

HOUSE BILL NO. 420

INTRODUCED BY K. SEEKINS-CROWE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TAX LIEN AND TAX DEED LAWS; REVISING THE TIME FOR REDEMPTION BY AN INTERESTED PARTY; PROVIDING THAT A TAX DEED MAY NOT BE ISSUED UNTIL A DELINQUENCY EXCEEDS CERTAIN EQUITY THRESHOLDS; PROVIDING FOR ADDITIONAL NOTICES TO INTERESTED PARTIES; REQUIRING ONLINE BIDDING IN REAL TIME; PROVIDING FOR DISTRIBUTION OF SURPLUS FUNDS AS UNCLAIMED PROPERTY; REVISING PROPERTY TYPES THAT ARE SUBJECT TO INCREASED PROTECTIONS; AMENDING SECTIONS 15-16-101, 15-17-121, 15-17-122, 15-18-111, 15-18-211, 15-18-214, 15-18-219, 15-18-220, AND 15-18-221, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice -- manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% a month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) (a) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due

1 and delinquent for other years. The written notice must include:

2 (i) the taxable value of the property;

3 (ii) the total mill levy applied to that taxable value;

4 (iii) itemized city services and special improvement district assessments collected by the county;

5 (iv) the number of the school district in which the property is located;

6 (v) the amount of the total tax due itemized by mill levy that is levied as city tax, county tax, state
7 tax, school district tax, and other tax;

8 (vi) an indication of which mill levies are voted levies, including voted levies to impose a new mill
9 levy, to increase a mill levy that is required to be submitted to the electors, or to exceed the mill levy limit
10 provided for in 15-10-420;

11 (vii) except as provided in subsection (2)(c), an itemization of the taxes due for each mill levy and a
12 comparison to the amount due for each mill levy in the prior year; and

13 (viii) a notice of the availability of all the property tax assistance programs available to property
14 taxpayers, including the intangible land value assistance program provided for in 15-6-240, the property tax
15 assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly
16 under 15-30-2337 through 15-30-2341.

17 (b) If a tax lien is attached to the property, the notice must also be sent to the interested parties
18 listed in 15-18-219(4)(b) and include, in a manner calculated to draw attention, a statement that a tax lien is
19 attached to the property, that failure to respond will result in loss of property, and that the taxpayer may contact
20 the county treasurer for complete information.

21 (c) The information required in subsection (2)(a)(vii) may be posted on the county treasurer's
22 website instead of being included on the written notice.

23 (3) The municipality shall, upon request of the county treasurer, provide the information to be
24 included under subsection (2)(a)(iii) ready for mailing.

25 (4) The notice in every case must be given as provided in 7-1-2121. Failure to publish or post
26 notices does not relieve the taxpayer from any tax liability. Any failure to give notice of the tax due for the
27 current year or of delinquent tax will not affect the legality of the tax.

28 (5) If the department revises an assessment that results in an additional tax of \$5 or less, an

1 additional tax is not owed and a new tax bill does not need to be prepared."

2

3 **Section 2.** Section 15-17-121, MCA, is amended to read:

4 **"15-17-121. Definitions.** Except as otherwise specifically provided, when terms mentioned in Title 15,
5 chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

6 (1) "Assignee" means a person, other than the person to whom the property is assessed, who
7 pays the delinquent taxes, including penalties, interest, and costs, and receives a tax lien certificate
8 representing a lien on the property and an assignment certificate.

9 (2) "Assignment certificate" means the document described in 15-17-323.

10 (3) (a) "Contiguous" means touching, meeting, or joining at the surface or border, other than at a
11 corner or a single point, and not separated by submerged lands.

12 (b) The term does not include submerged lands lying below the ordinary high-water mark.

13 ~~(3)~~(4) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes
14 when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the
15 administrative cost of:

16 (i) preparing the list of delinquent taxes;

17 (ii) preparing the notice of pending attachment of a tax lien;

18 (iii) assigning the county's interest in a tax lien to a third party;

19 (iv) identifying interested persons entitled to notice of the pending issuance of a tax deed;

20 (v) notifying interested persons;

21 (vi) sale or resale;

22 (vii) issuing the tax deed; and

23 (viii) any other administrative task associated with accounting for or collecting delinquent taxes.

24 (b) The term includes costs that are required by law and incurred by an assignee. The county
25 treasurer may require the assignee to provide receipts or may allow the assignee to provide a notarized
26 affidavit of costs to the county treasurer upon issuance of a tax lien certificate as required in 15-17-125 and
27 notification that a tax deed may be issued as required by 15-18-212, 15-18-216, and 15-18-219. A county
28 treasurer may at any time require an assignee who provided an affidavit of costs to submit the receipted costs

1 upon which the affidavit was based.

2 (c) The term does not include interest for payments for the following:

3 (i) postage for certified mailings and certified mailings with return receipt requested;

4 (ii) a title search, to the extent necessary to identify interested persons entitled to notice of the
5 pending issuance or auction of a tax deed;

6 (iii) publishing costs for required publications; and

7 (iv) filing costs for proof of notice.

8 ~~(4)(5)~~ "County" means any county government and includes those classified as consolidated
9 governments.

10 ~~(5)(6)~~ (a) "Dwelling" means a house or other structure intended for human habitation, including
11 buildings attached to the dwelling.

12 ~~(b) — The term does not include a dwelling that is not on a permanent foundation and that is~~
13 ~~classified by the department of revenue as personal property.~~

14 ~~(6)(7)~~ "Property tax lien" or "tax lien" means a lien attached by the county for nonpayment of property
15 taxes, including penalties, interest, and costs.

16 ~~(7)(8)~~ "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments,
17 fees related to property, and assessments for special improvement districts and rural special improvement
18 districts.

19 ~~(8)(9)~~ "Tax lien certificate" means the document described in 15-17-125.

20 ~~(9)(10)~~ "Tax lien sale" means, with respect to personal property that is not a dwelling, the offering for
21 sale by the county treasurer of personal property on which the taxes are delinquent or other personal property
22 on which the delinquent taxes are a lien."

23

24 **Section 3.** Section 15-17-122, MCA, is amended to read:

25 **"15-17-122. Notice of pending attachment of tax lien.** (1) The county treasurer shall publish or post
26 a notice of a pending attachment of a tax lien. The notice must include:

27 (a) the specific date on which the county will attach a property tax lien to property on which the
28 taxes are delinquent; and

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the specified date, a tax lien will be attached and may be assigned to a third party.

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be given as provided in 7-1-2121 and sent to the interested parties listed in 15-18-219(4)(b)(i) through (4)(b)(vi). The notice must be first published or posted on or before the last Monday in June.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or cancelled under the provisions of 15-23-708 or Title 15, chapter 24, part 17."

Section 4. Section 15-18-111, MCA, is amended to read:

"15-18-111. Time for redemption -- interested party. (1) ~~Except as provided in subsection (2), redemption~~ Redemption of a property tax lien may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, ~~or any interested party, or any party acting on the property owner's behalf; by the first working day in August, 3 years after attachment of the tax lien~~

(a) within 5 years after attachment of the tax lien; or

(b) after 5 years if a tax deed has not been delivered to the assignee or the county pursuant to 15-18-211.

~~(2) For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party by the first working day in August, 2 years after attachment of the tax lien.~~

1 ~~(3)~~(2) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a
2 contract for deed or the vendor's successor in interest, lienholder, or other person who has a properly recorded
3 interest in the property. A person who has an interest in property on which there is a property tax lien but which
4 interest is not properly recorded is not an interested party for the purposes of this chapter."

5
6 **Section 5.** Section 15-18-211, MCA, is amended to read:

7 **"15-18-211. Tax deed -- fee.** (1) Except as provided in 15-18-219 and subsection (3) of this section, if
8 the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the
9 assignee a tax deed for the property. The deed must contain the same information as is required in a tax lien
10 certificate under 15-17-125 and an assignment certificate under 15-17-323, except the description of the
11 property must be the full legal description.

12 (2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the assignee \$25
13 for making the deed plus all actual costs incurred by the county in giving the notice or assisting an assignee in
14 giving the notice required in 15-18-212. The fee must be deposited in the county general fund.

15 (b) If the tax deed is issued to the county, no fee may be charged for making the deed.

16 (c) Reasonable costs incurred by the county in searching the county records to identify persons
17 entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

18 (3) If no assignment has been made, the county treasurer may not issue a tax deed to the county
19 unless the board of county commissioners, by resolution, directs the county treasurer to issue a tax deed. A tax
20 deed may not be issued to the county if the issuance violates the equity threshold in 15-18-219(1)(a)(ii).

21 (4) Deeds issued to assignees or the county must be recorded by the county clerk as provided in
22 Title 7, chapter 4, part 26, except that when the county is issued the tax deed, the county clerk may not charge
23 a fee for recording the deed."

24
25 **Section 6.** Section 15-18-214, MCA, is amended to read:

26 **"15-18-214. Effect of deed.** (1) Subject to 15-18-411 and 15-18-413, a deed issued under this
27 chapter conveys to the grantee absolute title to the property described in the deed as of the date of the tax
28 deed, except:

- 1 (a) when the claim is payable after the execution of the deed and:
- 2 (i) a subsequent property tax lien is attached; or
- 3 (ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied
- 4 against the property;
- 5 (b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden
- 6 lawfully imposed on the property; or
- 7 (c) when the land is owned by the United States, this state, or a subdivision of this state; or
- 8 (d) when a tax deed was issued contrary to the equity threshold in 15-18-219(1)(a)(ii).
- 9 (2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right
- 10 of possession accrued as of the date on which a tax deed was issued."

11

12 **Section 7.** Section 15-18-219, MCA, is amended to read:

13 **"15-18-219. Application for tax deed for residential property -- fee -- notice.** (1) (a) (i) If Except as

14 provided in subsection (1)(a)(ii), if a property tax lien attached to the property provided for in subsection (1)(b) is

15 not redeemed in the time allowed under 15-18-111, the assignee may file an application after the redemption

16 period has expired with the county treasurer for a tax deed for the property. The tax deed application must

17 contain the same information as is required in 15-18-211(1). The county treasurer shall charge the assignee a

18 \$25 application fee. The fee must be deposited in the county general fund.

19 (ii) A property tax lien may be redeemed until the issuance of a tax deed, regardless of the amount

20 of the delinquency. A tax deed may not be issued unless the amount of the delinquent taxes, penalties, interest,

21 and costs exceeds the lesser of:

22 (A) 2% of the parcel's fair market value as shown by the department's most recent valuation of the

23 property, or

24 (B) \$5,000.

25 (b) The following All property is subject to the provisions of this section if it contains a dwelling that

26 is currently occupied by the legal titleholder of record:

27 (i) land classified as residential pursuant to 15-6-134;

28 (ii) land classified as agricultural pursuant to 15-6-133(1)(a) and (1)(c); and

1 (iii) — land classified as forest property pursuant to 15-6-143.

2 (c) — For the property provided for in subsection (1)(b)(ii) and (1)(b)(iii), the provisions of this section
3 also apply to other property of the same class that is included on the same tax bill, including a dwelling that is
4 not on a permanent foundation and that is classified by the department of revenue as personal property.

5 (2) An assignee who applies for a tax deed pursuant to this section shall pay the county treasurer
6 at the time of the tax deed application:

7 (a) the amount required to redeem any unassigned tax liens or tax liens held by other assignees;

8 (b) any delinquent taxes, penalties, and interest; and

9 (c) current taxes due for the property.

10 (3) (a) The county treasurer shall have the county clerk and recorder file a notice of the tax deed
11 application.

12 (b) A person acquiring an interest in the property after the tax deed application notice has been
13 filed is considered to be on notice of the pending tax deed auction, and no additional notice is required. The
14 sale at auction of the property automatically releases any filed notice of tax deed application for the property.

15 (c) If the property is redeemed, the county treasurer shall file a redemption certificate, which
16 releases the notice of tax deed application.

17 (4) (a) Between May 1 and May 30 of the year in which the redemption period expires, an
18 assignee applying for a tax deed shall notify the parties as required in subsection (4)(b) that a tax deed will be
19 auctioned unless the property tax lien is redeemed before the date of the auction.

20 (b) ~~The notice required under subsection (4)(a) must be made by certified mail, return receipt~~
21 ~~requested, in the form required by 15-18-215 and as provided in 7-1-2121, to~~ Notification by certified mail with
22 return receipt requested, or by registered mail if the notice is sent outside of the continental United States, at
23 least 60 days prior to a tax sale, again at least 30 days prior to the sale, and again 30 days before the issuance
24 of a tax deed following the sale must be made to the following interested parties:

25 (i) property owners of record in the county in which the property is located;

26 (ii) lienholders of record that have a recorded a lien against the property if an address appears on
27 the recorded lien;

28 (iii) mortgagees of record if an address appears on the recorded mortgage;

1 (iv) vendees of a recorded contract for deed if an address appears on the recorded contract;
2 (v) any other lienholder who has applied to the tax collector to receive notice if an address is
3 supplied to the collector;
4 (vi) lienholders of record who have recorded a lien against a mobile home located on the property if
5 an address appears on the recorded lien;
6 (vii) legal titleholders of record of property that is contiguous to the property described in the tax
7 certificate if the property described:
8 (A) is submerged land; or
9 (B) consists of common elements of a subdivision and if the address of the titleholder of the
10 contiguous property appears on the record of conveyance of the property to the legal titleholder;
11 (viii) any person who has requested to receive notices of delinquent taxes;
12 (ix) the current occupant, if any, of the property and to each party, other than a utility, listed on a
13 litigation guarantee, provided that the guarantee:
14 (i)(A) has been approved by the insurance commissioner and was issued by a licensed title
15 insurance producer;
16 (ii)(B) was ordered on the property by the person required to give notice; and
17 (iii)(C) lists the identities and addresses of the parties of record that have an interest or possible claim
18 of an interest in the property and is designed to disclose all parties of record that would otherwise be necessary
19 to name in a quiet title action.
20 (c) (i) The address to which the notice must be sent is, for each party, the address disclosed by the
21 records in the office of the county clerk and recorder or in the litigation guarantee and, for the occupant, the
22 street address or other known address of the subject property.
23 (ii) If notice to any property owner provided for in subsection (4)(b)(i) is returned undeliverable, a
24 diligent search must be undertaken to locate and provide written notice to the property owner of record.
25 (d) Every notice required by this section and each delinquent tax notice must include a statement
26 as follows:
27 "WARNING: There are unpaid taxes on property at..... (address) that you may own or have a legal
28 interest in or which may be contiguous to your property. The property will be (or was) sold at public auction

1 on..... (date) unless the back taxes are paid. To make payment or to receive further information, contact.....
2 (tax collector) immediately at..... (address),..... (telephone number). You may be eligible for free legal
3 assistance if you reach out to..... (name of free legal services organization) at..... (address),..... (telephone
4 number), for legal advice about how to respond to this notice."

5 (e) The county treasurer shall ensure a copy of the notices, including the warning statement, is
6 posted in a conspicuous place on the property by the sheriff of the county in which the property is located.

7 (5) The amount of interest and costs continues to accrue until the date of redemption. The total
8 amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of
9 the date of payment.

10 (6) (a) The county treasurer shall notify the assignee of the obligation to give notice under
11 subsection (4) between January 1 and January 31 of the year in which the redemption period expires. The
12 notice of obligation must be sent by certified mail, return receipt requested, to the assignee at the address
13 contained on the assignment certificate provided for in 15-17-323.

14 (b) If the assignee fails to give notice as required by subsection (4), as evidenced by failure to file
15 proof of notice with the county clerk and recorder as required in subsection (6)(c), the county treasurer shall
16 cancel the property tax lien evidenced by the tax lien certificate and the assignment certificate. Upon
17 cancellation of the property tax lien, the county treasurer shall file with the county clerk and recorder a notice of
18 cancellation on a form provided for in 15-18-217.

19 (c) Proof of notice must be given as provided in 15-18-216 and must be filed with the county clerk
20 and recorder. An assignee must file proof of notice with the county clerk and recorder within 30 days of the
21 mailing or publishing of the notice. Once filed, the proof of notice is prima facie evidence of the sufficiency of
22 the notice."
23

24 **Section 8.** Section 15-18-220, MCA, is amended to read:

25 **"15-18-220. Sale at public auction -- notice of auction -- cancellation of assignment for**
26 **unsuccessful auction.** (1) Upon receipt of an application for a tax deed pursuant to 15-18-219, the county
27 treasurer shall hold a public auction in the county in which the property is located within 60 days of receipt of
28 the application. The county treasurer shall send notice to the interested parties listed in 15-18-219(4)(b) and

1 publish notice of the auction as provided in 7-1-2121 that includes the date, time, and location of the auction,
2 the legal description of the property, the deposit requirement, and the minimum opening bid. The auction must
3 be held during the regular office hours of the county treasurer.

4 (2) (a) The opening bid on the property must be the amount required in subsection (2)(b), and the
5 county treasurer may not accept a bid below the opening bid.

6 (b) The opening bid for the property is equal to the sum of:

7 (i) the amount required to redeem the tax lien, which includes delinquent taxes, penalties, interest,
8 and costs;

9 (ii) amounts paid by the assignee upon application for the tax deed pursuant to 15-18-219(2);

10 (iii) tax deed fees provided for in 15-18-211(2)(a) and recording fees; and

11 (iv) an amount equal to half of the most recent assessed value of the land and of the dwelling
12 improvements or half of the value of the land and of the dwelling improvements as determined in an
13 independent appraisal. If the opening bid is based on an independent appraisal, the appraisal must be provided
14 to the county treasurer, must meet the standards set by the Montana board of real estate appraisers, and must
15 have been conducted within 6 months of the date of the auction.

16 (3) (a) The county treasurer shall sell the property to the high bidder for the purchase price bid plus
17 auction costs incurred by the county treasurer. Except as provided in subsection (3)(b), the high bidder shall
18 post with the county treasurer a nonrefundable deposit of 5% of the bid or \$200, whichever is greater, at the
19 time of sale. The deposit is applied to the sale price at the time of full payment. Notice of the deposit
20 requirement must be posted at the auction site, and the county treasurer may require bidders to show their
21 ability to post the deposit. The county treasurer may refuse to recognize the bid of a person who has previously
22 bid and refused, for any reason, to honor the bid.

23 (b) If the assignee is the high bidder, the assignee shall pay to the county treasurer auction costs
24 and any amounts included in the opening bid and not already paid, including filing fees, tax deed fees, and one-
25 half of the most recent assessed value of the land and of the dwelling improvements. If the assignee does not
26 make full payment within 24 hours, excluding weekends and legal holidays, the county treasurer shall cancel
27 the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-
28 18-225.

(c) If full payment of the purchase price and auction costs is not made within 24 hours of the sale, excluding weekends and legal holidays, by a high bidder who is not the assignee, the county treasurer shall cancel the high bid and allow the next highest bidder to purchase the tax deed for the amount bid. If the next highest bidder does not make full payment of the purchase price and the auction costs within 24 hours, excluding weekends and legal holidays, of notification by the county treasurer, the county treasurer shall repeat the process and contact the next highest bidder until the purchase price and auction costs are paid or until there are no bidders remaining. If no bidder pays the purchase price and auction costs, the county treasurer shall cancel the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-225.

(d) If there are no bidders at the auction, the county treasurer shall cancel the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-225.

(4) The portion of the opening bid that is equal to half of the most recent assessed value of the land and of the dwelling improvements is considered surplus funds and, upon sale of the property, must be distributed as provided in 15-18-221. If the purchase price is higher than the opening bid, the difference between the purchase price and the opening bid is considered surplus funds and must be distributed as provided in 15-18-221.

(5) Upon full payment of the purchase price, the county treasurer shall issue the tax deed in the form provided in 15-18-213 and distribute the funds as provided in 15-18-221.

(6) An auction required pursuant to this section ~~may be conducted~~ must provide for an online competitive bidding process in which bids are received electronically over the internet in real time."

Section 9. Section 15-18-221, MCA, is amended to read:

"15-18-221. Distribution of tax deed auction proceeds -- distribution of unclaimed property. (1)

The county treasurer shall distribute the proceeds of a tax deed auction pursuant to 15-18-220 as provided in this section.

(2) If the tax deed is purchased by a person other than the assignee, the county treasurer shall pay to the assignee:

(a) the amount paid for the assignment of the tax lien, including delinquent taxes, penalties,

1 interest, and costs; and

2 (b) all amounts paid pursuant to 15-18-219(2).

3 (3) Within 30 days of receiving payment from the purchaser of the tax deed, the county treasurer
4 shall distribute surplus funds to the legal titleholder of record. The county treasurer shall process the surplus
5 funds regardless of whether the legal titleholder is a resident of the state or not.

6 (4) Any surplus funds that remain unclaimed must be forwarded to the department and classified
7 as unclaimed property subject to the provisions of Title 70, chapter 9, part 8."

8

9 NEW SECTION. **Section 10. Applicability.** [This act] applies to tax liens for which the redemption
10 period expires on or after [the effective date of this act].

11 - END -