

By: Hartnett

H.B. No. 3197

A BILL TO BE ENTITLED

AN ACT

relating to expunction of a notice of lis pendens.

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

SECTION 1. Chapter 12, Property Code, is amended by adding Section 12.0071 to read as follows:

Sec. 12.0071. MOTION TO EXPUNGE. (a) Except as provided by this subsection, a court in which a proceeding is pending under Section 12.007 shall, on the motion of a party to the proceeding supported by an affidavit, order that the lis pendens for which a notice of lis pendens has been recorded under Section 12.007 be expunged. A court may not order a lis pendens expunged under this subsection if the party that filed the notice proves to the court by a preponderance of the evidence that:

(1) the proceeding affects:

(A) title to real property;

(B) the establishment of an interest in real property; or

(C) the enforcement of an encumbrance against real property described in the notice; and

(2) the person filing the notice commenced or prosecuted the proceeding for a proper purpose and in good faith.

(b) Notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.

1 (c) The court shall rule on the motion for expunction based
2 on the affidavits and counteraffidavits on file and on any other
3 proof the court allows.

4 (d) After a certified copy of an order expunging a notice of
5 lis pendens has been recorded, the notice of lis pendens and any
6 information derived from the notice does not:

7 (1) constitute constructive or actual notice of any
8 matter contained in the notice or of any matter relating to the
9 proceeding; or

10 (2) create any duty of inquiry in a person with respect
11 to the property described in the notice.

12 (e) The court in its discretion may require that the party
13 prevailing in the expunction hearing submit an undertaking to the
14 court in an amount determined by the court.

15 SECTION 2. The change in law made by this Act applies only
16 to a lis pendens filed on or after the effective date of this Act. A
17 lis pendens filed before the effective date of this Act is governed
18 by the law in effect immediately before that date, and that law is
19 continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2007.