

PROPERTY CODE

TITLE 3. PUBLIC RECORDS

CHAPTER 12. RECORDING OF INSTRUMENTS

Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY. (a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

(c) This section does not require the acknowledgement or swearing or prohibit the recording of a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

(d) The failure of a notary public to attach an official seal to an acknowledgment, a jurat, or other proof taken outside this state but inside the United States or its territories renders the acknowledgment, jurat, or other proof invalid only if the jurisdiction in which the acknowledgment, jurat, or other proof is taken requires the notary public to attach the seal.

Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 603, Sec. 2, eff. June 14, 1995.

Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS. (a) For the purposes of this section, "paper document" means a document received by a county clerk in a form that is not electronic.

(b) A paper document concerning real or personal property may not be recorded or serve as notice of the paper document unless:

(1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a proper jurat,

or proved according to law; or

(2) the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law.

(c) An original signature may not be required for an electronic instrument or other document that complies with the requirements of Chapter 15 of this code, Chapter 195, Local Government Code, Chapter 322, Business & Commerce Code, or other applicable law.

(d) This section does not apply to a child support lien notice issued by the Title IV-D agency under Chapter 157, Family Code. For purposes of this subsection, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

(e) This section does not apply to a notice of sale under Section 51.065, Natural Resources Code, or a land award under Section 51.066, Natural Resources Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 213 (H.B. 732), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 33, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 4, eff. September 1, 2017.

Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE. (a) Notwithstanding Section 12.0011(b), the following documents received by the county clerk in the manner provided by Subsection (b) shall be recorded by the clerk and serve as notice of the matter document:

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(2) a notice of sale pursuant to which the sale under a power of sale occurred;

(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

(b) A document described by Subsection (a) shall be accepted for recording pursuant to Subsection (a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) This section does not prevent the recording of documents in any other manner allowed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 653 (H.B. 2063), Sec. 1, eff. September 1, 2015.

Sec. 12.002. SUBDIVISION PLAT; PENALTY. (a) The county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the

plat or replat for recording to file with the clerk an affidavit stating that information.

(b) A person may not file for record or have recorded in the county clerk's office a plat or replat of a subdivision of real property unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Section [212.0105](#) or [232.023](#), Local Government Code, if applicable.

(c) Except as provided by Subsection (d), a person who subdivides real property may not use the subdivision's description in a deed of conveyance, a contract for a deed, or a contract of sale or other executory contract to convey that is delivered to a purchaser unless the plat or replat of the subdivision is approved and is filed for record with the county clerk of the county in which the property is located and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section [212.0105](#) or [232.023](#), Local Government Code, if applicable.

(d) Except in the case of a subdivision located in a county to which Subchapter B, Chapter [232](#), Local Government Code, applies, Subsection (c) does not apply to using a subdivision's description in a contract to convey real property before the plat or replat of the subdivision is approved and is filed for record with the county clerk if:

(1) the conveyance is expressly contingent on approval and recording of the final plat; and

(2) the purchaser is not given use or occupancy of the real property conveyed before the recording of the final plat.

(e) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a subdivision of real property unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property

indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if:

(1) more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property; or

(2) a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

(f) A person commits an offense if the person violates Subsection (b), (c), or (e). An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$1,000, by confinement in the county jail for a term not to exceed 90 days, or by both the fine and confinement. Each violation constitutes a separate offense and also constitutes prima facie evidence of an attempt to defraud.

(g) This section does not apply to a partition by a court.
Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1987, 70th Leg., ch. 149, Sec. 22, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 3.09, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 570, Sec. 1, eff. June 15, 1991; Acts 1997, 75th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 812, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1382, Sec. 8, eff. June 19, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1126 (H.B. [2491](#)), Sec. 26, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1154 (H.B. [3101](#)), Sec. 1, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 289 (H.B. 989), Sec. 1, eff. September 1, 2007.

Sec. 12.003. INSTRUMENT IN GENERAL LAND OFFICE OR ARCHIVES.

(a) If written evidence of title to land has been filed according to law in the General Land Office or is in the public archives, a copy of the written evidence may be recorded if:

(1) the original was properly executed under the law in effect at the time of execution; and

(2) the copy is certified by the officer having custody of the original and attested with the seal of the General Land Office.

(b) A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

(1) the older title had been recorded with the county clerk of the county in which the land is located; or

(2) the person who had the location or survey made had actual notice of the older title.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.004. FOREIGN DEED. If written evidence of title to land has been filed outside the county in which the land is located or outside the state, a copy of the written evidence may be recorded in the county in which the land is located if:

(1) the original was properly executed and recorded under the law governing the recording; and

(2) the copy is certified by the officer having legal custody of the original.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.005. PARTITION. (a) A court order partitioning or allowing recovery of title to land must be recorded with the county clerk of the county in which the land is located in order to be

admitted as evidence to support a right claimed under the order.

(b) A record of an order is sufficient under this section if it consists of a brief statement by the clerk of the court that made the order, signed and sealed by the clerk, that includes:

(1) the identity of the case in which the partition or judgment was made;

(2) the date of the case;

(3) the names of the parties to the case;

(4) a description of the land involved that is located in the county of the recording; and

(5) the name of the party to whom the land is decreed.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.006. GRANT FROM GOVERNMENT. A grant from this state or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgement or proof.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.007. LIS PENDENS. (a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

(b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:

(1) the style and number, if any, of the proceeding;

(2) the court in which the proceeding is pending;

(3) the names of the parties;

(4) the kind of proceeding; and

(5) a description of the property affected.

(c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.

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

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 1, eff. September 1, 2009.

Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) A party to an action in connection with which a notice of lis pendens has been filed may:

- (1) apply to the court to expunge the notice; and
- (2) file evidence, including declarations, with the motion to expunge the notice.

(b) The court may:

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

(c) The court shall order the notice of lis pendens expunged if the court determines that:

- (1) the pleading on which the notice is based does not contain a real property claim;
- (2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or
- (3) 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) Notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.

(e) The court shall rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.

(f) After a certified copy of an order expunging a notice of lis pendens has been recorded:

(1) the notice of lis pendens and any information derived or that could be derived from the notice:

(A) does not:

(i) constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in connection with which the notice was filed;

(ii) create any duty of inquiry in a person with respect to the property described in the notice; or

(iii) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(B) is not enforceable against a purchaser or lender described by Paragraph (A)(iii), regardless of whether the purchaser or lender knew of the lis pendens action; and

(2) an interest in the real property may be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 47 (S.B. 1955), Sec. 1, eff. September 1, 2017.

Sec. 12.008. CANCELLATION OF LIS PENDENS. (a) On the motion of a party or other person interested in the result of or in property affected by a proceeding in which a lis pendens has been recorded and after notice to each affected party, the court hearing the action may cancel the lis pendens at any time during the proceeding, whether in term time or vacation, if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.

(b) If the cancellation of a lis pendens is conditioned on

the payment of money, the court may order the cancellation when the party seeking the cancellation pays into the court an amount equal to the total of:

(1) the judgment sought;

(2) the interest the court considers likely to accrue during the proceeding; and

(3) costs.

(c) If the cancellation of a lis pendens is conditioned on the giving of an undertaking, the court may order the cancellation when the party seeking the cancellation gives a guarantee of payment of a judgment, plus interest and costs, in favor of the party who recorded the lis pendens. The guarantee must equal twice the amount of the judgment sought and have two sufficient sureties approved by the court. Not less than two days before the day the guarantee is submitted to the court for approval, the party seeking the cancellation shall serve the attorney for the party who recorded the lis pendens a copy of the guarantee and notice of its submission to the court.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM. (a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."

(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:

(1) that the master form is recorded in the county in which the instrument is offered for record;

(2) the numbers of the book or volume and first page of the records in which the master form is recorded; and

(3) a definite identification of each provision being

incorporated.

(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

(e) The provisions of the Uniform Commercial Code prevail over this section.

Acts 1983, 68th Leg., p. 3492, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.011. CERTIFICATE OF REDEMPTION. An instrument issued by the United States that redeems or evidences redemption of real property from a judicial sale or from a nonjudicial sale under foreclosure of a lien, mortgage, or deed of trust may be recorded in records of conveyances in each county in which the property is located if the instrument has been issued according to the laws of the United States.

Acts 1983, 68th Leg., p. 3493, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.012. ATTACHMENT. (a) If an officer files a writ of attachment on real property with a county clerk, the clerk shall record the name of each plaintiff and defendant in attachment, the amount of the debt, and the officer's return in full.

(b) A county clerk who receives a certified copy of an order quashing or vacating a writ of attachment shall record the order and the name of each plaintiff and defendant.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.013. JUDGMENT. A judgment of a court may be recorded if:

(1) the judgment is of a court:

(A) expressly created or established under the constitution or laws of this state or of the United States;

(B) that is a court of a foreign country and that is recognized by an Act of congress or a treaty or other international convention to which the United States is a party; or

(C) of any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the Constitution of the United States; and

(2) the judgment is attested under the signature and seal of the clerk of the court that rendered the judgment.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1997, 75th Leg., ch. 189, Sec. 15, eff. May 21, 1997; Acts 2001, 77th Leg., ch. 668, Sec. 1, eff. Sept. 1, 2001.

Sec. 12.014. TRANSFER OF JUDGMENT OR CAUSE OF ACTION. (a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged or sworn to in the form and manner required by law for acknowledgement or swearing of deeds.

(c) If a transfer of a judgment is filed, the clerk shall record the transfer appropriately. If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 162, Sec. 3, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 628 (H.B. 587), Sec. 4, eff. September 1, 2007.

Sec. 12.015. JUDGMENT IN JUSTICE COURT. (a) On the

application of a party interested in land that has been sold under an execution issued by a justice court, the justice of the peace having custody of the execution and the judgment under which it was issued shall make a certified transcript of the judgment, the execution, and the levy and return of the executing officer.

(b) A certified transcript under this section may be recorded in the same manner as a deed.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.016. POWER OF ATTORNEY. A power of attorney may be recorded.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.017. TITLE INSURANCE COMPANY AFFIDAVIT AS RELEASE OF LIEN; CIVIL PENALTY. (a) In this section:

(1) "Mortgage" means a deed of trust or other contract lien on an interest in real property.

(2) "Mortgagee" means:

(A) the grantee of a mortgage;

(B) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record; or

(C) if a mortgage is serviced by a mortgage servicer, the mortgage servicer.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person transmitting a payoff statement is considered the mortgage servicer for the mortgage described in the payoff statement.

(4) "Mortgagor" means the grantor of a mortgage.

(5) "Payoff statement" means a statement of the amount of:

(A) the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage; and

(B) interest on a per diem basis for the unpaid

balance.

(6) "Title insurance company" means a corporation or other business entity authorized to engage in the business of insuring titles to interests in real property in this state.

(7) "Authorized title insurance agent," with respect to an Affidavit as Release of Lien under this section, means a person licensed as a title insurance agent under Chapter 2651, Insurance Code, and authorized in writing by a title insurance company by instrument recorded in the real property records in the county in which the property to which the affidavit relates is located to execute one or more Affidavits as Release of Lien in compliance with this section, subject to any terms, limitations, and conditions that are set forth in the instrument executed by the title insurance company.

(b) This section applies only to a mortgage on:

(1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or

(2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

(c) An authorized officer of a title insurance company or an authorized title insurance agent may, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) An affidavit executed under Subsection (c) must be in substantially the following form:

AFFIDAVIT AS RELEASE OF LIEN

Before me, the undersigned authority, on this day personally appeared (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is (insert name of Affiant), and I am an authorized officer of (insert name of title insurance company or authorized title insurance agent) ("Title Company").

2. This affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the following mortgage:

(describe mortgage, the name of the mortgagor, and the property described in the mortgage)

3. (Insert name of Mortgagee) ("Mortgagee") provided a payoff statement with respect to the loan secured by the mortgage.

4. Affiant has ascertained that Title Company delivered to Mortgagee payment of the loan secured by the mortgage in the amount and time and to the location required by the payoff statement.

5. The mortgage relates to:

(A) property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime; or

(B) property, other than property described by Paragraph (A) above, for which the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.

6. Pursuant to Section 12.017, Texas Property Code, this affidavit constitutes a full and final release of the mortgage from the property.

Signed this ___ day of _____, ____.

_____ (signature of affiant)

State of _____

County of _____

Sworn to and subscribed to before me on _____ (date) by _____ (insert name of affiant).

_____ (signature of notarial officer)

(Seal, if any, of notary) _____

_____ (printed name)

My commission expires:

(e) An affidavit filed under Subsection (c) or (f) must include the names of the mortgagor and the mortgagee, the date of the mortgage, and the volume and page or clerk's file number of the real property records where the mortgage is recorded, together with

similar information for a recorded assignment of the mortgage.

(f) On or after the date of the payment to which the affidavit relates, the title insurance company or authorized title insurance agent must notify the mortgagee at the location to which the payment is sent that the title insurance company or authorized title insurance agent may file for record at any time the affidavit as a release of lien. If notice required by this section is not provided to the mortgagee, the title insurance company or authorized title insurance agent may not file for record the affidavit as a release of lien. The mortgagee may file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or authorized title insurance agent as a release of lien on or before the 45th day after the date the mortgagee receives the notice if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or authorized title insurance agent within that 45-day period.

(g) An affidavit under Subsection (c) operates as a release of the mortgage described in the affidavit if the affidavit, as provided by this section:

- (1) is executed;
- (2) is recorded; and
- (3) is not controverted by a separate affidavit by the mortgagee in accordance with the requirements of Subsection (f).

(h) The county clerk shall index an affidavit filed under this section in the names of the original mortgagee and the last assignee of the mortgage appearing of record as the grantors and in the name of the mortgagor as grantee.

(i) A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 of the Penal Code. The attorney general may sue to collect the penalty. A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the

court may award reasonable attorney's fees and court costs to the prevailing party.

(j) A title insurance company or authorized title insurance agent that, at any time after payment of the mortgage, files for record an affidavit executed under Subsection (c) may use any recording fee collected for the recording of a release of the mortgage for the purpose of filing the affidavit.

(k) This section does not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage.

Added by Acts 1993, 73rd Leg., ch. 1003, Sec. 1, eff. Aug. 30, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 2, eff. September 1, 2009.

Sec. 12.018. TRANSFER BY RECEIVER OR CONSERVATOR OF FAILED DEPOSITORY INSTITUTION. If a bank, savings and loan association, savings bank, or other depository institution is placed in receivership or conservatorship by a state or federal agency, instrumentality, or institution, including the Banking Department of Texas, Department of Savings and Mortgage Lending of Texas, Office of the Comptroller of the Currency, Resolution Trust Corporation, Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or their successors, a person at any time may record an affidavit or memorandum of a sale, transfer, purchase, or acquisition agreement between the receiver or conservator of the failed depository institution and another depository institution. If the sale, transfer, purchase, or acquisition agreement transfers or sells an interest in land or in a mortgage or other lien vested according to the real property records in the failed depository institution, a recorded affidavit or memorandum under this section is constructive notice of the transfer or sale. The failure of the affidavit or memorandum to be executed by the record owner or of the affidavit, memorandum, or agreement to contain language of conveyance does not create a defect in title to the land or the lien.

Added by Acts 1993, 73rd Leg., ch. 1004, Sec. 1, eff. Aug. 30, 1993.
Renumbered from Property Code Sec. 12.017 by Acts 1995, 74th Leg.,
ch. 76, Sec. 17.01(43), eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 6.064,
eff. September 1, 2007.