

By: Hartnett

H.B. No. 396

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. Section 12.007, Property Code, is amended by adding Subsection (d) to read as follows:

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

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

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

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

(b) The court may:

(1) permit evidence on the motion to be received in the form of oral testimony; and
(2) make any orders the court considers just to provide for discovery by a party affected by the motion.

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

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

3 (2) the claimant fails to establish by a preponderance
4 of the evidence the probable validity of the real property claim; or

5 (3) the person who filed the notice for record did not
6 serve a copy of the notice on each party entitled to a copy under
7 Section 12.007(d).

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

11 (e) The court shall rule on the motion for expunction based
12 on the affidavits and counteraffidavits on file and on any other
13 proof the court allows.

14 (f) After a certified copy of an order expunging a notice of
15 lis pendens has been recorded, the notice of lis pendens and any
16 information derived from the notice:

17 (1) does not:

18 (A) constitute constructive or actual notice of
19 any matter contained in the notice or of any matter relating to the
20 proceeding;

21 (B) create any duty of inquiry in a person with
22 respect to the property described in the notice; or

23 (C) affect the validity of a conveyance to a
24 purchaser for value or of a mortgage to a lender for value; and

25 (2) is not enforceable against a purchaser or lender
26 described by Subdivision (1)(C), regardless of whether the
27 purchaser or lender knew of the lis pendens action.

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

4 SECTION 3. The change in law made by this Act applies only
5 to a lis pendens filed on or after the effective date of this Act. A
6 lis pendens filed before the effective date of this Act is governed
7 by the law in effect immediately before that date, and that law is
8 continued in effect for that purpose.

9 SECTION 4. This Act takes effect September 1, 2009.