

BILL ANALYSIS

Senate Research Center
80R7868 JPL-F

S.B. 1476
By: Carona
Jurisprudence
3/29/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows a property owner to authorize another person to pay taxes on the person's real property. Tax records are public information, and businesses review the public records to locate property owners who are delinquent in paying their property taxes to offer the property owners loans to pay the delinquent taxes. Current law does not require that an original mortgagee be notified when the tax loan lender files a lien on the property that takes priority over the original mortgage. Therefore, if the property owner defaults on the tax loan, the tax loan lender has the right to foreclose on the property without the original mortgagee being notified.

As proposed, S.B. 1476 requires a tax lien lender to provide a disclosure notice with certain specifications to a property owner regarding any fees and charges associated with the tax lien and advising the property owner of certain rights. The bill also requires the tax lien lender to notify any mortgage servicer or lien holder on the property of the tax lien.

RULEMAKING AUTHORITY

This bill expressly grants rulemaking authority to the mortgage lending commissioner in SECTION 3 (Sec. 13.0075, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.06, Tax Code, by amending Subsection (a-1), (d), (e), (f), and (j), and by adding Subsections (b-1), (b-2), (e-1), and (e-2), as follows:

(a-1) Authorizes a person to 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 the authorization, the name and street address of the transferee authorized to pay the taxes of the property owner, a description of the property by street address, if applicable, and legal description, and an itemization of all amounts charged in connection with the authorization or with any contract relating to the transfer of the tax lien.

(b-1) Requires the proposed transferee, not later than the 12th day before the date a property owner executes a sworn document described by Subsection (a-1), to provide the property owner a disclosure statement that complies with the requirements established by the Department of Savings and Mortgage Lending.

(b-2) Requires the transferee of the tax lien, no later than the 10th day after the date the sworn document described by Subsection (a-1) has been filed with the collector, to provide a copy of the sworn document to any mortgage servicer and to each holder of a recorded lien encumbering the property by certified mail, return receipt requested. Requires that the copy be sent to the address shown on the most recent payment invoice, statement, or payment coupon provided by a mortgage servicer to the property owner, or the address in the real property records of the holder of a recorded lien, as applicable. Requires that the outside of the envelope containing the notice bear the following words in at least 14-point boldfaced type: "THE ADDRESSEE MAY WISH TO REFER THIS MATTER TO AN ATTORNEY FOR IMMEDIATE REVIEW." Provides that, if the notice required by this subsection is not sent in compliance with this subsection, the transferred lien is subordinate to all previously recorded lien encumbering the property.

(d) Requires that, to be enforceable, a tax lien transferred as provided by this section must be recorded with the sworn document described by Subsection (a-1) and the sworn statement and affidavit attesting to the transfer of the tax lien as described by, rather than in, Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(e) Prohibits a transferee holding a tax lien transferred as provided by this section from charging a greater rate of interest than 18 percent a year on the funds advanced. Provides that funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs. Prohibits any other amounts from being charged by the transferee at or before closing. Provides that reasonable closing costs, for purposes of this subsection, are limited to the following:

(1) reasonable fees for:

(A) title examination and preparation of an abstract of title by:

(i) an attorney who is not an employee of the transferee; or

(ii) a title company or property search company authorized to do business in this state; and

(B) premiums or fees for title insurance or title search for the benefit of the transferee;

(2) reasonable fees charged to the transferee by an attorney who is not a salaried employee of the transferee for preparation of the documents in connection with the transfer if the fees are evidenced by a statement for services rendered;

(3) charges prescribed by law that are paid to public officials for determining the existence of a security interest or for perfecting, releasing, or satisfying a security interest;

(4) reasonable fees for an appraisal of real property offered as security for the transfer prepared by an appraiser who is not a salaried employee of the transferee;

(5) the reasonable cost of a credit report;

(6) reasonable fees for a survey of real property offered as security for the transfer prepared by a registered surveyor who is not a salaried employee of the transferee;

(7) the premiums received in connection with the sale of optional credit life insurance, credit accident and health insurance, or other insurance that protects the transferee against default by the property owner, the benefits of which are applied in whole or in part to reduce or extinguish the balance of the transfer indebtedness; and

(8) an administrative fee in an amount not to exceed \$25 for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or less.

(e-1) Authorizes a contract between a property owner and a transferee holding a tax lien transferred as provided by this section to include a late payment fee that may not exceed the lesser of five percent of the payment or \$5, if a payment by the property owner remains unpaid for more than 10 days after the date the payment is due, and a fee for a dishonored check, subject to Section 3.506, Business & Commerce Code; and prohibits a contract between a property owner and a transferee from including a prepayment penalty.

(e-2) Authorizes only one late payment fee to be collected under Subsection (e-1) in connection with a single payment regardless of the duration of the default.

(f) Provides that the mortgage servicer or holder of a preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the tax lien transfer is recorded in all counties in which the property is located, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. Provides that the transferee is required to provide payoff information, notwithstanding any contrary 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.

(j) Authorizes the transferee of the lien, after one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, to foreclose the lien in the manner provided by Subsection (c) unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides that the transferee is authorized to foreclose the lien only after more than one year from that date, rather than otherwise.

SECTION 2. Amends Section 32.065(b), Tax Code, as follows:

(b) Provides that a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property, notwithstanding any agreement to the contrary, is subject to each requirement of Section 32.06 other than a requirement relating to judicial foreclosure, and is required to provide for a power of sale and foreclosure under Chapter 51, Property Code, and in addition to certain specified requirements, requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the notice of sale in the same manner on the mortgage servicer and, rather than or, the holder of all recorded real property liens encumbering the property. Sets forth the required language to be included on the first page of the notice. Sets forth the required language on the outside of the envelope containing the notice.

SECTION 3. Amends Chapter 13, Finance Code, by adding Section 13.0075, as follows:

Sec. 13.0075. AD VALOREM TAX LIEN TRANSFER DISCLOSURE STATEMENT. Requires the savings and mortgage lending commissioner (commissioner) to establish by rule the form and contents of the disclosure statement required by Section 32.06(b-1), Tax Code. Requires that the disclosure statement be designed so that the statement:

- (1) specifies the amount of each fee or charge with the transfer for the tax lien or any contract under Section 32.065, Tax Code;
- (2) conspicuously warns the property owner that entering into the tax lien transfer transaction may violate an agreement relating to an existing lien encumbering the property, which will permit the holder of the lien, without the property owner's consent, to pay off the loan obtained for payment of taxes to eliminate the tax lien or to foreclose the property;
- (3) advises the property owner that a holder of an existing lien, if requested, may agree to pay unpaid taxes on the property and charge a lower interest rate or establish an escrow arrangement and charge no interest;
- (4) informs the property owner that if the owner has any questions about the proposed transfer, or if the property owner has any complaints or questions about the proposed transferee, the owner may contact the Department of Savings and Mortgage Lending toll-free telephone number and contact information for the department.
- (5) provides a Department of Savings and Mortgage Lending toll-free number and contact information for the department.

SECTION 4. Repealer: Section 32.065(g), Tax Code, as added by Chapter 406, Acts of the 79th Legislature, Regular Session, 2005 (requiring a contract under this section to require that the lienholder notify the holders of all recorded liens on the property before foreclosure in the same manner and within the same time frame as the lienholder must notify the owner of the property under Section 51.002, Property Code).

SECTION 5. (a) Requires the savings and loan commissioner, as soon as practicable after the effective date of this Act, by rule to prescribe the form and contents of the disclosure statement required by Section 32.06, Tax Code, as amended by this Act.

(b) Prohibits the changes in law made by this Act to Section 32.06, Tax Code, that relate to the disclosure statement required by that section from being enforced until the savings and loan commissioner has complied with Subsection (a) of this section and the rules adopted under Subsection (a) of this section take effect.

SECTION 6. Effective date: September 1, 2007.