

IN THE SENATE

SENATE BILL NO. 1348

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TAX DEEDS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION  
2 43-720, IDAHO CODE, TO PROVIDE FOR TAX DEED PURPOSES THAT THE TERM "EN-  
3 CUMBRANCES" DOES NOT INCLUDE EASEMENTS, HIGHWAYS AND RIGHTS-OF-WAY;  
4 AMENDING SECTION 50-1823, IDAHO CODE, TO PROVIDE FOR TAX DEED PURPOSES  
5 THAT THE TERM "ENCUMBRANCES" DOES NOT INCLUDE EASEMENTS, HIGHWAYS AND  
6 RIGHTS-OF-WAY; AMENDING SECTION 63-1009, IDAHO CODE, TO PROVIDE FOR TAX  
7 DEED PURPOSES THAT THE TERM "ENCUMBRANCES" DOES NOT INCLUDE EASEMENTS,  
8 HIGHWAYS AND RIGHTS-OF-WAY; AND DECLARING AN EMERGENCY.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to  
12 clarify the scope and effect of Idaho's statutes governing tax deeds. In  
13 the case of *Regan v. Owen*, the Idaho Supreme Court addressed whether a tax  
14 deed issued pursuant to Section 63-1009, Idaho Code, has the effect of extin-  
15 guishing an otherwise valid private easement across the subject property.  
16 Similar legislative language exists with respect to irrigation entities in  
17 Section 43-720, Idaho Code, and with respect to cities in Section 50-1823,  
18 Idaho Code. The court did not decide the issue, but remanded to a lower  
19 court. The lower court subsequently ruled that despite the harsh result, the  
20 statute appears to have this effect. While a private access easement was at  
21 issue there, the reasoning would also result in the elimination of public  
22 utility easements, ditch rights, public highways and rights-of-way, conser-  
23 vation easements, and all manner of third-party rights in the land includ-  
24 ing, for example, interests of remaindermen following a life estate. By this  
25 legislation, the Idaho Legislature rejects that conclusion. It was never  
26 the intent of the Legislature to allow local governments to destroy valid  
27 property interests held by third parties and the public in land that is sub-  
28 ject to a sale or other conveyance based on a tax delinquency. Doing so would  
29 constitute an uncompensated taking of property under both the Idaho Con-  
30 stitution and the United States Constitution. The Legislature would never  
31 have intended such a result and, by this legislation, makes that clear. As  
32 its context should have made evident, the purpose of Section 63-1009, Idaho  
33 Code, has always been to convey title absolutely free and clear of specified  
34 liens and mortgages of a monetary nature. It was never the intent of the  
35 Legislature to allow a local governmental entity to convey more than the  
36 delinquent taxpayer owned and thereby to destroy valid property interests  
37 held by others. This clarification brings the interpretation of Idaho's tax  
38 deed statute into line with the interpretation of similar statutes in other  
39 jurisdictions, as had always been the Legislature's intent.

40 SECTION 2. That Section 43-720, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

1           43-720. TAX DEED -- RECITALS -- EFFECT AS EVIDENCE -- TITLE CON-  
2 VEYED. The matters recited in the delinquency entry must be recited in the  
3 deed, and such deed duly acknowledged or proved is prima facie evidence that:

4           (1) Benefits were apportioned to the property as required by law or wa-  
5 ter rights were properly allocated to the property.

6           (2) The assessment was levied in accordance with law.

7           (3) The assessment was equalized as required by law.

8           (4) The assessment, together with statutory penalties, interest and  
9 any other charges, was unpaid.

10          (5) At the proper time the delinquency entry was made as prescribed by  
11 law and by the proper officer.

12          (6) The property was unredeemed within the time allowed by the first  
13 paragraph of section 43-712, Idaho Code.

14          (7) The person who executed the tax deed was the proper officer. Such  
15 deed duly acknowledged and proved is prima facie evidence of the regular-  
16 ity of all other proceedings for the assessment, inclusive, up to the exe-  
17 cution of the deed. The deed conveys to the grantee the absolute title to the  
18 lands described therein, free of all encumbrances except mortgages of record  
19 to the holders of which notice as has not been sent as in this chapter pro-  
20 vided, and except any lien for assessments which have attached subsequent to  
21 the assessment resulting in the issuance of the tax deed and except any lien  
22 for state and county taxes. For purposes of this section, the term "encum-  
23 brances" does not include easements, highways and rights-of-way.

24          (8) Any number of descriptions of land in the same district may be in-  
25 cluded in one (1) deed where the certificates are held by one (1) person, or  
26 the district.

27           SECTION 3. That Section 50-1823, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29           50-1823. TAX DEED -- FORM AND CONTENTS -- TITLE CONVEYED. The matters  
30 recited in the delinquency entry must be recited in the deed to the city, and  
31 such deed duly acknowledged or proved shall be prima facie evidence in that:  
32 (1) the property was assessed as required by law; (2) that the property was  
33 equalized as required by law; (3) that the assessments were levied in accor-  
34 dance with law; (4) that the assessments were unpaid; (5) that at the proper  
35 time the delinquency entry was made as prescribed by law and by the proper  
36 officer; (6) that the property was unredeemed; (7) that the person who exe-  
37 cuted the deed was the proper officer of the city. Such deed duly acknowl-  
38 edged and proved shall be prima facie evidence of the regularity of all pro-  
39 ceedings for the assessments up to and including the execution and delivery  
40 of the deed. The said deed shall convey to the grantee the absolute title to  
41 the lands described therein free and clear of all liens and encumbrances ex-  
42 cept mortgagees of record, holders of liens and bondholders to which notice  
43 has not been sent after request, as provided in this act, and except any liens  
44 for assessments which have attached subsequent to assessment resulting in  
45 the sale and except any lien for state and county taxes. For purposes of this  
46 section, the term "encumbrances" does not include easements, highways and  
47 rights-of-way.

1           SECTION 4. That Section 63-1009, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3           63-1009. EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the  
4 grantee the absolute title to the land described therein, free of all encum-  
5 brances except mortgages of record to the holders of which notice has not  
6 been sent as provided in section 63-1005, Idaho Code, any lien for property  
7 taxes which may have attached subsequently to the assessment and any lien for  
8 special assessments. For purposes of this section, the term "encumbrances"  
9 does not include easements, highways and rights-of-way.

10           SECTION 5. An emergency existing therefor, which emergency is hereby  
11 declared to exist, this act shall be in full force and effect on and after its  
12 passage and approval.