BILL ANALYSIS

C.S.H.B. 406
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When property taxes are not paid, taxing units sue the property owner, obtain a judgment, and the property is then sold at auction. The minimum bid at the auction is the amount of tax due. If the property sells for more than the tax due, the surplus, or excess proceeds, belong to the former owner.

Unscrupulous investors are exploiting the former owner’s rights to the money by charging excessive fees. The law already limits lawyer's fees in these cases, but there is no limit on the fees charged by non-attorneys.

C.S.H.B. 406 limits which former owners can collect excess proceeds. The bill requires advance payment to the former owner of 80 percent of the money and limits the amount of excess proceeds the court may order paid to the buyer to 125 percent of the amount paid to the former owner. Under the bill, a person who buys the property after the date of the judgment is not authorized to establish a claim to the excess proceeds, except for sales and transfers to relatives of the former owner. Non-attorneys are prohibited from collecting fees in excess proceeds cases. The existing limit on attorney’s fees is retained.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 406 amends the Tax Code to clarify provisions establishing the order of priority for the disposition of excess proceeds of a tax sale of real property a court is required to follow when ordering payment. The bill adds the condition that a former owner prioritized for payment because of a claim for excess proceeds be a former owner that was a defendant in the judgment, is related within the third degree by consanguinity or affinity to a former owner that was a defendant in the judgment, or that acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment. The bill prohibits a former owner of the property that acquired an interest in the property after the date of the judgment from establishing a claim to the proceeds, except as otherwise provided by the bill's provisions. The bill provides that a former owner of the property is considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after that date. The bill clarifies that an order directing all or part of the excess proceeds to be paid to a party is appealable.

C.S.H.B. 406 clarifies that the conditions that must be met to overcome a prohibition against a person taking an assignment of an owner's claim to excess proceeds also apply to other transfers of an owner's claim. The bill adds to those conditions the condition that the assignment or transfer is not the result of an in-person or telephone solicitation and the condition that the assignee or transferee pays the assignor or transferor on the date of the assignment or transfer an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds. The bill clarifies that the sworn statement by an assignor or transferor required to be contained in the assignment or transfer document must affirm the specific amount of consideration given for the assignment or transfer and adds that the sworn statement is required to affirm that the consideration was paid in full on the date of the assignment or transfer and that the consideration paid was an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.

C.S.H.B. 406 makes an assignee or transferee who attempts to obtain excess proceeds without complying with the requirements for assignment or transfer of an owner's claim to the proceeds liable to the assignor or transferor for attorney's fees and expenses. The bill requires the assignee or transferee to produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. The bill requires the assignee or transferee to obtain the presence of the assignor or transferor to testify at the hearing, if the original evidence of the payment is lost or if the payment was in cash. The bill prohibits a person who is not an attorney from charging a fee to obtain excess proceeds for an owner. The bill prohibits the amount of excess proceeds the court is authorized to order be paid an assignee or transferee from exceeding 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

C.S.H.B. 406 provides that the change in law made by the bill applies to the disposition of excess proceeds of a tax sale paid to the clerk of the court regardless of the date on which the warrant or order of sale was issued, the tax sale was conducted, or the proceeds were paid to the clerk.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 406 differs from the original by adding to the conditions that must be met to overcome a prohibition against a person taking an assignment or other transfer of an owner's claim to excess proceeds that the assignment or transfer is not the result of an in-person or telephone solicitation.

C.S.H.B. 406 omits a provision in the original requiring that a lienholder prioritized for payment because of a claim for excess proceeds be a lienholder that was a defendant in the judgment.