

## **BILL ANALYSIS**

Senate Research Center

H.B. 396  
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Jurisprudence  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under Section 12.007 (Lis Pendens), Property Code, 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 property described in the notice takes the property subject to the claims made in the lawsuit.

Under Section 12.008 (Cancellation of Lis Pendens), 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.

H.B. 396 requires the person recording a lis pendens to serve a copy of the notice of lis pendens on each party to the action who has an interest in the real property affected by the notice. The bill provides for a procedure for expunging a notice of lis pendens under appropriate circumstances.

### **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 12.007, Property Code, by adding Subsection (d), as follows:

(d) Requires a person, not later than the third day after the date a person files a notice for record under this section, to serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice.

SECTION 2. Amends Chapter 12, Property Code, by adding Section 12.0071, as follows:

Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) Authorizes a party to an action in connection with which a notice of lis pendens has been filed to apply to the court to expunge the notice, and file evidence, including declarations, with the motion to expunge the notice.

(b) Authorizes the court to permit evidence on the motion to be received in the form of oral testimony and make any orders the court considers just to provide for discovery by a party affected by the motion.

(c) Requires the court to order the notice of lis pendens expunged if the court determines that the pleading on which the notice is based does not contain a real property claim, the claimant fails 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 Section 12.007(d).

(d) Requires the court to rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.

(f) Provides that after a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information derived from the notice:

(1) does not constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the proceeding, create any duty of inquiry in a person with respect to the property described in the notice, or affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(2) is not enforceable against a purchaser or lender described by Subdivision (1)(C) (relating to a provision that a notice of lis pendens does not affect the validity of certain things), regardless of whether the purchaser or lender knew of the lis pendens action.

(g) Authorizes the court in its discretion to require that the party prevailing in the expunction hearing submit an undertaking to the court in an amount determined by the court.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.