

CHAPTER 840

S.B. No. 1232

An Act relating to interests in land exempt from creditors' claims; revising Chapter 41, Property Code, as amended.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 41, Property Code, as amended, is revised to read as follows:

"TITLE 5. EXEMPT PROPERTY AND LIENS

"SUBTITLE A. PROPERTY EXEMPT FROM CREDITORS' CLAIMS

"CHAPTER 41. INTERESTS IN LAND

"SUBCHAPTER A. EXEMPTIONS IN LAND DEFINED

"Section 41.001. INTERESTS IN LAND EXEMPT FROM SEIZURE. (a) 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 properly fixed on homestead property.

"(b) Encumbrances may be properly fixed on homestead property for:

"(1) purchase money;

"(2) taxes on the property; or

"(3) work and material used in constructing improvements on the property if contracted for in writing before the material is furnished or the labor is performed and in a manner required for the conveyance of a homestead, with joinder of both spouses if the homestead claimant is married.

"(c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

"Section 41.002. DEFINITION OF HOMESTEAD. (a) If used for the purposes of an urban home or as a place to exercise a calling or business in the same urban area, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than one acre of land which may be in one or more lots, together with any improvements thereon.

"(b) If used for the purposes of a rural home, the homestead shall consist of:

"(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

"(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

"(c) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

"Section 41.003. TEMPORARY RENTING OF A HOMESTEAD. Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

"Section 41.004. ABANDONMENT OF A HOMESTEAD. If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

"SUBCHAPTER B. DESIGNATION OF A HOMESTEAD IN AID OF ENFORCEMENT OF A JUDGMENT DEBT

"Section 41.021. NOTICE TO DESIGNATE. If an execution is issued against a holder of an interest in land of which a homestead may be a part, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022,

the court will appoint a commissioner to make the designation at the expense of the judgment debtor.

“Section 41.022. DESIGNATION BY HOMESTEAD CLAIMANT. At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

“Section 41.023. DESIGNATION BY COMMISSIONER. (a) If a judgment debtor does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor’s homestead. The court may appoint a surveyor and others as may be necessary to assist the commissioner. The commissioner shall file his designation of the judgment debtor’s homestead in a written report, together with a plat of the area designated, with the justice or clerk of the court not more than 60 days after the order of appointment is signed or within such time as the court may allow.

“(b) Within 10 days after the commissioner’s report is filed, the judgment debtor or the judgment creditor may request a hearing on the issue of whether the report should be confirmed, rejected, or modified as may be deemed appropriate in the particular circumstances of the case. The commissioner’s report may be contradicted by evidence from either party, when exceptions to it or any item thereof have been filed before the hearing, but not otherwise. After the hearing, or if there is no hearing requested, the court shall designate the homestead as deemed appropriate and order sale of the excess.

“(c) The commissioner, a surveyor, and others appointed to assist the commissioner are entitled to such fees and expenses as are deemed reasonable by the court. The court shall tax these fees and expenses against the judgment debtor as part of the costs of execution.

“Section 41.024. SALE OF EXCESS. An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this subchapter may sell the excess of the judgment debtor’s interest in land not included in the homestead.”

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 2, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 15, 1985

Effective: Immediately