

BILL ANALYSIS

Senate Research Center
80R4210 JPL-D

S.B. 1520
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Jurisprudence
4/5/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas law has permitted property tax lien transfers, whereby an owner of real property consents to the payment of their real property taxes by a third party, to whom the taxing unit then transfers its preexisting lien on the property, prior to its codification into Property Code by the 66th Legislature. The 79th Legislature enacted H.B. 2491 to revise the law governing those transfers by limiting transfers on some current year taxes, by detailing the required elements of a contract to repay a tax lien, and by clarifying ambiguities in the statute regarding the definition in certain terms. However, S.B. 1587 was simultaneously enacted, which also provided for certain notification procedures to first lien mortgage holders in the event a transferred tax lien was foreclosed. Statutory change may be necessary to clarify the differences between these two enacted bills.

As proposed, S.B. 1520 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.06, Tax Code, by amending Subsections (a-1), (a-2), (b), (c), (d), (f), (i), and (k), and adding Subsections (c-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 if the property is not subject to a recorded mortgage lien or a tax lien transfer to the same person for one or more prior years on the same property has been executed and recorded. 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.

(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 to file a release with the collector for the collector's recordation when a tax lien is released.

Authorizes the transferee to charge the property owner a reasonable fee for filing the release. Makes conforming changes.

(c) Entitles the transferee of a tax lien and any successor in interest to foreclose the lien in the manner specified in Rule 736 (Expedited Foreclosure Proceeding) of the Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section, rather than Section 51.002 (Sale of Real Property Under Contract Lien), Property Code.

(c-1) Requires the application, if a transferee seeks to foreclose a tax lien on property under Subsection (c)(2), to allege that the lien is an ad valorem tax lien instead of a lien created under Section 50 (Homestead; Protection From Forced Sale; Mortgages; Trust, Deeds, and Liens), Article XVI, Texas Constitution, and to state that the applicant does not seek a court order under that section. 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.

(f) Requires a notice of delinquency when a loan secured by a transferee is 120 days late to be sent by certified mail by the loan holder on the 120th day of delinquency, or if that day is not a work day, on the next possible working day to any holder of a preexisting lien on the property. Entitles the mortgage servicer of a preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) to obtain a release of the transferred tax lien within six months after the date the notice is sent, rather than the date the tax lien is recorded in all counties in which the property is located. Provides that this right of redemption 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 (Title Insurance Company Affidavit as Release of Lien; Civil Penalty), Property Code, to be valid.

(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.

(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) 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, Property Code. Sets forth other certain provisions required of the contract. Makes a conforming change.

(d) Includes Chapter 343 (Home Loans), Finance Code, as a chapter that does not apply to a transaction covered under Section 32.065 (Contract for Foreclosure of Tax Lien), Tax Code.

SECTION 3. Repealers: (1) Section 32.06(a-3) (regarding transfer of tax lien before delinquency date), Tax Code, and (2) 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 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.