HB335

PD7XGEE-1

By Representative Hill

RFD: Judiciary

First Read: 19-Mar-24

SYNOPSIS:

Under existing law, all tax liens representing unpaid and delinquent taxes on real property are subject to a tax lien auction or a tax lien sale.

This bill would require a public auction to take place between 8:30 a.m. and 4:00 p.m.

Under existing law, a person who purchases a tax lien at auction is subject to three separate fees.

This bill would consolidate the three separate fees into one fee, with the total amount remaining consistent.

Under existing law, the holder of a tax lien certificate has the first right to purchase a tax lien relating to a subsequent delinquency.

This bill would provide that if a holder of a tax lien certificate fails to exercise the first right to purchase, the cost of the redemption price of the tax lien shall be added to the purchase price at the tax lien sale or auction and would provide for the transfer of the tax lien certificate and included rights.

This bill would further provide for who may redeem a tax lien that has been auctioned or sold.

This bill would prohibit a holder of a tax lien certificate from entering upon or possessing any

property until a deed is received from the circuit clerk.

This bill would prevent a holder of a tax lien certificate from being criminally or civilly liable for violations in certain circumstances.

This bill would also establish that certain books and records are prima facie evidence of an auction, sale, or redemption of a tax lien certificate.

A BILL

TO BE ENTITLED

AN ACT

Relating to tax lien auctions and sales; to amend Sections 40-10-182, 40-10-183, 40-10-184, 40-10-186, 40-10-187, 40-10-191, 40-10-193, 40-10-198, 40-10-199, and 40-10-200, Code of Alabama 1975; and to add Section 40-10-202 to the Code of Alabama 1975; to further provide for times a public auction may be held; to further provide for fees; to provide for the purchase price of a tax lien if a holder of a tax lien certificate fails to purchase a subsequent tax lien; to provide for the transfer of the tax lien and rights of the purchaser; to further provide for who may redeem a tax lien that has been auctioned or sold; to further provide for a title report for use in a foreclosure and quiet title action;

to prohibit a holder of a tax lien certificate from entering upon or possessing any property until a deed is received; to prevent a holder of a tax lien certificate from being criminally or civilly liable for violations in certain circumstances; and to provide that certain books and records are prima facie evidence in certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-10-182, 40-10-183, 40-10-184, 40-10-186, 40-10-187, 40-10-191, 40-10-193, 40-10-198, 40-10-199, and 40-10-200, Code of Alabama 1975, are amended to read as follows:

"§40-10-182

(a) All tax liens representing unpaid and delinquent taxes on real property shall be subject to a tax lien auction or a tax lien sale.

(b)(1) If the sale of a tax lien is chosen as the method to collect delinquent property taxes, the tax collecting official of any county shall conduct a public auction for the sale and transfer of delinquent tax liens between the hours of 8:30 a.m. and 4:00 p.m. on the auction date. The tax collecting official shall notify the delinquent taxpayer of the auction and all charges pursuant to Section 40-10-183 at least 30 days prior to the tax lien auction by first class mail and by any one of the following:

a. Advertising ~~for~~ once a week for three consecutive weeks in a newspaper with general circulation in the county where the property is located.

b. Advertising on an online website controlled by the

tax collecting official and accessible from the tax collecting official's website.

c. Posting at the courthouse of the county and if possible in a public place in the precinct where the property is located.

(2) The notices shall declare the time, the method, whether online or in person, and the location of the auction.

(c) The tax collecting official may auction or sell tax liens representing delinquent taxes for any year taxes are delinquent and unpaid."

"§40-10-183

At least 30 days prior to any tax lien auction, the tax collecting official shall prepare and maintain a list of all unsold tax liens. The list shall be known as the tax lien auction list and shall contain all of the following:

(1) The names of the several persons appearing in the latest tax roll as the respective owners of tax-delinquent properties.

(2) A description of each property as it appears in the latest tax roll.

(3) The year or years for which taxes are delinquent on each property.

(4) The principal amount of the delinquent taxes and the amount of accrued and accruing interest thereon and penalties, fees, and administration costs pursuant to Section 40-10-184(b) relating to each year of assessment."

"§40-10-184

(a) On the day and time designated for a tax lien

auction, the tax collecting official shall proceed to auction all tax liens described in the tax lien auction list compiled as provided in Section 40-10-183, except those for which the taxes, penalties, interest, fees, and costs ~~thereon~~ have been paid. Any tax lien unsold after a tax lien auction shall ~~be retained by the county~~ continue pursuant to Section 40-1-3 for future auction or sale as provided in this article. Interest shall continue to accrue on unsold tax liens at the rate imposed on delinquent real property taxes.

(b)(1) A tax lien shall be sold at auction pursuant to this article to the person who:(i) pays all taxes due, including unpaid taxes for previous years, interest, penalties, fees, and costs due on the property, ~~including an origination cost of twenty dollars ($20) as of the date of auction and a twenty dollar ($20) auction~~ (ii) pays an administrative fee~~, and who, in addition,~~ of forty-five dollars ($45), effective upon the preparation of the tax lien auction list, plus the amount to be paid to the holder of a tax lien certificate who has not exercised his or her first right to purchase as provided in Section 40-10-191; and (iii) bids the lowest interest rate on the amount required to be paid to redeem the property from the sale.

(2) The beginning interest rate bid shall not exceed a rate of 12 percent and additional bids may be made at a rate less than the immediately preceding bid.

(3) If ~~the interest rate bid for the property reaches 0.00 percent and more than one bidder remains,~~ an in-person auction ends in a tie and the winner cannot be determined, the

tax collecting official shall draw lots to determine the winning bidder ~~for the property~~. If an online auction ends in a tie and the winner cannot be determined, the tie shall be resolved by a random number generator.

(c) The sale of a tax lien does not extinguish any deed restriction, deed covenant, or easement on or appurtenant to the parcel. A tax lien offered for auction or sale shall be identified by a uniform parcel number and a legal description."

"§40-10-186

(a) The purchase price for a tax lien shall be the amount ~~of delinquent taxes plus any interest, penalties, fees, and costs accrued as of the date of the auction or sale~~as required in Section 40-10-184.

(b) The purchase price for a tax lien shall be paid in a form acceptable to the tax collecting official not later than one hour before close of business on the date of the auction or sale or, if the auction is online, not later than the close of business two days following the date of the auction.

(c) The purchase price for a tax lien received by the tax collecting official shall be credited to the tax collecting official for purposes of calculating commissions, if any, on taxes collected by the tax collecting official pursuant to Section 40-5-4."

"§40-10-187

(a) The tax collecting official, upon receipt of the purchase price, shall make, execute, and deliver a tax lien

certificate to each purchaser~~ at a tax lien sale or auction or to each assignee thereafter and shall collect from the purchaser or assignee a fee of five dollars ($5) for each tax lien certificate~~. The tax lien certificate shall be in a form provided by the Department of Revenue and shall also include a certificate of redemption form as provided in Section 40-10-194.

(b) A tax lien certificate shall evidence the auction or sale or assignment to the holder of the tax lien certificate of the delinquent and unpaid taxes, penalties, interest, fees, and costs set forth therein and represented by the tax lien.

(c) A tax lien certificate shall bear the interest rate per annum as bid on by the purchaser at the tax lien auction or as agreed upon by the purchaser at the tax lien sale, until the tax lien certificate is redeemed as provided pursuant to Section 40-10-193 or Section 40-10-197.

(d) The tax lien certificate shall do all of the following:

(1) Describe the real property on which a tax lien is auctioned or sold as it is described in the tax lien auction list.

(2) Specify the date on which the tax lien was auctioned or sold to the original purchaser.

(3) Specify the year of assessment to which the tax lien relates and the amount for which the tax lien was auctioned or sold to the original purchaser.

(4) Recite the amount of all taxes, penalties,

interest, fees, and costs due on the property, which relate to the year of assessment described in subdivision (3), as of the date specified in subdivision (2).

(5) Recite the rate per annum bid on by the purchaser at the tax lien auction or agreed upon at the tax lien sale on the amount described in subdivision (4) from the date specified in subdivision (2).

(e) The purchaser of a tax lien certificate may transfer and assign the certificate to any person, and the transferee of a tax lien certificate may subsequently transfer the certificate to any other person. The transferor of a tax lien certificate shall endorse the certificate and shall swear to the endorsement before a notary public or other officer empowered to administer oaths. The transferee shall present the endorsed tax lien certificate to the tax collecting official who prepared and executed the certificate, or his or her successor, who, for a fee of five dollars ($5), shall acknowledge the transfer on the certificate and shall make note of the transfer on the record of tax lien auctions and sales kept as provided in Section 40-10-188. An assignment and transfer as provided in this subsection shall vest in the assignee all the right and title of the original purchaser.

(f) A security interest in a tax lien certificate may be created and perfected in the manner provided for general intangibles under Title 7. Notice of the security interest shall be given to the tax collecting official pursuant to Section 7-9A-406 and as otherwise required by law.

(g) Within 30 days of a completed tax lien auction or

sale, the tax collecting official shall send notice to the property owner for whom the property was assessed informing the property owner that the tax lien has been auctioned or sold. The notice shall include the date of auction or sale and the name of the purchaser and shall be made by first class mail to the address listed in the assessment."

"§40-10-191

(a) The holder of a tax lien certificate shall have the first right to purchase the tax lien relating to a subsequent delinquency on the property described in the tax lien certificate of the holder. A holder of the certificate shall exercise this right between five and 30 days prior to the tax lien auction date, and the purchase by the holder shall be effective as of the date of the tax lien auction as if the holder has been the winning bidder. A holder of the certificate who exercises this right, upon payment of the purchase price, shall be issued a certificate of purchase in accordance with Section 40-10-187 and is entitled to the same interest rate as shown on the previous tax lien certificate. The owner of the property shall be notified within 30 days of the completion of the first right of purchase, in accordance with Section 40-10-187(g). ~~The owner of the property may pay the current year taxes due once the property owner redeems all outstanding tax liens on the property.~~

(b)(1) If the holder of a tax lien certificate fails to exercise the first right to purchase a subsequent tax lien, an amount equal to the redemption price of the tax lien shall be added to the purchase price at the subsequent tax lien sale or

auction and the tax lien certificate shall be transferred to the purchaser of the subsequent tax lien.

(2) A transfer of the tax lien certificate as provided in this subsection shall vest in the transferee all the rights and title of the previous holder of the tax lien certificate; the previous tax lien certificate shall be canceled; and a new tax lien certificate shall be issued to the purchaser.

(3) The amount paid from the transfer shall be distributed to the previous holder of the tax lien certificate, along with a notice of cancellation of the previous tax lien certificate, within 30 days of the receipt of the purchase price.

~~(b)~~ (c) In the event that a mortgagee is or becomes the holder of a tax lien certificate, the mortgagee may add all costs, fees, interest, penalties, and taxes regarding the tax sale to the principal of the loan.

~~(c)~~ (d) A holder of a tax lien certificate may abandon the certificate at any time upon notification given to the tax collecting official and the surrender of the tax lien certificate. Abandonment of a tax lien certificate relinquishes all rights of recovery of any monies or expenses."

"§40-10-193

(a)(1) Tax liens auctioned or sold may be redeemed by any of the following:

a. The owner, including a partial owner under Section 40-10-195, or his or her heirs or personal ~~representative~~ representatives.

b. Any mortgagee or purchaser of the property or any portion of the property.

c. ~~Any other person listed under subsection (a) of Section 40-10-120, if the property had been sold for taxes.~~Any person having an interest in the property or any portion of the property, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien on the property or any portion of the property.

(2) Property may be redeemed under subdivision (1) by payment to the tax collecting official of the amount specified on the tax lien certificate as the total amount of delinquent tax, interest, penalties, fees excluding lost certificate fees provided in Section 40-10-190, and costs paid to purchase the tax lien and to obtain a title report for use in a forclosure and quiet title action under Section 40-10-197, plus interest at the rate specified in the tax lien certificate, plus any due and owing taxes, interest, penalties, fees, and costs due. The tax collecting official shall provide a separate receipt for any current taxes, interest, penalties, fees, or costs paid.

(b) Statutory fees paid by the holder of the tax lien certificate in connection with the tax lien certificate shall be added to the amount payable on redemption and shall also bear interest at the rate of interest specified in the tax lien certificate."

"§40-10-198

(a) Each holder of a tax lien certificate shall be entitled to the same rights and remedies with respect to the

collection of the amounts due on ~~such~~ the tax lien certificate as are available to the tax collecting official with respect to the collection of delinquent taxes, including, but not limited to, the right to institute garnishment proceedings against the taxpayer for the payment of taxes.

(b) The holder of a tax lien certificate shall not be entitled to charge the taxpayer for the release or satisfaction of the tax lien any amount more than what would otherwise have been available to the tax collecting official with respect to the collection of the delinquent tax.

(c) The holder of a tax lien certificate shall not have the right to enter upon or otherwise possess any property upon which he or she holds a tax lien until he or she receives a deed from the circuit clerk pursuant to a court action under this article. Prior to receiving a clerk's deed, the holder of a tax lien certificate shall not make any repairs or alterations to the property or require the property owner to pay mesne profits or rents as part of any redemption amount. The holder of a tax lien certificate shall not be held criminally or civilly liable for any code violation on the property occurring prior to obtaining a clerk's deed."

"§40-10-199

(a) Tax liens that are not sold at the tax lien auction conducted by the tax collecting official shall be separated in the tax lien auction list as prescribed by Section 40-10-183 and ~~the county shall retain~~ the lien shall continue pursuant to Section 40-1-3. The tax collecting official, ~~within 45 days~~ at any time after the tax lien auction date, may sell at

private sale an unsold tax lien for no less than all taxes, interest, penalties, costs, and fees, plus the amount to be paid to the holder of a tax lien certificate who has not exercised his or her first right to purchase as provided in Section 40-10-191. The purchaser at private sale shall be entitled to interest on the amount paid at a rate agreed to by the tax collecting official, not to exceed 12 percent. All private tax lien sales shall be entered in the record of tax lien auctions and sales, as provided in Section 40-10-188.

(b) All tax liens that remain unsold by the tax lien auction or sale shall be included in all future tax lien auctions or sales until sold.

(c) Any tax lien that does not sell at auction shall be reported to the county commission when seeking approval of errors in assessments, litigations, or insolvents as the tax collecting official ~~will~~ shall be allowed credit for taxes due to this state upon final settlement with the state Comptroller."

"§40-10-200

(a)(1) Except as provided in subdivision (2), ~~no~~ a tax ~~assessor,~~assessing or tax collecting official, commissioner of revenue, ~~officer~~ judge or clerk of the court with jurisdiction over actions filed under this article, or any employee of any of those offices shall not knowingly have a direct or indirect financial interest in the purchase of any tax lien sold for delinquent taxes within their jurisdiction. A sale made in violation of this subsection is void.

(2) This section does not apply to an attorney

representing a party in the purchase of a tax lien sold for delinquent taxes or an employee of the attorney.

(b) A violation of this section ~~shall be~~ is a Class C misdemeanor and the sureties on his or her official bond shall be liable for a penalty not to exceed five hundred dollars ($500) and to be fixed by the circuit judge with jurisdiction in the county. The penalty shall be remitted to the general fund of the county."

Section 2. Section 40-10-202 is added to the Code of Alabama 1975, to read as follows:

§40-10-202

Unless otherwise provided, in the trial of any issue involving the auction, sale, or redemption of a tax lien certificate, an action for public auction, or a foreclosure and quiet title action filed under this article, the originals or certified copies of the books and records belonging to the office of the tax assessing official, tax collecting official, or board of equalization required to be kept by law shall be prima facie evidence of the facts included in the books or records.

Section 3. This act applies to all tax liens for which a final judgment in a foreclosure and quiet title action has not been rendered on or before June 1, 2024

Section 4. This act shall become effective on June 1, 2024.