

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 23, 2015

Opinion No. 15-40

County's Liability as Purchaser for Damages to Property During Redemption Period

Question

When the county is required by state law to submit bids on properties being auctioned due to failure to pay back taxes, does the county have any financial or legal liability for properties in which bids have been accepted but the one-year period of redemption has not ended? For example, if a fire or a natural disaster damages one of those properties during the one-year redemption period, who is financially or legally liable for that damage?

Opinion

The county, as the purchaser at the tax sale, is liable for any damage to the property occurring during the one-year redemption period, provided the right of redemption is not exercised during that time period.

ANALYSIS

As a general rule, the clerk of the court, acting for the county or other tax entity prosecuting a delinquent tax suit, is required to “bid the debt ascertained to be due for taxes, interest, penalties, and the costs and fees incident to the collection thereof, where no other bidder offers the same or larger bid.” Tenn. Code Ann. § 67-5-2501(a)(2) & (b)(2); *see also* Tenn. Code Ann. § 67-5-2506(a)(2) & (b)(2). In effect, these provisions require the county to be the successful bidder at a tax sale as to those properties for which minimum bids are not received. *Id.*

When the county acquires properties in this manner, “[i]t is the duty of the county mayor . . . to take charge of all the lands bought in by the county.” Tenn. Code Ann. § 67-5-2507(a)(1). During the one-year redemption period following confirmation of the sale, the county is required to hold the land and to put it “only to such use as will not result in a waste of such land.” Tenn. Code Ann. § 67-5-2507(a)(2). After the one-year redemption period has elapsed, the county mayor is required “to arrange for the disposition of every tract of such land as expeditiously and advantageously as possible,” subject to certain statutory requirements. Tenn. Code Ann. § 67-5-2507(a)(3). Alternatively, the county may “decide to retain ownership and possession of such property” if the county legislative body determines that it is “in the best interests of the county to use the property for a public purpose.” Tenn. Code Ann. § 67-5-2507(b)(11).

You have asked who is financially or legally liable for damage to property acquired by a county at a delinquent tax sale when such damage occurs during the one-year statutory redemption period. The Court of Appeals has described the responsibilities of a tax-sale purchaser to maintain

property during the one-year redemption period. In addition to any applicable statutory requirements, a tax-sale purchaser has a “common-law obligation to refrain from committing ‘permissive waste’” during the redemption period.¹ *State v. Delinquent Taxpayers*, No. M2004-00951-COA-R3-CV, 2006 WL 3147060, at *7 (Tenn. Ct. App. Nov. 2, 2006) (*no perm. app. filed*). In this context,

“waste” connotes unreasonable conduct by a person in rightful possession of real property that results in the destruction or permanent physical damage of the property and in substantial diminution in the value of other persons’ interests in the property. . . . Waste can be caused either by acts of commission or acts of omission. Thus, “voluntary waste” results from deliberate, affirmative acts by the possessor of property. On the other hand, “permissive waste” results from the failure of the possessor of property to exercise the reasonable care to preserve and protect the future estate or interest of another.

Id. (citations omitted).

Under this standard, the possessor of property purchased at a tax sale “must keep the property in the same general condition that it was at the time of possession.” *Id.* The purchaser has no obligation to make improvements to the property, but the purchaser cannot “allow a structure to deteriorate for lack of repair.” *Id.* Examples of permissive waste include, but are not limited to, “the failure to make roof repairs, the failure to replace a furnace to prevent damage from freezing, the failure to paint the exterior of a structure, and the failure to replace or maintain gutters.” *Id.*, at *8 (citations omitted).

If the property is redeemed before the expiration of the one-year redemption period, the purchaser in possession may recover from the redeeming party “[r]easonable cost paid by the purchaser to avoid permissive waste of the parcel.” Tenn. Code Ann. § 67-5-2701(e)(3).² Thus, while the purchasing party has the obligation to incur certain costs to avoid permissive waste during the one-year redemption period, the purchaser has the ability to recover these costs from the redeeming party. *Id.* In contrast, if no party with the right of redemption timely acts to redeem the property, the purchaser at the tax sale becomes the owner of the property and remains responsible for all costs associated with the property during the one-year redemption period and

¹ Formerly, this common-law obligation was codified at Tenn. Code Ann. §§ 67-5-2704(a) and 67-5-2705. Title 67, Chapter 5, Part 27, was repealed and reenacted in 2014 by Public Chapter 883, which took effect July 1, 2014. Prior to its repeal, Tenn. Code Ann. § 67-5-2704(a) required the party redeeming the property to pay the tax-sale purchaser any moneys “expended to preserve the value of the property.” As reenacted, Tenn. Code Ann. § 67-5-2701 now requires the redeemer to pay, *inter alia*, the “[r]easonable cost paid by the purchaser to avoid permissive waste of the parcel.” Tenn. Code Ann. § 67-5-2701(e)(3).

² The redeeming party additionally may be required to reimburse the tax-sale purchaser for other expenses incurred during the redemption period, including property taxes, reasonable insurance payments and improvements, homeowner’s association dues, and expenses of complying with a judicial or administrative order requiring compliance with applicable building code or zoning regulations. Tenn. Code Ann. § 67-5-2701(e)(1)-(5).

thereafter. Absent redemption, no mechanism exists for the purchaser to recover these costs from another party.

The same rules apply when the county is the purchaser at the tax sale. When the county acquires property at a tax sale, it is required to take charge of the land and to hold and use it in a manner that will not result in waste.³ Tenn. Code Ann. § 67-5-2507(a)(1)-(2). After the one-year redemption period has elapsed, the county becomes the owner of the property and is authorized to sell the property, subject to the statutory requirements for conveying the property, or to retain ownership and possession of the property. Tenn. Code Ann. § 67-5-2507(b)(1)-(11). Under these circumstances, the county remains responsible for any costs associated with the land during the one-year redemption period.

Your request specifically asks about damage caused by a fire or a natural disaster during the one-year redemption period. If no one timely acts to redeem the property, the county will have to bear the costs associated with the damage to the property, including any required cleanup costs or costs incurred to preserve the property's value. Similarly, if a fire, flood, or other natural disaster results in the property's diminution in value, the county ultimately will have to bear this loss if no redeeming party appears to reclaim the property.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

MARY ELLEN KNACK
Senior Counsel

Requested by:

The Honorable Ken Yager
State Senator
G19 War Memorial Building
Nashville, Tennessee 37243

³ Prior to its repeal, Tenn. Code Ann. § 67-5-2705 provided that “[n]o person in possession of real property subject to the appropriate redemption period . . . shall commit waste, and such persons shall take reasonable steps to prevent waste.” In repealing and reenacting Title 67, Chapter 5, Part 27, the General Assembly removed this affirmative statutory obligation from the code but did not replace it with substantially equivalent language. The Court of Appeals’ decision, however, indicates that a tax sale purchaser has a common-law obligation to refrain from committing permissive waste during the redemption period and that the prior version of the statute was merely a codification of this obligation. *State v. Delinquent Taxpayers*, at *7. Moreover, Tenn. Code Ann. § 67-5-2507 has not been amended in recent years, and it continues to require the county to hold the land and to put it “only to such use as will not result in a waste of such land.”