

LD4842356

HOUSE BILL NO. 2441

Offered January 23, 1995

A *BILL to amend and reenact §§ 58.1-3340, 58.1-3341, 58.1-3921, 58.1-3924, 58.1-3928, 58.1-3930, 58.1-3940, 58.1-3958, 58.1-3965 and 58.1-3974 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 39 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-3964.1 through 58.1-3964.6, relating to the sale of tax certificates on delinquent tax lands and the sale of delinquent tax lands.*

Patron—Miller

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3340, 58.1-3341, 58.1-3921, 58.1-3924, 58.1-3928, 58.1-3930, 58.1-3940, 58.1-3958, 58.1-3965 and 58.1-3974 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 39 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-3964.1 through 58.1-3964.6, as follows:

§ 58.1-3340. Lien on real estate for taxes and levies assessed thereon; responsibility of purchaser at sale; lien on rents.

There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance. *The lien may be transferred by a governing body to the purchaser of a tax certificate sold in accordance with the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.* The lien shall continue to be such prior lien until actual payment shall have been made to the proper officer of the taxing authority *or to the holder of a tax certificate sold in accordance with the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39.* The purchaser of real estate at a sale shall cause the proceeds to be applied to the payment of all taxes and levies assessed on real estate, the provisions of § 55-59.4 notwithstanding, and in the case of the purchase of a portion of a tract of land, shall cause the proceeds to be applied to the payment of taxes and levies assessed on the entire tract, prorated in accordance with the relationship that the purchase price bears to the most recent assessed value of the entire tract. In the event a proration is necessary, the purchaser's portion of such tract of land shall be relieved of such lien to the extent the proceeds exceed the purchaser's pro rata share of taxes. It shall be the responsibility of the treasurer or other proper officer of the taxing authority to cause the release of the lien. The seller's liability for taxes and levies shall be effectively prorated contractually. The words "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby shall, in addition to existing remedies for the collection of taxes and levies, be enforceable *by a governing body by suit in equity under the provisions of Article 4 of Chapter 39 (§ 58.1-3965 et seq.) of Chapter 39.*

There shall be a further, *prior* lien upon the rents of such real estate whether the same be in money or in kind, for taxes of the current year.

§ 58.1-3341. Liens for taxes delinquent twenty years or more released; seven-year-old tax certificates; lands purchased by Commonwealth; pending suits.

No lien upon real estate for taxes and levies due and payable to the Commonwealth or any political subdivision thereof, *held by the governing body to which the taxes are due*, which has been, or shall hereafter become, delinquent for twenty or more years shall be enforced in any proceeding at law or in equity and such lien shall be deemed to have expired and to be barred and cancelled after such time. For purposes of this section, taxes deferred pursuant to an ordinance enacted in conformity with Article 2 (§ 58.1-3210 et seq.) or Article 2.1 (§ 58.1-3219 et seq.) of Chapter 32 of this title shall not be considered "delinquent" during the pendency of any period of deferral, and the lien upon real property for taxes and levies shall remain valid for twenty years plus any period of deferral afforded pursuant to such ordinance.

No lien upon real estate for taxes and levies due and payable to the Commonwealth or any political subdivision thereof, held by the holder of a tax certificate which has been sold in accordance with the provisions of Article 3.1 (§ 58.1-3964.1 et seq.) of Chapter 39, which has been, or shall hereafter become, delinquent for seven or more years after the date on which the tax certificate was initially sold by the governing body, shall be enforced in any proceeding at law or in equity, and such lien shall be deemed to have expired and to be barred and cancelled after such time.

The right, title and interest of the Commonwealth in and to all real estate sold for taxes and levies which have been, or hereafter become, delinquent for twenty or more years, when such real estate has been purchased by the Commonwealth and not resold, is hereby unconditionally released unto and

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vested by operation of law in the person or persons who owned the real estate at the time the Commonwealth so acquired title or persons claiming, or to claim, by, through or under them.

No clerk shall make a tax deed conveying to any person any real estate sold for delinquent taxes or levies which have been, or hereafter become, delinquent for twenty or more years.

§ 58.1-3921. Treasurer to make out lists of uncollectible taxes and delinquents.

The treasurer, after ascertaining which of the taxes and levies assessed in his county or city cannot be collected, shall, not later than August 1 in each year, make out lists as follows:

1. A list of real estate on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes charged thereon.

2. A list of other real estate which is delinquent for the nonpayment of the taxes thereon.

3. A list of such of the taxes assessed on tangible personal property, machinery and tools and merchants' capital, and other subjects of local taxation, other than real estate, as he is unable to collect.

4. A list of the uncollected taxes amounting to less than five dollars each for which no bills were sent under § 58.1-3912.

5. *A list of all the certificates sold for taxes in accordance with the provisions of Article 4 (§ 58.1-3965 et seq.) of this chapter, showing the date of sale, the number of each certificate, the name of the purchaser and the last holder known to the treasurer, the interest rate bid, and the amount for which the sale was made. This list shall be known as the "list of tax certificates sold." The treasurer shall append to the list a certificate setting forth the fact that each sale was made in accordance with the requirements of this chapter.*

The governing body of any town may, by ordinance, adopt the procedures set forth in this section and § 58.1-3924. If such ordinance is adopted, the town treasurer shall submit such lists to the governing body as provided in § 58.1-3924.

§ 58.1-3924. Delinquent lists involving local taxes submitted to local governing bodies; publication of lists.

A copy of each of the four lists mentioned in § 58.1-3921 shall be submitted by the treasurer to the governing body of his county, city or town. Such lists shall be submitted at the first meeting of the governing body held after the treasurer has completed the lists.

The treasurer may, or shall at the direction of the governing body, certify to the commissioner of the revenue a copy of the list of real estate on the commissioner's land book improperly placed thereon or not ascertainable. The commissioner of the revenue shall correct his land book accordingly. The treasurer shall be given credit for the entire amount of the taxes included in the list and may destroy the tax tickets made out by him for such taxes. The treasurer shall be given credit for all taxes shown on the list mentioned in subdivision 4 of § 58.1-3921.

The governing body shall cause the lists mentioned in subdivisions 2 ~~and~~ , 3 ~~and~~ 5 of § 58.1-3921, or such parts thereof as deemed advisable, to be published once in a newspaper in the county, city or town, but if there be no newspaper published in the county, city or town then in some newspaper having general circulation therein or in handbills to be posted generally throughout the county, city or town, and at the front door of the courthouse thereof for a period of thirty days.

The publication costs shall be charged to the delinquent taxpayers listed. The sum payable by each delinquent taxpayer shall be determined by dividing the total publication costs incurred per thirty-day period, by the number of delinquent taxpayers listed per thirty-day period. *In those instances in which tax certificates have been issued, the delinquent taxpayer's share of publication costs shall be added to the cost of redemption of the tax certificate.*

§ 58.1-3928. Second publication of lists; subsequent collection of delinquent real estate taxes by treasurer.

At the expiration of one year after the initial submission to the governing body, the treasurer shall again submit a copy of each of the lists mentioned in ~~paragraphs subdivisions~~ subdivisions 2 ~~and~~ , 3 ~~and~~ 5 of § 58.1-3921 to the governing body of his county ~~or~~ , city ~~or~~ town, such submission to be made at the first meeting of such governing body held after June 30. Such lists so resubmitted shall show the changes which have occurred since June 30 of the preceding year, and the treasurer shall continue his efforts to collect the then unpaid local real estate taxes until the taxes are paid, *a tax certificate is issued*, or the land is sold as provided in Article 4 (§ 58.1-3965 et seq.) of this chapter.

§ 58.1-3930. How liens to be recorded; release of liens.

Liens of delinquent real estate taxes shall be recorded in the office of the treasurer in a book or an approved visible card system to be kept for the purpose and indexed in the names of the persons against whom the taxes on real estate are assessed *and the names of the holders of tax certificates*, or in a computer system approved by the Auditor of Public Accounts. Any officer collecting any ~~such~~ *delinquent taxes on property for which a tax certificate has not been issued*, unless otherwise specifically provided by law, shall forthwith transmit such payment to the treasurer, who shall give his receipt therefor and record the payment, thereby releasing the lien. Where such list is kept in a visible card index file, the treasurer may, at the time of entry of the records of payment *or redemption*, remove

from the file the cards on which such payments *or redemptions* have been noted; and such cards may, on certification by the Auditor of Public Accounts that the same are no longer needed for audit, be destroyed.

§ 58.1-3940. Limitation on collection of local taxes.

A. Except as otherwise specifically provided, collection of local taxes shall only be enforceable for five years following December 31 of the year for which such taxes were assessed. *The treasurer may only sell tax certificates for delinquent taxes within five years following December 31 of the year in which the delinquent taxes were assessed.*

B. Real property taxes shall be enforceable by sale under Article 4 (§ 58.1-3965 et seq.) of the property on which such taxes were assessed for twenty years after December 31 of the year for which such taxes were assessed, provided that whenever taxes or portions of taxes that would otherwise be due have been deferred pursuant to an ordinance enacted in conformity with Article 2 (§ 58.1-3210 et seq.) or Article 2.1 (§ 58.1-3219 et seq.) of Chapter 32 of this title, the statute of limitations provided by this subsection shall be tolled with respect to taxes deferred during the pendency of such deferral.

C. Nothing in this section shall affect a judgment lien resulting from a suit to collect taxes.

§ 58.1-3958. Payment of administrative costs, etc.

The governing body of any county, city or town may impose on delinquent taxpayers a fee to cover the administrative costs, *including the issuance of and foreclosure on tax certificates*, and reasonable attorney's or collection agency's fees which shall not exceed twenty percent of the delinquent tax bill associated with the collection of delinquent taxes. Such administrative costs shall be in addition to all penalties and interest, and shall not exceed *twenty dollars for the issuance of a tax certificate*, twenty dollars for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and twenty-five dollars for taxes collected subsequent to judgment. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal.

Article 3.1.

Tax Certificates.

§ 58.1-3964.1. *Tax certificates authorized.*

On the sixtieth day after the date that taxes owed on real estate become delinquent, the treasurer may proceed, in accordance with this article, to sell a tax certificate for the amount of the delinquent real estate taxes, plus the penalty and interest owed to the governing body, the administrative cost described in § 58.1-3958, and the cost of advertising and sale of the certificate, to any person who makes the qualifying bid described in this article. Upon the payment of the amount bid and the issuance of a tax certificate to the person who makes the qualifying bid, the tax lien held by the governing body shall pass to the holder of the tax certificate.

§ 58.1-3964.2. *Sale of tax certificates for unpaid taxes.*

A. When the treasurer determines that the sale of a tax certificate on delinquent real estate is appropriate, the treasurer shall advertise notice of his intent to sell a tax certificate on the real estate involved. A notice of the time and place of sale, which contains the name of the owner of the property, a description of the property, and the amount of the delinquent real estate taxes, plus penalty, interest, and costs due to the governing body, shall be published once a week for four successive weeks in a newspaper published in the county, city or town wherein the real estate is located. If there is no newspaper published in the county, city or town, then this notice shall be published in a newspaper having general circulation in the county, city or town. Notice of the sale of a tax certificate shall be posted at the front door of the courthouse for thirty days and shall be mailed by certified mail, return receipt requested, to the owner of the property at the mailing address indicated in the treasurer's records no later than fourteen calendar days before the date of sale. The failure of the owner to receive this notice shall not invalidate an otherwise valid sale of a tax certificate.

B. The tax certificate shall be sold to the bidder who agrees to pay the full amount of the delinquent taxes, penalties and interest owing to the governing body on those taxes, and the costs of the sale of the certificate and who bids the lowest rate of interest, not to exceed the maximum rate of eighteen percent, which will be due on this amount upon redemption, if any, of the tax certificate. This bid shall be known as the qualifying bid.

C. The tax lien transferred by the sale of a tax certificate may not be enforced in any manner except as prescribed in this chapter.

D. Delinquent real property taxes of all governmental units due on a parcel of land in any one year may be combined into one certificate.

E. A tax certificate on delinquent real estate representing less than \$1,000 in delinquent taxes on

183 such property shall not be enforced or collected pursuant to Article 4 (§ 58.1-3965 et seq.) of this
184 chapter. However, when all such tax certificates and accrued penalties and interest on such property
185 equal \$1,000 or more, then the holder of any tax certificate on that property may foreclose on it as
186 provided in this chapter.

187 F. The treasurer shall require immediate payment of a deposit in the amount of twenty-five percent
188 of the amount of the delinquent taxes, penalties and interest and all costs owed to the governing body
189 on the property at that time, from the person making the qualifying bid, and the failure to pay such
190 deposit shall cause the bid to be cancelled. When tax certificates are ready for issuance, the treasurer
191 shall notify each person to whom a certificate was sold that the certificate is ready for issuance and
192 that payment of the balance due to the governing body must be made within forty-eight hours from the
193 mailing of such notice, or the deposit shall be forfeited as a penalty and the bid cancelled. In any event,
194 payment of all amounts owing to the governing body shall be made before delivery of the certificate by
195 the treasurer.

196 G. The form of the certificate shall be as prescribed by the Department of Taxation. Upon the
197 cancellation of any bid for failure to pay the balance due within five days, the treasurer shall attempt to
198 resell such certificate as soon as possible by contacting the next highest bidder who was present at the
199 sale and so on until the certificate is sold, provided that the certificate is sold within ten days after
200 cancellation of such bid. Thereafter, no tax certificate may be sold on the property without a new
201 publication and notice to the landowner as provided in subsection A of this section.

202 H. No certificate shall be sold, nor any lien created, on property owned by any governmental unit if
203 the property has become subject to taxation due to its lease to a nongovernmental lessee.

204 I. Money paid for any tax certificates issued pursuant to the provisions of this article after July 1,
205 1995, which tax certificates are void due to an error of the commissioner of revenue, the treasurer, or
206 any other local government official, and which are subsequently cancelled pursuant to the provisions of
207 this article, shall earn simple interest at the rate of six percent per year, calculated from the date the
208 certificate was purchased.

209 J. Delinquent taxes on real property may be paid after the date of delinquency but prior to the sale
210 of a tax certificate by paying the delinquent taxes plus the penalties and interest, the administrative fees,
211 and the costs of any advertising and notice of a sale of a tax certificate for such property which have
212 been made.

213 § 58.1-3964.3. Duplicate certificates.

214 A. The holder of a tax certificate may apply to the treasurer for a duplicate certificate if the original
215 has been lost or destroyed. The tax certificate holder shall give an affidavit to the treasurer stating that
216 the affiant is the owner of the tax certificate and that the tax certificate was lost or destroyed. The tax
217 certificate holder shall pay a five-dollar fee for the issuance of the duplicate certificate. The treasurer
218 may require that a bond be executed, with such security as is approved by him, payable to the locality,
219 and conditioned to save harmless the locality from any loss occasioned by the issuance of a duplicate
220 certificate.

221 B. The treasurer shall issue a duplicate certificate, plainly mark or stamp such certificate as a
222 duplicate, and enter the fact that a duplicate exists in the tax certificate sale record opposite the entry
223 of the sale for which the lost or destroyed certificate was issued. He shall enter in the same place a
224 notation of the alleged loss or destruction, whether a duplicate certificate is issued or not.

225 § 58.1-3964.4. Transfer of tax certificates held by individuals.

226 A. All tax certificates issued to an individual may be transferred by endorsement at any time before
227 they are redeemed or foreclosed upon.

228 B. The official endorsement on a tax certificate by the treasurer with the date and the name of the
229 new holder shall be sufficient evidence of the assignment of it.

230 C. The treasurer shall record the transfer on the list of tax certificates sold.

231 D. The treasurer shall receive one dollar as a service charge for each endorsement.

232 § 58.1-3964.5. Redemption of tax certificates.

233 A. Any taxpayer may redeem a tax certificate on his property at any time after the certificate is
234 issued and before foreclosure on it. The person redeeming a tax certificate shall pay to the treasurer
235 who issued the tax certificate the face amount of the certificate together with the interest that has
236 accrued on the certificate and all lawful costs and charges.

237 B. The treasurer shall receive a fee of five dollars for each tax certificate purchased or redeemed.

238 C. When a tax certificate is redeemed, the treasurer shall give to the redeemer a receipt and
239 certificate showing the amount paid for the redemption, a description of the land, and the date, number
240 and amount of the certificate, which shall be in the form prescribed by the Department of Taxation. The
241 redemption shall be entered by the treasurer on the list of tax certificates sold.

242 D. The treasurer shall notify the last known holder in writing, by certified mail return receipt
243 requested, that the tax certificate has been redeemed and that the holder shall produce the tax
244 certificate in order to claim the redemption moneys.

§ 58.1-3964.6. *Disposition of unclaimed redemption moneys.*

A. *After money paid to the treasurer by a landowner for the redemption of a tax certificate has been held by the treasurer for ninety days, which money is payable to the holder of a redeemed tax certificate but for which no claim has been made, on the first day of the following quarter, the treasurer shall remit such unclaimed moneys to the local governing body.*

B. *Two years after the date the unclaimed redemption moneys were remitted to the local governing body, all claims to such moneys are forever barred, and such moneys become the property of the locality.*

§ 58.1-3965. When land may be sold for delinquent taxes or foreclosure on tax certificates; notice of sale; owner's right of redemption.

When any taxes on any real estate in a county, city or town are delinquent on December 31 following the third anniversary of the date on which such taxes have become due, *or when the treasurer receives written notification from the holder of any tax certificate lawfully issued on delinquent real estate taxes, and which certificate is at least three years old and not more than seven years old, that the certificate has not been redeemed and that the holder desires foreclosure*, such real estate may be sold for the purpose of collecting all delinquent taxes on such property. *The treasurer shall institute a bill in equity in the name of the governing body for the sale of lands subject to a tax certificate within sixty days of receiving the tax certificate holder's written request for foreclosure, and the tax certificate holder shall make his written request no later than sixty days before the expiration of his tax lien as established by § 58.1-3341. The procedure for foreclosure on a tax certificate and the sale of real property for delinquent taxes shall be the same, and where the provisions of this article state that they apply to the sale of land for delinquent taxes, they shall apply equally to foreclosure on a tax certificate.* The officer charged with the duty of collecting taxes for the locality wherein the real property lies shall, at least thirty days prior to instituting any action pursuant to this section, send a notice to the last known address of the property owner, and to the property address if the property address is different from the owner's address and if the real estate is listed with the post office by a numbered and named street address, advising the property owner of the delinquency and the officer's intention to take action. Such officer shall also cause to be published at least once a list of real estate which will be offered for sale under the provisions of this article in a newspaper of general circulation in the locality, at least thirty but not more than sixty days prior to the date on which proceedings under the provisions of this article are to be commenced. The pro rata cost of such publication shall become a part of the tax and together with all other costs, including reasonable attorneys' fees set by the court, shall be collected if payment is made by the owner in redemption of the *tax certificate or the* real property described therein whether or not court proceedings have been initiated. A notice substantially in the following form shall be sufficient:

Notice

Judicial Sale of Real Property

On (date) proceedings will be commenced under the authority of § 58.1-3965 et seq. of the Code of Virginia to sell the following parcels for payment of delinquent taxes *(or redemption of tax certificates issued for delinquent taxes)* :

(description of properties)

The owner of any property listed may redeem it *(or the tax certificates)* at any time before the date of the sale by paying all accumulated taxes, penalties, interest *(and interest accruing to the holder of the tax certificate)* and costs thereon, including the pro rata cost of publication hereunder.

§ 58.1-3974. Redemption of land by owner.

Any owner of the real estate described in any notice published pursuant to § 58.1-3965 or any bill in equity filed pursuant to this article, or his or their heirs, successors and assigns, shall have the right to redeem such real estate prior to the date set for a judicial sale thereof by paying into court all taxes, penalties and interest due with respect to such real estate *and any interest due to the holder of any tax certificate on the property*, together with all costs including costs of publication and a reasonable attorney's fee set by the court. Any person who has paid any taxes on such real estate shall have a lien thereon for any taxes paid, plus interest at the rate of six percent per year.