



TAX LIEN FORECLOSURES



When there is a foreclosure on a real estate tax lien, you are foreclosing or shutting out the property owner's right of redemption. Just because there is foreclosure on a tax lien does not mean you automatically wind up with the property.

In some tax jurisdictions, when the property is auctioned at the foreclosure sale, the amount paid is the amount owed for the tax lien plus penalties, interest, costs, and fees. Any remaining equity is returned to the owner.

Some tax jurisdictions require the investor to obtain a court order before a foreclosure can take place on a tax lien. Other tax jurisdictions allow nonjudicial foreclosure on tax liens.

Whether foreclosing judicially or nonjudicially, public notice and filing requirements must be followed. Failure to perform these requirements may forfeit any right you had to the property. It is recommended you work with an attorney to protect your rights.

If you file a foreclosure action with the court, a lis pendens is recorded against the title to the property. A lis pendens literally means a legal action is pending. This effectively clouds the title to the property.

A court date will be set and a motion to foreclose on the tax lien will be heard. The court then will make a judgment, hopefully in the investor's favor, and schedule a foreclosure sale.

If no requirement is needed to file a foreclosure action with the court, a notice of default may need to be filed with the local recorder. This gives all interested parties public notice of the foreclosure sale.

BIDDERS

- ➔ In some states you are the only person allowed to bid at the foreclosure sale! Except in Florida, there is no public oral bid auction sale of the real estate. There is no opportunity for anyone else to bid up the price of the property. Your credit bid, which is the amount you are owed for the tax lien plus subsequent taxes and fees paid plus interest and foreclosure costs, is the winning bid. All private party-deeds of trust and mortgages are wiped out. That means



they are removed as liens against the property title. You could wind up with a property with no mortgage.

- ➔ Statistics indicate that 95% to 98% of tax liens will be redeemed by the property owner.

COSTS

- ➔ One of the most important factors to consider is the length of time from the beginning to the end of the process.
- ➔ It is wise to calculate how much it will cost to obtain the title to the property in the even you do have to foreclose.
- ➔ Determine if you have to begin a foreclosure proceeding and if you do, how much will an attorney cost you?
- ➔ What are the filing fees, court costs, and taxing authority mandated expenses to obtain the property title?
- ➔ Some states do not guarantee the quality of the title you receive. Will there be further costs getting a marketable title after the foreclosure sale? Obtaining a marketable title can be a lengthy procedure.
- ➔ While there is a super-low risk in tax lien investing, allowing enough time to recoup investment and profit from it is important.

NEW PROPERTY TAXES

- ➔ In some tax jurisdictions, the winning bidder is responsible for paying the property taxes over the next two years if the property owner does not. In other jurisdictions, there is an option of paying the subsequent taxes.
 - ∞ If the subsequent taxes are not paid, the county may sell a subsequent tax lien to another investor, which can complicate obtaining the deed, because this adds an additional tax lien holder on the same property. The first tax lien would be considered the senior lien.
 - ∞ If the subsequent taxes are not paid, that amount will be added to the lien.
 - ∞ It is important to find out what responsibilities are taken on buying the tax lien with regard to the subsequent property taxes.
 - ∞ In order to not pay additional property taxes, buy tax liens in areas that do not require subsequent taxes to be paid.



TAX LIEN SECURITY

- ➔ How much security is received for an investment when buying a tax lien?
 - ∞ Generally the security of the property is 10 times the value of the tax lien investment; therefore, creating a super-low risk.
- ➔ The security for any particular tax lien depends on several factors.
 - ∞ The priority of the tax lien under state law ~ if there are liens that can be senior to the tax lien, and whether any such lien exists against the property at the time of the foreclosure sale.
 - It is possible that a property is the security for the tax lien could at the time of foreclosure be encumbered by a superior state lien.
 - In many states the tax lien is a higher-priority lien. A superior lien to the tax lien is practically impossible.
- ➔ Some states laws offer a treasurer's deed, which shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the parcel conveyed, subject only to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and all the right, title, interest, and claim of the state and county to the parcel.
 - ∞ Restrictive covenants are covenants like utility easements, zoning, and restrictions on discrimination.
 - ∞ Under the laws of some states, if two or more investors want to buy a particular tax lien, the investor willing to accept the smallest undivided interest in the real estate wins the bid.
 - Investors are often reticent to bid on tax liens in states using this system. When foreclosed, the investor only has a partial ownership interest in the property. Because of this, some states treasurer's offices use a random selection process to determine who will get a particular tax lien.
 - Other states take the bid in excess of the amount due for the delinquent taxes and any penalties, interest, fees, and costs is used to determine the successful bidder. Also known as high bid real estate tax lien auction.



Time for Foreclosure

- ➔ Before a real estate tax lien holder can foreclose on a property owner's right of redemption, the tax lien holder will have to bring current all delinquent real property taxes plus any penalties, interest, fees, and charges due. The longer it takes to foreclose out the right of redemption, the greater the accumulated amount of those taxes, penalties, interest, fees and charges. The greater that amount, the less security cushion in the property.
- ➔ The judicial foreclosure process could be started anywhere from as early as six months in some states to as long as four years in others.

Title Insurance

- ➔ When buying real estate at a mortgage-lender-held foreclosure sale, you get a title to the real estate that a title insurance company will insure. A sheriff's deed is received from a mortgage foreclosure and a trustee's deed from a trust deed foreclosure. However, that is not the case when you obtain the property title through the tax sale foreclosure process.
- ➔ In every state it is more difficult to get title insurance on a property foreclosed in the tax lien foreclosure sale than it is to get title insurance at a foreclosing lender sale. This is especially true if the foreclosure process used to acquire the property title is nonjudicial.
- ➔ Title insurance companies are usually unwilling to insure the property title. An attorney will have to file a quiet title lawsuit in court in order to get title insurance for the property.

Lien Priority

- ➔ A real estate tax lien is usually considered the first or senior lien against the title to a property.
 - ∞ If a first or senior lien is foreclosed, any junior liens are wiped out.
 - ∞ If the tax lien you are foreclosing on is the first or senior lien, the title to the real estate free and clear of all other liens.
- ➔ The safest tax lien investment is in those states where, by law, the tax lien has priority over any other liens against the title to the property.
- ➔ Laws controlling the priority of the real property tax lien for any given jurisdiction can be confusing. The attorney may have to know not only the statutory law but also the court decisions interpreting tax lien priority.



- If the real property tax lien is not the senior lien, then in that jurisdiction the investor would take title to the real estate subject to any balance due on any such senior liens. These senior liens could be junior liens that are given priority by law.