POLICY PAGE

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What We Know About Property Tax Lending So Far

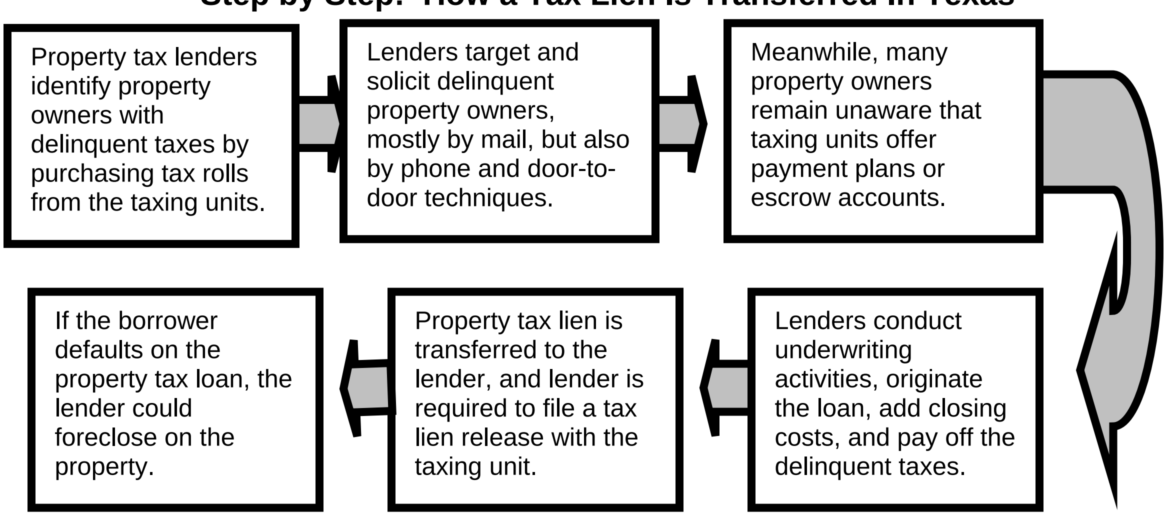
What is Property Tax Lending?

Property tax lending is the practice of soliciting property owners who are delinquent in their property tax payments to take out a loan to cover the tax payments. In return, the lender receives a lien on the property, allowing the lender to foreclose on the property if payments are missed. For this reason, these loans are also known as tax lien transfer loans.

Most homeowners are unaware that their local tax assessor/collector offers a wide range of options to delinquent property owners that would allow them to avoid taking out a property tax loan. Existing state law permits installment payment of certain taxes, semi-annual tax payments, and creation of an escrow account to provide for tax payments. Local officials have lower incentive to foreclose on a delinquent property owner than do private property tax lenders. Despite these options, property tax lending is a rapidly growing industry in Texas, targeted especially at residential homeowners, who account for roughly four out of every five tax loan borrowers. Texas is the only state where this industry flourishes.

Other states allow localities to auction or sell off delinquent tax liens at reduced prices, enabling private companies or transferees to collect unpaid taxes and to foreclose if these obligations are not met. These states usually require a minimum delinquency period (e.g. 3-5 years) before tax liens can be sold. In Texas delinquent tax liens are not sold, but pursued directly by the local taxing unit, opening an expanded role for property tax lenders in soliciting and originating loans to cover delinquent payments. The lender pays off the full delinquent amount, adds closing costs, and makes a multi-year loan for the combined amount , with interest capped by state law at an 18% annual percentage rate. The tax lien is transferred from the public taxing unit to the property tax lender. The lender now possesses the property owner's tax lien, allowing the lender to foreclose if the borrower misses payments, defaults on the loan, or violates the contract.

Step by Step: How a Tax Lien Is Transferred In Texas

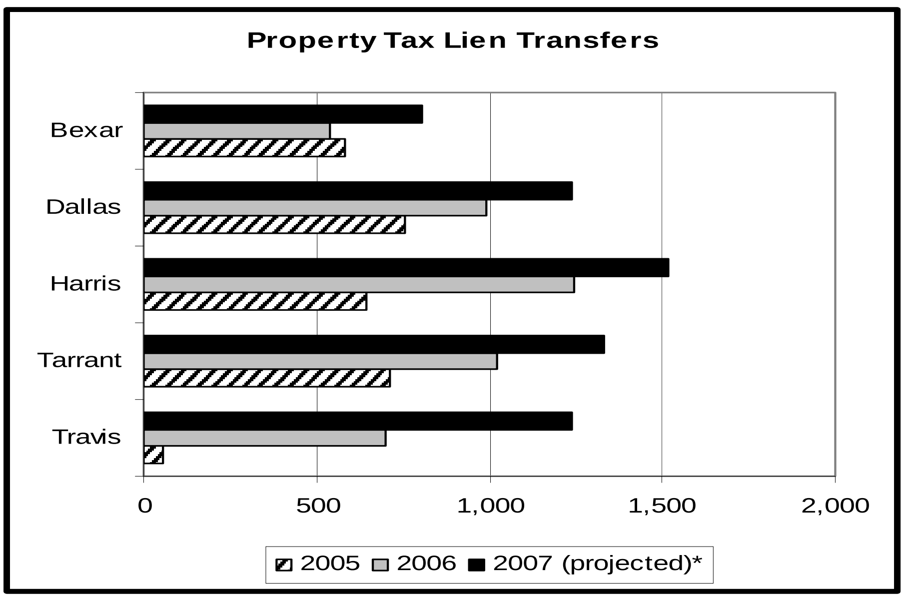


Tax liens are superior to mortgage liens, so the property tax lender would have first right to foreclose on the property, ahead of the bank or company holding the original mortgage. Through their marketing materials, property tax lenders often play on the fear of imminent foreclosure as a tactic to entice property owners into a tax lien loan. In fact, a CPPP survey of major taxing units across the state found that many are willing to offer alternative payment plans or other options to property owners to prevent foreclosures, even if they are more than six months delinquent.

Local Taxing Units Report Surge of Tax Lien Transfers

Throughout the state, property tax lending has increased substantially over the last couple of years, as evidenced by the number of tax lien transfers reported by the largest taxing units. For example, in an interview with CPPP in July, the El Paso County Tax Assessor-Collector said that "there has been a significant increase particularly this year… [and they] had never signed as many [tax lien transfers] as they had recently for the last six months." Although El Paso County does not keep statistical information on the number of lien transfers, CPPP obtained tax lien transfer data from Bexar, Dallas, Harris, Tarrant, and Travis counties, which account for over half of all single-family residential property value in Texas.

Property Tax Lien Transfers in Texas—Selected County Taxing Units, 2005-2007



Source: CPPP Survey of Texas Tax Assessor-Collectors, July 2007.
*Calculated pro-rata.

As shown in the graph above, although property tax lending was almost non-existent in Travis County in 2005, once lending companies increased their marketing efforts in the Capitol region, the number of tax lien transfers grew to almost match the prevalence in larger counties. Local taxing units and property tax lenders indicated that the heaviest activity typically occurs just before July 1, the trigger date for taxing units to add attorneys' fees to the property owner's delinquent tax bill.

Who Can Obtain a Property Tax Loan and Lien Transfer?

The Property Tax Lender Act limits who can transfer a tax lien to a third party for payoff. Most property owners can transfer their tax lien only upon delinquency, unless the property is not subject to a mortgage lien recorded by the county clerk. As a result, property owners without a recorded mortgage lien are likely targets for these lenders. Property owners can also transfer their non-delinquent tax liens if a tax lien transfer has successfully occurred in any prior year on the same property and if the property owner has previously authorized a third party to transfer tax liens for all property taxes—delinquent and non-delinquent.

Many property tax lenders guide their lending operations according to characteristics of the property, loan size, and the borrower's credit profile, as described below:

Property Requirements:

- **Location:** Most lenders require the property to be located within the state of Texas;
- **Minimum market value of residence:** Some lenders require a minimum property value;
- **Condition:** Some lenders verify that the house is in good condition and conduct property appraisals, surveys, and inspections; and
- **No federal tax liens:** Some lenders will only execute the loan if there are no existing IRS liens on the property (IRS liens trump tax liens).

Loan Requirements:

- **Minimum loan amount:** Some companies require a minimum property tax payoff amount, typically no less than $3,000;
- **Ratio of loan to value of the property:** Some companies have a maximum ratio of loan-to-house value. For example, if they have established a ratio ceiling of 20% and the house is worth $100,000, the lenders will not make a loan exceeding $20,000; and
- **May only be used for delinquent taxes:** Most property tax lenders will not execute a loan for current taxes owed, unless these terms are already included within an agreement to pay off delinquent taxes.

Borrower Qualifications:

- Must not be in bankruptcy;
- Must be the sole titleholder (verified through a title company);
- Must have income verified; and
- Must have credit checked.

How Much Does a Property Tax Loan Cost?

Interest on property tax loans averages a 14% annual rate, with variation from 12% to 18%. Some companies may offer lower interest rates but charge much higher origination fees, while those with higher interest rates charge relatively lower closing costs. These closing costs may include application, underwriting, and property inspection activities. These fees are typically added to the property tax payoff amount to form the base amount which is financed over a three-to-five year period. If the borrower violates the contract, misses payments, or defaults on his or her loan, a lender could foreclose on the homeowner and repossess the property. Adequate data is not available to determine the foreclosure rate for properties with transferred tax liens.

CPPP has identified interest rates and closing costs for property tax loans offered by a sampling of lenders. The following table shows estimated costs for a $5,000 delinquent tax balance with additional closing costs, and double-digit annual interest over a 5-year period.

Payments for a $5,000, 5-Year Loan with Selected Lenders

Lender	Closing Costs	Interest Rate*	Monthly Payments	Total Payments
TaxEase	$1,500.00	12.00%	$144.59	***$9,424.80***
Lone Star Tax Loans	$599.00	18.00%	$142.18	***$9,129.80***
Hunter Kensley	$225.00	17.98%	$132.62	***$7,957.20***

Source: CPPP Survey of Property Tax Lenders, 2007.
* Interest rate varies depending on circumstances (e.g. credit score, etc.)

How Will the New Property Tax Lending Law Work?

The Legislature has recently established a regulatory framework for property tax lenders, governing their overall mandate, interactions with mortgage servicers, consumer protection, and protocols for foreclosure. The Property Tax Lender License Act (SB 1520) took effect September 1, 2007.

Regulatory Mandates

- Requires property tax lenders to have a state issued license to operate, beginning March 1, 2008;
- Exempts banks, savings banks, or savings and loan associations from licensing requirements; and
- Requires property tax lenders to have a separate license for each office they operate.

Interactions with Mortgage Servicer

- Requires tax lien transferees to provide a sworn document to any mortgage servicer and to each first lien holder that includes the tax lien transferee and the address of the property;
- Requires property tax lenders to notify any preexisting lienholder (e.g. mortgage servicer) on or before the 120th day of delinquency; and
- Entitles mortgage servicer or first lienholder—within six months of sending a delinquency notice to the tax lien transferee (i.e. property tax lender)—to obtain a release of the transferred tax lien by paying the transferee the full amount owed under the contract between the property owner and the tax lien lender.

Consumer Protections

- Entitles property owners a right of rescission—a chance to reconsider and revoke transaction—for property tax loans, as outlined in federal law for mortgage transactions;

- Requires property tax lenders to inform property owners of their tax deferral rights if they are disabled or at least age 65; and
- Maintains existing annual interest rate cap of 18%.

Foreclosure

- Entitles holder of a recorded preexisting lien (e.g. mortgage holder or servicer) to 60 days notice before date of proposed foreclosure; and
- Requires transferee to confirm that the property owner has not requested a tax deferral authorized under Section 33.06 (for the residential homestead of an elderly or disabled person).

Agency Rulemaking and Implementation

Property tax lien transfers were codified by the Legislature in 1979, after many years of informal practice. According to the local taxing units, these transactions were exceptionally rare and often involved family members or employer/employee relationships. However, property tax lenders have recently surfaced across the state and boosted marketing efforts to reach more customers.

Until the recent legislation, property tax lenders were unlicensed and subject to only limited regulation by the Texas Finance Commission. However, with the passage of the Property Tax Lender License Act (SB 1520), all property tax lenders are to be licensed by March 1, 2008 and directly regulated by the Office of Consumer Credit Commissioner (OCCC), with final rulemaking authority residing with the Finance Commission. The OCCC is currently drafting rules to implement the new law, with final rulemaking expected by the end of the year. The new law charges the OCCC/Finance Commission with finalizing rules to determine:

- Content of an appropriate disclosure statement provided to property owner prior to the tax lien transfer transaction; and
- Scope of reasonable closing costs, fees, and other charges.

In August, the OCCC issued an Advance Notice of Proposed Rulemaking (ANPR) to gather preliminary comments on these issues. At its October 19 meeting, the Finance Commission may consider and approve the proposed rules, which would be posted in the *Texas Register* for a 30-day public comment period starting as early as November 2. For more information on the Advance Notice, see http://www.occc.state.tx.us/pages/Legal/ANPR/PropertyTaxLendersANPR.html

The major emerging issue is the amount of "reasonable closing costs" for property tax transactions. The OCCC has issued preliminary guidelines for activities and fees allowed in the category of "closing costs," including: property survey; title examination; tax certificate or tax payoff determination; credit report; and courier and delivery. The Texas Property Tax Lenders Association (TPTLA), which represents property tax lenders in the legislative and rulemaking process, argues that their activities are similar to those of first lien mortgage lenders, and that their closing costs are therefore similar.

The following table shows TPTLA's proposal, the OCCC draft proposed rules, and estimated balance transfer fees for a typical high-interest credit card:

Closing Cost Comparison:
Three Options for Refinancing Delinquent Tax Payments

Property Tax Payoff Amount	TPTLA Proposal	OCCC Draft Proposed Rules	Typical Cash Advance or Balance Transfer Fees (Revolving Credit Account)*
$1,000	$1,860	$1,000	$40
$2,500	$1,950	$1,250	$100
$5,000	$2,100	$1,500	$200
$7,500	$2,250	$1,750	$300
$10,000	$2,400	$2,000	$400

Source: CPPP Analysis, October 2007; TPTLA Comments, September 2007; Office of Consumer Credit Commissioner, October 2007.
*Assumes a 4% balance transfer fee, not secured by real property.

As shown above, the best available option is transferring the delinquent balance to a personal credit card, or revolving credit account. This alternative has much lower transfer fees and is unsecured by the owner's property. If the owner defaults, their homestead would not be in immediate jeopardy.

The Property Tax Lending Industry in Texas

Our research has identified at least 25 property tax lending companies that operate in Texas, including some companies with multiple locations or branches throughout the state. As of July 2007, only 11 of these companies were registered with the Texas Finance Commission. The new Property Tax Lender License Act requires that all property tax lenders must be registered with the Consumer Credit Commission by March 2008.

Property Tax Lenders in Texas, 2007

- Abbott Tax Loans*
- Bravo Servicing Solutions*
- Genesis Tax Solutions
- Hunter-Kelsey of Texas*
- Liberty Capital*
- Lone Star Issuance
- Moncor
- Nexmark Mortgage*
- Property Tax Fix
- Property Tax Solutions
- Security Mortgage & Trust*
- Tax Rescue*
- Texas Tax Loans
- American Tax Lending
- C-1 Capital Markets
- Gonzalez Financial Holdings*
- Jamac Capital*
- Loan America*
- Lone Star Tax Loans
- National Tax Assistance
- Propel Tax Loans
- Property Tax Loans
- ReTax Funding
- TaxEase Funding*
- Texas Real Property Tax Loans

Source: Center for Public Policy Priorities Survey, 2007
*Currently registered with the Texas Finance Commission

Payment Options Offered by the County Tax Assessor

County tax assessors are permitted by current law to provide payment plans to homeowners in delinquency that can serve as an alternative to property tax lending, including:

- Discounts if you pay your taxes early;
- Split payment of taxes allowing you to pay half your taxes by November 30, and the remainder by June 30 without any penalty;
- Partial payment of your taxes;
- Payment by credit card, with a fee of up to 5 percent; and
- Escrow agreements for special year-round account.

Source: Texas Comptroller of Public Accounts, August 2007

Many county tax assessor-collectors have only adopted a limited range of payment plans for property owners. The following table shows the limited range of payment arrangements offered by the largest local taxing units.

Payment Plans in the Major Counties in Texas

County Taxing Unit	Payment Plans	Payment Plan Terms	Partial Payments	Other Arrangements
Bexar	Available	20% down payment if the plan is to pay multiple delinquent years, and 10% if it is for current year	N/A	N/A
Dallas	None	N/A	Available	Payment plan with law firm
El Paso	Available	If the account has not incurred the 20% collection fee, there's a 10% down payment. If the account has incurred the 20% collection fee, then 1/3 of the taxes has to be paid	N/A	N/A
Tarrant	Available	Standard agreement: 25% down with the balance over 12 months	N/A	N/A
Travis	Depending on situation	No down payment unless the property is close to foreclosure	Available	N/A

Source: Center for Public Policy Priorities, 2007

Penalties and Interest for Delinquent Tax Bills

The Property Tax Code outlines the maximum interest rates that county tax assessors can charge. However, each county has different attorney fees, which make the total amount due on delinquent taxes different in every county.

The following chart contains the rate schedule used to calculate the total penalty and interest due on delinquent tax bills. To calculate the amount due, find the rate by the delinquent tax year and the month paid. For example, paying the taxes from 2004 on December 2007 the rate would be 0.47. This rate is multiplied by the original amount due on taxes. For example, if the 2004 taxes were $5,000.00, then the amount due in penalty and interest in December 2007 is $2,350.00, so the total amount due for the 2004 taxes is $7,350.00. Since this chart does not include attorney fees, which range from an additional 15-20%, the total amount due will vary by county.

Penalties and Interest Chart—Delinquent Property Tax Bills, Fiscal Year 2008

Year	OCT 2007	NOV 2007	DEC 2007	JAN 2008	FEB 2008	MAR 2008	APR 2008	MAY 2008	JUN 2008	JUL 2008	AUG 2008	SEP 2008
2004	0.45	0.46	0.47	0.48	0.49	0.50	0.51	0.52	0.53	0.54	0.55	0.56
2005	0.33	0.34	0.35	0.36	0.37	0.38	0.39	0.40	0.41	0.42	0.43	0.44
2006	0.21	0.22	0.23	0.24	0.25	0.26	0.27	0.28	0.29	0.30	0.31	0.32
2007					0.07	0.09	0.11	0.13	0.15	0.18	0.19	0.20

Source: Texas Comptroller of Public Accounts, 2007 (http://www.window.state.tx.us/taxinfo/proptax/pichart0708.html)

Recommendations:

County Tax-Assessor Collectors/Commissioners:

1. Widely publicize options and make them known early in the process.
2. Ensure that low-income families learn about and understand these options and can use them easily;
3. Promote escrow account programs and split-payment policies; and
4. On receiving a tax lien transfer request, contact the property owner and inform them of alternative payment plans;

OCCC/Finance Commission:

1. Establish reasonable limits on closing costs (not to exceed $1,000); and
2. Monitor marketing and solicitation activities to determine appropriateness.

Legislature:

1. Monitor implemention of the Property Tax Lending Law (SB 1520) and determine appropriate changes;
2. Assess the effect of property tax lending on Texas' foreclosure rate; and
3. Enable the Finance Commission/OCCC to collect data on property tax loans to determine overall trends, including foreclosure rates, usage of property tax loans, and borrower demographics.

Appendix: Tax Code provisions creating property tax payments options:

- **Split Payment of Taxes (Sec. 31.03):** Tax assessors *may* provide that a person who pays one-half of the unit's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1;
- **Installment Payments of Certain Homestead Taxes (Sec. 31.031):** Individuals who are disabled, or are at least 65 years of age and who are qualified for an exemption can pay their taxes in installments. However, they must at least pay 25% of the taxes before they become delinquent. The balance can be paid in three equal installments without any penalty or interest added. The first installment must be paid before April 1, the second installment before June 1, and the third installment before August 1;
- **Installment Payment of Delinquent Taxes (33.02):** The collector for a taxing unit *may* enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The agreement must be in writing and may not extend for more than 36 months;
- **Escrow Accounts (31.072):** The tax collector *may* enter into a contract with a property owner under which the property owner deposits money into an escrow account maintained by the collector to provide for the payment of property taxes;

Appendix: Tax Code provisions controlling the creation and transfer of tax liens:

- **Tax Lien (32.01):** On January 1 of each year, a tax lien attaches to the property to secure payment of the taxes in favor of the taxing unit. Once the tax is paid, the lien is removed.
- **Priority of Tax Liens over Other Property Interests (Sec. 32.05):** A tax lien on real property—including a transferred tax lien—takes priority over a homestead interest, including all mortgage liens;
- **Transfer of Tax Lien (32.06):** A person may authorize another person to pay the delinquent taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating the authorization, the transferee's information, and the description of the property. The transferee is entitled to foreclose the lien. The transferee may not charge a greater rate of interest than 18 percent a year; and
- **Penalties and Interest (33.01):** A delinquent tax incurs a penalty of six percent of the amount of the tax for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent.

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