

AN ACT

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

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

SECTION 1. Section 33.25, Tax Code, is amended to read as follows:

Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD; DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by Subsection (c), after]~~ a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and the sale of the property shall be conducted:

(1) in a county other than a county to which

1 Subdivision (2) applies, by the peace officer in the manner  
2 required for the sale under execution of personal property; or  
3 (2) in a county having a population of three million or  
4 more:

5 (A) by the peace officer or collector, as  
6 specified in the warrant, in the manner required for the sale under  
7 execution of personal property; or

8 (B) under an agreement authorized by Subsection  
9 (b).

10 (b) The commissioners court of a county having a population  
11 of three million or more by official action may authorize a peace  
12 officer or the collector for the county charged with selling  
13 property under this subchapter by public auction to enter into an  
14 agreement with a person who holds an auctioneer's license to  
15 advertise the auction sale of the property and to conduct the  
16 auction sale of the property. The agreement may provide for on-line  
17 bidding and sale.

18 (c) The commissioners court of a county that authorizes a  
19 peace officer or the collector for the county to enter into an  
20 agreement under Subsection (b) may by official action authorize the  
21 peace officer or collector to enter into an agreement with a service  
22 provider to advertise the auction and to conduct the auction sale of  
23 the property or to accept bids during the auction sale of the  
24 property under Subsection (b) using the Internet.

25 (d) The terms of an agreement entered into under Subsection  
26 (b) or (c) must be approved in writing by the collector for each  
27 taxing unit entitled to receive proceeds from the sale of the

1 property. An agreement entered into under Subsection (b) or (c) is  
2 presumed to be commercially reasonable, and the presumption may not  
3 be rebutted by any person.

4 (e) Failure to send or receive a ~~the~~ notice required  
5 ~~provided~~ by this section does not affect the validity of the sale  
6 or title to the seized property.

7 (f) The proceeds of a sale of property under this section  
8 shall be applied to:

9 (1) any compensation owed to or any expense advanced  
10 by the licensed auctioneer under an agreement entered into under  
11 Subsection (b) or a service provider under an agreement entered  
12 into under Subsection (c);

13 (2) all usual costs, expenses, and fees of the seizure  
14 and sale, payable to the peace officer conducting the sale;

15 (3) all additional expenses incurred in advertising  
16 the sale or in removing, storing, preserving, or safeguarding the  
17 seized property pending its sale;

18 (4) all usual court costs payable to the clerk of the  
19 court that issued the tax warrant; and

20 (5) taxes, penalties, and interest included in the  
21 application for warrant.

22 (g) The peace officer or licensed auctioneer conducting the  
23 sale shall pay all proceeds from the sale to the collector  
24 designated in the tax warrant for distribution as required by  
25 Subsection (f).

26 (h) ~~(e)~~ After a seizure of personal property defined by  
27 Sections 33.21(d)(2)-(5), the collector shall apply the seized

1 property toward the payment of the taxes, penalties, and interest  
2 included in the application for warrant and all costs of the seizure  
3 as required by Subsection (f).

4 SECTION 2. Section 33.91, Tax Code, is amended by amending  
5 Subsection (a) and adding Subsection (c) to read as follows:

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

12 (1) the property:

13 (A) is in a municipality;

14 (B) is less than one acre; and

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

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

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

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

23 (3) the tax collector of the municipality determines  
24 that seizure of the property under this subchapter for the payment  
25 of the delinquent taxes, penalties, and interest, and of a  
26 municipal health and safety lien on the property, would be in the  
27 best interest of the municipality and the other taxing units after

1 determining that the sum of all outstanding tax and municipal  
2 claims against the property plus the estimated costs under Section  
3 33.48 of a standard judicial foreclosure exceed the anticipated  
4 proceeds from a tax sale.

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

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

16 (2) "lawful act of ownership" includes mowing or  
17 cutting grass or weeds, repairing or demolishing a structure or  
18 fence, removing debris, or other form of property upkeep or  
19 maintenance performed by or at the request of the owner of the  
20 property.

21 SECTION 3. Section 33.911, Tax Code, is amended by amending  
22 Subsection (a) and adding Subsection (c) to read as follows:

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

27 (1) the property:

1 (A) is in the county;  
2 (B) is not in a municipality; and  
3 (C) has been abandoned [~~, unused, and vacant~~] for  
4 at least one year;

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

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

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

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

26 (2) "lawful act of ownership" includes mowing or  
27 cutting grass or weeds, repairing or demolishing a structure or

1 fence, removing debris, or other form of property upkeep or  
2 maintenance performed by or at the request of the owner of the  
3 property.

4 SECTION 4. Section 33.912, Tax Code, is amended to read as  
5 follows:

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

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

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

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

17 (B) a lien on the property has been created on the  
18 property in favor of the municipality for the cost of remedying a  
19 health or safety hazard on the property.

20 (b) If notice under Subsection (a) is not provided, the  
21 notice required by Section 33.91 or 33.911 shall be given by the  
22 assessor or the collector for the municipality or county, as  
23 applicable, by:

24 (1) serving, in the manner provided by Rule 21a, Texas  
25 Rules of Civil Procedure, a true and correct copy of the application  
26 for a tax warrant filed under Section 33.92 to each person known, or  
27 constructively known through reasonable inquiry, to own or have an

1 interest in the property;

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

7 (3) if required under Subsection (g), posting in the  
8 English language a notice of the assessor's intent to seize the  
9 property if, after exercising reasonable diligence, the assessor or  
10 collector cannot determine ownership or the address of the known  
11 owners.

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

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

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

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

26 (3) state that the assessor or collector intends to  
27 seize the property as abandoned property and that the property will



1 be sold at public auction without further notice unless all  
2 delinquent taxes, penalties, and interest are paid before the sale  
3 of the property; and

4 (4) describe the property.

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

8 (f) A notice by publication or posting under Subsection (b)  
9 may relate to more than one property or to multiple owners of  
10 property.

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

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

26 (1) contains the certificate of service as required by  
27 Subsection (b)(1);

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

5           (3) is accompanied by an affidavit of posting on  
6 behalf of the applicable assessor or collector under Subsection (g)  
7 stating the fact of posting and facts supporting the necessity of  
8 posting.

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

12           (j) The costs of publishing notice under this section are  
13 chargeable as costs and payable from the proceeds of the sale of the  
14 property.

15           SECTION 5. Section 33.92, Tax Code, is amended by amending  
16 Subsection (b) and adding Subsection (d) to read as follows:

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

23           (d) The collector is entitled, on request in the  
24 application, to recover attorney's fees in an amount equal to the  
25 compensation specified in the contract with the attorney for  
26 collection of the delinquent taxes, penalties, and interest on the  
27 property if:

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

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

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

9           SECTION 6. Sections 33.93(a) and (c), Tax Code, are amended  
10 to read as follows:

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

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

26           SECTION 7. Section 33.94(a), Tax Code, is amended to read as  
27 follows:

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

8 (1) the person against whom the warrant is issued,  
9 including each person to whom notice was provided under Section  
10 33.912(a);

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

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

16 SECTION 8. Sections 34.01(a) and (r), Tax Code, are amended  
17 to read as follows:

18 (a) Real property [~~Property~~] seized under a tax warrant  
19 issued under Subchapter E, Chapter 33, or ordered sold pursuant to  
20 foreclosure of a tax lien shall be sold by the officer charged with  
21 selling the property, unless otherwise directed by the taxing unit  
22 that requested the warrant or order of sale or by an authorized  
23 agent or attorney for that unit. The sale shall be conducted in the  
24 manner similar property is sold under execution except as otherwise  
25 provided by this subtitle.

26 (r) Except as provided by this subsection, a [~~A~~] sale of  
27 real property under this section must take place at the county

1 courthouse in the county in which the land is located. The  
2 commissioners court of the county may designate an ~~the~~ area in the  
3 county courthouse or another location in the county where sales  
4 under this section must take place and shall record any designated  
5 area or other location in the real property records of the county.  
6 If the commissioners court designates an area in the courthouse or  
7 another location in the county for sales, a sale must occur in that  
8 area or at that location. If the commissioners court does not  
9 designate an area in the courthouse or another location in the  
10 county for sales, a sale must occur in the same area in the  
11 courthouse that is designated by the commissioners court for the  
12 sale of real property under Section 51.002, Property Code.

13 SECTION 9. Sections 34.02(b) and (d)-(f), Tax Code, are  
14 amended to read as follows:

15 (b) The proceeds shall be applied to:

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

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

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

24 (4) the fees and commissions payable to the officer  
25 conducting the sale;

26 (5) the expenses incurred by a taxing unit in  
27 determining necessary parties and in procuring necessary legal

1 descriptions of the property if those expenses were awarded to the  
2 taxing unit by the judgment under Section 33.48(a)(4);

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

5 (7) any other amount awarded to a taxing unit under the  
6 judgment.

7 (d) ~~The~~ [~~If the sale is pursuant to foreclosure of a tax~~  
8 ~~lien, the~~] officer conducting a [~~the~~] sale under Section 33.94 or  
9 34.01 shall pay any excess proceeds after payment of all amounts due  
10 all participants in the sale as specified by Subsection (b) to the  
11 clerk of the court issuing the warrant or order of sale.

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

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

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

20 (c) At the hearing the court shall order that the proceeds  
21 be paid according to the following priorities to each party that  
22 establishes its claim to the proceeds:

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

26 (2) to a taxing unit for any taxes, penalties, or  
27 interest that have become due or delinquent on the subject property

1 subsequent to the date of the judgment or that were omitted from the  
2 judgment by accident or mistake;

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

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

9 (5) to each former owner of the property, as the  
10 interest of each may appear.

11 SECTION 11. Section 34.06(d), Tax Code, is amended to read  
12 as follows:

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

15 [~~(1) the officer conducting the sale of the property;~~  
16 ~~and~~

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

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

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

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

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

4           SECTION 13. This Act takes effect immediately if it  
5 receives a vote of two-thirds of all the members elected to each  
6 house, as provided by Section 39, Article III, Texas Constitution.  
7 If this Act does not receive the vote necessary for immediate  
8 effect, this Act takes effect September 1, 2003.

9           SECTION 14. The change in law made by Section 1 of this Act  
10 applies only to the sale of tax foreclosed property pursuant to an  
11 order of sale issued on or after the effective date of this Act.

12           SECTION 15. The changes in law made by Sections 2, 3, 4, 5,  
13 6, 7, and 8 of this Act apply only to an ad valorem tax proceeding  
14 that is commenced on or after the effective date of this Act. An ad  
15 valorem tax proceeding that was commenced before the effective date  
16 of this Act is governed by the law as it existed on the date the  
17 proceeding was commenced, and the former law is continued in effect  
18 for that purpose.

19           SECTION 16. The change in law made by Section 9 of this Act  
20 applies to a distribution of proceeds from an ad valorem tax sale  
21 that is made on or after the effective date of this Act, regardless  
22 of whether the tax sale was conducted before, on, or after that  
23 date.

24           SECTION 17. The change in law made by Section 10 of this Act  
25 applies to any cause of action that is pending on the effective date  
26 of this Act or brought on or after that date.

27           SECTION 18. The changes in law made by Section 11 of this



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1 Act apply to a distribution of the proceeds of a resale of property  
2 made on or after the effective date of this Act, regardless of  
3 whether the resale was conducted before, on, or after that date.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3419 was passed by the House on May 9, 2003, by the following vote: Yeas 128, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3419 on May 30, 2003, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3419 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor