



THE TEXAS HOUSE OF REPRESENTATIVES

CHAIRMAN Local Government Ways and Means

Transportation

Legislative Budget Board

FRED HILL

RECEIVED

June 9, 2004

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OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General  
c/o Ms. Nancy Fuller, Chair  
Opinions Committee  
Texas Attorney General's Office  
P. O. Box 12448  
Austin, TX 78701

RQ-0236-GA

FILE # ML-43751-04  
I.D. # 43751

Re: Texas Constitution, Article XVI, Section 50 and  
case law *Inwood vs. Harris*, 736, SW2d 632 (Tex.1987)

Dear General Abbott:

I respectfully request an Attorney General's opinion in the above matter and its effect on voters' and homeowners' homestead rights at closing of a real estate transaction.

This issue was brought to my attention by a homeowner's advocate group. Specifically, I am seeking an opinion on a question that involves one-party contracts and their effect on homestead designations at closing. The question is:

*Does the placement of one-party foreclosable contractual liens on the land by the developer supersede the homestead rights created in Article XVI, Section 50 of the Texas Constitution violate the Texas Homestead Act?"*

For your convenience, I have enclosed information that pertains to this issue.

Thank you for your consideration.

Respectfully yours,

Fred Hill

Enclosure



THE TEXAS HOUSE OF REPRESENTATIVES

CHAIRMAN Local Government Ways and Means

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OPINION COMMITTEE

July 19, 2004

Ms. Nancy S. Fuller  
Chair, Opinion Committee  
Office of the Attorney General  
P. O. Box 12548  
Austin, TX 78711-2548

FILE # RQ-0236-GA  
I.D. # 43840

Re: RQ-0236-GA

Dear Ms. Fuller,

I have been advised that the question previously asked in my June 9, 2004, request needs to be reworded for clarity.

The proper question is:

*Whether the placement of one-party foreclosable contractual liens on the land by the developer that supersede the homestead rights created in Article XVI, Section 50 of the Texas Constitution violate the Texas Homestead Act?*

I respectfully request that the above wording be the official question.

Thank you for your assistance in this regard.

Sincerely,

Fred Hill



June 7, 2004

The Honorable Fred Hill  
Chair, Local Government Ways and Means  
Committee  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

Re: Question to Attorney General regarding Article XVI, Section 50 of the Texas Constitution and the case law *Inwood vs. Harris*, 736, SW2d 632 (Tex. 1987) affect on voters' and homeowners' homestead rights at closing

Dear Honorable Hill:

Article XVI, Section 50 of the Texas Constitution has never been amended to allow homeowner association foreclosures on our homestead property; however, because of the case law *Inwood vs. Harris*, 736, SW2d 632 (Tex. 1987) our homestead rights are superseded by the developer's contractual lien created in *Inwood*. However, neither legislators nor the voters of this State have ever amended our Texas Constitution to reflect this homeowner association foreclosure right. This is a contract issue and it needs clarification as all homeowners across this state are subject to homeowner association foreclosure filings that contradict the homestead protection they have under the Homestead Act.

I am the President and Co-founder of the Texas Homeowner's Advocate Group based here in Texas and we represent Texas Homeowners who are concerned about losing their homestead rights at the closing table when we are supposed to have homestead protection under the Homestead Act of the Texas Constitution. We believe this is a contract error due to the fact the "contractual lien" created in case law *Inwood vs. Harris* was based on a one-party contract created by the developer and placed on the land prior to any homeowner's homestead designation at closing.



The reason for the ability to foreclose comes from the timing of when the contracts are placed on the property. The developers of the land have been allowed by this State to place one-party foreclosable contractual liens on the land that create the neighborhood homeowner association as well. It is actually a "proposed" contract. It does not actually become a contract until closing when the homebuyer is "forced" to sign it or they will not get the property they want to buy. (I just recently closed on a house so I know this to be a fact.) Unfortunately for the homebuyer, by the time they arrive at the closing table to designate their homestead exemption to protect their home from foreclosure, it has already been taken away from them by the developer. The developer is a commercial entity and should not have a higher homestead right than the homeowner for which the homestead is supposed to protect since February 15, 1876.

The question that has been raised concerns the placing of these one-party contracts and their affect on our homestead designation at closing. The exact question is:

*"Does the placement of one-party foreclosable contractual liens on the land by the developer that supersede the homestead rights created in Article XVI, Section 50 of the Texas Constitution violate the Texas Homestead Act?"*

As you may already know, Representative Hill, members of this group and other homeowner advocates have testified before various committees time and time again over the years to no avail. Unfortunately, the homeowners in this state are overwhelmed each session by the power and money of the Community Association Institute Attorneys and homeowner association board members. The homeowner's maintenance fees are oftentimes used against them in court.

On behalf of the homeowners across this state, we are asking for your cooperation and support in this endeavor by requesting an opinion of the Attorney General concerning the above mentioned question that concerns the homestead rights of the voters and homeowners in this state. Most homeowners in this state think that they are protected by the Homestead Act and are quite shocked when they find out otherwise.



I had the privilege on or about September 24, 2003, to support a question you asked, Request No. 0104-GA, regarding the Tax Code applicable to homestead exemptions, to which I submitted an amicus curiae.

We are also asking for additional clarification and an answer regarding this horrendous problem we have here in Texas from the Attorney General and under the statutes it is our right to request same.

As a legislative chairperson, you have the ability and power to ask the Attorney General on behalf of this group for the voters and homeowners of this state.

If you need any additional information from me to help you make a decision in this matter, please let me know. Also, if you want to meet with me before you make a decision, please let me know. At any rate, we would appreciate a response to this request by June 15, 2004, as to whether or not you will request the Attorney General's opinion on this requested question regarding this subject matter. Thank you for your assistance on behalf of Texas's voters and homeowners.

Best regards,

*Harvella Jones*

(Mrs) Harvella Jones  
President and Co-founder  
832-723-5651 cell phone

/j