

HB 2848

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2848

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



Passed April 13, 2013

In effect ninety days from passage.

2013 APR 30 PM 2:49
FILED

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CLERK OF THE HOUSE
SENATE OF WEST VIRGINIA

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FOR

H. B. 2848

(BY DELEGATE(S) BOGGS, SWARTZMILLER, FERRO,
CAPUTO AND POLING, D.)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11A-3-18, §11A-3-22, §11A-3-27, §11A-3-28 and §11A-3-55 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; modifying the requirements for petitioning to compel execution of a deed by the State Auditor; removing the provisions allowing judgement against the State Auditor for costs in the case of failure or refusal to execute a deed without reasonable cause; and providing for service

of notice when mail is not deliverable to an address at the physical location of the property.

Be it enacted by the Legislature of West Virginia:

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

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
2 of sale issued by a sheriff on account of any delinquent property
3 taxes may remain a lien on the real property for a period longer
4 than eighteen months after the original issuance of the tax
5 certificate of sale.

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

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

23 sheriff's records and the certificate and the record are prima
24 facie evidence of the cancellation of the certificate of sale and of
25 the release of the lien of the certificate on the lands described in
26 the certificate. Failure to record the certificate of cancellation
27 does not extend the lien evidenced by the certificate of sale. The
28 sheriff and State Auditor are not entitled to any fees for the
29 issuing of the certificate of cancellation nor for the entries in
30 their books made under the provisions of this subsection.

31 (d) Whenever a purchaser has complied with the notice
32 requirements provided in section nineteen of this article, but has
33 failed to request a deed within the eighteen month deadline
34 provided in this section, thereby forfeiting all rights to a tax
35 deed, the purchaser may recover the amounts paid in excess of
36 the taxes owed and expenses incurred by the State Auditor in the
37 processing of the tax lien if, within thirty days of the expiration
38 of the lien, upon a showing of compliance with the provisions of
39 section nineteen of this article, the purchaser files with the State
40 Auditor a request in writing for the refund. A purchaser who fails
41 to file the request within the thirty day period forfeits all rights
42 to the refund.

§11A-3-22. Service of notice.

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

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

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

14 (d) If the address of a person entitled to notice, whether a
15 resident or nonresident of this state, is unknown to the purchaser
16 and cannot be discovered by due diligence on the part of the
17 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
23 required as set forth in this section and a copy of the notice shall
24 at the same time be sent by certified mail, return receipt
25 requested, to the last known address of the person to be served.
26 The return of service of the notice and the affidavit of
27 publication, if any, shall be in the manner provided for process
28 generally and shall be filed and preserved by the State Auditor
29 in his or her office, together with any return receipts for notices
30 sent by certified mail.

31 In addition to the other notice requirements set forth in this
32 section, if the real property subject to the tax lien was classified
33 as Class II property at the time of the assessment, at the same
34 time the State Auditor issues the required notices by certified
35 mail, the State Auditor shall forward a copy of the notice sent to
36 the delinquent taxpayer by first class mail, addressed to
37 "Occupant", to the physical mailing address for the subject
38 property. The physical mailing address for the subject property
39 shall be supplied by the purchaser of the tax lien pursuant to the
40 provisions of section nineteen of this article. Where the mail is
41 not deliverable to an address at the physical location of the
42 subject property, the copy of the notice shall be sent to any other
43 mailing address that exists to which the notice would be
44 delivered to an occupant of the subject property.

§11A-3-27. Deed to purchaser; record.

1 (a) If the real estate described in the notice is not redeemed
2 within the time specified in the notice, then from April 1 of the

3 second year following the sheriff's sale until the expiration of
4 the lien evidenced by a tax certificate of sale as provided in
5 section eighteen of this article, the State Auditor or his or her
6 deputy shall upon request of the purchaser make and deliver to
7 the clerk of the county commission, a quitclaim deed for the real
8 estate. The purchaser's right to a tax deed shall be forfeited if the
9 deed is not requested within the eighteen month period set forth
10 in section eighteen of this article. The deed shall provide in form
11 or effect as follows:

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

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

35 Whereas, The State Auditor has caused the notice to redeem
36 to be served on all persons required by law to be served
37 therewith; and

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

41 Now, therefore, the grantor, for and in consideration of the
42 premises and in pursuance of the statutes, doth grant unto
43 _____, grantee, his or her heirs and assigns forever,
44 the real estate on which the tax lien(s) so purchased existed,
45 situate in the county of _____, bounded and
46 described as follows: _____.

47 Witness the following signature: _____

48 _____ State Auditor.

49 The State Auditor may not execute and deliver a deed more
50 than sixty days after the person entitled to the deed delivers the
51 same and requests the execution of the deed, except when
52 directed to do so under section twenty-eight of this article.

53 (c) For the execution of the deed and for all the recording
54 required by this section, a fee of \$50 and the recording and
55 transfer tax expenses shall be charged, to be paid by the grantee
56 upon delivery of the deed. The deed, when duly acknowledged
57 or proven, shall be recorded by the clerk of the county
58 commission in the deed book in the clerk's office, together with
59 any assignment from the purchaser, if one was made, the notice
60 to redeem, the return of service of the notice, the affidavit of
61 publication, if the notice was served by publication, and any
62 return receipts for notices sent by certified mail.

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

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

1 (a) If the State Auditor fails or refuses to prepare and serve
2 the notice to redeem as required in sections twenty-one and
3 twenty-two of this article, the person requesting the notice may,

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

16 (b) If the State Auditor fails or refuses to execute the deed as
17 required in section twenty-seven of this article to a purchaser
18 who has requested the deed within the period required by said
19 section twenty-seven, the person requesting the deed may, at any
20 time after such failure or refusal, but not more than six months
21 after his or her right to the deed accrued, upon proof that the
22 purchaser requested the deed within the period required by said
23 section twenty-seven, apply by petition to the circuit court of the
24 county for an order compelling the State Auditor to execute the
25 deed or appointing a commissioner to do so. If the person
26 requesting the deed fails to prove compliance with the
27 limitations period set forth in section twenty-seven of this article
28 or fails to make an application within the time allowed, he or she
29 shall lose his or her right to the deed. Any deed executed
30 pursuant to an order of the court or judge shall have the same
31 force and effect as if executed and delivered by the State Auditor
32 within the time specified in section twenty-seven of this article.

33 (c) Ten days' written notice of every application must be
34 given to the State Auditor. If, upon the hearing of the
35 application, the court or judge is of the opinion that the applicant
36 is not entitled to the notice or deed requested, the petition shall
37 be dismissed at his or her costs; but if the court or judge is of the
38 opinion that he or she is entitled to the notice or deed, then, upon

39 his or her deposit with the clerk of the circuit court of a sum
40 sufficient to cover the costs of preparing and serving the notice,
41 unless a deposit has already been made with the State Auditor,
42 an order shall be made by the court or judge directing the State
43 Auditor to prepare and serve the notice or execute the deed, or
44 appointing a commissioner for the purpose, as the court or judge
45 shall determine.

46 (d) Any commissioner appointed under the provisions of this
47 section shall be subject to the same liabilities as are provided for
48 the State Auditor. For the preparation of the notice to redeem, he
49 or she shall be entitled to the same fee as is provided for the
50 State Auditor. For the execution of the deed, he or she shall also
51 be entitled to a fee of \$50 and the recording and transfer
52 expenses, to be paid by the grantee upon delivery of the deed.

§11A-3-55. Service of notice.

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

8 The notice shall be served upon all such persons residing or
9 found in the state in the manner provided for serving process
10 commencing a civil action or by certified mail, return receipt
11 requested. The notice shall be served on or before the thirtieth
12 day following the request for such notice.

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

16 If the address of any person entitled to notice, whether a
17 resident or nonresident of this state, is unknown to the purchaser

18 and cannot be discovered by due diligence on the part of the
19 purchaser, the notice shall be served by publication as a Class
20 III-0 legal advertisement in compliance with the provisions of
21 article three, chapter fifty-nine of this code, and the publication
22 area for such publication shall be the county in which such real
23 estate is located. If service by publication is necessary,
24 publication shall be commenced when personal service is
25 required as set forth above, and a copy of the notice shall at the
26 same time be sent by certified mail, return receipt requested, to
27 the last known address of the person to be served. The return of
28 service of such notice, and the affidavit of publication, if any,
29 shall be in the manner provided for process generally and shall
30 be filed and preserved by the auditor in his office, together with
31 any return receipts for notices sent by certified mail.

32 In addition to the other notice requirements set forth in this
33 section, if the real property subject to the tax lien was classified
34 as Class II property at the time of the assessment, at the same
35 time the deputy commissioner issues the required notices by
36 certified mail, the deputy commissioner shall forward a copy of
37 the notice sent to the delinquent taxpayer by first class mail,
38 addressed to "Occupant", to the physical mailing address for the
39 subject property. The physical mailing address for the subject
40 property shall be supplied by the purchaser of the property,
41 pursuant to the provisions of section fifty-two of this article.
42 Where the mail is not deliverable to an address at the physical
43 location of the subject property, the copy of the notice shall be
44 sent to any other mailing address that exists to which the notice
45 would be delivered to an occupant of the subject property.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Danny Wells
Chairman, House Committee

Robert Ferguson
Member ~~Chairman~~ Senate Committee

Originating in the House.

In effect ninety days from passage.

FILED
2013 APR 30 PM 2:49
SECRETARY OF STATE

Suzanne M. Spil
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within *is approved* this the *30th*
day of *April*, 2013.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm