

District of Columbia  
Real Property Tax Clarity and Litter Control  
Administration Temporary Act of 2001  
D.C. Law 14-8 and  
Miscellaneous Items of Interest to the Title Industry

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Full Text available at <http://dccouncil.dc.gov/images/00001/20010316111628.pdf>  
(47 pages).

Note that these are the changes to the existing law (viewable at <http://dcode.westgroup.com/home/dccodes/default.wl> ).

As of 9/19/01 there is no printed version that integrates the changes into the actual law. This is partly because the Act is still on an emergency basis (set to expire January 24, 2002 (and subject to various commissions and congressional review)).

### **Overpayment of Taxes**

D.C. Official Code Section 47-811.2

- Overpayments generally credited to subsequent bills.
- Party has to file a request in writing, they get interest after 90 days after request.
- They can file suit if no refund only if one year has gone by from last day of tax year in which request was filed.
- Goes back to the party that paid.
- No refunds after 3 years.
- Only get a refund if the overpayment was because of a reclassification or abatement, doesn't appear that a mere overpayment will entitle anyone to a refund.

### **Exemptions from Transfer Tax**

- There is a transfer tax on a lease or ground rent if the term (including renewals) is greater than 30 years. Also a transfer tax on "life estates". 47-901(3) The tax is calculated at a formula found at 47-903(a)(2) and (a)(3).
- Exemption for Deeds of PR's transferring to a distributee without additional consideration.

## Exemptions from Recordation Tax

- Definition now excludes leases of less than 30 years as opposed to old rule of 99 years. Same type of formula for computing taxes on leases. 45-921 (Page 15 of the Law.
- If deed is not recorded within 30 days of execution, there is a \$250 additional penalty! 47-1431(a).

## New Tax Sale Procedures

- Basically, effective with the 2001 tax sale, tax sale purchasers will have to file a lawsuit to foreclose redemption rights. The District won't issue Tax Deeds until after a final court order has been issued.
- Specific Notice Requirements of the Sale 47-1341.
- DCRA, WASA, DPW's assessments/liens won't be included in tax sale unless the agency responds to OTR or unless the agency has filed a lien at ROD. 47-1340.
- Successful bidder still gets a Certificate of Sale for amount of bid. Bidder gets 18% per annum interest on the base amount of the bid. The base was the taxes owing to the District. Bidder doesn't get 18% on the surplus in the bid. 47-1348
- Certificates of Sale are assignable. 47-1349 (DC has to be advised within 30 days of assignment.
- Certificates of Sale and assignments thereof ARE recordable and constitute presumptive evidence of the interest of the purchaser in the property! Note that the purchaser has given up the certificate to ROD that the purchaser will need to deliver to OTR (of which ROD is a part) later on in the process. Also note that, if the certificate is recorded, the Purchaser is entitled to notice and has an interest in the property, of record.
- A Certificate of Sale is VOID if
  - Purchaser fails to bring suit to foreclose within one year of the date on the certificate of sale
  - The purchaser owed taxes under 47-1346(A)(5). Note the pitfall here! Until when can it be declared void? What happens if it is something like a 1996 Arena Tax for \$25? 47-1355.
- An owner or other party at interest can redeem at ANY time until the foreclosure of the right of redemption is final, by paying up all costs, interest, etc. 47-1360. Some reimbursement for Purchaser can be found in 47-1377(a)(2) if the property is redeemed (but note that NO expenses are reimbursed if incurred by purchaser within first 4 months after tax

sale; thus purchasers should order their search four months and a week after the tax sale).

- If there is a redemption, the District issues a Certificate of Redemption, which, when recorded, releases any encumbrance created by the recording of the certificate of sale. 47-1361(e).
- There are provisions for a purchaser to have a Receiver appointed and get possession of the property before the final foreclosure Order, i.e. to fix up a dilapidated property, with reimbursement to purchaser in the event of a redemption. 47-1363.
- Any time after 6 months after the auction, purchaser can file suit (but note comment above about waiting until 4 months have passed). The court can bar the right of redemption and vest fee-simple title in the purchaser (see later item about residential tenants) or it can “set aside” the sale and determine a redemption amount which purchaser will have to swallow. 47-1370.
- The plaintiff has to be the purchaser (or assignee). 47-1371(a).
- If the property is not described exactly as set forth in the certificate of sale, or recites a wrong street address, there are PROBLEMS. 47-1381.
- Defendants have to be
  - record owner
  - legal title owner (if different than record owner)
  - life estate owners or lessees of a lease greater than 30 years of record
  - mortgagees or trustees (or assignees) under deeds of trust (including someone who files a notice saying he has a beneficial interest in a deed of trust)
  - the District of Columbia 47-1371(b)(1)
  - “all persons claiming to have interest in the property”.
  - If some owners are unknown: “unknown owner of real property described as \_\_\_\_\_, the unknown owner’s heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest”, in which event an order of publication would be required. 47-1371(b)(4)

The exclusion of any of these people/entities is not fatal to the complaint, but the complaint will not wipe out their interest (i.e. you will have to start over again if title insurer so requires).

Notices of the action must also be sent to all persons having a recorded interest/claim/judgment and to any commercial tenants (but not residential). 47-1372(a)(2). Special rules about notifying commercial tenants at 47-1371(d) and (g). The envelopes have to have wording on the front that says “Notice of Action to Foreclose”.

- Failure to get the notice of the foreclosure action does not invalidate the sale and a copy of the commons has to be POSTED on the premises. The notice must have specific language 47-1372(d).
- Purchaser can get a writ of possession (but not against residential tenants) after final judgment, but can't execute on it for 30 days after judgment.
- Unknown Owners are covered under 47-1373.
- Service of Process 47-1374(b) has some good limitation language and (c) deals with order of publication (also see 47-1375) which includes the exact wording for an order of publication. Also deals with requirement that Summons be POSTED.
- A final order is final against heirs, devisees. 47-1378.
- The final order has to be presented by the purchaser to DC (and pay all amounts owing to DC in connection with the property) within 30 days or the whole judgment may be voidable or set aside. 47-1382(f). The District issues a fee-simple deed to the purchaser, subject to residential tenancies (except life estates and residential leases of record in excess of 30 years which are wiped out), easements of record and those easements which could be observed by an inspection of the property (47-1382) and agency liens filed under 47-1340(c). (Note, if the District is the Plaintiff in the case, agency liens are wiped out. 47-1382(b).
- If the purchaser doesn't record the deed within 30 days of receipt, again, the final judgment can be voided! 47-1382(f).

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The following important Section is authored by and reprinted with the permission of Elizabeth Zajic, Vice President and D.C. Manager/Counsel for First American Title Insurance Co.:

### **TITLE INSURANCE CONSIDERATIONS**

The Act operates to place the due process requirements inherent in any tax sale proceeding under the supervision of a court of law. Section 47-1379 of the Act prohibits reopening of a judgment rendered in an action for foreclosure of the right of redemption except on the grounds of lack of jurisdiction or fraud in the conduct of the action to foreclose.

- **Jurisdiction:**

There may be a lack of jurisdiction unless all interested parties who may be affected by the court's order are made parties to the foreclosure action through proper service of process.

- **Fraud:**

Constructive fraud may include an improper search of applicable land and/or court records and/or the failure to make a good faith effort to provide actual notice to persons with a real property interest.

The primary risk issue with title insurance for any tax foreclosed property is making sure that all statutory requirements relating to notification, publication, redemption periods, etc. were in compliance with the jurisdictional tax lien/tax deed foreclosure statutes. In light of the possibility of the reopening of a judgment foreclosing the right of redemption for lack of jurisdiction or fraud, there subsists, notwithstanding court supervision of the tax deed process, a title insurance risk stemming from due process insufficiencies.

The following is a list of items which should be reviewed in connection with the issuance of a title insurance policy for a title derived from a tax deed:

- Notice of Delinquency (FND).
- Mayor's public notice of sale.
- Certificate of Sale (COS).
- Purchaser's Complaint to foreclose the right of redemption including list of all defendants and their addresses.
- Purchaser's Affidavit to Superior Court of title examination.
- 60 year search.
- All mailed Complaint notices and summons to all affected parties.
- All return mail and certified mail cards with return receipts, to defaulting taxpayer(s) and all other parties in interest (i.e. mortgagees, assignees, lien holders, tenants, etc.) for the notice of right of redemption of foreclosure.
- Proof of mailing affidavit.
- Proof of posting of the summons on the property to be foreclosed.
- Written notice of taking possession of real property.
- Unknown owner affidavit (if applicable).
- Order of publication and publicized notice certified mail cards.
- All notice affidavits filed in the foreclosure action that described the method and time of service.
- Final Superior Court judgment.
- Mayor's Tax Deed and Mayor's court petitions and orders.
- Any other evidence of compliance with statutory requirements as a court may require to prove that all the provisions of law entitling the purchaser or the purchaser's assignees to a tax deed were complied with.

In addition, satisfactory evidence must always be obtained that the delinquent taxpayer and/or family members have surrendered possession of the property, as is required in any foreclosure or execution sale of real property, given that any effort by the tax sale or foreclosure purchaser to gain actual possession will almost always result in litigation triggering the duty of defense under a title insurance policy.