

1 HB458
2 115998-2
3 By Representative Ison (N & P)
4 RFD: Mobile County Legislation
5 First Read: 28-JAN-10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ENROLLED, An Act,

Relating to Class 2 municipalities; to authorize Class 2 municipalities to file an expedited quiet title and foreclosure action in circuit court to establish clear title to abandoned tax sale properties within the corporate limits that are acquired from the State Land Commissioner pursuant to Chapter 10, Title 40, Code of Alabama 1975; and to provide for the procedure and due process for the action in circuit court.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall apply only in a Class 2 municipality and provides the exclusive procedure for an expedited quiet title and foreclosure action for a Class 2 municipality, notwithstanding Section 8 of Act 2009-738, now appearing as Chapter 9 of Title 24, Code of Alabama 1975.

Section 2. (a) Class 2 municipalities may initiate an expedited quiet title and foreclosure action under this section against a parcel of tax sale property located within its municipal limits and purchased by the municipality from the State Land Commissioner. The municipality shall record, in the office of the judge of probate in the county in which the property is located, a notice of its intention to file an expedited quiet title and foreclosure action. The notice shall include a legal description of the property, street address of the property if available, a statement that the property is

1 subject to expedited quiet title and foreclosure proceedings
2 under this act, and a statement that those proceedings may
3 extinguish any legal interests in the property. As used
4 herein, "interested parties" shall mean the owner, his or her
5 heirs or personal representatives, any mortgagee or purchaser
6 of the subject property or any part thereof, and any party
7 with an interest in the property, or in any part thereof,
8 legal or equitable, in severalty or as tenant in common,
9 including a judgment creditor or other creditor having a lien
10 thereon, or any part thereof.

11 (b) The municipality shall make a good faith effort
12 to identify the interested parties and the addresses at which
13 they can be reached. The municipality shall be presumed to
14 have made a good faith effort to identify interested parties
15 if it does all of the following:

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

19 THIS PROPERTY WAS SOLD TO THE CITY OF
20 _____ FOR UNPAID TAXES. ANYONE WITH
21 INFORMATION ABOUT THE OWNER OF THIS PROPERTY,
22 PLEASE CALL _____.

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

1 (3) Examines the records of the tax assessor or
2 revenue commissioner to find the names and addresses of all
3 parties who paid taxes in the five-year period prior to the
4 date of the tax sale; provided, however, that the municipality
5 is not required to search for parties who paid taxes more than
6 20 years prior to the year of the inquiry.

7 (4) If the interested party is an individual, the
8 municipality shall examine voter registration lists, available
9 municipal archives for records of deaths, and the probate
10 court records of estates opened in the county in which the
11 property is located.

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

15 Section 3. The municipality may file a single
16 petition with the clerk of the circuit court for the judicial
17 circuit in which the subject property is located for an order
18 to quiet title and expedite foreclosure to one or more parcels
19 of property under this section. The petition shall identify
20 each parcel by its tax parcel number and street address and
21 shall be served on all interested parties identified in
22 accordance with subsection (b) of Section 2.

23 Section 4. The circuit court petition under Section
24 3 shall set the date, time, and place for a hearing on the

1 petition within 90 days. The court, on the request of a party,
2 may extend the 90-day period for good cause shown.

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

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

11 (2) Post conspicuously on each property named in the
12 petition notice of the hearing which includes the following
13 statement: "THIS PROPERTY HAS BEEN TRANSFERRED TO [NAME OF
14 MUNICIPALITY] AND IS SUBJECT TO AN EXPEDITED QUIET TITLE AND
15 FORECLOSURE ACTION. PERSONS WITH INFORMATION REGARDING THE
16 PRIOR OWNER OF THE PROPERTY ARE REQUESTED TO CONTACT [the
17 municipality]."

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

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

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

1 (3) The interested party or parties to whom the
2 notice is addressed.

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

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

11 (6) The name, address, and telephone number of the
12 municipality.

13 (7) A statement that persons with information
14 regarding the owner or prior owner of any of the properties
15 are requested to contact the municipality.

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

20 Section 6. If the municipality is unable to identify
21 the names and addresses of interested parties, or is unable to
22 provide notice under Section 5, the municipality shall apply
23 to the circuit court for an order to allow notice by
24 publication. If so ordered, the municipality shall publish a
25 notice once each week for three consecutive weeks in a

1 newspaper of general circulation in the county in which the
2 property is located. If no newspaper is published in that
3 county, publication shall be made in a newspaper of general
4 circulation in an adjoining county. This publication shall
5 substitute for notice under subdivision (1) of subsection (a)
6 of Section 5. The published notice shall include the
7 information listed in subsection (b) of Section 5. If the
8 municipality discovers the name and address of an interested
9 party following publication, it shall notify that party of the
10 expedited quiet title and foreclosure action in accordance
11 with subdivision (1) of subsection (a) of Section 5 as soon as
12 practicable, in which case notice shall be brought to the
13 attention of the court which shall postpone the hearing for a
14 period of time sufficient to give such notice to the newly
15 discovered party.

16 Section 7. Prior to the circuit court hearing on the
17 expedited quiet title and foreclosure action, the municipality
18 shall file with the clerk of the circuit court proof of notice
19 to the interested parties by certified and regular mail and of
20 the posting on the property under subdivision (2) of
21 Subsection (a) of Section 5, along with proof of notice by
22 publication under Section 6, if applicable. An interested
23 party who desires to contest the petition shall file written
24 objections with the clerk of the circuit court and serve those
25 objections on the municipality at least two weeks prior to the

1 date of the hearing. If the court denies the petition, the
2 denial shall not preclude the municipality from filing another
3 petition for expedited quiet title and foreclosure on that
4 parcel. No injunction shall issue to stay an expedited quiet
5 title and foreclosure action under this section.

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

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

14 (c) The judgment of the circuit court shall specify
15 all of the following:

16 (1) The legal description, tax parcel identification
17 number, and, if known, the street address of the property
18 foreclosed.

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

23 (3) That all liens against the property, including
24 any lien for unpaid taxes or special assessments, are
25 extinguished.

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

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

9 (6) That the municipality provided notice to all
10 interested parties or that the municipality complied with the
11 notice procedures in Section 5, which compliance shall create
12 a rebuttable presumption that all interested parties received
13 notice and an opportunity to be heard.

14 Section 9. A municipality or interested party may,
15 within 42 days following the effective date of the judgment,
16 appeal the judgment of the circuit court to the Court of Civil
17 Appeals. Any party appealing from an order vesting title in
18 the municipality shall, as a condition of the appeal, identify
19 the parcel which is the subject of the appeal and, with
20 respect to that parcel, post a bond with at least one solvent
21 surety in the amount due to redeem the property under Chapter
22 10, Title 40, Code of Alabama 1975. The appeal shall stay the
23 order of the circuit court only with respect to each parcel
24 identified as the subject of the appeal. The order of the
25 circuit court shall be affirmed absent a defect in the

1 identification of the property or in the notice such that the
2 notice deprived a party of the right to due process of law.
3 The order shall not be reversed on the basis of merely
4 technical noncompliance with this section.

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

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

13 Section 12. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in
and was passed by the House February 9, 2010.

Greg Pappas
Clerk

Senate	<hr/> 23-MAR-10 <hr/>	Amended and Passed
House	06-APR-10	Passed, the Governor's objections to the contrary notwithstanding
		Yeas 59, Nays 1, Abstains 15
Senate	<hr/> 08-APR-10 <hr/>	Passed, the Governor's objections to the contrary notwithstanding
		Yeas 23, Nays 0, Abstains 0