

BILL ANALYSIS

Senate Research Center

S.B. 1742
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Jurisprudence
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As Filed

DIGEST

The Texas Property Code is currently silent as to the standing of the buyer in a foreclosure sale. Case law has held that a foreclosure buyer bids at his peril at a foreclosure sale and is not a good faith purchaser without knowledge. S.B. 1742 would establish provisions regarding certain proceedings in a foreclosure action.

PURPOSE

As proposed, S.B. 1742 establishes provisions regarding certain proceedings in a foreclosure action.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.002, Property Code, to require a sale of real property under a power of sale conferred by a deed of trust, security instrument, or other contract lien to be a public sale at certain auctions. Requires notice of sale by the mortgagee or its attorney, agent, or representative serving written notice of foreclosure sale by certified mail on each mortgagor who, according to the records of the holder of the mortgagee, rather than debt, is obligated to pay the debt. Requires the mortgagee or its representative to serve a mortgagor in default under the terms of the note secured by a deed of trust, security instrument, or other contract lien on real property used as the mortgagor's residence with written notice by certified mail stating that the mortgagor is in default and giving the debtor at least 20 days to cure the default before notice of sale can be given. Provides that service of a notice is complete when the notice is addressed to the mortgagor at the property securing the debt, unless the mortgagee has received within 20 days of foreclosure, a written notice from the mortgagor designating a different address for purposes of notice under the terms of the security instrument. Provides that one notice may be mailed to all mortgagors residing in the same address. Requires a foreclosure sale to be discounted, after acceleration of the maturity of the debt, if at least five days before the scheduled sale date the mortgagee receives certain sums and payments and the mortgagor cures any other default. Establishes conditions regarding cost after acceleration. Provides that upon cure of a default, any prior acceleration is canceled and the note and security instrument remain enforceable. Establishes that the sale of any real property and improvements at a foreclosure sale is "as is" without any implied representations or warranties. Provides that a purchaser obtains only such title as the trustee had authority to convey and is not a good faith purchaser for value without notice. Requires the trustee to file within 60 days of receipt of a notice of rescission canceling the trustee's deed in the official real property records of the county where the property is located. Authorizes a mortgagee to appoint by power of attorney or resolution an individual residing in or a law firm licensed in Texas to select one or more substitute trustees for certain security instruments. Requires the power of attorney or resolution to include certain information on the mortgagee's behalf. Requires a notice of sale to include certain information regarding the power of attorney or resolution and clerk's information. Requires the substitute trustee to be identified in the notice. Deletes text regarding holder of a debt to which power of sale is related; the inclusion of an entire calendar day in the 20-day notice period computation for a notice; and notice of sale. Makes conforming changes.

SECTION 2. Amends Chapter 51, Property Code, by adding Section 51.007, as follows:

Sec. 51.007. TRUSTEE UNDER SECURITY INSTRUMENT. Authorizes a trustee named in a suit or proceeding related to a foreclosure to file a verified objection regarding the duties of the trustee. Requires each party, within 21 days after the objection is filed, to file a verified

response that sets forth each party's factual basis for certain belief. Requires the trustee, if the objection is not properly or timely filed, to be dismissed as to each non-responding party's claim in the suit or proceeding and the trustee shall not be subject to certain awards and costs. Requires a hearing date to be obtained by the trustee in the event a proper response to the trustee's objection is filed. Requires the court, based on a preponderance of the evidence, to dismiss the trustee if the court determines the trustee was named as a party solely in the capacity as trustee. Requires a trustee to incur no liability for any good faith error resulting from reliance on any information provided by the mortgagor, mortgagee, or their respective representatives.

SECTION 3. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 4. Emergency clause.