

1-1 By: Carona, Hinojosa S.B. No. 247
1-2 (In the Senate - Filed January 24, 2013; January 29, 2013,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 4, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 4, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Carona	X		
1-10	Taylor	X		
1-11	Eltife	X		
1-12	Estes	X		
1-13	Hancock	X		
1-14	Lucio	X		
1-15	Van de Putte	X		
1-16	Watson	X		
1-17	Whitmire	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 247 By: Carona

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the transfer of an ad valorem tax lien; providing an
1-22 administrative penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subsection (c), Section 351.0021, Finance Code,
1-25 is amended to read as follows:

1-26 (c) A property tax lender or any successor in interest may
1-27 not charge:

1-28 (1) any fee, other than interest, after closing in
1-29 connection with the transfer of a tax lien unless the fee is
1-30 expressly authorized under this section; or

1-31 (2) any interest that is not expressly authorized
1-32 under Section 32.06, Tax Code.

1-33 SECTION 2. Subchapter A, Chapter 351, Finance Code, is
1-34 amended by adding Sections 351.0022 and 351.0023 to read as
1-35 follows:

1-36 Sec. 351.0022. WAIVER PROHIBITED. Except as specifically
1-37 permitted by this chapter or Chapter 32, Tax Code, a property owner
1-38 may not waive or limit a requirement imposed on a property tax
1-39 lender by this chapter.

1-40 Sec. 351.0023. SOLICITATION OF LOANS; NOTICE. (a) A
1-41 property tax lender who solicits property tax loans by mail,
1-42 e-mail, or other print or electronic media shall include on the
1-43 first page of all solicitation materials, in at least 12-point
1-44 boldface type, a notice substantially similar to the following:
1-45 "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT
1-46 MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE
1-47 AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

1-48 (b) A property tax lender who solicits property tax loans by
1-49 broadcast media, including a television or radio broadcast, shall
1-50 state the following in the broadcast: "YOUR TAX OFFICE MAY OFFER
1-51 DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU.
1-52 YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS
1-53 FROM THE TAX OFFICE."

1-54 (c) A property tax lender may not, in any manner, advertise
1-55 or cause to be advertised a false, misleading, or deceptive
1-56 statement or representation relating to a rate, term, or condition
1-57 of a property tax loan.

1-58 (d) A property tax lender who refers to a rate or charge in
1-59 an advertisement shall state the rate or charge fully and clearly.
1-60 If the rate or charge is a rate of finance charge, the advertisement

2-1 must include the annual percentage rate and specifically refer to
2-2 the rate as an "annual percentage rate." The advertisement must
2-3 state that the annual percentage rate may be increased after the
2-4 contract is executed, if applicable. The advertisement may not
2-5 refer to any other rate, except that a simple annual rate that is
2-6 applied to the unpaid balance of a property tax loan may be stated
2-7 in conjunction with, but not more conspicuously than, the annual
2-8 percentage rate.

2-9 (e) If an advertisement for a property tax loan includes the
2-10 number of payments, period of repayment, amount of any payment, or
2-11 amount of any finance charges, the advertisement must, in addition
2-12 to any applicable requirements of Subsection (d), include:

2-13 (1) the terms of repayment, including the repayment
2-14 obligations over the full term of the loan and any balloon payment;

2-15 (2) the annual percentage rate, and must refer to that
2-16 rate as the annual percentage rate; and

2-17 (3) a statement that the lender may increase the
2-18 annual percentage rate after the contract is executed, if
2-19 applicable.

2-20 (f) The finance commission may adopt rules to implement and
2-21 enforce this section.

2-22 (g) Notwithstanding Section 14.251, the commissioner may
2-23 assess an administrative penalty under Subchapter F, Chapter 14,
2-24 against a property tax lender who violates this section, regardless
2-25 of whether the violation is knowing or wilful.

2-26 SECTION 3. Section 351.003, Finance Code, is amended to
2-27 read as follows:

2-28 Sec. 351.003. SECONDARY MARKET TRANSACTIONS. (a) Except
2-29 as provided by Subsection (b), this [~~This~~] chapter does not
2-30 prohibit a property tax lender from receiving compensation from a
2-31 party other than the property tax loan applicant for the sale,
2-32 transfer, assignment, or release of rights on the closing of a
2-33 property tax loan transaction.

2-34 (b) A person may not sell, transfer, assign, or release
2-35 rights to a property tax loan to a person who is not licensed under
2-36 Section 351.051 or exempt from the application of this chapter
2-37 under Section 351.051(c).

2-38 (c) The finance commission shall adopt rules to implement
2-39 this section.

2-40 SECTION 4. Subsection (c), Section 351.051, Finance Code,
2-41 is amended to read as follows:

2-42 (c) Except as provided by Section 351.003, this [~~This~~]
2-43 chapter does not apply to:

2-44 (1) any of the following entities or an employee of any
2-45 of the following entities, if the employee is acting for the benefit
2-46 of the employer:

2-47 (A) a bank, savings bank, or savings and loan
2-48 association, or a subsidiary or an affiliate of a bank, savings
2-49 bank, or savings and loan association; or

2-50 (B) a state or federal credit union, or a
2-51 subsidiary, affiliate, or credit union service organization of a
2-52 state or federal credit union; or

2-53 (2) an individual who:

2-54 (A) is related to the property owner within the
2-55 second degree of consanguinity or affinity, as determined under
2-56 Chapter 573, Government Code [~~makes a property tax loan from the~~
2-57 individual's own funds to a spouse, former spouse, or persons in the
2-58 lineal line of consanguinity of the individual lending the money];
2-59 or

2-60 (B) makes five or fewer property tax loans in any
2-61 consecutive 12-month period from the individual's own funds.

2-62 SECTION 5. Subsection (a), Section 351.054, Finance Code,
2-63 is amended to read as follows:

2-64 (a) A transferee of a tax lien must include with the sworn
2-65 document executed by the borrower and filed with the collector of a
2-66 taxing unit under Section 32.06(a-1), Tax Code, the information
2-67 required by this section.

2-68 SECTION 6. The heading to Section 32.06, Tax Code, is
2-69 amended to read as follows:

3-1 Sec. 32.06. PROPERTY TAX LOANS; TRANSFER OF TAX LIEN.
 3-2 SECTION 7. Subdivision (2), Subsection (a), Section 32.06,
 3-3 Tax Code, is amended to read as follows:

3-4 (2) "Transferee" means a person who is licensed under
 3-5 Chapter 351, Finance Code, or is exempt from the application of that
 3-6 chapter under Section 351.051(c), Finance Code, and who is:

3-7 (A) authorized to pay the taxes of another; or
 3-8 (B) a successor in interest to a tax lien that is
 3-9 transferred under this section.

3-10 SECTION 8. Section 32.06, Tax Code, is amended by amending
 3-11 Subsections (a-1), (a-2), (a-3), (a-4), (b), (c), (d), (e-1),
 3-12 (f-4), (g), (h), (i), and (j) and adding Subsections (a-5), (a-6),
 3-13 (a-7), (a-8), and (l) to read as follows:

3-14 (a-1) A property owner [~~person~~] may authorize another
 3-15 person to pay the taxes imposed by a taxing unit on the owner's
 3-16 [~~person's~~] real property by executing and filing with the collector
 3-17 for the taxing unit:

3-18 (1) a sworn document stating:

3-19 (A) the authorization for payment of the taxes;

3-20 (B) the name and street address of the transferee
 3-21 authorized to pay the taxes of the property owner;

3-22 (C) a description of the property by street
 3-23 address, if applicable, and legal description; and

3-24 (D) notice has been given to the property owner
 3-25 that if the property owner is [~~age 65 or~~] disabled, the property
 3-26 owner may be eligible for a tax deferral under Section 33.06; and

3-27 (2) the information required by Section 351.054,
 3-28 Finance Code.

3-29 (a-2) Except as provided by Subsection (a-8), a [A] tax lien
 3-30 may be transferred to the person who pays the taxes on behalf of the
 3-31 property owner under the authorization described by Subsection
 3-32 (a-1) for:

3-33 (1) taxes that are delinquent at the time of payment;
 3-34 or

3-35 (2) taxes that are due but not delinquent at the time
 3-36 of payment if[+]

3-37 [~~(A)~~] the property is not subject to a recorded
 3-38 mortgage lien[~~, or~~

3-39 [~~(B) a tax lien transfer authorized by the~~
 3-40 ~~property owner has been executed and recorded for one or more prior~~
 3-41 ~~years on the same property and the property owner has executed an~~
 3-42 ~~authorization consenting to a transfer of the tax liens for both the~~
 3-43 ~~taxes on the property that are not delinquent and taxes on the~~
 3-44 ~~property that are delinquent in the manner provided by Subsection~~
 3-45 ~~(a-1)].~~

3-46 (a-3) A person who is 65 years of age or older may not
 3-47 authorize a transfer of a tax lien on real property on which the
 3-48 person is eligible to claim an exemption from taxation under
 3-49 Section 11.13(c). [If the property owner has executed an
 3-50 authorization under Subsection (a-2)(2)(B) consenting to a
 3-51 transfer of the tax liens for both the taxes on the property that
 3-52 are not delinquent and taxes on the property that are delinquent,
 3-53 the collector's certification under Subsection (b) may be in one
 3-54 document.]

3-55 (a-4) The Finance Commission of Texas shall:

3-56 (1) prescribe the form and content of an appropriate
 3-57 disclosure statement to be provided to a property owner before the
 3-58 execution of a tax lien transfer;

3-59 (2) adopt rules relating to the reasonableness of
 3-60 closing costs, fees, and other charges permitted under this
 3-61 section; [~~and~~]

3-62 (3) by rule prescribe the form and content of the sworn
 3-63 document under Subsection (a-1) and the certified statement under
 3-64 Subsection (b); and

3-65 (4) by rule prescribe the form and content of a request
 3-66 a lender with an existing recorded lien on the property must use to
 3-67 request a payoff statement and the transferee's response to the
 3-68 request, including the period within which the transferee must
 3-69 respond.

4-1 (a-5) At the time the transferee provides the disclosure
 4-2 statement required by Subsection (a-4)(1), the transferee must also
 4-3 describe the type and approximate cost range of each additional
 4-4 charge or fee that the property owner may incur in connection with
 4-5 the transfer.

4-6 (a-6) Notwithstanding Subsection (f-3), a lender described
 4-7 by Subsection (a-4)(4) may request a payoff statement before the
 4-8 tax loan becomes delinquent. The Finance Commission of Texas by
 4-9 rule shall require a transferee who receives a request for a payoff
 4-10 statement to deliver the requested payoff statement on the
 4-11 prescribed form within a period prescribed by finance commission
 4-12 rule. The prescribed period must allow the transferee at least
 4-13 seven business days after the date the request is received to
 4-14 deliver the payoff statement. The consumer credit commissioner may
 4-15 assess an administrative penalty under Subchapter F, Chapter 14,
 4-16 Finance Code, against a transferee who wilfully fails to provide
 4-17 the payoff statement as prescribed by finance commission rule.

4-18 (a-7) A contract between a transferee and a property owner
 4-19 that purports to authorize payment of taxes that are not delinquent
 4-20 or due at the time of the authorization, or that lacks the
 4-21 authorization described by Subsection (a-1), is void.

4-22 (a-8) A tax lien may not be transferred to the person who
 4-23 pays the taxes on behalf of the property owner under the
 4-24 authorization described by Subsection (a-1) if the real property
 4-25 has been financed, wholly or partly, with a grant or below market
 4-26 rate loan provided by a governmental program or nonprofit
 4-27 organization and is subject to the covenants of the grant or loan.
 4-28 The Finance Commission of Texas may adopt rules to implement this
 4-29 subsection.

4-30 (b) If a transferee authorized to pay a property owner's
 4-31 taxes under ~~pursuant to~~ Subsection (a-1) pays the taxes and any
 4-32 penalties, ~~and~~ interest, and collection costs imposed, the
 4-33 collector shall issue a tax receipt to that transferee. In
 4-34 addition, the collector or a person designated by the collector
 4-35 shall certify that the taxes and any penalties, ~~and~~ interest, and
 4-36 collection costs on the subject property ~~and collection costs~~
 4-37 have been paid by the transferee on behalf of the property owner and
 4-38 that the taxing unit's tax lien is transferred to that
 4-39 transferee. The collector shall attach to the certified statement
 4-40 the collector's seal of office or sign the statement before a notary
 4-41 public and deliver a tax receipt and the certified statement
 4-42 attesting to the transfer of the tax lien to the transferee within
 4-43 30 days. The tax receipt and certified statement may be combined
 4-44 into one document. The collector shall identify in a discrete
 4-45 field in the applicable property owner's account the date of the
 4-46 transfer of a tax lien transferred under this section. When a tax
 4-47 lien is released, the transferee shall file a release with the
 4-48 county clerk of each county in which the property encumbered by the
 4-49 lien is located for recordation by the clerk and send a copy to the
 4-50 collector. The transferee may charge the property owner a
 4-51 reasonable fee for filing the release.

4-52 (c) Except as otherwise provided by this section, the
 4-53 transferee of a tax lien ~~and any successor in interest~~ is entitled
 4-54 to foreclose the lien~~+~~

4-55 ~~(1)~~ in the manner provided by law for foreclosure of
 4-56 tax liens~~+~~ or

4-57 ~~(2) in the manner specified in Section 51.002,~~
 4-58 ~~Property Code, and Section 32.065, after the transferee or a~~
 4-59 ~~successor in interest obtains a court order for foreclosure under~~
 4-60 ~~Rule 736, Texas Rules of Civil Procedure, except as provided by~~
 4-61 ~~Subsection (c-1) of this section, if the property owner and the~~
 4-62 ~~transferee enter into a contract that is secured by a lien on the~~
 4-63 ~~property].~~

4-64 (d) A transferee shall record a tax lien transferred as
 4-65 provided by this section with the certified statement attesting to
 4-66 the transfer of the tax lien as described by Subsection (b) in the
 4-67 deed records of each county in which the property encumbered by the
 4-68 lien is located.

4-69 (e-1) A transferee of a tax lien may not charge a fee for any

5-1 expenses arising after the closing of a loan secured by a tax lien
 5-2 transferred under this section, including collection costs, except
 5-3 for:

5-4 (1) interest expressly authorized under this section;
 5-5 (2) the fees for filing the release of the tax lien
 5-6 under Subsection (b);

5-7 (3) the fee for providing a payoff statement under
 5-8 Subsection (f-3);

5-9 (4) the fee for providing information regarding the
 5-10 current balance owed by the property owner under Subsection (g);
 5-11 and

5-12 (5) the fees expressly authorized under Section
 5-13 351.0021, Finance Code.

5-14 (f-4) Failure to comply with Subsection (b-1), (f), or (f-1)
 5-15 does not invalidate a tax lien transferred under this section [~~this~~
 5-16 ~~chapter, a contract lien,~~] or a deed of trust.

5-17 (g) At any time after the end of the six-month period
 5-18 specified by Subsection (f) and before a notice of foreclosure of
 5-19 the transferred tax lien is sent, the transferee of the tax lien [~~or~~
 5-20 ~~the holder of the tax lien~~] may require the property owner to
 5-21 provide written authorization and pay a reasonable fee before
 5-22 providing information regarding the current balance owed by the
 5-23 property owner to the transferee [~~or the holder of the tax lien~~].

5-24 (h) A mortgage servicer who pays a property tax loan secured
 5-25 by a [~~transferred~~] tax lien transferred under this section becomes
 5-26 subrogated to all rights in the lien.

5-27 (i) A judicial [~~Except as provided by Section 33.445, a~~]
 5-28 foreclosure of a tax lien transferred under [~~as provided by~~] this
 5-29 section may not be instituted within one year from the date on which
 5-30 the lien is recorded in all counties in which the property is
 5-31 located, unless the contract between the owner of the property and
 5-32 the transferee provides otherwise.

5-33 (j) After one year from the date on which a tax lien
 5-34 transferred under [~~as provided by~~] this section is recorded in all
 5-35 counties in which the property is located, the transferee of the
 5-36 lien may foreclose the lien in the manner provided by Subsection (c)
 5-37 unless the [~~a~~] contract between the transferee [~~holder of the lien~~]
 5-38 and the owner of the property encumbered by the lien provides
 5-39 otherwise. The proceeds of a sale following a judicial foreclosure
 5-40 as provided by this subsection shall be applied first to the payment
 5-41 of court costs, then to payment of the judgment, including accrued
 5-42 interest, and then to the payment of any attorney's fees fixed in
 5-43 the judgment. Any remaining proceeds shall be paid to other
 5-44 holders of liens on the property in the order of their priority and
 5-45 then to the person whose property was sold at the tax sale.

5-46 (l) Except as specifically provided by this section, a
 5-47 property owner cannot waive or limit any requirement imposed on a
 5-48 transferee by this section.

5-49 SECTION 9. Section 32.065, Tax Code, is amended by amending
 5-50 Subsection (b) and adding Subsection (i) to read as follows:

5-51 (b) Notwithstanding any agreement to the contrary, a
 5-52 contract entered into under Subsection (a) between a transferee and
 5-53 the property owner under Section 32.06 that is secured by a priority
 5-54 lien on the property shall provide for [~~a power of sale and~~]
 5-55 foreclosure in the manner provided by Section 32.06(c)
 5-56 [~~32.06(c)(2)~~] and:

5-57 (1) an event of default;

5-58 (2) notice of acceleration; and

5-59 (3) recording of the deed of trust or other instrument
 5-60 securing the contract entered into under Subsection (a) in each
 5-61 county in which the property is located. [~~+~~

5-62 [~~(4) recording of the sworn document and affidavit~~
 5-63 ~~attesting to the transfer of the tax lien,~~

5-64 [~~(5) requiring the transferee to serve foreclosure~~
 5-65 ~~notices on the property owner at the property owner's last known~~
 5-66 ~~address in the manner provided by Section 32.06(c)(2) or by a~~
 5-67 ~~commercially reasonable delivery service that maintains verifiable~~
 5-68 ~~records of deliveries for at least five years from the date of~~
 5-69 ~~delivery, and~~

6-1 [~~(6) requiring, at the time the foreclosure notices~~
6-2 ~~required by Subdivision (5) are served on the property owner, the~~
6-3 ~~transferee to serve a copy of the notice of sale in the same manner~~
6-4 ~~on the mortgage servicer or the holder of all recorded real property~~
6-5 ~~liens encumbering the property that includes on the first page, in~~
6-6 ~~14-point boldfaced type or 14-point uppercase typewritten letters,~~
6-7 ~~a statement that reads substantially as follows: "PURSUANT TO~~
6-8 ~~TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN~~
6-9 ~~THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF~~
6-10 ~~REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED~~
6-11 ~~TO OCCUR ON THE (DATE)."]~~

6-12 (i) An agreement under this section that attempts to create
6-13 a lien for the payment of taxes that are not delinquent or due at the
6-14 time the property owner executes the sworn document under Section
6-15 32.06(a-1) is void.

6-16 SECTION 10. Subsection (c-1), Section 32.06, Tax Code, is
6-17 repealed.

6-18 SECTION 11. The changes in law made by this Act apply only
6-19 to a contract entered into on or after the effective date of this
6-20 Act. A contract entered into before that date is governed by the
6-21 law in effect immediately before the effective date of this Act, and
6-22 that law is continued in effect for that purpose.

6-23 SECTION 12. This Act takes effect immediately if it
6-24 receives a vote of two-thirds of all the members elected to each
6-25 house, as provided by Section 39, Article III, Texas Constitution.
6-26 If this Act does not receive the vote necessary for immediate
6-27 effect, this Act takes effect September 1, 2013.

6-28 * * * * *