

**TRICKS OF THE TRADE:
LAND TITLE AND TITLE TRANSFER PROBLEM-SOLVING TECHNIQUES
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The following outline and appendix are intended solely for informational purposes, to illustrate techniques for addressing problems frequently encountered in achieving insurability of land titles in Texas. The preparation of many title-related documents constitutes the practice of law. This presentation does not constitute legal advice of any kind and is not intended to encourage or facilitate the unauthorized practice of law. Specific information concerning individual rights and remedies, legal process or procedures, and preparation of legal documents should always be requested from or referred to a licensed attorney.

I. DECEDENTS' ESTATES: PERSONS DYING INTESTATE.

1. Small Estate Affidavit. If 30 days have elapsed since the decedent's death without any administration having been opened, the estate may be distributed to the heirs of an intestate decedent on the basis of a Small Estate Affidavit, so long as the value of the decedent's estate, excluding homestead and other exempt property, does not exceed \$50,000. This Affidavit must be executed by two disinterested witnesses and all of the potential distributees (heirs); it must be filed with and approved by the probate court; it must identify all assets and liabilities of the estate; and it must set forth the facts that establish the right of the heirs to receive the estate. [TEX. PROBATE CODE Sec. 137(a)]. When filed in the real estate (deed) records of the county in which the property is located, a certified copy of a Small Estate Affidavit will transfer title to the decedent's homestead (identified as such by legal description in the Affidavit), *but cannot operate to transfer title to other real estate*. [TEX. PROBATE CODE Sec. 137(c)].

PROBLEM-SOLVER: If the decedent left a modest estate containing no real estate other than the decedent's residence, the heirs-at-law can utilize this procedure to both establish their title by inheritance to the residence and to obtain a degree of formal authority for dealing with bank accounts and

automobile titles. This procedure is particular useful for an adult child or children surviving a deceased unmarried parent.

2. Unqualified Community Survivor. When no executor or administrator has qualified in the estate of a deceased spouse, the surviving spouse as “surviving partner of the marital partnership” has the power to sell or otherwise dispose of the couple’s *community* property (but *not* the decedent’s *separate* property) for the purposes of paying community debts and otherwise winding up community affairs, and the surviving spouse may exercise this power without formal qualification as community administrator. [TEX. PROBATE CODE Sec. 160].

PROBLEM-SOLVER: When no administration is pending or expected in a deceased spouse’s, this statute permits the surviving spouse to unilaterally convey any part of the couple’s community property in order to discharge a community debt and otherwise wind up “community affairs”, even when the decedent’s interest may have passed to children. A surviving spouse would execute such a deed in this stated capacity: “Jane Smith, acting individually and as surviving partner of the marital partnership of herself and her deceased husband, John Smith, pursuant to TEXAS PROBATE CODE Section 160.” The best application of this procedure would a situation in which: a) title to the property was originally acquired in the names of both husband and wife (i.e., clearly community property), and b) when the sale by the survivor will discharge a debt against the sale-property which was incurred while the decedent was alive (e.g., purchase or improvement mortgage or delinquent ad valorem taxes).

3. Affidavit of Heirship. TEX. PROBATE CODE Sec. 52A sets out a statutory form entitled “Affidavit of Facts Concerning the Identity of Heirs” authorized for use as a statement of facts in a proceeding to declare heirship or suit involving title to real property. If an affidavit of this type has been on record for at least five years in the county where the decedent resided while living or in the county where the real property is located, the affidavit is admissible in evidence as prima facie proof of the facts stated in it. [TEX. PROBATE CODE Sec. 52].

PROBLEM-SOLVER: To a certain extent, this statute codifies the practice of “informal proof of heirship”—in other words, the use of third-party affidavits-of-heirship that attest to the facts of family and marital history and identity of survivors which permit an informal determination of heirship. This procedure is utilized when no administration in the decedent’s estate is pending or expected and when the facts of heirship are not in controversy. If the decedent died within the preceding ten years, such an affidavit will normally also affirm that the his/her unsecured debts (including those for last illness and burial) were paid and that the value of the decedent’s estate was not sufficient to incur federal estate and Texas inheritance taxes. The affidavit

may also specify the decedent's interest in particular real property. This type of affidavit is typically filed in the real estate records of any county where the decedent owned an interest in real property. To document the real property records in multiple counties, the same original affidavit of heirship can be successively filed in the various counties; or a certified copy can be obtained from the County Clerk of any county where it is recorded, for filing in the records of another county. See APPENDIX for the form of affidavit set out in TEX. PROBATE CODE Sec. 52A.

II. DECEDENTS' ESTATES: PERSONS DYING TESTATE.

1. Affidavit of Heirship. See discussion under No. I(3) above.

PROBLEM-SOLVER: When an administration is not necessary in the estate of a decedent who left a will devising his/her property to the same individuals who would inherit by statutory descent and distribution, formal probate of the will is unnecessary. Disposition of the decedent's property can be established by an affidavit-of-heirship modified to state that the decedent died testate (not intestate) and incorporating an attached copy of the executed will as an exhibit to the affidavit. See APPENDIX for a sample of this modified affidavit-of-heirship.

2. Muniment of Title. When no administration is necessary, a decedent's written will can be admitted to probate solely as a "muniment of title"—in other words, creating an official record of ownership transfer occurring under the terms of the will. [TEX. PROBATE CODE Secs. 89A—89C]. When more than four years has elapsed since the decedent's death, the will can still be probated as a muniment, but the applicant must demonstrate that he or she is was "not in default" for failing to present the will for probate within the initial four-year period following death of the decedent. [TEX. PROBATE CODE Sec. 73(a)]. If a will is offered for probate more than four after the decedent's death, notice of the application must be given to all persons who would constitute the decedent's heirs-at-law if the decedent had died intestate. [TEX. PROBATE CODE Sec. 128B].

PROBLEM-SOLVER: An individual may choose to make a will for the purpose of dealing with a specific family situation, such as a mentally-impaired adult child or an adult child who left home and whose whereabouts are unknown, which would create serious difficulty if the individual died intestate. No written will has any legal effect until it has been admitted to probate in one context or another. The muniment-of-title procedure avoids an actual administration of the decedent's estate and provides a cost-effective means of giving effect to the decedent's intent in making the will.

3. Wills Probated Out-of-State. If a decedent's will has been probated outside of Texas, copies of the will and the order admitting it to probate can be filed in the deed records of a Texas county in which the decedent owned real property; and, when filed, these copies will, in effect, operate as a muniment of title. [TEX. PROBATE CODE Sec. 96]. To be effective as such, the copies of the will and order must be "attested" (certified) by the clerk of the probate court in which the will was admitted *and must have a certificate from the probate court's presiding magistrate certifying that the clerk's attestation is in "due form"*. [TEX. PROBATE CODE Sec. 95(c)]. Once this procedure has been accomplished, no other formalities are required in Texas in order for a qualified executor to exercise a power of sale granted in the will, and the same is true for a testamentary trustee who is named in the will and given power of sale. [TEX. PROBATE CODE Sec. 107].

PROBLEM-SOLVER: When a "foreign will" (one probated outside of Texas) grants the executor an express power to sell and convey the decedent's property, this procedure permits the executor to exercise this power of sale WITHOUT obtaining Letters Testamentary in an ancillary probate proceeding brought in a Texas county where the decedent owned real property. See APPENDIX for a sample magistrate's certificate authenticating court clerk's certification of copies.

III. MINOR'S ESTATES.

1. Sale of Minor's Interest Without Guardianship. When the net value of a minor's interest in real estate is \$100,000 or less, any parent (natural or adoptive) or managing conservator of the child may apply to the probate court for an order authorizing the parent/conservator to sell the minor's interest without first being appointed guardian of the minor's estate. Sale of the minor's interest must be for cash. A minimum of five days must elapse between filing of the application and entry of the court's order. The court must specifically determine that the sale is in the best interests of the minor. After closing, the minor's net proceeds of sale must be deposited in the registry of the probate court, and withdrawal of the funds is subject to the court's approval. Venue for this proceeding is the same as for appointment of a guardian. A sale made under this statute cannot be disaffirmed when the minor achieves the age of majority. [TEX. PROBATE COURT Sec. 889].

PROBLEM-SOLVER: This procedure provides an efficient means of selling a minor child's interest that has vested directly as the result of careless conveyancing, termination of a trust, or inheritance through a decedent's estate that is not subject to a pending administration. It avoids the costs and difficulties associated with an extended formal guardianship when such a proceeding is not otherwise considered necessary.

2. Distribution of Minor's Interest to Custodian. If an interest in real estate has vested directly in a minor child as part of a decedent's estate under administration, the independent executor or independent administrator of the estate may transfer the interest to a statutory custodian for the minor under the Texas Uniform Transfers to Minors Act. The transfer must be authorized by the probate court if the value of the minor's interest exceeds \$10,000. [TEX. PROPERTY CODE Sec. 141.007]. The deed from the executor or administrator must identify the grantee as follows: "*(custodian's name)*, as Custodian for *(minor's name)* under the Texas Uniform Transfers to Minors Act." [TEX. PROPERTY CODE Sec. 141.010(a)(5)]. So long as he or she acts expressly in the capacity of custodian for the minor under the Act, the custodian has complete power and authority to sell and convey custodial real property. [TEX. PROPERTY CODE Sec. 141.014].

PROBLEM-SOLVER: If the real property cannot or will not be sold by the independent executor/administrator during administration of the decedent's estate, this procedure provides a means of distributing the minor's interest out of the estate and creating an arrangement under which a parent or other adult can later sell the minor's interest without judicial supervision/approval of any kind.

IV. INCAPACITATED PERSONS.

1. Sale of Homestead by Spouse. In order to sell all or part of a marital homestead, both spouses must execute the deed, even when title to the property is held in the name of only one of them. [TEX. FAMILY CODE Sec. 5.001]. However, when one spouse has become incompetent, the other spouse may file a sworn petition seeking an order authorizing him/her to sell the homestead without the participation of the incompetent spouse, if the homestead is community property. [TEX. FAMILY CODE Sec. 5.102]. This procedure is also available when the homestead is the separate property of the competent spouse (but not if the homestead is the separate property of the incompetent spouse). [TEX. FAMILY CODE Sec. 5.101]. The petition cannot be brought until sixty (60) days after the non-participating spouse has been medically determined to be incompetent. Notice and a hearing are required; the court may also require appointment of an attorney ad litem for the incompetent spouse and/or a bond; and, in its order, the court may impose restrictions or conditions on the applicant-spouse, including a requirement that the proceeds of sale be paid into the registry of the court for subsequent approved disbursement. [TEX. FAMILY CODE Secs. 5.103—5.106]. If the homestead is community property and the non-participating spouse has been *judicially* declared incompetent, the other spouse has an automatic power to sell the property, without court authorization or supervision. [TEX. FAMILY CODE Sec. 5.107].

PROBLEM-SOLVER: When one spouse has become incompetent, this abbreviated procedure is available to allow a sale of the marital homestead by the competent spouse acting alone, so long as no portion or interest qualifies as part of the incompetent spouse's separate property. This procedure avoids the cost and complexity of a formal extended guardianship of the incompetent spouse's estate when a guardianship has not been found to be necessary for other reasons. *NOTE: Under the FAMILY CODE provisions cited above, this same procedure is also available (with similar limitations and possible conditions) when one spouse's whereabouts are unknown following desertion or abandonment of the other spouse.*

2. Sale of an Adult Ward's Interest. When an individual has been already been appointed as guardian of the person of an incompetent/incapacitated adult, the guardian of the ward's person can apply to the probate court for an order authorizing him/her to sell the ward's property without additional appointment of the applicant as guardian of the ward's estate. To qualify for this procedure, the net value of the adult ward's interest in the property cannot exceed \$100,000. Venue, pleadings, procedure, and handling of funds are the same as with the sale of minor's interest by parent or conservator without guardianship [see III(1) above]. A sale done pursuant to an order of this type is not subject to later disaffirmance by the ward if he or she regains capacity. [TEX. PROBATE CODE Sec. 890].

PROBLEM-SOLVER: This procedure can be employed when a mentally-impaired or incapacitated adult (the ward) is found to own a previously undiscovered interest in property or else inherits an interest through the estate of a deceased parent or sibling. If a guardian of this individual's person has previously been appointed, the same guardian may be able to use this procedure to sell the minor's interest, thereby avoiding the cost and complexity of an extended guardianship of the ward's estate.

- V. DIVISION ON DIVORCE. When, as part of a divorce settlement and/or decree, community property is divested from one spouse and awarded entirely to the other spouse, evidence of the transfer must be filed in the real estate records of the county where the real property is located. This requirement applies even when the divorce occurred in the same county. If the transfer-on-divorce is not memorialized in the real estate records, the divested spouse's interest remains exposed to claims of his/her creditors. Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986). A divorce decree divesting and awarding community property is a form of judicial partition subject to recordation in order to support a right of recovery to land under TEX. PROPERTY CODE Sec. 12.005.

PROBLEM-SOLVER: Customarily, the divorce decree will direct execution of a deed from the divested spouse to the one who is receiving the property as part of the community property division. When such a deed is filed, nothing further is

required to establish the recipient-spouse's full ownership of the property. If the divested spouse refuses to provide the deed (or if the deed becomes lost prior to being filed for record and cannot be readily replaced), a certified copy of the divorce decree can be filed in the real estate records in lieu deed, so long as the decree clearly divests and awards the property by reference to a sufficient legal description. If the decree lacks a sufficient legal description, but the recipient-spouse has remained in possession, personally or through tenants, and has paid the taxes for a post-divorce period of at least ten (10) years, a certified copy of the decree can be made an exhibit to a affidavit that clarifies the property description while also setting forth the facts that would tend to establish title by limitation against the divested spouse. See APPENDIX for a sample affidavit of this type.

VI. TECHNICAL DEFECTS IN RECORDED DOCUMENTS. Once the requisite period of time has passed, TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.033 eliminates a number of documentary-type defects in title, by creating a limitation period of four (4) years on any action for recovery of real property conveyed by the defective instrument, which would raise the defect as a basis for the cause of action. This statute does not extend to forged documents, but does otherwise cover the following defects (**PROBLEM-SOLVERS!**):

1. The instrument was one executed on behalf of a corporation or partnership, but was not executed by the proper officer (corporation), partner (general or limited partnership, or manager or member (limited liability company); or else the real estate records lacks evidence that required authorization was given for execution of the instrument. [Sec. 16.033(a)(1) and (a)(4)].
2. The instrument appears to lack a corporate seal and was given by a corporation that had not by prior resolution dispensed with use of the corporate seal on real estate documents. [Sec. 16.033(a)(2) and (a)(3)].
3. Although the instrument was otherwise properly executed, the corporation, limited partnership, or limited liability company had in fact already lost its legal existence through voluntary dissolution or withdrawal, expiration, or involuntary forfeiture or cancellation of its charter or certificate of existence. [Sec. 16.033(a)(5)].
4. The instrument was executed by a trustee, but the real estate record lacks any evidence of the trustee's authority or any corroboration of facts stated in the document which asserted the trustee's authority. [Sec. 16.033(a)(7)]. *(NOTE: This subsection is applicable to a four-year-old foreclosure conducted by a substitute trustee for whom no appointment as substitute trustee appears on record.)*
5. The instrument appears to have been recorded on the strength of a legally defective acknowledgement, including, but not limited to, acknowledgement made in an individual capacity rather than a representative capacity. [Sec. 16.033(a)(6) and (a)(8)].
6. On its face, a deed indicates that, without retention or creation of any express lien or mortgage, the seller of real property deferred payment of

consideration, raising the possibility of an implied vendor's lien against the property. [Sec. 16.033(a)(9)].

VII. **LIMITATION PERIODS APPLICABLE TO LIENS.** Most (*but not all*) liens encumbering real property are subject to statutory limitations of action which operate to make the lien "barred" or unenforceable after expiration of the limitations period.

1. Vendor's Liens, Deeds of Trust, and Mechanic's and Materialman's Lien Contracts. In the absence of a recorded contractual extension of maturity or any tolling of limitation, a power of sale permitting non-judicial foreclosure of a contractual lien securing debt against real estate becomes "barred" (void and unenforceable) when four (4) years have elapsed following contractual maturity of the debt, and the same applies to a cause of action for judicial foreclosure of the lien. [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.035(d)].

PROBLEM-SOLVER: Texas Department of Insurance regulations authorize Texas title companies to rely on the applicable statute of limitations as a basis for waiving a formal release of lien, whenever expiration of the four-year post-maturity limitations period is evident in the real estate record. [Procedural Rule P-11(b)(3), Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas]. If the Deed of Trust or other lien-instrument does not, on its face, disclose the date on which the secured debt matured (and a written release cannot be readily obtained), the lien can be documented as barred by means of an affidavit affirming that the secured debt was paid and having as an exhibit a copy of the original promissory note reflecting that its final payment-date occurred more than four years ago. See APPENDIX for a sample affidavit of this type.

2. Federal Tax Liens Perfected by Recorded Notice. If perfected by Notice of Federal Tax Lien filed on or after November 5, 1990, a federal tax lien remains enforceable for ten (10) years following the date of the tax assessment. Refiling of the Notice within either the 10th year or 30 days following expiration of ten years will maintain unbroken priority from the date that the original Notice was filed. If the tax debt remains unpaid, a new Notice of Federal Tax lien can still be filed after final expiration (10 years plus 30 days) of an earlier Notice, but such a newly perfected federal tax lien has priority only from its date of filing. [26 U.S.C.A. 6501, 6502].

PROBLEM-SOLVER: To quickly ascertain whether or not a particular recorded Notice of Federal Tax Lien is still a "live" lien, simply refer to Column (e), captioned "Last Day for Refiling", in the body of the Notice. If each date listed in this column has passed, the Notice has expired as a lien against real property. Any new filing of a Notice, either prior to or after

expiration of the earlier one, will appear in the County Clerk's records as a separate federal tax lien.

3. Federal Estate Tax Lien: The federal lien for collection of estate tax is an "inchoate" lien—in other words, one that exists and is enforceable without any filing in the real estate records. Everyone dealing in a decedent's property is considered, by reason of the decedent's death, to be on notice of this automatic lien. The lien expires ten (10) years from the decedent's date of death. [26 U.S.C.A. 6324].
4. Ad Valorem Real Estate Tax Lien. The statutory lien securing payment of ad valorem real estate taxes in a particular calendar year expires twenty (20) years after the taxes become delinquent (February 1st of the year following assessment), unless a suit for collection is pending at the time. [TEX. TAX CODE Sec. 33.05].
5. State Taxes Liens. Strictly speaking, Texas law provides that a state tax lien attaches to real property owned by the taxpayer on or after the date that the lien is filed and that the lien continues until the tax secured thereby is paid. [TEX. TAX CODE Sec. 113.105]. *However, the Comptroller of Public Accounts is barred from bringing any suit for collection of a tax when three (3) years have passed following recordation of a lien to secure the tax.* [TEX. TAX CODE Sec. 111.202].
6. Judgment Liens (Non-Federal). A non-federal judgment lien, created by filing and indexing an abstract of the judgment, expires ten (10) years after the date on which the abstract was recorded and indexed in the County Clerk's records (*except an abstract of judgment filed to secure child-support arrearage; see No. 8 below*). [TEX. PROPERTY CODE Sec. 52.006].
7. Judgment Liens (Federal). If the underlying judgment in favor of the United States was rendered on or after May 29, 1981, a perfected federal judgment lien will extend for a period of twenty (20) years following the date on which an abstract of the judgment was filed and indexed in the County Clerk's records. Federal judgments include those in favor of the United States by name, as well as those in favor of federal agencies or corporations (for example: the Small Business Administration; the Department of Veterans Affairs; the Department of Housing and Urban Development; and the Federal Deposit Insurance Corporation when acting in its corporate capacity).
8. Child Support Lien. A lien for child-support arrearage, perfected by the filing of either an abstract of judgment or a notice of child support lien, continues until the support obligation is fully paid and *is not otherwise subject to any statutory limitation of action*. [TEX. FAMILY CODE Sec. 157.318].

9. Municipal Paving Lien. The statutory lien securing payment of a municipal assessment for street improvements is inferior only to liens for county, city, or school district ad valorem taxes, and *enforcement of the municipality's assessment lien is not subject to any defense based on limitation of action*. [TEX. TRANSPORTATION CODE Sec. 313.054].
10. Municipal Clearance/Demolition Liens. Likewise, as created in statutes authorizing assessments for expenses incurred to remedy health hazards (mowing weeds, removing refuse, etc.) or to secure, repair, or demolish substandard structures, liens securing these municipal assessments *are not made subject to any limitation of action*. [TEX. HEALTH & SAFETY CODE Sec. 342.007; TEX. LOCAL GOVERNMENT CODE Sec. 214.002].

VIII. TITLE BY LIMITATION (ADVERSE POSSESSION). Limitation-title statutes can be used defensively, to defend against an action brought for recovery of land, or “offensively” to support a claim of ownership asserted in a suit brought to establish title to the land.

1. Three-Year Statute [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.024]. To qualify under this statute, the claimant must have exercised peaceable (undisturbed) and adverse possession of the land for a period of at least three (3) years under a recorded chain of title which extends from the occupant back to the sovereign and is “regular” with the exception of only minor defects.
2. Five-year Statute [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.025]. To qualify under this statute, the claimant must have exercised peaceable (undisturbed) and adverse possession of the land, through actual use and enjoyment, for a period of at least five (5) years under a duly registered deed and is required to have paid all taxes assessed against the land for five (5) consecutive years *without delinquency*.

PROBLEM-SOLVER: If a judgment-debtor named in recorded abstract of judgment conveys property to bona fide purchasers who thereafter occupy it as their residence and otherwise meet the requirements of the three- and five-year limitation statutes, the judgment lien is then extinguished as to the property. Jones v. Harrison, 773 S.W.2d 759 (Tex.App.—San Antonio 1989). See APPENDIX for a sample affidavit by which subsequent purchasers may use under these circumstances.

3. Ten-Year Statute [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.026]. To qualify under this statute, the claimant must have exercised peaceable (undisturbed) and adverse possession of the land, through actual use and enjoyment, for a period of at least ten (10) years.
4. Twenty-Five-Year Record Title Statute [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.028]. To qualify under this statute, the claimant

must have maintained peaceable (undisturbed) and adverse possession of the property for a period of at least twenty-five (25) years, while acting in good faith under a recorded deed or other instrument, whether valid or invalid, which purports to convey title to the occupant/claimant. Unlike other limitations-title statutes, a claim of title under this statute will mature without interruption by the legal incapacity of a person against whom the claim is asserted.

5. Twenty-Five-Year “Dominion” Statute [TEX. CIVIL PRACTICE & REMEDIES CODE Sec. 16.029]: Without being the named grantee of a recorded deed purporting to convey the property, a claimant may qualify under this statute by demonstrating that, for a continuous period of at least twenty-five (25) years, the claimant has openly exercised dominion (control) over the property and has paid all taxes assessed against it without delinquency. A claim of title under this statute can be defeated by showing that a record-owner has either exercised dominion (control) over the property or else has paid taxes assessed against it for one or more years during the same 25-year period.

IX. AD VALOREM TAX FORECLOSURES.

A. PROCEDURE.

1. Statutory Tax Lien. By law, the tax lien automatically attaches to real property on January 1st of the year in which ad valorem taxes will be assessed, and the lien secures all taxes, penalties, and interest ultimately imposed by each taxing entity having the power the tax the property. [TEX. TAX CODE Sec. 32.01]. Ad valorem taxes become due when the property owner receives a tax bill (generally in October of the tax year) and become delinquent (and subject to foreclosure) if not paid before the following February 1st. [TEX. TAX CODE Sec. 32.02].
2. Tax Foreclosure Suit. Since no contractual power of sale exists in connection with an ad valorem tax lien, it is only enforceable by judicial foreclosure (judgment ordering foreclosure). A suit for foreclosure may be brought by a taxing unit at any time after its tax has become delinquent. [TEX. TAX CODE Sec. 33.41]. The taxing unit bring suit must join as defendants “in rem” all other taxing units that have delinquent-tax claims against any part of the property. [TEX. TAX CODE Sec. 33.44(a)]. If a taxing unit has pled for foreclosure of its lien, the judgment rendered by the court must contain an order that directs sale of the property to satisfy the amount of judgment granted for delinquent taxes. [TEX TAX CODE Sec. 33.53(a)]. If a taxing unit joined as defendant “in rem” fails to assert its claim for delinquent taxes, its lien securing those taxes will be extinguished by the judgment entered in the suit. [TEX. TAX CODE Sec. 33.44(c)].

3. Tax Foreclosure Sale. Any taxing unit receiving judgment for taxes in the foreclosure suit may apply to the District Clerk for an order of sale which directs the appropriate officer (sheriff or constable) to sell the property in satisfaction of the tax judgment. [TEX. TAX CODE Sec. 33.53(b)]. On receiving the order of sale of real property, the executing officer must endorse the order, and the officer's endorsement operates as levy on the property and proceeds as an execution sale. [TEX. TAX CODE Sec. 34.01(a)—(b)]. The officer must send the prescribed notice of tax sale to each named defendant in the judgment or to that person's attorney and must advertise the sale in a newspaper published in the county of the sale; but, if no newspaper is available, posting of notice at three public places—one of which must be the county courthouse—is a permissible substitute. [TEX. TAX CODE 34.01(g)—(h)]. At the sale, if no bid is received from the public which equals or exceeds the lesser of the taxes owned or value of the property, the officer must automatically bid the property off to the taxing entity who initiated the foreclosure, and the entity receives title for the benefit and benefit of itself and all other taxing units that establishes tax liens in the underlying suit. [TEX. TAX CODE Sec. 34.01(j)—(k)].
4. Tax Deed. The officer conducting the sale must prepare and deliver a deed to the tax sale purchaser or to another person specified by the purchaser or to the taxing unit receiving title in the absence of a sufficient public bid. [TEX. TAX CODE Sec. 34.01(m)]. The deed transfers "good and perfect title", including the foreclosed owner's right of use and possession, subject only to the foreclosed owner's statutory right of redemption and matters of title recorded prior to January 1st of the year in which the earliest foreclosed tax lien arose. [TEX. TAX CODE Sec. 34.01(n)].

B. REDEMPTION.

1. Deadlines for Redemption by Foreclosed Owner.
 - a. Residential Homestead: on or before the second anniversary of the date on which the tax sale deed was filed for record in the Office of the County Clerk [TEX. TAX CODE Sec. 34.21(a)—(c)].
 - b. Land Designated for Agricultural Use: Same as residential homestead (two years from filing of the tax deed).
 - c. All Other Real Property: 180th day following the date on which the tax sale deed was filed in the Office of the County Clerk.
3. Consideration for Redemption. In all cases, to obtain redemption of the property, the foreclosed owner must pay the bid-amount credited at the tax sale, plus the fee to record the tax deed and any amounts advanced by purchaser for subsequent taxes or costs associated with the property. If the purchaser was a private person or entity, the foreclosed owner must also pay a redemption premium (an additional 25% if redemption occurs within one year, or an additional 50% if redemption occurs within two years). [TEX. TAX CODE Sec. 34.01(a), (c)]. The premium is not collected if the property

was bid off to the taxing entity and then redeemed by the foreclosed owner prior to resale by the taxing entity. [TEX. TAX CODE Sec. 34.01(b)].

4. Documentation of Redemption [TEX. TAX CODE Sec. 34.21(f)].
 - a. Voluntary Redemption. If a tax sale purchaser other than a taxing entity agrees to accept the amount offered in redemption by the foreclosed owner, the purchaser evidence the fact of redemption by executed a quitclaim deed to the foreclosed owner.
 - b. Involuntary Redemption. If a tax sale purchaser other than a taxing entity cannot be located in the county where the property is located or is not a resident of the county, the foreclosed owner may deposit the redemption payment with the County Tax Assessor-Collector, and the receipt from the Assessor-Collector functions as a redemption certificate.

C. **TAXING ENTITY'S RESALE.** When, in the absence of a sufficient bid, the foreclosing entity receives title by tax deed, the entity can proceed to resell the property; but, resold property remains subject to any unexpired right of redemption in favor of the prior owner. [TEX. TAX CODE Sec. 34.05(a)]. Resale can occur by means of another public auction sale conducted by the appropriate officer, and, at such a sale, any price may be accepted. [TEX. TAX CODE Sec. 34.05(b)—(d)]. Or, the property can be resold by private sale in which, unless all involved taxing units consent to a lower price, the minimum acceptable price is the value of the property or the total of tax judgments against the property, whichever is less. [TEX. TAX CODE Sec. 34.05(h), (i)].

D. **PROBLEM-SOLVERS: TAX TITLE LIMITATION OF ACTIONS.** When actions to recover property from a tax sale purchaser have become barred by statute, the purchaser or the purchaser's successor-in-interest is held to have full title to the property, *precluding all other claims*. [TEX. TAX CODE Sec. 33.54(c)]. Once these periods of time have elapsed, the person who acquires the property for value and in reliance on the tax sale is entitled to *conclusively* presume that the tax sale was valid and holds title free and clear of the right, title, and interest of *any* person that arose before the sale, subject only to an unexpired right of redemption and matters recorded prior to inception of the earliest foreclosed tax lien. [TEX. TAX CODE Sec. 34.08(b)]. The limitation periods are:

1. For residential homestead or property designated for agricultural use (corresponding to the classes of property receiving a two-year redemption period): Two (2) years following the date on which the deed to the tax sale purchaser was filed in the County Clerk's Office;
2. For all other real property (corresponding to property receiving the 180-day redemption period), except property deed to a taxing entity:

One (1) year following the date on which the deed to the tax sale purchase was filed in the County Clerk's Office;

3. For all property received and re-sold by taxing unit: One (1) year following the date of the resale; or,
4. As to any person not subject to the foregoing limitation periods (e.g. a prior owner who was not served with citation in the tax suit and who pays taxes on the property following the tax sale): Two (2) years after the claimant's cause of action accrues.

X. OTHER TAX-RELATED PROCEDURES.

A. Alternate Disposition of Re-Sale Property. A municipality may, by City Council action, authorize a preferential method for disposing of properties acquired by the city at ad valorem tax foreclosure sales. If enacted, the preference may favor non-profit organizations that fall into either of two categories [TEX. TAX CODE Sec. 34.015]:

1. a nonprofit organization that develops low-income housing as a primary activity in promoting community-based revitalization of areas within the municipality; or
2. a Texas 501(c)(3) nonprofit corporation that has been incorporated for at least one (1) year, that has a stated corporate purpose of developing affordable housing, that draws at least 25% of its Board of Directors from residents of the municipality, and that engages primarily in construction, repair, rental, or sale of low-income housing.

B. Forced Sale of Co-Owner's Interest for Failure to Reimburse Taxes Paid. As a matter of law, every co-owner is obligated to pay all ad valorem pay taxes assessed against the whole of the property, but is entitled to proportionate reimbursement from other co-owners. When, for any three (3) years out of a five-year period, one co-owner has failed to reimburse his/her share of taxes paid by another co-owner, the paying co-owner may seek a judicially-compelled sale and purchase of the delinquent co-owner's undivided interest in the property. The property involved cannot be the delinquent co-owner's homestead, and the all of the parties' interests must have been originally acquired as the result of inheritance, devise under a will, or succession under a survivorship agreement. [TEX. PROPERTY CODE Sec. 29.001]. In order for this right to become available, any reimbursements made by the delinquent co-owner during the five-year period must total less than one-half of all taxes assessed and paid during the period. The paying co-owner may seek forced sale and purchase of the delinquent co-owner's interest by filing a petition in the district court. [TEX. PROPERTY CODE Sec. 29.002]. If either the whereabouts or the identity of a delinquent co-owner is unknown, the unknown or unlocated co-owner may be cited by publication. [TEX. PROPERTY CODE Sec. 29.0035]. If the plaintiff makes a satisfactory

showing of the required elements at a hearing on the petition, the court will enter an order that divests the delinquent co-owner of his/her interest in the property and directs payment by the plaintiff to the defendant an amount equal to the fair market value of the defendant's interest less the amount owed by the defendant in unreimbursed taxes paid by the plaintiff. The court may also order the defendant to execute and deliver a deed to the plaintiff. [TEX. PROPERTY CODE Sec. 29.003, 29.004].

PROBLEM-SOLVER: When a judgment or order of this type has been entered, but the defendant is unavailable or unwilling to execute an actual deed, the transfer of title affecting the delinquent co-owner's interest can instead be established by filing a certified copy of the judgment in the real estate records, together with an affidavit from the plaintiff to the effect that any payment obligation under the judgment has been satisfied.

NOTE: Effective September 1, 2001, House Bill 3349 expanded availability of this procedure for forced sale and purchase of a delinquent co-owner's undivided interest, by amending TEX. PROPERTY CODE Secs. 29.001—29.003. The procedure can now also be utilized by certain Texas 501(c)(3) nonprofit corporations. Qualifications of such a corporation are the same as those set out under TEX. TAX CODE Sec. 34.015(a)(2) [see Paragraph X(A) above], except with respect to composition of the corporation's Board of Directors (rather than being drawn from a particular municipality, at least 25% of the nonprofit corporation's Directors must be residents of the county in which the property in question is located.) Also, for qualifying nonprofit corporations, the tax-payment obligation is reduced to two (2) years out of any three-year period. [See APPENDIX for the complete text of House Bill 3349].