

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 724

An Act to amend and reenact §§ 58.1-3965, 58.1-3966, and 58.1-3969 of the Code of Virginia, relating to sale of delinquent tax lands.

[H 2275]

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3965, 58.1-3966, and 58.1-3969 of the Code of Virginia are amended and reenacted as follows:

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

A. When any taxes on any real estate in a county, city or town are delinquent on December 31 following the ~~third~~ *second* anniversary of the date on which such taxes have become due, or, in the case of real property upon which is situated any structure that has been condemned by the local building official pursuant to applicable law or ordinance, the first anniversary of the date on which such taxes have become due, such real estate may be sold for the purpose of collecting all delinquent taxes on such property. 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 judicial proceeding 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) and to the last known address of any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor, if such trustee, mortgagee or lien creditor is not otherwise made a party defendant under § 58.1-3967, advising such property owner, trustee, mortgagee or other lien creditor 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 days prior to the date on which judicial 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 and the costs of any title examination conducted in order to comply with the notice requirements imposed by this section, shall be collected if payment is made by the owner in redemption of 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:

(description of properties)

B. The owner of any property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorneys' fees, interest and costs thereon, including the pro rata cost of publication hereunder. Partial payment of delinquent taxes, penalties, reasonable attorneys' fees, interest or costs shall not be sufficient to redeem the property, and shall not operate to suspend, invalidate or make moot any action for judicial sale brought pursuant to this article.

C. Notwithstanding the provisions of subsection B and of § 58.1-3954, the treasurer or other officer responsible for collecting taxes may suspend any action for sale of the property commenced pursuant to this article upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed twenty-four months. Any such agreement shall be recorded by the officer among the land records of the locality in which the property lies, and shall be secured by the lien of the locality pursuant to § 58.1-3340.

D. During the pendency of any installment agreement permitted under subsection C, any proceeding for a sale previously commenced shall not abate, but shall be continued on the docket of the court in which such action is pending. It shall be the duty of the treasurer or other officer responsible for collecting taxes to promptly notify the clerk of such court when obligations arising under such an

installment agreement have been fully satisfied. Upon the receipt of such notice, the clerk shall cause the action to be stricken from the docket.

E. In the event the owner of the property or other responsible person defaults upon obligations arising under an installment agreement permitted by subsection C, or during the term of any installment agreement, defaults on any current obligation as it becomes due, such agreement shall be voidable by the treasurer or other officer responsible for collecting taxes upon fifteen days' written notice to the signatories of such agreement irrespective of the amount remaining due. Any action for the sale previously commenced pursuant to this article may proceed without any requirement that the notice or advertisement required by subsection A, which had previously been made with respect to such property, be repeated. No owner of property which has been the subject of a defaulted installment agreement shall be eligible to enter into a second installment agreement with respect to the same property within three years of such default.

§ 58.1-3966. Employment of attorney to institute proceedings; bond of attorney.

Proceedings under this article shall be instituted and conducted in the name of the county, city or town in which the real estate lies, by such attorney as the governing body *or treasurer* of the county, city or town employs for ~~the~~ *such* purpose, ~~on a salary, commission or other basis~~. The governing body *or treasurer* may require the attorney to give bond in an amount to be fixed by it, with surety to be approved by it, conditioned upon the lawful accounting for all funds which may come into his hands as such attorney under this article, and the premium on the bond may be ordered to be paid out of the local treasury. The bond shall be delivered to the clerk of the circuit court of the county or city and shall be recorded by the clerk in his special commissioner's bond book.

§ 58.1-3969. Order of reference; appointment of special commissioner to make sale; costs; attorney's fee.

The court shall have the option to refer the case to a commissioner in chancery for hearing and report, in which case, the order of reference shall be to ~~some~~ a commissioner in chancery or special master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to subject the real estate to the lien of any taxes. Upon (i) receipt of proper service of process on all parties defendant, a written real estate title certificate and the deposition of a licensed real estate appraiser where there is no dispute as to title or value or (ii) the receipt of the report of the commissioner in chancery, the court may appoint a special commissioner to sell the properties and execute the necessary deeds when a sale is found necessary or advisable and in doing so the appointee may be the attorney employed by the governing body of the county, city or town to bring the suit. The sale price achieved at a public auction shall be prima facie, but rebuttable, evidence of the value of the property for purposes of the approval of the sale. If the attorney employed by the governing body of the county, city, district or town be appointed a special commissioner to sell the land and execute the deed and he has already given the bond hereinabove mentioned, no additional bond shall be required of him as special commissioner unless the court regards the bond already given as insufficient in amount. No fee or commission shall be allowed or paid to any attorney for acting under the order of reference or as special commissioner, except as hereinafter provided, and the compensation contracted to be paid any such attorney by the governing body, whether the employment was on a salary, commission or other basis, shall be in full for all services rendered by him. The court shall allow as part of the costs, to be paid into the treasury of the county, city or town, a reasonable sum to defray the cost of its attorneys and the expenses of publication and appraisal necessary for the purpose of instituting such suit and such fees and commissions, including fees for preparing and executing deeds, as would be allowed if the suit were an ordinary lien creditor's suit. When the special commissioner is other than the attorney employed by the county, city or town the court may allow him reasonable fees for selling the land and executing the deed, payable out of the proceeds of sale.

In any case in which the attorney representing the county, city or town and the governing body thereof have failed to reach an agreement as to a salary or commission or other basis as compensation for the services of such attorney, the court in which any proceedings are brought under this article may allow from the proceeds of the sale of any such real estate such fee as the court shall deem reasonable and proper to the attorney representing any such county, city or town in such proceeding.