

Tax Sale Foreclosure Prosecution
Roy L. Kaufmann
DC Bar
Real Estate, Housing and Land Use Section
June 28, 2006

Statute: 47-1330 (et. seq) which is Chapter 13A called “Revised Real Property Tax Sales”. Note that none of Chapter 13 applies to sales that occurred on or after December 30, 2000.

Regs: 9 DCMR 316, et. seq. These were passed precipitously, without much comment, and those comments were basically ignored, so the regulations have some issues. Example:

316.1 This section shall apply to any tax sale conducted in July 2003
But, in subsection 316.1(c): This section shall also apply, nunc pro tunc,
from September 29, 2003 to each sale of real property conducted
thereafter.

Nuts and Bolts of Prosecution:

1. Don't play in the sandbox unless you read all the rules. This is a very technical practice, not for the casual participant.
2. Client Relations:
 - 2.1. System is fraught with problem
 - 2.1.1. Risk of a redemption that preceded filing of suit and client then eats the legal fees
 - 2.2. Difference between winning (getting a deed) and insurable title
 - 2.3. Risk is on client to know what client is bidding on
 - 2.3.1. Location of property
 - 2.3.2. Property conditions (easements, etc.)
 - 2.3.3. Amount of taxes that will have to be paid if we get the property
 - 2.4. Deed will be to the person holding the Tax Sale Cert
 - 2.5. Costs advanced
3. Ordering Title
 - 3.1. Wait until 4 months after sale before incurring costs.
 - 3.2. Look on the internet to see if property is redeemed (not dispositive) in the “Real Property Tax Database” at www.dc.gov. Look for Assessments, and not sales.

- 3.3. See Figures 1-5.
- 3.4. If there are no indications of redemption, order title from a good abstractor.
4. Examining Title
 - 4.1. Vesting?
 - 4.2. Who is listed in OTR records (Figure 1?)
 - 4.3. Beneficiaries & Trustees under Deeds of Trust
 - 4.4. DC Tax Liens
 - 4.5. IRS Tax Liens
 - 4.6. Judgment Creditors
5. Drafting the Complaint 47-1370
 - 5.1. Who are parties? Record owner, legal owner, life tenant and remainderman, mortgage/deed of trust, the District
 - 5.1.1. Unknown Owner: 47-1373
 - 5.2. If you leave someone out, your suit is not destroyed, but you have not foreclosed that party's right to redeem.
 - 5.3. Statutory all-encompassing language 47-1371(b)(4)
 - 5.4. Reference the property
 - 5.5. Lien holders and other interested parties 47-1372 (Exhibit B parties)
 - 5.5.1. Lien holders (i.e. judgment creditors with recorded interest)
 - 5.5.2. Commercial Tenants (30 days to obtain writ of possession)
 - 5.5.3. Prior Tax Sale purchasers IF the tax certificate was recorded!
 - 5.5.4. Notice by Certified Mail only
 - 5.5.4.1. Clerk will reject Certs of Service
6. Service of Process
 - 6.1. 47-1374(b) says not required to "make any investigation or to search any other records or sources of information" apart from records found at the Recorder of Deeds, through the title exam or "known to plaintiff or his attorney". In practice Mennonite, etc.
 - 6.2. Notice to a defendant may be made in any ... manner that results in actual notice of the pendency of the action to the defendant.
 - 6.3. Resources and when to do the investigation
 - 6.3.1. Accurint
 - 6.3.2. Prior cases on same property
 - 6.3.3. Federal Social Security Death Index
 - 6.3.4. Subpoena to Vital Records
 - 6.3.5. Phone books, internet, etc.
 - 6.4. How to find Prior Tax Sale Purchasers to send them Exh B notices.
 - 6.5. 180 days to file proof in Court, or dismissal without prejudice
7. Judge versus Magistrate Judge
 - 7.1. Review

8. Publication
 - 8.1. First publication under 47-1375, 3 consecutive weeks
 - 8.1.1.1. Clerk supplies the date
 - 8.2. Rule 4 Service by Publication (remember to extend time)
 - 8.3. File Affidavits from newspapers. Costs involved.
 - 8.4. Remember to file Lis Pendens
9. Posting
 - 9.1. Summons, Complaint, Initial Order and Order of Publication
 - 9.2. When
 - 9.3. Locating the property
 - 9.4. Documenting the posting
10. Court Hearings and Pleadings
 - 10.1. Calendar dates – try to pick a repetitive day - Wednesdays
 - 10.2. MSJ after Initial Hearing
 - 10.2.1. Copies of all Proofs of Service (except where Answers filed)
 - 10.2.2. Copy of posting
 - 10.2.3. Proofs of service on Exhibit B entities (including comm.. tenants)
 - 10.2.4. Order and Judgment
 - 10.2.5. IRS Lien – Notice upon filing of MSJ and build in 120 days for IRS to redeem after Motion is granted.
11. Redemption – Another person’s topic
 - 11.1. Timely any time before final judgment entered.
 - 11.2. Reply within ten days
 - 11.3. If Web does not confirm that taxes are paid, get proof before you dismiss
 - 11.4. Remember to file Release of Lis Pendens
12. Post Judgment
 - 12.1. Deliver copy of order and judgment to Tax Sale Office
 - 12.2. Bill for Tax Deed – 30 days to pay (Bankruptcy? IRS Lien?)
 - 12.3. After payment – Deed
 - 12.4. Record and append a copy of the Order and Judgment
 - 12.5. Remind client
 - 12.5.1. Watch for tax bills
 - 12.5.2. Insure the property

Newsletter: www.Jackscamp.com Go to Publications
To Receive our Newsletter, go to
www.Jackscamp.com/newsletter_request_form.asp

