

By: Shine

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 Subsection
6 (g) to read as follows:

7 (b) A judgment debtor may, at any time, file ~~[an affidavit]~~
8 in the real property records of the county in which the judgment
9 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 (d) A bona fide purchaser or a mortgagee for value or a
15 successor or assign of a bona fide purchaser or mortgagee for value
16 may not rely conclusively on an affidavit filed under Subsection
17 (b) unless:

18 (1) the judgment debtor has filed a certificate of
19 mailing under Subsection (b); and

20 (2) at least 21 days have elapsed from the date of the
21 filing of the certificate of mailing ~~[if included with the~~
22 ~~affidavit is evidence that:~~

23 ~~[(1) the judgment debtor sent a letter and a copy of~~
24 ~~the affidavit, without attachments and before execution of the~~

1 ~~affidavit, notifying the judgment creditor of the affidavit and the~~
2 ~~judgment debtor's intent to file the affidavit; and~~

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

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

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

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

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

18 (e) An affidavit filed under Subsection (b) does not serve
19 as release of record of a judgment lien established under this
20 chapter with respect to a purchaser or mortgagee of real property
21 that acquires the purchaser's or mortgagee's interest from the
22 judgment debtor after the judgment creditor files a contradicting
23 affidavit in the real property records of the county in which the
24 real property is located asserting that:

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

27 (2) another reason exists as to why the judgment lien

1 attaches to the judgment debtor's property.

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

4 HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

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

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

10 (describe the property claimed as homestead)

11 (2) This affidavit is made for the purpose of
12 effecting a release of that judgment lien recorded in _____
13 (refer to recording information of judgment lien) ("Judgment Lien")
14 as to the Land.

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

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

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

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

26 ~~[(A) Affiant(s) sent a letter and a copy of this~~
27 ~~affidavit, without attachments and before execution of the~~

1 ~~affidavit, notifying the judgment creditor in the Judgment Lien of~~
2 ~~this affidavit and the Affiant(s)' intent to file for record this~~
3 ~~affidavit, and~~

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

7 ~~[(i) the judgment creditor's last known~~
8 ~~address;~~

9 ~~[(ii) the address appearing in the judgment~~
10 ~~creditor's pleadings in the action in which the judgment was~~
11 ~~rendered or another court record, if that address is different from~~
12 ~~the judgment creditor's last known address;~~

13 ~~[(iii) the address of the judgment~~
14 ~~creditor's last known attorney as shown in those pleadings or~~
15 ~~another court record; and~~

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

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

23 Signed on this _____ day of _____, _____.

24 _____
25 _____

26 (Signature of Affiant(s))

27 State of _____

1 County of _____

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

4 My commission expires:
5 _____

6 _____
7 Notary Public, State of Texas
8 Notary's printed name:
9 _____

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

12 CERTIFICATE OF MAILING

13 OF HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

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

17 (1) My name is/Our names are _____ (insert
18 name(s) of Affiant(s)).

19 (2) On the ____ day of _____, 20__, Affiant(s)
20 caused a Homestead Affidavit as Release of Judgment Lien to be
21 recorded in _____ (refer to affidavit recording information)
22 ("Affidavit").

23 (3) On the ____ day of _____, 20__, Affiant(s)
24 sent a letter and a copy of the Affidavit, notifying the judgment
25 creditor of the Affiant's homestead claim and the filing of the
26 Affidavit, by registered or certified mail, return receipt
27 requested, to:

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

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

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

9 (D) the address of the judgment creditor's last
10 known attorney as shown in the records of the State Bar of Texas, if
11 that address is different from the address of the attorney as shown
12 in those pleadings or another court record.

13 (4) Attached to this certificate are:

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

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

18 Signed on the _____ day of _____, 20 _____.

19 _____
20 _____

21 (Signature of Affiant(s))

22 State of _____

23 County of _____

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

26 My commission expires:

27 _____

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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 support lien at the claimant's last known address.

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

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