

BILL ANALYSIS

Senate Research Center

H.B. 2066
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certain conditions not known at the time of a nonjudicial foreclosure sale may affect the ability of the sale to convey title for the property. Such conditions include a cure to the default that led to the sale prior to the sale, or the existence of a court-ordered stay of the sale issued in a related bankruptcy case. Under current law, the parties have to agree or litigate in order to resolve this issue.

H.B. 2066 provides a consistent method for a mortgagee, trustee, or substitute trustee to promptly rescind a nonjudicial foreclosure sale when certain conditions undermine the validity of the sale. This rescission process would allow the parties to return to the state they occupied immediately before the sale, without reaching a private agreement or filing a lawsuit. In keeping with the provisions of H.B. 2066, a person who wishes to rescind a sale pursuant to this legislation must comply with specific notice and refund requirements. Lastly, H.B. 2066 creates a statute of limitations and limits damages for certain civil actions related to a rescission conducted under the provisions of the bill.

Importantly, H.B. 2066 does not prohibit parties from rescinding a sale by agreement on other terms or filing a civil lawsuit to rescind a sale that was not rescinded under this legislation. Instead, H.B. 2066 provides a third option to rescind a flawed nonjudicial foreclosure sale.

H.B. 2066 amends current law relating to the rescission of 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 51, Property Code, by adding Section 51.016, as follows:

Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES. (a) Provides that this section applies only to a nonjudicial foreclosure sale conducted under Section 51.002 (Sale of Real Property Under Contract Lien).

(b) Authorizes a mortgagee, trustee, or substitute trustee, not later than the 15th day after the date of a foreclosure sale, to 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) 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 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) Requires that a notice required by Subsection (c) be served by certified mail. Provides that 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. Provides that the affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) Provides that the foreclosure sale, 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, 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) Requires the mortgagee to return, not later than the fifth business day after the date a foreclosure sale is rescinded under this section, to the purchaser the amount of the bid paid by the purchaser for the property at the sale. Requires the debtor to return to the trustee the amount of any excess proceeds received by the debtor from the sale.

(g) Provides that 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) Prohibits a civil action challenging the effectiveness of a rescission under this section from being filed after the 90th day after the date the notices of rescission required by this section are served. Provides that this subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(i) Provides that, 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. Prohibits the court, notwithstanding any other law, from ordering specific performance of the sale as a remedy for the

purchaser. Provides that 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) Provides that, 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) Provides that 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. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2015.