



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1431

right to redeem; foreclosure; sale

Purpose

Bifurcates the process to foreclose the right to redeem a property tax lien by establishing procedures to hold an excess proceeds property sale if the court determines that the sale is reasonable and a defendant requests the sale. Outlines notification, public auction, bid payment and proceed distribution requirements.

Background

By September 1, the county treasurer must send a notice of delinquent taxes to each person or firm that owes delinquent taxes against real property. By December 31, the county treasurer must publish a list of all real property with delinquent taxes and an accompanying notice that the county treasurer will sell a property tax lien at public auction. The county treasurer must sell a property tax lien to the person who pays the aggregate amount of all delinquent taxes due on the property, including penalties, interest and charges. The county treasurer must deliver a certificate of purchase to each lien purchaser at the sale or provide for a registered certificate in the county treasurer's records.

Between 3 and 10 years after a tax lien is sold, the certificate of purchase holder (certificate holder) may bring an action to foreclose the right to redeem. The action to foreclose the right to redeem must be filed in the superior court in the county in which the real property is located and name the county treasurer as a party to the action. Between 30 and 180 days before filing an action to foreclose, the purchaser must send a notice by certified mail to the county treasurer and the property owner. If the court finds that the sale is valid and that the tax lien has not been redeemed, the court must enter judgment: 1) foreclosing the right of the defendant to redeem; and 2) directing the county treasurer to expeditiously execute and deliver to the party in whose favor judgment is entered a deed conveying the property. After entering judgment, the parties whose rights to redeem the tax lien are foreclosed have no further legal or equitable right, title or interest in the property subject to the right of appeal and stay of execution as in other civil actions (A.R.S. §§ [42-18101 – 42-18204](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Foreclosure of the Right to Redeem a Property Tax Lien

1. Allows a property owner whose right to redeem is being foreclosed to request the court to determine if a sale of the property to recover excess proceeds (excess proceeds sale) is reasonable.

2. Requires the court, if the court finds that a tax lien sale is valid, the lien has not been redeemed and the defendant's request for an excess proceeds sale is reasonable, to enter judgment:
 - a) foreclosing the right of the defendant to redeem;
 - b) directing the excess proceeds sale to occur pursuant to the outlined statutory requirements; and
 - c) setting the opening bid for the property as the total outstanding costs, fees and interest related to the property.

Court Determination of a Reasonable Excess Proceeds Sale

3. Requires the court to determine that an excess proceeds sale is reasonable if the property sale price is likely to be more than a de minimus amount above all outstanding costs, fees and interest related to the property.
4. Stipulates that, if a defendant's request for an excess proceeds sale is unreasonable or the defendant did not request an excess proceeds sale, the existing statutory tax lien sale requirements apply.
5. Requires the property owner whose right to redeem is being foreclosed, if a request is made for an excess proceeds sale, to provide a reasonable estimate of the market value of the property to the court for the purposes of determining if the sale is reasonable.
6. Requires, if a request is made for an excess proceeds sale, the certificate holder to provide the following information to the court to determine if the sale is reasonable:
 - a) the costs related to filing the claim to foreclose the right to redeem, including estimated attorney fees and costs to be incurred through the date of the excess proceeds sale, if ordered;
 - b) the amount for which the real property tax lien was sold, with interest at a rate of 16 percent per year from the date of the tax lien sale through the date of the excess proceeds sale, if ordered;
 - c) the amount of any statutory fees the certificate holder paid in connection with the certificate of purchase, except the processing fee, with interest at a rate of 16 percent per year from the date of the tax lien sale through the date of the excess proceeds sale, if ordered;
 - d) the costs related to any title searches that the certificate holder incurred to comply with the requirements to provide information to the court;
 - e) an independent appraisal of the property;
 - f) the amount of all other recorded liens or encumbrances on the property as indicated on a title report provided by the certificate holder, except the certificate holder does not have to determine the actual balance owed on any lien or encumbrance other than property taxes owed;
 - g) the estimated cost of the excess proceeds sale; and
 - h) any other evidence relating to the property value or objecting to the excess proceeds sale that the certificate holder deems necessary.
7. Specifies that the foreclosure of the right to redeem does not extinguish the property owner's interest in the excess proceeds from an excess proceeds sale, if the court finds that the request for the sale is reasonable.

Excess Proceeds Sale Notification

8. Requires a qualified entity conducting an excess proceeds sale to provide notice of the sale's time and place, a description of the property being sold and the amount of the opening bid by each of the following methods:
 - a) recording a notice with the county recorder of each county where the property is situated (sale notice);
 - b) posting a copy of the sale notice in a conspicuous place on the property being sold at least 20 days before the sale, except if access to the property is restricted by a limited access gate or similar impediment in which case the sale notice must be posted at that gate or impediment;
 - c) posting at one of the places provided for posting public notices at any building that serves as a location of the superior court in the county where the property is being sold;
 - d) publishing the sale notice in a newspaper in the county in which the property is situated at least weekly for four weeks with the last publication date not less than 10 days before the sale;
 - e) certified mail to specified relevant parties; and
 - f) posting on a multiple listing service for at least 30 days before the sale.
9. Prohibits a sale notice from being rerecorded for any reason and specifies that the prohibition does not prohibit the recording of a new or subsequent sale notice for the same property.
10. Requires all persons to whom the qualified entity mails a sale notice to waive all defenses and objections to the sale not raised in an action that results in an injunction before the scheduled sale date.
11. Requires a copy of the injunction to be delivered to the qualified entity within 24 hours after the order is entered and specifies that a sale is not complete if the sale violates the delivery requirement because of an undisclosed order entered by the court within the 24-hour time frame.
12. Requires a sale held in violation of the injunction delivery requirement to be continued to a date, time and place announced by the qualified entity at the sale and, if not announced, to be continued to the same place and time 28 days later or the first business day following the 28th day.
13. Requires the newspaper that publishes the excess proceeds sale information to also post the sale notice on a website that posts the legal notices of 10 or more Arizona newspapers.
14. Prescribes a format for the sale notice and requires the sale notice to contain:
 - a) the date, time and place of the sale;
 - b) the street address or identifiable location and the property's legal description;
 - c) the county assessor's tax parcel number for the property;
 - d) the amount of the opening bid; and
 - e) the phone number of the qualified entity conducting the sale.

15. Specifies that an error in the sale notice information, other than an error in the legal description of the property or the date, time or place of sale, does not invalidate the sale if, considered as a whole, the information provided is sufficient to identify the property being sold.
16. Requires the qualified entity to record a cancellation of the sale notice if there is an error in the date, time or place of the sale or an error omission in the legal description so that the property cannot be identified.
17. Exempts a qualified entity or any person furnishing information to the qualified entity from liability for any error or omission in the required sale notice information, except for the wilful and intentional failure to provide the information.

Excess Proceeds Sale Time Frame

18. Requires an excess proceeds sale to be held:
 - a) at least 60 days after the date a judgment is entered by the court directing the property sale;
 - b) on a day other than Saturday, Sunday or a legal holiday;
 - c) between 9:00 a.m. and 5:00 p.m. MST; and
 - d) at a specified place on the property, a specified place at any location of the superior court or a specified place at the qualified entity's business, in any county in which the property being sold is situated.
19. Prohibits the excess proceeds sale date from being earlier than the 60th day after the date the sale notice was recorded.
20. Requires a qualified entity to offer to sell the property at public auction for cash to the highest bidder and allows the qualified entity to schedule more than one excess proceeds sale for the same date, time and place.
21. Specifies that an excess proceeds sale is postponed by operation of law to the next business day at the same scheduled time and place if an act of force majeure prevents access to the sale.
22. Allows a qualified entity to postpone or continue the excess proceeds sale from time to time or change the place of the sale to any other authorized location by giving notice of the new date, time and place by public declaration at the last appointed time and place of the sale.
23. Requires any new excess proceeds sale date to be a fixed date within 60 calendar days after the declaration.
24. Requires a qualified entity, after an excess proceeds sale has been postponed or continued and on request, to make available the date and time of the next scheduled sale and, if the location has been changed, the new location of the sale until the sale has been conducted or canceled and providing the information is without obligation or liability for the accuracy or completeness of the information.

Excess Proceeds Sale Bid Requirements

25. Specifies that the minimum bid is the total of the amounts and costs provided to the court by the certificate holder.

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26. Allows any person, including the qualified entity or the certificate holder, to bid at the excess proceeds sale and specifies that only the certificate holder may make a credit bid in lieu of cash.
27. Requires the qualified entity to require every bidder to provide a nonrefundable deposit in an amount equal to 10 percent of the opening bid or \$2,500, whichever is greater, in any form that is satisfactory to the qualified entity as a condition of offering a bid.
28. Allows the qualified entity or the qualified entity's auctioneer to control the means and manner of the auction and requires every bid to be deemed an irrevocable offer until the excess proceeds sale is completed, except a subsequent, higher bid by the same bidder.
29. Requires the qualified entity to return deposits to all but the highest bidder and deems the excess proceeds sale complete on payment of the bid by the purchaser.
30. Requires the highest bidder, other than the judgment holder to the extent of the credit bid, to pay the bid price by 5:00 p.m. MST on the business day after the excess proceeds sale.
31. Requires the bid price to be paid at the office of the qualified entity or the qualified entity's agent, or any other reasonable place designated by the qualified entity.
32. Allows the bid price payment to be made at a later time if agreed to in writing by the qualified entity.
33. Requires a qualified entity, if the highest bidder fails to pay, to either reopen bidding or immediately offer the property to the second highest bidder who may purchase the property at that bidder's bid price.
34. Requires a qualified entity, if the second highest bidder fails to pay by 5:00 p.m. MST of the next business day, to either reopen bidding or offer the property each of the prior bidders on successive business days in order of the highest bid, until a bid price is paid.
35. Requires the excess proceeds sale, if there is no other bidder, to be deemed continued to a time and place designated by the qualified entity, or if not designated, to the same place and time 28 days after the last scheduled sale date or to the first business day following the 28th day.
36. Requires a qualified entity, if the excess proceeds sale is continued, to provide notice of the continuation of the sale by registered or certified mail, with postage prepaid, to all bidders who provide their names, addresses and phone numbers in writing to the qualified entity.
37. Requires the qualified entity, in any excess proceeds sale that is continued because of a failure to pay, to reject a bid from any previous bidder who elected not to pay that bidder's bid price.
38. Requires the deposit of the highest bidder who fails to pay the bid amount to be applied to the costs of facilitating the excess proceeds sale and the balance, if any, and treated as additional sale proceeds to be distributed as outlined.

39. Specifies that, in addition to the forfeited deposit, the highest bidder who fails to pay is liable to any person who suffers loss or expenses as a result, including attorney fees, and allows a qualified entity to refuse to accept any bid of that person in any subsequent sale of property.

Distribution of Proceeds

40. Requires the qualified entity to distribute the proceeds of the excess proceeds sale within 90 days after the sale as follows:
- a) to the qualified entity, an amount equal to the cost of facilitating the property sale, including the costs of providing the sale notice;
 - b) to the certificate holder, an amount equal to the first five items provided by the certificate holder to the court to determine if the sale is reasonable;
 - c) to other lien or encumbrance holders, an amount equal to their respective lien or encumbrance as indicated on a title report provided by the certificate holder; and
 - d) to the property owner whose right to redeem was foreclosed, any remaining proceeds of the sale.
41. Requires the qualified entity to notify the court after the proceed distributions have been made and to dispose of any unclaimed monies after 90 days pursuant to the Unclaimed Property Act.
42. Requires a qualified entity, if the qualified entity fails to comply with the distribution requirements, to pay interest at a prescribed rate from the date of excess proceeds sale completion until the qualified entity comes into compliance.
43. Allows any party in the action to foreclose the right to redeem relating to the property to commence a civil action against the qualified entity for the entity's failure to comply with the proceed distribution requirements.
44. Allows the court to award the prevailing party reasonable attorney fees and costs incurred in that civil action.

Deed Recordation Requirements

45. Requires a qualified entity, within seven business days after receiving payment, to execute and submit the qualified entity's deed to the country recorder for recording and, on request, to provide an unrecorded copy of the signed deed to the purchaser.
46. Specifies that the recording of the deed on sale constitutes delivery of the deed to the purchaser and specifies that the qualified entity is not liable for any damages resulting from the failure to record the deed on sale after physical delivery of the deed to the purchaser.
47. Requires the deed to include the following information:
- a) the date, court action number and name of the judgment ordering the property sale;
 - b) the name of the purchaser;
 - c) the property description;
 - d) the date of the conveyance; and
 - e) a formal acknowledgement by the qualified entity.

48. Deems the excess proceeds sale perfected at the appointed date and time of the sale, if the qualified entity's deed is recorded in the county in which the property is located within 15 business days after the sale.
49. Requires the conveyed deed to operate to convey title of the purchased property to the purchaser and specifies that the conveyance is absolute without right of redemption and clear of all subordinate liens, claims or interests.
50. Specifies that the execution, delivery and recording of a qualified entity's deed are ministerial acts.

Miscellaneous

51. Specifies that a property tax lien may be fully redeemed at any time after three years after a tax lien sale but before an excess proceeds sale.
52. Defines *qualified entity* as an association or corporation doing business in Arizona as a bank, credit union, consumer lender, escrow agent, insurance company or law firm.
53. Defines *contiguous*.
54. Applies to actions to foreclose the right to redeem filed from and after the general effective date.
55. Makes technical and conforming changes.
56. Becomes effective on the general effective date.

Prepared by Senate Research

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MG/sdr