

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 835

**FISCAL
NOTE**

By Senator Azinger

[Introduced March 20, 2025; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11A-3-55 and §11A-4-4 of the Code of West Virginia, 1931, as
2 amended, relating to decreasing the service period for notice of tax lien sales; and
3 decreasing the statute of limitations for an action to set aside a deed.

Be it enacted by the Legislature of West Virginia:

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

§11A-3-55. Service of notice.

1 (a) As soon as the Auditor has prepared the notice provided for in §11A-3-54 of this code,
2 he or she 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, if
4 necessary, published at least 45 days prior to the first day a deed may be issued following the
5 Auditor's sale.

6 (b) 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, or other types of delivery service courier that provide a receipt. The notice shall be
9 served on or before the ~~30th~~ 15th day following the request for such notice.

10 (c) The notice shall be served upon persons not residing or found in the state by certified
11 mail, return receipt requested, or in the manner provided for serving process commencing a civil
12 action or other types of delivery service courier that provide a receipt. The notice shall be served
13 on or before the ~~30~~ 15 days following the request for the notice.

14 (d) If the address of a person is unknown to the purchaser and cannot be discovered by
15 due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0
16 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the
17 publication area for the publication shall be the county in which the real property is located. If
18 service by publication is necessary, publication shall be commenced within ~~60~~ 30 days following

19 the request for the notice, and a copy of the notice shall, at the same time, be sent pursuant to
20 subsection (b) or (c) of this section, to the last known address of the person to be served. The
21 return of service of the notice and the affidavit of publication, if any, shall be in the manner provided
22 for process generally and shall be filed and preserved by the State Auditor in his or her office,
23 together with any return receipts for notices sent by certified mail.

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

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-3-55 of this code is not
2 served with the notice as therein required, and does not have actual knowledge that such notice
3 has been given to others in time to protect his or her interests by redeeming the property, he or
4 she, his or her heirs and assigns may, before the expiration of ~~two years~~ one year following the
5 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 seeking to set aside a tax
7 deed shall, as a condition precedent to the court allowing the action to proceed, tender to the clerk
8 of the court in which the suit is pending the funds necessary to redeem the real estate. The court
9 shall enter an order directing the clerk to accept the funds of the applicant, and deposit those funds

10 into an account in the control of the clerk pending the conclusion of the proceeding.

11 (c) In any action brought by a tax sale purchaser or his or her grantee seeking to quiet the
12 title pursuant to an Auditor's sale, the previous owner and any person entitled to notice or right to
13 redeem shall have the right to assert as a defense to the requested remedy the existence of both a
14 failure of notice of the right to redeem and a failure of the applicant for the deed to have exercised
15 reasonably diligent efforts to provide notice of his or her intention to acquire title to the real estate.
16 It shall be a condition precedent to raising such a defense that he or she has the funds necessary
17 to redeem the real estate should he or she prevail. Upon application by the person instituting such
18 suit, the court shall enter an order directing the defendant to tender funds in the sufficient amount
19 to the clerk for deposit into an account in the clerk's control pending conclusion of the proceeding.
20 Failure to tender the necessary funds within 30 days following the entry of the order requiring the
21 deposit shall entitle the purchaser to a judgment in his or her favor.

22 (d) An answer filed by a purchaser or his or her grantee shall include the amount required
23 for redemption, together with any taxes which have been paid on the property since delivery of the
24 deed, with interest at the rate of 12 percent per annum.

25 (e) No title acquired pursuant to this article shall be set aside in the absence of a showing
26 by clear and convincing evidence that the person who originally acquired such title failed to
27 exercise reasonably diligent efforts to provide notice of his intention to acquire such title to the
28 complaining party or his predecessors in title.

29 (f) Upon a preliminary finding by the court that the deed will be set aside pursuant to this
30 section, such amounts on deposit with the clerk pursuant to this section shall be paid by the clerk
31 to the sheriff within one month of the entry thereof and shall direct the sheriff to pay to the
32 purchaser amounts pursuant to §11A-3-58 of this code. Upon a finding by the court that the deed
33 will not be set aside and with the entry of a judgment dismissing the action with prejudice, the clerk
34 shall return to the plaintiff or other appropriated person whose funds previously tendered, less any
35 accrued costs assessed against such person such funds by the court.

NOTE: The purpose of this bill is to decrease the service period for notice of tax lien sales; and to decrease the statute of limitations for an action to set aside a deed.

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