

DELINQUENT PROPERTY TAX COLLECTION MANUAL

**DEPARTMENT OF REVENUE
DIVISION OF COLLECTIONS**

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I. INTRODUCTION

The information contained in this manual deals with the collection of delinquent taxes on real and personal property. The information is not all inclusive, but is meant to provide basic information about the collection of delinquent property tax. For more specific information and amendments, please consult KRS Chapter 134.

Real property includes land, buildings, and anything else firmly affixed to the land. KRS 133.010(3) Personal property includes all other property owned by a taxpayer, both tangible (for example, a car) and intangible (for example, bonds). KRS 133.010(5) and KRS 134.010(4)

The collection cycle for property taxes, which is set out in various statutes, is summarized as follows:

The Collection Cycle

January 1	Assessment date
September 15 – November 1*	Taxes due and payable: A 2% discount is applicable.
November 2 – December 31	Taxes are payable at face value.
January 1 following January assessment date	Unpaid taxes become delinquent and property assessed for taxes has a lien against it by operation of law. A 5% penalty applies.
February 1	A 10% penalty and an additional 10% sheriff's fee apply, and the sheriff can distraint or attach nonexempt property of the taxpayer.
By the First Week of April after collection by distraint or attachment is completed	The sheriff shall advertise and offer for sale all uncollected tax claims if the taxpayer owns any real property subject to the lien provided in KRS 134.420(1).
At sale of tax claims (real property owned by TP) by April 30	The sheriff shall sell the tax claims for cash for the total amount of the tax, penalty and other fees due; or, if no such offer is received the sheriff shall purchase the tax claims on behalf of the taxing districts.
If total offers to purchase exceed the lesser of 10% of tax bills offered for sale or \$200,000	The sheriff shall notify the Finance and Administration Cabinet. The Finance and Administration Cabinet may purchase the tax bills and tender payment to the sheriff within 15 business days. If the Finance and Administration Cabinet does not purchase the tax bills, the sheriff shall complete the sale to the persons making the previous offer.

Upon sale of tax claims (real property owned by TP)

When the tax bill is sold and the sale is noted on the bill by the sheriff, it becomes a certificate of delinquency, which is filed by the county clerk as a lien against the property affected. All payments after this date must be made to the clerk. The sheriff shall continue to collect tax bills where the TP owns no real property until all his accounts with all taxing districts are settled.

Within 50 days after issuance of certificate of delinquency

The county attorney or Department of Revenue shall serve notice that the tax claims were purchased and that the county attorney or Department of Revenue will collect them if they are not paid.

By September 1

The sheriff shall make settlement with the Department of Revenue and the county.

1 year (tolling period) after sale of tax claims

The county attorney or Department of Revenue may distrain the personal property of the delinquent taxpayer or attach property in the hands of third parties, and may sue to foreclose liens on property.

Within 90 days after the expiration of the one-year tolling period, mail a notice of intent to enforce lien.

10 years following the date personal property tax bills become delinquent

All further action on personal property tax bills is barred by statute of limitations.

11 years after sale of delinquent real property tax claims

All further action on certificates of delinquency (real property) is barred by statute of limitations.

Note: the tax calendar may be back dated due to late delivery of tax bills.

A. CHRONOLOGY OF TAX COLLECTION DATES

Property taxes are payable on September 15 of the year they are assessed.¹ The sheriff is authorized to collect taxes upon his receipt of the tax bills from the county clerk.² He is responsible for publishing a notice in the newspaper of general circulation within the county showing the date the taxes are due.³ The sheriff is also required to mail a notice (tax bill) to each taxpayer showing the amount of the taxes due.⁴

Taxes are payable at a two percent (2%) discount through November 1; at face value through December 31; with a five percent (5%) penalty January 1 through January 31; and, with a ten percent (10%) penalty plus an additional ten percent (10%) sheriff's fee after January 31.⁵ Thereafter, all uncollected tax bills are collectible by distraint.⁶

If the tax bills are not prepared by September 15, these dates may be subject to change upon the approval of the Office of Property Valuation.⁷

B. REAL PROPERTY TAX COLLECTION SUMMARY

In Kentucky every tax imposed by law is a personal debt of the person liable for the payment of the tax, as well as constituting a lien on the real property.⁸ Therefore, delinquent real property taxes may be collected by an action against the

¹ KRS 134.020

² KRS 134.140, KRS 134.330

³ KRS 424.280, KRS 424.130(1)(d)

⁴ KRS 133.220(4)

⁵ KRS 134.020

⁶ KRS 134.430(1)

⁷ KRS 134.020(5)

⁸ KRS 134.050, KRS 134.420(1)

taxpayer as well as by an action against the property on which the taxes are assessed.⁹

As a result, unpaid taxes on land may be collected by the attachment or seizure and sale of any of the delinquent taxpayer's personal property as well as the sale of his land. The sheriff can distraint or attach funds owed to the delinquent taxpayer. Alternatively, he can seize nonexempt personal property of the tax delinquent so long as he has a copy of the unpaid delinquent tax bill in his possession.

The statutory scheme envisions that action will be taken against the taxpayer's personal property before any action is initiated against his real property. Tax bills are sold only if the amount of personal property attached or distrained and sold is insufficient to raise the sum of the unpaid taxes, penalties, interest, fees, commissions, charges, and other expenses incurred.

The amount remaining due after the distraint and sale of personal property constitutes a specific lien on the land assessed for the taxes.¹⁰ The tax bill becomes a certificate of delinquency when sold and a lien of record against all property of the property owner. The lien includes all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment or in the process of collection of the tax bill or certificate of delinquency.¹¹ This tax bill is sold at a tax sale to a person willing to pay the amount due.¹² If there is more than one prospective purchaser, the one having made the most recent purchase of a tax claim against the same delinquent or the same property has

⁹ KRS 134.470, KRS 134.490

¹⁰ KRS 134.420(1)

¹¹ KRS134.420

preference. If there is no such person, the lien is sold to the person being the first, in the sheriff's judgment, to offer to pay cash in the full amount of the tax claim.¹³

A one-year suspension period is in effect after the tax bill is sold.¹⁴ The delinquent taxpayer or any person having a legal or equitable interest in the property may redeem the certificate of delinquency at any time by paying the amount of the certificate of delinquency plus twelve percent (12%) simple annual interest.¹⁵ A fraction of a month is counted as an entire month.¹⁶ The sheriff's add-on fee, and the add-on fees of the clerk and county attorney are excluded from the interest calculation except in counties containing cities of the first class or consolidated government.¹⁷ If the taxpayer does not redeem the certificate of delinquency, the purchaser may foreclose on the land to collect the amount for which the certificate of delinquency was sold, plus interest.¹⁸ Also, if the purchaser is the taxing districts, after the expiration of the one-year suspension period, the county attorney or Department of Revenue can distrain (seize) and sell any property belonging to the delinquent taxpayer.¹⁹

If no personal property can be found to distrain, suit can be filed to enforce the lien and the land can be sold at public auction. (See Section IV, Actions by County Attorney.)

At the foreclosure sale the land is sold to the highest bidder. If property is sold pursuant to a judgment of foreclosure, the property must be appraised as in

¹² KRS 134.450

¹³ KRS 134.450(1)

¹⁴ KRS 134.470

¹⁵ KRS 134.460(1), KRS 134.480, KRS 134.500(1)

¹⁶ KRS 134.460(1), KRS 134.500(1)

¹⁷ KRS 134.500(1)

¹⁸ KRS 134.490

other foreclosure actions and the taxpayer may redeem the property within one year of the sale if the sale price is less than two thirds of the appraised value.²⁰ Any excess produced from the foreclosure sale is paid to the defaulting taxpayer.

C. PERSONAL PROPERTY TAX COLLECTION SUMMARY

The statutory scheme that applies to real property also applies to the due dates, tax lien, and collection procedures affecting personal property, with distraint and attachment being the recommended means of collection prior to settlement by the sheriff.

The major difference between collection of delinquent personal property and real property is that there is no procedure for the sale of unpaid delinquent personal property tax bills if there is no real property subject to the lien provided in subsection (1) of KRS 134.420. The one-year suspension period, during which collection is prohibited, does not apply to personal property. Collection of delinquent personal property taxes may be effected by any procedure authorized to collect a debt due the state, including attachment, garnishment, suit, and distraint and sale of personal property.

As with real property, the tax lien on personal property has priority over any other lien as it applies to the specific personal property assessed for the tax.²¹ Also, there is no right of redemption applicable to taxes on personal property.

¹⁹ KRS 134.490(3)

²⁰ KRS 134.490(4), KRS 426.530

²¹ KRS 134.420(1)

The sheriff shall file his list of certificates of delinquency with the fiscal court. The fiscal court shall then direct the county attorney to prosecute all remedies provided for the collection of these bills.

D. TAX LIENS

1. Kentucky Tax Liens

The state and county as of January 1, the date the taxes become delinquent, have a lien on the property on which the taxes remain unpaid for the amount of all unpaid taxes, penalties, interest, fees, commissions, charges, and other expenses incurred by reason of the delinquency in payment or collection of the tax bill or certificate of delinquency.²² A tax lien on real property for taxes due on that property takes precedence over all other liens on the specific property assessed for the tax, including a purchase money mortgage. A lien on real property to secure taxes assessed against other property of the taxpayer does not have a similar superpriority.²³ Payment in full of the entire tax claim, whether represented by an unpaid bill or a certificate of delinquency, cancels the lien on the taxpayer's property and provides the authority for releasing any lien filed of record at the expense of the party paying the tax.²⁴

When the land is sold privately between the date it is assessed for taxes (ad valorem tax date – January 1) and the date it becomes delinquent, which is generally January 1 of the following year, it appears that a problem may occur. Since the tax lien does not arise automatically by operation of law until the following January 1, when the taxes become delinquent, it appears that the purchaser takes

²² KRS 134.420(1)

the land free of the tax lien. However, that is incorrect. KRS 134.420(1) provides that “[n]o purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes . . .”

At the time of settlement the sheriff turns the certificate of delinquency over to the county clerk so that the clerk can immediately file liens on the property and thereby give constructive notice to all potential purchasers that the property secures the tax liability for taxes assessed against the property. This provision of KRS 134.420 provides for a lien on the property which is valid against the purchaser who bought the property while the taxes on it remained unpaid. The purchaser is charged with knowledge that the law dictates the taxes shall be paid by either the buyer or seller. The purchaser who relies on the seller’s representation that sale year taxes were paid may have a cause of action against the seller, but has no defense against the tax liability secured by a lien on the property.

A tax lien created by a certificate of delinquency is valid for **eleven (11)** years from the date the tax claim is sold because the statute of limitations on the real property tax lien is tolled during the one-year suspension period.²⁵ A tax lien with respect to an uncollectible tax bill on **personal** property is limited in duration to **ten (10)** years from the date the tax bill becomes delinquent.

²³ KRS 134.420; Midland-Guardian Co. v. McElroy, Ky., 563 S.W.2d 752 (1978)

²⁴ 51 Am.Jur.2d, Liens, § 49

²⁵ KRS 134.420, KRS 134.470

A tax lien can be defeated if the county clerk fails to file the lien, so that a buyer of the land, purchasing after the tax liens were required to be filed, could qualify as a bonafide purchaser.²⁶

2. Federal Tax Liens

Federal tax liens are filed by the Internal Revenue Service whenever a demand has been made on a delinquent taxpayer and the tax remains unpaid. The lien priority of federal liens is a matter of federal law. Generally, federal liens are entitled to the priority granted by the date of their filing. Under 26 U.S.C. § 6323(b)(6) state ad valorem property tax liens are entitled to a superpriority equivalent to the one they are granted under Kentucky law.

The most important thing to note about federal tax liens is if the United States is not made a party to the action; or, if the complaint does not set out the tax liens with sufficient particularity; or, if service is not made properly upon the United States, the federal tax lien will not be extinguished and will transfer with the property into the hands of the purchaser.

Alternate ¶ 7 of the “Complaint” (**Exhibit 20**) sets out the lien with sufficient particularity for this purpose.

Service on the United States in suits to foreclose or quiet title is governed by 28 U.S.C. § 2410(b), which provides in relevant part:

In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending

²⁶ KRS 134.420

copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appeal and answer, plead or demur within sixty days after such service or such further time as the court may allow.

Three copies must be served by mail upon the Attorney General. Additionally, the United States has certain other unique statutory rights pursuant to Section 2410 which should be reviewed by the county attorney or Department of Revenue before the action proceeds to trial.

E. EFFECT OF BANKRUPTCY

The most important effect of the filing of bankruptcy by the person liable for the taxes is the **automatic stay** at 11 U.S.C. § 362, which operates to prohibit **any** collection activity against the debtor (and his land) from the date of the bankruptcy petition until the case is closed. Upon receiving notice that the petition has been filed, the sheriff, county attorney, and all other officers, shall immediately cease **all** collection activities.

Note that §362(b) creates an exception for the creation or perfection of a statutory lien for ad valorem property taxes that become due after the commencement of a case. Title 11 §362(b)(18) provides in relevant part:

The filing of a petition ... **does not operate as a stay** – under subsection (a) **of the creation or perfection** of a **statutory lien** for ad valorem property tax imposed by ... a political subdivision of a State, **if such tax comes due after the filing of the petition.**

(emphasis added.) This exception is limited to the creation or perfection of liens for ad valorem taxes. The exception does not permit the enforcement of the lien free of

the automatic stay.²⁷ Thus, the county can create or perfect its lien for ad valorem property taxes on property assessed January 1st of the year the debtor files bankruptcy since the tax is due December 31st of that year.

Once the debtor is discharged from bankruptcy, you may be able to proceed with collection activities since tax claims entitled to priority are excepted from bankruptcy discharges.²⁸ A property tax is entitled to priority status only if 1) it is assessed before the commencement of the bankruptcy case and 2) the last date on which the tax could be paid without penalty was less than one year before the start of the case.²⁹

Title 11 §507(a)(8) provides in relevant part:

- (a) the following expenses and claims have priority in the following order:
 - (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for - . . .
 - (B) a property assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

Title 11 §523(a)(1)(A) provides in relevant part:

- (a) a discharge . . . does not discharge an **individual debtor** from any debt –
 - (1) for a tax or customs duty –
 - (A) of the kind and for the period specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

²⁷ 3 Collier on Bankruptcy §362.05[17] (Alan N. Resnick & Henry J. Somme eds., 15th ed. rev.)

²⁸ 11 USCA §§ 507(a)(8) and 523(a)

²⁹ 11 USCA §§ 507(a)(8) and 523(a)

Property taxes assessed after the start of the case must be paid as accrued.³⁰ As a general rule, the current year property taxes and the immediately preceding tax year will be excepted from discharge.

F. EFFECT OF FAIR DEBT COLLECTION PRACTICES ACT

The Fair Debt Collection Practices Act does not apply to officers or employees of any state if debt collection is part of their official duties. The term “debt collector” does not include “any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.”³¹ The term “State” means “any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.”³²

II. ACTIONS BY THE SHERIFF

Upon failure of the taxpayer to ***voluntarily make proper timely payment*** of his property tax bill by the end of January, the end of the five percent (5%) penalty period, the sheriff is responsible to secure payment by distraint (seizure) of the taxpayer’s nonexempt personal property and sell the property distrained (other than money) at auction.³³ Where more than one party has an interest in the property assessed for taxes, the party having the equitable interest in the property is primarily responsible for payment of the tax.³⁴

³⁰ 28 USCA §§ 959 and 960

³¹ 15 USCA § 1692(a)(6) (West 1998)

³² 15 USCA § 1692(a)(8) (West 1998)

³³ KRS 134.430, KRS 427.010

³⁴ KRS 134.060

The sheriff may, after the taxes become due, accept partial payment of the tax and shall provide a receipt for the payment.³⁵ The term “sheriff” includes any collector whose duty it is to receive or collect state, county, or district taxes.”³⁶ Thus, sheriff includes the county clerk and the county attorney. The sheriff or any authorized collector of property taxes may accept payment by any commercial means, including credit cards.³⁷

A. DISTRAINT

The sheriff is to first attempt collection of delinquent property taxes by distraint of personal property.³⁸ Distraint is defined as a self-help seizure of personal property without invoking the jurisdiction of the court.

1. Distraint of Bank Accounts

It is recommended that the sheriff first distraint any bank account of the taxpayer found in his county. This is authorized under KRS 134.430(1), which makes all personal property of a delinquent taxpayer subject to distraint. The funds in the account are owned by the bank; however, the customer/delinquent taxpayer has the contractual right to withdraw the funds upon demand. It is this contractual right which is distrained by the sheriff.

The sheriff should send by certified mail a copy of a “Final Notice Before Distraint” (**Exhibit 1**) to each taxpayer at his last known address. At the same time an advertisement should be published in the newspaper stating that the notices

³⁵ KRS 134.020(2), KRS 134.170(1)

³⁶ KRS 134.010(8)

³⁷ KRS 134.020(2)

³⁸ KRS 134.430, KRS 427.010

have been mailed and that bills not paid within ten (10) days will be subject to distraint.

If the certified letter to the taxpayer is returned to the sheriff marked “undeliverable”, the bank account can still be distrained without violating due process of law, as the taxpayer’s right to notice and a hearing were satisfied when he was sent the notice of assessment and given an opportunity to appeal the assessment to the county board of assessment appeals.³⁹ Once the taxpayer has waived or exhausted his statutory remedies, the tax becomes due upon the mailing of the tax bills.

The sheriff should serve a “Notice of Distraint” (**Exhibit 2**) on the bank not less than ten (10) days after the “Final Notice Before Distraint” has been sent by certified mail to the taxpayer. A photocopy of the unpaid tax bill must be attached to the “Notice of Distraint”. Additionally, a second copy of the notice should be left at the bank to send to the taxpayer.

2. **Distraint of Wages**

If a bank account cannot be located within the county, a second approach is to distraint the wages, salary or other compensation payable to the delinquent taxpayer. Not less than ten (10) days after the “Final Notice Before Distraint” has been mailed by certified mail to the taxpayer, a “Notice of Distraint” can be served upon the employer or other person holding any compensation due the taxpayer. A photocopy of the tax bill must be attached to the “Notice of Distraint” and a second copy of the notice left with the employer. An employee who has performed services through a pay period has a vested property right in the money due him for such

services, and it is this property right which is distrained. It should be noted that the garnishment exemptions in KRS 427.010(2) do not apply to these debts.⁴⁰

B. ATTACHMENT

In addition to the remedies provided in Chapter 134 for the collection of delinquent taxes, the sheriff also has the option of attaching funds owed to the delinquent taxpayer which are in the hands of third parties.⁴¹ An attachment under KRS 135.010 differs from distraint in that it is a statutory procedure to freeze assets in the hands of a third party until a judicial hearing leads to a court order requiring payment to the sheriff. This is recommended where the delinquent taxpayer is known to have a bank account outside the county, or has an employer outside the county, because the statute allows the attachment of funds in the hands of any person in **any** county of the state.⁴²

This procedure is initiated by serving a “Notice to Appear” (**Exhibit 3**) on the bank, employer, or other party holding funds owed to the delinquent taxpayer.⁴³ The notice informs the third party that he must appear at a hearing in the circuit court of the county in which the taxes are due concerning the disposition of the monies so held and prohibits payment of these funds to the delinquent taxpayer prior to the hearing.⁴⁴

The sheriff should serve a copy of the notice by first class mail on the delinquent taxpayer, who has an opportunity to present any defense he might have

³⁹ Shaw v. Phillips Crane & Rigging of San Antonio, Inc., Tex., 636 S.W.2d 186 (1982)

⁴⁰ KRS 427.010(3)

⁴¹ KRS 135.010; OAG 67-478

⁴² KRS 135.010

⁴³ KRS 135.010

⁴⁴ KRS 135.020

at the hearing.⁴⁵ This procedure involves the efforts of the county attorney as set out in Section IV, Actions by the County Attorney. The date for the hearing should be agreed upon with the circuit judge before notices are mailed. This alternative has been approved by the Kentucky Court of Appeals in the case of Commonwealth ex rel Carpenter v. Collins and May et al, Ky., 593 SW2d 887 (1980).

If neither a bank account nor a paycheck can be located within the state, then the sheriff is required to seize nonexempt tangible property owned by the delinquent taxpayer and sell it to satisfy the tax liability.

C. SALE OF DELINQUENT TAX CLAIMS

If the actions set out in the previous sections are insufficient to collect the entire sum due, the remaining **tax claims on real property** are sold at public auction.⁴⁶

No later than the first full week in April, the sheriff shall advertise all remaining tax claims where there is any real property subject to the lien provided in KRS 134.420(1) by publication in a county newspaper.⁴⁷ The notice, which gives the name and amount due from each delinquent taxpayer, is published once each week for three consecutive weeks.⁴⁸ The sheriff shall receive offers for the purchase of tax claims up to fifteen (15) business days following the date of the initial advertisement or no later than April 30, or the last business day prior to April 30, if April 30 is a weekend or holiday.⁴⁹

⁴⁵ KRS 135.020

⁴⁶ KRS 134.430(4)

⁴⁷ KRS 134.430(4), KRS 134.440, KRS 424.330, KRS 424.110, KRS 424.210

⁴⁸ KRS 424.130(1)(c)

⁴⁹ KRS 134.430(4)

The sheriff shall, not less than twelve (12) days before the sale, mail to the delinquent taxpayer's residence or business, if ascertainable, a notice of the time and place of sale.⁵⁰ Failure to send notice has no effect on the validity of the sale.⁵¹

The sheriff shall place a copy of the advertisement at the courthouse door in a conspicuous place at least fifteen (15) days before the sale.⁵² Tax bill sales are held on the advertised day at the front door of the county courthouse.⁵³ The tax claims of the taxing units on real property are sold for the amount of taxes, penalty, and costs remaining due after attempts to collect the tax liability by distraint or attachment of the taxpayer's personal property.⁵⁴ After the sale of the tax bill, it is called a certificate of delinquency.⁵⁵

As compensation for his services, the sheriff is entitled to ten percent (10%) of that part of the tax claims represented by the total taxes plus ten percent (10%) penalty, for all delinquent taxes collected from the time the ten percent (10%) penalty becomes applicable [February 1st] through the sale of the tax claims [April 30th].⁵⁶ This fee is added to the total amount due and paid by the person paying the delinquent tax bill.⁵⁷ After the sale of the tax claims, the sheriff's ten percent (10%) is eliminated from the tax bill and can no longer be collected.⁵⁸

⁵⁰ KRS 134.440(1)

⁵¹ KRS 134.440(1)

⁵² KRS 134.440(1)

⁵³ KRS 134.440(1)

⁵⁴ KRS 134.430(4); OAG 81-82

⁵⁵ KRS 134.450(1)

⁵⁶ KRS 134.430(3)

⁵⁷ KRS 134.430(3)

⁵⁸ KRS 134.430(3), 9-4-98 memo to Co Attys from Director, Division of Local Valuation

The sheriff is also entitled to a five dollar (\$5.00) fee for each tax claim he advertises and may recover his costs from an eventual proceeds recovered on the tax claim.⁵⁹

If there is more than one willing purchaser at the sale, the one having made the most recent purchase of a tax claim against the same delinquent taxpayer or the same property shall have preference.⁶⁰ If more than one person wishes to buy a tax lien, and no person owns a certificate of delinquency against the taxpayer or property, the sale is made to the person who, in the judgment of the sheriff, is first to offer the necessary amount in cash.⁶¹ If no one offers to buy the lien, the sheriff purchases the lien for the taxing districts.⁶² All purchasers of tax liens, other than the sheriff, are entitled to a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic register of the certificates of delinquency in the clerk's record.⁶³

The certificate of delinquency bears simple interest at the rate of 12% per year from the date the certificate is issued. The sheriff's add-on fee provided in KRS 134.430, the county clerk's add-on fee provided in KRS 134.480, and the county attorney's add on fee provided in KRS 134.500 shall be excluded from the interest calculation except in counties containing cities of the first class or consolidated local government.⁶⁴

⁵⁹ KRS 134.440(2)

⁶⁰ KRS 134.450(1)

⁶¹ KRS 134.450(2)

⁶² KRS 134.450(2)

⁶³ KRS 134.450

⁶⁴ KRS 134.500(1)

The sheriff should, as a matter of courtesy, at the time of the sale inform an individual who buys a certificate of delinquency that the sale should be recorded in the clerk's office and that there will be a fee for filing the lien.

The date of sale, as well as the sale price, along with the name and address of the purchaser must be recorded by the sheriff on the certificate of delinquency so that interest can be properly calculated.⁶⁵ The purchaser of a tax lien is not entitled to possession of the tax delinquent's land, but, is limited to remedies provided in KRS 134.470 and 134.490.

A sale of a tax bill must be made for the amount of the tax claim. The tax claim includes the taxes due on the tax bill plus penalties, costs, fees, interest, commissions, the lien provided in KRS 134.420(1) and other items or expenses that have become or are by reason of the delinquent tax bill proper legal charges imposed against the delinquent taxpayer.⁶⁶ The proceeds of the sale are divided between the taxing districts proportionately according to the amount due each.

If the total of all offers to purchase exceed ten percent (10%) of the total dollar amount or \$200,000, whichever is less, KRS 134.450 provides an additional procedure. KRS 134.450(1) provides in relevant part:

If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars (\$200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be

⁶⁵ KRS 134.450(1)

⁶⁶ KRS 134.010(6)

the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Department of Revenue to collect delinquent taxes. If the county attorney has not contracted with the Department of Revenue to collect delinquent taxes, the Department of Revenue shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff received responsible offers to purchase.

D. SETTLEMENT WITH THE SHERIFF

Immediately after the sale of the tax claims, the sheriff should close his books on real estate and give the certificates of delinquency to the county clerk, as the clerk is now the proper official to collect payments made on certificates of delinquencies.⁶⁷ In a county containing a first class city or consolidated local government the sheriff has fourteen (14) days to give the certificates of delinquency to the county clerk.⁶⁸

The sheriff shall continue to collect personal property tax bills of those taxpayers who own no real property to which the lien provided in KRS 134.420(1) attaches until he is ready to settle his accounts with all taxing districts. He must continue to submit his monthly report of property tax collections to the Office of Property Valuation.

After April 30 (unless the tax calendar has been disrupted), the sheriff must close his books and settle his accounts with the state, county fiscal court, and the other local taxing districts.⁶⁹ All of these settlements must be completed by September 1 of each year.

⁶⁷ KRS 134.450(3), KRS 134.480

⁶⁸ KRS 134.450(3)

⁶⁹ KRS 134.450(3)

The sheriff is given credit in his settlement for monies collected, uncollectible tax bills on personal property, and for tax bills on real property for which certificates of delinquency have been issued to the taxing units.⁷⁰

After the sheriff has obtained a quietus from the Department of Revenue, he is eligible to receive the tax bills for the next year.⁷¹

Note: After expiration of the one-year suspension period, the sheriff no longer attempts to distrain property. The county attorney is authorized to distrain property.⁷² (See Section IV, C-1)

III. ACTIONS BY THE COUNTY CLERK

The county clerk is responsible for filing various documents involved in delinquent property tax collections and for accepting and distributing delinquent tax payments after the sheriff's books are closed.

A. FILING OF CERTIFICATES OF DELINQUENCY AND SHERIFF'S RETURNS

Upon receipt of the certificates of delinquency from the sheriff, the county clerk must file each certificate in a file designated miscellaneous state and city delinquent and unpaid tax liens or in a certificate of delinquency lien file or in a certified electronic register of certificates of delinquencies.⁷³ The clerk can charge a fee for filing the lien and a fee for releasing the lien.⁷⁴ The fee for filing the lien is not paid by the taxing authorities at the time the lien is filed, but, is added to the

⁷⁰ KRS 134.360

⁷¹ KRS 134.330

⁷² KRS 134.490(3)

⁷³ KRS 134.450(3)

⁷⁴ KRS 64.012

certificate of delinquency as an addition to the tax claim.⁷⁵ An individual who buys the certificate must pay the fee for filing. The county clerk must maintain an index of all certificates of delinquency.⁷⁶

The county attorney or Department of Revenue, after serving the notice on the delinquent taxpayer as required by KRS 134.500, shall file in the county clerk's office a list of the names and addresses to which the notices were mailed.⁷⁷

Pursuant to KRS 134.450(4) & (5), the county clerk may provide a certified electronic certificate of delinquency in lieu of delivering a certified copy of the certificate of delinquency to the payor or an assignor.

B. ACCEPTANCE OF DELINQUENT TAX PAYMENTS

After the sheriff closes his books, the responsibility for accepting and accounting for payments made on certificates of delinquency and uncollectible tax bills shifts to the county clerk.⁷⁸

The county clerk is authorized to accept payment in full on certificates of delinquency from any person when the taxing districts purchased the certificates. When payment in full is made to the clerk by the person primarily liable for the tax, the lien on the property shall be released and the clerk shall issue a receipt for the payment. The clerk shall mark the certificate of delinquency paid in full.⁷⁹ When payment in full is made by any other person, the payment constitutes an assignment of the certificate. Upon payment of a fifty cent (50¢) fee, the clerk shall record the payment or purchase and the recordation constitutes an assignment of

⁷⁵ KRS 134.010(6)

⁷⁶ KRS 134.380(4); OAG 81-82; See Owen County v. Walker, 141 Ky. 516, 133 S.W. 236 (1911)

⁷⁷ KRS 134.500

⁷⁸ KRS 134.480

the certificates of delinquency.⁸⁰ The clerk shall provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records.⁸¹

The clerk is also allowed to accept **partial payments** on the certificate of delinquency from the person primarily liable for the taxes⁸². The clerk shall issue a receipt and allocate the funds received among the applicable taxing units in the ratio they would receive upon full payment, but shall not release the lien on the property until the tax claim against the real property is paid in full.⁸³ The clerk may accept payment by any commercially acceptable means, including credit cards.⁸⁴

C. EFFECT OF REAL AND PERSONAL PROPERTY TAXES ON THE SAME BILL

In the past, both real and personal property taxes were often included on the same tax bill. It is now recommended that separate real property and personal property tax bills be printed. When a purchaser buys land subject to a certificate of delinquency and wants to pay the back taxes on real property, but refuses to pay the personal property taxes included on the same bill, the issue arises whether under KRS 134.480 the county clerk can accept less than full payment of the entire tax bill.

The county clerk can accept payment for the taxes on the real property only by splitting the original tax bill into two separate tax bills, one covering real property taxes (certificate of delinquency) and the other covering personal property taxes

⁷⁹ KRS 134.480(1)

⁸⁰ KRS 134.480(1)

⁸¹ KRS 134.480(1)

⁸² KRS 134.010(8), KRS 134.020(2), KRS 134.480(2)

⁸³ KRS 134.480

(unpaid tax bill). The tax bill covering the real property must be attached to the original certificate of delinquency. Thereafter, when the real property taxes are paid, the lien of the certificate of delinquency on the real property may be satisfied. Taxes assessed against real property have priority over recorded mortgages, but any portion of the tax bill imposing a lien on real or personal property other than the property assessed is subject to the general principal of "first in time, first in right".⁸⁵

D. APPORTIONMENT OF TAX ENCUMBRANCE

Whenever an encumbrance by reason of a tax claim exists on land which is divided both as to ownership and area into two (2) or more tracts, any person owning any of the tracts may make application to the county judge-executive of the county for an apportionment of the assessment.⁸⁶ Notice of the intent to make the application must be given to the owners of the other tracts and the county attorney at least ten (10) days prior to filing the application.⁸⁷ The county judge-executive is authorized to make an apportionment of the amount of the encumbrance among the owners of each tract according to the value of their respective interests as shown by proof introduced by them.

Any owner of a tract for which the tax claim was apportioned may have the encumbrance on his property released by paying his pro-rata share as ascertained by the decision of apportionment. This determination shall be final unless an appeal

⁸⁴ KRS 134.480(2)

⁸⁵ Midland-Guardian, 563 S.W.2nd 752

⁸⁶ KRS 134.485

⁸⁷ KRS 134.485

to the circuit court is prosecuted within sixty (60) days from the rendition of the decision.⁸⁸

E. CLERK'S REPORT

The county clerk shall, by the tenth (10th) of each month, submit to the Department of Revenue, and each taxing district, all monies collected during the previous month. For his services, the clerk shall retain five percent (5%) of the amount due each taxing district for delinquencies from the 1997 and prior tax years.⁸⁹ For delinquencies from the 1998 and subsequent tax years, the clerk is entitled to a ten percent (10%) fee of the amount due (tax, penalty, and interest) each taxing unit, which is added to the total due.⁹⁰ This add-on fee is included in the interest calculation in counties containing cities of the first class or consolidated local government.⁹¹

IV. ACTIONS BY THE COUNTY ATTORNEY

The county attorney is responsible for providing legal assistance to the sheriff who utilizes the attachment proceedings. County attorneys may also enforce the collection of all delinquent property tax bills if they choose to sign a collection contract with the Department of Revenue. Those county attorneys who contract with the Department to collect delinquent property tax bills shall also contract with the Finance & Administration Cabinet to collect delinquent tax claims if requested.⁹²

⁸⁸ KRS 134.485

⁸⁹ KRS 134.480(2)

⁹⁰ KRS 134.480(2)

⁹¹ KRS 134.500(1)

⁹² KRS 134.450(1)

The County Attorney shall be entitled to all fees and costs as if collecting for the Department of Revenue.

The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments.⁹³ The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments according to the agreement.⁹⁴

To facilitate collections, the county attorney may waive penalties pursuant to KRS 131.030 and 131.175, and penalties and interest pursuant to KRS 131.081(6), if the delinquent taxpayer shows reasonable cause.⁹⁵ Please refer to the *Guidelines for the Waiver or Reduction of Real Personal Property Tax Penalties, Interest and Fees at the Local Level* issued 9-7-00 by the Commissioner and Office of Property Valuation, Department of Revenue.

A. ACTIONS PRIOR TO SALE OF TAX CLAIM

Prior to settlement with the county and state, the sheriff has responsibility for tax collection activities. Before sale of the tax claims, which should occur just prior to settlement, the sheriff can collect delinquent taxes by means of distraint or by means of attachment pursuant to KRS 135.010. If the sheriff distrains property administratively, neither the services of the courts nor the county attorney are required.

If the sheriff elects to use the attachment procedure, the county attorney and the circuit court become involved. The attachment proceeding is an administrative

⁹³ KRS 134.500(8)

process which includes a provision for judicial oversight. Therefore, it is initiated by contacting the circuit judge's office or court administrator for a hearing date. Then the sheriff can prepare the "Notice to Appear in _____ Circuit Court" (**Exhibit 3**) and deliver it to the persons owing funds to the delinquent taxpayers. Copies must be mailed to the delinquent taxpayers involved. The county attorney should attach copies of the served notices to the ex parte motion for a hearing. "Motion-Notice & Order to Set Hearing Date" (**Exhibits 4 & 5**) and submit it to the circuit court clerk's office for docketing and hearing.

At the hearing, the judge can be provided copies of the "Opinion and Order Directing Payment" (**Exhibit 6**) for completion. Copies of the opinion and order can be given to all affected persons as authority for the transfer of funds to the sheriff.

The same distraint procedure can be utilized by the county attorney at the expiration of the one-year tolling period prior to filing a foreclosure action.⁹⁶

B. ACTIONS AFTER SALE OF TAX CLAIMS

After the delinquent real property tax bills have been sold by the sheriff, the Department of Revenue is responsible for enforcing the applicable collection procedures; however, the Department must first offer the collection duties to the county attorney.⁹⁷ A county attorney who chooses to perform the collection duties must enter into and adhere to a written contract with the Cabinet. In those counties where a county attorney does not enter into a contract with the Cabinet, or fails to

⁹⁴ KRS 134.500(8)

⁹⁵ KRS 131.175, KRS 91A.070(1)(b)

⁹⁶ KRS 134.490(3)

⁹⁷ KRS 134.500(2)

perform the duties specified by the contract, Cabinet personnel will assume the collection duties.⁹⁸

The county attorney, as an authorized collector of property taxes, may accept partial payments from the person primarily liable for the taxes, and may accept payment by any commercial means, including credit cards.⁹⁹

Actions specified by the contract that should be completed after the sheriff's sale but before the end of the one-year tolling period are specified in KRS 134.500(2), which provides in relevant part:

- (a) Within fifty (50) days after issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Department of Revenue shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid, will be subject to collection by the county attorney as provided by law. **(Exhibit 7)**
- (b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.
- (c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one-year tolling period provided in KRS 134.470. The county attorney will be responsible for following up with the PVA to ensure that this task is completed timely.

Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period (KRS 134.470), and for which the PVA

⁹⁸ KRS 134.500(5)

⁹⁹ KRS 134.010(8), KRS 134.020(2)

cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated.¹⁰⁰ The PVA shall keep a record of these exonerations, which shall be open under the Open Records Act (KRS 61.870 to 61.884). If at any time one of these entries is determined to represent a valid parcel of property, it shall be assessed as omitted property under KRS 132.290.¹⁰¹

The county attorney who enters into a contract with the Department of Revenue shall have two (2) years after the expiration of the one (1) year tolling period (KRS 134.470) to collect delinquent tax bills or to initiate court action for their collection.¹⁰² At the expiration of the two years, the Department may assume responsibility for all uncollected bills except those pending court action.¹⁰³

The county attorney who enters into a contract and performs his duties shall be entitled to twenty percent (20%) of the amount due each taxing unit (tax, interest, penalties, fees, costs, commissions, charges, and other expenses), whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid by the county clerk when making distribution.¹⁰⁴ This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims.¹⁰⁵ This fee shall not be paid by the taxing districts or deducted from the taxes due the taxing districts.¹⁰⁶

¹⁰⁰ KRS 132.220(5)

¹⁰¹ KRS 132.220(5)

¹⁰² KRS 134.500(3)

¹⁰³ KRS 134.500(3)

¹⁰⁴ KRS 134.480, KRS 134.500(4)

¹⁰⁵ KRS 134.500(4)

¹⁰⁶ KRS 134.500(4)

If the certificate of delinquency is paid by the taxpayer within five (5) days of the sheriff's sale, the county attorney's fee shall be waived.¹⁰⁷ If more than one county attorney renders necessary services in an effort to collect a tax claim, the county attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee.¹⁰⁸

When the county attorney's office files a court action which is litigated by the taxpayer, an additional fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or bill and shall become part of the tax claim.¹⁰⁹ The add-on fees are included in the interest calculation in counties containing cities of the first class or consolidated local government.¹¹⁰

If a county attorney chooses not to contract for collection duties or fails to perform the duties required by the contract, the Department of Revenue shall assume responsibility for the collection process.¹¹¹ The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the Department of Revenue for deposit in the delinquent tax fund (KRS 134.400).¹¹²

The statute of limitations is tolled during the one-year redemption period.¹¹³ For property assessments made prior to January 1, 1998, the five-year statute of limitations is in effect. The ten-year statute of limitations applies to all property assessments made on or after January 1, 1998.¹¹⁴

¹⁰⁷ KRS 134.500(4)+

¹⁰⁸ KRS 134.500(4)

¹⁰⁹ KRS 134.500(4)

¹¹⁰ KRS 134.500(1)

¹¹¹ KRS 134.500(5)

¹¹² KRS 134.500(5)

¹¹³ KRS 134.470, KRS 134.490

¹¹⁴ KRS 134.470 Compiler's Notes – 1998 Acts Ch 209 §§ 13 & 21 (HB 568)

Redemption is made by paying the amount for which the certificate was sold plus twelve percent (12%) annual interest, plus any applicable clerk's fee, five dollar (\$5) sheriff fee for each tax claim advertised, advertising expense and any other costs.¹¹⁵ Payment may be made to the purchaser of the certificate if the buyer is a private party, or to the county clerk for certificates owned by the taxing districts. The certificate of delinquency must be surrendered to the person redeeming the land.¹¹⁶ If the owner of the certificate is a private party and cannot be found, the money may be paid to the county clerk.¹¹⁷

C. ACTIONS AFTER ONE YEAR TOLLING PERIOD TO COLLECT ON CERTIFICATE OF DELINQUENCY

A county attorney who had contracted with the Department of Revenue must take further action on all delinquent taxpayers with a certificate of delinquency over a year old.

Pursuant to KRS 134.500(2)(d), the county attorney is required within ninety (90) days after the expiration of the one year tolling period (KRS 134.470), to mail a notice of his intention to enforce the lien to all owners whose tax bills remain delinquent¹¹⁸ (**Exhibit 8**). This notice is addressed to the owner of the property shown on the certificate or the current resident. However, no second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.¹¹⁹

¹¹⁵ KRS 134.480

¹¹⁶ KRS 134.480(1)

¹¹⁷ KRS134.480(3)

¹¹⁸ KRS 134.500(2)(d)

¹¹⁹ KRS 134.500(2)(d)

Failure to mail the notices does not affect the validity of the claim of the state, county, and taxing districts.¹²⁰ The postal cost of mailing the notices shall be added to the certificate of delinquency, and, upon collection, the county attorney shall be reimbursed for the postage.¹²¹

No action may be taken on a certificate of delinquency until the expiration of the one-year suspension period and the action shall be instituted within ten (10) years after the expiration of that one (1) year period.¹²²

Since delinquent tax collection suites are filed in the name of the Commonwealth, the filing fees and state tax are not required to be paid by the Commonwealth at the time of filing. The immunity from costs, except where a statute requires the state to pay, applies to counties as well as the state.¹²³

The county attorney should pursue as many of the following collection procedures as may be required in a timely manner.

1. Distraint of Personal Property

On certificates of delinquency that remain unpaid a reasonable amount of time after the ninety-day notices have been sent out, the county attorney may attempt distraint of personal property owned by the delinquent taxpayer.¹²⁴

2. A Personal Action May be Filed Against the Delinquent Taxpayer in Local District Court

Since a delinquent property tax bill is a personal debt of the responsible party as well as a lien against the real property, the county attorney may choose to pursue a personal action against a delinquent taxpayer. This type of action is filed

¹²⁰ KRS 134.500(2)(e)

¹²¹ KRS 134.500(2)(e)

¹²² KRS 134.470

¹²³ OAGs 70-590, 82-96, 83-311

in the local district court for amounts in controversy not exceeding four thousand dollars (\$4,000), exclusive of interest and costs.¹²⁵ If the amount in controversy exceeds four thousand dollars (\$4,000), exclusive of interest and costs, the action must be filed in the circuit court.¹²⁶

This action is initiated by preparing a “Complaint” (**Exhibit 9**) and a “Civil Summons” (**Exhibit 10**) in triplicate. One set of forms is mailed to the delinquent taxpayer, one set is filed with the appropriate court clerk, and the final set is retained by the county attorney. These forms are sent by certified mail to the delinquent taxpayer and the mailing cost should be added to the total amount due.

The delinquent taxpayer is given twenty (20) days to respond to the Complaint and Civil Summons. If no response is received, a “Motion and Notice for Default Judgment” and an affidavit (**Exhibits 11 and 12**) are prepared, filed with the appropriate court clerk and mailed to the delinquent property owner. These documents will usually generate a payment or response from the property owner.

If an action goes before the court, the introduction of the certificate of delinquency generally proves a prima facie case.¹²⁷ A “Default Judgment” (**Exhibit 13**) will be issued against the delinquent taxpayers ordering them to pay the appropriate amount of taxes, penalty, and interest. When the total amount due has been paid, an “Order of Dismissal” (**Exhibit 14**) can be used to dismiss the case.

¹²⁴ KRS 134.490(3)

¹²⁵ KRS 24A.120

¹²⁶ KY CONST § 112

¹²⁷ KRS 134.460(2)

3. **An Action Against the Real Property May be Filed in the Local Circuit Court**

An **action to foreclose on the tax lien** (certificate of delinquency) or an **action to execute on the judgment lien**, if a personal judgment has been previously obtained in order to satisfy the delinquent property taxes, are generally done if the other actions listed above fail to result in payment of the total liability. To initiate this action it will be necessary to do a limited title search on the parcels of property, perhaps fifteen (15) years or so, in order to locate all liens on the property and any subsequent purchasers not shown on the certificates.

After this data is obtained, suit should be filed to enforce the appropriate lien, naming all interested parties as defendants in the “Complaint” (**Exhibit 15**) and a “Lis Pendens Notice” (**Exhibit 16**) filed on each piece of property when suit is brought.

When a suit is filed, some taxpayers will pay their delinquent taxes immediately. After the taxes, including court costs, are paid, a “Motion to Dismiss” and “Order of Dismissal” (**Exhibit 17**) are required to dismiss the case. Whenever an action is dismissed following payment of the tax claims, the Lis Pendens involved should be released with the “Release of Lis Pendens” (**Exhibit 18**).

Although a large number of delinquent taxpayers will pay their taxes after suit is filed, there will be some against whom judgment for the sale of the property will have to be taken to collect the sums due.

If an action to collect a certificate of delinquency goes to trial, the county attorney generally only needs to introduce the certificate of delinquency to prove a

prima facie case.¹²⁸ Delinquent taxpayers will generally have no defense to the action since failure to perform most procedural steps in exact accordance with the statutes does not constitute a valid defense.¹²⁹ If the attorney for the defendant files an answer that is essentially a denial of the allegations of the complaint, then a motion for summary judgment and accompanying affidavit (**Exhibits 19, 20 and 21**) with a copy of the certificates of delinquency attached should suffice.

D. SALE OF PROPERTY

When property is sold pursuant to a judgment of foreclosure enforcing the tax lien (certificate of delinquency) or the judgment lien, if a prior personal judgment is obtained against the taxpayer, the property must be appraised by two independent appraisers of the county approved by the local master commissioner (KRS 426.520). Additionally, a right of redemption exists for the delinquent taxpayer as authorized by KRS 426.530 if the property is sold for an amount that is less than two-thirds of its appraised value.

The owner of a certificate of delinquency must obtain a judgment and order of sale from the circuit court in the county where the land is located.¹³⁰ (**Exhibit 22**) The judgment should order the Master Commissioner to advertise the property and sell it at public auction. The public auction is generally held at the county courthouse.¹³¹

¹²⁸ KRS 134.460(2)

¹²⁹ KRS 132.650, KRS 134.430(2), KRS 134.440(1), KRS 134.450(3), KRS 134.500(1)

¹³⁰ KRS 134.500

¹³¹ KRS 426.200; OAG 78-720

All sales of real property must be advertised in a county newspaper once each week for three weeks.¹³² The advertisement must contain the time, place, and terms of the sale as well as a description of the property to be sold.¹³³ Additionally, any tenant or other person in possession of the property other than the delinquent taxpayer, and any other owner of a certificate of delinquency against the same property, must be notified of the sale.

The owner of the land may redeem it at any time before the sale, but, has no right of redemption after the sale if a private individual becomes the purchaser of the land at the tax sale and the property brings at least two-thirds of the appraised value of the property.¹³⁴

If there is no purchaser at the foreclosure sale, the master commissioner deeds the property to the owner or owners of the certificate or certificates of delinquency, and they shall have a pro rata interest therein in accordance with the amount of their respective certificates.¹³⁵

If the holder of the certificate of delinquency is the taxing districts, the deed will go to the state, county and local taxing districts. The Department of Revenue (or county attorney) then sells the land and the Cabinet deeds the property to the purchaser. The **deed** should be sent to the Division of Collections, Legal Support Branch, P.O. Box 5222, Frankfort, Kentucky 40602, for review and obtaining the Secretary's signature. The delinquent taxpayer may redeem his property at any

¹³² KRS 424.130(1)(c), KRS 134.440

¹³³ KRS 424.140(3)

¹³⁴ KRS 426.220, KRS 426.530, KRS 134.490(4)

¹³⁵ KRS 134.490(4)

time before the Secretary of the Finance & Administration Cabinet gives a deed to the purchaser by paying the county clerk.¹³⁶

After the sale, the Master Commissioner must prepare a report of sale for circuit court approval. This requires the county attorney to move the court for an order confirming the sale. **(Exhibits 23 and 24)** Any part of the sale price remaining after the amount of the tax lien, interest, penalties, fees, commissions, charges, costs and reasonable attorney fees have been subtracted, is paid to other lower priority lienholders, if any, and any remainder is paid to the delinquent taxpayer.¹³⁷

Pursuant to KRS 426.260, the purchaser of the land after obtaining a conveyance may upon ten (10) days notice in writing to the delinquent, whose lands have been sold, enter a motion on the docket in the circuit court of the county where the land is situated for a judgment for the possession of the land.¹³⁸

V. MISCELLANEOUS

A. LISTING PROPERTY

It is the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the PVA of the county where it is located between January 1 and March 1 of each year.¹³⁹ Any taxpayer may list his property in person before the PVA or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and the value stated in the deed pursuant to KRS 382.135, may be considered

¹³⁶ KRS 134.510(3)

¹³⁷ Hall v. Hall, 174 Ky. 356, 192 S.W. 76 (1917)

¹³⁸ KRS 426.260

to be listed for the current year if no changes affecting the assessed value have been made to the property. If a written request is made by the PVA or Department of Revenue for a property tax return to verify existing information or to provide additional information for assessment purposes, the owner shall furnish the return. Any real property underassessed because the owner intentionally failed to provide information, or intentionally provided erroneous information, shall be subject to revaluation. The difference in value shall be assessed as omitted property under KRS 132.290.¹⁴⁰ All persons in whose name property is properly assessed shall remain bound for the tax, even though they may have sold or parted with the property.¹⁴¹

If the owner fails to list the property, the PVA shall nevertheless assess it. The PVA may swear witnesses in order to ascertain the person in whose name to list the property. The PVA, his employee, or employees of the Department of Revenue, may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of the buildings may be measured and photographs taken. However, except for buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and the nonpublic portions of commercial building shall not be conducted in the absence or without permission of the owner or resident.¹⁴²

¹³⁹ KRS 132.220(1)

¹⁴⁰ KRS 132.220(2)

¹⁴¹ KRS 132.220(1)

¹⁴² KRS 132.220(3)

Real property shall be assessed in the name of the owner, if ascertained by the PVA, otherwise in the name of the occupant, if ascertainable, and otherwise to “unknown owner”.¹⁴³

B. EXONERATION OF ASSESSMENT ON REAL PROPERTY

Real property tax roll entries for which tax bills have not been collected at the expiration of the one-year tolling period (KRS 134.470), and for which the PVA cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated.¹⁴⁴ The PVA shall keep a record of these exonerations, which shall be open under the Open Records Act (KRS 61.870 to 61.884). If at any time one of these entries is determined to represent a valid parcel of property, it shall be assessed as omitted property under KRS 132.290.¹⁴⁵

Any loss of ad valorem tax revenue suffered by a taxing district because of the exoneration of these uncollectible tax bills may be recovered through an adjustment in the tax rate for the following year.¹⁴⁶

C. MOBILE HOMES AND RECREATIONAL VEHICLES

All mobile homes and recreational vehicles, which are in Kentucky on January 1 each year, shall be subject to ad valorem tax, except any mobile home or recreational vehicle not licensed in this state and not remaining in this state for more than ninety (90) days in any twelve (12) month period shall not have a taxable situs

¹⁴³ KRS 132.200(4)

¹⁴⁴ KRS 132.220(5)

¹⁴⁵ KRS 132.220(5)

¹⁴⁶ KRS 132.220(5)

in this state unless an occupant is employed in this state.¹⁴⁷ Mobile homes or manufactured homes not held for resale by a dealer shall be classified as real property regardless of whether or not the wheels or mobile parts have been removed and whether or not the unit rests on a permanent, fixed foundation.¹⁴⁸

Mobile home is defined as “a transportable dwelling unit suitable for year-round occupancy, which is manufactured on a chassis or undercarriage as a integral part thereof, containing facilities for water, sewage, bath, and electrical conveniences.”¹⁴⁹

A recreational vehicle means any of the following: travel trailer, pickup coach, motorhome, camping trailer, dependent recreational vehicle or a self-contained recreational vehicle.”¹⁵⁰ These vehicles are defined in KRS 219.320(8). Unlike a mobile home, a recreational vehicle is classified as real property if the wheels or mobile parts have been removed and the unit rests on a permanent, fixed foundation.¹⁵¹

¹⁴⁷ KRS 132.730

¹⁴⁸ KRS 132.751

¹⁴⁹ KRS 132.720(2); KRS 219.320(3)

¹⁵⁰ KRS 132.720(2); KRS 219.320(8)

¹⁵¹ KRS 132.751(2)