

BILL ANALYSIS

Senate Research Center
80R4555 JPL-F

S.B. 512
By: Harris
Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the Texas Constitution protects a person's homestead from being foreclosed on by a judgment lien. However, there can sometimes be difficulty in identifying what land is a person's homestead and whether a judgment lien attaches against said property.

As proposed, S.B. 512 specifies that a judgment lien does not attach and does not constitute a lien against a debtor's exempt real property, such as a homestead residence. This bill also specifies that a judgment lien would only become a lien against the homestead when the property no longer constitutes the debtor's homestead.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 52.001, Property Code, as follows:

Sec. 52.001. ESTABLISHMENT OF LIEN. Provides that a first or subsequent abstract of judgment, if it is not dormant and when it is recorded and indexed in accordance with Chapter 52 (Judgment Lien), Property Code, constitutes a lien on and attaches to any real property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing, other than real property exempt from seizure or forced sale under Chapter 41 (Interests in Land), Property Code, the Texas Constitution, or any other law, and except as provided by Section 52.0011 (Establishment of Lien Pending Appeal or Judgment) or Section 52.0012 (Release of Record of Lien on Homestead Property), Property Code.

SECTION 2. Amends Subchapter A, Chapter 52, Property Code, by adding Section 52.0012, as follows:

Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY. (a) Defines "homestead," "judgment debtor," and "judgment creditor."

(b) Authorizes a judgment debtor (debtor) to file an affidavit at any time in the real property records of the county in which the debtor's homestead is located that substantially complies with Subsection (f) of this section.

(c) Provides that an affidavit filed under Subsection (b) serves as a release of record of a judgment lien established under Chapter 52 (Judgment Lien), Property Code, is subject to Subsection (d) and except as provided by Subsection (e).

(d) Authorizes a bona fide purchaser or a mortgagee for value, or a successor or assign of a bona fide purchaser or a mortgagee for value to rely conclusively on an affidavit filed under this section if included with the affidavit is certain evidence.

(e) Specifies that an affidavit filed under this section does not serve as release of record of a judgment lien established under this chapter with respect to a

purchaser or mortgager of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor after the judgment creditor files a contradictory affidavit in the real property records of the county in which the real property is located that makes certain assertions.

(f) Sets forth the form that an affidavit filed under this section must substantially follow.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2007.