

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 88

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO TAXATION; PROVIDING PROCEDURES FOR THE SALE OF
ABANDONED REAL PROPERTY FOR WHICH DELINQUENT PROPERTY TAX IS
DUE; DEFINING "ABANDONED REAL PROPERTY" IN THE PROPERTY TAX
CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-35-2 NMSA 1978 (being Laws 1973,
Chapter 258, Section 2, as amended by Laws 1994, Chapter 9,
Section 1 and by Laws 1994, Chapter 9, Section 2) is amended to
read:

"7-35-2. DEFINITIONS.--As used in the Property Tax Code:

A. "abandoned real property" means real property:

(1) that is part of a subdivision where the
subdivision has a minimum of five thousand lots in delinquency
on the department's delinquent property tax list as prepared by

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1 the appropriate county treasurer pursuant to Section 7-38-61
2 NMSA 1978 as of January 1, 2019;

3 (2) of which the subdivided lots are vacant;

4 (3) that is part of a subdivision plotted on
5 or before 1980;

6 (4) the property taxes, penalties and interest
7 of which are delinquent for at least ten years; and

8 (5) that does not include property with
9 existing homes, businesses or other habitable structures;

10 ~~[A.]~~ B. "department" or "division" means the
11 taxation and revenue department, the secretary of taxation and
12 revenue or any employee of the department exercising authority
13 lawfully delegated to that employee by the secretary;

14 ~~[B.]~~ C. "director" means the secretary;

15 ~~[C.]~~ D. "livestock" means cattle, buffalo, horses,
16 mules, sheep, goats, swine, ratites and other domestic animals
17 useful to ~~[man]~~ humans;

18 ~~[D.]~~ E. "manufactured home" means a manufactured
19 home as that term is defined in Section 66-1-4.11 NMSA 1978;

20 ~~[E.]~~ F. "net taxable value" means the value of
21 property upon which the tax is imposed and is determined by
22 deducting from taxable value the amount of any exemption
23 authorized by the Property Tax Code;

24 ~~[F.]~~ G. "nonresidential property" means property
25 that is not residential property;

1 ~~[G.]~~ H. "owner" means the person in whom is vested
2 any title to property;

3 ~~[H.]~~ I. "person" means an individual or any other
4 legal entity;

5 ~~[I.]~~ J. "property" means tangible property, real or
6 personal;

7 ~~[J.]~~ K. "residential property" means property
8 consisting of one or more dwellings together with appurtenant
9 structures, the land underlying both the dwellings and the
10 appurtenant structures and a quantity of land reasonably
11 necessary for parking and other uses that facilitate the use of
12 the dwellings and appurtenant structures. As used in this
13 subsection, "dwellings" includes both manufactured homes and
14 other structures when used primarily for permanent human
15 habitation, but the term does not include structures when used
16 primarily for temporary or transient human habitation such as
17 hotels, motels and similar structures;

18 ~~[K.]~~ L. "secretary" means the secretary of taxation
19 and revenue and, except for purposes of Section 7-35-6 NMSA
20 1978 and Paragraphs (1) and (2) of Subsection B of Section
21 ~~[7-38-90]~~ 9-11-6.2 NMSA 1978, also includes the deputy
22 secretary or a division director or deputy division director
23 delegated by the secretary;

24 ~~[L.]~~ M. "tax" means the property tax imposed under
25 the Property Tax Code;

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1 ~~[M.]~~ N. "taxable value" means the value of property
2 determined by applying the tax ratio to the value of the
3 property determined for property taxation purposes;

4 ~~[N.]~~ O. "tax rate" means the rate of the tax
5 expressed in terms of dollars per thousand dollars of net
6 taxable value of property;

7 ~~[O.]~~ P. "tax ratio" means the percentage
8 established under the Property Tax Code that is applied to the
9 value of property determined for property taxation purposes in
10 order to derive taxable value; and

11 ~~[P.]~~ Q. "tax year" means the calendar year."

12 **SECTION 2.** Section 7-38-66 NMSA 1978 (being Laws 1973,
13 Chapter 258, Section 106, as amended by Laws 2001, Chapter 253,
14 Section 2 and by Laws 2001, Chapter 254, Section 2) is amended
15 to read:

16 "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--
17 NOTICE OF SALE.--

18 A. At least twenty days but not more than thirty
19 days before the date of the sale for delinquent taxes, the
20 department shall notify by certified mail, return receipt
21 requested, and, for abandoned real property, an additional
22 letter sent by first class mail, to the address as shown on the
23 most recent property tax schedule, each property owner whose
24 real property will be sold that the owner's real property will
25 be sold to satisfy delinquent taxes, unless:

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1 (1) all delinquent taxes, penalties, interest
2 and costs due are paid by 5:00 p.m. of the day prior to the
3 date of the sale, or, for abandoned real property being sold
4 via an online platform as provided in Subsection D of Section
5 7-38-67.1 NMSA 1978, all delinquent taxes, penalties, interest
6 and costs due are paid by 5:00 p.m. of the day prior to the
7 date the property is offered on the property tax division's
8 website; or

9 (2) an installment agreement for payment of
10 all delinquent taxes, penalties, interest and costs due is
11 entered into with the department by 5:00 p.m. of the day prior
12 to the date of sale in accordance with Section 7-38-68 NMSA
13 1978, or, for abandoned real property sold via an online
14 platform as provided in Subsection D of Section 7-38-67.1 NMSA
15 1978, an installment agreement for payment of all delinquent
16 taxes, penalties, interest and costs due is entered into with
17 the department in accordance with Section 7-38-68 NMSA 1978 by
18 5:00 p.m. of the day prior to the date the property is offered
19 on the property tax division's website.

20 B. The notice shall also:

21 (1) state the amount of taxes, penalties,
22 interest and costs due;
23 (2) state the time and place of the sale;
24 (3) if online, state the date and time the
25 sale begins and expires and the web address of the property tax

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1 division's website where the property being sold will be
2 listed;

3 [~~3~~] (4) describe the real property that will
4 be sold;

5 [~~4~~] (5) inform the property owner of [~~his~~]
6 the property owner's right to [enter into] apply for an
7 installment agreement with the department for payment of
8 delinquent taxes, penalties, interest and costs, in accordance
9 with Section 7-38-68 NMSA 1978;

10 [~~5~~] (6) provide information on the name and
11 phone number of the individual in the department the [~~taxpayer~~]
12 owner can contact to arrange for an installment agreement in
13 accordance with Section 7-38-68 NMSA 1978; and

14 [~~6~~] (7) contain any other information that
15 the department may require by [~~regulation~~] rule.

16 C. At the same time a notice required by Subsection
17 A of this section is sent to the owner of the real property, a
18 notice containing the information set out in Subsection B of
19 this section shall also be sent to each person holding a lien
20 or security interest of record in the property if an address
21 for such person is reasonably ascertainable through a search of
22 the property records of the county in which the property is
23 located.

24 D. Failure of the department to mail a required
25 notice by certified mail, return receipt requested, shall

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1 invalidate the sale; provided, however, that return to the
2 department of the notice of the return receipt shall be deemed
3 adequate notice and shall not invalidate the sale.

4 E. Proof [~~by the taxpayer~~] that all delinquent
5 taxes, penalties, interest and costs had been paid by 5:00 p.m.
6 of the day prior to the date of sale shall prevent or
7 invalidate the sale.

8 F. For abandoned real property sold via an online
9 platform as provided in Subsection D of Section 7-38-67.1 NMSA
10 1978, proof that the owner has paid all delinquent taxes,
11 penalties, interest and costs due by 5:00 p.m. of the day prior
12 to the date the property is offered on the property tax
13 division's website shall invalidate the sale.

14 [~~F.~~] G. Proof [~~by the taxpayer~~] that the [~~taxpayer~~]
15 owner has, by 5:00 p.m. of the day prior to the date of sale,
16 entered into an installment agreement to pay all delinquent
17 taxes, penalties, interest and costs as provided in Section
18 7-38-68 NMSA 1978 and that timely payments under such agreement
19 are being made shall prevent or invalidate the sale.

20 H. For abandoned real property sold via an online
21 platform as provided in Subsection D of Section 7-38-67.1 NMSA
22 1978, proof that the owner has entered into an installment
23 agreement with the department for payment of all delinquent
24 taxes, penalties, interest and costs due in accordance with
25 Section 7-38-68 NMSA 1978 by 5:00 p.m. of the day prior to the

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1 date the property is offered on the property tax division's
2 website shall invalidate the sale.

3 ~~[G.]~~ I. The time requirements of this section are
4 subject to the provisions of Section 7-38-83 NMSA 1978."

5 SECTION 3. A new Section 7-38-67.1 NMSA 1978 is enacted
6 to read:

7 "7-38-67.1. [NEW MATERIAL] SALE OF ABANDONED REAL
8 PROPERTY--NOTICE OF SALE--REQUIREMENTS.--

9 A. Abandoned real property may be sold by special
10 sale.

11 B. Notice of the sale shall be published in a local
12 newspaper within the county where the abandoned real property
13 is located, or in a newspaper published in a county contiguous
14 to or near the county in which the abandoned real property is
15 located, the week immediately preceding the week of the sale.
16 In cases where abandoned real property is offered for sale via
17 an online platform pursuant to Subsection D of this section,
18 the notice of the sale shall be published in a local newspaper
19 within the county where the abandoned real property is located,
20 or in a newspaper published in a county contiguous to or near
21 the county in which the abandoned real property is located, the
22 week immediately preceding the week of the beginning of the
23 continuous online sale. Online sales notices pursuant to this
24 section shall also be published on the property tax division's
25 website. The notice shall:

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- 1 (1) state the time and place of the sale;
 2 (2) if the sale is made via an online sale
 3 pursuant to Subsection D of this section, state the date and
 4 time the sale will begin and expire and the property tax
 5 division's website where the property being sold will be
 6 listed;

7 (3) include the name of the subdivision in
 8 which the abandoned real property is located;

9 (4) state the total minimum bid; and

10 (5) provide the phone number of the property
 11 tax division and the web address where interested buyers may
 12 obtain copies of the list of properties to be sold.

13 C. Abandoned real property may be sold at public
 14 auction either by the department or an auctioneer hired by the
 15 department. The auction shall be held in the county where the
 16 abandoned real property is located at a time and place
 17 designated by the department.

18 D. Abandoned real property may be offered for sale
 19 via an online platform on the property tax division's website,
 20 and notice shall be given pursuant to Subsection B of this
 21 section. The sales of abandoned real property listed on the
 22 property tax division's website may be continuous until
 23 December 31 of the tax year in which the abandoned real
 24 property is offered for sale. For subsequent tax years, notice
 25 shall be given pursuant to Subsection B of this section before

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1 the abandoned real property listed on the property tax
2 division's website can be reoffered for sale.

3 E. Before the sale, the department shall determine
4 a minimum sale price for the abandoned real property. In
5 determining the minimum price, the department shall consider
6 the amount of all delinquent taxes, penalties, interest and
7 costs for which the abandoned real property is being sold. If
8 the department determines the total amount due is in excess of
9 the sale price that could reasonably be made through public
10 auction, the property tax division may offer the abandoned real
11 property for less than the total amount of delinquent taxes,
12 penalties, interest and costs due.

13 F. A sale properly made under the authority of and
14 in accordance with the requirements of this section constitutes
15 full payment of all delinquent taxes, penalties and interest
16 that are a lien pursuant to Section 7-38-48 NMSA 1978 against
17 the abandoned real property at the time of sale, and the sale
18 extinguishes the lien.

19 G. Payment shall be made in full by the close of
20 the public auction before an offer may be deemed accepted by
21 the department. For abandoned real property sold via an online
22 platform pursuant to Subsection D of this section, payment
23 shall be made in full within one business day of the bid being
24 accepted by the department before an offer may be deemed
25 accepted by the department. Receipt of a bid from a buyer by

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1 the department is not acceptance of the bid by the department.
2 The department shall notify the buyer whose bid is accepted by
3 the department, and the one business day payment requirement
4 begins at the time the buyer received notice of acceptance to
5 the buyer whose bid was accepted by the department. Notice of
6 acceptance of a bid sent to a buyer by the department may be
7 sent via email. Failure of a buyer whose bid was accepted by
8 the department and to whom notice was sent by the department to
9 pay the full sales price within one business day invalidates
10 the sale and the property can be reoffered for sale unless the
11 buyer receives an extension to make payment from the
12 department. Requests for time extensions and approvals of time
13 extensions can be made via email.

14 H. The board of trustees of a community land
15 grant-merced governed pursuant to the provisions of Chapter 49,
16 Article 1 NMSA 1978, or by statutes specific to the named land
17 grant-merced, shall be allowed to exercise the right of first
18 offer to purchase the abandoned real property if:

19 (1) the abandoned real property offered for
20 sale is situated within the boundaries of that land
21 grant-merced as shown in the United States patent to the grant;

22 (2) the offer covers all taxes, penalties,
23 interest and costs due on the abandoned real property unless
24 the minimum sales price is reduced below total amounts owed
25 pursuant to Subsection E of this section; and

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1 (3) the land becomes part of the common lands
2 of the land grant-merced.

3 I. In the event that there is a competing interest
4 in the abandoned real property by prior landholders, such as
5 land grant owners, pueblos or nontaxable entities, the
6 secretary shall determine who has the prevailing right of first
7 offer.

8 J. The time requirements of this section are
9 subject to the provisions of Section 7-38-83 NMSA 1978.

10 K. As used in this section, "right of first offer"
11 means the department is obliged to undergo exclusive good faith
12 negotiations with the rights holder before offering abandoned
13 real property for sale to the public."