



## ATTORNEY GENERAL OF TEXAS GREG ABBOTT

### Wiping Out Fraudulent Liens

**Thursday, September 1, 2005**

Recently, my office has seen an upswing in the use of fraudulent debt claims to harass Texas public servants. A bogus claim, whether filed as a lien in the county clerk's property records or as a Uniform Commercial Code (UCC) financing statement at the Secretary of State, can cause serious financial difficulties for the target of the harassment.

These kinds of tactics were used in the 1990s by the Republic of Texas, a separatist group that filed hundreds of frivolous liens against government officials. Inmates often try this, targeting the prosecutors who helped put them in jail. For others, it is simply a way to retaliate against a police officer who gave them a traffic ticket.

This kind of activity will not be tolerated. I firmly believe public servants should be able to vigorously perform their duties without fearing that their property will be subject to illegal and retaliatory liens placed by people who are unhappy with a decision of a court or public agency.

My office is currently prosecuting a Dallas man who filed bogus liens against an array of public officials - from the governor and secretary of state to a justice of the peace and the local district attorney - for allegedly interfering in his business affairs.

The first sign of financial harassment is often an affidavit, letter or notice that purports to create a debt if you do not take some specific action. If you receive such a document, have it reviewed by your agency's attorney or the appropriate city, county or district attorney.

Unexpected problems obtaining credit or transferring property may also be a warning sign. It is a good idea for public officials and employees to check their credit reports regularly. You can obtain a free copy of your credit report from [www.annualcreditreport.com](http://www.annualcreditreport.com). If you discover any attempted identity theft or unauthorized financial activity, ask your agency's attorney to review it, as it may prove to be connected to an act taken in your official capacity.

#### REVIEW OF LIENS

Similarly, if you believe a retaliatory lien or claim has been filed against you because of actions taken in your official capacity, ask your agency's attorney or general counsel to review the document. Also, notify the prosecutor with appropriate jurisdiction.

Under a new state law, SB 1589, a county clerk may delay recording a suspicious lien pending review by the county or district attorney. The clerk may also request additional documentation in support of the lien, such as a contract or other document bearing the alleged debtor's signature. Similarly, the Secretary of State's Office may request additional documentation on UCC financing statements submitted for recording, and may ask the Attorney General's Office for assistance in determining their validity. The law took effect September 1, 2005.

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**REMEDIES***Revised:*

There are several civil and criminal remedies available when someone files a bogus lien. Under Chapter 12 of the Texas Civil Practice and Remedies Code, a claim for civil damages may be filed by the person harmed by the fraudulent lien. The suit may be filed in any district court in the county where the lien was filed or where real property subject to the lien is located. The victim may file suit on his or her own behalf, with or without an attorney. In the case of a government employee, the attorney for the employee's agency may file suit. The statute of limitations on a suit for damages is four years.

In addition, Penal Code Section 37.101 makes it an offense to knowingly file a UCC financing statement that is forged, groundless or contains a material false statement. This offense is a Class A misdemeanor or 3rd degree felony, depending on the offender's prior criminal history and whether intent to defraud can be shown. Charges under this section may be filed by the appropriate county or district attorney at the request of the victim.

Finally, under Penal Code Section 36.06, it is a 3rd degree felony to file a fraudulent financing statement against a public servant in retaliation for performance of their duties. This offense is punishable by two to ten years incarceration and up to a \$10,000 fine.

**REMOVAL**

Fraudulent liens can be removed by filing a Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim with the appropriate district court. This can be done using standard forms given in Sections 51.902 and 51.903 of the Texas Government Code. You can access these forms in the Texas Statutes section of the Legislature's website, at [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

To remove a lien, you will need to file: 1) the Motion for Judicial Review; and 2) an affidavit that describes any business relationship between yourself and the purported lien holder/secured party and that denies participation in any contract, agreement or instrument that would create a debt between you and the person who filed the lien. The documents that claim to create a lien should be attached to the affidavit. You are not required to give notice to the alleged "secured party."

After reviewing the documents filed by the alleged lien holder, the court may sign an order declaring that they in fact do not create a valid lien or debt under state or federal law. You should request certified copies of the motion, affidavit and order from the district clerk and file them with the UCC filings section of the Secretary of State's Office. If the bogus lien was also filed in the county clerk's real property records, certified copies of the motion, affidavit and order must be filed there as well. There is a four-year statute of limitations on Motions for Judicial Review.

**ASSISTANCE**

I have created a new section in our Law Enforcement Defense Division to assist public servants who have been subjected to fraudulent liens and claims. The fraudulent lien section will initiate proceedings to remove fraudulent liens filed against state officials and employees, and take appropriate criminal or civil action against the filer.

To assist local officials and employees, the section can answer specific questions about removing bogus liens, research and document the liens, and refer them to local prosecutors for further action. You can contact this section by calling (512) 463-2080.



Greg Abbott  
Attorney General of Texas