NON-JUDICIAL TAX SALES



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As Delinquent Tax Officer, I receive many inquiries concerning Non-Judicial Tax Sales of real and personal property, how these sales work, and the pros and cons of purchasing property at these sales. This brief publication is designed to inform the public of general delinquent tax collection procedures, and directs the reader to portions of the Official Code of Georgia Annotated for more information. In addition to reading this booklet, as with any legal matter and questions involving property, the reader should consult an attorney who is knowledgeable in this area of the law.

The material in this booklet is factual information, not legal advice. Such information is not intended as legal advice, nor as a substitute for professional advice or assistance. All prospective purchasers of property at Non-Judicial Tax Sales are encouraged to consult an attorney both before and after the purchase of property. Any and all owners, lien holders, and parties who may have an interest in the property scheduled for Non-Judicial Tax Sale are encouraged to consult an attorney on how best to protect their respective interest(s) in the property.

All Non-Judicial Tax Sales are caveat emptor sales. Any prospective purchaser shall look for themselves as to the title and soundness of the property. Potential purchasers of property at Non-Judicial Tax Sales must do their own research. This office cannot assist with such research. For example, this office does not know building code requirements, zoning, utility services, or whether a specific lot is buildable. This office also does not know whether a parcel of property currently has a structure on it, whether that structure is livable, and/or whether that structure is currently inhabited. We cannot advise you on what easements, restrictions, or covenants may encumber the property after the Non-Judicial Tax Sale, nor can we certify that the information contained on any public website, such as qPublic.net, is accurate.

As with any investment, purchasing property at a Non-Judicial Tax Sale is not guaranteed to realize a profit. The responsibility to conduct adequate research and balance the risk to reward potential of an investment does not—and cannot—fall on any party other than the potential purchaser. Once collection proceedings have begun, the Tax Commissioner may unilaterally choose to stop the collection and/or sale process at any time, for any reason. Following the Non-Judicial Tax Sale, the Tax Commissioner may rescind the sale for any and all reasons as allowed by law.

Our staff is here for your assistance. Please let us know if we can be of any help, but please remember, we are not attorneys and cannot give legal advice.

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INTRODUCTION

In addition to titling and registering motor vehicles, the Tax Commissioner’s office is responsible for the billing and collection of ad valorem taxes throughout Fayette County. These ad valorem taxes are assessed against real property, personal property, mobile homes, and other classes of property. The amount due for ad valorem taxes is based upon the value of the property, and the millage rate. Ad valorem taxes collected by the County may be used to pay the expenses of administration of the county government, to build and repair public buildings and bridges, to build and maintain county roads, to pay county police, to provide ambulance services within the county, and for a variety of other public services.

The General Assembly of Georgia has found that “nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes,” and Georgia law allows for delinquent ad valorem taxes to be collected in a process that may result in selling the property at public auction.

NOTICE OF INTENT TO ISSUE A TAX LIEN (FI. FA.)

The first step in the process of collecting delinquent ad valorem taxes is to send a notice to the delinquent tax payer that the taxes have not been paid, and that unless paid, an execution shall be issued. This execution is a tax lien, also known as a Fieri Facias (Fi. Fa.), and attaches to all property of the delinquent tax payer. This notice is not required to be sent when the delinquent tax amount is a tax on personal property.

ISSUANCE OF TAX LIEN (FIFA)

At any time after 30 days have passed since sending the Notice of Intent to Issue a Tax Lien (Fi. Fa.), the Tax Commissioner shall issue a Fi. Fa. for nonpayment of taxes. This Fi. Fa. is directed to “all and singular sheriffs and constables of this state.”

RECORDING THE TAX LIEN (FIFA)

Once a Fi. Fa. has been issued for the nonpayment of taxes, the Fi. Fa. will then be recorded in the Lien Docket, maintained by the Clerk of the Superior Court of Fayette County.

AUTHORITY OF SALE

The Tax Commissioner, by her designation as Ex-Officio Sheriff of Fayette County, may collect taxes by levy and sale under tax execution, utilizing the processes set forth in Title 48, Chapter 4 of the Official Code of Georgia Annotated.

NON-JUDICIAL TAX SALE PROCEDURES

At any time following the recordation of a Fi. Fa. for the nonpayment of ad valorem taxes on the Lien Docket, the Ex-Officio Sheriff may levy and sell property of the defendant in Fi. Fa. to satisfy the Fi. Fa.

LEVY

The Ex-Officio Sheriff may levy on the property of the defendant in Fi. Fa., or on the specific property identified on the Fi. Fa., by actual or constructive seizure of the property.

ADVERTISING

After the Ex-Officio Sheriff has levied on the property, the property will be advertised for sale in the legal organ of the county for four consecutive weeks.

NOTICES

Notices of the impending sale will be sent to mortgage companies, security deed holders, lien holders, owner(s) of the property, and all other interested parties.

PUBLIC AUCTION

After the proper notices have been sent and the property has been advertised for sale in the legal organ of the county, the property may be auctioned off on the courthouse steps or at a different location as identified by the Tax Commissioner.

PAYMENT

The best and highest bidder at the public auction is required to pay the amount of the winning bid to the Tax Commissioner’s office. Such payment will satisfy the delinquent tax amount, penalties, interest, and all costs associated with the sale. Any amount greater than the starting bid will be considered Excess Funds. If the best and highest bidder refuses to comply with his or her bid, the Tax Commissioner may take legal action to secure payment.

CLOSING THE SALE

After the best and highest bidder has paid the winning bid amount, the winning bidder will receive a purchase confirmation for the purchase of real property, or a bill of sale for the purchase of personal property or a mobile home. If the auctioned property was real property, the purchaser will receive a tax deed approximately 30 days after the day of sale. If the auctioned property was a mobile home, the purchaser must ensure that the title to the mobile home is transferred into their name.

EXCESS FUNDS

Excess funds arising from a Non-Judicial Tax Sale are the personal property of the pre-tax sale owner(s). These excess funds are available for distribution to the owner(s), lien holders, and security deed holders, in the order of priority of their respective interests.

RIGHT OF REDEMPTION

Following a Non-Judicial Tax Sale, real property may be redeemed by any entity having a right, title, or interest in the property. The property may be redeemed by paying the proper redemption amount to the holder of the tax deed, and the tax sale purchaser must then execute a quitclaim deed of redemption to the pre-tax sale owner.

FORECLOSING ON THE RIGHT OF REDEMPTION

Once a minimum of twelve months have passed following the Non-Judicial Tax Sale, the holder of a tax deed may foreclose on the right of redemption. An attorney is not required to foreclose on the right of redemption, but it is highly recommend that the holder of a tax deed seeking to foreclose on the right of redemption consult an attorney knowledgeable in the area of Georgia property tax law.

MARKETABLE TITLE

Generally, title conveyed from a Non-Judicial Tax Sale is not considered marketable title even after foreclosure on the right of redemption. In order for title to be considered marketable following a Non-Judicial Tax Sale, the tax deed holder should quiet title to the property in their name. This is done by filing suit in the Superior Court of Fayette County. Consult an attorney knowledgeable in the area of Georgia property tax law for further information.

RIPENING BY PRESCRIPTION (ADVERSE POSSESSION)

Title under a tax deed shall ripen by prescription after a period of four years of adverse possession following recordation of the tax deed in the land records of Fayette County. Consult an attorney knowledgeable in the area of Georgia property tax law for further information concerning adverse possession following a Non-Judicial Tax Sale.

PURCHASER’S RESPONSIBILITY FOR TAXES AND HOA/POA DUES

A purchaser of property at a Non-Judicial Tax Sale becomes responsible for the taxes against the property from the date of sale forward. The Non-Judicial Tax Sale purchaser should ensure that the tax bill will be sent to the correct billing address.

Similarly, a purchaser of property at a Non-Judicial Tax Sale becomes responsible for any Homeowner’s Association, Property Owner’s Association, and other like dues from the date of sale.