

SUBJECT: Deed-of-trust foreclosures

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons

0 nays

1 absent — Brady

WITNESSES: For — Robert Sneed, Texas Land Title Association

Against — None

BACKGROUND: A debtor may convey to a creditor a deed of trust that transfers title to property to a trustee as security for the loan. To avoid foreclosure if payment on the debt becomes overdue, the debtor may convey the property to the creditor through a deed, giving the creditor title to the land. The creditor is then no longer a lienholder and is subject to any liens on the property.

DIGEST: CSHB 333 would allow a creditor to void a deed conveying real property in satisfaction of a debt under deed of trust before the fourth anniversary of the date the deed was executed and foreclosed if the debtor had failed to disclose a lien or other encumbrance on the property before executing the deed and if the creditor had no personal knowledge of the lien. The bill would establish as conclusive for a third party a creditor's affidavit stating that a deed had been voided.

Voiding a deed would not affect the priority of the creditor's deed of trust against other lienholders. A creditor who accepted a deed in lieu of foreclosure could foreclose on a deed of trust as provided in the deed of trust without electing to void the deed.

SUPPORTERS SAY: CSHB 333 would help creditors and debtors avoid litigation by protecting a creditor who accepted a deed in lieu of foreclosure. Under current law a creditor who accepts a deed in lieu of foreclosure ceases to be a lienholder

and is subject to those who hold liens subsequent to the creditor's original deed. CSHB 333 would allow a creditor who holds a deed to land conveyed in lieu of foreclosure, who discovers that there are liens against the land, to void the deed and return to enforcing the deed of trust against the debtor.

Allowing creditors to void deeds and return to their deed-of-trust arrangement would encourage the use of deeds in lieu of foreclosure, which in turn would save time and prevent litigation. Deeding land is easier than foreclosing. Foreclosure requires notice of intent to foreclose, notice of sale, a trustee sale and observing various waiting periods in order to share the land among lienholders.

Conducting a title search may not be enough to protect a creditor who accepts a deed from the unexpected liens of other creditors. A title search does not pick up all the transactions a creditor goes through, including bankruptcy. In addition, even a diligent research of title might not pick up all the lienholders of a piece of property.

A creditor holding a deed is unlikely to waive the first lien priority of the deed of trust to other lienholders. CSHB 333 would ensure that creditors are not left worse off for accepting a deed in lieu of foreclosure. Creditors should be able to foreclose on land even if they do not void their deeds in lieu of foreclosure. These creditors are simply trying to restore all parties concerned with the land to their prior position at the lowest cost.

**OPPONENTS
SAY:**

CSHB 333 proposes unnecessary and unfair new provisions. Any diligent person considering acceptance of a deed in lieu of foreclosure can already adequately be protected by conducting a title search to determine if there are any liens on the debtor's property. No new protections are needed. Furthermore, it would be unfair to allow foreclosure on land by a creditor who does not void the deed accepted in lieu of foreclosure.

NOTES:

The substitute would require that a creditor have *personal* knowledge, rather than simply knowledge, of liens or encumbrances on a debtor's property before being allowed to void a deed. The substitute added the provisions about reliance on a creditor's affidavit, the priority of the creditor's deed of trust and foreclosure as provided in the deed of trust without voiding the deed.