

Comparing Tax Lien Statutes: D.C. and Maryland

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Introduction

Tax Lien or Tax Deed appears in Title Exam:



Introduction

The Same, But Different

- Maryland statute and similar system in place for over 100 years
- D.C. had administrative process, but in 2000, copied and altered Maryland statute [compare Md. Code Ann., Tax Property Art. Title 14 Subtitle 8 with D.C. Code Title 47 Ch. 13A]
- Additional significant statutory amendments in both jurisdictions

Introduction

The Same, But Different

- Different for many years, then similar after Tax Clarity Act, then statutory revisions created many nuances

Creation of a Tax Lien

How a Tax Lien Arises

- How real property taxes and municipal charges are billed – how the debt arises [Md. Code Ann., Tax Property Art. § 14-804; D.C. Code § 47-811]
- Delinquency results in lien against real estate [Md. Code Ann., Tax Property Art. § 14-804; D.C. Code § 47-1331]

Creation of a Tax Lien (cont.)

Easy Mode – Redemption

- Before a tax sale has occurred, the lien may be redeemed and released through payment to the collector
- Waiting Periods – 6 months after sale
- Each County and Jurisdiction have difference auction dates
- Be wary of fees owed in Maryland after waiting period

How the Tax Lien Encumbers Title

How the Tax Lien Encumbers Title

- Assessment process
- Outstanding delinquent bills – 6 months, min.
- Sale of the liens at public auction [Md. Code Ann., Tax Property Art. § 14-808; D.C. Code § 47-1332]
- Recording a tax lien certificate in land records [Md. Code Ann., Tax Property Art. § 14-822; D.C. Code § 42-1207(a)]
- D.C. publishes lists of purchasers

How the Tax Lien Encumbers Title (cont.)

How the Tax Lien Encumbers Title

- Super-priority lien
- Must be paid to record deeds of conveyance
- Cloud on title – indicates a party has “an interest” in the real property

Releasing the Redeemed Tax Lien

Getting Released

- Before a tax sale, released automatically upon payment [DCMR 316.]
- After sale to a third party, releases are required [Md. Code Ann., Tax Property Art. § 14-808; D.C. Code § 47-1332]
- If lien was recorded, release must be documented [DCMR 316.8(j)]
- If a case was filed, the case must be dismissed and release documented [DCMR 316.8(j)]

Releasing the Redeemed Tax Lien (cont.)

Do I need a Release?

- Before 4 month waiting period – no release required.
- After 6 month waiting period – MD requires release. DC includes PCLE in tax bill.
- DC (case filed) – additional legal fees/expenses can accrue, as can additional taxes. “Planets must align” for redemption to be completed.
- Maryland (after 4-7 months) – cannot pay taxes to collector without attorney release.

Clearing Title to Tax Deeds

Easy-Er (Redemption of Lien/Judgment)

- Payment of Taxes and Legal Fees
- Releases and Certificate of Redemption [DCMR 316.13]
- Dismissal of Suit or Release of Judgment
- Release of recorded lien and/or *Lis Pendens*

Clearing Title to Tax Deeds (cont.)

Foreclosure – Actions to Collect Taxes through Courts

- Maryland Code (Tax-Property Article):

The provisions of §§ 14-832.1 through 14-854 of this subtitle shall be construed to ensure a balance between:

(1) the due process and redemption rights of persons that own or have an interest in property sold at a tax sale; and

(2) the public policy of providing marketable title to property that is sold at a tax sale through the foreclosure of the right of redemption.

Clearing Title to Tax Deeds (cont.)

Foreclosure – Actions to Collect Taxes through Courts

- D.C. Code Title 47 (Ch. 13A, gen. not Ch. 13):

§ 47–1384. *Construction of chapter.*

Notwithstanding any other law, if a court determines that any provision of this chapter is ambiguous, the provision shall be liberally construed as remedial legislation to encourage the foreclosure of the right of redemption by suits in the Superior Court and for the decreeing of marketable titles to real property sold by the Mayor.

Clearing Title to Tax Deeds (cont.)

Foreclosure - Underwriting the tax sale case

- Adequacy of title report (required parties)
- Compliance with noticing [Md. Code Ann., Tax Property Art. §§ 14-833(a-1), 840; D.C. Code § 47-1370]
- Examining Service of Process [Md. Code Ann., Tax Property Art. §§ 14-836, 840, Maryland Rule 2-121, 124; D.C. Code § 47-1374, DC Superior Court R. Civ. P. Rule 4]
- Entry of Judgment [Md. Code Ann., Tax Property Art. § 14-844; D.C. Code § 47-1378]

Clearing Title to Tax Deeds (cont.)

Tax Deeds

- Issuance of Tax Deed and Recording [Md. Code Ann., Tax Property Art. § 14-847; D.C. Code § 47-1382]
- Judgment and Tax Deed are conclusive proof of legal title unless attacked within time period [compare Md. Code Ann., Tax Property Art. § 14-845 and Maryland Rule 2-535 with D.C. Code § 47-1379 and Rule 60(b)]

Underwriting Requirements

Legal Considerations

- In both jurisdictions, judgment entitles holder to tax deed (only as to named/served parties).
- DC – must pay Tax Deed Bill and present proof of payment
- MD – depends on County/City, but must pay “balance of bid (including any surplus bid)” plus subsequent taxes, municipal liens, submit deed for approval and execution.

Insurance Considerations

Underwriting Requirements

Insurance Considerations

- Occupants/Tenants
- Notice/Service to lenders
- Notice to creditors
- Appeals/Motions
- Equity Stripping
- Estates/heirs
- Timing
- Recording
- All fall into the category of potential challenges (claims)

Consequences Be Damned!

Tax Deed Not Insurable

- Could be marketable, but not insurable
- Necessary part(ies) not named/served
- Judgment creditor(s) not notified
- Notices improper or missing
- Publication not run
- Posting improper, incomplete, or not performed.
- Affidavit of Compliance (MD) or Motion for Judgment (DC) defective or incorrect
- Deed incorrect on its face

Similarities

D.C.

- Taxes and municipal bills may be certified for collection at tax sale (taxes MUST be delinquent)
- Public sale after advertisement
- Liens may be recorded
- Waiting periods (4 months, 6 months)
- Judicial Foreclosure
- Do not have to open estates – many times you can't
- Tenant right to redeem
- Tax Deed granted by Mayor

Maryland

- Taxes and some water bills can be collected at tax sale (BC no liens for only water)
- Public sale by each county/collector after advertisement (can set their own terms)
- Liens may be recorded
- Waiting periods (4 months, 6 months)
- Judicial Foreclosure
- No estates necessary – preferred, largest creditor
- Tenant right to redeem
- Tax Deed granted by Dir. of Fin.

Differences

D.C.

- Taxes paid in arrears
- Min. threshold for lien sale - \$2,500 (vacant land \$200)
- Bid min. is tax debt, anything additional is “surplus”
- Subsequent taxes may be paid
- No additional lien sales before the 4th year
- Certificate has 1 year life
- PCLE collected after 4th month
- Taxes can be paid at anytime by anyone
- Posting Requirement before foreclosure (45 days)
- Cannot obtain judgment for 1 year
- Equity sharing provision if owner/heir occupied
- Dearth of case law
- Rule 60(b)
- Cancellation, void sales – interest paid sometimes fees too

Maryland

- Taxes paid ahead
- Min. threshold for lien sale \$250 (only BC - \$750)
- Bid must be round number in excess of tax debt (bid premium)
- No additional lien sales while certificate remains valid
- Certificate valid for 2 years
- Attorney’s Fees and expenses after 4th month
- Cannot redeem without release
- Two sets of notices before foreclosure
- Cannot post subs – except BC
- Judgment anytime after requirements are met
- Many differences with vacant properties in Baltimore
- Many years of case law
- Rule 2-535
- Void sales – no fees

Tips

Redemption

- Obtain all releases and payoffs – check “good through” date.
- Make sure tax bills paid include all taxes due and owing at the time of redemption.
- Ensure any complaints are dismissed without prejudice and any recorded liens are released.

Deeds

- Review dockets and affidavits of complaints, motions for judgment and exhibits.
- Check any assignments and status of entities.
- Time is your friend.
- Thoroughness, proof and extent of service and notices.

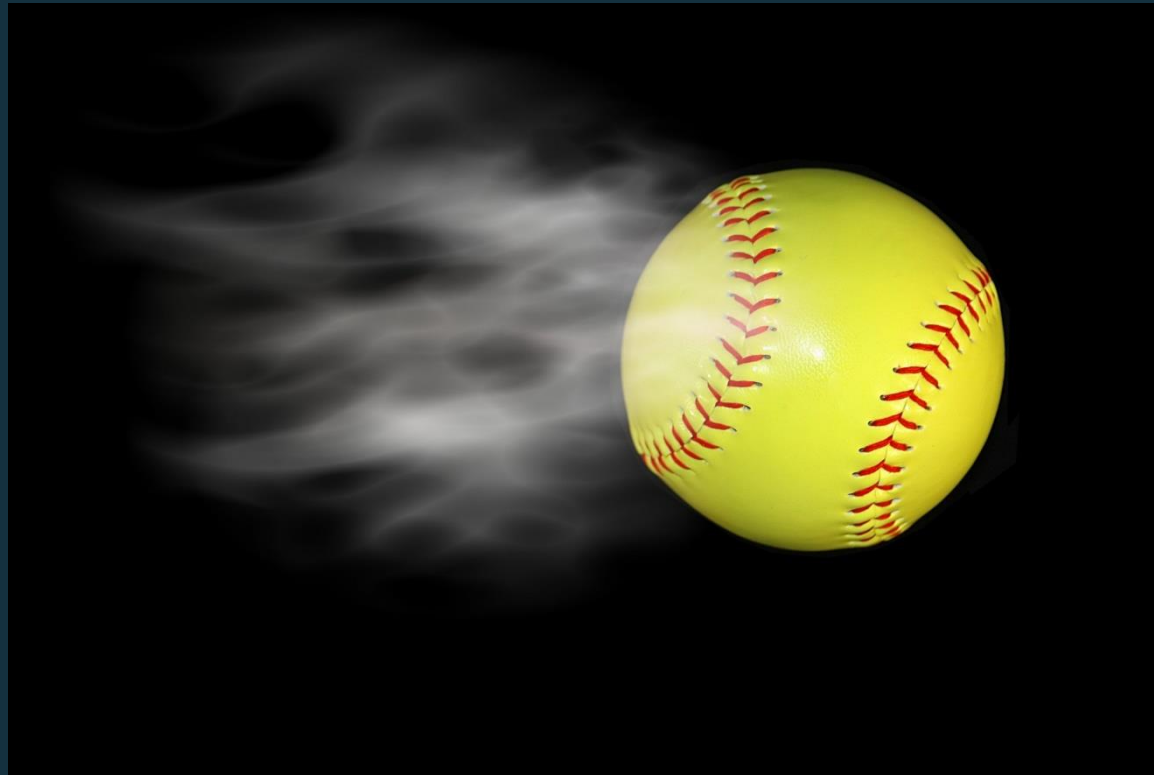
Conclusion

Be Aware:

- Know what to look for.
- Don't Trust, Verify.
- Follow-Up.
- Cure any defects in title.
- Contact underwriting for approval or to answer any specific questions.

Questions?

- Softballs only



Thank you!

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