

By: Wentworth

S.B. No. 1520

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 (a-4), (b-1), (c-1), (d-1), (f-1), (f-2), (f-3), (f-4), 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; and

(4) notice has been given to the property owner that if they are age 65 or disabled, they may be eligible for a tax deferral under Section 33.06.

(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

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

3 (A) the property is not subject to a recorded
4 mortgage lien;

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

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

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

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

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

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

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

26 (b-1) Not later than the 10th business day after the date
27 the certified statement is received by the transferee, the

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

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

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

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

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

22 (1) the application for the foreclosure must be served
23 on and name as parties the owner of the property and the holder of
24 any recorded preexisting first lien on the property and must:

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

1 (B) state that the applicant does not seek a
2 court order required by Section 50, Article XVI, Texas
3 Constitution;

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

10 (D) confirm that the property owner has not
11 requested a deferral of taxes authorized by Section 33.06; and

12 (2) the holder of a recorded preexisting lien must be
13 provided at least 60 days' notice before the date of the proposed
14 foreclosure.

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

21 (d-1) A right of rescission described by 12 C.F.R. Section
22 226.23 applies to a tax lien transfer under this section.

23 (f) The holder of a loan secured by a transferred tax lien
24 that is delinquent for 90 consecutive days must send a notice of the
25 delinquency by certified mail on or before the 120th day of
26 delinquency or, if the 120th day is not a business day, on the next
27 business day after the 120th day of delinquency, to any holder of a

1 recorded preexisting lien on the property. The holder or mortgage
2 servicer of a recorded preexisting lien on property encumbered by a
3 tax lien transferred as provided by Subsection (b) is entitled,
4 within six months after the date on which the notice is sent [~~tax~~
5 ~~lien is recorded in all counties in which the property is located~~],
6 to obtain a release of the transferred tax lien by paying the
7 transferee of the tax lien the amount owed under the contract
8 between the property owner and the transferee.

9 (f-1) If an obligation secured by a preexisting first lien
10 on the property is delinquent for at least 90 consecutive days and
11 the obligation has been referred to a collection specialist, the
12 mortgage servicer or the holder of the first lien may send a notice
13 of the delinquency to the transferee of a tax lien. The mortgage
14 servicer or the first lien holder is entitled, within six months
15 after the date on which that notice is sent, to obtain a release of
16 the transferred tax lien by paying the transferee of the tax lien
17 the amount owed under the contract between the property owner and
18 the transferee. The Finance Commission of Texas by rule shall
19 prescribe the form and content of the notice under this subsection.

20 (f-2) The rights granted by Subsections (f) and (f-1) do not
21 affect a right of redemption in a foreclosure proceeding described
22 by Subsection (k) or (k-1).

23 (f-3) Notwithstanding any contractual agreement with the
24 property owner, the transferee of a tax lien must provide the payoff
25 information required by this section to the greatest extent
26 permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The
27 payoff statement must meet the requirements of a payoff statement

1 defined by Section 12.017, Property Code. A transferee may charge a
2 reasonable fee for a payoff statement that is requested after an
3 initial payoff statement is provided.

4 (f-4) Failure to comply with Subsection (b-1), (f), or (f-1)
5 does not invalidate a tax lien under this chapter, a contract lien,
6 or a deed of trust.

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

21 (1) 125 percent of the purchase price during the first
22 year of the redemption period or 150 percent of the purchase price
23 during the second year of the redemption period with cash or cash
24 equivalent funds; and

25 (2) the amount reasonably spent by the purchaser in
26 connection with the property as costs within the meaning of Section
27 34.21(g) and the legal judgment rate of return on that amount.

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

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

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

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

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

3 (5) requiring the transferee to serve foreclosure
4 notices on the property owner at the property owner's last known
5 address in the manner provided [~~required~~] by Section 32.06(c)(2)
6 [~~Sections 51.002(b), (d), and (e), Property Code,~~] or by a
7 commercially reasonable delivery service that maintains verifiable
8 records of deliveries for at least five years from the date of
9 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
17 TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN
18 THIS 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. Subsection (g), Section 32.065, Tax Code, as
7 added by Chapter 406, Acts of the 79th Legislature, Regular
8 Session, 2005, is 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.