

BILL ANALYSIS

C.S.H.B. 1493
By: Solomons
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 51, Property Code governs the foreclosure process. Over the years, practices have been developed to manage the foreclosure process, many of which, though not inconsistent with Chapter 51, are not expressly authorized by it. 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. A recent appeals court ruling has cast doubt as to whether a mortgage servicer may administer the foreclosure process because the law does not specifically authorize it. Further uncertainty exists in the foreclosure process because key terms, such as “debtor’s last known address,” are not defined in law and other common practices, such as appointing substitute trustees, are not included in law.

C.S.H.B. 1493 permits a mortgage servicer to administer the foreclosure process on behalf of the mortgagee and clarifies several terms used in the statutes governing the foreclosure process.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1493 adds new Section 51.0021 to the Property Code to expressly permit a mortgage servicer to administer the foreclosure process on behalf of a mortgagee. The mortgage servicer must be granted this authority by the mortgagee in writing, and the mortgage servicer must disclose this fact to borrowers in the notices required by Section 51.002, Property Code to sell foreclosed property.

The bill clarifies that a trustee or substitute trustee may set reasonable conditions for conducting a public sale if such conditions are announced before bidding is opened for the first sale of the day held by the trustee. The bill clarifies that a trustee or substitute trustee is not a debt collector. The bill expressly permits a mortgagee to appoint, or authorize a mortgage servicer to appoint, substitute trustees. The bill clarifies that property purchased at a foreclosure sale is acquired “as is.”

The bill adds definitions for “book entry system,” “debtor’s last known address,” “mortgage servicer,” “mortgagee,” “mortgagor,” “security instrument,” “substitute trustee,” and “trustee” to Chapter 51, Property Code.

EFFECTIVE DATE

January 1, 2004

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds or expands several definitions. The substitute adds language clarifying the role and

authority of a trustee or substitute trustee and expressly permitting the appointment of a substitute trustee. The substitute adds language clarifying that property purchased at a foreclosure sale is acquired "as is." The substitute delays the effective date to January 1, 2004.