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## HOUSE BILL NO. 2275

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on January 30, 1997)

(Patron Prior to Substitute—Delegate Hall)

*A BILL to amend and reenact §§ 58.1-3965, 58.1-3967, and 58.1-3969 of the Code of Virginia, relating to sale of delinquent tax lands.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-3965, 58.1-3967, 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

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

69 § 58.1-3967. How proceedings instituted; parties; procedure generally; title acquired; disposition of  
70 surplus proceeds of sale.

71 Proceedings under this article for the sale of real estate on which county, city, or town taxes are  
72 delinquent shall be by bill in equity, filed in the circuit court of the county or city in which such real  
73 estate is located, to subject the real estate to the lien for such delinquent taxes.

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

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

80 All necessary parties shall be made parties defendant. A guardian ad litem shall be appointed for  
81 persons under a disability as defined in § 8.01-2, and for all persons proceeded against by an order of  
82 publication as parties unknown. The beneficiary or beneficiaries under any deed of trust, security interest  
83 or mortgage shall not be deemed necessary parties, provided any trustee under the deed of trust, any  
84 mortgagee under the mortgage, and any lien creditor are given notice as prescribed in § 58.1-3965,  
85 except that the beneficiary or beneficiaries, or the trustee or trustees, under any deed of trust, security  
86 interest or mortgage securing a financial institution, or any lien creditor that is a financial institution,  
87 shall be necessary parties defendant. The title conveyed to the purchaser at the judicial sale shall be held  
88 to bar any disabilities of parties defendant, and shall be free of all claims of any creditor, person, or  
89 entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice  
90 was given and the creditor, person, or entity was made a party defendant.

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

94 In proceedings under this article, the character of the title acquired by the purchaser of such real  
95 estate at such sale shall be governed by the principles and rules applicable to the titles of purchases at  
96 judicial sales of real estate generally.

97 The former owner, his heirs or assigns of any real estate sold under this article shall be entitled to  
98 the surplus received from such sale in excess of the taxes, penalties, interest, reasonable attorneys' fees,  
99 costs and any liens chargeable thereon. If no claim for such surplus is made by such former owner, his  
100 heirs or assigns, within two years after the date of confirmation of such sale, then such surplus shall be  
101 paid by the clerk of the court in which such suit was instituted to the county or city in which such real  
102 estate is located.

103 § 58.1-3969. Order of reference; appointment of special commissioner to make sale; costs; attorney's  
104 fee.

105 *The court shall have the option to refer the case to a commissioner in chancery for hearing and*  
106 *report, in which case, the order of reference shall be to ~~some~~ a commissioner in chancery or special*  
107 *master other than the attorney (or any attorney practicing in the same firm as the attorney) employed to*  
108 *subject the real estate to the lien of any taxes. ~~The~~ Upon (i) receipt of proper service of process on all*  
109 *parties defendant, a written real estate title certificate and the deposition of a licensed real estate*  
110 *appraiser where there is no dispute as to title or value or (ii) the receipt of the report of the*  
111 *commissioner in chancery, the court may appoint a special commissioner to sell the properties and*  
112 *execute the necessary deeds when a sale is found necessary or advisable and in doing so the appointee*  
113 *may be the attorney employed by the governing body of the county, city or town to bring the suit. The*  
114 *sale price achieved at a public auction shall be prima facie evidence of the value of the property for*  
115 *purposes of the approval of the sale. If the attorney employed by the governing body of the county,*  
116 *city, district or town be appointed a special commissioner to sell the land and execute the deed and he*  
117 *has already given the bond hereinabove mentioned, no additional bond shall be required of him as*  
118 *special commissioner unless the court regards the bond already given as insufficient in amount. No fee*  
119 *or commission shall be allowed or paid to any attorney for acting under the order of reference or as*  
120 *special commissioner, except as hereinafter provided, and the compensation contracted to be paid any*  
121 *such attorney by the governing body, whether the employment was on a salary, commission or other*

122 basis, shall be in full for all services rendered by him. The court shall allow as part of the costs, to be  
123 paid into the treasury of the county, city or town, a reasonable sum to defray the cost of its attorneys  
124 and the expenses of publication and appraisal necessary for the purpose of instituting such suit and such  
125 fees and commissions, including fees for preparing and executing deeds, as would be allowed if the suit  
126 were an ordinary lien creditor's suit. When the special commissioner is other than the attorney employed  
127 by the county, city or town the court may allow him reasonable fees for selling the land and executing  
128 the deed, payable out of the proceeds of sale.

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