

Tax Sales in Virginia â?? Part One of Two

Description

Virginia local governments maintain revenues primarily through various types of tax assessments. Typically, the largest source of funds for a local government is generated through real estate tax assessments and levies. Funds are also raised through personal property, business license, transient occupancy taxes and other forms of revenue. This article will concentrate on real estate taxes and the collection of the same when not paid.

Treasurers in Virginia are responsible for the collection of taxes. This includes collecting unpaid accounts that have fallen into a delinquent status. Treasurers have a variety of administrative means to collect on delinquencies short of selling the real estate for the delinquency. When typical standard methods (phone calls, skip tracing, letters) and administrative methods (wage and bank liens, distress levies, summons to answer interrogatories) of collections are unsuccessful, a treasurer is often left with no choice but to seek a sale of the real estate for the delinquent taxes.

There are two primary methods utilized for collecting delinquent real estate taxes â?? judicial sales and non-judicial sales. The primary difference between the two methods revolves around whether to involve the jurisdiction of the circuit court or to simply sell the properties without any court action at all. The authority to sell properties is strictly controlled by the specific allotment of authority under the Virginia Code (Virginia Code Â§ 58.1-3965, *et seq.* for judicial sales, and Virginia Code Â§ 58.1-3975 for non-judicial sales). These are statutory remedies so the localityâ??s or the attorneyâ??s failure to follow the strictures of the code may result in a sale being declared invalid. This invalidation can occur even if significant time has passed since the sale. Below, we will discuss the various steps involved in the tax sale processes to prepare your review of the titles for property that has been subject to a delinquent real estate tax sale.

Non-Judicial Sales

Non-judicial sales (NJS) are available only in limited circumstances for properties that are assessed at a lower assessed value. The authority to sell property through the NJS process is relatively new to local governments, having first been enacted in 2004. Through this authority, local governments can utilize a much less formal method to sell the real estate for the delinquent taxes that does not involve court action. The fundamental reasoning is that the circuit court process is expensive, cumbersome and slow. NJS sales, on the other hand, can be conducted with relative speed and without the requirements of serving process, initiating multiple legal publications or involving outside attorneys such as guardians *ad litem* or commissioners in chancery to effect the sale.

The NJS process is statutorily outlined in Virginia Code Â§ 58.1-3975. NJS is only available for real properties with taxes that are delinquent on the third anniversary following the December 31st of the due date. This is somewhat confusing so letâ??s break this down. Say, for example, a parcel has real estate taxes that were due on December 5, 2019, and remain unpaid. December 5, 2020 is the first anniversary of the delinquency, and December 5, 2022 is the third anniversary of the 2019 delinquency. Therefore, per the Code, the parcel would become eligible to begin the NJS process following

December 31, 2022. So, on January 1, 2023, properties that were delinquent dating back to tax year 2019 became eligible to start the NJS process (provided the other Code requirements, outlined below, were met).

In addition to the timing of the delinquency, the Code has additional tests to determine qualifications. If the property is assessed at a value of \$10,000 or less, it qualifies for a NJS tax sale without any additional qualification other than the delinquency timing. If the property is valued over \$10,000 but at \$25,000 or less, there are other qualifiers that are required as follows:

1. The property must be unimproved and measure no more than one acre (43,560 sq ft) OR
2. The property must be unimproved and be deemed unbuildable by the local zoning/building official, OR
3. The property must have a structure that has been declared a nuisance, contain a derelict building, or have been declared blighted by the locality.

If the above tests are met, the property qualifies for the NJS process and can be sold for the delinquent taxes without any court action. There are notice requirements placed on the locality to ensure the tax sale process is properly maintained.

At least 30 days prior to selling the property, the locality must send a certified mailing to the owner(s) and anyone appearing to have an interest at their last known address as shown on the records of the treasurer. They must also post notice of the sale at the local circuit courthouse and, if the property has road frontage, post a sign on the property itself. These requirements are found in Virginia Code Â§ 58.1-3975(C). In addition, a notice of public auction must be published in a local newspaper of general circulation at least 7 days prior to the auction. Virginia Code Â§ 58.1-3975(D). Note that the publication requirement changed on July 1, 2023 to only require the publication be made at least 7 days prior to the auction (it previously required the publication at least 7, but no more than 21 days prior to the auction).

Another fundamental difference in NJS versus a judicial tax sale â?? NJS properties can be sold without guaranteeing free/clear title. The Code in Â§ 58.1-3975 allows for an option to convey clear title so long as notices of the impending auction were provided to lienholders at least 30 days prior to the auction at the lienholders â??address of record and through its registered agent, if anyâ??. If notices are not provided to the lienholders, those liens remain attached to the property and pass through the tax sale undisturbed. When researching a prior sale under the NJS authority, if the statement that the sale is to be free and clear is not evident on the deed, look to the auction advertisement that was published in the newspaper for the terms and conditions. If the documents do not specify lien status, contact the treasurer or entity that conducted the sale.

Judicial Sales

The most common type of tax sale occurs judicially, through circuit court actions. The statutory authority for the judicial tax sale method can be found at Virginia Code Â§Â§ 58.1-3965 through 58.1-3974. Like NJS sales, judicial sales are a statutory remedy requiring the attorney handling the litigation to follow each step of the process to the letter of the law or risk invalidation of the sale. For the purposes of this article, we will break the overall process into four distinct steps: Pre-Litigation, Pre-Sale, Sale and Post-Sale.

Pre-Litigation

To begin the judicial sale process, certain pre-litigation notices must be provided to the owner(s) and potentially lienholders of record. At least 30 days prior to filing suit, the attorney handling the litigation must cause a notice to be published in a newspaper of general circulation describing the properties that suit will be filed on. Virginia Code Â§ 58.1-3965 provides a guide to how this notice should read. Note that the text from the statute to actual publication may vary somewhat, but the overall requirement is that the notice should suitably identify the property to be subject to suit. TACS typically lists the properties by owner name as shown on the tax records alongside a listing of the tax map number assigned by the jurisdiction. Notice must also be mailed to the owner(s) (and to the physical property address if different from the mailing address shown on the tax records). This mailed notice should identify the action to be taken and inform the owner(s) that they can request a payment plan not to exceed 72 months. Note that the treasurer is not obligated to enter into a payment plan and the Code requires that the current year taxes be paid as they come due.

The attorney handling the litigation should have a 60-year title search pulled so that all parties of record with an interest in the property are able to be identified. The title abstract will provide most of the information that is needed to satisfy the pre-litigation notice requirements and will also help the attorney ascertain who the necessary parties to the court action are. A "necessary party" is a term of art that is defined under Virginia Code Â§ 58.1-3967 for the purposes of tax sale. Generally, those parties required to be included in the litigation are: 1) the owners, 2) lienholders and Deed of Trust beneficiaries that are financial institutions, and 3) parties unknown if there are likely parties that may have an interest in the real estate that cannot otherwise be identified. Lienholders and Deed of Trust beneficiaries that are not necessary parties must be mailed notice of the impending action at least thirty (30) days prior to instituting suit or otherwise be included as a party. Likewise, Deed of Trust trustees are not necessary parties provided they are mailed notice at least thirty (30) days prior to the suit being filed.

Come back next issue for part two!



John A. Rife

John Rife is a Partner with Taxing Authority Consulting Services, PC. A native of Southwest Virginia, John received his degree in history from Virginia Tech and graduated in the charter class of the Appalachian School of Law in 2000. He began his legal career in local government representing several counties, cities and authorities in Southwest Virginia as deputy local government attorney working on general matters of representation, condemnation and easement acquisition. John began working in government tax collection matters as soon as his legal career began at Sands Anderson. He parlayed his experience with government collections and became a Partner with the law firm Linebarger Goggan

Blair & Sampson with responsibilities for their Virginia, North Carolina and South Carolina government collection operation. John joined TACS as a Partner in 2010. Today, TACS represents over 105 Virginia governments collecting a variety of delinquent accounts such as real estate, personal property, meals, transient occupancy and business license taxes, as well as utilities, parking tickets, judgment accounts, etc. John often works with the Treasurers' Association in legislative matters, training and general advice as may be needed from time to time.



Andrew M. Neville

Andy Neville is a Partner with Taxing Authority Consulting Services, PC (TACS). Originally from Northwest Pennsylvania, Andy received his degree in Political Science from Wake Forest University and graduated from the University of Richmond School of Law in 2013. Andy joined TACS five days after taking the Bar Exam, and over the past nine years he has gotten to see more of Virginia than he knew existed, and has enjoyed learning something new about Real Estate Law every day. Andy is licensed in Virginia and North Carolina, and presently oversees TACS's Real Estate Litigation Department, which performs tax sales for 75 of its clients. He is a proud dad to two daughters, Maddie and Abby, and would not be able to do any of this without his wife, Julie.

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Author

vltaexaminer