

Tackling Blight and Encouraging Development: How Judicial Tax Sales Can Be Your Most Effective Tool

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Every community in every corner of the State of Georgia, from the Coastal Plains to the Appalachian Plateau, faces the same challenge – how to ensure long-term strength and economic viability thereby encouraging individuals and businesses in the community to remain local and thrive. While facing these challenges, local leaders must consider how to effectively deal with blighted properties, how to encourage development or redevelopment of shopping and industrial areas and neighborhoods, and how to strengthen the tax base without unduly burdening their local population with constant tax increases. While these questions require more study and deliberations than can be covered in this article, one of the most effective tools for these challenges is the judicial tax sale of properties that have lingered too long without owners putting those properties to productive use. In this article we will briefly examine exactly what is a judicial tax sale and why communities should benefit from their use.

What is a Judicial Tax Sale?

In 1995, the General Assembly created a process by which counties and municipalities can collect taxes through judicial means in a manner which is quicker and results in greater certainty of title than a regular, non-judicial, tax sale. See O.C.G.A. §§ 48-4-75, *et seq.* In a rare instance in Georgia, the General Assembly expressed its intent in passing the judicial tax sale statutes – to create a process in which title to tax sale properties will efficiently vest, provide greater notice of tax sales and to allow for redemptions of tax sale properties at a lower price point.

O.C.G.A. § 48-4-75, specifically states, “the General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization....and that nonjudicial tax [sales] are inefficient, lengthy, and commonly result in title to real property which is neither marketable or insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that [judicial tax sales are] an effective means of eliminating health hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.”

The bottom line for the purposes of this article is this – judicial tax sales vest title absolutely into a purchaser at the sale, eliminating the need for post-sale barments and quiet titles and without the need for the purchaser to wait at least a year after the sale before starting the process to acquire good title.

Vesting of Title at the Sale

After a nonjudicial tax sale, the purchaser of the property at the sale must wait at least a year before barring rights of redemption. After the rights of redemption are barred, the purchaser must then file a quiet title action in superior court seeking a determination from the court that the purchaser has good title to the property purchased over a year earlier. This lengthy (and expensive) process disincentivises a person who wants to buy property for immediate residential or business use from buying at nonjudicial tax sales. How would a purchaser at a nonjudicial tax sale obtain a mortgage for the purchase of property which they cannot own or possess, if at all, until more than a year after the sale? Why would a business owner buy a property at a nonjudicial tax sale knowing that the property will not be owned by them, if at all, until more than a year after the sale?

These concerns are eliminated by the judicial tax sale process. A residential buyer or a business owner can rest assured that title will vest in them after purchase without long delays, additional attorneys' fees and expenses and without the uncertainty of ownership. And, just as important, buyers at judicial tax sales often find they can buy properties at judicial tax sales at a much lower price than would be possible on the open market. The obvious result of all of this is through the judicial tax sale process, properties can efficiently be put back into productive use as residential homes or new businesses (and jobs) for communities.

Blighted Properties and Judicial Tax Sales

While every state in the nation uses a different criteria to determine whether property is blighted, all recognize that blighted property is land that is dilapidated, unsafe and generally possesses unsightly conditions. The most common indicator of whether property is blighted is if it is uninhabitable.

While judicial tax sales provide a mechanism for the efficient vesting of titles in purchasers and ensure properties are put back into productive use, the question becomes how are blighted properties and judicial tax sales related? The answer is simple yet powerful - the benefits of judicial tax sales can only be realized if properties have delinquent taxes owing – and blighted properties usually do! When one looks at a blighted property, not only will one find multiple code violations for maintenance and upkeep, but more times than not, one will also find at least one year or more of delinquent taxes owing, setting the stage for a community to reap the benefits of selling properties at judicial tax sales.

In December, 2014, the Center for Community Progress completed a study for the City of Atlanta entitled, "Judicial In Rem Code Enforcement and Judicial In Rem Tax Sales: Optimum Tools to Combat Vacancy and Abandonment in Atlanta." While commissioned by the City of Atlanta, this study and its results can be applied to any community in the State. The study coins the phrase: "fix it up, pay it up, or give it up!" It details how a

community can utilize an in rem code enforcement procedure for blighted properties, levy fines in rem against the properties for violations and combine those levied fines with delinquent taxes and conduct judicial tax sales of properties. This mechanism then allows the community to collect delinquent taxes, collect fines for blighted conditions and then put properties back to productive use. While the study is very detailed and comprehensive and this Author recommends a thorough review of its findings, it concludes that "the utilization of [in rem code enforcement] coupled with [judicial tax sales] will ...institutionalize a coordinated, effective, efficient and equitable systemic response to vacancy, abandonment and code violations in the City of Atlanta [and communities around the state]."

Additional Benefits of Judicial Tax Sales

It is common place for properties that are blighted and/or tax delinquent to also have very difficult title histories. These difficult titles often manifest themselves in various ways: (1) record title may be vested in unknown heirs, (2) there may be breaks in the record chain of title making it unclear who the record owner is or (3) the recorded liens against the property may total an amount which is more than the property is worth. While this is not an exhaustive list, all of these "problems" are fixed through a judicial tax sale. After the sale, the purchaser will receive a final order from the superior court not only vesting fee title in the purchaser, but vesting it free and clear of any right or interest of unknown heirs, free and clear of any confusion created by breaks in title chains and free and clear of any and all junior liens attaching to the property. And, since liens for ad valorem taxes have priority to other liens under O.C.G.A. § 48-2-56, there is no need to worry about the total amount of the liens attaching to the property – all such liens are "wiped" from the property after judicial tax sale.

Conclusion

Every community in the state wants to combat blight, encourage economic development and instill pride in its citizens. As long as properties remain in a state of disrepair and no mechanism is utilized to put those properties back to productive use, communities will stagnate and efforts at rehabilitation and development will fail. By conducting judicial tax sales of properties, communities can once again ensure underutilized and blighted properties are used for homes and businesses, and, at the same time, decrease the tax burden on the community by collecting delinquent taxes and collecting fines levied for blighted property conditions. As communities continue to recover from the devastating effects of the real estate crash in the late 2000's, they should look to judicial tax sales as the most effective tool in their tool box.



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