

BILL ANALYSIS

Senate Research Center
88R4247 DRS-F

S.B. 801
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Attorneys and citizens will often mistakenly draft a conveyance of property to the name of a trust instead of the name of the trustee. However, in Texas a trust is not an entity. When a person who intends to convey trust to a trustee instead conveys it to a trust, courts sometimes use principles of legal construction to determine that the intent of the parties was clearly to convey the property to the trust and allow the transfer, but not always.

Texas also has a "correction instruments statute" which could also be used to correct such an error.

A recent case questioned the status of a conveyance when a deed conveyed property to a trust without naming the trustee. The lower court decided that such a conveyance is void because the grantee "was not in existence at the time," and that the deed could not be corrected. On appeal the court instead reasoned that the intent of the parties was clearly evident and sufficient for Texas law to recognize the conveyance. The court further reasoned that the correction instruments statute could also be used to correct such an error.

However, the potential for confusion still exists, so the legislature should clarify existing law to provide better direction to practitioners and avoid litigation based on confusion about the status of a conveyance when mistakenly made into the name of the trust instead of the trustee

As proposed, S.B. 801 amends current law relating to an instrument that names a trust as a party.

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 Subchapter D, Chapter 114, Property Code, by adding Section 114.087, as follows:

Sec. 114.087. INSTRUMENT NAMING TRUST AS PARTY. (a) Provides that the trustee of a trust is considered for all purposes to be the named party to an instrument that names the trust as a party to the instrument in any capacity, unless the trust is a legal entity under state law.

(b) Provides that Subsection (a) is effective as of the effective date of the recorded original instrument.

(c) Provides that the trustee of a trust that is the named party to an instrument may be, but is not required to be, identified by a correction instrument under Section 5.028 (Correction Instruments: Nonmaterial Corrections).

(d) Provides that a document purporting to be a certification of trust under Section 114.086 (Certification of Trust) that is recorded in the county in which real property of the trust is located is presumed to correctly identify the trust and the

trustee and is authorized to be relied upon by a good faith purchaser or lender for value.

SECTION 2. Amends Section 5.028(a), Property Code, as follows:

(a) Authorizes a person who has knowledge of facts relevant to the correction of a recorded original instrument of conveyance to prepare or execute a correction instrument to make a nonmaterial change that results from a clerical error, including an addition, correction, or clarification of certain information, including the identity of the trustee of a trust named as party.

SECTION 3. Provides that the changes made by this Act apply to an instrument executed on, before, or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2023.