

1-1 By: West S.B. No. 1368
1-2 (In the Senate - Filed March 9, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 14, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 April 14, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1368 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority of a co-owner of residential property to
1-11 encumber the property.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 5, Property Code, is amended by
1-14 adding Chapter 64 to read as follows:

1-15 CHAPTER 64. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY
1-16 Sec. 64.001. APPLICATION OF CHAPTER. This chapter applies
1-17 only to residential property:

1-18 (1) that has residential improvements primarily
1-19 designed for not more than four families;

1-20 (2) that is not more than 10 acres of land;

1-21 (3) that is owned by more than one person; and

1-22 (4) for which at least one co-owner has received a
1-23 residence homestead exemption under Section 11.13, Tax Code.

1-24 Sec. 64.002. CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR
1-25 CO-OWNER. A co-owner of residential property may act in the name of
1-26 and on behalf of another co-owner, whether known or unknown, as the
1-27 co-owner's statutory agent and attorney-in-fact for the purposes
1-28 described by Section 64.004 if:

1-29 (1) the co-owner has occupied the property for more
1-30 than five years;

1-31 (2) the co-owner has a residence homestead exemption
1-32 for the property under Section 11.13, Tax Code;

1-33 (3) for the five years preceding the date the
1-34 documents required by Section 64.003 are filed, the occupying
1-35 co-owner has paid all assessed ad valorem taxes without delinquency
1-36 and without contribution from the other co-owner; and

1-37 (4) the occupying co-owner files the documents
1-38 required by Section 64.003.

1-39 Sec. 64.003. REQUIRED DOCUMENTATION. The occupying
1-40 co-owner may establish the authority to act as an agent and
1-41 attorney-in-fact for another co-owner by filing in the office of
1-42 the county clerk of the county in which the real property is
1-43 located:

1-44 (1) an affidavit of the occupying co-owner affirming
1-45 the facts described by Sections 64.002(1)-(3);

1-46 (2) the affidavits of two additional affiants
1-47 personally familiar with the co-owner's occupancy of the real
1-48 property corroborating the occupancy during the preceding five
1-49 years; and

1-50 (3) a certificate of the tax assessor-collector for
1-51 the county in which the real property is located affirming that the
1-52 co-owner has paid all taxes assessed against the real property for
1-53 the preceding five years without delinquency.

1-54 Sec. 64.004. SCOPE OF AUTHORITY. (a) The authority of the
1-55 occupying co-owner to act as an agent and attorney-in-fact is
1-56 limited to the authority to enter into a contract giving rise to a
1-57 mechanic's and materialman's lien and to execute a deed of trust for
1-58 the purpose of preserving or improving the residential property.
1-59 The occupying co-owner is the sole obligor of the debt incurred
1-60 under the contract and secured by the deed of trust.

1-61 (b) A lien that arises under a contract entered into by an
1-62 occupying co-owner under this section is not subject to repudiation
1-63 or disaffirmance by another co-owner.

2-1 SECTION 2. This Act takes effect immediately if it receives
2-2 a vote of two-thirds of all the members elected to each house, as
2-3 provided by Section 39, Article III, Texas Constitution. If this
2-4 Act does not receive the vote necessary for immediate effect, this
2-5 Act takes effect September 1, 2011.

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