STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2820 By: Calvey

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 2001, Section 706, which relates to judgment liens; modifying property subject to judgment lien, with exception; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 706, is amended to read as follows:

Section 706. A. Scope. This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of the Uniform Federal Lien Registration Act, Section 3401 et seq. of Title 68 of the Oklahoma Statutes, which award the payment of money, regardless of whether such judgments also include other orders or relief.

B. Creation of Lien. A judgment to which this section applies shall be a lien on the real estate of the judgment debtor within a county only from and after a Statement of Judgment made by the judgment creditor or the judgment creditor's attorney, substantially in the form prescribed by the Administrative Director of the Courts, has been filed in the office of the county clerk in that county.

1. Presentation of a Statement of Judgment and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

2. A lien created pursuant to this section shall affect and attach to all real property, ~~including~~ except the homestead unless

the homestead is the subject of a foreclosure action to satisfy a mortgage on the homestead, of judgment debtors whose names appear in the Statement of Judgment~~; however, judgment liens on a homestead are exempt from forced sale pursuant to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of Article XII of the Oklahoma Constitution~~.

C. Judgment Index. A judgment index shall be kept by each county clerk in which the name of each person named as a judgment debtor in a Statement of Judgment filed with the county clerk shall appear in alphabetical order.

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which the judgment was filed, the amount of the judgment, including interest, costs and attorney's fees if shown on the Statement of Judgment, the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

2. It shall also be the duty of the county clerk, immediately after the filing of a Release of Judgment Lien, to make a notation in each entry in the judgment index made when any Statement of Judgment was filed with respect to the judgment being released, of the date of filing of the Release with the county clerk, the name of the judgment creditor on whose behalf the Release is filed, and whether the Release states that it is only a partial Release.

D. Execution of Judgment. Execution shall be issued only from the court which granted the judgment being enforced.

E. Release of Lien of Judgment. The lien of a judgment upon the real estate of judgment debtor in any county, which has not

become unenforceable by operation of law, is released only upon the filing in the office of the county clerk in that county of a Release of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted the judgment.

1. A judgment lien may be released, in whole or in part, by filing a Release of Judgment Lien with the county clerk by the judgment creditor or his or her attorney.

a. A Release of Judgment Lien shall either recite the name of the court which granted the judgment, the number and style of the case, the name of each judgment debtor with respect to whom the lien is being released, the name of each judgment creditor in favor of whom the lien was created, or otherwise adequately identify the judgment lien being released and the judgment debtor against whom the lien is indexed. The Administrative Director of the Courts shall prescribe a form of Release of Judgment which may be used at the option of the judgment creditor.

b. If the release is only partial, it shall also contain a description of the lands then being released from the judgment lien or identify the particular judgment debtors, if less than all, with respect to whom the lien is then being released, or both, as the case may be.

c. A Release of Judgment Lien may also be filed with the court clerk of the court which granted the judgment but filing with the court clerk does not release any judgment lien created pursuant to this section.

2. The lien of any judgment which has been satisfied by payment or otherwise discharged and which has not been released by the judgment creditor shall be released by the court upon written motion.

a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released.

b. A copy of the motion shall be mailed by certified mail by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the addresses to which they were mailed, and the date of mailing.

c. If the judgment creditor does not file a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion, the court shall order the judgment lien released.

d. When a judgment lien is ordered released by the court, the court shall cause a Release of Judgment Lien, in the form provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on such form advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county.

e. The party filing the motion for release shall pay all costs of the proceeding and any recording fees.

F. Effect of Filing or Recording a Judgment. The filing or recording of a judgment itself in the office of a county clerk on or after October 1, 1993, shall not be effective to create a general money judgment lien upon real estate, but a certified copy of a judgment may be recorded in such office for the purpose of giving notice of its contents whether or not recording is required by law.

G. Acceptance by County Clerk. The county clerk shall accept for filing and file any Statement of Judgment or Release of Judgment Lien without requiring any formalities of execution other than those provided in this section.

SECTION 2. This act shall become effective November 1, 2002.

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