

Judicial In-Rem Tax Sale Information

A guide to policies, procedures, and laws
for judicial in-rem tax sales in
Henry County



HENRY COUNTY, GA

TAX COMMISSIONER'S OFFICE

SERVICE • INTEGRITY • TRUST

QUICK FACTS

- Tax Sales will be conducted in the manner of a public auction with parcels sold in the order as indicated in the advertisement, or as amended by the Tax Commissioner.
- These are **BUYER BEWARE** sales! There are no guarantees neither expressed nor implied.
- We recommend that you do not purchase property without having first seen the property.
- Bidding on a property is a binding agreement between the County and the bidder/purchaser. Once the Levy Officer recognizes a bid, it is then considered an official bid (and a binding agreement).
- The opening bid will include all applicable taxes, penalties, fees and costs.
- Title will vest absolutely into the purchaser after the right of redemption, eliminating the need for post-sale barment procedures and quiet title action.
- The purchaser will be responsible for any current and future assessments and property taxes as they are due.
- No information provided is to be considered legal advice. Please Consult an Attorney.

MICHAEL C. HARRIS

Tax Commissioner/ Ex-Officio Sheriff
Henry County, Georgia



INTRODUCTION

Most Tax Commissioners use tax sales as their method of last resort in fulfilling their constitutional obligation to collect delinquent property taxes. The reality for every tax office in Georgia is that sometimes the only way to collect taxes is levy and sale of the taxpayer's property. The Georgia code provides for two types of tax sales:

- Judicial In-Rem Tax Sales
- Non-Judicial Tax Sales

Here in Henry County, we principally utilize the Judicial In-Rem Tax Sale process, and this brochure is designed to further explain how this process works.

Additional details associated with individual tax sales can be found on our website at www.HenryCountyTax.com. This will include specific information related to properties to be sold.



AUTHORITY TO SELL

In 1995, the General Assembly created the "in-rem" process by which counties and municipalities can collect taxes through judicial means in a manner that is quicker and results in greater certainty of title as opposed to the non-judicial tax sale process (O.C.G.A. § 48-4-75).

In accordance with State law (O.C.G.A. § 48-4-76) and as adopted locally by resolution on November 20, 2000, Henry County authorized *"the filing of judicial in-rem tax foreclosures for the collection of delinquent taxes..."* and further decided that it was desirable for *"the improvement of the marketability and insurability of properties, and to return certain delinquent properties back to the tax rolls and into productive use"*. Once the decision has been made to pursue this process, the tax commissioner *"shall file a petition with Superior Court..."* (O.C.G.A. § 48-4-78) for a judicial tax sale.

It should be noted that the lawsuit is not filed against an individual, such as the owner of the property, but rather against the land itself. This is a procedure in law known as "In-Rem".



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 **NOTICE**

When a petition for judicial tax sale is filed, multiple types of notices will be distributed (O.C.G.A. § 48-4-78). A Notice of Lis Pendens will be filed in the Henry County real estate records (formal notice of pending legal action). The property will be posted with copies of the summons, petition, notice to interested parties, and notice of hearing. The same set of documents will be sent via regular mail to the occupant of the property that is the subject of the action and by certified mail to all interested parties named in the action. Also, within 30 days of filing the petition, the petitioner will submit a legal notice to the Henry Herald, which serves to alert the public to the filing of the petition. The notice will run for two (2) weeks.

Any interested party who learns that a property they have a claim to is subject to a tax foreclosure action should take actions to protect their interest, as their interest can be extinguished through the tax foreclosure process. Such interested parties should contact the Henry County Tax Commissioner and attend the scheduled hearing in the Henry County Superior Court. Interested parties should consult an attorney as to their rights and obligations.

 **JUDICIAL TAX HEARING**

During the hearing, all interested parties shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the Superior Court determines that the information set forth in the petition is accurate and that proper notice was given, the court shall render its judgement and order that all requirements were met and that the property as described in the petition shall be sold in accordance with the provisions of O.C.G.A. § 48-4-79.

 **ADVERTISING**

With the court order allowing for a foreclosure sale, all properties to be auctioned for delinquent taxes are advertised for four (4) consecutive weeks prior to the tax sale. These requirements are printed in the Wednesday edition of the Henry County legal organ, the Henry Herald. Each advertisement shows the owners name, a description of the property to be sold, and the amount of the tax due in accordance with O.C.G.A § 9-13-140; 9-13-141 and 9-13-142.



JUDICIAL IN-REM TAX SALES

When held, Judicial In-Rem tax sales are conducted on the first Tuesday of the month between the hours of 10:00 am and 4:00 pm. The tax sales take place at the Henry County Administration Building located at 140 Henry Parkway, McDonough Georgia 30253. In the event that the first Tuesday of the month falls on a legal holiday, the tax sale may be held on that following day. For the most up to date information on upcoming tax sales, and list of the properties, please check our website at HenryCountyTax.com or call our office at (770) 288-8180.

The Judicial In-Rem tax sale shall not occur earlier than 45 days following the date of issuance of such order of the Henry County Superior Court (O.C.G.A. § 48-4-81).

Anyone wishing to bid on a tax sale property in Henry County must first Pre-Register with the Henry County Tax Commissioner's office on the day of the tax sale. All bidders are required to provide, to a staff member, the amount of certified funds they have available to bid. This known amount will be kept secured and private during the bidding process, with the understanding that bidders will not be allowed to bid beyond the amount of certified funds confirmed during the pre-registration process. Certified funds include cash, money orders and certified checks only.

The Opening Bid for a particular property is the sum total of the taxes due plus any and all accrued penalties, interest and fees. The property is sold to the highest bidder.

PRE-SALE INFORMATION

At any point prior to the sale, the delinquent taxes may be paid by the owner or an interested party. The amount due in order to remove the property from the tax sale includes the taxes due as well as any accrued interest, penalties and fees, and shall be paid to the Henry County Tax Commissioner. In the event that all required payments are made on the subject property, prior to the tax sale, the proceedings shall be dismissed and the rights and interests of all interested parties shall remain unaffected. Henry County does not, at this time, offer tax sale liens to interested parties.

POST -SALE INFORMATION

The law gives the former property owner one last chance to redeem the property through the Redemption Process after the tax sale. The delinquent owner has sixty (60) days from the date of the tax sale to pay into the registry of the Henry County Superior Court, the redemption amount, which is the minimum bid price. The successful bidder will then be refunded their purchase price and the foreclosure action is dismissed. If the delinquent owner fails to redeem the property within the required 60 day timeframe, then within 90 days of the date of sale, the title to the property passes to the purchaser by a deed issued by the Tax Commissioner.

 **PAYMENT**

We require payment in full at the time of sale. Following the conclusion of the tax sale, all successful bidders are required to return to the Tax Commissioners office to remit funds. Remittance is required to be made at the Henry County Administration Building located at 140 Henry Parkway, McDonough, GA 30253, and must be in the form of cash, money order or certified check. We also require the purchaser to sign a statement attesting to the fact that certain property was purchased for the bid price.

According to O.C.G.A § 9-13-170, any person who becomes the purchaser of any real or personal property at any sale made at public outcry who fails or refuses to comply with the terms of the sale when requested to do so, shall be liable for the amount of the purchase money. It shall be at the discretion of the Tax Commissioner either to proceed against the purchaser for the full amount of the purchase money or to resell the property and then proceed against the first purchaser for any deficiency arising from the sale.

 **EXCESS FUNDS**

In the event the tax sale price exceeds the minimum bid amount at the sale, the Tax Commissioner shall deposit the surplus amount into the registry of the Henry County Superior Court. Such surplus funds shall be distributed by the Superior Court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist (O.C.G.A. § 48-4-81).

Information contained herein is not appropriate for the purposes of making a decision to carry out a tax sale transaction without first consulting your attorney, nor does it provide any form of advice for tax sale purchases. The information herein is not warranted or guaranteed to be accurate or complete, and may contain errors, mistakes, inaccuracies or omissions. You are advised not to take any actions in reliance on this information without first receiving competent legal advice. Even though reasonable diligence has been used to ensure that the information provided is up to date, the laws and legal requirements affecting tax executions and tax sales are dynamic and subject to legislative changes by the Georgia General Assembly or rule changes by the Georgia Department of Revenue.

BENEFITS OF JUDICIAL IN-REM SALES

- Opportunity to buy properties at a much lower cost than on the open market
- Based on a court order, property is sold free and clear of all liens, claims and encumbrances other than listed by law (see O.C.G.A. § 48-4-79)
- Tax deed purchaser to receive deed within 90 days after date of sale if property is not redeemed
- Eliminates the need for post-sale barments (closing previous owners right to redeem)
- Eliminates need to "Quiet Title" in most cases – Title will vest to purchaser after the tax sale and the Right of Redemption period
- Increases marketability of property for investors, as title questions are eliminated prior to sale
- Properties can be put back into productive use as residential homes or new businesses quicker than with non-judicial sales
- Eliminates the shift of increased tax burden to property owners willing and able to pay their share of taxes

QUESTIONS

If you have any questions regarding tax sales after reading this brochure, please call our office at (770) 288-8180. We will be happy to clarify any information or address any additional questions you may have.

Again, we strongly encourage interested purchasers attending our tax sales to consult with an attorney for answers to any questions.



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