

1-1 By: Creighton S.B. No. 1405
 1-2 (In the Senate - Filed March 7, 2017; March 16, 2017, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 May 11, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; May 11, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1405 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the public sale of real property under a power of sale
 1-22 in a security instrument.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Title 2, Business & Commerce Code, is amended by
 1-25 adding Chapter 22 to read as follows:

1-26 CHAPTER 22. PUBLIC SALE OF RESIDENTIAL REAL PROPERTY UNDER POWER OF
 1-27 SALE

1-28 Sec. 22.001. DEFINITIONS. In this chapter:

1-29 (1) "Auction company" has the meaning assigned by
 1-30 Section 1802.001, Occupations Code.

1-31 (2) "Residential real property" means:

1-32 (A) a single-family house;

1-33 (B) a duplex, triplex, or quadraplex; or

1-34 (C) a unit in a multiunit residential structure
 1-35 in which title to an individual unit is transferred to the owner of
 1-36 the unit under a condominium or cooperative system.

1-37 (3) "Security instrument," "substitute trustee," and
 1-38 "trustee" have the meanings assigned by Section 51.0001, Property
 1-39 Code.

1-40 Sec. 22.002. APPLICABILITY. This chapter applies only to a
 1-41 public sale of residential real property conducted under a power of
 1-42 sale in a security instrument.

1-43 Sec. 22.003. CONTRACTS CONCERNING SALE. A trustee or
 1-44 substitute trustee conducting a sale to which this chapter applies
 1-45 may contract with:

1-46 (1) an attorney to advise the trustee or substitute
 1-47 trustee or to administer or perform any of the trustee's or
 1-48 substitute trustee's functions or responsibilities under a
 1-49 security instrument or this chapter; or

1-50 (2) an auction company to arrange, manage, sponsor, or
 1-51 advertise a public sale.

1-52 Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) A
 1-53 winning bidder at a sale, other than the foreclosing mortgagee or
 1-54 mortgage servicer, shall provide the following information to the
 1-55 trustee or substitute trustee at the time the trustee or substitute
 1-56 trustee completes the sale:

1-57 (1) the name, address, telephone number, and e-mail
 1-58 address of the bidder and of each individual tendering or who will
 1-59 tender the sale price for the winning bid;

1-60 (2) if the bidder is acting on behalf of another

2-1 individual or organization, the name, address, telephone number,
 2-2 and e-mail address of the individual or organization and the name of
 2-3 a contact person for the organization;
 2-4 (3) the name and address of any person to be identified
 2-5 as the grantee in a trustee's or substitute trustee's deed;
 2-6 (4) the purchaser's tax identification number;
 2-7 (5) a government-issued photo identification to
 2-8 confirm the identity of each individual tendering funds for the
 2-9 winning bid; and
 2-10 (6) any other information reasonably needed to
 2-11 complete the trustee's or substitute trustee's duties and functions
 2-12 concerning the sale.

2-13 (b) If a winning bidder required to provide information
 2-14 under Subsection (a) fails or refuses to provide the information,
 2-15 the trustee or substitute trustee may decline to complete the
 2-16 transaction or deliver a deed.

2-17 Sec. 22.005. RECEIPT AND DEED. The trustee or substitute
 2-18 trustee shall:

2-19 (1) provide the winning bidder with a receipt for the
 2-20 sale proceeds tendered; and

2-21 (2) except when prohibited by law, within a reasonable
 2-22 time:

2-23 (A) deliver the deed to the winning bidder; or

2-24 (B) file the deed for recording.

2-25 Sec. 22.006. SALE PROCEEDS. (a) The trustee or substitute
 2-26 trustee shall ensure that funds received at the sale are maintained
 2-27 in a separate account until distributed. The trustee or substitute
 2-28 trustee shall cause to be maintained a written record of deposits to
 2-29 and disbursements from the account.

2-30 (b) The trustee or substitute trustee shall make reasonable
 2-31 attempts to identify and locate the persons entitled to all or any
 2-32 part of the sale proceeds.

2-33 (c) In connection with the sale and related post-sale
 2-34 actions to identify persons with legal claims to sale proceeds,
 2-35 determine the priority of any claims, and distribute proceeds to
 2-36 pay claims, a trustee or substitute trustee may receive:

2-37 (1) reasonable actual costs incurred, including costs
 2-38 for evidence of title;

2-39 (2) a reasonable trustee's or substitute trustee's
 2-40 fee; and

2-41 (3) reasonable trustee's or substitute trustee's
 2-42 attorney's fees.

2-43 (d) A fee described by Subsection (c):

2-44 (1) is considered earned at the time of the sale;

2-45 (2) may be paid from sale proceeds in excess of the
 2-46 payoff of the lien being foreclosed; and

2-47 (3) is conclusively presumed to be reasonable if the
 2-48 fee:

2-49 (A) is not more than the lesser of 2.5 percent of
 2-50 the sale proceeds or \$5,000, for a trustee's or substitute trustee's
 2-51 fee; or

2-52 (B) is not more than 1.5 percent of the sale
 2-53 proceeds, for trustee's or substitute trustee's attorney's fees
 2-54 incurred to identify persons with legal claims to sale proceeds and
 2-55 determine the priority of the claims.

2-56 (e) A trustee or substitute trustee who prevails in a suit
 2-57 based on a claim that relates to the sale and that is found by a
 2-58 court to be groundless in fact or in law is entitled to recover
 2-59 reasonable attorney's fees necessary to defend against the claim,
 2-60 which may be paid from the excess sale proceeds, if any.

2-61 (f) Nothing in this section precludes the filing of an
 2-62 interpleader action or the depositing of funds in a court registry.

2-63 SECTION 2. Section 1802.001, Occupations Code, is amended
 2-64 by adding Subdivision (14) to read as follows:

2-65 (14) "Security instrument," "substitute trustee," and
 2-66 "trustee" have the meanings assigned by Section 51.0001, Property
 2-67 Code.

2-68 SECTION 3. Section 1802.002(a), Occupations Code, as
 2-69 amended by Chapters 777 (H.B. 2481) and 1230 (S.B. 1982), Acts of

3-1 the 84th Legislature, Regular Session, 2015, is reenacted and
3-2 amended to read as follows:

3-3 (a) This chapter does not apply to:

3-4 (1) a sale conducted by order of a United States court
3-5 under Title 11, United States Code;

3-6 (2) a sale conducted by an employee of the United
3-7 States, this state, or a political subdivision of this state in the
3-8 course and scope of employment;

3-9 (3) a sale conducted by a charitable, religious, or
3-10 civic organization, including an organization having a tax exempt
3-11 status under Section 501(c), Internal Revenue Code of 1986, or
3-12 organized as a nonprofit entity, if the person organizing,
3-13 arranging, or conducting the auction receives no compensation;

3-14 (4) a foreclosure auction involving the sale of real
3-15 property personally conducted by a trustee or substitute trustee
3-16 under a security instrument [~~under a deed of trust~~];

3-17 (5) a foreclosure sale of personal property personally
3-18 conducted by:

3-19 (A) a person who holds a security interest in the
3-20 property, including a mortgage; or

3-21 (B) an employee or agent of a person described by
3-22 Paragraph (A) acting in the course and scope of employment, if:

3-23 (i) the employee or agent is not otherwise
3-24 engaged in the auction business; and

3-25 (ii) all property for sale in the auction is
3-26 subject to a security agreement;

3-27 (6) a sale conducted by sealed bid without the option
3-28 of increasing or decreasing the amount of a bid;

3-29 (7) an auction conducted only for student training
3-30 purposes as part of a course of study approved by the department;

3-31 (8) an auction conducted by a posted stockyard or
3-32 market agency as defined by the federal Packers and Stockyards Act
3-33 (7 U.S.C. Section 181 et seq.), as amended;

3-34 (9) an auction of livestock conducted by a nonprofit
3-35 livestock trade association chartered in this state, if the auction
3-36 involves only the sale of livestock owned by members of the trade
3-37 association;

3-38 (10) an auction conducted by a charitable or nonprofit
3-39 organization chartered in this state, if the auction:

3-40 (A) is part of a fair that is organized under
3-41 state, county, or municipal authority; and

3-42 (B) involves only the sale of property owned by
3-43 the organization's members;

3-44 (11) a sale or auction conducted by an auctioneer
3-45 while the auctioneer is physically located outside of this state;

3-46 (12) a sale of motor vehicles at auction by a person
3-47 licensed under Chapter 2301 or 2302;

3-48 (13) a sale of motor vehicles at auction by a person
3-49 who holds a wholesale motor vehicle auction general distinguishing
3-50 number or an independent motor vehicle general distinguishing
3-51 number issued by the Texas Department of Motor Vehicles; or

3-52 (14) an auction of property through the Internet.

3-53 SECTION 4. The changes in law made by this Act apply only to
3-54 a sale for which the notice of sale is given under Section 51.002,
3-55 Property Code, on or after the effective date of this Act. A sale
3-56 for which the notice of sale is given before the effective date of
3-57 this Act is governed by the law applicable to the foreclosure sale
3-58 immediately before the effective date of this Act, and that law is
3-59 continued in effect for that purpose.

3-60 SECTION 5. To the extent of any conflict, this Act prevails
3-61 over another Act of the 85th Legislature, Regular Session, 2017,
3-62 relating to nonsubstantive additions to and corrections in enacted
3-63 codes.

3-64 SECTION 6. This Act takes effect September 1, 2017.

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