

By: Carona

S.B. No. 471

A BILL TO BE ENTITLED

AN ACT

relating to claims for excess proceeds of a tax sale of real property.

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

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

(3) to any other lienholder, consensual or otherwise, that was a defendant in the judgment for the amount due under a lien, in accordance with the priorities established by applicable law;

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

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

(A) was a defendant in the judgment;

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

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

(c-1) Except as provided by Subsections (c)(5)(B) and (C), a former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim to the proceeds. For purposes of this subsection, 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 the date of the judgment.

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

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

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

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

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

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

7                   (A) that the assignment or transfer was given  
8 voluntarily;

9                   (B) the date on which the assignment or transfer  
10 was made and that the date was not earlier than the 36th day after  
11 the date the excess proceeds were deposited in the registry of the  
12 court;

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

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

17                   (E) the circumstances under which the excess  
18 proceeds are in the registry of the court;

19                   (F) the amount of the claim to excess proceeds in  
20 the registry of the court;

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

24                   (H) that the assignor or transferor knows that  
25 the assignor or transferor may retain counsel; and

26                   (I) that the consideration was paid in full on  
27 the date of the assignment or transfer and that the consideration

1 paid was an amount equal to at least 80 percent of the amount of the  
2 assignor's or transferor's claim to the excess proceeds.

3 (g) An assignee or transferee who obtains excess proceeds  
4 without complying with Subsection (f) is liable to the assignor or  
5 transferor for the amount of excess proceeds obtained plus  
6 attorney's fees and expenses. An assignee or transferee who  
7 attempts to obtain excess proceeds without complying with  
8 Subsection (f) is liable to the assignor or transferor for  
9 attorney's fees and expenses.

10 (h) An assignee or transferee who files a petition setting  
11 forth a claim to excess proceeds must attach a copy of the  
12 assignment or transfer document and produce the original of the  
13 assignment or transfer document in court at the hearing on the  
14 petition. If the original assignment or transfer document is lost,  
15 the assignee or transferee must obtain the presence of the assignor  
16 or transferor to testify at the hearing. In addition, the assignee  
17 or transferee must produce at the hearing the original of any  
18 evidence verifying the payment of the consideration given for the  
19 assignment or transfer. If the original of any evidence of the  
20 payment is lost or if the payment was in cash, the assignee or  
21 transferee must obtain the presence of the assignor or transferor  
22 to testify at the hearing.

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

1        (j) The amount of the excess proceeds the court may order be  
2 paid to an assignee or transferee may not exceed 125 percent of the  
3 amount the assignee or transferee paid the assignor or transferor  
4 on the date of the assignment or transfer.

5        SECTION 2. The change in law made by this Act applies to the  
6 disposition of excess proceeds of a tax sale paid to the clerk of  
7 the court that issued the warrant or order of sale regardless of the  
8 date on which the warrant or order of sale was issued, the tax sale  
9 was conducted, or the proceeds were paid to the clerk.

10       SECTION 3. This Act takes effect September 1, 2009.