STATE OF NEW YORK

9326

IN ASSEMBLY

February 29, 2024

Introduced by M. of A. ZINERMAN -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to procedures for the foreclosure of tax lien proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1166 of the real property tax law, as amended by chapter 532 of the laws of 1994 and subdivision 1 as amended by chapter 500 of the laws of 2015, is amended to read as follows:

§ 1166. Real property acquired by tax district; right of sale. 1. Whenever any tax district shall become vested with the title to real property by virtue of a foreclosure proceeding brought pursuant to the provisions of this article, such tax district is hereby authorized to sell and convey the real property so acquired **at public auction to the highest bidder**, which shall include any and all gas, oil or mineral rights associated with such real property, [~~either with or without advertising for bids,~~] notwithstanding the provisions of any general, special or local law.

2. [~~No such sale shall be effective unless and until such sale shall have been approved and confirmed by a majority vote of the governing body of the tax district, except that no such approval shall be required when the property is sold at public auction to the highest bidder.~~] **(a) Notice of such sale shall be given by the officer making it by publishing a notice of the time and place of the sale, containing a description of the property to be sold, in a newspaper published in the county in which the property is located, or, if there is none, in a newspaper published in an adjoining county, unless the property is situated wholly or partly in a city, or in an incorporated village in which a daily, semi-weekly or tri-weekly newspaper is published, and, in that case, by publishing notice of the sale in such a daily, semi-weekly or tri-weekly paper, except that where such real property is located in a county within the city of New York such publication shall be in a daily newspaper published within such county, or in a weekly paper published in a city or in such incorporated village. If the property be situated in a city,**

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

LBD11294-01-3

or a village in which no newspaper is published daily, semi-weekly or tri-weekly, and there be an adjoining city or village in the same or another county, in which a newspaper is published daily, semi-weekly or tri-weekly, such notice may be published in such daily, semi-weekly or tri-weekly newspaper of the latter city or village or in a weekly newspaper of such city. In each case, publication may be either once in each week for four successive weeks or at least twice in each week for three successive weeks preceding the original date fixed for the sale. If the publication is for three weeks, such sale shall take place on any day on or after the twenty-first day and on or before the twenty-eighth day after the day of the first publication; and if the publication is for four weeks such sale shall take place on any day on or after the twenty-eighth day and on or before the thirty-fifth day after the day of the first publication. Any period of seven successive days shall constitute a week under this section.

(b) Where the property is situated wholly outside a city or an incorporated village referred to in paragraph (a) of this subdivision, notice of such sale shall also be given by posting a copy of the notice of sale at least twenty-eight days preceding the original date fixed for the sale in three public places in the town in which the property is located, and, if the sale is to be held in another town or in a city, in three public places therein.

(c) If the officer appointed to make such sale does not appear at the time and place where such sale has been advertised to take place, the attorney for the plaintiff may postpone or adjourn such sale not to exceed four weeks, during which time such attorney may make application to the court to have another person appointed to make such sale. Notice of postponement of the sale shall be posted at least three days prior to the postponed date in the same places as the original notice of sale when posting of the notice of sale is required, and shall be published once at least three days prior to the postponed date in the newspaper in which the notice of sale was originally published.

(d) The terms of the sale shall be made known at the sale.

(e) If the property consists of two or more distinct buildings, farms or lots, they shall be sold separately, unless otherwise ordered by the court; but where two or more buildings are situated in the same city lot, they shall be sold together.

(f) At any time within one year after the sale, but not thereafter, the court, upon such terms as may be just, may set the sale aside for failure to comply with the provisions of this section as to the notice, time or manner of such sale if a substantial right of a party was prejudiced by the defect.

3. After the sale pursuant to this section, all surplus moneys arising from the sale shall be paid into court by the officer conducting the sale within five days after the same shall be received.

4. (a) Within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless such time be extended by the court within said thirty days, the officer making the sale shall file with the clerk his or her report under oath of the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made.

(b) A motion to confirm such report of sale shall not be made within three months after the filing of the report and shall in any event be made not later than four months after the filing of such report, except that if there be no surplus moneys arising from the sale of the mortgaged premises under such judgment, an application for confirmation of

the report of sale may be made at any time after the report shall have been filed eight days. Where the report of sale shows surplus money, such report must include the amount of surplus and instructions for how interested parties may apply to claim an interest for such surplus pursuant to subdivision five of this section.

(c) Such report required pursuant to this subdivision shall be posted publicly in accordance with the provisions of section eleven hundred twenty-four of this article.

(d) Personal notice of the sale of property pursuant to this section shall be administered in accordance with the provisions of section eleven hundred twenty-five of this article.

5. (a) Any person claiming the surplus moneys arising upon the sale of premises pursuant to this section, or any part thereof, either in his or her own name, or by his or her attorney, at any time before the confirmation of the report of sale, may file with the clerk in whose office the report of sale is filed, a written notice of such claim, stating the nature and extent of his or her claim and the address of himself or herself or his or her attorney.

(b) On the motion for confirmation, or at any time within three months thereafter, on notice to all parties who have appeared in the action or filed claims, on motion of any party to the action, or any person who has filed a notice of claim on the surplus moneys, the court, by reference or otherwise, shall ascertain and report the amount due to him or any other person who has a lien on such surplus moneys, and the priority of the several liens thereon and order distribution of surplus moneys.

(c) The owner of the equity of redemption, or any party who has appeared in the action or any person who files a notice of claim or who has a recorded lien against the property shall be given notice by mail or in such other manner as the court shall direct, to attend any hearing on disposition of surplus money.

6. Whenever any tax district shall become vested with the title to real property by virtue of a foreclosure proceeding brought pursuant to the provisions of this article, such tax district is hereby authorized to keep the real property so acquired for such tax district's use. In such case, a valuation proceeding shall be commenced in accordance with article five of the eminent domain procedure law. Once a determination of the property's fair market value has been made, the court shall order the tax district to pay just compensation to the owners of the foreclosed property, representing the difference between the property's value and the total tax debt owed.

§ 2. Paragraph (d) of subdivision 2 and subdivision 3 of section 1136 of the real property tax law, as amended by chapter 532 of the laws of 1994, are amended to read as follows:

(d) In directing any conveyance pursuant to this subdivision, the judgment shall direct the enforcing officer of the tax district to prepare and execute a deed conveying title to the parcel or parcels of real property concerned. Such title shall be full and complete in the absence of an agreement between tax districts as herein provided that it shall be subject to the tax liens of one or more tax districts. Upon the execution of such deed, the grantee shall be seized of an estate in fee simple absolute in such parcel unless the conveyance is expressly made subject to tax liens of a tax district as herein provided[~~, and all persons, including the state, infants, incompetents, absentees and non-residents, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever~~

~~foreclosed of all such right, title, interest, claim, lien or equity of redemption~~].

3. When no answer has been interposed. The court shall make a final judgment awarding to such tax district the possession of any parcel of real property described in the petition of foreclosure not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the enforcing officer of the tax district to prepare, execute and cause to be recorded a deed conveying to such tax district full and complete title to such parcel. Upon the execution of such deed, the tax district shall be seized of an estate in fee simple absolute in such parcel [~~and all persons, including the state, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption~~].

§ 3. Subdivision 10 of section 1194 of the real property tax law, as amended by chapter 149 of the laws of 2003, is amended to read as follows:

10. The conveyance made pursuant to a judgment in any action brought under this title shall vest in the purchaser [~~all~~] **a proportion of the** right, title, interest, claim, lien and equity of redemption in and against the real property sold of all parties to the action, and of all persons whose right, title, interest, claim, lien or equity of redemption has accrued subsequent in time to the filing of the notice of the pendency of the action by assignment of an interest existing prior thereto from one of the parties to the action or any or either of them. All such parties and persons shall [~~be barred and forever foreclosed by the judgment in such action of all~~] **retain a** right, title, interest, claim, lien and equity of redemption in and to the real property sold or any part thereof **in proportion to the surplus equity remaining in the property after sale**, except that the conveyance shall be subject to all taxes or other legal charges of all tax districts which accrued subsequent to the taxes or other legal charges which were the subject of the action. [~~Notwithstanding the provisions of subdivision two of~~] **Proceeds of the sale shall be distributed in accordance with** section thirteen hundred fifty-four of the real property actions and proceedings law[~~, this subdivision shall prevail~~].

§ 4. Subdivision 1 and paragraph (a) of subdivision 2 of section 1112 of the real property tax law, as amended by chapter 532 of the laws of 1994, are amended to read as follows:

1. When a tax district holds more than one tax lien against a parcel, the liens need not be redeemed simultaneously. However, the liens [~~must~~] **shall** be redeemed in [~~reverse~~] chronological order, so that the lien with the [~~most recent~~] **earliest** lien date is redeemed first, and the lien with the [~~earliest~~] **most recent** lien date is redeemed last. Notwithstanding the redemption of one or more of the liens against a parcel as provided herein, the enforcement process shall proceed according to the provisions of this article as long as the [~~earliest~~] **most recent** lien remains unredeemed.

(a) When one or more liens against a parcel are redeemed as provided herein, but the [~~earliest~~] **most recent** lien remains unredeemed, the receipt issued to the person redeeming shall include a statement in substantially the following form: "This parcel remains subject to one or more delinquent tax liens. The payment you have made will not post-

pone the enforcement of the outstanding lien or liens. Continued failure to pay the entire amount owed will result in the loss of the property."

§ 5. Paragraph (b) of subdivision 1 of section 1125 of the real property tax law, as added by chapter 415 of the laws of 2006 and subparagraph (i) as amended by chapter 275 of the laws of 2009, is amended to read as follows:

(b) Notification method. (i) **In the case of an owner, the enforcing officer shall cause a copy of such notice to be posted as provided herein on the property to which the delinquent tax lien relates; in the case of a non-owner, the enforcing officer shall cause a copy of such notice to be posted in his or her office and in the office of the clerk of the court in which the petition of foreclosure has been filed. Notwithstanding any provision of law to the contrary, the party to whom such notice is directed may redeem the parcel in question or serve a duly verified answer to the petition of foreclosure until either the thirtieth day after such posting or delivery, or the date specified by the notice of foreclosure as the last day for redemption, whichever is later.**

(ii) Such notice shall **also** be sent to each such party both by certified mail and ordinary first class mail, subject to the provisions of subparagraph (iv) of this paragraph. The notice shall be deemed received unless both the certified mailing and the ordinary first class mailing are returned by the United States postal service within forty-five days after being mailed. In that event, the enforcing officer or his or her agent shall attempt to obtain an alternative mailing address from the United States postal service. When notice is required to be sent to the commissioner of taxation and finance, an alternative notice may be used by the enforcing officer, in accordance with instructions prescribed by the commissioner of taxation and finance.

[~~(ii)~~] **(iii)** If an alternative mailing address is found, the enforcing officer shall cause the notice to be mailed to such owner at such address both by certified mail and by ordinary first class mail. Notwithstanding any provision of law to the contrary, such owner may redeem the parcel in question or serve a duly verified answer to the petition of foreclosure until either the thirtieth day after such mailing, or the date specified by the notice of foreclosure as the last day for redemption, whichever is later.

[~~(iii) If no alternative mailing address can be found, then in the case of an owner, the enforcing officer shall cause a copy of such notice to be posted as provided herein on the property to which the delinquent tax lien relates; in the case of a non-owner, the enforcing officer shall cause a copy of such notice to be posted in his or her office and in the office of the clerk of the court in which the petition of foreclosure has been filed. Notwithstanding any provision of law to the contrary, the party to whom such notice is directed may redeem the parcel in question or serve a duly verified answer to the petition of foreclosure until either the thirtieth day after such posting or delivery, or the date specified by the notice of foreclosure as the last day for redemption, whichever is later.~~]

(iv) Where an owner is listed as "unknown" on the tax roll and the name of such owner cannot be found in the public record, the notice shall be mailed to the property address by ordinary first class mail addressed to "occupant" and a copy thereof shall be posted on the property to which the tax lien relates.

§ 6. Subdivision 3 of section 1180 of the real property tax law, as amended by chapter 579 of the laws of 1995, is amended to read as follows:

3. If such lands are not redeemed, every person despoiling such lands or interested in making such despoliation upon whom service of the notice has been made, shall be liable to pay to the tax district the [~~full~~] **differential** value [~~of~~] **between that total tax debt and the market value of the property at the time of foreclosure attributable to** any buildings, timber or other products cut or destroyed or removed therefrom, from the date of the filing of the list of delinquent taxes to the termination of such action or proceeding, and may be restrained by injunction from committing any waste thereon. **Where the value of the property at the time of foreclosure exceeds the amount of the total tax debt, there shall be no liability for despoliation. The value of the property at the time of foreclosure may be measured by either the amount generated by sale of the property at public auction, in accordance with section eleven hundred sixty-six of this title, or by valuation proceedings in accordance with article five of the eminent domain procedure law.**

§ 7. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.