

SUBJECT: Affidavit for a release of a child support lien on a homestead

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Hunter, Hughes, Alonzo, Branch, Jackson, Leibowitz, Lewis, Madden, Martinez

0 nays

1 present not voting — Hartnett

1 absent — Woolley

WITNESSES: None

BACKGROUND: Tex. Const., Art. 16, sec. 50 prevents a person’s homestead from being subject to attachment, execution, or forced sale by all but a few specifically enumerated creditors. Property Code, sec. 41.002 defines “homestead” as real property used for a person’s or family’s urban or rural home.

Under Property Code, sec. 52.0012, a person subject to a judgment (“judgment debtor”) lien against a person’s homestead may file an affidavit contradicting the lien in the real property records of the county in which the judgment debtor’s homestead is located. The affidavit serves as a release of the judgment lien if the affidavit satisfies the requirements of sec. 52.0012 and if the judgment creditor does not file a contradicting affidavit challenging the truthfulness of the judgment debtor’s affidavit or asserting that the lien attached to the property for a different reason.

A child support lien is a legal enforcement mechanism for the collection of child support payments owed by a person (“obligor”) to another (“obligee”). The obligee may file a child support lien to attach to the real and personal property of the obligor. There is no statute of limitations for a child support lien; the lien is effective until the obligor has paid all current and past due child support payments. A child support lien may not attach to the homestead of a child support obligor.

Family Code, sec. 231.002(h) requires the Attorney General's Office to enforce all delinquent child support obligations in the amount of \$5,000 or more by filing a child support lien.

The lack of any limitations period for child support liens potentially could result in unintended scenarios where a child becomes responsible for the liability of the child's own parent who is subject to a child support lien. For example, if a child inherited any real property subject to a child support lien, the child would become responsible for the parent's lien, including the original amount plus interest and fees. Other problems also may occur if a party subject to a lien could not be found and the title to the real property became clouded.

DIGEST:

CSHB 3053 would allow a person who owed child support ("obligor") to a claimant under a child support lien ("obligee") and who believed that the child support lien had attached to the obligor's homestead real property to file an affidavit to release the lien against the claimed homestead property.

Effect of affidavit. The affidavit would serve as a release of a child support lien against the obligor's homestead in the same manner that an affidavit under Property Code, sec. 52.0012 serves as a release of a judgment lien against a judgment debtor's homestead.

Affidavit requirements. The affidavit would have to comply with the same requirements under Property Code, sec. 52.0012 that currently apply to an affidavit to release a judgment lien against a homestead, except that the obligor would have only to send a letter and a copy of the affidavit to an obligee's last known address, and not the obligee's attorney, if any, as currently required under sec. 52.0012.

Obligee may challenge affidavit. CSHB 3053 would allow the claimant under the child support lien to dispute the obligor's affidavit by filing a contradicting affidavit. The contradicting affidavit would have to satisfy the same requirements for a contradicting affidavit under Property Code, sec. 52.0012(e) by asserting that the obligor's affidavit was untrue or that the lien attached to the obligor's property for a different reason. The contradicting affidavit would prevent the release of the child support lien in the same manner that a contradicting affidavit under sec. 52.0012(e) prevents the release of a judgment lien.

Adjudication of contradicting affidavits required. If an obligee filed a contradicting affidavit, CSHB 3053 would require that a legal action be brought to resolve the issue of whether the real property claimed as a homestead was subject to the child support lien. The action would have to be brought in the district court of the county in which the disputed real property was located and where the lien was filed.

Limitations period for child support liens. CSHB 3053 would establish a renewable 10-year statute of limitations period for child support liens with respect to real property. A child support lien on real property would be effective until the 10-year anniversary of the date on which the lien notice was filed with the county clerk. The lien could be renewed for subsequent 10-year periods by filing a renewed lien notice in the same manner as the original lien notice.

A renewed lien notice filed before the 10-year anniversary would continue to have priority over all other liens filed against the obligor's real property after the filing of the original child support lien. A lien notice renewed on or after the 10-year anniversary would have priority over any other recorded lien on the real property only on the basis of the date the renewed lien notice was filed.

Attorney General would no longer have to file a child support lien. CSHB 3053 would repeal Family Code, sec. 231.002(h), which currently requires the Office of the Attorney General of Texas to enforce delinquent child support obligations of at least \$5,000 or more by filing a child support lien. The attorney general would retain the discretion to file a child support lien.

Applicable date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

NOTES:

The companion bill, SB 1661 by Harris, passed the Senate by 29-2 (Huffman, Uresti) on April 27 and has been referred to the House Judiciary and Civil Jurisprudence Committee.