State of California

County Tax Sale Procedural Manual

Volume I: Chapter 7 Tax Sales

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California State Controller's Office

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Introduction

The *County Tax Sale Procedural Manual, Volume I: Chapter 7 Tax Sales,* is the first of a two volume manual (*Volume II: Chapter 8 Tax Sales*) produced by the State Controller's Office, Division of Accounting and Reporting, Property Tax Standards Unit. This volume is designed to provide comprehensive instructions and recommendations on how to prepare, conduct, and complete each of the four types of tax sale outlined in the California Revenue and Taxation Code.

Volume I: Chapter 7 Tax Sales, outlines the procedures necessary to conduct a public auction sale, a sealed bid sale, and an internet auction, within the statutory guidelines.

All statutory references cited are from the Revenue and Taxation Code, unless otherwise noted.

The State Controller's Office forms referred to within this manual are samples that contain all of the required information pursuant to statute. The county tax collector's office may use the sample forms or they may create their own forms. Forms used should contain all information required by statute.

NOTICE: This publication is provided by the State Controller's Office, Property Tax Standards Unit, as a general resource for California's county tax collectors. Processes and forms are recommended to assist the counties in performing their duties under the law. This publication is written primarily for use by county tax collectors and does not constitute legal advice. This publication has been reviewed by The Committee on County Tax Collecting Procedures and members of the California Association of County Treasurers and Tax Collectors.

Section 1: Overview of Chapter 7 Tax Sales

The material in this volume is intended to provide a step-by-step explanation of the process and procedures necessary to conduct a Chapter 7 Tax Sale.

The purpose of offering tax defaulted property at a tax sale is to collect the unpaid taxes (redemption) and to return the property to a revenue-generating status by conveying the property to another owner.

As a completed tax sale deprives a person of property ownership, specific procedural requirements have been added to statute to ensure that individuals are afforded consistent and appropriate opportunities to retain their property. Statute also gives counties the authority to initiate responsive measures should property owners fail to meet their property tax obligations.

Below is a summary of the general logistics concerning the sale of a property that has become tax defaulted:

- When a property owner fails to pay his or her property tax by the final due date and it becomes tax-delinquent, the tax collector sends the property owner, or assessee, a notice of impending default, followed by a declaration of default if the delinquency is not satisfied.
- The declaration of default opens a waiting period, during which the defaulted taxes, penalties, and costs accumulate until redeemed. At the end of the waiting period, if the taxes remain unpaid, the tax collector has the power to sell the property.
- Length of the waiting period depends on the property type.

Property Type	Waiting Period
Residential or Farmland	5 years
Nonresidential Commercial	3 years

- Before the sale, the tax collector is required to notify the assessee and all parties of interest, by certified mail, of the tax collector's power and intent to sell the property for nonpayment of taxes. The property must meet specific conditions to qualify for sale at an auction.

Waiting period exceptions: If a county board of supervisors has, by resolution or ordinance, opted out of the three-year provisions for commercial property, then the waiting period is five years. Property also may be eligible for sale after three years if a nuisance abatement lien has been recorded against the property, or if a qualified public agency or nonprofit organization has identified a property for low-income housing and has sent a completed application to the county.

Only after all of the statutory requirements are met, and not less than 45 days nor more than 120 days have elapsed since the mailing of the notice by certified mail, can the tax collector exercise his or her authority to sell the property.

Upon completion of the sale, the tax collector must record the deed with county recorder, and file reports with the county treasurer, auditor, and the assessor to address the transfer of title and the distribution of sale proceeds. The tax collector also must be prepared to submit, upon request, a report to the State Controller's Office on the disposition of all properties (§3691.6).

Additionally, within the first year following the date of the execution of the tax deed to the purchaser, the tax collector must respond to challenges concerning the validity of the sale and accept excess proceeds claims.

An action to overturn a sale based on alleged invalidity or irregularity of any proceedings may be commenced in court only if both of the following are satisfied (§3725):

- The person commencing the proceeding has first petitioned the board of supervisors pursuant to §3731 within one year of the date of the execution of the tax collector's deed; and
- The proceeding is commenced within one year of the date on which the board of supervisors determines that a tax deed sold under this part should not be rescinded pursuant to §3731.

Section 2: Significant Factors Timeline

The timeframes for each of the significant factors are given in ranges. For many significant factors, the time frames listed are suggested upper and lower cutoff points from which certain tasks should begin. For the significant factors that are in bold typeface and followed by an asterisk, the latter cutoff point is the statutory deadline to complete the task, rather than a suggested time to begin.

Determine whether the Internet Auction will be Processed In-House or through a Vendor (Internet Sale Only)	185 - 125 days prior to the sale
Begin Preparing the Files	210 - 125 days prior to the sale
Prepare the List of Properties	200 - 105 days prior to the sale
Send Pre-Demand on Improved Property (optional)	200 - 120 days prior to the sale
Determine Property Descriptions, Exemptions, and Tax Sale History	160 - 90 days prior to the sale
Establish the Minimum Selling Prices	160 - 80 days prior to the sale
Request Approval from the Board of Supervisors	160 - 70 days prior to the sale
Notice to Taxing Agencies/Nonprofits	**At least 30 days*** prior to the first publication/ posting the notice of intended sale (§3700)
Notice to the State Controller of Tax Sale	**120 - 45*** prior to the sale (§3700.5)
Search for Parties of Interest	180 - 60 days prior to the sale
Notice to Parties of Interest	**120 - 45 days*** prior to the sale (§3701)
Determine and Notify Eligible Bidders (Sealed bid sale only)	120 - 30 days prior to the sale
Notify Assessee by Personal Contact	**120 - 10 days*** prior to the sale (§3704.7)

Notice to the IRS	**120 - 25 days*** prior to the sale (26 U.S. Code §7425(c)(1))
Publish/Post the Notice of Sale	**At least 21 days*** prior to the sale (§3702)
Conduct the Sale	Day of the Sale
Execute a Deed to the Purchaser	**Immediately*** after receiving the full purchase price at the sale (§3708)
Record the Deed with the County Recorder	**Immediately*** after executing the deed to the purchaser (§3708.1)
Report to the County Treasurer and the County Auditor	**Immediately*** after depositing the money received from the sale (§3718)
Report to the Assessor	**Within 30 days*** after the sale (§3716)
Mail the Notice of Excess Proceeds	**Within 90 days*** after the sale (§4676)
Publish the Notice of Excess Proceeds (Only if the last known address of a party of interest cannot be obtained)	**Within 90 days*** after the sale (§4676)
Distribute the Excess Proceeds	**At least 1 year*** after the tax collector's deed to the purchaser was recorded (§4675)

***Denotes statutorily required event**. These items are also listed on the State Controller's Office sample form, *Checklist of Mandatory Requirements—Public Auction Sales* (SCO 8-04.1). The list will help to track requirements that should be initiated by the tax collector to lawfully initiate, process, conduct, and complete a tax sale.

Section 3: Preparing the Files

(210-125 days prior to the sale)

As numerous steps are involved in preparing, conducting, and completing a tax sale, the process should be started between 210 and 125 days prior to the sale date.

It is recommended that the process start as close to the 210 day mark as possible, especially if a large number of properties are anticipated. This will allow time to address any unforeseen delays in completing the process. Allowing sufficient time is important. Several procedures have statutory timelines, and delays may invalidate the tax sale.

Assembling the Files

- **Property File** – This file will contain information for each property; use the file to record and track the details on the property. The file will be used to extract pertinent information for posting on the internet auction website.
- **Auction File** – This file will contain information pertaining to the sale, including details of the auction process, as well as lists of related county agencies, entities, or resources.

Step 1: Locate the database or document that contains a list of properties within the county that are tax defaulted and are subject to the tax collector's power to sell (§3691).

Note: Tax defaulted residential property and property used and zoned for producing commercial agriculture commodities may be sold by the tax collector five years after default. Nonresidential commercial property and property with a nuisance abatement lien may be sold after three years. However, a county may, by an ordinance or resolution, apply the five-year time period to nonresidential commercial property (§3691).

In the case of tax defaulted property that has been damaged by a disaster in an area declared to be a disaster area, the five year period shall be tolled (§3691). **Refer to Appendix IV, Calculating the Power-of-Sale Schedule for Disaster-Damaged Property.**

Step 2: Determine the total number of properties to be listed.

Step 3: For a sealed bid sale, identify properties that meet any of the following conditions:

- The property is unusable due to its size, location, or other conditions, including being landlocked or too small to meet minimum local building code requirements, or it cannot be independently developed without being combined with adjoining property;
- The property is oil, gas, or mineral rights; and or
- The property is a partial interest or easement.

Note: It may be necessary to contact the assessor, the planning director, or the county health department for help in determining these conditions.

Step 4: Document all developments during preparation and completion of the sale, and organize the documents in separate file folders for each property. See State Controller's Office sample form, *Tax Collectors Record of Sale of Tax Defaulted Property* (SCO 8-01), for an example of what to include on a tracking document.

Step 5: Each file should include, in addition to the tracking form, all of the following items as they become available.

The Property File

- Assessor's parcel map
- Copy of the notice of power to sell
- Copy of the notice to last assessee and parties of interest
- Parties-of-interest information
- Notices returned by the post office as undeliverable, if any
- Registered or certified letter receipts
- Copy of the tax deed to the purchaser
- Any correspondence and other documents related to the property

The Auction File

- Terms and conditions of sale
- List of properties
- Information from the published notice of sale
- Frequently asked questions (FAQs)
- Revenue and Taxation Code sections related to the tax sale process, including redemption
- Claim against bidders for non-payment information
- Zoning information
- Zoning departments and contact information
- Tax rate areas
- Copy of the tax collector's request for approval from the board of supervisors
- Copy of the board's approval
- Copy of the notification of sale to the State Controller's Office
- List of local title companies
- Copy of the published or posted notice of sale
- Copy of the affidavit of publication or posting

Note: The compilation of property and auction files is recommended to help maximize the success of a sale and minimize problems and inefficacies. The elements listed above are not required to be assembled or provided to

the participants of the auction. Any information provided outside of statutory requirements is at the discretion of the tax collector.

Section 4: Preparing the List of Properties to be Offered for Sale

(200 – 105 days prior to the sale)

Many factors can influence or affect the condition of a property. In some cases, these factors can change the condition of a property such that it becomes ineligible for sale, even during the final weeks or days before the sale.

Existing Property Conditions

The key to developing and managing the list of properties is to ensure that none of the properties have any disqualifying conditions at the time of the sale. This does not mean that the properties require constant monitoring for all possible conditions during the sale preparation. It does mean that, aside from a few specific conditions that should be determined at the outset, disqualifying conditions must be addressed as they become known during preparation for the sale.

If any disqualifying conditions are discovered, remedy the situation or withdraw the property from the sale. Appendix II describes conditions that can disqualify a property from being offered and describes available remedies.

Step 1: Determine whether any of the following conditions exist for each property:

- **Bankruptcy** – Property files may be flagged with information about bankruptcy proceedings. If the files are not flagged or the information is not current, do not conduct any further research on the bankruptcy status until the parties of interest search is begun (see **Section 10: Search for Parties of Interest**), or until notification of a bankruptcy is received from the assessee (see **Section 16: Redemption and Other Issues Prior to the Sale**).
- **Unprobated Property** – If the file for a particular property contains any returned letters that the assessee is deceased, follow up with the county public administrator to determine if probate of the decedent's estate has begun.
- **Contaminated Property** – Ask the environmental health and safety agency to review the list of properties to determine if any are or may be contaminated.
- **Damaged Property** – If a property has sustained damage, determine whether the cause was related to a county, state, or federally declared disaster. The tax collector may have files or records containing this information, including dates and locations. If not, the information may be obtained by calling the California Office of Emergency Services (OES) at (916) 845-8510 or by sending a fax to (916) 845-8511. The website address is www.caloes.ca.gov.
- **Cemetery Property** – If the property is a known cemetery, determine whether it falls under the requirements of Health and Safety Code §8585. Information may be obtained by contacting the Department of Consumer Affairs, Cemetery and Funeral Bureau at (916) 574-7870 or by sending a fax to (916) 928-7988. The website address is www.cfb.ca.gov.

Step 2: If any of the conditions listed in Step 1 exist, proceed to the corresponding instruction.

- **Bankruptcy** – If the assessee has filed bankruptcy proceedings, the property may not be sold. However, an opportunity may exist to remedy the situation before the date of the sale; maintain compliance with 11 U.S. Code §362 and seek guidance from county counsel (See Appendix II for more information).
- **Unprobated Property** – Properties for which the assessee is deceased and no probate has commenced may not be sold. An opportunity may exist to remedy the situation before the date of the sale if the Public Administrator does not plan to open a probate (§4986.6).
- **Contaminated Property** – Properties that are on the Superfund list, if any, should be removed from the sale. Contaminated properties not on the Superfund list may be offered for sale, but information about the contamination should be disclosed to prospective buyers.

Note: The Superfund is the federal government's program to clean up the nation's uncontrolled hazardous waste sites. The tax collector's office may have a file containing Superfund list information for specific counties. If there are no files to refer to, contact the Department of Toxic Substances Control (DTSC) at (800) 728-6942. The website address is, www.dtsc.ca.gov/sitecleanup.

- **Damaged Property** – If a tax defaulted property has sustained damage due to a local, state, or federally designated disaster, the five-year period may be tolled until five years have elapsed from the date the damage to the property was incurred. During this tolled period, the tax collector's power of sale cannot arise, and the property is ineligible for sale (§3691(a)(1)(A)). However, if and when the damage is substantially repaired, or after five years from the date of damage, whichever comes first, the tolling period ends and the default status resumes.
- **Cemetery Property** – If a property falls with Health and Safety Code §8585 the tax collector must notify the cemetery authority who will in turn notify the Cemetery and Funeral Bureau in the Department of Consumer Affairs.

Section 5: Determine the Property Descriptions, Exemptions, and Tax Sale History

(160 – 90 days prior to the sale)

Once the eligible properties are compiled, the next task is to determine the property descriptions, exemptions, and tax sale history on the properties in order to establish a minimum selling price.

To obtain sale approval, a notice must be sent to the board of supervisors stating the intention to conduct a sale, the type of sale, a description of the property to be sold, and a proposed minimum price (§3698). To properly determine the sale price, several preliminary steps must be initiated, as outlined in the following subsections.

Property Description

Step 1: A description of each property to be offered for sale, including the associated Assessor's Parcel Number (APN).

Step 2: Transfer the description and APN of each property into its tracking file. This information is required when requesting approval from the board of supervisors to sell tax defaulted property.

Existing Exemptions (Public and Internet Auctions Only)

Note: As properties being offered at a sealed bid sale may be "unusable" (§3692(c)), neither of the following exemptions should appear for any property offered at a sealed bid sale.

Homeowner's Exemption/Situs

Step 1: From the assessor's file(s) or other available records, identify all properties that have a valid homeowner's exemption. If a homeowner's exemption is not apparent, check available records to determine whether the mailing address and the situs are the same as the last tax bill.

Step 2: Mark each property file that has a valid homeowner's exemption and/or a situs that is the same as the mailing address on the most recent tax bill. Later in the process, the note will act as a reminder to conduct a personal contact visit in addition to sending the notice to parties of interest.

Welfare Exemption

Step 1: From the property file(s), identify all properties that have a valid welfare exemption.

Step 2: Mark each property file that has the welfare exemption status. Request that the assessor determine the fair market value (§3698.7).

Tax Sale History

Properties Offered for Sale at a Previous Tax Sale

Step 1: Determine whether any property has been offered at a previous tax sale or was approved for sale by the board of supervisors but later pulled from the sale.

Step 2: Make a note in each property file indicating whether the property has been previously offered for sale.

Section 6: Establishing the Minimum Selling Price

(160 – 80 days prior to the sale)

Once a preliminary review of the properties is complete, determine the minimum selling price for each property, pursuant to §3698.5. This is the final task leading up to the request for approval by the board of supervisors to sell the properties.

Step 1: Organize the properties by type, into three categories:

Category A – Properties that **have not** been previously offered at a tax sale, including properties pulled prior to the tax sale, and **do not** have a welfare exemption.

Category B – Properties that **have** been offered at a tax sale previously and not sold.

Category C – Properties that **have not** been previously offered at a tax sale and **do** have a welfare exemption.

Step 2: Begin with the properties in Category A (If no properties meet the criteria for Category A, proceed to Step 3 for Category B and Step 4 for Category C). The minimum selling price must be at least the sum of the following, pursuant to §3698.5(a)(1):

- The amount of defaulted taxes;
- Delinquent penalties and costs;
- Redemption penalties;
- Redemption fee of $15 (§4102(d));
- Additional costs which include the following:
  - The amount of the actual and reasonable costs incurred by the tax collector (§3704.7(c));
  - The actual and reasonable costs incurred in obtaining the names and addresses of parties of interest and for mailing notices to these entities for each property (§4112(a)(1));
  - A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property (§4112(a)(3));
  - The actual and reasonable costs incurred in conducting personal contact and, if necessary, also serving written notice for each property that is a primary residence for the last known assessee (§4112(a)(4)) ;
  - $1.50 State fee (§4672);
  - $150 County fee for the cost of conducting the sale (§4672.1);
  - The costs of researching and giving notice to the parties of interest (§4672.2);
  - The cost of advertising the sale of the property (§4673);
  - The amount necessary to satisfy current taxes and assessments and applicable penalties and costs thereon for the fiscal year in which the tax sale is held (§4673.1);

- The outstanding balance of any property tax postponement loan which is the sum of the following:

  - The tax payments made by the State Controller's Office on behalf of the claimant in the Property Tax Postponement Program;
  - Accrued interest pursuant to Section §16183 of the Government Code, subject to Sections §20644 and §20644.5;
  - Other associated fees and penalties as deemed appropriate by law; and
  - Less any payments already made on the property tax postponement loan.

Note: For payoff amounts contact the SCO at (800) 952-5661 or email postponement@sco.ca.gov.

Step 3: For properties that meet the criteria in Category B, calculate the minimum selling price using one of the following options:

- The tax collector, with the approval of the board of supervisors, may offer the properties at less than the required minimum selling price. The tax collector may set the minimum selling price that he or she deems appropriate (§3698.5(c)). This option usually is exercised when it is apparent that the market value of a property is substantially less than the sum of the standard minimum selling amount outlined in §3698.5(a).
- The tax collector may offer the properties at the standard minimum selling price as calculated in Step 2 (§3698.5(a)).

Step 4: For properties that meet the criteria in Category C, refer to the **Appendix, Section III, *Establishing the Minimum Selling Price – Welfare Exemption***.

Note: For sealed bid sales, the procedure described above is a recommendation. For sealed bid sales, the tax collector is the only officer authorized to determine the criteria he or she will use in establishing the minimum selling price (§3698.5(c)).

Section 7: Request Approval from the Board of Supervisors

(160 – 70 days prior to the sale)

Once the minimum selling price for each property has been established, the next step is to obtain the county board of supervisors' approval for the sale (§3694).

Step 1: Prepare a request form, see the State Controller's Office sample form *Request For Approval To Sell Tax Defaulted Property Subject To The Power Of Sale (Chapter 7)*, (SCO 8-02) and the State Controller's Office sample form *Authorization And Report Of Sales*, (SCO 8-03).

The request form must contain the following required information, pursuant to §3698:

- A statement describing the tax collector's intention to sell properties that are subject to sale and the type of sale;
- A description of each property to be offered for sale, including the associated Assessor's Parcel Number (APN); and
- The minimum selling price at which it is proposed to sell each property.

Step 2: Contact the board of supervisors or its clerk to schedule a date to submit the request form.

Step 3: Submit the request form. The board of supervisors may either approve or reject the proposed sale (§3694). Once the request has been approved, the board may not add items to the list of properties approved for sale or rescind its approval. However, individual properties may be withdrawn under any of the following circumstances:

- New information is discovered indicating that a previously unknown or newly disqualifying condition exists; and or
- Withdrawal of a property is deemed, upon recommendation from county counsel, to be in the best interest of the county (§3698.8).

Note: The request form may include a request for approval to re-offer, at a lower minimum bid amount, any property that does not sell, pursuant to §3698.5(c), §3692(e) and §3698.7(c).

Step 4: After receiving the list of approved properties from the board of supervisors, furnish a copy of the list to the board and keep one copy for county records.

Section 8: Notice to Taxing Agencies

(120 – 51 days prior to the sale)

The tax collector shall forward a copy of the sale information to each taxing agency having the right to levy taxes and assessments on the property and may forward one copy to each nonprofit organization that has submitted a written request within one year prior to the next scheduled sale (§3700). This information affords the taxing agencies and nonprofit organizations sufficient time to review the properties identified for sale to determine whether there is a need to object to the sale of a particular property or properties.

Notices should be sent as soon as possible. Mail or deliver the notices to the clerk or secretary of the governing board of each taxing agency at least 30 days before the first publication or posting of the notice of intended sale (§3700). The notice of intended sale publication shall be started not less than 21 days prior to the date of the sale (§3702). Therefore, taxing agencies must be notified at least 51 days prior to the tax sale date.

It is recommended that notices are mailed earlier than 51 days prior to the sale date to allow for unforeseen delays that may cause missed deadlines, resulting in possible invalidation of the sale occurring on the planned date.

Note: It is possible to proceed with the publishing or posting without waiting 30 days if written consent from each taxing agency is on file (§3700).

Step 1: Obtain a listing of the taxing agencies in the county. The county auditor, clerk of the board, or county clerk may be able to furnish a listing.

Note: A listing of the nonprofit organizations that have requested notification pursuant to §3700 should also be created.

Step 2: Send one copy of the board of supervisors' approval notice and a list of all properties approved for sale to each taxing agency within the county, as well as to any nonprofit organization that has sent in a request per the requirements of §3700.

Step 3: Proceed to **Section 9: Notification of Sale to the State Controller's Office**.

Objections to the Sale

Prior to the date of the first notice of sale publication, objection letters to the sale may be received from taxing agencies and nonprofit organizations.

Type of Agency

- **Taxing Agency That is Not Also a Revenue District** – This includes the State, counties, and any district that formulates its own assessment of property for taxation purposes and levies taxes or assessments on property (§121, §3695).
- **Taxing Agency That is Also a Revenue District** – This includes every city, as well as any district for which county officers assess property and collect taxes or assessments (§122, §3695).
- **Nonprofit Organization** – With regard to purchasing tax defaulted property by chapter 8 agreement sale, a nonprofit organization qualifies if the organization is dedicated to the express purpose of acquiring:

    - Single-family or multifamily dwellings for rehabilitation and sale or rent to low-income persons, or for other use to serve low-income persons (§3695.5, §3772.5); and or
    - Vacant land for the purpose of constructing residential dwellings for subsequent sale or rent to low-income persons, or for other uses to serve low-income persons, or to dedicate for public use (§3695.5, §3772.5).

Note: If a taxing agency, regardless of whether it is also a revenue district, does not object to a sale prior to the sale date, its liens are canceled and the agency is then entitled to its share of the proceeds deposited in the delinquent tax sale trust fund (§3695, §3712(b)).

Type of Objection

- **Objection Solely to Preserve a Lien** – Only a taxing agency that is not also a revenue district may file this type of objection. The objection must be registered before the date of the sale and serves only to preserve the agency's lien, as defined in §3712, on a property that is sold. The tax collector is not required to withdraw the property from the sale.

Note: Because an objection solely to preserve a lien does not require the property to be withdrawn from the sale, the statutory deadline to make the objection is the last day prior to the tax sale (§3695).

- **Objection to Purchase a Property as an Option to Preserve a Lien** – Only a taxing agency that is not also a revenue district may file this type of objection. The objection must be registered before the date of the sale. It allows the agency to purchase the property and sell it on its own in order to recoup the lien, rather than preserving the lien and attempting to recover payment from the new owner. This objection requires the tax collector to withdraw the property from the sale. Refer to the County Tax Sale Procedural Manual, Chapter 8 Tax Sales, for comprehensive procedures.
- **Objection to Purchase a Property as a Requirement to Preserve a Lien** – Only a taxing agency that is also a revenue district may file this type of objection. The objection must be registered before the date of the sale. It requires the agency to purchase the property if the recovery of the lien through excess proceeds is not desired. This objection requires the tax collector to withdraw the property from the sale. Refer to the County Tax Sale Procedural Manual: Volume II Chapter 8 Tax Sales, for comprehensive procedures.

- **Objection to Purchase a Property for Public Use Pursuant to §3695.4** – Any eligible taxing agency, revenue district, redevelopment agency or special district may file this type of objection. The objection, along with an application to purchase in accordance with Chapter 8 (commencing with §3771) for any property that is or may be needed for public use, must be completed and registered before the date of the first publication of the notice of intended sale. If the State, a city, a taxing agency, a revenue district, or a special district files an objection and application in compliance with this section, the tax collector shall not proceed with the sale of the subject property. Refer to the County Tax Sale Procedural Manual Volume II: Chapter 8 Tax Sales, for comprehensive procedures.
- **Objection to Purchase a Property for Low-Income Use or Public Use Pursuant to §3695.5** – Only a nonprofit organization as defined in §3772.5(b) may file this type of objection. The objection must be registered before the date of the first publication or posting of the notice of intended sale pursuant to §3702 and §3703. If the nonprofit organization files an objection and application in compliance with this section and with any conditions of sale established pursuant to all appropriate Chapter 8 Tax Sale provisions of the Revenue and Taxation Code, the tax collector may not proceed with the sale of the property. Refer to the County Tax Sale Procedural Manual Volume II: Chapter 8 Tax Sales, for comprehensive procedures.

Section 9: Notification of Sale to the State Controller's Office

(120 – 45 days prior to the sale)

The tax collector must send notice of a proposed tax sale to the State Controller's Office. This notification must be sent at least 45 days, but not more than 120 days, before the proposed sale and must contain the date, time, and place of the proposed sale (§3700.5). The notification should include the number of properties being offered at the sale. If the sale is postponed for any reason, the tax collector must notify the State Controller's Office of the postponement and of the new date, time, and place of the sale (§3700.5).

Step 1: Prepare the notice, see State Controller's Office sample form, *Chapter 7 Notification (To SCO)* (SCO 8-05.5)

Step 2: Notify the State Controller's Office. The notification may be submitted by sending an email to propertytax@sco.ca.gov or sending a letter to:

California State Controller's Office
ATTN: Government Compensation and Property Tax Standards Section
3301 C Street, Suite 740
Sacramento, CA 95816

Section 10: Search for Parties of Interest

(180–60 days prior to the sale)

Once the board of supervisors' approval to sell the property has been granted and the tax collector notices have been sent to the taxing agencies, begin the process of notifying the parties of interest.

Note: Parties of interest are defined as lienholders of record and any persons with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser (§4675).

Revenue and Taxation Code §3701 specifically states that counties must make a reasonable effort to obtain the names and addresses of all parties of interest and to notify those parties by certified mail at their last known address, if available, at least 45 days, but not more than 120 days before the proposed sale date.

The preliminary task consists of researching, for each property, the identities of all individuals or entities considered a party of interest, as defined in §4675. This procedure is usually the most complex and can be the most time-consuming of the entire tax sale process. Therefore, the timeframe to complete this depends on both the number of properties to be offered and the method used to conduct the research.

Establish a schedule that allows the county to properly complete the necessary research in order to generate the parties of interest notification within the timeframe prescribed in §3701, which is from 120 to 45 days prior to the actual sale date.

While this 75-day window may be sufficient for most counties to complete both the parties of interest search and the notification, counties offering a large number of properties may require more time to conduct the parties-of-interest search. Research may need to begin up to seven months before the sale date, even with the assistance of an outside research agency. Counties that conduct tax sales annually with moderate to small numbers of properties usually are able to start their research 70 to 90 days before the actual sale date and complete it in time. Use of an outside research agency may further reduce the time needed to complete this task.

Begin the search for parties of interest by identifying the names and last known addresses of all the parties of interest for each property. Use one, or a combination, of the following resources:

- **Research Consultant -** Hiring a research consultant involves contracting with a vendor that locates lienholders or parties of interest of real property. Contracting with a vendor be moderately expensive, but can result in receipt of a comprehensive listing of all parties of interest on record.

- **Title Company –** This method involves the purchase of a litigation guarantee, which provides information sufficient to determine the parties of interest. Title company reports can be expensive and take some time to generate.

Note: Although these first two methods can save a substantial amount of research time, in the event a property does not sell, the money spent for the information cannot be immediately recouped. The cost can be added to the redemption fee, but the county may not collect the money until the property is redeemed or purchased through a tax sale. With this in mind, the following method may be a viable alternative or complement to the methods described above.

- **In-House Research –** If the property has been offered at a previous tax sale, an extensive list of parties of interest may already exist in the file. A general description of an in-house parties of interest search is as follows:

  - Update existing parties of interest lists or, when a list is absent, update from a point in the past at which all parties of interest were definitively known; and
  - Conduct a search for any updated information that may have been recorded about the property (from the current year back to the point the analysis began).

Section 11: Notice to Parties of Interest

(120 – 45 days prior to the sale)

Once a listing of parties of interest for each property has been compiled, a notice must be mailed to any lienholder of record and any person with title of record for all or any portion of a particular property that is scheduled to be offered at a tax sale. The notice must be sent by registered or certified mail with return receipt requested at least 45 days, but not more than 120 days, before the date of the proposed sale (§3701). Usually, notices are mailed just before the 45-day deadline due to the possibility of last minute changes to the condition of a property that would nullify the need to send a notice.

Prepare the notice

See State Controller's Office sample form, *Notice Of Sale Of Tax Defaulted Property to Parties of Interest (Chapter 7)* (SCO 8-05.1).

The notice must contain the following information, pursuant to §3701:

- The date, time, and location of the sale;
- The amount required to redeem the property;
- That the property may be redeemed up to the close of business on the last business day prior to the date of the sale; and
- Information regarding the rights of parties of interest to claim excess proceeds, if the property is sold and excess proceeds result from that sale.

Mailing Considerations

Do not use an envelope with "Return Service Requested" printed on it. If the notice is returned without having been delivered, the sale may be voided (Numitor Gold Mining Co. v. Katzer, 83 Cal. App. 161).

If an envelope is returned, do not alter or open it; keep it in the property file. After the sale, it may be necessary to show proof that the notice was mailed. If the envelope is opened or altered in any way, this proof may be compromised.

If an envelope is returned showing the assessee as deceased, check the records of the superior court for a probate. If the estate is in probate, mail the notice to the executor or administrator of the estate. If evidence of probate cannot be found, withdraw the property from the sale and notify the public administrator.

Section 12: Determine and Notify Eligible Bidders (Sealed Bid Sale only)

A sealed bid sale may be conducted when the tax defaulted property is unusable by virtue of its size, location, or other conditions (§3692(c)(d)). Tax defaulted oil, gas, and mineral rights subject to the tax collector's power to sell are also sold using sealed-bid sale procedures (§3692(b)(d)).

In addition to researching and notifying the parties of interest, it must be determined which individuals or entities are eligible to bid on property. Eligibility is limited to individuals or entities that meet one of the following conditions for each property (§3692(b-c)):

- Land owned by the individual or entity is contiguous to a property being sold;
- Land owned by the individual or entity is contiguous to or has surface rights to a particular property that has oil, gas, or mineral rights for sale; and or
- Individual or entity is the holder of record of either a predominant easement or a right-of-way easement.

Step 1: Research the assessor's records to identify all properties that are contiguous to each property being offered for sealed bid sale and determine the names and last known addresses of the owners.

Step 2: If applicable, determine the names and addresses of all owners having a partial interest or surface rights and all easement holders for each property being offered for sealed bid sale.

Step 3: Consolidate the names and addresses from Steps 1 and 2 into groups for each property being sold. Individuals and entities within a group should share one or more of the following criteria:

- Owns property contiguous to the property;
- Has a partial interest in the property;
- Has surface rights to the property; and or
- Holds an easement.

Step 4: Notify each eligible bidder of the sale. Notify bidders in conjunction with or after mailing the parties of interest letters no fewer than 30 days before the sale date. The 30-day time period is recommended because, if no qualified bids for a particular property are submitted, there will still be time to offer that property at a public auction sale without restarting the entire tax-sale preparation process (preparing new notices, conducting a new parties of interest search, etc.).

Execute the Notification Process

Step 1: Prepare a notification package for each individual and include the following:

- A notice of sale to eligible bidders – The following are State Controller's Office sample notices for each type of sealed bid;

  - *Notice to Owners of Contiguous Property of Sealed Bid Sale of Tax Defaulted Property* (SCO 8-08);
  - *Notice of Sealed Bid Sale of Partial Interest in (Oil, Gas, or Mineral) Rights to Appurtenant Property Owners* (SCO 8-09); and
  - *Notice of Sealed Bid Sale of Complete and Undivided Interest in (Oil, Gas, or Mineral) Rights to Appurtenant Property Owners* (SCO 8-10).

Note: When applicable, include on the notice a section to provide a description of any relevant property conditions that could burden a purchaser with additional costs.

- Bid Form – See State Controller's Office sample form *Bid Form (Sealed Bid Sale)* (SCO 8-11). The bid form should contain a statement directing the successful bidder to request that the assessor and the county planning department combine, when applicable, the bidder's existing property with the property being purchased (§3692(c)). If applicable, Include a copy of the standard form required for consolidation of contiguous property and have the applicant complete and submit the standard form with the bid form in an enclosed reply envelope.
- Copy of the affidavit of publication or posting.

Step 2: Mail the notification package to each individual at least 30 days prior to the date on which the sale is scheduled.

Note: Ensure that the notice sent to each individual conveys an offer to purchase only those properties for which he or she is eligible. Use the groupings described in Step 3 on the previous page to identify which properties to offer each individual.

Section 13: Notice to Assessee by Personal Contact (Public and Internet Auction only)

(120 – 10 days prior to the sale)

For certain properties, attempt to contact the assessee in person to notify him or her of the impending sale as soon as the parties of interest notices are mailed. Attempting to notify the assessee is required for each property having **either** a valid homeowner's exemption on file with the county assessor in the name of the last known assessee **or** a mailing address for the last tax bill that is the same as the situs.

The personal contact requirements state that the tax collector or his or her agent must make a reasonable effort to contact the owner-occupant of the property in person, not more than 120 days nor less than 10 days prior to the date of the sale (§3704.7(a)).

Note: In most cases, the parties of interest notice will have already been mailed. Contact by mail does not, however, eliminate the need for an in person contact. These are two separate notification requirements.

Step 1: Make a personal appearance at the property. If there is concern that the owner-occupant may not welcome the visit, a law enforcement agent may accompany the tax collector's representative or serve the notice on the tax collector's behalf.

Step 2: Whichever method of contact is used, the owner-occupant must be informed that:

- The property will be offered for sale if it is not redeemed (§3704.7(a)(1)); and
- Redemption rights are afforded to the owner-occupant pursuant to Part 7, commencing with Section §4101 (§3704.7(a)(2)).

Note: These rights include the opportunity to redeem the property up to the close of business of the last business day prior to the sale, the right to claim excess proceeds if the property is sold, and, if the property is not sold, the opportunity to redeem the property after the close of the auction.

Step 3: If after making a reasonable effort, personal contact with the assessee cannot be made, serve a written notice (e.g., posting notice on the property) no fewer than five days prior to the date of the sale (§3704.7(b)).

The notice must include a statement requiring the assessee to contact the tax collector's office immediately regarding the redemption of the property (§3704.7(b)), see State Controller's Office sample form, *Notice of Personal Contact for Sale of Tax Defaulted Property* (SCO 8-05.4).

Step 4: Calculate the actual and reasonable cost involved in making the personal contact and, if applicable, serving notice, and include that cost in the amount required to redeem the property (§3704.7(c)).

Note: In a number of counties, it is the policy to notify by personal contact the occupants of each property slated for auction, regardless of whether a valid homeowner's exemption exists or the mailing address is the same as the situs. No law or statute requires this practice. Be aware that any cost incurred from a personal contact for a property that does not meet the criteria outlined in §3704.7(c) cannot be added to the redemption amount.

Section 14: Notice to the Internal Revenue Service

(45 – 25 days prior to the sale)

Notification to the Internal Revenue Service (IRS) regarding a tax sale of a property with an IRS lien can begin immediately after the board of supervisors approves the sale. It is recommended that notification to the IRS occur as close to the 25-day deadline as possible to avoid missing any filed liens.

The United States (U.S.) Code, Title 26, Section §7425(c), requires that, whenever an IRS lien is discovered on a property that is subject to a tax sale, the IRS be provided notice before the sale occurs.

The Secretary of the Treasury has the right to redeem from the purchaser, up to 120 days after the date of the sale, any property sold at a tax sale that has an IRS lien against it (26 U.S. Code (§7425(d)).

Step 1: Prepare the notice. The notice must contain the following information, pursuant to Title 26 of the Code of Federal Regulations (CFR), (§301.7425-3(d)):

- The name and address of the person submitting the notice of sale;
- A copy of each notice of *Federal Tax Lien* (Form 668) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien;
- The IRS office named thereon;
- The name and address of the taxpayer;
- The date and place of filing of the notice; and
- With respect to the property to be sold, include the following information:
    - A detailed description, including location, of the property affected by the notice (in the case of real property, the street address, city, and state; the legal description contained in the title or deed to the property; and, if available, a copy of the abstract of title);
    - The date, time, place, and terms of the proposed sale of the property;
    - In the case of a sale of perishable property described (§301.7425(c)), a statement of the reasons why the property is believed to be perishable; and
    - The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

Step 2: Send the notice by registered mail, certified mail, or personal service no fewer than 25 days prior to the date of the sale (26 U.S. Code (§7425(c)).

Section 15: Publish/Post Notice of Sale

(120 – 21 days prior to the sale)

The tax collector must publish the notice of intended sale once each week for three consecutive weeks in a newspaper of general circulation published in the county seat and in a newspaper of general circulation published in the judicial district in which the property is situated (§3702).

If the same newspaper of general circulation is published in both the county seat and the judicial district where the property is located, then publication in that paper alone will satisfy the notice of intended sale requirements (§3702).

If there is no newspaper published in the county seat or in the judicial district, then publication may be made by posting notice in three public places in the county seat or in the judicial district (§3702). If, in the judgment of the board of supervisors any property to be sold under this chapter will bring at auction less than the cost of publication in a newspaper, the publication of the notice of intended sale may be made in the same manner as if there were no newspaper published in the county seat or in the judicial district (§3703). Regardless of the publication method, the notice shall be published or posted at least 21 days prior to the sale (§3702).

Step 1: Determine the publishing deadline date. The date must be at least 21 days prior to the date of the sale.

Step 2: Prepare the notice, see State Controller's Office sample forms, *Notice Of Public Auction Of Tax Defaulted Property for Delinquent Taxes* (SCO Figure 9.5), *Notice Of Public Auction of Tax Defaulted Property For Delinquent Taxes (Internet)* (SCO Figure 9.5a), or *Notice Of Sealed Bid Sale Of Tax Defaulted Property For Delinquent Taxes* (SCO Figure 9.6).

Pursuant to §3704, the notice of intended sale shall include all of the following:

- Type of sale (California Code of Regulations (CCR), Title 2, (§1136.18));

Note: If the intended sale is by public auction via the internet or other electronic media, then the electronic address and the locations of computer workstations that are available to the public and instructions on accessing the public auction and submitting bids are required.

- Date, time, and place of the intended sale;
- A description of the property to be sold. If a parcel number has changed, show both the current and the former parcel number;
- The name of the last assessee of the property;
- The minimum acceptable bid of the property to be sold;
- A statement that if the property is not redeemed before the close of business on the last business day prior to the date of the sale, then the right of redemption will cease;

- A statement that if the property is sold, parties of interest, as defined in §4675, have the right to file a claim with the county for any proceeds from the sale which are in excess of the liens and costs required to be paid from the proceeds;
- A statement that if excess proceeds result from the sale, notice will be given to the parties of interest;
- A statement that if the property remains unsold after the tax sale, the date, time, and location of any subsequent sale;
- If applicable, that a deposit is required as a condition to submit bids on the property; and
- If applicable, a statement that, for any property purchased by a credit transaction, the right of redemption will revive if full payment is not received by the tax collector prior to the close of business on the date, as specified by the tax collector under §3693.1, that full payment is due.

Step 3: Submit to the newspaper or circulation organization the notice information and set a date of publication. If possible, the first date of publication should be at least 7 to 14 days ahead of the 21-day deadline to allow time to correct any potential errors found in the publication.

Note: Taxing agencies must be notified at least 30 days prior to the first publication. If possible, the first publication should be scheduled a few weeks ahead of the deadline. If the publication is sent out early, adjust the taxing agency notification accordingly.

Step 4: It is recommended that an affidavit of publication be maintained in the tax collector's office; the newspaper or circulation organization carrying the notice should automatically supply the affidavit of publication.

Note: If the notice was posted rather than published, the tax collector should prepare an affidavit, see State Controller's Office sample form, *Affidavit of Posting Notice of (Public Auction/Sealed Bid) Sale* (SCO 9-02).

Step 5: Obtain copies of the newspaper(s) for the pertinent publication dates and check the property listings to ensure that the published information is correct. If an error is discovered, it should be corrected immediately.

Note: If a correction is necessary, the 21-day notification schedule must be re-started from the date the corrected notice is published. It is recommended that the publication process start at least 7 to 14 days prior to the minimum 21 day cutoff.

Section 16: Redemption and Other Issues Prior to the Sale

Several last minute variables can affect a property's eligibility to be sold, such as whole or partial redemption, objection to the sale, or bankruptcy. This section outlines these variables and the methods for addressing each.

Redemption

Step 1: All redemption payments, whether in person or by mail, must be physically received in the tax collector's office before the close of business on the last business day before the sale (§3707). Payments received after the deadline will be returned.

Note: If the redemption payment is received 90 or fewer days before the sale date, add $150 to the total amount to redeem (§4112(a)(3)).

Note: If personal contact was attempted and/or written notice was served as outlined in Section 13 of this manual, calculate the cost of one or both actions and add that cost to the total amount to redeem (§3704.7(c)).

Step 2: Upon receipt of a redemption payment, withdraw the property from the sale.

Note: Although redemption payments may be made up to the last business day before the sale, the tax collector should consider carefully whether it should accept forms of payment that cannot be verified for sufficient funds before the sale. It may be advisable to limit the forms of payment accepted during the week prior to the sale to those that do not require verification of funds, such as cash, cashier's checks, money orders, or credit cards (county policy permitting).

Step 3: When a property is redeemed, complete a rescission of notice of power to sell, see State Controller's Office sample form, *Rescission of Notice of Power to Sell Tax Defaulted Property* (SCO 5-08). For partial rescissions, see State Controller's Office sample form, *Partial Rescission of Notice of Power to Sell Tax Defaulted Property* (SCO 5-09).

Step 4: Refer to the County Tax Collector's Reference Manual, Chapter 5000, Redemption Section, for additional instructions needed to complete the rescission process.

Portion of Property Redeemed

If a portion of the property is withdrawn or redeemed, or if the power to sell was cancelled pursuant to Chapter 4, Part 9, Division 1, of the Revenue and Taxation Code, then the minimum selling price may be reduced. First determine what percentage of the property has been redeemed or withdrawn, as the minimum selling price may be reduced by no more than that percentage (§3706). For example, if 40% of the property has been redeemed, the minimum selling price may be reduced by no more than 40%.

Objection to the Sale

If a public agency or qualified nonprofit corporation objects to the sale of a property, the property may be withdrawn from the auction.

Bankruptcy

If an assessee declares bankruptcy, even at the last minute prior to the sale, the property may have to be withdrawn from the sale. When dealing with a bankruptcy, counties must maintain compliance with 11 U.S. Code §362 – Automatic Stay and should consult county counsel for guidance.

Step 1: Determine the validity of the bankruptcy claim.

- If the assessee claims bankruptcy over the phone or provides a completed petition form, but provides no court filing number, do not withdraw the property and consult with county counsel.
- If the assessee provides a completed petition with a court filing number, the property may have to be withdrawn from the sale, proceed to Step 2.

Step 2: Withdraw the property from sale by "postponement," with the intent of re-offering it at a follow-up sale within 90 days of the original sale date.

Step 3: Contact county counsel to determine the next course of action, including possible relief from the stay.

Note: If relief from the stay is attained before the original sale date and statutory requirements have been met, the property may be offered for sale as originally scheduled.

If relief from the stay is not attained before the original sale date but is attained within 90 days after the sale date and statutory requirements have been met, the property may be re-offered using the postponement procedures.

Injunction Brought Against Tax Sale

An injunction, restraining order, or other legal action cannot be brought against the county to either prevent or enjoin the collection of property taxes sought to be collected (§4807). However, an injunction may be attempted to prevent a property from being offered at a tax sale.

If an injunction for a particular property is brought against the tax sale, take the following steps:

Step 1: Notify county counsel.

Step 2: If the county counsel is unable to lift the injunction or restraining order before the effective sale date or if the hearing is within 90 days of the sale, the sale must be postponed. Give notice to parties of interest of the postponement of the sale of the affected property (§3706.1).

Mobile/Manufactured Homes and Other Possessory Interests

Any property that is determined not to be subject to tax default—e.g., mobile homes or manufactured homes without permanent foundation, and possessory interests must be withdrawn from the sale.

Properties Withdrawn for Other Reasons

The tax collector may withdraw a property from a tax sale with consent of county counsel if doing so is deemed to be in the best interest of the county (§3698.8).

Other Conditions

Property with any condition that causes or requires the cancellation of the notice of power to sell must be withdrawn from the sale. For a State Controller's Office sample form and specific information concerning the cancellation of a notice of power to sell, refer to the *County Tax Collector's Reference Manual, Chapter 7000*, Cancellation of Notice section.

Section 17: Information for Prospective Bidders

(Prepare for distribution prior to sale)

As the sale date approaches, expect inquiries from the general public regarding specific details about the process and/or individual property conditions. Many counties have determined that providing an information package is the best and most efficient method of addressing questions related to a specific tax sale.

A comprehensive information package would include the following items:

- A list of properties or a copy of the published notice;
- A terms and conditions page listing information pertinent to the auction and properties, including a citation of (§3692.3). This page may also include information from the published notice, as well as information contained in the preamble normally delivered at live public auctions;

Note: It is recommended to require the bidder's acknowledgement of the terms and conditions prior to submitting a bid.

- An information sheet containing answers to frequently asked questions;
- A list identifying properties that may have potential toxic waste problems;

Note: Estimating the extent of a potential hazard or cost of the clean-up is not required. However, all facts known about the potential hazard should be stated. Refer prospective bidders with further questions to the county health department or the appropriate state or federal agency.

- A list identifying those properties that have delinquent bonds that must be redeemed separately from the purchase of the property;
- A list identifying properties in which taxing agencies have objected to the sale of properties in order to preserve their liens;

Note: The purchaser becomes liable for payment of any and all taxes and assessments owed to the taxing agency.

- A notation that a property has a section §3712 lien;
- A notation that a property has an IRS lien; and
- Purchaser may be subject to an additional city transfer tax.

Section 18: Conducting the Auction

Each county has its own set of considerations in terms of population, proximity to major metropolitan areas, and the number and type of properties being offered. No set of procedures can address all variations.

The following procedures for conducting a tax sale are recommended and, unless otherwise stated, none of these pre-sale registration procedures are required by statute or regulation. However, many counties have found that such procedures contribute to the overall effectiveness and efficiency of the tax sale.

When conducting an auction, consider using one of two approaches: an in-house/user-managed sale, or a vendor-supported sale. Although both approaches have certain aspects in common, they also have significant differences. Thoroughly examine the elements outlined in this section before proceeding with an auction.

In-house (User Managed) or Vendor Supported

The tax collector is responsible for setting up, monitoring, and maintaining all of the elements associated with an auction. An important distinction between vendor supported and user managed auctions is that a vendor supported auction brings to the county the benefits of technical expertise and support.

- **Due Diligence** – It is recommended that bidders are provided with a due diligence notification and preamble; ideally, this should be provided as a requirement to bid. With an outside vendor's support, this can be easily incorporated without the need for in-house expertise.
- **Technical Expertise** – Although user-managed auctions may be straightforward in terms of set-up and administration, tax collectors should be aware that there are other processes involved. For internet auctions this includes managing set-ups for screen views and page flow, formulating an electronic bidding mechanism pursuant to code, providing support and technical assistance in canceling erroneous bids, managing electronic payments and collection, fielding inquiries, educating bidders, and providing informational listings pertinent to the internet auction. As vendor-supported auctions typically encompass most of the administrative and technical elements of the sale, they do not require county technical expertise and resources.
- **Phone and E-mail Support** – Although conducting an internet auction may be more efficient than conducting a live auction, the county may not see any reduction in bidder inquiries, no matter how much information is posted online. Staff resources should be allocated for phone and e-mail support.
- **FAQs List** – Providing answers to a set of frequently asked questions may significantly reduce the number of inquiries to the county office. **Appendix V** presents a list of sample questions and general responses.
- **Number of Properties** – Typically, vendor supported auctions require set-up fees and other charges not associated with user managed auctions. These costs may be included in the purchase price of the properties (shared by all properties sold), pursuant to §3698.5(a)(2). If there are only a few properties to be sold, the addition of vendor costs to the price of each property may reduce the number of likely bidders.

General Considerations

Factors that are important to the general function and success of an auction are as follows:

- **Number of Properties** – Offering a large number of properties for sale at once may overwhelm the bidding community, resulting in a large number of unsold properties.
- **Property Staggering** – In order to avoid overwhelming bidders with a large number of properties being offered at one time, some counties group properties and sell them as units, or "blocks," each with defined selling dates and times. A county with 100 properties to sell might divide those into five blocks of 20 properties, each with its own designated sale time during the course of an auction.
- **Property Limit** – Some counties separate the properties into multiple sales over the course of a year. The threshold number that appears to work well is 50-75 properties per sale.
- **Types of Properties** – In addition to limiting the number of properties per tax sale, the type of property also appears to be an important factor in determining the most appropriate auction format. For example, timeshares appear to generate the best sale results under the traditional public auction format.
- **Property Information** – It is recommended that counties supplement the general property information provided to bidders with additional details specific to each property. Information may include phone numbers and contacts for related county agencies, as well as property-specific details such as: property is known to contain toxic agents that may pose a possible hazardous waste problem; a taxing agency has objected to the sale in order to preserve a lien (§3695); property has a Section §3712 lien; property has an IRS lien; or purchaser may be subject to an additional city transfer tax.
- **Pre-sale Deposit** – To reduce the likelihood of frivolous bids, require a pre-sale deposit from individuals wishing to participate in the auction. This is especially pertinent to internet auctions where less serious bidders may participate in the tax sale. Counties may choose to require a general deposit from all participants and/or a deposit on specified properties as well. Both options are permissible under (§3693(b)(4) (A) and (B)). The law does not specify the amount tax collectors may require as a pre-sale deposit.
- **Required Bidding Components** – §3692.2 requires an internet auction to have the following operational components:

    - A component that allows bids to be submitted by computer; and
    - A component that authorizes the tax collector to accept bids for as long as he or she deems necessary.

- **Cost of Sale** – When considering a public or internet auction, identify the costs involved. Whether conducting a user-managed or vendor-supported sale, costs should be allocated on a per-property basis, all of which may be applied toward the minimum bid amount, pursuant to §3698.5.
- **Sale Schedule** – As internet auctions may attract a broad audience base, consider the following scheduling elements:

- **Preview of Sale** – Before offering the properties for sale, afford bidders an opportunity to preview the properties so that they may conduct due diligence research before the sale. Thirty days prior to the sale is an adequate preview period;
- **Duration of Sale** – Internet auctions appear to be most successful when they are scheduled to run for multiple days, regardless of the number of properties. The recommended number of days ranges from three days to ten days; and
- **Sale Ending Time** – Internet auctions expand the bidder audience beyond the Pacific Standard Time (PST) zone. It may be prudent to schedule the ending time to coincide with the close of business on the east coast. This allows bidders anywhere in the United States to participate, as they can access government facilities and conduct transactions within standard business hours, regardless of their state of residence. Many counties have opted for an end time of 1:30 p.m. PST.

Staffing

It is at the tax collector's discretion as to how to staff the auction. The following recommendations are based upon the shared experiences of various counties:

Step 1: Designate the county tax collector or a deputized individual as the auctioneer.

Step 2: Designate staff support. Typically, this consists of a cashier to accept payments and a clerk to register the properties purchased. Depending on the number of properties offered and the number of prospective bidders anticipated, additional staff members may be needed. For an internet auction, some level of telephone and e-mail support may be necessary.

Step 3: For a live auction, determine whether a law enforcement officer should be present. The presence of an officer may deter individuals from being disruptive at the tax sale.

Pre-Sale Registration

Before starting the actual sale, it may be helpful to register bidders and require them to submit a pre-sale deposit. Some counties have learned that conducting a pre-sale registration is a good way to ensure that only serious bidders participate.

Step 1: Direct prospective bidders to register and submit a deposit of cash, drafts, a money order, or electronic funds transfer.

Step 2: For a live auction, assign each prospective bidder a numbered bid card. The numbers on the card should be large enough for the auctioneer to read from the perimeter of the auction facility. For an internet auction, provide each bidder with a unique identifying number or code. The number or code will act as the electronic equivalent of the numbered bidder card.

Pre-Sale Announcements

To facilitate the bidding process and ensure that bidders understand the terms and conditions of the sale, an announcement or an acknowledgment page can be made for the purpose of communicating the tax sale rules.

The terms and conditions may include information appearing in the published notice of sale pursuant to §3702, as well as:

- No bid will be accepted for less than the minimum bid amount.

Note: At the discretion of the tax collector and with the approval of the board of supervisors, the auctioneer may announce that any remaining properties may be re-offered at the same sale for less than the initial minimum bid amount (§3698.5(c)).

- Properties appearing on the list of properties offered for sale that have since been withdrawn from the sale, if any.
- Acceptable forms of payment (e.g., cash, cashier's checks, traveler's checks, personal checks, money orders, letters of credit, and electronic funds transfer) and that the conditions of payment are those specified by law (§3693.1).
- Successful bidders will be required to pay a county transfer tax of $.55 per every $500 of the sale price and cities may impose an additional tax (§11911).
- Bidding will start with the published minimum bid and will increase in increments determined by the auctioneer (§3706).
- Bidding will conclude when no bid is offered that is higher than the last bid acknowledged by the auctioneer.
- Bidders not completing payment may be pursued for collection and may be prohibited from participating in future sales for up to five years (§3456).

- If it is determined that a property sold at a county tax sale should not have been sold, pursuant to conditions defined in §3731, the board of supervisors may rescind the sale with or without consent from the purchaser (§3731).

Bidding Procedures

To ensure clear, consistent, and efficient standards in the presentation and sale of each property, the following procedures are recommended.

Step 1: Identify the Property

Provide a unique identification for every property. Include a description and/or the Assessor's Parcel Number (APN).

Step 2: Property Disposition

After the property has been identified and before the floor is opened to bids, the auctioneer should announce any relevant property conditions that could burden the purchaser with additional costs. These include the following conditions:

- Known toxic agents on the property that may pose a possible hazardous waste problem;
- A taxing agency has objected to the sale in order to preserve a lien (§3695);
- Liens that may not be extinguished by the sale (§3712); and or
- The property has an IRS lien.

Step 3: Open the Floor for Bidding

During a live auction, after making the announcement concerning each property's condition, the auctioneer should begin the bidding process for that property.

- Announce the minimum bid and the acceptable incremental increase for subsequent bids, and open the floor for bidding.
- When an individual raises a bid card or calls out a bid, identify the bid card number and repeat the bid amount so other bidders know the current bid.
- Repeat the bid and ask for the next highest increment until either another individual raises the bid or no one contests the bid.
- Conclude the bidding for each property when the last acceptable bid goes unchallenged or there is no bid.

During an internet auction, unless properties are staggered into groups or blocks, open and close the bidding on all properties at the same time.

Step 4: **Re-offer Property at a Lower Bid Amount**

If a property does not receive a bid before the close of auction, it is possible, with previous authorization from the board of supervisors, to re-offer the property for an amount less than the original minimum bid. The new minimum bid amount is set at the tax collector's discretion (§3698.5(c)).

Note: As bidding activity for internet auctions tends to be concentrated toward the end of the sale, reserve for the last hour any consideration of lowering a bid due to inactivity. This action will likely limit the number of properties auctioned at a lower bid amount.

Step 5: Recording Bids

For public auctions, when bidding has concluded on a property, complete the following:

- Record the winning bid and the purchaser's name on a receipt, see State Controller's Office sample form, *Receipt For Property Purchased At Tax Sale* (SCO 8-06); and
- Inform successful bidders that they must pay the cashier immediately unless they have made prior arrangements.

Note: If the payment is required immediately, it is at the tax collector's discretion as to whether each transaction must be completed before or concurrently with, offering the next property. The tax collector may choose to wait until all bidding has concluded before collecting payments for the properties.

For internet auctions, inform the winning bidders immediately by either electronic or regular mail. The communication should contain:

- A notice identifying and confirming the winning bid amount(s) and the corresponding property/properties; and
- Payment information (see below for detail on payment information).

Payment Procedures

Generally, payment should be collected at the conclusion of the auction. Payment information must be communicated immediately following the close of sale.

Note: As internet auctions expand participation to bidders outside of the county, successful bidders may not be able to make payment in person or on the same day. The tax collector is authorized under §3693.1 to extend payment of the balance up to 90 days.

The following steps are required for each sale:

Step 1: Determine the transfer tax (copies of the tax-rate tables are available from the county recorder).

Step 2: Verify the manner in which the purchaser is to take title

Step 3: Verify the purchaser's name, address, and where the tax bill is to be mailed.

Step 4: Collect the payment.

Note: For bids where a purchase on credit was authorized, the purchaser must deposit $5,000 or 10% of the minimum bid amount, whichever is greater (§3693.1). The remaining balance must be paid, at the tax collector's discretion, within 90 days from the date of the auction (§3693.1)

Step 5 Provide a copy of the receipt to the successful bidder after collecting payment.

Note: Do not issue the purchaser a deed until the credit transaction has been completed.

Voided Sales

If the highest bidder refuses or neglects to consummate the purchase, void the sale. The bidder forfeits their down payment made in a credit transaction, as well as any rights to the property. Provisions for seeking collection are provided in §3456. Consult county counsel as to whether the tax collector's office should seek legal action against the bidder.

Note: Under no circumstances may the property be awarded to the second highest bidder.

In the event that the tax sale is voided, the assessee's right to redeem the property is revived (§3707(d)). The right to redeem is valid until the last business day prior to the next sale at which the property will be offered.

Continuance of Sale

If there is not sufficient time to offer all properties that were scheduled for sale on a given business day, the auction may be continued to the next business day. At the end of the first day, make the announcement that the sale will be continued on the following day.

Postponement of Sale

An auction, or any portion thereof, may be postponed for up to seven days by declaring, at the time and place originally fixed for the sale, the new time, date, and place (§3706.1(a)). No other notice need be given for a postponement of less than seven days. However, to postpone an auction for eight to 90 days, a declaration should be made and written notice of the postponement must be sent to the parties of interest (§4675), (§3706.1(b)).

In addition to providing written notice to the parties of interest, the tax collector must publish the notice of intended sale as outlined in §3701. The State Controller's Office must also be notified of the postponement and of the new date, time, and location (§3700.5). A notice of postponement may be published in a newspaper of general circulation in the county. Right of redemption is automatically extended to the new sale date (§3707).

Section 19: Conducting the Sealed Bid Sale

As sealed bid sales do not engage individuals in active bidding competition, the sale may proceed regardless of the presence or absence of bidders. However, any eligible bidder who has submitted a qualified bid should be allowed to observe the proceedings.

Based on past county practices, the following is a recommended strategy for conducting a sealed bid sale. However, because there are no current statutory or regulatory measures directing specific procedures for the sale, a county may choose to use other procedures that are better suited to its needs.

Staffing

Step 1: Assign a bid reader, typically the tax collector or deputy tax collector. The bids must remain sealed until the date and time of the sale.

Step 2: Designate a clerk to record the information from each sealed bid package. This individual can also serve as a witness to the proceeding, or an additional officer may act as an official witness.

Note: Designating an official witness is a prudent measure for a sealed bid sale, in case a bidder or other individual questions the validity of actions during the sale.

Forum

The sale must be conducted at the date, time, and location specified in the various notices that have been distributed. If an audience is anticipated, the sale should be held in a forum that can reasonably accommodate expected attendees.

Reading the Bids

Step 1: Open and read the sealed bid packages. Ensure that the reading is audible for all present.

Step 2: If a bid form is not signed by the bidder, reject the bid. Also reject bids received from ineligible bidders and bids received after the deadline.

Tracking the Proceeding

Step 1: Tabulate all bids and prepare a record of the money received.

Step 2: Within 15 days, prepare and send a notification to all unsuccessful and/or ineligible bidders and return their payments.

Notifying Successful Bidders

Step 1: As soon as possible after the sale, notify each successful bidder in writing that his or her bid has been accepted, see State Controller's Office sample form, *Receipt To Absentee Purchaser at Sealed Bid Sale* (SCO 8-12).

Step 2: If two or more bidders bid the same amount and they are the highest bids, the sale may be canceled or extended at the discretion of the tax collector. If the sale is extended, only those who were the highest bidders who bid the same amount may submit new sealed bids. Sealed bids are opened on a new date and at a time specified by the tax collector. The minimum bid at the extended sale is the amount of the highest bid at the original sale.

Step 3: If a property receives no bids, the property may be re-offered at a future sale.

Section 20: Recording of Deed and Deposit of Proceeds

Once the sale is concluded, a number of follow-up procedures must be completed, including collecting payment, title transfer, and deposit of proceeds.

Deed Preparation and Recording

Upon completion of the sale, a deed must be recorded in the purchaser's name, see State Controller's Office sample form, *Tax Deed to Purchaser of Tax Defaulted Property* (SCO 8-19). The form must contain the required information specified in §3710.

Step 1: Prepare and execute a deed in the purchaser's name only after the purchaser has made full payment for each property and the funds have been verified (§3708).

Step 2: Immediately record the deed with the county recorder and pay recording fees (§3708.1).

Step 3: Within 30 days, notify the county assessor of the change of ownership (§3716). For the complete change of ownership notification procedures, see **Section 21: Post-Sale Reports**.

Note: A Preliminary Change of Ownership Report is not required when recording a deed transfer from a sale for defaulted taxes. The information given to the assessor pursuant to §3716 and §3811 is considered sufficient (§480.3(e)).

Note: Do not record a rescission of notice of power to sell or a cancellation of notice of power to sell for property redeemed as a result of a tax sale. The recorded tax deed to purchaser is considered public notice that taxes have been satisfied and the property has been conveyed to a bona fide purchaser.

Deposit of Proceeds

Deposit the money received from a tax sale as money collected for tax payments (§3718). Allocate the proceeds in the following manner:

- Deposit the amount of the cost of advertising the sale into the county general fund (§3719);
- Deposit the balance of the proceeds, less the recorder's fee, into the delinquent tax sale trust fund (§3719); and
- Deposit the recorder's fee and the transfer tax into an appropriate fund (such as the tax collector's trust fund) and draw a warrant, or separate warrants, in favor of the county recorder for payment (§3719).

Returned Check/Failure to Complete Purchase

When a check is returned unpaid, the bid upon which it was accepted becomes void, as if no bid had been made (§3455). Any deposit that was made will not be returned and shall be distributed to the county general fund and shall not apply to outstanding delinquent taxes (§3693.1). In addition, the county has a claim against the person tendering the dishonored check for the costs involved in preparing the property for the tax sale (research, advertising, etc.). Notify, by registered or certified mail, the winning bidder that the bid has been voided and the sale of that property is therefore cancelled; state the amount of the county's claim (§3456). Retain evidence of the dishonored check as proof of the tax collector's claim and refer the matter to county counsel.

Section 21: Fee Calculation and Post-Sale Reports

(0-30 days after the sale)

After the sale has been completed, reports and supporting documentation must be compiled to record and track various aspects of the post-sale property condition and the distribution of proceeds.

Fee Calculations

Before preparing the reports, make the following calculations for each property:

- Purchase price;
- Recording fee;
- Transfer tax;
- $1.50 State fee (§4672);
- $150 county fee (§4672.1);
- Cost of researching and giving notice to the parties of interest (§4672.2);
- Cost of advertising the sale (§4673);
- Cost of personal contact, if applicable, and follow-up service of written notice, if applicable (§4672.3);
- Property Tax Postponement distribution (§4673.1); and
- The sum of the proceeds remaining after subtracting the amounts above from the purchase price.

Other Elements of the Sale

The following information, which should be available from previous research or tasks, should also be gathered:

- Name of each purchaser;
- Date of the sale; and
- Legal description of each property.

Required Reports

After completing all calculations and obtaining the additional information, prepare the various post-sale reports. Although the schedule for preparing reports may be based on the schedule for depositing proceeds, always give reports with statutory deadlines top priority.

Report to the County Treasurer and the County Auditor

After depositing sale proceeds, immediately transmit a report of the sale to the county treasurer and the county auditor (§3718), see State Controller's Office sample form, *Report Of Sale Of Tax Defaulted Property* (SCO 8-07).

The report of sale must include the following information (§3718):

- The cost of advertising the sale, including but not limited to the published notice required by §3702
- The sums received for individual properties;
- Identification of the properties by year, page and number of the delinquent and current roll; and
- The cost of recording the deeds.

Report to the Assessor

Within 30 days after the sale, the tax collector is required to report to the assessor (§3716). The report must include:

- The name of the purchaser;
- The date the property was sold;
- The amount for which the property was sold; and
- The description of the property conveyed.

Section 22: Excess Proceeds Notification and Claim Request Processing

(0 – 90 days after the sale)

Excess proceeds are proceeds remaining after all required distributions have been made (§4674). When excess proceeds from the sale exceed $150, notice must be given of the right to claim the excess proceeds to all parties of interest (§4676(a)). The notice of right to claim excess proceeds form must be mailed within 90 days after the date of sale (§4676(b)).

Notification

Step 1: Identify those properties that have excess proceeds.

Step 2: Develop a parties of interest list for each of these properties. Make a reasonable effort to obtain the names and last known mailing addresses of each party of interest (§4676(b))

Step 3: Prepare a written notice of the right to claim excess proceeds and mail it, no later than 90 days after the sale, to each party of interest with a last known address (§4676(b)). See State Controller's Office sample form, *Notice Of Right To Claim Excess Proceeds (Parties of Interest)* (SCO Figure 9.8).

Step 4: If the last known address of a party of interest cannot be obtained, the county shall publish notice of the right to claim excess proceeds in a newspaper of general circulation in the county. The notice shall be published once a week for three successive weeks and shall commence no later than 90 days after the sale of the property (§4676(c)).

Note: If the cost of publishing the notice is greater than or equal to the amount of excess proceeds, a published notice is not required (§4676(c)).

Step 5: Upon completion of the notification process, calculate the notification costs and deduct them from the balance of the excess proceeds. The amount deducted must be deposited into the county general fund (§4676(d)).

Step 6: Retain excess proceeds in the delinquent tax sale trust fund for a period of one year following the date of recordation of the tax deed to the purchaser. After one year, and upon order of the board of supervisors, disburse proceeds, in proper proportion, to all eligible parties of interest who submitted a claim (§4675(e))

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Note: An excess proceeds claim form may be sent with the written notice of right to claim excess proceeds, see State Controller's Office sample form, *Claim for Excess Proceeds* (SCO 8-21).

Claim Request Processing

Step 1: Review the claim form to determine whether the claimant has provided the necessary proof to establish his or her interest in the property (§4675).

Step 2: Determine both the ownership interest and the ownership portion, as proceeds are distributed in direct proportion to the ownership interest that was held in the property. For example, the holder of a one-quarter divided interest could claim no more than one-quarter of the total excess proceeds (*First Corporation Inc. v. Santa Clara County*, 146 Cal App. 3d 841).

Step 3: If the information submitted on the claim application meets the requirements outlined in §4674 and §4675, make the proper distribution according to office policy.

Step 4: If the distribution involves more than one person and/or entity and the total monetary claims are more than the available proceeds, determine the order of priority for parties of interest as follows (§4675(e)):

- Lienholders of record prior to recordation of the tax deed to purchaser in the order of their priority;
- Any person with title of record to all or any portion of the property prior to recordation of the tax deed to the purchaser; and
- In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds.

APPENDICES

I. Chapter 7 Sample Forms

Recession of Notice of Power to Sell Tax Defaulted Property ……SCO 5-08

Partial Recession of Notice of Power to Sell Tax Defaulted Property ……SCO 5-09

Tax Collector's Record of Sale of Tax Defaulted Property ……SCO 8-01

Request for Approval to Sell Tax Defaulted Property Subject to the Power of Sale (Chapter 7) ..... SCO 8-02

Authorization and Report of Sales …… SCO 8-03

Checklist of Mandatory Requirements – Public Auctions …….. SCO 8-04.1

Notice of Sale of Tax Defaulted Property to Parties of Interest (Chapter 7) …….. SCO 8-05.1

Notice of Personal Contact for Sale of Tax Defaulted Property …… SCO 8-05.4

Chapter 7 Notification (to SCO) …….. SCO 8-05.5

Receipt for Property Purchased at Tax Sale …….. SCO 8-06

Report of Sale of Tax Defaulted Property …….. SCO 8-07

Notice to Owners of Contiguous Property of Sealed Bid Sale of Tax Defaulted Property …….. SCO 8-08

Notice of Sealed Bid Sale of Partial Interest in, (Oil, Gas, or Mineral) Rights to Appurtenant Property Owners …….. SCO 8-09

Notice of Sealed Bid Sale of Complete and Undivided Interest in, (Oil, Gas, or Mineral) Rights to Appurtenant Property Owners …… SCO 8-10

Bid Form (Sealed Bid Sale) …….. SCO 8-11

Receipt to Absentee Purchaser at Sealed Bid Sale …… SCO 8-12

Tax Deed to Purchaser of Tax Defaulted Property …… SCO 8-19

Claim for Excess Proceeds …….. SCO 8-21

Affidavit of posting of Notice of (Public Auction/Sealed Bid) Sale …… SCO 9-02

Notice of Public Auction of Tax Defaulted Property for Delinquent Taxes …….. Figure 9.5

Notice of Public Auction of Tax Defaulted Property for Delinquent Taxes (Internet) …….. Figure 9.5a

Notice of Sealed Bid Sale of Tax Defaulted Property for Delinquent Taxes …… Figure 9.6

Notice of Right to Claim Excess Proceeds (Parties of Interest) …… Figure 9.8

II. Disqualifying Property Conditions

The following conditions will cause a given property to be exempted or excluded from agreement sale. However, in some cases, these conditions can be remedied. Where applicable, there are corrective measures included in these descriptions.

1) Property with an Indefinite or Improper Description

Reference made to acreage without specifying boundaries is an improper description. For example, "the south 10 acres of the NW 1/4" creates probable lines but may lead to conflicts over boundaries. Examples of inadequate descriptions are: a description that is dependent upon another description, a lot shown on an official map without reference to that map, and metes-and-bounds descriptions that do not establish a basic reference such as township, range, meridian, or name of a valid Spanish or Mexican land grant. See section 8120 of the *County Tax Collectors' Reference Manual* for the full explanation and definition of "indefinite description."

2) Property Belonging to Public Agencies

Properties belonging to public agencies normally should not be sold, pursuant to Article XIII, Section 3, of the Constitution and §202 of the Revenue and Taxation Code. Contact the State Controller's Office for any situation involving a public agency.

3) Unpatented Property

Unpatented property is land that has never been granted or conveyed to an individual by either the federal government or the State. It is not subject to taxation and, therefore, cannot be sold at a tax defaulted land sale.

4) Property Assessed to an Individual Who Has Filed for Bankruptcy

The filing of a bankruptcy petition creates an automatic stay in the enforcement of any lien against the estate of the debtor, and the stay continues until the case is closed or the real property no longer belongs to the estate. If the tax collector learns that bankruptcy proceedings have begun for the assessed owner, the tax collector must ensure that no attempt is made to sell the secured property covered by the bankruptcy without the bankruptcy court's permission. Such permission would be in the form of a relief from stay. The tax collector should contact the county counsel to file such a motion with the court.

5) Property Assessed to Individuals Not Responsible for Their Affairs

If a property that is subject to sale is owned by a person who is committed to a state hospital, the property cannot be offered for sale until the status of the property owner has been determined. It may be necessary to call one or both of the following agencies to locate that information.

Department of Developmental Services – Client Financial Services (916) 654-1690
(916)654-1690

Department of Health Care Services (916) 445-4171

If the property in question is responsible for his or her affairs, proceed with advertising the sale. If a conservator or guardian has been appointed on behalf of the property owner, notify the appointed party before including the property in the sale.

6) Indian Allotment Land

Indian allotment land on which a trust patent has been issued or reissued may not be sold at a tax sale. A trust patent is the instrument by which the United States government conveys title of public lands to Indian tribes.

7) California Veteran's Land (CalVet Property)

If taxes become delinquent on a Cal Vet property, contact the California Department of Veterans Affairs at 800-952-5626 and inform the office of the delinquency. The department may pay the taxes to prevent the property from becoming tax defaulted or subject to the tax collector's power of sale.

8) Property Exempted under the Service Member's Civil Relief Act

Title 50 of the United States Code (USC), Appendix, §3902 and §3991, affords protection to a person in the military service from the loss of real property through enforcement of the collection of taxes when such property is owned and occupied by dependents or employees as a dwelling or for professional, business, or agricultural purposes. If the real property is subject to the tax collector's power of sale, the enforcement action may be commenced only by court permission granted upon the application of the tax collector.

The serviceperson's exemption extends for a period not exceeding 180 days (six months) following termination of service. Pursuant to 50 USC §3936, when computing the tax-default time period, do not include in the calculations the period of military service.

9) Contaminated Property

It is recommended that any property on the Superfund list not be sold at a tax sale. Property not on the Superfund list but known or suspected to be contaminated may be sold. In such cases, consult county counsel on the specific circumstances. If the sale goes forward, disclose all that is known; do not attempt to estimate the extent of the contamination or the cost of cleanup.

10) Unprobated Property

If, prior to the tax sale, the tax collector receives delivery of a certified death certificate showing that an assessee is deceased, the tax collector should initiate an inquiry with the clerk of the superior court to determine whether probate proceedings have been commenced (§4986.6).

Note: On occasion, the notice mailed to the last known assessee of record may be returned by the post office with the word "deceased" stamped on the envelope. This type of documentation is not considered conclusive or an official determination of whether the assessee is deceased. Further investigation may be initiated by the office, but is not required by statute. Only upon receipt of a certified death certificate is the tax collector required to take any action related to the probate process.

Probate Scenarios

- If it is determined that probate proceedings have been initiated, then notice of the sale should be sent to the court appointed representative (and his or her attorney of record) and the sale should proceed as scheduled.
- If it is determined that probate proceedings have not been started, notification should be sent to the public administrator of the county in which the decedent resided at the time of death, as well as to the county public administrator where the property is located, stating that the property is subject to tax sale and that the public administrator shall take possession of the property pursuant to §7601 of the Probate Code and will conduct an investigation as authorized.
- If the public administrator has located a person or persons with higher authority to assume responsibility for the estate, notice of sale should be sent to that person(s). However, the property may only be offered for sale if the person(s) located by the public administrator initiated a probate.

Note: It is recommended that staff members involved in the tax sale process continue to follow up on the public administrator's investigation progress periodically. Following the public administrator's investigation, the public administrator is required to either notify the tax collector that the value of the estate does not warrant opening a probate (and thus the sale of the property may proceed) or commence a probate proceeding if no person of a higher authority can be discovered, at which time the property must be withdrawn from the sale.

Note: Generally, the public administrator may not be able to complete the investigation and report of findings as required by §4986.6 within the statutory time frames required for noticing. As such, once a certified copy of the death certificate is received, it is recommended that the property be pulled from the scheduled sale to allow sufficient time for the investigation. Monitoring the public administrator's progress on a regular basis during the conduct of their investigation will assure tax sale staff of the proper timing for scheduling the property at the next sale if not redeemed.

III. Establishing the Minimum Selling Price – Welfare Exemptions

Calculate the minimum selling price for each property, pursuant to §3698.5. For properties with welfare exemptions, determine a minimum selling amount in each of two categories. Once the total for each category has been determined, use the higher total as the minimum selling price (§3698.5(a)).

Category 1 – Fifty Percent of the Fair Market Value of the Property

Fair market value is "the amount as defined in Revenue and Taxation Code section §110 as determined pursuant to an appraisal of the property by the county assessor within one year immediately preceding the date of the sale. From the proceeds of the sale, there shall be distributed to the county general fund an amount to reimburse the county for the cost of appraising the property. The value of the property as determined by the assessor pursuant to an appraisal shall be conclusively presumed to be the fair market value of the property for the purpose of determining the minimum price at which the property may be offered for sale." (§3698.7(a)(1)).

Category 2 – The Total Amount Necessary to Redeem the Property, Plus Costs

Category 2 includes the following, which are the same totals of all factors outlined in §3698.5(a)(1):

- The amount of defaulted taxes;
- Delinquent penalties and costs;
- Redemption penalties;
- Redemption fee of $15 (§4102)(d));
- Additional costs, as described in sections §3704.7(c), §4112, §4672, §4672.1, §4672.2, and §4673 include:
    - The amount of the actual and reasonable costs incurred by the tax collector (§3704.7(c));
    - The actual and reasonable costs incurred in obtaining the names and addresses of parties of interest and for mailing notices to these entities for each property (§4112(a)(1));
    - A fee of one hundred fifty dollars ($150) if redemption is within 90 days of the proposed date for the tax sale of the redeemed property (§4112(a)(3));
    - The actual and reasonable costs incurred in conducting personal contact and, if necessary, also serving written notice for each property that is a primary residence for the last known assessee (§4112(a)(4));
    - $1.50 State fee (§4672);
    - $150 County fee for the cost of conducting the sale (§4672.1);
    - The costs of researching and giving notice to the parties of interest (§4672.2);
    - The cost of advertising the sale of the property (§4673);
    - The amount necessary to satisfy current taxes and assessments and applicable penalties and costs thereon for the fiscal year in which the tax sale is held (§4673.1);

- The outstanding balance of any property tax postponement loan (which is the sum of the following):
    - The tax payments made by the State Controller's Office on behalf of the claimant in the Property Tax Postponement Program;
    - Accrued interest pursuant to Section §16183 of the Government Code, subject to Sections §20644 and §20644.5;
    - Other associated fees and penalties as deemed appropriate by law; and
    - Less any payments already made on the property tax postponement loan.

Note: For payoff amounts contact the SCO at (916)445-8717 and ask for the Property Tax Postponement Section or email postponement@sco.ca.gov.

IV. Calculating the Power of Sale Schedule for Disaster-Damaged Property

Consider following the steps below in order to calculate when property damaged by a local, state, or federally declared disaster is subject to power of sale.

Step 1: Calculate the Total Default Time

The default status for disaster-damaged property is suspended (tolled) until substantial repair is made or after five years have passed, whichever comes first. A disaster-damaged property will not be subject to power of sale in the standard five consecutive years after the initial date of default. Use the equation below to incorporate the time period during which default was suspended into the overall default time, from the date that the property first became defaulted to the current date. To illustrate, consider that:

X – Y = 5 years or more

Let **X** represent the total time the property has been in default status (i.e., the current date minus the date the property first became defaulted). For example: Current date 11/01/15 minus default date 07/01/2008 = seven years and four months.

Let **Y** represent the total time the property has been in suspended default (i.e., the date the property was substantially repaired minus the date the damage occurred). For example: Repair date 8/01/2014 minus damage date 05/01/2011 = three years and three months.

In the example provided, the difference of x – y (seven years, four months minus three years, three months) is four years and one month, which is less than five years. Thus, the property is not subject to power of sale, nor can it be offered for sale.

Once five years of default have passed for disaster-damaged property, additional considerations remain regarding the property becoming subject to power to sell.

Step 2: Calculate the Power of Sale Schedule

Assuming that the calculation in Step 1 has shown that a disaster-damaged property's total default time, less the suspended default time, exceeds five years, the next step is to determine when the property becomes subject to the power of sale. The law states that all property that has been defaulted for five years or more becomes subject to the power of sale as of 12:01p.m. on July 1 of the fifth year of default .

The notice of impending power to sell must be published on or before June 8 of the fifth year of default.

If the tax collector fails to provide such notice, or the property has not been defaulted for five years or more as of June 8 of a given year (and thus could not be included in the notice), any sale made until proper notice is provided—within the statutory guidelines—would be invalid.

As such, if a disaster-damaged property's five-year default time is calculated to occur just after June 8 of a given year, the property would not qualify for inclusion in the current notice; it would have to appear in the following year's notice. Accordingly, it would not be subject to the power of sale until the following year.

V. Frequently Asked Questions

Members of the public frequently ask the following questions with regard to public auction and sealed bid sales. The answers provided are general responses. Answers should reflect the specific conditions of the sale and the policies of the office.

Q. Can I mail in or submit a sealed bid for a property in a public auction?

A. No. The public auction requires you or your representative to be present in order to bid on the properties.

Q. Can I obtain a property available at the tax sale by paying the delinquent taxes on it prior to the tax sale date?

A. No. Legal title to tax defaulted property subject to the tax collector's power to sell can be obtained only by being the successful bidder at the tax sale.

Q. How do I locate or view a vacant property I would like to bid on at the tax sale?

A. While we try in every way to help prospective purchasers identify a property location, we can provide only the approximate geographic location for vacant land (which accounts for most of the property offered at our tax sale). Vacant or unimproved land has no address. Its approximate location may be determined through the use of county assessor maps. Exact boundary lines of a property can be determined only by conducting a survey of the property, initiated at the purchaser's expense. Improved properties frequently (but not always) bear a situs (street address).

Q. How does a bidder pay for property offered at the tax sale?

A. Payment must be made in cash or certified funds (cashier's check, certified bank check, money order, or traveler's check, with proper identification) or by electronic funds transfer. Personal checks are not accepted.

Q. What are the conditions of payment for a property at the tax sale?

A. All sales require full payment, which includes the transfer tax and recording fee. At the tax collector's discretion, purchases for more than $5,000 may be paid for on a credit payment plan, but they still require a deposit at the time of sale of 10% of the minimum bid amount or $5,000, whichever is greater. According to the Revenue and Taxation Code, the balance is payable in lawful money of the United States, negotiable paper or electronic funds transfer, as specified by the tax collector, within a period specified by the tax collector, not to exceed 90 days from the date of the auction, as a condition precedent to the transfer of title to the purchaser. If the balance due is not paid within the period

specified, the deposit is forfeited, along with all rights with respect to the property and the bidder may be responsible for the tax collector's costs to bring the property to auction (§3693.1).

Q. Do liens or encumbrances on a tax defaulted property transfer to the new owner after purchase of the property at a tax sale?

A. §3712 states:

The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except for:

a) Any lien for installments of taxes and special assessments, that installments will become payable upon the secured roll after the time of the sale.
b) The lien for taxes or assessments or other rights of any taxing agency that does not consent to the sale under this chapter.
c) Liens for special assessments levied upon the property conveyed that were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax defaulted property, and, where a taxing agency that collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.
d) Easements of any kind, including prescriptive, constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.
e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded options of any taxing agency to purchase the property or any interest therein for a public purpose.
f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section §8500) of the Streets and Highways Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section §4671) of Part 8, or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section §8830) of Division 10 of the Streets and Highways Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Part 14 (commencing with Section §8830) of Division 10 of the Streets and Highways Code.
g) Any federal Internal Revenue Service liens that, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.
h) Unpaid special taxes under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section §53311) of Part 1 of Division 2 of Title 5 of the Government Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section §4671) of Part 8, or that are being collected through a foreclosure action pursuant to Section (§53356.1) of the Government Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Section (§53356.1) of the Government Code.

Q. When does the right to redeem a tax defaulted property subject to the power to sell cease?

A. The right ceases at the close of business on the last business day prior to the sale.

Q. How can I determine what use I can make of a tax sale property before I purchase it?

A. Consult the Planning Department of the city or the county, if in an unincorporated area, within which the property is located. Examine the county recorder's records for any recorded easements on a property. You can also order a title search report from a local title insurance company.

Q How soon can I take possession of a property that I purchase at the tax sale?

A. You should consult an attorney. Generally, the successful bidder may take possession of a property after making payment in full and complying with any conditions set forth by the tax collector.

Q. How is the minimum price determined on a property offered at a tax sale?

A. State law requires that the minimum price for a tax defaulted property offered at an auction for the first time shall be no less than the total amount necessary to redeem the property, plus costs. The minimum bid may be set at a greater amount at the tax collector's discretion.

Q. Is a tax sale publicly advertised?

A. Yes. State law requires that notice of a tax sale must be published three times in successive seven-day intervals before the tax sale date in a newspaper of general circulation published in the county.

Q. How will title in the deed to the purchaser be vested?

A. Title is vested in the name of the actual purchaser. If title is to be vested differently, a notarized letter from the individual being represented, stating the manner in which title is to be vested is required.

Contact Information

To view an electronic copy of this volume visit:
The State Controller's Website
http://www.sco.ca.gov/ardtax_tcs_taxguide.html

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