

BILL ANALYSIS

Senate Research Center
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S.B. 1768
By: Harris
Jurisprudence
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 1768 resolves an existing conflict as to when a judgment lien actually attaches against homestead property in Texas. S.B. 1768 clarifies that a judgment lien does not attach and does not constitute a lien against a debtor's exempt real property. The bill also provides that it would only become a lien against the homestead when the property no longer constitutes the debtor's homestead.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.001, Property Code, to provide that, except as provided by Sections 52.0011 (Establishment of a Lien Pending Appeal of Judgment) or 52.0012, rather than Section 52.0011, a first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, if the judgment is not then dormant, constitutes a lien on and attaches to any real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41 (Interests in Land), the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed.

SECTION 2. Amends Subchapter A, Chapter 52, Property Code, by adding Section 52.0012, as follows:

Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY. (a) Defines "homestead," "judgment debtor," and "judgment creditor."

(b) Authorizes a judgment debtor, at any time, to file an affidavit in the real property records of the county in which the judgment debtor's homestead is located that substantially complies with Subsection (f).

(c) Provides that, subject to Subsection (d) and except as provided by Subsection (e), an affidavit filed under Subsection (b) serves as a release of record of a judgment lien established under this chapter.

(d) Authorizes a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value to rely conclusively on an affidavit filed under Subsection (b) if certain evidence is included with the affidavit.

(e) Provides that an affidavit filed under Subsection (b) does not serve as release of record of a judgment lien established under this chapter with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor after the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that the affidavit filed by the judgment debtor under Subsection (b) is untrue or another reason exists as to why the judgment lien attaches to the judgment debtor's property.

(f) Sets forth requirements for creating a form for an affidavit filed under Subsection (b).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.