Guide to Judicial Tax Sales For Examiners & Underwriters in Virginia

Description

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I. Introduction

A judicial tax sale is a legal process used to collect delinquent real estate taxes by selling the property through a proceeding in the local circuit court. The procedure is governed by Article 4 of Chapter 39, Title 58.1, et. seq, of the Code of Virginia. The following is a brief overview of the required procedure, as well as a review of the various documents and filings one would expect to find when reviewing and examining title to property which is the subject of a judicial tax sale.

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II. Procedure

Once the locality determines there are delinquent taxes owed against real estate in its jurisdiction, it may begin the process of selling the property to collect the delinquent taxes. When it does such, the following are the required steps in that process.

1. Notice to Owner

As of July 1, 2025, at least 30 days before the commencement of the lawsuit, a written notice must be sent to all of the record property owners. Va. Code Â§ 58.1-3965 now provides as follows:

The officer charged with the duty of collecting taxes for the locality wherein the real property lies shall, at least 30 days prior to instituting any judicial proceeding pursuant to this section, send a notice to (A) the last known address of the property owner as such owner and address appear in the records of the treasurer and (B) the property address if the property address is different from the ownerâ??s address and if the real estate is listed with the post office by a numbered and named street address. Such notice shall advise the taxpayer that the taxpayer may request the treasurer to enter into a payment agreement to permit the payment of the delinquent taxes, interest, and penalties over a period not to exceed 72 months in accordance with the provisions of subsection C.

Prior to July 1, 2025, the beneficiary under a deed of trust or any lien creditor that was a financial institution were necessary parties defendant, and notice was to be sent to all other lienholders. However, this notice requirement was removed in favor of amendments requiring all lienholders be named as defendants in the lawsuit to sell the property. The title examiner and underwriter should review the title and lawsuit papers to make certain that all of the record owners of the property were given timely and proper notice of the sale.

Also note that under *Jones v. Flowers*, 547 U.S. 220 (2006), in cases where notices are returned undelivered, additional due diligence may be required of the locality to determine and/or locate the owner(s) and provide them with notice, potentially including the heirs of a deceased taxpayer. The Supreme Court found in that case that the locality violated the taxpayerâ??s Fourteenth Amendment

due process rights by failing to take additional steps and make a reasonable effort to notify Jones of the sale when it knew he had no notice of the sale since the notice was returned undelivered.

2. Advertisement

In addition to direct notice to the owners of the property, the sale must be advertised in a newspaper of general circulation in the locality at least 30 days prior to commencing judicial proceedings. Va. Code Â§ 58.1-3965 provides as follows:

Such officer (charged with the duty of collecting taxes for the locality wherein the real property lies), shall also cause to be published at least once a list of real estate which will be offered for sale under the provisions of this article in a newspaper of general circulation in the locality, at least 30 days prior to the date on which judicial proceedings under the provisions of this article are to be commenced.

3. Complaint to Sell Property for Delinquent Taxes

Pursuant to Va. Code Â§ 58.1-3966:

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Proceedings under this article shall be instituted and conducted in the name of the county, city or town in which the real estate lies, by such attorney as the governing body or treasurer of the county, city or town employs for such purpose.

The proper forum for the filing of the complaint is the circuit court in the city or county in which the property is located. A *lis pendens* may be filed in order to put third parties on notice of the lawsuit. *See* Va. Code Â§ 58.1-3967. A benefit of recording the *lis pendens* is that any lien creditors who file their liens subsequent to the *lis pendens* do not need to be provided additional notice or be joined as parties to the suit. This section also provides that a Special Commissioner may be requested to be appointed to handle the details of the sale and the distribution of proceeds.

4. Necessary Parties to the Lawsuit and Parties Unknown

a. Necessary Parties

As of July 1, 2025, all persons or entities with an interest in the land, including lienholders, must be named as defendants in the lawsuit and served with process. Per Va. Code Â§ 58.1-3967:

Any person or entity with an interest in such real estate, including a lienor, a person with a claim of title, or the beneficiary and trustees under a deed of trust, shall be named as a party defendant.

As such, it is imperative that the title examiner and the underwriter review the title and the lawsuit file to determine whether all record owners and lienholders were made parties to the lawsuit, and that they were also served with process.

b. Unknown Parties/Service by Publication

As is sometimes the case, the locality, title examiner and Special Commissioner are unable to determine all of the owners of the property. It may be that the last known deed in the chain was long ago, and the grantees have likely been deceased for a long period of time, and no information can be found as to the current owners. Per Va. Code Â§8.01-316(2-3), the Plaintiff may file an affidavit stating it has been unable to identify or locate persons who may have an interest in the property, and request

that they be permitted to name them as defendants as â??Parties Unknown,â?• and to serve them by publication. If the Court is satisfied with the localityâ??s due diligence, it may enter an Order of Publication against such unknown parties, thus allowing the locality to have jurisdiction over them and allowing the sale to proceed. The court must also enter an order appointing a guardian *ad litem* to defend their interests.

Per Va. Code Â§ 8.01-317:

(E)very order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than 50 days after entry of the order of publication. Such order of publication shall be published once each week for four successive weeks in such newspaper as the court may prescribe, or, if none be so prescribed, as the clerk may directâ?¦. The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within 20 days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the requirements of this section have been complied with.

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c. Appeal by Parties Served by Publication

Any party served by publication may petition to have the case reheard for good cause shown within 90 days of entry of the confirmation of sale. *See* Va. Code Â§ 8.01-322.

5. Additional Evidence to be Submitted by Locality

Per Va. Code Â§ 58.1-3969, the locality must submit a written real estate title certificate. Also, if the property is assessed for $100,000 or more, an appraisal of the property by a licensed appraiser must be submitted. If the property is assessed for less than $100,000, an affidavit from the Commissioner of Revenue as to value is all that is required with respect to value. The title examiner may find it helpful to review the title report submitted to the court to make certain there are no discrepancies between the filed report and the examinerâ??s title report.

6. Decree of Sale and Appointment of Special Commissioner

Per Va. Code Â§ 58.1-3969, if the Court determines that all of the necessary and proper parties have been named and served with process, proper notice of sale has been given, all defendants have filed an Answer, or the time for such has expired, the guardian *ad litem* has filed an Answer for any unknown parties, the locality has submitted its Certification of Publication (if applicable), a title report and proper evidence of value have been submitted and appear proper, and an affidavit from the Treasurer that taxes are due and unpaid, the Court may then enter a Decree of Sale. The Decree of Sale will also normally include an appointment of a Special Commissioner. The Special Commissioner then essentially handles and manages the sale pursuant to the Courtâ??s instructions. The method of the sale is most often by public auction at the local courthouse.

7. Commissionerâ??s Report

Once the Special Commissioner has an offer or bid that he or she wishes to accept, a Commissionerâ??s Report is submitted to the court. The Commissionerâ??s Report details the actions taken during a judicial tax sale, any offers or bids received, and how the proceeds from the sale would be distributed. This report will outline the priority of disbursements, such as covering the costs of the sale, paying delinquent real estate taxes, and distributing any remaining funds to lien creditors or property owners. The court then reviews this report, and if it is in agreement, it may confirm the sale.

8. Decree of Confirmation/Completion of Sale

If the court is satisfied with the Commissionerâ??s Report, it may confirm the sale, and direct the Special Commissioner to complete the sale, including collecting the purchase price, executing a deed for the property to the purchaser, and preparing an Accounting of the sale with requested disbursements. The Special Commissioner then files the Accounting and requests approval from the court of the requested disbursements, and for direction to disburse the proceeds. If the court agrees, it may enter a Disbursement Order, directing the disbursement of the proceeds per the Accounting and the Disbursement Order. Proceeds are normally distributed in the following order:

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1. Costs of the suit, including attorneyâ??s fees,

2. Payment of all delinquent real estate taxes and pro rata share of current taxes,

3. Payment to any lien creditors (e.g. mortgage creditors, judgment lien creditors, state or federal tax liens) in their order of priority as determined by law,

4. Any remaining proceeds are paid to the owners of the property. If owners cannot be located or identified, the Court can direct the remaining proceeds belonging to such absent owner(s) be paid over to and held by the Clerk of the Circuit Court.

9. Winding Up

Upon completion of the sale, the court will issue a Final Decree dismissing the case. The Memorandum of *lis pendens* should also be released.

III. Purchaserâ??s Title

Once the sale has been completed and is proper in all respects, and all appeal periods have expired, the purchaser acquires title free of all ownership interests, as well as any liens. However, the tax sale does not extinguish easements against the property. See Va. Code Â§ 58.1-3967.



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