

By: Jackson

S.B. No. 446

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, "property owners'
11 association" has the meaning assigned by Section 202.001.

12 (b) An obligation to pay property owners' association fees
13 for maintenance and ownership of common facilities and services or
14 to pay other fees or fines imposed by a property owners' association
15 is a debt for which an encumbrance may be properly fixed on
16 homestead property.

17 (c) Homestead property is exempt from seizure for the claims
18 of creditors for an encumbrance described by Subsection (b). A
19 property owners' association may collect on an encumbrance
20 described by Subsection (b) properly fixed on homestead property at
21 the time the homestead property is transferred. Section 41.001(c)
22 does not apply to a claim of a property owners' association under
23 this section.

24 SECTION 3. This Act takes effect January 1, 2012, but only
25 if the constitutional amendment proposed by the 82nd Legislature,
26 Regular Session, 2011, permitting an encumbrance to be fixed on
27 homestead property for an obligation to pay certain property

S.B. No. 446

1 owners' association fees and fines without permitting the forced
2 sale of the homestead takes effect. If that amendment is not
3 approved by the voters, this Act has no effect.