

1-1 By: Hartnett, Branch (Senate Sponsor - Wentworth) H.B. No. 3197
1-2 (In the Senate - Received from the House May 11, 2007;
1-3 May 15, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 19, 2007, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to expunction of a notice of lis pendens.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 12.007, Property Code, is amended by
1-11 adding Subsection (d) to read as follows:

1-12 (d) Not later than the seventh day after the date a person
1-13 files a notice for record under this section, the person must serve
1-14 a copy of the notice on each party to the action who has an interest
1-15 in the real property affected by the notice.

1-16 SECTION 2. Chapter 12, Property Code, is amended by adding
1-17 Section 12.0071 to read as follows:

1-18 Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) A party to
1-19 an action in connection with which a notice of lis pendens has been
1-20 filed may:

1-21 (1) apply to the court to expunge the notice; and
1-22 (2) file evidence, including declarations, with the
1-23 motion to expunge the notice.

1-24 (b) The court may:

1-25 (1) permit evidence on the motion to be received in the
1-26 form of oral testimony; and

1-27 (2) make any orders the court considers just to
1-28 provide for discovery by a party affected by the motion.

1-29 (c) The court shall order the notice of lis pendens expunged
1-30 if the court determines that:

1-31 (1) the pleading on which the notice is based does not
1-32 contain a real property claim;

1-33 (2) the claimant fails to establish by a preponderance
1-34 of the evidence the probable validity of the real property claim; or

1-35 (3) the person who filed the notice for record did not
1-36 serve a copy of the notice on each party entitled to a copy under
1-37 Section 12.007(d).

1-38 (d) Notice of a motion to expunge under Subsection (a) must
1-39 be served on each affected party on or before the 20th day before
1-40 the date of the hearing on the motion.

1-41 (e) The court shall rule on the motion for expunction based
1-42 on the affidavits and counteraffidavits on file and on any other
1-43 proof the court allows.

1-44 (f) After a certified copy of an order expunging a notice of
1-45 lis pendens has been recorded, the notice of lis pendens and any
1-46 information derived from the notice does not:

1-47 (1) constitute constructive or actual notice of any
1-48 matter contained in the notice or of any matter relating to the
1-49 proceeding; or

1-50 (2) create any duty of inquiry in a person with respect
1-51 to the property described in the notice.

1-52 (g) The court in its discretion may require that the party
1-53 prevailing in the expunction hearing submit an undertaking to the
1-54 court in an amount determined by the court.

1-55 SECTION 3. The change in law made by this Act applies only
1-56 to a lis pendens filed on or after the effective date of this Act. A
1-57 lis pendens filed before the effective date of this Act is governed
1-58 by the law in effect immediately before that date, and that law is
1-59 continued in effect for that purpose.

1-60 SECTION 4. This Act takes effect September 1, 2007.

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