

**SUBJECT:** Creating period of reliance for affidavits attesting to a homestead property

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 7 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson, S. Thompson

0 nays

2 absent — Cain, Shine

**WITNESSES:** For — Steven Streiff, Texas Land Title Association; (*Registered, but did not testify*: Aaron Day, Texas Land Title Association)

Against — None

**BACKGROUND:** Property Code sec. 52.0012 allows a judgment debtor to file an affidavit to serve as a release of record of a judgment lien on a homestead property. A bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or a mortgagee for value may rely conclusively on an affidavit if it included evidence that the judgment debtor sent a notice to the judgment creditor as provided by the statute. An affidavit would not release a lien if the judgment creditor files a contradicting affidavit asserting that the affidavit filed by the judgment debtor is untrue or another reason exists as to why the judgment lien attaches to the property.

Concerns have been raised that while the Texas Constitution protects a person's homestead from being foreclosed on a judgment lien, there can be difficulties in identifying a homestead and any lien attached to the property. Some have suggested establishing a period during which parties can rely with certainty on a homestead affidavit filed by a judgment debtor attesting to the fact that a property is their homestead.

**DIGEST:** CSHB 3115 would provide that a judgment debtor filing an affidavit to release a judgment lien on homestead property also could file a certificate of mailing. The certificate would have to be substantially in the same form

as established by the bill.

If the judgment debtor had filed a certificate of mailing, a bona fide purchaser or a mortgagee for value or a successor or their assign could rely conclusively on the affidavit for the 90-day period beginning on the date the certificate was filed.

The bill would establish a 30-day deadline after the date the certificate was filed for a judgment creditor to file a contradicting affidavit in the county's real property records in order for the debtor's affidavit to no longer serve as release of record of the judgment lien. A creditor could make an assertion that the certificate was untrue in their contradicting affidavit.

CSHB 3115 also would revise the time frame that a judgment debtor had to send notification of an affidavit to a judgment creditor such that notice could be provided after the affidavit was filed rather than 30 days or more before it was filed.

The bill would take effect September 1, 2021, and would apply only to an abstract of judgment lien recorded and indexed on or after that date.