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TAX CERTIFICATES, TAX DEEDS AND TAX SALES - INFORMATION FOR LENDERS AND INVESTORS

Lenders and investors alike face numerous issues involving real property taxes. For lenders whose borrowers have not escrowed for the payment of taxes, questions often arise regarding the timing of payment of back taxes and avoiding the loss of collateral through a tax sale. For investors, purchasing tax certificates has become a viable alternative to the 1% certificate of deposit or other seemingly conservative investments. Often, however, the analysis of whether to redeem back taxes (for lenders) or purchase tax certificates (for investors) is not always as straight-forward as it may seem.

In Florida's current economic environment, values of real estate often fall so fast that the county property appraisers are not keeping up with an accurate valuation of the land. In an era of declining real estate prices, some lenders are faced with collateral that is most likely not equal to the outstanding loan principal. In some extreme situations where there may be little or no market for the property, a quick foreclosure may not yield a satisfactory result for the bank when carrying costs are taken into account, such as the payment of real estate taxes, and homeowners' association or condominium association assessments. Some lenders are even discovering that the collateral may not be worth the investment of paying the future taxes on a parcel. In these situations, it becomes important for the lender to have a clear understanding of the nuances of Florida's ad valorem tax laws and procedures. It is also important to know the law to ensure that real estate collateral is not lost through the tax sale process.

For investors, there are similar concerns as some investors find out that even after purchasing a tax certificate and waiting the requisite period, the value of the collateral may not be worth the total investment in the land after the payment of the taxes and addressing other concerns, such as obtaining marketable title to the property.

The following is an executive summary of ad valorem real estate tax law in Florida.

Florida Ad Valorem Taxes

- Relevant Florida law is set forth in Chapter 197, Florida Statutes.
- Taxes are due on November 1 and delinquent on April 1 of the following year. Taxes are a first lien on the property beginning on January 1 of the year when due.
- Taxes are paid in arrears. Thus, taxes due on November 1, 2010 cover the 2010 tax year, which runs from January 1, 2010 - December 31, 2010.
- There is a 4% discount for payment in November; 3% discount for December; 2% discount for January; 1% discount for February; and no discount for March payment.
- Generally, special district taxes and Community Development District (CDD's) assessments are shown on the tax bill and paid along with real estate taxes.

Issuance of Tax Certificates

- By April 30, the taxpayer gets notice of delinquency of unpaid taxes.
- On or before June 1 the tax collector publishes four weekly notices of sale that lists property on which taxes are delinquent.
- Tax collector commences sale of tax certificates on date designated in notice of sale.
- Bidding starts at 18% interest and goes down from there. Certificates are sold to the person who will pay the taxes, interest, costs and charges and who will demand the lowest rate of interest not in excess of 18%. If there is no buyer, a tax certificate is issued to the county at

- 18% interest.
- Winning bidder pays a reasonable deposit set by the tax collector.
- Within 48 hours after mailing of notice that tax certificate is ready for issuance, winning bidder pays outstanding balance of taxes.
- Within 60 days after tax certificate sale, tax collector furnishes notice of sale to any mortgagee who timely requests such notice. [F.S. §197.344(2)]

Procedures for Redemption of Tax Certificates

- Any person (including lenders) can redeem the tax certificate at any time prior to the issuance of a tax deed by payment to the tax collection of all taxes, interest, costs and charges. Interest is calculated through the end of the month that the taxes are paid.[F.S. §197.472]

Procedures for Tax Sales and Issuance of Tax Deeds

- Certificate holder can file application for tax deed 2 years after April 1 of year tax certificate was issued. Applicant must pay all unpaid taxes, plus interest and any current taxes that are due.
- Circuit court clerk publishes notice of tax deed sale once a week for four consecutive weeks.
- Clerk mails notice of sale to persons listed in statute within **20 days prior to sale** of tax deed.
 - Title holder of record, at the address that appears on the latest assessment roll
 - Any lienholder of record
 - Any mortgagee of record
 - Notice must be mailed with return receipt requested.
 - The failure of any person to actually receive notice does not affect the validity of a subsequent tax deed. But, if the notice requirements of F.S. §197.522(1) are not strictly complied with, the tax deed may be invalid.
- Sheriff must also serve the property owner with notice at least 20 days prior to the sale.
- Clerk holds tax deed sale **30 days after first publication of notice of sale.**
- At the sale, the initial bid of the certificate holder is considered to be the amount required to redeem the tax certificate, plus the amounts paid to the circuit court clerk for the costs of sale, the redemption of all other tax certificates, and all other costs to the applicant, plus 1.5% per month for the period running from the month after the date of application for the deed through the month of sale. If there are no higher bids, the property will be sold to the certificate holder, who must pay documentary stamp taxes and recording fees due. The clerk will then issue and record a tax deed. If there are other bids, the certificate holder has the right to continue to bid with the property being sold to the highest bidder. If the property is purchased for an amount in excess of the statutory bid of the certificate holder, the excess is used to pay any lien of record against the property by a governmental unit. Any surplus remaining will be paid to mortgagees and lienholders.
- Tax Certificate is void and subject to cancellation 7 years after date of issuance of tax certificate if no application for tax deed is filed.

Post-Tax Sale Issues

- A tax deed is unencumbered by any prior lien that was subordinate to the tax lien and divests any interest of the former owner or those claiming under the former owner. A statutory exception to this rule exists with regards to a lien held by local government, a special district, or a CDD.
- Title to property obtained by a tax deed may be insurable with title insurance after four years have expired since the issuance of the tax deed.F.S. §95.191.
- If the statute of limitations has not expired, or if there are procedural problems with the issuance of the tax certificate or tax deed, title may be insured in the tax deed grantee after a successful quiet title lawsuit. The necessary defendants in a quiet title action include the taxpayer, lienholders, and all other parties with interest in the property capable of being extinguished by the issuance of a tax deed.
- Certain interests in real property survive the issuance of a tax deed. Easements for drainage, utilities, other public services, ingress and egress that are recorded or visibly occupied prior to the issuance of a tax deed are not eliminated. Most covenants and restrictions survive tax deeds. Oil, gas and mineral rights and other subsurface rights that are severed from the surface rights or assessed taxes separately from the real property are not eliminated by tax deed. State, municipal or county liens are also not eliminated. A federal tax lien can be

eliminated assuming the federal government received proper notice of the tax deed proceedings, but the federal government has a 120-day redemption period.

Q and A:

1. How are tax certificates sold?

Tax certificates are sold online in most counties and are sold for the previous tax year (thus, the tax sale that concluded in May of 2010 was for 2009 unpaid taxes). The tax certificates are sold by parcel number.

2. How long must the taxes be delinquent before the tax certificate can be issued?

Taxes for 2009 became delinquent on April 1, 2010, and the tax certificate auction was held in May of 2010.

3. How long must the holder of the certificate wait before asking for a sale/auction so that a tax deed can be issued?

The certificate holder must wait for 2 years after April 1 of the year the tax certificate was issued. Thus, for a tax certificate issued in May of 2010, the certificate holder must wait until April 1, 2012 to apply for a tax deed.

4. Are there any special requirements for the sale/auction to be held? Must litigation be filed to compel the sale?

The sale procedural requirements are set forth in Florida Statutes §197.502. No litigation is required to compel the sale.

5. What happens if there are senior tax certificates outstanding? Will the high bidder take title subject to these liens, or must these liens be paid off immediately or concurrently with the sale/auction?

As to the tax certificate sale, you do not have to pay off prior year's tax certificates, you just pay off the current delinquent taxes for the year you are bidding on.

As to a tax deed sale, all prior year's taxes and current taxes must be paid in full.

6. What happens if the tax collector fails to give all parties with an interest notice of the sale? Who bears the risk of failed notice -- the buyer or the county or the lienholder?

Florida courts have not definitively decided this issue. If the notice requirements of Section 197.522(1), F.S., are not strictly complied with, the tax deed may be invalid. *Terra Mar Capital, Inc. v. Auxier*, 694 So.2d 779 (Fla. 4th DCA 1997). The clerk is responsible for preparing an affidavit listing the names, addresses and dates on which each person was notified by mail. While some Florida courts have held that failure of any party to receive notice of a tax deed mailed in compliance with the statutory requirements will not affect the validity of the deed, *Saggese v. Department of Revenue*, 770 So. 2d 1244 (Fla. 4th DCA 2000); *Evans v. Ireland*, 707 So. 2d 1135 (Fla. 2d DCA 1998); *Crane v. Martin*, 741 So. 2d 1251 (Fla. 1st DCA 1999), the Florida Supreme Court has held that compliance with the statutory notice requirements is insufficient where the tax collector and clerk knew or should have known that the address on the tax roll was incorrect. *Vosilla v. Rosado*, 944 So.2d 289 (Fla. 2006). See also *Deutsch v. Global Financial Services, LLC*, 976 So.2d 680 (Fla. 2d DCA 2008) and *Singleton v. Eli B. Investment Corp.*, 968 So.2d 702 (Fla. 4th DCA 2007).

It would be difficult, however, to challenge lack of notice after the four-year statute of limitations period has expired.

7. If no buyer is found for any past due taxes, what happens to the taxes for that year? Can there be a tax sale?

If there is no buyer, a tax certificate is issued to the county at 18% interest. The county may also hold a subsequent tax certificate sale for those certificates that weren't purchased at the first sale.

If you have any questions regarding tax certificates, tax deeds or tax sales, contact [Paul S. Quinn, Jr.](#), shareholder in the Orlando office, or anyone in the firm's [Real Estate Group](#).

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