

### **§9.20 D. Delinquent Taxes – Interest**

Delinquent property taxes become liens against the property. Failure to pay property tax can result in a judicial sale of the property to pay the delinquent taxes. The statutes establish separate procedures for collection of delinquent real and personal property taxes. Historically, personal property taxes have been much harder to collect than real property taxes. This is due to the movability of personal property, and perhaps to a greater resentment on the part of taxpayers to taxes on personal property. The interest rate on delinquent taxes is set by statute, in K.S.A. 79-2968. See Op. Att’y Gen. 1 (2007), which said K.S.A. 79-2004(d) requires the use of K.S.A. 79-2968 rates in determining interest owed on delinquent real estate taxes.

K.S.A. 79-2968 provides that the interest rate is the underpayment rate in effect on the previous July 1, as prescribed by Section 6621 of the federal Internal Revenue Code, plus one percent for real property and two percent for personal property. The monthly rate is 1/12 of the annual rate. If the variable rate prescribed for underpayments under federal law cannot be determined for any reason, the rate on underpayments will be the judgment rate prescribed by K.S.A. 16-204. Beginning on January 1, 2012, the rate for property tax delinquencies or underpayments of \$10,000 or more shall be the greater of what the current interest rate is or 10% per year.

### **§9.21 E. Real Property Delinquencies and Tax Sales – Notice**

Taxes assessed for a particular year become delinquent if not paid by the following May 10. See K.S.A. 79-2301. Between July 1 and July 10 the county treasurer prepares and publishes a list of real estate for which taxes are delinquent. See K.S.A. 79-2302 and 79-2303. After publication of this list, the statutes provide that delinquent real estate is sold, or “bid-off” to the county treasurer for the amount of unpaid taxes. See K.S.A. 79-2306. Although the term sale is used in the statute, only the county treasurer is allowed to bid on the property. Thus, it is more accurate to describe this as a step in the process of perfecting the county’s lien on the property. This “bidding-off” usually occurs on the first Tuesday in September, but may also take place on the fourth Monday in October. See K.S.A. 79-2306; 79-2322.

Real property which has been bid-off to the county treasurer is held by the county for two years before it can be sold in a foreclosure sale. K.S.A. 79-2401a. Property covered by the Homestead Exemption, *Kansas Constitution* Article 15, §9, must be held for three years prior to foreclosure. See K.S.A. 79-2401a(b). The owner or his heirs, devisees, executors, administrators, assigns or mortgagees may redeem the property at anytime during this period by paying the amount for which the property was sold, plus interest and other costs. See K.S.A. 79-2401a(a). Abandoned property, defined as property that has been unoccupied for at least one year and which has not been reasonably maintained need only be held for one year after being “bid-off” by the county.

Partial redemptions are also possible at this stage; *e.g.*, where the property owner pays less than the full amount of delinquent taxes.

Taxes continue to accrue after the property has been bid-off to the county treasurer. See K.S.A. 79-2319. Thus, a property owner can redeem property under K.S.A. 79-2401a and still have unpaid property taxes. Further, K.S.A. 79-2401a(a)(1) does not preclude the partial payment on delinquent real estate taxes, but such taxes must be paid in full prior to the foreclosure in order to stay proceedings. See Op. Att’y Gen. 50 (1996).

K.S.A. 79-2401a(b)(2) requires owners of delinquent homestead property in Johnson county who are seeking to redeem the property and prevent tax foreclosure sales to pay off all back

taxes, special assessments, and interest at least once every three years. The law also allows mortgage holders to bid at tax foreclosure sales.

Property which is not redeemed under K.S.A. 79-2401a is subject to foreclosure sale under. See K.S.A. 79-2801.

Owners of property subject to sale for delinquent taxes must be given personal notice by summons or by publication which may actually reach the party. The court in *J.A. Tobin v Unified Government of Wyandotte County/Kansas City Kansas* 46 K.A. 593, 263 P. 3d 835 (2011), held the sale of an 11 acre vacant lot at a tax sale violated the owner's due process rights. The Unified Government's abstractor had searched the Kansas Secretary of State's website and found the original corporation owning the property was a Missouri corporation that had forfeited its Kansas corporate status. The abstractor did not search the Missouri Secretary of State's website where the information was readily available about the property owner.

After the entry of judgment in the foreclosure action, the property is sold at a sheriff's sale. See K.S.A. 79-2803 and 79-2804. K.S.A. 79-2804 specifies that the sale shall be for the "highest and best bid obtainable." If the buyer is a person who had a right to redeem the property under K.S.A. 79-2803, the purchase price must be at least the amount of the judgment lien. See K.S.A. 79-2804g and 79-2804h. Other purchasers may acquire the property for less than the amount of the judgment lien.

Note: K.S.A. 79-2803a permits a county, without a court order, to sell property previously offered at public auction for delinquent taxes, on its own.

K.S.A. 79-2812 prohibits persons who own real estate upon which there are delinquent property taxes or delinquent special assessments from purchasing additional real estate at delinquent tax sales conducted pursuant to K.S.A. 79-2801 *et seq.* See Op. Att'y Gen. 46 (1997), which discusses what constitutes a purchase. See also K.S.A. 79-2804g prohibits the sale of such property to certain relatives and other persons related to the person having a statutory right to redeem the property.

Excess proceeds derived at a tax sale should be returned to the owner or turned over to the state as abandoned property after one year if the owner cannot be found. See Op. Att'y Gen. 61 (1997).

In *Board of Sedgwick County Commissioners v Graham*, 254 Kan. 260, 864 P.2d 1141 (1993), the court upheld a district court's cost allocation for property sold at two real estate foreclosure proceedings or tax sales under K.S.A. 79-2803 which resulted in significantly less cost being allocated to two properties in question. The court clarified that only one \$65 filing fee was necessary in a real estate foreclosure action not a \$65 filing fee for each property involved. The court held that the district court did not abuse its discretion in vacating one sale involving an elderly woman in her 80's who claimed her first notice of the sale was her eviction notice. A summons had been tacked on the door of the woman's property but no testimony regarding two earlier attempts of personal service was offered. See also *Board of County Commissioners of Reno County v Akins*, 271 Kan. 192, 21 P.3d 535 (2001), where the court invalidated a tax foreclosure sale in regard to a large tract of valuable (over \$150,000) farmland. Property owners who resided in Oregon had not received notice of taxes due since 1993 (the sale occurred in 1999), nor had they received notice of the tax foreclosure sale. There was a tenant on a portion of the tract but no one from the county attempted to find out the correct address of the owners.

The Attorney General has said that valid claim of adverse possession prevails over the holder of a tax deed. See Op. Att'y Gen. 25 (1995).

Once the foreclosure petition has been filed, the property owner has another opportunity to

redeem the property. See K.S.A. 79-2803. Redemption at this stage requires payment of all taxes due on the property, including both amounts delinquent at the date of bidding-off to the county, as well as amounts accrued after that date. Partial redemption is not possible once a foreclosure petition has been filed. Filing of a bankruptcy petition will automatically stay a real estate tax foreclosure action.

**§9.22 F. City Conducted Tax Sale**

K.S.A. 79-2801(c) provides that if the board of county commissioners fails to initiate proceedings for a judicial tax foreclosure sale on property located within the corporate limits of a city and if the taxes on property have remained delinquent for at least three years after property first becomes eligible for sale by the county at a judicial tax foreclosure sale the governing body of the city in which property is located may initiate a judicial tax foreclosure sale on the property. The governing body of the city shall have the same powers and duties of the board of county commissioners which are necessary to effectuate the sale of the property. The city attorney of the city shall have the same powers and duties of the county attorney or county counselor. All other county officers are required to perform the duties prescribed by law relating to the sale of property in the same manner as if such sale had been initiated by the board of county commissioners.