

1 HB458
2 115998-1
3 By Representative Ison (N & P)
4 RFD: Mobile County Legislation
5 First Read: 28-JAN-10

SYNOPSIS: This bill would authorize any Class 2
municipality to establish an expedited quiet title
procedure to establish clear title to tax sale
properties acquired from the State Land
Commissioner pursuant to Chapter 10 of Title 40,
Code of Alabama 1975.

A BILL
TO BE ENTITLED
AN ACT

Relating to Class 2 municipalities; to authorize
Class 2 municipalities to file an expedited quiet title and
foreclosure action in circuit court to establish clear title
to abandoned tax sale properties within the corporate limits
that are acquired from the State Land Commissioner pursuant to
Chapter 10, Title 40, Code of Alabama 1975; and to provide for
the procedure and due process for the action in circuit court.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall apply only in a Class 2
2 municipality and provides the exclusive procedure for an
3 expedited quiet title and foreclosure action for a Class 2
4 municipality, notwithstanding Section 8 of Act 2009-738, now
5 appearing as Chapter 9 of Title 24, Code of Alabama 1975.

6 Section 2. (a) Class 2 municipalities may initiate
7 an expedited quiet title and foreclosure action under this
8 section against a parcel of tax sale property located within
9 its municipal limits and purchased by the municipality from
10 the State Land Commissioner. The municipality shall record, in
11 the office of the judge of probate in the county in which the
12 property is located, a notice of its intention to file an
13 expedited quiet title and foreclosure action. The notice shall
14 include a legal description of the property, street address of
15 the property if available, a statement that the property is
16 subject to expedited quiet title and foreclosure proceedings
17 under this act, and a statement that those proceedings may
18 extinguish any legal interests in the property. As used
19 herein, "interested parties" shall mean the owner, his or her
20 heirs or personal representatives, any mortgagee or purchaser
21 of the subject property or any part thereof, and any party
22 with an interest in the property, or in any part thereof,
23 legal or equitable, in severalty or as tenant in common,
24 including a judgment creditor or other creditor having a lien
25 thereon, or any part thereof.

26 (b) The municipality shall make a good faith effort
27 to identify the interested parties and the addresses at which

1 they can be reached. The municipality shall be presumed to
2 have made a good faith effort to identify interested parties
3 if it does all of the following:

4 (1) Erects a sign not less than four feet by six
5 feet on the property and maintains it for a minimum of 30
6 days, which must read as follows:

7 THIS PROPERTY WAS SOLD TO THE CITY OF
8 _____ FOR UNPAID TAXES. ANYONE WITH
9 INFORMATION ABOUT THE OWNER OF THIS PROPERTY,
10 PLEASE CALL _____.

11 (2) Examines the addresses that appear on the face
12 of the recorded deeds, mortgages, and relevant instruments.

13 (3) Examines the records of the tax assessor or
14 revenue commissioner to find the names and addresses of all
15 parties who paid taxes in the five-year period prior to the
16 date of the tax sale; provided, however, that the municipality
17 is not required to search for parties who paid taxes more than
18 20 years prior to the year of the inquiry.

19 (4) If the interested party is an individual, the
20 municipality shall examine voter registration lists, available
21 municipal archives for records of deaths, and the probate
22 court records of estates opened in the county in which the
23 property is located.

24 (5) If the interested party is a business entity,
25 the municipality shall search the records of the Secretary of
26 State for the name and address of a registered agent.

1 Section 3. The municipality may file a single
2 petition with the clerk of the circuit court for the judicial
3 circuit in which the subject property is located for an order
4 to quiet title and expedite foreclosure to one or more parcels
5 of property under this section. The petition shall identify
6 each parcel by its tax parcel number and street address and
7 shall be served on all interested parties identified in
8 accordance with subsection (b) of Section 2.

9 Section 4. The circuit court petition under Section
10 3 shall set the date, time, and place for a hearing on the
11 petition within 90 days. The court, on the request of a party,
12 may extend the 90-day period for good cause shown.

13 Section 5. (a) Not less than 30 days before the date
14 on which the hearing on the quiet title and foreclosure
15 petition is scheduled, the municipality shall do both of the
16 following:

17 (1) Send a notice of the hearing to the interested
18 parties identified under subsection (b) of Section 2 for each
19 parcel named in the petition by both certified mail, return
20 receipt requested, and regular mail.

21 (2) Post conspicuously on each property named in the
22 petition notice of the hearing which includes the following
23 statement: "THIS PROPERTY HAS BEEN TRANSFERRED TO [NAME OF
24 MUNICIPALITY] AND IS SUBJECT TO AN EXPEDITED QUIET TITLE AND
25 FORECLOSURE ACTION. PERSONS WITH INFORMATION REGARDING THE
26 PRIOR OWNER OF THE PROPERTY ARE REQUESTED TO CONTACT [the
27 municipality]."

1 (b) Notices provided to the interested parties under
2 this section shall include all of the following:

3 (1) The date on which the municipality recorded in
4 probate court its notice of the pending expedited quiet title
5 and foreclosure action under subsection (a) of Section 2.

6 (2) A legal description, tax parcel identification
7 number, and the street address of the property, if available.

8 (3) The interested party or parties to whom the
9 notice is addressed.

10 (4) The date, time, and place for the hearing on the
11 petition for expedited quiet title and foreclosure and a
12 statement that the judgment of the court may result in title
13 to the property vesting in the municipality.

14 (5) Notice that the judgment of the court in the
15 quiet title and foreclosure hearing may extinguish any
16 ownership interest in, liens against, right to redeem, or any
17 claim whatsoever secured by the property.

18 (6) The name, address, and telephone number of the
19 municipality.

20 (7) A statement that persons with information
21 regarding the owner or prior owner of any of the properties
22 are requested to contact the municipality.

23 (8) That any party seeking to redeem the property
24 will be required to pay all taxes, interest, penalties, and
25 fees and any other charges due and owing under Chapter 10 of
26 Title 40, Code of Alabama 1975.

1 Section 6. If the municipality is unable to identify
2 the names and addresses of interested parties, or is unable to
3 provide notice under Section 5, the municipality shall apply
4 to the circuit court for an order to allow notice by
5 publication. If so ordered, the municipality shall publish a
6 notice once each week for three consecutive weeks in a
7 newspaper of general circulation in the county in which the
8 property is located. If no newspaper is published in that
9 county, publication shall be made in a newspaper of general
10 circulation in an adjoining county. This publication shall
11 substitute for notice under subdivision (1) of subsection (a)
12 of Section 5. The published notice shall include the
13 information listed in subsection (b) of Section 5. If the
14 municipality discovers the name and address of an interested
15 party following publication, it shall notify that party of the
16 expedited quiet title and foreclosure action in accordance
17 with subdivision (1) of subsection (a) of Section 5 as soon as
18 practicable, in which case notice shall be brought to the
19 attention of the court which shall postpone the hearing for a
20 period of time sufficient to give such notice to the newly
21 discovered party.

22 Section 7. Prior to the circuit court hearing on the
23 expedited quiet title and foreclosure action, the municipality
24 shall file with the clerk of the circuit court proof of notice
25 to the interested parties by certified and regular mail and of
26 the posting on the property under subdivision (2) of
27 Subsection (a) of Section 5, along with proof of notice by

1 publication under Section 6, if applicable. An interested
2 party who desires to contest the petition shall file written
3 objections with the clerk of the circuit court and serve those
4 objections on the municipality at least two weeks prior to the
5 date of the hearing. If the court denies the petition, the
6 denial shall not preclude the municipality from filing another
7 petition for expedited quiet title and foreclosure on that
8 parcel. No injunction shall issue to stay an expedited quiet
9 title and foreclosure action under this section.

10 Section 8. (a) If an interested party appears at the
11 hearing and asserts a right to redeem the property, that party
12 may redeem in accordance with Chapter 10 of Title 40, Code of
13 Alabama 1975.

14 (b) If an interested party appears and fails to
15 redeem, or if no one appears, the circuit court shall enter
16 judgment on the petition not more than 10 days after the date
17 the matter was heard.

18 (c) The judgment of the circuit court shall specify
19 all of the following:

20 (1) The legal description, tax parcel identification
21 number, and, if known, the street address of the property
22 foreclosed.

23 (2) That fee simple title to property foreclosed by
24 the judgment is vested absolutely in the municipality, except
25 as otherwise provided in subdivision (5), below, without any
26 further rights of redemption.

1 (3) That all liens against the property, including
2 any lien for unpaid taxes or special assessments, are
3 extinguished.

4 (4) That the municipality has good and marketable
5 fee simple title to the property.

6 (5) That all existing recorded and unrecorded
7 interests in the property are extinguished, except for
8 recorded easements or right-of-way, private deed restrictions,
9 plat restrictions, or restrictions or covenants imposed under
10 the Alabama Land Recycling and Economic Development Act or any
11 other environmental law in effect in the state.

12 (6) That the municipality provided notice to all
13 interested parties or that the municipality complied with the
14 notice procedures in Section 5, which compliance shall create
15 a rebuttable presumption that all interested parties received
16 notice and an opportunity to be heard.

17 Section 9. A municipality or interested party may,
18 within 42 days following the effective date of the judgment,
19 appeal the judgment of the circuit court to the Court of Civil
20 Appeals. Any party appealing from an order vesting title in
21 the municipality shall, as a condition of the appeal, identify
22 the parcel which is the subject of the appeal and, with
23 respect to that parcel, post a bond with at least one solvent
24 surety in the amount due to redeem the property under Chapter
25 10, Title 40, Code of Alabama 1975. The appeal shall stay the
26 order of the circuit court only with respect to each parcel
27 identified as the subject of the appeal. The order of the

1 circuit court shall be affirmed absent a defect in the
2 identification of the property or in the notice such that the
3 notice deprived a party of the right to due process of law.
4 The order shall not be reversed on the basis of merely
5 technical noncompliance with this section.

6 Section 10. The municipality shall record the
7 court's order in the probate court following the 42-day period
8 after the entry of the order if no appeal is filed or after a
9 final judgment on appeal from the decision of the circuit
10 court on the municipality's petition for an expedited quiet
11 title and foreclosure action.

12 Section 11. All laws or parts of laws which conflict
13 with this act are repealed.

14 Section 12. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.