

# WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company  
From: Underwriting Department  
Date: February 21, 2018  
Bulletin No: TX 2018-03  
Subject: Release by Affidavit of Abstractors of Judgment and Child Support Liens Against Homesteads

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Agents are encountering more situations where a seller or borrower wants to use the “release by affidavit” procedure to remove an abstract of judgment (AJ) or a Child Support Lien (CSL) from property they claim as homestead. The purpose of this Bulletin is to remind agents of the statutory requirements so that examiners and escrow personnel can conduct an informed review of the documentation presented to them in these situations. Agents are not required to obtain Underwriting approval when this procedure is used. Of course, Underwriting is always available to discuss with you any specific questions which arise.

## **ABSTRACTS OF JUDGMENT**

The section of the Texas Property Code which governs the procedure (Section 52.0012) is attached to this Bulletin.

WFG’s requirements for using the “release of AJ by affidavit” procedure are as follows:

1. The judgment debtor (or someone acting on their behalf such as a lawyer) must prepare a *Homestead Affidavit As Release of Judgment Lien*. The form of the affidavit is found in Section 52.0012(f), Texas Property Code.
2. The judgment debtor (or someone acting on their behalf such as a lawyer) must send a copy of the unsigned Affidavit, without attachments, by registered or certified mail, return receipt requested, to the following:
  - (A) the judgment creditor's last known address;
  - (B) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;
  - (C) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and
  - (D) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

**NOTE: These notice requirements are strict and unusual. In a situation with one judgment creditor and one attorney, it might be necessary to send the letter to 4 different addresses.**

3. Following the expiration of at least thirty (30) days after the letter was sent, the judgment debtor should sign the Affidavit and record it, along with the attachments that establish proof of the date of mailing, in the real property records of the county where the land is located.
4. The Affidavit procedure will serve as a release of the AJ unless the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:
  - (A) the affidavit filed by the judgment debtor is untrue; or
  - (B) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

**Note: The AJ claimant can file a contradicting affidavit at any time, even after the 30 day period has expired.**

5. The title agent's responsibility is:
  - (A) Review all the documentation required above, including the initial notice letter(s) and all evidence of mailing, such as return receipt green cards;
  - (B) Verify that the signed Affidavit has been filed, and that at least 30 days expired from the date the letter was sent and the date the Affidavit was filed; and,
  - (C) Lastly, confirm that there has been no contradicting affidavit filed by the judgment creditor.

### **CHILD SUPPORT LIENS**

Child support liens (CSL) are not enforceable against homestead property. The procedure discussed above regarding abstracts of judgment can also be used if the cloud is a CSL. The relevant section from the Texas Family Code is as follows:

*Sec. 157.3171. RELEASE OF LIEN ON HOMESTEAD PROPERTY.*

*(a) An obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead, as defined by Section 41.002, Property Code, may file an affidavit to release the lien against the homestead in the same manner that a judgment debtor may file an affidavit under Section 52.0012, Property Code, to release a judgment lien against a homestead.*

*(b) Except as provided by Subsection (c), the obligor must comply with all requirements imposed by Section 52.0012, Property Code. For purposes of complying with that section, the obligor is considered to be a judgment debtor under that section and the claimant under the child support lien is considered to be a judgment creditor under that section.*

*(c) For purposes of Section 52.0012(d)(2), Property Code, and the associated text in the affidavit required by Section 52.0012(f), Property Code, the obligor is required only to send the letter and affidavit described in those provisions to the claimant under the child support lien at the claimant's last known address.*

**NOTE: The notice requirements are less stringent if the cloud is a child support lien than if the cloud is an abstract of judgment.**

*(d) The claimant under the child support lien may dispute the obligor's affidavit by filing a contradicting affidavit in the manner provided by Section 52.0012(e), Property Code.*

(e) Subject to Subsection (f), an affidavit filed by an obligor under this section has the same effect with respect to a child support lien as an affidavit filed under Section 52.0012, Property Code, has with respect to a judgment lien.

(f) If the claimant files a contradicting affidavit as described by Subsection (d), the issue of whether the real property is subject to the lien must be resolved in an action brought for that purpose in the district court of the county in which the real property is located and the lien was filed.

Added by Acts 2009, 81st Leg., R.S., Ch. 164 (S.B. [1661](#)), Sec. 1, eff. May 26, 2009.

WFG's requirements for using the "release of CSL by affidavit" procedure are as follows:

7. The child support debtor (or someone acting on their behalf such as a lawyer) must prepare a *Homestead Affidavit As Release of Child Support Lien*. The form of the affidavit is found in Section 52.0012(f), Texas Property Code.

***Note: Since you are dealing with a CSL and not an AJ all references to abstracts of judgment in the affidavit should be changed to "child support lien."***

8. The child support debtor (or someone acting on their behalf such as a lawyer) must send a copy of the unsigned Affidavit, without attachments, by registered or certified mail, return receipt requested, to the following:

(A) the child support claimant at the claimant's last known address;

9. Following the expiration of at least thirty (30) days after the letter was sent, the child support debtor should sign the Affidavit and record it, with the attachments that establish proof of the date of mailing, in the real property records of the county where the land is located.

10. The Affidavit procedure will serve as a release of the CSL unless the child support claimant files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:

(A) the affidavit filed by the judgment debtor is untrue; or

(B) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

11. The title agent's responsibility is:

(A) Review all the documentation required above, including the initial notice letter(s) and all evidence of mailing, such as return receipt green cards;

(B) Verify that the signed Affidavit has been filed, and that at least 30 days expired from the date the letter was sent and the date the Affidavit was filed; and,

(C) Lastly, confirm that there has been no contradicting affidavit filed by the CSL claimant.

***Note: The CSL claimant can file a contradicting affidavit at any time, even after the 30 day period has expired.***

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**TEXAS PROPERTY CODE Sec. 52.0012.  
RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY.**

(a) In this section:

(1) "Homestead" has the meaning assigned by Section 41.002.

(2) "Judgment debtor" and "judgment creditor" have the meanings assigned by Section 31.008(h), Civil Practice and Remedies Code.

(b) A judgment debtor may, at any time, file an affidavit in the real property records of the county in which the judgment debtor's homestead is located that substantially complies with Subsection (f).

(c) Subject to Subsection (d) and except as provided by Subsection (e), an affidavit filed under Subsection (b) serves as a release of record of a judgment lien established under this chapter.

(d) A bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value may rely conclusively on an affidavit filed under Subsection (b) if included with the affidavit is evidence that:

(1) the judgment debtor sent a letter and a copy of the affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor of the affidavit and the judgment debtor's intent to file the affidavit; and

(2) the letter and the affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before the affidavit was filed to:

(A) the judgment creditor's last known address;

(B) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(C) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(D) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(e) An affidavit filed under Subsection (b) does not serve as release of record of a judgment lien established under this chapter with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor after the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:

(1) the affidavit filed by the judgment debtor under Subsection (b) is untrue; or

(2) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

(f) An affidavit filed under Subsection (b) must be in substantially the following form:

#### **HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN**

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:

(1) My/our name is/are \_\_\_\_\_ (insert name of Affiant(s)). I/we own the following described land ("Land"):

(describe the property claimed as homestead)

(2) This affidavit is made for the purpose of effecting a release of that judgment lien recorded in \_\_\_\_\_ (refer to recording information of judgment lien) ("Judgment Lien") as to the Land.

(3) The Land includes as its purpose use for a home for Affiant(s) and is the homestead of Affiant(s), as homestead is defined in Section 41.002, Property Code. The Land does not exceed:

(A) 10 acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business; or

(B) 200 acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.

(4) Attached to this affidavit is evidence that:

(A) Affiant(s) sent a letter and a copy of this affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor in the Judgment Lien of this affidavit and the Affiant(s)' intent to file for record this affidavit; and

(B) the letter and this affidavit were sent by registered or certified mail, return receipt requested, 30 or more days before this affidavit was filed to:

(i) the judgment creditor's last known address;

(ii) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(iii) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(iv) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(5) This affidavit serves as a release of the Judgment Lien as to the Land in accordance with Section 52.0012, Property Code.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

(Signature of Affiant(s))

State of \_\_\_\_\_

County of \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

Notary's printed name:  
\_\_\_\_\_

Added by Acts 2007, 80th Leg., R.S., Ch. 374 (S.B. [512](#)), Sec. 2, eff. September 1, 2007.

**NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.**

**The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.**