

Tax Sales & Redemptions

Presenters: Joseph T. Johns and Nicole Johns Barker

Panel: Vincent J. Smith and G. Russell Rolleyson

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Presenters:
Joseph T. Johns, Esq.

- Associate at Turner & Johns, PLLC since 2015.
- Extensive background in bankruptcy and real estate law.
- More specifically, represents clients that purchase tax liens on delinquent real estate in various counties throughout the State of West Virginia

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Presenters: Nicole Johns Barker, Esq.

- 2016 graduate from the West Virginia University Law School.
- Former associate at Jackson Kelly PLLC, primarily focusing on bankruptcy, mergers and acquisitions, healthcare, and financing.
- Currently, Associate General Counsel at Charleston Area Medical Center, Inc., where she continues to do transactional work.

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Pre-Sale Proceedings

- A lien for all real property taxes due is created and attached to the property on July 1st of each year.
- Real property taxes in West Virginia are due in two installments on September 1st and March 1st each year and, as a result, delinquent on October 1st and April 1st. W. Va. Code §§11A-1-3; 11A-1-4; and 11A-1-5.
- The delinquent tax lien includes the unpaid taxes, interest, and charges that accrue throughout the collection process.

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Pre-Sale Proceedings cont.

- Taxing entities may sell real property liens at a public auction.
- However, prior to selling a tax lien at a public auction, the sheriff must:
 - (1) publish a list of delinquent real estate;
 - (2) make a second publication of delinquent real estate with a notice of sale; and
 - (3) mail a certified letter to the landowner and others entitled to notice, notifying the tax delinquency and the sale.

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Sale at Auction (the “Sheriff’s Sale”) - §11A-3-5

- After October 14th, and before November 23rd, the sheriff sells the tax lien on unredeemed property at a public auction.
- West Virginia uses a premium bid method, meaning the minimum bid includes the amount of delinquent taxes, interest, and charges due for each property.
- The highest bidder receives a certificate of sale.

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Post-Sale Proceedings

- **Purchaser's Notice of the Right to Redeem**
 - Pursuant to W. Va. Code §11A-3-19, after August 31st of the year following the sheriff's sale, and before October 31st of the same year, the purchaser must:
 - (1) prepare a list of persons to be served with a notice to redeem;
 - (2) provide the State Auditor with the physical mailing address of the property if the property is Class II property;
 - (3) provide the State Auditor with a list of expenses incurred after January 1 of the year following the sheriff's sale that will be added to the lien;
 - (4) pay the State Auditor a sum sufficient to cover the costs of preparing a serving the notice to redeem; and
 - (5) present the certificate of sale to the State Auditor.
 - If the purchaser fails to comply with all the notice requirements described in W. Va. Code §11A-3-19, the purchaser loses the benefits of the purchase.

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Purchaser's Obligations/Duties

- Purchaser's must strictly comply with the post-sale procedures.
- Compliance requires the following:
 - Title examination to identify all persons of record that have an interest in the real estate;
 - Identify the location of the real property and ascertain its physical mailing address if it is identified as a Class II property; and
 - Do not confine yourself to only looking for addresses in the county record room.
 - Utilize free and paid for services in order to locate the persons which are entitled to be served notice.

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Post-Sale Proceedings cont.

- **Purchaser's Notice of the Right to Redeem:**
 - After receiving the list from the purchaser, the State Auditor will prepare the notice to redeem.
 - The State Auditor will serve notice upon all the persons from the purchaser's list within thirty (30) days of the request for the notice to redeem.
 - The notice shall be served on all persons in the manner provided for serving process commencing a civil action, or by certified mail, return receipt requested, or other types of deliver service courier that provides a receipt
 - Additionally, if the real property subject to the tax lien was classified as Class II property at the time of the assessment at the time the State Auditor issues the required notices by certified mail, a copy of the notice shall be served upon and addressed to "Occupant" at the physical mailing address for the real property.

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Post-Sale Proceedings cont.

- **Purchaser's Notice of the Right to Redeem:**
 - If the purchaser complies with all the notice requirements and the property is not redeemed, the purchased is entitled to apply for a deed to the real property.
 - If the purchaser complies with all the notice requirements but fails to apply for a deed to the real property, the purchaser can recover the excess amount paid over the taxes and charges owed if the purchaser request a refund in writing within thirty (30) days of the expiration of the lien. After thirty (30) days, the purchaser forfeits all rights to the excess funds. W. Va. Code §11A-3-18.

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Redemption Period

- W. Va. Code §11A-3-23. Redemption from purchase; receipt; list of redemption; lien; lien of person redeeming interest of another; record.
 - The original owner of the property, or anyone else who was entitled to pay taxes on the property, has eighteen (18) months after a tax lien sale at auction to redeem the property.
 - If any person entitled to pay the taxes wishes to “redeem,” he or she will be required to pay the amount of taxes, charges paid on the date of the sale, all other taxes paid on the property, any reasonable expenses incurred from January 1 of the year following the sheriff’s sale up to \$500.00, and interest calculated at 12% per annum on this amount. The purchaser is also entitled to any statutory costs paid by the purchaser.

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Obtaining Deed to the Property

- W. Va. Code §11A-3-27. Deed to Purchaser; record.
 - If no persons entitled to pay the taxes redeems the property prior to April 1st of the second year following the sheriff’s sale, the State Auditor will make available a deed for the property.
 - To secure a deed, the purchaser must request a deed from the State Auditor
 - After the request is made, the State Auditor will execute a deed within 120 days of the request

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Example Timeline under Current Law:

- The sheriff sells a lien on November 13, 2020.
- The purchaser the receives instructions from the State Auditor on how to secure the deed between May 1, 2021 and September 1, 2021.
- The purchaser prepares its list of those to be served with notice to redeem and gives it to the State Auditor on October 24, 2021.
- The State Auditor effects service by November 24, 2021.
- The redemption period remains open until March 31, 2022.
- If no person redeems the property, the purchaser may request a deed from the State Auditor after April 1, 2022.

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Chapter 11A. Article 4. Remedies Relating to Tax Sales.

- W. Va. Code §11A-4-2. Right to set aside sale or deed when all taxes paid before sale.
- W. Va. Code §11A-4-3. Right to set aside deed improperly obtained.
- W. Va. Code §11A-4-4. Right to set aside deed when one entitled to notice not notified.
 - Those who were entitled to notice to redeem, but did not receive sufficient notice, may bring an action to set aside a tax deed issued to a purchaser.
 - This right to set aside is extinguished three (3) years after the deed is delivered to the purchaser.
 - In West Virginia, purchasers of tax sales do not need to take actual possession of the property for the statute of limitations to begin to run.
 - The complainant must show by clear and convincing evidence that the tax sale purchaser “failed to exercise reasonably diligent efforts to provide notice...”

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2022 Regular Session - Senate Bill 552

- Senate Bill 552 will take effect on June 10, 2022.
 - Senate Bill 552 repealed much of the current law, while also amended and reenacted other parts of the current law, relating to the tax sale process.
 - As noted above, the current law will remain applicable to the 2021 tax lien sales, but the 2022 tax lien sales will be impacted by the new pre and post-sale procedures set forth in Senate Bill 552.
- Senate Bill 522 eliminates the sheriff sale:
 - The bill repealed §§ 11A-3-14; 11A-3-15; 11A-3-16; 11A-3-17; 11A-3-18; 11A-3-19; 11A-3-20; 11A-3-21; 11A-3-22; 11A-3-23; 11A-3-24; 11A-3-25; 11A-3-26; 11A-3-27; 11A-3-28; 11A-3-29; 11A-3-30; 11A-3-31

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2022 Regular Session - Senate Bill 552 Pre-Sale Proceedings

- All prior pre-sale proceedings will remain in effect.
- However, in addition, W. Va. Code §11A-3-44 requires the State Auditor to certify the list of all lands subject to sale.
 - The list certified by the Auditor is made in quadruplicate and provided to the county commission, the sheriff, and to the West Virginia Land Stewardship Corporation.
 - All copies delivered to the clerk of the county commission and the sheriff shall become permanent public records, and shall be preserved as such in the offices of the Auditor and the clerk of the county commission

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2022 Regular Session - Senate Bill 552 Auditor Sale Proceedings

- **W. Va. Code §11A-3-45. Auditor to Hold Annual Auction.**
 - Within ninety (90) days after the State Auditor has certified the lands required by W. Va. Code §11A-3-44, the State Auditor will sell, at public auction, the tax liens on the delinquent real property.
 - The sale will take place at the courthouse of the county that the certified lands are located.

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2022 Regular Session - Senate Bill 552 Post-Sale Proceedings

- **W. Va. Code §11A-3-52. Duties of Purchaser to Secure a Deed.**
 - (a) Within 120 days following the approval of the sale by the State Auditor, pursuant to W. Va. Code §11A-3-51, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:
 - (1) prepare a list of persons to be served with notice to redeem and request the State Auditor to prepare and serve the notice provided in W. Va. Code §11A-3-54 and §11A-3-55;
 - (2) provide the State Auditor with the physical mailing address of the property if the property is Class 11 property; and
 - (3) Deposit, or offer to deposit, with the State Auditor a sum sufficient to cover the costs of preparing and serving the notice.
 - (b) If the purchaser fails to fulfill the requirements set forth in subsection (a) of this section, the purchaser shall lose all the benefits of his or her purchase.
 - (c) After the requirements of subsection (a) of this section have been satisfied, the State Auditor shall issue and notice to redeem as required by W. Va. Code §11A-3-54 and §11A-3-55.
- Subsection (d) provides an option for the purchaser to apply for an extension of sixty (60) days.

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2022 Regular Session - Senate Bill 552 Post-Sale Proceedings

- W. Va. Code §11A-3-55. Service of Notice.
 - After preparation of the notice provided in W. Va. Code §11A-3-54, the State Auditor shall cause service of the notice on the parties named on the list provided by the purchaser pursuant to the provisions of W. Va. Code §11A-3-52.
 - The State Auditor shall cause the notice to be served upon all persons from the purchaser's lists at least 45 days prior to the first day a deed may be issued following the State Auditor's sale.
 - The notice shall be served on all persons in the manner provided for serving process commencing a civil action, or by certified mail, return receipt requested, or other types of deliver service courier that provides a receipt.
 - Additionally, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the time the State Auditor issues the required notices by certified mail, a copy of the notice shall be served upon and addressed to "Occupant" at the physical mailing address for the real property.

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2022 Regular Session - Senate Bill 552 Redemption Period under W. Va. Code §11A-3-56

- The original owner of the property, or anyone else who was entitled to pay taxes on the property, may redeem the tax lien sold at any time before a tax deed is issued.
- If any person entitled to pay the taxes wishes to "redeem," he or she will be required to pay the amount of taxes, charges paid on the date of the sale, all other taxes paid on the property, any reasonable expenses incurred from January 1st of the year following the sheriff's sale up to \$500.00, and interest calculated at 1% per month on this amount. The purchaser is also entitled to any statutory costs paid by the purchaser.
- Any person for reasons of financial hardship may petition the State Auditor to redeem his or her primary residence in installments.

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2022 Regular Session - Senate Bill 552 Obtaining Deed to the Property under W. Va. Code §11A-3-59

- W. Va. Code §11A-3-59. Deed to Purchaser; record.
 - If the real property is not redeemed within the time specified in the prepared notice, but in no event prior to thirty (30) days after notices to redeem have been served and upon the request of the purchaser, the State Auditor shall make and deliver a deed to the purchaser.
 - To secure a deed, the purchaser must request a deed from the State Auditor.
 - After the request is made, the State Auditor will execute a deed within 120 days of the request.

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Example Timeline under Senate Bill 552:

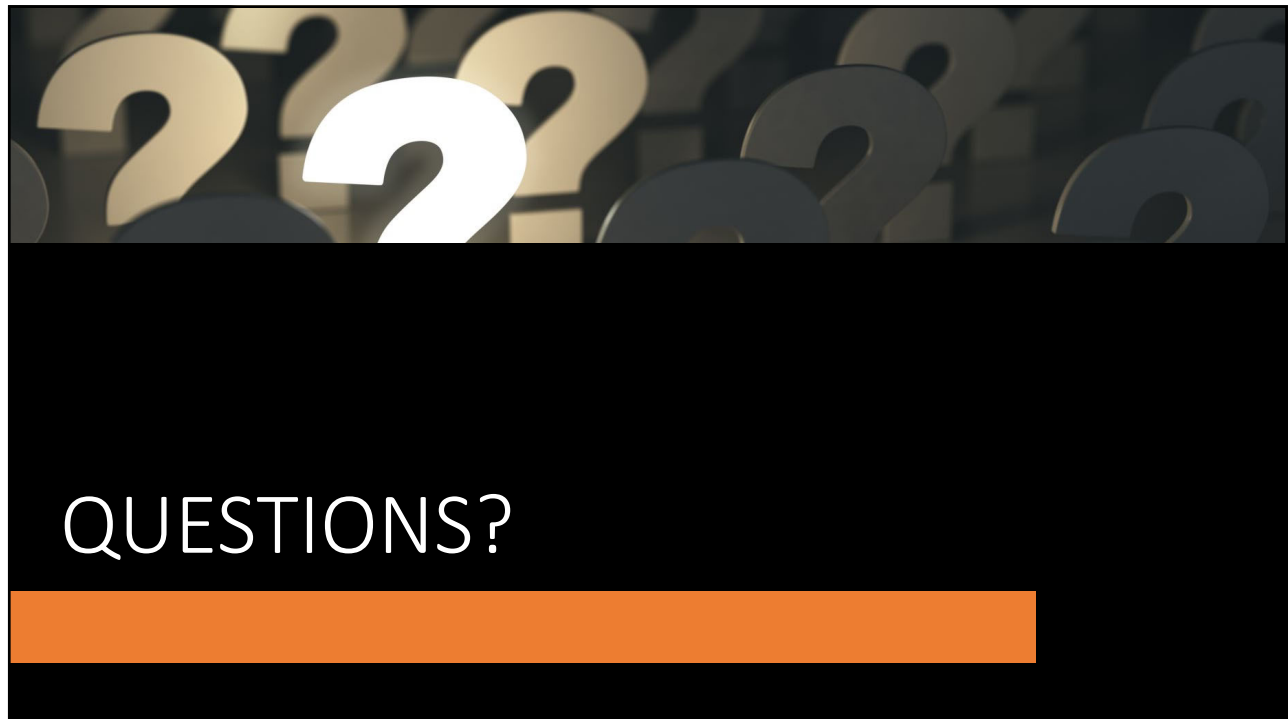
- The Auditor sells a lien on November 1, 2022.
- The purchaser prepares its list of those to be served with notice to redeem and gives it to the State Auditor on December 1, 2022.
- The State Auditor effects service on or before 45 days prior to the first date in which a deed may be issued to the purchaser.
- The redemption period remains open until a deed is issued to the purchaser.
- If no person redeems, the purchaser may request deed from the State Auditor.
- The State Auditor shall make and deliver deed the purchaser.

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Key Takeaways from West Virginia Case Law

- Substantial compliance for strictly construed procedures.
 - *Rebuild America, Inc., et al. v. Davis, et al.*, 229 W. Va. 86, 726 S.E.2d 296 (2012).
- You cannot remain confined to the dusty corners of the record room.
 - *Plemons v. Gale*, 382 F. Supp. 2d 826 (S.D.W.V. July 27, 2005).

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