

By: Menéndez

S.B. No. 763

A BILL TO BE ENTITLED

AN ACT

relating to a creditor's remedies with respect to certain delinquent payments owed by an elderly person who has an agent appointed under a durable power of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 751, Estates Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. CREDITOR'S DUTY TO NOTIFY AGENT

Sec. 751.231. CREDITOR'S DUTY TO NOTIFY AGENT OF CERTAIN DELINQUENT PAYMENTS. (a) In this section, "elderly principal" means a principal who is 65 years of age or older.

(b) For purposes of this section, a payment is delinquent if the creditor to whom the payment is owed does not receive the payment on or before the 30th day after the date the payment is due, as determined under a purchase or lease agreement or other contractual arrangement.

(c) Notwithstanding any other law, a creditor to whom an elderly principal owes a payment that is delinquent and arose out of a purchase or lease agreement or other contractual arrangement that secures the elderly principal's living quarters must comply with the requirements of this subsection before taking an adverse action against the elderly principal, including commencing an eviction proceeding, if the creditor knows or has reason to know that the elderly principal executed a durable power of attorney that grants

1 authority to an agent that would allow the agent to make the payment
2 that is delinquent. Notwithstanding any other law, before the
3 creditor takes the adverse action against the elderly principal,
4 the creditor must:

5 (1) submit a written request to the agent by certified
6 mail, return receipt requested, that the delinquent payment be made
7 on or before the 30th day after the date the agent receives the
8 request; and

9 (2) if the creditor does not receive payment on or
10 before the 30th day after the date the agent received the written
11 request under Subdivision (1), bring an action requesting a court
12 to review the agent's conduct and grant appropriate relief under
13 Section 751.251.

14 (d) A creditor who files an action with a court in
15 accordance with Subsection (c)(2) may not take an adverse action
16 against the elderly principal until the court enters an order on the
17 action.

18 (e) In addition to other remedies provided by law, an
19 elderly principal is entitled to recover from or against a creditor
20 who violates this section:

21 (1) a civil penalty in an amount equal to the amount of
22 the delinquent payment;

23 (2) actual damages suffered by the elderly principal
24 as a result of the creditor's violation of this section;

25 (3) court costs;

26 (4) injunctive relief; and

27 (5) reasonable attorney's fees incurred by the elderly

1 principal in seeking enforcement of this section.

2 SECTION 2. Section 751.251(a), Estates Code, is amended to
3 read as follows:

4 (a) The following may bring an action requesting a court to
5 construe, or determine the validity or enforceability of, a durable
6 power of attorney, or to review an agent's conduct under a durable
7 power of attorney and grant appropriate relief:

8 (1) the principal or the agent;

9 (2) a guardian, conservator, or other fiduciary acting
10 for the principal;

11 (3) a person named as a beneficiary to receive
12 property, a benefit, or a contractual right on the principal's
13 death;

14 (4) a governmental agency with regulatory authority to
15 protect the principal's welfare; ~~and~~

16 (5) a person who demonstrates to the court sufficient
17 interest in the principal's welfare or estate; and

18 (6) a creditor under Section 751.231(c)(2).

19 SECTION 3. (a) Subchapter E-1, Chapter 751, Estates Code,
20 as added by this Act, applies only to a purchase or lease agreement
21 or other contractual arrangement entered into or renewed:

22 (1) on or after the effective date of this Act; and

23 (2) before the effective date of this Act, to the
24 extent the subchapter does not conflict with a provision of the
25 purchase or lease agreement or other contractual arrangement.

26 (b) To the extent Subchapter E-1, Chapter 751, Estates Code,
27 as added by this Act, conflicts with the provision of a purchase or

1 lease agreement or other contractual arrangement entered into
2 before the effective date of this Act, the purchase or lease
3 agreement or other contractual arrangement provision prevails.

4 SECTION 4. This Act takes effect September 1, 2019.