

BILL ANALYSIS

Senate Research Center

H.B. 2137
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, notice requirements on tax lien transfers provide minimal protection for consumers from non-judicial foreclosure on their homes. A delinquent taxpayer can contract with an outside investor for a loan to cover the owners obligation to the taxing authority, which transfers the lien to the investor, but if the loan goes delinquent, the investor can foreclose on the property outside of judicial oversight.

H.B. 2137 amends current statute regarding certain aspects of ad valorem tax lien transfers and includes additional protections to consumers who authorize lien transfers for the payment of property taxes.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 32.06, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.06, Tax Code, by amending Subsections (a-1), (a-2), (a-3), (b), (c), (d), (f), (g), (i), (j), and (k), and adding Subsections (a-4), (b-1), (c-1), (d-1), and (k-1), as follows:

(a-1) Authorizes a person to authorize another person to pay the taxes, rather than the delinquent taxes, imposed on the person's real property.

(a-2) Authorizes the transfer of a tax lien (transfer) to the person who pays the taxes on behalf of the property owner under the authorization for taxes that are delinquent at the time of payment, or taxes that are not delinquent at the time of payment under certain circumstances. Deletes existing text authorizing the transfer of taxes on the property that become due in subsequent tax years before the delinquency date after a tax lien has been transferred.

(a-3) Requires the collector, if the property owner has executed an authorization under Section (a-2)(2)(c) 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, to certify in one document the transfer of the liens for all the taxes.

(a-4) Requires the Finance Commission of Texas (commission) to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer, to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section, and to adopt rules relating to the prohibition of deceptive practices that, to a homeowner's detriment, take advantage of the lack of knowledge, ability, experience, or capacity of the homeowner. Deletes existing text authorizing the transfer of a tax lien before the delinquency date if the real property is not subject to a lien other than the tax lien.

(b) Requires the collector or a person designated by the collector (designee) to certify that the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the property owner. Deletes existing text requiring the collector or the designee to certify on the sworn document that payment of

the taxes and any penalties and interest on the described property and collection costs has been made by the transferee on behalf of the property owner liable for the taxes when imposed. Requires the collector to attach to the certified statement, rather than sworn document, the collector's seal of office or to sign the statement before a notary public and to deliver a tax receipt and the statement, rather than an affidavit attesting to the transfer of the tax lien, attesting to the transfer of the tax lien to the transferee within 30 days. Requires the collector to identify in a discrete field in the applicable property owner's, rather than taxpayer's, account the date of the transfer. Requires the transferee, upon release of the tax lien, to file a release with the county clerk of each county in which the property encumbered by the lien is located for the clerks' recordation and to send a copy of the release to the collector. Authorizes the transferee to charge the property owner a reasonable fee for filing the release. Makes conforming changes.

(b-1) Requires the transferee, not later than the 10th business day after receipt of the certified statement, to send a copy of the sworn document described under Subsection (a-1) to any mortgage servicer and to each holder of a recorded first lien encumbering the property. Requires the copy to be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by the mortgage servicer to the property owner or the address of a holder of a recorded first lien shown in the real property records.

(c) Entitles the transferee of a tax lien and any successor in interest to foreclose the lien in the manner specified in Section 51.002 (Sale of Real Property Under Contract Lien), Property Code, and Section 32.065 (Contract for Foreclosure of Tax Lien), Tax Code, after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736 (Expedited Foreclosure Proceeding), Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section, if the property owner and the transferee enter into a contract that is secured by a lien on the property.

(c-1) Requires the application, if a transferee seeks to foreclose a tax lien on property under Subsection (c)(2), to make certain statements. Requires the holder of a preexisting lien to be provided at least 60 days' notice before the date of the proposed transfer.

(d) Requires a transferee to record a tax lien as provided by this section, rather than requiring the recording of the tax lien in order for the tax lien to be enforceable. Makes conforming changes.

(d-1) Provides that a right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.

(f) Requires the holder of a loan secured by a transfer that is delinquent for 90 consecutive days to send a notice of delinquency by certified mail on or before the 120th day of delinquency, or if that day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded, preexisting lien on the property. Authorizes the holder or mortgage servicer of a recorded, preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) to obtain a release of the transferred tax lien by paying the transferee of the tax lien a certain amount, if the tax lien has not been reinstated or foreclosed. Deletes existing text relating to the release of the transferred tax lien being released within six months after the date on which the tax lien is recorded in all counties in which the property is located. Provides that this right does not affect a right of redemption in a foreclosure proceeding described by Subsection (k) or (k-1). Requires the payoff statement to meet the requirements of a payoff statement defined by Section 12.017, Property Code, for it to be valid; and to be provided, upon request, to any holder of a recorded preexisting lien on the property, notwithstanding any contractual agreement with the property owner, to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

(g) Provides that failure to comply with Subsection (b-1), (c-1)(2), or (f) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust. Deletes existing text related to authorizing the transferee of the tax lien or the holder of the tax lien to require the property owner to provide written authorization and pay a reasonable fee

before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(i) Deletes existing text requiring the transferee of a tax lien or any successor in interest to notify the holder of all recorded liens on the property before foreclosure in the same manner and within the same time frame as the transferee is required to notify the owner of the property under Section 51.002, Property Code.

(j) Entitles the transferee, if a foreclosure suit under Subsection (c)(1) results in foreclosure of the lien, to recover attorney's fees in an amount not to exceed 10 percent of the judgment. Requires the proceeds of a sale following a foreclosure suit under Subsection (c)(1), rather than judicial foreclosure as provided by this subsection, to be applied in a certain manner to pay certain costs.

(k) Entitles the person whose property is sold as provided by Subsection (c) or the mortgage servicer of a prior recorded lien against the property to redeem the foreclosed property from the purchaser or the purchaser's successor for a certain amount.

(k-1) Authorizes the right of redemption provided by Subsection (k) to be exercised on a certain date. Requires the purchaser at the tax sale or the purchaser's successor to deliver a deed without warranty to the property to the person redeeming the property if the person redeems the property as provided by Subsection (k) and this subsection.

SECTION 2. Amends Sections 32.065(b), (c), and (d), Tax Code, as follows:

(b) Requires a contract entered into for the payment of taxes under Subsection (a) to provide for a power of sale and foreclosure in the manner provided by Section 32.06(c)(2), Tax Code, rather than under Chapter 51 (Provisions Generally Applicable to Liens), Property Code. Sets forth other certain provisions required of the contract. Makes a conforming change. Deletes existing text requiring that the transferee, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, serve a copy of the notice of sale in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes a certain statement. Amends the statement to specify that the foreclosure sale referred to in the document is a foreclosure of a superior transfer tax lien subject to right or redemption under certain conditions and to delete from the statement reference to the date the foreclosure is scheduled to occur.

(c) Provides that a transferee of a tax lien or the transferee's assignee is subrogated to and is entitled to exercise certain rights or remedies possessed by the transferring taxing unit, notwithstanding any other provisions of this code.

(d) Includes the provisions of Chapter 343 (Home Loans), Finance Code, other than Sections 343.203 (Negative Amortization) and 343.205 (Prepayment Penalties Prohibited), as provisions that do not apply to a transaction covered under Section 32.065 (Contract for Foreclosure of Tax Lien), Tax Code.

SECTION 3. Repealer: Section 32.065(b-1) (authorizing the mortgage service to obtain a release of a transferred tax lien on the property by making certain payments, in the event of default and notice of acceleration), Tax Code.

SECTION 4. Repealer: Section 32.065(g) (regarding requirement of lienholder to notify the holders of all recorded liens on the property before foreclosure), Tax Code, as added by Chapter 406, Acts of the 79th Legislature, Regular Session, 2005.

SECTION 5. (a) Makes application of this act prospective.

(b) Provides that the change in law made by this Act to Sections 32.06 and 32.065, Tax Code, applies to all foreclosures under those sections that occur on or after the effective date of this Act, other than a foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for

specific foreclosure procedures under the law in effect at the time the contract was executed. Provides that a foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed is governed by the law in effect at the time the contract was executed, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2007.