

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 8.01-268, 8.01-317, 8.01-318, 8.01-623, 58.1-3965, 58.1-3967, 58.1-3968, 58.1-3970.1, 58.1-3973, and 58.1-3974 of the Code of Virginia and to repeal § 8.01-321 of the Code of Virginia, relating to delinquent real estate taxes; procedure for sale of real estate; enforcement of liens; orders of publication.*

[H 2362]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-268, 8.01-317, 8.01-318, 8.01-623, 58.1-3965, 58.1-3967, 58.1-3968, 58.1-3970.1, 58.1-3973, and 58.1-3974 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-268. When and how docketed and indexed.**

A. No lis pendens or attachment shall bind or affect a subsequent bona fide purchaser of real or personal estate for valuable consideration and without actual notice of such lis pendens or attachment, until and except from the time a memorandum setting forth the title of the cause or attachment, the general object thereof, the court wherein it is pending, the amount of the claim asserted by the plaintiff, a description of the property, the name of the person whose estate is intended to be affected thereby, and in an action to enforce a zoning ordinance a description of the alleged violation, shall be admitted to record in the clerk's office of the circuit court of the county or the city wherein the property is located; or if it be in that part of the City of Richmond lying north of the south bank of the James River and including the islands in such river, in the clerk's office of the Circuit Court, Division I, of such city, or if it be in the part of the City of Richmond lying south of the south bank of the James River, in the clerk's office of the Circuit Court, Division II, of such city. Clerks of circuit courts are authorized and directed to admit to record memoranda of lis pendens or attachment for actions pending in any court of this Commonwealth, or in any other state, federal, or territorial court. The provisions of this section shall not be construed to mean that any such memoranda heretofore recorded are not properly of record. Such memorandum shall not be deemed to have been recorded unless and until indexed as required by law. A memorandum of lis pendens admitted to record in an action to enforce a zoning ordinance shall expire after 180 days.

B. No memorandum of lis pendens shall be filed unless the action on which the lis pendens is based seeks (i) to establish an interest by the filing party in the real property described in the memorandum, (ii) to sell the real property to enforce a lien for delinquent taxes pursuant to the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 or a docketed judgment lien, (iii) the partition of real property pursuant to Article 9 (§ 8.01-81 et seq.) of Chapter 3 of Title 8.01, or unless the action on which the lis pendens is based seeks (iv) to enforce a zoning ordinance.

**§ 8.01-317. What order of publication to state; how published; when publication in newspaper dispensed with; electronic notice.**

Except in condemnation actions, every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than 50 days after entry of the order of publication. Such order of publication shall be published once each week for four successive weeks in such newspaper as the court may prescribe, or, if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the courthouse wherein the court is held; also a copy of such order of publication shall be mailed to each of the defendants at the post office address given in the affidavit required by § 8.01-316. The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within 20 days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the requirements of this section have been complied with. The court may, in any case where deemed proper, dispense with such publication in a newspaper or may order that appropriate notice be given by electronic means, under such terms and conditions as the court may direct, either in addition to or in lieu of publication in a newspaper, provided that such electronic notice is reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The cost of such publication or notice shall be paid by the petitioner or applicant. *Costs in proceedings to enforce tax liens of a locality shall be recovered according to the provisions of Article 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1.*

**§ 8.01-318. Within what time after publication case tried or heard; no subsequent publication required.**

If after an order of publication has been executed, the defendants or unknown parties against whom it is

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entered shall not appear on or before the date specified in such order, the case may be tried or heard as to them. When the provisions of § 8.01-317; ~~or, if applicable, the provisions of § 8.01-321,~~ have been complied with, no other publication or notice shall thereafter be required in any proceeding in court, or before a commissioner, or for the purpose of taking depositions, unless specifically ordered by the court as to such defendants or unknown parties.

**§ 8.01-623. Injunction against decree subject to bill of review; limitations to bill of review.**

A court allowing a bill of review may award an injunction to the decree to be reviewed. But no bill of review shall be allowed to a final decree, unless it be exhibited within six months next after such decree, except that a person under a disability as defined in § 8.01-2 may exhibit the same within six months after the removal of his ~~or her~~ disability. In no case shall such a bill be filed without the leave of court first obtained, unless it ~~be~~ is for error of law apparent upon the face of the record. *Notwithstanding the provisions of this section, no court shall allow a bill of review for a decree entered pursuant to § 58.1-3969 to sell real estate to enforce the lien for delinquent real estate taxes.*

Article 4.

~~Bill in Equity for Sale of Delinquent Tax Lands.~~

**§ 58.1-3965. When land may be sold for delinquent taxes; notice of sale; owner's right of redemption.**

A. When any taxes on any real estate in a locality are delinquent on December 31 following the second anniversary of the date on which such taxes have become due, or, in the case of real property upon which is situated (i) any structure that has been condemned by the local building official pursuant to applicable law or ordinance; (ii) any nuisance as that term is defined in § 15.2-900; (iii) any derelict building as that term is defined in § 15.2-907.1; or (iv) any property that has been declared to be blighted as that term is defined in § 36-49.1:1, the first anniversary of the date on which such taxes have become due, such real estate may be sold for the purpose of collecting all delinquent taxes on such property.

However, in a qualifying locality, as defined in § 58.1-3221.6, whenever (a) taxes on any real estate in the locality are delinquent upon the expiration of six months following the date on which such taxes became due and (b) the locality has incurred abatement costs which remain unpaid upon the expiration of six months following the date on which the abatement costs were first incurred, real estate meeting the conditions described in clause (i), (ii), (iii), or (iv) may be sold for the purpose of collecting all delinquent taxes and abatement costs on such property. For the purposes of this section, "abatement costs" means costs incurred by a locality that result from the conditions described in clause (i), (ii), (iii), or (iv).

Upon a finding by the court, on real estate with an assessed value of \$100,000 or less in any locality, that ~~(a) (1)~~ any taxes on such real estate are delinquent on December 31 following the first anniversary of the date on which such taxes have become due or ~~(b) (2)~~ there is a lien on such real estate pursuant to § 15.2-900, 15.2-906, 15.2-907, 15.2-907.1, 15.2-908.1, or 36-49.1:1, which lien remains unpaid on December 31 following the first anniversary of the date on which such lien was recorded, the property shall be deemed subject to sale by public auction pursuant to proper notice under this subsection.

The officer charged with the duty of collecting taxes for the locality wherein the real property lies shall, at least 30 days prior to instituting any judicial proceeding pursuant to this section, send a notice to ~~(1)~~ (A) the last known address of the property owner as such owner and address appear in the records of the treasurer; ~~(2)~~ and (B) the property address if the property address is different from the owner's address and if the real estate is listed with the post office by a numbered and named street address ~~and (3) the last known address of any trustee under any deed of trust, mortgagee under any mortgage and any other lien creditor; if such trustee, mortgagee or lien creditor is not otherwise made a party defendant under § 58.1-3967, advising such property owner, trustee, mortgagee or other lien creditor of the delinquency and the officer's intention to take action.~~ Such notice shall advise the taxpayer that the taxpayer may request the treasurer to enter into a payment agreement to permit the payment of the delinquent taxes, interest, and penalties over a period not to exceed 72 months in accordance with the provisions of subsection C. Such officer shall also cause to be published at least once a list of real estate which will be offered for sale under the provisions of this article in a newspaper of general circulation in the locality, at least 30 days prior to the date on which judicial proceedings under the provisions of this article are to be commenced.

The pro rata cost of such publication shall become a part of the tax and together with all other costs, including reasonable attorney fees set by the court and the costs of any title examination conducted in order to comply with the notice requirements imposed by this section, shall be collected if payment is made by the owner in redemption of the real property described therein whether or not court proceedings have been initiated. A notice substantially in the following form shall be sufficient:

Notice

Judicial Sale of Real Property

On \_\_\_\_ (date) proceedings will be commenced under the authority of § 58.1-3965 et seq. of the Code of Virginia to sell the following parcels for payment of delinquent taxes:  
(description of properties)

B. The owner of any property listed may redeem it at any time before the date of the sale by paying all

accumulated taxes, penalties, reasonable attorney fees, interest and costs thereon, including the pro rata cost of publication hereunder. Partial payment of delinquent taxes, penalties, reasonable attorney fees, interest, or costs shall not be sufficient to redeem the property; and shall not operate to suspend, invalidate, or make moot any action for judicial sale brought pursuant to this article.

C. Notwithstanding the provisions of subsection B and of § 58.1-3954, the treasurer or other officer responsible for collecting taxes may suspend any action for sale of the property commenced pursuant to this article (i) upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period that is reasonable under the circumstances, but that in no event shall exceed 72 months, or (ii) upon written notice by an individual, not a party to the action, asserting ownership rights in the property that is the subject of the action arising by virtue of testate or intestate succession, to the treasurer or other officer responsible for collecting taxes. The treasurer or other officer responsible for collecting taxes shall promptly advise the court of such claim and seek leave to add the individual asserting the claim as a party in the action. If the court determines that the individual asserting the claim possesses an ownership interest in the property that is the subject of the action, such individual may, within 30 days of the court's finding, enter into an agreement with the treasurer or other official responsible for collecting taxes for the payment of all delinquent amounts in installments over a period that is reasonable under the circumstances, but that in no event shall exceed 72 months. Any agreement under this subsection shall provide for the payment of current tax obligations as they come due, which payments shall be credited to current tax obligations notwithstanding the provisions of § 58.1-3913 and shall be secured by the lien of the locality pursuant to § 58.1-3340.

D. During the pendency of any installment agreement permitted under subsection C, any proceeding for a sale previously commenced shall not abate, but shall be continued on the docket of the court in which such action is pending. It shall be the duty of the treasurer or other officer responsible for collecting taxes to promptly notify the clerk of such court when obligations arising under such an installment agreement have been fully satisfied. Upon the receipt of such notice, the clerk shall cause the action to be stricken from the docket.

E. In the event the owner of the property or other responsible person defaults upon obligations arising under an installment agreement permitted by subsection C, or during the term of any installment agreement, defaults on any current obligation as it becomes due, such agreement shall be voidable by the treasurer or other officer responsible for collecting taxes upon 15 days' written notice to the signatories of such agreement irrespective of the amount remaining due. Any action for the sale previously commenced pursuant to this article may proceed without any requirement that the notice or advertisement required by subsection A, which had previously been made with respect to such property, be repeated. No owner of property which has been the subject of a defaulted installment agreement shall be eligible to enter into a second installment agreement with respect to the same property within three years of such default.

F. Any corporate, partnership or limited liability officer, as those terms are defined in § 58.1-1813, who willfully fails to pay any tax being enforced by this section, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax not paid, to be assessed and collected in the same manner as such taxes are assessed and collected.

G. During the pendency of the action, the circuit court in which the action is pending may, on its own motion or on the motion of any party, refer the parties to a dispute resolution proceeding pursuant to the provisions of Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01.

H. In any case in which real estate subject to delinquent taxes is situated in two or more jurisdictions, a suit to sell the entirety of the real estate pursuant to this article may be brought in a single jurisdiction provided that (i) taxes are delinquent in all jurisdictions for periods not less than the minimum applicable periods set forth in subsection A and (ii) the treasurer of each jurisdiction within which the property is situated consents to the suit.

The suit shall identify the taxes, penalties, interest, and other charges due in each jurisdiction. The publications and notices required pursuant to this section shall identify each of the jurisdictions in which the property is situated. Upon sale of the property, the order confirming the sale shall provide for the payment of taxes, penalties, interest, and other charges to each jurisdiction, and copies of the order confirming the sale and the deed conveying the property to the purchaser shall be recorded among the land records of the clerk's office of the circuit court for each jurisdiction within which the property that is the subject of the suit is situated. No final order confirming sale shall be entered sooner than 90 days following the provision of notice to parties in accordance with subsection A or, if later, 90 days following the receipt of notice by the treasurer or other official responsible for collecting taxes from an individual, not previously made a party to the action, in accordance with clause (ii) of subsection C.

**§ 58.1-3967. How proceedings instituted; parties; procedure generally; title acquired; disposition of surplus proceeds of sale.**

Proceedings under this article for the appointment of a special commissioner under § 58.1-3970.1 or the sale of real estate on which county, city, or town taxes are delinquent shall be by ~~bill in equity~~ *a complaint*, filed in the circuit court of the county or city in which such real estate is located, to subject the real estate to

the lien for such delinquent taxes.

~~Any party~~ Except as modified by statute, such proceedings shall be conducted in accordance with any requirements arising from statute or case law for a creditor's equitable claim to effect the sale of real estate to enforce a judgment lien. Any person or entity with an interest in such real estate, including a lienor ~~or~~, a person with a claim of title, ~~but not including a person whose interest in the real estate is secured by or the beneficiary and trustees under a deed of trust properly recorded, shall file his claim within 90 days after notice of such proceedings. Failure to timely file shall bar any such claims be named as a party defendant.~~

Any party who is not otherwise served shall be served by publication pursuant to § 8.01-316. Any person party served by publication may petition to have the case reheard; ~~but, notwithstanding pursuant to § 8.01-322, but only for good cause shown, and only within 90 days of entry of the confirmation of sale.~~

All necessary parties shall be made parties defendant. A guardian ad litem shall be appointed for persons under a disability as defined in § 8.01-2, and for all persons proceeded against by an order of publication as parties unknown. The beneficiary or beneficiaries under any deed of trust, security interest or mortgage shall not be deemed necessary parties; provided any trustee under the deed of trust, any mortgagee under the mortgage, and any lien creditor are given notice as prescribed in § 58.1-3965, except that either the beneficiary or beneficiaries, or the trustee or trustees, under any deed of trust, security interest or mortgage securing a financial institution, or any lien creditor that is a financial institution, shall be necessary parties defendant. After filing of suit and a lis pendens, any party who thereafter acquires an interest in the delinquent real estate, including a lienor or party with a claim of title, shall not be deemed a necessary party, but shall be permitted to intervene in the proceedings to file his claim. Failure to file such a claim shall bar any such claim. The title conveyed to the purchaser at the judicial sale shall be held to bar any disabilities of parties defendant, and shall be free of all claims of any creditor, person, or entity, including those claims of beneficiaries under any deed of trust or mortgage, provided that notice was given ~~or the~~ such creditor, person, or entity was made a party defendant.

Such proceedings shall be held in accordance with the requirements, statutory or arising at common law, relative to effecting the sale of real estate by a creditor's bill in equity to subject real estate to the lien of a judgment creditor; provided that publication, if necessary, shall be as provided by § 8.01-321.

In proceedings under this article, the character of the title acquired by the purchaser of such real estate at such sale shall be governed by the principles and rules applicable to the titles of purchases at judicial sales of real estate generally; however nothing herein shall be construed to affect any easements recorded prior to the date of sale.

The former owner; and his heirs, devisees, successors, or assigns of any real estate sold under this article shall be entitled to the surplus received from such sale in excess of the taxes, penalties, interest, reasonable attorneys' attorney fees, costs, and any liens chargeable thereon. *The burden shall be on the claimant to prove such entitlement.* If no claim for payment of the indebtedness secured by any lien chargeable thereon is made by an unknown beneficiary of such lien, or if no claim for such surplus is made by such former owner; or his heirs, devisees, successors, or assigns; within two years after the date of confirmation of such sale, then such amount secured by the lien of the unknown beneficiary, surplus, or both, as applicable, shall be paid by the clerk of the court in which such suit was instituted to the county, city, or town that received proceeds from the sale of the real estate. If a county and a town receive proceeds from the same sale, then such surplus shall be divided between the county and town pro rata based on the relative amount of proceeds received by each. *The circuit court holding excess proceeds under this section may refer the matter to a commissioner in chancery who shall examine and report to the court to whom such extra proceeds should be paid.* Upon request of the former owner, his heirs, devisees, successors, or assigns, or unknown beneficiary of any real estate sold under this article, and after a showing of a prior entitlement thereto, the governing body of any county ~~or~~, city ~~which~~, or town that has received such surplus funds may; ~~in its discretion~~, grant relief, by ordinance, to such former owner, heir, ~~or~~ devisee, successor, assign, or unknown beneficiary and pay over such amount as the governing body may deem appropriate to such former owner, heir, devisee, successor, assign, or unknown beneficiary.

#### **§ 58.1-3968. When two or more parcels may be covered by one complaint.**

In any proceeding under this article, two or more parcels of real estate may be covered by one ~~bill~~ complaint if they were assessed against or are owned by the same party or parties, or if they are assessed against and owned by different parties but each parcel is assessed at a value ~~which~~ that does not exceed \$100,000.

#### **§ 58.1-3970.1. Appointment of special commissioner to execute title to certain real estate with delinquent taxes or liens to localities.**

A. 1. Except as provided in subsection B, in any proceedings under this article for the sale of a parcel or parcels of real estate that meet all of the following: (i) each parcel has delinquent real estate taxes or the locality has a lien against the parcel for removal, repair, or securing of a building or structure; removal of trash, garbage, refuse, or litter; or the cutting of grass, weeds, or other foreign growth; (ii) each parcel has an assessed value of \$75,000 or less; and (iii) (a) such taxes and liens, together, including penalty and accumulated interest, exceed 50 percent of the assessed value of the parcel, (b) such taxes alone exceed 25

percent of the assessed value of the parcel, or (c) for parcels containing a structure that is a derelict building, as that term is defined in § 15.2-907.1, such taxes and liens, together, including penalty and accumulated interest, exceed 25 percent of the assessed value of the parcel, the locality may petition the circuit court to appoint a special commissioner to execute the necessary deed or deeds to convey the real estate, in lieu of the sale at public auction, to the locality, to the locality's land bank entity, or to an existing nonprofit entity designated by the locality to carry out the functions of a land bank entity pursuant to § 15.2-7512. After notice as required by this article, service of process, and upon answer filed by the owner or other parties in interest to the ~~bill in equity complaint~~, the court shall allow the parties to present evidence and arguments, ore tenus, prior to the appointment of the special commissioner. Any surplusage accruing to a locality, land bank entity, or existing nonprofit entity as a result of the sale of the parcel or parcels after the receipt of the deed shall be payable to the beneficiaries of any liens against the property and to the former owner, ~~or his heirs, devisees, successors,~~ or assigns in accordance with § 58.1-3967. No deficiency shall be charged against the owner after conveyance to the locality, land bank entity, or existing nonprofit entity.

2. A land bank entity or existing nonprofit entity receiving any parcel pursuant to this section shall either (i) sell the property to a third party in an arms-length transaction or, if the land bank entity or existing nonprofit entity develops the property before selling it, make such sale within a reasonable period of time after completing such development or (ii) if the land bank entity or existing nonprofit entity does not intend to sell the property, pay to the beneficiaries of any liens against the property and to the former owner, ~~or his heirs, devisees, successors,~~ or assigns any amount of surplusage, if any, that would result if the property were sold and the proceeds distributed in accordance with § 58.1-3967. For purposes of this section, "existing nonprofit entity" and "land bank entity" have the same meaning as those terms are defined in § 15.2-7500.

B. For a parcel or parcels of real estate in a locality with a score of 100 or higher on the fiscal stress index, as published by the Department of Housing and Community Development in July 2020, all of the provisions of subsection A shall apply except (i) that the percentage of taxes and liens, together, including penalty and accumulated interest, and the percentage of taxes alone set forth in clauses (iii) (a) and (b) of ~~subsection subdivision A 1~~ shall exceed 35 percent and 15 percent, respectively, of the assessed value of the parcel or parcels or (ii) that the percentage of taxes and liens, together, including penalty and accumulated interest, and the percentage of taxes alone set forth in clauses (iii) (a) and (b) of ~~subsection subdivision A 1~~ shall exceed 20 percent and 10 percent, respectively, of the assessed value of the parcel or parcels, and each parcel has an assessed value of \$150,000 or less, provided that under this clause the property is not an occupied dwelling, and the locality enters into an agreement for sale of the parcel to a nonprofit organization to renovate or construct a single-family dwelling on the parcel for sale to a person or persons to reside in the dwelling whose income is below the area median income.

C. For sales by a nonprofit organization pursuant to subsection B, such sales may include either (i) both the land and the structural improvements on a property or (ii) only the structural improvements of a property and not the land the structural improvements are located on. A sale of only the structural improvements is permissible only if (a) the structural improvements are subject to a ground lease with a community land trust, as that term is defined in § 55.1-1200; (b) the structural improvements are subject to a ground lease that has a term of at least 90 years; and (c) the community land trust retains a preemptive option to purchase such structural improvements at a price determined by a formula that is designed to ensure that the improvements remain affordable in perpetuity to low-income and moderate-income families earning less than 120 percent of the area median income, adjusted for family size.

**§ 58.1-3973. Certain land purchased in name of Commonwealth to revert to owners, etc., subject to lien of delinquent taxes.**

On June 1, 1973, the title to any real estate purchased by the treasurer of any county, city, or town in the name of the Commonwealth pursuant to §§ 58-1067 through 58-1072, which are hereby repealed, and not sold by the treasurer pursuant to such sections shall revert to the former owner ~~or owners,~~ or his ~~or their~~ heirs, ~~devisees,~~ successors, and assigns, subject to the lien created by § 58.1-3340. The liens of such delinquent taxes shall continue to be recorded in the appropriate clerk's office or other office where such liens are customarily recorded.

**§ 58.1-3974. Redemption of land by owner; lien for taxes paid.**

Any owner of the real estate described in any notice published pursuant to § 58.1-3965 or any ~~bill in equity complaint~~ filed pursuant to this article, or his ~~or their~~ heirs, ~~devisees,~~ successors, and assigns, shall have the right to redeem such real estate prior to the date set for a judicial sale thereof by paying into court all taxes, penalties, and interest due with respect to such real estate, including any outstanding taxes, penalties, and interest owed to a town or other concurrent taxing entity, together with all costs including costs of publication and a reasonable attorney fee set by the court. Any person who has paid any taxes on such real estate shall have a lien thereon for any taxes paid, plus interest at the rate of six percent per year.

**2. That § 8.01-321 of the Code of Virginia is repealed.**