

BILL ANALYSIS

C.S.H.B. 2220
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, tax-assessors, collectors, and taxing authorities must use a judicial foreclosure process involving notice to all lien holders and option of redemption for a period of one year by the property owner in order to enforce a delinquent tax lien through foreclosure. Many taxing authorities appreciate the option of selling tax liens to investors because it eliminates administrative and personnel costs as well as legal fees. These investors then establish a loan arrangement with the property owner to pay back their debt. If these investors choose to foreclose on the property due to nonpayment, they have the ability to use a non-judicial foreclosure process which does not require notice to other lien holders. Additionally, there is some confusion as to whether a property owner's one-year right of redemption still applies after an investor's non-judicial tax sale or whether it applies only to a judicially foreclosed lien.

The purpose of this bill is to ensure that there are efficient judicial or non-judicial methods by which taxing authorities are able to transfer tax liens and allow rights of redemption for property owners.

C.S.H.B. 2220 provides for the sale of ad valorem tax liens and contracts for foreclosure of ad valorem tax liens.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2220 amends Section 32, Tax Code, as follows:

The substitute provides for definitions for "mortgage servicer" and "transferee".

The substitute authorizes a person to pay the delinquent taxes imposed by a taxing unit on real property. The contents of the sworn statement required when a person authorizes another person to pay taxes imposed by a taxing unit are expanded to include the name and address of the transferee and a description of the property. It allows for the transferring of taxes due in subsequent tax years before the delinquency date only if the real property is not subject to a lien other than the tax lien.

The substitute provides that a collector or a person designated by the collector can certify the sworn statement and its contents, including collection costs. The substitute provides for the option of having the document sworn before a notary public. The substitute requires the collector to conspicuously identify in the applicable taxpayer's account the date of the transfer of a tax lien. The substitute provides that the transferee of a tax lien and any successor in interest is entitled to foreclose the lien under the home equity rules adopted by the Texas Supreme Court and Section 32.065 of this Act. The substitute allows the transferee to charge a reasonable fee for a payoff statement.

The substitute provides any time after 6-month period and before a notice of foreclosure is sent, transferee of tax lien or holder of tax lien may require the property owner to provide written

C.S.H.B. 2220 79(R)

authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner.

The substitute authorizes the person or mortgage servicer redeem the foreclosed property for 125 percent of the purchase price during the first year of redemption, or 150 percent of the second year. The substitute provides for the procedure by which a redemption purchase is to take place.

The substitute requires a contract entered into by a transferee and the property owner for a transfer of tax lien to provide for a power of sale and foreclosure under Section 32.06(c), including recordation of contract, sworn documents and affidavits, foreclosure notices, notice requirements, and default/notice of acceleration requirements.

The substitute prohibits prepayment penalties for transactions covered by this section.

The substitute provides that an affidavit signed by the transferee of a transferred lien and recorded in the proper real property records that avers foreclosure was in compliance with Section 32.06 is prima facie evidence of a proper foreclosure.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2220 modifies the original by adding language that authorizes a person to pay the delinquent taxes imposed by a taxing unit on real property. The substitute removes the provision that required the name and address of mortgage servicer and whether the property owner will enter into a contract with transferee for the payment of the taxes that will be secured by a lien on the property from a sworn statement. The substitute adds language that allows for the transferring of taxes due in subsequent tax years before the delinquency date only if the real property is not subject to a lien other than the tax lien.

The substitute modifies the original by adding language that provides that a collector or a person designated by the collector can certify the sworn statement and its contents, including collection costs. The substitute adds language that provides for the option of having the document sworn before a notary public. The substitute adds language that the collector shall conspicuously identify in the applicable taxpayer's account the date of the transfer of a tax lien.

The substitute modifies the original by removing language that allows the mortgage servicer to obtain a release of the transferred tax lien before a foreclosure and by paying the transferee certain amounts including a redemption premium \$500 or 6 percent or less. The substitute adds language that allows the transferee to charge a reasonable fee for a payoff statement.

The substitute modifies the original by adding language that provides any time after 6-month period and before a notice of foreclosure is sent, transferee of tax lien or holder of tax lien may require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner.

The substitute modifies the original by adding the term "foreclosure procedure" instead of "the suit."

The substitute modifies the original by adding language that allows the person or mortgage servicer to redeem the foreclosed property for 125 percent of the purchase price during the first year of redemption, or 150 percent of the second year. The substitute provides for the procedure by which a redemption purchase is to take place.

The substitute modifies the original by adding language that requires a contract entered into by a transferee and the property owner for a transfer of tax lien to provide for a power of foreclosure under Section 32.06(c), including recordation of contract, sworn documents and affidavits, foreclosure notices, notice requirements, and default/notice of acceleration requirements.

The substitute modifies the original by adding language that prohibits prepayment penalties for transactions covered by this section.