

1-1 By: Rodriguez (Senate Sponsor - Carona) H.B. No. 406
1-2 (In the Senate - Received from the House April 27, 2009;
1-3 April 27, 2009, read first time and referred to Committee on
1-4 Finance; May 12, 2009, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 12, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the disposition of excess proceeds of a tax sale of real
1-9 property or foreclosure of a tax lien on real property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter A, Chapter 34, Tax Code, is amended by
1-12 adding Section 34.021 to read as follows:

1-13 Sec. 34.021. DISTRIBUTION OF EXCESS PROCEEDS IN OTHER TAX
1-14 FORECLOSURE PROCEEDINGS. A person conducting a sale for the
1-15 foreclosure of a tax lien under Rule 736 of the Texas Rules of Civil
1-16 Procedure shall, within 10 days of the sale, pay any excess proceeds
1-17 after payment of all amounts due all participants in the sale to the
1-18 clerk of the court that issued the order authorizing the sale. The
1-19 excess proceeds from such a sale shall be handled according to
1-20 Sections 34.03 and 34.04 of this code.

1-21 SECTION 2. Section 34.04, Tax Code, is amended by amending
1-22 Subsections (c), (e), (f), (g), (h), and (i) and adding Subsections
1-23 (c-1) and (j) to read as follows:

1-24 (c) At the hearing the court shall order that the proceeds
1-25 be paid according to the following priorities to each party that
1-26 establishes its claim to the proceeds:

1-27 (1) to the tax sale purchaser if the tax sale has been
1-28 adjudged to be void and the purchaser has prevailed in an action
1-29 against the taxing units under Section 34.07(d) by final judgment;

1-30 (2) to a taxing unit for any taxes, penalties, or
1-31 interest that have become due or delinquent on the subject property
1-32 subsequent to the date of the judgment or that were omitted from the
1-33 judgment by accident or mistake;

1-34 (3) to any other lienholder, consensual or otherwise,
1-35 for the amount due under a lien, in accordance with the priorities
1-36 established by applicable law;

1-37 (4) to a taxing unit for any unpaid taxes, penalties,
1-38 interest, or other amounts adjudged due under the judgment that
1-39 were not satisfied from the proceeds from the tax sale; and

1-40 (5) to each former owner of the property, as the
1-41 interest of each may appear, provided that the former owner:

1-42 (A) was a defendant in the judgment;

1-43 (B) is related within the third degree by
1-44 consanguinity or affinity to a former owner that was a defendant in
1-45 the judgment; or

1-46 (C) acquired by will or intestate succession the
1-47 interest in the property of a former owner that was a defendant in
1-48 the judgment.

1-49 (c-1) Except as provided by Subsections (c)(5)(B) and (C), a
1-50 former owner of the property that acquired an interest in the
1-51 property after the date of the judgment may not establish a claim to
1-52 the proceeds. For purposes of this subsection, a former owner of
1-53 the property is considered to have acquired an interest in the
1-54 property after the date of the judgment if the deed by which the
1-55 former owner acquired the interest was recorded in the real
1-56 property records of the county in which the property is located
1-57 after the date of the judgment.

1-58 (e) An ~~an~~ order under this section directing that all or
1-59 part of the excess proceeds be paid to a party is appealable.

1-60 (f) A person may not take an assignment or other transfer of
1-61 an owner's claim to excess proceeds unless:

1-62 (1) the assignment or transfer is taken on or after the
1-63 36th day after the date the excess proceeds are deposited in the
1-64 registry of the court;

1-65 (2) the assignment or transfer is in writing and

2-1 signed by the assignor or transferor; ~~and~~

2-2 (3) the assignment or transfer is not the result of an

2-3 in-person or telephone solicitation;

2-4 (4) the assignee or transferee pays the assignor or

2-5 transferor on the date of the assignment or transfer an amount equal

2-6 to at least 80 percent of the amount of the assignor's or

2-7 transferor's claim to the excess proceeds; and

2-8 (5) the assignment or transfer document contains a

2-9 sworn statement by the assignor or transferor affirming:

2-10 (A) that the assignment or transfer was given

2-11 voluntarily;

2-12 (B) the date on which the assignment or transfer

2-13 was made and that the date was not earlier than the 36th day after

2-14 the date the excess proceeds were deposited in the registry of the

2-15 court;

2-16 (C) that the assignor or transferor has received

2-17 the notice from the clerk required by Section 34.03;

2-18 (D) the nature and specific amount of

2-19 consideration given for the assignment or transfer;

2-20 (E) the circumstances under which the excess

2-21 proceeds are in the registry of the court;

2-22 (F) the amount of the claim to excess proceeds in

2-23 the registry of the court;

2-24 (G) that the assignor or transferor has made no

2-25 other assignments or transfers of the assignor's or transferor's

2-26 claim to the excess proceeds; ~~and~~

2-27 (H) that the assignor or transferor knows that

2-28 the assignor or transferor may retain counsel; and

2-29 (I) that the consideration was paid in full on

2-30 the date of the assignment or transfer and that the consideration

2-31 paid was an amount equal to at least 80 percent of the amount of the

2-32 assignor's or transferor's claim to the excess proceeds.

2-33 (g) An assignee or transferee who obtains excess proceeds

2-34 without complying with Subsection (f) is liable to the assignor or

2-35 transferor for the amount of excess proceeds obtained plus

2-36 attorney's fees and expenses. An assignee or transferee who

2-37 attempts to obtain excess proceeds without complying with

2-38 Subsection (f) is liable to the assignor or transferor for

2-39 attorney's fees and expenses.

2-40 (h) An assignee or transferee who files a petition setting

2-41 forth a claim to excess proceeds must attach a copy of the

2-42 assignment or transfer document and produce the original of the

2-43 assignment or transfer document in court at the hearing on the

2-44 petition. If the original assignment or transfer document is lost,

2-45 the assignee or transferee must obtain the presence of the assignor

2-46 or transferor to testify at the hearing. In addition, the assignee

2-47 or transferee must produce at the hearing the original of any

2-48 evidence verifying the payment of the consideration given for the

2-49 assignment or transfer. If the original of any evidence of the

2-50 payment is lost or if the payment was in cash, the assignee or

2-51 transferee must obtain the presence of the assignor or transferor

2-52 to testify at the hearing.

2-53 (i) A fee charged by an attorney to obtain excess proceeds

2-54 for an owner may not be greater than 25 percent of the amount

2-55 obtained or \$1,000, whichever is less. A person who is not an

2-56 attorney may not charge a fee to obtain excess proceeds for an

2-57 owner.

2-58 (j) The amount of the excess proceeds the court may order be

2-59 paid to an assignee or transferee may not exceed 125 percent of the

2-60 amount the assignee or transferee paid the assignor or transferor

2-61 on the date of the assignment or transfer.

2-62 SECTION 3. The change in law made by this Act applies to the

2-63 disposition of excess proceeds of a tax sale paid to the clerk of

2-64 the court that issued the warrant or order of sale regardless of the

2-65 date on which the warrant or order of sale was issued, the tax sale

2-66 was conducted, or the proceeds were paid to the clerk.

2-67 SECTION 4. This Act takes effect September 1, 2009.

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