

AN ACT

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

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

SECTION 1. Chapter 51, Property Code, is amended by adding Sections 51.0001, 51.0021, 51.0025, 51.0075, and 51.009 to read as follows:

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

(2) "Debtor's last known address" means:

(A) for a debt secured by the debtor's residence, the debtor's residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002; or

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice

1 required by Section 51.002.

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

6 (4) "Mortgagee" means:

7 (A) the grantee, beneficiary, owner, or holder of
8 a security instrument;

9 (B) a book entry system; or

10 (C) if the security interest has been assigned of
11 record, the last person to whom the security interest has been
12 assigned of record.

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

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

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

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

22 Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS REQUIRED. A
23 debtor shall inform the mortgage servicer of the debt in a
24 reasonable manner of any change of address of the debtor for
25 purposes of providing notice to the debtor under Section 51.002.

26 Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE
27 SERVICER. A mortgage servicer may administer the foreclosure of

1 property under Section 51.002 on behalf of a mortgagee if:

2 (1) the mortgage servicer and the mortgagee have
3 entered into an agreement granting the current mortgage servicer
4 authority to service the mortgage; and

5 (2) the mortgage servicer discloses in the notice
6 required under Section 51.002:

7 (A) that the mortgage servicer is representing
8 the mortgagee under a servicing agreement with the mortgagee; and

9 (B) the name and address of the mortgagee.

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

11 (a) A trustee or substitute trustee may set reasonable conditions
12 for conducting the public sale if the conditions are announced
13 before bidding is opened for the first sale of the day held by the
14 trustee or substitute trustee.

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

16 (c) A mortgagee may appoint or may authorize a mortgage
17 servicer to appoint a perpetual substitute trustee by power of
18 attorney or other written instrument. The power of attorney or
19 written instrument must be signed by the mortgagee's
20 representative, acknowledged, and sworn to with a jurat.

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

23 (1) acquires the foreclosed property "as is" without
24 any expressed or implied warranties, except as to warranties of
25 title, and at the purchaser's own risk; and

26 (2) is not a consumer.

27 SECTION 2. Sections 51.002(b), (d), and (e), Property Code,

1 are amended to read as follows:

2 (b) Notice of the sale, which must include a statement of
3 the earliest time at which the sale will begin, must be given at
4 least 21 days before the date of the sale:

5 (1) by posting at the courthouse door of each county in
6 which the property is located a written notice designating the
7 county in which the property will be sold;

8 (2) by filing in the office of the county clerk of each
9 county in which the property is located a copy of the notice posted
10 under Subdivision (1); and

11 (3) by the mortgage servicer [~~holder~~] of the debt to
12 which the power of sale is related serving written notice of the
13 sale by certified mail on each debtor who, according to the records
14 of the mortgage servicer [~~holder~~] of the debt, is obligated to pay
15 the debt.

16 (d) Notwithstanding any agreement to the contrary, the
17 mortgage servicer [~~holder~~] of the debt shall serve a debtor in
18 default under a deed of trust or other contract lien on real
19 property used as the debtor's residence with written notice by
20 certified mail stating that the debtor is in default under the deed
21 of trust or other contract lien and giving the debtor at least 20
22 days to cure the default before notice of sale can be given under
23 Subsection (b). The entire calendar day on which the notice
24 required by this subsection is given, regardless of the time of day
25 at which the notice is given, is included in computing the 20-day
26 notice period required by this subsection, and the entire calendar
27 day on which notice of sale is given under Subsection (b) is

1 excluded in computing the 20-day notice period.

2 (e) Service of a notice under this section by certified mail
3 is complete when the notice is deposited in the United States mail,
4 postage prepaid and addressed to the debtor at the debtor's last
5 known address [~~as shown by the records of the holder of the debt~~].
6 The affidavit of a person knowledgeable of the facts to the effect
7 that service was completed is prima facie evidence of service.

8 SECTION 3. This Act takes effect January 1, 2004.

H.B. No. 1493

President of the Senate

Speaker of the House

I certify that H.B. No. 1493 was passed by the House on May 2, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1493 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1493 on May 31, 2003, by a non-record vote.

Chief Clerk of the House

H.B. No. 1493

I certify that H.B. No. 1493 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1493 on June 1, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor