

**CHAPTER 727**

H.B. No. 710

AN ACT

relating to the voluntary designation of a homestead.

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

SECTION 1. Subchapter A, Chapter 41, Property Code, is amended by adding Section 41.005 to read as follows:

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*Sec. 41.005. VOLUNTARY DESIGNATION OF HOMESTEAD. (a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.*

*(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead, is part of one or more lots containing a total of more than one acre, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than one acre of the property as the homestead.*

*(c) To designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:*

- (1) a description sufficient to identify the property designated;*
- (2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;*
- (3) the name of the original grantee of the property; and*
- (4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.*

*(d) A person or persons, as applicable, may change the boundaries of a homestead designated under this section by executing and recording an instrument in the manner required for a voluntary designation. A change under this subsection does not impair rights acquired by a party before the change.*

*(e) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.*

*(f) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.*

SECTION 2. Section 41.021, Property Code, is amended to read as follows:

**Sec. 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 *and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005*, 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 3. Section 41.023(a), Property Code, is amended to read as follows:

**(a)** If a judgment debtor *who has not made a voluntary designation of a homestead under Section 41.005* 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.

SECTION 4. Section 41.024, Property Code, is amended to read as follows:

Sec. 41.024. SALE OF EXCESS. An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this *chapter* [~~subchapter~~] may sell the excess of the judgment debtor's interest in land not included in the homestead.

SECTION 5. 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 by the House on April 23, 1987, by the following vote: Yeas 138, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 710 on May 25, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 22, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 30, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.