

BILL ANALYSIS

C.S.H.B. 1977
By: Solomons
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law protects a homestead in Texas from foreclosure except to collect on certain debts, including debts owed on the original loan or for taxes on the home, on a refinanced lien, or on a materialman's lien. In its decision in *Inwood North Homeowners' Association, Inc. v. Harris*, 736 S.W.2d 632 (Tex. 1987), the Supreme Court of Texas held that homestead law does not protect a property owners' association's homeowners against foreclosure for failure to pay assessments, but Texas laws never have specifically granted this right to property owners' associations.

C.S.H.B. 1977 authorizes a property owners' association to affix a lien on a homestead to be collected at the time the property is transferred to collect on debts accrued on dues or fees owed to the association by the property owner and requires the funds to be paid upon the sale of the property unless a seizure of the homestead property is authorized by a provision in a dedicatory instrument adopted by the members of the homeowners' association in a manner prescribed in this bill. The bill repeals a provision that prohibits a property owners' association from foreclosing on such a lien.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1977 amends the Property Code to specify that a homestead is not exempt from seizure relating to a creditor's claim for certain encumbrances that are properly fixed on the homestead property, rather than stating that such an encumbrance may be fixed on the property. The bill establishes that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services or to pay other fees imposed by the association is a debt for which an encumbrance may be fixed on a homestead property. The bill exempts a homestead property from seizure for the claims of creditors for such an encumbrance unless the seizure is authorized by a provision in a dedicatory instrument adopted in accordance with this provision. The bill authorizes a property owners' association, if the seizure is not authorized in that manner, to collect on such an encumbrance properly fixed on a homestead property at the time the homestead is transferred. The bill specifies that the provision providing that a homestead claimant's proceeds of the sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of a sale does not apply to a claim made by a property owners' association under those provisions.

C.S.H.B. 1977 prohibits a provision in a dedicatory instrument from authorizing a property owners' association to foreclose the association's assessment lien on a homestead unless the provision is adopted in accordance with the provisions of this bill by a majority of all votes allocated to members of the association after the development period has ended. The bill requires votes in such an election to be registered by ballot and authorizes the ballots to be submitted in person, in absentia, or by electronic means so long as each ballot can be verified as having been submitted by a member of the association and each vote allocated can be verified as having been submitted only once. The bill prohibits the ballots in such an election from being be

cast by proxy. The bill provides that a provision in a dedicatory instrument adopted before January 1, 2010, that authorizes a property owners' association to foreclose an assessment lien on an owner's property is void on April 1, 2010, to the extent it authorizes a foreclosure of a lien on an owner's homestead unless on or after January 1, 2010, the provision is ratified or reenacted in accordance with this section by a majority of all votes allocated to the members of the association after the development period has ended. The bill defines the terms "dedicatory instrument," "development period," and "property owners' association."

C.S.H.B. 1977 repeals Section 209.009, Property Code, which prohibits a property owners' association from foreclosing an assessment lien held by the association if the debt securing the lien consists solely of fines assessed by the association or attorney's fees incurred by the association solely associated with fines assessed by the association.

EFFECTIVE DATE

January 1, 2010, but only if the constitutional amendment permitting an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees and prohibiting the forced sale of the homestead to pay those fees unless authorized by the members of the association in accordance with general law takes effect, is approved by the voters.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1977 removes language in the original that includes an obligation to pay fines imposed by a property owners' association as a debt for which an encumbrance may be properly fixed on homestead property. The substitute adds a provision not in the original exempting homestead property from seizure for the claims of creditors unless the seizure is authorized by a provision in a dedicatory instrument adopted in accordance with this provision and makes conforming changes to this addition. The substitute adds provisions not in the original setting forth the requirements for the adoption of the provision of the dedicatory instrument by the members of the property owners' association. The substitute adds definitions of "dedicatory instrument" and "development period" that are not in the original.