

BILL ANALYSIS

Senate Research Center
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H.B. 1493
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Engrossed

DIGEST AND PURPOSE

Chapter 51, Property Code, governs the foreclosure process. There are some practices that have been developed to manage the foreclosure process that are not expressly authorized by the Property Code. For example, it is common practice for lenders to rely upon mortgage servicers to accept loan payments on behalf of the lender, but current law does not address the role of mortgage servicers in the foreclosure process. Current practice is for the mortgage servicer to administer this process on behalf of the lender, but a recent appeals court ruling has put the legality of this process in doubt. Additionally, key terms are not currently defined by Texas law. H.B. 1493 defines several terms used in the statutes governing the foreclosure process and authorizes a mortgage servicer to administer the foreclosure process on behalf of the mortgagee, establishing the framework for that process.

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 Chapter 51, Property Code, by adding Sections 51.0001, 51.0021, 51.0075, and 51.009, as follows:

Sec. 51.0001. DEFINITIONS. Defines “book entry system,” “debtor’s last known address,” “mortgage servicer,” “mortgagee,” “mortgagor,” “security instrument,” “substitute trustee,” and “trustee.”

Sec. 51.0021. ADMINISTRATION OF FORECLOSURE BY MORTGAGE SERVICER. Authorizes a mortgage servicer to administer the foreclosure of property under Section 51.002 (Sale of Real Property Under Contract Lien) on behalf of a mortgagee under certain circumstances.

Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE. (a) Authorizes a trustee or substitute trustee to set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.

(b) Provides that a trustee or substitute trustee is not a debt collector.

(c) Authorizes a mortgagee to appoint or to authorize a mortgage servicer to appoint a perpetual substitute trustee by power of attorney or written instrument. Requires the power of attorney or written instrument to be signed by the mortgagee’s representative, acknowledged, and sworn to with a jurat.

Sec. 51.009. FORECLOSED PROPERTY SOLD “AS IS.” Provides that a purchaser at a sale of real property under Section 51.002 (Sale of Real Property Under Contract Lien) acquires the foreclosed property “as is” without any expressed or implied warranties and at the purchaser’s own risk, and such a purchaser is not a consumer or bona fide purchaser for value.

SECTION 2. Effective date: January 1, 2004.