

1-1 By: Wentworth S.B. No. 1520
1-2 (In the Senate - Filed March 8, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 27, 2007, reported adversely, with favorable Committee
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1520 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to ad valorem tax lien transfers.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 32.06, Tax Code, is amended by amending
1-13 Subsections (a-1), (a-2), (a-3), (b), (c), (d), (f), (i), and (k)
1-14 and adding Subsections (b-1), (c-1), (d-1), (f-1), (f-2), (f-3),
1-15 (f-4), and (k-1) to read as follows:

1-16 (a-1) A person may authorize another person to pay the
1-17 ~~[delinquent]~~ taxes imposed by a taxing unit on the person's real
1-18 property by filing with the collector for the unit a sworn document
1-19 stating:

1-20 (1) the authorization;

1-21 (2) the name and street address of the transferee
1-22 authorized to pay the taxes of the property owner; and

1-23 (3) a description of the property by street address,
1-24 if applicable, and legal description.

1-25 (a-2) A ~~[After a]~~ tax lien may be ~~[is]~~ transferred to the
1-26 person who pays the taxes on behalf of the property owner under the
1-27 authorization for:

1-28 (1) taxes that are delinquent at the time of payment;

1-29 or

1-30 (2) taxes that are not delinquent at the time of
1-31 payment if:

1-32 (A) the property is not subject to a recorded
1-33 mortgage lien;

1-34 (B) a tax lien transfer authorized by the
1-35 property owner has been executed and recorded for one or more prior
1-36 years on the same property; or

1-37 (C) the property owner has executed an
1-38 authorization consenting to a transfer of the tax liens for both the
1-39 taxes on the property that are not delinquent and taxes on the
1-40 property that are delinquent~~[, taxes on the property that become~~
1-41 due in subsequent tax years may be transferred before the
1-42 delinquency date in the manner provided by Subsection (a-1)].

1-43 (a-3) The Finance Commission of Texas shall:

1-44 (1) prescribe the form and content of an appropriate
1-45 disclosure statement to be provided to a property owner before the
1-46 execution of a tax lien transfer; and

1-47 (2) adopt rules relating to the reasonableness of
1-48 closing costs, fees, and other charges permitted under this section
1-49 [A tax lien may be transferred before the delinquency date in the
1-50 manner provided by Subsection (a-1) only if the real property is not
1-51 subject to a lien other than the tax lien].

1-52 (b) If a transferee authorized to pay a property owner's
1-53 taxes pursuant to Subsection (a-1) pays the taxes and any penalties
1-54 and interest imposed, the collector shall issue a tax receipt to
1-55 that transferee. In addition, the collector or a person designated
1-56 by the collector shall certify ~~[on the sworn document]~~ that
1-57 ~~[payment of]~~ the taxes and any penalties and interest on the subject
1-58 [described] property and collection costs have ~~[has]~~ been paid
1-59 [made] by the transferee on behalf of the property owner ~~[liable for~~
1-60 ~~the taxes when imposed]~~ and that the taxing unit's tax lien is
1-61 transferred to that transferee. The collector shall attach to the
1-62 certified statement ~~[sworn document]~~ the collector's seal of office
1-63 or sign the statement ~~[document]~~ before a notary public and deliver

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

2-14 (b-1) Not later than the 10th business day after the date
 2-15 the certified statement is received by the transferee, the
 2-16 transferee shall send by certified mail a copy of the sworn document
 2-17 described by Subsection (a-1) to any mortgage servicer and to each
 2-18 holder of a first lien encumbering the property. The copy must be
 2-19 sent, as applicable, to the address shown on the most recent payment
 2-20 invoice, statement, or payment coupon provided by the mortgage
 2-21 servicer to the property owner, or the address of the holder of a
 2-22 recorded first lien as shown in the real property records.

2-23 (c) Except as otherwise provided by this section, the
 2-24 transferee of a tax lien and any successor in interest is entitled
 2-25 to foreclose the lien:

2-26 (1) in the manner provided by law for foreclosure of
 2-27 tax liens; or

2-28 (2) in the manner specified in Section 51.002,
 2-29 Property Code, and Section 32.065, after the transferee or a
 2-30 successor in interest obtains a court order for foreclosure under
 2-31 Rule 736, Texas Rules of Civil Procedure, except as provided by
 2-32 Subsection (c-1) of this section ~~[of this code]~~, if the property
 2-33 owner and the transferee enter into a contract that is secured by a
 2-34 lien on the property.

2-35 (c-1) If a transferee seeks to foreclose a tax lien on the
 2-36 property under Subsection (c)(2):

2-37 (1) the application for the foreclosure must be served
 2-38 on and name as parties the owner of the property and the holder of
 2-39 any recorded preexisting first lien on the property and must:

2-40 (A) allege that the lien is an ad valorem tax lien
 2-41 instead of a lien created under Section 50, Article XVI, Texas
 2-42 Constitution;

2-43 (B) state that the applicant does not seek a
 2-44 court order required by Section 50, Article XVI, Texas
 2-45 Constitution; and

2-46 (C) state that the transferee has provided notice
 2-47 to cure the default, notice of intent to accelerate, and notice of
 2-48 acceleration of the maturity of the debt to the property owner, the
 2-49 mortgage servicer, and each holder of a recorded first lien on the
 2-50 property in the manner required for notice to a debtor under Section
 2-51 51.002, Property Code; and

2-52 (2) the holder of a recorded preexisting lien must be
 2-53 provided at least 60 days' notice before the date of the proposed
 2-54 foreclosure.

2-55 (d) A transferee shall record ~~[To be enforceable]~~ a tax
 2-56 lien transferred as provided by this section ~~[must be recorded]~~
 2-57 with the ~~[sworn]~~ statement ~~[and affidavit]~~ attesting to the
 2-58 transfer of the tax lien as described by ~~[in]~~ Subsection (b) in the
 2-59 deed records of each county in which the property encumbered by the
 2-60 lien is located.

2-61 (d-1) A right of rescission described by 12 C.F.R. Section
 2-62 226.23 applies to a tax lien transfer under this section.

2-63 (f) The holder of a loan secured by a transferred tax lien
 2-64 that is delinquent for 90 consecutive days must send a notice of the
 2-65 delinquency by certified mail on or before the 120th day of
 2-66 delinquency or, if the 120th day is not a business day, on the next
 2-67 business day after the 120th day of delinquency, to any holder of a
 2-68 recorded preexisting lien on the property. The holder or mortgage
 2-69 servicer of a recorded preexisting lien on property encumbered by a

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

3-7 (f-1) If an obligation secured by a preexisting first lien
 3-8 on the property is delinquent for at least 90 consecutive days and
 3-9 the obligation has been referred to a collection specialist, the
 3-10 mortgage servicer or the holder of the first lien may send a notice
 3-11 of the delinquency to the transferee of a tax lien. The mortgage
 3-12 servicer or the first lien holder is entitled, within six months
 3-13 after the date on which that notice is sent, to obtain a release of
 3-14 the transferred tax lien by paying the transferee of the tax lien
 3-15 the amount owed under the contract between the property owner and
 3-16 the transferee. The Finance Commission of Texas by rule shall
 3-17 prescribe the form and content of the notice under this subsection.

3-18 (f-2) The rights granted by Subsections (f) and (f-1) do not
 3-19 affect a right of redemption in a foreclosure proceeding described
 3-20 by Subsection (k) or (k-1).

3-21 (f-3) Notwithstanding any contractual agreement with the
 3-22 property owner, the transferee of a tax lien must provide the payoff
 3-23 information required by this section to the greatest extent
 3-24 permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The
 3-25 payoff statement must meet the requirements of a payoff statement
 3-26 defined by Section 12.017, Property Code. A transferee may charge a
 3-27 reasonable fee for a payoff statement that is requested after an
 3-28 initial payoff statement is provided.

3-29 (f-4) Failure to comply with Subsection (b-1), (f), or (f-1)
 3-30 does not invalidate a tax lien under this chapter, a contract lien,
 3-31 or a deed of trust.

3-32 (i) A foreclosure of a tax lien transferred as provided by
 3-33 this section may not be instituted within one year from the date on
 3-34 which the lien is recorded in all counties in which the property is
 3-35 located, unless the contract between the owner of the property and
 3-36 the transferee provides otherwise. [~~The transferee of a tax lien or~~
 3-37 ~~any successor in interest must notify the holders of all recorded~~
 3-38 ~~liens on the property before foreclosure in the same manner and~~
 3-39 ~~within the same time frame as the transferee must notify the owner~~
 3-40 ~~of the property under Section 51.002, Property Code.]~~

3-41 (k) Beginning on the date the foreclosure deed is recorded,
 3-42 the person whose property is sold as provided by Subsection (c) or
 3-43 the mortgage servicer of a prior recorded lien against the property
 3-44 is entitled to redeem the foreclosed property from the purchaser or
 3-45 the purchaser's successor by paying the purchaser or successor:

3-46 (1) 125 percent of the purchase price during the first
 3-47 year of the redemption period or 150 percent of the purchase price
 3-48 during the second year of the redemption period with cash or cash
 3-49 equivalent funds; and

3-50 (2) the amount reasonably spent by the purchaser in
 3-51 connection with the property as costs within the meaning of Section
 3-52 34.21(g) and the legal judgment rate of return on that amount.

3-53 (k-1) The right of redemption provided by Subsection (k) may
 3-54 be exercised on or before the second anniversary of the date on
 3-55 which the purchaser's deed is filed of record if the property sold
 3-56 was the residence homestead of the owner, was land designated for
 3-57 agricultural use, or was a mineral interest. For any other
 3-58 property, the right of redemption must be exercised not later than
 3-59 the 180th day after the date on which the purchaser's deed is filed
 3-60 of record. If a person redeems the property as provided by
 3-61 Subsection (k) and this subsection, the purchaser at the tax sale or
 3-62 the purchaser's successor shall deliver a deed without warranty to
 3-63 the property to the person redeeming the property. If the person
 3-64 who owned the property at the time of foreclosure redeems the
 3-65 property, all liens existing on the property at the time of the tax
 3-66 sale remain in effect to the extent not paid from the sale proceeds.

3-67 SECTION 2. Subsections (b), (c), and (d), Section 32.065,
 3-68 Tax Code, are amended to read as follows:

3-69 (b) Notwithstanding any agreement to the contrary, a

4-1 contract entered into under Subsection (a) between a transferee and
4-2 the property owner under Section 32.06 that is secured by a priority
4-3 lien on the property shall provide for a power of sale and
4-4 foreclosure in the manner provided by Section 32.06(c)(2) [under
4-5 Chapter 51, Property Code,] and:

4-6 (1) an event of default;
4-7 (2) notice of acceleration;
4-8 (3) recording of the deed of trust or other instrument
4-9 securing the contract entered into under Subsection (a) in each
4-10 county in which the property is located;

4-11 (4) recording of the sworn document and affidavit
4-12 attesting to the transfer of the tax lien;

4-13 (5) requiring the transferee to serve foreclosure
4-14 notices on the property owner at the property owner's last known
4-15 address in the manner provided [required] by Section 32.06(c)(2)
4-16 [Sections 51.002(b), (d), and (e), Property Code,] or by a
4-17 commercially reasonable delivery service that maintains verifiable
4-18 records of deliveries for at least five years from the date of
4-19 delivery; and

4-20 (6) requiring, at the time the foreclosure notices
4-21 required by Subdivision (5) are served on the property owner, the
4-22 transferee to serve a copy of the notice of sale in the same manner
4-23 on the mortgage servicer or the holder of all recorded real property
4-24 liens encumbering the property that includes on the first page, in
4-25 14-point boldfaced type or 14-point uppercase typewritten letters,
4-26 a statement that reads substantially as follows: "PURSUANT TO
4-27 TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN
4-28 THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF
4-29 REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED
4-30 TO OCCUR ON THE (DATE)."

4-31 (c) Notwithstanding any other provision of this code, a
4-32 transferee of a tax lien or the transferee's assignee is subrogated
4-33 to and is entitled to exercise any right or remedy possessed by the
4-34 transferring taxing unit, including or related to foreclosure or
4-35 judicial sale, but is prohibited from exercising a remedy of
4-36 foreclosure or judicial sale where the transferring taxing unit
4-37 would be prohibited from foreclosure or judicial sale.

4-38 (d) Chapters 342 and 346, Finance Code, and the provisions
4-39 of Chapter 343, Finance Code, other than Sections 343.203 and
4-40 343.205, do not apply to a transaction covered by this section. The
4-41 transferee of a tax lien under this section is not required to
4-42 obtain a license under Title 4, Finance Code.

4-43 SECTION 3. Subsection (g), Section 32.065, Tax Code, as
4-44 added by Chapter 406, Acts of the 79th Legislature, Regular
4-45 Session, 2005, is repealed.

4-46 SECTION 4. (a) The change in law made by this Act applies
4-47 only to the transfer of an ad valorem tax lien that occurs on or
4-48 after the effective date of this Act. A transfer of an ad valorem
4-49 tax lien that occurs before the effective date of this Act is
4-50 covered by the law in effect at the time the transfer occurred, and
4-51 the former law is continued in effect for that purpose.

4-52 (b) The change in law made by this Act to Sections 32.06 and
4-53 32.065, Tax Code, applies to all foreclosures under those sections
4-54 that occur on or after the effective date of this Act, other than a
4-55 foreclosure under a transferred ad valorem tax lien that was
4-56 transferred before the effective date of this Act pursuant to a
4-57 contract that provided for specific foreclosure procedures under
4-58 the law in effect at the time the contract was executed. A
4-59 foreclosure under a transferred ad valorem tax lien that was
4-60 transferred before the effective date of this Act pursuant to a
4-61 contract that provided for specific foreclosure procedures under
4-62 the law in effect at the time the contract was executed is governed
4-63 by the law in effect at the time the contract was executed, and the
4-64 former law is continued in effect for that purpose.

4-65 SECTION 5. This Act takes effect September 1, 2007.

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