

By: Paxton

H.B. No. 2220

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the sale of ad valorem tax liens and contracts for
3 foreclosure of ad valorem tax liens.

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

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

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

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

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

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

15 (1) the authorization;

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

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

21 (4) the name and address of any mortgage servicer
22 currently collecting payments for a debt secured by a recorded
23 security instrument encumbering the property; and

24 (5) whether the property owner will enter into a

1 contract with the transferee for the payment of the taxes that will
2 be secured by a lien on the property.

3 (b) If a transferee [~~person~~] authorized to pay a property
4 owner's [~~another's~~] taxes pursuant to Subsection (a) pays the taxes
5 and any penalties and interest imposed, the collector shall issue a
6 tax receipt to that transferee [~~the person paying the taxes~~]. In
7 addition, the collector shall certify on the sworn document that
8 payment of the taxes and any penalties and interest on the described
9 property has been made by the transferee on behalf of the property
10 owner [~~a person other than the person~~] liable for the taxes when
11 imposed and that the taxing unit's tax lien is transferred to that
12 transferee [~~the person paying the taxes~~]. The collector shall
13 attach to the sworn document the collector's seal of office and
14 deliver the sworn document, a tax receipt, and the affidavit
15 attesting to the transfer of the tax lien to the transferee [~~person~~
16 ~~paying the taxes~~]. The sworn document, tax receipt, and affidavit
17 attesting to the transfer of the tax lien may be combined into one
18 document. The collector shall keep a record of all tax liens
19 transferred as provided by this section, indexed by the name of the
20 transferee and the property owner whose taxes were paid by the
21 transferee.

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

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

27 (2) in the manner specified in Section 51.002,

1 Property Code, and Section 32.065 of this code, if the property
2 owner and the transferee enter into a contract that is secured by a
3 lien on the property.

4 (d) To be enforceable, a tax lien transferred as provided by
5 this section must be recorded with the sworn statement, tax
6 receipt, and affidavit attesting to the transfer of the tax lien as
7 described in Subsection (b) in the deed records of each county in
8 which the property encumbered by the lien is located.

9 (e) A transferee [~~person~~] holding a tax lien transferred as
10 provided by this section may not charge a greater rate of interest
11 than 18 percent a year on the taxes, penalties, and interest paid to
12 a taxing unit as shown on the tax receipt, plus any [~~and~~] recording
13 expenses paid to [~~acquire and~~] record the lien.

14 (f) Before a foreclosure as provided by Subsection (c), the
15 mortgage servicer [~~The holder~~] of a preexisting lien on property
16 encumbered by a tax lien transferred as provided by Subsection (b)
17 [~~this section~~] is entitled [~~, within six months after the date on~~
18 ~~which the tax lien is recorded in all counties in which the property~~
19 ~~is located,~~] to obtain a release of the transferred tax lien by
20 paying [~~pay~~] the transferee [~~holder~~] of the tax lien an amount equal
21 to:

22 (1) the amount paid to the taxing unit for the lien as
23 shown on the recorded tax receipt, plus interest accrued at the rate
24 provided by Subsection (e) and recording expenses;

25 (2) a redemption premium of \$500 or an amount equal to
26 six percent per year of the amount described by Subdivision (1),
27 whichever is less; [~~7~~] and

1 (3) any cost described by Section 34.21(g)(2) and paid
2 by the transferee that is itemized in writing as required by Section
3 34.21(i).

4 (g) A mortgage servicer who redeems a transferred tax lien
5 becomes subrogated to all rights in the lien. If a mortgage
6 servicer makes an affidavit stating that after a diligent search
7 the transferee of the tax lien cannot be found, that the transferee
8 and the mortgagee or mortgage servicer cannot agree on the
9 redemption amount, or that the transferee refuses to give the
10 mortgagee or mortgage servicer a payoff or release, the mortgagee
11 or mortgage servicer may redeem the transferred tax lien by paying
12 the appropriate amount prescribed by Subsection (f) to the
13 collector issuing the transfer of lien. The collector who receives
14 the payment shall give the mortgagee or mortgage servicer a signed
15 receipt witnessed by two persons. The signed receipt, when
16 recorded, is notice to all persons that the transferred tax lien has
17 been redeemed. A bona fide purchaser for value may conclusively
18 rely on the receipt as evidence of a valid redemption of the
19 transferred tax lien. The collector on demand shall pay the money
20 received from the mortgage servicer to the transferee or shall
21 interplead the money into the registry of a district court for the
22 county in which property is located. The collector may impose and
23 collect a fee to be paid by the mortgage servicer that is reasonably
24 related to the expense incurred by the collector in processing the
25 payment paid to the transferee. The amount of the fee may not
26 exceed five percent of the amount paid by the mortgage servicer to
27 redeem the property or \$500, whichever is greater. If the collector

1 interpleads the money into the registry of the court, the collector
2 is entitled to reasonable fees, including attorney's fees, and
3 costs, as determined by the court.

4 (h) [(g)] A foreclosure of [suit to foreclose] a tax lien
5 transferred as provided by this section may not be instituted
6 within one year from the date on which the lien is recorded in all
7 counties in which the property is located[, ~~unless the contract~~
8 ~~between the owner of the property and the transferee provides~~
9 ~~otherwise~~].

10 (i) [(h)] After one year from the date on which a tax lien
11 transferred as provided by this section is recorded in all counties
12 in which the property is located, the transferee [holder] of the
13 lien may [~~file suit to~~] foreclose the lien in the manner provided by
14 Subsection (c) [unless a contract between the holder of the lien and
15 the owner of the property encumbered by the lien provides
16 otherwise]. If a foreclosure [the] suit results in foreclosure of
17 the lien, the transferee [person filing suit] is entitled to
18 recover attorney's fees in an amount not to exceed 10 percent of the
19 judgment. The proceeds of a sale following foreclosure as provided
20 by this subsection shall be applied first to the payment of court
21 costs, then to payment of the judgment, including accrued interest,
22 and then to the payment of any attorney's fees fixed in the
23 judgment. Any remaining proceeds shall be paid to other holders of
24 liens on the property in the order of their priority and then to the
25 person whose property was sold at the tax sale.

26 (j) [(i)] The person whose property is sold as provided by
27 Subsection (c) [this section] or the mortgage servicer of [any

1 ~~person holding~~] a first lien against the property at that time is
2 entitled, within one year after the date the property is sold, to
3 redeem the property from the purchaser at the tax sale by paying
4 that purchaser the tax sale purchase price, plus a redemption
5 premium amount calculated at the rate of 18 percent per year of the
6 purchase price from the date of sale [~~costs, and interest accrued on~~
7 ~~the judgment~~] to the date of redemption, plus any costs described by
8 Section 34.21(g)(2), itemized in writing as required by Section
9 34.21(i), and paid by the transferee [~~or 118 percent of the amount~~
10 ~~of the judgment, whichever is less~~]. If a person redeems the
11 property as provided by this subsection, the purchaser at the tax
12 sale shall deliver a deed to the property to the person redeeming
13 the property. If at the time of foreclosure, the person who owned
14 the property or the mortgage servicer of a lien secured by the
15 property [~~at the time of foreclosure~~] redeems the property, all
16 liens existing on the property at the time of the tax sale remain in
17 effect to the extent not paid from the sale proceeds.

18 SECTION 2. Section 32.065, Tax Code, is amended by amending
19 Subsections (a)-(c) and (f) and adding Subsection (g) to read as
20 follows:

21 (a) Section 32.06 does not abridge the right of an owner of
22 real property to enter into a contract for the payment of taxes
23 [~~with the holder of a lien on the property, including a transferee~~
24 ~~under Section 32.06 or this section, or affect a contract between~~
25 ~~the owner and holder of a lien for the payment of taxes on the~~
26 ~~property~~].

27 (b) Notwithstanding any agreement to the contrary, a [A]

1 contract entered into under Subsection (a) between a transferee and
2 the property owner under Section 32.06 that is secured by a lien on
3 the property shall ~~may~~ provide for a power of sale and foreclosure
4 under Chapter 51, Property Code, and:

5 (1) an event of default; ~~and~~

6 (2) notice of acceleration;

7 (3) recording of the contract and security instrument
8 in each county in which the property is located;

9 (4) an affidavit describing the amount paid to the
10 taxing unit and a description and the amount of each fee, cost, or
11 expense charged to or paid by the owner of the property under the
12 contract or security instrument secured by the owner's property;

13 (5) requiring the transferee to serve foreclosure
14 notices on the property owner at the property owner's last known
15 address in the manner required by Sections 51.002(b), (d), and (e),
16 Property Code, or by a commercially reasonable delivery service
17 that maintains verifiable records of deliveries for at least five
18 years from the date of delivery; and

19 (6) requiring at the time the foreclosure notices
20 required by Subdivision (5) are served on the property owner, the
21 transferee shall serve a copy of the foreclosure notices in the same
22 manner on the mortgage servicer of any recorded real property lien
23 encumbering the property with a separate notice that includes a
24 statement addressed to the mortgage servicer that contains a
25 disclosure printed in 14-point boldfaced type or 14-point uppercase
26 typewritten letters that reads substantially as follows:

27 "THE SECURITY INTEREST RECORDED IN (NAME OF COUNTY),

1 TEXAS, AT (THE DATE AND VOLUME AND PAGE NUMBER, FILM
2 CODE NUMBER, OR COUNTY CLERK FILE NUMBER OF THE
3 MORTGAGOR'S SECURITY INSTRUMENT OR CONTRACT) SECURED
4 BY THE PROPERTY COMMONLY KNOWN AS (STREET ADDRESS OF
5 PROPERTY) AND (LEGAL DESCRIPTION OF PROPERTY) EXECUTED
6 BY (NAME OF CURRENT MORTGAGEE'S MORTGAGOR) MAY BE
7 EXTINGUISHED BY THE FORECLOSURE INDICATED IN THE
8 ATTACHED NOTICE THAT WAS SENT TO (PROPERTY OWNER'S
9 NAME) BY (TRANSFEEE'S NAME) WHO MAY BE CONTACTED
10 BETWEEN 9 A.M. AND 3 P.M. CENTRAL STANDARD TIME AT
11 (TRANSFEEE'S STREET AND MAILING ADDRESS AND TELEPHONE
12 NUMBER, FAX NUMBER, OR EMAIL ADDRESS). YOU ARE ADVISED
13 THAT UNDER CERTAIN CONDITIONS THE LIEN SOUGHT TO BE
14 FORECLOSED MAY BE REDEEMED UNDER THE PROVISIONS OF
15 SECTION 32.06, TAX CODE."

16 (c) Except as provided by Section 32.06 and
17 [Notwithstanding any other provision of] this section [code], a
18 transferee of a tax lien is subrogated to and is entitled to
19 exercise any right or remedy possessed by the transferring taxing
20 unit, including or related to foreclosure or judicial sale.

21 (f) The first written communication by the transferee
22 [lender] to the transferee's [its] prospective borrower shall
23 disclose each type and the amount [types] of possible additional
24 charges or fees that may be incurred by the borrower in connection
25 with the loan or contract under this section or in any subsequent
26 foreclosure.

27 (g) An affidavit of the transferee executed after

1 foreclosure of a tax lien that recites compliance with the terms of
2 Section 32.06 and this section and is recorded in each county in
3 which the property is located:

4 (1) is prima facie evidence of compliance with Section
5 32.06 and this section; and

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

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