

By: Carona

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 (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:

- 19 (1) the date of the notice;  
20 (2) the name of the property owner;  
21 (3) the address of the property owner;  
22 (4) the address of the property;  
23 (5) the legal description of the property;  
24 (6) the tax account number or property tax loan  
25 number;  
26 (7) the name and address of the mortgage servicer or  
27 the first lienholder sending the notice;

1           (8) the sender's relationship to the preexisting lien  
2 and, if the sender is not the lienholder, the name and address of  
3 the lienholder; and

4           (9) any other information required by the Finance  
5 Commission of Texas.

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

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

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

27           (1) a reasonable fee for filing the release of a tax

1 lien authorized under Section 32.06(b), Tax Code;

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

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

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

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

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

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

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

23 (9) fees for copies of transaction documents requested  
24 by the property owner.

25 (b) Notwithstanding Subsection (a)(9), a property tax  
26 lender shall provide a property owner:

27 (1) one free copy of the transaction documents at

1 closing; and

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

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

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

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

12 (d) Except for charges authorized under Subsections (a)(1),  
13 (2), (3), and (9), any amount charged by a property tax lender after  
14 closing must be for services performed by a person that is not an  
15 employee of the property tax lender.

16 (e) The finance commission may adopt rules implementing and  
17 interpreting this section.

18 SECTION 3. Section 351.006, Finance Code, is amended to  
19 read as follows:

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

24 (b) Notwithstanding Section 14.251 of this code, the  
25 commissioner may assess an administrative penalty under Subchapter  
26 F, Chapter 14, of this code against a person who violates Section  
27 32.06(b-1), Tax Code, regardless of whether the violation is

1 knowing or wilful.

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

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

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

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

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