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New law may eliminate big auction headaches for lenders

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An issue that made lenders wary of redeeming their Alabama properties at tax auctions is in the process of being resolved.

Jack Kubiszyn, a partner in the Birmingham office of Bradley Arant Boult Cummings LLP, said lenders in Alabama have been put in a tough spot when they try to buy back properties that have been put up for auction due to the failure by owners to pay property taxes.

But Kubiszyn and other experts say a new law passed in May by the Alabama Legislature will ease that burden, providing lenders more protection on their interests and reducing the need for costly litigation.

Previously, the state's lenders were not allowed to recover an excess bid paid as part of the redemption process because Alabama courts ruled only the original property owner, the person who failed to pay the taxes on the property, could claim the excess proceeds from the sale.

Kubiszyn said it put a greater burden on lenders to protect their interest by either setting up an escrow account from the borrower's monthly payment to pay the property taxes or requiring the borrower to execute a power of attorney or an assignment in the initial loan documents granting the lender the right to recover any excess bids as part of any redemption process.

The situation was at the center of a number of lawsuits filed by lenders across the state, according to Tom Layfield, vice president of governmental relations for the Alabama Bankers Association Inc. Those suits often named the county revenue official as the defendant.

As a result, the Alabama Bankers Association and the Association of County Commissions of Alabama formed a joint effort to work out a compromise bill, Layfield said.

The bill was passed by the Legislature and signed



into law in May.

Now, any person or entity who has redeemed property sold at a tax sale may receive the excess amount paid by a tax sale purchaser.

Also, it allows revenue departments to issue vouchers in the amount of the excess bid that the property owners can use to redeem the properties.

Layfield said the new law would go into effect in about three months.