

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 265**

BY SENATOR SYPOLT

[Introduced February 12, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §11A-3-4, §11A-3-19, §11A-3-52, and §11A-3-56 of the Code of  
 2 West Virginia, 1931, as amended; and to amend and reenact §11A-4-6 of said code, all  
 3 relating to sale of delinquent tax liens; prescribing when payments must be made for  
 4 redemption; limiting fees to \$500 to secure deed; establishing when purchaser has access  
 5 to property and when delinquent tax payer does not; changing time for redemption and  
 6 time to set aside a deed; and reducing the time to redeem by persons with disabilities.

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

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

**§11A-3-4. Redemption after second publication and before sale.**

1 Any of the real estate included in the list published pursuant to ~~the provisions of~~ §11A-3-  
 2 2 of this code may be redeemed at any time before sale as provided in §11A-2-18 of this code.  
 3 All payments for delinquent real estate taxes received within 14 business days prior to the date  
 4 of sale must be paid by cashier check, money order, certified check or United States currency:  
 5 Provided, That all payments for the redemption of delinquent real estate taxes shall be made  
 6 before the payment made by a purchaser of final costs to secure a deed.

**§11A-3-19. What purchaser must do before the deed can be secured.**

1 (a) At any time after August 31 of the year following the sheriff's sale, and on or before  
 2 October 31 of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed  
 3 for the real estate subject to the tax lien or liens purchased, shall:

4 (1) Prepare a list of those to be served with notice to redeem and request the State Auditor  
 5 to prepare and serve the notice as provided in §11A-3-21 and §11A-3-22 of this code;

6 (2) When the real property subject to the tax lien is classified as Class II property and is  
 7 assessed for residential improvements located thereon, provide the State Auditor with the  
 8 physical mailing address of the property that is subject to the tax lien or liens purchased;

9 (3) Provide the State Auditor with a list of any additional expenses incurred after January  
10 1 of the year following the sheriff's sale for the preparation of the list of those to be served with  
11 notice to redeem, including proof of the additional expenses in the form of receipts or other  
12 evidence of reasonable legal expenses incurred for the services of any attorney who has  
13 performed an examination of the title to the real estate and rendered written documentation used  
14 in the preparation of the list of those to be served with the notice to redeem: Provided, That these  
15 expenses shall not exceed \$500;

16 (4) Deposit with the State Auditor a sum sufficient to cover the costs of preparing and  
17 serving the notice; and

18 (5) Present the purchaser's certificate of sale, or order of the county commission where  
19 the certificate has been lost or wrongfully withheld from the owner, to the State Auditor.

20 If the purchaser fails to meet these requirements, he or she shall lose all the benefits of  
21 his or her purchase.

22 (b) If the person requesting preparation and service of the notice is an assignee of the  
23 purchaser he or she shall, at the time of the request, file with the State Auditor a written  
24 assignment to him or her of the purchaser's rights, executed, acknowledged, and certified in the  
25 manner required to make a valid deed.

26 (c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in  
27 the land sold for delinquent taxes, or any assignment of the lien is lost or wrongfully withheld from  
28 the rightful owner of the land and the land or interest has not been redeemed, the county  
29 commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof  
30 of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor,  
31 to be delivered to the rightful claimant and a record of the certificate shall be duly made by the  
32 county clerk in the recorded proceedings of the commission.

**§11A-3-52. What purchaser must do before he can secure a deed.**

1 (a) Within 45 days following the approval of the sale by the auditor pursuant to §11A-3-51

2 of this code, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate  
3 purchased, shall:

4 (1) Prepare a list of those to be served with notice to redeem and request the deputy  
5 commissioner to prepare and serve the notice as provided in §11A-3-54 and §11A-3-55 of this  
6 code;

7 (2) When the real property subject to the tax lien was classified as Class II property,  
8 provide the deputy commissioner with the actual mailing address of the property that is subject to  
9 the tax lien or liens purchased; and

10 (3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the  
11 costs of preparing and serving the notice.

12 (b) If the purchaser fails to fulfill the requirements set forth in paragraph (a) of this section,  
13 the purchaser shall lose all the benefits of his or her purchase.

14 (c) After the requirements of paragraph (a) of this section have been satisfied, the deputy  
15 commissioner may then sell the property in the same manner as he or she sells lands which have  
16 been offered for sale at public auction but which remain unsold after such auction, as provided in  
17 §11A-3-48 of this code.

18 (d) If the person requesting preparation and service of the notice is an assignee of the  
19 purchaser, he or she shall, at the time of the request, file with the deputy commissioner a written  
20 assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the  
21 manner required to make a valid deed.

22 (e) Whenever a purchaser has failed to comply with the notice requirements set forth in  
23 subsection (a) of this section, the purchaser may receive an additional 30 days to comply with the  
24 notice requirements set forth in subsection (a) of this section if the purchaser files with the State  
25 Auditor a request in writing for the extension before the expiration of the time period set forth in  
26 subsection (a) of this section and makes payment by cash, cashier check, certified check, or  
27 money order in the amount of \$100 or 10 percent of the total amount paid on the day of sale set

28 forth in §11A-3-45 of this code, whichever is greater. The fee for issuing the certificate of extension  
29 shall be \$25 made payable to the State Auditor.

30 (f) The State Auditor shall each month draw his or her warrant upon the Treasury payable  
31 to the county board of education of each county for payment received by him or her for the  
32 extension of the time period set forth in subsection (e) of this section for property located within  
33 each such county.

34 (g) The purchaser shall have reasonable access as necessary to protect the real property  
35 upon the payment of final costs and fees required by this section. The delinquent taxpayer shall  
36 have no right of access to the real property after the recording of the deed to purchaser.

**§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 not  
4 exceeding 90 days after the time specified in the notice to redeem provided in §11A-3-54 of this  
5 code and before a tax deed is issued therefor. In order to redeem, he or she must pay to the  
6 deputy commissioner the following amounts:

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

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

11 (3) Such additional expenses as may have been incurred in preparing the list of those to  
12 be served with notice to redeem, and for any licensed attorney's title examination incident thereto,  
13 with interest at the rate of one percent per month from the date of payment, but the amount he or  
14 she shall be required to pay, excluding said interest, for such expenses incurred for the  
15 preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this

16 code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An  
17 attorney may only charge a fee for legal services actually performed and must certify that he or  
18 she conducted an examination to determine the list of those to be served required by §11A-3-52  
19 of this code;

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

21 (5) The deputy commissioner's fee and commission as provided by §11A-3-66 of this  
22 code. Where the deputy commissioner has not received from the purchaser satisfactory proof of  
23 the expenses incurred in preparing the notice to redeem, or of any licensed attorney's title  
24 examination incident thereto, in the form of receipts or other evidence thereof, the person  
25 redeeming shall pay the deputy commissioner the sum of \$500 plus interest thereon at the rate  
26 of one percent per month from the date of the sale for disposition pursuant to ~~the provisions of~~  
27 §11A-3-57, §11A-3-58 and §11A-3-64 of this code. Upon payment to the deputy commissioner of  
28 those and any other unpaid statutory charges required by this article, and of any unpaid expenses  
29 incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their duties  
30 pursuant to this article, the deputy commissioner shall prepare an original and five copies of the  
31 receipt for the payment and shall note on said receipts that the property has been redeemed. The  
32 original of such receipt shall be given to the person redeeming. The deputy commissioner shall  
33 retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and  
34 the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of  
35 such filing and note the fact of redemption on his or her record of delinquent lands.

36 (b) Any person who, by reason of the fact that no provision is made for partial redemption  
37 of the tax lien on real estate purchased by an individual, is compelled in order to protect himself  
38 or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to  
39 some other person, shall have a lien on the interest of such other person for the amount paid to  
40 redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30  
41 days after payment he or she shall file with the clerk of the county commission his or her claim in

42 writing against the owner of such interest, together with the receipt provided for in this section.  
43 The clerk shall docket the claim on the judgment lien docket in his or her office and properly index  
44 the same. Such lien may be enforced as other judgment liens are enforced.

#### **ARTICLE 4. REMEDIES RELATING TO TAX SALES.**

##### **§11A-4-6. Redemption by persons under disability from purchase by individual.**

1 In addition to and notwithstanding any other provisions of this article, any infant or mentally  
2 incapacitated person whose real estate was, during such disability, conveyed by tax deed  
3 pursuant to this chapter to an individual purchaser, may redeem such real estate by paying to the  
4 purchaser, or his or her heirs or assigns, before the expiration of one year after removal of the  
5 disability but in no event more than ~~twenty~~ five years after the deed was obtained the amount of  
6 the purchase money, together with the necessary charges incurred in obtaining the deed, and  
7 any taxes paid on the property since the sale, with interest on such items at the rate of 12 percent  
8 per annum from the date each was paid. If such person was the owner of an undivided interest in  
9 the real estate sold, he or she may redeem such interest by paying that proportion of the purchase  
10 money, charges, taxes and interest chargeable to his or her interest; but after a deed has been  
11 delivered to the purchaser, he or she shall not have the right to redeem more than his or her own  
12 undivided interest. If improvements have been made on such real estate after the deed was  
13 obtained and before the offer to redeem as herein provided, the person redeeming shall pay to  
14 the purchaser, or his or her heirs or assigns, the value of the improvements at the time of such  
15 offer, after deducting therefrom the value of the use of such real estate without the improvements,  
16 from the date of the deed to the date of the offer. Upon payment or tender of payment, the  
17 purchaser, his or her heirs or assigns, shall, at the expense of the person redeeming, convey to  
18 him or her by quitclaim deed the real estate so redeemed.

19 One entitled to redeem under the provisions of this section may, if he or she is unable or  
20 is not willing to pay for the improvements made by the purchaser, elect to relinquish his or her  
21 interest in the property. If he or she so elects, he or she shall be entitled to an amount equal to

22 the estimated present value of the land without the improvements less what he or she would have  
23 had to pay to redeem the land had no improvements been made. Upon payment to him or her of  
24 such amount, he or she shall by quitclaim deed convey the land to the purchaser, his or her heirs  
25 or assigns.

26 If in any case provided for in this section the parties cannot agree on the amount to be  
27 paid, any of them may upon 10 days' notice in writing to the other, or others, apply by petition, to  
28 the circuit court of the county in which the real estate is situated to have the matter referred to a  
29 commissioner to ascertain the proper amount to be paid. Upon confirmation by the court or judge  
30 of the report of the commissioner, and upon payment or tender of the amount, if any, so  
31 ascertained to be due, the person to whom payment or tender was made, shall execute the  
32 quitclaim deed as provided above. In the event of his or her refusal to do so, the court, or judge,  
33 may appoint a commissioner to execute the deed.

34 If there is a refusal to execute the deed in any case in which there was no dispute as to  
35 the amount necessary for redemption, the person entitled to the deed may, upon 10 days' notice  
36 in writing to the other party or parties, apply by petition to the circuit court for the appointment of  
37 a commissioner to execute the deed.

NOTE: The purpose of this bill is to amend provisions relating to sale of delinquent tax liens; redemption; fees; and purchaser's obligations and rights. The bill changes the time for redemption and time to set aside a deed; and reduces the time to redeem by persons with disabilities.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.