

State of California

# County Tax Collectors' Reference Manual

Chapter 6000: Tax Defaulted Property

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**BETTY T. YEE**

California State Controller's Office

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## Introduction

The County Tax Collectors' Reference Manual, is produced by the State Controller's Office, Local Government Programs and Services Division, Property Tax Standards Unit. This manual is designed to provide comprehensive reference material to assist county tax collectors in performing their duties in compliance with statutory requirements and promote uniformity throughout the state.

All statutory references cited are from the Revenue and Taxation Code, unless otherwise noted. Citations and references in this manual are current as of its publication date however, care must be taken to ensure that none have been superseded by subsequent legislative action or court decisions.

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. 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 Tax Collectors.

## 6000 General Overview: General Information

### 6000. PURPOSE AND EFFECT

Annually, at 12:01 a.m. on July 1, the taxes, assessments, penalties, and costs on real property (except property that is currently in tax default or is a possessory interest) that have not been paid, shall be declared in default ([§3436](#)). The property on which the taxes, assessments, penalties, and costs are in default becomes "tax defaulted" property ([§126](#)). This begins the three or five-year period leading to the property becoming subject to the tax collector's power to sell. Nonresidential commercial property period is three years; all others are five years ([§3362\(b\)\(2\)](#)).

**NOTE:** The county may pass an ordinance or resolution to opt out of the three-year power to sell provisions.

During this period and until the property is sold by public auction, sealed bid, or a Chapter 8 Agreement Sale, the right of redemption continues and title to the property remains vested in the owner. Every person who does any act tending permanently to impair the value of tax defaulted property is guilty of a misdemeanor and is liable for any damages ([§3441](#)).

**NOTE:** If the Notice of Impending Power to Sell Tax Defaulted Property required by [§3351](#) is not published, or if the first publication of the notice is not made by the statutory deadline of June 8, then all of the property that would have become tax defaulted will continue to be tax delinquent until the next July 1 at 12:01 a.m., at which time the property will become tax defaulted, provided that the publication requirements are met.

## 6100-6106 Declaration Process: Eligible Property

### 6100. GENERAL INFORMATION

Properties on which the total amount of taxes due were not fully paid by the close of business on the last day of the fiscal year shall be declared tax defaulted ([§3436](#)). Property set forth in manual section [6111-6118](#) are excluded.

**EXCEPTION:** See second note under manual section [6000](#).

### 6101. LIFE ESTATES

Real property subject to a life estate is assessed on the secured roll in the same manner as an estate in fee simple. If the taxes on a life estate assessment become delinquent, the property shall:

- Be tax defaulted at the end of the first year of delinquency;
- Become subject to the tax collector's power to sell if the taxes remain delinquent for five years; and
- Be sold at public auction, if not redeemed prior to the auction. The property subject to sale covers the entire fee interest that may be sold to the purchaser at the tax sale. Either the life tenant or the remainder may redeem prior to the termination of the right of redemption ([Attorney General Letter 2-1-73](#)).

### 6102. CONDOMINIUMS

[Civil Code section 783](#) defines a condominium as an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential,

industrial, or commercial building or other real property, such as an apartment, office or store, that, in addition, may include a separate interest in other portions of such real property.

The initial seller or purchaser of an individual unit in a condominium project may request that the unit be separately assessed and that a separate tax bill be provided for the current fiscal year ([§2188.6](#)). However, if adequate security has been posted for payment of taxes on the entire condominium, a separate tax bill for an individual unit is not authorized.

The tax due on the individual unit constitutes a lien solely on that unit. Property taxes due on other units do not affect the unit that has been separately assessed and billed ([§2188.3](#), [§2188.6\(b\)](#)). The application for separate assessment should be made to the county assessor ([§2188.3](#), [§2188.6](#)). Each condominium owned in fee is subject to assessment on the secured roll, and the taxes levied constitute a lien thereon ([§2188.3](#)).

### 6103. UNDIVIDED INTEREST

An undivided interest is a parcel of property separate from the whole assessment ([§2802\(b\)](#)).

If the tax is to be paid on an undivided interest in an assessment on the current roll, the tax due on the remainder of the assessment, regardless of the amount of undivided interest it might contain, is to be paid in one lump sum and should include any accrued delinquent penalties and costs ([§2188.7\(c\)\(2\)](#)).

Payment of the segregated undivided interest should be identified with the name of the assessee and the recording data of the document evidencing the interest when entered upon the roll. This will assist in identifying the remaining unpaid undivided interest transferred to the delinquent records after the tax default.

The tax collector declares only the unpaid portion of the undivided interest to be tax defaulted, giving the name of the most current assessee as shown on the assessor's records.

**EXAMPLE:** "ONE FOURTH INTEREST IN LOT 10, BLOCK 12, CITY OF EXETER, POR, A.P.N., 12-333-44."

**NOTE:** If the assessment roll shows "John Doe, [et al.](#)" and John Doe has paid his interest, the assessor's records should be checked to determine which of the other owners, if delinquent in payment, will appear on the records of the tax defaulted property.

### 6104. TIMESHARE ESTATES AND TIMESHARE PROJECTS

Separate assessments and taxation of timeshare estates and timeshare projects as defined in the [Business and Professions Code section 11212](#) are provided in §2188 & §2189 as follows:

- A timeshare estate in real property may be separately assessed and billed ([§2188.8](#)). When the taxes on a timeshare estate in real property become delinquent, the timeshare estate can be tax defaulted.
- A leasehold timeshare estate may be separately assessed, but it cannot be separately billed. The entire timeshare project must be billed as a single unit. The director of the timeshare project receives a breakdown of the taxes applicable to each separate interest. When its taxes become delinquent, the entire timeshare project is declared tax defaulted ([§2188.9\(f\)\(g\)](#)).

### 6105. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION ROLL

Property assessed on the California Department of Tax and Fee Administration roll on which the taxes have not been paid is tax defaulted in the same manner and at the same time as other tax delinquent property on the secured roll.

**NOTE:** Delinquent tax on state assessed personal property should be collected as unsecured and, if unpaid after June 30, should be transferred to the unsecured abstract. Such tax is subject to the additional penalties provided in ([§2922](#)).

## 6106. SUBDIVISION FILING

The Subdivision Map Act ([Gov. Code §66410 et seq.](#)) requires that before property is subdivided for sale, lease, or financing, a subdivision map must be prepared by the subdivider and be approved by the governing body of the city or county in which the land is located.

If any part of the subdivision is subject to a lien for special assessments, the final map or parcel map shall not be recorded until the owner or the subdivider does the following:

- Files with the clerk of the board of supervisors a certificate or statement prepared by the tax collector giving his or her estimate of those taxes or assessments, and
- Executes and files with the clerk of the board of supervisors, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes. These taxes are a lien against the property when the final map is recorded but are not yet payable. A county may, by ordinance and after consultation with the tax collector, waive this requirement if there are four or fewer parcels, or for a lot line adjustment ([Gov. Code, §66493 \(1\)\(2\)\(d\)](#)).

If the land being subdivided is a portion of a larger parcel shown on the preceding tax roll as a unit, the security for payment of taxes need be only the sum determined by the tax collector to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all penalties and costs if the taxes are delinquent.

A county may, by ordinance, require that, if a property owner or subdivider deposits cash to secure the payment of the estimated taxes or special assessments, the county tax collector shall draw upon the deposit, at the request of the taxpayer, to pay the taxes or special assessments when they are payable.

If the land being subdivided is tax defaulted, it may be redeemed without the redemption of the remainder of the parcel of which it is a part if it was held in ownership separate from, and other than, the ownership of the remainder ([§4151](#)).

In computing the amount of security for taxes, consider only the amounts shown on the regular assessment roll or shown on any supplemental rolls.

## 6110-6118 Declaration Process: Ineligible Property

### 6110. GENERAL INFORMATION

The classes of property listed in manual section [6111-6118](#) should not be tax defaulted.

### 6111. GAS AND OIL LEASEHOLD ESTATES

Leasehold estates for the production of gas, petroleum, and other hydrocarbon substances, although assessed on the secured roll, are not to be tax defaulted for taxes or published in the delinquent list ([§107\(b\)](#)).

If the taxes remain unpaid at the declaration of default, the taxes and the accrued penalties and costs should be transferred to the current unsecured roll for collection ([§2189.5](#)).

Written demands upon the lessee are often helpful in enforcing payment of a delinquent account.

Taxes on personal property and improvements located upon or appurtenant to leasehold estates may be secured by such leasehold estates ([§2189.5](#)). If the taxes are not paid on the leasehold estate, it is subject to seizure and sale in the same manner as provided for the seizure and sale of unsecured property by ([§107](#), [§2189.5](#), [§2951-2962](#); *Picchi v. Montgomery*, 261 Cal. App. 2d 246).

Seek legal counsel if seizure and sale becomes necessary. Refer to manual section [2310 et seq.](#) and manual section [9900 et seq.](#) for restrictions imposed upon the sale of seized property.

**NOTE:** The assessment of "oil, gas, and mineral rights," also identified as "mineral rights," "OG&M," etc., are not to be confused with the assessment of leasehold estates. Mineral rights constitute an interest in the fee title of the property, are subject to assessment on the secured roll as real property, and may be tax defaulted in the event of a delinquency.

## 6112. PERSONAL PROPERTY AND POSSESSORY INTERESTS

Personal property, separately owned improvements, and possessory interests are not to be separately tax defaulted ([§107](#), [§3436](#); *Picchi v. Montgomery*, 261 Cal. App. 2d 246).

The taxes and penalties on personal property or improvements that are a lien on land on the secured roll are to be included in the amount due for the real estate upon which they are a lien ([§2188](#), [§2188.1](#), [§2188.2](#), [§2189](#), [§2189.3](#)). The taxes and penalties on possessory interests and on improvements assessed separately pursuant to ([§2188.2](#)), which become a lien on land pursuant to [§2190.2](#), are to be included in the amount due for the real estate upon which they are a lien.

Separately valued parcels contained within a single assessment, and against which taxes, penalties and costs are individually extended, cannot be combined into a single tax default (*Gottstein v. Kelly*, 206 Cal. 742).

If tax defaulted property and property that is not tax delinquent have been combined into one assessment and separate tax bills were not issued pursuant to [§2612.5](#) and manual section [1140](#), the assessment must be segregated.

## 6113. PROPERTY PREVIOUSLY TAX DEFAULTED

Property already tax defaulted may not be subsequently tax defaulted ([§3351](#), [§3436](#)), unless first redeemed ([§4101](#)) or unless the tax default is canceled or held void ([§3444](#)).

## 6114. UNENFORCEABLE TAX LIEN

Property should not be tax defaulted if collection of the delinquent tax cannot be enforced due to errors in description, assessment, equalization, levy, or other proceeding ([§3438](#)).

See manual section [1521](#) for procedure.

## 6115. WATER SYSTEM IMPROVEMENTS

Improvements that constitute component parts of a water distribution system and that are not a lien on the land on which they are located, should neither be tax defaulted nor published in the delinquent list. If taxes remain



unpaid when any installment of taxes has become delinquent on the secured roll, the tax collector may use the same collection procedure as for delinquent taxes on the unsecured roll.

Taxes remaining unpaid at the time set for the declaration of delinquent taxes, together with penalties and costs accrued while on the secured roll, shall be transferred to the current unsecured roll ([§2189.6](#)).

#### **6116. TRANSFER OF ERRONEOUS PAYMENT**

When a payment is credited to an incorrect property after a guaranty of title has been issued and is subsequently corrected, the incorrectly credited property shall not be tax defaulted. The accrued taxes, penalties and costs are transferred from the secured to the unsecured roll. The owner of the incorrectly credited property just prior to the issuance of a guaranty or certificate of title becomes personally liable for the payment ([§4911.1](#)).

#### **6117. STREETS ASSESSED TO SUBDIVIDERS**

Strips, lots, or parcels identified on either a filed or a recorded subdivision map, record of survey map, etc., as streets or roads dedicated to public use are tax exempt if they are:

- Accepted by the board of supervisors; or
- Accepted through prescription, i.e., long continued public use ([Const., Art. XIII, §1](#)).

An assessment of a public road can be cancelled as illegal ([Gaspard v. Edwin M. LeBaron, Inc. 107 Cal. App. 2d 356](#)). If the tax collector discovers an assessment of a public road, it should be reported to the assessor.

#### **6118. NATIVE AMERICAN ALLOTMENTS OR HOMESTEADS**

Pursuant to federal statutes of 1875, 1884, and 1887, the provisions of the Homestead Act of 1862 were made available to eligible Native Americans. Following issuance of a trust patent, the land was not subject to alienation, encumbrance or taxation for certain restricted periods: 1875 - 5 years, 1884 - 25 years, and 1887 - 25 years (except for any presidential extensions granted). Upon expiration of the restrictive period, the Native American entryman was entitled to a fee patent, after which the land became subject to taxation.

Unless a fee patent was received following termination of the restrictive period prescribed by the Dawes Act of 1887 and was in force when the application was made, the property would not be subject to assessment. Any assessment made of trust patent land is subject to cancellation under [§4986\(a\)\(2\)](#) and [§4992](#).

By executive order, many trust patents have been extended indefinitely. The Department of the Interior, Bureau of Land Management (BLM), may be contacted whenever a question of trust status exists. A search of BLM's General Land Office Records database can be conducted as well.

## **6120-6124 Declaration Process: Administrative Information**

#### **6120. DEFAULT NUMBERS**

For proper control, default numbers should be assigned to tax defaulted properties in ascending numerical order, by one of the following methods:

- Starting with "1" each year;
- Continuing consecutively from the last default number used in the preceding year; or

- Using the assessment (parcel or account) or billing number that appears on the assessment roll.

### 6121. "ADDENDA" DEFAULT NUMBERS

Tax defaulted parcels that are inadvertently omitted from, or incorrectly described in, the published Property Tax Default (Delinquent) List may be republished. These items may be entered as an addendum to a delinquent list publication in subsequent years ([§4841](#)).

### 6122. ENTRIES ON ROLL

Unless the information relating to unpaid items is entered on an abstract list ([§4372-§4379](#)), the tax collector shall enter on the delinquent roll ([§3439](#)) or on the secured assessment roll if the delinquent roll has been dispensed with, opposite each parcel separately valued and tax defaulted, including those in the addenda, the following information: the term "Tax Defaulted," the default number, the date of the default, and the total amount of the tax default.

### 6123. NOTICE TO AUDITOR

Within 30 days after the default, the tax collector shall furnish the auditor with a list of all properties that have become tax defaulted. The auditor shall enter on the current roll immediately after the description of the property the fact and date of the declaration of default ([§3442](#)).

The "current roll" is defined in [§125](#).

### 6124. NOTICE TO ASSESSOR

The tax collector transmits to the assessor a list of the tax defaulted properties. The assessor then enters on his or her records the fact and date of the default ([§3443](#)).

**EXCEPTION:** If the machine prepared roll, as defined in [§109.5](#), is reproduced by the auditor for use as the extended roll, the assessor is not required to enter the fact and date of default on the records, since such entries may be entered on the reproduced (extended) roll ([§3443.5](#)). This extended roll becomes the current roll on which the auditor makes any necessary entries ([§3442](#)).

If entries normally appearing on the extended roll are maintained electronically and no physical document is prepared, information pertaining to tax defaulted entries must likewise be recorded in the electronic file ([§109.6](#)).

## 6130-6134 Cancellation: General Information

### 6130. AUTHORITY

If a declaration of default is voided, the default must be canceled by the tax collector, with the approval of the auditor ([§4991](#)).

### 6131. CANCELLATION OF TAXES

When the taxes on a tax defaulted property are legally canceled, the tax default procedure used to enforce the taxes becomes void and must be cancelled ([§4991\(b\)](#)).

**6132. TAXES PAID PRIOR TO THE DEFAULT**

If the taxes on a property were paid prior to the time of its default, the default is void and must be canceled ([§4991\(a\)](#)).

**6133. TAXES TRANSFERRED TO UNSECURED ROLL**

When taxes on a tax defaulted property are transferred to the unsecured roll pursuant to ([§4831\(d\)](#)) or ([§4840](#)), the tax default must be cancelled.

**CAUTION:** No transfer to the unsecured roll may be made under [§5088](#) if the property has become subject to the tax collector's power to sell ([§3691](#)).

**6134. DUPLICATE DECLARATION OF TAX DEFAULT**

Unless the lien for taxes that resulted in a property becoming tax defaulted has been removed through redemption, cancellation, or nullification, the property may not again be declared tax defaulted. If tax delinquent property has been unintentionally declared tax defaulted a second time, the duplicate default must be canceled ([§4991](#)).

## 6140 Cancellation: Processing Procedures

**6140. GENERAL APPLICATION**

The fact and date of the cancellation shall be entered on the abstract or the electronic data processing records, whichever is appropriate ([§4991](#)).

**NOTE:** Since the mechanical methods utilized by counties vary, a county may accomplish cancellation through any method deemed most suitable to its system.

## 6150-6151 Cancellation: Special Circumstances

**6150. GENERAL PROCEDURES**

Actions for damages to tax defaulted property should be handled by the district attorney. If the damages have been committed by a person, the tax collector should submit a report in writing to the district attorney requesting that action be taken.

Actions include, but are not limited to, the removal, destruction, or cutting of any improvement or timber.

Persons damaging the property can be prosecuted for the commission of a misdemeanor, and can be sued for damages sustained by the county ([§3441](#)).

**6151. DAMAGE PERPETRATED ON TAX DEFAULTED PROPERTY**

Removal or destruction of any improvements, cutting of timber, or any act tending to permanently impair the value of tax defaulted property, or removal of minerals should be reported immediately to the district attorney for appropriate legal action ([§3441](#)). This applies even if the property is being redeemed under an installment plan of redemption ([Attorney General Letter 3-12-41](#)). If the property that was subject to sale has been

redeemed, the county is still permitted to recover damages for timber removed during the time the property was subject to the power to sell (*People v. Lucas*, 55 Cal. 2d 564).

Trustees in bankruptcy are obligated to conserve the bankrupt's estate but have no right by virtue of the bankruptcy laws to commit waste on the property. Trustees selling buildings or equipment attached to property subject to sale may be liable to prosecution under ([§3441](#)) ([Attorney General Letter 3-12-41](#)).

## **6152. STATUTE OF LIMITATIONS**

Ordinarily, the statute of limitations for a misdemeanor is one year and, for civil action for damages, it is three years [Code of Civil Procedure section 338 \(b\)](#). The tax collector need not determine whether the statute of limitations applies. The district attorney can determine this when the matter is reported.