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PROPERTY TAX LOAN ADVISORY BULLETIN

SB 247 Imposes New Requirements Effective May 29, 2013

On May 29, 2013, the governor signed SB 247 into law. The bill imposes new requirements on property tax lenders, and it took effect immediately upon the governor's signature. The new law applies to property tax loans that are closed on or after May 29, and to advertisements and solicitations that are distributed on or after May 29. (Previous law still applies to property tax loans that were closed before May 29.) The bill's requirements are summarized below.

Judicial foreclosure:

The bill repeals language allowing property tax lenders to engage in nonjudicial foreclosure. This effectively requires property tax lenders to use judicial foreclosure for loans closed on or after May 29, 2013.

Advertising:

The bill prohibits false, misleading, or deceptive advertising. It also requires property tax lenders to disclose certain additional information if they disclose a rate or charge in an advertisement. For example, if the property tax lender discloses the number of payments, amount of any payment, or amount of any finance charge, then the lender must also disclose the terms of repayment and the annual percentage rate.

The bill also requires all property tax loan solicitations to contain the following statement: "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

Secondary market:

The bill prohibits a property tax lender from assigning, transferring, or selling a property tax loan to a person not licensed under Chapter 351 of the Texas Finance Code (or exempt from licensing). The bill also amends the Tax Code's definition of "transferee" to include a successor in interest to a transferred tax lien.

Payoff statements:

The bill imposes new requirements for payoff requests sent by other lienholders and payoff statements provided by the property tax lender. Rules for these new requirements should be available in September.

New prohibitions:

The bill prohibits property tax loans in certain new circumstances where they were authorized under previous law. Property tax loans are now prohibited if:

- The borrower is 65 years old or older and can claim a property tax exemption under the Tax Code.
- The taxes are not delinquent at the time of the property tax loan, and the property is subject to another recorded lien.
- The taxes are neither due nor delinquent at the time of the property tax loan, and the property is not subject to another recorded lien.
- The property was financed with a grant or below-market-rate-loan provided by a governmental program or nonprofit organization, and the property is subject to the covenants of the grant or loan.
- The property is subject to a municipality's lien as a substandard or dangerous structure under the Local Government Code.

Other provisions:

The bill contains other provisions, including the following:

- The bill requires the property tax lender to disclose the approximate cost range for post-closing costs. This disclosure must be provided to the borrower at the same time as the disclosure statement.
- The bill provides that a property owner may not waive a requirement imposed on a property tax lender under Chapter 351 of the Finance Code (unless the statute provides otherwise).
- The bill provides that a tax lien transfer is void if taxes are not due or delinquent at the time of the transfer, or if it lacks the property owner's sworn authorization.
- The bill amends the consanguinity licensing exemption to allow an individual to make a property tax loan to a property owner within the second degree of consanguinity or affinity without obtaining a license under Chapter 351 of the Finance Code.