

By: Rodriguez

H.B. No. 406

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of excess proceeds of a tax sale of real property or foreclosure of a tax lien on real property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 34, Tax Code, is amended by adding Section 34.021 to read as follows:

Sec. 34.021. DISTRIBUTION OF EXCESS PROCEEDS IN OTHER TAX FORECLOSURE PROCEEDINGS. A person conducting a sale for the foreclosure of a tax lien under Rule 736 of the Texas Rules of Civil Procedure shall, within 10 days of the sale, pay any excess proceeds after payment of all amounts due all participants in the sale to the clerk of the court that issued the order authorizing the sale. The excess proceeds from such a sale shall be handled according to Sections 34.03 and 34.04 of this code.

SECTION 2. Section 34.04, Tax Code, is amended by amending Subsections (c), (e), (f), (g), (h), and (i) and adding Subsections (c-1) and (j) to read as follows:

(c) At the hearing the court shall order that the proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:

(1) to the tax sale purchaser if the tax sale has been adjudged to be void and the purchaser has prevailed in an action against the taxing units under Section 34.07(d) by final judgment;

(2) to a taxing unit for any taxes, penalties, or

1 interest that have become due or delinquent on the subject property
2 subsequent to the date of the judgment or that were omitted from the
3 judgment by accident or mistake;

4 (3) to any other lienholder, consensual or otherwise,
5 for the amount due under a lien, in accordance with the priorities
6 established by applicable law;

7 (4) to a taxing unit for any unpaid taxes, penalties,
8 interest, or other amounts adjudged due under the judgment that
9 were not satisfied from the proceeds from the tax sale; and

10 (5) to each former owner of the property, as the
11 interest of each may appear, provided that the former owner:

12 (A) was a defendant in the judgment;

13 (B) is related within the third degree by
14 consanguinity or affinity to a former owner that was a defendant in
15 the judgment; or

16 (C) acquired by will or intestate succession the
17 interest in the property of a former owner that was a defendant in
18 the judgment.

19 (c-1) Except as provided by Subsections (c)(5)(B) and (C), a
20 former owner of the property that acquired an interest in the
21 property after the date of the judgment may not establish a claim to
22 the proceeds. For purposes of this subsection, a former owner of
23 the property is considered to have acquired an interest in the
24 property after the date of the judgment if the deed by which the
25 former owner acquired the interest was recorded in the real
26 property records of the county in which the property is located
27 after the date of the judgment.

1 (e) An [~~an~~] order under this section directing that all or
2 part of the excess proceeds be paid to a party is appealable.

3 (f) A person may not take an assignment or other transfer of
4 an owner's claim to excess proceeds unless:

5 (1) the assignment or transfer is taken on or after the
6 36th day after the date the excess proceeds are deposited in the
7 registry of the court;

8 (2) the assignment or transfer is in writing and
9 signed by the assignor or transferor; [~~and~~]

10 (3) the assignment or transfer is not the result of an
11 in-person or telephone solicitation;

12 (4) the assignee or transferee pays the assignor or
13 transferor on the date of the assignment or transfer an amount equal
14 to at least 80 percent of the amount of the assignor's or
15 transferor's claim to the excess proceeds; and

16 (5) the assignment or transfer document contains a
17 sworn statement by the assignor or transferor affirming:

18 (A) that the assignment or transfer was given
19 voluntarily;

20 (B) the date on which the assignment or transfer
21 was made and that the date was not earlier than the 36th day after
22 the date the excess proceeds were deposited in the registry of the
23 court;

24 (C) that the assignor or transferor has received
25 the notice from the clerk required by Section 34.03;

26 (D) the nature and specific amount of
27 consideration given for the assignment or transfer;

1 (E) the circumstances under which the excess
2 proceeds are in the registry of the court;

3 (F) the amount of the claim to excess proceeds in
4 the registry of the court;

5 (G) that the assignor or transferor has made no
6 other assignments or transfers of the assignor's or transferor's
7 claim to the excess proceeds; ~~and~~

8 (H) that the assignor or transferor knows that
9 the assignor or transferor may retain counsel; and

10 (I) that the consideration was paid in full on
11 the date of the assignment or transfer and that the consideration
12 paid was an amount equal to at least 80 percent of the amount of the
13 assignor's or transferor's claim to the excess proceeds.

14 (g) An assignee or transferee who obtains excess proceeds
15 without complying with Subsection (f) is liable to the assignor or
16 transferor for the amount of excess proceeds obtained plus
17 attorney's fees and expenses. An assignee or transferee who
18 attempts to obtain excess proceeds without complying with
19 Subsection (f) is liable to the assignor or transferor for
20 attorney's fees and expenses.

21 (h) An assignee or transferee who files a petition setting
22 forth a claim to excess proceeds must attach a copy of the
23 assignment or transfer document and produce the original of the
24 assignment or transfer document in court at the hearing on the
25 petition. If the original assignment or transfer document is lost,
26 the assignee or transferee must obtain the presence of the assignor
27 or transferor to testify at the hearing. In addition, the assignee

1 or transferee must produce at the hearing the original of any
2 evidence verifying the payment of the consideration given for the
3 assignment or transfer. If the original of any evidence of the
4 payment is lost or if the payment was in cash, the assignee or
5 transferee must obtain the presence of the assignor or transferor
6 to testify at the hearing.

7 (i) A fee charged by an attorney to obtain excess proceeds
8 for an owner may not be greater than 25 percent of the amount
9 obtained or \$1,000, whichever is less. A person who is not an
10 attorney may not charge a fee to obtain excess proceeds for an
11 owner.

12 (j) The amount of the excess proceeds the court may order be
13 paid to an assignee or transferee may not exceed 125 percent of the
14 amount the assignee or transferee paid the assignor or transferor
15 on the date of the assignment or transfer.

16 SECTION 3. The change in law made by this Act applies to the
17 disposition of excess proceeds of a tax sale paid to the clerk of
18 the court that issued the warrant or order of sale regardless of the
19 date on which the warrant or order of sale was issued, the tax sale
20 was conducted, or the proceeds were paid to the clerk.

21 SECTION 4. This Act takes effect September 1, 2009.