

## **BILL ANALYSIS**

Senate Research Center

H.B. 3115  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Constitution protects a person's homestead from being foreclosed on by a judgment lien. However, there can be difficulty in identifying what land is a person's homestead and whether a judgment lien attaches against said property. In 2007, the 80th Legislature created Section 52.0012, Property Code, to address this problem.

The statute succeeded in creating a method of communication and provided a means for evidence for all parties with potential interest in the property. However, it did not establish a period during which parties can rely on the homestead affidavit with certainty.

H.B. 3115 seeks to create a limited period of time in which parties with an interest in the transaction can rely on the affidavit with certainty, while protecting the interests of creditors and their ability to challenge the affidavit both after filing and after the expiration of the reliance period.

This improvement furthers the goal of the statute to provide certainty in transactions involving homestead properties when a judgment lien exists. The proposed revision allows for this certainty once notice is provided and a challenge period has lapsed. A party may then rely on the affidavit while ensuring the protection of creditors in the event of a subsequent change in the character of the property.

H.B. 3115 amends current law relating to the release of a judgment lien on homestead property.

### **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 52.0012, Property Code, by amending Subsections (b), (d), (e), and (f) and adding Subsections (b-1) and (g), as follows:

(b) Authorizes a judgment debtor to file in the real property records of the county in which the judgment debtor's homestead is located:

(1) creates this subdivision from existing text and makes nonsubstantive changes;  
and

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

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

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

(2) 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;

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

(4) 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.

(d) Authorizes a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value, if a judgment debtor has filed a certificate of mailing under Subsection (b) and a contradicting affidavit is not filed under Subsection (e), to rely conclusively on an affidavit filed under Subsection (b) for the 90-day period that begins on the 31st day after the date the certificate of mailing was filed.

Deletes existing text authorizing a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value to rely conclusively on an affidavit filed under Subsection (b) if included with the affidavit is evidence that the judgment debtor sent a letter and a copy of the affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor of the affidavit and the judgment debtor's intent to file the affidavit and the letter and the affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before the affidavit was filed to certain addresses.

(e) Provides that an affidavit filed under Subsection (b) does not serve as release of record of a judgment lien established under Chapter 52 (Judgment Lien) with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor if, not later than the 30th day after the date a certificate of mailing was filed under Subsection (b), the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located for certain reasons, including asserting that the affidavit or certificate of mailing, rather than asserting that the affidavit, filed by the judgment debtor under Subsection (b) is untrue.

(f) Amends the language of the affidavit required to be in substantially a certain form for an affidavit filed under Subsection (b).

(g) Sets forth the language required to be in substantially a certain form for a certificate of mailing filed under Subsection (b).

SECTION 2. Amends Section 157.3171(c), Family Code, as follows:

(c) Provides that for purposes of Section 52.0012(d), Property Code, and the requirements of the certificate of mailing prescribed by Section 52.0012(g), Property Code, the obligor is required only to send the letter and affidavit described in Section 52.0012(g) to the claimant under the child support lien at the claimant's last known address. Deletes existing text providing that for purposes of Section 52.0012(d)(2), Property Code, and the associated text in the affidavit required by Section 52.0012(f), Property Code, the obligor is required only to send the letter and affidavit described in those provisions to the claimant under the child support lien at the claimant's last known address.

SECTION 3. Makes application of Section 52.0012(b), Property Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.