

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2848**

4 (By Delegates Boggs, Swartzmiller, Ferro, Caputo and D. Poling)

5 (Originating in the Committee on Finance)

6 [March 19, 2013]

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9
10 A BILL to amend and reenact §11A-3-18, §11A-3-22, §11A-3-27,
11 §11A-3-28 and §11A-3-55 of the Code of the West Virginia,
12 1931, as amended, all relating generally to the sale of tax
13 liens and nonentered, escheated and waste and unappropriated
14 lands; providing for the forfeiture of the rights of a
15 purchaser under certain circumstances where a tax certificate
16 of sale has ceased to be a lien on the property; authorizing
17 certain refunds after forfeiture of rights to a tax deed if
18 requested in a timely manner; establishing an alternative
19 mailing address for the delivery of certain notices to redeem
20 property; modifying the requirements for petitioning to compel
21 execution of a deed by the auditor; and removing provisions
22 that preserve certain rights of a purchaser and that award
23 costs to a petitioner in the case of a petition where a court
24 determines the auditor's failure or refusal to execute a deed
25 was without reasonable cause.

26 *Be it enacted by the Legislature of West Virginia:*

1 That §11A-3-18, §11A-3-22, §11A-3-27, §11A-3-28 and §11A-3-55
2 of the Code of the West Virginia, 1931, as amended, be amended and
3 reenacted, all to read as follows:

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

6 **§11A-3-18. Limitations on tax certificates.**

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

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

21 (c) Whenever a lien evidenced by a tax certificate of sale has
22 expired by reason of the provisions of this section, the State
23 Auditor shall immediately issue and record a certificate of
24 cancellation describing the real estate included in the certificate
25 of purchase or tax certificate and giving the date of cancellation

1 and the State Auditor shall also make proper entries in his or her
2 records. The State Auditor shall also present a copy of every
3 certificate of cancellation to the sheriff who shall enter it in
4 the sheriff's records and the certificate and the record are prima
5 facie evidence of the cancellation of the certificate of sale and
6 of the release of the lien of the certificate on the lands
7 described in the certificate. Failure to record the certificate of
8 cancellation does not extend the lien evidenced by the certificate
9 of sale. The sheriff and State Auditor are not entitled to any
10 fees for the issuing of the certificate of cancellation nor for the
11 entries in their books made under the provisions of this
12 subsection.

13 (d) Whenever a purchaser has complied with the notice
14 requirements provided in section nineteen of this article, but has
15 failed to request a deed within the eighteen month deadline
16 provided in this section, thereby forfeiting all rights to a tax
17 deed, the purchaser may recover the amounts paid in excess of the
18 taxes owed and expenses incurred by the State Auditor in the
19 processing of the tax lien if, within thirty days of the expiration
20 of the lien, upon a showing of compliance with the provisions of
21 section nineteen of this article, the purchaser files with the
22 State Auditor a request in writing for the refund. A purchaser who
23 fails to file the request within the thirty day period forfeits all
24 rights to the refund.

25 **§11A-3-22. Service of notice.**

26 (a) As soon as the State Auditor has prepared the notice

1 provided in section twenty-one of this article, he or she shall
2 cause it to be served upon all persons named on the list generated
3 by the purchaser pursuant to the provisions of section nineteen of
4 this article.

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

10 (c) If ~~any~~ a person entitled to notice is a nonresident of
11 this state, whose address is known to the purchaser, he or she
12 shall be served at that address by certified mail, return receipt
13 requested.

14 (d) If the address of ~~any~~ a person entitled to notice, whether
15 a resident or nonresident of this state, is unknown to the
16 purchaser and cannot be discovered by due diligence on the part of
17 the purchaser, the notice shall be served by publication as a Class
18 III-0 legal advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code and the publication
20 area for the publication shall be the county in which the real
21 estate is located. If service by publication is necessary,
22 publication shall be commenced when personal service is required as
23 set forth in this section and a copy of the notice shall at the
24 same time be sent by certified mail, return receipt requested, to
25 the last known address of the person to be served. The return of
26 service of the notice and the affidavit of publication, if any,

1 shall be in the manner provided for process generally and shall be
2 filed and preserved by the State Auditor in his or her office,
3 together with any return receipts for notices sent by certified
4 mail.

5 In addition to the other notice requirements set forth in this
6 section, if the real property subject to the tax lien was
7 classified as Class II property at the time of the assessment, at
8 the same time the State Auditor issues the required notices by
9 certified mail, the State Auditor shall forward a copy of the
10 notice sent to the delinquent taxpayer by first class mail,
11 addressed to "Occupant", to the physical mailing address for the
12 subject property. The physical mailing address for the subject
13 property shall be supplied by the purchaser of the tax lien
14 pursuant to the provisions of section nineteen of this article.
15 Where the mail is not deliverable to an address at the physical
16 location of the subject property, the copy of the notice shall be
17 sent to any other mailing address that exists to which the notice
18 would be delivered to an occupant of the subject property.

19 **§11A-3-27. Deed to purchaser; record.**

20 (a) If the real estate described in the notice is not redeemed
21 within the time specified in the notice, then from April 1 of the
22 second year following the sheriff's sale until the expiration of
23 the lien evidenced by a tax certificate of sale ~~issued by a sheriff~~
24 ~~for the real estate~~ as provided in section eighteen of this
25 article, the State Auditor or his or her deputy shall upon request
26 of the purchaser make and deliver to the clerk of the county

1 commission ~~subject to the provisions of section eighteen of this~~
2 ~~article~~, a quitclaim deed for the real estate. The purchaser's
3 right to a tax deed shall be forfeited if the deed is not requested
4 within the eighteen month period set forth in section eighteen of
5 this article. The deed shall provide in form or effect as follows:

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

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

26 Whereas, The State Auditor has caused the notice to redeem to

1 be served on all persons required by law to be served therewith;
2 and

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

6 Now, therefore, the grantor, for and in consideration of the
7 premises and in pursuance of the statutes, doth grant unto
8 _____, grantee, his or her heirs and assigns forever, the
9 real estate on which the tax lien(s) so purchased existed, situate
10 in the county of _____, bounded and described as
11 follows: _____.

12 Witness the following signature: _____

13 State Auditor.

14 (b) ~~Except when ordered to do so, as provided in section~~
15 ~~twenty-eight of this article,~~ The State Auditor may not execute and
16 deliver a deed more than sixty days after the person entitled to
17 the deed delivers the same and requests the execution of the deed,
18 except when directed to do so under section twenty-eight of this
19 article.

20 (c) For the execution of the deed and for all the recording
21 required by this section, a fee of \$50 and the recording and
22 transfer tax expenses shall be charged, to be paid by the grantee
23 upon delivery of the deed. The deed, when duly acknowledged or
24 proven, shall be recorded by the clerk of the county commission in
25 the deed book in the clerk's office, together with any assignment
26 from the purchaser, if one was made, the notice to redeem, the

1 return of service of the notice, the affidavit of publication, if
2 the notice was served by publication, and any return receipts for
3 notices sent by certified mail.

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

7 **§11A-3-28. Compelling service of notice or execution of deed.**

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

24 (b) If the State Auditor fails or refuses to execute the deed
25 as required in section twenty-seven of this article to a purchaser
26 who has requested the deed within the period required by said

1 section twenty-seven, the person requesting the deed may, at any
2 time after such failure or refusal, but not more than six months
3 after his or her right to the deed accrued, upon proof that the
4 purchaser requested the deed within the period required by said
5 section twenty-seven, apply by petition to the circuit court of the
6 county for an order compelling the State Auditor to execute the
7 deed or appointing a commissioner to do so. If the person
8 requesting the deed fails to prove compliance with the limitations
9 period set forth in section twenty-seven of this article or fails
10 to make an application within the time allowed, he or she shall
11 lose his or her right to the deed. ~~but his or her rights against~~
12 ~~the State Auditor under the provisions of section sixty-seven of~~
13 ~~this article shall not be affected.~~ Any deed executed pursuant to
14 an order of the court or judge shall have the same force and effect
15 as if executed and delivered by the State Auditor within the time
16 specified in section twenty-seven of this article.

17 (c) Ten days' written notice of every application must be
18 given to the State Auditor. If, upon the hearing of the
19 application, the court or judge is of the opinion that the
20 applicant is not entitled to the notice or deed requested, the
21 petition shall be dismissed at his or her costs; but if the court
22 or judge is of the opinion that he or she is entitled to the notice
23 or deed, then, upon his or her deposit with the clerk of the
24 circuit court of a sum sufficient to cover the costs of preparing
25 and serving the notice, unless a deposit has already been made with
26 the State Auditor, an order shall be made by the court or judge

1 directing the State Auditor to prepare and serve the notice or
2 execute the deed, or appointing a commissioner for the purpose, as
3 the court or judge shall determine. ~~If it appears to the court or~~
4 ~~judge that the failure or refusal of the State Auditor was without~~
5 ~~reasonable cause, judgment shall be given against him or her for~~
6 ~~the costs of the proceedings; otherwise the costs shall be paid by~~
7 ~~the applicant.~~

8 (d) Any commissioner appointed under the provisions of this
9 section shall be subject to the same liabilities as are provided
10 for the State Auditor. For the preparation of the notice to
11 redeem, he or she shall be entitled to the same fee as is provided
12 for the State Auditor. For the execution of the deed, he or she
13 shall also be entitled to a fee of \$50 and the recording and
14 transfer expenses, to be paid by the grantee upon delivery of the
15 deed.

16 **§11A-3-55. Service of notice.**

17 As soon as the deputy commissioner has prepared the notice
18 provided for in section fifty-four of this article, he shall cause
19 it to be served upon all persons named on the list generated by the
20 purchaser pursuant to the provisions of section fifty-two of this
21 article. Such notice shall be mailed and, if necessary, published
22 at least thirty days prior to the first day a deed may be issued
23 following the deputy commissioner's sale.

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

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

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

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

22 In addition to the other notice requirements set forth in this
23 section, if the real property subject to the tax lien was
24 classified as Class II property at the time of the assessment, at
25 the same time the deputy commissioner issues the required notices
26 by certified mail, the deputy commissioner shall forward a copy of

1 the notice sent to the delinquent taxpayer by first class mail,
2 addressed to "Occupant", to the physical mailing address for the
3 subject property. The physical mailing address for the subject
4 property shall be supplied by the purchaser of the property,
5 pursuant to the provisions of section fifty-two of this article.
6 Where the mail is not deliverable to an address at the physical
7 location of the subject property, the copy of the notice shall be
8 sent to any other mailing address that exists to which the notice
9 would be delivered to an occupant of the subject property.