

SENATE BILL REPORT

SB 5191

As of January 29, 2013

Title: An act relating to the owner of a beneficial interest in real property.

Brief Description: Concerning the owner of a beneficial interest in real property.

Sponsors: Senator Honeyford.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/29/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Under the Deeds of Trust Act, beneficiary means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

Mortgage Electronic Registration Systems, Inc. (MERS) is a company that operates an electronic registry designed to track servicing rights and ownership of home loans. In addition to tracking ownership, MERS was also frequently listed as the beneficiary of deeds of trust and initiated nonjudicial foreclosures. Deeds of trust give beneficiaries the power to nominate a trustee and give that trustee the power to sell a home if the homeowner defaults. In a recent state Supreme Court case, *Bain v. MERS*, the court stated that only the actual holder of the promissory note may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure. Since MERS doesn't hold the promissory note, it is not a lawful beneficiary.

A conveyance of real property may be recorded in the office of the recording officer of the county where the property is situated. The consequence of not recording is that the said conveyance is void against any subsequent purchaser of the same real property whose conveyance is first properly recorded. When a person buys residential real property, that sale is generally recorded. The Deeds of Trust Act requires that prior to a trustee's sale or foreclosure sale, the deed of trust has been recorded in each county in which the land is situated.

Summary of Bill: The bill as referred to committee not considered.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Proposed Substitute): Only the beneficiary, or the trustee appointed by the beneficiary, may foreclose under the Deed of Trust Act. The foreclosure must be in the name of the beneficiary.

Every assignment and transfer of a real property encumbrance must be recorded in the office of the recording officer of the county where the property is situated. The recording must include a full legal description of the property and the name and contact information of the beneficiary.

The beneficiary must record their interest within 20 days of the transfer and provide notice to the purchaser within ten days. Failure to record within 20 days results in a monetary fine, and that beneficiary may not initiate a trustee's sale for six months after a recording is perfected.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.