

# e-Newsletter

*Big City Solutions. Small Town Values.*

October 2012 – Issue 1

## Tax Deeds: The Due Process Dilemma

Most property owners in Florida realize that they have to pay property taxes on a yearly basis. Sounds pretty basic, right? On occasion, however, property owners fail to pay their property taxes for various reasons. Some simply cannot afford to pay them at the time they are due. Others may not have even realized that the taxes are due.

For those of us who escrow their taxes and insurance with their mortgage-holder, the mortgage-holder pays the taxes when they come due. The property owner still should receive notice, but it is the mortgage-holder who cuts the check from the owner's escrow account. Once a mortgage is paid off, the mortgage-holder no longer escrows for taxes and the direct payment of taxes becomes the owner's responsibility. If an owner has been accustomed to having their mortgage-holder pay the taxes over many years, the owner might accidentally disregard the tax notice as something that is informational only and not an actual bill.

In some cases, a property owner may have moved and neglected to provide a current address to the county property appraiser. As a result, the tax bills would continue to be sent to the prior address on file with the property appraiser. For most of us, the receipt of the tax bill is what prompts payment. Especially since the amount changes from year to year, an owner would not know how much to pay unless they received the bill or checked with the tax collector.

So, when the property taxes are not paid, what happens? Property taxes are due not later than March 31st of a given year. On April 1st, taxes are delinquent and interest and additional charges are assessed. On or before June 1st, a notice of a tax certificate sale is advertised and the cost of advertising is added to the tax bill. Then, a tax certificate sale is held, whereby bidders bid an amount of interest they are willing to accept if the bidder pays the taxes. The interest rate bidding starts at 18% and bidders reduce the amount of interest from there.

After a tax certificate is sold, the holder of the certificate can apply for a tax deed at any time between two and seven years from the date the taxes secured by the certificate became delinquent. If no tax deed application is submitted within seven years, the statute of limitations renders the tax certificate null and void. After application for the tax deed, notice is sent to the last known address of the property owner, and notice is published once a week for 4 consecutive weeks in the newspaper. The property is then sold at auction to the highest bidder, with the minimum bid being either the amount owed for back taxes,



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interest and charges, or in the case of homestead property, that amount plus one-half of the assessed value of the property.

If the owner has moved, died, is incapacitated, or otherwise did not receive the notice or see the newspaper advertisement, the property will be sold without notice to the owner. The Florida Statutes provide that "The failure of anyone to receive notice as provided herein shall not affect the validity of the tax deed issued pursuant to the notice." The statutory language would lead the prior owner to believe that, regardless of whether they received notice, there is nothing they can do and the property is lost.

Fortunately, for prior owners who lost property at a tax deed sale, our United States Constitution ensures due process. In 2006, the Supreme Court rejected the premise that merely sending notice of the sale satisfied due process if that notice is returned as undelivered. Florida courts have also held that due process requires that the clerk conducting the sale look beyond the last known address when there is reason to believe that the last known address is no longer accurate. Therefore, the facts that led to the prior owner not receiving notice of the tax deed sale, and the steps the clerk took to provide such notice will determine whether constitutional due process requirements have been satisfied and whether the tax deed sale will stand.

When evaluating whether to purchase property at a tax deed sale, or if you have lost property due to a tax deed sale, it is recommended that you consult with an attorney prior to the purchase, or immediately after learning that a sale has taken place.



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