

# Delinquent Tax Collectors Workshop

## Conducting the Tax Sale

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**DTC WORKSHOP MAY 2015**

# Tax Sale Overview

- Tax sale is the most commonly used method for collecting delinquent taxes.
- The taxpayer has one year after the sale in which to "redeem" the property (pay all delinquent taxes, interest, penalty, and costs in order to hold on to the property)
- If the property is not redeemed within one year after the sale, a deed is given to the person who was the high bidder at the tax sale.
- If the property is redeemed, the money that the bidder paid at time of tax sale is returned to him or her, with interest.
- VLCT strongly recommends that you utilize a qualified attorney when conducting a tax sale or any other formal collection remedy.



# Conducting the Tax Sale

## Step 1. Authorization from the Selectboard

- **Get authority from the selectboard to hire an attorney and conduct the sale.**
- **“The fees and costs allowed after the warrant and levy for delinquent taxes have been recorded shall be as follows: .... Expenses actually and reasonably incurred by the selectboard for legal assistance in the preparation for or the conduct of said sale when authorized by the selectboard, provided that such expenses shall not exceed 15 percent of the uncollected tax;....” 32 V.S.A. § 5258**



# Conducting the Tax Sale

## Step 2. File in the Town Clerk's Office

File in the office of the town clerk for recording:

- A true and attested copy of the warrant and the tax bill. This is a photocopy of the warrant and tax bill, with statement “A true and attested copy” and collector’s signature.
- A sufficient description of the land.
- A written statement that by virtue of the original tax warrant and tax bill committed, the collector has levied upon the described land. **32 V.S.A. § 5252(1)**



# Conducting the Tax Sale

## Step 3. Advertise in Newspaper

- **Advertise the tax sale three weeks successively in a newspaper circulating in the vicinity of the sale.**
- **The last publication of the advertisement must be at least ten days before the sale.**

**32 V.S.A. § 5252(2)**



# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- Give the taxpayer at least 10 days written notice of the sale (20 if the taxpayer is a nonresident) by registered mail, return receipt requested.
- The notice must be sent to the last known address of the delinquent and state the date and place of the sale.

**32 V.S.A. § 5252(3)**



# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- **The notice to the taxpayer should include a statement of the right to request that a portion of the property be sold.**
- **If such a request is made by the taxpayer, it must clearly identify the portion of the property to be sold, and include certification from the zoning administrator and Act 250 district coordinator that the portion identified may be legally subdivided.**



# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- **The request must be made at least 24 hours prior to the sale.**
- **If the portion identified cannot be sold for the total amount owed, then the entire property may be sold.**

**32 V.S.A. § 5254(b)**





# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- The notice to the taxpayer should include a statement of the right to seek relief from the town's Board of Abatement and a description of the process for applying for an abatement of taxes.
  - *Town of Windsor v. Blanchard*, Windsor Sup. Ct. Docket No. S528-11-99 Wrev (April 4, 2000).



# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- **The taxpayer's refusal to accept registered mail will not prevent the collector from proceeding with the sale.**
- **At the same time notice is sent by registered mail, send a copy by first class mail in an envelope without a return address.**



# Conducting the Tax Sale

## Step 4. Notice to Taxpayer

- **Post a copy of the notice on the front door of the property or some other visible location.**
- **These extra steps are not required by statute, but will foreclose a challenge to the tax sale on the basis that the taxpayer did not receive adequate notice.**



# Conducting the Tax Sale

## Step 5. Notice to Mortgagee/Lien Holders

- **Search the title to the property to identify all mortgage and lien holders.**
- **While this is not a full 40 year search, it must be done carefully.**
- **Failure to identify and give notice to mortgage and lien holders may invalidate the sale.**



# Conducting the Tax Sale

## Step 5. Notice to Mortgagees/Lien Holders

- **Give all mortgagees and lien holders at least 10 days written notice of the sale (20 if the taxpayer is a nonresident) by registered mail, return receipt requested.**
- **The notice must be sent to the last known addresses of the mortgage and lien holders and state the date and place of the sale.**

**32 V.S.A. § 5252(4)**



# Conducting the Tax Sale

## Step 5. Notice to Mortgagees/Lien Holders

- **If there is an IRS tax lien on the property, there are specific notice requirements for the IRS.**
- **If those notice requirements are not followed, the IRS tax lien will survive the tax sale. The purchaser will take the property subject to the tax lien. 26 U.S.C. § 7425(c).**



# Conducting the Tax Sale

## Step 6. Post Public Notice

- **Post notice of the tax sale in at least one public place in town. 32 V.S.A. § 5252(5)**
- **The form of this notice is found at 32 V.S.A. § 5253.**



# Conducting the Tax Sale

## Step 6. Post Public Notice

The form of advertisement and notice of sale provided for in section 5252 of this title shall be substantially in the following form:

*The resident and nonresident owners, lien holders and mortgagees of lands in the town of \_\_\_\_\_ in the county of \_\_\_\_\_ are hereby notified that the taxes assessed by such town for the years \_\_\_\_\_ (insert years the taxes are unpaid) \_\_\_\_\_ remain, either in whole or in part, unpaid on the following described lands in such town, to wit, \_\_\_\_\_ (insert description of lands) and so much of such lands will be sold at public auction at \_\_\_\_\_ a public place in such town, on the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) at \_\_\_\_\_ o'clock \_\_\_\_\_ (am/pm), as shall be requisite to discharge such taxes with costs and fees, unless previously paid.*

*Dated at \_\_\_\_\_, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).*

\_\_\_\_\_  
*Collector of Town Taxes*





# Conducting the Tax Sale

## Notices of the Sale

- In all instances where you are required to give notice (advertisement, taxpayer, mortgage and lien holders, public posting) do not include weekends or holidays in determining the number of days.
- Give sufficient extra time (e.g., 20 to 30 days) to ensure that deadlines are not missed.



# Conducting the Tax Sale

## Step 7. Settling Prior to Sale

- **After the warrant, tax bill, and levy have been recorded but prior to sale, you should not accept partial payment, unless special circumstances warrant it.**
- **If the taxpayer contacts you but cannot pay the full amount owed, remind them of the one year redemption period and the opportunity to seek abatement.**
- **If the taxpayer pays in full prior to the tax sale, send a cancellation letter to the town clerk for recording in the land records.**



# Conducting the Tax Sale

## Step 8. The Tax Sale

- **“When the tax with costs and fees is not paid before the day of sale, the real property on which the taxes are due shall be sold to pay such taxes, costs and fees.” 32 V.S.A. § 5254(a)**
- **A tax sale is an auction of the delinquent’s property to the highest bidder.**
- **The tax sale can occur at any location and does not have to occur at the property subject to the delinquent taxes.**



# Conducting the Tax Sale

## Step 8. The Tax Sale

### Prepare a Final Accounting

- Calculate the amount of tax, interest and fee due as of the date of sale, plus the expenses authorized under 32 V.S.A. § 5258.
- Prior to sale, but after the warrant and levy have been recorded, the taxpayer pays the tax, interest and fee due plus the fees and costs listed in 32 V.S.A. § 5258 that have been incurred by the collector.



# Conducting the Tax Sale

## Step 8. The Tax Sale

- **Bidders should be notified:**
  - **The terms of sale (e.g., bank check or other certified funds).**
  - **The minimum bid that will be accepted (i.e., the full amount of the taxes, interest, and fee owed, plus all of the costs allowed under 32 V.S.A. § 5258).**
  - **That the town may tender a bid in this amount if no third party does so at the sale (assuming that this is the town's intention).**



# Conducting the Tax Sale

## Step 8. The Tax Sale

- **Bidders should be notified:**
  - **That the taxpayer, mortgagees and lien holders have one year from the date of the sale to redeem the property by paying the purchase price paid at the sale plus interest at the rate of 1% per month or fraction thereof from the date of sale to the date of purchase.**
  - **If the IRS has a tax lien, the redemption period for the federal government will be extended an additional 120 days beyond the one year redemption period.**



# Conducting the Tax Sale

## Step 8. The Tax Sale

- **Bidders should be notified:**
  - **The taxpayer will retain possession of the property during the redemption period and the successful bidder has no right of entry during this time.**
  - **The town will not be liable to the successful bidder or any other party for any loss or damage to the property during the redemption period.**



# Conducting the Tax Sale

## Step 8. The Tax Sale

- **Bidders should be notified:**
  - **If the property is not redeemed, the successful bidder will receive a tax deed that will give only such title as the taxpayer had at the time of sale.**
  - **If the property is not redeemed, the successful bidder may have to pay any taxes, penalty, and interest that have accrued on the property during the redemption period.**





# Conducting the Tax Sale

## Step 9. Post Sale Requirements

- **Upon receipt of payment from the successful bidder, the amount received at the sale should be paid over to the treasurer, to satisfy the amounts owed to the town.**
- **The treasurer should pay back to the collector the amount of the collector's fee (if compensated in this manner), less any FICA and income tax withholding, plus any sale costs paid by the collector.**



# Conducting the Tax Sale

## Step 9. Post Sale Requirements

- Any excess proceeds should either be placed in an interest bearing escrow account for the benefit of the taxpayer or paid over to the taxpayer.
- The law is silent on how excess proceeds should be handled. The Vermont Supreme Court has said that the town can, and often should, pay the excess proceeds to the delinquent taxpayer, but is not under a legal obligation to do so. *Ran-Mar, Inc. v. Town of Berlin*, 181 Vt. 26 (2006).



# Conducting the Tax Sale

## Step 9. Post Sale Requirements

- **If the excess proceeds are placed in an escrow account, the money can be applied by the taxpayer toward the amount needed to redeem the property.**
- **The money should be released to the taxpayer at his/her request.**



# Conducting the Tax Sale

## Step 9. Post Sale Requirements

- **Interest accruing on the escrow amounts is the property of the taxpayer, not the town or the successful bidder.**
- **If the taxpayer fails to redeem, the full amount of the escrowed funds, plus interest, would be paid to the taxpayer.**



# Conducting the Tax Sale

## Step 9. Post Sale Requirements

- **Within 30 days after the sale, the collector must file a report of sale in the town clerk's office. The form of the report is specified in 32 V.S.A. § 5255.**
- **Send a copy of the report of sale to the delinquent, the mortgagees, and any lien holders with a cover letter and a copy of 32 V.S.A. § 5260. Indicate that the collector cannot accept anything less than the full redemption amount.**



# Conducting the Tax Sale

## Step 10. Redemption

- **Within one year from the date of sale, the owner or mortgagee of lands sold for taxes, his or her representatives or assigns can redeem the property by paying the collector the amount for which the land was sold with interest at the rate of one percent per month or fraction thereof from the day of the sale to the day of payment.**

**32 V.S.A. § 5260**



# Conducting the Tax Sale

## Step 10. Redemption

- **The Federal government (IRS lien) gets an additional 120 days to redeem the property. 26 U.S.C. § 7425(d)(1).**
- **Property belonging to a person on active duty with the military [which can only be sold at tax sale by permission of the a court] can be redeemed up until six months after leaving the military. 50 U.S.C. § 560.**



# Conducting the Tax Sale

## Step 10. Redemption

- Money paid to redeem the property must be paid over to the successful bidder on demand. **32 V.S.A. § 5260**
- Remember, this is not the town's money. The collector cannot accept anything less than this full amount required for redemption. If less than the full amount is tendered, the collector must issue a deed to the successful bidder.

*Westine v. Whitcomb, Clark & Moser, 150 Vt. 9 (1988).*

- If the property is redeemed, the collector should record a certificate of redemption in the land records indicating that the property has been redeemed.





# Conducting the Tax Sale

## Step 11. Issuing the Tax Deed

- **If the property is not redeemed, the tax collector must issue a deed to the purchaser conveying title to the property. 32 V.S.A. § 5261**
- **Within 30 days, the tax collector must file a report with the town clerk for recording indicating the properties not redeemed. 32 V.S.A. § 5262**



# Conducting the Tax Sale

## Step 11. Issuing the Tax Deed

- **The deed is not a warranty deed, but gives only such title as the taxpayer had. 32 V.S.A. § 5261**
- **A collector's deed may only be challenged for three years after it is issued (rather than the usual 15), provided that the purchaser records the deed, has taken possession of the property, and paid the property taxes. 32 V.S.A. § 5263**



# Conducting the Tax Sale

## Step 11. Issuing the Tax Deed

- If the deed is challenged, the purchaser has the burden of proving that the collector complied with every requirement for a valid sale.
- If the deed is held to be invalid because the proper tax sale process was not followed, the town will be liable to the purchaser.

■ Saulters v. Templeton, 61 Vt. 119 (1888).



# Questions

