

SUBJECT: Regulating claims for excess proceeds of a tax sale of real property

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, C. Howard, P. King, Paxton, Taylor, Villarreal

0 nay

1 absent — Pena

WITNESSES: For — Jim Bellevue; Carol Hale; Elena Lipkowski; (*Registered, but did not testify:* Jim Robinson)

Against — (*Registered, but did not testify:* Eugene Hoppe IV, City of Richardson; Pete Kamp, City of Denton)

BACKGROUND: Under Tax Code, ch. 34, real property may be ordered sold to pay delinquent property taxes. If any funds remain after all claims on the property have been settled, those funds are deposited with the clerk of the court that ordered the sale of the property. A former owner of the property is entitled to make a claim for them. A person may not take an assignment of an owner's claim to excess proceeds unless the assignment is taken on or after the 36th day after the date the excess proceeds are deposited in a court registry, the assignment is in writing and signed by the assignor, and the assignment document contains a sworn statement by the assignor affirming:

- that the assignment was given voluntarily;
- the date on which the assignment was made and that the date was not earlier than the 36th day after the date the excess proceeds were deposited in the registry of the court;
- that the assignor has received proper notice from the court clerk;
- the nature and amount of consideration given for the assignment;
- the circumstances under which the excess proceeds are in the registry of the court;
- the amount of the claim to excess proceeds in the registry of the court;

- that the assignor has made no other assignments of the assignor's claim to the excess proceeds; and
- that the assignor knows that the assignor may retain counsel.

An assignee who obtains excess proceeds without complying with the rules regarding the assignment document is liable to the assignor for the amount of excess proceeds obtained plus attorney's fees and expenses. An assignee who files a petition setting forth a claim to excess proceeds must attach a copy of the assignment document and produce the original of the assignment document in court at the hearing on the petition. If the original assignment document is lost, the assignee must obtain the presence of the assignor to testify at the hearing.

A fee charged to obtain excess proceeds for an owner may not be greater than 25 percent of the amount obtained or \$1,000, whichever is less.

DIGEST:

CSHB 406 would change the eligibility for who could be deemed a former owner and would further regulate the assignment or transfer of a claim of a former owner to excess proceeds.

Claims by former owners. CSHB 406 would amend Tax Code, sec. 34.04 so that former owners would be eligible to receive their due share of the excess proceeds of a tax sale, provided the former owner:

- was a defendant in the judgment ordering the tax sale;
- was related within the third degree by blood or marriage to a former owner that was a defendant in the judgment; or
- acquired by will or succession the interest in the property of a former owner that was a defendant in the judgment.

Except for those former owners who were related to the former owner or who took by a will or intestate succession as above, a former owner of the property that acquired an interest in the property after the date of the judgment would not be able to establish a claim to the proceeds. A former owner of the property would be considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after the date of the judgment.

Assignment or transfer of a claim. A person would not be able to take an assignment or other transfer of an owner's claim to excess proceeds unless

the assignment or transfer was not the result of an in-person or telephone solicitation and the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.

The assignment or transfer document additionally would have to affirm that the consideration was paid in full on the date of the assignment or transfer and that the consideration paid was an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.

An assignee or transferee who attempted to obtain excess proceeds without complying with the rules regulating the assignment or transfer document would be liable to the assignor or transferor for attorney's fees and expenses.

The assignee or transferee would have to produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. If the original of any evidence of the payment was lost or if the payment was in cash, the assignee or transferee would have to obtain the presence of the assignor or transferor to testify at the hearing.

A fee charged by an attorney to obtain excess proceeds for an owner could not be greater than 25 percent of the amount obtained or \$1,000, whichever was less. A person who was not an attorney could not charge a fee to obtain excess proceeds for an owner.

The amount of excess proceeds the court could order be paid to an assignee or transferee could not exceed 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

An order directing that all or part of the excess proceeds be paid to a party would be appealable.

CShB 406 would make a number of conforming changes throughout Tax Code, sec. 34.04 that would make clear that the law would apply to transfers as well as assignments of a claim to excess proceeds.

The bill would take effect September 1, 2009. It would apply to claims on excess proceeds of a tax sale regardless of the date on which the warrant or order of sale authorizing the tax sale was issued, the tax sale was conducted, or the proceeds were paid to the court clerk.

**SUPPORTERS
SAY:**

While the majority of firms that assist individuals to claim their rightful excess proceeds of a tax sale provide a valuable service and operate within the law, there are a few bad actors whose fraudulent actions and misrepresentations require tighter regulation of the industry. These unscrupulous groups prey on the old and disabled, the illiterate, and those who may not speak English. There have been instances in Texas where assignment companies received tens of thousands of dollars from a court but had first purchased the right to do so from a prior owner for a few thousand dollars. The most common business model for assignment companies is to scan public records for a pending tax sale, pressure an owner into selling the property about to be sold for dimes on the dollar, and then collect the windfall excess proceeds of the tax sale.

Current law does not provide enough oversight. CSHB 406 would make high-pressure assignment companies ineligible to collect excess proceeds, tighten the evidentiary rules required to claim excess proceeds, and reduce the amount of profit that an assignor or transferee could make to 20 percent. It would do this by requiring the assignees to provide the original former owner of the property with 80 percent of the total amount of the assignor's excess proceeds being held by the court.

CSHB 406 also would cap the fees that attorneys could charge to obtain excess proceeds for a prior owner. In addition, CSHB 406 would prevent a person who was not an attorney from charging a fee to obtain excess proceeds in order to crack down on the unauthorized practice of law that some assignment companies engage in. While many of the abuses done by the worst assignment companies could be addressed through private actions, CSHB 406 would work to prevent them from happening by removing incentives and tightening up the evidentiary burden. Requiring that the assignor be present in court when the original assignment document was missing will greatly reduce the amount of fraud that occurs in excess proceeds hearings. CSHB 406 would work to protect vulnerable populations while still allowing legitimate assignment companies room to operate and make a healthy profit.

OPPONENTS
SAY:

CSHB 406 is not needed. Many of the abuses that CSHB 406 would hope to solve can be addressed adequately through private claims alleging fraud and misrepresentation.

CSHB 406 could stymie an industry that helps people locate and receive funds to which they are entitled. Increasing the evidentiary burden and the paperwork required would make it harder for legitimate assignment companies to make claims. Requiring the presence of the assignor at the hearing to award excess proceeds when the original document was present could prevent some assignees from receiving what was rightfully theirs. Not all assignors are available, as some may be deceased. Capping the amount of profit that can be made would reduce the efforts these companies make to locate former owners who otherwise might never learn they are entitled to these funds.

NOTES:

The committee substitute added a requirement that the assignment or transfer not be the result of an in-person or telephone solicitation in order for the assignment or transfer to be valid. The substitute also struck an addition to the Tax Code, sec. 34.04, that would have required a lien holder, consensual or otherwise, to have been a defendant in the judgment in order to be paid its appropriate share.