

By: Oliveira

H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to the administration of foreclosure sales of real property.

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

SECTION 1. Section 1802.001, Occupations Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Mortgage servicer," "mortgagee," "security instrument," "substitute trustee," and "trustee" have the meanings assigned by Section 51.0001, Property Code.

SECTION 2. Section 1802.002(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

(4) a sale conducted by any person of the person's property if the person is not engaged in the business of selling

1 property at auction on a recurring basis;

2 (5) a foreclosure sale of real property personally
3 conducted by a trustee or substitute trustee under a security
4 instrument, if the trustee or substitute trustee:

5 (A) is an attorney or an employee of the
6 mortgagee or the mortgage servicer;

7 (B) has entered into a written agreement with an
8 attorney to administer and perform the functions of the trustee or
9 substitute trustee under the security instrument and Chapter 51,
10 Property Code, other than the advertising and conducting of the
11 auction; or

12 (C) is employed by an auction company to conduct
13 the auction, if the auction company has entered into a written
14 agreement with an attorney to administer and perform the functions
15 of the trustee or substitute trustee under the security instrument
16 and Chapter 51, Property Code, other than the advertising and
17 conducting of the auction [~~under a deed of trust~~];

18 (6) a foreclosure sale of personal property personally
19 conducted by:

20 (A) a person who holds a security interest in the
21 property, including a mortgage; or

22 (B) an employee or agent of a person described by
23 Paragraph (A) acting in the course and scope of employment, if:

24 (i) the employee or agent is not otherwise
25 engaged in the auction business; and

26 (ii) all property for sale in the auction is
27 subject to a security agreement;

1 (7) a sale conducted by sealed bid without the option
2 of increasing or decreasing the amount of a bid;

3 (8) an auction conducted only for student training
4 purposes as part of a course of study approved by the department;

5 (9) an auction conducted by a posted stockyard or
6 market agency as defined by the federal Packers and Stockyards Act
7 (7 U.S.C. Section 181 et seq.), as amended;

8 (10) an auction of livestock conducted by a nonprofit
9 livestock trade association chartered in this state, if the auction
10 involves only the sale of livestock owned by members of the trade
11 association;

12 (11) an auction conducted by a charitable or nonprofit
13 organization chartered in this state, if the auction:

14 (A) is part of a fair that is organized under
15 state, county, or municipal authority; and

16 (B) involves only the sale of property owned by
17 the organization's members; or

18 (12) a sale or auction conducted outside of this
19 state.

20 SECTION 3. Subtitle B, Title 5, Property Code, is amended by
21 adding Chapter 51A to read as follows:

22 CHAPTER 51A. FORECLOSURE SALES OF RESIDENTIAL REAL PROPERTY

23 Sec. 51A.001. DEFINITIONS. In this chapter:

24 (1) "Auction company" has the meaning assigned by
25 Section 1802.001, Occupations Code.

26 (2) "Mortgage servicer," "mortgagee," "security
27 instrument," "substitute trustee," and "trustee" have the meanings

1 assigned by Section 51.0001.

2 (3) "Proceeds of sale" means the sale price for a
3 property received at a foreclosure sale conducted by a trustee or
4 substitute trustee.

5 (4) "Residential real property" means:

6 (A) a single-family house;

7 (B) a duplex, triplex, or quadraplex; or

8 (C) a unit in a multi-unit residential structure
9 in which title to an individual unit is transferred to the owner of
10 the unit under a condominium or cooperative system.

11 Sec. 51A.002. APPLICABILITY. This chapter applies only to
12 a foreclosure sale of residential real property conducted under a
13 security instrument and Section 51.002.

14 Sec. 51A.003. ADMINISTRATION OF FORECLOSURE SALES. (a) A
15 foreclosure sale must be conducted by an individual who is a trustee
16 or substitute trustee authorized or appointed to exercise the power
17 of sale under a security instrument.

18 (b) Except as provided by Subsection (c), a trustee or
19 substitute trustee may enter into a written agreement with:

20 (1) an attorney to administer or perform any of the
21 trustee's or substitute trustee's functions or responsibilities
22 under a security instrument; or

23 (2) an auction company to arrange, manage, sponsor, or
24 advertise a foreclosure sale.

25 (c) A trustee or substitute trustee may not delegate the
26 performance of the public sale at auction of the property to any
27 person who is not a trustee or substitute trustee authorized or

1 appointed to exercise the power of sale under the security
2 instrument.

3 Sec. 51A.004. NOTICE OF SALE. The preparation and mailing
4 of a notice of sale required by Section 51.002 does not constitute
5 the practice of law.

6 Sec. 51A.005. INFORMATION FROM BIDDERS. (a) A trustee or
7 substitute trustee or an attorney or auction company that is
8 administering or managing a foreclosure sale at public auction may
9 request that bidders:

10 (1) register for the sale; or

11 (2) provide or display to the trustee, substitute
12 trustee, attorney, or auction company the following information:

13 (A) the name, address, telephone number, and
14 e-mail address of each individual tendering or who will tender the
15 sale price for a winning bid;

16 (B) if the bidder is acting on behalf of another
17 individual or organization, the name, address, telephone number,
18 and e-mail address of the individual or organization and the name of
19 a contact person for the organization;

20 (C) the name and address of any person to be
21 identified as the grantee in a trustee's or substitute trustee's
22 deed;

23 (D) for a winning bid, the purchaser's tax
24 identification number;

25 (E) a government-issued photo identification to
26 confirm the identity of each individual tendering funds for a
27 winning bid; and

1 (F) any other information reasonably needed to
2 complete the trustee's or substitute trustee's duties and functions
3 concerning the sale.

4 (b) A trustee, substitute trustee, attorney, or auction
5 company that requests a bidder to provide or display information
6 described by Subsection (a) before the sale may not refuse to allow
7 the bidder to bid if the bidder does not provide or display the
8 information before the sale.

9 (c) A trustee or substitute trustee may require a winning
10 bidder at a foreclosure sale to provide or display the information
11 described by Subsection (a) at the time the trustee or substitute
12 trustee completes the sale. If a bidder fails or refuses to provide
13 the information, the trustee or substitute trustee may:

14 (1) decline to complete the transaction;

15 (2) hold another auction; and

16 (3) sell the property to another bidder.

17 (d) Personal information obtained from a bidder in
18 connection with a foreclosure sale may not be sold or transferred by
19 a trustee, substitute trustee, attorney, or auction company without
20 the written informed consent of the bidder. The consent may not be
21 a condition of sale.

22 Sec. 51A.006. PURCHASER'S RECEIPT AND DEED. (a) After the
23 foreclosure sale, the trustee or substitute trustee shall:

24 (1) provide the winning bidder with:

25 (A) a purchaser's receipt for the proceeds of
26 sale; and

27 (B) a written copy of the conditions of sale

1 announced before bidding was opened for the first sale of the day
2 held by the trustee or substitute trustee; and

3 (2) except as provided by Subsection (b), within a
4 reasonable time:

5 (A) deliver the deed to the winning bidder; or

6 (B) file the deed for recording.

7 (b) If the foreclosure sale is disputed, the trustee or
8 substitute trustee may withhold the delivery or recording of the
9 deed while an action challenging the sale is pending in court.

10 Sec. 51A.007. PROCEEDS OF SALE. (a) Proceeds of sale
11 received in the form of checks or currency must be maintained in a
12 separate account until distributed to persons entitled to the
13 proceeds.

14 (b) The trustee or substitute trustee shall make reasonable
15 attempts to identify and locate the persons entitled to all or any
16 part of the proceeds of sale.

17 (c) A trustee or substitute trustee, or an attorney or
18 auction company acting under Section 51A.003, may make payments
19 from the proceeds of sale at any time.

20 (d) A person who accepts proceeds of sale tendered and
21 distributed by a trustee or substitute trustee takes the funds in
22 full satisfaction of claims for the proceeds of sale.

23 Sec. 51A.008. EXPENSES PAID FROM PROCEEDS OF SALE. (a) A
24 trustee or substitute trustee may be paid the trustee's or
25 substitute trustee's expenses for the sale from the proceeds of
26 sale, including:

27 (1) a trustee's or substitute trustee's fee of not more

1 than 2.5 percent of the proceeds of sale or the amount specified in
2 the security instrument;

3 (2) the actual costs of title evidence and records
4 searches incurred to identify parties legally entitled to the
5 proceeds of sale; and

6 (3) reasonable attorney's fees and costs incurred to
7 identify persons legally entitled to the proceeds of sale.

8 (b) A fee is:

9 (1) considered earned at the time of sale; and

10 (2) conclusively presumed to be reasonable if the fee:

11 (A) is not more than 2.5 percent of the proceeds
12 of sale, for a trustee's or substitute trustee's fee; or

13 (B) is not more than 1.5 percent of the proceeds
14 of sale, for an attorney's fee under Subsection (a)(3).

15 (c) A trustee or substitute trustee or an attorney who
16 prevails in a suit concerning a foreclosure sale of residential
17 real property conducted by the trustee or substitute trustee is
18 entitled to recover reasonable attorney's fees necessary to defend
19 the action, which may be paid from the excess proceeds of sale, if
20 any.

21 SECTION 4. (a) Section [1802.002](#), Occupations Code, as
22 amended by this Act, applies only to a foreclosure sale conducted on
23 or after the effective date of this Act. A foreclosure sale
24 conducted before the effective date of this Act is governed by the
25 law applicable to the foreclosure sale immediately before the
26 effective date of this Act, and that law is continued in effect for
27 that purpose.

1 (b) Chapter 51A, Property Code, as added by this Act,
2 applies only to a foreclosure sale for which the notice of sale is
3 given under Section 51.002, Property Code, on or after the
4 effective date of this Act.

5 SECTION 5. This Act takes effect September 1, 2015.