

- SUBJECT:** Amending rights to rescind contracts for repair or renovations to homesteads
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley  
0 nays
- WITNESSES:** For — Robert Bass, Lumbermen’s Association of Texas; Herbert Haws and Rodney Jones, Texas Association of Builders; Lynn Motheral, Texas Association of Builders, Remodelers Council  
Against — None
- BACKGROUND:** Art. 16, sec. 50 of the Texas Constitution, the 1997 home equity amendment, provides for a right of rescission of contracts for repairs or renovations to a homestead when a lien for the work and material would attach to the homestead. A contract, which must be in writing and signed by the owner and with consent of both spouses, cannot be executed until 12 days after an application for credit is filed by the homeowner and may be rescinded without penalty three days after execution of the contract. An exception is allowed for immediate repairs to conditions that would materially affect the health and safety of a resident of the homestead, if the owner acknowledges this in writing. Also, the contract may be executed by the owner and the owner’s spouse only in the office of the third-party lender making the extension of credit, an attorney, or a title company.  
  
For a homestead lien to attach for work and material used in constructing new improvements on a homestead, rather than in repair or renovation, the contract need only be in writing.
- DIGEST:** CSHJR 73 would amend art. 16, sec. 50(a) of the Constitution to revise the requirements for a lien on a homestead to attach for work and materials used for improvements to the homestead. A contract for the work and material would have to be in writing, with the consent of both spouses for family homesteads, for all improvements. For repairs and renovations, the contract also would have to provide that the owner could rescind the contract under

terms prescribed by law if the contract was executed at the residential homestead property.

If approved by the voters, the amendment would take effect January 1, 2000.

The proposal would be presented to the voters at an election on November 2, 1999. The ballot proposal would read: "The constitutional amendment prescribing requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property."

**SUPPORTERS  
SAY:**

CSHJR 73 would clarify the right to rescind contracts for homestead repairs or renovations, removing the burdensome and inflexible 12-day waiting period. This requirement, in effect, creates a two-week delay before home repairs can begin.

Under Business and Commerce Code, chapter 39, consumers already have the right to rescind a contract for goods or services within three days, provided that the contract was signed at the consumer's home and not at a place of business. This important provision is intended to protect consumers against unscrupulous, high-pressure home repair solicitors.

The home equity amendment approved last session provides that after a property owner applies for a loan to pay for home improvements, a 12-day waiting period goes into effect. The contract can be executed after that period, but the property owner still has the three-day period to rescind the contract. Therefore, construction work, however minor, cannot begin for 15 days. This inconveniences both home owners and contractors.

Rather than inflexibly specifying in the Constitution itself where a contract for home improvements must be signed, CSHJR 73 instead would accomplish the intent of the provision by allowing the owner to rescind the contract if it was executed at the owner's home. The original purpose of listing in the Constitution the places where a home improvement contract must be signed was to prevent salespersons visiting a person at home from pressuring homeowners to sign a home improvement contract without their having an opportunity to get advice. CSHJR 73 would allow the details of where a contract may signed to be specified in law, while the Constitution still would reflect the basic intent that these contracts not be signed in the home.

OPPONENTS  
SAY:

The 12-day waiting period was included in the Constitution to protect consumers and should not be removed. Without the waiting period, unscrupulous solicitors offering repair services could pressure unsuspecting homeowners into signing contracts committing them to the purchase of expensive repairs. The 12-day wait, coupled with the three-day right of rescission, is an important consumer safeguard that should be preserved.

NOTES:

The implementing legislation, HB 2605 by Solomons, passed the House on May 8 and was referred to the Senate Economic Development Committee. HB 2605 would allow rescission of a contract for repair or renovation of a homestead if the contract was executed by the owner of a homestead or by either spouse at the homestead property. Such contracts could not be rescinded if:

- ! the owner, or both spouses for a family homestead, had been represented by a licensed attorney;
- ! the residential construction contract was negotiated by a licensed real estate broker; or
- ! the contract was executed at another location, not at the homestead itself.

A purchaser, lender, or assignee for value could rely on a statement initialed by the owner or both spouses affirming that the contract was not executed at the homestead.

The bill would require that the disclosure statement required by Business and Commerce Code, chapter 39 regarding right of rescission be included in such contracts. The bill's provisions would be added to Subchapter K, Chapter 53 of the Property Code, regulating mechanic's, contractor's, and materialman's liens.

HB 2605 would take effect January 1, 2000, if CSHJR 73 is approved.