PROPERTY CODE

TITLE 5. EXEMPT PROPERTY AND LIENS

SUBTITLE B. LIENS

CHAPTER 65. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 65.001.  APPLICATION OF CHAPTER.  This chapter applies only to residential property:

(1)  that has residential improvements primarily designed for not more than four families;

(2)  that is not more than 10 acres of land;

(3)  that is owned by more than one person; and

(4)  for which at least one co-owner has received a residence homestead exemption under Section 11.13, Tax Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. [1368](http://capitol.texas.gov/tlodocs/82R/billtext/html/SB01368F.HTM)), Sec. 1, eff. June 17, 2011.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.001(39), eff. September 1, 2013.

Sec. 65.0011.  APPLICATION TO INSTITUTIONS OF HIGHER EDUCATION.   This chapter does not apply to residential property for which an institution of higher education is a co-owner.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.001(39), eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1366 (S.B. [1604](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01604F.HTM)), Sec. 2, eff. June 14, 2013.

Sec. 65.002.  CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER.  A co-owner of residential property may act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by Section 65.004 if:

(1)  the co-owner has occupied the property for more than five years;

(2)  the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;

(3)  for the five years preceding the date the documents required by Section 65.003 are filed, the occupying co-owner has paid all assessed ad valorem taxes without delinquency and without contribution from the other co-owner; and

(4)  the occupying co-owner files the documents required by Section 65.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. [1368](http://capitol.texas.gov/tlodocs/82R/billtext/html/SB01368F.HTM)), Sec. 1, eff. June 17, 2011.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.001(39), eff. September 1, 2013.

Redesignated and amended from Property Code, Section 64.002 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.002(29), eff. September 1, 2013.

Sec. 65.003.  REQUIRED DOCUMENTATION.  The occupying co-owner may establish the authority to act as an agent and attorney-in-fact for another co-owner by filing in the office of the county clerk of the county in which the real property is located:

(1)  an affidavit of the occupying co-owner affirming the facts described by Sections 65.002(1)-(3);

(2)  the affidavits of two additional affiants personally familiar with the co-owner's occupancy of the real property corroborating the occupancy during the preceding five years; and

(3)  a certificate of the tax assessor-collector for the county in which the real property is located affirming that the co-owner has paid all taxes assessed against the real property for the preceding five years without delinquency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. [1368](http://capitol.texas.gov/tlodocs/82R/billtext/html/SB01368F.HTM)), Sec. 1, eff. June 17, 2011.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.001(39), eff. September 1, 2013.

Redesignated and amended from Property Code, Section 64.003 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](http://capitol.texas.gov/tlodocs/83R/billtext/html/SB01093F.HTM)), Sec. 22.002(30), eff. September 1, 2013.

Sec. 65.004.  SCOPE OF AUTHORITY. (a)  The authority of the occupying co-owner to act as an agent and attorney-in-fact is limited to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property.  The occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust.

(b)  A lien that arises under a contract entered into by an occupying co-owner under this section is not subject to repudiation or disaffirmance by another co-owner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. [1368](http://capitol.texas.gov/tlodocs/82R/billtext/html/SB01368F.HTM)), Sec. 1, eff. June 17, 2011.

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