

BILL ANALYSIS

Senate Research Center
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H.J.R. 73
By: Solomons (Shapleigh)
Economic Development
5/14/1999
Engrossed

DIGEST

The "home equity" constitutional amendment created some ambiguities in the law relating to a lien on homestead for home improvements. Questions have arisen regarding the applicability of the law. The current wording of the law appears to distinguish between new improvements and the repair and renovation of existing improvements. The law also provides a 12-day waiting period from the time the owner makes a written application for an extension of credit, but does not address a request for an extension of credit in which there is no written application. Also, as written, the law does not specify whether the three-day right of rescission applies to all improvements or only to repairs and renovations. In addition, current law requires that the contract be signed in the office of a lawyer, title company, or lender. H.J.R. 73 proposes a constitutional amendment to amend Section 50(a) (relating to homestead; extension of credit secured by lien; protection from forced sale; mortgages, trust deeds, and liens), Article XVI, Texas Constitution to eliminate the aforementioned ambiguities by providing that this section applies to an improvement, rather than a new improvement; providing a right of rescission to a contract signed at the residential homestead; and deleting existing Subdivisions (C) and (D) (relating to the execution and nullification of contracts for renovation, repair, and work on a residential homestead). This joint resolution also requires the submission to the voters of a constitutional amendment prescribing the requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property.

PURPOSE

As proposed, H.J.R. 73 proposes a constitutional amendment for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property.

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 Section 50(a), Article XVI, Texas Constitution, to delete existing text to provide that this subdivision regards improvements, rather than only new improvements and deletes existing text providing that this subdivision applies if the contract is in writing. Provides that Subdivision (5) is an exemption under this section (Homestead; protection from forced sale; Mortgages, trust deeds and liens) if the contract provides that the owner may rescind the contract under terms prescribed by law if the contract is a contract for work and material used to repair or renovate existing residential homestead improvements and the contract is executed at the residential homestead property. Deletes existing text relating to improvements executed by the owner or the owner's spouse on the homestead. Deletes existing text relating to the owner's authorization to rescind the contract within three days after the execution of the contract by all parties under specified conditions. Deletes existing text relating to the execution of the contract by the owner and the owner's spouse at the office of a third party lender, an attorney-at-law, or a title company. Makes a conforming change.

SECTION 2. Proposes the addition of a temporary provision to the Texas Constitution prescribing the requirements for imposing a lien for work and material used in the construction, repair, or renovation of improvements on residential homestead property. Provides that this constitutional amendment takes effect January 1, 2000, and expires January 2, 2000.

SECTION 3. Requires the proposed constitutional amendment to be submitted to the voters at an election to be held November 2, 1999. Sets forth the ballot language for the amendment.

