

SB172 INTRODUCED



1 QHAP51-1

2 By Senators Givhan, Smitherman

3 RFD: Fiscal Responsibility and Economic Development

4 First Read: 05-Apr-23

5



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

Existing law for county and ad valorem tax sales conducted under Sections 40-10-1 through 40-10-143, Code of Alabama 1975, recognizes two distinct redemption periods. The first period, commonly referred to as the "administrative" or "statutory" redemption period, begins on the date a property is sold by the county and continues for at least three years.

This bill does not modify or affect this initial redemption period. This bill relates to the second redemption period, referred to as the "judicial" redemption period, which begins at the conclusion of the administrative redemption period.

This bill provides that, following the statutory redemption period, anyone with an interest in the property (i.e. purchasers, owners, mortgagees, and lienholders) may bring suit to determine and establish all rights and interests in the property sold so that clear title to the property can be obtained. This bill would clarify that a tax sale purchaser may, following the administrative redemption period, bring suit to establish the purchaser's title to the property without having first maintained possession of the property. Anyone having a right to redeem or challenge the tax sale may file suit, or counterclaim, to resolve such



SB172 INTRODUCED

29 claims.

30 This bill would establish, with certain
31 exceptions, an absolute six-year deadline for an owner,
32 mortgagee, or lienholder to redeem.

33 This bill would eliminate the time limit
34 identified in Rioprop Holdings, LLC v. Compass Bank,
35 256 So.3d 674 (Ala. Civ. App. 2018) for a tax purchaser
36 to obtain possession or file suit for possession of the
37 property to avoid forfeiture of the purchaser's
38 interest in the property.

39 This bill would also affirm the existing right
40 of holders of mortgages and liens recorded at the time
41 of the tax sale to redeem within one year of written
42 notice of the tax sale given by the purchaser; the
43 right of an owner who remains in actual possession of
44 the property to redeem notwithstanding the six-year
45 deadline; the right of minors and incompetent persons
46 to redeem; and that the six-year deadline to redeem
47 does not apply to the state or to owners of property
48 where taxes had been paid at the time of sale or were
49 not subject to taxation.

50

51

52

A BILL

53

TO BE ENTITLED

54

AN ACT

55

56 Relating to rights and remedies of a purchaser of real



SB172 INTRODUCED

57 estate sold at a tax sale; to amend Section 40-10-82 of the
58 Code of Alabama 1975, to provide limitations of actions that
59 may be brought in circuit court to resolve certain issues
60 related to real estate sold for the payment of taxes and to
61 limit the period of time for a land owner to file a motion to
62 redeem real estate sold for the payment of taxes, to challenge
63 the validity of a tax sale, or to pay a court ordered judgment
64 and costs.

65 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

66 Section 1. Section 40-10-82, Code of Alabama 1975, is
67 amended to read as follows:

68 "§40-10-82

69 ~~No action for the recovery of real estate sold for the~~
70 ~~payment of taxes shall lie unless the same is brought within~~
71 ~~three years from the date when the purchaser became entitled~~
72 ~~to demand a deed therefor; but~~ (a) (1) The purchaser or his or
73 her transferee and any person entitled to redeem real estate
74 sold for the payment of taxes, at any time following the date
75 the purchaser becomes entitled to demand a deed for the real
76 estate purchased, as provided in Section 40-10-120(a), may
77 bring an action in circuit court to resolve all rights of
78 possession, redemption, title, and all related issues.

79 (2)a. Should the person bringing the action assert a
80 right to redeem or a challenge to the validity of the tax
81 sale, he or she must pay into the court the amount of money
82 due under Section 40-10-122(a), less the amount of any excess
83 bid, within 30 days of asserting the right or the challenge.

84 b. In the event that the person fails to pay this



SB172 INTRODUCED

85 amount into the court, upon motion made and after a hearing,
86 the court shall dismiss the claim to redeem or to challenge
87 the validity of the tax sale, with prejudice.

88 (b) (1) In an action brought pursuant to subsection(a),
89 the court shall fully and finally resolve all issues among all
90 parties to the action, including, without limitation, all of
91 the following:

92 a. The validity of the sale.

93 b. The title.

94 c. The right to redeem.

95 d. The tolling of the statute of limitations under
96 subsections (c) and (e).

97 e. The possession or right to possession of, or adverse
98 possession of, the property.

99 (2) The court shall enter any of the following orders,
100 as appropriate:

101 a. Granting relief to the respective parties in the
102 event of an invalid tax sale pursuant to the remedies allowed
103 by other provisions of this chapter for the same.

104 b. Allowing the redemption, conditioned upon full
105 payment of all redemption amounts within 90 days, including
106 those determined by the court to be due under Section
107 40-10-122 and directing proper payment or credit of any excess
108 purchase amount in accordance with Sections 40-10-28 and
109 40-10-78.

110 c. Entering judgment in favor of the purchaser for the
111 real estate along with all title and interest in the real
112 estate, thus divesting and terminating all title and interest



SB172 INTRODUCED

113 in the real estate out of all parties to the action claiming a
114 right to redeem.

115 (3) Nothing in this subsection shall extend any
116 existing right or provide any new right to redeem or to
117 invalidate a tax sale.

118 (c) Except as provided in subsections (d), (e), (f),
119 and (g), no action, claim, counterclaim, motion, or other
120 right to seek redemption or to challenge the validity of a tax
121 sale shall lie unless the same is brought within six years
122 from the date of the tax sale.

123 (d) Notwithstanding subsections (a) or (c), if the
124 owner of ~~such the~~ real estate was, at the time of ~~such the~~
125 sale for the payment of taxes, under the age of 19 years or
126 ~~insane incompetent~~, he or she, his or her heirs, or legal
127 representatives shall be allowed one year after ~~such the~~
128 disability is removed to bring an action for the redemption
129 and recovery thereof of the real estate.; ~~but this section~~

130 (e) The limitation set out in subsection (c) shall not
131 apply to any of the following:

132 (1) ~~action~~Actions brought by the state, ~~to.~~

133 (2) ~~cases~~ Cases in which the owner of the real estate
134 sold for the payment of taxes had paid the taxes, ~~for the~~
135 ~~payment of which such real estate was sold~~ prior to ~~such the~~
136 sale, ~~or to.~~

137 (3) ~~cases~~ Cases in which the real estate sold was not,
138 at the time of the assessment or of the sale, subject to
139 taxation. ~~There shall be no time limit for recovery of real~~
140 ~~estate by an owner of land who has retained possession. If the~~



SB172 INTRODUCED

141 ~~owner of land seeking to redeem has retained possession,~~
142 ~~character of possession need not be actual and peaceful, but~~
143 ~~may be constructive and scrambling and, where there is no real~~
144 ~~occupancy of land, constructive possession follows title of~~
145 ~~the original owner and may only be cut off by adverse~~
146 ~~possession of the tax purchaser for three years after the~~
147 ~~purchaser is entitled to possession.~~

148 (f) Notwithstanding the limitation period provided in
149 subsection (c), if a party seeks to redeem real estate that is
150 subject to a mortgage or other instrument creating a lien that
151 is duly recorded at the time specified in this chapter, the
152 party shall have the right to redeem the real estate, or any
153 portion of it subject to the mortgage or lien, at any time
154 within one year from the date of written notice from the
155 purchaser served upon the party. Written notice from the party
156 seeking to redeem, served upon the then current mortgagees or
157 lien holders of record, or their heirs, personal
158 representatives, or assigns at anytime following that sale, is
159 deemed sufficient.

160 (g) (1) Notwithstanding the limitation period provided
161 in subsection (c), there shall be no time limit for the
162 redemption and recovery of real estate sold for the payment of
163 taxes by an owner who has retained actual, open, and continuous
164 possession since the date of the tax sale.

165 (2) Where the purchaser has lawfully taken possession
166 or an owner seeking to redeem has abandoned possession,
167 re-entry by the owner shall not revive or extend his or her
168 right to redeem under this section.



SB172 INTRODUCED

169 (h) If the owner or other party with the right to
170 redeem fails to assert the right in an action under this
171 section or in any other action in which he or she may assert
172 the right, or fails to tender the action in which he or she
173 may assert the right, the court shall enter judgment in favor
174 of the purchaser for the real estate along with all title and
175 interest in the real estate, thus divesting all title and
176 interest in the real estate out of all parties to the action
177 that failed to assert the right to redeem or failed to tender
178 the amount due for redemption, including divesting and
179 terminating all rights to challenge the validity of the sale
180 and all redemption rights of those parties that failed to
181 assert them or to tender the amount due for redemption.

182 (i) (1) This section serves only to limit the rights of
183 an owner to recover real estate.

184 (2) There exists no time limit on the right of a tax
185 sale purchaser who is current with the payment of ad valorem
186 taxes to bring an action for possession, or to clear title to
187 the real estate if the real estate has not yet been recovered
188 by the owner, as described in this section.

189 (3) This section shall not serve as a basis for real
190 estate to revert in the owner, absent an action for recovery
191 initiated pursuant to this section."

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