

BILL ANALYSIS

Senate Research Center

S.B. 1336
By: Ellis
State Affairs
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As Filed

DIGEST

Currently, under the Texas Supreme Court decision of *Inwood North Homeowners' Association v. Charlie Harris, Jr. et al. and Rolando M. Pamilar, et al.*, property owner associations have the power to foreclose on a homestead to collect delinquent assessments. This bill would permit an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' associations fees, but, in turn, would not allow the forced sale of the homestead by the property owner associations to collect delinquent assessments arising from such fees. Additionally, this bill would be contingent upon a similar change to the Texas Constitution authorizing an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees without permitting the forced sale of the homestead due to delinquent assessments arising from such fees.

PURPOSE

As proposed, S.B. 1336 provides that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services is a debt for which an encumbrance may be properly fixed on homestead property. Additionally, S.B. 1336 provides that the homestead property is exempt from seizure for the claims of creditors for such encumbrances.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 41.001(a) and (b), Property Code, to provide that 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), rather than encumbrances properly fixed on homestead property. Provides that a homestead is not exempt from seizure as provided by Subsection (a) for encumbrances that are properly fixed on homestead property for certain items. Deletes text authorizing encumbrances to be properly fixed on homestead property for certain items.

SECTION 2. Amends Chapter 41A, Property Code, by adding Section 41.0011, as follows:

Sec. 41.0011. CERTAIN ENCUMBRANCES FIXED ON HOMESTEAD EXEMPT FROM SEIZURE. Provides that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services is a debt for which an encumbrance may be properly fixed on homestead property. Provides that homestead property is exempt from seizure for the claims of creditors for an encumbrance described by Subsection (a). Authorizes a property owners' association to collect on an encumbrance described by Subsection (a) properly fixed on homestead property at the time the homestead property is transferred. Provides that Section 41.001(c) does not apply to a claim of a property owners' association under this section. Defines "property owners' association."

SECTION 3. Effective date: January 1, 1998, pending voter approval.

SECTION 4. Emergency clause.