

CHAPTER 2018-160

Committee Substitute for Committee Substitute for House Bill No. 1383

An act relating to tax deed sales; amending s. 197.502, F.S.; requiring a tax certificateholder to pay specified costs required to bring the property on which taxes are delinquent to sale; requiring the tax collector to cancel a tax deed application if certain costs are not paid within a specified period for certain purposes; revising procedures for applying for, recording, and releasing tax deed applications; revising the entities that must be notified before the sale of the property; revising provisions to require property information reports for certain purposes; prohibiting a tax collector from accepting or paying for a property information report under certain circumstances; amending s. 197.522, F.S.; authorizing a clerk to rely on addresses provided by the tax collector for specified purposes; amending s. 197.582, F.S.; revising procedures for the disbursement of surplus funds by clerks; providing forms for use in noticing and claiming surplus funds; specifying methods for delivering claims to the clerk's office; providing deadlines for filing claims; providing procedures to be used by clerks in determining disbursement of surplus funds; authorizing a tax deed recipient to pay specified liens; specifying procedures to be used by the tax clerk if surplus funds are not claimed; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2), paragraphs (b) and (c) of subsection (4), and subsections (5) and (6) of section 197.502, Florida Statutes, are amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(1) The holder of a tax certificate at any time after 2 years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate, may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located. The tax collector may charge a tax deed application fee of \$75 and for reimbursement of the costs for providing online tax deed application services. If the tax collector charges a combined fee in excess of \$75, applicants may use ~~shall have the option of using the~~ online electronic tax deed application process or may file applications ~~without~~ using such service.

(2) A certificateholder, other than the county, who applies ~~makes application~~ for a tax deed shall pay the tax collector at the time of application all amounts required for redemption or purchase of all other outstanding tax certificates, plus interest, any omitted taxes, plus interest, any delinquent taxes, plus interest, and current taxes, if due, covering the

property. In addition, the certificateholder shall pay the costs required to bring the property to sale as provided in ss. 197.532 and 197.542, including property information searches, and mailing costs, as well as the costs of resale, if applicable. If the certificateholder fails to pay the costs to bring the property to sale within 30 days after notice from the clerk, the tax collector shall cancel the tax deed application. All taxes and costs associated with a cancelled tax deed application shall earn interest at the bid rate of the certificate on which the tax deed application was based, and Failure to pay the such costs of resale, if applicable, within 30 days after notice from the clerk shall result in the clerk's entering the land on a list entitled "lands available for taxes."

(4) The tax collector shall deliver to the clerk of the circuit court a statement that payment has been made for all outstanding certificates or, if the certificate is held by the county, that all appropriate fees have been deposited, and stating that the following persons are to be notified prior to the sale of the property:

(b) Any lienholder of record who has recorded a lien against the property described in the tax certificate if an address appears on the recorded lien or if the lienholder is a financial institution and the financial institution has designated an address with the Department of State pursuant to s. 655.0201(2), then notice must be sent to the address on file with the Department of State.

(c) Any mortgagee of record if an address appears on the recorded mortgage or if the mortgagee has designated an address with the Department of State pursuant to s. 655.0201(2), then the notice must be sent to the address on file with the Department of State.

The statement must be signed by the tax collector or the tax collector's designee. The tax collector may purchase a reasonable bond for errors and omissions of his or her office in making such statement. The search of the official records must be made by a direct and inverse search. "Direct" means the index in straight and continuous alphabetic order by grantor, and "inverse" means the index in straight and continuous alphabetic order by grantee.

(5)(a) For purposes of determining who must be noticed and provided the information required in subsection (4), the tax collector must ~~may~~ contract with a title company or an abstract company to provide a property information report as defined in s. 627.7843(1) ~~the minimum information required in subsection (4), consistent with rules adopted by the department.~~ If additional information is required, the tax collector must make a written request to the title or abstract company stating the additional requirements. The tax collector may select any title or abstract company, regardless of its location, as long as the fee is reasonable, ~~the required minimum~~ information is submitted, and the title or abstract company is authorized to do business in this state. The tax collector may advertise and accept bids for the title or abstract company if he or she considers it appropriate to do so.

1. The property information report must include the letterhead of the person, firm, or company that makes the search, and the signature of the individual who makes the search or of an officer of the firm. The tax collector is not liable for payment to the firm unless these requirements are met. The report may be submitted to the tax collector in an electronic format.

2. The tax collector may not accept or pay for a property information report ~~any title search or abstract~~ if financial responsibility is not assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable. Notwithstanding s. 627.7843(3), the tax collector may contract for higher maximum liability limits.

3. In order to establish uniform prices for property information reports within the county, the tax collector must ensure that the contract for property information reports includes ~~include~~ all requests for property information reports ~~title searches or abstracts~~ for a given period of time.

(b) Any fee paid for initial property information reports and any updates ~~for a title search or abstract~~ must be collected at the time of application under subsection (1), and the amount of the fee must be added to the opening bid.

(c) Upon receiving the tax deed application from the tax collector, the clerk shall record a notice of tax deed application in the official records, which constitutes notice of the pendency of a tax deed application with respect to the property and remains effective for 1 year from the date of recording. A person acquiring an interest in the property after the tax deed application notice has been recorded is deemed to be on notice of the pending tax deed sale and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application for that property. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of the fees as authorized in s. 28.24(8) and (12). The contents of the notice shall be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1), and added to the opening bid.

(d) The clerk must shall advertise and administer the sale as set forth in s. 197.512, administer the sale as set forth in s. 197.542, and receive such fees for the issuance of the deed and sale of the property as provided in s. 28.24.

(e) A notice of the application of the tax deed in accordance with ss. 197.512 and 197.522 that is sent to the addresses shown on the statement described in subsection (4) is deemed conclusively sufficient to provide adequate notice of the tax deed application and the sale at public auction.

(6) The opening bid:

(a) On county-held certificates on nonhomestead property shall be the sum of the value of all outstanding certificates against the property, plus omitted years' taxes, delinquent taxes, current taxes, if due, interest, and all costs and fees paid by the county.

(b) On an individual certificate must include, in addition to the amount of money paid to the tax collector by the certificateholder at the time of application, the amount required to redeem the applicant's tax certificate and all other costs, ~~and fees paid by the applicant, and any additional fees or costs incurred by the clerk,~~ plus all tax certificates that were sold subsequent to the filing of the tax deed application, current taxes, if due, and omitted taxes, if any.

(c) On property assessed on the latest tax roll as homestead property shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead.

Section 2. Subsection (3) of section 197.522, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section to read:

197.522 Notice to owner when application for tax deed is made.—

(3) When sending or serving a notice under this section, the clerk of the circuit court may rely on the addresses provided by the tax collector based on the certified tax roll and property information reports. The clerk of the circuit court has no duty to seek further information as to the validity of such addresses, because property owners are presumed to know that taxes are due and payable annually under s. 197.122.

Section 3. Subsections (2) and (3) of section 197.582, Florida Statutes, are amended, and subsections (4) through (9) are added to that section, to read:

197.582 Disbursement of proceeds of sale.—

~~(2)(a) If the property is purchased for an amount in excess of the statutory bid of the certificateholder, the surplus excess must be paid over and disbursed by the clerk as set forth in subsections (3), (5), and (6). If the opening bid included the homestead assessment pursuant to s. 197.502(6)(c). If the property purchased is homestead property and the statutory bid includes an amount equal to at least one-half of the assessed value of the homestead, that amount must be treated as surplus excess and distributed in the same manner. The clerk shall distribute the surplus excess to the governmental units for the payment of any lien of record held by a governmental unit against the property, including any tax certificates not incorporated in the tax deed application and omitted taxes, if any. If the excess is not sufficient to pay all of such liens in full, the excess shall be paid to each governmental unit pro rata. If, after all liens of governmental units~~

~~are paid in full, there remains a balance of undistributed funds, the balance must shall be retained by the clerk for the benefit of persons described in s. 197.522(1)(a), except those persons described in s. 197.502(4)(h), as their interests may appear. The clerk shall mail notices to such persons notifying them of the funds held for their benefit at the addresses provided in s. 197.502(4). Such notice constitutes compliance with the requirements of s. 717.117(4). Any service charges, at the rate prescribed in s. 28.24(10), and costs of mailing notices shall be paid out of the excess balance held by the clerk. Notice must be provided in substantially the following form:~~

NOTICE OF SURPLUS FUNDS FROM TAX DEED SALE

CLERK OF COURT

..... COUNTY, FLORIDA

Tax Deed #.....

Certificate #.....

Property Description:

Pursuant to chapter 197, Florida Statutes, the above property was sold at public sale on ...(date of sale)..., and a surplus of \$...(amount)... (subject to change) will be held by this office for 120 days beginning on the date of this notice to benefit the persons having an interest in this property as described in section 197.502(4), Florida Statutes, as their interests may appear (except for those persons described in section 197.502(4)(h), Florida Statutes).

To the extent possible, these funds will be used to satisfy in full, each claimant with a senior mortgage or lien in the property before distribution of any funds to any junior mortgage or lien claimant or to the former property owner. To be considered for funds when they are distributed, you must file a notarized statement of claim with this office within 120 days of this notice. If you are a lienholder, your claim must include the particulars of your lien and the amounts currently due. Any lienholder claim that is not filed within the 120-day deadline is barred.

A copy of this notice must be attached to your statement of claim. After the office examines the filed claim statements, it will notify you if you are entitled to any payment.

Dated:

Clerk of Court

(b) The mailed notice must include a form for making a claim under subsection (3). Service charges at the rate set forth in s. 28.24(10) and the costs of mailing must be paid out of the surplus funds held by the clerk. If the

clerk or comptroller certifies that the surplus funds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of surplus funds as a service charge. Excess proceeds shall be held and disbursed in the same manner as unclaimed redemption moneys in s. 197.473. For purposes of identifying unclaimed property pursuant to s. 717.113, excess proceeds shall be presumed payable or distributable on the date the notice is sent. If excess proceeds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of excess proceeds as a service charge.

(3) A person receiving the notice under subsection (2) has 120 days from the date of the notice to file a written claim with the clerk for the surplus proceeds. A claim in substantially the following form is deemed sufficient:

CLAIM TO RECEIVE SURPLUS PROCEEDS OF A TAX DEED SALE

Complete and return to:

By mail:

By e-mail:

Note: The Clerk of the Court must pay all valid liens before distributing surplus funds to a titleholder.

Claimant's name:

Contact name, if applicable:

Address:

Telephone Number: Email Address:

Tax No.

Date of sale (if known):

..... I am not making a claim and waive any claim I might have to the surplus funds on this tax deed sale.

..... I claim surplus proceeds resulting from the above tax deed sale.

I am a (check one)Lienholder;Titleholder.

(1) LIENHOLDER INFORMATION (Complete if claim is based on a lien against the sold property).

(a) Type of Lien:Mortgage;Court Judgment;Other

Describe in detail:

If your lien is recorded in the county’s official records, list the following, if known:

Recording date:; Instrument #.....; Book #.....; Page #.....

(b) Original amount of lien: \$.....

(c) Amounts due: \$.....

1. Principal remaining due: \$.....

2. Interest due: \$.....

3. Fees and costs due, including late fees: \$..... (describe costs in detail, include additional sheet if needed);

4. Attorney fees: \$.....(provide amount claimed): \$.....

(2) TITLEHOLDER INFORMATION (Complete if claim is based on title formerly held on sold property.)

(a) Nature of title (check one):Deed;Court Judgment;Other (describe in detail)

(b) If your former title is recorded in the county’s official records, list the following, if known: Recording date:.....; Instrument #:.....Book #:.....; Page #:.....

(c) Amount of surplus tax deed sale proceeds claimed: \$.....

(d) Does the titleholder claim the subject property was homestead property?YesNo.

(3) I hereby swear or affirm that all of the above information is true and correct.

Date:

Signature:

STATE OF FLORIDA

.....COUNTY.

Sworn to or affirmed and signed before me on ...(date)... by ...(name of affiant)....

NOTARY PUBLIC or DEPUTY CLERK

...(Print, Type, or Stamp Commissioned Name of Notary)...

Personally known, or

Produced identification;

Identification Produced:

(4) A claim may be:

(a) Mailed using the United States Postal Service. The filing date is the postmark on the mailed claim;

(b) Delivered using either a commercial delivery service or in person. The filing date is the day of delivery; or

(c) Sent by fax or e-mail, as authorized by the clerk. The filing date is the date the clerk receives the fax or e-mail.

(5) Except for claims by a property owner, claims that are not filed on or before close of business on the 120th day after the date of the mailed notice as required by s. 197.582(2), are barred. A person, other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the surplus funds. The failure of any person described in s. 197.502(4), other than the property owner, to file a claim for surplus funds within the 120 days constitutes a waiver of interest in the surplus funds and all claims thereto are forever barred.

(6) Within 90 days after the claim period expires, the clerk may either file an interpleader action in circuit court, if potentially conflicting claims to the funds exist, or pay the surplus funds according to the clerk’s determination of the priority of claims using the information provided by the claimants under subsection (3). Fees and costs incurred by the clerk in determining whether an interpleader action should be filed shall be paid from the surplus funds. If the clerk files an interpleader action, the court shall determine the distribution of funds based upon the priority of liens filed. The clerk may move the court to award reasonable fees and costs from the interpleaded funds. An action to require payment of surplus funds is not ripe until the claim and review periods expire. The failure of a person described in s. 197.502(4), other than the property owner, to file a claim for surplus funds within the 120 days constitutes a waiver of all interest in the surplus funds and all claims for them are forever barred.

(7) A holder of a recorded governmental lien, other than a federal government lien or ad valorem tax lien, must file a request for disbursement of surplus funds within 120 days after the mailing of the notice of surplus funds. The clerk or comptroller must disburse payments to each governmental unit to pay any lien of record held by a governmental unit against the property, including any tax certificate not incorporated in the tax deed application and any omitted taxes, before disbursing the surplus funds to nongovernmental claimants.

(8) The tax deed recipient may directly pay off all liens to governmental units that could otherwise have been requested from surplus funds, and, upon filing a timely claim under subsection (3) with proof of payment, the tax

deed recipient may receive the same amount of funds from the surplus funds for all amounts paid to each governmental unit in the same priority as the original lienholder.

(9) If the clerk does not receive claims for surplus funds within the 120 day claim period, as required in subsection (5), there is a conclusive presumption that the legal titleholder of record described in s. 197.502(4)(a) is entitled to the surplus funds. The clerk must process the surplus funds in the manner provided in chapter 717, regardless of whether the legal titleholder is a resident of the state or not.

~~(3) If unresolved claims against the property exist on the date the property is purchased, the clerk shall ensure that the excess funds are paid according to the priorities of the claims. If a lien appears to be entitled to priority and the lienholder has not made a claim against the excess funds, payment may not be made on any lien that is junior in priority. If potentially conflicting claims to the funds exist, the clerk may initiate an interpleader action against the lienholders involved, and the court shall determine the proper distribution of the interpleaded funds. The clerk may move the court for an award of reasonable fees and costs from the interpleaded funds.~~

Section 4. This act applies to tax deed applications filed on or after October 1, 2018, with the tax collector pursuant to s. 197.502, Florida Statutes.

Section 5. This act shall take effect July 1, 2018.

Approved by the Governor April 6, 2018.

Filed in Office Secretary of State April 6, 2018.