



HOUSE OF REPRESENTATIVES

HB 2381

assignment of tax liens

Sponsor: Representative Olson

DPA Committee on Ways and Means

X Caucus and COW

House Engrossed

OVERVIEW

HB2381 authorizes a real property owner to assign a tax lien to an assignee.

HISTORY

A *property tax lien* is a legal claim by a government entity against the property of a noncompliant taxpayer. A lien is used as a means to force a taxpayer to pay all back taxes. Only repaying back taxes, getting the debt dismissed in a bankruptcy court, or reaching an offer in compromise with the tax authorities may get rid of the lien.

Current law requires a county treasurer to hold a tax lien sale each February. The lien is sold at a public auction, in which prospective investors bid on the lowest interest rate the investor may receive. The winning investor is responsible for the immediate payment of back taxes, interest, penalties, and charges and is issued a certificate of purchase by the county treasurer. The lien holder may recover their investment through redemption or foreclosure. If the property owner does not pay all amounts due, plus interest, to the lienholder within three years after the date of the sale of the lien, the lienholder may foreclose the right to redeem.

PROVISIONS

- Requires the county treasurer of a county with a population greater than 900,000 people to assign a real property tax lien to an assignee if the county treasurer receives:
 - a sworn written authorization from the owner of the real property to assign the lien to an assignee;
 - payment in the amount of the taxes, interest, charges, and penalties due on the real property;
 - a copy of the cash bond or surety bond submitted by the assignee, as required by this act, or an affidavit from the assignee or an authorized representative of the assignee affirming the assignee's compliance with the bond requirements of this act; and
 - a registration sheet that includes the assignee's name, address, telephone number, federal taxpayer identification number and e-mail address.
- Defines *assignee* as a person to whom an assignment of a lien is made, and that person's successor in interest.
- Stipulates that the county treasurer must assign the lien by:
 - issuing an acknowledgement of the assignment to the assignee, including the description and parcel number of the real property, the name and mailing address of the assignee and the date the assignment was recorded;
 - issuing the assignee a receipt for payment; and

- noting receipt of the payment and lien assignment in the record of tax lien sales maintained by the respective county treasurer.
- Specifies that the assignment of a lien does not affect the priority as currently prescribed in statute.
- Stipulates that a property owner may only authorize the assignment of a tax lien before the lien is open for sale.
- Prohibits a property owner from authorizing an assignment of a tax lien if there is an unredeemed tax lien that was sold for any of the 10 tax years prior.
- States that the sworn written authorization and acknowledgement and receipt of the assignment required under this act constitute prima facie evidence of the valid assignment and priority of the lien.
- Allows a real property owner and assignee of a property tax lien to enter into an agreement for payment of all amounts secured by the lien, including:
 - amounts paid as consideration for an assignment;
 - reasonable and necessary transaction costs incurred by the assignee, not exceeding \$400 for class three property;
 - interest on the transaction costs incurred by the assignee and amounts paid as consideration for an assignment, no higher than 16%; and
 - reasonable and necessary costs incurred by the assignee to enforce and collect on the payment agreement or the tax lien, including insufficient funds processing payments, lien release, recordation expenses, amounts expended to redeem a subsequent tax lien, attorney fees and costs relating to foreclosure or failure to perform under the payment agreement.
- Stipulates that if an assignee pays the amount owed on any additional liens levied against a property, after the original payment agreement, the county treasurer must assign the additional lien to the assignee.
- Specifies that if an assignee does not pay the amount owed on any additional liens levied against a property, after the original payment agreement, the priority of the original tax is subordinate to the additional lien, as sold to another purchaser.
- Allows an assignee to file an action to foreclose on the property at least three years after the date of the property owner's authorization of assignment, if the property owner defaults on the payment agreement.
- Stipulates that, between 60 and 180 days prior to an assignee's action to foreclose, the assignee must send written notice of the intent to foreclose to the property owner and all other consensual lien holders of the property.
- Requires an assignee's notice of foreclosure to provide that the holder of any lien with subordinate priority on the property may pay off the assigned tax lien.
- Requires a notice of foreclosure to include:
 - the property owner's name;
 - the real property taxpayer identification number;
 - the assignee's name and address; and
 - the proposed date of filing the action.

HB 2381

- Prohibits an assignee from receiving a fee in connection with a foreclosure action within 30 days of the date of the notice.
- Specifies that if an assignee fails to send a notice of foreclosure in the manner established by this act, the assignee is considered to have substantially failed to comply with the legal procedure and a court, therefore, will not enter any action to foreclose the tax lien until the assignee sends the notice.
- Stipulates that a holder of a lien against a property that has been foreclosed on by an assignee is entitled to an assignment of the assignee's interest if the lienholder pays the assignee's amount due under the payment agreement.
- Allows any successor in interest to the original assignee of a tax lien to continue the foreclosure action in the successor's own name.
- States that if a foreclosure sale of a property results in proceeds exceeding the amount owed to the assignee under the original payment agreement, the excess money must be distributed to each person that proves entitlement, in order of priority, with any remaining balance being paid to the original owner.
- Clarifies that an assignee is not entitled to any payment exceeding the amount agreed upon in the original payment agreement if a foreclosure sale results in proceeds exceeding the amount due to the assignee.
- Requires an assignee to release a tax lien upon satisfaction of all amounts due from the property owner, as agreed upon in a payment agreement.
- Requires an assignee to provide written notice of the release of the tax lien to the county treasurer.
- Stipulates that an assignee that fails to acknowledge satisfaction or notice release of a lien is liable to the property owner for actual damages caused by the neglect or refusal.
- Requires an assignee to post, prior to assignment of a lien, a \$500,000 cash bond or surety bond, including an indemnification for any owner or lienholder in the state that has suffered damage as a result of the failure or refusal to perform the obligations of an assignee as established by this act.
- Prohibits an assignee from withdrawing the bond, required by this act, while the assignee is a party to any payment agreement for assignment of a tax lien.
- Clarifies that no more than one bond is required of an assignee at any time.

AMENDMENTS

Committee on Ways and Means

- Limits the types of fees and penalties that may be incurred by the assignee, in a payment agreement, to costs from government or other third parties.
- Stipulates that a payment agreement may not include a fee for late payment.