

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA'S GUIDE TO UPSET TAX SALES

WHAT IS AN UPSET TAX SALE?

When a Pennsylvania resident fails to pay their Real Estate Taxes for two or more years, the money owed becomes delinquent and the government has the authority, under the Real Estate Tax Sale Law ("RETSL"), to sell the house in order to recoup their loss. In other words, if a person has not paid property taxes for over two years, the government can sell a person's house to get the tax money they are owed. An upset tax sale is also called a tax sale. Tax sales are conducted by a county's Tax Claims Bureau ("TCB").

At a tax sale, a tax-delinquent property is sold subject to existing liens (i.e. mortgages, judgments, etc.). The minimum sale price at a tax sale is the amount of the delinquent taxes, plus current year's taxes that are due, plus interest, plus municipal claims, plus costs.

Even if a house is sold at a tax sale, the delinquent owner still has the right to contest the sale. For example, if the owner did not get notice of the tax sale and a judge finds that to be true, the sale will be set aside. In that case, the money is returned to the tax sale purchaser and the delinquent owner is allowed to retain his property. However, if he does not pay the back taxes and current taxes going forward, the owner risks losing his house to tax sale again.

If a house is not sold at the initial upset/tax sale, it may be listed for judicial sale a couple of months later. If a house is not sold at either the tax sale or the judicial sale, it is then put up for repository sale.

A tax sale is not the same thing as a sheriff's sale; a sheriff's sale happens after a person fails to make mortgage payments and the bank who lent the money (or who now owns the mortgage) tries to sell the house to get its money back. Tax sales and sheriff's sales are similar in that inaction in either can lead to ejectment/eviction.

DATES TO KNOW

Tax sales in Pennsylvania are required to take place between the second Monday in September and October 1st. Different counties have their sales on different dates. Again, if a house is not sold at the initial tax sale, it will be relisted at the judicial sale which is held in December.

HOW TO SAVE PROPERTY FROM TAX SALE

The simplest way to save property from being sold at a tax sale is to call the Tax Claim Bureau (TCB) for the county and either pay the debt outright or work with them to make arrangements to repay the tax debt. Oftentimes, a TCB will offer a property owner a repayment plan which would allow the owner to make smaller payments over time and stay in the house.

Another way to end a tax sale is to pay off the debt by obtaining separate financing. A person can take out a private loan to pay off the tax debt, however, unless a person has a high enough credit score they will be unlikely to obtain a loan.

Alternatively, a person can file a Chapter 13 bankruptcy. By filing for a Ch. 13 bankruptcy an automatic stay is put in place. This means that the Tax Claim Bureau *cannot* list your house for tax sale for a period of up to five years. A Ch. 13 bankruptcy is a reorganization of debt. A person's debt does not disappear, but that person is allowed to pay the debt back over a period of three to five years rather than in a lump sum. Therefore, if a person's house is up for tax sale because they owe \$6,000, that person can file a Ch. 13 bankruptcy and repay that debt over five years at a rate of approximately \$83 a month. It is important to note, however, that a person is still expected to pay property taxes on time going forward in addition to the arrears (the \$83 in our example). Finally, a person should be aware that a Ch. 13 bankruptcy will be marked on their credit score for the next seven years.

RIGHT OF REDEMPTION:

A legal right to redeem property that has been sold at tax sale does not exist for all of Pennsylvania. Only in Philadelphia and Lancaster Counties can a property owner redeem his property *after* a tax sale. Therefore, a property owner must assert himself before the sale takes place in order to save his/her property.

NOTICE REQUIREMENTS

Though a person may owe unpaid property taxes to the government, the government cannot take their home without due process. The constitutional requirement of due process is met when a Tax Claim Bureau notifies an owner of property that their house is going up for tax sale in accordance with Pennsylvania's Real Estate Tax Sale Act ("RETSA").

Ten Day Written Notice of Sale for Owner-Occupied Property

Under Section 601(3) of RETSA, a house cannot be sold at tax sale without at least ten (10) days written notice that the house with delinquent property taxes will be listed for sale at the tax sale, as long as the house is the owner's primary residence. If the owner does not primarily live in the house going up for tax sale, the ten day written notice is not required. As long as one owner is served, all owners are considered to have been served.

The ten day notice requirement is fulfilled after the owner or occupier of the house has been personally served and the person who made service has filed proof with the county's Tax Claim Bureau. The written proof of service that must be filed has to contain the name of the person served, the date and time and place of service, and must have a copy of the notice that was served attached.

If personal notice cannot be properly served within twenty-five (25) days, the Tax Claim Bureau can ask the Court of Common Pleas to waive the requirement. Therefore, simply avoiding a process server does not mean that your house is safe. Avoiding a process server just allows your house to be sold without advising you of your rights.

Thirty Day Notice of Sale for All Property

At least thirty (30) days before any scheduled tax sale, a county's Tax Claim Bureau (TCB) must publish notice of tax sale in at least two newspapers in "general circulation." A TCB must also publish notice at least once in a legal journal that has been designated by a court to be the place to publish such notices. According to Section 602(a) of RETSA, Such notice must contain "(1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims entered and the name of the owner." The TCB must also send notice of the sale to any known owners by certified mail, restricted delivery, return receipt requested, and postage prepaid at least thirty (30) days before the tax sale.

At least ten (10) days before the tax sale, the TCB must also physically post a notice on the property. Most often this notice is left on the front door.

All notices (except for those published in the newspaper or legal journals) must have the following printed on them:

WARNING "YOUR PROPERTY IS ABOUT TO BE SOLD WITHOUT YOUR CONSENT FOR DELINQUENT TAXES. YOUR PROPERTY MAY BE SOLD FOR A SMALL FRACTION OF ITS FAIR MARKET VALUE. IF YOU HAVE ANY QUESTIONS AS TO WHAT YOU MUST DO IN ORDER TO SAVE YOUR PROPERTY, PLEASE CALL YOUR ATTORNEY, THE TAX CLAIM BUREAU AT THE FOLLOWING TELEPHONE NUMBER_____, OR THE COUNTY LAWYER REFERRAL SERVICE."

Such notices must also contain language which conveys to the owner the possibility of stopping the tax sale of their property as long as they work with the TCB to make arrangements for the payment of past due taxes. Any costs associated with advertising, posting, and sending notice is tacked on to the balance owed at tax sale as a cost. It is *always* advised that a client call their county's TCB upon learning of a tax sale.

If a person's house goes up for a tax sale and they did not receive these required notices, it is possible to stop the sale from occurring. In that case, a person will have extra time to work with a county's TCB to pay the back taxes and retain ownership of the home. If proper notice is not sent and/or posted, Legal Aid of Southeastern Pennsylvania has attorneys who can help stop the sale from occurring.

WHAT HAPPENS AFTER MY HOUSE HAS SOLD?

After a tax sale occurs and your house has been sold you cannot redeem the house, but you still have rights until you are formally ejected from the property. Before the ejection, sometimes a person can negotiate a deal with the new owner of the property, called a Cash-for-Keys deal. If a person is able to negotiate or are made such an offer, they might be able to get money for leaving the property without causing any issues. However, if a Cash-for-Keys deal is not made, a person may stay in the property until the new owner has filed an ejection lawsuit and obtained a court order to have them evicted.

When the Complaint in Ejection is served, it is possible to delay the eviction by filing a responsive pleading. A responsive pleading, such as an Answer or Preliminary Objections, can buy a person extra time in the house before he is physically forced to leave. Legal Aid of Southeastern Pennsylvania has a Housing Unit that can help people going through the ejection process by either assisting with negotiations or drafting responsive pleadings for a person to file.

Property up for Upset Tax Sale?

Contact Legal Aid of Southeastern Pennsylvania

LASP Attorneys can advise you of your rights,
negotiate on your behalf, and draft responsive pleadings
to buy you more time in the property.

**Apply for assistance by calling Legal Aid's Helpline at (877) 429-5994
or go online at www.lasp.org.**