

1 HB177
2 135846-1
3 By Representative Clouse
4 RFD: Financial Services
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, excess funds arising
9 from the sale of any real estate for taxes may be
10 paid to the owner of the property that has been
11 sold.

12 This bill would clarify that the owner of
13 property entitled to receive such excess funds
14 includes holders of recorded mortgages and would
15 establish the priority of the distribution of any
16 excess funds.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Section 40-10-28, Code of Alabama 1975,
23 relating to the distribution of excess funds arising from the
24 sale of real estate for taxes, by defining the terms "owner"
25 and "rightful owner" to include the holder of any recorded
26 mortgages and other persons owning the property; to establish

1 the order of payment of any excess funds; and to provide for
2 the effective date of this act.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-10-28, Code of Alabama 1975,
5 is amended to read as follows:

6 "§40-10-28.

7 "The excess arising from the sale of any real estate
8 remaining after paying the amount of the decree of sale, and
9 costs and expenses subsequently accruing, shall be paid over
10 to the owner, or his or her agent, or to the person legally
11 representing such owner, or into the county treasury, and it
12 may be paid therefrom to such owner, agent, or representative
13 in the same manner as to the excess arising from the sale of
14 personal property sold for taxes is paid. If such excess is
15 not called for within three years after such sale by the
16 person entitled to receive the same, upon the order of the
17 county commission stating the case or cases in which such
18 excess was paid, together with a description of the lands
19 sold, when sold and the amount of such excess, the county
20 treasurer shall place such excess of money to the credit of
21 the general fund of the county and make a record on his or her
22 books of the same, and such money shall thereafter be treated
23 as part of the general fund of the county. At any time within
24 10 years after such excess has been passed to the credit of
25 the general fund of the county, the county commission may on
26 proof made by any person that he or she is the rightful owner
27 of such excess of money order the payment thereof to such

1 owner, ~~his~~ its successor or heir, or legal representative, but
2 if not so ordered and paid within such time, the same shall
3 become the property of the county. For purposes of this
4 section, the terms "owner" and "rightful owner" shall be
5 defined to mean first, the holder of any recorded first
6 mortgage on the property on the date of the tax sale; second,
7 the holders of any other mortgage on the property recorded on
8 the date of the tax sale in the order of recordation; and
9 third, any other person owning the property after payment of
10 all recorded mortgages, if any. Any excess of money shall be
11 paid to the owner or rightful owner in the order set forth
12 immediately above."

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.