

BILL ANALYSIS

Senate Research Center
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S.B. 101
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to afford a safeguard in addition to the Service Member's Civil Relief Act (SCRA) that will prevent non-judicial foreclosures from being carried out on homes owned by active military duty service members.

SCRA is federal legislation that was signed into law in 2003. It protects those on active duty, in the Guard, and in the Reserve from foreclosures of mortgages, deeds of trust, and similar security devices, provided that the relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property; the ability to meet the financial security obligation is materially affected by the member's military service; and the action is filed during, or within 90 days after, the service member's period of military service.

Section 533 (Mortgagees and Trust Deeds) of SCRA requires that a court order be obtained before selling, foreclosing, or seizing real or personal property due to a breach of obligation by a service member during the period of military service or within nine months after the period ends. Additionally, in an action filed during or within nine months after a service member's military service, a court may, after a hearing on its own, or shall, upon application by a service member, stay a proceeding to enforce an obligation or adjust the debt when the service member's ability to comply with the obligation is materially affected by reason of the member's military service. SCRA prohibits any foreclosure on residents without a court order if the property owner is active-duty military.

During the summer of 2010, an incident occurred in which Captain Mike Clauer had his home nonjudicially foreclosed upon while he was deployed in Iraq. While SCRA is well-designed to prevent such occurrences, this was an instance of the debt servicer not being informed of the debtor's active-duty military status. There was a breakdown in communication between the home owner's association (HOA) and the homeowner that resulted in the home being nonjudicially foreclosed upon. S.B. 101 amends Sections 51.002 (Sale of Real Property under Contract Lien) and 51.015 (Sale of Certain Property Owned by Member of the Military), Property Code, to require any written notice from the servicer of the debt to contain a statement that will prevent any future failure of the servicer of the debt to recognize that the debtor is on active duty in the military, and thereby ensure compliance in Texas with SCRA.

As proposed, S.B. 101 amends current law relating to prohibiting nonjudicial foreclosure by a property owners' association on residences owned by certain members of the military.

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 adding Subsection (i), as follows:

- (i) Requires that notice served under Subsection (b)(3) (relating to a required written notice of sale) or (d) (relating to written notice that a debtor is in default) state the name and address of the sender of the notice and contain a statement that is conspicuous,

printed in boldface or underlined type, and is substantially similar to certain language as set forth in this subsection.

SECTION 2. Amends Section 51.015(a), Property Code, by adding Subdivision (1-a), to define "assessment" and "regular assessment" in this section.

SECTION 3. Amends Section 51.015(b), Property Code, to provide that this section applies only to an obligation that is secured by a mortgage, deed of trust, or other contract lien, including an assessment or regular assessment, on real property or personal property that is a dwelling owned by a military servicemember, that originates before the date on which the servicemember's active duty military service commences, and for which the servicemember is still obligated.

SECTION 4. Makes application of the levy of assessment or regular assessment as described by Section 51.015, Property Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2011.