

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 405

SENATOR SYPOLT, *original sponsor*

[Passed March 9, 2019; in effect 90 days from

passage]

1 AN ACT to amend and reenact §11A-3-23, §11A-3-25, §11A-3-56, §11A-3-57, §11A-3-58, and
2 §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating to increasing the
3 limit to \$500 on additional expenses a purchaser may recover in preparing notice list for
4 redemption of purchase and for licensed attorney's title examination.

Be it enacted by the Legislature of West Virginia:

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

**§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person
redeeming interest of another; record.**

1 (a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the
2 owner of, or any other person who was entitled to pay the taxes on, any real estate for which a
3 tax lien on the real estate was purchased by an individual may redeem at any time before a tax
4 deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the
5 following amounts:

6 (1) An amount equal to the taxes, interest and charges due on the date of the sale, with
7 interest at the rate of one percent per month from the date of sale;

8 (2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns,
9 with interest at the rate of one percent per month from the date of payment;

10 (3) Any additional expenses incurred from January 1 of the year following the sheriff's sale
11 to the date of redemption for the preparation of the list of those to be served with notice to redeem
12 and any written documentation used for the preparation of the list, with interest at the rate of one
13 percent per month from the date of payment for reasonable legal expenses incurred for the
14 services of an attorney who has performed an examination of the title to the real estate and
15 rendered written documentation used for the preparation of the list: The maximum amount the
16 owner or other authorized person shall pay, excluding the interest, for the expenses incurred for

17 the preparation of the list of those to be served required by §11A-3-19 of this code is \$500. An
18 attorney may only charge a fee for legal services actually performed and must certify that he or
19 she conducted an examination to determine the list of those to be served required by §11A-3-19
20 of this code; and

21 (4) All additional statutory costs paid by the purchaser.

22 (b) Where the State Auditor has not received from the purchaser satisfactory proof of the
23 expenses incurred in preparing the notice to redeem, and any written documentation used for the
24 preparation of the list of those to be served with notice to redeem, including the certification
25 required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts
26 or other evidence of legal expenses, incurred as provided in §11A-3-13 of this code, the person
27 redeeming shall pay the State Auditor the sum of \$500 plus interest at the rate of one percent per
28 month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant
29 to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

30 (c) The person redeeming shall be given a receipt for the payment and the written opinion
31 or report used for the preparation of the list of those to be served with notice to redeem required
32 by section nineteen of this article.

33 (d) Any person who, by reason of the fact that no provision is made for partial redemption
34 of the tax lien on real estate purchased by an individual, is compelled in order to protect himself
35 or herself to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to
36 some other person, shall have a lien on the interest of that other person for the amount paid to
37 redeem the interest. He or she shall lose his or her right to the lien, however, unless within 30
38 days after payment he or she files with the clerk of the county commission his or her claim in
39 writing against the owner of the interest, together with the receipt provided in this section. The
40 clerk shall docket the claim on the judgment lien docket in his or her office and properly index the
41 claim. The lien may be enforced as other judgment liens are enforced.

42 (e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor,
43 the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt.
44 The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall
45 be provided by the State Auditor and the State Auditor shall update the required payments plus
46 interest at least monthly.

47 (f) On or before the 10th day of each month, the county clerk shall deliver to the State
48 Auditor the redemption money paid and the name and address of the person who redeemed the
49 property on a form prescribed by the State Auditor.

§11A-3-25. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner set forth in §11A-3-23 of this code,
2 and the State Auditor has delivered the redemption money to the sheriff pursuant to §11A-3-24
3 of this code, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the
4 purchaser or his or her heirs or assigns, by mail, of the fact of the redemption and pay to the
5 purchaser or his or her heirs or assigns the following amounts:

6 (1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

7 (A) The surplus of money paid in excess of the amount of the taxes, interest, and charges
8 paid by the purchaser to the sheriff at the sale; and

9 (B) The amount of taxes, interest and charges paid by the purchaser on the date of the
10 sale, plus the interest at the rate of one percent per month from the date of sale to the date of
11 redemption;

12 (2) All other taxes on the land which have since been paid by the purchaser or his or her
13 heirs or assigns, with interest at the rate of one percent per month from the date of payment to
14 the date of redemption;

15 (3) Any additional reasonable expenses that the purchaser may have incurred from
16 January 1 of the year following the sheriff's sale to the date of redemption for the preparation of
17 the list of those to be served with notice to redeem and any written documentation used for the

18 preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one
19 percent per month from the date of payment, but the amount which shall be paid, excluding the
20 interest, for the expenses incurred for the preparation of the list of those to be served with notice
21 to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by
22 the purchaser or \$500, whichever is less: *Provided*, That the attorney may only charge a fee for
23 legal services actually performed and must certify that he or she conducted an examination to
24 determine the list of those to be served required by §11A-3-19 of this code; and

25 (4) All additional statutory costs paid by the purchaser.

26 (b) (1) The notice shall include:

27 (A) A copy of the redemption certificate issued by the State Auditor;

28 (B) An itemized statement of the redemption money to which the purchaser is entitled
29 pursuant to the provisions of this section; and

30 (C) Where, at the time of the redemption, the State Auditor has not received from the
31 purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served
32 with notice to redeem and any written documentation used for the preparation of the list in
33 accordance with §11A-3-19 of this code, the State Auditor shall also include instructions to the
34 purchaser as to how these expenses may be claimed.

35 (2) Subject to the limitations of this section, the purchaser is entitled to recover any
36 expenses incurred in preparing the list of those to be served with notice to redeem and any written
37 documentation used for the preparation of the list from January 1 of the year following the sheriff's
38 sale to the date of the sale to the date of the redemption.

39 (c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the
40 purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served
41 with notice to redeem, including written documentation used for preparation of the list, in the form
42 of receipts or other evidence within 30 days from the date of notification by the State Auditor, the
43 sheriff shall refund the amount to the person redeeming and the purchaser is barred from any

44 claim. Where, pursuant to that section, the State Auditor has received from the person redeeming
45 and therefore delivered to the sheriff the sum of \$500 plus interest at the rate of one percent per
46 month from January 1 of the year following the sheriff's sale to the date of the sale to the date of
47 redemption, and the purchaser provides the sheriff within 30 days from the date of notification
48 satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid
49 by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

1 (a) The Auditor shall establish a special operating fund for the land department in his or
2 her office. He or she shall pay into such fund all redemption fees, all publication or other charges
3 collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed
4 surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to
5 this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-
6 65 of this code, except such part thereof as represents state taxes and interest. All payments so
7 excepted shall be credited by the Auditor to the general school fund or other proper state fund.

8 (b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay
9 any balances due to deputy commissioners for services rendered, and any unpaid costs, including
10 those for publication which have accrued or will accrue under the provisions of this article, to pay
11 fees due surveyors under the provisions of §11A-3-43 of this code, and to pay for the operation
12 and maintenance of the land department in his or her office. The surplus over and above the
13 amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining
14 at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.

**§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person
redeeming interest of another; record.**

1 (a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of
2 this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate
3 for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax

4 deed is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the
5 following amounts:

6 (1) An amount equal to the taxes, interest and charges due on the date of the sale, with
7 interest thereon at the rate of one percent per month from the date of sale;

8 (2) All other taxes thereon, which have since been paid by the purchaser, his or her heirs
9 or assigns, with interest at the rate of one percent per month from the date of payment;

10 (3) Such additional expenses as may have been incurred in preparing the list of those to
11 be served with notice to redeem, and for any licensed attorney's title examination incident thereto,
12 with interest at the rate of one percent per month from the date of payment, but the amount he or
13 she shall be required to pay, excluding said interest, for such expenses incurred for the
14 preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this
15 code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An
16 attorney may only charge a fee for legal services actually performed and must certify that he or
17 she conducted an examination to determine the list of those to be served required by §11A-3-52
18 of this code;

19 (4) All additional statutory costs paid by the purchaser; and

20 (5) The deputy commissioner's fee and commission as provided by §11A-3-66 of this
21 code. Where the deputy commissioner has not received from the purchaser satisfactory proof of
22 the expenses incurred in preparing the notice to redeem, or of any licensed attorney's title
23 examination incident thereto, in the form of receipts or other evidence thereof, the person
24 redeeming shall pay the deputy commissioner the sum of \$500 plus interest thereon at the rate
25 of one percent per month from the date of the sale for disposition pursuant to the provisions of
26 §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the deputy commissioner
27 of those and any other unpaid statutory charges required by this article, and of any unpaid
28 expenses incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their
29 duties pursuant to this article, the deputy commissioner shall prepare an original and five copies

30 of the receipt for the payment and shall note on said receipts that the property has been
31 redeemed. The original of such receipt shall be given to the person redeeming. The deputy
32 commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor,
33 the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact
34 and time of such filing and note the fact of redemption on his or her record of delinquent lands.

35 (b) Any person who, by reason of the fact that no provision is made for partial redemption
36 of the tax lien on real estate purchased by an individual, is compelled in order to protect himself
37 or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to
38 some other person, shall have a lien on the interest of such other person for the amount paid to
39 redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30
40 days after payment he or she shall file with the clerk of the county commission his or her claim in
41 writing against the owner of such interest, together with the receipt provided for in this section.
42 The clerk shall docket the claim on the judgment lien docket in his or her office and properly index
43 the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

1 (a) Upon payment of the sum necessary to redeem, the deputy commissioner shall
2 promptly deliver to the sheriff the redemption money paid and the name and address of the
3 purchaser, his or her heirs or assigns.

4 (b) Of the redemption money received by the sheriff pursuant to this section, the sheriff
5 shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof
6 equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest
7 at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

1 (a) Where the land has been redeemed in the manner set forth in §11A-3-56 of this code,
2 and the deputy commissioner has delivered the redemption money to the sheriff pursuant to
3 §11A-3-57 of this code, the sheriff shall, upon delivery of the sum necessary to redeem, promptly

4 notify the purchaser, his or her heirs or assigns, by mail, of the redemption and pay to the
5 purchaser, his or her heirs or assigns, the following amounts:

6 (1) The amount paid to the deputy commissioner at the sale;

7 (2) All other taxes thereon, which have since been paid by the purchaser, his or her heirs
8 or assigns, with interest at the rate of one percent per month from the date of payment;

9 (3) Such additional expenses as may have been incurred in preparing the list of those to
10 be served with notice to redeem, and for any licensed attorney's title examination incident thereto,
11 with interest at the rate of one percent per month from the date of payment, but the amount which
12 shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of
13 those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed
14 attorney's title examination incident thereto, shall not exceed \$500; and

15 (4) All additional statutory costs paid by the purchaser.

16 (b) (1) The notice shall include:

17 (A) A copy of the redemption certificate issued by the deputy commissioner;

18 (B) An itemized statement of the redemption money to which the purchaser is entitled
19 pursuant to the provisions of this section; and

20 (C) Where, at the time of the redemption, the deputy commissioner has not received from
21 the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served
22 with notice to redeem or for any licensed attorney's title examination incident thereto, the deputy
23 commissioner shall also include instructions to the purchaser as to how these expenses may be
24 claimed.

25 (2) Subject to the limitations of this section, the purchaser is entitled to recover any
26 expenses incurred in preparing the list of those to be served with notice to redeem and for any
27 licensed attorney's title examination incident thereto from the date of the sale to the date of the
28 redemption.

29 (c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received
30 from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem,
31 in the form of receipts or other evidence of legal expenses, or for any licensed attorney's title
32 examination and rendered written documentation used for the preparation of the list incident
33 thereto, in the form of receipts or other evidence thereof, and therefore received from the
34 purchaser as required by said section and delivered to the sheriff the sum of \$500 plus interest
35 thereon at the rate of one percent per month from the date of the sale to the date of redemption,
36 and the sheriff has not received from the purchaser such satisfactory proof of such expenses
37 within 30 days from the date of notification, the sheriff shall refund such amount to the person
38 redeeming and the purchaser is barred from any claim thereto. Where, pursuant to §11A-3-56 of
39 this code, the deputy commissioner has received from the purchaser and therefore delivered to
40 the sheriff said sum of \$500 plus interest thereon at the rate of one percent per month from the
41 date of the sale to the date of redemption, and the purchaser provides the sheriff within 30 days
42 from the date of notification such satisfactory proof of such expenses, and the amount of such
43 expenses is less than the amount paid by the person redeeming, the sheriff shall refund the
44 difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

1 If the real estate described in the notice is not redeemed within the time specified therein,
2 but in no event prior to 30 days after notices to redeem have been personally served, or an attempt
3 of personal service has been made, or such notices have been mailed or, if necessary, published
4 in accordance with the provisions of §11A-3-55 of this code, following the deputy commissioner's
5 sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the
6 person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

7 This deed, made this _____ day of _____, 20____, by and between
8 _____, deputy commissioner of delinquent and nonentered lands of _____
9 County, West Virginia, grantor, and _____, purchaser (or

10 _____ heir, devisee, assignee of _____, purchaser)
11 grantee, witnesseth, that

12 Whereas, in pursuance of the statutes in such case made and provided,
13 _____, deputy commissioner of delinquent and nonentered lands of
14 _____ County, did, on the _____ day of _____, 20____, sell
15 the real estate hereinafter mentioned and described for the taxes delinquent thereon for the
16 year(s) 20____, (or as nonentered land for failure of the owner thereof to have the land entered
17 on the land books for the years _____, or as property escheated to the State of West
18 Virginia, or as waste or unappropriated property) for the sum of \$_____, that
19 being the amount of purchase money paid to the deputy commissioner, and _____ (here
20 insert name of purchaser) did become the purchaser of such real estate, which was returned
21 delinquent in the name of _____ (or nonentered in the name of, or escheated from
22 the estate of, or which was discovered as waste or unappropriated property); and

23 Whereas, the deputy commissioner has caused the notice to redeem to be served on all
24 persons required by law to be served therewith; and

25 Whereas, the real estate so purchased has not been redeemed in the manner provided
26 by law and the time for redemption set forth in such notice has expired.

27 Now, therefore, the grantor for and in consideration of the premises recited herein, and
28 pursuant to the provisions of Article 3, Chapter 11A of the West Virginia Code, doth grant unto
29 _____, grantee, his or her heirs and assigns forever, the real estate so
30 purchased, situate in the County of _____, bounded and described as follows:
31 _____ (here insert description of property)

32 Witness the following signature:

33 _____

34 Deputy Commissioner of Delinquent and Nonentered Lands of _____
35 County

36 Except when ordered as provided in §11A-3-60 of this code, the deputy commissioner
37 shall execute and deliver a deed within 120 days after the purchaser's right to the deed accrued.

38 For the preparation and execution of the deed and for all the recording required by this
39 section, a fee of \$50 and the recording expenses shall be charged, to be paid by the grantee upon
40 delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk
41 of the county commission in the deed book in his or her office, together with the assignment from
42 the purchaser, if one was made, the notice to redeem, the return of service of such notice, the
43 affidavit of publication, if the notice was served by publication, and any return receipts for notices
44 sent by certified mail.

45 Upon payment of the final costs and fees required by this article, the purchaser shall have
46 the right to inspect and perform necessary and reasonable repairs for the preservation of the real
47 property: *Provided*, That the current occupant has a duty to preserve the property to the best of
48 his or her ability and control.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor