

PROPERTY CODE

TITLE 5. EXEMPT PROPERTY AND LIENS

SUBTITLE A. PROPERTY EXEMPT FROM CREDITORS' CLAIMS

CHAPTER 41. INTERESTS IN LAND

SUBCHAPTER A. EXEMPTIONS IN LAND DEFINED

Sec. 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;

(3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);

(4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(6) an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or

(7) a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.

(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.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1993, 73rd Leg., ch. 48, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 121, Sec. 1.01, eff. May 17, 1995; Acts

1995, 74th Leg., ch. 121, Sec. 2.01; Acts 1997, 75th Leg., ch. 526, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 516, Sec. 1, eff. Sept. 1, 2001.

Sec. 41.002. DEFINITION OF HOMESTEAD. (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous 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) A homestead is considered to be urban if, at the time the designation is made, the property is:

(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and

(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

- (A) electric;
- (B) natural gas;
- (C) sewer;
- (D) storm sewer; and
- (E) water.

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

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1989, 71st Leg., ch. 391, Sec. 2, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 1510, Sec. 1, eff. Jan. 1, 2000; Acts 1999, 76th Leg., ch. 1510, Sec. 2, eff. Sept. 1, 1999.

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this

section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost to the settlor or beneficiary, other than payment of taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the instrument or court order; or

(iii) until the date the trust is revoked or terminated by an instrument or court order recorded in the real property records of the county in which the property is located and that describes the property with sufficient certainty to identify the property; and

(2) the trustee of which acquires the property in an instrument of title or under a court order that:

(A) describes the property with sufficient certainty to identify the property and the interest acquired; and

(B) is recorded in the real property records of the county in which the property is located.

(b) Property that a settlor or beneficiary occupies and uses in a manner described by this subchapter and in which the settlor or beneficiary owns a beneficial interest through a qualifying trust is considered the homestead of the settlor or beneficiary under Section 50, Article XVI, Texas Constitution, and Section 41.001.

(c) A married person who transfers property to the trustee of a qualifying trust must comply with the requirements relating to the joinder of the person's spouse as provided by Chapter 5, Family

Code.

(d) A trustee may sell, convey, or encumber property transferred as described by Subsection (c) without the joinder of either spouse unless expressly prohibited by the instrument or court order creating the trust.

(e) This section does not affect the rights of a surviving spouse or surviving children under Section 52, Article XVI, Texas Constitution, or Part 3, Chapter VIII, Texas Probate Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 984 (H.B. 3767), Sec. 1, eff. September 1, 2009.

Sec. 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.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 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.

Added by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

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 contiguous lots containing a total of more than 10 acres, 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 10 acres of the property as the homestead.

(c) Except as provided by Subsection (e) or Subchapter B, 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 current record title holder 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 Subsection (c) by executing and recording an instrument in the manner required for a voluntary designation under that subsection. A change under this subsection does not impair rights acquired by a party before the change.

(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.

(f) 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.

(g) 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.

Added by Acts 1987, 70th Leg., ch. 727, Sec. 1, eff. Aug. 31, 1987.

Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 3, eff. Sept. 1, 1993;

Acts 1993, 73rd Leg., ch. 297, Sec. 1, eff. Aug. 1, 1993; Acts 1997,

75th Leg., ch. 846, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th

Leg., ch. 1510, Sec. 3, eff. Jan. 1, 2000.

Sec. 41.0051. DISCLAIMER AND DISCLOSURE REQUIRED. (a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters that makes the following statement or a substantially similar statement:

THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.

(b) A person who solicits solely by mail or by telephone a homeowner to pay a fee for the service of applying for a property tax refund from a tax appraisal district or other governmental body on behalf of the homeowner shall, before accepting money from the homeowner or signing a contract with the homeowner for the person's services, disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund.

(c) A person's failure to provide a disclaimer on an advertisement as required by Subsection (a) or to provide the disclosure required by Subsection (b) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business & Commerce Code, and is subject to action by the

consumer protection division of the attorney general's office as provided by Section 17.46(a), Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 341, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 1191, Sec. 1, 2, eff. Sept. 1, 2003.

Sec. 41.006. CERTAIN SALES OF HOMESTEAD. (a) Except as provided by Subsection (c), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

(b) The taking of any deed in connection with a transaction described by this section is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and the deed is void and no lien attaches to the homestead property as a result of the purported sale.

(c) This section does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.

Added by Acts 1987, 70th Leg., ch. 1130, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.84, eff. Sept. 1, 1999.

Sec. 41.007. HOME IMPROVEMENT CONTRACT. (a) A contract for improvements to an existing residence described by Section 41.001(b)(3) must contain:

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the

owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.

Added by Acts 1987, 70th Leg., ch. 116, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 41.005 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(30), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 4, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 5, eff. September 1, 2007.

Sec. 41.008. CONFLICT WITH FEDERAL LAW. To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount



or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

Added by Acts 1999, 76th Leg., ch. 1510, Sec. 4.

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

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.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 2, eff. Aug. 31, 1987.

Sec. 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.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.023. DESIGNATION BY COMMISSIONER. (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.

(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.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 3, eff. Aug. 31, 1987.

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 may sell the excess of the judgment debtor's interest in land not included in the homestead.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 4, eff. Aug. 31, 1987.