

BILL ANALYSIS

Senate Research Center
82R4742 NC-F

S.B. 1368
By: West
Intergovernmental Relations
4/11/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After hurricanes Rita, Dolly, and Ike, the Texas Department of Housing and Community Affairs and the Texas Department of Rural Affairs were responsible for the distribution of disaster assistance. In many instances, individuals were able to receive assistance because they were "informal" homeowners, or those whose ownership of the property was achieved outside of formal transactions. Informal homeowners, particularly those with co-tenant interests, face difficulties in securing resources to improve homes because the homeowner can only sell or secure a loan on their "fractionalized co-tenant interest." The open market does not typically allow for transactions in this manner.

S.B. 1368 enacts an interim recommendation of the Senate Intergovernmental Relations Committee by allowing for an individual, who has been residing in and maintaining property for a sufficient period of time, to act as a statutory agent or as an attorney-in-fact, for the sole purpose of preserving or improving the property. This gives long-term homeowners the ability to secure resources from lenders or governmental entities, including federal and state disaster assistance. This scenario would not eliminate or preclude other heirs or co-tenants from asserting property rights through judicial or other actions since there would be no official change related to the ownership of the real property. A power of attorney would only provide a mechanism for the state and other creditors to secure a lien against the cost of the repairs, and thereby provide informal homeowners with the necessary resources to improve the property.

As proposed, S.B. 1368 amends current law relating to the authority of a co-owner of residential property to encumber the 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 Subtitle B, Title 5, Property Code, by adding Chapter 64, as follows:

CHAPTER 64. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 64.001. APPLICATION OF CHAPTER. Provides that this chapter applies only to residential property:

- (1) that has residential improvements primarily designed for not more than four families;
- (2) that is not more than 10 acres of land;
- (3) that is owned by more than one person; and
- (4) for which at least one co-owner has received a residence homestead exemption under Section 11.13 (Residence Homestead), Tax Code.

Sec. 64.002. **CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER.** 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 Section 64.004 if:

- (1) the co-owner has occupied the property for more than five years;
- (2) the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;
- (3) for the five years preceding the date the documents required by Section 64.003 are filed, the occupying co-owner has paid all assessed ad valorem taxes without delinquency and without contribution from the other co-owner; and
- (4) the occupying co-owner files the documents required by Section 64.003.

Sec. 64.003. **REQUIRED DOCUMENTATION.** 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:

- (1) an affidavit of the occupying co-owner affirming the facts described by Sections 64.002(1)-(3);
- (2) 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
- (3) 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.

Sec. 64.004. **SCOPE OF AUTHORITY.** (a) Provides that the authority of the occupying co-owner to act as an agent and attorney-in-fact is limited to the authority to enter into a contract giving rise to a mechanic's or materialman's lien for the purpose of preserving or improving the residential property. Provides that the occupying co-owner is the sole obligor of the debt incurred under the contract.

- (b) Provides that a lien that arises under a contract entered into by an occupying co-owner under this section is not subject to repudiation or disaffirmance by another co-owner.

SECTION 2. Effective date: upon passage or September 1, 2011.