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The Tax Sale

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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The Tax Sale

Reference Number: CTAS-1599

After the conclusion of the delinquent tax suit, the county holds a tax sale to sell property in order to collect delinquent taxes.

Advertisement of the Sale. The advertisement of the tax sale is an important duty that the clerk performs. The property must be advertised in one sale notice in the newspaper (or by printed handbills as the court orders) setting out the names of the owners of the different tracts or parcels of land, describing the property and setting out the amount of the judgment against each taxpayer. The description of the property must reference to a deed book and page (where a complete legal description can be found or the official property number as provided by T.C.A. § 67 -5-806) and may include a description (street address, map and parcel number, number of acres) of the property as it is commonly known. A mistake in the common description will not invalidate the sale so long as the deed book and page reference is accurate.¹

Notice of the sale must be sent by certified return receipt mail to the last known address of the present owner (as reflected in the assessor's records) and to anyone else with an interest in the property, if that person can be located after a reasonable search. A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required. In the event of the sale of severed mineral interest property, the court clerk must send a notice of proceedings regarding the sale by certified return receipt mail to any owner of the surface interest who has filed a declaration of surface ownership with the register of deeds. This certified mailing is part of the cost of the tax suit.²

Procedures of Sale. The sale must be conducted at the place and time given in the notice or as advertised. The sale should be public and open to all. Generally, a valid sale is not held on a Sunday or a non-judicial day. However, the mere designation of a day as a holiday does not invalidate a sale held on that day.³

The court shall order the sale of the property for cash, subject to the equity of redemption, which gives the taxpayer the right to pay the taxes, interest, penalties and costs, and terminate the sale proceeding.⁴ Property interests which are less than an entire fee are separately assessed and may be sold without selling the entire fee. Examples of separate interests include leaseholds and tenancies in common. A remainder interest constitutes part of the total present ownership of the land and cannot be separately assessed.⁵

Generally, any person not disqualified by statute may purchase at a tax sale. Those disqualified include persons under a moral or legal obligation to pay taxes on land being sold. A disqualified person cannot become a valid purchaser at a tax sale. If such a person does purchase, it is deemed a redemption or payment of the tax and does not establish a new title. In addition, persons occupying positions of trust ("fiduciaries") with the taxpayer cannot acquire title at a tax sale. For example, an agent of a deceased taxpayer who had control of the property and sufficient funds to pay accrued taxes cannot purchase such property at a tax sale and claim title in himself. A member of a taxpayer's family is not precluded from purchasing the property at a tax sale as long as no fiduciary relationship or fraud is involved. However, a husband or wife is usually precluded from purchasing the other's property at a tax sale.⁶

The clerk should bid in the amount due for taxes, penalties, interest and costs at the sale if no other bidder offers the same or larger bid. The clerk shall not offer a bid in the case of property where the county legislative body has determined that no bid should be made on behalf of the county due to a determination that such property poses an environmental risk. The county legislative body may also make a determination that no bid shall be made on behalf of the county on non-buildable or non-conforming parcels, including, without limitation, storm water detention basins; drainage ditches; private road right-of-ways; private drives; common open areas; and utility easements.⁷

Disposition of Proceeds from Sale. The sale proceeds are applied first to payment of any unpaid balance of compensation due the delinquent tax attorney. Second, the proceeds of the sale shall be applied to the costs of the suits. Third, the remainder shall be applied to the state first, county second, and municipality third, the amount due each to be ascertained by a decree of the court. If there is any remainder after the proceeds of the sale have been distributed, the party receiving notice pursuant to T.C.A. § 67-5-2502 shall also be given notice of the amount of proceeds resulting from the sale, the division of such proceeds, and

the remainder.⁸

¹T.C.A. § 67-5-2502. See Op. Tenn. Atty. Gen. U89-30 (April 5, 1989) (finding that only a single sale notice pursuant to T.C.A. § 67-5-2502 is required for tax sales, as T.C.A. § 35-5-101(a) is inapplicable). For general requirements as to publication in a "newspaper," see *Cook v. McCullough*, 1989 WL 155926 (Tenn. Ct. App. 1989), *cert. denied*, 498 U.S. 855 (1990). See also Op. Tenn. Atty. Gen. U89-133 (November 28, 1989) (finding that the *Memphis Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices); Op. Tenn. Atty. Gen. U90-55 (March 28, 1989) (finding that the *Nashville Business Journal* qualifies as a "newspaper of general circulation" for purposes of publication of official notices).

²T.C.A. § 67-5-2502.

³C.J.S. *Taxation* § 801 (1954).

⁴T.C.A. § 67-5-2501.

⁵*Sherrill v. State Bd. of Equalization*, 452 S.W.2d 857, 858 (Tenn. 1970). See also *Hadley v. Hadley*, 87 S.W. 250, 255 (Tenn. 1905).

⁶C.J.S. *Taxation* § 809 (1954). See also *Salts v. Salts*, 190 S.W. 2d 188 (1945). See also T.C.A. § 39-16-405 (Prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties); Op. Tenn. Atty. Gen. 99-105 (May 10, 1999).

⁷T.C.A. §§ 67-5-2501; 67-5-2506.

⁸T.C.A. §§ 67-5-2501(a)(3) and (b)(3); 67-5-2506(a)(3) and (b)(3). T.C.A. § 67-5-2502(a)(3). See also Op. Tenn. Atty. Gen. 07-34 (March 23, 2007) (distribution of proceeds); Op. Tenn. Atty. Gen. 95-060 (May 25, 1995) (effect of county delinquent tax sale on city tax lien); Op. Tenn. Atty. Gen. 85-201 (June 24, 1985) (distribution of surplus funds).

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