

By: Shine

H.B. No. 3115

Substitute the following for H.B. No. 3115:

By: Patterson

C.S.H.B. No. 3115

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

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

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

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

23 (3) the address of the judgment creditor's last known
24 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), a [A] bona fide purchaser or a mortgagee for
7 value or a successor or assign of a bona fide purchaser or mortgagee
8 for value may rely conclusively on an affidavit filed under
9 Subsection (b) for the 90-day period that begins on the date the
10 certificate of mailing was filed [~~if included with the affidavit is~~
11 ~~evidence that:~~

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

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

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

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

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

27 ~~[(D) the address of the judgment creditor's last~~

1 ~~known attorney as shown in the records of the State Bar of Texas, if~~
2 ~~that address is different from the address of the attorney as shown~~
3 ~~in those pleadings or another court record].~~

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

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

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

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

19 HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

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

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

25 (describe the property claimed as homestead)

26 (2) This affidavit is made for the purpose of
27 effecting a release of that judgment lien recorded in _____

1 (refer to recording information of judgment lien) ("Judgment Lien")
2 as to the Land.

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

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

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

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

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

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

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

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

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

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

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

11 Signed on this _____ day of _____, _____.

12 _____

13 _____

14 (Signature of Affiant(s))

15 State of _____

16 County of _____

17 SWORN TO AND SUBSCRIBED before me on the _____ day of
18 _____, 20__.

19 My commission expires:

20 _____

21 _____

22 Notary Public, State of Texas

23 Notary's printed name:

24 _____

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

27 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
in those pleadings or another court record.

(4) Attached to this certificate are:

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

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

Signed on the _____ day of _____, 20_____.

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20_____.

My commission expires:

Notary Public, State of Texas

Notary's printed name:

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

(c) For purposes of Section 52.0012(d) [~~52.0012(d)(2)~~], Property Code, and the requirements of the certificate of mailing prescribed [~~associated text in the affidavit required~~] by Section 52.0012(g) [~~52.0012(f)~~], Property Code, the obligor is required only to send the letter and affidavit described in Section 52.0012(g) [~~those provisions~~] to the claimant under the child

1 support lien at the claimant's last known address.

2 SECTION 3. The change in law made by this Act applies only
3 to an abstract of judgment lien recorded and indexed on or after the
4 effective date of this Act. An abstract of judgment lien that is
5 recorded and indexed before the effective date of this Act is
6 governed by the law in effect immediately before that date, and that
7 law is continued in effect for that purpose.

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