

BILL ANALYSIS

Senate Research Center
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S.B. 723
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 723 allows a commissioners court to designate a location for execution sales at a place other than the courthouse provided that the site is a public place within a reasonable proximity to the courthouse that is as accessible; corrects inconsistencies regarding notice and procedures; and affirms that tax sales are not required to be conducted inside the courthouse.

In 2003, the legislature made changes to allow tax sales to occur at a location other than the courthouse door. In 2005, a somewhat similar change was made to allow contract lien sales to occur at a location other than the courthouse door. However, no changes were made to the laws relating to execution sales and orders of sale that are not under the Tax Code. This currently means that in a county that wants to conduct sales in a place better suited than the courthouse, peace officers conducting the sales, along with the buying public and observers, would have to go to two separate locations to conduct and participate in sales conducted by peace officers. Additionally, there are also some inconsistencies in these real property public sales laws.

In recent years, in some counties there has been growth in the number of sales and sale attendees, which has resulted in overcrowding at the courthouse. Also, concerns have been raised about safety and security issues that can occur as part of the auction process.

Execution sales and orders of sale are conducted by peace officers at the courthouse door, but there are some limited exceptions to this location depending upon other laws or orders. These sales are conducted pursuant to various laws, but the principal laws are found in Chapter 34 (Execution on Judgments), Civil Practice and Remedies Code, and in Rules 621 through 656, Texas Rules of Civil Procedure. In an execution sale, a prevailing party in court (usually the plaintiff) has secured a final judgment, and after the passage of thirty days or the exhaustion of appeals, the judgment remains unsatisfied. A peace officer receives a writ of execution to seek satisfaction of the judgment, and if there is no satisfaction of the judgment (payment) after demand is made by the officer, then the officer goes through a process of levy and legal notices, then finally sale of the property at the courthouse door.

S.B. 723 allows execution sales to be treated the same as tax sales and contract lien sales for the purposes of allowing an alternate location to the courthouse steps.

As proposed, S.B. 723 amends current law relating to the location of certain public sales of real property.

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 Section 34.041, Civil Practices and Remedies Code, as follows:

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR. (a) Creates this subsection from existing text. Requires that sales under this chapter, if the public sale of real property, rather than land, is required by court order or other law to be made at a

place other than the courthouse door, be made at the place designated by that court order or other law.

(b) Authorizes the commissioners court of a county to designate an area other than an area at the county courthouse where public sales of real property under this chapter will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. Requires the commissioners court to record that designation in the real property records of the county. Requires that a sale, except for a sale under Subsection (a), be held at an area designated under this subsection and prohibits it from being held before the 90th day after the date the designation is recorded.

SECTION 2. Amends Section 51.002(h), Property Code, as follows:

(h) Authorizes the commissioners court of a county, for the purposes of Subsection (a), to designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. Requires the commissioners court to record that designation in the real property records of the county. Requires that a sale be held at an area designated under this subsection and prohibits the sale from being held before the 90th day after the date the designation is recorded, rather than prohibiting a sale from being held at an area designated under this subsection before the 90th day after the date the designation is recorded.

SECTION 3. Amends Section 34.01, Tax Code, by amending Subsection (r) and adding Subsection (r-1), as follows:

(r) Requires that the sale of real property under this section, except as provided by this subsection, take place at the county courthouse in the county in which the land is located. Authorizes the commissioners court of the county to designate an area other than an area at the county courthouse, where sales under this section will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. Requires that the commissioners court to record that designation in the real property records of that county. Requires that a sale be held at an area designated under this subsection and prohibits it from being held before the 90th day after the date the designation is recorded.

Deletes existing text authorizing the commissioners court of the county to designate an area in the county courthouse or another location in the county where sales under this section must take place and requiring the commissioners court to record any designated area or other location in the real property records of the county.

Deletes existing text requiring that a sale, if the commissioners court designates an area in the courthouse or another location in the county for sales, occur in that area or at that location. Deletes existing text requiring that a sale, if the commissioners court does not designate an area in the courthouse or another location in the county for sales, occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002 (Sale of Real Property Under Contract Lein), Property Code.

(r-1) Requires the commissioners court, if a commissioners court has designated an area where public sales of real property take place under Subsection (r) before September 1, 2013, that will not be in compliance with Subsection (r) after December 31, 2013, to designate before January 1, 2014, a location for public sales that will comply with Subsection (r), as amended by S.B. 723, 83rd Legislature, Regular Session, 2013. Provides that this subsection expires September 1, 2014.

SECTION 4. Makes application of Section 34.01(r), Tax Code, as amended by this Act, prospective.

SECTION 5. (a) Effective date, this section, except as provided by Subsection (b): September 1, 2013.

(b) Effective date, Section 34.01(r), Tax Code, as amended by this Act: January 1, 2014.