

tacs facts

A Resource For Government Finance Professionals On Developments and Trends In Collection, Assessment, Bankruptcy, and Other Areas

New Legislation That May Impact your Office



This year, as always, the General Assembly has enacted new laws and changes to existing laws that impact the operations of a Treasurers office. Sometimes these changes are sought by the Treasurers' Association of Virginia and sometimes they are opposed by the TAV, but the results of the session become law and can impact the way offices operate. The TAV legislative committee, led by Ron Williams of Suffolk, carefully reviewed proposals, analyzed bills and raised issues to make sure that the legislation that did pass did not negatively effect the Treasurers' abilities to do their job. Some of the important changes are covered below:

CHANGES TO JUDICIAL SALE (HB 2165)

The Governor's Commission on Racial Inequality proposed legislation that would have had far reaching consequences to judicial tax sales. The TAV intervened early in the process and agreed to changes that extends the time limit for payment

agreements of tax sale property to 5 years (from 3); and provides protections for heirs of the record owner who do not get actual notice of the proceedings. Make sure to discuss these changes with your Judicial Sale Attorney.

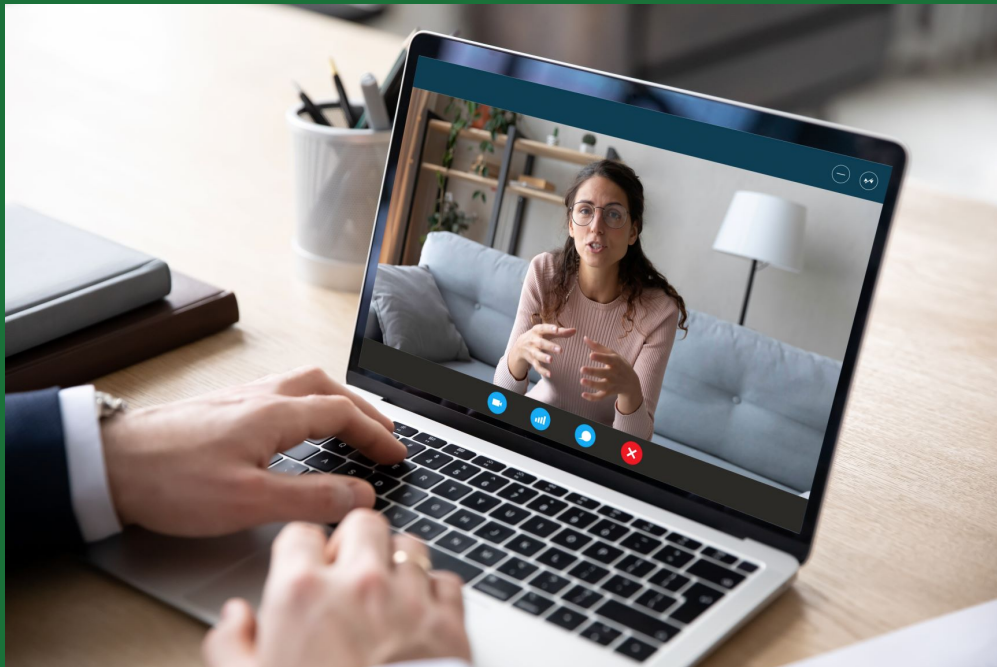
COLLECTION ON CIRCUIT COURT JUDGMENTS (HB 2099) (not yet signed by Governor)

Effective with judgments taken after July 1, 2021, the time period for collection of the judgment shall be 10 years (rather than 20 years as under current law). The statute allows the filing (twice) of Certificates of Extension prior to the expiration of the judgment (or original extension) to extend the period of limitations for an additional 10 years from the date of recording the Certificate.

SALES OF LEVIED PROPERTY CAN BE HELD OUTSIDE THE LOCALITY (HB 1800 (Budget Bill), Item 74D.)(not yet signed by Governor)

This change, put in by the TAV through a Budget Amendment, permits a the removal of levied property from the locality in order to facilitate its sale by a licensed auction company.

Collection by Virtual Summon



I think we can all agree that it has been a strange year. We are working, entertaining ourselves, socializing and communicating through new and different technologies that will impact the way we live for years to come. We have all had to make changes to the way we do things, and that includes our work. At TACS, we have tried to

leverage these technologies as best as we can to provide a continued high level of service to our clients. This has included employing these new technologies to serve the local government as seamlessly as possible. Among these innovations are the use of on-line tax sales [And please join us at the TAV Spring District meetings on April 26 or April 28 to learn more about these] (end of shameless plug) and shifting our Administrative Summons actions to a virtual environment.

The Administrative Summons is a tool that permits the Treasurer to ask questions of the taxpayer, or other party, about a tax delinquency. We find it is a very effective tool, often generating payments, payment plans, communication or assessment correction actions just by having them served. However, Summons are usually held in a room at the government center and can involve dozens of people coming in and out of the same small room all day, definitely not within most COVID protocols. Rather than wait until in-person gathering resumed, we shifted our Summons hearings to an on-line platform (using Microsoft Teams) and scheduled on-line appointments for the taxpayers to speak to a TACS attorney. The remainder of the Summons process remained the same, just the actual discussion was shifted on-line.

And to our surprise, the impact of issuing the Summons has not lessened due to the nature of the hearing. We still hear from many taxpayers and resolve many accounts prior to the scheduled date of the Summons. For those that do not respond, the actual virtual Summons hearings are held, with accommodations made for those who do not have access to the internet, with effective results and that means revenue for the locality.

As Treasurers, there are many tools that you can use to collect your accounts. Finding ways to adapt some of those tools to the current situation will help you reduce your delinquency and position you for success as more in-person communication can be held.

ANSWERS TO FREQUENTLY ASKED QUESTIONS



Q: We have a customer that had a delinquent real estate bill but whose taxes were supposed to be paid by the mortgage company. They want to make sure that if they pay the tax, penalty and interest, they can make a claim against the mortgage company for those fees.

A: Under Code of Virginia §6.2-414, a mortgage company that failed to make the real estate tax payment on time, presuming there were sufficient funds in the escrow account, is liable for the penalty and interest on the account. If the taxpayer goes ahead and pays the penalty and interest, they should be able to recover those funds from the mortgage company that erroneously failed to make the payment.

§ 6.2-414. Obligation of person maintaining escrow account to pay taxes and insurance; penalties.

Any lender or other person maintaining escrow accounts for the payment of taxes or insurance, who on receipt of notice thereof, fails to make timely payment therefor, and incurs a penalty or late charge thereon or a cancellation for nonpayment if there are sufficient funds in such escrow account at least five days before such due date to make such payment, shall be liable for the penalty or late charge assessed for late payment and for any loss as a result of the property being uninsured for nonpayment. The lender or other person shall give written notice to any obligor of the payment of such penalty or late charge within five days after such payment is made.

Q: I have a question about how judgments are handled after a bankruptcy discharge. I know there is a lien created but how can I collect on it?

A: There is a subtle distinction between the discharge of the debt which occurs on discharge even if there is a judgment and the impact of the judgment lien which is typically not addressed in bankruptcy.

When you go to General District Court and obtain a judgment and take the option of docketing in Circuit Court, you create another potential liability for the debtor. That is, the judgment constitutes a lien on any real estate the debtor may own in the locality in addition to being a personal obligation. (this is similar to the twofold liability that exists by statute for real estate taxes).

Bankruptcy only deals with the personal obligations, so when a discharge is entered, it might eliminate the county's ability to pursue the individual owner for the unpaid taxes even if a judgment was entered against them. So in effect the taxes are discharged.

The discharge does not, in any way, affect the lien that may have been created on any real estate owned by the debtor when the judgment was docketed in Circuit Court. And the judgment does not in any way prevent the debtor from getting a

discharge of those debts that would otherwise qualify for a discharge.

After discharge, therefore, the ability to collect on such a judgment is limited to enforcement of the lien against the real estate.

In many cases, the debtor does not own any real property and the lien has not actually attached to anything. In these cases, there is no way to enforce the judgment after discharge. There is no requirement, however, that you have to actually release the judgment.

If there is property to which the lien attached, however, the County could pursue sale of that property to satisfy the judgment through a creditor's bill.

So basically once the taxes that constitute the judgment lien are discharged, you can no longer take collection action against the individual that has been discharged. Your only recourse would be to enforce the lien against the property (if any) created by the judgment.

INFORMATION ABOUT UPCOMING TAV/TACS WEBINARS/CLASSES

- TAV Delinquent Collections Class, April 6-8
- TAV Bankruptcy Class, April 19-20
- Spring District Meeting II, April 26 and April 28 featuring:
 - On-line auctions
 - Attorney roundtable

WHO IS tacs

Taxing Authority Consulting Services, P.C. is a Virginia law firm formed to meet the needs of treasurers, assessors and local tax officials. Attorneys Jeffrey Scharf, Mark Ames, John Rife, Andrew Neville, Greg Haynes 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) 944-TACS or by e-mail to info@taxva.com to discuss your needs or for more information about the firm.



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