Committee Substitute

for

House Bill 4452

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

[Passed March 7, 2020; in effect ninety days from passage.]
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Enr. CS for HB 4452

AN ACT to amend and reenact §11A-3-18, §11A-3-22, §11A-3-52, and §11A-3-55 of the Code of West Virginia, 1931, as amended, all relating generally to notice requirements on tax collections and sale of delinquent property conducted by the State Auditor; allowing purchaser extension of time for compliance with notice requirements upon written request to State Auditor and payment of fees; requiring State Auditor to pay fees for extensions of time to board of education for county where property is located; revising procedure for serving or providing notice to certain persons having interest in property to be sold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEA TED, AND WASTE AND UNAPPROPRIATED LANDS.

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

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

(b) All rights of a purchaser to the property, to a lien on the property, or to any other interest in the property, including, but not limited to any right to a tax deed, shall be considered forfeited and expired, and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale where the certificate has ceased to be a lien pursuant to the provisions of this section and application for the tax deed, pursuant to the provisions of §11A-3-27 of this code, is not pending at the time of the expiration of the limitation period provided in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the State Auditor shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation, and the State Auditor shall also make proper entries in his or her records. The State Auditor shall also present a copy of every certificate of cancellation to the
sheriff, who shall enter it in the sheriff’s records, and the certificate and the record are prima facie
evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate
on the lands described in the certificate. Failure to record the certificate of cancellation does not
extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled
to any fees for the issuing of the certificate of cancellation, nor for the entries in their books made
under the provisions of this subsection.

(d) Whenever a purchaser has complied with the notice requirements provided in §11A-3-19 of this code, but has failed to request a deed within the 18 month deadline provided in this section, thereby forfeiting all rights to a tax deed, the purchaser may recover the amounts paid in excess of the taxes owed and expenses incurred by the State Auditor in the processing of the tax lien if, within 30 days of the expiration of the lien, upon a showing of compliance with the provisions of §11A-3-19 of this code, the purchaser files with the State Auditor a request in writing for the refund. A purchaser who fails to file the request within the 30-day period forfeits all rights to the refund.

(e) Whenever a purchaser has failed to comply with the notice requirements set forth in §11A-3-19 of this code, the purchaser may receive an additional 30 days to comply with the notice requirements set forth in §11A-3-19 of this code if, by December 1st of the year following the sale, the purchaser files with the State Auditor a request in writing for the extension and makes payment by cash, cashier check, certified check, or money order in the amount of $100 or 10 percent of the total amount paid on the day of sale set forth in §11A-3-5 of this code, whichever is greater. The fee for issuing the certificate of extension shall be $25 made payable to the State Auditor.

(f) The State Auditor shall each month draw his or her warrant upon the Treasury payable to the county board of education of each county for payment received by him or her for the extension of the time period set forth in subsection (e) of this section for property located within each such county.
§11A-3-22. Service of notice.

(a) As soon as the State Auditor has prepared the notice provided in §11A-3-21 of this code, he or she shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of §11A-3-19 of this code.

(b) The notice shall be served upon all persons residing or found in the state in the manner provided for serving process commencing a civil action, or by certified mail, return receipt requested, or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30th day following the request for the notice.

(c) The notice shall be served upon persons not residing or found in the state by certified mail, return receipt requested, or in the manner provided for serving process commencing a civil action, or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30 days following the request for the notice.

(d) If the address of a person is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for the publication shall be the county in which the real property is located. If service by publication is necessary, publication shall be commenced within 60 days following the request for the notice, and a copy of the notice shall, at the same time, be sent pursuant to subsection (b) or (c) of this section, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

(e) In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the State Auditor issues the required notices by certified mail, the State Auditor shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, or in the manner
provided for serving process commencing a civil action, addressed to “Occupant”, to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the tax lien pursuant to the provisions of §11A-3-19 of this code. Where the mail is not deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists 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.

(a) Within 45 days following the approval of the sale by the auditor pursuant to §11A-3-51 of this code, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in §11A-3-54 and §11A-3-55 of this code;

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

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

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

(c) After the requirements of subsection (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in §11A-3-48 of this code.

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

(e) Whenever a purchaser has failed to comply with the notice requirements set forth in
subsection (a) of this section, the purchaser may receive an additional 30 days to comply with the
notice requirements set forth in subsection (a) of this section if the purchaser files with the State
Auditor a request in writing for the extension before the expiration of the time period set forth in
subsection (a) of this section and makes payment by cash, cashier check, certified check, or
money order in the amount of $100 or 10 percent of the total amount paid on the day of sale set
forth in §11A-3-45 of this code, whichever is greater. The fee for issuing the certificate of extension
shall be $25 made payable to the State Auditor.

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

§11A-3-55. Service of notice.

(a) As soon as the deputy commissioner has prepared the notice provided for in §11A-3-
54 of this code, he or she shall cause it to be served upon all persons named on the list generated
by the purchaser pursuant to the provisions of §11A-3-52 of this code. Such notice shall be mailed
and, if necessary, published at least 45 days prior to the first day a deed may be issued following
the deputy commissioner’s sale.

(b) The notice shall be served upon all such persons residing or found in the state in the
manner provided for serving process commencing a civil action or by certified mail, return receipt
requested or other types of delivery service courier that provide a receipt. The notice shall be
served on or before the 30th day following the request for such notice.

(c) The notice shall be served upon persons not residing or found in the state by certified
mail, return receipt requested, or in the manner provided for serving process commencing a civil
action or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30 days following the request for the notice.

(d) If the address of a person is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the county in which the real property is located. If service by publication is necessary, publication shall be commenced within 60 days following the request for the notice, and a copy of the notice shall, at the same time, be sent pursuant to subsection (b) or (c) of this section, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

(e) In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the deputy commissioner issues the required notices by certified mail, the deputy commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, or in the manner provided for serving process commencing a civil action, addressed to “Occupant”, to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the property, pursuant to the provisions of §11A-3-52 of this code. Where the mail is not deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists to which the notice would be delivered to an occupant of the subject property.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of March, 2020.

Governor