

## UNDERWRITING BULLETIN - TEXAS

No. 39

DATE: August 1, 2014

RE: Abstracts of Judgment and Homesteads

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The application of Texas homestead laws to our business is a complex and at times frustrating process. One of the areas where great risk is presented occurs when we are asked to remove an AJ “because the property is the homestead” of the customer.

**Note:** We refer you to our Newsletter No. 10-02 for a general overview of why AJs are serious matters; a copy is attached to this Bulletin.

1. In general, a title company should never make a determination that something is the homestead of the customer. It is up to the customer to convince the AJ creditor that the property is homestead (and obtain a partial release); the customer does not need to convince the title company.
2. You should never remove an AJ from Sch C simply because the customer claims the property is homestead, regardless of the evidence which supports that claim, and no matter how much you are personally convinced that the property is homestead. Again, it is not up to the title company to make that determination.
3. Most sophisticated AJ creditors, such as national lenders or creditors who are represented by a knowledgeable attorney, will provide a partial release of an AJ if the customer will present their evidence of homestead status to the creditor and provide the creditor with a sworn claim of homestead.
4. If the AJ creditor will not voluntarily give a partial release, there are a few options available to the customer:
  - File suit for a declaratory judgment and ask the court to find that the property is homestead and that the AJ does not attach. The obviously takes time and money, but it is an option.
  - Follow the procedure contained in Texas Property Code Sect. 52.0012, commonly known as the “release of AJ by affidavit” procedure. This also takes time to complete and usually requires the services of an attorney. If you know that a customer is going to utilize this procedure, ask the customer to get pre-approval of their paperwork from Underwriting. The law is not complicated but it is detailed and we require strict compliance with the statutory requirements.



5. We do not bond around AJs or take escrow and indemnity agreements against AJs.

6. **An exception to these rules is as follows:** If the transaction is a rate-term refinance of a purchase money lien with no cash out (rolling in reasonable closing costs of 10% or less is OK) you may remove an AJ from Sch C without regard to whether the property is homestead. This is because the purchase money lien (or a refinance of the purchase money lien) has priority over the AJ regardless of the homestead status of the property and regardless of when the AJ was filed.

**Note:** Contact underwriting if the AJ is held by the United States or a department or agency of the United States. Different rules may apply in those situations

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