

**TEXAS ABSTRACTS OF JUDGMENT
AND
JUDGMENT LIENS**

Presented by

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TEXAS ABSTRACTS OF JUDGMENT AND JUDGMENT LIENS

I. REQUIREMENTS FOR A VALID JUDGMENT LIEN

A. General Considerations

1. Rendition of Judgment Alone Does Not Create a Lien

The judgment lien is an oft-employed and valuable tool for the enforcement of judgments.¹ However, judgment liens are not self-executing.² No lien is created by the mere rendition of judgment.³ A money judgment is simply an adjudication between the plaintiff and the defendant that the defendant owes the plaintiff money.⁴ Such a judgment gives the plaintiff no rank, superior or inferior, to other claimants.⁵ The plaintiff's only superior position is against the judgment debtor.⁶ A judgment can ripen into a judgment lien only with the proper issuance, recording, and indexing of an abstract of judgment in accordance with Chapter 52 of the Texas Property Code.⁷ The abstract of judgment is the statutory means by which a lien having no previous existence comes into being.⁸

This rule obtains even if the judgment itself recites that it creates a judgment lien. In *Day v. Day*,⁹ a divorce decree awarded Mrs. Day a money judgment of \$12,500.00 against Mr. Day and expressly fixed a judgment lien on his property to secure its payment.¹⁰ Held a judgment lien was not created by this recital in the decree.¹¹ A judgment lien comes into existence only upon complying with the post-judgment statutory mechanisms for the creation of such a lien set out in Chapter 52 of the Texas Property Code.¹²

2. Statutory Remedy Requiring Substantial Compliance

The judgment lien is a purely statutory remedy.¹³ As it is an extraordinary remedy imposed against the will of the debtor and in derogation of common law,¹⁴ the statute must be observed in all of its details.¹⁵ A creditor is not empowered to create a judgment lien in any other manner.¹⁶ Perfecting a judgment lien is a procedure fraught with attention to detail. Generally, each and every requirement of the statute must be followed to establish a lien.¹⁷ An underlying current of hostility toward judgment liens is evident from decisional authorities. A very literal and strict rule of compliance with the statute is imposed in these cases.¹⁸ This inelastic rule is possibly explained by an historic refusal to consider a lien creditor as an innocent purchaser who loses any value if his lien fails.¹⁹

Strict construction is not always applied to avoid judgment liens.²⁰ Courts are likewise

constrained from adding requirements for fixing a lien not strictly required by the statute.²¹

While the statutory requirements are strictly enforced, this does not mean that they are to be construed so technically as to impose unnecessary difficulties upon the judgment creditor in securing the benefits of a lien.²² Substantial compliance with the statute is the standard for establishing a lien.²³ Substantial compliance means little less than literal compliance.²⁴ Only a minor deficiency is allowed in a required element for a judgment lien.²⁵ There may be no material failure or omission.²⁶ The complete absence of a statutory element is not substantial compliance.²⁷

In deciding what is or is not a minor deficiency, courts sometimes indulge in a pragmatic examination of the purposes of abstracts of judgment -- that is to create a record sufficient to put a subsequent purchaser on notice of the lien or on notice of facts which if pursued by a reasonably prudent person with reasonable diligence would disclose the true facts.²⁸ If the record is sufficient to charge third parties with notice of the lien or would excite inquiry which would disclose the existence of the lien, the true object of the statute is served and a finding of substantial compliance is more likely.²⁹

B. Qualified Judgments

1. Valid Judgment Required

A judgment lien must be supported by a valid judgment. The recording of an abstract of judgment on a void judgment creates no lien.³⁰ In *Urban v. Bagby*,³¹ no judgment lien was created by recording an abstract on a judgment void for want of personal service.³²

2. Final Judgment Required

An abstract of judgment requires a final judgment.³³ In *Blankenship v. Buchanan & Herring*,³⁴ an interlocutory judgment which failed to dispose of the plaintiff's claims against one of the defendants could not support the issuance of a valid abstract of judgment.³⁵

a. Effect of Appeal.

An appeal does not preclude the judgment creditor from abstracting his judgment.³⁶ Nor will an appeal vacate the lien during the period when the appeal is pending³⁷ or affect the priority of the judgment lien upon the affirmance of the judgment.³⁸

b. Effect of Supersedias.

The general rule is that there is no restraint on the issuance and recording of an abstract of judgment on a superseded judgment.³⁹ Nor will a

supersedeas bond automatically suspend the effectiveness of a judgment lien previously acquired.⁴⁰ If the judgment is affirmed, the priority of the lien relates back to the date it is filed and indexed.⁴¹ The effect of the judgment lien is the same as if the case had never been appealed.⁴² Notwithstanding, the superseded nature of the judgment *will* prevent that judgment lien from constituting a lien on the real property of the defendant if:

- (1) the defendant has posted a supersedeas bond or is excused from posting such a bond; and
- (2) the court finds that the creation of the lien would not substantially increase the degree to which the judgment creditor's recovery under the judgment would be secured when balanced against the costs to the defendant after the exhaustion of appellate remedies.⁴³

The court making this determination is the court rendering the judgment not the reviewing appellate court.⁴⁴ A certified copy of the finding of the trial court must be recorded in the real property records in each county in which the abstract of judgment was filed.⁴⁵ The court may withdraw its original findings at any time the court determines, from the evidence presented to it, that the finding should be withdrawn.⁴⁶ The judgment lien then attaches upon withdrawal of the finding and upon the filing of a certified copy of the withdrawal in the real property records of each county where the abstract of judgment is recorded.⁴⁷

A supersedeas bond does automatically suspend the right to foreclose a judgment lien.⁴⁸

3. Judgment For Specified Sum Required

In order to support the issuance of an abstract of judgment, the judgment must be for a specified sum.⁴⁹ In *Blum v. Keyser*,⁵⁰ a judgment was entered against the defendants for \$2,776.02 together with a decree foreclosing a mortgage lien on six tracts of land.⁵¹ The judgment directed that if the proceeds from the sale of the defendants' properties were insufficient to pay off the judgment, that an execution issue for the balance.⁵² The defendants contended that an abstract of judgment issued *before* the foreclosure sale could not create a valid judgment lien until after the foreclosure sale determined the exact amount of the deficiency.⁵³ Held the judgment lien validly attached.⁵⁴ The judgment was a personal judgment against the defendants for the entire amount capable of being made a lien on the defendants' property in same manner as ordinary money judgments.⁵⁵

4. Unsatisfied Judgment Required

Some part of the judgment must remain unsatisfied before a judgment lien may issue.⁵⁶ In *Huggins v. Johnston*,⁵⁷ payment of the judgment by one judgment debtor precluded the plaintiff from fixing a judgment lien against the property of another judgment debtor.⁵⁸

5. Judgment Cannot Be Dormant

An abstract of judgment cannot be issued in enforcement of a dormant judgment.⁵⁹ The judgment lien is only incident to the judgment debt.⁶⁰ If the judgment becomes dormant, it loses its lien-conferring power.⁶¹ If an abstract of judgment is recorded and indexed after the judgment becomes dormant, it creates no judgment lien.⁶²

A judgment becomes dormant if a writ of execution is not issued: (1) within ten years after rendition of the judgment or (2) within ten years of the issuance of the last writ of execution on the judgment.⁶³ If a judgment's effectiveness is being maintained via a writ of execution, the mere clerical issuance of the writ is insufficient.⁶⁴ The writ must be delivered into the hands of an officer for execution.⁶⁵ Delivery of the writ to the proper officer will not be presumed but must be proven.⁶⁶

A dormant judgment may be revived by *scire facias* or by an action of debt brought not later than two years after the date that the judgment becomes dormant.⁶⁷ An action to foreclose a judgment lien is an action for debt sufficient to revive a judgment.⁶⁸ In *Churchill v. Russey*,⁶⁹ a judgment was entered in favor of Russey on November 19, 1970 and duly abstracted.⁷⁰ Russey filed suit to foreclose the judgment lien on August 14, 1979 (within 10 years of the entry of the judgment) but no final order foreclosing the judgment lien was entered until June 8, 1982.⁷¹ Held the suit to foreclose the judgment lien was an "action for debt" sufficient to prevent the judgment from becoming dormant.⁷²

The enforcement of a judgment lien requires proof that the abstract of judgment was issued at a time when the judgment was not dormant. The burden of proof on this issue is with the judgment lienholder.⁷³ However, there is no necessity that the abstract of judgment affirmatively show on its face that the underlying judgment is not dormant in order for the abstract to be effective.⁷⁴

6. Foreign Judgments

As a general rule, no abstract may be recorded unless issued by a Texas court or a U.S. District Court of Texas.⁷⁵ However, the statutory provisions relating to this are far from clear. TEX. PROP. CODE ANN. § 12.013 purports to allow the recording of an abstract issued by any court (1) expressly created or established under the constitution or laws of this state or of the United States, (2) 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 (3) of any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the Constitution of the United States so long as attested under the signature and seal of the clerk of that court.⁷⁶ However, this provision must be considered in conjunction with a contemporaneously enacted provision of the Civil Practices and Remedies Code which provides "Notwithstanding any other law, a purported judgment lien or document establishing or purporting to establish a judgment lien against property in this state, that is issued or purportedly issued by a court or a purported court other than a court established under the laws of this State or the United States, is void and has no effect in the determination of any title or right to property."⁷⁷

a. **Judgments of Other States**

A judgment lien cannot be filed in enforcement of a judgment of another state until that judgment is domesticated in Texas. The effect of due registration/domestication of the foreign state judgment is to instantly create a Texas judgment.⁷⁸ Thereafter it may be enforced using the same procedures for enforcing or satisfying a Texas judgment.⁷⁹ In *Citicorp Real Estate v. Banque Arabe Internationale D'Investissement*,⁸⁰ a Florida judgment was filed in Texas under the Uniform Enforcement of Foreign Judgments Act.⁸¹ An abstract was issued on the judgment by the 116th District Court of Dallas County.⁸² The abstract omitted the defendant's address and citation information.⁸³ Held the foreign status of the judgment did not excuse satisfaction of all of the required elements for a Texas abstract of judgment.⁸⁴ The abstract created no judgment lien.⁸⁵

Two procedures are available for domestication of foreign state judgments: (1) registering the judgment under the Texas version of the Uniform Enforcement of Foreign Judgments Act or (2) filing a common law action for enforcement of foreign judgment.⁸⁶ For an excellent discussion of these procedures, refer to Prewitt, *Enforcement of Foreign Judgments*, Univ. of Houston, *Collecting Debts and Judgments*, 1996.

b. **Federal Judgments**

Judgment liens can be created on federal judgments in two different ways (1) domestication/registration of the federal judgment as in the case of a judgment of another state;⁸⁷ or (2) direct recordation of an abstract of judgment issued under the certification of a clerk of a United States District Court.⁸⁸

Direct recordation of an abstract of judgment issued by a federal court is allowed only if the judgment was issued by a U.S. District Court

located in Texas.⁸⁹ Federal judgments rendered outside of Texas must be registered in a federal judicial district in Texas by filing with the appropriate U.S. District Clerk a certified copy of the judgment.⁹⁰ A judgment so registered then has the same effect as a judgment of the U.S. District Court where registered.⁹¹

An abstract of judgment issued by a U.S. District Court must contain all of the same elements, and must be recorded and indexed in the same manner as an abstract issued by a Texas court.⁹² Likewise, a federal abstract of judgment in conformity with Texas law has the same effect and operates in the same manner as an abstract issued by a Texas court.⁹³

c. **Judgments of Other Countries**

The registration of judgments of other countries is governed by TEX. CIV. PRAC. & REM. CODE ANN. Chapter 36. A qualified foreign country judgment that is duly-filed under this Chapter with requisite notice and for which recognition is not refused is enforceable in the same manner as a judgment of another state.⁹⁴ Presumably, the benefits of a judgment lien for a recognized foreign country judgment would be secured in the same manner and have the same effect as a judgment of another state.

C. Issuance of Abstract of Judgment

1. Who May Issue an Abstract of Judgment?

a. **Judgments Other Than in Justice or Small Claims Courts**

For judgments other than those in a small claims court or justice court, the abstract of judgment may be issued by the judgment creditor, the judgment creditor's agent, attorney, or assignee.⁹⁵

b. **Judgments in Justice or Small Claims Courts**

In a Small Claims Court or Justice Court, an abstract of judgment may be issued by: (1) the attorney of a person in whose favor a judgment is rendered, or (2) the judge or justice of the peace who rendered the judgment.⁹⁶ For a court-issued abstract of judgment, application for issuance may be made by the judgment creditor or the judgment creditor's agent, attorney, or assignee.⁹⁷

2. Fee for Issuance of Abstract of Judgment

For court-issued abstracts of judgment, the applicant must pay the fee allowed by law.⁹⁸ The current fee for issuance of an abstract of judgment is \$8.00.⁹⁹

D. Contents of Abstract of Judgment

No statutory form for an abstract of judgment is prescribed.¹⁰⁰ However, TEX. PROP. CODE ANN. § 52.003 lists the required elements. It is the duty of the judgment lien creditor to make sure that the

abstract of judgment includes all information required by statute.¹⁰¹

A court may look to the four corners of the abstract to supply the necessary elements.¹⁰² Thus in *Gullett Gin Co. v. Oliver*,¹⁰³ when the names of the defendants were not all given in the body of the abstract but were contained in the attached certificate of the clerk, the abstract was sufficient.¹⁰⁴ In *In re Rosenfield*,¹⁰⁵ an abstract was filed together with a lengthy settlement agreement between the parties specifying when payments would be made on the judgment.¹⁰⁶ The Court determined that documents filed with the abstract could be treated as the abstract itself and could supply the information required by the statute.¹⁰⁷ However this should be limited to short accompanying statements supplementing the information on the abstract not lengthy documents which make it difficult for a third party to garner the required information.¹⁰⁸

1. Purpose of Abstract of Judgment.

In examining the adequacy of an abstract of judgment, the purpose of the instrument is to be borne in mind.¹⁰⁹ The purpose of the abstract is to give notice of a judgment lien and to inform all interested persons where they may easily find the judgment and all papers bearing upon its validity.¹¹⁰

2. Names of Parties

An abstract of judgment must show the names of the plaintiff and defendant.¹¹¹ The allegation of the names of the parties is material.¹¹² An error in this element of the abstract may cause it to fail.

a. Which Parties Must Be Named?

In *Shirey v. Trust Co.*,¹¹³ an abstract was issued which listed all defendants against whom a money judgment was given but not other defendants against whom costs only were awarded.¹¹⁴ For failure to list *all* judgment defendants, the abstract failed to create a lien.¹¹⁵ In *Gensheimer v. Kneisley*,¹¹⁶ Kneisley sued Gilbert Beall and wife Vivian Beall.¹¹⁷ However, the judgment was against Gilbert Beall only.¹¹⁸ The subsequent abstract of judgment named only Gilbert Beall.¹¹⁹ Relying on *Womack v. Paris Grocer Co.*, 166 S.W.2d 366 (Tex. Civ. App. - Galveston 1942, writ ref'd), *Gensheimer* concluded that the abstract was sufficient even if showing only the names of all parties *to the judgment*.¹²⁰ The logic of this decision may be flawed as *Womack v. Paris Grocer Co.* was decided under a pre-Property Code version of the statute that required that the abstract contain "the names of the plaintiff and of the defendant *in such judgment*".¹²¹ In *Caruso v. Shropshire*,¹²² 54 plaintiffs obtained a judgment against James W. Bailey, Jr.¹²³ The abstract of judgment named only one of the plaintiffs.¹²⁴ Failing to name the

other 53 plaintiffs caused the abstract to be fatally defective.¹²⁵ This limiting language was not included in TEX. PROP. CODE ANN. § 52.003(a)(1). The best approach is probably to include the names of *all* parties to the suit in the abstract of judgment.

b. Errors in Party Names

A misspelled party name will generally not cause the abstract of judgment to fail so long as the misspelled name is *idem sonans* (sounds the same) as the correct name.¹²⁶ In *Anthony v. Taylor*,¹²⁷ an abstract of judgment listing the plaintiffs as "*Joan Burkhead and William Burkhead*" failed to create a judgment lien to secure a judgment in favor of Joan and William *Bankhead*.¹²⁸

There is little tolerance for any variance between the name of a party in the judgment and the name of a party in the abstract. For example in *Traweek v. Simmons*,¹²⁹ judgment was rendered for E.L. Sprague and Lind Sprague.¹³⁰ The abstract gave the plaintiffs names as "*Lind Greathouse and E.L. Sprague*".¹³¹ Evidence showed that the suit was originally brought by Lind Greathouse who, during the pendency of the suit, married E.L. Sprague to become Lind Sprague.¹³² Held the abstract was insufficient and failed to fix a lien.¹³³ In *Wicker v. Jenkins*,¹³⁴ an abstract of a judgment against "W.F.B. Wicker" incorrectly stated the defendant's name as "W.B.F. Wicker".¹³⁵ These transposed initials caused the judgment lien to fail.¹³⁶ *But see Mullins v. Albertson*,¹³⁷ holding an abstract of judgment against "*G.W. Albertson*" was sufficient when the judgment was against "*G.M. Albertson*".¹³⁸ Evidence showed G.W. Albertson and G.M. Albertson were one in the same person.¹³⁹

c. Capacity of Representative Parties

It is not necessary that the capacity of a party be given if the party has appeared in the suit in a representative capacity.¹⁴⁰ Thus an abstract of a judgment against J.P. Russell, executor of the estate of B.H. Eperson, was not defective when it failed to show that Russell was an executor.¹⁴¹ The entry in Russell's individual name was sufficient to excite inquiry and indicate the source of full information.¹⁴²

3. Birthdate and Driver's License Number of Defendant

An abstract of judgment must give the birthdate and driver's license number of the defendant if available to the clerk or justice.¹⁴³ This information is not necessarily mandatory.¹⁴⁴ It need be included in the abstract only if *reasonably* available to the clerk.¹⁴⁵ This likely means that unless the records of the clerk contain this information, it need not be included.¹⁴⁶ However, when reasonably available to the clerk,

this information is mandatory.¹⁴⁷ There is no necessity for the clerk or the judgment creditor to obtain this information by deposing the defendant.¹⁴⁸ If this information is not available, the abstract of judgment need not affirmatively state this.¹⁴⁹

IMPORTANT NOTE: This provision was not revisited in 1987 when TEX. PROP. CODE ANN. § 53.002 was amended to allow judgment creditors and their agents to issue their own abstracts of judgment. The effect of this is likely to require a judgment creditor to include the defendant's birthdate and driver's license number in the abstract if the clerk has any of this information reasonably available from the records of the clerk's office. If the clerk has this information from the records of the suit, birth records, criminal records, etc., the abstract is likely fatally defective if the creditor fails to incorporate the information into the abstract.

4. Cause Number of Suit

An abstract of judgment must include the number of the suit in which the judgment was rendered.¹⁵⁰

a. Missing Cause Number

In *Bonner v. Grigsby*,¹⁵¹ an abstract with a missing cause number was fatally defective and created no judgment lien.¹⁵²

b. Wrong Cause Number

In *San Antonio Loan & Trust Co. v. Davis*,¹⁵³ a mandate from the court of civil appeals reversed and rendered judgment in favor of Joseph C. Martin and Minnie B. Martin against John H. Davis.¹⁵⁴ The trial court later entered a judgment adopting the mandate of the court of civil appeals.¹⁵⁵ A subsequent abstract of judgment recited the cause number of the appellate proceeding rather than the trial court cause number.¹⁵⁶ Held the abstract was fatally defective.¹⁵⁷

c. Trial Court Designation Required?

TEX. PROP. CODE ANN. § 52.003 does not require that the trial court from which the judgment originates be designated. As a result any error in designating the issuing court does not affect the validity of the abstract of judgment.¹⁵⁸

5. Defendant's Address/Citation Information

An abstract of judgment must show the defendant's address, or if the address is not shown in the suit, the nature of the citation and the date and place of service of citation.¹⁵⁹ Without this information, the abstract of judgment cannot create a judgment lien.¹⁶⁰ If the defendant's address appears from the papers on file in the suit in which the judgment was rendered, this address must be shown.¹⁶¹ If there is no address for the

defendant shown in the suit papers, then the abstract must show the nature, date, and place of citation.¹⁶² This requirement is not an "either or" situation.¹⁶³ The defendant's address *must* be given if available to the clerk.¹⁶⁴ If the defendant's address is available to the clerk, the abstract of judgment will be insufficient if it gives only the citation information.¹⁶⁵ In *Olivares v. Nix Trust*,¹⁶⁶ conflicting addresses for the defendant appeared in the papers of the suit.¹⁶⁷ When a definitive address for the defendant did not appear from the records of the clerk, simply giving the citation information in the abstract was sufficient.¹⁶⁸

a. Counterclaims and Third-Party Actions

The defendant's address that must be shown is that of the defendant *in judgment*.¹⁶⁹ Therefore, to perfect a judgment lien, a counterplaintiff must use the same procedures regardless of that party's status in the underlying suit.¹⁷⁰

In *Allied First Nat'l Bank of Mesquite v. Jones*,¹⁷¹ the judgment creditor argued that strict compliance with this rule should not apply to counterclaims.¹⁷² The defendant's address is unlikely to appear in the counterclaim because the plaintiff has already appeared in the suit at the time that the counterclaim is filed.¹⁷³ Also citation is usually unnecessary because the counterdefendant can be served with the counterclaim pursuant to TEX. R. CIV. P. Rules 124, 21a.¹⁷⁴ Held that the statute must be strictly applied to every judgment creditor whatever that creditor's status in the original suit.¹⁷⁵ *IMPORTANT NOTE:* If the counterplaintiff wants to obtain a judgment lien in the event he is successful, he must take the preliminary cautionary steps of pleading the counter-defendant's address or serving the counterdefendant with citation.¹⁷⁶

b. Sufficiency of Address

In *Apostolic Church v. American Honda Motor Co.*,¹⁷⁷ the address for the defendant was given as "Tenaha Hwy., Center, Texas".¹⁷⁸ Held this address was sufficient.¹⁷⁹

In *Olivares v. Nix Trust*,¹⁸⁰ two different addresses for the defendant appeared in the papers of the suit.¹⁸¹ *Olivares* did not answer the question whether showing either or both of these addresses in the abstract of judgment would have been sufficient. Rather, when the defendant's address did not definitely appear in the papers of the suit, the citation information was properly substituted in the abstract of judgment.¹⁸²

c. Public Figure Exception?

In *Citicorp Real Estate Inc. v. Banque Arabe Internationale D'Investissement*,¹⁸³ Citicorp argued that the absence of the defendant's address in an abstract was excusable when the judgment was

against Clint W. Murchison, Jr. a public figure.¹⁸⁴ Held the same address requirements apply regardless of the notoriety of the defendant.¹⁸⁵

d. Sufficiency of Citation Information

If the defendant is served through its registered agent, the manner of this service should be affirmatively stated.¹⁸⁶ The "place" of the service requires a statement of the best address available where the defendant was served.¹⁸⁷

6. Date of Judgment

a. No Date

To perfect a lien, an abstract of judgment must show the date that the judgment was rendered.¹⁸⁸ The allegation of the judgment date is material and in its absence the abstract is fatally defective.¹⁸⁹

b. Error in Date

Abstracts of judgment with slight errors in the date of the judgment have been upheld. In *Guaranty State Bank of Donna v. Marion County Nat'l Bank*,¹⁹⁰ the abstract gave the date of the judgment as October 17, 1921 (the date the case went to trial) instead of October 20, 1921 (the correct date of the judgment).¹⁹¹ Held this was substantial compliance with the statute.¹⁹²

However, more substantial errors will cause the abstract of judgment to fail. In *Rushing v. Willis*,¹⁹³ an abstract issued in April 1889 gave the date of the judgment as September 1889, an impossible date *after* the issuance of the abstract (the judgment was actually rendered on October 2, 1888).¹⁹⁴ Held the abstract failed to create a lien.¹⁹⁵ In *San Antonio Loan & Trust Co. v. Davis*,¹⁹⁶ a mandate from the court of civil appeals reversed and rendered judgment in favor of Joseph C. Martin and Minnie B. Martin against John H. Davis.¹⁹⁷ The trial court later entered a judgment adopting the mandate of the court of civil appeals.¹⁹⁸ A subsequent abstract of judgment recited the date of the appellate mandate (June 21, 1918) rather than the date of trial court judgment (April 15, 1919).¹⁹⁹ Held the abstract was insufficient.²⁰⁰

c. Sufficiency of Date

In *Schneider v. Dorsey*,²⁰¹ the year of the judgment was not insufficiently given in the abstract as "93" instead of "1893".²⁰² Nor was the date insufficient for the failure to indicate the date as "A.D." rather than "B.C."²⁰³

7. Amount of Judgment/Balance Due

An abstract of judgment must give *both* the amount for which the judgment was rendered and the balance due thereon.²⁰⁴

a. Judgment Amount

The amount of the judgment is a material part of the abstract of judgment.²⁰⁵ If the amount of the judgment is incorrectly given, the abstract fails to create a lien.²⁰⁶ This requirement is strictly construed.²⁰⁷ Even a small variance between the correct amount of the judgment and the amount stated in the abstract will cause the attempted lien to fail.²⁰⁸ In *Texas Bldg. & Mortgage Co. v. Morris*,²⁰⁹ an abstract was sufficient although the amount of the judgment was not preceded by the "\$" symbol.²¹⁰ In *New England Loan & Trust Co. v. Avery*,²¹¹ the abstract substantially complied although the judgment amount had no decimal point between the dollars and cents shown.²¹²

The amount of the judgment which must be specified in the abstract has been construed to refer only to the principal amount of the judgment and not to the amount of any costs.²¹³ Thus in *Wicker v. Jenkins*,²¹⁴ when the abstract gave an incorrect amount for the costs, this error did not affect the validity of the judgment lien.²¹⁵

b. Amount Remaining Due

The abstract of judgment must give the amount remaining due on the judgment as of the date that the abstract was issued.²¹⁶ It is not necessary that the amount due on the judgment be expressly stated if that amount could be easily calculated from the other information supplied in the abstract.²¹⁷ In *Apostolic Church v. American Honda Motor Co.*,²¹⁸ the abstract gave the date and amount of the original judgment, the amount of costs, and the judgment rate of interest but failed to expressly state the amount then due.²¹⁹ That figure could be determined by mathematical calculation utilizing the information that was contained in the abstract.²²⁰ Held the abstract substantially complied with the statute.²²¹

The cases disagree on abstracts which correctly supply the means to calculate the amount due but which expressly and incorrectly state that amount. In *Kingman Texas Implement Co. v. Borders*,²²² the abstract correctly gave the original judgment amount and date, costs, credits, and interest rate but incorrectly calculated the amount due.²²³ A mathematical error apparently occurred when the clerk transposed two numbers (\$437 became \$473).²²⁴ Noting that human agencies are not infallible, the court held the error immaterial.²²⁵ However, on similar facts, *Noble v. Barner*²²⁶ concluded that an abstract could not leave such an important matter in doubt.²²⁷ Held such an abstract was fatally defective.²²⁸

Credits After Issuance of Abstract. Correctly stating the amount due on the judgment requires an accurate accounting for any credits or payments made on the judgment. However, this is required only for credits accruing *before* the issuance of the abstract.²²⁹ The duty to post any post-issuance credits is with the judgment debtor.²³⁰ There is

nothing requiring the judgment creditor to update the current balance of the judgment after the abstract has been filed and recorded in order to maintain the judgment lien.²³¹

In *Hoffman, McBryde & Co., P.C. v. Heyland*,²³² an abstract of judgment failed to reflect credits on the judgment arising after it was issued but before it was filed.²³³ Held the abstract of judgment need only accurately reflect the balance due on the date of its issuance.²³⁴ This is consistent with the purpose of abstracts of judgment to put interested persons on notice of the claim and to allow them to make further inquiry. Credits on a judgment will not necessarily be reflected in filed records. Therefore, a potential lender or purchaser should not have any expectations that the recorded abstract will on its face provide a sum certain due on the judgment.²³⁵

Procedures for crediting or releasing an abstract after its attachment are for the benefit of the judgment debtor to give the debtor a speedy, convenient, and effective way to credit the abstract.²³⁶ If the debtor does not avail himself of these procedures, it does not affect the validity of the judgment creditor's lien.²³⁷

Credits Before Issuance of Abstract. When an abstract of judgment fails to reflect credits to the judgment made *before* its issuance, it fixes no lien.²³⁸ However, if no credits have been made on the judgment prior to the issuance of the abstract, there is no necessity for the abstract to affirmatively state this.²³⁹ In *Texas Bldg. & Mortgage Co. v. Morris*,²⁴⁰ the judgment creditor recovered a judgment which further ordered a judicial foreclosure on property in Harris County.²⁴¹ On the same day as the judicial foreclosure, the creditor recorded an abstract in Montgomery County which did not reflect any credit for the Harris County sale.²⁴² Held the abstract was not void for failure to credit the amount received at the foreclosure sale because the foreclosure sale had not been completed at the time that the abstract was recorded.²⁴³ The sale was not complete because the sheriff had not yet made his return on the sale at the time that the abstract was recorded.²⁴⁴

In *In re Rosenfield*,²⁴⁵ the judgment debtor and judgment creditor entered into a settlement agreement by which each agreed (1) to the entry of an agreed judgment for \$144,250, (2) that the judgment debtor would pay off the judgment with periodic payments, (3) that the judgment creditor could abstract both the judgment and the settlement agreement, and (4) that in the event that a default in payment caused the judgment creditor to execute on the judgment, the judgment debtor would be credited for payments made.²⁴⁶ Two days after the first payment was made, an abstract was issued which failed to reflect any credits on the judgment.²⁴⁷ Both the abstract and settlement agreement were then recorded.²⁴⁸ Held the

abstract failed to attach a lien for failure to show credit for the payment made.²⁴⁹ The simultaneous recording of the settlement agreement, while showing when payments were due, did not sufficiently show the actual credit of the payment on the judgment.²⁵⁰

In *Askey v. Power*,²⁵¹ the clerk attempted to show that distinct portions of the judgment were to bear interest at different rates of interest but placed this information in the column for "credits" on the printed abstract of judgment form.²⁵² The abstract as issued showed purported "credits" totaling only 18¢ less than the total judgment amount.²⁵³ Held the abstract was fatally defective.²⁵⁴

8. Child Support Amount

For judgments for child support, the abstract must show the balance due, if any, for child support arrearage.²⁵⁵

9. Judgment Rate of Interest

An abstract of judgment must show the rate of interest specified by the judgment.²⁵⁶ In *Midland County v. Toliver's Estate*,²⁵⁷ the judgment did not recite any interest. Notwithstanding, the abstract stated that the judgment bore interest at 10% per annum.²⁵⁸ Held the abstract failed to create a judgment lien.²⁵⁹

It is not necessary for the abstract to state that interest accrues from the date of the judgment.²⁶⁰ This is fixed by law.²⁶¹ Nor is it necessary for the abstract to state that the interest is accruing on the amount of the judgment.²⁶²

10. Address of Judgment Creditor

An abstract of judgment may show the mailing address for each plaintiff or judgment creditor.²⁶³ This provision is not mandatory and does not affect the validity of the abstracted judgment.²⁶⁴ However, upon recordation, abstracts without this information may incur a penalty filing fee of \$25.00 or twice the statutory recording fee, whichever is greater.²⁶⁵ Payment of a filing fee and acceptance of the abstract of judgment by a county clerk for recordation creates a conclusive presumption of compliance.²⁶⁶

11. Indexing Information Required?

While the proper indexing of an abstract of judgment is necessary to its effectiveness, there is no necessity that the fact of indexing be noted on the face of the abstract.²⁶⁷

12. Authentication

No abstract may be recorded unless "properly authenticated".²⁶⁸

a. Litigant-Prepared Abstracts

An abstract of judgment prepared by person in whose favor a judgment has been rendered or

the person's agent, attorney, or assignee must be verified by the person preparing the abstract.²⁶⁹

b. Court-Prepared Abstracts

TEX. PROP. CODE ANN. § 52.002(b) requires that justices and clerks certify each abstract of judgment issued by them.²⁷⁰ Certification is a necessary prerequisite to the recordation and validity of the abstract.²⁷¹

Errors in Certificate. In *Atteridge v. Maxey*,²⁷² the certificate of the justice of the peace issuing the abstract incorrectly gave the year of the judgment as "1894" instead of "1890".²⁷³ The certificate also incorrectly gave the name of the judgment defendant as "Maxwell" instead of "Maxey".²⁷⁴ These errors caused the certificate to fail thus rendering the recordation of the incorrectly authenticated abstract a nullity.²⁷⁵

c. Elements of a Valid Verification

Although not defined, "verified" presumedly means that each abstract must be subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

Qualified Affiant. To create a valid verification, the affiant must be qualified to swear to the facts stated in the abstract of judgment.

First, the affiant must state somewhere in the abstract or verification that the facts in the abstract are true.²⁷⁶ If the abstract fails to state that the facts are true, the verification is fatally flawed.²⁷⁷

Second, the affiant must state that the facts are within the affiant's personal knowledge.²⁷⁸ Failure to state this fact makes the verification legally insufficient.²⁷⁹

Officers Authorized to Take Verification. A verification taken within the State of Texas may be made before (1) a judge, clerk, or commissioner of a court of record;²⁸⁰ (2) a justice of the peace or a clerk of a justice court;²⁸¹ (3) a notary public;²⁸² (4) a member of a board or commission created by law of Texas in a matter pertaining to the duty of the board or commission;²⁸³ (5) a person employed by the Texas Ethics Commission in certain Election Code matters;²⁸⁴ (6) a county tax assessor-collector or employee of county tax assessor-collector if relating to a document to be filed with the tax assessor-collector;²⁸⁵ (7) the secretary of state;²⁸⁶ (8) the lieutenant governor;²⁸⁷ (9) the speaker of the house of representatives;²⁸⁸ (10) the governor;²⁸⁹ or (11) a federal judge, justice, or magistrate.²⁹⁰

A verification taken within the United States but outside of Texas may be taken by (1) a clerk of a court of record having a seal;²⁹¹ (2) a commissioner of deeds;²⁹² (3) a notary public;²⁹³ or (4) a federal judge, justice, or magistrate.²⁹⁴

A verification may be taken outside of the United States by (1) a minister, commissioner, or charge d'affaires of the United States who resides in and is accredited to the country where the affidavit is made;²⁹⁵ (2) a consul-general, consul, vice-consul, commercial agent, or vice-commercial agent of the United States who resides in the country where the affidavit is taken;²⁹⁶ or (3) a notary public.²⁹⁷

A verification of a member of the United States armed forces or armed forces auxiliary or their spouse may be taken by a commissioned officer of the United States armed forces or armed forces auxiliary.²⁹⁸

An otherwise competent officer is disqualified from taking a verification if financially or beneficially interested in the transaction.²⁹⁹

An agent of a party is disqualified to take a jurat if the officer signs a written instrument as an agent for one of the parties.³⁰⁰ The mere fact of the agency may raise a presumption of the interest of the agent. This presumption may be rebutted; however, by proof that the agent's beneficial or pecuniary interest did not turn upon upholding the instrument.³⁰¹ Generally, to be disqualified, the agent must be clothed with discretionary authority to act on behalf of the principal.³⁰² A mere salaried employee of a party to a transaction is not disqualified from taking a jurat in that transaction.³⁰³

Personal Appearance Before the Officer. For a valid verification to be taken, the affiant must make a personal appearance before the officer that administers the oath.³⁰⁴ A valid verification cannot be taken over the telephone.³⁰⁵

Identification of the Affiant. A verification ceremony does not require that the affiant be identified or personally known to the officer as in the case of acknowledgments.³⁰⁶ It is enough that the affiant personally appeared before the officer so that he can be identified as the person taking the oath if perjury should apply.³⁰⁷

Affiant Must Swear That The Facts Are True. An officer may not take a valid verification by sitting in mute observation of the person signing the instrument.³⁰⁸ An oath must be administered to the affiant or the affiant must make a conscious and unequivocal act in the presence of the officer that causes the affiant to assume the obligations of an oath.³⁰⁹

Prudent practice would seem to require that on each occasion that a verification is taken that the affiant (1) be required to raise the affiant's right hand; (2) be administered an oath; and (3) be asked to verify the contents of the abstract.³¹⁰ This procedure should be followed on each separate occasion that a verification is taken. It is not acceptable for an affiant in the practice of executing multiple verifications over a period to

be placed on a "standing oath" applicable to any time the affiant signs a verification.³¹¹

Affiant Must Sign Abstract In the Presence of the Officer. The affiant must also subscribe the abstract in the presence of the officer administering the oath.³¹² The location of the signature on the instrument is not critical. The signature may appear above the body of the abstract or even below the jurat.³¹³

No Statutory Form for Jurat. Unlike acknowledgments, there is no general statutory form for a jurat.

Caption for Jurat. A jurat should bear a caption where the jurat was taken as would allow the recording official to determine that the officer taking the proof acted within the scope of his geographic authority. The jurisdiction shown by the jurat should be the jurisdiction where the verification was taken.

Jurat Must Recite The Competency of the Officer. A jurat must recite the official capacity of the officer taking the oath or it is fatally defective.³¹⁴

Jurat Must Recite Personal Appearance Before the Officer. A jurat must recite that the affiant appeared in person before the officer.³¹⁵ This requirement is satisfied if the jurat states that the affiant "personally appeared" or was "before me".³¹⁶

Jurat Must Recite That The Affiant Was Sworn. A jurat, to be effective, must recite that the affiant was sworn upon oath by the officer.³¹⁷

Jurat Must Recite The Instrument Was Signed Before the Officer? At least one case has held that a jurat reciting that the statement is sworn to need not further state that the instrument was subscribed by the affiant in the presence of the notary.³¹⁸

Jurat Must Contain Date of Oath? Generally each jurat should contain the date that the officer administered the oath. However, the absence of a date in the jurat is not fatally defective.³¹⁹

Jurat Must Contain The Signature of the Officer. A jurat must contain the signature of the officer administering the oath.³²⁰

Jurat Must Contain Official Seal of Officer. The jurat, to be effective, must also bear the official seal of the officer.³²¹

E. Recording Abstracts of Judgment

To effect a judgment lien, an abstract of judgment must be recorded.³²² A clerk when presented with a duly authorized abstract must file it, record it in the real property records, and note in the records the date and hour received.³²³ In *Vidor v. Rawlins*,³²⁴ an abstract was filed and recorded but the clerk failed to note thereon the day and hour when received.³²⁵ Held this failure did not render the judgment lien ineffective.³²⁶

It is not necessary that the recorded copy of the abstract of judgment contain the authentication which is essential to its issuance.³²⁷

1. Where Are Abstracts of Judgment Recorded?

The Property Code directs that abstracts of judgment be recorded in the "real property records" of the county clerk.³²⁸ Abstracts of judgment may be recorded in multiple counties.³²⁹

2. Proof of Recording

The burden of proof to show the proper recording of an abstract of judgment is on the judgment creditor.³³⁰

F. Indexing Abstracts of Judgment

An abstract of judgment must be indexed.³³¹ This requirement is mandatory.³³² Without proper indexing, the abstract will create no judgment lien.³³³ The courts strictly enforce the indexing requirements of the statute.³³⁴

1. Purpose of Indexing

One object of required indexing is to give persons searching the real property records the speedy means to discover the existence of judgment liens without having to search the clerk's entire records.³³⁵ Court will look to see if this statutory purpose has been served to determine if the indexing substantially complies with the statute.³³⁶

However, it should be remembered that a second function of indexing is to satisfy statutory prerequisites for the creation of the judgment lien.³³⁷ Therefore, if the required indexing is not satisfied, the abstract will create no lien even if the indexing failure works no injury to anyone for failure to give notice of the judgment.³³⁸

Indexing entries need not provide full information regarding the abstract of judgment.³³⁹ The indexing need only provide a means of ascertaining the existence of the lien and indicate the source from which full information may be obtained.³⁴⁰

2. Indexing Party Names

Each abstract of judgment must be indexed in the name of each plaintiff and each defendant in the judgment.³⁴¹ Only parties whose rights are finally adjudicated by the judgment need be indexed.³⁴² Parties dismissed prior to rendition of the judgment need not be indexed.³⁴³

a. Which Party Names Must be Indexed?

When there are several plaintiffs and/or several defendants whose rights are adjudicated by the judgment, *all* names must be indexed to create a valid lien.³⁴⁴ In *Caruso v. Shropshire*,³⁴⁵ a judgment was taken by 54 plaintiffs but indexed under the name of only one plaintiff.³⁴⁶ The abstract failed to create a lien for failure to be

indexed under the names of all parties to the judgment.³⁴⁷

It is not sufficient to index the abstract only against the defendant(s) against whose property the lien is sought to be enforced.³⁴⁸ This rule is inflexibly applied regardless of the type of relief which the judgment specifies for or against a party. In *Shirey v. Trust Co. of Texas*,³⁴⁹ an abstract was indexed in the names of all defendants against whom a personal judgment was rendered but not in the name of one additional defendant against whom costs only had been awarded.³⁵⁰ Held the abstract was fatally defective.³⁵¹ Similarly, in *McGlothlin v. Coody*,³⁵² an abstract of judgment which was indexed under the name of the defendant against whom a money judgment was rendered but not in the name of an additional defendant against whom a foreclosure was decreed failed to create a judgment lien.³⁵³ Likewise, *San Antonio Loan & Trust Co. v. Davis*,³⁵⁴ an abstract not indexed in name of some defendants against whom there was a declaratory judgment only failed to satisfy the statutory requirements for a judgment lien.³⁵⁵

Partnerships. For judgments to which a partnership is a party, some dated cases indicate that indexing the abstract in the partnership name alone fails to fix a lien.³⁵⁶ The judgment must also be indexed under each individual partner's name.³⁵⁷ It is reasoned that a party searching the judgment records for any outstanding liens against an individual arising out of a partnership obligation should not have to search the entire record to locate that abstract.³⁵⁸ There is an apparent relaxing of this rule when the partnership is the plaintiff and the partnership's name sufficiently incorporates the individual partners' names such that indexing the abstract in the firm name only would be sufficient notice to parties searching the index under the individual partners' names.³⁵⁹

The cases disagree on the necessity of correctly indexing such a judgment under the partnership name. In *Hamilton v. Beard*,³⁶⁰ a judgment against "W.P. Calloway and Henry B. Wilson composing the firm of Calloway and Wilson" was not indexed under the firm name.³⁶¹ Held no lien was created.³⁶² However, in *Willis v. Downes*,³⁶³ held that indexing the partnership name was not necessary to the validity of the lien.³⁶⁴

b. Direct and Reverse Index Required

Each defendant and each plaintiff in the judgment must be indexed. This means that all defendants in the judgment must correctly appear in the direct index and all plaintiffs in the judgment must appear in an indirect index.³⁶⁵ This rule is steadfastly enforced although the typical search of the judgments records by an interested party to ascertain the existence of a lien would be

of the direct index only.³⁶⁶ Thus, the abstract in *Guaranty State Bank of Donna v. Marion County Nat'l Bank*,³⁶⁷ failed when correctly indexed under all defendants but not indexed for any of the plaintiffs.³⁶⁸ In *Central Coal & Coke Co. v. Southern Nat'l Bank of New York*,³⁶⁹ an abstract of judgment failed when indexed by the name of the plaintiff but not the defendants.³⁷⁰

The statute only requires that each plaintiff in the judgment and each defendant in the judgment be correctly indexed. There is a dispute among the authorities whether each such index entry must correctly cross-reference all other parties. In *Texas Sand Co. v. Shield*,³⁷¹ the judgment had twelve plaintiffs and two defendants.³⁷² The judgment was indexed for each such plaintiff and defendant.³⁷³ A typical index entry read "Donald L. Shield, et al plaintiff Elgean Shield, et al defendant".³⁷⁴ Held that the index substantially complied with the statute.³⁷⁵ There was no necessity for each individual index entry to list every plaintiff and every defendant in the judgment.³⁷⁶ the object of indexing is not to encumber the registry with full information of the judgment lien.³⁷⁷ This can be obtained from the abstract itself.³⁷⁸ The only purpose of the index is to direct the searching party to the abstract from which full information may be obtained.³⁷⁹ This was adequately done with the index entries made.³⁸⁰

However, in *Noble v. Barner*,³⁸¹ a judgment was entered in favor of Noble & Hall, a partnership composed of O. Noble and L.H. Hall against L.W. Savage.³⁸² The reverse index entry for "H" correctly showed the plaintiffs' names but incorrectly referred to the defendant as "L.W. Hall" instead of "L.W. Savage" (the defendant's name correctly appeared in the direct index as "L.W. Savage").³⁸³ Held the index error cause the lien to fail.³⁸⁴

c. Party Names Must Be Indexed Alphabetically

To effect a lien, the names of the parties to the judgment must be indexed alphabetically.³⁸⁵ A party name indexed under the wrong letter of the alphabet causes the lien to fail.³⁸⁶ A considerable number of cases have dealt with the proper alphabetizing of party names:

Company Names Preceded by the Article "The". When a party name is preceded by the article "The" as in "The Steck Company", the company name is not indexed under "T" but under the letter of the next substantial identifying word in the company name.³⁸⁷ The article "the" is so habitually used in naming companies that it forms no part of the company name for indexing purposes.³⁸⁸

Company Names Beginning With the Initials and Surname of an Individual. When a company name begins with the initials and surname of an individual, as in "B.F. Avery & Sons", the

company is indexed under the individual's following surname, not the first initial.³⁸⁹ The surname is the more essential and identifying part of the company name.³⁹⁰ Any other rule would be confusing and misleading.³⁹¹

Representative Parties. Generally it is not necessary that the index of an abstract of judgment show the capacity of the party to the judgment.³⁹² In *Willis v. Smith*,³⁹³ an index of an abstract of judgment did not fail when it named the judgment defendants but did not indicate their capacity as executors of an estate.³⁹⁴ In *Sarny Holdings, Ltd. v. Letsos*,³⁹⁵ a judgment was awarded in favor of "Antoinette Maida Letsos, Guardian of the Estate of Lena Maida".³⁹⁶ Held the abstract was properly indexed under "M" as "Maida, Estate of Lena" rather than alphabetically under the guardian's name.³⁹⁷ In *Carver v. Gray*,³⁹⁸ a judgment was recovered by "Owen M. Murray, Receiver of the North Texas Trust Company".³⁹⁹ The abstract was adequately indexed when listed both under "M" as "Murray, Owen M., Receiver" and under "N" as "North Texas Tr. Co., by Receiver".⁴⁰⁰ The indexing was not defective under "M" although failing to show for whom Murray acted as receiver.⁴⁰¹

Sufficiency of Clerk's Alphabetizing Methods. In *Cocke v. Conquest*,⁴⁰² a judgment was obtained against Lee and Minnie Conquest.⁴⁰³ The clerk when indexing the abstract had no room left in the volume under the letter "C".⁴⁰⁴ A notation in the volume under the C's indicated that they were "Continued Under Letter E".⁴⁰⁵ A second notation under the letter "E" indicated that the following notations were "Brought From Letter C" with a clear space between this and the last "E" entry.⁴⁰⁶ Held this was improper indexing causing the judgment lien to fail.⁴⁰⁷

In *City State Bank in Wellington v. Bailey*,⁴⁰⁸ a judgment in favor of "City State Bank in Wellington" was indexed under "B" as "Bank, City State in Wellington".⁴⁰⁹ Held that the indexing failed to comply with the statute.⁴¹⁰

d. Errors in Party Names

Little variance between the party name as shown in the judgment and the party name as indexed is tolerated. Slight irregularities in indexing will not affect the validity of a lien.⁴¹¹ However any substantial error is problematic. In *Wicker v. Jenkins*,⁴¹² the plaintiff, "W.F.B. Wicker" was incorrectly indexed under "W.B.F. Wicker".⁴¹³ Held this error was substantial.⁴¹⁴ The abstract of judgment created no lien.⁴¹⁵

As a practical matter, the index is typically searched under the name of the judgment defendant to determine if an abstract of judgment may affect title to real property.⁴¹⁶ As a result, courts may be slightly more willing to tolerate indexing errors in the name of the judgment plaintiff than the judgment defendant if the

salutary purposes of indexing are unaffected by the error.⁴¹⁷

Geographic Designations in Party Names. In *McLarry v. Studebaker Bros. Co.*,⁴¹⁸ the judgment and abstract of judgment were in favor of "Studebaker Bros. Company of Texas" but indexed under "Studebaker Bros. Company".⁴¹⁹ Held the variance was such that the index failed to adequately apprise persons searching the judgment records of the true name of the judgment creditor.⁴²⁰ The judgment lien failed to attach.⁴²¹ But in *Texas Bldg. & Mortgage Co. v. Morris*,⁴²² a judgment describing the plaintiff alternately as "Guaranty Bond State Bank" and "Guaranty Bond State Bank of Tomball, Texas" was adequately indexed as "Guaranty Bond State Bank of Tomball".⁴²³

Misspelled Party Names. A misspelled party name will generally not cause the index to fail if the misspelled name is *idem sonans* (sounds the same) as the correct name.⁴²⁴ It is a question of whether a person of ordinary intelligence would be misled by the name as written.⁴²⁵ Thus a judgment in favor "Webb-Freyschlag Mercantile Co." was adequately indexed as "Webb-Frey Schlog Mer. Co." and "Webb-Freyschlog Mercantile Co.".⁴²⁶ In *Schneider v. Dorsey*,⁴²⁷ the index substantially complied with the statute although falling outside *idem sonans* rule when "M. Schneider & Bro." was indexed "M. Schnerder & Bro."⁴²⁸ It was doubtful under these facts that anyone was misled by the error.⁴²⁹

Abbreviated Party Names. In indexing party names, reasonable abbreviations may be used if not likely to lead to confusion.⁴³⁰ Thus "First City Bank of Highland Village" was correctly indexed as "First City Bank HV".⁴³¹ "North Texas Trust Company" could be indexed as "N. Tex. Tr. Co.",⁴³² and "Webb-Freyschlag Mercantile Company" could be indexed "Webb-Frey Schlog Mer. Co.".⁴³³ In *New England Loan & Trust Co. v. Avery*,⁴³⁴ multiple judgments were indexed against the same judgment debtor.⁴³⁵ It was acceptable to use "ditto" marks immediately below the first entry of the defendant's name to index subsequent judgments against the same defendant.⁴³⁶

Surplusage in Party Names. Surplusage in an indexed party name not calculated to mislead or confuse will not cause the lien to fail. In *Bowles v. Belt*,⁴³⁷ marginal notations by the clerk in the index were not part of the index and did detract from the effectiveness of the index.⁴³⁸ In *Willis v. Downes*,⁴³⁹ a judgment against "R.L. Douglas" did not fail when after the correct name of the plaintiff in the reverse index the defendant was referred to as "R.L. Douglas & Co." (the defendant's name was correctly given in the direct index).⁴⁴⁰ Held the addition "& Co." to the defendant's name did not invalidate the lien.⁴⁴¹

In *Semple v. Eubanks*,⁴⁴² a judgment was awarded to plaintiffs W.P. Darby and T.L. Cauthen.⁴⁴³ These plaintiffs did business under the firm name of Darby & Cauthen although the judgment was not taken in the firm name.⁴⁴⁴ However, the judgment was abstracted in the reverse index "W.P. Darby and T.L. Cauthen composing the firm of Teague and Ottens".⁴⁴⁵ This error being surplussage did not invalidate the lien.⁴⁴⁶

e. **Party Designation Must Be Shown in Index**

To conform to the statute, the index must not only correctly name the parties but also correctly designate them as either a plaintiff or defendant in the judgment.⁴⁴⁷ In *Reynolds v. Kessler*,⁴⁴⁸ Reynolds recovered a judgment against Dennis in a third-party action.⁴⁴⁹ However, the abstract, as indexed, incorrectly showed Reynolds as a party defendant rather than a plaintiff in judgment.⁴⁵⁰ This caused the judgment lien to fail.⁴⁵¹

3. **Indexing the Page of Records Where Abstract Recorded**

The index must reflect the number of the page in the records in which the judgment is recorded.⁴⁵² In *Fordyce - Crossett Sales Co. v. Erwin*,⁴⁵³ the index of judgment records incorrectly reflected that an abstract appeared on page "34" rather than "340".⁴⁵⁴ Held the abstract failed to create a lien.⁴⁵⁵

4. **Date of Indexing**

There is no requirement that an index entry be dated.⁴⁵⁶

5. **Proof of Indexing**

The enforcement of a judgment lien requires proof that the abstract was properly indexed.⁴⁵⁷ The burden of proof on indexing lies with the judgment creditor.⁴⁵⁸ No evidentiary presumption arises from the mere recordation of the abstract that the clerk properly indexed it.⁴⁵⁹ The best proof of indexing is to introduce certified copies of the applicable pages from the clerk's index book.⁴⁶⁰ There is a conflict among the case authorities whether simply having the clerk certify that the abstract was properly indexed is adequate proof of indexing without the production of the index records themselves.⁴⁶¹

G. Effect of Opposing Claimant's Actual Knowledge of the Abstract

The purpose of an abstract of judgment is to provide notice to subsequent purchasers of the existence of a lien.⁴⁶² However, even if this purpose is rendered unnecessary by a claimant's actual knowledge of the abstract of judgment, this does not relieve the judgment creditor from the obligation to provide for the correct issuance and indexing of the lien.⁴⁶³ No lien arises without the

registration and indexing required by the statute.⁴⁶⁴ Knowledge of the abstract cannot take the place of a proper abstract.⁴⁶⁵ Compliance with the statute is necessary to the initial creation of the lien.⁴⁶⁶

H. Estoppel

Can a litigant be estopped to deny the effectiveness of a judgment lien even if the abstract of judgment, as issued and indexed fails to meet statutory requirements? *In re Davis*,⁴⁶⁷ leaves open this possibility although estoppel was not raised by the facts of that case.⁴⁶⁸

I. Clerk's Errors

It avails nothing for a judgment creditor to assert that any failure in the issuance, recording, or indexing of the abstract resulted from an error of the clerk of the issuing court. It is the judgment creditor's responsibility to make sure that the clerk abstracts the judgment properly.⁴⁶⁹

II. EFFECT OF A JUDGMENT LIEN

The effect of recording a validly issued, recorded, and indexed abstract of judgment is to fix a lien upon all of the judgment debtor's (1) real property, (2) located in the county where the abstract is recorded, (3) subject to the lien, (4) which the judgment debtor owns when the judgment is recorded, or (5) acquired thereafter, (6) during the life of the judgment record.⁴⁷⁰

A. Lien Attaches to Real Property Only

A judgment lien attaches to real property only.⁴⁷¹ This means an interest in real property capable of assignment and subject to execution.⁴⁷² The lien will not attach to rents, issues, or profits from real estate.⁴⁷³

1. **Improvements**

A judgment lien encumbers improvements permanently attached to the tract to which the lien has attached.⁴⁷⁴

2. **Mineral Interests**

A royalty interest is real estate to which a judgment lien will attach.⁴⁷⁵ However such a lien cannot reach the rents, issues, and profits therefrom.⁴⁷⁶

Likewise the judgment debtor's interest in an oil and gas lease, being a determinable fee in oil and gas in place, is real estate to which a judgment lien will attach.⁴⁷⁷ But as oil and gas is produced, it loses its character as real property and becomes personalty.⁴⁷⁸ The judgment lien will not follow into the severed oil and gas or its proceeds.⁴⁷⁹ The judgment lienholder may not necessarily be entitled to hold up production on the lease to prevent the conversion of oil and gas in place into severed minerals.⁴⁸⁰

3. Liens

In *South Texas Lumber Co. v. Nicoletti*,⁴⁸¹ a creditor claimed a judgment lien had attached to a mechanic's lien note and unperfected lien in the hands of the judgment debtor.⁴⁸² Held that vendor's lien notes and mechanic's lien notes were personal property.⁴⁸³ Nor could the abstract attach to the supporting mechanic's lien because the judgment debtor had not foreclosed it.⁴⁸⁴ Likewise in *P.J. Willis & Bros. v. Sommerville*,⁴⁸⁵ Dennis Carwin sold certain property to J.H. Stone and W.W. Dickey by deeds dated October 1882.⁴⁸⁶ The deeds reserved a vendor's lien in favor of Carwin to secure the payment of vendor's lien notes given in part consideration for the property.⁴⁸⁷ P.J. Willis & Bros. obtained and abstracted a judgment in 1896.⁴⁸⁸ Held the judgment lien did not attach to Carwin's lien against the property.⁴⁸⁹ *Moseley v. Evangelical Theological College*,⁴⁹⁰ determined that an abstracted judgment will not attach to an unperfected deed of trust lien.⁴⁹¹ However, if the judgment debtor is the successful bidder at the trustee's sale the lien could attach.⁴⁹² In *Sugg v. Mozoch*,⁴⁹³ a judgment lien did not attach to a deed of trust lien notwithstanding that the lien had been judicially foreclosed by Sugg putting the mortgagee in possession of the property when the judgment lien was filed but before the actual sale of the property had occurred.⁴⁹⁴

4. Preemptive Rights

In *Bourn v. Robinson*,⁴⁹⁵ a judgment creditor sought to enforce a judgment lien against the defendant's preemptive rights to purchase school land prior to completion of the 3-year occupancy period.⁴⁹⁶ Held the debtor's right in the property was a mere chattel until completion of the occupancy period - a simple contract to perform conditions (aside from the payment of the purchase price) and thereafter demand conveyance of title.⁴⁹⁷ As such, the debtor's interest did not constitute a freehold interest in real estate to which the judgment lien could attach.⁴⁹⁸

5. Sales Proceeds

A judgment lien generally does not follow into the proceeds generated from the sale of a real estate interest to which it has attached. In *Donley v. Youngstown Sheet & Tube Co.*,⁴⁹⁹ a judgment lien attached to the royalty interest of the debtor.⁵⁰⁰ Sohio paid proceeds from the production of this royalty interest into the registry of the Court.⁵⁰¹ Held the judgment lien did not follow these proceeds which did not constitute real estate.⁵⁰² Similarly, in *Reisberg v. Hubbard*,⁵⁰³ the proceeds from the sale of the debtor's house paid into the registry of the court were personal property to which the judgment lien could not attach.⁵⁰⁴

A different result in *Pearson v. Teddlie*,⁵⁰⁵ when a deed of trust superior to the judgment lien

was foreclosed generating surplus proceeds.⁵⁰⁶ Held the abstracted lien attached to the surplus sales proceeds into the hands of the trustee.⁵⁰⁷ Such attachment, however, does not become effective until 6 months after the sale of the homestead property.⁵⁰⁸

B. Lien Attaches Only to Judgment Debtor's Real Property in County of Recordation

Abstracts of judgment from one judgment can be filed in multiple counties.⁵⁰⁹ Each constitutes a lien on the judgment debtor's non-exempt property in the county of recordation.⁵¹⁰ Each recorded abstract, whether recorded in different counties or in the same county creates an independent lien.⁵¹¹ When filed, recorded, and indexed at different times the duration and other aspects of each is different.⁵¹²

C. What Property is Subject to Judgment Lien?

1. Judgment Debtor's Property

As a general rule, a judgment lien will attach to all of the *judgment debtor's* property located in the county where recorded or thereafter acquired.⁵¹³ There must be a "match" between the judgment debtor and the record title owner of the property against whom the lien is sought to be enforced. In *McIntire v. Sawicki*,⁵¹⁴ a judgment was entered, abstracted, and indexed against "Frank Munger".⁵¹⁵ The correct name of the defendant was "Frank Monger".⁵¹⁶ The title to his real property was held in this name.⁵¹⁷ Held the abstracted judgment against "Frank Munger" failed to attach to the real property of "Frank Monger".⁵¹⁸

a. Homestead

The recordation of an abstract of judgment creates no enforceable judgment lien against a debtor's homestead.⁵¹⁹ There is some disagreement among the cases on the affect of recording an abstract while the property is homestead. The best supported view is that the lien cannot attach so long as the property remains homestead.⁵²⁰ However, there is some controverting authority that the lien attaches while the property is homestead but cannot be enforced until the homestead status of the property ceases.⁵²¹

In *Tarrant Bank v. Miller*,⁵²² homeowners sued Tarrant Bank for slander of title when the bank refused to partially release its judgment lien as to their homestead.⁵²³ Tarrant Bank defended that the bank's abstracted judgment created no lien against the homestead therefore could not, as a matter of law, cloud the homeowners' title.⁵²⁴ Held for the homeowners in the amount of \$21,000.00. The lien did not need to be valid to create a cloud on title.⁵²⁵

Using the same reasoning, the Fifth Circuit in *Matter of Henderson*⁵²⁶ allowed a debtor to avoid an abstract of judgment affecting his rural homestead.⁵²⁷ Under Section 522(f)(1) of the Bankruptcy Code, a debtor is entitled to avoid a judgment lien if it "impairs" the debtor's exempt property.⁵²⁸ The Fifth Circuit determined that while the judgment lien was unenforceable against the homestead, its practical effect was to create a cloud on title making it difficult for the debtor to obtain title insurance.⁵²⁹

A 1995 Attorney General's Opinion considered the effect of recording an abstract of a valid, non-dormant, and undischarged judgment in light of the *Tarrant Bank* decision.⁵³⁰ The opinion, like *Tarrant Bank*, concluded that an abstracted judgment does create a cloud on the debtor's title to his homestead.⁵³¹ Notwithstanding, the existence of a cloud on title does not give the debtor a cause of action to have the cloud removed without a reasonable apprehension of injury caused by the cloud.⁵³² As a result, no suit to remove the abstract of judgment will lie unless (1) the creditor attempts a seizure of the property or (2) the debtor attempts to sell the homestead and the sale is thwarted by the abstract.⁵³³ A judgment creditor is under no general obligation to partially release the abstract "on demand" and give up forever a valuable potential lien that could later attach to the homestead tract if its homestead status later terminates.⁵³⁴ However, a different situation is presented when the debtor shows the property is under contract for sale, the title company will not issue a policy on the property without a partial release of the judgment lien, and the property has remained the debtor's homestead continuously since the abstract was filed.⁵³⁵ Faced with a definite sale of the homestead tract held up by the abstracted judgment, the creditor should partially release the abstract conditioned upon the sale closing.⁵³⁶

The 1995 opinion also considered and rejected the idea that the filing of an abstract constitutes a slander of title. Slander of title requires the publication of false and malicious words in disparagement of title causing the plaintiff damages.⁵³⁷ A duly recorded abstract makes no false statement and does not of itself assert any claim of lien on the homestead.⁵³⁸ Likewise, a refusal to partially release an abstract "on demand" is not a false claim of a lien against homestead.⁵³⁹ If the creditor has any duty to mitigate the effect of the abstract it would be at most a duty to disclaim any present lien not to waive a potential future lien.⁵⁴⁰

Effect of Recording Abstract Before Establishment of Judgment Debtor's Homestead. A judgment lien may attach to property before it becomes homestead.⁵⁴¹ An abstract recorded before the establishment of the debtor's homestead

on the tract is not affected by the homestead claim.⁵⁴² The debtor takes his homestead interest subject to the judgment lien.⁵⁴³

Effect of Termination of Judgment Debtor's Homestead. If an abstract of judgment is filed while a property is homestead and then the property ceases to be homestead but is still owned by the judgment debtor, the judgment lien will attach.⁵⁴⁴ In such cases, the judgment lien arises as if it were recorded on the date that the property ceased to be homestead.⁵⁴⁵

Effect of Purchase of Homestead After Abstract Filed. If a judgment debtor purchases a homestead property after an abstract is recorded, the homestead character attaches to the property simultaneously with its acquisition in preference to the existing judgment lien.⁵⁴⁶ Thereafter, so long as it remains homestead, the property is protected against the judgment lien rendered before the debtor acquired the property.⁵⁴⁷

Effect of Sale of the Judgment Debtor's Homestead After Abstract Filed. Generally, a subsequent purchaser of homestead will be entitled to assert their predecessor's homestead protection against prior judgment lienholders.⁵⁴⁸ This enables the purchaser to take free of a prior judgment lien.⁵⁴⁹ There is a dispute among authorities over whether a prior lienholder's interest may attach if there is a gap in time between the sale of the homestead and the recordation of the buyer's interest.⁵⁵⁰ In *Intertex, Inc. v. Kneisley*,⁵⁵¹ a debtor sold homestead subject to an abstracted judgment. The buyer failed to record the deed for 5½ months.⁵⁵² Held this gap in recording the buyer's interest allowed the prior judgment lien to attach to the property.⁵⁵³ However, in *U.S. v. Johnson*,⁵⁵⁴ the Fifth Circuit refused to follow *Intertex* on similar facts.⁵⁵⁵ Finding that the *Intertex* ran counter to the overwhelming weight of Texas authority, the Court noted that alienation is complete on conveyance not recordation.⁵⁵⁶ The strong policy of protecting homesteads from judgment liens would be gutted by strict adherence to *Intertex*.⁵⁵⁷ There is inevitably some gap between the execution of a deed and its recordation.⁵⁵⁸

Effect of Death of Judgment Debtor. If the homestead has not been abandoned or terminated during the life of the judgment debtor such that the judgment lien has never attached, upon the death of the debtor the property vests in the debtor's heirs or devisees free of the abstracted judgment, subject to administration and payment of the decedent's debts.⁵⁵⁹

The homestead is not even subject to administration and payment of the judgment debtor's debts if (1) the estate is insolvent and (2) the debtor is survived by a spouse, minor child, or unmarried adult child living with the family.⁵⁶⁰ On satisfaction of these conditions, the homestead descends to those entitled to inherit it free from

the claims of creditors.⁵⁶¹ This is true whether the homestead claimant dies testate or intestate.⁵⁶² In contrast, when the decedent leaves no surviving spouse, minor child, or unmarried adult child residing with the family, the homestead property descends subject to administration and payment of the debts of the judgment debtor.⁵⁶³

This right to have the homestead descend free of debt is triggered immediately and is fixed at the death of the decedent. *Post mortem* events have no effect on the property descending free of debt.⁵⁶⁴ Once the homestead passes free of a debt, it never became subject to that debt.⁵⁶⁵ For example, if an insolvent homestead claimant dies leaving constituent family members, the family's subsequent sale or abandonment of the homestead has no effect on the property descending free of debt.⁵⁶⁶ Likewise, the proceeds from the sale of that homestead are free from the claims of the decedent's creditors.⁵⁶⁷

The right to have the homestead property descend free of the debts of the deceased homestead claimant is not dependent on any right to occupy the homestead.⁵⁶⁸ Thus, one who inherits the decedent's homestead receives the property free from debt even though the beneficiary benefitting from the rule may have no immediate right to occupy the property.⁵⁶⁹

In *National Union Fire Ins. Co. v. Olson*,⁵⁷⁰ an insolvent debtor died survived by an adult son and a minor daughter neither of whom lived with the debtor.⁵⁷¹ Before and after the decedent's death, the minor daughter lived with a guardian who did not assert any right to occupy the homestead.⁵⁷² The decedent's will left the property to his adult son.⁵⁷³ Held the property passed to the adult son at death free of an abstracted judgment against the decedent.⁵⁷⁴ The mere existence of a minor child at death caused the property to pass to the son free of debt.⁵⁷⁵ There was no requirement that the minor child have resided with the decedent before death or that the child intend to occupy the property after the decedent's death.⁵⁷⁶ The exempt nature of the homestead was not dependent on the surviving constituent family members actual use of the property.⁵⁷⁷

b. Judgment Debtor's Property Under Administration/ Litigation/in Trust

Probate Administration. The status of a judgment creditor's claim is fixed at death.⁵⁷⁸ A judgment rendered before the debtor's death ceases to have the force of a judgment at death and becomes merely a claim to be presented in the administration of the estate.⁵⁷⁹ The judgment loses its lien acquiring vitality upon the death of the judgment debtor.⁵⁸⁰ Thus, the judgment creditor cannot improve his status outside the estate administration by filing an abstract of judgment.⁵⁸¹

If the judgment debtor is the beneficiary of an estate, the judgment lien attaches to the judgment

debtor/devisee's interest at the death of the decedent and during the administration of the estate.⁵⁸² However, the lien is subject to the administration of the estate.⁵⁸³ The personal representative of the estate holds legal title and a superior right to possess estate property and to dispose of it as necessary to pay the debts of the estate.⁵⁸⁴ If the estate representative exercises this dispositive power, the sale divests the judgment debtor of his interest in the property and extinguishes the judgment lien.⁵⁸⁵

Guardianship. If a guardian has been appointed for the judgment debtor, an abstract of judgment cannot attach a lien against the debtor's property.⁵⁸⁶

Receivership. If an abstract of judgment is filed while the debtor's property is in a receivership, the filing is not void but attaches only upon the judgment debtor's resumption of possession of his property.⁵⁸⁷ In *Semple v. Eubanks*,⁵⁸⁸ a judgment lien attached to the judgment debtor's property before the debtor's property was placed into a receivership.⁵⁸⁹ The subsequent receivership did not destroy the effect of the judgment lien.⁵⁹⁰ The receiver was required to first satisfy the lien out of the lands in his possession.⁵⁹¹ But in *Baylor University v. Chester Sav. Bank*,⁵⁹² an abstract of judgment was ineffective when recorded after the application for the appointment of a receiver for the judgment debtor's assets had been filed but before the receiver was actually appointed.⁵⁹³ Under Texas law, the appointment of the receiver related back to the date of the application for the receivership.⁵⁹⁴

Express Trust. When legal title to land is in the hands of a trustee to serve the requirements of an active trust, a judgment lien against the beneficiary does not attach to the property.⁵⁹⁵ In *In re Goff*,⁵⁹⁶ Elbert and Gloria Goff established a self-settled retirement (Keough) trust with spendthrift provision for which the Goffs were the sole beneficiaries.⁵⁹⁷ Held a judgment lien against the Goffs did not attach to land held by the trust for the benefit of the Goffs.⁵⁹⁸ While the spendthrift provision of the self-settled trust was void, this did not render the entire trust void.⁵⁹⁹

Because the trust was valid, the Goffs held only equitable title to the property to which the judgment lien did not attach.⁶⁰⁰ *But see Woodward v. Jaster*,⁶⁰¹ where Kenneth Woodward, an attorney performed services for Terry Streza the beneficiary of a spendthrift testamentary trust, created by the will of Genelda Jaster.⁶⁰² When Streza failed to pay, Woodward recovered and abstracted a judgment against the trust and trustee. Held the judgment lien attached to trust property subject to the administration of Genelda Jaster's estate.⁶⁰³

Assignment for Benefit of Creditors. Upon an assignment of the debtor's property for the

benefit of creditors, the power to fix a lien on the debtor's property ceases.⁶⁰⁴

Bankruptcy. The automatic stay of a bankruptcy prevents any act to create, perfect, or enforce any lien against the property of estate to collect a pre-petition debt.⁶⁰⁵

Property Subject to Trespass to Try Title Action. TEX. PROP. CODE ANN. § 22.003 provides that "[a] final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through the party by a title that arises after the action is initiated."⁶⁰⁶ This provision has been construed to insulate the subject property from a judgment lien against a party to the suit if filed after the suit is initiated.⁶⁰⁷ A suit is "initiated" for the purposes of this rule after the judgment debtor has been served in the trespass to try title suit.⁶⁰⁸

c. **Unrecorded Interest of Judgment Debtor**

A judgment lien will attach to whatever interest the debtor has in non-exempt real estate even if that interest is not of record.⁶⁰⁹ For example in *Baker v. West*,⁶¹⁰ Mollie Baker abstracted a judgment against E.B. Ramsey on July 14, 1915.⁶¹¹ On May 1, 1920, Ramsey acquired two lots in Houston by deed not recorded until March 26, 1925.⁶¹² Held the abstract attached on May 1, 1920, the date of the deed into Ramsey.⁶¹³ It is immaterial whether or not the judgment debtor's interest appears of record.⁶¹⁴

While a judgment lien may attach to an unrecorded interest, the judgment lienholder can attain no greater title to the property than the debtor. The judgment lien, like the debtor's unrecorded interest, may be inferior to the claim of an innocent purchaser without notice of the debtor's interest.⁶¹⁵

d. **Equitable Interest of Judgment Debtor**

The cases are not in accord whether a judgment lien will attach to the mere equitable title of the judgment debtor in real estate. The majority of authorities have concluded that a judgment lien does not attach to such an equitable interest.⁶¹⁶ In *Adam's v. Impey*⁶¹⁷ and *Sugg v. Mozoch*,⁶¹⁸ held a judgment lien could not attach to property in which the judgment debtor was the beneficial owner but for which legal title was held by a third party.⁶¹⁹ In *In re Goff*,⁶²⁰ the debtors held property in the name of a self-employed retirement trust (Keogh plan) of which the debtors were the sole beneficiaries.⁶²¹ The trust had a spendthrift clause providing that the assets of the trust were not subject to garnishment, attachment, levy, etc.⁶²² Citizens National Bank contended that its judgment attached to the property because the trust was void as a self-settled spendthrift trust.⁶²³ Held that the effect of a self-settled

spendthrift trust was to render the spendthrift clause ineffective allowing creditors to reach property of the trust by garnishment.⁶²⁴ However, this did not cause the trust to fail for other purposes.⁶²⁵ Because the trust was effective, the debtor held only equitable title to the property.⁶²⁶ The judgment lien failed to attach.⁶²⁷

However, an opposite result in *Donley v. Youngtown Sheet & Tube Co.*,⁶²⁸ where the judgment debtor took ownership of a royalty interest as "E.H.R. Sabens, Trustee".⁶²⁹ Evidence showed that Sabens individually was the beneficial owner of one-half of the royalty interest.⁶³⁰ Held the judgment lien attached to that part of the royalty beneficially owned by Sabens individually.⁶³¹

e. **After-Acquired Property of Judgment Debtor**

A judgment lien will attach to non-exempt real property acquired by the debtor after the abstract is recorded.⁶³²

Effect if Judgment Creditor Later Acquires the Property by Devise. When a judgment debtor acquires property by devise, the title to the property is said to vest in the debtor devisee immediately upon the death of the testator.⁶³³ Consequently, a judgment lien against the devisee will attach to the devised property immediately upon the death of the testator, subject however, to the administration of the estate.⁶³⁴ In *Woodward v. Jaster*,⁶³⁵ Woodward recovered and abstracted a judgment against a trust created for the benefit of Terry Jaster (the "Trust").⁶³⁶ The will of Genelda Jaster devised certain property to the Trust.⁶³⁷ The property was sold by the Administrator of Genelda Jaster's estate to Sullivan to pay certain debts of the estate.⁶³⁸ Held the judgment lien on the property did not follow the property into the hands of Sullivan.⁶³⁹ Until the administrator had paid all of the debts of the estate and distributed the estate property, the devise to the Trust did not vest legal title in the Trust.⁶⁴⁰ When the property was sold by the administrator to pay debts of the estate, the sale divested the Trust of its interest in the property and extinguished the judgment lien.⁶⁴¹

Effect of Vendor's Lien Given By Judgment Debtor to Acquire Property. A judgment lien attaches to any after-acquired property of the judgment debtor subject and inferior to any vendor's lien or superior title retained by the vendor of the property when sold to the judgment debtor.⁶⁴² In *Baker v. West*,⁶⁴³ Mollie Baker abstracted a judgment against E.B. Ramsey on July 14, 1915.⁶⁴⁴ On May 1, 1920, L.E. Norton conveyed two lots in Houston to Ramsey by several general warranty deeds reserving a vendor's lien and superior title to secure the payment of notes financing the purchase price.⁶⁴⁵ On the date of this transaction, the Mollie Baker judgment lien attached to the two lots subject to

the vendor's lien and superior title of L.E. Norton.⁶⁴⁶

The vendor's lien is superior to the judgment lien even if not immediately placed of record by recordation of the deed into the judgment debtor (retaining a vendor's lien)⁶⁴⁷ or deed of trust evidencing same.⁶⁴⁸

f. Fraudulent Conveyance Into Judgment Debtor

In *York v. Robbins*,⁶⁴⁹ T.P. Adams quit claimed a tract to B.L. York in fraud on Adam's creditors.⁶⁵⁰ Held this transaction was binding on the parties to vest legal title in York.⁶⁵¹ This rendered the property subject to an abstracted judgment against York.⁶⁵²

g. Fraudulent Conveyance Out of Judgment Debtor

A judgment creditor cannot be deprived of his legal right to enforce the collection of his judgment against the lands of the debtor by a fraudulent conveyance made to hinder, delay, or defraud the creditor, even though the conveyance is made prior to the entry of judgment and filing of an abstract of judgment.⁶⁵³ Under former law, the fraudulent transfer was void as to the judgment creditor.⁶⁵⁴ The judgment lien attached to the transferred property just as though no transfer had been made.⁶⁵⁵ However, with the adoption of the Uniform Fraudulent Transfer Act (TEX. BUS. & COM. CODE ANN., Chapter 24), this concept has changed.⁶⁵⁶ Fraudulent transfers are no longer considered void but avoidable.⁶⁵⁷

In *Texas Sand Co. v. Shield*,⁶⁵⁸ Donald Shield, et al brought suit against Elgean Shield and wife.⁶⁵⁹ On the date that Elgean received the notice of the trial date, he conveyed 2,031 acres to his son by gift deed. The tract was shortly conveyed by the son to a family corporation never completely organized.⁶⁶⁰ Donald obtained and abstracted a judgment against Elgean six months later.⁶⁶¹ The jury determined that the pre-trial deeds were fraudulent conveyances.⁶⁶² Held that the later judgment lien in favor of Donald, et al attached to the transferred property.⁶⁶³

However, *In re Harman*,⁶⁶⁴ determined that the underpinnings of *Texas Sand* have been altered by the adoption of the Uniform Fraudulent Transfer Act.⁶⁶⁵ Fraudulent transfers are no longer void but avoidable.⁶⁶⁶ When a fraudulent transfer occurs, legal title no longer remains with the debtor allowing the judgment lien to automatically attach.⁶⁶⁷ Under current Texas law, procedurally the judgment debtor must either bring an avoidance action or request a court order allowing execution on the transferred property.⁶⁶⁸

Limitations on Suit to Set Aside Fraudulent Conveyance Not Applicable to Judgment Creditor. Normally a suit to cancel a fraudulent conveyance is barred by a four-year statute of limitations (or

within one-year after the transfer could have been reasonably discovered).⁶⁶⁹ Certain dated authorities determined that, after a judgment lien had been obtained, the judgment creditor was not limited to the remedy of a suit to cancel and reverse a fraudulent conveyance.⁶⁷⁰ The judgment creditor could simply choose to foreclose a judgment lien against the transferred property even after the limitations period had expired for a suit to set aside a fraudulent conveyance.⁶⁷¹

For example, in *Texas Sand Co. v. Shield*,⁶⁷² the debtors fraudulently transferred all of their property to their son and then to a family corporation in March 1954 on the eve of trial.⁶⁷³ The plaintiff recovered and abstracted a judgment against the debtors in September 1954.⁶⁷⁴ After an appeal, the judgment was affirmed.⁶⁷⁵ In February 1959, the plaintiff instituted suit to set aside the 1954 conveyances and to foreclose the judgment lien.⁶⁷⁶ Held that the four-year limitations period to suit to set aside a fraudulent conveyance did not bar the suit to foreclosure the judgment lien.⁶⁷⁷ The defendant 's fraudulent conveyance was wholly void as to the judgment creditor the same as if no transfer had been made.⁶⁷⁸ The judgment lien could be foreclosed even though a conventional action to set aside the fraudulent conveyance was barred by limitations.⁶⁷⁹

Whether the same result would occur under current Texas law is highly suspect. *In re Harman*⁶⁸⁰ determined that subsequent to the adoption of the Uniform Fraudulent Transfer Act (TEX. BUS. & COM. CODE ANN., Chapter 24) that fraudulent transfers are no longer void but avoidable.⁶⁸¹ When a fraudulent transfer occurs, legal title no longer remains in the debtor allowing the judgment lien to automatically attach.⁶⁸² Under current Texas law, procedurally the creditor must bring an action under the Uniform Fraudulent Transfer Act to avoid the transfer or request the court to allow execution against the transferred property.⁶⁸³ Judgment liens may no longer be exempt from a limitations claim under the Uniform Fraudulent Transfer Act.⁶⁸⁴

Limitations on Suit to Recover Real Property (Adverse Possession) are Also Applicable to the Judgment Creditor. The judgment creditor should also be very concerned about the limitations periods for adverse possession found at TEX. CIV. PRAC. & REM CODE ANN. Chapter 16, Subchapter B. The operation of these limitations statutes may also result in making the judgment lien unenforceable. *Refer to IV(F) infra.*

h. When Judgment Debtor is the Personal Representative of an Estate

In *Moseley v. Evangelical Theological College*,⁶⁸⁵ Annette Moseley recovered and abstracted a judgment against "Emma C. Short, as independent executrix under the will of U.F. Short".⁶⁸⁶ Held no judgment lien attached to

property later acquired by Emma C. Short in her individual capacity.⁶⁸⁷ Emma C. Short, as executrix, was a separate juristic person from Emma C. Short, individually.⁶⁸⁸

2. Property Belonging to Parties Other Than Judgment Debtor

As a general rule, a judgment lien fixes a lien only on lands in the hands of the judgment debtor not against property of persons not a party to the judgment.⁶⁸⁹ However, there are some notable exceptions to this rule.

a. Purchasers From Judgment Debtor

After judgment lien has attached to a property, a later purchaser of the property is charged with notice of the lien and takes title to the property subject to the lien. (although without personal liability to the judgment creditor).⁶⁹⁰

Effect of Improvements to Property By Vendee of Judgment Debtor. If a vendee from the judgment debtor makes improvements to the property, the judgment lien will attach to those improvements if from their nature and construction the improvements became part of the realty.⁶⁹¹ The improvements create no equity of reimbursement if the judgment lien is later foreclosed.⁶⁹² However, the improvements may be removed if they can be removed without injury to the land or improvements existing when the land was conveyed by the judgment debtor.⁶⁹³

Effect of Vendee's Assumption of Judgment Debtor's Purchase Money Indebtedness for the Property. A judgment lien may in some cases be inferior to an existing vendor's lien against the property in the hands of the judgment debtor.⁶⁹⁴

Several cases have considered the effect of the judgment debtor's later conveyance of the property to a vendee who assumes that existing indebtedness. In *McDowell v. M.T. Jones Lumber Co.*,⁶⁹⁵ S.J. Thomas owned a tract in Potter County subject to a lien in favor of First National Bank of Amarillo formalized by deed of trust filed December 21, 1900.⁶⁹⁶ An inferior abstract of judgment in favor of M.T. Jones Lumber Company was recorded on September 28, 1901.⁶⁹⁷ On November 11, 1901, Thomas sold the property to J.E. McDowell who assumed and paid the existing debt to the bank without knowledge of the abstracted judgment.⁶⁹⁸ McDowell sought to defeat the judgment lien by claiming he was subrogated to the bank's superior position by paying off the bank loan.⁶⁹⁹ Held the subrogation doctrine did not apply.⁷⁰⁰ McDowell's assumption of the superior lien extinguished it and placed McDowell in same position as if Thomas had paid off the loan before conveying the property.⁷⁰¹ McDowell took the property subject to the judgment lien.⁷⁰²

A different result in *Harrison v. First Nat'l Bank of Lewisville*.⁷⁰³ In *Harrison*, the judgment

debtors borrowed money on their homestead on April 28, 1916 (through a convoluted transaction amounting to a pretended sale).⁷⁰⁴ Prior to the loan, two abstracts of judgment had been filed by judgment creditors. These judgment liens failed to attach to the property due to the homestead nature of the tract.⁷⁰⁵ Harrison paid off the "loan" at the request of the borrowers on that same day, April 28, 1916, and took an assignment of the lien securing it.⁷⁰⁶ The judgment debtors later abandoned the property on May 28, 1917, allowing the judgment liens to attach.⁷⁰⁷ On July 6, 1917 the judgment debtors conveyed the property to Harrison in an apparent deed in lieu of foreclosure.⁷⁰⁸ Held that Harrison was subrogated to the prior position of the April 28, 1916 lien.⁷⁰⁹ Harrison did not assume the note as part of the purchase of the property.⁷¹⁰ Rather, Harrison essentially refinanced the original mortgage without intending to be an outright purchaser of the property.⁷¹¹ The later deed in lieu of foreclosure from the debtors did not destroy the priority of the refinanced vendor's lien.⁷¹²

b. Community Property Interest of Spouse of Judgment Debtor

In *Carlton v. Estate of Estes*,⁷¹³ the Supreme Court concluded that under TEX. FAM. CODE ANN. § 5.61(c), (d) (now TEX. FAM. CODE ANN. § 3.202(c), (d)) that a spouses community property interest in property subject to joint management, control, and disposition could be reached to satisfy liabilities of the other spouse without joinder of both spouses in the suit.⁷¹⁴ As a result, an abstract of judgment against one spouse fixes a lien against the entirety of a community property parcel inclusive of the community interest of the other spouse.⁷¹⁵

c. Separate Property Interest of Spouse of Judgment Debtor

A judgment lien will not attach to the separate property interest of a spouse of the judgment debtor.⁷¹⁶

d. Unrecorded Conveyances/ Liens to Third Parties

In some cases, a judgment lien will attach to the property of a third party even if the judgment debtor conveyed the property prior to the recordation of the abstract of judgment. TEX. PROP. CODE ANN. § 13.001(a) provides:

- (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to subsequent purchaser for valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

This provision has been interpreted to provide that the lien of a judgment creditor takes precedence over a prior unrecorded deed or deed of trust executed by the judgment debtor unless the judgment creditor has notice of the unrecorded instrument at or before the time the lien was fixed on the land.⁷¹⁷ In *Gibraltar Sav. Ass'n v. Martin*,⁷¹⁸ the judgment debtor, Charles Floyd, conveyed all of his ½ undivided interest in a property to J.D. Martin by deed dated November 24, 1981.⁷¹⁹ On September 14, 1986, Gibraltar Savings Ass'n. recorded an abstract of judgment against Floyd.⁷²⁰ Floyd's deed to Martin was later recorded on October 30, 1987.⁷²¹ Held the Gibraltar's judgment lien was superior to the claims of Martin under the unrecorded deed.⁷²²

In *Olivares v. Nix Trust*,⁷²³ the Nix Trust obtained a judgment against Jose Olivares on November 24, 1975 which was abstracted on March 15, 1976.⁷²⁴ On December 2, 1975, a date between the date of the judgment and the date it was abstracted, certain tracts belonging to Olivares were foreclosed on at a substitute trustee's sale purporting to exercise a power of sale in preexisting deeds of trust.⁷²⁵ Substitute trustee's deeds for these sales were placed of record on January 5, 1976.⁷²⁶ However, the deeds of trust supporting the substitute trustee's sale were never placed of record.⁷²⁷ Held the abstract of judgment was superior to the rights of the purchaser at the substitute trustee's sale.⁷²⁸ At the time that the abstract of judgment was recorded, legal title to the property was in the name of Olivares with no liens of record.⁷²⁹

Registration Statute Will Not Apply Unless Record Title is in Judgment Debtor When Abstract Filed. In some cases, there may be no recorded conveyance either into or out of the judgment debtor at the time that the abstract is filed. For example in *Lewis v. San Antonio Belt & Terminal Ry.*,⁷³⁰ the property was involved in a series of sales: (1) L.A. Dolan sold to H.E. Hildebrand by deed dated November 15, 1913 and recorded on August 16, 1915; (2) H.E. Hildebrand sold to Thomas A. Reynolds by deed dated July 7, 1914 and recorded August 16, 1915; and (3) Thomas A. Reynolds sold to San Antonio Belt & Terminal Ry. by deed dated July 22, 1914 and recorded on March 3, 1915.⁷³¹ An abstract of judgment was recorded against Hildebrand on July 20, 1915.⁷³² Held the recording statute did not allow the judgment lien to attach to the property even though the deed out of Hildebrand was unrecorded when the abstract was filed.⁷³³ The rule allowing a judgment lien creditor to prevail over an unrecorded deed is inapplicable unless record title is in the judgment debtor at the time that the abstract is filed or thereafter.⁷³⁴ The indexing of a judgment does not create a lien on property not then apparently belonging to the judgment debtor.⁷³⁵ Because Hildebrand was not

the record owner of the property when the abstract was filed, the abstract created no lien on the property.⁷³⁶

Similarly, in *Steele v. Harris*,⁷³⁷ Steele purchased certain property on January 7, 1927. He conveyed the property to his brother on the same day.⁷³⁸ Neither the deed into or out of Steele was recorded until June 30, 1927.⁷³⁹ On June 18, 1927, Harris abstracted a judgment against Steele.⁷⁴⁰ Held that the abstract of judgment did not attach to the property.⁷⁴¹ When the judgment debtor does not have record title to the property, the only interest to which a lien will attach is the actual interest that the debtor had in the property at the time that the judgment was abstracted.⁷⁴²

Notice. A judgment lien creditor will not prevail over an unrecorded conveyance of which the judgment creditor had notice.⁷⁴³ Notice may be actual⁷⁴⁴ or constructive and generally consists of anything which, if reasonably pursued, would acquaint the creditor with the unrecorded conveyance.⁷⁴⁵ The burden of proving that the lien creditor had notice is upon the party claiming under the unrecorded deed.⁷⁴⁶

The time that is examined to determine if the lien creditor had notice of the unrecorded conveyance is the time that the abstract of judgment was recorded and indexed.⁷⁴⁷ Notice later acquired is irrelevant to this inquiry.⁷⁴⁸ In *Bova v. Wyatt*,⁷⁴⁹ George W. Dixon deeded 50 acres to his sister Cumire Bova on March 23, 1929.⁷⁵⁰ The deed was not recorded until November 18, 1937.⁷⁵¹ Marine Bank and Trust abstracted a judgment against Dixon on February 10, 1937 having no notice of the deed to Bova.⁷⁵² When Bova learned of the intended execution sale of the property, she notified the Sheriff of her interest in the property.⁷⁵³ However, this notice, coming after the abstract of judgment was filed, was ineffective to prevent the judgment lien from being superior to her interest in the property.⁷⁵⁴

Open possession by the party claiming under the unrecorded deed or that party's successor or tenant is generally sufficient to impart notice of the unrecorded instrument.⁷⁵⁵ Actual possession is *prima facie* evidence of ownership and title.⁷⁵⁶ The judgment creditor must make an investigation of any possession of the property and inquiry of the possessor as to the nature of the claim under which he holds.⁷⁵⁷ In *Rodriguez v. Buckley*,⁷⁵⁸ the judgment debtor sold his property to Pena by unrecorded conveyance.⁷⁵⁹ At the time the judgment was abstracted, Pena had entered into possession of the tract and made improvements to the property.⁷⁶⁰ Held this was sufficient notice of the unrecorded conveyance to prevent the judgment lien from attaching to the property.⁷⁶¹ In *Long Falls Realty Co. v. Anchor Electric Co.*,⁷⁶² possession by judgment debtor's almost wholly owned corporation was sufficient notice to the

judgment creditor of an unrecorded conveyance to the corporation.⁷⁶³

However, any possession by a vendee of the judgment creditor must be open, exclusive, visible, and unequivocally that of a claimant other than the judgment debtor.⁷⁶⁴ In *Von Stein v. Trexler*,⁷⁶⁵ no notice of an unrecorded conveyance was given when the vendee fenced the land and put some lumber on it but never actually occupied the tract.⁷⁶⁶ A similar result in *Triangle Supply Co. v. Fletcher*,⁷⁶⁷ where the occupier adverse to the judgment lienholder maintained no employees or structures on the property.⁷⁶⁸ A different result in *Newman v. Phalen*,⁷⁶⁹ when the vendee under an unrecorded deed took possession of the tract through his employees and agent, cultivated the land, put in a crop, and built a segregating fence.⁷⁷⁰

Occupation by the tenant of the vendee is equivalent to possession by vendee and will generally impart notice of the unrecorded sale to a judgment creditor.⁷⁷¹ For example in *Garth v. Stuart*,⁷⁷² the property was occupied by a tenant, George Hunter, at the time that the judgment creditor filed its abstract of judgment.⁷⁷³ By a prior unrecorded deed the judgment debtor conveyed the property to W.C. Persons.⁷⁷⁴ Hunter, by this time, had attorned to Persons and begun paying rent directly to Persons instead of the judgment debtor.⁷⁷⁵ Held the occupation of the property by Hunter was notice of Person's title.⁷⁷⁶ Even if the lien creditor knew Hunter to be the debtor's tenant at one time, there was still a duty to inquire about Hunter's *present* right to occupy the property.⁷⁷⁷ A different result in *Bowles v. Belt*,⁷⁷⁸ where evidence showed that the tenant of the judgment debtor knew nothing of the unrecorded sale until *after* the abstract had been filed.⁷⁷⁹ Because the tenant had not yet attorned to the new owner, reasonable inquiry would not have discovered the unrecorded sale.⁷⁸⁰

A more difficult problem is presented when the record title to the property is consistent with its occupation by the person presently in possession but that person is actually occupying the property under an unrecorded conveyance. The authorities disagree on whether occupation consistent with record title is sufficient to impart notice of the unrecorded conveyance. For example, in *Gibraltar Sav. Ass'n v. Martin*,⁷⁸¹ record title to a tract showed a joint tenancy between the judgment debtor and Martin.⁷⁸² The property was occupied by Superior Tire under a lease from Martin.⁷⁸³ Although the judgment debtor conveyed all of his undivided interest in the property to Martin by unrecorded conveyance, the tenancy of Superior Tire was no notice of this.⁷⁸⁴ Possession by one co-tenant or his lessee gave no notice of an adverse claim against the record title of the judgment debtor.⁷⁸⁵ But see *Collum v. Sanger Bros.*,⁷⁸⁶ where possession by the Elizabeth

Collum (through tenants) of a tract in which she had a 1/5 undivided interest was sufficient to put the judgment creditor on notice that she had acquired an additional 1/5 interest from the judgment debtor by unrecorded deed.⁷⁸⁷ Possession by one consistent with recorded title does *not* relieve the judgment creditor from making inquiry of the possessor as to any other title the possessor may have.⁷⁸⁸ A lien creditor will be imputed to have knowledge about the entire nature and extent of the possessor's claim.⁷⁸⁹

What is a "Conveyance of Real Estate" for the Purposes of the Registration Statute? The operation of the recording statute in favor of lien creditors is strictly construed.⁷⁹⁰ It operates only when the unrecorded instrument is a deed (or deed of trust) that passes a present interest in land.⁷⁹¹ As a result, the cases have concluded that the statute has no application to an unrecorded executory contract for the sale of land.⁷⁹² In *Texas Am. Bank/Levelland v. Resendez*,⁷⁹³ Loveta Alford owned a lot in Levelland, Texas.⁷⁹⁴ On November 17, 1980, Alford entered into a contract for deed to sell the tract to Jesse and Anita Resendez.⁷⁹⁵ Resendez completed all payments by November 10, 1983.⁷⁹⁶ On February 22, 1984, Texas American Bank/Levelland abstracted a judgment against Alford.⁷⁹⁷ On May 11, 1984, a deed from Alford to Resendez was recorded.⁷⁹⁸ Held that Resendez' performance of conditions of the contract for deed gave Resendez equitable title to the property superior to that of Alford and independent of the legal title acquired by the deed from Alford.⁷⁹⁹ TEX. PROP. CODE ANN. § 13.001(c) did not apply to the contract for deed.⁸⁰⁰ The superiority of this equitable title of Resendez could be asserted against the bank's judgment lien even if the bank had no notice of this title when the judgment was abstracted.⁸⁰¹

In *Gaona v. Gonzales*,⁸⁰² Rodolfo Gonzales recovered and abstracted a judgment against Rachel Gonzales in Tom Green County.⁸⁰³ At the time that the judgment was abstracted, Rachel Gonzales had already entered into an oral executory contract for the sale of 3 lots to Gaona.⁸⁰⁴ Gaona had commenced but not completed making the required payments on the property.⁸⁰⁵ Held Gaona's equitable rights in the property were superior to the judgment lien.⁸⁰⁶ However, Rachel Gonzalez's legal title to the property *was* subject to the judgment lien inclusive of Gonzalez's right to receive the remaining payments from Gaona on the executory contract of sale.⁸⁰⁷ Rodolfo Gonzales was entitled to receive from Gaona all remaining payments on the contract which accrued after Gaona had actual notice of the judgment lien.⁸⁰⁸

e. Equitable Interests of Third Parties

When the legal title to property stands in the name of a judgment debtor, a judgment lien will

attach to the property. Notwithstanding, the lien will fasten only upon that interest in the property actually owned by the judgment debtor even though the deed records erroneously disclose in the debtor's favor a greater interest in the land than belongs to the debtor.⁸⁰⁹ If there are equitable interests in the property outstanding in third parties, the judgment lien generally will not attach to these interests.⁸¹⁰ The equitable rights of these parties will be protected against a lien directed against the judgment debtor as owner of legal title to the property.⁸¹¹ This is true even though the lien creditor has no notice of the equitable interest at the time that the abstract is filed.⁸¹²

The rationale for this preference in favor of the outstanding equitable interests of third parties is that a judgment lienholder is in no sense an innocent purchaser for value.⁸¹³ The judgment lienholder has expended no new value for his lien position.⁸¹⁴ If his lien fails, he loses nothing.⁸¹⁵ His judgment remains unimpaired in the full amount.⁸¹⁶

Parties claiming upon a theory of equitable title superior to a judgment lien so as to avoid the registration statute bear the burden of proof.⁸¹⁷

Resulting Trusts. A resulting trust may be implied in law from a transaction where one party pays the consideration for the purchase of property (or becomes legally obligated to do so) but title is taken in another's name (a "purchase money resulting trust").⁸¹⁸ In such a transaction, the parties are presumed to have intended that the named grantee in the deed hold title for the use and benefit of the person who paid the purchase price.⁸¹⁹ If the judgment debtor holds legal title to property, the consideration for which was paid by a third party, the judgment lien is inferior to the equitable title held by the person who paid for the property.⁸²⁰ Thus in *Roeser & Pendleton, Inc. v. Stanolind Oil Co.*,⁸²¹ when Stanolind Oil Co. paid the purchase price for certain mineral interests the title to which was taken in the name of the broker, the judgment lien against the broker was inferior to the equitable title held by Stanolind.⁸²² Likewise, in *Hammitt v. McIntire*,⁸²³ Munger purchased property on behalf of Thomas because Thomas could not qualify for a loan.⁸²⁴ Thomas obligated himself to pay the loan obtained at the time of purchase although Munger was the only maker on the note.⁸²⁵ A resulting trust arose under these facts giving Thomas equitable title to the property. This equitable title was superior to the rights of a judgment creditor of Munger.⁸²⁶

A resulting trust will also be implied in situations where a grantor conveys property without consideration and without intending a gift (a "gratuitous transfer resulting trust").⁸²⁷ As with a purchase money resulting trust, if a judgment debtor holds legal title to property after such a gratuitous transaction, an abstracted judgment lien against the debtor will not attach to the equitable

title retained by the grantor. In *Garrison v. Citizens Nat'l Bank of Hillsboro*,⁸²⁸ J.C. Garrison conveyed property to his son, J.P. Garrison, in order to raise money by creating a vendor's lien note.⁸²⁹ The recited consideration was not paid nor was any gift intended.⁸³⁰ J.C. Garrison always retained possession of the tract.⁸³¹ Held that an abstracted judgment lien against J.P. Garrison could not be foreclosed against the property.⁸³²

A deed absolute in form but intended as a deed of trust can also create a resulting trust.⁸³³ Although, this same type of transaction has also been said to create a constructive trust,⁸³⁴ Howsoever characterized, the substance is that equitable title in such cases remains with the grantor.⁸³⁵ Thus in *Michael v. Knapp*,⁸³⁶ a deed absolute on its face did not subject the property to a judgment lien against the grantee when it was actually intended as to secure a loan.⁸³⁷

Where a property is purchased by an agent of another with the agent carrying out the instructions of the principal, the purchase inures to the benefit of the principal.⁸³⁸ A resulting trust will be implied in such a case in favor of the principal.⁸³⁹ In *Berry v. Chadwick*,⁸⁴⁰ property was purchased by Chadwick with a loan arranged by Caruthers.⁸⁴¹ The parties agreed that Chadwick would purchase the tract for the benefit of Caruthers and convey it to Caruthers at a later date.⁸⁴² Held the transaction vested equitable title in Caruthers which could not be reached by Chadwick's judgment creditor.⁸⁴³

Conveyances Subject to Equitable Reformation. If a conveyance fails to reflect the true intention of the parties, equity will reform the instrument to correct the mistake and speak the truth.⁸⁴⁴ This equitable right is not controlled by the registration statute.⁸⁴⁵ In *First State Bank of Amarillo v. Jones*,⁸⁴⁶ W.S. Roberts gave First State Bank a lien on his property in Clay County with a deed of trust recorded on December 22, 1911.⁸⁴⁷ When Roberts made a partial payment on the note, the Bank agreed to partially release the deed of trust.⁸⁴⁸ However, by mistaken misuse of a printed form, a full release of the deed of trust was signed and recorded on May 27, 1912.⁸⁴⁹ This mistake was apparent on the face of the release which stated that the note had been paid in full but purported to release only a portion of the property.⁸⁵⁰ On October 9, 1912, T.K. Jones recorded an abstract of judgment against Roberts.⁸⁵¹ When the bank discovered its error, it filed a new deed of trust reciting the mistake on October 15, 1912.⁸⁵² Held under these facts that the bank's equitable right to reform the mistaken release was superior to the judgment lien of Jones.⁸⁵³ The bank had the superior lien.⁸⁵⁴

In *Martin v. Cadle Co.*,⁸⁵⁵ Cadle Co.'s predecessor abstracted a judgment against Jack E. Pratt, Jr. on April 3, 1989.⁸⁵⁶ Pratt later acquired an undivided interest (with co-tenant Jack E.

Pratt, Sr.) in a property subject to a note in favor of the predecessor of Compass Bank.⁸⁵⁷ On May 17, 1997, Compass Bank executed a complete release of its lien on the property acknowledging full payment of the note.⁸⁵⁸ However, two weeks later, Evelyn Johnstone conducted a substitute trustee's sale under the released Compass Bank deed of trust selling the property to Jack E. Pratt, Sr.⁸⁵⁹ One week after this sale, Compass Bank executed a Transfer of Lien to Johnstone "in lieu and substitution of" the earlier Release of Lien of May 17, 1997.⁸⁶⁰ Jack E. Pratt, Sr. immediately sold the property to the Martins who contended that they acquired the property free of the Cadle Co. judgment lien.⁸⁶¹ Held that the Release of Lien of May 17, 1997 could not be reformed to constitute a Transfer of Lien.⁸⁶² Unlike *First State Bank of Amarillo v. Jones*, the Release of Lien had no apparent mistake on its face. The release recited that it gave a complete release of lien for full payment of the note.⁸⁶³ Further, the Martins produced no evidence that (1) the Release of Lien was executed by mutual mistake of Compass Bank and Jack E. Pratt, Jr. or (2) Johnstone actually paid off the Compass Bank debt entitling her to equitable title to the property.⁸⁶⁴ Under these circumstances, the Release of Lien could not be reformed to make the Martins' title superior to the Cadle Co. judgment lien.⁸⁶⁵

In *Lewisville State Bank v. Blanton*,⁸⁶⁶ Jack Blanton acquired a tract belonging to W.H. Blanton by paying off a deed of trust lien in favor of Lewisville State Bank.⁸⁶⁷ By mistake, the deed from Jack Blanton to W.H. Blanton misdescribed the property.⁸⁶⁸ Thereafter, the bank abstracted judgment against W.H. Blanton.⁸⁶⁹ A later correction deed revised the property description.⁸⁷⁰ However, the bank claimed a superior lien. Held the equitable right of Jack Blanton to reform the deed was superior to the bank's abstracted judgment.⁸⁷¹

However, a contrary rule was adopted in *North East Ind. School Dist. v. Aldridge*,⁸⁷² which concluded that an equitable right sufficient to defeat a judgment lien must be equitable *title* not the mere equitable *right* to reform a deed not absolutely void.⁸⁷³ In this decision, a deed from Guy Aldridge to W.J. Aldridge dated October 27, 1961 inadvertently left out certain lots intended to be conveyed.⁸⁷⁴ A judgment lien was recorded against Guy Aldridge on January 4, 1965.⁸⁷⁵ A later correction deed from Guy Aldridge inserted the intended legal description inclusive of the disputed lots.⁸⁷⁶ Held the judgment lien was superior to the equitable right to reform the original deed.⁸⁷⁷

Conveyance To Entity Not Legally Organized. In *Payne v. Bracken*,⁸⁷⁸ Kimbrough conveyed property to East Texas Oil Corporation on a date before the charter for the corporation had

been filed.⁸⁷⁹ An abstract of judgment was abstracted against Kimbrough after the conveyance to the corporation was recorded but one day before the corporate charter was filed.⁸⁸⁰ When East Texas Oil Corporation later sold the property to Bracken, the judgment lienholder claimed an interest superior to Bracken.⁸⁸¹ Held the judgment lien was inferior to the interest of Bracken.⁸⁸² Bracken could have recovered title from the corporation on an estoppel theory or by treating the conveyance as a contract to convey.⁸⁸³

D. Duration of Judgment Lien

A judgment lien continues for 10 years following the date of recording and indexing of the abstract.⁸⁸⁴ However, if the judgment ever becomes dormant during that 10 year period, the lien ceases to exist.⁸⁸⁵

In *Olivares v. Nix Trust*,⁸⁸⁶ a judgment lien creditor intervened in a condemnation proceeding against the debtor's property.⁸⁸⁷ At the time that the intervention was filed and the condemnation award was deposited with the Court, the underlying judgment was valid and subsisting.⁸⁸⁸ However, prior to the distribution of the condemnation proceeds, the judgment became dormant.⁸⁸⁹ Held that the dormancy of the judgment did not effect the judgment lienholder's interest in the condemnation proceeds which vested at the time of the deposit of such proceeds with the court.⁸⁹⁰

1. Can Judgment Lien Be Renewed and Extended?

TEX. PROP. CODE ANN. § 52.001 clearly contemplates that an initial and subsequent abstracts of the same judgment may be filed in a county.⁸⁹¹ **IMPORTANT NOTE:** Most practitioners assume that filing a subsequent abstract before the expiration of the first has the effect of extending and renewing the original abstract and that the inception date of the lien will relate back to the original filing.⁸⁹² However, there are no authorities supporting this view. A prior version of the judgment lien statute provided for the renewal and extension of liens. But currently there is no express authority for the renewal of judgment liens.⁸⁹³ *Burton Lingo Co. v. Warren*,⁸⁹⁴ determined that judgment lien terminated by expiration of its ten-year term cannot be extended, but declined to decide whether an unexpired lien could be "extended".⁸⁹⁵ The court viewed each abstract as an "independent" lien, each with its own term and duration.⁸⁹⁶ It is difficult to harmonize this view with the concept of extending and renewing judgment liens such that the priority of the extended lien relates back to the original filing.⁸⁹⁷

It is clear that there is no necessity to bring a second action for judgment in order to issue a new abstract of judgment.⁸⁹⁸ So long as the judgment

is prevented from going dormant, subsequent abstracts of judgment may be issued to enforce it.⁸⁹⁹

E. Priority of Judgment Liens

Generally, the priority of judgment liens over other liens and interests is determined with respect to the order in which they are created.⁹⁰⁰ Ordinarily, a judgment lien will take priority over a subsequently filed lien or interest.⁹⁰¹ Conversely, a judgment lien is subordinate to conveyances recorded prior to the abstracting and recording of the judgment.⁹⁰² *McGriff v. Hazle*,⁹⁰³ considered the situation where a deed of the property out of the judgment debtor was recorded simultaneously with the abstracted judgment.⁹⁰⁴ Held the judgment lien did not attach in the case of a tie.⁹⁰⁵

In *Yates v. Darby*,⁹⁰⁶ a judgment lien attached to the debtor's property *after* a vendor's lien retained in a previous deed was barred by limitations.⁹⁰⁷ The judgment lien created was superior to the barred vendor's lien.⁹⁰⁸ The subsequent renewal and extension of the barred lien did not alter this priority.⁹⁰⁹ A different result in *Hughes v. Hess*⁹¹⁰ when the judgment lien attached after the vendor's lien was apparently barred by limitations.⁹¹¹ However, an unrecorded extension agreement had actually extended the viability of the vendor's lien.⁹¹² Held that the renewed and extended vendor's lien was superior to the judgment lien although the extension was unrecorded.⁹¹³

1. Establishing the Date That Judgment Lien Attaches

A judgment lien does not attach until properly filed, recorded, and indexed.⁹¹⁴ Until these events occur, the abstract does not attach such that its priority to competing interests may be established.⁹¹⁵ For example in *Belbaze v. Ratto*,⁹¹⁶ an abstract was filed on February 15, 1886 but not recorded until March 6, 1886.⁹¹⁷ Held the judgment lien was inferior to a deed of trust recorded on March 5, 1886.⁹¹⁸ Likewise in *Willis v. Nichols*,⁹¹⁹ when an abstract was recorded with an inadequate index on March 25, 1885 but refiled with a corrected index on June 28, 1887, it was inferior to a deed recorded January 1, 1887.⁹²⁰

2. Priorities Among Competing Judgment Liens

Between competing judgment lienholders generally the first filed has priority.⁹²¹ Similarly, a judgment lien has priority over a subsequently levied execution/attachment⁹²² but will be inferior to a lien created before the abstract was filed.⁹²³

a. After-Acquired Property

An exception to the first to file rule applies to after-acquired property. Judgment liens perfected on different dates attach simultaneously to

after-acquired property.⁹²⁴ Each is of equal dignity and entitled to a *pro rata* distribution of any sales proceeds.⁹²⁵

Federal Tax Liens. However, a different rule applies when a federal tax lien has attached to the property.⁹²⁶ The priority of liens on property to which a federal tax lien has attached is determined by federal law.⁹²⁷ Under federal law regardless of the after-acquired nature of the property, judgment liens have a first in time first in right priority.⁹²⁸

b. Termination of Homestead

If two or more abstracts of judgment are filed while the judgment debtor's property is homestead and that homestead is later abandoned or terminated, it is not the first abstract filed that takes priority.⁹²⁹ The liens attach at the same time and are coordinate.⁹³⁰

Federal Tax Liens. In *Frappier v. Texas Commerce Bank*,⁹³¹ a judgment lien against the Allens was abstracted in 1986.⁹³² A federal tax lien was filed in 1989.⁹³³ When a deed of trust lien superior to both was foreclosed against the Allens' homestead, the sale generated surplus claim to the surplus proceeds.⁹³⁴ The judgment lien did not attach to the homestead. Nor could it attach to the proceeds until 6 months after the trustee's sale.⁹³⁵ Conversely, the federal tax lien attached to the homestead immediately upon filing.⁹³⁶

F. Effect of Fraudulent Judgment Lien

TEX. CIV. PRAC. & REM. CODE ANN. § 12.002 prohibits a person from filing a document of record with knowledge that it is a fraudulent court record or lien claim against real property with the intent that the document be given legal effect with the intent to cause physical injury, financial injury, or mental anguish or distress.⁹³⁷ A person violating this provision is liable to each injured person for the greater of actual damages or \$10,000, together with court costs, attorney's fees, and exemplary damages.⁹³⁸ In addition, injunctive relief is available to the injured party and to specified public officers.⁹³⁹

G. Effect of "Correction" Abstract of Judgment

*In re Davis*⁹⁴⁰ suggests that the "Relation Back Doctrine" is inapplicable to a correction abstract of judgment.⁹⁴¹ If an initial abstract of judgment is defective but a subsequent abstract meets statutory standards, the second filing will not relate back to the priority of the initial filing.⁹⁴²

H. Does Abstracting Judgment Violate Automatic Stay in Bankruptcy?

Filing an abstract of judgment is act against the debtor's property violative of the automatic stay in bankruptcy.⁹⁴³

I. Does Abstracting Judgment Constitute a Slander on Title?

In *Leslie v. Western Steel Co.*,⁹⁴⁴ Western Steel obtained and abstracted a judgment against C.E. Leslie.⁹⁴⁵ Leslie inherited a life estate in a 1/3 interest in certain properties of his deceased wife.⁹⁴⁶ The owners of the remaining interest in the affected tracts claimed that the recordation of the abstract was a slander on their title.⁹⁴⁷ Held that Western Steel had an inherent right to have its judgment abstracted.⁹⁴⁸ Western Steel was under no duty to issue releases to parties owning an interest in the property who are not mentioned in the abstract.⁹⁴⁹

III. ENFORCEMENT OF JUDGMENT LIEN.

A judgment lien may be enforced by two methods: (1) independent suit to foreclose the judgment lien or (2) execution sale.⁹⁵⁰

A. Suit to Foreclose Judgment Lien

1. Jurisdiction

A district court has jurisdiction to foreclose a judgment lien.⁹⁵¹

2. Necessary Parties

A suit to enforce a judgment lien is in the nature of an action *in rem* to subject the land to the payment of the judgment.⁹⁵² It seeks no general judgment against the judgment debtor.⁹⁵³ As a result, if the debtor has conveyed all of his interest in the property to a remote vendee, the judgment debtor is a proper but not necessary party to the suit.⁹⁵⁴ Similarly, if the debtor has conveyed all of the debtor's interest in the property prior to his death, a judgment creditor need not seek relief through the probate court, but may proceed directly against the property in the hands of its current owner without joinder of the debtor's estate.⁹⁵⁵ However, if the judgment debtor has sold the property by contract for deed retaining legal title until the property is paid for by the buyer, a judgment creditor may bring a suit to foreclose on the judgment debtor's retained title without joining the buyer under the contract for deed.⁹⁵⁶

If the debtor owns only an undivided interest in the subject property, it is not necessary to join the other tenants in common in a suit to foreclose a judgment lien against the debtor's interest in the property.⁹⁵⁷

3. Limitations

The ten year duration of a judgment lien prescribed by TEX. PROP. CODE ANN. § 52.006 is not a statute of limitations which limits the time within which a suit must be instituted or the period within which the judgment of foreclosure must be decreed.⁹⁵⁸ It is only necessary to show that the lien has not expired at the time the suit to

foreclose it is filed.⁹⁵⁹ Because the 10 year duration of the judgment lien is not a limitations issue, it is not necessary for the party defending against the lien to plead limitations in order to assert that the lien has expired.⁹⁶⁰

B. Execution Sale

The judgment creditor may enforce the judgment lien by levy and execution against the property to which the lien has attached.⁹⁶¹ This is true although the judgment debtor has prior to the execution conveyed away all of his interest in the property.⁹⁶²

When a judgment lien is enforced by levy and execution, the title obtained at the sheriff's sale dates from the date that the judgment lien attached not the date of the sheriff's sale.⁹⁶³ Thus in *Baker v. West*,⁹⁶⁴ when the judgment lien attached to the debtor's property on May 1, 1920 but was not enforced by execution until July 7, 1925, the title obtained at the sale was superior to that obtained in intervening conveyances between 1920 and 1925.⁹⁶⁵

C. Order of Foreclosure

If part of the property subject to the lien has been sold by the debtor to a subsequent grantee and part of the property remains in the hands of the judgment debtor, the judgment creditor must resort first to the property remaining in the hands of the debtor in satisfaction of the lien.⁹⁶⁶ If the judgment debtor has sold all of the property subject to the judgment lien to more than one subsequent vendee, those vendees may require that the judgment lien be foreclosed in the reverse order of alienation.⁹⁶⁷ That is the vendees may require that the last property sold by the judgment debtor be subjected to the lien first and so on in the opposite order that the tracts were sold by the judgment debtor.⁹⁶⁸

IV. TERMINATION OF JUDGMENT LIEN

A. Satisfaction by Execution

TEX. PROP. CODE ANN. § 52.005 provides that the clerk may note the credit or payment of the judgment (partial or full) by a return on an execution certified by the officer making the return and showing the names of the parties to the judgment, the number and style of the suit, the court in which the judgment was rendered, the date and amount of the judgment, and the dates of issuance and return on the execution.⁹⁶⁹

B. Release

A judgment lien may be satisfied by a receipt acknowledgment, or release signed by the party entitled to receive payment on the judgment, their agent or attorney, that is acknowledged and proven for record in the manner required for deeds.⁹⁷⁰

A judgment credit may release a judgment for less than the amount necessary to the full satisfaction of the judgment.⁹⁷¹ The partial payment will be sufficient consideration for the judgment creditor's agreement to release the lien.⁹⁷²

C. Satisfaction By Subsequent Judgment or Court Order

In the event that the underlying judgment supporting the judgment lien is reversed or overturned, the cloud on title created by the abstract may be removed by court order directing the clerk of each county where the judgment is abstracted to enter into the clerk's judgment records an indexed entry showing the abstract is cancelled, released, or discharged.⁹⁷³ In *A.H. Belo Corp. v. Sanders*,⁹⁷⁴ Belo recovered a judgment in Dallas County that was abstracted in Marion County.⁹⁷⁵ The judgment was reversed in a Dallas County bill of review action which decreed that the judgment and abstract were a nullity.⁹⁷⁶ Held that this judgment did not go far enough to remove the cloud on title caused by the Marion County abstract.⁹⁷⁷ The judgment should have directed all county clerks of counties where the judgment is abstracted to record and index an entry declaring the previous abstract a nullity.⁹⁷⁸ The best practice is for the judgment to describe each abstract to be cancelled by specific recording reference.⁹⁷⁹

D. Payment

Generally payment of a judgment extinguishes both the judgment and any judgment liens abstracted in its enforcement.⁹⁸⁰ Where there are several judgment debtors subject to a joint judgment, payment of the judgment by one debtor extinguishes both the judgment and judgment lien whatever may have been the intention of the parties.⁹⁸¹ The same rule applies when the judgment is paid by one who simply acts as a trustee for the use and benefit of a judgment debtor.⁹⁸²

However, a different rule will apply when the judgment is paid by one who is a stranger to it.⁹⁸³ In such a case, the rule is that in the absence of any agreement to the contrary, the judgment is extinguished.⁹⁸⁴ But if there is an understanding that the judgment and its lien are to be kept alive, the judgment continues for the benefit of the person making the payment and will be considered to have been assigned to the payor.⁹⁸⁵ The person paying the judgment becomes subrogated to the rights of the judgment creditor.⁹⁸⁶ In *Williams v. Hedrick*,⁹⁸⁷ George H. Hedrick paid in full a judgment held by J.I. Smith against Brown C. Williams.⁹⁸⁸ At the time, the judgment had been abstracted against a tract in Nacogdoches County in which Brown C. Williams had an undivided interest.⁹⁸⁹ Hedrick had an outstanding option to purchase another undivided interest in the same

tract held by Mary Williams.⁹⁹⁰ Hedrick paid off the judgment to allow a sale of pipe and casing off the tract to go forward and to keep Ms. Williams interest "clear".⁹⁹¹ Hedrick took an assignment of the judgment and promptly brought suit against Brown C. Williams to enforce its judgment lien.⁹⁹² Held the payment of the judgment did not extinguish the judgment lien.⁹⁹³ Hedrick was a stranger to the judgment whose actions in taking an assignment of the judgment and filing suit to foreclose its lien clearly indicated an intention to keep the judgment alive.⁹⁹⁴

E. Bankruptcy of Judgment Debtor

1. Abstracts of Judgment Recorded Prior to September 1, 1993

An abstracted judgment filed prior to September 1, 1993 is not automatically cancelled by the judgment debtor's discharge in bankruptcy.⁹⁹⁵ The lien is not affected by the bankruptcy discharge and may be enforced if (1) the lien is against real property owned by the bankrupt prior to the bankruptcy filing (or adjudication of bankruptcy) and (2) either the judgment debt is not discharged or the property is nonexempt and abandoned during the course of the proceeding.⁹⁹⁶ Otherwise, the judgment and abstract are of no force after bankruptcy discharge.⁹⁹⁷ However, a debtor (or the debtor's receiver or trustee) may seek the cancellation and discharge of the judgment lien by application made to the court in which the judgment was rendered.⁹⁹⁸ The application must show the debtor's discharge in bankruptcy and must be made within one year of that discharge.⁹⁹⁹ Notice of the application must be served on the judgment creditor or his attorney of record in the action in which the judgment was rendered.¹⁰⁰⁰ This requires personal service if the residence or place of business of the judgment creditor or his attorney is known.¹⁰⁰¹ Published service is allowed upon proof by affidavit that (1) the addresses of the judgment debtor and his attorney are unknown and cannot be ascertained upon reasonable diligence or (2) the judgment debtor's residence is outside of Texas or unknown.¹⁰⁰²

The Court must conduct a hearing on the application to cancel the judgment lien.¹⁰⁰³ If it is shown that the judgment debt has been discharged in bankruptcy, the court must enter an order discharging and cancelling the judgment debt and any abstracts of that judgment.¹⁰⁰⁴ That order may then be recorded in each county where an abstract is filed.¹⁰⁰⁵ The recorded order is effective to constitute a release, discharge, and cancellation of the judgment.¹⁰⁰⁶

2. Abstracts of Judgment Recorded After September 1, 1993

An abstract recorded after September 1, 1993 is automatically cancelled without any court action if (1) the lien is against real property owned by the debtor before the bankruptcy filing and (2) the judgment debt is discharged in the bankruptcy.¹⁰⁰⁷ Nor will the judgment lien attach to property acquired by the debtor after the bankruptcy filing.¹⁰⁰⁸

The judgment lien will continue notwithstanding the debtor's bankruptcy discharge if (1) the judgment debt is not discharged in the bankruptcy, or (2) the property is nonexempt and abandoned during the bankruptcy.¹⁰⁰⁹

The bankruptcy discharge is a bar to future proceedings to enforce the judgment.¹⁰¹⁰ However, the discharge is neither a payment nor extinguishment of the debt.¹⁰¹¹ The judgment debt remains in existence after the discharge for some limited purposes although divested of its character as a legally enforceable personal obligation.¹⁰¹² In *Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth*,¹⁰¹³ a 1987 judgment was entered in favor of Turner against Hageman and Luth, jointly and severally.¹⁰¹⁴ In 1989, Hageman received a discharge in bankruptcy.¹⁰¹⁵ In 2001, Hageman acquired the judgment from Turner and sought to enforce it against his co-debtor, Luth.¹⁰¹⁶ Held for the purpose of the "extinguishment rule" (the acquisition of a judgment by one debtor extinguishes the judgment for all judgment debtors) that Hageman was still a co-debtor on the judgment notwithstanding his discharge in bankruptcy.¹⁰¹⁷ Refer to IV(G) *infra*.

F. Adverse Possession

1. Three-Year Statute.

Limitations title obtained by the adverse possession of a successor of title of the judgment debtor will extinguish a judgment lien.¹⁰¹⁸ A purchaser of the land from the judgment debtor who enters into possession of the land under title or color of title and maintains possession of the tract peaceably, continuously, and adversely for more than 3 years before the commencement of a suit to foreclose the judgment lien, acquires the property free of the lien.¹⁰¹⁹ One dated case has suggested that even the judgment debtor himself may extinguish a judgment lien by adverse possession under the 3 year limitations statute.¹⁰²⁰ In *Jones v. Harrison*,¹⁰²¹ a judgment lien attached to property while in the hands of David Madden, the judgment debtor.¹⁰²² Madden sold the subject property to two different buyers who entered into possession of the respective properties.¹⁰²³ Held limitations title began to run against the judgment creditor from the time the buyers entered into possession of the properties.¹⁰²⁴

Notice of Adverse Claim. However, limitations will not operate against a judgment creditor until the creditor knows, or with the

exercise of ordinary care should have known about the sale of the property.¹⁰²⁵ In *Lewis v. Hall*,¹⁰²⁶ the judgment debtor, Dr. Ransom, acquired property in Tarrant County by unrecorded deed after the judgment was abstracted.¹⁰²⁷ Prior to his death, Ransom conveyed the property to his wife by gift deed also not recorded.¹⁰²⁸ After Dr. Ransom's death, his wife recorded both deeds and asserted that the 3 years limitation statute had extinguished the judgment lien.¹⁰²⁹ Held limitations would not begin until the judgment creditor was apprised that wife held the property adversely.¹⁰³⁰ This could not possibly begin until the deed into wife was recorded revealing Dr. Ransom as the source of her title.¹⁰³¹ Otherwise, the judgment creditor would have no way of knowing the property was subject to the judgment lien.¹⁰³² In *Walker v. Geer*,¹⁰³³ the judgment creditor had actual notice of the transfer of the property by the judgment debtor.¹⁰³⁴ This actual notice was sufficient to begin the running of the limitations period.¹⁰³⁵

Color of Title. The three-year limitations statute of TEX. CIV. PRAC. & REM CODE ANN. § 16.024 requires that the party claiming adversely to the judgment lien hold the property under "color of title".¹⁰³⁶ In *Martin v. Cadle Co.*,¹⁰³⁷ the Martins claimed limitations title to certain property superior to an existing judgment lien.¹⁰³⁸ The Martins obtained the property from Jack E. Pratt, Sr. who purchased the property at a prior substitute trustee's sale.¹⁰³⁹ This substitute trustee's sale foreclosed a deed of trust for which a complete release was already executed and recorded.¹⁰⁴⁰ The void foreclosure sale passed no title.¹⁰⁴¹ Nor did the Martins obtain equitable title as bona fide purchasers.¹⁰⁴² The Martins were charged with knowledge of all facts appearing in the chain of title to the property.¹⁰⁴³ This chain of title, if examined, would have revealed to the Martins that the deed of trust had been released and that no transfer of the note and lien was made to its purported holder until after the substitute trustee's sale.¹⁰⁴⁴ Because the chain of title revealed defects, the Martins were not bona fide purchasers.¹⁰⁴⁵

In *Texas Sand Co. v. Shield*,¹⁰⁴⁶ the defendants, Elgean and Flora Shield, deeded the subject property to their son, Richard Shield, on the eve of trial, March 1, 1954.¹⁰⁴⁷ Richard in turn conveyed the property to Texas Sand Co., a family corporation, on March 17, 1954.¹⁰⁴⁸ No stock was ever issued by Texas Sand Co. whose charter was forfeited in 1955.¹⁰⁴⁹ The judgment defendants contended that Texas Sand Co. and Flora Shield (as sole shareholder of Texas Sand Co.) adversely possessed against a judgment lien under the three-year statute.¹⁰⁵⁰ Held that neither Texas Sand Co. nor Flora Shield could show color of title.¹⁰⁵¹ Texas Sand Co., the last record title owner of the property, could not claim by adverse

possession after it ceased to exist.¹⁰⁵² Flora Shield had no color of title because there was no deed shown conveying the property to her.¹⁰⁵³ Nor was there any automatic succession of title to Flora Shield when Texas Sand Co. forfeited its charter.¹⁰⁵⁴ There was no evidence that *any* stock was ever issued by the corporation (much less to Flora).¹⁰⁵⁵

Eckert v. Wendel,¹⁰⁵⁶ determined that a conveyance executed by the debtor in fraud on the debtor's judgment creditor but otherwise regular in form was sufficient to constitute color of title for the purposes of the three-year statute.¹⁰⁵⁷

2. Five-Year Statute.

The five-year limitations statute for recovery of real estate found at TEX. CIV. PRAC. & REM. CODE ANN. § 16.025 requires proof *inter alia* that the purchaser acquired the property by duly registered deed not forged or executed under a forged power of attorney.¹⁰⁵⁸ *Eckert v. Wendel*¹⁰⁵⁹ determined that a deed executed as part of a fraudulent conveyance otherwise regular in form could support limitations title adverse to a judgment lien.¹⁰⁶⁰

G. Acquisition of the Judgment by the Debtor - The Extinguishment Rule

Generally the acquisition of the judgment by the judgment debtor extinguishes the judgment.¹⁰⁶¹

1. Effect of Multiple Judgment Debtors

The principle is the same if there are multiple judgment debtors.¹⁰⁶² If two parties are jointly and severally liable on a judgment, the acquisition of the judgment by one judgment debtor extinguishes the judgment as all debtors.¹⁰⁶³ In *Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth*,¹⁰⁶⁴ Turner obtained a judgment against Luth and Hageman, jointly and severally (the "Turner Judgment").¹⁰⁶⁵ Hageman later received a discharge of his debts inclusive of the Turner judgment. Hageman and Luth later formed a partnership between them which spawned a suit by Luth against Hageman for fraud, breach of fiduciary duty, breach of contract, etc.¹⁰⁶⁶ This later suit settled with Hageman agreeing to pay Luth \$169,000.00.¹⁰⁶⁷ In the meantime, Hageman acquired the Turner Judgment from Turner for \$12,500.00.¹⁰⁶⁸ At the final settlement conference between Hageman and Luth, Hageman paid the agreed sum to Luth in currency.¹⁰⁶⁹ As Luth counted out the settlement funds, Hageman had prearranged deputy constables levy upon the cash with a writ of execution issued against Luth in enforcement of the Turner Judgment (now owned by Hageman).¹⁰⁷⁰ Held the levy was invalid as the Turner Judgment has been extinguished when acquired by Hageman, one of the original judgment debtors.¹⁰⁷¹ This extinguishment title was not affected by the right of contribution

existing between Luth and Hageman, as co-debtors on the original judgment.¹⁰⁷² Nor was this result altered by Texas' rejection of the "unity of release rule" (in Texas, the release of one tortfeasor from a course of action does not release other tortfeasors unless those other tortfeasors are specifically named in the release).¹⁰⁷³

V. TRANSFER OF JUDGMENT LIEN

Judgment liens may be assigned and transferred to a party that is a stranger to the original judgment.¹⁰⁷⁴ When a judgment is transferred the judgment lien is said to pass with the judgment.¹⁰⁷⁵

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ENDNOTES

1. The judgment lien has been described as one of the highest classes of security for a creditor known to law. *Smith v. Kale*, 32 Tex. 290, 293 (1869).
2. *Schumann v. Breedlove & Bensey*, 983 S.W.2d 333, 334 (Tex. App. - Houston [1st Dist.] 1998, no writ), citing, *Fore v. United States*, 339 F.2d 70, 72 (5th Cir. 1964). See also Op. Tex. Att'y Gen. M-1000 (1971).
3. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied); *White v. FDIC*, 19 F.3d 249, 251 n.5 (1994).
4. *Schumann v. Breedlove & Bensey*, 983 S.W.2d 333, 334 (Tex. App. - Houston [1st Dist.] 1998, no writ); *Fore v. United States*, 339 F.2d 70, 72 (5th Cir. 1964).
5. *Schumann v. Breedlove & Bensey*, 983 S.W.2d 333, 334 (Tex. App. - Houston [1st Dist.] 1998, no writ); *Fore v. United States*, 339 F.2d 70, 72 (5th Cir. 1964).
6. *Schumann v. Breedlove & Bensey*, 983 S.W.2d 333, 334 (Tex. App. - Houston [1st Dist.] 1998, no writ); *Fore v. United States*, 339 F.2d 70, 72 (5th Cir. 1964).
7. *Reynolds v. Kessler*, 669 S.W.2d 801, 805 (Tex. App. - El Paso 1984, no writ); *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
8. *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. Civ. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, judgment adopted).
9. 610 S.W.2d 195 (Tex. Civ. App. - Tyler 1980, writ ref'd n.r.e.).
10. *Id.* at 196-97.
11. *Id.* at 197. See also *Wisdom v. Wisdom*, 575 S.W.2d 124, 126 (Tex. Civ. App. - Fort Worth 1978, writ dismissed).
12. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied); *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
13. *Nye v. Moody*, 70 Tex. 434, 436, 8 S.W. 606, 607 (1888); *Askey v. Power*, 36 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved); *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, writ denied); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no pet.).
14. A judgment lien does not arise from any contract between the parties but from a hostile proceeding of one against the other. The lien is a creature of their hostility, the child of their lawsuit, the fond nursling of the one, the repudiated bastard of the other. *White v. Pingnot*, 90 S.W. 672, 674 (Tex. Civ. App. 1905, writ ref'd).
15. *City State Bank of Wellington v. Bailey*, 214 S.W.2d 901, 903 (Tex. Civ. App. - Amarillo 1948, writ ref'd); *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 615 (Tex. Civ. App. - San Antonio 1921, no writ); *Kingman Texas Implement Co. v. Borders*, 156 S.W. 614, 615 (Tex. Civ. App. - San Antonio 1913, no writ).
16. *Barton v. Parks*, 127 S.W.2d 376, 378 (Tex. Civ. App. - Galveston 1939, writ ref'd); *Bush v. Farris*, 71 F. 770, 774 (5th Cir. 1896).
17. *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, judgment adopted); *Texas Am. Bank/Fort Worth N.A. v. Southern Union Exploration Co.*, 714 S.W.2d 105, 107 (Tex. App. - Eastland 1986, writ ref'd n.r.e.); *Fred Rizk Constr. Co. v. Cousins Mtg. & Equity Inv.*, 627 S.W.2d 753, 755 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.); *Barton v. Parks*, 127 S.W.2d 376, 378 (Tex. Civ. App. - Galveston 1939, writ ref'd); *Blum v. Keyser*, 28 S.W. 561, 562 (Tex. Civ. App. 1894, no writ).

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18. *See Fred Rizk Constr. Co. v. Cousins Mtg. & Equity Inv.*, 627 S.W.2d 753, 755 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.); *American Petroleum Exchange v. Lord*, 399 S.W.2d 213, 216 (Tex. Civ. App. - Fort Worth 1966, writ ref'd n.r.e.); *R.B. Spencer v. Green*, 203 S.W.2d 957, 960 (Tex. Civ. App. - El Paso 1947, no writ); *Rushing v. Willis*, 28 S.W. 921, 921 (Tex. Civ. App. 1894, no writ); *Von Stein v. Trexler*, 23 S.W. 1047, 1048 (Tex. Civ. App. 1893, no writ).
19. *In re Rosenfield*, 62 B.R. 515, 522 (Bankr. N.D. Tex. 1986).
20. *Id.*
21. *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 238 (Tex. Civ. App. - Beaumont 1924, writ dismiss'd); *Blum v. Keyser*, 28 S.W. 561, 563 (Tex. Civ. App. 1894, no writ).
22. *Bradley v. Janssen*, 93 S.W. 506, 508 (Tex. Civ. App. 1906, writ ref'd); *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ).
23. *Evans v. Frisbie*, 84 Tex. 369, 343, 19 S.W. 510, 511 (1892); *Askey v. Power*, 36 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved); *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no writ).
24. *Wicker v. Jenkins*, 108 S.W. 188, 190 (Tex. Civ. App. 1908, no writ).
25. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no writ); *Citicorp Real Estate v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App. - Dallas 1988, writ denied); *In re Davis*, 174 B.R. 223, 226-27 (Bankr. N.D. Tex. 1994).
26. *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 615 (Tex. Civ. App. - San Antonio 1921, no writ).
27. *Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no writ); *Citicorp Real Estate v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App. - Dallas 1988, writ denied); *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
28. *See Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Thompson v. Clay*, 367 S.W.2d 917, 920 (Tex. Civ. App. - Amarillo 1963, writ ref'd n.r.e.); *Traweek v. Simmons*, 72 S.W.2d 349, 350 (Tex. Civ. App. - Galveston 1934, no writ); *In re Rosenfield*, 62 B.R. 515, 522 (Bankr. N.D. Tex. 1986).
29. *See Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Citizens State Bank of Clarinda v. Del-Tex Inv. Co.*, 123 S.W.2d 450, 452 (Tex. Civ. App. - San Antonio 1938, writ dismiss'd judgment corrected).
30. *Urban v. Bagby*, 286 S.W. 519, 521 (Tex. Civ. App. - Galveston 1926), *aff'd*, 291 S.W. 537 (Tex. Comm'n App. 1927, judgment adopted).
31. 286 S.W. 519 (Tex. Civ. App. - Galveston 1926), *aff'd*, 291 S.W. 537 (Tex. Comm'n App. 1927, judgment adopted).
32. *Id.* at 524.
33. *Eastham v. Sallis*, 60 Tex. 576, 579 (1884); *York Div., Borg-Warner Corp v. Security Sav. & Loan Ass'n*, 485 S.W.2d 327, 331 (Tex. Civ. App. - Houston [1st Dist.] 1972, writ ref'd n.r.e.); *Bowles v. Belt*, 159 S.W. 885, 888 (Tex. Civ. App. - Amarillo 1913, writ ref'd); *Blankenship v. Buchanan & Herring*, 132 S.W. 882, 883 (Tex. Civ. App. 1910, no writ).
34. 132 S.W. 882 (Tex. Civ. App. 1910, no writ).
35. *Id.* at 883.

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36. *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
37. *Smith v. Kale*, 32 Tex. 290, 294 (1869).
38. *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
39. *Roman v. Goldberg*, 7 S.W.2d 899, 899 (Tex. Civ. App. - Waco 1928, writ ref'd); *Semple v. Eubanks*, 35 S.W. 509, 510 (Tex. Civ. App. 1898, writ ref'd); *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
40. *Thulemeyer v. Jones*, 37 Tex. 560, 571 (1872); *Smith v. Kale*, 32 Tex. 290, 292 (1869); *Roman v. Goldberg*, 7 S.W.2d 899, 900 (Tex. Civ. App. - Waco 1928, writ ref'd); *Semple v. Eubanks*, 35 S.W. 509, 510 (Tex. Civ. App. 1898, writ ref'd).
41. *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
42. *Id.*
43. TEX. PROP. CODE ANN. § 52.0011 (Vernon 1995).
44. *Chrysler First Fin. Serv. Corp. v. Kimbrough, Carson & Woods*, 801 S.W.2d 213, 213-14 (Tex. App. - Houston [1st Dist.] 1990, no writ).
45. TEX. PROP. CODE ANN. § 52.0011(a) (Vernon 1995).
46. *Id.* at § 52.0011(b).
47. *Id.*
48. *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 256 (N.D. Tex. 1959).
49. *Texas Bldg. & Mtg. Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ dismiss'd); *New England Loan & Trust Co. v. Avery*, 41 S.W. 673, 674 (Tex. Civ. App. 1897, writ ref'd); *Blum v. Keyser*, 28 S.W. 561, 562 (Tex. Civ. App. 1894, no writ).
50. 28 S.W. 561 (Tex. Civ. App. 1894, no writ).
51. *Id.* at 561.
52. *Id.*
53. *Id.* at 562.
54. *Id.*
55. *Id.* See also *Texas Bldg. & Mtg. Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ dismiss'd).
56. See *Huggins v. Johnston*, 120 Tex. 21, 26, 35 S.W.2d 688, 690 (1931).
57. 120 Tex. 21, 35 S.W.2d 688 (1931).
58. 120 Tex. at 21, 26, 35 S.W.2d at 689-90.
59. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995). See also *Wylie v. Posey*, 71 Tex. 34, 36, 9 S.W. 87, 87 (1888); *Evans v. Frisbie*, 84 Tex. 341, 343, 19 S.W. 510, 511 (1892); *Clements v. Ewing*, 71 Tex. 370, 373, 9 S.W. 312, 313 (1888); *Barron v. Thompson*, 54 Tex. 235, 240 (1881); *Ficklin v. McCarty*, 54 Tex. 370, 371 (1881).
60. *Oakwood State Bank v. Durham*, 21 S.W.2d 586, 589 (Tex. Civ. App. - Waco 1929, no writ).

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61. *Anthony v. Taylor*, 68 Tex. 403, 405, 4 S.W. 531, 532 (1887); *Oakwood State Bank v. Durham*, 21 S.W.2d 586, 589 (Tex. Civ. App. - Waco 1929, no writ).
62. *Evans v. Frisbie*, 84 Tex. 341, _____, 19 S.W. 510, 511 (1892).
63. TEX. CIV. PRAC. & REM. CODE ANN. § 34.001 (Vernon 1997). *See also Olivares v. Nix Trust*, 126 S.W.3d 242, 249 (Tex. App. - San Antonio 2003, pet. denied). The failure to timely secure the issuance of a writ of execution may be excused if prevented by some legal obstacle. *Johnson v. Weatherford*, 71 S.W. 789, 790 (Tex. Civ. App. 1903, no writ). *See Gruner v. Westin*, 66 Tex. 209, 213-14, 18 S.W. 512, 513-14 (1886); *Wren v. Peel*, 64 Tex. 374, 380 (1885) (time for securing issuance of writ of execution may be extended while judgment superseded). However, mere insolvency of the debtor will not excuse the timely issuance of a writ of execution in enforcement of a judgment. *Johnson v. Weatherford*, 71 S.W. 789, 790 (Tex. Civ. App. 1903, no writ).
64. *Schneider v. Dorsey*, 96 Tex. 544, 547, 74 S.W. 526, 527 (1903); *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
65. *Schneider v. Dorsey*, 96 Tex. 544, 547, 74 S.W. 526, 527 (1903); *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
66. *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
67. TEX. CIV. PRAC. & REM. CODE ANN. § 31.006 (Vernon 1997).
68. *Churchill v. Russey*, 692 S.W.2d 596, 597-98 (Tex. App. - Fort Worth 1985, no writ).
69. 692 S.W.2d 596 (Tex. App. - Fort Worth 1985, no writ).
70. *Id.* at 597.
71. *Id.*
72. *Id.* at 597-98.
73. *Boyd v. Ghent*, 95 Tex. 46, 47, 64 S.W. 929, 930 (1901); *Moore v. Ray*, 282 S.W. 671, 672 (Tex. Civ. App. - Amarillo 1926, no writ); *Spaulding Mfg. Co. v. Blankenship*, 191 S.W. 1167, 1168 (Tex. Civ. App. - Fort Worth 1917, writ dismissed); *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
74. *Spaulding Mfg. Co. v. Blankenship*, 191 S.W. 1167, 1168 (Tex. Civ. App. - Fort Worth 1917, writ dismissed).
75. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 12.003(c) (Vernon 2002).
76. TEX. PROP. CODE ANN. § 12.013 (Vernon 2004).
77. TEX. CIV. PRAC. & REM. CODE ANN. § 12.003(c) (Vernon 2002).
78. *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996); *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App. - San Antonio 1996, writ denied); *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 208 (Tex. App. - Amarillo 1994, writ denied); *Moncrief v. Harvey*, 805 S.W. 20, 23 (Tex. App. - Dallas 1991, no writ).
79. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App. - Dallas 1988, writ denied); *Hennessy v. Marshall*, 682 S.W.2d 340, 343 (Tex. App. - Dallas 1984, no writ).
80. 747 S.W.2d 926 (Tex. App. - Dallas 1988, writ denied).
81. *Id.* at 928.

82. *Id.*
83. *Id.* at 928-29.
84. *Id.* at 930.
85. *Id.* at 931.
86. TEX. CIV. PRAC. & REM. CODE ANN. Chapter 35 (Vernon 1997). *See also Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App. - Amarillo 1994, writ denied).
87. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 35.001 (Vernon 1997).
88. TEX. PROP. CODE ANN. § 52.007 (Vernon 1995). *See also Reynolds v. Kessler*, 609 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ).
89. 28 U.S.C. § 1962.
90. 28 U.S.C. § 1963. *See also Reynolds v. Kessler*, 669 S.W.2d 801, 804 (Tex. App. - El Paso 1984, no writ).
91. 28 U.S.C. § 1963. *See also Reynolds v. Kessler*, 669 S.W.2d 801, 804 (Tex. App. - El Paso 1984, no writ).
92. *Reynolds v. Kessler*, 669 S.W.2d 801, 804-05 (Tex. App. - El Paso 1984, no writ); *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
93. 28 U.S.C. § 1962. *See also Reynolds v. Kessler*, 669 S.W.2d 801, 804-05 (Tex. App. - El Paso 1984, no writ); *Bourn v. Robinson*, 107 S.W. 874, 875 (Tex. Civ. App. 1908, no writ).
94. TEX. CIV. PRAC. & REM. CODE ANN. § 36.004 (Vernon 1997).
95. TEX. PROP. CODE ANN. § 52.002(b) (Vernon Supp. 2000).
96. *Id.* at § 52.002(a) (Vernon Supp. 2000).
97. *Id.*
98. TEX. GOV'T CODE ANN. § 51.318(b)(5) (Vernon 1998).
99. TEX. PROP. CODE ANN. § 52.002(c) (Vernon Supp. 2000).
100. *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890); *Texas Bldg. & Mtg. Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ dism'd); *New England Loan & Trust Co. v. Avery*, 41 S.W. 673, 674 (Tex. Civ. App. 1897, writ ref'd).
101. *Olivares v. Nix Trust*, 126 S.W.3d 242, 247 (Tex. App. - San Antonio 2003, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no pet.); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied); *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
102. *See Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890).
103. 78 Tex. 182, 14 S.W. 451 (1890).
104. 78 Tex. at 183, 14 S.W. at 452. *See also James v. Midland Grocery & Dry Goods Co.*, 146 S.W. 1073, 1074 (Tex. Civ. App. - El Paso 1912, writ ref'd).
105. 62 B.R. 515 (Bankr. N.D. Tex. 1986).
106. *Id.* at 516-17.

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107. *Id.* at 522-23.
108. *Id.* at 523.
109. *See McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. Civ. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *Fred Rizk Constr. Co. v. Cousins Mtg. & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.).
110. *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. Civ. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *In re Rosenfeld*, 62 B.R. 515, 522 (Bankr. N.D. Tex. 1986).
111. TEX. PROP. CODE ANN. § 52.003(a)(1) (Vernon 1995). *See also Anthony v. Taylor*, 68 Tex. 403, 405, 4 S.W. 531, 532 (1887); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Gensheimer v. Kneisley*, 778 S.W.2d 138, 140 (Tex. App. - Texarkana 1989, no writ); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ).
112. *Blankenship v. Buchanan & Herring*, 132 S.W. 882, 882 (Tex. Civ. App. 1910, no writ).
113. 98 S.W.2d 243 (Tex. Civ. App. - Texarkana 1936, no writ).
114. *Id.* at 244.
115. *Id.* at 244-45.
116. 778 S.W.2d 138 (Tex. App. - Texarkana 1989, no writ).
117. *Id.* at 139.
118. *Id.* at 140.
119. *Id.*
120. *Id.*
121. *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 368 (Tex. Civ. App. - Galveston 1942, writ ref'd).
122. 954 S.W.2d 115 (Tex. App. - San Antonio 1997, no pet.).
123. *Id.* at 115.
124. *Id.* at 116.
125. *Id.* at 117.
126. *See Anthony v. Taylor*, 68 Tex. 403, 406, 4 S.W. 531, 532 (1887).
127. 68 Tex. 403, 4 S.W. 531 (1887).
128. 68 Tex. at 405-06, 4 S.W. at 532.
129. 72 S.W.2d 349 (Tex. Civ. App. - Galveston 1934, no writ).
130. *Id.* at 350.
131. *Id.* at 349.
132. *Id.* at 350.

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133. *Id.*
134. 108 S.W. 188 (Tex. Civ. App. 1908, no writ).
135. *Id.* at 189.
136. *Id.* at 190.
137. 136 S.W.2d 263 (Tex. Civ. App. - San Antonio 1940, writ ref'd).
138. *Id.* at 264.
139. *Id.*
140. *See Willis v. Smith*, 66 Tex. 31, 43-44, 17 S.W. 247, 248 (1886).
141. 66 Tex. at 43, 17 S.W. at 248.
142. 66 Tex. at 43, 17 S.W. at 248.
143. TEX. PROP. CODE ANN. § 52.003(a)(2) (Vernon 1995). *See also Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 926 (Tex. App. - Dallas 1988, writ denied).
144. *Fred Rizk Constr. Co. v. Cousins Mortgage & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.).
145. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Fred Rizk Constr. Co. v. Cousins Mortgage & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.). *See also* Op. Tex. Att'y Gen. M-1000 (1971).
146. *Fred Rizk Constr. Co. v. Cousins Mtg. & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.); *In re Rosenfield*, 62 B.R. 515 (Bankr. N.D. Tex. 1986).
147. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied).
148. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Fred Rizk Constr. Co. v. Cousins Mortgage & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.).
149. *Id.* *But see* Op. Tex. Att'y Gen. M-1000 (1971) (if such information is not reasonably available, the abstract of judgment should so recite).
150. TEX. PROP. CODE ANN. § 52.003(a)(3) (Vernon 1995). *See also Bonner v. Grigsby*, 84 Tex. 330, 332, 19 S.W. 511, 512 (1892); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied).
151. 84 Tex. 330, 19 S.W. 511 (1892).
152. 84 Tex. at 332, 19 S.W. at 512. *See also Bush v. Farris*, 71 F. 770, 774 (5th Cir. 1896).
153. 235 S.W. 612 (Tex. Civ. App. - San Antonio 1921, no writ).

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154. *Id.* at 615.
155. *Id.* at 616.
156. *Id.* at 613.
157. *Id.* at 616.
158. *See Citizens State Bank of Clarinda v. Del-Tex Inv. Co.*, 123 S.W.2d 450, 452 (Tex. Civ. App. - San Antonio 1938, writ dism'd judgm't cor.); *Fikes v. Buckholts State Bank*, 273 S.W. 957, 958 (Tex. Civ. App. - Austin 1925, writ dism'd); *In re Rosenfield*, 62 B.R. 515, 522 (Bankr. N.D. Tex. 1986).
159. TEX. PROP. CODE ANN. § 52.003(a)(4) (Vernon 1995). *See also Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied).
160. *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 555 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied); *Tex. Am. Bank/Fort Worth N.A. v. Southern Union Exploration Co.*, 714 S.W.2d 105, 107 (Tex. App. - Eastland 1986, writ ref'd n.r.e.); *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
161. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Tex. Am. Bank/Fort Worth N.A. v. Southern Union Exploration Co.*, 714 S.W.2d 105, 107 (Tex. App. - Eastland 1986, writ ref'd n.r.e.).
162. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied); *Texas Am. Bank/Fort Worth, N.A. v. Southern Union Exploration Co.*, 714 S.W.2d 105, 107 (Tex. App. - Eastland 1986, writ ref'd n.r.e.).
163. *Olivares v. Nix Trust*, 126 S.W.3d 242, 248 (Tex. App. - San Antonio 2003, pet. denied).
164. *Id.*
165. *Id.*
166. 126 S.W.3d 242 (Tex. App. - San Antonio 2003, pet. denied).
167. *Id.* at 249 n.6.
168. *Id.* at 249.
169. *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 803 (Tex. App. - Dallas 1989, no writ).
170. *Id.*
171. 766 S.W.2d 800 (Tex. App. - Dallas 1989, no writ).
172. *Id.* at 803.
173. *Id.*
174. *Id.*
175. *Id.*

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176. *Id.*
177. 833 S.W.2d 553 (Tex. App. - Tyler 1992, writ denied).
178. *Id.* at 555.
179. *Id.* at 556.
180. 126 S.W.3d 242 (Tex. App. - San Antonio 2003, pet. denied).
181. *Id.* at 249 n.6.
182. *Id.* at 249.
183. 747 S.W.2d 926 (Tex. App. - Dallas 1988, writ denied).
184. *Id.* at 931.
185. *Id.*
186. Op. Tex. Att'y Gen. M-1000 (1971).
187. *Id.*
188. TEX. PROP. CODE ANN. § 52.003(a)(5) (Vernon 1995). *See also Spence v. Brown*, 86 Tex. 430, 432, 25 S.W. 413, 413 (1894); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ).
189. *Reynolds v. Kessler*, 699 S.W.2d 801, 804 (Tex. App. - El Paso 1984, no writ); *Blankenship v. Buchanan & Herring*, 132 S.W. 882, 882 (Tex. Civ. App. 1910, no writ); *In re Rosenfield*, 62 B.R. 515, 521 (Bankr. N.D. Tex. 1986).
190. 293 S.W. 248 (Tex. Civ. App. - San Antonio 1927, no writ).
191. *Id.* at 248.
192. *Id.* *See also Smith v. Adams*, 333 S.W.2d 892, 894 (Tex. Civ. App. - Eastland 1960, writ ref'd n.r.e.).
193. 28 S.W. 921 (Tex. Civ. App. 1894, no writ).
194. *Id.* at 921.
195. *Id.*
196. 235 S.W. 612 (Tex. Civ. App. - San Antonio 1921, no writ).
197. *Id.* at 615.
198. *Id.* at 616.
199. *Id.* at 613-16.
200. *Id.* at 616.
201. 96 Tex. 544, 74 S.W. 526 (1903).

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202. 96 Tex. at 547, 74 S.W. at 528.
203. 96 Tex. at 547, 74 S.W. at 528.
204. TEX. PROP. CODE ANN. § 52.003(a)(6) (Vernon 1995). *See also Spence v. Brown*, 86 Tex. 430, 432, 25 S.W. 413, 413 (1894); *Evans v. Frisbie*, 84 Tex. 341, 342, 19 S.W. 510, 511 (1892); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 907 (Tex. App. - Dallas 2002, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied).
205. *Blankenship & Buchanan v. Herring*, 132 S.W. 882, 882 (Tex. Civ. App. 1910, no writ).
206. *Reynolds v. Kessler*, 669 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ); *Lemons v. Epley Hardware Co.*, 197 S.W. 1118, 1119 (Tex. Civ. App. - El Paso 1917, no writ); *Glasscock v. Stringer*, 32 S.W. 920, 923 (Tex. Civ. App. 1895), *modified*, 33 S.W. 677 (Tex. Civ. App. 1896, writ ref'd); *Bush v. Farris*, 71 F. 770, 773 (5th Cir. 1896).
207. *Texas Bldg. & Mortgage Co. v. Morris*, 123 S.W.2d 365, 368 (Tex. Civ. App. - Beaumont 1938, writ dism'd); *Bush v. Farris*, 71 F. 770, 773 (5th Cir. 1896)..
208. *See Lemons v. Epley Hardware Co.*, 197 S.W. 1118, 1119 (Tex. Civ. App. - El Paso 1917, no writ); *Bush v. Farris*, 71 F. 770, 773 (5th Cir. 1896).
209. 123 S.W.2d 365 (Tex. Civ. App. - Beaumont 1938, writ dism'd).
210. *Id.* at 370. *See also New England Loan & Trust Co. v. Avery*, 41 S.W. 673, 674 (Tex. Civ. App. 1897, writ ref'd). *But see Bush v. Farris*, 71 F. 770, 773 (5th Cir. 1896).
211. 41 S.W. 673 (Tex. Civ. App. 1897, writ ref'd).
212. *Id.* at 674.
213. *See Wicker v. Jenkins*, 108 S.W. 188, 190 (Tex. Civ. App. 1908, no writ); *First Nat'l Bank of Decatur v. Cloud*, 21 S.W. 770, 771 (Tex. Civ. App. 1893, no writ).
214. 108 S.W. 188 (Tex. Civ. App. 1908, no writ).
215. *Id.* at 190.
216. TEX. PROP. CODE ANN. § 52.003(a)(6) (Vernon 1995).
217. *See Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 915 n.5 (Tex. App. - Dallas 2002, pet. denied); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 555 (Tex. App. - Tyler 1992, writ denied); *Wicker v. Jenkins*, 108 S.W. 188, 189-90 (Tex. Civ. App. 1908, no writ); *P.J. Willis & Bros. v. Sommerville*, 22 S.W. 781, 782 (Tex. Civ. App. 1893, writ ref'd); (a judgment showing the amount for which the judgment was rendered and the rate of interest complies with the statute). *But see First Nat'l Bank of Decatur v. Cloud*, 21 S.W. 770, 771 (Tex. Civ. App. 1893, no writ).
218. 833 S.W.2d 553 (Tex. App. - Tyler 1992, writ denied).
219. *Id.* at 555.
220. *Id.*
221. *Id.* *See also Wicker v. Jenkins*, 108 S.W. 188, 189-90 (Tex. Civ. App. 1908, no writ); *P.J. Willis & Bros. v. Sommerville*, 22 S.W. 781, 782 (Tex. Civ. App. 1893, writ ref'd).
222. 156 S.W. 614 (Tex. Civ. App. - San Antonio 1913, no writ).

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223. *Id.* at 616.
224. *Id.*
225. *Id.*
226. 55 S.W. 382 (Tex. Civ. App. 1890, writ dismiss'd).
227. *Id.* at 383.
228. *Id.*
229. *Gordon - Sewall Co. v. Walker*, 258 S.W. 233, 238 (Tex. Civ. App. - Beaumont 1924, writ dismiss'd); *In re Rosenfield*, 62 B.R. 515, 523 (Bankr. N.D. Tex. 1986).
230. *Id.*
231. *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 910 (Tex. App. - Dallas 2002, pet. denied).
232. 74 S.W.3d 906 (Tex. App. - Dallas 2002, pet. denied).
233. *Id.* at 907.
234. *Id.* *But see Evans v. Frisbie*, 84 Tex. 341, 343, 19 S.W. 510, 511 (1892); *Ainsworth v. Dorsey*, 191 S.W. 594, 596 (Tex. Civ. App. 1917, no writ); *Willis v. Sanger*, 40 S.W. 229, 234 (Tex. Civ. App. 1897, writ ref'd); *In re Rosenfield*, 62 B.R. 515, 522-23 (Bankr. N.D. Tex. 1986).
235. *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 910 (Tex. App. - Dallas 2002, pet. denied).
236. *Gordon - Sewall Co. v. Walker*, 258 S.W. 233, 238 (Tex. Civ. App. - Beaumont 1924, writ dismiss'd).
237. *Id.*
238. *Evans v. Frisbie*, 84 Tex. 341, 343, 19 S.W. 510, 511 (1892); *McIntire v. Sawicki*, 353 S.W.2d 952, 953 (Tex. Civ. App. - Eastland 1962, writ ref'd n.r.e.); *Ainsworth v. Dorsey*, 191 S.W. 594, 596 (Tex. Civ. App. 1917, no writ); *Willis v. Sanger*, 40 S.W. 229, 234 (Tex. Civ. App. 1897, writ ref'd); *In re Rosenfield*, 62 B.R. 515, 521 (Bankr. N.D. Tex. 1986).
239. *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 912 n.5 (Tex. App. - Dallas 2002, pet. denied); *Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 555 (Tex. App. - Tyler 1992, writ denied); *Willis v. Peques*, 218 S.W. 96, 98 (Tex. Civ. App. - Beaumont 1920, no writ).
240. 123 S.W.2d 365 (Tex. Civ. App. - Beaumont 1938, writ dismiss'd).
241. *Id.* at 367.
242. *Id.* at 367-68.
243. *Id.* at 368.
244. *Id.* at 368-69. *See also Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 238 (Tex. Civ. App. - Beaumont 1924, writ dismiss'd) (abstract need not anticipate post-issuance credits by mentioning other collateral held by creditor or a foreclosure ordered in the judgment).
245. 62 B.R. 515 (Bankr. N.D. Tex. 1986).
246. *Id.* at 516-17.

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247. *Id.* at 517.
248. *Id.*
249. *Id.* at 522.
250. *Id.*
251. 36 S.W.2d 446 (Tex. Comm'n App. 1931, holding approved).
252. To look at the text of the abstract, *see Askey v. Power*, 21 S.W.2d 326, 329 (Tex. Civ. App. - Fort Worth 1929), *rev'd*, 36 S.W.2d 446 (Tex. Comm'n App. 1931, holding approved).
253. *Askey v. Power*, 36 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved).
254. *Id.*
255. TEX. PROP. CODE ANN. § 52.003(a)(6) (Vernon 1995).
256. *Id.* at § 52.003(a)(7). *See also Askey v. Power*, 36 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Apostolic Church v. American Honda Co.*, 833 S.W.2d 553, 554 (Tex. App. - Tyler 1992, writ denied); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 802 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied).
257. 155 S.W.2d 921 (Tex. Comm'n App. 1941, opinion adopted).
258. *Id.* at 922.
259. *Id.*
260. *Texas Bldg. & Mortgage Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ *dism'd*).
261. *Id.*
262. *Id.*
263. TEX. PROP. CODE ANN. § 52.003(b) (Vernon 1995).
264. *Id.* at § 52.0041(b).
265. *Id.* at § 52.0041(a)(2).
266. *Id.* at § 52.0041(c).
267. *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890).
268. TEX. PROP. CODE ANN. § 52.004(a) (Vernon 1995). *See also Traweek v. Simmons*, 72 S.W.2d 349, 350 (Tex. Civ. App. - Galveston 1934, no writ); *James v. Midland Grocery & Dry Goods Co.*, 146 S.W. 1073, 1074 (Tex. Civ. App. - El Paso 1912, writ *ref'd*); *Atteridge v. Maxey*, 45 S.W. 606, 607 (Tex. Civ. App. 1898, writ *dism'd*).
269. *Id.* at § 52.002(b). *See also Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 910 (Tex. App. - Dallas 2002, *pet. denied*).
270. TEX. PROP. CODE ANN. § 52.002(a) (Vernon Supp. 2004). *See also Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 909, 910 (Tex. App. - Dallas 2002, *pet. denied*).

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271. TEX. PROP. CODE ANN. § 52.002(a) (Vernon Supp. 2004). *See also Spence v. Brown*, 86 Tex. 430, 433, 25 S.W. 413, 414 (1894); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 910 (Tex. App. - Dallas 2002, pet. denied); *Texas Bldg. & Mortgage Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ dismissed); *Traweek v. Simmons*, 72 S.W.2d 349, 350 (Tex. Civ. App. - Galveston 1934, no writ); *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 615 (Tex. Civ. App. - San Antonio 1921, no writ); *Atteridge v. Maxey*, 45 S.W. 606, 607 (Tex. Civ. App. 1898, writ dismissed).
272. 45 S.W. 606 (Tex. Civ. App. 1898, writ dismissed).
273. *Id.* at 608.
274. *Id.*
275. *Id.*
276. *See Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984); *Burke v. Satterfield*, 525 S.W.2d 950, 955 (Tex. 1975); *Rodriguez v. Texas Farmer's Ins. Co.*, 903 S.W.2d 499, 507 (Tex. App. - Amarillo 1995, writ denied); *Weeks v. Hobson*, 877 S.W.2d 478, 479 (Tex. App. - Houston [1st Dist.] 1994, no writ); *State Bar of Texas v. Tinning*, 875 S.W.2d 403, 407 (Tex. App. - Corpus Christi 1994, no writ).
277. *Humphries v. Caldwell*, 888 S.W.2d 469, 470 (Tex. 1994); *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984); *Rodriguez v. Texas Farmer's Ins. Co.*, 903 S.W.2d 499, 507 (Tex. App. - Amarillo 1995, writ denied); *Brown Foundation v. Friendly Chevrolet Co.*, 715 S.W.2d 115, 117 (Tex. App. - Dallas 1986, writ refused n.r.e.); *State Bar of Texas v. Tinning*, 875 S.W.2d 403, 407 (Tex. App. - Corpus Christi 1994, no writ).
278. *Humphries v. Caldwell*, 888 S.W.2d 469, 470 (Tex. 1994); *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984); *Burke v. Satterfield*, 525 S.W.2d 950, 955 (Tex. 1975); *Rodriguez v. Texas Farmer's Ins. Co.*, 903 S.W.2d 449, 507 (Tex. App. - Amarillo 1995, writ denied).
279. *Humphries v. Caldwell*, 888 S.W.2d 469, 470 (Tex. 1994); *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984); *Burke v. Satterfield*, 525 S.W.2d 950, 955 (Tex. 1975); *Rodriguez v. Texas Farmer's Ins. Co.*, 903 S.W.2d 449, 507 (Tex. App. - Amarillo 1995, writ denied).
280. TEX. GOV'T CODE ANN. § 602.002(1) (Vernon Supp. 2004).
281. *Id.* at § 602.002(2). Deputy county clerks may administer oaths. TEX. LOCAL GOV'T CODE ANN. § 82.005(a) (Vernon 1988). The same is true for deputy district clerks. TEX. GOV'T CODE ANN. § 51.309(a) (Vernon 1998).
282. TEX. GOV'T CODE ANN. § 602.002(3) (Vernon Supp. 2004).
283. *Id.* at § 602.002(4).
284. *Id.* at § 602.002(5).
285. *Id.* at § 602.002(6).
286. *Id.* at § 602.002(7).
287. *Id.* at § 602.002(8).
288. *Id.* at § 602.002(9).
289. *Id.* at § 602.002(10).
290. 28 U.S.C. §§ 459, 636.
291. TEX. GOV'T CODE ANN. § 602.003(1) (Vernon 1994).

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292. *Id.* at § 602.003(2).
293. *Id.* at § 602.003(3).
294. 28 U.S.C. §§ 459, 636.
295. TEX. GOV'T CODE ANN. § 602.004(1) (Vernon 1994).
296. *Id.* at § 602.004(2).
297. *Id.* at § 602.004(3).
298. *Id.* at § 602.005(a).
299. *See In the Interest of Bruno*, 974 S.W.2d 401, 404 (Tex. App. - San Antonio 1998, no writ); *Terrell v. Chambers*, 630 S.W.2d 800, 802 (Tex. App. - Tyler 1982), *rev'd on other grounds*, 639 S.W.2d 451 (Tex. 1982); *Morris v. Dunn*, 164 S.W.2d 562, 563 (Tex. Civ. App. - Fort Worth 1942, no writ).
300. *In the Interest of Bruno*, 974 S.W.2d 401, 401 (Tex. App. - San Antonio 1998, no writ). (Jurat not invalid when taken by adoption agency employee not identified in any document as agent for adoption agency).
301. *See Id.* (Jurat not invalid when taken by salaried adoption agency employee whose salary was not based on number of affidavits taken and not paid extra fees for notary services).
302. *See Id.* (Jurat not invalid although taken by an "associate director" of the agency when the responsibility of this position involved only the implementation of policies set by the Board of Directors of the agency).
303. *Id.*
304. TEX. GOV'T CODE ANN. § 312.011(1) (Vernon 1998); *See Sullivan v. First Nat'l Bank of Flatonia*, 83 S.W. 421, 422 (Tex. Civ. App. - 1904, no writ).
305. *Id.*
306. *Id.*
307. *Id.*
308. *De Los Santos v. S.W. Texas Meth. Hosp.*, 802 S.W.2d 749, 755 (Tex. App. - San Antonio 1990, no writ). *See also* 3 Am.Jur. *Affidavits* § 11.
309. *Colbert v. State*, 314 S.W.2d 602, 603 (Tex. Crim. App. - 1958); *Murphy v. State*, 103 S.W.2d 765, 765-66 (Tex. Crim. App. - 1937); *State v. Bishop*, 921 S.W.2d 765, 767 (Tex. App. - San Antonio 1996, no writ); *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ).
310. *See e.g., In the Interest of Bruno*, 974 S.W.2d 401, 404 (Tex. App. - San Antonio 1998, no writ) (upholding affidavit after affiant was asked to raise her right hand, was placed under oath, and asked to verify the contents of the affidavit).
311. *State v. Bishop*, 921 S.W.2d 765, 766 (Tex. App. - San Antonio 1996, no writ); *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ).
312. *Morey v. State*, 744 S.W.2d 668, 670 (Tex. App. - San Antonio 1988, no writ); *Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
313. *Kohn Bros. v. Wesler & August*, 69 Tex. 67, 68-69, 6 S.W. 551, 552 (1887); *Acme Brick v. Temple Associates, Inc.*, 816 S.W.2d 440, 441 (Tex. App. - Waco 1991, writ denied).

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314. See *Hardy v. Beaty*, 84 Tex. 562, 566, 19 S.W. 778, 779 (1892); *Marion Mach. Foundry & Supply Co. v. Central Motor Co.*, 285 S.W. 933, 935 (Tex. Civ. App. - Eastland 1926, no writ); *Neiman v. State*, 16 S.W. 253, 253 (Tex. App. 1891, no writ).
315. *Steinham v. Gahwiler*, 30 S.W. 472, 474 (Tex. App. - 1895, no writ).
316. *Id.*
317. *Id.*
318. *Norcross v. Conoco, Inc.*, 720 S.W.2d 627, 630 (Tex. App. - San Antonio 1986, no writ). *But see* *Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
319. *Order of Aztecs v. Noble*, 174 S.W. 623, 624 (Tex. Civ. App. - Austin 1915, no writ).
320. See *Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
321. TEX. GOV'T CODE ANN. § 312.011(1) (Vernon 1998). See also *Carpenter v. State*, 218 S.W.2d 207, 208 (Tex. Crim. App. - 1949).
322. *Belbaze v. Ratto*, 69 Tex. 636, 639, 7 S.W. 501, 502 (1888); *Anthony v. Taylor*, 68 Tex. 403, 405, 4 S.W. 531, 532 (1887); *Askey v. Power*, 36 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved); *Fordyce - Crossett Sales Co. v. Erwin*, 121 S.W.2d 491, 493 (Tex. Civ. App. - Amarillo 1938, no writ).
323. TEX. PROP. CODE ANN. § 52.004(a) (Vernon Supp. 2004). See also *Vidor v. Rawlins*, 93 Tex. 259, 261, 54 S.W. 1026, 1027 (1900); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Noble v. Barner*, 55 S.W. 382, 382 (Tex. Civ. App. 1899, writ dism'd).
324. 93 Tex. 259, 54 S.W. 1026 (1900).
325. 93 Tex. at 261, 54 S.W. at 1026.
326. 93 Tex. at 262, 54 S.W. at 1027.
327. *Spence v. Brown*, 86 Tex. 430, 433, 25 S.W. 413, 415 (1894); *Texas Bldg. & Mtg. Co. v. Morris*, 123 S.W.2d 365, 370 (Tex. Civ. App. - Beaumont 1938, writ dism'd); *James v. Midland Grocery & Dry Goods Co.*, 146 S.W. 1073, 1074 (Tex. Civ. App. - El Paso 1912, writ ref'd); *Wicker v. Jenkins*, 108 S.W. 188, 189 (Tex. Civ. App. 1908, no writ).
328. TEX. PROP. CODE ANN. § 52.004(a) (Vernon Supp. 2004).
329. *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 752 (Tex. Civ. App. - Eastland 1931, writ ref'd).
330. *Moore v. Ray*, 282 S.W. 671, 672 (Tex. Civ. App. - Amarillo 1926, no writ).
331. TEX. PROP. CODE ANN. §§ 52.001, 52.004(b) (Vernon 1995, Vernon Supp. 2004). See also *Steffens v. Cameron*, 19 S.W. 1068, 1069 (Tex. 1892); *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890); *Nye v. Gribble*, 70 Tex. 458, 462, 8 S.W. 608, 610 (1888); *Nye v. Moody*, 70 Tex. 434, 436-37, 8 S.W. 606, 607 (1888); *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, jdgmt adopted).
332. *Nye v. Moody*, 70 Tex. 434, 436-37, 8 S.W. 606, 609 (1888); *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, judgm't adopted); *Chamlee v. Chamlee*, 113 S.W.2d 290, 291 (Tex. Civ. App. - Waco 1938, no writ); *Guaranty State Bank of Donna v. Marion County Nat'l Bank*, 293 S.W. 248, 249 (Tex. Civ. App. - San Antonio 1927, no writ).
333. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995). See also *Steffens v. Cameron*, 19 S.W. 1068, 1069 (Tex. 1892); *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890); *Belbaze v. Ratto*, 69 Tex. 636, 638-39, 7 S.W. 501, 502 (1888); *Anthony v. Taylor*, 68 Tex. 403, 405, 4 S.W. 531, 532 (1887); *Askey v. Power*, 38 S.W.2d 446, 447 (Tex. Comm'n App. 1931, holding approved).

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334. *Von Stein v. Trexler*, 23 S.W. 1047, 1048 (Tex. Civ. App. 1893, no writ).
335. *Schneider v. Dorsey*, 96 Tex. 544, 548, 74 S.W. 526, 528 (1903); *Spence v. Brown*, 86 Tex. 430, 436, 25 S.W. 413, 415 (1894); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906 (Tex. App. - Dallas 2002, pet. denied); *Fred Rizk Constr. Co. v. Cousins Mortgage & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1982, writ ref'd n.r.e.); *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 368 (Tex. Civ. App. - Galveston 1942, writ ref'd).
336. *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ). *See also Sarny Holdings, Ltd. v. Letsos*, 896 S.W.2d 274, 276 (Tex. App. - Houston [1st Dist.] 1995, writ denied).
337. *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. Civ. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *Wicker v. Jenkins*, 108 S.W. 188, 190 (Tex. Civ. App. 1908, no writ); *In re Davis*, 174 B.R. 223, 228 (Bankr. N.D. Tex. 1994).
338. *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 186, 14 S.W. 451, 452 (1890); *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. Civ. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted).
339. *Houston Inv. Bankers Corp. v. First City Bank of Highland Village*, 640 S.W.2d 660, 662 (Tex. App. - Houston [14th Dist.] 1982, no writ); *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 369 (Tex. Civ. App. - Galveston 1942, writ ref'd); *Carver v. Gray*, 140 S.W.2d 227, 230 (Tex. Civ. App. - Amarillo 1940, writ dismiss'd jdgmt cor.).
340. *Houston Inv. Bankers Corp. v. First City Bank of Highland Village*, 640 S.W.2d 660, 662 (Tex. App. - Houston [14th Dist.] 1982, no writ); *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 369 (Tex. Civ. App. - Galveston 1942, writ ref'd); *Carver v. Gray*, 140 S.W.2d 227, 230 (Tex. Civ. App. - Amarillo 1940, writ dismiss'd jdgmt cor.). *But see Wicker v. Jenkins*, 108 S.W. 188, 190 (Tex. Civ. App. 1908, no writ) (the record of an abstract should be made sufficiently complete within itself as to accurately supply all of the information required to be placed of record without imposing on the inquirer the necessity of going elsewhere to supplement or to verify what is there incompletely shown).
341. TEX. PROP. CODE ANN. § 52.004(b) (Vernon Supp. 2004). *See also Steffens v. Cameron*, 19 S.W. 1068, 1069 (Tex. 1892); *Nye v. Moody*, 70 Tex. 434, 436, 8 S.W. 606, 607 (1888); *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, jdgmt adopted); *Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no writ); *Sarny Holdings, Ltd. v. Letsos*, 896 S.W.2d 274, 275 (Tex. App. - Houston [1st Dist.] 1995, writ denied).
342. *See Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 367 (Tex. Civ. App. - Galveston 1942, writ ref'd).
343. *Id.*
344. *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, jdgmt adopted); *Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no pet.); *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 368-69 (Tex. Civ. App. - Galveston 1942, writ ref'd); *Shirey v. Trust Co. of Texas*, 69 S.W.2d 835, 837-38 (Tex. Civ. App. - Texarkana 1934, writ ref'd); *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 616 (Tex. Civ. App. - San Antonio 1921, no writ).
345. 954 S.W.2d 115 (Tex. App. - San Antonio 1997, no pet.).
346. *Id.* at 115-116.
347. *Id.* at 117.
348. *See Schneider v. Dorsey*, 96 Tex. 544, 548, 74 S.W. 526, 528 (1903); *Fred Rizk Constr. Co. v. Cousins Mortgage & Equity Inv.*, 627 S.W.2d 753, 756 (Tex. App. - Houston [1st Dist.] 1982, writ ref'd n.r.e.); *Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 368 (Tex. Civ. App. - Galveston 1942, writ ref'd); *Barton v. Parks*, 127 S.W.2d 376, 378-79 (Tex. Civ. App. - Galveston 1939, writ ref'd); *Citizens State Bank of Clarinda v. Del-Tex Inv. Co.*, 123 S.W.2d 450, 452 (Tex. Civ. App. - San Antonio 1938, writ dismiss'd judgment cor.); *But See Blum*

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- v. Keyser*, 28 S.W. 561, 562 (Tex. Civ. App. 1894, no writ).
349. 69 S.W.2d 835 (Tex. Civ. App. - Texarkana 1934, writ ref'd).
350. *Id.* at 837.
351. *Id.* at 838. *See also* Op. Tex. Att'y Gen. O-1568 (1939).
352. 59 S.W.2d 819 (Tex. Comm'n App. 1922, judgm't adopted).
353. *Id.* at 821-22. *See also* *Barton v. Parks*, 127 S.W.2d 376, 377-78 (Tex. Civ. App. - Galveston 1939, writ ref'd); *Shirey v. Trust Co. of Texas*, 69 S.W.2d 835, 835-37 (Tex. Civ. App. - Texarkana 1934, writ ref'd); Op. Tex. Att'y Gen. O-2630 (1940); Op. Tex. Att'y Gen. O-1568 (1939).
354. 235 S.W.2d 612 (Tex. Civ. App. - San Antonio 1921, no writ).
355. *Id.* at 616.
356. *Steffens v. Cameron*, 19 S.W. 1068, 1068-69 (Tex. 1892); *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 186, 14 S.W. 451, 452 (1890); *Pierce v. Wimberly*, 78 Tex. 187, 189, 14 S.W. 454, 455 (1890); *Bradley v. Janssen*, 93 S.W. 506, 507 (Tex. Civ. App. 1906, writ ref'd); *Glasscock v. Price*, 45 S.W. 415, 417 (Tex. Civ. App. 1898), *rev'd in part*, 92 Tex. 271, 47 S.W. 965 (Tex. 1898). *But see* *Cooke v. Avery*, 147 U.S. 375, _____ (1892); *Thompson v. Clay*, 367 S.W.2d 917, 920 (Tex. Civ. App. - Amarillo 1963, writ ref'd n.r.e.); *Willis v. Downes*, 46 S.W. 920, 921-22 (Tex. Civ. App. 1898, writ ref'd).
357. *Glasscock v. Price*, 45 SW. 415, 417 (Tex. Civ. App. 1898), *rev'd in part*, 92 Tex. 271, 47 S.W. 965 (1898).
358. *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 186, 14 S.W. 451, 452 (1890).
359. *See* *Oppenheimer v. Robinson*, 87 Tex. 174, 177, 27 S.W. 95, 96 (1894) (judgment in favor of the firm of "D & A Oppenheimer" comprised of D. Oppenheimer and A. Oppenheimer was sufficiently indexed under "D & A Oppenheimer"); *Thompson v. Clay*, 367 S.W.2d 917, 920 (Tex. Civ. App. - Amarillo 1963, writ ref'd n.r.e.) (judgment in favor of "F.C. Jupe, John Jupe, Dan Jupe, Fred C. Jupe, and Woody Bruza d/b/a Jupe Motor Supply" adequately indexed under "Jupe Motor Supply").
360. 33 S.W. 252 (Tex. Civ. App. 1895, no writ).
361. *Id.* at 254.
362. *Id.*
363. 46 S.W. 920 (Tex. Civ. App. 1898, no writ).
364. *Id.* at 922. *See also* *Semple v. Eubanks*, 35 S.W. 509, 510 (Tex. Civ. App. 1896, writ ref'd).
365. *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, judgm't adopted); *Reynolds v. Kessler*, 669 S.W.2d 801, 805 (Tex. App. - El Paso 1984, no writ); *J.M. Radford Grocery Co. v. Speck*, 152 S.W.2d 787, 789 (Tex. Civ. App. - Amarillo 1941, writ ref'd); *Barton v. Parks*, 127 S.W.2d 376, 378 (Tex. Civ. App. - Galveston 1939, writ ref'd); *Central Coal & Coke Co. v. Southern Nat'l Bank of New York*, 34 S.W. 383, 385 (Tex. Civ. App. 1896, no writ). *But see* *Semple v. Eubanks*, 35 S.W. 509, 510 (Tex. Civ. App. 1896, writ ref'd); *Blum v. Keyser*, 28 S.W. 561, 562 (Tex. Civ. App. 1894, no writ); *Von Stein v. Trexler*, 23 SW. 1047, 1049 (Tex. Civ. App. 1893, no writ).
366. *Central Coal & Coke Co. v. Southern Nat'l Bank of New York*, 34 S.W. 383, 385 (Tex. Civ. App. 1896, no writ).
367. 293 S.W. 248 (Tex. Civ. App. - San Antonio 1927, no writ).

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368. *Id.* at 248-49. *See also Caruso v. Shropshire*, 954 S.W.2d 115, 117 (Tex. App. - San Antonio 1997, no writ).
369. 34 S.W. 383 (Tex. Civ. App. 1896, no writ).
370. *Id.* at 385.
371. 367 S.W.2d 88 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 48 (Tex. 1964).
372. *Id.* at 93.
373. *Id.*
374. *Id.*
375. *Id.*
376. *Id.* *See also Womack v. Paris Grocer Co.*, 166 S.W.2d 366, 369 (Tex. Civ. App. - Galveston 1942, writ ref'd); *Texas Bldg. & Mortgage Co. v. Morris*, 123 S.W.2d 365, 371 (Tex. Civ. App. - Beaumont 1938, writ dismiss'd); *Glasscock v. Stringer*, 32 S.W. 920, 923 (Tex. Civ. App. 1895), *modified on other grounds*, 33 S.W. 677 (Tex. Civ. App. 1895, writ ref'd).
377. *Texas Sand Co. v. Shield*, 367 SW.2d 88 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 88, 93 (Tex. 1964).
378. *Id.*
379. *Id.*
380. *Id.*
381. 55 S.W. 382 (Tex. Civ. App. 1890, writ dismiss'd).
382. *Id.* at 382-83.
383. *Id.* at 383.
384. *Id.*
385. TEX. PROP. CODE ANN. § 52.004(b) (Vernon Supp. 2004). *See also Steffens v. Cameron*, 19 S.W. 1068, 1069 (Tex. 1892); *Nye v. Moody*, 70 Tex. 434, 436, 8 S.W. 606, 607 (1888); *McGlothlin v. Coody*, 59 S.W.2d 819, 821 (Tex. Comm'n App. 1933, judgment adopted); *Reynolds v. Kessler*, 669 S.W.2d 801, 805 (Tex. App. - El Paso 1984, no writ); *City State Bank in Wellington v. Bailey*, 214 S.W.2d 901, 903 (Tex. Civ. App. - Amarillo 1943, writ ref'd).
386. *See e.g., City State Bank of Wellington v. Bailey*, 214 S.W.2d 901, 903-04 (Tex. Civ. App. - Amarillo 1948) (plaintiff in judgment "City State Bank in Wellington" was incorrectly indexed under "B" as "Bank, City State in Wellington"); *McLarry v. Studebaker Bros. Co. of Texas*, 146 S.W. 676, 678 (Tex. Civ. App. - Amarillo 1912, writ ref'd) (plaintiff in judgment "Studebaker Bros. Co. of Texas" incorrectly indexed under "Q" and "R" but not "S").
387. *See McDermott v. Steck Co.*, 138 S.W.2d 1106, 1107 (Tex. Civ. App. - Austin 1940, writ ref'd); *Franke v. Lone Star Brewing Co.*, 42 S.W. 861, 861-62 (Tex. Civ. App. 1897, writ ref'd); *Central Coal & Coke Co. v. Southern Nat'l Bank of New York*, 34 S.W. 383, 385 (Tex. Civ. App. 1896, no writ); *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ).
388. *McDermott v. Steck Co.*, 138 S.W.2d 1106, 1107 (Tex. Civ. App. - Austin 1940, writ ref'd); *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ).

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389. *McDermott v. Steck Co.*, 138 S.W.2d 1106, 1107 (Tex. Civ. App. - Austin 1940, writ ref'd); *B.F. Avery & Sons v. Texas Loan Agency*, 62 S.W. 793, 794 (Tex. Civ. App. 1901, no writ); *Willis v. Downes*, 46 S.W. 920, 921 (Tex. Civ. App. 1898, writ ref'd); *Kanz v. P.J. Willis & Bros.*, 40 S.W. 171, 171 (Tex. Civ. App. 1897, no writ); *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ).
390. *Willis v. Downes*, 46 S.W. 920, 921 (Tex. Civ. App. 1898, writ ref'd); *Burnett v. Cockshatt*, 21 S.W. 950, 950 (Tex. Civ. App. 1893, no writ).
391. *B.F. Avery & Sons v. Texas Loan Agency*, 62 S.W. 793, 794 (Tex. Civ. App. 1901, no writ).
392. *Willis v. Smith*, 17 S.W. 247, 248 (Tex. 1886); *Moseley v. Evangelical Theological College*, 34 S.W.2d 638, 639 (Tex. Civ. App. - Dallas 1930, writ ref'd).
393. 17 S.W. 247 (Tex. 1886).
394. *Id.* at 248.
395. 896 S.W.2d 274 (Tex. App. - Houston [1st Dist.] 1995, writ denied).
396. *Id.* at 275 n.3.
397. *Id.* at 276.
398. 140 S.W.2d 227 (Tex. Civ. App. - Amarillo 1940, writ dism'd judgm't cor.).
399. *Id.* at 228.
400. *Id.* at 230.
401. *Id.*
402. 2 S.W.2d 992 (Tex. Civ. App. - San Antonio 1928), *aff'd*, 13 S.W.2d 348 (Tex. Comm'n App. 1929, judgm't adopted).
403. *Id.* at 994.
404. *Id.*
405. *Id.*
406. *Id.*
407. *Id.* See also *Fairmont Creamery Co. v. Minter*, 274 S.W. 281, 283 (Tex. Civ. App. - San Antonio 1925, writ ref'd); *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 616-17 (Tex. Civ. App. - San Antonio 1921, no writ); *McLary v. Studebaker Bros. Co.*, 146 S.W. 676, 678 (Tex. Civ. App. - Amarillo 1912, writ ref'd).
408. 214 S.W.2d 901, 903 (Tex. Civ. App. - Amarillo 1948, writ ref'd).
409. *Id.* at 903.
410. *Id.* at 903-04.
411. See *First State Bank of Mobeetie v. Goodner*, 168 S.W.2d 941, 944 (Tex. Civ. App. - Amarillo 1943, no writ).
412. 108 S.W. 188, 190 (Tex. Civ. App. 1908, no writ).
413. *Id.*

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414. *Id.*
415. *Id.*
416. *Sarny Holdings, Ltd. v. Letsos*, 896 S.W.2d 274, 276 (Tex. App. - Houston [1st Dist.] 1995, writ denied).
417. *See Id.*
418. 146 S.W. 676 (Tex. Civ. App. - Amarillo 1912, writ ref'd).
419. *Id.* at 678.
420. *Id.*
421. *Id.*
422. 123 S.W.2d 365 (Tex. Civ. App. - Beaumont 1938, writ dism'd).
423. *Id.* at 371.
424. *See Schneider v. Dorsey*, 96 Tex. 544, 548, 74 S.W. 526, 528 (1903); *Bradley v. Janssen*, 93 S.W. 506, 508 (Tex. Civ. App. 1906, writ ref'd).
425. *Bradley v. Janssen*, 93 S.W. 506, 508 (Tex. Civ. App. 1906, writ ref'd).
426. *Id.* at 507-08.
427. 96 Tex. 544, 74 S.W. (1903).
428. 96 Tex. at 548, 74 S.W. at 506.
429. *Id.*
430. *See Houston Inv. Bankers Corp. v. First City Bank of Highland Village*, 640 S.W.2d 660, 662 (Tex. App. - Houston [14th Dist.] 1982, no writ); *Carver v. Gray*, 140 S.W.2d 227, 230 (Tex. Civ. App. - Amarillo 1940, writ dism'd judgm't cor.); *Bradley v. Janssen*, 93 S.W. 506, 508 (Tex. Civ. App. 1906, writ ref'd).
431. *Houston Inv. Bankers Corp. v. First City Bank of Highland Village*, 640 S.W.2d 660, 662 (Tex. App. - Houston [14th Dist.] 1982, no writ).
432. *Carver v. Gray*, 140 S.W.2d 227, 230 (Tex. Civ. App. - Amarillo 1940, writ dism'd judgm't cor.).
433. *Bradley v. Janssen*, 93 S.W. 506, 508 (Tex. Civ. App. 1906, writ ref'd).
434. 41 S.W. 673 (Tex. Civ. App. 1897, writ ref'd).
435. *Id.* at 675.
436. *Id.*
437. 159 S.W. 885 (Tex. Civ. App. - Amarillo 1913, writ ref'd).
438. *Id.* at 890.
439. 46 S.W. 920 (Tex. Civ. App. 1898, writ ref'd).
440. *Id.* at 921.

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441. *Id.*
442. 35 S.W.2d 509 (Tex. Civ. App. 1896, writ ref'd).
443. *Id.* at 510.
444. *Id.*
445. *Id.*
446. *Id.*
447. *But see Von Stein v. Trexler*, 23 S.W. 1047, 1049 (Tex. Civ. App. 1893, no writ).
448. 669 S.W.2d 801 (Tex. App. - El Paso 1984, no writ).
449. *Id.* at 804-05.
450. *Id.* at 805.
451. *Id.* *But see Von Stein v. Trexler*, 23 S.W. 1047, 1048-49 (Tex. Civ. App. 1893, no writ).
452. TEX. PROP. CODE ANN. § 52.004(b)(3) (Vernon Supp. 2004). *See also Steffens v. Cameron*, 19 S.W. 1068, 1069 (Tex. 1892); *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 186, 14 S.W. 451, 452 (1890); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *J.M. Radford Grocery Co. v. Speck*, 152 S.W.2d 787, 789 (Tex. Civ. App. - Amarillo 1941, writ ref'd); *Fordyce - Crosssett Sales Co. v. Erwin*, 121 S.W.2d 491, 493 (Tex. Civ. App. - Amarillo 1938, no writ).
453. 121 S.W.2d 491 (Tex. Civ. App. - Amarillo 1938, no writ).
454. *Id.* at 492.
455. *Id.* at 493.
456. *Gullet Gin Co. v. Oliver*, 78 Tex. 182, 185-86, 14 S.W. 451, 452 (1890); *Willis v. Smith*, 66 Tex. 31, 44, 17 S.W. 247, 248 (1886).
457. *See Miller v. Koetge*, 70 Tex. 162, 167, 7 S.W. 691, 694 (1888); *Nye v. Gribble*, 70 Tex. 458, 462, 8 S.W. 608, 610 (1888); *R.B. Spencer & Co. v. Green*, 203 S.W.2d 957, 960 (Tex. Civ. App. - El Paso 1947, no writ); *Security Nat'l Bank of Wichita Falls v. Allen*, 267 S.W. 1057, 1058 (Tex. Civ. App. - Amarillo 1924, no writ); *Rushing v. Willis*, 28 S.W. 921, 921 (Tex. Civ. App. 1894, no writ).
458. *Alkas v. United Sav. Ass'n of Texas, Inc.*, 672 S.W.2d 852, 859 (Tex. App. - Corpus Christi 1984, writ ref'd n.r.e.); *Moore v. Ray*, 282 S.W. 671, 672 (Tex. Civ. App. - Amarillo 1926, no writ).
459. *Nye v. Gribble*, 70 Tex. 458, 462, 8 S.W. 608, 610 (1888); *Miller v. Koetge*, 70 Tex. 162, 167, 8 S.W. 691, 694 (1888); *Alkas v. United Sav. Ass'n of Texas, Inc.*, 672 S.W.2d 852, 859 (Tex. App. - Corpus Christi 1984, writ ref'd n.r.e.); *Abee v. Bargas*, 100 S.W. 191, 193 (Tex. Civ. App. 1907, no writ); *Lindsey v. State*, 66 S.W. 332, 335 (Tex. Civ. App. 1901, no writ). *But see Willis v. Smith*, 66 Tex. 31, 44, 17 S.W. 247, 248 (1886).
460. *See Lindsey v. State*, 66 S.W. 332, 335 (Tex. Civ. App. 1901, no writ).
461. *Compare Abee v. Bargas*, 100 S.W. 191, 193 (Tex. Civ. App. 1907, no writ) *with Lindsey v. State*, 66 S.W. 332, 335 (Tex. Civ. App. 1901, no writ).
462. *Citicorp Real Estate v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App. - Dallas 1988, writ denied); *Reynolds v. Kessler*, 699 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ); *Glasscock v. Stringer*, 32 S.W. 920, 924 (Tex. Civ. App. 1895), *modified*, 33 S.W. 671 (Tex. Civ. App.

1896, no writ).

463. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App. - Dallas 1988, writ denied); *Reynolds v. Kessler*, 669 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ); *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *In re Davis*, 174 B.R. 223, 227 (Bankr. N.D. Tex. 1994).

464. *Reynolds v. Kessler*, 669 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ); *Bush v. Farris*, 71 F. 770, 775 (5th Cir. 1896); *In re Davis*, 174 B.R. 223, 227 (Bankr. N.D. Tex. 1994); *In re Rosenfield*, 62 B.R. 515, 521 (Bankr. N.D. Tex. 1986).

465. *Reynolds v. Kessler*, 669 S.W.2d 801, 806 (Tex. App. - El Paso 1984, no writ); *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *Glasscock v. Stringer*, 32 S.W. 920, 924 (Tex. Civ. App. 1895), *modified on other grounds*, 33 S.W. 677 (Tex. Civ. App. 1896, writ ref'd); *In re Davis*, 174 B.R. 223, 227 (Bankr. N.D. Tex. 1994); *In re Rosenfield*, 62 B.R. 515, 521 (Bankr. N.D. Tex. 1986).

466. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930-31 (Tex. App. - Dallas 1988, writ denied); *McGlothlin v. Coody*, 39 S.W.2d 133, 134 (Tex. App. - Eastland 1931), *aff'd*, 59 S.W.2d 819 (Tex. Comm'n App. 1933, jdgmt adopted); *Glasscock v. Stringer*, 32 S.W. 920, 924 (Tex. Civ. App. 1895), *modified on other grounds*, 33 S.W. 677 (Tex. Civ. App. 1896, writ ref'd); *In re Davis*, 174 B.R. 223, 227 (Bankr. N.D. Tex. 1994).

467. 174 B.R. 223 (Bankr. N.D. Tex. 1994).

468. *Id.* at 228.

469. *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 910 (Tex. App. - Dallas 2002, pet. denied); *Caruso v. Shropshire*, 954 S.W.2d 115, 116 (Tex. App. - San Antonio 1997, no writ); *Allied First Nat'l Bank of Mesquite v. Jones*, 766 S.W.2d 800, 803 (Tex. App. - Dallas 1988, no writ); *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 929 (Tex. App. - Dallas 1988, writ denied); *In re Davis*, 174 B.R. 223, 227 (Bankr. N.D. Tex. 1994).

470. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995). *See also Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no writ); *John F. Grant Lumber Co. v. Hunnicutt*, 143 S.W.2d 976, 976 (Tex. Civ. App. - Waco 1940, no writ); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 237 (Tex. App. - Beaumont 1924, writ dism'd); *Hirt v. Werneburg* 191 S.W. 711, 713 (Tex. Civ. App. - Fort Worth 1917, writ ref'd); *Marks v. Bell*, 31 S.W. 699, 701 (Tex. Civ. App. 1895, writ ref'd).

471. *Reisberg v. Hubbard*, 326 S.W.2d 605, 605 (Tex. Civ. App. - Eastland 1959, no writ); *Donley v. Youngstown Sheet & Tube Co.*, 328 S.W.2d 192, 194 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.); *Pearson v. Teddlie*, 235 S.W.2d 757, 758-59 (Tex. Civ. App. - Eastland 1950, no writ); *South Texas Lumber Co. v. Nicoletti*, 54 S.W.2d 893, 897 (Tex. Civ. App. - Beaumont 1932, writ dism'd); *Moseley v. Evangelical Theological College*, 34 S.W.2d 638, 639 (Tex. Civ. App. - Dallas 1930, writ ref'd).

472. *Pearson v. Teddlie*, 235 S.W.2d 757, 759 (Tex. Civ. App. - Eastland 1950, no writ). *But see Sugg v. Mozoch*, 293 S.W. 907, 908 (Tex. Civ. App. - Austin 1926, writ ref'd); *Bourn v. Robinson*, 107 S.W. 873, 876 (Tex. Civ. App. 1908, no writ) (real estate means a life estate or fee simple title to real estate).

473. *Donley v. Youngstown Sheet & Tube Co.*, 328 S.W.2d 192, 194 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.).

474. *Hicks v. Price*, 81 S.W.2d 116, 119 (Tex. Civ. App. - Galveston 1935, no writ).

475. *Id.* *See also Munzeheimer v. Leopold*, 163 S.W.2d 663, 664 (Tex. Civ. App. - Galveston 1942, writ ref'd w.o.m.).

476. *Donley v. Youngstown Sheet & Tube Co.*, 328 S.W.2d 192, 194 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.).

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477. *United States v. Texas Eastern Transmission Corp.*, 254 F.Supp. 114, 118 (W.D. La. 1965); *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 256 (N.D. Tex. 1959).
478. *United States v. Texas Eastern Transmission Corp.*, 254 F.Supp. 114, 118 (W.D. La. 1965); *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 256 (N.D. Tex. 1959).
479. *United States v. Texas Eastern Transmission Corp.*, 254 F.Supp. 114, 118 (W.D. La. 1965); *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 256-57 (N.D. Tex. 1959).
480. *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 257-58 (N.D. Tex. 1959).
481. 54 S.W.2d 893 (Tex. Civ. App. - Beaumont 1932, writ dism'd).
482. *Id.* at 896.
483. *Id.*
484. *Id.* at 897. *See also Howard v. Mayher*, 88 S.W. 409, 410 (Tex. Civ. App. 1905, writ ref'd) (judgment lien did not attach to vendor's lien notes pertaining to debtor's property).
485. 22 S.W. 781 (Tex. Civ. App. 1893, writ ref'd).
486. *Id.* at 781.
487. *Id.*
488. *Id.* at 782.
489. *Id.* *See also Kaliski v. Gray*, 28 S.W.2d 931, 933-34 (Tex. Civ. App. - San Antonio 1930), *aff'd*, 45 S.W.2d 157 (Tex. Comm'n App. 1932, holding approved); *Tunnell v. Johnson*, 209 S.W. 451, 452 (Tex. Civ. App. - Amarillo 1919, no writ).
490. 34 S.W.2d 639 (Tex. Civ. App. - Dallas 1930, writ ref'd).
491. *Id.* at 639.
492. *Id.*
493. 293 S.W. 907 (Tex. Civ. App. - Austin 1927, writ ref'd).
494. *Id.*
495. 107 S.W. 874 (Tex. Civ. App. 1908, no writ).
496. *Id.* at 875-76.
497. *Id.* at 876.
498. *Id.*
499. 328 S.W.2d 192 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.).
500. *Id.* at 196-97.
501. *Id.* at 193.
502. *Id.* at 197.

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503. 326 S.W.2d 605 (Tex. Civ. App. - Eastland 1959, no writ).
504. *Id.* at 605.
505. 235 S.W.2d 757 (Tex. Civ. App. - Eastland 1959, no writ).
506. *Id.* at 758.
507. *Id.* at 759. *See also Wynne v. State Nat'l Bank of Fort Worth*, 82 Tex. 378, 381, 17 S.W. 918, 919 (1891); *Frappier v. Texas Commerce Bank*, 879 F.Supp. 715, 717 (S.D. Tex. 1995).
508. *Frappier v. Texas Commerce Bank*, 879 F.Supp. 715, 717 (S.D. Tex. 1995).
509. *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 752 (Tex. Civ. App. - Eastland 1931), writ ref'd).
510. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995). *See also In re Goff*, 812 F.2d 931, 932-33 (5th Cir. 1987); *In re Box*, 41 B.R. 27, 28 n.1 (Bankr. N.D. Tex. 1984); *In re Dawkins*, 11 B.R. 213, 215 (Bankr. N.D. Tex. 1981).
511. *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 752 (Tex. Civ. App. - Eastland 1931), writ ref'd).
512. *See Id.*
513. TEX. PROP. CODE ANN. § 42.001 (Vernon 2000).
514. 353 S.W.2d 952 (Tex. Civ. App. - Eastland 1962, writ ref'd n.r.e.).
515. *Id.* at 953.
516. *Id.*
517. *Id.*
518. *Id.*
519. *Exocet Inc. v. Cordes*, 815 S.W.2d 350, 352 (Tex. App. - Austin 1991, no writ); *Zable v. Henry*, 649 S.W.2d 136, 138 (Tex. App. - Dallas 1983, no writ); *Gill v. Quinn*, 613 S.W.2d 324, 325 (Tex. Civ. App. - Eastland 1981, no writ); *Hoffman v. Love*, 494 S.W.2d 591, 594 (Tex. Civ. App. - Dallas 1973, writ ref'd); *Anderson v. Bundick*, 245 S.W.2d 318, 322 (Tex. Civ. App. - Eastland 1951, writ ref'd n.r.e.).
520. *See Harms v. Ehlers*, 172 S.W.2d 582, 583 (Tex. Civ. App. - Austin 1944, writ ref'd); *Texas Bldg. & Mortgage Co. v. Morris*, 123 S.W.2d 365, 371 (Tex. Civ. App. - Beaumont 1938, writ dism'd); *Oakwood State Bank v. Durham*, 21 S.W.2d 586, 588 (Tex. Civ. App. - Waco 1929, no writ); *Panhandle Lumber Co. v. Fairey*, 3 S.W.2d 941, 945 (Tex. Civ. App. - Amarillo 1928, no writ); *Savage v. Cowan*, 113 S.W. 319, 320 (Tex. Civ. App. 1908, writ ref'd). *See also* Op. Tex. Att'y Gen. DM-366 (1995).
521. *Exocet, Inc. v. Cordes*, 815 S.W.2d 350, 352 (Tex. App. - Austin 1991, no writ); *Matter of Henderson*, 18 F.3d 1305, 1309 (5th Cir. 1994). *See also* Op. Tex. Att'y Gen. DM-366 (1995).
522. 833 S.W.2d 666 (Tex. App. - Eastland 1992, writ denied).
523. *Id.* at 667.
524. *Id.*
525. *Id.* at 668-69.
526. 18 F.3d 1305 (5th Cir. 1994).

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527. *Id.* at 1310-11.
528. *Id.* at 1308.
529. *Id.* at 1310-11. *See also Mauro v. Lavlies*, 386 S.W.2d 825, 827 (Tex. Civ. App. - Beaumont 1964, no writ).
530. Op. Tex. Att'y Gen. DM-366 (1995).
531. *Id.* at 1985. *See also Mauro v. Lavlies*, 386 S.W.2d 825, 826-27 (Tex. Civ. App. - Beaumont 1964, no writ) (the abstract does not in itself assert any claim of lien upon homestead property).
532. Op. Tex. Att'y Gen. DM-366 (1995).
533. *Id.*
534. *Id.* at 1987-90. *See also Mauro v. Lavlies*, 386 S.W.2d 825, 827 (Tex. Civ. App. - Beaumont 1964, no writ).
535. *Id.* at 1990. *See also Mauro v. Lavlies*, 386 S.W.2d 825, 827 (Tex. Civ. App. - Beaumont 1964, no writ).
536. *Id.*
537. *Id.* at 1985.
538. *Id.* at 1989. *See also Commercial Securities Co. v. Thompson*, 239 S.W.2d 911, 915 (Tex. Civ. App. - Fort Worth 1951, no writ); *First Nat'l Bank of McAllen v. Moore*, 7 S.W.2d 145, 147 (Tex. Civ. App. - Texarkana 1928, writ dism'd).
539. Op. Tex. Att'y Gen. DM-366 (1995).
540. *Id.* at 1990.
541. *Stevenson v. Wilson*, 163 S.W.2d 1063, 1066 (Tex. Civ. App. - Waco 1942, no writ); *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
542. *Stevenson v. Wilson*, 163 S.W.2d 1063, 1066 (Tex. Civ. App. - Waco 1942, no writ); *In re Dawkins*, 11 B.R. 213, 216 (Bankr. N.D. Tex. 1981).
543. *Freiburg v. Walzem*, 85 Tex. 264, 266, 20 S.W. 60, 61 (1892); *Van Ratliff v. Call*, 72 Tex. 491, 495, 10 S.W. 578, 580 (1889); *Wright v. Straub*, 64 Tex. 64, 66 (1885); *Gage v. Neblett*, 57 Tex. 374, 378 (1882); *First Realty Bank & Trust v. Youngkin*, 568 S.W.2d 428, 430 (Tex. Civ. App. - Eastland 1978, no writ).
544. *Posey v. Commercial Nat'l Bank*, 55 S.W.2d 515, 517 (Tex. Comm'n App. 1932, judgm't approved); *Intertext, Inc. v. Kneisley*, 837 S.W.2d 136, 138 (Tex. App. - Houston [14th Dist.] 1992, writ denied); *Zable v. Henry*, 649 S.W.2d 136, 138 (Tex. App. - Dallas 1983, no writ); *Gill v. Quinn*, 613 S.W.2d 324, 324 (Tex. Civ. App. - Eastland 1981, no writ); *Hoffman v. Love*, 494 S.W.2d 591, 594 (Tex. Civ. App. - Dallas 1973, writ ref'd).
545. *Glasscock v. Stringer*, 33 S.W. 677, 678 (Tex. Civ. App. 1896, writ ref'd).
546. *Freiburg v. Walzem*, 84 Tex. 264, 266-67, 20 S.W. 60, 61 (1892); *MacManus v. Campbell*, 37 Tex. 267, 268 (1872); *Hughes v. Groshart*, 150 S.W.2d 827, 830 (Tex. Civ. App. - Galveston 1941, no writ); *J.R. Watkins, Co. v. Dawson*, 145 S.W.2d 901, 905 (Tex. Civ. App. - El Paso 1940, no writ); *Person v. Levenson*, 143 S.W.2d 419, 425 (Tex. Civ. App. - El Paso 1940, no writ).
547. *Hughes v. Groshart*, 150 S.W.2d 827, 830 (Tex. Civ. App. - Galveston 1941, no writ).

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548. *McGahey v. Ford*, 503 S.W.2d 857, 861 (Tex. Civ. App. - Fort Worth 1978, writ ref'd n.r.e.); *Hoffman v. Love*, 494 S.W.2d 591, 594 (Tex. Civ. App. - Dallas 1973, writ ref'd).
549. *Sanchez v. Telles*, 960 S.W.2d 762, 770 (Tex. App. - El Paso 1997, writ denied); *Lawrence v. Lawrence*, 911 S.W.2d 450, 452 (Tex. App. - Texarkana 1995, writ denied); *Intertex, Inc. v. Kneisley*, 837 S.W.2d 136, 138 (Tex. App. - Houston [14th Dist.] 1992, writ denied); *Gill v. Quinn*, 613 S.W.2d 324, 325 (Tex. Civ. App. - Eastland 1981, no writ); *Hoffman v. Love*, 494 S.W.2d 591, 594 (Tex. Civ. App. - Dallas 1973, writ ref'd). *See also* Op. Tex. Att'y Gen. DM-366 (1995).
550. *Sanchez v. Telles*, 960 S.W.2d 762, 770 (Tex. App. - El Paso 1997, writ denied); *Lawrence v. Lawrence*, 911 S.W.2d 450, 452 (Tex. App. - Texarkana 1995, writ denied); *Intertex, Inc. v. Kneisley*, 837 S.W.2d 136, 138 (Tex. App. - Houston [14th Dist.] 1992, writ denied).
551. 837 S.W.2d 136 (Tex. App. - Houston [14th Dist.] 1992, writ denied).
552. *Id.* at 138.
553. *Id.*
554. 160 F.3d 1061 (5th Cir. 1998).
555. *Id.* at 1065-66.
556. *Id.* at 1065.
557. *Id.*
558. *Id.*
559. *Anderson v. Bundick*, 245 S.W.2d 318, 323 (Tex. Civ. App. - Eastland 1951, writ ref'd n.r.e.); *Harms v. Ehlers*, 179 S.W.2d 582, 583 (Tex. Civ. App. - Austin 1944, writ ref'd); *Oakwood State Bank v. Durham*, 21 S.W.2d 586, 588 (Tex. Civ. App. - Waco 1929, no writ).
560. TEX. PROB. CODE ANN. § 279 (Vernon 2003). *See also National Union Fire Ins. Co. v. Olson*, 920 S.W.2d 458, 461 (Tex. App. - Austin 1996, no writ).
561. *National Union Fire Ins. Co. v. Olson*, 920 S.W.2d 458, 461 (Tex. App. - Austin 1996, no writ).
562. *Id.* at 461.
563. *Id.*
564. *Id.* at 462.
565. *Id.*
566. *Id.* citing *Hoefling v. Hoefling*, 106 Tex. 350, 167 S.W. 210 (1914).
567. *Id.* citing *American Bonding Co. v. Logan*, 106 Tex. 306, 166 S.W. 1132, 1137-38 (1914).
568. *Id.* at 461.
569. *Id.*
570. 920 S.W.2d 458 (Tex. App. - Austin 1996, no writ).
571. *Id.* at 460.
572. *Id.*

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573. *Id.*
574. *Id.* at 462.
575. *Id.*
576. *Id.* at 461-62.
577. *Id.* at 462.
578. *First Nat'l Bank of Bowie v. Cone*, 170 S.W.2d 782, 783 (Tex. Civ. App. - Fort Worth 1943, writ ref'd).
579. *Harms v. Ehlers*, 179 S.W.2d 582, 583 (Tex. Civ. App. - Austin 1944, writ ref'd); *First Nat'l Bank of Bowie v. Cone*, 170 S.W.2d 782, 783 (Tex. Civ. App. - Fort Worth 1943, writ ref'd).
580. *Harms v. Ehlers*, 179 S.W.2d 583, 583 (Tex. Civ. App. - Austin 1944, writ ref'd).
581. *Van v. Webb*, 147 Tex. 299, 305, 215 S.W.2d 151, 154 (1948); *First Nat'l Bank of Bowie v. Cone*, 170 S.W.2d 782, 783 (Tex. Civ. App. - Fort Worth 1943, writ ref'd); *Horton v. Gibson*, 274 S.W. 292, 293 (Tex. Civ. App. - Waco 1925, no writ).
582. *Gregg v. First Nat'l Bank in Brownsville*, 26 S.W.2d 179, 181 (Tex. Comm'n App. 1930, judgm't adopted); *Woodward v. Jaster*, 933 S.W.2d 777, 781 (Tex. App. - Austin 1996, no writ).
583. *Gregg v. First Nat'l Bank in Brownsville*, 26 S.W.2d 179, 181 (Tex. Comm'n App. 1930, judgm't adopted); *Woodward v. Jaster*, 933 S.W.2d 777, 781 (Tex. App. - Austin 1996, no writ).
584. *Woodward v. Jaster*, 933 S.W.2d 777, 781 (Tex. App. - Austin 1996, no writ).
585. *Id.*
586. *See Horton v. Gibson*, 274 S.W. 292, 293 (Tex. Civ. App. - Waco 1925, no writ).
587. *First Nat'l Bank of Bowie v. Cone*, 170 S.W.2d 782, 783 (Tex. Civ. App. - Fort Worth 1943, writ ref'd); *Baylor Univ. v. Chester Sav. Bank*, 82 S.W. 738, 744 (Tex. Civ. App. - Waco 1935, writ ref'd); *San Antonio Loan & Trust Co. v. Davis*, 235 S.W. 612, 617 (Tex. Civ. App. - San Antonio 1921, no writ).
588. 35 S.W. 509 (Tex. Civ. App. 1896, writ ref'd).
589. *Id.* at 510.
590. *Id.* at 511.
591. *Id.*
592. 82 S.W.2d 738 (Tex. Civ. App. - Waco 1935, writ ref'd).
593. *Id.* at 744.
594. *Id.*
595. *Gregg v. First Nat'l Bank in Brownsville*, 26 S.W.2d 179, 181 (Tex. Comm'n App. 1930, judgm't adopted).
596. 812 F.2d 931 (5th Cir. 1987).
597. *Id.* at 932.

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598. *Id.* at 933.
599. *Id.*
600. *Id.* But see *Gregg v. First Nat'l Bank of Brownsville*, 26 S.W.2d 179, 181 (Tex. Comm'n App. 1930, judgment adopted) (a judgment lien will attach to the debtor's beneficial interest in a dry or passive trust).
601. 933 S.W.2d 777 (Tex. App. - Austin 1996, no writ).
602. *Id.* at 779.
603. *Id.* at 781.
604. *Von Stein v. Trexler*, 23 S.W. 1047, 1049 (Tex. Civ. App. 1893, no writ).
605. 11 U.S.C. § 362(a)(5). See also *In re Warren*, 217 B.R. 538, 539 (Bankr. S.D. Tex. 1997).
606. TEX. PROP. CODE ANN. § 22.003 (Vernon 2000).
607. *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismissed judgment corrected).
608. *Id.*
609. *Donley v. Youngtown Sheet & Tube Co.*, 328 S.W.2d 192, 194 (Tex. Civ. App. - Eastland 1959, writ refused n.r.e.); *United States v. Texas Eastern Transmission Corp.*, 254 F.Supp. 114, 118 (W.D. Tex. 1965). See also *Baker v. West*, 120 Tex. 113, 115-18, 36 S.W.2d 695, 695-96 (1931).
610. 120 Tex. 113, 36 S.W.2d 695 (1931).
611. 120 Tex. at 115, 36 S.W.2d at 695.
612. 120 Tex. at 115, 36 S.W.2d at 365.
613. 120 Tex. at 118, 36 S.W.2d at 696.
614. *Donley v. Youngtown Sheet & Tube Co.*, 328 S.W.2d 192, 196 (Tex. Civ. App. - Eastland 1959, writ refused n.r.e.).
615. *Id.* at 196-97.
616. See *Watson v. Scales*, 244 S.W.2d 366, 368 (Tex. Civ. App. - Texarkana 1951, writ refused n.r.e.); *Adams v. Impey*, 131 S.W.2d 288, 290 (Tex. Civ. App. - Beaumont 1939, no writ); *Gamer v. Love*, 41 S.W.2d 356, 359 (Tex. Civ. App. - Fort Worth 1931, writ dismissed); *Sugg v. Mozoch*, 293 S.W. 907, 909 (Tex. Civ. App. - Austin 1927, writ refused); *In re Goff*, 812 F.2d 931, 933 (5th Cir. 1987).
617. 131 S.W.2d 288 (Tex. Civ. App. - Beaumont 1939, no writ).
618. 293 S.W. 907 (Tex. Civ. App. - Austin 1927, writ refused).
619. *Adams v. Impey*, 131 S.W.2d 288, 290 (Tex. Civ. App. - Beaumont 1939, no writ); *Sugg v. Mozoch*, 293 S.W. 907, 909 (Tex. Civ. App. - Austin 1927, writ refused).
620. 812 F.2d 931 (5th Cir. 1987).
621. *Id.* at 932.
622. *Id.*

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623. *Id.* at 933.
624. *Id.*
625. *Id.*
626. *Id.*
627. *Id.*
628. 328 S.W.2d 192 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.).
629. *Id.* at 193.
630. *Id.* at 194.
631. *Id.* at 196. *See also Estelle v. Hart*, 55 S.W.2d 510, 513 (Tex. Comm'n App. 1932, jdgm't adopted) (judgment lien attached to mortgagor's equity of redemption in foreclosed property); *Brinkman v. Tinkler*, 117 S.W.2d 139, 141 (Tex. Civ. App. - San Antonio 1938, writ ref'd) (abstract of judgment attached to equitable interest of judgment debtor in property standing in the name of another after separate suit was filed to subject such equitable interest to the judgment lien).
632. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995). *See also Baker v. West*, 120 Tex. 113, 118, 36 S.W.2d 695, 696 (1931); *Barron v. Thompson*, 54 Tex. 235, 237-38 (1881); *Thulemeyer v. Jones*, 37 Tex. 560, 571 (1872); *Cheswick v. Weaver*, 280 S.W.2d 942, 943-44 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *Dallas Land & Loan Co. v. Sugg*, 237 S.W. 955, 957 (Tex. Civ. App. - Austin 1922, writ ref'd).
633. TEX. PROB. CODE ANN. § 37 (Vernon 2003). *See also Woodward v. Jaster*, 933 S.W.2d 777, 780 (Tex. App. - Austin 1996, no writ).
634. *Woodward v. Jaster*, 933 S.W.2d 777, 781-82 (Tex. App. - Austin 1996, no writ). *See also Gregg v. First Nat'l Bank in Brownsville*, 26 S.W.2d 179, 181 (Tex. Comm'n App. 1930, judgment adopted).
635. 933 S.W.2d 777 (Tex. App. - Austin 1996, no writ).
636. *Id.* at 780.
637. *Id.* at 780-81.
638. *Id.* at 780.
639. *Id.* at 781.
640. *Id.*
641. *Id.*
642. *Irving Lumber Co. v. Alltex Mortgage*, 468 S.W.2d 341, 343 (Tex. 1971); *Baker v. West*, 120 Tex. 113, 118, 36 S.W.2d 695, 696 (1931); *Pearson v. Teddlie*, 235 S.W.2d 757, 759 (Tex. Civ. App. - Eastland 1950, no writ); *Goldenrod Finance Co. v. Ware*, 142 S.W.2d 614, 620 (Tex. Civ. App. - Galveston 1940, writ dism'd judgment cor.); *Mostyn v. Griffith*, 130 S.W.2d 906, 907 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgment cor.).
643. 120 Tex. 113, 36 S.W.2d 695 (1931).
644. 120 Tex. at 115, 36 S.W.2d at 695.
645. 120 Tex. at 115, 36 S.W.2d at 695.

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646. 120 Tex. at 118, 36 S.W.2d at 696.
647. *See Baker v. West*, 120 Tex. 113, 118, 36 S.W.2d 695, 695-96 (1931).
648. *See Masterson v. Burnett*, 66 S.W. 90, 93 (Tex. Civ. App. 1901, writ ref'd).
649. 255 S.W. 720 (Tex. Comm'n App. 1923).
650. *Id.* at 723.
651. *Id.*
652. *Id.*
653. *Texas Sand Co. v. Shield*, 367 S.W.2d 88, 91 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 48 (Tex. 1964).
654. *Texas Sand co. v. Shield*, 381 S.W.2d 48, 54-55 (Tex. 1964); *Eckert v. Wendel*, 120 Tex. 618, _____, 40 S.W.2d 796, 797 (1931).
655. *Texas Sand co. v. Shield*, 381 S.W.2d 48, 54 (Tex. 1964); *Eckert v. Wendel*, 120 Tex. 618, _____, 40 S.W.2d 796, 797 (1931); *First State Bank of Mobeatie v. Goodner*, 168 S.W.2d 941, 944 (Tex. Civ. App. - Fort Worth 1943, no writ).
656. *See In re Harman*, 243 B.R. 671, 671 (Bankr. N.D. Tex. 1999).
657. TEX. BUS. & COM. CODE ANN. § 24.008 (Vernon 2002). *See also In re Harman*, 243 B.R. 671, 674 (Bankr. N.D. Tex. 1999).
658. 367 S.W.2d 88 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 48 (Tex. 1964).
659. *Id.* at 89.
660. *Id.* at 89-90.
661. *Id.* at 90.
662. *Id.*
663. *Id.* at 91.
664. 243 B.R. 671 (Bankr. N.D. Tex. 1999).
665. *Id.* at 674.
666. *Id.*
667. *Id.*
668. TEX. BUS. & COM. CODE ANN. § 24.008 (Vernon 2002). *See also In re Harman*, 243 B.R. 671, 674 (Bankr. N.D. Tex. 1999).
669. TEX. BUS. & COM. CODE ANN. § 24.010(a) (Vernon 2002). *See also Texas Sand Co. v. Shield*, 381 S.W.2d 48, 53 (Tex. 1954).
670. *Texas Sand Co. v. Shield*, 381 S.W.2d 48, 54-55 (Tex. 1954).
671. *Id.* at 55.

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672. 381 S.W.2d 48 (Tex. 1954).
673. *Id.* at 52.
674. *Id.*
675. *Id.*
676. *Id.* at 51.
677. *Id.* at 54.
678. *Id.*
679. *Id.* at 55.
680. 243 B.R. 671 (Bankr. N.D. Tex. 1999).
681. *Id.* at 674.
682. *Id.*
683. TEX. BUS. & COM. CODE ANN. § 24.008 (Vernon 2002). *See also In re Harman*, 243 B.R. 671, 674 (Bankr. N.D. Tex. 1999).
684. TEX. BUS. & COM. CODE ANN. § 24.010 (Vernon 2002). *See also In re Harman*, 243 B.R. 671, 674 (Bankr. N.D. Tex. 1999).
685. 34 S.W.2d 638 (Tex. Civ. App. - Dallas 1930, writ ref'd).
686. *Id.* at 638.
687. *Id.* at 639.
688. *Id.*
689. *Stewart Title Co. v. Huddleston*, 598 S.W.2d 321, 323 (Tex. Civ. App. - San Antonio 1980, writ ref'd); *Oakwood State Bank v. Durham*, 21 S.W.2d 586, 588 (Tex. Civ. App. - Waco 1929, no writ); *Leslie v. Western Steel Co.*, 202 F.Supp. 27, 28 (S.D. Tex. 1962).
690. *Cheswick v. Weaver*, 280 S.W.2d 942, 944-45 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *John F. Grant Lumber Co. v. Hunnicutt*, 143 S.W.2d 976, 976 (Tex. Civ. App. - Waco 1940, no writ); *New England Loan & Trust Co. v. Avery*, 41 S.W. 673, 674 (Tex. Civ. App. 1897, writ ref'd).
691. *Hicks v. Price*, 81 S.W.2d 116, 119 (Tex. Civ. App. - Galveston 1935, no writ).
692. *Cheswick v. Weaver*, 280 S.W.2d 942, 944 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *Hicks v. Price*, 81 S.W.2d 116, 199 (Tex. Civ. App. - Galveston 1935, no writ).
693. *Cheswick v. Weaver*, 280 S.W.2d 942, 944 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *Hicks v. Price*, 81 S.W.2d 116, 119 (Tex. Civ. App. - Galveston 1935, no writ).
694. *See e.g.* Notes 561-67 and accompanying text.
695. 93 S.W. 476 (Tex. Civ. App. 1906, no writ).
696. *Id.* at 467.

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697. *Id.*
698. *Id.*
699. *Id.*
700. *Id.*
701. *Id.* at 477.
702. *Id.* See also *Harrison v. First Nat'l Bank of Lewisville*, 238 S.W. 209, 210 (Tex. Comm'n App. 1922, jdgmt adopted); *Cheswick v. Weaver*, 280 S.W.2d 942, 944 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.).
703. 238 S.W. 209 (Tex. Comm'n App. 1922, jdgmt adopted).
704. *Id.* at 209-10.
705. *Id.* at 210.
706. *Id.* at 209.
707. *Id.* at 210.
708. *Id.* at 211.
709. *Id.*
710. *Id.* at 210-11.
711. *Id.* at 211.
712. *Id.*
713. 664 S.W.2d 332 (Tex. 1983).
714. *Id.* at 323. *But see Stewart Title Co. v. Huddleston*, 598 S.W.2d 321, 324 (Tex. Civ. App. - San Antonio 1980, writ ref'd).
715. See *Gensheimer v. Kneisley*, 778 S.W.2d 138, 140 (Tex. App. - Texarkana 1989, no writ). However, clearly an abstracted judgment against one spouse does not create a lien against the separate property of the other spouse. See *First Nat'l Bank of McAllen v. Moore*, 7 S.W.2d 145, 147 (Tex. Civ. App. - San Antonio 1928, writ dism'd).
716. *First Nat'l Bank of McAllen v. Moore*, 7 S.W.2d 145, 146 (Tex. Civ. App. - San Antonio 1928, writ dism'd); *Ferguson v. Kuehn*, 246 S.W. 674, 675-76 (Tex. Civ. App. - Austin 1922, no writ).
717. *Baker v. West*, 120 Tex. 113, _____, 36 S.W.2d 695, 697 (1931); *Central City Trust Co. v. Waco Bldg. Ass'n.*, 95 Tex. 48, 51, 64 S.W. 998, 998 (1901); *Calvert v. Roche*, 59 Tex. 463, 464-65 (1883); *Mainwarring v. Templeman*, 51 Tex. 205, 211 (1879); *Estelle v. Hart*, 55 S.W.2d 510, 515 (Tex. Comm'n App. 1932, jdgmt adopted); *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied).
For authority that an abstracted judgment prevails over an unrecorded deed of trust see *Barnett v. Squires*, 93 Tex. 153, 153-54, 54 S.W. 241, 241 (1899); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 237 (Tex. Civ. App. - Beaumont 1924, writ dism'd); *Masterson v. Burnett*, 66 S.W. 90, 91 (Tex. Civ. App. 1901, writ ref'd).
718. 784 S.W.2d 555 (Tex. App. - Amarillo 1990, writ denied).
719. *Id.* at 556.
720. *Id.*

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721. *Id.*
722. *Id.* at 557-59. *See also* TPEA No. 5 Credit Union v. Solis, 605 S.W.2d 381, 383-84 (Tex. Civ. App. - Waco 1980, no writ); *Christian v. Sam R. Hill Lumber Co.*, 113 S.W.2d 616, 618 (Tex. Civ. App. - Beaumont 1938, no writ).
723. 126 S.W.3d 242 (Tex. App. - San Antonio 2003, pet. denied).
724. *Id.* at 245.
725. *Id.*
726. *Id.*
727. *Id.* at 247.
728. *Id.*
729. *Id.*
730. 208 S.W. 552 (Tex. Civ. App. - San Antonio 1919, writ ref'd).
731. *Id.* at 553.
732. *Id.*
733. *Id.* at 553-55.
734. *Id.* at 554-55. *See also* TEX. PROP. CODE ANN. § 52.001 (Vernon 1995).
735. *Id.* at 555.
736. *Id.* at 555. *See also* Sugg v. Mozoch, 293 S.W. 907, 907 (Tex. Civ. App. - Austin 1927, writ ref'd); *Hooker v. Eakin*, 176 S.W. 80, 81-82 (Tex. Civ. App. - Texarkana 1915, writ ref'd).
737. 2 S.W.2d 537 (Tex. Civ. App. - Waco 1928, no writ).
738. *Id.* at 537.
739. *Id.*
740. *Id.*
741. *Id.*
742. *Id.*
743. *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 557 (Tex. App. - Amarillo 1990, writ denied); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *Dallas Land & Loan Co. v. Sugg*, 237 S.W. 955, 957 (Tex. Civ. App. - Austin 1922, writ ref'd); *Ives v. Culton*, 197 S.W. 619, 621 (Tex. Civ. App. - Amarillo 1917), *aff'd*, 229 S.W. 321 (Tex. Comm'n App. 1921, jdgmt adopted).
744. *See* Triangle Supply Co. v. Fletcher, 408 S.W.2d 765, 766-67 (Tex. Civ. App. - Eastland 1966, writ ref'd n.r.e.); *T-Vesto Litt-Vada v. Lu-Cal One Oil Co.*, 651 S.W.2d 284, 292 (Tex. App. - Austin 1983, writ ref'd n.r.e.); *Howard v. Leonard*, 185 S.W.2d 490, 491 (Tex. Civ. App. - San Antonio 1945, writ ref'd w.o.m.).

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745. *Dallas Land & Loan Co. v. Sugg*, 237 S.W. 955, 957 (Tex. Civ. App. - Austin 1922, writ ref'd); *Bowles v. Belt*, 159 S.W. 885, 887 (Tex. Civ. App. - Amarillo 1913, writ ref'd); *Von Stein v. Trexler*, 23 S.W. 1047, 1049 (Tex. Civ. App. 1893, no writ).
746. *Barnett v. Squyres*, 93 Tex. 193, 194, 54 S.W. 241, 241 (18___); *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 559 (Tex. App. - Amarillo 1990, writ denied); *McDonald v. Powell Lumber Co.*, 243 S.W.2d 192, 195 (Tex. Civ. App. - Beaumont 1981, writ ref'd); *Newman v. Phalen*, 214 S.W. 958, 960 (Tex. Civ. App. - Amarillo 1919, no writ); *Diltz v. Dodson*, 207 S.W. 356, 358 (Tex. Civ. App. - Fort Worth 1918, no writ).
747. *See Burnett v. Cockshatt*, 21 S.W. 950, 951 (Tex. Civ. App. 1893, no writ).
748. *See Id.*
749. 140 S.W.2d 601 (Tex. Civ. App. - Galveston 1940, writ ref'd).
750. *Id.* at 601.
751. *Id.* at 601-02.
752. *Id.* at 601.
753. *Id.* at 602.
754. *Id.* *See also Brinkman v. Tinkler*, 117 SW.2d 139, 141 (Tex. Civ. App. - San Antonio 1938, writ ref'd).
755. *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 557 (Tex. App. - Amarillo 1990, writ denied); *Texas American Bank/Levelland v. Resendez*, 706 S.W.2d 343, 347 (Tex. App. - San Antonio 1986, no writ); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *Long Falls Realty Co. v. Anchor Elec. Co.*, 405 S.W.2d 170, 173 (Tex. Civ. App. - Dallas 1966, no writ); *Steele v. Harris*, 2 S.W.2d 537, 538 (Tex. Civ. App. - Waco 1928, no writ).
756. *Long Falls Realty Co. v. Anchor Electric Co.*, 405 S.W.2d 170, 173 (Tex. Civ. App. - Dallas 1966, no writ).
757. *See Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 557 (Tex. App. - Amarillo 1990, writ denied); *Texas American Bank/Levelland v. Resendez*, 706 S.W.2d 343, 347 (Tex. App. - San Antonio 1986, no writ); *Garth v. Stuart*, 125 S.W. 611, 612 (Tex. Civ. App. 1910, writ ref'd).
758. 30 S.W. 1123 (Tex. Civ. App. 1895, no writ)
759. *Id.* at 1124.
760. *Id.*
761. *Id.* *See also Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *Newman v. Phalen*, 214 S.W. 958, 960 (Tex. Civ. App. - Amarillo 1919, no writ).
762. 405 S.W.2d 170 (Tex. Civ. App. - Dallas 1966, no writ).
763. *Id.* at 173.
764. *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied); *Triangle Supply Co. v. Fletcher*, 408 S.W.2d 765, 768 (Tex. Civ. App. - Eastland 1966, writ ref'd n.r.e.); *Howard v. Leonard*, 185 S.W.2d 490, 491 (Tex. Civ. App. - San Antonio 1945, writ ref'd w.o.m.).
765. 23 S.W. 1047 (Tex. Civ. App. 1893, no writ).

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766. *Id.* at 1049. *See also Howard v. Leonard*, 185 S.W.2d 490, 491 (Tex. Civ. App. - San Antonio 1945, writ ref'd w.o.m.).
767. 408 S.W.2d 765 (Tex. Civ. App. - Eastland 1977, writ ref'd n.r.e.)
768. *Id.* at 768.
769. 214 S.W. 958 (Tex. Civ. App. - Amarillo 1919, no writ).
770. *Id.* at 960.
771. *Collum v. Sanger Bros.*, 98 Tex. 162, 164, 82 S.W. 459, 460 (1904); *Dallas Land & Loan Co. v. Sugg*, 237 S.W. 955, 957 (Tex. Civ. App. - Austin 1922, writ ref'd); *Garth v. Stuart*, 125 S.W. 611, 612 (Tex. Civ. App. 1910, writ ref'd).
772. 125 S.W. 611 (Tex. Civ. App. 1910, writ ref'd).
773. *Id.* at 611-12.
774. *Id.* at 611.
775. *Id.* at 612.
776. *Id.* *See also Cox v. Kearby*, 175 S.W. 731, 734 (Tex. Civ. App. - Fort Worth 1915), *rev'd on other grounds*, 211 S.W. 932 (Tex. Comm'n App. 1919, judgm't adopted).
777. *Id.*
778. 159 S.W. 885 (Tex. Civ. App. - Amarillo 1913, writ ref'd).
779. *Id.* at 887.
780. *Id.*
781. 784 S.W.2d 555 (Tex. App. - Amarillo 1990, writ denied).
782. *Id.* at 559.
783. *Id.* at 556.
784. *Id.* at 559.
785. *Id.* *See also Triangle Supply Co. v. Fletcher*, 408 S.W.2d 765, 768 (Tex. Civ. App. - Eastland 1966, writ ref'd n.r.e.) (joint occupancy of land by two or more persons, one of whom is the record owner, will not put creditors on inquiry of an adverse claim); *Dallas Land & Loan Co. v. Sugg*, 237 S.W. 955, 957 (Tex. Civ. App. - Austin 1922, writ ref'd) (Possession consistent with recorded title eliminates duty of inquiry of possessor's right to occupy. Record title in such cases disarms suspicion and stifles inquiry. Judgment creditor need not pursue possessor to see if he has another conveyance "in his pocket").
786. 98 Tex. 162, 82 S.W. 459 (1904).
787. 98 Tex. at 164-65, 82 S.W. at 460.
788. 98 Tex. 165, 82 S.W. 460. *See also Wimberly v. Bailey*, 58 Tex. 222, 226-27 (1882); *Alkas v. United Sav. Ass'n of Texas, Inc.*, 672 S.W.2d 852, 859 (Tex. App. - Corpus Christi 1984, writ ref'd n.r.e.); *Long Falls Realty Co. v. Anchor Electric Co.*, 405 S.W.2d 170, 173 (Tex. Civ. App. - Dallas 1966, no writ); *Kelly-Springfield Tire Co. v. Walker*, 149 S.W.2d 195, 197 (Tex. Civ. App. - Beaumont 1940, writ dism'd judgm't cor.); *Garth v. Stuart*, 125 S.W. 611, 612 (Tex. Civ. App. 1910, writ ref'd).

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789. See 98 Tex. at 165, 85 S.W. at 460.
790. *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ).
791. *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ).
792. See *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ).
793. 706 S.W.2d 343 (Tex. App. - Amarillo 1986, no writ).
794. *Id.* at 344.
795. *Id.*
796. *Id.* at 345.
797. *Id.*
798. *Id.*
799. *Id.* at 346. See also *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *In re Fulton*, 148 B.R. 838, 842 (Bankr. S.D. Tex. 1992).
800. *Id.* at 347. See also *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ).
801. *Id.* See also *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *In re Fulton*, 148 B.R. 838, 842 (Bankr. S.D. Tex. 1992).
802. 997 S.W.2d 784 (Tex. App. - Austin 1999, no pet.).
803. *Id.* at 785.
804. *Id.*
805. *Id.* at 787.
806. *Id.* at 786-87.
807. *Id.* at 787.
808. *Id.*
809. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 630, 183 S.W. 874, 876 (1916); *Calvert v. Roche*, 59 Tex. 463, 464-65 (1883); *Payne v. Bracken*, 115 S.W.2d 903, 904-05 (Tex. Comm'n App. 1938, opinion adopted); *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ).
810. *Payne v. Bracken*, 115 S.W.2d 903, 905 (Tex. Comm'n App. 1938, opinion adopted); *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *North East Independent School Dist. v. Aldridge*, 528 S.W.2d 341, 343 (Tex. Civ. App. - Amarillo 1974, writ ref'd n.r.e.); *Lusk v. Parmer*, 114 S.W.2d 677, 682 (Tex. Civ. App. - Amarillo 1938, writ dism'd).
811. *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *Roeser & Pendleton, Inc. v. Stanolind Oil & Gas Co.*, 138 S.W.2d 250, 253 (Tex. Civ. App. - Texarkana 1940, writ ref'd);

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Lusk v. Parmer, 114 S.W.2d 677, 682 (Tex. Civ. App. - Amarillo 1938, writ dismissed); *Garrison v. Citizens Nat'l Bank of Hillsboro*, 25 S.W.2d 231, 232 (Tex. Civ. App. - Waco 1930, writ refused).

812. *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 347 (Tex. App. - Amarillo 1986, no writ); *In re Fulton*, 148 B.R. 838, 842 (Bankr. S.D. Tex. 1992).

813. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 631, 183 S.W. 874, 876 (1916); *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345-46 (Tex. App. - Amarillo 1986, no writ); *Berry v. Chadwick*, 137 S.W.2d 859, 863 (Tex. Civ. App. - Fort Worth 1940, writ dismissed judgment corrected.); *Barton v. Parks*, 127 S.W.2d 376, 379 (Tex. Civ. App. - Galveston 1939, writ refused).

814. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 631, 183 S.W. 874, 876 (1916); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345-46 (Tex. App. - Amarillo 1986, no writ); *Berry v. Chadwick*, 137 S.W.2d 859, 863 (Tex. Civ. App. - Fort Worth 1940, writ dismissed judgment corrected.); *Barton v. Parks*, 127 S.W.2d 376, 379 (Tex. Civ. App. - Galveston 1939, writ refused); *Garrison v. Citizens' Nat'l Bank of Hillsboro*, 25 S.W.2d 231, 232 (Tex. App. - Waco 1930, writ refused).

815. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 631, 183 S.W. 874, 876 (1916); *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345-46 (Tex. App. - Amarillo 1986, no writ); *Berry v. Chadwick*, 137 S.W.2d 859, 863 (Tex. Civ. App. - Fort Worth 1940, writ dismissed judgment corrected.); *Barton v. Parks*, 127 S.W.2d 376, 379 (Tex. Civ. App. - Galveston 1939, writ refused).

816. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 631, 183 S.W. 874, 876 (1916); *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no pet.); *Tex. Am. Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345-46 (Tex. App. - Amarillo 1986, no writ); *Berry v. Chadwick*, 137 S.W.2d 859, 863 (Tex. Civ. App. - Fort Worth 1940, writ dismissed judgment corrected.); *Barton v. Parks*, 127 S.W.2d 376, 379 (Tex. Civ. App. - Galveston 1939, writ refused).

817. *Brinkman v. Tinkler*, 117 S.W.2d 139, 142 (Tex. Civ. App. - San Antonio 1938, writ refused).

818. *See Tricentral Oil Trading, Inc. v. Annesley*, 809 S.W.2d 218, 220 (Tex. 1991); *Nolana Dev. Ass'n v. Corsi*, 682 S.W.2d 246, 250 (Tex. 1984); *Leyva v. Pacheco*, 163 Tex. 638, 642, 358 S.W.2d 547, 550 (1962); *Cohrs v. Scott*, 161 Tex. 111, 117, 338 S.W.2d 127, 130 (1960); *Morrison v. Farmer*, 147 Tex. 122, 125, 213 S.W.2d 813, 814 (1948).

819. *Cohrs v. Scott*, 161 Tex. 111, 117, 338 S.W.2d 127, 130 (1960); *Masterson v. Hogue*, 842 S.W.2d 696, 697 (Tex. App. - Tyler 1992, no writ); *Ford v. Simpson*, 568 S.W.2d 468, 470 (Tex. Civ. App. - Waco 1978, no writ); *Bell v. Smith*, 532 S.W.2d 686, 684 (Tex. Civ. App. - Fort Worth 1976, no writ); *Hammett v. McIntire*, 365 S.W.2d 844, 847 (Tex. Civ. App. - Houston 1962, writ refused n.r.e.).

820. *Calvert v. Roche*, 59 Tex. 463, 464-65 (1883); *Estelle v. Hart*, 55 S.W.2d 510, 514-15 (Tex. Comm'n App. 1932, judgment adopted); *Park Central Bank v. JHJ Inv. Co.*, 835 S.W.2d 813, 815 (Tex. App. - Fort Worth 1992, no writ); *Hammett v. McIntire*, 365 S.W.2d 844, 846-47 (Tex. Civ. App. - Houston 1962, writ refused n.r.e.); *Roeser & Pendleton, Inc. v. Stanolind Oil & Gas Co.*, 138 S.W.2d 250, 252-53 (Tex. Civ. App. - Texarkana 1940, writ refused).

821. 138 S.W.2d 250 (Tex. Civ. App. - Texarkana 1940, writ refused).

822. *Id.* at 251-52. *See also Solether v. Trinity Fire Ins. Co.*, 78 S.W.2d 180, 182 (Tex. Comm'n App. 1935, opinion adopted).

823. 365 S.W.2d 844 (Tex. Civ. App. - Houston 1962, writ refused n.r.e.).

824. *Id.* at 846.

825. *Id.*

826. *Id.*
827. *See Richardson v. Laney*, 911 S.W.2d 489, 493 (Tex. App. - Texarkana 1995, no writ); *Uriarte v. Petro*, 606 S.W.2d 22, 25 (Tex. Civ. App. - Houston [1st Dist.] 1980, no writ); *Murphy v. Johnson*, 439 S.W.2d 440, 444 (Tex. Civ. App. - Houston [1st Dist.] 1969, no writ); *Carter v. Carter*, 391 S.W.2d 546, 548 (Tex. Civ. App. - Dallas 1965, no writ); *Hereford Land Co. v. Globe Indus.*, 387 S.W.2d 771, 775 (Tex. Civ. App. - Tyler 1965, writ ref'd n.r.e.).
828. 25 S.W.2d 231 (Tex. Civ. App. - Waco 1930, writ ref'd).
829. *Id.* at 232.
830. *Id.*
831. *Id.*
832. *Id.* at 233.
833. *See Hirschfield v. Howard*, 59 S.W. 55, 58 (Tex. Civ. App. 1900), *motion for rehearing denied*, 60 S.W. 83 (Tex. Civ. App. 1901).
834. *See Thigpen v. Locke*, 363 S.W.2d 247, 252 (Tex. 1962). In some areas the distinction between resulting and constructive trusts is admittedly confusing. *Mills v. Gray*, 147 Tex. 33, 38, 210 S.W.2d 985, 987-88 (1948).
835. *See Michael v. Knapp*, 23 S.W. 280, 281 (Tex. Civ. App. 1893, no writ).
836. 23 S.W. 280 (Tex. Civ. App. 1893, no writ).
837. *Id.* at 281.
838. *See Long v. Steiger*, 8 Tex. 460, 462 (1852); *Berry v. Rhine*, 205 S.W.2d 632, 634 (Tex. Civ. App. - Fort Worth 1947, no writ); *Elbert v. Waples - Platter Co.*, 156 S.W.2d 146, 150 (Tex. Civ. App. - Fort Worth 1941, writ ref'd w.o.m.)
839. *See Long v. Steiger*, 8 Tex. 460, 462 (1852); *Berry v. Rhine*, 205 S.W.2d 632, 634 (Tex. Civ. App. - Fort Worth 1947, no writ); *Elbert v. Waples - Platter Co.*, 156 S.W.2d 146, 150 (Tex. Civ. App. - Fort Worth 1941, writ ref'd w.o.m.)
840. 137 S.W.2d 859 (Tex. Civ. App. - Fort Worth 1940, writ dism'd judgm't cor.).
841. *Id.* at 863.
842. *Id.*
843. *Id.*
844. *First State Bank of Amarillo v. Jones*, 107 Tex. 623, 631, 183 S.W. 874, 877 (1916).
845. *Id.* at 676.
846. 107 Tex. 623, 183 S.W. 874 (1916).
847. 107 Tex. at 627, 183 S.W. at 875.
848. 107 Tex. at 628-29, 183 S.W. at 875-76.
849. 107 Tex. at 628, 183 S.W. at 875.

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850. 107 Tex. at _____, 183 S.W. at 877.
851. 107 Tex. at 626, 183 S.W. at 875.
852. 107 Tex. at 628, 183 S.W. at 875.
853. 107 Tex. at 633, 183 S.W. at 878.
854. 107 Tex. at 633, 183 S.W. at 878.
855. 133 SW.2d 897 (Tex. App. - Dallas 2004, no pet.).
856. *Id.* at 900.
857. *Id.*
858. *Id.*
859. *Id.* at 900-01.
860. *Id.* at 901.
861. *Id.*
862. *Id.* at 903.
863. *Id.*
864. *Id.* at 903-04.
865. *Id.*
866. 520 S.W.2d 607 (Tex. Civ. App. - Waco 1975), *rev'd on other grounds*, 525 S.W.2d 696 (Tex. 1975).
867. *Id.* at 607.
868. *Id.*
869. *Id.* at 608.
870. *Id.*
871. *Id.* See also *Gauss - Langenberg Hat Co. v. Allums*, 184 S.W. 288, 289 (Tex. Civ. App. - Galveston 1916, writ ref'd). But see *Henderson v. Odessa Bldg. & Fin. Co.*, 24 S.W.2d 393, 394 (Tex. Comm'n App. 1930, jdgmt adopted).
872. 528 S.W.2d 341 (Tex. Civ. App. - Amarillo 1975, writ ref'd n.r.e.).
873. *Id.* at 343. See also *Gibraltar Sav. Ass'n v. Martin*, 784 S.W.2d 555, 558 (Tex. App. - Amarillo 1990, writ denied).
874. *Id.* at 342.
875. *Id.*
876. *Id.*

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877. *Id.* at 343. *See also Henderson v. Odessa Bldg. & Fin Co.*, 24 S.W.2d 394 (Tex. Comm'n App. 1930, judgment adopted).
878. 115 S.W.2d 903 (Tex. Comm'n App. 1938, opinion adopted).
879. *Id.* at 904.
880. *Id.* at 904.
881. *Id.*
882. *Id.* at 905.
883. *Id.*
884. TEX. PROP. CODE ANN. § 52.006 (Vernon 1995). *See also Jackson v. Wallace*, 252 S.W. 745, 747 (Tex. Comm'n App. 1923, judgment adopted); *Olivares v. Nix Trust*, 126 S.W.3d 242, 249 (Tex. App. - San Antonio 2003, pet. denied); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *A.H. Belo Corp. v. Sanders*, 598 S.W.2d 7, 10 (Tex. Civ. App. - Texarkana 1980, no writ); *Texas Sand Co. v. Shield*, 367 S.W.2d 88, 96 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 48 (Tex. 1964).
885. TEX. PROP. CODE ANN. § 52.006 (Vernon 1995). *See also Evans v. Frisbie*, 84 Tex. 341, _____, 19 S.W. 510, 511 (1892); *Olivares v. Nix Trust*, 126 S.W.3d 242, 249 (Tex. App. - San Antonio 2003, pet. denied); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *A.H. Belo Corp. v. Sanders*, 598 S.W.2d 7, 10 (Tex. Civ. App. - Texarkana 1980, no writ); *Texas Sand Co. v. Shield*, 367 S.W.2d 88, 96 (Tex. Civ. App. - Eastland 1963), *aff'd*, 381 S.W.2d 48 (Tex. 1964).
886. 126 S.W.3d 242 (Tex. App. - San Antonio 2003, pet. denied).
887. *Id.* at 245.
888. *Id.* at 250.
889. *Id.*
890. *Id.*
891. TEX. PROP. CODE ANN. § 52.001 (Vernon 1995).
892. This reasoning may be a subconscious result of long association with TEX. BUS. & COM. CODE ANN. § 9.403 which allows Article 9 liens on personalty to be periodically renewed with the priority of the renewed lien relating back to the date of the original lien filing.
893. *See Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 752-53 (Tex. Civ. App. - Eastland 1931, writ ref'd).
894. 45 S.W.2d 750 (Tex. Civ. App. - Eastland 1931), writ ref'd n.r.e.).
895. *Id.* at 752-53. *See also Olivares v. Nix Trust*, 126 S.W.3d 242, 249 (Tex. App. - San Antonio 2003, pet. denied).
896. *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 752-53 (Tex. Civ. App. - Eastland 1931, writ ref'd).
897. *But see United States v. Blakeman*, 750 F.Supp. 216, 223 (N.D. Tex. 1990) (stating that a lapsed lien could have been "extended" and "kept alive" if a second abstract had been filed within 10 years of the first filing).
The judgment lien statute was amended after *Burton Lingo* in 1937 to expressly provide for the filing of a "subsequent abstract". The effect of this added language on the priority date of a subsequent abstract is unclear. The 1937 amendments caused at least one commentator to conclude that judgment liens could be

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"extended". See Thomas J. Mitchell, Comment, *Perpetuating the Force of Judgments and Judgment Liens in Texas*, 29 TEX. L. REV. 530 (1951) (But note the inexplicable absence of any discussion in this article of the *Burton Lingo* decision).

898. *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 753 (Tex. Civ. App. - Eastland 1931), writ ref'd).
899. *Id.*
900. *In re Davis*, 174 B.R. 223, 226 (Bankr. N.D. Tex. 1994).
901. See *Firebaugh v. Ward*, 51 Tex. 409, 413 (1879); *Wright v. Rhodes*, 42 Tex. 523, 528 (1875); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *Kyles v. Texarkana Prod. Credit Ass'n*, 474 S.W.2d 302, 311-12 (Tex. Civ. App. - Texarkana 1971, writ ref'd n.r.e.); *John F. Grant Lumber Co. v. Hunnicutt*, 143 S.W.2d 976, 976 (Tex. Civ. App. - Waco 1940, no writ).
902. *Firebaugh v. Ward*, 51 Tex. 409, 413 (1879); *Rucker v. Steelman*, 619 S.W.2d 5, 6-7 (Tex. Civ. App. - Houston [1st Dist.] 1981, writ ref'd n.r.e.); *Pacific Fin. Corp. v. Donald*, 286 S.W.2d 260, 263 (Tex. Civ. App. - Beaumont 1955, no writ); *Fitzgerald v. Le Grande*, 187 S.W.2d 155, 160 (Tex. Civ. App. - El Paso] 1945, no writ); *Pacific Fin. Corp. v. Donald*, 286 S.W.2d 260, 263 (Tex. Civ. App. - Beaumont 1955, no writ).
903. 201 S.W.2d 92 (Tex. Civ. App. - Eastland 1947, no writ).
904. *Id.* at 93, 97.
905. *Id.* at 97.
906. 131 S.W.2d 95 (Tex. Comm'n App. 1939, opinion adopted).
907. *Id.* at 97-99.
908. *Id.* at 100.
909. *Id.* at 99.
910. 172 S.W.2d 301 (Tex. 1943).
911. *Id.* at 302-03.
912. *Id.* at 302.
913. *Id.* at 304.
914. *Gullett Gin Co. v. Oliver*, 78 Tex. 182, 185, 14 S.W. 451, 452 (1890); *Belbaze v. Ratto*, 69 Tex. 636, 639, 7 S.W. 501, 502 (1888); *Willis v. Smith*, 66 Tex. 31, 44, 17 S.W. 247, 248 (1886); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 911 (Tex. App. - Dallas 2002, pet. denied); *Reynolds v. Kessler*, 669 S.W.2d 801, 805 (Tex. App. - El Paso 1984, no writ).
915. *In re Warren*, 217 B.R. 538, 539 (Bankr. S.D. Tex. 1997).
916. 69 Tex. 636, 7 S.W. 501 (1888).
917. 69 Tex. at 637, 7 S.W. at 502.
918. 69 Tex. at 639, 7 S.W. at 502.
919. 23 S.W. 1025 (Tex. Civ. App. 1893, no writ).
920. *Id.* at 1028.

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921. *See Pearson v. Teddlie*, 235 S.W.2d 757, 759 (Tex. Civ. App. - Eastland 1900, no writ).
922. *See Harris Realty Co. v. Austin*, 118 S.W.2d 491, 491-92 (Tex. Civ. App. - Galveston 1938), *aff'd*, 134 Tex. 484, 137 S.W.2d 19 (Tex. Comm'n App. 1940, opinion adopted); *Corbett v. Provident Nat'l Bank*, 57 S.W. 61, 63 (Tex. Civ. App. 1900, writ ref'd).
923. *Brackenridge v. Cobb*, 85 Tex. 448, 448-49, 21 S.W. 1034, 1034 (1893).
924. *Harrison v. First Nat'l Bank of Lewisville*, 238 S.W. 209, 212 (Tex. Comm'n App. 1922, jdgmt adopted); *Martin v. Cadle Co.*, 133 S.W.3d 897, 906 (Tex. App. - Dallas 2004, no pet.); *Matula v. Lane*, 55 S.W. 504, 508 (Tex. Civ. App. 1900, writ ref'd); *Willis v. Downes*, 46 S.W. 920, 921 (Tex. Civ. App. 1898, writ ref'd); *Marks v. Bell*, 31 S.W. 699, 702 (Tex. Civ. App. 1895, writ ref'd).
925. *Harrison v. First Nat'l Bank of Lewisville*, 238 S.W. 209, 212 (Tex. Comm'n App. 1922, jdgmt adopted); *Martin v. Cadle Co.*, 133 S.W.3d 897, 906 (Tex. App. - Dallas 2004, no pet.); *Matula v. Lane*, 55 S.W. 504, 504 (Tex. Civ. App. 1900, writ ref'd); *McAllen State Bank v. Saenz*, 561 F.Supp. 636, 639 (S.D. Tex. 1982).
926. *McAllen State Bank v. Saenz*, 561 F.Supp. 636, 638 (S.D. Tex. 1982).
927. *Id.*
928. *Id.* at 639-40.
929. *Marks v. Bell*, 31 S.W. 699, 702 (Tex. Civ. App. 1895, writ ref'd).
930. *Id.*
931. 879 F.Supp. 715 (S.D. Tex. 1995).
932. *Id.* at 716.
933. *Id.*
934. *Id.* at 717.
935. *Id.*
936. *Id.*
937. TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a) (Vernon 2002).
938. *Id.* at § 12.002(b).
939. *Id.* at § 12.003.
940. 174 B.R. 223 (Bankr. N.D. Tex. 1994).
941. *Id.* at 228.
942. *Id.*
943. *In re Thornburg*, 277 B.R. 719, 727, 731 (Bankr. E.D. Tex. 2002).
944. 202 F.Supp. 27 (S.D. Tex. 1962).
945. *Id.* at 28.

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946. *Id.*
947. *Id.* at 27.
948. *Id.* at 28.
949. *Id.*
950. *Baker v. West*, 120 Tex. 113, 119, 36 S.W.2d 695, 697 (1931); *Fikes v. Buckholts State Bank*, 273 S.W. 957, 961 (Tex. Civ. App. - Austin 1925, writ dismiss'd); *Ives v. Culton*, 197 S.W. 619, 621 (Tex. Civ. App. - Amarillo 1917), *aff'd* 229 S.W. 321 (Tex. Comm'n App. 1921, judgment adopted); *Onyx Refining Co. v. Evans Produc. Corp.*, 182 F.Supp. 253, 256 (N.D. Tex. 1959).
951. *Day v. Day*, 610 S.W.2d 195, 200 (Tex. Civ. App. - Tyler 1980, writ ref'd n.r.e.); *Hull v. Naumberg*, 20 S.W. 1125, 1126 (Tex. Civ. App. 1892, no writ).
952. *Nichols v. Cansler*, 140 S.W.2d 254, 255-56 (Tex. Civ. App. - Fort Worth 1940, writ dismiss'd judgment cor.); *Citizens Bank v. Brandau*, 1 S.W.2d 466, 470 (Tex. Civ. App. - Dallas 1927, writ ref'd).
953. *Id.* at 470.
954. *Citizens Bank v. Brandau*, 1 S.W.2d 466, 470 (Tex. Civ. App. - Dallas 1927, writ ref'd); *McDowell v. M.T. Jones Lumber Co.*, 93 S.W. 476, 476 (Tex. Civ. App. 1906, no writ).
955. *Jackson v. Butler*, 47 Tex. 423, 427 (1877); *W.T. Raleigh Co. v. Childers*, 132 S.W.2d 434, 434-35 (Tex. Civ. App. - Beaumont 1939, no writ).
956. *Demo v. Goforth*, 556 S.W.2d 128, 130 (Tex. Civ. App. - San Antonio 1977, no writ).
957. *Price v. Pelton*, 199 S.W.2d 249, 252 (Tex. Civ. App. - Austin 1947, writ ref'd n.r.e.); *White v. Glenn*, 138 S.W.2d 914, 920 (Tex. Civ. App. - Amarillo 1940, writ dismiss'd judgment cor.).
958. *Boyd v. Ghent*, 95 Tex. 46, 47, 64 S.W. 929, 930 (1901); *Nichols v. Cansler*, 140 S.W.2d 254, 256 (Tex. Civ. App. - Fort Worth 1940, writ dismiss'd judgment cor.).
959. *Boyd v. Ghent*, 95 Tex. 46, 47, 64 S.W. 929, 930 (1901); *Nichols v. Cansler*, 140 S.W.2d 254, 256 (Tex. Civ. App. - Fort Worth 1940, writ dismiss'd judgment cor.).
960. *Boyd v. Ghent*, 95 Tex. 46, 47, 64 S.W. 929, 930 (1901).
961. *Baker v. West*, 120 Tex. 113, 119, 36 S.W.2d 695, 697 (1931); *Smith v. Adams*, 333 S.W.2d 892, 894 (Tex. Civ. App. - Eastland 1960, writ ref'd n.r.e.); *Fikes v. Buckholts State Bank*, 273 S.W. 957, 961 (Tex. Civ. App. - El Paso 1925, writ dismiss'd).
962. *See Baker v. West*, 120 Tex. 113, 115-19, 36 S.W.2d 695, 695-97 (1931).
963. *Baker v. West*, 120 Tex. 113, 119, 36 S.W.2d 695, 697 (1931); *Smith v. Adams*, 333 S.W.2d 892, 894 (Tex. Civ. App. - Eastland 1960, writ ref'd n.r.e.); *Masterson v. Adams*, 197 S.W.2d 154, 156 (Tex. Civ. App. - Galveston 1946, writ ref'd n.r.e.); *Brinkman v. Tinkler*, 117 S.W.2d 139, 141 (Tex. Civ. App. - San Antonio 1938, writ ref'd); *Fikes v. Buckholts State Bank*, 273 S.W. 957, 961 (Tex. Civ. App. - El Paso 1925, writ dismiss'd).
964. 120 Tex. 113, 36 S.W.2d 695 (1931).
965. 120 Tex. at 119, 36 S.W.2d at 697. *See also Fikes v. Buckholts State Bank*, 273 S.W. 957, 961 (Tex. Civ. App. - El Paso 1925, writ dismiss'd)
966. *Semple v. Eubanks*, 35 S.W. 509, 511 (Tex. Civ. App. 1899, writ ref'd).

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967. *Nichols v. Cansler*, 140 S.W.2d 254, 256 (Tex. Civ. App. - Fort Worth 1940, writ dism'd judgm't cor.).
968. *Id.*
969. TEX. PROP. CODE ANN. § 52.005 (Vernon 1995). *See also Texas & Pacific Ry. Co. v. Walker*, 93 Tex. 611, 613, 57 S.W. 568, 569 (1900); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *A.H. Belo Corp. v. Sanders*, 598 S.W.2d 7, 10 (Tex. Civ. App. - Texarkana 1980, no writ); *Gordon - Sewall & Co. v. Walker*, 258 S.W. 233, 238 (Tex. Civ. App. - Beaumont 1924, writ dism'd).
970. TEX. PROP. CODE ANN. § 52.005 (Vernon 1995). *See also Texas & Pacific Ry. Co. v. Walker*, 93 Tex. 611, 613, 57 S.W. 568, 569 (1900); *Hoffman, McBryde & Co., P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. - Dallas 2002, pet. denied); *A.H. Belo Corp. v. Sanders*, 598 S.W.2d 7, 10 (Tex. Civ. App. - Texarkana 1980, no writ).
971. *Rutherford v. Watson*, 52 S.W.2d 85, 89 (Tex. Civ. App. - Fort Worth 1932, writ ref'd).
972. *Id.*
973. *See A.H. Belo Corp. v. Sanders*, 598 S.W.2d 7, 10 (Tex. Civ. App. - Texarkana 1980, no writ).
974. 598 S.W.2d 7 (Tex. Civ. App. - Texarkana 1980, no writ).
975. *Id.* at 8.
976. *Id.*
977. *Id.* at 10.
978. *Id.*
979. *See Cheswick v. Freeman*, 282 S.W.2d 315, 317 (Tex. Civ. App. - Waco 1955, no writ).
980. *Williams v. Hedrick*, 131 S.W.2d 187, 190 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgm't cor.).
981. *Huggins v. Johnston*, 120 Tex. 21, 26, 35 S.W.2d 688, 690 (1931); *Walston v. Price*, 159 S.W.2d 548, 551-52 (Tex. Civ. App. - Waco 1942, no writ); *Williams v. Hedrick*, 131 S.W.2d 187, 190 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgm't cor.).
982. *Williams v. Hedrick*, 131 S.W.2d 187, 190 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgm't cor.).
983. *Id.*
984. *Id.*
985. *Id.*
986. *Id.*
987. 131 S.W.2d 187 (Tex. Civ. App. - Beaumont 1939, writ dism'd judgm't cor.).
988. *Id.* at 189.
989. *Id.*
990. *Id.*
991. *Id.*

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- 992. *Id.*
- 993. *Id.* at 190.
- 994. *Id.*
- 995. TEX. PROP. CODE ANN. § 52.021 (Vernon 1995).
- 996. *Id.* at § 52.025(a).
- 997. *Id.* at § 52.025(b).
- 998. *Id.* at § 52.022.
- 999. *Id.*
- 1000. *Id.* at § 52.023(a).
- 1001. *Id.* at § 52.023(b).
- 1002. *Id.* at § 52.023(c).
- 1003. *Id.* at § 52.024(c).
- 1004. *Id.*
- 1005. *Id.* at § 52.024(b).
- 1006. *Id.*
- 1007. *Id.* at § 52.042(a).
- 1008. *Id.* at § 52.042(b).
- 1009. *Id.* at § 52.043.
- 1010. *Hageman/Fritz, Byrne, Head & Harrison L.L.P. v. Luth*, 2004 WL 1404063 (Tex. App. - Austin 2004, no pet.).
- 1011. *Id.*
- 1012. *Id.*
- 1013. 2004 WL 1404063 (Tex. App. - Austin 2004, no pet.).
- 1014. *Id.*
- 1015. *Id.*
- 1016. *Id.*
- 1017. *Id.*
- 1018. *Shaw v. Ball*, 23 S.W.2d 291, 292-93 (Tex. Comm'n App. 1930, jdgmt adopted); *Jones v. Harrison*, 773 S.W.2d 759, 760 (Tex. App. - San Antonio 1989, writ denied).

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1019. *Shaw v. Ball*, 23 S.W.2d 291, 292-93 (Tex. Comm'n App. 1930, judgm't adopted); *Walker v. Geer*, 99 S.W.3d 244, 246 (Tex. App. - Eastland 2003, no pet.); *Lewis v Hall*, 271 S.W.2d 447, 449 (Tex. Civ. App. - Fort Worth 1954, writ ref'd n.r.e.); *Bain v. Smith*, 97 S.W.2d 353, 355 (Tex. Civ. App. - San Antonio 1936, no writ); *White v. Pingnot*, 90 S.W. 672, 674-75 (Tex. Civ. App. 1905, writ ref'd).

1020. *White v. Pingnot*, 90 S.W. 672, 675 (Tex. Civ. App. 1905, writ ref'd).

1021. 773 S.W.2d 759 (Tex. App. - San Antonio 1989, writ denied).

1022. *Id.* at 759-60.

1023. *Id.*

1024. *Id.* at 760.

1025. *Walker v. Geer*, 99 S.W.3d 244, 247 (Tex. App. - Eastland 2003, no pet.).

1026. 271 S.W.2d 447 (Tex. Civ. App. - Fort Worth 1954, writ ref'd n.r.e.).

1027. *Id.* at 448.

1028. *Id.*

1029. *Id.* at 448-49.

1030. *Id.* at 450.

1031. *Id.*

1032. *Id.*

1033. 99 S.W.3d 244 (Tex. App. - Eastland 2003, no pet.).

1034. *Id.* at 246.

1035. *Id.* at 247.

1036. TEX. CIV. PRAC. & REM. CODE ANN. § 16.024 (Vernon 2002). *See also Martin v. Cadle Co.*, 133 S.W.2d 897, 904 (Tex. App. - Dallas 2004, no pet.).

1037. 133 S.W.3d 897 (Tex. App. - Dallas 2004, no pet.).

1038. *Id.* at 904.

1039. *Id.*

1040. *Id.*

1041. *Id.*

1042. *Id.* at 905.

1043. *Id.*

1044. *Id.*

1045. *Id.*

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- 1046. 381 S.W.2d 48 (Tex. 1964).
- 1047. *Id.* at 52.
- 1048. *Id.*
- 1049. *Id.* at 55-56.
- 1050. *Id.* at 55.
- 1051. *Id.* at 55-56.
- 1052. *Id.* at 55.
- 1053. *Id.*
- 1054. *Id.* at 55-56.
- 1055. *Id.* at 56.
- 1056. 120 Tex. 618, 40 S.W.2d 796 (1931).
- 1057. 120 Tex. at _____, 40 S.W.2d at 800-01.
- 1058. TEX. CIV. PRAC. & REM. CODE ANN. § 16.025 (Vernon 2002).
- 1059. 120 Tex. 618, 40 S.W.2d 796 (1931).
- 1060. 120 Tex. at _____, 40 S.W.2d at 801.
- 1061. *Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth*, 2004 WL 1404063 (Tex. App. - Austin 2004, no pet.).
- 1062. *Id.*
- 1063. *Id.*
- 1064. *Id.*
- 1065. *Id.*
- 1066. *Id.*
- 1067. *Id.*
- 1068. *Id.*
- 1069. *Id.*
- 1070. *Id.*
- 1071. *Id.*
- 1072. *Id.*
- 1073. *Id.*

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1074. See *Hicks v. Price*, 81 S.W.2d 116, 119 (Tex. Civ. App. - Galveston 1935, no writ); *Burnett v. Cockshatt*, 21 S.W. 950, 950-51 (Tex. Civ. App. 1893, no writ).

1075. *Burnett v. Cockshatt*, 21 S.W. 950, 950-51 (Tex. Civ. App. 1893, no writ).