

Senate Bill No. 281

(By Senator Plymale)

[Introduced January 21, 2015; referred to the Committee on the Judiciary; and then to the
Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11A-3A-1, §11A-3A-2, §11A-3A-3, §11A-3A-4, §11A-3A-5 and §11A-3A-6, all relating to creating a system of judicial in rem tax foreclosure sales; providing a judicial in rem tax foreclosure process as alternative to nonjudicial foreclosure process; defining terms; providing for identification of properties eligible for judicial foreclosure; setting forth requirements in petition for judicial foreclosure; requiring notice to owners and interested parties in order to preserve their due process rights; setting forth form of petition; detailing standards for judicial hearing on petition; requiring certain judicial order for sale; noting priority of claims; allowing for continuance upon death of interested party; providing process for redemption by owner or interested party prior to judicial foreclosure sale; stating sale procedure and timing; setting minimum bid requirements; addressing finality of purchase; permitting additional fourteen-day redemption period post sale for owner of property;

1 requiring execution of tax deed and report of sale; and stating certain information that shall
2 be included in deed.

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

4 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
5 article, designated §11A-3A-1, §11A-3A-2, §11A-3A-3, §11A-3A-4, §11A-3A-5 and §11A-3A-6,
6 all to read as follows:

7 **ARTICLE 3A. JUDICIAL SALE OF TAX LIENS.**

8 **§11A-3A-1. Judicial in rem tax foreclosure.**

9 (a) In addition to any other rights and remedies provided in this code for the enforcement of
10 tax liens by the state and its subdivisions, a governmental entity may proceed with judicial in rem
11 tax foreclosures for delinquent taxes in accordance with the provisions of this article.

12 (b) Proceedings in accordance with this article are designed solely to enforce the lien taxes
13 against the property subject to such taxation and does not constitute an action for personal liability
14 for such taxes of the owner or owners of such property.

15 (c) The rights and remedies set forth in this article are available solely to the governmental
16 entities authorized by law to collect taxes and do not extend to any transferee of tax executions or
17 tax liens.

18 (d) The enforcement proceedings authorized by this article may be initiated by the
19 governmental entity wherein the property is located or by a joint action in a single proceeding when
20 the property is located in more than one governmental entity.

21 **§11A-3A-2. Definitions.**

1 As used in this article, the terms:

2 (1) “Interested party” means:

3 (A) Those parties having an interest in the property as revealed by a certification of title to
4 the property conducted in accordance with the title standards of the state;

5 (B) Those parties having filed a notice of their interest with the clerk of the county wherein
6 the property is located; and

7 (C) Any other party having an interest in the property whose identity and address are
8 reasonably ascertainable from the records of the petitioner or records maintained in the county
9 courthouse, by the clerk of the court, or by the Secretary of State. “Interested Party” does not
10 include the holder of the benefit or burden of any easement or right of way whose interest is properly
11 recorded which interest shall remain unaffected.

12 (2) “Redemption amount” means the full amount of the delinquent taxes, accrued interest at
13 the rate specified in this chapter, penalties determined in accordance with this chapter, and costs
14 incurred by the governmental entity in collecting such taxes, including without limitation the cost
15 of title examination and publication of notices.

16 **§11A-3A-3. Identification of properties on which taxes are delinquent; petition for tax**
17 **foreclosure; contents of petition; notice.**

18 (a) After a tax lien has become payable and is past due and thereby delinquent, in accordance
19 with the provisions of this chapter, the county sheriff, in consultation with the county commission,
20 may identify those properties on which to commence a tax foreclosure in accordance with this
21 article. The sheriff may not commence a tax foreclosure in accordance with this article for a period

1 of twelve months following the date upon which the taxes initially became delinquent. Thereafter,
2 the sheriff may work with the county prosecutor or other attorney hired by the county commission
3 to commence judicial tax foreclosure in accordance with this article. Once enforcement proceedings
4 have commenced, the enforcement proceedings may be amended to include any and all taxes which
5 become delinquent subsequent to the date of the initial tax lien that was the original basis for the
6 enforcement proceedings.

7 (b) The sheriff, in consultation with the county prosecutor or other attorney hired by the
8 county commission, shall file a petition with the circuit court of the county in which the property is
9 located, which petition shall have form and content substantially similar to that form provided in
10 subsection (g) of this section. When the subject property is located in more than one taxing
11 jurisdiction, the entity filing the petition shall identify in the petition only those portions of such
12 property lying within the jurisdiction of the taxing authority of the petitioner.

13 (c) The petition shall be filed against the property for which taxes are delinquent and shall
14 provide:

15 (1) The identity of the petitioner and the name and address of the individual responsible for
16 collecting the delinquent taxes;

17 (2) The property address;

18 (3) A description of the property;

19 (4) The tax identification number of the property;

20 (5) The calendar year or years for which the taxes are delinquent;

21 (6) The principal amount of the delinquent taxes together with interest and penalties; and

1 (7) The names and addresses of parties to whom copies of the petition are to be sent in
2 accordance with subsection (d) of this section.

3 (d) The petitioner shall mail copies of the petition by certified mail, return receipt requested,
4 and by first-class mail to all interested parties whose identity and address are reasonably
5 ascertainable. Copies of the petition shall also be mailed by first-class mail to the property address
6 to the attention of the occupants of the property, if any, and shall be posted on the property.

7 (e) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition
8 to be filed in the appropriate lis pendens docket in the county in which the property is located.

9 (f) Within thirty days of the filing of the petition, the petitioner shall cause notice of the
10 petition to be published on two separate dates as a Class III-0 legal advertisement in compliance with
11 the provisions of article three, chapter fifty-nine of this code, and the publication area for such
12 publication shall be the county in which the property is located. The notice shall specify:

13 (1) The identity of the petitioner and the name and address of the individual responsible for
14 collecting the delinquent taxes;

15 (2) The property address;

16 (3) A description of the property;

17 (4) A tax identification number of the property;

18 (5) The applicable period of tax delinquency;

19 (6) The principal amount of the delinquent taxes together with interest and penalties; and

20 (7) The date and place of the filing of the petition.

21 (g) The petition for tax foreclosure shall be written or printed, or written in part and printed

1 in part, and shall be in substantially the following form:

2 Circuit Court of _____ County

3 State of West Virginia

4 Petitioner:)

5 [NAME, OFFICE])

6 [Address])

7 [Phone Number])

8)

9 v.)

10 Case No.:

11 Respondents:)

12 [Land Description])

13 And)

14 [Name of Owner])

15 [Address of property])

16 PETITION FOR JUDICIAL TAX FORECLOSURE

17 COMES NOW, [Petitioner], and petitions this Court for an in rem tax foreclosure by showing

18 this Court as follows:

19 1. [Name] is the owner of certain real property located at _____ (the "Property")

20 having a tax identification number of _____. A legal description of the property is

21 attached hereto as Exhibit "A" and by this reference incorporated herein.

1 2. The taxes assessed against the property by _____ County for the year(s)
2 _____ in the amount of \$_____ (amount includes principal amount of taxes owed and
3 any accrued interest and penalties as of this date) has not been paid.

4 3. Attached hereto as Exhibit “B” is a list of the names and addresses of Interested Parties
5 also receiving a copy of this Petition by certified mail, return receipt requested, and first-class mail.

6 4. The occupants of the respondent property, [names, if known], were served the Petition by
7 first-class mail to the attention of the occupants at the above-listed property address.

8 5. The Petition has also been posted on the property in accordance with W. Va. Code
9 §11A-3A-3.

10 6. Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

11 WHEREFORE, Petitioner demands (1) a hearing in the Circuit Court of _____ County
12 (the “Court”) and (2) a judgment by the Court stating that (a) the taxes for the property are delinquent
13 and (b) that Notice has been given to all Interested Parties, and ordering that the property may be sold
14 pursuant to Chapter Eleven-A, Article Three-A of West Virginia Code.

15

16 [PETITIONER NAME]

17

18 _____ County

19

20 By:_____

21

1 NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES

2 This Petition serves as notice to the Respondents and all Interested Parties that: (1) Each
3 party is presumed to own or have a legal interest in the property; (2) that foreclosure proceedings
4 have been commenced because of the failure to pay the real property taxes cited above; and (3)
5 foreclosure will result in the loss of ownership of the property and all rights or interests of all
6 Interested Parties.

7 To avoid loss of ownership or any interest in the property, payment of the full amount of
8 taxes, penalties, interest, and costs must be paid to the office located at _____ by
9 _____ date. Respondents and all Interested Parties are also reminded that each of you
10 may wish to contact an attorney to protect your rights.

11 A Hearing on the above matter shall take place in the Circuit Court of _____ County
12 no earlier than thirty days after the filing of this Petition. To determine the exact time and date of
13 such Hearing, please call the Clerk of the Circuit Court of _____ County.

14 **§11A-3A-4. Judicial hearing on petition; orders; priority of claims; death of interested party.**

15 (a) The Petitioner shall request that a judicial hearing on the petition occur not earlier than
16 thirty days following the filing of the petition. At the hearing, any interested party has the right to
17 be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the circuit
18 court determines that the information set forth in the petition is accurate, the court shall render its
19 judgment and order that:

- 20 (1) The taxes are delinquent;
- 21 (2) Proper notice has been given to all interested parties;

1 (3) The property as described in the petition be sold in accordance with the provisions of this
2 article; and

3 (4) The sale shall become final and binding fourteen days after the day of the sale, in
4 accordance with section six of this article.

5 (b) The order of the circuit court shall provide that the property be sold free and clear of all
6 liens, claims, and encumbrances other than:

7 (1) Rights of redemption provided under federal law;

8 (2) Tax liens held by West Virginia governmental entities other than the petitioner, which
9 are superior to the taxes identified in the petition.

10 (3) Easements and rights-of-way of holders who are not interested parties, pursuant to section
11 two of this article.

12 (4) Benefits or burdens of any real covenants filed of record as of the date of filing of the
13 petition.

14 (c) If, upon production of evidence to the court by any party, it is determined by the court that
15 any interested party died within the six-month period of time immediately preceding the filing of the
16 petition, the court may postpone the hearing for a period of up to six months to allow the
17 administrator or executor of the estate adequate time to close the estate.

18 **§11A-3A-5. Redemption by owner or other interested party.**

19 (a) At any point prior to the moment of the sale, any interested party may redeem the property
20 from the sale by payment of the redemption amount. Payment shall be made to the petitioner.
21 Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

1 (b) In the event of such payment by the owner of the subject property, the proceedings shall
2 be dismissed and the rights and interests of all interested parties shall remain unaffected.

3 (c) In the event of such payment by any interested party other than the owner, the party
4 accomplishing such payment shall possess a lien on the property for the full amount of such
5 payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder
6 shall have the right to enforce such lien as permitted to the holder of any lien under this code. Such
7 lienholder does not otherwise succeed to the rights of the petitioner as described in this article.

8 **§11A-3A-6. Sale procedure; time; minimum bid; finality; right of redemption by owner;**
9 **execution of tax deed; report of sale.**

10 (a) Following the hearing and order of the circuit court in accordance with this article, a sale
11 of the property shall be advertised and conducted on the date, time, place, and manner which are
12 required by law of sheriffs' sales. Such sale shall not occur earlier than forty-five days following the
13 date of issuance of such order of the circuit court.

14 (b) Except as otherwise authorized by law, the minimum bid price for the sale of the property
15 shall be the redemption amount. In the absence of any higher bid, the petitioner may, but is not be
16 obligated to, tender its own bid in an amount equal to the minimum bid price and thereby become
17 the purchaser at the sale.

18 (c) From and after the moment of the sale, the sale is final and binding, subject only to the
19 right of the owner of the property to redeem the property from the sale upon payment into the circuit
20 court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner
21 exists for a period of fourteen days from and after the date of the sale and shall be in accordance with

1 the following provisions:

2 (1) Redemption by an owner in accordance with this subsection results in a dismissal of the
3 proceedings. Immediately following such redemption by an owner, if the property was sold to a third
4 party at the sale, the petitioner shall refund to such purchaser the full amount paid by such purchaser
5 at the sale;

6 (2) For purposes of redemption under this subsection, “owner” means the owner of record
7 of fee simple interest in the property as of the date of filing of the petition, together with such
8 owner’s successors-in-interest by death or operation of law. This right of redemption is not
9 otherwise transferable; and

10 (3) This right of redemption automatically terminates and expires upon failure to redeem in
11 accordance with the provisions of this subsection within the fourteen day period following the date
12 of the sale.

13 (d) If the property is not redeemed by the owner in accordance with subsection (c) of this
14 section, then within forty-five days following the date of the sale, the petitioner shall cause to be
15 executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the
16 property in substantially the same form described in subsection (g) of this section, together with such
17 real estate transfer tax declaration forms as may be required by law.

18 (e) Within forty-five days following the date of the sale, the petitioner shall file a report of
19 the sale with the circuit court, which report shall identify whether a sale took place, the foreclosure
20 sale price, and the identity of the purchaser.

21 (f) In the event that the foreclosure sale price exceeds the minimum bid amount at the

1 foreclosure sale, the petitioner shall deposit the surplus with the circuit court. The circuit court shall
2 distribute the surplus to the interested parties, including the owner, as their interests appear and in
3 the order of priority in which their interests exist.

4 (g) The form of the deed provided in subsection (d) of this section shall be made under the
5 seal of a notary public and shall include the following information:

6 (1) The date and details of the sale of the property;

7 (2) The amount paid for the property;

8 (3) A reference to the order of the circuit court required by this article;

9 (4) A description of the advertisement printed, the frequency of the printing, and the
10 distribution of the advertisement;

11 (5) A statement that the sale was made for the purpose of paying the delinquent taxes, plus
12 interest and penalties;

13 (6) A statement that the grantor conveys the property to the grantee subject to all restrictions
14 and easements, if any, to which the deed is junior and inferior in terms of priority;

15 (7) A description of the property; and

16 (8) A declaration that the property is transferred to the grantee in fee simple.

NOTE: The purpose of this bill is to create an alternative method for tax sales in this state that rely on superior notice at the start of the process, a judicial order, and transfer of the property to the new purchaser in a quick manner following the sale, in order to allow for improvement to the property sooner rather than later.

This article is new; therefore, strike-throughs and underscoring have been omitted.