

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 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) Under this section, a property is presumed to have been
11 abandoned for at least one year if, during that period, the property
12 has remained vacant and no lawful act of ownership of the property
13 has been exercised. As used in this section, "vacant" means the
14 absence of any activity by the property owners, tenants, or
15 licensees related to residency, work, trade, business, leisure or
16 recreation. As used in this section, "lawful act of ownership"
17 includes mowing, cutting of weeds, repairing or demolishing a
18 structure or fence, removing debris, and other forms of property
19 maintenance performed by the owners or at their request. Vacancy
20 and the absence of any lawful act of ownership may be shown by
21 affidavit of any competent person with personal knowledge of the
22 facts.

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

25 (a) After notice has been provided to a person, the person's
26 real property, whether improved or unimproved, is subject to
27 seizure by a county for the payment of delinquent ad valorem taxes,

1 penalties, and interest the person owes on the property if:

2 (1) the property:

3 (A) is in the county;

4 (B) is not in a municipality; and

5 (C) has been abandoned [~~7, unused, and vacant~~] for
6 at least one year;

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

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

16 (c) Under this section, a property is presumed to have been
17 abandoned for at least one year if, during that period, the property
18 has remained vacant and no lawful act of ownership of the property
19 has been exercised. As used in this section, "vacant" means the
20 absence of any activity by the property owners, tenants, or
21 licensees related to residency, work, trade, business, leisure or
22 recreation. As used in this section, "lawful act of ownership"
23 includes mowing, cutting of weeds, repairing or demolishing a
24 structure or fence, removing debris, and other forms of property
25 maintenance performed by the owners or at their request. Vacancy
26 and the absence of any lawful act of ownership may be shown by
27 affidavit of any competent person with personal knowledge of the

1 facts.

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

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

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

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

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

14 (B) a lien on the property has been created on the
15 property in favor of the municipality for the cost of remedying a
16 health or safety hazard on the property.

17 (b) If the notice provided by Subsection (a) has not been
18 provided, notice shall be given by the assessor or by the attorney
19 for the taxing unit by:

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

25 (2) publishing in the English language a notice of the
26 assessor's intent to seize the property in some newspaper published
27 in the county in which the property is situated if, after exercising

1 reasonable diligence, the assessor cannot determine ownership or
2 the address of the known owners; or

3 (3) posting in the English language a notice of the
4 assessor's intent to seize the property as provided by Subsection
5 (g) if, after exercising reasonable diligence, the assessor cannot
6 determine ownership or the address of the known owners.

7 (c) A notice under subdivision (1) of Subsection (b) shall
8 be provided at the time of filing the application, and must be
9 supported by a certificate of service appearing on the application
10 in the same manner and form as provided by Rule 21a, Texas Rules of
11 Civil Procedure. The notice is sufficient if sent to the person's
12 last known address.

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

15 (1) be published or, if applicable, posted at least 10
16 and not more than 180 days before the date of filing the application
17 for tax warrant under Section 33.92;

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

20 (3) state that the assessor intends to seize the
21 property as abandoned property and that the property will be sold at
22 public auction without further notice unless all delinquent taxes,
23 penalties and interest are paid prior to its sale; and

24 (4) describe the property.

25 (e) A description of the property under subdivision (4) of
26 Subsection (d) is sufficient if it is the same property description
27 that appears on the current tax roll.

1 (f) A notice by publication or posting under Subsection (b)
2 may pertain to multiple properties and multiple owners in a single
3 notice.

4 (g) For publishing a notice under subdivision (2) of
5 Subsection (b), a newspaper may charge a rate that does not exceed
6 the greater of two cents per word or an amount equal to the
7 published word or line rate of that newspaper for the same class of
8 advertising. If there is not a newspaper published in the county
9 where the property is situated, or a newspaper that will publish the
10 notice for the rate authorized by this subsection, chargeable as
11 costs and payable upon the sale of the property, the assessor shall
12 post the notice in writing in three public places in the county. One
13 of the posted notices must be at the door of the county courthouse.
14 Proof of the posting shall be made by affidavit of the person
15 posting it or by the attorney for the applicant.

16 (h) A person is considered to have been provided the notice
17 required by Sections 33.91 and 33.911 and in the manner provided by
18 Subsection (b) of this section if the application for tax warrant:

19 (1) contains the certificate of service as provided by
20 subdivision (1) of Subsection (b);

21 (2) is accompanied by the affidavit of the applicant
22 stating the fact of publication under subdivision (2) of Subsection
23 (b), with a copy of the published notice attached thereto; or

24 (3) is accompanied by the affidavit of posting
25 authorized by Subsection (g) stating the fact of posting and facts
26 supporting the necessity of posting.

27 (i) A failure to receive a notice under this section does

1 not affect the validity of a sale of the seized property or title to
2 the property.

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

5 (b) The court shall issue the tax warrant if by affidavit
6 the collector shows that the property is subject to seizure under
7 Section 33.91 or 33.911. A showing that the property has been
8 abandoned for at least one year, as an element required under
9 Sections 33.91(a)(1)(C) and 33.911(a)(1)(C), may be made by
10 affidavit of any competent person with personal knowledge of the
11 relevant facts.

12 (d) The collector is entitled, upon request in the
13 application, to recover attorney's fees in an amount equal to the
14 compensation specified in the contract with the attorney if:

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

17 (2) the existence of the contract and the amount of
18 attorney's fees that equal the compensation specified in the
19 contract are supported by the affidavit of the applicant; and

20 (3) the tax sought to be recovered is not subject to
21 the additional penalty under Section 33.07 or 33.08 at the time the
22 application is filed.

23 SECTION 5. Subsections (a) and (c) of Section 33.93, Tax
24 Code, is amended to read as follows:

25 (a) A tax warrant shall direct the sheriff or a constable in
26 the county and the collector for the municipality or the county to
27 seize the property described in the warrant, subject to the right of

1 redemption, for the payment of the ad valorem taxes, penalties,
2 [~~and~~] interest, and attorney's fees owing on the property included
3 in the application, the amount secured by a municipal health or
4 safety lien on the property included in the application, and the
5 costs of seizure and sale. The warrant shall direct the person
6 whose property is seized to disclose to a person executing the
7 warrant the name and address if known of any other person having an
8 interest in the property.

9 (c) On issuance of a tax warrant, the collector shall take
10 possession of the property pending its sale by the sheriff or
11 constable.

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

14 (a) After a seizure of property preceded by notice under
15 Subsection (a) of Section 33.912, the collector for the
16 municipality or county shall make a reasonable inquiry to determine
17 the identity and address of any person, other than the person
18 against whom the tax warrant is issued, having an interest in the
19 property. The collector shall deliver as soon as possible a notice
20 stating the time and place of the sale and briefly describing the
21 property seized to:

22 (1) the person against whom the warrant is issued,
23 including those persons who received notice under Section
24 33.912(a);

25 (2) those persons who received notice under Section
26 33.912(b)(1); and

27 (3) [~~to~~] any other person the collector determines has

1 an interest in the property if the collector can ascertain the
2 address of the other person.

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

5 (a) Property seized under a tax warrant pursuant to
6 Subchapter E, Chapter 33 or ordered sold pursuant to foreclosure of
7 a tax lien shall be sold by the officer charged with selling the
8 property, unless otherwise directed by the taxing unit that
9 requested the warrant or order of sale or by an authorized agent or
10 attorney for that unit. The sale shall be conducted in the manner
11 similar property is sold under execution except as otherwise
12 provided by this subtitle.

13 SECTION 8. Subsections (b), (d), (e), and (f), of Section
14 34.02, Tax Code, are amended to read as follows:

15 (b) The proceeds shall be applied to:

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

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

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

24 (4) ~~[any other amount awarded to a taxing unit under~~
25 ~~the judgment]~~ the fees and commissions payable to the officer
26 conducting the sale[-];

27 (5) the expenses incurred by a taxing unit in

1 determining necessary parties and in procuring necessary legal
2 descriptions of the property if those expenses were awarded to the
3 taxing unit under the judgment pursuant to Section 33.48(a)(4);

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

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

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

13 (e) ~~[If the sale is pursuant to seizure of personal~~
14 ~~property, the officer conducting the sale shall distribute any~~
15 ~~excess of proceeds as provided by law for excess proceeds in the~~
16 ~~case of execution]~~ In this section, "taxes" includes a charge, fee,
17 or expense that is expressly authorized by Section 32.06 or 32.065.

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

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

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

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

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

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

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

11 (5) to each former owner of the property, as their
12 interests may appear.

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

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

17 ~~[(1) the officer conducting the sale of the property,~~
18 ~~and]~~

19 ~~[(2) the clerk of the court in connection with the suit~~
20 ~~and the sale of the property]~~

21 the suit and sale in the same manner and in the same order of
22 priority as provided by subdivisions (1)-(5) of Section 34.02(b).

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

25 (k) The inclusion of dues and assessments for maintenance
26 owing to a property owners' association under subsection (g) as a
27 form of "costs" shall not be construed as:

1 (1) a waiver of any immunity, to which a taxing unit
2 may be entitled, from suit or from liability for such dues or
3 assessments, or

4 (2) authority for a taxing unit to make an expenditure
5 of public funds in violation of Section 50, Article III, Texas
6 Constitution, Section 51, Article III, Texas Constitution, Section
7 52(a), Article III, Texas Constitution, or Section 3, Article XI,
8 Texas Constitution.

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

10 SECTION 13. The changes in law made by Sections 1, 2, 3, 4,
11 5, and 6 of this Act apply to tax warrant proceedings in which an
12 application for tax warrant was filed on or after the effective date
13 of this Act. Tax warrant proceedings commenced by application
14 before the effective date of this Act are governed by the law as it
15 existed immediately before the effective date of this Act, and that
16 law is continued in effect for that purpose.

17 SECTION 14. The changes in law made by Section 8 of this Act
18 apply to distributions of tax sale proceeds made on or after the
19 effective date of this Act, regardless of whether the tax sale was
20 conducted before, on, or after that date.

21 SECTION 15. The changes in law made by Section 9 of this Act
22 apply to all causes of action pending on the effective date of this
23 Act, or brought after that date.

24 SECTION 16. The changes in law made by Section 10 of this
25 Act apply to distributions of tax resale proceeds made on or after
26 the effective date of this Act, regardless of whether the tax resale
27 was conducted before, on, or after that date.

1 SECTION 17. The importance of this legislation and the
2 crowded condition of the calendars of both houses create an
3 emergency and an imperative public necessity that the
4 constitutional rule requiring bills to be read on three several
5 days in each house be suspended, and this rule is hereby suspended.