

MAINE STATE LEGISLATURE

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L.D. 2262

Date: 4/9/24

(Filing No. H-939)

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TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1452, L.D. 2262, "An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 14 MRSA §4422, sub-§1, ¶C, as amended by PL 2021, c. 382, §2, is further amended to read:

C. That portion of the proceeds from any sale of property or any money returned to the former owner of property, pursuant to the provisions of Title 36, section 943-C, that is exempt under this section is exempt for a period of 12 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period.

Sec. 2. 36 MRSA §943, 6th ¶, as amended by PL 2017, c. 288, Pt. A, §41, is further amended to read:

Beginning with taxes that are assessed after April 1, 1985, the notice of impending automatic foreclosure must be substantially in the following form:

STATE OF MAINE
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE
Title 36, M.R.S.A. Section 943

IMPORTANT: DO NOT DISREGARD
THIS NOTICE. YOU WILL LOSE
YOUR PROPERTY UNLESS YOU PAY
YOUR 20 PROPERTY TAXES,
INTEREST AND COSTS.
TO:

COMMITTEE AMENDMENT

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You are the party named on a tax lien certificate filed on _____, 20____, and recorded in Book _____, Page _____ in the County Registry of Deeds. This filing has created a tax lien mortgage on the real estate described therein.

On _____, 20____, the tax lien mortgage will be foreclosed and your right to recover your property by paying the taxes, interest and costs that are owed will expire.

IF THE TAX LIEN FORECLOSES,
THE MUNICIPALITY WILL OWN
YOUR PROPERTY AND MAY SELL IT
AND RETURN EXCESS SALE PROCEEDS
TO YOU, IF ANY, PURSUANT TO THE
MAINE REVISED STATUTES, TITLE 36, SECTION 943-C.

If you cannot pay the property taxes you owe please contact me to discuss this notice.
Municipal Treasurer

Sec. 3. 36 MRSA §943-C, as amended by PL 2023, c. 523, Pt. A, §8, is further amended to read:

§943-C. Sale of foreclosed properties

Notwithstanding any provision of law to the contrary, after the foreclosure process under sections 942 and 943 or sections 1281 and 1282 is completed and the right of redemption has expired, if a municipality chooses to sell to someone other than the former owner, the municipal officers or their designee shall ~~notify the former owner of the right to require the municipality to use the sale process under subsection 3.~~ For the purpose of this section, "former owner" means the owner or owners of record at the time of foreclosure or, if deceased, the former owner's heirs, devisees or personal representatives. ~~The notice must be sent by United States Postal Service certified mail, return receipt requested, and first-class mail to the last known address of the former owner and~~ "tax-acquired property" means real property taken by a municipality for nonpayment of property taxes. If the municipality agrees to sell the property back to the former owner, the alternative sale process under this section does not apply. If the sale to the former owner is not completed, the requirements of this section are reinstated.

1-A. Subject property. This section governs the sale of all tax-acquired property through the tax lien mortgage foreclosure process under sections 942 and 943 or sections 1281 and 1282.

2. Notification; appeal. At least 90 days prior to listing property for sale, the municipal officers or their designee shall send a written notice to the last known address of the former owner, by United States Postal Service certified mail, return receipt requested, and first-class mail, ~~of the right to require the sale process described in subsection 3.~~ The State Tax Assessor shall prepare notices that must be used by municipalities to inform former owners of ~~their right to apply for the sale process provided under subsection 3.~~

3. Sale process requirements. ~~If the former owner submits a written demand within 90 days after the notification in subsection 2 that the sale process of this subsection be used~~ When selling a tax-acquired property, the municipal officers or their designee shall:



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A. List the property for sale at the highest reasonable price at which the property is anticipated to sell with a real estate broker or agent licensed under Title 32, chapter 114 who does not hold an elected or appointed office in the municipality and is not employed by the municipality;

B. ~~Sell~~ Convey the property via quitclaim deed to the successful buyer at the highest price at which the property is able to sell, ~~or the price at which the property is anticipated by the real estate broker to sell~~ within 6 12 months after listing; and

C. Pay to the former owner any sale proceeds in excess of:

- (1) The sum of all taxes owed on the property;
- (2) ~~Property~~ The sum of all taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the municipality;
- (3) All accrued interest;
- (4) Fees, including advertising, mailing, recording, property listing and real estate broker's or agent's fees, to the extent that those fees are not included in the broker or agent fee agreement;
- (5) Any other expenses incurred by the municipality in selling ~~or~~, maintaining or improving the property, including, but not limited to, ~~an administrative fee equal to 10% of the property taxes owed~~ documented administrative costs and reasonable attorney's fees;
- (6) The cost to the municipality of the lien and foreclosure process, including, but not limited to, reasonable attorney's fees; and
- (7) Unpaid sewer, water or other utility charges and reasonable fees imposed by the municipality; and

D. Provide to the former owner a written accounting of the amount of excess sale proceeds itemizing any deductions made pursuant to paragraph C, subparagraphs (1) to (7) at the former owner's request.

~~If the municipal officers are unable to list or sell the property under the requirements of paragraphs A and B, or if the property tax payer does not request that the property be sold according to the sale process in this subsection, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, if the municipal officers pay the former owner any excess sale proceeds as calculated in paragraph C.~~

4-A. Effect of inability to contract or sell property. If, after 3 attempts, a municipality is unable to contract with a real estate broker or agent for the sale of the property as described in subsection 3 or the broker or agent is unable to sell the property within 12 months after listing, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, as long as the municipality pays the former owner any excess sale proceeds as calculated in subsection 3, paragraph C.

5. Property in the unorganized territory. With regard to the sale of property acquired by the State through tax lien foreclosure in the unorganized territory, the State Tax Assessor has the obligations of a municipality under this section.

COMMITTEE AMENDMENT

ROS

1 ~~6. Quitclaim deed and waiver~~ **Waiver of former owner.** ~~As a condition of~~
 2 ~~disbursement of excess sale proceeds to the former owner under subsection 3, paragraph~~
 3 ~~C, the municipal officers may require the former owner to execute a quitclaim deed without~~
 4 ~~covenant conveying any interest of the former owner in the property to the municipality~~
 5 ~~and to deliver that deed before conveyance by the municipality to the buyer. Receipt of~~
 6 ~~such excess sale proceeds by the former owner pursuant to this section is deemed to be a~~
 7 ~~waiver of any right of the former owner to commence any action pursuant to section 946-B.~~
 8 Failure of a municipality to file the notice required by subsection 11 does not nullify or
 9 otherwise affect the validity of the waiver under this subsection. This subsection may not
 10 be construed to prevent the former owner from commencing an action for damages relating
 11 to the effective conveyance of excess sale proceeds or the amount of excess sale proceeds.

12 **7. Retention of tax-acquired property.** If a municipality chooses to retain a tax-
 13 acquired property for municipal use, the municipality shall procure an appraisal report from
 14 an appraiser licensed to provide real estate appraisals in this State showing the value of the
 15 tax-acquired property being retained. The appraiser may not hold an elected or appointed
 16 office in the municipality or be otherwise employed by the municipality. The municipal
 17 officers, after providing the notice required by subsection 8, shall pay the former owner
 18 any excess sale proceeds as calculated in subsection 3, paragraph C, substituting the value
 19 of the tax-acquired property as shown in the appraisal report, which must be prepared
 20 within 120 days before the time the excess sale proceeds are paid, for the selling price of
 21 the tax-acquired property.

22 **8. Notice of intent to pay excess sale proceeds.** If after the sale of a tax-acquired
 23 property there exist any excess sale proceeds as described in subsection 3, paragraph C, at
 24 least 30 days prior to disbursement of those excess sale proceeds to the former owner the
 25 municipal officers shall send written notice of the municipality's intent to pay the former
 26 owner the excess sale proceeds. The notice must be sent by first-class mail and certified
 27 mail, return receipt requested, to the last known address of the former owner and the last
 28 known address of each record holder of an interest in the tax-acquired property. This notice
 29 does not limit the right of a lienholder to pursue any claims to the excess sale proceeds
 30 against the former owner otherwise available by law.

31 **9. Notice by publication.** If the municipality is unable, after reasonable diligence, to
 32 locate the former owner of a tax-acquired property in order to send the notice required in
 33 subsection 8, the municipality, once a week for 3 consecutive weeks, shall place a notice
 34 in a newspaper of general circulation in the county in which the tax-acquired property is
 35 located. The notice must include the name of the former owner, a description of the tax-
 36 acquired property that was sold, the amount of the excess sale proceeds and the date by
 37 which the excess sale proceeds must be claimed.

38 **10. Transfer of proceeds.** If, after provision of notice under subsection 9, a former
 39 owner fails to claim the excess sale proceeds within 30 days of the final published notice,
 40 the municipality shall transfer the excess sale proceeds to the Unclaimed Property Fund
 41 under Title 33, section 2141.

42 **11. Notice of payment of proceeds.** A municipality, within 10 days of payment of
 43 any excess sale proceeds to the former owner under this section, shall record in the registry
 44 of deeds of the county or registry district where the tax-acquired property is located a notice
 45 signed by the municipal officers. The notice must include the name of the former owner
 46 to whom the excess sale proceeds were paid, the amount of the excess sale proceeds, the

1 date on which the excess sale proceeds were paid to the former owner, a description of the
2 tax-acquired property that was sold and a statement that receipt of the excess sale proceeds
3 by the former owner is deemed to be a waiver of the former owner's right to commence any
4 action challenging the taking pursuant to section 946-B.

5 The State Tax Assessor shall prescribe the form of the notice to be used by municipalities
6 under this subsection.'

7 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
8 number to read consecutively.

9 **SUMMARY**

10 This amendment makes changes to the bill to improve the process when a municipality
11 sells real property acquired for nonpayment of taxes by the former owner, including:

12 1. Requiring a notice of impending automatic foreclosure to specify that the
13 municipality may sell the property and pay any excess sale proceeds to the former owner;

14 2. Allowing municipalities to use an agent as well as a real estate broker in the sale of
15 the property;

16 3. Increasing from 6 months to 12 months the length of time the property may be listed
17 for sale;

18 4. Allowing the deduction from the proceeds of the sale fees incurred in selling the
19 property but only to the extent those fees are not included in the broker or agent fee
20 agreement;

21 5. Requiring any fees imposed by a municipality on the property to be reasonable;

22 6. Requiring an itemized written account of the deductions from the sale proceeds to
23 be provided to the former owner when requested;

24 7. Requiring an appraisal report to be prepared within 120 days, if a municipality
25 chooses to retain the property;

26 8. Specifying that a person receiving the excess sale proceeds waives the right to
27 challenge the taking of the property but not the right to commence an action relating to the
28 effective conveyance of the excess sale proceeds; and

29 9. Providing that, if the former owner of foreclosed property cannot be located for
30 distribution of excess amounts, the excess amounts must be turned over to the unclaimed
31 property division of the Office of the Treasurer of State.