

**New Jersey
N2K Hour:**

**Tax Sale
Certificates and
Foreclosures**

August 8, 2023

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Basics of New Jersey Taxes

- All owners of real property are required to pay both property taxes and any other municipal charges.
- In NJ, 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.
 - When you pay your taxes, you reduce the lien amount each quarter.
- Municipal liens for real estate taxes and other assessments have a super priority to all prior and subsequent liens.
 - Except for subsequent municipal liens.

Tax Certificate Basics

- In order to enable municipalities to return property to the paying tax rolls, they can 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

- 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 municipality's fiscal year, there may be an additional 6% penalty.
- As previously stated, each municipality is required to hold one auction a year for the delinquent accounts.

Tax Sale Procedure (cont.)

- 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. Instead, 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.

Tax Sale Procedure (cont.)

- 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 can pay the subsequent taxes.

Tax Sale Procedure - Example

- Let's say you attend a Municipal Tax Sale. You are the winning bidder. This was an attractive property, so the winning bid was for premium (interest was bid down to 0%). The lien was for \$5,000.00 as well as \$10,000.00 in premium. 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?
 - You will be paid the principal amount plus penalty in addition to subsequent taxes paid which will accrue interest at 18%.

Tax Sale Procedure – Example (cont.)

- 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 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.

Tax Sale Certificate Redemption (cont.)

- 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.

Case Law Supports Protecting Homeowners (cont.)

- The Court's of New Jersey readily support the notion that distressed property owners are generally in vulnerable positions. Therefore, 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.

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, they must wait until two (2) years after the tax sale to act.
 - 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.

In Personam Actions to Foreclose (cont.)

- After waiting the statutory period, the holder of a TSC will file a complaint with the Chancery Division, similar to 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 to Foreclose (cont.)

- 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.
 - 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 choose 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.

In Rem Actions to Foreclose (cont.)

- 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.

In Rem Actions to Foreclose (cont.)

- 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).

Recent Updates regarding In Rem Actions

- On July 12, 2023, the New Jersey Supreme Court issued an Order in response to a recent decision of the United States Supreme Court, *Tyler v Hennepin County*, 598 U.S. _____, 143 S. Ct. 1369 (2023).
- The NJ Supreme Court's order states that In Rem tax foreclosure actions filed after May 25, 2023, will require a motion for final judgment made to the county Superior Court judge, rather than having the entry of final judgment handled by the Foreclosure Unit.
- The Order also specifies that any allegation in a responsive pleading that a party has equity in the property shall be treated as a contesting answer to the tax foreclosure.

Recent Updates Regarding In Rem Actions (cont.)

- The Order also sets forth changes in the requirements for service for In Rem actions, requiring **personal service** of any and all parties who have the right of redemption.
- This requirement for personal service includes the summons and complaint as well as all prejudgment notices and the notice of motion for entry of judgment.
- This is a departure from the current Court Rules which allow for publication and mailed notice of the publication to the owner and interested parties.

There's always an 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.

The Chancery Abstract (cont.)

- For in rem actions, you will need to note the filing date on the complaint.
- If the complaint was filed after May 25, 2023, you must verify that all notices including the original summons and complaint and the motion for entry of judgment are all served personally upon the parties who hold a right of redemption.
- The recently issued Supreme Court order does allow for the possibility of alternate service in the event that the owner cannot be served personally, by filing a certificate of diligent inquiry with the court, detailing the steps that were taken to locate and serve the defendant owner.

Common Questions

- **Question:** We have a closing and the Tax Collector has not provided redemption figures, what should we escrow?
- **Answer:** You may not hold escrow for unpaid taxes. However, if presented with a situation you SHOULD contact your underwriter for assistance.
- **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 (cont.)

- **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 (cont.)

- **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 (cont.)

- **Question:** I have an 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 Purchases?

- 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.

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.

Wrap Up and Review

- The holder of a TSC does not own the property. Instead, the TSC holder owns a lien against the property in the amount paid for the TSC plus interest which continues to accrue.
- 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.
- 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.
- A TSC held by the municipality is enforceable forever.

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September N2K HOUR:

Tuesday, September 12th, 2023

11:00AM

Water Rights in NJ