

DELINQUENT PROPERTY TAX CERTIFICATES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies and enacts provisions relating to delinquent property taxes.

Highlighted Provisions:

This bill:

- ▶ enacts a provision establishing a process for issuing, selling, and administering tax lien certificates;
- ▶ allows a county treasurer to sell tax lien certificates for real property on which property taxes are delinquent;
- ▶ requires a county that sells a tax lien certificate to remit:
 - proceeds of tax lien certificate sales to taxing entities as if the proceeds were property tax collections; and
 - property tax redemption proceeds, including delinquent property taxes, penalties, and interest, to the owner of a tax lien certificate;
- ▶ requires a county that sells a tax lien certificate to provide a tax deed transferring ownership of the property to the owner of an outstanding tax lien certificate, upon request of an owner of the tax lien certificate and subject to certain conditions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2012.

Utah Code Sections Affected:

AMENDS:

59-2-1301, as renumbered and amended by Laws of Utah 1987, Chapter 4

59-2-1331, as last amended by Laws of Utah 2010, Chapter 63

59-2-1332.5, as last amended by Laws of Utah 2009, Chapter 388

59-2-1343, as last amended by Laws of Utah 1995, Chapter 181

59-2-1351, as last amended by Laws of Utah 2009, Chapter 388

59-2-1351.1, as last amended by Laws of Utah 2000, Chapter 75

ENACTS:

59-2-1331.1, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-2-1301** is amended to read:

59-2-1301. Tax has effect of judgment -- Lien has effect of execution.

(1) Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent.

(2) The judgment is not satisfied nor the lien removed until:

(a) the taxes are paid [or];

(b) if applicable, a tax deed is issued to the owner of an outstanding tax lien certificate as defined in Section 59-2-1331.1; or

(c) the property is sold for the payment of the judgment or lien.

Section 2. Section **59-2-1331** is amended to read:

59-2-1331. Date tax is delinquent -- Penalty -- Interest -- Payments -- Refund of prepayment.

(1) (a) Except as provided in Subsection (1)(b), all taxes, unless otherwise specifically provided for under Section 59-2-1332, or other law, unpaid or postmarked after November 30 of each year following the date of levy, are delinquent, and the county treasurer shall close the treasurer's office for the posting of current year tax payments until a delinquent list has been prepared.

(b) Notwithstanding Subsection (1)(a), if November 30 falls on a Saturday, Sunday, or holiday:

(i) the date of the next following day that is not a Saturday, Sunday, or holiday shall be substituted in Subsection (1)(a) and Subsection 59-2-1332(1) for November 30; and

(ii) the date of the day occurring 30 days after the date under Subsection (1)(b)(i) shall be substituted in Subsection 59-2-1332(1) for December 30.

(2) (a) Except as provided in Subsection (2)(e), for each parcel, all delinquent taxes on each separately assessed parcel are subject to a penalty of 2.5% of the amount of the delinquent taxes or \$10, whichever is greater.

(b) Unless the delinquent taxes, together with the penalty, are paid on or before January 31[;]:

(i) the amount of taxes and penalty shall bear interest on a per annum basis from the January 1 immediately following the delinquency date[;]; and

(ii) the property is subject to issuance of a tax lien certificate in accordance with Section 59-2-1331.1.

(c) Except as provided in Subsection (2)(d), for purposes of Subsection (2)(b)(i), the interest rate is equal to the sum of:

(i) 6%; and

(ii) the federal funds rate target[~~-(A)~~], established by the Federal Open Markets Committee[~~and (B)~~], that exists on the January 1 immediately following the date of delinquency.

(d) The interest rate described in Subsection (2)(c) may not be[~~-(i)~~] less than 7%[;] or [i] more than 10%.

(e) The penalty described in Subsection (2)(a) is 1% of the amount of the delinquent taxes or \$10, whichever is greater, if all delinquent taxes and the penalty are paid on or before the January 31 immediately following the delinquency date.

(3) If the delinquency exceeds one year, the amount of taxes and penalties for that year and all succeeding years shall bear interest until settled in full through redemption or tax sale. The interest rate to be applied shall be calculated for each year as established under Subsection (2) and shall apply on each individual year's delinquency until paid.

(4) The county treasurer may accept and credit on account against taxes becoming due

during the current year, at any time before or after the tax rates are adopted, but not subsequent to the date of delinquency, either:

(a) payments in amounts of not less than \$10; or

(b) the full amount of the unpaid tax.

(5) (a) At any time before the county treasurer mails the tax notice described in Section 59-2-1317, the county treasurer may refund amounts accepted and credited on account against taxes becoming due during the current year.

(b) Upon recommendation by the county treasurer, the county legislative body shall adopt rules or ordinances to implement the provisions of this Subsection (5).

Section 3. Section **59-2-1331.1** is enacted to read:

59-2-1331.1. Tax lien certificate -- Action procedures -- Disposition of taxes paid.

(1) As used in this section:

(a) "Outstanding tax lien certificate" means a tax lien certificate that has not been paid in full.

(b) "Tax lien certificate" means a document:

(i) relating to property that is the subject of a delinquency in the payment of taxes;

(ii) issued by the county in which the property is located; and

(iii) that entitles its owner to receive the payment of the delinquent taxes on that property and any applicable penalties and interest, as provided in this section.

(2) (a) Except as provided in Subsection (2)(b), if taxes for a property are delinquent on January 31, a county treasurer may sell a tax lien certificate for the property.

(b) A county treasurer selling a tax lien certificate under Subsection (2)(a) shall sell the certificate to the highest bidder in a public auction held no later than April 30.

(c) If all outstanding delinquent taxes, penalties, and interest for a property are paid prior to the auction described in Subsection (2)(b), the county may not sell a tax lien certificate for the property.

(d) (i) The public auction under Subsection (2)(b) may be conducted in person or through electronic means.

(ii) At the public auction under Subsection (2)(b):

(A) the minimum acceptable bid is the amount of delinquent taxes on the property that is the subject of the tax lien certificate; and

121 (B) if no one submits a minimum acceptable bid for a tax lien certificate for a property,
122 the county treasurer shall issue the tax lien certificate to the county and the county treasurer
123 may sell the tax lien certificate at an auction held in accordance with this section in a
124 subsequent year.

125 (e) The county shall distribute the proceeds of the auction conducted under Section
126 (2)(b) to taxing entities as if the proceeds were property tax collections.

127 (3) (a) The county shall maintain the original tax lien certificate in its files and shall
128 issue one certified copy of the tax lien certificate to the tax lien certificate owner.

129 (b) Upon notification to the county treasurer, the owner of a tax lien certificate may sell
130 or assign the tax lien certificate to another person.

131 (c) Upon notification of sale or assignment under Subsection (3)(b), the county shall
132 update its records to reflect the ownership change.

133 (d) The county may charge a reasonable processing fee for issuing an additional
134 certified copy of the tax lien certificate and for processing a tax lien certificate ownership
135 change.

136 (4) (a) The owner of a tax lien certificate relating to a property is entitled to receive all
137 delinquent taxes, penalties, and interest paid on that property for the tax year for which the tax
138 lien certificate is issued.

139 (b) The county treasurer shall quarterly remit to the owner of a tax lien certificate the
140 amount of delinquent taxes, penalties, and interest that the treasurer collects for the tax year of
141 the tax lien certificate for the property that is the subject of the tax lien certificate.

142 (5) If in a subsequent year taxes are delinquent on a property that is the subject of an
143 outstanding tax lien certificate, the owner of the outstanding tax lien certificate may purchase
144 that subsequent year's tax lien certificate for that property prior to the auction conducted under
145 Subsection (2)(b) by paying an amount equal to the delinquent taxes for that year.

146 (6) If delinquent taxes, penalties, and interest for a property that is the subject of a tax
147 lien certificate are paid in full, the county shall:

148 (a) mark the tax lien certificate as "Paid In Full"; and

149 (b) remit payment to and send a copy of the marked tax lien certificate to the owner of
150 the tax lien certificate.

151 (7) The county shall issue a tax deed to the owner of the tax lien certificate as provided

in this part if:

(a) the redemption period has expired;

(b) the owner of the tax lien certificate requests a tax deed as provided in this part; and

(c) the property for which there is an outstanding tax lien certificate is not redeemed in accordance with this part.

Section 4. Section **59-2-1332.5** is amended to read:

59-2-1332.5. Mailing notice of delinquency or publication of delinquent list --

Contents -- Notice -- Definitions.

(1) The county treasurer shall provide notice of delinquency in the payment of property taxes:

(a) except as provided in Subsection (4), on or before December 31 of each calendar year; and

(b) in a manner described in Subsection (2).

(2) A notice of delinquency in the payment of property taxes shall be provided by:

(a) (i) mailing to each delinquent taxpayer a written notice, postage prepaid[~~-(A)-to each delinquent taxpayer, and (B)~~] that includes the information required by Subsection (3)(a); and

(ii) making available to the public, by electronic means and in accordance with Section 45-1-101, a list of delinquencies in the payment of property taxes[~~-(A) (I) by electronic means, and (H) in accordance with Section 45-1-101, and (B)~~] that includes the information required by Subsection (3)(b); or

(b) publishing a list of delinquencies in the payment of property taxes:

(i) in one issue of a newspaper having general circulation in the county;

(ii) that lists each delinquency in alphabetical order by:

(A) the last name of the delinquent taxpayer; or

(B) if the delinquent taxpayer is a business entity, the name of the business entity; and

(iii) that includes the information required by Subsection (3)(b).

(3) (a) A written notice of delinquency in the payment of property taxes described in Subsection (2)(a)(i) shall include:

(i) a statement that delinquent taxes are due;

(ii) the amount of delinquent taxes due, not including any penalties imposed in

183 accordance with this chapter;

184 (iii) (A) the name of the delinquent taxpayer; or

185 (B) if the delinquent taxpayer is a business entity, the name of the business entity;

186 (iv) (A) a description of the delinquent property; or

187 (B) the property identification number of the delinquent property;

188 (v) a statement that a penalty shall be imposed in accordance with this chapter; ~~and~~

189 (vi) a statement that interest accrues as of January 1 following the date of the

190 delinquency unless before January ~~16~~ 31 the following are paid:

191 (A) the delinquent taxes; and

192 (B) the penalty~~[-]~~; and

193 (vii) a statement that a tax lien certificate may be issued against the property as

194 provided in Section 59-2-1331.1 if the delinquent taxes, penalties, and interest are not paid in

195 full.

196 (b) The list of delinquencies described in Subsection (2)(a)(ii) or (2)(b) shall include:

197 (i) the amount of delinquent taxes due, not including any penalties imposed in

198 accordance with this chapter;

199 (ii) (A) the name of the delinquent taxpayer; or

200 (B) if the delinquent taxpayer is a business entity, the name of the business entity;

201 (iii) (A) a description of the delinquent property; or

202 (B) the property identification number of the delinquent property;

203 (iv) a statement that a penalty shall be imposed in accordance with this chapter; and

204 (v) a statement that interest accrues as of January 1 following the date of the

205 delinquency unless before January ~~16~~ 31 the following are paid:

206 (A) the delinquent taxes; and

207 (B) the penalty~~[-]~~; and

208 (vi) a statement that a tax lien certificate may be issued against the property as

209 provided in Section 59-2-1331.1 if the delinquent taxes, penalties, and interest are not paid in

210 full.

211 (4) Notwithstanding Subsection (1)(a), if the county legislative body extends the date
212 when taxes become delinquent under Subsection 59-2-1332(1), the notice of delinquency in the
213 payment of property taxes shall be provided on or before January 10.

(5) (a) In addition to the notice of delinquency in the payment of property taxes required by Subsection (1), a county treasurer may in accordance with this Subsection (5) mail a notice that property taxes are delinquent:

(i) to:

(A) a delinquent taxpayer;

(B) an owner of record of the delinquent property;

(C) any other interested party that requests notice; or

(D) a combination of Subsections (5)(a)(i)(A) through (C); and

(ii) at any time that the county treasurer considers appropriate.

(b) A notice mailed in accordance with this Subsection (5):

(i) shall include the information required by Subsection (3)(a); and

(ii) may include any information that the county treasurer finds is useful to the owner of record of the delinquent property in determining:

(A) the status of taxes owed on the delinquent property;

(B) any penalty that is owed on the delinquent property;

(C) any interest charged under Section 59-2-1331 on the delinquent property; or

(D) any related matters concerning the delinquent property.

(6) As used in this section, "business entity" means:

(a) an association;

(b) a corporation;

(c) a limited liability company;

(d) a partnership;

(e) a trust; or

(f) a business entity similar to Subsections (6)(a) through (e).

Section 5. Section **59-2-1343** is amended to read:

59-2-1343. Tax Sale Listing.

(1) If any property is not redeemed by March 15 following the lapse of four years from the date when the property tax became delinquent, the county treasurer shall immediately file a listing with the county auditor of all properties whose redemption period is expiring in the nearest forthcoming tax sale.

(2) The listing in Subsection (1) is known as the "Tax Sale Listing."

(3) The county treasurer shall notify the owner of an outstanding tax lien certificate of the tax sale listing of the property that is the subject of an outstanding tax lien certificate, as defined in Section 59-2-1331.1.

Section 6. Section **59-2-1351** is amended to read:

59-2-1351. Sales by county -- Notice of tax sale -- Entries on record.

(1) (a) Upon receiving the tax sale listing from the county treasurer, the county auditor shall select a date for the tax sale for all real property on which a delinquency exists that was not previously redeemed and upon which the period of redemption is expiring in the nearest tax sale.

(b) The tax sale shall be conducted in May or June of the current year.

(2) Notice of the tax sale shall be provided as follows:

(a) sent by certified and first class mail to the last-known recorded owner, the occupant of any improved property, the owner of an outstanding tax lien certificate as defined in Section 59-2-1331.1, and all other interests of record, as of the preceding March 15, at their last-known address; and

(b) published:

(i) four times in a newspaper published and having general circulation in the county, once in each of four successive weeks immediately preceding the date of sale; and

(ii) in accordance with Section 45-1-101 for four weeks immediately preceding the date of sale; and

(c) if no newspaper is published in the county, posted in five public places in the county, as determined by the auditor, at least 25 but no more than 30 days prior to the date of sale.

(3) The notice shall be in substantially the following form:

NOTICE OF TAX SALE

Notice is hereby given that on _____(month\day\year), at ___ o'clock __. m., at the front door of the county courthouse in _____ County, Utah, I will offer for sale at public auction and sell to the highest bidder for cash, under the provisions of Section 59-2-1351.1, the following described real property located in the county and now delinquent and subject to tax sale. A bid for less than the total amount of taxes, interest, penalty, and administrative costs which are a charge upon the real estate will not be accepted.

(Here describe the real estate)

IN WITNESS WHEREOF I have hereunto set my hand and official seal on

_____ (month\day\year).

County Auditor

County

(4) (a) The notice sent by certified mail in accordance with Subsection (2)(a) shall include:

(i) the name and last-known address of the last-known recorded owner of the property to be sold;

(ii) the parcel, serial, or account number of the delinquent property; and

(iii) the legal description of the delinquent property.

(b) The notice published in a newspaper in accordance with Subsection (2)(b) shall include:

(i) the name and last-known address of the last-known recorded owner of each parcel of property to be sold; and

(ii) the street address or the parcel, serial, or account number of the delinquent parcels.

(5) (a) After issuance of the notices under this section, the owner of an outstanding tax lien certificate for a property may request that the county issue a tax deed in accordance with Section 59-2-1331.1 if:

(i) the property is not redeemed prior to the date of the tax sale; and

(ii) the owner of an outstanding tax lien certificate makes a deposit equal to the amount of all delinquent taxes, penalties, and interest on the property through the scheduled date of the tax sale, including years for which other tax lien certificates are outstanding.

(b) If multiple owners of an outstanding tax lien certificate submit a request in accordance with Subsection (5)(a), the owner of the oldest outstanding tax lien certificate has priority.

(c) The commission may create a standardized form to be used statewide for submitting requests in accordance with Subsection (5)(a).

Section 7. Section **59-2-1351.1** is amended to read:

59-2-1351.1. Tax sale -- Combining certain parcels -- Acceptable bids -- Deeds.

(1) (a) ~~[At]~~ Except as provided in Subsection (4), at the time specified in the notice the auditor shall:

(i) attend at the place appointed, offer for sale, and sell all real property for which an acceptable bid is made; and

(ii) refuse to offer a parcel of real property for sale if the description of the real property is so defective as to convey no title.

(b) The auditor may post at the place of sale a copy of the published list of real property to be offered and cry the sale by reference to the list rather than crying each parcel separately.

(2) (a) The tax commission shall establish, by rule, minimum procedural standards applicable to tax sales.

(b) For matters not addressed by commission rules, the county legislative body, upon recommendation by the county auditor, shall establish procedures, by ordinance, for the sale of the delinquent property that best protect the financial interest of the delinquent property owner and meet the needs of local governments to collect delinquent property taxes due.

(3) The county governing body may authorize the auditor to combine for sale two or more contiguous parcels owned by the same party when:

(a) the parcels are a single economic or functional unit;

(b) the combined sale will best protect the financial interests of the delinquent property owner; and

(c) separate sales will reduce the economic value of the unit.

(4) (a) If an owner of an outstanding tax lien certificate makes a deposit and submits a request for a tax deed under Section 59-2-1331.1 before the date of the tax sale and the property owner does not redeem the property in accordance with this part before the date of the tax sale, the county shall issue a tax deed to the owner of the outstanding tax lien certificate after applying the deposit against all outstanding property taxes, penalties, and interest.

(b) If a property is redeemed before the date of the tax sale, the county shall refund any deposit made by an owner of a tax lien certificate under Section 59-2-1331.1.

~~[(4)]~~ (5) The governing body may accept any of the following bids:

(a) the highest bid amount for the entire parcel of property, however, a bid may not be

accepted for an amount which is insufficient to pay the taxes, penalties, interest, and administrative costs; or

(b) a bid in an amount sufficient to pay the taxes, penalties, interest, and administrative costs, for less than the entire parcel.

(i) The bid which shall be accepted shall be the bid of the bidder who will pay in cash the full amount of the taxes, penalties, interest, and administrative costs for the smallest portion of the entire parcel.

(ii) The county auditor at the tax sale or the county legislative body following the tax sale shall reject a bid to purchase a strip of property around the entire perimeter of the parcel, or a bid to purchase a strip of the parcel which would prevent access to the remainder of the parcel by the redemptive owner or otherwise unreasonably diminish the value of that remainder.

(iii) If the bid accepted is for less than the entire parcel, the auditor shall note the fact, with a description of the property covered by the bid, upon the tax sale record and the balance of the parcel not affected by the bid shall be considered to have been redeemed by the owner.

~~[(5)]~~ (6) The county legislative body may decide that none of the bids are acceptable.

~~[(6)]~~ (7) Once the county auditor has closed the sale of a particular parcel of property as a result of accepting a bid on the parcel, the successful bidder or purchaser of the property may not unilaterally rescind the bid. The county legislative body, after acceptance of a bid, may enforce the terms of the bid by obtaining a legal judgment against the purchaser in the amount of the bid, plus interest and attorney's fees.

~~[(7)]~~ (8) Any sale funds which are in excess of the amount required to satisfy the delinquent taxes, penalties, interest, and administrative costs of the delinquent property shall be treated as unclaimed property under Title 67, Chapter 4a, Unclaimed Property Act.

~~[(8)]~~ (9) All money received upon the sale of property made under this section shall be paid into the county treasury, and the treasurer shall settle with the taxing entities as provided in Section 59-2-1366.

~~[(9)]~~ (10) (a) The county auditor shall, after acceptance by the county governing body, and in the name of the county, execute deeds conveying in fee simple all property sold through issuance of a tax lien certificate under Section 59-2-1331.1 or at the public sale to the purchaser and attest this with the auditor's seal. Deeds issued by the county auditor under this

section shall recite the following:

(i) the total amount of all the delinquent taxes, penalties, interest, and administrative costs which were paid in for the execution and delivery of the deed;

(ii) the year for which the property was assessed, the year the property became delinquent, and the year the property was subject to tax sale;

(iii) a full description of the property; and

(iv) the name of the grantee.

(b) When the deed is executed and delivered by the auditor, it shall be prima facie evidence of the regularity of all proceedings subsequent to the date the taxes initially became delinquent and of the conveyance of the property to the grantee in fee simple.

(c) The deed issued by the county auditor under this section shall be recorded by the county recorder.

(d) The fee for the recording shall be included in the administrative costs of the sale.

(e) The deed shall be substantially in the following form:

TAX DEED

____ County, a body corporate and politic of the state of Utah, grantor, hereby conveys to _____, grantee, of _____ the following described real estate in _____ County, Utah:

(Here describe the property conveyed)

This conveyance is made in consideration of payment by the grantee of \$____, representing the total amount owing for delinquent taxes, penalties, interest, and administrative costs constituting a charge against the real property for nonpayment of general taxes assessed against it for the years ____ through ____ in the sum of \$____.

Dated _____(month\day\year).

(Auditor's Seal)

County _____

By _____

County Auditor

Section 8. Effective date.

This bill takes effect on January 1, 2012.

Legislative Review Note
as of 1-28-11 3:09 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 105

SHORT TITLE: **Delinquent Property Tax Certificates**

SPONSOR: **Froerer, G.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.