

Illinois Tax Sales, Tax Certificates, Redemptions, Tax Deeds & Indemnity Fund Proceedings



Stanko McCarthy Law Group

John W. Stanko, Jr.
Emmett R. McCarthy
STANKO McCARTHY LAW GROUP, LTD.
20 North Clark Street – Suite 2200
Chicago, Illinois 60602
Telephone (312) 236-8400
Fax (312) 800-0161
jstanko@smlg.law
emccarthy@smlg.law
www.smlg.law

Revised January 2018

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Illinois Tax Sales, Tax Certificates, Redemptions, Tax Deeds & Indemnity Fund Proceedings

The Illinois Property Tax Code for can be found at 35 ILCS 200/1-1 *et seq.* The purchasers of Illinois tax certificates are commonly referred to as “tax buyers” or “tax purchasers.” Illinois tax certificates are freely assignable. Therefore, assignees are also considered “tax buyers” or “tax purchasers.”

I. COLLECTOR’S ANNUAL APPLICATION FOR JUDGMENT AND SALE

After annual taxes have become delinquent, the County Collector (*i.e.*, the County Treasurer) publishes an advertisement giving notice of the intended application for an order of judgment and sale of delinquent properties. §21-110. The advertisement must be published at least ten days before the date judgment is to be obtained. §21-115. Publication of the notice gives the court jurisdiction, and any sale of delinquent taxes that was not advertised is invalid.

Not less than 15 days before the application, the County Collector must mail notice to the assessee of each delinquent parcel by registered or certified mail. In all counties other than Cook, notice also must be mailed to any lienholder of record who requests such notice. §21-135. Delinquent taxes may be paid at any time on or before the business day immediately preceding the day the taxes are sold. §21-165.

At the date specified in the advertisement, the State’s Attorney (as attorney for the County Collector) appears in the circuit court and presents the application for judgment and order of sale. The court will consider any objections to the application and then enter a judgment and order of sale directing that the delinquent parcels be offered for sale. The sale must begin within five business days after the judgment and order of sale is entered. §§21-115 and 21-150.

The tax judgment, sale, redemption and forfeiture record (commonly known as the “judgment record”) is prepared by the County Collector and, after the sale, is transferred to the County Clerk. §21-160. All extensions of the redemption period and all costs and “subtaxes” must be posted in the judgment record. The judgment record may disclose whether a property has been redeemed, a sale in error has been granted, a tax deed case has been filed and/or a tax deed has been issued.

II. DIFFERENT TYPES OF TAX SALES

A. Annual Sales

Property as to which all or part of the previous year's taxes are delinquent are offered for sale each year. For example, Cook County property as to which all or part of the 2013 taxes (which were due in 2014) were delinquent were offered for sale at the 2013 annual sale, which took place in August 2015. The 2014 annual tax sale will begin in the summer of 2016.

The tax purchaser must pay the entire amount of the delinquent taxes and penalties (together with several hundred dollars in sale costs). The tax purchaser must also pay all prior years' open taxes in order to complete the sale and obtain a certificate of purchase. If the tax purchaser fails to complete the sale, a "5% certificate" is issued which constitutes a lien on the property until the amount paid is redeemed with interest at five percent per annum, but the tax purchaser cannot proceed to a tax deed. §21-240. The tax purchaser may, however, seek a sale in error.

Bidding at an annual sale begins at 18% **per six months or fraction thereof** and proceeds downwards; the bidding may go as low as zero.

B. Forfeiture Sales

If a parcel is offered for sale at the annual tax sale and no one bids on the parcel, the taxes are "forfeited" to the State of Illinois. §21-225. A party who wishes to purchase the forfeited taxes after the annual tax sale may apply to the County Clerk to do so. The County Clerk sends a notice to the party in whose name the taxes are assessed, advising that a party has applied to buy the taxes. The County Clerk also computes the amounts needed to purchase the forfeited taxes (including accrued penalties and costs). If the court, county clerk and the county treasurer certify that the taxes equal or exceed the value of the property, the collector shall offer the property for sale to the highest bidder. The tax purchaser must pay the entire amount of taxes and penalties outstanding (together with sale costs). The tax purchaser also must pay all unpaid taxes and penalties for prior years in order to complete the sale.

The penalty rate is 12% **per six months or fraction thereof**.

C. Scavenger Sales

Every two years in odd numbered years, parcels as to which all or part of the taxes for **3 or more years** are delinquent are offered for sale at the scavenger sale. §21-145. The most recent scavenger sale began in December 2015, and the next one will begin in late 2017. Unlike an annual or forfeiture sale, the entire amount of taxes and penalties due need not be paid. Parties bid the amount they are willing to pay to purchase all taxes and penalties outstanding for the years offered. Bidding begins at the minimum bid set by the county, and may proceed upwards to the entire balance of taxes and penalties due or even higher (commonly known as an "overbid").

The penalty on redemption from a scavenger sale is 12% **per six months or fraction thereof for the first 24 months** (except that the penalty is only 3% if the property is redeemed within two months from the date of sale), and **6% per year thereafter**. However, no penalty is payable on any "overbid." §21-260(f).

1. Scavenger Sale Fraud; Ineligible Bidders

A taxpayer may not purchase (or cause another person to purchase) taxes on the taxpayer's own property at the scavenger sale. §§21-285, 21-290. A person commits the offense of tax sale fraud who knowingly:

- a. Enters or causes to be entered a scavenger sale bid where the person in whose behalf the bid is made has an interest in the property or had an interest in the property on January 1 of any year for which delinquent taxes were included in the sale;
 - b. Acquires ownership of a scavenger sale certificate of purchase where the person in whose behalf the certificate is acquired has an interest in the property or had an interest in the property on January 1 of any year for which delinquent taxes were included in the sale;
 - c. Conveys or assigns a scavenger sale certificate of purchase to a person who has an interest in the property or had an interest in the property on January 1 of any year for which delinquent taxes were included in the sale;
 - d. Makes a false statement in an application to bid at a scavenger sale; or
 - e. Forfeits two or more bids at any scavenger sale by failing to pay the amount needed to complete the sale.
2. Tax sale fraud is a Class A misdemeanor, but a second conviction is a Class 4 felony. §21-290.
 3. No person may bid at a scavenger sale without first submitting to the County Clerk a true, accurate and complete application, affirming that the bidder (1) has not bid at the scavenger sale upon any property for a party (or the agent of a party) who owns the property or is responsible for payment of the delinquent taxes; (2) is not (and is not an agent for) the owner or party responsible for payment of taxes on any property in the county which is tax-delinquent or forfeited for two or more years; and (3) has not twice during the same sale failed to complete a purchase after a successful bid. §21-265.
 4. If a person bids at a scavenger sale and fails to pay the amount bid, the parcel will be re-offered at the scavenger sale. If the parcel is sold for less than the amount originally bid, the first bidder is liable for the difference between the amount he or she bid (less any amounts paid) and the amount for which the property is sold after being re-offered. §21-260(a).

D. Assignment of Certificates of Purchase

A certificate of purchase may be assigned. §21-250. An assignee of a tax sale certificate may register the assignment with the county clerk (not record it with the recorder of deeds) but is not required to do so. However, an assignee that fails to record an assignment takes the risk that notice may be sent to the original tax purchaser rather than to the assignee.

III. TAX SALE REDEMPTIONS

A. Right of Redemption.

The right to redeem property from a tax sale exists "in any owner or other person interested in that property, other than an undisclosed beneficiary of an Illinois land trust," whether or not the interest in the property sold is recorded or filed. §21-345.

Article 9, Section 8(b) of the Illinois Constitution provides that "[t]he right of redemption . . . shall exist in favor of owners and persons interested in such real estate for not less than two years following such sales."

Section 21-345(a) of the Property Tax Code provides that "[a]ny redemption shall be presumed to have been made by or on behalf of the owners and persons interested in the property and shall inure to the benefit of the persons having the legal or equitable title to the property redeemed, subject to the right of the person making the redemption to be reimbursed by the persons benefited."

Although a stranger to the property has no right to redeem property sold for delinquent taxes, legal or record title is not required; the person seeking to redeem need only have an undefined interest in the property. The Illinois Supreme Court in the case of *In re Application of County Treasurer (Loop Mortgage Corp. v. Williams)*, 185 Ill. 2d 428, 706 N.E. 2d 465 (1998), reinforced the policy of the law favoring redemptions, stating:

The law favors redemptions, and the redemption statute will be liberally construed unless injury to the tax purchaser results. The tax purchaser's mere failure to procure a tax deed, however, does not preclude liberal construction of the redemption statute because the tax purchaser recovers the amount it paid for the tax certificate upon redemption. . . . A party seeking to redeem a property sold at a tax sale need only have an "undefined interest" in the property.

The Supreme Court further stated that:

"a land trust beneficiary has a redeemable interest in the property because the beneficiary 'has exclusive power to direct or control the trustee in dealing with the title to the land, and exclusive control of the management, operation and selling, together with the exclusive right to the earnings, avails and proceeds of the property.' *In re Application of the County Treasurer*, 16 Ill.App.3d 385, 390, 306 N.E.2d 743 (1973). . . . Tax deed proceedings are not designed, nor are they the

appropriate forum, for trying substantial disputes as to title. These proceedings are very limited in nature, and the only issue presented in these proceedings is whether [the party making the redemption] is within the class of persons entitled to redeem."

The Court held that a contract purchaser had a right to redeem even though the contract seller had previously conveyed her interest in the property by an unrecorded warranty deed. *See also, Hibco Investments v. Home Equity Savers, Ltd.*, 396 Ill. App. 3d 541, 919 N.E.2d 1006 (2d Dist.) (irrelevant whether redeeming party knew that the contract seller did not hold legal title before it entered into purchase agreement; neither contract seller nor redeeming party was a stranger to the property; the record supported the contract seller's claims that he was either an heir or a trustee of the trust, while redeeming party had a recorded interest via a warranty deed).

B. Redemption Periods

1. If on the date of sale the property sold was improved with a ***dwelling structure of six or fewer units***, it may be redeemed at any time on or before **two years and six months** from the date of sale.
2. If on the date of sale the property is ***vacant, non-farm or improved real estate containing seven or more residential units*** or real estate that is ***commercial or industrial property***, and the property was delinquent or forfeited for all or a part of general taxes for ***two or more years*** at the time of the sale, it may be redeemed at any time before the expiration of **six months** from the date of sale.
3. In all other cases, the property may be redeemed at any time before the expiration of **two years** from the date of sale.
4. The holder of the certificate of purchase may extend the redemption period up to **three years** from the date of sale, in which event the property may be redeemed at any time on or before expiration of the extended redemption period. After the redemption period has expired, the court may order an extension of the redemption period, but only if a tax deed petition has been filed prior to the expiration of the redemption period and only on motion of the tax deed petitioner. The redemption period may not be extended, however, to a date more than three years from the date of sale.

C. Redemption Amount

1. The amount required to redeem must be deposited with the County Clerk in cash, cashier's or certified check or money order issued by the post office or by a federally insured financial institution, payable to the County Clerk. Redemption must be actually received in person at the County Clerk's office by the end of the redemption period or mailed *with a post office cancellation mark dated not less than one day prior to expiration of the redemption period.* §21-355.

2. The amount required to redeem includes:

- the certificate amount, which shall include all tax principal, special assessments, interest and penalties paid by the tax purchaser together with costs and fees of sale. §21-355(a);
- Accrued penalty, computed as provided in §21-355(b) (for annual or forfeiture sales) or §21-260(f) (for scavenger sales);
- All taxes and special assessments (and accrued interest on those taxes and costs paid in connection therewith) paid by the tax purchaser subsequent to the tax sale, together with penalty in the amount of **12% for each year or portion thereof** from the date of payment to the date of redemption;
- Amounts paid by the tax purchaser to redeem the property from a forfeiture occurring for a subsequent year tax together with penalty in the amount of **12% for each year or portion thereof** from the date of payment to the date of redemption;
- Amounts paid by the tax purchaser to redeem a subsequently occurring tax sale;
- Fees paid to the County Clerk for serving the notice required by §22-5 of the Property Tax Code. §21-355(f);
- Court costs paid in connection with the filing of a tax deed petition and recording of a *lis pendens* notice, together with a fee of \$35.00 if a tax deed petition has been filed and a fee of \$4.00 if the §22-5 notice has been served. §21-355(h);
- If a petition for tax deed has been filed, all fees up to \$150 per redemption paid to a registered or licensed title insurance company or title insurance agent for a title search to identify all owners, parties interested, and occupants of the property, to be paid to the purchaser or his or her assignee. §21-355(h);
- Fees paid for publication of notice in connection with tax deed proceeding. §21-355(i);
- Sums paid to any city, village or town for reimbursement of municipal advances (e.g., demolition or receivership lien). §21-355(j);
- Expenses of receivership authorized or approved by the court that appointed the receiver. §21-355(k).

3. Redeeming a scavenger sale is different than an annual or forfeiture sale. §21-260(f). The party redeeming must also pay all delinquent taxes and penalties which were outstanding at the time of the tax sale and which were not included in the amount bid at the sale. However, if the property is an **owner-occupied single-family dwelling, condominium unit or cooperative unit** and the redeeming party submits an affidavit to the County Clerk, then the redemption does not include the taxes and penalties which were not included in the amount bid at the sale. If the party submits a false affidavit, the redemption may be stricken.

D. Redemption Under Protest

1. A person entitled to redeem who desires to preserve his or her right to defend against the tax deed proceeding may redeem under protest by depositing with the County Clerk the amount required to redeem, together with three copies of a written protest signed by the party redeeming in the form prescribed by §21-380.
2. The grounds for redeeming under protest are limited to those defenses which would provide sufficient basis to deny entry of an order for issuance of a tax deed.
3. A redemption under protest must be filed after a tax deed petition has been filed, but before expiration of the redemption period.
4. A redemption under protest constitutes the appearance of the redeeming party and that person shall present a defense to the petition for tax deed at the time the court directs. Failure to appear and defend shall constitute a waiver of the protest and the court shall order the redemption money distributed to the holder of the certificate of purchase upon surrender of that certificate and shall dismiss the proceedings.
5. When the party redeeming appears and presents a defense, the court shall hear and determine the matter. If the defense is not sustained, the court shall order the protest stricken and direct the county clerk to distribute the redemption money upon surrender of the certificate of purchase **and shall order the party redeeming to pay the petitioner reasonable expenses, actually incurred, including the cost of withheld redemption money, together with a reasonable attorneys' fee.** Upon a finding sustaining the protest in whole or in part, the court may declare the sale to be a sale in error under Section 21-310 or Section 22-45, and shall direct the county clerk to return all or part of the redemption money or deposit to the party redeeming.

E. Equitable Redemption

Past cases have allowed attacks on tax deeds, even in the absence of fraud by the tax purchaser, in circumstances in which the courts have used their equitable powers to find

a “redemption” has occurred even though the statutory redemption requirements have not been met. Cases where the tax deed was defeated even though the statutory redemption procedure had not been followed have been generally classified into three categories: (1) correct amount of payment sent in timely fashion to county officer who issued a certificate of redemption, *Application of County Treasurer, Atlantic Municipal Corporation v. McGuirk*, 84 Ill.App.3d 506 405 N.E.2d 869 (2d Dist. 1980); (2) correct amount of payment in wrong form (personal check which bounced) but accepted by county official who issued certificate of redemption, *Application of Williamson County Collector, G & H Investments v. Brymer*, 128 Ill.App.3d 408, 470 N.E.2d 1193 (5th Dist. 1984); and (3) taxpayer failed to redeem, or redeemed in the wrong amount, due to a clerk’s error, *Application of the County Treasurer*, 171 Ill.App.3d 644, 525 N.E.2d 852 (1st Dist. 1988) (estimate of redemption was in wrong amount) and *Application of County Treasurer*, 185 Ill.App.3d 789, 542 N.E.2d 397 (1st Dist. 1989) (County Clerk and Assessor had failed to assign the correct index number to condominium unit).

Section 22-45 now provides that a tax deed may be voided by the court upon petition, **filed not more than three months after an order for tax deed was entered**, if the court finds that the property was owner-occupied on the expiration date of the period of redemption and that the order for deed was effectuated pursuant to a negligent or willful error made by an employee of the county clerk or county collector during the period of redemption from the sale that was reasonably relied upon to the detriment of any person having a redeemable interest. This provision, which applies only in Cook County, was enacted to negate the impact of the appellate court decisions that considered equitable principles not listed in the statute and which therefore threatened the marketability of tax deeds. *Application of County Treasurer (MidFirst Bank v. Midwest Partnership)*, 267 Ill.App.3d 993, 642 N.E.2d 741, 746 (1st Dist. 1994).

Whether that amendment eliminated the possibility of an equitable redemption remains open to dispute. *Application of County Treasurer (Hawkeye Investment Limited Partnership v. Lanz)*, 378 Ill. App. 3d 842, 881 N.E.2d 576 (1st Dist. 2007), held that the trial court may equitably extend the period of redemption before a tax deed has issued and held that §22-45 does not restrict courts’ equitable powers with respect to pre-tax deed redemption, but only with respect to post-tax deed redemption. *But see, Application of County Treasurer (Z Financial, LLC v. Dunn)* 389 Ill. App. 3d 735, 906 N.E.2d 1285 (1st Dist. 2009).

F. Expungement of Redemption

An invalid redemption may be set aside or “expunged” on motion by the tax purchaser. If a tax deed petition has been filed, notice of the motion must be given to the redepton and to all persons entitled to notice of the tax deed proceeding. Circuit Court of Cook County Rule 10.3.1. If the redepton has no interest in the property, or if the redemption was untimely or in the wrong amount, the redemption will be expunged. If the redepton shows that he or she had an interest in the property or was acting as agent for a person having an interest in the property, then the motion to expunge the redemption should be denied. Where a redemption is expunged, notice of the expungement must be given to the redepton and to all interested parties. §21-397. Any interested party may make a

valid redemption within 30 days after the date of the order expunging the redemption.
Id.

The provisions of the Mortgage Rescue Fraud Act (765 ILCS 940/1, et seq.), may arise in conveyances of residential real property that consisting of one to six family dwelling units that are in foreclosure or at risk of loss due to nonpayment of taxes. See e.g., *In re County Treasurer (A.P. Properties, Inc. v. Ezra Chaim Properties, LLC)*, 914 N.E.2d 1158, 394 Ill.App.3d 111 (Ill. App., 2009).

IV. TAX DEED PROCEEDINGS

A. The Section 22-5 Notice

Within four months and 15 days after the date of the tax sale, the tax purchaser must prepare the notice required by §22-5. The notice must be completely filled in, in compliance with the statute, and addressed to the party in whose name the taxes are currently assessed. The tax purchaser must submit the notice in triplicate to the County Clerk together with the required fee. The County Clerk will then mail the notice to the party to whom it is addressed. Failure to comply with the statutory requirements may result in denial of the tax deed petition. It may still be possible to obtain a refund under §22-50 or §21-310. Effective to tax sales that occur after July 1, 2012, §22-5 was amended by changing “Permanent Index Number” to “Property Index No.” and changing “County Court House” to “Office of the County Clerk.”

Prior to August 25, 2011, it was generally thought that only “substantial compliance” with §22-5 was required. In *Application of County Treasurer (Glohry, LLC v. OneWest Bank)*, 955 N.E.2d 669, 2011 Ill. App. LEXIS 913, 2011 IL App (1st) 101966, the Court held that tax purchasers must strictly comply with §22-5 (tax purchaser listed the wrong redemption date in the §22-5 although it was undisputed that the owner never received the notice; Court held notice which specifies a wrong date cannot be regarded as any notice whatsoever). This holding was recently upheld in *Application of County Collector (Petition of Matthew A. Flamm, as Receiver for Salta Group, Inc.)*, 2013 IL App (1st) 130103, despite the lack of an objecting party.

In *Application of County Treasurer (Equity One Inv. Fund, LLC v. Williams)*, 2013 IL App (1st) 130463, the tax buyer included the following in the “location” of the property on its Section 22-5 Take Notice: the dimensions, the street intersection, the township, the county and the property index number. However, the tax buyer failed to include the common address or municipality where the property was located. When the tax buyer prepared its Section 22-10 and 22-25 Take Notices, it then included the common address of the property, which included the mailing address and the municipality. The court held that the tax buyer had failed to strictly comply with Section 22-5 of the Property Tax Code. At the beginning of the *Midwest Real Estate Investment* decision, the appellate court noted that its task was to determine “how the legislature would answer the question, ‘How strict is strict?’” The answer is, “Strict.”

B. Extension of the Redemption Period

1. The maximum extension of the redemption period is three years from the date of sale. §21-385,
2. Do not extend the redemption period to end on a Saturday, Sunday or legal holiday.
3. Prior to expiration of the redemption period, the tax purchaser may extend the redemption period by filing with the County Clerk a notice extending the redemption period, ***signed by the certificate holder or his or her agent or attorney***. See, *CCPI, LLC v. MB Financial Bank*, 2012 Ill App (1st) 101976; *Z Financial v. Giordano*, 2014 IL App (2d) 130995.
4. After the redemption period has expired, the court may order an extension of the redemption period, but *only* if a tax deed petition has been filed prior to the expiration of the redemption period. §21-385.
5. If the redemption period expires and no tax deed petition has been filed, no extension is possible and the certificate may not be turned into a tax deed. The tax purchaser may be possible to obtain a refund under §22-50 or §21-310 during the one-year period after the redemption period expired. §22-85.

C. Diligent Inquiry for Owners, Occupants and Other Interested Parties

1. Between six and three months before the redemption period expires, the tax purchaser must conduct a diligent inquiry for owners, occupants and other persons interested in the real estate. §22-10.
2. The tax purchaser or agent must physically inspect the premises and note any indication of occupancy, usage or ownership (signs or structures on the property, cars being parked by permission of the owner, farming being conducted on the property, etc.). The tax purchaser or agent should speak with any persons found on the property and/or neighbors to ascertain the whereabouts of owners and parties in interest.
3. A title search, including a grantor-grantee search, should be conducted by the tax purchaser or by a title or abstract company. If the title search is conducted more than six months before the redemption period expires it should be updated immediately before filing the petition for tax deed.
4. All reasonable efforts should be made to locate owners, occupants and other interested parties. This may include:
 - a. Reviewing recorded documents and contacting any persons whose names are disclosed of record;

- b. Reviewing recent and pending building violation cases and other court files for identity and location of parties in interest;
 - c. Using skip trace databases and software and/or inspecting current telephone directories for the metropolitan area;
 - d. Calling parties with similar names;
 - e. Reviewing the current list of registered voters to identify possible occupants;
 - f. Reviewing probate records regarding decedents' heirs or legatees;
 - g. Checking the Secretary of State regarding corporate status of corporations or limited liability companies;
 - h. Checking online directories and searches.
 - i. Researching PIN divisions/consolidations for parent parcel/divided parcel issues.
5. Due diligence dictates that a thorough examination is made of the public records in the county in which the property is situated, particularly an examination of the property tax records. *Payne v. Williams*, 91 Ill.App.3d 336, 341, 414 N.E.2d 836, 840 (5th Dist. 1980); *Application of County Treasurer (HomeSide Lending Inc. v. Midwest Real Estate Investment Company)*, 347 Ill.App.3d 769, 807 N.E.2d 1042, 1051 (1st Dist. 2004). Thus, under *Payne*, a tax purchaser has not acted with minimal diligence if he fails to make a reasonable effort to notify all persons whose interests in the property are reasonably inferable from public records of the property's ownership. 347 Ill.App.3d 769, 807 N.E.2d at 1051. *See also, In re County Treasurer (Ballinger v. Moore)*, 2014 IL App (4th) 130261 (court rejected tax buyer's argument that testatrix's granddaughter did not have a recorded interest because the will included a class gift to the testatrix's grandchildren but did not state the granddaughter's name).
6. If a mortgage is held by Mortgage Electronic Registrations Systems, Inc. (MERS), the tax purchaser should determine the current noteholder and/or servicer. *See, Glohry, LLC v. OneWest Bank, supra*, regarding service on MERS. This can be easily done online via the MERS website.
7. It is better to be over inclusive than to risk omitting a party in interest. If a party may or may not have an interest in the property, it is better to give that party notice of the tax deed proceeding.

8. If title is in a land trust, beneficiaries must be given notice if their identity is reasonably ascertainable. *Application of County Treasurer (Huffman v. Davis)*, 216 Ill. App. 3d 162, 576 N.E.2d 255 (1st Dist. 1991).
9. If property consists of more than four dwelling units, the managing agent or rent collector may be given notice in lieu of serving all tenants. §22-15.
10. Failure to conduct a sufficiently diligent inquiry may be fatal to the tax deed petition.
11. A federal revenue lien may be discharged under some circumstances. State liens may be discharged if the State is properly served with notice.
12. If the United States has any other interest, or if the State or a municipality has fee title, the tax purchaser should seek declaration of a sale in error. Other interests of the State or a municipality may be defeated by tax deed, but certain municipal advances (e.g., demolition liens) must be reimbursed before an order for tax deed can be issued.

E. Petition for Tax Deed

1. A petition for tax deed must be filed in the Circuit Court between six and three months before expiration of redemption period.
2. A copy of the certificate of purchase and any assignment(s) must be attached as exhibits.
3. It is generally most efficient to prepare the petition, Take Notices, notice for publication, *lis pendens* notice and notice of extension of redemption period at the same time.
4. The notice extending the redemption period must be filed with the County Clerk *before* the petition for tax deed is filed.
5. If more than one parcel is owned by the same party, they may be included in a single tax deed petition, even if they are not contiguous.

F. *Lis Pendens* Notice

Recording of a *lis pendens* notice is not required, but it is advisable to give record notice of the tax deed proceeding to any party who acquires an interest in the property after the tax deed petition is filed. The *lis pendens* notice must be recorded in the office of the Recorder of Deeds. The cost of recording can be posted to the judgment record and will then be included in the redemption amount.

G. Take Notices

1. Two sets of notices are required, similar but not identical in form. Both sets of notices must include the date, time, address and room number of the return day hearing (§22-10, Cook County Circuit Court Rule 10.3.).
2. The first notices are signed by the tax purchaser and placed with the Sheriff's office for personal service on all owners, occupants and parties interested in the property, at their most recent ascertainable addresses (as disclosed by the tax purchaser's diligent inquiry). §22-10. Allow sufficient time to permit repeated attempts at service prior to expiration of the notice-serving period.
3. Any **owner-occupants must be served personally** by the Sheriff. *Id.*
4. The Sheriff will attempt to serve all other parties by personal or substitute service. If a party cannot be found in Cook County, the Sheriff will attempt to serve that party by certified mail.
5. The second notices are placed with and signed by the Clerk of the Circuit Court for mailing by certified mail directed to all owners and occupants, at their most recent ascertainable addresses (as disclosed by the tax purchaser's diligent inquiry). §22-25. Some tax purchasers also direct this notice to other parties interested in the property, but this is not required by statute.
6. Both sets of notices must be prepared in **strict compliance** with the requirements of the Property Tax Code. Failure to do so may result in denial or vacation a tax deed.
7. The notices will set forth the return date (*i.e.*, the first court date). In Cook County, all tax deed petitions must be returnable the Richard J. Daley Center, 50 W. Washington St., Room 1704, Chicago, Illinois 60602, at 9:30 a.m. on any Monday, Wednesday or Friday (except court holidays).

H. Publication

Notice must be published on three days, all of which must be between six and three months before expiration of redemption period, in a newspaper of general circulation in the county. However, in counties with less than 3,000,000 inhabitants, §22-20 requires publication in some newspaper published in the municipality if there is one. The cost of publication should be posted in judgment record.

I. Payment and Posting of Subsequent Years' Taxes

1. The tax purchaser *may* pay delinquent taxes (and redeem forfeitures and tax sales) for years subsequent to the year(s) covered by the tax sale (commonly referred to as "subtaxes").

2. A tax purchaser should promptly “post” subtaxes on the judgment record for the year of the tax sale, so that the taxpayer must reimburse those amounts at time of redemption. To be eligible to post subtaxes, the tax purchaser must pay an indemnity fund fee equal to \$80.00. (The Cook County Clerk usually will not post subtax payments until the tax is 30 days delinquent.)
3. Subtaxes paid and posted by tax purchaser must be redeemed ***with interest at 12% per year or fraction thereof*** from date of payment to date of redemption. Therefore, even if the original tax sale is at a low penalty rate, the penalty on subtaxes is 12% per year or fraction thereof. Thus, a property owner whose property is sold at a tax sale should pay all subsequent taxes promptly, so that the tax purchaser cannot pay and post them.
4. The tax purchaser *must* pay or redeem all subtaxes prior to issuance of tax deed order. This is often done after the prove-up hearing.

J. Receivership

1. Either before or after the filing of a tax deed petition, the tax purchaser may petition the Court for appointment of a receiver. §21-410.
2. Grounds include abandonment, waste, need to preserve property and prevent further damage or destruction, *i.e.*, different than the requirements for appointing a receiver in a mortgage foreclosure case.
3. The tax purchaser or another person may be appointed receiver.
4. Costs incurred by the receiver (up to the limit allowed by the Court in its order appointing the receiver) should be promptly posted on judgment record, and will be reimbursed if the property is redeemed from the sale.

K. Posting of Costs

1. All costs allowed by Sections 21-260 and 21-355 should be promptly posted in the judgment record.
2. If the property owner redeems, he or she will have to reimburse the tax purchaser ***only for posted costs*** in order to effect a redemption.
3. No costs may be posted in the judgment record within 30 days prior to expiration of redemption period. This allows an owner or lender to rely on an estimate of redemption issued within thirty days before the redemption period expires.

L. Expiration of the Period of Redemption

1. Upon expiration of the redemption period, the tax purchaser or attorney should check the judgment record and determine whether a redemption has been made.
2. If a redemption has been made, the tax purchaser should attempt to determine whether the party redeeming has a redeemable interest in the property. If not, the tax purchaser may consider filing a motion to expunge the redemption.
3. The tax purchaser also should determine whether the amount of the redemption is correct.

M. Preparation of Application for Order Directing Issuance of Tax Deed

1. A verified Application for Order Directing Issuance of Tax Deed must be filed before the case will be assigned to a judge for a prove-up hearing.
2. The Application must comply with Cook County Circuit Court Rule 10.3(b) and Administrative Order 2007-13, and must include:
 - a. A copy of the Certificate of Purchase;
 - b. Copies of the extensions of the redemption period;
 - c. A copy of the Section 22-5 notice, stamped by the County Clerk to show date of receipt;
 - d. Evidence of the tax purchaser's title search;
 - e. Copies of the Sheriff's Notice and the Clerk's Notice;
 - f. A copy of the certificate of publication; and
 - e. An affidavit or affidavits demonstrating compliance with the requirements of the Property Tax Code.

N. Assignment and Prove-up Hearing

1. On the return date set forth in the Take Notices, the tax purchaser or attorney must appear in courtroom 1704 of the Daley Center for assignment.
 - a. If the property has been redeemed, an order should be entered dismissing the tax deed petition.
 - b. If the Application for Order Directing Issuance of Tax Deed has not been filed, the case will be continued.

- c. If the property has not been redeemed and an Application for Order Directing Issuance of Tax Deed has been filed, the case will be assigned to a trial judge for a prove-up hearing on another date.
2. The tax purchaser's attorney must then have the case scheduled for a prove-up hearing.
3. At the prove-up hearing, the tax purchaser and/or attorney must introduce evidence of compliance with all statutory requirements for entry of an order for tax deed.

O. Entry of Order for Tax Deed

If the Court finds that the requirements for entry of an order for tax deed have been satisfied, the Court will take the matter under advisement, pending presentation of:

1. A transcript of the prove-up hearing;
2. Proof that taxes for all tax years subsequent to the year(s) covered by the tax sale have been paid or redeemed;
3. Proof that any eligible municipal advances (e.g., demolition liens) have been reimbursed as required by §22-35; and
4. A proposed order directing issuance of a tax deed, approved in advance by the County Clerk to show that the property has not been redeemed (commonly known as the “green stamp”).

Upon presentation of these items, the Court will enter the Order Directing Issuance of Tax Deed.

P. Issuance and Recording of Tax Deed

The tax purchaser or attorney must prepare the tax deed and present it to the County Clerk together with the *original* certificate of purchase, a certified copy of the Order Directing Issuance of Tax Deed and the applicable fee for issuance of the tax deed. The Order Directing Issuance of Tax Deed *must* be entered, and the deed *must* be recorded, within *one year* after expiration of the redemption period, or else the certificate of purchase (and the tax deed, if issued) becomes *null and void with no right of reimbursement*. §22-85. The one-year period is tolled by any time during which the Court is unable to act on the petition (e.g., due to a pending bankruptcy proceeding or tax deed contest). No order is required in order to toll the one-year period if the Court is unable to act. *Application of County Treasurer (Bryant v. Bowman)*, 309 Ill. App. 3d 181, 721 N.E.2d 745 (1st Dist. 1999).; *Application of County Treasurer*, 225 Ill. App. 3d 349, 587 N.E.2d 1232 (1st Dist. 1992). However, ordinary delay incident to processing of tax deed cases does not constitute inability of the Court to act. *Application of Rosewell (First State*

Bank & Trust Company of Hanover Park v. Wolf, 209 Ill.App.3d 187, 568 N.E.2d 89 (1st Dist. 1991).

Recording of the tax deed, not the earlier expiration of the redemption period, marks the perfection of the tax buyer's interest. *Smith v. SIPI, LLC*, 614 F.3d 654 (7th Cir. Ill. 2010). This was exemplified in *Strong v. City of Peoria*, 2010 Ill. App. LEXIS 555 (3rd Dist. 2010), a wrongful demolition case where the court stated that the plain language of Property Tax Code provides that the purchaser of a tax certificate does not acquire title until the county clerk issues the tax deed.

Q. Possession

The Court who grants the order for tax deed retains jurisdiction to enter an order for possession to put the grantee under the tax deed in possession of the property. A motion for order of possession may be made by the tax deed grantee or his or her successor in interest.

R. Merger of Prior Years' Taxes

Section 22-40 provides that if taxes for years prior to those included in a tax sale are delinquent, the court shall order that the lien of those delinquent taxes has been merged in the title of a tax deed grantee. If a tax deed has not yet issued, the court shall order that those tax liens will merge upon issuance of a tax deed. This relief is not available if the tax deed grantee or any person or entity under common ownership or control held a certificate of purchase for the tax years sought to be merged. The purpose of this law is to ensure that tax deeds convey merchantable title. An interesting opinion was issued in *In re County Collector (Petition of Elton Elzey)*, 389 Ill. App. 3d 398, 905 N.E.2d 953 (1st Dist. 2009), a case involving a "wrap around sale" (a sale of tax years both prior to and subsequent to the year or years of a prior tax sale). Essentially what the Court held was that the prior tax purchaser was required to redeem the subsequent tax sale even though it included both prior and subsequent tax years. In the meantime, tax purchasers can protect themselves from this situation by paying subsequent years taxes before they go to a tax sale that could potentially include prior years taxes.

V. TAX DEED DEFENSES

A. Defenses to Petitions for Tax Deed

Any owner, occupant or any other person having an interest in the property may appear and defend against the tax deed petition, whether or not that person was served with notice. A party objecting to issuance of a tax deed may raise as a defense any failure to comply with requirements for issuance of a tax deed, including:

1. Deficiencies in the Section 22-5 notice or Take Notices;
2. Failure to conduct a sufficiently diligent inquiry for parties interested in property;

3. Failure to give notice to all necessary parties in manner required by law; and
4. Failure to file the tax deed petition and/or failure to serve notices within time prescribed by law.

Section 22-40 directs the Court to insist on “strict compliance” with the notice requirements of Sections 22-10 through 22-25. Even small errors in those notices may result in denial of the tax deed if an interested party raises an objection. *Application of County Collector (Midwest v. Anderson)*, 295 Ill. App. 3d 703, 692 N.E.2d 1211 (1st Dist. 1998); *Application of County Collector (Dream Sites, LLC v. Grace Apostolic Faith Church)*, 826 N.E.2d 951 (1st Dist. 2005) (take notices must contain the complete street address of the Daley Center). See also, *Glohry, LLC v. OneWest Bank, supra*, regarding strict compliance with §22-5.

B. Denial of Petition for Tax Deed

If the Court denies the tax deed petition but finds that the tax purchaser has made a “bona fide attempt” to comply with the statutory requirements, the Court shall order that the amount paid by the tax purchaser be refunded, without interest. §22-50.

The plain language of Section 22-50 reflects that it applies when a court has refused to enter an order granting a tax deed because of the tax purchaser’s failure to comply with the statute. Section 22-50 provides for a specific remedy *after* the court has refused to enter an order for tax deed. Most judges in Cook County acknowledge a tax purchaser’s right to a sale in error pursuant to Section 22-50 without the requirement of filing a tax deed petition, prove up and denial. In other counties throughout the state, the courts follow the thought process as stated in *In Re Application of the Kane County Collector (SIPI, LLC)*, Second District, Docket No. 2-14-0265, rehearing denied January 21, 2015.

VI. RELIEF FROM TAX DEED ORDERS

A. Grounds for Attacking Tax Deed At Any Time

A tax deed may be set aside at any time on the following grounds:

1. That the taxes had been paid in full prior to issuance of the judgment and order of sale for delinquent taxes;
2. That the property was exempt from taxation. For some cases that involve interesting fact patterns, see *New Holy Temple Missionary Baptist Church v. Discount Inn, Inc.*, 371 Ill.App.3d 443, 862 N.E.2d 1198 (1st Dist. 2007) and *Beth-El All Nations Church v. City of Chicago*, 486 F.3d 286 (7th Cir. 2007).

3. That the tax deed violated the doctrine of sovereign immunity by defeasing an ownership interest of the State or of a municipality or any interest of the United States, except by consent; or
4. That the owner of the property had filed a petition for relief in bankruptcy prior to the sale. See e.g., *Bank of America v. FINA IP, LLC*, 2015 IL App (2d) 150741-U, a long and complicated order but ultimately finding that the tax sale was void.
5. Lack of jurisdiction is always a defense, subject to §2-1401 of the Code of Civil Procedure. However, failure to properly serve notices required by the Property Tax Code does not deprive the Court of jurisdiction. Even application of an incorrect redemption period does not deprive the Court of jurisdiction. *Application of Cook County Collector (Standard Bank v. Barnard)*, 228 Ill.App.3d 719, 593 N.E.2d 538 (1st Dist. 1992). But if the failure to give proper notice would have the effect of depriving a party of his or her interest in property without due process, application of Federal and Illinois constitutional guaranties may permit attack on tax deed at any time. In, *In re County Collector (Devon Bank v. Miller)*, 921 N.E.2d 462 (1st Dist. 2009), the Court stated that the statutory notice requirements of the Property Tax Code comport with due process, but where those notice procedures were not followed resulting in a total lack of notice to the owner, due process was violated and a judgment entered without such jurisdiction is void.
6. Parties must be aware of the procedures of the Circuit Court of Cook County, County Department, County Division, and Administrative Orders 2007-12 and 2007-14 to make sure that any motions or petitions are properly filed and set on the proper calendar.

B. Relief within 30 Days After Entry of Order for Deed

Section 2-1203 of the Code of Civil Procedure authorizes a motion for relief from a tax deed order filed within 30 days after entry of the order. Any issue that could have been raised at the prove-up hearing may be presented in a §2-1203 motion filed within 30 days after entry of the order. Courts are very liberal in granting relief under §2-1203. *Application of County Treasurer (Forus Mortgage Corp. v. Dwyer)*, 214 Ill.2d 253, 824 N.E.2d 614 (2005), *on remand*, 359 Ill.App.3d 763, 835 N.E.2d 175, *appeal denied*, Ill. Dec 01, 2005. Public Act 95-477, effective June 1, 2008, codified codify the Supreme Court's in *Forus*, which held that motions to vacate may be brought under both §2-1203 (within 30 days, "direct attack") and §2-1401 (beyond 30 days, "collateral attack") of the Code of Civil Procedure.

C. Section 2-1401 Petition for Relief from Order for Deed

A far stricter standard applies to a petition for relief from a tax deed order filed under §2-1401 of the Code of Civil Procedure more than 30 days after entry of the tax deed order. Grounds for relief under §2-1401 are limited to: (1) that the taxes were paid prior to the sale; (2) that the property was exempt from taxation; (3) that the tax deed was procured by fraud or deception on the part of the tax purchaser; or (4) that the tax purchaser did not make a diligent inquiry and effort to serve a party holding a recorded interest in the property who was not named in the publication notice. §22-45. Under very limited circumstances, relief may be granted if an attempt to redeem was frustrated by an error made by the county clerk or county treasurer.

In *Application of County Treasurer (Apex Tax Investments v. Mary Lowe)*, 217 Ill.2d 1, 838 N.E.2d 907 (2005), the Supreme Court held that the trial court's finding that inquiry into owner's whereabouts was diligent could not be challenged by collateral attack. (See attached copy.) Furthermore, with regard to the 2-1401 petitioner's argument that her due process rights were violated because she was a hospitalized, mentally incapacitated property owner who did not receive actual notice, the Court held it is sufficient for due process that statutes provide for reasonably diligent efforts to give notice. *Id.* The question is not whether the procedure actually succeeds in notifying the individual, but rather whether the procedure is reasonably calculated to do so. *Id.* The United States Supreme Court granted *certiorari* and vacated the judgment in *Apex* for further consideration in light of the U.S. Supreme Court's decision in *Jones v. Flowers*, 126 S. Ct. 1708 (2006). On remand, the Illinois Supreme Court affirmed the judgment of the appellate court. 225 Ill.2d 208, 867 N.E.2d 941 (2007).

In *In re Application of County Collector (Countrymark Cooperative, LLP v. Groome)*, 2013 IL App (5th) 120546-U, the appellate court held that seeking personal property (rather than solely the real property) in a petition for tax deed is not fraudulent. Conversely, in *In re Application of County Collector (Lincoln Title Company v. Normanbhoy Family Limited Partners)*, 2013 IL App (3d) 120999, the appellate court held that the tax buyer's failure to remind the trial court that it did not deliver a Section 22-5 notice to the County Clerk (it allegedly mailed the notice by regular mail) and its representation in several pleadings that it had complied with the notice requirements was fraudulent.

In the past, fraud in a tax deed proceedings was defined as "a wrongful intent – an act calculated to deceive." *In re Application of County Treasurer of Cook County*, 92 Ill.2d 400, 405 (1982). More recently however, the appellate court has more broadly defined fraud in tax deed proceedings to include "the failure to inform the court of any facts that might change the court's ruling can amount to fraud for purposes of vacating tax deeds." *HomeSide Lending Inc. v. Midwest Real Estate Investment Company*, 347 Ill.App.3d 769, 807 N.E.2d 1042 (1st Dist. 2004); *TCF Bank v. Community Partners*, 2015 IL App (1st) 133693.

In *DG Enterprises, LLC-Will Tax LLC. V. Cornelius*, 2015 IL 118975 (Docket 118975, opinion filed December 3, 2015), the Illinois Supreme Court addressed the competing

public policies of allowing a party to attack the order directing the issuance of a tax deed in addition to direct appeal, and the finality of a final order and the marketability of tax deeds. The Supreme Court upheld the legislative intent behind Section 22-45 of the Illinois Property Tax Code in finding that the grounds enumerated in attacking the Order must be set forth within that Section. "Section 22-45 evinces an intent on the part of the General Assembly 'to protect tax deed orders from collateral attack on questions relating to notice', unless the challenge squarely fits within the language of section 22-45." The Supreme Court also addressed issues of Due Process in failures to serve parties with a recorded interest, finding that the Illinois Property Tax Code, when followed, sufficiently complies with the protection of a party's Due Process rights.

D. Merchantable Title and Bona Fide Interests

Any Section 2-1401 attack on an order for tax deed will not affect the right, title or interest in or to any property of any person who was not a party to the tax deed proceeding and who acquired an interest in the property for value after issuance of the tax deed and before filing of a petition to set aside the tax deed, unless lack of jurisdiction affirmatively appears from the record. Code of Civil Procedure §2-1401(e). A party having actual or constructive notice of facts that would put a prudent person on inquiry that there may be a defect in the proceeding is not a bona fide purchaser. *Application of Cook County Collector (Standard Bank v. Barnard)*, 593 N.E.2d 538 (1st Dist. 1992). A party asserting that he or she is a bona fide purchaser has the burden of proving that he or she acquired the property for value and without actual or constructive notice of any defect in the proceeding. *Id. But see, In re County Collector (Devon Bank v. Miller)*, 921 N.E.2d 462 (1st Dist. 2009). The "bona fide purchaser defense" extends not only to purchasers but other parties with a bona fide interest such as mortgagees.

E. Reimbursement of Amounts Paid by Tax Purchaser

If a tax deed order is set aside because the property was exempt or the taxes were paid prior to the tax sale, or if the tax sale was void for some other reason, the Court shall order a refund of the amounts paid by the tax purchaser, with interest. §22-80(a). If a tax deed order is set aside on any other grounds, the Court shall order that the party who successfully contested the tax deed pay to the tax purchaser all amounts paid by the tax purchaser (including taxes, subsequent years' taxes, costs and reimbursement of municipal advances), with interest at 1% per month on taxes and costs paid by the tax purchaser. §22-80(b). However, reimbursement is not required where more than one year has expired from expiration of the redemption period to the date of recording of the tax deed, since the certificate of purchase has become null and void. *Application of Rosewell (First State Bank & Trust Company of Hanover Park v. Wolf)*, 209 Ill.App.3d 187, 568 N.E.2d 89 (1st Dist. 1991). In *CCPI, LLC v. MB Financial Bank*, 2012 Ill App (1st) 101976, the court held that the tax deed was void with no right of reimbursement because it was not recorded within one year due to an invalid attempt by the assignor of the tax certificate to extend the redemption period. The issue came down to the language in Section 21-350(c) and 21-385 of the Property Tax Code and the court held that redemption period can only be extended the certificate holder, not the certificate holder's assignor.

VII. SALES IN ERROR

A. Statutory Grounds

1. Section 21-310 of the Property Tax Code authorizes the Court to declare a sale in error on a number of grounds.
2. Some of the grounds may be raised by the County Collector, by the owner of the certificate of purchase or by a municipality that owns or has owned the property sold (§21-310(a)), including:
 - a. that the property was not subject to taxation, or that all or any part of the lien of taxes sold has become null and void pursuant to §21-95 or unenforceable pursuant to subsection (c) of §18-250 or subsection (b) of §22-40:
 - b. that the taxes had been paid prior to the sale;
 - c. that there is a double assessment;
 - d. that the description of the property is void for uncertainty;
 - e. that the assessor, board of appeals or other county official has made an error (other than an error of judgment as to the value of the property);
 - f. that the owner of homestead property had tendered timely and full payment of the taxes that the taxpayer reasonably believed were due and owing, but the County Collector did not apply the payment to the homestead property.
 - g. that *before* the tax sale a voluntary or involuntary bankruptcy or reorganization petition had been filed by or against the legal or beneficial owner of the property;
 - h. that the property is owned by the State of Illinois, a municipality, or a taxing district; or
 - i. the owner of the property is a reservist or guardsperson who is granted an extension of his or her due date under Sections 21-15, 21-20, and 21-25 of this Act.
3. Certain other grounds may be raised *only* by the owner of the certificate of purchase (§21-310(b)), including:
 - a. that a bankruptcy or reorganization petition has been filed by or against the property owner *after* the date of the tax sale;

- b. that the improvements upon the property have been substantially destroyed or rendered uninhabitable subsequent to the tax sale; or
 - c. that there is an interest in the property held by the United States that cannot be extinguished by a tax deed.
- 4. A sale in error, without interest, may be declared on petition of the tax purchaser where environmental conditions exist which impair the merchantability of title to the property. §21-310(b)(4).
- 5. The Court shall not enter an order for tax deed to any property as to which a city, village or incorporated town has an interest under the police and welfare power by reason of a demolition lien or other advancements made from public funds, until the tax purchaser has reimbursed the amount advanced. In lieu of reimbursement, the tax purchaser may elect to have the tax purchase set aside as a sale in error, without interest. §22-35. This section has been interpreted to require reimbursement only of the principal amount of the demolition lien, not accrued interest.
- 6. Subsequent years' taxes paid by the certificate holder will be refunded to the certificate holder, regardless of when those taxes were paid. If the tax deed is denied but the court finds that the holder of the certificate of purchase made a bona fide attempt to comply with the requirements for a tax deed, the purchase price and court costs will be refunded without interest. These technical changes correct anomalous situations that have arisen from interpretations of prior law.

B. Non-Statutory Grounds

The Supreme Court has held that the list of grounds set forth in the Property Tax Code is not exclusive, and that the Court may grant a sale in error on other equitable grounds. *Thornton, Ltd. v. Rosewell*, 72 Ill. 2d 399 (1978). There has been a trend toward denying “equitable” sales in error. *See, People ex rel. Edgcomb v. Wolfe*, 226 Ill.App.3d 995, 589 N.E.2d 811 (4th Dist., 1992).

C. Interest on Sales In Error

If the sale in error is granted on one of the grounds specified in §21-310 of the Property Tax Code (other than substantial destruction or environmental conditions), the Court shall award interest on the amount refunded to the tax purchaser at the rate of 1% per month from the date of sale to the date of payment. However, the interest paid shall not exceed the penalty which would have been payable if the property had been redeemed from the sale. §21-315(a). If the Court determines that the tax purchaser had actual knowledge prior to the sale of the grounds on which the sale in error is declared, no interest is payable. §21-315(b). The term “actual knowledge,” as used in the statute, does not include constructive knowledge. *Application of County Treasurer (First Financial Funding Corp. v. Rosewell)*, 302 Ill. App. 3d 639, 707 N.E.2d 60 (1st Dist.

1998). If the sale in error is granted on the basis of substantial destruction, environmental conditions or on a non-statutory ground, no interest is allowable.

D. Administrative Sales in Error

A tax sale may be set aside as a "sale in error" by the County Treasurer through an administrative process if the property was not subject to taxation, if the taxes were paid prior to the tax sale, if the owner of the property was in bankruptcy at the time of the tax sale or if the property is owned by a governmental entity. The administrative process can be initiated only within one year after the date of an annual tax sale or within 180 days after the date of a scavenger sale. The County Treasurer initiates the process by sending notice to the last known owner of the certificate of purchase that the County Treasurer intends to declare an administrative sale in error. If the owner of the Certificate of Purchaser objects in writing within 28 days after the date of mailing of notice, then an administrative sale in error cannot be granted and the sale in error must be handled through a court proceeding. If no objection is filed, the County Treasurer may declare a sale in error and order a refund to the tax purchaser of the amount paid at the tax sale, together with costs paid by the tax purchaser and interest. §21-310(c).

VIII. EFFECT OF BANKRUPTCY

A. Sample of Reported Cases

It is very difficult to say "what the law is" when it comes to the interaction of state tax sale laws and federal bankruptcy laws. Just when a practitioner thinks they have an understanding of that interaction, a new case comes down that flips that understanding on its head. Therefore, the safe approach is to know what the cases hold generally then research the most recent decisions to see how the courts are ruling on the issue.

1. If the owner or another party interested in the property has filed a petition for relief under the Bankruptcy Code **before** the tax sale, the sale is void as a violation of the automatic stay provision of the Bankruptcy Code. 11 U.S.C. §362(a); *In re Garcia*, 109 B.R. 335 (N.D.Ill. 1989). The tax sale must be set aside as a sale in error on petition of the tax purchaser or by the County Collector. §21-310(a)(6).
2. A petition for bankruptcy relief filed before the tax sale may be raised as a defense to the tax deed proceeding **at any time**, before or after issuance of a tax deed.
3. If a petition for bankruptcy relief is filed **after** the tax sale, the sale is not automatically void. The tax purchaser **may** seek declaration of a sale in error, but is not required to do so. §21-310(b)(1).
4. If the redemption period had not yet expired as of the date of filing of the bankruptcy or reorganization petition, the debtor is entitled to redeem within 60

days after the filing of the bankruptcy petition or prior to the end of the redemption period, whichever is later. 11 U.S.C. §108(b).

5. It had been held repeatedly by judges of the United States Bankruptcy Court and of the United States District Court for the Northern District of Illinois that the filing of a bankruptcy or reorganization petition does not affect the right of a party who has purchased delinquent real estate taxes to prosecute a tax deed proceeding and to obtain a tax deed. *In re Thomas*, 84 C 4242 (N.D. Ill., December 10, 1984) (opinion of Judge Bua); *In re Guice*, 83 B 5606 (N.D. Ill., December 5, 1984) (opinion of Judge Hertz); *In re Richardson*, 83 C 2654 (N.D. Ill., January 14, 1984) (opinion of Judge McMillen); *Lapat v. Shek*, 82 C 2458 (N.D. Ill., December 15, 1983) (opinion of Judge Marovitz). No debtor-creditor relationship exists between a tax buyer and a delinquent property owner. *In re Mary Blue*, 244 B.R. 131 (N.D. Ill. 2000), opinion withdrawn and reissued at 247 B.R. 748 (N.D. Ill. 2000) (opinion of Judge Barliant.) Judge Wedoff suggested that a Chapter 13 debtor may propose a plan providing for payment of the redemption amount over the life of the plan. If the plan is confirmed, the tax purchaser is prevented from moving forward in state court unless the debtor fails to make payments pursuant to the plan. *In re Bates*, 270 B.R. 455 (N.D. Ill. 2001). Judge Squires rejected the reasoning applied in the *Bates* case by Judge Wedoff and declined to follow the view that a secured claim of a tax purchaser may be satisfied through a Chapter 13 plan. The court reasoned that the debtor's time to redeem as extended by §108(b) could not be further extended under a Chapter 13 plan by way of Section 1322 (b)(2). *In re Murray*, 02 C 3827 consolidated with 02 C 3829 (N.D. Ill. March 25, 2002).
6. In *In re Kasco*, 378 B.R. 207 (N.D. Ill. 2007), Judge Pamela S. Hollis held that the *in rem* rights that tax purchaser at prepetition tax sale had against a Chapter 13 debtor's real property, if debtor did not redeem, were sufficient to give the tax purchaser a "claim" in bankruptcy, and to make purchaser a "creditor" of the estate; and as long as debtor-taxpayers filed their Chapter 13 petition prior to expiration of time for redeeming property that was the subject of prepetition tax sale, the debtors could modify the tax purchaser's right to receive payment prior to expiration of state law redemption period and provide for payment over life of plan. Judge Janet S. Baer (following *In re La Mont*, 08 BK 32995, and *In re Kasco*) held that a Chapter 13 debtor may cure delinquent taxes over the life of the plan as long as the redemption period had not expired prior to the bankruptcy filing. The court noted that debtors are not exercising their right to redeem but are using §1322(b)(2) to modify the claim.

B. Pending Issues

1. *Relief from Automatic Stay*: If a bankruptcy petition is filed after the tax sale, it is not clear whether the tax purchaser must seek relief from the automatic stay before proceeding to obtain a tax deed. Federal judges in the Southern District of Illinois have held that the automatic stay does apply, and that leave of court is required to prosecute a tax deed proceeding after the filing of a bankruptcy

or reorganization petition. A decision of Judge Schmetterer of the Northern District agrees with this position. *In re Halas*, No. 95 B 10592 (April 9, 1996). Other courts disagree with this position and hold that relief from the automatic stay is not required. *Jackson v. Midwest Partnership*, 176 B.R. 156 (N.D. Ill. 1994); *Hood v. Hall*, 321 Ill.App.3d 452, 747 N.E.2d 510 (5th Dist. 2001). The prudent practitioner will seek relief from the automatic stay before proceeding.

2. *Fraudulent Transfer*: Some trustees or debtors have sought to set aside a tax deed as a fraudulent transfer or as a preferential transfer. The United States Supreme Court has held that a mortgage foreclosure sale will not constitute a fraudulent transfer voidable by the Bankruptcy Court. *BFP v. Resolution Trust Corp.*, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994). The possible applicability of this holding to a tax deed proceeding is unclear. One published decision of the United States Bankruptcy Court for the Northern District of Illinois has stated that a tax sale may constitute a fraudulent transfer. *In re McKeever*, 132 B.R. 996 (N.D. Ill. 1991). See also, *Smith v. SIPI, LLC*, 614 F.3d 654 (7th Cir. Ill. 2010) (recording of the tax deed, not the earlier expiration of the redemption period, marks the perfection of the tax buyer's interest.) The *Smith* case went to the United States District Court for the Northern District of Illinois, which held that the debtors had failed to state a claim for fraudulent transfer under the bankruptcy provisions (N.D. Ill., 2014). The Court noted that “[i]t would turn the fraudulent transfer statute on its head to use it to allow debtors to recover property lost years earlier by their own inaction, to the detriment of their creditors.”

In *Smith v. SIPI, LLC*, 07 B 6631 (N.D.Ill. 2013), Judge Bruce W. Black held that the debtors could avoid the transfer of property as a fraudulent transfer under §548(a)(1)(B) to the extent of their homestead exemption. The tax buyer had obtained a tax deed on April 15, 2005, recorded it on May 19, 2005 and sold it to a third party for \$50,000 on August 10, 2005. On April 13, 2007, the debtors filed for Chapter 13 and listed to property with a value of \$90,000. The court found that issuance of the tax deed occurred within the two-year “look back” period of §548 and also determined that the value of the property was over the debtors’ \$15,000 exemption amount. Finally, the court found that the debtors could recover from the tax buyer, but not the third party. This case is currently pending before the Seventh Circuit Court of Appeals.

IX. RELIEF FROM THE INDEMNITY FUND AFTER TAX DEED

If a tax deed has been issued and it is not possible to have the tax deed order set aside, it may still be possible to obtain relief for the property owner. *Application of County Treasurer (Apex Tax Investments v. Mary Lowe)*, 217 Ill.2d 1, 838 N.E.2d 907 (2005). The Indemnity Fund was created to ameliorate the harsh effect of the tax sale system by compensating owners who lose their property to tax deeds and who are deserving of relief. Indeed, the very purpose of the indemnity fund is to work equity. *Hawkeye Inv. Ltd. Partnership v. Lanz (In re County Treasurer)*, 378 Ill. App. 3d 842, 854; 881 N.E.2d 576, 586 (1st Dist. 2007). The Indemnity Fund has been an invaluable part of the tax

sale system. Legislation has corrected some problems with the Indemnity Fund, and should bring in additional funds so that its purpose can be better served. A petition of indemnity must be filed within 10 years after the date the tax deed was issued. §21-305(d).

The Illinois Supreme Court recently noted the importance of the Indemnity Fund for owners who have lost title to property via the tax sale process. *DG Enterprises, LLC-Will Tax LLC. V. Cornelius*, 2015 IL 118975, ¶¶52-54 (Docket 118975, opinion filed December 3, 2015). The Court also noted that equitable considerations are taken into account and that circuit courts are given “broad discretion” in Indemnity Fund cases. *Id.*

A. Owner-Occupied Residential Property

If the property consists of four or fewer dwelling units and the owner resided on the property on the last day of the redemption period, the owner must show only that he or she is “equitably entitled to compensation.” “The Court shall liberally construe this equitable entitlement standard to provide compensation wherever, in the discretion of the Court, the equities warrant the action.” §21-305(a)(1). Awards under this Section cannot exceed \$99,000.

This provision gives the trial court very broad discretion to award compensation, without regard to the owner’s fault or negligence. *Kirk v. Rosewell*, 225 Ill.App.3d 326, 587 N.E.2d 1214 (1st Dist. 1992). *But see In re Application of Cook County Collector (Walker v. Rosewell)*, 174 Ill. App. 3d 981, 529 N.E.2d 570 (1st Dist. 1988) (denial of indemnity claim by trial court affirmed). The Supreme Court in *Malmloff v. Kerr*, 227 Ill. 2d 118, 879 N.E.2d 870 (2007), held that when a person seeks indemnity under §21-305(a)(1), the trial court’s focus rests on equity alone. A broad range of circumstances can be considered including the mental, physical, and financial status of the person seeking indemnity, the person’s comprehension of property taxes and the duty to pay them, and the person’s diligence and credibility. Though not determinative, fault or negligence certainly may also be considered. Each case must be decided on its own facts.

B. Owner-Occupied Awards Over \$99,000 & Non-Owner Occupied Property

The owner of any other property must show that he or she sustained loss or damage by reason of the issuance of a tax deed “without fault or negligence of his or her own.” §21-305. This is a higher standard and requires a greater degree of blamelessness. However, “the phrase ‘without fault or negligence,’ as it is used in §21-305, is not given its broadest legal interpretation. To do so would make the section meaningless, as any owner who has lost his or her property by the issuance of a tax deed is to some extent at fault.” *Levin v. Skidmore (In re County Order of Judgment)*, 343 Ill. App. 3d 363, 797 N.E.2d 1122 (2d Dist. 2003). Thus, while the trial court must apply a “without fault or negligence” standard in determining whether a property owner who comes within §21-305(a)(2) has the right to indemnity, the court must also “liberally construe this Section” per Section 21-305(b)(1) to provide compensation whenever, in its discretion, the equities warrant such action. *Lakefront Plumbing and Heating v. Pappas*, 356 Ill.App.3d 343, 350-51, 826 N.E.2d 464, 469 (1st Dist. 2005).

A recent trial court opinion highlights a potential problem for indemnity petitioners. In *Emedi v. Pappas, as Trustee of the Indemnity Fund*, 2010 COIN 59 (Cook County), the petitioners were a married couple (unlike the petitioner in *Van Dahm v. Novak*, 174 Ill.App.3d 880 (2d Dis 1988), who was the divorced ex-wife). The trial court held that because the petitioners were joint petitioners and the wife admitted she contributed to the loss, she should not be able to recover from the Indemnity Fund as a joint petitioner. The opinion leaves open the question of whether a sole married petitioner could recover if their spouse contributed to the loss, or whether the court could award a 50% recovery.

C. Indemnity Fund Provisions

1. The former owner “shall petition the court which ordered the tax deed to issue.” Therefore, a petition for indemnity is frequently brought as an alternative count to objections to issuance of a tax deed or a motion to vacate within 30 days of an order directing issuance of a tax deed.
2. A petition for indemnity may also be brought concurrently with a petition for relief under §2-1401 of the Code of Civil Procedure. §22-45.
3. The Act mandates liberal construction to provide compensation whenever, in the discretion of the Court, the equities require relief. §21-305(b)(1).
4. In determining fault or negligence, the court consider whether the owner exercised ordinary reasonable diligence under all of the relevant circumstances. §21-305(a)(2).
5. Petitioners must be barred or otherwise precluded from bringing an action to recover the property. However, a party is only required to file a Section 2-1401 petition when there are grounds to file a successful petition and when it can result in a return of the property to the indemnity petitioner. *Van Dahm v. Novak*, 174 Ill.App.3d 880, 529 N.E.2d 43 (2d Dist. 1988); *In re Application of County Treasurer (Baez v. Rosewell)*, 301 Ill.App.3d 883, 704 N.E.2d 1003 (1st Dist. 1999).
6. The indemnity award may include the amount of the outstanding mortgage on the property if the petitioner is personally liable. This is commonly referred to as a “Viso award” per *Viso v. Rosewell*, 119 Ill. App. 3d 212 (1st Dist. 1983).
7. The court may order joinder of the mortgagee or lienholder as an additional party to the indemnity action. §21-305(a)(4).
8. In determining the amount of the award, the fair cash value shall be reduced by the principal amount of all taxes paid by the tax purchaser prior to issuance of the tax deed. §21-305(a)(3).

9. The County Treasurer (who is *ex officio* trustee of the Indemnity Fund), is “subrogated to all parties in whose favor judgment may be rendered against him or her, and by third party complaint may bring in as a defendant any party (other than the tax purchaser) who is or may be responsible for causing the loss. §21-305(b)(2), *Garcia v. Rosewell*, 43 Ill.App.3d 512, 517, 357 N.E.2d 559, 563(1st Dist. 1976).
10. Any contract involving the proceeds of an indemnity judgment must be in writing, and is subject to discovery.
11. Judgments used to accrue interest at 9% per annum from date of judgment until the judgment was satisfied. *Demos v. Pappas*, 956 N.E.2d 533, 2011 Ill. App. LEXIS 873, 2011 IL App (1st) 100829) held that interest should accrue at 6%. It is currently taking about 1.5 to 2 years for indemnity fund judgments to be paid.
12. The fee paid into the Indemnity Fund at the time of each tax purchase is increased to \$80. Prior to December 31, 2006, the fee also included 5% of the taxes paid at the sale. A similar fee is required for subsequent years’ taxes paid by the tax purchaser and posted to the judgment record. With the loss of the additional 5%, it is taking much longer for Indemnity Fund judgments to be paid. Proposed legislation may reinstitute a percentage surcharge.
13. Certain conduct, including inducing a taxpayer to seek relief from the indemnity fund rather than seeking to recover the property or entering into an agreement to acquire an indemnity fund judgment before the end of the redemption period, is made a criminal offense.

X. TIMING IS EVERYTHING WITH DELINQUENT TAXES

Below is a quick summary of the options for a property owner, mortgage company or other interested party in dealing with delinquent real estate taxes. If you have any questions, please do not hesitate to contact us.

A. Pay the Delinquent taxes

Pay the delinquent taxes upon receipt of the delinquency notice.

B. Redeem the Delinquent Taxes

Redeem the delinquent taxes as soon as possible after the tax sale. In reality, many taxpayers may not discover the delinquency until the tax buyer has filed a petition for tax deed and sent take notices to interested parties.

C. Redeem The Delinquent Taxes Under Protest

If a tax deed petition has been filed, an interested party may redeem delinquent taxes under protest. The redeeming party must be aware that if the defense is not sustained, the court “shall order the party redeeming to pay the petitioner reasonable expenses, actually incurred, including the cost of withheld redemption money, together with a reasonable attorneys fee.”

D. If Grounds Exist, Seek A Sale In Error

If a taxpayer is aware of certain grounds for a sale in error, the taxpayer can request that the Treasurer seek a sale in error on behalf of the county.

E. Object To The Petition For Tax Deed

Prior to entry of the order directing issuance of the tax deed, an interested party may file objections in the tax deed proceeding. Unless there is a specific strategy for doing otherwise, file objections before the prove-up hearing or as soon as possible after the prove-up.

F. Move To Vacate The Order For Tax Deed Within 30 Days

Any issue that could have been raised at the prove-up hearing may be presented in a Section 2-1203 motion filed within 30 days after entry of the order.

G. Petition To Vacate The Order For Tax Deed After 30 Days

A far stricter standard applies to a petition for relief from a tax deed order under Section 2-1401 of the Code of Civil Procedure filed more than 30 days after entry of the tax deed order. Moreover, filing a petition to vacate does not stay enforcement of the order for tax deed, i.e., the tax buyer may obtain possession of the property while the litigation is pending. The petitioner will have to negotiate with the tax buyer regarding possession of the property, frequently through the payment of monthly “use and occupancy.” The petitioner’s counsel must have a thorough understanding of the Property Tax Code and must act quickly to determine potential grounds to vacate the order directing issuance of the tax deed to avoid arguments about lack of diligence and the effects of bona fide interests. Petitioner’s counsel must also be cognizant of standing issues for the petitioner.

H. Petition To Vacate The Order For Deed After Two Years

Some grounds can be raised at almost any time such as the taxes being paid in full prior to the sale; the property was exempt; the property was owned by the State, a municipality, or there was in interest of the United States; the owner filed bankruptcy prior to the tax sale; other lack of jurisdiction of the court. Due Process and application of Federal and Illinois constitutional guaranties may permit attack on tax deed at any time.

I. The Indemnity Fund Is A Remedy Of Last Resort

Although the Indemnity Fund is an invaluable remedy for many parties who have lost title to their property through the tax sale process, it should be viewed as a last resort. The indemnity petitioner may have to negotiate an agreement with a mortgagee in order to make the Indemnity Fund a viable economic option. They may also be able to enter into an agreement with the tax buyer (commonly known as a repurchase or “flip” agreement) to continue to occupy the property and possibly reacquire the property using the proceeds of an indemnity fund judgment.