

ADEQUATE DELINQUENT TAX PAYER NOTICE

UNITED STATES SUPREME COURT ADDRESSES DUE PROCESS AND TAX SALE NOTICE

The due process clause of the 14th Amendment is a touchstone of municipal law. The clause prohibits local and state government from taking property without due process of law. At a bare minimum, due process encompasses an individual's right to be adequately notified of proceedings involving him or her, and the opportunity to be heard at these proceedings. In the case *Jones v. Flowers*, ___ U.S. ___ (April 26, 2006), the United States Supreme Court addressed the concept of due process in the context of the sale of property for collection of delinquent property taxes. The facts of the case are as follows:

In the early 1990s, Arkansas resident Gary Jones got divorced. Pursuant to his divorce decree, Mr. Jones continued to pay the mortgage on the family home though he did not reside there. In addition to his mortgage payment, Mr. Jones was required to make a monthly state property tax escrow payment to the bank. He made his mortgage and tax escrow payments diligently until his mortgage was paid off, but Mr. Jones apparently didn't realize that once the mortgage was paid, he was obligated to pay his property taxes directly to the state.

When Mr. Jones's property taxes went delinquent, the state tax collector sent a certified letter - addressed to him at the family home - stating that, unless he redeemed the property, it would be subject to tax sale in two years. Nobody was home to sign for the letter and it was returned to the tax collector. Two years later, the tax collector published a notice of sale in a local newspaper. Immediately before the sale, the tax collector sent Mr. Jones another certified letter, which was also returned unclaimed.

The state proceeded with a tax sale. After the house was sold, the new owner served an eviction notice on the person living in the house - who just happened to be Mr. Jones's daughter. She forwarded the letter to Mr. Jones, who then brought suit against the new owner and the state in an attempt to get the house back. Mr. Jones alleged that the tax commissioner's failure to provide adequate notice resulted in the taking of his property without due process of law in violation of the 14th Amendment of the United States Constitution.

Mr. Jones lost at the Arkansas trial court level and again at the Arkansas Supreme Court, but the U.S. Supreme Court decided in favor of Mr. Jones, holding that "[w]hen a mailed notice of a tax sale is returned unclaimed, the state must take additional reasonable steps to provide notice to the property owner before selling his property, if it is practical to do so." Because the Arkansas tax collector had failed to take these additional reasonable steps, the U.S. Supreme Court reversed the lower courts' decisions.

In Vermont, the collector of delinquent taxes must take several steps to inform a taxpayer and other interested persons of an impending tax sale:

- **File in Clerk's Office.** The collector of delinquent taxes must file in the town clerk's office a copy of the warrant, a description of the land, and a statement that he or she will proceed with a tax sale to collect the unpaid taxes. 32 V.S.A. § 5252 (1).
- **Advertise Sale.** The collector of delinquent taxes must advertise the sale for three weeks in a newspaper of general circulation in the community. The last publication must be at least 10 days prior to the sale. 32 V.S.A. § 5252 (2). The form of the advertisement is found in 32 V.S.A. § 5253.
- **Notice to Taxpayer.** The collector of delinquent taxes must notify the delinquent taxpayer of the sale in writing, by registered mail, return receipt requested. The notice is sent to the property owner's last known address, and must include the time, date and place of the sale. The notice must be sent at least 10 days prior to the sale (and 20 days prior to the sale for taxpayers who are nonresidents of the town). 32 V.S.A. § 5252 (3).
- **Notice to Mortgagees and Lien Holders.** The collector of delinquent taxes must notify all mortgagees or lien holders of the tax sale proceedings by registered mail, return receipt requested, at least 10 (resident) or 20 (nonresident) days prior to the sale. 32 V.S.A. § 5252 (4).

- **Post Notice in Public Place.** The collector of delinquent taxes must post a notice of the tax sale in at least one public place in the municipality (generally the clerk's office). 32 V.S.A. § 5253 (5). The required form of the notice is set out in 32 V.S.A. § 5253 and is provided in Appendix 18.

It is not the delinquent tax collector's responsibility to ensure that the delinquent taxpayer actually receives the notice and, while a taxpayer's refusal to accept the certified mail will not prevent the collector of delinquent taxes from proceeding with the tax sale, in light of the *Jones* decision, Vermont's delinquent tax collectors should be sure that, whenever possible, the taxpayer receives actual notice of the sale.

Considering the holding in *Jones*, VLCT recommends the following additional steps:

- **Regular Mail.** At the same time the notice is sent by registered mail, delinquent tax collectors should send a copy of the notice, addressed to the property owner, in an unmarked envelope by regular first class mail to the property owner's last known address.
- **Regular Mail Addressed to Occupant.** If the registered mail notice is returned as unclaimed, send another copy of the notice addressed to "occupant," in an unmarked envelope by regular first class mail. This notice should be sent to the owner's last known address and to the property address, if they differ.
- **Posting Notice on the Front Door.** At the same time the third copy of the notice is sent to "occupant," post a copy of the tax sale notice on the front door of the property or some other readily visible location on the property. Of course, this should be done in such a way as to ensure that the peace will not be breached and that your safety will not be jeopardized.

In all instances, the collector of delinquent taxes should keep a good record of the efforts undertaken to notify the taxpayer of a sale. While these additional steps cannot guarantee that the taxpayer will receive actual notice of a tax sale, they will help demonstrate that the delinquent tax collector afforded the taxpayer due process by taking reasonable additional steps to notify the taxpayer of the impending tax sale.

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