

- SUBJECT:** Foreclosure sales after natural disasters or closure of courthouse
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
- 0 nays
- 1 absent — Bailey
- WITNESSES:** For — Tommy Bastian, Barrett, Burke, Wilson, Castle, Daffin & Frappier; (*Registered, but did not testify:* Suzanna Hupp, Barrett, Burke, Wilson, Castle, Daffin & Frappier)
- Against — None
- BACKGROUND:** Property Code, ch. 51 governs sales of real property under a contract lien. Sec. 51.002 requires a notice 21 days before the date of sale to be posted at the courthouse where the property is located, filed in the county clerk's office, and served by certified mail to each debtor obligated to pay the debt. Secs. 51.007 and 51.0075 contain requirements for trustees.
- DIGEST:** HB 2738 would amend Property Code, sec. 51.002 to provide that, in the event the courthouse or county clerk's office was closed because of inclement weather, natural disaster, or other act of God, the 21-day notice requirement for sale of real property under contract lien could be posted or filed up to 48 hours after the courthouse or county clerk's office reopened for business.
- The bill also would require that when a commissioners court designated a public place other than the courthouse where sales of real property would take place, the commissioners court would have to record that place in county records and a sale could not be held at the designated place until 90 days after the recording.
- HB 2738 also would add Property Code, sec. 51.0074 to allow one or more persons to be authorized to exercise the power of sale under a security instrument, and to prohibit a trustee from:

- being assigned a duty under a security instrument other than the power of sale, or
- being a fiduciary of the mortgagor or mortgagee.

The bill would provide for the purchase price in a sale held by a trustee to be payable immediately on acceptance of a bid, and the trustee would disburse the proceeds as provided by law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

HB 2738 would preempt certain lien foreclosure problems, as foreclosures in Texas are expected to increase as a result of issues in the mortgage industry, such as more loans to higher-risk borrowers. In Texas, foreclosure sales are scheduled exclusively for the first Tuesday of every month. When inclement weather causes the closure of the county clerk's office or courthouse, timely notice or posting as required by the statute cannot occur. This causes the foreclosure to be delayed until the next month, resulting in the lender or consumer paying extra fees and interest on the property. HB 2738 would remedy this by allowing the notice or filing to occur up to 48 hours after the county clerk's office or courthouse had reopened, allowing the foreclosure sale to happen the same month as intended.

Requiring a 90-day period to run before a foreclosure sale occurred in a place other than the courthouse would assure proper notice to parties, avoiding undue cost for delays. The commissioners court frequently moves the place for public sales due to construction, security issues, or when a new courthouse is built.

HB 2738 would address the specific role of the trustee in a foreclosure sale to ensure the trustee remained an impartial auctioneer. It would keep the trustee out of the details of a transaction so that the trustee was not forced to choose between serving the interests of the mortgagor and mortgagee. HB 2738 would aid all parties involved in foreclosures, limiting arguments over case law and providing clarity in the statute.

OPPONENTS  
SAY:

No apparent opposition.