Don't Lose Track of the Delinquent Real Estate Taxes in a Foreclosure Case

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As all of you know, the number of people facing foreclosure is at an all time high. With that being said, whether you represent the lender or the borrower, one of the many issues to be considered in a foreclosure case is whether there are any delinquent real estate taxes associated with the property. If there are delinquent real estate taxes, it is imperative to know for what years the taxes are delinquent so that no important deadlines are missed.

Suppose you discover that the real estate taxes for the 2007 year are delinquent. How does this affect your foreclosure case? In order to answer this question, it is important to look at a timeline of dates. The 2007 Pinellas County real estate taxes were due on March 31, 2008 and became delinquent on April 1, 2008. The Pinellas County Tax Collector held a Tax Certificate Sale on or about June 1, 2008. *See*, Fla. Stat. § 197.432(1). At the Tax Certificate Sale, a third party could purchase the tax certificate. A tax certificate is a lien against the property. If there were no bidders at the Tax Certificate Sale, the tax certificate would have been issued to Pinellas County at an annual interest rate of 18%. Twenty-two (22) months from the date of the Tax Certificate Sale, on or about April 1, 2010, the purchaser of the tax certificate, also known as the certificate holder, was permitted to file a tax deed application with the Pinellas County Tax Collector. Thereafter, a Tax Deed Sale takes place approximately six (6) months from the date of the tax deed application. If the tax deed application was filed on April 1, 2010, the Tax Deed Sale would occur in approximately September or October of 2010. At the Tax Deed Sale, the property will be publicly auctioned if the 2007 delinquent real estate taxes are not paid by that date.

Pursuant to section 197.446 of the *Florida Statutes*, a tax deed sale may not be enjoined unless and until the delinquent taxes are paid. Section 197.446 provides that "[n]o order shall be issued by any court in an action brought by or on behalf of any landowner to enjoin any tax sale or to set aside or cancel any tax certificate held by any county in the state until the owner pays to the tax collector of the county where the property is assessable the full amount of the taxes that could have been lawfully assessed against the property for the period covered by the assessment complained of, whether or not the real estate has been returned for assessment by the owner. In all such cases, the court shall ascertain and determine the amount of tax to be paid by the owner."

As a result, in our hypothetical above, if you represent the homeowner/borrower in a foreclosure case and your client wants to save the property prior to it being sold, the 2007 Pinellas County real estate taxes must be paid prior to the Tax Deed Sale, or the property will be publicly auctioned at the Tax Deed Sale. If you represent the lender in a foreclosure case and your client wants to retain its secured interest in the property, the lender must pay the 2007 Pinellas County real estate taxes prior to the Tax Deed Sale, or the property will be publicly auctioned at the Tax Deed Sale. Generally speaking, the successful bidder at the Tax Deed Sale becomes the new owner of the property, obtaining the deed to the property and all rights to the property free and clear of liens and mortgages.

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