

By: Solomons

H.B. No. 2738

A BILL TO BE ENTITLED

AN ACT

relating to liens on real property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.0001(8), Property Code, is amended to read as follows:

(8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

SECTION 2. Section 51.002, Property Code, is amended by amending Subsections (b) and (h) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), notice ~~[Notice]~~ of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least 21 days before the date of the sale by:

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

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

(3) serving written notice of the sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

1 (b-1) If the courthouse or county clerk's office is closed
2 because of inclement weather, natural disaster, or other act of
3 God, a notice required to be posted at the courthouse under
4 Subsection (b)(1) or filed with the county clerk under Subsection
5 (b)(2) may be posted or filed, as appropriate, up to 48 hours after
6 the courthouse or county clerk's office reopens for business, as
7 applicable.

8 (h) For the purposes of Subsection (a), the commissioners
9 court of a county may designate an area other than an area at the
10 courthouse where sales under this section will take place that is in
11 a public place within a reasonable proximity of the county
12 courthouse and in a location as accessible to the public as the
13 courthouse door. The commissioners court shall record that
14 designation in the real property records of the county. A sale may
15 not be held at an area designated under this subsection before the
16 90th day after the date the designation is recorded. The posting of
17 the notice required by Subsection (b)(1) of a sale designated under
18 this subsection to take place at an area other than an area of the
19 courthouse remains at the courthouse door of the appropriate
20 county.

21 SECTION 3. Subchapter B, Chapter 51, Property Code, is
22 amended by adding Section 51.0074 to read as follows:

23 Sec. 51.0074. QUALIFICATIONS OF TRUSTEE. (a) One or more
24 persons may be authorized to exercise the power of sale under a
25 security instrument.

26 (b) A trustee may not be:

27 (1) assigned a duty under a security instrument other

1 than to exercise the power of sale in accordance with the terms of
2 the security instrument; or

3 (2) a fiduciary of the mortgagor or mortgagee.

4 SECTION 4. Section 51.0075, Property Code, is amended by
5 adding Subsection (f) to read as follows:

6 (f) The purchase price in a sale held by a trustee or
7 substitute trustee under this section is payable immediately on
8 acceptance of the bid by the trustee or substitute trustee. The
9 trustee or substitute trustee shall disburse the proceeds of the
10 sale as provided by law.

11 SECTION 5. (a) Section 51.002(b-1), Property Code, as added
12 by this Act, applies only to a notice required to be posted or filed
13 on or after the effective date of this Act. A notice required to be
14 posted or filed before the effective date of this Act is governed by
15 the law in effect immediately before that date, and that law is
16 continued in effect for that purpose.

17 (b) Section 51.002(h), Property Code, as amended by this
18 Act, applies only to a designation of an area for sales made on or
19 after the effective date of this Act. A designation made before the
20 effective date of this Act is governed by the law in effect
21 immediately before that date, and that law is continued in effect
22 for that purpose.

23 (c) Section 51.0074, Property Code, as added by this Act,
24 applies only to the designation of a trustee under a security
25 instrument executed on or after the effective date of this Act. The
26 designation of a trustee under a security instrument executed
27 before the effective date of this Act is governed by the law in

1 effect immediately before that date, and that law is continued in
2 effect for that purpose.

3 (d) Section 51.0075(f), Property Code, as added by this Act,
4 applies only to a public sale conducted on or after the effective
5 date of this Act. A public sale conducted before the effective date
6 of this Act is governed by the law in effect immediately before that
7 date, and that law is continued in effect for that purpose.

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2007.