

- SUBJECT:** Appointing substitute trustees in certain foreclosures
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Solomons, McCall, Flynn, Guillen, Orr, Riddle
0 nays
1 absent — Chavez
- WITNESSES:** For — Tommy Bastian; Robert Doggett, Texas Low Income Housing Information Service; (*Registered but did not testify:* Karen Neeley, Independent Bankers Association of Texas)
Against — None
- BACKGROUND:** HB 1493 by Solomons enacted by the 78th Legislature in 2003 allows a mortgage servicer to administer a foreclosure on real property on behalf of the lender. A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at an auction at the county courthouse. The mortgage servicer must serve the borrower a notice of the date, time, and place of the foreclosure sale. A mortgage servicer also may obtain authorization from the mortgagee to appoint a substitute trustee to post the notice and conduct the foreclosure sale.
- DIGEST:** CSHB 1234 would allow a mortgagee to appoint or authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. This authorization could be made by power of attorney, corporate resolution, or other written instrument.
- A mortgage servicer could authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee. The name and street address of the trustee or substitute trustees would be disclosed in a notice of foreclosure sale.
- The bill would take effect September 1, 2005, and would apply only to security instruments and other contracts executed on or after this date.

**SUPPORTERS
SAY:**

Currently, a mortgagee must authorize a mortgage servicer by power of attorney to appoint substitute trustees. This is a cumbersome process that must occur every time the trustee is changed. CSHB 1234 would clarify that the appointment of a substitute trustee by a mortgage servicer could occur by a power of attorney, corporate resolution, or any other instrument. The bill does not remove any protection or any step in the foreclosure process. It only would simplify the process by which an agent of the mortgage servicer could be authorized to conduct the foreclosure process.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The original bill would not have required that the name and street address of the trustee or substitute trustees be disclosed in a notice of foreclosure sale.

The companion bill, SB 1154 by Harris, has been referred to the Senate Business and Commerce Committee.