

## **BILL ANALYSIS**

Senate Research Center  
82R3663 AJA-D

S.B. 446  
By: Jackson  
Intergovernmental Relations  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law protects a homestead in Texas from foreclosure except to collect on certain debts, including debts owed on the original loan or for taxes on the home, on 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 Supreme Court of Texas held that homestead law does not protect a property owners' association's homeowners against foreclosure for failure to pay assessments, but Texas laws have never specifically granted this right to property owners' associations.

S.B. 446 authorizes a property owners' association to affix a lien on a homestead to be collected at the time the property is transferred to collect on debts accrued on dues or fees owed to the association by the property owner and requires the funds to be paid upon the sale of the property. This bill protects a homestead from forced sale for the payment of such a debt.

As proposed, S.B. 446 amends current law relating to encumbrances that may be fixed on homestead property.

### **RULEMAKING AUTHORITY**

This bill does not expressly 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, as follows:

- (a) Provides 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.
- (b) Provides that a homestead is not exempt from seizure as provided by Subsection (a) for encumbrances that are, rather than authorizing encumbrances to be, properly fixed on a homestead property for certain reasons.

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

- Sec. 41.0011. HOMESTEAD EXEMPT FROM SEIZURE FOR CERTAIN ENCUMBRANCES. (a) Defines "property owners" in this section.
- (b) Provides that an obligation to pay property owners' association fees for maintenance and ownership of common facilities and services or to pay other fees or fines imposed by a property owners' association is a debt for which an encumbrance may be properly fixed on homestead property.
  - (c) Provides that homestead property is exempt from seizure for the claims of creditors for an encumbrance described by Subsection (b). Authorizes a property owners' association to collect on an encumbrance described by Subsection (b)

properly fixed on homestead property at the time the homestead property is transferred. Provides that Section 41.001(c) (relating to prohibition of seizure of the homestead claimant's proceeds of a sale of a homestead for a creditor's claim) does not apply to claim of a property owners' association under this section.

SECTION 3. Effective date: January 1, 2012, contingent upon approval by the voters of the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, relating to permitting an encumbrance to be fixed on homestead property for an obligation to pay certain property owners' association fees and fines without permitting the forced sale of the homestead.