

By: Carona
(Paxton)

S.B. No. 762

Substitute the following for S.B. No. 762:

By: Murphy

C.S.S.B. No. 762

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 (a-3), (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]~~.

(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 Subsection (f-3);

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

and

1 (5) the fees expressly authorized under Section
2 351.0021, Finance Code.

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

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

21 (j) After one year from the date on which a tax lien
22 transferred as provided by this section is recorded in all counties
23 in which the property is located, the transferee of the lien may
24 foreclose the lien in the manner provided by Subsection (c) unless a
25 contract between the holder of the lien and the owner of the
26 property encumbered by the lien provides otherwise. [~~If a~~
27 ~~foreclosure suit results in foreclosure of the lien, the transferee~~

1 ~~is entitled to recover attorney's fees in an amount not to exceed 10~~
2 ~~percent of the judgment.]~~ The proceeds of a sale following a
3 judicial foreclosure as provided by this subsection shall be
4 applied first to the payment of court costs, then to payment of the
5 judgment, including accrued interest, and then to the payment of
6 any attorney's fees fixed in the judgment. Any remaining proceeds
7 shall be paid to other holders of liens on the property in the order
8 of their priority and then to the person whose property was sold at
9 the tax sale.

10 SECTION 2. Section 33.445(b), Tax Code, is amended to read
11 as follows:

12 (b) In consideration of the payment by the transferee of
13 those taxes and charges, each joined taxing unit shall transfer its
14 tax lien to the transferee in the form and manner provided by
15 Section 32.06(b) and enter its disclaimer in the suit. The transfer
16 of a tax lien under this subsection does not require authorization
17 by the property owner.

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

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

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

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

27 (3) a reasonable fee for providing information

1 regarding the current balance owed by the property owner authorized
2 under Section 32.06(g), Tax Code;

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

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

11 (6) a reasonable fee for title examination and
12 preparation of an abstract of title by an attorney, a title company,
13 or a property search company authorized to do business in this
14 state;

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

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

19 (9) a prepayment penalty, if the lien transferred is
20 on a property other than one owned and used by the owner for
21 personal, family, or household purposes;

22 (10) recording expenses incurred in connection with a
23 modification necessary to preserve a borrower's ability to avoid a
24 foreclosure proceeding; and

25 (11) fees for copies of transaction documents
26 requested by the property owner.

27 (b) Notwithstanding Subsection (a)(11), a property tax

1 lender shall provide a property owner:

2 (1) one free copy of the transaction documents at
3 closing; and

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

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

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

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

14 (d) Except for charges authorized under Subsections (a)(1),
15 (2), (3), and (11), any amount charged by a property tax lender
16 after closing must be for services performed by a person that is not
17 an employee of the property tax lender.

18 (e) The finance commission may adopt rules implementing and
19 interpreting this section.

20 SECTION 4. Section 351.006, Finance Code, is amended to
21 read as follows:

22 Sec. 351.006. ENFORCEMENT. (a) In addition to any other
23 applicable enforcement provisions, Subchapters E, F, and G, Chapter
24 14, apply to a violation of this chapter or Section 32.06 or 32.065,
25 Tax Code, in connection with property tax loans.

26 (b) Notwithstanding Section 14.251, the commissioner may
27 assess an administrative penalty under Subchapter F, Chapter 14,

1 against a person who violates Section 32.06(b-1), Tax Code,
2 regardless of whether the violation is knowing or wilful.

3 SECTION 5. Section 351.051(a), Finance Code, is amended to
4 read as follows:

5 (a) A person must hold a license issued under this chapter
6 to:

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

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

15 SECTION 6. The changes in law made by this Act apply only to
16 the transfer of an ad valorem tax lien that occurs on or after the
17 effective date of this Act. A transfer of an ad valorem tax lien
18 that occurs before the effective date of this Act is governed by the
19 law in effect at the time the transfer occurred, and the former law
20 is continued in effect for that purpose.

21 SECTION 7. This Act takes effect September 1, 2011.