

Hall County Tax Sale Prospective Purchaser's Guide

DISCLAIMER

This publication is designed to answer questions and provide an insight into delinquent property tax sales as conducted by the Hall County Tax Commissioner.

Prospective purchasers (bidders) at a tax sale are encouraged to consult an attorney for professional advice and assistance. All tax sales are a BIDDER BEWARE sale. It is the responsibility of the bidder to research each property they wish to bid on and do their own due diligence.

Applicable references to the Official Code of Georgia are given as a source for understanding how real estate tax sales are conducted in the State of Georgia.

The Tax Commissioner makes no warranties or assurances as to the completeness or accuracy of the information contained herein.

ATTENTION

Prospective Tax Sale Purchasers (bidders):

This tax sale booklet provides a starting point to understanding tax sales. All bidders are responsible for knowing the law regarding tax sales.

Tax deeds only convey "defeasible" title to property, which means, treat it like a lien since the owner and lien holders have the right to redeem the property. To acquire fee simple title to property, a tax deed purchaser must foreclose the right to redeem (after 12 months) pursuant to state law and request quiet title via the Superior Court.

The legal axiom of caveat emptor or "buyer beware" applies to tax sales (OCGA 9-13-167). Bidders must educate themselves about the titles of the tax sale properties and any defects that may exist in them.



The Hall County Tax Commissioner does not warrant titles and any title search done for the Tax Commissioner should not be considered an opinion of title and should not be relied upon for tax sale purchasers. The Hall County Tax Commissioner reserves the right to void any tax sale that is later determined to have errors that make the sale invalid. The Tax Commissioner cannot and does not guarantee any expected gain on investments.

INTRODUCTION

There are many factors regarding the tax sale property that cannot be answered by the Tax Commissioner. Anyone interested in tax sale property must find information in other offices and records. For example, building code requirements, whether county sewer or water lines serve a particular area or street, whether a particular parcel or lot will be approved for a building or a septic tank, conditions of existing structures, or any easements.

Property offered for tax sale may have other unpaid taxes or liens that do not go away after the sale. If the parcel of land is located in a city that collects their own taxes, the city taxes could be unpaid as well. It is also possible that additional county taxes have become delinquent since proceedings first began on the parcel. If there was an IRS lien against the owner of the property, the IRS has 120 days to redeem the property at the purchase price (Federal Law).

Can a purchaser lose money? This is always a possibility. One may obtain a bad deed or clouded title, whether from an individual or from a tax sale. It is recommend that anyone contemplating purchasing at a tax sale consult an attorney, assure oneself that the title is good, verify information, study those sections of Georgia law pertaining to tax sales, and attend a tax sale to become familiar with the proceedings.

TAX SALE PROCEDURES

The Hall County Tax Commissioner's Office follows certain procedures when it levies upon a piece of property. These procedures are prescribed by the **Official Code of Georgia Annotated (OCGA)**. You will see code sections referenced throughout this booklet. These references are a starting point for your research and are by no means a complete listing. We strongly suggest you read those sections of Georgia law which pertain to Tax Executions and Tax Sales. **OCGA Title 48 - Revenue and Taxation, Chapter 3 - Tax Executions and Chapter 4 Tax Sales** contain important information that you must be aware of.

AUTHORITY TO SELL

The Tax Commissioner of Hall County also serves as Ex-Officio Sheriff of Hall County. The Ex- Officio Sheriff may appoint Ex-Officio Deputy Sheriffs. Both may act on behalf of the Sheriff in tax sale matters. Each Ex- Officio Deputy Sheriff has full power to advertise and bring property to sale for the purpose of collecting taxes due the state and county (OCGA 48-2-55 and 48-3-6).

Taxes due the state and county are not only **against the owner but also against the property**, are superior to all other liens and shall be paid before any other debt, lien, or claim of any kind. Taxes constitute a general lien upon all property of a taxpayer and the lien attaches on January 1st of each tax year, even though the fi. Fa. Has not been issued (OCGA 48-2-56 and 48-5-28).

FIERI FACIAS (FI. FA.)

A **fi. fa.** (short for **fieri facias**, a Latin term meaning "cause it to be done" and also used interchangeably with **Tax Execution** or **Execution**) is a tax lien or writ, authorizing the Sheriff or Ex-Officio Sheriff to obtain satisfaction of unpaid taxes by levying on and selling the delinquent taxpayer's property. These documents are recorded on the **General Execution Docket** ("GED") of the Clerk of Superior Court (OCGA 48-3-1 and 48-3-3).

30 DAY NOTICE BEFORE ISSUING FI. FA.

After the last day for payment of taxes, the Tax Commissioner shall notify the taxpayer in writing that the taxes are outstanding, and unless taxes are paid within thirty (30) days, an execution (fi. fa.) will be issued (OCGA 48-3-3(b)).

ISSUANCE AND RECORDATION OF FI. FA.

The execution (fi. fa.) is directed "to all and singular sheriffs of this state" (which means Sheriffs or Tax Commissioners who serve as Ex-Officio Sheriffs) and shall direct them to seize and sell the property of the delinquent taxpayer to satisfy the delinquent taxes. The property shall be plainly described on the execution (fi. fa.). (OCGA 48-3-1).

The execution also bears interest every month from the date the tax was due. The interest rate is based on the bank prime loan rate as posted by the Board of Governors



of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January 1 of each calendar year. The execution (fi. fa.) is signed by the Tax Commissioner as Ex-Officio Sheriff or may be signed by the Sheriff in a county where the Tax Commissioner does not serve as an Ex-Officio Sheriff. (OCGA 48-2-40 and 48-3-8).

LEVY

When real estate is levied upon, the levy officer, appointed as an Ex-Officio Deputy Sheriff, is directed by a tax execution to seize and sell the property to satisfy the delinquent taxes. The Ex-Officio Deputy Sheriff must give **20 days written notice** before advertising to the owner, tenant, record owner of the property and the record owner of each security deed and mortgage affecting such property. (OCGA 48-3-1 and 48-3-9)

This levy notice is delivered by certified mail. The levy shall state the owner's and/or mortgage holder's name, the tax year's delinquent, the principal amount of taxes due, the accrued cost due, and a description of the property to be sold (OCGA 48-3-9, 48-3-10, and 9-13-13).

ADVERTISING

All properties to be auctioned for delinquent taxes are advertised every Thursday for four (4) consecutive weeks prior to the first Tuesday of the month. These advertisements are placed in the legal section of the Gainesville Times whose website is www.gainesvilletimes.com. An updated list is also available at [hallcountytax.org/#/property/tax sale](http://hallcountytax.org/#/property/tax_sale). (OCGA 9-13-141)

10 DAY NOTICE TO OWNER

At least 10 days before the tax sale, the owner is sent an additional written notice by certified mail informing them of the impending tax sale with a copy being sent to the appropriate tax official of the state, county, or municipality which also has issued an execution with respect to such property. (OCGA 48-4-1).

STARTING BIDS LIST

A list of properties for sale is also available online -
<https://www.hallcountytax.org/#/property/taxsale>

TAX SALE

Tax sales are held on the **first Tuesday of the month (in the months in which tax sales are held)**, between the hours of **10 am** and **4 pm**, in the Hall County Commissions Meeting Room, (except when the first Tuesday of the month falls on a legal holiday, the sale is held the next day, Wednesday). It is located on the second floor of the Hall County Government Center, 2875 Browns Bridge Road, Gainesville Ga, 30504. (OCGA 9-13-161)

The opening bid for a particular property is the amount of tax due, plus penalties, interest, fi. fa. cost, levy cost, administrative levy fee, certified mail cost, advertising cost, and tax deed recording fees. The property is sold to the highest bidder. The purchaser is required to sign a statement attesting to the fact that certain property was purchased for a certain price.

PAYMENT

Immediately following the conclusion of the tax sale, all purchasers must remit payment in full to the Hall County Tax Commissioner. Payment must be in the form of cash, certified check, or cashier's check. After all payments are processed we begin preparation of the Tax Deed and the Real Estate Transfer Tax form.

*According to OCGA 9-13-170, any person who becomes the purchaser of any real or personal property at any sale made at public outcry who **fails or refuses to comply** with the terms of the sale when requested to do so, **shall be liable** for the amount of the purchase money. It shall be the tax commissioner's option either to proceed against the purchaser for the full amount of the purchase money or to resell the real or personal property and then proceed against the first purchaser for any deficiency arising from the sale.*

AFTER THE TAX SALE

PAYMENT OF EXCESS FUNDS

Any excess funds after paying taxes, accrued costs, and all expenses of a tax sale shall be paid to the person **authorized to receive them**. (OCGA 48-4-5).

A letter is sent to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded interest or claim in such property at the time of the tax sale, advising of the tax sale and explaining how the excess funds can be claimed. Claim forms may be obtained from the Tax Commissioner's web site at www.hallcountytax.org. Claims by lien holders should include a current payoff statement since the excess funds paid to the lien holder cannot exceed that amount. All claims require documentation affirming the amount claimed.

If conflicting claims exist or it is unclear who has the priority right to the excess funds an interpleader action may be filed in superior court for a determination as to who is entitled to receive the excess funds. (OCGA 48-4-5). The excess funds are paid over to the court by the Tax Commissioner when the interpleader is filed.

RIGHT OF REDEMPTION AND THE AMOUNT PAYABLE FOR REDEMPTION

When real property is sold at a tax sale, whether to an individual or to Hall County, the defendant in fi. fa., or any person having any right, title, or interest in or lien in the property, may redeem the property from the holder of the tax deed. (OCGA 48-4-40)

The owner, creditor, or any other person with interest in the property may redeem the property at any time during the **twelve (12) months** following the tax sale. The purchaser of the tax deed cannot take actual possession of the property during this time. The tax deed purchaser is not authorized to receive rents, evict or make improvements to the property. (OCGA 48-4-40)



If redeeming, the owner, creditor, or any other person with interest in the property, must pay the **tax deed purchaser**, the amount paid for the property at tax sale, **plus 20% premium** for the first year or fraction of a year, plus any taxes paid on the property by the purchaser after the sale, plus any special assessment on the property, and a **10% premium** of the amount for each additional year or fraction of a year, which has elapsed since the date of sale plus costs. A premium of 20% must also be paid when Hall County was the purchaser (OCGA 48-4-42). If the property has been redeemed (all monies due the purchaser paid as prescribed by law), the purchaser shall then issue a quitclaim deed to the owner of the property (as stated on the fi. fa.) releasing the property from the tax deed. (OCGA 48-4-43 and 48-4-44)

This redemption of the property shall put the title conveyed by the tax sale back to the defendant in fi. fa., subject to all liens that existed at the time of the tax sale. If the redemption was made by any creditor of the owner or by any person having any interest in the property, the amount expended by the creditor or the person interested shall constitute a first lien on the property (OCGA 48-4-44).

NOTICE OF FORECLOSURE OF RIGHT TO REDEEM

After twelve (12) months from the date of the tax sale, the purchaser at the tax sale may terminate or foreclose on the right to redeem the property by causing a notice or notices of the foreclosure to be served by certified mail to the owner of record at time of the tax sale, the occupant and to all interest holders which appear on the public record. In addition, the notice of foreclosure is to be published in the county in which the property is located, once a week for **four (4) consecutive weeks**. (OCGA 48-4-45)

If the redemption is not made until after the notice has been given, then the costs of serving the notice or notices and publishing the notice shall be added to the redemption price to cover the cost of making the necessary examinations to determine the persons upon whom notice should be served (OCGA 48-4-42).

Any questions about this foreclosure process should be referred to an attorney.

AFTER THE RIGHT OF REDEMPTION IS FORECLOSED

After foreclosing the right of redemption, it is recommended that the purchaser seek legal advice regarding the petition to quiet title in land, pursuant to **OCGA 23-3-60**.

Under the action, the petitioner (tax deed purchaser) makes a request to the court to take jurisdiction over the matter. Depending upon the action selected, the court may

appoint a Special Master (third party) to examine the petition and exhibits to determine who is entitled to notice. The petitioner will then ask the court to issue a decree establishing title in the land against "all the world" and that all "clouds to petitioner's title to the land be removed" and that "said decree be recorded as provided by law."

RIPENING OF THE TAX DEED TITLE BY PRESCRIPTION

The term **prescription** refers to a process whereby, over a period of time a tax deed becomes a fee simple title. This process promotes an alternative method to obtain fee simple title without the legal intricacies of the foreclosure process. (OCGA 48-4-48)

A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four (4) years from the recordation of that deed in the land records in the county in which said land is located (OCGA 48-4-48).

Notice of foreclosure of the right to redeem is not required in order for the title to ripen by prescription.

It is recommended that an attorney be consulted prior to following this process as there may be negative legal implications. The courts have ruled that the simple passage of time is not sufficient to allow a title to ripen by prescription, adverse possession appears to also be required.

SUBSEQUENT TAX SALES

Following a tax sale, the tax sale purchaser becomes the owner of record and is liable for the payment of all taxes assessed following the tax sale date. This is applicable even though the defendant in fi. fa. and others with an interest in the property still have a right of redemption.