

BILL ANALYSIS

H.B. 2738
By: Solomons
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In several counties, problems arise when the courthouse or county clerk's office close due to natural disasters or inclement weather. Also, trustees may not receive the proceeds of the purchase price in a reasonable time after accepting bids.

H.B. 2738 amends the Property Code to address these issues.

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

H.B. 2738 amends the Property Code to include "persons" in the definition of a trustee. The bill amends Section 51.002 to allow notice to be posted or filed up to 48 hours after the courthouse or county clerk's office reopens for business, following a natural disaster, inclement weather or other act of God. H.B. 2738 clarifies that a sale held at an area designated by the commissioners court may not be held before the 90th day after the date the designation is recorded.

H.B. 2738 amends the Property Code by adding Section 51.0074 which lists the qualifications for a trustee. A trustee can exercise the power of sale in accordance with the terms of a security instrument but cannot be assigned another duty under the instrument or be a fiduciary of the mortgagor or mortgagee.

H.B. 2738 amends the Property Code by adding Section 51.0075 (f) which states that the purchase price in a sale held by a trustee is payable immediately upon acceptance of the bid by the trustee. The trustee is required to disburse the proceeds of the sale.

The bill provides that Section 51.002(b-1), Property Code, as added by this Act, applies only to a notice required to be posted or filed on or after the effective date of this Act. The bill provides that Section 51.002(h), Property Code, as amended by this Act, applies only to a designation of an area for sales made on or after the effective date of this Act. The bill provides that Section 51.0074, Property Code, as added by this Act, applies only to the designation of a trustee under a security instrument executed on or after the effective date of this Act. The bill provides that Section 51.0075(f), Property Code, as added by this Act, applies only to a public sale conducted on or after the effective date of this Act.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.