

A resource for Treasurers and Government Tax Officials on developments and trends in collections and bankruptcy

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TACS FACTSSM

*A Resource for Treasurers on Developments and Trends in Collection and Bankruptcy and Other Areas
From Taxing Authority Consulting Services, P.C. (TACS)*

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Non-Judicial Sales of Real Property (NJS)

Effective July 1, 2017 new legislation sponsored by the Treasurers' Association of Virginia took effect that will enhance the use of the Non-Judicial Sales (NJS) of real property statute. Pursuant to these amendments to Code of Virginia §58.1-3975 the NJS process becomes more accessible so as to allow a locality to efficiently and economically sell certain low-value delinquent parcels. While these amendments make more delinquent parcels eligible for such treatment, there are a number of factors that a Treasurer may wish to consider before deciding to proceed.

When the General Assembly created the NJS process in 2004, it was to help treasurers dispose of tax-delinquent, non-buildable real property of minimal value, such as mountainside lots, tiny deeded campsites, and slivers of land left over after condemnation actions. While this process was helpful for some localities, it did have several limitations. The property had to be assessed at less than \$10,000 and had to be either less than 4,000 sq. ft. or determined to be non-buildable by the locality's zoning administrator. In several localities, this limitation prevented the use of this process through either the lack of zoning or because of officials unwilling to make such a determination.

WHO IS TACS?

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers and local tax officials. Attorneys Jeffrey Scharf, Mark Ames, John Rife, Andrew Neville, Phillip Lecky and Paul LaBarr are dedicated to serving the needs of local taxing authorities. TACS' focus is on tax collection, assessment and bankruptcy issues faced by governments. TACS can provide assistance to your locality to help increase your revenue. Please contact us at (804) 649-2445 or by e-mail to info@taxva.com to

This new law broadens the properties that can be sold in this manner and eliminates the need for a determination of buildability for particularly low value parcels. Under the revised statute, a parcel assessed at less than \$5,000 with three years of delinquent taxes (as of December 31) qualifies to be sold through a Non-Judicial Sale. Treasurers should take note, however, to balance this authority with the facts and circumstances of the ownership interests. While it would be clearly appropriate to sell those parcels that truly are unusable in this fashion but for which the local zoning official would not opine as to the buildability, there may be other circumstances where the use of a NJS might not be as clear. Remember, the NJS process basically results in the taking of someone's property for unpaid taxes and does so without the safeguards of notice and due process that come through a court proceeding. In those instances, such as where there is a improvable piece of land, the Treasurer might want to defer to the full judicial sale process.

For those properties that are truly non-buildable (or less than 4,000 sq. ft.) the statute Increases the assessment threshold to \$20,000; and also includes the ability to sell parcels that are condemned, derelict, blighted or nuisance properties (even though those parcels may be improved). This language provides an opportunity for a locality to use the NJS process for urban renewal or targeted blight abatement. The inclusion of these potentially improved properties complicates the transfer of these properties as there may be interested lienholders whose interest would remain attached to the property even in the hands of the new owner.

Under the Non-Judicial Sale process, parcels have always transferred subject to pre-existing liens, however, when the properties were so small and with just a minimum value, the threat of a creditor coming forward even after the sale was minimal. In general, these are properties that were not worth foreclosing on and in which the lienholder has already affirmatively decided not to proceed with a foreclosure or creditor's bill in equity. However,

discuss your collection needs or for more information about the firm.



Forcibly collecting from those who won't pay makes everybody's obligation a little easier to bear.

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now that some improved or improvable parcels may be involved, there is a need for a process to address prior liens. As such, the new law provides that the properties can be sold clear of prior liens (other than mortgages or deeds of trust on properties assessed at more than \$5,000) if the lienholder is given 30 days' notice at their address of record and through their registered agent. In order to be able to provide this notice, the Treasurer will have to order, at a minimum, a current owner title search to identify anyone that might have a lien interest in the subject property. Mortgage and Deed of Trust holders will have to be addressed separately in order to convey the property free of their interests, either through an agreement not to enforce their lien of some negotiated payment.

While the amendment to the law should provide opportunities for Treasurers to address certain long term delinquencies, this authority should be used cautiously keeping in mind the extraordinary nature of this remedy.

The logo for TACS, consisting of the lowercase letters 'tacs' in a stylized, green, sans-serif font.

*"TACS"ing
Thoughts*

Death and taxes
may be inevitable,
but at least death
doesn't get worse
every time
Congress meets.

--Will Rogers
(attributed)

FREQUENTLY ASKED QUESTIONS, ANSWERED:

Q: We are always telling people that there are only certain reasons, established by Virginia Code, that would allow a Treasurer to waive late pay and interest for Real Estate accounts paid late. We have a letter that we send out detailing this information, but it does not reference any specific code section.

Can you tell me the Code section that specifies that not receiving your RE bill, if sent to the correct address, is NOT a reason for the Treasurer to waive the penalty.

A: There is very little law directly addressing the late payment of taxes and few provided reasons in the Code that would not impose penalty on a late payment. There are a series of older Attorney General opinions (compiled by Kevin Appel) that address late payment issues (see below).

Under the Code, late payment penalty and interest do not apply if the late payment was due to a medically determinable physical or mental impairment on the due date, provided payment is made within 30 days of the due date. Code of Virginia §58.1-3916. Also there is no penalty if there is a fiduciary handling the affairs of the taxpayer (guardian, conservator, executor) and such fiduciary has 120 days from the time of their appointment to pay without penalty. Code of Virginia §58.1-3916. Penalty and interest also do not apply to the extent the Commissioner abates the underlying tax. Code of Virginia §58.1-3980.

In addition where there is a clerical error by the Commissioner or if the late payment was due solely to the fault of the Treasurer or Commissioner of the Revenue penalty may be abated (i.e., if any act by the taxpayer contributes to the lateness, penalty and interest must apply). Code of Virginia §58.1-3916.

The law specifies that payments made by mail or commercial delivery service must be postmarked or handed off to the delivery service by no later than the due date. Thus, taxpayers use the mail or delivery service at their peril. Code of Virginia §58.1-9. The only exception to the postmark rule is if the Treasurer's office received no payment and the taxpayer can show, with appropriate documentation, that payment was sent before the due date (1980-81 Report of the Atty. Gen. 348, April 22, 1981).

Penalty and interest cannot be waived because the taxpayer did not know the deadline or misread the deadline on the tax bill (1987-88 Report of the Atty. Gen. 559, August 22, 1988); because the taxpayer did not receive a bill (1970-71 Report of the Atty. Gen. 373, March 31, 1971); because the bill was mailed to the wrong address (1981-82 Report of the Atty. Gen. 393, March 25, 1982); because the bill was incorrect (1986-87 Report of the Atty. Gen. 321, July 31, 1986); or because the taxpayer received erroneous information from County staff, whether in person or over the phone (1981-82 Report of the Atty. Gen. 350, May 13, 1982).

Otherwise, penalty and interest are imposed automatically by law if payment is late, and there can be no "waiver" of penalty or interest. The bottom line is that taxpayers have a duty to know tax due dates and to pay on time. If no bill is received, that duty includes contacting the taxing authority, before the due date, and paying on time (1981-82 Report of the Atty. Gen. 393, March 25, 1982).

Q: We had a Bankruptcy Attorney state that real estate taxes are dischargeable. I thought they were a secured debt and were not dischargeable, although the attorney did say the taxes follow the property. Can you please explain? The property is still in their name. The deed has not been changed. So going forward they will still be liable but not the back taxes?

A: The handling of real estate accounts can be tricky because the debtor can get a discharge from his personal liability but it doesn't affect the lien on the real property which can still be enforced through the tax sale process.

So while the action to force the sale of the property may be permitted, you do not have the ability to take personal action against the "discharged" debtor.

Generally, this is not a major issue as people will pay those debts anyway to keep the property from tax sale, but in this case, it appears this may not be a priority.

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