

WEST VIRGINIA LEGISLATURE
2018 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1006

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 20, 2018]

1 A BILL to amend and reenact §11A-3-19, §11A-3-20, §11A-3-23, §11A-3-27, §11A-3-55, §11A-
 2 3-56, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating generally
 3 to purchasers of liens securing a deed; amending dates and time frames for securing
 4 deeds; allowing property to be redeemed prior to recording of deed; and amending the
 5 time frame for notice to be provided or published.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

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

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

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

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

25 (c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in
26 the land sold for delinquent taxes, or any assignment of the lien is lost or wrongfully withheld from
27 the rightful owner of the land and the land or interest has not been redeemed, the county
28 commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof
29 of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor,
30 to be delivered to the rightful claimant and a record of the certificate shall be duly made by the
31 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~~ October 31 of the year following payment of the amount bid at a
2 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-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person

redeeming interest of another; record.

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

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

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

10 (3) Any additional expenses incurred from January 1 of the year following the sheriff's sale
11 to the date of redemption for the preparation of the list of those to be served with notice to redeem
12 and any written documentation used for the preparation of the list, with interest at the rate of one
13 percent per month from the date of payment for reasonable legal expenses incurred for the
14 services of an attorney who has performed an examination of the title to the real estate and
15 rendered written documentation used for the preparation of the list: *Provided*, That the maximum
16 amount the owner or other authorized person shall pay, excluding the interest, for the expenses
17 incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is
18 \$300: *Provided, however*, That the attorney may only charge a fee for legal services actually
19 performed and must certify that he or she conducted an examination to determine the list of those
20 to be served required by §11A-3-19 of this code; and

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

22 (b) Where the State Auditor has not received from the purchaser satisfactory proof of the
23 expenses incurred in preparing the notice to redeem, and any written documentation used for the
24 preparation of the list of those to be served with notice to redeem, including the certification
25 required in §11A-3-23(a)(3) of this code, incident thereto, in the form of receipts or other evidence

26 of legal expenses, incurred as provided in §11A-3-19 of this code, the person redeeming shall
27 pay the State Auditor the sum of \$300 plus interest at the rate of one percent per month from
28 January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the
29 provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

30 (c) The person redeeming shall be given a receipt for the payment and the written opinion
31 or report used for the preparation of the list of those to be served with notice to redeem required
32 by §11A-3-19 of this code.

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

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

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

§11A-3-27. Deed to purchaser; record.

1 (a) If the real estate described in the notice is not redeemed within the time specified in

2 the notice, then from April 1 of the second year following the sheriff's sale until the expiration of
 3 the lien evidenced by a tax certificate of sale as provided in §11A-3-18 of this code, the State
 4 Auditor or his or her deputy shall upon request of the purchaser make and deliver to the clerk of
 5 the county commission, a quitclaim deed for the real estate. The purchaser's right to a tax deed
 6 shall be forfeited if the deed is not requested within the 18-month period set forth in §11A-3-18 of
 7 this code. The deed shall provide in form or effect as follows:

8 This deed made this _____ day of _____, 20 _____, by and between
 9 _____, State Auditor, West Virginia, (or by and between _____, a
 10 commissioner appointed by the circuit court of _____ County, West Virginia) grantor,
 11 and _____, purchaser, (or _____, heir, devisee or assignee of
 12 _____, purchaser), grantee, witnesseth, that:

13 Whereas, In pursuance of the statutes in such case made and provided,
 14 _____, Sheriff of _____ County, (or _____, deputy for
 15 _____, Sheriff of _____ County), (or _____, collector of
 16 _____ County), did, in the month of _____, in the year 20 _____, sell the tax
 17 lien(s) on real estate, hereinafter mentioned and described, for the taxes delinquent thereon for
 18 the year (or years) 20 _____, and _____, (here insert name of purchaser) for the sum
 19 of \$_____, that being the amount of purchase money paid to the sheriff, did become the
 20 purchaser of the tax lien(s) on such real estate (or on _____ acres, part of the tract or land,
 21 or on an undivided _____ interest in such real estate) which was returned delinquent in
 22 the name of _____; and

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

25 Whereas, The tax lien(s) on the real estate so purchased has not been redeemed in the
 26 manner provided by law and the time for redemption set in such notice has expired;

27 Now, therefore, the grantor, for and in consideration of the premises and in pursuance of

28 the statutes, doth grant unto _____, grantee, his or her heirs and assigns forever, the
 29 real estate on which the tax lien(s) so purchased existed, situate in the county of
 30 _____, bounded and described as follows:
 31 _____.

32 Witness the following signature: _____

33 State Auditor.

34 (b) The State Auditor ~~may not~~ shall execute and deliver a deed ~~more than sixty~~ within 120
 35 days after the person entitled to the deed ~~delivers the same and~~ requests the execution of the
 36 deed, except when directed to do so otherwise under §11A-3-28 of this code.

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

44 (d) The State Auditor shall appoint employees of his or her office to act as his or her
 45 designee to effect the purposes of this section.

§11A-3-55. Service of notice.

1 As soon as the deputy commissioner has prepared the notice provided for in §11A-3-54
 2 of this code, he shall cause it to be served upon all persons named on the list generated by the
 3 purchaser pursuant to the provisions of §11A-3-52 of this code. Such notice shall be mailed and,
 4 if necessary, published at least ~~thirty~~ 45 days prior to the first day a deed may be issued following
 5 the deputy commissioner’s sale.

6 The notice shall be served upon all such persons residing or found in the state in the
 7 manner provided for serving process commencing a civil action or by certified mail, return receipt

8 requested. The notice shall be served on or before the thirtieth day following the request for such
9 notice.

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

12 If the address of any person entitled to notice, whether a resident or nonresident of this
13 state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the
14 purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in
15 compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for such
16 publication shall be the county in which such real estate is located. If service by publication is
17 necessary, publication shall be commenced when personal service is required as set forth above,
18 and a copy of the notice shall at the same time be sent by certified mail, return receipt requested,
19 to the last known address of the person to be served. The return of service of such notice, and
20 the affidavit of publication, if any, shall be in the manner provided for process generally and shall
21 be filed and preserved by the auditor in his office, together with any return receipts for notices
22 sent by certified mail.

23 In addition to the other notice requirements set forth in this section, if the real property
24 subject to the tax lien was classified as Class II property at the time of the assessment, at the
25 same time the deputy commissioner issues the required notices by certified mail, the deputy
26 commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail,
27 addressed to "Occupant", to the physical mailing address for the subject property. The physical
28 mailing address for the subject property shall be supplied by the purchaser of the property,
29 pursuant to the provisions of §11A-3-52 of this code. Where the mail is not deliverable to an
30 address at the physical location of the subject property, the copy of the notice shall be sent to any
31 other mailing address that exists to which the notice would be delivered to an occupant of the
32 subject property.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person

redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of
2 this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate
3 for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax
4 deed is ~~issued~~ recorded therefor. In order to redeem, he or she must pay to the deputy
5 commissioner the following amounts: (1) An amount equal to the taxes, interest, and charges due
6 on the date of the sale, with interest thereon at the rate of one percent per month from the date
7 of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his or her heirs
8 or assigns, with interest at the rate of one percent per month from the date of payment; (3) such
9 additional expenses as may have been incurred in preparing the list of those to be served with
10 notice to redeem, and any title examination incident thereto, with interest at the rate of one percent
11 per month from the date of payment, but the amount he or she shall be required to pay, excluding
12 said interest, for such expenses incurred for the preparation of the list of those to be served with
13 notice to redeem required by §11A-3-52 of this code, and any title examination incident thereto,
14 shall not exceed \$200; (4) all additional statutory costs paid by the purchaser; and (5) the deputy
15 commissioner's fee and commission as provided by §11A-3-66 of this code. Where the deputy
16 commissioner has not received from the purchaser satisfactory proof of the expenses incurred in
17 preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts
18 or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of
19 \$200 plus interest thereon at the rate of one percent per month from the date of the sale for
20 disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon
21 payment to the deputy commissioner of those and any other unpaid statutory charges required
22 by this article, and of any unpaid expenses incurred by the sheriff, the State Auditor and the
23 deputy commissioner in the exercise of their duties pursuant to this article, the deputy
24 commissioner shall prepare an original and five copies of the receipt for the payment and shall
25 note on said receipts that the property has been redeemed. The original of such receipt shall be

26 given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and
 27 forward one copy each to the sheriff, assessor, the State Auditor and the clerk of the county
 28 commission. The clerk shall endorse on the receipt the fact and time of such filing and note the
 29 fact of redemption on his or her record of delinquent lands.

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

§11A-3-59. Deed to purchaser; record.

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

7 This deed, made this _____ day of _____, 19 20____, by and between
 8 _____, deputy commissioner of delinquent and nonentered lands of _____
 9 County, West Virginia, grantor, and _____, purchaser (or
 10 _____ heir, devisee, assignee of _____, purchaser)
 11 grantee, witnesseth, that

12 Whereas, in pursuance of the statutes in such case made and provided,

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

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

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

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

32 Witness the following signature:

33 _____

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

36 Except when ordered ~~to do so~~ as provided in §11A-3-60 of this code, the deputy
 37 commissioner shall ~~not~~ execute and deliver a deed ~~more than thirty~~ within 120 days after the
 38 purchaser's right to the deed accrued.

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

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NOTE: The purpose of this bill is to amend and adjust certain deadlines and time frames relating to securing a real estate deed by a purchaser of a tax lien.

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