

Assembly Bill No. 261

CHAPTER 288

An act to amend Sections 3712, 3725, and 3731 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 20, 2011. Filed with
Secretary of State September 21, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 261, Dickinson. Property tax: tax-defaulted property.

Existing property tax law generally authorizes a county tax collector to sell tax-defaulted property 5 years or more, or 3 years or more, as applicable, after that property has become tax defaulted. Under existing law, when tax-defaulted property is sold, the deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, with specified exceptions including an exception for specified easements.

This bill would provide that easements of any kind, including prescriptive easements, are included within those specified exceptions to the conveyance of title free of encumbrances.

Existing law provides that a proceeding based on alleged invalidity or irregularity of any proceedings instituted in a sale of tax-defaulted property can only be commenced within one year after the date of execution of the tax collector's deed. Existing law authorizes the board of supervisors to rescind the sale of property sold by tax deed by the tax collector, as provided, when it is determined that the property should not have been sold.

This bill would for sales completed on or after January 1, 2012, instead require any person wishing to have a tax deed sold by the tax collector rescinded due to alleged invalidity or irregularity of any proceeding to first petition the board of supervisors, as provided, to have the tax sale rescinded before the proceeding described above can be commenced in a court, and would require the court proceeding to be commenced within one year of the date the board of supervisors determines that the sale of property sold by a tax deed should not be rescinded.

By imposing new duties upon county officials with respect to tax-defaulted property, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 3712 of the Revenue and Taxation Code is amended to read:

3712. The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

(a) Any lien for installments of taxes and special assessments, that installments will become payable upon the secured roll after the time of the sale.

(b) The lien for taxes or assessments or other rights of any taxing agency that does not consent to the sale under this chapter.

(c) Liens for special assessments levied upon the property conveyed that were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax-defaulted property, and, where a taxing agency that collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.

(d) Easements of any kind, including prescriptive, constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.

(e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded options of any taxing agency to purchase the property or any interest therein for a public purpose.

(f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code.

(g) Any federal Internal Revenue Service liens that, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.

(h) Unpaid special taxes under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Section 53356.1 of the Government Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Section 53356.1 of the Government Code.

SEC. 2. Section 3725 of the Revenue and Taxation Code is amended to read:

3725. (a) A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced in a court if both of the following are satisfied:

(1) The person commencing the proceeding has first petitioned the board of supervisors pursuant to Section 3731 within one year of the date of the execution of the tax collector's deed.

(2) The proceeding is commenced within one year of the date the board of supervisors determines that a tax deed sold under this part should not be rescinded pursuant to Section 3731.

(b) Sections 351 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under this section.

(c) The amendments made to this section by the act adding this subdivision shall apply to sales that are completed on or after January 1, 2012.

SEC. 3. Section 3731 of the Revenue and Taxation Code is amended to read:

3731. (a) When a tax deed to a purchaser of property sold by the tax collector pursuant to this part is recorded and it is determined that the property should not have been sold, the sale may be rescinded by the board of supervisors with the written consent of the county legal adviser and the purchaser of the property or a successor in interest in the property, except a bona fide purchaser for value, under any of the following circumstances:

(1) The property has not been transferred or conveyed by the purchaser at the tax sale to a bona fide purchaser for value.

(2) The property has not become subject to a bona fide encumbrance for value subsequent to the recordation of the tax deed.

(b) If the written consent of the purchaser of the property or a successor in interest is not obtained pursuant to subdivision (a), the sale may be rescinded by the board of supervisors pursuant to the circumstances specified in subdivision (a), if both of the following conditions are met:

(1) Notwithstanding Section 3731.1, a hearing is scheduled before the board of supervisors.

(2) (A) A notification is provided to the purchaser of the property or a successor in interest that contains all of the following information:

(i) The date, time, and place of the hearing.

(ii) A description of the property that was sold.

(iii) The reason for rescinding the sale of the property.

(iv) A statement that a refund will be issued to the purchaser of the property or the successor in interest, if applicable, for the purchase amount of the property plus interest at the county pool apportioned rate as specified in Section 5151 from the date of the purchase of the property.

(B) The tax collector shall send the notice, not less than 45 days prior to the date of the hearing, to the purchaser of the property or a successor in interest by certified mail with return receipt requested. The notice shall be sent to the last known mailing address of the purchaser of the property or a successor in interest.

(c) When the sale of tax-defaulted property is rescinded pursuant to this section, the purchaser or a successor in interest is entitled to a refund of the amount paid as the purchase price plus interest at the county pool apportioned rate as specified in Section 5151 from the date of the purchase of the property after rescission of the tax deed is recorded.

(d) The rescission shall be executed by the county tax collector and, if rescinded pursuant to subdivision (a), also by the purchaser or a successor in interest. The signature of both the county tax collector and the purchaser or a successor in interest shall be acknowledged by the county clerk, without charge, and the county tax collector shall then record the rescission with the county recorder, without charge. When the rescission is recorded, the tax deed becomes null and void as though never issued and all provisions of law relating to tax-defaulted property shall apply to the property.

(e) The holder of a tax certificate who received all or any part of the amount paid by the purchaser or a successor in interest shall not be obligated to make any refund or repayment of any amount to the purchaser, the delinquent taxpayer, the county, or any other person. The tax collector may use amounts on deposit in the Tax Certificate Redemption Fund to make the refund, but only to the extent those amounts were paid to the holder of the applicable tax certificate.

(f) Subdivision (b) shall apply to sales that are completed on or after January 1, 2010.

(g) A proceeding may be commenced in a court pursuant to Section 3725 only if the person commencing the proceeding first petitions the board of supervisors to rescind the sale of a tax deed pursuant to this section.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.