

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of an ad valorem tax lien; providing for the imposition of an administrative penalty.

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

SECTION 1. Section 32.06, Tax Code, is amended by amending Subsections (d-1), (f-3), and (j) and adding Subsections (e-1) and (e-2) to read as follows:

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a ~~[tax lien]~~ transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(e-1) A transferee of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes may not charge a fee for any expenses arising after closing, including collection costs, except for:

(1) interest expressly authorized under this section;

(2) the fees for filing the release of the tax lien under Subsection (b);

(3) the fee for providing a payoff statement under Subsection (f-3);

(4) the fee for providing information regarding the current balance owed by the property owner under Subsection (g);
and

(5) the fees expressly authorized under Section

1 351.0021, Finance Code.

2 (e-2) The contract between the property owner and the
3 transferee may provide for interest for default, in addition to the
4 interest permitted under Subsection (e), if any part of the
5 installment remains unpaid after the 10th day after the date the
6 installment is due, including Sundays and holidays. The additional
7 interest may not exceed five cents for each \$1 of a scheduled
8 installment.

9 (f-3) Notwithstanding any contractual agreement with the
10 property owner, the transferee of a tax lien must provide the payoff
11 information required by this section to the greatest extent
12 permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The
13 payoff statement must meet the requirements of a payoff statement
14 defined by Section 12.017, Property Code. A transferee may charge a
15 reasonable fee for a payoff statement that is requested after an
16 initial payoff statement is provided. However, a transferee is not
17 required to release payoff information pursuant to a notice under
18 Subsection (f-1) unless the notice contains the information
19 prescribed by the Finance Commission of Texas.

20 (j) After one year from the date on which a tax lien
21 transferred as provided by this section is recorded in all counties
22 in which the property is located, the transferee of the lien may
23 foreclose the lien in the manner provided by Subsection (c) unless a
24 contract between the holder of the lien and the owner of the
25 property encumbered by the lien provides otherwise. [~~If a~~
26 ~~foreclosure suit results in foreclosure of the lien, the transferee~~
27 ~~is entitled to recover attorney's fees in an amount not to exceed 10~~

1 ~~percent of the judgment.]~~ The proceeds of a sale following a
2 judicial foreclosure as provided by this subsection shall be
3 applied first to the payment of court costs, then to payment of the
4 judgment, including accrued interest, and then to the payment of
5 any attorney's fees fixed in the judgment. Any remaining proceeds
6 shall be paid to other holders of liens on the property in the order
7 of their priority and then to the person whose property was sold at
8 the tax sale.

9 SECTION 2. Subchapter A, Chapter 351, Finance Code, is
10 amended by adding Section 351.0021 to read as follows:

11 Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract
12 between a property tax lender and a property owner may require the
13 property owner to pay the following costs after closing:

14 (1) a reasonable fee for filing the release of a tax
15 lien authorized under Section 32.06(b), Tax Code;

16 (2) a reasonable fee for a payoff statement authorized
17 under Section 32.06(f-3), Tax Code;

18 (3) a reasonable fee for providing information
19 regarding the current balance owed by the property owner authorized
20 under Section 32.06(g), Tax Code;

21 (4) reasonable and necessary attorney's fees,
22 recording fees, and court costs for actions that are legally
23 required to perform a foreclosure, including fees required to be
24 paid to an official and fees for an attorney ad litem;

25 (5) to the extent permitted by the United States
26 Bankruptcy Code, attorney's fees and court costs for services
27 performed after the property owner files a voluntary bankruptcy

1 petition;

2 (6) a reasonable fee for title examination and
3 preparation of an abstract of title by an attorney, a title company,
4 or a property search company authorized to do business in this
5 state;

6 (7) a processing fee for insufficient funds, as
7 authorized under Section 3.506, Business & Commerce Code;

8 (8) a fee for collateral protection insurance, as
9 authorized under Chapter 307; and

10 (9) fees for copies of transaction documents requested
11 by the property owner.

12 (b) Notwithstanding Subsection (a)(9), a property tax
13 lender shall provide a property owner:

14 (1) one free copy of the transaction documents at
15 closing; and

16 (2) an additional free copy of the transaction
17 documents on the property owner's request following closing.

18 (c) A property tax lender may not charge:

19 (1) any fee, other than interest, after closing in
20 connection with the transfer of a tax lien against property owned
21 and used by the property owner for personal, family, or household
22 purposes unless the fee is expressly authorized under this section;

23 or

24 (2) any interest that is not expressly authorized
25 under Section 32.06, Tax Code.

26 (d) Except for charges authorized under Subsections (a)(1),
27 (2), (3), and (9), any amount charged by a property tax lender after

1 closing must be for services performed by a person that is not an
2 employee of the property tax lender.

3 (e) The finance commission may adopt rules implementing and
4 interpreting this section.

5 SECTION 3. Section 351.006, Finance Code, is amended to
6 read as follows:

7 Sec. 351.006. ENFORCEMENT. (a) In addition to any other
8 applicable enforcement provisions, Subchapters E, F, and G, Chapter
9 14, apply to a violation of this chapter or Section 32.06 or 32.065,
10 Tax Code, in connection with property tax loans.

11 (b) Notwithstanding Section 14.251, the commissioner may
12 assess an administrative penalty under Subchapter F, Chapter 14,
13 against a person who violates Section 32.06(b-1), Tax Code,
14 regardless of whether the violation is knowing or wilful.

15 SECTION 4. Subsection (a), Section 351.051, Finance Code,
16 is amended to read as follows:

17 (a) A person must hold a license issued under this chapter
18 to:

19 (1) engage in the business of making, transacting, or
20 negotiating property tax loans; or

21 (2) contract for, charge, or receive, directly or
22 indirectly, in connection with a property tax loan subject to this
23 chapter, a charge, including interest, compensation,
24 consideration, or another expense, authorized under this chapter or
25 Chapter 32, Tax Code [~~that in the aggregate exceeds the charges~~
26 ~~authorized under other law~~].

27 SECTION 5. This Act takes effect September 1, 2011.