

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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 takeplace at an area other than an area of the  
19 courthouse remains at the courthouse door of the appropriate  
20 county.

21           SECTION 3. Chapter 51, Property Code, is amended by adding  
22 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.

COMMITTEE AMENDMENT NO \_\_\_\_\_  
HB 2738 ENGROSSED

1

BY




On page 2, SECTION 3, Sec.51.0074, line 23 strike "QUALIFICATIONS" and insert "DUTIES"

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

**ADOPTED**

MAY 23 2007



Secretary of the Senate

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 18, 2007**

**TO:** Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2738** by Solomons (Relating to liens on real property.), **Committee Report 2nd House,**  
**As Amended**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, MN, JRO, DB

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 2, 2007**

**TO:** Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2738** by Solomons (Relating to liens on real property.), **As Engrossed**

**No fiscal implication to the State is anticipated.**

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, MN, JRO, DB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 2, 2007**

**TO:** Honorable Helen Giddings, Chair, House Committee on Business & Industry

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2738** by Solomons (Relating to liens on real property.), **As Introduced**

<b>No fiscal implication to the State is anticipated.</b>
---

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, JRO, DB