

No. 336, S.]

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CHAPTER 203

AN ACT to amend 75.521 (3) (a) (intro. par.) and 4 and (b), (4), (5), (6) (first and second pars.), (9), (10), (11), (12) and (14a) of the statutes relating to in rem tax deed proceedings.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

75.521 (3) (a) (intro. par.) and 4 and (b), (4), (5), (6) (first and second pars.), (9), (10), (11), (12) and (14a) of the statutes are amended to read:

75.521 (3) COMMENCEMENT OF PROCEEDING TO FORECLOSE TAX LIEN.
(a) (intro. par.) Whenever any * * * land has been sold to the county for delinquent taxes * * * and 3 * * * years * * * have elapsed since the date of the tax sale certificate the treasurer * * * may file in the office of the clerk of the circuit court of such county, one or more lists of parcels of property affected by unpaid tax liens as shown on the delinquent tax rolls in said treasurer's office. Such parcels shall be numbered consecutively. Such list shall be known and designated as the "List of Tax Liens of ----- County Being Foreclosed by * * * Proceeding in Rem 19-----, No. -----" and shall bear the following caption:
"STATE OF WISCONSIN: CIRCUIT COURT: ----- COUNTY
In the matter of the foreclosure of tax liens pursuant to section 75.521 Wisconsin Statutes by ----- County, List of Tax Liens for 19-----, Number -----."

Such list shall contain as to each parcel, the following:

4. A petition to the court for judgment vesting title to each of said parcels of land in the county, as of the date of entry of judgment * * * and barring any and all claims whatsoever of the former owner or any person claiming through and under him * * * since the date of filing the list of tax liens in the office of the clerk of the circuit court * * *.

(b) Such list of tax liens shall be verified by the affidavit of the county treasurer and shall be posted in his office. The filing of such list of tax liens in the office of the clerk of the circuit court * * * shall constitute and have the same * * * effect as the filing and recording in the office of the register of deeds of such county of a separate and individual notice of the pendency of such * * * *proceeding* as to each parcel described in such list, and likewise, notwithstanding any other provision of law, shall constitute the commencement of * * * *a special proceeding* by the county against each parcel of real estate therein described and have the same * * * effect as the filing of an individual and separate *petition or complaint* by the county against each parcel of real estate therein described to enforce the payment of the tax liens against such property.

(4) Each clerk of the circuit court with whom such list of tax liens is filed, shall index it *by year and list number, and alphabetically by the names of those set forth in the list, pursuant to sub. (3) (a) 2*, in a separate book kept for that purpose and such clerk shall be entitled to a fee of \$3 for such receiving, filing and indexing of each such list, in lieu of any other fees to which he might otherwise be entitled for such services. The circuit court of such county in which such delinquent list is filed * * * is hereby given jurisdiction of the * * * *proceeding* authorized by this section.

(5) Every person, including any municipal taxing district other than the one foreclosing, having any right, title or interest in, or lien upon, any parcel described in such list may redeem such parcel by paying all of the sums mentioned in such list of tax liens together with interest thereon, or such portion thereof as * * * *is due* for the interest therein or part thereof owned by such person which amount shall be determined by the county treasurer on application, before the expiration of the redemption period mentioned in the notice published pursuant to sub. (6), or may serve a verified answer upon the county treasurer of such county, as provided in sub. (7). The caption of such answer shall contain a reference to the number or numbers of the parcels concerned as shown by the treasurer's list. Such answer must be served on said county treasurer and filed in the office of the clerk of the circuit court within 30 days after the date mentioned in the notice published pursuant to sub. (6), as the last day for redemption. In the event of the failure to redeem or answer by any person having the right to redeem or answer within the time herein limited, such person, and all persons claiming under and through him, from and after the date of the filing of said list of tax liens with the clerk of the circuit court * * *, shall be forever barred and foreclosed of all his right, title and interest in and to the parcel described in such list of tax liens and a judgment in foreclosure may be taken as herein provided. Upon redemption as permitted by this section, the person redeeming shall be entitled to a certificate evidencing such redemption from the county treasurer of such county, describing the property in the same manner as it is described in such list of tax liens and the fact of such redemption shall be noted upon the tax rolls in the office of the county treasurer, who shall file a certified copy of such redemption certificate with the clerk of the circuit court and upon such filing, such clerk shall note the word "Redeemed" and the date of such filing opposite the description of said parcel on such list of tax liens. Such notation shall operate to cancel the notice of pendency of * * * *proceeding* with respect to such parcel or such portion thereof * * *. The person so redeeming shall be entitled to add the amount paid in redemption to the face amount of any lien which he may have against said lands *and* to have interest thereon until paid.

(6) (first par.) Upon the filing of such list in the office of the clerk of the circuit court, the county treasurer forthwith shall prepare a notice

that such list of tax liens and petition has been so filed * * * and a copy thereof posted in the office of said county treasurer. Such treasurer shall cause such notice, together with the list of tax liens and petition, to be published at least once a week for 3 successive weeks in a newspaper of general circulation published in the English language in such county possessing the qualifications specified in s. 331.20, selected by such treasurer, and if there be none, in at least one such newspaper published in an adjoining county, and if there be no such newspaper, then in 2 newspapers having a general circulation in the county. Such notice shall be in substantially the following form:

NOTICE OF COMMENCEMENT OF * * * *PROCEEDING* IN REM TO
FORECLOSE TAX LIENS BY ----- COUNTY

(Here insert list of tax liens and petition as filed in office of clerk of the circuit court.)

(second par.) TAKE NOTICE that all persons having or claiming to have any right, title or interest in or lien upon the real property described in the list of tax liens, No. -----, on file in the office of the clerk of the circuit court of ----- county, dated -----, and hereinabove set forth, are hereby notified that the filing of such list of tax liens in the office of the clerk of the circuit court of ----- county constitutes the commencement by said ----- county of * * * a *special proceeding* in the circuit court for ----- county to foreclose the tax liens therein described by foreclosure proceeding in rem and that a notice of the pendency of such * * * *proceeding* against each piece or parcel of land therein described was filed in the office of the clerk of the circuit court on ----- (insert date). Such * * * *proceeding* is brought against the real property herein described only and is to foreclose the tax liens described in such list. No personal judgment will be entered herein for such taxes, assessments or other legal charges or any part thereof.

(9) All affidavits of filing, publication, posting, mailing or other acts required by this section, shall be made by the person * * * performing such acts and shall be filed in the office of the the clerk of the circuit court of the county in which the property subject to such tax lien is situated and shall, together with all other documents required in this section, filed in such office, constitute and become part of the judgment roll in such foreclosure * * * *proceeding*.

(10) If a duly verified answer is served upon the county treasurer within the period mentioned in sub. (7), the court shall hear and determine the issues raised by the petition and answer in the same manner and under the same rules as it hears and determines * * * *civil* actions, except as in this section otherwise provided. Upon such trial, proof that such tax or special assessment, together with any interest or penalty which may have been due was paid, or that the property was not subject to tax or special assessment, or that such tax lien is barred by the statute of limitations, shall constitute a complete defense. Whenever an answer is interposed as herein provided, there shall be a severance of the * * * *proceeding* as to any parcel or parcels of land in which such answering defendant has any right, title or interest as alleged in his answer, and as to the other parcels in such list, the * * * *proceeding* shall proceed as provided in sub. (8).

(11) PREFERENCE OVER OTHER PROCEEDINGS AND ACTIONS. Any * * * *proceeding* brought pursuant to this section shall be given preference over all other causes and actions not on trial and no such * * * *proceeding* shall be referred.

(12) (a) * * * The county * * * need not plead or prove the various steps, proceedings and notices for the assessment and levy of the taxes,

assessments or other lawful charges against the lands set forth in the list of tax liens and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or special assessment, because of which said land was not liable to taxation or special assessment, must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense.

(b) * * * This section shall apply to and be valid and effective with respect to all defendants even though one or more be infants, incompetents, absentees or nonresidents of the state of Wisconsin, provided that a guardian ad litem shall be appointed to serve for all persons known or unknown who have or may have an interest in the lands described in any list and who are or may be minors or incompetents at the date of filing such list. Such guardian ad litem may be appointed by the court without notice, and the fee for his services as fixed by the court shall be paid by the county.

(14a) Any person who was the owner of any right, title or interest in land which * * * was lost by judgment of foreclosure as provided in this section may within 2 years from the date of entry of such judgment, in the cases hereinafter mentioned other than fraud and within 6 years in the case of fraud, commence an action in the circuit court against the county to recover the fair market value of * * * his interest therein at the date of entry of said judgment of foreclosure in rem. If the court * * * determines that such person's right, title and interest in said land was unjustly foreclosed and lost because (a) * * * said person's interest in such lands was not subject to taxation or special assessment at the time of the levy of the tax for nonpayment of which said lands were foreclosed, or (b) that in fact such tax was paid by said owner, or (c) that the tax lien upon which the judgment of foreclosure in rem was based was barred by the statute of limitations, or (d) if such person lost said property through fraud without fault on his part, the court shall determine the fair market value of said land or of said person's interest therein as hereinabove set forth. *The fair market value shall not exceed the amount arrived at by dividing the assessed valuation of such lands in the year in which such judgment in rem was entered by the percentage ratio of real estate assessments prevailing for the taxing district in which the lands were located as set forth in the equalization for state tax purposes of the same year * * *. The court shall award judgment to such plaintiff in such amount, together with a reasonable attorney's fees to be fixed by the court, and the plaintiff's costs and disbursements of such action. The amount awarded the plaintiff shall be reduced * * * by the total amount due, as of the date of entry of such judgment, for all current taxes and upon all tax sales certificates held by the county on such date that the court shall find were valid. Upon payment of the judgment the county may charge back as a tax to any taxing district the amount which such district received from the county in payment of taxes and interest on said land either by distribution of proceeds of sale thereof by the county or through other payment by the county to the extent that it exceeds the amount distributable to such district had the same been based upon the payment of the taxes and interest found by the court to be properly payable at the time of the entry of the judgment of foreclosure and applied in reduction of the amount awarded to the plaintiff hereunder.*

Approved June 13, 1957.