

BILL ANALYSIS

Senate Research Center

C.S.S.B. 2121
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Intergovernmental Relations
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Committee Report (Substituted)

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.

C.S.S.B. 2121 amends current law relating to the persons entitled to redeem property after the foreclosure of a property owners' association's assessment 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, Property Code, by amending Subsections (a) and (b), and adding Subsections (b-1) and (b-2), 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, 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 record 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:

(1) Makes no changes to this subdivision;

(2) the address of each holder of a lien on the property subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located; and

(3) the address of each transferee or assignee of a deed of trust described by Subsection (b)(2) who has provided notice to a property owners association of such assignment or transfer. Requires that notice provided by a transferee or assignee to a property owners association be in writing, contain the mailing address of the transferee or assignee, and be mailed certified mail, return receipt requested or U.S. mail with signature confirmation, to the property owners association according to the mailing address of the property owners association pursuant to the most recent management certificate filed of record pursuant to Section 209.004 (Management Certificates).

(b-1) Provides that if a recorded instrument does not include an address for the lienholder, the association does not have a duty to notify the lienholder as provided by this section.

(b-2) Provides that, for purposes of this section, the lot owner is 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 lienholder of record 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 deliver to the redeeming party, rather than 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 states that the property has been redeemed, rather than that the lot owner has redeemed the property, contains a legal description of the property, and includes the name and mailing address of the person who redeemed the property. Makes conforming changes.

(j) Makes conforming changes.

(k) Makes a nonsubstantive change.

(m) Makes conforming changes.

(n) Requires the association or third party foreclosure purchaser, after the redemption period and any extended redemption period provided by Subsection (m) expires without a redemption of the property, to record an affidavit in the real property records of the county in which the property is located stating that the lot owner or a lienholder did not redeem the property during the redemption period or any extended redemption period.

(p) Makes a conforming change.

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.