

BILL ANALYSIS

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C.S.H.B. 2066
By: Oliveira; Fallon (Watson)
Business & Commerce
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Committee Report (Substituted)

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parties from rescinding a sale by agreement on other terms or filing a civil lawsuit to rescind a sale that was not rescinded under this legislation.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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 of residential real property conducted under Section 51.002 (Sale of Real Property Under Contract Lien). Defines "residential real property."

(b) Authorizes a mortgagee, trustee, or substitute trustee, not later than the 15th calendar 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) Requires the party rescinding the sale, on or before the 15th calendar day after the date of the sale, to:

(1) serve a written notice of rescission that describes the reason for the rescission and includes recording information for any affected trustee's or substitute trustee's deed that was recorded on:

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

(B) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt; and

(2) file each notice for recording in the real property records of the county in which all or part of the property is located.

(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) Requires the mortgagee, not later than the fifth calendar day after the date a foreclosure sale is rescinded under this section, to return, to the purchaser by certified mail, electronic or wire transfer, or courier service with delivery tracking 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. Provides that the return of the bid amount is considered made on the date:

(1) the bid amount is deposited postage prepaid in the United States mail or with the courier service addressed to the purchaser at the purchaser's last known address; or

(2) the electronic or wire transfer is ordered.

(f) Requires the rescinding mortgagee, trustee, or substitute trustee to cause to be filed for recording in the real property records of the county where the notice required under Subsection (c) was recorded an affidavit stating the date the bid amount was returned together with the certified mail, electronic or wire transfer, or courier service delivery tracking information.

(g) Provides that an affidavit executed and filed in accordance with Subsection (f) is *prima facie* evidence of the return of the bid amount and of the authority of the maker of the affidavit. Entitles a bona fide purchaser, lender, or other person acquiring an interest in the property or an insurer of title to rely conclusively on the record of the filed affidavit and notice, and provides that any subsequent purchaser in good faith and for value is entitled to bona fide purchaser protection.

- (h) 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 prior to the sale.
- (i) Provides that a rescission of a foreclosure sale under this section is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless notice of the rescission has been acknowledged, sworn to, or proved and filed for recording as required by law. Provides that a rescission of a foreclosure sale under this section evidenced by an unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has the notice of the instrument.
- (j) Provides that no action challenging the effectiveness of a rescission under this section may be commenced unless the action is filed on or before the 30th calendar day after the date the notices of rescission required by Subsection (c) are filed for recording. Provides that a lis pendens notice based on the rescission not recorded within that period has no effect. Provides that this subsection does not affect the limitations period for an action claiming damages resulting from the rescission.
- (k) 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.
- (l) 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.
- (m) 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.