

BILL ANALYSIS

C.S.H.B. 2066
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain conditions not known at the time of a nonjudicial foreclosure sale may affect the ability of the sale to convey indefeasible title. Such conditions may include, for example, the default leading to the sale being cured before the sale or a receivership or dependent probate administration being pending at the time of the sale. The parties contend that currently there is no adequate procedure to reverse a sale and restore the involved parties to their pre-sale positions without litigation or signed agreements. C.S.H.B. 2066 seeks to address this issue.

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. 2066 amends the Property Code to authorize a mortgagee, trustee, or substitute trustee, not later than the 15th day after the date of a nonjudicial foreclosure sale conducted under statutory provisions governing the sale of real property under a contract lien, to rescind the sale if the statutory requirements for the sale were not satisfied; the default leading to the sale was cured before the sale; a receivership or dependent probate administration involving the property was pending at the time of sale; 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; the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on an enforceable written agreement by the debtor to cure the default; or at the time of the sale a court-ordered or automatic stay of the sale imposed in a bankruptcy case filed by a person with an interest in the property was in effect.

C.S.H.B. 2066 authorizes the foreclosure sale, if the trustee's or substitute trustee's deed has not been recorded in the deed records of a county in which all or part of the property is located, to be rescinded by serving a written notice of rescission that describes the reason for the rescission to the purchaser, if the mortgagee is not the purchaser, and on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt. The bill sets out requirements for the service of such notice to the purchaser or debtor, as applicable, and, if the trustee's or substitute trustee's deed has been recorded in the deed records of a county in which all or part of the property is located, authorizes the foreclosure sale to be rescinded by serving such notices of rescission and recording a copy of each notice in the deed records of each county in which the deed was recorded.

C.S.H.B. 2066 requires the mortgagee, not later than the fifth business day after the date the foreclosure sale is rescinded, to return to the purchaser the amount of the bid paid by the purchaser for the property at the sale and requires the debtor to return to the trustee the amount of any excess proceeds received by the debtor from the sale. The bill establishes that the rescission of the foreclosure sale restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately before the sale occurred. The bill prohibits a civil action challenging the effectiveness of a rescission from being filed after the 90th day after the date the required notices of rescission are served but establishes that this prohibition does not affect the limitations period for an action claiming damages resulting from the rescission.

C.S.H.B. 2066 limits, if the foreclosure sale is rescinded for a reason other than a court-ordered or automatic stay, the damages a court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may award to the purchaser to the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. The bill prohibits the court from ordering specific performance of the sale as a remedy for the purchaser. The bill establishes that awarded interest ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser. The bill limits the damages the court may award to the purchaser to the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, if the foreclosure is rescinded due to a court-ordered or automatic stay. The bill establishes that nothing in its provisions prohibits the rescission of a sale by agreement of the affected parties on other terms or a suit to rescind a sale not rescinded under the bill's provisions.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2066 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. 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 60th 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;

HOUSE COMMITTEE SUBSTITUTE

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 written agreement by the debtor to cure the default;
or

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

(c) If the trustee's or substitute trustee's deed has not been recorded in the deed records of a county in which all or part of the property is located, the foreclosure sale may be rescinded under this section by serving a written notice of rescission that describes the reason for the rescission on:

(1) the purchaser, if the mortgagee is not the purchaser; and

(2) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

(d) A notice required by Subsection (c) must be served by certified mail. Service of the notice is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the purchaser or debtor, as applicable, at the purchaser's or debtor's last known address, as applicable. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) If the trustee's or substitute trustee's deed has been recorded in the deed records of a county in which all or part of the property is located, the foreclosure sale may be rescinded under this section by:

(1) serving notices of rescission as prescribed by Subsections (c) and (d); and

(2) recording a copy of each notice in the deed records of each county in which the deed was recorded.

(f) Not later than the seventh business day after the date a foreclosure sale is rescinded under this section, the mortgagee shall return to the purchaser the amount of the bid paid by the purchaser for the property at the

(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 written agreement by the debtor to cure the default;
or

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

(c) If the trustee's or substitute trustee's deed has not been recorded in the deed records of a county in which all or part of the property is located, the foreclosure sale may be rescinded under this section by serving a written notice of rescission that describes the reason for the rescission to:

(1) the purchaser, if the mortgagee is not the purchaser; and

(2) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

(d) A notice required by Subsection (c) must be served by certified mail. Service of the notice is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the purchaser or debtor, as applicable, at the purchaser's or debtor's last known address, as applicable. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) If the trustee's or substitute trustee's deed has been recorded in the deed records of a county in which all or part of the property is located, the foreclosure sale may be rescinded under this section by:

(1) serving notices of rescission as prescribed by Subsections (c) and (d); and

(2) recording a copy of each notice in the deed records of each county in which the deed was recorded.

(f) Not later than the fifth business day after the date a foreclosure sale is rescinded under this section, the mortgagee shall return to the purchaser the amount of the bid paid by the purchaser for the property at the sale.

sale. The debtor shall return to the mortgagee the amount of any excess proceeds received by the debtor from the sale.

(g) The rescission of a foreclosure sale under this section restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately before the sale occurred.

(h) A civil action challenging the effectiveness of a rescission under this section may not be filed after the 90th day after the date the notices of rescission required by this section are served. This subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(i) If the foreclosure sale is rescinded under this section for a reason listed in Subsection (b), other than a stay described by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. Notwithstanding any other law, the court may not order specific performance of the sale as a remedy for the purchaser. Interest awarded under this subsection ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser.

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

The debtor shall return to the trustee the amount of any excess proceeds received by the debtor from the sale.

(g) The rescission of a foreclosure sale under this section restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately before the sale occurred.

(h) A civil action challenging the effectiveness of a rescission under this section may not be filed after the 90th day after the date the notices of rescission required by this section are served. This subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(i) If the foreclosure sale is rescinded under this section for a reason listed in Subsection (b), other than a stay described by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. Notwithstanding any other law, the court may not order specific performance of the sale as a remedy for the purchaser. Interest awarded under this subsection ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser.

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

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

SECTION 2. The changes in law made by this Act apply only to a foreclosure sale that occurs on or after the effective date of this Act. A foreclosure sale that occurred 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 3. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.