

# Comprehensive Guide to Understanding West Virginia Tax Sales

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# **TAX LIEN SALES IN WEST VIRGINIA**

West Virginia's counties strictly abide by the statutory code outlined in W. Va. Code Chapter 11A when conducting tax lien sales. The sheriff auctions the tax liens, which are freely assignable after purchase. If not redeemed, a purchaser of a tax lien may request a quitclaim deed for the property up to 18 months following the date of sale when the lien expires.

To understand tax lien sales in West Virginia, it is important to understand the statutory code and procedures associated with the sales. Both will be addressed below.

## **Disclaimer:**

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. This publication does not constitute legal advice. Should you need assistance, retaining experienced legal counsel is recommended.

## **REAL PROPERTY TAX LIEN SALES**

In West Virginia, delinquent real property taxes are sold as tax liens at an annual public auction with the purchaser receiving a certificate of sale. W. Va. Code § 11A-3-14. A quitclaim deed is available on unredeemed properties between April 1 of the second year following the tax sale and 18 months after the sale. W. Va. Code § 11A-3-27.

### **I. Real Property Delinquent Tax Liens**

West Virginia real property taxes are payable to the sheriff or appointed tax collector in two installments on September 1 and March 1 each year and are delinquent on October 1 and April 1. W. Va. Code §§ 11A-1-3; 11A-1-4; 11A-1-5.<sup>1</sup> If delinquent taxes go unpaid, a lien attaches to the property on July 1 until the taxpayer pays the delinquent taxes. W. Va. Code § 11A-1-2. The delinquent tax lien includes the unpaid taxes, interest, and charges that accrue throughout the collection process. W. Va. Code § 11A-1-2. Taxing entities may sell the tax liens. W. Va. Code § 11A-2-10.

### **II. Sale of Tax Liens**

On or after April 1, the sheriff prepares and publishes a notice of delinquency stating that unpaid delinquent taxes after April 30 will be included in the publication of the delinquent list. W. Va. Code § 11A-2-10a. On or before May 1, the sheriff prepares the delinquency list. W. Va. Code §§ 11A-2-11; 11A-2-12. The sale of tax liens by the sheriff to persons other than those persons/entities with an interest in the real property or the delinquency collection process as codified in W. Va. Code 11A-3-6, are conducted in accordance with W. Va. Code § 11A-3-5. The sheriff holds the sale between October 14 and November 23 on the courthouse stairs during regular business hours. W. Va. Code § 11A-3-5.

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<sup>1</sup> An interest of 9% per year begins to accrue after delinquency. W. Va. Code § 11A-1-3.

*a. Requirements of Third-Party Purchasers Prior to Sale*

Any third party holding a certificate of sale for a tax lien on a parcel of property from a prior year may prevent the sale of a later tax lien by paying the amount due on the lien. W. Va. Code § 11A-3-17. Further, a purchaser of a tax lien may pay the later taxes on the property. W. Va. Code § 11A-3-16. The purchaser must certify the additional payment to the State Auditor, who will endorse the payment. W. Va. Code § 11A-3-16.

*b. Pre-Sale Notice of Tax Sale*

On or before September 10, the sheriff will prepare a second delinquent list that lists properties delinquent as of September 1 and includes a notice of the tax lien sale. W. Va. Code § 11A-3-2. The sheriff will publish the list in a Class III-0 legal advertisement within the county. At least 30 days before the sale, the sheriff will send notice of the delinquency and the date of sale by certified mail to the last known address of (1) each person listed in the land book, (2) each person who has a lien on the property and has filed that lien with the sheriff, (3) each person with an interest in the property or in a fiduciary relationship to the person with an interest in the property and has requested notice from the sheriff, and (4) any person with an interest in the mineral rights with an interest in the surface to extract such minerals and has requested notice from the sheriff. W. Va. Code § 11A-3-2. Any person who holds a lien on the property and has not registered it with the sheriff will forfeit the right to notice of the tax sale. W. Va. Code § 11A-3-3. A fee of \$25 will be added to the lien to cover the cost of preparing and publishing the list. W. Va. Code § 11A-3-2. Another fee of \$10 per addressee to cover the mailing cost will be also added. W. Va. Code § 11A-3-2.

A taxpayer may redeem the lien until the close of business on the day before the sale. W. Va. Code § 11A-3-4. If the taxpayer redeems the lien before publishing the advertisement, a fee of \$3 will be added. W. Va. Code § 11A-3-2.

*c. Sale Procedure*

The sheriff or clerk of the county commission auctions the tax liens from the courthouse stairs after October 14 and before November 23. W. Va. Code § 11A-3-5; 11A-3-5a. West Virginia uses a premium bid method. The starting minimum bid includes the delinquent taxes, interest, and charges due for the property. W. Va. Code § 11A-3-5. Investors bid up the price of the lien, and the highest bidder will receive a certificate of sale. W. Va. Code § 11A-3-14. All highest bidders must pay the sheriff by check or money order before the close of business on the day of the sale. W. Va. Code § 11A-3-5. The certificate of sale is freely transferable with endorsement and registration. W. Va. Code § 11A-3-15. If by October 31 of the year following the sale of the tax lien, the lien is found to be subject to erroneous assignment or is otherwise nonexistent, the purchaser may submit the abstract or a certificate of attorney to the sheriff, who will refund the purchase cost. W. Va. Code § 11A-3-20.

The sheriff may suspend the sale of a lien if (1) the land has previously been transferred by deed, (2) no delinquent taxes are owed on the parcel of land, (3) the tax lien has been previously sold and not redeemed, or (4) the minimum bid amount is incorrect. W. Va. Code § 11A-3-7. The sheriff will certify any tax lien that remains unsold to the Auditor. W. Va. Code § 11A-3-8. The unsold liens may be sold to any interested party without further auction or advertisement. W. Va. Code § 11A-3-48.

*d. Post-Sale Notice of the Tax Sale*

As soon as the sale is complete, the sheriff will prepare a list of all tax liens bought at the sale, suspended, redeemed before sale, or certified to the auditor to deliver to the clerk of the county commission within one month. W. Va. Code §§ 11A-3-9; 11A-3-11. Within 10 days of the delivery of the list to the clerk of the county commission, the clerk transmits a copy of the list to the State Auditor. W. Va. Code § 11A-3-11. For up to six months after the sale, a person may petition the county commission to amend the list, and if granted, the county commission will transmit an updated list to the State Auditor. W. Va. Code § 11A-3-12. Additionally, within one month, the sheriff must publish the above list as a Class II-0 legal advertisement within the county. W. Va. Code § 11A-3-13. The State Auditor will send a notice of the requirement to secure a deed to the purchaser between May 1 and September 1 of the year following the sale. W. Va. Code § 11A-3-14.

The tax lien certificate of sale may remain on a property no longer than 18 months after the original issuance of the certificate. W. Va. Code § 11A-3-18. After August 31 of the year following the sheriff's sale and before October 31 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 sufficient sum to cover the costs of preparing and serving the notice to redeem, and (5) present the certificate of sale to the State Auditor. W. Va. Code § 11A-3-19. If the certificate of sale has been transferred, the assignee must also present the written assignment to the State Auditor. W. Va. Code § 11A-3-19. If the purchaser does not comply

with all of the notice requirements, the purchaser loses the benefits of the purchase. W. Va. Code § 11A-3-19.

After receiving the list from the purchaser, the State Auditor will prepare the notice to redeem. W. Va. Code § 11A-3-21. A fee of \$10 for the original notice and \$2 for each copy required will be added. W. Va. Code § 11A-3-21. The State Auditor will serve notice upon all the persons from the purchaser's list within 30 days of the purchaser's request for the notice to redeem. W. Va. Code § 11A-3-22. If the address of the party is known, the State Auditor will serve notice to redeem by certified mail, return receipt requested. W. Va. Code § 11A-3-22. If the address of a party is unknown and the purchaser cannot discover the address with due diligence, the State Auditor will deliver notice by publication in a Class III-0 legal advertisement within the county in which the property is located. W. Va. Code § 11A-3-22. If the State Auditor fails to serve the notice to redeem, the purchaser may petition the circuit court of the county for an order compelling the State Auditor to act between two weeks of discovering the failure to act and 60 days after the request to serve the notice to redeem. W. Va. Code § 11A-3-28. Such notice is valid as though the action occurred within the prescribed time frame. W. Va. Code § 11A-3-28. The purchaser must provide 10 days' notice to the State Auditor of the petition. W. Va. Code § 11A-3-28.

If the purchaser complies with all the notice requirements but fails to request a quitclaim deed within 18 months, the purchaser can recover the excess amount paid over the taxes and charges owed if the purchaser requests a refund in writing within 30 days of the expiration of the lien. W. Va. Code § 11A-3-18. After 30 days, the purchaser forfeits all rights to the excess funds. W. Va. Code § 11A-3-18. If the purchaser fails to fulfil the notice requirements but by December 1 of the year following the sale files a request in writing for an extension with the State Auditor, a

purchaser may receive another 30 days to comply after paying a fee of \$100 or 10% of the total sale price, whichever is greater. W. Va. Code § 11A-3-18.

*e. Fees Third-Party Purchaser is Entitled to Collect*

If any person entitled to pay the taxes seeks to “redeem” or satisfy the tax lien, the third-party purchaser is entitled to the amount of taxes, charges due on the date of 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, and interest calculated at 12% per year on this total amount. W. Va. Code § 11A-3-23. The purchaser is also entitled to any statutory costs paid by the purchaser. W. Va. Code § 11A-3-23.

The taxpayer will pay the State Auditor or the county clerk, who will transmit the payment and receipt to the State Auditor. W. Va. Code § 11A-3-23. When redeemed, the sheriff will contact the purchaser and transfer the money to the purchaser. W. Va. Code § 11A-3-25. The person redeeming will receive a certificate of redemption and the State Auditor will release the lien. W. Va. Code § 11A-3-26.

### **III. Obtaining Deed to the Property**

If no persons entitled to pay the taxes redeems the property, between April 1 of the second year following the sheriff’s sale and 18 months after the sale, the State Auditor will make available a quitclaim deed for the property. W. Va. Code § 11A-3-27. The purchaser must make a request to the State Auditor for the quitclaim deed, and the State Auditor will execute the quitclaim deed within 120 days of the request. W. Va. Code § 11A-3-27. A fee of \$50 together with any recording and transfer taxes will be charged. W. Va. Code § 11A-3-27. After the 18-month expiration, the purchaser forfeits the quitclaim deed. W. Va. Code § 11A-3-27.



The quitclaim deed gives the purchaser all rights, title, and interests that at the time of the transfer were vested in the taxpayer. W. Va. Code § 11A-3-30. The deed will relate back to July 1 of the year in which the taxes were due. W. Va. Code § 11A-3-30. No irregularities or errors leading up to the delivery of the deed by the State Auditor will invalidate the title, unless the irregularity or error is specifically enumerated as a defense to set aside the deed.<sup>2</sup> W. Va. Code § 11A-3-31.

If the State Auditor fails to execute a tax deed, the purchaser may petition the circuit court of the county for an order compelling the State Auditor to act between the time of discovering the failure to act and 6 months after the right to the deed accrued. W. Va. Code § 11A-3-28. Delivering the deed is valid as though the action occurred within the prescribed time frame. W. Va. Code § 11A-3-28. The purchaser must provide 10 days' notice to the State Auditor of the petition. W. Va. Code § 11A-3-28.

#### **IV. Actions to Set Aside the Tax Deed**

The former owner of the property or someone on his behalf may bring an action to set aside the tax deed, which will re-vest in the owner all the rights, title, and interests in the land. W. Va. Code § 11A-4-5. A taxpayer must bring most actions to set aside a deed within 3 years of the delivery of the deed. W. Va. Code §§ 11A-4-2; 11A-4-3; 11A-4-4. A person can bring an action to set aside a deed within 3 years of the delivery of the deed, (1) if before the sale, the taxpayer paid the delinquent taxes; (2) if the State Auditor delivered the deed after the expiration of the tax lien; (3) if the purchaser failed to meet the notice requirements; or (4) the taxpayer redeemed the property before the deed was issued. W. Va. Code §§ 11A-4-2; 11A-4-3. Further, a person may bring an action to set aside the deed within 3 years of issuing the deed if one who had a right to

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<sup>2</sup> See *infra* Real Property Tax Lien Sales; VI. Actions to Set Aside a Deed.

notice, failed to receive that notice and did not have actual knowledge of the sale. W. Va. Code § 11A-4-4. That said, the time a taxpayer must bring an action to set aside a deed is extended when the taxpayer was an infant or mentally incapacitated. W. Va. Code § 11A-4-6. The person may bring an action to set aside the deed up to 1 year after the removal of the disability, but no more than 20 years after the purchaser obtained the deed. W. Va. Code § 11A-4-6. In all actions to set aside the deed, the person must pay the fee for redemption of the property plus an interest rate of 12% per year from the date expenses were incurred. W. Va. Code §§ 11A-4-2; 11A-4-3; 11A-4-4; 11A-4-6.

### **SALE OF NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS**

Nonentered, escheated, and waste and unappropriated lands are treated in a different manner to those sold under a tax lien. W. Va. Code § 11A-3-37. Nonentered lands are those lands which the owner has failed to have entered for appraisal of taxes for five successive years. W. Va. Code § 11A-3-37. All nonentered, escheated, and waste and unappropriated lands are subject to sale by the deputy commissioner. W. Va. Code § 11A-3-42. The sale of nonentered, escheated, and waste and unappropriated lands by the deputy commissioner to persons other than those persons/entities with an interest in the real property or the collection process as codified in W. Va. Code 11A-3-49 are conducted in accordance with W. Va. Code 11A-3-45.

To redeem the property, the taxpayer must pay (1) taxes, interest, and charges from the date of certification, (2) taxes between the year of nonentry to the present, and (3) interest at a rate of 12% per year from the date of the purchase. W. Va. Code § 11A-3-38.

#### **I. Sale of Nonentered, Escheated, and Waste and Unappropriated Lands**

*a. Pre-sale Notice of the Sale*

Between May 1 and October 1, the auditor of the county will certify to the deputy commissioner a list of all lands subject to sale. W. Va. Code § 11A-3-44. This list will include all lands unsold at the sheriff's sale, nonentered lands, escheated lands, and waste and unappropriated lands. W. Va. Code § 11A-3-42. A fee of \$25 will be added to the amount due to cover the costs. W. Va. Code § 11A-3-44. Once per week for the three consecutive weeks before the auction, the deputy commissioner will publish notice of the auction as a Class III-0 legal advertisement. W. Va. Code §§ 11A-3-46. A fee of \$30 will be added to the amount due to cover costs of publication. W. Va. Code § 11A-3-46. The taxpayer may redeem the property at any time before the sale of the land. W. Va. Code §§ 11A-3-38; 11A-3-39.

*b. Sale Procedures*

As with tax lien sales, West Virginia also uses a premium bidding method for the sale of nonentered, escheated, and waste and unappropriated lands. The sheriff will not sell any lien for less than the amount of taxes, charges, and interest due on the land. W. Va. Code § 11A-3-42. The sheriff will conduct the public auction of nonentered, escheated, and waste and unappropriated lands within 120 days of certification of the land to the deputy commissioner. W. Va. Code § 11A-3-45. The bidders bid up the price, and the highest bidder receives the lien. W. Va. Code § 11A-3-45. The highest bidder must pay the sheriff with a check or money order by the close of business of the day of the sale. W. Va. Code § 11A-3-45. If within 45 days of the sale, the purchaser discovers the property is nonexistent, the sheriff will refund the purchase price upon request. W. Va. Code § 11A-3-53. A private, nonprofit, charitable organization, who has a principal purpose of constructing housing or other public facilities, may notify the deputy commissioner of an intent to bid on a parcel of land. W. Va. Code § 11A-3-45. If the charity registers a bid that is at least 5%

lower than the highest bid at auction, the deputy commissioner will sell the lien to the charity. W. Va. Code § 11A-3-45.

Any land that remains unsold at the end of auction is subject to sale without further auction or advertising subject to the auditor's approval. W. Va. Code § 11A-3-48; 11A-3-51. The sheriff will collect the money from the sale and distribute it to cover charges accrued in the collection process. W. Va. Code § 11A-3-64.

*c. Post-Sale Notice of the Sale*

Within 14 days of the auction or later sale, the deputy commissioner will report any sales to the auditor. W. Va. Code § 11A-3-51. As soon as the auditor receives the list, the auditor will determine whether the sale is in the best interest of the state, and either reject and resell the property or accept the transaction. W. Va. Code § 11A-3-51. If approved, the purchaser within 45 days must (1) prepare a list of those to be served with notice to redeem, (2) provide the address of the land if it is a Class II property, and (3) deposit funds to the deputy commissioner to cover the cost of preparation and service of the notice to redeem. W. Va. Code § 11A-3-52. If a purchaser has not complied with the notice requirement before the expiration of the 45 days, the purchaser may request another 30 days to comply by requesting an extension from the State Auditor and paying a fee of \$100 or 10% of the purchase price, whichever is greater. W. Va. Code § 11A-3-52. If the purchaser fails to comply with the notice requirement, he will lose the benefits of the purchase. W. Va. Code § 11A-3-52.

After receiving the list from the purchaser, the deputy commissioner will prepare the notice to redeem. W. Va. Code § 11A-3-54. A fee of \$10 for the original notice and \$2 for each copy required will be added. W. Va. Code § 11A-3-54. The deputy commissioner will serve notice upon all the persons from the purchaser's list within 30 days of the purchaser's request for the notice to

redeem and at least 45 days prior to the first day the deed may be issued. W. Va. Code § 11A-3-55. If the address of a party is known, the deputy commissioner will serve notice to redeem by certified mail, return receipt requested. W. Va. Code § 11A-3-55. If the address of a party is unknown and the purchaser cannot discover it with due diligence, the deputy commissioner will deliver notice by publication within 60 days of the request for notice in a Class III-0 legal advertisement within the county. W. Va. Code § 11A-3-55.

*d. Fees Third-Party Purchaser is Entitled to Collect*

If any person entitled to pay the taxes seeks to “redeem” or satisfy the tax lien, the third-party purchaser is entitled to the amount of taxes, charges due on the date of 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, and interest calculated at 12% per year on this total amount. W. Va. Code § 11A-3-56. The purchaser is also entitled to any statutory costs paid by the purchaser. W. Va. Code § 11A-3-56.

The taxpayer will pay the deputy commissioner, who will transfer the money to the sheriff. W. Va. Code §§ 11A-3-56; 11A-3-57. The sheriff will contact the purchaser and transfer the money to the purchaser. W. Va. Code § 11A-3-58.

**II. Obtaining Deed to the Property**

If the lien has not been redeemed within the time specified in the notice to redeem, no sooner than 30 days after the notice to redeem was delivered, the deputy commissioner will make and deliver a quitclaim deed for the property upon request by the purchaser. W. Va. Code § 11A-3-59. A fee of \$50 and recording expenses will be charged. W. Va. Code § 11A-3-59. The deputy commissioner must execute and deliver the deed within 120 days from when the purchaser’s right to the deed accrued. W. Va. Code § 11A-3-59. If the deputy commissioner fails to serve notice to

redeem or to execute a deed, the purchaser may petition the circuit court of the county for an order compelling the deputy commissioner to act. W. Va. Code § 11A-3-60. That notice or deliverance of the deed is valid as though the action occurred within the prescribed time frame. W. Va. Code § 11A-3-60. The purchaser must provide 10 days' notice to the State Auditor of the petition. W. Va. Code § 11A-3-60.

The quitclaim deed gives the purchaser all rights, title, and interests that at the time of the transfer were vested in the person entitled to redeem. W. Va. Code § 11A-3-62. The deed will relate back to July 1 of the year in which the taxes were due. W. Va. Code § 11A-3-62. No irregularities or errors leading up to the delivery of the tax deed by the State Auditor will invalidate the title, unless the irregularity or error is specifically enumerated as a defense to set aside the deed. W. Va. Code § 11A-3-63.

The former owner is entitled to the surplus of the sale, but the former owner must file a claim within 2 years of the date of the sale. W. Va. Code § 11A-3-65. Former creditors of the property also have a claim to the surplus. W. Va. Code § 11A-4-7. The former owner may institute an action to set aside the deed.<sup>3</sup>

### **CONCLUSION**

West Virginia sells its tax liens and gives the prior owner the right to redeem any time before the tax deed is issued. The purchaser has between April 1 of the second year following the sheriff's sale and 18 months after sale to request a quitclaim deed for the property. One should stay apprised of any legislative changes or legal decisions impacting the tax lien sale process. It is also important to familiarize yourself with the collecting official in the particular county to stay informed of his sale dates and the liens offered at auction.

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<sup>3</sup> See *supra*, Real Property Tax Lien Sales; VI. Actions to Set Aside a Deed.