

BILL ANALYSIS

Senate Research Center
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H.B. 1234
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 78th Legislature, Regular Session, 2003, amended Chapter 51 (Farm, Factory, and Store Worker's Liens), Property Code, to allow mortgage servicers to administer the foreclosure process. A mortgage servicer is the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

Typically, mortgage servicers, not mortgagees, are responsible for all day-to-day, loan-level administration responsibilities for a borrower's loan. This practice is consistent with the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2605, which recognizes a mortgage servicer as having the responsibility for the daily administration of a borrower's loan.

H.B. 1234 alter the method by which mortgagees or mortgage servicers appoint trustees. Due to the technological changes in the mortgage banking industry, the bill permits electronic appointment or any other legitimate type of communication to designate the substitute trustee.

H.B. 1234 allows for the appointment of substitute trustees in certain foreclosures.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.0075, Property Code, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

(c) Provides that, notwithstanding any agreement to the contrary, a mortgagee is authorized to appoint or authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee, rather than a perpetual substitute trustee. Permits a mortgagee or mortgage servicer to make an appointment or authorization as specified. Deletes text which set forth requirements regarding power of attorneys and other written instruments.

(d) Authorizes a mortgage service provider to authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee under Subsection (c).

(e) Requires the name and a street address for a trustee or substitute trustees to be disclosed on the notice required by Section 51.002(b).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.