

TEXAS TITLE INSURANCE WORKS TRUST AS GRANTEE CLARIFICATION

SB 801 (SEN. HUGHES) | HB 4281 (REP. LONGORIA)



TLTA seeks introduction and passage of a bill clarifying that a deed conveying title to a trust (as opposed to naming the trustee of that trust) should be deemed to be a conveyance into the trustee.

Problem

A recent case, *Fugedi v. United Rentals (N.Am.) Inc.*, No. 3:19-CV-00249, 2021 WL 1220032, 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 since the grantee “was not in existence at the time” and that the deed could not be corrected. The Fifth Circuit heard an appeal and correctly reasoned that the conveyance was effective under Texas law as “[t]he identity of the proper grantee can be ascertained from context...”. The Court further reasoned that the correction instruments statute could also be utilized to correct such an error, *Fugedi v. Intram, Incorporated et al.*, No. 21-40365, 2022 WL 3716198 (*Fugedi*). However, the potential for confusion remains in state court creating uncertainty and possible future litigation.

Solution

The statute should be clarified to acknowledge that:

1. Deeds conveying property to the name of the trust should be deemed as conveyed to the trustee.
2. The Correction Instruments statute (Texas Prop. Code Section 5.028) is unambiguously available to correct the deed and identify the trustee as the grantee.

Background

Attorneys and other parties will often mistakenly draft a conveyance of property to the name of a trust instead of the name of the trustee. Longstanding law in Texas is that a trust is not an entity. However, in accordance with principles of legal construction, Texas should clearly recognize the conveyance when the parties can be ascertained. Further, Texas has a correction instruments statute which could clearly also be utilized to correct such an error.

Despite the correct outcome in the *Fugedi* decision, concerns remain that the opportunity for continued confusion on the matter still exists and there is always the threat that a court may not recognize such a conveyance. The helpfulness of the *Fugedi* decision is further limited because it was a federal case that was unpublished.

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Texas Land Title Association

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