

## Judicial Tax Sales – Not Just Any Notice Will Do

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**In Re: Sale of Real Estate by Lackawanna County Tax Claim Bureau**

If a taxing body serves notice of a judicial tax sale by using a state constable instead of a sheriff, should the tax sale be set aside? In its decision issued on May 17, 2011, the Commonwealth Court determined that such a sale should be set aside for failure of proper notice.

In certain counties of Pennsylvania, tax sales may be governed by the Real Estate Tax Law of 1947, 72 P.S. § 5960.101 *et. seq.* (the "Tax Sale Law").<sup>1</sup> The Tax Sale Law sets forth procedures for (i) upset sales, which convey property subject to liens of record; and (ii) judicial sales, which convey property free and clear of liens and which are conducted only if the upset sale was unsuccessful. The notice provisions of the Tax Sale Law differ depending on the type of sale being conducted.

In [In Re: Sale of Real Estate by Lackawanna County Tax Claim Bureau](#) [PDF], the Tax Claim Bureau proceeded with a judicial sale following an unsuccessful upset sale. The Bureau published notice of the judicial sale in a local newspaper and used a state constable to effectuate personal service on the property owners. There was evidence in the record that, despite service by the constable, the owners were not aware of judicial sale proceeding - but the Commonwealth Court's holding does not rest on whether the property owners had actual notice.

The property owners sought to set aside the sale and argued that, pursuant to Section 611 of the Tax Sale Law, service must be made by sheriff and not by constable. The Bureau countered that Section 601 of the Tax Sale Law allows the Board of County Commissioners to appoint a person in lieu of the sheriff to provide personal service.

The Commonwealth Court noted that Section 601 was limited to upset sales and that Section 611 governed judicial sales. In its opinion, the Court stated, "[t]he Bureau could probably use a state constable to provide service of the petition for an upset sale pursuant to Section 601(a)(3) of the Tax Sale Law . . . however, [Section 601] is simply inapplicable to service relating to judicial sales under Section 611 of the Tax Sale Law." The Court concluded that "service was invalidly provided by a state constable."

This case establishes a bright line rule requiring that notice be provided in accordance with the precise requirements of the applicable provision of the Tax Sale Law. While the property owners in this case alleged that they were not aware of the judicial sale proceeding, the Commonwealth Court does not rely on the alleged lack of actual notice in its holding. Presumably, the rule in this case applies even if the property owner is fully aware of the proceeding.

Prior to purchasing a property at a judicial tax sale, a prudent purchaser will confirm that notice has been provided in strict accordance with Section 611. Otherwise a purchaser assumes the risk that the sale may be set aside for lack of proper notice. Proper notice may be confirmed by requesting a copy of the return of service from the sheriff, or - if service could not be made in the Commonwealth - a copy of the return receipt of the certified registered mailing.



1. The Tax Sale Law applies to Third - Eighth class counties and municipalities located within those counties. However, municipalities in Third -Eighth class counties have the option of proceeding under the Municipal Claims Tax Lien Act of 1923, 53 P.S. § 7101 et. seq.

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