

BILL ANALYSIS

S.B. 1568
By: Campbell
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Chapter 51 of the Property Code, which relates to liens created against real property as enforcement of a deed of trust, authorizes a trustee or a substitute trustee to conduct a foreclosure sale and defines both using the term "person." Clarification is needed in this law as to whether a "person" acting as a substitute trustee may be a legal entity such as a governmental entity, corporation, organization, or other legal entity, or if a substitute trustee must be an individual human being. A recent Texas attorney general opinion (Opinion No. KP-0424) found that a court would likely conclude that a corporate entity is a "person" under law and thus may serve as a substitute trustee for purposes of conducting a mortgage foreclosure sale. The opinion noted that the Texas Code Construction Act provides definitions of common terms that "apply unless the statute or context . . . requires a different definition" and that act defines "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." The opinion also cited relevant Texas case law in suggesting that a court would likely conclude that a corporate entity is a "person" authorized to serve as a substitute trustee for purposes of conducting a mortgage foreclosure sale under Chapter 51 of the Property Code. Although the attorney general's opinion should help clarify this matter, a legislative clarification will help further resolve any lingering confusion. S.B. 1568 seeks to do so by applying the legal definition of "person" in the Texas Code Construction Act to the definition of a trustee or substitute trustee under Chapter 51 of the Property Code.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1568 amends the Property Code to revise the definitions of "substitute trustee" and "trustee," for purposes of provisions generally applicable to liens, as follows:

- redefines "substitute trustee" from a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale of real property to an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity so appointed; and
- redefines "trustee" from a person authorized to exercise the power of sale under the terms of a security instrument in accordance with statutory provisions relating to the duties of a trustee to an individual, corporation, organization, government or governmental

subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity so authorized.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.