NON-JUDICIAL TAX SALES PURSUANT TO VIRGINIA CODE Â§ 58.1-3975

Description

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1. Background

Virginia Code Â§58.1-3975 provides Virginia localities with an optional, nonjudicial foreclosure process to sell certain properties without the necessity of the time and expense associated with filing a lawsuit. In most cases, these are lower-value properties, many of which have been abandoned for long periods of time, are either unimproved or any buildings have been condemned, or they have been declared a nuisance by the locality. In these types of cases, the costs of a judicial sale typically outweigh the value. By bypassing standard judicial foreclosure procedures, local tax collectors and treasurers can cost-effectively clear abandoned, blighted, or minimal-value parcels from delinquent tax rolls, and get them into the hands of buyers who may be looking to improve them.

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2. Eligible Properties

As of July 1, 2025, to utilize the nonjudicial sale process, the property must meet certain value, timing, and physical characteristics.

Tier 1: Assessed Value Under $15,000

Properties with an assessed value under $15,000 qualify regardless of whether they are improved or unimproved. Per Va. Code Â§ 58.1-3975(A):

Notwithstanding any other provision of this title, the treasurer or other officer responsible for collecting taxes may sell, at public auction, any parcel of real property that is assessed at $15,000 or less, provided that the taxes on such parcel are delinquent on December 31 following the third anniversary of the date on which such taxes have become due.

Tier 2: Assessed Value Between $15,000 and $30,000

Properties with an assessed value between $15,000 and $30,000 qualify only if they are unimproved or meet additional criteria. Per Va. Code Â§ 58.1-3975(B):

The treasurer or other officer responsible for collecting taxes may in addition sell, at public auction, any parcel of real property that is assessed at more than $15,000 but no more than $30,000, provided that the taxes on such parcel are delinquent on December 31 following the third anniversary of the date on which such taxes have become due, it is not subject to a recorded mortgage or deed of trust lien, and such parcel:

1. Is unimproved and measures no more than 43,560 square feet (1.0 acre);

2. Is unimproved and is determined to be unsuitable for building due to the size, shape, zoning, floodway, or other environmental designations of the parcel made by the localityâ??s zoning administrator or other official designated by the locality to administer its zoning ordinance and carry out the duties set forth in subdivision A 4 of Â§ 15.2-2286;

3. Has a structure on it that has been condemned by the local building official pursuant to applicable law or ordinance;

4. Has been declared by the locality a nuisance as that term is defined in Â§ 15.2-900;

5. Contains a derelict building as that term is defined in Â§ 15.2-907.1; or

6. Has been declared by the locality to be blighted as that term is defined in Â§ 36-3.

For purposes of determining the area of any parcel, the area or acreage found in the localityâ??s land book shall be determinative.

Tier 3: Assessed Value Between $30,000 and $40,000

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Properties with an assessed value between $30,000 and $40,000 qualify only if they are unimproved or meet additional criteria. Per Va. Code Â§ 58.1-3975(C):

C. The treasurer or other duly authorized official responsible for collecting taxes may in addition sell, at public auction, any parcel of real property that is assessed at more than $30,000 but no more than $40,000, provided that the taxes on such parcel are delinquent on December 31 following the third anniversary of the date on which such taxes have become due, such parcel is not subject to a recorded mortgage or deed of trust lien, such parcel is within an area designated by the local governing body as an urban redevelopment or revitalization zone, and such parcel is unimproved and measures no more than 21,825 square feet (0.5 acre). For purposes of determining the area of any parcel, the area or acreage found in the localityâ??s land book shall be determinative.

Real estate taxes must be delinquent on December 31 following the third anniversary of the date on which they became due.

3. Procedure

a. **Notice**

Because non-judicial sales have no judicial oversight and accompanying safeguards, at a minimum, constitutional due process mandates strict compliance with the statute provisions. Per Va. Code Â§ 58.1-3975(D):

At least 30 days prior to conducting a sale under this section, the treasurer or other officer responsible for collecting taxes shall:

1. Send notice by certified or registered mail to the record owner or owners of such property and anyone appearing to have an interest in the property at their last known address as contained in the records of the treasurer or other officer responsible for collecting taxes; and

2. Post notice of such sale at the property location, if such property has frontage on any public or private street, and at the circuit courthouse of the locality.

b. **Newspaper Publication**:

Per Va. Code Â§ 58.1-3975(E):

The treasurer or other officer responsible for collecting taxes shall also cause a notice of sale to be published in the legal classified section of a newspaper of general circulation in the locality in which the property is located at least seven days prior to the sale; however, if the annual taxes assessed on the property are less than $500, such notice may be placed, in lieu of publication, on the treasurerâ??s or local governmentâ??s website beginning at least seven days prior to sale and through the date of sale. The pro rata costs of posting notice, publication, and mailing shall become a part of the tax and shall be collected if payment is made in redemption of such real property.

c. **Ownerâ??s Right of Redemption**:

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The owner or any interested party has the right to redeem the property at any time prior to the date of sale. Redemption requires paying all accumulated taxes, penalties, interest, and reasonable administrative/attorney costs. Per Va. Code Â§ 58.1-3975(H):

The owner of any property, or other interested party, may redeem it at any time prior to the date of the sale by paying all accumulated taxes, penalties, interest, and costs thereon, including reasonable attorney fees. Partial payment of delinquent taxes, penalties, interest, or costs shall be insufficient to redeem the property and shall not operate to suspend, invalidate, or nullify any sale brought pursuant to this section.

4. Purchaserâ??s Title

a. **Tax Liens**: The public auction sale is free and clear of the localityâ??s tax lien. *See* Va. Code Â§ 58.1-3975(I):

b. **Prior Liens and Deeds of Trust**:

Please note that a non-judicial tax sale **does not extinguish third-party liens or deeds of trust unless the Treasurer provided written notice of the sale to the lienholder at their address of record, and to their registered agent, if any, at least 30 days prior to the auction**. *See* Va. Code Â§ 58.1-3975(I).

As such, the title examiner must report any such liens in the title report since it is very unlikely he or she would be able to determine whether such notices were sent in a non-judicial sale setting. Underwriters typically have to request copies a number of items from the Treasurerâ??s sale file, including notices and advertisements.

Unfortunately, it is not uncommon to find a sale without notice to any lienholders. As such, buyers have purchased properties at non-judicial tax sales where such liens were not extinguished, and therefore remained liens against the properties after the tax sale.

c. **Federal Liens:** Federal liens are NOT wiped by non-judicial foreclosures, including a non-judicial real estate tax foreclosure sale. *See* *Show Me State Premium Homes, LLC v. McDonnell*, 74 F.4th 911

(2023). Any federal liens, such as a HUD deed of trust, must be reported.

d. **Easements**: Valid covenants and easements of record recorded prior to the date of sale are unaffected and remain with the land. *See* Va. Code Â§ 58.1-3975(I).

e. Conveyance: The treasurer or designated tax officer executes the transfer by tendering a special warranty deed directly to the highest bidder.



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