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By TLTA Staff
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Legislation on Lis Pendens Filed in Texas Legislature; Amicus Brief Filed by TLTA in Related Case

TLTA was instrumental in getting two bills filed last week – [SB 1955](#) and [HB 4086](#) – which would clarify that title insurance companies could rely on an expungement of lis pendens when evaluating a transaction. A recent combined case heard before the Supreme Court has begun to shed doubt on this previous certainty. If the Supreme Court were to decide that actual knowledge of the action in the lis pendens denied a purchaser the ability to rely on an expungement, this would have the practical effect of removing any ability of the title insurance industry to rely on an expungement, as each case would become a fact issue.

In addition, TLTA recently filed an [amicus brief](#) on lis pendens in these two cases combined and heard before the Supreme Court of Texas.

SB 1955 and HB 4086 Filed; Could Affect Lis Pendens Issues

TLTA's outreach has led to new legislation being filed that could impact the role a lis pendens plays in a property sale. The bill [SB 1955](#), authored by Sen. Bryan Hughes, and the bill [HB 4086](#), authored by Rep. John Wray, have been filed. If passed, they could ensure that any expunged lis pendens does not impact the property moving forward.

TLTA will keep you informed about these bills as they progress.

- [Follow SB 1955 online](#) and read the [full text of the bill](#).
- [Follow HB 4086 online](#) and read the [full text of the bill](#).

Amicus Letter Filed With Supreme Court of Texas

In a letter to the TLTA Board of Directors, Aaron Day, director of government affairs and counsel for TLTA, wrote,

In 2009, the Legislature adopted a process whereby a lis pendens could be expunged. A recent case before the Texas Supreme Court, could result in a very narrow interpretation of how that statute might be used and relied upon by the title industry.

Although this case has been favorably decided by the lower courts, there was a strong dissent at the appellate level which if adopted by the Supreme Court could be problematic for the title industry. Petitioner to the Supreme Court narrowly interprets this statute and argues that only actual or constructive notice arising solely from the notice of lis pendens or from information directly derived from reading that notice is eliminated as a result of an expungement. Thus, any subsequent purchaser who learned of the claims regarding the property through direct knowledge of the underlying proceeding, as opposed to merely knowledge of the lis pendens, would not be entitled to bona fide purchaser status under § 13.004(b).

This interpretation is wholly incompatible with the need for uniform standards regarding the status of title because it requires an individual and fact-intensive analysis of whether a purchaser learned of the lawsuit, and if so, how. As explained by the Court of Appeals, “[u]nder this interpretation, whether an expungement can remove the cloud of a lis pendens does not turn on whether the party encumbering the real property can demonstrate a probable right of recovery on an underlying real-property claim, but instead on details about exactly how the purchaser seeking to rely on an expungement learns of the underlying claim.” 469 S.W.3d 173, 184. Consequently, a title insurer could rely on the existence of an expungement order in the chain of title to determine whether a subsequent purchaser could take title to real property without regard to any existing litigation over the property. Title examiners would then be forced to engage in fact-intensive analyses of a purchaser or lender’s knowledge (or knowledge that could be imputed to a purchaser or lender) of pending litigation. Such a task is at odds with the certainty intended to be created through the Texas real property records and destroys the goal of providing purchasers with secure title.

TLTA submitted the [amicus letter](#) on Wednesday, March 8. We will publish updates on these cases as they become available.

Past Legislative Updates

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