

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2985

BY DELEGATE SKAFF

[Introduced March 08, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §11A-4-4 of the Code of West Virginia, 1931, as amended, relating
 2 to instituting suit to set aside a sheriff sale deed to tender to the circuit clerk of the court
 3 funds for redemption; requiring payment of a deposit prior to the tax sale to show ability to
 4 redeem; revising procedure for redemption; providing opportunity for purchaser being
 5 required to answer or otherwise respond to the suit and providing the return of deposit if
 6 unsuccessful in redemption litigation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REMEDIES RELATING TO TAX SALES.

§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 provisions of §11A-3-22 or §11A-3-55 of
 2 this code, is not served with the notice as therein required, and does not have actual knowledge
 3 that such notice has been given to others in time to protect his or her interests by redeeming the
 4 property, he or she, his or her heirs and assigns, may, before the expiration of three years
 5 following the delivery of the deed, institute a civil action to set aside the deed.

6 (b) Any person instituting a civil action pursuant to this section which seeks to set aside a
 7 sheriff sale deed shall be required, as a condition precedent to the court allowing that suit to
 8 remain on the docket or requiring the tax-sale purchaser or other person then claiming title to file
 9 an answer or other defense to any demand for such relief, to tender to the clerk of the court in
 10 which the suit is then pending the funds necessary to demonstrate to the court that the plaintiff
 11 has the financial wherewithal and ability to redeem the real estate should the plaintiff or other
 12 party later establish his or her entitlement to an order setting aside the deed. Upon application by
 13 the party instituting such suit, the court shall proceed to enter an order directing the clerk to accept
 14 the tender of funds by the applicant; to deposit those funds into an account in the control of the
 15 clerk for safe keeping pending the conclusion of the proceeding; and to direct the tax sale
 16 purchaser to file an answer to the complaint within 20 days following the date of the
 17 acknowledgement by the clerk of the receipt by that office of those funds or within the period as

18 other specified by the court.

19 (c) In any action brought by a tax sale purchaser or by a person then claiming title to real
20 estate which action seeks an order quieting the title acquired pursuant to the sheriff sale, removing
21 a cloud from that title; or otherwise entering a declaratory judgment affirming the quality of that
22 title, the previous owner and any person entitled to notice of right to redeem shall each have the
23 right to assert as a defense to the requested remedy the existence of both a failure of the receipt
24 of notice of the right to redeem by the person entitled to such notice and a failure of the applicant
25 for the deed to have exercised reasonably diligent efforts to provide notice of his or her intention
26 to acquire title to the real estate. It shall be a condition precedent to the assertion and maintenance
27 of such a defense by the former owner or by any person entitled to notice of a right to redeem to
28 tender to the clerk of the court in which the suit is then pending the funds necessary to
29 demonstrate to the court that the person seeking to assert such defense has the wherewithal and
30 ability to redeem the real estate should the person later establish his or her entitlement to an order
31 setting aside the deed. Upon application by the person instituting such suit, the court shall proceed
32 to enter an order directing the person seeking to assert either or both of these defenses to tender
33 funds in the sufficient amount to the clerk for deposit into an account in the control of the clerk for
34 safe keeping pending the conclusion of the proceeding. Upon a failure of the party to comply with
35 the order of the court within 30 days following the entry of the order requiring the deposit, the
36 court shall grant a motion by the sheriff sale purchaser or person holding through him or her to
37 strike the defense of an existence of the failure of the receipt of notice of the right to redeem by
38 the person entitled to such notice and the failure of the applicant for the deed to have exercised
39 reasonably diligent efforts to provide notice of the intention to acquire title to real estate.

40 (d) The court shall specify in any order requiring the filing of an answer by a tax sale
41 purchaser or his or her heirs and assigns the amount of the tender to include as a minimum ~~No~~
42 ~~deed shall be set aside under the provisions of this section until payment has been made or~~
43 ~~tendered to the purchaser, or his heirs or assigns, of the amount which would have been required~~

44 for redemption, together with any taxes which have been paid on the property since delivery of
45 the deed, with interest at the rate of 12 percent per annum.

46 ~~(b)~~ (e) No title acquired pursuant to this article shall be set aside in the absence of a
47 showing by clear and convincing evidence that the complaining party, his or her predecessors in
48 title or other persons entitled to receive notice of the right to redeem failed to receive such notice;
49 and that the person who originally acquired such title failed to exercise reasonably diligent efforts
50 to provide notice of his or her intention to acquire such title to the complaining party or his or her
51 predecessors in title.

52 ~~(e)~~ (f) Upon a ~~preliminary~~ finding by the court that the deed will be set aside pursuant to
53 this section, such amounts on deposit with the clerk shall be paid by the clerk to the sheriff within
54 one month of the entry thereof. Upon ~~the failure to pay the same within said period of time a~~
55 finding by the court shall upon the request of the purchaser, enter that the deed will not be set
56 aside and with the entry of judgment dismissing the action with prejudice, the clerk shall return to
57 the plaintiff, complaining party or other appropriate person those funds previously tendered, less
58 any accrued costs assessed against such person or against such funds by the court.

NOTE: The purpose of this bill is to require a plaintiff attempting to set aside a sheriff sale deed to tender the circuit clerk of the court funds for redemption; requiring payment of a deposit prior to the tax sale to show ability to redeem; revising procedure for redemption following tax sale; providing opportunity for purchaser being required to answer or otherwise respond to the suit and providing the return of deposit if unsuccessful in redemption litigation.

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