

By: Estes, Van de Putte
West

S.B. No. 472

A BILL TO BE ENTITLED

1 AN ACT
2 relating to notice required before and period to vacate after
3 foreclosure sale of real property.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 24.005, Property Code, is amended by
6 amending Subsection (b) and adding Subsection (b-1) to read as
7 follows:

8 (b) If the occupant is a tenant at will or by sufferance, the
9 landlord must give the tenant at least three days' written notice to
10 vacate before the landlord files a forcible detainer suit unless
11 the parties have contracted for a shorter or longer notice period in
12 a written lease or agreement. If a building is purchased at a tax
13 foreclosure sale or a trustee's foreclosure sale under a lien
14 superior to the tenant's lease and the tenant timely pays rent and
15 is not otherwise in default under the tenant's lease after
16 foreclosure, the purchaser must give a residential tenant of the
17 building at least 60 [~~30~~] days' written notice to vacate if the
18 purchaser chooses not to continue the lease. The tenant is
19 considered to timely pay the rent under this subsection if, during
20 the month of the foreclosure sale, the tenant pays the rent for that
21 month to the landlord before receiving any notice that a
22 foreclosure sale is scheduled during the month or pays the rent for
23 that month to the foreclosing lienholder or the purchaser at
24 foreclosure not later than the fifth day after the date of receipt

1 of a written notice of the name and address of the purchaser that
2 requests payment. Before a foreclosure sale, a foreclosing
3 lienholder may give written notice to a tenant stating that a
4 foreclosure notice has been given to the landlord or owner of the
5 property and specifying the date of the foreclosure.

6 (b-1) A purchaser of a property at a foreclosure sale for
7 which notice was given under Section 51.002(b) shall deliver to the
8 tenant not later than 24 hours after the time of the foreclosure
9 sale a notice that states the tenant's rights under this chapter and
10 Chapter 51. The attorney general shall prescribe the contents of
11 the notice. The purchaser may require the tenant to vacate the
12 property before the period prescribed by Section 51.002(i) only for
13 failure to pay rent or other payment due under the lease agreement,
14 including a late fee, as of the date of sale.

15 SECTION 2. Section 51.002, Property Code, is amended by
16 amending Subsections (b) and (d) and adding Subsections (d-1), (i),
17 and (j) to read as follows:

18 (b) Except as provided by Subsection (b-1), notice of the
19 sale, which must include a statement of the earliest time at which
20 the sale will begin, must be given at least 21 days before the date
21 of the sale by:

22 (1) posting at the courthouse door of each county in
23 which the property is located a written notice designating the
24 county in which the property will be sold;

25 (2) filing in the office of the county clerk of each
26 county in which the property is located a copy of the notice posted
27 under Subdivision (1); and

1 (3) serving written notice of the sale by certified
2 mail and regular mail on each debtor who, according to the records
3 of the mortgage servicer of the debt, is obligated to pay the debt.

4 (d) Notwithstanding any agreement to the contrary, the
5 mortgage servicer of the debt shall serve a debtor in default under
6 a deed of trust or other contract lien on real property used as the
7 debtor's residence with written notice by regular mail and
8 certified mail stating that the debtor is in default under the deed
9 of trust or other contract lien and giving the debtor at least 45
10 [~~20~~] days to cure the default before notice of sale can be given
11 under Subsection (b). The attorney general shall prescribe the
12 contents of the notice. The entire calendar day on which the notice
13 required by this subsection is given, regardless of the time of day
14 at which the notice is given, is included in computing the 45-day
15 [~~20-day~~] notice period required by this subsection, and the entire
16 calendar day on which notice of sale is given under Subsection (b)
17 is excluded in computing the 45-day [~~20-day~~] notice period.

18 (d-1) In addition to the notice provided by Subsection (d),
19 a mortgage servicer of the debt shall serve the debtor with a
20 written notice by regular and certified mail under this subsection.
21 The notice must be printed on a separate sheet of canary yellow or a
22 similarly colored yellow paper that is 8-1/2 by 11 inches or larger
23 and affixed to the notice of default provided under Subsection (d).
24 The attorney general shall prescribe the contents of the notice.
25 The notice must include the following:

26 (1) a statement that the notice provided by the
27 mortgage servicer is required by law;

1 (2) a description of the process of foreclosure on a
2 contract lien;

3 (3) a statement that the debtor in default has 45 days
4 to cure the default as provided by Subsection (d);

5 (4) a description of the options available to the
6 debtor in default to prevent the foreclosure;

7 (5) a description of resources available to the debtor
8 in default to assist in preventing the foreclosure;

9 (6) a list of resources the debtor may contact for
10 assistance in filing a complaint concerning the foreclosure
11 process;

12 (7) a statement that the debtor must serve a copy of
13 the notice of sale on each tenant as prescribed by Section 51.0022;
14 and

15 (8) the name, telephone number, facsimile number, and
16 e-mail address of a person authorized to act for the servicer of the
17 debt relating to the debt.

18 (i) If a sale of property occurs, notwithstanding Chapter
19 24:

20 (1) the tenant of the debtor is not required to vacate
21 the property before the 61st day after the date of the sale,
22 provided that the tenant:

23 (A) timely pays rent to the new property owner;

24 (B) maintains the property in good order; and

25 (C) maintains a liability insurance policy
26 during the term of the holdover period; and

27 (2) the debtor is not required to vacate the property

1 before the 14th day after the date of the sale.

2 (j) A debtor who retains possession of the property during
3 the period described by Subsection (i)(2):

4 (1) may not destroy, damage, impair, allow to
5 deteriorate, or commit waste on the property; and

6 (2) is liable:

7 (A) to the purchaser, for the damage caused by a
8 violation of Subdivision (1); and

9 (B) to the injured party, for any injury to an
10 individual or damage to any property occurring during the period of
11 possession described by Subsection (i)(2).

12 SECTION 3. Chapter 51, Property Code, is amended by adding
13 Section 51.0022 to read as follows:

14 Sec. 51.0022. NOTICE OF SALE TO TENANT. Not later than the
15 seventh day after the date a debtor receives a notice of sale under
16 Section 51.002(b), the debtor shall serve a copy of the notice on
17 each tenant of the property by any one of the following methods:

18 (1) personal delivery to the tenant;

19 (2) certified mail, return receipt requested, to the
20 tenant; or

21 (3) leaving the notice inside the dwelling, as defined
22 by Section 92.001, in a conspicuous place if notice in that manner
23 is authorized in a written lease.

24 SECTION 4. (a) Effective September 1, 2011, Subsection
25 (i), Section 51.002, Property Code, as added by Section 2 of this
26 Act, is amended to read as follows:

27 (i) If a sale of property occurs, notwithstanding Chapter

1 24:

2 (1) the tenant of the debtor is not required to vacate
3 the property before the 31st [~~61st~~] day after the date of the sale,
4 provided that the tenant:

- 5 (A) timely pays rent to the new property owner;
- 6 (B) maintains the property in good order; and
- 7 (C) maintains a liability insurance policy
8 during the term of the holdover period; and

9 (2) the debtor is not required to vacate the property
10 before the 14th day after the date of the sale.

11 (b) Effective September 1, 2011, Subsection (b), Section
12 24.005, Property Code, as added by Section 1 of this Act, is amended
13 to read as follows:

14 (b) If the occupant is a tenant at will or by sufferance, the
15 landlord must give the tenant at least three days' written notice to
16 vacate before the landlord files a forcible detainer suit unless
17 the parties have contracted for a shorter or longer notice period in
18 a written lease or agreement. If a building is purchased at a tax
19 foreclosure sale or a trustee's foreclosure sale under a lien
20 superior to the tenant's lease and the tenant timely pays rent and
21 is not otherwise in default under the tenant's lease after
22 foreclosure, the purchaser must give a residential tenant of the
23 building at least 30 [~~60~~] days' written notice to vacate if the
24 purchaser chooses not to continue the lease. The tenant is
25 considered to timely pay the rent under this subsection if, during
26 the month of the foreclosure sale, the tenant pays the rent for that
27 month to the landlord before receiving any notice that a

1 foreclosure sale is scheduled during the month or pays the rent for
2 that month to the foreclosing lienholder or the purchaser at
3 foreclosure not later than the fifth day after the date of receipt
4 of a written notice of the name and address of the purchaser that
5 requests payment. Before a foreclosure sale, a foreclosing
6 lienholder may give written notice to a tenant stating that a
7 foreclosure notice has been given to the landlord or owner of the
8 property and specifying the date of the foreclosure.

9 SECTION 5. The changes in law made by this Act apply only to
10 a notice required to be provided on or after September 1, 2009. A
11 notice required to be provided before September 1, 2009, is
12 governed by the law in effect immediately before that date, and that
13 law is continued in effect for that purpose.

14 SECTION 6. This Act takes effect September 1, 2009.