



Tax Lien Sales / Treasurer's Deeds

October 2004

What is a tax lien?

If property taxes are delinquent, the Treasurer is authorized to sell the property for unpaid taxes. Delinquent real property taxes go to tax lien sale annually, generally toward the end of the year. At the Tax Lien Sale, investors pay the delinquent amount due on a property, which grants the investor a lien on the property.

The Tax Lien Sale allows the taxing authorities to receive their budgeted revenue without having to wait for the delinquent taxes to be collected. It also offers an investment opportunity to the general public, as individuals purchasing tax lien certificates can earn a potentially attractive interest rate on their investment.

The property owner has three years to redeem the tax lien before the investor is eligible to apply for a Treasurer's Deed on the property. In addition to the amount of the delinquent taxes, the property owner pays an interest charge to the tax lien investor.

The Tax Lien Sale is the final step in the Treasurer's efforts to collect taxes on real property. A tax lien is placed on each property in the county on January 1 each year and remains until the property taxes are paid. If the property owner does not pay the taxes on their property by a certain date, the county sells the tax lien at the yearly Tax Lien Sale. The tax lien is auctioned to the highest bidder, who then becomes the tax lien certificate holder.

Often, the successful bidder must pay a premium price above the amount of the delinquent taxes and other costs in order to purchase the tax lien certificate. The premium paid does not earn interest and is not paid back by the property owner.

Interest is earned on the face amount of the certificate (again, not on any bidding premium paid) from the date of the sale to the date that the property owner redeems the certificate by paying the delinquent taxes, interest, and costs.

The property owner may redeem the property from the tax lien certificate holder at any time, from the day of the sale to the day that a tax deed is issued.

If the property owner does not redeem the property by paying the delinquent taxes, the tax lien certificate holder can pay the required costs and fees and apply for a Treasurer's Deed after three years.

Procedures for Tax Lien Sales

Tax Lien Sales in Colorado are auction-type sales and are governed by statute. C.R.S. 39-11-151(1)(b) states that no tax lien shall be sold to an elected or appointed county official, to a county employee, or to a member of the immediate family of such person or to the agent of any such county official or employee during the time the official or employee holds office or is employed. Interest rates are predetermined at the time of the sale and are also set by statute (C.R.S. 39-12-103).

A completed W-9 form is required to participate in a Tax Lien Sale. In addition, the Internal Revenue Service requires counties to issue 1099-INT forms to tax lien buyers.

The Tax Lien Sale is usually held in October or November. Actual dates vary by county.

Buyers pay the total advertised price consisting of tax, interest to the date of sale, and an advertising fee. They also pay a nominal certificate fee plus any premium bid. The person bidding the highest amount is issued a Certificate of Purchase. This is a negotiable document representing a recorded lien on the property.

The buyer does not recover the premium paid over the starting amount. The certificate earns interest at the rate stated on the certificate with portions of calendar months considered as whole months.

Redemption of Certificate of Purchase

The redemption amount paid is the certificate amount (tax, interest, advertising, and fees), plus redemption interest (as determined at the

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time of the tax sale). Upon redemption, the Treasurer notifies the buyer to return their certificate for payment of the certificate face value plus accrued interest. When a county holds a certificate for the purchaser, payment is often mailed immediately.

The owner, owner's agent, attorney or assignee, or any person having a legal or equitable interest in the property may redeem the property by paying the back taxes, costs, and interest accrued. This must be done within three years. A Redemption Certificate is issued when the taxes are redeemed.

Treasurer's Deed

If the property has not been redeemed after three years, the holder of the Certificate of Purchase can apply for and receive a Treasurer's Deed to the property. Very few properties actually go without being redeemed.

Buyers requesting a Treasurer's Deed return their certificates to the county and deposit expense money. After a title search, advertising, and notification of all interested parties, a Treasurer's Tax Deed is issued if there has been no redemption. When a Treasurer's Deed is issued, the tax lien certificate holder receives the deed to the property but no additional interest or reimbursement of costs.

Because the county does not own the property but simply has a lien on it, the county does not guarantee or warrant any part of the tax lien process. The tax deed is created by state statute and is not the equivalent of a general warranty deed.

It is each tax lien purchaser's responsibility to understand the process and the risks connected with the process; to understand the nature of the tax deed; to become familiar with the value, circumstances, and condition of the property; and to determine whether there is anyone with a hidden interest in the property.

A Treasurer's Deed creates an entirely new chain of title since its origin comes from taxes—the "true first" lien on real property.

As a general guideline, a Treasurer's Deed is considered an "official deed" but does not become official until it has been of record for seven years. Various tolling statutes for persons absent or under disability add on another two years to constitute the nine-year marketability.

Marketability

If the Treasurer's Deed is to be insured prior to the passage of nine years, marketability can only be insured if a Quiet Title action is conducted in the courts or if deeds, releases, etc. are obtained from persons with a record interest in the property prior to the issuance of the Treasurer's Deed. Keep in mind that if a Quiet Title action is sought, marketability is still an exception for six months following the entry of the Quiet Title Decree.

The Title Commitment

Land Title no longer reports tax sales on the title commitments as the counties no longer record the Certificates of Purchase that are given to the highest bidder at the tax sale. They also no longer record the Certificate of Redemption that is issued to a party redeeming taxes after the tax sale. Instead, the closer must get all redemption figures from the Treasurer and of course they are given as "prior taxes due" on the tax certificates.

Generally, a title company is only concerned with title requirements regarding tax liens when a Treasurer's Deed has been issued in conjunction with a tax sale, because of the issue of marketable title.

Title insurance underwriting requirements may differ from procedures carried out by the Treasurer. When the Treasurer issues the tax deed, they could say that all liens are gone. Title insurers, however, have the responsibility of insuring "marketability"; they may view this type of transaction as if the prior liens remain and need to be released or completely removed from the property by Quiet Title Action. In some counties where liens are viewed as being gone, the Public Trustees will not accept a foreclosure of a prior deed of trust and the lender must therefore proceed with a judicial foreclosure.

Each situation must be considered on its own merits and on a case-by-case basis.

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