

1-1 By: Solomons (Senate Sponsor - Harris) H.B. No. 1493  
1-2 (In the Senate - Received from the House May 5, 2003;  
1-3 May 7, 2003, read first time and referred to Committee on Business  
1-4 and Commerce; May 22, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1493 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the foreclosure of property and the authority of a  
1-11 mortgage servicer to administer the foreclosure on behalf of a  
1-12 mortgagee.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 51, Property Code, is amended by adding  
1-15 Sections 51.0001, 51.0021, 51.0025, 51.0075, and 51.009 to read as  
1-16 follows:

1-17 Sec. 51.0001. DEFINITIONS. In this chapter:

1-18 (1) "Book entry system" means a national book entry  
1-19 system for registering a beneficial interest in a security  
1-20 instrument that acts as a nominee for the grantee, beneficiary,  
1-21 owner, or holder of the security instrument and its successors and  
1-22 assigns.

1-23 (2) "Debtor's last known address" means:

1-24 (A) for a debt secured by the debtor's residence,  
1-25 the debtor's residence address unless the debtor provided the  
1-26 mortgage servicer a written change of address before the date the  
1-27 mortgage servicer mailed a notice required by Section 51.002; or

1-28 (B) for a debt other than a debt described by  
1-29 Paragraph (A), the debtor's last known address as shown by the  
1-30 records of the mortgage servicer of the security instrument unless  
1-31 the debtor provided the current mortgage servicer a written change  
1-32 of address before the date the mortgage servicer mailed a notice  
1-33 required by Section 51.002.

1-34 (3) "Mortgage servicer" means the last person to whom  
1-35 a mortgagor has been instructed by the current mortgagee to send  
1-36 payments for the debt secured by a security instrument. A mortgagee  
1-37 may be the mortgage servicer.

1-38 (4) "Mortgagee" means:

1-39 (A) the grantee, beneficiary, owner, or holder of  
1-40 a security instrument;

1-41 (B) a book entry system; or

1-42 (C) if the security interest has been assigned of  
1-43 record, the last person to whom the security interest has been  
1-44 assigned of record.

1-45 (5) "Mortgagor" means the grantor of a security  
1-46 instrument.

1-47 (6) "Security instrument" means a deed of trust,  
1-48 mortgage, or other contract lien on an interest in real property.

1-49 (7) "Substitute trustee" means a person appointed by  
1-50 the current mortgagee or mortgage servicer under the terms of the  
1-51 security instrument to exercise the power of sale.

1-52 (8) "Trustee" means a person authorized to exercise  
1-53 the power of sale under the terms of a security instrument.

1-54 Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS REQUIRED. A  
1-55 debtor shall inform the mortgage servicer of the debt in a  
1-56 reasonable manner of any change of address of the debtor for  
1-57 purposes of providing notice to the debtor under Section 51.002.

1-58 Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE  
1-59 SERVICER. A mortgage servicer may administer the foreclosure of  
1-60 property under Section 51.002 on behalf of a mortgagee if:

1-61 (1) the mortgage servicer and the mortgagee have  
1-62 entered into an agreement granting the current mortgage servicer  
1-63 authority to service the mortgage; and

2-1 (2) the mortgage servicer discloses in the notice  
2-2 required under Section 51.002:

2-3 (A) that the mortgage servicer is representing  
2-4 the mortgagee under a servicing agreement with the mortgagee; and

2-5 (B) the name and address of the mortgagee.

2-6 Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE.

2-7 (a) A trustee or substitute trustee may set reasonable conditions  
2-8 for conducting the public sale if the conditions are announced  
2-9 before bidding is opened for the first sale of the day held by the  
2-10 trustee or substitute trustee.

2-11 (b) A trustee or substitute trustee is not a debt collector.

2-12 (c) A mortgagee may appoint or may authorize a mortgage  
2-13 servicer to appoint a perpetual substitute trustee by power of  
2-14 attorney or other written instrument. The power of attorney or  
2-15 written instrument must be signed by the mortgagee's  
2-16 representative, acknowledged, and sworn to with a jurat.

2-17 Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS." A purchaser  
2-18 at a sale of real property under Section 51.002:

2-19 (1) acquires the foreclosed property "as is" without  
2-20 any expressed or implied warranties and at the purchaser's own  
2-21 risk; and

2-22 (2) is not a consumer.

2-23 SECTION 2. Sections 51.002(b), (d), and (e), Property Code,  
2-24 are amended to read as follows:

2-25 (b) Notice of the sale, which must include a statement of  
2-26 the earliest time at which the sale will begin, must be given at  
2-27 least 21 days before the date of the sale:

2-28 (1) by posting at the courthouse door of each county in  
2-29 which the property is located a written notice designating the  
2-30 county in which the property will be sold;

2-31 (2) by filing in the office of the county clerk of each  
2-32 county in which the property is located a copy of the notice posted  
2-33 under Subdivision (1); and

2-34 (3) by the mortgage servicer [~~holder~~] of the debt to  
2-35 which the power of sale is related serving written notice of the  
2-36 sale by certified mail on each debtor who, according to the records  
2-37 of the mortgage servicer [~~holder~~] of the debt, is obligated to pay  
2-38 the debt.

2-39 (d) Notwithstanding any agreement to the contrary, the  
2-40 mortgage servicer [~~holder~~] of the debt shall serve a debtor in  
2-41 default under a deed of trust or other contract lien on real  
2-42 property used as the debtor's residence with written notice by  
2-43 certified mail stating that the debtor is in default under the deed  
2-44 of trust or other contract lien and giving the debtor at least 20  
2-45 days to cure the default before notice of sale can be given under  
2-46 Subsection (b). The entire calendar day on which the notice  
2-47 required by this subsection is given, regardless of the time of day  
2-48 at which the notice is given, is included in computing the 20-day  
2-49 notice period required by this subsection, and the entire calendar  
2-50 day on which notice of sale is given under Subsection (b) is  
2-51 excluded in computing the 20-day notice period.

2-52 (e) Service of a notice under this section by certified mail  
2-53 is complete when the notice is deposited in the United States mail,  
2-54 postage prepaid and addressed to the debtor at the debtor's last  
2-55 known address [~~as shown by the records of the holder of the debt~~].  
2-56 The affidavit of a person knowledgeable of the facts to the effect  
2-57 that service was completed is prima facie evidence of service.

2-58 SECTION 3. This Act takes effect January 1, 2004.

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