

SUBJECT: Transfer of a tax lien to an investor

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 4 ayes — Solomons, Chavez, Flynn, Orr
0 nays
3 absent — McCall, Guillen, Riddle

WITNESSES: For — Robert Doggett, Texas Low Income Housing Information Service; Suzanne Frossard, Genesis Tax Loan Services, Inc.; David Gonzalez, Gonzalez Financial Holdings, Inc.; Mark Morris, JPMorgan Chase; Tim Perser, First American Real Estate; Tom Rutledge, Texas Land Title Association; Eric Sherer, Gonzalez Financial Holdings, Inc.; (*Registered but did not testify*: Demetrius McDaniel, Citigroup, Inc.; Eric Sandberg, Texas Savings and Community Bankers Association; A.R. Schwartz, Genesis Tax Loan Services, Inc.; Greg Smith, National Taxnet; Larry Temple, Texas Mortgage Bankers Association; Jeri Thompson, Total Mortgage Solutions and First Horizon Home Loan Corporation; Craig Zinda, First American Real Estate Information Services, Inc.

Against — None

On — (*Registered, but did not testify*: Jerry Hooper, Tax Ease, Inc.)

BACKGROUND: In order to enforce a delinquent tax lien through foreclosure, tax-assessors, collectors, and taxing authorities must use a judicial foreclosure process in which notice is provided to all lien holders and the property owner has the option of redemption for one year.

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 taking precedence over any other liens. If the loan goes delinquent, the lender can foreclose on the loan through a non-judicial process without notice to prior lienholders.

DIGEST:

CSHB 2220 would define a transferee as a person authorized to pay the taxes of another. A person could authorize another person to pay delinquent taxes on real property by filing a sworn statement including the authorization, the name and address of the transferee, and a description of the property. After a tax lien was transferred, taxes on the property that became due in subsequent tax years could be transferred before the delinquency date only if the property was not subject to another lien.

The transferee would issue the property owner a tax receipt. The tax authority would certify on the sworn document that the transferee had made the payment on the owner's behalf and that the taxing unit's lien would be transferred to the transferee. The tax collector would issue the transferee relevant documentation and note the date of the transfer of the tax lien in the taxpayer's account.

The transferee of a tax lien and any successor in interest could foreclose the lien under the home equity rules adopted by the Texas Supreme Court and the expedited rules which apply to reverse mortgages. An affidavit signed by the transferee and recorded in the proper real property records that stated the foreclosure was in compliance would be prima facie evidence of a proper foreclosure.

The lien would be enforceable only if the sworn statement were recorded in the deed records of the county in which the property was encumbered. The transferee would provide disclosure regarding the fees that a prospective borrower could incur in connection with the loan. The transferee could charge a reasonable fee for a payoff statement. Prepayment penalties would be prohibited. The transferee could not charge more than 18 percent per year on the taxes, penalties, and interest, plus other expenses paid to acquire the lien.

The mortgage servicer of a preexisting lien on property encumbered by a transferred tax lien could pay the transferee the amount owed under the contract with the property owner within six months to obtain a release of the transferred tax lien. The transferee could charge for additional payoff statements and for payoff information requested after the six-month period but before a notice of foreclosure was sent. A mortgage servicer who paid a transferred tax lien would become subrogated to all rights in the lien.

A foreclosure of a transferred tax lien could not be instituted within one year from the recording date of the lien, unless otherwise provided in the contract. The transferee could foreclose the lien after one year from the date of recording. If a foreclosure procedure resulted in a foreclosure, the transferee would be entitled to recover attorney's fees of up to 10 percent of the judgment.

From the date the foreclosure deed was recorded, a person whose property was sold or the mortgage servicer of a prior recorded lien could redeem the property from the purchaser by paying 125 percent of the purchase price during the first year of the redemption prior or 150 percent during the second with cash equivalent funds. The right of redemption could be exercised on or before the second anniversary on homestead or land designated for certain uses. Otherwise, the right of redemption could be exercised within 180 days.

The bill would add requirements for the contract between a property owner and transferee including recording of the contract and sworn documents. The contract also would require specifications for the delivery and content of the foreclosure notice provided to both the property owner and the mortgage servicer of any recorded real property lien on the property.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Current law does not properly balance the interests of those in the tax lien business, mortgage companies, and consumers. Tax lien investors play an important role in local economies in that they expedite needed revenue to taxing authorities by paying delinquent taxes. In addition, some taxpayers experience a period of significant financial hardship due to catastrophic events and need assistance in getting back on their financial feet. The services of tax lien investors save tax payers the expense of additional penalties and fees from the taxing authority and lengthen the period of time in which they have to pay off obligations.

CSHB 2220 would balance protecting the rights of tax lien investors and the beneficial services they provide to taxpayers with adequate protections for mortgage lenders. A provision of every mortgage contract is that the borrow will not enter into another agreement that puts the mortgage lien in jeopardy. Because a tax lien is a super-priority lien, non-payment of taxes

or establishing a tax lien transfer loan puts a mortgage customer technically in default on his mortgage.

CSHB 2220 would do several things to respect this balance. It would limit tax lien transfers until after the taxes were delinquent. This would provide mortgage companies the maximum time under law to work with their customer before they technically default on the mortgage.

It also would clarify the date at which the six month buy-back period would begin. Mortgage companies would have the right to buy back tax liens within the first six months, however the bill would also strengthen the tax lien investor's ability to collect all expenses. After the six-month buy back period was over, the bill would protect tax lien investors and their customers from mortgage servicers who could aggressively try to pay off the loan.

CSHB 2220 would strengthen reporting requirements for tax liens and strengthens the recording requirements in the taxing authority offices so that the liens could be identified more easily. It would also institute notice requirements before foreclosure and would clarify the right of redemption after foreclosure.

**OPPONENTS
SAY:**

While this bill would be beneficial, it could be improved through added protections for seniors and disabled individuals who do not require this sort of service because they can defer their tax payments. Such individuals are not always aware of this right and could unknowingly enter into an agreement that would not serve their best interests. These tax liens convey fewer protections than many other forms of loans and should be used only by populations that have no safer alternatives.

Finally, this bill should not exclude non-delinquent taxpayers from using the services of tax lien businesses. Some taxpayers recognize prior to their taxes coming due that they will be unable to pay them. The penalties incurred from delinquent tax payment can surpass the cost of charges imposed by tax lien businesses, and taxpayers should not have to encumber unnecessary late penalties when they can anticipate a need to utilize the services of a tax lien business.

NOTES:

The original bill did not specify that a taxpayer would need to be delinquent to authorize payment by a transferee. It would have had more extensive requirements for the sworn statement. It would not have required

identifying the date of transfer of a tax lien on certain documents. It would have allowed the mortgage servicer to obtain a release of the transferred tax lien before a foreclosure through making specified payments to the transferee. It would not have allowed fees for payoff statements. It would not have allowed the person or mortgage servicer to redeem the foreclosed property for a specified percentage of the purchase price during the first or second years after foreclosure. It would not have provided for a power of foreclosure. It would not have prohibited payment penalties.