

SUBJECT: Rights of tenants living in foreclosed home and to receive copy of lease

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Solomons,
Workman

0 nays

1 absent — Quintanilla

WITNESSES: For — Mark Hurley, David Mintz, Texas Apartment Association; Sandy Rollins, Elizabeth Waters, Texas Tenants' Union; (*Registered, but did not testify*: George Darty; Robert Doggett, Texas Housing Justice League; Daniel Gonzalez, Texas Association of Realtors; Cynthia Wallace, Texas Tenants' Union; Lynn Walshak, HOA Reform Coalition;)

Against — John Fleming, Texas Mortgage Bankers; (*Registered, but did not testify*: John Heasley, Texas Bankers Association)

On — Carey Helm, Texas Community Association Advocates

BACKGROUND: The federal Protecting Tenants at Foreclosure Act of 2009 gives tenants of foreclosed properties the right to occupy their homes for the remainder of the lease and requires that they be given 90 days notice to vacate. Only a buyer who wants to occupy the house as his or her primary residence can end the lease within its term, and must give the tenant 90 days notice to do this. This law expires on December 31, 2014.

According to Property Code, sec. 92.331, a Texas tenant is protected from retaliatory action from a landlord, including eviction, decreased services, increased rent, or termination of the lease, if the tenant:

- in good faith exercises a right or remedy provided by the lease or the law;
- gives the landlord notice to repair or exercise a remedy; or
- complains to a government entity, public utility, or civic or nonprofit agency about a code violation and believes in good faith the complaint is valid.

DIGEST:

Notice to vacate. CSHB 1429 would modify language in Property Code, sec. 24.005 regarding conditions that had to be met before filing an eviction notice upon foreclosure. These provisions would be in effect January 1, 2012, through December 31, 2014, and would apply only to the purchase of leased property at a foreclosure sale on or after January 1, 2012.

The bill would define a bona fide tenant in this section as one who occupied the premises on the date of the foreclosure sale and was not the mortgagor of the purchaser or the mortgagor's child, spouse, or parent. A purchaser of a foreclosed-upon property would have to give a bona fide tenant a written notice to vacate at least 90 days in advance. Sec. 24.005 of the Property Code also would be modified to add a description to "tenant," specifying a "tenant at will or by sufferance or under a written lease or oral rental agreement."

Effective January 1, 2015, the previous language outlined above would be replaced, and new language would apply only to the purchase of leased property at a foreclosure sale on or after January 1, 2015.

After January 1, 2015, if a building was purchased at a foreclosure sale under a lien superior to the tenant's lease, and the tenant timely paid rent and was not otherwise in default after the foreclosure, the purchaser would have to give the tenant at least 30 days written notice to vacate if the purchaser chose not to continue the lease.

The tenant would be considered to have timely paid the rent if, during the month of the foreclosure sale, the tenant paid the rent to:

- the landlord before receiving any notice of the foreclosure sale;
- the foreclosing lien holder; or
- the purchaser at foreclosure no later than the fifth day after receiving the purchaser's written payment request.

Before a foreclosure sale, a foreclosing lien holder could give written notice to a tenant specifying the date of the foreclosure and stating that a foreclosure notice had been given to the landlord or property owner.

Effect of foreclosure on tenancy. CSHB 1429 also would amend the Property Code by adding sec. 92.025, which would be effective January 1,

2012, through December 31, 2014, and would apply only to the purchase of leased property at a foreclosure sale on or after January 1, 2012.

The bill would define a bona fide tenant in this section as one who was not the mortgagor of the purchaser or the mortgagor's child, spouse, or parent; whose lease resulted from an arms-length transaction; and whose rent was not substantially less than fair market rent for the premises.

The bill would allow the purchaser of a foreclosed property to require a bona fide tenant to vacate only after providing at least 90 days written notice. Tenants could occupy the rental property until the end of the lease or the date given to vacate, whichever was later. If the purchaser wanted to occupy the property as a primary residence, the tenant would have to vacate when given 90 days notice, unless the tenant owed no unpaid rent or other money to the landlord and was party to a still-effective lease, in which case the tenant could remain until the end of the lease.

Landlord's duty to provide copy of lease. CSHB 1429 also would amend the Property Code, by adding sec. 92.026, which would be effective January 1, 2012, and would apply only to a lease with an effective date of January 1, 2012, or later.

Within three business days of signing the lease, the landlord would have to provide at least one copy of the lease to at least one party to the lease. If more than one tenant was a party to the lease, the landlord would have to provide a copy of the lease to a requesting tenant who had not received a copy within three days of receiving the written request. If a landlord failed to comply with these provisions, the tenant could sue to recover actual damages, court costs, and reasonable attorney's fees.

Retaliation against tenant. CSHB 1429 would add a new circumstance under Property Code sec. 92.331 for which the landlord could not retaliate against a tenant. This provision would be effective January 1, 2012. The landlord would not be allowed to retaliate against a tenant who established, attempted to establish, or participated in a tenant organization.

Effective date. The bill would take effect January 1, 2012.

SUPPORTERS
SAY:

CSHB 1429 is needed to ensure tenants' rights after foreclosure, give tenants the right to get copies of their leases, and provide greater protection against retaliation.

Texas needs to conform to the federal Protecting Tenants at Foreclosure Act and make it applicable to all types of mortgage foreclosures, whether federally related or not, including seller financing. There is no legitimate public policy reason for treating tenants differently depending on what kind of mortgage was foreclosed. The National Low Income Housing Coalition estimated that tenants occupy as many as 40 percent of the homes facing foreclosure. With so much at stake, it is important that Texas make clear its intention to protect tenants by allowing them to stay through their lease terms and by requiring 90-day notices to vacate.

CSHB 1429 also would address a tenant's right to a copy of the lease. Licensed real estate brokers are required to provide people who sign leases with copies, but an owner or agent of a property is not required to provide lease copies. Tenants are at a disadvantage regarding the lease; they rightfully expect a copy, as common practice would dictate, but have no real bargaining power or rights to enforce that common practice. CSHB 1429 would give a tenant the right to a copy of the lease and would give the right to sue for damages if the landlord did not provide it.

With regard to retaliation by the landlord, Texas, unlike some states, does not require that a landlord have "just cause" to evict a tenant, and a tenant's rights against retaliation are limited. One current hole in the law is that tenants are not protected from retaliation if they join tenant organizations to try to improve their communities. At least 29 states protect tenant organizing under their retaliation statutes, and Texas should join them by approving CSHB 1429.

**OPPONENTS
SAY:**

CSHB 1429 would go farther and be broader than federal law, and is unnecessary because federal law already protects most tenants in Texas. Federal law covers foreclosures related to federally related mortgages, such as federally insured mortgages. CSHB 1429 would expand the protections to any mortgage that was foreclosed, including for a seller-financed home. In the case of a conflict, federal law would pre-empt this law, so it would be safer to stick with the federal law.

The mandate to provide a lease is not necessary. Most landlords already provide a lease as common practice, and placing a mandate in statute would be strange given that no other mandates exist in law for giving a signed contract of any other type to the other party.

OTHER
OPPONENTS
SAY:

CSHB 1429 should change the definition of bona fide tenant to match the federal law definition.