

- SUBJECT:** Expunction of a notice of lis pendens
- COMMITTEE:** Judiciary — committee substitute recommended
- VOTE:** 7 ayes — Hartnett, Homer, Hopson, Alonzo, Gonzales, Hughes, Krusee
0 nays
2 absent — R. Cook, Goolsby
- WITNESSES:** For — Robert Williams; (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors)
Against — None
- BACKGROUND:** Under Property Code, sec. 12.007, a lis pendens serves as notice of a pending real estate lawsuit involving an action of eminent domain, a claim of title, the establishment of an interest in real property, or the enforcement of an encumbrance against real property. Recording a lis pendens with the county clerk alerts a potential purchaser or lender that the property or its title is contested in some way. After the notice is recorded, anyone who nevertheless purchases the land or property described in the notice takes subject to the ultimate decision of the lawsuit.

Under Property Code, sec. 12.008, a judge may cancel a lis pendens if the judge determines that the party seeking relief can be adequately protected by a deposit of money into the court, a guarantee of a payment of a judgment, or on condition of some remedial measure being offered to the aggrieved party.
- DIGEST:** CSHB 3197 would amend Property Code, sec. 12.007 to require the person recording a lis pendens to serve a copy of the notice on each party to the action who had an interest in the real property affected by the notice.

CSHB 3197 would add sec. 12.0071 to provide a motion to expunge lis pendens. A party to an action in connection with which a notice of lis pendens had been filed could apply to the court to expunge the notice and file evidence, including declarations, with the motion to expunge the notice. The court could permit evidence on the motion in the form of oral

testimony and the court could issue any discovery orders the court considered necessary for any party affected by the motion.

The court would have to order the notice of lis pendens expunged if the court determined that:

- the pleading on which the notice was based did not contain a real property claim;
- the claimant failed to establish by a preponderance of the evidence the probable validity of the real property claim; or
- the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under sec. 12.007(d).

The bill also would require that notice of a motion to expunge a lis pendens be served on each affected party on or before the 20th day before the date of the hearing on the motion. The court would rule on the motion for expunction based on affidavits and counteraffidavits on file and on any other proof the court allowed.

After a certified copy of an order expunging a notice of lis pendens had been recorded, the notice of lis pendens and any information derived from the notice would not:

- constitute constructive or actual notice of any matter contained in the notice or any matter relating to the proceeding; or
- create any duty of inquiry in a person with respect to the property described in the notice.

CSHB 3197 would allow a court to require that the party prevailing in the expunction hearing submit an enforceable guarantee of payment for an adverse judgment to the court in an amount determined by the court.

The bill would take effect on September 1, 2007, and would apply only to a lis pendens filed on or after the effective date.