

BILL ANALYSIS

Senate Research Center
76R5229 DWS-F

C.S.S.J.R. 15
By: Harris
State Affairs
2/11/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law provides three ways for the spouse of an incapacitated person to sign transactions for the incapacitated spouse. However, language in transactions involving home equity loans refers only to the required consent of a spouse. This causes lenders to believe that normal consent does not apply to home equity loans. This bill would legitimize the giving of consent by an incapacitated spouse regarding transactions in connection with a homestead.

PURPOSE

As proposed, C.S.S.J.R. 15 requires the submission to the voters of a constitutional amendment to make an incapacitated person's choice to extend credit secured by a homestead bound by laws of the Texas Constitution.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, by adding Subsection (t) to authorize the consent or execution of a lien, contract, or other instrument by the owner of a homestead, or that owner's spouse, if the owner or spouse is considered or presumed incapacitated, and a third party may rely on the consent or execution. Provides that this subsection does not impair the homestead owners' ability to execute a power of attorney in connection with the consent or other instrument relating to the homestead.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters on November 2, 1999. Sets forth the required language for the ballot.

SUMMARY OF COMMITTEE CHANGES

Relating Clause.

Amends the relating clause to clarify that this joint resolution relates to transactions by an incapacitated person in connection with a homestead, rather than transactions in connection with an encumbrance on a homestead by an incapacitated person.

SECTION 1.

Amends Section 50(t), Article XVI, Texas Constitution, to include a lien or other instrument as transactions an incapacitated person would participate in, which require legal consent. Authorizes a third party to rely on the consent or execution of a transaction by an incapacitated person, and adds text establishing that Subsection (t) does not impair the homesteaders' ability to execute a power of attorney as provided by law.

SECTION 2.

Changes the required language for the ballot to be submitted to voters on November 2, 1999.