

## TAX FORECLOSURE

Local governments are run on property taxes, and a homeowner's failure to pay the taxes can cost them their homes. Because property taxes are backed by the property itself, each year on Jan. 1 when the property taxes come due, the tax commissioner automatically gains a lien on the property. When the taxes are paid, the lien goes away; however, when the taxes are not paid, the lien against your property remains and can interfere with your ability to sell or borrow against your home. Tax sales are conducted in two different ways, non-judicial which doesn't require court proceedings, and judicial which requires that the tax commissioner file pleadings in superior court and the judge to issue an order for sale. Prior to May 2002, Georgia law allowed private investors to purchase tax liens and take over the proceedings from there. However, Georgia legislature halted that practice and now both types of sales must be instituted by the tax commissioner and conducted by the sheriff. Both non-judicial and judicial sales each have their own advantages and disadvantages for the homeowner and for the tax commissioner.

Non-judicial tax sales can be quicker and are the most common route tax commissioners take to collect back taxes. The tax commissioner will issue a tax fi. fa. and writ of execution to the sheriff which commands the sheriff to sell the property at auction. As with mortgage foreclosures, the sheriff is required to publish a notice in the official legal newspaper in the county in which the property is located, and serve by mail the property owner whose home is being foreclosed upon. After the proper notifications are completed, the sheriff then sells the property at auction on the first Tuesday of the month (or Wednesday if Tuesday is a holiday), to the highest bidder. The proceeds go toward paying the back taxes and the highest bidder takes ownership to the property.

Judicial tax sales are less common because they take longer to act but it is a more decisive

process. In a judicial tax sale, the tax commissioner must wait 12 months from the date the taxes were due to file pleadings in Superior Court (i.e. if taxes were due Jan. 1, 2000 then the tax commissioner would wait until Jan. 1, 2001 to file pleadings). After filing the legal pleadings, a notice of the county's intent to foreclose on the property must be published alerting the general public to the hearing on whether a tax foreclosure should be permitted. If the Court approves the foreclosure sale, the Court will issue an Order to that effect and the tax commissioner must then proceed to publish a Notice of Judicial In Rem Foreclosure Sale in the same manner that the notice of hearing was published.

In both situations, non-judicial and judicial foreclosure sales, the property owner has the opportunity to redeem the property. In non-judicial sales, the property owner must pay the amount paid at auction, plus penalties, interest and sometimes costs. As a matter of right, the property owner has twelve months in which to seek redemption of the property, and sometimes the deadline may be longer depending on how quickly the new owner acts to relinquish the old owner's property rights. In judicial sales, the property owner can redeem the property prior to foreclosure by paying the back taxes. And, 60 days after sale the property owner can redeem the property by paying not only the back taxes and penalties but also the amount paid for the property at auction.

Often the title to property purchased at a tax sale is clouded and makes it difficult or even impossible for the new owner to sell or refinance the property. Investors who purchase a property at a tax sale often must begin "quiet title" proceedings to clear the title and declare that they are the true and rightful owners to the property. Again, notices and publishing requirements must be met before the Court can grant the new owner's request to clear the title.