

LEGISLATIVE BILL 341

Approved by the Governor May 29, 2013

Introduced by Wightman, 36.

FOR AN ACT relating to revenue and taxation; to amend sections 77-1807, 77-1808, 77-1812, 77-1813, 77-1818, 77-1822, 77-1823, 77-1830, 77-1836, 77-1849, and 77-1936, Reissue Revised Statutes of Nebraska, and sections 77-1824, 77-1824.01, 77-1825, 77-1831, 77-1832, 77-1833, 77-1837, and 77-1902, Revised Statutes Cumulative Supplement, 2012; to change and eliminate provisions relating to tax sales for delinquent property taxes; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal sections 77-1820, 77-1926, and 77-1937, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-1807, Reissue Revised Statutes of Nebraska, is amended to read:

77-1807 (1) The person who offers to pay the amount of taxes, delinquent interest, and costs due on any real property shall be the purchaser. due on any real property for the smallest portion of the same shall be the purchaser, and when such person designates the smallest portion of the real property for which he or she will pay the amount of taxes assessed against any such property, the portion thus designated shall be considered an undivided portion. If no person bids for a less quantity than the whole, the treasurer may sell any real property to any one who will take the whole and pay the taxes and charges thereon. If the homestead is listed separately as a homestead, it shall be sold only for the taxes delinquent thereon.

(2) The county treasurer shall announce bidding rules at the beginning of the public auction, and such rules shall apply to all bidders throughout the public auction.

(3) The sale, if conducted in a round-robin format, shall be conducted in the following manner:

(a) At the commencement of the sale, a count shall be taken of the number of registered bidders present who want to be eligible to purchase property. Each registered bidder shall only be counted once. If additional registered bidders appear at the sale after the commencement of a round, such registered bidders shall have the opportunity to participate at the end of the next following round, if any, as provided in subdivision (e) of this subsection;

(b) Sequentially enumerated tickets shall be placed in a receptacle. The number of tickets in the receptacle for the first round shall equal the count taken in subdivision (a) of this subsection, and the number of tickets in the receptacle for each subsequent round shall equal the number of the count taken in subdivision (a) of this subsection plus additional registered bidders as provided in subdivision (e) of this subsection;

(c) In a manner determined by the county treasurer, tickets shall be selected from the receptacle by hand for each registered bidder whereby each ticket has an equal chance of being selected. Tickets shall be selected until there are no tickets remaining in the receptacle;

(d) The number on the ticket selected for a registered bidder shall represent the order in which a registered bidder may purchase property consisting of one parcel subject to sale from the list per round; and

(e) If property listed remains unsold at the end of a round, a new round shall commence until all property listed is either sold or, if any property listed remains unsold, each registered bidder has consecutively passed on the opportunity to make a purchase. Registered bidders who are not present when it is their turn to purchase property shall be considered to have passed on the opportunity to make a purchase. At the beginning of the second and any subsequent rounds, the county treasurer shall inquire whether there are additional registered bidders. If additional registered bidders are present, tickets for each such bidder shall be placed in a receptacle and selected as provided in subdivisions (b) through (d) of this subsection. The second and any subsequent rounds shall proceed in the same manner and purchase order as the last preceding round, except that any additional registered bidders shall be given the opportunity to purchase at the end of the round in the order designated on their ticket.

(4) Any property remaining unsold upon completion of the public auction shall be sold at a private sale pursuant to section 77-1814.

(5) A bidder shall (a) register with the county treasurer prior to

participating in the sale, (b) provide proof that it maintains a registered agent for service of process with the Secretary of State if the bidder is a foreign corporation, and (c) pay a twenty-five-dollar registration fee. The fee is not refundable upon redemption.

Sec. 2. Section 77-1808, Reissue Revised Statutes of Nebraska, is amended to read:

77-1808 The person purchasing any real property shall pay to the county treasurer the amount of taxes, interest, and cost thereon, which payment may be made in the same funds receivable by law in the payment of taxes. If any purchaser fails to so pay, then the real property shall at once again be offered as if no such sale had been made.

Sec. 3. Section 77-1812, Reissue Revised Statutes of Nebraska, is amended to read:

77-1812 The county treasurer shall keep a ~~sale book~~ record showing in separate columns the number and date of each certificate of sale, the name of the owners or owner if known, the description of the real property, the name of the purchaser, the total amount of taxes and costs for which sold, the amount of subsequent taxes paid by the purchaser and date of payment, to whom assigned, and the amount paid therefor, name of person redeeming, date of redemption, total amount paid for redemption, name of person to whom conveyed, and date of deed.

Sec. 4. Section 77-1813, Reissue Revised Statutes of Nebraska, is amended to read:

77-1813 On or before the first Monday of April following the sale of the real property, the county treasurer shall file in the office of the county clerk a return thereon as the same shall appear upon the county treasurer's sale book, record, and such return, duly certified, shall be evidence of the regularity of the proceedings.

Sec. 5. Section 77-1818, Reissue Revised Statutes of Nebraska, is amended to read:

77-1818 The purchaser of any real property sold by the county treasurer for taxes shall be entitled to a certificate in writing, describing the real property so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the county treasurer in his or her official capacity and shall be presumptive evidence of the regularity of all prior proceedings. Each tax lien shall be shown on a single certificate. The purchaser acquires a perpetual lien of the tax on the real property, and if after the taxes become delinquent he or she subsequently pays any taxes levied on the property, whether levied for any year or years previous or subsequent to such sale, he or she shall have the same lien for them and may add them to the amount paid by him or her in the purchase.

Sec. 6. Section 77-1822, Reissue Revised Statutes of Nebraska, is amended to read:

77-1822 The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his or her legal representatives, all the right and title of the original purchaser. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. An assignment shall be recorded by the county treasurer who shall collect a reassignment fee of ~~ten~~ twenty dollars and issue a new certificate to the assignee. The fee is not refundable upon redemption.

Sec. 7. Section 77-1823, Reissue Revised Statutes of Nebraska, is amended to read:

77-1823 The county treasurer shall charge a ~~ten-dollar~~ twenty-dollar issuance fee for each deed or certificate made by him or her for a sale of real property for taxes together with the fee of the notary public or other officer acknowledging the deed, ~~but any number of items of real property bought by any one person may be included in one deed as desired by the purchaser.~~ The issuance fee shall not be required if the tax sale certificate is issued in the name of the county, but the issuance fee is due from the purchaser when the county assigns the certificate to another person. The fee is not refundable upon redemption. Whenever the county treasurer makes a deed to any real property sold for taxes, he or she shall enter an account thereof in the ~~sale book~~ record opposite the description of the real property conveyed.

Sec. 8. Section 77-1824, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1824 The owner or occupant of any real property sold for taxes or any person having a lien thereupon or interest therein may redeem the same. ~~For owner-occupied real property, the right of redemption expires forty-five days after the date of application for the tax deed, and for all other real property, the~~ The right of redemption expires when the purchaser files an application for tax deed with the county treasurer. A redemption shall not be

accepted by the county treasurer, or considered valid, unless received prior to the close of business ~~forty-five days after the date of application for the tax deed for owner-occupied real property or~~ prior to the close of business on the day the application for the tax deed is received by the county treasurer, ~~for other real property.~~ Redemption shall be accomplished by paying the county treasurer for the use of such purchaser or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from date of such payment to date of redemption. The amount due for redemption shall include the issuance fee charged pursuant to section 77-1823. ~~In addition, if owner-occupied real property is redeemed after the day the purchaser files an application for a tax deed, the owner shall pay a redemption fee equal to twenty percent of all other amounts due.~~

Sec. 9. Section 77-1824.01, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1824.01 (1) For purposes of sections 77-1801 to 77-1863, owner-occupied real property means real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner on the date of the notice of the application for the tax deed.

(2) The determination of owner-occupied real property shall be made solely by the purchaser. The purchaser's determination shall be proved by affidavit at the time of the application and shall be accepted as true and correct by the county treasurer for his or her determination of statutory compliance with sections 77-1801 to 77-1863. Any person swearing falsely in the affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915.

Sec. 10. Section 77-1825, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1825 The county treasurer shall enter a memorandum of redemption of real property in the ~~sales book~~ record and shall give a receipt therefor to the person redeeming the same, for which the county treasurer may charge a fee of two dollars. The county treasurer shall send written notice of redemption, ~~by registered or certified mail,~~ to the holder of the county treasurer's certificate of tax sale by first-class mail ~~if the post office address of the holder of the certificate is filed in the office of the county treasurer or by electronic means if previously agreed to by the parties.~~ The redemption money, ~~including any redemption fee under section 77-1824,~~ shall be paid to or upon the order of the holder on return of the certificate.

Sec. 11. Section 77-1830, Reissue Revised Statutes of Nebraska, is amended to read:

77-1830 Any person claiming an undivided part of any real property sold for taxes may redeem the property on paying such proportion of the purchase money, interest, costs, and subsequent taxes as he or she claims of the real property sold. The owner or occupant of a divided part of any real property sold for taxes or any person having a lien thereon or interest therein may redeem the property by paying the taxes separately assessed against such divided part, together with interest, costs, and subsequent taxes. If no taxes have been separately assessed against such divided part, then it shall be the duty of the county assessor, upon demand of the owner or lienholder or upon the demand of the county treasurer, to assess the divided part and to certify the assessment to the county treasurer. The owner or lienholder of the divided part may thereupon redeem the divided part upon the payment to the county treasurer of such sum so assessed, together with interest thereon, costs, and subsequent taxes. The county treasurer shall make a proper entry of such partial redemption in his or her sale book, record, and no deed thereafter given shall convey a greater interest than that remaining unredeemed.

Sec. 12. Section 77-1831, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1831 ~~(1) No~~ Except as otherwise provided in this section, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months from the date of service of such notice, the tax deed will be applied for. In the case of owner-occupied property, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless

such purchaser or assignee, at least three months and forty-five days before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months and forty-five days from the date of service of such notice, the tax deed will be applied for.

The notice shall include:

~~(a) (1) The following statement in sixteen-point type: UNLESS YOU ACT YOU WILL LOSE THIS PROPERTY;~~

~~(b) (2) The date when the purchaser purchased the real property sold by the county for taxes;~~

~~(c) (3) The description of the real property;~~

~~(d) (4) In whose name the real property was assessed;~~

~~(e) (5) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and any subsequent taxes paid and interest a statement that subsequent taxes may have been paid and interest may have accrued as of the date the notice is signed by the purchaser; and~~

~~(f) (6) The following statements:~~

~~(i) (a) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;~~

~~(ii) (b) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer; and, In addition, if the real property is owner-occupied real property and the redemption occurs after the day the purchaser files an application for a tax deed, a redemption fee equal to twenty percent of all other amounts due must be paid; and~~

~~(iii) The (c) Except as provided for real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, right of redemption expires at the close of business forty-five days after on the date of application for the tax deed, and a deed may be applied for after the expiration of three months from the date of service of this notice. For real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, a deed may be applied for after the expiration of three months and forty-five days after the service of this notice. for owner-occupied real property or at the close of business on the day the purchaser files an application for a tax deed with the county treasurer for all other real property.~~

~~(2) In addition to the notice required under subsection (1) of this section, no purchaser of owner-occupied real property at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, upon application for the deed, serves or causes to be served a notice that, after the expiration of forty-five days after the date of application for the tax deed, the tax deed will be executed and delivered by the county treasurer unless the owner redeems the real property.~~

~~The notice shall include:~~

~~(a) The date when the purchaser purchased the real property sold by the county for taxes;~~

~~(b) The description of the real property;~~

~~(c) In whose name the real property was assessed;~~

~~(d) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and any subsequent taxes paid and interest accrued as of the date the notice is signed by the purchaser plus the amount of the redemption fee; and~~

~~(e) The following statements:~~

~~(i) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;~~

~~(ii) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer. In addition, if the real property is owner-occupied real estate and the redemption occurs after the day the purchaser files an application for a tax deed, a redemption fee equal to twenty percent of all other amounts due must be paid; and~~

~~(iii) The right of redemption expires forty-five days after the date of application for the tax deed for owner-occupied real property.~~

Sec. 13. Section 77-1832, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1832 (1) Service of the notice provided by subsection (1) of

section 77-1831 shall be made by:

(a) Personal or residence service as described in section 25-505.01 upon every person in actual possession or occupancy of the real property who qualifies as an owner-occupant under section 77-1824.01; or ~~and upon the person in whose name the title to the real property appears of record who can be found in this state; or~~

(b) Certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record ~~who cannot be found in this state or who cannot be served by personal or residence service~~ to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record.

~~(2) Service of the notice pursuant to subsection (2) of section 77-1831 shall be made by certified mail upon the owner of owner-occupied real property.~~

~~(3)~~ (2) Personal or residence service shall be made by the county sheriff of the county where service is made or by a person authorized by section 25-507. The sheriff or other person serving the notice shall be entitled to the statutory fee prescribed in section 33-117. Within twenty days after the date of request for service of the notice, the person serving the notice of service shall (a) make proof of service to the person requesting the service and state the time and place of service including the address if applicable, the name of the person with whom the notice was left, and the method of service or (b) return the proof of service with a statement of the reason for the failure to serve. Failure to make proof of service or delay in doing so does not affect the validity of the service.

Sec. 14. Section 77-1833, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1833 The service of ~~notices~~ notice provided by section 77-1832 shall be proved by affidavit, and the notice and affidavit shall be filed and preserved in the office of the county treasurer. The purchaser or assignee shall also affirm in the affidavit that a title search was conducted to determine those persons entitled to notice pursuant to such section. The certified mail return receipt shall be filed with and accompany the return of service. The affidavit shall be filed with the application for the tax deed pursuant to section 77-1837. For each service of such notice, a fee of one dollar shall be allowed. The amount of such fees shall be noted by the county treasurer in the sales book record opposite the real property described in the notice and shall be collected by the county treasurer in case of redemption for the benefit of the holder of the certificate.

Sec. 15. Section 77-1836, Reissue Revised Statutes of Nebraska, is amended to read:

77-1836 If any person is compelled to publish notice in a newspaper as provided in sections 77-1834 and 77-1835, then before any person who may have a right to redeem such real property from such sale is permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money the amount paid for publishing such notice, for the use of the person compelled to publish the notice. The fee for such publication shall not exceed five dollars for each item of real property contained in such notice. The cost of making such publication shall be noted by the county treasurer in the sales book record opposite the real property described in the notice.

Sec. 16. Section 77-1837, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1837 ~~(1)~~ At any time within ~~six~~ nine months after the expiration of three years after the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the county treasurer, on application, on production of the certificate of purchase, and upon compliance with ~~the provisions of~~ sections 77-1801 to 77-1863, shall execute and deliver a deed of conveyance for the real estate described in such certificate as provided in this section. The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with ~~the provisions of~~ sections 77-1801 to 77-1863.

~~(2) If the tax deed is for owner-occupied real property, the county treasurer shall not execute and deliver the tax deed for forty-five days after the time specified in subsection (1) of this section until the right of redemption expires. If the real property is not owner-occupied real property or if forty-five days have passed since the time specified in subsection (1) of this section for owner-occupied real property and the right of redemption~~

has expired, the county treasurer shall execute and deliver the tax deed previously executed to the purchaser or his or her heirs or assigns.

Sec. 17. Section 77-1849, Reissue Revised Statutes of Nebraska, is amended to read:

77-1849 Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or, if a deed be is returned by the purchaser, that any tract or lot has been sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he or she shall make an entry opposite such tract or lot on the ~~sale book~~ record that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. In such cases the purchase money shall be refunded to the purchaser.

Sec. 18. Section 77-1902, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-1902 When land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed has been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed and all subsequent tax liens thereon, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917. Such action shall only be brought within ~~six~~ nine months after the expiration of three years from the date of sale of any real estate for taxes or special assessments.

Sec. 19. Section 77-1936, Reissue Revised Statutes of Nebraska, is amended to read:

77-1936 When any county, city, village, school district, drainage district, or irrigation district shall have acquired real estate under such tax foreclosure proceedings, the governing body of such governmental subdivision or municipal corporation shall have power to convey any such real estate by a deed signed by the ~~chairman~~ chairperson or other presiding officer of such body, subject to the right, if any, of any person, persons, firm, corporation, or governmental body to attack the same by action or proceeding within the one-year limitation provided in sections ~~77-1933 to 77-1937,~~ 77-1934 to 77-1936, for such price as the governing body of any such governmental subdivision or municipal corporation, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Sec. 20. This act becomes operative on January 1, 2015.

Sec. 21. Original sections 77-1807, 77-1808, 77-1812, 77-1813, 77-1818, 77-1822, 77-1823, 77-1830, 77-1836, 77-1849, and 77-1936, Reissue Revised Statutes of Nebraska, and sections 77-1824, 77-1824.01, 77-1825, 77-1831, 77-1832, 77-1833, 77-1837, and 77-1902, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 22. The following sections are outright repealed: Sections 77-1820, 77-1926, and 77-1937, Reissue Revised Statutes of Nebraska.