

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1470  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Certain aspects of the foreclosure process in Texas, including the reasonableness of fees charged by the trustees who conduct foreclosure auctions, the process of the auction itself, and the requirements for involved parties after the auction, are ill-defined.

H.B. 1470 amends the Business & Commerce Code to authorize a trustee or substitute trustee conducting a public sale of residential real property under a power of sale in a security instrument to contract with an attorney to advise the trustee or substitute trustee or to administer or perform any of the trustee's or substitute trustee's functions or responsibilities under a security instrument or the bill's provisions, or with an auction company to arrange, manage, sponsor, or advertise a public sale.

H.B. 1470 requires a winning bidder at such a sale, other than the foreclosing mortgagee or mortgage servicer, to provide specified information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale and authorizes the trustee or substitute trustee to decline to complete the transaction or deliver a deed if a winning bidder required to provide such information fails or refuses to so provide.

H.B. 1470 requires the trustee or substitute trustee to provide the winning bidder with a receipt for the sale proceeds tendered and, except when prohibited by law and within a reasonable time, to deliver the deed to the winning bidder or to file the deed for recording.

H.B. 1470 requires the trustee or substitute trustee to ensure that funds received at the sale are maintained in a separate account until distributed and to cause to be maintained a written record of deposits to and disbursements from the account.

H.B. 1470 requires the trustee or substitute trustee to make reasonable attempts to identify and locate the persons entitled to all or any part of the sale proceeds.

H.B. 1470 authorizes a trustee or substitute trustee to receive in connection with the sale and specified related post-sale actions reasonable actual costs incurred, a reasonable trustee's or substitute trustee's fee, and reasonable trustee's or substitute trustee's attorney's fees and sets out provisions relating to the timing, payment, and reasonableness of such fees.

H.B. 1470 entitles a trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law to recover reasonable attorney's fees necessary to defend against the claim and authorizes such fees to be paid from the excess sale proceeds, if any.

H.B. 1470 establishes that nothing in these provisions precludes the filing of an interpleader action or the depositing of funds in a court registry.

H.B. 1470 amends current law relating to the public sale of real property under a power of sale in a security instrument.

## **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2, Business and Commerce Code, by adding Chapter 22, as follows:

### **CHAPTER 22. PUBLIC SALE OF RESIDENTIAL REAL PROPERTY UNDER POWER OF SALE**

Sec. 22.001. DEFINITIONS. Defines "auction company," "residential real property," "security instrument," "substitute trustee," and "trustee."

Sec. 22.002. APPLICABILITY. Provides that this chapter applies only to a public sale of residential real property conducted under a power of sale in a security instrument.

Sec. 22.003. CONTRACTS CONCERNING SALE. Authorizes a trustee or substitute trustee conducting a sale to which this chapter applies to contract with an attorney to advise the trustee or substitute trustee or to administer or perform any of the trustee's or substitute trustee's functions or responsibilities under a security instrument or this chapter; or an auction company to arrange, manage, sponsor, or advertise a public sale.

Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) Requires a winning bidder at a sale, other than the foreclosing mortgagee or mortgage servicer, to provide certain information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale.

(b) Authorizes the trustee or substitute trustee, if a winning bidder required to provide information under Subsection (a) fails or refuses to provide the information, to decline to complete the transaction or deliver a deed.

Sec. 22.005. RECEIPT AND DEED. Requires the trustee or substitute trustee to provide the winning bidder with a receipt for the sale proceeds tendered and, except when prohibited by law, within a reasonable time deliver the deed to the winning bidder or file the deed for recording.

Sec. 22.006. SALE PROCEEDS. (a) Requires the trustee or substitute trustee to ensure that funds received at the sale are maintained in a separate account until distributed. Requires the trustee or substitute trustee to cause to be maintained a written record of deposits to and disbursements from the account.

(b) Requires the trustee or substitute trustee to make reasonable attempts to identify and locate the persons entitled to all or any part of the sale proceeds.

(c) Authorizes a trustee or substitute trustee, in connection with the sale and related post-sale actions to identify persons with legal claims to sale proceeds, determine the priority of any claims, and distribute proceeds to pay claims, to receive reasonable actual costs incurred, including costs for evidence of title, a reasonable trustee's or substitute trustee's fee, and reasonable trustee's or substitute trustee's attorney's fees.

(d) Provides that a fee described by Subsection (c) is considered earned at the time of the sale, is authorized to be paid from sale proceeds in excess of the payoff of the lien being foreclosed, and is conclusively presumed to be reasonable if the fee is not more than the lesser of a certain amount or is not more a certain amount.

(e) Entitles a trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law to recover reasonable attorney's fees necessary to defend against the claim, which may be paid from the excess sale proceeds, if any.

(f) Provides that nothing in this section precludes the filing of an interpleader action or the depositing of funds in a court registry.

SECTION 2. Amends Section 1802.001, Occupations Code, by adding Subdivision (14) to define "security instrument," "substitute trustee," and "trustee."

SECTION 3. Reenacts Section 1802.002(a), Occupations Code, as amended by Chapters 777 (H.B. 2481) and 1230 (S.B. 1982), Acts of the 84th Legislature, Regular Session, 2015, and amends it, as follows:

(a) Provides that this chapter (Auctioneers) does not apply to a foreclosure auction involving the sale of real property personally conducted by a trustee or substitute trustee under a security instrument, rather than a foreclosure sale of real property personally conducted by a trustee under a deed of trust.

SECTION 4. Makes application of this Act, prospective regarding only a sale for which notice is given under Section 51.002, Property Code.

SECTION 5. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. Effective date: September 1, 2017.