

ASSEMBLY, No. 3772

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 22, 2024

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District 31 (Hudson)

Assemblyman WILLIAM B. SAMPSON, IV

District 31 (Hudson)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

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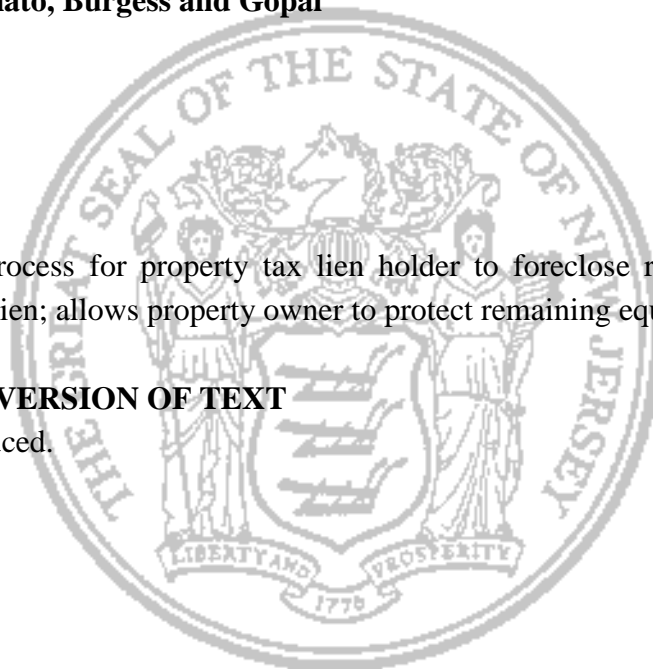
Assemblymen McGuckin, Kanitra, Rodriguez, Assemblywoman Swift, Assemblyman Hutchison, Assemblywoman N.Munoz, Assemblymen Wimberly, Atkins, Assemblywomen Ramirez, Reynolds-Jackson, Peterpaul, Murphy, Donlon, Bagolie, Speight, Assemblyman Stanley, Senators Amato, Burgess and Gopal

SYNOPSIS

Revises process for property tax lien holder to foreclose right to redeem property tax lien; allows property owner to protect remaining equity.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/28/2024)

1 AN ACT revising the process for a property tax lien holder to
2 foreclose the right to redeem a property tax lien, amending
3 various parts of the statutory law, and supplementing chapter 5
4 of Title 54 of the Revised Statutes and P.L.1948, c.96 (C.54:5-
5 104.29 et seq.).
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. R.S.54:5-33 is amended to read as follows:

11 54:5-33. a. Payment for the sale shall be made before the
12 conclusion of the sale, or the property shall be resold. Any
13 premium payment shall be held by the collector and returned to the
14 purchaser of the fee if and when redemption is made. If redemption
15 is not made within five years from date of sale the premium
16 payment shall be turned over to the treasurer of the municipality
17 and become a part of the funds of the municipality. In the event
18 that a petition of bankruptcy has been filed by the property owner,
19 the five year limitation shall be extended for each day that the
20 foreclosure action is precluded by that bankruptcy filing.

21 b. If the tax sale certificate is redeemed through a judicial sale
22 as in the manner of the foreclosure of a mortgage or through an
23 Internet auction through the office of the county sheriff, and the
24 redemption is made within five years of the date of the tax sale, the
25 tax collector shall refund the premium to the holder of the tax sale
26 certificate.

27 In the event that the holder of the tax sale certificate, or an
28 assignee, is the successful bidder at the judicial sale as in the
29 manner of the foreclosure of a mortgage or an Internet auction
30 through the office of the county sheriff, the tax collector shall not
31 refund any premium.

32 (cf: P.L.2009, c.320, s.7)
33

34 2. R.S.54:5-87 is amended to read as follows:

35 54:5-87. a. The Superior Court, in an action to foreclose the
36 right of redemption, may give full and complete relief under this
37 chapter, in accordance with other statutory authority of the court, to
38 bar the right of redemption and to foreclose all prior or subsequent
39 alienations and descents of the lands and encumbrances thereon,
40 except subsequent municipal liens, and to adjudge an absolute and
41 indefeasible estate of inheritance in fee simple, to be vested in the
42 purchaser. The judgment shall be final upon the defendants, their
43 heirs, devisees and personal representatives, and their or any of
44 their heirs, devisees, executors, administrators, grantees, assigns or
45 successors in right, title or interest and no application shall be

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 entertained to reopen the judgment after three months from the date
2 thereof, and then only upon the grounds of lack of jurisdiction or
3 fraud in the conduct of the suit. Such judgment and recording
4 thereof shall not be deemed a sale, transfer, or conveyance of title
5 or interest to the subject property under the provisions of the
6 "Uniform Voidable Transactions Act," R.S.25:2-20 et seq.

7 b. In order to preserve any equity that may exist in the property
8 being foreclosed, the owner, or the owner's heirs, shall have the
9 right to demand, by written request to the Superior Court no later
10 than 45 days after being served with the foreclosure complaint, that
11 the holder of the tax sale certificate foreclose the right to redeem
12 that certificate in the same manner as a mortgage, through a judicial
13 sale as in the manner of the foreclosure of a mortgage of the
14 property through the office of the county sheriff, or in the
15 alternative, through an Internet auction of the property through the
16 office of the county sheriff. The final judgment shall provide for a
17 writ of execution to the sheriff of the county in which the property
18 is located, and the holding of either a judicial sale as in the manner
19 of the foreclosure of a mortgage, or an Internet auction. In the
20 event that the owner or the owner's heirs do not demand a judicial
21 sale as in the manner of the foreclosure of a mortgage, or an
22 Internet auction, the owner of the tax sale certificate may proceed
23 under subsection a. of this section and foreclose without a judicial
24 sale as in the manner of the foreclosure of a mortgage, and the
25 owner and the owner's heirs shall have no claim against the holder
26 of the tax sale certificate for any equity in the property. The
27 amount received through the judicial sale as in the manner of the
28 foreclosure of a mortgage, or through the Internet auction, as
29 appropriate, shall be conclusively presumed to be the fair market
30 value of the property. In the event that no one bids on the property
31 through the judicial sale as in the manner of the foreclosure of a
32 mortgage or at the Internet auction, and the owner of the tax sale
33 certificate obtains fee title from the sheriff, it shall be conclusively
34 presumed that there is no equity in the property. In the event that
35 the sheriff has not established an Internet auction, the defendant
36 shall only be entitled to a judicial sale as in the manner of the
37 foreclosure of a mortgage.

38 The sheriff of the county shall deposit with the clerk of the
39 Superior Court any surplus funds derived from the judicial sale as
40 in the manner of the foreclosure of a mortgage or the Internet
41 auction, as appropriate, after the holder of the tax sale certificate
42 has been paid the redemption moneys, allowable costs, and
43 attorney's fees as set forth by the court in the final judgment of
44 foreclosure. The sheriff shall deduct the costs to the office of the
45 county sheriff of holding the judicial sale as in the manner of the
46 foreclosure of a mortgage or Internet auction, as appropriate, have
47 been withheld by the sheriff from those funds. All subsequent
48 lienholders named in the foreclosure shall have the right to file a

1 motion in the Superior Court for any surplus funds, in the order of
2 their priority, not later than the first day of the seventh month next
3 following the issuance of the sheriff's deed. The owner, or the
4 owner's heirs, shall be entitled to any remaining surplus, and shall
5 be entitled to file a motion to the court for the payment of the
6 surplus. After five years from the date of the judicial sale as in the
7 manner of the foreclosure of a mortgage, the clerk of the court shall
8 pay any unclaimed monies to the holder of the tax sale certificate.
9 If the holder of the tax sale certificate is unable to be located, the
10 funds shall revert to the municipality wherein the property is
11 located, and shall be paid by the clerk of the court to the chief
12 financial officer of the municipality.

13 As used in this section, "surplus funds" shall mean and include
14 any funds derived from the judicial sale as in the manner of the
15 foreclosure of a mortgage or Internet auction through the office of
16 the county sheriff of a property pursuant to this section, after the
17 holder of the tax sale certificate has been fully redeemed, and paid
18 moneys due and owing to the holder of the tax sale certificate. The
19 redemption amount shall also include any costs charged by the
20 sheriff to the holder of the tax sale certificate to conduct the judicial
21 sale as in the manner of the foreclosure of a mortgage or the
22 Internet auction.

23 c. In the event that any federal statute or regulation requires a
24 judicial sale as in the manner of the foreclosure of a mortgage of the
25 property in order to debar and foreclose a mortgage interest or any
26 other lien held by the United States or any agency or
27 instrumentality thereof, then the tax lien may be foreclosed in the
28 same manner as a mortgage, and the final judgment shall provide
29 for the issuance of a writ of execution to the sheriff of the county
30 wherein the property is situated and the holding of a judicial sale as
31 in the manner of the foreclosure of a mortgage.

32 (cf: P.L.2021, c.92, s.23)

33

34 3. Section 7 of P.L.1965, c.187 (C.54:5-97.1) is amended to read
35 as follows:

36 7. **【No search fee, counsel fee or other fee related to certified**
37 **mailings shall be allowed a plaintiff other than a municipality in the**
38 **foreclosure of a tax lien unless, prior to the filing of the complaint,**
39 **the plaintiff shall have given】** At least 30 【days' written notice to
40 the parties entitled to redeem whose interests appear of record at the
41 time of the tax sale,】 days prior to the filing of a complaint, the
42 holder of a tax sale certificate shall send all parties having a right to
43 redeem a notice of intention to file a complaint. The notice to the
44 owner, or the owner's heirs, shall be addressed to the last known
45 address contained in the municipal records. The notice to any other
46 parties having a right to redeem shall be sent to the address
47 contained in any document recorded with the county clerk or
48 register. The notice shall be sent by certified mail with postage

1 prepaid thereon **【**, addressed to the last known address of such
2 persons, of intention to file such complaint**】**. The notice shall also
3 contain the amount **【due on such】** necessary to redeem the
4 outstanding tax **【lien】** sale certificate **【as of the date of the notice】**.
5 The notice shall also advise the owner, or the owner's heirs, that the
6 owner, or the owner's heirs, shall have the right to request a judicial
7 sale as in the manner of the foreclosure of a mortgage or an Internet
8 auction of the property through the office of the county sheriff, to
9 preserve any equity that may be in the property. A copy of **【such】**
10 the notice shall also be filed with the municipal tax collector's
11 office. **【Upon the filing and service of such notice, a plaintiff shall**
12 **be entitled to such fees and expenses.】**

13 A municipality, by ordinance, may authorize the tax collector to
14 charge to a lienholder a fee not to exceed \$50 for the calculation of
15 the amount due to redeem the tax lien required to be provided
16 pursuant to this section. Any request for a redemption calculation
17 shall specify the date to be used for the calculation, which shall be
18 the date of the notice. Neither the tax collector or the municipality
19 shall be liable for an incorrect calculation. The fee paid to the
20 municipality shall not become part of the lien and shall not be
21 passed on to any party entitled to redeem pursuant to R.S.54:5-54.

22 (cf: P.L.2009, c.320, s.11)

23

24 4. (New section) a. The holder of the tax sale certificate shall
25 provide to the owner of the property, in writing, with the summons
26 and complaint for foreclosure, information prominently displayed in
27 bold face type that states that the owner of the property being
28 foreclosed has the right to demand, in writing, that the foreclosure
29 proceed to a judicial sale as in the manner of the foreclosure of a
30 mortgage or an Internet auction of the property, through the office
31 of the county sheriff.

32 If the holder of the tax sale certificate has complied with this
33 subsection and the provisions of section 7 of P.L.1965, c.187
34 (C.54:5-97.1), that person shall be entitled to recover all reasonable
35 attorney's fees and costs of foreclosure, including all costs
36 associated with the judicial sale as in the manner of the foreclosure
37 of a mortgage. In the event that all costs and reasonable attorney's
38 fees are not recovered through the judicial sale as in the manner of
39 the foreclosure of a mortgage or the Internet auction through the
40 office of the county sheriff, the holder of the tax sale certificate
41 shall have a first lien paramount to any other lien on any surplus
42 funds and shall be entitled to apply to the Superior Court to recover
43 any unpaid costs or attorney's fees.

44 b. In the event that the owner, or the owner's heirs, has
45 demanded a judicial sale as in the manner of the foreclosure of a
46 mortgage or an Internet auction through the office of the county
47 sheriff, the holder of the tax sale certificate, whether a municipality

1 or third party investor, shall be entitled to a first lien on any surplus
2 funds that are deposited in the Superior Court by the sheriff, in the
3 amount of 10 percent of the surplus funds, to cover administrative
4 costs related to the foreclosure action, not to exceed \$5,000.

5 c. As used in this section, "surplus funds" shall have the same
6 meaning as set forth in R.S.54:5-87.

7
8 5. (New section) The notice of foreclosure required to be served
9 on the owner and published in the newspaper shall conspicuously
10 state in boldface type that the owner and the owner's heirs shall
11 have the right to demand a judicial sale as in the manner of the
12 foreclosure of a mortgage, or an Internet auction through the office
13 of the county sheriff, of the property subject to the tax lien
14 foreclosure to preserve any equity that they may have in the
15 property.

16 The notice shall state that the owner, or the owner's heirs, has 45
17 days from the date of service of the foreclosure complaint to file the
18 written request for a judicial sale as in the manner of the foreclosure
19 of a mortgage or an Internet auction through the office of the county
20 sheriff with the Superior Court.

21
22 6. Section 31 of P.L.1948, c.96 (C.54:5-104.59) is amended to
23 read as follows:

24 31. a. All costs and reasonable attorney fees incurred in [the]
25 an in rem foreclosure action shall be equitably apportioned and
26 allocated to the several **[**parcels of land affected by the action**]**
27 schedules of the complaint, and added to the amount required to
28 redeem.

29 b. For the purposes of this section, "all costs and reasonable
30 attorney fees" includes all costs incurred **[**for a standard title
31 search**]** with respect to the in rem foreclosure proceeding and all
32 reasonable attorney fees incurred in the action, including any, and
33 all, costs incurred for a judicial sale as in the manner of the
34 foreclosure of a mortgage, or an Internet auction through the office
35 of the county sheriff, of the property subject to the in rem
36 foreclosure.

37 In the event that the holder of the tax sale certificate shall have
38 incurred any costs or attorney's fees in the judicial sale as in the
39 manner of the foreclosure of a mortgage or Internet auction through
40 the office of the county sheriff that were not reimbursed in the
41 redemption monies received from the sheriff, the holder of the tax
42 sale certificate shall have a first lien on any surplus funds for
43 reimbursement of those costs and reasonable attorney's fees. As
44 used in this section, "surplus funds" shall have the same meaning as
45 set forth in R.S.54:5-87.

46 (cf: P.L.1993, c.278, s.1)

1 7. Section 36 of P.L.1948, c.96 (C.54:5-104.64) is amended to
2 read as follows:

3 36. (a) The judgment shall give full and complete relief, in
4 accordance with the provisions of **【this act】** P.L.1948, c.96 (C.54:5-
5 104.29 et seq.), and in accordance with any other statutory
6 authority, to bar the right of redemption, and to foreclose all prior
7 or subsequent alienations and descents of the lands and
8 encumbrances thereon, and to adjudge an absolute and indefeasible
9 estate of inheritance in fee simple in the lands therein described, to
10 be vested in the plaintiff.

11 (b) Such judgment shall be binding and final upon all persons
12 having a vested or contingent title or interest in or lien or claim
13 upon or against said lands, including the State of New Jersey, and
14 any agency and political subdivision thereof, and their heirs,
15 devisees and personal representatives, and their, or any of their
16 heirs, devisees, executors, administrators, grantees, assigns or
17 successors in right, title or interest, notwithstanding any infancy or
18 incompetency of such person or persons, and upon all other persons,
19 their heirs, devisees and personal representatives and their or any of
20 their heirs, devisees, executors, administrators, grantees, assigns or
21 successors in right, title or interest.

22 In order to preserve any equity that may exist in the property
23 being foreclosed, the owner, or the owner's heirs, shall have the
24 right to demand, by written request to the Superior Court, no later
25 than 45 days after being served with the foreclosure complaint, or
26 the publication of the notice concerning the foreclosure, whichever
27 is later, that the holder of the tax sale certificate be foreclosed with
28 a judicial sale as in the manner of the foreclosure of a mortgage of
29 the property through the office of the county sheriff, or, in the
30 alternative, an Internet auction of the property through the office of
31 the county sheriff. If there is more than one schedule in the in rem
32 foreclosure complaint and a request is made for a judicial sale as in
33 the manner of the foreclosure of a mortgage, or an Internet auction
34 through the office of the county sheriff, the schedule shall be
35 severed and the final judgment shall provide for a writ of execution
36 to the sheriff of the county where the property is located and the
37 holding of either a judicial sale as in the manner of the foreclosure
38 of a mortgage or an Internet auction, as appropriate.

39 In the event that the owner or the owner's heirs do not demand a
40 judicial sale as in the manner of the foreclosure of a mortgage, or an
41 Internet auction through the office of the county sheriff, the holder
42 of the tax sale certificate may proceed in rem without a judicial sale
43 as in the manner of the foreclosure of a mortgage, or an Internet
44 auction through the office of the county sheriff, and the owner or
45 his heirs shall have no claim against the holder of the tax sale
46 certificate for any loss of equity in the property. The amount
47 received at a judicial sale as in the manner of the foreclosure of a
48 mortgage, or an Internet auction through the office of the county

1 sheriff, shall be conclusively presumed to be the fair market value
2 of the property. In the event that no one bids at the judicial sale as
3 in the manner of the foreclosure of a mortgage or the Internet
4 auction through the office of the county sheriff above the amount to
5 redeem or there is no bidding at all, it shall be conclusively
6 presumed that there is no equity in the property.

7 The sheriff of the county shall deposit with the clerk of the
8 Superior Court any surplus funds derived from the judicial sale as
9 in the manner of the foreclosure of a mortgage or the Internet
10 auction, after all of the costs to the office of the county sheriff of
11 holding the judicial sale as in the manner of the foreclosure of a
12 mortgage or the Internet auction, have been withheld by the sheriff
13 from those funds of the sale, after paying the amount of the
14 judgment plus any costs to the holder of the tax sale certificate. All
15 subsequent lienholders named in the foreclosure shall have the right
16 to apply to the Superior Court, in writing, for payment of their lien
17 in the order of their priority. All subsequent lienholders named in
18 the foreclosure shall have the right to apply to the Superior court for
19 any surplus funds, in the order of their priority, not later than the
20 first day of the seventh month next following the issuance of the
21 sheriff's deed. The owner, or the owner's heirs, shall be entitled to
22 any remaining surplus funds and shall be entitled to make written
23 application to the court for the payment of the surplus. After five
24 years from the date of the judicial sale as in the manner of the
25 foreclosure of a mortgage, the clerk of the court shall make
26 payment of any unclaimed monies to the holder of the tax sale
27 certificate. If the holder of the tax sale certificate is unable to be
28 located, the funds shall revert to the municipality wherein the
29 property is located, and shall be paid by the clerk of the court to the
30 chief financial officer of the municipality.

31 As used in this subsection, "surplus funds" shall have the same
32 meaning as set forth in R.S.54:5-87.

33 (c) In the event that any federal statute or regulation requires a
34 judicial sale as in the manner of the foreclosure of a mortgage of the
35 property in order to debar and foreclose a mortgage interest or any
36 other lien held by the United States or any agency or
37 instrumentality thereof, then the tax lien may be foreclosed in the
38 same manner as a mortgage, and the final judgment shall provide
39 for the issuance of a writ of execution to the sheriff of the county
40 wherein the property is situated and the holding of a judicial sale as
41 in the manner of the foreclosure of a mortgage.

42 (cf: P.L.1995, c.326, s.3)

43
44 8. (New section) With respect to any property tax lien
45 foreclosure actions pending on the date of enactment of the
46 amendatory and supplementary provisions of P.L. , c. (C.)
47 (pending before the Legislature as this bill), a property owner shall
48 be personally served in writing with a notice of their right to

1 demand a judicial sale as in the manner of the foreclosure of a
2 mortgage, or an Internet auction by the office of the county sheriff,
3 and shall have 45 days after such service to notify the court of their
4 demand for a judicial sale as in the manner of the foreclosure of a
5 mortgage or an Internet auction by the office of the county sheriff.
6 If the property owner demands a judicial sale as in the manner of
7 the foreclosure of a mortgage, or an Internet auction by the office of
8 the county sheriff, in a timely manner, the foreclosure complaint
9 shall be amended by the tax lien holder to require such a sale or
10 auction. If no timely demand is made for a judicial sale as in the
11 manner of the foreclosure of a mortgage or an internet auction by
12 the office of the county sheriff, the foreclosure action shall proceed
13 without a judicial sale as in the manner of the foreclosure of a
14 mortgage or an Internet auction through the office of the county
15 sheriff.

16

17 9. This act shall take effect immediately, and shall apply to any
18 property tax lien foreclosure complaint filed on or after May 25,
19 2023. This act shall have no effect on any foreclosure action in
20 which a final judgment has been entered prior to the effective date
21 of this act.

22

STATEMENT

23

24 This bill would revise the “tax sale law,” R.S.54:5-1 et seq., and
25 the In Rem Tax Foreclosure Act (1948), P.L.1948, c.96 (C.54:5-
26 104.29 et seq.), to bring those laws into compliance with the recent
27 United States Supreme Court decision in Tyler v. Hennepin County,
28 Minnesota, et al., 143 S. Ct. 1369 (2023) concerning the ability of a
29 property owner, whose right to redeem a tax lien on their property
30 has been foreclosed by the holder of a tax sale certificate, to receive
31 any of the owner’s equity remaining in the property after the tax
32 lien foreclosure.

33 Under current State law, the holder of a tax sale certificate, after
34 six months, in the case of a municipality that holds the tax sale
35 certificate or in the case of the holder of a tax sale certificate on a
36 property that is abandoned, or after two years, in the case of a third
37 party lienholder, may file suit in Superior Court to foreclose the
38 right of the property owner to redeem the tax lien. Upon the
39 foreclosure, the lienholder will receive title to the property and all
40 of the equity remaining in the property, leaving the former property
41 owner with no funds from the foreclosure with which to purchase
42 another property.

43 In the Tyler decision, the Supreme Court determined that
44 Hennepin County could not keep the equity in the property beyond
45 the amount it was owed for overdue property taxes and interest
46 thereon. Under the Court’s ruling, that excess equity was
47 considered as property that could not be taken from the former

1 property owner consistent with the takings clause restrictions of the
2 5th Amendment of the United States Constitution.

3 This bill would amend current law to permit a property owner to
4 require a judicial sale as in the manner of the foreclosure of a
5 mortgage of the property by the county sheriff in the same manner
6 as mortgage foreclosures are subject to a judicial sale as in the
7 manner of the foreclosure of a mortgage, or an Internet auction of
8 the property through the office of the county sheriff. The property
9 owner would have to make a motion to the Superior Court for either
10 a judicial sale as in the manner of the foreclosure of a mortgage or
11 an Internet auction of the property by the office of the county
12 sheriff within 45 days of receiving the complaint for foreclosure or,
13 in the case of an in rem foreclosure, within 45 days of receiving the
14 complaint for foreclosure or the publication of the notice of
15 foreclosure as required by law, whichever date is later. The
16 property owner would be advised of this information, in boldface
17 type, with the service of the complaint for foreclosure.

18 This bill would not require a judicial sale as in the manner of the
19 foreclosure of a mortgage or an Internet auction of the property
20 through the office of the county sheriff if the property owner does
21 not make a demand for one. This would save the lien holder from
22 incurring substantial costs associated with a judicial sale as in the
23 manner of the foreclosure of a mortgage or Internet auction of the
24 property through the office of the county sheriff. Many owners
25 have no equity in their property to protect during a tax lien
26 foreclosure. However, any property owner who wants a judicial
27 sale as in the manner of the foreclosure of a mortgage or an Internet
28 auction of the property through the office of the county sheriff will
29 be able to obtain one by simply requesting one from the court.