

BILL ANALYSIS

C.S.H.B. 2063
By: Oliveira
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law relating to the sale of real property under a contract lien sets out requirements for notice of the sale. Certain actions must be performed by the mortgage servicer of the debt before notice of the sale can be given. If the mortgage servicer has appointed a trustee or substitute trustee to exercise the power of sale, that appointment is customarily recorded. Concerned parties report that frequently, trustee appointments are not received in time to meet legal deadlines for foreclosures. Furthermore, it is reported that only about one-third of properties posted for sale actually go to sale, resulting in title records with recorded appointments related to sales that never occurred. The parties explain that this situation has resulted in confusion in official public records relating to the title to property and to which trustee has authority to act in exercising power of sale. The parties contend that such confusion may lead to litigation over extraneous documents, notarizations, and timing of recording.

C.S.H.B. 2063 seeks to reduce confusion in land title records and provide a safe harbor to reduce procedural litigation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 2063 amends the Property Code to require the recording of certain documents concerning real property subject to a foreclosure sale that are received by a county clerk in a specified manner and to specify that such documents serve as notice of the matter document. The bill requires such a document to be accepted for recording if it is attached as an exhibit to a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the original signature requirements for recording or to an affidavit of a trustee or substitute trustee that meets the original signature requirements for recording and relates to a foreclosure sale. The bill specifies that these provisions do not prevent the recording of documents in any other manner allowed by law.

C.S.H.B. 2063 makes the appointment or authorization of a trustee or substitute trustee made in a notice of the sale of real property under a contract lien effective as of the date of the notice if the notice complies with statutory provisions governing such sales, discloses the name and a street address for the trustee or substitute trustee, is signed by an attorney or agent of the mortgagee or mortgage servicer, and contains a specified statement in all capital letters and boldface type.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2063 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 12, Property Code, is amended by adding Section 12.0012 to read as follows:

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Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE.

Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE. (a)

(a) Notwithstanding Section 12.0011(b), the following paper documents received by the county clerk in the manner provided by Subsection (b) shall be recorded and may serve as notice of the paper document:

Notwithstanding Section 12.0011(b), the following documents received by the county clerk in the manner provided by Subsection (b) shall be recorded by the clerk and serve as notice of the matter document:

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(2) a notice of sale pursuant to which the sale under a power of sale occurred;

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(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

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(b) A document described by Subsection (a) must be attached as an exhibit to:

(b) A document described by Subsection (a) shall be accepted for recording pursuant to Subsection (a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) This Section does not prevent the

recording of documents in any other manner allowed by law.

SECTION 2. Chapter 51, Property Code, is amended by adding Section 51.0076 to read as follows:

Sec. 51.0076. EFFECTIVE DATE OF APPOINTMENT. The appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 and 51.0075(e); and

(2) is signed by an attorney who:

(A) is licensed to practice law in this state and includes the attorney's state bar identification number; and

(B) represents the trustee, substitute trustee, or mortgage servicer.

SECTION 2. Chapter 51, Property Code, is amended by adding Section 51.0076 to read as follows:

Sec. 51.0076. EFFECTIVE DATE OF APPOINTMENT. The appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 and 51.0075(e);

(2) is signed by an attorney or agent of the mortgagee or mortgage servicer; and

(3) contains a statement in all capital letters, boldface type, to read as follows:

THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.

SECTION 3. The changes to law made by this Act apply only to a sale for which a notice is required under Section 51.002, Property Code, on or after the effective date of this Act. A sale for which a notice is required under Section 51.002, Property Code, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2015.

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