

- SUBJECT:** Setting time limit on accepting bids on a foreclosure sale
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Elkins, Gattis, Keffer, Orr, Quintanilla, S. Turner
0 nays
4 absent — Christian, England, Giddings, S. Miller
- WITNESSES:** For — (*Registered, but did not testify:* Robert Doggett, Texas Low Income Housing Information Service; David Mintz, Community Associations Institute, Texas Legislative Action Committee)

Against — None
- BACKGROUND:** Property Code, ch. 51 governs sales of real property under a contract lien. Sec. 51.002 requires a notice 21 days before the date of sale to be posted at the courthouse where the property is located, filed in the county clerk’s office, and served by certified mail to each debtor obligated to pay the debt. Secs. 51.007 and 51.0075 contain requirements for trustees.
- First Fed. Sav. & Loan Ass'n v. Sharp*, 359 S.W.2d 902, 904 (Tex. 1962) holds that a trustee in a deed of trust has a duty to conduct any foreclosure sale in a fair and impartial manner and in accordance with the terms of the trust instrument.
- In 2007, the 80th Legislature enacted HB 2738 by Solomons, which amended Property Code, sec. 51.002 to provide that, in the event the courthouse or county clerk’s office was closed because of inclement weather, natural disaster, or other act of God, the 21-day notice requirement for sale of real property under contract lien could be posted or filed up to 48 hours after the courthouse or county clerk’s office reopened for business.
- HB 2738 also amended Property Code, sec. 51.0075 (f) to provide that the purchase price in a trustee sale would be payable immediately on acceptance of a bid, and the trustee would disburse the proceeds as provided by law.

DIGEST: CSHB 655 would amend Property Code, sec. 51.0075 (f) to provide that the purchase price in a trustee sale would be due and payable without delay on acceptance of a bid, or, on the purchaser's request, within a reasonable period after acceptance of the bid.

The bill would take effect on September 1, 2009.

SUPPORTERS SAY: CSHB 655 would remedy what became an unforeseen and unintended consequence of the legislation enacted last session, where trustees may refuse to accept a foreclosure bid if the cashier's check was not for the exact amount of the accepted purchase price. Some trustees insist on the immediate payment as provided in the law, or they will take back the property for the value they had set for it. Finding a bank to issue another cashier's check can be difficult in a rural county. Sometimes the trustee may refuse to allow a purchaser to obtain a new check even when the bank was located across the square from the courthouse. The bill would provide for a more reasonable standard and would allow the purchaser and trustee to reach an agreement on accepting the bid.

Substitute trustees who conduct foreclosure sales frequently travel to several counties on one day. It would be unreasonable for them to meet an arbitrary deadline — such as one hour — set in state law. Any condition on time to complete a sale or an amount to hold the property could be played for an advantage by either a trustee or a buyer. No amount of legislative draftsmanship can anticipate every situation, but CSHB 655 would restore a sense of balance and fairness that was established in the court decision in *First Fed. Sav. & Loan Ass'n v. Sharp*, 359 S.W.2d 902, 904 (Tex. 1962).

Current law benefits professional purchasers of property who frequently attend trustee sales and the lenders who hold the mortgage on the foreclosed property. CSHB 655 would help individuals making purchases at trustee sales.

OPPONENTS SAY: CSHB 655 should set a definite and enforceable standard, such as a one-hour time limit or requirement for a certain amount of a non-refundable deposit. Such limits could prevent attempts to game a trustee sale.

OTHER
OPPONENTS
SAY:

CSHB 655 should restore the *First Fed. Sav. & Loan Ass'n v. Sharp*, 359 S.W.2d 902, 904 (Tex. 1962) standard and place it into statute. Purchasers should be allowed to request additional time and have the parties reach an agreement on what a reasonable time would be to complete the sale.

NOTES:

Rep. Solomons is expected to offer a floor substitute that would allow the purchaser and the trustee to agree on what would be considered a reasonable time to complete the sale should the purchaser request additional time.

The original version of the bill would have required that the purchase price be payable within one hour of the acceptance of the bid in a trustee sale.