

By: Paxton, Eiland

H.B. No. 2220

Substitute the following for H.B. No. 2220:

By: Solomons

C.S.H.B. No. 2220

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of an ad valorem tax lien and to a contract for foreclosure of an ad valorem tax lien.

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

SECTION 1. Section 32.06, Tax Code, is amended to read as follows:

Sec. 32.06. TRANSFER OF TAX LIEN. (a) In this section:

(1) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(2) "Transferee" means a person authorized to pay the taxes of another.

(a-1) A person may authorize another person to pay the delinquent taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating:

(1) the authorization;

(2) the name and street address of the transferee[~~and naming the other person~~] authorized to pay the taxes of the property owner; and

(3) a description of[~~and describing~~] the property by street address, if applicable, and legal description.

(a-2) After a tax lien is transferred, taxes on the property that become due in subsequent tax years may be transferred before the delinquency date in the manner provided by Subsection (a-1).

1 (a-3) Taxes may be transferred before the delinquency date
2 in the manner provided by Subsection (a-1) only if the real property
3 is not subject to a lien other than the tax lien.

4 (b) If a transferee [~~person~~] authorized to pay a property
5 owner's [~~another's~~] taxes pursuant to Subsection (a-1) [~~(a)~~] pays
6 the taxes and any penalties and interest imposed, the collector
7 shall issue a tax receipt to that transferee [~~the person paying the~~
8 ~~taxes~~]. In addition, the collector or a person designated by the
9 collector shall certify on the sworn document that payment of the
10 taxes and any penalties and interest on the described property and
11 collection costs has been made by the transferee on behalf of the
12 property owner [~~a person other than the person~~] liable for the taxes
13 when imposed and that the taxing unit's tax lien is transferred to
14 that transferee [~~the person paying the taxes~~]. The collector shall
15 attach to the sworn document the collector's seal of office or sign
16 the document before a notary public and deliver the sworn document,
17 a tax receipt, and the affidavit attesting to the transfer of the
18 tax lien to the transferee [~~person paying the taxes~~]. The sworn
19 document, tax receipt, and affidavit attesting to the transfer of
20 the tax lien may be combined into one document. The collector shall
21 conspicuously identify in the applicable taxpayer's account the
22 date of the transfer of a tax lien transferred under this section
23 [~~keep a record of all tax liens transferred as provided by this~~
24 ~~section~~].

25 (c) Except as otherwise provided by this section, the
26 transferee of a tax lien and any successor in interest is entitled
27 to foreclose the lien:

1 (1) in the manner provided by law for foreclosure of
2 tax liens; or

3 (2) in the manner specified in rules of civil
4 procedure adopted by the Supreme Court of Texas under Section 50,
5 Article XVI, Texas Constitution, and Section 32.065 of this code,
6 if the property owner and the transferee enter into a contract that
7 is secured by a lien on the property [~~Section 51.002, Property~~
8 ~~Code~~].

9 (d) To be enforceable, a tax lien transferred as provided by
10 this section must be recorded with the sworn statement and
11 affidavit attesting to the transfer of the tax lien as described in
12 Subsection (b) in the deed records of each county in which the
13 property encumbered by the lien is located.

14 (e) A transferee [~~person~~] holding a tax lien transferred as
15 provided by this section may not charge a greater rate of interest
16 than 18 percent a year on the taxes, penalties, and interest paid to
17 a taxing unit as shown on the tax receipt, plus only those [~~and~~
18 recording and other expenses paid to acquire and record the lien.

19 (f) The mortgage servicer [~~holder~~] of a preexisting lien on
20 property encumbered by a tax lien transferred as provided by
21 Subsection (b) [~~this section~~] is entitled, within six months after
22 the date on which the tax lien is recorded in all counties in which
23 the property is located, to obtain a release of the transferred tax
24 lien by paying [~~pay~~] the transferee [~~holder~~] of the tax lien the
25 amount owed under the contract between the property owner and the
26 transferee. A transferee may charge a reasonable fee for a payoff
27 statement that is requested after an initial payoff statement is

1 provided.

2 (g) At any time after the end of the six-month period
3 specified by Subsection (f) and before a notice of foreclosure of
4 the transferred tax lien is sent, the transferee of the tax lien or
5 the holder of the tax lien may require the property owner to provide
6 written authorization and pay a reasonable fee before providing
7 information regarding the current balance owed by the property
8 owner to the transferee or the holder of the tax lien.

9 (h) A mortgage servicer who pays a transferred tax lien
10 ~~[paid for the lien, plus interest accrued at the rate provided by~~
11 ~~Subsection (e) and recording expenses, and]~~ becomes subrogated to
12 all rights in the lien.

13 (i) [~~(g)~~] A foreclosure of [suit to foreclose] a tax lien
14 transferred as provided by this section may not be instituted
15 within one year from the date on which the lien is recorded in all
16 counties in which the property is located, unless the contract
17 between the owner of the property and the transferee provides
18 otherwise.

19 (j) [~~(h)~~] After one year from the date on which a tax lien
20 transferred as provided by this section is recorded in all counties
21 in which the property is located, the transferee [~~holder~~] of the
22 lien may [~~file suit to~~] foreclose the lien in the manner provided by
23 Subsection (c) [unless a contract between the holder of the lien and
24 ~~the owner of the property encumbered by the lien provides~~
25 ~~otherwise].~~ If a foreclosure procedure [~~the suit~~] results in
26 foreclosure of the lien, the transferee [~~person filing suit~~] is
27 entitled to recover attorney's fees in an amount not to exceed 10

1 percent of the judgment. The proceeds of a sale following
2 foreclosure as provided by this subsection shall be applied first
3 to the payment of court costs, then to the payment of the judgment,
4 including accrued interest, and then to the payment of any
5 attorney's fees fixed in the judgment. Any remaining proceeds
6 shall be paid to other holders of liens on the property in the order
7 of their priority and then to the person whose property was sold at
8 the tax sale.

9 (k) Beginning on the date the foreclosure deed is recorded,
10 the [(i) — The] person whose property is sold as provided by
11 Subsection (c) [this section] or the mortgage servicer of [any
12 person holding] a prior recorded [first] lien against the property
13 is entitled[, within one year after the date the property is sold,]
14 to redeem the foreclosed property from the purchaser [at the tax
15 sale] by paying the [that] purchaser or successor 125 [the tax sale
16 purchase price, plus costs, and interest accrued on the judgment to
17 the date of redemption or 118] percent of the purchase price during
18 the first year of the redemption period or 150 percent of the
19 purchase price during the second year of the redemption period with
20 cash or cash equivalent funds. The right of redemption may be
21 exercised on or before the second anniversary of the date on which
22 the purchaser's deed is filed of record if the property sold was the
23 residence homestead of the owner, was land designated for
24 agricultural use, or was a mineral interest. For any other
25 property, the right of redemption must be exercised not later than
26 the 180th day after the date on which the purchaser's deed is filed
27 of record [amount of the judgment, whichever is less]. If a person

1 redeems the property as provided by this subsection, the purchaser
2 at the tax sale shall deliver a deed to the property to the person
3 redeeming the property. If the person who owned the property at the
4 time of foreclosure redeems the property, all liens existing on the
5 property at the time of the tax sale remain in effect to the extent
6 not paid from the sale proceeds.

7 SECTION 2. Section 32.065, Tax Code, is amended by amending
8 Subsections (a)-(d) and (f) and adding Subsections (b-1) and (g) to
9 read as follows:

10 (a) Section 32.06 does not abridge the right of an owner of
11 real property to enter into a contract for the payment of taxes
12 ~~[with the holder of a lien on the property, including a transferee~~
13 ~~under Section 32.06 or this section, or affect a contract between~~
14 ~~the owner and holder of a lien for the payment of taxes on the~~
15 ~~property].~~

16 (b) Notwithstanding any agreement to the contrary, a [A]
17 contract entered into under Subsection (a) between a transferee and
18 the property owner under Section 32.06 that is secured by a lien on
19 the property shall [may] provide for a power of foreclosure
20 authorized under Section 32.06(c), and:

- 21 (1) an event of default; ~~[and]~~
22 (2) notice of acceleration;
23 (3) recording of the contract in each county in which
24 the property is located;
25 (4) recording of the sworn document and affidavit
26 attesting to the transfer of the tax lien;
27 (5) requiring the transferee to serve foreclosure

1 notices on the property owner at the property owner's last known
2 address in the manner required by Sections 51.002(b), (d), and (e),
3 Property Code, or by a commercially reasonable delivery service
4 that maintains verifiable records of deliveries for at least five
5 years from the date of delivery; and

6 (6) requiring, at the time the foreclosure notices
7 required by Subdivision (5) are served on the property owner, the
8 transferee to serve a copy of the foreclosure notices in the same
9 manner on the mortgage servicer of any recorded real property lien
10 encumbering the property that includes on the first page, in
11 14-point boldfaced type or 14-point uppercase typewritten letters,
12 a statement that reads substantially as follows:

13 "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE
14 FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A
15 SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF
16 REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE
17 IS SCHEDULED TO OCCUR ON THE (DATE)."

18 (b-1) On an event of default and notice of acceleration, the
19 mortgage servicer of a recorded lien encumbering real property may
20 obtain a release of a transferred tax lien on the property by paying
21 the transferee of the tax lien or the holder of the tax lien the
22 amount owed by the property owner to that transferee or holder.

23 (c) Except as provided by Section 32.06 or another
24 [Notwithstanding any other] provision of this code, a transferee of
25 a tax lien is subrogated to and is entitled to exercise any right or
26 remedy possessed by the transferring taxing unit, including or
27 related to foreclosure or judicial sale.

1 (d) Chapters 342 and 346, Finance Code, [~~and Section~~
2 ~~302.102, Finance Code,~~] do not apply to a transaction covered by
3 this section. The transferee of a tax lien under this section is
4 not required to obtain a license under Title 4, Finance Code.

5 (f) The first written communication by the transferee
6 [~~lender~~] to the transferee's [~~its~~] prospective borrower shall
7 disclose each type and the amount [~~types~~] of possible additional
8 charges or fees that may be incurred by the borrower in connection
9 with the loan or contract under this section.

10 (g) An affidavit of the transferee executed after
11 foreclosure of a tax lien that recites compliance with the terms of
12 Section 32.06 and this section and is recorded in each county in
13 which the property is located:

14 (1) is prima facie evidence of compliance with Section
15 32.06 and this section; and

16 (2) may be relied on conclusively by a bona fide
17 purchaser for value without notice of any failure to comply.

18 SECTION 3. This Act takes effect September 1, 2005.