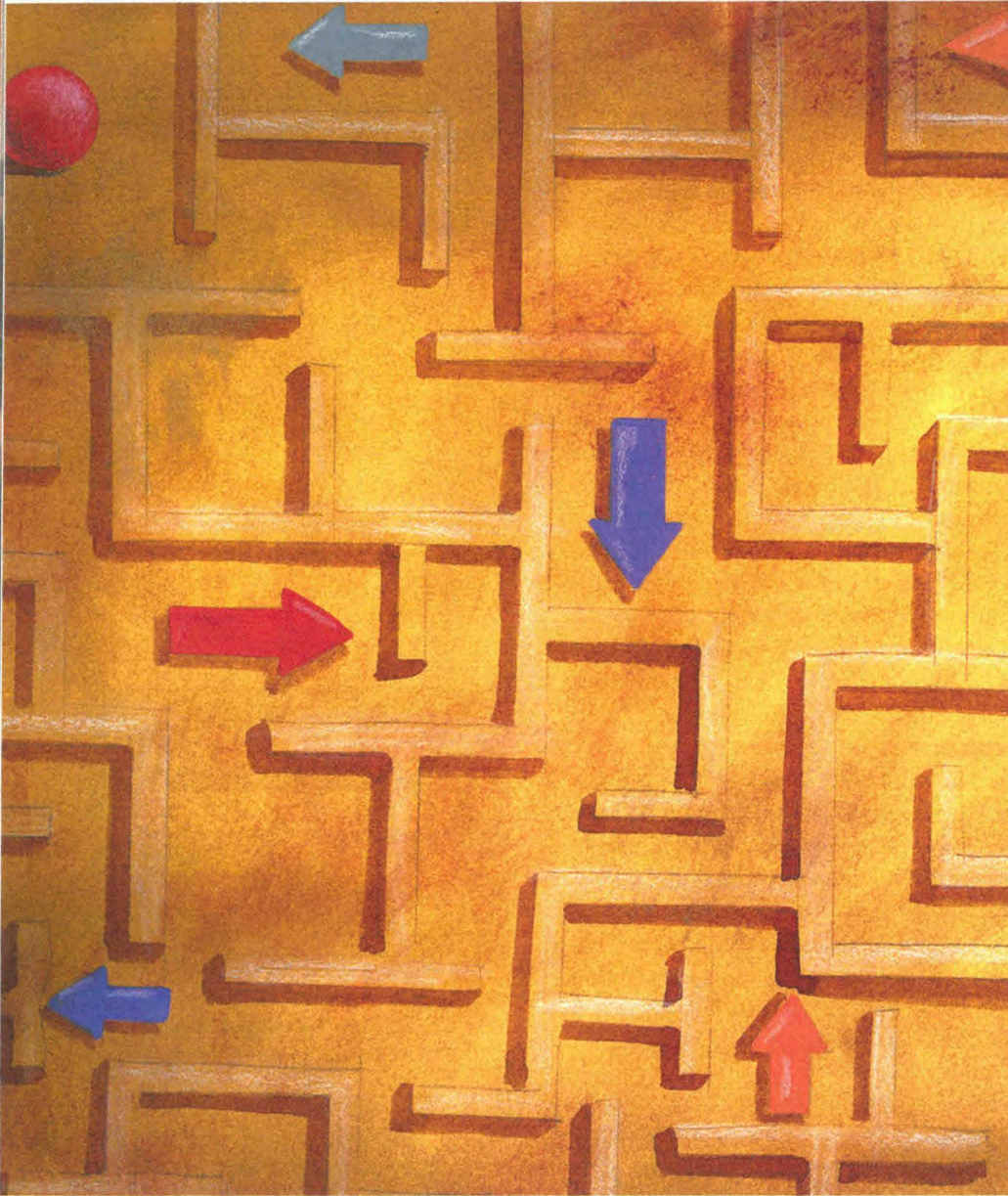


Tax Sales and Tax Deeds – A Primer

By Arthur W. Friedman



THIS ARTICLE IS INTENDED to be a short introduction to annual real estate tax sales and tax deeds in Cook County, Illinois. The statutory structure, which is set forth in 35 ILCS 200/1-1 *et seq.* ("Property Tax Code"), is complex and can be a trap for the unwary. Care must be taken—by tax purchasers, property owners, and lenders—to protect their rights.

The Lien of Real Estate Taxes

The lien of real estate taxes for a given year attaches to the real estate on January 1 of that year. Thus, on January 1, 2003, the 2003 real estate taxes on each parcel of real estate became a lien on that parcel, even though the amount of those real estate taxes were neither ascertained nor payable until 2004.

Real Estate Taxes are Payable in Two Installments

The first installment of 2003 real estate taxes on any Cook County parcel were equal to one-half of the 2002 real estate taxes on the parcel and were payable in early 2004. The second and final installment will be in an amount equal to the difference between (i) the full 2003 real estate taxes (which will be ascertained in the summer or fall of 2004) and (ii) the amount of the first installment, and will be payable later this summer or fall.

When someone buys a parcel of real estate, he or she should make sure to provide the County with the name and address of the party to whom subsequent tax bills should be sent. Failure to receive a tax bill is not a defense to non-payment or late payment.

Interest on Delinquent Real Estate Taxes

A partial payment of real estate taxes can be accepted and must be posted in the Warrant Book maintained by the County Collector. Interest on taxes not paid before each delinquency date accrues at the rate of 1½ % per month or portion thereof. Property Tax Code, § 21-25.

Application for Judgment and Order of Sale with Respect to Delinquent Taxes

If the 2003 real estate taxes on a Cook County parcel (payable in 2004) are delinquent following the due date of the second installment, the County Collector will apply to the Circuit Court of Cook County (County Department, County Division) for a judgment and order of sale. Not less than 15 days prior to the filing of an application for a judgment and order of sale, the County Collector must send a notice, by registered or certified mail, to all assessors of record of delinquent property. Property Tax Code, § 21-135. Another prerequisite to the filing of such an application is the publication in a newspaper of an advertisement, listing each parcel for which 2003 taxes are delinquent and the amount of taxes due on each such parcel. That publication must also state the date on which the Collector will

apply to the Court for a judgment and order of sale and the date on which (assuming the judgment and order of sale is approved) the annual tax sale will begin. Property Tax Code, § 21-110; § 21-115; § 21-190.

The pertinent information with respect to all parcels as to which 2003 taxes are delinquent must be maintained by the County Clerk in the Tax Judgment, Sale, Redemption, and Forfeiture Record ("Judgment Record"). Property Tax Code, § 21-160.

When the County Collector files the Application for Judgment and Order of Sale (after having fulfilled the necessary mailing and publication requirements) with respect to the 2003 taxes, the Circuit Court will examine the delinquent list and the Judgment Record, and assuming the Application is in order, the Court will enter a Judgment and Order directing the sale of the delinquent 2003 taxes. Pursuant to that Judgment and Order of Sale, the annual sale of the 2003 delinquent taxes ("2003 Annual Cook County Tax Sale") will likely be held in early 2005.

If delinquent 2003 real estate taxes are paid (along with the required interest and costs) after the Judgment and Order of Sale is entered but before the parcel is actually offered for sale at the 2003 Annual Cook County Tax Sale, the parcel will be withdrawn from that Sale.

The Annual Cook County Tax Sale Auction

Parcels for which real estate taxes remain delinquent are sold at annual sales through an "open outcry" auction, in which participants bid a "penalty rate" that the delinquent taxpayer must pay (along with taxes, penalties, interest, and costs) in order to redeem the property. (See discussion of Redemption below.) Under the Property Tax Code, bidders are allowed to bid "penalty rates" that range from 0% to 18% of the property value. Property Tax Code, § 21-215. Because there are tens of thousands of properties offered for sale each year, each annual Cook County auction takes place over a period of approximately one month. (The separate Scabenger Sale is beyond the scope of this article.) Prospective bidders must post security in favor of the Collector to assure payment of the purchase price of the delinquent taxes. Property Tax Code, § 21-220.

Unlike most auctions, the auctioneer at the annual tax sales will neither seek nor force a lower penalty rate bid. The auction

is a descending auction (*i.e.*, the winning bid is the lowest), rather than an ascending one. For example, if the only bid heard is at 18%, the auctioneer will award the property at the 18% penalty rate (*i.e.*, 18% for *each* six-month period or portion thereof) without seeking a lower bid. The successful bidder receives a Certificate of Purchase.

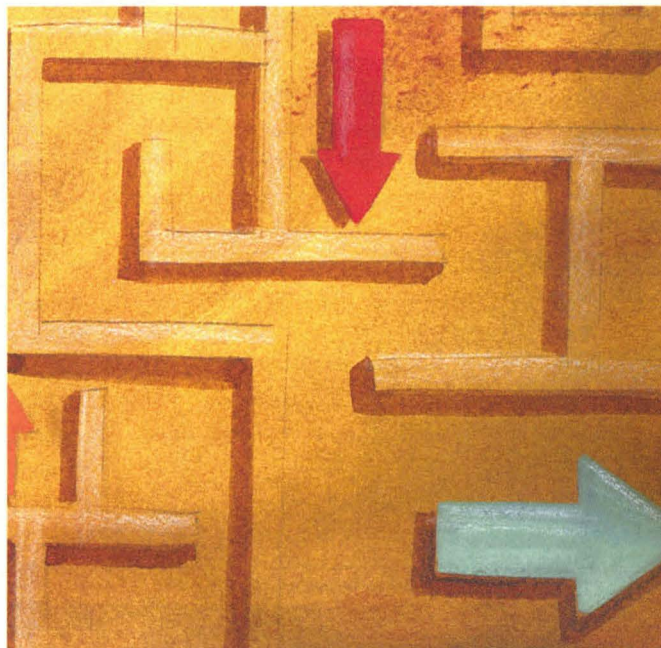
The successful bidder must pay the County the amount of the taxes purchased (together with interest and costs), whereupon the County's lien on the property itself is satisfied and the successful bidder has the right to receive the penalty rate bid for each six-month period or portion thereof that the taxes are not redeemed—until the expiration of the period of redemption. By way of example, assume that a tax purchaser buys delinquent taxes on a parcel in the amount of \$1,000, including interest and costs ("Certificate Amount") at a 10% penalty rate and that the purchase takes place on March 1, 2005. If the owner of the parcel redeems within six months after March 1, 2005 (before September 1, 2005), the penalty payable is 10% of the \$1,000 figure, or \$100. Thus, in order to redeem the owner would have to pay \$1,000 plus the \$100 penalty. If the owner redeems after the expiration of the first six months but before the expiration of the first 12 months of the redemption period (*e.g.*, between September 1, 2005 and February 28, 2006), the penalty amount would be 20% of \$1,000 or \$200. An additional 10% of the Certificate Amount is added for every six-month period or portion thereof thereafter until redemption or the expiration of the period of redemption. Property Tax Code, § 21-355(a) and (b). (See discussion of Redemption below.)

If the period of redemption expires without redemption, the successful bidder has the right to obtain a tax deed, provided that the statutory prerequisites to a tax deed are satisfied.

The Successful Bidder's Right to Pay and Post "Subsequent" Taxes

The successful bidder at an annual tax sale also has the right to pay and post taxes for subsequent years (years subsequent to the year of taxes reflected in the Certificate of

Purchase) if those subsequent taxes are delinquent. By way of example, the successful bidder at the sale of delinquent 2003 taxes on a given parcel (or his assignee) has the right to pay the 2004 taxes on that same parcel—assuming those taxes are delinquent—and post that payment to the Judgment Record. If such payment and posting are accomplished, the holder of the Certificate of Purchase, or his or her assignee, has the right to receive (if there is a redemption) a



penalty payment with respect to the 2004 taxes at the rate of 12% for each year or portion thereof (in addition to the redemption amounts with respect to the 2003 taxes). Property Tax Code, § 21-355(c).

Redemption

The period of redemption generally expires *two years* after the date of the tax sale, but the period of redemption expires *two and one-half years* after the date of the tax sale if, on the date of the tax sale, the land is improved with at least one and not more than six dwelling units. Under some circumstances when property has been sold for two or more delinquent years, the redemption period is as short as six months. Property Tax Code, § 21-350. The tax purchaser or his assignee may extend the period of redemption, provided that the period of redemption is not extended *beyond three years* after the date of the tax sale.

The property owner and any other person "with an interest in the property"

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may redeem. (The question of who has “an interest in the property” has been the subject of litigation and is beyond the scope of this article.) To do so, he or she may obtain an estimate of redemption from the County Clerk (which should show the amount necessary to redeem) and pay that amount to the Clerk, who must then post the amount of the redemption in the Judgment Record.

Courts have held that redemption must be exercised in substantial compliance with the Property Tax Code, which provides, *inter alia*, that a redemption deposit “shall be deemed timely only if *actually received in person* at the county clerk’s office prior to the close of business . . . *on or before the expiration of the period of redemption or by United States mail with a post office cancellation mark dated not less than one day prior to the expiration of the period of redemption.*” Property Tax Code, § 21-355 (emphasis added). The warning against being “a day late and a dollar short” is an important one to remember in connection with redemptions.

The Tax Deed

If the delinquent taxes specified in the Certificate of Purchase are not redeemed prior to the expiration of the period of redemption, the holder of the Certificate of Purchase has the right to obtain a tax deed to the parcel, provided that he or she complies with the statutory requirements which mandate that certain actions be taken *before* the expiration of the period of redemption. Property Tax Code, § 22-40. These include the following:

1. The tax purchaser (or his or her assignee) must deliver to the County Clerk a notice (“Section 22-5 Notice”) within the first four months and 15 days after the tax sale. The County Clerk, in turn, must mail (by certified or registered mail) a copy of the Section 22-5 Notice to the party in whose name the taxes were last assessed (the certificate holder must provide that information to the County Clerk) within 10 days of the delivery of the Section 22-5 Notice to the County Clerk. Property Tax Code, § 22-5.

2. The tax purchaser (or his assignee) must file a Petition for Tax Deed not earlier than five months before the expiration of the period of redemption and not later than three months before the expiration of the

period of redemption (the “Two-Month Window”). Property Tax Code, § 22-30. A Petition for Tax Deed is an *in rem* proceeding.

3. The tax purchaser (or his or her assignee) must arrange for the following notices to be served during the Two-Month Window (see Property Tax Code, §§ 22-10 to 22-25):

- (a) A notice must be delivered to the *Clerk of the Circuit Court*, who in turn is to *mail the notice* (by certified or registered mail) to owners and occupants of the property (whose names and addresses are to be supplied by the tax purchaser or his assignee).
- (b) A notice must be delivered to the *Sheriff*, who in turn is to *serve* the notice on owners, occupants, and other “parties interested in the property” (whose names and addresses are to be supplied by the tax purchaser or his assignee).
- (c) A notice must be *published*.

The Circuit Court must hold a hearing to determine whether the tax purchaser or his or her assignee has satisfied the statutory requirements for the issuance of a tax deed. If, after such a hearing, the Court enters an order directing the issuance of a tax deed and a deed is issued, it must be recorded within one year from the expiration of the period of redemption. This is another potential trap for the unwary. If the tax deed is not recorded within that time period (which in certain circumstances can be extended by court order), the property becomes free from the lien of the taxes sold and subsequent taxes paid by the tax purchaser, who loses his investment in the property. Property Tax Code, § 22-85.

Challenging an Order Directing Issuance of a Tax Deed.

Section 22-45 of the Property Tax Code provides that a party may assert a collateral attack on an order directing issuance of a tax in certain limited circumstances.

Tax deeds issued under Section 22-40 are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Section 2-1401 of the Code of Civil Procedure in the same manner and to the same extent as may be had under that Section with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 *shall be limited to*:

- (1) proof that *the taxes were paid prior to sale*;
- (2) proof that the property was *exempt from taxation*;
- (3) proof *by clear and convincing evidence* that the tax deed had been procured by *fraud or deception* by the tax purchaser or his or her assignee; or
- (4) proof by a person or party *holding a recorded ownership or other recorded interest in the property* that he or she was *not named as a party in the publication notice* as set forth in Section 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to serve that person or party with the notices required by Sections 22-10 through 22-30.

Property Tax Code, § 22-45 (emphasis added).

In order to obtain relief under Section 2-1401 the party seeking relief must also show due diligence.

Section 22-45 goes on to provide that in cases of the sale of *homestead property* in counties with 3,000,000 or more inhabitants (Cook is the only such county in Illinois), an order directing issuance of a tax deed may also be set aside by the court if a petition is filed not more than three months after an order for tax deed was entered, and if the court finds that:

- (i) the property was *owner occupied* on the expiration date of the period of redemption, and
- (ii) the order for deed was the result of *a negligent or willful error made by an employee of the county clerk or county collector* that was *reasonably relied upon* to the detriment of any person having a redeemable interest. . . .

The Indemnity Fund

Because the integrity of tax deeds is a fundamental part of the tax collection process, tax deed orders can be set aside only in limited circumstances (see discussion above), and the results can sometimes seem harsh. For this reason, the legislature created the Indemnity Fund. See Sections 21-304 and 21-305 of the Property Tax Code. Section 21-305 provides that any owner of property who sustains a loss by reason of the issuance of a tax deed and who is barred from bringing an action for the recovery of the property shall have the right to indemnity—from the Indemnity Fund created pursuant to § 21-304—in certain circumstances:

1. An *owner* who resided on property that

contained *four or fewer dwelling units* on the last day of the period of redemption—and who is “equitably entitled to compensation . . .”—may recover the fair cash value of the property less mortgages and liens on the property; the award cannot exceed \$99,000 unless the owner can show that his loss was not attributable to his own fault or negligence, in which case the award can exceed \$99,000.

2. Any *owner* of any kind of property who sustains a loss, “*without fault or negligence of his or her own*,” may recover the fair cash value of the property less mortgages and liens on the property.

An owner who sustains a loss by reason of the issuance of a tax deed would be wise to examine his or her rights under Section 21-305 and the cases construing it.

The Property Tax Code provides a mechanism for the collection of essential revenue. The possibility that a property owner or lender may lose valuable real estate—by the issuance of a tax deed to a tax purchaser who purchased the delinquent real estate taxes that the owner or lender should have paid (and related amounts)—is a fundamental part of the statutory framework. It is Illinois public policy that tax deeds convey merchantable title. Property Tax Code, § 22-55. Those who buy real estate, or lend money to people who buy real estate, should be aware of the provisions for the enforcement of the obligation to pay real estate taxes. ■

Arthur W. Friedman is a partner in the law firm of Miller Shakman & Hamilton. He has litigated cases involving tax deeds in the Circuit Court of Cook County, in the Illinois Appellate Court, in the United States District Court, and in the United States Bankruptcy Court.

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