

By: Solomons, et al.

H.B. No. 1977

Substitute the following for H.B. No. 1977:

By: Quintanilla

C.S.H.B. No. 1977

A BILL TO BE ENTITLED

AN ACT

relating to encumbrances that may be fixed on homestead property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 41.001(a) and (b), Property Code, are amended to read as follows:

(a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances described by Subsection (b) [~~properly fixed on homestead property~~].

(b) A homestead is not exempt from seizure as provided by Subsection (a) for encumbrances that are [~~Encumbrances may be~~] properly fixed on homestead property for:

(1) purchase money;

(2) taxes on the property;

(3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);

(4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both

1 spouses, if the homestead is a family homestead, or from the tax
2 debt of the owner;

3 (6) an extension of credit that meets the requirements
4 of Section 50(a)(6), Article XVI, Texas Constitution; or

5 (7) a reverse mortgage that meets the requirements of
6 Sections 50(k)-(p), Article XVI, Texas Constitution.

7 SECTION 2. Subchapter A, Chapter 41, Property Code, is
8 amended by adding Section 41.0011 to read as follows:

9 Sec. 41.0011. HOMESTEAD EXEMPT FROM SEIZURE FOR CERTAIN
10 ENCUMBRANCES. (a) In this section:

11 (1) "Dedictory instrument" has the meaning assigned
12 by Section 202.001.

13 (2) "Development period" means a period stated in a
14 declaration during which a declarant reserves:

15 (A) a right to facilitate the development,
16 construction, and marketing of the subdivision; and

17 (B) a right to direct the size, shape, and
18 composition of the subdivision.

19 (3) "Property owners' association" has the meaning
20 assigned by Section 202.001.

21 (b) An obligation to pay property owners' association fees
22 for maintenance and ownership of common facilities and services or
23 to pay other fees imposed by a property owners' association is a
24 debt for which an encumbrance may be properly fixed on homestead
25 property. Homestead property is exempt from seizure for the claims
26 of creditors for an encumbrance described by this subsection unless
27 the seizure is authorized by a provision in a dedicatory instrument

1 adopted in accordance with this section. If the seizure is not
2 authorized in that manner, the property owners' association may
3 collect on an encumbrance described by this subsection properly
4 fixed on homestead property at the time the homestead is
5 transferred.

6 (c) Section 41.001(c) does not apply to a claim of a
7 property owners' association under this section.

8 (d) A provision in a dedicatory instrument may not authorize
9 a property owners' association to foreclose the association's
10 assessment lien on a homestead unless the provision is adopted in
11 accordance with this section by a majority of all votes allocated to
12 members of the association after the development period has ended.

13 (e) Votes in an election for the purposes of this section
14 must be registered by ballot. The ballots may be submitted in
15 person, in absentia, or by electronic means so long as:

16 (1) each ballot can be verified as having been
17 submitted by a member of the association; and

18 (2) each vote allocated can be verified as having been
19 submitted only once.

20 (f) Ballots in an election under this section may not be
21 cast by proxy.

22 (g) A provision in a dedicatory instrument adopted before
23 January 1, 2010, that authorizes a property owners' association to
24 foreclose an assessment lien on an owner's property is void on April
25 1, 2010, to the extent it authorizes a foreclosure of a lien on an
26 owner's homestead unless on or after January 1, 2010, the provision
27 is ratified or reenacted in accordance with this section by a

1 majority of all votes allocated to the members of the association
2 after the development period has ended.

3 SECTION 3. Section 209.009, Property Code, is repealed.

4 SECTION 4. This Act takes effect January 1, 2010, but only
5 if the constitutional amendment proposed by the 81st Legislature,
6 Regular Session, 2009, permitting an encumbrance to be fixed on
7 homestead property for an obligation to pay certain property
8 owners' association fees and prohibiting the forced sale of the
9 homestead to pay those fees unless authorized by the members of the
10 association in accordance with general law takes effect. If that
11 amendment is not approved by the voters, this Act has no effect.