

PROPERTY CODE

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. 12.002. 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 or replat of a subdivision of real property unless the 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 or replat is filed after September 1 of a year, the 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 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; Acts 2005, 79th Leg., ch. 1126, Sec. 26, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1154, Sec. 1, eff. Sept. 1, 2005.

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.

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

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 note the transfer on the margin of the minute book at the place where the judgment is recorded. 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.

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 and licensed to transact the business of insuring titles to interests in real property in this state.

(b) This section applies only to a mortgage on property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime.

(c) If a mortgagee fails to execute and deliver a release of mortgage to the mortgagor or the mortgagor's designated agent within 60 days after the date of receipt of payment of the mortgage by the mortgagee in accordance with a payoff statement furnished by the mortgagee or its mortgage servicer, an authorized officer of a title insurance company 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 this section must state that:

(1) the affiant is an authorized officer of a title insurance company;

(2) the affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage;

(3) the mortgagee provided a payoff statement with respect to the loan secured by the mortgage;

(4) the affiant has ascertained that the mortgagee has received payment of the loan secured by the mortgage in accordance with the payoff statement, as evidenced by:

(A) a bank check, certified check, escrow account check from the title company or title insurance agent, or attorney trust account check that has been negotiated by the mortgagee; or

(B) another documentary evidence of the receipt of payment by the mortgagee;

(5) more than 60 days have elapsed since the date payment was received by the mortgagee;

(6) the title insurance company or its agent has given the mortgagee at least 15 days' notice in writing of its intention to execute and record an affidavit in accordance with this section, with a copy of the proposed affidavit attached to the written notice; and

(7) the mortgagee has not responded in writing to the notification, or a request for additional payment made by the mortgagee has been complied with at least 15 days before the date of the affidavit.

(e) The affidavit 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) The affiant must attach to the affidavit a photostatic copy, certified as a true copy of the original document, of:

(1) the documentary evidence that payment has been received by the mortgagee, including the mortgagee's endorsement of a negotiated check if paid by check; and

(2) the payoff statement.

(g) An affidavit that is executed and recorded as provided by this section operates as a release of the mortgage described in the affidavit.

(h) The county clerk shall index the affidavit 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, and to a party injured by the affidavit for actual damages or \$5,000, whichever is greater. The attorney general may sue to collect the penalty. 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.

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

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, Savings and Loan Department 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 V.T.C.A., Property Code Sec. 12.017 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(43), eff. Sept. 1, 1995.