

HB270 INTRODUCED



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



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SYNOPSIS:

Under existing law, a county tax collecting official may choose to deal with a tax delinquent property in one of two ways. A tax delinquent property may either be sold in a tax sale to a tax sale purchaser, or the tax lien may be sold to a tax lien certificate holder.

This bill would provide that an owner who is unable to redeem his or her property or the tax lien certificate, depending on the system used in the county at the time of the delinquency, would have an opportunity to receive the difference between the amount owed to the government and the value of their property, as reflected by the property's sale price.

Under existing law, property may sell at a tax sale for more than the amount of the decree of sale, which includes taxes, fees, charges and costs, and expenses owed to the county. The difference between the amount paid at a tax sale and the amount of the decree of sale is the excess.

After the tax sale, the tax-delinquent owner or other persons with an interest in the property such as a mortgagor may redeem the property within three years from the date of the tax sale by paying the amount paid by the tax sale purchaser plus certain additional



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29 costs. This is known as a statutory redemption. Any
30 person who redeems during this initial statutory
31 redemption period is entitled to receive the excess
32 funds.

33 After the expiration of the initial statutory
34 redemption period, this bill would provide for the
35 owner of the land at the time of the tax sale or a
36 subsequent owner with a properly recorded deed or
37 conveyance to receive the excess funds without a
38 redemption if the owner or subsequent owner executes a
39 release and waiver releasing any right to redeem the
40 property and waiving any and all interest in the
41 property, which must be recorded with the judge of
42 probate.

43 This bill would also expand the 10-year period
44 during which the excess funds must be paid out for
45 specified calendar years.

46 Under existing law, in those counties in which
47 tax liens are sold, if no person redeemed the tax lien
48 certificates during the three-year statutory redemption
49 period, the holder of all tax lien certificates on the
50 property may bring an action to foreclose the right to
51 redemption and quiet title to the property. This
52 requires that notice be provided to a number of
53 specified persons with potential legal interests in the
54 property.

55 This bill would provide that an action to
56 foreclose the right to redemption and quiet title may



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57 be brought not less than four years, rather than three
58 years, after the auction or sale of a tax lien.

59 This bill would provide further details of who
60 qualifies as the holder of all tax lien certificates on
61 a property.

62 This bill would provide for notification of the
63 action to additional persons with potential legal
64 interests in the property.

65 This bill would provide that a person who is
66 entitled to redeem the tax liens may demand that, in
67 lieu of the holder of the tax lien certificates being
68 vested in the property, the property be sold at public
69 auction.

70 This bill would provide details regarding the
71 conduct of the public auction and the distribution of
72 proceeds from the auction.

73 This bill would also provide that any surplus in
74 the proceeds shall be distributed to the original owner
75 of the tax-delinquent property or his or her heirs or
76 other successors.

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78

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A BILL

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TO BE ENTITLED

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AN ACT

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83

Relating to tax delinquent properties; to amend

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Sections 40-10-28 and 40-10-197, Code of Alabama 1975, to



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85 further provide for the distribution of excess funds arising
86 from tax sales occurring during certain time periods; to
87 further provide the period of time during which certain tax
88 lien purchasers may bring an action to foreclose the right to
89 redeem and quiet title to property under certain conditions;
90 to further provide procedure for sending notice of the action
91 to defendants and for representing certain defendants; to
92 further provide the circumstances under which the court may
93 render judgment; to further provide rights not extinguished by
94 the foreclosure; to provide the procedure for sale of the
95 property at public auction and distribution of proceeds if a
96 public auction is demanded by certain persons entitled to
97 redeem; to provide for the distribution of surplus proceeds;
98 to provide that the act shall apply only to tax liens for
99 which there has been no final judgment in a foreclosure and
100 quiet title action on or before the effective date of this
101 act.

102 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

105 "§40-10-28

106 (a) (1) The excess arising from the sale of any real
107 estate remaining after paying the amount of the decree of
108 sale, including costs and expenses subsequently accruing,
109 shall be paid over to a person or entity who has redeemed the
110 property as authorized in Section 40-10-120 or any other
111 provisions of Alabama law authorizing redemption from a tax
112 sale, provided proof that the person or entity requesting



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113 payment of the excess has properly redeemed the property is
114 presented to the county commission within three years after
115 the tax sale has occurred. The county commission may retain
116 any interest earned on those funds. Until and unless the
117 property is redeemed, the excess funds from the tax sale shall
118 be held in a separate account in the county treasury during
119 the three-year period. If at the end of the three-year period
120 there has been no proper request for the excess funds, those
121 funds and any interest earned on those funds shall be
122 deposited to the credit of the general fund of the county and
123 shall thereafter be treated as part of the general fund of the
124 county.

125 (2) The Department of Revenue shall ~~promulgate~~adopt
126 rules authorizing the county commission to issue a voucher in
127 the amount of the excess bid to a person or entity ~~which~~that
128 has paid all other costs of redemption as required in this
129 subsection. The person or entity redeeming property may
130 present the voucher to the judge of probate in lieu of the
131 amount equal to the excess bid to complete the redemption
132 process. The rules ~~promulgated~~adopted by the department shall
133 include forms to be utilized for issuing such vouchers.

134 (b) At any time ~~more than~~after three years but ~~within~~no
135 later than 10 years after a tax sale that occurred in calendar
136 year 2016 or later, or at any time after three years but no
137 later than 11 years after a tax sale that occurred in calendar
138 year 2015, or at any time after three years but no later than
139 12 years after a tax sale that occurred in calendar year 2014,
140 the excess funds arising from the sale shall be paid to



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141 ~~either~~any of the following:

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

146 (2) To the owner of the land at the time of the tax
147 sale or a subsequent owner, upon proof provided to the tax
148 collector or other official performing those duties that the
149 land has been redeemed by negotiated agreement from the
150 purchaser at the tax sale or the purchaser's successor in
151 interest. Proof of negotiated redemption agreement shall
152 include the following:

153 a. A copy of a properly recorded deed or conveyance to
154 the redeeming party executed by the party from whom redemption
155 was made.

156 b. If the redeeming party was not the owner of the land
157 at the time of the tax sale, a copy of a properly recorded
158 deed or conveyance from the owner at the time of the tax sale
159 to the subsequent owner.

160 c. If the party from whom redemption was made is a
161 successor in interest of the tax sale purchaser, a copy of a
162 properly recorded deed or conveyance from the tax sale
163 purchaser to the successor in interest.

164 (3) To the owner of the land at the time of the tax
165 sale or a subsequent owner with a properly recorded deed or
166 conveyance without a redemption if the owner or subsequent
167 owner executes a release and waiver releasing any right to
168 redeem the property and waiving any and all interest in the



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169 property which shall be recorded with the judge of probate.

170 (c) Upon receipt of proof of redemption or proof of
171 release and waiver as required in subsection (b), the county
172 commission shall order the payment of the excess funds as
173 provided therein and retain any interest earned on those
174 funds. If proof of redemption or proof of release and waiver
175 is not received within 10 years after the tax sale that
176 occurred in calendar year 2016 or later, within 11 years after
177 a tax sale that occurred in calendar year 2015, or within 12
178 years after a tax sale that occurred in calendar year 2014,
179 the excess funds and any interest earned on the funds shall
180 become the property of the county.

181 (d) Notwithstanding any other provision of law, the
182 process for calculation, distribution, and retention of any
183 excess funds resulting from the sale of real estate for taxes,
184 including any interest earned on the funds, shall be governed
185 by this section and shall apply regardless of when the tax
186 sale occurred. Any prior actions taken regarding excess funds
187 and any interest earned on the funds which were made in good
188 faith reliance pursuant to this section prior to July 2, 2017,
189 are ratified, validated, and affirmed."

190 "§40-10-197

191 (a) (1) At any time not less than ~~three~~four years after
192 the tax lien auction or the tax official's sale of a tax lien
193 but not more than 10 years after the auction or sale, if the
194 tax lien has not been redeemed, a holder of all of the sold,
195 unexpired, outstanding tax lien certificates for a parcel of
196 property may bring in the circuit court of the county in which



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197 the property is located an action to foreclose the right to
198 redeem and to quiet title to the property in the name of the
199 holder of the tax lien certificate. If any applicable law or
200 court order prohibits bringing an action to foreclose the
201 right to redeem and to quiet title to the property, the
202 limitation provided in this section shall be extended 12
203 months following the termination of the prohibition.

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

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

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

217 a. The property owner or owners of record, according to
218 the property tax records of the county in which the property
219 is located, at the ~~owner's~~ address shown in the records and at
220 the street address of the property if different.

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

224 c. The tax collecting official of the county in which



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225 the property is located.

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

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

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

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

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

239 (2) The holder of the tax lien certificates shall make
240 an affidavit setting forth the names of the persons, entities,
241 and organizations that were sent notice pursuant to
242 subdivision (1) and how these persons were identified,
243 including, but not limited to, the records searched. This
244 affidavit must be filed in the subsequent action.

245 ~~(2)~~ (3) The notice shall include the property owner's
246 name, the date of mailing, the uniform parcel number, the
247 legal description and street address, if any, of the property,
248 and the name and address of the holder of the tax lien
249 certificate, ~~and a statement that the holder proposes to file~~
250 ~~a tax lien foreclosure action as soon as 30 but not later than~~
251 ~~180 days after the date of mailing of the notice.~~ If the
252 holder fails to send the notice required by this subsection,



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253 the court shall dismiss any tax lien foreclosure action filed
254 under this article. The notice shall also include a statement
255 or words substantially to the same effect, as follows:

256 Notice is hereby given that the holder of these tax
257 liens proposes to file a tax lien foreclosure action as soon
258 as 30, but not later than 180, days following the date this
259 notice is mailed. Once this action is served, anyone who is
260 named as a defendant has 30 days to file an answer, or a
261 default judgment may be entered against that person. Any
262 person with a right to redeem the property may do so at any
263 time prior to the entry of final judgment in the proposed
264 action, either by payment to the tax collecting official as
265 provided by law before an action is commenced, or by filing a
266 timely answer or motion in the court after an action has been
267 commenced. A judgment quieting title may cause a person with
268 an interest in or claim on the property to lose their interest
269 or claim. Any person claiming an interest in the property may
270 appear in the action. Any person who is entitled to redeem may
271 request that the property be sold at public auction.

272 ~~(e)~~ (d) (1) An action shall be commenced by filing a
273 complaint in compliance with Section 6-6-561. The holder shall
274 not be required to plead or prove possession of the property.

275 The holder shall name as parties defendant to the tax lien
276 foreclosure action all persons entitled to redeem under this
277 article. Upon filing the tax lien foreclosure action, the
278 holder shall record a notice as provided by Section 35-4-131.
279 Service of the complaint shall be made in accordance with
280 Section 6-6-563. Notice shall also be published as provided by



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281 Section 6-6-564. An answer must be filed within 30 days
282 following the date of service, as provided by Section 6-6-565.

283 (2) On the filing of a complaint, should it appear that
284 any of the defendants is a minor or incapacitated or should
285 the identity of some, or all, of the defendants be unknown,
286 the court shall promptly appoint a guardian ad litem to
287 represent and defend the interest of the minor or
288 incapacitated defendant, or unknown party in the proceeding.

289 (3) If the taxes have been paid by a person authorized
290 to pay the taxes for any year in the intervening period
291 between the first unredeemed lien and the filing of the
292 action, the holder must also pay into court the amount of
293 taxes that were paid, plus the interest on those taxes at the
294 rate of interest specified in the oldest unredeemed tax lien
295 certificate. If the property is foreclosed or sold through
296 auction, this amount shall be distributed to the person who
297 paid the taxes.

298 ~~(d)~~ (e) (1) In a tax lien foreclosure action, if the
299 court finds that: (i) the tax lien auction or sale is valid;
300 (ii), ~~that~~ proper notice has been ~~given~~ sent; (iii), ~~that~~ the
301 holder is the holder of all of the sold, ~~unexpired,~~
302 ~~outstanding~~ tax certificates on the property; (iv), ~~and that~~
303 the tax liens have not been redeemed; and (v) no person has
304 demand that the property be sold by public auction under
305 this section, the court shall enter judgment foreclosing the
306 right of the defendant or defendants to redeem, shall vest
307 good and marketable fee simple title in the holder, free of
308 encumbrances, claims, and liens except as otherwise provided



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309 in subsection (f), and shall direct the circuit clerk to
310 execute and deliver to the party in whose favor judgment is
311 entered a deed conveying the ~~interests of the defendants in~~
312 ~~the~~ property described in the tax lien certificates.

313 (2) After entry of judgment, a party whose rights to
314 redeem the tax liens ~~are~~have been foreclosed has no further
315 legal or equitable right, title, or interest in the property,
316 subject to the right of appeal and stay of execution as in
317 other civil actions.

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

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

- 327 a. The date of the judgment.
328 b. The number and style of the case.
329 c. The name of the plaintiff, who shall be stated as
330 the grantee.
331 d. The legal description of the property.
332 e. The uniform parcel number of the property.
333 f. The date of the conveyance.

334 (2) The original deed shall be delivered to the
335 plaintiff for recording in the probate records in the county
336 in which the property is located.



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337 ~~(g)~~ (h) Any person who is entitled to redeem under this
338 article may redeem at any time before judgment is entered,
339 notwithstanding that an action ~~to foreclose under this section~~
340 has been commenced, by paying into the circuit court the
341 redemption amount that would have been paid to the tax
342 collecting official under Section 40-10-193 ~~plus any other~~
343 ~~amounts determined by the court under this section. If the~~
344 ~~person who redeems has been served personally or by~~
345 ~~publication in the action, or if the person became an owner~~
346 ~~after the action began and redeems after a notice is recorded~~
347 ~~pursuant to subsection (c), the redeeming party shall also pay~~
348 ~~into the court with the redemption amount the costs incurred~~
349 ~~by the plaintiff in the action, including reasonable attorney~~
350 ~~fees actually incurred, to be determined by the court. The~~
351 ~~court shall then order the tax lien certificates cancelled and~~
352 ~~the tax liens void, the redemption amount be paid to the tax~~
353 ~~collecting official, and the costs and attorney fees be paid~~
354 ~~to the plaintiff~~ for all sold, unexpired, outstanding tax lien
355 certificates held by the holder, plus the amount of any other
356 taxes that were paid pursuant to this section. If the person
357 who redeems has been served in the action, or if the person
358 became an owner after the action was commenced and redeems
359 after a notice is recorded pursuant to subsection (d), the
360 court shall also enter an order requiring the repayment of
361 reasonable costs and reasonable attorney fees actually
362 incurred in the action as established by the law and evidence,
363 including, but not limited to, the filing fee. An award of
364 costs and fees under this section shall be entered as a



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365 judgment against the redeemer, which may be enforced in the
366 same manner as other judgments.

367 ~~(h)~~ (i) (1) a. Any person entitled to redeem, without
368 redeeming, may respond to the action by demanding that the
369 parcel of property be sold at public auction. By demanding
370 that the parcel of property be sold at public auction, the
371 person concedes that the court may enter judgment foreclosing
372 the right to redeem and vest good and marketable fee simple
373 title in favor of the highest bidder.

374 b. A demand for auction may be made at any time before
375 judgment is entered and may be made in the alternative,
376 however no auction shall occur before any other defense raised
377 by any other party defendant has been waived or adjudicated.
378 The demand for auction must be served on all parties as
379 provided in the Alabama Rules of Civil Procedure for pleadings
380 subsequent to the original complaint. Any other party to the
381 action, except for the holder of the tax lien certificates,
382 may object to the demand within 30 days following service. A
383 holder of the tax lien certificates receiving the demand shall
384 file an accounting of the reasonable costs incurred in the
385 action within 30 days.

386 (2) If the court determines that the request for
387 auction of the parcel of property is made by a proper person
388 and is due to be granted, the court shall also determine the
389 reasonable costs actually incurred by the holder of the tax
390 lien certificates in the action in accordance with this
391 section, plus the cost of the auction. It shall order a
392 suitable commissioner to conduct the auction no later than 180



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393 days from the date of the order.

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

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

403 (5) The minimum bid at the sale shall be set by the
404 court as the amount required to redeem all outstanding tax
405 lien certificates under Section 40-10-193, plus any back taxes
406 paid prior to bringing the action and the costs and fees
407 ordered by the court. The holder of the tax lien certificates
408 shall automatically be deemed to bid the minimum amount. If
409 the holder is the highest bidder, he or she shall receive a
410 credit toward the purchase price equal to the minimum bid.

411 (6) The suitable commissioner shall report the results
412 of the auction to the court for confirmation and shall deposit
413 the proceeds of the auction, if any, with the clerk of court.
414 The court shall enter judgment foreclosing the right of the
415 defendant or defendants to redeem and shall vest good and
416 marketable fee simple title to the highest bidder. The court
417 shall direct the circuit clerk to execute and deliver a deed
418 as described in this section to the highest bidder, except
419 that, if no bid other than the minimum bid is received, the
420 holder shall pay the cost of the auction prior to receiving



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421 the deed.

422 (7) The proceeds of the auction shall be applied first
423 to the cost of the auction, and then distributed to the holder
424 of the tax lien certificates in an amount equal to the amount
425 required to redeem, plus any due and owing taxes, interest,
426 penalties, fees, and costs that were paid by him or her prior
427 to filing the action, plus the reasonable costs and fees
428 actually incurred in the action as previously determined by
429 the court. Any surplus shall then be distributed to the owner
430 or owners of the property or their heirs or other successors
431 in interest, or to another proper person, as determined by the
432 court. The provisions of Alabama law applicable to unclaimed
433 property held by the state shall apply.

434 (j) If a tax lien that was purchased pursuant to this
435 article is not redeemed and the holder of the tax lien
436 certificate fails to commence a tax lien foreclosure action on
437 or before 10 years ~~from the date of the tax lien~~
438 ~~certificate~~after the tax lien auction or the tax official's
439 sale of the tax lien, the tax lien certificate shall expire
440 and the lien shall become void.

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

445 Section 2. This act shall become effective on October
446 1, 2024, and shall apply to all tax liens for which a final
447 judgment has not been rendered in a foreclosure and quiet
448 title action on or before October 1, 2024.



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