

## **BILL ANALYSIS**

Senate Research Center  
83R22922 CLG-F

H.B. 2795  
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Jurisprudence  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

When a borrower defaults on a secured loan, notice of a default and foreclosure is given to the record title holder of the pledged property. Under current law, title to property of a deceased individual is immediately vested in the individual's heirs upon death, which can create issues with regard to determination of title and notice if debt that is secured by the decedent's interest in real property is in default. Interested parties observe that since the heirs are not contractually obligated to pay the debt, the property is held hostage, and the lender cannot foreclose or obtain good title as would be the case if the borrower were not deceased. The parties note that in many cases, the lender must file a creditor's administration or a vendor's lien rescission lawsuit, which is a cumbersome process that results in a protracted delay detrimental to property values and neighborhoods.

H.B. 2795 seeks to address this issue by establishing an efficient process through which a lender can proceed with foreclosure of a lien on certain decedents' interests in real property in an effort to eliminate litigation risks to consumers, title companies, and lenders when it comes to ownership of a deceased borrower's property.

H.B. 2795 amends current law relating to enforcement of a lien against certain decedents' interests in real property.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Supreme Court of Texas is restricted in SECTION 1 (Section 125.002, Estates Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle C, Title 2, Estates Code, as effective January 1, 2014, by adding Chapter 125, as follows:

#### **CHAPTER 125. ENFORCEMENT OF LIEN AGAINST CERTAIN DECEDENTS' INTERESTS IN REAL PROPERTY**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 125.001. DEFINITIONS. Defines "mortgage servicer," "mortgagee," "mortgagor," and "security instrument" in this chapter.

Sec. 125.002. APPLICABILITY OF CHAPTER; CONFLICT WITH OTHER LAW. (a) Provides that this chapter applies only to foreclosure of a lien on real property of a decedent's estate if the decedent is the mortgagor of the security instrument creating the lien.

(b) Provides that this chapter controls to the extent of a conflict between this chapter and another provision of this title, Rule 736, Texas Rules of Civil Procedure, or Chapter 51 (Provisions Generally Applicable to Liens), Property Code.

(c) Prohibits the Supreme Court of Texas, notwithstanding Section 22.004 (Child), from amending or adopting a rule in conflict with this chapter.

#### SUBCHAPTER B. PROCEDURES PRIOR TO FORECLOSURE OF LIEN

Sec. 125.051. PROCEDURE IN ABSENCE OF PROBATE PROCEEDING. (a) Authorizes the mortgagee or mortgage servicer to proceed with foreclosure of the lien on the property in accordance with this section if a debt that is secured by a decedent's interest in real property under a security instrument is in default and no probate proceeding has been commenced.

(b) Prohibits foreclosure of a lien on real property in accordance with this section from being initiated earlier than the 180th day after the date of the decedent's death and authorizes foreclosure to be initiated only if the mortgagee agrees that the mortgagee has only a preferred debt and lien claim against the decedent's interest in the real property.

(c) Requires the mortgagee or mortgage servicer, concurrently with obtaining a judgment declaring heirship under Chapter 202 (Determination of Heirship), to:

(1) obtain a court order under Rule 736, Texas Rules of Civil Procedure, allowing the mortgagee or mortgage servicer to proceed with foreclosure of the lien under Chapter 51, Property Code, and the terms of the security instrument; and

(2) give notice in accordance with Subchapter C.

(d) Provides that the foreclosure deed divests all persons receiving notice under Subchapter C of their right, title, and interest in the decedent's interest in the real property after a foreclosure sale following the procedure in Subsection (c).

#### SUBCHAPTER C. NOTICE AND OTHER REQUIREMENTS

Sec. 125.101. NOTICE. (a) Requires a mortgagee or mortgage servicer foreclosing a lien under Section 125.051, for purposes of Section 51.002(b) (relating to requiring that the notice of sale be given at least 21 days before the date of sale through certain methods), Property Code, to send notice of sale to:

(1) each surviving obligor of the debt secured by the real property or surviving mortgagor of the security instrument encumbering the real property at the street address of the property sought to be foreclosed and at any other address in the records of the mortgagee or mortgage servicer identified by the decedent mortgagor, surviving mortgagor, or surviving obligor as an address for notice;

(2) the decedent, with the notation "Decedent," at the street address of the property sought to be foreclosed;

(3) the surviving spouse of the mortgagor, if any;

(4) each heir of the decedent named in the judgment obtained under Section 202.201 (Required Statements in Judgment), at the heir's last known address;

(5) the "Occupant" at the street address of the property sought to be foreclosed; and

(6) if an heir is a minor child or otherwise under a legal disability, the person who is the parent, natural guardian, next friend, or person with a power of attorney for the heir or if a guardianship has been created by a

court for the heir, the name and last known address of the heir's guardian of the estate.

(b) Requires the mortgagee or mortgage servicer, in addition to mailing the notice by certified mail as required by Section 51.002(b), Property Code, to mail the notice by regular mail to the person's last known address.

(c) Requires the mortgagee or mortgage servicer by affidavit to describe to the court the due diligence exercised by the person to find or locate the whereabouts of the spouse, heir, or other person for purposes of providing notice under this section and requires the court to determine whether citation by publication is necessary if the name, last known address, or whereabouts of the surviving spouse or an heir of a decedent or other person to whom notice is required to be given under this section is unknown.

Sec. 125.102. CONTENTS OF APPLICATION FOR RULE 736 ORDER. Requires that the application for the order, if a court order under Rule 736, Texas Rules of Civil Procedure, is required under this chapter:

- (1) substantially comply with the requirements of Rule 736.1; and
- (2) contain an estimate of the "fair market value" of the property prepared not earlier than the 120th day before the date the application is filed and supported by documentation as to fair market value.

Sec. 125.103. CONTENTS OF ORDER. Requires that an order allowing the mortgagee or mortgage servicer to proceed with the foreclosure of a lien under this chapter:

- (1) describe the material facts establishing the basis for foreclosure;
- (2) describe the real property to be foreclosed by the property's commonly known mailing address and legal description;
- (3) contain the name and last known address of each person who is to receive the notice under this subchapter; and
- (4) contain the recording or indexing information of the security instrument to be foreclosed.

SECTION 2. Makes application of Chapter 125, Estates Code, as added by this Act, prospective.

SECTION 3. Effective date: January 1, 2014.