
Judiciary Committee

HB 2265

Title: An act relating to protecting lienholders' interests while retaining consumer protections.

Brief Description: Protecting lienholders' interests while retaining consumer protections.

Sponsors: Representatives Kirby, Vick, Volz, Graves, Blake, Barkis, Harmsworth, Bergquist, Springer, Haler, Steele, Goodman, Young and Harris.

Brief Summary of Bill

- Establishes new requirements governing distribution of surplus funds from a tax foreclosure sale held by a county treasurer after payment of the tax judgment and any recorded water-sewer district liens.
- Removes the limit on the amount of fees a person may seek for locating funds held by a county that are proceeds from a tax foreclosure in cases where the person paying the fee is not a natural person who was the record owner of the property.
- Requires the county treasurers of the five largest counties in the state by population to report information on the total number of claims to surplus funds submitted by and paid to lienholders, as compared to claims submitted by and paid to owners of tax foreclosed property.

Hearing Date: 1/17/18

Staff: Edie Adams (786-7180).

Background:

Tax Foreclosures.

Three years after the date real property taxes become delinquent, the county treasurer must issue a certificate of delinquency on the property for all years' taxes, interest, and costs, unless the county treasurer elects to issue a certificate for fewer than all years' taxes, interest, and costs. The county treasurer files the certificate of delinquency with the clerk of the court and, with the assistance of the local prosecuting attorney, institutes an action for foreclosure of the real

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property tax lien. Notice and summons of the foreclosure proceeding must be given to the property owner and any person having a recorded interest in or lien of record upon the property.

The superior court, in determining an action to foreclose on a tax lien, may enter an order for the sale of the affected property; vacate and set aside the certificate of delinquency; or issue other relief or judgment as must be just. An order for the sale of the property allows the county treasurer authority to proceed with the sale of the property. The county treasurer must sell the property through a public auction, according to specified notice and time requirements, to the highest and best bidder for cash. The acceptable minimum bid is the total amount of due taxes, interest, and costs. The county treasurer issues a tax deed conveying title to the property to the winning bidder at the auction.

If the amount of the bid exceeds the amount of taxes, interest, and costs due, the excess funds must first be paid to satisfy all recorded water-sewer district liens, and any remaining excess funds must be paid to the record owner of the property if the record owner makes application for the excess funds. If the record owner does not apply for the excess funds within three years after the date of sale, the treasurer must deposit the excess funds in the county current expense fund, and all claims by any owner to the excess funds are extinguished. Record owner means the person who held title to the property on the date of the issuance of the certificate of delinquency.

Unclaimed Property Law.

Under the unclaimed property laws, limits are placed on the amount of fees or compensation that a person or entity may charge for locating or purporting to locate any funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or liens, or any property that he or she knows has been delivered or paid to the Department of Revenue as unclaimed property. Under this law, it is a misdemeanor offense to charge a fee of more than 5 percent of the value of the located property or funds. A violation is subject to up to 30 days in jail and a fine of up to 10 times the amount of the fee charged. In addition, a violation of the fee limitation is a violation of the Consumer Protection Act.

Summary of Bill:

Tax Foreclosures.

Following a tax foreclosure sale, persons or entities with a recorded interest in or lien of record upon the property have priority to the surplus funds remaining after payment of the tax debt and all recorded water-sewer district liens if they make a claim to the surplus funds. Any remaining surplus funds must be paid to the record owner if the record owner submits a claim for the surplus funds. The definition of "record owner" is revised to mean the person who held title to the property immediately before title transferred to the tax sale purchaser, rather than the person who held title when the certificate of delinquency was issued.

A process is created for county treasurers to determine priority and distribute surplus funds to lienholders and record owners who submit a claim and have a right to the funds, subject to the following parameters:

- The county treasurer must determine priority by reference to the title search report. The county treasurer may require a claimant to submit additional evidence as proof of a claim.
- The county treasurer may not determine priority to and distribute surplus funds prior to one year after the date of recordation of the tax deed to the purchaser.

- After expiration of the one-year waiting period, if a claim or claims for payment of surplus funds are submitted, the county treasurer must promptly determine priority to the surplus funds and mail a notice to each claimant that the county treasurer intends to distribute surplus funds.
- The county treasurer may not accept a claim for payment of surplus funds more than three years after the tax sale or after distribution of surplus funds to a claimant or claimants, whichever is sooner.
- The county treasurer may not distribute surplus funds until 90 days after mailing the required notice to the claimants. During this 90-day waiting period, a claimant may seek review of the county treasurer's decision regarding distribution by commencing an action in the superior court that issued the foreclosure judgment.
- In addition to the one-year and 90-day waiting periods, the county treasurer may not distribute surplus funds during the pendency of any court case appealing the underlying tax foreclosure sale or the county treasurer's notice of intent to distribute surplus funds.
- The county treasurer may impose a fee on claimants in an amount equal to the expected costs of determining priority and distributing funds.

The process for distributing surplus funds from tax sales applies only to surplus funds of tax sales of property occurring on or after the effective date of the act.

Unclaimed Property Law.

The 5 percent limit on the amount of fees a person may seek or receive from another person for locating any funds held by a county that are proceeds from a delinquent property tax foreclosure applies only in cases where the person paying the fee is a natural person who was the record owner of the property at the time the treasurer issued the certificate of delinquency. In all other cases, the 5 percent limit is removed on the amount of fees that may be charged for locating funds held by a county that are proceeds from a delinquent property tax foreclosure sale.

County Treasurer Reporting Requirements.

The county treasurers of the five largest counties in the state by population must submit a report with information on the total number of claims to surplus funds submitted by and paid to lienholders, as compared to claims submitted by and paid to owners of tax foreclosed property, through the process established in the act. The report must be submitted to the House Business and Financial Services Committee and the Senate Financial Institutions and Insurance Committee by November 1, 2019.

Appropriation: None.

Fiscal Note: Requested on 1/12/18.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.