S T A T E O F N E W Y O R K

3039--A

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sens. VOLKER, STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the Erie county tax act, in relation to providing that the amount required to redeem real property affected by any tax sale certificate in foreclosure, or to be recovered by the plaintiff in foreclosure, shall include the aggregate amount of all tax sale certificates affecting such real property and shall also include amounts for attorneys' fees, abstracts of title, court costs, allowances and other disbursements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 8-1.0 of chapter 812 of the laws of 1942, constituting the Erie county tax act, as amended by chapter 682 of the laws of 1969, is amended to read as follows:

S 8-1.0 Notice to redeem. Except as PROVIDED in section 7-17.0 [provided] OF THIS ACT, whenever any lot or parcel of land heretofore or hereafter affected by the sale of a tax certificate for taxes by the commissioner of finance shall remain unredeemed at the expiration of nine months after the date of such sale, or at any time thereafter, the grantee under such tax sale certificate or the person claiming under him may serve a notice, written or printed, or partly written and partly printed on the owner of such land and also upon all persons having mortgages upon such land, stating in substance a description of the lot or parcel of land covered by such certificate, the amount for which the tax lien was sold, the nature and amount of other charges allowable under this act, the last day of redemption of any such real estate, and the office or place where and the hours when the money for such redemption can be paid, which office or place of business shall be in the city of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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Buffalo and which hours shall be between nine o'clock in the forenoon and four o'clock in the afternoon. The last day of redemption to be specified in such notice shall be not less than three months from the date of the service thereof, nor prior to two years from the date of such sale. Such notice shall be served personally or left with some adult person at the residence or place of business of all persons entitled to such notice if they or any of them reside in the city of Buffalo or have a place of business therein; and in case they or any of them do not so reside or have such a place of business in said city, then such notice shall be served by mailing a copy thereof addressed to them at the post office at or nearest to their last known or reputed place of residence, and if after diligent inquiry no information can be obtained as to such last reputed place of residence, then such notice shall be served by mail addressed to them at the post office at or nearest to the property described in such notice. The expense of mailing or serving each such notice shall [in no case exceed the sum of twenty-five cents and may] be added to and become a part of the amount required to be paid for the redemption of such real estate.

S 2. Section 8-2.0 of chapter 812 of the laws of 1942, constituting the Erie county tax act, is amended to read as follows:

S 8-2.0 Title searches and continuations; conditions. At the expiration of one year from the date of the execution of such certificate of sale, the holder thereof may cause an abstract of title to be made and the cost thereof, [not exceeding five dollars and] established by the affidavit of the certificate holder, shall be added to and become a part of the amount required to be paid for the redemption of such real estate. Not more than one continuation of such abstract of title may be made in any calendar year and the charge therefor, established by a like affidavit shall [in no case exceed two dollars and fifty cents and may] be added to the amount required to be paid for the redemption of such real estate. Where a tax sale certificate is subsequently foreclosed by the holder thereof, the amount for abstracts of title and continuations thereof shall be [offset and credited against the bill of costs incurred in such tax foreclosure] ADDED TO AND BECOME A PART OF THE AMOUNT REQUIRED TO BE PAID FOR THE REDEMPTION OF SUCH REAL ESTATE.

S 3. Section 9-8.0 of chapter 812 of the laws of 1942, constituting the Erie county tax act, is amended to read as follows:

S 9-8.0 Costs, allowances and disbursements. [The plaintiff in any such action shall be entitled to recover the actual and necessary disbursements made in such action, and, if he appears by an attorney, costs as herein provided. Where judgment is taken by default, the taxable costs shall not exceed fifteen dollars except where the amount shown to be due by the tax sale certificates on which the action is brought, including the interest, fees, penalties and other charges thereon exceeds fifty dollars, in which event the taxable costs shall not exceed the sum of twenty-five dollars; when such an action, however, is settled before judgment, there shall be allowed as costs to the plaintiff in addition to his actual and necessary disbursements one-half of the above prescribed sum. The plaintiff may procure such title searches as may be necessary at a fair and reasonable cost, which shall be taxed as a necessary disbursement in the action. Where a charge has been made for a search or continuation pursuant to section 8-2.0 of this act, such charge shall be offset and deducted from the bill of costs provided for herein. Whenever a defense shall in good faith be interposed in any such action and the plaintiff succeeds therein, the same costs in the discretion of the court, may be awarded as would be allowed in an action

to foreclose a mortgage. Costs in an action in which the county of Erie is plaintiff shall be recovered by the county] AT ANY TIME FOLLOWING THE COMMENCEMENT OF AN ACTION BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 9-1.0 OF THIS ACT, THE AMOUNT REQUIRED TO REDEEM ANY REAL ESTATE AFFECTED BY SUCH A TAX SALE CERTIFICATE, AND THE AMOUNT TO BE RECOVERED BY THE PLAINTIFF, SHALL INCLUDE THE AGGREGATE AMOUNT OF ALL TAX SALE CERTIFICATES AFFECTING SAME OWNED BY THE PLAINTIFF AS OF THE DATE SUCH ACTION WAS COMMENCED, TOGETHER WITH ALL INTEREST, PENALTIES, ADDITIONS AND EXPENSES AS PROVIDED IN THIS ACT, AND SHALL ALSO INCLUDE REASONABLE AND NECESSARY ATTORNEYS' FEES, COURT COSTS, ALLOWANCES AND OTHER DISBURSEMENTS INCURRED BY PLAINTIFF IN CONNECTION WITH SUCH FORECLOSURE.

S 4. Section 11-4.0 of chapter 812 of the laws of 1942, constituting the Erie county tax act, is amended by adding a new subdivision (d) to read as follows:

(D) A STATEMENT THAT THE AMOUNT REQUIRED TO REDEEM ANY REAL PROPERTY AFFECTED BY SUCH A TAX SALE CERTIFICATE, AND THE AMOUNT TO BE RECOVERED BY THE COUNTY, SHALL INCLUDE THE AGGREGATE AMOUNT OF ALL TAX SALE CERTIFICATES AFFECTING SAME OWNED BY THE COUNTY AS OF THE DATE SUCH LIST IS FILED IN THE COUNTY CLERK'S OFFICE BY THE COUNTY ATTORNEY, TOGETHER WITH ALL INTEREST, PENALTIES, ADDITIONS AND EXPENSES AS IN THIS ACT PROVIDED, AND SHALL ALSO INCLUDE A PER PARCEL FEE, TO BE KNOWN AS THE "IN REM FEE", WHICH SHALL NOT EXCEED THE SUM OF FIVE HUNDRED DOLLARS, TO COVER THE PRESUMPTIVE COST TO THE COUNTY FOR REASONABLE AND NECESSARY ATTORNEYS' FEES, ABSTRACTS OF TITLE AND OTHER DISBURSEMENTS IN CONNECTION WITH SUCH FORECLOSURE PURSUANT TO THE IN REM PROVISIONS OF THIS ACT.

S 5. Section 11-12.0 of chapter 812 of the laws of 1942, constituting the Erie county tax act, as amended by chapter 981 of the laws of 1973, is amended to read as follows:

S 11-12.0 Public notice of foreclosure. Upon the filing of such list in the office of the county clerk, the county attorney shall forthwith cause a notice of foreclosure to be published at least once a week for six successive weeks in two newspapers designated by him and published within the county of Erie. Such notice shall be in substantially the following form:

"State of New York, County Court, Erie County
NOTICE OF FORECLOSURE OF TAX LIENS
BY THE COUNTY OF ERIE BY ACTION IN REM

Please take notice that on the .....day of.....the county of Erie pursuant to law filed with the clerk of Erie county a list of parcels of property affected by unpaid tax liens held and owned by said county of Erie which on such date had been due and unpaid for a period of at least two years after the date on which such real property affected by such unpaid tax liens was sold. Such list contains as to each such parcel (a) a brief description of the property affected by each tax lien, (b) the name of the last known owner of such property as the same appears on the latest tax roll in the hands of the commissioner of finance, or a statement that the owner is unknown if such be the case, (c) a statement of such tax liens upon such parcel of property including such tax sale certificates owned by the county of Erie which shall have been due for less than two years, together with the date or dates from which and the rate or rates at which interest and penalties shall be computed, (D) A STATEMENT THAT THE AMOUNT REQUIRED TO REDEEM ANY SUCH PARCEL OF PROPERTY, AND THE AMOUNT TO BE RECOVERED BY THE COUNTY, INCLUDES ALL TAX SALE

CERTIFICATES OWNED BY THE COUNTY AND AFFECTING SUCH PROPERTY, TOGETHER WITH ALL INTEREST, PENALTIES, ADDITIONS AND EXPENSES AS IN THIS ACT PROVIDED, AND ALSO INCLUDES AN "IN REM FEE" OF $..... PER PARCEL (HERE INSERT A SUM NOT TO EXCEED FIVE HUNDRED DOLLARS) TO COVER THE PRESUMPTIVE COST TO THE COUNTY FOR REASONABLE AND NECESSARY ATTORNEYS' FEES, ABSTRACTS OF TITLE AND OTHER DISBURSEMENTS IN CONNECTION WITH SUCH FORECLOSURE PURSUANT TO THE IN REM PROVISIONS OF THIS ACT.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes and properties are hereby notified that the filing of such list constitutes the commencement by said county of Erie of an action in the county court of Erie county to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of the pendency of action and a complaint by the said county of Erie against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such lists.

No personal judgment shall be entered herein against any owner for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and property and such persons are hereby notified further that a certified copy of such list of delinquent taxes and property has been filed in the office of the commissioner of finance of said county of Erie and in the respective offices of each tax collector and receiver of taxes and treasurers of the respective cities, towns, and villages in which such listed real property is located, and will remain open for public inspection up to and including the ..... day of ....., (here insert a date at least seven weeks from the date of the first publication of this notice) which date is hereby fixed as the last day for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel of real property and the legal right thereto may on or before said date redeem the same by paying to the said commissioner of finance of Erie county the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption.

In the event that such taxes are paid by a person holding a lien of record against such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Any person having any right, title or interest in or lien upon any parcel of real property described in such list of delinquent taxes and properties may serve a duly verified answer upon the county attorney for the county of Erie setting forth in detail the nature and amount of his interest and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk and served upon the county attorney within twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title, interest and equity of redemption in and to the parcel of real property described in such list of delinquent taxes and properties and a judgment in foreclosure may be taken by default.

Take further notice that the ownership by the county of the tax sale certificates set forth on such list of delinquent taxes and properties

is conclusive evidence of the fact that the taxes, assessments or other legal charges represented thereby have not been paid to the county or assigned by it.

.....
Commissioner of Finance

.....
Attorney for the County of Erie
(Address)"

S 6. This act shall take effect immediately; provided that sections two, three, four and five of this act shall not affect or apply to any Erie county tax sale certificates for any fiscal year prior to 2010.