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OPINION COMMITTEE

The State of Texas
House of Representatives

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BURT R. SOLOMONS
District 65

Thursday, January 21, 2010
The Honorable Greg Abbott
Attorney General for the State of Texas
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-46322-10
I.D. # 46322

RQ-0857-GA

Re: Request for Opinion – Applicability of Tax Code Section 33.06 on a property tax loan with Property Tax Lender regulated under Finance Code Chapter 351.

Dear Attorney General Abbott:

I respectfully request an opinion on whether Texas Tax Code 33.06 would apply to a property tax loan issued to an individual prior to them being 65 years of age by a property tax lender as defined by Texas Finance Code, Chapter 351 and thus prohibit the collection of such debt after an individual turned 65.

Factual Background

During the 80th Legislative Session, the Texas Legislature passed HB 2138 (Paxton/Wentworth) which regulated property tax lenders and property tax loans which is:

- “(A) in connection with a transfer of lien under Section 32.06, Tax Code, or a contract under Section 32.065, Tax Code;
- (B) in connection with which the person making the transfer arranges for the payment, with a property owner’ written consent, of property taxes and related closing costs on behalf of the property owner in accordance with Section 32.06, Tax Code; and
- (C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.”¹⁹

Under Texas Tax Code §36.06(a-1) an individual may authorize another person, in this scenario a property tax lender, to pay delinquent or non-delinquent taxes imposed by a taxing authority on the individual’s real property which is secured by a priority lien on a the property provided for a power of sale and foreclosure as required by §36.065(b), however this power is limited by §36.065(c) which states that a transferee of a tax lien is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

¹ Texas Finance Code §351.002(2)

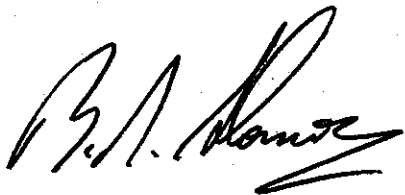
Texas Tax Code §33.06 allows an individual to defer collection of "a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien if the individual is 65 years of age or older...and the tax was imposed against property that the individual owns and occupies as a residence homestead." Under this provision, an individual files a deferral request with the Chief Appraiser, who shall in turn notify each taxing unit but not each property tax lien holders. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property and the property may not be sold at a sale to foreclose the tax lien until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead.

Question of Law

Does a property tax lien lender with a property lien secured by a priority lien, with the power to force sale, perfected prior to the property owner's 65th birthday have to the right to continue collections and even forced sale under Texas Tax Code §§36.06 and 36.065 after a property owner turns 65 years of age if the property owner files a deferment of taxes under Texas Tax Code §33.06 or must they wait to complete the collections until 181 days after the owner no longer owns and occupies the property?

Thank you for your consideration of this important matter.

Sincerely,



Burt Solomons
Chairman
House Committee on State Affairs

brs/bb

Interoffice mail

cc: Governor Rick Perry
Lt. Governor David Dewhurst
Speaker Joe Straus
Senator Bob Duncan, Chair of State Affairs
Senator Jeff Wentworth, Sponsor of 80R HB 2138 & Chair of Jurisprudence
Representative Ken Paxton, Author of 80R HB 2138
Representative Rene Oliveria, Chair of Way & Means
Representative Vicki Truitt, Chair of Pensions, Investments & Financial Services
Tax Assessor-Collectors Association of Texas

Texas Association of Property Tax Professionals
Texas Low Income Housing Information Service
Texas Taxpayers and Research Association
Texas Property Tax Lenders Association
Texas Property Tax Lienholders Association
Linebarger, Goggan, Blair & Sampson