

By: Carona, et al.
(Miller of Comal, Oliveira)

S.B. No. 247

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of an ad valorem tax lien; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

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

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

Sec. 351.0023. SOLICITATION OF LOANS; NOTICE. (a) A property tax lender who solicits property tax loans by mail, e-mail, or other print or electronic media shall include on the first page of all solicitation materials, in at least 12-point

1 boldface type, a notice substantially similar to the following:
2 "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT
3 MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE
4 AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

5 (b) A property tax lender who solicits property tax loans by
6 broadcast media, including a television or radio broadcast, shall
7 state the following in the broadcast: "YOUR TAX OFFICE MAY OFFER
8 DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU.
9 YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS
10 FROM THE TAX OFFICE."

11 (c) A property tax lender may not, in any manner, advertise
12 or cause to be advertised a false, misleading, or deceptive
13 statement or representation relating to a rate, term, or condition
14 of a property tax loan.

15 (d) A property tax lender who refers to a rate or charge in
16 an advertisement shall state the rate or charge fully and clearly.
17 If the rate or charge is a rate of finance charge, the advertisement
18 must include the annual percentage rate and specifically refer to
19 the rate as an "annual percentage rate." The advertisement must
20 state that the annual percentage rate may be increased after the
21 contract is executed, if applicable. The advertisement may not
22 refer to any other rate, except that a simple annual rate that is
23 applied to the unpaid balance of a property tax loan may be stated
24 in conjunction with, but not more conspicuously than, the annual
25 percentage rate.

26 (e) If an advertisement for a property tax loan includes the
27 number of payments, period of repayment, amount of any payment, or

1 amount of any finance charges, the advertisement must, in addition
2 to any applicable requirements of Subsection (d), include:

3 (1) the terms of repayment, including the repayment
4 obligations over the full term of the loan and any balloon payment;

5 (2) the annual percentage rate, and must refer to that
6 rate as the annual percentage rate; and

7 (3) a statement that the lender may increase the
8 annual percentage rate after the contract is executed, if
9 applicable.

10 (f) The finance commission may adopt rules to implement and
11 enforce this section.

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

16 SECTION 3. Section 351.003, Finance Code, is amended to
17 read as follows:

18 Sec. 351.003. SECONDARY MARKET TRANSACTIONS. (a) Except
19 as provided by Subsection (b), this [This] chapter does not
20 prohibit a property tax lender from receiving compensation from a
21 party other than the property tax loan applicant for the sale,
22 transfer, assignment, or release of rights on the closing of a
23 property tax loan transaction.

24 (b) A person may not sell, transfer, assign, or release
25 rights to a property tax loan to a person who is not licensed under
26 Section 351.051 or exempt from the application of this chapter
27 under Section 351.051(c).

1 (c) The finance commission shall adopt rules to implement
2 this section.

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

5 (c) Except as provided by Section 351.003, this ~~[This]~~
6 chapter does not apply to:

7 (1) any of the following entities or an employee of any
8 of the following entities, if the employee is acting for the benefit
9 of the employer:

10 (A) a bank, savings bank, or savings and loan
11 association, or a subsidiary or an affiliate of a bank, savings
12 bank, or savings and loan association; or

13 (B) a state or federal credit union, or a
14 subsidiary, affiliate, or credit union service organization of a
15 state or federal credit union; or

16 (2) an individual who:

17 (A) is related to the property owner within the
18 second degree of consanguinity or affinity, as determined under
19 Chapter 573, Government Code ~~[makes a property tax loan from the~~
20 ~~individual's own funds to a spouse, former spouse, or persons in the~~
21 ~~lineal line of consanguinity of the individual lending the money];~~
22 or

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

25 SECTION 5. Subsection (a), Section 351.054, Finance Code,
26 is amended to read as follows:

27 (a) A transferee of a tax lien must include with the sworn

1 document executed by the borrower and filed with the collector of a
2 taxing unit under Section 32.06(a-1), Tax Code, the information
3 required by this section.

4 SECTION 6. The heading to Section 32.06, Tax Code, is
5 amended to read as follows:

6 Sec. 32.06. PROPERTY TAX LOANS; TRANSFER OF TAX LIEN.

7 SECTION 7. Subdivision (2), Subsection (a), Section 32.06,
8 Tax Code, is amended to read as follows:

9 (2) "Transferee" means a person who is licensed under
10 Chapter 351, Finance Code, or is exempt from the application of that
11 chapter under Section 351.051(c), Finance Code, and who is:

12 (A) authorized to pay the taxes of another; or

13 (B) a successor in interest to a tax lien that is
14 transferred under this section.

15 SECTION 8. Section 32.06, Tax Code, is amended by amending
16 Subsections (a-1), (a-2), (a-3), (a-4), (b), (c), (d), (e-1),
17 (f-4), (g), (h), (i), and (j) and adding Subsections (a-5), (a-6),
18 (a-7), (a-8), (a-9), and (l) to read as follows:

19 (a-1) A property owner [~~person~~] may authorize another
20 person to pay the taxes imposed by a taxing unit on the owner's
21 [~~person's~~] real property by executing and filing with the collector
22 for the taxing unit:

23 (1) a sworn document stating:

24 (A) the authorization for payment of the taxes;

25 (B) the name and street address of the transferee
26 authorized to pay the taxes of the property owner;

27 (C) a description of the property by street

1 address, if applicable, and legal description; and

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

5 (2) the information required by Section 351.054,
6 Finance Code.

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

11 (1) taxes that are delinquent at the time of payment;
12 or

13 (2) taxes that are due but not delinquent at the time
14 of payment if[+

15 [~~(A)~~] the property is not subject to a recorded
16 mortgage lien[~~, or~~

17 [~~(B) a tax lien transfer authorized by the~~
18 ~~property owner has been executed and recorded for one or more prior~~
19 ~~years on the same property and the property owner has executed an~~
20 ~~authorization consenting to a transfer of the tax liens for both the~~
21 ~~taxes on the property that are not delinquent and taxes on the~~
22 ~~property that are delinquent in the manner provided by Subsection~~
23 ~~(a-1)]].~~

24 (a-3) A person who is 65 years of age or older may not
25 authorize a transfer of a tax lien on real property on which the
26 person is eligible to claim an exemption from taxation under
27 Section 11.13(c). [~~If the property owner has executed an~~

1 ~~authorization under Subsection (a-2)(2)(B) consenting to a~~
2 ~~transfer of the tax liens for both the taxes on the property that~~
3 ~~are not delinquent and taxes on the property that are delinquent,~~
4 ~~the collector's certification under Subsection (b) may be in one~~
5 ~~document.]~~

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

7 (1) prescribe the form and content of an appropriate
8 disclosure statement to be provided to a property owner before the
9 execution of a tax lien transfer;

10 (2) adopt rules relating to the reasonableness of
11 closing costs, fees, and other charges permitted under this
12 section; ~~and~~

13 (3) by rule prescribe the form and content of the sworn
14 document under Subsection (a-1) and the certified statement under
15 Subsection (b); and

16 (4) by rule prescribe the form and content of a request
17 a lender with an existing recorded lien on the property must use to
18 request a payoff statement and the transferee's response to the
19 request, including the period within which the transferee must
20 respond.

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

26 (a-6) Notwithstanding Subsection (f-3), a lender described
27 by Subsection (a-4)(4) may request a payoff statement before the

1 tax loan becomes delinquent. The Finance Commission of Texas by
2 rule shall require a transferee who receives a request for a payoff
3 statement to deliver the requested payoff statement on the
4 prescribed form within a period prescribed by finance commission
5 rule. The prescribed period must allow the transferee at least
6 seven business days after the date the request is received to
7 deliver the payoff statement. The consumer credit commissioner may
8 assess an administrative penalty under Subchapter F, Chapter 14,
9 Finance Code, against a transferee who wilfully fails to provide
10 the payoff statement as prescribed by finance commission rule.

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

15 (a-8) A tax lien may not be transferred to the person who
16 pays the taxes on behalf of the property owner under the
17 authorization described by Subsection (a-1) if the real property:

18 (1) has been financed, wholly or partly, with a grant
19 or below market rate loan provided by a governmental program or
20 nonprofit organization and is subject to the covenants of the grant
21 or loan; or

22 (2) is encumbered by a lien recorded under Subchapter
23 A, Chapter 214, Local Government Code.

24 (a-9) The Finance Commission of Texas may adopt rules to
25 implement Subsection (a-8).

26 (b) If a transferee authorized to pay a property owner's
27 taxes under [~~pursuant to~~] Subsection (a-1) pays the taxes and any

1 penalties, ~~[and]~~ interest, and collection costs imposed, the
 2 collector shall issue a tax receipt to that transferee. In
 3 addition, the collector or a person designated by the collector
 4 shall certify that the taxes and any penalties, ~~[and]~~ interest, and
 5 collection costs on the subject property ~~[and collection costs]~~
 6 have been paid by the transferee on behalf of the property owner and
 7 that the taxing unit's tax lien is transferred to that
 8 transferee. The collector shall attach to the certified statement
 9 the collector's seal of office or sign the statement before a notary
 10 public and deliver a tax receipt and the certified statement
 11 attesting to the transfer of the tax lien to the transferee within
 12 30 days. The tax receipt and certified statement may be combined
 13 into one document. The collector shall identify in a discrete
 14 field in the applicable property owner's account the date of the
 15 transfer of a tax lien transferred under this section. When a tax
 16 lien is released, the transferee shall file a release with the
 17 county clerk of each county in which the property encumbered by the
 18 lien is located for recordation by the clerk and send a copy to the
 19 collector. The transferee may charge the property owner a
 20 reasonable fee for filing the release.

21 (c) Except as otherwise provided by this section, the
 22 transferee of a tax lien ~~[and any successor in interest]~~ is entitled
 23 to foreclose the lien~~+~~

24 ~~[(1)]~~ in the manner provided by law for foreclosure of
 25 tax liens~~+~~~~or~~

26 ~~[(2) in the manner specified in Section 51.002,~~
 27 ~~Property Code, and Section 32.065, after the transferee or a~~

1 ~~successor in interest obtains a court order for foreclosure under~~
2 ~~Rule 736, Texas Rules of Civil Procedure, except as provided by~~
3 ~~Subsection (c-1) of this section, if the property owner and the~~
4 ~~transferee enter into a contract that is secured by a lien on the~~
5 ~~property].~~

6 (d) A transferee shall record a tax lien transferred as
7 provided by this section with the certified statement attesting to
8 the transfer of the tax lien as described by Subsection (b) in the
9 deed records of each county in which the property encumbered by the
10 lien is located.

11 (e-1) A transferee of a tax lien may not charge a fee for any
12 expenses arising after the closing of a loan secured by a tax lien
13 transferred under this section, including collection costs, except
14 for:

- 15 (1) interest expressly authorized under this section;
- 16 (2) the fees for filing the release of the tax lien
17 under Subsection (b);
- 18 (3) the fee for providing a payoff statement under
19 Subsection (f-3);
- 20 (4) the fee for providing information regarding the
21 current balance owed by the property owner under Subsection (g);
22 and
- 23 (5) the fees expressly authorized under Section
24 351.0021, Finance Code.

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

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

8 (h) A mortgage servicer who pays a property tax loan secured
9 by a [~~transferred~~] tax lien transferred under this section becomes
10 subrogated to all rights in the lien.

11 (i) A judicial [~~Except as provided by Section 33.445, a~~]
12 foreclosure of a tax lien transferred under [~~as provided by~~] this
13 section may not be instituted within one year from the date on which
14 the lien is recorded in all counties in which the property is
15 located, unless the contract between the owner of the property and
16 the transferee provides otherwise.

17 (j) After one year from the date on which a tax lien
18 transferred under [~~as provided by~~] this section is recorded in all
19 counties in which the property is located, the transferee of the
20 lien may foreclose the lien in the manner provided by Subsection (c)
21 unless the [~~a~~] contract between the transferee [~~holder of the lien~~]
22 and the owner of the property encumbered by the lien provides
23 otherwise. The proceeds of a sale following a judicial foreclosure
24 as provided by this subsection shall be applied first to the payment
25 of court costs, then to payment of the judgment, including accrued
26 interest, and then to the payment of any attorney's fees fixed in
27 the judgment. Any remaining proceeds shall be paid to other

1 holders of liens on the property in the order of their priority and
2 then to the person whose property was sold at the tax sale.

3 (1) Except as specifically provided by this section, a
4 property owner cannot waive or limit any requirement imposed on a
5 transferee by this section.

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

8 (b) Notwithstanding any agreement to the contrary, a
9 contract entered into under Subsection (a) between a transferee and
10 the property owner under Section 32.06 that is secured by a priority
11 lien on the property shall provide for [~~a power of sale and~~]
12 foreclosure in the manner provided by Section 32.06(c)
13 [~~32.06(c)(2)~~] and:

14 (1) an event of default;
15 (2) notice of acceleration; and
16 (3) recording of the deed of trust or other instrument
17 securing the contract entered into under Subsection (a) in each
18 county in which the property is located. [~~+~~

19 [~~(4) recording of the sworn document and affidavit~~
20 ~~attesting to the transfer of the tax lien,~~

21 [~~(5) requiring the transferee to serve foreclosure~~
22 ~~notices on the property owner at the property owner's last known~~
23 ~~address in the manner provided by Section 32.06(c)(2) or by a~~
24 ~~commercially reasonable delivery service that maintains verifiable~~
25 ~~records of deliveries for at least five years from the date of~~
26 ~~delivery, and~~

27 [~~(6) requiring, at the time the foreclosure notices~~

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

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

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

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

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