

Florida Tax Deed Sales

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Introduction

Tax deed sales are one of the lesser known and widely misunderstood avenues for purchasing real property. In the most basic terms, a tax deed is a property sold by the county when a homeowner fails to pay their property taxes. Clear To Sell, LLP exists to provide thorough resources and Florida specific solutions.

Why is it important for the county to sell tax certificates and tax deeds?

Property taxes fund, in some part, many of the services residents enjoy within their community. On a macro level, if the county cannot pay for these services, the entire community suffers. A few examples are:

1. Police/Fire Rescue Services
2. Utility services such as water, sewer and trash collection
3. Libraries
4. Parks
5. Schools
6. Road work & repairs of public property

On a micro level, many properties brought to tax deed auction have fallen into substantial disrepair or have been abandoned, creating years of an eyesore and sometimes even a hazard for the immediate neighbors. The tax deed purchaser is welcomed by the neighbors as they are motivated to rehabilitate the property whether for themselves or for the purpose of selling it, creating another benefit to the value of the community as a whole.

These challenges should not deter you from investing in Florida tax deeds. To the contrary, they create an opportunity for an informed investor. That said, there are state by state and sometimes county by county specifics that a tax deed investor must understand and consider before bidding at auction. Caveat emptor, or 'let the buyer beware,' is an important rule to live



by in all real property transactions. The best tactic to protect yourself is to exercise due diligence and take every opportunity to expand your knowledge of the process. Florida Tax Deed sales carry well-defined and limited liabilities based on state statutes. However, these same statutes prevent the investor from obtaining title insurance on the property for a long period after the date of sale, requiring title curative work in that time. Below we will detail the Florida tax deed process as it may interest an investor, discuss some good due diligence practices, distinguish which encumbrances survive the tax deed sale in Florida, as well as walk through solutions for the title cloud that remains after a property is purchased from the county tax deed auction. This will provide you with the best possible knowledge and framework when you decide Florida tax deeds are your next investment opportunity.

Disclaimer:

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. This publication does not constitute legal advice. Should you need assistance, retaining experienced legal counsel is recommended.



What happens before the tax deed sale?

Collection of delinquent taxes

In Florida, all taxes are due and payable on November 1st of each year or as soon thereafter as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1st the following year, or immediately after 60 days have expired from the mailing of the original tax notice, whichever is later. §197.333.¹

The tax collector holds an online sale of tax certificates on the real property on which taxes have not been paid and are deemed delinquent. The tax certificates can be purchased by either an individual or a corporation. The taxes, interest, costs, and charges against the parcel described in the certificate serve as the basis of the sale. §197.432(1).^{2 3} The Certificate is awarded to the person who demands the lowest interest rate, not in excess of the maximum rate allowed. §197.432(6). The holder of a tax certificate may not directly, through an agent, or otherwise initiate contact with the owner of property upon which he or she holds a tax certificate to encourage or demand payment until 2 years after April 1 of the year of issuance of the tax certificate. §197.432(13).

These tax certificate auctions are dominated by large institutional investors who are seeking to arbitrage their low cost of obtaining capital and making the spread between their cost of funds and the 5% minimum return for tax deed certificate holders. Individual property

¹ Unless otherwise noted, all statutory references herein refer to the 2019 Florida Statutes.

² The subject of this publication is only Florida tax deed sales. The reference to Florida tax certificate sales is solely for context. For more information regarding Florida tax certificate sales, please seek the advice of Florida counsel and/or reference Florida Statute Chapter 197.

³ *Villages of Avignon Cmty. Dev. Dist. v. Burton*, 215 So. 3d 127 (Fla. 2d DCA 2017). Holding: “Because the issuance of a tax certificate is a prerequisite to the issuance of a tax deed, see § 197.502, a lien surviving the issuance of a tax deed must necessarily have survived the issuance of a tax certificate.”



investors are unlikely to compete in these auctions and there is no clear path from buying a tax certificate to acquiring the real property. The only benefit a tax certificate holder has in acquiring the real property is a credit bid for the amount of their tax certificate investment as of the date of a tax deed sale.

The tax certificate can be redeemed by an owner or a third party (judgment creditor, secured lender or even a relative) at any time after the certificate is issued and before a tax deed is issued, prior to payment in full for the tax deed being made to the clerk, including documentary stamps and recording fees. §197.472. A sale of real property for non-payment of taxes will be held invalid if redemption occurred before delivery of the tax deed. §197.122. It is well established law that recording of a tax deed in the public records of the County in which the property was located is evidence of its delivery.⁴

Application for tax deed

The holder of a tax certificate may file an application for a tax deed to the tax collector in the county the property is located in, any time after 2 years have elapsed since April 1 of the year of issuance and prior to the expiration of the tax certificate, which is seven years from the date of issuance of the tax certificate. §197.502(1); §197.482. At the time of the application, the certificate holder is required to pay the tax collector the amount required for redemption or purchase of all subsequently issued outstanding tax certificates against the same parcel, any omitted or delinquent taxes, all plus interest, the current taxes, if due, and the costs of bringing the property to sale, as provided in §197.532; §197.542; and §197.502(2).

⁴ See *Wise v. Wise*, 134 Fla. 553, 184 So. 91, 96 (1938); *Kerr v. Fernandez*, 792 So.2d 685, 687 (Fla. 3d DCA 2001); *Ashear v. Sklarey*, 247 So.3d 574 (Fla. 3d DCA 2018).



The tax collector then provides a statement to the county clerk confirming the application costs have been paid and the following parties are to be notified of the sale, in general:

- a) *Any legal titleholder of record⁵*
- b) *Any lienholder of record who has recorded a lien against the property described in the tax certificate*
- c) *Any mortgagee of record*
- d) *Any vendee of a recorded contract for deed*
- e) *Any other lienholder who has applied to the tax collector to receive notice if an address is supplied to the collector*
- f) *Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed.*
- g) *Any lienholder of record who has recorded a lien against a mobile home located on the property described in the tax certificate*
- h) *Any legal titleholder of record of property that is contiguous to the property described in the tax certificate*

§197.502(4). For the purpose of identifying the parties that require notice of the sale, the tax collector contracts with a title company or abstract company for a property information report, as defined in §627.7843(1), inclusive of a direct and inverse search of the Official Records.

§197.502(5)(a).

Upon receiving the tax deed application from the tax collector, the county clerk records a **notice of tax deed application** in the Official Records of the county where the property sits. This constitutes record notice of the tax deed application and remains effective for 1 year from the date of recording. The sale automatically releases the notice, and if the property is redeemed prior to the sale, the clerk will record a release upon payment in full. §197.502(7).

⁵ For additional information related to notice to the prior owner and due process requirements, see: *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Vosilla v. Rosado*, 944 So.2d 289, 294 (Fla. 2006); *Jones v. Flowers*, 547 U.S. 220, 225 (2006); *Delta Prop. Mgmt. v. Profile Invs., Inc.*, 87 So.3d 765 (Fla. 2012).



After the application and recording of the notice of the tax deed application, the clerk will publish a notice once each week for 4 consecutive weeks in a newspaper. §197.512(1). Unless the property is redeemed prior to the sale, the proof of the publication is filed with the clerk of court, and the certificate of notice and the certificate of advertising is recorded in the public record. §197.512(3).

The clerk is required to send notice of the sale to those listed on the tax collector's statement, pursuant to §197.502(4), and under certain conditions the sheriff is required to attempt service or post the notice. §197.522(2)(a).

In the state of Florida, each county holds individual auctions. Some hold them monthly, but the properties come up for auction on a rolling basis throughout the year.

Investor due diligence research prior to the sale

Thorough pre-sale research into a property before bidding is essential to the prudent tax deed investor. Even though due diligence may not uncover everything, going into a sale unprepared is highly risky. The following are some useful resources to consider before bidding on a Florida tax deed property. **Again, Caveat Emptor!**

1) County Resources

- a. The individual county property appraiser and tax collector websites may document property improvements and market volatility, such as low sales or foreclosures in the past. Some counties have a substantial amount of data on these sites, including mortgages, land use restrictions, or nuisance liens.
- b. The county clerk Official Records contain data about resolutions, special assessments or utility liens.



- c. The county department that handles the sale itself may have useful information regarding encumbrances that could potentially survive the sale. The majority of the counties provide their pre-search property information reports online as well.
- d. Always perform a map-based (GIS) search by parcel number to verify boundary lines. These parcel boundaries may be available on the property appraiser or tax collector websites as clickable overhead maps. (Purchasing half of a house at auction can be very burdensome after the fact. Purchasing a conservation easement parcel is similarly frustrating).

2) Local Ordinances

- a. Tax deed statutes preserve the validity of easements and restrictive covenants that control use of the land.
- b. Contact the city and/or county that the property is located in, and they will be able to direct you to the correct department for your question: planning & zoning, code enforcement, community improvement, etc.
- c. Knowing about any zoning or land use restrictions is particularly important for those investors looking to build.

3) Association Dues/ Assessments

- a. Even though homeowner's and condominium association liens for past due assessments are extinguished with the tax deed sale, the tax deed purchaser will be responsible for dues and assessments from the date of the sale forward, including possibly special assessments and initial capital contributions and mandatory club membership fees. This might be a consideration in the bid price.



- b. Sometimes the Declaration of Condominium and/or Declaration of Protective Covenants for a homeowner's association are recorded and can be very helpful in determining which restrictive covenants are actively in place.
- c. Remember that any country club or golf course communities will still require whatever buy-in or capital contribution the community is entitled to receive from a new purchaser. HOPA communities (55+) still carry their restrictions as well, so anyone to whom you attempt to rent or resell the property will have to meet their criterion.

4) Physical Inspection of the Property

- a. **DO NOT TRESPASS.** Prior to the tax deed sale this is still the private property of someone else.
- b. However, it can be beneficial for an investor to drive by the property site prior to bidding on it.
- c. For example: Is there an access point? Can the property boundaries be verified? Are the existing owners, tenants, or squatters using it? Are there adjoining owners who may have crossed over the boundary lines and are occupying a portion of the property? Is there a tree through the center of the house? Has the house been demolished by the county or by an Act of God?
- d. With commercial property, buyers should try to be aware of which improvements or fixtures will stay with the land, and which will be removed prior to sale.

5) Governmental liens




- a. By statute, county and municipal governmental liens survive the tax deed sale and become the responsibility of the tax deed purchaser to address prior to being able to deliver clear title to a purchaser.
 - b. Sometimes federal rights of redemption will delay a closing or require additional actions to be taken by the tax deed purchaser.
- 6) Consider having a title or lien search company run a report regarding encumbrances so you have a complete picture of the property prior to the auction.

The sale procedure itself

Attention to detail is very important when a new tax deed purchaser is registering to bid at auction with the various county clerks. It is imperative to ensure the purchaser's proper legal name is used and/or the entity name is spelled correctly and includes the designation of the type of entity and the appropriate state of incorporation. Mistakes at this vital administration stage create a title vesting issue that can be very costly to correct after the sale has been completed.

The **opening bid** serves to repay the county and the applicant for the amounts due to bring the sale from application to auction. The opening bid:

- a) *On county-held certificates on nonhomestead property shall be the sum of the value of all outstanding certificates against the property, plus omitted years' taxes, delinquent taxes, current taxes, if due, interest, and all costs and fees paid by the county.*
- b) *On an individual [held] certificate must include, in addition to the amount of money paid to the tax collector by the certificate holder at the time of application, the amount required to redeem the applicant's tax certificate and all other costs, fees paid by the applicant, and any additional fees or costs incurred by the clerk, plus all tax certificates that were sold subsequent to the filing of the tax deed application, current taxes, if due, and omitted taxes, if any.*
- c) *On property assessed on the latest tax roll as homestead property shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead.*



§197.502(6).

The property is sold to the highest bidder at public auction by the clerk of court. The certificate holder has the right to bid, just like other parties. §197.542(1-2). The high bidder is required to post a nonrefundable 5% of the bid or \$200 deposit, whichever is greater, at the time of the sale to be applied to the sale price at the time of full payment. Full payment of the final bid, documentary stamp tax, and recording fees, must be made to the clerk within 24 hours. Upon payment, a tax deed shall be issued and recorded by the clerk. §197.542(1).

If the sale is canceled for any reason or payment is not made in full, the clerk shall cancel all bids, readvertise the sale, and pay all costs of the sale from the forfeited deposit. §197.542(2). The sale is held within 30 days of the readvertisement, and the opening bid increases by the cost of readvertising, any additional clerk fees, and interest. §197.542(3).

If there are no bidders at the public auction and the certificate holder fails to timely pay the costs of resale, within 30 days after the sale, the clerk enters the property on a list of **“lands available for taxes”** and immediately notifies the county commission the property is available. During the first 90 days, the county may purchase the property, after that, any party may purchase the property directly from the clerk. Each subsequent year’s taxes shall be treated as omitted years and added to the minimum bid required for the purchase off the **“lands available for taxes.”** §197.502(7-8).

3 years after the property was offered for public auction, the property escheats to the county, free and clear. All tax certificates, prior/omitted taxes, and liens of any nature against the property are cancelled as a matter of law and are of no legal force and effect. The clerk executes



an **escheatment tax deed** vesting title in the board of county commissions of the county where the property is located. §197.502(8).

What survives a tax deed sale in Florida, and what does not?

One of the main reasons Florida tax deeds are so lucrative to investors is the number and type of interested parties that are extinguished by the sale itself.

Except as specifically provided in this chapter, no right, interest, restriction, or other covenant shall survive the issuance of a tax deed, except that a lien of record held by a municipal or county governmental unit, special district, or community development district, when such lien is not satisfied as of the disbursement of proceeds of sale under the provisions of s. 197.582, shall survive the issuance of a tax deed.

§197.552.

The tax deed is sold subject to certain **easements** on the property, such as those for conservation purposes; to support improvements that may be constructed above the land; those recorded for the purpose of drainage or ingress and egress. The most common are those easements for a public service purpose, such as telephone, pipeline, etc. §197.572.

Restrictions and covenants “run with the land,” so in general they survive and will be enforceable after the tax deed sale. These are the types of restrictions that govern the use of the property, or the type, character and location of a building, without imposing a debt or lien against the real property. §197.573. Land use restrictions and zoning/ development issues are something the investor should definitely review prior to the sale. Sometimes these can be resolved after the fact, but knowing the purchaser needs to be prepared to address them, might impact their maximum bid.

The survival of **county and municipal governmental liens** is inevitable based on statute, unless the property is purchased through an escheatment tax deed, but the amount of the lien



the purchaser has to pay back is not.⁶ Sometimes municipal and county liens can accrue up to \$100-\$250 per day. The prudent investor should **stop the bleeding first** and bring the property into compliance. Some counties will accept just what is paid from the surplus and release the lien, others will give a percentage reduction in the amount due, and still others will not negotiate at all. If the governmental body does not negotiate the liens directly, the tax deed purchaser can apply for a hearing in front of the governing board or special magistrate for a reduction of a fine. The tax deed purchaser is responsible for the payment of liens held by governmental units not satisfied in full by the excess proceeds of the sale. These liens are not extinguished by §95.191 after 4 years.

There was a recent change to the Florida tax deed statute, which allows the tax deed purchaser to directly pay off liens to governmental units that could otherwise have been requested from surplus funds, and, upon filing a timely claim the purchaser may receive the same amount from the surplus funds with the same priority as the governmental lienholder. §197.582(8).

The homeowner and condominium owner **associations** historically put up the biggest fight as to extinguishment of their liens.⁷ The Courts were required to reconcile the statutes addressing liability for payment of association liens in general with the extinguishment of the association liens based on the tax deed statutes.⁸ It is now fully settled law that association liens accrued prior to the issuance of the tax deed do not survive the sale. Unlike the association

⁶ See Fla. Stat. § 197.552, § 197.573, and § 197.502(8).

⁷ For additional information regarding tax deeds and their impact on Associations over the years, see Paul Krasker & Megan Schmidt, *Let's Be Clear - Not All Liens Survive a Tax Deed Sale*, ActionLine - A Publication of the Florida Bar Real Property, Probate & Trust Law Section (March 2016).

⁸ *Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n*, 124 So.3d 302, 307 (Fla. 2d DCA 2013).



statutes, the combined effect of the tax deed statutes is to preserve the validity of covenants that control the use of the property, but extinguish any covenant that creates a lien or requires a grantee to 'expend money for any purpose' for debts that precede the issuance of the tax deed. Both the lien and the grantee's liability for the preexisting debt are extinguished upon issuance of the tax deed.^{9 10} Very rarely, associations will attempt to charge the tax deed purchaser for fees accrued prior to the sale. The easiest solution is to contact the association directly and get on the phone with someone better versed in tax deeds. The law is well settled on the issue at this point in time, and Clear To Sell, LLP even has a template letter for clients to use.

Occasionally, the association is in the process of foreclosing on their claim of lien, at the same time the tax deed process is taking place and there will be an outstanding lis pendens recorded against the property. The associations tend to accept payment from the surplus and will amicably dismiss their lawsuit and dissolve the lis pendens. This should not prevent you from purchasing the property, but it will be something that needs to be addressed to alleviate the cloud on the title.

In general, **mortgages and judgment creditor** liens do not survive the tax deed sale, as long as the statutory guidelines were met. In order for a judgment, order, or decree, to become a lien on real property, a certified copy of it needs to be recorded in the Official Records; reflecting the name and address of the lienholder or a simultaneously recorded affidavit clarifying the same. §55.10. If a valid judgment lien is created against the tax deed property, it will be extinguished from the property with notice of the tax deed sale.

⁹ *Lunohah Investments, LLC v. Gaskell*, 158 So.3d 619, 621 (Fla. 5d DCA 2013). *A to Z Props., Inc. v. Fairway Palms II Condo. Assoc., Inc.*, 137 So.3d 453 (Fla. 4TH DCA 2014).

¹⁰ See for comparison Fla. Stat. § 720.3085(2)(b) and § 718.116(1)(a).



The exception is if there is a mortgage of record on the property held by the city or county. Some governmental agencies take the position these **mortgages are protected as municipal or county governmental liens** under §197.552, therefore they survive the tax deed sale. The county will have priority to the surplus, but it may not be enough to satisfy the amount owed in full. If this is the case, it will be the tax deed purchaser's responsibility to pay them or negotiate with them and have the mortgage released.

In some instances, when the **United States** holds a lien there are additional allowances designated by federal code or mandate. The two most common with tax deed sales in Florida are the Internal Revenue Service (IRS) Notice of Federal Tax Lien and Small Business Administration (SBA) mortgages. The lien is extinguished by proper notice of the sale, but the right of redemption is not.

Pursuant to 26 U.S.C. §7425(d), the IRS is entitled to a 120 day right of redemption from the date of the sale. In practicality, this means before selling the tax deed property, the purchaser should set their closing date 120 days from the date of the sale or obtain a waiver of the right of redemption directly from the IRS. This relatively short time frame will not deter most investors.

The SBA claims a 1 year right of redemption pursuant to 28 U.S.C. §2410(c). Sometimes, the SBA will make a claim on the surplus and release the right of redemption based on the amount paid, otherwise the purchaser can apply for a waiver or set their closing date over 1 year from the tax deed sale.

This is not intended to be a fully comprehensive list of potential encumbrances that come into play at Florida tax deed sales, but these are the most common.



After the sale

Tax deeds are issued in the name of the county, signed by the clerk in front of two witnesses, and acknowledged like other deeds. §197.552. The tax deed purchaser is entitled to **immediate possession** of the lands described on the tax deed, but it does not deliver marketable title. A tax deed does not represent a transfer of title but constitutes the commencement of a “new, original and paramount” title.¹¹ If possession is refused by a current occupant, the purchaser can apply to the court for a writ of assistance after 5 days’ notice to the person refusing to deliver possession. If the court finds for the applicant, an order is issued by the court directing the sheriff to put the purchaser in possession of the property. §197.562.

The interested parties have the option to **challenge the validity of the tax deed** itself, but a successful challenge is extremely rare. The only instances we have seen the courts overturn a sale is when there is evidence the taxes were paid or attempted to be paid prior to the issuance of the tax deed, and where there was a clerk error in the notification requirements of interested parties resulting in a due process violation prior to the tax deed sale. If a party successfully challenges the validity of a tax deed in an action at law or equity, but the taxes were not paid prior to the tax deed sale, the party shall need to reimburse the purchaser for:

- a) *The amount paid for the tax deed and all taxes paid upon the land, together with 12 percent interest thereon per year from the date of the issuance of the tax deed;*
- b) *All legal expenses in obtaining the tax deed, including publication of notice and clerk’s fees for issuing and recording the tax deed; and*
- c) *The fair cash value of all maintenance and permanent improvements made upon the land by the holders under the tax deed.*

¹¹ *Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass’n*, 124 So.3d 302, 306 (Fla. 2d DCA 2013); *Blume v. Giles*, 143 Fla. 615, 197 So. 344, 346 (1940); *see also Dean v. Kane*, 106 Fla. 814, 143 So. 656, 657 (1932) (holding that a tax title “creates in the purchaser a new and original title entirely disconnected with that of the former owner”).



§197.602(1). The court determines the amount of expenses for which a party shall be reimbursed. §197.602(3).

There is no right of redemption in Florida for the prior owners once the tax deed is paid for, issued, and delivered. However, a tax deed carries an inherently clouded title. A Florida tax deed purchaser has 3 options to alleviate the cloud and obtain title insurance after the sale.

- 1) Wait out the statute of limitations to challenge the sale, pursuant to §95.191
- 2) Initiate a quit title action suit
- 3) Use a tax deed certification service such as Clear to Sell LLP

This cloud on title will prevent the property from being insurable on normal terms until cleared. While waiting for the statute of limitations to expire can clear this cloud, title insurers may still require curative work relating to the tax deed sale or the chain of title before providing title insurance. A quiet title action suit is the traditional way to clear this cloud, but can also bring unpredictable challenges, such as escalating timeline and cost, as it proceeds. Alternatively, a tax deed certification service, which Clear To Sell, LLP provides, can be used to clear this cloud and obtain fully insurable title quicker, easier, and usually at a lower cost than more traditional methods.