

GENERAL INFORMATION ABOUT TAX SALES

IMPORTANT – PLEASE READ

This memorandum answers frequently-asked questions about tax sales for people who have received a notice or are interested in bidding on properties. It is for informational use only. It is not legal advice, and does not interpret or modify applicable law. Since municipalities and their attorneys cannot represent your interests or give you legal advice, you should consult your own lawyer about how tax sales work and what your rights and duties are.

Why did I receive this notice?

This notice was sent to you because you or someone you represent is listed in public records as either owning or holding an encumbrance in real estate which has been slated for public auction to recover delinquent taxes and/or other municipal charges. You may be an owner or occupier, or may have recorded a mortgage or lien against the property. This notice will also be provided to any member of the public who inquires about the auction.

What is a “tax sale”?

A tax sale is a public auction of property conducted by a municipal entity which applies the proceeds against unpaid taxes or similar assessments owed. The sale can be conducted on any real estate owned by an individual or organization which has failed to pay any kind of tax, sewer charge, or similar debt (whether it was assessed on that real estate or not) owed to a city, town, borough, district, or other municipal authority.

Is a tax sale a lawsuit?

No. A tax sale does not mean that anyone is being sued, although it is a type of foreclosure. The tax collector of the municipality arranges and conducts the tax sale directly, or through an attorney or other agent, without the involvement of a court. However, if the auction does not bring in enough money to pay the delinquencies, the municipality can make further collection efforts to recover the difference, which might include suing the owner.

How is a tax sale started?

The usual first step is that the owner is mailed a letter demanding payment of the total delinquency at his or her last known address. After that, three notices are mailed over a nine- to twelve-week period to everyone who has recorded an interest in the property in the town clerk’s office. Notices of the tax sale are advertised in a local newspaper three times, and are also posted near the property or the clerk’s office. All delinquency information is available to the public on request.

Can the property be sold before the auction?

The municipality has no power to sell the property to anyone before the auction itself, even to someone who offers to pay the taxes in full. Paying someone else’s tax debt does not transfer ownership. However, the property’s owner does remain free to sell the property, before the auction or up to six months afterward – but the tax sale will proceed as scheduled unless the buyer or seller also pays the debt owed to the municipality.

What happens at the auction?

The auction usually takes place at the town hall or municipal office. The notices will specify the location. A sign is posted at the auction explaining the total delinquency, and rules are announced for how the auction will be conducted. The property is then auctioned to the highest bidder. Often, several delinquent properties are auctioned on the same day, one at a time. If the bids are too low, the municipality itself can take title to the property or reschedule the auction.

Who can participate in the auction?

Registration takes place at the time and place of the auction, not before. Any member of the public (other than the owner and encumbrancers) may bid on the property so long as he or she has a nonrefundable deposit in a minimum amount announced by the municipality. The deposit must be in certified funds like a bank check; cash, personal checks, or home equity line checks are not acceptable. Bidders must also bring government-issued ID and be prepared to provide a social security number (if bidding in their own name) or federal tax identification number (if bidding for an entity). Any member of the public may attend and observe the auction, but only those who register can bid.

Can people inspect the property before bidding?

People interested in bidding may research public records like assessment maps, field cards, land records, and similar documents, or look at the property from the road or sidewalk. They may also hire an appraisal service to conduct a curbside value estimate. No one, however, may trespass onto the property itself, or violate the privacy rights of any occupants. The municipality has no power to let interested bidders enter a property being auctioned at any time. (The only exception is that a municipality can authorize ground testing of a property with a known contamination history, with no guarantees as to the environmental condition or whether testing has been or should be done.)

How does the bidding work?

The minimum bid will be an amount determined by the municipality. It is usually the total delinquency including principal, interest, and fees due plus the cost of the auction and any jeopardy acceleration of subsequent installments (see below). Bidding will increase in an orderly fashion and as appropriate to maximize the final price. When someone is declared the highest bidder, he or she submits the deposit and must pay the rest of the bid (also in certified funds) by a fixed deadline. Otherwise, the deposit is forfeited, and a lower bid might be accepted instead depending on the rules announced at the auction. All unsuccessful bidders get their deposits back immediately. (Some bidders name themselves as alternative payees – such as, “John Smith OR Pullman & Comley, Trustee” – to simplify getting their money back from their bank.)

What is a “jeopardy acceleration”?

Jeopardy is the acceleration of a tax or other debt owed to the municipality. Although taxes usually become due in separate installments at fixed dates throughout the year, a tax collector who believes that a future installment is unlikely to be paid on time can collect it early. This is often done when an owner has a poor payment history, so that future installments can be recovered at the same time as the delinquencies. If budgets or mill rates have not yet been fixed, an estimate is used for the jeopardy amount to be collected, and any balance can be reflected on the next bill.

Where do the auction proceeds go?

Once paid, the winning bid is immediately used to pay the collection expenses and delinquencies owed in the order required by state law. Any money left over is put into a separate bank account and the municipality keeps the interest it earns. On the other hand, if the winning bid is less than the total delinquency, the owner continues to owe the difference, and the municipality might litigate to collect it, or pursue the person's other income or assets to the extent allowed by law.

What guarantees are given to the auction's highest bidder?

None, other than that the auction is conducted according to the proper legal procedures. The property itself is sold "as is" in every way. There is no guarantee that the property is buildable, up to code, useable for any purpose, reachable by road or utility, title-insurable, or worth the purchase price. The buyer has sole responsibility to figure these things out and to seek out independent legal advice.

What happens after the auction?

After the auction, a notice identifying the highest bidder and price is sent to the owner and everyone else with a recorded interest in the property. This is also published in a local newspaper. The tax collector signs a deed transferring the property to the highest bidder, but holds it in the clerk's office for six months. Nothing else happens during this time. The taxpayer continues to own and use the property; the highest bidder still cannot enter, alter, or sell it. If the highest bidder wants to, he or she may buy insurance to protect the property from fire or loss. The owner can even sell it during this time, but the buyer will still lose title at the six-month deadline unless either of them pays the debt.

When does the highest bidder get title?

Six months after the auction, the deed which the tax collector signed is officially recorded in the land records. The highest bidder owns the property "free and clear" of other liens and encumbrances at that time, except certain kinds such as easements and other taxes. For example, the purchaser generally need not pay off the property's mortgages and judgment liens (unlike in some court foreclosures). The purchaser must pay any taxes and water/sewer charges owed to the municipality conducting the sale which occur after the first sale notice filed in the land records unless they were included in the purchase price. It is solely up to the purchaser to evict any "holdovers" – like the former owner – by legal methods. The purchaser can ask the tax collector to put an affidavit in the land records explaining the details of the tax sale, which may be needed to apply for title insurance.

What about the property's other encumbrancers?

When the highest bidder acquires the property six months after the auction, most other interests in the property are wiped out. This means that mortgages, liens, other monetary encumbrances, and alienation restraints – even federal tax and state liens – will become totally unenforceable against the property and its new owner, except as the notice might otherwise exempt them. The notices might identify additional liens which will survive the auction, which the buyer must pay. If the municipality is holding extra money because the winning bid exceeds the total amount owed, the difference (less any other taxes or debts owed by the same owner) is sent to the local superior court. The former owner and any other person with a recorded interest in the property has 90 days to apply for a share of the money, and the court decides how to distribute it. (The purchaser cannot claim it.)

Can the tax sale be “undone” after it happens?

Yes. The owner or anyone else with a recorded interest in the property can “void” the auction up to six months after it happens, which is why the deed sits in the clerk’s office for that period. This is called a redemption. He or she pays the total delinquency as of the sale date, including the costs of the auction, plus 1.5% per month interest on the winning bid (not on the delinquency), plus any additional debts owed to the municipality not recovered by the auction procedure. If this happens, the highest bidder gets back his or her bid (including the deposit) plus monthly interest. The owner keeps the property, and notices are mailed that the sale has been undone. If the redeemer was an encumbrancer, a certificate is issued authorizing the redeemer to foreclose the amount paid with enhanced priority over other lienholders and 1.5% monthly interest along with the original lien. If the IRS has liened the property, it has an additional 120 days to redeem, in which case the buyer will lose title but will also get the bid refund although with only 0.5% monthly interest.

What kinds of expenses are charged to the property owner?

By law, all expenses of arranging and conducting the tax sale are charged to the property’s owner. These usually include fees for title searches, attorney’s hourly rates, newspaper advertising, filings in the land records, certified mailings, and similar costs. This is in addition to the 1.5% monthly interest which accrues on all municipal delinquencies, plus any jeopardy accelerations. These expenses increase significantly as the process moves along, and usually total a few thousand dollars. It is illegal for tax collectors to waive or negotiate these amounts, so any such request will be denied.

How can I prevent the tax sale?

Partial payments, promises to pay, and scheduled closings cannot stop the auction procedure. All requests for an exception will be denied regardless of the reason. A tax sale can be stopped if the owner pays the total due including interest, fees, and expenses, in which case notices are mailed out to announce the cancellation. Other people with recorded interests in the property can also prevent the sale by paying the delinquency for the owner; they usually do this to keep their liens from being wiped out. A “payoff” statement is not available to people with no recorded interest in the property, since the debt is irrelevant to them; they should just bid whatever they believe the property is worth. Bidders are strongly advised to check www.cttaxsales.com the day before the auction to determine whether any property in which they are interested has been de-listed due to payment.

What is the deadline for paying?

The final payment deadline is six months after the auction occurs. After that, the property’s title shifts from the taxpayer to the winning bidder, and redemption is no longer possible. Because fees, costs, and interest accrue throughout the entire process, the sooner the payoff occurs (especially before the auction instead of afterward), the cheaper it will be. Auctions and redemption deadlines cannot be postponed at the request of an owner or encumbrancer without a valid court order.

How can I find out more about this tax sale?

For more information about your legal rights and obligations, speak with your attorney. The municipality and its attorney cannot give you legal advice. If you have questions about the rules, scheduling, or payoff amount for a specific tax sale, e-mail ajc@pullcom.com (preferred) or call 203-330-2230.