What to Do If You Get Sued by the Tax Collector

By Nikolaos P. Stavros

Many Texans do not understand what happens if they don't pay their real estate taxes on time. This article describes what happens when a property owner who is unable to pay his taxes gets sued by the Tax Collector and what he can do to save his property.

Background

If a property owner does not pay his property taxes, eventually the Tax Collector will file suit against the owner, obtain a court order to sell the property at a foreclosure auction, and use the proceeds from the foreclosure sale to pay the taxes.

Property taxes are assessed by different taxing entities such as the city, the county, the independent school districts, health districts, community college districts, municipal utility districts, etc. For example, some properties around Houston have over 10 taxing entities, each charging taxes to the property owner.

Each of the taxing entities has the ability to collect the taxes themselves. However, in most Texas counties, the county Tax Office collects on behalf of all of the applicable taxing entities. In those counties, individuals get only one bill and have to write only one check. In other counties that do not collect for all applicable taxing entities, the property owners have to pay as many as three different property tax bills to the respective taxing entities. A property owner should not assume that he will receive only one bill, and he should be sure to pay all bills that he receives, or he may get sued.

Without a state income tax, most government entities rely almost exclusively on property tax revenue to fund their operations. Many years ago, the Texas legislature passed laws that enable huge penalties and interest to be charged on delinquent accounts in the hopes that these large charges would ensure that people pay on time. These charges amount to at least

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

an extra 24%, and in fact most Texans face an extra 47% in fees, penalties and interest for the first year of their delinquent taxes.

Tax bills are due on January 1st, but they are not considered late until February 1st. After six months of being delinquent (on July 1st), Texas law allows the Tax Collector to initiate lawsuits to collect the delinquent amounts. Travis County, which includes the City of Austin, is the only county in the State of Texas that has not outsourced their collections to a law firm. Every other county obtains a law firm to handle its delinquent accounts.

On July 1st, Texas law allows the Tax Collector to initiate lawsuits to collect the delinquent amounts.

Collection Law Firms

Texas law allows these law firms to charge a collection fee for their services in addition to the delinquent tax amount. Most of the law firms charge an extra 20% fee, but some only charge 15%. Travis County charges 15% for their in-house collection efforts. If a taxpayer owes $10,000 in property taxes, the law firm will likely charge an extra 20% of that amount, or $2,000, to "collect" his bill. The taxing entity does not pay this bill. Rather, the delinquent taxpayer is responsible for this bill. So once July 1 hits, the $10,000 bill could become a $12,000 bill. And, this extra 15-20% continues to apply to the additional interest that gets applied each month.

On July 1 of each year, the taxing entities hand over their delinquent tax roll to the law firms that are hired to collect the delinquent taxes. At that point, delinquent taxpayers have to deal with the law firm instead of their local taxing entity. Anyone who calls to discuss his delinquent tax bill after July 1 will be directed to speak to an employee of the collection law firm.

Foreclosure lawsuits

Each law firm collection office handles delinquencies in its own way, but all of these firms will eventually initiate a foreclosure lawsuit against the delinquent taxpayer. Some start in July and others may wait a few years. It is impossible to predict when a taxpayer will be sued. The larger counties seem to be more aggressive. Experience shows that the higher the amount owed, the more likely one is to be sued.

The tax collection firm will send a demand letter to the property owner before initiating the lawsuit. This letter indicates that failure to respond will result in moving forward with a lawsuit. The lawsuit accomplishes several things: 1) it gets the attention of the property owner and makes them more likely to pay; 2) it results in the law firm obtaining a court order to foreclose in the event that the property owner does not pay; and 3) it generates legal fees for the law firm. All of the costs associated with a lawsuit, which can add up to thousands of dollars, are passed on to the taxpayer. Unlike other lawsuits where a property owner would have to pay the opposing law firm's fee based on the amount of time it actually spent prosecuting the suit, a collection law firm will get its fee regardless of how much time it actually spends on the case.

Foreclosure lawsuits are filed by collection law firms in a district court. They name all owners of record and all lienholders as defendants. For the lawsuit or foreclosure to be valid, all known owners and lienholders must be served proper notice. Such notice is normally served in person by a county constable. When an owner cannot be found, the law firm can post the notice in the local newspaper and serve "notice by publication". The more difficult it is for a law firm to discover the identities of the real owners, the less likely it is that they will initiate a lawsuit. Some lawsuits delay for up to ten years while the lawyers attempt to discover the identities of the original owners of the property or their descendants.

The taxing entities sue for a financial judgment including: 1) the amount of the original delinquent taxes; 2) all subsequent penalties and interest; 3) the law firm collection fees; and 4) all court costs, abstract fees, and attorney fees. At the conclusion of the suit, the court will award a judgment in favor of the taxing entity or entities and will order a sale of the property in order to satisfy the judgment amount. Only the taxes that are delinquent (including interest, penalties and fees), on the date of the judgment, may be included in the amount recoverable under the judgment by the taxing entities. Any subsequent taxes or amounts owed will remain as valid liens on the property. For example, when a lawsuit for delinquent property taxes takes two years to complete, the property may then have two additional years of property taxes due that were not part of the lawsuit. Subsequent year taxes are not eliminated by the act of a foreclosure.

What are your defenses?

There are very few defenses to a tax collection lawsuit that is executed correctly. A properly executed lawsuit must correctly name and serve all owners and lienholders, correctly identify the amount owed, and correctly identify the property on which taxes are owed. When this is the situation, the owner is going to "lose" the case at trial and the Tax Collector will get a court order allowing them to foreclose on the property.

Many people who have been sued for delinquent property taxes are shocked by how high the original tax bill had become and are further surprised by the huge penalties, interest, attorney fees, and court costs that have been piled on to their original debt. Once the taxing unit or its law firm initiates suit for these delinquent property taxes, it is way too late for a property owner to complain about the original tax amount. An original tax bill is based on what the county determines to be the value of your property. If a taxpayer disagrees with the valuation, he must protest the valuation before the end of May in the year the assessment is received. By the time the taxing entities sue an owner for taxes, the deadline to dispute the assessed value is far behind and will not be part of a "defense" to the collection suit.

When the court approves a foreclosure sale, it also orders a "Writ of Possession". This provides the authority for the foreclosure process to give the purchaser the right of possession of the real property immediately after the sale is completed. Once a judgment has been awarded to the taxing entity, they are free to initiate a foreclosure sale. The collection law firm handles setting up the foreclosure auction, while a county constable or sheriff will typically conduct the sale on the courthouse steps on behalf of the taxing entity.

What should you do if you are sued?

First, a property owner should be sure that the notice he has received is NOT a pre-lawsuit letter. The collection firms may send a letter that looks like the property owner has been sued but really is just an official letter indicating that he will be sued. If the property owner has not yet been sued, he can save a lot of money (in lawsuit costs) by getting his taxes paid as quickly as possible.

Property owners who have actually been sued must file a written "answer" to the lawsuit in the court records, or he will get a default judgment against him. Filing an answer to the suit will slow the process down slightly a little bit, but the property owner will still ultimately "lose" the suit and be faced with having his property sold at auction. Whether he files an answer or not, he will be responsible for all legal costs up to this point, BUT he can stop incurring any further costs by paying his delinquent bill as soon as possible. The delinquent taxpayer might choose to hire an attorney to represent him in the lawsuit, but that can certainly cost more. There is not much an attorney can do to help if someone is truly delinquent, other than possibly stalling to give the taxpayer time to obtain the money to pay the taxes. Usually, the costs to stall are too high to be justified.

Property tax lawsuits involve extra district court fees, abstract fees, and attorney fees that get added onto the taxpayer's bill.

In other types of lawsuits, the opposing parties can "settle" the lawsuit by compromise based on the situation. Tax suits are different in that the taxing entities and collection law firms have no discretion to forgive any amounts owed, based on the property owner's unusual or unfortunate circumstances. They have to follow the law, and the law provides no way for them to forgive valid taxes assessed to a property. This includes delinquent bills for assessments that are being contested. The taxpayer must pay the full amount owed, and if he wins a valuation protest, the county will refund the taxpayer the money. They will normally stop any lawsuit if the taxpayer pays at least the amount owed on the valuation provided in the protest.

The property owner might be able to negotiate a payment plan with the taxing entities. Taxing entities offer payment plans, but these are generally only for property owners who contact them before the end of March for that year's taxes. It might be worthwhile for a property owner to make a phone call to the collection law firm to see if a payment plan is an option. Some law firms don't offer payment plans, while others do. Frequently, the taxpayer will have to come up with at least 25% of the amount due in order to get on a plan.

Individuals who are permanently disabled or over 65 years of age may be able to qualify for a property tax deferment on their homestead (not available on non-homestead properties). A deferment allows a property owner to stop paying taxes until he no longer lives in the house. The taxes will still accumulate, but only at an 8% interest rate and no penalties or collection fees would apply. Most taxing entities will not allow individuals that are already delinquent to defer property taxes – only future taxes owed, but one should always inquire just to see if he might meet the conditions. To get a deferment, the property owner must apply and get approved by his local Tax Assessor's office.

One option for those being sued is to get a payment plan from a state-licensed property tax lender. The Texas legislature has created this option for taxpayers who are unable to pay their taxes. Most of these lenders do not require any down payment and will create a repayment plan that fits the individual's or business's budget. The costs of a payment plan with a property tax lender are generally much less than the costs associated with doing nothing about delinquent property taxes, and they are considerably less than doing nothing followed by a lawsuit. A property tax lender will be able to give the property owner lower monthly payments than he could get with the Tax Collector because the property tax lender can stretch out the time to pay over a longer period (up to ten years, if needed). Counties are restricted to offering plans that are between 12 to 36 months. In addition, a property tax lender will usually be able to act quickly to get the delinquent taxes paid before the costs of the delinquent property taxes go up further.

Summary

Delinquent property taxes are subject to lawsuits that add hefty additional costs to the taxpayer and can result in a foreclosure in which the property owner loses his property. Each month hundreds of properties are auctioned off at the county courthouses all across Texas. To avoid either a lawsuit or a foreclosure, delinquent taxpayers need to get their taxes paid.

Individuals who have been sued for delinquent property taxes should not ignore the suit. It will not go away and will only become a more expensive problem as time goes on. People who <u>are</u> able to pay the taxes and other associated costs should pay as soon as possible, the earlier they pay the better. But, property owners who do not have the money on hand should try to get help from a licensed property tax lender, or they should call the law office that is handling the lawsuit to inquire about their options. Failure to act quickly and definitively may result in property owners losing their property.

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