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ALIGNING THE TOOLS:

Addressing Vacant, Abandoned, and Deteriorated Properties in Tennessee

Center for Community Progress Report
to the Blight Authority of Memphis
2017 Technical Assistance Scholarship Program Recipient



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ABOUT CENTER FOR COMMUNITY PROGRESS

The mission of Center for Community Progress is to foster strong, equitable communities where vacant, abandoned, and deteriorated properties are transformed into assets for neighbors and neighborhoods. Founded in 2010, Community Progress is the leading national, nonprofit resource for urban, suburban, and rural communities seeking to address the full cycle of property revitalization. The organization fulfills its mission by nurturing strong leadership and supporting systemic reforms. Community Progress works to ensure that public, private, and community leaders have the knowledge and capacity to create and sustain change. It also works to ensure that all communities have the policies, tools, and resources they need to support the effective, equitable reuse of vacant, abandoned, and deteriorated properties. More information is available at www.communityprogress.net.

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INTRODUCTION

In April 2017, the Center for Community Progress (Community Progress) selected the Blight Authority of Memphis (BAM), along with other local and statewide coalition partners, as one of three recipients of the 2017 Technical Assistance Scholarship Program (TASP). TASP is a competitive, merit-based scholarship for communities that are ready to engage in a forward-thinking technical assistance process to address large-scale property vacancy, abandonment, and deterioration.¹ This engagement and final report focuses on enhancing and coordinating three key legal tools to address vacancy and abandonment: housing and building code enforcement, delinquent tax enforcement, and land banking.

In addition to independent legal and programmatic research, much of this analysis was informed by a series of three site visits to Memphis in February, May, and August, and meetings with broad ranges of stakeholders. A list of participants in one or more of these meetings is set forth as Appendix B to this report. A preliminary draft of this report was presented to stakeholders in August 2017, and helpful corrections and suggestions were received at that time. The analysis, conclusions, and recommendations in this final report are solely the responsibility of the author and do not reflect the views of any given participant.

The thrust of this analysis and recommendations is prospective in nature: how can the three legal systems in Tennessee be modified and aligned to achieve maximum effectiveness and efficiency in addressing vacancy and abandonment. This report does *not* focus on a number of related issues such as (i) strategies for addressing the title defects in the pre-existing property inventories of local governments which originated in tax sales, (ii) pre-existing liens of local governments for code enforcement related activities, (iii) the difficulties posed by the bulk sale, or “factoring,” of municipal tax liens, (iv) the inefficiencies created by separate and independent taxation of property by different levels of local government, and (v) the vital issues of discerning ways to protect and to support vulnerable owner occupants and vulnerable neighborhoods.

¹ For more information on TASP, please visit <http://www.communityprogress.net/technical-assistance-scholarship-program--tasp--pages-494.php>

THE CONTEXT

Over the past decade key communities spanning the length of Tennessee have focused on creating new strategies to address vacant, abandoned, and deteriorated properties in their neighborhoods. These strategies have involved the three legal systems that are most important in transforming vacant spaces into vibrant places: **housing and building code enforcement**, **property tax enforcement**, and **land banking**. In each of these contexts these communities – and the State of Tennessee – have taken transformative steps forward in just a few short years.

In order to create a twenty-first century approach to confronting the challenges of properties, buildings, and houses which fall far below the minimum standards set by **housing and building codes**, Tennessee enacted the Neighborhood Preservation Act² in 2004 (the NPA). Amended in several key respects over the past decade, the NPA sets as its goal maximum “voluntary” compliance by owners with code requirements. When compliance and remediation by the owner does not occur, then remediation can be undertaken by the local government, by approved nonprofit entities, and through the judicial appointment of a receiver.³ The existence of a receiver’s lien in the NPA is the direct parallel to a property tax lien for enforcement purposes.⁴

Because multiyear property tax delinquency is one of the clearest signs that owners have abandoned their property, county trustees and municipalities began work in 2011 to amend Tennessee laws to create a more efficient and effective approach to **property tax enforcement**. Amendments in 2014 and 2015 shortened the overall timeframe for a completed sale when the property has many years of tax delinquency,⁵ and when the property is determined to be vacant or abandoned the post-sale redemption period is reduced to thirty days.⁶ Additional changes included amendments to the nature of the proceeding,⁷ and to the notices to be provided about the proceeding.⁸

A third tool, or legal system, that has proven to be both efficient and effective when no open market exists for properties that have become vacant and deteriorated, or when the aggregate amount of public liens (property taxes, code enforcement liens) exceeds any plausible fair market value, is **land banking**.⁹ At the encouragement of Oak Ridge, Tennessee, the legislature enacted the Tennessee Local Land Bank Pilot Program in 2012.¹⁰ In 2014, the legislature broadened the scope of this statute in eliminating its status as a “pilot” program and allowing a range of municipalities the local option of creating a land bank.¹¹ In short order Chattanooga created the Chattanooga Land Bank Authority (2015) and Memphis created the Blight Authority of Memphis (2016).

² TENN. CODE ANN. §13-6-101.

³ Steven E. Barlow, Daniel M. Schaffzin, and Brittany J. Williams, *Ten Years of Fighting Blighted Property in Memphis: How Innovative Litigation Inspired Systems Change and a Local Culture of Collaboration to Resolve Vacant and Abandoned Properties*, 25 URB. LAW. 347 (2017).

⁴ TENN. CODE ANN. §13-6-106(k).

⁵ TENN. CODE ANN. §67-5-2701(a)(1)(B).

⁶ TENN. CODE ANN. §67-5-2701(a)(1)(C).

⁷ TENN. CODE ANN. §§67-5-2103, 67-5-2101.

⁸ TENN. CODE ANN. §67-5-2415.

⁹ Frank S. Alexander, *LAND BANKS AND LAND BANKING* (2d ed., 2015) (Center for Community Progress).

¹⁰ H.B. 3400, 107th Gen. Assembly. Reg. Session (Tenn. 2012), enacting TENN. CODE ANN. §13-30.

¹¹ 2014 TENN. PUB. ACTS. Ch. 793, modifying TENN. CODE ANN. §13-30-101 to be the “Tennessee Local Land Bank Program”, and amending the definition of eligible local governments, TENN. CODE ANN. §13-30-103.

Code enforcement reforms, property tax enforcement reforms, and land banking are important and necessary tools to address vacant, abandoned, and deteriorated properties in our communities, but statutory reforms alone are not sufficient to get the job done. In order for these reforms to work, and to work effectively, strong commitments from both public sector and private sector leadership are essential, and neighborhood and community leadership is indispensable. Across the State of Tennessee, and in Oak Ridge, Chattanooga, and Memphis in particular, such leadership has demonstrated that these new tools can indeed be transformative not just at the neighborhood and municipal levels, but also as models for the entire country.

THE CHALLENGES

The State of Tennessee and the municipalities of Oak Ridge, Chattanooga, and Memphis have moved forward in just a few years in enacting many of the necessary statutory reforms and implementing new operating protocols to address vacant, abandoned, and deteriorated properties. The goal for all of these communities is to achieve efficient, effective, and equitable systemic approaches to the transformation of these properties.

An **efficient** enforcement statute is one that is clear on the legal priority of the public obligations, the dollar amount, if any, of the obligation or lien, and the timeframes for compliance. An **effective** enforcement statute is one that yields maximum compliance prior to deterioration and abandonment, and which culminates, in the event of noncompliance, in a transfer of insurable and marketable title to a new responsible owner. An **equitable** enforcement system is one that is premised on a fair assessment system and which incorporates provisions for “hardship” repayment plans for targeted property owners such as low-income owner-occupants.

In each of these areas significant progress has been made in recent years, but none of the three tools is yet capable of achieving maximum results in a manner that is efficient, effective, and equitable. While additional statutory reforms are necessary and desirable for each of the systems of code enforcement, property tax enforcement, and land banking, given the reforms that have already been accomplished it is just as important at this stage to coordinate and align the use of these three tools.

There are three missing pieces in the puzzle of using these tools to address vacant, abandoned, and deteriorated properties in Tennessee: (1) these tools do not provide insurable and marketable title in the event of transfer to a new owner; (2) these tools are not being used in a coordinated and proactive manner, and (3) there is inadequate anticipation of the appropriate transferee of the property.

The dominant missing piece is that **these tools do not yet provide insurable and marketable title** to a new owner in the event of noncompliance and transfer of the property. The underlying legal issue is whether the enforcement proceedings provide constitutionally adequate notice to all parties with an interest in the property. This is due, in part, to ambiguous and at times conflicting statutory

provisions. It is also due, in part, to the absence of clear standard operating procedures which involve comprehensive title examinations, maximum notice to all parties, and the presence of a commitment for title insurance.

The second and equally important missing piece in the puzzle, as communities seek to utilize these tools, is the **need for clear legal and strategic coordination in the use of the tools**. Code enforcement, property tax enforcement, and land banking need to be aligned to achieve maximum efficiency and effectiveness. Substantially parallel if not identical procedures could be implemented for both receiver's lien enforcement under the NPA and for property tax enforcement. Tactical decisions can and should be made as to when final enforcement proceedings designed to result in a transfer of the property should be driven either by the receiver's lien procedures under the NPA or by the property tax enforcement procedures of the county trustee. Correspondingly, the presence or absence of a receiver's lien or a property tax lien, or both, on a given parcel of property and the respective dollar values of each should be used as a guide in evaluating the possibility of a public sale to a new private owner or a transfer to the local land bank.

The third missing piece in these public strategies is **clarity on the ultimate new owner of the property** in the event of noncompliance and nonpayment. The paramount goal of all of these public policies is to achieve voluntary compliance whenever possible, whether through remediation of housing and building code violations or through payment of property taxes. Both the property tax system and the NPA currently and appropriately focus on maximizing such voluntary compliance. It is when properties are not just vacant, or even vacant and deteriorated, but also functionally abandoned by the owners who have no further interest in the property that the tools should be used to transfer title to a new responsible owner. As a general proposition the transfer should be made on the open market to the highest bidder consistent with local land use and community development policies. When the fair market value of the property is less than the amount of the delinquent tax lien, or the receiver's lien, or both, then the land bank becomes the key tool to complete the transfer to a new responsible owner.

THIS REPORT

Given the three final missing pieces in the excellent reforms that have been accomplished in recent years, this report presents a detailed analysis of the code enforcement system, the delinquent tax enforcement system, and the role of land banking. In the context of analyzing each tool, this report presents some basic observations and suggests a range of potential statutory and policy recommendations. All of the various recommendations are then compiled in a reorganized and streamlined manner and set forth in Appendix A.

I. HOUSING AND BUILDING CODE ENFORCEMENT

Since its enactment in 2004 the Neighborhood Preservation Act (“NPA”) has given to municipalities across Tennessee a powerful new tool to deal with vacant, abandoned and deteriorated properties. Part of the power of this new statute lies in its clarity and simplicity. It confers jurisdiction upon local courts to receive complaints filed by nonprofit corporations, interested parties and neighbors for the enforcement of housing and building codes and public nuisance statutes.¹²

Shortly after filing of the complaint the alleged violations are evaluated by the municipality and a certificate of public nuisance is issued if appropriate.¹³ A development plan for abatement of the public nuisance is prepared either by the owner or, if the owner does not respond, by a judicially appointed receiver.¹⁴ The judicially appointed receiver is granted broad powers, subject to the court’s oversight, to take control of the property and implement the development plan for remediation of the violations.¹⁵ A receiver’s lien (“Receiver’s Lien”) is created as a first priority lien against the property securing all expenditures, costs and fees incurred by the receiver.¹⁶ The Receiver’s Lien can ultimately be enforced through a public auction and transfer of the property to a new owner.¹⁷

The utilization of, and success in implementation of, the NPA in Memphis over the past five years has been due in part to the active involvement of the Shelby County Environmental Court in exercising its jurisdiction under the NPA. It is also a direct result of the newly created Neighborhood Preservation Clinic at the Cecil C. Humphreys School of Law at the University of Memphis.¹⁸ Much of the work of the Court and the Clinic is focused on identifying whenever possible the owners and

¹² TENN. CODE ANN. §13-6-106. The standing of a municipal corporation to file an action under the NPA may be set forth implicitly, or explicitly, in other Tennessee statutes but it is a puzzling omission from the language of the NPA. TENN. CODE ANN. § 13-6-106.

¹³ TENN. CODE ANN. §13-6-106(a).

¹⁴ TENN. CODE ANN. §13-6-106(i).

¹⁵ TENN. CODE ANN §13-6-106(j).

¹⁶ TENN. CODE ANN. §13-6-106(k).

¹⁷ TENN. CODE ANN. §13-6-106(l).

¹⁸ Daniel M. Schaffzin, *Blight at the End of the Tunnel? How a City’s Need to Flight Vacant and Abandoned Properties Gave Rise to a Law School Clinic Like No Other*, 52 WASH. UNIV. J. L. & POL’Y. 115 (2016).

interested parties of a property that is the subject of the complaint and working with them to design and implement the development plan for remediation. When this “voluntary” compliance is not successful, a receiver is appointed to undertake such actions.

When a Receiver’s Lien is not paid in full by the owner or by an interested party, the court is given stark power to direct “the receiver to offer the building and property for sale upon terms and conditions that the court shall specify.”¹⁹ Despite the success in the application of the NPA in Memphis, and in some ways because of its success, no actions have yet been taken to enforce a Receiver’s Lien by a public auction and sale. It is this final step in the process which involves the first of the three missing pieces in addressing vacant, abandoned, and deteriorated properties – the effective delivery of insurable and marketable title to a new owner.

As powerful and useful as it is in its present form for Memphis and Shelby County in particular, the NPA is limited in its geographical scope to local governments that meet certain defined population parameters.²⁰ In order for the NPA to be an effective tool used in combination with the tool of land banking, the NPA needs to be amended to be available also to those local governments that create a local land bank.

A. INSURABLE AND MARKETABLE TITLE

The availability of insurable and marketable title rests upon compliance with the federal constitutional requirements that notice of the proceedings be given to all parties that have an interest in the property. Such parties include all persons who may have an interest in the property as would be revealed by a comprehensive title examination of public records. Notice to all of these parties, as well as notice by publication, by notice sent addressed to the “Occupant”, and by posting of the notice at the property location itself, are standard measures used to meet the constitutional requirements.

One of the complicating factors in meeting the appropriate standard of notice is that *in personam* lawsuits and *in rem* lawsuits rest on very different foundations. A lawsuit which is *in personam* seeks a personal judgment against an individual or entity, and a court must have jurisdiction over the defendant through personal service of the complaint. A lawsuit which is *in rem* is a lawsuit against the property itself and not against an individual or entity. An *in personam* lawsuit has high burdens of proof of service of process as a judgment against the individual or entity may follow that individual or entity and attach to whatever income or assets the defendant may have in any location. An *in rem* lawsuit, in contrast, is purely a complaint or petition against the property, with the property itself being the defendant, and the remedy being a public sale of the property. An *in rem* lawsuit has lower thresholds of notice. In an *in personam* lawsuit the standard legal terminology makes reference to a complaint and a

A lawsuit which is *in personam* seeks a personal judgment against an individual or entity, and a court must have jurisdiction over the defendant through personal service of the complaint. A lawsuit which is *in rem* is a lawsuit against the property itself and not against an individual or entity.

¹⁹ TENN. CODE ANN. §13-6-106.

²⁰ TENN. CODE ANN. §13-6-105.

summons and some form of proof of service is normally required. The most common form of such service is when the defendant is personally handed a copy of the complaint. In an *in rem* lawsuit the standard legal terminology makes reference to a petition and to notice of the petition. Service in an *in rem* lawsuit can be accomplished by regular mail.

In its present form the NPA is ambiguous as to whether the actions it contemplates are designed to be an *in personam* action, or an *in rem* action. The NPA refers to “a civil action . . . against the owner”.²¹ It also provides that if a Receiver’s Lien is not satisfied by auction sale proceeds, the lien remains in effect until satisfied, suggesting at least by implication that a defendant may continue to have personal liability even after the sale of the property.²²

This uncertainty about the character of NPA actions is reflected in the express statutory cross-reference to Rule 4 of the Tennessee Rules of Civil Procedure issued by the Tennessee Supreme Court.²³ Rule 4.04 is entirely consistent with judicial notice and jurisdiction in *in personam* jurisdiction, though it does contain a provision recognizing service by mail when authorized by statute.²⁴

An advantage of proceeding *in rem* rather than *in personam* is that the federal constitutional requirement is not of personal service or even certified or registered mail.²⁵ First class mail is a sufficient form of transmission, as least from the perspective of the United States Constitution. It is more efficient from a cost perspective, and just as effective from a title insurance perspective, when structured as an *in rem* proceeding.

Recommendations

- 1.1 Amend the NPA to provide expressly that actions brought under the NPA are *in rem* actions.
- 1.2 Amend the NPA to provide that the Defendant in an NPA action is the property itself, and not any of the Owners or Interested Parties.
- 1.3 Amend the NPA to provide that a municipal corporation has standing to file the civil action under the NPA.
- 1.4 Amend the NPA to provide that copies of the complaint shall be provided to all Owners and Interested Parties.
- 1.5 Amend the NPA to provide that notice can be transmitted by first class mail, by publication, by mailing notice to the “Occupant” at the property address, and by posting notice on the property.

²¹ TENN. CODE ANN. §13-6-106(a).

²² TENN. CODE ANN. §13-6-106(m).

²³ TENN. CODE ANN. §13-6-106(c).

²⁴ Tenn. Rules of Civil Procedure, Rule 4.04(h).

²⁵ See *Tulsa Prof'l Collection Servs. Inc. v. Pope*, 485 U.S. 478, 490 (1988); *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 798 (1983); *United Cos. Fin. Corp. v. Mellon Fin. Servs. Corp.* #7, 922 F.2d 270 (5th Cir. 1991).

- 1.6 Amend the NPA to provide that the NPA is applicable to any local government that creates a land bank pursuant to the land bank statute.
- 1.7 Amend the definition of Interested Parties to expressly include, or expressly exclude, the holders of the benefit of easements appurtenant or the benefit of restrictive real covenants.
- 1.8 Create consistency between the definitions of Owner and Interested Parties as set forth in the NPA²⁶ with the definition of “Interested Person” as used in a portion of the delinquent property tax sale statute.²⁷
- 1.9 Consider the possibility of engaging one or more title insurance companies in large volume master contracts (i) to conduct preliminary title examinations for targeted properties with high probability of voluntary compliance, (ii) to conduct comprehensive title examinations for targeted parties with low probability of voluntary compliance, (iii) to provide all necessary notices to all Owners and Interested Parties, (iv) to publish notice of auctions and sales, and (v) to provide a commitment for title insurance prior to the auction which is transferable to the auction purchaser.

As the primary goal of code *enforcement* is code *compliance*, code enforcement officials and the Memphis Law School Neighborhood Preservation Clinic devote substantial effort to identifying owners and interested parties and working with them to remediate violations. As a matter of current practice, copies of the initial complaint are not necessarily sent to all interested parties. The more extensive, and expensive, comprehensive title examination is not done, as a matter of current practice, until a decision is made to seek the appointment of a receiver. The advantage of this approach is that it maximizes the emphasis on “voluntary” compliance while reducing the per-case out-of-pocket disbursements. The disadvantage of this approach is that the quantity and quality of notice that is constitutionally required and is required for insurable and marketable title is not provided at the outset of the proceeding. Without constitutionally adequate notice to all interested parties the quality of title at an ultimate auction is neither insurable nor marketable, and without such title insurance the sale at an auction is not effective.

²⁶ TENN. CODE ANN. §13-6-102(5), (8).

²⁷ TENN. CODE ANN. §67-5-2503(c)(1)(B).

Recommendations

- 1.10 Amend the NPA to specify that notice of the complaint must be provided to all interested parties as revealed by a comprehensive title examination of the property.
- 1.11 Alternatively, consider the possibility of amending the NPA, or modifying current practices, to divide the target inventory into two categories. One category would consist of those properties having a high probability of successful voluntary compliance. The second category would consist of those properties with a low probability of successful compliance. As to the first category, minimize costs by conducting limited title examination, with no expectation of a title commitment. As to the second category, conduct a comprehensive title examination, provide maximum notice of all forms, and conduct this process in reliance on a commitment for title insurance.

For purposes of the final act of enforcement by auction and sale, the critical proposition is the existence of the Receiver's Lien. The NPA clearly contemplates such a Receiver's Lien, provides that it constitutes a first lien on the property, and directs that the lien can be enforced by an auction and sale.²⁸ Despite these key fundamental points in the NPA, additional clarity is needed which could be accomplished by amendments to the NPA, by the text of court orders, or by local protocols and practice. When enforcement of Receiver's Liens begins to move into the final stage of auction and sale, these outstanding issues will need to be resolved.

At present, there is latent ambiguity on when a Receiver's Lien arises as a matter of law and in the public records. The date upon which the lien actually arises as a matter of law is not clear. It appears that the lien is considered to arise as of the order of appointment of a receiver, but there is no express provision for entering the order of appointment, and notice of the lien, in the public records. One consequence of this delayed effective date for the creation of the Receiver's Lien is that all costs and expenses incurred by the municipality, after the date of the original complaint and prior to the appointment of the receiver, are not recoverable as part of the Receiver's Lien. A second consequence of this delayed effective date for the Receiver's Lien is that it may lead to missed transfers and encumbrances that occur between the date of the complaint and the date of appointment of a receiver.

The provision of the NPA that permits the court to issue an injunction barring the transfer of the property once a certificate of public nuisance has been issued²⁹ does not, in and of itself, resolve the question of when the Receiver's Lien has arisen. It also is not clear whether such an order would extend to an owner's refinancing of existing mortgage debt, the transfer of mortgage debt among transferees, or the foreclosure and sale pursuant to an existing mortgage.

²⁸ TENN. CODE ANN. §13-6-106(k).

²⁹ TENN. CODE ANN. §13-6-106(f)

Recommendations

- 1.12 Amend the NPA to provide that the original complaint requests the appointment of a receiver, and that the Receiver's Lien arises upon filing of the complaint and recording of notice in appropriate real property records. The complaint could specify that a receiver would be appointed only upon subsequent motion by the party filing the complaint.
- 1.13 Evaluate the efficacy of the potential order barring a transfer of the property without abatement of the public nuisance and, if necessary, amend the NPA to make clear its application to mortgage transfers and mortgage foreclosures unless authorized by the court.

When a lien is placed upon real property securing a financial obligation, it is not necessary that the lien specify a fixed dollar amount. It is necessary, however, that the amount be capable of precise quantification at any given point in time. This is necessary both to enable an owner or interested party to pay the lien amount and, in the absence of such payment, to set a minimum bid for purposes of the auction and sale. The NPA provides that the court may assess "court costs and expenses" and receiver's fees.³⁰ Though it may be implicit it is not clear that "court costs" include any and all expenditures related to remediation of the conditions. It is also not clear whether costs, and expenses carry an interest factor from the date of expense.

Recommendations

- 1.14 Amend the NPA to provide that the precise dollar amount secured by the Receiver's Lien can be established by the court at any time upon the request of any Owner or Interested Party, or the Receiver. If the Receiver's Lien arises upon the initial filing of the complaint it secures an inchoate financial amount until established by the court.
- 1.15 Amend the NPA to provide expressly that the Receiver's Lien, upon approval by the court, includes any and all expenses and costs incurred by the Receiver in implementation of the detailed development plan.
- 1.16 Amend the NPA to provide that the Receiver's Lien, upon approval by the court, includes any and all outstanding municipal fines, penalties, expenditures, and assessments attributable to housing and building code citations and enforcement actions.
- 1.17 Amend the NPA to specify that the outstanding principal amount of the Receiver's Lien carries interest at a standard statutory rate applicable to judgment liens in Tennessee.

³⁰ TENN. CODE ANN. §13-6-106(k).

B. COORDINATED AND PROACTIVE ENFORCEMENT

The second of the three missing pieces in the puzzle of using these tools to address vacant, abandoned, and deteriorated properties is the coordination between costs and expenses reflected by the Receiver's Lien, and the amounts of delinquent property taxes. In its present form the NPA provides that the Receiver's Lien is a first priority lien, including having priority over state and local taxes, and does so using the overlapping concepts of "Insolvent Property"³¹ and "Uncollectible."³² These two terms are then used to limit the status of the Receiver's Lien to being a first priority lien only when the property is Insolvent and the taxes and assessments are Uncollectible. With their current definitions and usage, the analysis is potentially both incomplete and internally contradictory. "Insolvent" and "Uncollectible" do not necessarily incorporate reference to the amount of the Receiver's Lien.

Recommendations

- 1.18 Amend the NPA to replace the concepts of "Insolvent Property" and "Uncollectible" with a single proposition that the dollar amount of the Receiver's Lien shall include any and all amounts attributable to state and local taxes and assessments, and the amount shall be established by the court. In the event of payment of the full amount of the Receiver's Lien by an Owner or Interested Party, or in the event the property is sold to a private third party at auction for at least the full amount of the Receiver's Lien, the amount of taxes and assessments shall be disbursed to the appropriate taxing entity.
- 1.19 Amend the NPA to provide that the minimum bid at a Receiver's Lien Auction includes the amounts, if any, represented by a delinquent property tax lien.
- 1.20 Amend property tax enforcement statutes to provide that the minimum bid at tax sales includes the amounts, if any, secured by a Receiver's Lien on the property.
- 1.21 Develop a standard operating protocol between code enforcement officials seeking a Receiver's Lien auction and taxing officials seeking a delinquent property tax sale to assist in determining whether to proceed with a Receiver's Lien auction or a delinquent property tax sale.

³¹ TENN. CODE ANN. §13-6-102(4).

³² TENN. CODE ANN. §13-6-102(13).

C. ANTICIPATING THE APPROPRIATE TRANSFEREE

The existence of the Receiver's Lien and the appointment of a Receiver are the core features of the NPA and lie at the heart of its effectiveness and efficiency. As presently structured the statute contemplates that, in the absence of voluntary compliance, the Receiver will perform all work necessary to achieve compliance with the development plan and then conduct an auction and sale. While this may be a typical process for many of the target properties, it fails to account for the set of properties for which there is or could be a certificate of public nuisance in which no Owner or Interested Party has any intention of achieving compliance or paying the costs, and yet the probable fair market value of the property exceeds the costs of remediation. In these cases the Receiver should be given opportunity, with court approval, to proceed with an auction and sale of the property without having first achieved the remediation itself. The terms of the auction would, with court approval, require a commitment from the successful bidder ensuring performance of the specified remediation and the presence of a bond or mortgage securing such commitment.

Recommendations

- 1.22 Amend the NPA to provide that the Receiver may petition the court for authority to conduct an auction and sale without completion of the development plan remediation upon showing that (i) projected remediation costs plus the amount of the Receiver's Lien are less than fair market value, and (ii) the terms of the auction minimum bid will include a bond or other security such as a mortgage ensuring performance of the remediation.

Though part of the beauty of the NPA lies in its simplicity, the lack of clarity and specificity at times can be an obstacle. The NPA at present provides virtually no guidance on the time, place, and manner for enforcement of the Receiver's Lien by conducting an auction of the property. All that is provided is that the "court may enter an order directing the receiver to offer the building and property for sale upon terms and conditions that the court shall specify."³³ As there have not yet been any auctions and sales pursuant to the NPA, these issues have not been considered. The issues to be addressed include the form of notices of the public sale (to the public and to the Owners and Interested Parties), the time and place of the auction sale, and the terms and conditions of the sale such as minimum bids and cash requirements. While all of these issues could be addressed in detail in the court order, it is also possible to amend the NPA to address these issues or to mirror existing Tennessee lien enforcement or mortgage foreclosure procedures.

³³ TENN. CODE ANN. §13-6-106(i).

Recommendations

- 1.23 Amend the NPA to set presumptive criteria for the time, place, and manner of auctions and sales, setting them forth with specific detail or using by appropriate statutory cross-references to existing mortgage foreclosure or judgement lien foreclosure procedures.
- 1.24 Amend the NPA, or incorporate into the standard court order, specific provisions for the minimum bid to be accepted at the auction.
- 1.25 Amend the NPA, or incorporate into the standard court order, specific provisions for the minimum bid to be tendered by a municipal corporation or land bank as a credit bid.
- 1.26 Amend the NPA, or incorporate into the standard court order, specific provisions for the distribution of the cash proceeds of the successful bid, including the distribution of any surplus over the minimum bid to the benefit of the Owners and Interested Parties.
- 1.27 Amend the NPA, or incorporate into the standard court order, provisions that the prevailing bid at the auction and sale is reported to the court and, upon approval by the court, a final order and deed is issued to the successful bidder.

II. DELINQUENT PROPERTY TAX ENFORCEMENT

Throughout the United States, property tax constitutes one of the most important sources of revenue for municipalities and school districts. It is the primary form of local tax revenues and it continues to be the primary form of general revenue that is within the discretion and control of local governments. The goal of every county trustee and municipal fiscal officer is simply to maximize the payment of the taxes that are due. It is the responsibility of these public officials to collect what is due and owing in accordance with state law.

It is when property taxes remain unpaid with little likelihood of ever being paid that the property tax enforcement system becomes intertwined with the challenges of vacant, abandoned, and deteriorated properties. Nonpayment of property taxes is one of the clearest early warning signs of abandonment and deterioration. Multiple years of delinquency strongly indicates that no owner or interested party is willing or able to bear responsibility for the property. Because the goal of property tax enforcement is primarily payment rather than forced transfers of property, state laws throughout the country since the 19th century have had very lengthy periods of time between the initial date of delinquency and the date on which an involuntary sale is final and complete.

The State of Tennessee is no different in this regard. It is at this point that a delinquent property tax enforcement system itself becomes one of the causes of abandonment and deterioration. Multiple years of tax delinquency at high rates of interest with multiple years for redemption after an initial tax sale, coupled with deteriorating conditions and falling fair market value, ultimately serve to lock the vacant and abandoned property into its current status and condition.

One of the first challenges for every property tax enforcement system is to balance the goal of maximizing the payments by owners with the goal of not creating systems that end up encouraging deterioration and abandonment.

One of the first challenges for every property tax enforcement system is to balance the goal of maximizing the payments by owners with the goal of not creating systems that end up encouraging deterioration and abandonment. In general terms the existing property tax enforcement system in Tennessee is a three step process – delinquency, tax sale, and end of redemption. The tax lien arises

on January 1st of each year, is due in October and becomes delinquent the following March. After being delinquent for one year the lien may be enforced by a tax sale, followed by a redemption period of up to one year.

Over the past five years Tennessee has enacted a number of key reforms designed to restore this balance and move the tax enforcement system away from being a cause of deterioration and abandonment. In 2013 it amended the statutes to provide for consolidation of multiple years of delinquency into a single action.³⁴ In 2014 and 2015 it revised and consolidated the provisions on redemption from tax sales.³⁵ For vacant and abandoned property, it enacted the significant change of reducing the redemption period to thirty days from the sale.³⁶

A. INSURABLE AND MARKETABLE TITLE

As is true of many jurisdictions in the United States the existing statutory systems for delinquent property tax enforcement contain provisions suggestive of both *in personam* actions and *in rem* actions. The *in personam* approach was the dominant approach from the late nineteenth century through the late twentieth century. It was premised on relatively unitary ownership of property by an individual and the moral suasion that all of the defendant's assets should be available to pay the property taxes. Property taxes during this period included not just taxes on real property but personal property as well. Over the course of the twentieth century the nature of real property ownership became far more fragmented as new forms emerged such as partnerships, limited liability corporations, and single asset corporations. The range of other encumbrances, such as mortgages, long term ground leases, and community association covenants, also increased dramatically. A consequence of these fundamental shifts was a significant reduction in the likelihood of recovering funds in an action for personal liability for property taxes.

A lawsuit which is *in personam* seeks a personal judgment against an individual or entity, and a court must have jurisdiction over the defendant through personal service of the complaint. A lawsuit which is *in rem* is a lawsuit against the property itself and not against an individual or entity.

The continued presence of an *in personam* approach to property tax enforcement in Tennessee is most evident in the proposition that property taxes remain a personal debt of the owner³⁷ and a court may award a personal judgment against the owner³⁸ when the owner has received service of process or other notice as defined in the statute.³⁹ The same statute, however, appears to acknowledge that service by mail is an adequate alternative.⁴⁰

³⁴ TENN. CODE ANN. §67-5-2409(a).

³⁵ TENN. CODE ANN. §67-5-2701.

³⁶ TENN. CODE ANN. §67-5-2701(a)(1)(C).

³⁷ TENN. CODE ANN. §67-5-2101(a). As a general proposition the provisions of TENN. CODE ANN. Title 67 – Taxes and Licenses, Chapter 5 – Property Taxes, Part 24 – Tax Lien – Sale of Property (§§ 67-5-2401 through 2423) appears to be premised upon an action for personal liability for taxes.

³⁸ TENN. CODE ANN. §67-5-2415(a).

³⁹ TENN. CODE ANN. §67-5-2415(a).

⁴⁰ TENN. CODE ANN. §67-5-2415(f).

Tennessee law also appears to create an *in rem* cause of action for enforcement of the lien for delinquent taxes as opposed to personal liability for taxes.⁴¹ This conclusion is strengthened by the express provision that the “whole proceeding for the enforcement of property tax liens, from the assessment to sale for delinquency, shall be a proceeding in rem.”⁴²

It is entirely plausible for a state to have both of these different approaches available to local governments for the enforcement of delinquent property taxes. An *in personam* approach may and perhaps should be available for those rare situations where a defendant has ample assets and can be brought within the jurisdiction of the court. The *in rem* approach can and should be used in all other situations precisely because it is designed in the event of nonpayment to force a transfer of the property to a new owner with insurable and marketable title.

One challenge for the State of Tennessee at the present time is the potentially confusing overlay of the statutory sections. The basic description of the property tax lien identifies it as both a lien on the property and as a personal debt of the owner.⁴³ A key statute which describes the proceedings as *in rem* proceedings should be revised to tie directly and specifically to a complaint for enforcement of the lien.⁴⁴

Because the notice to be provided is different in *in personam* proceedings and in *in rem* proceedings, there is potential confusion if not direct conflicts in the existing statutes for the notice to be provided in property tax enforcement proceedings. Necessary clarity could be achieved by clearly separating and differentiating these distinct actions and the notices required by them.

Insurable and marketable title to the property at the completion of a tax sale presupposes notice as constitutionally required to all parties having an interest in the property. The most effective way to achieve this goal is to conduct a comprehensive title examination prior to the filing of the complaint, or commencement of the lien enforcement proceedings. Notice of the complaint is provided to all such interested parties, as well as notice by publication, by mail addressed to “Occupant,” and by posting notice on the property itself.

⁴¹ As a general proposition the provisions of TENN. CODE ANN. Title 67 – Taxes and Licenses, Chapter 5 – Property Taxes, Part 25 – Tax Lien Enforcement Generally (§§ 67-5-2501 through 2516) appears to be designed as an *in rem* lien enforcement system.

⁴² TENN. CODE ANN. §67-5-2103(a).

⁴³ TENN. CODE ANN. §67-5-2101(b).

⁴⁴ TENN. CODE ANN. §67-5-2103(a).

Recommendations

- 2.1. Amend the property tax enforcement statutes to make clear that the two approaches of *in personam* and *in rem* enforcement contemplate different complaints or petitions, with different notice requirements, and different judicial procedures.
- 2.2. Undertake an empirical analysis of the financial recoveries resulting from *in personam* litigation and the financial costs (including all staff related overhead) of obtaining such recoveries. Use this quantitative analysis to develop criteria for guiding decisions on whether to pursue *in personam* liability or *in rem* enforcement.
- 2.3. Amend the property tax enforcement statutes relative to the filing and prosecution of suits⁴⁵ to resolve the confusion as to whether such suits are designed to be *in personam* for personal liability⁴⁶ or to be *in rem* for sale of the property.⁴⁷
- 2.4. Amend the property tax enforcement statutes for filing of an *in rem* complaint to indicate clearly that the defendant is the property itself, with copies of the complaint provided to all Interested Persons⁴⁸ at the time of filing of the complaint.
- 2.5. Amend the property tax enforcement statutes to make clear that *in personam* notice requirements⁴⁹ are applicable only to *in personam* actions, and that *in rem* notice requirements are applicable only to *in rem* actions.⁵⁰
- 2.6. Compare and reconcile the statutory definitions of Interested Person⁵¹ in the tax lien enforcement statute with the corresponding definitions of Owner and Interested Parties in the Neighborhood Preservation Act.⁵²
- 2.7. Amend the notice requirements for *in rem* enforcement proceedings to provide that notices are to be provided by first class mail rather than certified mail or registered mail.
- 2.8. Amend the notice requirements for *in rem* enforcement proceedings to include mailing of notice address to “Occupant” at the property address and the posting of notice on the property itself.
- 2.9. Amend the property tax enforcement statutes to provide that all tax deeds or orders confirming sales are recorded by the Chancery Court Clerk and Master, whether the deeds are to third party purchasers or to governmental entities.

⁴⁵ TENN. CODE ANN. §67-5-2405.

⁴⁶ TENN. CODE ANN. §67-5-2101(b).

⁴⁷ TENN. CODE ANN. §67-5-2103(a)

⁴⁸ TENN. CODE ANN. §67-5-2502(c)(1)(B).

⁴⁹ TENN. CODE ANN. §67-5-2415.

⁵⁰ TENN. CODE ANN. §67-5-2502.

⁵¹ TENN. CODE ANN. §67-5-2502(c)(1)(B).

⁵² TENN. CODE ANN. §13-6-102(5), (8).

B. COORDINATED AND PROACTIVE ENFORCEMENT

As property tax enforcement moves increasingly toward procedures that will result in insurable and marketable title at the completion of a tax sale, such procedures can and should be developed in parallel with the procedures being designed and implemented for Receiver's Lien auctions. It is neither efficient nor effective to have differing, independent, and uncoordinated procedures for enforcement of parallel public liens. The immediate first step in coordination is the creation of a common and shared database for properties. A key second step is the creation of common procedures for title examination, notice, and title policy commitments. The third step in coordination and proactive enforcement is the creation of a standard operating protocol to determine when properties should be enforced by a tax sale and when they should be enforced by a Receiver's Lien auction. Coordinated policies and procedures can provide consistency and reduction in costs through economies of scale.

From a purely financial perspective it would be advantageous for property tax officials to determine the frequency with which tax sales are redeemed by an Owner or Interested Party prior to the end of the statutory redemption period. If properties sold at tax sales are purchased primarily, or even in large numbers, by investors anticipating the likelihood of redemption then an empirical study of redemption rates and redemption amounts will reveal the aggregate cash flow being provided to tax sale investors through the existing Tennessee system of property tax enforcement. Such an analysis could provide a basis for a robust discussion of whether the positive cash flow from the high rates of interest and expenses, payable at redemption, could be internalized by the local government and used to offset the costs associated with remediation of the properties not likely to be sold at a tax sale.

Recommendations

- 2.10. Develop a common accessible database of (i) properties encumbered by delinquent tax liens, (ii) properties encumbered by pending code enforcement actions, and (iii) properties encumbered by both.
- 2.11. Consider the possibility of engaging one or more title insurance companies in large volume master contracts (i) to conduct comprehensive title examinations prior to filing the complaint, (ii) to provide all necessary notices to all Interested Persons, (iii) to publish notice of auctions and sales, and (iv) to provide a commitment for title insurance prior to the tax sale which is transferable to the tax sale purchaser.
- 2.12. Consider the possibility of collaboration between the parties seeking enforcement of Receiver's Liens and the parties seeking enforcement of property tax liens in the decision to obtain comprehensive title examination services so as to minimize duplication and maximize efficiencies in economies of scale.
- 2.13. Develop a standard operating protocol between code enforcement officials seeking a Receiver's Lien auction and taxing officials seeking a delinquent property tax sale to assist in determining whether to proceed with a Receiver's Lien auction or a delinquent property tax sale.

- 2.14. Conduct an empirical study of the rates of redemption, after tax sales, the redemption amounts, the timing of redemption, and the property characteristics for the properties redeemed. Evaluate the possibility of altering tax enforcement policies and policies, or amending state statutes, or both, to increase the ability of the local governments to internalize this positive cash flow.

C. ANTICIPATING THE APPROPRIATE TRANSFEREE

At the present time property tax officials in Tennessee are faced with only two possibilities when tax sales are conducted: a third party purchaser tenders the minimum bid and acquires the property, or no such minimum bid is offered and the property is transferred to the county. In the first situation, the sale is subject to the possibility of redemption which is the primary goal of most tax sale purchasers. It is also subject to the possibility that in the absence of redemption, the tax sale purchaser elects never to record the deed and essentially abandon the investment. In the second situation, which occurs most commonly when the aggregate amount of the tax lien exceeds fair market value, the property tax officials are left with the decision simply to leave the tax lien unenforced or to acquire the property in the name of the local government. When a decision is made not to proceed with a tax sale because there would be no probable bidder, the property essentially becomes “dead” to the marketplace. When a decision is made to proceed with a sale and transfer the property to the local government, the local government commonly lacks capacity to maintain and transfers such surplus property to a new responsible owner.

The presence of a local land bank adds a critical new option for property tax officials, for local governments, and for neighborhoods. When tax delinquent property is not likely to be sold at a tax sale, a land bank should be able to tender the minimum bid and become the new owner of the property, with insurable and marketable title.

Recommendations

- 2.15. Develop policy protocols governing the determination of commencement of delinquent tax lien enforcement procedures that include information about existing or probable Receiver’s Lien enforcement actions.
- 2.16. Amend property tax enforcement statutes to provide that every tax deed, whether to a third party purchaser, to a land bank, or to the county, is recorded by the clerk and special master.
- 2.17. Develop a standard operating protocol and shared data base between the property tax enforcement officials and the land bank to identify those properties for transfer to the land bank at a tax sale.

III. LAND BANKING

The first of the missing pieces in using the excellent tools of the NPA, property tax lien enforcement, and land banking is that of designing the systems so that the final property ownership carries with it insurable and marketable title. The second of the missing pieces is the structural and procedural coordination between Receiver's Lien auctions and property tax lien sales. The third missing piece in the puzzle is aligning the use of the new tools in anticipation of the appropriate transferee of the property.

With the recent enactment of the NPA and key reforms in property tax enforcement procedures, the State of Tennessee has moved forward with authorization for and implementation of the third key tool – land banking at the local government level. The original land bank act was approved in 2012 and amended in 2014 to extend local option authority for the creation of a land bank to a broad range of local governments across the state.⁵³ As with the NPA and the property tax enforcement statutes, the land banking statute contains many, but not all, of the necessary elements to be an efficient, effective, and equitable tool in addressing these properties.

A land bank is a special purpose governmental entity that specializes in the conversion of vacant, abandoned, and deteriorated properties into productive use. More than ten states, including Tennessee, have enacted land bank enabling statutes in the past decade and over 165 local land banks across the country are in operation.

Land banks are not created for the purpose of enforcing housing and building codes. Nor are they created to enforce the collection of properties taxes, to change mortgage foreclosure laws, or even to act in the first instance as redevelopment authorities. Land banks are created to deal with those properties that are vacant, abandoned, and deteriorated and which by their very nature are imposing significant economic and social costs on neighborhoods, communities, and schools. Land banks are designed to become the new owners of these derelict properties when there is no open market demand for them, when public liens on them exceed fair market value, or when the legal systems themselves become a cause of abandonment and market stagnation.

Land banks are created to deal with those properties that are vacant, abandoned, and deteriorated and which by their very nature are imposing significant economic and social costs on neighborhoods, communities, and schools.

⁵³ TENN. CODE ANN. §13-20-101.

Land banks are best designed to work in coordination with existing legal systems and public policies to ensure that the targeted properties are indeed transferred to a new responsible owner. The two dominant legal systems that are the most important partners for land banking are the housing and building code enforcement system and the property tax enforcement system. The magic of the reforms in Tennessee in recent years is that Tennessee has moved forward with authority for and implementation of all three tools.

Because land banking is not a tool designed to enforce housing and building codes or tax liens, the first two key puzzle pieces of insurable and marketable title and coordinated enforcement are not resolved by land banking. The very possibility of land banking, however, changes the necessary coordination in important ways for it creates a potential new appropriate transferee of the property. The land banking tool plays a central role in the third missing piece of the puzzle.

Though there are important programmatic variations in local land banks across the country, the primary role of land banks is to be able to acquire the targeted properties through the code enforcement system or property tax enforcement system when neither the existing owners nor purchasers on the open market will pay the full cost of all public liens that encumber the property. An efficient coordinated system is one that aggregates all public liens that encumber the property, provides opportunity for payment, and upon nonpayment forces a sale or auction of the property. If there is no payment by the owner or an open market purchaser of the aggregate lien amount, the property is transferred to the land bank. An effective coordinated system is one which maximizes opportunity for payment but which conveys insurable and marketable title to the new owner at the time of the sale, whether that new owner is a private third party or a land bank. After acquisition, land banks then play a critical role in maintaining these properties and transferring them to responsible owners.

The Tennessee LBA is patterned in large measure on the most recent generation of comprehensive land bank statutes.⁵⁴ It contains most of the now standard forms of governance, responsibilities, powers, and limitations. It does, however, fail to address one of the most vital powers of a local land bank – the integration with and coordination with the code enforcement system and the property tax enforcement system.

⁵⁴ See *Template for Land Bank Legislation*, Appendix D, in Frank S. Alexander, *LAND BANKS AND LAND BANKING* (2d ed. 2015) (Center for Community Progress).

A. LAND BANK ACQUISITION AT RECEIVER'S LIEN AUCTIONS AND TAX SALES

One of the recurring challenges for property tax lien enforcement sales, as well as for housing and building code lien enforcement auctions, is when the sale occurs and no one in the open market is willing or able to tender the minimum bid. At this point, historically, there were only two options available to the local government. One option has been simply to cancel the sale and hope (rather in vain) that a future auction in subsequent years would yield a different result. The second option has been to transfer the property to the local government and leave it in the inventory of a governmental department that rarely possesses the expertise or resources to handle such properties.

Land banks in Tennessee need to have the express authority to acquire property at tax sales and at Receiver's Lien auctions for the minimum bid. Such authority could be placed in either in the land bank statute or in the NPA and in the appropriate property tax lien enforcement statutes. It could also be addressed separately in each of the appropriate titles of the Tennessee Code. Tennessee statutes on property tax lien enforcement already contemplate potential transfers directly to political subdivisions and to the state⁵⁵ but the underlying structure of these provisions presumes different forms of local government claims and liens to the property in question. Amending these sections to acknowledge the separate legal existence of and roles of a land bank would be problematic.

Establishment of the minimum bid at the tax sale and the Receiver's Lien auction is a critical step. The minimum bid at a tax sale is the amount of all taxes, interests, penalties, costs, and fees, and in the absence of a third party bid the minimum bid is tendered by the clerk of the court.⁵⁶ The minimum bid at a tax sale should also include any and all amounts reflected in a Receiver's Lien. The amount of the minimum bid at a Receiver's Lien auction is not addressed in the NPA. The minimum bid at a Receiver's Lien auction should include the full amount of any and all delinquent property tax liens. An efficient system of lien enforcement would provide that when the local government is conducting an involuntary sale or auction of property, the minimum bid should include any and all amounts due and owing to local and state governments.

Recommendations

- 3.1 Amend the land bank statute to provide expressly for authority to tender the minimum bid with appropriate statutory cross-references to property tax lien enforcement sales and to auctions conducted pursuant to the NPA.
- 3.2 Amend the NPA to specify that the minimum bid at Receiver's Lien auctions includes any and all outstanding amounts secured by delinquent property tax liens.
- 3.3 Amend the property tax enforcement statutes to specify that the minimum bid at tax sales includes the amounts, if any, secured by a Receiver's Lien on the property.

⁵⁵ TENN. CODE ANN. §§67-5-2508, 2510.

⁵⁶ TENN. CODE ANN. §67-5-2501(a)(2).

As a general proposition the sale of property by the enforcement of public liens requires that the property be sold to the highest bidder for cash so long as the bid is not less than the minimum bid. When there is no private third party willing to tender the minimum bid, it is a strong indication that the minimum bid – representing the public liens against the property – is in excess of fair market value. When property is functionally “underwater” in this context the property is not sold to a third party and instead is transferred to the local government, or optimally to the local land bank if it is willing to acquire the property.

Because the minimum bid represents the costs and expenses already incurred by the local government, or the taxes due to the local government, it makes little sense to require that the local government tender cash payment for the amount of the minimum bid. That would, in effect, be requiring the local government to pay twice. Instead, the standard practice in most all tax sales is to provide that when the property is conveyed to the local government because it is the sole party tendering the minimum bid there is no requirement of additional cash payment. Because local land banks are special purpose corporations of local governments, and are directly or indirectly within the control of and accountable to the local governments, land banks that tender the minimum bid at public lien sales and auctions should be deemed the purchaser of the property without any requirement for payment of the minimum bid in cash and all liens and claims that were the basis of the sale or action are deemed extinguished as a matter of law.

Recommendations

- 3.4 Amend the land bank statute⁵⁷ to provide expressly that when the land bank tenders a successful minimum bid in writing it is not required to tender cash for such payment.
- 3.5 Amend the NPA and appropriate property tax lien enforcement statutes to provide that when a local land bank tenders a successful minimum bid the underlying Receiver’s Lien or property tax lien is deemed satisfied and cancelled of record.
- 3.6 Develop a common accessible database of (i) properties encumbered by delinquent tax liens, (ii) properties encumbered by pending code enforcement actions, and (iii) properties encumbered by both.
- 3.7 Develop standard operating protocols among code enforcement, property tax enforcement, and land bank leadership to determine which properties should, at the time of auction or sale, be transferred to the land bank for minimum bid.

⁵⁷ TENN. CODE ANN. §13-30-110.

B. OTHER STATUTORY POWERS FOR TENNESSEE LAND BANKS

The role of a land bank is to acquire vacant, abandoned, and deteriorated properties, eliminate the liabilities associated with them, and place them back into productive use. This role is further strengthened by providing that when a land bank tenders a minimum bid at a Receiver's Lien auction, or a property tax sale, such a bid prevails as a matter of law notwithstanding the presence of other potentially higher bids from the open market. Such a policy position is justified on the grounds that as the new owner a land bank is more likely to remediate and manage the property consistent with public policies than may be an open market investor. This preemptive bid permits a land bank to focus on particular properties imposing unique harms in a given neighborhood and ensures that the property is not simply acquired by a new open market investor who has little interest in remediating the harms and prefers to hold onto the property in its current condition as part of a long term investment strategy. A preemptive bid would dampen the purely speculative market in these properties which has little interest in improving the properties in the near term.

The exercise of a preemptive bid by a land bank at an auction or sale would differ from the regular land bank bid for the minimum bid amount. When a land bank tenders a bid for the minimum bid amount, which is not a preemptive bid, and no third party tenders a bid which is higher than minimum bid, the land bank becomes the owner and the land bank is not required to pay cash for this bid. When, however, a land bank tenders a bid for the minimum bid amount which is a *preemptive* bid, the land bank should be required to tender the minimum bid amount in cash. This critical difference between a normal land bank minimum bid and a *preemptive* minimum bid is in recognition of the fact that but for the preemptive minimum bid the Receiver's Lien, and the property tax lien, would have been paid in full in cash by an open market bid. Requiring a land bank to pay in cash the full amount of the minimum bid when exercising a *preemptive* bid ensures that all liens of the local government entities are still paid in full.

Recommendations

- 3.8 Amend the land bank statute to provide that when a land bank tenders a *preemptive* minimum bid in writing such a bid prevails over all third party bids, and the land bank is required to tender cash for the full amount of such a *preemptive* minimum bid.
- 3.9 Amend the NPA and the appropriate property tax enforcement statutes to provide that auctions and sales shall be to the party tendering the minimum bid, or in the case of a *preemptive* minimum bid, to a land bank.

Though not as vital as these missing interconnections with Receiver's Lien auctions and property tax lien sales, the land bank statute in its present form does not contain other powers relative to its general revenue sources that are found in state land bank statutes in the United States. A common revenue source is the ability to receive a portion of property tax revenues yielded by properties the land bank is able to place back on the tax rolls.

A major challenge for all land banks in the United States is identifying sources of revenues to fund their operations, particularly the direct and indirect costs of rehabilitating, remediating, or demolishing the structures that characterize vacant, abandoned, and deteriorated properties. One policy approach that has been adopted in a number of states is to provide that once a land bank has acquired the property, remediated the conditions, and conveyed the property to a new responsible owner, a portion of the new property tax proceeds attributable to that property are remitted to the local government for a fixed period of time. The policy rationale for this position is that prior to acquisition by the land bank, the property was most likely heavily tax delinquent and thus yielding no tax revenues to the local government and actually causing decline in neighboring property values. When the efforts of the land bank result in changing this negative tax status to a positive one by getting the property back on the tax rolls, then a portion of such revenues for a limited period of time can and should be used to support the land bank operations. The most common period for such tax subsidy of land banks is a five year period commencing on the date that the property is placed back on the tax rolls. The percentage of the general property taxes that are allocated to the land bank range from fifty percent to seventy-five percent. In all states where this tax subsidy is found it is authorized by statute and is permissive but not mandatory at the local government level.

Recommendations

- 3.10 Amend the land bank statute, or property taxation statutes, or both, to provide that at the discretion of the local government which creates a land bank, some portion of the property tax revenues during a stated period of time post-transfer by the land bank are remitted to the land bank for operational purposes.

IV. ALIGNING THE TOOLS

Even if all of the issues and recommendations relative to the NPA, to property tax enforcement, and to the LBA are enacted, it is essential these new tools be coordinated and used in the most efficient and effective manner. To some extent, each tool can stand on its own and accomplish important tasks. To a far greater extent, however, the complex issues of vacant, abandoned, and deteriorated properties requires these tools to be carefully and deliberately coordinated and implemented. This section of the report is designed to offer one perspective on the potential collaboration and coordination between the NPA, the County Trustee (or municipal tax collector), and a local land bank. It suggests one form of a decision tree analysis to identify when to use receivership actions as the primary tool, when to use property tax enforcement as the primary tool, and how to use them in a coordinated fashion. It also suggests when and how transfers to a land bank are the optimum outcome.

A. THE KEY DEFINITIONS, VARIABLES, AND CATEGORIES

For purposes of this analysis there are three key financial variables:

- RL:** The aggregate dollar amount of all sums secured by the Receiver's Lien (for purposes of this analysis at this point the RL is not deemed to include delinquent taxes).
- DT:** The aggregate dollar amount of all sums secured by the delinquent property tax lien.
- FMV:** The projected fair market value of the property once substandard conditions have been remediated and there are no delinquent taxes.

For purposes of a “simple” analysis it is assumed that the overall inventory of the vacant, abandoned, and deteriorated properties in a community is characterized either by the presence of delinquent tax liens (DT) or Receiver’s Liens (RL), or both. It is also assumed, for present purposes, that RL includes not just NPA actions that have been filed but also those properties for which an NPA action could be filed. There are, of course, rare exceptions when a parcel of property has no delinquent taxes and its conditions do not rise to the level of being certified as a public nuisance, but such exceptional cases are not the focus of this work.

This aggregate inventory all of properties in a community with either DT or RL could be divided into seven categories according to the relationships between DT, RL, FMV, and the probability of “voluntary” compliance of an Owner or Interested Party.

- Category A:** This category includes all of the properties which have a high likelihood of voluntary compliance by an Owner or Interested Party without need for a final sale or auction event.
- Categories B and C:** These two categories include properties that are characterized only by the presence of RL. There are no DT on these properties.
- Category D and E:** These two categories include those properties which are encumbered by both DT and RL.
- Categories F and G:** These two categories include properties that are characterized only by the presence of DT. There are no property conditions that would justify the initiation of an action under the NPA and the appointment of a receiver.

<u>Category</u>	<u>Liens</u>		<u>Fair Market Value</u>
A	High probability of “voluntary” compliance by Owners with no need for auction or sale		
B	RL only (no DT)	<	Significantly less than FMV
C	RL only (no DT)	>	Significantly greater than FMV
D	Both RL and DT	<	Significantly less than FMV
E	Both RL and DT	>	Significantly greater than FMV
F	DT only (no RL)	<	Significantly less than FMV
G	DT only (no RL)	>	Significantly greater than FMV

B. ALIGNING THE TOOLS AND STRATEGIES

Category A properties represent those that provide the optimum outcome for all parties involved. The owners of the property pay the property taxes and remediate the property conditions. There is no involuntary sale of the property. This result may occur because FMV significantly exceeds DT or RL, or both. It may also occur as a result of locating the Owner or Interested Party and informing them of the DT or RL or working with them to achieve the payment or resolution of the RL. **Early intervention is a key to a successful outcome for these Category A properties.** The longer the period of time between the onset of the tax delinquency or the substandard conditions the lower the likelihood of voluntary compliance.

Recommendations

- 4.1. Ensure that the RL and DT reflect the fully-loaded direct and indirect costs to the public sector of addressing noncompliance, including personnel costs, and the costs of all notices and all other expenditures.
- 4.2. Create as a standard operating protocol between code enforcement officers and property tax officials the regular sharing of a common database for monitoring the onset of DT or RL.
- 4.3. Use a standard operating protocol, or common database, to document and share actions, initiatives, and information to avoid unnecessary duplication of efforts.

Category B and Category C properties include only those properties for which there is an existing or potential action under the NPA and an RL. There are no delinquent property taxes on these properties. This is not normally a large set of properties but they do exist, particularly in situations of absentee ownership (or highly fractured heir property ownership) where someone is paying the annual taxes but lacks any real knowledge of the property conditions.

Category B properties are those properties for which the RL, plus costs of compliance with a development plan, are *significantly less* than the FMV. In normal situations where property taxes are being paid and the costs of compliance are far less than FMV, the owner or interested party will “voluntarily” comply and no auction is necessary. Because there are instances, however, when the ownership of the property is highly fractured, or in dispute, or the owner otherwise has no interest in compliance, an involuntary sale is necessary. In this narrow category of properties where the costs of compliance are significantly less than FMV (post-compliance) there is a high probability of a successful auction sale to a third party purchaser. In this situation it should be unnecessary for the Court or its appointed Receiver, or the local government, to advance the funds for remediation of the substandard conditions prior to the auction. The Court and the Receiver should ensure that the remediation is done as part of the terms and conditions of the auction sale.

Recommendations

- 4.4. Amend the NPA to permit enforcement of the RL through an auction without completion of development plan remediation. (See Recommendation 1.22).
- 4.5. When a RL auction occurs without remediation, specify in the court order for the auction that the projected costs of remediation, and the obligation to perform the remediation, are secured by a promissory note and mortgage executed by the purchaser in favor of the land bank.

Category C properties are those properties for which the RL, plus costs of compliance with a development plan, *greatly exceed* the FMV. For these properties there is no likelihood to a successful sale to the open market at an RL auction precisely because the costs of remediation have exceeded, or will exceed, post-remediation FMV. Because there will be no sale, the RL and corresponding public expenditures will not be recovered at a sale. The land bank tool becomes necessary and indispensable as the transferee of the property at the auction and the new responsible property owner.

Recommendations

- 4.6. Ensure that the minimum bid at an RL auction is the fully-loaded amount inclusive of all direct and indirect costs and expenditures.
- 4.7. Coordinate in advance the RL auction with the land bank and authorize the land bank to submit a written offer of minimum bid. Upon completion of the sale and confirmation by the court, issue a deed to the land bank transferring insurable and marketable title to the land bank.
- 4.8. Specify in the court order of confirmation of the auction sale that the RL is extinguished.

Category D and Category E properties are those properties which have both RL and DT. These categories contain the largest percentage of the inventory of properties that are loosely considered to be vacant, abandoned, and deteriorated properties. These are the properties that are most likely to be imposing greatest costs and harms on the neighborhood and community. A successful resolution for these properties requires the maximum coordination in the use of the three tools of the NPA, tax enforcement, and land banking, and all three are necessary.

Category D properties are those for which the aggregate dollar amount of the RL and DT is *significantly less* than the FMV. This could include situations where the remediation has been completed by the Receiver as well as those situations where the remediation has not yet been done by the Receiver but where the RL plus the compliance costs, plus the DT, are still significantly less than the FMV. In these situations it is highly likely that a sale will occur to a third-party purchaser. Coordination suggests in the first instance that a single enforcement event be pursued. It is hardly

efficient to have separate governmental entities pursuing independent enforcement actions directed toward the sale of the same property. This would result in maximum duplication of time, energy, and costs and pose complex issues of relative priority of the sales events. A single enforcement event can rest upon a single comprehensive title examination, provision of notice, and title commitment. In order for a single enforcement event to be effective it is important that the minimum bid at the sale be inclusive of both the RL and the DT. Though statutory amendments to the NPA are necessary to clarify the RL auction procedures, the overall form and structure of the RL auction is likely to be just as effective and more efficient than the property tax lien enforcement procedures. Because the FMV exceeds the aggregate amount of the RL and the DT, and the sale will be made for cash, the full amount of the RL will be paid and the full amount of the DT will be transmitted by the court to the appropriate taxing entities.

Recommendations

- 4.9. Develop a standard operating protocol and shared database between the code enforcement offices and the property tax collection offices to identify the Category D properties.
- 4.10. Through the standard operating protocol designate the Receiver as the party responsibility for the conducting the combined RL/DT auction.
- 4.11. Confirm that the minimum bid at the auction includes all DT as well as RL.
- 4.12. Specify in the court order of confirmation of the auction sale that the DT is to be transmitted to the appropriate property tax collection office and that both the RL and DT are extinguished.

Category E properties are those that are encumbered by both RL and DT and the aggregate combined amount of the RL and the DT *greatly exceeds* the FMV. This situation occurs when the vacant, abandoned, and deteriorated property has been in this status for a long period of time, or whether recent casualty losses occurred and the Owners and Interested Parties elected not to invest in remediation and instead to abandon the property. When the aggregate combined amount of the RL and the DT, which should be the minimum bid at an auction or sale, greatly exceeds the FMV there will be no private third party bidders on the open market, and the public expenditures and public liens are not recoverable. In these situations there is still need for coordination in the enforcement of the RL and DT through a single proceeding with an aggregate RL and DT minimum bid. Because there will be no third-party bidder in this situation, the land bank tool becomes necessary and indispensable as the transferee of the property at the auction and the new responsible property owner.

Recommendations

- 4.13. Develop a standard operating protocol and shared database between the code enforcement offices and the property tax collection offices to identify the Category E properties.
- 4.14. Through the standard operating protocol, designate the Receiver as the party responsibility for the conducting the combined RL/DT auction.
- 4.15. Confirm that the minimum bid at the auction includes all DT as well as RL.
- 4.16. Coordinate in advance the enforcement auction with the land bank and authorize the land bank to submit a written offer of minimum bid. Upon completion of the sale and confirmation by the court, issue a deed to the land bank transferring insurable and marketable title to the land bank.
- 4.17. Specify in the court order of confirmation of the auction sale that both the RL and the DT are extinguished.

Category F and G properties are those which have DT but otherwise have no evidence of substandard conditions which could be the basis for an enforcement action under the NPA. This suggests that the properties may be vacant and abandoned but are not deteriorated. In such instance the necessary and appropriate coordination is between the property tax enforcement system and land banking.

Category F contains those properties for which the aggregate amount of the DT is *significantly less* than the FMV. In these situations it is highly likely that there will be a third-party purchaser at the tax sale with payment in full of the minimum bid. In most situations there is no need for a land bank to serve in the role of a transferee at the tax enforcement sale. In limited circumstances where a particular parcel of tax delinquent property is critical to the disposition program and policies of a land bank, where there is concern that third party purchasers may act to the disadvantage of owners during the applicable redemption period, or concern that third party purchasers are likely to be passive speculators in the property, it is possible to provide by statute that a land bank has authority to tender the minimum bid at a tax sale, which bid is a preemptive bid and prevails notwithstanding the presence of potentially higher third party-bids. Such a preemptive bid by the land bank must be paid in full in cash to the taxing entity.

Recommendations

- 4.18. Amend the land bank statute, or the property tax lien sale statutes, to confer discretionary authority upon a local land bank to tender the minimum bid, for cash, at a tax sale which is a preemptive bid.

Category G contains those properties for which the aggregate amount of the DT *greatly exceeds* the FMV. In these situations there will be no third party purchaser at the tax sale and no payment of the DT. In such a context the DT are functionally an uncollectible lien, and under existing Tennessee law, the property defaults to the county by virtue of the minimum being statutorily tendered by the clerk and master of the court. It is in precisely these contexts that land banks were first created in the United States and all other states to expressly authorize the transfers to land banks at property tax sales. In one state (Michigan) a local land bank essentially becomes the transferee of all tax delinquent properties that are not redeemed, but this has the disadvantage of making the land bank the owner of large volumes of inventory without necessarily having the financial resources to maintain and manage the inventory. In all other land bank jurisdictions land banks have the discretion, but not the obligation, to tender minimum bids at tax sales. The most efficient and effective strategy in this context is to use both the tools of tax enforcement and of land banking to move the property from the status of harming the community with growing tax liabilities into the status of ownership by the land bank which is charged with returning it to productive use.

Recommendations

- 4.19. Develop a standard operating protocol and shared database between the property tax enforcement officials and the land bank to identify the Category G properties.
- 4.20. Amend the land bank statute or the property tax lien enforcement statute, or both, to provide expressly that when the land bank tenders a successful minimum bid in writing it is not required to tender cash for such payment.
- 4.21. Amend the NPA or the property tax lien enforcement statute, or both, to provide that when a local land bank tenders a successful minimum bid the underlying property tax lien is deemed satisfied and cancelled of record.

CONCLUSION

Dealing with vacant, abandoned, and deteriorated properties in our neighborhoods is rarely an easy task and it is often an unpleasant task, but it is a task that plants the seeds of hope and gives birth to new communities. It is the starkness of decay and its impact on the lives around it that gives motivation to tackling the arcane complexities of legal systems designed for centuries past. It is the promise of new and renewed relationships with each other, and with the land, that gives strength to persevere.

The State of Tennessee, and the communities of Oak Ridge, Chattanooga, and Memphis in particular have taken fundamental steps forward in just the past three years in designing and redesigning tools to meet the challenges of these vacant, abandoned, and deteriorated properties. The form of these tools has been set and they are beginning to take shape. But they are not yet complete. Each of the tools needs refinement and alignment.

There are three missing pieces to the puzzle of strategies to address these properties. The tools are not yet capable of providing insurable and marketable title to new responsible owners of the property. The tools are not yet coordinated and aligned for substantive strength or for clarity regarding which tool to use in which context. The tools are not yet being implemented with proactive clarity on the ultimate new transferee of the property.

The goal of this report has been to identify these missing pieces, suggest ways to refine them and to align them, and to empower these communities to move forward with effective, efficient, and equitable strategies.

There are many other issues and challenges that lie within this overall task but which are not addressed in this report. These include (i) strategies for addressing the title defects in pre-existing inventories of local government which originated in tax sales, (ii) pre-existing liens of local governments for code enforcement related activities, (iii) the difficulties posed by the bulk sale, or “factoring,” of municipal tax liens, (iv) the inefficiencies created by separate and independent taxation of property by different levels of local government, and (v) the vital issues of discerning ways to protect and to support vulnerable owner occupants and vulnerable neighborhoods.

The task is not yet complete, but the work is well underway.

ENFORCING THE PUBLIC LIENS

Liens	Liens Compared to FMV	Property Category	Enforcement Process	Disposition Strategy
Not Applicable	Not Applicable	A	High probability of “voluntary” compliance by Owners with no need for auction or sale	
RL Only	Less than FMV	B	RL Auction	Sale to Highest Bidder
	Greater than FMV	C	RL Auction	Transfer to Land Bank for Credit Bid
RL & DT	Less than FMV	D	RL Auction	Sale to Highest Bidder
	Greater than FMV	E	RL Auction	Transfer to Land Bank for Credit Bid
DT Only	Less than FMV	F	DT Lien Sale	Sale to Highest Bidder
	Greater than FMV	G	RL Auction	Transfer to Land Bank for Credit Bid

Financial Variables

- RL:** The aggregate dollar amount of all sums secured by the Receiver’s Lien (for purposes of this analysis at this point the RL is not deemed to include delinquent taxes).
- DT:** The aggregate dollar amount of all sums secured by the delinquent property tax lien.
- FMV:** The projected fair market value of the property once substandard conditions have been remediated and there are no delinquent taxes.

Category Definitions

Category	Liens		Fair Market Value
A	High probability of “voluntary” compliance by Owners with no need for auction or sale		
B	RL only (no DT)	<	Significantly less than FMV
C	RL only (no DT)	>	Significantly greater than FMV
D	Both RL and DT	<	Significantly less than FMV
E	Both RL and DT	>	Significantly greater than FMV
F	DT only (no RL)	<	Significantly less than FMV
G	DT only (no RL)	>	Significantly greater than FMV

APPENDIX A: COMPOSITE RECOMMENDATIONS

This Appendix A draws upon all of the observations, suggestions, and recommendations set forth in the different sections of the report and significantly reorganizes them. As to each of three key legal systems – code enforcement, property tax enforcement, and land banking – the recommendations are divided into two subcategories, (a) legislative and (b) operating policies and procedures. Duplication and repetition has largely been eliminated but caution needs to be exercised in assuming that a key point is ultimately advanced in any given set of legislative proposals or by any given office with public policy responsibilities.

I. Housing and Building Code Enforcement

- A. Legislative Recommendations (amendments to the NPA, Tenn. Code Ann. §13-6-101).
- 1.1. Jurisdiction.
- (a) Amend §13-6-106(a) to provide that a municipal corporation has standing to file civil actions under the NPA.
 - (b) Amend §13-6-105 to provide that the NPA is available to any local government that creates a land bank pursuant to the land bank statute, §13-30-104(a)(1).
- 1.2. Nature of the Proceedings.
- (a) Actions brought under the NPA are solely *in rem* actions.
 - (b) The Defendant in an NPA action is the property itself, and not any of the Owners or Interested Parties.
 - (c) Notice of the complaint shall be provided to all Owners and Interested Parties as revealed by a comprehensive title examination of the property.
 - (d) Notice shall be transmitted by first class mail, by publication, by mailing notice to the “Occupant” at the property address, and by posting notice on the property.
 - (e) Amend the definition of Interested Parties to expressly include, or expressly exclude, the holders of the benefit of easements appurtenant or the benefit of restrictive real covenants.
 - (f) Create consistency between the definitions of Owner and Interested Parties as set forth in the NPA⁵⁸ with the definition of “Interested Person” as used in a portion of the delinquent property tax sale statute.⁵⁹

⁵⁸ TENN. CODE ANN. §13-6-102(5), (8).

⁵⁹ TENN. CODE ANN. §67-5-2503(c)(1)(B).

1.3. The Receiver's Lien.

- (a) Provide that the original complaint requests the appointment of a receiver, and that the Receiver's Lien arises upon filing of the complaint and recording of notice in appropriate real property records. The complaint should specify that a receiver would be appointed only upon subsequent motion by the party filing the complaint.
- (b) The Receiver's Lien arises upon the initial filing of the complaint and it secures an inchoate financial amount until established by the court. The precise dollar amount secured by the Receiver's Lien is established by the court at any time upon the request of any Owner or Interested Party, or the Receiver.
- (c) The Receiver's Lien, upon approval by the court, includes any and all expenses and costs incurred by the Receiver in implementation of the detailed development plan and is inclusive of all direct and indirect costs and expenditures.
- (d) The Receiver's Lien, upon approval by the court, includes any and all outstanding municipal fines, penalties, expenditures, and assessments attributable to housing and building code citations and enforcement actions.
- (e) Amend the NPA to replace the concepts of "Insolvent Property" and "Uncollectible" with a single proposition that the dollar amount of the Receiver's Lien shall include any and all amounts attributable to state and local taxes and assessments, and the amount shall be established by the court. In the event of payment of the full amount of the Receiver's Lien by an Owner or Interested Party, or in the event the property is sold to a private third party at auction for at least the full amount of the Receiver's Lien, the amount of taxes and assessments shall be disbursed to the appropriate taxing entity.
- (f) The Receiver's Lien, and the minimum bid at Receiver's Lien auctions, includes any and all outstanding amounts secured by delinquent property tax liens.
- (g) The outstanding principal amount of the Receiver's Lien carries interest at a standard statutory rate applicable to judgment liens in Tennessee.

1.4. Subject to court approval, the Receiver's Lien may be enforced through an auction without completion of development plan remediation. The Receiver may petition the court for authority to conduct an auction and sale without completion of the development plan remediation upon showing that (i) projected remediation costs plus the amount of the Receiver's Lien are less than fair market value, and (ii) the terms of the auction minimum bid will include a bond or other security such as a mortgage ensuring performance of the remediation executed by the purchaser in favor of the local land bank.

1.5. Receiver's Lien Auctions.

- (a) Provide for the presumptive criteria for the time, place, and manner of Receiver's Lien auctions, setting them forth with specific detail or using by appropriate statutory cross-references to existing mortgage foreclosure or judgement lien foreclosure procedures.
- (b) The minimum bid at a Receiver's Lien auction is the full amount of the Receiver's Lien.

- (c) When the minimum bid at a Receiver's Lien auction is tendered by a local government or a local land bank, and there is no higher bid by any party, the property is sold to the local government or local land bank and there is no requirement of cash payment of the minimum bid.
- (d) When the successful bid is paid in cash the amount of the minimum bid is paid to satisfy the Receiver's Lien, including transfer to the appropriate property tax officials of that portion of the Receiver's Lien that constituted delinquent property taxes.
- (e) To the extent that a successful bid exceeds the minimum bid, the surplus amount shall be distributed by the court to the Owner's and Interested Parties in the priority in which their interests encumbered the property prior to the auction.
- (f) The successful bid at the auction, and the identity of the transferee, is reported to the court and, upon approval and confirmation by the court, a final order and deed is issued to the successful bidder. Upon confirmation by the court of the sale the underlying Receiver's Lien and property tax lien, if any, is deemed satisfied and cancelled of record.
- (g) A Receiver's Lien auction, upon approval and confirmation by the court, terminates the interests of all Interested Parties.
- (h) A local land bank may tender a preemptive bid for the minimum amount, in which event the property shall be sold to the land bank notwithstanding the presence of higher bids. In all cases involving the exercise of a preemptive bid the local land bank shall pay the full amount of the minimum bid in cash.

B. Operating Policies and Procedures

1.6. Consider the possibility of engaging one or more title insurance companies in large volume master contracts (i) to conduct preliminary title examinations for targeted properties with high probability of voluntary compliance, (ii) to conduct comprehensive title examinations for targeted parties with low probability of voluntary compliance, (iii) to provide all necessary notices to all Owners and Interested Parties, (iv) to publish notice of auctions and sales, and (v) to provide a commitment for title insurance prior to the auction which is transferable to the auction purchaser.

1.7. Consider the possibility of modifying current practices, to divide the target inventory into two categories. One category would consist of those properties having a high probability of successful voluntary compliance. The second category would consist of those properties with a low probability of successful compliance. As to the first category, minimize costs by conducting limited title examination, with no expectation of a title commitment. As to the second category, conduct a comprehensive title examination, provide maximum notice of all forms, and conduct this process in reliance on a commitment for title insurance.

1.8. Develop a standard operating protocol between code enforcement officials seeking a Receiver's Lien auction and taxing officials seeking a delinquent property tax sale to assist in determining whether to proceed with a Receiver's Lien auction or a delinquent property tax sale.

1.9. Evaluate the efficacy of the potential order barring a transfer of the property without abatement of the public nuisance and, if necessary, amend the NPA to make clear its application to mortgage transfers and mortgage foreclosures unless authorized by the court.

II. Delinquent Property Tax Enforcement

A. Legislative Recommendations

2.1. Nature of Proceedings.

- (a) Amend the property tax enforcement statutes to make clear that the two approaches of *in personam* and *in rem* enforcement contemplate different complaints or petitions, with different notice requirements, and different judicial procedures.
- (b) Amend the property tax enforcement statutes relative to the filing and prosecution of suits to resolve the confusion as to whether such suits are designed to be *in personam* for personal liability or to be *in rem* for sale of the property.
- (c) Amend the property tax enforcement statutes to make clear that *in personam* notice requirements are applicable only to *in personam* actions, and that *in rem* notice requirements are applicable only to *in rem* actions.
- (d) Amend the property tax enforcement statutes for filing of an *in rem* complaint to indicate clearly that the defendant is the property itself, with copies of the complaint provided to all Interested Persons at the time of filing of the complaint.
- (e) Amend the notice requirements for *in rem* enforcement proceedings to provide that notices are to be provided by first class mail rather than certified mail or registered mail.
- (f) Amend the notice requirements for *in rem* enforcement proceedings to include mailing of notice address to “Occupant” at the property address and the posting of notice on the property itself.
- (g) Compare and reconcile the statutory definitions of Interested Person in the tax lien enforcement statute with the corresponding definitions of Owner and Interested Parties in the Neighborhood Preservation Act.

2.2. Tax Sales.

- (a) Amend the property tax enforcement statutes to specify that the minimum bid at tax sales includes the amounts, if any, secured by a Receiver’s Lien on the property.
- (b) Amend the property tax enforcement statutes to recognize that the outstanding amount of a property tax lien may be incorporated in a Receiver’s Lien and included as part of the minimum bid at a Receiver’s Lien auction.
- (c) Amend the property tax enforcement statutes to recognize the ability of a land bank to tender the minimum bid, without requirement of payment in cash, or to tender a preemptive minimum bid, with requirement of payment in cash.

(d) Amend the property tax lien enforcement statutes to provide that when a local land bank tenders a successful minimum bid the property tax lien is deemed satisfied and cancelled of record.

2.3. Amend the property tax enforcement statutes to provide that all tax deeds are recorded by the Chancery Court Clerk and Master, whether the deeds are to third party purchasers or to governmental entities.

B. Operating Policies and Procedures

2.4. Develop a common accessible database of (i) properties encumbered by delinquent tax liens, (ii) properties encumbered by pending code enforcement actions, and (iii) properties encumbered by both.

2.5. Develop a standard operating protocol between code enforcement officials seeking a Receiver's Lien auction and taxing officials seeking a delinquent property tax sale to assist in determining whether to proceed with a Receiver's Lien auction or a delinquent property tax sale.

2.6. Consider the possibility of engaging one or more title insurance companies in large volume master contracts (i) to conduct comprehensive title examinations prior to filing the complaint, (ii) to provide all necessary notices to all Interested Persons, (iii) to publish notice of auctions and sales, and (iv) to provide a commitment for title insurance prior to the tax sale which is transferable to the tax sale purchaser.

2.7. Consider the possibility of collaboration between the parties seeking enforcement of Receiver's Liens and the parties seeking enforcement of property tax liens in the decision to obtain comprehensive title examination services so as to minimize duplication and maximize efficiencies in economies of scale.

2.8. Conduct an empirical analysis of the financial recoveries resulting from *in personam* litigation, the fully loaded costs (including all staff related overhead) of obtaining such recoveries. Use this quantitative analysis to develop criteria for guiding decisions on whether to pursue *in personam* liability or *in rem* enforcement.

2.9. Conduct an empirical study of the rates of redemption, after tax sales, the redemption amounts, the timing of redemption, and the property characteristics for the properties redeemed. Evaluate the possibility of altering tax enforcement policies and policies, or amending state statutes, or both, to increase the ability of the local governments to internalize this positive cash flow.

2.10. Develop a standard operating protocol and shared data base between the property tax enforcement officials and the land bank to identify those properties for transfer to the land bank at a tax sale.

III. Land Banking

- A. Legislative Recommendations (amendments to the NPA, Tenn. Code Ann. §13-6-101).
- 3.1. Provide for authority to tender the minimum bid with appropriate statutory cross-references to property tax lien enforcement sales and to auctions conducted pursuant to the NPA.
 - 3.2. Provide that when the land bank tenders a successful minimum bid in writing it is not required to tender cash for such payment.
 - 3.3. Provide that when a land bank tenders a *preemptive* minimum bid in writing such a bid prevails over all third party bids, and the land bank is required to tender cash for the full amount of such a *preemptive* minimum bid.
 - 3.4. Amend the land bank statute, or property taxation statutes, or both, to provide that at the discretion of the local government which creates a land bank a portion of the property tax revenues during a stated period of time post-transfer by the land bank are remitted to the land bank for operational purposes.
- B. Operating Policies and Procedures
- 3.5. Develop a common accessible database of (i) properties encumbered by delinquent tax liens, (ii) properties encumbered by pending code enforcement actions, and (iii) properties encumbered by both.
 - 3.6. Develop standard operating protocols among code enforcement, property tax enforcement, and land banking leadership to determine which properties should, at the time of auction or sale, be transferred to the land bank for minimum bid.

IV. Aligning the Tools

Operating Policies and Procedures

- 4.1. Ensure that the RL and DT reflect the fully-loaded direct and indirect costs to the public sector of addressing noncompliance, including personnel costs, the costs of all notices and all expenditures.
- 4.2. Create as a standard operating protocol between code enforcement officers and property tax officials the regular sharing of a common data base for monitoring the onset of DT or RL.
- 4.3. Use a standard operating protocol, or common data base, to document and share actions, initiatives, and information to avoid unnecessary duplication of efforts.
- 4.4. When a RL auction occurs without remediation specify in the court order for the auction that the projected costs of remediation, and the obligation to perform the remediation, are secured by a promissory note and mortgage executed by the purchaser in favor of the land bank.

- 4.5. Coordinate in advance every RL auction with the land bank to ascertain whether the land bank will tender minimum bid, or a preemptive minimum bid.
- 4.6. Develop a standard operating protocol and shared data base between the code enforcement offices and the property tax collection offices to identify the Category D properties.
- 4.7. Through the standard operating protocol designate the Receiver as the party responsibility for the conducting the combined RL/DT auction.
- 4.8. Confirm that the minimum bid at the auction includes all DT as well as RL.
- 4.9. Develop a standard operating protocol and shared data base between the code enforcement offices and the property tax collection offices to identify the Category E properties.
- 4.10. Develop a standard operating protocol and shared data base between the property tax enforcement officials and the land bank to identify the Category G properties.

APPENDIX B: LIST OF PARTICIPANTS IN SITE MEETINGS

[The identification of the following individuals is solely to indicate their attendance at one or more meetings with the author of this report, and neither suggests nor implies their agreement with any of the information, analysis, observations, or recommendations in this report.]

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Tennessee Rules of Civil Procedure

4.04. Service Upon Defendants within the State. [Current rule. See Proposed rule.]

The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary. Service shall be made as follows:

- (1) Upon an individual other than an unmarried infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or if he or she evades or attempts to evade service, by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, whose name shall appear on the proof of service, or by delivering the copies to an agent authorized by appointment or by law to receive service on behalf of the individual served.
- (2) Upon an unmarried infant or an incompetent person, by delivering a copy of the summons and complaint to the person's residence guardian or conservator if there is one known to the plaintiff; or if no guardian or conservator is known, by delivering the copies to the individual's parent having custody within this state; or if no such parent is within this state, then by delivering the copies to the person within this state having control of the individual. If none of the persons defined and enumerated above exist, the court shall appoint a practicing attorney as guardian ad litem to whom the copies shall be delivered. If any of the persons directed by this paragraph to be served is a plaintiff, then the person who is not a plaintiff who stands next in the order named above shall be served. In addition to the service provided in this paragraph, service shall also be made on an unmarried infant who is fourteen (14) years of age or more, and who is not otherwise incompetent.
- (3) Upon a partnership or unincorporated association (including a limited liability company) which is named defendant under a common name, by delivering a copy of the summons and of the complaint to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.
- (4) Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the summons and of the complaint to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.
- (5) Upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in a county other than the county in which the resident individual resides, in any action growing out of or connected with the business of that office or agency, by delivering a copy of the summons and of the complaint to the person in charge of the office or agency.
- (6) Upon the state of Tennessee or any agency thereof, by delivering a copy of the summons and of the complaint to the attorney general of the state or to any assistant attorney general.
- (7) Upon a county, by delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county court clerk.
- (8) Upon a municipality, by delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to the city attorney.
- (9) Upon any other governmental or any quasi-government entity, by delivering a copy of the summons and of the complaint to any officer or managing agent thereof.
- (10) Service by mail of a summons and complaint upon a defendant may be made by the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint is filed, the clerk shall, upon request, furnish the original summons, a certified copy thereof and a copy of the filed complaint to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant. If the defendant to be served is an individual or entity covered by subparagraph (2), (3), (4), (5), (6), (7), (8), or (9) of this rule, the return receipt mail shall be addressed to an individual specified in the applicable subparagraph. The original summons shall be used for return of service of process pursuant to Rule 4.03(2). Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute. If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used.
- (11) When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing.

Neighborhood Preservation Act

13-6-101. Short title.

This chapter shall be known and may be cited as the "Neighborhood Preservation Act."

13-6-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Abate" or "abatement" in connection with any building means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life;
- (2) "Building" means any building or structure that is vacant or occupied by any owner, tenants or residents;
- (3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;
- (4) "Insolvent property" means property subject to real property tax liens, fines or penalties, or to special assessments or improvement district liens, or other similar liens securing obligations in excess of the amount for which the property could reasonably be sold to a private purchaser at tax sale;
- (5) "Interested party," for purposes of § 13-6-106(g) only, means any owner, mortgagee, lien holder or person that possesses an interest of record in any property that becomes subject to the jurisdiction of a court pursuant to this chapter;
- (6) "Municipal corporation" means any incorporated city, town or county in this state, including any county having a metropolitan form of government, and as further defined by the population restrictions set forth § 13-6-105;
- (7) "Nonprofit corporation" means any nonprofit corporation that has been duly organized under the laws of this state, and has as one (1) of its goals community development or redevelopment;
- (8) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:
 - (A) All or part of the legal title to property; or
 - (B) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;
- (9) "Public nuisance" means any building that is a menace to the public health, welfare, or safety; structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, dangerous to human life, or no longer fit and habitable; a nuisance as defined in § 29-3-101; or is otherwise determined by the court, the local municipal corporation or code enforcement entity to be as such;
- (10) (A) "Receiver" means either a municipal corporation or a nonprofit corporation that agrees to be appointed by the court for the purpose of preserving or improving the property of another. Any nonprofit corporation so appointed shall first be certified as an eligible receiver by the court, the municipal corporation, or the code enforcement entity where the building is located. The certification of a nonprofit corporation shall be issued upon receipt of the following:
 - (i) An external verification of nonprofit status;
 - (ii) The nonprofit corporation's articles of incorporation or bylaws evidencing community development or redevelopment is a part of the mission;
 - (iii) Evidence of financial capacity to carry out a community development or redevelopment project, including audited financial statements of the organization for the past five (5) years, where applicable;
 - (iv) The organization's formal conflict of interest policy governing both the staff and the board of directors; and
 - (v) Evidence of the administrative capacity to successfully undertake a community development or redevelopment project;
- (B) A receiver appointed pursuant to this subdivision (10) is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office;
- (11) "Residential property" means a dwelling unit that is owner-occupied and the owner's principal place of residence, or that is otherwise intended for single-family residential use;
- (12) "Residential rental property" means a building or structure consisting of one (1) or two (2) dwelling units; and
- (13) "Uncollectible" means tax liens, fines or penalties, special assessments or improvement district liens, and/or other similar liens attached to real property for which there is no substantial likelihood of ever being collected by the lienholder in the use of reasonable efforts to collect them.

13-6-103. Maintenance at level of community standards.

- (a) The owner of residential rental property or residential property shall be required to maintain the exterior of such property and the lot on which the residential rental property or residential property is located at a level which is no less than the community standards of the residential property in the area.
- (b) It is prima facie evidence that the residential rental property or residential property is not maintained at the community standards of the residential property in the area if the owner of such residential rental property or residential property has been cited for three (3) or more separate violations of local building and construction codes or property standards governing residential property within a one-year period and the owner has not brought the property into compliance with such building and construction codes or property standards within such period.

13-6-104. Action for damages for failure to maintain property -- Measure of damages.

- (a) An owner of residential property affected by residential rental property or residential property not maintained to community standards of residential property in the area may bring an action for damages against the owner of such residential rental property or residential property for failure to maintain the property in the manner required by § 13-6-103; provided, however, that a showing by the owner of the residential rental property or residential property that the failure to maintain the property is due to an act of nature, serious illness, or a legal barrier shall constitute a defense to any cause of action brought under this section.
- (b) The measure of damages shall be the difference between the value of the owner's residential property if the residential rental property or residential property were maintained at the community standards of the residential property in the area and the value of the owner's residential property because the residential rental property or residential property is not maintained at such community standards.
- (c) As proof of the value of the owner's residential property, the plaintiff shall submit to the court two (2) independent appraisals.
- (d) Upon a finding by the court that an owner of residential rental property or residential property has failed to maintain the property in the manner required by § 13-6-103, the court may award to the person bringing an action under this chapter reasonable attorney's fees and costs.

13-6-105. Application.

This chapter shall only apply in any county having a metropolitan form of government which has a population in excess of five hundred thousand (500,000), or in any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, or in any county having a population of not less than ninety-eight thousand two hundred (98,200) nor more than ninety-eight thousand three hundred (98,300), according to the 2010 federal census or any subsequent federal census.

13-6-106. Civil action to enforce compliance -- Draft order of compliance.

- (a) Any nonprofit corporation as defined in § 13-6-102, or any interested party or neighbor, may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of any building or structure that is vacant or occupied by any owner, tenants or residents for failure to comply with that ordinance or regulation. If the petitioner has not attached a certificate of public nuisance to the complaint, the court, by written notice to the chief housing officer and the chief legal officer of the municipal corporation, may request that the code enforcement entity complete its inspection and issue a certificate of public nuisance or denial including a list of the reasons for the determination within thirty (30) calendar days. If the code enforcement entity fails to respond within thirty (30) calendar days of written notice, or if the code enforcement entity denies the issuance of certificate of public nuisance, then the court shall schedule a hearing requesting that the code enforcement entity be present, with its findings, and participate in the hearing of the issue of public nuisance. At the conclusion of the hearing of the issue of public nuisance, the court shall determine whether or not the issuance of a certificate of public nuisance is warranted.
- (b) The complaint shall include a draft order of compliance setting forth the relief requested as described in this section, and may request the appointment of a receiver if the order of compliance is not successful.
- (c) In the civil action, notice shall comply with Tennessee Rules of Civil Procedure, Rule 4. Additionally, notice shall require that a copy of the complaint be posted in a conspicuous place on the building and that the complaint be published in the local paper.
- (d) The court shall conduct a hearing in a timely manner at least twenty-eight (28) calendar days but no later than sixty (60) calendar days after all notice provisions of this section have been satisfied, including that the owner of the building has been served with a copy of the complaint and the notice of the date and time of the hearing.
- (e) The action will be dismissed if the building is not certified as a public nuisance by the municipal corporation or code enforcement entity where the building is located or by the court. If the owner can establish the grounds as set forth in § 13-6-104, it shall constitute a complete defense to any cause of action brought under this section.

- (f) If the owner cannot establish a complete defense, the court may issue an order of compliance requiring the owner of the building to produce a development plan for the abatement of the public nuisance. The plan shall include, at a minimum, a projected timeline for abatement of the public nuisance, and a statement demonstrating the financial ability of the owner to complete the abatement. The plan shall be duly approved by the court for purposes of compliance with this section. If the owner has commenced work on the building prior to, or during the pendency of the action, the owner shall be required to provide a report of the work that has been completed to date, as well as a development plan for the abatement of the public nuisance. Upon a finding by the court that the issuance of a certificate of public nuisance is warranted, the court may issue an order or an injunction barring transfer of the property at issue without the prior abatement of the public nuisance, and award to the person bringing the action reasonable attorney's fees and costs.
- (g) If the owner fails to comply with the court's order, the court, at its discretion, may allow an interested party the opportunity to undertake the work to abate the public nuisance under a detailed development plan as described in subsection (i).
- (h) If the actions pursuant to subsections (f) and (g) fail to abate the public nuisance, the court may appoint a receiver to take possession and control of the building to abate the public nuisance. Prior to a nonprofit corporation being designated a receiver under this section, the nonprofit corporation shall provide proof of certification by the municipal corporation or code enforcement entity where the building is located. The court shall have the discretion to review the certification and supporting documentation and shall determine whether the receiver has the capacity to undertake a particular project.
- (i) (1) Prior to ordering any action be taken to abate the public nuisance, the court shall cause a more detailed development plan to be submitted for review, which shall include, but may not be limited to:
 - (A) A detailed budget for abating the public nuisance;
 - (B) If repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitute the public nuisance; and
 - (C) The terms, conditions and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.
 (2) Any party submitting a detailed development plan under this section may be required by the court to post a reasonable bond in an amount fixed by the court.
- (j) If the court deems the detailed development plan to be sufficient and appropriate, the court may empower the receiver to complete any or all of the following:
 - (1) Taking possession and control of the building and the property on which it is located;
 - (2) Paying all expenses of operating and conserving the building and the property, including obtaining mortgage insurance;
 - (3) Paying pre-receivership mortgages or installments of them and other liens; and
 - (4) Implementing the detailed development plan; provided, that, if the development plan requires demolition, the court specifically order that the demolition be done properly and in compliance with applicable laws.
- (k) The interested party or receiver shall file a report with the court every sixty (60) calendar days and, upon completion of the detailed development plan, shall file a final report with the court indicating that the public nuisance has been abated. If the court finds the final report is sufficient and complete, the court may assess court costs and expenses and also may approve the payment of receiver's fees at the discretion of the judge but not to exceed the greater of ten percent (10%) of the total costs of the abatement or twenty-five thousand dollars (\$25,000) to the receiver. These costs as approved by the court shall be considered a first lien on the property, which shall be superior to all prior and subsequent liens or other encumbrances associated with the building or the property, including those for state and local taxes and assessments, provided that the property at issue has been found by the court to be an insolvent property and provided that the court, after a hearing, notice of which has been provided to proper state and local taxing authorities, has determined that such state and local taxes and assessments are uncollectible. The interested party or receiver shall be responsible for recording a certified copy of the judgment with the county recorder in the county in which property is located within sixty (60) calendar days after the date of the entry of the judgment. Once the lien is perfected and the owner has satisfied the lien, then the court shall order the receivership terminated. The county trustee shall be allowed a credit pursuant to § 67-5-1903(b)(1) for any local taxes and assessments which the court has deemed uncollectible pursuant to this section.
- (l) If the lien is not satisfied within a one-hundred-eighty-calendar-day period or longer, with approval of the court after a hearing on the matter, the court may enter an order directing the receiver to offer the building and property for sale upon terms and conditions that the court shall specify.
- (m) The receivership is terminated at the time of sale. The proceeds of the sale shall first satisfy the receiver's lien. If the sale proceeds are sufficient to satisfy the receiver's lien, then the receivership lien shall be terminated. If the receiver's lien is not satisfied by the sale proceeds, the receiver's lien shall remain in effect until the lien is satisfied. Proceeds in excess of the receiver's lien, if any, shall first be applied to satisfy all state and local taxes and assessments or tax settlements, and then to other liens in their order of priority.

(n)

- (1) Nothing in this section shall be construed as a limitation upon the powers granted to a court having jurisdiction over a civil action described in subsection (a).
- (2) The monetary and other limitations specified in § 16-15-501(d)(1) upon any court with jurisdiction over a civil action described in subsection (a) do not operate as limitations upon any of the following:
 - (A) Expenditures of a mortgagee, lienholder, other interested party, or receiver that has been selected pursuant to subsection (g) or (h) to undertake the work and to furnish the materials necessary to abate a public nuisance;
 - (B) Any notes issued by a receiver pursuant to subsection (j);
 - (C) Any mortgage granted by a receiver in accordance with subsection (j);
 - (D) Expenditures in connection with the foreclosure of a mortgage granted by a receiver in accordance with subsection (j);
 - (E) The enforcement of an order of a judge entered pursuant to this chapter; or
 - (F) The actions that may be taken pursuant to this chapter by a receiver or a mortgagee, lienholder, or other interested party that has been selected pursuant to subsection (g) or (h) to undertake the work and to furnish the materials necessary to abate a public nuisance.
- (3) A judge in a civil action described in subsection (a), or the judge's successor in office, has continuing jurisdiction to review the condition of any building that was determined to be a public nuisance pursuant to this chapter.

13-6-107. Jurisdiction.

Jurisdiction for civil actions filed pursuant to this chapter is conferred upon the chancery, circuit, and any court designated as an environmental court pursuant to Acts 1991, chapter 426.

Land Banking

13-30-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Local Land Bank Program."

13-30-102. Legislative findings.

The legislature finds and declares as follows:

- (1) Tennessee's communities are important to the social and economic vitality of the state. Whether urban, suburban or rural, many communities are struggling to cope with vacant, abandoned and tax-delinquent properties.
- (2) There exists a crisis in many cities and their metro areas caused by disinvestment in real property and resulting in a significant amount of vacant and abandoned property. This condition of vacant and abandoned property represents lost revenue to local governments and large costs associated with demolition, safety hazards and spreading deterioration of neighborhoods including resulting mortgage foreclosures.
- (3) The need exists to strengthen and revitalize the economy of the state and its local units of government by solving the problems of vacant and abandoned property in a coordinated manner and to foster the development of such property and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies, ineffective property inspection, code enforcement and property rehabilitation support, lengthy and/or inadequate foreclosure proceedings, and lack of coordination and resources to support economic revitalization.
- (4) There is an overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to be available to communities throughout the state enabling them to turn vacant spaces into vibrant places.
- (5) Land banks are one of the tools that can be utilized by communities to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use.
- (6) In the interest of self-governance on the part of Tennessee's cities, this pilot program will be used in specific areas as a testing model of a self-governing, self-sustaining land bank that can revitalize Tennessee cities and counties.

13-30-103. Chapter definitions.

As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Board of directors" or "board" means the board of directors or other similar governing body of the corporation;

- (2) "Corporation" means a corporation created pursuant to this chapter to operate a land bank;
- (3) "Land bank" means real property, however obtained or acquired and held by a corporation, created pursuant to this chapter, with the intent of acquiring and holding onto the real property so acquired until such a time as the corporation is able to find a willing and able buyer to acquire the real property from the corporation;
- (4) "Local government" means:
 - (A) Any home rule municipality;
 - (B) Any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 federal census or any subsequent federal census;
 - (C) Any county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census;
 - (D) Any county having a metropolitan form of government; or
 - (E) Any municipality having a population of not less than forty-eight thousand two hundred (48,200) nor more than forty-eight thousand two hundred nine (48,209), according to the 2010 federal census or any subsequent federal census;
- (5) "Real estate" means an identified parcel or tract of land, including improvements, if any; and
- (6) "Real property" means one (1) or more defined parcels or tracts of land or interests, benefits and rights inherent in the ownership of real estate.

13-30-104. Creating corporation -- Funding.

- (a)
 - (1) Any local government shall have the authority to create a corporation which is authorized to operate a land bank within the jurisdictional boundaries of the local government establishing the corporation.
 - (2) The corporation is declared to be performing a public function on behalf of the local government with respect to which the corporation is created and organized and to be a public instrumentality of such local government. Accordingly, the corporation and all properties of the corporation, including all properties held in the name of the corporation in the land bank, at any time owned by it, and the income and revenues from the properties, shall be exempt from all taxation in this state.
- (b)
 - (1) A corporation shall come into existence under the terms of this chapter when any local government to which subsection (a) applies either on its own initiative or through inter-local agreements entered into by and between one (1) or more creating local governments vote by majority vote of its legislative body to establish the corporation. Evidence of such authorization shall be proclaimed and countersigned by the presiding officer of each participating county or municipality and certified by such officer to the secretary of state.
 - (2) The governing bodies of the creating local governments shall indicate their willingness to appropriate sufficient funds to provide for the initial administration of the corporation as a part of the authorization process and for such purposes are authorized to provide funding or grants and appropriate money to the corporation in such manner as directed by the legislative bodies.

13-30-105. Board of directors.

- (a) The corporation shall have a board of directors in which all powers of the corporation shall be vested. Such board shall consist of any number of directors, no fewer than five (5), all of whom shall be duly qualified electors of and taxpayers in the creating local government or local governments.
- (b) The creating local government or local governments, if more than one (1) has jointly created a corporation, shall determine the qualifications, manner of selection or appointment, terms of office of members of the board, the number of directors, whether and to what extent the members of the local legislative bodies shall be appointed or elected to serve on the board of the corporation and the manner of filling vacancies.
- (c) The term of each director on the corporation shall be as set by the creating local government or local governments, provided that any director shall continue to serve beyond the end of the director's term until the director's successor has been appointed. At the first organizational meeting of the corporation, the creating local government or local governments shall establish the terms of the initial directors so that the directors serve staggered terms and an approximately equal number of directors have terms that expire in each year.

13-30-106. Quorum for transaction of business -- Officers -- Rules and regulations -- Removal of board members -- Compensation -- Meetings -- Majority approval for actions of the board -- No proxy voting.

- (a) A majority of the board of the corporation shall constitute a quorum for the transaction of any business. Unless a greater number or percentage is required by state law, the vote of a simple majority of the directors present at any meeting at which a quorum is present shall be the action of the corporation. To the extent permitted by applicable law, the corporation may permit any or all directors to participate in an annual, regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.
- (b) The members of the board of directors shall select annually from among themselves a chair, a vice chair, a treasurer, and such other officers as the board may determine, and shall establish their duties as may be regulated by rules adopted by the board.
- (c) The board shall establish rules and requirements relative to the attendance and participation of members in its meetings, regular or special. Such rules and regulations may prescribe a procedure whereby, should any member fail to comply with such rules and regulations, such member may be disqualified and removed automatically from office by no less than a majority vote of the remaining members of the board, and that member's position shall be vacant as of the first day of the next calendar month. Any person removed under this subsection (c) shall be ineligible for reappointment to the board, unless such reappointment is confirmed unanimously by the board.
- (d) Any citizen or group of citizens upon collection of a petition having a clearly worded purpose, of at least twenty (20) verified signatures of qualified voters registered in the jurisdiction in which the board operates may present to the local government legislative body a resolution calling for the removal of any board member. The local government legislative body shall have the power, upon timely and due consideration of the citizen petition and a response from the board, to remove or retain the cited board member by simple majority vote. Removal from the board of directors of any public official shall not, in and of itself, impair the public official or municipal or county employee in that person's other duties.
- (e) Board members shall serve without compensation, shall have the power to organize and reorganize the executive, administrative, clerical, and other departments of the corporation and to fix the duties, powers and compensation of all employees, agents and consultants of the corporation. The board may reimburse any member for expenses actually incurred in the performance of duties on behalf of the corporation.
- (f) The board shall meet in regular session according to a schedule adopted by the board, and also shall meet in special session as convened by the chair or upon written notice signed by a majority of the members. The presence of a majority of the total membership of the board shall constitute a quorum.
- (g) All actions of the board shall be approved by the affirmative vote of a majority of the members of that board present and voting. However, no action of the board shall be authorized on the following matters unless approved by a majority of the total board membership:
 - (1) Adoption of bylaws and other rules and regulations for conduct of the business of the corporation;
 - (2) Hiring or firing of any employee or contractor of the corporation. This function may, by majority vote, be delegated by the board to a specified officer or committee of the corporation, under such terms and conditions, and to the extent, that the board may specify;
 - (3) The incurring of debt;
 - (4) Adoption or amendment of the annual budget; and
 - (5) Sale, lease, encumbrance, or alienation of real property, improvements or personal property with a value of more than fifty thousand dollars (\$50,000).
- (h) Vote by proxy shall not be permitted. Any member may request a recorded vote on any resolution or action of the board.

13-30-107. Corporate authority to create land bank for real property -- Compliance with state law, ethical standards, and open records provisions.

- (a) The corporation, once created, shall have the authority to create a land bank for real property located within the boundaries of the creating local government or local governments.
- (b) No rules or bylaws created by the corporation may contravene state law.
- (c) All board members, appointees, employees and/or paid advisors of the corporation created, appointed or employed, with or without pay, pursuant to this chapter are subject to title 8, chapter 17, and may not be exempted on the basis of any corporate board governance rules or bylaws.
- (d) All meetings of the board of directors of the corporation and/or its employees are subject to title 8, chapter 44, and may not be exempted on the basis of the corporate board governance rules or bylaws.
- (e) All corporate records are subject to §§ 10-7-503 -- 10-7-505, and may not be exempted on the basis of any corporate board governance rules or bylaws.

13-30-108. Contracts and agreements.

The corporation may enter into contracts and agreements with the creating local government or local governments for staffing services to be provided to the corporation by such local governments or agencies or departments thereof.

13-30-109. Corporate powers.

The corporation shall have the power, as limited by the legislative body of the creating local government or local governments, to:

- (1) Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business;
- (2) Sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to the real property held in the land bank;
- (3) Adopt a seal and to alter the same at pleasure;
- (4) Borrow funds as may be necessary, for the operation and work of the corporation with the concurrence of the legislative body of the creating local government or local governments;
- (5) Enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental agreements under the existing Tennessee Code for the joint exercise of powers under this chapter;
- (6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers to acquire, hold and dispose of real property held in the land bank;
- (7) Procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the corporation in the performance of the duties of such person's office or employment or any other insurable risk, as the board of directors, in its discretion, may deem necessary;
- (8) Accept donations, contributions, revenues, capital grants or gifts from any individual, association, public or private corporation, municipality or county of the state of Tennessee, the state of Tennessee or the United States government, or any agency or instrumentality of the state of Tennessee or the United States, for or in aid of any of the purposes of this chapter and enter into agreements in connection with the donations, contributions, revenues, capital grants or gifts;
- (9) Invest money of the corporation in investments that would be eligible investments for a municipality or county in the state and name and use depositories for its money with a bank or trust company which is a member of the Federal Deposit Insurance Corporation;
- (10) [Deleted by 2014 amendment, effective April 25, 2014.]
- (11) Enter into contracts which do not violate § 29-17-102, for the management of or the sale of real property in the land bank; such power shall include the power to preserve the value or prevent diminution of the value of any such property until disposed of by the corporation, including the following actions:
 - (A) Design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property;
 - (B) Fix, charge and collect rents, fees and charges for the use of real property of the land bank and for services provided by the corporation;
 - (C) Grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property in the land bank; and
 - (D) Enter into limited partnerships, limited joint ventures and other limited collaborative relationships with local governments and other public and private entities within the designated boundary for the ownership, management, development, and disposition of real property; and
- (12) Do all other things necessary or convenient to achieve the objectives and purposes of the corporation related to the real property held in the land bank.

13-30-110. Acquisition and maintenance of real property and interests in real property.

- (a) The corporation may acquire real property or interests in real property for the land bank by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the corporation considers proper.
- (b) The corporation may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts or land contracts, and may accept transfers from municipalities or counties upon such terms and conditions as agreed to by the corporation and the local government.
- (c) The corporation shall maintain all of its real property and real property held in the land bank in accordance with state law and the laws and ordinances of the jurisdiction in which the real property is located.

- (d) The corporation shall not own or hold real property located outside the jurisdictional boundaries of the local governmental entity or entities that created the corporation; provided, however, that the corporation may be granted authority pursuant to an intergovernmental cooperation agreement with another municipality or county to manage and maintain real property located within the jurisdiction of such other municipality or county.
- (e) Except as provided in § 13-30-120, notwithstanding any other law to the contrary, any municipality or county may convey to the corporation real property and interests in real property on such terms and conditions, and according to such procedures, as determined by the legislative body of the local government conveying the real property to the corporation.

13-30-111. Corporation to hold property -- Maintenance and availability of inventory of real property -- Policies and procedures regarding consideration to be received for transfers of property -- Hierarchical ranking of priorities for use -- Voting and approval requirements.

- (a) The corporation shall hold in its own name all real property acquired by the corporation for the land bank irrespective of the identity of the transferor of such property.
- (b) The corporation shall maintain and make available for public review and inspection an inventory of all real property held for the land bank. In addition to referrals to public access, routine, printed, real property records or those on municipal and county electronic database files, the corporation is authorized to maintain an independent, publically available, electronic inventory via the creating local government or local government's web site with any combination of pictures, informal descriptions, legal descriptions and addresses as the board may deem appropriate to its purposes related to real property in the land bank. The corporation is obligated to make reasonable efforts to ensure that information contained in any independent, electronic inventory is practically accurate or to ensure that a prominent disclaimer of accuracy is prominently displayed to any potential viewer.
- (c) The corporation shall determine and set forth in policies and procedures of the board of directors, the general terms and conditions for consideration to be received for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board of directors to be in the best interest of the corporation related to real property in and for the land bank.
- (d) The corporation may convey, exchange, sell, transfer, lease as lessee, grant, release and demise, pledge and hypothecate any and all interests in, upon or to real property of the land bank, to the extent authorized by the legislative body of the creating local government or local governments and in a manner which does not violate § 29-17-102.
- (e) The legislative body of the local government or local governments creating the corporation are authorized to establish a hierarchical ranking of priorities for the use of real property conveyed to the corporation for the land bank including, but not limited to:
 - (1) Use for purely public spaces and places;
 - (2) Use for affordable housing;
 - (3) Use for retail, commercial and industrial activities; or
 - (4) Use as wildlife conservation areas, and such other uses and in such hierarchical order as determined.
- (f) The creating local government or local governments are authorized to require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions which is held by the corporation in the land bank, be subject to specified voting and approval requirements of the board of directors. Except and unless restricted or constrained in this manner, the board of directors may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property held by the corporation as real property for the land bank.

13-30-112. Keeping of minutes and records -- Reports -- Annual audit.

- (a) The board shall cause minutes and a record to be kept of all its proceedings and such records shall be available for timely public inspection. All meetings shall be open to the public with appropriate notice published in accordance with § 13-30-107(d).
- (b) The board shall publish a report on an annual basis to its creating local government or local governments. This annual report must contain a detailed financial accounting of the corporation's debt obligations, income (sources and amounts), properties, dispositions, expenditures, acquisitions, contracts (executed and pending within the next ninety (90) days), significant activities and other data as required by organizational bylaws and governance documents. This report shall be maintained on file for audit purposes and immediately available to the department of audit in the office of the comptroller of the treasury upon request. Additionally, all such reports shall be available for public inspection.
- (c) The board of directors of the corporation shall cause an annual audit to be made of the books and records of the corporation. With prior approval of the comptroller of the treasury, the audit may be performed by a licensed certified public accountant selected by the corporation. If a licensed certified public accountant is employed, the audit contract between the corporation and the licensed certified public accountant shall be on contract forms prescribed by the comptroller of the treasury. The

cost of any audit shall be paid by the corporation. The comptroller of the treasury, through the department of audit, shall be responsible for determining that the audits are prepared in accordance with generally accepted government auditing standards and that the audits meet the minimum standards prescribed by the comptroller of the treasury.

- (d) In the event the governing body of the corporation fails or refuses to have the audit prepared, then the comptroller of the treasury may appoint a licensed certified public accountant, or direct the department of audit, to prepare the audit, the cost of the audit to be paid by the corporation.
- (e) A copy of the annual audit referenced in subsection (c) shall be filed annually with the creating local government or local governments.

13-30-113. Dissolution of corporation.

A corporation created pursuant to this chapter may be dissolved in the manner established by the creating local government or local governments or otherwise in accordance with general law for the dissolution of a public corporation.

13-30-114. Conflicts of interest.

No member of the board or employee of a corporation shall acquire any interest, direct or indirect, in real property acquired or held by the corporation. No member of the board or employee of the corporation shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by the corporation. The board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for members of the board and employees of the board or corporation.

13-30-115. Liberal construction

This chapter shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authorization for the performance of each and every act and thing authorized by this chapter, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers. Except as otherwise expressly set forth in this chapter, in the exercise of its powers and duties under this chapter and its powers relating to property held in the land bank, the corporation shall have complete control as fully and completely as if it represented a private property owner and shall not be subject to restrictions imposed by the charter, ordinances or resolutions of a local unit of government.

13-30-116. Exemption from state taxes -- Payment of unpaid taxes -- Proceeds of sales -- Revenue.

- (a) In accordance with §§ 67-5-2505 [repealed], 67-5-2507, 67-5-2508, 67-5-2509, and 67-5-2514 [repealed], the corporation is exempt from any state taxation.
- (b) Additionally, the corporation has the power to pay any unpaid taxes due and owing by the owner of record of the real property, or make any government mandated improvements to the property, in exchange for the deed of real property to the corporation.
- (c) All proceeds from the sale of real property held in the land bank shall be returned to the corporation.
- (d) All corporate revenue shall be held by the board of directors, and proceeds shall only go to furthering the aims of the acquisition and/or resale of real property by the corporation for the land bank.

13-30-117. Action to quiet title.

- (a) A corporation shall be authorized to file an action to quiet title as to any real property in which the corporation has an interest. For purposes of any and all such actions, the corporation shall be deemed to be the holder of sufficient legal and equitable interests, and possessory rights, so as to qualify the corporation as adequate complainant in such action.
- (b) Prior to the filing of an action to quiet title, the corporation shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by the following methods:
 - (1) Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;
 - (2) In the case of occupied real property by registered or certified mail, addressed to "occupant";
 - (3) By posting a copy of the notice on the real property;
 - (4) By publication in a newspaper of general circulation in the municipality in which the property is located;
 - (5) By electronically publishing notices with addresses and descriptions via the municipality's web site; and
 - (6) Such other methods as the court may order.
- (c) As part of the complaint to quiet title, the corporation shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.

- (d) The court shall schedule a hearing on the complaint within ninety (90) days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the court shall issue its final judgment within one hundred twenty (120) days of the filing of the complaint.
- (e) A corporation shall be authorized to join in a single complaint to quiet title one (1) or more parcels of real property.

13-30-118. Appeal procedure -- Appeals committee.

- (a) The creating local government or local governments shall establish an appeal procedure as described in this section for any person aggrieved by the decision of the corporation with respect to real property proposed for acquisition or acquired by, held and disposed of by the corporation for the land bank.
- (b) The legislative body of the local government is authorized to create an appeals committee or a joint appeals committee if more than one (1) local government created the corporation. Any person aggrieved by the decision of the corporation concerning any aspect of this chapter may obtain review of the official's decision by requesting an appeal of the decision of the official in written form to the appeals committee within ten (10) days of the date of the official's decision.
- (c) The appeals committee shall hear the appeal within thirty (30) days of the written request for appeal.
- (d) The appeals committee shall consider the appeal and render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the committee for further information.
- (e) The appeals committee shall act as a quasi-judicial body whose purpose is to determine whether the corporation followed proper and authorized procedures related to the acquisition or disposal of real property held in the land bank, its applicability to the appellant, and to rule upon the actions of the official. The appeals committee shall not be bound by formal rules of evidence applicable to the various courts of the state.
- (f) Hearings before the appeals committee shall proceed as follows:
 - (1) The corporate official shall explain the official's decision and the reasons for the official's decision related to the real property at issue;
 - (2) The appellant shall explain the appellant's reasons for protesting the decision of the official;
 - (3) The appeals committee may request further information from any corporate official. The appeals committee shall not have the power of subpoena;
 - (4) The appeals committee shall deliberate and render a decision by a majority vote as to whether the official acted appropriately in making the decision. The decision shall also include a recommendation for appropriate legislative action to be taken by the local government, if any is required or recommended, to remedy the issue in accordance with the decision rendered by the appeals committee;
 - (5) Decisions will be reduced to writing and copies shall be sent to all parties, including the legislative body of the local government or local governments, as appropriate, and shall become a part of the minutes of the appeals committee and the appropriate legislative body;
 - (6) Decisions of the appeals committee shall be final.

13-30-119. Monitoring of corporation by comptroller of the treasury.

- (a) The comptroller of the treasury shall monitor the actions of the corporation for a period of three (3) years from the date the corporation is created.
- (b) No later than March 1st following the end of the third year of the creation of the corporation, the comptroller shall file a report with the governor and the state and local government committee of the senate and the local government committee of the house of representatives with recommendations concerning whether the pilot project should be continued, expanded or discontinued, together with recommended legislative actions based on such decision.

Tax Collection and Enforcement Generally

67-5-101. Property subject to tax generally.

All property, real and personal, shall be assessed for taxation for state, county and municipal purposes, except such as is declared exempt in part 2 of this chapter, or unless otherwise provided.

67-5-102. Taxation by county.

- (a)
 - (1) For county general purposes, the various counties are authorized to levy an ad valorem tax upon all property subject to this form of taxation.
 - (2) The amount of such tax shall be fixed by the county legislative body of each county.

- (3) "County general purpose levy" means a levy for all county purposes, except roads, bridges, schools, debt service, sinking funds and levies pursuant to special tax laws not included in the above.
- (b) Taxes on property for county purposes shall be imposed on the value of the property, as defined and determined in this chapter and as otherwise provided by law.
- (c) All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses, or a combination of the two (2), whether imposed by general or private act, or home rule charter, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are repealed effective January 1, 1973.

67-5-103. Taxation by municipality.

- (a) Taxes on property for municipal purposes shall be imposed on the value of the property, as defined and determined in this chapter and as otherwise provided by law, and shall be collected by the same officers at the time and in the manner prescribed for the collection of county taxes, except as otherwise provided by law.
- (b) All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses or a combination of the two (2), whether imposed by general or private act, or home rule charter, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are repealed effective January 1, 1973.
- (c) With respect to municipalities that fund all or part of the cost of waste disposal by special assessment to the property owner, as authorized in § 6-2-201(19), the special assessment may be billed in the same manner as municipal real property taxes and the special assessment may be billed on the real property tax notices, but shall not constitute a lien on any affected property or accrue any penalties or interest for late payment. Any municipality that exercises this method of waste disposal by special assessment shall bear all costs of system modifications necessary to prepare property tax notices.

67-5-104. Locality does not meet municipality requirements. [Omitted]

67-5-105. Chapter definitions.

As used in this chapter:

- (1) "Collector" means in the case of any tax entity, other than a county, that collects its own taxes, assessments, or other charges secured by property, the officer of such tax entity responsible for collecting such taxes, assessments, or charges;
- (2) "Tax entity" includes counties, cities, metropolitan governments, municipal corporations, quasi-municipal corporations, and political subdivisions having authority to levy a property tax; and
- (3) "Taxpayer" means any owner of property subject to taxation or any party liable for property taxes.

67-5-2001. Deputies collect delinquent taxes.

- (a)
 - (1) After taxes become delinquent, the county trustee shall have power to appoint such deputies as may be necessary for the collection of the taxes, and in such cases the county trustee shall furnish the deputy with a list of the delinquent taxpayers, with the description of the property assessed against each and the amount of taxes due from each.
 - (2) In cases involving delinquent taxes assessed against real property, such list shall identify the current owner of such property and the owner's last known mailing address, if such owner can easily be identified and, in those cases, shall not identify any former owners.
 - (3) Nothing in this subsection (a) shall be construed as in any manner affecting the liability of the current owner or any former owner.
 - (4) The county trustee shall receive no compensation for making out the delinquent lists for the officers as provided.
- (b) The official bond of the county trustee shall be liable and be held to cover the official acts of such deputy trustees, constables and deputy sheriffs, to whom delinquent tax lists may be furnished by the county trustee, but the county trustee shall have the power and authority, before turning over to such officers such delinquent lists, to require of them bond in such sum as the county trustee may deem appropriate, conditioned upon the faithful performance of their duties and for full and complete settlement of all sums collected by them upon such delinquent tax lists, which bonds shall be payable to the county trustee and upon which the county trustee shall have a right of action for any default of such officers.
- (c) All lists shall be returned by such officer on or before January 1.
- (d)
 - (1) Notwithstanding any general law or any private act to the contrary, the county trustee may accept partial payments of delinquent property taxes, including, but not limited to, payment by electronic transfers, bank customer preauthorized payments, wire transfers or ACH credits. If the entire amount of delinquent taxes due is not paid prior to the date the trustee delivers the delinquent tax lists to the delinquent tax attorney, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally-authorized procedures.

- (2) Prior to any county trustee accepting partial payment of delinquent property taxes, the county trustee shall file a plan with the comptroller of the treasury at least thirty (30) days prior to the acceptance of the payments. The plan shall indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of delinquent property taxes. The plan shall also indicate whether the program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed.
- (3) The delinquent date for property taxes and penalties and interest applicable to delinquent property taxes shall not be affected by application of a partial payment system established in the county.
- (4) Penalties and interest shall apply only to the amount of delinquent property taxes remaining due.
- (5) If a partial payment of delinquent property taxes is accepted, the partial payment does not release the tax lien on the property upon which the taxes were assessed.

67-5-2002. Publication of delinquent tax lists.

- (a) The county trustee may cause advertisement to be made annually of the delinquent tax lists in one (1) or more newspapers of general circulation, published in the county, listing the name of the delinquent taxpayer and the amount of the taxpayer's delinquency on each item of taxable property, the costs for which shall be borne by the county, not to exceed the usual and customary legal advertising rate.
- (b) The trustee publishing the delinquent tax lists shall give the lists to papers at least twenty (20) days before being turned over to the tax attorney. Failure of any taxpayer's name to appear on a delinquent tax list publication or incorrect information shall not be a defense to any suit for tax collection.

67-5-2003. Collection by distraint and sale of personalty -- Actions at law or garnishment. [Omitted]

67-5-2004. Collection by garnishment.

The officers to whom the delinquent lists are so delivered may proceed against the delinquent taxpayers by garnishment proceedings, returnable before any general sessions court in the district where the delinquent resides, or to any court, which garnishment shall run in the name of the state for its own behalf and for the use and benefit of the county.

67-5-2005. Delinquent municipal real property taxes -- Tax sale.

- (a) When a municipal corporation uses the county trustee or the delinquent tax attorney to collect delinquent real property taxes of the corporation, the proper officers of the corporation shall certify the delinquent taxes to the county trustee by April 1 of the second calendar year after the taxes become due.
- (b) The property so certified to the county trustee on which the municipal taxes are delinquent shall be advertised and sold by the county trustee at the same time and in the same manner and as a part of the county trustee's other sales of property for state and county taxes.
- (c) The proceeds of such sale shall be disposed of and the property may be redeemed as elsewhere provided in this title with reference to property sold for the collection of state and county taxes.
- (d) The power of each municipal corporation under its charter to collect its own taxes and delinquent taxes is preserved. If a municipal corporation has the power under its charter to collect its own taxes, but the charter makes no provision for the collection of delinquent taxes, the municipal corporation may provide by ordinance for the collection of its delinquent taxes. Nothing in this subsection (d) may be construed as limiting the authority of the county trustee to collect both current and delinquent county and municipal property taxes under this title.

67-5-2006. Return of delinquent tax list -- Settlement.

- (a)
 - (1) The sheriff, constable and deputy trustee having delinquent lists for collection shall make partial settlement with the trustee whenever required by the trustee, and shall, on or before January 1 following the receipt of the delinquent tax lists, make final settlement with the trustee and return the lists showing in the return what disposition was made of each item of taxes therein set out, and the reason for not collecting items remaining unpaid, and sign the return in the sheriff's, constable's or deputy trustee's official capacity.
 - (2) The officer making the return shall receive no additional compensation for making it.
- (b) On January 1, the constable or deputy trustee shall make a final settlement of the taxes in the constable's or deputy trustee's hands for collection, and in the settlement shall be charged with the aggregate amount of taxes in the constable's or deputy trustee's hands for collection, and be credited with the amount collected and accounted for, with errors, double and illegal assessments, and with such insolvent or other taxes as such officer shall show could not have been collected by law after diligent effort on such officer's part.

- (c) It is the duty of the collecting officers to make return of the delinquent lists to the county trustee, on or before January 1 of each year, and the officer failing to make such a return on or before January 1, as provided in this subsection (c), shall be presumed to have collected all the taxes on the lists delivered to such officer, and shall account for and pay the taxes to the trustee.
- (d) Any balance found due on such settlements may be recovered of the constable or deputy trustee and such person's sureties on such person's bond, by suit or motion, on five (5) days' notice, in any court of record, instituted by the county trustee or any agent or district attorney general of the state.
- (e)
 - (1) No credit shall be allowed the county trustee, by way of releases, until the delinquent lists have been returned to the county trustee's office by the collecting officer.
 - (2) After the return of such lists by the officer to the county trustee's office, the county legislative body may allow the trustee credit for erroneous assessments and double taxation, but no credit shall be allowed for any item due from insolvent delinquent land taxpayers, and such taxes shall remain a charge upon the books of the county trustee until the county trustee complies with the requirements of § 67-5-2406.

67-5-2007. Collection fees and costs.

- (a)
 - (1) The officer making such collection shall receive no additional fees for making delinquent collections.
 - (2) The only compensation shall be salaries paid to deputies in accordance with title 8, chapter 20, or to trustees in accordance with §§ 8-24-102, 8-24-106, and 8-24-107.
 - (3) Postage and other office expenses incurred by the trustee or the trustee's deputies incidental to the collection of delinquent taxes shall be paid from the fees of the trustee.
- (b) In case of a levy or garnishment proceeding, officers shall receive, in addition to the compensation provided in subdivision (a) (2), the fees allowed by law in such cases, the fees to be taxed as a part of the costs of collection and to be paid by the delinquent.
- (c) Neither the state nor county shall be liable for costs where no collection is made by the officer.

67-5-2008. Payment of tax after return of delinquent tax list.

From January 1 until February 1, and until the bill is filed to collect delinquent taxes, delinquent taxes may be received at the office of the county trustee who shall, at the same time, collect the penalties and interest.

67-5-2009. Record of levies.

The trustee shall keep a record of all levies made by the trustee or deputies and of proceedings under such levies.

67-5-2010. Penalty and interest.

- (a)
 - (1) To the amount of tax due and payable, a penalty of one-half of one percent (0.5%) and interest of one percent (1%) shall be added on March 1, following the tax due date and on the first day of each succeeding month, except as otherwise provided in regard to municipal taxes. Any county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census establishing tax due dates other than the first Monday in October in each year, in accordance with § 67-1-701(a), shall have the authority to establish the date that interest and penalty shall begin to accrue as the date of delinquency in lieu of March 1.
 - (2) The rate of penalty and interest as provided in this section may be reduced to an amount not less than twelve percent (12%) per annum in the aggregate, upon approval by a two-thirds (2/3) vote of the appropriate local governing body that levied such taxes, in any county having a population of not less than twenty-four thousand six hundred (24,600) nor more than twenty-four thousand seven hundred (24,700), according to the 1980 federal census or any subsequent federal census.
- (b) In all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for the collection of delinquent taxes that may be due to the municipalities and none other shall prevail and obtain, anything in this chapter to the contrary notwithstanding:
 - (1) The taxes levied and assessed by such municipalities shall become due and delinquent on the date as now provided by existing laws; and
 - (2) If such municipal taxes are not paid on or before the date fixed for the delinquencies thereof, to the amount of tax due and payable, a penalty of one half of one percent (0.5%) and interest of one percent (1%) shall be added on March 1, following the tax due date and on the first day of each succeeding month.
- (c) [Expired effective January 1, 2014. See the Compiler's Notes.]

- (d) For purposes of any claim in a bankruptcy proceeding pertaining to delinquent property taxes, the assessment of penalties determined pursuant to this section constitutes the assessment of interest.

67-5-2011. Military personnel -- Due date of taxes. [Omitted]

67-5-2012. Election to sell tax receivables.

- (a) As used in this section, unless the context otherwise requires:
 - (1) "Tax collector" means, in the case a taxing agency that is a county or for which a county acts as its tax collector, the county trustee; and, in the case of a taxing agency that is a governmental entity that, under existing laws, collects its own taxes, assessments, or other charges secured by real property, the officer of the taxing agency responsible for collecting the taxes or charges;
 - (2) "Tax receivable" means the right to receive revenue from a tax, assessment, or other charge secured by a lien on real property that has become delinquent in whole or in part, including all penalties and interest on the taxes, assessments, or other charges accrued pursuant to law; and
 - (3) "Taxing agency" means:
 - (A) Any county having a population of not less than three hundred eighty thousand (380,000), according to the 2000 federal census or any subsequent federal census; or
 - (B) Any city, town, taxing district, municipal corporation, political subdivision or any other state or local governmental entity that is authorized to assess taxes on real property that is wholly or partially within a county described in subdivision (a)(3)(A).
- (b) Any taxing agency, by resolution of its governing body, may elect to sell its tax receivables to public or private parties. In the case of a taxing agency that is a county or for which a county acts as its tax collector, prior to the governing body electing to sell its tax receivables, the county trustee must certify to the governing body the trustee's consent to administer the program; provided, however, that upon a two-thirds vote of the legislative body of the taxing agency, this certification shall not be necessary. All interest and penalties imposed by law shall continue to accrue on the unpaid original amount of the tax in the same manner as if the tax receivables had not been sold. Sales of tax receivables may be by individual parcel or in bulk. The taxing agency may establish such criteria for eligible purchasers of tax receivables and may make such sales pursuant to negotiated sale for such prices as the taxing agency determines to be in the best interest of the taxing agency.
- (c) A taxing agency may enter into purchase and sale agreements for the sale of tax receivables, which purchase and sale agreements may, consistent with this section, contain such terms, covenants, representations and warranties as, in the judgment of the taxing agency, shall be necessary or desirable. The agreement may require the taxing agency to repurchase a tax receivable, or to substitute another tax receivable of equivalent value, for prices and under conditions specified in the agreement. In the case of a taxing agency for which the applicable county trustee acts as tax collector, upon the execution of a purchase and sale agreement for the sale of tax receivables by the appropriate officer of the taxing agency, a taxing agency may enter into an agreement with the county trustee to act as the taxing agency's agent in connection with the administration of the purchase and sale agreements and of the related tax receivables.
- (d) The order of priority of the application of collections of tax receivables with respect to a particular property shall not be changed by reason of the sale of all or a portion of the tax receivables. All amounts collected on account of the tax receivables shall be promptly paid by the taxing agency to the holder of the tax receivable; provided, however, that the taxing agency shall have the right to retain all amounts that are charged and collected as trustee's fees, attorney's fees and costs of collection or that are otherwise collected in excess of the amount due on the tax receivables sold.
- (e) Unless provided otherwise in the purchase and sale agreement with respect to tax receivables sold:
 - (1) The amount bid in a tax sale on behalf of the governmental entities for which the taxes are owing shall include the amount of all tax receivables sold, including the costs incident to the collection thereof;
 - (2) In the event that the property is acquired by a governmental entity in a tax sale and is not redeemed by the end of the redemption period, then the governmental entity shall promptly offer the property for sale to private purchasers by appropriate means and shall make diligent efforts to sell the property at its reasonable market value, unless the governmental entity pays to the purchasers of the tax receivables the full amount of the tax receivables then due and unpaid;
 - (3) After a tax sale to a governmental entity, penalties and interest pursuant to § 67-5-2010(a)(1) shall continue to accrue on any tax receivables sold until paid in full; however, under no circumstances shall the cost of redemption be greater than if the receivable had not been sold; and
 - (4) If a governmental entity chooses to discharge, reduce, delay or otherwise compromise the payment of any tax receivables that have been sold, then the discharge, reduction, delay or compromise shall not be effective unless the government entity first pays to the purchaser of the tax receivables the amount of the tax receivable payments that have been discharged, reduced, delayed or otherwise compromised.
- (f) Tax receivables and the penalties and interest accrued on the tax receivables shall be exempt from taxation by any governmental entity. The real property affected by any tax receivable shall not be exempt from taxation by reason of this section.

- (g) It shall be the duty of the tax collector and all other state, county and municipal officers to continue to enforce the collection of tax receivables that have been sold pursuant to this section, in the same manner as if the tax receivables had not been sold. Nothing in this subsection (g) shall be construed to require of the tax collector or its officers, employees, agents or attorneys a standard of performance of their statutory or contractual duties in the collection of a tax receivable that is different from the standard of performance otherwise required of those persons.

Tax Lien Generally

67-5-2101. Taxes on which lien based.

- (a) The taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed.
- (b) In addition to the lien on property, property taxes shall become and remain a personal debt of the property owner or property owners as of January 1 of the tax year, and, when delinquent, may be collected by suit as any other personal debt. In any lawsuit for collection of property taxes, the same penalties and attorney fees shall apply as set forth in § 67-5-2410 for suits to enforce liens for property taxes. The claim for the debt and the claim for enforcement of the lien may be joined in the same complaint.

67-5-2102. Property subject to lien.

- (a) This lien shall extend to each and every part of all tracts or lots of land, and to every species of taxable property, notwithstanding any division or alienation thereof, or assessing or advertising the same in the name of persons not actually owners thereof at the time of the sale, or though the owner be unknown. However, there shall be no lien against leased personal property assessed to a lessee.
- (b) Such taxes shall be a lien upon the fee in the property, and not merely upon the interest of the person to whom the property is or ought to be assessed, but to any and all other interests in the property, whether in reversion or remainder, or of lienors, or of any nature whatever.
- (c) Where there is assessable under the law a leasehold interest in real estate or any improvements on real estate, under which such real estate is exempt from taxation in the hands of and to the owner thereof, the taxes assessed against such leasehold interest or interest in improvements on such exempt real estate shall be a lien only upon such leasehold interest or interest in improvements, and not upon the interest of the owner of the fee or the remainder or reversion of the fee.
- (d) In all cases where a penalty is incurred for exercising a privilege without license, the interest that the person thus exercising the privilege without license has in the building shall be liable for the penalty, superior to all other claims; but the interest of the owner of the building shall not be liable, unless the owner is privy to the violation of law.
- (e) The distress warrant authorized by law to be issued in such cases, if proceeded with to sale, shall operate as a writ of possession against the party exercising the privilege, without license.

67-5-2103. Nature of proceedings.

- (a) The whole proceeding for the enforcement of property tax liens, from the assessment to sale for delinquency, shall be a proceeding in rem, and shall not be invalid on account of such land having been listed or assessed for taxation to anyone as owner or owners or to any person or persons not the owner or owners or to unknown owner or owners.
- (b) All interested persons shall be deemed to have constructive notice of the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien. However, interested persons who do not have an obligation to pay the taxes on the parcel, such as lienholders, need not be joined as parties nor served with process so long as a diligent effort to give actual notice of the proceedings, as defined in § 67-5-2502(c)(1), is made to such persons.
- (c) The filing of a complaint for the purpose of enforcement of the first lien provided for in § 67-5-2101, shall create a lien lis pendens as to each parcel which is included in the proceeding, during the pendency of the proceeding, affecting all subsequent owners, without the recording of any copy or abstract thereof in the office of the register of deeds.
- (d) The general assembly finds and determines that:
 - (1) The collection of property taxes is an essential and necessary function of counties and municipal corporations in the state;
 - (2) This chapter provides for a specific and comprehensive scheme for the collection of delinquent property taxes;
 - (3) This chapter is intended to be procedural and remedial in application and, unless a contrary intent is expressed in an act amending this chapter, such amendments are also intended to be procedural and remedial in application;
 - (4) The economy of the state has evolved from one primarily based upon the agrarian use of real property to an economy based more upon the improvement of real property by the construction of residential, commercial, and industrial structures thereon. Such improvements require the investments of significant funds and resources;

- (5) A purpose of this chapter is to promote and encourage the development of improvements upon real estate that have been conveyed pursuant to this chapter through the enforcement of tax liens;
- (6) The certainty and finality of the titles to real estate that have been conveyed pursuant to this chapter through the enforcement of tax liens is a necessary prerequisite to the development of improvements thereon; and
- (7) Statutes that are not consistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter should not be applicable to tax proceedings, tax liens, or the enforcement of such tax liens.
- (e) This chapter shall be construed liberally in favor of the certainty and finality of property titles transferred pursuant to this chapter.
- (f) Title 21, chapter 1, part 4, is not applicable to tax proceedings, tax liens, or the enforcement of such tax liens.
- (g) Sections 29-6-161--29-6-165 are not applicable to tax proceedings, tax liens, or the enforcement of such tax liens.
- (h) Title 67, chapter 1, part 18, is not applicable to property tax proceedings, property tax liens, or the enforcement of such property tax liens.
- (i) Other statutes that are not consistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter shall not be applicable to tax proceedings, tax liens, or the enforcement of such tax liens.
- (j) All interested persons, as defined in this chapter, are charged with the knowledge that the parcel is subject to property taxes, which are required to be paid to the trustee or collector on an annual basis, and which taxes become a first lien on the parcel from January 1 of each year. All interested persons have an affirmative duty to inquire as to the amounts of such taxes and their payment status. Under no circumstances shall a claim that the interested party did not receive a tax bill or any pre-lawsuit notice constitute a valid defense to the enforcement of the lien, the personal debt for the taxes, or the amount of taxes owed, including penalty, interest, cost, and fees.

Tax Lien – Enforcement Generally

67-5-2401. Notice of intent to file suit -- Publication.

- (a) As a preliminary step toward enforcing the lien for uncollected property taxes, the trustee or collector shall cause to be inserted, once a week for two (2) consecutive weeks in the month of January, in a newspaper of general circulation as defined in § 2-1-104 or one (1) or more newspapers published or widely distributed in the county, a notice as follows:

You are advised that after February 1, additional penalties and costs will be imposed in consequence of suits to be filed for enforcement of the lien for property taxes for prior tax years; until the filing of such suits, taxes may be paid in my office.

..... _____

..... County Trustee (or other Collector)

- (b) The cost of publication shall be paid by the tax entity, and, if no newspaper is published in the county, notice shall be posted on the courthouse door.

67-5-2402. Notice to property owner of delinquency.

- (a) The trustee or collector shall likewise prepare from the rolls held by the trustee's or the collector's office, a list of taxpayers and identification of property for which property taxes are delinquent, including unpaid rollback taxes as defined in § 67-5-1004, as of June 1 of the current calendar year, and include the following notice or equivalent language in the current tax bills sent to property owners appearing on either the trustee's or the collector's list or the list received from the clerk of court pursuant to § 67-5-2403:

.....

IN ADDITION TO THIS AMOUNT, YOU OWE BACK TAXES. CONTACT THIS OFFICE IMMEDIATELY OR YOUR PROPERTY MAY BE SOLD.

..... _____

..... County Trustee (or other Collector)

- (b) Subsection (a) does not apply to any county having a population of not less than seven thousand four hundred fifty (7,450) nor more than seven thousand five hundred (7,500), according to the 1980 federal census or any subsequent federal census.

67-5-2403. List of property involved in suits.

Additionally, it is the duty of the clerk of any court in which suits for the enforcement of property tax liens have been filed, if requested by the trustee, collector or by the attorney prosecuting the suit, to annually provide to such requesting party or parties, no earlier than June 1 nor later than July 1, a complete list of unpaid delinquent taxes pending in the court as of June 1 of the current calendar year, with identification of the property involved in such suits, and the years for which taxes are delinquent.

67-5-2404. Delivery of delinquent tax list to attorney -- Appeals.

(a)

- (1) After the publication of the notice in § 67-5-2401, and between the dates of February 1 and April 1, the trustee shall deliver the delinquent lists showing all unpaid land taxes to an attorney chosen by the trustee with the approval of the county mayor.
- (2)
 - (A) Compensation of the attorney shall be determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body, but in no event shall such compensation exceed ten percent (10%) of all delinquent land taxes collected.
 - (B) [Deleted by 2015 amendment.]
- (3) It is the duty of the county trustee and the county mayor to cause the attorney to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes, and all arrears of taxes due the state, county and municipality.
- (4) In order that delinquent and municipal taxes may be collected at the same time as other taxes, it is the duty of the proper municipal officers to furnish the county trustee or the trustee's attorney certified lists of delinquent municipal taxes, unless otherwise provided.
- (5) This subsection (a) shall not apply to counties with a metropolitan form of government or to counties having the following populations according to the 1970 federal census or any subsequent federal census: *[omitted]*

(b)

- (1) After the publication of the notice in § 67-5-2401, and between the dates of February 1 and April 1, the trustee shall deliver the delinquent lists showing all unpaid land taxes to an attorney chosen by the trustee with the approval of the county mayor, and it shall be the duty of the county trustee and the county mayor to cause the attorney to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes, and all arrears of taxes due the state, county and municipality; and, so that delinquent and municipal taxes may be collected at the same time as other taxes, it shall be the duty of the proper municipal officers to furnish the county trustee or the trustee's attorney certified lists of delinquent municipal taxes, unless otherwise provided.
- (2) This subsection (b) shall apply only to counties with a metropolitan form of government and to counties having the following populations according to the 1970 federal census or any subsequent federal census: *[omitted]*

(c)

- (1) Upon written agreement between the county trustee and the clerk of the court where suit has been filed for collection of delinquent taxes, the county trustee may continue to collect delinquent property taxes, including penalty and interest due, regarding any property included on the delinquent tax list delivered by the county trustee to an attorney for the filing of suits for collection until such property has been sold at a delinquent tax sale if the offices of the court clerk and the county trustee have computer systems that are sufficiently connected so as to enable the county trustee to collect the correct amount of taxes, penalties, and interest due. The county trustee shall pay over to the court clerk the entire amount so collected pursuant to such agreement and the court clerk shall allocate such amount as if the moneys were collected by the court clerk. This subsection (c) shall only apply to any county having a population of not less than one hundred thirty-four thousand seven hundred (134,700) nor more than one hundred thirty-four thousand eight hundred (134,800), according to the 2000 federal census or any subsequent federal census, upon adoption of a resolution by a two-thirds (2/3) vote of the county legislative body authorizing the county trustee to collect delinquent property taxes as provided in this subsection (c).
- (2) Upon written agreement between the county trustee and the clerk of the court where suit has been filed for collection of delinquent taxes, the county trustee may continue to collect delinquent property taxes, including penalty, interest, fees, and costs on all property included on the delinquent list delivered by the county trustee to the delinquent tax attorneys appointed for the filing of suits until the time such properties are sold in a delinquent tax sale. The county trustee shall pay over or allocate to the court clerk the entire amount so collected pursuant to such agreement and the court clerk, or the county trustee pursuant to such agreement, shall allocate such amount as if the moneys were collected by the court clerk. This subdivision (c)(2) shall apply to any county having over three hundred thousand (300,000) tax parcels, upon adoption of a resolution by a two-thirds (2/3) vote of the county legislative body authorizing the county trustee to collect delinquent taxes as provided in this subdivision (c)(2).

- (d) If a taxpayer or other adverse party to the tax entity appeals a judgment or other order in an action to collect or enforce a lien for unpaid taxes, or files suit for recovery pursuant to chapter 1, part 9 of this title, or to set aside a tax sale pursuant to § 67-5-2504, the court may, in its discretion, and upon the tax entity prevailing in such action, award reasonable attorneys' fees in addition to the compensation set forth in this section. Any request for such fees shall be supported by affidavit and such fees shall become additional expenses of the tax suit for the purposes of § 67-5-2410(d), and shall be secured by the lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a). Nothing in this subsection (d) shall be construed as authorizing an award of attorney's fees in favor of a taxpayer or other adverse party to the tax entity.

67-5-2405. Filing and prosecution of suits.

- (a) The attorney shall after February 1, and not later than April 1, file suits in the circuit or chancery court of the county for the collection of delinquent land taxes due the state, county and municipality, as well as the interest, penalties, and costs attached to and a part of such taxes, which taxes, interest, penalties, and costs are declared a lien upon the land; and, for the enforcement of this lien, suits shall be brought in the name of the county, in its own behalf and for the use and benefit of the state, municipality or other tax entity that has certified a delinquent tax list, or in the name of any such tax entity that has certified a delinquent tax list, in its own behalf and for its own use and benefit.
- (b)
 - (1) The complaint shall be in substance and form as other complaints for the enforcement of liens and may be filed against and contain the names of all the delinquent taxpayers in the county, and the fact that the complaint contains the names of more than one (1) defendant shall not be considered by the court multifarious, or a misjoinder of parties.
 - (2) Additional defendants and delinquent taxes may be added to the suit as a matter of right upon the filing of a notice on behalf of the complainant to add additional defendants and without the necessity of amending the complaint. Upon the filing of such notice, the additional defendants shall be served with process pursuant to the Rules of Civil Procedure and § 67-5-2415.
- (c) Suits for the collection of delinquent taxes are to be prosecuted to a conclusion as soon as practicable, and for this purpose proceedings in respect thereto are to be accorded priority by the court.
- (d) At any time after suit has been filed pursuant to subsection (a), whether delinquent tax defendants have or have not been served with a copy of such suit, the court may amend this suit by adding delinquent taxes that became delinquent more recently than the taxes being enforced pursuant to subsection (a).
- (e)
 - (1) If a plaintiff has reasonable cause to believe that an interested person owning an interest in a parcel is a minor or a person who is incompetent and that the person has no spouse, parent, child, guardian or best friend suitable to represent the person's interest, nor any appointed representative, the plaintiff shall make that fact known to the court. The court shall determine whether the interests of justice require the appointment of a guardian ad litem or attorney ad litem to represent the interests of the person. Otherwise, notice to such spouse, parent, child, guardian, best friend, or appointed representative, shall constitute notice to the interested person.
 - (2) It is not necessary for unborn, unfound or unknown owners to have a guardian ad litem, attorney ad litem, or other representative, appointed to represent their interests in the proceedings except as provided in subdivision (e)(1).

67-5-2406. Failure to prosecute -- Duties of district attorney general

- (a) Upon the failure of the county trustee and the county mayor to employ an attorney and institute suits for the collection of delinquent taxes, and within the time provided, the district attorney general has the power and the duty to:
 - (1) Employ an attorney to institute and prosecute suits for the collection of such taxes; or
 - (2) Maintain an action for a writ of mandamus to compel the county trustee and county mayor to employ an attorney to institute and prosecute suits for the collection of such taxes.
- (b) In the event a delinquent tax attorney has not prosecuted delinquent tax suits to a sale of the property within five (5) years of the filing of the suit, the court, on motion of the county mayor and county trustee or the district attorney general, may remove the attorney from all delinquent tax suits the attorney is prosecuting, unless satisfactory explanation of the delay is proven to the court. Upon the attorney's removal, the lien for attorney's fees on any remaining unpaid taxes shall be extinguished as to such attorney.

67-5-2407. Credit to trustee after suit filed.

After the filing of such suits, the county trustee shall submit to the county legislative body a list of delinquent taxes reported uncollected, as the insolvent list, and the county legislative body shall allow credit for such uncollected taxes when the trustee has caused suits to be instituted for their collection as provided in this part, but not otherwise.

67-5-2408. Lists and records delivered to attorney.

When suits have not been brought, the commissioner of revenue shall restore the delinquent tax lists of such counties to the county trustee, and the trustee and county mayor shall cause suits to be brought for the collection of such taxes under this part, and it shall also be the duty of the circuit court clerks of the several counties of the state to turn over to the attorney selected by the trustee and county mayor all records of uncollected taxes remaining in the office of the circuit court clerks, and to the end that the attorney, in preparing and filing such bills to enforce the tax lien as herein provided in this part, may include in such bill or bills all delinquent tax debtors.

67-5-2409. Consolidation of suits -- Amendment of suit.

- (a) If any other suits for delinquent taxes are pending against any particular piece of property, such suits shall be consolidated as a matter of right upon the filing of a notice of consolidation on behalf of the complainant. All taxes for which any given piece of property is liable and for which suits are pending may be included in the final decree.
- (b) At any time after suit has been filed, whether delinquent tax defendants have or have not been served with a copy of such suit, the court may amend the suit by adding delinquent taxes that became delinquent more recently than the taxes being enforced pursuant to subsection (a). Once amended, all delinquent taxes, both delinquent prior to filing the complaint and added later by amendment, shall be included in the first bid submitted to purchase the property at the tax sale. Amendment of the suit to include more recent delinquent taxes owed shall not require the issuance of leading process and formal service upon the defendant or defendants, as all property owners are already on notice pursuant to this title 67 that taxes are due every year and become delinquent, if not paid by March 1 of the following year.

67-5-2410. Penalties, fees and costs -- Duties of clerk.

- (a) (1)(A) Upon the filing of suits to enforce the tax lien against real or personal property, an additional penalty of ten percent (10%) upon all delinquent taxes shall accrue and the penalty is imposed upon the amount due from any defendant to the state, county or municipality, which penalty shall be devoted to the expense of prosecuting the suits. Such penalty shall be computed on the base amount of delinquent taxes, not including accrued interest or penalties.
 - (B) Notwithstanding subdivision (a)(1)(A), upon the filing of suits to enforce the tax lien, a municipal or county legislative body in any county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census, may impose the additional penalty at a rate of twenty percent (20%) upon all delinquent land taxes that shall accrue, and the penalty is imposed upon the amount due from any defendant to the state, county, or municipality, which penalty shall be devoted to the expense of prosecuting the suits. The twenty percent (20%) rate may only be imposed upon adoption of a resolution by a two-thirds (2/3) vote of the municipal legislative body or the county legislative body imposing the rate for those purposes described in this section.
- (2) Subdivision (a)(1) shall not apply to counties with a metropolitan form of government or to counties having the following populations, according to the 1970 federal census or any subsequent federal census: *[omitted]*
- (b) (1) Upon the filing of suits to enforce the tax lien against real or personal property, an additional penalty of ten percent (10%) upon all delinquent taxes shall accrue and the penalty is imposed upon the amount due from any defendant to the state, county or municipality, which penalty shall be devoted to the expense of prosecuting these suits and shall be allowed to the attorney filing the suits as compensation for the attorney's services. Such penalty shall be computed on the base amount of delinquent taxes, not including accrued interest or penalties.
 - (2) Subdivision (b)(1) shall apply only to counties with a metropolitan form of government and to counties having the following populations, according to the 1970 federal census or any subsequent federal census: *[omitted]*
- (c) (1) The sheriff shall receive, as costs to be taxed against each delinquent, seven dollars and fifty cents (\$7.50) for serving all original processes and the statutory fees for all other services performed by the sheriff, and the clerks of the courts shall receive the statutory fees provided in § 8-21-401.
 - (2) No litigation tax shall be imposed.
 - (3) If necessary to the prompt dispatch of suits for the collection of delinquent taxes, the court may order paid out of delinquent tax money on hand all reasonable expenses of prosecuting these suits in addition to that otherwise provided by law.
- (d) Additional expenses ordered by the court such as, but not limited to, title examination fees, extra publications, survey fees, environmental assessments and other necessary costs, shall be set by the court and shall be considered as court costs of the tax suit.
- (e) Clerks shall not be required to prepare petitions, complaints, summonses, notices or orders for the prosecution of tax enforcement suits.

67-5-2411. Dismissal on payment of taxes.

- (a) The proceedings shall be automatically dismissed without the entry of any order of a court, as to a defendant's property, upon the payment of the amount of taxes due from the defendant, together with interest and penalty, and such court costs as may have accrued against the defendant in consequence of the filing of the proceedings. In the event the payment is made by a method such as a check which fails to clear, counterfeit money or other method which results in a failure of the payment, the payment and any receipt issued therefor, shall be void and the proceedings shall be automatically reinstated without further order of a court.
- (b) The securing of an official tax receipt by use of a method of payment which results in a failure of payment, shall be prima facie evidence of an intent to defraud if a third party is damaged or changes the party's position to the party's detriment in reliance upon the issued tax receipt.
- (c) The securing of an official tax receipt by use of a method of payment which results in a failure of payment shall constitute criminal contempt of the court in which is pending a proceeding to collect delinquent property taxes owing against the parcel.

67-5-2414. Procedure governing suit.

All such suits, whether brought in the chancery court or circuit court, shall be prosecuted according to the rules of procedure of courts of chancery, except as modified in this chapter or as they may be inconsistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter; and all lands impressed with the lien for taxes, penalties, interest, and costs shall be subject to sale under such proceedings, when the amount due is ascertained.

67-5-2415. Notice to taxpayer of suit.

- (a) The court shall have jurisdiction to award personal judgment against an owner upon the claim for the debt upon determining that proper process has been served upon such owner. The court shall have jurisdiction to award a judgment enforcing the lien by a sale of the parcel upon determining that any the following actions have occurred as to each owner:
 - (1) That proper process has been served upon an owner;
 - (2) That the owner has actual notice of the proceedings by mail or otherwise; or
 - (3) That constructive notice by publication pursuant to §§ 21-1-203 and 21-1-204, except as modified in this section, utilizing a description of the parcel in accord with § 67-5-2502(a)(1), has been given to unborn, unfound and unknown owners and that the plaintiff has made or will make a diligent effort prior to the confirmation of the sale of the parcel to give actual notice of the proceedings to persons owning an interest in the parcel, as identified by the searches described in § 67-5-2502(c)(2).
- (b) Notice shall also be sufficient if received by an owner in time to afford the owner a reasonable period to prevent the loss of owner's interest in the parcel. Such loss shall be deemed to occur upon the expiration or termination of the redemption period established by part 27 of this chapter.
- (c) Notice of the pendency of the proceedings as to a parcel constitutes notice of the pending sale of the parcel and vice versa.
- (d) If process is to be served upon a defendant, the defendant does not have to receive a copy of the complaint or exhibits. The plaintiff may in lieu thereof furnish to the defendant a notice identifying the proceedings sufficiently for the defendant to determine the parcel which is subject to the delinquent taxes for which the defendant is being sued.
- (e) A defendant may file a pleading alleging specific facts establishing any of the following defenses:
 - (1) That the parcel is not subject to sale for the taxes;
 - (2) That the taxes have been paid; or
 - (3) That there has been substantial noncompliance with mandatory statutory provisions relating to the proceedings.
- (f) Process may be served either by an authorized process server or forwarded by certified or registered mail, return receipt requested, or by any alternative delivery service as authorized by *Section 7502 of the Internal Revenue Code*, codified in 26 U.S.C. § 7502.
- (g) The return of the receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice as provided for in the Rules of Civil Procedure, or its return marked "refused", "unclaimed", or other similar notation, as evidenced by appropriate notation of such fact by the postal authorities, and filed as a part of the record by the clerk shall be evidence of actual notice. Process and notices delivered by registered or certified mail or by an alternative delivery service, with a return receipt, to an interested party's registered agent at the agent's address or to the address of the interested party, each as shown on the corporate records of a state secretary of state or other officer responsible for maintaining such records, shall be sufficient to bind the interested party as to notices and service of process.
- (h) Prior to confirming the sale of a parcel, the court shall determine that a diligent effort has been made to give actual notice of the proceedings to all interested persons, as identified by the searches described in § 67-5-2502(c)(2).

67-5-2416. Reference and master's report.

A reference may be taken in each case, and notice shall be given to all officers whose duty it is to collect delinquent revenue; and all such revenue as may be delinquent, together with all the costs, fees, penalties and interest thereon, shall be ascertained and included in the master's report.

67-5-2417. Receivership.

In all cases, the courts in which such bills may be filed are authorized to appoint receivers to take charge of the property that is the subject matter of the litigation and collect the rents and profits thereon, to the end that the net amount of such rents and profits, after paying the receiver reasonable compensation, shall be applied to the taxes, costs, penalties and interest involved in such suits and incident to such suits.

67-5-2418. Judgment and sale as to part of defendants -- Appeal.

- (a) Pro confesso may be taken and entered of record against any one (1) or more defendants included in a bill and the cause proceeded with, against any one (1) or more, to a final judgment and a sale of the property, without affecting the rights of the other parties to the suit.
- (b) Any one (1) or more defendants shall have the right to appeal, and such appeal shall not affect the standing of the cause as to other parties to the proceedings.

67-5-2419. Implementation of decrees.

The courts having jurisdiction of any delinquent tax proceeding are vested with the authority to render judgments and decrees, and order writs of possession for the purposes declared in this part and part 25 of this chapter, and the commissioner of revenue is authorized to take all steps necessary to put the state in possession of the property.

Tax Lien – Sale of Property

67-5-2501. Sale of land generally.

- (a)
 - (1) The court shall order a sale of the land for cash, subject to the equity of redemption.
 - (2) At all sales, the clerk of the court, acting for a tax entity or entities prosecuting the suit, shall bid the debt ascertained to be due for taxes, interest, penalties, and the costs and fees incident to the collection thereof, where no other bidder offers the same or larger bid; provided, that, when the legislative body of a tax entity determines that the environmental risks or financial liabilities associated with the property are such that it is not in the best interests of the tax entity for a minimum bid to be offered at the tax sale, the clerk shall not offer a bid on the property at the tax sale.
 - (3) Up to ten percent (10%) of the sale proceeds shall be applied first to payment of any unpaid balance of compensation due the prosecuting attorney. Second, the proceeds of the sale shall be applied to the costs of the suits. Third, the remainder shall be applied to the state first, county second, and municipality third, the amount due each to be ascertained by a decree of the court.
 - (4) This subsection (a) does not apply to counties with a metropolitan form of government or to counties having the following populations according to the 1970 federal census or any subsequent federal census: *[omitted]*
- (b)
 - (1) The court shall order a sale of such land for cash, subject to the equity of redemption.
 - (2) At all sales, the clerk of the court, acting for a tax entity or entities prosecuting the suit, shall bid the debt ascertained to be due for taxes, interest, penalties, and the costs and fees incident to the collection thereof, where no other bidder offers the same or larger bid; provided, that, when the legislative body of a tax entity determines that the environmental risks are such that it is not in the best interests of the tax entity for a minimum bid to be offered at the tax sale, the clerk shall not offer a bid on the property at the tax sale.
 - (3) The proceeds from such sale shall be applied first to the payment of the ten percent (10%) penalty allowed as compensation for prosecuting the suits, second to the costs, and third the remainder shall be applied to the state first, county second, and the municipality third, the amount due each to be ascertained by a decree of the court.
 - (4) This subsection (b) applies only to counties with a metropolitan form of government and to counties having the following populations according to the 1970 federal census or any subsequent federal census: *[omitted]*

(c)

- (1) Within five (5) business days after the conclusion of the sale, and prior to confirmation of the sale by the court, the clerk of the court shall immediately file in the case a report of sale or other notice reflecting the results of the tax sale.
- (2) The clerk of the court shall, concurrently with the filing, file the report or notice with the office of the register of deeds of the county in which the property is located. The report or notice shall set forth all results from the sale, or a separate report or notice may be created for each property sold.
- (3) The report or notice shall include, at a minimum, the identification of the property and defendants contained in the notice of sale as required by § 67-5-2502, the name of the successful bidder, and the total successful price bid for each parcel together with the instrument number of the last conveyance of record.
- (4) The report or notice shall be for notice purposes only and shall not be evidence of transfer of title.
- (5) Failure to timely record the report or notice shall not provide grounds to set the sale aside.
- (6) The document shall be exempt from recording fees pursuant to § 8-21-1001, and shall be indexed by the register under the name of the last owner of record.

67-5-2502. Notice of sale of land.

(a)

- (1) In the event of a sale under a decree of the court, the property shall be advertised in one (1) sale notice, which notice shall set out the names of the owners of the different tracts or parcels of land and describe the property and set out the amount of judgment against each defendant. The description of the property shall include a concise description, that means a reference to a deed book and page that contains a complete legal description of the property or the official property number as provided by § 67-5-806, and may also include a common description of the property, which may include street name and number, map and parcel number, number of acres, or any other description which might help identify the property as it is commonly known. The purpose of the common description is to help identify the property that is described in the concise description. Any error or defect in the common description shall not in any way void any sale of the property; provided, that the concise description makes accurate reference to the last conveyance of the property by correct reference to a deed book and page or the official property number as provided by § 67-5-806.
- (2) The advertisement may be by publication in a newspaper as required by subdivision (a)(1), or by printed handbills as the courts may decree.
- (3) Notice to parties or others in delinquent tax suits and sales shall be governed by the Tennessee Rules of Civil Procedure, except as modified in this chapter or as they may be inconsistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter, and may be forwarded to the address of an owner of the property that is on record in the office of the assessor of property. If there is any remainder after the proceeds of the sale have been distributed pursuant to § 67-5-2501, the party receiving notice pursuant to this subdivision (a)(3) shall also be given notice of the amount of proceeds resulting from the sale, the division of such proceeds, and the remainder.
- (4) A person, who is either expressly or impliedly authorized by another person to receive mail on behalf of the other person, is authorized to sign a receipt on behalf of the other person accepting registered or certified mail or correspondence delivered by an alternative delivery service, containing either a summons, complaint, or summary of the proceeding or a notice that has been or is to be filed in a tax proceeding. In every tax proceeding, the burden of proving by clear and convincing evidence that a person who signed such a receipt for a different person and was, in fact, at that time expressly prohibited in writing from accepting mail for the second person, shall be upon the person challenging the sufficiency of the service or notice.

(b) It is the responsibility of the property owner to register the property owner's name and address with the assessor of property of the county in which the land lies.

(c) (1) For the purposes of this chapter, unless the context requires otherwise:

- (A) "Diligent effort to give actual notice of the proceedings" means a reasonable effort to give notice which is reasonably calculated, under all the circumstances and conditions, to apprise interested persons of the pendency of the proceedings in time to afford them an opportunity to prevent the loss of their interest in the parcel. Such effort shall be such as one desirous of actually informing the persons might reasonably adopt to accomplish it. Such effort does not, however, require that an interested person receive actual notice. Nor does it require the plaintiff to search records or sources of information in addition to that information available in the specific offices listed in subdivision (c)(2);
- (B) "Interested person", "person owning an interest in a parcel" and "owner" means a person, including any governmental entity, that owns an interest in a parcel and includes a person, including any governmental entity, that holds a lien against a parcel or is the assignee of a holder of such a lien. "Interested person" also includes a person or entity named as nominee or agent of the owner of the obligation that is secured by the deed or a deed of trust and that is identifiable from information provided in the deed or a deed of trust, which shall include a mailing address or post office box of the nominee or agent. However, a person named as a trustee under a deed of trust, contract lien or security instrument, is not included in such definition unless the person has a separate interest in the parcel;

- (C) "Parcel" means a tract or item of real or personal property which is the subject of a judicial proceeding to obtain a personal judgment for the taxes owing or to enforce the lien securing the payment of delinquent property taxes by a sale of the tract or item; and
 - (D) "Proceeding" and "proceedings" means a judicial proceeding filed by a governmental entity for the purpose of collecting delinquent property taxes owing the entity or including the enforcement of the first lien securing such taxes. The court shall have jurisdiction to determine all issues arising in the proceedings including issues arising before and after the confirmation of the sale of a parcel, including redemption, disposition of excess proceeds and all issues arising pursuant to § 67-5-2507.
- (2) The delinquent tax attorney shall make a reasonable search of the public records in the offices of the assessor of property, trustee, the register of deeds and the local office where wills are recorded, seeking to identify and locate all persons owning an interest in a parcel. The court shall set a reasonable attorneys fee for the services required by this subsection (c) which shall become an additional expense of the proceedings for the purposes of § 67-5-2410(d) and shall be secured by the first lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a).
 - (3) The delinquent tax attorney shall make a diligent effort to give actual notice of the proceedings to all interested persons, as identified by the searches described in subdivision (c)(2).
- (d) A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required.
 - (e)
 - (1) Any owner of a surface interest in property overlying a mineral interest may record a declaration of the owner's interest in such land with the register of deeds in the county where the mineral interest is located. Declaration forms shall be available at the register's office and shall include the name of the owner of mineral interest beneath the surface. Declaration forms received by the register's office shall be recorded by the register in the dormant mineral interest record. Declaration forms shall be indexed under the names of the mineral interest owners as grantor or grantors and under the names of the surface owners as grantee or grantees. Recording the declaration of surface ownership shall entitle surface owners to receive notice described in subdivision (e)(2).
 - (2) In the event of the sale of severed mineral interest property pursuant to § 67-5-2501, the clerk of the court shall send, by certified return receipt mail, a notice of proceedings regarding the sale of that mineral interest to any owner of the surface interest who has recorded a declaration of surface ownership as described in subdivision (e)(1).
 - (3)
 - (A) The owner of surface interest who has recorded a declaration of surface ownership according to subdivision (e)(1), and who has received notice of delinquent tax proceedings according to this section may, within one hundred twenty (120) days after the sale pursuant to § 67-5-2501, purchase the mineral interest beneath the owner's tract for a percentage of the total amount of such sale, which percentage shall be derived from the percentage that the owner's surface interest bears to the total surface area of the property connected with the mineral interest sold at such tax sale.
 - (B) Such surface owner shall tender to the clerk of court such amount, including a pro-rated amount of the penalty and interest paid, at the same percentage rate. The clerk shall, within thirty (30) days of receipt of such amount pay the same amount to the person who purchased the mineral interest at the tax sale. The surface owner shall, in addition, pay the clerk for the clerk's services in such transaction.

67-5-2503. Sale of land -- Writ of possession -- Rents and profits.

- (a) An order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser effective upon entry of the order. On such date, the risk of loss shall transfer from the original owner to the purchaser. In the event of a loss occurring after the sale and before the order confirming the sale is entered, the court shall, on motion of the purchaser filed before the order confirming the sale becomes final, determine whether any portion of the purchaser's bid should be refunded to the purchaser.
- (b) A writ of possession shall, upon application of the purchaser, in a proper case, be ordered by the court in which the tax sale has been made. A purchaser not taking actual possession of the property shall have no rights to rents or profits from a taxpayer who has remained in possession during the redemption period.

67-5-2504. Attacks on sale of land -- Rights of purchaser.

- (a)
 - (1) Any person who buys real estate sold for delinquent taxes that were a lien thereon, and who shall for any cause fail to get a good title or to recover possession of the realty, shall be subrogated to all liens that secured the taxes, and all interest, costs, penalties and fees; and such person shall have the right to enforce the same in chancery for the reimbursement of the purchase money paid by such person and interest thereon.

- (2) The chancery court shall have jurisdiction, in such case, though the amount sued for be less than fifty dollars (\$50.00).
- (b) A tax deed of conveyance or an order confirming the sale shall be an assurance of perfect title to the purchaser of such land, and no such conveyance shall be invalidated in any court, except by proof that the land was not liable to sale for taxes, or that the taxes for which the land was sold have been paid before the sale or that there was substantial noncompliance with mandatory statutory provisions relating to the proceedings in which the parcel was sold; and if any part of the taxes for which the land was sold is illegal or not chargeable against it, but a part is chargeable, that shall not affect the sale, nor invalidate the conveyance thereunder, unless it appears that before the sale the amount legally chargeable against the land was paid or tendered to the county trustee, and no other objection either in form or substance to the sale or the title thereunder shall avail in any controversy involving them. An action seeking to invalidate any tax title to a parcel shall allege specific facts establishing the grounds set out herein and proof of compliance with subsection (c) prior to the filing of the complaint.
- (c) No suit shall be commenced in any court of the state to invalidate any tax title to land until the party suing shall have paid or tendered to the clerk of the court where the suit is brought the amount of the bid and all taxes subsequently accrued, with interest and charges as provided in this part.
- (d)
- (1) A suit to invalidate any tax title to land shall be commenced within one (1) year from the date the cause of action accrued, which is the date of the entry of the order confirming the tax sale.
 - (2) The statute of limitations to invalidate the sale of any tax title shall be one (1) year as set forth in subdivision (d)(1), except that it may be extended to one (1) year after the plaintiff discovered or with the exercise of reasonable due diligence should have discovered the existence of such cause of action.
 - (3) In no event shall any action to invalidate any tax sale title be brought more than three (3) years after the entry of the order confirming the tax sale.
 - (4) This subsection (d) shall not be construed to prevent or delay issuance of an order quieting title to land at the suit of a delinquent tax sale purchaser. After expiration of the period of redemption provided in § 67-5-2701, the delinquent tax sale purchaser may file suit to quiet title, notwithstanding the deadline for tax sale challenges provided in this subsection (d).
 - (5) Nothing in this subsection (d) shall limit the time in which a motion for excess proceeds may be filed pursuant to § 67-5-2702.
- (e) In all cases where the state is not the holder of the legal title to the property bought by it at a tax sale for delinquent state and county taxes, any person desiring to attack the validity of such tax sale may do so by making only the holder of the legal or equitable title thereto and those persons claiming through such holder who are parties to such suit, and it shall not be necessary to make the state a party thereto.
- (f) Any person successfully challenging the validity of a tax sale of the person's interest in a parcel shall also be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for any increase in the value of the parcel, including any improvements thereto, from the date of the entry of the order confirming the sale until the entry of a court order declaring the tax sale invalid as to the challenger. In the alternative, the challenger shall be responsible to the person purchasing the property at the tax sale and the purchaser's successors in interest, for all amounts expended by the purchaser or the purchaser's successors as set out in § 67-5-2701(b) and (e), if such amount is in excess of the increased value of the parcel. The purchaser and successors shall have a lien upon the parcel to secure the payment of the amount determined by the court to be due.
- (g) An order confirming the sale of a parcel is voidable and may be voided by the court after a determination of the merits of the grounds for the action as set out in this chapter and any defenses raised.
- (h) For the purposes of this chapter, a motion filed pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure, or any other or successor rule of similar effect, challenging the validity of a tax sale and any independent action for a similar purpose, shall be considered an action to invalidate the sale of a tax title.

67-5-2506. Sale of land for county taxes only.

- (a)
- (1) When any land must be sold for payment of delinquent county taxes only, it shall be sold under the provisions of this part and parts 20 and 24 of this chapter so far as they apply.
 - (2) It is the duty of the clerk of the court ordering the sale to bid, on behalf of the governmental entities for which the taxes are owing, to ascertain the amount due for taxes, interest, penalties and costs, where no other bidder offers the same or higher bid; provided, that, in the case of property where the county legislative body has determined that no bid should be made on behalf of the governmental entities to which taxes are owing due to a determination that such property poses an environmental risk or has financial liabilities associated with the property such that it is not in the best interest of

the county to take possession of the property, the clerk shall not offer a bid. The county legislative body may also make a determination that no bid shall be made on behalf of the governmental entities on non-buildable or non-conforming parcels, including, without limitation:

- (A) Storm water detention basins;
- (B) Drainage ditches;
- (C) Private road right-of-ways;
- (D) Private drives;
- (E) Common open areas; and
- (F) Utility easements.

- (3) Up to ten percent (10%) of the sale proceeds shall be applied, first, to payment of any unpaid balance of compensation due the prosecuting attorney; second, the proceeds of the sale shall be applied to the costs of the suits; and third, the remainder shall be applied to the county first and second, to any municipality having a tax lien on the same property.
- (4) This subsection (a) does not apply to counties with a metropolitan form of government or to counties having the following populations, according to the 1970 federal census or any subsequent federal census: *omitted*

(b)

- (1) When any land must be sold for payment of delinquent county taxes only, it shall be sold under the provisions of this part and parts 20 and 24 of this chapter so far as they apply.
- (2) It is the duty of the clerk of the court ordering the sale to bid, on behalf of the governmental entities for which the taxes are owing, to ascertain the amount due for taxes, interest, penalties and costs, where no other bidder offers the same or higher bid; provided, that, in the case of property where the county legislative body has determined that no bid should be made on behalf of the governmental entities to which taxes are owing due to a determination that such property poses an environmental risk, the clerk shall not offer a bid.
- (3) The proceeds from such sale shall be applied, first, to the payment of the penalty allowed as compensation for prosecuting the suits; second, to the costs; and third, the remainder shall be prorated, first, to the county and, second, to any municipality that has a tax lien thereon.
- (4) This subsection (b) applies only to counties with a metropolitan form of government and to counties having the following populations, according to the 1970 federal census or any subsequent federal census: *omitted*

67-5-2508. Sale of property -- Political subdivision as purchaser.

(a)

- (1) Any county, city, town, taxing district or other municipal corporation in Tennessee is authorized to bid at any sale of property sold for nonpayment of taxes or assessments levied against the property, or to enforce the lien of any taxes or assessments levied against such property, upon which property any such county, city, town, taxing district or other municipal corporation may have a lien for taxes or assessments, and to buy at any such sale.
- (2) Such counties, cities, towns, taxing districts and municipal corporations are expressly authorized to bid such amounts in excess of the total amount of taxes, interest, penalties, attorney's fees, costs and other charges incident thereto as may be authorized by the county legislative body, or the legislative council or other governing bodies of cities, towns, taxing districts and other municipal corporations, and to execute such notes or other evidence of indebtedness for any part of the purchase price of such property as may be authorized by the county legislative body, or by the legislative council or other governing bodies of such cities, towns, taxing districts or other municipal corporations.
- (3) Any such counties, cities, towns, taxing districts or other municipal corporations may bid at such sales, either jointly or separately, being expressly authorized in the event of joint bids, to contract with reference thereto and execute all contracts necessary or incidental to such joint bids.

(b)

- (1) If at any sale of property for taxes or assessments levied against the property, or for the enforcement of the lien of such taxes or other assessments, any county, city, town, taxing district or other municipal corporation shall be the successful bidder and become the purchaser of such property at any such sale, it shall be and is expressly authorized to take credit on any note, notes or other evidence of indebtedness executed as all or part of the purchase price of such property for any taxes or assessments against the property, owed to such county, city, town, taxing district or other municipal corporation. Such county, city, town, taxing district or other municipal corporation is expressly exempted from furnishing any security for payment of any such notes or other evidence of indebtedness for all or any part of the purchase price of any such property purchased by it by authority of or under the provisions of this section.

- (2) Any county, city, town, taxing district, or other municipal corporation, having become a purchaser at a tax sale, or having otherwise acquired real estate, may fully discharge the lien or liens of delinquent taxes of the state that have priority or are superior to its lien for taxes, by paying into the hands of the clerk and master or clerk conducting such sale, the net amount of such state taxes without interest or penalty.
- (c)
- (1) Upon the purchase of land by a municipality at a delinquent tax sale for municipal taxes only, and after the period of redemption has lapsed, the municipality may, upon a majority vote of the governing body determining it impracticable to sell the property for the full amount of the taxes, penalty, cost and interest, sell the property for less than this amount.
 - (2) Subdivision (c)(1) shall not apply in any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.
 - (3) The municipality may, upon a majority vote of its legislative body determining it in the best interests of the municipality to use the property for a public purpose, decide to retain ownership and possession of such property.
- (d) Upon the purchase of land by a municipality or by a county at a delinquent tax sale, after the period of redemption has lapsed, when both municipal and county taxes are delinquent:
- (1) The municipality may, upon a majority vote of the respective governing body determining it impracticable to sell the property for the full amount of the taxes, penalty, cost and interest, sell the property for less than this amount, and the county shall be joined in such tax sale;
 - (2) The county may conduct a sale in accordance with § 67-5-2507(b)(5), and the municipality shall be joined in such tax sale; and
 - (3) Any resulting revenue from such tax sale shall be apportioned to the municipality and county pro rata based on the amount of delinquent taxes.
 - (4) The county or municipality may, upon a majority vote of its legislative body determining it in the best interests of such county or municipality to use the property for a public purpose, decide to retain ownership and possession of such property. The county or municipality wishing to retain the property shall pay to the other governmental entity its pro rata share of the joint bid amount at the tax sale, upon receipt of which the other governmental entity shall execute a quitclaim deed conveying its interest in the property.

67-5-2510. Property purchased by state or political subdivision

- (a) Whenever any property is sold at a tax sale and is purchased by the state, by a county, by a municipality, or by a county and municipality, the officers of the state, or the county, or the municipality, or of county and municipality, purchasing the property, shall notify the county trustee and the collector of any municipal taxes that are a lien upon the property, when actual possession has been taken of such lands, and the county trustee and the collector of municipal taxes are then authorized and directed to note the payment of the taxes, for which the sale was held upon the tax rolls, by endorsing thereon the words: "Paid by sale of property, see Land Ledger, p. _____; actual possession having been taken by _____ (County, City, or City and County)," or equivalent words.
- (b) If actual possession is not taken by the state, by a county, or by a municipality, or by a county and municipality, the lands shall not be removed from the tax rolls, nor shall the lands be removed from the tax rolls, if the owner or former tenant is permitted to remain in possession of the property without the payment of rent to the state, county or municipality or county and municipality.

67-5-2511. Ledger of property purchased by state or political subdivision.

- (a) The county trustee and all municipal collectors are likewise authorized and directed to set up a ledger of all properties sold at a tax sale and purchased by the state, or by a county, or by a municipality, or by a county and municipality, possession of which has been taken by one (1) or more of them.
- (b) The ledger shall consist of a well-bound book, properly indexed, containing a sheet or page for each parcel of land, upon which page the taxes for which the property was sold shall be listed, year by year, without the addition of any interest or penalties.
- (c) As to each item of tax entered on the ledger, a reference shall be made to the tax roll, showing the book and page from which the item was taken, and on the ledger page shall be also entered the net amount of rents received, or the net sale price thereof, and the distribution of such rents and sale price.

67-5-2515. Reference to tax deed deemed reference to court decree.

Any reference in this code to a tax deed with respect to property sold for delinquent taxes shall also be deemed a reference to an order of confirmation of sale entered in a delinquent tax lawsuit with respect to the property in question.

67-5-2516. Transfer of unimproved or undeveloped property acquired by tax entity at tax sale

- (a) As used in this section:
 - (1) "Undeveloped" means that no utility services, such as electricity, gas, water or sanitary sewer, have been constructed or installed on the particular property or to serve the property; and
 - (2) "Unimproved" means that no buildings or other structures have been placed, constructed, installed, or erected on the property.
- (b) Whenever a tax entity acquires any unimproved or undeveloped property at a tax sale, at any time during its ownership of the property, the tax entity may transfer such property to the non-governmental entity claiming contractual rights to the payment of fees or assessments duly recorded in covenants and restrictions, which shall be in full satisfaction of such fees and assessments; provided, that the tax entity and non-governmental entity shall jointly approve the transfer and may negotiate a suspension or resolution of any such fees and assessments from the date the tax entity takes title at the tax sale until the transfer to the non-governmental entity is complete. In the event that such transfer is jointly approved, then prior to the date that the non-governmental entity takes title to the property, no judgment shall be entered against the tax entity regarding the payment of assessments or fees, nor shall any lien for such assessments or fees claimed by the non-governmental entity be enforced. Any transfer of the property shall not affect any rights of redemption pursuant to part 27 of this chapter.

Redemption

67-5-2701. Procedure for redemption of property.

- (a) (1) Upon entry of an order confirming a sale of a parcel, a right to redeem shall vest in all interested persons. The right to redeem shall be exercised within the time period established by this subsection (a) beginning on the date of the entry of the order confirming the sale, but in no event shall the right to redeem be exercised more than one (1) year from that date. The redemption period of each parcel shall be stated in the order confirming the sale based on the following criteria:
 - (A) Unless the court finds sufficient evidence to order a reduced redemption period pursuant to this section, the redemption period for each parcel shall be one (1) year;
 - (B) The redemption period shall be determined for each parcel based on the period of delinquency. Once the period of delinquency is established, the redemption period shall be set on the following scale:
 - (i) If the period of delinquency is five (5) years or less, the redemption period shall be one (1) year from the entry of the order confirming the sale;
 - (ii) If the period of delinquency is more than five (5) years but less than eight (8) years, the redemption period shall be one hundred eighty (180) days from the entry of the order confirming the sale; or
 - (iii) If the period of delinquency is eight (8) years or more, the redemption period shall be ninety (90) days from the entry of the order confirming the sale; and
 - (C) For all property for which a showing is made pursuant to subdivision (a)(2), the redemption period shall be thirty (30) days from the entry of the order confirming the sale without regard to the number of years of delinquent taxes owed on the property, beyond that required to make the property legally eligible for the sale.
- (2) A reasonable basis to believe that real property is vacant, or, in the case of vacant land, a reasonable basis to believe that the property is abandoned, shall, at a minimum, be based upon periodic inspections of the property over a two-month period at different times of the day where three (3) or more inspections reveal evidence of abandonment.
- (3) As used in this section:
 - (A) "Evidence of abandonment" includes, but is not limited to, any of the following conditions:
 - i. Overgrown or dead vegetation;
 - ii. Accumulation of newspapers, circulars, flyers, or mail;
 - iii. Past due utility notices, disconnected utilities, or utilities not in use;
 - iv. Accumulation of trash, refuse, or other debris;
 - v. Absence of window coverings such as curtains, blinds, or shutters;
 - vi. One (1) or more boarded, missing, or broken windows;
 - vii. The property is open to casual entry or trespass;
 - viii. The property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons; or

- ix. Any of the conditions in subdivisions (a)(3)(A)(i) - (viii) exist and, if there is a mortgage on the property, the mortgagor does not occupy the property and has informed the mortgagee or loan servicing company in writing that the mortgagor does not intend to occupy the property in the future;
 - (B) "Period of delinquency" means, with respect to a parcel, the longest consecutive number of years the property taxes on that parcel are delinquent and have not been paid to a jurisdiction, and for which years the collection of property taxes for that jurisdiction is being sought in the tax sale;
 - (C) "Person entitled to redeem" means, with respect to a parcel, any interested person, as defined in this chapter, as of the date of the sale and the date the motion to redeem is filed;
 - (D) "Vacant and abandoned" with respect to real property:
 - i. Means:
 - (a) There is a reasonable basis to believe the property is not occupied as determined in accordance with subdivision (a)(2); or
 - (b) A court has determined that the property is a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners, or has otherwise declared the property unfit for occupancy; and
 - ii. Does not include:
 - (a) An unoccupied building that is undergoing construction, renovation, or rehabilitation at the hands of a properly licensed contractor pursuant to a building permit; is proceeding to completion; and is in compliance with all applicable ordinances, codes, regulations, and statutes;
 - (b) A building occupied on a seasonal basis that is otherwise secure;
 - (c) A building that is secure, but is the subject of a probate action, action to quiet title, or other similar ownership dispute; provided, that the owners are exercising diligence in pursuit of resolution of the dispute;
 - (d) A building damaged by a natural disaster and one (1) or more owners intend to repair and reoccupy the property; provided, that the owners are exercising diligence in pursuit of completion of repairs at the property in accordance with subdivision (a)(3)(D)(ii)(a); or
 - (e) Any property occupied by the owner, a relative of the owner, or a tenant lawfully in possession; provided, that neither subdivision (a)(3)(A)(viii) nor subdivision (a)(3)(D)(i)(b) applies to the property.
- (b) (1) In order to redeem a parcel, the person entitled to redeem shall file a motion to such effect in the proceedings in which the parcel was sold. The motion shall describe the parcel, the date of the sale of the parcel, the date of the entry of the order confirming the sale and shall contain specific allegations establishing the right of the person to redeem the parcel. Prior to the filing of the motion to redeem, the movant shall pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at the rate of twelve percent (12%) per annum, which shall begin to accrue on the date the purchaser pays the purchase price to the clerk and continuing until the motion to redeem is filed. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail.
- (2) In any motion to enforce a right of redemption brought by a transferee against a tax sale purchaser or other interested party:
- (A) The tax sale purchaser or other interested party in whom the right of redemption originally vested must be served with a copy of the motion to redeem;
 - (B) The motion to redeem must be denied on the objection or response to the motion to redeem by the tax sale purchaser or any other interested party if it appears that the transferee is engaged in speculation or profiteering with respect to such right of redemption;
 - (C) Such speculation and profiteering is resumed if it appears that the transfer of the right of redemption was made for consideration in an amount less than the purchase price paid by the tax sale purchaser at the tax sale minus the amount the debtor would have been required to pay to redeem the property under this chapter; and
 - (D) If a motion to redeem by a transferee is denied under this subdivision (b)(2) based on a finding by the court of such speculation and profiteering, the court may award reasonable attorney's fees to the tax sale purchaser or any other interested party challenging the motion to redeem.
- (3) Subdivision (b)(2) is intended to:
- (A) Further the public policies of this state in protecting the interests of owners of real property subject to debt, protecting the integrity of the tax sale process, providing reliable tax sale titles to purchasers, and prohibiting the profiteering and speculation in rights of redemption; and
 - (B) Be remedial and construed to apply to any existing rights of redemption.

- (c) Upon the filing of the motion to redeem and the payment of the required amount, the clerk shall within ten (10) days send a notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem the parcel. The notice of redemption shall state the amount paid at the time of the filing of the motion and refer the persons to this section.
- (d) The purchaser may within thirty (30) days after the mailing of the notice of redemption, file a response seeking additional funds to be paid by the proposed redeemer to compensate the purchaser for amounts expended by the purchaser for the purposes set out in subsection (e). The response shall specifically set out the basis for each category of additional funds claimed. The response may also allege that the motion to redeem was not properly or timely filed. If no response is timely filed, the court shall determine whether the redemption has been properly made, and if so, shall cause an order to be entered requiring the proposed redeemer to pay additional interest at the rate set forth in subsection (b), accruing from the date the motion to redeem was filed until the date of such payment.
- (e) Additional sums to be paid by the proposed redeemer at the demand of the purchaser, shall include the following:
 - (1) Additional ad valorem taxes, penalty, interest and court costs paid by the purchaser secured by a lien against the parcel;
 - (2) Reasonable payments made by the purchaser for insurance on the parcel and any improvements thereon;
 - (3) Reasonable cost paid by the purchaser to avoid permissive waste of the parcel;
 - (4) Reasonable expenses paid by the purchaser as a result of a judicial or administrative order or other official notice requiring the purchaser to immediately bring the property into compliance with applicable building code or zoning regulations;
 - (5) Reasonable payments by the purchaser for homeowner's association dues or obligations resulting from covenants running with the land which are secured by a lien against the parcel; and
 - (6) Additional interest at the rate set out in subsection (b), accruing from the date the motion to redeem was filed until the date the purchaser's response was filed. If the court determines that the purchaser has not delayed consideration of the motion to redeem and that any response filed by the purchaser for additional funds was based on a reasonable expectation that the expenditures of the purchaser were reimbursable pursuant to this section, then the court may require the proposed redeemer to also pay additional interest at the same rate, accruing from the date the purchaser's response was filed until the date of such payment.
- (f) Any additional funds ordered to be paid by the proposed redeemer under this section shall be paid to the clerk prior to the later of the following dates:
 - (1) The date of the expiration of the redemption period; or
 - (2) Thirty (30) days after the entry of the order allowing additional funds.
- (g) If the proposed redeemer timely pays the full amount of any additional funds ordered by the court, the court shall declare that the property has been redeemed.
- (h) If the proposed redeemer fails to timely pay the full amount of any additional funds ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded to him less the clerk's fee and any other court costs.
- (i) In the event a person tenders the full amount owing in the proceeding at a time after the date of sale and prior to the entry of an order confirming the sale, the person shall also pay interest computed as established by subsection (b) on the total purchase price paid by the purchaser.
- (j) The court in which the proceedings are pending may order that any proposed redeemer shall also pay to the clerk the amount necessary to record any orders of the court in the office of the register of deeds. Such payment may be required to be paid upon the filing of the motion to redeem or upon determining whether any additional funds are to be allowed.
- (k) Upon any order pertaining to redemption becoming final, the clerk shall make such disbursements as are provided in the order.
- (l) In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the redemption portion of the proceedings as an assistance to the court, the court may allow a reasonable attorneys fee to be paid by either the movant or the purchaser as directed by the court.
- (m) In the event all parties to the action waive their right to appeal all issues in the cause, the clerk shall immediately disburse all amounts owing.
- (n) Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be divested out of the purchaser, and the clerk shall promptly refund the purchase money and pay all sums due to the purchaser under this section. The interests of the taxpayer and other interested parties, or their successors in interest, shall be restored to that state which existed as of the date of entry of the order confirming the sale. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien.
- (o) During the redemption period, the purchaser shall have no obligation to purchase insurance on the parcel and shall not be liable to a person redeeming the parcel for damages to the parcel during such redemption period unless such damages are directly caused by intentional acts of the purchaser. L This subsection (o) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

- (p) During the redemption period and thereafter a taxing entity which has purchased a parcel pursuant to §67-5-2501 shall have no obligation to preserve the value of the parcel. This subsection (p) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

67-5-2702. Motion setting forth claim to excess sale proceeds -- Service of motion -- Hearing on motion -- Recovery of excess proceeds paid in error.

- (a) Following entry of the order of confirmation of sale, any interested person, as defined in this chapter, may file a motion with the court requesting disbursement of any excess sale proceeds pursuant to this section.
- (b) A copy of such motion shall be served, in the manner prescribed by the Rules of Civil Procedure, on all parties to the underlying action, no later than thirty (30) days prior to the hearing date of the motion.
- (c) At the hearing, the court shall order that any remaining redemption period shall be terminated as to the movant and as to any other person entitled to redeem property who consents to such termination as evidenced by their signature on such order, and any excess proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:
- (1) To the tax entity or entities prosecuting the delinquent tax sale, for any remaining or subsequent outstanding taxes that are a lien against the property;
 - (2) To any lienholder, private or public, holding a claim against the property at the time of the tax sale, for the amount proven to be due under such lien, in accordance with priorities established by applicable law;
 - (3) To any lienholder, private or public, holding a claim against the property arising after the tax sale, for the amount proven to be due under such lien, in accordance with priorities established by applicable law;
 - (4) To any taxpayer, according to such taxpayer's interest at the time of the tax sale; provided, that such taxpayer was a defendant in the underlying action, or acquired by will or intestate succession the interest in the property of a former taxpayer who was a defendant in the underlying action; and
 - (5) Any remaining excess proceeds shall be subject to the Uniform Disposition of Unclaimed Property Act, compiled in title 66, chapter 29, part 1. A motion for excess proceeds may be filed in the court in which the proceeding is pending until such time as the funds are actually forwarded to the state pursuant to the Uniform Disposition of Unclaimed Property Act. For the purposes of § 66-29-110, the presumption of abandonment shall not arise until the final determination of all filed motions for redemption and excess proceeds or one (1) year following the expiration of the redemption period for that parcel, whichever is later.
- (d) A person who claims to be the owner of an interest in a parcel, which is the subject of a motion to claim any excess proceeds from a delinquent tax sale shall record the document effecting such ownership, or an abstract thereof, or an affidavit of heirship, in the office of the register of deeds for the county in which the parcel is located, prior to thirty (30) calendar days before the day on which the motion is scheduled to be heard. A person who fails to timely record such document shall not be entitled to notice of the motion to claim excess proceeds as referred to in subsection (a).
- (e) In the event an owner who failed to receive notice of the motion to claim excess proceeds, absent any fault on the owner's part, claims that a person has received excess proceeds in error or in excess of the person's correct share to the detriment of the owner, the owner shall have a right of action against such person for the recovery of such excess proceeds as may have been paid in error. Such right of action shall be the exclusive remedy of such an owner.
- (f) For the purposes of this section, "in accordance with priorities established by applicable law" means that the priority of the interests in the parcel shall transfer to the proceeds from the sale of the parcel.
- (g) In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the excess sale proceeds portion of the proceedings as an assistance to the court, the court may allow a reasonable attorney's fee to be assessed as directed by the court.



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