

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 — Philip MacDonald, Lake Ridge Property Owners Association; Lynn Walshak, Texas Homeowners for HOA Reform, Inc.; (*Registered, but did not testify*: Judd Austin, Henry Oddo, Austin & Fletcher; Laurie Beppler, Walker's Mark HOA; Orville R. Bevel Jr. Greater Lake Palestine Council; Linda Blackstock, Robert Collier, Lake Livingston Village POA, Inc.; Carolyn Boyle, Stonebriar HOA; Shonda Britton, Select Management Co.; Cordelia Brown, Heritage Village HOA; Glenn Buckley, Montgomery Trace POA; Charles Butera, Quail Valley Fund; C.A. Cockrell, Greater Lake Palestine Council, Callender Lake POA; Chuck Davidson, Spring Shadows Civic Association; Jason Delgado, Craig Place Townhomes; Jan Douglas, Georgetown HOA; Chuck Davidson, Spring Shadows Civic Association; Jason Delgado, Craig Place Townhomes; Sandra Denton, Community Association Institute; 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; Nelwyn Hardy, Champion Pines Condo; Catherine Heimer, Villas at Ingram Hills; Andy Hill, Texas Association of Community Management Companies; Matt Hillstrom, The Tribute Owners Association, Inc.; Sheila Hitt, Safari Waters Ranch Property Owners Association, Cimmarron Estates; Lana Hoelsing, Promenade at Stafford Run; Bart Hoggins, Heritage Oaks HOA; Harvella Jones, National Homeowners Advocate Group, Texas Homeowners Advocate Group; David Kincaid, Remington Heights HOA; Peter Legee, Forest Cove Estate HOA, Inc.; Robert Leitner, Missionbend Civic Association and Greater MBA Council; Lisa Lemmond, Copperstone HOA; John Michael, 2016

Main Owners' Association; Robert Mohler, North Fort Worth Alliance and Arcadia Parks Estates HOA; Robin Motley, Westchester, HOA; Lisa Pfeiffer, Coalition of NE Neighborhoods (CONEN), Ventura Maintenance Association (VMA); Robert Philo, Eldorado HOA; Lauren Ramella, Palo Blanco HOA; Rita Rasberry, Wynfield Farms HOA; Jim Rhodes, Terraces at Encino Park HOA; Rachel Schmutz, Hannover Forest HOA; Sam Simmons, Kelliwood Terrace; David Smith, Texas Neighborhoods Together; Lewis Smith, Greatwood HOA; Lewis W. Smith IV, Royal Lakes Estates HOA, The Promenade at Stafford Row, Meadow Creek, Sugarland City Councilman Russell Jones, Huntington Village; Bob Stout, The Woodlands Development Co. and Newland Communities Texas, Woodlands Township; Danielle Sturm, Bauerle Ranch, Estates of Baurele Ranch; George Swenson, Stonebridge Ranch Community Association; Jamie Taylor, Cambridge Court HOA; L. Wayne Templeton, Hunters Valley HOA; Velma Thomas, Oak Hill HOA; Jimmy Vandagriff, Riverstone Ranch HOA, Inc.; Dave Weinreich, Williamschase POA; Christi Wells, Community Association Bank, Mutual of Omaha Bank; Jay Wiesner Callender Lake POA; Lance Williams, Champion Pines Condominiums, Millhollow Townhomes, 3000 S. Braeswood Tanglegrove Townhomes Condo Association; Robert Wise, Stone Forest HOA; Susan Wright, Texas Association of Builders, and 69 others.)

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

**DIGEST:** CSHJR 76 would amend Texas Constitution, Art. 16, sec. 50, to provide that fees assessed by a property owners' association for maintenance and ownership of common facilities and services would be considered an encumbrance on homestead property. The homestead property would be protected from foreclosure for payment of these property owners' association fees on and after April 1, 2010, unless the members of the property owners' association voted to authorize this type of foreclosure.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: "The constitutional amendment permitting an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees and prohibiting the forced sale of the homestead to pay those fees unless authorized by the members of the association in accordance with general law. "

SUPPORTERS  
SAY:

CSHJR 76 would permit Texas voters, rather than the courts, to decide whether property owners' associations should be allowed to foreclose on residential property to collect unpaid assessments and fees. Current law protects a homestead in Texas from foreclosure 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 would clarify the law and provide protections to members of property owners' associations.

OPPONENTS  
SAY:

Restrictions such as CSHJR 76 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:

CSHJR 76 should be amended to provide the protections provided in the original version that would have prohibited foreclosures for any fees or assessments, including fines, imposed by a property owners' association. It also should be amended to remove the ability of property owners' associations to vote to approve foreclosures after April 1, 2010. *Inwood North Homeowners' Association, Inc. v. Harris* was a decision rendered without any representation on behalf of homeowners, and the Legislature or the voters should have the opportunity to overrule an outrageous opinion that is contrary to the longstanding protections for homesteads in the Texas Constitution.

NOTES:

HB 1976 by Solomons, comprehensive property owners' association legislation that would allow property owners' association members to vote to change the dedicatory documents provisions on foreclosures, is on the May 8 General State Calendar.

The substitute differs from the joint resolution as filed by removing references to fines and prohibiting foreclosures by homeowners after April 1, 2010, unless the property owners' association voted in favor of allowing the foreclosures. The original would have prohibited foreclosures

for fees or assessments, including fines, imposed by a property owner's association.