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## LIEN DIVESTITURE STARTS WITH A SALE

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## Real Estate Tax Sales – The Law

- Real Estate Tax Sale Law (72 P.S. § § 5860.101 to 5860.803), which is effective in all counties except Allegheny and Philadelphia (“RETSL”)
- The Municipal Claim and Tax Lien Act (53 P.S. § 7101 et seq.) (“MCTLA”), which is effective throughout the Commonwealth

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## Real Estate Tax Sales - Process

- Unpaid real estate taxes become delinquent on January 1st of the year following the year when the taxes are due.
- The taxing authorities return a claim for unpaid taxes to the County Tax Claim Bureau by the last day of April of the year following the year when the taxes are due.
- The Tax Claim Bureau acts as the agent for the taxing authorities in a county. Delinquent taxes can be paid only to the Tax Claim Bureau, not to the local tax collectors.
- Notices of the claims for unpaid taxes are mailed to the owner of record no later than July 31. The notice advises the taxpayer that a one year grace period exists from July 1 of the year notice is given in which to fully pay the claims, interest accrual (9% per year) and costs.
- If the owner of record does not claim the certified mailing, the property is physically posted and the posting fee is assessed against the parcel.

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## Real Estate Tax Sales - Process

- Section 311 - On the first day of January next following the notice hereinbefore prescribed, if the amount of the tax claim referred to in the notice has not been paid, or no exceptions thereto filed, **the claim shall become absolute.**
- Section 601. Date of Sale.--(a) The bureau shall schedule the date of the sale no earlier than the second Monday of September and before October 1.
- Three types of sales:
  - 1) Upset
  - 2) Judicial
  - 3) Repository

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## Real Estate Tax Sales – Upset Sale

- Sale scheduled no earlier than the second Monday of September and before October 1, and the sale may be adjourned, readjourned or continued. No additional notice of sale is required when the sale is adjourned, readjourned or continued if the sale is held by the end of the calendar year.
- Amounts included in the Upset Price –
  - (a) the tax liens of the Commonwealth (Primarily if property owned by Corp, LP or LLC);
  - (b) the amount of the claim absolute and interest;
  - (c) the amount of any other tax claim or tax judgment due on such property;
  - (d) the amount of all accrued taxes including taxes levied for the current year
  - (e) the amount of the municipal claims against the property; and
  - (f) the record costs and costs of sale
- No sale of property shall be made at the upset sale unless a bid equal to the upset price is made. If no bid equal to the upset price is received, the sale shall be continued without further advertisement in order to give the bureau a chance to sell the property at private sale, or to petition court for an order to sell the same (Judicial Sale)

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## Real Estate Tax Sales – Upset Sale

- After the sale, notice shall be given by the bureau within thirty (30) days of the actual sale to each owner by certified mail, at his last known post office address that the property was sold and that the owner may file objections or exceptions with the court relating to the regularity and procedures followed during the sale no later than thirty (30) days after the court has made a confirmation nisi of the consolidated return.
- After confirmation of the sale by the court, the Bureau deeds the property to the purchaser.
- **Every upset sale shall convey title to the property under and subject to the lien of every recorded obligation, claim, lien, estate, mortgage, ground rent and Commonwealth tax lien not included in the upset price with which said property may have or shall become charged or for which it may become liable.**

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## Real Estate Tax Sales – Judicial Sales

**In the event the property does not sell at Upset Sale:**

- The sale shall be continued, but not beyond the end of the calendar year, without further advertising, and the bureau may, at any time during or after the continuance, and shall, immediately at the written direction of a taxing district, file its petition in the court of common pleas of the county to sell the property pursuant to a Judicial Sale.
- Upon petition of the Bureau, the court issues a Rule To Show Cause why a decree should not be made that said property be sold, freed and cleared of their respective tax and municipal claims, liens, mortgages, charges and estates, except separately taxed ground rents. The rule shall be made returnable in not more than thirty (30) days from the date the petition was presented or as otherwise determined by the court.
- Confirm proper service has been made and, if personal service not accomplished, an order authorizing alternative service was granted. Also confirm that if the judicial sale is to be held three (3) months or more after the upset sale that it was re-advertised.
- If upon hearing the court is satisfied proper service has been accomplished, it shall order and decree that said property be sold at a subsequent day to be fixed by the court, freed and cleared of all tax and municipal claims, mortgages, liens, charges and estates, except separately taxed ground rents, to the highest bidder.

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## Mortgage Foreclosures

- **Pre-Foreclosure Notices Act 6/91:**
- New form as of 9/1/2016
- An Act 6 Notice is not required if an Act 91 Notice is being sent. Act 91 expressly states that an Act 91 Notice is in lieu of any other notices. 35 P.S. § 1680.403c.
- Must be given 33 days before commencing foreclosure (30 days plus 3 days for mailing) a Must be sent in English with Spanish translation (other languages available if necessary)
- Mailing of notice triggers 30 day period to apply for Homeowners' Emergency Mortgage Assistance Program (HEMAP)

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## Mortgage Foreclosures

**Foreclosure Checklist:**

- ✓ Pre-Foreclosure Notices properly given?
- ✓ Lien Priority
  - 1. Is our mortgage in first position?
  - 2. Review lien priority as set forth in 42 Pa. Cons. Stat. Ann. § 8141
    - a. Purchase Money Mortgages from the time they are delivered to the mortgagee, if they are recorded within ten days after their date; otherwise, from the time they are left for record.
    - b. Others generally by recording or in case of adverse judgments when rendered
  - 3. If mortgage not in first position, senior liens or judgments probably not divested even with notice.

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## Mortgage Foreclosures

- **Foreclosure Checklist:**
- ✓ Confession of Judgment:
  - Some lenders will bring an action to confess judgment on the Note secured by the mortgage.
  - Advantage to this is confessed judgment is an in personam judgment which then allows for execution on all of defendant's assets. Pure mortgage foreclosure action only allows for execution against property encumbered by the mortgage.
  - Judgment itself has priority from when it is entered, however, the lien of a judgment founded on a mortgage relates back to the mortgage.
  - Execution process on mortgaged property based on a confessed judgment should be identical to that on a pure mortgage foreclosure.

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## Mortgage Foreclosures

- **Foreclosure Checklist:**
- ✓ Writ of Execution – Once the judgment is entered, the plaintiff needs to secure a writ of execution from the court. The Writ has two purposes. It allows the plaintiff to proceed to Sheriff's sale on the property and also cuts off additional liens and judgments from attaching to the property.
- ✓ Sheriff's Sale Process:
  - Notice of the sheriff's sale must be given by handbills, by publication, and by written notice to all persons whose names and addresses are listed in the Rule 3129.1 Affidavit.
  - A Verification of Non-Military Service and an Affidavit as to Act No. 91 must also be filed.
  - Notice containing the information required in the handbill must also be given by publication by the sheriff once a week for three successive weeks in a newspaper of general circulation in the county and in the legal publication, if any, designated by rule of court for publication of notices. The first publication to be made not less than 21 days before the date of sale.
  - The required written Notice of Sheriff's Sale must contain the same information as the handbill, or may consist of the handbill, and such notice must be served at least 30 days before the sale on all persons whose names and addresses are set forth in the Rule 3129.1 Affidavit.

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## Mortgage Foreclosures

- **Foreclosure Checklist:**
- ✓ Sheriff's Sale Process (cont.):
  - After service is complete, a Rule 3129.2 Affidavit must be filed, attesting to the completion of the required service upon all of the persons identified in the 3129.1 Affidavit.
  - In the event the sale is stayed, continued, postponed, or adjourned to a date certain within 130 days of the originally scheduled sale date, and a public announcement of the new date is made to the bidders assembled at the time and place of the originally scheduled sale, no new notice is required, but there may be only two stays, continuances, postponements, or adjournments without new notice or a court order.
  - On the day of the sale the property is sold to the highest bidder, in accordance with the rules of the local sheriff. Usually the attorney on the writ opens the bidding by bidding "costs," and also announces an upset price (not more than the amount of the judgment), and the bidding then proceeds. If there is no actual bidding, the property is knocked down to the attorney on the writ.

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## Mortgage Foreclosures

- **Foreclosure Checklist:**

✓ After the Sheriff's Sale:

- Within 30 days after the sale, the sheriff is required prepare and file a schedule of proposed distribution and a list of liens for each property sold. This not required when the property is sold to the attorney on the writ for costs only.
- Ten days after the filing of the schedule of distribution, the sheriff must prepare, execute, and deliver to the Recorder of Deeds a deed to the property sold and distribute the proceeds of sale in accordance with the schedule of distribution, unless written exceptions are filed with the sheriff within ten days after the filing of the proposed schedule.
- Of course it is possible that the schedule can be modified if a petition to set aside the sale is filed and a hearing is then held by the court.

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## Mortgage Foreclosures

- **Foreclosure Checklist:**

✓ What does the Sheriff's Deed get you?

- The effect of a foreclosure sale is to wipe out all junior liens **on the notice of the sale**.
- The purchaser takes title subject to encumbrances and interests of record superior to the mortgage foreclosed upon. With respect to the condition of the property, the buyer takes the property as is.
- What if there are leases on the property? If the lease was entered into before the mortgage being foreclosed, then the buyer takes title subject to the lease. If the lease was entered into subsequent to the mortgage, then the buyer has the option of continuing or terminating the lease. If the prior owner or tenant refuses to vacate the premises, an ejectment action may be required.
- Unlike tax sales, no right of redemption in any county.

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## PA Department of Revenue

- **Effect of Foreclosures and Tax Sales on PA Inheritance Tax Liens:**

✓ Foreclosures --

- PA law requires that the Department of Revenue be notified of judicial sales to ensure claims are properly honored.
- The Department accepts Rule 3129 notices to be sufficient notice for any existing Department liens which may exist against the captioned defendants.
- For inheritance tax purposes, however, the Rule 3129 notices are only sufficient for those estates that are opened and have reported the real property in question. To the extent there is a tax liability it survives the foreclosure sale and is valid until paid.
- In order to clear the lien, the Department is requiring the mortgagee to report any available valuation information and their corresponding date of death mortgage balances so as to determine if there is any equity to which inheritance taxes could attach.
- Where it is not clear an estate has fully paid inheritance taxes related to a property which has been foreclosed upon, the Title Company requires a clearance letter from the Department of Revenue before insuring any property without exception for inheritance tax liens.

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## PA Department of Revenue

- **Effect of Foreclosures and Tax Sales on PA Inheritance Tax Liens:**

- ✓ Tax Sales:

- The Department takes the position that its claim for inheritance taxes would not be divested under any real estate tax sale laws of the Commonwealth.
- They indicate that this interpretation is consistent with the Commonwealth's sovereign status of being the superior creditor to political subdivisions and other lienholders.
- Therefore, the title company requires that any PA state tax liens, whether inheritance tax or any other PA state tax lien, be paid in full prior to insuring any property coming out of a tax sale (even a judicial sale with a free and clear order).

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