

BILL ANALYSIS

Senate Research Center

H.B. 2738
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Jurisprudence
5/18/2007
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the sale of real property under a contract lien is governed by Chapter 51 (Provisions Generally Applicable to Liens), Property Code. The chapter requires a sale of real property under a power of sale conferred by a deed of trust or other contract lien to be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month and must take place at the county courthouse in any county in which the property is located. Notice of the sale is required to be given at least 21 days before the day of the sale by one of several means, including posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold or filing notice with the county clerk.

Problems may arise if the courthouse or county clerk's office is closed due to inclement weather, natural disaster, or other act of God when it is time to post the notice at the courthouse or file the notice with the county clerk.

Chapter 51 also provides that a person authorized to exercise the power of sale under the terms of a security instrument is the trustee of the property. At times, a trustee may not receive the proceeds of the sale in a reasonable time after accepting a bid.

H.B. 2738 authorizes notice to be posted or filed up to 48 hours after the courthouse or county clerk's office reopens following a natural disaster, inclement weather, or other acts of God. The bill provides that a sale held in an area designated by the commissioners court may not be held before the 90th day after the date the designation is recorded. This bill also clarifies the qualifications for a trustee and requires the purchase price in a sale held by a trustee to be payable immediately upon acceptance of the bid.

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 51.0001(8), Property Code, to redefine "trustee."

SECTION 2. Amends Section 51.002, Property Code, by amending Subsections (b) and (h) and adding Subsection (b-1), as follows:

(b) Makes a conforming change.

(b-1) Authorizes a notice required to be posted at the courthouse or filed with the county clerk to be posted or filed, as appropriate, up to 48 hours after the courthouse or county clerk's office reopens for business, as applicable, if the courthouse or office is closed because of an act of God.

(h) Authorizes a sale of a real property under a contract lien to be held at an area designated under this subsection before the 90th day after the date the designation is recorded.

SECTION 3. Amends Chapter 51, Property Code, by adding Section 51.0074, as follows:

Sec. 51.0074. QUALIFICATIONS OF TRUSTEE. (a) Authorizes one or more persons to be authorized to exercise the power of sale under a security instrument.

(b) Prohibits a trustee from being assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument, or from being a fiduciary of the mortgagor or mortgagee.

SECTION 4. Amends Section 51.0075, Property Code, by adding Subsection (f), as follows:

(f) Provides that the purchase price in a sale held by a trustee or substitute trustee under this section (Authority of Trustee of Substitute Trustee) is payable immediately on acceptance of the bid by the trustee or substitute trustee. Require the trustee or substitute trustee to disburse the proceeds of the sale as provided by law.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2007.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No.1

(1) Amends SECTION 3 of the bill, in added Section 51.0074, Property Code (Engrossed Version, page 2, line 23), by striking "QUALIFICATIONS" and inserting "DUTIES."

(2) Amends SECTION 3 of the bill, in added Section 51.0074, Property Code (Engrossed Version, page 3, line 3), to prohibit a trustee from being held to the obligations of a fiduciary of the mortgagor or mortgagee.