

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box
Filing Date

FILED

Nov 29 10 38 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Denied
1/10/95

NOTICE OF AN EMERGENCY RULE

AGENCY: State Auditor's Office
Division of County Collectors TITLE NUMBER: 155

CITE AUTHORITY: WV Code §11A-3-33; State Human Rights Commission v Pauley
212 S E 2d 77 (1975)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1 (one)

TITLE OF RULE BEING FILED AS AN EMERGENCY: Properties purchased by individuals
at Delinquent and Nonentered Land Sales who fail to meet the requirements
to secure a deed shall be again subject to sale under §11A-3-45 and §11A-3-48
of the Code of West Virginia

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY
AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

See Attached Statement

Use additional sheets if necessary

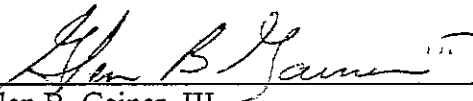

Signature

3.80

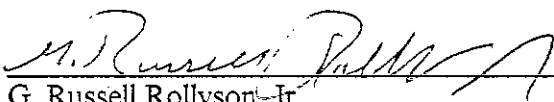
Notice of Agency Adoption

Legislative Rule: Properties purchased by individuals at Delinquent and Nonentered Land Sales who fail to meet the requirements to secure a deed shall again be subject to sale under §11A-3-45 and §11A-3-48 of the code of West Virginia.

The above titled legislative rule constitutes the official rule adopted by the Division of County Collections in the State Auditor's Office on the 30th day of November, 1994, and filed pursuant to law in the office of the Secretary of State, State of West Virginia.



Glen B. Gainer, III
State Auditor and
Commissioner of Delinquent and Nonentered Lands



G. Russell Rollyson, Jr.
Director, County Collections Division

11-30-94
Entered

**State Auditor
Title 155
Series 1**

FACTS AND CIRCUMSTANCES CONSTITUTING EMERGENCY

There is an immediate need for the emergency rule allowing the properties purchased by individuals at Delinquent and Nonentered Land Sale who fail to meet the requirements to secure a deed set forth in §11A-3-52 of the code of West Virginia to again be subject to sale pursuant to §11A-3-45 and §11A-3-48. The need for this rule is a direct result of the changes that were made in the law by the adoption of H. B. 4043. This is evident in the number of properties purchased by individuals who failed to meet the requirements to secure a deed. This creates a situation in which those individual properties remain in a state of uncertainty. §11A-3-52 of the code of West Virginia states that for failure to meet the requirements for securing a deed, the purchaser shall lose all the benefits of his or her purchase. Unlike the Sheriff's tax sale, in the Deputy Commissioner's tax sale there is no requirement that the minimum bid be in the amount of taxes, interest and charges due on the date of the sale. In most cases that amount will not be achieved at a Deputy Commissioner's Sale. Thus it cannot be said that a purchaser is paying the taxes and therefore the property should revert back to the former owner should the purchaser fail to secure a deed. Furthermore, §11A-3-56 of the code of West Virginia states that an owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued. Therefore, if the purchaser loses all rights for failure to meet the requirements of securing a deed, for whatever reason, and if the property can still be redeemed up to a time where a tax deed is issued, what would then be the status of this property under H.B. 4043? That is the precise reason that this emergency rule is required. This rule proposes that properties that fall under this category shall be again subject to sale under §11A-3-45 and §11-3-48 of the code of West Virginia. Failure to address this rule in a favorable light will result in individual counties losing much needed tax revenue by not making the properties tax producing more quickly and create a nightmare for title attorneys. As stated in §11A-3-1 of the code of West Virginia in the Declaration of Legislative Purpose and Policy for H.B. 4043:

"... One of the purposes of this article is to provide for the transfer of delinquent and nonentered lands to those more responsible to, or better able to bear, the duties of citizenship than were the former owners."

§11A-3-33 of the code of West Virginia empowers and requires the "Auditor to administer and carry into execution the laws with reference to delinquent and nonentered lands. The Auditor on behalf of the state shall have power to hold and manage such lands and to exercise all other powers incident to the powers and duties conferred upon by this article."

For the foregoing reasons, this proposed Legislative rule is necessary for the immediate preservation of public welfare and to prevent substantial harm to the public interest.

The sole purpose of this rule is to allow the Deputy Commissioners of Delinquent and Nonentered Lands to make those properties that individual purchased at Delinquent and Nonentered Land Sale, but fail to meet the requirements for securing a deed, again subject to sale under §11A-3-45 and §11A-3-48 of the code of West Virginia.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Properties purchased by individuals at Delinquent and Nonentered Land Sales who fail to meet the requirements to secure a deed shall be subject to sale under §11A-3-45 and §11A-3-48 of the code of W.V.

Type of Rule: Legislative Interpretive Procedural

Agency: Division of County Collections
State Auditor's Office

Address: Building 1, Room W-212
1900 Kanawha Boulevard, East
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL NOTE		
	Increase	Decrease	Current	Next	Thereafter
	\$	\$	\$	\$	\$
Estimated Total Cost					
Personal Services	N/A	N/A	N/A	N/A	N/A
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This rule is a revenue enhancement with no increase in cost to the Auditor's Office.

3. Objective of these rules:

To better serve the citizens of West Virginia.

4. Explanation of overall economic impact of proposed rule:

A. Economic Impact on State Government.

Monies that received by the State Auditor's Office as a result of this rule will be credited to the proper accounts in accordance with §11A-3-64 of the code of W. V.

B. Economic Impact on Political Subdivision; Specific Industries; Specific groups of citizens.

The Sheriff and Treasurer of the Counties will receive their portion of the proceeds of the Deputy Commissioners' sales on the first sale, as well as, the second sale or redemption, as a result of this rule. Out of the Sheriff's portions of the proceeds monies will go to the proper accounts in accordance with §11A-3-64.


In addition this rule will make the property tax producing sooner.

C. Economic Impact on Citizens/Public at Large.

It will allow individuals to purchase property more quickly.

Date: 11-30-74

Signature of Agency or Authorized Representative



Glen B. Gainer, III

State Auditor

and

Commissioner of Delinquent and Nonentered Lands

DATE: November 30, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Glen B Gainer, III, State Auditor

EMERGENCY RULE TITLE: Properties purchased by individuals at Delinquent and Nonentered Land Sales who fail to meet the requirements to secure a deed shall be subject to sale under §11A-3-45

~~1. -- Date of Filing --~~ and 11A-3-48 again of the Code of West Virginia

1. Date of Filing: November 30, 1994

2. Statutory authority for promulgating emergency rule:

WV Code §11A-3-33; State Human Right Commission v Pauley
212 S E 2d 77 (1975)

3. Date of filing of proposed legislative rule: November 30, 1994

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

No

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See Attached Sheet

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

No

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Attached Sheet

FILED

Nov 29 10 38 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**TITLE 155
EMERGENCY LEGISLATIVE RULE
STATE AUDITOR
COUNTY COLLECTIONS DIVISION**

**SERIES 1
PROPERTIES PURCHASED BY INDIVIDUALS AT
DELINQUENT AND NONENTERED LAND SALES WHO
FAIL TO MEET THE REQUIREMENTS TO SECURE A
DEED SHALL BE AGAIN SUBJECT TO SALE UNDER §11A-
3-45 AND §11A-3-48 OF THE CODE OF WEST VIRGINIA**

§155-1-1. General.

- 1.1. Scope This legislative rule establishes that properties purchased by individuals at Delinquent and Nonentered Land Sales, who failed to meet the requirements to secure a deed shall be again subject to sale under §11A-3-45 and §11A-3-48 of the code of West Virginia.
- 1.2. Authority W.V. Code §11A-3-33; State Human Rights Commission v. Pauley, 212 S.E.2d 77(1975).
- 1.3. Filing Date _____.
- 1.4. Effective Date _____.

§155-1-2. Properties purchased by individuals at Delinquent and Nonentered Land Sales who fail to meet the requirements to secure a deed shall be again subject to sale pursuant to §11A-3-45 and §11A-3-48 of the code of West Virginia.

- 2.1. When individual purchase properties at Delinquent and Nonentered Land Sales and fail to meet the requirements set forth in §11A-3-52 of the code of West Virginia to secure a deed, the property shall be again subject to sale under §11A-3-45 and §11A-3-48.
- 2.2. Any sale conducted under this rule must comply with all provisions in §11A-3-45 and §11A-3-48 of said code.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
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Executive Assistant

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

January 10, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

OFFICE OF THE
SECRETARY OF STATE
JAN 10 12 39 PM '95
FILED

AGENCY: Auditor's Office

RULE: New Rule, Series 1 Properties purchased by individuals at delinquent and nonentered land sales who fail to meet the requirements to secure a deed shall be again subject to sale under §11A-3-45 and §11A-3-4 of the Code of West Virginia

DATE FILED AS AN EMERGENCY RULE: November 29, 1994

DECISION NO. 2-95

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be **disapproved**. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

EMERGENCY RULE DECISION (ERD 2-95)

AGENCY: Auditor's Office

RULE: New Rule, Series 1, Properties purchased by individuals at delinquent and nonentered land sales who fail to meet the requirements to secure a deed shall be again subject to sale under §11A-3-45 and §11A-3-4 of the Code of West Virginia

FILED AS AN EMERGENCY RULE: November 29, 1994

- par. 1 The State Auditor's Office (Auditor) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a)(b)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Auditor filed this emergency rule with supporting documents with the Secretary of State November 29, 1994 and with the LRMRC November 29, 1994.

par. 7 It is the determination of the Secretary of State that the Auditor has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §11A-3-33 reads:

The state auditor shall ex officio be state commissioner of delinquent and nonentered lands. The term "auditor" whenever used in this chapter in connection with delinquent, nonentered, escheated or waste and unappropriated lands, shall be construed to refer to the auditor in his capacity as state commissioner of delinquent and nonentered lands.

The auditor is empowered, and it shall be his duty, through the land department in his office, to administer and carry into execution the laws with reference to such lands. The auditor on behalf of the state shall have power to hold and manage such lands, and to exercise all other powers incident to the powers and duties conferred upon him by this article.

par. 9 It is the determination of the Secretary of State that the Auditor has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Auditor are as follows:

There is an immediate need for the emergency rule allowing the properties purchased by individuals at delinquent and nonentered land sale who fail to meet the requirements to secure a deed set forth in §11A-3-52 of the code to again be subject to sale pursuant to §11A-3-45 and §11A-3-48. The need for this rule is a direct result of the changes that were made in the law by the adoption of H.B. 4043. This is evident in the number of properties purchased by individuals who failed to meet the requirements to secure a deed. This creates a situation in which those individual properties remain in a state of uncertainty. §11A-3-52 of the code states that for failure to meet the requirements for securing a deed,

the purchaser shall lose all the benefits of his or her purchase. Unlike the Sheriff's tax sale, in the Deputy Commissioner's tax sale there is no requirement that the minimum bid be in the amount of taxes, interest and charges due on the date of the sale. In most cases that amount will not be achieved at a Deputy Commissioner's Sale. Thus it cannot be said that a purchaser is paying the taxes and therefore the property should revert back to the former owner should the purchaser fail to secure a deed. Furthermore, §11A-3-56 of the code states than an owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued. Therefore, if the purchaser loses all rights for failure to meet the requirements of securing a deed, for whatever reason, and if the property can still be redeemed up to a time where a tax deed is issued, what would then be the status of the property under HB 40403? That is the precise reason that this emergency rule is required. This rule proposes that properties that fall under this category shall be again subject to sale under §11A-3-45 and §11-3-48 of the code. Failure to address this rule in a favorable light will result in individual counties losing much needed tax revenue by not making the properties tax producing more quickly and create a nightmare for title attorneys. As stated in §11A-3-1 of the code in the declaration of Legislative purpose and policy for HB 4043.

"One of the purposes of this article is to provide for the transfer of delinquent and nonentered lands to those more responsible to, or better able to bear, the duties of citizenship then were the former owners."

§11A-3-33 of the code empowers and requires the "Auditor to administer and carry into execution the laws with reference to delinquent and nonentered lands. The Auditor on behalf of the state shall have power to hold and manage such lands to exercise all other powers incident to the powers and duties conferred upon by this article."

For the foregoing reasons, this proposed Legislative rule is necessary for the immediate preservation of public welfare and to prevent substantial harm to the public interest.

The sole purpose of this rule is to allow the Deputy Commissioners of delinquent and nonentered lands to make those properties that individual purchased at delinquent and nonentered land sale, but fail to meet the requirements for securing a deed, again subject to sale under §11A-3-45 and §11A-3-48 of the code.

par. 13

It is the determination of the Secretary of State that this proposal is more of an interpretive nature and does not qualify under the definition of an emergency as defined in §29A-3-15(g).

par. 14

This decision shall be cited as Emergency Rule Decision 2-95 or ERD 2-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Auditor's Office, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED
JAN 10 12 39 PM '95
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE