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RELEASING JUDGMENT LIENS AGAINST HOMESTEAD PROPERTY

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Introduction

A judgment, when properly abstracted in the real property records, “constitutes a lien on and attaches to any real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41, the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing” (Texas Property Code Sec. 52.001). However, Property Code Sec. 52.0012, which became effective September 1, 2007, provides a procedure for releasing homestead property from a judgment lien. In the past, a homestead was not exempt from a perfected lien, but it was exempt from forced sale so long as the property remained the homestead of the debtor. *Exocet Inc. v. Cordes*, 815 S.W.2d 350, 352 (Tex.App.-Austin 1991, no writ). Section 52.0012 now provides a statutory method for securing a release of any judgment lien against homestead property.

Statutory Affidavit

Property Code Sec. 52.0012 provides for the filing of an Affidavit that must substantially comply with the form that appears in this section of the Code. Filing of the affidavit must be preceded by a 30 day notice letter, sent certified mail and addressed to the judgment creditor and its attorney of record. The letter must contain a copy of the affidavit that the homestead owner intends to file in the real property records. The requirements of the letter and the affidavit are highly technical and should be done by an attorney knowledgeable in this procedure.

The judgment creditor may contest the homeowner’s action by filing a contradicting affidavit if there is reason to believe that the homeowner’s affidavit is false.

Release of Judgment Lien

The ultimate result, if this procedure is followed to the letter, is that the homeowner’s affidavit serves as a release of the judgment lien as to the homestead property. Also, subsequent

bona fide purchasers and mortgagees are entitled to rely absolutely on the homeowner's affidavit.

Disclaimer

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David J. Willis is board certified in both residential and commercial real estate law by the Texas Board of Legal Specialization. More information is available at his website, LoneStarLandLaw.com. Copyright © 2008 by David J. Willis. All rights reserved.