S T A T E O F T E N N E S S E E
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Opinion No. 07-135

Applicability of Tenn. Code Ann. § 35-5-101 to Delinquent Tax Sales

QUESTION

Do the provisions of Tenn. Code Ann. § 35-5-101, as amended by Chapter 801 of the Public Acts of 2006, apply to delinquent tax sales?

OPINION

No. The provisions of Tenn. Code Ann. § 35-5-501 do not apply to delinquent tax sales. Delinquent tax sales are governed by the more specific provisions of Tenn. Code Ann. §§ 67-5-2401, *et seq*., and 67-5-2501, *et seq*.

ANALYSIS

Effective January 1, 2007, the General Assembly amended Tenn. Code Ann. § 35-5-501 by adding the following as a new subsection (e):

> (e) In any sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders or process, the trustee or other party that sells such property shall send to the debtor and any co-debtor a copy of the noticed required in § 35-5-104. The notice shall be sent on or before the first date of publication provided in this section by registered or certified mail, return receipt requested. The notice shall be sent to the following:
>
> (1) If the debtor:
>
> (A) The location of the property; and
>
> (B) The last known residence of the debtor or such other address provided by the debtor to the mortgagor or trustee, at least thirty (30) days prior to the publication date, but only if such

> residence or such other address is both different from the address of the property and different from that of the debtor.
>
> (2) If a co-debtor, the last known residence address or other address of the co-debtor which is provided to the mortgagor or trustee at least thirty (30) days prior to the publication date, but only if such residence or such other address is both different from the address of the property and different from that of the debtor.

2006 Tenn. Pub. Acts 801, § 10.

As your request points out, the notice provisions contained in Tenn. Code Ann. §§ 35-5-101 and 35-5-104 differ from the notice provisions contained in the property tax code that apply to delinquent tax sales. *See, e.g.*, Tenn. Code Ann. § 67-5-2401 (2006) (requiring publication of notice of intent to file delinquent tax suit); Tenn. Code Ann. § 67-5-2402 (2006) (requiring trustee to provide notice in taxpayer's current tax bill); Tenn. Code Ann. § 67-5-2415 (2006) (requiring notice to taxpayer when delinquent tax suit is filed); Tenn. Code Ann. § 67-5-2502 (2006) (requiring publication of advertisement of delinquent tax sale).

It is the opinion of this Office that the provisions of Tenn. Code Ann. § 35-5-101 do not apply to delinquent tax sales. "Tennessee courts recognize that a specific statute will apply rather than a general statute when there is a conflict between the two statutes." *Johnson v. John Hancock Funds*, 217 S.W.3d 414, 423 (Tenn. Ct. App. 2006). The property tax code contains notice provisions that specifically apply to delinquent tax sales. These specific statutes apply to delinquent tax sales rather than the more general notice provisions of Tenn. Code Ann. § 35-5-101, *et seq*.

The notice provisions of Tenn. Code Ann. § 35-5-101(e) were enacted as part of the Tennessee Home Loan Protection Act. *See* 2006 Tenn. Pub. Acts 801, § 1. These notice provisions primarily relate to sales of land "to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value." Tenn. Code Ann. § 35-5-101(e) (Supp. 2006). Within the broader context of the Tennessee Home Loan Protection Act, the notice provisions appear designed to provide additional protection to homeowners who have provided their homes as security in commercial transactions. These provisions were not designed to apply to tax liens, which arise as a matter of law, or the delinquent tax sales that are conducted to satisfy such liens. Such sales are governed by the more specific provisions contained in Tenn. Code Ann. §§ 67-5-2401, *et seq*., and 67-5-2501, *et seq*.

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