

1-1 By: Shine (Senate Sponsor - Buckingham) H.B. No. 3115
 1-2 (In the Senate - Received from the House May 12, 2021;
 1-3 May 13, 2021, read first time and referred to Committee on Business
 1-4 & Commerce; May 20, 2021, reported favorably by the following vote:
 1-5 Yeas 9, Nays 0; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the release of a judgment lien on homestead property.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Section 52.0012, Property Code, is amended by
 1-22 amending Subsections (b), (d), (e), and (f) and adding Subsections
 1-23 (b-1) and (g) to read as follows:
 1-24 (b) A judgment debtor may~~[, at any time,]~~ file ~~[an~~
 1-25 ~~affidavit]~~ in the real property records of the county in which the
 1-26 judgment debtor's homestead is located:
 1-27 (1) an affidavit that substantially complies with
 1-28 Subsection (f); and
 1-29 (2) a certificate of mailing that substantially
 1-30 complies with Subsection (g).
 1-31 (b-1) A judgment debtor who files an affidavit under
 1-32 Subsection (b) shall send a letter notifying the judgment creditor
 1-33 of the filing of the affidavit and a copy of the filed affidavit by
 1-34 registered or certified mail, return receipt requested, to:
 1-35 (1) the judgment creditor's last known address;
 1-36 (2) the address appearing in the judgment creditor's
 1-37 pleadings in the action in which the judgment was rendered or
 1-38 another court record, if that address is different from the
 1-39 judgment creditor's last known address;
 1-40 (3) the address of the judgment creditor's last known
 1-41 attorney as shown in those pleadings or another court record; and
 1-42 (4) the address of the judgment creditor's last known
 1-43 attorney as shown in the records of the State Bar of Texas, if that
 1-44 address is different from the address of the attorney as shown in
 1-45 those pleadings or another court record.
 1-46 (d) If a judgment debtor has filed a certificate of mailing
 1-47 under Subsection (b) and a contradicting affidavit is not filed
 1-48 under Subsection (e), a [A] bona fide purchaser or a mortgagee for
 1-49 value or a successor or assign of a bona fide purchaser or mortgagee
 1-50 for value may rely conclusively on an affidavit filed under
 1-51 Subsection (b) for the 90-day period that begins on the 31st day
 1-52 after the date the certificate of mailing was filed [if included
 1-53 with the affidavit is evidence that:
 1-54 [(1) the judgment debtor sent a letter and a copy of
 1-55 the affidavit, without attachments and before execution of the
 1-56 affidavit, notifying the judgment creditor of the affidavit and the
 1-57 judgment debtor's intent to file the affidavit; and
 1-58 [(2) the letter and the affidavit were sent by
 1-59 registered or certified mail, return receipt requested, 30 or more
 1-60 days before the affidavit was filed to:
 1-61 [(A) the judgment creditor's last known address;

2-1 ~~[(B) the address appearing in the judgment~~
2-2 ~~creditor's pleadings in the action in which the judgment was~~
2-3 ~~rendered or another court record, if that address is different from~~
2-4 ~~the judgment creditor's last known address;~~

2-5 ~~[(C) the address of the judgment creditor's last~~
2-6 ~~known attorney as shown in those pleadings or another court record;~~
2-7 ~~and~~

2-8 ~~[(D) the address of the judgment creditor's last~~
2-9 ~~known attorney as shown in the records of the State Bar of Texas, if~~
2-10 ~~that address is different from the address of the attorney as shown~~
2-11 ~~in those pleadings or another court record].~~

2-12 (e) An affidavit filed under Subsection (b) does not serve
2-13 as release of record of a judgment lien established under this
2-14 chapter with respect to a purchaser or mortgagee of real property
2-15 that acquires the purchaser's or mortgagee's interest from the
2-16 judgment debtor if, not later than the 30th day after the date a
2-17 certificate of mailing was filed under Subsection (b), [after] the
2-18 judgment creditor files a contradicting affidavit in the real
2-19 property records of the county in which the real property is located
2-20 asserting that:

2-21 (1) the affidavit or certificate of mailing filed by
2-22 the judgment debtor under Subsection (b) is untrue; or

2-23 (2) another reason exists as to why the judgment lien
2-24 attaches to the judgment debtor's property.

2-25 (f) An affidavit filed under Subsection (b) must be in
2-26 substantially the following form:

2-27 HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

2-28 Before me, the undersigned authority, on this day personally
2-29 appeared _____ ("Affiant(s)") (insert name of one or more
2-30 affiants) who, being first duly sworn, upon oath states:

2-31 (1) My/our name is/are _____ (insert name of
2-32 Affiant(s)). I/we own the following described land ("Land"):

2-33 (describe the property claimed as homestead)

2-34 (2) This affidavit is made for the purpose of
2-35 effecting a release of that judgment lien recorded in _____
2-36 (refer to recording information of judgment lien) ("Judgment Lien")
2-37 as to the Land.

2-38 (3) The Land includes as its purpose use for a home for
2-39 Affiant(s) and is the homestead of Affiant(s), as homestead is
2-40 defined in Section 41.002, Property Code. The Land does not
2-41 exceed:

2-42 (A) 10 acres of land, if used for the purposes of
2-43 an urban home or as both an urban home and a place to exercise a
2-44 calling or business; or

2-45 (B) 200 acres for a family or 100 acres for a
2-46 single, adult person not otherwise entitled to a homestead, if used
2-47 for the purposes of a rural home.

2-48 (4) ~~[Attached to this affidavit is evidence that:~~

2-49 ~~[(A) Affiant(s) sent a letter and a copy of this~~
2-50 ~~affidavit, without attachments and before execution of the~~
2-51 ~~affidavit, notifying the judgment creditor in the Judgment Lien of~~
2-52 ~~this affidavit and the Affiant(s)' intent to file for record this~~
2-53 ~~affidavit; and~~

2-54 ~~[(B) the letter and this affidavit were sent by~~
2-55 ~~registered or certified mail, return receipt requested, 30 or more~~
2-56 ~~days before this affidavit was filed to:~~

2-57 ~~[(i) the judgment creditor's last known~~
2-58 ~~address;~~

2-59 ~~[(ii) the address appearing in the judgment~~
2-60 ~~creditor's pleadings in the action in which the judgment was~~
2-61 ~~rendered or another court record, if that address is different from~~
2-62 ~~the judgment creditor's last known address;~~

2-63 ~~[(iii) the address of the judgment~~
2-64 ~~creditor's last known attorney as shown in those pleadings or~~
2-65 ~~another court record; and~~

2-66 ~~[(iv) the address of the judgment~~
2-67 ~~creditor's last known attorney as shown in the records of the State~~
2-68 ~~Bar of Texas, if that address is different from the address of the~~
2-69 ~~attorney as shown in those pleadings or another court record.~~

3-1 [~~4~~] This affidavit serves as a release of the
3-2 Judgment Lien as to the Land in accordance with Section 52.0012,
3-3 Property Code.

3-4 Signed on this _____ day of _____, _____.

3-5 _____

3-6 _____
3-7 (Signature of Affiant(s))

3-8 State of _____

3-9 County of _____

3-10 SWORN TO AND SUBSCRIBED before me on the _____ day of
3-11 _____, 20____.

3-12 My commission expires:
3-13 _____

3-14 _____

3-15 _____
3-16 Notary Public, State of Texas

3-17 _____
3-18 Notary's printed name:

3-19 (g) A certificate of mailing filed under Subsection (b) must
3-20 be in substantially the following form:

3-21 CERTIFICATE OF MAILING

3-22 OF HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

3-23 Before me, the undersigned authority, on this day personally
3-24 appeared _____ ("Affiant(s)") (insert name(s) of Affiant(s))
3-25 who, being first duly sworn, upon oath state(s):

3-26 (1) My name is/Our names are _____ (insert
3-27 name(s) of Affiant(s)).

3-28 (2) On the _____ day of _____, 20____, Affiant(s)
3-29 caused a Homestead Affidavit as Release of Judgment Lien to be
3-30 recorded in _____ (refer to affidavit recording information)
3-31 ("Affidavit").

3-32 (3) On the _____ day of _____, 20____, Affiant(s)
3-33 sent a letter and a copy of the Affidavit, notifying the judgment
3-34 creditor of the Affiant's homestead claim and the filing of the
3-35 Affidavit, by registered or certified mail, return receipt
3-36 requested, to:

3-37 (A) the judgment creditor's last known address;

3-38 (B) the address appearing in the judgment
3-39 creditor's pleadings in the action in which the judgment was
3-40 rendered or another court record, if that address is different from
3-41 the judgment creditor's last known address;

3-42 (C) the address of the judgment creditor's last
3-43 known attorney as shown in those pleadings or another court record;
3-44 and

3-45 (D) the address of the judgment creditor's last
3-46 known attorney as shown in the records of the State Bar of Texas, if
3-47 that address is different from the address of the attorney as shown
3-48 in those pleadings or another court record.

3-49 (4) Attached to this certificate are:

3-50 (A) a true and correct copy of the letter
3-51 described by Subdivision (3) of this certificate; and

3-52 (B) proof of mailing of the letter described by
3-53 Subdivision (3) of this certificate.

3-54 Signed on the _____ day of _____, 20____.

3-55 _____

3-56 _____
3-57 (Signature of Affiant(s))

3-58 State of _____

3-59 County of _____

3-60 SWORN TO AND SUBSCRIBED before me on the _____ day of
3-61 _____, 20____.

3-62 My commission expires:
3-63 _____

3-64 _____

3-65 _____
3-66 Notary Public, State of Texas

3-67 _____
3-68 Notary's printed name:

3-69 SECTION 2. Section 157.3171(c), Family Code, is amended to
3-70 read as follows:

3-71 (c) For purposes of Section 52.0012(d) [~~52.0012(d)(2)~~],

4-1 Property Code, and the requirements of the certificate of mailing
4-2 prescribed [~~associated text in the affidavit required~~] by Section
4-3 52.0012(g) [~~52.0012(f)~~], Property Code, the obligor is required
4-4 only to send the letter and affidavit described in Section
4-5 52.0012(g) [~~those provisions~~] to the claimant under the child
4-6 support lien at the claimant's last known address.

4-7 SECTION 3. The change in law made by this Act applies only
4-8 to an affidavit filed under Section 52.0012(b), Property Code, as
4-9 amended by this Act, on or after the effective date of this Act. An
4-10 affidavit filed under Section 52.0012(b), Property Code, as amended
4-11 by this Act, before the effective date of this Act is governed by
4-12 the law in effect immediately before that date, and that law is
4-13 continued in effect for that purpose.

4-14 SECTION 4. This Act takes effect September 1, 2021.

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