

SENATE BILL No. 503

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning property taxation; relating to judicial tax lien
2 foreclosure sales; providing requirements for publication service and
3 confirmation of sale; expanding costs included in redemption fees;
4 amending K.S.A. 79-2801, 79-2803, 79-2804b, 79-2804g, 79-2804h
5 and 79-2812 and repealing the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 79-2801 is hereby amended to read as follows: 79-
9 2801. (a) (1) Except as provided by K.S.A. 79-2811, and amendments
10 thereto, whenever real estate has been or shall be sold and bid in by the
11 county at any delinquent tax sale and remains unredeemed on September 1
12 of the second year after the sale, or any extension thereof as provided by
13 ~~subsection (b) of K.S.A. 79-2401a(b)~~, and amendments thereto, or
14 whenever real estate described by ~~subsection (a)(2) of K.S.A. 79-2401a(a)~~
15 (2), and amendments thereto, has been or shall be sold and bid in by the
16 county at any delinquent tax sale and remains unredeemed on September 1
17 of the first year after the sale, the board of county commissioners shall
18 order the county attorney or county counselor and it shall be the duty of
19 the county attorney or county counselor to institute an action in the district
20 court, in the name of the board of county commissioners, against the
21 owners or supposed owners of the real estate and all persons having or
22 claiming to have any interest ~~therein or thereto~~ *in such real estate*, by
23 filing a petition with the clerk of the court. The board of county
24 commissioners may provide for special legal and other assistance
25 necessary to secure the timely performance of duties required by this act.
26 Whenever the real estate involved is a mineral interest in land ~~which that~~
27 has been severed from the fee, the bringing of the action for the
28 foreclosure of the mineral interest shall be within the discretion of the
29 board of county commissioners. Whenever the aggregate assessed
30 valuation of the real estate subject to sale is less than \$300,000, or the
31 aggregate amount of delinquent taxes, including special assessments, is
32 less than \$10,000, the bringing of the action shall be within the discretion
33 of the board of county commissioners. The petition shall contain a
34 description of each tract, lot or piece of real estate including, if in a city of
35 the first or second class, the street number or location. The petition shall
36 state, as far as practicable, the amount of taxes, charges, interest and

1 penalties chargeable to each tract, lot or piece of real estate, the name of
2 the owner, supposed owner and party having or claiming to have any
3 interest ~~therein or thereto~~ *in such real estate*, and giving the year the real
4 estate was sold for delinquent taxes under the provisions of K.S.A. 79-
5 2302, and amendments thereto. The petition shall request that the court
6 determine the amount of taxes, charges, interest and penalties chargeable
7 to each particular tract, lot or piece of real estate, the name of the owner or
8 party having any interest ~~therein~~ *in such real estate*. The petition also shall
9 request that the court adjudge and decree the amount due to be a first and
10 prior lien upon the real estate and that the same be sold at public sale for
11 the satisfaction of the lien, costs, charges and expenses of the proceedings
12 and sale and other necessary relief. The petition shall be filed in duplicate
13 and a copy delivered by the clerk to the county treasurer, who thereafter
14 shall accept no payments of taxes upon the real estate included in the
15 petition except as provided by K.S.A. 79-2801 ~~to~~ *through 79-2810-*
16 ~~inclusive~~, and amendments thereto.

17 (2) A summons shall be issued and personally served or publication
18 made as provided in other cases under the code of civil procedure. *Prior to*
19 *any service by publication, a party that files an action under this section*
20 *shall determine the address for any person to be served, including any*
21 *alternative address that may be on file with any county office, except any*
22 *such address that is prohibited from public disclosure by law, and shall*
23 *exercise due diligence in conducting personal service on such person at*
24 *any such address. If the action is a city-initiated action pursuant to*
25 *subsection (c), prior to any service by publication, a party filing such*
26 *action shall determine the address for any person to be served, including*
27 *any alternative address that may be on file with any city or county office,*
28 *except any such address that is prohibited from public disclosure by law.*
29 *In determining any such address for any person to be served, the party*
30 *filing the action shall review readily available information concerning any*
31 *such address that is published online by a reliable source.* If service is
32 made by publication, the notice, in addition to the requirements prescribed
33 by the code of civil procedure, shall contain a description of the real estate.

34 (3) Any member of the board of county commissioners, county
35 attorney or county counselor who fails to perform the duties required by
36 this section shall forfeit the office held by the officer. Any person may
37 secure enforcement of the provisions of this act through mandamus. Such
38 proceeding shall be initiated by filing a petition in a court of competent
39 jurisdiction.

40 (b) The governing body of any city may provide for the rendering of
41 legal and other assistance to the county attorney or county counselor to
42 secure the expeditious judicial foreclosure of real estate on which there is
43 unredeemed delinquent tax liens, including delinquent special assessments.

1 The provision of such services by the city shall not relieve any county
 2 officer of the requirement to perform the duties required by this act. The
 3 actual and necessary costs incurred by a city in providing such assistance
 4 shall be considered as costs incident to the sale of the real estate and the
 5 city may be reimbursed therefor from the proceeds of the sale in an
 6 amount apportioned pursuant to K.S.A. 79-2805, and amendments thereto.

7 (c) If the board of county commissioners fails to initiate proceedings
 8 for a judicial tax foreclosure sale on property located within the corporate
 9 limits of a city and if the taxes on such property have remained delinquent
 10 for at least ~~three years~~ *one year* after such property first becomes eligible
 11 for sale by the county at a judicial tax foreclosure sale pursuant to K.S.A.
 12 79-2801 et seq., and amendments thereto, the governing body of the city in
 13 which such property is located may initiate a judicial tax foreclosure sale
 14 on such property. The governing body of such city shall have the same
 15 powers and duties of the board of county commissioners under K.S.A. 79-
 16 2801 et seq., and amendments thereto, which are necessary to effectuate
 17 the sale of such property. The city attorney of such city shall have the same
 18 powers and duties of the county attorney or county counselor under K.S.A.
 19 79-2801 et seq., and amendments thereto, relating to the judicial tax
 20 foreclosure sale of such property. All other county officers shall perform
 21 the duties prescribed by law relating to the sale of such property in the
 22 same manner as if such sale had been initiated by the board of county
 23 commissioners.

24 Sec. 2. K.S.A. 79-2803 is hereby amended to read as follows: 79-
 25 2803. (a) Issues may be joined in ~~said~~ *any* action *filed pursuant to this act*
 26 as in other civil actions, but after such issues are so joined ~~said~~, *such*
 27 actions shall stand for trial and shall have precedence over all other actions
 28 except criminal cases and it shall be the duty of such district court, in as
 29 summary way as possible, to investigate and to decide what taxes, charges,
 30 interest, and penalty thereon, to the date of the filing of the petition, shall
 31 have been legally assessed and charged on such tract, lot, or piece of real
 32 estate, and to render judgment therefor, together with the interest, charges
 33 and penalty thereon, as provided by law, together with and including in
 34 such judgment any taxes, interest charges and penalties ~~which~~ *that* became
 35 a lien on such tract, lot, or piece of real estate after the filing of the petition
 36 in the same manner as if set out in the petition, together with the cost and
 37 expenses of the proceeding and sale and to charge the same as a first and
 38 prior lien on said tract, lot, or piece of real estate, subject, ~~however~~, to
 39 valid covenants running with the land and to valid easements of record or
 40 in use, whether the holder thereof appears or not, and to order the sale of
 41 ~~the said~~ *such* real estate for the payment of such taxes, charges, interest
 42 and penalty and the costs, and expense of such proceedings and sale;
 43 ~~which~~.

1 (b) (1) *Any sale under subsection (a) shall be made and conducted as*
 2 ~~hereinafter provided. Provided,~~ *in accordance with this section, except*
 3 *that any person interested in any tract, lot or piece of real estate as owner*
 4 *or holder of the record title, his or her such person's heirs, devisees,*
 5 *executors, administrators; or assigns, or any mortgagee or his or her such*
 6 *mortgagee's assigns may before the day of sale hereinafter provided for,*
 7 *make redemption in the following manner:* Such redemptioner, his or her
 8 *or such redemptioner's agent or attorney shall file with the clerk of the*
 9 *court an application to redeem, identifying the parcel to be redeemed, and*
 10 *paying to said the clerk, to cover its such redemptioner's equitable share of*
 11 *all costs and expenses of the proceedings and sale, such amount as the*
 12 *court may order, or if no order be made then an amount equal to five*
 13 ~~percent~~ *5% of the amount set forth in the petition as the lien for taxes,*
 14 *charges, interest and penalties chargeable to each tract, lot or piece of real*
 15 *estate plus such charges, if any, as may be chargeable separately against*
 16 ~~said such parcel.~~

17 (2) *Notwithstanding the provisions of K.S.A. 19-723, and*
 18 *amendments thereto, the actual and necessary costs incurred by a board of*
 19 *county commissioners or the governing body of a city in any action filed*
 20 *pursuant to this act in hiring special legal counsel or other assistance,*
 21 *including, but not limited to, abstracting fees and title examining fees, may*
 22 *be included by the court in any order determining redemption fees or*
 23 *apportioning such costs to real estate sold by the sheriff and shall be*
 24 *considered costs incident to the sale of the real estate. Such board of*
 25 *county commissioners or governing body of a city may be reimbursed for*
 26 *such costs from the proceeds of the sale. Any such redemption may include*
 27 *the costs for abstracting fees and title examining fees incurred by the*
 28 *board of county commissioners or the governing body of a city for real*
 29 *estate in a tax delinquent group that was considered to be included in any*
 30 *such action by the board of county commissioners or the governing body*
 31 *of a city but was excluded from such action due to the payment of the*
 32 *delinquent taxes on such real estate or for such other reason as*
 33 *determined by the board of county commissioners or the governing body*
 34 *of a city.*

35 (3) Upon receipt of such payment, the clerk shall issue a receipt
 36 ~~therefor which for such payment that shall be forthwith exhibited~~
 37 ~~submitted to the county treasurer, who.~~ *The county treasurer shall*
 38 ~~forthwith~~ *calculate the amount of taxes, charges, interest and penalties*
 39 *chargeable against said such real estate as of such date, which. Such*
 40 *calculated amount shall be forthwith paid to said the treasurer, who shall*
 41 ~~thereupon then~~ *issue in triplicate a certificate showing such redemption,*
 42 *one copy of which he or she shall forthwith deliver be delivered each to*
 43 *the clerk of the district court, the other to such the redemptioner; and the*

1 ~~third to the~~ county attorney. Such payments shall be a full satisfaction and
 2 redemption of such tract, lot or piece of real estate from the lien and shall
 3 stay all further proceedings for the collection of such lien as against the
 4 particular tract, lot or piece of real estate so redeemed.

5 (4) The clerk shall immediately upon receipt of ~~such~~ any certificate
 6 *of redemption* make an entry upon the records ~~in his or her office~~ opposite
 7 such case showing that the lien as to such tract, lot or piece of real estate
 8 has been redeemed. If an order of sale has been issued, the clerk shall
 9 ~~thereupon~~ issue and deliver to the sheriff a statement reciting such
 10 redemption specifically identifying the tract, lot or piece of real estate
 11 redeemed, and ~~thereupon~~ the sheriff shall strike such lot, tract or piece of
 12 real estate from the execution or order of sale and shall not include it in the
 13 sale, ~~and upon~~. In making *the* return of the execution or order of sale ~~he or~~
 14 ~~she~~ *the sheriff* shall attach ~~thereto~~ any such statement.

15 (c) The court shall, as soon as practicable after the sale, equitably
 16 apportion the cost ~~and~~, charges; ~~and the~~ expenses of the proceedings and
 17 sale to each tract, lot or piece of real estate, ~~and~~. The total costs, charges
 18 and expenses of the proceedings and sale, less the amount ~~thereof~~ paid by
 19 redemptioners, shall be deducted from the gross sum received from the
 20 sale of all of ~~said~~ such lots, tracts; and pieces of real estate, ~~and the~~. Any
 21 *remaining* balance shall be equitably apportioned to each tract, lot; or piece
 22 of real estate that sold for more than its share of the costs, charges; and
 23 expenses of the proceedings and sale, ~~and~~. Any tax liens on all real estate
 24 sold or redeemed in ~~said~~ such action shall be satisfied and discharged of
 25 record.

26 (d) If any lot, tract or piece of real estate sells for more than the
 27 judgment lien for the taxes, interest, penalty; and charges plus its share of
 28 the costs, charges and expenses of the proceedings and sale, such excess
 29 shall be ordered by the court paid upon due proof to the owner or party
 30 entitled thereto.

31 Sec. 3. K.S.A. 79-2804b is hereby amended to read as follows: 79-
 32 2804b. (a) Legal or equitable actions or proceedings may be brought to
 33 open, vacate, modify or set aside any judgment rendered for taxes, interest
 34 and costs or any order of sale made under the provisions of K.S.A. 79-
 35 2803, or amendments thereto, or any sale made under the provisions of
 36 K.S.A. 79-2804, ~~or any and amendments thereof thereto~~, but every such
 37 action or proceeding, including those brought to set aside judgments on the
 38 grounds and in the manner prescribed by the code of civil procedure, ~~must~~
 39 *shall* be commenced within ~~twelve~~ six months after the date the sale of the
 40 real estate, ~~which that~~ was affected by such judgment, order of sale or sale;
 41 was confirmed by the court. The time limitation ~~herein~~ *fixed in this*
 42 *subsection* for the bringing of any such action or proceeding shall be
 43 construed as a condition precedent to the bringing of any such action or

1 proceeding and shall not be construed as a statute of limitations.

2 (b) The petition in every such action or proceeding shall show that
3 such action or proceeding was commenced within the time ~~herein limited~~
4 *limit provided in subsection (a)*. If any such action or proceeding is not
5 commenced within ~~the time herein limited~~ *such time limit*, or if the petition
6 in any such action or proceeding shall not show that such action or
7 proceeding was so commenced, the court shall have no jurisdiction of such
8 action or proceeding. The provisions of this section shall apply to all
9 judgments, orders of sale, and sales whether the purchaser at the
10 foreclosure sale ~~be~~ *is* the county or an individual.

11 Sec. 4. K.S.A. 79-2804g is hereby amended to read as follows: 79-
12 2804g. (a) Whenever any tract, lot or piece of real estate is offered for sale
13 at public auction pursuant to K.S.A. 79-2804, and amendments thereto,
14 such tract, lot or piece of real estate shall not be sold, either directly or
15 indirectly, to:

16 (1) Any person having a statutory right to redeem such real estate
17 prior to such sale, pursuant to the provisions of K.S.A. 79-2803, and
18 amendments thereto, except that this paragraph (1) shall not prohibit sale
19 to any person or such person's assignee who held an interest in such real
20 estate as mortgagee of record at the time of the sale;

21 (2) any parent, grandparent, child, grandchild, spouse, sibling, trustee
22 or trust beneficiary who held an interest in a tract as owner or holder of the
23 record title or who held an interest at any time when any tax constituting
24 part of the county's judgment became due; ~~or~~

25 (3) with respect to a title holding corporation, any current or former
26 stockholder, current officer or director, or any person having a relationship
27 enumerated in paragraph (2) to such stockholder, officer or director;

28 (4) *any county commissioner who, together with other members of*
29 *the board of county commissioners, authorizes and directs the filing of an*
30 *action pursuant to this act with respect to such tract, lot or piece of real*
31 *estate; or*

32 (5) *any member of the governing body of a city who, together with*
33 *other members of the governing body, authorizes and directs the filing of*
34 *an action pursuant to this act with respect to such tract, lot or piece of real*
35 *estate.*

36 (b) If any such real estate is acquired by a county pursuant to K.S.A.
37 79-2804, and amendments thereto, and, at the end of six months from and
38 after confirmation of such sale to the county, such real estate is advertised
39 for sale at public auction, as provided in K.S.A. 79-2804f, and
40 amendments thereto, such real estate shall not be sold, either prior to or at
41 such auction, to any person having a statutory right to redeem such real
42 estate, under the provisions of K.S.A. 79-2803, and amendments thereto,
43 for an amount less than the original judgment lien and interest thereon,

1 plus the costs, charges and expenses of the proceedings and sale, as set
2 forth in the execution and order of sale issued pursuant to K.S.A. 79-2804,
3 and amendments thereto.

4 (c) If any tract, lot or piece of real estate purchased at public auction
5 pursuant to K.S.A. 79-2804, and amendments thereto, is transferred, sold,
6 given or otherwise conveyed to any person who had a statutory right to
7 redeem such real estate prior to such sale pursuant to K.S.A. 79-2803, and
8 amendments thereto, within 10 years of the date of the public auction, such
9 person shall be liable for an amount equal to the original judgment lien and
10 interest thereon from the date of the public auction, except that this
11 subsection shall not apply to any person or such person's assignee who
12 held an interest in such real estate as mortgagee of record at the time of the
13 sale.

14 (d) The provisions of this section shall apply to the sale or
15 conveyance of any real estate by a county land bank established pursuant
16 to K.S.A. 19-26,104, and amendments thereto.

17 Sec. 5. K.S.A. 79-2804h is hereby amended to read as follows: 79-
18 2804h. No sale of real estate as provided for in article 28 of chapter 79 of
19 the Kansas Statutes Annotated, and amendments thereto, shall be
20 confirmed as provided for in K.S.A. 79-2804, and amendments thereto,
21 until the purchaser at the sale files with the clerk of the court, an affidavit
22 stating that the purchase of the real estate was not made, either directly or
23 indirectly, for any person having the statutory right to redeem, other than
24 any person or such person's assignee who held an interest in such real
25 estate as mortgagee of record at the time of the sale, *and that the*
26 *purchaser is not the record owner of real estate for which there are*
27 *delinquent general ad valorem taxes or delinquent special assessments as*
28 *shown in the records of the county treasurer.*

29 Sec. 6. K.S.A. 79-2812 is hereby amended to read as follows: 79-
30 2812. ~~Except as otherwise provided by K.S.A. 79-2804g, and amendments~~
31 ~~thereto,~~ No person shall be eligible to purchase real estate at any
32 delinquent tax sale conducted pursuant to the provisions of K.S.A. 79-
33 2801 et seq., and amendments thereto, if such person is the record owner
34 of real estate ~~upon~~ *for which there are delinquent general ad valorem taxes*
35 *of a general ad valorem tax nature or delinquent special assessments in*
36 *existence as reflected by as shown in the records of the county treasurer.*

37 Sec. 7. K.S.A. 79-2801, 79-2803, 79-2804b, 79-2804g, 79-2804h and
38 79-2812 are hereby repealed.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.