

The delinquent tax man cometh: tax certificates and deeds

Each year this season brings delinquent property taxes, resulting in tax sales by the county tax collector.

This year the downturn in the economy has prompted many to ask about tax certificates and tax deeds. Property owners want to know their liability for being delinquent on their taxes as well as their rights. Others seek to better understand the opportunities available through tax sales. For both, it is important to become familiar with the process of tax collections, and how tax certificates and tax deeds are issued.

According to Florida Statute 197.332, the tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest and costs, by sale of tax certificates on real property. Every property owner is responsible for paying the property taxes assessed on their real property. The amount of the tax is based on the value of the property, referred to as ad valorem. The tax is paid in arrears, and is due and payable at a 4 percent discount in November of the year in which the tax is assessed.

purchase a certificate, which includes the gross tax, interest and other sale costs. The tax certificate sale is conducted in reverse auction style, with bidding beginning at the maximum allowable rate of interest. The certificate is sold to the person who will pay the taxes, interest and costs and who will demand the lowest rate of interest. If there are no bidders, the certificate is issued to the county. Once issued, the tax certificate becomes a lien on the property.

The property owner may redeem the property by paying the delinquent taxes and other costs, plus the certificate's rate of interest up until the issuance of a tax deed. If the certificate is not redeemed within two years, then a tax certificate holder may apply for a tax deed. The certificate expires after seven years if the holder does not apply for a tax deed.

Upon application for a tax deed, Florida Statute 197.502 requires the tax collector to deliver to the clerk of the circuit court a list of the persons who are to be sent notice of the sale, including the legal titleholder of record, lender or other lien holder, and any recorded

buyer. The clerk must then notify such persons of the impending tax sale by sending a copy of the application for tax deed and a warning notice letter, informing them of the unpaid taxes and unless paid the property will be sold at public auction per F.S. 197.522. In *Vosilla v. Rosado*, the Florida Supreme Court recognized that the notice must be reasonably calculated to apprise the property owner of the tax deed sale. In that case, the property owner advised the taxing authorities of a change of address. However, the address on the tax assessment roll was not updated, which resulted in the notice being sent to the property owner's previous address. The notice was deemed improper because it violated the property owners' due process protections. Notice of a tax sale is also provided to the public by publication in a local newspaper of record.

The U.S. Supreme Court recently addressed the issue of adequate notice in *Jones v. Flowers*. There, the plaintiff owned a house, but no longer resided there. His property taxes went unpaid and he was certified delin-

quent. The clerk sent certified letters to his house regarding the delinquency, but no one was home to sign for them and no one claimed the letters at the post office; they were returned to the clerk stamped unclaimed. The Supreme Court held that, under those circumstances, the state should have taken additional steps to notify Jones. The Court stated that what additional steps are reasonable in response to new information depends upon what the new information reveals. The Court reasoned that the return of the certified letters as unclaimed meant that Jones either still lived at the house, but was not home when it was delivered and did not retrieve it from the post office, or that he no longer lived there. The Court mentioned several reasonable steps that the state could have taken upon return of the unclaimed notice letter, including resending the letter by regular mail so that a signature was not required.

The Court noted that the use of certified mail might make actual notice more difficult in some

cases, and that following up with regular mail might improve the chances of actual notice to a homeowner. After discussing the efficacy of various other methods for providing adequate notice, the Court concluded that the efforts to provide notice to Jones of the impending tax sale were insufficient to satisfy constitutional due process requirements.

At the tax sale that occurs after required notice is given, the tax deed is issued to the highest bidder for cash. Except in certain circumstances, a tax deed entitles the buyer to immediate possession of the property. However, the buyer of a tax deed is cautioned to beware because clear and marketable title is not warranted or guaranteed.

Moreover, certain easements and governmental liens can survive a tax deed. If the former owner of the property does not initiate an action on the tax deed within four years, then the tax deed holder will have clear title to the property. The collection of delinquent taxes will take up more of the tax collector's resources in these hard economic times.

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Warren R. Ross

LEGALLY SPEAKING

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Each successive month the discount decreases by one percent, until no discount remains for payment in March. Property taxes become delinquent on April 1 following the year in which the tax is assessed. For example, property taxes assessed for 2007 become delinquent April 1, 2008. A property owner's failure to pay the property taxes results in the tax collector beginning the process of issuing lien.

This column is primarily the work of Lance Ball, an associate at the Wotitzky law firm. Florida Statute 197.402(3) provides that on or before June 1, the tax collector shall advertise once each week for three weeks in a local newspaper and shall sell tax certificates on all real property with delinquent taxes. The advertisement lists the properties with delinquent taxes, the location, date and time of the tax certificate sale, and the cost to