

BUSINESS AND COMMERCE CODE

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 22. PUBLIC SALE OF RESIDENTIAL REAL PROPERTY UNDER POWER OF SALE

Sec. 22.001. DEFINITIONS. In this chapter:

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

(2) "Residential real property" means:

(A) a single-family house;

(B) a duplex, triplex, or quadraplex; or

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 1, eff. September 1, 2017.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 1, eff. September 1, 2017.

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 1, eff. September 1, 2017.

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

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

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

(3) the name and address of any person to be identified as the grantee in a trustee's or substitute trustee's deed;

(4) the purchaser's tax identification number;

(5) a government-issued photo identification to confirm the identity of each individual tendering funds for the winning bid; and

(6) any other information reasonably needed to complete the trustee's or substitute trustee's duties and functions concerning the sale.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 1, eff. September 1, 2017.

Sec. 22.005. RECEIPT AND DEED. The trustee or substitute trustee shall:

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

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

(A) deliver the deed to the winning bidder; or

(B) file the deed for recording.

Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 1, eff. September 1, 2017.

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

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

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

(1) reasonable actual costs incurred, including costs for evidence of title;

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

(3) reasonable trustee's or substitute trustee's attorney's fees.

(d) A fee described by Subsection (c):

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

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

(3) is conclusively presumed to be reasonable if the fee:

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

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

(e) A trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law is entitled to recover

reasonable attorney's fees necessary to defend against the claim, which may be paid from the excess sale proceeds, if any.

(f) Nothing in this section precludes the filing of an interpleader action or the depositing of funds in a court registry. Added by Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. [1470](#)), Sec. 1, eff. September 1, 2017.