

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2795
By: Raymond (West)
Jurisprudence
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Committee Report (Substituted)

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.

C.S.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.

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

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 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 in which a decedent had an interest if the decedent was the mortgagor of the security instrument creating the lien and an obligor of the debt secured by 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.

SUBCHAPTER B. FORECLOSURE OF LIEN

Sec. 125.051. PROCEDURE PRIOR TO FORECLOSURE. (a) Authorizes the mortgagee or mortgage servicer to proceed with foreclosure of the lien on the real 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 under this section from being initiated earlier than the 180th day after the date of the decedent's death.

(c) Provides that foreclosure of a lien on real property under this section is considered an election by the mortgagee to have the claim allowed, approved, and fixed as a preferred debt and lien claim against the decedent's interest in the real property securing the debt and paid according to the terms of the contract that secured the lien. Prohibits any further claim for the debt from being made by the mortgagee against any other assets of the decedent's estate.

(d) 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.

Sec. 125.052. EFFECT OF FORECLOSURE. Provides that a deed given pursuant to a foreclosure of a lien on real property in accordance with this chapter divests all persons receiving notice under Subchapter C of any right or title to or interest in the decedent's interest in the real property.

SUBCHAPTER C. NOTICE AND OTHER REQUIREMENTS

Sec. 125.101. NOTICE. (a) Requires a mortgagee or mortgage servicer foreclosing a lien under this chapter, 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, sent to the street address of the property subject to the foreclosure and the last known 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," sent to the street address of the property subject to the foreclosure;

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

(4) each heir of the decedent named in the judgment obtained under Chapter 202, sent to the heir's last known address;

(5) the "Occupant," sent to the street address of the property subject to the foreclosure; and

(6) if an heir is a minor child or otherwise under a legal disability, the person who is a natural guardian, a guardian, or, if known to the

mortgagee or mortgage servicer, an agent or attorney in fact under a power of attorney signed by the heir, sent to the person's last known address.

(b) Requires the mortgagee or mortgage servicer to mail a notice required under Subsection (a) both by regular mail and by registered or certified mail.

(c) Requires the mortgagee or mortgage servicer to describe to the court by affidavit 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 are unknown.

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

(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.

Sec. 125.104. ATTACHMENT OF ORDER TO TRUSTEE'S DEED. Requires that a conformed copy of the court order obtained under Rule 736, Texas Rules of Civil Procedure, pursuant to this chapter be attached to the trustee's or substitute trustee's deed when recorded in the real property records.

SUBCHAPTER D. DISPOSITION OF EXCESS PROCEEDS OF FORECLOSURE SALE.

Sec. 125.151. PAYMENT OF EXCESS PROCEEDS INTO COURT REGISTRY. Requires the trustee or substitute trustee, not later than the 90th day after the date of a foreclosure sale conducted pursuant to this chapter, to pay into the court registry any proceeds of the foreclosure sale remaining after the payment of:

(1) the costs of the foreclosure;

(2) any trustee fees or attorney's fees permitted under a security instrument evidencing a lien foreclosed under this chapter; and

(3) the debt owed to any lienholder who obtained an order under this chapter in the order of priority of those liens.

Sec. 125.152. WITHDRAWAL FROM COURT REGISTRY. Authorizes excess proceeds paid into a court registry as required by Section 125.151 to be withdrawn as follows:

(1) the personal representative of the decedent's estate is authorized to withdraw the excess proceeds to be administered as a part of the decedent's estate; or

(2) if no person is serving as personal representative of the decedent's estate, the decedent's heirs named in a judgment in a proceeding to declare heirship under Chapter 202 are authorized to withdraw the excess proceeds on the earlier of the expiration of the fourth anniversary of the date of the decedent's death or the date of entry of an order of no administration under Chapter 451 (Order of No Administration).

Sec. 125.153. PAYMENT TO COMPTROLLER. Requires the court to order the remaining amount to be paid to the comptroller of public accounts of the State of Texas in accordance with Chapter 551 (Payment of Certain Estates to State) if any money paid into the court registry under this subchapter remains on deposit with the court four years and six months after the date of the decedent's death.

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

SECTION 3. Effective date: January 1, 2014.