

**SUBJECT:** Extending consumer protections in foreclosures of residential real estate

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 6 ayes — Deshotel, Elkins, Giddings, Keffer, Quintanilla, S. Turner  
1 nay — Orr  
4 absent — Christian, England, Gattis, S. Miller

**WITNESSES:** For — Alice Basey; Robert Doggett, Texas Low Income Housing Information Service; Martina Grifaldo, Lee Manly, and Candy Torres, Association of Community Organizations for Reform Now (ACORN); (*Registered, but did not testify*: Martha Balderas, Rene Rojo, and Cres Villanueva, ACORN)  
  
Against — None

**BACKGROUND:** Property Code, sec. 24.005 outlines provisions regarding a notice to vacate prior to filing an eviction suit. Under Property Code, sec. 24.005(b) provides that, if a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease, and the tenant timely pays rent and is not in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease.  
  
Property Code, sec. 51.002 details provisions regarding sale of real property under a power of sale conferred by a deed of trust or other contract lien. Property Code, sec. 51.002(d) states that a mortgage servicer of the debt, despite an agreement to the contrary, must serve a debtor in default with written notice by certified mail stating that the debtor is in default and give the debtor at least 20 days to cure the default before notice of sale can be given. The entire day when the required notice is given, regardless of the time of day, is included in the required 20-day notice period, but the entire day when the notice of sale is given is excluded from the 20-day notice period.

**DIGEST:** CSHB 1471 would extend from 30 days to 90 days the period that a tenant has to vacate a building purchased through a tax foreclosure sale or a trustee's foreclosure sale when the tenant was not in default of the lease and paying timely rent.

The bill would also require a mortgage servicer of the debt to provide the debtor in default written notice via first class regular mail, addressed to the debtor at his or her last address, in addition to certified mail. The time frame under which the debtor would have to cure the default would be extended from 20 to 45 days, as would the related provisions for how the notice period is determined.

CSHB 1471 would amend Property Code, ch. 51 by adding that any provision of a contract, agreement, or other document intended to waive a right of a debtor or exempt a mortgage servicer, mortgagee, trustee, substitute trustee, or government official from existing provisions generally applicable to liens would be void.

The bill would take effect September 1, 2009. The extended period in which a tenant would have to vacate and the waiver prohibition would apply only on or after the effective date. The provisions relating to the written notice and extended time period in which a debtor in default would have to cure the default would apply on or after December 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 1471 would provide relief to the increasing number of Texans affected by foreclosures. In 2008, there were over 129,000 foreclosures, and in February of this year, there were over 10,500 new foreclosure filings and 717 foreclosure sales.

CSHB 1471 would provide consumer protections to help stabilize and strengthen the Texas housing market by providing relief to struggling homeowners to stay in their home, giving them more time to cure mortgage loan defaults. The current timeframe gives homeowners just under three weeks to find a way to stay in their home — an unrealistic timeframe given the urgency of the situation. This extended 45-day timeframe is consistent with a recommendation by the attorney general given last year. Additionally, as the bill would require a foreclosure notice to be sent by regular mail in addition to certified mail as is currently required, the chances would increase that homeowners would receive the notice in a timely manner, which would allow them to take action to avoid foreclosure.

Extending the period in which a responsible tenant would have to vacate housing due to a landlord's failure to pay the mortgage is the right thing for Texas to do. Through no fault of their own, the lives of tenants who have been paying their rent timely are upended in such a foreclosure. CSHB 1471 simply would afford these victims, who would still be responsible for paying rent to a new owner, additional time to find a new place to live.

The bill also would prevent lenders from attempting to avoid protections provided in the law by preventing a borrower to waive his or her rights in loan documents. The rights of homeowners should not be able to be waived in loan documents, which can be confusing in and of themselves.

**OPPONENTS  
SAY:**

The existing timeframes provided in current law are sufficient and do not need adjustment. Making the deadline for tenants to vacate too long and unwieldy might make it more difficult to dispose of property when the owner was in default.