

H. B. 2848

(By Delegate Boggs, Swartzmiller, Ferro,
Caputo, D, Poling.)

(By Request of the State Auditor)

[Introduced March 6, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §11A-3-18, §11A-3-27, and §11A-3-28 of
the Code of the West Virginia, 1931, as amended, all relating
generally to the sale of tax liens and nonentered, escheated
and waste and unappropriated lands; providing the process for
requesting a refund after forfeiture of rights to a tax deed;
clarifying deadlines for receipt of tax deeds and refunds
related to failure to meet deadlines; providing procedure for
petitioning to compel execution of a deed by the State
Auditor; removing the provisions allowing judgment against the
State Auditor for costs in the case of failure or refusal to
execute a deed without reasonable cause.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

9 (b) All rights of a purchaser to a tax deed shall be
10 considered forfeited and expired and no tax deed is to be issued on
11 any tax sale evidenced by a tax certificate of sale where the
12 certificate has ceased to be a lien pursuant to the provisions of
13 this section and application for the tax deed, pursuant to the
14 provisions of section twenty-seven of this article, is not pending
15 at the time of the expiration of the limitation period provided in
16 this section.

17 (c) Whenever a lien evidenced by a tax certificate of sale has
18 expired by reason of the provisions of this section, the State
19 Auditor shall immediately issue and record a certificate of
20 cancellation describing the real estate included in the certificate
21 of purchase or tax certificate and giving the date of cancellation
22 and the State Auditor shall also make proper entries in his or her
23 records. The State Auditor shall also present a copy of every
24 certificate of cancellation to the sheriff who shall enter it in

1 the sheriff's records and the certificate and the record are prima
2 facie evidence of the cancellation of the certificate of sale and
3 of the release of the lien of the certificate on the lands
4 described in the certificate. Failure to record the certificate of
5 cancellation does not extend the lien evidenced by the certificate
6 of sale. The sheriff and State Auditor are not entitled to any
7 fees for the issuing of the certificate of cancellation nor for the
8 entries in their books made under the provisions of this
9 subsection.

10 (d) Whenever a purchaser has complied with the notice
11 requirements provided in section nineteen of this article, but has
12 failed to request a deed within the eighteen month deadline
13 provided in this section, thereby forfeiting all rights to a tax
14 deed, the purchaser may within thirty days of the expiration of the
15 lien, request a refund of the amounts paid in excess of the taxes
16 owed and expenses incurred in the processing of the tax lien:
17 Provided, That the purchaser shall only be entitled to a refund
18 upon proof of compliance with the requirements of section nineteen
19 of this article.

20 **§11A-3-27. Deed to purchaser; record.**

21 (a) If the real estate described in the notice is not redeemed
22 within the time specified in the notice, then ~~from~~ between April 1
23 of the second year following the sheriff's sale and ~~until~~ the
24 expiration of the lien evidenced by a tax certificate of sale

1 ~~issued by a sheriff for the real estate~~ as provided in section
 2 eighteen of this article, the State Auditor or his or her deputy
 3 shall upon request of the purchaser make and deliver to the clerk
 4 of the county commission ~~subject to the provisions of section~~
 5 ~~eighteen of this article~~, a quitclaim deed for the real estate:
 6 Provided, That the purchaser's right to a tax deed shall be
 7 considered forfeited if the deed is not requested within the
 8 eighteen month period set forth in section eighteen. The deed
 9 shall provide in form or effect as follows:

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

17 Whereas, In pursuance of the statutes in such case made and
 18 provided, _____, Sheriff of _____ County, (or
 19 _____, deputy for _____, Sheriff of _____
 20 County), (or _____, collector of _____ County),
 21 did, in the month of _____, in the year 20 _____, sell the
 22 tax lien(s) on real estate, hereinafter mentioned and described,
 23 for the taxes delinquent thereon for the year (or years) 20 _____,
 24 and _____, (here insert name of purchaser) for the sum of

1 article.

2 (c) For the execution of the deed and for all the recording
3 required by this section, a fee of \$50 and the recording and
4 transfer tax expenses shall be charged, to be paid by the grantee
5 upon delivery of the deed. The deed, when duly acknowledged or
6 proven, shall be recorded by the clerk of the county commission in
7 the deed book in the clerk's office, together with any assignment
8 from the purchaser, if one was made, the notice to redeem, the
9 return of service of the notice, the affidavit of publication, if
10 the notice was served by publication, and any return receipts for
11 notices sent by certified mail.

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

15 **§11A-3-28. Compelling service of notice or execution of deed.**

16 (a) If the State Auditor fails or refuses to prepare and serve
17 the notice to redeem as required in sections twenty-one and twenty-
18 two of this article, the person requesting the notice may, at any
19 time within two weeks after discovery of the failure or refusal,
20 but in no event later than sixty days following the date the person
21 requested that notice be prepared and served, apply by petition to
22 the circuit court of the county for an order compelling the State
23 Auditor to prepare and serve the notice or appointing a
24 commissioner to do so. If the person requesting the notice fails

1 to make application within the time allowed, he or she shall lose
2 his or her right to the notice, but his or her rights against the
3 State Auditor under the provisions of section sixty-seven of this
4 article shall not be affected. Notice given pursuant to an order
5 of the court or judge shall be as valid for all purposes as if
6 given within the time required by section twenty-two of this
7 article.

8 (b) If the State Auditor fails or refuses to execute the deed
9 ~~as~~ to a purchaser who has complied with the deadline required in
10 section twenty-seven of this article, the person requesting the
11 deed may, at any time after such failure or refusal upon proof of
12 compliance with the limitations period set forth in section twenty-
13 seven of this article, but not more than six months after his or
14 her right to the deed accrued, apply by petition to the circuit
15 court of the county for an order compelling the State Auditor to
16 execute the deed or appointing a commissioner to do so. If the
17 person requesting the deed fails to prove compliance with the
18 limitations period set forth in section twenty-seven of this
19 article or fails to make an application within the time allowed, he
20 or she shall lose his or her right to the deed. ~~but his or her~~
21 ~~rights against the State Auditor under the provisions of section~~
22 ~~sixty-seven of this article shall not be affected.~~ Any deed
23 executed pursuant to an order of the court or judge shall have the
24 same force and effect as if executed and delivered by the State

1 Auditor within the time specified in section twenty-seven of this
2 article.

3 (c) Ten days' written notice of every application must be
4 given to the State Auditor. If, upon the hearing of the
5 application, the court or judge is of the opinion that the
6 applicant is not entitled to the notice or deed requested, the
7 petition shall be dismissed at his or her costs; but if the court
8 or judge is of the opinion that he or she is entitled to the notice
9 or deed, then, upon his or her deposit with the clerk of the
10 circuit court of a sum sufficient to cover the costs of preparing
11 and serving the notice, unless a deposit has already been made with
12 the State Auditor, an order shall be made by the court or judge
13 directing the State Auditor to prepare and serve the notice or
14 execute the deed, or appointing a commissioner for the purpose, as
15 the court or judge shall determine. ~~If it appears to the court or~~
16 ~~judge that the failure or refusal of the State Auditor was without~~
17 ~~reasonable cause, judgment shall be given against him or her for~~
18 ~~the costs of the proceedings; otherwise the costs shall be paid by~~
19 ~~the applicant.~~

20 (d) Any commissioner appointed under the provisions of this
21 section shall be subject to the same liabilities as are provided
22 for the State Auditor. For the preparation of the notice to
23 redeem, he or she shall be entitled to the same fee as is provided
24 for the State Auditor. For the execution of the deed, he or she

1 shall also be entitled to a fee of \$50 and the recording and
2 transfer expenses, to be paid by the grantee upon delivery of the
3 deed.

NOTE: The purpose of this bill is to provide the process for requesting a refund after forfeiture of rights to a tax deed; to clarify deadlines for receipt of tax deeds and refunds related to failure to meet deadlines; to provide the procedure for petitioning to compel execution of a deed by the State Auditor; and to remove the provisions allowing judgment against the State Auditor for costs in the case of failure or refusal to execute a deed without reasonable cause.

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