

BILL ANALYSIS

Senate Research Center

H.B. 2063
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law relating to the sale of real property under a contract lien sets out requirements for notice of the sale. Certain actions must be performed by the mortgage servicer of the debt before notice of the sale can be given. If the mortgage servicer has appointed a trustee or substitute trustee to exercise the power of sale, that appointment is customarily recorded. Concerned parties report that frequently, trustee appointments are not received in time to meet legal deadlines for foreclosures. Furthermore, it is reported that only about one-third of properties posted for sale actually go to sale, resulting in title records with recorded appointments related to sales that never occurred. The parties explain that this situation has resulted in confusion in official public records relating to the title to property and to which trustee has authority to act in exercising power of sale. The parties contend that such confusion may lead to litigation over extraneous documents, notarizations, and timing of recording.

H.B. 2063 amends current law relating to the recording and effective date of certain documents relating to nonjudicial foreclosure sales.

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 Chapter 12, Property Code, by adding Section 12.0012, as follows:

Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE. (a) Requires that the following documents received by the county clerk in the manner provided by Subsection (b), notwithstanding Section 12.0011(b) (prohibiting a paper document concerning real or personal property from being recorded or serving as notice of the paper document unless certain circumstances apply), be recorded by the clerk and serve as notice of the matter document:

- (1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;
 - (2) a notice of sale pursuant to which the sale under a power of sale occurred;
 - (3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;
 - (4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;
 - (5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer;
- or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

(b) Requires that a document described by Subsection (a) be accepted for recording pursuant to Subsection (a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) Provides that this section does not prevent the recording of documents in any other manner allowed by law.

SECTION 2. Amends Chapter 51, Property Code, by adding Section 51.0076, as follows:

Sec. 51.0076. EFFECTIVE DATE OF APPOINTMENT. Provides that the appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 (Sale of Real Property Under Contract Lien) and 51.0075(e) (requiring that the name and a street address for a trustee or substitute trustees be disclosed on the notice);

(2) is signed by an attorney or agent of the mortgagee or mortgage servicer; and

(3) contains a statement in all capital letters, boldface type, to read as set forth.

SECTION 3. Provides that the changes to law made by this Act apply only to a sale for which a notice is required under Section 51.002, Property Code, on or after the effective date of this Act. Provides that a sale for which a notice is required under Section 51.002, Property Code, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2015.