National Tax Lien Association

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Best Practices

Buying and Selling Tax Deed Properties

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Best Practices for Buying and Selling Tax Deed Properties

For years, the National Tax Lien Association (NTLA) has set the practical and ethical standards for buying and selling tax certificates. Our membership encourages innovation and partners with governmental entities to make all aspects of delinquent tax management and sales fair, transparent, and efficient.

Accordingly, the NTLA hereby issues this best practices guide for investors, governmental entities and other interested stake holders with regard to tax lien foreclosures and tax deeds. It is the NTLA's intent that this be a working document that will evolve over time and it is our hope that our guide serves as an impetus for positive change – to stimulate discussion, improve business practices, and influence model legislation.

This best practice guide is a first step for NTLA and we intend to follow it with a model legislation that properly balances the interests of all stakeholders in the tax lien and tax deed process. We believe the best laws in this industry are those that balance the rights and due process needs of existing property owners with the cash flow needs of local governments and with the market efficiency needs of tax lien and tax deed investors.

PURPOSE OF SELLING TAX DEEDS

This is an introduction to buying tax deeds at auctions – where local governments sell tax deed titles to land and properties in order to recover past-due real estate taxes. Tax lien sales where you pay back taxes in exchange for an interest rate return (but do not get title to real estate) are not addressed here.

Tax sales are an inevitable necessity in a world where revenues from real estate taxes pay for a large portion of local (municipality and county) government-provided essential governmental services (schools, police, fire, etc.) Property taxes assessed against real estate account for a large portion of school budgets (averaging 85%) and local government revenues (averaging 30%).[1] Although the exact percentages vary between states and municipalities, taxes assessed upon real property are a substantial portion of the local government revenues.

Local governments cannot afford to forego real estate tax collections; however, they often delay any significant enforcement for years. Failing to pursue collection eventually would be unfair to those who pay their real estate taxes voluntarily and would rightly subject tax collectors to charges of not faithfully executing their responsibilities.

All governments must balance the rights of the property owners with the necessity for collection actions when property taxes are not paid. In the foreword of West Virginia's tax sale laws, its state legislature provided an eloquent purpose and policy paragraph, shown here:

> *In view of the paramount necessity of providing regular tax income for the state, county and municipal governments, particularly for school purposes; and in view of the further fact that delinquent land not only constitutes a public liability, but also represents a failure on the part of delinquent private owners to bear a fair share of the costs of government; and in view of the rights of owners of real property to adequate notice and an opportunity for redemption before they are divested of their interests in real property for failure to pay taxes or have their property entered on the landbooks; and in view of the fact that the circuit court suits heretofore provided prior to deputy commissioners' sales are unnecessary and a burden on the judiciary of the state; and in view of the necessity to continue the mechanism for the disposition of escheated and waste and unappropriated lands; now therefore, the Legislature declares that*

[1] Tax Policy Center (Brookings Institute and Urban Institute)

its purposes in the enactment of this article are as follows: (1) To provide for the speedy and expeditious enforcement of the tax claims of the state and its subdivisions; (2) to provide for the transfer of delinquent and non-entered lands to those more responsible to, or better able to bear, the duties of citizenship than were the former owners; (3) to secure adequate notice to owners of delinquent and non-entered property of the pending issuance of a tax deed; (4) to permit deputy commissioners of delinquent and non-entered lands to sell such lands without the necessity of proceedings in the circuit courts; (5) to reduce the expense and burden on the state and its subdivisions of tax sales so that such sales may be conducted in an efficient manner while respecting the due process rights of owners of real property; and (6) to provide for the disposition of escheated and waste and unappropriated lands.[2]

RIGHTS OF PROPERTY OWNERS

Even tax delinquent property owners enjoy specific rights until such time as the Due Process and foreclosure is complete. Their rights must be respected and honored. These rights include:

- The right of redemption, the process through which they payoff the outstanding property tax debt.
- The right to enjoy peacefully their property as they wish within the bounds of the law.
- The right to enforce trespassing laws. Note, unless a person has a deed or a lease to a property and the legal right of possession, they have no right to be on it. A tax lien, and even some tax deeds (depending the circumstances), do not convey a right to access the property.
- The right to properly attempted notice before the taking of property (see Due Process below).

With regard to property tax liens, there is always a time during which the property owner(s) can redeem the delinquent taxes without being under the threat of foreclosure, this period being known as the "redemption period". The redemption period is set by state statute and generally lasts for 6 months to 3 years, depending the state.

The procedures for the taking of property without violating the rights of those currently in title were created by the right to Due Process of Law, which was established in the Fourteenth Amendment to the U.S. Constitution and further detailed in the U.S. Supreme Court cases:

- Mennonite Board of Missions v. Adams,
- Mullane v. Central Hanover Bank & Trust Co.,
- Jones v. Flowers (most recent case that definitively discusses the other two).

These cases both interpret the right to Due Process and describe the standards and procedures to be used to accomplish it. The Due Process requirements include:

- Rights to notice of delinquency and any impending action of the taking of property.
- Such notices must be provided through means "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Mullane v. Hannover). The Mullane case further states

[2] **http://code.wvlegislature.gov/11A-3/**

that the means of notice used "…must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."

- Most taxing authorities and courts have interpreted due process to be limited to either certified mail and newspaper publication or process server and if unsuccessful newspaper publication (Rule 4 notice and 'Alternative Notice'). Until Jones v. Flowers the U.S. Supreme Court was resistant to provide specific forms of notice that would be required. This left a bit of a guessing game for parties pursuing perfected title and a loophole for delinquent owners to unwind tax deeds. However, in Jones, the court mentions practical methods of providing notice that it would deem sufficient to surpass the "reasonably calculated" test:
    - Notice via first class mail in addition to certified mailings.
    - Posted Notices on the subject premises in a conspicuous place. Note: take a picture with the address included for evidence.
    - Notices mailed to "Occupant" instead of a specific person.
- The Jones v. Flowers case also limited the necessity to search the ends of earth for persons who had clearly not maintained their address in county records associated to the property. Until this published decision, courts were increasingly overturning tax deeds because the foreclosing party didn't conduct exhaustive searches, some even requiring notice to anyone in the county with the same name (with the enhancement of technology, these rulings only got worse – imagine how many John Smiths or Joe Jacksons one could find on the internet). The decision states specifically, "Contrary to Jones' claim, the Commissioner was not required to search the local phone book and other government records. Such an open-ended search imposes burdens on the State significantly greater than the several relatively easy options outlined here."
- Significantly, the courts have upheld that actual notice is not required. Rather, it is the process that must be followed with reasonable efforts. Unfortunately, some courts have ruled form over function, requiring that extra steps be taken even though the first certified mail notice was received and the return receipt signed. The higher courts generally support that actual notice trumps further requirements; however, it will take another supreme court ruling to put the issue to final rest.
- In consideration of the added expense of posting notices, the NTLA provides the following suggestions:
    - Post notices toward the end of the foreclosure process, but at least 60 days prior to the final date to redeem.
    - Some taxing authorities only post notices when the mailed notices or service of process notices were not received by the property owner. This risks the actual notice versus process issue discussed above.
- Special rights are giving to persons serving in the military and those incarcerated. Many NTLA members will not pursue foreclosure on active military owners, once they have knowledge of their service. NTLA suggest reaching out to military members to inform them of the delinquency and work with them through open dialog on the repayment of the debt. There are websites that offer paid and unpaid services to determine military and incarceration status, such as www.vinelink.com and https://www.servicememberscivilreliefact.com/scra/military-status-verification/

Usually by the time a property is scheduled to be sold at a tax deed sale, the taxes are behind several years. The owner has received multiple notices over the years and has been provided multiple opportunities (forbearance, payment plans, etc.) to catch up on the taxes prior to the lien converting to a tax deed.

It is the collective observation of NTLA members that it is the effort to reach the interested parties and the engagement in the dialog to a solution (payment plan or other) that matter more than the initial time given to cure. If a landowner is given 3 years to redeem, but he/she doesn't know about the delinquency until the final 30 days before foreclosure, then the additional time only put them further in debt and less likely to be able redeem. Thus, a collection system that aggressively notices interested parties early in the process and provides extended payment timelines for those who remain engaged in payments, yet swifter action for those who abandon all attempts to resolution perform the best.

Moreover, swift foreclosures on abandoned properties have proven to reduce blight. Some taxing authorities determine properties to be abandoned not only by the lack of response from the owners, but also by utilities that have been cancelled for more than a specified time (typically 90, 120, or 180 days). At a minimum, the NTLA believes property owners should be given six months from the date of delinquency before any foreclosure proceeding commences. During this time, aggressive efforts should be taken to notice persons and/or entities with an interest in the subject parcel.

The foreclosure process itself should be expedited (about 4 months' duration) for abandoned properties. Unfortunately, there is wide deviation between counties and states in the definition of "abandonment." The NTLA defines "Abandoned Property" as a property for which the interested parties have not responded to notices or communications, at least including certified and regular mail to their last known address found through a search of the public record for the subject property, publication, and posted notice for a period of 60 days, and where utilities have been shutoff or unpaid for at least 120 days. Other counties and states have more specific definitions. In Duval County, Florida, abandoned real property is defined by Ordinance 179.102 and means "any real property that is vacant, and is under a public notice of default, or is pending a mortgage foreclosure, or notice of mortgagee's sale, or lien sale and/or properties that have been the subject of a mortgage foreclosure sale where title is retained by the mortgagee, and/or properties transferred under a deed-in-lieu of foreclosure sale, a short sale or any other legal means."

In New Jersey, the legislature has codified a definition of abandonment in New Jersey Statute 55:19-81, which reads as follows:

> 55:19-81. Determination that property is abandoned except as provided in section 6 of P.L. 2003, c. 210 (C. 55:19-83), any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the public officer that:
>
> a. The property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place during that six-month period;
>
> b. Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of the date of a determination by the public officer pursuant to this section;
>
> c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date of a determination by the public officer pursuant to this section; or
>
> d. The property has been determined to be a nuisance by the public officer in accordance with section 5 of P.L. 2003, c. 210 (C. 55:19-82).

The NTLA encourages taxing authorities and other foreclosing parties to give parties who have shown an interest in protecting their ownership a period of 60 days to finalize their payment, defense, payment plan, or other workout strategy. Based upon our members' experiences, those who take more than 60 days to put a solid repayment plan in place will never actually get one done and most likely are using this as a stall tactic, during which the property continues to dilapidate and the overdue sums grow. Sincere persons will keep in regular contact and will provide evidence of making progress.

Property owners subject to foreclosure typically have one additional right that extends beyond the foreclosure, and that is the right to the excess bid funds. If, in the state of the subject property tax deeds are sold through a public auction, or if in the bidding process for the tax lien there was surplus bidding (bidding above the amount of the taxes due), then the former owner, in most such states, is entitled to the funds in excess of those amount necessary to make his/her accounts current at the respective taxing authority. In some states, these funds are distributed in priority of interested parties (mortgage companies before owners), in others it is first come first served.

TYPES OF PROPERTY CONVERTING TO TAX DEEDS

By many multiples, vacant land is the most common underlying real estate for which a tax lien converts to a tax deed. It is rare that improved properties (housing or commercial structures) are transferred for past-due taxes, and most that are have serious structural or title issues. The rarest type of property resulting in a tax title transfer is that of an owner-occupied.

Improved properties title transferred for past due taxes are almost always vacant and rarely maintained. These properties often have a negative impact on the local community in the forms of inviting crime and decreasing neighboring real estate values. A few properties can lead to a contagion effect to other properties. Too many of these properties in a small area create blight and a downward spiral in a section of a municipality.

The tax deed transfer process often benefits communities by transferring vacant, unused, and unwanted property to a new owner who will maintain it, place it back into service, improve the property, pay the taxes and support neighborhood values.

CAVEAT EMPTOR TO THE EXTREME

Caveat Emptor with regard to tax deeds should be interpreted as buyers are assuming all risks, even those of which they could not have known prior to purchase. Tax deed sales hold both opportunities and tremendous risks – an investor can purchase properties outside of the standard real estate market, but knowledge is power and this is not a marketplace for the uneducated or unadvised.

A taxing authority will transfer tax titles to lienholders or bidders, however, they do so without any liability or warranty of any kind. Most often, they will not even insure that they performed the foreclosure properly or that they had the right to transfer the property. Thus, there are two forms of risk when acquiring title to property through a tax deed: 1) title risk, and 2) property risk.

Title risk is the possibility that the buyer has acquired less than 100% fee simple title to the property, that their ownership is subject to rights of another owner, or that other liens exist which can jeopardize the buyer's ownership if not cured. This can include the parcel being miss-assessed with a building that is actually only partially on the subject parcel. It is financially impractical to order title and lien reports and surveys for every deal on which an investor conducts due diligence, so most investors are adept at researching the public records to identify the liens, encumbrances and other potential claims that can cause a cloud on title. It is important to know which specific items will survive a tax deed sale, and which will be eliminated. There are also risks of gaps or gores within the chain of title, especially if there are quit claim deeds of record. We encourage investors to seek advice from legal counsel for any unusual circumstances. After the tax deed is purchased, there are tax deed certification companies that will review the public record and may certify the tax deed process so that an insurable title policy may be issued. There is also the ability to have legal counsel file the traditional Quiet Title Actions to sever any prior interests, but these actions are only as good as your ability to include and serve the appropriate parties.

Property risk is the possibility of damage or other inherent physical, environmental, or community problems that adversely affect the value of the property. This can include a foundation crack, a roof leak, termite damage, a crime problem, or soil contamination from a neighboring property. These are all very real possibilities and likely why the former owner abandoned the property. Recall that buyers have no right to inspection prior to acquiring the tax deed.

Below are some common problems and industry best practices for dealing with them.

Be careful and be advised, you need specialized knowledge.

BUYING AND SELLING TAX DEED PROPERTIES – PROBLEMS AND SOLUTIONS

Problem #1 – Lack of Information to do Effective Due Diligence

Due diligence is the research performed to determine if a property is desired, what it is worth, and how much to bid for it. However, the list of properties being offered for sale gives very little information (generally, a legal description, perhaps an address, possibly the former owners name, and the opening bid amount).

In addition, there are no "open houses" or inspection periods, there are no condition reports, nor does the auctioneer provide photos or any other materials to help bidders. Remember, bidders have ***no legal right to enter upon any private lands***, regardless how vacant and/or abandoned it may look. Stepping on to the property is considered trespassing and is a violation of law. People new to bidding for a property at tax sale are often surprised that they are allowed only to drive by the property and are not allowed to go inside to inspect it. But that is the law. Set foot on the property and you are trespassing, i.e. committing a crime. Walk inside and you are breaking and entering, a more serious crime.

No one gives you a key, no one gives you interior photos, and no one gives you any information, guarantees or warranties of any kind. It is truly "buyer beware."

The lack of interior inspections and large numbers of properties to evaluate make buying at tax deed sales much different than buying through traditional means.

Best practice to address this problem:

Smart investors seek to avoid losses first and make profits second. It is better to bid on properties for which you have done due diligence on rather than gambling on properties you know little about.

If you have too many properties to see them all, calculate how many properties you can see in a day and limit your due diligence to the properties you can see. It is far better to have lots of information on a few properties, than little bits of information on many properties.

Pick out a few zip codes and drive by all those properties. Limiting yourself to specific neighborhoods or zip codes will keep your due diligence in a concentrated physical area. This will also ease management of properties should you be the winning bidder.

Over time you will learn local values and marketability. As you learn the values of neighborhoods, your due diligence will become faster and more accurate.

In the interest of maximizing time, most investors begin with on-line or desktop due diligence. Common resources are data tapes from the tax collector and property assessor, county GIS systems, online maps, and other property based resources. Common things to search for are:

- Ownership is not a government agency or other exempt entity. Life estates are handled differently in each state, so if buying life estates be sure to research if the remainderman has rights beyond the tax sale.
- Assessed values - look to make sure the land and improvements have reasonable values. Also, look at the value history to make sure nothing significantly negative has occurred, things like a demolition can significantly change the value of the property and increase the outstanding liens on the property.
- If targeting improved properties, verify improvements to make sure they are actually a building and not just site improvements. Moreover, verify that the improvements are still there – check with the fire department for their records on the property.
- Outstanding prior tax delinquencies and payments. These tell investors if the opening bid will be larger than expected, or if it is likely that the former owner will payoff the taxes owed before the sale date.
- Search for liens against the property that might survive a tax deed issuance, such as IRS liens or nuisances/code enforcement liens. Some properties may already be scheduled for demolition, so it is wise to cross-reference with any available demolition lists.
- Plat (GIS, where available) and Map the property to verify the address matches the plat and to make sure that any building is fully on the subject parcel and not split across others. GIS mapping is the next evolution from old plat maps; these sites illustrate the lot lines, aerial views, and often provide other valuable information about the property and its surroundings, flood zones being one of particular interest.
- Cross reference the property with environmental databases at the federal EPA website and any state or local website. https://www.epa.gov/superfund/search-superfund-sites-where-you-live.
- Look up neighboring property values on sites like Zillow.com and Realtor.com.
- Bidders can usually see open permits at the building department's offices.

Some properties may warrant physical inspections in the form of driving by the properties to evaluate their condition and neighborhood. Remember, you have ***no legal right to enter upon any private lands***, regardless how vacant and/or abandoned it may look. All you can do is view the property from the street and make some educated guesses. Be careful, some people take great offense to you scoping out their property; and some have responded with anger and violence.

Assume all tax deed properties need major renovations and look for evidence of roof damage and foundation damage, as these often create the most expensive repair bills. Seeing overgrown grass or a generally poor appearance indicates that most likely there are outstanding code violations. Confirm if those code liens will be discharged by a tax sale; if they will, be sure to remedy the violations immediately upon purchase of the property so that more fines don't accumulate post-purchase.

Looks can be deceiving. Even a standing property that looks fine from the outside can be water damaged, fire damaged, an EPA hazardous waste site, have nuisance liens, mold problems, survey and title problems, be unbuildable land or have any number of other issues. For example, sometimes there has been a fire and all that can be seen from the outside (from the street) is some soot under an eve or at the top of a window. Remember, the property is being sold because the owner did not pay the taxes, which are generally a very small portion of the value of the property – thus, there is something wrong with it. They may not pay taxes because the property has physical or title problems and it cannot be rented. Investigate the physical condition as thoroughly as you can from the street.

Assume the worst. Owners generally do not put money into repairs in properties for which they are not paying taxes, so these properties are often in poor condition.

Problem #2 – The Final List is Never Final

Whether in a tax sale or a tax deed sale, the final list is rarely, truly final. Only if they have a final redemption/resolution/void date prior to the sale date is the final list actually final. In most cases, interested parties are rightfully able to redeem the property until the actual moment of sale, and the NTLA encourages this. If a property owner has the ability to redeem the property before the sale, he/she should be given every opportunity to do so, up until the last final moment.

The problem for buyers is that they end up doing useless research on numerous properties; in large tax sales, the wasted parcel research is in the thousands, sometimes tens of thousands. Tax deed sales have less in number, but more time is spent on each property, so the wasted time is similar.

Best practice to address this problem:

Buyers must plan accordingly to not over-invest research in just a few parcels. Buyers should look at many liens/parcels such that they have plenty of options. Buyers must balance the need for effective due diligence with time constraints and the odds of liens/parcels actually going to sale and then them actually winning such liens/parcels. Look for variables that may indicate a lien/parcel will not redeem prior to the sale date.

Problem #3 – Some Real Estate is Truly Worthless, or Sometimes a Liability!

Believe it or not, there are thousands of useless parcels in every state. These properties have no hope of development, building, redevelopment, or use of any kind, regardless that they may be assessed otherwise.

The taxing authorities simply auction every property with delinquent taxes. Not all taxing authorities review what they are selling, and they do not offer any warranties, guarantees, or refunds.

Owners of useless land will stop paying the taxes and let them go at tax auction – HOA's and common areas of developments are famous for this. With great certainty, we can assert that useless parcels exist and are sold at tax sales and tax deed sale in every county, in every state, every year.

Best practice to address this problem:

Things to look for are: use obsolesce, septic requirements (even on existing buildings that are abandoned), size of the lot (versus building requirements), buildability (look for waterways or utilities crossing it, lot coverage concerns, easements, access, dimensions, drainage, water table, zoning requirements, etc.).

Buyers are better served to assume that abandoned buildings will need to meet all of the code requirements to build new, and that vacant land parcels in the sale are unbuildable. Then, search for the evidence that those assumptions are wrong (versus assuming that the tax assessment value is correct and the land is buildable to the buyer's planned desire). Assume the worst and check everything!

Problem #4 – Oops! That House is Occupied!

Occasionally, tax deeded properties are occupied with former owners, renters, or squatters. You may need to evict the occupants, but there are other options.

Best practice to address this problem:

Ideally, a buyer would know the occupancy status prior to obtaining a tax deed; however, that is not always possible to determine. Even after a buyer has acquired a tax deed, never assume the property is vacant. Always assume it is occupied and work from that assumption.

Most occupants are willing to work with new owners as long as the communication with them is kept open and honest. There are numerous options that can be mutually beneficial: month-to-month rental, short-term lease, long-term lease, cash for keys, and other forms of settlement. Investors should be aware of the rights conveyed to a tenant before they sign as lease; many states vest specific statutory rights to tenants and require landlord to fulfill certain minimum obligations. Do not try “self help” evictions such as removing front doors or shutting off the utilities, and do not harass occupants. Avoid legal action by trying to reach an amicable resolution quickly. If that cannot be achieved, then the new owner must go through the correct legal channels to evict the occupant(s).

Problem #5 - Litigation to Overturn Tax Sales

Owners of valuable properties will often come back after the tax deed sale to try to undo the auction and be reinstated as owners.

Tax deed properties tend to be fairly easy to overturn, which is why title insurance for them requires more than the standard review.

Problems that can result in tax deeds being overturned and title being returned to the former owner include any technical problems with government process of advertising and noticing the sale - including insufficient legal notices or any irregularity in the sale process or procedure. If any “t’s” aren’t crossed, or “i’s” aren’t dotted in the foreclosure or tax deed sale paperwork, the sale often will be overturned. Since most tax deed sales are done by government entities in large volumes, there are occasionally problems in the paperwork and process.

Likely, investors must engage an attorney to defend any litigation against their ownership of the property. It is unlikely that an investor will be reimbursed for his/her legal expenses, especially if he/she wins the title. If the investor loses the litigation, typically the investors will be refunded his/her initial purchase price, but it is less than rare that he/she will recover any attorney’s fees or costs, or receive anything for his/her time, effort, and aggravation, or any repairs or renovations.

Best practice to address this problem:

Title insurance can protect investments in tax deeds from challenges by former interest holders, not just former owners, but also mortgage holders, judgment holders, and heirs. It is highly recommended that tax deed investors get title insurance as soon as possible, certainly before any repairs/renovations begin.

There are two methods to obtaining title insurance on tax deed properties: 1) hire an attorney to file a Quiet Title action to forever terminate all other ownership the rights, or 2) hire a tax deed certification service to research the tax deed process to “certify” the sale. At the conclusion of either method tax deed holders should obtain a title insurance policy. At the outset of the engagement for services, we recommend communicating the expectation for a clean title policy that insures over the tax foreclosure and tax deed sale at the conclusion of their process. Savvy investors budget for the cost of these solutions before they bid for properties. If litigation comes, regardless of best efforts, and there isn't a title policy in place, we recommend hiring an attorney experienced in tax sale litigation, not just any real estate attorney. The laws regarding tax lien foreclosures are designed to protect the former owner, and judges often favor them in court. Therefore, often the best exist is to settle and to do so early in the process as possible.

Problem #6 – Liens that Survive the Tax Sale

Tax sales do not necessarily wipe out all the liens on a property. This varies by jurisdiction, but in some jurisdictions grass cutting liens, fines for trash on a property, and other "nuisance" liens come with and stay with the property. Those liens can add up to enormous amounts of money and must be considered. If the property has code violations, determine that in due diligence, verify if any fines will survive the tax sale, and address the code violations immediately upon purchase of the property. You want to avoid fines and have good relations with the community and government where you are investing. Addressing code issues promptly will help in that regard. EPA issues such as groundwater and soil contamination are not wiped out by a tax sale. At some sales, association liens, mechanics liens, and certain governmental judgments are not eliminated by tax sales.

If IRS liens are present, the IRS retains the right to purchase the property for the amount paid at the tax deed property for 120 days' post-sale. The net effect of IRS liens is typically that you must wait out the 120 day "redemption period" before you can get improve or resell the property. Similarly, SBA loans have a 365 day right of redemption post sale, but often the SBA is willing to negotiate a small payment for a waiver of their right to avoid a long wait time. Best practice is not to do any repairs or improvements during the redemption period. If the property is redeemed, get your bid amount refunded but you cannot be sure you will get any reimbursement for repairs or improvements you made.

If a lienholder is not given proper notice in advance of the sale, they will not be eliminated at all. Since the sales are often done in large batches, problems with notice happen with some frequency.

Tax sales can be vulnerable due to lack of notice to the owner prior to the tax sale. There is not sufficient time for you to check each file to see if noticing was done properly. When noticing is not done properly, even if the tax sale could have divested the lien since there was no notice, the lien will not be divested. Check in advance of the sale what liens will legally stay with all properties because they are not legally divested by a tax sale, even if property noticing is done. Understand the risk that from time to time you will be liable for liens because noticing was done incorrectly.

Best practices to address this problem:

Consult with a local attorney to find out which liens (including mortgages, condo/HOA, municipal, nuisance liens, etc.) survive a tax sale and which do not. You can also use the Quiet Title Action or tax deed certification services discussed in #5 above to void any risk or liability regarding these surviving liens. As part of your due diligence, check for the presence of any liens that will stay with the property and bid accordingly. Clear up any code violations immediately upon purchase of a property so you don't incur post tax sale fines.

Be extra cautious with commercial properties. EPA issues are not cleared by a tax sale and you could be stuck with a cleanup bill as the successful bidder at tax sale. EPA issues can be financially devastating. As the owner of the polluted property, you may be liable under the "strict liability" scheme of the environmental laws of the United States and may end up paying the cleanup costs and fines if you become the owner of a polluted property.

Final Note on Community Standing and Profitability.

As a bidder at tax deed sales, one should strive to meet his/her economic objectives and find "good deals" at tax sales. Good deals are the fruit of extensive due diligence and work, but can be ruined by poor relations between the investor and the local government. To maintain good relations, one needs a good reputation and to act responsibly. That means the investor: 1) pays timely the real estate taxes and all utility bills on the tax deed properties he/she purchases (in some jurisdictions, investors with unpaid taxes on properties are barred from purchasing additional properties at tax deed sales), 2) clears up code violations soon after a property is purchased, and 3) follows the laws and codes when dealing with occupants and renovations. When one acts responsibly he/she will find that business comes easier and more profitable. When one doesn't act responsibly, fines, fees, interest, and costs will reduce his/her profit margins.

Again, we must encourage every tax deed investor to learn the state-specific laws regarding tax deed investing before bidding at any auctions.

Next actions by the NTLA.

Our goal as an organization is to serve as a catalyst for positive change within the industry. We acknowledge that some states have tax lien and tax deed statutes, and others have tax deed statutes. We strive to unify the tax lien and tax deed laws to encourage tax lien and tax deed investment. Any model legislation proposed in the future should address and balance the needs of all stakeholders, including existing property owners, governmental entities, lien holders and tax lien and tax deed investors:

- Delinquent taxpayers and lien holders must receive due process and fair treatment. This includes multiple notices and sufficient time for all parties to address the delinquencies.
- After all proper notices and time periods lapse and a tax deed is issued, all avenues of overturning the deed should be terminated and all rights to challenge a sale should expire within a reasonably short time period. Some time must be allowed in case where the process was not done properly; however, in the interest of finality and the need for buyers to be able to move forward with the property this time must be limited reasonably.
- The goal for all delinquent tax properties should be to encourage redemption by the owner and to eliminate any blight amongst the adjoining neighborhood.
- Legislation must encourage rapid transition of the property post-deed to a revenue-generating taxable asset for the local government authority.
  - Tax deed sales must eliminate any community association liens and debts acquired prior to the tax deed.
  - Tax deed sales must reduce any code enforcement liens to "hard costs" if the tax deed investor timely addresses such liens and underlying issues after purchasing the tax deed.
- Any occupants residing in property post tax deed sale must be afforded due process.

A final note and word of caution.

The NTLA is aware of a number of deceptive and fraudulent seminar educators for Tax Lien and Tax Deed investing. Recently the Federal Trade Commission filed suit against two tax lien and tax deed seminar companies seeking to shut them down.[3]

The NTLA offers education for both tax lien investing and tax deed investing through our conferences, webinars, and soon to be released online education. Under the umbrella of the National Tax Lien Association, the "Tax Deed Investor Group" acts as a subcommittee to address all tax deed related matters.

The NTLA warns investors to seek proper education and advises steering clear of educators who make the process sound over simplistic and easy.

We look forward to continuing to serve our members, the tax sale community, and the local governments that participate in this process.

National Tax Lien Association
561-449-2484
info@ntla.org
www.ntla.org

[3] https://www.ftc.gov/news-events/press-releases/2019/11/ftc-acts-shut-down-companies-operating-real-estate-seminar-scheme