

1-1 By: Villalba, Oliveira (Senate Sponsor - Creighton) H.B. No. 1470
 1-2 (In the Senate - Received from the House April 18, 2017;
 1-3 May 9, 2017, read first time and referred to Committee on Business
 1-4 & Commerce; May 21, 2017, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 21, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Creighton	X			
1-9 Campbell	X			
1-10 Estes	X			
1-11 Nichols			X	
1-12 Schwertner	X			
1-13 Taylor of Galveston	X			
1-14 Whitmire	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the public sale of real property under a power of sale
 1-20 in a security instrument.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Title 2, Business & Commerce Code, is amended by
 1-23 adding Chapter 22 to read as follows:

1-24 CHAPTER 22. PUBLIC SALE OF RESIDENTIAL REAL PROPERTY UNDER POWER OF
 1-25 SALE

1-26 Sec. 22.001. DEFINITIONS. In this chapter:

1-27 (1) "Auction company" has the meaning assigned by
 1-28 Section 1802.001, Occupations Code.

1-29 (2) "Residential real property" means:

1-30 (A) a single-family house;

1-31 (B) a duplex, triplex, or quadraplex; or

1-32 (C) a unit in a multiunit residential structure
 1-33 in which title to an individual unit is transferred to the owner of
 1-34 the unit under a condominium or cooperative system.

1-35 (3) "Security instrument," "substitute trustee," and
 1-36 "trustee" have the meanings assigned by Section 51.0001, Property
 1-37 Code.

1-38 Sec. 22.002. APPLICABILITY. This chapter applies only to a
 1-39 public sale of residential real property conducted under a power of
 1-40 sale in a security instrument.

1-41 Sec. 22.003. CONTRACTS CONCERNING SALE. A trustee or
 1-42 substitute trustee conducting a sale to which this chapter applies
 1-43 may contract with:

1-44 (1) an attorney to advise the trustee or substitute
 1-45 trustee or to administer or perform any of the trustee's or
 1-46 substitute trustee's functions or responsibilities under a
 1-47 security instrument or this chapter; or

1-48 (2) an auction company to arrange, manage, sponsor, or
 1-49 advertise a public sale.

1-50 Sec. 22.004. INFORMATION FROM WINNING BIDDER. (a) A
 1-51 winning bidder at a sale, other than the foreclosing mortgagee or
 1-52 mortgage servicer, shall provide the following information to the
 1-53 trustee or substitute trustee at the time the trustee or substitute
 1-54 trustee completes the sale:

1-55 (1) the name, address, telephone number, and e-mail
 1-56 address of the bidder and of each individual tendering or who will
 1-57 tender the sale price for the winning bid;

1-58 (2) if the bidder is acting on behalf of another
 1-59 individual or organization, the name, address, telephone number,
 1-60 and e-mail address of the individual or organization and the name of
 1-61 a contact person for the organization;

2-1 (3) the name and address of any person to be identified
2-2 as the grantee in a trustee's or substitute trustee's deed;
2-3 (4) the purchaser's tax identification number;
2-4 (5) a government-issued photo identification to
2-5 confirm the identity of each individual tendering funds for the
2-6 winning bid; and
2-7 (6) any other information reasonably needed to
2-8 complete the trustee's or substitute trustee's duties and functions
2-9 concerning the sale.

2-10 (b) If a winning bidder required to provide information
2-11 under Subsection (a) fails or refuses to provide the information,
2-12 the trustee or substitute trustee may decline to complete the
2-13 transaction or deliver a deed.

2-14 Sec. 22.005. RECEIPT AND DEED. The trustee or substitute
2-15 trustee shall:

2-16 (1) provide the winning bidder with a receipt for the
2-17 sale proceeds tendered; and

2-18 (2) except when prohibited by law, within a reasonable
2-19 time:

2-20 (A) deliver the deed to the winning bidder; or

2-21 (B) file the deed for recording.

2-22 Sec. 22.006. SALE PROCEEDS. (a) The trustee or substitute
2-23 trustee shall ensure that funds received at the sale are maintained
2-24 in a separate account until distributed. The trustee or substitute
2-25 trustee shall cause to be maintained a written record of deposits to
2-26 and disbursements from the account.

2-27 (b) The trustee or substitute trustee shall make reasonable
2-28 attempts to identify and locate the persons entitled to all or any
2-29 part of the sale proceeds.

2-30 (c) In connection with the sale and related post-sale
2-31 actions to identify persons with legal claims to sale proceeds,
2-32 determine the priority of any claims, and distribute proceeds to
2-33 pay claims, a trustee or substitute trustee may receive:

2-34 (1) reasonable actual costs incurred, including costs
2-35 for evidence of title;

2-36 (2) a reasonable trustee's or substitute trustee's
2-37 fee; and

2-38 (3) reasonable trustee's or substitute trustee's
2-39 attorney's fees.

2-40 (d) A fee described by Subsection (c):

2-41 (1) is considered earned at the time of the sale;

2-42 (2) may be paid from sale proceeds in excess of the
2-43 payoff of the lien being foreclosed; and

2-44 (3) is conclusively presumed to be reasonable if the
2-45 fee:

2-46 (A) is not more than the lesser of 2.5 percent of
2-47 the sale proceeds or \$5,000, for a trustee's or substitute trustee's
2-48 fee; or

2-49 (B) is not more than 1.5 percent of the sale
2-50 proceeds, for trustee's or substitute trustee's attorney's fees
2-51 incurred to identify persons with legal claims to sale proceeds and
2-52 determine the priority of the claims.

2-53 (e) A trustee or substitute trustee who prevails in a suit
2-54 based on a claim that relates to the sale and that is found by a
2-55 court to be groundless in fact or in law is entitled to recover
2-56 reasonable attorney's fees necessary to defend against the claim,
2-57 which may be paid from the excess sale proceeds, if any.

2-58 (f) Nothing in this section precludes the filing of an
2-59 interpleader action or the depositing of funds in a court registry.

2-60 SECTION 2. Section 1802.001, Occupations Code, is amended
2-61 by adding Subdivision (14) to read as follows:

2-62 (14) "Security instrument," "substitute trustee," and
2-63 "trustee" have the meanings assigned by Section 51.0001, Property
2-64 Code.

2-65 SECTION 3. Section 1802.002(a), Occupations Code, as
2-66 amended by Chapters 777 (H.B. 2481) and 1230 (S.B. 1982), Acts of
2-67 the 84th Legislature, Regular Session, 2015, is reenacted and
2-68 amended to read as follows:

2-69 (a) This chapter does not apply to:

3-1 (1) a sale conducted by order of a United States court
3-2 under Title 11, United States Code;

3-3 (2) a sale conducted by an employee of the United
3-4 States, this state, or a political subdivision of this state in the
3-5 course and scope of employment;

3-6 (3) a sale conducted by a charitable, religious, or
3-7 civic organization, including an organization having a tax exempt
3-8 status under Section 501(c), Internal Revenue Code of 1986, or
3-9 organized as a nonprofit entity, if the person organizing,
3-10 arranging, or conducting the auction receives no compensation;

3-11 (4) a foreclosure auction involving the sale of real
3-12 property personally conducted by a trustee or substitute trustee
3-13 under a security instrument [under a deed of trust];

3-14 (5) a foreclosure sale of personal property personally
3-15 conducted by:

3-16 (A) a person who holds a security interest in the
3-17 property, including a mortgage; or

3-18 (B) an employee or agent of a person described by
3-19 Paragraph (A) acting in the course and scope of employment, if:

3-20 (i) the employee or agent is not otherwise
3-21 engaged in the auction business; and

3-22 (ii) all property for sale in the auction is
3-23 subject to a security agreement;

3-24 (6) a sale conducted by sealed bid without the option
3-25 of increasing or decreasing the amount of a bid;

3-26 (7) an auction conducted only for student training
3-27 purposes as part of a course of study approved by the department;

3-28 (8) an auction conducted by a posted stockyard or
3-29 market agency as defined by the federal Packers and Stockyards Act
3-30 (7 U.S.C. Section 181 et seq.), as amended;

3-31 (9) an auction of livestock conducted by a nonprofit
3-32 livestock trade association chartered in this state, if the auction
3-33 involves only the sale of livestock owned by members of the trade
3-34 association;

3-35 (10) an auction conducted by a charitable or nonprofit
3-36 organization chartered in this state, if the auction:

3-37 (A) is part of a fair that is organized under
3-38 state, county, or municipal authority; and

3-39 (B) involves only the sale of property owned by
3-40 the organization's members;

3-41 (11) a sale or auction conducted by an auctioneer
3-42 while the auctioneer is physically located outside of this state;

3-43 (12) a sale of motor vehicles at auction by a person
3-44 licensed under Chapter 2301 or 2302;

3-45 (13) a sale of motor vehicles at auction by a person
3-46 who holds a wholesale motor vehicle auction general distinguishing
3-47 number or an independent motor vehicle general distinguishing
3-48 number issued by the Texas Department of Motor Vehicles; or

3-49 (14) an auction of property through the Internet.

3-50 SECTION 4. The changes in law made by this Act apply only to
3-51 a sale for which the notice of sale is given under Section 51.002,
3-52 Property Code, on or after the effective date of this Act. A sale
3-53 for which the notice of sale is given before the effective date of
3-54 this Act is governed by the law applicable to the foreclosure sale
3-55 immediately before the effective date of this Act, and that law is
3-56 continued in effect for that purpose.

3-57 SECTION 5. To the extent of any conflict, this Act prevails
3-58 over another Act of the 85th Legislature, Regular Session, 2017,
3-59 relating to nonsubstantive additions to and corrections in enacted
3-60 codes.

3-61 SECTION 6. This Act takes effect September 1, 2017.

3-62 * * * * *