

By: Harris

S.B. No. 1768

A BILL TO BE ENTITLED

AN ACT

relating to the attachment of a judgment lien to homestead property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 52.001, Property Code, is amended to read as follows:

Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by Sections [Section] 52.0011 or 52.0012, 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 [the] real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41, the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

SECTION 2. Subchapter A, Chapter 52, Property Code, is amended by adding Section 52.0012 to read as follows:

Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY. (a) In this section:

(1) "Homestead" has the meaning assigned by Section 41.002.

(2) "Judgment debtor" and "judgment creditor" have the meanings assigned by Section 31.008(h), Civil Practice and Remedies Code.

1       (b) A judgment debtor may, at any time, file an affidavit in  
2 the real property records of the county in which the judgment  
3 debtor's homestead is located that substantially complies with  
4 Subsection (f).

5       (c) Subject to Subsection (d) and except as provided by  
6 Subsection (e), an affidavit filed under Subsection (b) serves as a  
7 release of record of a judgment lien established under this  
8 chapter.

9       (d) A bona fide purchaser or a mortgagee for value or a  
10 successor or assign of a bona fide purchaser or mortgagee for value  
11 may rely conclusively on an affidavit filed under Subsection (b) if  
12 included with the affidavit is evidence that:

13           (1) the judgment debtor sent a letter and a copy of the  
14 affidavit, without attachments and before execution of the  
15 affidavit, notifying the judgment creditor of the affidavit and the  
16 judgment creditor's intent to file the affidavit; and

17           (2) the letter and the affidavit were sent by  
18 registered or certified mail, return receipt requested, 16 or more  
19 days before the affidavit was filed to:

20                   (A) the judgment creditor's last known address;

21                   (B) the address appearing in the judgment  
22 creditor's pleadings in the action in which the judgment was  
23 rendered or another court record, if that address is different from  
24 the judgment creditor's last known address;

25                   (C) the address of the judgment creditor's last  
26 known attorney as shown in those pleadings or another court record;

27 and

1           (D) the address of the judgment creditor's last  
2 known attorney as shown in the records of the State Bar of Texas, if  
3 that address is different from the address of the attorney as shown  
4 in those pleadings or another court record.

5           (e) An affidavit filed under Subsection (b) does not serve  
6 as release of record of a judgment lien established under this  
7 chapter with respect to a purchaser or mortgagee of real property  
8 that acquires the purchaser's or mortgagee's interest from the  
9 judgment debtor after the judgment creditor files a contradicting  
10 affidavit in the real property records of the county in which the  
11 real property is located asserting that:

12           (1) the affidavit filed by the judgment debtor under  
13 Subsection (b) is untrue; or

14           (2) another reason exists as to why the judgment lien  
15 attaches to the judgment debtor's property.

16           (f) An affidavit filed under Subsection (b) must be in  
17 substantially the following form:

18           HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

19           Before me, the undersigned authority, on this day personally  
20 appeared \_\_\_\_\_ ("Affiant(s)) (insert name of one or more  
21 affiants) who, being first duly sworn, upon oath states:

22           (1) My/our name is/are \_\_\_\_\_ (insert name of  
23 Affiant(s)). I/we own the following described land ("Land"):

24           (describe the property claimed as homestead)

25           (2) This affidavit is made for the purpose of  
26 effecting a release of that judgment lien recorded in \_\_\_\_\_  
27 (refer to recording information of judgment lien) ("Judgment Lien")

1 as to the Land.

2 (3) The Land includes as its purpose use for a home for  
3 Affiant(s) and is the homestead of Affiant(s), as homestead is  
4 defined in Section 41.002, Property Code. The Land does not exceed:

5 (A) 10 acres of land, if used for the purposes of  
6 an urban home or as both an urban home and a place to exercise a  
7 calling or business; or

8 (B) 200 acres for a family or 100 acres for a  
9 single, adult person not otherwise entitled to a homestead, if used  
10 for the purposes of a rural home.

11 (4) Attached to this affidavit is evidence that:

12 (A) Affiant(s) sent a letter and a copy of this  
13 affidavit, without attachments and before execution of the  
14 affidavit, notifying the judgment creditor in the Judgment Lien of  
15 this affidavit and the Affiant(s)' intent to file for record this  
16 affidavit; and

17 (B) the letter and this affidavit were sent by  
18 registered or certified mail, return receipt requested, 16 or more  
19 days before this affidavit was filed to:

20 (i) the judgment creditor's last known  
21 address;

22 (ii) the address appearing in the judgment  
23 creditor's pleadings in the action in which the judgment was  
24 rendered or another court record, if that address is different from  
25 the judgment creditor's last known address;

26 (iii) the address of the judgment  
27 creditor's last known attorney as shown in those pleadings or

1 another court record; and

2 (iv) the address of the judgment creditor's  
3 last known attorney as shown in the records of the State Bar of  
4 Texas, if that address is different from the address of the attorney  
5 as shown in those pleadings or another court record.

6 (5) This affidavit serves as a release of the Judgment  
7 Lien as to the Land in accordance with Section 52.0012, Property  
8 Code.

9 Signed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

10 \_\_\_\_\_  
11 \_\_\_\_\_

12 (Signature of Affiant(s))

13 State of \_\_\_\_\_

14 County of \_\_\_\_\_

15 SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of  
16 \_\_\_\_\_, 20\_\_\_\_.

17 My commission expires:

18 \_\_\_\_\_

19 \_\_\_\_\_

20 Notary Public, State of Texas

21 Notary's printed name:

22 \_\_\_\_\_

23 SECTION 3. The change in law made by this Act applies only  
24 to an abstract of judgment lien recorded and indexed on or after the  
25 effective date of this Act. An abstract of judgment lien that is  
26 recorded and indexed before the effective date of this Act is  
27 governed by the law in effect immediately before that date, and that

1 law is continued in effect for that purpose.

2 SECTION 4. This Act takes effect September 1, 2005.