

By: Paxton

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), (b), (c), (d), (f), (i), and (k) and adding Subsections (c-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 mortgage lien; or

1                    (B) a tax lien transfer to the same person for one  
2 or more prior years on the same property has been executed and  
3 recorded [~~7 taxes on the property that become due in subsequent tax~~  
4 ~~years may be transferred before the delinquency date in the manner~~  
5 ~~provided by Subsection (a-1)] .~~

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

1 reasonable fee for filing the release.

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

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

7 (2) in the manner specified in Rule 736, Texas Rules of  
8 Civil Procedure, except as provided by Subsection (c-1) of this  
9 section [~~Section 51.002, Property Code,~~] and Section 32.065 [~~of~~  
10 ~~this code~~], if the property owner and the transferee enter into a  
11 contract that is secured by a lien on the property.

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

14 (1) the application for the foreclosure must:

15 (A) allege that the lien is an ad valorem tax lien  
16 instead of a lien created under Section 50, Article XVI, Texas  
17 Constitution; and

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

21 (2) the holder of a preexisting lien must be provided  
22 at least 60 days' notice before the date of the proposed transfer.

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

1 lien is located.

2 (f) When a loan secured by a transferred tax lien is 120 days  
3 delinquent, a notice of the delinquency must be sent by certified  
4 mail by the holder of the loan on the 120th day of delinquency or, if  
5 that day is not a working day, on the next working day to any holder  
6 of a preexisting lien on the property. The mortgage servicer of a  
7 preexisting lien on property encumbered by a tax lien transferred  
8 as provided by Subsection (b) is entitled, within six months after  
9 the date on which the notice is sent [~~tax lien is recorded in all~~  
10 ~~counties in which the property is located~~], to obtain a release of  
11 the transferred tax lien by paying the transferee of the tax lien  
12 the amount owed under the contract between the property owner and  
13 the transferee. This right of redemption does not affect a right of  
14 redemption in a foreclosure proceeding described by Subsection (k)  
15 or (k-1). A transferee may charge a reasonable fee for a payoff  
16 statement that is requested after an initial payoff statement is  
17 provided. To be valid, the payoff statement must meet the  
18 requirements of a payoff statement defined by Section 12.017,  
19 Property Code.

20 (i) A foreclosure of a tax lien transferred as provided by  
21 this section may not be instituted within one year from the date on  
22 which the lien is recorded in all counties in which the property is  
23 located, unless the contract between the owner of the property and  
24 the transferee provides otherwise. [~~The transferee of a tax lien or~~  
25 ~~any successor in interest must notify the holders of all recorded~~  
26 ~~liens on the property before foreclosure in the same manner and~~  
27 ~~within the same time frame as the transferee must notify the owner~~

1 ~~of the property under Section 51.002, Property Code.]~~

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

7 (1) 125 percent of the purchase price during the first  
8 year of the redemption period or 150 percent of the purchase price  
9 during the second year of the redemption period with cash or cash  
10 equivalent funds; and

11 (2) the amount reasonably spent by the purchaser in  
12 connection with the property as costs within the meaning of Section  
13 34.21(g) and the legal judgment rate of return on that amount.

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

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

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

9 (1) an event of default;

10 (2) notice of acceleration;

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

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

16 (5) requiring the transferee to serve foreclosure  
17 notices on the property owner at the property owner's last known  
18 address in the manner required by Section 32.06(c)(2) [~~Sections~~  
19 ~~51.002(b), (d), and (e), Property Code,~~] or by a commercially  
20 reasonable delivery service that maintains verifiable records of  
21 deliveries for at least five years from the date of delivery; [~~and~~]

22 (6) requiring, at the time the foreclosure notices  
23 required by Subdivision (5) are served on the property owner, the  
24 transferee to serve a copy of the notice of sale in the same manner  
25 on the mortgage servicer or the holder of all recorded real property  
26 liens encumbering the property that includes on the first page, in  
27 14-point boldfaced type or 14-point uppercase typewritten letters,

1 a statement that reads substantially as follows: "PURSUANT TO TEXAS  
2 TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS  
3 DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF  
4 REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED  
5 TO OCCUR ON THE (DATE)."; and

6 (7) requiring that a contract entered into under  
7 Subsection (a) between a transferee and the property owner under  
8 Section 32.06 include, in 14-point boldfaced type or 14-point  
9 uppercase typewritten letters, a statement that reads  
10 substantially as follows: "IF YOU HAVE A FIRST LIEN MORTGAGE  
11 PREVIOUSLY RECORDED ON THE PROPERTY SUBJECT TO THIS CONTRACT,  
12 FAILURE TO PAY YOUR TAXES ON THE PROPERTY AND ENTERING INTO THIS  
13 CONTRACT MAY CONSTITUTE A DEFAULT UNDER THE TERMS OF YOUR  
14 MORTGAGE."

15 (d) Chapters 342, 343, and 346, Finance Code, do not apply  
16 to a transaction covered by this section. The transferee of a tax  
17 lien under this section is not required to obtain a license under  
18 Title 4, Finance Code.

19 SECTION 3. The following statutes are repealed:

20 (1) Section 32.06(a-3), Tax Code; and

21 (2) Section 32.065(g), Tax Code, as added by Chapter  
22 406, Acts of the 79th Legislature, Regular Session, 2005.

23 SECTION 4. (a) The change in law made by this Act applies  
24 only to the transfer of an ad valorem tax lien that occurs on or  
25 after the effective date of this Act. A transfer of an ad valorem  
26 tax lien that occurs before the effective date of this Act is  
27 covered by the law in effect at the time the transfer occurred, and

1 the former law is continued in effect for that purpose.

2 (b) The change in law made by this Act to Sections 32.06 and  
3 32.065, Tax Code, applies to all foreclosures under those sections  
4 that occur on or after the effective date of this Act, other than a  
5 foreclosure under a transferred ad valorem tax lien that was  
6 transferred before the effective date of this Act pursuant to a  
7 contract that provided for specific foreclosure procedures under  
8 the law in effect at the time the contract was executed. A  
9 foreclosure under a transferred ad valorem tax lien that was  
10 transferred before the effective date of this Act pursuant to a  
11 contract that provided for specific foreclosure procedures under  
12 the law in effect at the time the contract was executed is governed  
13 by the law in effect at the time the contract was executed, and the  
14 former law is continued in effect for that purpose.

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