

- SUBJECT:** Service of citation in an expedited judicial foreclosure proceeding
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, Raymond, S. Thompson
- 0 nays
- 1 absent — Hernandez Luna
- WITNESSES:** For — G. Tommy Bastian, Barrett Daffin Frappier Turner Engel LLP; Brian Engel
- Against — (*Registered, but did not testify*: Celeste Embrey, Texas Bankers Association; John Fleming, Texas Mortgage Bankers Association)
- BACKGROUND:** Texas Rules of Civil Procedure, Rule 736, establishes the expedited order for a mortgage foreclosure proceeding. For service of notice to be considered complete, the rule requires the court clerk to issue a separate citation to each named respondent and one additional citation for the occupant of the property sought to be foreclosed. The clerk must serve each citation by both first class mail and certified mail.
- The rules generally outline available methods of delivering notice that may be used unless otherwise specified by rule. Acceptable methods of delivering notice to a party to be served include mail, fax, courier, process server, and notice to the Texas secretary of state if the person to be served is outside of Texas. Rules address individuals who specifically avoid receiving service.
- DIGEST:** CSHB 2978 would add Civil Practice and Remedies Code, sec. 17.031 to require service of notice to be considered complete when a respondent in an expedited order for a mortgage foreclosure proceeding received a citation via mail, according to Rule 736, or in any other manner provided for petitions under the Texas Rules of Civil Procedure.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 2978 would make the foreclosure process more efficient and workable in Texas. Rule 736 governs a type of mortgage foreclosure proceeding and requires that service of process be conducted through mail. While the rule does not require return of the certified mail receipt, many courts, citing constitutional concerns for due process, have held that service through certified mail is not complete until the delivery receipt has been returned to the court. This last step often causes long delays that can indefinitely stall an expedited foreclosure under Rule 736 because individuals being foreclosed upon commonly do not respond to certified mail or are difficult to locate with a physical mailing address.

No one benefits from a drawn-out foreclosure. Delays increase costs for all parties involved, and owners of foreclosed property are denied the ability to move on with their personal and financial lives. Property taxes go uncollected, and property values in the neighboring area fall.

CSHB 2978 would give courts the flexibility needed to move their foreclosure dockets forward in proceedings and allow the cases to be heard on their merits instead of stalling out on procedural matters. By allowing a court to use any method of citation offered by the Texas Rules of Civil Procedure, the due process rights of the parties to be served would enjoy the same protections as in any other civil lawsuit.

It is important to make changes to service of citation via legislation rather than through Supreme Court rulemaking because the Supreme Court historically has taken much too long to adopt these changes. Further, the bill, by moving through the legislative process, would receive just as much vetting, if not more, than if the proposal moved through the rulemaking process used by the court.

**OPPONENTS
SAY:**

CSHB 2978 would be the wrong vehicle for changing the service of citation in expedited judicial foreclosure proceedings. Instead, interested parties should petition the Supreme Court, which drafted and approved Rule 736, to amend it. Texas Constitution, Art. 16, sec. 50(r) directs the court to promulgate rules of civil procedure for expedited foreclosure proceedings. It does not direct the Legislature to do so. CSHB 2978 would directly conflict with this constitutional article by preventing the Supreme Court from amending Rule 736 in a way that would conflict with the bill.