

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 405

SENATOR SYPOLT, *original sponsor*

[Originating in the Committee on Government
Organization; Reported on February 8, 2019]

1 A BILL to amend and reenact §11A-3-23, §11A-3-25, §11A-3-36, §11A-3-56, §11A-3-57, and
2 §11A-3-58 of the Code of West Virginia, 1931, as amended, all relating to the sale of tax
3 liens by the State Auditor; increasing the limit to \$500 on additional expenses a purchaser
4 may recover in preparing notice list for redemption of purchase and for licensed attorney's
5 title examination; and requiring any amounts above the surplus of 20 percent of the gross
6 amount of the operating fund be paid to the General School Fund at the end of each fiscal
7 year.

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. ~~Provided, That the~~ The
16 maximum amount the owner or other authorized person shall pay, excluding the interest, for the
17 expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of
18 this code is \$500. ~~Provided however, That the~~ An attorney may only charge a fee for legal services
19 actually performed and must certify that he or she conducted an examination to determine the list
20 of those to be served required by §11A-3-19 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 §11A-3-23(a)(3) of this code, incident thereto, in the form of receipts or other evidence
26 of legal expenses, incurred as provided in §11A-3-19 of this code, the person redeeming shall
27 pay the State Auditor the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month
28 from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the
29 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 §11A-3-19 of this code.

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

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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 ~~\$300~~ \$500, whichever is less. ~~Provided, That the~~ An attorney may only charge
23 a fee for legal services actually performed and must certify that he or she conducted an
24 examination to 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

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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 ~~\$300~~ \$500 plus interest at the rate of one percent
46 per month from January 1 of the year following the sheriff's sale to the date of the sale to the date
47 of 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-3-65
6 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 \$100,000, remaining in the fund at the end of any fiscal year, shall be paid by the~~
14 ~~Auditor into the general school fund.~~ The surplus over and above the amount of 20 percent of
15 gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal

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16 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: (1) An amount equal to the taxes, interest, and charges due on the date of the
6 sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other
7 taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with
8 interest at the rate of one percent per month from the date of payment; (3) such additional
9 expenses as may have been incurred in preparing the list of those to be served with notice to
10 redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate
11 of one percent per month from the date of payment, but the amount he or she shall be required
12 to pay, excluding said interest, for such expenses incurred for the preparation of the list of those
13 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 ~~\$200~~ \$500. An attorney may only
15 charge a fee for legal services actually performed and must certify that he or she conducted an
16 examination to determine the list of those to be served required by §11A-3-52 of this code; (4) all
17 additional statutory costs paid by the purchaser; and (5) the deputy commissioner's fee and
18 commission as provided by §11A-3-66 of this code. Where the deputy commissioner has not
19 received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to
20 redeem, ~~and or of any examination of title~~ licensed attorney's title examination incident thereto, in
21 the form of receipts or other evidence thereof, the person redeeming shall pay the deputy
22 commissioner the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month

23 from the date of the sale for disposition pursuant to §11A-3-57, §11A-3-58, and §11A-3-64 of this
24 code. Upon payment to the deputy commissioner of those and any other unpaid statutory charges
25 required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor and the
26 deputy commissioner in the exercise of their duties pursuant to this article, the deputy
27 commissioner shall prepare an original and five copies of the receipt for the payment and shall
28 note on said receipts that the property has been redeemed. The original of such receipt shall be
29 given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and
30 forward one copy each to the sheriff, assessor, the Auditor, and the clerk of the county
31 commission. The clerk shall endorse on the receipt the fact and time of such filing and note the
32 fact of redemption on his or her record of delinquent lands.

33 (b) 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 such real estate when it belongs, in whole or in part, to
36 some other person, shall have a lien on the interest of such other person for the amount paid to
37 redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30
38 days after payment he or she shall file with the clerk of the county commission his or her claim in
39 writing against the owner of such interest, together with the receipt provided for in this section.
40 The clerk shall docket the claim on the judgment lien docket in his or her office and properly index
41 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: (1) The amount paid to the deputy
6 commissioner at the sale; (2) all other taxes thereon, which have since been paid by the
7 purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the
8 date of payment; (3) such additional expenses as may have been incurred in preparing the list of
9 those to be served with notice to redeem, and for any licensed attorney's title examination incident
10 thereto, with interest at the rate of one percent per month from the date of payment, but the
11 amount which shall be paid, excluding said interest, for such expenses incurred for the
12 preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this
13 code, and for any licensed attorney's title examination incident thereto, shall not exceed \$200
14 \$500; and (4) all additional statutory costs paid by the purchaser.

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

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

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

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

24 (2) Subject to the limitations of this section, the purchaser is entitled to recover any

25 expenses incurred in preparing the list of those to be served with notice to redeem and for any
26 licensed attorney's title examination incident thereto from the date of the sale to the date of the
27 redemption.

28 (c) Where, pursuant to §11A-3-56 of this code, the deputy commissioner has not received
29 from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem,
30 in the form of receipts or other evidence of legal expenses, and or for any licensed attorney's title
31 examination and rendered written documentation used for the preparation of the list incident
32 thereto, in the form of receipts or other evidence thereof, and therefore received from the
33 purchaser as required by said section and delivered to the sheriff the sum of ~~\$200~~ \$500 plus
34 interest thereon at the rate of one percent per month from the date of the sale to the date of
35 redemption, and the sheriff has not received from the purchaser such satisfactory proof of such
36 expenses within 30 days from the date of notification, the sheriff shall refund such amount to the
37 person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to §11A-
38 3-56 of this code, the deputy commissioner has received from the purchaser and therefore
39 delivered to the sheriff said sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per
40 month from the date of the sale to the date of redemption, and the purchaser provides the sheriff
41 within 30 days from the date of notification such satisfactory proof of such expenses, and the
42 amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall
43 refund the difference to the person redeeming.