

SUBJECT: Allowing property owners' associations to assess liens against homesteads

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Elkins, Christian, Keffer, S. Miller, Orr, Quintanilla,  
S. Turner

0 nays

3 absent — England, Gattis, Giddings

WITNESSES: For — (*Registered, but did not testify*: Danita Haase)

Against — Judd Austin, Henry, Oddo, Austin & Fletcher; C.A. Cockrell, Greater Lake Palestine Council, Callender Lake POIA; Richard W. Craig; Dick Crain, Heritage Ranch HOA; Gwen Gates, David Kahne; Philip MacDonald, Lake Ridge Property Owners Association; Suzy Rice; David Smith, Texas Neighborhoods Together; (*Registered, but did not testify*: Karla Anaya, N.B. Avery Park HOA; Laurie Beppler, Walker's Mark HOA; Orville R. Bevel, Jr., Greater Lake Palestine Council; Linda Blackstock, Robert Collier, Lake Livingston Village POA; Rodney Bouffard, Benders Landing POA; Carolyn Boyle Stonebriar HOA; Cordelia Brown, Heritage Village HOA; Glenn Buckley, Montgomery Trace POA; Charles Butera, Quail Valley Fund; Joseph Cook, Alamo Ranch Community Association, Hill Country Retreat Community Association; Chuck Davidson, Spring Shadows Civic Association; Henry Del Castillo Jr., Colleyville Spring Garden Townhome Association; Jason Delgado, Craig Place Townhomes; Sandra Denton, Community Association Institute; Jan Douglas, Glenn Lippman, Georgetown HOA, Annette Escarenio, Covington C.A., East Point Subdivision Heron Nest O.A., Lochshire MF Hunterwood Village I & II; Michael Foster, Wind Gate Ranch HOA; Russell Fuller, North Fort Worth Alliance Vineyards at Heritage HOA; Alfredo Gonzalez, The Dominion Homeowners Association; Troy Goodell, The Spencer Company; Matt Hillstrom, The Tribute Owners Association, Inc.; Sheila Hitt, Safari Waters Ranch POA, Cimmaron Estates HOA; Bart Hoggins, Heritage Oaks, Karen Janezak, Lake Forest of Kelliwood HOA; Harvella Jones, The National Homeowners Advocate Group, The Texas Homeowners Advocate Group; Gary Josephson, Mountain Valley Country Club Estate, Hills at

Westchester HOA; Kevin Kerwan, Heritage Ranch HOA; Sally King, Villas at Ingram Hills; Gary Klepperich, Singer Association Management, Inc.; Samantha Lacewell, Deerfield Village Community Association, Inc.; Larry Leesman, Oak Shores Estates HOA; Peter Legee, Forest Core Estate HOA, Inc.; Robert Leitner, MBCA, GMBAC; Lisa Lemmond, Copperstone HOA; Kate Loeffler, Windstone Colony HOA; John Michael, 2016 Main Owners Association; Robert Mohler, North Fort Worth Alliance and Arcadia Park Estates HOA; Theresa Ostrander, Heartland Community Association Kaufman County Municipal Utility District 8-12, Margaret Parker, Capital Consultant Management Corp.; Lisa Pfeiffer, Coalition of NE Neighborhoods, CONEN, Ventura Maintenance Association, VMA; Lauren Ramella, Palo Blanco, HOA; Margaret Rankin, Lake Windcrest POA, Champions Creek, CIA; Rita Rasberry WynField Farms HOA; Cheryl Rhoads, Northpointe East Owners Association; Jim Rhodes, Terraces at Encino Park HOA; Eugene Riggs, Oak Shores HOA; Debra Romanon, Ashlynn Wells, Premier Communities; Reynaldo Saucedo, Deer Creek POA; Rachel Schmutz, Hannover Forest HOA, Inc.; Alan Seilhammen, Mutual of Omaha Bank; Sam Simmons, Kelliwood Terrace; A.J. Simpson, Briargate HOA; Dodie Slama, Chimney Hill Homeowners Association; Lewis Smith, Greatwood HOA; Bob Stout, The Woodlands Development Co., The Woodlands Township, Newland Communities of Texas; Danielle Sturm, Bauerle Ranch, Estates Bauerle Ranch; Susan Sweeney, Parker Estates Homeowners Association; Jamie Taylor, Cambridge Court HOA; L. Wayne Templeton, Hunters Valley HOA; Velma Thomas, Oak Hill Homeowners Association, Inc.; Rhonda Van Tassell, Lone Star Ranch HOA; Jimmy Vandagriff, Riverstone Roach HOA, Inc.; Susan Vandagriff, Imperial Oaks Park POA, Inc.; Jesus Varela, Northwest Park Home Owners' Association; Lynn Walshak, Texas Homeowners for HOA, Inc.; David Weinreich, Williams Chase HOA; Christi Wells, Community Association Bank, Mutual of Omaha Bank; Jay Wiesner, Callender Lake POA; Lance Williams, Champion Pines Condo Association, Millhollow Town Homes Association; 3000 S. Braeswood Condo Tanglegrove Townhome Condo Association; Robert Wise, Stone Forest HOA; John Wynn, Summerfield Homeowners Associations; Greg Yearsley, Hills at Firewheel HOA; and 101 others)

On — Bill Davis; Sharon Reuler

**BACKGROUND:** Texas Constitution, Art. 16, sec. 50 provides protections for homeowners and limits the ability of debtors to foreclose on homestead property.

Property Code, sec. 209.009 prohibits property owners' associations from foreclosing on an assessment lien 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.

DIGEST:

CSHB 1977 would amend Property Code, ch. 41 to provide that homestead property in a property owners' association would be exempt from foreclosure for debts owed to the property owners' association unless such seizures would be authorized by the association's dedicatory instruments.

The bill would void any provision in a dedicatory instrument adopted before January 1, 2010, that would allow a property owners' association to foreclose on an assessment lien. However, such provision could be ratified or reenacted by a vote of a majority of voting interests in a property owners' association.

CSHB 1977 would require that such an election be registered by ballot. The ballots would be allowed to be cast in person, in absentia, or electronically as long as:

- each ballot could be verified as having been submitted by a member of an association; and
- each votes allocated can be verified as having been submitted only once.

Proxy voting in these elections would be prohibited.

CSHB 1977 would repeal Property Code, sec. 209.009.

The bill would take effect on January 1, 2010, but only if voters approve a constitutional amendment to prohibit foreclosure of homestead property to pay property owners' association assessments. If the constitutional amendment is not approved, the bill would have no effect.

SUPPORTERS  
SAY:

CSHB 1977 would extend current protections from foreclosures of homestead in Texas except to collect on certain debts, including debts owed on the original loans, taxes, 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 Texas Supreme Court held that homestead law does not protect an association's homeowners against

foreclosure for failure to pay assessments. However, Texas law has never specifically granted the right of foreclosure to property owners' associations. The proposed constitutional amendment and CSHB 1977, its enabling legislation, would clarify the law and provide protections to members of property owners' associations.

OPPONENTS  
SAY:

Restrictions such as CSHB 1977 would destroy the community and the protection of property values provided by property owners' associations by limiting of the necessary means to collect the fees and assessments required to provide these services. Without the ability to foreclose, there would be no mechanism to require payment of delinquent accounts.

OTHER  
OPPONENTS  
SAY:

CSHB 1977's provisions allowing an election to change dedicatory instruments to permit forecloses would dilute the protections proposed by the accompanying constitutional amendment and the bill. Developers may retain a majority control of voting interest in the property owners' association even after the development period has ended.

The bill should be amended to require notice to protect unwitting new homeowners who might buy properties in a property owners' association which has amended its dedicatory instruments to permit foreclosures for non-payment of mandatory and other special assessments.

NOTES:

On May 11, the accompanying proposed constitutional amendment, HJR 76 by Solomons, was postponed by the author until June 2, after the Legislature adjourns sine die.