

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 (a-3), (d-1), (f-3), and (j) and adding Subsections (e-1) and (e-2) to read as follows:

(a-3) If the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector's certification under Subsection (b) may be ~~[collector shall certify]~~ in one document ~~[the transfer of the liens for all the taxes]~~.

(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 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

1 Subsection (f-3);

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

5 (5) the fees expressly authorized under Section  
6 351.0021, Finance Code.

7 (e-2) The contract between the property owner and the  
8 transferee may provide for interest for default, in addition to the  
9 interest permitted under Subsection (e), if any part of the  
10 installment remains unpaid after the 10th day after the date the  
11 installment is due, including Sundays and holidays. If the lien  
12 transferred is on residential property owned and used by the  
13 property owner for personal, family, or household purposes, the  
14 additional interest may not exceed five cents for each \$1 of a  
15 scheduled installment.

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

27 (j) After one year from the date on which a tax lien

1 transferred as provided by this section is recorded in all counties  
2 in which the property is located, the transferee of the lien may  
3 foreclose the lien in the manner provided by Subsection (c) unless a  
4 contract between the holder of the lien and the owner of the  
5 property encumbered by the lien provides otherwise. [~~If a  
6 foreclosure suit results in foreclosure of the lien, the transferee  
7 is entitled to recover attorney's fees in an amount not to exceed 10  
8 percent of the judgment.~~] The proceeds of a sale following a  
9 judicial foreclosure as provided by this subsection shall be  
10 applied first to the payment of court costs, then to payment of the  
11 judgment, including accrued interest, and then to the payment of  
12 any attorney's fees fixed in the judgment. Any remaining proceeds  
13 shall be paid to other holders of liens on the property in the order  
14 of their priority and then to the person whose property was sold at  
15 the tax sale.

16 SECTION 2. Subsection (b), Section 33.445, Tax Code, is  
17 amended to read as follows:

18 (b) In consideration of the payment by the transferee of  
19 those taxes and charges, each joined taxing unit shall transfer its  
20 tax lien to the transferee in the form and manner provided by  
21 Section 32.06(b) and enter its disclaimer in the suit. The transfer  
22 of a tax lien under this subsection does not require authorization  
23 by the property owner.

24 SECTION 3. Subchapter A, Chapter 351, Finance Code, is  
25 amended by adding Section 351.0021 to read as follows:

26 Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract  
27 between a property tax lender and a property owner may require the

1 property owner to pay the following costs after closing:

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

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

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

9 (4) reasonable and necessary attorney's fees,  
10 recording fees, and court costs for actions that are legally  
11 required to respond to a suit filed under Chapter 33, Tax Code, or  
12 to perform a foreclosure, including fees required to be paid to an  
13 official and fees for an attorney ad litem;

14 (5) to the extent permitted by the United States  
15 Bankruptcy Code, attorney's fees and court costs for services  
16 performed after the property owner files a voluntary bankruptcy  
17 petition;

18 (6) a reasonable fee for title examination and  
19 preparation of an abstract of title by an attorney, a title company,  
20 or a property search company authorized to do business in this  
21 state;

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

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

26 (9) a prepayment penalty, unless the lien transferred  
27 is on residential property owned and used by the property owner for

1 personal, family, or household purposes;

2 (10) recording expenses incurred in connection with a  
3 modification necessary to preserve a borrower's ability to avoid a  
4 foreclosure proceeding; and

5 (11) fees for copies of transaction documents  
6 requested by the property owner.

7 (b) Notwithstanding Subsection (a)(11), a property tax  
8 lender shall provide a property owner:

9 (1) one free copy of the transaction documents at  
10 closing; and

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

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

14 (1) any fee, other than interest, after closing in  
15 connection with the transfer of a tax lien unless the fee is  
16 expressly authorized under this section; or

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

19 (d) Except for charges authorized under Subsections (a)(1),  
20 (2), (3), (9), and (11), any amount charged by a property tax lender  
21 after closing must be for services performed by a person that is not  
22 an employee of the property tax lender.

23 (e) The finance commission may adopt rules implementing and  
24 interpreting this section.

25 SECTION 4. Section 351.006, Finance Code, is amended to  
26 read as follows:

27 Sec. 351.006. ENFORCEMENT. (a) In addition to any other

1 applicable enforcement provisions, Subchapters E, F, and G, Chapter  
2 14, apply to a violation of this chapter or Section 32.06 or 32.065,  
3 Tax Code, in connection with property tax loans.

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

8 SECTION 5. Subsection (a), Section 351.051, Finance Code,  
9 is amended to read as follows:

10 (a) A person must hold a license issued under this chapter  
11 to:

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

14 (2) contract for, charge, or receive, directly or  
15 indirectly, in connection with a property tax loan subject to this  
16 chapter, a charge, including interest, compensation,  
17 consideration, or another expense, authorized under this chapter or  
18 Chapter 32, Tax Code [~~that in the aggregate exceeds the charges~~  
19 ~~authorized under other law~~].

20 SECTION 6. (a) The Finance Commission of Texas shall  
21 conduct a study regarding the fees, costs, interest, and other  
22 expenses charged to property owners by property tax lenders in  
23 conjunction with the transfer of property tax liens and the payoff  
24 of loans secured by property tax liens.

25 (b) Not later than June 1, 2012, the Finance Commission of  
26 Texas shall submit to the legislature a report containing the  
27 findings of the study conducted under Subsection (a) of this

1 section and any recommendations for legislative changes.

2           SECTION 7. The changes in law made by this Act apply only to  
3 the transfer of an ad valorem tax lien that occurs on or after the  
4 effective date of this Act. A transfer of an ad valorem tax lien  
5 that occurs before the effective date of this Act is governed by the  
6 law in effect at the time the transfer occurred, and the former law  
7 is continued in effect for that purpose.

8           SECTION 8. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 762 passed the Senate on March 24, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 25, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 762 passed the House, with amendments, on May 23, 2011, by the following vote: Yeas 140, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor