

1-1 By: Oliveira, Fallon (Senate Sponsor - Watson) H.B. No. 2066
1-2 (In the Senate - Received from the House April 23, 2015;
1-3 April 30, 2015, read first time and referred to Committee on
1-4 Business and Commerce; May 18, 2015, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 18, 2015, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | | | X | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | | | X | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | X | | | |
| 1-17 | X | | | |

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2066 By: Whitmire

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the rescission of nonjudicial foreclosure sales.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Chapter 51, Property Code, is amended by adding
1-24 Section 51.016 to read as follows:
1-25 Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES.
1-26 (a) This section applies only to a nonjudicial foreclosure sale of
1-27 residential real property conducted under Section 51.002. In this
1-28 subsection, "residential real property" means:
1-29 (1) a single family home, duplex, triplex, or
1-30 quadraplex; or
1-31 (2) a unit in a multiunit residential structure in
1-32 which title to an individual unit is transferred to the owner of the
1-33 unit under a condominium or cooperative system.
1-34 (b) Not later than the 15th calendar day after the date of a
1-35 foreclosure sale, a mortgagee, trustee, or substitute trustee may
1-36 rescind the sale under this section if:
1-37 (1) the statutory requirements for the sale were not
1-38 satisfied;
1-39 (2) the default leading to the sale was cured before
1-40 the sale;
1-41 (3) a receivership or dependent probate
1-42 administration involving the property was pending at the time of
1-43 sale;
1-44 (4) a condition specified in the conditions of sale
1-45 prescribed by the trustee or substitute trustee before the sale and
1-46 made available in writing to prospective bidders at the sale was not
1-47 met;
1-48 (5) the mortgagee or mortgage servicer and the debtor
1-49 agreed before the sale to cancel the sale based on an enforceable
1-50 written agreement by the debtor to cure the default; or
1-51 (6) at the time of the sale, a court-ordered or
1-52 automatic stay of the sale imposed in a bankruptcy case filed by a
1-53 person with an interest in the property was in effect.
1-54 (c) On or before the 15th calendar day after the date of the
1-55 sale, the party rescinding the sale shall:
1-56 (1) serve a written notice of rescission that
1-57 describes the reason for the rescission and includes recording
1-58 information for any affected trustee's or substitute trustee's deed
1-59 that was recorded on:
1-60 (A) the purchaser, if the mortgagee is not the

2-1 purchaser; and

2-2 (B) each debtor who, according to the records of
 2-3 the mortgage servicer of the debt, is obligated to pay the debt; and

2-4 (2) file each notice for recording in the real
 2-5 property records of the county in which all or a part of the
 2-6 property is located.

2-7 (d) A notice required by Subsection (c) must be served by
 2-8 certified mail. Service of the notice is complete when the notice
 2-9 is deposited in the United States mail, postage prepaid and
 2-10 addressed to the purchaser or debtor, as applicable, at the
 2-11 purchaser's or debtor's last known address, as applicable. The
 2-12 affidavit of a person knowledgeable of the facts to the effect that
 2-13 service was completed is prima facie evidence of service.

2-14 (e) Not later than the fifth calendar day after the date a
 2-15 foreclosure sale is rescinded under this section, the mortgagee
 2-16 shall return to the purchaser by certified mail, electronic or wire
 2-17 transfer, or courier service with delivery tracking the amount of
 2-18 the bid paid by the purchaser for the property at the sale. The
 2-19 debtor shall return to the trustee the amount of any excess proceeds
 2-20 received by the debtor from the sale. The return of the bid amount
 2-21 is considered made on the date:

2-22 (1) the bid amount is deposited postage prepaid in the
 2-23 United States mail or with the courier service addressed to the
 2-24 purchaser at the purchaser's last known address; or

2-25 (2) the electronic or wire transfer is ordered.

2-26 (f) The rescinding mortgagee, trustee, or substitute
 2-27 trustee shall cause to be filed for recording in the real property
 2-28 records of the county where the notice required under Subsection
 2-29 (c) was recorded an affidavit stating the date the bid amount was
 2-30 returned together with the certified mail, electronic or wire
 2-31 transfer, or courier service delivery tracking information.

2-32 (g) An affidavit executed and filed in accordance with
 2-33 Subsection (f) is prima facie evidence of the return of the bid
 2-34 amount and of the authority of the maker of the affidavit. A bona
 2-35 fide purchaser, lender, or other person acquiring an interest in
 2-36 the property or an insurer of title is entitled to rely conclusively
 2-37 on the record of the filed affidavit and notice, and any subsequent
 2-38 purchaser in good faith and for value is entitled to bona fide
 2-39 purchaser protection.

2-40 (h) The rescission of a foreclosure sale under this section
 2-41 restores the mortgagee and the debtor to their respective title,
 2-42 rights, and obligations under any instrument relating to the
 2-43 foreclosed property that existed immediately prior to the sale.

2-44 (i) A rescission of a foreclosure sale under this section is
 2-45 void as to a creditor or to a subsequent purchaser for a valuable
 2-46 consideration without notice unless notice of the rescission has
 2-47 been acknowledged, sworn to, or proved and filed for recording as
 2-48 required by law. A rescission of a foreclosure sale under this
 2-49 section evidenced by an unrecorded instrument is binding on a party
 2-50 to the instrument, on the party's heirs, and on a subsequent
 2-51 purchaser who does not pay a valuable consideration or who has
 2-52 notice of the instrument.

2-53 (j) No action challenging the effectiveness of a rescission
 2-54 under this section may be commenced unless the action is filed on or
 2-55 before the 30th calendar day after the date the notices of
 2-56 rescission required by Subsection (c) are filed for recording. A
 2-57 lis pendens notice based on the rescission not recorded within that
 2-58 period has no effect. This subsection does not affect the
 2-59 limitations period for an action claiming damages resulting from
 2-60 the rescission.

2-61 (k) If the foreclosure sale is rescinded under this section
 2-62 for a reason listed in Subsection (b), other than a stay described
 2-63 by Subsection (b)(6), the court in a civil action filed by the
 2-64 purchaser challenging the effectiveness of the rescission or
 2-65 claiming damages resulting from the rescission may only award as
 2-66 damages to the purchaser the amount of the bid paid for the property
 2-67 by the purchaser at the sale that has not been refunded to the
 2-68 purchaser, plus interest on that amount at the rate of 10 percent
 2-69 per year. Notwithstanding any other law, the court may not order

3-1 specific performance of the sale as a remedy for the purchaser.
3-2 Interest awarded under this subsection ceases to accrue on the
3-3 fourth day after the date the mortgagee deposits the amount of the
3-4 damages awarded in the United States mail or with a courier for
3-5 delivery to the purchaser.

3-6 (l) If a foreclosure sale is rescinded under this section
3-7 for a reason provided by Subsection (b)(6), the court in a civil
3-8 action filed by the purchaser challenging the effectiveness of the
3-9 rescission or claiming damages resulting from the rescission may
3-10 only award as damages to the purchaser the amount of the bid paid
3-11 for the property by the purchaser at the sale that has not been
3-12 refunded to the purchaser.

3-13 (m) Nothing in this section prohibits the rescission of a
3-14 sale by agreement of the affected parties on other terms or a suit
3-15 to rescind a sale not rescinded under this section.

3-16 SECTION 2. The changes in law made by this Act apply only to
3-17 a foreclosure sale that occurs on or after the effective date of
3-18 this Act. A foreclosure sale that occurred before the effective
3-19 date of this Act is governed by the law applicable to the
3-20 foreclosure sale immediately before the effective date of this Act,
3-21 and that law is continued in effect for that purpose.

3-22 SECTION 3. This Act takes effect September 1, 2015.

3-23

* * * * *