

PROPERTY CODE
TITLE 5. EXEMPT PROPERTY AND LIENS
SUBTITLE B. LIENS
CHAPTER 68. RICO LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Beneficial interest," "investigative agency," "local prosecutor," and "real property" have the meanings assigned by Section 140B.001, Civil Practice and Remedies Code.

(2) "RICO lien notice" means a lien notice filed under Section 68.051 or 68.052.

(3) "Trustee":

(A) means:

(i) a person acting as trustee under a trust established under the Texas Trust Code (Subtitle B, Title 9, Property Code) in which the trustee holds legal or record title to real property;

(ii) a person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) a successor trustee to a person described by Subparagraph (i) or (ii); and

(B) does not include a person appointed or acting as a personal representative as defined by Section 22.031, Estates Code, or appointed or acting as a trustee of a testamentary trust or as a trustee of an indenture of trust under which any bonds have been or are to be issued.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

SUBCHAPTER B. RICO LIEN NOTICE

Sec. 68.051. GENERAL RICO LIEN NOTICE. (a) On the institution by an investigative agency of a civil action brought under Chapter 140B, Civil Practice and Remedies Code, the

investigative agency, then or at any time during the pendency of the action, may file a RICO lien notice in the official records of any one or more counties. The attorney general must receive the consent of the applicable local prosecutor before filing a RICO lien.

(b) A filing fee or other charge may not be required as a condition for filing the RICO lien notice, and the clerk of the district court, on the presentation of a RICO lien notice, shall immediately record it in the official records.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.052. ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN NOTICE. (a) In addition to the authority to file a RICO lien notice under Section 68.051, the attorney general or a local prosecutor may apply ex parte to a district court and, on petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property on a showing of probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(b) If the RICO lien notice authorization is granted, the attorney general or local prosecutor shall, after filing the notice, immediately provide notice to the owner of the property by:

(1) serving the notice in the manner provided by law for the service of process;

(2) mailing the notice, postage prepaid, by certified mail to the owner at the owner's last known address and obtaining evidence of the delivery; or

(3) if service by a method described by Subdivision (1) or (2) cannot be accomplished, posting the notice on the premises.

(c) The owner of the property may move the court to discharge the lien, and that motion shall be set for hearing at the earliest possible time.

(d) The court shall discharge the lien if the court finds

that:

(1) there is no probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code; or

(2) the owner of the property neither knew nor reasonably should have known that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(e) Testimony presented by the property owner at the hearing:

(1) is not admissible against the property owner in any criminal proceeding except in a criminal prosecution for perjury or false statement; and

(2) does not constitute a waiver of the property owner's constitutional right against self-incrimination.

(f) Except as provided by Subsection (g), a RICO lien notice secured under this section is valid for a period of 90 days from the date the court granted authorization and may be extended for an additional 90 days by the court for good cause shown.

(g) If a civil action is instituted under Chapter 140B, Civil Practice and Remedies Code, and a RICO lien notice is filed under this subchapter, the term of the lien notice is governed by this subchapter.

(h) The filing of a RICO lien notice, regardless of whether subsequently discharged or otherwise lifted, constitutes notice to the owner and knowledge by the owner that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, such that lack of such notice and knowledge is not a defense in any subsequent civil action under Chapter 140B, Civil Practice and Remedies Code, or a subsequent criminal proceeding under Chapter 72, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.053. FORMAT OF NOTICE. (a) A RICO lien notice must be signed by the attorney general or the attorney general's designee or by a local prosecutor or the local prosecutor's designee.

(b) A RICO lien notice must be in the form prescribed by the attorney general and must include:

(1) the name of the person against whom a civil action has been brought under Chapter 140B, Civil Practice and Remedies Code, and at the discretion of the investigative agency may also include any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person;

(2) if known to the investigative agency, the current residence and business addresses of the person named in the notice and of the other names included in the notice;

(3) a reference to an applicable civil action, stating:

(A) that an action under Chapter 140B, Civil Practice and Remedies Code, has been brought against the person named in the notice;

(B) the name of each county in which the action has been brought; and

(C) if known to the investigative agency at the time of filing the notice, the cause number of the action;

(4) a statement that the notice is being filed under this chapter; and

(5) the name and address of the investigative agency filing the notice and the name of the individual signing the notice.

(c) A RICO lien notice must apply only to one person and, to the extent applicable, any other aliases, names, or fictitious names of that person, including the names of corporations, partnerships, or other entities, to the extent permitted by Subsection (b)(1). A separate notice must be filed for each person against whom the investigative agency desires to file a RICO lien notice under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.054. SERVICE OF NOTICE. (a) An investigative agency shall, as soon as practicable after the filing of each RICO lien notice, provide to the person named in the notice:

(1) a copy of the recorded notice; or

(2) a copy of the notice that states each county in which the notice has been recorded.

(b) The failure of the investigative agency to provide a copy of a RICO lien notice under this section does not invalidate or otherwise affect the notice.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.055. CREATION AND PRIORITY OF RICO LIEN.

(a) Filing a RICO lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

(1) any real property situated in the county where the notice is filed then or thereafter owned by the person or under any of the names; and

(2) any beneficial interest situated in the county where the notice is filed then or thereafter owned by the person or under any of the names.

(b) The lien shall commence and attach as of the time of filing of a RICO lien notice and shall continue thereafter until expiration, termination, or release of the notice under this subchapter. The lien created in favor of the state is superior to the interest of any other person in the real property or beneficial interest if the interest is acquired subsequent to the filing of the notice.

(c) For purposes of this section, a beneficial interest is considered to be located where real property owned by the trustee is located.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.056. LIS PENDENS; INTERESTS OF PERSONS ACQUIRING INTEREST IN PROPERTY. (a) In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, an investigative agency may file without prior court order in any county a notice of lis pendens under Section 12.007. In such case, a person acquiring an interest in the subject real property or beneficial interest, if the real property or beneficial interest is acquired subsequent to the filing of the notice of lis pendens, shall take the interest subject to the civil action and any subsequent judgment of forfeiture.

(b) In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, if a RICO lien notice has been filed, an investigative agency may name as a defendant, in addition to the person named in the notice, any person acquiring an interest in the real property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture is entered in the action in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.057. DUTIES OF TRUSTEE; CRIMINAL OFFENSE. (a) A trustee who acquires actual knowledge that a RICO lien notice or a civil action brought under Chapter 140B, Civil Practice and Remedies Code, or criminal proceeding brought under Chapter 72, Penal Code, has been filed against a person for whom the trustee holds legal or record title to real property shall immediately furnish to the appropriate investigative agency:

(1) the name and address of the person, as known to the trustee;

(2) the name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real property; and

(3) if requested by the investigative agency, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(b) A trustee who violates this section commits an offense. An offense under this subsection is a Class B misdemeanor. Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.058. LIABILITY OF TRUSTEE FOR CONVEYANCE OF TITLE.

(a) A trustee who conveys title to real property for which, at the time of the conveyance, a RICO lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real property is situated is liable to the state for the greatest of:

(1) the amount of proceeds received directly by the person named in the notice as a result of the conveyance;

(2) the amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the notice; or

(3) the fair market value of the interest of the person named in the notice in the real property conveyed.

(b) Notwithstanding Subsection (a)(3), if a trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or the beneficiary's designee, the trustee's liability does not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

(c) An investigative agency may bring a civil action in any district court against a trustee to recover from the trustee the amount described by Subsection (a) and is entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.059. EFFECT ON TRUST OF RICO LIEN NOTICE. (a) The filing of a RICO lien notice does not constitute a lien on the record title to real property as owned by a trustee except to the extent that the trustee is named in the notice.

(b) The filing of a RICO lien notice does not affect the use

to which real property or a beneficial interest owned by the person named in the notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership, but not the sale, of the property until a judgment of forfeiture is entered.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.060. TRUST EXCEPTIONS. (a) This chapter does not apply to a conveyance by a trustee under a court order, unless that court order is entered in an action between the trustee and the beneficiary.

(b) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a RICO lien notice or is otherwise a defendant in a civil action brought under Chapter 140B, Civil Practice and Remedies Code, this subchapter does not apply to a conveyance by the trustee:

(1) required under the terms of the trust agreement that is a matter of public record before the filing of the lien notice; or

(2) to all of the persons who own beneficial interests in the trust.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.061. RIGHTS OF INNOCENT PERSONS. All forfeitures or dispositions under this chapter must be made with due provision for the rights of innocent persons.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.062. EXPIRATION, RENEWAL, AND RELEASE OF RICO LIEN NOTICE. (a) Unless renewed by the investigative agency, a RICO lien notice expires on the sixth anniversary of the date it was filed. If the investigative agency renews the notice, the notice expires on the sixth anniversary of the date it was renewed. The investigative agency may renew the notice only once.

(b) The investigative agency filing a RICO lien notice may wholly or partly release the notice or may release any specific real property or beneficial interest from the notice on the investigative agency's own terms. A release of the notice may be filed in the official records of any county. A charge or fee may not be imposed for the filing of the release.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.063. EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE. If a civil action has not been brought by an investigative agency seeking a forfeiture of any property owned by the person named in the RICO lien notice, the acquittal in a criminal proceeding brought under Chapter 72, Penal Code, of the person named in the notice or the dismissal of the criminal proceeding terminates the notice and, in such case, the filing of the notice is void. If the criminal proceeding has been dismissed or the person named in the notice has been acquitted in the criminal proceeding, the notice continues for the duration of a civil action brought under Chapter 140B, Civil Practice and Remedies Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.064. TERMINATION OR RELEASE OF RICO LIEN NOTICE BY COURT. (a) If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is not pending against a person named in a RICO lien notice, the person may bring an action in the county where the notice has been filed against the investigative agency that filed the notice seeking a release or extinguishment of the notice.

(b) In an action brought under this section, the court shall, on the motion of the person named in the RICO lien notice, immediately enter an order setting a date for hearing that is not earlier than the fifth day and not later than the 10th day after the date the action is filed, and the order and a copy of the complaint shall be served on the investigative agency not later than the third day after the date the action is filed.

(c) At the hearing set under Subsection (b), the court shall take evidence on the issue of whether any real property or beneficial interest owned by the person named in the RICO lien notice is covered by the notice or is otherwise subject to forfeiture under Chapter 140B, Civil Practice and Remedies Code.

(d) If, at the hearing under Subsection (b), the person named in the RICO lien notice shows by a preponderance of the evidence that the notice is not applicable to the person or that any real property or beneficial interest owned by the person is not subject to forfeiture under Chapter 140B, Civil Practice and Remedies Code, the court shall enter a judgment terminating the notice or releasing the real property or beneficial interest from the notice.

(e) A court shall immediately enter its order releasing from a RICO lien notice any specific real property or beneficial interest if a sale of that real property or beneficial interest is pending and the filing of the notice prevents the sale of the property or interest. Proceeds resulting from the sale of that real property or beneficial interest shall be deposited into the registry of the court, subject to the further order of the court.

(f) At the hearing under Subsection (b), the court may release any real property or beneficial interest from the RICO lien notice, on the posting by the person named in the notice of security that is equal to the value of the real property or beneficial interest owned by the person.

(g) If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is pending against a person named in a RICO lien notice, the court on motion by the person may grant the relief described by this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.