HIGH INTEREST IN TAX WARRANTS ON REAL ESTATE

By Judith I. Johannsen

Fail to pay federal or state income tax and a lien can be placed against your property. Fail to pay your municipal property tax (real and/or personal property) and you can *lose* your property.

Under CT's General Statutes, municipalities, as part of their budget process, estimate their town's expenses for the upcoming year and decide upon a mill rate. Then the tax collectors levy taxes upon their citizens to collect the money to pay those expenses. Most Connecticut towns finalize their budgets in May and send out tax bills shortly thereafter and most towns and cities receive the payments in two installments, six months apart.

When a property owner fails to pay his/her local property taxes, the tax collector can (and most likely will) make a written demand to that owner for payment of the tax. If the owner fails to pay the tax, the tax collector has the authority to levy a tax warrant on the property, which is the official process of obtaining the money to satisfy the amount of taxes, interest, fees and any other legally permitted charges through seizure and subsequent sale of the property to the highest bidder at public auction.

Before the tax collector can sell the property, however, notice must be sent to the delinquent taxpayer, any lender(s), lienholders or other record encumbrancers. If the tax collector knows the names of those whose interest in the property will be affected but cannot determine their addresses, notice of sale or public auction should be published in the newspaper serving that town. Similarly, those whose interest in the property is unknown to the tax collector because their interest has not been recorded on the land records can get notice of such a sale or public auction through the newspaper serving that town or through a posting in the Town Hall of the town in which the property lies.

One difference between buying a property at a tax sale and a sale resulting from negotiations with a seller for a property exposed to competitive market forces is that the successful bidder at a tax sale does not receive a deed at a traditional closing; rather, within two weeks after the tax sale, the tax collector executes a deed to the successful bidder and the deed is then held, unrecorded, in the office of the Town Clerk for six months.

Another difference is in the timing of the recording of the deed evidencing transfer of title. When a buyer takes title to a property at a traditional closing, the deed, typically, is promptly recorded on the land records in the town where the property is located to provide record notice to the world that title to that real property has been transferred. In a tax warrant sale, the deed to the successful bidder is not recorded on the Land Records until six months after the sale date.

There can be a snag on the way to a tax sale buyer taking title to a property. That snag is called *redemption* and for a tax sale buyer it signals loss of the property, but it's also handsomely profitable.

Redemption is the restoration of an owner's rights in its property, but it must be done within a period of time fixed by statute. Here's how it works: Within sixty days of the sale date, the tax collector must publish in a newspaper that is circulated in the property's town and also send a notice, by certified mail, to the delinquent taxpayer, lender(s) and others whose interest may be affected, stating the date of the sale, the name and address of purchaser, the amount paid and the date the *redemption period* expires.

Redemption occurs when the delinquent taxpayer, a lender, or other record encumbrancer pays to the tax collector the taxes, the interest, and all charges due and owing at time of sale, *together with interest on the total purchase price paid by the purchaser* ***at the rate of 18%***, before the redemption period ends.

If the owner redeems its property, the tax collector notifies the tax sale buyer that the owner has redeemed the property and then pays the amount of the tax, the interest and all charges due and owing at the time of the sale back to the buyer, and the unrecorded deed is then delivered to the tax collector by the Town Clerk for cancellation.

If the owner of the property does not redeem or pay the purchase price, interest and charges owing, the property is not redeemed, the mortgages, liens and titles to the property are extinguished, and the deed to the buyer is recorded on the Land Records.

The statutory provisions governing tax warrants are probably not common knowledge, but they did play a role in an April 2004 Connecticut Supreme Court decision in a lawsuit to recover goods. In this case, a mill property owner was delinquent in its taxes to the town so the town's tax collector issued a tax warrant authorizing seizure and sale of a mill property. The owner of the property and the tax collector disagreed as to whether or not the equipment and machinery located in and attached to the property were goods and chattels (personal items belonging to the owner) and, therefore, not to be seized and sold with the buildings, or so attached to the mill property as to be fixtures and to be sold as a part of the buildings.

Important to the Court's decision that the pieces of equipment and machinery were fixtures and a part of the mill property and not goods, was that, in addition to knowing that they were installed in the mill originally and that there was no separate bill of sale for the equipment and machinery when the current owner bought the property, the deputy sheriff who served the tax warrant not only didn't remove any property from the premises, he posted public notice of seizure on the various buildings housing the pieces of property and secured the premises to prevent removal of any property. The Court noted that the tax warrant preserved the status quo of the property.

The tax warrant process is a swift, no-nonsense way for municipalities to convert delinquent taxes into cash, to allow a delinquent taxpayer the opportunity to restore his/her ownership rights in the property within the redemption period, or provide a return on a buyer's investment considerably north of practically any other short term legal investment.

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