

HB270 ENGROSSED



1 HB270
2 B7334J4-2
3 By Representative Sells
4 RFD: State Government
5 First Read: 29-Feb-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to tax delinquent properties; to amend Sections 40-10-28 and 40-10-197, Code of Alabama 1975, to further provide for the distribution of excess funds arising from tax sales occurring during certain time periods; to further provide the period of time during which certain tax lien purchasers may bring an action to foreclose the right to redeem and quiet title to property under certain conditions; to further provide procedure for sending notice of the action to defendants and for representing certain defendants; to further provide the circumstances under which the court may render judgment; to further provide rights not extinguished by the foreclosure; to provide the procedure for sale of the property at public auction and distribution of proceeds if a public auction is demanded by certain persons entitled to redeem; to provide for the distribution of surplus proceeds; to provide that the act shall apply only to tax liens for which there has been no final judgment in a foreclosure and quiet title action on or before the effective date of this act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-10-28 and 40-10-197, Code of



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29 Alabama 1975, are amended to read as follows:

30 "§40-10-28

31 (a) (1) The excess arising from the sale of any real
32 estate remaining after paying the amount of the decree of
33 sale, including costs and expenses subsequently accruing,
34 shall be paid over to a person or entity who has redeemed the
35 property as authorized in Section 40-10-120 or any other
36 provisions of Alabama law authorizing redemption from a tax
37 sale, provided proof that the person or entity requesting
38 payment of the excess has properly redeemed the property is
39 presented to the county commission within three years after
40 the tax sale has occurred. The county commission may retain
41 any interest earned on those funds. Until and unless the
42 property is redeemed, the excess funds from the tax sale shall
43 be held in a separate account in the county treasury during
44 the three-year period. If at the end of the three-year period
45 there has been no proper request for the excess funds, those
46 funds and any interest earned on those funds shall be
47 deposited to the credit of the general fund of the county and
48 shall thereafter be treated as part of the general fund of the
49 county.

50 (2) The Department of Revenue shall ~~promulgate~~adopt
51 rules authorizing the county commission to issue a voucher in
52 the amount of the excess bid to a person or entity ~~which~~that
53 has paid all other costs of redemption as required in this
54 subsection. The person or entity redeeming property may
55 present the voucher to the judge of probate in lieu of the
56 amount equal to the excess bid to complete the redemption



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57 process. The rules ~~promulgated~~adopted by the department shall
58 include forms to be utilized for issuing such vouchers.

59 (b) At any time ~~more than~~after three years but ~~within~~no
60 later than 10 years after a tax sale that occurred in calendar
61 year 2016 or later, or at any time after three years but no
62 later than 11 years after a tax sale that occurred in calendar
63 year 2015, or at any time after three years but no later than
64 12 years after a tax sale that occurred in calendar year 2014,
65 the excess funds arising from the sale shall be paid to
66 ~~either~~any of the following:

67 (1) To any person or entity entitled to redeem under
68 Section 40-10-83, or any other provisions of law authorizing
69 redemption from the tax sale, upon proof of a circuit court
70 order granting redemption to the person or entity.

71 (2) To the owner of the land at the time of the tax
72 sale or a subsequent owner, upon proof provided to the tax
73 collector or other official performing those duties that the
74 land has been redeemed by negotiated agreement from the
75 purchaser at the tax sale or the purchaser's successor in
76 interest. Proof of negotiated redemption agreement shall
77 include the following:

78 a. A copy of a properly recorded deed or conveyance to
79 the redeeming party executed by the party from whom redemption
80 was made.

81 b. If the redeeming party was not the owner of the land
82 at the time of the tax sale, a copy of a properly recorded
83 deed or conveyance from the owner at the time of the tax sale
84 to the subsequent owner.



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85 c. If the party from whom redemption was made is a
86 successor in interest of the tax sale purchaser, a copy of a
87 properly recorded deed or conveyance from the tax sale
88 purchaser to the successor in interest.

89 (3) To the owner of the land at the time of the tax
90 sale or a subsequent owner with a properly recorded deed or
91 conveyance without a redemption if the owner or subsequent
92 owner executes a release and waiver releasing any right to
93 redeem the property and waiving any and all interest in the
94 property which shall be recorded with the judge of probate.

95 (c) Upon receipt of proof of redemption or proof of
96 release and waiver as required in subsection (b), the county
97 commission shall order the payment of the excess funds as
98 provided therein and retain any interest earned on those
99 funds. If proof of redemption or proof of release and waiver
100 is not received within 10 years after the tax sale that
101 occurred in calendar year 2016 or later, within 11 years after
102 a tax sale that occurred in calendar year 2015, or within 12
103 years after a tax sale that occurred in calendar year 2014,
104 the excess funds and any interest earned on the funds shall
105 become the property of the county.

106 (d) Notwithstanding any other provision of law, the
107 process for calculation, distribution, and retention of any
108 excess funds resulting from the sale of real estate for taxes,
109 including any interest earned on the funds, shall be governed
110 by this section and shall apply regardless of when the tax
111 sale occurred. Any prior actions taken regarding excess funds
112 and any interest earned on the funds which were made in good



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113 faith reliance pursuant to this section prior to July 2, 2017,
114 are ratified, validated, and affirmed."

115 "§40-10-197

116 (a) (1) At any time not less than ~~three~~four years after
117 the tax lien auction or the tax official's sale of a tax lien
118 but not more than 10 years after the auction or sale, if the
119 tax lien has not been redeemed, a holder of all of the sold,
120 unexpired, outstanding tax lien certificates for a parcel of
121 property may bring in the circuit court of the county in which
122 the property is located an action to foreclose the right to
123 redeem and to quiet title to the property in the name of the
124 holder of the tax lien certificate. If any applicable law or
125 court order prohibits bringing an action to foreclose the
126 right to redeem and to quiet title to the property, the
127 limitation provided in this section shall be extended 12
128 months following the termination of the prohibition.

129 (2) For purposes of this section, a tax lien
130 certificate shall be considered outstanding if it is owned by
131 the original holder of the tax lien certificate or his or her
132 successor in interest.

133 (b) If there are any unsold tax liens, the holder must
134 pay all due and owing taxes, interest, penalties, fees, and
135 costs prior to filing an action under this section.

136 ~~(b)~~ (c) (1) At least 30 days before filing a tax lien
137 foreclosure action under this article, but not more than 180
138 days before the action is commenced, the holder of the tax
139 lien certificates shall send notice of intent to file the
140 foreclosure action by certified mail or by United States mail,



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141 First Class, postage pre-paid, to all of the following:

142 a. The property owner or owners of record, according to
143 the property tax records of the county in which the property
144 is located, at the ~~owner's~~ address shown in the records and at
145 the street address of the property if different.

146 b. All holders of outstanding mortgages, judgment
147 liens, or other liens on the property as recorded in the
148 probate office of the county in which the property is located.

149 c. The tax collecting official of the county in which
150 the property is located.

151 d. Any other person who may reasonably be believed to
152 have an interest in the property, including, but not limited
153 to, any of the following:

154 1. A person whose name appears on the face of a
155 recorded deed, mortgage, or other relevant instrument.

156 2. A person who paid taxes on the property during the
157 period that it has been owned by the property owner of record.

158 3. A person who appears to be the heir of the property
159 owner of record, as shown by probate court records.

160 4. The registered agent and all persons appearing to
161 have an ownership interest in the entity as recorded on the
162 records of the probate court or the Secretary of State, or
163 both, if the property is owned by a business entity.

164 (2) The holder of the tax lien certificates shall make
165 an affidavit setting forth the names of the persons, entities,
166 and organizations that were sent notice pursuant to
167 subdivision (1) and how these persons were identified,
168 including, but not limited to, the records searched. This



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169 affidavit must be filed in the subsequent action.

170 ~~(2)~~ (3) The notice shall include the property owner's
171 name, the date of mailing, the uniform parcel number, the
172 legal description and street address, if any, of the property,
173 and the name and address of the holder of the tax lien
174 certificate, ~~and a statement that the holder proposes to file~~
175 ~~a tax lien foreclosure action as soon as 30 but not later than~~
176 ~~180 days after the date of mailing of the notice.~~ If the
177 holder fails to send the notice required by this subsection,
178 the court shall dismiss any tax lien foreclosure action filed
179 under this article. The notice shall also include a statement
180 or words substantially to the same effect, as follows:

181 "Notice is hereby given that the holder of these tax
182 liens proposes to file a tax lien foreclosure action as soon
183 as 30, but not later than 180, days following the date this
184 notice is mailed. Once this action is served, anyone who is
185 named as a defendant has 30 days to file an answer, or a
186 default judgment may be entered against that person. Any
187 person with a right to redeem the property may do so at any
188 time prior to the entry of final judgment in the proposed
189 action, either by payment to the tax collecting official as
190 provided by law before an action is commenced, or by filing a
191 timely answer or motion in the court after an action has been
192 commenced. A judgment quieting title may cause a person with
193 an interest in or claim on the property to lose their interest
194 or claim. Any person claiming an interest in the property may
195 appear in the action. Any person who is entitled to redeem may
196 request that the property be sold at public auction. IN



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197 SUMMARY, IF YOU DO NOT WANT TO LOSE ANY INTEREST OR EQUITY, OR
198 BOTH, YOU MAY HAVE IN THE PROPERTY, ONCE THE TAX LIEN
199 FORECLOSURE ACTION BEGINS, YOU MUST TAKE ALL REQUIRED MEASURES
200 TO APPEAR IN AND RESPOND TO THE FORECLOSURE ACTION."

201 ~~(e)~~ (d) (1) An action shall be commenced by filing a
202 complaint in compliance with Section 6-6-561. Additionally,
203 the complaint shall be accompanied by the following statement
204 or words substantially to the same effect:

205 "A person with a right to redeem the property may do so
206 at any time prior to the entry of final judgment in this
207 action by filing a timely answer or motion in the court. A
208 judgment quieting title may cause a person with an interest in
209 or claim on the property to lose their interest or claim. Any
210 person claiming an interest in the property may appear in this
211 action. Any person who is entitled to redeem may request that
212 the property be sold at public auction. IN SUMMARY, IF YOU DO
213 NOT WANT TO LOSE ANY INTEREST OR EQUITY, OR BOTH, YOU MAY HAVE
214 IN THE PROPERTY, YOU MUST TAKE ALL REQUIRED MEASURES TO APPEAR
215 IN AND RESPOND TO THIS TAX LIEN FORECLOSURE ACTION." The
216 holder shall not be required to plead or prove possession of
217 the property. The holder shall name as parties defendant to
218 the tax lien foreclosure action all persons entitled to redeem
219 under this article. Upon filing the tax lien foreclosure
220 action, the holder shall record a notice as provided by
221 Section 35-4-131. Service of the complaint shall be made in
222 accordance with Section 6-6-563. Notice shall also be
223 published as provided by Section 6-6-564. An answer must be
224 filed within 30 days following the date of service, as



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225 provided by Section 6-6-565.

226 (2) On the filing of a complaint, should it appear that
227 any of the defendants is a minor or incapacitated or should
228 the identity of some, or all, of the defendants be unknown,
229 the court shall promptly appoint a guardian ad litem to
230 represent and defend the interest of the minor or
231 incapacitated defendant, or unknown party in the proceeding.

232 (3) If the taxes have been paid by a person authorized
233 to pay the taxes for any year in the intervening period
234 between the first unredeemed lien and the filing of the
235 action, the holder must also pay into court the amount of
236 taxes that were paid, plus the interest on those taxes at the
237 rate of interest specified in the oldest unredeemed tax lien
238 certificate. If the property is foreclosed or sold through
239 auction, this amount shall be distributed to the person who
240 paid the taxes.

241 ~~(d)~~ (e) (1) In a tax lien foreclosure action, if the
242 court finds that: (i) the tax lien auction or sale is valid;
243 (ii), ~~that~~ proper notice has been ~~givensent~~ sent; (iii), ~~that~~ the
244 holder is the holder of all of the sold, unexpired,
245 outstanding tax certificates on the property; (iv), ~~and that~~
246 the tax liens have not been redeemed; and (v) no person has
247 demandd that the property be sold by public auction under
248 this section, the court shall enter judgment foreclosing the
249 right of the defendant or defendants to redeem, shall vest
250 good and marketable fee simple title in the holder, free of
251 encumbrances, claims, and liens except as otherwise provided
252 in subsection (f), and shall direct the circuit clerk to



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253 execute and deliver to the party in whose favor judgment is
254 entered a deed conveying the ~~interests of the defendants in~~
255 ~~the~~ property described in the tax lien certificates.

256 (2)a. In no event may judgment be granted in a tax lien
257 foreclosure action prior to the expiration of 90 days after it
258 is filed, unless all persons possessing an ownership interest
259 in the property have filed an answer explicitly waiving any
260 defense to the action, and all persons who are entitled to
261 demand a sale of the parcel of property at public auction have
262 filed an answer explicitly waiving their right to demand a
263 sale at public auction.

264 b. Notwithstanding any other provision of law or the
265 Alabama Rules of Civil Procedure to the contrary, an
266 application for default judgment must be filed with the court
267 and served on all parties who have appeared in the action as
268 provided in the Alabama Rules of Civil Procedure and on any
269 party who has not appeared in the action in accordance with
270 Section 6-6-563. The holder of the tax lien certificates must
271 submit an affidavit of service to the court.

272 c. Judgment may not be granted prior to 30 days after
273 the service of the application for default judgment or 90 days
274 after the filing of the action, whichever is later. The
275 application for default judgment must specifically and
276 prominently state the expected date on which judgment on the
277 application may be entered and that any person seeking to
278 protect an ownership or equity interest in the property must
279 take all required measures to appear in and respond to the tax
280 lien foreclosure action.



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281 ~~(2)~~ (3) After entry of judgment, a party whose rights to
282 redeem the tax liens ~~are~~have been foreclosed has no further
283 legal or equitable right, title, or interest in the property,
284 subject to the right of appeal and stay of execution as in
285 other civil actions.

286 ~~(e)~~ (f) The foreclosure of the right to redeem does not
287 extinguish any easement or right-of-way on or appurtenant to
288 the property or rights of any public utility or governmental
289 entity in the property, deed restrictions or covenants, or
290 plat restrictions or conditions. Any other liens shall be
291 extinguished according to their priority as provided by law.

292 ~~(f)~~ (g) (1) The clerk's deed executed in accordance with
293 subsection ~~(d)~~ (e) shall include all of the following
294 information:

- 295 a. The date of the judgment.
- 296 b. The number and style of the case.
- 297 c. The name of the plaintiff, who shall be stated as
298 the grantee.
- 299 d. The legal description of the property.
- 300 e. The uniform parcel number of the property.
- 301 f. The date of the conveyance.

302 (2) The original deed shall be delivered to the
303 plaintiff for recording in the probate records in the county
304 in which the property is located.

305 ~~(g)~~ (h) Any person who is entitled to redeem under this
306 article may redeem at any time before judgment is entered,
307 notwithstanding that an action ~~to foreclose~~ under this section
308 has been commenced, by paying into the circuit court the



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309 redemption amount that would have been paid to the tax
310 collecting official under Section 40-10-193 ~~plus any other~~
311 ~~amounts determined by the court under this section. If the~~
312 ~~person who redeems has been served personally or by~~
313 ~~publication in the action, or if the person became an owner~~
314 ~~after the action began and redeems after a notice is recorded~~
315 ~~pursuant to subsection (c), the redeeming party shall also pay~~
316 ~~into the court with the redemption amount the costs incurred~~
317 ~~by the plaintiff in the action, including reasonable attorney~~
318 ~~fees actually incurred, to be determined by the court. The~~
319 ~~court shall then order the tax lien certificates cancelled and~~
320 ~~the tax liens void, the redemption amount be paid to the tax~~
321 ~~collecting official, and the costs and attorney fees be paid~~
322 ~~to the plaintiff~~ for all sold, unexpired, outstanding tax lien
323 certificates held by the holder, plus the amount of any other
324 taxes that were paid pursuant to this section. If the person
325 who redeems has been served in the action, or if the person
326 became an owner after the action was commenced and redeems
327 after a notice is recorded pursuant to subsection (d), the
328 court shall also enter an order requiring the repayment of
329 reasonable costs and reasonable attorney fees actually
330 incurred in the action as established by the law and evidence,
331 including, but not limited to, the filing fee. An award of
332 costs and fees under this section shall be entered as a
333 judgment against the redeemer, which may be enforced in the
334 same manner as other judgments.

335 ~~(h)~~ (i) (1) a. Any person entitled to redeem, without
336 redeeming, may respond to the action by demanding that the

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337 parcel of property be sold at public auction. By demanding
338 that the parcel of property be sold at public auction, the
339 person concedes that the court may enter judgment foreclosing
340 the right to redeem and vest good and marketable fee simple
341 title in favor of the highest bidder.

342 b. A demand for auction may be made at any time before
343 judgment is entered and may be made in the alternative,
344 however no auction shall occur before any other defense raised
345 by any other party defendant has been waived or adjudicated.
346 The demand for auction must be served on all parties as
347 provided in the Alabama Rules of Civil Procedure for pleadings
348 subsequent to the original complaint. Any other party to the
349 action, except for the holder of the tax lien certificates,
350 may object to the demand within 30 days following service. A
351 holder of the tax lien certificates receiving the demand shall
352 file an accounting of the reasonable costs and attorney fees
353 incurred in the action within 30 days.

354 (2) If the court determines that the request for
355 auction of the parcel of property is made by a proper person
356 and is due to be granted, the court shall also determine the
357 reasonable costs and attorney fees actually incurred by the
358 holder of the tax lien certificates in the action in
359 accordance with this section, plus the cost of the auction. It
360 shall order a suitable commissioner to conduct the auction no
361 later than 180 days from the date of the order.

362 (3) The auction of the parcel of property shall be
363 conducted either on the premises of or within the courthouse
364 or courthouse annex of the county, and awarded to the highest

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365 bidder for cash between the hours of 10:00 a.m. and 4:00 p.m.

366 (4) Notice of the auction shall be given for at least
367 three successive weeks as provided by Section 6-8-60 and by
368 posting a notice in the courthouse. The notice shall specify
369 the property and shall state the location, time, and manner of
370 the sale.

371 (5) The minimum bid at the sale shall be set by the
372 court as the amount required to redeem all outstanding tax
373 lien certificates under Section 40-10-193, plus any back taxes
374 paid prior to bringing the action and the costs and fees
375 ordered by the court. The holder of the tax lien certificates
376 shall automatically be deemed to bid the minimum amount. If
377 the holder is the highest bidder, he or she shall receive a
378 credit toward the purchase price equal to the minimum bid.

379 (6) The suitable commissioner shall report the results
380 of the auction to the court for confirmation and shall deposit
381 the proceeds of the auction, if any, with the clerk of court.
382 The court shall enter judgment foreclosing the right of the
383 defendant or defendants to redeem and shall vest good and
384 marketable fee simple title to the highest bidder. The court
385 shall direct the circuit clerk to execute and deliver a deed
386 as described in this section to the highest bidder, except
387 that, if no bid other than the minimum bid is received, the
388 holder shall pay the cost of the auction prior to receiving
389 the deed.

390 (7) The proceeds of the auction shall be applied first
391 to the cost of the auction, and then distributed to the holder
392 of the tax lien certificates in an amount equal to the amount



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393 required to redeem, plus any due and owing taxes, interest,
394 penalties, fees, and costs that were paid by him or her prior
395 to filing the action, plus the reasonable costs and fees
396 actually incurred in the action as previously determined by
397 the court. Any surplus shall then be distributed to the owner
398 or owners of the property or their heirs or other successors
399 in interest, or to another proper person, as determined by the
400 court. The provisions of Alabama law applicable to unclaimed
401 property held by the state shall apply.

402 (j) If a tax lien that was purchased pursuant to this
403 article is not redeemed and the holder of the tax lien
404 certificate fails to commence a tax lien foreclosure action on
405 or before 10 years ~~from the date of the tax lien~~
406 ~~certificate~~after the tax lien auction or the tax official's
407 sale of the tax lien, the tax lien certificate shall expire
408 and the lien shall become void.

409 ~~(i)~~ (k) If a judicial proceeding prohibits bringing a
410 tax lien foreclosure action, the time of expiration under this
411 section shall be extended by 12 months following the
412 completion of the judicial proceeding."

413 Section 2. This act shall become effective on October
414 1, 2024, and shall apply to all tax liens for which a final
415 judgment has not been rendered in a foreclosure and quiet
416 title action on or before October 1, 2024.



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House of Representatives

Read for the first time and referred29-Feb-24
to the House of Representatives
committee on State Government

Read for the second time and placed21-Mar-24
on the calendar:
1 amendment

Read for the third time and passed02-Apr-24
as amended
Yeas 103
Nays 0
Abstains 0

John Treadwell
Clerk