

By: West  
(Deshotel)

S.B. No. 1368

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a co-owner of residential property to encumber the property.

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

SECTION 1. Subtitle B, Title 5, Property Code, is amended by adding Chapter 64 to read as follows:

CHAPTER 64. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 64.001. APPLICATION OF CHAPTER. This chapter applies only to residential property:

(1) that has residential improvements primarily designed for not more than four families;

(2) that is not more than 10 acres of land;

(3) that is owned by more than one person; and

(4) for which at least one co-owner has received a residence homestead exemption under Section 11.13, Tax Code.

Sec. 64.002. CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER. A co-owner of residential property may act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by Section 64.004 if:

(1) the co-owner has occupied the property for more than five years;

(2) the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;

1           (3) for the five years preceding the date the  
2 documents required by Section 64.003 are filed, the occupying  
3 co-owner has paid all assessed ad valorem taxes without delinquency  
4 and without contribution from the other co-owner; and

5           (4) the occupying co-owner files the documents  
6 required by Section 64.003.

7           Sec. 64.003. REQUIRED DOCUMENTATION. The occupying  
8 co-owner may establish the authority to act as an agent and  
9 attorney-in-fact for another co-owner by filing in the office of  
10 the county clerk of the county in which the real property is  
11 located:

12           (1) an affidavit of the occupying co-owner affirming  
13 the facts described by Sections 64.002(1)-(3);

14           (2) the affidavits of two additional affiants  
15 personally familiar with the co-owner's occupancy of the real  
16 property corroborating the occupancy during the preceding five  
17 years; and

18           (3) a certificate of the tax assessor-collector for  
19 the county in which the real property is located affirming that the  
20 co-owner has paid all taxes assessed against the real property for  
21 the preceding five years without delinquency.

22           Sec. 64.004. SCOPE OF AUTHORITY. (a) The authority of the  
23 occupying co-owner to act as an agent and attorney-in-fact is  
24 limited to the authority to enter into a contract giving rise to a  
25 mechanic's and materialman's lien and to execute a deed of trust for  
26 the purpose of preserving or improving the residential property.  
27 The occupying co-owner is the sole obligor of the debt incurred

1 under the contract and secured by the deed of trust.

2 (b) A lien that arises under a contract entered into by an  
3 occupying co-owner under this section is not subject to repudiation  
4 or disaffirmance by another co-owner.

5 SECTION 2. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect September 1, 2011.