

BILL ANALYSIS

Senate Research Center

S.B. 2121
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, if a homeowners' association forecloses its lien for assessments, only the owner has the right to redeem the property. In many cases, the association lien is subordinated by restrictive covenants to a voluntary mortgage, but not in all cases, and not for all voluntary liens. Since a defaulting owner is often absentee, and the foreclosure is for a low dollar amount, the lender should be permitted to redeem the property, thereby paying the association and retaining its lien position.

This bill will help lenders maintain and protect their lien position, will permit homeowners' associations to be paid their assessments, and will protect the ownership interest of the owners, who may be able to work out a plan to stay in the home with their lender.

As proposed, S.B. 2121 provides a lienholder a right of redemption subsequent to the foreclosure of a property owners' association lien.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 209.010(a) and (b), Property Code, and adds Subsection (c), as follows:

(a) Requires a property owners' association that conducts a foreclosure sale of an owner's lot to send to the lot owner and to each lienholder of record on the property, not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of the right of the lot owner and lienholders to redeem the property under Section 209.011 (Right of Redemption After Foreclosure), rather than the lot owner and of the owner's right to redeem the property under Section 209.011.

(b) Requires that a notice be sent by certified mail, return receipt requested, to the address of each holder of a lien evidenced by a deed of trust of record on the property subject to foreclosure, according to the most recent deed of trust on file in the real property records of the county in which the property is located. Provides that a property owners association shall have no duty to determine if a deed of trust has been transferred or assigned. Provides that the association, if there is no lienholder address in such deed of trust, shall have no duty to notify the lienholder in accordance with this section.

(c) Requires the lot owner, for purposes of this section, to be deemed to have given approval for the association to notify the lienholder.

SECTION 2. Amends Sections 209.011(b)-(h), (j), (k), (m), (n), and (p), Property Code, as follows:

(b) Authorizes the owner of property in a residential subdivision or a holder of a recorded lien secured by the property to redeem the property from any purchaser at a sale foreclosing a property owner's association assessment lien not later than the 180th day

after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010 (Notice After Foreclosure Sale).

(c) Prohibits a person who purchases property at a sale foreclosing a property owners' association's assessment lien from transferring ownership of the property to a person other than a redeeming lot owner or a redeeming lienholder during the redemption period.

(d) Makes conforming changes.

(e) Makes a conforming change.

(f) Requires the purchaser of the property at foreclosure, if a lot owner or lienholder redeems the property under this section, to immediately execute and record, rather than deliver to the owner, a deed transferring the property to the lot owner, rather than to the redeeming lot owner. Authorizes the lot owner or lienholder, if a purchaser fails to comply with this section, to file an action, rather than a cause of action, against the purchaser and to recover reasonable attorney's fees from the purchaser if the lot owner or the lienholder is the prevailing party in the action.

(g) Makes conforming changes.

(h) Authorizes the purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property to presume conclusively that the lot owner or a lienholder did not redeem the property unless the lot owner or a lienholder files in the real property records of the county in which the property is located an affidavit that includes the name and mailing address of the person who redeemed the property. Makes conforming and nonsubstantive changes.

(j) Makes conforming changes.

(k) Makes a conforming and nonsubstantive change.

(m), (n), and (p) Makes conforming changes.

SECTION 3. Makes application of Sections 209.010 and 209.011, Property Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2009.