

SUBJECT: Allowing lienholders to redeem property owners' association foreclosures

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Deshotel, Elkins, England, Gattis, Orr, Quintanilla

0 nays

5 absent — Christian, Giddings, Keffer, S. Miller, S. Turner

SENATE VOTE: On final passage, April 30 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion, HB 2392:*)
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. The notice must be in writing and be sent by certified mail, return receipt requested, to the lot owner's last known mailing address 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 that were satisfied out of foreclosure sale proceeds.

DIGEST:

CSSB 2121 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 and to the address provided to the property owners' association by each transferee or assignee of the deed of trust for the foreclosed property.

The transferee's or assignee's notice to the property owners' association would have to:

- be in writing;
- list the mailing address of the transferee or assignee; and
- be mailed by certified mail, return receipt requested, or by U.S. Mail with signature confirmation to the property owner's association's address listed in its most recent management certificate.

The property owners' association would have no duty to notify the lienholder if no address was included in the deed of trust records. The lot owner would be considered to have granted approval for the association to notify the lienholder.

CSSB 2121 would amend Property Code, sec. 209.011 to provide that the lienholder would be allowed to redeem the property by meeting the same payment requirements as the lot owner. 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 to the redeeming

party transferring the property to the lot owner. The property owner or lienholder could bring legal action against the purchaser for failure to record the deed properly.

The lot owner or 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 lot owner or 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:**

CSSB 2121 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 can be assessed against property for reverse mortgages, home equity loans, and home improvement loans. Because a defaulting owner often is an absentee and the foreclosure is for a relatively small amount, the lender should be able to redeem the property by paying the association and retaining its lien against the property.

CSSB 2121 would not impose an undue burden on a property owners' association to locate and notify lienholders. It would relieve them of this responsibility if no address was recorded in the deed of trust records, or if assignees or transferees had failed to notify the association of their interest in the property and their addresses. 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 lienholders, lot owners, and property owners' associations, while discouraging speculators at foreclosure sales who prey on other parties with interest in a property.

Both current law and CSSB 2121 would provide adequate protection to rights of redeeming lot owners and redeeming lienholders should a property be transferred before the redemption period expired.

**OPPONENTS
SAY:**

CSSB 2121 should retain the provision in the Senate-passed bill and House companion that would prohibit buyers at a foreclosure sale from transferring the property to anyone besides the redeeming lot owner or

redeeming lienholder during the redemption period. Such a restriction could prevent speculators from “flipping” or selling the property for an inflated price, or from complicating the transfer of the land back to redeeming lot owners or lienholders.

NOTES:

The House companion bill, HB 2392 by England, was reported favorably, was reported favorably, as substituted, by the Business and Industry Committee on April 20 and placed on the May 8 General State Calendar, where no further action was taken.

The House committee substitute differs from the Senate-passed bill and the House companion bill by deleting a provision that would have prohibited a purchaser at a foreclosure sale from transferring the property to any party other than a redeeming lot owner or redeeming lienholder.