

1 HB311
2 126180-2
3 By Representatives Hubbard (J) and McCutcheon
4 RFD: County and Municipal Government
5 First Read: 22-MAR-11

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8 SYNOPSIS: This bill would authorize any Class 3
9 municipality to establish an expedited quiet title
10 procedure to establish clear title to tax sale
11 properties acquired from the State Land
12 Commissioner pursuant to Chapter 10 of Title 40,
13 Code of Alabama 1975.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to Class 3 municipalities; to authorize
20 Class 3 municipalities to file an expedited quiet title and
21 foreclosure action in circuit court to establish clear title
22 to abandoned tax sale properties within the corporate limits
23 that are acquired from the State Land Commissioner pursuant to
24 Chapter 10, Title 40, Code of Alabama 1975; and to provide for
25 the procedure and due process for the action in circuit court.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall apply only in a Class 3
2 municipality and provides the exclusive procedure for an
3 expedited quiet title and foreclosure action for a Class 3
4 municipality, notwithstanding Section 24-9-8, Code of Alabama
5 1975. Section 40-10-82, Code of Alabama 1975, as amended,
6 shall not apply to, restrict, or otherwise affect any cause of
7 action brought by a Class 3 municipality pursuant to this act.

8 Section 2. (a) Any Class 3 municipality may initiate
9 an expedited quiet title and foreclosure action under this
10 section against a parcel of tax sale property located within
11 its municipal limits and purchased by the municipality from
12 the State Land Commissioner. The municipality shall record, in
13 the office of the judge of probate in the county in which the
14 property is located, a notice of its intention to file an
15 expedited quiet title and foreclosure action. The notice shall
16 include a legal description of the property, street address of
17 the property if available, a statement that the property is
18 subject to expedited quiet title and foreclosure proceedings
19 under this act, and a statement that those proceedings may
20 extinguish any legal interests in the property. As used
21 herein, "interested parties" shall mean the owner, his or her
22 heirs or personal representatives, any mortgagee or purchaser
23 of the subject property or any part thereof, and any party
24 with an interest in the property, or in any part thereof,
25 legal or equitable, in severalty or as tenant in common,
26 including a judgment creditor or other creditor having a lien
27 thereon, or any part thereof.

1 (b) The municipality shall make a good faith effort
2 to identify the interested parties and the addresses at which
3 they can be reached. The municipality shall be presumed to
4 have made a good faith effort to identify interested parties
5 if it does all of the following:

6 (1) Erects a sign not less than four feet by six
7 feet on the property and maintains it for a minimum of 30
8 days, which must read as follows:

9 THIS PROPERTY WAS SOLD TO THE CITY OF
10 _____ FOR UNPAID TAXES. ANYONE WITH
11 INFORMATION ABOUT THE OWNER OF THIS PROPERTY,
12 PLEASE CALL _____.

13 (2) Examines the addresses that appear on the face
14 of the recorded deeds, mortgages, and relevant instruments.

15 (3) Examines the records of the tax assessor or
16 revenue commissioner to find the names and addresses of all
17 parties who paid taxes in the five-year period prior to the
18 date of the tax sale; provided, however, that the municipality
19 is not required to search for parties who paid taxes more than
20 20 years prior to the year of the inquiry.

21 (4) If the interested party is an individual, the
22 municipality shall examine voter registration lists, available
23 municipal archives for records of deaths, and the probate
24 court records of estates opened in the county in which the
25 property is located.

1 (5) If the interested party is a business entity,
2 the municipality shall search the records of the Secretary of
3 State for the name and address of a registered agent.

4 Section 3. The municipality may file a single
5 petition with the clerk of the circuit court for the judicial
6 circuit in which the subject property is located for an order
7 to quiet title and expedite foreclosure to one or more parcels
8 of property under this section. The petition shall identify
9 each parcel by its legal description, tax parcel number, and
10 street address, if available, and shall be served on all
11 interested parties identified in accordance with subsection
12 (b) of Section 2.

13 Section 4. The circuit court petition under Section
14 3 shall set the date, time, and place for a hearing on the
15 petition within 90 days. The court, on the request of a party,
16 may extend the 90-day period for good cause shown.

17 Section 5. (a) Not less than 30 days before the date
18 on which the hearing on the quiet title and foreclosure
19 petition is scheduled, the municipality shall do both of the
20 following:

21 (1) Send a notice of the hearing to the interested
22 parties identified under subsection (b) of Section 2 for each
23 parcel named in the petition by both certified mail, return
24 receipt requested, and regular mail.

25 (2) Post conspicuously on each property named in the
26 petition notice of the hearing which includes the following
27 statement: "THIS PROPERTY HAS BEEN TRANSFERRED TO [NAME OF

1 MUNICIPALITY] AND IS SUBJECT TO AN EXPEDITED QUIET TITLE AND
2 FORECLOSURE ACTION. PERSONS WITH INFORMATION REGARDING THE
3 PRIOR OWNER OF THE PROPERTY ARE REQUESTED TO CONTACT [THE
4 MUNICIPALITY]."

5 (b) Notices provided to the interested parties under
6 this section shall include all of the following:

7 (1) The date on which the municipality recorded in
8 probate court its notice of the pending expedited quiet title
9 and foreclosure action under subsection (a) of Section 2.

10 (2) A legal description, tax parcel identification
11 number, and the street address of the property, if available.

12 (3) The interested party or parties to whom the
13 notice is addressed.

14 (4) The date, time, and place for the hearing on the
15 petition for expedited quiet title and foreclosure and a
16 statement that the judgment of the court may result in title
17 to the property vesting in the municipality.

18 (5) Notice that the judgment of the court in the
19 quiet title and foreclosure hearing may extinguish any
20 ownership interest in, liens against, right to redeem, or any
21 claim whatsoever secured by the property.

22 (6) The name, address, and telephone number of the
23 municipality.

24 (7) A statement that persons with information
25 regarding the owner or prior owner of any of the properties
26 are requested to contact the municipality.

1 (8) That any party seeking to redeem the property
2 will be required to pay all taxes, interest, penalties, and
3 fees and any other charges due and owing under Chapter 10 of
4 Title 40, Code of Alabama 1975.

5 Section 6. If the municipality is unable to identify
6 the names and addresses of interested parties, or is unable to
7 provide notice under Section 5, the municipality shall apply
8 to the circuit court for an order to allow notice by
9 publication. If so ordered, the municipality shall publish a
10 notice once each week for three consecutive weeks in a
11 newspaper of general circulation in the county in which the
12 property is located. If no newspaper is published in that
13 county, publication shall be made in a newspaper of general
14 circulation in an adjoining county. This publication shall
15 substitute for notice under subdivision (1) of subsection (a)
16 of Section 5. The published notice shall include the
17 information listed in subsection (b) of Section 5. If the
18 municipality discovers the name and address of an interested
19 party following publication, it shall notify that party of the
20 expedited quiet title and foreclosure action in accordance
21 with subdivision (1) of subsection (a) of Section 5 as soon as
22 practicable, in which case notice shall be brought to the
23 attention of the court which shall postpone the hearing for a
24 period of time sufficient to give such notice to the newly
25 discovered party.

26 Section 7. Prior to the circuit court hearing on the
27 expedited quiet title and foreclosure action, the municipality

1 shall file with the clerk of the circuit court proof of notice
2 to the interested parties by certified and regular mail and of
3 the posting on the property under subdivision (2) of
4 subsection (a) of Section 5, along with proof of notice by
5 publication under Section 6, if applicable. An interested
6 party who desires to contest the petition shall file written
7 objections with the clerk of the circuit court and serve those
8 objections on the municipality at least two weeks prior to the
9 date of the hearing. If the court denies the petition, the
10 denial shall not preclude the municipality from filing another
11 petition for expedited quiet title and foreclosure on that
12 parcel. No injunction shall issue to stay an expedited quiet
13 title and foreclosure action under this section.

14 Section 8. (a) If an interested party appears at the
15 hearing and asserts a right to redeem the property, that party
16 may redeem in accordance with Chapter 10 of Title 40, Code of
17 Alabama 1975.

18 (b) If an interested party appears and fails to
19 redeem, or if no one appears, the circuit court shall enter
20 judgment on the petition not more than 10 days after the date
21 the matter was heard.

22 (c) The judgment of the circuit court shall specify
23 all of the following:

24 (1) The legal description, tax parcel identification
25 number, and, if known, the street address of the property
26 foreclosed.

1 (2) That fee simple title to property foreclosed by
2 the judgment is vested absolutely in the municipality, except
3 as otherwise provided in subdivision (5), without any further
4 rights of redemption.

5 (3) That all liens against the property, including
6 any lien for unpaid taxes or special assessments, are
7 extinguished.

8 (4) That the municipality has good and marketable
9 fee simple title to the property.

10 (5) That all existing recorded and unrecorded
11 interests in the property are extinguished, except for
12 recorded easements or right-of-way, private deed restrictions,
13 plat restrictions, or restrictions or covenants imposed under
14 the Alabama Land Recycling and Economic Development Act or any
15 other environmental law in effect in the state.

16 (6) That the municipality provided notice to all
17 interested parties or that the municipality complied with the
18 notice procedures in Section 5, which compliance shall create
19 a rebuttable presumption that all interested parties received
20 notice and an opportunity to be heard.

21 Section 9. A municipality or interested party may,
22 within 42 days following the effective date of the judgment,
23 appeal the judgment of the circuit court to the Court of Civil
24 Appeals. Any party appealing from an order vesting title in
25 the municipality shall, as a condition of the appeal, identify
26 the parcel which is the subject of the appeal and, with
27 respect to that parcel, post a bond with at least one solvent

1 surety in the amount due to redeem the property under Chapter
2 10, Title 40, Code of Alabama 1975. The appeal shall stay the
3 order of the circuit court only with respect to each parcel
4 identified as the subject of the appeal. The order of the
5 circuit court shall be affirmed absent a defect in the
6 identification of the property or in the notice such that the
7 notice deprived a party of the right to due process of law.
8 The order shall not be reversed on the basis of merely
9 technical noncompliance with this section.

10 Section 10. The municipality shall record the
11 court's order in the probate court following the 42-day period
12 after the entry of the order if no appeal is filed or after a
13 final judgment on appeal from the decision of the circuit
14 court on the municipality's petition for an expedited quiet
15 title and foreclosure action.

16 Section 11. All laws or parts of laws which conflict
17 with this act are repealed.

18 Section 12. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.