

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~~]~~ 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~~]~~  
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  
2 charge a reasonable fee for a payoff statement that is requested  
3 after an 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.