
OLR Bill Analysis

sSB 941

AN ACT CONCERNING THE ASSIGNMENT OF CERTAIN PROPERTY, TAX, WATER AND SEWER LIENS.

SUMMARY

This bill imposes new restrictions on entities that acquire the right to enforce real property liens securing specified delinquent tax, sewer, and water charges (i.e., lien assignees). The bill applies to liens for delinquent:

1. real property taxes (§ 1) and any other liens that by law may be enforced using the same procedure as applies to these taxes (e.g., statutory special taxing district assessments, see CGS § 7-328);
2. sewer benefit assessments or sewer use and connection charges imposed by municipal water pollution control authorities or regional sewer authorities (§§ 2, 3 & 6); and
3. water charges imposed by municipal water companies and regional water authorities (§§ 4 & 5).

The bill makes any lien assignment executed on or after July 1, 2022, unenforceable unless memorialized in a written contract between the assignee and municipality or authority. The contract must include the disclosure and other provisions the bill specifies.

Under the bill:

1. the assignee must provide (a) a written payoff statement upon request and (b) written notices before beginning a foreclosure;
2. all aspects of a foreclosure sale or other disposition (e.g., costs, venue, and terms) must be “commercially reasonable,” which is undefined; and

3. the assignee is liable for any act deemed an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (see BACKGROUND).

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2021

REQUIRED CONTRACT PROVISIONS

General Provisions

For assignments executed on or after July 1, 2022, the bill specifies the provisions that must be included in the contract between the assignee and municipality or authority. The provisions must:

1. specify how the assignee will provide its contact information to the property owner, including an address and telephone number;
2. indicate the earliest and latest dates by which the assignee must begin any foreclosure or suit on the debt or how to determine the dates, except as may be impacted by a payment arrangement, bankruptcy petition, or other circumstance, but the assignee may not begin a foreclosure suit within one year after the lien was purchased;
3. specify the attorney's fee structure and rates that the assignee may claim against the property owner or owners and ban using an attorney or law office that is owned by, employs, or contracts with anyone having an interest in the assignee;
4. confirm that the property owner for which the lien has been filed is a third-party beneficiary entitled to enforce the contract's covenants and responsibilities;
5. prohibit the assignee from assigning the lien without the municipality's prior written consent;
6. specify the detail and frequency of reports provided to the municipality's tax collector on the status of the assigned liens;

7. confirm that the assignee is not ineligible to be assigned the liens because of occupational safety and health law violations;
8. incorporate the bill's disclosure requirements (see below); and
9. include any additional terms to which the parties agree, consistent with applicable law.

Disclosures

The contract must disclose:

1. all resolved and pending arbitration and litigation matters in which the assignee or any of its principals have been involved within the last 10 years, except foreclosure actions involving liens purchased from or assigned by governmental entities;
2. all criminal proceedings that the assignee or any of its principals have ever been the subject of;
3. any interest in the subject property held by the assignee or any of its principals, officers, or agents; and
4. each instance in which the assignee or any of its principals was found to have violated a state or local ethics law, regulation, ordinance, code, policy, or standard, or to have committed any other offense arising from submitting proposals or bids for, or performing work on, a public contract.

PAYOFF STATEMENTS

The bill requires an assignee to provide a payoff statement (i.e., a statement showing the unpaid balance and accruing interest) in the same manner that a mortgagee must provide one to a mortgagor in a mortgage foreclosure situation.

By law, a mortgagee, upon the written request of the mortgagor, the mortgagor's attorney, or other authorized agent, must provide a written payoff statement or reinstatement payment statement to the person requesting one. The mortgagee must do so by the date specified in the request, provided the request date is at least seven business days

after the date of receipt of the written request (CGS § 49-10a).

FORECLOSURE REQUIREMENTS

By law, the assignees have the same powers and rights to enforce an assigned lien as the municipality, the municipality's tax collector, or the authority had, which include the right to enforce the lien through foreclosure.

The bill requires assignees to provide notices to the property owner and other specified interest parties when foreclosing on a lien.

Written Notice to Holders of First or Second Security Interests

Under the bill, at least 60 days before beginning a foreclosure action, the assignee must send written notice, by first class mail, to the holders of all first or second security interests on the property that were recorded before the taxes or charges became delinquent.

The notice is effective on the date it is provided and must include:

1. the amount of unpaid debt owed to the assignee as of the notice's date;
2. the amount of any attorney's fees and costs incurred by the assignee in enforcing the lien as of the notice's date;
3. a statement of the assignee's intention to foreclose the lien if these amounts are not paid to the assignee within 60 days after the date on which notice is provided;
4. the assignee's contact information (i.e., name, address, telephone number, and email address, if any); and
5. instructions on acceptable means of making a payment.

When sending this notice, the assignee may use the name and mailing address last recorded for the holder of the interest. If the holder of the interest is a plaintiff in a pending related court case to enforce the interest, the assignee must instead provide the written notice to the plaintiff's attorney.

Written Notice to Mortgage Owners and Holders

The bill increases the amount of time that an assignee has to notify the owner about a property tax lien assignment. Under current law, within 30 days after the assignment the assignee must provide written notice to any holder of a mortgage (i.e., mortgagee) on the subject property, provided the holder is of record as of the date of the assignment. The bill increases the notification period to within 60 days after the assignment and requires that the notice also goes to the owner (presumably the property owner).

The bill also extends the notice requirement that applies to tax lien assignments to the assignment of liens securing unpaid sewer benefit assessments, sewer use and connection charges, or water charges.

As is the case for tax lien assignments, the notice must include information to identify the:

1. property subject to the lien;
2. name and addresses of the assignee; and
3. amount of unpaid taxes, interest, and fees being assigned as of the date of the assignment. (Presumably, “tax” means unpaid assessments or charges, as applicable.)

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney’s fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Bill

SB 968, favorably reported by the Planning and Development Committee, limits the circumstances under which certain liens may be enforced or assigned and requires that aspects of related foreclosure actions or other legal proceedings be commercially reasonable.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/17/2021)