

BURR ALERT

Mortgagees: Don't Lose Collateral— Take Action to Ensure You Receive Notice of Pending Tax Deed Sales

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Summary: Mortgagees and other lienholders whose proper address does not appear in a recorded mortgage or lien may not receive notice of a pending tax deed sale and may therefore lose collateral. A recent Florida court held that the clerk of the court does not have a duty to locate the mortgagee or lienholder if they fail to provide notice of their proper address. Mortgagees and lienholders should take affirmative action to notify the proper authorities of their correct addresses. Mortgagees and lienholders, particularly those who acquired their interest through merger, assignment or otherwise, are advised to provide notice to the county tax assessor, tax collector, and clerk of the court, to ensure they receive notices of tax deed sales.

County tax collectors are authorized to sell tax certificates on real property to collect unpaid ad valorem real property taxes.¹ A certificate holder can later apply for a tax deed, which triggers notice requirements to both the property owner and interested parties whose lien rights in the property may be adversely affected by the tax deed sale.² This is because a properly conducted and noticed tax deed sale results in the successful purchaser receiving title to property free and clear of any previously recorded lien (except for a lien of record held by a municipal or county governmental unit, special district or community development district).³

Before the tax deed sale can proceed, proper notice to all interested parties must be given in the form prescribed by *Florida Statutes*. The county tax collector must identify all persons entitled to notice of the tax deed sale, which by law includes any legal title holder of record, any lienholder of record, and any mortgagee of record, but only if an address appears on the recorded conveyance, lien or mortgage, respectively.⁴ In addition, the tax collector must identify any other lienholder who has applied to the tax collector to receive notice of any tax deed sale.⁵ The county tax collector must then prepare a statement that identifies those persons and their addresses and deliver that statement to the clerk of the circuit court.⁶ The clerk must then mail notice of a tax deed sale at least 20 days prior to the date of the sale to each of the persons on the tax collector's statement.⁷

¹ Fla. Stat. 197.432(1).

² Fla. Stat. 197.502(1).

³ Fla. Stat. 197.552.

⁴ Fla. Stat. 197.502(4)(a)-(c).

⁵ Fla. Stat. 197.502(4)(e).

⁶ Fla. Stat. 197.502(4).

⁷ Fla. Stat. 197.522(1)(a).

Mortgagees whose addresses appear on the recorded instrument creating their lien should receive notice of an impending tax deed sale because of the procedure described above. For those mortgagees who have acquired a mortgage due to a merger, assignment or other transfer, notice may not be forthcoming. A recent circuit court opinion has upheld a tax deed sale when faced with a challenge by an original mortgagee who did not receive notice of the sale.⁸ The mortgagee had changed its address after it recorded its mortgage (which included the old address), but the mortgagee failed to notify the property appraiser, tax collector, or clerk of the court of its address change.⁹ The mortgagee argued that due process required the clerk of the court, after notice of the tax deed sale was returned as undelivered to the old address identified in the mortgage, to search the public records or the Internet to find the new address for the mortgagee. The circuit court judge ruled that the due process requirements of the Constitution do not impose that burden on clerk, where the mortgagee did not take affirmative steps to notify the clerk, property assessor or tax collector of its address change.

The decision in *Beneficial* provides a reminder to mortgagees, especially those who acquired their interest from the original mortgagee: provide written notice, via certified mail, return receipt requested, to the county property assessor, county tax collector, and clerk of the court of your current address. Those who do provide notice of a change of address should receive notice of any tax deed sale so that measures can be taken to protect collateral subject to a tax deed sale. And if notice of a tax deed sale is not received, the diligent mortgagee who provided notice of an address change will likely fare better in challenging the validity of the tax deed sale.

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or the Burr & Forman attorney with whom you regularly work.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

⁸ *Beneficial Fla., Inc. v. Burke*, 20 Fla. L. Weekly Supp. 499b (Fla. 6th Cir. Ct. Feb. 19, 2013).

⁹ *Id.*