

HB270 ENROLLED



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



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1 Enrolled, An Act,

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 40-10-28 and 40-10-197, Code of
23 Alabama 1975, are amended to read as follows:

24 "§40-10-28

25 (a) (1) The excess arising from the sale of any real
26 estate remaining after paying the amount of the decree of
27 sale, including costs and expenses subsequently accruing,
28 shall be paid over to a person or entity who has redeemed the



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29 property as authorized in Section 40-10-120 or any other
30 provisions of Alabama law authorizing redemption from a tax
31 sale, provided proof that the person or entity requesting
32 payment of the excess has properly redeemed the property is
33 presented to the county commission within three years after
34 the tax sale has occurred. The county commission may retain
35 any interest earned on those funds. Until and unless the
36 property is redeemed, the excess funds from the tax sale shall
37 be held in a separate account in the county treasury during
38 the three-year period. If at the end of the three-year period
39 there has been no proper request for the excess funds, those
40 funds and any interest earned on those funds shall be
41 deposited to the credit of the general fund of the county and
42 shall thereafter be treated as part of the general fund of the
43 county.

44 (2) The Department of Revenue shall ~~promulgate~~adopt
45 rules authorizing the county commission to issue a voucher in
46 the amount of the excess bid to a person or entity ~~which~~that
47 has paid all other costs of redemption as required in this
48 subsection. The person or entity redeeming property may
49 present the voucher to the judge of probate in lieu of the
50 amount equal to the excess bid to complete the redemption
51 process. The rules ~~promulgated~~adopted by the department shall
52 include forms to be utilized for issuing such vouchers.

53 (b) At any time ~~more than~~after three years but ~~within~~no
54 later than 10 years after a tax sale that occurred in calendar
55 year 2016 or later, or at any time after three years but no
56 later than 11 years after a tax sale that occurred in calendar



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57 year 2015, or at any time after three years but no later than
58 12 years after a tax sale that occurred in calendar year 2014,
59 the excess funds arising from the sale shall be paid to
60 ~~either~~any of the following:

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

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

72 a. A copy of a properly recorded deed or conveyance to
73 the redeeming party executed by the party from whom redemption
74 was made.

75 b. If the redeeming party was not the owner of the land
76 at the time of the tax sale, a copy of a properly recorded
77 deed or conveyance from the owner at the time of the tax sale
78 to the subsequent owner.

79 c. If the party from whom redemption was made is a
80 successor in interest of the tax sale purchaser, a copy of a
81 properly recorded deed or conveyance from the tax sale
82 purchaser to the successor in interest.

83 (3) To the owner of the land at the time of the tax
84 sale or a subsequent owner with a properly recorded deed or



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85 conveyance without a redemption if the owner or subsequent
86 owner executes a release and waiver releasing any right to
87 redeem the property and waiving any and all interest in the
88 property which shall be recorded with the judge of probate.

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

100 (d) Notwithstanding any other provision of law, the
101 process for calculation, distribution, and retention of any
102 excess funds resulting from the sale of real estate for taxes,
103 including any interest earned on the funds, shall be governed
104 by this section and shall apply regardless of when the tax
105 sale occurred. Any prior actions taken regarding excess funds
106 and any interest earned on the funds which were made in good
107 faith reliance pursuant to this section prior to July 2, 2017,
108 are ratified, validated, and affirmed."

109 "§40-10-197

110 (a) (1) At any time not less than ~~three~~four years after
111 the tax lien auction or the tax official's sale of a tax lien
112 but not more than 10 years after the auction or sale, if the



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113 tax lien has not been redeemed, a holder of all of the sold,
114 unexpired, outstanding tax lien certificates for a parcel of
115 property may bring in the circuit court of the county in which
116 the property is located an action to foreclose the right to
117 redeem and to quiet title to the property in the name of the
118 holder of the tax lien certificate. If any applicable law or
119 court order prohibits bringing an action to foreclose the
120 right to redeem and to quiet title to the property, the
121 limitation provided in this section shall be extended 12
122 months following the termination of the prohibition.

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

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

130 ~~(b)~~ (c) (1) At least 30 days before filing a tax lien
131 foreclosure action under this article, but not more than 180
132 days before the action is commenced, the holder of the tax
133 lien certificates shall send notice of intent to file the
134 foreclosure action by certified mail or by United States mail,
135 First Class, postage pre-paid, to all of the following:

136 a. The property owner or owners of record, according to
137 the property tax records of the county in which the property
138 is located, at the ~~owner's~~ address shown in the records and at
139 the street address of the property if different.

140 b. All holders of outstanding mortgages, judgment



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141 liens, or other liens on the property as recorded in the
142 probate office of the county in which the property is located.

143 c. The tax collecting official of the county in which
144 the property is located.

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

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

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

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

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

158 (2) The holder of the tax lien certificates shall make
159 an affidavit setting forth the names of the persons, entities,
160 and organizations that were sent notice pursuant to
161 subdivision (1) and how these persons were identified,
162 including, but not limited to, the records searched. This
163 affidavit must be filed in the subsequent action.

164 ~~(2)~~ (3) The notice shall include the property owner's
165 name, the date of mailing, the uniform parcel number, the
166 legal description and street address, if any, of the property,
167 and the name and address of the holder of the tax lien
168 certificate, and a statement that the holder proposes to file



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169 ~~a tax lien foreclosure action as soon as 30 but not later than~~
170 ~~180 days after the date of mailing of the notice.~~ If the
171 holder fails to send the notice required by this subsection,
172 the court shall dismiss any tax lien foreclosure action filed
173 under this article. The notice shall also include a statement
174 or words substantially to the same effect, as follows:

175 "Notice is hereby given that the holder of these tax
176 liens proposes to file a tax lien foreclosure action as soon
177 as 30, but not later than 180, days following the date this
178 notice is mailed. Once this action is served, anyone who is
179 named as a defendant has 30 days to file an answer, or a
180 default judgment may be entered against that person. Any
181 person with a right to redeem the property may do so at any
182 time prior to the entry of final judgment in the proposed
183 action, either by payment to the tax collecting official as
184 provided by law before an action is commenced, or by filing a
185 timely answer or motion in the court after an action has been
186 commenced. A judgment quieting title may cause a person with
187 an interest in or claim on the property to lose their interest
188 or claim. Any person claiming an interest in the property may
189 appear in the action. Any person who is entitled to redeem may
190 request that the property be sold at public auction. IN
191 SUMMARY, IF YOU DO NOT WANT TO LOSE ANY INTEREST OR EQUITY, OR
192 BOTH, YOU MAY HAVE IN THE PROPERTY, ONCE THE TAX LIEN
193 FORECLOSURE ACTION BEGINS, YOU MUST TAKE ALL REQUIRED MEASURES
194 TO APPEAR IN AND RESPOND TO THE FORECLOSURE ACTION."

195 ~~(e)~~ (d) (1) An action shall be commenced by filing a
196 complaint in compliance with Section 6-6-561. Additionally,



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197 the complaint shall be accompanied by the following statement
198 or words substantially to the same effect:

199 "A person with a right to redeem the property may do so
200 at any time prior to the entry of final judgment in this
201 action by filing a timely answer or motion in the court. A
202 judgment quieting title may cause a person with an interest in
203 or claim on the property to lose their interest or claim. Any
204 person claiming an interest in the property may appear in this
205 action. Any person who is entitled to redeem may request that
206 the property be sold at public auction. IN SUMMARY, IF YOU DO
207 NOT WANT TO LOSE ANY INTEREST OR EQUITY, OR BOTH, YOU MAY HAVE
208 IN THE PROPERTY, YOU MUST TAKE ALL REQUIRED MEASURES TO APPEAR
209 IN AND RESPOND TO THIS TAX LIEN FORECLOSURE ACTION." The
210 holder shall not be required to plead or prove possession of
211 the property. The holder shall name as parties defendant to
212 the tax lien foreclosure action all persons entitled to redeem
213 under this article. Upon filing the tax lien foreclosure
214 action, the holder shall record a notice as provided by
215 Section 35-4-131. Service of the complaint shall be made in
216 accordance with Section 6-6-563. Notice shall also be
217 published as provided by Section 6-6-564. An answer must be
218 filed within 30 days following the date of service, as
219 provided by Section 6-6-565.

220 (2) On the filing of a complaint, should it appear that
221 any of the defendants is a minor or incapacitated or should
222 the identity of some, or all, of the defendants be unknown,
223 the court shall promptly appoint a guardian ad litem to
224 represent and defend the interest of the minor or



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225 incapacitated defendant, or unknown party in the proceeding.

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

235 ~~(d)~~ (e) (1) In a tax lien foreclosure action, if the
236 court finds that: (i) the tax lien auction or sale is valid;
237 (ii), that proper notice has been given; (iii), that the
238 holder is the holder of all of the sold, unexpired,
239 outstanding tax certificates on the property; (iv), and that
240 the tax liens have not been redeemed; and (v) no person has
241 demande that the property be sold by public auction under
242 this section, the court shall enter judgment foreclosing the
243 right of the defendant or defendants to redeem, shall vest
244 good and marketable fee simple title in the holder, free of
245 encumbrances, claims, and liens except as otherwise provided
246 in subsection (f), and shall direct the circuit clerk to
247 execute and deliver to the party in whose favor judgment is
248 entered a deed conveying the interests of the defendants in
249 the property described in the tax lien certificates.

250 (2)a. In no event may judgment be granted in a tax lien
251 foreclosure action prior to the expiration of 90 days after it
252 is filed, unless all persons possessing an ownership interest



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253 in the property have filed an answer explicitly waiving any
254 defense to the action, and all persons who are entitled to
255 demand a sale of the parcel of property at public auction have
256 filed an answer explicitly waiving their right to demand a
257 sale at public auction.

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

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

275 ~~(2)~~(3) After entry of judgment, a party whose rights to
276 redeem the tax liens ~~are~~have been foreclosed has no further
277 legal or equitable right, title, or interest in the property,
278 subject to the right of appeal and stay of execution as in
279 other civil actions.

280 ~~(e)~~(f) The foreclosure of the right to redeem does not



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281 extinguish any easement or right-of-way on or appurtenant to
282 the property or rights of any public utility or governmental
283 entity in the property, deed restrictions or covenants, or
284 plat restrictions or conditions. Any other liens shall be
285 extinguished according to their priority as provided by law.

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

- 289 a. The date of the judgment.
290 b. The number and style of the case.
291 c. The name of the plaintiff, who shall be stated as
292 the grantee.
293 d. The legal description of the property.
294 e. The uniform parcel number of the property.
295 f. The date of the conveyance.

296 (2) The original deed shall be delivered to the
297 plaintiff for recording in the probate records in the county
298 in which the property is located.

299 ~~(g)~~ (h) Any person who is entitled to redeem under this
300 article may redeem at any time before judgment is entered,
301 notwithstanding that an action ~~to foreclose~~ under this section
302 has been commenced, by paying into the circuit court the
303 redemption amount that would have been paid to the tax
304 collecting official under Section 40-10-193 ~~plus any other~~
305 ~~amounts determined by the court under this section. If the~~
306 ~~person who redeems has been served personally or by~~
307 ~~publication in the action, or if the person became an owner~~
308 ~~after the action began and redeems after a notice is recorded~~



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

329 ~~(h)~~(i) (1) a. Any person entitled to redeem, without
330 redeeming, may respond to the action by demanding that the
331 parcel of property be sold at public auction. By demanding
332 that the parcel of property be sold at public auction, the
333 person concedes that the court may enter judgment foreclosing
334 the right to redeem and vest good and marketable fee simple
335 title in favor of the highest bidder.

336 b. A demand for auction may be made at any time before



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

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

356 (3) The auction of the parcel of property shall be
357 conducted either on the premises of or within the courthouse
358 or courthouse annex of the county, and awarded to the highest
359 bidder for cash between the hours of 10:00 a.m. and 4:00 p.m.

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



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

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

384 (7) The proceeds of the auction shall be applied first
385 to the cost of the auction, and then distributed to the holder
386 of the tax lien certificates in an amount equal to the amount
387 required to redeem, plus any due and owing taxes, interest,
388 penalties, fees, and costs that were paid by him or her prior
389 to filing the action, plus the reasonable costs and fees
390 actually incurred in the action as previously determined by
391 the court. Any surplus shall then be distributed to the owner
392 or owners of the property or their heirs or other successors



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393 in interest, or to another proper person, as determined by the
394 court. The provisions of Alabama law applicable to unclaimed
395 property held by the state shall apply.

396 (j) If a tax lien that was purchased pursuant to this
397 article is not redeemed and the holder of the tax lien
398 certificate fails to commence a tax lien foreclosure action on
399 or before 10 years ~~from the date of the tax lien~~
400 ~~certificate~~after the tax lien auction or the tax official's
401 sale of the tax lien, the tax lien certificate shall expire
402 and the lien shall become void.

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

407 Section 2. This act shall become effective on October
408 1, 2024, and shall apply to all tax liens for which a final
409 judgment has not been rendered in a foreclosure and quiet
410 title action on or before October 1, 2024.

