

15 QUESTIONS ABOUT TEXAS REAL PROPERTY TAX LIEN SALES

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ABSTRACT

Because Texas has no state income tax, property taxes loom large. A lien automatically attaches to real property each year to secure payment of taxes imposed on the property for the year. If the taxes are unpaid, the lien may be foreclosed by the filing of a tax foreclosure lawsuit, where the property will be ordered sold at a public tax lien sale. Among other peculiarities, properties sold at a Texas tax lien sale: (1) are sold subject to a right of redemption, (2) may generate excess proceeds, and (3) may be sold to the taxing unit bringing the sale. As a result, tax lien sales are quite unique from mortgage foreclosure and other courthouse sales. This article considers unusual aspects of Texas real property tax lien sales and attempts to answer questions that often arise around these sales.

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I. INTRODUCTION

There are 254 counties in Texas.¹ In many county seats, especially the smaller ones, the county courthouses are situated in the middle of a Rockwellian downtown square. On the first Tuesday of each month, these courthouses host an old and not-so Rockwellian ritual: a person shows up and sells property they don't own, on behalf of someone who has a lien on the property, to the highest bidder.² Some sales satisfy mortgage debts, others satisfy homeowners' association debts, and others satisfy real property tax debts. The focus of this article is the sale of real property to satisfy tax debts. In particular, this article answers 15 discrete legal questions arising from the unusual nature of these sales.

II. THE RULES AND LEGAL CONCEPTS OF THE TAX SALE

A. *Basic Mechanics*

The law of tax lien sales is set forth in Chapters 31–34 of the Texas Tax Code (the “Tax Code”).³ Property is sold at a tax sale because the owner has failed to pay their taxes and the taxing units have foreclosed on the lien placed on the property to secure the owner's obligation to pay those taxes.⁴ In Texas, the lien automatically attaches on January 1 of each year to secure payment of taxes imposed on the property for the year.⁵ Multiple local taxing units (e.g., a city, county, school district, and hospital) tax the same property, but the county tax assessor-collector typically combines all the taxes owed into one tax bill.⁶

If a property owner falls behind on their taxes, a taxing unit may file suit to foreclose the lien securing payment of the tax.⁷ There is no standard time after payment default in which a suit is typically filed. Sometimes the lawsuits are filed promptly,⁸ as the law allows suit “[a]t

1. TEXAS ASSOCIATION OF COUNTIES, *10 Facts About Texas Counties*, <https://www.county.org/resources/resource-library/news-and-information/10-facts-about-texas-counties>

(last visited Feb. 15, 2026).

2. Some tax sales are now done online. See TEX. TAX CODE ANN. § 34.01(a-1). Also, if the first Tuesday of the month is on January 1 or July 4, the sale is held on the following Wednesday. *Id.* § 34.01(r-1).

3. TEX. TAX CODE ANN. chs. 31–34.

4. *Id.* § 33.41(a).

5. *Id.* § 32.01(a).

6. *Id.* § 31.01(e).

7. *Id.* § 33.41(a). The taxing unit that files suit must join the other taxing units. *Id.* § 33.44(a). A peace officer may also seize property under a tax warrant and ultimately sell it in the same fashion as a tax foreclosure lawsuit property. See *id.* §§ 33.23, 34.01. For simplicity, tax warrants are not discussed in this article.

8. *E.g.*, *Deutsche Bank Nat. Tr. Co. v. Stockdick Land Co.*, 367 S.W.3d 308, 310 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (“[The owner] did not pay all of the property tax due for the years 2004 and 2005. During 2005, taxing authorities filed a collection suit.”).

any time after [the] tax on property becomes delinquent.”⁹ In contrast, sometimes taxing units allow delinquencies for many years before filing suit.¹⁰ If the owner has no valid defenses to the tax suit, the court must order the property sold in satisfaction of the judgment.¹¹ The judgment amount is the aggregate of all taxes, penalties, and interest, plus any other amount awarded by the judgment, court costs, and the costs of the sale.¹² There is no time after the judgment in which a taxing unit is required to have the property sold, and as will be discussed below, problems arise when years pass between the judgment and the sale. The order of judgment must direct “an officer authorized to conduct execution sales” to sell the property.¹³ Thus, these sales are often called “sheriff’s sales.”

Although the sales must occur at the county courthouse¹⁴ on the first Tuesday of each month,¹⁵ the Tax Code was amended in 2015 to allow online sales,¹⁶ which many counties now conduct. Three law firms represent most of the taxing units and, among them, handle the legal work and advertising associated with tax lien sales.¹⁷ At the sale, whether live or online, the officer charged with selling the property bids the property off to the public.¹⁸ The minimum (opening) bid at the sale is the lesser of the value of the property or the unpaid taxes, penalties, and other items covered by the tax foreclosure lawsuit judgment.¹⁹ If multiple people bid on a property, a bidding war ensues, and the property is sold to the highest bidder.²⁰

B. *Struck-off/Resale Properties*

A property that goes unsold at the tax sale because no bid is made may be “struck-off” to the taxing unit that requested the sale.²¹ “Struck-

9. TEX. TAX CODE ANN. § 33.41(a).

10. See, e.g., Dallas County Tax Assessor/Collector Account Number 65068862510550000 (example of a property with unpaid taxes for 20 years, from 2004-2024), https://www.dallasact.com/act_webdev/dallas/reports/taxbyyear.jsp?can=65068862510550000 (last checked July 2, 2025).

11. TEX. TAX CODE ANN. § 33.53(a).

12. *Id.* § 34.01(b).

13. *Id.* § 33.53(b).

14. *Id.* § 34.01(r).

15. *Id.* § 34.01(r-1). If the first Tuesday of the month is on January 1 or July 4, the sale is held on the following Wednesday. *Id.*

16. Act of May 15, 2015, 84th Leg., R.S., ch. 34, § 1, 2005 Tex. Gen. Laws 27.

17. Tex. Taxing Auths.’ Joint Ltd. Obj. to Ch. 7 Tr.’s Emergency Mot. to Sell Estate Assets at 1 n.2, *In re Tricolor Holdings, LLC*, (Bankr. N.D. Tex. 2025) (No. 25-33487). The three law firms are: (a) Linebarger Goggan Blair & Sampson, LLP, (b) Perdue Brandon Fielder Collins & Mott, LLP, and (c) McCreary, Veselka, Bragg & Allen, P.C. These firms list their monthly tax sales on their websites.

18. TEX. TAX CODE ANN. § 34.01(a-1).

19. *Id.* § 34.01(j).

20. *Id.*

21. *Id.* § 34.01(j). See also *Irannezhad v. Aldine Indep. Sch. Dist.*, 257 S.W.3d 260, 262 n.6 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (“The phrase ‘struck off’ refers to properties purchased by taxing units at a tax sale when bids are insufficient.” (Quoting *Guajardo v. State*, No. 04-04-00554-CV, 2005 WL 236881, at *1 n. 1 (Tex. App.—San Antonio Feb. 2, 2005, pet. denied)). As

off” refers to the idea that property is struck off the tax rolls because it will no longer generate tax revenue because it is owned by the taxing unit.²² Normally, the property will later be sold by the taxing unit at a so-called “resale,” typically at a lower price than the original sale.²³ A taxing unit has an incentive to resell the property quickly because the property generates no tax revenue while the unit holds it, and the unit remains responsible for maintenance.

C. Redemption

Unlike Texas mortgage foreclosure sales,²⁴ when a property is sold at a Texas tax sale, the former owner (defaulting taxpayer) receives a constitutionally protected right to redeem the property.²⁵ If the property was the residence homestead of the owner or was land designated for agricultural use when the tax foreclosure lawsuit was filed, the former owner receives a two-year redemption right beginning on the date the deed to the purchaser at the tax sale is filed.²⁶ To redeem, the former owner must pay the purchaser “the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus a redemption premium of 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.”²⁷ If the property is not a residential homestead or agricultural property, the redemption period is 180 days and the premium is 25%.²⁸

D. Excess Proceeds

When multiple people bid on a property and the property is sold to the highest bidder for more than the minimum bid, the amount above the minimum bid is referred to as excess proceeds.²⁹ Excess proceeds

to the “may be”, Section 34.01(j) gives the taxing unit the ability to terminate the sale if the minimum bid is not received, rather than taking title. See Part 3(D) in this article.

22. TEX. TAX CODE ANN. § 34.01(j).

23. *Id.* § 34.05.

24. 15 W. Mike Baggett, TEX. FORECLOSURE: LAW AND PRAC. § 2.122 (2026) (“[T]he mortgagor has no right of redemption.”).

25. TEX. CONST. art. VIII, § 13. The right of redemption is more fully set forth in Tax Code Section 34.21.

26. TEX. CONST. art. VIII, § 13; TEX. TAX CODE ANN. § 34.21(a). Note that the redemption period begins when the tax sale deed is filed, not on the date of the tax sale. Many officers conducting tax sales file the deed within 2–3 weeks of the sale. But others take as long as four months, thereby effectively giving the former owner a 10-month redemption option from the date of the tax sale. As an example, see the Sheriff’s Deed recorded in the Marion County Real Property Records in Volume 1097, Page 725, recorded on April 3, 2025, in connection with a tax sale that occurred December 3, 2024, 121 days earlier. While nothing in the Tax Code appears to obligate any person to file the deed within any set time window, it is hard to imagine the drafters of the Texas Constitution would have expected officers to wait four months to file a deed.

27. TEX. TAX CODE ANN. § 34.21(a).

28. *Id.* § 34.21(e)(1)–(2).

29. *Id.* § 34.03.

are paid by the officer conducting the sale to the clerk of the court.³⁰ The Tax Code provides a waterfall of persons entitled to payment of excess proceeds, including lienholders and each former owner of the property.³¹ If the excess proceeds are not claimed after two years from the date of the tax lien sale,³² the taxing units receive the excess proceeds.

E. Multiple Owner Property

Many properties have multiple owners and thus are sold at a tax sale due to a coordination problem among the owners. To illustrate, imagine a lady owns property outright. She has four children, and each of those children has two children. Two generations later, assume title to the property has passed to the lady's grandchildren under intestacy rules. There are now eight owners of the property. Those eight owners are tenants in common who each own a 12.5% undivided ownership interest in the property. In many situations like this, only one or a small number of these owners bear the responsibility of paying the taxes, while the other owners refuse or are unable to pay. A problem of coordination (or lack thereof) among the owners in paying the taxes thus arises. The default position of the Tax Code is that property is taxed as a whole even if there are many owners.³³ Thus, if the paying owners grow tired of paying the taxes, or become unable to pay, the taxes will go unpaid and the property will ultimately be sold at tax sale.³⁴

A tenant in common (e.g., one of the grandchildren in the example) may override the default rule by asking the tax office to tax their undivided interest separately.³⁵ That will relieve the tenant in common from paying the tax obligations of the other owners. The downside is that the other interests, which are now also taxed separately, will end up being sold at tax sale if the taxes go unpaid. After the tax sale, the owner who has paid their taxes will go from being a tenant in common with a sibling or cousin, as in the hypothetical above, to being in common ownership with a (likely risk-averse) investor who was willing to buy a partial ownership interest at a tax sale. The investor may then seek partition of the property, either in kind or by sale.³⁶

30. *Id.* § 34.02(d).

31. *Id.* § 34.04(c)(3), (5).

32. *Id.* § 34.03(a)(2).

33. *Id.* § 25.11(a).

34. Francine Miller, *Heirs' Property: Understanding the Legal Issues in Texas*, FARMLAND ACCESS LEGAL TOOLKIT (Nov. 2022), <https://farmlandaccess.org/wp-content/uploads/2022/11/heirs-property-legal-issues-texas.pdf> (noting it is hard to sell a property with several owners because all of them need to agree (and be legally able) to sell the property).

35. TEX. TAX CODE ANN. § 25.11(b).

36. Unif. Law Comm'n, *The Uniform Partition of Heirs Property Act: A Summary*, UNIFORM LAW COMMISSION (Feb. 2019), https://www.thetexasfreedomcoloniesproject.com/wp-content/uploads/2022/06/UPHPA_Summary_Feb-2019_ADA.pdf; C. Donald Wiggins & Sidney B. Rosenberg, *Revisiting Valuation of Real Estate Partial Interests: Recent Case Studies*, BUSINESS VALUATION, INC. (Oct. 2001), https://www.businessvaluationinc.com/wp-content/uploads/2021/01/revisiting_valuation_of_real_estate_partial_interests_recent_case_studies.pdf. The taxing units generally

As will be discussed in this article, the collision of the Tax Code with the realities of undivided interests creates difficult legal issues.

III. TAX SALE ISSUES, OPEN QUESTIONS, RUMORS, AND OTHER MATTERS OF INTEREST

Having set forth the basics of Texas tax sales, fifteen legal questions will now be considered.

A. *How are tax sale properties and resale properties priced?*

While the pricing of a regular tax sale property (i.e., setting a minimum bid) is straightforward,³⁷ the pricing of a resale property has become complex.

The price of a property at a regular tax lien sale is “the market value of the property stated in the [tax lien] judgment or the aggregate amount of the judgments against the property, whichever is less.”³⁸ In other words, if the property is worth less than the amount in the judgment, the minimum bid is the market value of the property.³⁹ If the property is worth more, the minimum bid is the amount in the judgment.⁴⁰ As noted above, the judgment amount is the aggregate of all taxes, penalties, and interest, plus any other amount awarded by the judgment, court costs, and the costs of the sale.⁴¹

Regarding resale property, Chapter 34 of the Tax Code contains a dizzying and inconsistent array of pricing options. To understand them, some background about taxing units is helpful. A “taxing unit” may be, for example, a county, a school district, or other political unit of the state.⁴² Several taxing units tax the same property, and each taxing unit with the power to tax property obtains a tax lien for unpaid taxes.⁴³ Any taxing unit may file suit to foreclose its tax lien,⁴⁴ but that taxing unit

do not like selling undivided interests, as there is far less interest from buyers. Few buyers want to own an interest where they will either need the consent of other owners to subdivide or sell or, if no consent is given, will need to file a partition lawsuit seeking the same.

37. TEX. TAX CODE ANN. § 34.01(p); *See infra* Part 2(A).

38. TEX. TAX CODE ANN. § 33.50(b).

39. The market value is determined as part of the tax lien foreclosure lawsuit, and “[t]he appraised value of the property according to the most recent appraisal roll approved by the appraisal review board is presumed to be its market value on the date of trial, and the person being sued has the burden of establishing that the market value of the property differs from that appraised value.” *See id.* § 33.50(a)–(b).

40. *See id.*

41. *Id.* § 34.01(b).

42. *Id.* § 1.04(12) (“‘Taxing unit’ means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority (including a junior college district, a hospital district, a district created by or pursuant to the Water Code, a mosquito control district, a fire prevention district, or a noxious weed control district), or any other political unit of this state, whether created by or pursuant to the constitution or a local, special, or general law, that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs.”).

43. *Id.* § 32.01(a).

44. *Id.* § 33.41.

must join the other taxing units to the lawsuit.⁴⁵ If a taxing unit forecloses a tax lien, the property goes unsold at a tax sale, and the property is struck off to the taxing unit, the unit “takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit.”⁴⁶ The primary takeaway here is that, in the case of a struck off property, one taxing unit will hold title to the property for the benefit of all other taxing units involved. The taxing unit may then resell the property at any time by public or private sale.⁴⁷ The Tax Code contemplates at least six types of resales, and the differences between them are largely based on two things: (1) whether the resale is public or private, and (2) whether consent of all the other taxing units to the resale is required.⁴⁸ The types of sales are:

1. Public resale, Section 34.05(c-d). There is no minimum bid price (the property may be sold for any amount), and no consent of the other taxing units is required.⁴⁹
2. Private sale, Section 34.05(h). The minimum bid price is the same as a regular tax lien sale.⁵⁰ No consent of the other taxing units is required.⁵¹ This type of private sale is somewhat atypical because if the property did not sell for the minimum bid at the regular sale, there is often no reasonable expectation of selling it for the same price at a subsequent sale.⁵²
3. Private sale, Section 34.05(i). The minimum bid price is any amount consented to by each of the taxing units.⁵³
4. Private sale, Sections 34.05(j-l). The minimum bid price is the market value of the property, but only *if* that amount is more than the amount in the judgment plus post-judgment taxes, interest, and penalties (“TIPs”). Each of the taxing units must consent to a sale at that price,⁵⁴ but there is a

45. *Id.* § 33.44(a).

46. *Id.* § 34.01(k).

47. *Id.* § 34.05(a).

48. *Id.* § 34.05.

49. *Id.* § 34.05(b). Pricing across counties lacks consistency, although \$500 is a typical resale price (minimum bid) for an undesirable or low-value property. More desirable properties are often discounted at 10–25% from their original sale price.

50. That is, the market value stated in the tax lien judgment or the aggregate amount of the judgments against it, whichever is less.

51. TEX. TAX CODE ANN. § 34.05(h).

52. Tex. Att’y Gen. Op. No. GA-1072, at 1 (2014). Furthermore, if the taxing unit believed the property would sell for the minimum bid, it could simply cancel the regular sale (see Part 3(D)) and not strike the property off, thereby incurring the burdens of ownership.

53. Many counties accept private bids for resale properties.

54. TEX. TAX CODE ANN. § 34.05(j)(2).

potential penalty to the taxing unit for withholding consent.⁵⁵ This section was added during the financial crisis in 2011 to “allow taxing units more easily to clear their inventory of foreclosed properties that were difficult to market.”⁵⁶ In the case of distressed properties, the judgment and post-judgment TIPs outweighed the market values of the properties, which had undoubtedly sunk because of the financial crisis.⁵⁷ One difference between Sections 34.05(i) (discussed in the preceding paragraph) and (j) is that a taxing unit may freely withhold consent under subsection (i), while a taxing unit may be penalized for doing so under subsection (j). Another difference is that subsection (j) provides a minimum price, while subsection (i) does not.

5. Private sale, Section 34.0101. This section applies to private sales of flood-zone property, narrow strips of land, and landlocked property, in each case to adjacent landowners. This is not exclusively a resale section, but the taxing unit must first hold a public sale at which it does not receive the minimum bid.⁵⁸ The minimum price is the same as a regular sale or private resale under Section 34.05(h).⁵⁹ No consent of the other taxing units is required.⁶⁰ It is hard to understand how this section, added in 2023, came to be. It makes little sense that there would be a minimum price for the least desirable properties (i.e., flood-zone, narrow strips, and landlocked properties). Further, there is little difference between Section 34.0101 and Section 34.05(h), because both set the same floor on minimum prices. Did the legislature make a drafting or implementation mistake? The legislative history indicates that the purpose of this section was to allow for the sale of these types of properties without first having a public sale,⁶¹ and at a lower price

55. If a taxing unit withholds consent, it is liable to the purchasing unit for a pro rata share of the costs incurred by the purchasing unit in maintaining the property. *See* TEX. TAX CODE ANN. § 34.05(l).

56. House Rsch. Org., Bill Analysis, Tex. H.B. 1118, 82d Leg., R.S. (2011), [<https://lrl.texas.gov/scanned/hroBillAnalyses/82-0/HB1118.PDF>].

57. *Id.*

58. TEX. TAX CODE ANN. § 34.0101(e). As discussed in Part 3(D), a county may terminate a sale where the minimum bid is not received.

59. A different price is assigned to properties seized under a tax warrant issued under Subchapter E, Chapter 33. *See id.* § 34.0101(h)(2).

60. *Id.* § 34.0101(i).

61. Senate Rsch. Ctr., Bill Analysis, Tex. S.B. 2091, 88th Leg., R.S. (2023), [<https://lrl.texas.gov/scanned/srcBillAnalyses/88-0/SB2091ENR.PDF>] (“S.B. 2091 proposes an amendment to the Tax Code in the State of Texas, allowing the taxing unit to sell seized or foreclosed property to an abutting property owner, without the need for a public sale.... The bill does not require the taxing unit to offer the property for sale to the public, and the unit may sell the property at a price lower than required under Section 34.01(p).”).

than would normally be allowed.⁶² As enacted, the section allows neither.⁶³

6. Private sale, Section 34.051. The purpose of this section is to allow resales for urban development. The price is any amount, “if consent to the conveyance is evidenced by an interlocal agreement between the municipality and each taxing unit that is a party to the judgment.”⁶⁴

B. Is a tax sale purchaser liable for post-judgment TIPs?

There is often a long delay between the issuance of the court judgment foreclosing the tax lien and the sale of the property at a tax lien sale.⁶⁵ The taxpayer still owns the property after the judgment, so taxes, interest, and penalties keep accruing. These taxes are known as post-judgment taxes (the taxes, with interest and penalties, herein called “post-judgment TIPs”). Post-judgment TIPs are, of course, not covered by the judgment and therefore do not become part of the minimum bid price of the property at the tax sale. As such, they are not satisfied from the proceeds of sale of the property.⁶⁶ In all but rare cases, a tax sale purchaser becomes liable to pay them.⁶⁷

It is not necessarily logical that a tax sale purchaser should be liable for post-judgment TIPs. Post-judgment TIPs largely arise when there is a delay in bringing the tax sale, and this delay may be solely the fault of the taxing unit. There is a certain logic in making the taxing unit, not the purchaser, liable for the delay. The Tax Code itself is also arguably ambiguous as to whether a purchaser is liable for post-judgment TIPs. Sections 32.05(b)–(b-1) and 34.01(n), both discussed in Part 3(N) and which make no mention of post-judgment TIPs, might lead a reader to believe that a purchaser takes the property free of any obligation to pay

62. House Ways & Means Comm., Bill Analysis, Tex. S.B. 2091, 88th Leg., R.S. (2023), [<https://lrl.texas.gov/scanned/TLBillAnalyses/88-0/SB2091RPT.PDF>] (“S.B. 2091 seeks to [provide] for the sale of such property that is seized under a tax warrant or ordered sold pursuant to foreclosure of a tax lien to an eligible owner of abutting property at a private sale at a price lower than is required for the sale of such property by public sale.”).

63. I suspect counties are simply using Section 34.05(i), and its lack of a price floor, to dispose of these generally undesirable properties on resale.

64. TEX. TAX CODE ANN. § 34.051(a).

65. House Rsch. Org., Bill Analysis, Tex. H.B. 1118, 82d Leg., R.S. (2011), [<https://lrl.texas.gov/scanned/hroBillAnalyses/82-0/HB1118.PDF>] (“A tax or foreclosure sale may not occur right away for various reasons, including an appeal, installment agreements with the previous owner for payment of the taxes, or hazardous property conditions that warrant deferring a sale until the property is rendered safe.”). I question the validity of the first two, which presumably would merely delay the date of the judgment, not the sale after the judgment. Even the third is dubious, as taxing units regularly sell trash-covered properties and properties with improvements in need of demolition.

66. TEX. TAX CODE ANN. §§ 34.05(h), (j), (k).

67. HARRIS CNTY. TAX ASSESSOR-COLLECTOR’S OFFICE, <https://www.hctax.net/en/records/delinquent-property-tax-sales> (last visited Feb. 10, 2026).

post-judgment TIPs.⁶⁸ However, other sections of the Tax Code make the purchaser's liability clear. The first such section is Section 33.52(d), which states:

Except as provided by Section 34.05(k), a taxing unit's claim for taxes that become delinquent after the date of the judgment is not affected by the entry of the judgment or a tax sale conducted under that judgment. Those taxes may be collected by any remedy provided by this title.⁶⁹

Section 33.52(d) applies to regular sales but may not apply to resales because a resale is not "a tax sale conducted under [the] judgment."⁷⁰ However, Section 34.01(l) makes it clear that a purchaser at a resale is also liable for post-judgment TIPs:

(l) Notwithstanding that property is bid off to a taxing unit under this section, a taxing unit that established a tax lien in the suit may continue to enforce collection of any amount for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law.⁷¹

Even if there is ambiguity in the Tax Code, the legislative history to the 1999 legislation implementing Section 34.01(l) states the goal of the subsection was to make resale purchasers liable for post-judgment TIPs.⁷²

It should be noted that a purchaser who buys at a resale is not liable for post-judgment TIPs arising *after* the property is struck off to a taxing unit.⁷³ The purchaser is only liable for post-judgment TIPs arising between the judgment and the original tax sale in which the property was struck off to the taxing unit.⁷⁴

68. TEX. TAX CODE ANN. §§ 32.05(b)-(b-1), 34.01(n).

69. *Id.* §§ 33.52(d), 34.05(j)-(l). Tax Code Sections 34.05(j)-(l) are discussed in Part 3(A). They erase liability for post-judgment TIPs when a property with a market value that is lower than the judgment amount is sold at resale.

70. *Id.* § 33.52. Note that Tax Code Section 33.52(d) does not mention interest and penalties. However, because they are not specifically excluded and are permitted under Tax Code Section 34.01(l), interest and penalties appear to be included.

71. TEX. TAX CODE ANN. § 34.01(l). This would presumably be subject to Tax Code Section 34.05(k), too.

72. House Ways & Means Comm., Bill Analysis, Tex. H.B. 3549, 76th Leg., R.S. (1999), [<https://lrl.texas.gov/scanned/officeOfHouseBAs/76-0/HB3549RPT.htm>]. "(Section 34.01(l) [a]uthorizes a taxing unit that established a tax lien in the suit to continue to enforce collection of any amount due from the owner for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law, notwithstanding that the property has been bid off to a taxing unit.")

73. *Guajardo v. State*, No. 04-04-00554-CV, 2005 WL 236881, at *1 n. 1 (Tex. App.—San Antonio Feb. 2, 2005, pet. denied) ("The phrase 'struck off' means properties have been struck off the tax roll while they are in possession of taxing units because such properties are exempt from taxation." (Citing *State v. Moak*, 146 Tex. 322, 207 S.W.2d 894, 897 (Tex. 1948)). See also *Iranzhad v. Aldine Indep. Sch. Dist.*, 257 S.W.3d 260, 262 (Tex. App.—Houston [1st Dist.] 2008, no pet.) ("The parties agree that after the property was struck off to [the taxing unit], the property was exempt from taxation and that no additional taxes accrued.").

74. TEX. TAX CODE ANN. § 34.05(k).

Tax sale purchasers have not always been liable for post-judgment TIPs on resale properties. In 1948's *State v. Moak*,⁷⁵ the Texas Supreme Court held that, when a property is struck off to a taxing unit, the post-judgment TIPs merge into the taxing unit's title and are erased.⁷⁶ This rule changed in 1999 with the legislature's addition of Section 34.01(l).⁷⁷ As a Texas appellate court noted in 2008's *Irannezhad v. Aldine Indep. Sch. Dist.*,⁷⁸ "*Moak* is in conflict with section 33.52(d) and 34.01(l) and has been superseded by the Legislature."⁷⁹ In *Irannezhad*, a purchaser bought a property at a public resale.⁸⁰ The taxing unit ultimately sued the purchaser to recover post-judgment TIPs and the purchaser defended by citing *Moak*, further arguing the post-judgment TIPs did not become the purchaser's liability in the case of a resale.⁸¹ The court was unpersuaded by the purchaser's argument and cited Sections 33.52(d) and 34.01(l) as proof of the purchaser's liability.⁸²

As argued above, there is a certain logic in making the taxing unit—not the purchaser—liable for the delay in selling properties which gives rise to post-judgment TIPs. The current law, which makes the purchaser liable, clearly has its detractors, as evidenced by legislation proposed in 2001 which would have reversed the effect of the 1999 amendments, but that legislation failed.⁸³ Perhaps a fair compromise would be that, in any sale, whether original or resale, a tax sale purchaser is liable for post-judgment TIPs accruing within one year after the judgment.⁸⁴ If it takes the taxing unit longer than a year to sell the property, the taxing unit bears responsibility for additional post-judgment TIPs. Another quasi-compromise would be to have excess proceeds from the sale automatically pay the post-judgment TIPs, as discussed in the following Part 3(C).

C. May a tax sale purchaser properly claim excess proceeds to pay post-judgment TIPs?

As discussed in Part 2(B), property is sold at a tax sale "subject to" real property taxes, interest, and penalties that have accrued on the property since the date of the tax lien judgment (post-judgment TIPs). Thus, a purchaser at the tax lien sale becomes obligated to pay them. But if the property sells for more than the minimum bid and thus generates

75. *State v. Moak*, 207 S.W.2d 894 (Tex. 1948).

76. *Id.* at 898.

77. TEX. TAX CODE ANN. § 34.01(l).

78. *Irannezhad v. Aldine Indep. Sch. Dist.*, 257 S.W.3d 260 (Tex. App.—Houston [1st Dist.] 2008, no pet.).

79. *Id.* at 267 n. 15.

80. *Id.* at 262.

81. *Id.* at 263–64.

82. *Id.* at 265–66.

83. *Id.* at 265 n.14.

84. I have chosen one year arbitrarily; the point is simply that the time period could be limited.

excess proceeds, may the purchaser successfully claim excess proceeds in an amount sufficient to pay the post-judgment TIPs?⁸⁵ The answer is likely yes.

Two Tax Code sections support the purchaser's recovery of excess proceeds to pay post-judgment TIPs. First, under Section 34.04(c)(2), excess proceeds are to be distributed "to a taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment."⁸⁶ As a result, the taxing unit already has the right to recover (and arguably should be recovering) the excess proceeds to pay post-judgment TIPs. Second, consider Section 34.01(q), which states a former owner remains personally liable for post-judgment TIPs,⁸⁷ along with Section 34.04(c)(5), which allows a former owner to recover excess proceeds as part of the payment waterfall in Section 34.04(c).⁸⁸ Because the former owner remains personally liable for post-judgment TIPs, but is also allowed to recover excess proceeds, it makes sense to allow a purchaser to intercept the former owner's excess proceeds to pay post-judgment TIPs. Then, the former owner takes excess proceeds after those post-judgment TIPs have been paid.

This set of rules could be improved. The taxing unit's right to excess proceeds for post-judgment TIPs is second in line in Section 34.04(c)'s excess proceeds payment waterfall, behind only the tax sale purchaser's right to the excess proceeds if the tax sale is adjudged void. The problem is that excess proceeds are common, and void sales are rarer, so a more efficient rule would be that excess proceeds *automatically* pay post-judgment TIPs. In the rare case where a tax sale is later adjudged to be void, the payment of post-judgment TIPs would be reversed and the excess proceeds given to the tax sale purchaser. As things are now, I suspect counties are generating windfalls when tax sale purchasers pay the post-judgment TIPs and the excess proceeds go unclaimed, thereby reverting to the taxing units.⁸⁹

85. TEX. TAX CODE ANN. § 34.04(a) states that a petition for excess proceeds "is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property but may be filed under the cause number of the underlying suit." A review of the dockets for tax suits in which the property has sold for more than is owed indicates purchases sometimes claim excess proceeds.

86. *Id.* § 34.04(c)(2). Taxing authorities are entitled to excess proceeds from the sale of tax foreclosed property to pay for the taxes, penalties, and interest that accrued on the property after the foreclosure judgment but prior to the sale of the property. *See* *Nipper-Bertram Trust v. Aldine Independent School Dist.*, 76 S.W.3d 788, 792 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).

87. *Id.* § 34.01(q)(2). ("A sale of property under this section to a purchaser other than a taxing unit ... does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale.")

88. *Id.* § 34.04(c)(5).

89. *Id.* § 34.03(b) ("If no claimant establishes entitlement to the proceeds within the period provided by Subsection (a), the clerk shall distribute the excess proceeds to each taxing unit participating in the sale in an amount equal to the proportion its taxes, penalties, and interests bear to the total amount of taxes, penalties, and interest due all participants in the sale."). A claim for excess proceeds must be brought within two years after the date of the sale. *Id.* § 34.03(a)(2).

D. *May the sheriff/taxing unit treat a tax sale like it never happened?*

As discussed above, when the minimum bid price for a property is not received at a tax sale (i.e., no one bids on the property), the property is typically “struck off” to the taxing unit; the taxing unit will resell the property later. But the taxing unit has another option under the Tax Code, it may simply act like the sale never happened. Section 34.01(j) states as follows:

(j) If a bid sufficient to pay the lesser of [total amount due under the judgment] or the adjudged value is not received, the taxing unit that requested the order of sale may terminate the sale. *If the taxing unit does not terminate the sale*, the officer making the sale shall bid the property off to the taxing unit that requested the order of sale, unless otherwise agreed by each other taxing unit that is a party to the judgment, for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less.⁹⁰

If a property is struck off, the taxing unit owns it.⁹¹ If the sale is terminated, the taxpayer still owns it and may erase the chance of a subsequent sale by paying the taxes.⁹² In other words, if the sale is terminated, it is like it never happened. Section 34.01(j) could be read to say that the officer making the sale shall publicly announce whether the sale is terminated or the property is bid off to the taxing unit, but experience indicates such announcements are not always made. It is as if the taxing unit may decide after the sale whether they want the property or instead want to treat the sale as if it never happened.

E. *What interests may a tenant in common redeem?*

Tax Code Section 34.21(a) states that “[t]he owner of real property sold at a tax sale to a purchaser ... may redeem the property. . . .”⁹³ When a tenant in common wants to redeem, must they redeem the whole property, or may they redeem only their undivided interest? In some states, including Texas, the tenant in common must redeem the whole property.⁹⁴ Historically, in other states, a tenant in common could redeem only their undivided interest.⁹⁵

90. *Id.* § 34.01(j) (emphasis added).

91. *Id.*

92. *Id.*

93. *Id.* § 34.21(a).

94. *E.g.*, Wood v. Wood, 51 Ark. App. 47, 52 (1995); Bradley v. Bradley, 554 N.W.2d 761, 764 (Minn. App. 1996); Poenisch v. Quarnstrom, 361 S.W.2d 367, 372 (Tex. 1962).

95. *See* Sailer v. Mercer County, 75 N.D. 123, 133 (1947) (“Any person who has or claims an interest in or lien upon an undivided share of any piece or parcel of land sold may redeem such undivided share of such land by paying to the county treasurer an amount proportionate to the amount required to redeem the whole of such land. . . .”); Peterson v. Johnson, 39 Cal. 2d 745, 748 (1952); Smith v. Anderson, 67 Cal. 2d 635, 637–638 (1967); *Annotation, Constitutionality*,

The Texas rule requiring full redemption is set out in the Texas Supreme Court's decision in *Poenisch v. Quarnstrom*,⁹⁶ where a tenant in common claimed title over her other cotenants after redeeming tax sale property.⁹⁷ The Texas Supreme Court held one tenant in common's redemption is considered as being for the benefit of all co-owners.⁹⁸ In other words, a redeeming tenant in common cannot strip the ownership interest of the other former tenants in common through redemption; the redemption by one co-owner restores the ownership interest of all co-owners, subject to a right of contribution by the redeeming co-owner (more on contribution in Part 3(F)). The Tyler appellate court held the same in *Rogers v. Yarborough*,⁹⁹ where an 83.3% undivided interest in a property was purchased at tax sale. The court held the owner of "an unknown undivided interest" redeemed the entire 83.3% interest, despite presumably owning less.¹⁰⁰ The *Rogers* court distinguished the 1908 appellate court case *Hill v. Harris*,¹⁰¹ the only case relied on by the tax sale purchaser in *Rogers*. The court in *Hill* had held that "[u]nless authorized by the other joint owners to do so, [the redeemer] had no right as against the purchaser to redeem their interests."¹⁰² *Hill* is no longer good law on this point after *Poenisch*.

The Texas approach is clearly superior. A partial redemption would expose every purchaser who buys a multi-owner property at tax sale to the risk of becoming a tenant in common with a partial redeemer. This risk would almost certainly chill bidding and increase litigation.

F. What are the redeeming tenant in common's rights as against other owners?

As discussed in the prior subsection, a tenant in common must redeem the full property by paying the full redemption price. However, because the redemption restores all tenants in common to their pre-tax sale ownership position, redemption means every other tenant in

construction, and application of statutes providing for partial or proportional redemption from tax sale of land, 145 A.L.R. 1328 (1943). No attempt has been made to determine whether these sources remain "good law."

96. See *Poenisch*, 361 S.W.2d at 372.

97. *Id.*

98. *Id.*

99. See *Rogers v. Yarborough*, 923 S.W.2d 667 (Tex. App.—Tyler 1996). See also *UMLIC VP LLC v. T & M Sales & Env't Sys., Inc.*, 176 S.W.3d 595 (Tex. App.—Corpus Christi-Edinburg 2005) ("In applying the redemption statute, where one co-owner redeems property from a tax foreclosure sale, courts have concluded that it does not divest any other co-owner of his ownership interest in the property. See *Reynolds v. Batchelor*, 216 S.W.2d 663, 667 (Tex. Civ. App.—Fort Worth 1948, writ ref'd n.r.e.); *Bush v. Bush*, 275 S.W. 1096, 1097 (Tex. Civ. App.—Waco 1925, no writ). The action of a co-owner in redeeming the property is considered as being for the benefit of all co-owners. See *Poenisch v. Quarnstrom*, 361 S.W.2d at 372 (Tex. 1962) (citing *Bush*, 275 S.W. at 1097))."

100. *Rogers*, 923 S.W.2d at 668–670.

101. *Hill v. Harris*, 108 S.W. 489, 489 (Tex. Civ. App.—Tyler 1908, no writ).

102. *Id.*; See, e.g., *Wood*, 51 Ark. App. at 52 (under Arkansas law, a "[tax sale] purchase by a tenant in common amounts to a redemption and confers no right except to demand contribution from the cotenant.").

common gets their ownership interest back because of the redeemer's purchase. What rights does the redeemer have against their other tenants in common? While no Texas case directly on point has been located, the answer must be that the redeeming tenant in common obtains a claim for contribution¹⁰³ from the other tenants in common.¹⁰⁴ The Texas Supreme Court strongly implied this in *Poenisch*, noting that a redemption by one co-owner "could at most give rise to some claim for contribution..."¹⁰⁵

This is a bad situation for the redeemer. It is likely the other tenants in common, who have already failed to pay their taxes, will be unable or unwilling to pay on a contribution claim, which will simply leave the redeemer with a cause of action against their co-owners. A tenant in common redeemer might want to argue that they have an equitable lien in their co-owners' property to secure their right to contribution,¹⁰⁶ but even so, that type of lien probably needs to be imposed in a court case, creating a significant burden on the redeemer.

Sometimes a tenant in common who would like to redeem will ask the tax sale purchaser if they will sell the property back at the redemption price. This is clearly a superior approach for the redeemer because it vests full title in the redeeming tenant in common rather than restoring title to all tenants in common, but it requires the cooperation of the purchaser.

An ideal approach is the one taken by the Minnesota Supreme Court in *Bradley v. Bradley*,¹⁰⁷ where the court held a redeeming tenant in common takes title to the entire property, subject to the right of redemption of each former tenant in common's partial interest by paying their contribution amount.¹⁰⁸ All rights of redemption run for the original statutory redemption period.¹⁰⁹

G. What excess proceeds may a former tenant in common

103. *Wagner & Brown, Ltd v. Sheppard*, 282 S.W.3d 419, 425 (Tex. 2008) ("When two persons are cotenants in the ownership of land, and one of them incurs expense in the improvement of the property which is necessary and beneficial, it is equitable that the one incurring the expense shall have contribution from his cotenant in an amount which is in proportion to the undivided interest owned by such cotenant.... The law implies a contract between him and his cotenant, authorizing him to spend for him the money which was necessarily spent....").

104. *Wood*, 51 Ark. App. at 52 (under Arkansas law, a "[tax sale] purchase by a tenant in common amounts to a redemption and confers no right except to demand contribution from the cotenant.").

105. *Poenisch*, 361 S.W.2d at 372.

106. In the family law context, see *Langston v. Langston*, 82 S.W.3d 686, 689 (Tex. App.—Eastland 2002, no pet.) (right to economic contribution means court may impose an equitable lien).

107. *Bradley*, 554 N.W.2d 761.

108. *Id.* at 766. While this could encourage the purchase of tenant in common interests by investors, as discussed in Part 3(L), the legislature has already acted to discourage the transfer of redemption rights to investors.

109. *Id.*

recover?

Tax Code Section 34.04(c) provides a payment waterfall for excess proceeds generated from a tax sale. The fifth category of persons entitled to excess proceeds in the waterfall includes “each former owner of the property, as the interest of each may appear.” The phrase “as the interest of each may appear” was added in 2003¹¹⁰ and indicates that a former owner of an undivided interest may only recover their proportionate interest in the excess proceeds.¹¹¹ The rule is obvious when one considers that there is a two year window to collect excess proceeds and that multiple former owners could file claims to recover excess proceeds, either at the same time or different times within that window. If one owner were allowed to take all excess proceeds, none would remain for the other owners.

While a proportionate allocation of excess proceeds to tenants in common makes sense, a problem arises when not all heirs are interested in using excess proceeds to redeem the property. As discussed in Part 3(N), redemption by a former owner of an undivided interest must be a full redemption of the property,¹¹² and that redemption restores all former owners back into their pre-sale position.¹¹³ Thus, the problem is an owner who needs excess proceeds to redeem a property may only recover their proportionate share, yet they need to come up with the entire redemption amount.

By way of illustration, imagine four heirs each own a 25% undivided interest in a property. The unpaid taxes on the property are \$10,000. The property sells at a tax sale for \$50,000, leaving \$40,000 in excess proceeds. Each heir may recover 25% of the \$40,000, or \$10,000. Further assume that, as is often the case, three of those heirs are not participating, and only one heir seeks to recover the excess proceeds. The heir also needs those excess proceeds to pay to redeem the property. The redemption price is 25% over the sale price, or \$62,500.¹¹⁴ The \$10,000 in excess proceeds the heir may recover might not be enough for the heir to afford the \$62,500 redemption price, whereas they might be able to afford it if they recovered the full \$40,000.¹¹⁵

This issue is probably not large enough to justify a legislative solution, but one cure for the problem could be that a redeeming tenant in common is permitted to receive all of the excess proceeds if the tenant

110. TEX. TAX CODE ANN. § 34.04(c); Act of May 28, 2003, 78th Leg., R.S., ch. 319, §§ 10, 17, 2003 Tex. Gen. Laws 1350, 1355, 1356.

111. *Franks v. Woodville Indep. Sch. Dist.*, 132 S.W.3d 167, 172 (Tex. App.—Beaumont 2004, no pet.) (alleged former owner of undivided interest bore the burden to show fact of, and amount of, his interest for purposes of recovering excess proceeds).

112. *Supra* notes 80–83 and related text.

113. *Supra* notes 80–83 and related text.

114. TEX. TAX CODE ANN. § 34.21(a).

115. To make matters worse, the remaining \$30,000 will probably go back to the taxing units when unclaimed after two years. *See id.* §§ 34.03(a)(2), (b).

attests to the court that the proceeds will be used to redeem the property. The clerk of the court holding the proceeds would be required to disburse those proceeds unless another tenant in common simultaneously seeks their share of the excess proceeds. Any downside to the other tenants in common would be offset by the restoration of their interests in the property.¹¹⁶

H. May a tenant in common buy interests in their property at a tax sale?

A tenant in common may buy their property at the tax sale, but not as freely as a regular purchaser. Tax Code Section 33.50(c) states that an owner of the property may not purchase the property unless “the amount bid by that person is equal to or greater than the aggregate amount of the judgments against the property, including all costs of suit and sale.”¹¹⁷ Recall from the discussion above that the minimum bid is normally the aggregate amount of the judgments, but if the amount of the judgments exceeds the fair market value of the property, the minimum bid will be that value. Apparently, a property owner, including a tenant in common, would not be able to buy property at a sale where the minimum bid is based on the fair market value of the property until the bidding reaches a level that exceeds the aggregate amount of the judgments. Query how this rule could be enforced, as the officer conducting the sale would need to recognize that an owner is bidding and, in real time, impose these different rules. Further, a rule like this is easily circumvented by bidding through an entity (assuming the property is held in an individual’s name, or vice versa)¹¹⁸ or by bidding in the name of a family member or friend. Many counties have no requirement that bidders register for the sale; there would be no way to police this rule in those counties.

116. See Part 2(E).

117. TEX. TAX CODE ANN. § 33.50(c). The subsection applies to “a person owning an interest in the property or to a person who is a party to the suit other than a taxing unit,” so assuming each tenant in common was a party to the tax foreclosure lawsuit, the subsection would apply to them. Was the subsection intended to apply to tenants in common? The subsection was added in 1999, and no legislative history has been located which answers that question. See Act of Sept. 1, 1999, 76th Leg., R.S., ch. 1481, §21, 1999 Tex. Gen. Laws 5097, 5103. Does the subsection apply if the undivided interests are taxed separately and the person who has paid their taxes wants to bid on interests of the other owners who have not paid their taxes? I don’t think so. The word “property” in subsection (c) should be construed to mean the property *interest*, such as an undivided interest—i.e., only the property interest with respect to which taxes are delinquent. If a tenant in common is not an owner of the property interest being foreclosed, the subsection should not apply to them.

118. See, e.g., Appellee Aldine Independent School District’s Brief, 2007 WL 4991286 (Tex. App.—Houston [1st Dist.] 2008) (taxing unit argued the beneficial owner purchased his own property at tax sale in attempt to have the tax sale clear an assessment lien).

I. May a redemption right be waived?

May a former owner waive their redemption right in exchange for consideration from the tax sale purchaser? This would allow the purchaser to sell or develop the property without risk of redemption. The law on waiver of redemption in tax sales is sparse, but there is little reason to think that the redemption right cannot be waived for valid consideration. The redemption right is simply a property right and is thus alienable.¹¹⁹

There is some law from other states supporting the waiver of redemption rights in connection with *mortgage* foreclosures (recall that Texas does not permit redemption from a mortgage foreclosure¹²⁰). In other states, those waivers are uniformly upheld¹²¹ even if they are contained in the original loan documents¹²² (as opposed to a post-default waiver by the debtor).

Part 3(L) of this article discusses Tax Code Section 34.21(l), which prohibits a former owner from transferring the owner's right of redemption to another person. Arguably, that section could be construed to block waiver of the redemption right, but transfer and waiver are different concepts, and the purpose of Section 34.21(l), as discussed in Part 3(L), is to prevent abuse of former owners by investors. That purpose does not seem to be served by blocking waiver. If a former owner has no desire to redeem and can get paid to waive the redemption right, the waiver is better for both the purchaser and the former owner.

In short, there is no compelling reason in Texas or elsewhere why a former owner cannot waive the redemption right for valid consideration.

J. Does a redeemer take the property subject to changes made during the redemption period?

May a tax sale purchaser make changes to the property during the redemption period, such as cutting and selling timber or agreeing with

119. *Alienable*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, available at <https://www.law.cornell.edu/wex/alienable> ("In general, all private property is alienable unless some contractual, common law, or statutory restriction on it states otherwise.").

120. *See supra* note 18

121. *Russo v. Wolbers*, 323 N.W.2d 385, 388 (Mich. Ct. App. 1982) ("Nothing in the Legislature's language precludes any waiver nor indicates waiver is against public policy."); *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699, 704 (Minn. Ct. App. 2016) (In supporting the waiver of a mortgagor's redemption right the court stated, "[i]n this case, however, no ambiguity arises from the absence of a [statutory] statement that a mortgagor may or may not waive the statutory right to redeem foreclosed property."); *see generally* Benjamin Pitts, *Waiver of Redemption Rights in Tennessee Mortgages: Discarding the Contracts Clause and Common-Law Concepts*, 55 TENN. L. REV. 733 (1988).

122. *E.g.*, *Dellinger v. First Nat. Bank of Russellville*, 970 S.W.2d 223, 224 (Ark. 1998) ("When the mortgage or deed of trust contains the waiver, and the court renders a foreclosure decree, the right of redemption is gone by operation of the statute. In other words, the right of redemption after the sale is determined by the question whether or not there was in fact a waiver of the lien in the mortgage[.]" (citing *Wilkinson v. James*, 262 S.W. 319, 321 (Ark. 1924))).

co-owners to partition the property?¹²³ While there is little guidance, the answer seems to be yes.

The authorities say that the purchaser's tax sale title is a defeasible interest, or an estate subject to defeat by redemption.¹²⁴ Stated differently, the purchaser acquires a conditional estate which ripens into an unconditional estate at the end of the redemption period.¹²⁵ Either way, it seems clear the former owner retains no right, pre-redemption, to affect the purchaser's use of the property.¹²⁶ The Tax Code is in accord. For one, Section 34.01(n) states as follows, which notes that the former owner's (defendant's) only right is the right of redemption:

The [tax sale] deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption [and certain covenants and easements].¹²⁷

Further, Section 34.21(h) states, "[t]he right of redemption does not grant or reserve in the former owner of the real property the right to the use or possession of the property, or to receive rents, income, or other benefits from the property while the right of redemption exists."¹²⁸ Thus, all rights and benefits inure to the tax sale purchaser.

Lastly, while no case law on point has been located, a Texas tax sale purchaser appears to have the right to transfer the property during the redemption period (subject, to the right of redemption).¹²⁹ This points to the purchaser's ownership interest being the same as any other fee simple ownership, subject only to the redemption right.

Money received from cutting timber seems to fall under the "income" or "other benefits" category in Section 34.21(h) and would therefore belong to the purchaser.¹³⁰ The partition question is trickier. Imagine a tax sale purchaser buys a 50% undivided interest in land. During

123. Recall from Part 2(E) that a tax sale purchaser might only purchase an undivided interest, meaning the purchaser will become a mere co-owner of the property.

124. 69 TEX. JUR. 3D *Taxation* § 625 (2026) ("The title acquired by the purchaser at a tax sale is an estate that is liable to be defeated on a compliance with the redemption laws by those entitled to redeem.").

125. *Id.* (citing *Reynolds v. Batchelor*, 216 S.W.2d 663 (Tex. App.—Fort Worth 1948, writ refused n.r.e.)), *see also* *ABN AMRO Mortg. Grp. v. TCB Farm & Ranch Land Invs.*, 200 S.W.3d 774, 780 (Tex. App.—Fort Worth 2006, no pet.).

126. Of course, the purchaser takes the risk that money spent will not be reimbursed under the narrow definition of "costs" comprising part of the redemption price in Tax Code Section 34.21(g)(2). TEX. TAX CODE ANN. § 34.21(g)(2).

127. *Id.* § 34.01(n).

128. *Id.* § 34.21(h).

129. *See* TEX. PROP. CODE ANN. § 209.011(c), which governs foreclosure of property owners' association's assessment liens, and states, "[a] person who purchases property at a sale foreclosing a property owners' association's assessment lien may not transfer ownership of the property to a person other than a redeeming lot owner during the redemption period." No equivalent statutory rule exists for tax sales.

130. TEX. TAX CODE ANN. § 34.21(h).

the redemption period, the purchaser agrees with the other 50% owner to subdivide the property in half, and they execute and record a consensual partition deed so doing. If the former owner redeems, do they now own the half transferred to the purchaser by partition deed? All signs point to yes, although this leads to the strange result of the former owner redeeming something different than they previously owned.

K. What are the purchaser's "costs" in the redemption price?

The price to redeem a property is "the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property," in addition to the applicable redemption premium on the total of those amounts.¹³¹ The deed recording fees, taxes, penalties, and interest are easy to determine, but "costs" sometimes are not. Section 34.21(g)(2)(A) defines "costs" as "the amount reasonably spent by the purchaser for maintaining, preserving, and safekeeping the property" and includes a list of permissible costs, such as property insurance.¹³²

Courts have recognized that "the statute acknowledges and provides for certain ambiguity in the amount that must be paid."¹³³ As one court stated, "[a] determination of what constitutes an 'amount *reasonably* spent by the purchaser' can be a disputed and subjective determination. Moreover, it is not information that will always be readily available to the original owner."¹³⁴

A few cases have explored the limits of the word "costs." In *Gonzalez v. Razi*,¹³⁵ the court stated costs must be "necessary for the maintenance, preservation, or safekeeping of the property rather than simply improving or altering the property."¹³⁶ The court held the purchaser did not establish that costs consisting of \$1,200 to remove a mobile home and \$240 to evict a prior resident were necessary for the maintenance, preservation, or safekeeping of the property rather than simply for improving or altering the property.¹³⁷

In *Burd v. Armistead*,¹³⁸ before the Tax Code defined "costs,"¹³⁹ the court held that proper costs for purposes of redemption included \$3,578.43 to replace a septic system where the system installer signed an affidavit that the repairs were required by law.¹⁴⁰ The court did not

131. TEX. TAX CODE ANN. § 34.21(a).

132. *Id.* § 34.21(g)(2)(A).

133. *Mekhail v. Duncan-Jackson Mortuary, Inc.*, 369 S.W.3d 482, 486 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

134. *Id.*

135. *Gonzalez v. Razi*, 338 S.W.3d 167 (Tex. App.—Houston [1st Dist.] 2011, pet. denied).

136. *Id.* at 175–176.

137. *Id.*

138. *Burd v. Armistead*, 982 S.W.2d 31 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

139. *Id.* at 34.

140. *Id.* at 35.

weigh in on costs of \$416.25 to remove a person from the property, \$1,125 to remove trash, and \$7,108.69 to replace and paint fascia boards, treat a building for termites, replace a roof and carpet, and repair water pipes, an air-conditioning unit, and an electrical system.¹⁴¹ In short, *Gonzalez* and *Burd* suggest the definition of “costs” should be read narrowly.

While no Texas case has been located regarding attorney fees, a Tennessee court held that attorney fees were not recoverable because they were not listed in the state’s redemption statute.¹⁴²

L. May redemption rights and claims to excess proceeds be assigned?

The Texas legislature has clearly been concerned about investors taking advantage of former property owners. In recent years, the legislature has enacted statutory measures blocking investors from taking assignment of a former owner’s redemption rights and their claim to excess proceeds.

1. Assignment of redemption rights.

In 2019, the legislature blocked the assignment of redemption rights by adding Section 34.21(l), which states, “[a]n owner of real property who is entitled to redeem the property under this section may not transfer the owner’s right of redemption to another person.¹⁴³ Any instrument purporting to transfer the owner’s right of redemption is void.”¹⁴⁴ The House Ways & Means Committee’s Bill Analysis says the law was in response to “concerns about reported instances in which property owners have sold their right of redemption to a person with easy access to capital attempting to acquire the property at a reduced price, contrary to the intention of the right of redemption.”¹⁴⁵ Query whether a law preventing an owner from alienating a real property right, such as the right of redemption, is constitutional, although no such challenge has yet been made. It is worth noting that Texas courts

141. *Id.*

142. *Morrow v. Bobbitt*, 943 S.W.2d 384, 392 (Tenn. Ct. App. 1996).

143. Act of June 14, 2019, 86th Leg., R.S., ch. 1345, § 1.

144. TEX. TAX CODE ANN. § 34.21(l).

145. House Ways & Means Comm., Bill Analysis, Tex. S.B. 1642, 86th Leg., R.S. (2019) [<https://lrl.texas.gov/scanned/TLBillAnalyses/86-0/SB1642RPT.PDF>]. See also Senate Rsch. Center, Bill Analysis, Tex. S.B. 1642, 86th Leg., R.S. (2019), [<https://lrl.texas.gov/scanned/srcBillAnalyses/86-0/SB1642ENR.PDF>] (“[I]nstances have occurred where owners have sold their right of redemption. And because tax sales often fail to fetch market value for property, a person with easy access to capital may purchase and exercise the right of redemption to acquire real property at a reduced price. Also, the statutory exercise price does not include the purchaser’s costs to voluntarily improve the property, so the purchaser may invest in the property only to lose it to a third party’s redemption.”).

allowed the assignment of redemption rights before 2019,¹⁴⁶ and some other states have historically allowed the same.¹⁴⁷

It seems the anti-assignment rule could be circumvented by an investor funding a former owner's redemption of the property on the condition that a deed from the former owner to the investor would become effective upon successful redemption. In other words, an investor could facilitate a successful redemption which ultimately runs in their favor.¹⁴⁸ This is the functional equivalent of the assignment of a redemption right.

2. Assignment of a claim to excess proceeds.

In 2009, the legislature added Sections 34.04(c)–(j), which all but block the assignment of excess proceeds to investors.¹⁴⁹ Historically, there were two ways for an investor to chase excess proceeds: (1) by taking assignment of an owner's property interest after the tax lien foreclosure judgment but *before* the tax lien sale; or (2) by taking assignment of a former's claim to excess proceeds *after* the tax lien sale. The 2009 legislation attempted to put a damper on both. Subsection (c-1) seeks to prevent the first way. It states that:

A former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim

146. See *St. Andrews Inv. Co., LLC v. Valdez*, 2021 WL 330122, *4 (Tex. App.—Houston [14th Dist.] Feb. 2, 2021, pet. denied) (mem. op.) (Regarding the transfer of redemption rights that occurred in 2018 (i.e., before the 2019 legislation), “[t]he right of redemption was not restricted to the heirs alone, and they were free to pass the right to their assign or their grantee, which they did, also within the two-year redemption period.”); *Macha v. Carameros*, 674 S.W.2d 491, 493 (Tex. App.—El Paso 1984, no writ) (assignee of former owners who took assignment post-tax sale, apparently for sole purpose of redeeming property, was permitted to redeem); *McGuire v. Bond*, 271 S.W.2d 508, 510 (Tex. Civ. App.—El Paso 1954), writ refused n.r.e., (Feb. 22, 1955) (“[T]here is no public policy which would render void or voidable the purchase of the equity of redemption . . . after the tax sale, or the exercise of the right to redeem . . .”); 69 TEX. JUR. 3D *Taxation* § 621 (2026) (“The right of redemption is not personal to the owner at the time of the tax sale, but is a statutory privilege that passes to the owner’s heirs, and that may be assigned in the same manner as the land itself.” (citing *Macha* and *McGuire*)).

147. E.g., *Moad v. Neill*, 451 N.W.2d 4, 7 (Iowa Ct. App. 1989) (“There is nothing in the law which forbids the disposition of redemption or possession rights. These rights can be disposed of separately.”).

148. The real property records in certain counties may be searched for redemption deeds, so it is simple to see whether this likely happens. Indeed, I have found occasions where redemption deeds were recorded conveying title back to the former owner/redeemer. Shortly thereafter, another deed was recorded conveying title from the former owner/redeemer to a new grantee. This chain of title suggests the type of rule circumvention I discuss is being used.

149. TEX. TAX CODE ANN. § 34.04(c-j). Act of Sept. 1, 2009, 81st Leg., R.S., ch. 254, § 2. For pre-legislation cases permitting the functional assignment of excess proceeds claims, see generally *Woodside Assur., Inc. v. N.K. Res., Inc.*, 175 S.W.3d 421 (Tex. App.—Houston [1st Dist.] 2005, no pet.), and *Strauss v. Belt*, 322 S.W.3d 707 (Tex. App.—Austin 2010, no pet.). In *Strauss*, two weeks before a tax sale, a buyer paid the owner \$1,000 for a quitclaim deed to a property. *Id.* at 709. The property was sold at tax sale, resulting in \$20,300.76 in excess proceeds. *Id.* The former owner/seller under the quitclaim deed and the buyer under the quitclaim deed both claimed the excess proceeds. *Id.* The court noted the 2009 legislation was not effective until after the appeal in the case was filed, and nothing before that legislation prevented a pre-tax sale transfer of the property, meaning the pre-sale transferee/buyer under the quitclaim deed was entitled to the excess proceeds. *Id.* at 711–13.

to [excess] proceeds. 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.¹⁵⁰

Subsection (f) seeks to prevent the second way. Under subsection (f)(3), a claim to excess proceeds cannot be assigned as a result of an in-person or telephone solicitation, and under subsection (f)(4), the assignee must pay the claimant at least 80% of the claim.¹⁵¹ At least in theory, these rules affect an investor's ability to solicit claims and their ability to make significant windfalls from paying well below the amount of a claim.

There has historically been a cottage industry around assisting former owners recover excess proceeds. Evidently the 2009 legislature was concerned about abuses in this industry. As the House Research Organization wrote in its committee report:

While the majority of firms that assist individuals to claim their rightful excess proceeds of a tax sale provide a valuable service and operate within the law, there are a few bad actors whose fraudulent actions and misrepresentations require tighter regulation of the industry. These unscrupulous groups prey on the old and disabled, the illiterate, and those who may not speak English. There have been instances in Texas where assignment companies received tens of thousands of dollars from a court but had first purchased the right to do so from a prior owner for a few thousand dollars. The most common business model for assignment companies is to scan public records for a pending tax sale, pressure an owner into selling the property about to be sold for dimes on the dollar, and then collect the windfall excess proceeds of the tax sale.¹⁵²

There is a certain logic to blocking the assignment of claims for excess proceeds. There is speculation that a cottage industry remains in recovering excess proceeds. Some investors appear to be seeking a cut of the proceeds for assisting a former owner in recovering excess proceeds even though Section 34.04(i) tries to prevent this by disallowing "a person who is not an attorney [from charging] a fee to obtain excess proceeds for an owner."¹⁵³ An investor could work with an attorney, but the same section prevents an attorney from recovering more "than 25 percent of the amount obtained or \$1,000, whichever is less,"¹⁵⁴ and

150. TEX. TAX CODE ANN. § 34.04(c-1).

151. *Id.* § 34.04(f).

152. House Rsch. Org., Bill Analysis, Tex. H.B. 406, 81st Leg., R.S. (2009), [<https://lr.texas.gov/scanned/hroBillAnalyses/81-0/HB406.PDF>].

153. TEX. TAX CODE ANN. § 34.04(i).

154. *Id.* Notably, one Texas appellate court has read this subsection to allow \$1,000 *per* former owner. In *Davis v. Kaufman Cnty.*, 195 S.W.3d 847, 850 (Tex. App.—Dallas 2006, no pet.), an

thus theoretically disincentives the project of hunting excess proceeds claimants.

Naturally, the Tax Code does not prevent an owner from conveying title to its property pre-tax sale. Thus, there are three possible timing scenarios that could involve an investor's purchase of interests, as follows:

- (a) Transfer of property to investor by deed before tax lien foreclosure judgment. All rights flow to the investor.
- (b) Transfer of property to investor by deed after tax lien foreclosure judgment but before tax lien sale. The right to redeem, but not a claim to excess proceeds, flows to the investor.
- (c) Purported transfer of redemption right and claim to excess proceeds after the tax lien sale. No right to redeem or claim to excess proceeds flows to the investor.

M. Does redemption restore liens?

There are two ways to think about the effect of redemption on inferior liens on a property that were extinguished by the tax sale of the property. One is that the redemption "merely annuls the sale, and leaves the property subject to all liens which would have been barred if the sale had ripened into title."¹⁵⁵ An odd feature of this rule is that a lien is extinguished by a tax sale, but then brought back to life by redemption. The other way is that "[t]he redemption amounts to an assignment of the purchaser's rights under the sale when the redemption is made."¹⁵⁶ This means that the property is kept clear of liens extinguished by the tax sale even when redemption is made. The obvious downside of this approach is that an owner of a property encumbered by liens could allow a tax sale, only to redeem it later, now clear of the liens.¹⁵⁷

Recent cases indicate that Texas follows the first approach, although no Texas Supreme Court case on point has been located. In *Assoc. Home Equity Serv. Co., Inc. v. Hunt*,¹⁵⁸ a Texas appellate court reversed a

attorney was allowed to recover \$3,500 in fees where they represented some 16 former tenant in common owners who received excess proceeds.

155. JOYCE PALOMAR, PATTON AND PALOMAR ON LAND TITLES § 483 (3d ed. 2003), ("[I]t has been held in some jurisdictions that redemption by a judgment debtor or a successor-in-interest vests title free of the lien created by the judgment. The redemption amounts to an assignment of the purchaser's rights under the sale when the redemption is made by a junior encumbrancer, by an owner who is not liable for the debt, or by a debtor whose grantee has assumed payment, or who is otherwise merely a surety for payment of the debt.")

156. *Id.*

157. *See, e.g.,* Reynolds v. Batchelor, 216 S.W.2d 663, 667 (Tex. Civ. App.—Fort Worth 1948, writ ref'd n.r.e.) (an owner who does not pay taxes should not be allowed to strengthen his title at a tax sale); Appellee Aldine Independent School District's Brief, 2007 WL 4991286, at *5 (Tex. App.—Houston [1st Dist.] 2008) (taxing unit argued the beneficial owner purchased his own property at tax sale in attempt to have the tax sale clear an assessment lien).

158. *Assoc. Home Equity Serv. Co., Inc. v. Hunt*, 151 S.W.3d 559 (Tex. App.—Beaumont 2004, no pet.).

trial court in holding that a deed of trust was reinstated after redemption. The court cited two earlier appellate court cases for the proposition that “[a] purchaser at a tax sale receives a conditional estate, which is subject to defeat upon ‘compliance with the redemption laws by those entitled to redeem.’”¹⁵⁹ One judge dissented, arguing that the beneficiary (lender) under the deed of trust was a defendant in the tax lien lawsuit and thus could have paid the taxes and sought reimbursement from the owner.¹⁶⁰ The dissent also argued the beneficiary could have bid at the sale to protect its interest.¹⁶¹ The dissent called the majority’s holding an exception to a long-standing rule (i.e., presumably, the rule that tax foreclosure sales permanently extinguish junior liens).¹⁶²

There is a similar line of cases in which a lienholder redeemed property. One such recent Texas appellate court case is *UMLIC VP LLC v. T & M Sales & Env’t Sys., Inc.*,¹⁶³ where a beneficiary under a deed of trust redeemed a property.¹⁶⁴ There, the court first held that a lienholder was entitled to redeem after a tax sale.¹⁶⁵ Further, citing *Hunt*, the court held that the redemption did not mean the lienholder became the owner of the property; rather, the redemption simply returned title to the property to the way it was before the tax sale, meaning the former owner had title and the lienholder was reinstated as the beneficiary under the deed

159. *Id.* at 561 (citing *Reynolds v. Batchelor*, 216 S.W.2d 663, 666 (Tex. Civ. App.—Fort Worth 1948, writ ref’d n.r.e.); see also *O’Hanlon v. Morrison*, 187 S.W. 692, 696 (Tex. Civ. App.—Amarillo 1916, no writ)).

160. *Id.* at 563.

161. *Id.* Alternately, while not mentioned in the dissent but as discussed in the next paragraph, the beneficiary could have redeemed the property.

162. *Id.*

163. *UMLIC VP LLC v. T & M Sales & Env’t Sys., Inc.*, 176 S.W.3d 595 (Tex. App.—Corpus Christi—Edinburg 2005, no writ).

164. *Id.* at 603.

165. *Id.* at 607. TEX. TAX CODE ANN. § 34.21(a) gives the “owner” of a property the right to redeem. The *UMLIC* court noted as follows:

[A]ny person who has any interest in lands sold for taxes” is considered an owner for the purposes of redemption. *Rogers v. Yarborough*, 923 S.W.2d 667, 669 (Tex.App.—Tyler 1996, no pet.); [*Jackson v. Maddox*, 53 Tex.Civ.App. 478, 117 S.W. 185, 185 (1909, no writ)]. To redeem, a party need only show “some connection with the title, past or present, by deed, descent, contract, or possession.” *Jackson*, 117 S.W. at 185. Proof of title is not necessary. *Id.*

[A party cannot] strengthen his title by redeeming title from a third party subsequent to the sale. [citation omitted]. This rule includes parties who, while not legally obligated to pay taxes, have sufficient interest in the property that they might redeem it to protect themselves from loss or injury, or to establish a preferred lien. See [*Reynolds v. Batchelor*, 216 S.W.2d 663, 667 (Tex.Civ.App.—Fort Worth 1948, writ ref’d n.r.e.)]. In these situations, equity requires the protection of the rights of other owners or lien holders. *Id.*

Although *UMLIC*’s security interest in the property did not create any legal obligation, it was only by virtue of this pre-existing interest that *UMLIC* was eligible to complete the redemption transaction. See *Reynolds*, 216 S.W.2d at 668 . . .

UMLIC VP LLC, 176 S.W.3d at 607. See also 2 Patton and Palomar on Land Titles § 483 (3d ed.) (“[T]he general rule states that a redemption made by a judgment debtor, a mortgagor, a subsequent owner, or part owner, or by the spouse of any such party, merely annuls the sale, and leaves the property subject to all liens which would have been barred if the sale had ripened into title.”).

of trust.¹⁶⁶ If a lienholder has the right to redeem, then clearly their lien is not fully extinguished by a tax sale. A lienholder's redemption right is consistent with the rule that a former owner's redemption restores liens extinguished by the sale.

N. What is the priority between an assessment lien and tax lien?

What is the priority between a tax lien and a local government assessment lien, such as a mowing lien or a demolition lien? As will be discussed, it seems clear from the statutes that a tax lien has priority, and as such, a tax sale extinguishes assessment liens. However, at least some local governments, through their local law firms, take the position that assessment liens not covered by the judgment leading to the tax sale survive the tax sale.¹⁶⁷

A brief definitional primer may help get an answer. "Priority" is defined in relevant part as "a creditor's right to have a claim paid before other creditors of the same debtor receive payment."¹⁶⁸ For this discussion though, the definition ought to be changed to begin with "a *secured* creditor's right..." because the issue here is one of lien priority. Much of the time, priority is timing-based. For example, for Texas deed of trust priority, a creditor who records their deed of trust first has priority over a creditor who records their deed of trust second.¹⁶⁹ But not all priority rules are timing-based. Some rules, like the tax lien priority rules, are nontemporal, meaning a lien has priority both over liens arising after it (which would normally be junior liens anyway), *and* liens arising before it (which would normally be senior liens). Priority, of course, is important upon foreclosure. The general rule is that foreclosure of a senior lien extinguishes all junior liens¹⁷⁰ (but note that a junior lienholder whose lien has been extinguished is entitled to surplus proceeds from the sale after satisfaction of the senior lien being foreclosed¹⁷¹). The flip side of the general rule is that foreclosure of a junior lien has no effect on a senior lien, meaning the senior lien remains in existence after

166. *UMLIC VP LLC*, 176 S.W.3d at 608–09.

167. Email from Linebarger Goggan Blair & Sampson, LLP to author (Feb 16, 2024), (on file with author), taking position that certain mowing liens on property are not extinguished by tax lien foreclosure sale.

168. *Priority*, BLACK'S LAW DICTIONARY (12th ed. 2024).

169. TEX. PROP. CODE ANN. § 13.001(a).

170. *Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.*, 120 S.W.3d 878, 883 (Tex. App.—Fort Worth 2003, pet. denied) ("[I]n foreclosure ... junior lienholders are divested of their interest in the property, and their liens are extinguished." (citing *Nat'l W. Life Ins. Co. v. Acreman*, 425 S.W.2d 815, 817–818 (Tex. 1968))).

171. 30 TEX. JUR. 3D *Deeds of Trust and Mortgages* § 221 (2025). ("If there are surplus proceeds generated by a foreclosure sale after payment of fees and expenses of the trustee and existing indebtedness secured by the foreclosed lien, such surplus proceeds are to be distributed to inferior lienholders . . .") (Citations omitted).

foreclosure of the junior lien.¹⁷² When a buyer buys property with a lien on it (at a foreclosure sale or otherwise), the buyer buys “subject to” the lien, meaning the lienholder could foreclose the lien and wipe out the buyer’s ownership interest.¹⁷³ However, not all priority matters directly involve foreclosure. In a liquidation bankruptcy, for example, a trustee might be appointed to sell the debtor’s property and pay the secured creditors first in the order of their priority.¹⁷⁴

With the preceding definitional primer set out, the matter of priority may emerge more clearly. As noted, the statutes appear to give clear nontemporal priority to the tax lien. Subsections 32.05(b) and (b-1) are the first relevant priority rules in the Tax Code.¹⁷⁵ The subsections state that, with exceptions not relevant here, a tax lien takes priority over both junior and senior liens of any creditor:

(b) [A] tax lien provided by this chapter takes priority over:

(1) the claim of any creditor of a person whose property is encumbered by the lien; [and]

(2) the claim of any holder of a lien on property encumbered by the tax lien

(b-1) The priority given to a tax lien by Subsection (b) prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien.¹⁷⁶

Next, Section 34.01(n) contains seemingly relevant language indicating that a property is conveyed at tax sale free of nearly all existing liens:

[A deed to a purchaser of real property at a tax sale] vests good and perfect title in the purchaser or the purchaser’s assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant’s right to the use and possession of the property, subject only to the defendant’s right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of

172. 2 TEXAS REAL ESTATE GUIDE § 8.48 (2026) (“Because proper notice and foreclosure of a lien on property causes legal and equitable title in the property to merge, in foreclosure, prior lienholders are divested of title to the property, and their liens are extinguished; stated otherwise, following the valid foreclosure of a senior lien, junior liens not satisfied from the proceeds of sale are extinguished. Thus, when a senior lien is foreclosed, the purchaser at the sale acquires title to the property free from any junior lienholder claims.” (Citations omitted)).

173. *Conversion Props., L.L.C. v. Kessler*, 994 S.W.2d 810, 813–14 (Tex. App.—Dallas 1999, pet. denied).

174. Of course, from the debtor’s perspective, this is just foreclosure by a different name.

175. TEX. TAX CODE ANN. §§ 32.05(b), (b)(1).

176. *Id.*

record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.¹⁷⁷

It is hard to tell how Subsections 32.05(b) and (b-1) relate to Section 34.01(n), but neither suggests that an assessment lien survives a tax foreclosure sale.¹⁷⁸

The assessment lien statutes also typically give nontemporal priority to tax liens. For example, Texas Health & Safety Code Section 342.007(d) states a mowing lien “is inferior only to: (1) tax liens; and (2) liens for street improvements.”¹⁷⁹ And the demolition lien statute, Texas Local Government Code Section 214.001(o), states “the lien is a privileged lien subordinate only to tax liens.”¹⁸⁰

Given this statutory authority, why do some taxing units take the position that certain assessment liens survive foreclosure sales? The answer could be that the Tax Code can be read to say that the judgment on the tax lien lawsuit, not the actual tax lien sale, is itself the foreclosure of the tax lien. Consider Section 33.51, which states, “[i]f the court orders the foreclosure of a tax lien and the sale of real property....”¹⁸¹ This phrase arguably treats the foreclosure and the sale as separate matters. Note that if the judgment of the court is the actual foreclosure, then any liens arising after the judgment would be unaffected by the sale and would justify local governments in refusing to release those liens post-tax sale. But that would mean any lien, consensual or otherwise, placed on a property between the time of judgment and sale would survive the tax lien sale. No case has been located where a court takes such a position. Instead, the courts, like those in *Burleson v. Gen. Elec. Capital Corp.*,¹⁸² and *Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.*,¹⁸³ treat the tax sale itself, not the judgment, as the event that cuts off junior liens. For example, as the *Conseco* court noted, “following the valid foreclosure of a senior lien, junior liens, if not satisfied from the proceeds of [a tax lien] sale, are extinguished.”¹⁸⁴ Notice how, in the court’s view, the lien is extinguished by the sale itself.¹⁸⁵ As discussed in Part 3(B), post-

177. *Id.* § 34.01(n).

178. Another similar rule is found in TEX. TAX CODE ANN. § 33.95, which states, “[a] purchaser for value at or subsequent to the tax sale may conclusively presume the validity of the sale and takes free of any claim of a party with a prior interest in the property subject to the provisions of Section 16.002(b), Civil Practice and Remedies Code, and subject to applicable rights of redemption.

179. TEX. HEALTH & SAFETY CODE ANN. § 342.007(d).

180. TEX. LOC. GOV’T CODE ANN. § 214.001(o). For a list of Texas assessment liens, see Steven R. Martens et al., *Texas Forms Real Estate* ch. 4 § 1 (2025 ed.).

181. TEX. TAX CODE ANN. § 33.51(a).

182. *Burleson v. Gen. Elec. Capital Corp.*, 831 S.W.2d 54, 60 (Tex. App.—Houston [14th Dist.] 1992, writ denied).

183. *Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.*, 120 S.W.3d 878, 883 (Tex. App.—Fort Worth 2003, pet. denied).

184. *Id.*

185. While there are unlikely to be consensual liens recorded after a tax lien judgment, there could be other types of non-government non-consensual liens, like the lien of a judgment creditor. It is no wonder the Tax Code is at odds with itself over this matter, as the Tax Code seems to intuit

judgment tax liens orient the taxing units to thinking about the date of the judgment as a consideration for priority. Section 33.52(d) gives a statutory basis for charging post-judgment taxes, but no section in the Tax Code provides a basis for claiming post-tax sale assessment liens.¹⁸⁶

Another plausible answer, which is more sinister and seemingly less likely, is that the taxing units (through their law firms) simply know they can get away with charging a tax sale purchaser with the obligations secured by post-judgment assessment liens. Assessment liens are often less than a few thousand dollars and thus do not justify the effort to challenge them. In the rare case of a tax sale purchaser who does challenge an assessment lien, the taxing unit can simply release their liens to avoid having a court decision declare those liens illegal as a precedential matter.

Only one recent case, *Saturn Capital Corp. v. City of Houston*,¹⁸⁷ addresses priority between a tax lien and an assessment lien. There, the court held that a tax sale extinguished a city's demolition lien such that the purchaser took the property free from that demolition lien (the demolition lien was dated before the judgment leading to the tax sale but was not part of the judgment).¹⁸⁸ The court cited Texas Local Government Code Section 214.001(o) and Tax Code 33.95, both quoted above, in so holding.¹⁸⁹ It is notable that the taxing unit in *Saturn Capital* did not appear to take the position that it had priority based on the timing of the liens or statutory language.¹⁹⁰ Rather, the taxing unit argued that the same individual beneficially owned the property both before and after the tax sale and fraudulently used the tax sale to extinguish the demolition lien.¹⁹¹

Saturn Capital is also notable for its sovereign immunity implications on the dispute of assessment liens. The tax sale purchaser in *Saturn Capital* did not immediately challenge the demolition lien.¹⁹² Instead, it entered into a contract to sell the property.¹⁹³ When the buyer learned of the demolition lien and refused to close unless it was released, the tax sale purchaser paid off the lien under protest and then

that tax sales would be help promptly after tax lien judgments. As discussed in *supra* n. 57 and related text, that is often not the case.

186. TEX. TAX CODE ANN. § 33.52(d).

187. *Saturn Capital Corp. v. City of Houston*, 246 S.W.3d 242, 245 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).

188. *Id.* at 244–45. Perhaps the trickier cases are those in which the assessment lien arises after the judgment but before the tax lien sale.

189. *Id.* at 245.

190. *Id.*; *Cf.* Appellee Aldine Independent School District's Brief, 2007 WL 4991286, at *5–6, *13–14, *17 (Tex. App.—Houston [1st Dist.] 2007) (taxing unit argued liens survived based on timing of lien attachment and statutory language under Tax Code sections 33.52(d) and 34.01(l)).

191. *Saturn Capital Corp.*, 246 S.W.3d at 246 n.2; *Cf.* Appellee Aldine Independent School District's Brief, 2007 WL 4991286, at *5–6, *21–23 (Tex. App.—Houston [1st Dist.] 2007) (taxing unit argued liens survived based on statutory interpretation and merger doctrine principles, without raising beneficial ownership or fraud arguments).

192. *See Saturn Capital Corp.*, 246 S.W.3d at 244.

193. *Id.*

sued the government to recover the payment.¹⁹⁴ The government defended by asserting sovereign immunity, which is normally a legitimate defense when a tax or fee is voluntarily paid.¹⁹⁵ While the court found for the tax sale purchaser under an exception to the voluntary payment rule that arises when illegal government taxes and fees are paid under the duress (in this case, the duress of potentially losing the sale),¹⁹⁶ a tax sale purchaser would probably not want to take such a risk. Thus, another lesson of *Saturn Capital* may be that a tax sale purchaser faced with a governmental unit refusing to release a pre-tax sale assessment lien ought to directly challenge the lien.¹⁹⁷

O. Do investors make adverse possession claims for tax sale properties?

Imagine a property is advertised for tax sale. The fair market value is \$250,000 and the taxpayer owes \$10,000 in property taxes and fees, so \$10,000 will be the opening bid at the tax sale.¹⁹⁸ The taxes have not been paid for 15 years, and an examination of the tax lien lawsuit's docket indicates that none of the former owners appeared in the lawsuit. On the morning of the tax sale, an enterprising investor takes stock of the situation. They anticipate the property is likely to sell at the tax sale for half of the fair market value, or \$125,000. So, just before the tax sale starts,¹⁹⁹ the investor cuts a check to the county tax office paying off the \$10,000 owed, and the sale is thereby cancelled.

Shortly thereafter, the investor files a pro se lawsuit for adverse possession under the ten-year rule of Civil Practice and Remedies Code Section 16.026.²⁰⁰ Of course, the investor will need to lie in their petition about being in possession of the property for the prior ten years, but the investor will assume that the former owners will not appear in the lawsuit (just as they failed to appear in the tax lien foreclosure lawsuit), and that the judge will simply rubber stamp a default judgment awarding title to the investor.

This is, of course, a high-risk game for the investor. Any appearance by a former owner would presumably result in an immediate litigation defeat of the investor, ideally lead to penalties for perjury, and result in the loss of the \$10,000 used to pay the taxes.

194. *Id.* at 246.

195. *Id.* at 245.

196. *Id.* at 246.

197. See 69 TEX. JUR. 3D *Taxation* § 53 (2026) (“[A]n action for declaratory relief may be maintained by an aggrieved taxpayer.” (Citation omitted)). See also TEX. TAX CODE ANN. § 112.001 *et. seq.* (taxpayers’ suit).

198. TEX. TAX CODE ANN. § 34.01(b).

199. By waiting until the last minute, the investor gains as much assurance as possible that none of the former owners has an interest in trying to save the property.

200. TEX. CIV. PRAC. & REM. CODE §16.026. We will assume the action is pro se. Let’s hope no Texas lawyer would take the case.

Do risk averse investors do this? I have never witnessed it, but I have overheard enough around the courthouse to suggest that it has been done.