BILL ANALYSIS

Senate Research Center

H.B. 406
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When property taxes are not paid, a taxing unit may sue the property owner, obtain a judgment, and sell the property at a county auction to collect the owed taxes. At the auction, the county generally makes an initial bid for the property that reflects the amount of taxes due plus interest, penalties, and court costs. If the property sells for more than the minimum bid, the former property owner is entitled to the amount of the surplus monies. The surplus amount is referred to as the excess proceeds.

Prior to the county auction, people unrelated to the property may obtain information about the former property owner, including contact information and the amount of excess proceeds owed to the former property owner. In an effort to make an investment, the person may then approach the property owner and offer to purchase the property owner's rights. If the property owner agrees to transfer his or her interest, the transfer may be accomplished by an assignment, transfer, or other contractual agreement. These agreements often involve a finder's fee or derivative of a finder's fee to be paid to the investor. This practice is unregulated, including the amount of the fees that may be charged. Consequently, very high fees may be charged.

In comparison, former property owners may retain an attorney to petition the court for excess proceeds owed to the former property owner. In the Tax Code, the attorney's fees are limited to 25 percent of the excess proceeds.

H.B. 406 relates to the disposition of excess proceeds of a tax sale of real property or foreclosure of a tax lien on real property.

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 Subchapter A, Chapter 34, Tax Code, by adding Section 34.021, as follows:

> Sec. 34.021. DISTRIBUTION OF EXCESS PROCEEDS IN OTHER TAX FORECLOSURE PROCEEDINGS. Requires a person conducting a sale for the foreclosure of a tax lien under Rule 736 of the Texas Rules of Civil Procedure, within 10 days of the sale, to pay any excess proceeds after payment of all amounts due all participants in the sale to the clerk of the court that issued the order authorizing the sale. Requires that the excess proceeds from such a sale be handled according to Sections 34.03 (Disposition of Excess Proceeds) and 34.04 (Claims for Excess Proceeds) of this code.

SECTION 2. Amends Section 34.04, Tax Code, by amending Subsections (c) and (e)-(i) and adding Subsections (c-1) and (j), as follows:

> (c) Requires the court at the hearing to order that the proceeds be paid to each party that establishes its claim to the proceeds, to include any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law; and to each former owner of the property, as the interest of each may

appear, provided that the former owner was a defendant in the judgment, is related within the third degree by consanguinity or affinity to a former owner that was a defendant in the judgment, or acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment.

(c-1) Prohibits a former owner of the property that acquired an interest in the property after the date of the judgment from establishing a claim to the proceeds, except as provided by Subsections (c)(5)(B) (regarding relation in the third degree) and (C) (regarding property acquired by will or intestate succession). Provides that for purposes of this subsection, a former owner of the property is 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.

(e) Provides that an order under this section directing that all or part of the excess proceeds be paid to a party is appealable. Makes a nonsubstantive change.

(f) Prohibits a person from taking an assignment or other transfer of an owner's claim to excess proceeds unless certain conditions are met.

(g) Provides that an assignee or transferee who attempts to obtain excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for attorney's fees and expenses. Makes conforming changes.

(h) Requires the assignee or transferee, in addition, to produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. Requires the assignee or transferee, if the original of any evidence of the payment is lost or if the payment was in cash, to obtain the presence of the assignor or transferor to testify at the hearing. Makes conforming changes.

(i) Prohibits a fee charged by an attorney to obtain excess proceeds for an owner from being greater than 25 percent of the amount obtained or $1,000, whichever is less. Prohibits a person who is not an attorney from charging a fee to obtain excess proceeds for an owner.

(j) Prohibits the amount of the excess proceeds the court may order be paid to an assignee or transferee from exceeding 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

SECTION 3. Provides that the change in law made by this Act applies to the disposition of excess proceeds of a tax sale paid to the clerk of the court that issued the warrant or order of sale regardless of the date on which the warrant or order of sale was issued, the tax sale was conducted, or the proceeds were paid to the clerk.

SECTION 4. Effective date: September 1, 2009.