

**DELINQUENT TAX SUITS
VS
RESIDENTIAL HOMESTEAD**

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DISCUSSION LIMITED TO DELINQUENT TAX FORECLOSURE SUITS ON RESIDENTIAL HOMESTEADS; AVOIDANCE DEFENSES, EXEMPTIONS, REDEMPTION AND OTHER CONSIDERATIONS

❖ REFERENCES ARE TO THE TEXAS PROPERTY TAX CODE UNLESS OTHERWISE STATED

- <http://www.statutes.legis.state.tx.us/?link=TX> Link to Tax Code
- <http://www.texascad.com> Link to CAD websites
- <http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html> Link to Tax forms

WILL NOT ADDRESS TAX PROTEST AND NON HOMESTEAD PROPERTY TAX MATTERS.

- I. **THE TAX SUIT PETITION** – §33.43. See also 34 TAC §9.5151
 - A. A petition is sufficient if it alleges the 11 items listed, that:
 1. The taxing unit is legally constituted and authorized to impose and collect a tax;
 2. A tax in the stated amount was legally imposed on each property described and on each person named who owned the property on Jan 1 of each tax year specified;
 3. The tax was imposed in the county where suit is filed
 4. The tax is delinquent
 5. P, I & cost authorized by law in the stated amount for each assessed property
 6. The taxing unit is entitled to recover P that has accrued & I from the date of judgment to the date of sale

7. The person sued owned the property on Jan 1 of the tax year is the suit seeks to enforce personal liability on the named defendant;
 8. The person sued owned the property when the suit was filed
 9. The taxing unit asserts a lien on each separately described property to secure the payment of all taxes, P, I and costs
 10. ALL THINGS REQUIRED TO BE DONE HAVE BEEN DONE PROPERLY BY THE APPROPRIATE OFFICIALS; and
 11. The attorney signing the petition is legally authorized to prosecute the suit on behalf of the taxing unit.
- B. A tax suit to foreclose the tax lien may be filed any time a tax becomes delinquent.
- C. In a court of competent jurisdiction in the county where the tax is imposed; in district court if seek to foreclose on real property; in county or JP court for personal property, if within the jurisdiction limit. Certain county courts have jurisdiction granted by statute to foreclose a tax lien; Gov C 25.1032.
- D. Tax cases are transferred to the tax master. TRCP 171. Masters try as other trials and pursuant to the standing transfer order. The Tax Master must issue a master's report; findings of fact, conclusions law and recommendations for the district court.
- E. **Tax records constitute Prima Facie Evidence;** §33.47.
The taxing units current and delinquent tax rolls showing the property and the amount of tax, penalty and interest imposed constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax (and P&I) alleged to be delinquent against the property are the correct amounts.
- F. **A tax receipt (issued per §31.075) that states a tax has been paid is prima facie evidence that the tax has been paid as stated. 33.47**
- G. Examples of taxing units delinquent tax records:
- a. Tax rolls.
 - b. Authenticated notice of tax liens.
 - c. Delinquent tax statements authenticated by the tax collector.

- i The tax roll states a specific hence liquidated amount, therefore no additional hearing on damages is required in context of default judgment.
- ii. Burden shifts to taxpayer to introduce defensive evidence.

II. PARTIES - WHO ARE THE DEFENDANTS?

- A. ALL PERSONS WHO OWN OR CLAIM AN INTEREST in the property when the suit is filed should be joined as defendants. ALL OWNERS ARE NECESSARY PARTIES. §33.43(a)(8).
 - a. Who is your client – a titleholder or heir of a titleholder?
 - i. Probate the estate or
 - ii. Prepare an affidavit of heirship in lieu of probate, Probate Code §52A.
 - b. A judgment is void as to necessary parties not included in the tax suit. Norris v. Harry Hott 612 S.W.2nd 630 (CA-Dallas, 1981, no writ).
- B. ALL TAXING UNITS MUST BE JOINED, 33.44(a). A taxing unit not joined can move to vacate a judgment for failure to be joined.
 - a. A taxing unit that has been joined must file its own claim for delinquent taxes against the property or else its lien is extinguished 33.44(c).
- C. The attorney for the taxing unit must exercise due diligence to discover all persons claiming or having an interest in the property subject to the suit. State V. Bagby's Estate (Civ.App. 1939) 126 SW2d 687.
 - i. Attorney's for the tax collector hire a title company to run title, then issue citations accordingly. Title company fee is added to court costs.
- D. 33.445 JOINDER OF TAX LIEN TRANSFEREE; of record per 32.06

III. HAVE THE DEFENDANTS BEEN SERVED WITH CITATION?

- A. TRCP 117a - Citation in suits for Delinquent Ad Valorem taxes
 - a. Personal service if the owner and residence are known, within state
 - i. TRCP 99 to 107 apply
 - b. Personal service if the owner and residence are known, out of state
 - i. TRCP 108 applies
 - c. Personal service on all others is by posting, publication, or on the sec of state

- d. File answer for your client w/o service could save cost
- e. All persons with an interest in the property (LIEN HOLDERS) must be named defendants and notified of the suit,
 - i. HOW: certified mail RRR is sufficient
- f. Special Appearance contest jurisdiction,
- g. Motion to Quash citation if not properly served
- h. A Notice of trial setting is required to be sent to all parties, defendants who have appeared in the case.
- i. Service by publication; Courts are required to appoint an attorney ad litem to represent **unknown** owners.

IV. **STATUTE OF LIMITATIONS** –§33.05.

- (a) Personal Property may not be seized and a suit may not be filed:
 - (1) to collect a tax on personal property that has been delinquent more than four years; (MANUFACTURED HOMES) or
 - (2) TO COLLECT A TAX ON REAL PROPERTY THAT HAS BEEN DELINQUENT MORE THAT 20 YEARS.
- (b) A tax delinquent for more that the limitation period and any penalty and interest on the tax is presumed paid unless a suit to collect the tax is pending. 33.05(b).

- A tax is due upon receipt of the tax bill and is delinquent if not paid before Feb 1 of the year following the year the tax is imposed.
- CAUTION: the limitations period is TOLLED for taxes deferred pursuant to §33.06, see §33.06(d) “A plea of limitations, laches or want of prosecution does not apply because of deferral or abatement of collection as provided by this section.”
- PLEAD LIMITATIONS BY AFFIRMATIVE DEFENSE – TRCP 94.

V. **DEFERRED COLLECTION OF TAXES** – §33.06

- (A) AN INDIVIDUAL IS ENTITLED TO DEFER COLLECTION OF A TAX; TO ABATE A SUIT TO COLLECT A DELINQUENT TAX OR ABATE A SALE TO FORECLOSE A TAX LIEN IF THE INDIVIDUAL:
 - 1. IS 65 YEARS OR OLDER OR IS DISABLED AS DEFINED BY 11.13(m); (“DISABLED means under a disability for payment of disability insurance benefits under the Federal Old Age, Survivors and Disability Insurance Act”) and

2. The tax was imposed against property that the individual owns and occupies as a residence homestead

(B) To obtain a deferral, an individual must file with the chief appraiser for the CAD where the property is located an affidavit stating the facts required to be established by Subsection (a).

i. Thereafter a taxing unit MAY NOT file suit to collect delinquent taxes on the property and the property may not be sold to foreclose the tax lien until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead;

(C) To obtain an abatement of a pending suit, the individual must file in the court in which suit is pending an affidavit stating the facts required to be established by Subsection (a). If no controverting affidavit is filed by the taxing unit, or if, after a hearing the court finds the individual is entitled to the deferral, the court shall abate the suit until the 181st day after the date the individual no longer owns and occupies the property as a residence homestead. The clerk of the court shall deliver a copy of the judgment abating the suit to the chief appraiser;

(D) To obtain an abatement of a pending sale to foreclose the tax lien, the individual must deliver an affidavit stating the facts ... to the -- chief appraiser, ... -the tax collector that requested the order of sale or -the attorney representing that tax collector and -the officer charged with selling the property NOT LATER THAN THE FIFTH DAY BEFORE THE DATE OF THE SALE. After an affidavit is delivered under this subsection, the property may not be sold at a tax sale until the 181st day after the individual no longer owns and occupies the property as a residence homestead. If the property is sold in violation of this section, the property owner may file a motion to set aside the sale. The motion must be filed during the redemption period as set forth in § 34.21(a). THIS RIGHT IS NOT TRANSFERABLE TO A THIRD PARTY.

➤ See Kubovy v. Cypress-Fairbanks ISD 972 S.W.2nd 130 (Civ.App. Houston (14th) 1998)

(E) A tax lien remains on the property and interest continues to accrue during the period collection of taxes is deferred or abated. THE

ANNUAL INTEREST RATE DURING THE DEFERRAL OR ABATEMENT PERIOD IS EIGHT (8%) PERCENT PER ANNUN INSTEAD OF 1% PER MONTH.

- i. P & I that accrued or that were incurred before the date the individual files the deferral affidavit or the date the judgment abating the suit is entered are preserved.
 - ii. A penalty under § 33.01 is not incurred during a deferral or abatement period.
 - iii. The additional penalty under § 33.07 may be imposed and collected only if the taxes for which collection is deferred or abated remain delinquent on or after the 181st day after the date the deferral or abatement period expires.
 - iv. A plea of limitation, laches or want of prosecution does not apply against the taxing unit because of the deferral or abatement of collection as provided by this section.
- d. Each year the chief appraiser shall publicize in a manner reasonably designed to notify all residents of the county of the provisions of this section and the method by which eligible persons may obtain a deferral or abatement.
- (f) If an individual who qualifies for a deferral dies, the deferral or abatement continues in effect until the 181st day after the date the surviving spouse of the individual no longer owns and occupies the property as a residence homestead if:
- (1) the property was the residence homestead of the deceased spouse when the deceased spouse died;
 - (2) the surviving spouse was 55 years of age or older when the deceased spouse died and
 - (3) the property was the residence homestead of the surviving spouse when the deceased spouse died.

NOTICE OF RIGHT TO DEFERRAL 33.045: Requires that all tax bills and any written communication to a property owner by a taxing unit or its attorney or agent that threatens a lawsuit to collect a delinquent tax must contain the following statement in capital letters:

IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT

REGARDING ANY ENTITLEMENT YOU MAY HAVE TO
POSTPONEMENT IN THE PAYMENT OF THESE TAXES.

PRACTICE CONSIDERATIONS

Sample Original Answer with Plea in Abatement; attached form 1.

2. Plea in abatement is an avoidance pleading, the alleged facts should be verified.
3. Attach copy of birth certificate, Texas Driver's License, passport to show proof of age. THE NAMES MUST MATCH, OWNERSHIP AND PROOF OF AGE .
4. Attach copy of Social Security Administration letter stating that property owner is disabled and the effective date of the disability for SSA purposes. THE NAME ON THE SSA LETTER MUST MATCH THE OWNER'S NAME AND ADDRESS.

VI. **EXEMPTIONS – RESIDENTIAL HOMESTEAD §11.13**

- (a) A family or single adult is entitled to an exemption from taxation for the county ... of \$3000 off the assessed value of his residence homestead
- (b) An adult is entitled to exemption from taxation by a school district of \$15000 off the appraised value of the adult's residence homestead, except \$10000 of the exemption does not apply to ...
- (c) In addition to the exemption provided by subsection (b), an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of \$10000 of the appraised value of the residence homestead
- (d) & (e) provide for additional "local options exemptions" for counties and cities.
- (n) In addition to any other exemptions ... an individual is entitled to an exemption ... of a percentage of the appraised value of residence homestead if the exemption is adopted by the governing body ... may not exceed 20 percent.
- (h) Joint community or successive owners may not each receive the same exemption A person may not receive an exemption for more than one residence homestead in the same year.
- (j)(1) **Residence Homestead** means a structure (including a mobile home) or a separately secured and occupied portion of a structure **together with the land, not to exceed 20 acres**, and improvements used in the residential occupancy of the structure,

if the structure and the land and improvements have identical ownership that:

- v. Is owned by one or more individuals, directly or thru a beneficial interest in a qualifying trust
- vi. Is designed or adapted for human residence
- vii. Is used as a residence and
- viii. Is occupied as his principal residence by an owner or, by a trustor of the trust who qualifies for the exemption

(k) A qualified residential structure does not lose its character as a residence homestead if a portion of the structure is rented or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However the amount of residential exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(l) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence, if that owner does not establish a different principal residence and the absence is

- ix. For a period of less than two years and the owner intends to return and occupy the structure as the owner's principal residence or
- x. Caused by owner's military service outside the USA
- xi. Residency in a facility that provides services related to health, infirmity or aging.

(m) (1) **DISABLED** means under a disability for purposes of payment of disability insurance benefits under the Federal Old-Age, Survivors and Disability Insurance Act.

SSA defines disability as:

- (1) having a medically determinable physical or mental impairment;
- (2) the impairment must prevent one from engaging in any substantial gainful activity; and (SSA defines SGA for 2010 as earning \$1000.00)
- (3) the impairment must be expected to last for at least 12 continuous months or to result in death.

20CFR§404.1505 and 20CFR§416.905. see

www.socialsecurity.gov/OP_Home/cfr20/416/416-0905.htm

SSA recognizes severe impairment(s) as those that meet or medically equal a listing in appendix 1 to subpart P of part 404 of §416. For a copy of the listings click on the SSA site immediately above and follow the links.

Someone can meet the definition of disability under title 16 but not receive monthly disability payments because of deeming of income or because of excess resources. 20CFR§416.1201

(q) The surviving spouse of over 65 year old (BUT NOT A DISABLED) homeowner is entitled to an exemption for the same property in an amount equal to that of the exemption for which the deceased spouse qualified if

- xii. The deceased spouse died in a year in which the deceased spouse qualified for the exemption
- xiii. The surviving spouse was 55 years or older when the deceased spouse died and
- xiv. The property was the residence homestead of the surviving spouse

Ripley v. Stephens (App. 3 1985) 686 S.W.2d 757 writ ref. n.r.e. holds if marital home is H's separate property the over 65 wife does not own it hence wife is not eligible for homestead exemption. BUT if H dies then W has life estate in marital home and is eligible for a homestead exemption.

SERVICEMEN ON ACTIVE DUTY DURING A WAR OR NATIONAL EMERGENCY MAY AVOID P, I & COLLECTION FEES AND ABATE COLLECTION OF TAXES AND DEFER A TAX SUIT 31.02(a), (b) &(c).

- Provided the Tax Collector is notified on form supplied by CAD
- Serviceman is transferred out of state for 60 days or more
 - until the person is discharged, returns to the state for more than 10 days, returns to inactive duty or the war or national emergency ends.

DISABLED VETERANS EXEMPTION § 11.22

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates in accordance with the following schedule:

\$5,000 if have VA disability rating of at least 10% to 29%;
\$7,500 if rating at least 30% and not greater than 49%;
10000 if rating at least 50% and not greater than 69%;
12000 if rating 70% or over; or
12000 if 65 or over and at least 10% disabled, totally blind in one or both eyes or has lost the use of one or more limbs;
100% EXEMPTION of the value of residence homestead if 100% DISABLED due to a service connected disability. 11.131

(c) If a disabled veteran dies, the vets surviving spouse is entitled to an exemption ...on property the spouse owns and designates, the amount of the exemption is the amount the veteran's exemption at time of death; but only for as long as the spouse remains unmarried. The deceased vets children younger than 18 and unmarried are entitled to an exemption per the statute.

SCHOOL TAX FREEZE ON HOMESTEAD OF ELDERLY AND DISABLED §11.26

- A SCHOOL district may not increase the total annual amount of tax it imposes on the residence homestead of an individual 65 years or older or who is disabled above the amount of the tax it imposed in the first tax year in which the individual qualified for that residence homestead.
- The surviving spouse age 55 years or older qualifies for tax freeze if deceased spouse qualified for a freeze.
- The school tax freeze is portable to new residence homestead on a pro rata basis.
- Improvements made to property after the freeze date are not subject to the freeze, taxes may be increased according to the increased value by the tax rate.
- Local option tax freeze by counties and cities, §11.261

PARTIAL OWNERSHIP OF EXEMPT PROPERTY §11.41

- If a person who qualifies for an exemption is not the sole owner of the property to which the exemption applies, the exemption shall be pro rated based on the percentage of ownership.

APPLICATION FOR HOMESTEAD EXEMPTION §11.43 & LATE APPLICATION §11.431

- Exemption qualifying date is Jan 1st if own property on Jan 1st, or the next Jan 1st if acquire property after Jan 1st.

- Elderly and disabled qualifying date is Jan 1st of year during which first become eligible and once you apply. (retroactive to Jan 1st.)
- **11.43 (l) & (m)** requires that the homestead exemption application form include a space for the applicant to include his/her date of birth. It further provides that a person who receives a homestead exemption is entitled to receive an over 65 exemption without applying for the exemption if information in the CAD's records show that the taxpayer becomes 65.
- Deadline to apply for h/s exemption is April 30 of a tax year.
- Deadline to late file for a h/s exemption is one year after the tax year that the tax first becomes delinquent. E.g. 2/1/10 for 2008.
- If taxes were paid for a late filed year, should get a refund.

ADDITIONAL CONSIDERATIONS

- **CO-OWNED PROPERTY.** If there are two or more owners of an undivided interest, one or more may have the property partitioned by the court. 33.46(a). On partition, the court is required to apportion the taxes, P, I and costs to the owners in proportion to the interest of each owner. The court shall allow reasonable attorney's fees and costs of partition for each property partitioned and tax the cost against each owner in proportion. The fee becomes a lien until paid. 33.46(c).
- **DESIGNATION OF ORDER OF SALE OF PROPERTY.** 34.01(i) The owner may file with the selling officer a written request that the property be divided and only as many portions be sold as necessary to pay the amount due against the property. The written request shall describe the portions and specify the order in which the portions shall be sold.

PENALTY, INTEREST AND ATTORNEY FEES;

33.01 (a) Penalty, 6% of tax on first day calendar month delinquent (usually Feb 1) plus 1% per month for each month delinquent, then a total of 12% on July 1.

33.01(b) Interest, tax accrues interest of 1% per month for each portion of month delinquent for so long as taxes remain delinquent (up to 240%)

33.01(d) additional penalty of 50% regardless of duration if the tax is delinquent because the owner received an exemption not entitled to, homestead, over 65, not 55 year old surviving spouse

§ 33.07. ADDITIONAL PENALTY FOR COLLECTION COSTS FOR TAXES DUE BEFORE JUNE 1.

(a) A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that become delinquent on or after February 1 of a year but not later than May 1 of that year and that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30. The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes.

(b) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(c) If a penalty is imposed pursuant to this section, a taxing unit may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty.

(d) If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver a notice of delinquency and of the penalty to the property owner at least 30 and not more than 60 days before July 1.

§6.30 (c) The taxing unit may contract with an attorney to enforce the collection of delinquent taxes, compensation is set in the contract but the total amount may not exceed 20% of the amount of delinquent tax, P and I collected. (e) A contract that does not conform to requirements of §6.30 is void.

WAIVER OF PENALTIES AND INTEREST §33.011

- A taxing unit shall waive penalties and interest on a delinquent tax if and only if an act or omission of an officer of the taxing unit or appraisal district caused or resulted in the failure to pay the tax before the delinquency, e.g., a tax bill was mailed to an incorrect mailing address and returned by USPS.

NOT ALLOWED DEFENSES IN A DELINQUENT TAX SUIT. §41.41

The tax code provides for an administrative protest procedure, chapter 41. The protest procedure IS EXCLUSIVE hence none of the grounds that may be raised by protest may be raised

-In a defense to suit to enforce the collection of tax

-Or a basis of a claim for relief in a suit to prevent the tax collection process

-Or to obtain a refund

-THE ONLY DEFENSES ARE THOSE ALLOWED BY §42.09, and such must be raise by way of an affirmative defense,

- that defendant did not own the property on January 1 and
- that the property was not within the boundary of the taxing unit when tax imposed.

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§41.41 sets out other matters which must be contested during the administrative protest process, hence are NOT ALLOWED in defense to tax suit because the administrative remedy is the exclusive remedy:

DETERMINATION OF VALUE, UNEQUAL APPRAISAL, THE INCLUSION OF PROPERTY IN THE TAXING UNIT, THE DENIAL OR REMOVAL OF AN EXEMPTION OR PARTIAL EXEMPTION, THE DETERMINATION THAT THE PROPERTY OWNER IS THE OWNER, A DETERMINATION THAT THE USE OF THE PROPERTY HAS BEEN CHANGED, ANY OTHER ACTION THAT MAY ADVERSELY AFFECT THE PROPERTY OWNER.

PROCEDURE TO CONTEST CAD VALUATION

- Deadline to dispute CAD appraised value is 5/31 of the tax year or 30 days after valuation notice is sent, which ever date is later.
- MUST appeal a valuation decision or the denial of an exemption to the Appraisal Review Board (ARB)

TAX JUDGMENTS 33.48

- The taxing units are entitled to recover taxes, penalties, interest,
- usual court cost, cost of filing lis pendens
- expenses of foreclosure sale,, cost to determine the name and location of necessary parties and legal description of property
- attorney fees in the amount of **15%** of the total taxes, p & I,
- reasonable ad litem fees, and
- future taxes & P & I from date of judgment to date of sale.
- All to be collected out of the sale proceeds
- The taxing units are entitled to an order of sale

WRIT OF POSSESSION 33.51

(a) If the court orders the foreclosure of a tax lien, it should order the sale of the real property, and provide the issuance of a writ of possession to the sale purchaser a writ of possession, “no sooner than 20 days” following the date when the deed is recorded. The writ shall put the purchaser in possession w/o further order “subject to any notice to vacate that is required to be given to any tenant pursuant to Section 24.005(b) of the Property Code”

(c) The writ of possession shall order the officer executing the writ to:

(1) post a written warning that is at least 8-1/2 by 11 inches on the exterior of the front door of the premises notifying the occupant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning that is not sooner than the 10th day after the date the warning is posted; and

(2) on execution of the writ:

(A) deliver possession of the premises to the purchaser or the purchaser's assigns;

(B) instruct the occupants to immediately leave the premises and, if the occupants fail or refuse to comply, physically remove them from the premises;

(C) instruct the occupants to remove, or to allow the purchaser or purchaser's assigns, representatives, or other persons acting under the officer's supervision to remove, all personal property from the premises; and

(D) place, or have an authorized person place, the removed personal property outside the premises at a nearby location, but not so as to block a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assigns, or the officer executing the writ. The officer may not require the purchaser or the purchaser's assigns to store the personal property.

(e) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(f) The warehouseman's lien on stored property, the officer's duties, and the occupants' rights of redemption as provided by Section 24.0062, Property

Code, are all applicable with respect to any personal property that is removed under Subsection (d).

(g) A sheriff or constable may use reasonable force in executing a writ under this section.

(h) If a taxing unit is a purchaser and is entitled to a writ of possession in the taxing unit's name:

(1) a bond may not be required of the taxing unit for issuance or delivery of a writ of possession; and

(2) a fee or court cost may not be charged for issuance or delivery of a writ of possession.

ORDER OF SALE - TAX SALES 33.53 & 34.01

Conducted in the manner for judicial sale of similar property.

The district clerk shall prepare an order to an officer authorized to conduct execution sales, ordering the property sold, upon application by taxing unit.

The taxing unit may specify particular parcels to be sold and their order and may request more than one order as necessary.

The owner may request that the property be divided and that only as many portions be sold as necessary. Owner shall describe the portions and specify the order to be sold. Request must be delivered no later than 7 days before the date of sale.

A property shall be sold for the judgment amount or the market value, which ever is less, except the taxpayer may only purchase for the judgment amount and must be the highest bidder.

The officer must give written notice of the sale under TRCP 21a to each defendant or the defendant's attorney, state the date, time and location of the sale, and a brief description of the property. Notice must also be made by publication in a newspaper in the county. Failure to provide newspaper notice does not invalidate the sale.

If the bids are insufficient to pay the judgment amount the officer conducting the sale is required to bid the property off to the taxing unit, self executing. The taxing unit takes title for the benefit of all taxing units.

The officer conducting the sale prepares a deed, delivers it to purchaser after recording.

The deed vests good and perfect title in the purchaser subject only to the right of redemption and restrictive covenants or easements. 34.01(n).

EXCESS SALES PROCEEDS. §§34.03 & 34.04

A person, including a taxing unit, may file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds.

The petition must be filed before the second anniversary of the date of the sale.

The petition may be filed under the same cause number.

A copy of the petition shall be served, pursuant to TRCP 21a

At a hearing the court shall order that the excess proceeds be paid according to the priorities set out in the statute.

RIGHT OF REDEMPTION § 34.21

(a) The owner of real property sold at a tax sale to a purchaser other than a taxing unit that was used as the residential homestead of the owner ... may redeem the property on or before the second anniversary of the date on which the purchaser's deed is filed for record by paying the purchaser the amount the purchaser bid for the property, the amount of the deed recording fee and the amount paid by the purchaser as taxes, penalties, interest and costs on the property, plus a redemption premium of 25% of the aggregate total if the property is redeemed during the first year of the redemption period or 50% of the aggregate total if the property is redeemed during the second year of the redemption period.

If property was the owner's homestead, the owner could meet the homestead requirements under Section 11.13 by occupying the property as a principal residence or having the property owned through a beneficial interest in a qualifying trust by a trustor who qualified for the exemption. The legislative intent is to allow an owner who occupies a homestead an additional period of time to redeem that homestead. The mere failure to actually file an exemption application would deprive the owner of the right to redeem his homestead.

Nichols v. Lincoln Trust Company, 8 S.W.3d 346 (Tex.App.-Amarillo 1999, no pet.).

TAX BILL AND PAYMENT § 31.01 – 31.08

31.01 Bill to be mailed by Oct 1 or as soon thereafter as practicable to include a history of appraisals, rates and bills for past 5 years

31.02 Sets delinquency as “if not paid by February 1 of the year imposed” unless on military duty outside of U.S. etc

31.03 Split Payment Tax collector MAY provide that a person who pays one half of the taxes before Dec 1 may pay the remaining one half without P or I before July 1 of the following year

31.031 Installment payment of homestead taxes. An over 65 year old or disabled person with appropriate homestead exemption may pay taxes in ¼ installments IF TAXPAYOR NOTIFIES TAX COLLECTOR SIMULTANEOUSLY IN WRITING and pays the first installment before delinquency date, the second installment must be paid before April 1, 3rd before June 1 and last before August 1. If fail to make timely installment payment then taxpayer incurs P of 6% and I of 1% of delinquent payment

31.032 Installment payment of taxes on property in disaster area. Applies to residence homestead w/ fewer than 5 living units (or business entity under certain conditions).

31.035 Performance of service in lieu of payment of taxes on HS of elderly person... of teaching services in lieu of school taxes on HS

31.04 Postponement of Delinquency Date; if tax bill is mailed after January 10 the delinquency date is the first day of the next month following 21 days after the date of mailing...

31.05 Discounts

31.06 Medium of Payment Currency of the US, check, money order or credit card. Tax collector authorized to also collect a fee to process credit card payment.

31.061 Payment by conveyance of real property

31.07 Payments accepted

a. may pay on any one property w/o paying on others

b. may pay one tax collector w/o paying any others

c. A collector may accept partial payment of property taxes, which is allocated among all taxing units. Acceptance of a partial payment does not affect the date a tax becomes delinquent, but the P&I are incurred only on the unpaid taxes.

31.073 Restricted or Conditional payment prohibited.

31.075 Receipt. The taxing unit shall issue a receipt

31.08 Tax Certificate shall be issued upon request.

§ 11.432. HOMESTEAD EXEMPTION FOR MANUFACTURED HOME.

(a) For a manufactured home to qualify for an exemption under Section 11.13, the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home or be accompanied by a verified copy of the purchase contract showing that the applicant is the purchaser of the manufactured home, unless a photostatic copy of the current title page for the home is displayed on the computer website of the Texas Department of Housing and Community Affairs. The appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to determine whether a manufactured home qualifies for an exemption.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08. The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether the owner has elected to treat the home as real property or personal property and regardless of whether the home is listed on the tax rolls with the real property to which it is attached or separately.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

§ 32.014. TAX LIEN ON MANUFACTURED HOME.

(a) If the owner of a manufactured home has elected to treat the home as real property under Section 25.08, the tax lien shall be attached to the land on which the manufactured home is located.

(b) If the owner of a manufactured home does not elect to treat the home as real property with the land on which the manufactured home is located, the tax lien on the manufactured home does not attach to the land on which the home is located.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

(e) This section prevails over Chapter 1201, Occupations Code, to the extent of any conflict.

§ 32.015. TAX LIEN ON MANUFACTURED HOME.

(a) On payment of the taxes, penalties, and interest for a year for which a valid tax lien has been recorded on the title records of the department, the collector for the taxing unit shall issue a tax certificate showing no taxes due or a tax paid receipt for such year to the person making payment. When the tax certificate showing no taxes due or tax paid receipt is filed with the department, the tax lien is extinguished and canceled and shall be removed from the title records of the manufactured home. **The collector for a taxing unit may not refuse to issue a tax paid receipt to the person who offers to pay the taxes, penalties, and interest for a particular year or years, even though taxes may also be due for another year or other years.**

(b) In this section, "department" and "manufactured home" have the meanings assigned by Section 1201.003, Occupations Code; however, the term "manufactured home" does not include a manufactured home that has been attached to real property and for which the document of title has been canceled under Section 1201.217 of that code.

§ 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) **With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be**

enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business.

(a-2) A person may not transfer ownership of a manufactured home until all tax liens perfected on the home that have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply

the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

§ 32.06. TRANSFER OF TAX LIEN. (a) In this section:

(1) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(2) "Transferee" means a person authorized to pay the taxes of another.

(a-1) A person may authorize another person to pay the taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit:

(1) a sworn document stating:

(A) the authorization;

(B) the name and street address of the transferee authorized to pay the taxes of the property owner;

(C) a description of the property by street address, if applicable, and legal description; and

(D) notice has been given to the property owner that if the property owner is age 65 or disabled, the property owner may be eligible for a tax deferral under Section 33.06; and

(2) the information required by Section 351.054, Finance Code.

(a-2) A tax lien may be transferred to the person who pays the taxes on behalf of the property owner under the authorization for:

(1) taxes that are delinquent at the time of payment; or

(2) taxes that are not delinquent at the time of payment if:

(A) the property is not subject to a recorded mortgage lien; or

(B) a tax lien transfer authorized by the property owner has been executed and recorded for one or more prior years on the same property and the property owner has executed an authorization consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent in the manner provided by Subsection (a-1).

(a-3) If the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector shall certify in one document the transfer of the liens for all the taxes.

(a-4) The Finance Commission of Texas shall:

(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer;

(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section; and

(3) by rule prescribe the form and content of the sworn document under Subsection (a-1) and the certified statement under Subsection (b).

(b) If a transferee authorized to pay a property owner's taxes pursuant to Subsection (a-1) pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to that transferee. In addition, the collector or a person designated by the collector shall certify that the taxes and any penalties and interest on the subject property and collection costs **have been paid by the transferee on behalf of the property owner and that the taxing unit's tax lien is transferred to that transferee.** The collector shall attach to the certified statement the collector's seal of office or sign the statement before a notary public and deliver a tax receipt and the statement attesting to the transfer of the tax lien to the transferee within 30 days. The tax receipt and statement may be combined into one document. The collector shall identify in a discrete field in the applicable property owner's account the date of the transfer of a tax lien transferred under this section. When a tax lien is released, the transferee shall file a release with the county clerk of each county in which the property encumbered by the lien is located for recordation by the clerk and send a copy to the collector. The transferee may charge the property owner a reasonable fee for filing the release.

(b-1) Not later than the 10th business day after the date the certified statement is received by the transferee, the transferee shall send by certified mail a copy of the sworn document described by Subsection (a-1) to any mortgage servicer and to each holder of a recorded first lien encumbering the property. The copy must be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by

the mortgage servicer to the property owner, or the address of the holder of a recorded first lien as shown in the real property records.

(c) Except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien:

(1) in the manner provided by law for foreclosure of tax liens; or

(2) in the manner specified in Section 51.002, Property Code, and Section 32.065, after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736, Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section, if the property owner and the transferee enter into a contract that is secured by a lien on the property.

(c-1) If a transferee seeks to foreclose a tax lien on the property under Subsection (c)(2):

(1) the application for the foreclosure must be served on and name as parties the owner of the property and the holder of any recorded preexisting first lien on the property and must:

(A) allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution;

(B) state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution;

(C) state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity of the debt to the property owner and each holder of a recorded first lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code; and

(D) confirm that the property owner has not requested a deferral of taxes authorized by Section 33.06; and

(2) the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure.

(d) A transferee shall record a tax lien transferred as provided by this section with the statement attesting to the transfer of the tax lien as described by Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.

(e) A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes,

penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs.

(f) The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee.

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

(f-2) The rights granted by Subsections (f) and (f-1) do not affect a right of redemption in a foreclosure proceeding described by Subsection (k) or (k-1).

(f-3) Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided.

(f-4) Failure to comply with Subsection (b-1), (f), or (f-1) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust.

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien may require the property owner to provide written authorization and pay a reasonable fee

before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(h) A mortgage servicer who pays a transferred tax lien becomes subrogated to all rights in the lien.

(i) Except as provided by Section 33.445, a foreclosure of a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise.

(j) After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the transferee of the lien may foreclose the lien in the manner provided by Subsection (c) unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment. The proceeds of a sale following a judicial foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

(k) Beginning on the date the foreclosure deed is recorded, the person whose property is sold as provided by Subsection (c) or the mortgage servicer of a prior recorded lien against the property is entitled to redeem the foreclosed property from the purchaser or the purchaser's successor by paying the purchaser or successor:

(1) 125 percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period with cash or cash equivalent funds; and

(2) the amount reasonably spent by the purchaser in connection with the property as costs within the meaning of Section 34.21(g) and the legal judgment rate of return on that amount.

(k-1) The right of redemption provided by Subsection (k) may be exercised on or before the second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a

mineral interest. **For any other property, the right of redemption must be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record.** If a person redeems the property as provided by Subsection (k) and this subsection, the purchaser at the tax sale or the purchaser's successor shall deliver a deed without warranty to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

§ 32.065. CONTRACT FOR FORECLOSURE OF TAX LIEN.

(a) Section 32.06 does not abridge the right of an owner of real property to enter into a contract for the payment of taxes.

(b) Notwithstanding any agreement to the contrary, a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property shall provide for a power of sale and foreclosure in the manner provided by Section 32.06(c)(2) and:

(1) an event of default;

(2) notice of acceleration;

(3) recording of the deed of trust or other instrument securing the contract entered into under Subsection (a) in each county in which the property is located;

(4) recording of the sworn document and affidavit attesting to the transfer of the tax lien;

(5) requiring the transferee to serve foreclosure notices on the property owner at the property owner's last known address in the manner provided by Section 32.06(c)(2) or by a commercially reasonable delivery service that maintains verifiable records of deliveries for at least five years from the date of delivery; and

(6) requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the notice of sale in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes on the first page, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows: "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF

REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)."

(b-1) On an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property may obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder.

(c) Notwithstanding any other provision of this code, a transferee of a tax lien or the transferee's assignee is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure or judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

(d) Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section.

(e) If in a contract under this section a person contracts for, charges, or receives a rate or amount of interest that exceeds the rate or amount allowed by this section, the amount of the penalty for which the person is obligated is determined in the manner provided by Chapter 349, Finance Code.

(f) Before accepting an application fee or executing a contract, the transferee shall disclose to the transferee's prospective borrower each type and the amount of possible additional charges or fees that may be incurred by the borrower in connection with the loan or contract under this section.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1329, Sec. 3, eff. September 1, 2007.

(h) An affidavit of the transferee executed after foreclosure of a tax lien that recites compliance with the terms of Section 32.06 and this section and is recorded in each county in which the property is located:

(1) is prima facie evidence of compliance with Section 32.06 and this section; and

(2) may be relied on conclusively by a bona fide purchaser for value without notice of any failure to comply.

FORM #1: DEFENDANT'S ANSWER WITH PLEA IN ABATEMENT

CAUSE NO. _____

_____ ISD, CITY OF _____,	§	IN THE DISTRICT COURT OF
COUNTY OF _____, PLAINTIFFS	§	
	§	
VS.	§	_____ TH JUDICIAL DISTRICT
	§	
_____, DEFENDANT	§	_____ COUNTY, TEXAS

DEFENDANT _____'S ORIGINAL ANSWER
WITH PLEA IN ABATEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant, _____, who files his Original Answer with Plea in Abatement in the above-styled and numbered cause, and would show the following:

PLEA IN ABATEMENT

I.

That Defendant, _____, is entitled to abate this suit to collect delinquent property taxes pursuant to §33.06 of the Texas Tax Code. As demonstrated in the affidavit required to be filed by §33.06(a), which affidavit is attached hereto and labeled Exhibit "A" and made a part of this plea by reference; Defendant, _____ is disabled (*or over age 65*) and owns, occupies, and claims as his residence homestead the property on which the taxes, the subject of the above styled and numbered suit, are delinquent. By virtue of the foregoing, Defendant, _____, is entitled to defer collection of the taxes on said property, which is the subject matter of the above styled and numbered cause, for so long as he owns and occupies said property as a resident homestead.

GENERAL DENIAL

II.

Defendant, _____, exercises his legal rights as guaranteed by the Texas Rules of Civil Procedure to generally deny each and every, all and singular, the allegations contained in Plaintiffs' Original Petition, and demands strict proof thereof by a preponderance of the evidence.

PRAYER

III.

Defendant, _____, requests that all proceedings in this cause be abated; if the action is not abated, then that Plaintiffs take nothing by their petitions,

and for such other and further relief, general and special, legal and equitable to which he may be entitled.

Respectfully submitted,

_____ LEGAL AID, INC

(____) _____

(____) _____ (FAX NO.)

BY: _____

STAFF ATTORNEY

SBOT NO. _____

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Defendant, _____, who, being by me duly sworn on his oath deposed and said that he is the Defendant in the above-entitled and numbered cause; that he has read the above and foregoing Defendant's Original Answer with Plea in Abatement; and that the information contained therein is within his personal knowledge and is true and correct.

SUBSCRIBED AND SWORN to before me, this ____ day of June, 2010 by _____.

NOTARY PUBLIC, STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2010 a true and correct copy of the foregoing Defendant's Original Answer with Plea in Abatement has been mailed, certified mail, return receipt requested, to:

LINEBARGER GOOGAN, BLAIR & SAMPSON, LLP., attorneys for the plaintiffs, at _____, Austin, TX 78760-7428

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF _____ §

AFFIDAVIT

BEFORE ME, the undersigned official, on this day appeared _____, personally known to me, and first being duly sworn according to law upon his oath deposed and said:

“My name is _____. I ___ years old, I was born on _____, 19___. (*I am over age 65, attached hereto and marked Exhibit “B” is a true and correct copy of my birth certificate and driver’s license*)

"I am disabled. The Social Security Administration recognizes that I am disabled and sends me disability insurance benefits under the Federal Old Age, Survivors, and Disability Insurance Act. A true and correct copy of a Social Security Administration document that states that I am disabled and that I receive disability insurance benefits under the Act, is attached hereto and marked Exhibit "B"."

“I own the property described below and I occupy same as a residence homestead;
INSERT LOCAL ADDRESS; LEGAL DISCRPTION AND TAX ACCOUNT NUMBER.

"I have maintained my residence homestead on the above-referenced house and lot since _____. I have continuously occupied and maintained the property as my sole residence since.

"I hereby assert my rights under §33.06 of the Texas Tax Code to abate this suit for so long as I own and occupy the subject property as my residential homestead."

“I have personal knowledge of the facts stated herein and they are true and correct.”

SUBSCRIBED AND SWORN TO before me, this _____ day of _____, 2010 by _____.

NOTARY PUBLIC, STATE OF TEXAS

FORM # 2: PETITION FOR EXCESS PROCEEDS

Cause No. _____

_____ ISD,	§	IN THE DISTRICT COURT
CITY _____,		
_____ COUNTY	§	
	§	_____ JUDICIAL DISTRICT
V.	§	
	§	
_____	§	_____ COUNTY, TEXAS

**PETITION FOR RELEASE OF EXCESS PROCEEDS
AND NOTICE OF HEARING**

TO THE HONORABLE COURT:

_____, the petitioner, files this petition under Texas Property Tax Code Section 34.04 for excess proceeds now in the hands of the clerk of this court in the amount of \$ _____, deposited on April __, 20__, and for cause of action shows:

The real property described as: LOT __ BLK __, _____ Addition, an addition to the City of _____, _____ County, Texas, according to the map or plat thereof, recorded in Volume __, Page __, Map Records of _____ County, Texas, also known as 30__ _____, _____, _____ County, Texas, was the subject of a tax foreclosure in the above-entitled and numbered cause. The proceeds realized from that sale were in excess of the amount owed to the several tax collectors, and the excess proceeds in the amount of _____ was deposited in the registry of the court on April __, 20__. The defendant, _____ was the owner of the property before the tax sale.

Said excess tax sale proceeds rightfully belong to Petitioner, _____, and Petitioner is entitled to recover same pursuant to Section 34.04 of the Texas Property Tax Code.

WHEREFORE, premises considered, the Petitioner, _____, prays that the court enter its Order directing the Clerk of this Court to disburse the sum of \$ _____ to Petitioner as the excess tax sale proceeds from the sale of the aforesaid property, and for such other and further relief to which the Petition may be justly entitled.

Respectfully submitted,

NOTICE OF HEARING

Please take notice that this Petition is set for hearing on _____,
2010 at _____ in the District Court of _____ County, Texas.

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____, who, being by me duly sworn on her oath deposed and said that she is the Petitioner in the above-entitled and numbered cause; that she has read the above and foregoing Petition For Excess Proceeds; and that the information contained therein is within her personal knowledge and is true and correct.

SUBSCRIBED AND SWORN to before me, this ____ day of _____ 2010
by _____.

NOTARY PUBLIC STATE OF TEXAS

Certificate of Service

I certify that a copy of the Petition for Release of Excess Proceeds and Notice of Hearing was served on the parties listed below by certified mail on the _____ day of _____, 2010.

LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP
ATTORNEYS FOR THE TAX COLLECTORS

