

BILL ANALYSIS

Senate Research Center

S.B. 754
By: Harris
Jurisprudence
3-10-97
As Filed

DIGEST

Currently, Sections 16.035 and 16.036, Civil Practice and Remedies Code, relate to the statute of limitations in regard to a "lien debt" on real property. Section 3.118, Business and Commerce Code, relating to statute of limitations under the Uniform Commercial Code, may create a conflict with those sections and, thus, lead to uncertainty relating to such lien debts. This bill would amend those sections in the Civil Practice and Remedies Code to provide that they are not affected by Section 3.118, Business and Commerce Code, relating to the statute of limitations for real property liens.

PURPOSE

As proposed, S.B. 754 amends Sections 16.035 and 16.036, Civil Practice and Remedies Code, to provide that they are not affected by Section 3.118, Business and Commerce Code, relating to the statute of limitations for real property liens.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 16.035, Civil Practice and Remedies Code, as follows:

Sec. 16.035. New heading: LIEN ON REAL PROPERTY. Requires a person to bring suit for the recovery of real property under a real property lien, rather than debt, or the foreclosure of a real property lien, rather than a debt, no later than four years after the day the cause of action accrues. Requires a sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien, rather than secures a debt, to be made no later than four years after the day the cause of action accrues. Provides that the running of the statute of limitations is not suspended against certain persons who have no notice or knowledge of the suspension of the limitations period and who acquire an interest in the property when a cause of action on an outstanding real property lien has accrued for more than four years, except as provided for in this section. Provides that one of the two exceptions is provided for in Section 16.036, Civil Practice and Remedies Code, providing for record extensions of real property lines, rather than lien debts. Provides that on the expiration of the four-year limitations period, the real property lien and a power of sale to enforce the real property lien become void. Provides that the limitations period under this section is not affected by Section 3.118, Business and Commerce Code. Defines "real property lien," rather than "lien debt." Makes conforming changes.

SECTION 2. Amends Section 16.036, Civil Practice and Remedies Code, as follows:

Sec. 16.036. New heading: EXTENSION OF REAL PROPERTY LIEN. Authorizes the party or parties primarily liable for a debt or obligation secured by a real property lien to suspend the running of the four-year limitations period for real property liens, rather than lien debts, through a written extension provided by this section. Makes conforming changes.

SECTION 3. Amends Section 16.037, Civil Practice and Remedies Code, as follows:

Sec. 16.037. New heading: EFFECT OF EXTENSION OF REAL PROPERTY LIEN ON THIRD PARTIES. Makes a conforming change.

SECTION 4. Amends Section 3.118, Business and Commerce Code, by adding Subsection (h), to provide that this section does not apply to an action involving a real property lien covered by Section 16.035 or 16.036, Civil Practice and Remedies Code.

SECTION 5. Emergency clause.
Effective date: upon passage.