

HB # 4043

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 4043

(By Delegates Rowe, Reed, Huffman,
Manuel, Tribett + Faircloth)

— ● —

Passed March 3, 1994

In Effect July 1, 1994 ~~Passage~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4043

(By DELEGATES ROWE, REED, HUFFMAN,
MANUEL, TRIBETT AND FAIRCLOTH)

[Passed March 3, 1994; in effect July 1, 1994.]

AN ACT to amend and reenact sections ten and thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles three and four of said chapter, all relating to the disposition of delinquent, nonentered, escheated and waste and unappropriated lands.

Be it enacted by the Legislature of West Virginia:

That sections ten and thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that articles three and four of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING
PAYMENT.**

§11A-2-10. Sale of tax liens on real estate.

1 In addition to the methods for the collection of taxes
2 provided for in this article, tax liens on real estate may
3 be sold for the taxes assessed thereon in the manner
4 prescribed in article three of this chapter.

§11A-2-13. Publication and posting of delinquent tax lists.

1 A copy of each of the delinquent lists shall be posted
2 at the front door of the courthouse of the county at least
3 two weeks before the session of the county commission
4 at which they are to be presented for examination. At
5 the same time a copy of each list shall be published as
6 a Class I-O legal advertisement in compliance with the
7 provisions of article three, chapter fifty-nine of this code,
8 and the publication area for such publication shall be
9 the county. Only the aggregate amount of the taxes owed
10 by each person need be published. To cover the costs of
11 preparing, publishing and posting the delinquent lists,
12 a charge of ten dollars shall be added to the taxes and
13 interest already due on each item listed.

14 Any person whose taxes were delinquent on May first
15 may have his name removed from the delinquent lists
16 prior to the time the same is delivered to the newspapers
17 for publication by paying to the sheriff the full amount
18 of the taxes and costs owed by such person at the date
19 of such redemption. The sheriff shall collect a charge of
20 only three dollars if redemption is made before the list
21 is delivered for publication. Costs collected by the sheriff
22 hereunder which are not expended for publication shall
23 be paid into the general county fund.

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
ESCHEATED AND WASTE AND UNAPPROP-
RIATED LANDS.**

PART I

§11A-3-1. Declaration of legislative purpose and policy.

1 In view of the paramount necessity of providing
2 regular tax income for the state, county and municipal
3 governments, particularly for school purposes; and in
4 view of the further fact that delinquent land not only
5 constitutes a public liability, but also represents a
6 failure on the part of delinquent private owners to bear
7 a fair share of the costs of government; and in view of
8 the rights of owners of real property to adequate notice
9 and an opportunity for redemption before they are
10 divested of their interests in real property for failure to
11 pay taxes or have their property entered on the land

12 books; and in view of the fact that the circuit court suits
 13 heretofore provided prior to deputy commissioners' sales
 14 are unnecessary and a burden on the judiciary of the
 15 state; and in view of the necessity to continue the
 16 mechanism for the disposition of escheated and waste
 17 and unappropriated lands; now therefore, the Legisla-
 18 ture declares that its purposes in the enactment of this
 19 article are as follows: (1) To provide for the speedy and
 20 expeditious enforcement of the tax claims of the state
 21 and its subdivisions; (2) to provide for the transfer of
 22 delinquent and nonentered lands to those more respon-
 23 sible to, or better able to bear, the duties of citizenship
 24 than were the former owners; (3) to secure adequate
 25 notice to owners of delinquent and nonentered property
 26 of the pending issuance of a tax deed; (4) to permit
 27 deputy commissioners of delinquent and nonentered
 28 lands to sell such lands without the necessity of
 29 proceedings in the circuit courts; (5) to reduce the
 30 expense and burden on the state and its subdivisions of
 31 tax sales so that such sales may be conducted in an
 32 efficient manner while respecting the due process rights
 33 of owners of real property; and (6) to provide for the
 34 disposition of escheated and waste and unappropriated
 35 lands.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 (a) On or before September tenth of each year, the
 2 sheriff shall prepare a second list of delinquent lands,
 3 which shall include all real estate in his county
 4 remaining delinquent as of September first, together
 5 with a notice of sale, in form or effect as follows:

6 Notice is hereby given that tax liens for the following
 7 described tracts or lots of land or undivided interests
 8 therein in the County of _____ which are
 9 delinquent for the nonpayment of taxes for the year (or
 10 years) 19____, will be offered for sale by the undersigned
 11 sheriff (or collector) at public auction at the front door
 12 of the courthouse of the county, between the hours of ten
 13 in the morning and four in the afternoon, on the _____
 14 day of _____, 19_____

15 Tax liens on each unredeemed tract or lot, or each
16 unredeemed part thereof or undivided interest therein,
17 will be sold at public auction to the highest bidder for
18 cash in an amount which shall not be less than the taxes,
19 interest and charges which shall be due thereon to the
20 date of sale, as set forth in the following table:

21	Name of person	Quantity	Local	Total amount of taxes,
22	charged	of	descrip-	interest and charges
23	with taxes	land	tion	due to date of sale

24 Any of the aforesaid tracts or lots, or part thereof or
25 an undivided interest therein, may be redeemed by the
26 payment to the undersigned sheriff (or collector) before
27 sale, of the total amount of taxes, interest and charges
28 due thereon up to the date of redemption.

29 Given under my hand this _____ day of
30 _____, 19____

31 _____
32 Sheriff (or collector).

33 The sheriff shall publish the list and notice prior to
34 the sale date fixed in the notice as a Class III-O legal
35 advertisement in compliance with the provisions of
36 article three, chapter fifty-nine of this code, and the
37 publication area for such publication shall be the county.

38 (b) In addition to such publication, no less than thirty
39 days prior to the sale the sheriff shall send a notice of
40 such delinquency and the date of sale by certified mail
41 (1) to the last known address of each person listed in the
42 land books whose taxes are delinquent, (2) to each
43 person having a lien on real property upon which the
44 taxes are due as disclosed by a statement filed with the
45 sheriff pursuant to the provisions of section three of this
46 article, (3) to each other person with an interest in the
47 property or with a fiduciary relationship to a person
48 with an interest in the property who has in writing
49 delivered to the sheriff on a form prescribed by the tax
50 commissioner a request for such notice of delinquency,
51 and (4) in the case of property which includes a mineral
52 interest but does not include an interest in the surface
53 other than an interest for the purpose of developing the

54 minerals, to each person who has in writing delivered
55 to the sheriff, on a form prescribed by the tax commis-
56 sioner, a request for such notice which identifies the
57 person as an owner of an interest in the surface of real
58 property that is included in the boundaries of such
59 property: *Provided*, That in a case where one owner
60 owns more than one parcel of real property upon which
61 taxes are delinquent, the sheriff may, at his option, mail
62 separate notices to the owner and each lienholder for
63 each parcel, or may prepare and mail to the owner and
64 each lienholder a single notice which pertains to all such
65 delinquent parcels. If he elects to mail only one notice,
66 that notice shall set forth a legally sufficient description
67 of all parcels of property on which taxes are delinquent.
68 In no event shall failure to receive the mailed notice by
69 the landowner or lienholder affect the validity of the
70 title of the property conveyed if it is conveyed pursuant
71 to sections twenty-seven or fifty-nine of this article.

72 (c)(1) To cover the cost of preparing and publishing
73 the second delinquent list, a charge of ten dollars shall
74 be added to the taxes, interest and charges already due
75 on each item and all such charges shall be stated in the
76 list as a part of the total amount due.

77 (2) To cover the cost of preparing and mailing notice
78 to the landowner, lienholder or any other person entitled
79 thereto pursuant to this section, a charge of five dollars
80 per addressee shall be added to the taxes, interest and
81 charges already due on each item and all such charges
82 shall be stated in the list as a part of the total amount
83 due.

84 (d) Any person whose taxes were delinquent on
85 September first may have his name removed from the
86 delinquent list prior to the time the same is delivered
87 to the newspapers for publication by paying to the
88 sheriff the full amount of taxes and costs owed by such
89 person at the date of such redemption. In such case, the
90 sheriff shall include but three dollars of the costs
91 provided in this section in making such redemption.
92 Costs collected by the sheriff hereunder which are not
93 expended for publication and mailing shall be paid into
94 the general county fund.

§11A-3-3. Waiver of notice by person claiming lien.

1 (a) Any person claiming a lien against real property
2 shall be deemed to have waived any right to notice
3 provided by sections two, twenty-two and fifty-five of
4 this article unless he shall have filed a statement
5 declaring such interest with the sheriff. Such statement
6 shall be filed upon creation of the lien and upon release
7 of said lien and upon any change of the lienholder's
8 postal address since the original filing of such document.

9 Such statement shall be sufficient if it is filed at the
10 time the document creating the lien is filed and when
11 said lien is released on a form and in a manner to be
12 prescribed from time to time by the tax commissioner,
13 which form shall include the name of the person
14 charged with taxes for the real property; the tax map
15 and parcel number of the property; the assessor's
16 account number of the property; a description of the
17 interest claimed; and the address to which notice is to
18 be sent. The statement may be amended at any time by
19 the person claiming the lien, upon such amended form
20 and in such manner as may be prescribed by the tax
21 commissioner: *Provided*, That in counties with a
22 population greater than two hundred thousand any
23 person claiming liens against more than fifty parcels of
24 real estate may file such statement electronically in a
25 similar format as before described designed by the tax
26 commissioner.

27 (b) At least once a year prior to July first, the sheriff
28 shall publish a notice that any person claiming a lien
29 against taxable real property must file the statement
30 required by this section or such person will be deemed
31 to have waived any right to notice provided by the
32 preceding section. The notice shall be published as a
33 Class I legal advertisement in compliance with the
34 provisions of article three, chapter fifty-nine of this code,
35 and the publication area for such publication shall be
36 the county in which such land is located.

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

1 Any of the real estate included in the list published

2 pursuant to the provisions of section two of this article
3 may be redeemed at any time before sale as provided
4 in section eighteen, article two of this chapter.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

1 (a) The tax lien on each unredeemed tract or lot, or
2 each unredeemed part thereof or undivided interest
3 therein shall be sold by the sheriff at public auction to
4 the highest bidder for cash, between the hours of ten in
5 the morning and four in the afternoon on any business
6 working day after the fourteenth day of October and
7 before the twenty-third of November: *Provided*, That no
8 tax lien for such unredeemed tract or lot or undivided
9 interest therein shall be sold upon any bid or for any
10 sum less than the total amount of taxes, interest and
11 charges then due: *Provided, however*, That at any such
12 sale, the tax lien for each unredeemed tract or lot, or
13 undivided interest therein, shall be offered for sale and
14 sold for the entirety of such tract or lot or undivided
15 interest therein as the same is described and constituted
16 as a unit or entity in the list and notice prescribed in
17 section two of this article. If the sale shall not be
18 completed on the day designated in the notice for the
19 holding of such sale, it shall be continued from day to
20 day between the same hours until disposition shall have
21 been made of all the land.

22 (b) Each sheriff is immune from liability if a loss or
23 claim results from the sale of a tax lien conducted
24 pursuant to the provisions of this article or from any
25 subsequent conveyance of the property to which the lien
26 attaches: *Provided*, That where a sheriff fails or refuses
27 to sell said tax lien pursuant to the provisions of this
28 article for reasons other than those provided by section
29 seven of this article, the sheriff may be compelled by
30 mandamus to sell the same upon the petition of the
31 auditor or any taxpayer of the county in a court of
32 competent jurisdiction.

**§11A-3-6. Purchase by sheriff and clerk of county
commission prohibited; co-owner free to
purchase at tax sale.**

1 (a) No sheriff, clerk of the county commission or

2 circuit court, assessor, nor deputy of any of them, shall
3 directly or indirectly become the purchaser, or be
4 interested in the purchase, of any tax lien on any real
5 estate at the tax sale or receive any tax deed conveying
6 such real estate. Any such officer so purchasing shall
7 forfeit one thousand dollars for each offense. The sale
8 of any tax lien on any real estate, or the conveyance of
9 such real estate by tax deed, to one of the officers named
10 in this section shall be voidable, at the instance of any
11 person having the right to redeem, until such real estate
12 reaches the hands of a bona fide purchaser.

13 (b) Any co-owner, except a coparcener, in the absence
14 of satisfactory proof of a fiduciary relationship, shall be
15 entitled to acquire by tax purchase for his own account
16 the tax lien on the interest of any, or all, of his co-owners
17 in any real estate, and to receive a tax deed conveying
18 such interest without being required to hold such tax
19 lien or interest or interests under any constructive trust.
20 There shall be a prima facie presumption against the
21 existence of any such constructive trust.

**§11A-3-7. Suspension from sale; amended delinquent
lists; subsequent sale.**

1 (a) Whenever it shall appear to the sheriff that any
2 real estate included in the list has been previously
3 conveyed by deed and no tax thereon is currently
4 delinquent, or that the tax lien thereon has been sold
5 previously and not redeemed, or that the tax lien
6 thereon ought not to be sold for the amount stated
7 therein, he shall suspend the sale thereof and report his
8 reasons therefor to the county commission and to the
9 auditor. If the commission finds that the tax lien on the
10 real estate ought not to be sold, it shall so order; but if
11 the commission finds that the tax lien on the real estate
12 ought to be sold for the amount stated, or for a greater
13 or less amount, it shall order the sheriff to include such
14 real estate in his next September list, unless sooner
15 redeemed.

16 (b) In the event the list and notice of sale prescribed
17 in section two of this article is not published, posted and
18 completed in the manner provided by said section two,

19 so that it is impossible for that reason, or by reason of
20 omission of any necessary procedural act, for the sheriff
21 to make sale of the tax lien for the real estate embraced
22 in said list pursuant to the provisions of this chapter,
23 then and in that event the sheriff shall certify to the
24 auditor, on or before the second day of December
25 following the month in which such sale should have been
26 held, an amended list or lists of such taxes which then
27 remain delinquent. The sheriff shall include the real
28 estate in the last-mentioned amended list or lists in his
29 next September list, unless sooner redeemed.

§11A-3-8. Certification of unsold property to the auditor.

1 If no person present bids the amount of taxes, interest
2 and charges due on any real estate offered for sale, the
3 sheriff shall certify the real estate to the auditor for
4 disposition pursuant to section forty-four of this article,
5 subject, however, to the right of redemption provided by
6 section thirty-eight of this article. The auditor shall
7 prescribe the form by which the sheriff certifies the
8 property.

**§11A-3-9. Sheriff's list of sales, suspensions, redemptions
and certifications; oath.**

1 As soon as the sale provided for in section five of this
2 article has been completed, the sheriff shall prepare a
3 list of all tax liens on delinquent real estate purchased
4 at the sale, or suspended from sale, or redeemed before
5 sale, or certified to the auditor. The heading of the list
6 shall be in form or effect as follows:

7 List of sales of tax liens on real estate in the county
8 of _____, returned delinquent for nonpay-
9 ment of taxes thereon for the year (or years) 19____, and
10 sold in the month (or months) of _____,
11 19____, or suspended from sale, or redeemed before sale,
12 or certified to the auditor.

13 The sheriff shall, at the foot of such list, subscribe an
14 oath, which shall be subscribed before and certified by
15 some person duly authorized to administer oaths, in
16 form or effect as follows:

17 I, _____, sheriff (or deputy sheriff or

18 collector) of the county of _____, do swear
19 that the above list contains a true account of all the tax
20 liens on real estate within my county returned delin-
21 quent for nonpayment of taxes thereon for the year (or
22 years) 19____, which were sold by me or which were
23 suspended from sale or redeemed before sale or certified
24 to the auditor, and that I am not now, nor have I at any
25 time been, directly or indirectly interested in the
26 purchase of any such tax liens.

27 Except for the heading and the oath, the tax commis-
28 sioner shall prescribe the form of the list.

§11A-3-10. Sheriff to account for proceeds; disposition of surplus.

1 (a) The sheriff shall account for the proceeds of all
2 sales and redemptions included in such list in the same
3 way he accounts for other taxes collected by him, except
4 that if the purchase money paid for any property sold
5 is in excess of the amount of taxes, interest and charges
6 due thereon, the surplus shall be deposited in a special
7 county fund to be known and designated as the "sale of
8 tax lien surplus fund". Where there is a redemption
9 after the sale, the sheriff shall also deposit into said fund
10 the amount of taxes, interest and charges due on the
11 date of the sale, plus the interest at the rate of one
12 percent per month from the date of sale to the date of
13 redemption, described in subdivision (2), subsection (b),
14 section twenty-four of this article. Such surpluses shall
15 be disposed of as follows:

16 (1) In any case where the property was redeemed,
17 such surplus shall be distributed to the person or
18 persons who purchased the tax lien thereon, or the heirs,
19 devisees, legatees, executors, administrators, successors
20 or assigns thereof, if a proper claim therefor is filed
21 with the sheriff within two years from and after the date
22 of the sale; or

23 (2) If a claim as specified in subdivision (1) hereof is
24 not timely filed, or if there was no redemption, such
25 surplus shall be distributed to the person or persons who
26 owned the property at the time of the sale, or the heirs,
27 devisees, legatees, executors, administrators, successors

28 or assigns thereof, if a proper claim therefor is filed
29 with the sheriff within three years from and after the
30 date of the sale; or

31 (3) If there be no proper claim filed under either
32 subdivision (1) or (2) hereof within the time limits
33 aforesaid, all claims to such surplus shall be barred and
34 such surplus shall be distributed by the sheriff in the
35 manner provided by law for the distribution of property
36 taxes collected by him.

37 (b) All real estate included in the first delinquent list
38 sent to the auditor, and not accounted for in the list of
39 sales, suspensions, redemptions and certifications, shall
40 be deemed to have been redeemed before sale, and the
41 taxes, interest and charges due thereon shall be
42 accounted for by the sheriff as if they had been received
43 by him before the sale.

§11A-3-11. Return of list of sales, suspensions and redemptions.

1 (a) Within one month after completion of the sale, the
2 sheriff shall deliver the original list of sales, suspensions
3 and redemptions described in section nine of this article,
4 with a copy thereof, to the clerk of the county commis-
5 sion. The clerk shall bind the original of such list in a
6 permanent book to be kept for the purpose in his office,
7 and shall note each sale and suspension, each redemp-
8 tion not previously noted, and each certification on his
9 record of delinquent lands. The clerk, within ten days
10 after delivery of the list to him, shall transmit the copy
11 to the auditor, who shall note each sale, suspension,
12 redemption and certification on the record of delinquent
13 lands kept in his office.

14 (b) Any sheriff who fails to prepare and return the list
15 of sales, suspensions, redemptions and certifications
16 within the time required by this section shall forfeit not
17 less than fifty nor more than five hundred dollars, for
18 the benefit of the general school fund, to be recovered
19 by the auditor or by any taxpayer of the county on
20 motion in a court of competent jurisdiction. Upon the
21 petition of any person interested, the sheriff may be
22 compelled by mandamus to make out and return such

23 list, and the proceedings thereon shall be at his cost.

§11A-3-12. Amendment of such list.

1 If the sheriff shall make any error or omission in the
2 list of sales, suspensions, redemptions and certifications
3 returned to the clerk of the county commission, he or
4 any person interested may, within six months after the
5 sale, apply by petition to the county commission for an
6 order permitting or requiring amendment of the list.
7 Any person who might be prejudiced by the proposed
8 amendment must, if found within the county, be given
9 at least ten-days' notice of such application. Upon proof
10 of the error or mistake the commission shall make an
11 order permitting or requiring the sheriff to file an
12 amended list with the clerk of the commission. The
13 sheriff shall thereupon prepare and deliver to the clerk
14 of the commission the amended list and a copy thereof,
15 with a copy of the order of the commission permitting
16 or requiring it to be filed attached to the list and to the
17 copy. The clerk shall substitute the original of the
18 amended list for the list already in his office, and make
19 the necessary corrections on his record of delinquent
20 lands. The clerk shall transmit the copy of the amended
21 list to the auditor who shall note the corrections on his
22 record of delinquent lands.

§11A-3-13. Publication by sheriff of sales list.

1 Within one month after completion of the sale, the
2 sheriff shall prepare and publish a list of all the sales
3 and certifications made by him, in form or effect as
4 follows, which list shall be published as a Class II-O
5 legal advertisement in compliance with the provisions of
6 article three, chapter fifty-nine of this code, and the
7 publication area for such publication shall be the county.

8 List of tax liens on real estate sold in the county of
9 _____, in the month (or months) of
10 _____, 19____, for nonpayment of taxes
11 thereon for the year (or years) 19____, and purchased
12 by individuals or certified to the auditor of the state of
13 West Virginia:

14	Name of	Local		Quantity		
15	person	descrip-		of land		Whole
16	charged	tion	Quantity	for which	Name	amount
17	with	of	of land	tax lien	of	paid by
18	taxes	lands	charged	is sold	purchaser	purchaser

19 The owner of any real estate listed above, or any other
 20 person entitled to pay the taxes thereon, may, however,
 21 redeem such real estate as provided by law.

22 Given under my hand this _____ day of
 23 _____, 19____.

24 To cover the costs of preparing and publishing such
 25 list, a charge of ten dollars shall be added to the taxes,
 26 interest and charges already due on each item listed.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

1 (a) If any person, being the highest bidder present at
 2 the sale provided for in section five of this article, bids
 3 and pays at least the amount of taxes, interest and
 4 charges for which the tax lien on any real estate is
 5 offered for sale, the sheriff shall issue to him a
 6 certificate of sale for the purchase money. The heading
 7 of the certificate shall be:

8 Memorandum of tax lien on real estate sold in the
 9 county of _____ on this _____ day
 10 of _____, 19____ for the nonpayment of
 11 taxes charged thereon for the year (or years) 19____ .

12 Except for the heading, the tax commissioner shall
 13 prescribe the form of the receipt.

14 (b) The certificate of sale shall describe the real estate
 15 subject to the tax lien that was sold, the total amount
 16 of all taxes, interest, penalties and costs paid for each
 17 lot or tract, and the rate of interest to which the
 18 purchaser shall be entitled upon redemption. The
 19 certificate shall also set forth columns for the entry of
 20 subsequent taxes and costs paid. For each certificate so
 21 delivered, the purchaser shall pay a fee of ten dollars,
 22 and such amount shall be included in the costs described
 23 therein.

§11A-3-15. Certificate of sale assignable.

1 The certificate of sale shall be assignable by endor-
2 sement, and an assignment thereof, when entered upon
3 the delinquent lands book of the clerk of the county
4 commission, shall vest in the assignee or his legal
5 representative all the right and title of the original
6 purchaser. The clerk shall be entitled to a fee of two
7 dollars for the entry thereof.

§11A-3-16. Subsequent tax payments by purchaser.

1 Any person desiring to pay any subsequent taxes on
2 lands for which he holds the certificate of sale described
3 in section fourteen or fifteen of this article shall produce
4 such certificate to the sheriff, who shall endorse the
5 amount of such subsequent taxes and the date of
6 payment thereof in his records upon the payment to the
7 sheriff of a fee therefor in the amount of two dollars.
8 He shall also present such certificate to the clerk of the
9 county commission, who shall enter the amount of such
10 tax in his record of delinquent lands upon the payment
11 to the clerk of a fee therefor in the amount of two
12 dollars.

§11A-3-17. Sale of subsequent tax liens.

1 Whenever any tax lien on any real estate has been sold
2 at a tax sale to an individual purchaser, and the tax on
3 such real estate for the year of the sale or for any
4 subsequent year have become delinquent, the sheriff
5 shall include the real estate in the delinquent lists of the
6 proper year and shall sell any subsequent tax liens
7 therefor on the whole or a part thereof for taxes as if
8 the former sale had not occurred. The purchaser at the
9 first sale may, however, prevent the second sale by
10 paying the amount due, or he may redeem from the
11 second sale. If the purchaser bought the lien upon only
12 a part of the land at the first sale, he may prevent a
13 second sale thereof by paying the proportionate part of
14 the taxes assessed against the whole which are charge-
15 able to the part purchased.

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

1 (a) No lien upon real property conveyed by a tax

2 certificate of sale issued by a sheriff on account of any
3 delinquent property taxes shall remain a lien thereon
4 for a period longer than eighteen months after the
5 original issuance thereof.

6 (b) No tax deed shall issue on any tax sale evidenced
7 by a tax certificate of sale where such certificate has
8 ceased to be a lien pursuant to the provisions of this
9 section and application for such tax deed is not pending
10 at the time of the expiration of the limitation period
11 provided for in this section.

12 (c) Whenever a lien conveyed by a tax certificate of
13 sale has expired by reason of the provisions of this
14 section, the sheriff shall immediately issue a certificate
15 of cancellation describing the real estate included in the
16 certificate of purchase or tax certificate and giving the
17 date of cancellation; and he shall also make proper
18 entries in his records. He shall also present every such
19 certificate of cancellation to the county clerk who shall
20 enter the same in his records and file the same, and such
21 certificate and the record thereof shall be prima facie
22 evidence of the cancellation of the certificate of sale and
23 of the release of the lien of such certificate on the lands
24 therein described. Failure to record such certificate of
25 cancellation shall not extend the lien conveyed by the
26 certificate of sale. The sheriff and county clerk shall not
27 be entitled to any fees for the issuing of such certificate
28 of cancellation nor for the entries in their books made
29 under the provisions of this subsection.

§11A-3-19. What purchaser must do before he can secure deed.

1 (a) At any time after October thirty-first of the year
2 following the sheriff's sale, and on or before December
3 thirty-first of the same year, the purchaser, his heirs or
4 assigns, in order to secure a deed for the real estate
5 subject to the tax lien or liens purchased, shall: (1)
6 Prepare a list of those to be served with notice to redeem
7 and request the clerk to prepare and serve the notice
8 as provided in sections twenty-one and twenty-two of
9 this article; (2) deposit, or offer to deposit, with the clerk
10 a sum sufficient to cover the costs of preparing and

11 serving the notice; and (3) present the purchaser's
12 certificate of sale, or order of the county commission
13 where the certificate has been lost or wrongfully
14 withheld from the owner, to the clerk of the county
15 commission. For failure to meet these requirements, the
16 purchaser shall lose all the benefits of his purchase.

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

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

**§11A-3-20. Refund to purchaser of payment made at
sheriff's sale where property is subject of
an erroneous assessment or is otherwise
nonexistent.**

1 If, after payment of the amount bid at a sheriff's sale,
2 the purchaser discovers that the lien purchased at such
3 sale is the subject of an erroneous assessment or is
4 otherwise nonexistent, such purchaser shall submit the
5 certificate of an attorney-at-law that the property is the
6 subject of an erroneous assessment or is otherwise
7 nonexistent. Upon receipt thereof, the sheriff shall cause
8 the moneys so paid to be refunded. Upon refund, the
9 sheriff shall inform the assessor of the erroneous
10 assessment for the purpose of having the assessor
11 correct said error.

§11A-3-21. Notice to redeem.

1 Whenever the provisions of section nineteen of this
2 article have been complied with, the clerk of the county
3 commission shall thereupon prepare a notice in form or
4 effect as follows:

5 To _____

6 You will take notice that _____, the
7 purchaser (or _____, the assignee, heir or
8 devisee of _____, the purchaser) of the tax
9 lien(s) on the following real estate, _____,
10 (here describe the real estate for which the tax lien(s)
11 thereon were sold) located in _____, (here
12 name the city, town or village in which the real estate
13 is situated or, if not within a city, town or village, give
14 the district and a general description) which was
15 returned delinquent in the name of _____,
16 and for which the tax lien(s) thereon was sold by the
17 sheriff of County at the sale for delinquent taxes made
18 on the _____ day of _____,
19 19____, has requested that you be notified that a deed
20 for such real estate will be made to him on or after the
21 first day of April, 19____, as provided by law, unless
22 before that day you redeem such real estate. The amount
23 you will have to pay to redeem on the last day, March
24 thirty-first, will be as follows:

25 Amount paid sheriff at sale, with interest to March
26 31st \$ _____.

27 Amount of taxes paid on the property, since the sale,
28 with interest to March 31st \$ _____

29 Amount paid for title examination and preparation
30 of list of those to be served, and for preparation
31 and service of the notice with interest to
32 _____ \$ _____

33 Amount paid for other statutory costs (describe)
34 _____ \$ _____

35 Total..... \$ _____

36 You may redeem at any time before March thirty-first
37 by paying the above total less any unearned interest.

38 Given under my hand this day of _____,

39 19_____.

40

41 Clerk of the County Commission

42 of _____ County,

43 State of West Virginia

44 The clerk for his service in preparing the notice shall
45 receive a fee of five dollars for the original and one
46 dollar for each copy required. Any costs which must be
47 expended in addition thereto for publication, or service
48 of such notice in the manner provided for serving
49 process commencing a civil action, or for service of
50 process by certified mail, shall be charged by the clerk.
51 All costs provided by this section shall be included as
52 redemption costs and included in the notice described
53 herein.

§11A-3-22. Service of notice.

1 As soon as the clerk has prepared the notice provided
2 for in section twenty-one of this article, he shall cause
3 it to be served upon all persons named on the list
4 generated by the purchaser pursuant to the provisions
5 of section nineteen of this article.

6 The notice shall be served upon all such persons
7 residing or found in the state in the manner provided
8 for serving process commencing a civil action, or by
9 certified mail, return receipt requested. The notice shall
10 be served on or before the tenth day following the
11 request for such notice.

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

16 If the address of any person entitled to notice, whether
17 a resident or nonresident of this state, is unknown to the
18 purchaser and cannot be discovered by due diligence on
19 the part of the purchaser, the notice shall be served by
20 publication as a Class III-O legal advertisement in
21 compliance with the provisions of article three, chapter
22 fifty-nine of this code, and the publication area for such

23 publication shall be the county in which such real estate
24 is located. If service by publication is necessary,
25 publication shall be commenced when personal service
26 is required as set forth above, and a copy of the notice
27 shall at the same time be sent by certified mail, return
28 receipt requested, to the last known address of the
29 person to be served. The return of service of such notice,
30 and the affidavit of publication, if any, shall be in the
31 manner provided for process generally and shall be filed
32 and preserved by the clerk in his office, together with
33 any return receipts for notices sent by certified mail.

**§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
2 pursuant to section five of this article, the owner of, or
3 any other person who was entitled to pay the taxes on,
4 any real estate for which a tax lien thereon was
5 purchased by an individual, may redeem at any time
6 before a tax deed is issued therefor. In order to redeem,
7 he must pay to the clerk of the county commission the
8 following amounts: (1) An amount equal to the taxes,
9 interest and charges due on the date of the sale, with
10 interest thereon at the rate of one percent per month
11 from the date of sale; (2) all other taxes thereon, which
12 have since been paid by the purchaser, his heirs or
13 assigns, with interest at the rate of one percent per
14 month from the date of payment; (3) such additional
15 expenses as may have been incurred in preparing the
16 list of those to be served with notice to redeem, and any
17 title examination incident thereto, with interest at the
18 rate of one percent per month from the date of payment,
19 but the amount he shall be required to pay, excluding
20 said interest, for such expenses incurred for the
21 preparation of the list of those to be served with notice
22 to redeem required by section nineteen of this article,
23 and any title examination incident thereto, shall not
24 exceed one hundred dollars; and (4) all additional
25 statutory costs paid by the purchaser. Where the clerk
26 has not received from the purchaser satisfactory proof
27 of the expenses incurred in preparing the notice to

28 redeem, and any examination of title incident thereto,
29 in the form of receipts or other evidence thereof, the
30 person redeeming shall pay the clerk the sum of one
31 hundred dollars plus interest thereon at the rate of one
32 per cent per month from the date of the sale for
33 disposition by the sheriff pursuant to the provisions of
34 sections ten, twenty-four, twenty-five and thirty-two of
35 this article.

36 The person redeeming shall be given a receipt for the
37 payment.

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

**§11A-3-24. Notice of redemption to purchaser; moneys
received by sheriff.**

1 (a) Upon payment of the sum necessary to redeem, the
2 clerk shall promptly notify the purchaser, his heirs or
3 assigns, by mail of the redemption, deliver to the sheriff
4 the redemption money paid, and note the fact of
5 redemption on his record of delinquent lands. The notice
6 by mail shall advise that upon the request of the
7 purchaser, his heirs or assigns, the sheriff shall pay to
8 the purchaser the sums described in section twenty-five
9 of this article.

10 (b) Of the redemption money received by the sheriff
11 pursuant to this section, the sheriff shall deposit into the
12 sale of tax lien surplus fund provided by section ten of
13 this article the amount thereof equal to (1) the surplus

14 of money paid in excess of the amount of the taxes,
15 interest and charges due and paid to the sheriff at the
16 sale; and (2) the amount of taxes, interest and charges
17 due on the date of the sale, plus the interest at the rate
18 of one percent per month thereon from the date of sale
19 to the date of redemption.

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

1 (a) Where the land has been redeemed in the manner
2 set forth in section twenty-three of this article, and the
3 clerk has delivered the redemption money to the sheriff
4 pursuant to section twenty-four of this article, the
5 sheriff shall, upon request made of him by the pur-
6 chaser, his heirs or assigns, and upon delivery to the
7 sheriff of the certificate of sale or assignment thereof,
8 pay to the purchaser, his heirs or assigns the following
9 amounts: (1) From the sale of tax lien surplus fund
10 provided by section ten of this article, (A) the surplus
11 of money paid in excess of the amount of the taxes,
12 interest and charges due and paid to the sheriff at the
13 sale, and (B) the amount of taxes, interest and charges
14 due on the date of the sale, plus the interest at the rate
15 of one percent per month from the date of sale to the
16 date of redemption; (2) all other taxes thereon, which
17 have since been paid by the purchaser, his heirs or
18 assigns, with interest at the rate of one percent per
19 month from the date of payment; (3) such additional
20 expenses as may have been incurred in preparing the
21 list of those to be served with notice to redeem, and any
22 title examination incident thereto, with interest at the
23 rate of one percent per month from the date of payment,
24 but the amount which shall be paid, excluding said
25 interest, for such expenses incurred for the preparation
26 of the list of those to be served with notice to redeem
27 required by section nineteen of this article, and any title
28 examination incident thereto, shall not exceed one
29 hundred dollars; and (4) all additional statutory costs
30 paid by the purchaser.

31 (b) Where, pursuant to section twenty-three of this
32 article, the clerk has not received from the purchaser
33 satisfactory proof of the expenses incurred in preparing
34 the notice to redeem, and any title examination incident

35 thereto, in the form of receipts or other evidence thereof,
36 and therefore received from the purchaser as required
37 by said section and delivered to the sheriff the sum of
38 one hundred dollars plus interest thereon at the rate of
39 one per cent per month from the date of the sale to the
40 date of redemption, and the sheriff has not received
41 from the purchaser such satisfactory proof of such
42 expenses within thirty days from the date of redemp-
43 tion, the sheriff shall refund such amount to the person
44 redeeming and the purchaser is barred from any claim
45 thereto. Where pursuant to section twenty-three of this
46 article, the clerk has received from the purchaser and
47 therefore delivered to the sheriff said sum of one
48 hundred dollars plus interest thereon at the rate of one
49 per cent per month from the date of the sale to the date
50 of redemption, and the purchaser provides the sheriff
51 within thirty days from the date of redemption such
52 satisfactory proof of such expenses, and the amount of
53 such expenses is less than the amount paid by the person
54 redeeming, the sheriff shall refund the difference to the
55 person redeeming.

**§11A-3-26. Certificate of redemption issued by clerk;
recordation; disposition of redemption
money.**

1 (a) Upon payment of the sum necessary to redeem, the
2 clerk shall execute a certificate of redemption in
3 duplicate, which certificate shall specify the real estate
4 redeemed, or the part thereof or the interest therein, as
5 the case may be, together with any changes in respect
6 thereto which were made in the landbook and in the
7 record of delinquent lands; shall specify the year or
8 years for which payment was made; and shall state that
9 it is a receipt for the money paid and a release of the
10 tax lien on the real estate redeemed. The original
11 certificate shall be retained in the files in the clerk's
12 office and one copy shall be delivered to the person
13 redeeming. The clerk shall make any necessary changes
14 in his record of delinquent lands and shall note the fact
15 of redemption on such record, and shall record the
16 certificate in a separate volume provided for the
17 purpose.

18 The fee for issuing the certificate of redemption shall
19 be twenty-five dollars.

20 (b) All certificates of redemption issued by the clerk
21 in each year shall be numbered consecutively and shall
22 be filed by the clerk in numerical order. Reference to
23 the year and number of the certificate shall be included
24 in the notation of redemption required herein. No fee
25 shall be charged by the clerk for any recordation, filing
26 or notation required by this section.

27 (c) In April of each year, the clerk shall prepare and
28 certify to the auditor a list of all redemptions which
29 have not been included in any other lists.

§11A-3-27. Deed to purchaser; record.

1 If the real estate described in the notice is not
2 redeemed within the time specified therein, but in no
3 event prior to the first day of April of the second year
4 following the sheriff's sale, the person entitled thereto
5 shall make and deliver to the clerk of the county
6 commission at any time thereafter, subject to the
7 provisions of section eighteen of this article, a quitclaim
8 deed for such real estate in form or effect as follows:

9 This deed made this _____ day of
10 _____, 19____, by and between
11 _____, clerk of the county commission of
12 _____ County, West Virginia, (or by and
13 between _____, a commissioner appointed
14 by the Circuit Court of _____ County, West
15 Virginia) grantor, and _____, purchaser,
16 (or _____, heir, devisee or assignee of
17 _____, purchaser,) grantee, witnesseth,
18 that

19 Whereas, In pursuance of the statutes in such case
20 made and provided, _____, Sheriff of
21 _____ County, (or _____, deputy for
22 _____, Sheriff of _____ County, (or
23 _____, collector of _____
24 County,) did, in the month of _____, in the
25 year 19____, sell the tax lien(s) on real estate, here-
26 inafter mentioned and described, for the taxes delin-

27 quent thereon for the year (or years) 19_____, and
28 _____, (here insert name of purchaser) for
29 the sum of \$_____, that being the amount
30 of purchase money paid to the sheriff, did become the
31 purchaser of the tax lien(s) on such real estate (or on
32 _____ acres, part of the tract or land, or on an
33 undivided _____ interest in such real
34 estate) which was returned delinquent in the name of
35 _____, and

36 Whereas, The clerk of the county commission has
37 caused the notice to redeem to be served on all persons
38 required by law to be served therewith; and

39 Whereas, The tax lien(s) on the real estate so pur-
40 chased has not been redeemed in the manner provided
41 by law and the time for redemption set in such notice
42 has expired;

43 Now, therefore, the grantor, for and in consideration
44 of the premises and in pursuance of the statutes, doth
45 grant unto _____, grantee, his heirs and assigns
46 forever, the real estate on which the tax lien(s) so pur-
47 chased existed, situate in the county of _____,
48 bounded and described as follows: _____.

49 Witness the following signature:

50 _____

51 Clerk of the County Commission of _____ County.

52 Except when ordered to do so, as provided in section
53 twenty-eight of this article, no clerk of the county
54 commission shall execute and deliver such a deed more
55 than thirty days after the person entitled to the deed
56 delivers the same and requests the execution thereof.
57 Upon the clerk's determination that the deed presented
58 substantially complies with the requirements of this
59 section, the clerk shall execute the deed and acknowl-
60 edge the same, record the deed in the clerk's office, and
61 deliver the original thereof to the purchaser.

62 For the execution of the deed and for all the recording
63 required by this section, a fee of ten dollars shall be
64 charged, to be paid by the grantee upon delivery of the

65 deed. The deed, when duly acknowledged or proven,
 66 shall be recorded by the clerk of the county commission
 67 in the deed book in his office, together with assignment
 68 from the purchaser, if one was made, the notice to
 69 redeem, the return of service of such notice, the affidavit
 70 of publication, if the notice was served by publication,
 71 and any return receipts for notices sent by certified
 72 mail.

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

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

19 If the clerk fails or refuses to execute the deed as
 20 required in section twenty-seven of this article, the
 21 person requesting the deed may, at any time after such
 22 failure or refusal, but not more than six months after
 23 his right to the deed accrued, apply by petition to the
 24 circuit court of the county for an order compelling the
 25 clerk to execute the deed or appointing a commissioner
 26 to do so. If the person requesting the deed fails to make
 27 such application within the time allowed, he shall lose
 28 his right to the deed, but his rights against the clerk
 29 under the provisions of section sixty-seven of this article
 30 shall not be affected. Any deed executed pursuant to an
 31 order of the court or judge shall have the same force and

32 effect as if executed and delivered by the clerk within
33 the time specified in the preceding section.

34 Ten days' written notice of every such application
35 must be given to the clerk. If, upon the hearing of such
36 application, the court or judge is of the opinion that the
37 applicant is not entitled to the notice or deed requested,
38 the petition shall be dismissed at his costs; but if the
39 court or judge is of the opinion that he is entitled to such
40 notice or deed, then, upon his deposit with the clerk of
41 the circuit court of a sum sufficient to cover the costs
42 of preparing and serving the notice, unless such a
43 deposit has already been made with the clerk of the
44 county commission, an order shall be made by the court
45 or judge directing the clerk to prepare and serve the
46 notice or execute the deed, or appointing a commissioner
47 for the purpose, as the court or judge shall determine.
48 If it appears to the court or judge that the failure or
49 refusal of the clerk was without reasonable cause,
50 judgment shall be given against him for the costs of the
51 proceedings; otherwise the costs shall be paid by the
52 applicant.

53 Any commissioner appointed under the provisions of
54 this section shall be subject to the same liabilities as are
55 provided for the clerk. For the preparation of the notice
56 to redeem, he shall be entitled to the same fee as is
57 provided for the clerk. For the execution of the deed,
58 he shall also be entitled to a fee of ten dollars, to be paid
59 by the grantee upon delivery of the deed.

§11A-3-29. One deed for separate purchases.

1 Whenever one purchaser at the tax sale has purchased
2 tax liens on two or more pieces of real estate, or
3 undivided interests therein, charged with taxes for the
4 same year, or years, he, his heirs or assigns, may request
5 the clerk of the county commission to execute a separate
6 deed for each piece of real estate, or undivided interest
7 therein, or separate deeds for some and one deed for the
8 remainder, or one deed for all, as he or they may prefer.
9 Every deed for two or more pieces of real estate, or
10 undivided interests therein, shall describe each piece of
11 real estate and each undivided interest separately.

§11A-3-30. Title acquired by individual purchaser; action to quiet title.

1 (a) Whenever the purchaser of any tax lien on any real
2 estate sold at a tax sale, his heirs or assigns, shall have
3 obtained a deed for such real estate from the clerk of
4 the county commission or from a commissioner ap-
5 pointed to make the deed, he or they shall thereby
6 acquire all such right, title and interest, in and to the
7 real estate, as was, at the time of the execution and
8 delivery of the deed, vested in or held by any person who
9 was entitled to redeem, unless such person is one who,
10 being required by law to have his interest separately
11 assessed and taxed, has done so and has paid all the
12 taxes due thereon, or unless the rights of such person
13 are expressly saved by the provisions of section six of
14 this article or section two, three, four or six, article four
15 of this chapter.

16 The tax deed shall be conclusive evidence of the
17 acquisition of such title. The title so acquired shall relate
18 back to July first of the year in which the taxes, for
19 nonpayment of which the tax lien on the real estate was
20 sold, were assessed.

21 (b) Any individual purchaser to whom a tax deed has
22 been issued may institute and prosecute actions to quiet
23 title in any such real estate conveyed thereby. Such
24 action may be maintained for all or any one or more of
25 the lots or tracts conveyed.

§11A-3-31. Effect of irregularity on title acquired by purchaser.

1 No irregularity, error or mistake in respect to any
2 step in the procedure leading up to and including
3 delivery of the tax deed by the clerk shall invalidate the
4 title acquired by the purchaser unless such irregularity,
5 error or mistake is, by the provisions of section six of
6 this article or section two, three, four or six, article four
7 of this chapter, expressly made ground for instituting
8 a suit to set aside the sale or the deed.

§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.

1 (a) The sheriff shall keep in a separate fund the
2 proceeds of all redemptions and sales paid to him under
3 the provisions of this chapter, except for those proceeds
4 for which a separate fund is directed by the provisions
5 of section sixty-four of this article. Out of the total
6 proceeds of each sale or redemption he shall in the order
7 of priority stated below credit the following amounts, for
8 payment as hereinafter provided: (1) To the general
9 county fund, such part as represents costs paid out of
10 such fund for publishing the sheriff's delinquent and
11 sales list and all other costs incurred by the sheriff
12 pursuant to the provisions of this article; (2) surplus
13 proceeds from the sale of tax liens on delinquent lands
14 shall be held by the sheriff for the periods provided for
15 in section ten of this article, and if no application is
16 made within the time therein specified, such surplus
17 shall be distributed by the sheriff in the manner
18 provided by law for the distribution of property taxes
19 collected by him; and (3) the balance, if any, of the
20 proceeds of the lands included in each suit shall be
21 prorated among the various taxing units on the basis of
22 the total amount of taxes due them in respect to the
23 lands that were sold or redeemed. The amounts so
24 determined shall be credited as follows, for payment as
25 hereinafter provided: (1) To the auditor, such part as
26 represents state taxes and interest; and (2) to the fund
27 kept by the sheriff for each local taxing unit, such part
28 as represents taxes and interest payable to such unit.

29 (b) All amounts which under the provisions of this
30 section were so credited by the sheriff to the auditor
31 shall be paid to him semiannually; and those credited
32 to the various local taxing units shall be transferred
33 semiannually by the sheriff to the fund kept by him for
34 each such taxing unit.

35 (c) The tax commissioner, in cooperation with the land
36 department in the auditor's office, shall prescribe the
37 form of the records to be kept by the sheriff for the
38 purposes of this section, and the method to be used by
39 him in making the necessary pro rata distributions.

PART II

§11A-3-33. State commissioner of delinquent and nonentered lands.

1 The state auditor shall ex officio be state commis-
2 sioner of delinquent and nonentered lands. The term
3 “auditor” whenever used in this chapter in connection
4 with delinquent, nonentered, escheated or waste and
5 unappropriated lands, shall be construed to refer to the
6 auditor in his capacity as state commissioner of
7 delinquent and nonentered lands.

8 The auditor is empowered, and it shall be his duty,
9 through the land department in his office, to administer
10 and carry into execution the laws with reference to such
11 lands. The auditor on behalf of the state shall have
12 power to hold and manage such lands, and to exercise
13 all other powers incident to the powers and duties
14 conferred upon him by this article.

§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.

1 The auditor shall appoint for each county in the state
2 a deputy commissioner of delinquent and nonentered
3 lands. Persons serving in that capacity when this article
4 takes effect shall continue to serve, subject to the
5 provisions of this article. The auditor shall make new
6 appointments from time to time thereafter whenever
7 vacancies occur, or when in the auditor’s judgment it is
8 deemed advisable. The auditor may promulgate rules
9 respecting the tenure of deputy commissioners. In the
10 absence of such rules, the deputy commissioner for each
11 county shall, so long as he satisfies the requirements of
12 this section in respect to professional qualifications and
13 bonding, continue to act without reappointment until the
14 auditor designates his successor.

15 The auditor shall appoint deputy commissioners in
16 such numbers and to serve such counties as the auditor
17 deems advisable to effect the purposes of this article.
18 Appointments shall be limited to persons duly licensed
19 to practice law in this state. Any person appointed as
20 deputy commissioner for a single county shall reside in
21 said county. Any person appointed as deputy commis-
22 sioner for more than one county shall reside in one of

23 the counties for which he has been appointed.

24 Whenever in respect to any land the deputy commis-
25 sioner, in his own judgment or in the opinion of the
26 auditor, is disqualified or otherwise unable to serve,
27 because of his personal interest, or because of his
28 representation of clients in matters affecting such land,
29 or because of vacancies or failure to act, the auditor may
30 appoint a special deputy, including an employee of his
31 office licensed to practice law in this state, to assume
32 all of the disqualified deputy commissioner's rights,
33 duties, responsibilities and liabilities relating to such
34 land.

35 The deputy commissioner shall be subject to the
36 orders and control of the auditor, shall be accountable
37 to him, and shall serve as his local agent within the
38 county. It shall be his duty to do whatever is required
39 of him by the auditor or by the provisions of this article.
40 The deputy commissioner before entering upon his
41 duties shall give a bond, with satisfactory corporate
42 surety, conditioned upon the faithful performance of his
43 duties and the payment of any forfeitures incurred. The
44 penalty of such bond shall be not less than twenty-five
45 thousand dollars nor more than one hundred thousand
46 dollars, as the auditor may direct. The premium
47 therefor shall be paid by the auditor out of the operating
48 fund for the land department in his office.

§11A-3-35. Land record in auditor's office.

1 The auditor shall prepare and keep in his office a
2 permanent record of all delinquent, nonentered,
3 escheated and waste and unappropriated lands. The
4 record shall as to every tract or lot listed set forth the
5 information available as to quantity, local description,
6 and, except in the case of waste and unappropriated
7 lands, the name of the former owner and the respective
8 dates of nonentry, or delinquency and certification to the
9 auditor, or escheat, as the case may be. The record shall
10 be prima facie evidence of all matters required by this
11 section to be set forth therein, including the correctness
12 of the description of lands as nonentered, delinquent,
13 escheated or waste and unappropriated.

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

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

13 (b) The operating fund shall be used by the auditor
14 in cases of deficits in land sales to pay any balances due
15 to deputy commissioners for services rendered, and any
16 unpaid costs including those for publication which have
17 accrued or will accrue under the provisions of this
18 article, to pay fees due surveyors under the provisions
19 of section forty-three of this article, and to pay for the
20 operation and maintenance of the land department in
21 his office. The surplus over and above the amount of one
22 hundred thousand dollars, remaining in the fund at the
23 end of any fiscal year, shall be paid by the auditor into
24 the general school fund.

§11A-3-37. Disposition of nonentered lands.

1 It is the duty of the owner of land to have his land
2 entered for taxation on the landbooks of the appropriate
3 county, have himself charged with the taxes due
4 thereon, and pay the same. Land which, for any five
5 successive years, shall not have been so entered and
6 charged shall, without any proceedings therefor, be
7 subject to the authority and control of the auditor and
8 such nonentered lands shall thereafter be subject to
9 transfer or sale under the provisions of this article
10 relating to the auditor's disposition of lands certified to
11 the auditor pursuant to section eight thereof.

§11A-3-38. Redemption of nonentered or certified lands.

1 (a) The owner of any real estate certified to the auditor
2 pursuant to section eight of this article, or of any
3 nonentered real estate subject to the authority of the
4 auditor pursuant to section thirty-seven of this article,
5 or any other person who was entitled to pay the taxes
6 thereon, may redeem such real estate from the auditor
7 at any time prior to the certification of such real estate
8 to the deputy commissioner as provided in section forty-
9 four of this article. Thereafter such real estate shall be
10 subject to disposition pursuant to section forty-four of
11 this article, and subsequent sections.

12 (b) In order to redeem the person seeking redemption
13 must pay to the auditor such of the following amounts
14 as may be due: (1) The taxes, interest and charges due
15 on the real estate on the date of certification to the
16 auditor or the discovery of the nonentry, with interest
17 at the rate of twelve percent per annum from the date
18 of such certification or discovery; (2) all taxes assessed
19 thereon for the year in which the certification occurred
20 or nonentry was discovered, with interest at the rate of
21 twelve percent per annum from the date on which they
22 became delinquent, except when such taxes are cur-
23 rently due and payable to the sheriff; (3) all taxes except
24 those for the current year which would have been
25 assessed thereon since the certification had the certifi-
26 cation not occurred, or which, in case of nonentered
27 lands, would have been assessed thereon had the land
28 been properly entered, with interest at the rate of twelve
29 percent per annum from the date on which such taxes
30 would have become delinquent: *Provided*, That in the
31 case of nonentered lands, the owner shall not be liable
32 for more than the taxes and interest which would have
33 become due and payable during the ten years imme-
34 diately preceding the date of the discovery of the
35 nonentry.

36 (c) In computing the amount due under subdivision
37 (3), subsection (b) of this section on real estate certified
38 to the auditor by the sheriff, the auditor shall use as the
39 basis for computation the classification and valuation
40 placed thereon by the assessor for each year since the
41 sale. If such valuation and classification have not been

42 made, he shall use the last valuation and classification
43 appearing on the property books. In computing the
44 amount due under subdivision (3), subsection (b) of this
45 section on nonentered real estate, the auditor shall use
46 as the basis for computation such classification and
47 valuation as may, at the request of the auditor or the
48 person redeeming, be certified to the auditor by the
49 assessor as the classification and valuation which in his
50 opinion would be proper for each year of nonentry.

51 (d) Redemption of an undivided interest included in
52 a group assessment shall not be permitted until the
53 applicable provisions of sections nine or ten of article
54 one of this chapter have been complied with, except that
55 instead of presenting the assessor's certificate to the
56 sheriff as therein provided, the person redeeming shall
57 present it to the auditor, who, after making the
58 necessary changes in the land book, and in the record
59 of delinquent lands kept in his office, shall compute the
60 taxes due on the part or interest redeemed.

**§11A-3-39. Certificate of redemption issued by auditor;
recordation.**

1 (a) Upon payment of the sum necessary to redeem, the
2 auditor shall execute a certificate of redemption in
3 triplicate, which certificate shall specify the real estate
4 redeemed, or the interest therein, as the case may be,
5 together with any changes in respect thereto which were
6 made in the land book and in the record of delinquent
7 lands, shall specify the year or years for which payment
8 was made, and shall state that it is a receipt for the
9 money paid and a release of the state's lien against the
10 real estate redeemed. The original certificate shall be
11 retained in the files in the auditor's office, one copy shall
12 be delivered to the person redeeming and the second
13 copy shall be mailed by the auditor to the clerk of the
14 county commission of the county in which the real estate
15 is situated, who, after making any necessary changes in
16 his record of delinquent lands, shall note the fact of
17 redemption on such record, and shall record the
18 certificate in a separate volume provided for the
19 purpose.

20 The fee for issuing the certificate of redemption shall
21 be ten dollars or seven and one-half percent of the total
22 taxes, interest and charges due, whichever is greater.

23 (b) All certificates of redemption issued by the auditor
24 in each year shall be numbered consecutively and shall
25 be filed by the clerk of the county commission in
26 numerical order. Reference to the year and number of
27 the certificate shall be included in the notation of
28 redemption required of the clerk of the county commis-
29 sion. No fee shall be charged by the clerk for any
30 recordation, filing or notation required by this section.

§11A-3-40. Compulsory redemption at election of auditor.

1 The auditor, if he so elects, may at any time compel
2 redemption of any nonentered lands or real estate
3 certified to the auditor by the sheriff. In order to collect
4 from the owner of such real estate an amount sufficient
5 for redemption, he may use any of the methods provided
6 in article two of this chapter for collection of taxes by
7 the sheriff.

**§11A-3-41. Auditor to report redemptions to county
officers; disposition of redemption money;
credit of state taxes to proper fund.**

1 (a) The auditor shall report monthly to the sheriff, the
2 assessor and the clerk of the county commission of each
3 county all land in such county which was redeemed in
4 his office during the preceding month. The assessor
5 shall enter the fact of such redemption in the land book
6 in his office. The clerk shall file and index the report
7 in a separate volume provided for the purpose.

8 (b) Between August fifteenth and August thirty-first
9 of each year, the auditor shall report to the sheriff of
10 each county for inclusion in his next September
11 delinquent list all tracts of land redeemed from the
12 auditor, which after certification to the auditor have
13 been reported to him by the sheriff as suspended from
14 sale, if the taxes for the year or years of suspension were
15 not collected by the auditor. The sheriff shall be charged
16 with such taxes and shall account for them as is
17 required in the case of current taxes. Instead of making

18 this report, the auditor may collect the taxes due for the
19 year or years of suspension. Upon collection thereof he
20 shall issue a second certificate of redemption, and such
21 certificate shall be a release of the state's lien for such
22 taxes.

23 (c) The auditor shall each month draw his warrant
24 upon the treasury, payable to the sheriff of each county,
25 for that part of the taxes, interest and charges received
26 by him upon the redemption of the property included
27 in his report, which was owing to any of the taxing units
28 in such county. The sheriff shall account for and pay
29 over such money as if it had been paid to him for
30 redemption before sale.

31 Upon collection of delinquent taxes due the state, the
32 auditor shall credit them to the proper fund.

§11A-3-42. Lands subject to sale by deputy commissioner.

1 All lands for which no person present at the sheriff's
2 sale, held pursuant to section five of this article, has bid
3 the total amount of taxes, interest and charges due, and
4 which were subsequently certified to the auditor
5 pursuant to section eight of this article, and which have
6 not been redeemed from the auditor within eighteen
7 months after such certification, together with all
8 nonentered lands, all escheated lands and all waste and
9 unappropriated lands, shall be subject to sale by the
10 deputy commissioner of delinquent and nonentered
11 lands as further provided in this article. References in
12 this chapter to the sale or purchase of certified or
13 nonentered lands by or from the deputy commissioner
14 shall be construed as the sale or purchase of the tax lien
15 or liens thereon.

§11A-3-43. Officers to report lands subject to sale.

1 (a) Whenever an assessor, sheriff, clerk of the county
2 commission or county surveyor learns of the existence
3 within the county of any nonentered land, he shall
4 promptly report that fact to the auditor, together with
5 his information relating thereto. The assessor, as
6 escheator, shall likewise report all lands which escheat
7 to the state.

8 (b) Whenever the deputy commissioner learns of the
9 existence of any waste and unappropriated lands within
10 his county, except lands lying under the bed of a
11 navigable stream, he shall direct the county surveyor,
12 or some other competent surveyor, to make a survey,
13 plat and report thereof, listing all discovered claims of
14 title thereto. For his services in making the survey, plat
15 and report, the surveyor shall be entitled to a fee of fifty
16 dollars, and such additional compensation as the deputy
17 commissioner may recommend and the auditor approve,
18 to be paid out of the operating fund for the land
19 department in the auditor's office.

**§11A-3-44. Auditor to certify list of lands to be sold; lands
so certified are subject to sale.**

1 On or after the first day of May and on or before the
2 first day of October of each year, the auditor shall
3 certify to the deputy commissioner of each county a list
4 of all lands in the county subject to sale under this
5 article. He shall note the fact of certification on the land
6 record in his office. Upon completion of the list for
7 certification, a charge of twenty-five dollars shall be
8 added to the taxes, interest and charges already due on
9 each tract listed, to cover the costs incurred by the
10 auditor in the preparation of the list, and in the event
11 of sale or redemption, the same shall be collected and
12 paid into the operating fund provided for in this article.

13 Escheated lands and waste and unappropriated lands
14 shall be listed separately. The list shall be arranged by
15 districts and, except in the case of waste and unappropriated
16 lands, alphabetically by the name of the owner.
17 The list shall state as to each item listed the information
18 required by section thirty-five of this article to be set
19 forth in the land record in the auditor's office, and shall
20 specify as to each tract listed as delinquent or nonentered
21 the amount of taxes and interest due or chargeable
22 thereon on the date of certification, the publication and
23 other charges due, with interest, and the total currently
24 due. The specification of taxes due or chargeable shall
25 as to delinquent land commence with those for nonpayment
26 of which it was sold, and as to nonentered land
27 with those properly chargeable to it for the first year

28 of nonentry, subject to the provisions of the proviso set
29 forth in subsection (b), section thirty-eight of this article.

30 All items certified to each deputy commissioner shall
31 be numbered consecutively. All subsequent entries,
32 applications or proceedings under this article in respect
33 to any item shall refer to its number and the year of
34 certification. All tracts, lots, or parcels certified to the
35 auditor as a unit may be treated by the auditor as a
36 single item for purposes of certification. Subject to the
37 provisions of this section, the auditor shall prescribe a
38 form for the list and shall provide in such form adequate
39 space to show the subsequent history and final disposi-
40 tion of each item certified.

41 The list shall be made in triplicate. The auditor shall
42 keep the original and send one copy to the clerk of the
43 county commission and one to the deputy commissioner.
44 The clerk of the county commission shall bind his copy
45 in a permanent book to be labeled "Report of State
46 Commissioner of Delinquent and Nonentered Lands"
47 and shall note the fact of the certification of each item
48 on his record of delinquent lands. Such copies shall
49 become permanent records, and shall be preserved as
50 such in the offices of the auditor and the clerk of the
51 county commission.

§11A-3-45. Deputy commissioner to hold annual auction.

1 (a) Each tract or lot certified to the deputy commis-
2 sioner pursuant to the preceding section shall be sold by
3 the deputy commissioner at public auction at the front
4 door of the courthouse of the county to the highest
5 bidder, for cash, between the hours of ten in the
6 morning and four in the afternoon on any business
7 working day within sixty days after the auditor has
8 certified the lands to the deputy commissioner as
9 required by the preceding section. No part or interest
10 in any tract or lot subject to such sale, or any part
11 thereof of interest therein, that is less than the entirety
12 of such unredeemed tract, lot or interest, as the same
13 is described and constituted as a unit or entity in said
14 list, shall be offered for sale or sold at such sale. If the
15 sale shall not be completed on the first day of the sale,

16 it shall be continued from day to day between the same
17 hours until all the land shall have been offered for sale.

18 (b) A private, nonprofit, charitable corporation,
19 incorporated in this state, which has been certified as
20 a nonprofit corporation pursuant to the provisions of
21 §501(c)(3) of the federal Internal Revenue Code, as
22 amended, which has as its principal purpose the
23 construction of housing or other public facilities, and
24 which notifies the deputy commissioner of an intention
25 to bid and subsequently submits a bid that is not more
26 than five percent lower than the highest bid submitted
27 by any person or organization which is not a private,
28 nonprofit, charitable corporation as defined in this
29 subsection, shall be sold the property offered for sale by
30 the deputy commissioner pursuant to the provisions of
31 this section at the public auction as opposed to the
32 highest bidder.

33 The nonprofit corporation referred to in this subsection
34 does not include a business organized for profit, a
35 labor union, a partisan political organization or an
36 organization engaged in religious activities and it does
37 not include any other group which does not have as its
38 principal purpose the construction of housing or public
39 facilities.

§11A-3-46. Publication of notice of auction.

1 Once a week for three consecutive weeks prior to the
2 auction required in the preceding section, the deputy
3 commissioner shall publish notice of the auction as a
4 Class III-O legal advertisement in compliance with the
5 provisions of article three, chapter fifty-nine of this code,
6 and the publication area for such publication shall be
7 the county.

8 The notice shall be in form or effect as follows:

9 Notice is hereby given that the following described
10 tracts or lots of land in the County of _____,
11 have been certified by the Auditor of the State of West
12 Virginia to _____, Deputy Commissioner of
13 Delinquent and Nonentered Lands of said County, for
14 sale at public auction. The lands will be offered for sale

15 by the undersigned deputy commissioner at public
16 auction at the front door of the courthouse of
17 _____ County between the hours of ten in
18 the morning and four in the afternoon, on the
19 _____ day of _____, 19____.

20 Each tract or lot as described below, will be sold to
21 the highest bidder for cash. If any of said tracts or lots
22 remain unsold following the auction, they will be subject
23 to sale by the deputy commissioner without additional
24 advertising or public auction. All sales are subject to the
25 approval of the auditor of the State of West Virginia.

26 (here insert description of lands to be sold)

27 Any of the aforesaid tracts or lots may be redeemed
28 by any person entitled to pay the taxes thereon at any
29 time prior to the sale by payment to the deputy
30 commissioner of the total amount of taxes, interest and
31 charges thereon up to the date of redemption. Lands
32 listed above as escheated or waste and unappropriated
33 lands may not be redeemed.

34 Given under my hand this _____ day of
35 _____, 19____.

36 _____ Deputy Commissioner of Delin-
37 quent and Nonentered Lands of _____
38 County

39 The description of lands required in the notice shall
40 be in the same form as the list certifying said lands to
41 the deputy commissioner for sale. If the deputy commis-
42 sioner is required to auction lands certified to him in
43 any previous years, pursuant to section forty-eight of
44 this article, he shall include such lands in the notice,
45 with reference to the year of certification and the item
46 number of the tract or interest.

47 To cover the cost of preparing and publishing the
48 notice, a charge of twenty-five dollars shall be added to
49 the taxes, interest and charges due on the delinquent
50 and nonentered property.

§11A-3-47. Redemption prior to sale.

1 Any of the delinquent and nonentered lands certified

2 to the deputy commissioner may be redeemed, prior to
3 the auction, by the owner of such land or any other
4 person entitled to pay the taxes thereon, by payment of
5 the taxes, interest and charges due. The deputy commis-
6 sioner shall give to the person redeeming a duplicate
7 receipt, one of which shall be filed with the clerk of the
8 county commission, who shall note the fact of such
9 redemption on his record of delinquent lands. Any
10 person redeeming the interest of another shall be
11 subrogated to the lien of the state on such interest as
12 provided in section nine, article one of this chapter.

**§11A-3-48. Unsold lands subject to sale without auction or
additional advertising.**

1 If any of the lands which have been offered for sale
2 at the public auction provided in section forty-five of this
3 article shall remain unsold following such auction, or if
4 the auditor refuses to approve the sale pursuant to
5 section fifty-one of this article, the deputy commissioner
6 may sell such lands at any time subsequent to such
7 auction, without any further public auction or additional
8 advertising of such land, to any party willing to
9 purchase such property. The price of such property shall
10 be as agreed upon by the deputy commissioner and
11 purchaser, subject to approval by the auditor as
12 provided in section fifty-one of this article: *Provided,*
13 That any of such unsold lands, which remain unsold at
14 the time the deputy commissioner publishes notice of
15 subsequent annual auctions, shall be included in such
16 notice and offered for sale at such auction: *Provided,*
17 *however,* That in no event shall the deputy commissioner
18 be required to offer a tract, lot or interest for sale at
19 more than three consecutive annual auctions.

**§11A-3-49. Purchase by owner or deputy commissioner
or other officers prohibited; co-owner free
to purchase at sale.**

1 (a) It shall be illegal for an owner, in whose name any
2 real estate was certified to the auditor or was subjected
3 to the authority of the auditor because of the nonentry
4 thereof, or his heirs or assigns, or his or their agent, to
5 purchase such real estate at sale provided in sections

6 forty-five or forty-eight of this article. No deputy
 7 commissioner, sheriff, clerk of the county commission or
 8 circuit court, assessor, nor deputy of any of them, shall
 9 directly or indirectly become the purchaser, or be
 10 interested in the purchase of any real estate at the sale.
 11 Any such person or officer so purchasing shall for each
 12 offense forfeit one thousand dollars, to be collected as
 13 other forfeitures are collected. The sale of any real
 14 estate, or the conveyance of such real estate by tax deed,
 15 to one of the persons or officers named in this section
 16 shall be voidable at the instance of any person having
 17 the right to redeem until such real estate reaches the
 18 hands of a bona fide purchaser.

19 (b) Any co-owner, except a coparcener, in the absence
 20 of satisfactory proof of a fiduciary relationship, shall be
 21 entitled to purchase at the sale for his own account the
 22 interest of any, or all, of his co-owners in any real estate,
 23 without being required to hold such interest or interests
 24 under a constructive trust. There shall be a prima facie
 25 presumption against such constructive trust.

§11A-3-50. Receipt to purchaser for purchase price.

1 The deputy commissioner shall issue to the purchaser
 2 a duplicate receipt for the purchase money, one of which
 3 shall be filed with the clerk of the county commission,
 4 who shall note the fact of such sale on his record of
 5 delinquent lands. The heading of the receipt shall be:

6 Memorandum of real estate sold in the county of
 7 _____ on this _____ day of
 8 _____, 19____, by the _____,
 9 deputy commissioner of delinquent and nonentered
 10 lands of said county.

11 Except for the heading, the auditor shall prescribe the
 12 form of the receipt.

§11A-3-51. Deputy commissioner to report sales to auditor; auditor to approve sales.

1 Within fourteen days following the auction required
 2 by section forty-five of this article, and within fourteen
 3 days of any sale pursuant to section forty-eight of this
 4 article, the deputy commissioner must report such sales

5 to the auditor. The report must include the year that the
6 land was certified by the auditor for sale, the item
7 number of the land on the list certifying the land for
8 sale, the amount of taxes, interest and charges on such
9 land at the time of the sale, the quantity of the land,
10 the name and address of the purchaser, and the
11 purchase price. The report shall be filed in duplicate
12 with the auditor. The auditor may prescribe the form
13 of the report.

14 As soon as possible after receiving the report, the
15 auditor shall determine whether the sale is in the best
16 interest of the state, and shall either approve or
17 disapprove the sale. The auditor shall then note such
18 approval or disapproval and, if disapproved, the reasons
19 therefore, on the copy of the report, and return the copy
20 to the deputy commissioner. The original shall be
21 retained by the auditor.

22 If the auditor shall disapprove any such sale, the
23 deputy commissioner shall forthwith refund the pur-
24 chase price to the purchaser. The land shall then be
25 again subject to sale pursuant to sections forty-five and
26 forty-eight of this article. If the auditor approves the
27 sale, the purchaser shall immediately commence the
28 steps to obtain a deed, as provided in section fifty-two
29 of this article.

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

1 (a) Within thirty days following the approval of the
2 sale by the auditor pursuant to section fifty-one of this
3 article, the purchaser, his heirs or assigns, in order to
4 secure a deed for the real estate purchased, shall: (1)
5 Prepare a list of those to be served with notice to redeem
6 and request the deputy commissioner to prepare and
7 serve the notice as provided in sections fifty-four and
8 fifty-five of this article; and (2) deposit, or offer to
9 deposit, with the deputy commissioner a sum sufficient
10 to cover the costs of preparing and serving the notice.
11 For failure to meet these requirements, the purchaser
12 shall lose all the benefits of his purchase.

13 (b) If the person requesting preparation and service

14 of the notice is an assignee of the purchaser, he shall,
15 at the time of the request, file with the deputy commis-
16 sioner a written assignment to him of the purchaser's
17 rights, executed, acknowledged and certified in the
18 manner required to make a valid deed.

**§11A-3-53. Refund to purchaser of payment made at
deputy commissioner's sale where property
is subject of an erroneous assessment or is
otherwise nonexistent.**

1 If, after payment of the amount bid at a deputy
2 commissioner's sale, the purchaser discovers that the
3 property purchased at such sale is the subject of an
4 erroneous assessment or is otherwise nonexistent, such
5 purchaser shall submit the certificate of an attorney-at-
6 law that the property is the subject of an erroneous
7 assessment or is otherwise nonexistent. Upon receipt
8 thereof, the deputy commissioner shall cause the moneys
9 so paid to be refunded. Upon refund, the deputy
10 commissioner shall inform the assessor of the erroneous
11 assessment for the purpose of having the assessor
12 correct said error.

§11A-3-54. Notice to redeem.

1 Whenever the provisions of section fifty-two of this
2 article have been complied with, the deputy commis-
3 sioner shall thereupon prepare a notice in form or effect
4 as follows:

5 To _____
6 You will take notice that _____, the
7 purchaser (or _____, the assignee, heir or
8 devisee of _____, the purchaser) of the
9 following real estate, _____, (here describe
10 the real estate sold) located in _____, (here
11 name the city, town or village in which the real estate
12 is situated or, if not within a city, town or village, give
13 the district and a general description) which was
14 _____ (here put whether the property was
15 returned delinquent or nonentered) in the name of
16 _____, and was sold by the deputy commis-
17 sioner of delinquent and nonentered lands of

18 _____ County at the sale for delinquent
19 taxes (or nonentry) on the _____ day of
20 _____, 19____, has requested that you be
21 notified that a deed for such real estate will be made
22 to him on or after the _____ day of
23 _____, 19____, as provided by law, unless
24 before that day you redeem such real estate. The amount
25 you will have to pay to redeem on the _____
26 day of _____, will be as follows:

27 Amount paid deputy commissioner at sale, with
28 interest to _____ \$ _____

29 Amount of taxes paid on the property, since the sale,
30 with interest to _____ \$ _____

31 Amount paid for title examination and preparation of
32 list of those to be served, and for preparation and service
33 of the notice with interest to _____ \$
34 _____

35 Amount paid for other statutory costs (describe)
36 \$ _____

37 Total \$ _____

38 You may redeem at any time before _____
39 by paying the above total less any unearned interest.

40 Given under my hand this _____ day of
41 _____, 19____.

42 _____
43 Deputy Commissioner of Delinquent and
44 Nonentered Lands
45 _____ of County,
46 State of West Virginia

47 The deputy commissioner for his service in preparing
48 the notice shall receive a fee of ten dollars for the
49 original and two dollars for each copy required. Any
50 costs which must be expended in addition thereto for
51 publication, or service of such notice in the manner
52 provided for serving process commencing a civil action,
53 or for service of process by certified mail, shall be
54 charged by the deputy commissioner. All costs provided
55 by this section shall be included as redemption costs and

56 included in the notice described herein.

§11A-3-55. Service of notice.

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

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

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

19 If the address of any person entitled to notice, whether
20 a resident or nonresident of this state, is unknown to the
21 purchaser and cannot be discovered by due diligence on
22 the part of the purchaser, the notice shall be served by
23 publication as a Class III-O legal advertisement in
24 compliance with the provisions of article three, chapter
25 fifty-nine of this code, and the publication area for such
26 publication shall be the county in which such real estate
27 is located. If service by publication is necessary,
28 publication shall be commenced when personal service
29 is required as set forth above, and a copy of the notice
30 shall at the same time be sent by certified mail, return
31 receipt requested, to the last known address of the
32 person to be served. The return of service of such notice,
33 and the affidavit of publication, if any, shall be in the
34 manner provided for process generally and shall be filed
35 and preserved by the deputy commissioner in his office,
36 together with any return receipts for notices sent by
37 certified mail.

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

1 (a) After the sale of any tax lien on any real estate
2 pursuant to section forty-five or forty-eight of this
3 article, the owner of, or any other person who was
4 entitled to pay the taxes on, any real estate for which
5 a tax lien thereon was purchased by an individual, may
6 redeem at any time before a tax deed is issued therefor.
7 In order to redeem, he must pay to the deputy commis-
8 sioner the following amounts: (1) An amount equal to the
9 taxes, interest and charges due on the date of the sale,
10 with interest thereon at the rate of one percent per
11 month from the date of sale; (2) all other taxes thereon,
12 which have since been paid by the purchaser, his heirs
13 or assigns, with interest at the rate of one percent per
14 month from the date of payment; (3) such additional
15 expenses as may have been incurred in preparing the
16 list of those to be served with notice to redeem, and any
17 title examination incident thereto, with interest at the
18 rate of one percent per month from the date of payment,
19 but the amount he shall be required to pay, excluding
20 said interest, for such expenses incurred for the
21 preparation of the list of those to be served with notice
22 to redeem required by section fifty-two of this article,
23 and any title examination incident thereto, shall not
24 exceed one hundred dollars; (4) all additional statutory
25 costs paid by the purchaser; and (5) the deputy commis-
26 sioner's fee and commission as provided by section sixty-
27 six of this article. Where the deputy commissioner has
28 not received from the purchaser satisfactory proof of the
29 expenses incurred in preparing the notice to redeem,
30 and any examination of title incident thereto, in the
31 form of receipts or other evidence thereof, the person
32 redeeming shall pay the deputy commissioner the sum
33 of one hundred dollars plus interest thereon at the rate
34 of one per cent per month from the date of the sale for
35 disposition pursuant to the provisions of sections fifty-
36 seven, fifty-eight and sixty-four of this article. Upon
37 payment to the deputy commissioner of any those and
38 any other unpaid statutory charges required by this

39 article, including the fee of the clerk of the county
40 commission for the issuance of a certificate of redemp-
41 tion, and of any unpaid expenses incurred by the sheriff,
42 the auditor and the deputy commissioner in the exercise
43 of their duties pursuant to this article, the deputy
44 commissioner shall issue duplicate receipts for the
45 payment and shall note on said receipts that the
46 property has been redeemed. One of such receipts shall
47 be given to the person redeeming and the other receipt
48 shall be filed with the clerk of the county commission
49 with the fee for the certificate of redemption. The clerk
50 shall endorse on the receipt the fact and time of such
51 filing, note the fact of redemption on his record of
52 delinquent lands, and issue a certificate of redemption
53 pursuant to the provisions of section twenty-six of this
54 article.

55 (b) Any person who, by reason of the fact that no
56 provision is made for partial redemption of the tax lien
57 on real estate purchased by an individual, is compelled
58 in order to protect himself to redeem the tax lien on all
59 of such real estate when it belongs, in whole or in part,
60 to some other person, shall have a lien on the interest
61 of such other person for the amount paid to redeem such
62 interest. He shall lose his right to the lien, however,
63 unless within thirty days after payment he shall file
64 with the clerk of the county commission his claim in
65 writing against the owner of such interest, together with
66 the receipt provided for in this section. The clerk shall
67 docket the claim on the judgment lien docket in his
68 office and properly index the same. Such lien may be
69 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
2 deputy commissioner shall promptly notify the pur-
3 chaser, his heirs or assigns, by mail of the redemption
4 and deliver to the sheriff the redemption money paid.
5 The notice by mail shall advise that upon the request
6 of the purchaser, his heirs or assigns, the sheriff shall
7 pay to the purchaser the sums described in section fifty-
8 eight of this article.

9 (b) Of the redemption money received by the sheriff
10 pursuant to this section, the sheriff shall hold as surplus
11 to be disposed of pursuant to section sixty-four of this
12 article an amount thereof equal to (1) the surplus of
13 money paid in excess of the amount of the taxes, interest
14 and charges due and paid to the sheriff at the sale; and
15 (2) the amount of taxes, interest and charges due on the
16 date of the sale, plus the interest at the rate of one
17 percent per month thereon from the date of sale to the
18 date of redemption.

§11A-3-58. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner
2 set forth in section fifty-six of this article, and the
3 deputy commissioner has delivered the redemption
4 money to the sheriff pursuant to section fifty-seven of
5 this article, the sheriff shall, upon request made of him
6 by the purchaser, his heirs or assigns, and upon delivery
7 to the sheriff of the purchaser's receipt for the sale, pay
8 to the purchaser, his heirs or assigns the following
9 amounts: (1)(A) the surplus of money paid in excess of
10 the amount of the taxes, interest and charges due and
11 paid to the deputy commissioner at the sale, and (B) the
12 amount of taxes, interest and charges due on the date
13 of the sale, plus the interest at the rate of one percent
14 per month from the date of sale to the date of redemp-
15 tion; (2) all other taxes thereon, which have since been
16 paid by the purchaser, his heirs or assigns, with interest
17 at the rate of one percent per month from the date of
18 payment; (3) such additional expenses as may have been
19 incurred in preparing the list of those to be served with
20 notice to redeem, and any title examination incident
21 thereto, with interest at the rate of one percent per
22 month from the date of payment, but the amount which
23 shall be paid, excluding said interest, for such expenses
24 incurred for the preparation of the list of those to be
25 served with notice to redeem required by section fifty-
26 two of this article, and any title examination incident
27 thereto, shall not exceed one hundred dollars; and (4) all
28 additional statutory costs paid by the purchaser.

29 (b) Where, pursuant to section fifty-six of this article,
30 the deputy commissioner has not received from the

31 purchaser satisfactory proof of the expenses incurred in
 32 preparing the notice to redeem, and any title examina-
 33 tion incident thereto, in the form of receipts or other
 34 evidence thereof, and therefore received from the
 35 purchaser as required by said section and delivered to
 36 the sheriff the sum of one hundred dollars plus interest
 37 thereon at the rate of one per cent per month from the
 38 date of the sale to the date of redemption, and the sheriff
 39 has not received from the purchaser such satisfactory
 40 proof of such expenses within thirty days from the date
 41 of redemption, the sheriff shall refund such amount to
 42 the person redeeming and the purchaser is barred from
 43 any claim thereto. Where pursuant to section fifty-six of
 44 this article, the deputy commissioner has received from
 45 the purchaser and therefore delivered to the sheriff said
 46 sum of one hundred dollars plus interest thereon at the
 47 rate of one per cent per month from the date of the sale
 48 to the date of redemption, and the purchaser provides
 49 the sheriff within thirty days from the date of redemp-
 50 tion such satisfactory proof of such expenses, and the
 51 amount of such expenses is less than the amount paid
 52 by the person redeeming, the sheriff shall refund the
 53 difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

1 If the real estate described in the notice is not
 2 redeemed within the time specified therein, but in no
 3 event prior to the first day of the third month following
 4 the deputy commissioner's sale, the deputy commis-
 5 sioner shall, upon the request of the purchaser, make
 6 and deliver to the person entitled thereto a quitclaim
 7 deed for such real estate in form or effect as follows:

8 This deed, made this _____ day of
 9 _____, 19____, by and between
 10 _____, deputy commissioner of delinquent
 11 and nonentered lands of _____ County,
 12 West Virginia, grantor, and _____, pur-
 13 chaser (or _____ heir, devisee, assignee of
 14 _____, purchaser) grantee, witnesseth, that

15 Whereas, in pursuance of the statutes in such case
 16 made and provided, _____, deputy commis-

17 sioner of delinquent and nonentered lands of _____
18 County, did, on the _____ day of
19 _____, 19____, sell the real estate
20 hereinafter mentioned and described for the taxes
21 delinquent thereon for the year(s) 19____, (or as
22 nonentered land for failure of the owner thereof to have
23 the land entered on the land books for the years
24 _____, or as property escheated to the State of West
25 Virginia, or as waste or unappropriated property) for
26 the sum of \$ _____, that being the amount
27 of purchase money paid to the deputy commissioner, and
28 _____ (here insert name of purchaser) did
29 become the purchaser of such real estate, which was
30 returned delinquent in the name of _____
31 (or nonentered in the name of, or escheated from the
32 estate of, or which was discovered as waste or unappropriated
33 property); and

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

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

40 Now, therefore, the grantor for and in consideration
41 of the premises recited herein, and pursuant to the
42 provisions of Article 3, Chapter 11A of the West
43 Virginia Code, doth grant unto _____,
44 grantee, his heirs and assigns forever, the real estate so
45 purchased, situate in the County of _____,
46 bounded and described as follows: _____
47 (here insert description of property)

48 Witness the following signature:

49 _____ Deputy Commis-
50 sioner of Delinquent and Nonentered Lands of
51 _____ County

52 Except when ordered to do so as provided in section
53 sixty of this article, the deputy commissioner shall not
54 execute and deliver a deed more than thirty days after
55 the purchaser's right to the deed accrued.

56 For the preparation and execution of the deed and for
57 all the recording required by this section, a fee of fifty
58 dollars shall be charged, to be paid by the grantee upon
59 delivery of the deed. The deed, when duly acknowledged
60 or proven, shall be recorded by the clerk of the county
61 commission in the deed book in his office, together with
62 the assignment from the purchaser, if one was made, the
63 notice to redeem, the return of service of such notice,
64 the affidavit of publication, if the notice was served by
65 publication, and any return receipts for notices sent by
66 certified mail.

§11A-3-60. Compelling service of notice or execution of deed.

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

19 If the deputy commissioner fails or refuses to prepare
20 and execute the deed as required in the preceding
21 section, the person requesting the deed may, at any time
22 after such failure or refusal, but not more than six
23 months after his right to the deed accrued, apply by
24 petition to the circuit court of the county for an order
25 compelling the deputy commissioner to prepare and
26 execute the deed or appointing a commissioner to do so.
27 If the person requesting the deed fails to make such
28 application within the time allowed, he shall lose his

29 right to the deed, but his rights against deputy
30 commissioner under the provisions of section sixty-seven
31 of this article shall remain unaffected. Any deed
32 executed pursuant to an order of the court shall have
33 the same force and effect as if executed and delivered
34 by deputy commissioner within the time specified in the
35 preceding section.

36 Ten days written notice of every such application must
37 be given to deputy commissioner. If, upon the hearing
38 of such application, the court is of the opinion that the
39 applicant is not entitled to the notice or deed requested,
40 the petition shall be dismissed at his costs; but, if the
41 court is of the opinion that he is entitled to such notice
42 or deed, then, upon his deposit with the clerk of the
43 circuit court of a sum sufficient to cover the costs of
44 preparing and serving the notice, unless such a deposit
45 has already been made with deputy commissioner, an
46 order shall be made by the court directing the deputy
47 commissioner to prepare and serve the notice or execute
48 the deed, or appointing a commissioner for the purpose,
49 as the court or judge shall determine. The order shall
50 be filed with the clerk of the circuit court and entered
51 in the civil order book. If it appears to the court that
52 the failure or refusal of deputy commissioner was
53 without reasonable cause, judgment shall be given
54 against him for the costs of the proceedings, otherwise
55 the costs shall be paid by the applicant.

56 Any commissioner appointed under the provisions of
57 this section shall be subject to the same liabilities as
58 deputy commissioner. For the preparation of the notice
59 to redeem, he shall be entitled to the same fee as is
60 provided for deputy commissioner. For the preparation
61 and execution of the deed, he shall also be entitled to
62 a fee of fifty dollars, to be paid by the grantee upon
63 delivery of the deed.

§11A-3-61. One deed for separate purchases.

1 Whenever one purchaser at the tax sale has purchased
2 two or more pieces of real estate, or undivided interests
3 therein, charged with taxes for the same year, or years,
4 he, his heirs or assigns, may request the deputy

5 commissioner to execute a separate deed for each piece
6 of real estate or undivided interest therein, or separate
7 deeds for some and one deed for the remainder, or one
8 deed for all, as he or they may prefer. Every deed for
9 two or more pieces of real estate, or undivided interests
10 therein, shall describe each piece of real estate and each
11 undivided interest separately.

§11A-3-62. Title acquired by individual purchaser.

1 (a) Whenever the purchaser of any tax lien on any real
2 estate sold at a tax sale, his heirs or assigns, shall have
3 obtained a deed for such real estate from the deputy
4 commissioner or from a commissioner appointed to
5 make the deed, he or they shall thereby acquire all such
6 right, title and interest, in and to the real estate, as was,
7 at the time of the execution and delivery of the deed,
8 vested in or held by any person who was entitled to
9 redeem, unless such person is one who, being required
10 by law to have his interest separately assessed and
11 taxed, has done so and has paid all the taxes due
12 thereon, or unless the rights of such person are expressly
13 saved by the provisions of section forty-nine of this
14 article or sections two, three, four or six, article four of
15 this chapter.

16 The tax deed shall be conclusive evidence of the
17 acquisition of such title. If the property was sold for
18 nonpayment of taxes, the title so acquired shall relate
19 back to July first of the year in which the taxes, for
20 nonpayment of which the real estate was sold, were
21 assessed. If the property was sold for nonentry pursuant
22 to section thirteen of this article, or escheated to the
23 state, or is waste and unappropriated property, the title
24 shall relate back to the date of sale.

25 (b) Any individual purchaser to whom a tax deed has
26 been issued may institute and prosecute actions to quiet
27 title in any such real estate conveyed thereby. Such
28 action may be maintained for all or any one or more of
29 the lots or tracts conveyed.

§11A-3-63. Effect of irregularity on title acquired by purchaser.

1 No irregularity, error or mistake in respect to any
2 step in the procedure leading up to and including
3 delivery of the tax deed by the deputy commissioner
4 shall invalidate the title acquired by the purchaser
5 unless such irregularity, error or mistake is, by the
6 provisions of section forty-nine of this article or section
7 two, three, four or six, article four of this chapter,
8 expressly made ground for instituting a suit to set aside
9 the sale or the deed.

**§11A-3-64. Sheriff to receive proceeds of deputy commis-
sioners' sales and redemptions from the
deputy commissioner; disposition.**

1 (a) The sheriff shall receive all proceeds of sales held
2 by the deputy commissioner pursuant to sections forty-
3 five and forty-eight of this article, and all redemption
4 money paid to the deputy commissioner pursuant to this
5 article. All funds to be paid to the deputy commissioner
6 pursuant to any provision of this article shall be paid
7 by check or money order payable to the sheriff of the
8 county. The deputy commissioner shall, immediately
9 upon receipt of any such payment, turn such moneys
10 over to the sheriff.

11 (b) The sheriff shall keep in a separate fund the
12 proceeds of all redemptions and sales paid to him under
13 the provisions of sections forty-five, forty-eight and fifty-
14 six of this article. Out of the total proceeds of each sale
15 or redemption he shall, in the order of priority stated
16 below, credit the following amount for payment as
17 hereinafter provided: (1) To the deputy commissioner,
18 such part as represents compensation due him under the
19 provisions of section sixty-six of this article; (2) to the
20 auditor, such part as represents any charges which were
21 paid by or which are payable to him; and (3) to the
22 general county fund, such part as represents costs paid
23 out of such fund for publishing the sheriff's delinquent
24 and sales list and all other costs incurred by the sheriff
25 pursuant to the provisions of this article; and (4) to the
26 auditor for credit to the general school fund, such part
27 as represents all taxes and interest chargeable in
28 respect to any nonentered lands, and all surplus
29 proceeds of sale of any waste and unappropriated lands.

30 In addition thereto, surplus proceeds from the deputy
31 commissioner's sale of delinquent and nonentered lands,
32 as well as the proceeds from the sale of escheated lands,
33 shall be held by the sheriff for the periods provided in
34 section sixty-five of this article and section seven, article
35 four of this chapter, and if no claim is made therefore
36 to the sheriff within the time therein specified, such
37 amounts shall be paid to the auditor for credit to the
38 general school fund.

39 The balance, if any, of the proceeds of the lands sold
40 by the deputy commissioner shall be prorated among the
41 various taxing units on the basis of the total amount of
42 taxes due them in respect to the lands that were sold
43 or redeemed. The amounts so determined shall be
44 credited as follows, for payment as hereinafter provided:
45 (1) To the auditor, such part as represents state taxes
46 and interest; and (2) to the fund kept by the sheriff for
47 each local taxing unit, such part as represents taxes and
48 interest payable to such unit.

49 (c) All amounts which under the provisions of this
50 section were so credited by the sheriff to the deputy
51 commissioner shall be paid to him quarterly; those
52 credited to the auditor shall be paid to him semiannu-
53 ally; and those credited to the various local taxing units
54 shall be transferred semiannually by the sheriff to the
55 fund kept by him for each such taxing unit.

56 (d) The tax commissioner, in cooperation with the land
57 department in the auditor's office, shall prescribe the
58 form of the records to be kept by the sheriff for the
59 purposes of this section, and the method to be used by
60 him in making the necessary pro rata distributions.

§11A-3-65. Right of former owner to surplus proceeds.

1 The former owner of any delinquent or nonentered
2 lands sold pursuant to sections forty-five and forty-eight
3 of this article, his heirs or assigns, shall be entitled to
4 the surplus received from the sale over and above the
5 taxes and interest charged or chargeable thereon
6 including all costs of the sale, if his, or their claim be
7 filed in the circuit court of the county in which the land
8 is situated within two years after the date of confirma-

9 tion of said sale. If no claim is filed with the court within
10 the two years, then such surplus shall be paid by the
11 sheriff to the auditor for credit to the general school
12 fund.

§11A-3-66. Compensation of deputy commissioner.

1 As compensation for his services, the deputy commis-
2 sioner shall be entitled to a fee of ten dollars for each
3 item certified to him by the auditor pursuant to section
4 forty-four of this article. In addition thereto he shall
5 receive a commission of fifteen percent on each sale or
6 redemption. Such commission on sales shall be based on
7 sale price and on redemptions on the total taxes and
8 interest due. Such compensation shall be paid as
9 provided in this article.

PART III

**§11A-3-67. Liability of officer failing to perform duty;
penalty.**

1 If any officer mentioned in this article shall refuse to
2 perform any duty required of him, he shall forfeit not
3 less than twenty-five nor more than one hundred dollars
4 for each such failure or refusal, unless a different
5 penalty is imposed by the provisions of this article.

**§11A-3-68. Disposition of lands heretofore purchased by
or forfeited to state.**

1 All lands which have been heretofore purchased by
2 the state at a tax sale pursuant to the provisions of the
3 former article three of this chapter and which have not
4 been redeemed from the auditor or certified to the
5 circuit court for sale as provided in the former article
6 four of this chapter shall be reported by the auditor to
7 the sheriff of the county in which the lands are situated
8 for reentry on the land books. Such lands shall be
9 reentered on the land books in the name of the person
10 charged with taxes on the land at the time of purchase
11 by the state, and charged with all unpaid taxes thereon,
12 including those taxes which have accrued since such
13 purchase by the state, and all costs charged to such
14 lands arising from the tax sale and purchase by the
15 state. Such lands shall then be subject to disposition

16 pursuant to this article.

17 All lands which have heretofore been forfeited to the
18 state pursuant to the provisions of former article four
19 of this chapter, and which have not been certified to the
20 circuit court for sale pursuant to such article, shall be
21 deemed nonentered pursuant to section thirty-seven of
22 this article, and shall be subject to redemption and sale
23 as provided herein.

24 All lands which have heretofore been certified to the
25 circuit court for sale by the deputy commissioner
26 pursuant to the provisions of the former article four of
27 this chapter shall be deemed certified to the deputy
28 commissioner for sale pursuant to section forty-four of
29 this article, and shall be subject to redemption and sale
30 as provided herein. All suits heretofore instituted by the
31 deputy commissioners pursuant to the provisions of the
32 former article four of this chapter, which have not been
33 reduced to judgment for the sale of all lands listed in
34 such suits, are hereby dismissed, and the lands listed in
35 such suits shall be deemed certified to the deputy
36 commissioner pursuant to section forty-four of this
37 article and shall be subject to redemption and sale as
38 provided herein. All lands subject to sale under any
39 court order entered in any such suit, which have not yet
40 been sold pursuant to such order, shall be deemed
41 certified to the deputy commissioner for sale pursuant
42 to section forty-four of this article, and shall be subject
43 to redemption and sale as provided herein. All lands
44 which have been sold prior to the effective date of this
45 act under any court order entered in any such suit shall
46 be deemed sold and any tax deed which has or shall
47 issue for any such land pursuant to the provisions of the
48 former article four of this chapter are hereby confirmed
49 as valid, subject to the discretion of the court as set forth
50 in the former section thirty-one, article four of this
51 chapter: *Provided*, That if the court refuses to confirm
52 said sale, the land shall be deemed certified to the
53 deputy commissioner for sale pursuant to section forty-
54 four of this article, and shall be subject to redemption
55 and sale as provided herein.

ARTICLE 4. REMEDIES RELATING TO TAX SALES.

§11A-4-1. Declaration of legislative purpose.

1 In furtherance of the policy declared in section one,
2 article three of this chapter, it is the intent and purpose
3 of the Legislature to provide reasonable opportunities
4 for delinquent taxpayers to protect their interests in
5 their lands and to provide reasonable remedies in
6 certain circumstances for persons with interests in
7 delinquent and escheated lands.

**§11A-4-2. Right to set aside sale or deed when all taxes
paid before sale.**

1 Any owner of real estate for which a tax lien was sold
2 for nonpayment of taxes pursuant to the provisions of
3 article three of this chapter, when all taxes thereon had
4 in fact been paid before the sale, his heirs and assigns,
5 or the person who paid the taxes, may, before the
6 expiration of three years following the sale, institute a
7 civil action to set aside the sale and to enjoin the proper
8 official from taking any further steps in the procedure
9 provided in this and the following article, or, if a deed
10 has been delivered to the purchaser, before the expira-
11 tion of three years following the delivery of the deed,
12 institute a civil action to set aside the deed. If such
13 action is instituted by or on behalf of the owner of an
14 undivided interest which was included in a group
15 assessment but which was separately redeemed as
16 provided in section eighteen, article two of this chapter,
17 the sale or the deed shall be set aside only insofar as
18 it affects his interest.

§11A-4-3. Right to set aside deed improperly obtained.

1 (a) Whenever the clerk of the county commission has
2 delivered a deed to the purchaser after the time
3 specified in section twenty-seven of article three of this
4 chapter, or, within that time, has delivered a deed to a
5 purchaser who was not entitled thereto either because
6 of his failure to meet the requirements of section
7 nineteen of said article three, or because the property
8 conveyed had been redeemed, the owner of such
9 property, his heirs and assigns, or the person who
10 redeemed the property, may, before the expiration of
11 three years following the delivery of the deed, institute

12 a civil action to set aside the deed. No deed shall be set
13 aside under the provisions of this section, except in the
14 case of redemption, until payment has been made or
15 tendered to the purchaser, or his heirs or assigns, of the
16 amount which would have been required for redemp-
17 tion, together with any taxes which have been paid on
18 the property since delivery of the deed, with interest at
19 the rate of twelve percent per annum.

20 (b) Whenever the deputy commissioner has delivered
21 a deed to the purchaser after the time specified in
22 section fifty-nine of article three of this chapter, or,
23 within that time, has delivered a deed to a purchaser
24 who was not entitled thereto either because of his failure
25 to meet the requirements of section fifty-two of said
26 article three, or because the property conveyed had been
27 redeemed, the owner of such property, his heirs and
28 assigns, or the person who redeemed the property, may,
29 before the expiration of three years following the
30 delivery of the deed, institute a civil action to set aside
31 the deed. No deed shall be set aside under the provisions
32 of this section, except in the case of redemption, until
33 payment has been made or tendered to the purchaser,
34 or his heirs or assigns, of the amount which would have
35 been required for redemption, together with any taxes
36 which have been paid on the property since delivery of
37 the deed, with interest at the rate of twelve percent per
38 annum.

**§11A-4-4. Right to set aside deed when one entitled to
notice not notified.**

1 (a) If any person entitled to be notified under the
2 provisions of section twenty-two or fifty-five, article
3 three of this chapter is not served with the notice as
4 therein required, and does not have actual knowledge
5 that such notice has been given to others in time to
6 protect his interests by redeeming the property, he, his
7 heirs and assigns, may, before the expiration of three
8 years following the delivery of the deed, institute a civil
9 action to set aside the deed. No deed shall be set aside
10 under the provisions of this section until payment has
11 been made or tendered to the purchaser, or his heirs or
12 assigns, of the amount which would have been required

13 for redemption, together with any taxes which have
14 been paid on the property since delivery of the deed,
15 with interest at the rate of twelve percent per annum.

16 (b) No title acquired pursuant to this article shall be
17 set aside in the absence of a showing by clear and
18 convincing evidence that the person who originally
19 acquired such title failed to exercise reasonably diligent
20 efforts to provide notice of his intention to acquire such
21 title to the complaining party or his predecessors in title.

22 (c) Upon a preliminary finding by the court that the
23 deed will be set aside pursuant to this section, such
24 amounts shall be paid within one month of the entry
25 thereof. Upon the failure to pay the same within said
26 period of time, the court shall upon the request of the
27 purchaser, enter judgment dismissing the action with
28 prejudice.

**§11A-4-5. On whose behalf suits instituted; decree when
deed set aside.**

1 Any civil action instituted under the provisions of
2 sections two, three or four of this article by a person
3 other than the former owner, his heirs or assigns, must
4 be brought on his or their behalf. Whenever the deed
5 in such case is set aside, the decree shall be that all the
6 right, title and interest of the former owner, his heirs
7 or assigns, is revested in him or them.

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

1 In addition to and notwithstanding any other provi-
2 sions of this article, any infant or mentally incapacitated
3 person whose real estate was, during such disability,
4 conveyed by tax deed pursuant to this chapter to an
5 individual purchaser, may redeem such real estate by
6 paying to the purchaser, or his heirs or assigns, before
7 the expiration of one year after removal of the disability,
8 but in no event more than twenty years after the deed
9 was obtained, the amount of the purchase money,
10 together with the necessary charges incurred in obtain-
11 ing the deed, and any taxes paid on the property since
12 the sale, with interest on such items at the rate of twelve

13 percent per annum from the date each was paid. If such
14 person was the owner of an undivided interest in the
15 real estate sold, he may redeem such interest by paying
16 that proportion of the purchase money, charges, taxes
17 and interest chargeable to his interest; but after a deed
18 has been delivered to the purchaser, he shall not have
19 the right to redeem more than his own undivided
20 interest. If improvements have been made on such real
21 estate after the deed was obtained and before the offer
22 to redeem as herein provided, the person redeeming
23 shall pay to the purchaser, or his heirs or assigns, the
24 value of the improvements at the time of such offer,
25 after deducting therefrom the value of the use of such
26 real estate without the improvements, from the date of
27 the deed to the date of the offer. Upon payment or
28 tender of payment, the purchaser, his heirs or assigns,
29 shall, at the expense of the person redeeming, convey to
30 him by quitclaim deed the real estate so redeemed.

31 One entitled to redeem under the provisions of this
32 section may, if he is unable or is not willing to pay for
33 the improvements made by the purchaser, elect to
34 relinquish his interest in the property. If he so elects,
35 he shall be entitled to an amount equal to the estimated
36 present value of the land without the improvements less
37 what he would have had to pay to redeem the land had
38 no improvements been made. Upon payment to him of
39 such amount, he shall by quitclaim deed convey the land
40 to the purchaser, his heirs or assigns.

41 If in any case provided for in this section the parties
42 cannot agree on the amount to be paid, any of them may
43 upon ten days' notice in writing to the other, or others,
44 apply by petition, to the circuit court of the county in
45 which the real estate is situated to have the matter
46 referred to a commissioner to ascertain the proper
47 amount to be paid. Upon confirmation by the court or
48 judge of the report of the commissioner, and upon
49 payment or tender of the amount, if any, so ascertained
50 to be due, the person to whom payment or tender was
51 made, shall execute the quitclaim deed as provided
52 above. In the event of his refusal to do so, the court, or
53 judge, may appoint a commissioner to execute the deed.

54 If there is a refusal to execute the deed in any case
55 in which there was no dispute as to the amount
56 necessary for redemption, the person entitled to the deed
57 may, upon ten days' notice in writing to the other party
58 or parties, apply by petition to the circuit court for the
59 appointment of a commissioner to execute the deed.

**§11A-4-7. Right of creditor of former owner of escheated
land.**

1 Any surplus proceeds arising from the sale of
2 escheated land may be applied for by the creditors of
3 the decedent if application is made to the circuit court
4 of the county in which the land is situated within one
5 year after the auditor has confirmed the sale. Upon
6 proper application to the court within such time such
7 surplus may be applied to the satisfaction of the claims
8 of creditors of the decedent who had a lien on the land
9 at the time of his death, or who, being general creditors,
10 have properly proved their claims against his estate and
11 have been unable to obtain payment out of the person-
12 alty. In the disposition of such surplus, due preference
13 shall be given to lien creditors. Any part of such surplus
14 thereafter remaining shall be paid by the sheriff to the
15 auditor for credit to the general school fund.

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

[Handwritten signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1994.

[Handwritten signature]
.....
Clerk of the Senate

Donald Z. Kopp
.....
Clerk of the House of Delegates

[Handwritten signature]
.....
President of the Senate

[Handwritten signature]
.....
Speaker of the House of Delegates

The within is approved this the 29th
day of March 1994.

Gaston Capner
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 9:41 am