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Municipal Tax Collectors

Municipal Chief Financial Officers

2009 Tax Lien Law Revision P.L. 2009, c. 320

Newly enacted P.L.2009, c.320 (A-1619) revised various statutes concerning sale of tax and other municipal liens. The law took effect on January 18, 2010 and a copy of the legislation as enacted is attached to this Notice. Tax collectors, attorneys involved in lien collection and enforcement, and lien holders should review its provisions carefully.

The following summary is based on the statements that are part of the legislative history (the item numbers refer to section numbers of the bill). As an overview, this Notice **does not** substitute for tax collectors carefully reviewing the individual changes.

1. N.J.S.A. 54:5-19 clarifies that a municipality may hold either a standard tax sale (the sale of liens after the close of the fiscal year) or an accelerated tax sale (the sale of liens during the fiscal year). The previous language of the statute, authorizing the sale of tax liens had been criticized as confusing for many new tax collectors, and amendment to the previous statute provides for either a standard or an accelerated tax sale.
2. N.J.S.A. 54:4-21 clarifies the timeframe for which the tax sale list should be prepared for a standard tax sale and accelerated tax sale.
3. N.J.S.A. 54:5-24 now allows the list of properties subject to tax sale to be maintained as a permanent record, in either book form or as a bound hard copy of a computer-generated list. This reflects the current practice of maintaining municipal records on computer.
4. N.J.S.A. 54:5-26 was amended to replace the current phrase "set of notices" with the word "notice." This change clarifies that the cost of mailing a notice of tax sale, by either regular or certified mail, to each interested party may not exceed \$25 for each notice, or mailing, for a particular property. The cost of mailing shall be added to the cost of the tax sale in addition to those provided in N.J.S.A.54:5-38.
5. N.J.S.A. 54:5-29 was amended to allow the collector to collect the actual cost set forth in N.J.S.A. 54:5-38 on pre-tax sale payments.

6. N.J.S.A 54:5-32 was amended to allow a tax collector to sell a tax lien at no interest, without having to collect a premium. The previous law authorized an interest rate of less than 1%, but did not specifically authorize the payment of no interest on a tax lien. This language effectively clarifies that an interest rate of less than 1% includes "no interest" on the lien.
7. N.J.S.A 54:5-33 is amended to allow an extension of the five year timeframe before a premium is turned over to the municipality. In the event that a petition of bankruptcy has been filed by the property owner, the five year limitation shall be extended for each day that foreclosure is precluded by the bankruptcy of the property owner.
8. N.J.S.A 54:5-38 was amended to reflect the timeframe for which the actual costs of sale are to be collected.
9. N.J.S.A. 54:5-51 was amended to require the holder of the tax sale certificate to record the tax sale certificate and to provide the tax collector with a copy of the recorded certificate showing the date of recording, the book and page in which the lien is recorded, and the cost of recording the tax sale certificate. It also requires the collector to maintain the information as a permanent record. This information is necessary for collectors in order to execute certificates of redemption.
10. and 11. Amendments to N.J.S.A. 54:5-54 and 54:5-97.01 concerns the calculation by the tax collector of the amount needed to redeem the tax sale certificate, referred to as the "redemption amount." N.J.S.A. 54:5-54 requires that the tax collector provide any party entitled to redeem a tax sale certificate, two redemption calculations within a calendar year at no cost. The governing body of a municipality, may by ordinance, require a fee, not to exceed \$50 for each subsequent calculation requested of the tax collector. The language also requires that a request for a redemption calculation shall be made in writing to the tax collector. N.J.S.A 54:5-97.1 was amended to allow a municipality to charge a \$50 fee for a redemption calculation that has been requested by a lien holder on a certificate that they own; the fee may not be passed onto the certificate. The lien holder must specify the date to be used for calculation.
12. A new chapter of law, likely to be compiled as N.J.S.A. 54:5-20.1, Section 12 makes discretionary to the tax collector the sale of a tax lien that, together with the interest, penalties, charges, and costs of advertising, would amount to less than \$100.
13. A new chapter of law, likely to be compiled as N.J.S.A. 54:5-57.1, Section 13 requires that if the owner of a tax lien fails to surrender a tax sale certificate within five years of being notified of redemption, the unclaimed redemption monies will escheat to the municipality. The change applies to any redemption monies being held by a tax collector on or after the effective date of the law.
14. A new chapter of law, likely to be compiled as N.J.S.A. 54:5-54.1, Section 14 requires that all redemptions of tax liens must be made through the tax collector's office, unless authorized by court order or pursuant to federal bankruptcy law. It also requires that any lienholder who knowingly causes a redemption to be made outside a tax collector's office in violation of this section will forfeit the tax sale certificate to the redeeming party.

Tax collectors with specific questions about the law can contact Patricia Turin by e-mail at pturin@dca.state.nj.us or by phone at (609) 292-6858 or Margaret Saharic by e-mail at Margaret.Saharic@dca.state.nj.us or by phone at (609) 984-4185.

P.L. 2009, Chapter 320 (Assembly, No. 1619)

STATE OF NEW JERSEY

Effective January 18, 2010

AN ACT concerning the sale of real property to enforce liens, amending various parts of statutory law and supplementing chapter 5 of Title 54 of the Revised Statutes.

Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law. New text is underscored

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.54:5-19 is amended to read as follows:

54:5-19. [When unpaid taxes or any municipal lien, or part thereof, on real property, remains in arrears on the 11th day of the eleventh month in the fiscal year when the same became in arrears, the collector or other officer charged by law in the municipality with that duty, shall, subject to the provisions of the next paragraph, enforce the lien by selling the property in the manner set forth in this article, provided that the sale is conducted no earlier than in the last month of the fiscal year.]

The term "collector" as hereinafter used includes any such officer, and the term "officer" includes the collector.

A municipality shall have the authority to conduct both standard and accelerated tax sales.

When unpaid taxes or any municipal lien, or part thereof, on real property remain in arrears at the close of the fiscal year, the collector or other officer charged by law in the municipality with that duty, shall enforce the lien by selling the property in the manner set forth in this article by holding a standard tax sale in the following fiscal year.

When unpaid taxes or any municipal lien, or part thereof, on real property remains in arrears on the 11th day of the eleventh month in the fiscal year when the taxes or lien became in arrears, the collector or other officer charged by law in the municipality with that duty, shall enforce the lien by selling the property in the manner set forth in this article by conducting an accelerated tax sale by selling the property in the manner set forth in this article, provided that the sale is conducted and completed no earlier than in the last month of the fiscal year.

[The] In either a standard or an accelerated tax sale, the municipality may by resolution direct that when unpaid taxes or other municipal liens or charges, or part thereof, are in arrears as of the 11th day of the eleventh month of the fiscal year, such sale shall include only such unpaid taxes or other municipal liens or charges as were in arrears in the fiscal year designated in such resolution, and may by resolution, either general or special, direct that there shall be omitted from such sale any or all such unpaid taxes, and other municipal liens, or parts thereof, on real property, upon which regular, equal monthly installment payments are being made, in pursuance to such agreement as may be authorized by said resolution between the collector and the owner or person interested in the property upon which such delinquent taxes may be due; provided, that said agreement shall require payment of such installment payments in amounts large enough to pay in full all delinquent taxes, assessments and other municipal liens held by the municipality, in not more than five years from the date of such agreement;

provided, that the extension of time for payment of such arrearages herein authorized shall not apply to any parcel of property which prior thereto has been included in any plan theretofore adopted by any municipality of this State under and pursuant to the provisions of any public statute of this State whereunder prior extensions for the payment of delinquent taxes were authorized; provided further, that the right of any person interested in such property to pay such arrears in such installments shall be conditioned on the prompt payment of the installments of taxes for the current year in which such agreement is made, and all subsequent taxes, assessments and other municipal liens imposed or becoming a lien thereafter, including all installments thereafter payable on assessments theretofore levied, and also the prompt payment of all installments of arrears as hereinbefore authorized; and provided further, that in case any such installment of arrears or any new taxes, assessments or other liens are not promptly paid, that is to say, within thirty days after the date when the same is due and payable, then such agreement shall be void, and in any such case the collector, or other officer charged by law with that duty, shall proceed to enforce such lien by selling in the manner in this article provided.

2. R.S.54:5-21 is amended to read as follows:

54:5-21. The collector shall make a list of the lands so subject to sale, describing them in accordance with the last tax duplicate, including the name of the owner as shown on the duplicate, amplifying the description in the duplicate if necessary to better identify the parcel. He shall enter on the list all taxes, assessments and other municipal charges which were a lien at the close of the fiscal year. He shall add to the list all unpaid installments of assessments for benefits theretofore levied and existing as immediate or direct benefits, whether then payable or not, so that the list shall be a complete statement of all municipal charges against the property existing at the close of the fiscal year, together with all interest and costs on all of the items of the list computed to date of sale. If directed so to do by resolution, the collector shall omit from such list such lands as may be subject to sale for unpaid taxes or for any municipal lien, or part thereof, upon which regular installment payments are being made under any agreement or agreements approved by the municipality.

In the case of a standard tax sale, the list shall be prepared at least 50 calendar days prior to the date of sale. The collector may prepare the list after the 11th day of the eleventh month of the fiscal year, and prior to the close of the fiscal year, in order to start advertising the standard tax sale prior to the close of the current fiscal year.

In the case of an accelerated tax sale, the list shall be prepared as of the 11th day of the 11th month of the current fiscal year, and shall include only those taxes, assessments and other municipal charges that were delinquent as of that date.

3. R.S.54:5-24 is amended to read as follows:

54:5-24. The list shall be [bound in book form] maintained as a permanent record of that office. The list shall be either a bound book or a bound hard copy of a computer-generated list. The list may be made up in one or more sections and the term "list" as used in this chapter shall apply to any such section.

4. R.S.54:5-26 is amended to read as follows:

54:5-26. Copies of the notice of a tax sale shall be set up in five of the most public places in the municipality, and a copy of the notice shall be published in a newspaper circulating in the municipality, once in each of the four calendar weeks preceding the calendar week containing the day appointed for the sale. In lieu of any two publications, notice to the property owner and to any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L.1948, c.96 (C.54:5-104.48) may be given by regular or certified mail, the costs of which shall be added to the cost of the sale in addition to those provided in R.S.54:5-38, not to exceed \$25 for each [set of notices] notice for a particular property.

For the purposes of notice in connection with a special tax sale for eligible properties which are on an abandoned property list established by the municipality pursuant to section 36 of P.L.1996, c.62 (C.55:19-55), a single advertisement published in a newspaper circulating in the municipality no less than four and no more than six weeks prior to the sale, along with notice to the property owner and any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L.1948, c.96 (C.54:5-104.48), shall constitute sufficient notice of sale on the part of the municipality.

Failure of the property owner to receive a notice of a tax sale properly mailed by the tax collector shall not constitute grounds to void the subsequent tax sale. If ordinances of the municipality are required to be published in any special newspaper or newspapers, the notice shall be published therein.

5. R.S.54:5-29 is amended to read as follows:

54:5-29. At any time before sale the collector shall receive payment of the amount due on any property, together with the interest and costs set forth in R.S.54:5-38, incurred up to the time of payment. When a taxpayer whose property is included in a tax sale shall, prior to the sale, pay the full amount advertised in the sale, plus any interest on any other delinquencies, the tax collector shall then post the receipts, first to the interest, followed by the oldest delinquencies, costs and penalties which action shall then be cause for said property to be removed from the sale.

6. R.S.54:5-32 is amended to read as follows:

54:5-32. The sale shall be made in fee to such person as will purchase the property, subject to redemption at the lowest rate of interest, but in no case in excess of 18% per annum. If at the sale a person shall offer to purchase subject to redemption at a rate of interest less than 1%, or at no interest, he may, in lieu of any rate of interest to redeem, offer a premium over and above the amount of taxes, assessments or other charges, as in this chapter specified, due the municipality, and the property shall be struck off and sold to the bidder who offers to pay the amount of such taxes, assessments or charges, plus the highest amount of premium.

7. R.S.54:5-33 is amended to read as follows:

54:5-33. Payment for the sale shall be made before the conclusion of the sale, or the property shall be resold. Any premium payment shall be held by the collector and returned to the purchaser of the fee if and when redemption is made. If redemption is not made within five years from date of sale the premium payment shall be turned over to the treasurer of the municipality and become a part of the funds of the municipality. In the event that a petition of bankruptcy has been filed by the property owner, the five year limitation shall be extended for each day that the foreclosure action is precluded by that bankruptcy filing.

8. R.S.54:5-38 is amended to read as follows:

54:5-38. The officer conducting a tax sale shall collect and pay into the treasury of the municipality a fee for all costs incurred by the municipality in holding the sale. The amount of the fee so paid shall be 2% of the existing lien as stated in R.S.54:5-19 and R.S.54:5-2, but not less than \$15.00 and not more than \$100.00 for each parcel [sold] listed. [The] In the case of a standard tax sale, the fee shall be payable and collected beginning the 50th calendar day prior to the date of the sale, and in the case of an accelerated tax sale, the fee shall be payable and collected beginning on the 11th day of the eleventh month of the current fiscal year. If unpaid prior to the tax sale, the fee shall form part of the tax lien and be paid by the purchaser at the tax sale. [If a tax lien on a specific parcel is not sold at a sale, the fee for the sale shall be added to the amount due to the municipality and shall form part of the lien and be paid by a purchaser at a subsequent tax sale.]

9. R.S.54:5-51 is amended to read as follows:

54:5-51. When the certificate of sale is not made to the municipality, it shall, unless so recorded within three months of the date of sale, be void as against a bona fide purchaser, lessee or mortgagee whose deed, lease or mortgage is recorded before the recording of the certificate. After recording the tax sale certificate, the lien holder shall deliver a copy of the recorded certificate showing the book, page, date, and cost of recording to the tax collector. The tax collector shall maintain the information as a permanent record.

10. R.S.54:5-54 is amended to read as follows:

54:5-54. Except as hereinafter provided, the owner, his heirs, holder of any prior outstanding tax lien certificate, mortgagee, or occupant of land sold for municipal taxes, assessment for benefits pursuant to R.S.54:5-7 or other municipal charges, may redeem it at any time until the right to redeem has been cut off in the manner in this chapter set forth, by paying to the collector, or to the collector of delinquent taxes on lands of the municipality where the land is situate, for the use of the purchaser, his heirs or assigns, the amount required for redemption as hereinafter set forth.

The tax collector shall provide to any party entitled to redeem a certificate pursuant to this section two calculations of the amount required for redemption within a calendar year at no cost. The governing body of a municipality may, by ordinance, require a fee not to exceed \$50 for each subsequent calculation requested of the tax collector. A request for a redemption calculation shall be made in writing to the tax collector.

11. Section 7 of P.L.1965, c.187 (C.54:5-97.1) is amended to read as follows:

7. No search fee, counsel fee or other fee related to certified mailings shall be allowed a plaintiff other than a municipality in the foreclosure of a tax lien unless, prior to the filing of the complaint, the plaintiff shall have given 30 days' written notice to the parties entitled to redeem whose interests appear of record at the time of the tax sale, by certified mail with postage prepaid thereon, addressed to the last known address of such persons, of intention to file such complaint. The notice shall also contain the amount due on such tax lien as of the date of the notice. A copy of such notice shall also be filed with the municipal tax collector's office. Upon the filing and service of such notice, a plaintiff shall be entitled to such fees and expenses.

A municipality, by ordinance, may authorize the tax collector to charge to a lienholder a fee not to exceed \$50 for the calculation of the amount due to redeem the tax lien required to be provided pursuant to this section. Any request for a redemption calculation shall specify the date to be used for the calculation, which shall be the date of the notice. Neither the tax collector or the municipality shall

be liable for an incorrect calculation. The fee paid to the municipality shall not become part of the lien and shall not be passed on to any party entitled to redeem pursuant to R.S.54:5.54.

12. (New section) When a tax on real property, or other municipal fee or charge levied against real property, together with the interest, penalties, charges and costs of advertising, would amount to less than \$100, it shall be discretionary with the tax collector as to whether or not the property shall be advertised and sold for the enforcement of the lien. The tax, fee or charge shall remain a lien on the property and may be included in any tax sale or other municipal lien sale affecting the property, notwithstanding any other law to the contrary. When any such tax, lien or charge shall be due for a period of five years following the year in which it became in arrears, the collector shall sell the property.

13. (New section) In the event that the owner of a tax lien shall fail to surrender a tax sale certificate within five years of being notified of redemption pursuant to R.S.54:5-57, the unclaimed redemption monies shall escheat to the municipality. The provisions of this section shall apply to any redemption monies being held by a tax collector on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

14. (New section) All redemptions shall be made through the tax collector's office, unless authorized by court order or pursuant to federal bankruptcy law. Any lienholder who knowingly causes a redemption to be made outside a tax collector's office in violation of this section shall forfeit the tax sale certificate to the redeeming party.

15. This act shall take effect immediately.