

103 KAR 5:180. Procedures for sale of certificates of delinquency by county clerks.

RELATES TO: KRS 134.127, 134.128

STATUTORY AUTHORITY: KRS 134.128(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. This administrative regulation establishes the process for the purchase and sale of certificates of delinquency to third parties.

Section 1. Definitions. (1) "Clerks fees" means any fee required to be collected by a county clerk for the filing, recording, release, processing, or other handling of a certificate of delinquency or a lien created by a certificate of delinquency.

(2) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or a person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(3) "Current certificate of delinquency" means a certificate of delinquency which relates to the most recent tax year and which has not been offered in a prior year's county clerk's sale.

(4) "Department" means the Kentucky Department of Revenue.

(5) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(6) "Priority Certificate of Delinquency" means a current certificate of delinquency which relates to a property on which a potential purchaser already owns a prior year certificate of delinquency.

(7) "Protected Certificate of Delinquency" means a certificate of delinquency which is:

(a) Currently involved in litigation;

(b) Part of an ongoing bankruptcy proceeding of which the county clerk has received actual notice; or

(c) The subject of an agreed payment plan in good standing.

(8) "Related entities" or "related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

(9) "Sale" means the annual sale by the county clerk of certificates of delinquency to third party purchasers.

Section 2. Establishing Sale Date. (1)(a) The Department of Revenue shall develop a

preliminary statewide schedule for certificate of delinquency sales and shall notify each county clerk on or before May 1 of each year of the proposed date of the county's sale.

(b) A county clerk may, within five (5) business days of notification of the preliminary schedule, make a written request to the department to change the proposed sale date for his or her county.

(c) Date changes shall be made solely in the discretion of the department.

(d) Any adjustments shall be made after consultation with the county clerk and shall be completed on or before May 15 of that same year.

(e) The department shall publish the final sale schedule as soon as practicable after May 15 of each year.

(2)(a) The county clerk shall notify the county attorney of the sale date as soon as practicable after May 15 of each year.

(b) Between ten (10) and fifteen (15) days prior to the sale date, the county attorney shall provide the county clerk a list of all protected certificates of delinquency.

(c) A certificate of delinquency included on the protected list shall not be sold at the county clerk's sale.

(3) Except as provided in KRS 134.127, the county clerk shall not assign any current certificate of delinquency prior to the sale.

Section 3. Purchaser's Registration with the county clerk. (1) A third party purchaser shall register with the county clerk prior to participating in the county's sale. A new registration shall be required for each year's sale.

(2) A third party purchaser's registration shall include:

(a) The purchaser's name, physical address, mailing address and phone number;

(b) A copy of the Certificate of Registration required by 103 KAR 5:190;

(c) A list of the priority certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all priority certificates of delinquency listed and the following information for each priority certificate of delinquency listed:

1. The current year's tax bill number;

2. The taxpayer name;

3. The amount due on the current certificate of delinquency;

4. The prior year certificate of delinquency's tax bill number;

5. The prior year certificate of delinquency's tax year;

6. The book and page numbers where the prior year certificate of delinquency is filed, if applicable;

7. The account or parcel identification number if the county uses that number to identify specific properties; and

8. If requested by the county clerk, a copy of the prior year certificate of delinquency;

(d) A list of the current certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all certificates of delinquency listed and the following information for each certificate of delinquency listed:

1. The taxpayer name;

2. The amount due on the certificate of delinquency;

3. The current year's tax bill number; and

4. The account or parcel identification number if the county uses that number to identify specific properties.

(e) The following sworn statement: "I hereby certify that I am not participating in this sale in conjunction with any related person or related entity to obtain any advantage over other

potential purchasers at the sale.";

(f) The deposit required by the county clerk pursuant to Section 4 of this administrative regulation; and

(g) Payment of the registration fee of five (5) dollars for each certificate of delinquency included on the purchaser's list of priority certificates of delinquency and ten (10) dollars for each certificate of delinquency included on the purchaser's list of current certificates of delinquency. The total registration fee shall not exceed \$250.

(3)(a) Except as provided by paragraphs (b) and (c) of this subsection, the registration material required by subsection (2) of this section shall be submitted to the county clerk no later than fifteen (15) days prior to the sale.

(b) The deposit required by Section 4 of this administrative regulation shall be submitted to the county clerk no later than five (5) days to the sale.

(c) The list of current certificates of delinquency required by subsection (2)(d) of this section shall be submitted to the county clerk no later than ten (10) days prior to sale.

(d) The county clerk shall include these deadlines in all advertisement required by KRS 134.128(5).

(4) Prior to the sale, the county clerk shall:

(a) Review each registration and confirm that each registrant has complied with KRS 134.129 and that related entities or related interests are not participating or attempting to participate in the sale in a manner designed to subvert the fairness of the sale or to deprive other participants from an equitable opportunity to purchase certificates of delinquency at the sale. If the county clerk determines that a purchaser has violated or has attempted to violate this section, the county clerk shall notify the county attorney and the Department of Revenue of the violation or attempted violation;

(b) Review all the lists of priority certificates of delinquency for purchase submitted by purchasers to verify that the registrant has a priority right to purchase the listed certificates of delinquency;

(c) Review the submitted priority purchase lists to identify multiple purchasers interested in the certificates of delinquency on the same property and, based upon the information submitted, determine the registrant that holds the prior year claim for the most recent tax year; and

(d) No later than forty-eight (48) hours prior to the sale, make available to each third party purchaser registered for the sale, copies of all lists of priority certificates submitted pursuant to subsection (2)(c) of this section.

Section 4. Deposit Requirement. (1) A purchaser shall deposit funds with the county clerk at the time of registration in the following amounts:

(a) 100% of the value of each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(b) All clerk's fees associated with each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(c) Twenty-five (25) percent of the value of each certificate of delinquency included on the purchaser's list of current certificates of delinquency. A purchaser shall not be required to pay an additional deposit if the certificate of delinquency is included on both lists, and if both lists clearly indicate that the certificate is included on both lists. A purchaser may deposit more than the minimum amount required by the county clerk.

(2) The county clerk shall apply the deposit to payment of any certificate of delinquency purchased at the sale.

(3) The county clerk shall refund any unused portion of the deposit to the purchaser no later

than ten (10) business days after the completion of the sale.

(4) The county clerk shall:

(a) Accept payment of the deposit in a method of payment that complied with KRS 134.126(1)(b); and

(b) Not require that a deposit be made in cash. Inadequate deposit, the county clerk shall allow the third party purchaser an opportunity to submit additional funds to reach the correct deposit amount. The deposit shall be paid in full by the day of the sale.

Section 5. Payment. (1) Payment of any outstanding balance, after application of all deposits, shall be made at a time determined by the county clerk, but no later than ten (10) business days after the sale. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale.

(2) The county clerk shall:

(a) Accept payment of the deposit in a method of payment that complied with KRS 134.126(1)(b);

(b) Not require that a deposit be made in cash; and

(c) Include a list of the acceptable forms of payment in all advertisements for the sale.

(3)(a) If full payment is not made for the certificates of delinquency at the time designated by the county clerk, the county clerk shall not assign any certificate of delinquency for which full payment has not been received and those certificates of delinquency shall be available for payment pursuant to KRS 134.127(1)(b).

(b) The county clerk shall have discretion as to how to allocate partial payments.

(c) If the purchaser's failure to make payment results in additional cost or expense to the county clerk, the county clerk shall forfeit the purchaser's deposit to cover those additional costs and expenses.

Section 6. Conduct of the Sale. (1)(a) The county clerk may sell the requested priority certificates of delinquency to the purchasers who submitted a list prior to the sale at the beginning of the sale, or as soon as practicable after the sale.

(b) The purchaser holding a certificate of delinquency from the most recent tax year shall have priority.

(c) If a purchaser holding a certificate of delinquency from the most recent tax year declines to purchase the priority certificate of delinquency, the purchaser holding a prior certificate of delinquency from the next most recent year shall be allowed to purchase the certificate of delinquency if included on their list of priority certificates of delinquency.

(2)(a) The certificates of delinquency remaining at the time of the sale shall be sold as established by subsection (3) of this section.

(b) The order of selection of lots by registered purchasers shall be determined by a random drawing on the day of the sale.

(c) The purchaser who draws the lowest number during the random drawing shall have the first turn to choose a lot for purchase. Thereafter, purchasers shall select lots to purchase in order based on the random drawing from lowest to highest.

(d) Purchasers who are not present for the random drawing shall be placed at the bottom of the selection list behind the purchasers who were present for the random drawing.

(3)(a) Except as provided in paragraph (b) of this subsection, the certificates of delinquency remaining at the time of sale shall be sold in lot sizes as follows:

1. In counties with 500 or fewer certificates of delinquency to be sold, the certificates of delinquency shall be sold in lots of up to five (5);

2. In counties with more than 500 and less than 1,000 certificates of delinquency to be sold,

the certificates of delinquency shall be sold in lots of up to ten (10);

3. In counties with at least 1,000 and not more than 2,500 certificates of delinquency to be sold, the certificates of delinquency shall be sold in lots of up to twenty-five (25);

4. In counties with at least 2,500 and not more than 7,500 certificates of delinquency to be sold, the certificates of delinquency shall be sold in lots of up to fifty (50); and

5. In counties with more than 7,500 certificates of delinquency to be sold, the certificates of delinquency shall be sold in lots of no more than fifty (50) for the first four (4) rounds, and, for all subsequent rounds, shall be sold in lots not to exceed two (2) percent of the total number of current certificates of delinquency included in the pool for the sale.

(b) For any round of a sale, if, there are more certificates of delinquency to be sold than purchasers participating in the sale, the lot size used for that round shall not create fewer lots than the number of purchasers participating.

(4) The county clerk shall set a reasonable time limit for purchasers to make their selections.

(5) A purchaser may withdraw from the sale at any time prior to completion of the sale. If a purchaser withdraws from the sale, the purchaser shall not make any further purchases in any later round of the sale. Another purchaser shall not take the place of the withdrawing purchaser.

(6) A purchaser may purchase less than a full lot of certificates of delinquency. If a purchaser purchases less than a full lot in three (3) consecutive rounds, the purchaser shall be considered to have withdrawn from the sale after the partial lot purchase.

(7)(a) The county clerk shall apply the purchaser's deposit to the total amount due for the certificates of delinquency purchased.

(b) The purchaser shall pay any additional funds required on or before the payment deadline established by the county clerk pursuant to Section 4 of this administrative regulation.

(c) The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale.

(d) Any amount of deposit remaining after the sale shall be refunded to the purchaser.

(8) Purchasers shall only purchase those certificates of delinquency listed on the registration required by Section 3 of this administrative regulation.

(9) Any questions or controversies relating to the sale shall be addressed by the county clerk.

Section 7. Department of Revenue Oversight. The Commissioner of the Department of Revenue or his or her duly appointed representative shall have access to all sales and shall be permitted to review or audit the records relating to the sale of certificates of delinquency. (36 Ky.R. 1391; 2082-M; 2028-A; eff. 5-7-2010.)