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Tax Commissioner**

As Tax Commissioner for Cobb County, I receive many inquiries concerning real estate tax sales. This brief publication is designed to answer these questions and provide an insight into the legal framework that gives the authority for conducting a real estate tax sale in the state of Georgia.

The material in this booklet is not intended as a substitute for professional advice or assistance. We encourage prospective purchasers at a tax sale to consult an attorney. Keep foremost in mind that it is up to the purchasers at a tax sale to assure themselves as to the soundness of the sale and the deed to be acquired at the sale. No warranties are given or implied and clear title is not contemplated. Our primary concern is the payment of delinquent taxes. The conveying of property, or rights to property, is coincidental.

Applicable references to the Official Code of Georgia are given both as a source of authority and to add to a clear understanding of how real estate tax sales in the state of Georgia work.

**Gail Downing
Cobb County Tax Commissioner**

A T T E N T I O N

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 to 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 Cobb 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 Cobb 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 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 a 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 Cobb County Tax Commissioner's Office follows certain procedures when it levies upon a piece of property. These procedures are prescribed by 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 shown after each code section. These opinions and court cases are extremely important and must be taken into consideration when interpreting these laws.

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 Cobb County also serves as Ex-Officio Sheriff of Cobb 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 48-2-56 and 48-5-28)

30 DAY NOTICE BEFORE ISSUING FI.FA.

After the last day for payment of taxes, the Tax Commissioner notifies the taxpayer in writing that the taxes are outstanding, and unless taxes are 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 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 of 1% per month from the date the tax was due. The execution (Fi. Fa.) is 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 recorded on the General Execution Docket (GED) of the Clerk of Superior Court.

LEVY

When real estate is levied, 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 Sheriff must give 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). The levy notice is delivered by certified mail, and if we cannot effect service by certified mail (mail returned unclaimed or undeliverable), the 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, then the Tax Commissioner routinely seizes it all. However, if a large parcel (tract) 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)

ADVERTISEMENT

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 Marietta Daily Journal under the heading "Tax Commissioner." Their website is www.mdjonline.com - to view advertisements online, at the left margin click on, CLASSIFIEDS and from the drop down select, LEGALS and then to the right select, TAX COMMISSIONERS. *These advertisements can be viewed online in the Friday edition!* 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

A written notice is sent by certified mail 10 days before the tax sale to the owner address of record and any applicable state, county or municipality that have

issued executions informing 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, and all applicable other costs. The property is sold to the highest bidder. If no one bids, the Tax Commissioner has the authority to bid the property for the County. Properties receiving no bids may be offered for sale again at 3:00 p.m. on the sale date, if there are interested bidders.

PAYMENT

We require payment in full upon conclusion of the tax sale. Payment must be in the form of cash, certified check, cashiers check, or money order. We also require the purchaser to sign a statement attesting to the fact that the property was purchased for the final 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. These documents are normally recorded and mailed to the purchaser by Friday afternoon following the tax sale.

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 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 the tax sale, we send written notice to the tenant, owner, security lien holder, 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

After paying taxes, cost and all expenses of the sale, a letter is mailed to inform all parties of record that excess is available and to explain how to claim them. The funds will be distributed as the priority of interest exists. (OCGA 48-4-5)

If the potential exists for competing claims or when deemed necessary, we may file an interpleader action in Superior Court for the determination as to who is entitled to receive the funds. The funds will then be distributed to the parties according to the court order.

The letter and affidavit is mailed to the owner(s) of record at the time of the tax sale, each security lien holder(s) and to all other parties having any recorded interest. The affidavit is provided and used as a guideline for our record to disburse the funds.

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. Owners with one or more liens on the property may require the lien holder to release his interest in the funds in order for us to approve their claim.

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.

PROCEDURES FOR TAX PURCHASER, OWNER, CREDITOR AND PARTIES WITH RECORD INTEREST

RIGHT OF REDEMPTION AND THE AMOUNT PAYABLE FOR REDEMPTION

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 tax deed.

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 purchaser 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.

The redemption amount paid to the tax deed purchaser should include the amount paid at tax sale, plus a 20% premium for the first year or fraction of a year, any taxes paid after the sale and any special assessment on the property. After the first year, the purchaser is entitled to an additional 10% for each subsequent year or fraction of a year that has elapsed since the date of sale, plus costs to redeem. A premium of 20% is paid each year when the parcel is bid into the county. (OCGA 48-4-42)

When the property has been redeemed (all monies 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.

Effective July 1, 2006, when property is redeemed the quitclaim deed prepared by the purchaser shall include a recital indicating the name of the person who paid the redemption money and the capacity in which or the claim of right or interest to which the money was paid. The quitclaim deed shall be presented when payment is received or within 7 days from the date of the payment. The deed must be recorded in the county of the tax sale and the purchaser shall pay the recording cost and return the recorded deed to the redeemer. (OCGA 48-4-44)

The 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, 48-4-40, 48-4-41, 48-4-42, 48-4-43 and 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 (bar) the owner's right to redeem the property by causing a notice or notices of 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.

If the redemption is not made until after the notice has been given, then the costs of serving the notice or notices and publishing the notice shall be added to the redemption price to cover the cost of making the necessary examinations to determine the persons upon whom notice should be served. (OCGA 48-4-42, 48-4-45 and 48-4-46)

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 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 execution of that 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.

QUESTIONS

If you have questions about tax sales after reading this booklet, please visit the State of Georgia web site at www.legis.ga.gov to read the applicable laws on the procedures referenced in this booklet.

For general tax information, you can visit our web site at www.cobbtax.org or visit the Cobb County web site for information and online services at www.cobbcountyga.gov.

To access copies of documents on public record for property ownership and security holder visit the Superior Court web site at www.cobbgasupctclk.com.