

TCAA 2011 Summer Conference June 8-10, 2011  
"Ex Mar Veritas"

## REAL ESTATE LIENS AND OTHER ISSUES

(OR "IS IT REALLY WORTH FORECLOSING THAT MOWING LIEN?")

Presented by:  
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Dallas, Texas

Texas City Attorneys Association 2011 Summer Conference  
South Padre Island, Texas  
June 8-10, 2011

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### New Sources of Revenue:

- New and Increased Fees
- Sale of Surplus City Property
- Becoming more aggressive on collections of delinquent fees and taxes
- Foreclosing on city property liens

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### Some Factors to Consider Before Foreclosing City Liens:

1. What will the cost of the lawsuit be to seek judicial foreclosure of the lien? In many instances, the property owner is "judgment proof" (a fancy phrase for "that broke with no money").
2. What is the value of the property?
3. Does the city have a real use for the property, or is the intent simply to turn around and sell it?
4. How much are the delinquent taxes due on the property?
5. What is the likelihood the city will have to continue to abate the nuisance on the property at city cost because of the broke and/or absent owner?
6. If the city forecloses its lien, will it wipe out all other liens other than tax liens?

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### Generally Applicable Issues:

# WHO IS THE OWNER OF THE PROPERTY?

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### Common Mistakes in Determining Ownership

- Relying solely on appraisal district and/or tax records
- Relying solely on the county clerk index
- Failing to check for later conveyances
- With business entities, failing to check for mergers and/or other entity sales.

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### Including a Good Legal Description In the Lien

- Address is not sufficient
- Appraisal District records description often not complete description
- Look at recorded documents in chain of title

**Even for Liens Where Owner Name Not Required – Legal Description a Must!!!**

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### Is the Property a Residential Homestead?

- Defined in Tax Property Code sec. 41.002
- Generally, if owner also lives on the property – probably homestead
- Absence of filing for homestead tax exemption not determinative

Based on prior case law, Texas Attorney General has held that liens that do not constitute a tax, such as special assessments, placed on homestead property cannot be foreclosed. Tex. Atty. Gen. Op. GA-237 (2004); Tex. Atty Gen Op. JC-386 (2001)

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### CHAPTER 342, TEXAS HEALTH & SAFETY CODE –

Source Statute for Ordinances Adopted by MOST Texas Cities Regarding Local Regulation of Common Nuisances and the Abatement of those Nuisances



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### Chapter 342 authorizes cities to:

- (a) require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease;
- (b) regulate the construction, making, filling, altering, repairing, cleaning and disinfecting of sewers and privies;
- (c) regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter; and
- (d) require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter

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### Characteristics of Tex H&S Code Ch. 342 Lien

<b>Who signs?</b>	Mayor, municipal health authority, or person designated by the mayor to sign.
<b>Name of Owner Required?</b>	Yes, if known. As this will constitute a lien on real property, some reasonable effort should be made to determine if appraisal district records are accurate.
<b>Other Special Content</b>	A statement as to the amount of expenses incurred by the city in abating the nuisance.
<b>Priority of lien.</b>	Inferior only to (a) tax liens and (b) liens for street improvements.
<b>File on Homestead?</b>	Yes, but may not be able to foreclose on homestead.
<b>How foreclosed in addition to Tex. Prop. Code ch. 51?</b>	In conjunction with a seizure and sale of the property for delinquent property taxes as allowed in Tex. Tax Code §§33.91, et.seq.
<b>Time in which to foreclose?</b>	No deadline.

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### CHAPTER 214, TEXAS LOCAL GOVERNMENT CODE –

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Per: Loc. Govt. Code §214.001 authorizes cities to adopt ordinances that require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:

1. dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
2. regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
3. boarded up, fenced, or otherwise secured in any manner if:
  - A. the building constitutes a danger to the public even though secured from entry; or
  - B. the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by (2), above.

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**If city abates the ordinance at city cost, city can place a lien on the property.**

<b>Who signs?</b>	City authorized officer of the city (recommend this be abrogated in the city ordinance).
<b>Name of Owner (Recipient)?</b>	Yes, if known. Must make "reasonable effort" to determine identity of owner. "Reasonable effort" is deemed to have been made if the city searches for the identity of the owner through review of the following records: (1) county and property records of the county in which the building is located; (2) appraisal district records of the appraisal district in which the building is located; (3) records of the Texas Secretary of State; (4) assumed name records of the county in which the building is located; (5) city tax records, and (6) city utility records.
<b>Other Special Considerations?</b>	1. A statement as to the amount of expenses incurred by the city and the remaining balance owed to the city. 2. Address of the owner.
<b>Priority of lien.</b>	1. Inferior to tax liens. 2. Superior to all other liens and mortgages <b>IF</b> the city makes a diligent effort or uses best efforts (depending on the statute's requirement) to determine the identity and address of each lien holder or mortgagee and provide the notices required by TLGC §214.001(d), (e), or (f).
<b>File on homestead?</b>	Yes, but may not be able to foreclose on homestead.
<b>How foreclosed in addition to Tex Prop. Code ch. 51?</b>	1. In conjunction with a seizure and sale of the property for delinquent property taxes as allowed in Tex. Tax Code §§33.91, et seq. 2. In judicial proceeding, if: a. a building or other structure on the property has been demolished (in other words, cannot foreclose if expenses related to relocating former residents or repair of the building); and b. the expenses that are secured by the lien has remained unpaid for at least 180 days after the lien was filed; and c. ad valorem taxes are delinquent on all or a part of the property.
<b>Time in which to foreclose?</b>	No deadline.

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**TLGC §214.0015**

Alternative remedy to cities for dealing with substandard buildings if the city has adopted ordinance authorized by TLGC §214.001.

If the city orders a building to be repaired, removed, or demolished pursuant to TLGC §214.001, and the owner fails to take the ordered action within the required time, the city may:

1. if the building is a residential building with 10 or fewer dwelling units, repair the building at the city's expense to the extent necessary to bring the building up to the minimum standards and assess the property for the expenses, or
2. assess a civil penalty against the property owner.

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### TLGC §552.0063-Water and Sewer System Assessment

- Assesses a property which benefits from the construction of water and/or sewer system improvements.
- Assessment may not levy more the 90% of the estimated costs of the improvements against the benefited properties.
- Ordinance must provide the time, term, and conditions of payment and default of the assessment.
- Must set forth the interest rate on the unpaid balance of the assessment, not to exceed 10% per year.
- Must providing notice and hearing as required by TLGC §552.069.
- Assessment against any particular property limited to the enhancement of value the water and/or sewer improvements will create for the property assessed.

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The notice of assessment must meet the following requirements and has the following priority:

Who signs?	City clerk or secretary, mayor, or other city officer performing the duties of any of the foregoing.
Form of Ordinance Required?	No.
Other Special Content	<ol style="list-style-type: none"> <li>Must substantially show that the governing body has determined by order, directive, or otherwise that water or sewer system improvements are necessary.</li> <li>Identify the required improvements by location or otherwise.</li> <li>A statement that a portion of the cost of the improvements is to be or has been specially assessed as a lien against the benefited property.</li> <li>Signatures on Notice of Assessment need not be acknowledged for filing purposes.</li> <li>One notice can be used to cover multiple water and sewer systems.</li> </ol>
Priority of lien.	Superior to any lien except state, county, school district, and municipal tax liens.
File on homestead?	Yes, but will not be able to foreclose for default.
How foreclosed in addition to Tex Prop. Code ch. 51?	N/A
Time in which to foreclose?	No deadline.

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### TLGC Ch. 372 – Public Improvement Districts

City can create public improvement districts for the purpose of providing a means to finance the construction of public facilities, amenities, and infrastructure to benefit development within a defined area of the city and/or the city's ETJ.

Funding for district's improvements usually comes from the levy of assessments on property located within the district based on a methodology and procedure adopted in accordance with Chapter 372.

Amount of assessment limited to the special benefits accruing to the property being assessed.

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### Practical Issues/Problems with Judgment Liens

1. Check the judgment date. Sometimes the abstract may not be filed for some years after the date of the judgment, meaning lien may have expired though 10 years has not passed since abstract filed.
2. Finding the plaintiff or plaintiff's attorney.
3. Getting the full or partial release of lien.

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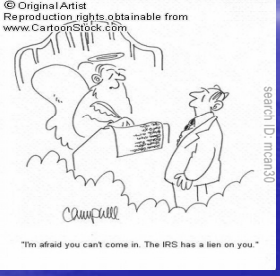
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### Federal Tax Liens – 26 USC §6321, Et. Seq.

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"I'm afraid you can't come in. The IRS has a lien on you."

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### Federal Tax Liens – 26 USC §6321, Et. Seq.

- Valid for 10 years plus 30 days from date of assessment (not date of filing)
- Can be extended for an additional 10 year period if refilled before the end of the initial period.

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### State Liens for Wages and Unemployment Taxes

- Lien for unpaid wages – Tex Labor Code §61.082
- Lien for failure to pay unemployment taxes – Tex Labor Code §213.057
- Lien for unpaid wages has priority over all liens except ad valorem liens
- Lien for unpaid unemployment taxes – priority not expressly stated, but arguably has a super priority because they are state taxes.

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### One final practice tip...

Appendix to Chapter 5, Texas Property Code titled *Texas Title Examination Standards* prepared and regularly reviewed and updated by Title Standards Joint Editorial Board of the State Bar of Texas Real Estate, Probate and Trust Law and Oil, Gas & Energy Resources Law Sections

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