

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 682

An Act to amend and reenact § 58.1-3967 of the Code of Virginia, relating to real property tax; sale of tax-delinquent property.

[H 2651]

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3967 of the Code of Virginia is 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, *but not including a person whose interest in the real estate is secured by a deed of trust properly recorded*, 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.