

**New Jersey
N2K Hour:**

**What You Need
To Know About
Tax Sale
Certificates
&
TSC Foreclosure**

**Webex Presentation:
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FEATURING:



DAVID RUBIN, ESQ.



**Moderated by
JOHN CROWLEY, ESQ.**

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**What You N2K
About
Tax Sale Certificates
and
Their Foreclosure**

Tax Sale Certificate Basics

- All owners of real property are required to pay both property taxes and any other municipal charges.
- In New Jersey, property taxes are a continuous lien on the real estate in the full annual amount as of the 1st of the year.
- Property taxes are payable in four installments:
February 1, May 1, August 1, and November 1.
 - Thus when you pay your taxes, you reduce the lien amount each quarter
- Municipal liens for real estate taxes and other assessments are paramount to all prior and subsequent liens,
 - Except for subsequent municipal liens.

Tax Sale Certificate Basics

- In order to enable municipalities to return property to the paying tax rolls, they must sell or assign the liens
- New Jersey law requires all 565 municipalities to hold at least one tax sale per year, if the municipality has delinquent property taxes and/or municipal charges.
- The purpose of the tax sales is to: (i) obtain payment on delinquencies; or (ii) permit the use of foreclosure proceedings to transfer title from the delinquent party.

Tax Sale Procedure – How does it work

- Purchasing a tax sale certificate is a form of investment.
- Delinquency on a property may accrue interest at up to 8% for the first \$1,500.00 due, and 18% for any amount over \$1,500.00
 - If the delinquency exceeds \$10,000.00 at the end of a municipalities fiscal year, there may be an addition 6% penalty.
- As previously stated, each municipality is required to hold one auction a year for the delinquent accounts.

Tax Sale Procedure – How does it work

- Tax sales are conducted by the tax collector;
- Third parties and the municipality bid on the tax sale certificates (“TSC”).
- At the conclusion of the sale, the highest bidder pays the outstanding taxes and becomes the holder of the TSC.
 - The TSC must be recorded with the County Clerk to become a lien against the real estate.
- The holder of a TSC does not own the property. Rather, the TSC holder owns a lien against the property in the amount paid for the TSC plus interest which continues to accrue.
- If no one bids on a property, the municipality retains the lien/certificate

More about what is being purchased.

- At the auction, bidders bid DOWN the interest rate that will be paid by the owner for continuing interest on the certificate amount.
- If the interest is bid down to 1%, a premium is bid up until the bidding stops, to obtain the tax sale certificate.
 - This means that the investor is getting no interest on the certificate amount or the premium, significantly lowering the returns on this investment.
 - In New Jersey premiums are held by the municipality and **if the lien is not redeemed within a 5 year period, that money is not returned to the investor.**
 - The reason that tax lien investors pay premium is that once you are the lien holder, you then have the ability to pay the subsequent taxes.

Lets illustrate by example

Lets say you attend a Municipal Tax Sale. You are the winning bidder (hooray). This was an attractive property, so the winning bid was for premium (as discussed interest was bid down to 0%). The lien was for \$5,000.00 as well as \$10,000.00 in premium. Thus at the close of the tax sale you tender \$15,000.00.

You then pay the subsequent years taxes of \$10,000.00 what does your investment look like.

The investor example continued.

You will be paid the principle amount plus penalty in addition to subsequent taxes paid which will accrue interest at 18%.

By way of further example, if you did not bid premium and won the bidding at an interest rate, each year the certificate amount will accrue interest at the rate which was the winning bid..However, subsequent taxes paid will accrue interest at the municipalities statutory rate. In addition, you will receive penalty as well.

Tax Sale Certificate Redemption

- Redemption: Redemption is governed by statute,
- Only certain enumerated persons with interests in a property may redeem the Tax Sale Certificate. They include the owners, trustees for the owners, heirs of the owners holder of any prior tax sale certificates, mortgagees and any legal occupant.
- The amount required to redeem must be requested from the tax collector who relies on a certification of the TSC holder as to all amounts due and owing.
- Once the amount is paid, the Certificate should be cancelled of record.

Redemption by others

- Most investors holding certificates are only interested in getting their certificate paid off
- Others, whether or not they are the certificate holder, are truly interested in a particular piece of property that is being foreclosed.
- Many third party investors interested in obtaining title to a property have been surprised to learn that once a certificate holder has commenced a foreclosure action, they cannot simply show up at the tax office, pay off the certificate, and buy the property from the owner.

What we should be looking for if asked to insure a purchase

- A third party who does not hold the TSC must seek court approval and demonstrate that the purchase is not a sweetheart deal to the property owner.
- The motion for intervention is not readily granted.
 - Once the motion to intervene is timely filed, the potential purchaser must convince the court that the transaction will benefit the property owner by showing that it is for more than “nominal value” and offers the owner a real, tangible and meaningful benefit above token value, and not one that would be unconscionable under all the circumstances.

Case Law Supports Protecting Homeowners

- In Simon v. Cronecker, 189 N.J. 304, 318 (2007), our Supreme Court addressed the New Jersey Tax Sale Law, N.J.S.A. 54:5-1 to-137, (Act) and instituted protections for distressed property owners.
- In the motion to intervene, the third-party investor must "establish that [it] has offered more than nominal consideration for the interest." Id. at 338. The Court has defined "more than nominal" consideration as "consideration that is not insubstantial under all the circumstances; it is an amount, given the nature of the transaction, that is not unconscionable." Id. at 335.

The Rationale

- The Court's of New Jersey readily support the notion that distressed property owners are generally in vulnerable positions. Thus a third-party purchaser must truly demonstrate that the intent is to benefit the homeowner.
- Alternatively, by simply allowing third party purchasers to construct deals that do not represent fair market value and real consideration, such transactions would have a chilling effect on potential tax sale certificate purchasers.

I have a question

Question: We have a closing in 35 minutes and the Tax Collector has not provided redemption figures, what should we escrow?

Answer: You should not hold escrow for unpaid taxes. However, if presented with a situation you **SHOULD** contact your underwriter for assistance.

- Redemption figures may vary by not only interest rate, but also for fees, costs, and other taxes paid by the holder
 - Thus establishing an escrow incurs a hazardous risk

In Personam Actions to Foreclose

- The purchaser of a Tax Sale Certificate may foreclose any rights of redemption by commencing a strict foreclosure action.
- If the purchaser is a municipality, it must wait until six months after the tax sale to commence the action;
- If the purchaser is a private person, he/she must wait until two (2) years after the tax sale to take action.
 - A private purchaser who fails to keep the taxes on the property current, forfeits his right to foreclose.
 - There is no such prohibition on municipalities

Understanding the In Personam Foreclosure Process

- After waiting the statutory period, the holder of a TSC will file a complaint with the Chancery Division, similar to that filed in a strict foreclosure action.
- The defendants to be named should include the owner of the property, mortgagees, holder of prior tax liens, tenants and any other persons who may have a right to redeem.
- The Plaintiff will submit its proofs for the amount due, to be certified by the Tax Collector of the municipality; at which point an Order Setting time and place for Redemption.
- The Order must be served on all parties via regular mail or by publication.

In Personam Actions continued

- If no party appears to challenge or redeems the amount owed; the Court will enter final judgment upon submission of proof of service of the order for redemption and an affidavit of non-redemption.
- The final judgment will bar the claims of any persons claiming to have an interest in the subject premises.
- The recordation of the Final Judgment acts in the same way as a Deed and title will become vested in the foreclosing Plaintiff

In Rem Actions to Foreclose

- As previously noted, municipalities have the right in some cases to foreclose through an in rem action.
 - Note: No action may be commenced unless more than six months have passed from the date of tax sale; and all or any portion of the taxes against the subject property for the 21 months preceding remain unpaid.
- The municipality **MUST** pass a resolution if it wishes to commence an in rem action
- Why would they chose this process: The In Rem foreclosure is less costly and much faster because all service is done by mail and there is no order setting time.

The In Rem Procedure

- Filing of a complaint – The complaint must be verified by the tax collector setting forth:
 - The tax foreclosure list
 - Names of the persons who hold title to the property;
 - A demand for relief pursuant to the In Rem Tax Foreclosure Act.
 - The Act provides that 200 tax sale certificates may be joined in a single action
 - The plaintiff in an in rem action is required to publish notice of foreclosure with an answer or redemption period of 45 days
 - Notice must ALSO be served on interested parties

The In Rem Procedure

- If an answer or redemption is made, the parcel will be severed from the complaint
 - Generally, you will see properties “scratched out” from the complaint.
- If no answer is filed, final judgment will be entered, and the plaintiff obtains fee simple title to the subject property, free and clear of all liens and encumbrances.
- The judgment is thereafter recorded and the tax sale certificate becomes a minument of title (there will be a notation made on the certificate).

There is one exception...

- Tax lien foreclosure in New Jersey is generally a “strict foreclosure” process, whereby the final judgment is recorded as a deed and the lien holder becomes the owner without a Sheriff’s Sale.
- There is an exception however. If the federal government holds an interest in the property, such as an IRS federal tax lien, then “strict foreclosure” is not permitted, and there must be a Sheriff’s Sale at the end of the foreclosure process.
- This opens the door to other investors who may bid at the sale to pay off the plaintiff / tax lien holder, and take title to the property via Sheriff’s Deed. When this happens, you do not get the property, but you get paid off with interest.

The Chancery Abstract

- When asked to insure property out of a tax sale foreclosure, you are required to order an abstract of the proceedings.
 - This is the same type of abstract ordered in mortgage foreclosure actions
- You want to review your Abstract in conjunction with your title search.
 - Ensure joinder of all proper parties who may have an interest as previously identified
 - Ensure there is proper service of all parties

Common Questions when Dealing with Tax Sale Certificates and Tax Sale Foreclosures

Question: I have several tax sale certificates in title, do I need to have them all cancelled of record.

Answer: Tax Sale Certificates work in opposite priority. Meaning those which are recorded last have priority over earlier tax sale certificates. Thus earlier tax sale certificates lose their ability to foreclose. You should contact the tax collector to determine if the prior certificates have been redeemed. If not, redemption will be required.

Common Questions when Dealing with Tax Sale Certificates and Tax Sale Foreclosures

- **Question:** Should the tax sale certificate have been joined in my mortgage foreclosure action, or was it just missed?
- **Answer:** No, a tax sale certificate WILL NEVER be joined in a foreclosure action, as it is considered a Super Priority Lien and thus cannot be divested
- **Question:** The final judgment was recorded 6 months ago, why am I being told that you will not insure, everything looks up to par.
- **Answer:** Public policy disfavors tax sale foreclosure. While by statute a judgment may be opened within 3 months. The Rule of Thumb is not to insure the transaction until 1 year has passed.

Common Questions when Dealing with Tax Sale Certificates and Tax Sale Foreclosures

- **Question:** I understand that we need to wait one year, but why?
- **Answer:** Rule 4:50-1 governs vacation of final judgment. The rule enumerates seven (7) reasons which would form the basis for vacation. Most motions to vacate judgment must be brought in a reasonable time, however, if the basis for the motion is due to lack of jurisdiction or fraud, it can only be brought within one (1) year.
 - If the final judgment is taken against an unknown owner or unknown claimant, the person may seek to vacate up to FIVE (5) years.

Common Questions when Dealing with Tax Sale Certificates and Tax Sale Foreclosures

- **Question:** I have a open tax sale certificate from 1989 on title, what can be done about this?
- **Answer:** A privately held TSC generally has a life of 20 years, which may nevertheless be extended through continued payment of taxes by the holder thereof beyond the 20 years.
 - However, a TSC held by a municipality is enforceable forever.

What about Bona Fide purchasers for value

- If at time of our transaction, title is held by a bona fide purchaser for value from a bona fide purchaser for value from the foreclosing entity no need to order chancery abstract.
- If at time of our transaction, title is held by a bona fide purchaser for value from the foreclosing entity and five (5) years have elapsed since date of foreclosure judgment no need to order chancery abstract.

Wait..you said there needs to be a two year wait, and this action was started sooner

Accelerated foreclosure and right of entry.

The Abandoned Properties Rehabilitation Act amended N.J.S.A. §54:5-86 to grant significant powers to third party tax lien buyers.

The buyer of a tax sale certificate on an abandoned property, either at the time of tax sale or thereafter, may immediately file an action to foreclose on the property. The standard two year waiting period for foreclosure by a third party is eliminated with respect to abandoned properties. Moreover, while the property must meet the definition of abandoned property to be subject to the provisions of this section, it need not be on a municipal abandoned property list.

Other Factors to keep in Mind

- Bankruptcy – one of the main functions of a bankruptcy filing is to stop ALL collection activity while the debtor attempts to get their affairs in order . The STOP is referred to as a STAY. Only with permission from the Bankruptcy Court will that STAY be removed and a creditor can continue their collection efforts.
- This applies to tax sale foreclosures. If you see a bankruptcy filing during the foreclosure, you want to make sure the Plaintiff was given permission by the Court to pursue the foreclosure, any action done without permission is illegal and can result in stiff penalties.

Date: September 19, 2011

From:

To: All New Jersey Issuing Offices

RE: Insuring Title out of a Tax Sale Foreclosure

Dear Associates:

The state office has recently had an increased number of inquiries regarding insuring transactions where there has been a tax sale foreclosure. This bulletin serves as a reminder of Stewart's requirements for insuring these transactions.

As you are aware unpaid taxes and municipal utility charges are a lien upon real property. If the taxes remain unpaid the municipality may sell a tax sale certificate to an investor to recover the unpaid taxes. The certificates may be sold to individual investors or to the municipality itself. Ultimately the certificates may be foreclosed. Unlike a mortgage foreclosure there is not typically a sheriff's sale. It is the entry of the final judgment that will vest title in the foreclosing party. It should be noted that because of the summary nature of the proceeding federal liens will not be cut off absent a judicial sale.

Of particular concern when insuring transactions derived through a tax sale foreclosure is the property owner seeking to overturn the final judgment and redeem the certificate. Practitioners in this area will often refer to a three month right of redemption set forth by statute. However under NJ Court Rule 4:50-1 a party may seek to overturn the entry of a final judgment for up to a year. Because tax sale certificates are often purchased for a relatively small investment and the foreclosure action results in the property owner being divested of a highly valuable asset, courts have tended to be sympathetic to applications under this rule by foreclosed owners.

Accordingly, where less than 1 year has elapsed from the recording of the final judgment Stewart title will not insure title into a purchaser from the foreclosing entity or a subsequent resale.

If more than 1 year has elapsed from the recording of the final judgment, a chancery abstract must be reviewed to determine that all necessary procedures have been followed and that all parties being cut

off have been given proper notice of the foreclosure.

Any open federal liens of record must be satisfied unless there has been a judicial sale and proper notice given.

If you have any questions relating to this or other bulletins, please contact a Stewart Title Guaranty Company underwriter.

For on-line viewing of this and other bulletins, please log onto www.vuwriter.com.

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Without Underwriter Approval

References

Bulletins Replaced : None
Related Bulletins : None
Underwriting Manual : [19.00 Tax Titles](#)

Exceptions Manual : None
Forms : None

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JULY N2K HOUR

Tuesday

July 17

10:00AM

BANKRUPTCY