

## **BILL ANALYSIS**

C.S.H.B. 1470  
By: Villalba  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that 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. C.S.H.B. 1470 seeks to provide clarity in this area of foreclosure law.

### **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. 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. The bill 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. The bill 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.

C.S.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. The bill 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. The bill 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. The bill 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. The bill establishes that nothing in these provisions precludes the filing of an interpleader action or the depositing of funds in a court registry.

C.S.H.B. 1470 amends the Occupations Code to make conforming changes.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1470 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

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 22 to read as follows:

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

Sec. 22.001. DEFINITIONS.

Sec. 22.002. APPLICABILITY.

Sec. 22.003. AGREEMENTS CONCERNING SALE. A trustee or substitute trustee conducting a sale to which this chapter applies may enter into a written agreement with:

(1) 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

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

Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) A winning bidder at a sale

shall provide the following information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale:

(1) the name, address, telephone number, and e-mail address of the bidder and of each individual tendering or who will tender the sale price for the winning bid;

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

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 22 to read as follows:

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

Sec. 22.001. DEFINITIONS.

Sec. 22.002. APPLICABILITY.

Sec. 22.003. CONTRACTS CONCERNING SALE. A trustee or substitute trustee conducting a sale to which this chapter applies may contract with:

(1) 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

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

Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) A winning bidder at a sale, other than the foreclosing mortgagee or mortgage servicer,

shall provide the following information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale:

(1) the name, address, telephone number, and e-mail address of the bidder and of each individual tendering or who will tender the sale price for the winning bid;

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

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

(4) the purchaser's tax identification number;

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

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

(b) If a winning bidder fails or refuses to provide the information described by Subsection (a), the trustee or substitute trustee may decline to complete the transaction or deliver a deed.

Sec. 22.005. RECEIPT AND DEED.

Sec. 22.006. SALE PROCEEDS. (a) The trustee or substitute trustee shall cause funds received at the sale to be maintained in a separate account until distributed. The trustee or substitute trustee shall cause to be maintained a written record of deposits to and disbursements from the account. The trustee, the substitute trustee, or an agent acting pursuant to an agreement under Section 22.003 is not considered a fiduciary with respect to the account.

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

(c) 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, a trustee or substitute trustee may receive:

(1) reasonable actual costs incurred, including costs for evidence of title;

(2) a reasonable trustee's or substitute trustee's fee; and

(3) reasonable trustee's or substitute trustee's attorney's fees.

(d) A fee described by Subsection (c):

(1) is considered earned at the time of the sale;

(2) may be paid from sale proceeds in excess of any first priority purchase money lien payoff; and

(3) is conclusively presumed to be reasonable if the fee:

(A) is not more than the lesser of 2.5

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

(4) the purchaser's tax identification number;

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

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

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

Sec. 22.005. RECEIPT AND DEED.

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

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

(c) 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, a trustee or substitute trustee may receive:

(1) reasonable actual costs incurred, including costs for evidence of title;

(2) a reasonable trustee's or substitute trustee's fee; and

(3) reasonable trustee's or substitute trustee's attorney's fees.

(d) A fee described by Subsection (c):

(1) is considered earned at the time of the sale;

(2) may be paid from sale proceeds in excess of the payoff of the lien being foreclosed; and

(3) is conclusively presumed to be reasonable if the fee:

(A) is not more than the lesser of 2.5

percent of the sale proceeds or \$5,000, for a trustee's or substitute trustee's fee; or (B) is not more than 1.5 percent of the sale proceeds, for trustee's or substitute trustee's attorney's fees incurred to identify persons with legal claims to sale proceeds and determine the priority of the claims.

(e) 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 is entitled to recover reasonable attorney's fees necessary to defend against the claim, which may be paid from the excess sale proceeds, if any.

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

SECTION 2. Section 1802.001, Occupations Code, is amended.

SECTION 3. 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, is reenacted and 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 foreclosure sale of real property personally conducted by a trustee or substitute trustee under a security instrument [~~under a deed of trust~~];
  - (5) a foreclosure sale of personal property personally conducted by:
    - (A) a person who holds a security interest in the property, including a mortgage; or
    - (B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

percent of the sale proceeds or \$5,000, for a trustee's or substitute trustee's fee; or (B) is not more than 1.5 percent of the sale proceeds, for trustee's or substitute trustee's attorney's fees incurred to identify persons with legal claims to sale proceeds and determine the priority of the claims.

(e) 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 is entitled to recover reasonable attorney's fees necessary to defend against the claim, which may be paid from the excess sale proceeds, if any.

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

SECTION 2. Same as introduced version.

SECTION 3. 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, is reenacted and 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 foreclosure auction involving the sale of real property personally conducted by a trustee or substitute trustee under a security instrument [~~under a deed of trust~~];
  - (5) a foreclosure sale of personal property personally conducted by:
    - (A) a person who holds a security interest in the property, including a mortgage; or
    - (B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

- (i) the employee or agent is not otherwise engaged in the auction business; and
- (ii) all property for sale in the auction is subject to a security agreement;
- (6) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;
- (7) an auction conducted only for student training purposes as part of a course of study approved by the department;
- (8) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;
- (9) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;
- (10) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:
  - (A) is part of a fair that is organized under state, county, or municipal authority; and
  - (B) involves only the sale of property owned by the organization's members;
- (11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;
- (12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302;
- (13) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles; or
- (14) an auction of property through the Internet.

SECTION 4. The changes in law made by this Act apply only to a sale for which the notice of sale is given under Section 51.002, Property Code, on or after the effective date of this Act. A sale for which the notice of sale is given before the effective date of this Act is governed by the law applicable to the foreclosure sale immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017,

- (i) the employee or agent is not otherwise engaged in the auction business; and
- (ii) all property for sale in the auction is subject to a security agreement;
- (6) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;
- (7) an auction conducted only for student training purposes as part of a course of study approved by the department;
- (8) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;
- (9) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;
- (10) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:
  - (A) is part of a fair that is organized under state, county, or municipal authority; and
  - (B) involves only the sale of property owned by the organization's members;
- (11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;
- (12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302;
- (13) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles; or
- (14) an auction of property through the Internet.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. This Act takes effect September 1, 2017.

SECTION 6. Same as introduced version.