

**BASIC INFORMATION ABOUT BUYING
AND COLLECTING ON CERTIFICATES OF
DELINQUENCY FOR
POTENTIAL THIRD PARTY PURCHASERS**

**PREPARED BY THE
OFFICE OF PROPERTY VALUATION**

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INTRODUCTION

A third party has had the ability to purchase delinquent real property tax bills (officially known as certificates of delinquency) in Kentucky for many decades. However, it has only been in the last 15 to 20 years that significant interest in acquiring these delinquencies has developed. In response to this increased demand, significant legislative reforms have been enacted that standardize the tax sale process throughout the State, require registration of third party purchasers who meet certain thresholds, establish guidelines for the amounts of pre-litigation fees that can be imposed, mandate that annual notices must be sent to delinquent taxpayers and detail the information that must be included in those notices.

This manual will provide you with details on all of these requirements along with basic information about the process to follow when it becomes necessary to enforce the lien of a certificate of delinquency in an effort to help you decide if being a third party purchaser is right for you.

Kentucky Property Tax Calendar

All potential third party purchasers need to have an understanding of how the property tax system in Kentucky works. The assessment date of both real and personal property is January 1 of each year. The official name on the property tax bill is the January 1st property owner; however, a tax bill can be sent “in care of” a new owner if the property transfers during the year. The local official responsible for assessing all property in each county is known as a property valuation administrator (PVA).

The PVA must submit the total assessments in each property class to the Department of Revenue and, once the totals have been approved, the local taxing districts can then set their individual tax rates. This work takes place during the late spring and summer months. Tax bills are generally mailed out by October 1st or November 1st in each county and they are payable to the sheriff’s office. Tax bills become delinquent on January 1st and various penalty amounts are added. The sheriff’s office transfers all delinquent tax bills to the county clerk’s office as of the close of business on April 15th of each year. The tax bills are then known as certificates of delinquency and they represent a lien against the corresponding real property.

After April 15th, the property owner can make payment to the county clerk’s office and additional penalties, fees and interest will apply. The county attorney is responsible for sending a notice within 30 days of the bills being received by the county clerk to each delinquent taxpayer. If necessary, another notice is mailed by the county attorney within 60 days of the bills being transferred to the county clerk.

The certificates of delinquency are eligible to be sold to third party purchasers by the county clerk 90 days after they have been received from the sheriff's office. The actual tax sale date for each county will be advertised in the local newspaper, on the county clerk's website and on the Department of Revenue's website <http://revenue.ky.gov/property/pages/third-party-purchaser.aspx> at least 30 days prior to the sale date.

A diagram of the property tax calendar is shown on the following page.

KENTUCKY PROPERTY TAX CALENDAR

| | REAL ESTATE | PERSONAL PROPERTY |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Assessment Date | January 1 | January 1 |
| Listing Period | January 1 - March 1 | January 1 - May 15 |
| First Recap to Office of Property Valuation | First Monday in April | |
| Public Inspection of Tax Roll/PVA Conferences | 13 Days Beginning First Monday in May (6 days per week, including Saturday) | |
| Final Recap to Office of Property Valuation | No Later Than 6 Work Days After the Close of Inspection | |
| Property Valuation Certification | Upon Completion of Action by Department of Revenue | Upon Completion of Action by Department of Revenue |
| Board of Assessment Appeals | 5 Days Beginning 25 to 35 Days After Inspection | |
| Establishment of Local Property Tax Rates | Within 45 Days of the Department of Revenue's Certification of the County's Property Tax Roll | Within 45 Days of the Department of Revenue's Certification of the County's Property Tax Roll |
| Tax Bills Delivered to Sheriff | By September 15 | By September 15 |
| Pay With Discount | By November 1 | By November 1 |
| Pay Without Discount | November 2 - December 31 | November 2 - December 31 |
| Tax Bills Delinquent | January 1 | January 1 |
| Pay With 5 Percent Penalty | January 1 - January 31 | January 1 - January 31 |
| Pay With 10 Percent Penalty and 10 percent Sheriff's add-on fee. | After January 31 | After January 31 |
| Transfer of Delinquent Tax Bills from the Sheriff to the County Clerk | April 15 - Sheriff collects tax through the close of business. | April 15 - Sheriff collects tax through the close of business. |
| County Clerk's Sale of Certificates of Delinquency | July 14 through August 28* | |
| Sheriff's Settlement | By September 1 | |

***Counties with delinquent unmined mineral or oil and gas tax bills have an additional 60 day time period to schedule their tax sale.**

Registration Process for Third Party Purchasers at the State Level

All third party purchasers who plan on buying more than 3 certificates of delinquency in any county, 5 certificates of delinquency statewide or investing more than \$10,000 in certificates of delinquency must register with the Department of Revenue. An application is available on the Department's website –<http://revenue.ky.gov/property/pages/third-party-purchaser.aspx>. You will see a section devoted solely to third party purchasers and this is where you will find the link to download an application.

The application requests various items of information to be provided about the third party purchaser such as: type of entity, contact information, whether you are current on all taxes owed to the State and if you are related to another third party purchaser. If the third party purchaser is organized as a corporation, limited liability company or partnership, then additional information about the entity and the individual owners and officers will need to be provided.

The completed application, along with a registration fee of \$250, is submitted to the Department of Revenue for review. If there are questions, you will receive a follow up email or telephone call from the Department. Upon completion of the review process, you will receive a Certificate of Registration from the Department. All Certificates of Registration expire on December 31st of the calendar year issued. Since there is a 60 day waiting period from the time the application is received by the Department before the third party will be eligible to begin making purchases, the Certificate will list the date purchases may begin.

Once a third party is eligible to begin making purchases, any certificate of delinquency from a prior year may be acquired at any time. Keep in mind that the current year certificates of delinquency are not available for purchase until the date of the county clerk's tax sale and thereafter. For example, in 2019 a certificate of delinquency from 2017 or earlier tax year can be purchased anytime after the third party purchaser becomes eligible. The 2018 certificates of delinquency will not be available until the county clerk's tax sales begin in July of 2019.

The registration process for a particular year opens in October of the previous year so that any third party purchaser wishing to have a Certificate that is effective on January 1 can apply and meet the 60 day waiting period prior to January 1.

County Clerk Tax Sale Dates

Each county clerk must set a tax sale date on an annual basis. Tax sales can begin no earlier than July 14th of each year. Most of the tax sales will be completed by the latter part of August; however, there is a provision for counties with unmined coal or oil and gas delinquent tax bills that allows a tax sale to be conducted in September or October due to the delayed collection schedule for these types of bills.

Registration at the County Clerk's Office

All third party purchasers wishing to participate in a particular county's tax sale must complete a registration form and submit it along with all required fees and deposits to the county clerk's office by the advertised deadline. The purchase thresholds in effect for registration with the Department of Revenue do not apply when registering with the county clerk. Therefore, even if you only want to purchase one or two certificates, you must timely register with the county clerk's office. The following items need to be submitted to the county clerk's office by the deadline established:

The registration form that is used by the county clerk;

Copy of the registration certificate issued by the Department of Revenue (if necessary);

A list of priority certificates of delinquency you intend to acquire (more details about this can be found in the next section);

A list of current year certificates of delinquency you intend to acquire (also detailed in a following section);

The applicable registration fees; and

All applicable deposit amounts.

Priority Certificates of Delinquency

When a third party has purchased a certificate of delinquency for a particular property in a prior year, that third party will have first priority to acquire the current year's certificate of delinquency for the same property. A list of all certificates of delinquency upon which you have a priority needs to be compiled and submitted with your registration form to the county clerk. The information to include on this list is as follows:

The current year's tax bill number;

The name on the certificate of delinquency;

The amount due on the certificate of delinquency;

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

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

The account or parcel identification number if used by the county to identify specific properties.

The county clerk may also request a copy of the prior year certificate of delinquency to ensure a priority exists.

If you do not list your priority claim with the county clerk, the certificate of delinquency upon which you had a claim will be included in the pool of certificates to be sold and it may be purchased by any third party.

A deposit of 100% of the value of each priority certificate of delinquency is required from the third party purchaser and it must accompany the registration when it is submitted. The county clerk can specify what forms of payment will be accepted.

Current Year Certificates of Delinquency With No Priority Claims

A separate list of certificates of delinquency for which a third party has no priority claim must also be prepared and submitted to the county clerk with the registration form. This list shall include the following information:

The tax bill number;
The taxpayer name;
The amount due on each certificate of delinquency; and
The account or parcel identification number if used by the county to identify property.

A deposit of 25% of the total value of the certificates of delinquency on this list will be required. Again, the county clerk can specify what forms of payment will be accepted.

Registration Fees

A registration fee up to a yearly maximum of \$250.00 must be paid by a third party purchaser no matter when a certificate of delinquency is acquired during the year. If a prior year certificate of delinquency is purchased before the current year's tax sale, a registration fee of \$10.00 per bill will be added to the total due. For certificates of delinquency purchased at the tax sale, a fee of \$5.00 for each certificate of delinquency included on the priority list and \$10.00 for each certificate of delinquency included on the purchaser's current year list will be required. Whenever the \$250.00 maximum has been reached, no further registration fees will be charged until the next calendar year.

After the tax sale in a county has been completed, any remaining certificates of delinquency may be purchased at any time by any third party. If the \$250.00 maximum has not been met, a registration fee of \$10.00 per bill will be imposed until the limit is reached.

County Clerk Tax Sale Procedures

On the day of the tax sale, all registered third party purchasers will report to the county clerk's office for instructions on where the sale will be held. County clerks are encouraged to update the list of certificates of delinquency available for the tax sale the night before or the morning of the tax sale. Some county clerks will provide paper copies of these lists while in other counties you will need to go on-line to access the updated list. In addition, payments can be made by a taxpayer right up to the time of the tax sale; therefore, the county clerk may have more deletions to the list of available bills to announce.

After allocating the certificates of delinquency for which third party purchaser's had a priority claim, the remaining certificates will be sold in a predetermined lot size. The selection order is determined by a random drawing at the beginning of the tax sale and this order is followed in each round. If a registered purchaser is not present for the random drawing but shows up late, he or she will be placed at the bottom of the selection list.

The certificates of delinquency shall be sold in the following lot sizes:

In counties with 500 or fewer certificates of delinquency to be sold, the certificates may be sold in lots of up to 5;

In counties with more than 500 and less than 1,000 certificates of delinquency to be sold, the certificates may be sold in lots of up to 10;

In counties with at least 1,000 and less than 2,500 certificates of delinquency to be sold, the certificates may be sold in lots of up to 25;

In counties with at least 2,500 but not more than 7,500 certificates of delinquency to be sold, the certificates may be sold in lots of up to 50; and

If a county has more than 7,500 certificates of delinquency available for sale, the certificates may be sold in lots of no more than 50 for the first 4 rounds. For all subsequent rounds, the certificates may be sold in lots not to exceed 2% of the total number of certificates of delinquency available to be sold.

Many county clerks will sell one certificate of delinquency at a time for at least the first 2 or 3 rounds in an effort to ensure that all third party purchasers will have the opportunity to acquire certificates that are high on their list.

Purchasers are eligible to select only those certificates included on their list of current year certificates of delinquency that was previously submitted to the county clerk.

A purchaser may withdraw from the tax sale at any time prior to the completion of the tax sale. If a purchaser acquires less than a full lot of certificates in three consecutive rounds, the purchaser will be considered to have withdrawn from the sale after the third partial lot purchase. No other purchaser can take the place of a withdrawing purchaser.

The county clerk may impose a reasonable time limit for purchasers to make their selections during each round. Purchasers need to be alert while other third parties are making selections so that certificates that have already been selected are not called when it is your turn. If this occurs, the county clerk may or may not allow an alternative certificate to be selected. The county clerk should make an announcement about how this situation will be handled at the beginning of the tax sale.

The third party purchaser will pay for all certificates of delinquency acquired at the conclusion of the tax sale. The county clerk will first apply the purchaser's deposit to the total amount due and additional amounts shall be paid in the manner required by the county clerk. The total due will include all county clerks' fees for the recording and assignment of each certificate of delinquency. Any deposit amount remaining after the sale shall be refunded to the third party purchaser within 10 business days after the sale.

After the tax sale, any remaining certificates of delinquency may be purchased at any time by any third party purchaser. However, all third party purchasers must continue to meet the State's registration requirements and a registration fee of \$10.00 per certificate of delinquency must be paid to the county clerk up to the \$250.00 maximum if that limit has not already been reached.

Actions After Purchasing a Certificate of Delinquency

Within 50 days after receiving delivery of a certificate of delinquency from the county clerk, the third party purchaser must send a notice of the purchase to the delinquent taxpayer. Subsequent notices must be sent at least annually to the delinquent taxpayer.

Notices need to include the following information:

A statement that the certificate of delinquency is a lien of record against the property;

That the certificate accrues simple interest at the rate of 1% per month;

A statement that if the certificate is not paid it will be subject to collection as provided by law and that collection actions may include foreclosure;

A complete listing of the total due as of the date of the notice broken out between:
The purchase price of the certificate of delinquency;
Interest accrued subsequent to the purchase of the certificate; and
The fees imposed by the third party purchaser.

If the third party purchaser was required to register with the Department of Revenue, then the notice must also include a statement that the delinquent taxpayer may make a written request for an installment payment plan.

In addition to the above information, the notice must also include the legal name of the third party purchaser, the physical address of the third party, the mailing address for payments if different than the physical address and the third party purchaser's telephone number.

If the contact information changes, the third party purchaser is required to send a notice to the delinquent taxpayer with the updated information within 30 days of the change becoming effective. The third party purchaser must also update the contact information with the appropriate county clerk(s) within 10 days of the change becoming effective. The failure to keep all information current will result in the suspension of the accrual of all interest and fees until proper notice is given.

Procedures to Follow When Notices are Returned by the Post Office

Prior to sending a notice, the third party purchaser shall obtain from the property valuation administrator (PVA) the most recent address for the property owner. This information can be obtained through the PVA Office's website or a list may be submitted to the PVA office and updated address information will be provided to the third party purchaser within 10 days. The PVA office is allowed to charge a fee of \$2.00 for each address provided.

Any notices that are returned as undeliverable shall be resent by first class mail addressed to the "Occupant" at the address of the property that is the subject of the certificate of delinquency. These notices must be sent within 20 days of receipt of the returned notice.

If the third party purchaser is made aware of a more accurate address for the delinquent taxpayer that is different from the address maintained by the PVA, a notice shall be sent to the updated address and the PVA must be notified of the updated address as well.

If a certificate of delinquency that relates to oil and gas or unmined coal property is acquired, the same general procedures need to be followed to obtain the best possible mailing address; however, your requests need to be directed to the Department of Revenue rather than the PVA. Address information requests need to be directed to:

Office of Property Valuation
501 High Street
4th Floor, Station 33
Frankfort, KY 40620
ATTN: Justin Woodside

You may also send your information requests via email to Justin.Woodside@ky.gov

Installment Payment Plans

Upon receipt of a written request from a delinquent taxpayer, a third party purchaser must offer an installment payment plan. The minimum length of the payment plan is 12 months unless both parties agree to a shorter term. The third party purchaser is entitled to a monthly processing fee of \$8.00 per month to offset the administrative cost of providing a payment plan.

The Department of Revenue has developed a payment plan calculator that is posted at <http://revenue.ky.gov/property/pages/third-party-purchaser.aspx> to assist third party purchasers with this requirement. There are also detailed instructions on the data entry needed to be done in order to arrive at an accurate payment plan calculation.

If a delinquent taxpayer defaults on a payment plan, the third party purchaser is entitled to retain all payments received and that amount is applied to the outstanding balance due. The third party purchaser is then free to pursue the appropriate legal action to enforce the certificate of delinquency.

Foreclosure Actions

By statute, no enforcement collection actions can be taken until it has been at least one year since the certificate in question became delinquent. Unless there has been a delay in the county's collection schedule, tax bills are considered delinquent on January 1st. Therefore, the following January 1st marks the end of the one year tolling period on collection actions. For example, the 2017 property tax bills became delinquent on January 1, 2018. No enforcement actions – other than sending the required notices – can be taken until January 1, 2019.

After the expiration of the one year tolling period, a third party purchaser has 10 years to initiate a foreclosure action. At least 45 days before starting a legal action, the third party purchaser must send a notice to the taxpayer by first class mail informing them of the impending action. This notice must contain the same information as the initial notice sent

to the delinquent taxpayer. See the section titled “Actions After Purchasing a Certificate of Delinquency”.

To initiate a foreclosure action, you will go through the Circuit Court of the county in which the property is located. The Master Commissioner will have the property appraised and set a time for the foreclosure sale. At the appointed time, the property is offered for sale at public auction. The third party purchaser will be reimbursed out of the proceeds from the sale. If the sale’s proceeds are insufficient to pay the third party purchaser in full, a pro-rata distribution will be made. If the third party purchaser decides to bid at the auction and is the high bidder, then the third party purchaser becomes the new owner of the property.

The foreclosure process will take several months at a minimum and the information in this section provides a very basic overview of the process. If the third party purchaser is not an attorney, then legal counsel should be obtained prior to taking this action.

Amounts That Can Be Collected by a Third Party on a Certificate of Delinquency

KRS 134.452 governs the amounts that can be collected on a certificate of delinquency after it has been acquired by a third party purchaser but before any litigation has been filed. First, interest can be charged at the rate of 1% per month based upon the amount paid to the county clerk for the certificate of delinquency beginning with the date of purchase. Next, administrative fees incurred for preparing, recording and releasing an assignment of a certificate of delinquency can be added in an amount not to exceed \$115.00. Finally, pre-litigation attorneys’ fees incurred may also be added to the total due; however, there is a sliding scale to follow that is detailed below:

If the amount paid for the certificate is between \$5 and \$350, up to 100% of the amount of the certificate can be added to the total due – not to exceed \$350;

If the amount paid for the certificate is between \$351 and \$700, up to 80% of the amount of the certificate can be added to the total due – not to exceed \$560;

If the amount paid for the certificate exceeds \$700, up to 70% of the amount of the certificate can be added to the total due – not to exceed \$700.

In addition, the statute contains a further limitation on the addition of pre-litigation attorneys’ fees to the amount due on a certificate of delinquency. If you own more than one certificate of delinquency against the same taxpayer, then the pre-litigation attorneys’ fees for all of the certificates of delinquency you own cannot exceed 1.5 times the maximum amount permitted under the sliding scale detailed above.

As an example, if you paid \$725 for one certificate and \$750 for another certificate against the same property owned by the taxpayer, the maximum amount for the higher dollar value certificate can be used to compute the initial limit for pre-litigation attorneys’ fees - \$525.00 (\$750 x 70%). This amount is then the basis for calculating the total amount that

can be added for these fees for all certificates owned against the same property - \$787.50 (\$525.00 x 1.5).

This statute goes on to state that the pre-litigation attorneys' fees that are calculated under the method provided cannot be charged all at once, unless the amount of the certificate of delinquency is \$175 or less. Otherwise, these fees are added in \$175 increments – up to the maximum amount allowed – for each notice that is sent to the delinquent taxpayer, but additional amounts cannot be added any more frequently than quarterly no matter how many notices are sent.

When litigation becomes necessary, the third party purchaser may collect actual, reasonable attorneys' fees that arise due to the prosecution or the protection of a certificate of delinquency that is involved in litigation. KRS 134.452(3)(b) states actual litigation fees up to \$2,000 may be considered reasonable as long as the work performed is properly documented and the hourly rates imposed are customary for similar services done in the area. Any fees of this type in excess of \$2,000 will have to be authorized by the court.

Refunds to Third Party Purchasers

Refunds to third party purchasers are governed by KRS 134.551. When a certificate of delinquency held by a third party purchaser is unenforceable because:

It is a duplicate certificate of delinquency;

The tax liability represented by the certificate of delinquency was paid prior to the purchase of the certificate of delinquency;

All or a portion of the certificate of delinquency is exonerated;

The property to which the certificate of delinquency applies was not subject to taxes as a matter of law as certified by the property valuation administrator; or

It should not have been sold since it met the requirements for inclusion on the list of protected certificates of delinquency provided by the county attorney in accordance with KRS 134.504 (10) (b);

the third party purchaser may apply to the county clerk for refund. The application for refund must include written proof that one of the situations listed above exists.

Upon approval of the refund application, the county clerk is authorized to issue a refund of the amount paid by the third party purchaser. The refund does **NOT** include the lien filing fees paid by the third party purchaser.

If the county clerk does not have sufficient funds to make the refund, the clerk may do one of the following:

Retain the approved refund claim and make the refund as soon as sufficient funds are on hand; or

Provide a signed letter to the person due the refund which includes the amount due from each taxing jurisdiction and fee office. The letter will also direct each taxing jurisdiction and fee office to pay the appropriate amount due to the third party purchaser.

When a refund is made to a third party purchaser, the county clerk shall issue and file a release of the lien on the property that was subject to the certificate of delinquency. The lien release and supporting documents are filed without a fee. The county clerk shall return the lien release document to the taxpayer and provide a copy to the third party purchaser.

If a refund request is denied by the county clerk, the third party purchaser may appeal the decision to the Kentucky Claims Commission.

Assignment of a Certificate of Delinquency

On occasion, a third party purchaser will assign a certificate of delinquency that has been acquired to another third party purchaser. This is allowable under KRS 134.126; however, the third party purchaser that is obtaining the lien in the assignment will need to meet the State registration requirements that are in place for all third party purchasers who participate in the tax sales. This means if the third party purchaser is obtaining – via an assignment – more than 3 certificates of delinquency in a county or more than 5 certificates of delinquency statewide or is spending more than \$10,000 then the third party must be registered with the Department of Revenue and eligible to purchase certificates of delinquency. Proof of registration and the effective date purchases can begin should be provided to the county clerk before any assignment is made. The county clerk shall charge a fee of \$13.00 to note and record the assignment.

More Resources Available for Potential Third Party Purchasers

The Department of Revenue's website – <http://revenue.ky.gov/property/pages/third-party-purchaser.aspx> - contains links to all of the various statutes and regulations that govern this process. There are also links that will provide you with a list of the county clerk's tax sale dates, the website addresses used by the county clerks to advertise their certificates of delinquency and other third party purchasers who have registered with the Department. As noted in an earlier section of this brochure, a link to the application to be a registered

third party purchaser, an installment payment plan calculator and the accompanying instructions are also provided. As noted in an earlier section of this brochure, a link to the application to be a registered third party purchaser, an installment payment plan calculator and the accompanying instructions are also provided.

After reviewing these materials, if you have any further questions, please do not hesitate to contact Luka Moore via email at Luka.Moore@ky.gov or you may call her at 502-564-7230. You may also contact Tom Crawford via email at Tom.crawford@ky.gov or you may call him at 502-564-7179.