

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1742  
By: Harris  
Jurisprudence  
4/27/1999  
Committee Report (Substituted)

### **DIGEST**

The Texas Property Code is currently silent as to the standing of the buyer in a foreclosure sale. Case law has held that a foreclosure buyer bids at his peril at a foreclosure sale and is not a good faith purchaser without knowledge. C.S.S.B. 1742 would establish provisions regarding certain proceedings in a foreclosure action.

### **PURPOSE**

As proposed, C.S.S.B. 1742 establishes provisions regarding certain proceedings in a foreclosure action.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 51, Property Code, by adding Section 51.007, as follows:

Sec. 51.007. TRUSTEE UNDER DEED OF TRUST, CONTRACT LIEN OR SECURITY INSTRUMENT. Authorizes a trustee named in a suit or proceeding to plead in the answer that the trustee is not a necessary party by a verified denial stating the basis for the trustee's reasonable belief that the trustee under a deed of trust, contract lien, or security. Sets forth conditions regarding a verified response setting forth all matters that rebut the trustee's verified denial. Requires the trustee to be dismissed from the suit or proceeding without prejudice, if a party has no objection or fails to file a timely verified response to the trustee's verified denial. Requires the matter to be set for hearing if a timely response has been filed. Requires the court to dismiss the trustee from the suit or proceeding if it is determined that the trustee is not a necessary party. Prohibits a dismissal of the trustee from prejudicing a party's right to seek injunctive relief to prevent the trustee from proceeding with foreclosure sale. Prohibits a trustee from being liable for any good faith error resulting from reliance on any information in law or fact provided by the mortgagor, mortgagee or their respective attorney, agent, representative, or other third party.

SECTION 2. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 3. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Amends Section 51.007, Property Code, to add a new heading. Establishes provisions regarding a trustee under a deed of trust, contract lien, or security instrument. Deletes proposed SECTION 1. Renumbers subsequent SECTIONS.