

Tax Sales, Redemptions and Tax Deed Proceedings in Illinois

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Tax Sales, Redemptions and Tax Deed Proceedings in Illinois

All statutory references are to the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, unless otherwise indicated. All references to “tax purchaser” mean the holder of the certificate of purchase, whether by purchase or assignment.

For additional information, please refer to Chapter 11, “A Guide to Tax Deed and Indemnity Fund Proceedings,” in *Real Estate Taxation* (Illinois Institute for Continuing Legal Education, 2008).

I. COLLECTOR’S ANNUAL APPLICATION FOR JUDGMENT AND SALE

Each year, after the annual taxes have become delinquent, the County Collector (*i.e.*, the County Treasurer) publishes an advertisement giving notice that he or she intends to apply for an order of judgment and sale as to parcels whereupon the taxes are delinquent. §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.

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”) lists all delinquent parcels and the amounts due. §21-160. The record is prepared by the County Collector; after the sale, custody of the judgment record is transferred to the County Clerk. The judgment record will reflect whether the parcel was offered for sale, sold or forfeited. All extensions of the redemption period and all costs and “subtaxes” (see part IV.I. *infra*) must be posted in the judgment record. The judgment record generally will disclose whether the property has been redeemed from the tax sale, whether the sale has been set aside as a sale in error, whether a tax deed proceeding has been filed and whether a tax deed has been issued.

II. ANNUAL, FORFEITURE AND SCAVENGER SALES

There are three types of tax sales: annual, forfeiture and scavenger sales.

A. Annual Sales

Each year, parcels as to which all or part of the previous year's taxes are delinquent are offered for sale. For example, parcels as to which all or part of the 2003 taxes (which were due in 2004) are delinquent were offered at the 2003 annual sale, which began in July 2005.

The tax purchaser must pay the entire amount of taxes and penalties outstanding (together with several hundred dollars in sale costs). The tax purchaser also must pay all open taxes for prior years in order to complete the sale and to 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 penalty rate is the rate bid by the successful bidder at the tax sale. Bidding 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 tax purchaser bids for the parcel, the taxes are forfeited to the State of Illinois.

A tax purchaser 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 the assessee that a tax purchaser 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 taxes are not paid within 30 days after the notice is mailed, the tax purchaser may purchase the forfeited taxes.

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, parcels as to which all or part of the taxes for two or more years are delinquent are offered for sale at the scavenger sale. The most recent scavenger sale began in December 2009, and the next one will begin in late 2011.

Unlike an annual or forfeiture sale, the entire amount of taxes and penalties due need not be paid at a scavenger sale. Bidders bid the amount they are willing to pay to purchase all taxes and penalties outstanding for the years in question. 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 amount bid in excess of the total taxes and penalties due at the time of sale. §21-260(f).

D. Scavenger Sale Fraud; Ineligible Bidders

1. A taxpayer may not purchase (or cause another person to purchase) taxes on the taxpayer’s own property at the scavenger sale. 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. §§21-285, 21-290.

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).

E. Taxes Uncollectible After Twenty Years

Taxes that have been delinquent for twenty years are uncollectible, and liens for those taxes are discharged and released. §20-180. Prior to 2002, only taxes which were thirty years delinquent were uncollectible.

F. Assignment of Certificates of Purchase

A Certificate of Purchase may be assigned. §21-250. Public Act 92-729, effective July 25, 2002, created a procedure by which an assignee of a tax sale certificate may record the assignment with the County Clerk. Previously, there was no procedure by which such assignments could be recorded, so notice was sent to the original tax purchaser even if he or she had sold the Certificate of Purchase. The assignment procedure is voluntary, but an assignee who fails to record his or her assignment takes the risk that notice may be sent to the original tax purchaser rather than to the assignee. There is a one-time \$10 fee for recording an assignment. §21-251.

III. REDEMPTIONS FROM TAX SALES

A. Right of Redemption.

Section 21-345 of the Property Tax Code provides that 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.

Article 9, Section 8(b) of the Illinois Constitution provides that, "The 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." The Constitution does not exclude undisclosed beneficiaries of an Illinois land trust. This raises a question whether Section 21-345 of the Property Tax Code is unconstitutional to the extent it denies the undisclosed beneficiary a right to redeem.

Section 21-345(a) of the Property Tax Code provides that:

"Any 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. *County Collector of DuPage County v. Bodoh*, 98 Ill App 3d. 950, 54 Ill Dec. 301 (2d Dist. 1981).

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.

B. Time of Redemption

The following rules apply to tax sales occurring on or after August 22, 1991:

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. Amount of Redemption

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:

- All taxes, penalties and costs paid at the time of the tax sale.
- Accrued penalty, computed as provided in section 21-355(b) (for annual or forfeiture sales) or section 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 Section 22-5 of the Property Tax Code (see section IV.A. *infra*).
- 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 five-month notice has been served.
- Fees paid for publication of notice in connection with tax deed proceeding.
- Sums paid to any city, village or town for reimbursement of municipal advances (e.g., demolition or receivership lien).

- Expenses of receivership authorized or approved by the court which appointed the receiver. §21-355.
3. To redeem from a scavenger sale, the procedure is similar. However, 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, *unless* the property is an owner-occupied single-family dwelling, condominium unit or cooperative unit. A party seeking to redeem property as owner-occupied must complete and submit an affidavit to the County Clerk. 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 §21-175.
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. The court before which the tax deed petition is pending shall hear and determine the protest. If the redemption under protest is sustained, the court may declare the sale to be a sale in error, if appropriate grounds exist, and shall direct the County Clerk to return all or a part of the redemption money to the party redeeming. If the redemption under protest is not sustained, the court shall order the protest stricken and direct the County Clerk to distribute the redemption money to the holder of the certificate of purchase, and shall order the party redeeming to pay to the tax deed petitioner reasonable attorneys' fees and expenses and the cost of use of the redemption money.
5. A 1995 decision of the Appellate Court for the Fifth District held that a party who redeems but who does not redeem under protest cannot defend against the tax deed proceeding. *Application of County Treasurer*, 276 Ill. App. 3d 1084, 659 N.E.2d 457, 460-61 (5th Dist. 1995). The reasoning of this decision was widely criticized; the Second and Third District Appellate Courts ruled to the contrary, as did the

Supreme Court in *A.P. Properties, Inc. v. Goshinsky*, 186 Ill. 2d 524, 714 N.E.2d 519 (1999). Public Act 91-564 amended Section 21-345 to provide that any person who desires to redeem and does not desire to contest the validity of a petition for tax deed may redeem without redeeming under protest.

E. Equitable Redemption

Several 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 of the Property Tax Code was amended in 1990 to provide 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) (1990 amendment to Section 22-45, formerly known as Section 266 of the Revenue Act of 1939, overruled case law allowing equitable redemption).

Whether that amendment eliminated the possibility of an equitable redemption remains open to dispute. A recent opinion, *Application of County Treasurer*

(Hawkeye Investment Limited Partnership v. Lanz), No. 1-06-3387 (1st Dist. December 28, 2007), held that the trial court may equitably extend the period of redemption before a tax deed has issued and held that Section 22-45 does not restrict courts' equitable powers with respect to pre-tax deed redemption, but only with respect to post-tax deed redemption.

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 redeemer and to all persons entitled to notice of the tax deed proceeding. Rule 10.3.1 of Circuit Court of Cook County. If the redeemer has no interest in the property, or if the redemption was untimely or in the wrong amount, the redemption will be expunged. If the redeemer 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.

Public Act 94-822, effective January 1, 2007, created the Mortgage Rescue Fraud Act (765 ILCS 940/1, et seq.), which 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. Currently, there are no reported cases involving the Mortgage Rescue Fraud Act.

Where a redemption is expunged, notice of the expungement must be given to the redeemer 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.

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 substantially 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.

B. Extension of the Redemption Period

1. The maximum extension of the redemption period is three years from the date of sale.

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 tax purchaser or his or her agent or attorney.
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.
5. If the redemption period expires and no tax deed petition has been filed, no extension is possible and the certificate is “dead.” It may still be possible to obtain a refund under §22-50 or §21-310 for one year after the date the redemption period expired.

C. Compliance with Torrens Act

The Torrens Repeal Act, 765 ILCS 40/1 *et seq.*, provides a schedule and procedure for phasing out the Torrens system. Effective January 1, 1997, no further filings in Torrens will be accepted. Accordingly, it is no longer necessary (or even possible) to comply with the former requirement that a certified copy of the certificate of purchase be registered as a memorial on the Torrens certificate. If a tax deed is issued on property that is still registered in Torrens, the property should be deregistered before the tax deed is recorded, and preferably before a tax deed petition is filed.

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

1. Between five months and three months before expiration of the redemption period, the tax purchaser must conduct a diligent inquiry for owners, occupants and other persons interested in the real estate. §22-10. Public Act 95-477, effective June 1, 2008, extended the period of time in which the tax deed petitioner may file its petition and in which take notices may be served to three to *six* months prior to the expiration of the redemption period.
2. The tax purchaser or agent must personally inspect the premises and note any indication of occupancy, usage or ownership (for example, signs on the property, cars being parked by permission of the owner, or farming being conducted on the property). 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 or tract search may be conducted by the tax purchaser or by a title or abstract company. If the title search is conducted more than five months before the redemption period expires (or more than six months before the redemption period expires after June 1, 2008), 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. 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. Consulting probate records regarding decedents' heirs or legatees;
 - g. Calling Secretary of State regarding corporate status of corporations or limited liability companies;
 - h. Submitting FOIA request to Board of Election Commissioners and/or County Clerk for voter registration records; and
 - i. Checking CD-ROM and Internet directories.
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.

6. It is better to be overinclusive 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.
7. 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).
8. 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.
9. Failure to conduct a sufficiently diligent inquiry may be fatal to the tax deed petition.
10. A federal revenue lien may be discharged under some circumstances. State liens may be discharged if the State is properly served with notice.
11. 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 (see part VII below). 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. Preparation and Filing of Petition for Tax Deed

1. A petition for tax deed must be filed in the Circuit Court between five and three months before expiration of redemption period. Public Act 95-477, effective June 1, 2008, extended the period of time in which the tax deed petitioner may file its petition and in which take notices may be served to three to *six* months prior to the expiration of the redemption period.
2. A copy of the certificate of purchase and any assignment(s) must be attached as an exhibit to the petition.
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 titleholder, 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 constructive 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 on the judgment record, and will be reimbursed if the property is redeemed from the tax sale.

G. Take Notices

1. Two sets of notices are required -- similar but not identical in form. Under recent amendments to the Property Tax Code and Circuit Court Rules, both sets of notices must include the date, time, address and room number of the return day hearing. (§22-10, Circuit Court Rule 10.3.)
2. The first set of notices, which is signed by the tax purchaser, is 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. Public Act 95-477, effective June 1, 2008, amended §22-15 to conform the requirements for service of take notices in tax deed petitions to the requirements for service in other civil cases under the Code of Civil Procedure.
5. The second set of notices, which is signed by the Clerk of Circuit Court, is placed with the Clerk of 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 of the tax deed petition.
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 (Public Act 95-477, effective June 1, 2008, extended the period of time in which the tax deed petitioner may file its petition and in which take notices may be served to three to six months prior to the expiration of the redemption period). The cost of publication should be posted in judgment record, so that it will be reimbursed if the property is redeemed from the sale.

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 plus 5% of the amount of taxes paid. (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.

NOTE: 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 taxpayer whose property is sold at a tax sale would be well advised to 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 proveup hearing.

5. No subtaxes may be posted in the judgment record within 30 days prior to expiration of redemption period.

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.
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. Filing, service, recording and receivership costs should be promptly posted in the judgment record. §21-355.
2. If the property owner redeems, he or she will have to reimburse the tax purchaser 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.)

V. TAX DEED HEARINGS AND DEFENSES

A. 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.

- B. 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 proveup hearing.
 2. The Application must comply with Circuit Court Rule 10.3(b) and (as of January 2, 2008) 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.
- C. Assignment and Proveup
1. At 9:30 a.m. 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 proveup hearing.
 2. The tax purchaser's attorney must then have the case scheduled for a proveup hearing.

3. At the proveup hearing, the tax purchaser and/or attorney must introduce evidence of compliance with all statutory requirements for entry of an order for tax deed.

D. Defenses to Petitions for Tax Deed

An 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).

E. 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 proveup 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.

F. 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.

G. 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. §22-40. Public Act 95-477, effective June 1, 2008, codified the longstanding interpretation of the statute and makes clear that a motion for order of possession may be made by the tax deed grantee or his or her successor in interest, thereby preserving the merchantability of tax titles.

H. 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. In March 2009, 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. This unfortunate result is likely to be changed by amendments to the Property Tax Code. 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.

I. 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. *Application of County Treasurer (Fleishman Associates)*, 305 Ill. App. 3d 995, 713 N.E.2d 703 (1st Dist. 1999), held that costs are not included in such a refund. The holding of that case was reversed by Public Act 92-224, effective August 2, 2001.

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 recent 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.
5. Lack of jurisdiction is always a defense, subject to Section 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 proveup hearing may be presented in a Section 2-1203 motion filed within 30 days after entry of the order. Courts are very liberal in granting relief under Section 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 Section 2-1203 (within 30 days, "direct attack") and Section 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 Section 2-1401 of the Code of Civil Procedure more than 30 days after entry of the tax deed order. Grounds for relief under Section 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. See section III.E. above.

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).

D. Marketable Title -- Effect on Parties With 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), for an interesting set of facts and an interesting result.

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 18% per annum 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).

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 Section 21-95 or unenforceable pursuant to subsection (c) of Section 18-250 or subsection (b) of Section 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. Public Act 92-224, effective August 2, 2001, clarifies the law relating to sales in error. 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

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

Public Act 92-729, effective July 25, 2002, allows a tax sale to 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). The new law will allow the vast majority of

sales in error, which are uncontested and uncontroversial, to be handled quickly through an administrative process.

VIII. EFFECT OF BANKRUPTCY

A. Current State of the Law

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 has 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 Section 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. Recently, 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.

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). For a recent analysis of this issue and the two-year look-back period under the bankruptcy fraudulent transfer statute, 11 U.S.C. §548, see *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.)

IX. RELIEF FROM THE INDEMNITY FUND AFTER LOSS OF PROPERTY TO 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. Owner-Occupied Residential Property

If the property consists of four or fewer dwelling units and if 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 just 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). 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. Other 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 section 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 section 21-305(a)(2) has the right to indemnity, the court must also "liberally construe this Section" 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).

C. Procedure

1. Damages under §21-305(a)(1) (equitable entitlement) are limited to the fair market value of the property as of the date the tax deed was issued, less any mortgages or liens thereon, and the award cannot exceed \$99,000.
2. Under certain circumstances, however, the indemnity award may include the amount of a mortgage on the property. *Viso v. Rosewell*, 119 Ill. App. 3d 212 (1st Dist. 1983). This was codified in the 1999 amendment. §21-305(a)(4).
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. A petition for indemnity may be brought concurrently with a petition for relief under Section 2-1401 of the Code of Civil Procedure. §22-45.
5. 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).
6. Judgments accrue interest at 9% per annum from date of judgment until judgment is satisfied. It was taking several years for indemnity fund

judgments to be paid, but all judgments have now been paid and new judgments are being paid promptly.

D. Other Provisions Applicable to the Indemnity Fund

1. 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.
2. Any contract involving the proceeds of an indemnity judgment must be in writing, and is subject to discovery.
3. 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.
4. Any award under the "equitable entitlement" portion of the statute (applicable only to owner-occupied residential property containing one to four units) is limited to \$99,000. To recover more than \$99,000, the owner must show that he or she lost the property without fault or negligence.
5. All petitioners must be barred or otherwise precluded from bringing an action to recover the property. Previously, this requirement did not apply to owner-occupied property containing one to four units.
6. In determining fault or negligence, the statute now requires that the court consider whether the owner exercised ordinary reasonable diligence under all of the relevant circumstances. §21-305(a)(2).
7. 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).
8. If the taxpayer was personally liable for the amount due on any mortgage note, the court shall order an additional indemnity award sufficient to discharge the taxpayer's personal liability. This codifies the holding of the *Viso* decision, referred to in paragraph C.2. above.
9. The court may order joinder of the mortgagee or lienholder as an additional party to the indemnity action. §21-305(a)(4).

The Indemnity Fund remains an important vehicle for obtaining relief for a client who has lost his or her property to a tax deed where the circumstances justify such relief. The statutory changes seek to ensure that the Indemnity Fund is the property owner's last chance, and that it will apply only where other remedies are unavailable.