

1-1 By: Carona S.B. No. 762
1-2 (In the Senate - Filed February 17, 2011;
1-3 February 23, 2011, read first time and referred to Committee on
1-4 Business and Commerce; March 9, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 9,
1-6 Nays 0; March 9, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 762 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the transfer of an ad valorem tax lien; providing for
1-11 the imposition of an administrative penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 32.06, Tax Code, is amended by amending
1-14 Subsections (d-1), (f-3), and (j) and adding Subsections (e-1) and
1-15 (e-2) to read as follows:

1-16 (d-1) A right of rescission described by 12 C.F.R. Section
1-17 226.23 applies to a ~~[tax lien]~~ transfer under this section of a tax
1-18 lien on residential property owned and used by the property owner
1-19 for personal, family, or household purposes.

1-20 (e-1) A transferee of a tax lien on residential property
1-21 owned and used by the property owner for personal, family, or
1-22 household purposes may not charge a fee for any expenses arising
1-23 after closing, including collection costs, except for:

1-24 (1) interest expressly authorized under this section;

1-25 (2) the fees for filing the release of the tax lien
1-26 under Subsection (b);

1-27 (3) the fee for providing a payoff statement under
1-28 Subsection (f-3);

1-29 (4) the fee for providing information regarding the
1-30 current balance owed by the property owner under Subsection (g);
1-31 and

1-32 (5) the fees expressly authorized under Section
1-33 351.0021, Finance Code.

1-34 (e-2) The contract between the property owner and the
1-35 transferee may provide for interest for default, in addition to the
1-36 interest permitted under Subsection (e), if any part of the
1-37 installment remains unpaid after the 10th day after the date the
1-38 installment is due, including Sundays and holidays. The additional
1-39 interest may not exceed five cents for each \$1 of a scheduled
1-40 installment.

1-41 (f-3) Notwithstanding any contractual agreement with the
1-42 property owner, the transferee of a tax lien must provide the payoff
1-43 information required by this section to the greatest extent
1-44 permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The
1-45 payoff statement must meet the requirements of a payoff statement
1-46 defined by Section 12.017, Property Code. A transferee may charge a
1-47 reasonable fee for a payoff statement that is requested after an
1-48 initial payoff statement is provided. However, a transferee is not
1-49 required to release payoff information pursuant to a notice under
1-50 Subsection (f-1) unless the notice contains the information
1-51 prescribed by the Finance Commission of Texas.

1-52 (j) After one year from the date on which a tax lien
1-53 transferred as provided by this section is recorded in all counties
1-54 in which the property is located, the transferee of the lien may
1-55 foreclose the lien in the manner provided by Subsection (c) unless a
1-56 contract between the holder of the lien and the owner of the
1-57 property encumbered by the lien provides otherwise. [~~If a~~
1-58 ~~foreclosure suit results in foreclosure of the lien, the transferee~~
1-59 ~~is entitled to recover attorney's fees in an amount not to exceed 10~~
1-60 ~~percent of the judgment.] The proceeds of a sale following a~~
1-61 judicial foreclosure as provided by this subsection shall be
1-62 applied first to the payment of court costs, then to payment of the
1-63 judgment, including accrued interest, and then to the payment of

2-1 any attorney's fees fixed in the judgment. Any remaining proceeds
2-2 shall be paid to other holders of liens on the property in the order
2-3 of their priority and then to the person whose property was sold at
2-4 the tax sale.

2-5 SECTION 2. Subchapter A, Chapter 351, Finance Code, is
2-6 amended by adding Section 351.0021 to read as follows:

2-7 Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract
2-8 between a property tax lender and a property owner may require the
2-9 property owner to pay the following costs after closing:

2-10 (1) a reasonable fee for filing the release of a tax
2-11 lien authorized under Section 32.06(b), Tax Code;

2-12 (2) a reasonable fee for a payoff statement authorized
2-13 under Section 32.06(f-3), Tax Code;

2-14 (3) a reasonable fee for providing information
2-15 regarding the current balance owed by the property owner authorized
2-16 under Section 32.06(g), Tax Code;

2-17 (4) reasonable and necessary attorney's fees,
2-18 recording fees, and court costs for actions that are legally
2-19 required to perform a foreclosure, including fees required to be
2-20 paid to an official and fees for an attorney ad litem;

2-21 (5) to the extent permitted by the United States
2-22 Bankruptcy Code, attorney's fees and court costs for services
2-23 performed after the property owner files a voluntary bankruptcy
2-24 petition;

2-25 (6) a reasonable fee for title examination and
2-26 preparation of an abstract of title by an attorney, a title company,
2-27 or a property search company authorized to do business in this
2-28 state;

2-29 (7) a processing fee for insufficient funds, as
2-30 authorized under Section 3.506, Business & Commerce Code;

2-31 (8) a fee for collateral protection insurance, as
2-32 authorized under Chapter 307; and

2-33 (9) fees for copies of transaction documents requested
2-34 by the property owner.

2-35 (b) Notwithstanding Subsection (a)(9), a property tax
2-36 lender shall provide a property owner:

2-37 (1) one free copy of the transaction documents at
2-38 closing; and

2-39 (2) an additional free copy of the transaction
2-40 documents on the property owner's request following closing.

2-41 (c) A property tax lender may not charge:

2-42 (1) any fee, other than interest, after closing in
2-43 connection with the transfer of a tax lien against property owned
2-44 and used by the property owner for personal, family, or household
2-45 purposes unless the fee is expressly authorized under this section;
2-46 or

2-47 (2) any interest that is not expressly authorized
2-48 under Section 32.06, Tax Code.

2-49 (d) Except for charges authorized under Subsections (a)(1),
2-50 (2), (3), and (9), any amount charged by a property tax lender after
2-51 closing must be for services performed by a person that is not an
2-52 employee of the property tax lender.

2-53 (e) The finance commission may adopt rules implementing and
2-54 interpreting this section.

2-55 SECTION 3. Section 351.006, Finance Code, is amended to
2-56 read as follows:

2-57 Sec. 351.006. ENFORCEMENT. (a) In addition to any other
2-58 applicable enforcement provisions, Subchapters E, F, and G, Chapter
2-59 14, apply to a violation of this chapter or Section 32.06 or 32.065,
2-60 Tax Code, in connection with property tax loans.

2-61 (b) Notwithstanding Section 14.251, the commissioner may
2-62 assess an administrative penalty under Subchapter F, Chapter 14,
2-63 against a person who violates Section 32.06(b-1), Tax Code,
2-64 regardless of whether the violation is knowing or wilful.

2-65 SECTION 4. Subsection (a), Section 351.051, Finance Code,
2-66 is amended to read as follows:

2-67 (a) A person must hold a license issued under this chapter
2-68 to:

2-69 (1) engage in the business of making, transacting, or

3-1 negotiating property tax loans; or
3-2 (2) contract for, charge, or receive, directly or
3-3 indirectly, in connection with a property tax loan subject to this
3-4 chapter, a charge, including interest, compensation,
3-5 consideration, or another expense, authorized under this chapter or
3-6 Chapter 32, Tax Code [~~that in the aggregate exceeds the charges~~
3-7 ~~authorized under other law~~].

3-8 SECTION 5. This Act takes effect September 1, 2011.

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