

## **BILL ANALYSIS**

S.B. 1368  
By: West  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Concerned parties contend that, in the aftermath of a hurricane or other disaster, so-called informal homeowners, meaning homeowners whose ownership of real property is achieved outside of formal transactions and particularly those with co-tenant interests, may face difficulties in securing disaster assistance to repair their homes because such a homeowner can only sell or secure a loan on the homeowner's fractionalized co-tenant interest, a type of transaction typically not allowed in the open market.

S.B. 1368 seeks to address this situation by allowing a co-owner of certain residential property who has been residing in and maintaining the property for a specified period of time to act as a statutory agent or as an attorney-in-fact, with the limited authority to enter into a contract giving rise to a mechanic's or materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. In addition, the bill seeks to establish that the occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust. These provisions are intended to give such homeowners the ability to secure resources, including federal and state disaster assistance, from lenders and governmental entities.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1368 amends the Property Code to make its provisions relating to the authority of a co-owner to encumber residential property applicable only to residential property that has residential improvements primarily designed for not more than four families, that is not more than 10 acres of land, that is owned by more than one person, and for which at least one co-owner has received a residence homestead exemption under state law.

S.B. 1368 authorizes a co-owner of residential property to act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by the bill's provisions if the co-owner has occupied the property for more than five years; the co-owner has a residence homestead exemption for the property; for the five years preceding the date the documents required by the bill's provisions are filed, the occupying co-owner has paid all assessed property taxes without delinquency and without contribution from the other co-owner; and the occupying co-owner files those documents.

S.B. 1368 authorizes the occupying co-owner to establish the authority to act as an agent and attorney-in-fact for another co-owner by filing in the office of the county clerk of the county in which the real property is located an affidavit of the occupying co-owner affirming certain facts described by the bill's provisions, the affidavits of two additional affiants personally familiar with the co-owner's occupancy of the real property corroborating the occupancy during the

preceding five years, and a certificate of the tax assessor-collector for the county in which the real property is located affirming that the co-owner has paid all taxes assessed against the real property for the preceding five years without delinquency.

S.B. 1368 limits the authority of the occupying co-owner to act as an agent and attorney-in-fact to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The bill establishes that the occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust. The bill specifies that a lien that arises under a contract entered into by an occupying co-owner under the bill's provisions is not subject to repudiation or disaffirmance by another co-owner.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.