

By: Orr

H.B. No. 3387

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of ad valorem tax liens.

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), (d), (e), (f), and (j), and by adding Subsections (b-1), (b-2), (e-1), and (e-2) 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; and

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

(b-2) No later than the 10th day after the date the sworn

1 document described by Subsection (a-1) has been filed with the
2 collector, the transferee of the tax lien shall provide a copy of
3 the sworn document to any mortgage servicer and to each holder of a
4 recorded lien encumbering the property by certified mail, return
5 receipt requested. The copy must be sent to the address shown on
6 the most recent payment invoice, statement, or payment coupon
7 provided by a mortgage servicer to the property owner, or the
8 address in the real property records of the holder of a recorded
9 lien, as applicable. The outside of the envelope containing the
10 notice must also bear the following words in at least 14-point
11 boldfaced type: "THE ADDRESSEE MAY WISH TO REFER THIS MATTER TO AN
12 ATTORNEY FOR IMMEDIATE REVIEW." If the notice required by this
13 subsection is not sent in compliance with this subsection, the
14 transferred lien is subordinate to all previously recorded liens
15 encumbering the property.

16 (d) To be enforceable, a tax lien transferred as provided by
17 this section must be recorded with the sworn document described by
18 Subsection (a-1) and the sworn statement and affidavit attesting to
19 the transfer of the tax lien as described by ~~in~~ Subsection (b) in
20 the deed records of each county in which the property encumbered by
21 the lien is located.

22 (e) A transferee holding a tax lien transferred as provided
23 by this section may not charge a greater rate of interest than 18
24 percent a year on the funds advanced. Funds advanced are limited to
25 the taxes, penalties, interest, and collection costs paid as shown
26 on the tax receipt, expenses paid to record the lien, plus
27 reasonable closing costs. No other amounts may be charged by the

1 transferee at or before closing. For purposes of this subsection,
2 reasonable closing costs are limited to the following:

3 (1) reasonable fees for:

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

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

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

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

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

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

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

22 (5) the reasonable cost of a credit report;

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

26 (7) the premiums received in connection with the sale
27 of optional credit life insurance, credit accident and health

1 insurance, or other insurance that protects the transferee against
2 default by the property owner, the benefits of which are applied in
3 whole or in part to reduce or extinguish the balance of the transfer
4 indebtedness; and

5 (8) an administrative fee in an amount not to exceed
6 \$25 for a loan of more than \$1,000 or \$20 for a loan of \$1,000 or
7 less.

8 (e-1) A contract between a property owner and a transferee
9 holding a tax lien transferred as provided by this section:

10 (1) may include:

11 (A) a late payment fee that may not exceed the
12 lesser of five percent of the payment or \$5, if a payment by the
13 property owner remains unpaid for more than 10 days after the date
14 the payment is due; and

15 (B) a fee for a dishonored check, subject to
16 Section 3.506, Business & Commerce Code; and

17 (2) may not include a prepayment penalty.

18 (e-2) Only one late payment fee may be collected under
19 Subsection (e-1) in connection with a single payment regardless of
20 the duration of the default.

21 (f) The mortgage servicer or holder of a preexisting lien on
22 property encumbered by a tax lien transferred as provided by
23 Subsection (b) is entitled, within six months after the date on
24 which the tax lien transfer is recorded in all counties in which the
25 property is located, to obtain a release of the transferred tax lien
26 by paying the transferee of the tax lien the amount owed under the
27 contract between the property owner and the transferee. A

1 transferee may charge a reasonable fee for a payoff statement that
2 is requested after an initial payoff statement is provided. The
3 transferee is required to provide payoff information,
4 notwithstanding any contrary contractual agreement with the
5 property owner, to the greatest extent permitted by 15 U.S.C.
6 Section 6802 and 12 C.F.R. Part 216.

7 (j) After one year from the date on which a tax lien
8 transferred as provided by this section is recorded in all counties
9 in which the property is located, the transferee of the lien may
10 foreclose the lien in the manner provided by Subsection (c) unless a
11 contract between the holder of the lien and the owner of the
12 property encumbered by the lien provides that the transferee may
13 foreclose the lien only after more than one year from that date
14 [otherwise]. If a foreclosure suit results in foreclosure of the
15 lien, the transferee is entitled to recover attorney's fees in an
16 amount not to exceed 10 percent of the judgment. The proceeds of a
17 sale following a judicial foreclosure as provided by this
18 subsection shall be applied first to the payment of court costs,
19 then to payment of the judgment, including accrued interest, and
20 then to the payment of any attorney's fees fixed in the judgment.
21 Any remaining proceeds shall be paid to other holders of liens on
22 the property in the order of their priority and then to the person
23 whose property was sold at the tax sale.

24 SECTION 2. Section 32.065(b), Tax Code, is amended to read
25 as follows:

26 (b) Notwithstanding any agreement to the contrary, a
27 contract entered into under Subsection (a) between a transferee and

1 the property owner under Section 32.06 that is secured by a priority
2 lien on the property is subject to each requirement of Section 32.06
3 other than a requirement relating to judicial foreclosure, and
4 shall provide for a power of sale and foreclosure under Chapter 51,
5 Property Code, and:

6 (1) an event of default;

7 (2) notice of acceleration;

8 (3) recording of the contract in each county in which
9 the property is located;

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

12 (5) requiring the transferee to serve foreclosure
13 notices on the property owner at the property owner's last known
14 address in the manner required by Sections 51.002(b), (d), and (e),
15 Property Code, or by a commercially reasonable delivery service
16 that maintains verifiable records of deliveries for at least five
17 years from the date of delivery; and

18 (6) requiring, at the time the foreclosure notices
19 required by Subdivision (5) are served on the property owner, the
20 transferee to serve a copy of the notice of sale in the same manner
21 on the mortgage servicer and ~~or~~ the holder of all recorded real
22 property liens encumbering the property that includes on the first
23 page, in 14-point boldfaced type or 14-point uppercase typewritten
24 letters, a statement that reads substantially as follows:

25 "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE
26 SALE REFERRED TO IN THIS DOCUMENT IS A [~~SUPERIOR~~] TRANSFER TAX LIEN
27 SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. THE

1 FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)." The outside of the
2 envelope containing the notice must also bear the following words
3 in at least 14-point boldfaced type: "THE ADDRESSEE MAY WISH TO
4 REFER THIS MATTER TO AN ATTORNEY FOR IMMEDIATE REVIEW."

5 SECTION 3. Chapter 13, Finance Code, is amended by adding
6 Section 13.0075 to read as follows:

7 Sec. 13.0075. AD VALOREM TAX LIEN TRANSFER DISCLOSURE
8 STATEMENT. The commissioner by rule shall establish the form and
9 contents of the disclosure statement required by Section
10 32.06(b-1), Tax Code. The disclosure statement must be designed so
11 that the statement:

12 (1) specifies the amount of each fee or charge the
13 proposed transferee of the tax lien will charge in connection with
14 the transfer of the tax lien or any contract under Section 32.065,
15 Tax Code;

16 (2) conspicuously warns the property owner that
17 entering into the tax lien transfer transaction may violate an
18 agreement relating to an existing lien encumbering the property,
19 which will permit the holder of the lien, without the property
20 owner's consent, to pay off the loan obtained for payment of taxes
21 to eliminate the tax lien or to foreclose the property;

22 (3) advises the property owner that a holder of an
23 existing lien, if requested, may agree to pay unpaid taxes on the
24 property and charge a lower interest rate or establish an escrow
25 arrangement and charge no interest;

26 (4) informs the property owner that if the owner has
27 any questions about the proposed transfer, or if the property owner

1 has any complaints or questions about the proposed transferee, the
2 owner may contact the Department of Savings and Mortgage Lending;
3 and

4 (5) provides a Department of Savings and Mortgage
5 Lending toll-free telephone number and contact information for the
6 department.

7 SECTION 4. Section 32.065(g), Tax Code, as added by Chapter
8 406, Acts of the 79th Legislature, Regular Session, 2005, is
9 repealed.

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

14 (b) The changes in law made by this Act to Section 32.06, Tax
15 Code, that relate to the disclosure statement required by that
16 section may not be enforced until the savings and loan commissioner
17 has complied with Subsection (a) of this section and the rules
18 adopted under Subsection (a) of this section take effect.

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