

BILL ANALYSIS

C.S.H.B. 3115
By: Shine
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. Nearly 15 years ago, the Texas Legislature enacted legislation to address this problem by allowing a judgment debtor to file an affidavit attesting to the fact that a property is their homestead in order to release the lien from the property. The law 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. C.S.H.B. 3115 seeks to establish such a period 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 established reliance period.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3115 amends the Property Code to revise the time frame allowed for a judgment debtor to send the letter notifying a judgment creditor of the filing of an affidavit attesting to the fact that a property is their homestead for purposes of releasing a judgment lien on the property from before filing the affidavit to after that filing. The bill authorizes a debtor to file a separate document known as a certificate of mailing in the county's real property records that attests to the fact that they mailed the letter and a copy of the affidavit to the requisite addresses. The bill establishes the form of the certificate.

C.S.H.B. 3115 conditions the authority of a bona fide purchaser or a mortgagee for value or a successor or assign thereof to rely conclusively on the affidavit filed by a judgment debtor on the debtor filing a certificate of mailing and sets the period of reliance at 90 days, beginning on the date the certificate was filed. The bill establishes 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. The bill includes among the assertions the creditor may make in their contradicting affidavit the certificate being untrue.

C.S.H.B. 3115 amends the Family Code to make a conforming change.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3115 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the substitute and the original remove the requirement for a judgment debtor to send a letter in a prescribed manner to a judgment creditor providing advance notice of their intent to file an affidavit, along with a copy of the affidavit that will be filed, the substitute includes a requirement for the debtor, after filing the affidavit, to send a letter in that manner notifying the creditor of the filing along with a copy of the filed affidavit.

The substitute makes additional revisions as follows:

- changes the period during which a bona fide purchaser or a mortgagee for value or a successor or assign thereof may rely conclusively on a filed affidavit from an indefinite period beginning 21 days after the date the certificate was filed to a 90-day period that begins on that filing date;
- includes a deadline of 30 days after the date the certificate was filed for a creditor to file a contradicting affidavit for the purpose of preventing the affidavit filed by the debtor from serving as a release of record of a judgment lien; and
- removes the specification that a judgment debtor may file the affidavit or certificate at any time.