

BILL ANALYSIS

C.S.H.B. 1234
By: Paxton
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2003, the Texas Legislature amended Chapter 51, Property Code, which governs the process of foreclosing real property, to allow mortgage servicers to administer the foreclosure process. A mortgage servicer is the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

Typically, mortgage servicers, not mortgagees, are responsible for all day-to-day, loan-level administration responsibilities for a borrower's loan. This practice is consistent with the federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2605, which recognizes a mortgage servicer as having the responsibility for the daily administration of a borrower's loan.

The purpose of this bill is to alter the method by which mortgagees or mortgage servicers appoint trustees. Due to technological changes in the mortgage banking industry, the bill permits electronic appointment or any other legitimate type of communication to designate the substitute trustee.

C.S.H.B. 1234 allows for the appointment of substitute trustees in certain foreclosures

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. 1234 amends Section 51.0075, Property Code, as follows:

The substitute provides that, notwithstanding any agreement to the contrary, a mortgagee may appoint, or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. It also provides that a mortgagee or mortgage servicer may make an appointment or authorization by power of attorney, corporate resolution, or other written instrument.

The substitute provides that a mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of the mortgagee.

The substitute requires the name and a street address of the trustee or substitute trustees to be disclosed in a notice of foreclosure sale.

The substitute makes the changes in law made by this Act apply to a security instrument or other contract executed before the effective date of this Act if the security instrument or other contract does not conflict with the former law. If there is a conflict, the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1234 modifies the original by adding new language that requires the name and a street address of the trustee or substitute trustees be disclosed in a notice of foreclosure sale.