

By: Creighton

S.B. No. 1405

A BILL TO BE ENTITLED

AN ACT

relating to the public sale of real property under a power of sale in a security instrument.

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

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. In this chapter:

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

(2) "Residential real property" means:

(A) a single-family house;

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

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

(3) "Security instrument," "substitute trustee," and "trustee" have the meanings assigned by Section 51.0001, Property Code.

Sec. 22.002. APPLICABILITY. 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. AGREEMENTS CONCERNING SALE. A trustee or

1 substitute trustee conducting a sale to which this chapter applies  
2 may enter into a written agreement with:

3 (1) an attorney to advise the trustee or substitute  
4 trustee or to administer or perform any of the trustee's or  
5 substitute trustee's functions or responsibilities under a  
6 security instrument or this chapter; or

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

9 Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) A  
10 winning bidder at a sale shall provide the following information to  
11 the trustee or substitute trustee at the time the trustee or  
12 substitute trustee completes the sale:

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

16 (2) 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 (3) the name and address of any person to be identified  
21 as the grantee in a trustee's or substitute trustee's deed;

22 (4) the purchaser's tax identification number;

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

26 (6) any other information reasonably needed to  
27 complete the trustee's or substitute trustee's duties and functions

1 concerning the sale.

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

5 Sec. 22.005. RECEIPT AND DEED. The trustee or substitute  
6 trustee shall:

7 (1) provide the winning bidder with a receipt for the  
8 sale proceeds tendered; and

9 (2) except when prohibited by law, within a reasonable  
10 time:

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

12 (B) file the deed for recording.

13 Sec. 22.006. SALE PROCEEDS. (a) The trustee or substitute  
14 trustee shall cause funds received at the sale to be maintained in a  
15 separate account until distributed. The trustee or substitute  
16 trustee shall cause to be maintained a written record of deposits to  
17 and disbursements from the account. The trustee, the substitute  
18 trustee, or an agent acting pursuant to an agreement under Section  
19 22.003 is not considered a fiduciary with respect to the account.

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

23 (c) In connection with the sale and related post-sale  
24 actions to identify persons with legal claims to sale proceeds,  
25 determine the priority of any claims, and distribute proceeds to  
26 pay claims, a trustee or substitute trustee may receive:

27 (1) reasonable actual costs incurred, including costs

1 for evidence of title;

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

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

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

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

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

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

12 (A) is not more than the lesser of 2.5 percent of  
13 the sale proceeds or \$5,000, for a trustee's or substitute trustee's  
14 fee; or

15 (B) is not more than 1.5 percent of the sale  
16 proceeds, for trustee's or substitute trustee's attorney's fees  
17 incurred to identify persons with legal claims to sale proceeds and  
18 determine the priority of the claims.

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

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

26 SECTION 2. Section 1802.001, Occupations Code, is amended  
27 by adding Subdivision (14) to read as follows:

1           (14) "Security instrument," "substitute trustee," and  
2 "trustee" have the meanings assigned by Section 51.0001, Property  
3 Code.

4           SECTION 3. Section 1802.002(a), Occupations Code, as  
5 amended by Chapters 777 (H.B. 2481) and 1230 (S.B. 1982), Acts of  
6 the 84th Legislature, Regular Session, 2015, is reenacted and  
7 amended to read as follows:

8           (a) This chapter does not apply to:

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

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

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

19                   (4) a foreclosure sale of real property personally  
20 conducted by a trustee or substitute trustee under a security  
21 instrument [~~under a deed of trust~~];

22                   (5) a foreclosure sale of personal property personally  
23 conducted by:

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

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

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

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

5 (6) a sale conducted by sealed bid without the option  
6 of increasing or decreasing the amount of a bid;

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

9 (8) an auction conducted by a posted stockyard or  
10 market agency as defined by the federal Packers and Stockyards Act  
11 (7 U.S.C. Section 181 et seq.), as amended;

12 (9) an auction of livestock conducted by a nonprofit  
13 livestock trade association chartered in this state, if the auction  
14 involves only the sale of livestock owned by members of the trade  
15 association;

16 (10) an auction conducted by a charitable or nonprofit  
17 organization chartered in this state, if the auction:

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

20 (B) involves only the sale of property owned by  
21 the organization's members;

22 (11) a sale or auction conducted by an auctioneer  
23 while the auctioneer is physically located outside of this state;

24 (12) a sale of motor vehicles at auction by a person  
25 licensed under Chapter 2301 or 2302;

26 (13) a sale of motor vehicles at auction by a person  
27 who holds a wholesale motor vehicle auction general distinguishing

1 number or an independent motor vehicle general distinguishing  
2 number issued by the Texas Department of Motor Vehicles; or

3 (14) an auction of property through the Internet.

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

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

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