

HOUSE BILL NO. 621

INTRODUCED BY T. JACOBSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCESS FOR THE SALE OF A TAX LIEN AND ISSUANCE OF A TAX DEED FOR DELINQUENT TAXES WHEN THE DELINQUENT PROPERTY IS A PRINCIPAL RESIDENCE; REQUIRING NOTIFICATION BY A SHERIFF PRIOR TO ISSUANCE OF A TAX DEED; AMENDING SECTIONS 7-6-4414, 15-17-121, 15-17-318, 15-17-319, 15-17-320, 15-17-321, 15-17-322, ~~AND~~ 15-18-211, AND 15-18-212, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Sale of principal residence for tax lien.** (1) Whenever a tax lien sale certificate has been issued on a principal residence and a tax deed would be issued pursuant to 15-18-211, the county treasurer shall notify the county commissioners that a tax lien sale certificate for a principal residence has been issued and the county commissioners shall proceed to auction the property as provided for in Title 7, chapter 8, part 23, as if the property had been acquired by the county by tax deed.

(2) If the property does not sell at auction under subsection (1), the county is considered to be the purchaser and the county treasurer shall proceed under 15-18-211(3).

(3) If the property sells at auction under this section less than 6 months after the tax lien sale certificate is issued and the person who purchases the property at auction:

(a) is the person, other than the county, who holds the tax lien sale certificate, the county treasurer ~~may~~ SHALL reimburse the person for taxes or assessments not collected from the property owner, including penalties, interests, or costs, if any, but shall allocate to the county the amount of all delinquent and current taxes and assessments, including penalties and interest, if any, which must be distributed as provided in 15-17-322, and all costs, which must be deposited in the county general fund, and forward the remainder to the person who owned the property at the time the tax sale certificate was issued;

(b) is the county, the county treasurer shall allocate to the county the amount of all delinquent and current taxes and assessments, including penalties and interest, if any, which must be distributed as provided for in 15-17-322, and all costs, which must be deposited in the county general fund, and forward the remainder to the person who owned the property at the time the property was sold at auction; or

1 (c) is not the person who holds the tax lien sale certificate or the county, the county treasurer shall
2 allocate the proceeds from the sale of the property in the following order:

3 (i) to the person holding the tax lien sale certificate, the amount of all delinquent taxes and assessments,
4 including penalties, interest, and costs, paid by the person in acquiring the tax lien sale certificate and not
5 collected from the property owner;

6 (ii) to the county, the amount of all delinquent and current taxes and assessments, including penalties
7 and interest, if any, which must be distributed as provided for in 15-17-322, and all costs, which must be
8 deposited in the county general fund; and

9 (iii) the remainder to the person who owned the property at the time the tax sale certificate was issued.

10 (4) If the property is sold, by auction or otherwise, 6 months or more after the tax lien sale certificate is
11 issued, the county treasurer shall reimburse the county for all unreimbursed costs incurred by the county in regard
12 to the property, which must be deposited in the county general fund, and shall allocate to the county all remaining
13 proceeds, which must be distributed as provided for in 15-17-322.

14 (5) As soon as practicable after sale of the property under this section, the county treasurer shall issue
15 a tax deed in the manner provided for in 15-18-211 as if the property was not a principal residence.

16

17 **Section 2.** Section 7-6-4414, MCA, is amended to read:

18 **"7-6-4414. Sales for delinquent taxes when county collects municipal tax.** (1) All publications of
19 sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The
20 sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of
21 advertising provided by law.

22 (2) All money received from sales, after a deed is given by the county treasurer as provided by law, shall
23 ~~be credited to the state, county, and city or town pro-rata in the same proportions~~ distributed as provided in
24 15-17-322 or [section 1], as applicable."

25

26 **Section 3.** Section 15-17-121, MCA, is amended to read:

27 **"15-17-121. Definitions.** Except as otherwise specifically provided, when terms mentioned in Title 15,
28 chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

29 (1) "Certificate" or "tax lien sale certificate" means the document described in 15-17-212.

30 (2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when

1 due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the
2 administrative cost of:

- 3 (i) preparing the list of delinquent taxes;
- 4 (ii) preparing the notice of pending tax lien sale;
- 5 (iii) conducting the tax lien sale;
- 6 (iv) assigning the county's interest in a tax lien to a third party;
- 7 (v) identifying interested persons entitled to notice of the pending issuance of a tax deed;
- 8 (vi) notifying interested persons;
- 9 (vii) issuing the tax deed; and
- 10 (viii) any other administrative task associated with accounting for or collecting delinquent taxes.

11 (b) The term includes costs that are required by law and incurred by the purchaser of a property tax lien
12 other than the county. The county treasurer may require the purchaser of the property tax lien to provide receipts
13 or may allow the purchaser of the property tax lien to provide a notarized affidavit of costs to the county treasurer
14 upon issuance of a tax lien sale certificate as required in 15-17-212 and notification that a tax deed may be issued
15 as required by 15-18-212 and 15-18-216. A county treasurer may at any time require a purchaser who provided
16 an affidavit of costs to submit the receipted costs upon which the affidavit was based.

17 (c) The term does not include interest for payments for the following:

- 18 (i) postage for certified mailings and certified mailings with return receipt requested;
- 19 (ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending
20 issuance of a tax deed;
- 21 (iii) publishing costs for required publications; and
- 22 (iv) filing costs for proof of notice.

23 (3) "County" means any county government and includes those classified as consolidated governments.

24 (4) "Prime rate" means the prime rate published by the federal reserve system in its statistical release

25 H.15 Selected Interest Rates for bank prime loans.

26 (5) "Principal residence" means a residential dwelling that is a single-family dwelling unit, unit of a
27 multiple-unit dwelling, trailer, manufactured home, or mobile home that is occupied by the owner for at least 7
28 months during the tax year.

29 ~~(4)~~(6) "Property tax lien" means a lien acquired by the payment at a tax lien sale of all outstanding
30 delinquent taxes, including penalties, interest, and costs.

1 ~~(5)~~(7) "Purchaser" means any person, other than the person to whom the property is assessed, who
 2 pays at the tax lien sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate
 3 representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

4 ~~(6)~~(8) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments,
 5 fees related to property, and assessments for special improvement districts and rural special improvement
 6 districts.

7 ~~(7)~~(9) "Tax lien sale" means:

8 (a) with respect to real property and improvements, the offering for sale by the county treasurer of a
 9 property tax lien representing delinquent taxes, including penalties, interest, and costs; and

10 (b) with respect to personal property, the offering for sale by the county treasurer of personal property
 11 on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."
 12

13 **Section 4.** Section 15-17-318, MCA, is amended to read:

14 **"15-17-318. Assignment of municipality's interest.** (1) (a) At any time after a parcel of land that is not
 15 all or part of a principal residence has been acquired by a municipality, as provided in 15-17-317, and has not
 16 been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to
 17 any person who pays:

18 ~~(a)~~(i) the purchase price paid by the municipality;

19 ~~(b)~~(ii) the delinquent assessments;

20 ~~(c)~~(iii) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month or,
 21 for taxes due on a principal residence, at a rate of 4% above the prime rate, as published on the date of
 22 delinquency, a month; and

23 ~~(d)~~(iv) penalties and costs as provided by law.

24 **(b)** If the parcel of land is all or part of a principal residence that has been acquired by a municipality,
 25 as provided in 15-17-317, but on which the delinquent taxes and assessments, including penalties, interest, and
 26 costs, have not been redeemed, the treasurer of the municipality may request the county treasurer to proceed
 27 with the sale of the property pursuant to [section 1].

28 (2) The treasurer of the municipality shall execute to the person a certificate of sale ~~for~~ of the
 29 municipality's interests in the parcel, which may be in substantially the form provided in 15-17-212 for the
 30 assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the

1 assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee
 2 delivers to the treasurer evidence satisfactory to the treasurer, including an affidavit of the assignee, that the
 3 certificate has been lost or destroyed.

4 (3) An assignment by a municipality under this section discharges the trust created under 15-17-317.
 5 ~~The~~ If the property for which the municipality's interest is assigned is not a principal residence, the municipality
 6 may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the
 7 delinquent assessments and interest accrued on the assessments.

8 (4) If the property in which the municipality has a tax lien interest is a principal residence, the municipality
 9 may request that the county treasurer proceed with the sale of the property pursuant to [section 1]. Sale of the
 10 property pursuant to [section 1] discharges the trust created under 15-17-317."
 11

12 **Section 5.** Section 15-17-319, MCA, is amended to read:

13 **"15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.** A
 14 municipality may sell, donate, or lease property it acquires under ~~15-17-317~~ 15-17-318(1)(a) or (4) in the same
 15 manner as a county may sell, donate, or lease tax-deed property under Title 7, chapter 8, part 23. All money
 16 received by the municipality from the sale or lease of the ~~land~~ property, after payment of the cost of sale, not to
 17 exceed \$25, must be paid into the improvement fund to the extent of the delinquent assessments, interest, and
 18 penalties. The surplus, if any, must be paid into any revolving fund that secures payment of special assessments
 19 or, if there ~~are none~~ is no revolving fund, to the general fund of the municipality."
 20

21 **Section 6.** Section 15-17-320, MCA, is amended to read:

22 **"15-17-320. Taxes and subsequent installments of special assessments on land acquired by a**
 23 **municipality.** For property that is acquired by a municipality as provided in ~~15-17-317~~ 15-17-318(1)(a) or (4),
 24 subsequent installments of the special assessment or assessments, if any, and other special assessments not
 25 then delinquent must be levied, and taxes for the following years must be assessed in the same manner as if the
 26 property had not been so acquired. If the special assessments, ~~or installments thereof~~ of special assessments,
 27 or taxes are not paid when due, the property must again be sold in the manner provided by law and the levies
 28 of special assessments, assessments of taxes, and the sale of the property for delinquent special assessments
 29 and taxes must continue until the time when the property has been redeemed from ~~such~~ the sale."
 30

1 **Section 7.** Section 15-17-321, MCA, is amended to read:

2 **"15-17-321. Resale for nonpayment.** (1) ~~If Except as provided in subsection (2), if a purchaser other~~
3 than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the
4 next business day following the day of purchase at a tax lien sale, the property must be made available for sale
5 for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of
6 the tax lien sale, ~~except as provided in subsection (2)~~.

7 (2) (a) If the sale was made on the last day of the tax lien sale and payment was not received as
8 provided in subsection (1), the county is considered to be the purchaser as provided in 15-17-214.

9 **(b) If the nonpayment pertains to property that is a principal residence that has not been subject to sale**
10 **under [section 1], the county shall proceed as provided in [section 1]."**

11

12 **Section 8.** Section 15-17-322, MCA, is amended to read:

13 **"15-17-322. Disposition of money from tax lien sale.** All money received from purchasers for
14 delinquent taxes, penalties, interest, and costs must be deposited in the county treasury. ~~The Except as provided~~
15 ~~in [section 1]:~~

16 (1) ~~the~~ money received, other than costs, must be credited to the various funds to which the taxes would
17 have originally been distributed and in the same proportion as the taxes would have originally been distributed:
18 ~~Any; and~~

19 (2) ~~the~~ money received for costs ~~or~~ and any money remaining after crediting the separate funds must
20 be deposited to the credit of the county general fund."

21

22 **Section 9.** Section 15-18-211, MCA, is amended to read:

23 **"15-18-211. Tax deed -- fee.** (1) Except as provided in subsection (3), if the property tax lien is not
24 redeemed in the time allowed under 15-18-111, the county treasurer shall grant the purchaser a tax deed for the
25 property. The deed must contain the same information as is required in a tax lien sale certificate under 15-17-212,
26 except the description of the property must be the full legal description, and a statement that the property tax lien
27 was not redeemed during the redemption period provided in 15-18-111.

28 (2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser \$25 plus
29 all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving
30 the notice required in 15-18-212 for making the deed, which fee must be deposited in the county general fund.

1 (b) If the purchaser is the county, no fee may be charged for making the deed.

2 (c) Reasonable costs incurred by the county in searching the county records to identify persons entitled
3 to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

4 (3) (a) If the property tax lien is on a principal residence and is not redeemed within the time allowed
5 under 15-18-111, the county treasurer may not immediately issue a tax deed to the holder of the tax lien sale
6 certificate, but shall proceed as provided in [section 1]. Subsequent to the sale of the principal residence pursuant
7 to [section 1] or if the county is considered to be the purchaser under [section 1(2)], the county treasurer shall
8 issue a tax deed as provided by law.

9 (b) If the county is the purchaser of a tax lien is the county and no assignment has been made, the
10 county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution,
11 directs the county treasurer to issue a tax deed.

12 (c) The county treasurer may issue a tax deed for a principal residence only as provided in [section 1].

13 (4) ~~Deeds~~ A deed issued to ~~purchasers~~ a purchaser must be recorded by the county clerk as provided
14 in Title 7, chapter 4, part 26, except that when the county is the purchaser and subsequent tax deed holder, the
15 county clerk may not charge a fee for recording the deed."
16

17 **SECTION 10. SECTION 15-18-212, MCA, IS AMENDED TO READ:**

18 **"15-18-212. Notice -- proof of notice -- penalty for failure to notify.** (1) Not more than 60 days prior
19 to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice
20 must be given as follows:

21 (a) for each property for which there has been issued to the county a tax lien sale certificate or for which
22 the county is otherwise listed as the purchaser or assignee, the county clerk and recorder shall notify the parties
23 as required in subsection (4) and the current occupant of the property, if any, that a tax deed may be issued to
24 the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

25 (b) for each property for which there has been issued a tax lien sale certificate to a purchaser other than
26 the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify
27 the parties as required in subsection (4), if any, that a tax deed will be issued to the purchaser or assignee unless
28 the property tax lien is redeemed prior to the expiration date of the redemption period.

29 (2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not
30 been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed

1 during the period described in subsection (1) but the board of county commissioners at a time subsequent to the
2 period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk and
3 recorder shall provide notification to the parties as required in subsection (4) and the current occupant, if any, in
4 the manner provided in subsection (1)(a). The notification required under this subsection must be made not less
5 than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

6 (b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after
7 giving the notice required by subsection (1)(a), additional notice need not be given.

8 (3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by
9 subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of
10 notice with the county clerk and recorder as required in subsection (8), the county treasurer shall notify the
11 purchaser or assignee of the obligation to give notice under subsection (1)(b). The notice of obligation may be
12 sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax
13 lien sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

14 (b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee
15 fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county
16 clerk and recorder as required in subsection (8), the county treasurer shall cancel the property tax lien evidenced
17 by the tax lien sale certificate or the assignment. Upon cancellation of the property tax lien, the county treasurer
18 shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-217.

19 (4) (a) The notice required under subsections (1) and (2) must be made by certified mail, return receipt
20 requested, to the current occupant, if any, of the property and to each party, other than a utility, listed on a
21 property title guarantee, provided that:

22 (i) the guarantee has been approved by the insurance commissioner and issued by a licensed title
23 insurance producer; and

24 (ii) the guarantee was ordered on the property by the person required to give notice.

25 (b) The current occupant must also be served in person by the sheriff or by a registered process server
26 provided for in 37-60-301. The service must include a form on which the occupant may certify the property as a
27 principal residence for the purposes of [section 1].

28 (b)(c) The address to which the notice must be sent is, for each party, the address disclosed by the
29 records in the office of the county clerk and recorder or in the title guarantee and, for the occupant, the street
30 address or other known address of the subject property.

1 (5) In all cases in which the address of an interested party is not known, the person required to give
2 notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior
3 to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence
4 publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper
5 as the board of county commissioners may by resolution designate, a notice containing the information contained
6 in subsection (6), plus:

7 (a) the name of the party for whom the address is unknown;

8 (b) a statement that the address of the party is unknown;

9 (c) a statement that the published notice meets the legal requirements for notice of a pending tax deed
10 issuance; and

11 (d) a statement that the party's rights in the property may be in jeopardy.

12 (6) The notices required by subsections (1), (2), and (5) must contain the following:

13 (a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

14 (b) a description of the property on which the taxes are or were delinquent, which must be the same as
15 the description of the property on the tax lien sale certificate or in the record described in 15-17-214(2)(b);

16 (c) the date that the property taxes became delinquent;

17 (d) the date that the property tax lien attached as the result of a tax lien sale;

18 (e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of
19 pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties,
20 interest, and costs that must be paid for the property tax lien to be liquidated;

21 (f) the name and address of the purchaser;

22 (g) the name of the assignee if an assignment was made as provided in 15-17-323;

23 (h) the date that the redemption period expires or expired;

24 (i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or
25 prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer
26 will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date on which
27 the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

28 (j) the business address and telephone number of the county treasurer who is responsible for issuing
29 the tax deed.

30 (7) The amount of interest and costs provided for in subsection (6)(e) continues to accrue until the date

1 of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the
2 county treasurer as of the date of payment.

3 (8) Proof of notice in whatever manner given must be filed with the county clerk and recorder. If the
4 purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk and recorder
5 within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of
6 notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima
7 facie evidence of the sufficiency of the notice.

8 (9) A county or any officer of a county may not be held liable for any error of notification."
9

10 NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an
11 integral part of Title 15, chapter 18, and the provisions of Title 15, chapter 18, apply to [section 1].
12

13 NEW SECTION. Section 12. Saving clause. [This act] does not affect rights and duties that matured,
14 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
15

16 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2015.
17

18 NEW SECTION. Section 14. Applicability -- nonapplicability. (1) [This act] applies only to tax
19 delinquencies that begin on or after [the effective date of this act] and only to principal residences, as defined in
20 15-17-121 as amended by [this act].

21 (2) [This act] does not affect or apply to any property on which taxes were delinquent prior to [the
22 effective date of this act] or to any tax lien that attached or any tax lien sale, tax lien sale certificate, tax lien
23 assignment, or tax deed that was begun, concluded, or issued pursuant to Title 15 prior to [the effective date of
24 this act].

25 - END -