

By: Paxton, Orr

H.B. No. 2137

A BILL TO BE ENTITLED

AN ACT

relating to ad valorem tax lien transfers.

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

SECTION 1. Section 32.06, Tax Code, is amended by amending Subsections (a-1), (a-2), (a-3), (b), (c), (d), (f), (g), (i), (j), and (k) and adding Subsections (a-4), (b-1), (c-1), (d-1), and (k-1) to read as follows:

(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 authorized to pay the taxes of the property owner; and

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

(a-2) A ~~After a~~ tax lien may be ~~is~~ transferred to the person who pays the taxes on behalf of the property owner under the authorization for:

(1) taxes that are delinquent at the time of payment;

or

(2) taxes that are not delinquent at the time of payment if:

(A) the property is not subject to a recorded

1 mortgage lien;

2 (B) a tax lien transfer authorized by the
3 property owner has been executed and recorded for one or more prior
4 years on the same property; or

5 (C) the property owner has executed an
6 authorization consenting to a transfer of the tax liens for both the
7 taxes on the property that are not delinquent and taxes on the
8 property that are delinquent~~[, taxes on the property that become~~
9 ~~due in subsequent tax years may be transferred before the~~
10 ~~delinquency date in the manner provided by Subsection (a-1)].~~

11 (a-3) If the property owner has executed an authorization
12 under Section (a-2)(2)(C) consenting to a transfer of the tax liens
13 for both the taxes on the property that are not delinquent and taxes
14 on the property that are delinquent, the collector shall certify in
15 one document the transfer of the liens for all the taxes.

16 (a-4) The Finance Commission of Texas shall:

17 (1) prescribe the form and content of an appropriate
18 disclosure statement to be provided to a property owner before the
19 execution of a tax lien transfer;

20 (2) adopt rules relating to the reasonableness of
21 closing costs, fees, and other charges permitted under this
22 section; and

23 (3) adopt rules relating to the prohibition of
24 deceptive practices that, to a homeowner's detriment, take
25 advantage of the lack of knowledge, ability, experience, or
26 capacity of the homeowner ~~[A tax lien may be transferred before the~~
27 ~~delinquency date in the manner provided by Subsection (a-1) only if~~

1 ~~the real property is not subject to a lien other than the tax lien].~~

2 (b) If a transferee authorized to pay a property owner's
3 taxes pursuant to Subsection (a-1) pays the taxes and any penalties
4 and interest imposed, the collector shall issue a tax receipt to
5 that transferee. In addition, the collector or a person designated
6 by the collector shall certify ~~[on the sworn document]~~ that
7 ~~[payment of]~~ the taxes and any penalties and interest on the subject
8 ~~[described]~~ property and collection costs have ~~[has]~~ been paid
9 ~~[made]~~ by the transferee on behalf of the property owner ~~[liable for~~
10 ~~the taxes when imposed]~~ and that the taxing unit's tax lien is
11 transferred to that transferee. The collector shall attach to the
12 certified statement ~~[sworn document]~~ the collector's seal of office
13 or sign the statement ~~[document]~~ before a notary public and deliver
14 ~~[the sworn document,~~ a tax receipt~~]~~ and the statement
15 ~~[affidavit]~~ attesting to the transfer of the tax lien to the
16 transferee within 30 days. The ~~[sworn document,~~ tax receipt~~]~~
17 and statement ~~[affidavit attesting to the transfer of the tax lien]~~
18 may be combined into one document. The collector shall
19 ~~[conspicuously]~~ identify in a discrete field in the applicable
20 property owner's ~~[taxpayer's]~~ account the date of the transfer of a
21 tax lien transferred under this section. When a tax lien is
22 released, the transferee shall file a release with the county clerk
23 of each county in which the property encumbered by the lien is
24 located for recordation by the clerk and send a copy to the
25 collector. The transferee may charge the property owner a
26 reasonable fee for filing the release.

27 (b-1) Not later than the 10th business day after the date

1 the certified statement is received by the transferee, the
2 transferee shall send by certified mail a copy of the sworn document
3 described by Subsection (a-1) to each holder of a recorded first
4 lien encumbering the property. The copy must be sent, as
5 applicable, to the address shown on the most recent payment
6 invoice, statement, or payment coupon provided by the mortgage
7 servicer to the property owner, or the address of the holder of a
8 recorded first lien as shown in the real property records.

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

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

14 (2) in the manner specified in Section 51.002,
15 Property Code, and Section 32.065, after the transferee or a
16 successor in interest obtains a court order for foreclosure under
17 Rule 736, Texas Rules of Civil Procedure, except as provided by
18 Subsection (c-1) of this section [of this code], if the property
19 owner and the transferee enter into a contract that is secured by a
20 lien on the property.

21 (c-1) If a transferee seeks to foreclose a tax lien on the
22 property under Subsection (c)(2):

23 (1) the application for the foreclosure must:

24 (A) allege that the lien is an ad valorem tax lien
25 instead of a lien created under Section 50, Article XVI, Texas
26 Constitution;

27 (B) state that the applicant does not seek a

1 court order required by Section 50, Article XVI, Texas
2 Constitution;

3 (C) state that the transferee has provided notice
4 to cure the default and notice of intent to accelerate to the
5 property owner, and notice of acceleration of the maturity of the
6 debt to the property owner, any recorded mortgage servicer, and
7 each holder of a recorded lien on the property in the manner
8 required for notice to a debtor under Section 51.002, Property
9 Code;

10 (D) state the applicant has confirmed with the
11 chief appraiser for the appraisal district in which the property is
12 located that the homeowner has not filed an affidavit of deferral
13 under Section 33.06, Tax Code; and

14 (E) verify the application; and

15 (2) the holder of a recorded preexisting lien must be
16 provided at least 60 days' notice before the date of the proposed
17 foreclosure, and notwithstanding any contractual agreement with
18 the property owner is entitled to payoff information to the
19 greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R.
20 Part 216.

21 (d) A transferee shall record [~~To be enforceable,~~] a tax
22 lien transferred as provided by this section [~~must be recorded~~]
23 with the [~~sworn~~] statement [~~and affidavit~~] attesting to the
24 transfer of the tax lien as described by [~~in~~] Subsection (b) in the
25 deed records of each county in which the property encumbered by the
26 lien is located.

27 (d-1) A right of rescission described by 12 C.F.R. Section

1 226.23 applies to a tax lien transfer under this section.

2 (f) The holder of a loan secured by a transferred tax lien
3 that is delinquent for 90 consecutive days must send a notice of the
4 delinquency by certified mail on or before the 120th day of
5 delinquency or, if the 120th day is not a business day, on the next
6 business day after the 120th day of delinquency, to any holder of a
7 recorded preexisting lien on the property. The mortgage servicer
8 of a recorded preexisting lien on property encumbered by a tax lien
9 transferred as provided by Subsection (b) may [~~is entitled, within~~
10 ~~six months after the date on which the tax lien is recorded in all~~
11 ~~counties in which the property is located, to~~] obtain a release of
12 the transferred tax lien by paying the transferee of the tax lien
13 the amount owed under the contract between the property owner and
14 the transferee, if the tax lien has not been reinstated or
15 foreclosed. This right does not affect a right of redemption in a
16 foreclosure proceeding described by Subsection (k) or (k-1). A
17 transferee may charge a reasonable fee for a payoff statement that
18 is requested after an initial payoff statement is provided. To be
19 valid, the payoff statement must meet the requirements of a payoff
20 statement defined by Section 12.017, Property Code, and must be
21 provided, upon request, to any holder of a recorded preexisting
22 lien on the property, notwithstanding any contractual agreement
23 with the property owner, to the greatest extent permitted by 15
24 U.S.C. Section 6802 and 12 C.F.R. Part 216.

25 (g) Failure to comply with Subsection (b-1), (c-1)(2), or
26 (f) does not invalidate a tax lien under this chapter, a contract
27 lien, or a deed of trust [~~At any time after the end of the six-month~~

1 ~~period specified by Subsection (f) and before a notice of~~
2 ~~foreclosure of the transferred tax lien is sent, the transferee of~~
3 ~~the tax lien or the holder of the tax lien may require the property~~
4 ~~owner to provide written authorization and pay a reasonable fee~~
5 ~~before providing information regarding the current balance owed by~~
6 ~~the property owner to the transferee or the holder of the tax lien].~~

7 (i) A foreclosure of a tax lien transferred as provided by
8 this section may not be instituted within one year from the date on
9 which the lien is recorded in all counties in which the property is
10 located, unless the contract between the owner of the property and
11 the transferee provides otherwise. [~~The transferee of a tax lien or~~
12 ~~any successor in interest must notify the holders of all recorded~~
13 ~~liens on the property before foreclosure in the same manner and~~
14 ~~within the same time frame as the transferee must notify the owner~~
15 ~~of the property under Section 51.002, Property Code.]~~

16 (j) After one year from the date on which a tax lien
17 transferred as provided by this section is recorded in all counties
18 in which the property is located, the transferee of the lien may
19 foreclose the lien in the manner provided by Subsection (c) unless a
20 contract between the holder of the lien and the owner of the
21 property encumbered by the lien provides otherwise. If a
22 foreclosure suit under Subsection (c)(1) results in foreclosure of
23 the lien, the transferee is entitled to recover attorney's fees in
24 an amount not to exceed 10 percent of the judgment. The proceeds of
25 a sale following a foreclosure suit under Subsection (c)(1)
26 [~~judicial foreclosure as provided by this subsection~~] shall be
27 applied first to the payment of court costs, then to payment of the

1 judgment, including accrued interest, and then to the payment of
2 any attorney's fees fixed in the judgment. Any remaining proceeds
3 shall be paid to other holders of liens on the property in the order
4 of their priority and then to the person whose property was sold at
5 the tax sale.

6 (k) Beginning on the date the foreclosure deed is recorded,
7 the person whose property is sold as provided by Subsection (c) or
8 the mortgage servicer of a prior recorded lien against the property
9 is entitled to redeem the foreclosed property from the purchaser or
10 the purchaser's successor by paying the purchaser or successor:

11 (1) 125 percent of the purchase price during the first
12 year of the redemption period or 150 percent of the purchase price
13 during the second year of the redemption period with cash or cash
14 equivalent funds; and

15 (2) the amount reasonably spent by the purchaser in
16 connection with the property as costs within the meaning of Section
17 34.21(g) and the legal judgment rate of return on that amount.

18 (k-1) The right of redemption provided by Subsection (k) may
19 be exercised on or before the second anniversary of the date on
20 which the purchaser's deed is filed of record if the property sold
21 was the residence homestead of the owner, was land designated for
22 agricultural use, or was a mineral interest. For any other
23 property, the right of redemption must be exercised not later than
24 the 180th day after the date on which the purchaser's deed is filed
25 of record. If a person redeems the property as provided by
26 Subsection (k) and this subsection, the purchaser at the tax sale or
27 the purchaser's successor shall deliver a deed without warranty to

1 the property to the person redeeming the property. If the person
2 who owned the property at the time of foreclosure redeems the
3 property, all liens existing on the property at the time of the tax
4 sale remain in effect to the extent not paid from the sale proceeds.

5 SECTION 2. Subsections (b), (c), and (d), Section 32.065,
6 Tax Code, are amended to read as follows:

7 (b) Notwithstanding any agreement to the contrary, a
8 contract entered into under Subsection (a) between a transferee and
9 the property owner under Section 32.06 that is secured by a priority
10 lien on the property shall provide for a power of sale and
11 foreclosure in the manner provided by Section 32.06(c)(2) [~~under~~
12 ~~Chapter 51, Property Code,~~] and:

13 (1) an event of default;

14 (2) notice of acceleration;

15 (3) recording of the deed of trust or other instrument
16 securing the contract entered into under Subsection (a) in each
17 county in which the property is located;

18 (4) recording of the sworn document and affidavit
19 attesting to the transfer of the tax lien;

20 (5) requiring the transferee to serve foreclosure
21 notices on the property owner at the property owner's last known
22 address in the manner provided [~~required~~] by Section 32.06(c)(2)
23 [~~Sections 51.002(b), (d), and (e), Property Code,~~] or by a
24 commercially reasonable delivery service that maintains verifiable
25 records of deliveries for at least five years from the date of
26 delivery; and

27 (6) requiring that notice under Section 32.06(c-1)(2)

1 include, [~~at the time the foreclosure notices required by~~
2 ~~Subdivision (5) are served on the property owner, the transferee to~~
3 ~~serve a copy of the notice of sale in the same manner on the mortgage~~
4 ~~servicer or the holder of all recorded real property liens~~
5 ~~encumbering the property that includes]~~ on the first page, in
6 14-point boldfaced type or 14-point uppercase typewritten letters,
7 a statement that reads substantially as follows: "PURSUANT TO
8 TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN
9 THIS DOCUMENT IS A FORECLOSURE OF A SUPERIOR TRANSFER TAX LIEN
10 SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. [~~THE~~
11 ~~FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE).~~]

12 (c) Notwithstanding any other provision of this code, a
13 transferee of a tax lien or the transferee's assignee is subrogated
14 to and is entitled to exercise any right or remedy possessed by the
15 transferring taxing unit, including or related to foreclosure or
16 judicial sale, but is prohibited from exercising a remedy of
17 foreclosure or judicial sale where the transferring taxing unit
18 would be prohibited from foreclosure or judicial sale.

19 (d) Chapters 342 and 346, Finance Code, and the provisions
20 of Chapter 343, Finance Code, other than Sections 343.203 and
21 343.205, do not apply to a transaction covered by this section. The
22 transferee of a tax lien under this section is not required to
23 obtain a license under Title 4, Finance Code.

24 SECTION 3. Section 32.065(b-1), Tax Code, is repealed.

25 SECTION 4. Subsection (g), Section 32.065, Tax Code, as
26 added by Chapter 406, Acts of the 79th Legislature, Regular
27 Session, 2005, is repealed.

1 SECTION 5. (a) The change in law made by this Act applies
2 only to the transfer of an ad valorem tax lien that occurs on or
3 after the effective date of this Act. A transfer of an ad valorem
4 tax lien that occurs before the effective date of this Act is
5 covered by the law in effect at the time the transfer occurred, and
6 the former law is continued in effect for that purpose.

7 (b) The change in law made by this Act to Sections 32.06 and
8 32.065, Tax Code, applies to all foreclosures under those sections
9 that occur on or after the effective date of this Act, other than a
10 foreclosure under a transferred ad valorem tax lien that was
11 transferred before the effective date of this Act pursuant to a
12 contract that provided for specific foreclosure procedures under
13 the law in effect at the time the contract was executed. A
14 foreclosure under a transferred ad valorem tax lien that was
15 transferred before the effective date of this Act pursuant to a
16 contract that provided for specific foreclosure procedures under
17 the law in effect at the time the contract was executed is governed
18 by the law in effect at the time the contract was executed, and the
19 former law is continued in effect for that purpose.

20 SECTION 6. This Act takes effect September 1, 2007.