



AUDIT REPORT



DATE April 12, 2017

NO. 2017-001

TAX DEED SALES

INTERNAL AUDIT DIVISION
ROGER D. EATON
CLERK OF THE CIRCUIT COURT AND COUNTY COMPTROLLER
CHARLOTTE COUNTY FLORIDA

Honorable Roger D. Eaton
Charlotte County Clerk of the Circuit Court and County Comptroller
350 East Marion Avenue
Punta Gorda, Florida 33950

We have completed an audit of the Tax Deed Sales process performed within the Official Records Division of the Charlotte County Clerk of the Circuit Court. The purpose of the audit was to determine that adequate control policies and procedures are in place over the processing of tax deed sales and that applicable Florida Statutes and Administrative Rules are complied with.

The following is a report of the results of our audit. Responses from Division Management are also included.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. Mitchell".

Diane Mitchell
Director Internal Audit

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EXECUTIVE SUMMARY

Internal Audit has completed a review of the Tax Deed Sales process performed by the Tax Deeds Section of the Official Records Division of the Charlotte County Clerk of the Circuit Court (Clerk). The audit included an examination and evaluation of the system of internal controls surrounding the processing of tax deed sales; compliance with existing operating policies and procedures; and compliance with applicable Florida Statutes and Florida Administrative Rules.

In our opinion, controls over tax deed sales and their related transactions were adequate. Transactions were processed in an accurate and timely manner. The Tax Deeds Section was, with the exception of the comments included in this report, in compliance with Florida Statutes and Administrative Rules and in adherence to internal control procedures. Written policies and standard operating procedures existed for the activities performed using the Clerk's system involved in the sales. The Clerk's system was properly calculating and charging the appropriate fees and accurately distributing them to the appropriate parties.

Our audit revealed the following:

1. There are day- to-day activities performed by personnel that are not included in the written operating procedures.
2. A control weakness exists that compromises the security of cash equivalents.
3. Notices of Surplus were not always scanned into the applicable bucket in the Clerk's TaxSmart system.
4. Escheatment of properties to the County from the list of "lands available for taxes" was not executed per timelines established in the Florida Statutes.
5. The minimum bid is not being updated for events occurring subsequent to the filing of the Tax Deed Application Certification.
6. An opportunity for improvement exists if the information contained in the Tax Deed Application Certification could be provided by the Tax Collector's Office in electronic format.

Based upon our audit, we recommend the following:

1. Operating policies and procedures should be updated to include all activities performed by Section personnel to ensure consistency in processing.
2. Controls should be implemented and adhered to over the handling of cash equivalents.
3. The Tax Deeds Section should ensure that the system is properly scanning Notices of Surplus.
4. The Tax Deeds Section should adhere to the Florida Statute's requirement of escheating properties to the County "three years after the land was offered for public sale".
5. The Tax Deeds Section should request updated information from the Tax Collector for delinquent taxes and/or additional certificates that occurred subsequent to the Tax Deed Application Certification to update the minimum bid.
6. The Tax Deeds Section should explore the possibility of contacting the Tax Collector's Office for an electronic download of the information contained in the Tax Deed Application Certification.

BACKGROUND

Florida Statutes provide that the Clerk of the Circuit Court is responsible for the administration of tax deed sales. Chapter 197 prescribes the requirements for tax deed sales and Chapter 28 prescribes the charges for recording documents, instruments, and other services provided by the Clerk's Office. The sale of a tax deed by the Clerk of the Circuit Court is the culmination of a process that begins with the sale of a tax certificate by the Tax Collector.

A tax certificate is an enforceable first lien against the property for unpaid real estate taxes. To remove the lien or redeem the certificate, payment must be made to the Tax Collector for delinquent taxes plus accrued interest, advertising costs, and collection fees. If the property owner does not redeem the tax certificate after two years from the time of issue, the certificate holder can apply for a tax deed with the Tax Collector to bring the property to sale at a public auction. If a tax deed application is received from the certificate holder, the Tax Collector submits a Certification of Tax Deed Application and the Ownership & Encumbrance Report, both in hardcopy format, to the Clerk's Tax Deeds Section.

Upon receipt of the information, the Tax Deeds Section bills the applicant for fees required by the Statutes. Once payment is received, the Tax Deeds Section will advertise the sale in the newspaper for four consecutive weeks prior to auction, notify all related parties, and schedule the auction.

Tax deed sales are conducted via public auction on the Internet and properties are sold to the highest bidder. If there are no bids higher than the opening bid, the property is struck off to the certificate holder. Either the highest bidder or the certificate holder must pay all additional recording fees and documentary stamps before the tax deed is issued. After purchasing the property, the new owner must initiate a quiet title suit in civil court to clear the title of the real estate.

When the property is sold and there are no liens, the original property owner receives notification that he/she may claim the overbid proceeds (sale price less opening bid) within 90 days after the auction date. If the property is subject to a lien or liens, the Clerk's Office notifies those who may have a right to claim and upon verification, will disburse the overbid amounts according to statute. Any unclaimed overbid proceeds from a tax deed sale are held for one year by the Clerk's Office and then forwarded to the State of Florida as unclaimed property.

The Clerk's Office currently uses three separate systems that interface with each other to process tax deed sales: REALTAXLIEN from REAL AUCTION is used to conduct the on-line sales; TaxSmart from Pioneer is used to process the sales; and the recording software Landmark from Pioneer is used to record the tax deeds.

TaxSmart has the capability of functioning as an integrated sub-ledger to the general ledger in the Accounting System EDEN. Transactions are updated daily from TaxSmart to the general ledger.

The Clerk of the Circuit Court Finance Division performs reconciliations of the deposits and payments posted to both REAL AUCTION and TaxSmart on a daily basis.

AUDIT OBJECTIVES

1. Ensure the Tax Deeds Section has effective and adequate control policies and control procedures in place over the processing of tax deed sales.
2. Determine that tax deed auctions and related collections and disbursements are conducted in accordance with Florida Statutes and approved fee schedules.
3. Determine that interest and fees associated with tax deed sales, including the calculation of the minimum bid and post-sale costs, are correctly calculated by the automated programs.
4. Ensure that the amounts derived from sales (deposits, sales collections, disbursements, fees, etc.) are accurately posted to the appropriate general ledger accounts and that these accounts are properly maintained.

SCOPE

We reviewed tax deed sales scheduled during the period dating from October 1, 2015 through September 30, 2016. There were 599 sales processed during this period according to the Clerk's Tax Deed software. Several topics/issues addressed by the Florida Statutes were not present in the sales processed during the time period. Therefore, these topics/issues were reviewed in sales occurring outside of the audit period.

The Clerk's Information Technology (IT) Division provided several databases that contained the information required to perform testing on the majority of the criteria included in the audit. The databases were input to the audit data analysis software (IDEA) and tested for accuracy and completeness. IDEA was then utilized to test the data components for compliance with applicable Florida Statutes, Administrative Rules, and current case law. Among the data tested were Clerk's fees for services rendered; advertising, recording, and documentary stamp tax fees; costs for processing the sale (base/minimum bid); Clerk's certified amounts; Tax Collector's certified amounts; valuation of homestead property; certified and registered mail notices; and sale and advertising dates.

IDEA was also used to randomly select a sample of 30 sales from the population of the 599 sales to perform testing when compliance could not be verified by the use of the audit software. This testing included verification of proof of claims received from lienholders, Sheriff's notices, and notification of sale and excess funds. The sample was also used to validate the results of tests performed on several data components by accessing the Clerk's website and reviewing the supporting documentation. In addition, all issues for which compliance with current law needed to be verified were discussed with Tax Deeds Section personnel and documentation was reviewed.

AUDIT METHODOLOGY

1. We reviewed:
 - a. Applicable provisions of Florida Statutes Title XIV Taxation and Finance, Chapter 197 Tax Collection, Sales and Liens and Title V Judicial Branch, Chapter 28 Clerk of the Circuit Court, Service Charges by Clerk of the Circuit Court.
 - b. Applicable provisions of Florida Administrative Code, Chapter 12D-13 Tax Collectors Rules and Regulations.
 - c. Florida Department of Revenue publications on Tax Certificates and Tax Deeds.
 - d. Florida Department of Revenue's Tax Revenue Law Library for statutes, rules, court cases, technical assistance advisements, publications, etc.
 - e. Charlotte County Clerk of the Circuit Court website.
 - f. Tax Deed Training Manual and Operating Procedures.
2. Interviewed staff of the Tax Deeds Section and the Finance Division to gain an understanding of the tax deed sales process.
3. Observed two Tax Deed Auctions and walked through the several processes involved in a sale, from the receipt of the ownership and encumbrance report from the Tax Collector's office to the issuance of the tax deed and beyond.
4. Tested the information generated by TaxSmart for calculation of fees and other amounts for compliance with Florida Statutes and Florida Administrative Code and current case law.

COMMENTS AND RECOMMENDATIONS

The Tax Deeds Section is processing tax deed transactions and sales in an accurate and timely manner. Internal control policies and procedures exist and are being adhered to. And, in general, applicable Florida Statutes and Administrative Rules are being complied with.

As a result of our audit test work, we are recommending the following:

1) Written operating procedures should include all manual processes performed.

The processing of tax deed sales is mainly automated and the Tax Deeds Section has written policies and procedures in place to ensure consistency in utilizing the systems involved in the process. Although these policies and procedures were being updated at the time of our review, there are many manual steps performed day-to-day that were not included. These steps are performed by employees who have been in the position for over 10 years and who are highly knowledgeable. Audit observed procedures being followed that, if written, could benefit the Section by ensuring completeness and consistency in its processes, which ultimately prevents errors.

Without a complete set of Standard Operating Procedures (SOPs) there is an increased risk that employee turnover could lead to the loss of institutional knowledge.

We recommend that the Tax Deeds Section review existing policies and procedures for completeness and update them to include any missing or necessary items.

2) Cash equivalents should be properly safeguarded.

Payments for deposits and sales are received by the Tax Deeds Section clerk after the on line auction. These checks need to be processed and deposited to the correspondent account by the end of the day of the auction. Audit observed that the checks received were placed and left on a shelf located over the clerk's desk, even when the clerk was not in the cubicle. The checks were visible and accessible by any person passing by the clerk's cubicle during the work day.

Best practices dictate that risk should be minimized when handling cash and cash equivalents. Unsecured and unattended cash and cash equivalents pose high risks to the Section's assets.

We recommend that cash and cash equivalents be properly safeguarded. Procedures should be implemented whereby checks are secured/locked in the clerk's desk drawer until they are processed for deposit.

3) Notices of Surplus are not being scanned (print to file) into the applicable bucket in TaxSmart.

Records and documents from tax deed sales are kept in electronic format, whether or not they are generated by the system. During our review of the sales that resulted in overbid funds, we could not validate the sending of notices to the appropriate parties as prescribed by 197.582, Florida Statutes and 12D-13.065, Florida Administrative Code. When we accessed the Clerk's website to verify the sending of the notices, most of them were not there. This was brought to the attention of the Section clerk in charge of the process, who confirmed our finding.

The issue was reviewed and analyzed with the help of the clerk. Audit observed that when the notice of surplus is generated, it must to be printed so the hard copy can be sent to the appropriate party. Since the notice is generated by the system, it is not necessary to scan in the hard copy of the notice, but instead it is "printed to file" and stored in the appropriate bucket in the Clerk's website. During the examination of the actions taken by the clerk and the order in which they take place, we noted that the clerk printed the hard copy of the notice and immediately "printed to file". Based on our observation, the auditor advised the clerk to reverse the actions and a solution to

the issue was found. The clerk went back to previous sales and corrected the situation for auctions between September 20 and November 15, 2016.

Maintenance and storage of records are sensitive issues due to retention periods set forth in state laws and regulations.

We recommend the Tax Deeds Section ensure that all Notices of Surplus be maintained in the system to be in compliance with Florida Statutes and Code.

We also recommend that a notice or proof of mailing, signed by the Section clerk, be maintained.

4) Escheatment of properties from the list of “lands available for taxes” was not executed according to the Statute’s time frame.

Chapter 197.502(8), Florida Statutes, requires that three years after land is offered for public sale, the land shall escheat to the county in which it is located, free and clear. On 11/10/2016, the Clerk’s Office escheated several properties that were offered for sale back on August 3, 2013 to the County. Review of the transfer documentation revealed that the Clerk’s Office complied with the 3-year requirement and executed escheatment tax deeds. However, the review revealed that the Tax Deeds Section calculated the 3 years beginning with the 91st day after the properties were first placed on the list of “lands available for taxes” instead of on the date the properties were offered for public sale as prescribed by the Statute.

We recommend that the Tax Deeds Section adhere to the Statute and escheat properties to the County “three years after the land was offered for public sale”. In addition, this process should be included in the Section’s policies and procedures manual.

5) The minimum bid is not updated for events occurring after the filing of the Tax Deed Application Certification.

Florida Statute 197.542(1) requires that “if tax certificates exist or if delinquent taxes accrued subsequent to the filing of the tax deed application, the amount required to redeem such tax certificates or pay such delinquent taxes must be included in the minimum bid”. 197.542(1) also states that “However, if the land to be sold is assessed on the latest tax roll as homestead property, the bid of the certificate holder must be increased to include an amount equal to one-half of the assessed value of the homestead property as required by s. 197.502”, more specifically 197.502(6)(c).

It is our interpretation that the Statute is mandating the Clerk’s Office to update the minimum bid for events that may have occurred between the date the Clerk’s Office calculated the minimum bid (based on the Tax Collector’s Certification) and the date of the sale.

Discussion with Section personnel revealed that the minimum bid is not updated before the sale because information is not requested from, nor provided by, the Tax Collector’s Office. Personnel relies on the information/certification received initially from the Tax Collector, including form DR-513 and the O&E Report, for computation of the minimum opening bid. In addition, the Tax Deeds Section is under the impression that the update may not be necessary because it is the responsibility of the person interested in participating in the auction to verify if tax certificates and/or delinquent taxes have accrued subsequent to the filing of the tax deed application.

The audit did not identify any such transactions. However, the audit determined that no procedure exists within the Tax Deeds Section to comply with this Statute.

We recommend that the Tax Deeds Section establish and implement a procedure requesting updated information from the Tax Collector's Office for delinquent taxes and/or additional certificates that occurred subsequent to the tax deed application. In addition, this request should be made in writing.

6) An opportunity for improvement exists if information contained in the Tax Deed Application Certification could be provided by the Tax Collector's Office in electronic format.

The Tax Deeds Section has the opportunity to improve the efficiency of the tax deed sale process. At the time of our audit, the Tax Deeds Section was receiving hard copies of tax deed application packets from the Tax Collector's Office. The Tax Deeds Section must scan this information and enter applicable data into the Clerk's tax deed system. These tasks consume time that could be better spent performing other activities related to the sales process.

We recommend that the Tax Deeds Section contact the Tax Collector's Office to explore the possibility of receiving an electronic download of the information contained in the Tax Deed Application Certification packet.

ACKNOWLEDGEMENT

We would like to thank the Clerk of the Circuit Court Tax Deeds Section, the Finance Division and the Information Technology Division for their assistance in the completion of this audit.

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To: Diane Mitchell, Director of Internal Audit
From: Crystal Henderson, Director of Official Records
Re: Response to Tax Deed Audit

Item #1: Written operating procedure should include all manual processes performed.

Response: Official Records is in the process of updating the Tax Deed manual to reflect all of the policies and procedures handled in our department.

Item #2: Cash equivalents should be properly safeguarded.

Response: Procedures are now in place so that checks are also locked in the deputy clerk's drawer while they are away from their station.

Item #3: Notice of Surplus are not being scanned (print to file) into the applicable bucket in Taxsmart.

Response: Notice of Surplus letters was not being scanned into Taxsmart because they were blank. I am working with the IT Department to have the names and addresses of the owner and interested parties listed on the Notice of Surplus which will include a notice or proof of mailing. These forms will then be saved to each Tax Deed that has a surplus.

Item #4: Escheatment of properties from the list of "Lands Available for Taxes" is not being executed according to the Statute's mandate.

Response: The Tax Deed department has updated the policy to reflect that the List of Lands Available will be escheated three years after the land was offered for public sale, as opposed to waiting 3 years and 91 days.

Item #5: The minimum bid is not updated for events occurring subsequent to the filing of the Tax Deed Application Certification.

Response: Minimum bid for 197.502(6)(c) The Tax Deed department is compliant with, we are adding the ½ homestead for the improved property.

Current taxes are not being included at this time. The Tax Deed department is striving to meet the standards set forth by the Best Practices while following guidelines of the Florida Statutes. At this time if the Tax Collector provides us the Tax Deed packet prior to this year's taxes, this year's taxes are excluded from the open bid because of the timeframe between receiving the Tax Collector's packet and the actual sale date. We will be in contact with the Tax Collector to see how this process can be updated.

Item #6: An opportunity for improvement exists if information contained in the Tax Deed Application Certification could be provided by the Tax Collector's Office in electronic format.

Response: We have had a meeting with the Tax Collector along with both IT Departments last year to determine if this would be possible. I will follow up with both departments to see if this data can be integrated into our existing software.

