

BILL ANALYSIS

Senate Research Center
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S.B. 1568
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Property Code Chapter 51 relates to liens created against real property as enforcement of a deed of trust. It authorizes a trustee or a substitute trustee to conduct a foreclosure sale and defines both using the term "person." Some confusion may exist on the question whether a "person" acting as a substitute trustee under Property Code Chapter 51 may be a legal entity such as a government entity, corporation, organization, etc., or if a substitute trustee must be a natural person, i.e., 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 Property Code Chapter 51 and thus may serve as a substitute trustee for purposes of conducting a mortgage foreclosure sale. The Attorney General's opinion noted that the Texas Code Construction Act (Chapter 311, Government Code) provides definitions of common terms that "apply unless the statute or context . . . requires a different definition," and further noted that there is no different definition of "person" in Property Code Chapter 51. The Attorney General opinion went on to find that the Code Construction Act's definition of "person" includes a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." The Attorney General opinion also cited relevant Texas case law that further suggests that a "person" authorized to act as trustee or substitute trustee may be a legal entity such as corporation, organization, etc.

Although the Attorney General's opinion should help clarify this matter, a legislative clarification in Property Code Chapter 51 will help further resolve any lingering confusion.

S.B. 1568 addresses this issue in Property Code Chapter 51 by applying the legal definition of "person" in the Texas Code Construction Act (Chapter 311, Government Code) to Property Code Chapter 51's definition of which entities can act as a trustee or substitute trustee. The bill will resolve any lingering confusion by explicitly stating in Property Code Chapter 51 that a trustee or substitute trustee means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

As proposed, S.B. 1568 amends current law relating to the persons authorized or appointed to exercise the power of sale under the terms of a contract lien on real property.

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 Sections 51.0001(7) and (8), Property Code, as follows:

(7) Provides that "substitute trustee" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity, rather than a person, appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.

(8) Provides that "trustee" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity, rather than a person or persons, authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074 (Duties of Trustee).

SECTION 2. Effective date: upon passage or September 1, 2023.