WEST VIRGINIA CODE: §11A-4-4

§11A-4-4. Right to set aside deed when one entitled to notice not notified.

(a) If any person entitled to be notified under the provisions of §11A-3-55 of this code is not served with the notice as therein required, and does not have actual knowledge that such notice has been given to others in time to protect his or her interests by redeeming the property, he or she, his or her heirs and assigns may, before the expiration of two years following the delivery of the deed, institute a civil action to set aside the deed.

(b) Any person instituting a civil action pursuant to this section seeking to set aside a tax deed shall, as a condition precedent to the court allowing the action to proceed, tender to the clerk of the court in which the suit is pending the funds necessary to redeem the real estate. The court shall enter an order directing the clerk to accept the funds of the applicant, and deposit those funds into an account in the control of the clerk pending the conclusion of the proceeding.

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

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

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

(f) Upon a preliminary finding by the court that the deed will be set aside pursuant to this section, such amounts on deposit with the clerk pursuant to this section shall be paid by the clerk to the sheriff within one month of the entry thereof and shall direct the sheriff to pay to the purchaser amounts pursuant to §11A-3-58 of this code. Upon a finding by the court that the deed will not be set aside and with the entry of a judgment dismissing the action with

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prejudice, the clerk shall return to the plaintiff or other appropriated person whose funds previously tendered, less any accrued costs assessed against such person such funds by the court.

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