HOUSE BILL NO. 135

INTRODUCED BY LEE, HARDING

IN THE HOUSE

JANUARY 9, 1991 INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

JANUARY 10, 1991 FIRST READING.

JANUARY 15, 1991 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

JANUARY 17, 1991 SECOND READING, DO PASS.

JANUARY 18, 1991 ENGROSSING REPORT.

JANUARY 19, 1991 THIRD READING, PASSED. AYES, 94; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 21, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.

FIRST READING.

MARCH 6, 1991 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 8, 1991 SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 11, 1991

MARCH 9, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

52nd Legislature

LC 0396/01

INTRODUCED BY Lee Harding 1 1 2 2 3 3 A BILL FOR AN ACT ENTITLED: "AN ACT AFFORDING INDIGENT 4 4 PROPERTY OWNERS DUE PROCESS IN TAX DEED PROCEEDINGS BY 5 5 6 REMOVING THE DEPOSIT REQUIREMENTS IF INDIGENCY IS FOUND AND 6 7 BY PROVIDING THAT DEFENSES ARE NOT WAIVED IF THE INDIGENCY 7 8 RESULTS IN AN INABILITY TO PAY THE DEPOSIT; IMPLEMENTING THE 8 9 DECISION OF THE MONTANA SUPREME COURT IN BALL V. GEE, 795 9 P.2D 82, 47 ST. REP. 1196 (1990); AND AMENDING SECTIONS 10 10 15-18-411 AND 15-18-412, MCA." 11 11 12 12 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 14 14 Section 1. Section 15-18-411, MCA, is amended to read: 15 "15-18-411. Action to quiet title to tax deed --15 16 16 notice. (1) (a) In an action brought to set aside or annul 17 17 any tax deed or to determine the rights of a purchaser to 18 18 real property claimed to have been acquired through tax 19 19 proceedings or a tax sale, the purchaser, upon filing an 20 20 affidavit, may obtain from the court an order directed to 21 21 the person claiming to: 22 22 (i) own the property; 23 23 (ii) have any interest in or lien upon the property: 24 24 (iii) have a right to redeem the property; or 25 (iv) have rights hostile to the tax title.

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(b) The person described in subsections (1)(a)(i)
 through (1)(a)(iv) is hereafter referred to as the true
 owner.

4 (c) The <u>Except as provided in subsection (1)(d), the</u>
5 order described in subsection (1)(a) may command the true
6 owner to:

7 (i) deposit with the court for the use of the 8 purchaser:

9 (A) the amount of all taxes, interest, penalties, and 10 costs that would have accrued if the property had been 11 regularly and legally assessed and taxed as the property of 12 the true owner and was about to be redeemed by the true 13 owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements thereon while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

(ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why such payment should not be made.

24 (d) The deposit provided for in subsection (1)(c) may
25 not be required of a person found to be indigent.

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1 (2) The affidavit must list the name and address of the 2 true owner and whether he is in the state of Montana, if 3 known to the plaintiff, or state that the address of the 4 true owner is not known to the plaintiff.

5 (3) (a) The order must be filed with the county clerk 6 and a copy served personally upon each person shown in the 7 affidavit claiming to be a true owner and who is, at that 8 time, known to be in the state of Montana.

9 (b) Jurisdiction is acquired over all other persons by:
10 (i) publishing the order once in the official newspaper
11 of the county;

(ii) posting the order in three public places in thecounty at least 10 days prior to the hearing; and

14 (iii) giving a copy to the county treasurer."

15 Section 2. Section 15-18-412, MCA, is amended to read: 16 "15-18-412. Procedure in tax deed quiet title action. 17 (1) Upon the hearing of the order to show cause, the court 18 has jurisdiction to determine the amount to be deposited and 19 to make an order that the same be paid to the court within a 20 period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsection subsections
(2) (b) and (2)(c), if the amount is not paid within the time
fixed by the court, the true owner is considered to have
waived any defects in the tax proceedings and any right of
redemption. In the event of waiver, the true owner has no

claim of any kind against the state or purchaser and a
 decree must be entered in the action quieting the title of
 the purchaser as against the true owner.

4 (b) The proceedings are void if the taxes were not 5 delinquent or have been paid.

6 (c) A deposit is not required if the true owner is
7 indigent.

8 (3) If payment is made to the court and the true owner
9 is successful in the action and the tax proceedings are
10 declared void, the amount deposited with the court must be
11 paid to the purchaser.

12 (4) If the purported true owner is not successful in 13 the action and the title of the purchaser is sustained, the 14 money must be returned to the purported true owner.

15 (5) In any action brought by a purchaser to quiet 16 title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set 17 forth in one complaint. All persons claiming any title to, 18 19 interest in, or lien upon any of the premises or any part 20 thereof may be joined as defendants, even though their 21 claims are independent, are not in common, and do not cover the same tracts. The procedure in such an action must 22 23 follow, as nearly as practicable, the procedure specified in 24 70-28-101 through 70-28-109. 25 (6) In the final judgment, the court shall also

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determine the rights resulting from any additional taxes on
 the property accruing or being paid by either party during
 the pendency of the suit.

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(7) In the quiet title action, the court has complete 4 5 jurisdiction to fix the amount of taxes that should have 6 been paid, including penalties, interest, and costs, and to 7 determine all questions necessary in granting full relief, 8 including the power to order any assessor or other tax 9 officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the 10 court to do complete justice. Errors may be reviewed on 11 12 appeal from the final judgment."

-End-

52nd Legislature

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APPROVED BY COMMITTEE ON JUDICIARY

1	HOUSE BILL NO. 135	1	(b) The person described in subsections (1)(a)(i)
2	INTRODUCED BY LEE, HARDING	2	through (1)(a)(iv) is hereafter referred to as the true
3		3	owner.
4	A BILL FOR AN ACT ENTITLED: "AN ACT AFFORDING INDIGENT	4	(c) The Except as provided in subsection (1)(d), the
5	PROPERTY OWNERS DUE PROCESS IN TAX DEED PROCEEDINGS BY	5	order described in subsection (1)(a) may command the true
6	REMOVING THE DEPOSIT REQUIREMENTS IF INDIGENCY IS FOUND AND	6	owner to:
7	BY PROVIDING THAT DEFENSES ARE NOT WAIVED IF THE INDIGENCY	7	(i) deposit with the court for the use of the
8	RESULTS IN AN. INABILITY TO PAY THE DEPOSIT; IMPLEMENTING THE	8	purchaser:
9	DECISION OF THE MONTANA SUPREME COURT IN BALL V. GEE, 795	9	 (A) the amount of all taxes, interest, penalties, and
10	P.2D 82, 47 ST. REP. 1196 (1990); AND AMENDING SECTIONS	10	costs that would have accrued if the property had been
11	15-18-411 AND 15-18-412, MCA."	11	regularly and legally assessed and taxed as the property of
12		12	the true owner and was about to be redeemed by the true
13	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	13	owner; and
14	Section 1. Section 15-18-411, MCA, is amended to read:	14	(B) the amount of all sums reasonably paid by the
15	"15-18-411. Action to quiet title to tax deed	15	purchaser following the order and after 3 years from the
16	notice. (1) (a) In an action brought to set aside or annul	16	date of the tax sale to preserve the property or to make
17	any tax deed or to determine the rights of a purchaser to	17	improvements thereon while in the purchaser's possession, a
18	real property claimed to have been acquired through tax	18	the total amount of the taxes, interest, penalties, costs
19	proceedings or a tax sale, the purchaser, upon filing an	19	and improvements is alleged by the plaintiff and as mus
20	affidavit, may obtain from the court an order directed to	20	appear in the order; or
21	the person claiming to:	21	(ii) show cause on a date to be fixed in the order, no
22	(i) own the property;	22	exceeding 30 days from the date of the order, why suc
23	(ii) have any interest in or lien upon the property;	23	payment should not be made.
24	(iii) have a right to redeem the property; or	24	(d) The deposit provided for in subsection (1)(c) ma
25	(iv) have rights hostile to the tax title.	25	not be required of a person found BY THE COURT to b

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3	owner.
4	(c) The Except as provided in subsection (1)(d), the
5	order described in subsection (1)(a) may command the true
6	owner to:
7	(i) deposit with the court for the use of the
8	purchaser:
9	(A) the amount of all taxes, interest, penalties, and
10	costs that would have accrued if the property had been
11	regularly and legally assessed and taxed as the property of
12	the true owner and was about to be redeemed by the true
13	owner; and
14	(B) the amount of all sums reasonably paid by the
15	purchaser following the order and after 3 years from the
16	date of the tax sale to preserve the property or to make
17	improvements thereon while in the purchaser's possession, as
18	the total amount of the taxes, interest, penalties, costs,
19	and improvements is alleged by the plaintiff and as must
20	appear in the order; or
21	(ii) show cause on a date to be fixed in the order, not
22	exceeding 30 days from the date of the order, why such

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1 indigent FOLLOWING AN EXAMINATION INTO THE MATTER BY THE COURT UPON THE REQUEST OF A TRUE OWNER CLAIMING TO BE 2 INDIGENT. 3

(2) The affidavit must list the name and address of the 4 5 true owner and whether he is in the state of Montana, if known to the plaintiff, or state that the address of the 6 true owner is not known to the plaintiff. 7

(3) (a) The order must be filed with the county clerk 8 and a copy served personally upon each person shown in the 9 affidavit claiming to be a true owner and who is, at that 10 time, known to be in the state of Montana. 11

(b) Jurisdiction is acquired over all other persons by: 12 (i) publishing the order once in the official newspaper 13 14 of the county;

(ii) posting the order in three public places in the 15 county at least 10 days prior to the hearing; and 16

(iii) giving a copy to the county treasurer." 17

Section 2. Section 15-18-412, MCA, is amended to read: 18 "15-18-412. Procedure in tax deed quiet title action. 19 (1) Upon the hearing of the order to show cause, the court 20 has jurisdiction to determine the amount to be deposited and 21 to make an order that the same be paid to the court within a 22 period not exceeding 30 days after the order is made. 23

(2) (a) Except as provided in subsection subsections 24 (2)(b) and (2)(c), if the amount is not paid within the time 25

fixed by the court, the true owner is considered to have Ł waived any defects in the tax proceedings and any right of 2 redemption. In the event of waiver, the true owner has no 7 claim of any kind against the state or purchaser and a 4 decree must be entered in the action guieting the title of 5 the purchaser as against the true owner. 6 (b) The proceedings are void if the taxes were not 7 8 delinguent or have been paid. (c) A deposit is not required if the true owner is 9 FOUND BY THE COURT TO BE INDIGENT FOLLOWING AN EXAMINATION 10 INTO THE MATTER BY THE COURT UPON THE REQUEST OF A TRUE 11 OWNER CLAIMING TO BE indigent. 12 (3) If payment is made to the court and the true owner 13 is successful in the action and the tax proceedings are 14 declared void, the amount deposited with the court must be 15 16 paid to the purchaser. (4) If the purported true owner is not successful in 17 the action and the title of the purchaser is sustained, the 18 money must be returned to the purported true owner. 19 (5) In any action brought by a purchaser to quiet 20 title, several tracts of land, whether contiguous or 21 noncontiguous or owned by different defendants, may be set 22 forth in one complaint. All persons claiming any title to, 23 interest in, or lien upon any of the premises or any part 24 thereof may be joined as defendants, even though their

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claims are independent, are not in common, and do not cover
 the same tracts. The procedure in such an action must
 follow, as nearly as practicable, the procedure specified in
 70-28-101 through 70-28-109.

5 (6) In the final judgment, the court shall also
6 determine the rights resulting from any additional taxes on
7 the property accruing or being paid by either party during
8 the pendency of the suit.

9 (7) In the guiet title action, the court has complete jurisdiction to fix the amount of taxes that should have 10 11 been paid, including penalties, interest, and costs, and to 12 determine all questions necessary in granting full relief, 13 including the power to order any assessor or other tax 14 officer to make and certify to the court a corrected or new 15 assessment or to do any other act necessary to enable the 16 court to do complete justice. Errors may be reviewed on 17 appeal from the final judgment."

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HOUSE BILL NO. 135 INTRODUCED BY LEE, HARDING

A BILL FOR AN ACT ENTITLED: "AN ACT AFFORDING INDIGENT 4 5 PROPERTY OWNERS DUE PROCESS IN TAX DEED PROCEEDINGS BY 6 REMOVING THE DEPOSIT REQUIREMENTS IF INDIGENCY IS FOUND AND 7 BY PROVIDING THAT DEFENSES ARE NOT WAIVED IF THE INDIGENCY RESULTS IN AN INABILITY TO PAY THE DEPOSIT: IMPLEMENTING THE 8 DECISION OF THE MONTANA SUPREME COURT IN BALL V. GEE, 795 9 10 P.2D 82, 47 ST. REP. 1196 (1990); AND AMENDING SECTIONS 11 15-18-411 AND 15-18-412, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-18-411, MCA, is amended to read: 14 15 *15-18-411. Action to quiet title to tax deed ---16 notice. (1) (a) In an action brought to set aside or annul 17 any tax deed or to determine the rights of a purchaser to 18 real property claimed to have been acquired through tax 19 proceedings or a tax sale, the purchaser, upon filing an 20 affidavit, may obtain from the court an order directed to 21 the person claiming to:

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1	(b) The person described in subsections (1)(a)(i)			
2	through (1)(a)(iv) is hereafter referred to as the true			
3	owner.			
4	(c) The Except as provided in subsection (1)(d), the			
5	order described in subsection (1)(a) may command the true			
6	owner to:			
7	(i) deposit with the court for the use of the			
8	purchaser:			
9	(A) the amount of all taxes, interest, penalties, and			
10	costs that would have accrued if the property had been			
11	regularly and legally assessed and taxed as the property of			
12	the true owner and was about to be redeemed by the true			
13	owner; and			
14	(B) the amount of all sums reasonably paid by the			
15	purchaser following the order and after 3 years from the			
16	date of the tax sale to preserve the property or to make			
17	improvements thereon while in the purchaser's possession, as			
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20	appear in the order; or			
21	(ii) show cause on a date to be fixed in the order, not			
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8 (3) (a) The order must be filed with the county clerk
9 and a copy served personally upon each person shown in the
10 affidavit claiming to be a true owner and who is, at that
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1 fixed by the court, the true owner is considered to have 2 waived any defects in the tax proceedings and any right of 3 redemption. In the event of waiver, the true owner has no 4 claim of any kind against the state or purchaser and a 5 decree must be entered in the action quieting the title of 6 the purchaser as against the true owner.

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 follow, as nearly as practicable, the procedure specified in
 70-28-101 through 70-28-109.

5 (6) In the final judgment, the court shall also 6 determine the rights resulting from any additional taxes on 7 the property accruing or being paid by either party during 8 the pendency of the suit.

9 (7) In the quiet title action, the court has complete 10 jurisdiction to fix the amount of taxes that should have 11 been paid, including penalties, interest, and costs, and to 12 determine all questions necessary in granting full relief, including the power to order any assessor or other tax 13 officer to make and certify to the court a corrected or new 14 15 assessment or to do any other act necessary to enable the 16 court to do complete justice. Errors may be reviewed on appeal from the final judgment." 17

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1	HOUSE BILL NO. 135	1 (b) The person described in subsections (1)(a)(i)
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