

1-1 By: Hartnett (Senate Sponsor - Carona) H.B. No. 396  
1-2 (In the Senate - Received from the House April 14, 2009;  
1-3 April 27, 2009, read first time and referred to Committee on  
1-4 Jurisprudence; May 7, 2009, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 7, 2009, 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 third 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:

1-47 (1) does not:

1-48 (A) constitute constructive or actual notice of  
1-49 any matter contained in the notice or of any matter relating to the  
1-50 proceeding;

1-51 (B) create any duty of inquiry in a person with  
1-52 respect to the property described in the notice; or

1-53 (C) affect the validity of a conveyance to a  
1-54 purchaser for value or of a mortgage to a lender for value; and

1-55 (2) is not enforceable against a purchaser or lender  
1-56 described by Subdivision (1)(C), regardless of whether the  
1-57 purchaser or lender knew of the lis pendens action.

1-58 (g) The court in its discretion may require that the party  
1-59 prevailing in the expunction hearing submit an undertaking to the  
1-60 court in an amount determined by the court.

1-61 SECTION 3. The change in law made by this Act applies only  
1-62 to a lis pendens filed on or after the effective date of this Act. A  
1-63 lis pendens filed before the effective date of this Act is governed  
1-64 by the law in effect immediately before that date, and that law is

2-1 continued in effect for that purpose.

2-2 SECTION 4. This Act takes effect September 1, 2009.

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