

PROPERTY TAX SALES IN TENNESSEE:
THE GOOD, THE BAD AND THE UGLY

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I have been asked several times over the last year to summarize the status of tax sale law in this state and specifically what has happened in the courts in Tennessee in recent years to negatively impact buyers at tax sales. In looking at a way to analyze tax sales in this state it seemed apparent to me that there are good things about purchasing at tax sales, there are some bad things and finally, recent case law can make purchasing at tax sales a bit ugly. I will attempt to summarize in this article the basic law involved in the tax sale process and inform the reader about legal aspects of tax sales that no prospective buyer should ignore.

The Good. Tennessee law states that a tax deed “shall be an assurance of perfect title to the purchase of such land” in Tennessee Code Annotated 67-5-2504(b). This sounds like a great assurance to a tax sale purchaser that once they purchase at sale, once the sale is confirmed by the Chancery Court and once the statutory redemption time period has run, that they have good title to the property purchased. Tennessee Code Annotated 67-5-2702(a) states that previous owners must either redeem the property “within one (1) year after entry of the order of confirmation of the tax sale.” or lose that right. If they don’t exercise the redemption rights, the statutory redemption period expires and the former owner’s opportunity to redeem the property ends. From a review of the relevant statutes, it appears that after a year from the date of confirmation, if no redemption occurs, that the property should be owned by the Purchaser. Of course, there are other aspects of tax sales that should interest investors. Although the number of tax sale parcels is greatly reduced by the date of sale because of payments of taxes by owners,

these sales do offer an opportunity for buyers to bid on and perhaps purchase an interest in valuable real estate for low prices. For those purchasers interested in raw land and lots, these types of properties often end up for sale by the Chancery Court in tax sales. Sometimes improved real property is also sold and these properties can be rented prior to the end of the redemption period producing income for investors. In the past most tax sale purchasers felt that after the redemption period, the law supported their ownership of the property they purchased at sale and a one year time frame did not seem to be too long a time period to wait for title. For some investors tax sales are a viable alternative to the private market to acquire valuable investment property.

The Bad. One of the major problems in the past is that title companies issuing title insurance policies in Tennessee have not favored tax sales or the process employed by the local courts to notify property owners that their property will be sold for nonpayment of back taxes. The Courts have construed that Defendants in tax sale proceedings, pursuant to Tennessee Code Annotated 29-29-101 et seq. , must receive notice of pending tax sale litigation and have an opportunity to defend in tax sale actions. The “notice” requirements have been under scrutiny by the Tennessee Courts and even the United State Supreme Court in recent years. Unfortunately, at least in courts in Middle Tennessee, service of process in most tax sale cases is by publication in local newspapers of general circulation as the record owners are often difficult to find and serve with legal process. Depending on the efforts employed by the Clerk and Master to locate and serve the record property owner or owners, the service by publication may or may not hold

up legally. This chance that service may not be ruled good service primarily is what bothers the title companies in this state.

In fact, many title companies will not write title insurance policies on tax sale property for 10-20 years after sale. This single fact does make the re- sale of tax sale properties difficult even after the one year redemption period expires. However, there typically have been ways to “clean-up” the title after the one-year redemption period by the filing of a “quiet title” suit in Chancery court. This additional legal action has been utilized by many tax sale purchasers to be able to sell tax sale property with a title insurance policy being issued within 13-14 months after the sale is confirmed. Title companies will normally issue title issuance after a final decree is issued in a quiet title suit.

The Ugly. Apparently, many tax purchasers, attorneys and title companies have failed, in the past, to review Tennessee Code Annotated 67-5-2504 (d). This section provides “no suit shall be commenced, in any court of the state to invalidate any tax title to land after three (3) years from the time the land was sold for taxes.” This often ignored statute became the subject of a 2004 case for the Tennessee Court of Appeals, Inman vs. Raymer. In an opinion filed by the Court of Appeals on May 4, 2004, the Court held that this statute does apply, it says what is says, and it should not be ignored. In fact, the Court held that this statute give former owners and/or interest holders the right to challenge the title given to purchasers at tax sales for three years from the time of sale.

The effect of this Court ruling is that no quiet title suit can be commenced until after three (3) years after sale for back taxes. Local courts have refused to accept quiet title suits until

after this three (3) year period has passed. Even though the one year redemption period law remains in effect, the holding period for many tax properties has now been extended significantly.

Due to this Court ruling and other applicable laws, the prospective buyer at tax sales should be aware of several issues that could affect the title to the property they purchase at sale which could impact and limit their ability to market and re-sell the property as follows:

1. Did the former owner receive proper notice of the sale?
2. The property may be redeemed within one year redemption period.
3. Buyers will now have to wait three (3) years to commence a quiet title suit.
4. Was the property properly described in the Chancery Court sale proceedings and Publication Notice?
5. Were all the owner of the Property properly notified?
6. Be aware of asbestos and environmental hazards that may affect the property.
7. You may have to evict occupants of property purchased at tax sales.

I hope this information proves helpful to you in your investment career. Tax sale purchases can be profitable but as experienced buyers will confirm there can also be expensive pitfalls and losses. Knowledge of the property and the process is essential.

For any questions or information, please do not hesitate to contact me at bnotestine@hotmail.com or bob@bellemeadetitle.com

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