

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 616

An Act to amend and reenact §§ 58.1-3967 and 58.1-3975 of the Code of Virginia, relating to sales of tax delinquent properties.

[H 1421]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3967 and 58.1-3975 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3967. How proceedings instituted; parties; procedure generally; title acquired; disposition of surplus proceeds of sale.

Proceedings under this article for the appointment of a special commissioner under § 58.1-3970.1 or the sale of real estate on which county, city, or town taxes are delinquent shall be by bill in equity, filed in the circuit court of the county or city in which such real estate is located, to subject the real estate to the lien for such delinquent taxes.

Any party with an interest in such real estate, including a lienor or person with a claim of title, shall file his claim within 90 days after notice of such proceedings. Failure to timely file shall bar any such claims.

Any party who is not otherwise served shall be served by publication pursuant to § 8.01-316. Any person served by publication may petition to have the case reheard, but, notwithstanding § 8.01-322, only for good cause shown, and only within 90 days of entry of the confirmation of sale.

All necessary parties shall be made parties defendant. A guardian ad litem shall be appointed for persons under a disability as defined in § 8.01-2, and for all persons proceeded against by an order of publication as parties unknown. The beneficiary or beneficiaries under any deed of trust, security interest or mortgage shall not be deemed necessary parties, provided any trustee under the deed of trust, any mortgagee under the mortgage, and any lien creditor are given notice as prescribed in § 58.1-3965, except that either the beneficiary or beneficiaries, or the trustee or trustees, under any deed of trust, security interest or mortgage securing a financial institution, or any lien creditor that is a financial institution, shall be necessary parties defendant. After filing of suit and a lis pendens, any party who thereafter acquires an interest in the delinquent real estate, including a lienor or party with a claim of title, shall not be deemed a necessary party, but shall be permitted to intervene in the proceedings to file his claim. Failure to file such a claim shall bar any such claim. The title conveyed to the purchaser at the judicial sale shall be held to bar any disabilities of parties defendant, and shall be free of all claims of any creditor, person, or entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice was given or the creditor, person, or entity was made a party defendant.

Such proceedings shall be held in accordance with the requirements, statutory or arising at common law, relative to effecting the sale of real estate by a creditor's bill in equity to subject real estate to the lien of a judgment creditor, provided that publication, if necessary, shall be as provided by § 8.01-321.

In proceedings under this article, the character of the title acquired by the purchaser of such real estate at such sale shall be governed by the principles and rules applicable to the titles of purchases at judicial sales of real estate generally; *however nothing herein shall be construed to affect any easements recorded prior to the date of sale.*

The former owner, his heirs or assigns of any real estate sold under this article shall be entitled to the surplus received from such sale in excess of the taxes, penalties, interest, reasonable attorneys' fees, costs and any liens chargeable thereon. If no claim for payment of the indebtedness secured by any lien chargeable thereon is made by an unknown beneficiary of such lien, or if no claim for such surplus is made by such former owner, his heirs or assigns, within two years after the date of confirmation of such sale, then such amount secured by the lien of the unknown beneficiary, surplus, or both, as applicable, shall be paid by the clerk of the court in which such suit was instituted to the county, city, or town that received proceeds from the sale of the real estate. If a county and a town receive proceeds from the same sale, then such surplus shall be divided between the county and town pro rata based on the relative amount of proceeds received by each. Upon request of the former owner, his heirs or assigns, or unknown beneficiary of any real estate sold under this article, and after a showing of a prior entitlement thereto, the governing body of any county or city which has received such surplus funds may, in its discretion, grant relief, by ordinance, to such former owner, heir, or assign, or unknown beneficiary and pay over such amount as the governing body may deem appropriate to such former owner, heir, assign, or unknown beneficiary.

§ 58.1-3975. Nonjudicial sale of tax delinquent real properties of minimal size and value.

Notwithstanding any other provision of this title, the treasurer or other officer responsible for collecting taxes may sell, at public auction, any unimproved parcel of real property that is assessed at

less than \$10,000, provided that the taxes on such parcel are delinquent on December 31 following the fifth anniversary of the date on which such taxes have become due, and either such parcel (i) measures less than 4,000 square feet (.0918 acres), or (ii) is determined to be unsuitable for building due to the size, shape, zoning or soils of the parcel by the locality's zoning administrator. For purposes of determining the area of any parcel, the area or acreage found in the locality's land book shall be determinative.

Prior to conducting such sale the treasurer or other officer responsible for collecting taxes shall send notice by certified or registered mail to the record owner or owners of such property and anyone appearing to have an interest in the property at their last known address as contained in the records of the treasurer or other officer responsible for collecting taxes and shall post notice of such sale at the property location, if such property has frontage on any public or private street, and at the circuit courthouse of the locality at least 30 days prior to such sale. The treasurer or other officer responsible for collecting taxes shall also cause a notice of sale to be published in the legal classified section of a newspaper of general circulation at least seven days but no more than 21 days prior to the sale. The pro rata costs of publication and mailing shall become a part of the tax and shall be collected if payment is made by the owner in redemption of such real property. The treasurer or other officer responsible for collecting taxes may advertise and sell multiple parcels at the same time and place pursuant to one notice of sale. The treasurer or other officer responsible for collecting taxes may enter into an agreement with the owner of such parcel for payment over time, not to exceed 12 months. The owner of any property listed may redeem it at any time prior to the date of the sale by paying all accumulated taxes, penalties, interest and costs thereon, including the pro rata costs of publication and mailing. Partial payment of delinquent taxes, penalties, interest or costs shall be insufficient to redeem the property, and shall not operate to suspend, invalidate or nullify any sale brought pursuant to this section.

At the time of sale, the treasurer or other officer responsible for collecting taxes shall sell to the highest bidder at public auction each parcel that has not been redeemed by the owner. Such sale shall be free and clear of the tax lien, but shall not affect easements recorded prior to the date of sale. The treasurer or other officer responsible for collecting taxes shall tender a treasurer's deed to effectuate the conveyance of the parcel to the highest bidder. If the sale proceeds are insufficient to pay the taxes in full, the remaining delinquent tax amount shall remain the personal liability of the former owner. The sale proceeds shall be applied first to the costs of sale, then to the taxes, penalty, and interest due on the parcel, and thereafter to any other taxes or other charges owed by the former owner to the jurisdiction. Any excess proceeds shall remain the property of the former owner and shall be kept by the treasurer in an interest-bearing escrow account. If no claim for payment of excess proceeds is made by the former owner within two years after the date of sale, the treasurer shall deposit the excess proceeds in the jurisdiction's general fund. If the sale does not produce a successful bidder, the treasurer shall add the costs of sale incurred by the jurisdiction to the delinquent real estate account.