



# *Independent Bankers Association of Texas*

## Compliance Helpline 800.749.4228

### Compliance Overview

## **Protect Your Real Estate Collateral – Tax Lien Lender Considerations**

All IBAT member banks make loans secured by real estate (both commercial and residential), and a substantial portion of those loans are kept “in-portfolio”. Additionally, many of these loans do not have an escrow arrangement for insurance and taxes. As property tax due dates are right around the corner, we wanted to make sure you were “covering your bases” with your customers responsible for paying their own taxes, especially with respect to tax lien loans.

In recent years, there has been a proliferation of entities and individuals offering “tax lien loans”. In many cases, these companies scour the tax records, and solicit those who have not yet paid their property taxes. While improvements have been made to this situation over the past several legislative sessions, there are still some significant pitfalls for you as a lender.

First and foremost, these lenders take a priority lien position in the property just as if they were the taxing authority. Your collateral value will clearly be diminished in virtually all of these situations. The loans generally are at high interest rates, and come with hefty fees, potentially impacting your borrower’s ability to repay. Thus, both your customer and your bank will be adversely affected if such a loan is used for taxes.

While most of you already have a good system in place, please consider some or all of the following actions to mitigate some potentially expensive problems:

- Procedures should be in place to annually contact your residential and commercial real estate loan customers (as necessary) to remind them that evidence of paid taxes is a requirement of the loan covenants. This is especially important if there are indications (late or missed payments, overdrafts, etc.) of financial problems. You may also wish to advise them that if they are having potential problems paying the taxes due, they should visit with their loan officer to discuss possible options, like adding the taxes on to their existing loan. Additionally, you might wish to remind them that allowing a priority lien to be imposed on the property (such as a tax lien) violates one of the promises in the deed of trust, and is an event of default;
- If you send payment notices or periodic statements, you might consider a notice on some or all of these stating that third party property tax lien transfers create a priority lien on the property and violates the loan agreement;
- Please remember that evidence of taxes paid does not disclose the source of the funds utilized to pay said taxes. If your customer has contracted with a tax lien lender, there is simply no way to tell other than to check the public records. A notice of tax lien transfer must be sent to the first lien holder of record under state law, but only “after the fact”; and
- Your home equity loan portfolio is obviously also subject to risk in this area.



Proper procedures and proactive measures can clearly alleviate potential problems and unnecessary diminution of collateral values.

Tax lien lenders are licensed and regulated by the Texas Office of Consumer Credit Commissioner (OCCC), 800-538-1579 or call Kelly Goulart at 512.275.2231 if you have questions or comments.

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