

BILL ANALYSIS

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S.B. 472
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Mortgage Bankers Association of America has recently reported that at least one in ten Texas homeowners are at-risk of default and foreclosure. Last fall, Texas Attorney General Greg Abbott recommended that the legislature consider lengthening to 45 days the time frame allowed to a debtor in default to cure a loan default before a notice of sale. Current state law provides homeowners a 20-day window to cure a default.

This bill extends the cure period on a pending foreclosure from 20 to 45 days. The bill requires lenders to contact the borrower by telephone or in person and to extend a 30 day time-period from the date of foreclosure to homeowners and renters in order to vacate the property. The bill authorizes the Office of Attorney General to create a model "notice of foreclosure" form, that would include a definition of mortgage foreclosure, a reminder that homeowners have 45 days to cure defaulted loans, all rights and options available to homeowners seeking to save their homes, a warning about foreclosure rescue scams, and a listing of resources available to homeowners, for mortgage companies to use. The bill requires debtors to notify any tenants of a pending foreclosure within seven days.

As proposed, S.B. 472 amends current law relating to notice required before and period to vacate after foreclosure sale of 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 Section 51.002, Property Code, by amending Subsection (d) and adding Subsections (d-1), (d-2) and (i), as follows:

(d) Requires the mortgage servicer, notwithstanding any agreement to the contrary, to serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 45, rather than 20, days to cure the default before the notice of sale can be given under Subsection (b). Makes conforming changes.

(d-1) Requires a mortgage servicer of the debt, in addition to the notice provided by Subsection (d), to serve the debtor with a written notice under this subsection. Requires that the notice be printed on a separate sheet of canary yellow or a similarly colored yellow paper that is eight and one half by 11 inches or larger and affixed to the notice of default provided under Subsection (d). Requires the attorney general to prescribe the contents of the notice. Requires that the notice include a statement that the notice provided by the mortgage servicer is required by law; a description of the process of foreclosure on a mortgage; a statement that the debtor in default has 45 days to cure the default as provided by Subsection (d); a description of the options available to the debtor in default to prevent the foreclosure; a description of and warning against unconscionable actions or courses of action under Subchapter E, Chapter 17 (Deceptive Trade Practices and Consumer Protections), Business & Commerce Code, relating to the foreclosure; a description of resources available to the debtor in default to assist in preventing the

foreclosure; a list of resources the debtor is authorized to contact for assistance in filing a complaint concerning the foreclosure process; and a statement that the debtor is required to serve a copy of the notice of sale on each tenant as prescribed by Section 51.0022.

(d-2) Requires the mortgage servicer of the debt, in addition to the notices provided under Subsections (d) and (d-1), not later than the fifth day after the date the notices are mailed under Subsections (d) and (d-1), to attempt and make every reasonable effort to contact the debtor in default by telephone if the debtor has telephone service and provide the debtor with the same information provided in the notices under Subsections (d) and (d-1). Requires the mortgage servicer to maintain a telephone log that indicates each attempted telephone contact and whether the debtor was contacted.

(i) Provides that if a sale of property described by this section occurs, notwithstanding Chapter 24 (Forcible Entry and Detainer), the debtor or a tenant of the debtor is not required to vacate the property before the 31st day after the date of the sale.

SECTION 2. Amends Chapter 51, Property Code, by adding Section 51.0022, as follows,

Sec. 51.0022. NOTICE OF SALE TO TENANT. Requires the debtor, not later than the seventh day after the date a debtor receives a notice of sale under Section 51.002(b) (relating to methods of notice of sale), to serve a copy of the notice on each tenant of the property by personal delivery to the tenant; certified mail, return receipt requested, to the tenant; or leaving the notice inside the dwelling, as defined by Section 92.001 (Definitions), in a conspicuous place if notice in that manner is authorized in a written lease.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.