

# State Tax Commission of Missouri



## Chapter 140 Tax Sale Procedure Manual\*

\* Section 140.640 RSMo. 2000, giving the State Tax Commission authority to decide questions concerning the construction and interpretation of Chapter 140, has been repealed. This material is provided for informational purposes only and should not be relied upon without first speaking to your county counselor or prosecuting attorney.

This manual does not address tax sales under Chapter 141 RSMo., which applies to the City of St. Louis and First Class Charter Counties not electing to operate under Chapter 140 RSMo.

July 2017

# TABLE OF CONTENTS

## DELINQUENT TAX SALES

<b>I.</b>	<b>Authority to Collect Taxes .....</b>	<b>5</b>
	A. County Taxes .....	5
	B. City Taxes .....	5
<b>II.</b>	<b>The Back Tax Book.....</b>	<b>6</b>
	A. Creation of the Back Tax Book .....	6
	B. Role of County Commission.....	7
	C. Role of Board of Equalization .....	8
<b>III.</b>	<b>Generally.....</b>	<b>8</b>
	A. Delinquency .....	9
	B. Notice.....	9
	C. Cost of Tax Sale.....	9
	D. Actions Available to Collect Delinquent Taxes.....	9
	E. Existing Covenants and Easements .....	10
	F. Leaseholds.....	10
	G. Political Entities .....	10
	H. Bankruptcy.....	11
	I. Damages for Improper Sale .....	11
<b>IV.</b>	<b>Preparing for a Tax Sale .....</b>	<b>11</b>
	A. Prior to Publication.....	12
	B. Newspaper Publication .....	12
	C. Exception – Courthouse Posting.....	13
	D. Abbreviations.....	13
	E. Locator Numbers .....	13
<b>V.</b>	<b>The Tax Sale .....</b>	<b>14</b>
	A. Statute of Limitations.....	14
	B. Date and Time.....	15
	C. Minimum Bid.....	15
	D. Disqualified Bidders .....	15
	E. Non-Residents.....	15
	F. Role of the County Clerk .....	16

G. Costs.....	16
<b>VI. Bid Payment – Penalty.....</b>	<b>16</b>
<b>VII. Surplus Funds.....</b>	<b>16</b>
<b>VIII. Multi-Year Offerings.....</b>	<b>16</b>
A. First Offering .....	16
B. Second Offering.....	17
C. Third Offering.....	17
D. Beyond the Third Offering.....	17
<b>IX. Adequacy of Consideration.....</b>	<b>18</b>
<b>X. Certificates of Purchase.....</b>	<b>20</b>
A. Contents of Certificate of Purchase .....	20
B. Fees .....	21
C. Recording.....	21
D. Right to Assign .....	21
E. Limitations on Issuance or Assignment.....	21
F. Cancellation .....	22
G. Replacement Certificates .....	22
<b>XI. Collector’s Deeds.....</b>	<b>22</b>
A. Entitlement.....	22
B. Purchaser’s Affidavit.....	29
C. Time of Issuance of Collector’s Deed .....	30
D. Form of Deed .....	32
E. Execution of Deed.....	33
F. Time of Recording .....	33
G. Costs.....	34
H. Fees .....	34
I. Evidence of Validity .....	34
J. Lien Forfeiture .....	34
K. Certificate of Purchase – Surrender .....	35
L. Delinquent Taxpayer.....	35
M. Beyond Third Offerings.....	35
N. Purchase by County Trustee .....	35
O. In the Event of the Purchaser’s Death.....	35

<b>XII. Redemption.....</b>	<b>36</b>
A. Prior to First Offering .....	36
B. After Sale at a First or Second Offering .....	36
C. Upon Purchase at Third Offering.....	36
D. Upon Purchase at a Sale Subsequent to Third Offering .....	36
E. By Incapacitated or Disabled Persons.....	37
F. Compensation for Improvements.....	37
G. Notice of Redemption .....	37
H. Record of Redemption .....	37
I. Purchaser in possession During Redemption Period .....	37
J. Owner/Occupant May Retain Possession During Redemption Period.....	38
K. Redemption by Drainage, Levee or Improvement Districts .....	38
L. Limitation on Interest.....	38
<b>XIII. Challenges to Validity of Tax Sale.....</b>	<b>38</b>
A. Presumptions.....	38
B. Mistakes, Irregularities and Omissions.....	39
C. Void Sales .....	39
<b>XIX. Quiet Title Actions .....</b>	<b>40</b>
A. Lien Remains Valid .....	40
B. Statute of Limitations.....	41
C. Possession not Required .....	41
D. Offer of Reimbursement Required.....	41
E. Proof Required .....	41
F. County Records.....	42
<b>XX. Frequently Asked Questions .....</b>	<b>43</b>

# Delinquent Tax Sales

## I. Authority to Collect Taxes

The Collector is the only public official given the responsibility for collecting delinquent taxes for the county. The statutory method for collecting delinquent real estate taxes is through the tax sale. The Collector is usually required to collect the entire amount of taxes, penalties and interest due on the property. In a few limited instances, the County Commission is given the authority to settle for less than the full amount due. Additionally, also in limited circumstances, the Board of Equalization is given authority to strike uncollectable taxes.

### A. County Taxes

County collectors are required to collect delinquent property taxes. Section 140.050.3 RSMo. 2000 and Sections 52.290 and 140.110.1 RSMo. Supp. 2008. Collectors apply tax payments first to the payment of back taxes and then to the payment of current taxes. Section 140.110.2 and 140.110.3 RSMo. 2008. Payment is applied to the oldest delinquent taxes first. Section 140.110 RSMo. Supp. 2010.

### B. City Taxes

In addition to county taxes, county collectors may also collect delinquent taxes for cities and towns, but some cities conduct their own tax sales to collect delinquent taxes. Where appropriate, statutory references to “county” can be construed to mean “city”. And, statutory references to the “county clerk” can be construed to mean the city clerk or other appropriate official. Also, in counties which have adopted township organization, the term “collector” should be construed to mean “treasurer and ex officio collector”. Section 140.665 RSMo. 2000. Special authority to collect city taxes and the liens and procedures associated with those taxes are set forth in Sections 140.670 through 140.720 RSMo. 2000.

City taxes are not “inferior” to County taxes and are not wiped out by a County sale. However, a Collector cannot issue a Collector’s deed until all taxes are paid. State ex rel. McGhee v. Baumann, 160 SW 2d 697 (Mo. Supp. 1942).

## **II. The Back Tax Book**

### **A. Creation of the Back Tax Book**

#### **1. Generally**

The county collector is required to make a list of delinquent taxes. Section 140.030 RSMo. 2000. This list is then submitted to the county commission for review and correction. Section 140.040 RSMo. 2000. After the commission review, the county clerk prepares the back tax book. This book can be in electronic format. Section 140.050 RSMo. 2013. The collector and the clerk compare the delinquent list and the back tax book and when they determine that it is correct, the clerk certifies it as correct. Section 140.080 RSMo. 2000.

In first class non-charter and second class counties, the collector prepares the back tax books in lieu of delinquent lists. Back tax books may be maintained electronically. Section 52.361 RSMo. 2010.

#### **2. Penalties Assessed**

In addition to the taxes due, each parcel in the back tax book is charged a penalty of eighteen percent of each year's delinquency. Section 140.100 RSMo. 2000.<sup>1</sup>

If redemption occurs prior to sale the penalty is limited to two percent per month or fractional part of a month. Section 140.100 RSMo. 2000.

The collector is obligated to collect this penalty and is personally responsible for any penalty he or she refuses to assess. Section 139.100 RSMo. 2000.

#### **3. Penalties, Interest, and Fees**

Note: The delinquent property tax statutes do not appear to differentiate between the terms "penalties," "interest," and "fees". Sections 140.050, 140.060, 140.120, 140.130, 140.170 and 140.180.

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<sup>1</sup> See Section A.3., which discusses the change in the amount of interest effective January 1, 2018.

Interest is at the penalty rate of 2% per month, or fractional part thereof, but capped at 18% per year for each year's delinquency on lands redeemed prior to sale. Section 140.100 RSMo. Supp. 2010. It is called a penalty but treated as interest because it accrues every year.

Additionally, in all but pre 2008 charter jurisdictions, each county is authorized to charge a fee of 7% for the collection of delinquent taxes. Sections 52.290 and 54.325 RSMo. Supp. 2008, 2010. A portion of this collection fee goes into the tax maintenance fund in each county. The rest is divided between the county general fund and the county employees' retirement fund. Section 52.290 RSMo. 2008.

If a county's charter authorizes a different fee for the collection of delinquent and back taxes, the rate established in the county charter shall control. Section 52.290 RSMo. 2010.

For non-charter counties, the taxpayer with delinquent taxes could experience a 25% (18% + 7%) penalty for each year. This is a one time charge at the time of collection.

In a pre 2008 charter county and the City of St. Louis, a fee of two percent of all sums collected is added the tax bill, except that in charter counties with more than 250,000 but less than 700,000 inhabitants, the collector collects a fee of three percent. Section 52.290 RSMo. Supp. 2010. If there is a tax maintenance fund, one-third of the fees goes into that fund; otherwise all fees are paid into the county general fund. Section 52.290.2 RSMo. 2008.

Interest and penalties are not charged to military persons who are absent from their homes in service to the state or the United States. Sections 41.950 and 139.100.2 RSMo. 2008.

**NOTE:** As of January 1, 2018, the following revisions to Section 52.290, Section 137.280, Section 137.345, and Section 140.100, which involve fees that are deposited into the county employees' retirement fund (CERF), take effect:

A fee collected on delinquent and back taxes of which three-sevenths is paid to CERF is changed from seven percent of all sums collected to nine percent. Of the nine percent collected two-ninths is paid to the county general fund, two-ninths is paid to the county's tax maintenance fund, and five-ninths is paid to CERF. Section 52.290.1 RSMo. 2017.

Penalty fees for a taxpayer failing to return personal property assessment lists to the county assessor are increased by five dollars. The assessor must annually submit to CERF the log of property lists not returned and the dollar amount associated with the penalties

waived by the assessor when annual waivers exceed forty percent. Section 137.280.1 and .4 RSMo. 2017.

Penalty fees for a taxpayer failing to return itemized and certified business personal property assessment lists to the county assessor are increased by five dollars. Section 137.345.1 RSMo. 2017.

The collector and county clerk shall each receive five dollars for recording delinquent land lists and such fee shall go to CERF. Section 140.100.3 RSMo. 2017.

**B. Role of County Commission**

**1. Review of List**

The delinquent tax list, or delinquent back tax books, are submitted to the county commission for review and correction. Section 140.040 RSMo. 2000.

**2. When the Commission can Correct a List**

County commissions may correct delinquent tax lists only if

- a. the land has been assessed more than once; or
- b. the land is not subject to taxation; or
- c. there is an error in a legal description.

Section 140.040. RSMo. 2000.

**3. Limitation on Authority to Settle**

The county collectors and commissioners have no authority to settle back tax bills for less than the full amount due. AG Op. 80-2004, 200 WL 823705; unless it appears that the property would not sell for the amount of taxes, interest and costs due. Section 140.120 RSMo. 2000.

**C. Role of Board of Equalization**

**1. Review of Back Tax Book**



The county board of equalization reviews the back tax book prior to making its settlement with the county collector. Section 140.130 RSMo. 2000.

## **2. Ability to Strike Entries**

The board may strike properties from the back tax book if it finds:

- a. the property has been on the back tax books for at least five years and
- b. the bill is too small to justify the expense of a suit; or
- c. the bill is due against an exempt property; or
- d. the bill is due against a property which is not worth the taxes, interest and costs due;
- e. but which bill cannot be otherwise compromised as provided by law.

Section 140.130 RSMo. 2000.

## **III. Generally**

Tax sales are arguably the least pleasant but most technically demanding part of a Collector's duties. Because tax sales involve extinguishing an individual's property rights in real estate, the law demands a great deal of precision. It is the Collector's obligation to diligently pursue tax collection while being aware of legal safeguards designed to ensure that property owners and interested parties are notified of their rights prior to sale.

### **A. Delinquency**

All real estate taxes become delinquent on January 1 of the year following their assessment. Section 140.010. RSMo. 2000. Penalties and interest begin accruing after December 31 of the tax year. Section 52.240.3 RSMo. Supp. 2008.

The postmark, certified or registered mail date is used to determine the timeliness of payment. Section 139.100.4 RSMo. 2000.

Tax sales must occur within three years. But, there is no waiting period to begin collection proceedings, once the taxes are delinquent.

**B. Notice**

Each year the collector sends out a statement showing the taxes due. That statement includes a statement of delinquent taxes, penalties and interest due. Sections 52.230 and 139.350 RSMo. Supp. 2008.

Failure to receive notice is not a defense to charges for penalties and interest. However, no penalties or interest will be assessed if the taxpayer shows by clear and convincing evidence that the county made an error or omission in determining the amount of taxes owed. Section 52.240 RSMo. Supp. 2008.

The “error” here is the amount of taxes due. Errors in the mailing address; on the taxpayer’s declaration; or in the tax rate submitted by a taxing entity is not an error in determining the amount of taxes due.

**C. Cost of Tax Sale**

The costs of all collectors’ deeds, the recording and the surveying and advertising, are paid out of the county treasury. 140.170 and 140.260 RSMo. Supp. 2008. The treasury is reimbursed by the purchaser or a redeemer.

**D. Actions Available to Collect Delinquent Taxes**

1. Personal judgments for past due real estate taxes are not authorized by law. Section 140.640 RSMo. 2000. But personal judgments are allowed for delinquent personal property taxes. Section 140.730 RSMo. supp. 2008.
2. Tax sales, as described in Chapter 140 RSMo., are the only method available to collectors to collect past due real estate taxes, except for charter jurisdictions and St. Louis City which may opt for the procedure found in Chapter 141.
3. Although delinquent property taxes are collected by an action against the real estate; to collect delinquent taxes on personal property the collector must bring suit to obtain a judgment against the taxpayer and collect on the judgment as any other creditor would. Section 140.730.

**E. Existing Covenants and Easements**

Any sale of lands under Chapter 140 is subject to validly recorded covenants running with the land and validly recorded easements. Section 140.722 RSMo. 2000.

#### **F. Leaseholds**

Under Section 140.150 a collector can sell the leasehold interest in lands and buildings located on the land separate from the land itself. The conveyance should be in the usual form describing the lessee's interest in the land and building. AG Op. 86, Stumberg, 7/26/54. However, where improvements are erected by a lessee and they remain the property of the lessee and are assessed to the lessee, the underlying land is not subject to a lien for the delinquent taxes on the improvements. AG Op., Kirby, 11/23/51.

This would allow for the sale of billboards, too. Mineral rights and other royalty interests can also be sold. Section 140.150 RSMo. 2013

#### **G. Political Entities**

The "moment" the government acquires title, the current and pre-existing delinquent taxes are not subject to collection. See, *State ex rel. City of St. Louis v. Baumann*, 153 S.W.2d 31, at 34 (Mo en banc 1941); *State ex rel. Smith v. City of Springfield*, 375 S.W.2d 84 (Mo. banc 1964), at page 91; and *Wallis v. County of St. Louis*, 621 S.W.2d 720 (Mo. App. E.D. 1981), at page 725.

However, a leasehold interest in public property held by a private individual is not immune from taxation. *Iron County v. State Tax Commission*, 437 SW 2d 665 (Mo. Supp. 1968).

#### **H. Bankruptcy**

A tax collector cannot maintain independent action to enforce collection of taxes assessed against property in receivership, or effect collection by sale thereof, without leave of court having jurisdiction of property. *Davison v. Arne*, 248 SW 2d 582 (Mo. Supp. 1952).

Current taxes have a priority unsecured status and may be reimbursed by the bankruptcy trustee. Delinquent taxes have no priority status and are treated like any other unsecured debt.

A discharge in bankruptcy wipes out all unpaid taxes. However, if the bankruptcy is dismissed because the debtor failed to meet any obligations imposed by the bankruptcy court, the delinquent taxes are still due and owing.

## **I. Damages for Improper Sale**

A tax sale purchaser may maintain an action against the county collector for the return of funds paid to the county for lands improperly sold. Damages include the amount paid by the purchaser; interest upon that amount; and a ten percent penalty. The action may be brought on the collector's warranty or the collector's bond. Section 140.300.2 RSMo. 2000.

Additionally, an owner who has been deprived of his title or has incurred expenses because of a title suit because the collector (1) failed to credit him for any taxes paid; or (2) sold the property when it was assessed to two people and the entire tax had been paid by one of those people; that owner can recover damages, costs and charges, plus an additional ten percent penalty on the collector's bond. Section 140.490 RSMo. 2000.

## **IV. Preparing for a Tax Sale**

The laws governing the time and place of tax sales are strictly construed in favor of the taxpayer. *Schlafly v. Baumann*, 108 SW 2d 363 (Mo. 1937). Notice requirements are based on the 14<sup>th</sup> Amendment to the United States Constitution, which provides that no state shall "deprive any person of life, liberty or property without due process of law." Collectors are required to use their best efforts to inform interested parties of pending tax sales. This may include sending notice by both regular mail and certified mail. And, may include posting notice on the property or sending notice to "occupant" if the certified mail is returned unclaimed. Any collector, agent of any collector, tax sale purchaser, or agent of any tax sale purchaser performing duties under this chapters shall have the lawful right to enter upon the land of another without being guilty of trespass, if he or she is in the course of providing or attempting to provide notice of a tax sale or tax sale redemption rights and it is necessary to enter upon such land to provide, serve, or post such notice. Section 140.195 RSMo. 2016.

Article X, Section 13 of the Missouri Constitution provides that: No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law.

**A. Prior to Publication**

The collector must send notice to publicly recorded owner of record. The first notice is sent by first class mail. A second notice is sent by certified mail only if the assessed value of the property is greater than \$1,000. Section 140.150.2 RSMo. 2013. These notices may be sent on the same day.

If the certified mail notice is returned unsigned, the collector must send out a third notice **before the sale** by first class mail to both the owner of record and the occupant of the property. Section 140.150.2 RSMo. 2010.

**B. Newspaper Publication**

Prior to the sale, the collector must publish a list of delinquent lands and lots in a newspaper of general circulation within the county.

Lists must be published once a week for three consecutive weeks prior to the sale. The last insertion must be at least fifteen days prior to the fourth Monday in August. Section 140.170.1 RSMo. 2008

**1. List Requirements**

The lists must:

- a. describe the land; and
- b. state the names of all record owners or the names of all owners appearing on the land tax book and
- c. list the aggregate amount of taxes, penalty, interest and cost due on each parcel. Each year is separately stated, and
- d. state that the property is being sold for delinquent taxes; and
- e. tell the public that the sale will be held at the courthouse or in the courthouse; and
- f. indicate the date and time of the sale. Section 140.170 RSMo. 2008.

**C. Exception – Courthouse and Collector Office Posting**

For properties with assessed values of \$1,500 or less and that have been advertised previously or that are located in a development of 20 or more

lots, the collector may publish a separate list of the properties, without legal descriptions or the names of the record owners, in a newspaper of general circulation published in the county for three consecutive weeks prior to the sale. However, the notice must state that the legal descriptions and the names of the record owners shall be posted at any county courthouse within the county and the office of the county collector. Section 140.170.7 RSMo. 2015.

#### **D. Abbreviations**

When publishing descriptions, the collector is allowed to use abbreviations such as those approved in Section 140.180 RSMo. 2000. Descriptions must be sufficiently specific as to allow the public to identify the property being offered for sale

1. **Ijames v. Geiler**, 783 SW 2d 934 (Mo. App. ED 1990). No sale or conveyance of land for taxes shall be valid if at the time of being listed ... the description is so imperfect as to fail to describe the land or lot with reasonable certainty.

#### **E. Locator Numbers**

In **Wayward, Inc. v. Shafer**, 936 S.W. 2d 843 (Mo. App. E.D. 1996), delinquent land owners argued that the collector's deed was void because property was identified by the tax locator number which the land owners argued was not an accurate description of the land as required by Section 140.530. The court held that *in the absence of evidence to the contrary*, the tax locator number was sufficiently definite that one reasonably skilled in determining land location could locate the land.

In **Firma, Inc. v. Twillman**, 126 SW 3d 790 (Mo. App. ED 2004), a lot had been subdivided to create a small strip of land which was purchased for a driveway. The assessor had picked up the subdivision and identified the subject property by parcel number. However, when the collector's deed was issued it made reference to book and page which conveyed the entire original parcel. The court held that although the locator number correctly identified the parcel sold, it was not enough to overcome the uncertainty of what was being conveyed. That uncertainty was that the legal description said "All of lot 3" when only a portion of lot three was intended to be sold. The court concluded:

"Although we agree that tax locator numbers and parcel identification numbers contained in Assessor's Records may be considered, we are not persuaded that here, the referenced extrinsic evidence renders the property description reasonably certain. Accordingly, the trial court's conclusion that the legal

description in the Collector's Deed failed to describe the Property with **reasonable certainty** and, therefore, that the tax sale was void and failed to convey any interest in the Property to Hazelbaker and Allsberry is supported by substantial evidence and not against the weight of the evidence.”

If the collector determines that an adequate description cannot be obtained by referring to documents in the recorder of deeds office, the collector may hire a land surveyor to prepare a legal description. The costs of the survey are included in the costs of sale. Section 140.170.8 RSMo. 2010.

Legal descriptions pulled from Assessor records are often too abbreviated to be useful for Collectors. In the final analysis, the burden is on the Collectors to properly describe the property.

## **V. The Tax Sale**

### **A. Statute of Limitations**

Procedures to collect delinquent taxes must be initiated within three years of the date of delinquency. Section 140.160 RSMo. 2008.

Despite the common practice of waiting until taxes are delinquent three years, the collector is authorized to sell the property the first year taxes become delinquent upon it.

An exception exists for property which was being carried as exempt, but later becomes taxable through a transfer of ownership. In that case, the three year limitation period begins to run only when the new title has been recorded. Section 140.160 RSMo. 2008.

A bankruptcy will “stay” the collection of delinquent taxes. If the debtor is discharged, the delinquent taxes are also discharged and the Collector cannot collect them. If for some reason the bankruptcy action is dismissed, the Collector can attempt to collect the delinquent taxes. In this instance, a bankruptcy stay would also stop the running of the statute of limitations.

### **B. Date and Time**

Delinquent land tax sales begin at 10:00 a.m. on the fourth Monday in August and run from day to day until all parcels are offered for sale. Section 140.170.3 and 140.190.1 RSMo. 2008.

**C. Minimum Bid**

At the first three offerings, properties must be sold for a sufficient amount as to pay the taxes, interests and charges owed on the property or chargeable to the taxpayer in that county. Section 140.190.1 RSMo. Supp. 2008. See also, section VIII.

**D. Disqualified Bidders**

Individuals who are delinquent on any tax payments, other than a delinquency on the property being offered, cannot purchase property at a tax sale. To this end, bidders are required to sign affidavits establishing that they are not delinquent on any property taxes. Section 140.190.2 RSMo. Supp. 2008.

A resident purchaser may bid in person or by a designated agent. Both the purchaser and agent must sign an affidavit that they are not delinquent. Section 140.190. RSMo. Supp. 2010.

**E. Non-Residents**

Individuals who are not Missouri residents must appoint a county citizen to act as their agent and for service of process. Additionally, they submit a written agreement to the collector consenting to jurisdiction of the county court to resolve any issues arising out of the sale of the property. If the agent is unable to act, the county clerk becomes the successor agent. Section 140.190.2 RSMo. 2008.

The designated agent signs an affidavit stating that he/she is not delinquent on taxes. After sale, the certificate of purchase will be issued to the designated agent who then has the responsibility of conveying the property to the nonresident purchaser. Section 140.190 RSMo. Supp. 2010.

**F. Role of the County Clerk**

The county clerk or the deputy county clerk acts as the clerk at tax sales. The clerk records which parcel is sold; to whom it is sold and the price. In counties with populations of less than 100,000 the clerk receives a fee of



twenty-five cents for each parcel sold. The fee becomes part of the costs charged to the purchaser. Section 140.220 RSMo. 2008.

**G. Costs**

The costs of all collectors' deeds, the recording and the surveying and advertising, are paid out of the county treasury. 140.170 and 140.260 RSMo. Supp. 2008, 2010.

**VI. Bid Payment – Penalty**

A purchaser at tax sale is required to immediately pay his bid to the collector. If the purchaser fails to immediately pay his bid, the land is once again offered for sale. If no one bids at the immediately subsequent offering, the purchaser is charged a penalty of 25% of his bid to be paid to the school fund. The prosecuting attorney is required to collect the penalty in the name of the collector. Section 140.280 RSMo. Supp. 2008.

**VII. Surplus Funds**

The collector must submit a sworn statement to the county commission describing properties that have sold for more than the taxes and costs due. Upon commission approval, surplus funds are placed in the county treasury. If the funds are not claimed by the publicly recorded owner or owners, or their legal representatives, (persons entitled to such moneys) within three years the surplus becomes the property of the school fund. The public owners are the ones who owned the property prior to the sale. No interest is paid on surplus receipts. While it is not specified, presumably the three year period begins to run from the sale date. Section 140.230 RSMo. 2013 and 140.280 RSMo. Supp. 2008, 2010.

**VIII. Multi-year Offerings**

**A. First Offering**

If the collector fails to receive a bid which would cover the delinquent taxes, interest, penalty, and costs, he or she makes a note of this and holds the property for a year and then offers it again. Section 140.240 RSMo. 2000.

**B. Second Offering**

If upon this second offering, the property still fails to get a bid which would cover the delinquent taxes, interest, penalty, and costs, the collector again holds the property for a year. Section 140.240 RSMo. 2000.

**C. Third Offering**

In the third year, the collector may sell the property to the highest bidder, if the bid covers delinquent taxes, interest, penalty, and costs. Section 140.250.1 RSMo. 2000, 2010.

**D. Beyond the Third Offering**

If the collector is unable to get a bidder at the third offering, the collector is not required to offer the property for sale more than once every five years. Any such offering tolls the statute of limitations. Section 140.250.3 RSMo. 2000.

However, the county commission may appoint a trustee to bid at tax sales in order to preserve the county's right to collect all unpaid taxes. Trustees are not allowed to bid more than the full amount of all delinquent taxes, penalties, interest and costs. Section 140.260 RSMo. Supp. 2008.

If the county has failed to appoint a trustee or the trustee in offerings after the third offering does not bid and no sale occurs; the collector may sell the land or lots at any time and for any amount. Section 140.260.8 RSMo. Supp. 2008.

Although Section 140.260.8 was probably intended to give collectors the right to sell these properties without notice and without adhering to the requirement that sales be held on the 4<sup>th</sup> Monday in August, this would run afoul of Article X, Section 13 of the Missouri Constitution requiring notice in all non-judicial proceedings.

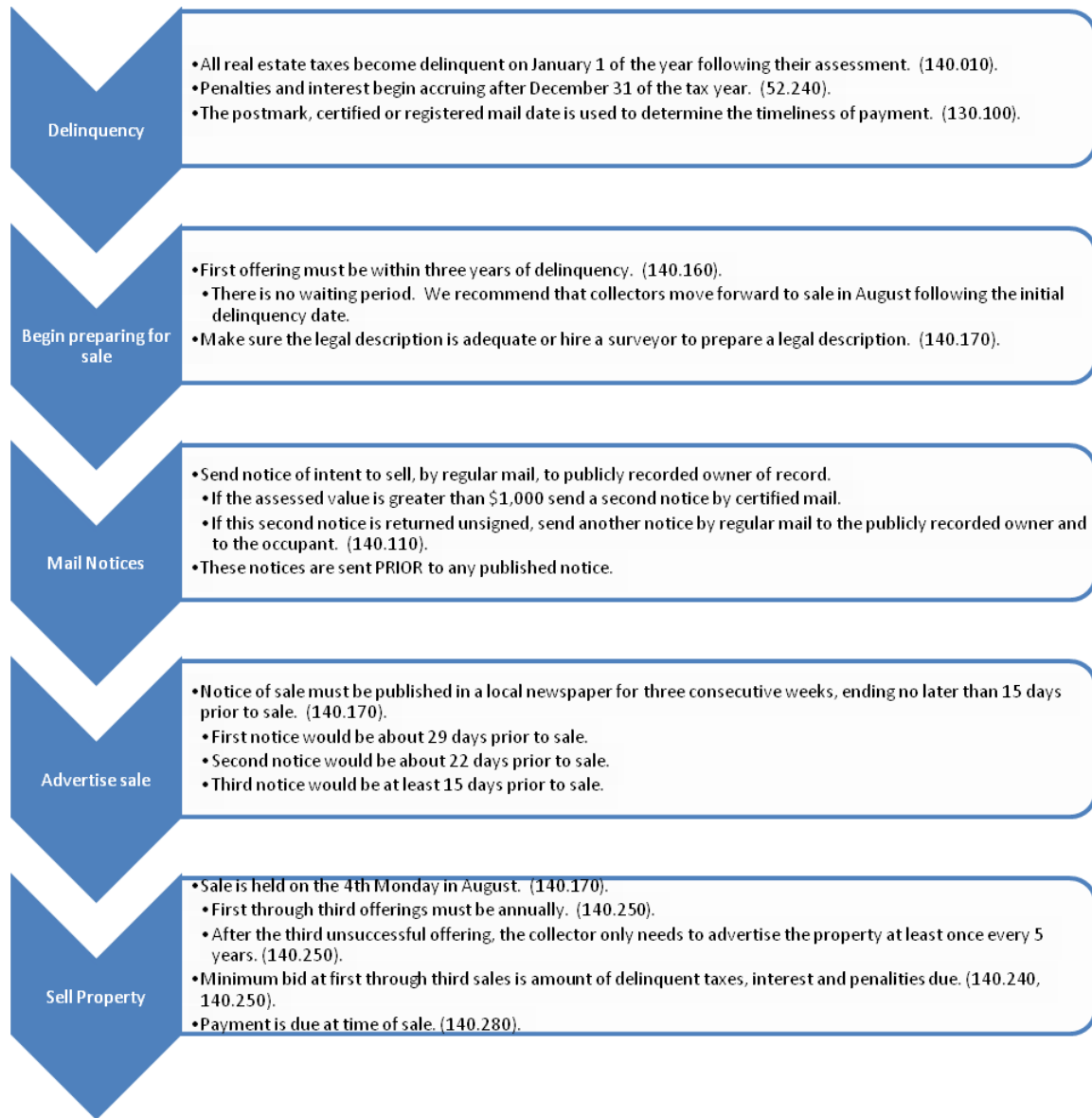
## IX. Adequacy of Consideration

**Powell v. County of St. Louis**, 559 SW 2d 189 (1977). The adequacy of consideration rule is inapplicable to the Jones-Munger law; accordingly, any tax purchaser at the third sale is immune from attack on the ground of inadequacy of consideration, and therefore the prudent purchaser who satisfies himself that the sale was regular in all other respects may be confident he is receiving a fully marketable title.

This holding would now apply to sales after the third offering. Property owners cannot get a tax sale set aside by arguing that the bid amount was not adequate consideration for the purchase of the property.

The Jones-Munger Act (Chapter 140, RSMo) provides for the annual sale of real property on which payments of property taxes have been delinquent.” *M&P Enterp. v. TransAmerica Financial*, 994 SW 2d 154 (Mo. 1977). This (literally) ground-breaking legislation, which “effected a radical change in the method of foreclosing the state's lien for delinquent taxes by suit in a court of competent jurisdiction,” was enacted in 1933. *Schlafly*, 108 SW 2d at 366; *see also* 1933 Mo. Laws 425-449. “Before the Jones-Munger Act, the lien for taxes was foreclosed by suit. If inferior lien holders were made parties to the suit, their liens were extinguished. Jones-Munger substituted an administrative proceeding for the judicial foreclosure and instead of being made parties to the suit, lienholders are notified by publication.” *McMullin v. Carter*, 639 SW 2d 815 (Mo. Banc 1982).

# Steps to Sale - Recap



## **X. Certificates of Purchase**

### **A. Contents of Certificate of Purchase**

After a purchaser pays his bid at a first, second or third offering, the county collector issues a written certificate of purchase. This certificate is individually numbered and describes the purchase by:

1. Individual tract number separately stated;
2. Total amount due for each year for each lot;
3. The aggregate of all taxes, penalties, interest and costs due;
4. The amount bid for each lot;
5. The amount of any surplus;
6. The name and address of the owner or reputed owner, if known;
7. If the owners are not known, the name and address of the parties to whom each lot is assessed, if known;
8. The name and address of the purchaser;
9. The date of the sale;
10. When the purchaser will be entitled to a collector's deed if not redeemed;
11. The rate of interest the certificate will bear – not to exceed 10% per annum;
12. An authentication by the collector (notarized);
13. A written guaranty, by the collector, warranting that the taxes which are named in the certificate are due upon the tract

Section 140.290 and 140.300 RSMo. 2000.

A single certificate of purchase can cover more than one tract or lot.

**B. Fees**

The purchaser pays the collector the actual costs of recording the certificate of purchase and any assignment. These fees are deposited into general revenue. Section 140.290 RSMo. 2013.

**C. Recording**

The collector shall record the certificate, in the recorder of deeds office, before it is given to the purchaser. Section 140.290 and 140.300 RSMo. 2000.

**D. Right to Assign**

The purchaser may assign a certificate of purchase but no assignment is valid unless it is:

1. endorsed upon the certificate of purchase and
2. acknowledged by an officer authorized to take acknowledgments of deeds and
3. entered in the record of the certificate of purchase in the county collector's office. Section 140.290.3 RSMo. 2000.

Note that the certificate is recorded in the recorder's office but the collector also maintains a record and the assignment information goes into the collector's record.

Although not required, we recommend that Collectors include an assignment clause on their certificates of purchase.

**E. Limitations on Issuance or Assignment**

Section 140.410, RSMo. Supp. 2008, states that certificates of purchase cannot be assigned to nonresidents or delinquent taxpayers. However, Section 140.290.5 RSMo. Supp. 2010 provides that a nonresident may appoint a resident agent and that agent may bid pursuant to Section 140.190. Thereafter the resident agent can assign the certificate to the non-resident purchaser.

**F. Cancellation**

Once a collector's deed is issued, the collector cancels and files the certificate of purchase. Section 140.450 RSMo. 2000.

**G. Replacement Certificates**

Upon showing proof of loss or upon production of a verified copy of the certificate of purchase, the collector may execute and deliver a replacement certificate of purchase. Section 140.450 RSMo. 2000.

**XI. Collector's Deeds**

The certificate of purchase creates only a lien on the property. But, the Collector's Deed acts to transfer title to the property.

**A. Entitlement**

**1. Taxes Must Be Paid**

Before being entitled to a collector's deed the purchaser must pay all taxes due on the property. Section 140.440 RSMo. 2000.

**2. Interested Parties Must Be Notified of Right to Redeem**

This is only one of the places where a record owner can redeem. The owner has a superior interest to the purchaser and can redeem prior to the sale, at this point in the process, or up until the Collector's Deed is issued to the purchaser.

The person redeeming the property shall pay the costs incurred by the purchaser, including the costs of notice. Costs include the title search, postage, and costs for recording the certificate and the release – and all the costs of the sale. Section 140.340 RSMo. 2015.

- a. For first, second and third offering sales, before a purchaser can request that a deed be issued, and at least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser must notify interested parties of the right to redeem. Section 140.405 RSMo. 2015.

- b. The purchaser knows who to send the notices to because Section 140.405.1 RSMo. 2015 requires that the purchaser acquire a title search, by a licensed attorney or a licensed title company detailing the ownership and encumbrances on the property.
- c. Because the purchaser at the third offering sale must also send out this notice to redeem within 45 days of the sale, the third offering purchaser is going to take his/her collector's deed within 135 days after the sale date. (45 + 90 = 135). Sections 140.405, 140.420 RSMo. Supp. 2010.
- d. Purchasers in first, second and third offering sales must now provide an affidavit that every notice requirement has been met. A copy of the title search and copies of the mailings/first class envelopes, must be attached to the affidavit. Section 140.405.5 RSMo. Supp. 2010.
- e. When the 90 day notice has been met; the affidavit has been filed and the one year redemption period has expired, the purchasers in first and second offerings are entitled to a Collector's Deed. Section 140.405 RSMo. Supp. 2010.'
- f. Purchasers in third offering sales are entitled to a Deed when the 90 day notice (mailed within 45 days of the sale) has been met and the affidavit has been filed. Section 140.405 RSMo. Supp. 2010.

The rules for first and second offering sales are different from the rules for third offering sales. For the former, everything occurs in relation to the time when the purchaser can obtain a deed, i.e., one year from the date of sale. On the other hand, third offering post-sale requirements are calculated either from the date of sale or from the time when the purchaser is authorized to receive the Collector's Deed. Third offering sales are further complicated by the fact that a time certain for delivery of the Deed is not stated.

- g. The confusion about the 90 day notice requirement has been resolved by the Supreme Court in *Sneil, LLC v. Tybe Learning Center*, 370 S.W. 3d 562 (2012). The 90 day notice requirement means 90 days prior to the one year anniversary of the tax sale in first and second offerings.
- h. Failure to comply with notice requirements results in the purchaser's loss of all interest in the real estate. Section 140.405.8 RSMo. 2015.



### 3. Who Are Interested Parties

The purchaser must notify the owner and any person who holds a publicly recorded unreleased deed of trust, mortgage, lease, lien judgment or any other publicly recorded claim upon the real estate that that person has a right to redeem the property. Section 140.405.2 RSMo. 2015. Parties whose names and addresses appear on the front page of the deed of trust document, such as beneficiaries of deeds of trust and trustees of deeds of trust, must receive notice as well. Cedarbridge LLC v. Eason, 293 S.W. 3d 462 (Mo. App. E.D. 2009).

The purchaser determines the interested parties by ordering a title search report. Section 140.405.1 RSMo. 2015

- a. **Campbell v. Siegfried**, 823 S.W. 2d 156 (Mo. App. E.D. 1992). Subsequent purchasers are entitled to notice.
- b. **Glasgow Enterprises, Inc. v. Bowers**, 196 S.W. 3d 265 (Mo. App. E.D. 2006). Statute requiring purchasers of property at delinquent tax sales to give notice of right of redemption to any holder of publicly recorded deed, mortgage, lease, lien, or claim upon property did not require any additional notice to be given to persons who obtain interest in property after purchaser gave required notice 90 days prior to date when purchaser was authorized to acquire deed.

### 4. What Must the Notice Contain

Section 140.405, RSMo mandates the following:

**“At least ninety days prior to the date when a purchaser is authorized to acquire the deed, the purchaser shall notify [the recipient] of the latter person's right to redeem the property.”**

After *Sneil, LLC v. Tybe Learning Center, Inc.*, the purchaser is no longer required to advise the property owner of the cut off day for redemption. The Supreme Court held that the tax sale purchaser is required to do no more than that which is specifically required by the language of the statute, overturning *United Asset Mgmt. Trust v. Clark*; *Drake Dev. & Constr., LLC v. Jacob Holdings, Inc.*; *Hames v. Bellistri*; *CedarBridge, LLC v. Eason*; *Keylien Corp. v. Johnson*; and *Boston v. Williamson*.

If the notice is sent concerning a **third offering** sale, it must state that the recipient has 90 days from the postmark date on the notice in which to redeem. Section 140.405.6 RSMo. Supp. 2010.

The Missouri Supreme Court has held that an owner's right to redeem property from a Chapter 140 tax sale does not cease at the end of the one-year redemption period but continues until the collector's deed is both executed and delivered. *Wetmore v. Berger*, 188 S.W.2d 949 (Mo. 1945). This has now been codified at Section 140.340.1 RSMo. 2015 and allows owners, lienholders, occupants, or other interested parties to redeem any time prior to the tax sale purchaser receiving the collector's deed.

## 5. How Must the Notice Be Sent

### Stage One

- a. A notice must be sent by **both** first class mail and certified mail, return receipt requested. Section 140.405.2 RSMo. 2015.
- b. The notice must be sent by certified mail to anyone with an interest as set out in 3 above. Section 140.405.2 RSMo. 2015.
- c. The notice must be sent to the last known address. Section 140.405.2 RSMo. 2015.
  1. **Bullard v. Holt**, 158 SW 3d 868 (Mo. App. SD 2005) Purchaser of land at delinquent tax sale failed to exercise due diligence in determining title owner's last known available address for purposes of providing title owner with actual notice of his right to redeem property; purchaser had actual notice that tax records did not have accurate address for title owner when notice was returned to purchaser, and owner's correct address was readily ascertainable given that purchaser knew that property was continuously rented and not abandoned, purchaser had actual notice that two different real estate companies were working for owner and that property had been listed for sale, and purchaser had contacted one of property managers to express interest in purchasing property.

In order to satisfy requirement under statute on sale of land for delinquent taxes that actual notice of right to redeem be given to owner at owner's "last known available address," purchaser must use due diligence to notify owner at last known "available" address; use of word "available" encompasses concept that reasonable efforts should be used to notify owner that someone else is claiming interest in property.

d. According to Section 140.405.2 RSMo. 2015, notice shall be presumed received if:

1. The certified mail return receipt is returned signed; or
2. The first class mail notice is not returned; or
3. The first class mail notice is refused where noted by the United States Postal Service; or
4. Any combination of the above.

#### **Stage Two – When Additional Steps are Required**

- a. Where both the certified mail return receipt card is returned unsigned and the first class mail is returned for any reason except refusal, the purchaser must attempt additional notice and certify what additional notice was attempted.
- b. **Jones v. Flowers**, 126 S. Ct. 1708 (2006). Due process requires that reasonable steps must be taken to notify interested persons. If a mailed notice of tax sale is returned unclaimed, additional reasonable steps must be taken to attempt to provide notice. Additional steps can include sending mail by a different method or posting a notice on the door of the property.
  1. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.
  2. An interested party's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending.
- c. **Schlereth v. Hardy**, 280 S.W.3d 47 (Mo. banc 2009). The Missouri Supreme Court held that, if certified mail is returned unclaimed to a tax sale purchaser, due process requires the state to

take additional reasonable steps to notify the property owner. The Court stated that the additional reasonable steps could take the form of:

1. Sending the notice by regular mail,
2. Posting notice at the property in a manner calculated to notify the owner, or
3. Serving the notice by a process server.

In any event, in order to comply with constitutional notice requirements, a tax sale purchaser must take additional follow-up measures to effectuate notice when a certified-mail notice of a tax sale has been returned undelivered.

6. **Collector Notice.** In the alternative, the county collector may opt to do the title search and send out notices. In that case, the collector is required to follow the same procedures as the purchaser. The purchaser is charged for the cost of the title search [but not the certified mailings]. Section 140.405.7 RSMo. 2015.

**B. Purchaser's Affidavit**

1. Pursuant to Section 140.405.5 RSMo. 2015, the purchaser must notify the collector, by affidavit, of the date every required notice has been sent.
2. A copy of the valid title search is attached to the affidavit.
3. A copy of mailings are attached to the affidavit.
  - a. Notice of right to redeem sent by first class mail;
  - b. Notice of right to redeem sent by certified mail notice;
  - c. Addressed envelopes for all notices as they appeared immediately before mailing;
  - d. Certified mail receipt as it appeared upon its return; and
  - e. Any returned regular mailed envelopes.
4. A statement that the 90 days' notice requirements have been met.

### C. Time of Issuance of the Collector's Deed

If no person redeems the property within one year from the sale date of a first or second offering sale or within the 90 day redemption period for a third offering sale, upon the production of a certificate of purchase, the collector shall execute a deed to the purchaser which shall vest the grantee with an absolute estate in fee simple. Subject, however, to all claims for unpaid taxes except such unpaid taxes existing at the time of the purchase of the lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold. Sections 140.250 and 140.420 RSMo. 2015 (wipes out inferior tax claims).

Special tax bills, subdivision assessments, etc. are "inferior tax claims". AG Op. 45-97. City taxes are not an inferior tax claims. State ex rel. McGhee v. Baumann, 160 SW 2d 697 (Mo. Supp. 1942).

Purchasers at offerings subsequent to the third offering are entitled to immediate issuance of the collector's deed provided that the purchaser first pay all taxes due on the property. Section 140.250, RSMo.

With the 2010 amendments, there is now a fixed date on which the purchaser is authorized to receive the deed. Section 140.205.5 sets that date. It provides: " at such time [as] the purchaser notifies the collector by affidavit that all the ninety days' notice requirements of this section have been met, the purchaser is authorized to acquire the deed, provided that a collector's deed shall not be acquired before the expiration date of the redemption period as provided in Section 140.340."

Section 140.410, RSMo.2015 sets the "timeframe" in first and second offering purchases, by requiring the purchaser "to cause a deed to be executed and placed on record in the proper county within eighteen months from the date of said sale." This timeframe may not apply in third offering purchases where no certificate of purchase is issued. *Journey v. Miler*, 250 SW 2d 164 (Mo. 1952). Failure of the purchaser, his heirs or assigns cause the deed to be executed results in the purchaser's lien for the amount due such purchaser being extinguished. Section 140.410, RSMo. 2015.

The 2010 amendments to Sections 140.310 and 140.405 provide that 1<sup>st</sup> and 2<sup>nd</sup> year tax sales have a redemption period of one year while third year tax sales are redeemable 90 days following the postmark on the notice of right to redeem (or approximately 135 days after sale).

The purchaser must notify the interested parties at least 90 days prior to the date when they are authorized to receive the collector's deed.

When the purchaser provides the affidavit to the collector, and met the requirements of Section 140.405.9 RSMo. 2015, the purchaser is authorized to receive his/her deed provided the redemption time has run.

**D. Form of Deed**

The form of the deed is set forth in Section 140.460.2 RSMo. 2013:

Whereas, A. B. did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, produce to the undersigned, C. D., collector of the county of \_\_\_\_\_ in the state of Missouri, a certificate of purchase, in writing, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, signed by E. F., who at the last mentioned date was collector of said county, from which it appears that the said A. B. did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, purchase at public auction at the door of the courthouse in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, being the amount due on the following tracts or lots of land, returned delinquent in the name of G. H., for nonpayment of taxes, costs and charges for the year \_\_\_\_\_, namely: (Here set out the lands offered for sale); which said lands have been recorded, among other tracts, in the office of said collector, as delinquent for the nonpayment of taxes, costs, and charges due for the year last aforesaid, and legal publication made of the sale of said lands; and it appearing that the said A. B. is the legal owner of said certificate of purchase and the time fixed by law for redeeming the land therein described having now expired, the said G. H. nor any person in his behalf having paid or tendered the amount due the said A. B. on account of the aforesaid purchase, and for the taxes by him since paid, and the said A. B., having demanded a deed for the tract of land mentioned in said certificate, and which was the

least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges, as above specified, and it appearing from the records of said county collector's office that the aforesaid lands were legally liable for taxation, and has been duly assessed and properly charged on the tax book with the taxes for the years \_\_\_\_\_;

Therefore, this indenture, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the state of Missouri, by C. D., collector of said county, of the first part, and the said A. B., of the second part, Witnesseth: That the said party of the first part, for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the tract or parcel of land mentioned in said certificate, situate in the county of \_\_\_\_\_, and state of Missouri, and described as follows, namely: (Here set out the particular tract or parcel sold), To have and to hold the said last mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, his heirs and assigns forever, in as full and ample a manner as the collector of said county is empowered by law to sell the same.

In Testimony Whereof, the said C. D., collector of said county of \_\_\_\_\_, has hereunto set his hand, and affixed his official seal, the day and year last above written.

Witness: \_\_\_\_\_ (L.S.)

Collector of \_\_\_\_\_ County.

State of Missouri, \_\_\_\_\_ County, ss:

Before me, the undersigned, \_\_\_\_\_, in and for said county, this day, personally came the above-named C. D., collector of said county, and acknowledged that he executed the foregoing deed for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**E. Execution of Deed**

The county collector executes the deed, under seal; which execution is acknowledged before the county recorder or any other officer authorized to take acknowledgments. Section 140.460.1 RSMo. 2013.

**F. Time of Recording**

The deed must be recorded before delivery to the purchaser. Section 140.460.1 RSMo. 2000.

**G. Costs**

The costs of all collectors' deeds, the recording, surveying and the advertising, are initially paid out of the county treasury. 140.170 and 140.260 RSMo. Supp. 2010.

**H. Fees**

The purchaser pays a recording fee which is included as a cost of sale. Section 140.460.1 RSMo. 2000. The collector is entitled to collect a fee of one dollar and fifty cents for each tax deed. This fee includes any fee for the acknowledgment. Section 140.470 RSMo. 2000.

**I. Evidence of Validity**

The collector's deed is prima facie evidence that the sale was valid. Section 140.460.2 RSMo. 2000.

**J. Lien Forfeiture**

**1. For Failing to Pay Taxes**

If the certificate holder allows taxes to become delinquent, he forfeits all liens on the property. Section 140.440 RSMo. Supp. 2008.

**2. For Failing to Provide Notice**

If the purchaser fails to provide notice of right to redeem he forfeits his interest in the property. Section 140.405.8 RSMo. 2015.



**3. For Failing to Have the Deed Executed and Recorded**

It is the certificate holder's duty to cause a deed to be executed and placed on record in the proper county within eighteen months from the date of the sale. Failure to do so will nullify a purchaser's lien on the lands. Section 140.410 RSMo. 2015.

The 2010 amendments to Sections 140.310 and 140.405 provide that 1<sup>st</sup> and 2<sup>nd</sup> year tax sales have a redemption period of one year while third year tax sales are redeemable 90 days following the postmark on the notice of right to redeem (or approximately 135 days after sale).

The purchaser must notify the interested parties at least 90 days prior to the date when they are authorized to receive the collector's deed.

When the purchaser provides the affidavit to the collector, the purchaser is authorized to receive his/her deed provided the redemption time has run.

Inasmuch as the purchaser's affidavit is due at a time certain and, since the collector rather than the purchaser causes the deed to be executed prior to delivery, the two year limit in Section 140.410 no longer makes sense.

**K. Certificate of Purchase – Surrender**

Upon notice from the collector, the purchaser must surrender his certificate of purchase. Section 140.440 RSMo. 2000.

**L. Delinquent Taxpayer**

A delinquent taxpayer, or someone acting on his/her behalf, is never given a collector's deed unless payment in full is received for all delinquent taxes, penalties, interest and costs. Section 140.250.5 RSMo. 2000.

**M. Beyond Third Offerings**

At any sales after a third offering a purchaser is entitled to the immediate issuance of a collector's deed if the purchaser pays (1) his bid; and (2) all past due taxes on the property arising after the date of the advertisement for this particular sale. Section 140.250.4 RSMo.2000.

**N. Purchase By County Trustee**

At any sales where the county trustee purchases the property, the trustee is not required to pay the amount bid but a collector's deed is issued detailing the delinquent taxes still due on the property. Section 140.260.3 RSMo. Supp. 2008. The trustee, thereafter, attempts to sell the property for the benefit of the various taxing entities. Section 140.260.5 RSMo. Supp. 2008.

The trustee should resell the land by the method that provides the maximum amount available for distribution to the taxing authorities. In the event that the land involves more than one lot, the trustee may sell the land in tracts or separately. The county is not responsible for any subdivision assessments levied against the land during the time the land is held by the trustee. AG Op. 45-97, 1997 WL 22810.

**O. In the Event of the Purchaser's Death**

In the event of death, the collector may execute a deed to the heirs or devisees of the purchaser. Such a deed is subject to the same liabilities as if it had been executed to the deceased person immediately before his/her death. Section 140.430 RSMo. 2000.

## **XII. Redemption**

### **A. Prior to First Offering**

Property owners or interested persons can redeem a tract of land from the state's lien by paying the original amount of taxes due together with interest from the day the tax first became delinquent. Section 140.110.1 RSMo. Supp. 2010. Payment is applied to the oldest delinquencies first. Interest is at the same rate as the penalty.

Uninterested parties cannot create a lien on the property by paying delinquent taxes without the knowledge and consent of the owner. Section 140.115 RSMo. 2013.

### **B. After Sale at a First or Second Offering**

Section 140.340 RSMo. 2015. Any owner or occupant or interested person may redeem the property at any time during one year immediately following the tax sale. The redeemer must pay to the collector for the use of the purchaser:

1. The total amount paid, including interest and costs, listed in the certificate of purchase
2. Interest on the purchase price at the certificate rate; except no interest is due on any surplus paid by the purchaser
3. Reimbursement for all subsequent taxes paid by the purchaser together with interest thereon at eight percent
4. The costs of recording the redemption
5. The cost of recording the certificate of purchase
6. The cost of recording the release
7. The cost of any title search - The cost of the title search cannot exceed the reasonable and customary costs and are not reimbursable unless the search is done after March 1 following the date of sale. Section 140.340 RSMo. 2015.
8. The cost of any mailing required in Sections 140.150 to 140.405
9. In first and second offerings, the purchaser's costs for providing notice shall not be reimbursable unless those costs are incurred

after March first following the date of purchase of the tax sale certificate. Section 140.340 RSMo. 2015

**C. Upon Purchase at Third Offering**

The redemption period is limited to 90 days after notice of right to redeem. Section 140.250.1 RSMo. 2010.

**D. Upon Purchase at a Sale Subsequent to Third Offering**

There is no right to redemption and no title search or notice requirement. Section 140.250.4 RSMo. 2000.

**E. By Incapacitated or Disabled Persons**

Minors, incapacitated and disabled persons, as defined in chapter 475 RSMo., may redeem within five years of the date of the last payment of taxes encumbering the real estate. The last payment of taxes must have been made by the minor, incapacitated or disabled person, the party's predecessors in interest, or any representative of such person. Section 140.350 RSMo. 2015.

**F. Compensation for Improvements**

In addition to the sale price and interest listed above, a redeemer is not allowed to take possession of the property until he has paid for lasting and valuable improvements made by the purchaser Section 140.360.1 RSMo. 2015.

The purchaser cannot be compensated for improvements to the property that were made by the purchaser until the expiration of one year after the date of sale for taxes. Section 140.360.2 RSMo. 2015. Presumably, this coincides with the deadline for redemption after sale at first or second offering, i.e., one year after the date of sale for taxes.

Any improvements made to the property by an occupant prior to the tax sale date, which such improvements the occupant would be permitted to detach and remove, remain the property of the occupant. Section 140.310.3 RSMo. 2015.

An occupant maintains a right to any interest in any planted, growing or unharvested crops. Section 140.310.2 RSMo. 2000.

## **G. Redemption**

Upon paying the reasonable and customary costs of sale to the county collector for the use of the purchaser, his or her heirs, successors, or assigns; the owner; lienholder; or occupant of any land or lot sold for taxes, or any other persons having an interest therein, shall have the absolute right to redeem the same at any time during the one year next ensuing and shall continue to have a defeasible right to redeem the same until such time as the tax sale purchaser acquires the deed, at which time the right to redeem shall expire, provided upon the expiration of the lien evidenced by a certificate of purchase under section 140.410 no redemption shall be required. Section 140.340.1 RSMo. 2015.

The reasonable and customary costs of sale include all costs incurred in selling and foreclosing tax liens under this chapter, and such reasonable and customary costs shall include the following: the full sum of the purchase money named in the certificate of purchase and all the costs of the sale, including the cost to record the certificate of purchase as required in section 140.290, the fee necessary for the collector to record the release of such certificate of purchase, and the reasonable and customary cost of the title search and postage costs of notification required in sections 140.150 to 140.405, together with interest at the rate specified in such certificate, not to exceed ten percent annually, except on a sum paid by a purchaser in excess of the delinquent taxes due plus costs of the sale incurred by the collector, no interest shall be owing on the excess amount, with all subsequent taxes which have been paid thereon by the purchaser, his or her heirs or assigns with interest at the rate of eight percent per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption; provided, however, that no costs incurred by tax sale purchasers in providing notice of tax sale redemption rights required by law shall be reimbursable as a reasonable and customary cost of sale unless such costs are incurred after March first following the date of purchase of the tax sale certificate by said tax sale purchaser at a first or second offering delinquent tax sale. Section 140.340.2 RSMo. 2015.

Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his or her heirs or assigns, at the last post office address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Section 140.340.3 RSMo. 2015.

Such notice, given as herein provided, shall stop payment to the purchaser, his or her heirs or assigns of any further interest or penalty. Section 140.340.4 RSMo. 2015.

The reasonable and customary costs of sale needed to redeem any land or lot sold for taxes under this section shall be determined by the collector. Section 140.340.5 RSMo. 2015.

**H. Record of Redemption**

Once redeemed, the collector inserts a memorandum of redemption into the record, stating what has been redeemed, the date thereof, and by whom made. A certificate of redemption is given to the person making the redemption. Thereafter, the person redeeming must present the certificate of redemption to the county clerk who will enter it into the record of sales of land for delinquent taxes. Section 140.370 RSMo. Supp. 2008.

**I. Purchaser in Possession During Redemption Period**

The purchaser has the right to immediate possession one year after the sale date. Section 140.310.1 RSMo. 2000.

Purchasers in possession during the redemption period, after redemption is exercised, are entitled to the value of any planted, growing or unharvested crops. Section 140.310.5 RSMo. 2000.

**J. Owner/Occupant May Retain Possession During Redemption Period**

The owner or occupant may retain possession of the premises by making a written assignment of rents or agreeing to pay rent during the redemption period sufficient to discharge the bid of the purchaser with interest thereon. This rent or assignment operates as a payment due the holder of the certificate of purchase and must be endorsed on the certificate and shall be taken into consideration in the redemption of land. Section 140.310.1 and 140.310.4 RSMo. 2000.

**K. Redemption by Drainage, Levee or Improvement Districts**

If authorized by the law creating the district, these districts may redeem just like any other interested party. In these instances, the certificate of purchase is not cancelled but is considered to be legally transferred to the district after the district deposits the requisite funds with the collector. This certificate may be redeemed by interested parties. If the certificate is not redeemed a collector's deed is issued in favor of the district. Section 140.380 RSMo. 2000.

**L. Limitation on Interest**

Interest stops running on the purchase if the purchaser fails to take a tax deed within eighteen months of the sale date. Section 140.340.4 RSMo. Supp. 2008.

**XIII. Challenges to Validity of Tax Sale**

**A. Presumptions**

1. Until affirmatively shown otherwise, there is a presumption that all taxes assessed on any property are legally assessed. Section 140.510 RSMo. 2000.
2. There is a presumption that all necessary paperwork has been made and filed correctly. Section 140.510 RSMo. 2000.

**B. Mistakes, Irregularities and Omissions**

1. A mistake in the owner's name does not invalidate a tax sale. Section 140.500 RSMo. 2000.
2. Mistakes in the form of the sale that do not affect the merits of the case and do not prejudice the rights of the party assessed, do not invalidate the sale. Section 140.510 RSMo. 2000.
3. Irregularities in the assessment roll do not invalidate sales or the title conveyed by the tax deed. Section 140.520 RSMo. 2000.
4. Omissions from the assessment roll do not invalidate sales or the title conveyed by the tax deed. Section 140.520 RSMo. 2000.
5. Mere irregularities of any kind in any proceeding do not invalidate sales or the title conveyed by the tax deed. Section 140.520 RSMo. 2000.
6. No failure of an officer to perform duties on the day or within the time specified will invalidate any proceedings or deed. Section 140.520 RSMo. 2000.
7. No overcharge as to part of the taxes or costs, nor payment of such taxes or costs, shall invalidate a sale for taxes, except as to part of the real estate sold to the proportion of the whole as such part of

the taxes and costs is to the whole amount for which such land was sold. Section 140.520 RSMo. 2000.

8. Acts of officers de facto shall be valid as if they were officers de jure. Section 140.520 RSMo. 2000.
9. If a deed would be valid as to the sale for any one tax, it shall not be impaired by any irregularity, error or defect in the proceedings or sale for any other tax or taxes. Section 140.520 RSMo. 2000.

**C. Void Sales**

1. No sale or conveyance of land for taxes shall be valid if:
  - a. at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale; or
  - b. if the description is so imperfect as to fail to describe the land or lot with reasonable certainty. Section 140.530 RSMo. 2000.
2. The statute describes these sales as “void” and dictates that a purchaser be reimbursed, with interest, out of the county treasury upon an order of the county commission. Sections 140.530 and 140.540 RSMo. 2000
3. If a collector discovers that a void sale has occurred prior to issuing a deed, he/she must stop the conveyance. The statute of limitations is tolled for the period of time between the sale and the discovery of the invalidity. The collector and clerk must annotate their records to show that the sale was not valid. These entries are prima facie evidence of the existence of an invalid sale. Section 140.540 RSMo. 2000.
4. If a collector’s deed has already been issued in a sale which is later determined to be invalid under Section 140.530 because the description was insufficient or for any other cause other than that no taxes were due on the property, the grantee obtains a lien on the property in the amount of taxes, interest and penalties legally due at the time of sale, together with interest and any subsequent taxes and interest paid. Section 140.550 RSMo. 2000.
5. Anyone who holds a lien on property because of an illegal or invalid sale; shall issue a deed of release to the owner upon receiving the full amount of the lien together with the sum of one



dollar and fifty cents and any sum due him as an occupying claimant. Failure to provide of deed of release subjects the lien holder to a quiet title action and subjects the lien holder to liability for costs and attorney fees. Section 140.560 RSMo. 2000.

## **XIX. Quiet Title Actions**

### **A. Lien Remains Valid**

Even when deeds and conveyances are determined to be invalid, the liens remain in full force and effect until the issues are resolved by a court. The court determines the amount owed to the lien holder and orders the property owners to reimburse the lien holder. If the property owners fail to follow the court order, the court may order that the property be sold again under Section 140.330. If the property is sold again, there is no right of redemption and the purchaser obtains a fee simple estate with a right of immediate possession. Section 140.570 RSMo. 2000.

### **B. Statute of Limitations**

Quiet title actions must be commenced within three years from the time the tax deed was recorded, except in cases where the person claiming to own the land is an infant or incapacitated. In those instances, action can be brought anytime within two years after the disability is removed. Section 140.590 RSMo. 2000.

### **C. Possession not Required**

A recorded tax deed establishes sufficient title to allow a property owner to maintain an action for recovery of possession against the deed holder, whether or not the deed holder is in actual possession. Section 140.580 RSMo. 2000.

### **D. Offer of Reimbursement Required**

The petition initiating a quiet title action must offer to reimburse the deed holder for all taxes paid together with interest from the date the taxes were paid until the date of judgment. Actual tender of payment is not required. If the deed holder requests relief through his answer of other pleading and the court finds reimbursement to be appropriate; the amount found to be due the deed holder shall be a lien on the land. Sections 140.600 and 140.630 RSMo. 2000.

**E. Proof Required**

In order to defeat the title conveyed by the tax deed; the claimant must establish:

1. That the land described in the deed was not subject to taxation at the date of the assessment of taxes for which it was sold; or
2. That the taxes for the nonpayment for which the land was sold were paid to the proper officer within the time allowed by law; or
3. That the land had not been assessed for the taxes; or
4. That the land had been redeemed pursuant to law; or
5. That a certificate of redemption, in proper form; had been given to the proper officer, within the time allowed by law for paying taxes or redeeming property
6. That a certificate of no taxes due at the time of sale had been made, or
7. That at the date of the tax deed, the redemption period had not yet expired.

Section 140.610 RSMo. 2000.

**F. County Records**

Certified county records are prima facie evidence of the facts contained therein. Section 140.620 RSMo. 2000.

## XX. Frequently Asked Questions

PLEASE NOTE: Section 140.640 RSMo. 2000, giving the State Tax Commission authority to decide questions concerning the construction and interpretation of Chapter 140, has been repealed. This material should not be construed as legal advice. This material is provided for informational and educational purposes only and should not be relied upon without first speaking to your county counselor or prosecuting attorney.

### Q. Can a collector write off back taxes?

**A. No.** See Section 140.130: The **Board of Equalization**, not the Collector, may, in its discretion, strike a property from the back tax book if it finds the property has been on the back tax books for at least five years and one or more of the following applies: the bill is too small to justify the expense of a suit; or the bill is due against an exempt property; or the bill is due against a property which is not worth the taxes, interest and costs due. In any event, the bill cannot be otherwise compromised as provided by law, meaning that the Collector cannot reduce the amount owed. See Section 140.120: The County Commission, not the Collector, may, in its discretion, compromise the back taxes owed with the property owner.

### Q. Can post-third year sales be sold “over the counter?” Are such sales legal in light of the requirements of due process and notification to the owner?

**A. Probably not.**

See Section 140.170: A collector is required to publish the list of delinquent lands and lots and the names of all record owners or of all owners appearing on the tax book associated with those delinquent lands and lots in advance of the tax sale. The list must be printed in a newspaper of general circulation published in the county for three consecutive weeks, one insertion weekly, before the sale, the last insertion to be at least 15 days prior to the fourth Monday in August.

See Section 140.405: Any person purchasing property at a delinquent land tax auction shall not acquire the deed to the real estate, as provided for in section 140.250 or 140.420, until the person meets the requirements of this section, **except that such requirements shall not apply to post-third-year sales**, which shall be conducted under subsection 4 of section 140.250.

See Sections 140.250.3 and .4: If any lands or lots are **not** sold at a third offering, then the collector, **in his discretion**, need not again advertise or offer such lands or lots for sale *more often than once every five years after the third offering of such lands or lots*, and such offering shall toll the operation of any applicable statute of limitations. Purchasers at offerings **subsequent** to the third offering are entitled to immediate issuance of the collector’s deed (no redemption period) provided that the purchaser first pays all taxes due on the property.

Under Section 140.250.3, it appears that the collector has the discretion to decide whether to advertise or offer the post-third year sales more often than once every five years after the third offering. The key is that the post-third year sales must be advertised or offered **at least once** in every five year period after the third offering. However, this provision does not relieve the collector from notifying the taxpayer of a pending post-third year sale.

According to the Missouri Supreme Court, when a property interest is at stake, the collector is under a duty to provide “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Schwartz v. Dey, 780 S.W.2d 42, 44 (Mo. banc 1989). In Schwartz, the Court recognized that the duties imposed by due process on the tax collector must be considered in balance with the duty of a landowner to preserve his property. Schwartz, 780 S.W.2d at 44. The collector is not required to make “impracticable and extended searches ... in the name of due process” nor is the collector “required to undertake extraordinary efforts to discover the ... whereabouts of [the owner].” Id., quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) and Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983). However, where the name and address of one with a property interest is publicly recorded, notice of tax sale by publication is insufficient to satisfy due process. “The Jones–Munger Act requires a collector to provide notice of an upcoming tax sale by publication.” Investment Corp. of Virginias, Inc., V. Acquaviva, 302 S.W.3d 195, 199 (Mo. App. E.D. 2009). “The act does not place any duty on a collector to provide an interested party with any other type of pre-sale notice.” Investment Corp. of Virginias, Inc., 302 S.W.3d at 199. “However, the Missouri Supreme Court has held that pre-sale notice by publication pursuant to section 140.170 does not satisfy due process if the names and addresses of persons with legally protected interests are known or easily ascertainable.” Id. “In that situation, notice must be mailed to the person's last known available address or personally served.” Id.

**Q. What is the effect of inferior liens on a tax sale?**

**A. The better way to ask this is “what is the effect of a tax sale on inferior liens?”** State tax liens are superior to all other liens. Gershman Investment Corp. v. Duckett Creek Sewer District, 851 S.W.2d 765 (Mo. App. E.D. 1993). Examples of inferior liens include deeds of trust and subdivision assessments. Under Missouri law, inferior liens are foreclosed (wiped out) by a tax sale. Lien holders, who are interested parties to the property and whose interest has been recorded, must be notified of the tax sale by publication (and/or mail). These lien holders/interested parties have the right to redeem the property from the tax sale. In other words, because interested parties are provided notice of the tax sale, the liens held by the interested parties are extinguished by the tax sale unless an interested party redeems the property. See also Stadium West Properties, 133

S.W.3d 128 (Mo. App. W.D. 2004); State ex rel. McGhee v. Baumann, 160 S.W.2d 697 (Mo. banc 1942); State ex rel. Buder v. Hughes et al., 350 Mo. 547 (Mo. 1942); McMullin v. Carter, 639 S.W.2d 815 (Mo. banc 1982); Lohr v. Cobur Corp., 622 S.W.2d 270 (Mo. App. E.D. 1981).