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Clark E. Bowen

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## FLORIDA TAX DEED TITLES

CLARK E. BOWEN\*

There are two varieties of suits for recovery of delinquent property taxes in use in the various states—actions *in personam*<sup>1</sup> and actions *in rem*.<sup>2</sup> The first type is a personal proceeding against the delinquent taxpayer. The judgment is not against a specific tract of land but against the person, and execution may be levied on any available property of the taxpayer.

The other form of tax suit is a proceeding *quasi-in-rem*. It is against the property itself and not against the person of the owner. There must be jurisdiction of the res, acquired by proper notice of delinquency in compliance with certain statutory requirements, but the delinquency notice may be constructive. The judgment obtained can be enforced only against the res—the specific property on which the tax is delinquent. A new and original title deed is obtained by this method.

Blackwell in his treatise on tax titles states: "In those states where the tax is a charge upon the land alone, . . . and where proceeding is strictly *in rem*, the tax deed will undoubtedly have the effect of destroying all prior interests in the estate . . . . In such case the tax law itself is notice to the whole world . . . everyone claiming an interest in the land is bound . . . to pay the tax . . . and protect that interest . . . if he neglects . . . his title becomes extinct, and a new and independent title becomes vested in the purchaser."<sup>3</sup>

A deed to Florida real property which has been sold for unpaid taxes is obtained through the *quasi-in-rem* proceeding, hereinafter shortened to "in rem proceeding." There are two methods of accomplishing this: (a) by foreclosure of a tax sale certificate and obtaining a deed to the property, or (b) buying the property from the governmental division which seized the property for unpaid taxes. Both procedures result in an original title. However, a derivative tax deed title may also be obtained by way of a lien on intangible property, as will be explained later.

The Florida statutes provide that all real and personal property belonging to persons residing in the state shall be taxed, unless expressly exempted by law.<sup>4</sup>

Real property for purposes of taxation includes all buildings, fixtures,

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LL.B. Feb. 1953, University of Miami; M.S., 1939, Albany State Teachers College; LL.M., Candidate at University of Miami.

\* M.S. 1939, Albany State Teachers College; LL.B. 1953, University of Miami; Candidate for LL.M., University of Miami.

1. *Blevins v. Smith*, 104 Mo. 583, 16 S.W. 213 (1891). The court held that a tax title obtained by an *in personam* action under the laws of that state was valid.

2. New York State uses the *in rem* proceeding method. N. Y. TAX LAW § 65.

3. BLACKWELL, TAX TITLES, 630-631 (4th ed. 1875).

4. FLA. STAT. § 192.01 (1951).

and other improvements thereon; land and real estate in connection with taxation mean the same as real property.<sup>5</sup>

The exempted properties are those that belong to literary, educational, charitable, beneficial, fraternal, and scientific organizations.<sup>6</sup> Such property actually occupied and used by said organizations, with not more than 75 per cent of the property rented to outside business activities, and the profits from such outside activities used for the purpose for which the organization has been exempted, is not liable for real or personal property tax.<sup>7</sup>

Further provisions in the same section specify the types of tax exempt organizations, among which are: houses of public worship, public libraries, fraternities, agricultural societies, certain women's clubs, public property of a governmental division or agency,<sup>8</sup> schools, fire companies, tombs, hospitals, clubs operated by organizations of ex-service men, orphan homes, certain YMCA property, city-owned public utilities, and other similar organizations too numerous to list here.

The Florida courts as a general rule are liberal in their viewpoint concerning exempt property and organizations, and often will allow exemptions even though they are questionable.<sup>9</sup>

There is one other exempt type of real property and that is "homestead" property.<sup>10</sup> Section 192.12 of the Florida Statutes states the qualifications which must be met to claim homestead exemption.<sup>11</sup> A section

5. FLA. STAT. § 192.02 (1951).

6. The Florida Constitution does not exempt fraternal and beneficial organizations from taxation. FLA. CONST. Art. IX, § 5, states: ". . . excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes."

The Florida Supreme Court relies on FLA. STAT. § 192.06 (1951) whenever fraternal or beneficial organizations are involved in exemption cases but uses the appropriate provision of the FLA. CONST., Art. IX, § 5, when the other charitable organizations are concerned.

7. FLA. STAT. § 192.06 (1951).

8. Property occupied by the government, but not owned by it, is not exempt property.

9. See *Lummus v. Cushman*, 41 So.2d 895 (1949) (A private school was considered exempt because it alleviated crowded conditions in the public schools); *Miami Battle Creek v. Lummus*, 140 Fla. 718, 192 So. 211 (1939) (A private sanitarium and clinic was allowed exempt status as no personal profit accrued to individual owners); *Strohmeier v. Rembrandt Corp.*, 123 Fla. 833, 168 So. 242 (1936) (Museum entitled to exemption as it was educational); *Lummus v. Fla. Adirondack School*, 123 Fla. 810, 168 So. 232 (1934) (A private school was labeled tax exempt); *but cf.*, *Johnson v. Sparkman*, 159 Fla. 276, 31 So.2d 863 (1947); *State ex rel. Burbridge v. St. John*, 143 Fla. 544, 197 So. 131 (1940); *Jefferson Standard Life Insurance Co. v. City of Wildwood*, 118 Fla. 771, 160 So. 208 (1935).

10. FLA. CONST. Art. 10, § 7 (1885) as amended 1934.

11. "Every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of five thousand dollars on the said home and contiguous real property . . . Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as they reside thereon."

added in 1951 making one year's residence in the state a condition precedent to homestead exemption<sup>12</sup> was later declared unconstitutional by the Florida Supreme Court.<sup>13</sup>

Religious organizations have been given added protection. The statutes provide for the return to religious organizations of land taken from them through tax foreclosure sale, provided the lands were owned by an established church at the time the lands were taken. The county board of commissioners is to reconvey the property at private sale without regard to the value of said property.<sup>14</sup>

It will be easier to understand the manner in which a tax deed is obtained by the tax sale certificate device if the various sections of the Florida statutes that pertain to such acquisition are listed in the order which a person would follow in acquiring such a deed. Section 193.41 states that all real property taxes shall be due and payable on the first day of November, and that a discount shall be given if the taxes are paid within a certain period: a four per cent discount if paid in November; three per cent in December; two per cent in January; and one per cent in February. All taxes are a first lien on real property, superior to all other liens and remain until paid. Owners are responsible for knowing that the taxes are due.<sup>15</sup>

All county dealings in connection with tax sales certificates and tax sales deeds are with the clerk of the Florida Circuit Court.<sup>16</sup>

#### PROCEDURE

There is a statutory requirement that every person having control of, or owning any type of property subject to taxation shall file a return with the tax assessor before April first each year.<sup>17</sup> Few people file any such return for real property, the main reason being that there is no penalty for failure to file.<sup>18</sup>

The property is assessed by the county assessor sometime between January first and July first. The assessment will be on the value of the property as of January first. Assessment is at full value.<sup>19</sup>

The owner of the property has until April first of the year following

12. FLA. STAT. § 192.121 (1951).

13. *Sparkman v. State ex rel Scott*, 58 So.2d 431 (Fla. 1952) (In violation of Art. X, § 7, of the Florida Constitution).

14. FLA. STAT. § 194.61 (1951).

15. FLA. STAT. § 192.21 (1951).

16. FLA. STAT. § 194.01 (1951).

17. FLA. STAT. § 193.12 (1951).

18. FLA. STAT. § 199.30 (1951) provides a ten per cent interest penalty for failure to file an intangible personal property return.

19. FLA. STAT. § 193.11 (1951). However property is seldom assessed at its full value. An effort is now being made by the Governor of Florida to have all real property throughout the state assessed at its full value in order to avoid the inequity that now prevails among the various counties.

J. N. Lummus, former Dade County Tax Assessor, stated in the Miami Herald, Real Estate section, July 29, 1951, why assessments are not 100 per cent of value: 1. People are paying higher prices for lower value homes and the assessments would not be true value. 2. If value were raised in Dade County, the taxpayer of that county would be paying more than their just share of Flood Control taxes, Drainage District taxes and Inland Navigation District taxes.

the assessment to pay the taxes. If not paid, the interest charges will be eighteen per cent for the first year of delinquency, and eight per cent for the second year. The delinquent owner has from April first until the date of sale of the property by the tax collector in June to redeem his property.<sup>20</sup> If the taxes are not paid within the "period of grace", April first to June first, the clerk of the circuit court will sell the property at "public outcry" (auction) at noon on the day set for such sales in June. If there is no bidder, the tax collector will bid in the property for the governmental division which is demanding the tax.<sup>21</sup>

Any person may bid on the property at the tax sale. To the person who bids in the property at the *lowest rate of interest* for the first year, but not less than five per cent nor more than eighteen per cent, plus tax and costs of sale, the circuit court clerk will issue a tax sale certificate.<sup>22</sup>

The lowest bidder (contrary to accepted notions about bidding at auctions) receives a piece of paper called a tax sale certificate, which is his proof that he now has a lien on the property.<sup>23</sup> "The certificate is evidence of the fact of purchase . . . and purchaser is entitled to conveyance, should the land not be redeemed."<sup>24</sup> "A tax sale certificate is only evidence of the existence of liens for unpaid delinquent taxes."<sup>25</sup>

The delinquent owner of said property may redeem the property after the tax certificate sale and before a tax deed is issued (two years later) by paying the face of the tax sale certificate, plus costs and interest.<sup>26</sup>

Two years after the beginning of the tax delinquency, April first, the holder (successful bidder) files his certificate with the clerk of the circuit court and notifies the clerk that he desires to foreclose his certificate or buy the property. Notice that the property is to be sold must be published in the newspapers four times. If owner then fails to redeem, the holder of the certificate pays the amount due, cost of advertising, clerk's fees, interest, and receives a deed to the property.<sup>27</sup>

#### TITLE OBTAINED FROM GOVERNMENTAL DIVISION

The following illustrates the method of obtaining property from the governmental division which has taken the property for unpaid taxes.

Assuming that no individual has made a successful bid for the property at the tax certificate sale, the tax collector will bid in for his governmental division, and that division will take the tax sale certificate for itself. For the purpose of this illustration a county will be used.

After a two year lapse from the date of the tax certificate sale in June, the circuit court clerk makes a list of all unredeemed property within ninety

20. FLA. STAT. § 193.51 (1951).

21. FLA. STAT. § 193.54 (1951).

22. FLA. STAT. §§ 193.56, 193.59 (1951).

23. FLA. STAT. § 193.59 (1951).

24. *Turner v. Jackson Lumber Co.*, 159 Fed. 923 (5th Cir. 1908).

25. *Ridgeway v. Reese*, 100 Fla. 1304, 131 So. 136 (1930).

26. FLA. STAT. § 194.02 (1951).

27. FLA. STAT. § 194.15 (1951).

days after the two year period. The clerk files this list with the board of county commissioners. The board, within ninety days of receipt of the list from the clerk, engages an attorney to file a bill of complaint<sup>28</sup> in the circuit court.<sup>29</sup>

The clerk gives notice to the delinquent owner of the bill of complaint and publishes notice of the action in the newspapers the necessary times.<sup>30</sup> Upon the return date of the notice, all parties having a property interest or holding liens on the realty have to appear and show cause why a fee simple title should not be vested in the county and title quieted. If no one contests the bill the circuit court issues a final decree and title vests in the county.<sup>31</sup> Upon entry of the chancery decree all rights of any other party are ended. The title is new and original. All former rights are null and void.<sup>32</sup>

The title is now in the name of the county. Section 194.55 of the Florida Statutes gives the county the right to sell the property ninety days after the final decree. The board of county commissioners determines the price and can offer the property for sale at not less than fifty per cent of last assessed valuation.<sup>33</sup> After the board orders the property sold, notice is published two consecutive times in a newspaper that the property will be sold at auction, free and clear of all liens. The buyer deposits his initial bid, with fees and costs, with the clerk of the circuit court. When the sale is made, the clerk reports to the board and obtains a deed for the purchaser. The purchaser receives a new and original title to the property.<sup>34</sup>

If the land remains vested in the county two years after the final decree, the board can order the land to be sold to the highest bidder.<sup>35</sup> This time the price does not have to be fifty per cent of the assessed valuation, but can be sold at whatever price the property will bring. A new and original title will be given by the clerk for property bought at this sale.<sup>36</sup>

A chart at the end of this article summarizes the dates and procedures of the different governmental divisions in regard to tax liens.<sup>37</sup>

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28. FLA. STAT. § 194.47(1) (1951).

29. Notice the difference in dates of foreclosure for an individual holder of a certificate and the county as a holder. An individual may foreclose two years after delinquency, April first, while county forecloses two years after tax certificate sale in June, plus a possible 180 days.

30. Publication need be once only, not later than thirty days after filing of the bill of complaint.

31. FLA. STAT. §§ 194.47 (2), (3) (1951).

32. FLA. STAT. § 194.53 (1951).

33. That is, not less than fifty per cent of the amount of the last assessed valuation appearing upon the county tax roll.

34. FLA. STAT. §§ 194.55 (2), (3) (1951).

35. FLA. STAT. § 194.60 (1951).

36. FLA. STAT. § 194.60(4) (1951). *Green v. Smith*, 157 Fla. 454, 26 So.2d 181 (1946) (if decree quieting title to tax delinquent lands was valid, grantees from the county are entitled to rely on the decree).

37. Information about municipal tax liens is found in FLA. STAT. c. 173 (1951).

## LIMITATIONS ON RECOVERY BY FORMER OWNER

The courts of chancery are given jurisdiction in all cases of illegal taxation or assessments. These courts can set aside any tax contrary to law, provided plaintiff pays into the court the full amount of the claimed legal tax.<sup>38</sup> No decree will be given by the court to enjoin a tax sale or cancel a tax sale certificate until plaintiff has paid the full amount of taxes that could legally be assessed.<sup>39</sup>

An individual is protected if he has taken possession of the property under an invalid tax deed. In any suit contesting the validity of a tax deed, should the court declare the deed invalid at time of issuance, there will be no vested title in the defendant deed holder, but the plaintiff winner shall pay to the holder of the invalid deed the amount expended by the latter (taxes, purchase price and costs), plus eight per cent. Defendant loser is to have a prior lien on the property until the amount is paid.<sup>40</sup>

Section 192.48 of the Florida Statutes, relating to the Murphy Lands Act, and other lands held under tax proceedings, has taken the place of Section 196.06.<sup>41</sup> It states that the former delinquent owner, and all who claim under him, having once had title to the property, are allowed one year to bring suit for recovery, with a few stated exceptions.<sup>42</sup> If no suit is brought within one year all suits are forever barred.<sup>43</sup> A subsection applies to ". . . any deed hereafter executed for any tax lien."<sup>44</sup> Another subsection states that when land conveyed by such tax sale deed is in actual possession of one other than grantee in the deed, or anyone under him, the suit has to take place within three years.<sup>45</sup>

## QUIETING TITLE

The safest and best method of getting a good title to property bought at a tax sale is to foreclose the tax sale certificate, or after getting the tax deed, to bring suit to quiet title.

Suits to quiet title are equity actions.<sup>46</sup> Chancery has jurisdiction in suits over liens.<sup>47</sup> Any grantee under any tax deed may maintain a suit to quiet title against any holder.<sup>48</sup> The procedure is the same as in any other quiet title suit. Where the suit is based upon a tax deed, the bill of complaint

38. FLA. STAT. § 196.01 (1951).

39. FLA. STAT. § 196.05 (1951). One way of avoiding this section is to plead that no taxes nor tax money is due, therefore nothing needs to be paid in order to bring suit.

40. FLA. STAT. § 196.07 (1951).

41. FLA. STAT. § 196.09 (1951) stated that if grantee, or heirs, had paid taxes for twenty successive years after issuance of a tax deed, no action could be taken against them and grantee could file a bill to quiet title. Although still remaining in the statutes the use of the section has been superseded by § 196.06, which later was superseded by § 192.48.

42. The exceptions given are: (a) taxes for which deed was issued were not assessed, (b) taxes were not due, (c) taxes had been paid.

43. FLA. STAT. § 192.48(3) (1951).

44. FLA. STAT. § 192.48(2) (1951).

45. FLA. STAT. § 192.48(4) (1951).

46. FLA. STAT. § 66.36 (1951).

47. FLA. STAT. § 62.36 (1951).

48. Includes municipalities and any successor to grantee.

need not deraign title beyond the issuance of the tax deed. If suit is on a deed given by the state, the new owner need not deraign title beyond the deed vesting title in the state.<sup>49</sup>

Information about proceedings in rem is contained in another section.<sup>50</sup> Any person who claims may bring proceedings in rem to determine any adverse claims. Any person who has claimed under adverse possession, judgment, tax deed, or records lost or stolen, may bring such proceedings.<sup>51</sup> However, it is a matter of record that the courts dislike any in rem proceedings to quiet title under this section.<sup>52</sup> The court in *Key v. All Persons*<sup>53</sup> said that a title cannot be quieted if there is no cloud against it, nor any defendants to defend, and concluded that this statute was entirely too general. It appears best to quiet title under Sections 66.26 and 66.27.<sup>54</sup>

#### INTANGIBLE PERSONAL PROPERTY TAX

Strange as it may seem, the intangible personal property tax levied in Florida is related to real property. The statutes provide that all unpaid intangible personal property taxes are a lien on all real property belonging to the delinquent taxpayer.<sup>55</sup>

Intangible personal property taxes are delinquent at a different date from real property taxes. The intangible taxes are due and payable on November first,<sup>56</sup> as are real property taxes, *but real property taxes are not delinquent until four months later than intangible property taxes.* This means that if an intangible property tax is not paid on November first when due, there is an automatic lien on the taxpayer's real property. Therefore, no clear title can be obtained to the real property unless the intangible personal property lien is discharged. The real property is put up for sale in the same manner as property is disposed of for real property taxes. An individual can get a tax deed to this real property, such deed being a derivative one in that it is a tax against all the taxpayer's property rather than a specific piece of property.

#### CASES ON TAX TITLE SALES

The procedure for a tax deed title as outlined seems quite simple but, like any other statutory proceeding, there have been many controversies concerning such deeds.

One of the great controversial points pertains to notification of a delinquent owner prior to sale of his property. In addition to the publication of the notice of application for tax deed, the clerk of the circuit court is

49. FLA. STAT. § 66.27 (1951). If defendant is in possession, a jury trial may be had.

50. FLA. STAT. § 66.28 (1951).

51. FLA. STAT. § 66.28(5) (1951).

52. In suit to quiet title of realty against defendant in possession, defendant can have the action transferred to law. *Cox v. Lippard*, 40 So.2d 219 (Fla. 1949).

53. 160 Fla. 723, 36 So.2d 366 (1948).

54. Plaintiff does not have to be in possession of land involved in order to bring suit. FLA. STAT. § 66.27 (1951).

55. FLA. STAT. § 199.22 (1951).

56. FLA. STAT. § 199.15 (1951).

required to mail a copy of such notice<sup>57</sup> to the property owner and to each mortgagee, if any, or if unknown, to the person last paying taxes as recorded in the tax collector's receipt book.<sup>58</sup>

Prior to 1943 Sections 194.18 and 194.51 read, "... failure of the clerk to mail the notice . . . or failure of the owner . . . to receive such notice shall not affect the validity of the tax deed." These sections now read, "The failure of the owner . . . to receive such notice shall not affect the validity of the tax deed issued pursuant to such notice." The Florida Supreme Court has held in some cases that such mailing of notice by the clerk is mandatory, and in others that it is only directory.<sup>59</sup>

In *Lucian v. Duvane Corporation*,<sup>60</sup> the court remarked that mailing of a copy of the notice to owner was not required, and that failure to notify did not affect validity of the tax deed. Failure of the clerk to mail a copy of notice in *Sudduth v. Hutchison*<sup>61</sup> was held not to affect the validity of the underlying proceedings or tax deed issued pursuant to the published notice of application for tax deed. Justice Sebring stated in this latter case that the statutory requirement regarding mailing of notice by the clerk, "... does not make such procedure mandatory but directory only."<sup>62</sup> It was also stated in that case that the statute in force at the time of the application for a tax deed, not the statute in force at the time of the issuance of the tax certificate, regulates the procedure to be followed in obtaining a tax deed.

Two 1950 cases, however, have interpreted the mailing of notice as mandatory. In *Thacker v. Biggers*<sup>63</sup> the clerk failed to mail a copy of the publication of notice and such was held to be a sufficient defect to invalidate the tax deed. In *Heinberg v. Andress*<sup>64</sup> the holder under a prior tax deed was permitted to redeem an outstanding certificate upon which a tax deed was issued when no notice had been sent by the clerk prior to the issuance of the new tax deed.

In *Smith v. Green*<sup>65</sup> it was held that newspaper publication was sufficient notice to the delinquent taxpayer, and in *Reina v. Hope*<sup>66</sup> the court repeated that notice by publication was sufficient to satisfy due process in foreclosure of property by the city. *Fleming v. Fleming*<sup>67</sup> was the basis for an opinion that jurisdiction of the property was obtained by newspaper

57. FLA. STAT. § 194.18 (1951) (when application is made by individual); FLA. STAT. § 194.51 (1951) (when governmental division holds the tax certificate).

58. The failure of the owner or mortgagee to receive such notice shall not affect the validity of the tax deed issued pursuant to such notice.

59. FLA. STAT. § 194.14 (1951) states that a mortgagee has to file a written request for notice that property is going to be sold for taxes; newspaper publication will be sufficient notice if he does not file the request.

60. 158 Fla. 634, 29 So.2d 627 (1947).

61. 42 So.2d 355 (Fla. 1949).

62. *Id.* at 359.

63. 48 So.2d 750 (Fla. 1950).

64. 45 So.2d 488 (Fla. 1950).

65. 159 Fla. 319, 31 So.2d 925 (1947).

66. 158 Fla. 771, 30 So.2d 172 (1947).

67. 130 Fla. 264, 177 So. 607 (1937).

notice. In *Coult v. McIntosh Investment Co.*,<sup>68</sup> a newspaper publication printed two weeks after the sale was not sufficient notice.

The courts have also declared that a tax sale certificate could be foreclosed and the property sold to the certificate holder even though nothing in the statutes expressly says so. In *Brickell v. Palbricke*<sup>69</sup> the court mentioned that a title based on a tax certificate foreclosure was good title. "A valid tax sale certificate may be foreclosed without aid of statutory proof . . . authorizing and fixing procedure for foreclosure thereof, since valid tax sale certificates constitute liens of the highest character."<sup>70</sup> *Sivort Co. v. State*<sup>71</sup> followed the *Brickell* case, saying, "No statutory authority is required to authorize the state to foreclose tax liens evidenced by tax sale certificates lawfully issued."<sup>72</sup>

Contests over time limitations are almost as numerous as any other type of dispute over tax titles. The court, in *Day v. Benesh*,<sup>73</sup> gave an opinion that actual possession for a four year period prior to suit will bar any action if tax deed is not void.

In *Susman v. Pockrus*<sup>74</sup> the opinion was that a one year limitation on suit for recovery of land was not too short. Concerning foreclosure of a tax sale certificate forty-five years old, the court said it was barred by the twenty year statutory period.<sup>75</sup> Again, in *Buck v. Triplett*,<sup>76</sup> one year was declared a reasonable length of time to bring an action for recovery of property.

Another favorite method of trying to beat a tax title deed is to declare that the property description in the deed is indefinite. The court has decided that a tax sale certificate may be defective because of the indefiniteness of description of the land.<sup>77</sup> Five years after this decision, the court modified its former strict interpretation of property description and allowed a deed containing an indefinite description to be declared valid.<sup>78</sup> The court's test in such suits is whether the description of land in a title deed contains sufficient information to enable a surveyor, using ordinary rules of surveying, to decide where the land is located.<sup>79</sup>

#### MARKETABILITY OF TITLE

Many local attorneys and title companies will not pass on a title which has been obtained by a tax title deed. Their claim, that the "marketability"<sup>80</sup>

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68. 133 Fla. 141, 182 So. 594 (1938).

69. 123 Fla. 508, 167 So. 44 (1936).

70. *Id.* at 508, 167 So. at 44.

71. 136 Fla. 179, 186 So. 671 (1939).

72. *Id.* at 180, 186 So. at 671.

73. 104 Fla. 58, 139 So. 448 (1932).

74. 40 So.2d 223 (Fla. 1949).

75. *Lyle v. Hebb*, 144 Fla. 282, 197 So. 859 (1940).

76. 159 Fla. 772, 32 So.2d 753 (1947).

77. *Brickell v. Palbricke*, 123 Fla. 508, 167 So. 44 (1936).

78. *Mitchell v. Moore*, 152 Fla. 843, 13 So.2d 314 (1943) (if by reasonable construction the proper boundaries could be ascertained the deed would be valid).

79. *Burns v. Campbell*, 131 Fla. 633, 180 So. 46 (1938).

80. Marketability: a title sufficiently secure so that it can be sold at a reasonable

of a tax deed title is insecure, becomes unsound when viewed in the light of Florida's present statutes and court decisions.

Three significant reasons given by attorneys in other states for disliking tax deed titles were reviewed. The objections were based on the "human elements" of carelessness, lack of skill, and prejudice. Such elements are not valid objections against the tax system itself, for these criticisms arise not only in the field of taxation but in any transaction where human actions are involved.

It also seems that many deeds are turned by the title examiners largely because of an overabundance of caution based on tradition and/or hesitation to approve a title which the next examiner might reject because of a high degree of conservatism. These attorneys are often unrealistic and dislike to pass title even though, as a practical matter, there is little likelihood of any dispute ever arising.

Florida attorneys and title examiners are not alone in their conservatism.<sup>81</sup> Title attorneys in many states refuse to accept as marketable a title which rests upon a tax deed unconfirmed by a judicial determination of its validity.<sup>82</sup> Seventeen states have rejected tax titles as marketable unless the purchaser has obtained a decree quieting title, or has secured his title by adverse possession.<sup>83</sup>

The Florida statutes concerning titles received by tax deeds are clear as to who receives legal title, and the statutes can be depended upon to substantiate an attorney's decision to approve a title based on such deeds.

The Florida courts have upheld the statutes in all cases. In *Taff v. Hodge*<sup>84</sup> the decision was, ". . . a tax deed if regular, extinguishes former record title to land conveyed by such tax deed." In *Sunset Corporation v. Doyle* the court again repeated its opinion of a tax title deed by stating that: "A tax deed which is regular on its face constitutes 'prima facie' a new and independent title."

The court, in *Torreyson v. Dutton*,<sup>85</sup> summed up the tax deed situation by stating that the grantee of the tax deed acquires a complete, new, and independent grant from the sovereign, thus barring all prior titles and equities arising out of them.

The object of a tax sale is to raise revenue and consideration must be

price to a willing buyer, or mortgaged to one willing to lend on a reasonable security. For general discussion see Jennings, *Marketability of Titles in Florida*, 7 *MIAMI L.Q.* 318 (1953).

81. Note, *The Current Status of Tax Titles: Remedial Legislation and Due Process*, 62 *HARV. L. REV.* 93, 95 (1948). The three objections considered were: (a) authority for sale is purely statutory which leads to deviations from the prescribed procedure; (b) the officials who handle the statutory procedures are unskilled and careless; (c) the disproportion between value of the land owned and the purchase price creates a judicial prejudice in favor of the former owner.

82. *Id.* at 93.

83. *Id.* at 94, n. 4.

84. 132 Fla. 642, 644, 182 So. 230 (1938).

85. 151 Fla. 161, 164; 9 So.2d 703, 704 (1942).

86. 137 Fla. 683, 188 So. 805 (1939).

given to the interest of the taxing authority in the collection of taxes. Foreclosure of tax liens and subsequent sale of the property is the final step in the enforcement of tax laws, and anything which tends to restrict the opportunity for sale hampers the realization of taxes. Some states consider the matter so important that imprisonment for nonpayment of taxes is provided as a means of stimulating payments.<sup>87</sup>

Title companies in the states of Washington, California and Nevada have developed check lists which enable them to insure most tax titles, thereby rendering them marketable. Missouri gives judicial authority and authenticity to the proffered titles and thus avoids the prohibitive costs of a title search.<sup>88</sup> New York, by statute,<sup>89</sup> declares that a deed obtained by an in rem proceeding is conclusive evidence of the regularity of all proceedings two years after it is recorded.

No doubt administrative action can be improved upon in the field of taxation, but it must be recognized that the system of taxation depends equally upon administration, decisions, and legislation. All are equally important and responsible for the success of the system, and a decided weakness in any one of them will disrupt the entire system.<sup>90</sup>

A Model Real Property Tax Collection System has been drafted by a special committee of the National Municipal League in the interests of taxation.<sup>91</sup> It has corrected most of the troublesome areas which have been detrimental to the tax collection system. If this program could be adopted by the various states, most of the ailments existing in tax collections today would be alleviated and tax deed titles would be much easier to pass.

The Florida real property laws contain all of the necessary ingredients to establish a good tax title. Among them are: (a) a two year redemption period for owner before final sale of property;<sup>92</sup> (b) notification by clerk of the sale as well as publication in the newspapers;<sup>93</sup> (c) judicial determination on all property bought from the county;<sup>94</sup> (d) protection of individual who has taken under an invalid deed;<sup>95</sup> (e) one year limitation period on bringing of suits, or three years for secondary grantees;<sup>96</sup> and (f) judicial determination can be obtained to quiet titles.<sup>97</sup>

To supplement this legislation the bar association might adopt and promulgate a list of minimum standards which must be met by a tax deed under varying foreclosure procedures. Such a list, compiled and endorsed by the bar association, would help eliminate the fear of an attorney that the title he passes will not be marketable.

87. 3 LAW AND CONTEMPORARY PROBLEMS 398 n.4 (1936).

88. MO. REV. STAT. ANN. § 11201.1-53 (West 1947).

89. N.Y. REAL PROP. LAW, VILLAGE LAW § 133-31 (1944).

90. Baker, *Tax Delinquency*, 28 ILL. L. REV. 159, 175 (1933).

91. 24 NAT. MUNIC. REV. 290 (May Supp. 1930).

92. FLA. STAT. § 194.02 (1951).

93. FLA. STAT. § 194.16 (1951).

94. FLA. STAT. § 194.47 (1951).

95. FLA. STAT. § 196.07 (1951).

96. FLA. STAT. § 192.48 (1951).

97. FLA. STAT. § 66.36 (1951).

## SUMMARY OF PROCEDURE

Florida Statute		For example, on the following dates
§ 192.01	All property is subject to tax	January 1, 1950
§ 192.21	Tax becomes a first lien on the property	
§ 192.21	Last date to protest against invalid assessment	December 1, 1950
§ 193.11	Property is assessed between January 1, 1950 and	June 1, 1950
§ 193.41	Taxes are due and payable	November 1, 1950
§ 193.41	Discounts when paid, November 4%, December 3%, January 2%, February 1%	November 1950 to March 1951
§ 193.51	Delinquent if taxes not paid by	April 1, 1951
§ 193.51	Delinquent interest, 18% first year, 8% second year	
§ 193.51	If taxes not paid, advertised for sale, 4 publications	May 1951
§ 193.54	If taxes still not paid, tax certificate sale	June 1951
	<i>Bid by Individual</i>	
§ 193.56	Lowest bidder pays tax and costs, gets certificate	June 1951
§ 193.59	Tax certificate of sale issued	June 1951
§ 194.02	Owner may redeem any time before issuance of final deed	
§ 194.15	Application by bidder for deed, 2 years after delinquency	April 1953
§ 194.16	Public notice of sale for four weeks	April, May 1953
§ 194.21	Tax deed issued to bidder—derivative title	May 1953
	<i>Bid by County</i>	
§ 193.54	Tax Certificate to county	June 1951
§ 194.47(1)	Two years after tax sale	June 1953
§ 194.47(1)	List of delinquent properties made by clerk within 90 days	September 1953
§ 194.47(1)	Complaint filed with court within 90 days	December 1953
§ 194.47(4)	Final decree issued by Court of Chancery	December 1953
§ 194.53	New and original title	December 1953
§ 194.55(1)	90 days after decree, county board sets price of property, not less than 50% of last assessed valuation	March 1954
§ 194.55(2)	Buyer deposits initial bid	March 1954
§ 194.55(2)	Publication of sale	March 1954
§ 194.55(3)	Sale of property at public auction	March 1954
§ 194.55(4)	Free and clear of all liens	
§ 194.60(1)	If county still has title 2 years after decree, county board can sell to the highest bidder	December 1955
§ 194.60(6)	If property not yet sold, county board can set a minimum bid	1956

*Municipalities*

- § 173.01 Tax lien may be foreclosed
- § 173.02 An in rem proceeding
- § 173.03 Suit may be brought any time after
  - (a) expiration of two years from date of tax sale certificate—incorporated municipality
  - (b) expiration of two years from date of tax delinquency—unincorporated municipality
  - (c) expiration of one year from date of special assessment—both
- § 173.04 Complaint issued by the municipality
- § 173.08 Judgment for complainant
- § 173.09 Special master's sale to highest bidder
- § 173.09 Two publications necessary
- § 173.09 Special master delivers to buyer a deed of conveyance. If not enough bid for taxes, complainant bids and gets fee simple title
- § 173.09 May be disposed of in any manner prescribed by law
- § 173.12 May be redeemed by former owner prior to sale
- § 173.13 Procedure under chapter 173 is optional with a chartered municipality