

Tax Sale Information Booklet

ATTENTION

Prospective Tax Sale Purchasers:

You are encouraged to read this tax sale booklet which will answer most of your questions regarding tax sales. As tax sale purchasers, you are responsible for knowing the law regarding tax sale purchases and should familiarize yourself with all the applicable laws.

You are reminded that a tax deed only conveys “defeasible” title to property. To acquire fee simple title to property, a tax deed purchaser must foreclose the right to redeem pursuant to state law.

The legal axiom of caveat emptor or “buyer beware” applies at tax sales (OCGA section 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 Cherokee County Tax Commissioner does not warrant the titles and any title search done for the Tax Commissioner should not be considered an opinion of title to rely on for tax sale purchasers.

The Cherokee County Tax Commissioner reserves the right to void any tax sale that is later determined to have errors that make the sale invalid. The Tax Commissioner cannot and does not guarantee any expected gain on your investment.

Introduction

There are several actions required by law in the preparation for auctioning property. Information folders are kept on these parcels including our title search, tax map and /or plat, various correspondences, and our Ex-Officio Sheriff’s Notice of Service. Our title searches are for our own purposes and would not serve the needs of the buying public. Keep in mind that it is the purchaser’s responsibility to assure oneself as to the soundness of the title of all property sold at a tax sale.

Questions may arise that we cannot answer; therefore, the person interested in the property must find these answers in other offices and records. For example, we do not know building code requirements. We do not know whether county sewer lines serve any particular area or street. We have no way of knowing whether a particular parcel or lot will be approved for a building or a septic tank. We are not always aware of easements.

An important point that **MUST NOT BE OVERLOOKED by the purchaser at a tax sale is that **OTHER TAXES** might be unpaid. If the parcel of land is located in a city that collects their own taxes, the city taxes could be unpaid as well. It is also possible that additional county taxes have become delinquent since proceedings first began on the parcel you are considering.**

Can you lose money? Maybe! We don't really know. One can obtain a bad deed or title at a sale, whether from an individual or from a tax sale. We always recommend that anyone contemplating purchasing at tax sale consult an attorney, assure oneself that the title is good, verify the information we have gathered, read those sections of Georgia law pertaining to tax sales, and attend our sales to be familiar with the proceedings.

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. Our office prepares and records the Tax Deed and the Real Estate Transfer Tax form after the sale.

Tax Sale Procedures

The Cherokee County Tax Commissioner's Office follows certain procedures when it levies upon a piece of property. The procedures are prescribed in the Official Code of Georgia Annotated (OCGA). 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. OCGA Title 48- Revenue and Taxation, Chapter 3 – Tax Executions, and Chapter 4 – Tax Sales, contain important information that you must 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. We will explain each procedure and reference code section to which you may refer.

Fieri Facias (FI.FA)

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. (OCGA 48-3-1 and 48-3-3)

Authority to Sell

The Tax Commissioner of Cherokee County also serves as Ex-Officio Sheriff of Cherokee County. As Ex-Officio Sheriff, he appoints Ex-Officio Deputy Sheriffs to act in 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 the state and county. (OCGA 48-2-55)

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. (OCGA 48-5-28)

30 Day Notice before Issuing FI.FA

After the last day for payment of taxes, the Tax Commissioner shall notify the 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. (OCGA 48-3-3)

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 and singular sheriffs of this state” (which means Sheriffs or Tax Commissioners who serve as Ex-Officio Sheriffs) and shall direct them to seize and sell the property of the delinquent tax payer to satisfy the delinquent taxes. The property shall be plainly described on the execution (fi.fa.). The execution also bears interest at the rate of 1% per month from the date the tax was due. The executions (fi.fa.) are signed by the Tax Commissioner as Ex-officio Sheriff or may be signed by the Sheriff in a county where the Tax Commissioner does not serve as Ex-Officio Sheriff. The execution (fi.fa.) is then recorded on the General Execution Docket (GED) of the Clerk of Superior Court. (OCGA 48-2-40)

Levy

When real estate is levied upon, the levy officer who acts as an Ex-Officio Deputy Sheriff is directed by a tax execution to seize and sell the property to satisfy the delinquent taxes. The Ex-Officio Deputy must give a 20 days written notice before advertising to the owner, tenant, holder of the security deed, IRS, Georgia Department of Revenue and Labor and EPD or EPA (if outstanding federal tax liens or state of Georgia liens, EPD or EPA liens exist). This levy notice is delivered by certified mail, and if we cannot effectively service by certified mail (mail returned unclaimed or undeliverable), this notice is delivered to the owner and/or tenant in person. 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. (OCGA 48-2-55,48-3-1,48-3-6,48-3-9,48-3-10,48-4-3,48-5-27,48-5-161,9-13-13)

Pointing out Privilege

If the property being levied upon is a house and lot, the Tax Commissioner routinely seizes it all. However, if a large parcel is being levied, it may not be prudent to sell all of it, and a portion may be set aside for levy purposes. The delinquent taxpayer may select the property to be sold. This is known as the “pointing out privilege.” However, it is at the discretion of the Ex-Officio Deputy Sheriff to levy on additional property whenever it is deemed necessary to secure prompt collection of delinquent taxes. (OCGA 48-3-4)

Advertising

All properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the first Tuesday of the month. These advertisements are placed in the legal section of the Cherokee Tribune under the heading "Tax Commissioner". Their website is www.cherokeetribune.com. To view advertisements online, on left side, click on Classifieds, and then click on the heading Legals then click on Tax Commissioner's Notice. Each advertisement shows the owner's name, a description of the property to be sold, and the amount of tax due. (OCGA 9-13-140; 9-13-141; 9-13-142 and 48-2-55)

10 Day Notice to Owner

At least 10 days before the tax sale, the owner is sent a written notice by certified mail informing him of the impending tax sale. (OCGA 48-4-1)

Tax Sale

Our tax sale is held on the first Tuesday of each month, between the hours of 10 a.m. and 4 p.m.; on the steps of the Superior Court building (except when the first Tuesday of the month falls on a legal holiday, the sale is held the next day, Wednesday). The opening bid for a particular property is the amount of tax due, plus penalties, interest, fi.fa. cost, levy cost, administrative levy fee, certified mail cost, advertising cost, and tax deed recording fees. The property is sold to the highest bidder. If no one bids at least the amount due the county for the property, the Tax Commissioner has the authority to bid the property for the County. Properties for which no bid is received may be offered for sale again at 3:00 p.m. on the sale date.

Payment

We require payment in full upon conclusion of the tax sale. Payment must be in the form of cash, certified check, or money order. We also require the purchaser to sign a statement attesting to the fact that certain property was purchased for the bid price.

Immediately following the conclusion of the tax sale all purchasers must remit full payment to this office. After all payments are processed we begin preparation of the Tax Deed and the Real Estate Transfer Tax Form.

ACCORDING TO OCGA 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 TAX COMMISSIONER'S OPINION EITHER TO PROCEED AGAINST THE PURCHASER FOR THE FULL AMOUNT OF THE PURCHASE MONEY OR TO RESELL THE REAL PROEPRTY AND THEN PROCEED AGAINST THE FIRST PURCHASER FOR ANY DEFICIENCY ARISING FROM THE SALE.

Sale Closing

After the tax sale, we send written notice to the tenant, owner, Mortgage Company, IRS and the Georgia Department of Revenue and Labor (if applicable) informing them the property was sold. We provide them the purchaser's name and address. (OCGA 9-13-160, 9-13-161, 9-13-166, 48-2-55, 48-4-1, 48-4-3, 48-4-4, 48-4-6 and 48-4-20)

After the tax Sale

Payment of Excess Funds

Any excess funds after paying taxes, accrued costs, and all expenses of a tax sale shall be paid to the person authorized to receive them. (OCGA 48-4-5)

A letter is sent to the owner(s) of record and the mortgage holder(s) advising of the tax sale and explaining how the excess funds can be claimed. We provide the forms to be used as a guideline for the claim.

The legal owner of the property, absent other lien holders, can claim the excess funds with an affidavit and indemnification agreement supported by a current Certificate of Title.

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 fund paid to the superior lien holder cannot exceed that amount.

The owner with one or more liens on his property requires the lien holder to release his interest in the funds to you in order for us to approve your claim. If the potential exists, 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 exist. (OCGA 48-4-5)

Right of Redemption and the Amount Payable for Redemption

When real property is sold at a tax sale, whether to an individual or to Cherokee County; the owner, creditor, or any person having an interest in the property may redeem the property from the holder of the 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 sale, plus any special assessment on the property, plus a 20% premium for the first year or fraction of a year, and a 10% premium of the amount for each additional year or fraction of a years, which has elapsed since the date of sale. A premium of 20% must also be paid when Cherokee County is the purchaser. (OCGA 48-4-42)

The owner, creditor, or any other person with interest in the property may redeem the property at anytime during the twelve (12) months following the tax sale. The purchase of the 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 then 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 any interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property. (OCGA 48-4-21; 48-4-41; 48-4-42; 48-4-43; 48-4-44)

Notice of Foreclosure of Right to Redeem

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 certified mail to the owner of record and to all interest holders which appear on the public record. In addition, the notice of foreclosure is to be published in the county in which the property is located, once a week for four (4) consecutive weeks after the twelve months has elapsed.

If the redemption is not made until more than 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. (OCGA 48-4-42, 48-4-45 and 48-4-46)

Any questions about this foreclosure process should be referred to any attorney.

After the Right of Redemptions is Foreclosed

After the foreclosing the right of redemption, we recommend that the purchaser seek legal advice regarding the petition to quiet title in land, pursuant to OCGA 23-3-60.

Under the action, the petitioner (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 provided by law."

Ripening of the Tax Deed Title 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 executions of the deed (OCGA 48-4-48)

A title under a tax deed executed 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 (OCGA 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 (OCGA 48-4-48).

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.

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. Since defeasible title has been conveyed to the tax deed purchaser, liability for subsequent taxes would be the same as any other superior lien holder. If there is a subsequent tax sale of the same parcel, the tax deed purchaser will be listed as the owner along with 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.

Even though the tax deed purchaser may receive tax bills for subsequent taxes, the owner of record will continue to be the defendant in fi.fa. 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 record owner.