

BILL ANALYSIS

H.B. 396
By: Hartnett
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A lis pendens serves as notice of a pending real estate lawsuit involving an action of eminent domain, a claim of title, the establishment of an interest in real property, or the enforcement of an encumbrance against real property. Recording a lis pendens with the county clerk alerts a potential purchaser or lender that the property or its title is contested in some way. After the notice is recorded, anyone who nevertheless purchases the property described in the notice takes the property subject to the ultimate decision of the lawsuit.

A judge may cancel a lis pendens if the judge determines that the party seeking relief can be adequately protected by a deposit of money into the court, a guarantee of a payment of a judgment, or on condition of some remedial measure being offered to the aggrieved party.

H.B. 396 sets out provisions relating to a motion to expunge a lis pendens.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 396 amends the Property Code to require a person who files a notice for record of lis pendens to serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice not later than the seventh day after the filing. The bill authorizes a party to an action in connection with which a notice of lis pendens has been filed to apply to the court to expunge the notice and to file evidence, including declarations, with the motion to expunge the notice. The bill authorizes the court to permit evidence on the motion to be received in the form of oral testimony and to make any order the court considers just to provide for discovery by a party affected by the motion. The bill requires a court to order the notice of lis pendens expunged if the court determines that the pleading on which the notice is based does not contain a real property claim, that the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim, or that the person who filed the notice for record did not serve a copy of the notice on each affected party entitled to a copy on or before the 20th day before the date of the hearing on the motion.

H.B. 396 requires the court to rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows. The bill provides that after a certified copy of an order expunging a notice of lis pendens has been recorded, the notice and any information derived from the notice does not constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the proceeding, nor does it create any duty of inquiry in a person with respect to the property described in the notice. The bill authorizes a court to require the party prevailing in the expunction hearing to submit an undertaking to the court in an amount determined by the court.

EFFECTIVE DATE

September 1, 2009.