

**REAL ESTATE LIENS AND OTHER ISSUES**

**(OR “IS IT REALLY WORTH FORECLOSING THAT MOWING LIEN?”)**

**Presented by:**

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*Kevin B. Laughlin* is an Attorney with the Dallas law firm of Nichols, Jackson, Dillard, Hager & Smith, L.L.P., having joined the firm in April 2008. Kevin has spent the majority of his 25+ years of legal practice representing Texas cities, having served as an in-house attorney for the City of Midland, Texas, from 1989 to 1996 (the last 4.5 years as First Assistant City Attorney) and as the City Attorney for the City of Kerrville, Texas, from 1996 to 2002. Kevin returned to the Midland/Odessa area in June 2002 and joined the Odessa law firm of Atkins & Peacock, L.L.P (now Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, Inc.), where his practice included, among other areas, real estate transactions, title examination, collection matters, banking law, school law, and civil litigation. Prior to his days as a municipal attorney, Kevin served four years in-house as Assistant University Counsel for Southern Methodist University.

During his 12+ years with the cities of Midland and Kerrville, Kevin performed legal services in virtually every area of municipal government. Kevin has extensive experience in the preparation of ordinances and resolutions covering a wide range of matters. Kevin's current practice involves providing advice and counsel in all areas of municipal law to the firm's client cities and local government entities in the Greater Dallas/Ft. Worth Metroplex.

Kevin obtained his B.A. in English and Political Science from Southern Methodist University in 1982 and his J.D. from Southern Methodist University School of Law in 1985. Kevin is licensed to practice law in Texas and Oklahoma as well as the United States District Courts for the Northern and Western Districts of Texas.

Kevin is a long time member of the Texas City Attorneys Association and served as TCAA president in 2002-2003. Kevin has also been an occasional speaker at TCAA conferences and seminars. Kevin is married to his wife of 29 years, Libby, and has three children, Cpl. Richard Laughlin, USMC (who is a veteran of two deployments to Afghanistan as part of Operation Enduring Freedom), and daughters, Ashley and Lauren, who will both start college later this year.

## **DISCLAIMER**

As in my last paper from the Summer 2009 conference, here goes the disclaimer:

You're not my client, and I am not your attorney (with the exception of a couple of you who actually hired me to consult on a couple of issues after my last paper). Therefore, while much of the information contained in this paper and in the presentation offered at this conference is readily available in your law library or on the Internet, how I put this paper together and the comments I make about this topic may not be the same way you, based on your own experience or fact situation, may do things or advise your client. My hope is that you can use this as a reference tool to help in a pinch when your mayor, city manager, or city engineer comes to you and asks "can we do this?" or worse, use it as a shield when they come to you and tell you "we ARE going to do this." But PLEASE, because fact situations are different and new laws and court decisions can change the outcome of any prior opinion, always be sure to confirm anything I might advise with your own research.

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# **REAL ESTATE LIENS AND OTHER ISSUES (OR “IS IT REALLY WORTH FORECLOSING THAT MOWING LIEN?”)**

## **INTRODUCTION**

As noted in my paper from the 2009 TCAA Summer Conference<sup>1</sup>, during my six year hiatus away from practicing municipal law, I was in private practice primarily working as a real estate/probate attorney in Odessa. During that time, I often found myself answering questions posted by fellow Municipal Code listserv members regarding basic real estate matters affecting every day municipal projects. From that experience, I realized how many of us as municipal law practitioners know very little beyond the most basic aspects of the law related to real estate and real estate transactions. Therefore, in my initial installment of what I would like to think will be a series of “how to” or “building block” type papers, I posed, and then answered, a number of questions related to situations we municipal law practitioners often experience in our practice. Based on the positive response I received after the 2009 TCAA Summer Conference about the presentation, it seemed that providing a little more of the same might be helpful.

One area that was not adequately covered in my summer 2009 presentation were issues relating to the various types of liens that can affect real property. The topic of real estate liens is a matter of concern any time anyone seeks to purchase a tract of land, especially to buyers and, in the case of cities, condemnors. In reviewing title to a piece of property where recorded liens are in the chain of title, we need to ask ourselves “Is the lien still valid?” or “If the city forecloses on its own lien or condemns the property, will the lien survive?” The answer to these questions, and, in some instances, the failure to ask, can have a significant impact on a public works project, both in time and cost.

As before, the purpose of this paper and the related presentation is not to provide any great treatise of law on real estate transactions...there are far smarter and more experienced people than me to whom you can turn to get that type of information. Instead, I will attempt in this paper to provide a summary of (1) the types of the more common liens that cities can place on properties, (2) the form which those liens must take, and (3) how those liens stack up against the different types of third party liens that may also be affecting the property. This paper will also touch on the different types of liens that often affect property, with the discussion being from the perspective of reviewing title to a parcel of land in which a city may want to obtain an interest. Along the way, I hope to provide a few practice tips and words of wisdom based on a combination of 21+ years of municipal practice and almost ten years of concentrated real estate practice. For those of you who have a significant amount of real estate experience, you may want to head for the pool now. For the rest of you, I again hope you will gain some practical information and tips that will assist you in reviewing real estate matters that are brought to your attention or are otherwise thrust upon you as your problem to solve.

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<sup>1</sup> *Real Estate FAQ's for City Attorneys (or “What is the Difference Between a Right-of-Way and an Easement?”)*, ©2009 Kevin B. Laughlin, still available on our law firm's website at [www.njdhs.com](http://www.njdhs.com) under the heading link to “Articles”.

## LIENS THAT CITIES AND RELATED ENTITIES CAN (AND DO) IMPOSE

### PRELIMINARY ISSUES

The Texas Constitution and other provisions of state law authorize cities, other local governmental entities, and certain special districts that are created or authorized by cities to place a lien on real property under certain circumstances. As with the assessment of pretty much all liens, other than ad valorem tax liens which attach automatically by operation of state law with no affirmative action required by a city, a city or other governmental entity must follow certain procedures in order to establish a lien on real property. This section of the paper contains a reference to most, if not all, of the most common liens that a city can place on real property, the means of perfecting that lien as provided by state law, and the priority of that lien in relation to other liens.

It is the last item above – lien priority – that will often be most critical in any decision relating to the foreclosure of the city’s lien. Lien priority also affects the ability of a city to collect the funds that are secured by the city’s lien if a party holding a different lien on the property forecloses its lien. As a general rule, the lien that is recorded first has priority over all other liens that are recorded afterward. However, in the case of some (but not all) liens that a city may impose, state law gives the city lien a “super priority” even if filed later in time. Sometimes, that super priority lien status applies to all types of liens other than tax liens. At other times, the super priority lien status applies to some, but not all liens. The discussion below is intended to bring together in a simplified format where a city’s lien falls within the scale of priority of other liens affecting the property.

There are also a couple of other issues that will generally affect the ability of a city to create a valid perfected lien regardless of which state law provision authorizes the lien. The first is ***IDENTIFYING THE CORRECT OWNER OF THE PROPERTY AT THE TIME THE LIEN IS CREATED!*** (emphasis added for good reason) I cannot emphasize enough how important this issue is and how often it gets screwed up because someone failed to take the 15 to 30 minutes (maybe a bit longer for cities whose counties who do not provide on-line access to real property indexes) to do the necessary research to identify the record owner of the property to which the lien will attach. Often, city staff will use the local appraisal district records as their resource for determining the owner of a piece of property but then go no further. This may be acceptable if the statute merely states that a notice that must be sent prior to placing a lien needs to go to the person last identified on the property tax rolls (in which case, the city staff needs to be checking the county tax assessor-collector records, not appraisal district records). However, appraisal district records – and even tax records, while a good starting place, are not 100% accurate with respect to determining record ownership and should never be relied on for purpose of determining the true owner of a tract of land. Appraisal district records and tax records do not pick up divorce decrees, deaths of a record owner, and other matters affecting title that are not recorded in the county clerk’s property records. Occasionally, the name on the tax rolls is not the true record owner, but merely the party to whom the tax bill is being sent. I found this to be true on many occasions on property being purchased under a contract for deed, where title will not pass to the buyers until they have finished paying for the home. A true title exam will look at all such records and will provide a better result in determining the true owner of the property.

The second issue relates to ***OBTAINING A GOOD, VALID LEGAL DESCRIPTION OF THE PROPERTY AGAINST WHICH THE LIEN WILL BE ATTACHED.*** This is probably even more important than the first issue, because, while in a number of instances naming the record owner of the subject property is not required to perfect the lien, getting the legal description correct is a must. It is the legal description that appears in the lien that allows the county clerk to properly index the lien when filed for recording so that the world (and, in particular the owners of the property and any potential subsequent

owner and/or lien holder) will have record notice of the city's lien. Mess this up, and the city may have no chance of ever recovering the funds secured by the lien. Aside from the foregoing, every lien filed by a city MUST contain a legal description of the property unless the statute states otherwise<sup>2</sup>.

In many counties, you can now go on-line to find information on each tract assessed by the central appraisal district within the county, including the mailing address of the person responsible for paying the taxes (who may not always be the owner) and the transaction history. The appraisal district's page for the property will also often contain an abbreviated legal description of the property. DO NOT STOP AT THIS POINT. Appraisal district records rarely contain the entire legal description of a property sufficient for the conveyance of property. This is true even of a platted lot that is described by lot, block, and subdivision name. Appraisal district legal descriptions will usually not include (1) the recording information for the plat, (2) which phase the plat is (i.e. many plats will have the same name but will have an additional tag "Phase II," "Phase III," etc.), or (3) the identity of a partial lot or, conversely, how much of a partial lot is part of the tract. If the property is not platted, at most, the appraisal district record will show in what survey and abstract the property is located and the acreage, but will in no way describe the boundaries of the property. Therefore, to confirm the legal description of the property, the research must continue from here.

Often, on-line appraisal district records will also include the recording information for the last deed in the chain of title for the property. If it does, then obtaining the legal description may be as simple as going to your county clerk's on-line database for real property records, typing in the recording information obtained from the appraisal district website, and viewing the on-line copy of the deed. If the website requires you to pay for a copy of the document (usually at \$1.00 per page), it is probably worth paying it in order to save yourself a trip to the courthouse (of course, if you develop a relationship with a local title company, you may get them to send you a courtesy copy of the document from their title plant without charging you for it). For those of you in counties whose real property records are not on-line, a trip to the courthouse to look up the document may be required. Again, this is where a good relationship with the local title company may save you time and money.

The point here is this: if you pull the legal description from the most recent deed in the chain of title, it will be difficult for anyone to claim that your legal description was incorrect.

***Practice Tip:*** *If the property has not been previously platted such that the only available legal description is a metes and bounds description, one way to prepare the lien without having to include the full metes and bounds description is to include an identification of the survey and section/abstract in which the property is located (which is usually found in the lead paragraph of the description), and then reference the deed in which the legal description appears. For example:*

**A 3.85 acre tract of land out of the J.W. Wilson Survey No. 123, Abstract No. 456, Mysto County, Texas, and being the same property described in that certain Warranty Deed dated June 8, 2003, from Joe Black to John White, and recorded in Volume 543, Page 101, Official Public Records, Mysto County, Texas (more commonly known as 987 Easy Street, Goldbrick, Texas).**

A third significant issue that affects the ability of a city to perfect a lien on property is the status of the property as a person's residential homestead as defined in Texas Property Code §41.002. The status of property as a person's homestead may occasionally require some investigation. The fact that a person has filed a homestead designation with the local appraisal district for purposes of applying the homestead exemption from ad valorem taxes is a good indicator. However, the absence of such

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<sup>2</sup> Tex. Prop. Code §51.008(b)

designation does not mean the property is not a homestead for purposes of Texas Property Code §41.002. In absence of the designation for property tax purposes, a determination needs to be made as to whether or not the property is being used as a residence by the owner of the property. If the answer is “yes,” then there is a great presumption that the property is the person’s homestead. There are, of course, facts that may negate such a designation (such as the owner claiming a homestead in another county...one cannot have two homesteads), but that discussion is beyond the scope of this particular paper.

While it should go without saying, with few exceptions, liens that a city is authorized to place on property under any of the following statutes must be filed in the Real Property Records (or Official Public Records, depending on what your county calls them) of the county in which the property is located<sup>3</sup>.

## CHAPTER 342, TEXAS HEALTH & SAFETY CODE

Chapter 342 of the Texas Health & Safety Code is the source statute for ordinances adopted by many, if not most, cities around the state regarding the local regulation of common nuisances and the abatement of same. In particular, 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<sup>4</sup>; (b) regulate the construction, making, filling, altering, repairing, cleaning and disinfecting of sewers and privies<sup>5</sup>; (c) regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter<sup>6</sup>; 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<sup>7</sup>. These are often referred to as “weedy lot ordinances” or “nuisance abatement ordinances.”

As we generally know, Tex. H&S Code §342.006 authorizes a city to proceed to perform the necessary work to abate the regulated nuisance if the owner of the property fails to abate the nuisance within seven days after the city provides the notice required by statute<sup>8</sup>. A city may then place a lien on the property to secure the repayment of the expenses incurred by the city in abating the nuisance described in the notice of abatement<sup>9</sup>. Assuming the notice of abatement complied in all respect with Tex. H&S Code §342.006, the elements that are required of the lien are as follows:

<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 <sup>10</sup> .
<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.

<sup>3</sup> Tex. Prop. Code §51.008(a)

<sup>4</sup> Tex. H&S Code §342.001(a)

<sup>5</sup> Tex, H&S Code §342.002

<sup>6</sup> Tex. H&S Code §342.003

<sup>7</sup> Tex. H&S Code §342.004

<sup>8</sup> Tex. H&S Code §342.006(a)

<sup>9</sup> Tex. H&S §342.007

<sup>10</sup> Atty. Gen. Op. GA-0237 (2004); Atty. Gen Op. JC-0386 (2001)



<b>Time in which to foreclose?</b>	No deadline.
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In determining whether to seek a foreclosure of a “weedy lot lien” in an attempt to recover the cost to abate the nuisance, a city should assess at least the following factors:

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 “flat 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. What are the amounts of delinquent taxes that are due on the property? Since a weedy lot lien is inferior to a property tax lien, the city may be required to cut a deal with the other taxing entities to get the tax lien released, especially if the city intends to sell the property to a private party.
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?

There are a number of other issues that will factor into a decision to foreclose a weedy lot lien, many of them policy or politically driven.

#### **CHAPTER 214, TEXAS LOCAL GOVERNMENT CODE**

Tex. 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<sup>11</sup>.

Tex. Loc. Govt. Code §214.001 sets forth the required contents of the ordinance(s) that must be adopted in order for a city to be able to take the above-described action as well as the procedures required to order a property owner to bring a building or other structure into compliance with the city’s ordinances.

Tex. Loc. Govt. Code §214.001 also authorizes a city to vacate, secure, remove, or demolish a building or relocate the occupants at the city’s own expense if the building is not vacated, secured, repaired, removed, or demolished, or the occupants relocated, within the time allotted in the order issued

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<sup>11</sup> Tex. Loc. Govt. Code §214.001(a)



by the city’s building and standards commission in the case<sup>12</sup>. If the city does incur such costs related to performing the above work, it may assess such costs and perfect a lien against the property on which the building was located<sup>13</sup>. In order for the lien to be perfected, it must conform to the following:

<b>Who signs?</b>	Any authorized officer of the city (recommend this be designated in the city ordinance).
<b>Name of Owner Required?</b>	<p>Yes, if known. Must make “reasonable effort” to determine identity of owner<sup>14</sup>. “Reasonable effort” is deemed to have been made if the city searches for the identity of the owner through review of the following records:</p> <p>(1) county real property records of the county in which the building is located;</p> <p>(2) appraisal district records of the appraisal district in which the building is located;</p> <p>(3) records of the Texas Secretary of State;</p> <p>(4) assumed name records of the county in which the building is located;</p> <p>(5) city tax records; and</p> <p>(6) city utility records<sup>15</sup>.</p>
<b>Other Special Content</b>	<p>1. A statement as to the amount of expenses incurred by the city and the remaining balance owed to the city.</p> <p>2. Address of the owner.</p>
<b>Priority of lien.</b>	<p>1. Inferior to tax liens.</p> <p>2. Superior to all other liens and mortgages <b>IF</b> the city makes a diligent effort or uses best efforts<sup>16</sup> (depending to 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 (g).</p>
<b>File on homestead?</b>	Yes, but may not be able to foreclose on homestead <sup>17</sup> .

<sup>12</sup> Tex. Loc. Govt. Code §214.001(m)

<sup>13</sup> Tex. Loc. Govt. Code §214.001(n)

<sup>14</sup> *Ibid*

<sup>15</sup> Tex. Loc. Govt. Code §214.001(q)

<sup>16</sup> The standard for “making diligent effort” and “using best efforts” with respect to determining the identity of lien holders and mortgagees is the same as that for using “reasonable efforts” as set forth in Tex. Loc. Govt. Code §214.001(q).

<sup>17</sup> Atty. Gen. Op. GA-0237 (2004)’ Atty. Gen Op. JC-0386 (2001)

<p style="text-align: center;"><b>How foreclosed in addition to Tex Prop. Code ch. 51?</b></p>	<ol style="list-style-type: none"> <li>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.<sup>18</sup></li> <li>2. In judicial proceeding, if, <ol style="list-style-type: none"> <li>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</li> <li>b. the expenses that are secured by the lien has remained unpaid for at least 180 days after the lien was filed; and</li> <li>c. ad valorem taxes are delinquent on all or a part of the property<sup>19</sup>.</li> </ol> </li> </ol>
<p><b>Time in which to foreclose?</b></p>	<p>No deadline.</p>

TLGC §214.0011 allows a city to adopt an ordinance that provides for the city to summarily secure a building the city believes to be substandard pursuant to its ordinances if the property is vacant or occupied by someone not authorized to occupy the building.<sup>20</sup> The city has the same authority to assess a lien against the property as provided in TLGC §214.001(n) in the amount of the city’s expenses in securing the building. Since the remedy under TLGC §214.0011 does not involve demolition of the building (assuming nothing further happens, such as an exercise of the remedies under TLGC §214.001), the additional method for foreclosure of the lien created under TLGC §214.0011 will be limited to a foreclosure in conjunction with the seizure of property under Tex. Tax Code §§33.01, et.seq.<sup>21</sup>

TLGC §214.0015 provides an alternative remedy to cities for dealing with substandard buildings if the city has adopted a substandard building ordinance as 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) 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, but only if the building is a residential building with 10 or fewer dwelling units<sup>22</sup>, or (2) assess a civil penalty against the property owner for failing to take the required action which provides for the mode and manner of giving notice regarding the assessment and for collecting the assessment<sup>23</sup>. The city may file a lien against the property for the repair expenses or the civil penalty that conforms to the following:

<sup>18</sup> Tex. Loc. Govt. Code §214.004(1)

<sup>19</sup> Tex. Loc. Govt. Code §214.004(2)

<sup>20</sup> Tex. Loc. Govt. Code §214.011(b)

<sup>21</sup> Tex. Loc. Govt. Code §214.004

<sup>22</sup> Tex. Loc. Govt. Code §214.0015(b)(1) and (c)

<sup>23</sup> Tex. Loc. Govt. Code §214.0015(b)(2)

<b>Who signs?</b>	Any authorized officer of the city (recommend this be designated in the city ordinance).
<b>Name of Owner Required?</b>	No <sup>24</sup>
<b>Other Special Content</b>	No, other than the notice should describe the nature of the assessment being imposed and whether it is for civil penalty of repair, removal, or demolition expenses.
<b>Priority of lien.</b>	<ol style="list-style-type: none"> <li>1. Inferior to tax liens.</li> <li>2. Inferior to bona fide mortgage liens filed before the date the civil penalty is assessed or the date the city commenced repairing, removing, or demolishing the building; however, city's lien superior to previously filed bona fide mortgages <b>IF</b> the city makes a diligent effort or uses best efforts<sup>25</sup> (depending to 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 (g).<sup>26</sup></li> <li>3. Superior to all prior filed judgment liens.</li> </ol>
<b>File on homestead?</b>	No
<b>How foreclosed in addition to Tex. Prop. Code ch. 51?</b>	<ol style="list-style-type: none"> <li>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.<sup>27</sup></li> <li>2. By judicial foreclosure pursuant to Chapter 51, Texas Property Code, BUT ONLY IF, <ol style="list-style-type: none"> <li>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</li> <li>b. the expenses that are secured by the lien has remained unpaid for at least 180 days after the lien was filed; and</li> <li>c. ad valorem taxes are delinquent on all or a part of the property<sup>28</sup>.</li> </ol> </li> </ol> <p>NOTE: Cannot foreclose lien for repair expenses on residence occupied by person 65 years of age or older.<sup>29</sup></p>
<b>Deadline to foreclose?</b>	No deadline.

<sup>24</sup> Tex. Loc. Govt. Code §214.0015(d)(Section describes contents of lien without mentioning owner name as in other provisions of TLGC Ch. 214.)

<sup>25</sup> See Tex. Loc. Govt. Code §214.001(q)

<sup>26</sup> Tex. Loc. Govt. Code §214.0015(e)

<sup>27</sup> Tex. Loc. Govt. Code §214.004(1)

<sup>28</sup> Tex. Loc. Govt. Code §214.004(2)

<sup>29</sup> Tex. Loc. Govt. Code §214.0015(i). Not sure why this provision of law is necessary since Tex. Loc. Govt. Code §214.0015(d) prohibits liens on homesteads generally, but it is what it is.

A city is also authorized to place a lien on property to secure expenses related to connecting a property to the city's sewer system<sup>30</sup>, or filling up, cleaning, draining, altering relaying, repairing, or improving a drain, sink, or privy<sup>31</sup>.

<b>Who signs?</b>	1. Under TLGC §214.013: Any authorized officer of the city (recommend this be designated in the city ordinance). 2. Under TLGC §214.014: Mayor.
<b>Additional Filing Requirements</b>	Under TLGC §214.014, must be filed with clerk of district court in county where property is located.
<b>Name of Owner Required?</b>	No
<b>Other Special Content</b>	No, other than the notice should describe the nature and amount of the assessment being imposed.
<b>Priority of lien.</b>	Inferior to tax liens and all prior recorded liens.
<b>File on homestead?</b>	Yes, but likely unable to foreclose in the event of default <sup>32</sup> .
<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. <sup>33</sup>
<b>Deadline to foreclose?</b>	No deadline.

Finally, TLGC §214.101 authorizes a city to place a lien on property when the city repairs, replaces, secures, or otherwise remedies and enclosure or fence of a swimming pool when the owner fails to do so in accordance with an ordinance adopted by the city<sup>34</sup>. A lien created in accordance with TLGC §214.101 must conform to the following:

<sup>30</sup> Tex. Loc. Govt. Code §214.013

<sup>31</sup> Tex. Loc. Govt. Code §214.014

<sup>32</sup> Atty. Gen. Op. GA-0237 (2004)' Atty. Gen Op. JC-0386 (2001)

<sup>33</sup> Tex. Loc. Govt. Code §214.015

<sup>34</sup> Tex. Loc. Govt. Code §214.101(e)

<b>Who signs?</b>	Any authorized officer of the city (recommend this be designated in the city ordinance).
<b>Name of Owner Required?</b>	<p>Yes, if known. Must make “reasonable effort” to determine identity of owner<sup>35</sup>. “Reasonable effort” is deemed to have been made if the city searches for the identity of the owner through search of the following records:</p> <p>(1) county real property records of the county in which the building is located;</p> <p>(2) appraisal district records of the appraisal district in which the building is located;</p> <p>(3) records of the Texas Secretary of State;</p> <p>(4) assumed name records of the county in which the building is located;</p> <p>(5) city tax records; and</p> <p>(6) city utility records<sup>36</sup>.</p>
<b>Other Special Content</b>	<p>1. A statement as to the amount of expenses incurred by the city.</p> <p>2. Address of the owner.</p>
<b>Priority of lien.</b>	<p>1. Inferior to tax liens.</p> <p>2. Inferior to all previously recorded bona fide mortgage liens.</p> <p>3. Privileged lien to all other liens.</p>
<b>File on homestead?</b>	No
<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. <sup>37</sup>
<b>Time in which to foreclose?</b>	No deadline.

### MUNICIPAL UTILITY SERVICES – TLGC §552.0025

Aside from the nuisance abatement and dilapidated building liens described above, probably the most common liens imposed by cities on property are for delinquent water, sewer, gas and/or electric bills owed to the city<sup>38</sup>. A city must adopt an ordinance that adopts the authority granted by state law to impose the lien for delinquent utility bills<sup>39</sup>. A delinquent utility services lien has the following characteristics:

<sup>35</sup> *Ibid*

<sup>36</sup> Tex. Loc. Govt. Code §214.001(q)

<sup>37</sup> Tex. Loc. Govt. Code §214.102

<sup>38</sup> Tex. Loc. Govt. Code §552.0025

<sup>39</sup> Tex. Loc. Govt. Code §552.0025(d)

<b>Who signs?</b>	Any authorized officer of the city (recommend this be designated in the city ordinance).
<b>Name of Owner Required?</b>	No
<b>Other Special Content</b>	Account Number for the delinquent account
<b>Priority of lien.</b>	1. Inferior to prior recorded bona fide mortgage liens. 2. Superior to all other liens, including prior recorded judgment liens and any liens filed after the city's lien. <sup>40</sup>
<b>File on homestead?</b>	No
<b>How foreclosed in addition to Tex Prop. Code ch. 51?</b>	None
<b>Time in which to foreclose?</b>	No deadline.
<b>Other special provisions</b>	1. Cannot file lien if property is connected in name of tenant after notice by owner to city that property is rental property. 2. Lien may include penalties, interest, and collection costs.

A city that provides utilities to its citizens that does not have an ordinance adopted under TLGC §552.0025 is failing to take advantage of a tremendous tool. Cities that have this ordinance often have less than 0.5% non-collection rate on utility bills. Because a city is allowed to charge a larger deposit to tenants<sup>41</sup> in order to account for the inability to place a lien on rental property, a city is often able to come close to full collection on its utilities.

The biggest cause of non-collection other than bankruptcy is possibly the timing of filing the lien. TLGC §552.0025(a) prohibits a city from collecting a delinquent bill for services to a property from a new customer at the same service connection. Placing a lien on a property after the property is sold to someone other than the customer who incurred the charges would likely constitute an attempt to collect a delinquent bill from a subsequent owner. Therefore, it is critical that if your city files delinquent utility liens, such liens should be filed as soon as possible after your local policy states when to file the lien<sup>42</sup>.

## **WATER AND SEWER SYSTEM ASSESSMENTS**

Without getting into a great deal of detail, a city may assess a property which benefits from the construction of water and/or sewer system improvements as defined in TLGC §552.062<sup>43</sup>. The ordinance providing for the assessment may not levy more the 90% of the estimated costs of the improvements against the benefited properties, must provide the time, term, and conditions of payment and default of the assessment, and must set forth the interest rate on the unpaid balance of the assessment, such rate not to exceed 10% per year<sup>44</sup>. The assessment cannot be levied against a benefited property without first providing notice and hearing as required by TLGC §552.069. Furthermore, despite the general requirement that the assessment be apportioned in accordance with the "front foot" rule<sup>45</sup>, the assessment

<sup>40</sup>

<sup>41</sup> Tex. Loc. Govt. Code §552.0025(c)

<sup>42</sup> The lien can technically be filed as soon as the bill becomes delinquent. However, many cities as a matter of policy wait until the bill is at least two months delinquent, which is also about the time cities elect to do cutoffs. Whatever the local practice, this is an administrative matter that should be handled in an expeditious manner.

<sup>43</sup> Tex. Loc. Govt. Code §552.065

<sup>44</sup> Tex. Loc. Govt. Code §552.065(a)

<sup>45</sup> Tex. Loc. Govt. Code §552.066

against any particular property will be limited to the enhancement of value the water and/or sewer improvements will create for the property being assessed.<sup>46</sup>

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

<b>Who signs?</b>	City clerk or secretary, mayor, or other city officer performing the duties of any of the foregoing.
<b>Name of Owner Required?</b>	No
<b>Other Special Content</b>	<ol style="list-style-type: none"> <li>1. Must substantially show that the governing body has determined by order, directive, or otherwise that water or sewer system improvements are necessary.</li> <li>2. Identify the required improvements by location or otherwise.</li> <li>3. A statement that a portion of the cost of the improvements is to be or has been specially assessed as a lien against the benefitted property.<sup>47</sup></li> <li>4. Signatures on Notice of Assessment need not be acknowledged for filing purposes.</li> <li>5. One notice can be used to cover multiple water and sewer systems.</li> </ol>
<b>Priority of lien.</b>	Superior to any lien except state, county, school district, and municipal tax liens. <sup>48</sup>
<b>File on homestead?</b>	Yes, but will not be able to foreclose for default <sup>49</sup> .
<b>How foreclosed in addition to Tex Prop. Code ch. 51?</b>	N/A
<b>Time in which to foreclose?</b>	No deadline.

#### **PUBLIC IMPROVEMENT DISTRICTS – TLGC CH. 372**

Chapter 372 of the Texas Local Government Code authorizes a city to 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 extraterritorial jurisdiction. The funding for the 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<sup>50</sup>. Regardless of the method of assessment, the amount of the assessment on a particular property is to be limited to the special benefits accruing to the property being assessed<sup>51</sup>.

The assessment lien itself has the following characteristics:

<sup>46</sup> Tex. Loc. Govt. Code §552.069(a)

<sup>47</sup> Tex. Loc. Govt. Code §552.067(a)

<sup>48</sup> Tex. Loc. Govt. Code §552.065(c)

<sup>49</sup> Atty. Gen. Op. GA-0237 (2004)’ Atty. Gen Op. JC-0386 (2001)

<sup>50</sup> Tex. Loc. Govt. Code §372.015

<sup>51</sup> Tex. Loc. Govt. Code §372.015(a)



<b>Who signs?</b>	Not specified. This is in form of ordinance signed by whoever normally signs the city's ordinances.
<b>Name of Owner Required?</b>	No
<b>Other Special Content</b>	1. The amount of the assessment. 2. The method for payment of the assessment. 3. Description of the property assessed.
<b>Priority of lien.</b>	First and prior lien superior to all liens except state, county, school district, and municipal ad valorem tax liens. Also, survives foreclosure of tax lien for delinquent taxes.
<b>File on homestead?</b>	Yes, but will not be able to foreclose if owner defaults on payment <sup>52</sup> .
<b>How foreclosed in addition to Tex Prop. Code ch. 51?</b>	N/A. Enforced in same manner as enforcement of payment of ad valorem taxes.
<b>Time in which to foreclose?</b>	No deadline.

The issue about placing a public improvement district assessment on a residential homestead usually only comes up when trying to fund improvements in developed residential subdivisions. In such situations, the owners are often requesting the improvements, such as construction of a new water line to provide city water to an area of town being served by water wells that are going bad<sup>53</sup>. In such instances, it is often possible to get a sufficient number of homestead owners to agree to a voluntary mechanic's lien note secured by a first or second lien deed of trust placed on the property in the amount of the assessment to be placed on the property (after all, you likely needed these folks to sign the petition to create the PID in the first place). Since a mechanic's lien relating to the construction of improvements that benefit and serve the property is a specific constitutional exception to the homestead exemption, you should be able to obtain a sufficient number of owners to agree to this additional security to make the project feasible. Note that the deed of trust lien must be in place before the work commences. The mechanic's lien exception to the homestead laws does not apply once materials are purchased and work commences.

#### **OTHER TYPES OF LIENS AND RELATED ISSUES**

The first portion of this presentation is intended to provide some basic information regarding liens that cities can place on properties to secure repayment of certain expenses and penalties related to either the condition of property or improvements benefitting the property. We now change direction and provide information on some different kinds of liens you may run across when reviewing title on property your city is seeking to acquire. I also hope to give you a few practice pointers from a title examiner's perspective on possible ways to deal with such liens when you run across them.

#### **DEED OF TRUST LIENS**

You will regularly be dealing with property on which there is an existing deed of trust lien securing a note from a lender. If there is a deed of trust lien on the property that shows up on a title commitment or in your own search of the county clerk's index of recorded documents, I recommend you actually review the document (or have someone else who knows what a deed of trust is take a look at it). In reviewing a deed of trust, there are several things I usually look for:

<sup>52</sup> Atty. Gen. Op. GA-0237 (2004)' Atty. Gen Op. JC-0386 (2001)

<sup>53</sup> Which was the situation with the first PID I worked on in Midland close to 20 years ago.

- **Names of the Grantors:** This is particularly critical if the city is trying to acquire an interest in a residential property where the owners own the dwelling units. Frequently, for reasons known only to the owners, not all of the names of the owners of the property will be shown as grantees on the deed. However, unless the owners got married after they bought the property, if the property is going to be the owners' residential homestead, the lender and the title company will insist that both spouses be named on and sign the deed of trust. This is important to check because (1) you want to be sure that ALL owners of the property are signing the deed (and this is required if the conveyance is an interest in a residential homestead) and (2) if you end up condemning the property, all owners will need to be named as defendants.
- **Name of the Beneficiary:** The Beneficiary is the lender. Every once in a while, when setting out the deed of trust liens on Schedule C of the title commitment, the title company will only name the trustee without naming the lender. The lender is who you need to deal with if you (1) need to obtain a full or partial release of lien terminating the lender's lien against the portion of the property the city is seeking to acquire or (2) need to obtain an agreement to subordinate the lender's interest or otherwise get the consent of the lender to grant an easement or other interest in property. You will also need to name the lender as a defendant in any eminent domain proceeding so that you extinguish the lender's lien when you acquire the property for the city.
- **Language regarding consent to grant easements.** Most deeds of trust do not allow an owner to grant an easement to the property to which the deed of trust lien attaches without the consent of the lender. Doing so could result in a technical default of the note and deed of trust and is grounds for foreclosure. This often becomes an issue when the owner simply wants to give an easement to the city with no money changing hands and no one seems to see the need to involve the lender. Under the current lending climate, it is best to cover this base by urging the owner obtain the lender's consent. Attached in Appendix "A" are a couple of sample forms that can be modified and provided to a lender from whom you are seeking the consent you need. The consent form does not need to be notarized and filed with the county clerk, but you can do so if you wish.
- **Language regarding the renewal and extension of a prior lien or language regarding modification of lien.** Frequently, a deed of trust will be granted in renewal and extension of a prior note and deed of trust, especially in commercial real estate transactions. However, a title commitment may only show the last renewal as opposed to all prior renewals going back to the original deed of trust. The start date of a lien that has been renewed and extended is the date of the original lien, not the date of the renewal and extension. In situations where you are trying to determine if a lien that the city has placed on the property<sup>54</sup> is first in time, you need to know when the original note and deed of trust were granted by tracing back the renewal and extension references in each deed of trust.
- **The maturity date or term of the note secured by the deed of trust.** Not all deeds of trust will state the terms of the note other than its original date and the original principal amount. However, many will also state the actually date of maturity of the note. This is important in situations where a deed of trust lien is shown on Schedule C of the title commitment but no release of lien has been filed. Tex. Civ. Prac. & Rem Code §16.035(b) states that "A sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien must be made not later than four years after the day the cause of action accrues." The cause of action on a note accrues when the note matures, which is when the last payment on the note is due<sup>55</sup>. In

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<sup>54</sup> Assuming the lien does not have a super priority granted to it by statute.

<sup>55</sup> *Holy Cross Church of God in Christ v. Wolf*, 44 SW3d 562, 566 (Tex. 2001)

other words, if more than four years have passed since the maturity date of the note as indicated on the deed of trust, the deed of trust is not enforceable and no release of lien is required to ensure that the city is obtaining good title free of the particular deed of trust lien. *BUT A WORD OF CAUTION:* If you are doing this title work without the benefit of a title commitment, be sure you look forward in the chain for assignments and renewal and extension documents relating to the lender on the property. Often, a release of lien is not signed and recorded when a note and deed of trust are assigned to a new lender. Since the new lender takes the status of the old lender, you may still have a valid lien, but with a new lender that took an assignment and then renewed and extended the note and deed of trust.

## **JUDGMENT LIENS – CHAPTER 52, TEXAS PROPERTY CODE**

Except for property constituting the defendants' residential homestead, a judgment lien is created on all real property owned by the defendants in the county named in an abstract of judgment filed in the real property records of the county where the property is located<sup>56</sup>. A judgment lien is valid for ten years from the date the abstract of judgment is filed in the real property records unless the judgment becomes dormant<sup>57</sup> or unless the judgment is in favor of the state or a state agency<sup>58</sup> as defined in Tex. Govt. Code §403.055<sup>59</sup>.

As for dormancy, a judgment becomes dormant if a writ of execution is not issued or the judgment has otherwise not been satisfied within ten years after the rendition of the judgment<sup>60</sup>. Abstracts of judgment can be filed at any time, even years after a judgment is rendered. Thus, it is possible that if a plaintiff fails to execute on a judgment by obtaining a writ of execution within the ten years after the rendition of the judgment, and the abstract of judgment is not filed until two years after the judgment is rendered, the judgment lien could actually end eight years after the abstract of judgment is filed, not ten years.

Judgment liens in favor of the state or a state agency have a 20-year life, cannot become dormant, and can be renewed for an additional 20-year period by filing another abstract of judgment before the end of the original 20-year period<sup>61</sup>.

From a practice standpoint, judgment liens can be a real pain when trying to cure title to property. When you run across a judgment lien, first check the date the abstract of judgment was filed and the date of the judgment to see if the judgment lien is still valid. If the judgment lien IS still valid, the next trick (and this will often take some effort) is to track down the plaintiff's attorney and/or the plaintiff. If the judgment is very old at all, this may not be an easy task, because both may have moved on to other endeavors (or other cities or states). If you do manage to track down the plaintiff's attorney, depending on the age of the judgment, the attorney may no longer have a relationship with the client/plaintiff or may have long since archived or destroyed the file. The ultimate goal is to (1) determine if the judgment has been paid off (thus, entitling the owner to a release of the lien), (2) if the judgment has not been paid off, what is the pay off or, alternatively, how much will it take to obtain a partial release of the judgment lien,

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<sup>56</sup> Tex. Prop. Code §52.001

<sup>57</sup> Tex. Prop. Code §52.006(a)

<sup>58</sup> "State agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code, other than a public junior or community college. Tex. Govt. Code §403.055(1)(2)

<sup>59</sup> Tex. Prop. Code §52.006(b)

<sup>60</sup> Burlington State Bank v. Marlin Nat. Bank, 207 S.W. 954 (Tex. Civ. App. Austin 1918)

<sup>61</sup> Tex. Prop. Code §52.006(b)

and/or (3) failing to get enough information or cooperation to determine (1) or (2), then to determine the current location of the plaintiff(s) so you can serve him/it/them as a lienholder defendant in the eminent domain proceeding. This information is also helpful with respect to determining the priority of a city lien that you may want to foreclose that does not otherwise fit into one of the super-priority categories.

#### **FEDERAL TAX LIENS – 26 USC §6321, ET. SEQ.**

Frequently, when a property is abandoned and becomes dilapidated, the scumbag record owner, aside from failing to take care of business with the property, also decides not to pay Uncle Sam his due (a.k.a federal income taxes). When this happens, our good friends at the IRS will assess a federal tax lien against the owner's real and personal property. In order to perfect the lien against real property, the IRS must file a Notice of Federal Tax Lien in the real property records where the property is located<sup>62</sup>. A Federal tax lien is valid for 10 years plus 30 days from the date of the original assessment<sup>63</sup>. The form of the Notice of Federal Tax Lien actually shows the date the assessment lien expires. A sample is attached to this paper as Appendix "B". The Notice of Tax Lien may be refiled for another 10 year period not later than the expiration of the initial notice that is filed.<sup>64</sup>

Fortunately for cities, Federal law provides that Federal tax liens affecting real property do not have priority as against a holder of a lien upon such property if such lien is entitled under local law to priority over security interests which are prior in time, and such lien secures payment of:

- a tax of general application levied by any taxing authority based upon the value of such property;
- a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or
- charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.<sup>65</sup>

For purpose of figuring out the applicability of a federal tax lien as to any of the above categories, the term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability, and exists at any time:

- (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and
- (B) to the extent that, at such time, the holder has parted with money or money's worth.<sup>66</sup>

In other words, a federal tax lien will not have priority over the above categories of subsequently arising local government liens if the same local government lien under state law generally has priority over a voluntary contractual lien on the property (as opposed to judgment liens). State and local ad valorem tax liens, of course, have sufficient priority to be superior to a federal tax lien because they are also superior to all subsequently filed liens. On the other hand, because a lien for delinquent utility

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<sup>62</sup> 26 USC §6323(f)(1)(A)

<sup>63</sup> 26 USC §6322

<sup>64</sup> 26 USC §6323(g)(3)

<sup>65</sup> 26 USC §6323(b)(6)

<sup>66</sup> 26 USC §6323(h)

payments does not have priority over a previously filed bona fide deed of trust lien, the utility lien will not trump a prior-in-time federal tax lien.

### **FEDERAL LIEN SECURING A JUDGMENT IMPOSING A CRIMINAL FINE**

18 USC §3613 provides for the establishment of a lien in favor of the United States to secure the payment of a fine levied against a criminal defendant. The manner of notice and priority of the lien are the same as for filing a notice of federal tax lien<sup>67</sup>. However, a lien securing a judgment for a criminal fine has a life of 20 years.

### **CHILD SUPPORT LIENS**

Texas Family Code §157.312 authorizes a claimant that is owed child support pursuant to the laws of the state of Texas or any other state to enforce that obligation by means of placing a lien on the real and personal property of the obligor. In order to enforce the lien against the obligor's real property, a notice of the child support obligation must be filed in the real property records of the county where the property is located<sup>68</sup>. A child support lien is valid until the past due amount set forth in the lien notice is paid; however, the notice is good for ten years from the date it is filed in the real property records, and may be renewed for an indefinite number of additional ten year periods by filing a new notice<sup>69</sup>.

A child support lien has no super priority over any lien filed prior to the filing of the notice of the child support lien<sup>70</sup>. Because of the specific super-priority status of virtually all of the city-imposed liens described earlier in this paper, a city foreclosure of its lien should in almost all instances wipe out a child support lien on a property. However, because it constitutes an interest in real property, if a child support lien is attached to a property which a city is attempting to purchase by negotiated contract or through eminent domain, a partial release of lien from the obligee identified in the lien will need to be obtained, or the obligee named as a lienholder defendant in the eminent domain suit, as the case may be.

Note you may also find yourself dealing with someone from the local office of the Child Support Division of the Texas Attorney General's office. Every once in a while, the obligee who is owed the child support has moved and cannot be located, and the only way you may be able to find her (not to be sexist, but it is usually the mother that is owed the child support).

### **LIENS FOR WAGES AND UNEMPLOYMENT TAXES**

The State of Texas, through the Comptroller of Public Accounts, has the ability to place a lien on property to enforce and judgment for unpaid wages brought on behalf of a worker not paid by his employer<sup>71</sup> and for failure of an employer to pay unemployment taxes due the state<sup>72</sup>. With respect to the lien for unpaid wages, the lien has priority over all liens other than ad valorem tax liens<sup>73</sup>. There is no language in Chapter 213 of the Texas Labor Code regarding any priority of such liens in relation to any other lien, including ad valorem tax liens. In so far as Chapter 213 of the Texas Labor Code relates to payment of unemployment taxes, which are state taxes, it is likely the state will take the position that its lien will take precedence over any local tax or assessment liens.

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<sup>67</sup> 18 USC §3613(c)

<sup>68</sup> Tex. Fam. Code §157.314

<sup>69</sup> Tex. Fam. Code §157.318

<sup>70</sup> Tex. Fam. Code §157.320

<sup>71</sup> Tex. Lab. Code §61.082

<sup>72</sup> Tex. Lab. Code §213.057

<sup>73</sup> Tex. Lab. Code §61.0825

## SO NOW WHAT?

So what is the point of all of the above information? Largely, the intent is to give you some additional tools in advising your client on matters of important policy. For instance, given the present economy and city councils looking to generate new sources of revenue, some cities are now looking to foreclose on old weedy lot and dilapidated building liens. Whether the purpose of foreclosing the property is to consolidate land in order to provide a site for an economic development project or simply to turn around and sell the tracts in an effort to recover the funds secured by the lien and get the parcel back on the tax rolls, the above information can help you evaluate the feasibility of ever acquiring that property. The information can also be used to help you determine which method of property acquisition may be best in acquiring an interest in the property. I also hope that if you are not the lawyer primarily tasked with handling real estate matters for your city (or cities, for those of you who are outside counsel with multiple municipal clients), this presentation will at least arm you with enough information to know what your real estate practitioners are talking about when these issues arise as well as to be able to question their conclusions if something does not seem quite right in what you are being told.

One final practice tip...A tool you will find helpful with respect to questions of title to property is found in the Texas Property Code. Sandwiched between Chapters 5 and 1 of the Texas Property Code is the Appendix to Chapter 5 titled *Texas Title Examination Standards* prepared and regularly reviewed and updated by members of the State Bar of Texas Real Estate, Probate and Trust Law Section and Oil, Gas & Energy Resources Law Section that make up the Title Standards Joint Editorial Board. While these title examination standards are not state law, they are standards generally followed with respect to the examination of title to real property interests based on current state laws and prior case decisions. If you ever have a particular question about the quality of title or what is required to cure a problem with title, a good place to start your research is with the *Texas Title Examination Standards*.

Until next time....

APPENDIX "A"

STATE OF TEXAS §  
COUNTY OF DALLAS §

CONSENT TO GRANT OF EASEMENT

Date: \_\_\_\_\_, 2011

Borrower:

Borrower's Address:

Lender:

Lender's Address:

Security Instrument:

Easement Property:

Borrower has executed in favor of Lender a promissory note and has furthermore granted in favor of Lender a deed of trust lien and/or security interest in real property owned by Borrower to secure repayment of said note, said note and deed of trust lien/and or security interest and the real property to which said lien and/or security interest attach being described in the Security Instrument. Borrower desires to convey to the City of \_\_\_\_\_, Texas, ("City") a Texas home rule municipality with the power of eminent domain, a sidewalk and general utility easement on the Easement Property without requiring City to exercise the power of eminent domain substantially in accordance with the provisions set forth in Exhibit "A," attached hereto ("the Easement"). Having reviewed the proposed conveyance, Lender does hereby consent to the proposed conveyance of the Easement and agrees that such conveyance shall not constitute a default of the Security Instrument.

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

LENDER:

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



STATE OF TEXAS

§  
§  
§

CONSENT TO GRANT OF EASEMENT

COUNTY OF DALLAS

Date: \_\_\_\_\_, 2011

**Borrower:**

**Borrower's Address:**

**Lender:**

**Lender's Address:**

**Security Instrument:**

**Easement Property:**

Borrower has executed in favor of Lender a promissory note and has furthermore granted in favor of Lender a deed of trust lien and/or security interest in real property owned by Borrower to secure repayment of said note, said note and deed of trust lien/and or security interest and the real property to which said lien and/or security interest attach being described in the Security Instrument. Borrower desires to convey to the **City of \_\_\_\_\_, Texas**, ("City") a Texas home rule municipality with the power of eminent domain, a sidewalk and general utility easement on the Easement Property without requiring City to exercise the power of eminent domain substantially in accordance with the provisions set forth in Exhibit "A," attached hereto ("the Easement"). Having reviewed the proposed conveyance, Lender does hereby consent to the proposed conveyance of the Easement and agrees that such conveyance shall not constitute a default of the Security Instrument.

SIGNED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

LENDER:

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**APPENDIX "B"**

<b>Form 668 (Y)(c)</b> <small>(Rev. February 2004)</small>	3592	Department of the Treasury - Internal Revenue Service <b>Notice of Federal Tax Lien</b>			
Area: SMALL BUSINESS/SELF EMPLOYED AREA #5 Lien Unit Phone: (800) 913-6050	Serial Number 416966108	For Optional Use by Recording Office			
<p><b>As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.</b></p>					
Name of Taxpayer					
Residence DENTON, TX 76201-					
<p><b>IMPORTANT RELEASE INFORMATION:</b> For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).</p>					
<b>Kind of Tax (a)</b>	<b>Tax Period Ending (b)</b>	<b>Identifying Number (c)</b>	<b>Date of Assessment (d)</b>	<b>Last Day for Refiling (e)</b>	<b>Unpaid Balance of Assessment (f)</b>
941	12/31/2005	75-	01/10/2006	02/09/2016	163.07
941	12/31/2006	75-	12/24/2007	01/23/2018	2607.49
941	03/31/2007	75-	12/24/2007	01/23/2018	3405.89
941	09/30/2007	75-	12/24/2007	01/23/2018	3355.32
Place of Filing DENTON COUNTY DENTON, TX, TX 76202					Total \$ 9531.77
This notice was prepared and signed at <u>DALLAS, TX</u> , on this,					
the <u>23rd</u> day of <u>January</u> , <u>2008</u> .					
Signature <i>R. A. Mitchell</i> for <b>DEXTER A HERNANDEZ</b>			Title REVENUE OFFICER (817) 232-6477		
			25-05-4528		
<p><small>(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien                  Rev. Rul. 71-466, 1971 - 2 C.B. 409)</small></p>					
Part 2 - Internal Revenue Service TDA Copy				Form <b>668(Y)(c)</b> (Rev. 2-2004) CAT. NO 60025X	

5437  
 CR  
 DEPT. OF THE TREASURY  
 INTERNAL REVENUE SERVICE