

By: Solomons

H.B. No. 1493

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the foreclosure of property and the authority of a  
3 mortgage servicer to administer the foreclosure on behalf of a  
4 mortgagee.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 51, Property Code, is amended by adding  
7 Sections 51.0001, 51.0021, 51.0075, and 51.009 to read as follows:

8 Sec. 51.0001. DEFINITIONS. In this chapter:

9 (1) "Book entry system" means a national book entry  
10 system for registering a beneficial interest in a security  
11 instrument that acts as a nominee for the holder of the debt and its  
12 successors and assigns.

13 (2) "Debtor's last known address" means a debtor's  
14 residence address for a debt secured by the debtor's residence  
15 unless the debtor provided the current mortgage servicer a written  
16 change of address on or before the 60th day before the date the  
17 mortgage servicer mailed a notice required by Section 51.002.

18 (3) "Mortgage servicer" means the last person to whom  
19 a mortgagor has been instructed by the current mortgagee to send  
20 payments for the debt secured by a security instrument. A mortgagee  
21 may be the mortgage servicer.

22 (4) "Mortgagee" means:

23 (A) the grantee, beneficiary, owner, or holder of  
24 a security instrument;

1           (B) a book entry system; or

2           (C) if the security interest has been assigned of  
3 record, the last person to whom the security interest has been  
4 assigned of record.

5           (5) "Mortgagor" means the grantor of a security  
6 instrument.

7           (6) "Security instrument" means a deed of trust,  
8 mortgage, or other contract lien on an interest in real property.

9           (7) "Substitute trustee" means a person appointed by  
10 the current mortgagee or mortgage servicer under the terms of the  
11 security instrument to exercise the power of sale.

12           (8) "Trustee" means a person authorized to exercise  
13 the power of sale under the terms of a security instrument.

14           Sec. 51.0021. ADMINISTRATION OF FORECLOSURE BY MORTGAGE  
15 SERVICER. A mortgage servicer may administer the foreclosure of  
16 property under Section 51.002 on behalf of a mortgagee if:

17           (1) the mortgage servicer and the mortgagee have  
18 entered into an agreement granting the current mortgage servicer  
19 authority to service the mortgage; and

20           (2) the mortgage servicer discloses in the notices  
21 required under Section 51.002 that the mortgage servicer is  
22 representing the mortgagee under a servicing agreement with the  
23 mortgagee.

24           Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE.

25           (a) A trustee or substitute trustee may set reasonable conditions  
26 for conducting the public sale if the conditions are announced  
27 before bidding is opened for the first sale of the day held by the

1 trustee or substitute trustee.

2 (b) A trustee or substitute trustee is not a debt collector.

3 (c) A mortgagee may appoint or may authorize a mortgage  
4 servicer to appoint a perpetual substitute trustee by power of  
5 attorney or other written instrument. The power of attorney or  
6 written instrument must be signed by the mortgagee's  
7 representative, acknowledged, and sworn to with a jurat.

8 Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS." A purchaser  
9 at a sale of real property under Section 51.002:

10 (1) acquires the foreclosed property "as is" without  
11 any expressed or implied warranties and at the purchaser's own  
12 risk; and

13 (2) is not a consumer or a bona fide purchaser for  
14 value.

15 SECTION 2. This Act takes effect January 1, 2004.