

As Tax Commissioner for Forsyth County, I receive many inquiries concerning real estate tax sales. This brief brochure is designed to answer your questions and provide an insight into the legal framework that gives our office the authority to conduct real estate tax sales in the state of Georgia.

The material in this booklet **is not** a substitute for professional advice or assistance. We encourage all prospective tax sale purchasers to consult with an attorney. Keep foremost in mind that it is the responsibility of purchasers to assure themselves as to the soundness of the sale and the deed to be acquired after the sale. No warranties are expressed or implied and clear title is not contemplated. Our primary concern is the collection of delinquent taxes. The conveying of property, or rights to property, is coincidental.

Applicable references to the Official Code of Georgia are given both as a source of authority and to add to a clear understanding of the inner-workings of real estate tax sales in the state of Georgia.

We hope you find this brochure to be both useful and informative. If upon reading this information you still have any questions, feel free to contact our office and we will attempt to answer them for you.

Sincerely,

A handwritten signature in black ink, appearing to read "David D. Hicks". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Hicks".

David D. Hicks
Tax Commissioner
Forsyth County, Georgia

ATTENTION

Prospective Tax Sale Purchasers:

You are encouraged to read this tax sale brochure which will answer most of your questions regarding tax sales. As tax sale purchasers, you are responsible for knowing the law as it applies to tax sale purchases and should familiarize yourself with all applicable laws.

You are advised that a tax deed only conveys “defeasible” title to property. To acquire fee simple title to property, a tax deed purchaser must foreclose the right to redeem, or allow the title to “ripen by prescription”, pursuant to state law.

The legal axiom of **caveat emptor** or “buyer beware” applies to tax sales (O.C.G.A. § 9-13-167). Therefore, you are charged with knowledge of the titles of the properties that are sold and any defects in these titles. The Forsyth County Tax Commissioner does not warrant the titles and any title searches performed for or by our office for the purpose of a tax sale should not be considered an opinion of title to rely on for tax sale purchasers.

The Forsyth County Tax Commissioner reserves the right to void any tax sale that is later determined to have errors that result in the sale being invalid. The Tax Commissioner cannot and will not guarantee any expected gain on your investment.

INTRODUCTION

There are several actions required by law in the preparation for auctioning property. Various information on these parcels is gathered prior to sale, including all or part of the following: title searches, tax map/plats, various correspondences, and Ex-Officio Sheriff’s notices of service. Title searches conducted are specific only to our purpose and would not therefore serve the needs of the buying public. Keep in mind it is the purchaser’s responsibility to assure oneself as to the soundness of title for any property sold at tax sale.

Questions may arise that we cannot answer, therefore 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 road. We have no way of knowing whether a particular parcel or lot will be approved a building permit or septic tank. We are not always aware of easements.

Can a purchaser lose money? That is a certain possibility. One may obtain a bad deed or title, whether from an individual or from a tax sale. We strongly encourage and recommend potential tax sale purchasers first seek legal advice, assure themselves of title, verify all pertinent/relevant information, and familiarize themselves in all applicable areas of Georgia Law prior to bidding.

The buyer at a tax auction is responsible for the proper processing of documents concerning the foreclosure of the owner's right to redeem and those documents concerning the right of redemption. Our office prepares and records the Sheriff's Deed and the Real Estate Transfer Tax form after the sale.

TAX SALE PROCEDURES

The Forsyth County Tax Commissioner's Office follows certain procedures when it levies upon a piece of property. The procedures are prescribed in the Official Code of Georgia Annotated (O.C.G.A.). You will see code sections referenced throughout this brochure. 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. O.C.G.A. Title 48 – Revenue and Taxation, Chapter 3 – Tax Executions, and Chapter 4 – Tax Sales, contain important information for which you must be aware. Also, read and research those Opinions of the Attorney General and Judicial Decisions that are shown after each code section. These opinions and court cases are extremely important and must be taken into consideration when interpreting these laws. We will explain each procedure and reference code sections to which you may refer.

FIERI FACIAS (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 or 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. O.C.G.A. § 48-3-1; 48-3-3

AUTHORITY TO SELL

The Tax Commissioner of Forsyth County also serves as Ex-Officio Sheriff of Forsyth County. As Ex-Officio Sheriff, he appoints Ex-Officio Deputy Sheriffs to act in his behalf in tax sale matters. Each Deputy Ex-Officio Sheriff has full power to advertise and bring property to sale for the purpose of collecting taxes due the state and county. O.C.G.A. § 48-2-55

Taxes due the state and county are not only against the owner BUT also against the property regardless of judgments, mortgages, sales, or encumbrances. Taxes constitute a general lien upon all property of a taxpayer and the lien attaches on January 1st of each tax year, even though a Fi.Fa. has not been issued. O.C.G.A. § 48-2-56; 48-5-28

30 DAY NOTICE BEFORE ISSUING FI.FA.

After the due date for tax payments has expired, the Tax Commissioner shall notify each delinquent taxpayer in writing that the taxes are outstanding, and if taxes are not paid within thirty (30) days, an execution (Fi.Fa.) will be issued. O.C.G.A. § 48-3-3

ISSUANCE AND RECORDATION OF FI.FA.

At any time after the 30 day notice has elapsed, the Tax Commissioner shall issue an execution (Fi.Fa. or tax lien) against the owner and the property. The execution (Fi.Fa.) is directed “to all singular sheriffs of this state” (which means Sheriffs or Tax Commissioners who serve as Ex-Officio Sheriffs) and shall direct them to seize and sell the property of the delinquent taxpayer to satisfy the delinquent taxes. The property shall be plainly described on the execution (Fi.Fa.). The execution also bears interest at the rate of 1% per month from the date the tax was due. The execution (Fi.Fa.) is signed by the Tax Commissioner as Ex-Officio Sheriff or may be signed by the Sheriff in a county where the Tax Commissioner does not serve as Ex-Officio Sheriff. The execution (Fi.Fa.) is then recorded on the General Execution Docket (GED) of the Clerk of Superior Court. O.C.G.A. § 48-2-40

LEVY

When real estate is levied upon, the levy officer who acts as an Ex-Officio Deputy Sheriff is directed by a tax execution to seize and sell the property to satisfy the delinquent taxes. The Ex-Officio Deputy Sheriff must give twenty (20) days written notice before advertising to the owner, tenant, holder of the security deed, IRS, Georgia Department of Revenue and Labor and EPD or EPA (if outstanding federal tax liens or state of Georgia liens, EPD or EPA liens exist). This levy notice is delivered by certified mail, and if we cannot effect service by certified mail (mail returned unclaimed or undeliverable), this notice is delivered to the owner and/or tenant in person. The levy shall state the owner’s name, the tax years delinquent, the principle amount of taxes due, the accrued cost due, and a description of the property to be sold. O.C.G.A. § 48-2-55; 48-3-1; 48-3-6; 48-3-9; 48-3-10; 48-4-3; 48-5-27; 48-5-161; 9-13-13

POINTING OUT PRIVILEGE

If the property being levied upon is a house and lot, then the Tax Commissioner routinely seizes both. 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. This is known as the "pointing out privilege". However, it is at the discretion of the Ex-Officio Deputy Sheriff to levy on additional property whenever it is deemed necessary to secure prompt collection of delinquent taxes. O.C.G.A. § 48-3-4

ADVERTISING

All properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the tax sale. These advertisements are printed in the Wednesday edition of the County's legal organ, The Forsyth County News. Each advertisement shows the owners name, a description of the property to be sold, and the amount of the tax due. O.C.G.A. § 9-13-140; 9-13-141; 9-13-142; 48-2-55

10 DAY NOTICE TO OWNER

At least ten (10) days before the tax sale, the owner is sent a written notice via certified mail informing him/her of the impending tax sale. O.C.G.A. § 48-4-1

TAX SALE

Tax sales are conducted the first Tuesday of the month (as needed) at 10:00am on the steps of the Forsyth County Courthouse. In the event that the first Tuesday of the month falls on a legal holiday, the sale is held the following day (Wed.) at 10:00am. The opening bid for a particular property is the amount of the tax due, plus penalties, interest, Fi.Fa. costs, levy costs, administrative levy fees, certified mail costs, advertising costs, and tax deed recording fees. 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 the minimum on behalf of the county.

PAYMENT

We require payment in full upon conclusion of the tax sale. Payment must be in the form of cash, certified check, or money order. We also require the purchaser to sign a statement attesting to the fact that certain property was purchased for the bid 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 the Real Estate Transfer Tax form. These documents are filed/recorded with the Clerk of Superior Court within thirty (30) days following the tax sale.

ACCORDING TO O.C.G.A. § 9-13-170, ANY PERSON WHO BECOMES THE PURCHASER OF ANY REAL OR PERSONAL PROPERTY AT ANY SALE MADE AT PUBLIC OUTCRY WHO FAILS OR REFUSES TO COMPLY WITH THE TERMS OF THE SALE WHEN REQUESTED TO DO SO, SHALL BE LIABLE FOR THE AMOUNT OF THE PURCHASE MONEY. IT SHALL BE THE TAX COMMISSIONER'S OPTION EITHER TO PROCEED AGAINST THE PURCHASER FOR THE FULL AMOUNT OF THE PURCHASE MONEY OR TO RESELL THE REAL OR PERSONAL PROPERTY AND THEN PROCEED AGAINST THE FIRST PURCHASER FROM ANY DEFICIENCY ARISING FROM THE SALE.

SALE CLOSING

After the tax sale, written notification of the sale is sent to the Defendant in Fi.Fa., owner/tenant, and to any creditor or interested party to whom notification was sent prior to the sale of the property. Provided in the notice is the sale date, property address and description, name of the owner/Defendant in Fi.Fa., purchaser name/address/phone number, sale price, the amount (if any) of excess funds available from sale, along with contact information for claim submittal. O.C.G.A. § 48-4-5 (a)

PAYMENT OF EXCESS FUNDS

Any excess funds remaining from the sale of property after payment of all tax, penalties, fees, interest, and other costs are held in escrow by the Tax Commissioner; available for claim by owner(s) and other parties holding a record interest in the property as their interest appears and in order and priority in which their interest exists. O.C.G.A. § 48-4-5 (a)

The legal owner of the property, absent any other priority lienholder(s), may file a claim for excess funds. Lienholders with a priority interest who file a claim are required to provide a written payoff amount of their current lien good through the date of claim, as amount of excess claimed cannot exceed current lien value.

This Office provides no "claim form" to any individual, entity, or third-party wishing to submit a claim for excess funds. All claims are to be in writing, signed and notarized, and submitted to our Office along with proper photo identification.

Submission of a certified title report (good through date of request) is strongly encouraged. In addition, claimants should provide copies of all relevant documentation (both recorded and non-recorded) in support of their claim (Warranty Deeds, Security Deeds, Assignments, Powers of Attorney, etc.). Upon submission and subsequent review any necessary additional information will be required of the claimant prior to any final determination made regarding the payment of claim.

Note: All claims and accompanying documentation are subject to review by counsel for legal opinion regarding disbursement. All submittals are made available to anyone upon written request via the Georgia Open Records Act. Any claim, associated documentation, or identification submitted deemed suspect or fraudulent will be forwarded to law enforcement for full investigation. Any claimant found to have purposely misrepresented fact(s), or any claimant attempting to deceive or defraud, whether or not successful, will be prosecuted to the fullest extent of the Law.

In cases of third-party requests for funds, or in the event of competing or conflicting claim(s), an interpleader action may be filed with the Superior Court of Forsyth County for a Judicial ruling regarding disbursement. All reasonable attorney fees and court costs will first be paid from the excess funds requested prior to disbursement of any remaining funds. O.C.G.A. § 48-4-5(b)

Private agreements between claimants and third-parties who assist in locating claimants and/or requesting payment of excess funds on their behalf remain unenforceable for 24-months following date the funds were first placed in escrow. O.C.G.A. § 44-12-224(a)

Fees charged by third-parties to claimants for assisting in the recovery of excess funds on their behalf shall not exceed 10 percent of the value of the excess being recovered. Excess funds must be paid/delivered directly to the owner and will not be paid/delivered to any third-party charging the fee, whether pursuant to a duly executed power of attorney or otherwise. O.C.G.A. § 44-12-224(a)

RIGHT TO REDEEM AND AMOUNTS PAYABLE

Whenever real property is sold at tax sale, the owner(s), creditor(s), or any other persons/entities having a record interest in the property at the time of sale are entitled to redeem the property from the tax deed holder for a statutory-required period of twelve (12) months immediately following the date of sale.

If redemption occurs within the allowed twelve (12) month period, the holder of the tax deed (purchaser) is entitled from the redeemer an amount equal to the purchase price paid at sale, plus a premium of twenty (20) percent of the purchase price, plus the amount of any subsequent tax, fee, or assessment paid

by the purchaser after the tax sale. Should the right to redeem not yet be barred and redemption occur beyond the initial twelve (12) month period, the purchaser is entitled from the redeemer an additional premium of ten (10) percent of the purchase price for each additional year (or fraction of a year) thereafter. O.C.G.A. § 48-4-42)

Within ten (10) days of redemption (all monies due purchaser having been paid as prescribed by law) the purchaser shall issue, and present to the Clerk of Superior Court for recording, a quitclaim deed back to the owner of the property (as stated on the Fi.Fa.) releasing the property from the tax deed. Once recorded, the purchaser shall send the recorded quitclaim deed to the redeemer. Costs for recording are to be paid by the purchaser. O.C.G.A. § 48-4-44

The redemption of the property shall convey title back to the owner/defendant in Fi.Fia.; again subject to all liens existing at the time of sale. If the redemption was made by any creditor of the owner or by any person having an interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property. O.C.G.A. § 48-4-21; 48-4-40; 48-4-41; 48-4-42; 48-4-43; 48-4-44

NOTICE OF FORECLOSURE OF RIGHT TO REDEEM

After twelve (12) months from the date of the tax sale, the purchaser at the tax sale may terminate or foreclose on the owner's right to redeem the property by causing a notice(s) of the foreclosure to be served by certified mail to the owner of record and to all interest holders which appear on the public record. In addition, the notice of foreclosure is to be published in the legal section of the Forsyth County News once per week for four (4) consecutive weeks after the twelve months have elapsed.

If the redemption is not made until more than thirty (30) days after the notice, then the sheriff's costs for serving the notice(s) and the cost of publication of the notice(s) shall be added to the redemption price. O.C.G.A. § 48-4-42; 48-4-45; 48-4-46

PLEASE NOTE: ANY QUESTIONS ABOUT THIS FORECLOSURE PROCESS SHOULD BE REFERRED TO AN ATTORNEY.

AFTER THE RIGHT OF REDEMPTION IS FORECLOSED

After foreclosing the right of redemption, we recommend the purchaser seek legal advice regarding the petition to quiet title in land, pursuant to O.C.G.A. § 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 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 required by law”.

RIPENING OF THE TAX DEED TITLE BY PRESCRIPTION

- AN ALTERNATIVE METHOD -

The term “prescription” refers to a process whereby, over a period of time a tax deed becomes a fee simple title. This process promotes an alternative method to obtain fee simple title without the legal intricacies of the foreclosure process. A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven (7) years from the date of execution of that deed. O.C.G.A. § 48-4-48

A title under a tax deed properly executed at a valid and legal sale on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four (4) years from the execution of that deed. O.C.G.A. § 48-4-48

A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four (4) years from the recordation of that deed in the land records in the county in which said land is located. O.C.G.A. § 48-4-48

Notice of foreclosure of the right to redeem is not required in order for the title to ripen by prescription. In order to protect your tax sale investment, subsequent taxes should be paid.

QUESTIONS

If you have any questions regarding tax sales after reading this brochure, you may call our office at 770-781-2110. We will attempt to clarify the information found here for you. Again, we strongly encourage interested purchasers at our tax sales to consult with an attorney for answers to any questions.