

By: Shine

H.B. No. 3115

A BILL TO BE ENTITLED

AN ACT

relating to the release of a judgment lien on homestead property.

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

SECTION 1. Section 52.0012, Property Code, is amended by amending Subsections (b), (d), (e), and (f) and adding Subsections (b-1) and (g) to read as follows:

(b) A judgment debtor may~~[, at any time,]~~ file ~~[an affidavit]~~ in the real property records of the county in which the judgment debtor's homestead is located:

(1) an affidavit that substantially complies with Subsection (f); and

(2) a certificate of mailing that substantially complies with Subsection (g).

(b-1) A judgment debtor who files an affidavit under Subsection (b) shall send a letter notifying the judgment creditor of the filing of the affidavit and a copy of the filed affidavit by registered or certified mail, return receipt requested, to:

(1) the judgment creditor's last known address;

(2) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(3) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

1           (4) the address of the judgment creditor's last known  
2 attorney as shown in the records of the State Bar of Texas, if that  
3 address is different from the address of the attorney as shown in  
4 those pleadings or another court record.

5           (d) If a judgment debtor has filed a certificate of mailing  
6 under Subsection (b) and a contradicting affidavit is not filed  
7 under Subsection (e), a [A] bona fide purchaser or a mortgagee for  
8 value or a successor or assign of a bona fide purchaser or mortgagee  
9 for value may rely conclusively on an affidavit filed under  
10 Subsection (b) for the 90-day period that begins on the 31st day  
11 after the date the certificate of mailing was filed [~~if included~~  
12 ~~with the affidavit is evidence that:~~

13           ~~[(1) the judgment debtor sent a letter and a copy of~~  
14 ~~the affidavit, without attachments and before execution of the~~  
15 ~~affidavit, notifying the judgment creditor of the affidavit and the~~  
16 ~~judgment debtor's intent to file the affidavit, and~~

17           ~~[(2) the letter and the affidavit were sent by~~  
18 ~~registered or certified mail, return receipt requested, 30 or more~~  
19 ~~days before the affidavit was filed to:~~

20                   ~~[(A) the judgment creditor's last known address,~~

21                   ~~[(B) the address appearing in the judgment~~  
22 ~~creditor's pleadings in the action in which the judgment was~~  
23 ~~rendered or another court record, if that address is different from~~  
24 ~~the judgment creditor's last known address,~~

25                   ~~[(C) the address of the judgment creditor's last~~  
26 ~~known attorney as shown in those pleadings or another court record,~~  
27 and

1                    [~~(D) the address of the judgment creditor's last~~  
2 ~~known attorney as shown in the records of the State Bar of Texas, if~~  
3 ~~that address is different from the address of the attorney as shown~~  
4 ~~in those pleadings or another court record]~~.

5            (e) An affidavit filed under Subsection (b) does not serve  
6 as release of record of a judgment lien established under this  
7 chapter with respect to a purchaser or mortgagee of real property  
8 that acquires the purchaser's or mortgagee's interest from the  
9 judgment debtor if, not later than the 30th day after the date a  
10 certificate of mailing was filed under Subsection (b), [~~after~~] the  
11 judgment creditor files a contradicting affidavit in the real  
12 property records of the county in which the real property is located  
13 asserting that:

14            (1) the affidavit or certificate of mailing filed by  
15 the judgment debtor under Subsection (b) is untrue; or

16            (2) another reason exists as to why the judgment lien  
17 attaches to the judgment debtor's property.

18            (f) An affidavit filed under Subsection (b) must be in  
19 substantially the following form:

20                    HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

21            Before me, the undersigned authority, on this day personally  
22 appeared \_\_\_\_\_ ("Affiant(s)") (insert name of one or more  
23 affiants) who, being first duly sworn, upon oath states:

24            (1) My/our name is/are \_\_\_\_\_ (insert name of  
25 Affiant(s)). I/we own the following described land ("Land"):

26                    (describe the property claimed as homestead)

27            (2) This affidavit is made for the purpose of

1 effecting a release of that judgment lien recorded in \_\_\_\_\_  
2 (refer to recording information of judgment lien) ("Judgment Lien")  
3 as to the Land.

4 (3) The Land includes as its purpose use for a home for  
5 Affiant(s) and is the homestead of Affiant(s), as homestead is  
6 defined in Section 41.002, Property Code. The Land does not  
7 exceed:

8 (A) 10 acres of land, if used for the purposes of  
9 an urban home or as both an urban home and a place to exercise a  
10 calling or business; or

11 (B) 200 acres for a family or 100 acres for a  
12 single, adult person not otherwise entitled to a homestead, if used  
13 for the purposes of a rural home.

14 (4) ~~[Attached to this affidavit is evidence that:~~

15 ~~[(A) Affiant(s) sent a letter and a copy of this~~  
16 ~~affidavit, without attachments and before execution of the~~  
17 ~~affidavit, notifying the judgment creditor in the Judgment Lien of~~  
18 ~~this affidavit and the Affiant(s)' intent to file for record this~~  
19 ~~affidavit, and~~

20 ~~[(B) the letter and this affidavit were sent by~~  
21 ~~registered or certified mail, return receipt requested, 30 or more~~  
22 ~~days before this affidavit was filed to:~~

23 ~~[(i) the judgment creditor's last known~~  
24 ~~address,~~

25 ~~[(ii) the address appearing in the judgment~~  
26 ~~creditor's pleadings in the action in which the judgment was~~  
27 ~~rendered or another court record, if that address is different from~~

1 ~~the judgment creditor's last known address,~~

2 ~~[(iii) the address of the judgment~~  
3 ~~creditor's last known attorney as shown in those pleadings or~~  
4 ~~another court record, and~~

5 ~~[(iv) the address of the judgment~~  
6 ~~creditor's last known attorney as shown in the records of the State~~  
7 ~~Bar of Texas, if that address is different from the address of the~~  
8 ~~attorney as shown in those pleadings or another court record.~~

9 [(5)] This affidavit serves as a release of the  
10 Judgment Lien as to the Land in accordance with Section 52.0012,  
11 Property Code.

12 Signed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

13 \_\_\_\_\_

14 \_\_\_\_\_

15 (Signature of Affiant(s))

16 State of \_\_\_\_\_

17 County of \_\_\_\_\_

18 SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of  
19 \_\_\_\_\_, 20\_\_.

20 My commission expires:

21 \_\_\_\_\_

22 \_\_\_\_\_

23 Notary Public, State of Texas

24 Notary's printed name:

25 \_\_\_\_\_

26 (g) A certificate of mailing filed under Subsection (b) must  
27 be in substantially the following form:

CERTIFICATE OF MAILING

OF HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally  
appeared \_\_\_\_\_ ("Affiant(s)) (insert name(s) of Affiant(s))  
who, being first duly sworn, upon oath state(s):

(1) My name is/Our names are \_\_\_\_\_ (insert  
name(s) of Affiant(s)).

(2) On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Affiant(s)  
caused a Homestead Affidavit as Release of Judgment Lien to be  
recorded in \_\_\_\_\_ (refer to affidavit recording information)  
("Affidavit").

(3) On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Affiant(s)  
sent a letter and a copy of the Affidavit, notifying the judgment  
creditor of the Affiant's homestead claim and the filing of the  
Affidavit, by registered or certified mail, return receipt  
requested, to:

(A) the judgment creditor's last known address;

(B) the address appearing in the judgment  
creditor's pleadings in the action in which the judgment was  
rendered or another court record, if that address is different from  
the judgment creditor's last known address;

(C) the address of the judgment creditor's last  
known attorney as shown in those pleadings or another court record;  
and

(D) the address of the judgment creditor's last  
known attorney as shown in the records of the State Bar of Texas, if  
that address is different from the address of the attorney as shown

1 in those pleadings or another court record.

2 (4) Attached to this certificate are:

3 (A) a true and correct copy of the letter  
4 described by Subdivision (3) of this certificate; and

5 (B) proof of mailing of the letter described by  
6 Subdivision (3) of this certificate.

7 Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

8 \_\_\_\_\_

9 \_\_\_\_\_

10 (Signature of Affiant(s))

11 State of \_\_\_\_\_

12 County of \_\_\_\_\_

13 SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of  
14 \_\_\_\_\_, 20\_\_\_\_\_.

15 My commission expires:

16 \_\_\_\_\_

17 \_\_\_\_\_

18 Notary Public, State of Texas

19 Notary's printed name:

20 \_\_\_\_\_

21 SECTION 2. Section 157.3171(c), Family Code, is amended to  
22 read as follows:

23 (c) For purposes of Section 52.0012(d) [~~52.0012(d)(2)~~],  
24 Property Code, and the requirements of the certificate of mailing  
25 prescribed [~~associated text in the affidavit required~~] by Section  
26 52.0012(g) [~~52.0012(f)~~], Property Code, the obligor is required  
27 only to send the letter and affidavit described in Section

1 52.0012(g) [~~these provisions~~] to the claimant under the child  
2 support lien at the claimant's last known address.

3 SECTION 3. The change in law made by this Act applies only  
4 to an affidavit filed under Section 52.0012(b), Property Code, as  
5 amended by this Act, on or after the effective date of this Act. An  
6 affidavit filed under Section 52.0012(b), Property Code, as amended  
7 by this Act, before the effective date of this Act is governed by  
8 the law in effect immediately before that date, and that law is  
9 continued in effect for that purpose.

10 SECTION 4. This Act takes effect September 1, 2021.