

HOUSE BILL 1254

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 35, Chapter 5; Title 66 and Title 67, Chapter 5, relative to delinquent property taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-5-109, is amended by adding the following language to the end of the section:

However, this requirement shall not be applicable to sales of parcels pursuant to title 67, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 35-5-112(b), is amended by adding the following language to the end of the subsection:

This subsection (b) shall not be applicable to sales of parcels pursuant to title 67, chapter 5.

SECTION 3. Tennessee Code Annotated, Title 35, Chapter 5, is amended by adding the following as a new section:

The requirements of §§ 35-5-101(e), 35-5-104(a)(4) and (5), and 35-5-104(b) shall not be applicable to sales of parcels pursuant to title 67, chapter 5.

SECTION 4. Tennessee Code Annotated, Title 66, Chapter 26, is amended by adding the following as a new section:

(a) Every person who claims to be the owner of an interest or lien in a parcel and every guardian, conservator, attorney in fact, or other person having a fiduciary relationship with a minor, an incompetent, or other person claiming to be the owner of an interest in a parcel, shall register the document effecting such ownership, interest, or

lien, or an abstract thereof, or an affidavit of heirship, in the office of the register of deeds for the county in which the parcel is located.

(b) A person who fails, or whose fiduciary fails, to register such document shall not be heard to complain of a failure to receive notice of an in rem proceeding if the document is not registered prior to the proceeding being filed, and shall be bound by such judgments, findings, orders, and precedents rendered or established in the proceedings.

SECTION 5. Tennessee Code Annotated, Section 67-5-2003(g)(4), is amended by deleting the subdivision and substituting instead the following:

(4) A judgment of personal liability for unpaid personal property taxes may be enforced as any other judgment, through garnishment, execution, or otherwise, and may also be recorded in one (1) or more offices of registers of deeds and made a lien against the judgment debtor's other property. Any judgment recorded pursuant to this subdivision (g)(4) shall be subject to the same requirements and attributes of judgment liens, including durability, priority, and renewal, and shall thereafter no longer be subject to the statute of limitation established by this chapter for unpaid property taxes.

However, the rates of penalty and interest shall continue as established by this chapter, and upon recording of such judgment, the tax entity shall retain the alternative of enforcing its tax lien against the assessed personal property according to the priority and procedures set forth in this chapter.

SECTION 6. Tennessee Code Annotated, Section 67-5-2101(b), is amended by deleting the subsection and substituting instead the following:

(b) In addition to the lien on property, property taxes shall become and remain a personal debt of the property owner or property owners as of January 1, and, when delinquent, may be collected by suit as any other personal debt. In any lawsuit for collection of property taxes, the same penalties and attorney fees shall apply as set forth in § 67-5-2410 for suits to enforce liens for property taxes. The claim for the debt and the claim for enforcement of the lien may be joined in the same complaint.

SECTION 7. Tennessee Code Annotated, Section 67-5-2103(b), is amended by deleting the subsection and substituting instead the following:

(b) All interested persons shall be deemed to have constructive notice of the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien. However, interested persons who do not have an obligation to pay the taxes on the parcel, such as lienholders, need not be joined as parties nor served with process so long as a diligent effort to give actual notice of the proceedings, as defined in § 67-5-2502(c)(1), is made to such persons.

SECTION 8. Tennessee Code Annotated, Section 67-5-2103, is further amended by adding the following as new subsections:

(d) The general assembly finds and determines that:

(1) The collection of property taxes is an essential and necessary function of counties and municipal corporations in the state;

(2) This chapter provides for a specific and comprehensive scheme for the collection of delinquent property taxes;

(3) This chapter is intended to be procedural and remedial in application and, unless a contrary intent is expressed in an act amending this chapter, such amendments are also intended to be procedural and remedial in application and, thus, that this chapter and such amendments should be applied retroactively in all hearings and proceedings occurring after the effective date of this act or the effective date of any such amendment, except as may be limited by the constitutions of the United States and of this state;

(4) The economy of the state has evolved from one primarily based upon the agrarian use of real property to an economy based more upon the improvement of real property by the construction of residential, commercial, and

industrial structures thereon. Such improvements require the investments of significant funds and resources;

(5) A purpose of this chapter is to promote and encourage the development of improvements upon real estate which have been conveyed pursuant to this chapter through the enforcement of tax liens;

(6) The certainty and finality of the titles to real estate which have been conveyed pursuant to this chapter through the enforcement of tax liens, is a necessary prerequisite to the development of improvements thereon; and

(7) Statutes that are not consistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter should not be applicable to tax proceedings, tax liens, or the enforcement of such tax liens.

(e) This chapter and, unless a contrary intent is expressed in an act amending this chapter, amendments to this chapter shall be applied retroactively in all hearings and proceedings occurring after the effective date of this act or the effective date of any such amendment, except as may be limited by the constitutions of the United States and of this state.

(f) This chapter shall be construed liberally in favor of the certainty and finality of property titles transferred pursuant to this chapter.

(g) Title 21, Chapter 1, Part 4 is not applicable to tax proceedings, tax liens, or the enforcement of such tax liens.

(h) Sections 29-6-161 – 29-6-165 are not applicable to tax proceedings, tax liens, or the enforcement of such tax liens.

(i) Other statutes that are not consistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter shall not be applicable to tax proceedings, tax liens, or the enforcement of such tax liens.

(j) All interested persons, as defined in this chapter, are charged with the knowledge that the parcel is subject to property taxes, which is required to be paid to the trustee or collector on an annual basis, and which taxes become a first lien on the parcel from January 1 of each year. All interested persons have an affirmative duty to inquire as to the amounts of such taxes and their payment status. Under no circumstances shall a claim that the interested party did not receive a tax bill or any pre-lawsuit notice constitute a valid defense to the enforcement of the lien, the personal debt for the taxes, or the amount of taxes owed, including penalty, interest, cost, and fees.

SECTION 9. Tennessee Code Annotated, Section 67-5-2414, is amended by inserting the following language after the words “courts of chancery”:

, except as modified in this chapter or as they may be inconsistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter

SECTION 10. Tennessee Code Annotated, Section 67-5-2502(a)(3), is amended by inserting the following language after the words “Tennessee Rules of Civil Procedure”:

, except as modified in this chapter or as they may be inconsistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter

SECTION 11. Tennessee Code Annotated, Section 67-5-2414, is further amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b):

(b) The court shall have broad discretion to determine whether a parcel shall be sold separately, combined with other parcels for sale, or subdivided and sold. The court shall consider the following factors:

(1) Whether the parcels have a common owner;

(2) Whether the action proposed will likely increase the value of the parcel and entice additional bidders to the sale;

(3) Whether separate parcels proposed to be combined are of equal value or the value of each parcel proposed to be combined can be adequately determined prior to the sale so as to determine the distribution of the proceeds of the sale;

(4) Whether the parcels are subject to common lienholders;

(5) Whether the proposed action will enable the resulting parcel to be eligible for issuance of a building permit, wastewater disposal permit, or otherwise improve the likelihood of an improvement being constructed thereon; and

(6) Whether the proposed action, after consideration of all facts and circumstances, will be more likely to increase the proceeds of the sale.

SECTION 12. Tennessee Code Annotated, Section 67-5-2415(g), is amended by adding the following language to the end of the subsection:

Process and notices sent by registered or certified mail or by an alternative delivery service, with a return receipt, shall be sufficient to bind the addressee if the addressee fails to pick up the mail. Process and notices delivered by registered or certified mail or by an alternative delivery service, with a return receipt, to an interested party's registered agent at the agent's address or to the address of the interested party, each as shown on the corporate records of a state secretary of state or other officer responsible for maintaining such records, shall be sufficient to bind the interested party as to notices and service of process.

SECTION 13. Tennessee Code Annotated, Section 67-5-2502(a), is further amended by adding the following new subdivision:

(4) A person, who is either expressly or impliedly authorized by another person to receive mail on behalf of the other person, is authorized to sign a receipt on behalf of

the other person accepting registered or certified mail or correspondence delivered by an alternative delivery service, containing either a summons, complaint, or summary of the proceeding or a notice that has been or is to be filed in a tax proceeding. Evidence of other instances in which a person has received mail addressed to a different person shall constitute conclusive proof that the person is authorized to receive mail and accept service of process on behalf of the other person. In every tax proceeding, the burden of proving by clear and convincing evidence, that a person who signed such a receipt for a different person and was, in fact, at that time expressly prohibited in writing from accepting mail for the second person, shall be upon the person challenging the sufficiency of the service or notice. Such written prohibition shall be by a sworn statement also containing a denial that the prohibition is made for the purpose of avoiding or hindering proceedings to collect delinquent property taxes or to enforce a lien for delinquent property taxes and shall, after proper acknowledgment, be recorded in the office of the register of deeds in the county where the parcel, which is the subject of the tax proceeding, is located. Absent the recording of such a statement prior to the receipt at issue being signed, it shall be conclusively presumed that a person signing such a receipt for a different person was authorized to accept service of process and notice on that person's behalf.

SECTION 14. Tennessee Code Annotated, Section 67-5-2503, is amended by designating the existing language as subsection (b) and by inserting the following language as a new subsection (a):

(a) An order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser effective upon entry of the order. On such date, the risk of loss shall transfer from the original owner to the purchaser. In the event of a loss occurring after the sale and before the order confirming the sale is entered, the court

shall, on motion of the purchaser filed before the order confirming the sale becomes final, determine whether any portion of the purchaser's bid should be refunded to the purchaser.

SECTION 15. Tennessee Code Annotated, Section 67-5-2504(d)(4), is amended by deleting the language "2702" and substituting instead the language "2701".

SECTION 16. Tennessee Code Annotated, Section 67-5-2504(d)(5), is amended by deleting the language "2707" and substituting instead the language "2702".

SECTION 17. Tennessee Code Annotated, Section 67-5-2504, is further amended by adding the following new subsections:

(f) Any person successfully challenging the validity of a tax sale of the person's interest in a parcel shall also be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for any increase in the value of the parcel, including any improvements thereto, from the date of the entry of the order confirming the sale until the entry of a court order declaring the tax sale invalid as to the challenger. In the alternative, the challenger shall be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for all amounts expended by the purchaser or the purchaser's successors as set out in § 67-5-2701(b) and (e), if such amount is in excess of the increased value of the parcel. The purchaser and successors shall have a lien upon the parcel to secure the payment of the amount determined by the court to be due.

(g) An order confirming the sale of a parcel is voidable and may be voided by the court after a determination of the merits of the grounds for the action as set out in this chapter and any defenses raised.

(h) For the purposes of this chapter, a motion filed pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure, or any other or successor rule of similar effect,



challenging the validity of a tax sale and any independent action for a similar purpose, shall be considered an action to invalidate the sale of a tax title.

SECTION 18. Tennessee Code Annotated, Section 67-5-2507(b)(9), is amended by deleting the subdivision and substituting instead the following:

(9) Conveyances of the land shall be made without warranties of any sort, and deeds shall be executed by the county mayor or other chief fiscal officer of the county.

SECTION 19. Tennessee Code Annotated, Section 67-5-2509(a), is amended by deleting the language “2702” and substituting instead the language “2701”.

SECTION 20. Tennessee Code Annotated, Section 67-5-2701(b), is amended by deleting the fourth sentence and substituting instead the following:

The interest shall be at the rate of twelve percent (12%) per annum, which shall begin to accrue on the date the purchaser pays the purchase price to the clerk and continuing until the motion to redeem is filed.

SECTION 21. Tennessee Code Annotated, Section 67-5-2701(d), is amended by deleting the last sentence and substituting instead the following:

If no response is timely filed, the court shall determine whether the redemption has been properly made, and if so, shall cause an order to be entered requiring the proposed redeemer to pay additional interest at the rate set forth in subsection (b), accruing from the date the motion to redeem was filed until the date of such payment.

SECTION 22. Tennessee Code Annotated, Section 67-5-2701(e)(4), is amended by deleting the language “judicial or administrative order” and substituting instead the language “judicial or administrative order or other official notice”.

SECTION 23. Tennessee Code Annotated, Section 67-5-2701(e)(6), is amended by deleting the subdivision and substituting instead the following:

(6) Additional interest at the rate set out in subsection (b), accruing from the date the motion to redeem was filed until the date the purchaser's response was filed. If the court determines that the purchaser has not delayed consideration of the motion to redeem and that any response filed by the purchaser for additional funds was based on a reasonable expectation that the expenditures of the purchaser were reimbursable pursuant to this section, then the court may require the proposed redeemer to also pay additional interest at the same rate, accruing from the date the purchaser's response was filed until the date of such payment.

SECTION 24. Tennessee Code Annotated, Section 67-5-2701(f), is amended by deleting the language "If the court determines that additional funds are owing by the proposed redeemer, the same shall be paid" and substituting instead the language "Any additional funds ordered to be paid by the proposed redeemer under this section shall be paid".

SECTION 25. Tennessee Code Annotated, Section 67-5-2701(g), is amended by deleting the subsection and substituting instead the following:

(g) If the proposed redeemer timely pays the full amount of any additional funds ordered by the court, the court shall declare that the property has been redeemed.

SECTION 26. Tennessee Code Annotated, Section 67-5-2701(n), is amended by deleting the subsection and substituting instead the following:

(n) Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be restored to that state which existed as of the date of entry of the confirmation order and shall be subject to such conveyances and encumbrances that have occurred since the entry of the confirmation order. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien.

SECTION 27. Tennessee Code Annotated, Section 67-5-2702(a), is amended by deleting the subsection and substituting instead the following:

(a) Following entry of the order of confirmation of sale, any interested person, as defined in this chapter, may file a motion with the court requesting disbursement of any excess sale proceeds pursuant to this section.

SECTION 28. Tennessee Code Annotated, Section 67-5-2702(c)(5), is amended by deleting the subdivision and substituting instead the following:

(5) Any remaining excess proceeds shall be subject to the Uniform Disposition of Unclaimed Property Act, compiled in title 66, chapter 29, part 1. A motion for excess proceeds may be filed in the court in which the proceeding is pending until such time as the funds are actually forwarded to the state pursuant to the Uniform Disposition of Unclaimed Property Act. For the purposes of § 66-29-110, the presumption of abandonment shall not arise until the final determination of all filed motions for redemption and excess proceeds or one (1) year following the expiration of the redemption period for that parcel, whichever is later.

SECTION 29. Tennessee Code Annotated, Section 67-5-2702, is amended by adding the following as a new subsection:

(f) For the purposes of this section, “in accordance with priorities established by applicable law” means that the priority of the interests in the parcel shall transfer to the proceeds from the sale of the parcel.

SECTION 30. Tennessee Code Annotated, Section 67-5-2702, is further amended by adding the following as a new subsection:

(g) In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the excess sale proceeds portion of the proceedings as an

assistance to the court, the court may allow a reasonable attorney's fee to be assessed as directed by the court.

SECTION 31. This act shall take effect upon becoming a law, the public welfare requiring it.