

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1202
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Supreme Court of Texas recently issued rules related to expedited foreclosure actions. Prior to these rules, judges were able to send homeowners to mediation prior to the foreclosure to work out a potential remedy to retain their home. Concerns have been raised with removing this ability, especially in those cases where the homeowner is seeking a loan re-modification. C.S.S.B. 1202 seeks to clarify that, at the judge's discretion, between the presentation of an application for foreclosure and the signing of the order the parties can be sent to mediation to resolve modification and foreclosure issues.

C.S.S.B. 1202 amends current law relating to an order to conduct mediation following an application for expedited judicial foreclosure proceedings.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Supreme Court of Texas is restricted in SECTION 1 (Section 154.028, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 154, Civil Practice and Remedies Code, by adding Section 154.028, as follows:

Sec. 154.028. **MEDIATION FOLLOWING APPLICATION FOR EXPEDITED FORECLOSURE.** (a) Authorizes a court, following receipt of an application for an expedited foreclosure proceeding under Rule 736.1, Texas Rules of Civil Procedure, to, in the court's discretion, conduct a hearing to determine whether to order mediation. Prohibits a court from ordering mediation without conducting a hearing. Authorizes the petitioner or respondent to request a hearing to determine whether mediation is necessary or whether an application is defective.

(b) Prohibits a hearing under Subsection (a) from being conducted before the expiration of the respondent's deadline to file a response.

(c) Authorizes a hearing under Subsection (a), subject to Subsection (d), to be conducted by telephone.

(d) Requires the court, not later than the 10th day before the date of a hearing under Subsection (a), to send notice of the hearing to the parties concerning whether the hearing will be conducted by telephone and, if applicable, instructions for contacting the court and attending the hearing by telephone.

(e) Requires the court, at a hearing under Subsection (a), to consider any objections to the referral of the case to mediation.

(f) Requires the mediation, if the court orders the case to mediation, to be conducted before the expiration of any deadline imposed by Rule 736, Texas Rules of Civil Procedure.

(g) Authorizes the court to appoint a mediator if the parties to a case that has been ordered to mediation are unable to agree on the appointment of a mediator. Requires the court, if a mediator is appointed by the court, to provide all parties with the name of the chosen mediator at the mediation hearing if the parties are unable to agree to a mediator at that hearing.

(h) Requires that a mediator's fee be divided equally between the parties.

(i) Authorizes the parties to agree to waive the mediation process.

(j) Requires that notice of any mediation hearing, if a party does not respond to an application filed under Rule 736, Texas Rules of Civil Procedure, before the deadline established by that rule, be made in accordance with Subsection (d), and requires the hearing to occur not later than the 15th day after the date the petitioner files a motion for default order under Rule 736.7, Texas Rules of Civil Procedure. Authorizes a petitioner to file a motion to cancel a hearing, and authorizes the court to grant the motion if the petitioner submits an affidavit stating that the respondent received actual notice and did not reply before the deadline.

(k) Provides that, if a respondent fails to attend a mediation hearing after notice in accordance with Subsection (d), the court is prohibited from ordering mediation, and is required to grant or deny the petitioner's motion for default order under Rule 736.7, Texas Rules of Civil Procedure.

(l) Requires that any mediation, if a respondent attends a hearing and mediation is ordered, take place not later than the 29th day after the date the petitioner filed a motion for default order.

(m) Prohibits the Supreme Court of Texas, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from amending or adopting rules in conflict with this section.

SECTION 2. Effective date: September 1, 2013.