

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4452**

BY DELEGATES MAYNARD, HILL, BARNHART, WORRELL,  
WESTFALL, PHILLIPS, J. JEFFRIES, COOPER, HARDY,  
KESSINGER AND BIBBY

[Introduced January 22, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §11A-3-18, §11A-3-22, §11A-3-52, and §11A-3-55 of the Code of  
 2 West Virginia, 1931, as amended, all relating generally to notice requirements on tax  
 3 collections conducted by the State Auditor.

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

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

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

1 (a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on  
 2 account of any delinquent property taxes may remain a lien on the real property for a period longer  
 3 than 18 months after the original issuance of the tax certificate of sale.

4 (b) All rights of a purchaser to the property, to a lien on the property, or to any other interest  
 5 in the property, including, but not limited to any right to a tax deed, shall be considered forfeited  
 6 and expired and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale  
 7 where the certificate has ceased to be a lien pursuant to the provisions of this section and  
 8 application for the tax deed, pursuant to the provisions of section 27 of this article, is not pending  
 9 at the time of the expiration of the limitation period provided in this section.

10 (c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the  
 11 provisions of this section, the State Auditor shall immediately issue and record a certificate of  
 12 cancellation describing the real estate included in the certificate of purchase or tax certificate and  
 13 giving the date of cancellation and the State Auditor shall also make proper entries in his or her  
 14 records. The State Auditor shall also present a copy of every certificate of cancellation to the  
 15 sheriff who shall enter it in the sheriff's records and the certificate and the record are prima facie  
 16 evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate  
 17 on the lands described in the certificate. Failure to record the certificate of cancellation does not  
 18 extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled

19 to any fees for the issuing of the certificate of cancellation nor for the entries in their books made  
20 under the provisions of this subsection.

21 (d) Whenever a purchaser has complied with the notice requirements provided in section  
22 19 of this article, but has failed to request a deed within the 18 month deadline provided in this  
23 section, thereby forfeiting all rights to a tax deed, the purchaser may recover the amounts paid in  
24 excess of the taxes owed and expenses incurred by the State Auditor in the processing of the tax  
25 lien if, within 30 days of the expiration of the lien, upon a showing of compliance with the ~~provisions~~  
26 provisions of section 19 of this article, the purchaser files with the State Auditor a request in writing  
27 for the refund. A purchaser who fails to file the request within the 30 day period forfeits all rights  
28 to the refund.

29 (e) Whenever a purchaser has failed to comply with the notice requirement provided in  
30 section 19 of this article, the purchase may receive an additional 30 days to comply with the notice  
31 requirements set forth in section 19 of this article. If by December 1st of the year following the  
32 sale the purchaser files with the State Auditor a request in writing for the extension and make  
33 payment by cash, cashier check, certified check, or money order in the amount of \$100 or 10  
34 percent of the total amount paid the day of sale set forth in section 5 of this article, whichever is  
35 greater. The fee for issuing the certificate of extension shall be \$25 made payable to the State  
36 Auditor.

37 (f) The State Auditor shall each month draw his or her warrant upon the Treasury payable  
38 to the county board of education of each county for payment received by him or her for the  
39 extension of the time period set forth in subsection (e) for property located within their county.

**§11A-3-22. Service of notice.**

1 (a) As soon as the State Auditor has prepared the notice provided in section twenty-one  
2 of this article, he or she shall cause it to be served upon all persons named on the list generated  
3 by the purchaser pursuant to the provisions of section 19 of this article.

4 (b) The notice shall be served upon all persons residing or found in the state in the manner

5 provided for serving process commencing a civil action or by certified mail, return receipt  
6 requested or other types of delivery service courier that provide a receipt. The notice shall be  
7 served on or before the 30th day following the request for the notice.

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

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

21 In addition to the other notice requirements set forth in this section, if the real property  
22 subject to the tax lien was classified as Class II property at the time of the assessment, at the  
23 same time the State Auditor issues the required notices by certified mail, the State Auditor shall  
24 forward a copy of the notice sent to the delinquent taxpayer by first class mail, addressed to  
25 "Occupant", to the physical mailing address for the subject property. The physical mailing address  
26 for the subject property shall be supplied by the purchaser of the tax lien pursuant to the provisions  
27 of section 19 of this article. Where the mail is not deliverable to an address at the physical location  
28 of the subject property, the copy of the notice shall be sent to any other mailing address that exists  
29 to which the notice would be delivered to an occupant of the subject property.

**§11A-3-52. What purchaser must do before he or she can secure a deed.**

1 (a) Within 45 days following the approval of the sale by the auditor pursuant to section 51  
2 of this article, the purchaser, his or her heirs or assigns, in order to secure a deed for the real  
3 estate purchased, shall:

4 (1) Prepare a list of those to be served with notice to redeem and request the deputy  
5 commissioner to prepare and serve the notice as provided in sections 54 and 55 of this article;

6 (2) When the real property subject to the tax lien was classified as Class II property,  
7 provide the deputy commissioner with the actual mailing address of the property that is subject to  
8 the tax lien or liens purchased; and

9 (3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the  
10 costs of preparing and serving the notice.

11 (b) If the purchaser fails to fulfill the requirements set forth in ~~paragraph~~ subsection (a) of  
12 this section, the purchaser shall lose all the benefits of his or her purchase.

13 (c) After the requirements of ~~paragraph~~ subsection (a) of this section have been satisfied,  
14 the deputy commissioner may then sell the property in the same manner as he sells lands which  
15 have been offered for sale at public auction but which remain unsold after such auction, as  
16 provided in section 48 of this article.

17 (d) If the person requesting preparation and service of the notice is an assignee of the  
18 purchaser, he shall, at the time of the request, file with the deputy commissioner a written  
19 assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner  
20 required to make a valid deed.

21 (e) Whenever a purchaser has failed to comply with the notice requirement provided in  
22 section 19 of this article, the purchaser may receive an additional 30 days to comply with the  
23 notice requirements set forth in subsection (a) of this section following the sale the purchaser files  
24 with the State Auditor a request in writing for the extension within that time period and make  
25 payment by cash, cashier check, certified check, or money order in the amount of \$100 or 10  
26 percent of the total amount paid the day of sale set forth in section 45 of this article, whichever is

27 greater. The fee for issuing the certificate of extension shall be \$25 made payable to the State  
28 Auditor.

29 (f) The State Auditor shall each month draw his or her warrant upon the Treasury payable  
30 to the county board of education of each county for payment received by him or her for the  
31 extension of the time period set forth in subsection (e) for property located within their county.

**§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 or she shall cause it to be served upon all persons named on the list generated  
3 by the purchaser pursuant to the provisions of §11A-3- 52 of this code. Such notice shall be mailed  
4 and, if necessary, published at least 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 or other types of delivery service courier that provides a receipt. The notice shall be  
9 served on or before the 30th day following the request for such notice.

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

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

21 the affidavit of publication, if any, shall be in the manner provided for process generally and shall  
22 be filed and preserved by the auditor in his or her office, together with any return receipts for  
23 notices sent by certified mail.

24 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  
26 same time the deputy commissioner issues the required notices by certified mail, the deputy  
27 commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail,  
28 addressed to "Occupant", to the physical mailing address for the subject property. The physical  
29 mailing address for the subject property shall be supplied by the purchaser of the property,  
30 pursuant to the provisions of §11A-3-52 of this code. Where the mail is not deliverable to an  
31 address at the physical location of the subject property, the copy of the notice shall be sent to any  
32 other mailing address that exists to which the notice would be delivered to an occupant of the  
33 subject property.

NOTE: The purpose of this bill is to modify the notice requirements for the redemption of delinquent properties.

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