

Real Property

# Tax Sale

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As Tax Commissioner, I receive many inquiries concerning Real Estate Tax Sales, how they work and what are the pros and cons of buying property on the steps of the Courthouse. This brief publication is designed to answer all of these questions, plus provide an insight into the legal frame work, which gives the Tax Commissioner the authority for conducting a Real Estate Tax Sale in the State of Georgia.

**LOWNDES COUNTY DOES NOT SELL TAX LIENS. We also have nothing to do the foreclosures conducted by the mortgage holders. All INFORMATION IN THIS BOOK REFERS TO THE SALE OF PROPERTY by the county on the courthouse steps for **DELINQUENT PROPERTY TAX**.**

The material in this booklet is not intended as a substitute for professional advice or assistance. We encourage prospective buyers to consult with an attorney before purchasing property at a tax sale. Keep foremost in mind that it is up to the purchaser at a tax sale to assure themselves as to the soundness of the sale and the deed to be acquired at the sale.

Applicable references to the Official Code of Georgia are given both as a source of authority and to add a clear understanding of how Real Estate Tax Sales in the State of Georgia work.

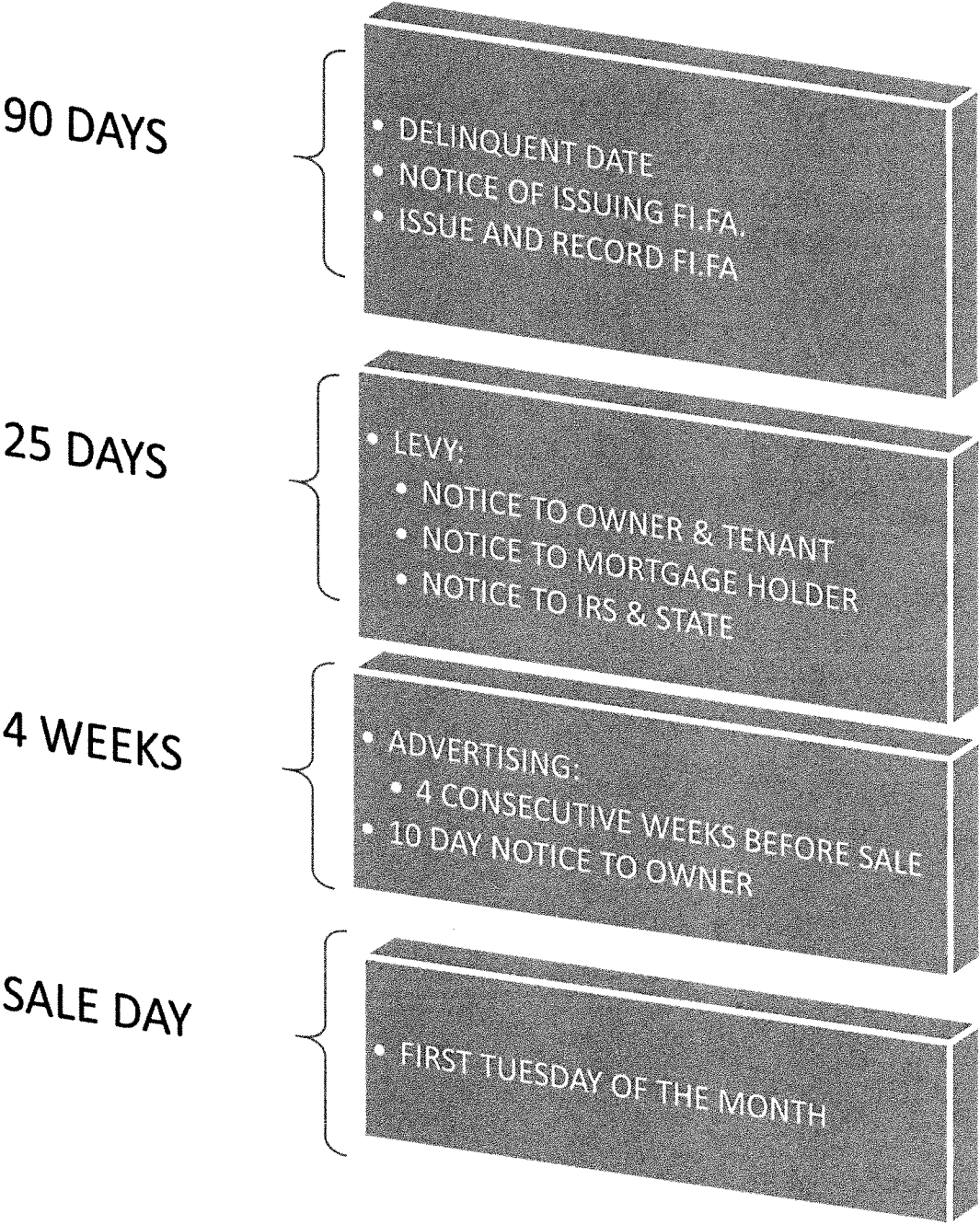
Although we cannot teach you the entire process of buying tax sale properties, our staff is always here for your assistance, so please let us know when we can be of help.



Lowndes County Tax Commissioner



# LOWNDES COUNTY TAX SALE FLOW CHART



## INTRODUCTION

There are several actions we go through in preparation for selling a parcel of property. We keep an information folder on these parcels that includes our title search, tax map and/or plat, copies of the newspaper advertisement, and our Ex-Officio Sheriff's Notice of Service. Our title searches are for our own purpose and would not serve the needs of the buying public. Keep in mind that it is the purchaser's responsibility to assure them as to the soundness of the title of all property sold at a tax sale.

Questions arise that we cannot answer, and the person interested in the property must find these answers in other offices and records. For example, we do not know building code requirements. We do not know whether county sewer lines serve any particular area or street. We have no way of knowing whether a particular parcel or lot will be approved for a building or a septic tank. We are not always aware of easements.

An important point that **MUST NOT BE OVERLOOKED** by the purchaser at a tax sale is that **OTHER TAXES** might be unpaid. It is possible that additional county taxes have become delinquent since proceedings were first begun on the parcel you have purchased or wish to purchase, and those additional taxes must be paid separately.

Can you lose money? Maybe! We do not really know. One can get a bad deed or title at a sale, whether from an individual or from a tax sale. We always recommend that anybody contemplating a tax sale consult an attorney, assure oneself the title is good, verify the information we have gathered, read those sections of Georgia law that pertain to tax sales, and attend our sales to get an idea of what goes on.

The buyer at a tax sale auction should find for themselves answers to questions relative to documentation, and recordation of documents resulting from the sale. The buyer at a tax auction is also responsible for proper processing of documents concerning the foreclosure of the right to redeem and those documents concerning the right of redemption. (*See Right of Redemption Section*)

## **AUTHORITY OF SALE**

The Tax Commissioner of Lowndes County also serves as Ex-Officio Sheriff of Lowndes County. The Tax Commissioner as Ex-Officio Sheriff appoints Ex-Officio Deputy Sheriffs, who are sworn by the probate Judge, to act for the Tax Commissioner as Ex-Officio Sheriff in tax matters. Each Ex-Officio Deputy Sheriff has full power to advertise and bring property to sale for the purpose of collecting taxes due the state and county. (OCGA 48-5-128 and 48-2-55)

Taxes due the state and county are not only against the owner BUT are also against the property, regardless of judgements, mortgages, sales or encumbrance. Taxes constitute a general “lien” upon all property of a taxpayer and attaches on January 1<sup>st</sup> of each year, even though a FIFa has not been issued. (OCGA 48-2-56 and 48-5-28)

### **Fi.Fa.**

A Fi.Fa. (short for fieri facias) – a Latin term for cause it to be done, and also used interchangeably with TAX EXECUTION or EXECUTION, is a tax lien or writ, authorizing the Sheriff of Ex-Officio Sheriff to obtain satisfaction of unpaid taxes by levying on and selling the delinquent taxpayer’s property. These documents are recorded on the General Execution Docket (GED) of the Clerk of Superior Court. (OCGA 48-3-1 and 48-3-3)

## **TAX SALE PROCEDURES**

THE Lowndes County Tax Commissioner’s Office follows certain procedures when it levies upon a piece of property. These procedures are prescribed by the Official Code of Georgia, Annotated (OCGA). You will see code sections referenced throughout this booklet. These references are a starting point for your research and are by no means a complete listing. We strongly suggest you read those sections of Georgia law which pertain to Tax Executions and Tax Sales. OCGA Title 48-Revenue and Taxation, Chapter 3-Tax Executions, and Chapter 4-Tax Sales, contain important information that you must be aware of Also, read and research those opinions of the attorney General and judicial decisions which are shown after each code section. These opinions and court cases are extremely important and must be taken into consideration when interpreting these laws. On page 3 of this booklet, you will find a Tax Flow Chart that outlines legally required procedures. We will further explain each procedure and reference code sections to which you may refer.

## **SELECTION OF PROPERTY LEVY**

If the property being levied upon is a house and lot, then the Tax Commissioner routinely takes it all. However, if a large parcel is being levied, it may not be prudent to sell all of it, and a portion may be set aside for levy purposes. The delinquent taxpayer may select the property to be sold. However, it is at the discretion of the Ex-Officio Deputy Sheriff to levy on additional property whenever he deems it necessary to secure prompt collection of delinquent taxes. This is known as the "pointing out privilege". (OCGA 48-3-4)

## **ADVERTISING**

All properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the first Tuesday of the month. These advertisements are placed in the legal section of the Valdosta Daily Times under the heading "Tax Sale". Each advertisement shows the owner's name and a description of the property to be sold. (OCGA 9-13-140, 9-13-141, 9-13-142 and 48-2-55)

## **10 DAY NOTICE TO OWNER**

At least 10 days before the tax sale, the owner is sent a written notice by certified mail, informing him of the impending tax sale. (OCGA 48-4-1)

## **TAX SALE**

On the first Tuesday of each month, between the hours of 10 a.m. and 4 p.m. (usually 10:00 a.m.), we hold our tax sale on the steps of the Lowndes County Judicial Building (Except, when the first Tuesday falls on a legal holiday, the sale is held the next day, Wednesday). The opening bid for a particular piece of property is the amount of taxes due, plus penalties, interest, Fi.Fa. cost, levy cost, administrative levy fee, certified mail cost, and advertising cost. The property is sold to the highest bidder. If no one bids at least the amount due the county for the property, the Tax Commissioner has the authority to bid in the property for the County or declare a "no sale".

## **PAYMENT**

We require payment in full upon conclusion of the tax sale. Payment must be in form of cash, certified check, cashier's check or money order. We also require the purchaser to sign a statement attesting to the fact that certain property was purchased for a certain price. Immediately following the conclusion of the tax sale, all purchasers must remit full payment to this office. After all payments are processed, we begin preparation of the Tax Deed and Real Estate Transfer Tax form. The recordation of the Tax Sale Deed is governed by the timetable of the Clerk of the Superior Court's office.

## **SALE CLOSING**

After the tax sale, we send written notice, by certified mail, to the owner, mortgage company, IRS and the State of Georgia (if applicable) informing them the property was sold, who purchased the property and provide them with the purchaser's contact information. (OCGA 9-13-160, 9-13-161, 9-13-166, 48-4-1, 48-4-2, 48-4-3, 48-4-4, 48-4-5, 48-4-6 and 48-4-20)

## **PAYMENT OF EXCESS FUNDS**

If there are any excess funds after paying taxes, accrued cost, and all expenses of the tax sale, they shall be paid to the person "authorized to receive them". (OCGA 48-4-5) To be "authorized to receive" these funds usually means that a party holding interest in the property has redeemed the tax deed. In all cases where property is redeemed, the purchaser at the tax sale shall make a quit-claim deed to the defendant in Fi.Fa., which deed shall recite: The name of the person who has paid the redemption money. (OCGA 48-4-44) After receiving the quit-claim deed and having it recorded, a copy must be presented to the Tax Commissioner. The excess funds will then be disbursed to whoever is named on the quit-claim deed as the one who redeemed the property. Circumstances other than those described here are possible but are highly unusual. Furthermore, if any potential for conflict of claims appears, the excess funds will be turned over to the court for a decision.

## **RIGHT OF REDEMPTION AND THE AMOUNT PAYABLE FOR REDEMPTION**

Whenever any real property is sold at a tax sale, whether to an individual or to Lowndes County, the owner, creditor or any person having interest in the property may redeem the property from the holder of the tax deed. The owner, creditor or any other person with interest in the property must pay the purchaser of the tax deed the amount paid for the property at the tax sale, plus a 20% premium. The owner, creditor, or any other person with interest in the property may redeem the property at any time during the twelve months following the tax sale. The purchaser of the tax deed **cannot** take actual possession of the property during this time. The tax deed purchaser is not authorized to receive rents or make improvements to any structure on the property or grade any lot prior to this time. When the property has been redeemed (all monies being due the purchaser having been paid as prescribed bylaw), the purchaser shall then issue a quit-claim deed to the owner of the property (as stated on the Fi.Fa.) releasing the property from the tax deed. The redemption of the property shall put the title conveyed by the tax sale. If the redemption was made a creditor of the owner, or by any person having interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property.  
(OCGA 48-4-40, 48-4-41, 48-4-42, and 48-4-43)

## **NOTICE OF FORECLOSURE OF RIGHT TO REDEEM**

After 12 months from the date of the tax sale, the purchaser at the tax sale should terminate or foreclose on the owner's right to redeem the property. This is done by causing a notice, or notices of the foreclosure, to be served to the owner of record, the occupant, if any, and all interested holders that appear on the public record. **SUCH NOTICE CANNOT BE SERVED UNTIL AFTER THE END OF THE 12-MONTH PERIOD.** The purchaser must write an original notice in accordance with a form shown herein and provide a copy for each person to be served. The purchaser is to deliver these, together with a list of persons to be served, to the sheriff of the county in which the land is located. The purchaser must deliver the information no less than 45 days before the date set in the notice for termination of the right of redemption.

Within 15 days, the sheriff must serve a copy of the notice upon all persons on the list residing in the county and make an entry of such service on the original notice. Leaving a copy of the notice at the residence of any person required to be served is sufficient service. If the sheriff makes an entry that he has been unable to serve the



notice on any person, the purchaser must immediately have it published in the official county newspaper once a week for two consecutive weeks. This constitutes service. The Right of Redemption Notice should be recorded in the Clerk of Superior Court's office.

If redemption is not made until after the required notice has been given, the cost of serving the notice or notices, the cost of publishing the notice or notices, and further the sum of 20% of the amount paid for the property at the tax sale to cover the cost of making the necessary examinations to determine the person(s) upon whom notice should be served, shall be added to the redemption price. (OCGA 48-4-42, 48-4-45 and 48-4-46)

### **AFTER THE RIGHT OF REDEMPTION IS FORECLOSED**

After foreclosing the right of redemption, we recommend that the purchaser seek legal advice regarding the petition to Quit Title in Land, pursuant to (OCGA 23-3-60).

Under the action, the petitioner (Tax Deed Purchaser) makes a request to the court to take jurisdiction over the matter. The court then appoints a Special Master (third party) to examine the petition and exhibits and to determine who is entitled to notice. The petitioner will then ask the court to issue a decree establishing his/her title in the land against "all the world" and that all "clouds to petitioner's title to the land be removed" and that "said decree be recorded as provided by law".

### **RIPENING OF THE TAX DEED TITLE BY PRESCRIPTION**

The term prescription refers to a process, whereby over a period of time, a tax deed becomes a fee simple title.

A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989 will ripen by prescription after a period of seven years from the date of that deed.

A title under a tax deed executed on or after July 1, 1989 will ripen by prescription after a period of four years. Notice of foreclosure of the right to redeem is not required in order for the title to ripen by prescription.

Until the right of redemption has been foreclosed or the title has ripened by prescription, a tax deed has the same force and effect as a lien. However, defeasible title has been conveyed to the tax deed purchaser and therefore, liability for subsequent taxes would be the same as any other superior lien holder. If there is a subsequent tax sale of the same parcel, the tax deed purchaser will be listed as the owner along with the defendant in Fi.Fa. (record owner) for purposes of levy and sale, despite not having foreclosed the right of redemption or having the tax deed ripen by prescription. Therefore, not only would it be in the best interest of the tax deed purchaser to pay subsequent taxes but it could possibly enhance the tax deed purchaser's title against the record owner's title.

## **QUESTIONS**

If you have any questions about tax sales after reading this booklet, call our Delinquent Tax Department at 229-671-2574 or [wsumner@lowndescounty.com](mailto:wsumner@lowndescounty.com)

For general tax information, you can visit our web site at [www.lowndescountytax.com](http://www.lowndescountytax.com).