

1-1 By: Davis of Harris (Senate Sponsor - Lindsay) H.B. No. 3419
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 13, 2003, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 24, 2003, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3419 By: Gallegos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to procedural and technical corrections and clarification
1-11 of the Property Tax Code, procedures for the seizure and sale of
1-12 property, and distribution of ad valorem tax sale proceeds.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 33.25, Tax Code, is amended to read as
1-15 follows:

1-16 Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD;
1-17 DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by~~
1-18 ~~Subsection (c), after]~~ a seizure of personal property, the
1-19 collector shall make a reasonable inquiry to determine the identity
1-20 and to ascertain the address of any person having an interest in the
1-21 property other than the person against whom the tax warrant is
1-22 issued. The collector shall provide in writing the name and address
1-23 of each other person the collector identifies as having an interest
1-24 in the property to the peace officer charged with executing the
1-25 warrant. The peace officer shall deliver as soon as possible a
1-26 written notice stating the time and place of the sale and briefly
1-27 describing the property seized to the person against whom the
1-28 warrant is issued and to any other person having an interest in the
1-29 property whose name and address the collector provided to the peace
1-30 officer. The posting of the notice and the sale of the property
1-31 shall be conducted:

1-32 (1) in a county other than a county to which
1-33 Subdivision (2) applies, by the peace officer in the manner
1-34 required for the sale under execution of personal property; or
1-35 (2) in a county having a population of three million or

1-36 more:
1-37 (A) by the peace officer or collector, as
1-38 specified in the warrant, in the manner required for the sale under
1-39 execution of personal property; or
1-40 (B) under an agreement authorized by Subsection

1-41 (b).

1-42 (b) The commissioners court of a county having a population
1-43 of three million or more by official action may authorize a peace
1-44 officer or the collector for the county charged with selling
1-45 property under this subchapter by public auction to enter into an
1-46 agreement with a person who holds an auctioneer's license to
1-47 advertise the auction sale of the property and to conduct the
1-48 auction sale of the property. The agreement may provide for on-line
1-49 bidding and sale.

1-50 (c) The commissioners court of a county that authorizes a
1-51 peace officer or the collector for the county to enter into an
1-52 agreement under Subsection (b) may by official action authorize the
1-53 peace officer or collector to enter into an agreement with a service
1-54 provider to advertise the auction and to conduct the auction sale of
1-55 the property or to accept bids during the auction sale of the
1-56 property under Subsection (b) using the Internet.

1-57 (d) The terms of an agreement entered into under Subsection
1-58 (b) or (c) must be approved in writing by the collector for each
1-59 taxing unit entitled to receive proceeds from the sale of the
1-60 property. An agreement entered into under Subsection (b) or (c) is
1-61 presumed to be commercially reasonable, and the presumption may not
1-62 be rebutted by any person.

1-63 (e) Failure to send or receive a ~~the~~ notice required

2-1 ~~[provided]~~ by this section does not affect the validity of the sale
2-2 or title to the seized property.

2-3 (f) The proceeds of a sale of property under this section
2-4 shall be applied to:

2-5 (1) any compensation owed to or any expense advanced
2-6 by the licensed auctioneer under an agreement entered into under
2-7 Subsection (b) or a service provider under an agreement entered
2-8 into under Subsection (c);

2-9 (2) all usual costs, expenses, and fees of the seizure
2-10 and sale, payable to the peace officer conducting the sale;

2-11 (3) all additional expenses incurred in advertising
2-12 the sale or in removing, storing, preserving, or safeguarding the
2-13 seized property pending its sale;

2-14 (4) all usual court costs payable to the clerk of the
2-15 court that issued the tax warrant; and

2-16 (5) taxes, penalties, and interest included in the
2-17 application for warrant.

2-18 (g) The peace officer or licensed auctioneer conducting the
2-19 sale shall pay all proceeds from the sale to the collector
2-20 designated in the tax warrant for distribution as required by
2-21 Subsection (f).

2-22 (h) ~~[(c)]~~ After a seizure of personal property defined by
2-23 Sections 33.21(d)(2)-(5), the collector shall apply the seized
2-24 property toward the payment of the taxes, penalties, and interest
2-25 included in the application for warrant and all costs of the seizure
2-26 as required by Subsection (f).

2-27 SECTION 2. Section 33.91, Tax Code, is amended by amending
2-28 Subsection (a) and adding Subsection (c) to read as follows:

2-29 (a) After notice has been provided to a person, the person's
2-30 real property, whether improved or unimproved, is subject to
2-31 seizure by a municipality for the payment of delinquent ad valorem
2-32 taxes, penalties, and interest the person owes on the property and
2-33 the amount secured by a municipal health or safety lien on the
2-34 property if:

- 2-35 (1) the property:
 - 2-36 (A) is in a municipality;
 - 2-37 (B) is less than one acre; and
 - 2-38 (C) has been abandoned [~~, unused, and vacant~~] for

2-39 at least one year;

- 2-40 (2) the taxes on the property are delinquent for:
 - 2-41 (A) each of the preceding five years; or
 - 2-42 (B) each of the preceding three years if a lien on

2-43 the property has been created on the property in favor of the
2-44 municipality for the cost of remedying a health or safety hazard on
2-45 the property; and

2-46 (3) the tax collector of the municipality determines
2-47 that seizure of the property under this subchapter for the payment
2-48 of the delinquent taxes, penalties, and interest, and of a
2-49 municipal health and safety lien on the property, would be in the
2-50 best interest of the municipality and the other taxing units after
2-51 determining that the sum of all outstanding tax and municipal
2-52 claims against the property plus the estimated costs under Section
2-53 33.48 of a standard judicial foreclosure exceed the anticipated
2-54 proceeds from a tax sale.

2-55 (c) For purposes of this section, a property is presumed to
2-56 have been abandoned for at least one year if, during that period,
2-57 the property has remained vacant and a lawful act of ownership of
2-58 the property has not been exercised. The tax collector of a
2-59 municipality may rely on the affidavit of any competent person with
2-60 personal knowledge of the facts in determining whether a property
2-61 has been abandoned or vacant. For purposes of this subsection:

2-62 (1) property is considered vacant if there is an
2-63 absence of any activity by the owner, a tenant, or a licensee
2-64 related to residency, work, trade, business, leisure, or
2-65 recreation; and

2-66 (2) "lawful act of ownership" includes mowing or
2-67 cutting grass or weeds, repairing or demolishing a structure or
2-68 fence, removing debris, or other form of property upkeep or
2-69 maintenance performed by or at the request of the owner of the

3-1 property.

3-2 SECTION 3. Section 33.911, Tax Code, is amended by amending
3-3 Subsection (a) and adding Subsection (c) to read as follows:

3-4 (a) After notice has been provided to a person, the person's
3-5 real property, whether improved or unimproved, is subject to
3-6 seizure by a county for the payment of delinquent ad valorem taxes,
3-7 penalties, and interest the person owes on the property if:

3-8 (1) the property:

3-9 (A) is in the county;

3-10 (B) is not in a municipality; and

3-11 (C) has been abandoned [~~, unused, and vacant~~] for
3-12 at least one year;

3-13 (2) the taxes on the property are delinquent for each
3-14 of the preceding five years; and

3-15 (3) the county tax assessor-collector determines that
3-16 seizure of the property under this subchapter for the payment of the
3-17 delinquent taxes, penalties, and interest would be in the best
3-18 interest of the county and the other taxing units after determining
3-19 that the sum of all outstanding tax and county claims against the
3-20 property plus the estimated costs under Section 33.48 of a standard
3-21 judicial foreclosure exceed the anticipated proceeds from a tax
3-22 sale.

3-23 (c) For purposes of this section, a property is presumed to
3-24 have been abandoned for at least one year if, during that period,
3-25 the property has remained vacant and a lawful act of ownership of
3-26 the property has not been exercised. The tax collector of a county
3-27 may rely on the affidavit of any competent person with personal
3-28 knowledge of the facts in determining whether a property has been
3-29 abandoned or vacant. For purposes of this subsection:

3-30 (1) property is considered vacant if there is an
3-31 absence of any activity by the owner, a tenant, or a licensee
3-32 related to residency, work, trade, business, leisure, or
3-33 recreation; and

3-34 (2) "lawful act of ownership" includes mowing or
3-35 cutting grass or weeds, repairing or demolishing a structure or
3-36 fence, removing debris, or other form of property upkeep or
3-37 maintenance performed by or at the request of the owner of the
3-38 property.

3-39 SECTION 4. Section 33.912, Tax Code, is amended to read as
3-40 follows:

3-41 Sec. 33.912. NOTICE. (a) A person is considered to have
3-42 been provided the notice required by Sections 33.91 and 33.911 if by
3-43 affidavit or otherwise the collector shows that the assessor or
3-44 collector for the municipality or county mailed the person each
3-45 bill for municipal or county taxes required to be sent the person by
3-46 Section 31.01:

3-47 (1) in each of the five preceding years, if the taxes
3-48 on the property are delinquent for each of those years; or

3-49 (2) in each of the three preceding years, if:

3-50 (A) the taxes on the property are delinquent for
3-51 each of those years; and

3-52 (B) a lien on the property has been created on the
3-53 property in favor of the municipality for the cost of remedying a
3-54 health or safety hazard on the property.

3-55 (b) If notice under Subsection (a) is not provided, the
3-56 notice required by Section 33.91 or 33.911 shall be given by the
3-57 assessor or the collector for the municipality or county, as
3-58 applicable, by:

3-59 (1) serving, in the manner provided by Rule 21a, Texas
3-60 Rules of Civil Procedure, a true and correct copy of the application
3-61 for a tax warrant filed under Section 33.92 to each person known, or
3-62 constructively known through reasonable inquiry, to own or have an
3-63 interest in the property;

3-64 (2) publishing in the English language a notice of the
3-65 assessor's intent to seize the property in a newspaper published in
3-66 the county in which the property is located if, after exercising
3-67 reasonable diligence, the assessor or collector cannot determine
3-68 ownership or the address of the known owners; or

3-69 (3) if required under Subsection (g), posting in the

4-1 English language a notice of the assessor's intent to seize the
 4-2 property if, after exercising reasonable diligence, the assessor or
 4-3 collector cannot determine ownership or the address of the known
 4-4 owners.

4-5 (c) A notice under Subsection (b)(1) shall be provided at
 4-6 the time of filing the application for a tax warrant and must be
 4-7 supported by a certificate of service appearing on the application
 4-8 in the same manner and form as provided by Rule 21a, Texas Rules of
 4-9 Civil Procedure. The notice is sufficient if sent to the person's
 4-10 last known address.

4-11 (d) A notice by publication or posting under Subsection (b)
 4-12 must substantially comply with this subsection. The notice must:

4-13 (1) be published or posted at least 10 days but not
 4-14 more than 180 days before the date the application for tax warrant
 4-15 under Section 33.92 is filed;

4-16 (2) be directed to the owners of the property by name,
 4-17 if known, or, if unknown, to "the unknown owners of the property
 4-18 described below";

4-19 (3) state that the assessor or collector intends to
 4-20 seize the property as abandoned property and that the property will
 4-21 be sold at public auction without further notice unless all
 4-22 delinquent taxes, penalties, and interest are paid before the sale
 4-23 of the property; and

4-24 (4) describe the property.

4-25 (e) A description of the property under Subsection (d)(4) is
 4-26 sufficient if it is the same as the property description appearing
 4-27 on the current tax roll for the county or municipality.

4-28 (f) A notice by publication or posting under Subsection (b)
 4-29 may relate to more than one property or to multiple owners of
 4-30 property.

4-31 (g) For publishing a notice under Subsection (b)(2), a
 4-32 newspaper may charge a rate that does not exceed the greater of two
 4-33 cents per word or an amount equal to the published word or line rate
 4-34 of that newspaper for the same class of advertising. If notice
 4-35 cannot be provided under Subsection (b)(1) and there is not a
 4-36 newspaper published in the county where the property is located, or
 4-37 a newspaper that will publish the notice for the rate authorized by
 4-38 this subsection, the assessor shall post the notice in writing in
 4-39 three public places in the county. One of the posted notices must
 4-40 be at the door of the county courthouse. Proof of the posting shall
 4-41 be made by affidavit of the person posting the notice or by the
 4-42 attorney for the assessor or collector.

4-43 (h) A person is considered to have been provided the notice
 4-44 under Section 33.91 or 33.911 in the manner provided by Subsection
 4-45 (b) if the application for the tax warrant under Section 33.92:

4-46 (1) contains the certificate of service as required by
 4-47 Subsection (b)(1);

4-48 (2) is accompanied by an affidavit on behalf of the
 4-49 applicable assessor or collector stating the fact of publication
 4-50 under Subsection (b)(2), with a copy of the published notice
 4-51 attached; or

4-52 (3) is accompanied by an affidavit of posting on
 4-53 behalf of the applicable assessor or collector under Subsection (g)
 4-54 stating the fact of posting and facts supporting the necessity of
 4-55 posting.

4-56 (i) A failure to provide, give, or receive a notice provided
 4-57 under this section does not affect the validity of a sale of the
 4-58 seized property or title to the property.

4-59 (j) The costs of publishing notice under this section are
 4-60 chargeable as costs and payable from the proceeds of the sale of the
 4-61 property.

4-62 SECTION 5. Section 33.92, Tax Code, is amended by amending
 4-63 Subsection (b) and adding Subsection (d) to read as follows:

4-64 (b) The court shall issue the tax warrant if by affidavit
 4-65 the collector shows that the property is subject to seizure under
 4-66 Section 33.91 or 33.911. The collector may show that the property
 4-67 has been abandoned or vacant for at least one year, as required by
 4-68 Section 33.91(a)(1)(C) or 33.911(a)(1)(C) by affidavit of any
 4-69 competent person with personal knowledge of the relevant facts.

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

5-6 (1) the taxing unit served by the collector contracts
 5-7 with an attorney under Section 6.30;

5-8 (2) the existence of the contract and the amount of
 5-9 attorney's fees that equal the compensation specified in the
 5-10 contract are supported by the affidavit of the collector; and

5-11 (3) the delinquent tax sought to be recovered is not
 5-12 subject to an additional penalty under Section 33.07 or 33.08 at the
 5-13 time the application is filed.

5-14 SECTION 6. Sections 33.93(a) and (c), Tax Code, are amended
 5-15 to read as follows:

5-16 (a) A tax warrant shall direct the sheriff or a constable in
 5-17 the county and the collector for the municipality or the county to
 5-18 seize the property described in the warrant, subject to the right of
 5-19 redemption, for the payment of the ad valorem taxes, penalties, and
 5-20 interest owing on the property included in the application, any
 5-21 attorney's fees included in the application as provided by Section
 5-22 33.92(d), the amount secured by a municipal health or safety lien on
 5-23 the property included in the application, and the costs of seizure
 5-24 and sale. The warrant shall direct the person whose property is
 5-25 seized to disclose to a person executing the warrant the name and
 5-26 address if known of any other person having an interest in the
 5-27 property.

5-28 (c) On issuance of a tax warrant, the collector shall take
 5-29 possession of the property pending its sale by the officer charged
 5-30 with selling the property.

5-31 SECTION 7. Section 33.94(a), Tax Code, is amended to read as
 5-32 follows:

5-33 (a) After a seizure of property, the collector for the
 5-34 municipality or county shall make a reasonable inquiry to determine
 5-35 the identity and address of any person, other than the person
 5-36 against whom the tax warrant is issued, having an interest in the
 5-37 property. The collector shall deliver as soon as possible a notice
 5-38 stating the time and place of the sale and briefly describing the
 5-39 property seized to:

5-40 (1) the person against whom the warrant is issued,
 5-41 including each person to whom notice was provided under Section
 5-42 33.912(a);

5-43 (2) each person to whom notice was provided under
 5-44 Section 33.912(b)(1); and

5-45 (3) ~~to~~ any other person the collector determines has
 5-46 an interest in the property if the collector can ascertain the
 5-47 address of the other person.

5-48 SECTION 8. Sections 34.01(a) and (r), Tax Code, are amended
 5-49 to read as follows:

5-50 (a) Real property [~~Property~~] seized under a tax warrant
 5-51 issued under Subchapter E, Chapter 33, or ordered sold pursuant to
 5-52 foreclosure of a tax lien shall be sold by the officer charged with
 5-53 selling the property, unless otherwise directed by the taxing unit
 5-54 that requested the warrant or order of sale or by an authorized
 5-55 agent or attorney for that unit. The sale shall be conducted in the
 5-56 manner similar property is sold under execution except as otherwise
 5-57 provided by this subtitle.

5-58 (r) Except as provided by this subsection, a [A] sale of
 5-59 real property under this section must take place at the county
 5-60 courthouse in the county in which the land is located. The
 5-61 commissioners court of the county may designate an ~~the~~ area in the
 5-62 county courthouse or another location in the county where sales
 5-63 under this section must take place and shall record any designated
 5-64 area or other location in the real property records of the county.
 5-65 If the commissioners court designates an area in the courthouse or
 5-66 another location in the county for sales, a sale must occur in that
 5-67 area or at that location. If the commissioners court does not
 5-68 designate an area in the courthouse or another location in the
 5-69 county for sales, a sale must occur in the same area in the

6-1 courthouse that is designated by the commissioners court for the
6-2 sale of real property under Section 51.002, Property Code.

6-3 SECTION 9. Sections 34.02(b) and (d)-(f), Tax Code, are
6-4 amended to read as follows:

6-5 (b) The proceeds shall be applied to:

6-6 (1) the [all] costs of advertising the tax sale [and
6-7 all original court costs payable to the clerk of the court];

6-8 (2) any [all] fees ordered by the judgment to be paid
6-9 [and commissions payable] to an appointed attorney ad litem [the
6-10 officer conducting the sale];

6-11 (3) the original court costs payable to the clerk of
6-12 the court [taxes, penalties, and interest that are due under the
6-13 judgment]; [and]

6-14 (4) the fees and commissions payable to the officer
6-15 conducting the sale;

6-16 (5) the expenses incurred by a taxing unit in
6-17 determining necessary parties and in procuring necessary legal
6-18 descriptions of the property if those expenses were awarded to the
6-19 taxing unit by the judgment under Section 33.48(a)(4);

6-20 (6) the taxes, penalties, interest, and attorney's
6-21 fees that are due under the judgment; and

6-22 (7) any other amount awarded to a taxing unit under the
6-23 judgment.

6-24 (d) The [If the sale is pursuant to foreclosure of a tax
6-25 lien, the] officer conducting a [the] sale under Section 33.94 or
6-26 34.01 shall pay any excess proceeds after payment of all amounts due
6-27 all participants in the sale as specified by Subsection (b) to the
6-28 clerk of the court issuing the warrant or order of sale.

6-29 (e) [If the sale is pursuant to seizure of personal
6-30 property, the officer conducting the sale shall distribute any
6-31 excess of proceeds as provided by law for excess proceeds in the
6-32 case of execution.

6-33 [~~f~~] In this section, "taxes" includes a charge, fee, or
6-34 expense that is expressly authorized by Section 32.06 or 32.065.

6-35 SECTION 10. Section 34.04(c), Tax Code, is amended to read
6-36 as follows:

6-37 (c) At the hearing the court shall order that the proceeds
6-38 be paid according to the following priorities to each party that
6-39 establishes its claim to the proceeds:

6-40 (1) to the tax sale purchaser if the tax sale has been
6-41 adjudged to be void and the purchaser has prevailed in an action
6-42 against the taxing units under Section 34.07(d) by final judgment;

6-43 (2) to a taxing unit for any taxes, penalties, or
6-44 interest that have become due or delinquent on the subject property
6-45 subsequent to the date of the judgment or that were omitted from the
6-46 judgment by accident or mistake;

6-47 (3) to any other lienholder, consensual or otherwise,
6-48 for the amount due under a lien, in accordance with the priorities
6-49 established by applicable law;

6-50 (4) to a taxing unit for any unpaid taxes, penalties,
6-51 interest, or other amounts adjudged due under the judgment that
6-52 were not satisfied from the proceeds from the tax sale; and

6-53 (5) to each former owner of the property, as the
6-54 interest of each may appear.

6-55 SECTION 11. Section 34.06(d), Tax Code, is amended to read
6-56 as follows:

6-57 (d) After retaining the amount authorized by Subsection
6-58 (c), the purchasing taxing unit shall then pay all costs of [~~+~~

6-59 [~~(1) the officer conducting the sale of the property,~~
6-60 ~~and~~

6-61 [~~(2) the clerk of the court in connection with] the~~
6-62 suit and the sale of the property in the same manner and in the same
6-63 order of priority as provided by Sections 34.02(b)(1)-(5).

6-64 SECTION 12. Section 34.21, Tax Code, is amended by adding
6-65 Subsection (k) to read as follows:

6-66 (k) The inclusion of dues and assessments for maintenance
6-67 paid to a property owners' association within the definition of
6-68 "costs" under Subsection (g) may not be construed as:

6-69 (1) a waiver of any immunity to which a taxing unit may

7-1 be entitled from a suit or from liability for those dues or
7-2 assessments; or

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

7-6 SECTION 13. This Act takes effect immediately if it
7-7 receives a vote of two-thirds of all the members elected to each
7-8 house, as provided by Section 39, Article III, Texas Constitution.
7-9 If this Act does not receive the vote necessary for immediate
7-10 effect, this Act takes effect September 1, 2003.

7-11 SECTION 14. The change in law made by Section 1 of this Act
7-12 applies only to the sale of tax foreclosed property pursuant to an
7-13 order of sale issued on or after the effective date of this Act.

7-14 SECTION 15. The changes in law made by Sections 2, 3, 4, 5,
7-15 6, 7, and 8 of this Act apply only to an ad valorem tax proceeding
7-16 that is commenced on or after the effective date of this Act. An ad
7-17 valorem tax proceeding that was commenced before the effective date
7-18 of this Act is governed by the law as it existed on the date the
7-19 proceeding was commenced, and the former law is continued in effect
7-20 for that purpose.

7-21 SECTION 16. The change in law made by Section 9 of this Act
7-22 applies to a distribution of proceeds from an ad valorem tax sale
7-23 that is made on or after the effective date of this Act, regardless
7-24 of whether the tax sale was conducted before, on, or after that
7-25 date.

7-26 SECTION 17. The change in law made by Section 10 of this Act
7-27 applies to any cause of action that is pending on the effective date
7-28 of this Act or brought on or after that date.

7-29 SECTION 18. The changes in law made by Section 11 of this
7-30 Act apply to a distribution of the proceeds of a resale of property
7-31 made on or after the effective date of this Act, regardless of
7-32 whether the resale was conducted before, on, or after that date.

7-33 * * * * *