HOUSE
RESEARCH
ORGANIZATION bill analysis   5/12/2011

HB 3593
W. Smith
(CSHB 3593 by S. Miller)

SUBJECT: Providing notice of default to mortgagees

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla, Solomons, Workman

                0 nays

WITNESSES: For — Ronald Anderson, Community Resource Credit Union; John Lederer, Credit Union Coalition and Credit Union of Texas; Paul Withey, Texas Bay Area Credit Union; (*Registered, but did not testify:* Jon Fisher, Associated Builders and Contractors of Texas; Jeff Huffman, Texas Credit Union League; Joseph Rossa, EECU; Michael White, Texas Construction Association)

                Against — John Fleming, Texas Mortgage Bankers; (*Registered, but did not testify:* Celeste Embrey, Texas Bankers Association; Janet Ahmad, Home Owners for Better Building, HOA Reform)

                On — Nancy Hentschel

BACKGROUND: Property Code, ch. 51 governs sales of real property under a contract lien. Sec. 51.002 requires a mortgage servicer to serve a debtor in default on a residence with written notice by certified mail giving the debtor at least 20 days to cure the default. If the default is not cured, a notice must be posted 21 days before the date of sale at the county courthouse, filed in the county clerk's office, and served by certified mail to each debtor obligated to pay the debt.

DIGEST: CSHB 3593 would require a mortgage servicer to serve, by verified mail, a copy of the notice to cure sent to the debtor on any other mortgagee not represented by the mortgage servicer.

                The bill would require notice to cure and notice of sale to the debtor to be sent by verified mail.

                Verified mail would be defined as any method of mailing that provided evidence of mailing. Service of a notice by verified mail would be

complete when the notice was deposited with the U.S. Postal Service or a common carrier, with postage or shipping charges prepaid, and addressed to the debtor at the debtor's last known address or to a mortgagee at the mortgagee's last known address as reflected in the real property records in the county in which the property was located.

The bill would take effect September 1, 2011, and would apply to a notice required to be provided on or after September 1, 2011.

SUPPORTERS
SAY:

Primary lien holders are not required under current law to provide notification to other lien holders that a property is in default. CSHB 3593 would provide increased notification to lien holders that had an interest in the property. The bill would allow other lien holders to offer refinancing options for the borrower or a loan modification program. This could help a borrower avoid foreclosure.

OPPONENTS
SAY:

This bill would cause servicers to incur a cost of $100 to $500 for a title search to determine whether other lenders needed to be notified. The bill would raise costs for all borrowers in default since a search would have to be conducted whether a junior lien actually existed or not.

The bill would require notice of default to be given when the borrower gets the notice to cure. A home is not in foreclosure at this time and a foreclosure decision has not been made, making notice to other lien holders premature.

Providing notice by verified mail would reduce the probability that a homeowner in default would receive the notice. Verified mail is not adequately defined in the bill. "Evidence of mailing" could be interpreted to mean that a third party certified the notice had been mailed. This would not provide for proof of delivery in the form of a receipt signed by the addressee.

NOTES:

The substitute differs from the original by requiring notice to other mortgagees at the time the notice to cure was sent, rather than when the notice of sale was sent. The substitute also would require notices by verified mail rather than certified mail.

The companion bill, SB 1712 by Jackson, was considered in a public hearing of the Senate Intergovernmental Relations Committee on April 27 and left pending.