

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART VI - PARTICULAR PROCEEDINGS
CHAPTER 161 - UNITED STATES AS PARTY GENERALLY

§ 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

- (1) to quiet title to,
- (2) to foreclose a mortgage or other lien upon,
- (3) to partition,
- (4) to condemn, or
- (5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 3720 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises. In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.

(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1986, the amount to be paid for such property shall be the sum of—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 2, 2006 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),
- (2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and
- (3) the amount (if any) equal to the excess of
 - (A) the expenses necessarily incurred in connection with such property, over
 - (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

(e) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer may issue a certificate releasing the property from such lien.

(June 25, 1948, ch. 646, 62 Stat. 972; May 24, 1949, ch. 139, § 119, 63 Stat. 105; Pub. L. 85–508, § 12(h), July 7, 1958, 72 Stat. 348; Pub. L. 86–507, § 1(20), June 11, 1960, 74 Stat. 201; Pub. L. 89–719, title II, § 201, Nov. 2, 1966, 80 Stat. 1147; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–647, title XXXVI, § 3630, Nov. 29, 1990, 104 Stat. 4966; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–316, title I, § 114, Oct. 19, 1996, 110 Stat. 3834.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., §§ 901, 902, 904, 905 (Mar. 4, 1931, ch. 515, §§ 1, 2, 4, 5, 46 Stat. 1528, 1529; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; June 6, 1940, ch. 242, 54 Stat. 234; Dec. 2, 1942, ch. 656, §§ 1–3, 56 Stat. 1026).

Provisions including the districts of Hawaii and Puerto Rico, and the District Court of the United States for the District of Columbia, in section 901 of title 28, U.S.C., 1940 ed., were omitted as covered by “any district court.” See section 451 of this title.

Provisions in section 902 of title 28, U.S.C., 1940 ed., relating to process, were omitted as covered by Rule 4 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 Act

This amendment conforms the language of section 2410 (b) of title 28, U.S.C., with that of the prior law with respect to service of process and complaint upon the United States in suits brought in State courts. This is provided for by rule 4(d)(4) of the Federal Rules of Civil Procedure with respect to such suits in United States district courts.

References in Text

The internal revenue laws, referred to in subsec. (b), are classified generally to Title 26, Internal Revenue Code.

Section 7425 of the Internal Revenue Code of 1986, referred to in subsec. (d), is classified to section 7425 of Title 26.

Amendments

1996—Subsec. (e). Pub. L. 104–316 struck out “shall so report to the Comptroller General who” after “unenforceable, such officer” in second sentence.

1991—Subsec. (c). Pub. L. 102–83 substituted “section 3720 of title 38” for “section 1820 of title 38”.

1990—Subsec. (c). Pub. L. 101–647 inserted at end “In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 2, 2006 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

1986—Subsec. (d). Pub. L. 99–514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1966—Subsec. (a). Pub. L. 89–719 substituted “subject matter—

“(1) to quiet title to,

“(2) to foreclose a mortgage or other lien upon,

“(3) to partition,

“(4) to condemn, or

“(5) of interpleader or in the nature of interpleader with respect to,”

for “subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon”.

Subsec. (b). Pub. L. 89–719 substituted “complaint or pleading shall set forth” for “complaint shall set forth”, and inserted sentence requiring the complaint or pleading, in actions or suits involving liens arising under the internal revenue laws, to include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed.

Subsec. (c). Pub. L. 89–719 substituted “judgment or decree in such action” for “judicial sale in such action”, “discharge of the property from the mortgage or other lien” for “discharge of the property from liens and encumbrances”, and “place where the court is situated” for “place where the property is situated”, and inserted provisions requiring an action to foreclose a mortgage or other lien, in which the United States is named as a party under this section, to seek a judicial sale, providing that the period of redemption where a sale is made with respect to a lien arising under the internal revenue laws is 120 days or the period allowable for redemption under State law, whichever is longer, and prohibiting the right of redemption in any case which, under the provisions of section 1701k of Title 12 and section 1820 (d) of Title 38, the right to redeem does not arise.

Subsecs. (d), (e). Pub. L. 89–719 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (b). Pub. L. 86–507 inserted “or by certified mail,” after “registered mail,”.

1958—Subsec. (a). Pub. L. 85–508 struck out provisions which extended section to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1949—Subsec. (b). Act May 24, 1949, conformed section with that of prior law with respect to service of process and complaint upon the United States in suits brought in State courts.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89–719, set out as a note under section 1346 of this title.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.