

SUBJECT: Notice requirements for tax lien transfers and tax lien foreclosures

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 6 ayes — Solomons, Flynn, Anchia, Anderson, McCall, Orr

0 nays

1 absent — Chavez

WITNESSES: *(On original version:)*

For — Phil Migicovsky, Texas Property Tax Lenders Association; Scott Wizig; *(Registered, but did not testify: Sam Feldman, RETax Funding LP)*

Against — Ken Culbreth, Walter Mortgage Company; *(Registered, but did not testify: John Heasley, Texas Bankers Association; Laura Matz, ACC Capital Holdings Corporation; Mark Morris, JPMorgan Chase Bank; Kelly Rodgers, Walter Mortgage Company/Countrywide Home Loans)*

On — Heather Amick, FIS Tax Service; Robert Doggett, Texas Low Income Housing Information Service; *(Registered, but did not testify: John Fleming, Department of Savings and Mortgage Lending; Danny Payne, Department of Savings and Mortgage Lending)*

(On committee substitute:)

For — Charles Brown, Hunter-Kelsey of Texas, LLC; Mary Belan Doggett, Texas Property Tax Lenders Association; Suzanne Frossard, Genesis Tax Loan Services, Inc., Genesis Tax Solutions, Inc.; Mary Ann Adams; Kevin Bales; David Burnett; *(Registered, but did not testify: J. Moore McDonough, Hunter-Kelsey of Texas, LLC; A.R. Schwartz, Genesis Tax Loan Services, Inc., Genesis Computer Services, Inc.)*

Against — None

On — Roland Love, Texas Land Title Association

BACKGROUND: A delinquent taxpayer and outside investor may contract with one another for a loan in which the investor pays the owner's obligation to a taxing authority, and the tax lien is transferred contractually to the investor. The

investor then stands in the position of the taxing authority with respect to the tax lien. The tax lien is considered a super priority lien and takes precedence over any other liens. If the loan goes delinquent, the lender can foreclose on the loan through a non-judicial process. If a loan is foreclosed, the property owner or any party with a lien against the property can redeem the property within two years by paying 125 percent of the purchase price within the first year of the redemption period or 150 percent within the second year.

DIGEST:

CSHB 2137 would revise the eligible circumstances under which a tax lien could be transferred, requirements for the recording of lien transfers, notice requirements regarding payment delinquency and foreclosure, and the process by which a foreclosed property could be redeemed.

Tax lien transfers. A tax lien could be transferred to a third-party payor if the taxes were delinquent at the time payment was due. If the taxes were not delinquent, the tax lien only could be transferred if there was no mortgage on the property or there had been a tax lien on the property in prior years. A consumer would have the right to rescind a tax lien transfer as prescribed in the federal Truth in Lending Act.

The Finance Commission would prescribe the form and content of a disclosure provided to the property owner prior to the execution of a tax lien transfer. The commission also would adopt rules relating to the reasonableness of closing costs, fees, and other charges associated with the transfer.

When a tax lien was released, the transferee would file the release with the county clerk of each county in which the property was located. The release would be filed by the clerk, and a copy would be sent to the tax collector. The deed associated with a lien transfer contract would be recorded with any county in which the property was located. The tax collector would identify the date of the transfer of a tax lien in a discrete field in the property owner's account. The transferee could charge a reasonable fee to the property owner for filing the release.

Provisions regulating home loans in the Finance Code would not be applicable to tax lien lending with the exception of prohibitions on prepayment penalties and negative amortization.

Notice of tax lien transfers, delinquency, and foreclosure. Within 10 days of receiving a tax receipt and statement attesting to the tax lien transfer from the tax collector, the transferee would send the sworn document including information on the property and the transferee's address to the mortgage servicer and any other first lien holder on the property. The copy of the sworn document would be sent by mail to the most recent address of the mortgage servicer and lien holders.

The transferee would send notice of delinquency on a loan secured by a transferred tax lien by the 120th day of delinquency. Within six months after the date on which the notice was sent, the mortgage servicer for the property could pay the outstanding balance on the loan to obtain a release of the transferred lien. Failure to provide notice of delinquency or notice of tax lien transfer to other lienholders would not invalidate the tax lien.

An agreement between a transferee and property owner for the transfer of a tax lien would include foreclosure provisions requiring a court order for foreclosure and prescribing the foreclosure process according to Texas Rules of Civil Procedure, Rule 736. The procedures established by Rule 736 would be modified to properly address tax lien foreclosures rather than expedited foreclosure proceedings for home equity loans or reverse mortgages.

The current statute governing notice on foreclosure of a tax lien would be repealed. The holder of a preexisting lien on the property would be provided at least 60 days' notice before the date of a proposed foreclosure and could obtain any permissible pay off information.

Redemption of foreclosed property. The property owner or mortgage servicer on a foreclosed property could redeem the property through appropriate payment to the purchaser or a successive purchaser within two years of the foreclosure date. In addition to any other payment to redeem the property, the redeemer would owe the purchaser costs for maintenance and preservation of the property. The purchaser or any successive purchaser would deliver the deed without warranty to the person redeeming the property.

The bill would take effect on September 1, 2007, and would apply only to a transfer of a tax lien or foreclosure occurring on or after this date. An exception would be made for foreclosure agreements made before the effective date that dictated a different foreclosure proceeding.

SUPPORTERS
SAY:

CSHB 2137 would facilitate the tax lien lending process, which benefits taxing entities, mortgage servicers, and consumers. Transferring a tax lien allows a taxing entity to collect money more quickly and frees the entity from the hassle of foreclosures. Tax lien lending prevents mortgage companies from losing their interest in a property to a tax foreclosure. Finally, consumers facing short-term financial obstacles can save their property by paying off a year's taxes more slowly as their finances permit.

The legal notice requirements in the CSHB 2137 would enhance communication between the tax lien lender and the mortgage company. As the super priority lien, a tax lien loan takes precedence over any other first lien, including the mortgage. The notice requirement for when a tax lien transfer occurred would make other first lien holders aware the tax lien lender had an interest in their property. The discrete field in tax collector records also would convey at any given time whether taxes had been paid, were delinquent, or were addressed through a tax lien transfer. These mechanisms would allow other lien holders to track the interest they held in a property and institute means of remediation through the methods afforded them.

The bill also would provide 60 days notice of a planned foreclosure to any first lien holder on the property so that another lien holder could pay off the tax lien debt and protect their interest in the property. The bill would require judicial oversight of foreclosures and would institute a foreclosure process with more safeguards.

CSHB 2137 appropriately would prohibit a mortgage servicer from paying off the tax lien transfer until a property owner was 120 days delinquent on payments. The mortgage company's investment is not at risk until the customer is in danger of defaulting on their tax lien loan. The bill would allow the mortgage servicer to pay off the loan when this risk was introduced. Allowing pay off by a mortgage lender any earlier only would interfere with the business of the tax lender and not afford the property owner any further relief, because the mortgage servicer simply would roll the value of the tax lien into the mortgage. This provision would strike the appropriate balance between the interests of mortgage lenders, tax lien lenders, and consumers.

The bill appropriately would afford a consumer who had purchased a foreclosed property compensation for the maintenance and preservation of

the property if redeemed. These allowances would reflect the consumer's minimum investment to keep a property livable. Without such compensation, a purchaser could allow a property's condition to decline for fear that he would lose money on any repairs. The tight language of this provision would not allow abuses, because the bill would reference a definition of costs that would include reasonable expenses for property insurance and repairs required by local ordinance.

The bill would provide that notice of delinquency or notice of tax lien transfer to other lien holders would not invalidate the tax lien so that title companies would be assured that they were guaranteeing clean titles. The bill would in no way provide for the invalidation of a foreclosure commenced without notice.

**OPPONENTS
SAY:**

CSHB 2137 would impair a contract right afforded in most mortgage agreements allowing the mortgage servicer to pay off any indebtedness superior to the mortgage that could jeopardize the loan. The bill would keep mortgage holders from exercising their right to protect their investment by disallowing pay off of transferred tax liens for at least 120 days. The 120 day wait also would harm the mortgage servicer, because the longer the mortgage servicer must wait to pay off a tax lien, the longer the tax lien lender's high interest and penalties could accrue against the pay off amount of the lien.

The bill would leave room for abuse on the part of a purchaser of a foreclosed property. It would require that a person redeeming a property pay the buyer the amount spent for maintaining, preserving, and safekeeping the property. This would provide an incentive for a buyer of a foreclosed property to move forward with improvements prior to the completion of the two year redemption period, because the buyer could anticipate succeeding in making claims that certain improvements were only maintenance. Any such claims would be subject to interpretation.

Given that failure to provide required notices would not invalidate the tax lien, the bill would leave room for interpretation as to whether a foreclosure could be invalidated if required notice were not provided. This ambiguity could threaten the expected interest of a buyer of a foreclosed property if a mortgage company later redeemed the property but refused to pay any amount in excess of the value of the lien on the grounds that the foreclosure was not valid.

NOTES: The companion bill, SB 1520 by Wentworth, was reported favorably, as substituted, by the Senate Jurisprudence committee on April 27.

A related bill, HB 2138 by Paxton, which would regulate property tax lenders, passed the House by 128-0 on April 26.