

**SUBJECT:** Establishing a mediation procedure for an expedited foreclosure

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

**VOTE:** 6 ayes — Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman  
0 nays  
1 absent — Oliveira

**SENATE VOTE:** On final passage, April 24 — 29-1 (Hancock)

**WITNESSES:** For — Martin Hoffman (*Registered, but did not testify*: Tom Forbes, Texas Attorney-Mediators Coalition)  
Against — None  
On — John Fleming, Texas Mortgage Bankers Association

**BACKGROUND:** Texas Rules of Civil Procedure, rule 106, outlines a method of service in which a citation is delivered to the defendant in person with the date of the delivery attached and a copy of the petition. The citation may also be mailed by registered or certified mail with a return receipt requested. If these methods of service are unsuccessful, the court may authorize leaving a true copy of the citation with an attached petition to any person older than age 16 at the specified location or in any other manner the court determines reasonably effective.  
  
Texas Rules of Civil Procedure, rule 736, sets out the procedure for an expedited order allowing the foreclosure of a lien. Rule 736.3 describes how citations should be issued; rule 736.5 outlines how the respondent files a response; and, rule 736.7 describes the appropriate default when the respondent fails to file a response.

**DIGEST:** CSSB 1202 would set out the rules for mediation in an expedited foreclosure case, allowing for a citation for expedited foreclosure to be served according to Texas Rules of Civil Procedure, rule 106 or rule 736.

**Hearing before mediation.** After a filing of a response under Texas Rules of Civil Procedure, rule 736.5, the court would at its discretion have a hearing to determine whether to order mediation and could not order mediation without a hearing. The petitioner or respondent would be able to request a hearing on mediation or on whether the application was defective. This hearing would not take place before the deadline for the respondent to file a response. The hearing could take place by telephone if the court sent notice and instructions to the concerned parties at least 10 days before the hearing was scheduled to take place.

The court would consider any objections to the referral of the case to mediation at this hearing. It would be able to order the case to mediation, but would be required to do so according to deadlines in rule 736.

**Mediation process.** If the two concerned parties could not agree on appointing a mediator, the court could appoint one, in which case all parties would receive the name of the chosen mediator at the mediation hearing. The mediator's fee would be divided equally between the parties, which also could agree to waive mediation.

**Nonresponse.** If a respondent did not file a response to a citation before the deadline under rule 736, or if a respondent did not attend a mediation hearing after receiving notice, the court would not order a mediation and would grant or deny the petitioner's motion under rule 736.7.

If the respondent attended the mediation hearing and mediation was ordered, the mediation would take place no later than 29 days after the initial filing of a motion for a default order.

The Supreme Court could not amend or adopt rules in conflict with the bill.

The bill would take effect September 1, 2013.

SUPPORTERS  
SAY:

CSSB 1202 would provide judges with a process to follow for a timely expedited foreclosure mediation. This form of dispute resolution would be particularly appropriate for homeowners who had the ability to save their homes but had difficulties communicating with the mortgage companies. While judges already may order mediation proceedings, the Texas Rules of Civil Procedure do not address holding a hearing before the mediation proceedings. This bill would give judges a template to initiate these

proceedings in a manner that ensured a fair, speedy process, while protecting the homeowner.

The bill would ensure that judges could use their discretion in sending cases to mediation, an expensive process that should be carefully weighed and not imposed on all expedited foreclosure cases.

The bill would adopt into statute a number of common practices already used in rule 106 to serve a respondent with a citation for expedited foreclosure, which is a higher standard of due process. This would safeguard the respondent by ensuring the court did not act before the respondent had a reasonable opportunity for notification, and also would give the court direction not to grant a hearing if the respondent did not respond.

Hearings and mediation are costly, and the bill would address this by allowing for parties to participate via telephone in hearings and to waive mediation, and requiring them to split the costs.

CSSB 1202 would ensure the hearings and mediation were conducted in a timely manner, by establishing in law a number of deadlines from rule 736 to be observed before further action could be taken, including a deadline for responding to a citation and a deadline for when the mediation would have to be conducted. Because the bill would apply to expedited foreclosure proceedings, the inclusion of these deadlines would be appropriate.

**OPPONENTS  
SAY:**

By opening up a path to mediation, the bill would raise the costs of home foreclosure by adding an extra step. These costs would have to be absorbed not only by the foreclosing entity but also by the homeowner.

**OTHER  
OPPONENTS  
SAY:**

While the intention of the bill to provide for mediation is laudable, the bill should not include so many tight deadlines for the parties to meet in completing the hearing and the mediation. The bill would not allow enough time to accomplish the objectives of the mediation.