

House Bill 2738
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

Same as House version.

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.

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

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or county clerk's office reopens for business, as applicable.

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

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

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

(b) A trustee may not be:

(1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or

(2) a fiduciary of the mortgagor or mortgagee.

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

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

(b) A trustee may not be:

(1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or

(2) held to the obligations of a fiduciary of the mortgagor or mortgagee.

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

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

Same as House version.

SECTION 5. (a) 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. A notice required to be posted or filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) 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. A designation made before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(c) 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 designation of a trustee under a security instrument executed before the effective date of this Act is governed by the law in effect immediately

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

(d) 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. A public sale conducted before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

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

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