
MEMORANDUM

TO: Attorneys

FROM: Gwynne L. Booth, Lyle M. Blanchard, and Natasha N. Mishra

DATE: June 8, 2022

SUBJECT: Updated Memorandum—Tax Sales in the District of Columbia

This memorandum explains the tax sale process in the District of Columbia.

The DC Office of Tax and Revenue (“OTR”) expects to hold an Annual Tax Sale this year on July 19 and 20, 2022. Notice will be published on June 22 and 23, 2022 in both the Washington Informer and Washington Times newspapers. Typically, the tax sale is held in mid-July approximately 30 days after the Tax Sale List is published. The last general tax sale was held in July 2019. No tax sale was held in 2020 and a limited tax sale was held in October, 2021 for properties classified as vacant or blighted (Class 3 and Class 4).

2021 Amendment to D.C. Code § 47-1332

In June 2021, the Council of the District of Columbia amended, via Bill 24-260, the “Real Property Tax Sale Covid-19 Equitable Temporary Amendment Act of 2021”, on a temporary basis, § 47-1332 (“Sale of properties by Mayor; exemptions from sale”) of the District of Columbia Official Code. The amendment was approved by the Mayor on July 21, 2021 (Act 24-123) and became D.C. Law 24-27, effective September 22, 2021.

The amendment cancelled the tax sale for Class 1 and Class 2 properties in 2021 and required that notice of the cancellation be mailed to affected property owners.

The 2021 Annual Tax Sale, held on October 13, 2021, was limited to only Class 3 (Vacant) and Class 4 (Blighted) properties. Class 1 (Residential) and Class 2 (Commercial) properties were not offered for sale at the 2021 Annual Tax Sale.

On May 5, 2022, the amendments by the temporary legislation expired.

The permanent version of § 47-1332, now reads as follows:

(a) Except as provided in subsections (c) and (d) of this section or as provided in other law, the Mayor shall sell all real property on which the tax is in arrears.

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(b) The Mayor shall designate a single agency to conduct tax sales.

(c) The Mayor shall not sell any real property if:

(1) A forbearance authorization has been approved in writing by the Mayor for the applicable tax sale;

(2) For improved Class 1 Property, the tax amount to be sold is less than \$2,500; or

(3) The real property is a Class 1 Property that is receiving a homestead deduction, with respect to which there is an outstanding non-void certificate of sale; provided, that no real property shall be excluded from sale solely pursuant to this paragraph if the non-void certificate of sale has been outstanding for 3 years or more.

(d) The Mayor, in the Mayor's discretion, may decline to sell any Class 1 Property or any real property for a delinquency in the payment of a non-real property tax that does not have to be certified.

(e)(1) An application for a forbearance authorization, utilizing the form of application as shall be devised by the Mayor, may be submitted to the Mayor up to 30 days before the first day of the tax sale.

(2) The Mayor shall review and approve or deny the application within 90 days of receipt of the application.

(3)(A) The Mayor shall approve an application if the real property receives a homestead deduction and the tax amount to be sold is less than or equal to \$7,500.

(B) The Mayor, in the Mayor's discretion, may approve an application that does not meet the criteria for demonstrated hardship set forth in subparagraph (A) of this paragraph.

(4) Upon approving an application for forbearance authorization, the Mayor shall remove the real property from the tax sale to which the forbearance corresponds or, if the tax sale has occurred with respect to the real property, cancel the tax sale pursuant to § 47-1366.

See § 47-1332.

Background on the Tax Sale Process in the District of Columbia

How Are Tax Liens Formed?

Taxes automatically become a lien on real property on the date the tax is due and unpaid. The lien for the tax shall be a prior and preferred claim over all other liens and shall be perpetual. All

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payments for taxes shall be applied to each outstanding lien in order of its priority measured by the date that it became, or was converted to, a lien. The payment shall be applied to the lien in the following order: costs; penalties; interest; and the original amount of the lien. A lien transferred to a third party by the District shall enjoy the same priority and preference as if the lien were still held by the District.

District of Columbia Tax Sale

The Tax Sale is an annual event held pursuant to DC Official Code § 47-1332(a) in which the District of Columbia sells real property on which the taxes are delinquent.

It is held at the Office of Tax and Revenue 1101 4th St, SW 2nd Floor, Suites W244 and W250 Washington, DC 20024.

The tax sale threshold is generally \$2,500. Thus, no property with an improvement can be sold for less than \$2,500 in delinquent taxes (prior to inclusion of a tax sale fee). True vacant land has a threshold of \$200 in delinquent taxes (prior to inclusion of a tax sale fee).

Eligibility of Purchasers

A potential purchaser, including a natural person, or business entity, who is delinquent in payment of taxes to the District, may not bid on real property offered at a sale held under this chapter or otherwise acquire an interest in real property sold. Also, bidders cannot be related to businesses organizations that are delinquent in the payment of taxes. If it is determined that a bidder is delinquent in taxes after the purchase of property, the sale will be voided and monies paid will be forfeited.

Each prospective purchaser/bidder will be required to provide personal information, including the following: (1) Drivers license or state issued identification card; (2) Name(s) of potential purchaser(s) (maximum of two names per registration); (3) Potential purchaser's mailing address; (4) Potential purchaser's telephone numbers (home, business and fax); (5) Attorney information (if available); (6) Notice of Business Tax Registration; (7) Potential purchaser's Social Security Number or Federal Employer Identification Number (FEIN) (a business, including an LLC, must provide a FEIN); and (8) A properly completed IRS Form W-9.

a. A delinquent taxpayer cannot participate in the Tax Sale.

A potential purchaser, including a natural person or business entity, who is delinquent in payment of in rem taxes to the District (including a person owning a 10% or more equity in, or an officer of, an entity that owns a 10% or more equity interest in real property on which taxes are delinquent) or who has been convicted of a felony involving fraud, deceit, moral turpitude, or anti-competitive behavior, may not bid on or otherwise acquire

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an interest in real property offered at the Tax Sale. If it is determined that a bidder violated any of the foregoing, the certificate of sale issued to such purchaser is voidable. If such certificate of sale is voided, all monies paid will be forfeited. *See* DC Official Code § 47-1346(a)(5).

How to Bid at the Public Auction

All sales shall be at public auction to the purchaser who makes the highest bid. Before making any bid, a potential purchaser shall have on deposit 20% of the purchase price. The deposit shall guarantee full and final settlement for the purchase. If the required deposit is not sufficient, the real property shall be immediately re-auctioned.

Extent of Notice Required

1. Notice to Taxing Authorities

At least 60 days before the mailing of the notices required to be sent to the owner, the Mayor shall notify all taxing agencies of the Mayor's intention to hold a tax sale and shall state the time and place of the sale. Each of the taxing agencies shall, within 30 days after receiving the notice, submit a statement to the Mayor certifying all taxes appearing on its records then due to the District as of the date of the Mayor's notice that have not been previously certified to the Mayor.

2. Notice to Owner

At least 30 days before real property is first advertised for a tax sale under this chapter, the Mayor shall mail to the person who last appears as owner of the real property on the tax roll, at the last address shown on the tax roll, as updated by the filing of a change of address at the Recorder of Deeds, a notice of delinquency stating the name of the person who last appeared as owner on the tax roll, identifying by taxation square, suffix, and lot number, or parcel and lot number, the real property to be sold, and the amount of taxes due.

Payment of the total amount stated in the notice of delinquency and as directed in the notice shall preclude the real property from being offered at the tax sale to which the notice corresponds.

3. Notice to Prospective Purchasers

At any time after 30 days from the mailing of the notice of delinquency, the Mayor shall cause to be advertised, at least once in not less than 2 newspapers of general circulation within the District which are published at least once every 2 weeks, a public notice stating that the listed real property will be sold at public auction because of taxes on the date and at the place named in the public notice.

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The list in the public notice shall contain, with substantial accuracy, at least the following: (1) A description of the real property, by taxation square, suffix, and lot number, or parcel and lot number; (2) The name of the person who last appears on the Mayor's tax roll as the owner of the real property; and (3) The amount of all taxes for which the real property shall be sold at the scheduled sale; provided, that costs need not be included in the public notice, but, if not included, costs shall be included in the opening bid amount at the time of the sale.

How to Purchase and Pay the Municipality

A purchaser shall pay the full amount of his bid, including surplus and costs, within 5 business days after the last day of the sale. If the payment is not received within the time prescribed, 20% of the deposit of the defaulting purchaser shall be forfeited to the District, and the real property shall be deemed to have been bid off to and purchased by the Mayor in the name of the District. Additionally, Real property shall not be sold for less than the amount of the taxes, if this bid is not met then the property is bid off to and purchased by the Mayor in the name of the District.

Certificate of Sale

The Mayor shall deliver to the purchaser a certificate of sale under the Mayor's hand and seal or authorized facsimile signature (or a delegate's hand and seal). The purchaser may record the certificate of sale in the Recorder of Deeds.

The certificate shall set forth: (1) Date; (2) The real property described in it was sold by the Mayor to the purchaser; (3) The date of the tax sale to which the certificate corresponds; (4) The date of the sale to the purchaser, which shall be the same date as in paragraph (3) of this subsection, if the purchaser purchased the real property at the tax sale held under § 47-1346; (5) The amount of taxes for which the real property was offered for sale at the original tax sale; (6) The total amount of taxes owing at the time of sale to the purchaser; (7) The purchase price; (8) The amount of surplus; (9) A description of the real property in substantially the same form as the description appearing on the Mayor's tax roll; (10) A statement that the rate of simple interest, upon redemption, shall be 1.5% per month or portion thereof on the amount paid for the real property, excluding surplus, beginning on the first day of the month immediately following the date of the tax sale or the date when the certificate of sale was assigned by the Mayor; (11) The date when an action to foreclose the right of redemption may be filed; and (12) That the certificate shall be void unless diligent proceedings to foreclose the right of redemption are brought within one year from the date of the certificate, and that if the certificate shall become void, all monies paid for the real property by the purchaser shall be forfeited to the District.

The certificate of sale is presumptive evidence in all judicial proceedings by and against the purchaser, and the purchaser's representatives, heirs and assigns, of the: (1) Truth of the statements in the certificate of sale; (2) Interest of the purchaser in the real property described;

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(3) Regularity and validity of all proceedings regarding the taxes for which the real property was sold; and (4) Sale of the real property.

Who Has Rights of Redemption and How Are They Calculated?

An owner or other person who has an interest in the real property sold by the Mayor may redeem the real property at any time until the foreclosure of the right of redemption is final. To redeem the real property, the person redeeming shall pay to the Mayor, for deposit into the General Fund of the District, the following: (1) If the real property was sold at tax sale to a purchaser, the amount paid by the purchaser for the real property exclusive of surplus, with interest thereon; (2) All other taxes, interest, and penalties paid by a purchaser on behalf of the real property, with the interest that would have been owing if the purchaser had not paid the taxes provided, that the certificate of sale of the purchaser is not void; (3) All other taxes to bring the real property current; Unless the person redeeming furnishes the Mayor a release or acknowledgment executed by the purchaser that all expenses under § 47-1377 have been paid to the purchaser (Expenses under this statute include: (1) Before the filing of an action to foreclose redemption: (A) The amount of \$ 300 for pre-complaint legal expenses, including a title search of the public record required to satisfy the notice requirements of this chapter, and (B) The amount paid to record the certificate of sale; or (2) If a complaint has been filed before redemption, all expenses as allowed by the Superior Court, including expenses incurred for personal service of process, expenses for service of process by publication, expenses for publication and posting of all required notices, expenses for postage, and reasonable attorneys' fees), (4) All expenses for which the purchaser is entitled to reimbursement under § 47-1377; (5) All expenses owing to any other purchaser; and (6) If judgment of foreclosure of the right of redemption of the sale is set aside, the reasonable value, at the date of the judgment, of all reasonable improvements made on the real property by the purchaser and the purchaser's successors in interest.

After receipt of the monies needed to redeem the property, the Mayor shall notify the purchaser that the real property has been redeemed. The purchaser shall surrender the certificate of sale and shall receive from the Mayor the amount to which the purchaser is entitled.

If the real property is redeemed after an action to foreclose the right of redemption is filed and there is a dispute regarding redemption, the person redeeming may apply to the Superior Court for an order fixing the amount necessary for redemption. Usually, the Mayor may accept a payment for redemption without an order from the court; however, if there is a dispute regarding redemption, the Mayor shall not accept a payment for redemption unless a certified copy of the order from the court fixing the amount necessary for redemption is filed with the Mayor.

The owner of real property sold under this chapter shall have the right, during the period of redemption, to continue in possession of, and to exercise all rights of ownership over, the real property until the right of redemption has been finally foreclosed

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Where and when does the buyer post the Post-Tax Sale Notice?

The buyer must post a copy of the post-tax sale notice (Sold Notice) on a place on the premises where it can be conveniently read. The notice must be posted no sooner than 4 months after the date of the tax sale and at least 45 days before the filing of a complaint for Foreclosure pursuant to D.C. Code § 47-1370.

Notifying OTR when a Complaint is filed in Superior Court

The tax sale purchaser is required to notify OTR and the Real Property Tax Ombudsman of the filing of the Complaint to Foreclose the Right of Redemption within thirty (30) days of the filing. Such notification must be submitted to OTR electronically via the tax sale purchaser's account at www.mytax.dc.gov, as a Notification of Foreclose Filing. The electronic mail sent to the Real Property Tax Ombudsman via Realproperty.dc@dc.gov must contain as attachments copies of the complaint and certificate of sale.

What is the process for issuing a refund once a Certificate of Sale has been issued?

OTR will issue a refund once the taxes on the real property tax bill (including amounts certified pursuant to D.C. Code § 47-1340), BID taxes and vault rents have been paid to current. The real property's account shall be deemed to have been brought to current if the amounts payable to OTR, including tax, interest, penalties, and expenses falls below \$100. The remaining balance shall remain due and owing and any remaining expenses shall thereafter be deemed a real property tax.

How Do Tax Liens Accrue Interest?

The rate of interest on all amounts due, owing, or paid for purposes of redemption shall be 1.5% per month or portion thereof. No interest shall accrue for surplus, expenses, or the reasonable value of improvements.

Canceling the Tax Sale

The Office of Tax and Revenue may terminate a tax sale if the property was sold with incorrect ownership, or the owner is in bankruptcy under protection of a stay.

Other examples of circumstances in which the District may cancel a sale may include, without limitation: (i) where the record owner pays the amount set forth in the Notice of Delinquency to Avoid the Tax Sale as required under § 47-1341(a) or otherwise pays the outstanding taxes before the Tax Sale; (ii) payment was applied to an incorrect tax year; (iii) payment was applied to incorrect property account; (iv) property is exempt from tax; (v) where the property is

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receiving a homestead deduction and was sold at a tax sale within the last 4 years; (vi) where the record owner (or heir of a deceased record owner) occupies as his/her personal residence a Class 1 property with 5 or fewer units and proves the Mayor failed to mail the Notice of Delinquency to Avoid the Tax Sale (pursuant to § 47-1341(a)) or the Post-Tax Sale Notice (under § 47-1353.01); (vii) the mailing address of the person who last appears as the record owner of the real property on the tax roll was not properly updated by OTR despite proper filing of a change of address form; or (viii) or the tax amount for which the property is offered at tax sale is less than \$2,500 for improved Class 1 properties.

If the sale is cancelled by the District, the amount of interest to be refunded will be at the rate of 1.5% per month or portion thereof on the sale amount, exclusive of surplus beginning on the first day of the month immediately following the date of the tax sale until the date of the cancellation of the tax sale.

What Can The Property Owner Do to Avoid the Tax Sale?

The property owner must pay all delinquent real property taxes through the real property tax year (and any BID taxes and vault rents) as included on the Notice of Delinquency to Avoid the Tax Sale as required under § 471341(a).

What Must the Property Owner Pay Before the Title Search?

Within four (4) months of the Tax Sale, and before the title search, the property owner must pay all real property taxes (including amounts certified pursuant to D.C. Code § 47- 1340), BID taxes, and vault rents to bring the real property current.

What must the Property Owner Pay Before the Foreclosure Action?

Within four (4) months of the Tax Sale, and before the foreclosure action, the property owner must pay (i) all real property taxes, BID taxes, and vault rents to bring the real property current; (ii) amount of \$50 for posting the post-tax sale notice required by §47-1353.01; (iii) costs for recording the certificate of sale, \$31.50; • Cost of a title search, not to exceed \$300; and (iv) all delinquent special assessments owed pursuant to an energy efficient loan agreement under subchapter IX of Chapter 8 of Title 47.

Foreclosure

After Six Month Waiting Period Complaint May Be Filed

At any time after the expiration of a 6-month waiting period following the date of sale, a purchaser may file a complaint to foreclose the right of redemption of the real property to which the certificate of sale corresponds. The right of redemption shall continue until a judgment foreclosing the right of redemption becomes final.

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What must the Property Owner Pay After a Foreclosure Action?

The owner must bring the real property current, and among other items, must also pay for the amount for posting the post-tax sale notice costs for recording the certificate of sale; cost of a title search; and all post-complaint legal expenses.

If the property owner does not pay all the costs described above before the court order becomes final, the Superior Court of the District of Columbia will enter an order foreclosing the right of redemption of the property owner. After payment of all outstanding amounts by the Tax Sale purchaser, the District will issue a deed of title for the property to the Tax Sale Purchaser.