

BILL ANALYSIS

C.S.H.B. 2137
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

To enforce a delinquent tax lien through foreclosure, 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. Many taxing authorities appreciate the option of selling tax liens to investors because this practice eliminates administrative and personnel costs as well as legal fees. These investors obtain permission to buy the lien from the property owner and then establish a loan arrangement with the property owner to pay back their debt. For some property owners, such a tax lien loan is an attractive option to be able to pay their taxes over a longer period of time.

However, the establishment of a tax lien transfer does place the tax lien in a superior position to any other lien, even one that is recorded before it in time. For this reason, the regulation of tax liens loans is important to insure adequate notice to other lien holders in order to protect their lien interest in the property.

C.S.H.B. 2137 amends the Tax Code and Finance Code to address the issues of tax lien transfers.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2137 amends Subsections (a-1), (a-2), (b), (c), (d), (f), (i), and (k) and adds Subsections (a-3), (b-1), (c-1), (d-1), (f-1), and (k-1), of the Tax Code. C.S.H.B. 2137 clarifies that in addition to transfers for delinquent taxes, a property owner may authorize a tax lien transfer for the payment of current taxes, as long as one of two conditions exists: a tax lien was transferred on the property in a prior year or the property is not subject to a recorded first lien mortgage. C.S.H.B. 2137 requires the Finance Commission to adopt rules to prescribe the form and content of an appropriate disclosure statement and the reasonableness of closing costs, fees, and other charges. C.S.H.B. 2137 eliminates the language that a tax lien may be transferred before the delinquency date in the manner provided by Subsection (a-1) only if the real property is not subject to a lien other than the tax lien.

C.S.H.B. 2137 eliminates the requirement that tax collectors certify a tax lien transfer on the same document that the property owner signed in order to give consent to the transfer. Instead, C.S.H.B. 2137 gives collectors discretion to create their own, separate document to reflect the transfer has occurred. Also C.S.H.B. 2137 requires that when a transferred tax lien is released, the transferee must file a copy with the county clerk and the collector, for which a reasonable fee may be charged to the property owner. C.S.H.B. 2137 requires that the collector record the release. C.S.H.B. 2137 requires transferees to send by certified mail a notice of the tax lien transfer to other lien holders not later than the 10th working day after the certified statement is received by the transferee. The copy must be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by the mortgage servicer to the property owner, or the address of the holder of a recorded first lien as shown in the real property records.

C.S.H.B. 2137 requires a transferee to obtain a court order under Rule 736, Texas Rules of Civil Procedure, except as provided by Subsection (c-1), before proceeding with a foreclosure under Section 51.002, Property Code and Section 32.065. If a transferee seeks to foreclose a tax lien

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on the property under Subsection (c)(2), C.S.H.B. 2137 requires the application for the foreclosure must allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution, state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution, and state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity of the debt to the property owner, the mortgage servicer, and each holder of a recorded lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code and the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure, and notwithstanding any contractual agreement with the property owner, is entitled to payoff information to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

C.S.H.B. 2137 requires tax lien transferees to record a copy of the tax collector's statement attesting to the transfer of the tax lien in the county deed records, which brings the statute into conformity with recent judicial interpretation of recording requirements. C.S.H.B. 2137 clarifies that a right of rescission in 12 C.F.R. Section 226.23 applies to a tax lien transfer. C.S.H.B. 2137 adds a notice provision that requires tax lien transferees, in the event a property tax loan becomes delinquent, to notify other holders of recorded liens against the property of that delinquency. The notice must be sent on or before the 120th day of delinquency, if the 120th day is not a working day, on the next working day after the 120th day of delinquency. The notice triggers a six month period during which the other lienholders have the right to pay the tax lien transferee the amount due in connection with the tax loan contract and become subrogated to the rights associated with the special tax lien. C.S.H.B. 2137 clarifies that this right does not affect a right of redemption in a foreclosure proceeding. To be valid, the payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code, and must be provided, upon request, to any holder of a preexisting lien on the property, notwithstanding any contractual agreement with the property owner, to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

C.S.H.B. 2137 insures that failure to provide certain notices do not invalidate a lien under this chapter, a contract lien, or a deed of trust. C.S.H.B. 2137 deletes a redundant reference to foreclosure procedures under Section 51.002, Property Code. C.S.H.B. 2137 adds the purchaser's successor so that the person whose property is sold can redeem the property during the statutorily allowed time even if the purchaser of the foreclosed property has sold it to a successor and adds to the existing allowable costs the purchaser or successor's reasonable costs incurred under Section 34.21(g) and the legal judgment rate of return on that amount. In order to improve the strength of title of a property foreclosed upon for a transferred tax lien, C.S.H.B. 2137 requires that either the purchaser or the purchaser's successors are required to deed the property to the redeemer, and that the deed shall be at least a deed without warranty.

C.S.H.B. 2137 amends Sections 32.065(b), (c) and (d), Tax Code. C.S.H.B. 2137 amends the Tax Code to reflect that foreclosures and notices associated therewith will be governed by Section 32.06(c)(2). The section also changes a recording requirement from the contract to the deed of trust or other instrument securing the contract. C.S.H.B. 2137 includes a transferee's assignee to the subrogation rights. C.S.H.B. 2137 clarifies that Chapter 343, other than Sections 343.203 and 343.205 of the Finance Code, which regulates certain types of voluntary consumer debt, is not applicable to property tax lien transfers.

C.S.H.B. 2137 repeals Section 32.065(g), Tax Code, as added by Chapter 406, Acts of the 79th Legislature, Regular Session, 2005. The change in law made by this Act applies only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. A transfer of an ad valorem tax lien that occurs before the effective date of this Act is covered by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose. The change in law made by this Act to Sections 32.06 and 32.065, Tax Code, applies to all foreclosures under those sections that occur on or after the effective date of this Act, other than a foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed. A foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed

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is governed by the law in effect at the time the contract was executed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2137 amends the original to clarify existing language that after one tax lien transfer has been executed post-delinquency, tax lien transfers can be made before the taxes are delinquent in subsequent years to any person. The substitute gives the Finance Commission the authority to determine appropriate consumer disclosure at foreclosure, to set reasonable closing costs, fees, and other costs, and clarifies that a right of rescission contained in federal statute applies to a tax lien loan. The substitute also clarifies that the filing of a release must be made to both the county clerk and the tax collector in Sec. 32.06(b). If a transferee seeks to foreclose a tax lien on the property under Subsection (c)(2), C.S.H.B. 2137 requires the application for the foreclosure must allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution, state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution, and state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity of the debt to the property owner, the mortgage servicer, and each holder of a recorded lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code and the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure, and notwithstanding any contractual agreement with the property owner, is entitled to payoff information to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

C.S.H.B. 2137 corrects a reference where the text wrongly referred to a 'transfer' when 'foreclosure' was intended in Sec. 32.06(c-1)(2). In Sec. 32.06(f) it clarifies that a required notice may be sent on or before the 120th day and removes a wrong reference to 'right of redemption' when 'right of pay off' was intended. To be valid, the payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code, and must be provided, upon request, to any holder of a preexisting lien on the property, notwithstanding any contractual agreement with the property owner, to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. Failure to comply with Subsection (b-1) or (f) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust.

C.S.H.B. 2137 removes the original stated language requiring that a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 include, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows: "IF YOU HAVE A FIRST LIEN MORTGAGE PREVIOUSLY RECORDED ON THE PROPERTY SUBJECT TO THIS CONTRACT, FAILURE TO PAY YOUR TAXES ON THE PROPERTY AND ENTERING INTO THIS CONTRACT MAY CONSTITUTE A DEFAULT UNDER THE TERMS OF YOUR MORTGAGE." C.S.H.B. 2137 adds a transferee's assignee to the rights of subrogation in Sec. 32.065(c). Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section. C.S.H.B. 2137 reinstates Section 32.06 (a-3), Tax Code.