

By: Oliveira, Fallon

H.B. No. 2066

A BILL TO BE ENTITLED

AN ACT

relating to the rescission of nonjudicial foreclosure sales.

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

SECTION 1. Chapter 51, Property Code, is amended by adding Section 51.016 to read as follows:

Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES.

(a) This section applies only to a nonjudicial foreclosure sale conducted under Section 51.002.

(b) Not later than the 15th day after the date of a foreclosure sale, a mortgagee, trustee, or substitute trustee may rescind the sale under this section if:

(1) the statutory requirements for the sale were not satisfied;

(2) the default leading to the sale was cured before the sale;

(3) a receivership or dependent probate administration involving the property was pending at the time of sale;

(4) a condition specified in the conditions of sale prescribed by the trustee or substitute trustee before the sale and made available in writing to prospective bidders at the sale was not met;

(5) the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on an enforceable

1 written agreement by the debtor to cure the default; or

2 (6) at the time of the sale, a court-ordered or
3 automatic stay of the sale imposed in a bankruptcy case filed by a
4 person with an interest in the property was in effect.

5 (c) If the trustee's or substitute trustee's deed has not
6 been recorded in the deed records of a county in which all or part of
7 the property is located, the foreclosure sale may be rescinded
8 under this section by serving a written notice of rescission that
9 describes the reason for the rescission to:

10 (1) the purchaser, if the mortgagee is not the
11 purchaser; and

12 (2) each debtor who, according to the records of the
13 mortgage servicer of the debt, is obligated to pay the debt.

14 (d) A notice required by Subsection (c) must be served by
15 certified mail. Service of the notice is complete when the notice
16 is deposited in the United States mail, postage prepaid and
17 addressed to the purchaser or debtor, as applicable, at the
18 purchaser's or debtor's last known address, as applicable. The
19 affidavit of a person knowledgeable of the facts to the effect that
20 service was completed is prima facie evidence of service.

21 (e) If the trustee's or substitute trustee's deed has been
22 recorded in the deed records of a county in which all or part of the
23 property is located, the foreclosure sale may be rescinded under
24 this section by:

25 (1) serving notices of rescission as prescribed by
26 Subsections (c) and (d); and

27 (2) recording a copy of each notice in the deed records

1 of each county in which the deed was recorded.

2 (f) Not later than the fifth business day after the date a
3 foreclosure sale is rescinded under this section, the mortgagee
4 shall return to the purchaser the amount of the bid paid by the
5 purchaser for the property at the sale. The debtor shall return to
6 the trustee the amount of any excess proceeds received by the debtor
7 from the sale.

8 (g) The rescission of a foreclosure sale under this section
9 restores the mortgagee and the debtor to their respective title,
10 rights, and obligations under any instrument relating to the
11 foreclosed property that existed immediately before the sale
12 occurred.

13 (h) A civil action challenging the effectiveness of a
14 rescission under this section may not be filed after the 90th day
15 after the date the notices of rescission required by this section
16 are served. This subsection does not affect the limitations period
17 for an action claiming damages resulting from the rescission.

18 (i) If the foreclosure sale is rescinded under this section
19 for a reason listed in Subsection (b), other than a stay described
20 by Subsection (b)(6), the court in a civil action filed by the
21 purchaser challenging the effectiveness of the rescission or
22 claiming damages resulting from the rescission may only award as
23 damages to the purchaser the amount of the bid paid for the property
24 by the purchaser at the sale that has not been refunded to the
25 purchaser, plus interest on that amount at the rate of 10 percent
26 per year. Notwithstanding any other law, the court may not order
27 specific performance of the sale as a remedy for the purchaser.

1 Interest awarded under this subsection ceases to accrue on the
2 fourth day after the date the mortgagee deposits the amount of the
3 damages awarded in the United States mail or with a courier for
4 delivery to the purchaser.

5 (j) If a foreclosure sale is rescinded under this section
6 for a reason provided by Subsection (b)(6), the court in a civil
7 action filed by the purchaser challenging the effectiveness of the
8 rescission or claiming damages resulting from the rescission may
9 only award as damages to the purchaser the amount of the bid paid
10 for the property by the purchaser at the sale that has not been
11 refunded to the purchaser.

12 (k) Nothing in this section prohibits the rescission of a
13 sale by agreement of the affected parties on other terms or a suit
14 to rescind a sale not rescinded under this section.

15 SECTION 2. The changes in law made by this Act apply only to
16 a foreclosure sale that occurs on or after the effective date of
17 this Act. A foreclosure sale that occurred before the effective
18 date of this Act is governed by the law applicable to the
19 foreclosure sale immediately before the effective date of this Act,
20 and that law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2015.