

54:5-87

LEGISLATIVE HISTORY CHECKLIST
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(Foreclosure--liens)

NJSA: 54:5-87

LAWS OF: 1995 **CHAPTER:** 326

BILL NO: S1456

SPONSOR(S): Connors

DATE INTRODUCED: September 26, 1994

COMMITTEE: **ASSEMBLY** ---

SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** November 30, 1995

SENATE: June 26, 1995

DATE OF APPROVAL: January 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[SECOND REPRINT]

SENATE, No. 1456

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 26, 1994

By Senator CONNORS, Assemblymen Armone and Connors

1 AN ACT concerning certain lien foreclosure complaints and
2 amending R.S.54:5-87 and P.L.1948, c.96.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.54:5-87 is amended to read as follows.

7 54:5-87. The Superior Court, in an action to foreclose the
8 right of redemption, may give full and complete relief under this
9 chapter, in accordance with other statutory authority of the
10 court, to bar the right of redemption and to foreclose all prior or
11 subsequent alienations and descents of the lands and
12 encumbrances thereon, except subsequent municipal liens, and to
13 adjudge an absolute and indefeasible estate of inheritance in fee
14 simple, to be vested in the purchaser. The judgment shall be final
15 upon the defendants, their heirs, devisees and personal
16 representatives, and their or any of their heirs, devisees,
17 executors, administrators, grantees, assigns or successors in
18 right, title or interest and no application shall be entertained to
19 reopen the judgment after three months from the date thereof,
20 and then only upon the grounds of lack of jurisdiction or fraud in
21 the conduct of the suit. Such judgment and recording thereof
22 shall not be deemed a sale, transfer, or conveyance of title or
23 interest to the subject property under the provisions of the
24 "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq.

25 In the event that any federal statute or regulation requires a
26 judicial sale of the property in order to ²debar and² foreclose a
27 mortgage interest or ²any² other lien held by ²[any agency of]²
28 the United States ²[,] or any agency or instrumentality thereof,
29 then the tax lien may be foreclosed in the same manner as a
30 mortgage, and² the final judgment shall provide for the issuance
31 of a writ of execution to the sheriff of the county wherein the
32 property is situated and the holding of a judicial sale as in the
33 manner of the foreclosure of a mortgage.

34 (cf: P.L.1994, c.32, s.11)

35 2. Section 6 of P.L.1948, c.96 (C.54:5-104.34) is amended to
36 read as follows:

37 6. No action may be instituted under this act on any tax sale
38 certificate unless:

39 a. More than 6 months have expired from the date of the tax
40 sale out of which any such certificate arose; and

41 b. All or any portion of the general land taxes levied and
42 assessed against the land for 21 months next preceding the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCO committee amendments adopted January 12, 1995.

² Assembly floor amendments adopted November 9, 1995.

1 commencement of the action, other than those subject to
2 payment by installments authorized by a resolution adopted
3 pursuant to R.S.54:5-65, remains unpaid.

4 Such action on a tax sale certificate may include ¹[separate
5 counts for foreclosure on] the lien for unpaid taxes,¹ utility liens
6 or any other municipal liens ¹in conjunction with or independent
7 of one another¹.

8 (cf: P.L.1974, c.91, s.5)

9 3. Section 36 of P.L.1948, c.96 (C.54:5-104.64) is amended to
10 read as follows:

11 36. (a) The judgment shall give full and complete relief, in
12 accordance with the provisions of this act, and in accordance
13 with any other statutory authority, to bar the right of
14 redemption, and to foreclose all prior or subsequent alienations
15 and descents of the lands and encumbrances thereon, and to
16 adjudge an absolute and indefeasible estate of inheritance in fee
17 simple in the lands therein described, to be vested in the plaintiff.

18 (b) Such judgment shall be binding and final upon all persons
19 having a vested or contingent title or interest in or lien or claim
20 upon or against said lands, including the State of New Jersey, and
21 any agency and political subdivision thereof, and their heirs,
22 devisees and personal representatives, and their, or any of their
23 heirs, devisees, executors, administrators, grantees, assigns or
24 successors in right, title or interest, notwithstanding any infancy
25 or incompetency of such person or persons, and upon all other
26 persons, their heirs, devisees and personal representatives and
27 their or any of their heirs, devisees, executors, administrators,
28 grantees, assigns or successors in right, title or interest.

29 (c) In the event that any federal statute or regulation requires
30 a judicial sale of the property in order to ²debar and² foreclose a
31 mortgage interest or ²any² other lien held by ²[any agency of]²
32 the United States ²[,] or any agency or instrumentality thereof,
33 then the tax lien may be foreclosed in the same manner as a
34 mortgage, and² the final judgment shall provide for the issuance
35 of a writ of execution to the sheriff of the county wherein the
36 property is situated and the holding of a judicial sale as in the
37 manner of the foreclosure of a mortgage.

38 (cf: P.L.1953, c.51, s.88)

39 4. This act shall take effect immediately.

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44 _____
45 Permits conclusion of foreclosure process involving subordinate
federal lien and foreclosure of utility lien by municipalities.

1 Such action on a tax sale certificate may include separate
2 counts for foreclosure on utility liens or any other municipal liens.
3 (cf: P.L.1974, c.91, s.5)

4 3. Section 36 of P.L.1948, c.96 (C.54:5-104.64) is amended to
5 read as follows:

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7 accordance with the provisions of this act, and in accordance
8 with any other statutory authority, to bar the right of
9 redemption, and to foreclose all prior or subsequent alienations
10 and descents of the lands and encumbrances thereon, and to
11 adjudge an absolute and indefeasible estate of inheritance in fee
12 simple in the lands therein described, to be vested in the plaintiff.

13 (b) Such judgment shall be binding and final upon all persons
14 having a vested or contingent title or interest in or lien or claim
15 upon or against said lands, including the State of New Jersey, and
16 any agency and political subdivision thereof, and their heirs,
17 devisees and personal representatives, and their, or any of their
18 heirs, devisees, executors, administrators, grantees, assigns or
19 successors in right, title or interest, notwithstanding any infancy
20 or incompetency of such person or persons, and upon all other
21 persons, their heirs, devisees and personal representatives and
22 their or any of their heirs, devisees, executors, administrators,
23 grantees, assigns or successors in right, title or interest.

24 (c) In the event that any federal statute or regulation requires
25 a judicial sale of the property in order to foreclose a mortgage
26 interest or other lien held by any agency of the United States, the
27 final judgment shall provide for the issuance of a writ of
28 execution to the sheriff of the county wherein the property is
29 situated and the holding of a judicial sale as in the manner of the
30 foreclosure of a mortgage.

31 (cf: P.L.1953, c.51, s.88)

32 4. This act shall take effect immediately.
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35 STATEMENT 36

37 This bill permits the conclusion of a foreclosure process
38 involving a subordinate federal lien and foreclosure of a utility
39 lien by municipalities.

40 Specifically, this bill amends the current law to provide for a
41 "judicial sale" if a federal lien is involved so that the final
42 judgment of foreclosure can provide for the type of judicial sale
43 required by federal statute and case law. Federal law while
44 permitting the foreclosure of a prior lien precludes the wiping out
45 of a federal lien unless the law provides for a judicial sale as
46 there would be in the case of a foreclosure of a mortgage. This
47 means that there must be a sheriff's sale as a precondition to the
48 barring of the federal lien. In the case of the foreclosure of a
49 mortgage, such judicial sale exists. However, in the case of the
50 foreclosure of a municipally held tax sale certificate, no judicial
51 sale is provided for. Therefore, even though municipalities have
52 the right of foreclosure and priority, they cannot conclude the
53 same because no judicial sale is available to the Federal
54 Government.

1 Further, this bill amends current law to permit a municipality
2 to foreclose a tax lien based solely upon an unpaid utility charge
3 or other similar lien. Under current law the In Rem Foreclosure
4 Act is available only in the event that unpaid real estate taxes
5 form all or part of the municipal lien. Should a utility lien or
6 other similar lien not be coupled with a lien for unpaid real estate
7 taxes, the Act is not applicable.

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12 Permits conclusion of foreclosure process involving subordinate
13 federal lien and foreclosure of utility lien by municipalities.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 936

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

The Senate Community Affairs Committee reports favorably Assembly Bill No. 936(1R).

This bill includes a combination of technical and substantive amendments to various sections of municipal tax collection and lien laws. Several of the amendments are in response to various federal and State court decisions concerning New Jersey's current municipal tax sale procedures.

The bill amends R.S.54:4-64 to change the date by which the tax collector in municipalities operating on the State fiscal year must mail tax bills. Current law requires that bills be mailed by October 1 of the pretax year. The bill would extend that deadline to "at least two months before the first installment of taxes for the calendar year falls due." Since the first installment currently falls due on February 1, this language would require that bills be mailed by December 1 of the pretax year.

The bill amends R.S.54:4-65 to require that a tax bill, or form mailed with the tax bill, shall state the dates upon which each tax installment is due. The bill amends R.S.54:4-66, R.S.54:4-67 and R.S.54:5-29 to clarify when a property is considered delinquent in property taxes, how long the property remains in delinquency and the order in which receipts are applied to a tax delinquency. Under the bill, a property would remain delinquent until all unpaid taxes, including subsequent taxes and liens, including interest on those taxes and liens, are brought current. The issuance of a tax sale certificate by a municipality would not extinguish the delinquent status of the property. The bill amends R.S.54:4-67 to clarify that the interest rate is calculated from the date that the tax was payable until the date that the tax collector will be next authorized to turn over the money to the lienholder. In many municipalities the tax collector does not disburse money to a lienholder until authorized by the governing body at its monthly meeting.

The bill amends R.S.54:5-6 to establish that taxes on lands shall be a continuous lien and all subsequent taxes, liens, interest, penalties and costs which thereafter accrue are a part of the continuous lien. Under current law taxes become a lien on the property on January 1 of the year for which they are assessed. The federal bankruptcy courts have indicated that under current New Jersey law post petition taxes do not become liens on the property.

The bill amends R.S.54:5-11 to remove the requirement that the official municipal tax lien searcher have a separate bond apart from the municipality's general error and omissions liability insurance policy. Because lien searchers are municipal employees who are no longer paid directly from search fees, the bill states that no personal liability shall attach or be chargeable to the lien official.

The bill amends R.S.54:5-29 to direct the tax collector to post receipts from a taxpayer received prior to a scheduled tax sale, representing the full amount advertised in the sale plus any interest for other delinquencies, first to interest on the taxes and liens, followed by the oldest delinquencies to the most recent delinquency, and then to the costs and penalties. This payment by the taxpayer and allocation by the tax collector would cause the property to be removed from the tax sale.

The bill amends R.S.54:5-54 to limit persons who may redeem land sold for municipal taxes or other municipal charges to the owner, heirs of the owner, a mortgagee, a holder of a prior outstanding tax sale certificate, or an occupant of the land. Under current law any person having an interest in the land, which could include such persons as bail bondsmen, can redeem a property implying that such persons must also be given notice of the proceedings. The bill also deletes specific references to time periods within which a property may be redeemed since those limitations are also contained in R.S.54:5-86.

The bill amends R.S.54:5-61 to clarify the fees and costs that are recoverable by the holder of a tax sale certificate upon redemption by the owner or other person having a right of redemption pursuant to R.S.54:5-54.

The bill deletes subsection a. of R.S.54:5-77 and repeals R.S.54:5-78 and R.S.54:5-80 because federal and State court decisions have held that the notice and redemption provisions contained therein did not provide adequate due process.

The bill amends R.S.54:5-87, R.S.54:5-104 and sections 4 and 37 of P.L.1948, c.96 (C.54:5-104.32 and 54:5-104.65) to exclude a judgment in an action to foreclose and a judgment barring rights of redemption from being considered a sale, transfer, or conveyance of title or interest under the provisions of the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq. These amendments are intended to prevent the bankruptcy courts from using the "uniform fraudulent conveyance law" to conclude that the foreclosure and redemption bar judgments are not final and could therefore be set aside by the bankruptcy trustee.

The bill amends R.S.54:5-91 to clarify that the search for an unknown owner only need be traced back 60 years.

Finally, the bill amends section 7 of P.L.1965, c.187 (C.54:5-97.1) to require a plaintiff other than a municipality to provide written notice of foreclosure to all persons entitled to redeem at least 30 days prior to the filing of the foreclosure action as a prerequisite for the plaintiff's collection of search fees, counsel fees and certified mail fees.

This bill is identical to the Senate Committee Substitute for Senate Bills No 529 and 599, which was favorably reported by the Senate Community Affairs Committee this date.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1456

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 12, 1995

The Senate Community Affairs Committee reports favorably Senate Bill No. 1456 with committee amendments.

As amended by the committee, this bill would permit the foreclosure of municipal liens, independent of in rem liens for real estate taxes, and would permit the conclusion of lien foreclosure complaints by amending R.S.54:5-87 and sections 6 and 36 of P.L.1948 chapter 96 (C.54:5-104.34 and C.54:5-104.64).

Specifically, the bill would permit the conclusion of a foreclosure process involving a subordinate federal lien and foreclosure of a utility lien by municipalities. It would amend current law by providing for a "judicial sale" if a federal lien is involved so that the final judgment of foreclosure can provide for the type of judicial sale required by federal statute and case law. Federal law while permitting the foreclosure of a prior lien precludes the wiping out of a federal lien unless the law provides for a judicial sale as there would be in the case of a foreclosure of a mortgage. This means that there must be a sheriff's sale as a precondition to the barring of the federal lien. In the case of the foreclosure of a mortgage, such judicial sale exists. However, in the case of the foreclosure of a municipally held tax sale certificate, no judicial sale is provided for. Therefore, even though municipalities have the right of foreclosure and priority, they cannot conclude the same because no judicial sale is available to the Federal Government.

Further, this bill would permit a municipality to foreclose a tax lien based solely upon an unpaid utility charge or other similar lien. Under current law the In Rem Foreclosure Act is available only in the event that unpaid real estate taxes form all or part of the municipal lien.

The committee amended the bill in order to clarify that under this bill a municipality may take action on a tax sale certificate based upon a utility lien or other municipal lien independent of a lien for unpaid taxes. The amendments also delete reference to separate counts for foreclosure on a lien.