



## WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: September 16, 2021

Bulletin No.: TX 2021-04

Subject: Revised Procedure for Release by Affidavit of AJs & Child Support Liens Against Homestead

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This bulletin supersedes Bulletin No. 2018-03 issued February 21, 2018.

Via HB 3115, the Texas Legislature has substantially revised the release by affidavit process for judgment liens and child support liens against homestead property stated in Texas Property Code §52.0012 and Family Code §157.3171. The new law went into effect on September 1, 2021 and applies to affidavits of release filed **on or after September 1, 2021**. Any affidavit recorded before September 1, 2021 will continue to be governed by the prior versions of §52.0012 and §157.3171.

### **ABSTRACTS OF JUDGMENT**

§52.0012(f) previously required the judgment debtor to send a copy of a letter notifying the judgment creditor of his/her intent to file a Homestead Affidavit as a Release of Judgment Lien 30 days before recording the Homestead Affidavit. But the judgment creditor could record a contradicting affidavit at any time, creating a risk that the creditor's affidavit could be recorded in the gap period.

Under revised §52.0012, the release by affidavit procedure is clarified and a 90-day window is created in which the abstract of judgment is conclusively released.

Now, a judgment debtor may record a Homestead Affidavit that conforms to §52.0012(f), send a letter notifying the judgment creditor of the recorded Homestead Affidavit with a copy of the Homestead Affidavit, and record a Certificate of Mailing of that letter which conforms to §52.0012(g), in the real property records of the county in which the homestead is located.

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

If the judgment creditor does not file an affidavit objecting to the homestead status of the property within 30 days after the Certificate of Mailing is recorded, a bona fide purchaser or a mortgagee for value may conclusively rely on the Homestead Affidavit as a release of the judgment lien for 90 days after the Certificate of Mailing is recorded. Thus, the creditor only has a 30 day window in which to record an objection to the homestead character of the property. If the creditor fails to do so, then the judgment debtor may close free of the judgment lien for up to 90 days thereafter.

WFG's requirements for using the revised release by Homestead Affidavit procedure are as follows:

(1) The judgment debtor (or someone acting on his/her behalf, such as a lawyer) must prepare a Homestead Affidavit that complies with §52.0012(f).

**NOTE: The form of the Homestead Affidavit is unchanged from the prior version of the statute, except that evidence of mailing a letter notifying the judgment creditor of the Affidavit is not attached to the Affidavit.**

(2) The judgment debtor must sign and record the Homestead Affidavit in the real property records of the county in which the judgment debtor's homestead is located.

(3) The judgment debtor (or someone acting on his/her behalf, such as a lawyer) must send a letter notifying the judgment creditor of the Homestead Affidavit and a copy of the recorded Homestead Affidavit by registered or certified mail, return receipt requested, at each of 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 judgement was rendered, or another court record, if that address is different from the last known address;

(c) The address of the judgment creditor's last known attorney as shown in the 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 the pleadings or another court record.

(4) The judgment debtor (or someone acting on his/her behalf, such as a lawyer) must prepare a Certificate of Mailing that complies with §52.0012(g). The judgment debtor must sign the Certificate of Mailing and record it, along with a copy of the letter sent to the judgment creditor and proof of mailing, in the real property records of the county where the land is located.

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(5) The Affidavit procedure will serve as a release of the judgment lien for 90 days beginning on the 31<sup>st</sup> day after the Certificate of Mailing is recorded **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 Homestead Affidavit of Certificate of Mailing recorded by the judgment debtor is untrue; or

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

(6) The title agent's responsibility is to:

(a) Review all the documentation required above, including the letter to the creditor and all evidence of mailing, including return receipt green cards;

(b) Verify that the Homestead Affidavit and Certificate of Mailing have been recorded and that at least 30 days, but not more than 90 days, have passed since the Certificate of Mailing was recorded; and

(c) Confirm that no contradicting Affidavit has been filed by the judgment creditor within 30 days after the Certificate of Mailing was recorded.

***NOTE: If the transaction fails to close within 90 days after the Certificate of Mailing is recorded, the release by Homestead Affidavit procedure will need to start over before the lien can be removed from Schedule C.***

#### **CHILD SUPPORT LIENS**

Child Support liens are not enforceable against homestead property. If a Homestead Affidavit is used to remove a Child Support Lien from the commitment, the same procedure under Property Code §52.0012 outlined above may be used, pursuant to Texas Family Code §157.3171. However, the documentation listed in Property Code §52.0012(b-1) is only required to be sent to the claimant under the child support lien at the claimants last known address.

Please contact a WFG Texas Underwriter if you have any questions.

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