

By: Paxton

H.B. No. 2137

Substitute the following for H.B. No. 2137:

By: Orr

C.S.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), (i), and (k) and adding Subsections (b-1), (c-1), (d-1), (f-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; or

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 [~~, taxes on the property that become due~~  
5 ~~in subsequent tax years may be transferred before the delinquency~~  
6 ~~date in the manner provided by Subsection (a-1)] .~~

7 (a-3) The Finance Commission of Texas shall:

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

11 (2) adopt rules relating to the reasonableness of  
12 closing costs, fees, and other charges permitted under this section  
13 [~~A tax lien may be transferred before the delinquency date in the~~  
14 ~~manner provided by Subsection (a-1) only if the real property is not~~  
15 ~~subject to a lien other than the tax lien].~~

16 (b) If a transferee authorized to pay a property owner's  
17 taxes pursuant to Subsection (a-1) pays the taxes and any penalties  
18 and interest imposed, the collector shall issue a tax receipt to  
19 that transferee. In addition, the collector or a person designated  
20 by the collector shall certify [~~on the sworn document~~] that  
21 [~~payment of~~] the taxes and any penalties and interest on the subject  
22 [~~described~~] property and collection costs have [~~has~~] been paid  
23 [~~made~~] by the transferee on behalf of the property owner [~~liable for~~  
24 ~~the taxes when imposed~~] and that the taxing unit's tax lien is  
25 transferred to that transferee. The collector shall attach to the  
26 certified statement [~~sworn document~~] the collector's seal of office  
27 or sign the statement [~~document~~] before a notary public and deliver

1 ~~[the sworn document,~~] a tax receipt~~]~~ and the statement  
2 ~~[affidavit]~~ attesting to the transfer of the tax lien to the  
3 transferee within 30 days. The ~~[sworn document,~~] tax receipt~~]~~ and  
4 statement ~~[affidavit attesting to the transfer of the tax lien]~~ may  
5 be combined into one document. The collector shall ~~[conspicuously]~~  
6 identify in a discrete field in the applicable property owner's  
7 ~~[taxpayer's]~~ account the date of the transfer of a tax lien  
8 transferred under this section. When a tax lien is released, the  
9 transferee shall file a release with the county clerk of each county  
10 in which the property encumbered by the lien is located for  
11 recordation by the clerk and send a copy to the collector. The  
12 transferee may charge the property owner a reasonable fee for  
13 filing the release.

14 (b-1) Not later than the 10th working day after the date the  
15 certified statement is received by the transferee, the transferee  
16 shall send by certified mail a copy of the sworn document described  
17 by Subsection (a-1) to any mortgage servicer and to each holder of a  
18 first lien encumbering the property. The copy must be sent, as  
19 applicable, to the address shown on the most recent payment  
20 invoice, statement, or payment coupon provided by the mortgage  
21 servicer to the property owner, or the address of the holder of a  
22 recorded first lien as shown in the real property records.

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

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

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

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

10           (1) the application for the foreclosure must:

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

14           (B) state that the applicant does not seek a  
15 court order required by Section 50, Article XVI, Texas  
16 Constitution; and

17           (C) state that the transferee has provided notice  
18 to cure the default, notice of intent to accelerate, and notice of  
19 acceleration of the maturity of the debt to the property owner, the  
20 mortgage servicer, and each holder of a recorded lien on the  
21 property in the manner required for notice to a debtor under Section  
22 51.002, Property Code; and

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

1 Part 216.

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

8 (d-1) A right of rescission described by 12 C.F.R. Section  
9 226.23 applies to a tax lien transfer under this section.

10 (f) The holder of a loan secured by a transferred tax lien  
11 that becomes delinquent must send a notice of the delinquency by  
12 certified mail on or before the 120th day of delinquency or, if the  
13 120th day is not a working day, on the next working day after the  
14 120th day of delinquency, to any holder of a preexisting lien on the  
15 property. The mortgage servicer of a preexisting lien on property  
16 encumbered by a tax lien transferred as provided by Subsection (b)  
17 is entitled, within six months after the date on which the notice  
18 is sent [~~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 the transferee of the tax lien the amount owed under the  
21 contract between the property owner and the transferee. This right  
22 does not affect a right of redemption in a foreclosure proceeding  
23 described by Subsection (k) or (k-1). A transferee may charge a  
24 reasonable fee for a payoff statement that is requested after an  
25 initial payoff statement is provided. To be valid, the payoff  
26 statement must meet the requirements of a payoff statement defined  
27 by Section 12.017, Property Code, and must be provided, upon

1 request, to any holder of a preexisting lien on the property,  
2 notwithstanding any contractual agreement with the property owner,  
3 to the greatest extent permitted by 15 U.S.C. Section 6802 and 12  
4 C.F.R. Part 216.

5 (f-1) Failure to comply with Subsection (b-1) or (f) does  
6 not invalidate a tax lien under this chapter, a contract lien, or a  
7 deed of trust.

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

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

22 (1) 125 percent of the purchase price during the first  
23 year of the redemption period or 150 percent of the purchase price  
24 during the second year of the redemption period with cash or cash  
25 equivalent funds; and

26 (2) the amount reasonably spent by the purchaser in  
27 connection with the property as costs within the meaning of Section

1 34.21(g) and the legal judgment rate of return on that amount.

2       (k-1) The right of redemption provided by Subsection (k) may  
3 be exercised on or before the second anniversary of the date on  
4 which the purchaser's deed is filed of record if the property sold  
5 was the residence homestead of the owner, was land designated for  
6 agricultural use, or was a mineral interest. For any other  
7 property, the right of redemption must be exercised not later than  
8 the 180th day after the date on which the purchaser's deed is filed  
9 of record. If a person redeems the property as provided by  
10 Subsection (k) and this subsection, the purchaser at the tax sale or  
11 the purchaser's successor shall deliver a deed without warranty to  
12 the property to the person redeeming the property. If the person  
13 who owned the property at the time of foreclosure redeems the  
14 property, all liens existing on the property at the time of the tax  
15 sale remain in effect to the extent not paid from the sale proceeds.

16       SECTION 2. Sections 32.065(b), (c), and (d), Tax Code, are  
17 amended to read as follows:

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

- 24               (1) an event of default;
- 25               (2) notice of acceleration;
- 26               (3) recording of the deed of trust or other instrument  
27 securing the contract entered into under Subsection (a) in each

1 county in which the property is located;

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

4 (5) requiring the transferee to serve foreclosure  
5 notices on the property owner at the property owner's last known  
6 address in the manner required by Section 32.06(c)(2) [~~Sections~~  
7 ~~51.002(b), (d), and (e), Property Code,~~] or by a commercially  
8 reasonable delivery service that maintains verifiable records of  
9 deliveries for at least five years from the date of delivery; and

10 (6) requiring, at the time the foreclosure notices  
11 required by Subdivision (5) are served on the property owner, the  
12 transferee to serve a copy of the notice of sale in the same manner  
13 on the mortgage servicer or the holder of all recorded real property  
14 liens encumbering the property that includes on the first page, in  
15 14-point boldfaced type or 14-point uppercase typewritten letters,  
16 a statement that reads substantially as follows: "PURSUANT TO TEXAS  
17 TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS  
18 DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF  
19 REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED  
20 TO OCCUR ON THE (DATE)."

21 (c) Notwithstanding any other provision of this code, a  
22 transferee of a tax lien or the transferee's assignee is subrogated  
23 to and is entitled to exercise any right or remedy possessed by the  
24 transferring taxing unit, including or related to foreclosure or  
25 judicial sale, but is prohibited from exercising a remedy of  
26 foreclosure or judicial sale where the transferring taxing unit  
27 would be prohibited from foreclosure or judicial sale.



1 (d) Chapters 342 and 346, Finance Code, and the provisions  
2 of Chapter 343, Finance Code, other than Sections 343.203 and  
3 343.205, do not apply to a transaction covered by this section. The  
4 transferee of a tax lien under this section is not required to  
5 obtain a license under Title 4, Finance Code.

6 SECTION 3. Section 32.065(g), Tax Code, as added by Chapter  
7 406, Acts of the 79th Legislature, Regular Session, 2005, is  
8 repealed.

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

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

1 SECTION 5. This Act takes effect September 1, 2007.