

By: Davis of Harris

H.B. No. 3419

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedural and technical corrections and clarification
3 of the Property Tax Code, procedures for the seizure of property,
4 and distribution of ad valorem tax sale proceeds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 33.91, Tax Code, is amended by amending
7 Subsection (a) and adding Subsection (c) to read as follows:

8 (a) After notice has been provided to a person, the person's
9 real property, whether improved or unimproved, is subject to
10 seizure by a municipality for the payment of delinquent ad valorem
11 taxes, penalties, and interest the person owes on the property and
12 the amount secured by a municipal health or safety lien on the
13 property if:

14 (1) the property:

15 (A) is in a municipality;

16 (B) is less than one acre; and

17 (C) has been abandoned [~~unused, and vacant~~] for
18 at least one year;

19 (2) the taxes on the property are delinquent for:

20 (A) each of the preceding five years; or

21 (B) each of the preceding three years if a lien on
22 the property has been created on the property in favor of the
23 municipality for the cost of remedying a health or safety hazard on
24 the property; and

1 (3) the tax collector of the municipality determines
2 that seizure of the property under this subchapter for the payment
3 of the delinquent taxes, penalties, and interest, and of a
4 municipal health and safety lien on the property, would be in the
5 best interest of the municipality and the other taxing units after
6 determining that the sum of all outstanding tax and municipal
7 claims against the property plus the estimated costs under Section
8 33.48 of a standard judicial foreclosure exceed the anticipated
9 proceeds from a tax sale.

10 (c) For purposes of this section, a property is presumed to
11 have been abandoned for at least one year if, during that period,
12 the property has remained vacant and a lawful act of ownership of
13 the property has not been exercised. The tax collector of a
14 municipality may rely on the affidavit of any competent person with
15 personal knowledge of the facts in determining whether a property
16 has been abandoned or vacant. For purposes of this subsection:

17 (1) property is considered vacant if there is an
18 absence of any activity by the owner, a tenant, or a licensee
19 related to residency, work, trade, business, leisure, or
20 recreation; and

21 (2) "lawful act of ownership" includes mowing or
22 cutting grass or weeds, repairing or demolishing a structure or
23 fence, removing debris, or other form of property upkeep or
24 maintenance performed by or at the request of the owner of the
25 property.

26 SECTION 2. Section 33.911, Tax Code, is amended by amending
27 Subsection (a) and adding Subsection (c) to read as follows:

1 (a) After notice has been provided to a person, the person's
2 real property, whether improved or unimproved, is subject to
3 seizure by a county for the payment of delinquent ad valorem taxes,
4 penalties, and interest the person owes on the property if:

5 (1) the property:

6 (A) is in the county;

7 (B) is not in a municipality; and

8 (C) has been abandoned [~~, unused, and vacant~~] for
9 at least one year;

10 (2) the taxes on the property are delinquent for each
11 of the preceding five years; and

12 (3) the county tax assessor-collector determines that
13 seizure of the property under this subchapter for the payment of the
14 delinquent taxes, penalties, and interest would be in the best
15 interest of the county and the other taxing units after determining
16 that the sum of all outstanding tax and county claims against the
17 property plus the estimated costs under Section 33.48 of a standard
18 judicial foreclosure exceed the anticipated proceeds from a tax
19 sale.

20 (c) For purposes of this section, a property is presumed to
21 have been abandoned for at least one year if, during that period,
22 the property has remained vacant and a lawful act of ownership of
23 the property has not been exercised. The tax collector of a county
24 may rely on the affidavit of any competent person with personal
25 knowledge of the facts in determining whether a property has been
26 abandoned or vacant. For purposes of this subsection:

27 (1) property is considered vacant if there is an

1 absence of any activity by the owner, a tenant, or a licensee
2 related to residency, work, trade, business, leisure, or
3 recreation; and

4 (2) "lawful act of ownership" includes mowing or
5 cutting grass or weeds, repairing or demolishing a structure or
6 fence, removing debris, or other form of property upkeep or
7 maintenance performed by or at the request of the owner of the
8 property.

9 SECTION 3. Section 33.912, Tax Code, is amended to read as
10 follows:

11 Sec. 33.912. NOTICE. (a) A person is considered to have
12 been provided the notice required by Sections 33.91 and 33.911 if by
13 affidavit or otherwise the collector shows that the assessor or
14 collector for the municipality or county mailed the person each
15 bill for municipal or county taxes required to be sent the person by
16 Section 31.01:

17 (1) in each of the five preceding years, if the taxes
18 on the property are delinquent for each of those years; or

19 (2) in each of the three preceding years, if:

20 (A) the taxes on the property are delinquent for
21 each of those years; and

22 (B) a lien on the property has been created on the
23 property in favor of the municipality for the cost of remedying a
24 health or safety hazard on the property.

25 (b) If notice under Subsection (a) is not provided, the
26 notice required by Section 33.91 or 33.911 shall be given by the
27 assessor or the collector for the municipality or county, as

1 applicable, by:

2 (1) serving, in the manner provided by Rule 21a, Texas
3 Rules of Civil Procedure, a true and correct copy of the application
4 for a tax warrant filed under Section 33.92 to each person known, or
5 constructively known through reasonable inquiry, to own or have an
6 interest in the property;

7 (2) publishing in the English language a notice of the
8 assessor's intent to seize the property in a newspaper published in
9 the county in which the property is located if, after exercising
10 reasonable diligence, the assessor or collector cannot determine
11 ownership or the address of the known owners; or

12 (3) if required under Subsection (g), posting in the
13 English language a notice of the assessor's intent to seize the
14 property if, after exercising reasonable diligence, the assessor or
15 collector cannot determine ownership or the address of the known
16 owners.

17 (c) A notice under Subsection (b)(1) shall be provided at
18 the time of filing the application for a tax warrant and must be
19 supported by a certificate of service appearing on the application
20 in the same manner and form as provided by Rule 21a, Texas Rules of
21 Civil Procedure. The notice is sufficient if sent to the person's
22 last known address.

23 (d) A notice by publication or posting under Subsection (b)
24 must substantially comply with this subsection. The notice must:

25 (1) be published or posted at least 10 days but not
26 more than 180 days before the date the application for tax warrant
27 under Section 33.92 is filed;

1 (2) be directed to the owners of the property by name,
2 if known, or, if unknown, to "the unknown owners of the property
3 described below";

4 (3) state that the assessor or collector intends to
5 seize the property as abandoned property and that the property will
6 be sold at public auction without further notice unless all
7 delinquent taxes, penalties, and interest are paid before the sale
8 of the property; and

9 (4) describe the property.

10 (e) A description of the property under Subsection (d)(4) is
11 sufficient if it is the same as the property description appearing
12 on the current tax roll for the county or municipality.

13 (f) A notice by publication or posting under Subsection (b)
14 may relate to more than one property or to multiple owners of
15 property.

16 (g) For publishing a notice under Subsection (b)(2), a
17 newspaper may charge a rate that does not exceed the greater of two
18 cents per word or an amount equal to the published word or line rate
19 of that newspaper for the same class of advertising. If notice
20 cannot be provided under Subsection (b)(1) and there is not a
21 newspaper published in the county where the property is located, or
22 a newspaper that will publish the notice for the rate authorized by
23 this subsection, the assessor shall post the notice in writing in
24 three public places in the county. One of the posted notices must
25 be at the door of the county courthouse. Proof of the posting shall
26 be made by affidavit of the person posting the notice or by the
27 attorney for the assessor or collector.

1 (h) A person is considered to have been provided the notice
2 under Section 33.91 or 33.911 in the manner provided by Subsection
3 (b) if the application for the tax warrant under Section 33.92:

4 (1) contains the certificate of service as required by
5 Subsection (b)(1);

6 (2) is accompanied by an affidavit on behalf of the
7 applicable assessor or collector stating the fact of publication
8 under Subsection (b)(2), with a copy of the published notice
9 attached; or

10 (3) is accompanied by an affidavit of posting on
11 behalf of the applicable assessor or collector under Subsection (g)
12 stating the fact of posting and facts supporting the necessity of
13 posting.

14 (i) A failure to provide, give, or receive a notice provided
15 under this section does not affect the validity of a sale of the
16 seized property or title to the property.

17 (j) The costs of publishing notice under this section are
18 chargeable as costs and payable from the proceeds of the sale of the
19 property.

20 SECTION 4. Section 33.92, Tax Code, is amended by amending
21 Subsection (b) and adding Subsection (d) to read as follows:

22 (b) The court shall issue the tax warrant if by affidavit
23 the collector shows that the property is subject to seizure under
24 Section 33.91 or 33.911. The collector may show that the property
25 has been abandoned or vacant for at least one year, as required by
26 Section 33.91(a)(1)(C) or 33.911(a)(1)(C) by affidavit of any
27 competent person with personal knowledge of the relevant facts.

1 (d) The collector is entitled, on request in the
2 application, to recover attorney's fees in an amount equal to the
3 compensation specified in the contract with the attorney for
4 collection of the delinquent taxes, penalties, and interest on the
5 property if:

6 (1) the taxing unit served by the collector contracts
7 with an attorney under Section 6.30;

8 (2) the existence of the contract and the amount of
9 attorney's fees that equal the compensation specified in the
10 contract are supported by the affidavit of the collector; and

11 (3) the delinquent tax sought to be recovered is not
12 subject to an additional penalty under Section 33.07 or 33.08 at the
13 time the application is filed.

14 SECTION 5. Sections 33.93(a) and (c), Tax Code, are amended
15 to read as follows:

16 (a) A tax warrant shall direct the sheriff or a constable in
17 the county and the collector for the municipality or the county to
18 seize the property described in the warrant, subject to the right of
19 redemption, for the payment of the ad valorem taxes, penalties, and
20 interest owing on the property included in the application, any
21 attorney's fees included in the application as provided by Section
22 33.92(d), the amount secured by a municipal health or safety lien on
23 the property included in the application, and the costs of seizure
24 and sale. The warrant shall direct the person whose property is
25 seized to disclose to a person executing the warrant the name and
26 address if known of any other person having an interest in the
27 property.

1 (c) On issuance of a tax warrant, the collector shall take
2 possession of the property pending its sale by the officer charged
3 with selling the property.

4 SECTION 6. Section 33.94(a), Tax Code, is amended to read as
5 follows:

6 (a) After a seizure of property, the collector for the
7 municipality or county shall make a reasonable inquiry to determine
8 the identity and address of any person, other than the person
9 against whom the tax warrant is issued, having an interest in the
10 property. The collector shall deliver as soon as possible a notice
11 stating the time and place of the sale and briefly describing the
12 property seized to:

13 (1) the person against whom the warrant is issued,
14 including each person to whom notice was provided under Section
15 33.912(a);

16 (2) each person to whom notice was provided under
17 Section 33.912(b)(1); and

18 (3) [~~to~~] any other person the collector determines has
19 an interest in the property if the collector can ascertain the
20 address of the other person.

21 SECTION 7. Section 34.01(a), Tax Code, is amended to read as
22 follows:

23 (a) Property seized under a tax warrant issued under
24 Subchapter E, Chapter 33, or ordered sold pursuant to foreclosure
25 of a tax lien shall be sold by the officer charged with selling the
26 property, unless otherwise directed by the taxing unit that
27 requested the warrant or order of sale or by an authorized agent or

1 attorney for that unit. The sale shall be conducted in the manner
2 similar property is sold under execution except as otherwise
3 provided by this subtitle.

4 SECTION 8. Sections 34.02(b) and (d)-(f), Tax Code, are
5 amended to read as follows:

6 (b) The proceeds shall be applied to:

7 (1) the ~~[all]~~ costs of advertising the tax sale ~~[and~~
8 ~~all original court costs payable to the clerk of the court]~~;

9 (2) any ~~[all]~~ fees ordered by the judgment to be paid
10 ~~[and commissions payable]~~ to an appointed attorney ad litem ~~[the~~
11 ~~officer conducting the sale]~~;

12 (3) the original court costs payable to the clerk of
13 the court ~~[taxes, penalties, and interest that are due under the~~
14 ~~judgment]~~; ~~[and]~~

15 (4) the fees and commissions payable to the officer
16 conducting the sale;

17 (5) the expenses incurred by a taxing unit in
18 determining necessary parties and in procuring necessary legal
19 descriptions of the property if those expenses were awarded to the
20 taxing unit by the judgment under Section 33.48(a)(4);

21 (6) the taxes, penalties, interest, and attorney's
22 fees that are due under the judgment; and

23 (7) any other amount awarded to a taxing unit under the
24 judgment.

25 (d) The ~~[If the sale is pursuant to foreclosure of a tax~~
26 ~~lien, the]~~ officer conducting a [the] sale under Section 33.94 or
27 34.01 shall pay any excess proceeds after payment of all amounts due

1 all participants in the sale as specified by Subsection (b) to the
2 clerk of the court issuing the warrant or order of sale.

3 ~~(e) [If the sale is pursuant to seizure of personal~~
4 ~~property, the officer conducting the sale shall distribute any~~
5 ~~excess of proceeds as provided by law for excess proceeds in the~~
6 ~~case of execution.~~

7 ~~[(f)]~~ In this section, "taxes" includes a charge, fee, or
8 expense that is expressly authorized by Section 32.06 or 32.065.

9 SECTION 9. Section 34.04(c), Tax Code, is amended to read as
10 follows:

11 (c) At the hearing the court shall order that the proceeds
12 be paid according to the following priorities to each party that
13 establishes its claim to the proceeds:

14 (1) to the tax sale purchaser if the tax sale has been
15 adjudged to be void and the purchaser has prevailed in an action
16 against the taxing units under Section 34.07(d) by final judgment;

17 (2) to a taxing unit for any taxes, penalties, or
18 interest that have become due or delinquent on the subject property
19 subsequent to the date of the judgment or that were omitted from the
20 judgment by accident or mistake;

21 (3) to any other lienholder, consensual or otherwise,
22 for the amount due under a lien, in accordance with the priorities
23 established by applicable law;

24 (4) to a taxing unit for any unpaid taxes, penalties,
25 interest, or other amounts adjudged due under the judgment that
26 were not satisfied from the proceeds from the tax sale; and

27 (5) to each former owner of the property, as the

1 interest of each may appear.

2 SECTION 10. Section 34.06(d), Tax Code, is amended to read
3 as follows:

4 (d) After retaining the amount authorized by Subsection
5 (c), the purchasing taxing unit shall then pay all costs of [+

6 ~~[(1) the officer conducting the sale of the property,~~
7 ~~and~~

8 ~~[(2) the clerk of the court in connection with]~~ the
9 suit and the sale of the property in the same manner and in the same
10 order of priority as provided by Sections 34.02(b)(1)-(5).

11 SECTION 11. Section 34.21, Tax Code, is amended by adding
12 Subsection (k) to read as follows:

13 (k) The inclusion of dues and assessments for maintenance
14 paid to a property owners' association within the definition of
15 "costs" under Subsection (g) may not be construed as:

16 (1) a waiver of any immunity to which a taxing unit may
17 be entitled from a suit or from liability for those dues or
18 assessments; or

19 (2) authority for a taxing unit to make an expenditure
20 of public funds in violation of Section 50, 51, or 52(a), Article
21 III, or Section 3, Article XI, Texas Constitution.

22 SECTION 12. This Act takes effect September 1, 2003.

23 SECTION 13. The change in law made by Sections 1, 2, 3, 4, 5,
24 6, and 7 of this Act applies only to an ad valorem tax warrant
25 proceeding in which an application for a tax warrant is filed on or
26 after the effective date of this Act. An ad valorem tax warrant
27 proceeding in which an application was filed before the effective

1 date of this Act is governed by the law as it existed on the date the
2 application was filed, and the former law is continued in effect for
3 that purpose.

4 SECTION 14. The change in law made by Section 8 of this Act
5 applies to a distribution of proceeds from an ad valorem tax sale
6 that is made on or after the effective date of this Act, regardless
7 of whether the tax sale was conducted before, on, or after that
8 date.

9 SECTION 15. The change in law made by Section 9 of this Act
10 applies to any cause of action that is pending on the effective date
11 of this Act or brought on or after that date.

12 SECTION 16. The changes in law made by Section 10 of this
13 Act apply to a distribution of the proceeds of a resale of property
14 made on or after the effective date of this Act, regardless of
15 whether the resale was conducted before, on, or after that date.