

TAX SALE BOOKLET

DISCLAIMER

This publication is designed to answer questions and provide an insight into the legal framework that gives the Cobb County Tax Commissioner the authority to conduct a real estate tax sale in the state of Georgia.

The material in this booklet is **not intended as a substitute for professional advice** or assistance. We encourage prospective purchasers at a tax sale to **consult an attorney**. Keep foremost in mind that it is up to the purchasers at a tax sale to assure themselves as to the soundness of the sale and the deed to be acquired at the sale. **No warranties** are given or implied and clear title is not contemplated. Our primary concern is the payment 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 how real estate tax sales in the state of Georgia work.

ATTENTION

Prospective Tax Sale Purchasers:

This tax sale booklet provides a starting point to understanding tax sales. As tax sale purchasers, you are responsible for knowing the law regarding tax sale purchases and should familiarize yourself with all the applicable laws.

You are reminded 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 pursuant to state law.

The legal axiom of **caveat emptor** or "buyer beware" applies to tax sales (OCGA 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 Cobb County Tax Commissioner does not warrant the titles and any title search done for the Tax Commissioner should not be considered an opinion of title to rely on for tax sale purchasers.

The Cobb County Tax Commissioner reserves the right to void any tax sale that is later determined to have errors that make the sale invalid. The Tax Commissioner cannot and does not guarantee any expected gain on your investment.

INTRODUCTION

There are many questions regarding the property 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 street. We have no way of knowing whether a particular parcel or lot will be approved for a building or a septic tank. We are not always aware of easements.

An important point that must not be overlooked by the purchaser at a tax sale is that other taxes might be unpaid. If the parcel of land is located in a city that collects their own taxes, the city taxes could be unpaid as well. It is also possible that additional county taxes have become delinquent since proceedings first began on the parcel you are considering.

Can you lose money? Maybe! We don't really know. We always recommend that anyone contemplating purchasing at a tax sale consult an attorney, assure oneself that the title is good, verify the information we have gathered, read those sections of Georgia law pertaining to tax sales, and attend our sales to be familiar with the proceedings.

TAX SALE PROCEDURES

The Cobb County Tax Commissioner's Office follows certain procedures when it levies upon a piece of property. These procedures are prescribed by the **Official Code of Georgia Annotated (OCGA)**. You will see code sections referenced throughout this booklet. 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. **OCGA Title 48 - Revenue and Taxation, Chapter 3 - Tax Executions and Chapter 4 Tax Sales** contain important information that you must be aware of.

FIERI FACIAS (FI. FA.)

A **fi. fa.** (short for **feri facias**, a Latin term meaning "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 (OCGA 48-3-1 and 48-3-3).

AUTHORITY TO SELL

The Tax Commissioner of Cobb County also serves as Ex-Officio Sheriff of Cobb County. As Ex-Officio Sheriff, she may appoint Ex-Officio Deputy Sheriffs to act on her behalf in tax sale matters. Each Ex-Officio Deputy Sheriff has full power to advertise and bring property to sale for the purpose of collecting taxes due the state and county (OCGA 48-2-55 and 48-3-6).

Taxes due the state and county are not only **against the owner** but **also against the property**, are superior to all other liens and shall be paid before any other debt, lien, or claim of any kind. 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 (OCGA 48-2-56 and 48-5-28).

30 DAY NOTICE BEFORE ISSUING FI. FA.

After the last day for payment of taxes, the Tax Commissioner shall notify the taxpayer in writing that the taxes are outstanding, and unless taxes are paid within thirty (**30**) days, an execution (fi. fa.) will be issued (OCGA 48-3-3(b)).

ISSUANCE AND RECORDATION OF FI. FA.

At any time after the 30 day notice period has elapsed, the Tax Commissioner shall issue an execution (fi. fa. or tax lien) against the owner and the property which shall be recorded in the Cobb County public records. The execution (fi. fa.) is directed "to all and 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.). (OCGA 48-3-1).

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 an Ex-Officio Sheriff. (OCGA 48-2-40 and 48-3-8).

LEVY

When real estate is levied upon, the levy officer, appointed 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 **20 days written notice** before advertising to the owner, tenant, record owner of the property and the record owner of each security deed and mortgage affecting such property. (OCGA 48-3-1 and 48-3-9)

This levy notice is delivered by certified mail, and if we cannot affect 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 and/or mortgage holder's name, the tax years delinquent, the principal amount of taxes due, the accrued cost due, and a description of the property to be sold (OCGA 48-3-9, 48-3-10, and 9-13-13).

POINTING OUT PRIVILEGE

If the property being levied upon is a house and lot, then the Tax Commissioner routinely seizes it all. 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 (OCGA 48-3-4).

ADVERTISING

All properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the first Tuesday of the month. These advertisements are placed in the legal section of the Marietta Daily Journal under the heading: **Tax Commissioner**. Their website is www.mdjonline.com. (OCGA 9-13-141)

10 DAY NOTICE TO OWNER

At least 10 days before the tax sale, the owner is sent an additional written notice by certified mail informing them of the impending tax sale with a copy being sent to the appropriate tax official of the state, county, or municipality which also has issued an execution with respect to such property. (OCGA 48-4-1).

STARTING BIDS LIST

A list of properties for sale is also available online, though the list may not be the most up-to-date.

TAX SALE

Our tax sale is held on the **first Tuesday of the month (in the months we decide to hold a tax sale)**, between the hours of **10 am** and **4 pm**, on the steps of the Superior Court building, also known as **Flournoy Park**, (except when the first Tuesday of the month falls on a legal holiday, the sale is held the next day, Wednesday). (OCGA 9-13-161)

The opening bid for a particular property is the amount of tax due, plus penalties, interest, fi. fa. cost, levy cost, administrative levy fee, certified mail cost, advertising cost, 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 offer the property for sale again, at **3 pm on the sale date**.

PAYMENT

Immediately following the conclusion of the tax sale all purchasers must remit payment in full to the Cobb County Tax Commissioner. Payment must be in the form of cash, certified check, or cashier's check. We also require the purchaser to sign a statement attesting to the fact that certain property was purchased for a certain price. After all payments are processed we begin preparation of the Tax Deed and the Real Estate Transfer Tax form.

According to **OCGA 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 for any deficiency arising from the sale.*

AFTER THE TAX SALE

PAYMENT OF EXCESS FUNDS

Any excess funds after paying taxes, accrued costs, and all expenses of a tax sale shall be paid to the person **authorized to receive them.** (OCGA 48-4-5).

A letter is sent to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded equity interest or claim in such property at the time of the tax sale, advising of the tax sale and explaining how the excess funds can be claimed. We provide the forms to be used as a guideline for the claim. Claims by lien holders should include a current payoff statement since the excess funds paid to the lien holder cannot exceed that amount.

If the potential exists for competing claims for the excess funds, we **may** file, when deemed necessary, an interpleader action in superior court for a determination as to who is entitled to receive the excess funds. (OCGA 48-4-5)

RIGHT OF REDEMPTION AND THE AMOUNT PAYABLE FOR REDEMPTION

When real property is sold at a tax sale, whether to an individual or to Cobb County, the defendant in fi. fa. or any person having any right, title, or interest in or lien in the property may redeem the property from the holder of the tax deed. (OCGA 48-4-40)

The owner, creditor, or any other person with interest in the property may redeem the property at anytime during the **twelve (12) months** following the tax sale. The purchaser of the tax deed cannot take actual possession of the property during this time. The tax deed purchaser is not authorized to receive rents or make improvements to any structure on the property or grade any lot prior to this time. (OCGA 48-4-40)

If redeeming, the owner, creditor, or any other person with interest in the property, must pay the **tax deed purchaser**, the amount paid for the property at tax sale, **plus 20% premium** for the first year or fraction of a year, plus any taxes paid on the property by the purchaser after the sale, plus any special assessment on the property, and a **10% premium** of the amount for each additional year or fraction of a year, which has elapsed since the date of sale plus costs. A premium of 20% must also be paid when Cobb County is the purchaser (OCGA 48-4-42).

When the property has been redeemed (all monies due the purchaser paid as prescribed by law), the purchaser shall then issue a quitclaim deed to the owner of the property (as stated on the fi. fa.) releasing the property from the tax deed. (OCGA 48-4-43 and 48-4-44)

This redemption of the property shall put the title conveyed by the tax sale back to the owner, subject to all liens that existed at the time of the tax sale. If the redemption was made by any creditor of the owner or by any person having any interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property (OCGA 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 or notices of the foreclosure to be served by certified mail to the owner of record at time of the tax sale, the occupant and to all interest holders which appear on the public record. In addition, the notice of foreclosure is to be published in the county in which the property is located, once a week for **four (4) consecutive weeks**. (OCGA 48-4-45)

If the redemption is not made until after the notice has been given, then the costs of serving the notice or notices and publishing the notice shall be added to the redemption price to cover the cost of making the necessary examinations to determine the persons upon whom notice should be served (OCGA 48-4-42).

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 that the purchaser seek legal advice regarding the petition to quiet title in land, pursuant to **OCGA 23-3-60**.

Under the action, the petitioner (tax deed purchaser) makes a request to the court to take jurisdiction over the matter. Depending upon the action selected, the court may appoint 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 provided by law."

RIPENING OF THE TAX DEED TITLE BY PRESCRIPTION

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. (OCGA 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 (OCGA 48-4-48).

Notice of foreclosure of the right to redeem is not required in order for the title to ripen by prescription.

It is recommended that an attorney be consulted prior to following this process as there may be negative legal implications.

SUBSEQUENT TAX SALES

Following a tax sale, the tax sale purchaser becomes the owner of record and is liable for the payment of all taxes assessed following the tax sale date. This is applicable even though the defendant in fi. fa. and others with an interest in the property still have a right of redemption.

QUESTIONS

If you have questions about tax sales after reading this booklet, call the **Delinquent Tax Department** at **770- 528-8623** or tax@cobbtax.org. For general tax information, you can visit our web site at www.cobbtax.org.