

SENATE AMENDMENTS

2nd Printing

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7 the property is located, the foreclosure sale may be rescinded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.

ADOPTED

MAY 22 2015

Atty Gen
Secretary of the Senate

By: _____

H.B. No. 2066

Substitute the following for ___B. No. _____:

By: *White*

C.S. ___B. No. _____

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the rescission of nonjudicial foreclosure sales.

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

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

6 Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES.

7 (a) This section applies only to a nonjudicial foreclosure sale of
8 residential real property conducted under Section 51.002. In this
9 subsection, "residential real property" means:

10 (1) a single family home, duplex, triplex, or
11 quadraplex; or

12 (2) a unit in a multiunit residential structure in
13 which title to an individual unit is transferred to the owner of the
14 unit under a condominium or cooperative system.

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

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

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

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

CONFIDENTIAL
PROPERTY
RECORDS

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

5 (5) the mortgagee or mortgage servicer and the debtor
6 agreed before the sale to cancel the sale based on an enforceable
7 written agreement by the debtor to cure the default; or

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

11 (c) On or before the 15th calendar day after the date of the
12 sale, the party rescinding the sale shall:

13 (1) serve a written notice of rescission that
14 describes the reason for the rescission and includes recording
15 information for any affected trustee's or substitute trustee's deed
16 that was recorded on:

17 (A) the purchaser, if the mortgagee is not the
18 purchaser; and

19 (B) each debtor who, according to the records of
20 the mortgage servicer of the debt, is obligated to pay the debt; and

21 (2) file each notice for recording in the real
22 property records of the county in which all or a part of the
23 property is located.

24 (d) A notice required by Subsection (c) must be served by
25 certified mail. Service of the notice is complete when the notice
26 is deposited in the United States mail, postage prepaid and
27 addressed to the purchaser or debtor, as applicable, at the

1 purchaser's or debtor's last known address, as applicable. The
2 affidavit of a person knowledgeable of the facts to the effect that
3 service was completed is prima facie evidence of service.

4 (e) Not later than the fifth calendar day after the date a
5 foreclosure sale is rescinded under this section, the mortgagee
6 shall return to the purchaser by certified mail, electronic or wire
7 transfer, or courier service with delivery tracking the amount of
8 the bid paid by the purchaser for the property at the sale. The
9 debtor shall return to the trustee the amount of any excess proceeds
10 received by the debtor from the sale. The return of the bid amount
11 is considered made on the date:

12 (1) the bid amount is deposited postage prepaid in the
13 United States mail or with the courier service addressed to the
14 purchaser at the purchaser's last known address; or

15 (2) the electronic or wire transfer is ordered.

16 (f) The rescinding mortgagee, trustee, or substitute
17 trustee shall cause to be filed for recording in the real property
18 records of the county where the notice required under Subsection
19 (c) was recorded an affidavit stating the date the bid amount was
20 returned together with the certified mail, electronic or wire
21 transfer, or courier service delivery tracking information.

22 (g) An affidavit executed and filed in accordance with
23 Subsection (f) is prima facie evidence of the return of the bid
24 amount and of the authority of the maker of the affidavit. A bona
25 fide purchaser, lender, or other person acquiring an interest in
26 the property or an insurer of title is entitled to rely conclusively
27 on the record of the filed affidavit and notice, and any subsequent

1 purchaser in good faith and for value is entitled to bona fide
2 purchaser protection.

3 (h) The rescission of a foreclosure sale under this section
4 restores the mortgagee and the debtor to their respective title,
5 rights, and obligations under any instrument relating to the
6 foreclosed property that existed immediately prior to the sale.

7 (i) A rescission of a foreclosure sale under this section is
8 void as to a creditor or to a subsequent purchaser for a valuable
9 consideration without notice unless notice of the rescission has
10 been acknowledged, sworn to, or proved and filed for recording as
11 required by law. A rescission of a foreclosure sale under this
12 section evidenced by an unrecorded instrument is binding on a party
13 to the instrument, on the party's heirs, and on a subsequent
14 purchaser who does not pay a valuable consideration or who has
15 notice of the instrument.

16 (j) No action challenging the effectiveness of a rescission
17 under this section may be commenced unless the action is filed on or
18 before the 30th calendar day after the date the notices of
19 rescission required by Subsection (c) are filed for recording. A
20 lis pendens notice based on the rescission not recorded within that
21 period has no effect. This subsection does not affect the
22 limitations period for an action claiming damages resulting from
23 the rescission.

24 (k) If the foreclosure sale is rescinded under this section
25 for a reason listed in Subsection (b), other than a stay described
26 by Subsection (b)(6), the court in a civil action filed by the
27 purchaser challenging the effectiveness of the rescission or

1 claiming damages resulting from the rescission may only award as
2 damages to the purchaser the amount of the bid paid for the property
3 by the purchaser at the sale that has not been refunded to the
4 purchaser, plus interest on that amount at the rate of 10 percent
5 per year. Notwithstanding any other law, the court may not order
6 specific performance of the sale as a remedy for the purchaser.
7 Interest awarded under this subsection ceases to accrue on the
8 fourth day after the date the mortgagee deposits the amount of the
9 damages awarded in the United States mail or with a courier for
10 delivery to the purchaser.

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

18 (m) Nothing in this section prohibits the rescission of a
19 sale by agreement of the affected parties on other terms or a suit
20 to rescind a sale not rescinded under this section.

21 SECTION 2. The changes in law made by this Act apply only to
22 a foreclosure sale that occurs on or after the effective date of
23 this Act. A foreclosure sale that occurred before the effective
24 date of this Act is governed by the law applicable to the
25 foreclosure sale immediately before the effective date of this Act,
26 and that law is continued in effect for that purpose.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2066 by Oliveira (Relating to the rescission of nonjudicial foreclosure sales.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to the rescission of a nonjudicial foreclosure sale of real property under a contract lien. The bill would authorize a civil action challenging the effectiveness of a rescission or claiming damages resulting from the rescission.

The Office of Court Administration reported no significant fiscal impact to the state court is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450
Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, EK, JLi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 15, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2066 by Oliveira (Relating to the rescission of nonjudicial foreclosure sales.),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to the rescission of a nonjudicial foreclosure sale of real property under a contract lien. The bill would authorize a civil action challenging the effectiveness of a rescission or claiming damages resulting from the rescission.

The Office of Court Administration reported no significant fiscal impact to the state court is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450
Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, EK, JLi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2066 by Oliveira (Relating to the rescission of nonjudicial foreclosure sales.), As
Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to the rescission of a nonjudicial foreclosure sale of real property under a contract lien. The bill would authorize a civil action challenging the effectiveness of a rescission or claiming damages resulting from the rescission.

The Office of Court Administration reported no significant fiscal impact to the state court is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450
Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, EK, JLi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 3, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2066 by Oliveira (Relating to the rescission of nonjudicial foreclosure sales.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to the rescission of a nonjudicial foreclosure sale of real property under a contract lien. The bill would authorize a civil action challenging the effectiveness of a rescission or claiming damages resulting from the rescission.

The Office of Court Administration reported no significant fiscal impact to the state court is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450
Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, EK, JLi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 23, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2066 by Oliveira (Relating to the rescission of nonjudicial foreclosure sales.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Property Code relating to the rescission of a nonjudicial foreclosure sale of real property under a contract lien. The bill would authorize a civil action challenging the effectiveness of a rescission or claiming damages resulting from the rescission.

The Office of Court Administration reported no significant fiscal impact to the state court is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450
Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, EK, JLi