

STATE OF ALABAMA



ALABAMA LAW INSTITUTE

ALABAMA REDEMPTION FROM AD VALOREM TAX SALES

May 2008

ALABAMA LAW INSTITUTE
326 Law Center
Post Office Box 861425
Tuscaloosa, Alabama 35486
(205) 348-7411
FAX (205) 348-8411
<http://www.ali.state.al.us/>

PREFACE

When Section 40-10-122 was amended in 2002 to limit 12% interest paid at tax sale to taxes and on the overbid up to 15% of assessed value, other sections of the law should have been amended. This bill will clarify and codify the current law by amending other relevant code sections concerning the redemption of property from ad valorem tax sales. It also codifies case law on redemption and delineates the counties' responsibility with regard to holding and refunding an "overbid" by the tax sale purchaser who paid all taxes, fees and charges and any additional sums paid to the tax collector.

The bill also:

1. Provides a procedure for redemption by the landowner from multiple tax sales.
2. The owner who remains in possession after the sale may always redeem. (Tax payer has a statutory redemption period 3 years from sale; there is an additional 3 years redemption period from the purchaser after the 3 year statutory redemption period.)
3. Allows the tax status for Class 3 property to remain to be taxed as Class 3 property as long as the owner occupies the property.
4. After three years from the date of the tax sale, the probate judge must receive proof that all ad valorem taxes have been paid before a tax deed is issued.
5. The county will retain the overbid until there is a final disposition of the property.
6. When the property is redeemed, the amount of

the overbid will be distributed to the land purchaser. If the property is foreclosed, the amount of the overbid will be paid to the person against whom the property was accessed. Any earnings paid by the county's depository on the overbid shall be retained by the county.

Robert L. McCurley, Jr.
Director

May 2008

To amend Sections 40-10-19, 40-10-29, 40-10-75, 40-10-76, 40-10-77, 40-10-78, 40-10-82, 40-10-83, 40-10-120, 40-10-122, and 40-10-128, Code of Alabama 1975, relating to the redemption of property sold for delinquent ad valorem taxes, to allow tax status to remain for Class III owner-occupied property; and to require ad valorem taxes to be paid before the judge of probate issues a deed upon the expiration of three years from the date of sale of any real estate for taxes and provide further for the deposit of redemption money, to provide further for the rights of a purchaser where the tax sale proceedings were defective, for actions for possession and defenses that are defeated on grounds other than that the taxes were not due, for the tender of parties claiming adversely to the tax title, for the effect of payment by the original owner, and for the time and by whom the land may be redeemed.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-10-19, 40-10-29, 40-10-75, 40-10-76, 40-10-77, 40-10-78, 40-10-82, 40-10-83, 40-10-120, 40-10-122, and 40-10-

128, Code of Alabama 1975, are amended to read as follows:

"§40-10-19.

"(a) As soon after the confirmation of sale is made as may be practicable, the tax collector must make out and deliver to each purchaser, other than the state, a certificate of purchase, which shall contain a description of the real estate sold and show that the sum was assessed by the assessor, to whom assessed, the date of assessment, for what year or years the taxes were due, the amount of taxes thereon, the amount of and the name of the holder of each tax lien certificate related thereto, distinguishing the amount due the state and county and for school purposes and to each holder of a tax lien certificate and the fees and costs, that it was advertised and how long, that it was offered for sale and at what time, who became the purchaser, at what price and the fact and date of the confirmation of such sale.

"(b) In the event of the tax sale of owner-occupied property that is taxed as Class III, the certificate shall provide

notice that (1) the Class III tax status shall remain in effect for the property throughout the period allowed for redemption as long as the property is used as an owner-occupied residence, and (2) for any period or periods following the tax sale that the property is not used as Class III property, as defined in Section 40-8-1, the property will be classified, assessed, and taxed as Class II property.

"§40-10-29.

"After the expiration of three years from the date of the sale of any real estate for taxes, the judge of probate then in office must execute and deliver to the purchaser, other than the state, or person to whom the certificate of purchase has been assigned, upon the return of the certificate, proof that all ad valorem taxes have been paid, and payment of a fee of \$5 five dollars (\$5) to the judge of probate, a deed to each lot or parcel of real estate sold to the purchaser and remaining unredeemed, including therein, if desired by the purchaser, any number of parcels, or lots purchased by him at such sale; and such deed

shall convey to and vest in the grantee all the right, title, interest and estate of the person whose duty it was to pay the taxes on such real estate and the lien and claim of the state and county thereto, but it shall not convey the right, title or interest of any reversioner or remainderman therein.

"§40-10-75.

"If, in any action brought for the possession of land sold for taxes, the title of the purchaser at the tax sale shall be defeated on account of any defect in the proceedings under which the sale is had, or on account of any defect in or insufficiency of the process by which the owner of the land was brought before the probate court, as is provided, or in the service of ~~said~~ the process, or by reason of the failure of the judge of probate on account of any negligence or refusal on his or her part to produce when called upon, sufficient evidence of the proper issuance and service of ~~said~~ the notice or process, or by reason of any other defect or insufficiency in any of the proceedings for the condemnation and sale of ~~said~~ the

property, or of the certificate or deed to ~~said~~ the purchaser or any two or more of ~~said~~ the causes, the officer or officers on account of whose omission or error ~~said~~ the defect or insufficiency or defects or insufficiencies shall have arisen, together with the sureties on the official bond, shall be liable to the purchaser whose title shall be thus defeated and to his or her assignees for the full sum of the purchase money paid by him or her at ~~said~~ the tax sale for ~~said~~ the property, the cost of the action in which ~~said~~ the title failed, which the purchaser shall have incurred in attempting to maintain ~~his~~ title under ~~said~~ tax sale, together with the interest upon each of these amounts; at the rate of 12 percent per annum subject to the limitations set forth in Section 40-10-122(a) ~~40-10-122(a)~~; provided that except as to the state, actions under this section shall be commenced within five years from the sale.

"§40-10-76.

"If, in any action brought by the purchaser, or other person claiming under ~~him~~ the purchaser, to recover the

possession of lands sold for taxes, a recovery is defeated on the ground that such sale was invalid for any reason other than that the taxes were not due, the court shall forthwith, on the motion of the plaintiff, ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest thereon from the date of sale, and the amount of such taxes on the lands, if any, as the plaintiff, or the person under whom he claims, has, since such sale, lawfully paid or assumed by the state after its purchase, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of 12 percent per annum subject to the limitations set forth in Section 40-10-122(a); and the court shall thereupon render judgment against the defendant in favor of the plaintiff for the amount ascertained and the costs of the action, which judgment shall constitute a lien on the lands sued for, and payment thereof may be enforced as in other cases.

"§40-10-77.

"If, in an action brought against such purchaser or other person claiming under ~~him~~ the purchaser to recover possession of lands sold for taxes, the defendant claims and defends under the tax title and ~~his~~ the defense fails on the ground that such sale was invalid for any reason other than that the taxes were not due, and the plaintiff recovers, the court shall forthwith, on the motion of the defendant, ascertain the amount of taxes for which the lands were liable at the time of the sale and for the payment of which they were sold, with interest thereon from the day of sale, and the amount of such taxes on the lands, if any, as the defendant or the person under whom he or she claims has, since such sale, lawfully paid or assumed, in case of the state, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of percent per annum subject to the limitations set forth in Section 40-10-122(a); and the court shall thereupon render judgment against the plaintiff in favor of the defendant for the amount ascertained and the cost of the action, which judgment

shall constitute a lien on the land sued for, the payment of which may be enforced as in other cases, and no writ of possession shall issue until such judgment has been satisfied, and the court may order the land sold or condemn it to the satisfaction of the debt.

"§40-10-78.

"(a) In any action under the provisions of either Section 40-10-76 or 40-10-77, the party claiming adversely to the tax title may, at any time, tender the amounts required in such sections to be ascertained by the court, with interest as therein prescribed; and no costs accruing after such tender shall be recovered of him, if, upon a refusal of the tender, he shall pay such amounts into court.

"(b) If the party is entitled to recover an excess pursuant to Section 40-10-28, the court shall ascertain the amount of the tender after allowing a credit for any such amount and shall direct the county treasurer, or other holder of the excess, to pay the amount of the excess to the court. The county need not be

named as a party to the proceedings. Provided, however, the county shall have 60 days from receipt of the court's order to intervene in the action as a matter of right and contest the court's determination as to the existence and disposition of the excess.

"§40-10-82.

"No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; but if the owner of such real estate was, at the time of such sale, under the age of 19 years or insane, he or she, his or her heirs or legal representatives shall be allowed one year after such disability is removed to bring an action for the recovery thereof; but this section shall not apply to any action brought by the state, ~~nor~~ to cases in which the owner of the real estate sold had paid the taxes, for the payment of which such real estate was sold prior to such sale, ~~nor shall they apply~~ or to cases in which the real estate sold

was not, at the time of the assessment or of the sale, subject to taxation. There shall be no time limit for recovery of real estate by an owner of land who has retained possession. If the owner of land seeking to redeem has retained possession, character of possession need not be actual and peaceful, but may be constructive and scrambling and, where there is no real occupancy of land, constructive possession follows title of the original owner and may only be cut off by adverse possession of the tax purchaser for three years after the purchaser is entitled to possession.

"§40-10-83.

"When the action is against the person for whom the taxes were assessed or the owner of the land at the time of the sale, his or her heir, devisee, vendee or mortgagee, the court shall, on motion of the defendant made at any time before the trial of the action, ascertain (i) the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with 12 percent per annum thereon, subject

to the limitations set forth in Section 40-10-122(a); (ii) with respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, all insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures and the value of all permanent improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon; (iii) with respect to any property which contains a residential structure at the time of the sale regardless of its location, all insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure and the value of all preservation improvements made by the purchaser determined in accordance with Section 40-10-122, together with 12 percent per annum thereon, subject to the limitations set forth in Section 23 40-10-122(a); and (iv) a reasonable attorney's fee for the plaintiff's attorney for bringing the action. The court shall also determine the right, if any, of the

defendant to recover any excess pursuant to Section 40-10-28 and shall apply a credit and direct the payment of the same as set forth in subsection (b) of Section 40-10-78. Upon such determination the court shall enter judgment for the amount so ascertained in favor of the plaintiff against the defendant, and the judgment shall be a lien on the land sued for. Upon the payment into court of the amount of the judgment and costs, the court shall enter judgment for the defendant for the land, and all title and interest in the land shall by such judgment be divested out of the owner of the tax deed.

"§40-10-120.

"(a) Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his or her heirs, or personal representatives, or by any mortgagee or purchaser of

such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of three years from the sale may redeem at any time within one year after the removal of ~~his~~ the disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of ~~said~~ the tax sale, the ~~said~~ party shall, in addition to the time herein specified, have the right to redeem ~~said~~ the real estate sold, or any portion thereof covered by his or her mortgage or lien, at any time within one year from the date of written notice from the purchaser of his or her purchase of ~~said~~ the lands at tax sale served upon such party, and notice served upon either the original mortgagees or lienholders or their

transferee of record, or their heirs, personal representatives, or assigns shall be sufficient notice.

"(b) If any real property has been sold for taxes and is subject to redemption from the sale as set forth in subsection (a) and has also been sold in one or more subsequent sales for taxes, then any party entitled to redeem such sale for taxes may redeem such sale if the redemptioner simultaneously redeems his or her sale and all subsequent sales. In the event of a redemption of successive sales, the redemption amount shall be ascertained by applying the provisions of Sections 40-10-121 and 40-10-122. Redemption amounts computed pursuant to Section 40-10-121 shall be paid as stated therein. Redemption amounts computed pursuant to Section 40-10-122 shall be paid as stated therein if the purchaser had the right to redeem pursuant to subsection (a) or was the owner of the then current tax certificate or tax title. Otherwise, those funds shall be disposed of as set forth in Section 40-10-28 and paid to such purchaser or his or her assignee only as set forth in Section 40-

10-28, with the time limits for such application computed utilizing the sale date when the purchaser's interest was sold for taxes.

"§40-10-122.

"(a) In order to obtain the redemption of land from tax sales where the same has been sold to one other than the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest payable at the rate of 12 percent per annum from date of sale, and, on the portion of any excess bid that is less than or equal to 15 percent of the market value as established by the ~~county board of equalization~~ assessing official, together with the amount of all taxes which have been paid by the purchaser, which fact shall be ascertained by consulting the records in the office of the tax collector, or other tax collecting official, with interest on ~~said~~ the payment at 12 percent per annum. If any taxes on said land have been assessed to the purchaser and

have not been paid, and if ~~said~~ the taxes are due which may be ascertained by consulting the tax collector or other tax collecting official of the county, the probate judge shall also require the party desiring to redeem ~~said~~ the land to pay the tax collector or other tax collecting official the taxes due on ~~said~~ the lands which have not been paid by the purchaser before he or she is entitled to redeem the same. In all redemptions of land from tax sales, the party securing the redemption shall pay all costs and fees as herein provided for due to officers and a fee of \$.50 to the judge of probate for his or her services in the matter of redemption. This application and payment may be executed by an on-line transaction via the Internet or other on-line provision.

"(b) With respect to property located within an urban renewal or urban redevelopment project area designated pursuant to Chapters 2 or 3 of Title 24, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in

this section, the amounts set forth below:

"(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on insurable structures with interest on said payments at 12 percent per annum.

"(2) The value of all permanent improvements made on the property determined in accordance with this section with interest on said value at 12 percent per annum.

"(c) With respect to property which contains a residential structure at the time of the sale regardless of its location, the proposed redemptioner must pay to the purchaser or his or her transferee, in addition to any other requirements set forth in this section, the amounts set forth below:

"(1) All insurance premiums paid or owed by the purchaser for casualty loss coverage on the residential structure with interest on the payments at 12 percent per annum.

"(2) The value of all preservation improvements made on the property determined in accordance with this section

with interest on the value at 12 percent per annum.

"(d) As used herein, "permanent improvements" shall include, but not be limited to, all repairs, improvements, and equipment attached to the property as fixtures. As used herein, "preservation improvements" shall mean improvements made to preserve the property by properly keeping it in repair for its proper and reasonable use, having due regard for the kind and character of the property at the time of sale. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent or preservation improvements as applicable made on the property since the tax sale. In response to written demand made pursuant to this subsection, within 10 days from the receipt of such demand, the purchaser shall furnish the proposed redemptioner with the amount claimed as the value of such permanent or preservation improvements as applicable; and within 10 days after receipt of such response, the proposed redemptioner either shall accept the value so stated by the purchaser or,

disagreeing therewith, shall appoint a referee to ascertain the value of such permanent or preservation improvements as applicable. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of such notice, the purchaser shall appoint a referee to ascertain the value of the permanent or preservation improvements as applicable and advise the proposed redemptioner of the name of the appointee. Within 10 days after the purchaser has appointed his or her referee, the two referees shall meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of such body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

"(e) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (d), he or she

must pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (d), the purchaser shall forfeit his or her claim to compensation for such improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises and in the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of such permanent or preservation improvements as applicable and enforce the redemption accordingly.

"§40-10-128.

"(a) If the lands redeemed were bid in by any person other than the state, the redemption money must be deposited by the judge of probate in the county treasury and there kept separate and apart from the general funds of the county, and the judge of probate shall notify the purchaser of such deposit by mailing notice to the residence or place of business of such

purchaser, or to such address as the purchaser may furnish the judge of probate at the time he or she secures his or her certificate of purchase; and, upon the demand of the purchaser, his or her legal representative or assignee and the surrender of the certificate of purchase, the judge of probate must give him or her an order on the treasury for the same.

"(b) For purposes of this article, the county shall retain any overbid until there is a final disposition of the property. If the property is redeemed, the amount of the overbid shall be distributed to the lien purchaser. If the property is foreclosed, the amount of the overbid shall be distributed to the person against whom the property was assessed at the time of sale, or his or her successor or assigns. Notwithstanding the foregoing, the earnings paid by the county's depository institution on any overbid shall be retained by the county."

Section 2. This act shall become effective September 1, 2008, following its passage and approval by the Governor, or its otherwise becoming law.