

Tax Sales

- Lieutenant Carl Eller, Travis County Pct. 5

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Agenda

- Tax Foreclosure Basics
- Tax Sale Procedures
- Tricky Issues
- Key Points Review

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Tax Foreclosure Basics

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What is a tax sale?

- Tax Foreclosure – A public authority’s seizure and sale of property for nonpayment of taxes.

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Tax Sales = Auctions

- The sale is an auction held by the Sheriff or Constable, to sell properties that have become delinquent on their local property taxes and have been foreclosed on in the courts
- You may hear of a sale referred to as a “Texas Tax Lien Sale”, but a buyer is not buying the lien. They are **buying the deed** to a property

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Are they the same as execution sales?

- Tax sales are very similar to execution sales, and except for a few provisions, follow the same rules.

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Where are the statutes & Rules for tax sales?

- Texas Tax Code Ch. 33 & 34 – Authority and basic procedures for tax sales
- Rules of Civil Procedure

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Institution of Seizure

Once a tax becomes delinquent, a tax warrant can be sought from any court in any county where there is property

Tax Code §33.22

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Tax Warrant

- A **tax warrant** is a legal action that can be brought against you by the state or federal government if you **fail to pay your taxes**.
- Also called a lien, the warrant is a public record that allows the government to claim your personal property or assets to satisfy the **unpaid taxes**.

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Tax Warrant Contents

- Direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, interest, and attorney's fees included in the application and all costs of seizure and sale.
- Direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property

A fee or court cost may not be charged for issuance or delivery of a warrant

Tax Code §33.23

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Tax Sale Procedures

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What happens after the warrant is issued?

- Officer shall take possession of the property pending its sale
- The person (or another person having possession of property) shall surrender the property on demand.
- Pending the sale of the property, peace officer may secure the property at the location where it is seized or may move the property to another location.

Tax Code § 33.23

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Bond for Payment of Taxes

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or surety bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

Tax Code § 33.24.

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Who conducts the sale?

- Unless otherwise requested by the foreclosing party, a tax foreclosure property is to be sold by a Sheriff or a Constable in the County where the property is located.

Tax Code § 34.01

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Where is the sale advertised?

- A notice of the upcoming tax sale must be advertised in a local newspaper for three consecutive weeks prior to the sale and the notice must include date, time and location of the sale as well as a brief description of the property to be sold. If there is no local newspaper, the officer will post a notice of the sale in three different public places including the county courthouse.

Tax Code § 34.01, Rule 647

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Where is the sale held?

- Tax Sales must take place at the County

Courthouse in which the properties in question are located. A County Commissioner may change the location, but it is rarely the case

Tax Code § 34.01

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Redemption Period Defined

- A Foreclosure Redemption Period is a period of time in which the original owner of a property that has been sold at a Property Tax Foreclosure Sale may choose to financially redeem (buy back) his or her property as stated in *Tax Code § 34.21*

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Redemption Period on Properties with Exemptions & Ag Use

- This category includes any property where a previous owner had on file a current Homeowner's Exemption for the purposes of taxes or was agricultural in nature.
- Allowed **two years** after the date that a Constable's deed is filed to redeem their property.
- This two-year time period does not commence until the Constable's deed is actually filed (*not on the date of the sale*)

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Redemption on Non-Homestead

- Properties that do not have a Homeowner's Exemption on file for the purpose of taxes.
- Even if a homeowner is using the property as his primary residence, if he or she has not filed an exemption prior to the property being sold, the property falls into this category
- **Six-month** exemption period.

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Redemption Fees

- The amount the purchaser paid for the property +
- The amount of the fee for filing the purchaser's deed for record +
- The amount paid by the purchaser as taxes, penalties, interest, and costs on the property +
- Redemption premium of **25 %** of the aggregate total if the property is redeemed in the first year *or* **50 %** of the aggregate total if the property is redeemed in the second year
- **Note that this redemption fee *does not* include such things as remodeling.**

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Buyer' Rights

- The officer at the sale will prepare a Constable's Deed for the purchaser and mail it to the purchaser once it has been filed.
- This deed gives the purchaser the right to collect rent and use the property during the redemption period.

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Minimum Bid

- Properties are generally not sold for less than the amount that covers the taxes, penalties, interest, cost and other claims for which the foreclosure warrant was issued. This amount is usually referred to as the **Minimum Bid** at most Tax Sales.
- It is the responsibility of the Plaintiff/Creditor to set the minimum bid. **Not the Constable.**

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Method of Payment

- 100% Payment is due when purchasing a property from a tax sale. No financing is available, and obtaining financing after the fact is difficult due to the difficulty of acquiring mortgage insurance on a Constable Sale of property.
- With extremely few exceptions, payment is expected in full at the time of the sale or within a few hours later, by cashier's check or by cash.
- Note: Some counties still accept Money Orders, however the payment can be stopped.

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Deputy's Duties

- Conducted in the manner similar property is sold under execution
- Commissioners Court of a county may authorize a public auction using online bidding and sale
- On receipt of an order of sale of real property, the officer charged with selling the property shall endorse on the order the date and exact time when the officer received the order.

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Duties Continued

- Provide a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit and all penalties, interest, and attorney's fees provided by the judgment as of the date of the proposed sale
- Give written notice of the sale in the manner prescribed by Rule 21a to each person who was a defendant to the judgment or that person's attorney
- Provide a Notice of Sale

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The Notice Must Include:

- The date, time, and location of the sale
- A brief description of the property to be sold
- *Not required to include field notes describing the property*
- State the number of acres and identify the original survey
- State the name by which the land is generally known with reference to that subdivision or addition

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Posting the Notice

- The officer shall post the notice in writing in three public places in the county *not later than* the 20th day before the date of the sale.
- One of the notices must be posted at the door of the county courthouse.

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Date & Time of Tax Sales

In Person

- Must take place between 10 a.m. and 4 p.m. on the **first Tuesday of a month** *or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the **first Wednesday of the month***

Online

- May begin at any time and must conclude at 4 p.m. on the **first Tuesday of a month** *or, if the first Tuesday of a month occurs on January 1 or July 4, at 4 p.m. on the **first Wednesday of the month***

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Online Auction Systems?

- What are some of the systems, programs, or websites your county uses for online auctions?

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Know Your System!

- Counties may use different resources for online auctions
- JPCA and TJCTC do not recommend any one system or resource over another.
- Next slides talk about Real Auction only as one example of how online auctions can work and illustrate the benefits of any online system.
- Important thing here is to know what system your county uses (if any) and make sure you are comfortable with that system.

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Online Auction

- Real Auction– www.realauction.com
- Auction products are as follows: **RealTaxLien** for all Online Tax Lien Auctions, and **RealForeclose** for all Online Foreclosure Auctions, Tax Deed Auctions, and Sheriff Sale Auctions. We also offer **RealTDA** for online Tax Deed Applications and **RealTDM** for Tax Deed Management solutions.
- **REALTAXLIEN™** takes the arduous process of managing tax sale auctions and simplifies it by taking all the tools needed and putting them into one online piece of software that is easy to use for both counties and bidders.

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Constable Duties For Online Auction

- Same duties with exception of In-Person Tax Sale
- Serve the warrant/citation
- Post Notices of Sale
- Enter and complete returns on all sales.
- Sign Deeds
- Taxing Unit (L,G,B & S) collects and disburses money
- Constable fees & commissions should increase

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Post Tax Sale

- Taxing unit will email the returns to be completed
- Wait for Deed to be mailed to you
- Receive Deed, input dates, make sure deeds are only 2 pages long
- Print Deed
- Have The Constable sign the deeds and notarize them
- Send Deeds to respective Tax Attorney
- Return the Original Order of Sale & Deputy Return to District Clerk

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Conducting An Auction

- Arrive Early
- Bring Help to Watch for Bids
- Set up Sign In Log
- Post Disclaimer
- 10:00 a.m. Announce agency and area
- Read Disclaimer
- Read Property Description
- Take Bids

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Props

- Bidder numbers
- Disclaimer
- Disclaimer Board



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Bidder Registration

- A Commissioners Court may require that, to be eligible to bid at a sale of real property under this chapter, a person must be registered as a bidder with the county assessor-collector before the sale begins
- Does your county require this?

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Why register bidders before the sale?

- Obtain the person's name and address
- Obtain valid proof of identification
- Obtain written proof of authority to bid on behalf of another person, *if applicable*
- Obtain any additional information reasonably required by the county assessor-collector
- Verify that there are no delinquent ad valorem taxes owed by the person registering as a bidder to the county or to any taxing unit having territory in the county

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TAX SALE				
CAUSE NO. 22-01-00783 ; MONTGOMERY COUNTY, ET AL. v. RUBIANA BECERRA, ET AL				
NUMBER	NAME	ADDRESS	DRIVERS LICENSE	PHONE NUMBER
1	Krystle Hedrick	21130 US Hwy 59 New Caney TX	01234567	281-577-8415
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
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ORDER OF SALE/WRIT OF EXECUTION DISCLAIMER

This sale is being conducted pursuant to statutory or judicial requirements. Bidders will bid on the rights, title and interest, if any, in the real or personal property offered today.

The property is sold **AS IS**, where is, without any warranty, either expressed or implied. Neither the County nor the Constables Department warrants or makes any representations about the properties title, condition, habitability, merchantability, or fitness for a particular purpose. Buyers assume all risks.

In some situations, a lot of five (5) acres or less is presumed to be intended for residential use. However, if property lacks water and wastewater service, the property may not qualify for residential use. A potential buyer who would like more information should make additional inquiries or consult with private counsel.

Properties purchased from the Constables Sale require payment today, immediately after the sale with cash or cashiers check made payable to **Montgomery County Constable**.

There will be an additional \$20.00 filing fee that you need to pay to have your land recorded in the real property records of Montgomery County. This check must be made payable to **L. Brandon Steinmann, County Clerk** and is due today.

This property is being sold at public auction to the highest bidder based on *oral bids*. Any successful bidder who fails to make payment shall be held liable for twenty percent (20%) of the value of the property plus costs incurred as a result of the bidders pursuant to Rule 652 of the Texas Rules of Civil Procedure.

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Reading Property Description

- Cause #
- Judgment date
- Account #
- Order issue date
- Style of Case
- Legal Description
- Adjudged value
- Minimum Bid.

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NOTICE OF SALE						
STATE OF TEXAS		§	BY VIRTUE OF AN ORDER OF SALE			
MONTGOMERY COUNTY		§				
		§				
<p>and issued pursuant to judgment decreet(s) of the District Court of Montgomery County, Texas, by the Clerk of said Court on said date, in the hereinafter numbered and styled suit(s) and to me directed and delivered as Sheriff or Constable of said County, I have on _____, seized, levied upon, and will offer for sale the following properties, on the first Tuesday in March, 2023, the same being the 7th day of said month. Pursuant to Texas Tax Code 34.01, and as further provided in the Resolution adopted by the Commissioners Court of Montgomery County, Texas on July 27, 2021 and recorded as instrument number 2021105114 in the Official Public Records of Montgomery County, Texas, tax sales in Montgomery County shall be conducted as an ONLINE AUCTION at the following URL: https://montgomery.texas.realforeclose.com. Beginning February 1, 2022, the Montgomery County Constables will no longer conduct LIVE tax sale auctions. The Montgomery County Constables will continue conducting live auctions for execution sales, if any are scheduled in a given month, between the hours of 10 o'clock a.m. and 4 o'clock p.m. on said day, beginning at 10:00 AM, and will proceed to sell for cash to the highest bidder all the right, title, and interest of the defendants in such suit(s) in and to the following described real estate levied upon as the property of said defendants, the same lying and being situated in the County of Montgomery and the State of Texas, to-wit:</p>						
Sale #	Case # Judgment Date	Act # Order Issue Date	Style of Case	Legal Description	Adjudged Value	Estimated Minimum Bid
1	17-01-01122 02/24/22	0066400205400 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. ALMA DIANE DYMACEK, FKA ALMA D. MUSGROVE, ET AL	5664002 - LAKELAND CLUB 02, BLOCK 17, LOT 9 (AKA BLOCK 8, LOT 9), ACRES 0.12, MORE OR LESS, CLK'S FILE NO. 9122779*	\$3,930.00	\$3,930.00
2	18-06-07018 10/24/19	0060600010911 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. KEVIN MICHAEL KELLY, ET AL	5666000 - IDA STRAUSS, LOT 10918 - 11018, ACRES 2.4741, MORE OR LESS, CLK'S FILE# 2010018753*	\$153,650.00	\$16,600.00
3	20-09-10514 10/27/22	0083970430600 JANUARY 23, 2023	MONTGOMERY COUNTY, ET AL VS. LORELLA M. STEVENS, TRUSTEE OF THE WILLIAM ARTHUR STEVENS BYPASS TRUST, DECEASED, ET AL	ROMAN FOREST 04, BLOCK 10, LOT 23, CABINET A, SHEET 48A & VOL. 791, PG 94*	\$1,000.00	\$1,000.00
4	20-12-15656 07/28/22	0077970102900 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. DELBERT LEO READY, ET AL	PEACH CREEK LK & DAM 01, BLOCK 3, LOT 10, ACRES 0.120, MORE OR LESS, CLK'S FILE NO. 8100050*	\$1,020.00	\$1,020.00
5	21-11-15089 04/29/22	0083970409600 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. REGIONS BANK, SUCCESSOR TO MERCHANTS BANK	ROMAN FOREST 04, BLOCK 1, LOT 6, CABINET A, SHEET 48A & CLERK'S FILE # 9240545*	\$1,000.00	\$1,000.00
6	21-11-15089 04/29/22	0083970557400 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. REGIONS BANK, SUCCESSOR TO MERCHANTS BANK	ROMAN FOREST 05, BLOCK 12, LOT 45, CABINET A, SHEET 74B & CLERK'S FILE# 9240545*	\$500.00	\$500.00
7	22-01-00340 07/28/22	0003030004400 JANUARY 23, 2023	MONTGOMERY COUNTY, ET AL VS. GIANELLA TORRES CIBUENTES	KIBBE WM TRACT 44, ACRES 22, MORE OR LESS, CLK'S FILE NO. 2018087903	\$67,030.00	\$9,700.00

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Tips For Conducting An Auction

- Control the room
- Speak loudly & clearly
- Make sure all bidders know which property you are selling
- Record every bid
- Control the bids

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Tricky Issues

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Service on defendants important!

- Recent tax sales (2019/2015) were overturned, because taxing units didn't diligently search for a Defendant's address, and instead just posted notice at the courthouse door.
- Just a cursory review of public county property and tax records would have provided service addresses
- Make sure your taxing entity knows about this if they often don't have service addresses for notice – **pain to fix this!**

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Key Points Review

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Key Points

- Tax Warrant - may be called tax lien, but they are not buying a lien.
- Work this like an execution
- Know your online system
- Use props and bring help
- Discuss auction day with the Tax office-are they going to sign in bidders? Take payment? Do they want to announce anything?

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THANK YOU

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