

A stylized, light-colored map of the state of Florida is positioned in the upper right corner of the slide. The map is semi-transparent and blends into the background.

# Cleaning Up Escheated Property

Florida Association of County  
Attorneys 2016 CLE Program  
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# What is Escheated Land?

- Not unclaimed property held by the state
  - Chapters 716 and 717 – State Department of Financial Services responsible for unclaimed intangible personal property and its disposition or escheatment
- “Lands available for taxes”
  - Real property will “escheat” to the county where it is situated

# How Does Land Escheat?

- Notice of Tax Delinquency Mailed to Taxpayer
- Notice, Advertisement and Sale of Tax Certificates
- Certificate Holder Applies For Tax Deed (2-year waiting period)
- Clerk Provides Statutory Notice to Necessary Parties Then Holds Public Sale
- No Bids from Public or From Certificate Holder
- Land Placed on List of “Lands Available for Taxes”
- Available for County Purchase First, Then Public
- If on List Three (3) Years After Offer for Public Sale Title Passes to County

# What Happens When Real Property Taxes Aren't Paid?

- § 197.333, Fla. Stat. – Taxes become delinquent the later of April 1 following the year in which they are assessed or 60 days after mailing of the original tax notice
- § 197.402 (3), Fla. Stat. – Tax Collector advertises sale of tax certificates, and sells certificates no later than June 1 (or 60 days after delinquency, if later)

# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- §197.432(5), Fla. Stat. – If there is no bidder for a tax certificate, the Tax Collector issues a certificate to the County
- §197.4725, Fla. Stat. – County-held tax certificates are available for sale to the public on a first-come-first-served basis, and carry an interest rate of 18 percent

# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- §197.502(1), Fla. Stat. – When two years have elapsed from April 1 in the year of issuance, a non-county tax certificate holder can apply for a tax deed
- § 197.502(2), Fla. Stat. – The applicant pays the cost to satisfy the outstanding tax obligation and any resale fees. If they aren't paid, the property may end up listed as “lands available for taxes”

# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- § 197.502(3), Fla. Stat. – If the County holds the tax certificate, after two years from issuance have elapsed:
  - For land valued at \$5,000 or more, the County is required to apply for a tax deed;
  - For land valued at less than \$5,000, the County has the option to apply for a tax deed

# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- §197.502, Fla. Stat. – Upon application for a tax deed, the Tax Collector offers the land for sale at public auction
- §197.502 (6)-(7), Fla. Stat. – The holder is deemed opening bidder at minimum amount satisfying the tax-related debt. If no higher bids, and if holder doesn't pay opening bid, within 30 days the land becomes “lands available for taxes”



# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- § 197.502(7), Fla. Stat. – First 90 days property is listed, County may purchase it for the opening bid. If it waives this right, any person may purchase for the opening bid
- § 197.502(8), Fla. Stat. – If the property remains on the list three years after the day it was offered for public sale, the land “escheats” to the County “free and clear”

# What Happens When Real Property Taxes Aren't Paid? (Cont.)

- §197.502(8), Fla. Stat. – Following escheatment, “[a]ll tax certificates, accrued taxes, and *liens of any nature* against the property shall be deemed canceled as a matter of law and of no further legal force and effect, and the clerk shall execute an escheatment tax deed vesting title in the board of county commissioners... .”

# County Owns It – Now What?

- Property is likely undesirable, of little economic value, or both – why?
  - No bidders for tax certificate or at public sale indicates limited value in marketplace;
  - Size?
  - Location?
  - Condition?
  - Parties in Possession?
  - Liability?

# County Owns It – Now What? (Cont.)



# County Owns It – Now What? (Cont.)



# Potential Issues

- Title Issues
- Other Parties in Possession
- Personal Property Issues
- Environmental Issues

# Title Issues

- § 197.502(8), Fla. Stat. – Escheatment deed condition of title:
  - Property escheats to County “free and clear”
  - “All tax certificates, accrued taxes, and liens of any nature against the property shall be deemed canceled as a matter of law and of no further force and effect”

# Title Issues (Cont.)

- What is a regular tax deed's condition of title? See § 197.552, Fla. Stat.:
  - “Except as specifically provided in this chapter, no right, interest, restriction, or other covenant shall survive the issuance of a tax deed ... .”



# Title Issues (Cont.)

- Notwithstanding this statutory declaration, title based on a tax deed of record for less than 20 years is generally regarded as unmarketable in Florida
- Tax deeds are historically susceptible to being invalidated judicially or resulting in failure of title, for a variety of reasons:
  - Improper or insufficient notice of tax sale;
  - Re-acquisition by former co-tenants when tax title acquired by other former co-owner;

# Title Issues (Cont.)

- Tax title passes to former life estate or remainder interest holder;
- Failure of compliance with the Servicemembers' Civil Relief Act of 2004;

# Title Issues (Cont.)

- An escheatment tax deed, like a regular tax deed, does not transfer title, but conveys “original title” not dependent upon the validity of title held by predecessors
- Thus, only “jurisdictional” matters can invalidate these administrative deeds

# Title Issues (Cont.)

- Title based on an escheatment tax deed, therefore, appears to be susceptible to the same potential risks, as the termination of the taxpayer's title relies first upon notice
- This makes a determination of marketability or insurability of title obtained by escheatment tax deed problematic, perhaps more so than for a typical tax deed

# Title Issues (Cont.)

- Title insurers have very little experience with title obtained by escheatment deed
- By experience, we know the requirements to insure a regular tax deed title
- Title obtained through a “tax deed” is insurable, though great care must be taken by the insurer and its agents to verify that title is insurable when a tax deed is involved

# Title Issues (Cont.)

- Uncertain whether statutory protections afforded title by regular tax deed apply to title by escheatment tax deed
- §§ 95.191 and 95.192, Fla. Stat. time limit to 4 years certain actions against a tax deed holder
- Insurers rely upon these statutes of limitation when determining insurability of title

# Title Issues (Cont.)

- By their plain terms, these statutes apply to “tax deeds” rather than “escheatment tax deeds”
- For example, the following provisions contain specific references:

# Title Issues (Cont.)

- **95.191 Limitations when *tax deed* holder in possession.**—When the holder of a *tax deed* goes into actual possession of the real property described in the *tax deed*, no action to recover possession shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. ...



# Title Issues (Cont.)

– **95.192 Limitation upon acting against *tax deeds*.—**

(1) When a *tax deed* has been issued to any person *under s. 197.552* for 4 years, no action shall be brought by the former owner of the property or any claimant under the former owner.

...

# Title Issues (Cont.)

- Under these statutes of limitation, after the 4 year period has run, title for a “tax deed” may be insured in the grantee if:
  - Taxes have been paid by the grantee;
  - Notice was furnished to all persons required to be furnished notice under § 95.192(4), Fla. Stat.;

# Title Issues (Cont.)

- After issuance, there have been no adverse claims of record and there is no adverse possession; and
- The former owner is not protected by SCRA
- Where the tax deed is of record 4 years or less, title may be insured if:
  - The taxpayer provides a deed;
  - Either the grantee has paid the taxes or it is verified that the former owner has not;

# Title Issues (Cont.)

- Releases of all mortgages and liens that existed prior to the tax deed, unless compliance with tax sale notice requirements is confirmed; and
- Confirmation of no adverse claims or possession after recording the tax deed.
- Without the 4 year limitation period, the necessity of a deed from the prior owner makes insuring title problematic

# Title Issues (Cont.)

- If title insurance (and marketability) is needed prior to the running of the 4-year period, an action to quiet title will likely be required
- The 4-year limitation against actions may not apply where the title of record is by “escheatment tax deed” rather than “tax deed”, so the more rigorous requirements could apply even after the running of 4 years.

# Title Issues (Cont.)

- Neither the applicability of the limitation period nor the effect of the §197.502(8) grant of title “free and clear” upon escheatment have been judicially determined.
- Underwriters will likely employ caution when determining whether a transaction involving an escheatment deed is insurable

# Title Issues (Cont.)

- The greater the proposed amount of insurance, the less likely the insurer will take on the risk

# Other Parties in Possession

- “Lands available for taxes” may appear to be abandoned, and may become a target for adverse possession scams
- A taxpayer may simply refuse to leave the property, even after title has been divested by escheatment
- Tenants under unrecorded leases or with permission of the taxpayer may be present on the land



# Other Parties in Possession (Cont.)

- In any event, in order to take possession from another party, the County will need to obtain a writ which can be executed by the Sheriff's Office
- The form of action for obtaining the writ could differ depending on the circumstances

# Other Parties in Possession (Cont.)

- Both regular tax deeds and escheatment tax deeds appear to extinguish leases existing between the taxpayer and the tenant, eliminating the need to follow eviction procedures
- Where regular tax deeds are concerned, § 197.562, Fla. Stat., provides a summary procedure enabling a tax deed grantee to take possession of the property

# Other Parties in Possession (Cont.)

- § 197.562, Fla. Stat., provides:

“Any person, firm, corporation or county that is the grantee of *any tax deed* under this law shall be entitled to the immediate possession of the lands described in the deed. If a demand for possession is refused, the purchaser may apply to the circuit court for a writ of assistance upon 5 days’ notice directed to the person refusing to deliver possession. (Cont.)

# Other Parties in Possession (Cont.)

“Upon service of the responsive pleadings, if any, the matter shall proceed as in chancery cases. If the court finds for the applicant, an order shall be issued by the court directing the sheriff to put the grantee in possession of the lands.”

- It is unclear whether this summary procedure is intended to apply when the County seeks possession pursuant to an escheatment tax deed

# Other Parties in Possession (Cont.)

- § 197.562, Fla. Stat. references “*any tax deed* under this law but does not reference an “escheatment tax deed”
- In 1973, the Legislature removed language from the statute that made it apply expressly to “any county acquiring lands for delinquent taxes”
- Does the statute still apply when the County acquires by escheatment tax deed?

# Other Parties in Possession (Cont.)

- If § 197.562, Fla. Stat. does not apply, the form of action to take possession would be an action for ejectment under Ch. 66, Fla. Stat.
- Both the summary procedure for writ of assistance and an action for ejectment and writ of possession are plead in the Circuit Court.

# Other Parties in Possession (Cont.)

- The statutory summary procedure for writ of assistance requires:
  - A demand for possession;
  - 5 days notice to the person failing to deliver possession;
  - Application to the Circuit Court for a writ of assistance

Person in possession may serve responsive pleadings and the matter proceeds as in chancery cases

# Other Parties in Possession (Cont.)

- Ultimately, there may be little practical difference between an action for ejectment under Ch. 66 and the § 197.562 procedure as both proceed as chancery cases
- In an action for ejectment, demand for possession is not always required, and there is no statute specifying how a demand for possession should be served.



# Other Parties in Possession (Cont.)

- Personal service on the party in possession and issuance of a certificate of service is a safe method
- If party in possession cannot be found, post a copy of the demand at the property with a registered or certified letter mailed to the party's last known address
- Personal service possible in most cases since its an action for possession

# Tangible Personalty

- Florida Statutes provide little guidance for the disposition of chattels left on abandoned real estate
- Chapter 715, Fla. Stat., nominally relates to the release, sale or disposition of personal property abandoned or left behind by a departing owner, but applies only in the context of a landlord/tenant relationship

# Tangible Personalty (Cont.)

- Chapter 705, Fla. Stat., however, provides rules for dealing with tangible personal property that has been lost or abandoned on public property or in public places
- By virtue of the escheatment tax deed, the abandoned property is located on public property

# Tangible Personalty (Cont.)

The statute defines “abandoned property” as:

“...all tangible personal property that **does not have an identifiable owner** and that has been disposed on public property **in a wrecked, inoperative, or partially dismantled condition** or has no apparent **intrinsic value to the rightful owner**. The term includes derelict vessels as defined in s. 823.11.”

# Tangible Personalty (Cont.)

- Does this statute apply to chattels left on escheated land?
- The definition seems to exclude this remedy in cases where the identity of the personal property owner is known or ascertainable and in cases where the personal property has some value and is not junked

# Tangible Personalty (Cont.)

- In AGO 1996-64, the Attorney General suggests that Ch. 705, Fla. Stat., is the correct procedure to follow
- Per the AGO, easily identified property found on public land makes the public land owner an involuntary bailee, and subject to § 705.104, Fla. Stat.

# Tangible Personalty (Cont.)

- § 705.104, Fla. Stat., vests title to lost or abandoned property in the finder after proper notice to the apparent owner and the expiration of a 90-day custodial time period.

# Tangible Personalty (Cont.)

- § 705.104 (2), Fla. Stat., provides that county employees finding lost or abandoned property while conducting official duties are agents of the county, and must turn the property over to the county department designated to receive such property. If after notice and expiration of the custody period the property is unclaimed, title vests in the county



# Environmental Matters

- County must take escheated property as it finds it
- May have environmental issues, depending on prior uses or improper storage or disposal of hazardous substances on the property

# Environmental Matters (Cont.)

- § 197.502(8)(a), Fla. Stat., shields a county from any liability under the Pollutant Discharge Prevention and Control Act (Ch. 376) and the Environmental Control laws codified in Ch. 403, Fla. Stat., for any preexisting soil or groundwater contamination

# Environmental Matters (Cont.)

- § 197.502(8)(b), Fla. Stat., allows the county and DEP to enter into an agreement “for the performance, funding, and reimbursement of the investigative and remedial acts necessary for a property that escheats to the county”
- Similar language contained in § 376.82(2)(l), Fla. Stat.

# Environmental Matters (Cont.)

- Although counties may be stuck with polluted properties, the state will not hold them liable when caused by prior owner, and may fund remediation from state trust funds established for that purpose.

# The End

- Questions?

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