

SUBJECT: Extending consumer protections in foreclosure of residential real estate

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Deshotel, Elkins, Christian, England, Gattis, Giddings,
Quintanilla, S. Turner

0 nays

3 absent — Keffer, S. Miller, Orr

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: No public hearing

BACKGROUND: 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, the purchaser must give a tenant not in default 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.

DIGEST: SB 472 would, for two years, extend from 30 days to 60 days the period that a tenant had 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. On September 1, 2011, the period would revert to 30 days.

The bill would require the purchaser of the property at the foreclosure sale to deliver a notice to the tenant within 24 hours of the sale listing the tenant's rights under Property Code, ch. 51. The attorney general would be required to provide the wording of the notice. The purchaser would be

allowed to make the tenant vacate the property before the notification time period expired only if the tenant had failed to pay rent or other payments due under the lease agreement, including a late fee, as of the date of the sale.

SB 472 also would require a mortgage servicer of a debt to provide a debtor in default written notice via 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. The attorney general would be required to provide the wording of this notice.

The mortgage servicer would be required include an additional notice attached to the written notice of sale sent by first class regular mail and certified mail. The second notice would have to be printed on a regular piece of canary yellow or similarly-colored paper at least 8 1/2 by 11 inches. The attorney general also would provide the exact wording, but the notice would be required to include:

- a statement that notice provided by the mortgage services was required by law;
- a description of the process of foreclosure on a contract lien;
- a statement that the debtor in default had 45 days to cure the default as provided by Property Code, sec. 51.002(c) as amended by SB 472;
- a description of options available to the debtor in default to assist in preventing the foreclosure;
- a list of resources the debtor could contact for assistance in filing a complaint concerning the foreclosure process;
- a statement that the debtor was required to serve a copy of notice of sale to each tenant; and
- the name, telephone number, facsimile number, and e-mail address of a person authorized to act for the servicer of the debt relating to the debt.

Should the foreclosure sale occur, the tenant of the debtor would not be required to vacate the property before the 61st day after the sale, provided that the tenant had:

- paid rent timely to the new property owner;
- maintained the property in good order; and

- maintained a liability insurance policy during the term of the holdover period.

This time period requirement would revert to the 31st day after the sale on September 1, 2011.

The debtor would not be required to vacate the property until 14 days after the sale. The debtor in possession of the property would not be allowed to destroy, damage, impair, allow to deteriorate, or to commit waste on the property and would be liable to the purchaser for the damage and to anyone who suffered an injury or property damage while on the property.

The bill also would require that the debtor provide a notice to tenants within seven days of a notice of a sale by:

- personal delivery to the tenant;
- certified mail, return receipt requested to the tenant; or
- leaving a notice in a conspicuous place inside the dwelling if the lease authorized this kind of notice.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 472 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.

SB 472 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 the attorney general made 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 would be 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. SB 472 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.

The extended timeframe for tenants to vacate housing due to the landlord's failure to pay the mortgage would end after September 1, 2011. By that time, the state's economy and housing market should have recovered, and fewer foreclosures are to be expected.

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.

OTHER
OPPONENTS
SAY:

SB 475 should extend from 30 to 90 days, rather than 60 days, the period a tenant has to vacate a building purchased through a foreclosure sale when the tenant was not in default of the lease and paying timely rent.