

PUBLICATION

Florida Sets 120-Day Deadline on Tax Deed Sale Surplus Claims

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Earlier this month, House Bill 1383, which amends Florida's tax deed statutes, was passed in both houses of the Florida legislature and now awaits the Governor's signature. While the amendments generally provide more guidance with respect to the county clerks' responsibilities and handling of tax deed sales and required notices, they also introduce a significant change surrounding tax deed sale surplus claims.

The biggest impact upon mortgage holders with an interest in collecting excess proceeds from tax deed sales is a new time limitation for making any such claims. Revised Fla. Stat. Sect. 197.582(3) creates a 120-day deadline for lienholders to file a claim. The 120-day period begins on the date stated in the clerk's notice of excess proceeds, which is required to be sent to all lienholders of record. Prior to this amendment, the only deadline for lienholders to submit claims was the clerk's option to remit excess proceeds to the State if no claims were made within one year from the date of the notice of excess proceeds.

Florida courts analyzing a similar statute that imposes a 60-day claim limitation for foreclosure sale excess proceeds have determined that deadline to be jurisdictional, and any claims made beyond that date are barred. Tax sale proceeds claimants should expect similar treatment with respect to the 120-day deadline. The language of new Sect. 197.582(5) clearly expresses the legislature's intent to bar any tax surplus claims filed on the 121st day and beyond. Sect. 197.582(6) further prohibits delinquent claimants from participating in an interpleader action brought to determine entitlement to excess proceeds.

While the amended statute becomes effective July 1, 2018, the new provisions in the amended tax deed statutes, including the 120-day claim deadline, only apply to tax deed applications filed with the tax collector on or after October 1, 2018. A tax deed sale may not be held until at least 30 days after the tax deed application is filed. Hence, the practical impact of HB 1383 on mortgage holders of record seeking to claim excess proceeds will be that the 120-day deadline to file claims will apply to tax deed sales held beginning in November of 2018.

As always, we are happy to answer any questions you may have.