

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2848**

5 (By Delegates Boggs, Swartzmiller, Ferro, Caputo and D. Poling)

6 [Passed April 13, 2013; in effect ninety days from passage.]

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9
10 AN ACT to amend and reenact §11A-3-18, §11A-3-22, §11A-3-27, §11A-
11 3-28 and §11A-3-55 of the Code of the West Virginia, 1931, as
12 amended, all relating generally to the sale of tax liens and
13 nonentered, escheated and waste and unappropriated lands;
14 providing the process for requesting a refund after forfeiture
15 of rights to a tax deed; clarifying deadlines for receipt of
16 tax deeds and refunds related to failure to meet deadlines;
17 modifying the requirements for petitioning to compel execution
18 of a deed by the State Auditor; removing the provisions
19 allowing judgment against the State Auditor for costs in the
20 case of failure or refusal to execute a deed without
21 reasonable cause; and providing for service of notice when
22 mail is not deliverable to an address at the physical location
23 of the property.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §11A-3-18, §11A-3-22, §11A-3-27, §11A-3-28 and §11A-3-55

1 of the Code of the West Virginia, 1931, as amended, be amended and
2 reenacted, all to read as follows:

3 **ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE**
4 **AND UNAPPROPRIATED LANDS.**

5 **§11A-3-18. Limitations on tax certificates.**

6 (a) No lien upon real property evidenced by a tax certificate
7 of sale issued by a sheriff on account of any delinquent property
8 taxes may remain a lien on the real property for a period longer
9 than eighteen months after the original issuance of the tax
10 certificate of sale.

11 (b) All rights of a purchaser to the property, to a lien on
12 the property, or to any other interest in the property, including
13 but not limited to any right to a tax deed, shall be considered
14 forfeited and expired and no tax deed is to be issued on any tax
15 sale evidenced by a tax certificate of sale where the certificate
16 has ceased to be a lien pursuant to the provisions of this section
17 and application for the tax deed, pursuant to the provisions of
18 section twenty-seven of this article, is not pending at the time of
19 the expiration of the limitation period provided in this section.

20 (c) Whenever a lien evidenced by a tax certificate of sale has
21 expired by reason of the provisions of this section, the State
22 Auditor shall immediately issue and record a certificate of
23 cancellation describing the real estate included in the certificate
24 of purchase or tax certificate and giving the date of cancellation
25 and the State Auditor shall also make proper entries in his or her

1 records. The State Auditor shall also present a copy of every
2 certificate of cancellation to the sheriff who shall enter it in
3 the sheriff's records and the certificate and the record are prima
4 facie evidence of the cancellation of the certificate of sale and
5 of the release of the lien of the certificate on the lands
6 described in the certificate. Failure to record the certificate of
7 cancellation does not extend the lien evidenced by the certificate
8 of sale. The sheriff and State Auditor are not entitled to any
9 fees for the issuing of the certificate of cancellation nor for the
10 entries in their books made under the provisions of this
11 subsection.

12 (d) Whenever a purchaser has complied with the notice
13 requirements provided in section nineteen of this article, but has
14 failed to request a deed within the eighteen month deadline
15 provided in this section, thereby forfeiting all rights to a tax
16 deed, the purchaser may recover the amounts paid in excess of the
17 taxes owed and expenses incurred by the State Auditor in the
18 processing of the tax lien if, within thirty days of the expiration
19 of the lien, upon a showing of compliance with the provisions of
20 section nineteen of this article, the purchaser files with the
21 State Auditor a request in writing for the refund. A purchaser who
22 fails to file the request within the thirty day period forfeits all
23 rights to the refund.

24 **§11A-3-22. Service of notice.**

25 (a) As soon as the State Auditor has prepared the notice
26 provided in section twenty-one of this article, he or she shall

1 cause it to be served upon all persons named on the list generated
2 by the purchaser pursuant to the provisions of section nineteen of
3 this article.

4 (b) The notice shall be served upon all persons residing or
5 found in the state in the manner provided for serving process
6 commencing a civil action or by certified mail, return receipt
7 requested. The notice shall be served on or before the thirtieth
8 day following the request for the notice.

9 (c) If a person entitled to notice is a nonresident of this
10 state, whose address is known to the purchaser, he or she shall be
11 served at that address by certified mail, return receipt requested.

12 (d) If the address of a person entitled to notice, whether a
13 resident or nonresident of this state, is unknown to the purchaser
14 and cannot be discovered by due diligence on the part of the
15 purchaser, the notice shall be served by publication as a Class
16 III-0 legal advertisement in compliance with the provisions of
17 article three, chapter fifty-nine of this code and the publication
18 area for the publication shall be the county in which the real
19 estate is located. If service by publication is necessary,
20 publication shall be commenced when personal service is required as
21 set forth in this section and a copy of the notice shall at the
22 same time be sent by certified mail, return receipt requested, to
23 the last known address of the person to be served. The return of
24 service of the notice and the affidavit of publication, if any,
25 shall be in the manner provided for process generally and shall be
26 filed and preserved by the State Auditor in his or her office,

1 together with any return receipts for notices sent by certified
2 mail.

3 In addition to the other notice requirements set forth in this
4 section, if the real property subject to the tax lien was
5 classified as Class II property at the time of the assessment, at
6 the same time the State Auditor issues the required notices by
7 certified mail, the State Auditor shall forward a copy of the
8 notice sent to the delinquent taxpayer by first class mail,
9 addressed to "Occupant", to the physical mailing address for the
10 subject property. The physical mailing address for the subject
11 property shall be supplied by the purchaser of the tax lien
12 pursuant to the provisions of section nineteen of this article.
13 Where the mail is not deliverable to an address at the physical
14 location of the subject property, the copy of the notice shall be
15 sent to any other mailing address that exists to which the notice
16 would be delivered to an occupant of the subject property.

17 **§11A-3-27. Deed to purchaser; record.**

18 (a) If the real estate described in the notice is not redeemed
19 within the time specified in the notice, then from April 1 of the
20 second year following the sheriff's sale until the expiration of
21 the lien evidenced by a tax certificate of sale as provided in
22 section eighteen of this article, the State Auditor or his or her
23 deputy shall upon request of the purchaser make and deliver to the
24 clerk of the county commission, a quitclaim deed for the real
25 estate. The purchaser's right to a tax deed shall be forfeited if
26 the deed is not requested within the eighteen month period set

1 forth in section eighteen of this article. The deed shall provide
2 in form or effect as follows:

3 This deed made this _____ day of _____, 20 _____, by
4 and between _____, State Auditor, West Virginia, (or by
5 and between _____, a commissioner appointed by the
6 circuit court of _____ County, West Virginia) grantor, and
7 _____, purchaser, (or _____, heir, devisee or
8 assignee of _____, purchaser), grantee,
9 witnesseth, that:

10 Whereas, In pursuance of the statutes in such case made and
11 provided, _____, Sheriff of _____ County, (or
12 _____, deputy for _____, Sheriff of _____
13 County), (or _____, collector of _____ County),
14 did, in the month of _____, in the year 20 _____, sell the
15 tax lien(s) on real estate, hereinafter mentioned and described,
16 for the taxes delinquent thereon for the year (or years) 20 _____,
17 and _____, (here insert name of purchaser) for the sum of
18 \$_____, that being the amount of purchase money paid to the
19 sheriff, did become the purchaser of the tax lien(s) on such real
20 estate (or on _____ acres, part of the tract or land, or on an
21 undivided _____ interest in such real estate) which was
22 returned delinquent in the name of _____; and

23 Whereas, The State Auditor has caused the notice to redeem to
24 be served on all persons required by law to be served therewith;
25 and

26 Whereas, The tax lien(s) on the real estate so purchased has

1 not been redeemed in the manner provided by law and the time for
2 redemption set in such notice has expired;

3 Now, therefore, the grantor, for and in consideration of the
4 premises and in pursuance of the statutes, doth grant unto
5 _____, grantee, his or her heirs and assigns forever, the
6 real estate on which the tax lien(s) so purchased existed, situate
7 in the county of _____, bounded and described as
8 follows: _____.

9 Witness the following signature: _____

10 State Auditor.

11 (b) The State Auditor may not execute and deliver a deed more
12 than sixty days after the person entitled to the deed delivers the
13 same and requests the execution of the deed, except when directed
14 to do so under section twenty-eight of this article.

15 (c) For the execution of the deed and for all the recording
16 required by this section, a fee of \$50 and the recording and
17 transfer tax expenses shall be charged, to be paid by the grantee
18 upon delivery of the deed. The deed, when duly acknowledged or
19 proven, shall be recorded by the clerk of the county commission in
20 the deed book in the clerk's office, together with any assignment
21 from the purchaser, if one was made, the notice to redeem, the
22 return of service of the notice, the affidavit of publication, if
23 the notice was served by publication, and any return receipts for
24 notices sent by certified mail.

25 (d) The State Auditor shall appoint employees of his or her
26 office to act as his or her designee to effect the purposes of this

1 section.

2 **§11A-3-28. Compelling service of notice or execution of deed.**

3 (a) If the State Auditor fails or refuses to prepare and serve
4 the notice to redeem as required in sections twenty-one and twenty-
5 two of this article, the person requesting the notice may, at any
6 time within two weeks after discovery of the failure or refusal,
7 but in no event later than sixty days following the date the person
8 requested that notice be prepared and served, apply by petition to
9 the circuit court of the county for an order compelling the State
10 Auditor to prepare and serve the notice or appointing a
11 commissioner to do so. If the person requesting the notice fails
12 to make application within the time allowed, he or she shall lose
13 his or her right to the notice, but his or her rights against the
14 State Auditor under the provisions of section sixty-seven of this
15 article shall not be affected. Notice given pursuant to an order
16 of the court or judge shall be as valid for all purposes as if
17 given within the time required by section twenty-two of this
18 article.

19 (b) If the State Auditor fails or refuses to execute the deed
20 as required in section twenty-seven of this article to a purchaser
21 who has requested the deed within the period required by said
22 section twenty-seven, the person requesting the deed may, at any
23 time after such failure or refusal, but not more than six months
24 after his or her right to the deed accrued, upon proof that the
25 purchaser requested the deed within the period required by said
26 section twenty-seven, apply by petition to the circuit court of the

1 county for an order compelling the State Auditor to execute the
2 deed or appointing a commissioner to do so. If the person
3 requesting the deed fails to prove compliance with the limitations
4 period set forth in section twenty-seven of this article or fails
5 to make an application within the time allowed, he or she shall
6 lose his or her right to the deed. Any deed executed pursuant to
7 an order of the court or judge shall have the same force and effect
8 as if executed and delivered by the State Auditor within the time
9 specified in section twenty-seven of this article.

10 (c) Ten days' written notice of every application must be
11 given to the State Auditor. If, upon the hearing of the
12 application, the court or judge is of the opinion that the
13 applicant is not entitled to the notice or deed requested, the
14 petition shall be dismissed at his or her costs; but if the court
15 or judge is of the opinion that he or she is entitled to the notice
16 or deed, then, upon his or her deposit with the clerk of the
17 circuit court of a sum sufficient to cover the costs of preparing
18 and serving the notice, unless a deposit has already been made with
19 the State Auditor, an order shall be made by the court or judge
20 directing the State Auditor to prepare and serve the notice or
21 execute the deed, or appointing a commissioner for the purpose, as
22 the court or judge shall determine.

23 (d) Any commissioner appointed under the provisions of this
24 section shall be subject to the same liabilities as are provided
25 for the State Auditor. For the preparation of the notice to
26 redeem, he or she shall be entitled to the same fee as is provided

1 for the State Auditor. For the execution of the deed, he or she
2 shall also be entitled to a fee of \$50 and the recording and
3 transfer expenses, to be paid by the grantee upon delivery of the
4 deed.

5 **§11A-3-55. Service of notice.**

6 As soon as the deputy commissioner has prepared the notice
7 provided for in section fifty-four of this article, he shall cause
8 it to be served upon all persons named on the list generated by the
9 purchaser pursuant to the provisions of section fifty-two of this
10 article. Such notice shall be mailed and, if necessary, published
11 at least thirty days prior to the first day a deed may be issued
12 following the deputy commissioner's sale.

13 The notice shall be served upon all such persons residing or
14 found in the state in the manner provided for serving process
15 commencing a civil action or by certified mail, return receipt
16 requested. The notice shall be served on or before the thirtieth
17 day following the request for such notice.

18 If any person entitled to notice is a nonresident of this
19 state, whose address is known to the purchaser, he shall be served
20 at such address by certified mail, return receipt requested.

21 If the address of any person entitled to notice, whether a
22 resident or nonresident of this state, is unknown to the purchaser
23 and cannot be discovered by due diligence on the part of the
24 purchaser, the notice shall be served by publication as a Class
25 III-0 legal advertisement in compliance with the provisions of
26 article three, chapter fifty-nine of this code, and the publication

1 area for such publication shall be the county in which such real
2 estate is located. If service by publication is necessary,
3 publication shall be commenced when personal service is required as
4 set forth above, and a copy of the notice shall at the same time be
5 sent by certified mail, return receipt requested, to the last known
6 address of the person to be served. The return of service of such
7 notice, and the affidavit of publication, if any, shall be in the
8 manner provided for process generally and shall be filed and
9 preserved by the auditor in his office, together with any return
10 receipts for notices sent by certified mail.

11 In addition to the other notice requirements set forth in this
12 section, if the real property subject to the tax lien was
13 classified as Class II property at the time of the assessment, at
14 the same time the deputy commissioner issues the required notices
15 by certified mail, the deputy commissioner shall forward a copy of
16 the notice sent to the delinquent taxpayer by first class mail,
17 addressed to "Occupant", to the physical mailing address for the
18 subject property. The physical mailing address for the subject
19 property shall be supplied by the purchaser of the property,
20 pursuant to the provisions of section fifty-two of this article.
21 Where the mail is not deliverable to an address at the physical
22 location of the subject property, the copy of the notice shall be
23 sent to any other mailing address that exists to which the notice
24 would be delivered to an occupant of the subject property.