HB270

1MAVZZZ-1

By Representative Sells

RFD: State Government

First Read: 29-Feb-24

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

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

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

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

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

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

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

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

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

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

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

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

A BILL

TO BE ENTITLED

AN ACT

Relating to tax delinquent properties; to amend Sections 40-10-28 and 40-10-197, Code of Alabama 1975, to

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-10-28

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

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

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

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

~~either~~any of the following:

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

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

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

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

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

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

property which shall be recorded with the judge of probate.

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

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

"§40-10-197

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

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

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

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

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

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

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

c. The tax collecting official of the county in which

the property is located.

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

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

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

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

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

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

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

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

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

~~(c)~~ (d)(1) An action shall be commenced by filing a complaint in compliance with Section 6-6-561. The holder shall not be required to plead or prove possession of the property. The holder shall name as parties defendant to the tax lien foreclosure action all persons entitled to redeem under this article. Upon filing the tax lien foreclosure action, the holder shall record a notice as provided by Section 35-4-131. Service of the complaint shall be made in accordance with Section 6-6-563. Notice shall also be published as provided by

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

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

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

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

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

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

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

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

a. The date of the judgment.

b. The number and style of the case.

c. The name of the plaintiff, who shall be stated as the grantee.

d. The legal description of the property.

e. The uniform parcel number of the property.

f. The date of the conveyance.

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

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

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

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

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

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

days from the date of the order.

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

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

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

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

the deed.

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

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

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

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

449