

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2977

By Delegate Foster

[Introduced January 24, 2023; 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 reducing to one year the deadline for right to set aside deed when one entitled to notice
3 of tax sale was not notified.

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-3-55 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 reduce from two years to one year the period allowed to set aside a deed when one entitled to notice in a tax sale was not notified.

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