

# NewsLink

## Navigating the Strict Requirements for Insuring a Property Acquired Through a Tax Deed Sale



Investing in a tax deed property can be a very lucrative business for those who are experienced at this specialized investment strategy. However, before taking the leap, it's advisable to know what you are getting into.

This is especially true when it comes to obtaining title insurance on the property, as the goal of most tax deed investors is to resell the property for profit. Without title insurance, the investor may struggle to procure a loan for renovating the property, and certainly will need a clear title to complete the ultimate sale of the property to a new owner.

To dive into the particulars, it may be helpful to understand the language of tax deeds and tax liens, and what exactly an investor is getting for their investment.

### **Tax Lien vs. Tax Deed**

In many states, when a homeowner fails to pay their property taxes, the county may file a tax lien against the property. This filing gives the county a

legal claim to any future funds derived from the sale of the property to cover unpaid taxes, penalties and interest.

The county has the option to go after the homeowner to recover the delinquent taxes, or they can offer investors a tax lien certificate in exchange for full payment of the taxes.

With certificate in hand, the investor is in the position to collect taxes and interest directly from the homeowner once the certificate ripens. If the homeowner fails to reimburse the investor, the investor can bring a tax certificate foreclosure action against the owners after a designated period of time, which varies by state – usually between one and 10 years – to acquire full ownership of the property.

A tax deed, on the other hand, is the legal document that transfers a property that has gone into tax foreclosure following a failure to pay property taxes. This transfer usually takes place at an auction conducted by the county.

Here is the distinction: In the case of a tax lien certificate, the investor has earned the right to only collect the taxes or, after a designated period of time, begin foreclosure proceedings. Tax liens, therefore, pose a much longer and more complicated path to actually gaining full ownership interest in the property.

When purchasing a tax deed, the investor is actually acquiring the property because the county itself has taken the legal steps to foreclose on the property. Because this tax deed can often be challenged, these types of investors face higher risk.

### **Owner Options**

In most states, there are laws that allow the homeowner to make good on their unpaid taxes and reclaim their full rights to the property. In the case of the tax lien, the owners must pay the money owed to the tax lien holder.

In the case of a tax deed sale, most states allow for a redemption period after the bid has been accepted by the county, but before the investor actually pays for the property and takes possession. This redemption period allows the homeowners to pay all taxes, fines and fees and regain title. These redemption periods vary in length depending on the state where the property is located.

If the homeowner does make good on their delinquent taxes, the investor doesn't lose anything other than the potential benefit their investment may have derived for them.

Once an investor has successfully cleared the foreclosure process in the case of a tax lien purchase or the redemption period for a tax deed sale has run without action by the former owner, they still must go through several steps to guarantee their ownership for future transfers.

One of the risks of investing in tax deed properties is that there may be other parties who have an

established interest, for instance a mortgage lender, a lien holder, or additional owners or heirs who were not adequately notified of the pending tax lien. One of the most important steps the investor must take is to clear the title of other claims for the purpose of procuring title insurance.

### **Quiet Title and Tax Title Due Process Certification: Two Pathways**

A property that has undergone a foreclosure action or tax deed sale is often present with several clouds on the title, and a title insurance company will not insure the title until all issues are resolved and the title is marketable. This includes paying off liens and thoroughly researching the title to ensure all ownership issues are resolved.

There are two options to clearing title for purposes of acquiring title insurance: A quiet title action at court or procuring a tax title due process certification.

#### ***Quiet title***

In filing a quiet title action at court, the investor is asking the court, upon notice to all potential interest holders, to find that the tax deed holder is the sole owner of the property. To quiet the title in the tax investor, the court must determine that:

- The foreclosure process was completed legally and correctly, with notice to all parties in interest;
- There are no additional persons with any ownership interest; and
- All liens and judgments are fully satisfied.

With a final judgment quieting the title to the property, an investor can confidently seek to refinance or sell the investment property and acquire title insurance to protect their ownership rights or the rights of the prospective buyer and lender.

The downsides of pursuing a quiet title action are the two enemies of investments: Time and money.

Simple quiet title actions may be concluded in 90-120 days, depending on the court's docket, but it is common for more complicated filings to take six months to a year to complete. The more complicated filings will also be more expensive, with the cost of quiet title proceedings ranging from \$5,000 to \$15,000 or more.

### ***Due process certification***

Title insurance underwriters may also accept a tax certification of due process in lieu of a completed quiet title action. A tax certification of due process is similar to a quiet title action in that it seeks to verify that all parties in interest have been notified of the tax sale but accomplishes this without the expense of a legal proceeding. If an investor chooses to opt for the certification process, it behooves them to ensure ahead of time that their title agency's underwriter will accept this option for purposes of underwriting the tax sale concerns.

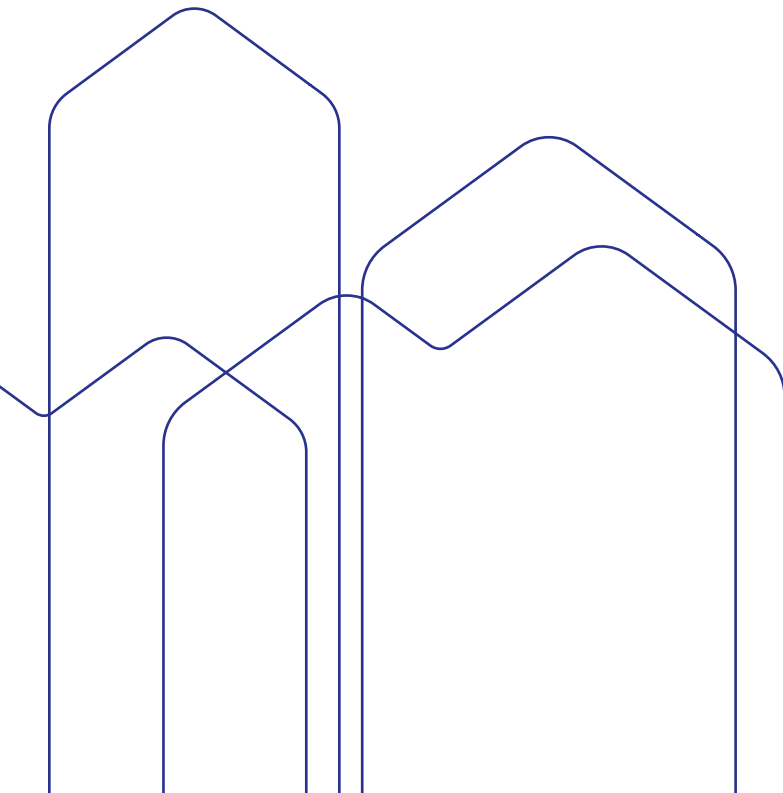
### **Caveat Emptor**

Property ownership is a revered right in the U.S., and courts are notoriously – and often justifiably – suspicious when property owners lose their



property for nonpayment of a nominal amount of taxes, which often represents a small percentage of the value of the property. Because of this, tax deed sales are susceptible to being overturned when challenged in court.

Therefore, title insurers take extraordinary precautions when insuring a property that has a tax deed sale reflected in the chain of title. Investors must be aware of the extraordinary requirements before taking the plunge.



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