

- SUBJECT:** Permitting lienholders to redeem property owners' association foreclosures
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Elkins, England, Giddings, Keffer, Orr, S. Turner  
0 nays  
4 absent — Christian, Gattis, S. Miller, Quintanilla
- WITNESSES:** For — Roland Love, Texas Land Title Association; (*Registered, but did not testify*: J. E. "Buster" Brown, Community Association Institute Texas Legislative Action Committee; Andy Hill, Texas Association of Community Management Companies)  
  
Against — None
- BACKGROUND:** Property Code, sec. 209.010 requires that a property owners' association that conducts a foreclosure sale of an owner's lot must notify the lot owner within 30 days of the sale of the owner's right to redeem the property under Property Code, sec. 209.011. The notice must be in writing and be sent by certified mail, return receipt requested, to the lot owner's last known mailing address, as reflected in the records of the property owners' association.
- Property Code, sec. 209.011, grants the lot owner the right to redeem, or reclaim, the foreclosed property within 180 days of receiving the notice by paying:
- all amounts due the association at the time of the foreclosure sale;
  - interest from the date of the foreclosure sale to the date of redemption on all amounts owed the association at the rate stated in the dedicatory instruments for delinquent assessments or, if no rate is stated, at an annual interest rate of 10 percent;
  - costs incurred by the association in foreclosing the lien and conveying the property to the redeeming lot owner, including reasonable attorney's fees;
  - any assessment levied against the property by the association after the date of the foreclosure sale;

- any reasonable cost incurred by the association, including mortgage payments and costs of repair, maintenance, and leasing of the property; and
- the purchase price paid by the association at the foreclosure sale less any amounts due the association under Subdivision (1) that were satisfied out of foreclosure sale proceeds.

**DIGEST:**

CSHB 2392 would amend Property Code, sec. 209.010 (a) and (b) to require that those who had a lien against a property in a property owners' association be notified within 30 days of any foreclosure sale of the right to redeem the property. The written notice would have to be sent by certified mail, return receipt requested, to the address of each lienholder listed on the deed of trust filed with the county's property records. The property owners' association would have no duty to determine if the deed of trust had been transferred or assigned or to notify the lienholder if no address were included in the deed of trust records. The lot owner would be considered to have granted approval for the association to notify the lienholder.

CSHB 2392 would amend Property Code, sec. 209.011 to provide that the lien holder was allowed to redeem the property by meeting the same payment requirements as the lot owner. The deed of trust would remain in the name of the lot owner, rather than the lien holder. If either the lot owner or lienholder were to redeem the property, the purchaser of the property at the foreclosure sale would be required to record a deed transferring the property to the lot owner. The property owner or lien holder could bring legal action against the purchaser for failure to record the deed properly.

The lienholder would be required to file an affidavit with the deed of trust county property records that stated that the property purchased at the foreclosure sale had been redeemed by the lienholder. The affidavit would have to include the name and mailing address of the lien holder who redeemed the property.

The bill would take effect on September 1, 2009, and would apply only to foreclosure sales conducted on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2392 would establish a fair and workable mechanism to grant lienholders the right of redemption in property owners' association foreclosure sales and to protect their interest in those properties. Liens

could be assessed against the property for reverse mortgages, home equity loans, and home improvement loans. Because a defaulting owner is often an absentee and the foreclosure for a low amount, the lender should be able to redeem the property by paying the association and retaining its lien against the property.

CSHB 2392 would not impose an undue burden on the property owners' association to locate and notify lienholders. It would relieve them of this responsibility if no address were recorded in the deed of trust records. The deadline and duties required for a lienholder to redeem the property would be the same as required for the lot owner. The bill would protect lot owners as well by requiring the deeds of trust be recorded in their name should the lienholder redeem the foreclosed property. The bill would benefit lien holders, lot owners, and property owners' association while discouraging the bottom feeders and speculators at foreclosure sales who prey on the other parties with interests in the property.

OPPONENTS  
SAY:

No apparent opposition

NOTES:

The companion bill, SB 2121 by West, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 30 and was reported favorably, as substituted, by the House Business and Industry Committee on May 8.

Also on the May 8 General State Calendar is HB 1976 by Solomons, which would make changes in property owners' association operations, including a requirement for a hearing before a judge before property owners' associations foreclosure sales.

The substitute differs from the original bill by requiring that the notice be mailed to lienholder addresses recorded with the deed of trust; relieving the property owners' association from determining if the deed of trust had been transferred or assigned or to notify if there were no address for the lienholder in the deed of trust records; requiring that the deed of trust be recorded in the name of the lot owner, rather than either the lot owner or lienholder as provided in the original bill; and requiring that the purchaser of a redeemed property immediately record the deed of trust in the lot owner's name, rather than deliver it to the lot owner.