

1-1 By: Solomons (Senate Sponsor - Harris) H.B. No. 2738
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 18, 2007, reported favorably, as amended, by
1-5 the following vote: Yeas 4, Nays 0; May 18, 2007, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Harris

1-7 On page 1, SECTION 3, Sec. 51.0074, line 58 strike
1-8 "QUALIFICATIONS" and insert "DUTIES"

1-9 On page 2, SECTION 3, Sec. 51.0074, line 3 after "(2)" insert
1-10 "held to the obligations of"

1-11 A BILL TO BE ENTITLED
1-12 AN ACT

1-13 relating to liens on real property.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 51.0001(8), Property Code, is amended to
1-16 read as follows:

1-17 (8) "Trustee" means a person or persons authorized to
1-18 exercise the power of sale under the terms of a security instrument
1-19 in accordance with Section 51.0074.

1-20 SECTION 2. Section 51.002, Property Code, is amended by
1-21 amending Subsections (b) and (h) and adding Subsection (b-1) to
1-22 read as follows:

1-23 (b) Except as provided by Subsection (b-1), notice [Notice]
1-24 of the sale, which must include a statement of the earliest time at
1-25 which the sale will begin, must be given at least 21 days before the
1-26 date of the sale by:

1-27 (1) posting at the courthouse door of each county in
1-28 which the property is located a written notice designating the
1-29 county in which the property will be sold;

1-30 (2) filing in the office of the county clerk of each
1-31 county in which the property is located a copy of the notice posted
1-32 under Subdivision (1); and

1-33 (3) -serving written notice of the sale by certified
1-34 mail on each debtor who, according to the records of the mortgage
1-35 servicer of the debt, is obligated to pay the debt.

1-36 (b-1) If the courthouse or county clerk's office is closed
1-37 because of inclement weather, natural disaster, or other act of
1-38 God, a notice required to be posted at the courthouse under
1-39 Subsection (b)(1) or filed with the county clerk under Subsection
1-40 (b)(2) may be posted or filed, as appropriate, up to 48 hours after
1-41 the courthouse or county clerk's office reopens for business, as
1-42 applicable.

1-43 (h) For the purposes of Subsection (a), the commissioners
1-44 court of a county may designate an area other than an area at the
1-45 courthouse where sales under this section will take place that is in
1-46 a public place within a reasonable proximity of the county
1-47 courthouse and in a location as accessible to the public as the
1-48 courthouse door. The commissioners court shall record that
1-49 designation in the real property records of the county. A sale may
1-50 not be held at an area designated under this subsection before the
1-51 90th day after the date the designation is recorded. The posting of
1-52 the notice required by Subsection (b)(1) of a sale designated under
1-53 this subsection to take place at an area other than an area of the
1-54 courthouse remains at the courthouse door of the appropriate
1-55 county.

1-56 SECTION 3. Chapter 51, Property Code, is amended by adding
1-57 Section 51.0074 to read as follows:

1-58 Sec. 51.0074. QUALIFICATIONS OF TRUSTEE. (a) One or more
1-59 persons may be authorized to exercise the power of sale under a
1-60 security instrument.

1-61 (b) A trustee may not be:

1-62 (1) assigned a duty under a security instrument other

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

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

2-4 SECTION 4. Section 51.0075, Property Code, is amended by
2-5 adding Subsection (f) to read as follows:

2-6 (f) The purchase price in a sale held by a trustee or
2-7 substitute trustee under this section is payable immediately on
2-8 acceptance of the bid by the trustee or substitute trustee. The
2-9 trustee or substitute trustee shall disburse the proceeds of the
2-10 sale as provided by law.

2-11 SECTION 5. (a) Section 51.002(b-1), Property Code, as added
2-12 by this Act, applies only to a notice required to be posted or filed
2-13 on or after the effective date of this Act. A notice required to be
2-14 posted or filed before the effective date of this Act is governed by
2-15 the law in effect immediately before that date, and that law is
2-16 continued in effect for that purpose.

2-17 (b) Section 51.002(h), Property Code, as amended by this
2-18 Act, applies only to a designation of an area for sales made on or
2-19 after the effective date of this Act. A designation made before the
2-20 effective date of this Act is governed by the law in effect
2-21 immediately before that date, and that law is continued in effect
2-22 for that purpose.

2-23 (c) Section 51.0074, Property Code, as added by this Act,
2-24 applies only to the designation of a trustee under a security
2-25 instrument executed on or after the effective date of this Act. The
2-26 designation of a trustee under a security instrument executed
2-27 before the effective date of this Act is governed by the law in
2-28 effect immediately before that date, and that law is continued in
2-29 effect for that purpose.

2-30 (d) Section 51.0075(f), Property Code, as added by this Act,
2-31 applies only to a public sale conducted on or after the effective
2-32 date of this Act. A public sale conducted before the effective date
2-33 of this Act is governed by the law in effect immediately before that
2-34 date, and that law is continued in effect for that purpose.

2-35 SECTION 6. This Act takes effect immediately if it receives
2-36 a vote of two-thirds of all the members elected to each house, as
2-37 provided by Section 39, Article III, Texas Constitution. If this
2-38 Act does not receive the vote necessary for immediate effect, this
2-39 Act takes effect September 1, 2007.

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