

SUBJECT: Allowing a co-owner of residential property to encumber the property

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Deshotel, Orr, Bohac, Giddings, Quintanilla, Solomons,
Workman

0 nays

2 absent — Garza, S. Miller

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: No public hearing

DIGEST: SB 1368 would add a chapter to the Property Code authorizing a co-owner to place a mechanic's and materialman's lien on residential property to preserve or improve the property.

A co-owner of residential property could 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 if:

- the co-owner had occupied the property for more than five years;
- the co-owner had a homestead tax exemption for the property;
- for the five years before the filing date of the required documentation, the occupying co-owner had paid all assessed property taxes without delinquency and without contribution from the other co-owner; and
- the occupying co-owner filed the required documentation.

The authority of the occupying co-owner to act as an agent and attorney-in-fact would be limited to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The occupying co-owner would be the sole obligor of the debt incurred under the contract and secured by the deed of trust. A lien that arose under a

contract entered into by an occupying co-owner would not be subject to repudiation or disaffirmance by another co-owner.

The chapter would apply only to residential property:

- that had residential improvements primarily designed for no more than four families;
- that was not more than 10 acres of land;
- that was owned by more than one person; and
- for which at least one co-owner had received a homestead tax exemption.

The occupying co-owner could establish the authority to act as an agent and attorney-in-fact for another co-owner by filing required documentation in the office of the county clerk where the property was located, specifically:

- an affidavit of the occupying co-owner affirming that the co-owner had occupied the property for more than five years, had a homestead tax exemption for the property, and had paid all property taxes without delinquency and without contribution from the other co-owner in the last five years;
- the affidavits of two additional persons with personal knowledge corroborating the occupancy during the past five years; and
- a certificate of the county tax assessor-collector where the property was located affirming that the co-owner had paid all taxes assessed against the real property for the past five years without delinquency.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 1368 would provide a way for owners of homes that have fallen into disrepair and disaster victims to obtain assistance or a loan to repair the property. Assistance programs such as the federal HOME Investment Partnerships Program require a lien to be placed on the property to ensure that recipients continue to live on the property rather than selling it. However, some property owners have not been able to place a lien on their property because multiple heirs have an interest in the property, and the heirs cannot be located to consent to the lien. SB 1368 would address the

problem by giving co-owners the ability to act as attorney-in-fact for the purpose of receiving assistance or funds to improve property. A co-owner could enter into a contract giving rise to a mechanic's and materialman's lien. This would allow someone with a partial interest in the property to make repairs.

There is little threat that a property would be foreclosed upon to satisfy a mechanic's and materialman's lien.

**OPPONENTS
SAY:**

SB 1368 is overly broad and would apply not only to a situation where co-owners could not be located, but also to a situation where a known co-owner objected to a home improvement lien being taken out on a property. The bill would allow the occupying co-owner to override the other co-owner's objections and encumber the entire property. If the loan was not repaid, the property could be foreclosed upon. The bill could result in a co-owner losing his or her interest in a property because of a lien to which the co-owners did not agree.

The bill should be more narrowly tailored to protect nonoccupying co-owners. It should contain a notice requirement to co-owners and allow co-owners to object if they paid their share of past taxes. Alternately, the bill should apply only to assistance programs and not to private loans.