

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4434

BY DELEGATES FAIRCLOTH, IHLE, STANSBURY, HILL,

KURCABA, STATLER AND FRICH

[Introduced February 8, 2016; Referred
to the Committee on Roads and Transportation then
Finance.]

1 A BILL to amend and reenact §11A-3-12, §11A-3-14, §11A-3-18, §11A-3-19, §11A-3-20 and
 2 §11A-3-21 of the Code of West Virginia, 1931, as amended, all relating to limitations on
 3 tax certificates; and changing the time period that a lien resulting from a tax certificate of
 4 sale issued by a sheriff as a result of delinquent property taxes may remain as delinquent
 5 property, from eighteen months to six months.

Be it enacted by the Legislature of West Virginia:

1 That §11A-3-12, §11A-3-14, §11A-3-18, §11A-3-19, §11A-3-20 and §11A-3-21 of the
 2 Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§11A-3-12. Amendment of such list.

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

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

1 (a) If the highest bidder present at the sale provided in section five of this article, bids and
2 pays at least the amount of taxes, interest and charges for which the tax lien on any real estate
3 is offered for sale, the sheriff shall issue to him or her a certificate of sale for the purchase money,
4 retain the original certificate for his or her file and forward a copy to the State Auditor, except the
5 sheriff shall require payment of any subsequent taxes due at the time of the sale before a
6 certificate of sale is issued. The heading of the certificate shall be:

7 Memorandum of tax lien on real estate sold in the county of
8 _____ on this _____ day of
9 _____, 20 , for the nonpayment of taxes charged thereon for the year
10 (or years) 20 .

11 (b) Except for the heading, the State Auditor shall prescribe the form of the receipt.

12 (c) The certificate of sale shall describe the real estate subject to the tax lien that was sold,
13 the total amount of all taxes, interest, penalties and costs paid for each lot or tract and the rate of
14 interest to which the purchaser is entitled upon redemption. The certificate shall also set forth
15 columns for the entry of subsequent years taxes paid and costs required by the sheriff to be paid
16 on the date of the sale and for the entry of subsequent taxes and costs paid. For each certificate
17 delivered, the purchaser shall pay a fee of \$10 and that amount shall be included in the costs
18 described in the certificate.

19 (d) The State Auditor shall send a notice of the requirements to secure a deed to the
20 purchaser, or an assignee, by first-class mail. The notice shall be ~~mailed~~ sent by certified mail to
21 the last known address of each person who received a certificate of sale from the sheriff and shall
22 be mailed between ~~May 1 and September 1~~ of the year December 15 and February 22 following
23 the sheriff=s sale: *Provided*, That when a person purchased more than one parcel of real property
24 upon which a certificate of sale was issued, the State Auditor may, at his or her option, prepare
25 and mail separate notices for each purchase to the purchaser or may prepare and mail a single
26 notice of all purchases made by the purchaser. In no event shall failure to receive the notice by

27 the purchaser, or the assignee, affect the procedures required by section nineteen of this article.

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

1 (a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on
2 account of any delinquent property taxes may remain a lien on the real property for a period longer
3 than eighteen months after the original issuance of the tax certificate of sale.

4 (b) All rights of a purchaser to the property, to a lien on the property, or to any other interest
5 in the property, including, but not limited to any right to a tax deed, shall be considered forfeited
6 and expired and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale
7 where the certificate has ceased to be a lien pursuant to the provisions of this section and
8 application for the tax deed, pursuant to the provisions of section twenty-seven of this article, is
9 not pending at the time of the expiration of the limitation period provided in this section.

10 (c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the
11 provisions of this section, the State Auditor shall immediately issue and record a certificate of
12 cancellation describing the real estate included in the certificate of purchase or tax certificate and
13 giving the date of cancellation and the State Auditor shall also make proper entries in his or her
14 records. The State Auditor shall also present a copy of every certificate of cancellation to the
15 sheriff who shall enter it in the sheriff=s records and the certificate and the record are prima facie
16 evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate
17 on the lands described in the certificate. Failure to record the certificate of cancellation does not
18 extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled
19 to any fees for the issuing of the certificate of cancellation nor for the entries in their books made
20 under the provisions of this subsection.

21 (d) Whenever a purchaser has complied with the notice requirements provided in section
22 nineteen of this article, but has failed to request a deed within the ~~eighteen~~ six month deadline
23 provided in this section, thereby forfeiting all rights to a tax deed, the purchaser may recover the
24 amounts paid in excess of the taxes owed and expenses incurred by the State Auditor in the

25 processing of the tax lien if, within thirty days of the expiration of the lien, upon a showing of
26 compliance with the provisions of section nineteen of this article, the purchaser files with the State
27 Auditor a request in writing for the refund. A purchaser who fails to file the request within the thirty
28 day period forfeits all rights to the refund.

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

1 (a) At any time after ~~October 31 of the year~~ December 15 following the sheriff's sale, and
2 on or before ~~December 31 of the same year~~ February 15 of the following year, the purchaser, his
3 or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens
4 purchased, shall:

5 (1) Prepare a list of those to be served with notice to redeem and request the State Auditor
6 to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article;

7 (2) When the real property subject to the tax lien is classified as Class II property, provide
8 the State Auditor with the physical mailing address of the property that is subject to the tax lien or
9 liens purchased;

10 (3) Provide the State Auditor with a list of any additional expenses incurred after ~~January~~
11 ~~1 of the year~~ December 15 following the sheriff's sale for the preparation of the list of those to be
12 served with notice to redeem including proof of the additional expenses in the form of receipts or
13 other evidence of reasonable legal expenses incurred for the services of any attorney who has
14 performed an examination of the title to the real estate and rendered written documentation used
15 in the preparation of the list of those to be served with the notice to redeem;

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

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

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

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

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

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

1 If, ~~by December 31 of the year following~~ within three months of payment of the amount bid
 2 at a sheriff's sale, the purchaser discovers that the lien purchased at that sale is the subject of an
 3 erroneous assessment or is otherwise nonexistent, the purchaser shall submit the abstract or
 4 certificate of an attorney at law that the property is the subject of an erroneous assessment or is
 5 otherwise nonexistent. Upon receipt of the abstract or certificate, the sheriff shall cause any
 6 money paid to be refunded. Upon refund, the sheriff shall inform the assessor and the State
 7 Auditor of the erroneous assessment for the purpose of having the assessor correct the error. For
 8 failure to meet this requirement, the purchaser shall lose all benefits of his or her purchase.

§11A-3-21. Notice to redeem.

1 (a) Whenever the provisions of section nineteen of this article have been complied with,
 2 the State Auditor shall prepare a notice in form or effect as follows:

3 To _____.

4 You will take notice that _____, the purchaser (or _____, the

5 assignee, heir or devisee of _____, the purchaser) of the tax lien(s) on the following
 6 real estate, _____, (here describe the real estate for which the tax lien(s) thereon
 7 were sold) located in _____, (here name the city, town or village in which the
 8 real estate is situated or, if not within a city, town or village, give the district and a general
 9 description) which was returned delinquent in the name of _____, and for which the
 10 tax lien(s) thereon was sold by the sheriff of _____ County at the sale for
 11 delinquent taxes made on the _____ day of _____, 20, has requested that you
 12 be notified that a deed for such real estate will be made to him or her on or after ~~April~~ May 1, 20
 13 _____, as provided by law, unless before that day you redeem such real estate. The amount you
 14 will have to pay to redeem on the last day, ~~March 31~~ April 30, will be as follows:

15 Amount equal to the taxes, interest, and charges due on the date of sale, with interest to
 16 ~~March 31~~ April 30, 20 _____ \$ _____

17 Amount of subsequent years taxes paid on the property, since the sale, with interest to
 18 ~~March 31~~ April 30, 20 _____ \$ _____

19 Amount paid for title examination and preparation of list of those to be served, and for
 20 preparation and service of the notice with interest from January 1, 20 (insert year) following the
 21 sheriff=s sale to March 31, 20 _____ \$ _____

22 Amount paid for other statutory costs (describe) _____
 23 \$ _____

24 Total \$ _____

25 You may redeem at any time before ~~March 31~~ April 30, 20 _____, by paying
 26 the above total less any unearned interest.

27 Given under my hand this _____ day of _____, 20 _____.

28 _____

29 State Auditor, State of West Virginia

30 (b) The State Auditor for his or her service in preparing the notice shall receive a fee of

31 \$10 for the original and \$2 for each copy required. Any additional costs which must be expended
32 for publication, or service of the notice in the manner provided for serving process commencing
33 a civil action, or for service of process by certified mail, shall be charged by the State Auditor. All
34 costs provided by this section shall be included as redemption costs and included in the notice
35 described in this section.

NOTE: The purpose of this bill is to modify the maximum time period that liens can be held on delinquent real property after the original issuance of the tax certificate of sale for failure to pay property taxes. The change of the time period serves to shorten the redemption amount of time that delinquent property liens can be held following tax sales and to return delinquent properties to productive use more efficiently.

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