Delinquent Tax Sales Information

A guide to policies, processes, and laws for delinquent tax sales

Quick Facts...

- Tax sales will be conducted in the manner of a public auction.
- These are buyer beware sales! There are no guarantees neither expressed nor implied.
- We suggest you do not purchase property without having seen the property.
- Bidding on a piece of property is a binding agreement between the Levying Authority and the bidder/purchaser. Once the Levy Officer recognizes a bid, it is then considered an official bid (and a binding agreement).
- The opening bid will include all applicable taxes, penalties and costs.
- The time to remit payment will be determined the day of the sale. The form of payment must be cash, money order or certified check.
- The Levy Officer will execute a Sheriff's Tax Deed (after the sale) and will have the deed properly recorded. The tax deed is not a fee simple deed. It is the purchaser's responsibility to check the validity of title to the property. The mailing address given at the time of purchase will be the address used to mail deed and all future tax notices.
- State law prohibits the purchaser from taking possession and/or trespassing prior to twelve months from the sale date. Twelve months after the sale date, the purchaser may forever "bar" or 'foreclose" the right of redemption.
- The purchaser will be responsible for any future assessments and property taxes as they may become due.
- At the discretion of the Levy Officer, certain properties for which no minimum bid is received may be re-offered following our regular sale.
- No information provided is to be considered legal advice. **CONSULT AN ATTORNEY**.

INTRODUCTION

There are several actions required by law in the preparation for auctioning property. The legal axiom of caveat emptor or "buyer beware" applies to tax sales (O.C.G.A. § 9- 13-167). Therefore, you are charged with knowledge of the titles of the properties that are sold and any defects in these titles. The Levying Officer does not warrant the titles and any title searches performed for or by our office for the purpose of a tax sale should not be considered an opinion of title to rely on for tax sale purchasers.

TAX SALE PROCEDURES

The Levying Officer follows certain procedures when it levies upon a piece of property. The procedures are prescribed in the Official Code of Georgia Annotated (O.C.G.A.). You will see code sections referenced throughout this booklet. These references are a starting point for your research and are by no means a complete listing. We strongly suggest you read those sections of Georgia Law which pertain to Tax Executions and Tax Sales. O.C.G.A. Title 48 - Revenue and Taxation, Chapter 3-Tax Executions, and Chapter 4-Tax Sales, contain important information that you may want to be aware of. Also read and research those Opinions of the Attorney General and Judicial Decisions that are shown after each code section. These opinions and court cases are extremely important and must be taken into consideration when interpreting these laws.

Fi.Fa. (FIERI FACIAS)

A Fi.Fa. (short for fieri facias - a Latin term for "cause it to be done" and also used interchangeably with TAX EXECUTION or EXECUTION) is a tax lien or writ, authorizing the Sheriff or Ex-Officio Sheriff to obtain satisfaction of unpaid taxes by levying on and selling the delinquent taxpayer's property. These documents are recorded on the General Execution Docket ("GED") of the Clerk of Superior Court. (O.C.G.A. § 48-3-1 and 48-3-3). After the due date for tax payments has expired, the Levying Officer shall notify each delinquent taxpayer in writing that the taxes are outstanding, and if taxes are not paid within thirty (30) days, an execution (Fi.Fa.) will be issued (O.C.G.A. § 48-3-3). If there is not sufficient property in the county in which the taxpayer resides to satisfy the tax execution, property of the taxpayer situated in any other county shall be subject to levy and sale. (0.C.G.A. § 48-3-5)

AUTHORITY TO SELL

The Levying Officer serves as Ex-Officio Sheriff. Each Levying Officer when acting as an ex officio sheriff shall have full power to bring property to sale for the purpose of collecting taxes due the state and county. Additionally, he shall have all the powers vested in sheriffs for the advertisement of the property for sale, for the sale of the property, and for the making and delivery of all due and proper conveyances and bills of sale. All sales made by a Levying Officer acting as an Ex Officio sheriff shall be valid and shall carry the title to property sold as fully and completely as if made by the sheriff of the county (O.C.G.A. § 48-5-137) . As Ex-Officio Sheriff, he appoints Ex-Officio Deputy Sheriffs to act on his behalf in tax sale matters. Each Ex-Officio Deputy Sheriff has full power to advertise and bring property to sale for the purpose of collecting taxes due (O.C.G.A. § 48-3-6).

Taxes due the state and county are not only against the owner BUT also against the property regardless of judgments, mortgages, sales, or encumbrances. Taxes constitute a general lien upon all property of a taxpayer and the lien attaches on January 1st of each tax year, even though a Fi.Fa. has not been issued (0.C.G.A. § 48-2-56 and 48-5-28).

ISSUANCE AND RECORDATION OF Fi.Fa.

At any time after the 30 day notice has elapsed, the Tax Commissioner shall issue an execution (Fi.Fa. or tax lien) against the owner and the property. The execution (Fi.Fa.) is directed "to all singular sheriffs of this state" (which means Sheriffs or Levying Officers who serve as Ex-Officio Sheriffs) and shall direct them to seize and sell the property of the delinquent taxpayer to satisfy the delinquent taxes. The property shall be plainly described on the execution (Fi.Fa.). The execution also bears interest at the rate prescribed by law per month from the date the tax was due. The execution (Fi.Fa.) is signed by the Levying Officer as Ex-Officio Sheriff. The execution (Fi.Fa.) is then recorded on the General Execution Docket (GED) of the Clerk of Superior Court (0.C.G.A. § 48-2-40).

LEVY

When real estate is levied upon, the levy officer who acts as an Ex-Officio Sheriff is directed by a tax execution to seize and sell the property to satisfy the delinquent taxes. The Ex-Officio Sheriff must give twenty (20) days written notice before advertising to the owner, tenant, and holder of the security deed prior to the sale. This levy notice is delivered by certified mail. The levy shall state the owner's and/or mortgage holder's name, the tax years delinquent, the principal amount of taxes due, the accrued cost due, and a description of the property to be sold (O.C.G.A. § 48-3-6; 48-3-9; 48-3-10; 48-5-27; 48-5-161; 9-13-12; 9-13-13).

ADVERTISING

All properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the tax sale. These advertisements are printed one day a week for four (4) consecutive weeks in the County's legal organ. Each advertisement shows the owners name, a description of the property to be sold, and the amount of the tax due (O.C.G.A. § 9-13-140; 9-13-141; 9-13-142).

10 DAY NOTICE TO OWNER

At least ten (1O) days before the tax sale, the owner is sent a written notice via certified mail informing him/her of the impending tax sale (0.C.G.A. § 48-4-1).

TAX SALE

Tax sales (when held) occur on the first Tuesday of the month between the hours of 10:00 am and 4:00 pm at the Courthouse. In the event that the first Tuesday of the month falls on a legal holiday, the sale may be held on the following day (Wed.). The opening bid for a particular property is the amount of the tax due, plus penalties, interest, and costs. The property is sold to the highest bidder. If no one bids at least the amount due the county for the property, the Levying Officer considers the property a "No Bid" which can be offered again that day for bid at their discretion.

PAYMENT

The bid payment must be paid in full in the form of cash, certified check, or money order. The purchaser is required to sign a statement attesting to the fact that certain property was purchased for the bid price.

ACCORDING TO O.C.G.A. § 9-13-170, ANY PERSON WHO BECOMES THE PURCHASER OF ANY REAL OR PERSONAL PROPERTY AT ANY SALE MADE AT PUBLIC OUTCRY WHO FAILS OR REFUSES TO COMPLY WITH THE TERMS OF THE SALE WHEN REQUESTED TO DO SO, SHALL BE LIABLE FOR THE AMOUNT OF THE PURCHASE MONEY. IT SHALL BE THE LEVYING OFFICER'S OPTION EITHER TO PROCEED AGAINST THE PURCHASER FOR THE FULL AMOUNT OF THE PURCHASE MONEY OR TO RESELL THE REAL OR PERSONAL PROPERTY AND THEN PROCEED AGAINST THE FIRST PURCHASER FOR ANY DEFICIENCY ARISING FROM THE SALE.

SALE CLOSING

After all payments are processed, the Sheriff's Tax Deed and the Real Estate Transfer Tax Form will be completed and recorded within 30 days of the sale. The Levy Officer reserves the right to VOID any tax sale purchase within 30 days. The buyer will receive a full refund of the bid amount.

You are reminded that a Sheriff's Tax Deed only conveys "defeasible title" (conditional title that can be revoked or voided) to property. To acquire "fee simple title" (complete possessory rights and ownership) to property, a tax deed purchaser must "foreclose" or "bar" the right to redeem, or allow the title to "ripen by prescription," pursuant to state law.

After the tax sale, if there are any “excess funds” generated from the sale of the real property after all taxes and costs are paid, a notice will be sent to the same interested parties notified during the levy and sale. This notice contains the name of the purchaser, purchaser's address, opening bid, sale price, and any excess funds amount with a description of the real property sold.
O.C.G.A. § 9-13-160; 9-13-161; 9-13-166; 48-2-55; 48-4-1; 48-4-3; 48-4-4;
48-4-6; 48-4-20).

PAYMENT OF EXCESS FUNDS

Persons or entities who feel they are entitled to the Excess Funds shall file a request on a claim form provided by the Levying Officer’s Office. The Levying Officer may: 1) disburse funds to claimant based on the request and information gathered in the tax sale file, 2) request a review and recommendation from an attorney for the payment of the amount of such excess, or 3) file an interpleader action in Superior Court to determination the appropriate owner of the excess funds. In all instances, such excess may then be distributed to intended parties, including the original owner, as their interest appears and in the order of priority in which their interests exist.
(O.C.G.A. § 48-4-5).

The superior lien holder may claim the funds in the same manner. These claims should state the dollar amount of the lien on the property since the excess funds paid to the superior lien holder cannot exceed that amount.

An owner who makes a request through a claim, and has one or more liens on the property, is required to have the lien holder release their interest in the funds to the owner in order for us to approve the claim. As stated earlier, in this instance we may file an interpleader action in Superior Court for the payment amount to be distributed to intended parties, including the owner as their interest appears and in the order in which their interest exists (O.C.G.A. § 48-4-5).

RIGHT OF REDEMPTION AND THE AMOUNT PAYABLE

When real property is sold at a tax sale, the owner, creditor, or any person having an interest in the property may redeem the property from the holder of the Sheriff's Tax Deed.

The owner, creditor, or any other person with interest in the property, must pay the tax deed purchaser the tax amount of the property paid at tax sale, plus any taxes paid on the property by the purchaser after the tax sale, plus any special assessment on the property, plus a twenty (20) percent premium for the first year or fraction of a year, and a ten (10) percent premium of the amount for each additional year or fraction of a year, which has elapsed since the date of sale (O.C.G.A. § 48-4-42).

The owner, creditor, or any other person with interest in the property may redeem the property at any time during the twelve (12) months following the tax sale. The purchaser of the Sheriff's Tax Deed cannot take actual possession of the property during this time. The tax deed purchaser is not authorized to receive rents or make improvements to any structure on the property or grade any lot prior to this time.

When the property has been redeemed (all monies due the purchaser paid as prescribed by law), the purchaser shall issue a quitclaim deed to the owner of the property (as stated on the Fi.Fa.) releasing the property from the tax deed.

This redemption of the property shall put the title conveyed by the tax sale back to the owner, subject to all liens that existed at the time of the tax sale. If the redemption was made by any creditor of the owner or by any person having an interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property (O.C.G.A. § 48-4-40; 48-4- 41; 48-4-42; 48-4-43; and 48-4-44).

NOTICE OF FORECLOSURE OF RIGHT TO REDEEM

The buyer at a tax auction is responsible for proper processing of documents concerning the foreclosure of the owner's right to redeem and those documents concerning the right of redemption.

After twelve (12) months from the date of the tax sale, the purchaser at the tax sale may terminate or foreclose on the owner's right to redeem the property by causing a notice(s) of the foreclosure to be served by "the sheriff of the county in which the land is located, not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the county. The sheriff shall make an entry of the service on the original copy of the notice.
Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice." The notice of foreclosure is to be published in the legal organ once per week for four (4) consecutive weeks after the twelve months have elapsed.

If the redemption is not made until more than thirty (30) days after the notice, then the sheriff's costs for serving the notice(s) and the cost of publication of the notice(s) shall be added to the redemption price (O.C.G.A. § 48-4-42; 48-4- 45;and 48-4-46). PLEASE NOTE: ANY QUESTIONS ABOUT THIS FORECLOSURE PROCESS SHOULD BE REFERRED TO AN ATTORNEY.

AFTER THE RIGHT OF REDEMPTION IS FORECLOSED

After foreclosing the right of redemption, we recommend the purchaser seek legal advice regarding the petition to quiet title in land, pursuant to O.C.G.A. § 23-3-60.

Under the action, the petitioner (Sheriff's Tax Deed purchaser) makes a request to the court to take jurisdiction over the matter. The court then appoints a Special Master (third party) to examine the petition and exhibits to determine who is entitled to notice. The petitioner will then ask the court to issue a decree establishing his/her title in the land against "all the world" and that all "clouds to petitioner's title to the land be removed" and that "said decree be recorded as required by law".

RIPENING OF THE TAX DEED BY PRESCRIPTION (AN ALTERNATIVE METHOD)

The term "prescription" refers to a process whereby, over a period of time a tax deed becomes a fee simple title. This process promotes an alternative method to obtain fee simple title without the legal intricacies of the foreclosure process. A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven (7) years from the date of execution of that deed (O.C.G.A. § 48-4-48).

A title under a tax deed properly executed at a valid and legal sale on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four (4) years from the execution of that deed (O.C.G.A §48-4-48).

A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four (4) years from the recordation of that deed in the land records in the county in which said land is located (O.C.G.A. § 48-4-48). Also see Community Renewal and Redemption, LLC v. Nix, S05A0877, November 7, 2005.

Notice of foreclosure of the right to redeem is not required in order for the title to ripen by prescription. In order to protect your tax sale investment, subsequent taxes should be paid. We also suggest that the purchaser seek legal advice regarding the petition to quiet title in land after the ripening process.

SUBSEQUENT TAX SALES

Until the right of redemption has been foreclosed or the title has ripened by prescription, a tax deed has the same force and effect as a lien. Even though an unredeemed tax deed is only a defeasible title until such time that the property is redeemed or the right of redemption is foreclosed, the tax sale purchaser acquires sufficient interest in the property to make a property tax return, and becomes liable for taxes due on the property for subsequent years until redeemed. If there is a subsequent tax sale of the same parcel, the tax deed purchaser will be listed as the defendant in Fi.Fa. (record owner) for purposes of levy and sale, despite not having foreclosed the right of redemption or having the tax deed ripen by prescription. Therefore, the tax deed purchaser may wish to consider the best possible avenue to protect their initial tax sale investment. If and when the tax deed purchaser forecloses the right to redeem or the tax deed ripens by prescription and the tax deed purchaser takes possession, the tax deed purchaser becomes the owner of record.