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2905 Corporate Circle

**To:** Clients and Friends

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**From:** Shawn P. Black

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**Subject:** Texas Attorney General opines that a corporate entity may act as a trustee or substitute trustee of a deed of trust in Texas

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In an Opinion issued on February 6, 2023 ([Opinion No. KP-0424](#)), Ken Paxton, the Attorney General of Texas, stated that a court would likely conclude that a corporate entity may serve as a trustee or substitute trustee of a security instrument encumbering an interest in real property (i.e., deed of trust) under Texas law.<sup>1</sup> The Opinion was requested to clarify the meaning of “*person*” under Chapter 51 of the Texas Property Code (relating to liens created against real property and enforcement of deeds of trust). Section 51.001 of the Texas Property Code defines a “Trustee” as “a person or persons authorized to exercise the power of sale under the terms of a security instrument . . .” (Section 51.001(8)) and a “Substitute Trustee” as “a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale” (Section 51.001(7)).

However, the definition of “*person*” is not included in Chapter 51 of the Texas Property Code. As a result, some question exists as to whether “*person*” means only a natural person, or a more encompassing definition which includes a legal entity such as an organization, corporation, partnership, association, etc. In concluding that the more encompassing definition applies, the Attorney General looked to Section 1.002 of the Texas Property Code, which states that, “The Code Construction Act (Chapter 311, Texas Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.” As the Property Code does not define “*person*” for purposes of Chapter 51, the applicable definition of “*person*” is found in Section 311.005(2) of the Texas Government Code. That section states that “‘Person’ includes corporation, organization, government or government subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.”

The Opinion also points to other chapters of the Texas Property Code that more broadly define “*person*” to include corporate and other legal entities, (*see* Chapter 111), as well as case law (*see In re AMRCO, Inc.* 496 B.R. 442, 445 (W.D. Tex. 2013)) as support for this conclusion.

<sup>1</sup> The request for the Opinion asked specifically whether a corporate entity could serve as a substitute trustee, but the Opinion stated the same analysis would apply to a trustee (Opinion No. KP-0424, n.3).

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