

IOWA TAX SALE LAW

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A. ANNUAL TAX SALE

1. **Annual Tax Sale.** When a property owner fails to pay property taxes on a parcel of real property, Iowa law requires that the county treasurer of the county in which the parcel is located must offer the parcel at the annual public tax sale conducted on the third Monday in June. Iowa Code Section 446.7.

2. **Real Property Sold at Tax Sale.** The following Iowa Code statutes provide the framework for the designation of the real property sold at tax sale.

a. Iowa Code Chapter 427 provides for the taxation of real property.

b. Iowa Code Chapter 428 provides for the listing of all parcels of taxable real estate for taxation purposes.

c. Iowa Code Chapter 441 provides regulations governing the assessment and valuation of real property.

d. Section 441.18 requires the local assessor (county or city, as the case may be) to list and value all taxable parcels of real property.

e. Iowa Code Section 445.36 provides that taxes for a certain fiscal year (July 1 through June 30, based on the preceding January 1 assessment date) become due and payable in two one-half installments, due no later than September 30 and March 31 of the next fiscal year.

f. Iowa Code Section 445.37 provides that the tax installments due September 30 and March 31 become delinquent from and after the following October 1 and April 1.

g. Iowa Code Section 445.39 provides that delinquent taxes draw interest at the rate of one and one-half percent per month until paid.

h. Iowa Code Section 446.7 requires the county treasurer to offer for sale at the tax sale all parcels “on which taxes are delinquent . . . for the total amount of taxes, interest, fees, and costs due.”

3. **Registration of Bidders for Tax Sale.** Each county treasurer has established rules for the registration of bidders for each tax sale. The treasurer may collect a reasonable registration fee from each registered bidder, provided that “[t]he total of the fees collected shall not exceed the total costs of the tax sale.” Iowa Code Section 446.16(2).

4. **Tax Sale Bidders must be Legal Entities.** Only legal entities may bid at tax sale or receive a tax sale deed. Iowa Code Section 557.1 mandates that only “persons” have the legal right to own real estate in Iowa. Iowa Code Section 4.1(20) defines the term “person” to include only legal entities, including an “individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or *any other legal entity.*” [emphasis added] A deed to a grantee that is not a legal entity is void. Miller v. Chittenden, 2 Clarke 315 (Iowa 1856); In the Matter of the Estate of Glenn W. Woodroffe, 742 N.W.2d 94 (Iowa 2007). Iowa Code Section 446.16(4) provides that only those persons as defined in Section 4.1(20) are authorized to bid at tax sale or own a tax sale certificate. Section 446.16(4) requires that a tax sale bidder, other than an individual, must provide the treasurer with a federal tax identification number, together with evidence that it has filed for a trade name with the county recorder under Iowa Code Chapter 547, or that it has filed with the Secretary of State, which would apply to limited partnerships (under Chapter 488), corporations (under Chapter 490), limited liability companies (under Chapter 490A), professional corporations (under Chapter 496C), cooperatives and cooperative associations (under Chapters 497, 498, 499, 501 and 501A), and nonprofit corporations (under Chapter 504).

5. **Conduct of Tax Sale.** At the tax sale, the treasurer offers each parcel separately for sale. Iowa Code Section 446.15. The bidding procedures at tax sale are specifically set forth in Iowa Code Section 446.16(1) as follows:

The person who offers to pay the total amount due, which is a lien on any parcel, for the smallest percentage of the parcel is the purchaser, and when the purchaser designates the percentage of any parcel for which the purchaser will pay the total amount due, the percentage thus designated shall give the person an undivided interest upon the issuance of a treasurer’s deed, as provided in chapter 448. If any two or more persons

have placed an equal bid and the bids are the smallest percentage offered, the county treasurer shall use a random selection process to select the bidder to whom a certificate of purchase will be issued. The percentage that may be designated by any person under this subsection shall not be less than one percent.

In most counties, the tax sale is commenced and completed on the same day, being the third Monday in June. However, in some counties such as Polk County, the sale is continued into successive days pursuant to Iowa Code Section 446.17, which provides that “[t]he county treasurer shall continue the sale from day to day as long as there are bidders or until all delinquent parcels have been offered for sale.” If all parcels offered for sale are not sold at the June tax sale, the treasurer is required to adjourn the sale and continue it to a future date not to exceed two months from adjournment. Iowa Code Sections 446.25 and 446.28.

6. **Public Bidder Sale.** The county treasurer is required to offer, at a “public bidder sale” separate from the regular tax sale, “all parcels which remain liable to sale for delinquent taxes, which have previously been advertised, offered for one year or more, and remain unsold for want of bidders.” Iowa Code Section 446.18.

7. **County or City as Purchaser.** Cities and other governmental agencies and political subdivisions are entitled to bid on parcels offered at public bidder sale. At public bidder sale, the county is required to purchase a tax certificate for each parcel offered for sale and upon which no bid is received. Iowa Code Section 446.19.

8. **Purchase by County or City for Use as Housing.** Iowa Code Section 446.19A provides that the county board of supervisors has the discretion to pass an ordinance “authorizing the county and each city in the county to bid on and purchase delinquent taxes and to assign tax sale certificates of abandoned property [assessed as residential or commercial multifamily housing property] or vacant lots.” Prior to the purchase, the county or city must file a verified statement with the treasurer stating that the parcel is suitable for use as housing following rehabilitation or that the parcel is a vacant lot. If a parcel assessed as residential or commercial multifamily housing property is sold at tax sale to another party and is identified by a county or city as abandoned or a vacant lot, the county or city is authorized to require the certificate holder to assign the

certificate to the county or city by paying the holder the total amount due on the certificate on the date of assignment. The county or city is authorized to assign any such certificate held by it to persons who “demonstrate the intent to rehabilitate the abandoned property for habitation or build a residential structure on the vacant lot if the property is not redeemed.” Alternatively, if the county or city takes a tax sale deed to a parcel, the county or city is authorized to dispose of the parcel under normal procedures for disposal of property.

9. **Public Nuisance Tax Sale.** Iowa Code Section 446.19B provides that the county board of supervisors has the discretion to pass an ordinance to authorize the county treasurer to separately offer and sell at the annual tax sale delinquent taxes on parcels that are “abandoned property and are assessed as residential or commercial multifamily housing property and that are, or are likely to become, a public nuisance.” On or before May 15, a county or city may file with the treasurer a “verified statement containing a listing of parcels and a declaration that each parcel is abandoned property, each parcel assessed as residential property or as commercial multifamily housing property, each parcel is, or is likely to become, a public nuisance, and that each parcel is suitable for use as housing following rehabilitation.” At the tax sale, the treasurer is required to sell the listed parcels in a separate “public nuisance tax sale.” Eligible bidders must enter a rehabilitation agreement with the county or city “to demonstrate the intent to rehabilitate the property for use as housing if the property is not redeemed.” If the certificate holder obtains a tax sale deed and then determines that the building cannot be rehabilitated, the holder may request approval to demolish the building from the county or city. If no bid is received for a parcel at the sale, the county is required to purchase the tax sale certificate to the parcel.

10. **Mobile Homes and Manufactured Homes within Manufactured Home Communities and Mobile Home Parks.** Iowa Code Chapter 435 provides for taxation of mobile homes and manufactured homes located within a manufactured home community or mobile home park. Section 435.25 provides that the county treasurer shall offer and sell tax sale certificates to all such mobile homes and manufactured homes with delinquent taxes at the annual tax sale. Because such mobile homes and manufactured

homes have not been converted to real property pursuant to Iowa Code Section 435.26, title is not evidenced by a deed, but by a certificate of title. Accordingly, upon the expiration of the ninety-day redemption period with no redemption having been made, the treasurer is required to issue a tax sale certificate of title to the certificate holder, in lieu of a tax sale deed.

11. **Buildings Owned by Person Other than Owner of Land with Delinquent Taxes Cannot be Sold at Tax Sale.** Iowa Code Section 428.4 establishes that, if a tract is improved with buildings that are owned by the landowner, the buildings must be assessed “as a part of the real estate to be taxed.” However, Section 428.4 provides an exception whereby: “If such buildings or improvements are erected or made by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings and improvements as real estate.” Iowa Code Section 445.32 provides that the exclusive means for collecting delinquent taxes on such buildings is through an ordinary suit at law brought by the county treasurer pursuant to Iowa Code Sections 445.3 and 445.4. Therefore, the county treasurer is prohibited from offering such buildings for sale at the annual tax sale.

B. TAX SALE CERTIFICATE

12. **Tax Sale Certificate.** The successful purchaser at the tax sale pays the treasurer the amount of delinquent taxes and other advertised charges and receives a tax sale certificate. Iowa Code Section 446.29. The tax sale certificate is a lien against the subject parcel until the tax sale is redeemed by the owner or by another person entitled by law to redeem. Iowa Code Sections 446.16(3) and 446.29. The tax sale certificate holder has only an inchoate lien and obtains no title or right of possession to the parcel before a tax sale deed is issued. City of Muscatine v. Northbrook Partnership Co., 619 N.W.2d 362, 366 (Iowa 2000); Currington v. Black Hawk County, 184 N.W.2d 675, 676 (Iowa 1971).

13. **Payment of Subsequent Taxes by Certificate Holder.** The tax sale certificate holder has the right to pay subsequent delinquent taxes against the parcel. Iowa Code Section 446.32 permits, but does not require, the certificate holder to pay taxes for a subsequent year “beginning fourteen days following the date from which an

installment becomes delinquent as provided in section 445.37.” This means that delinquent subsequent taxes may be paid by the certificate holder on or after the 15th day of October and April.

14. **Interest on Tax Sale Certificate.** Interest accrues on a tax sale certificate at the rate of “two percent per month, counting each fraction of a month as an entire month, from the month of sale, and the total amount paid by the purchaser or the purchaser’s assignee for any subsequent year, with interest at the same rate added on the amount of the payment for each subsequent year from the month of payment, counting each fraction of a month as an entire month.”

15. **Assignment of Certificate.** A tax sale certificate may be assigned by the holder “by endorsement and entry in the county system in the office of the county treasurer from which the certificate was issued, and when the assignment is so entered and the assignment transaction fee paid, it shall vest in the assignee or legal representatives of the assignee all the right and title of the assignor. . . . For each assignment transaction, the treasurer shall charge the assignee an assignment transaction fee of one hundred dollars . . . not to be added to the amount necessary to redeem. . . . A certificate of purchase for a parcel shall not be assigned to a person, other than a municipality, who is entitled to redeem that parcel.” Iowa Code Section 446.31.

16. **Redemption of Certificate.** The owner of a parcel is entitled to redeem a tax sale certificate at any time after the tax sale by making an application to the county treasurer and by paying to the treasurer all sums due on the certificate. Iowa Code Sections 447.1 and 447.5. Upon approval of the application, the treasurer is required to “issue to the party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate, the date of the redemption, the amount paid, and by whom redeemed, and shall make the proper entries in the county system in the treasurer’s office.” Iowa Code Section 447.5.

C. TAX SALE CERTIFICATE FORECLOSURE

17. **Time for Commencement of Foreclosure on Certificate; Cancellation of Certificate after Three Years.**

a. If a parcel is not redeemed within one year and nine months after the tax sale, the tax sale certificate holder is entitled to serve a 90-day notice of expiration of right of redemption and file an affidavit showing such service with the county treasurer (provided that such notices may be served after nine months from sale in the case of a sale under Section 446.18 or 446.39, and after three months from sale in the case of a sale under Section 446.19A or 446.19B). Iowa Code Sections 447.9, 447.10 and 447.12.

b. If redemption subsequently does not take place within the 90-day redemption period following the filing of the affidavit of service with the county treasurer, the certificate holder is entitled to receive a treasurer's deed from the treasurer. Iowa Code Section 448.1.

c. The holder must complete service and file the affidavit with the treasurer within three years after the date of the tax sale, because Iowa Code Section 446.37 requires each certificate to be cancelled by the treasurer after three years have elapsed from the time of the tax sale; provided that, if the filing of the affidavit is stayed by bankruptcy or other legal proceedings, the "time period for the filing of the affidavit shall not expire until the later of six months after the stay has been lifted or three years from the time of the tax sale." To meet the three-year deadline for filing the affidavit, it is sufficient if competent evidence (such as the metered postmark on the mailing envelope) establishes that the certificate holder mailed the affidavit to the treasurer on or before the last date for filing. Iowa Code Section 622.105; Wright v. Maloney, Slip Copy, 2007 WL 4191949 (Table) (Iowa Ct. App. 2007).

18. **Bankruptcy: Automatic Stay.** If the owner of the parcel files bankruptcy, the automatic stay prohibits the parcel from being sold at tax sale and prohibits the certificate holder from serving redemption notices. 11 U.S.C. Section 362(a) (providing that the filing of a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate . . . [or] to create, perfect, or enforce any lien against property of the estate . . ."). If the parcel was inadvertently sold by the county treasurer at tax sale to the certificate holder after the bankruptcy was filed, the sale is void, and the certificate holder is entitled to the return of the holder's purchase funds from the treasurer. If the bankruptcy petition was filed after the parcel was sold at tax sale, but

before the certificate holder has served redemption notices, the holder should not serve notices until after the termination of the automatic stay. If the holder desires to proceed prior to the closing of the bankruptcy case, dismissal, or the debtor's discharge, the holder must file a motion with the bankruptcy court seeking to lift the stay and wait for the court to issue an order lifting the stay. If the bankruptcy petition is filed after the certificate holder has served redemption notices and filed the affidavit of service with the treasurer, then the holder needs to take no further action other than merely waiting for the expiration of the redemption period, or sixty days, whichever is later. In re Froehle, 286 B.R. 94 (B.A.P. 8th Cir. 2002) (applying Iowa tax sale law in holding that "once the Notice of Right of Redemption is served upon the appropriate parties, the rights of the parties are fixed and the Bankruptcy Code does not toll the running of the redemption period, subject only to the additional 60 days granted pursuant to [11 U.S.C. Section 108(b)].")

19. **Form of Notice of Expiration of Right of Redemption.** Foreclosure proceedings commence with preparation and service of a written notice of expiration of right of redemption. Iowa Code Section 447.9 requires that the notice must be "signed by the certificate holder or the holder's agent or attorney, stating the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice." The notice should set forth a clear description of the parcel, and it is prudent to use, as part of the description, the tax parcel number used in the county system as well as the "legal" description of the parcel set forth on the face of the certificate.

20. **Persons Entitled to Service of Notice.** Section 447.9 requires that the notice must be served on the persons in possession of the parcel, the persons in whose name the parcel is taxed, any mortgagee having a lien on the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of lease, any other person who has an interest of record, and any city where the parcel is situated.

21. **Service of Notice by Mail.**

a. Section 447.9(1) requires that the persons in possession of the parcel and the persons in whose name the parcel is taxed must be served by both regular mail and certified mail to the person's last known address. Service is deemed completed when the notice is deposited in the mail and post-marked for delivery.

b. Section 447.9(2) currently requires that notice be served only by regular mail on any mortgagee having a lien on the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of lease, any other person who has an interest of record, and any city where the parcel is situated. However, effective July 1, 2012, Section 447.9(2) was amended by the passage of Senate File 2170 by the Legislature to require mailing of notice by certified mail as well as regular mail.

c. Iowa Code Section 618.15 provides that "the words 'certified mail' mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing." Therefore, notice of redemption may be mailed by certified mail, either with or without the feature of return receipt requested.

d. In Nicholson v. HF05, 778 N.W.2d 218 (Table), 2009 WL4842472 (Iowa Ct. App. 2009), the Iowa Court of Appeals held that the manner of giving notice of redemption by regular and certified mail under Iowa Code Section 447.9 comports with constitutional due process requirements.

22. **Service of Notice by Mail on IRS.** If there is a federal tax lien appearing of record, the standard redemption notice should be mailed by both certified and regular mail to the Director for the Internal Revenue Service for the district in which the parcel is located. In addition to the standard notice, the IRS should be mailed a special notice of sale form in accordance with IRS regulations. *See* Internal Revenue Code Section 7425(b) and (c) and Treasury Regulations Sections 301.7425-2 and 301.7425-3(d). The IRS has a special 120-day redemption period from the date of the tax sale deed (not from the date of the tax sale) within which to redeem. *See* Internal Revenue Code Section 7425(d)(1). Section 7425(d)(2) of the Internal Revenue Code provides that, in the event

the United States redeems, the amount to be paid shall be the amount prescribed by Section 2410(d) of Title 28 of the United States Code (which is the sum of the amount paid by the tax deed holder at the tax sale, plus interest on the amount paid at six percent per annum from the date of sale, plus any excess of expenses incurred in connection with the parcel over the income from the parcel). *See also* Treasury Regulations Section 301.7425-4(b).

23. **Service of Notice by Publication.** Iowa Code Section 447.10 requires that the notice be served by publication, if any of the persons entitled to service under Section 447.9 cannot be served by mail. The notice must be published “once in an official newspaper in the county.” The affidavit of service filed with the treasurer must state the reason why service could not be served by mail, which usually will be due to the inability to find an address for mailing the notice. Publication of notice is insufficient service on any person with a known address who could have been served by mail. Dearchs v. Boardwalk Investors/US Bank, 791 N.W.2d 427 (Table), 2010 WL 3503530 (Iowa Ct. App. 2010).

24. **Service of Notice Regarding Multi-unit Apartments.** A frequent problem exists as to service of notice where the subject parcel is a multi-unit apartment building. Typically, the leases are not filed of record, and the identities of the tenants in possession are unknown to the certificate holder. The notice could be served on the unknown tenants by personal service by a process server who goes from door to door. However, Section 447.9 requires notice to be served by mail and does not authorize personal service as an alternative legal service method. Without a determination of the identity of a tenant, the only way notice can be served by mail would be to address the envelope to “Person(s) in Possession” at the address of the apartment unit. An alternative procedure would involve first sending a process server to personally serve the notice. The return of service would identify the person personally served. The certificate holder then could follow up with mailed notice addressed to the person whose identity is now known. In multi-unit apartment situations, it would be prudent for the certificate holder to consider supplemental methods of providing notice to the tenants, such as posting the

notices on the entry doors to the units or to the apartment building, installing a notice sign in the front yard or publication of the notice.

25. **Filing of Affidavit to Complete Service.**

a. Iowa Code Section 447.12 provides that service of the 90-day notice of expiration of right of redemption “is complete only after an affidavit has been filed with the county treasurer showing the making of the service, the manner of service, the time when and place where made, under whose direction the service was made, and costs incurred as provided in section 447.13.” Thus, the running of the 90-day redemption period commences on the date of filing of the affidavit with the treasurer, regardless of the date the notice was actually mailed.

b. Section 447.12 provides the following additional requirements for the affidavit:

The affidavit shall be made by the holder of the certificate or by the holder’s agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered in the county system and is presumptive evidence of the completed service of the notice.

c. Iowa Code Section 447.13 provides as follows:

The cost of serving the notice, including the cost of sending certified mail notices, and the cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem. The cost of a record search shall also be added to the amount necessary to redeem. However, if the certificate holder is other than a county, the search must be performed by an abstractor who is an active participant in the title guaranty program under section 16.91 or by an attorney licensed to practice in the state of Iowa, and the amount of the cost of the record search that may be added to the amount necessary to redeem shall not exceed three hundred dollars.

d. Section 447.12 provides that “[c]osts not filed with the treasurer before a redemption is complete shall not be collected by the treasurer. Costs shall not be filed with the treasurer prior to the filing of the affidavit.”

e. The affidavit may include a paragraph certifying that no person who owns or occupies the subject parcel is in the military service, if that is in fact the case. If the parcel was owned and occupied by any person on active duty in the United States

military service, by dependents of such person, or was occupied by the employees of such person owning the parcel, within the period commencing six months prior to the tax sale, then Section 560(3) of the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. Sections 501-91, grants the person in military service the “right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service.”

26. **No Service of Notice after Filing of Affidavit.** Section 447.9 does not permit any notice to be served after the filing of the affidavit of service with the treasurer. If the certificate holder determines that a person entitled to service was not served, it is necessary to file a new affidavit to revoke the prior affidavit and show the updated service of notice. The ninety-day redemption period then will commence to run from the date of filing of the new affidavit. Section 447.9 further provides as follows:

Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale.

The cited provision dictates that, if a person acquires possession of, or an interest in, a parcel after the certificate holder has completed service and filed the affidavit, the certificate holder is not obligated to serve such person with notice, but that the person still is eligible to redeem.

27. **Determination of Expiration of Ninety-day Redemption Period.** Iowa Code Section 447.12 provides as follows with regard to the expiration of the ninety-day redemption period:

The right of redemption shall not expire until ninety days after service is complete. A redemption shall not be considered valid unless received by the treasurer prior to the close of business on the ninetieth day from the date of completed service except in the case of a public bidder certificate held by the county in which case the county may accept a redemption at any time prior to the issuance of the tax deed. However, if the ninetieth day falls on a Saturday, Sunday, or a holiday, payment of the total redemption amount must be received by the treasurer before the close of business on the first business day following the ninetieth day. The date of postmark of a redemption shall not be considered as the day the

redemption was received by the treasurer for purposes of the ninety-day time period.

28. **Redemption Governed by Law at Time of Sale.** Iowa Code Section 447.14 provides that “[t]he law in effect at the time of tax sale governs redemption.”

D. TAX SALE DEED

29. **Requirements for Issuance of Tax Sale Deed.** Pursuant to Iowa Code Section 448.1, the certificate holder becomes entitled to the issuance of a tax sale deed immediately upon the expiration of the ninety-day redemption period following the filing of the affidavit of service with the treasurer. To obtain the tax sale deed, the holder must provide the county treasurer with the original certificate, and checks for \$25.00 to the treasurer for administrative fees and the appropriate fee to the county recorder for recording the deed.

30. **Form of Deed.** Iowa Code Section 448.2 sets forth the form of the tax sale deed to be executed by the county treasurer.

31. **Effect of Deed.** Iowa Code Section 448.3 provides that a tax sale deed shall vest in the purchaser all the right, title, interest, and claim of the state and county to the parcel, and all the right, title, interest, and estate of the former owner in and to the parcel conveyed. However, the deed is subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and subject to all the right and interest of a holder of a certificate of purchase from a tax sale occurring after the tax sale for which the deed was issued. The issuance of the deed shall operate to cancel all suspended taxes.

32. **Certificate must be Returned for Deed within Ninety Days after Expiration of Redemption Period.** Section 448.1 provides as follows:

The tax sale certificate holder shall return the certificate of purchase and remit the appropriate deed issuance fee and recording fee to the county treasurer within ninety calendar days after the redemption period expires. The treasurer shall cancel the certificate for any tax sale certificate holder who fails to comply with this paragraph.

33. **On-site Inspection and Due Diligence.** The ninety-day period within which the certificate holder must apply for the tax sale deed allows the holder sufficient time to conduct on-site inspection of the parcel and perform other due diligence

investigation before taking legal title, responsibility and potential owner liability. For example, if the parcel contains deposits of hazardous substances or leaking underground petroleum storage tanks, the government may seek to impose strict liability on the property owner, without regard to fault or causation. If the certificate holder discovered the environmental contamination during an inspection of the parcel during the ninety-day period, the holder would be in a position to make an informed decision whether or not to take title to the parcel or walk away from the potential owner liability.

E. PROCEDURES FOR CHALLENGING TAX SALE DEED

34. **Procedures for Challenging Tax Sale Deeds from Tax Sales Prior to June 1, 2005.** Tax sale deeds may be challenged in court under two distinct sets of circumstances. In the first type of case, a person entitled to redeem can file an action seeking judgment to allow redemption of the parcel based on alleged failure of the deed holder to properly serve notices of expiration of right of redemption prior to obtaining the deed. In the second type of case, the former owner of the parcel can file an action seeking to invalidate the treasurer's deed generally based on a mistake in offering the parcel at tax sale even though the taxes had actually been paid. For tax sales prior to June 1, 2005, the Iowa Code contained fragmented standards governing the two types of court actions. The standards were spread among Iowa Code Sections 447.8, 448.6 and 448.7. These former standards were unclear as to whether particular provisions were applicable to the first or the second types of cases, or to both.

35. **Amendments Changing Procedures for Challenging Tax Sale Deeds from Tax Sales after June 1, 2005.** In 2005, the Iowa Code was amended, effective for all tax sales after June 1, 2005, to completely rewrite the standards for judicial challenges to tax sale deeds by consolidating the standards into only two Code sections: Section 447.8 sets forth the procedures for challenging a deed based on alleged failure of the deed holder to properly serve notices of expiration of right of redemption prior to obtaining the deed; and Section 448.6 sets forth procedures for challenging a deed based on a mistake in offering the parcel at tax sale even though the taxes had actually been paid. The 2005 amendments were discussed by the Iowa Court of Appeals in Robinson v. First American

Title Insurance Co. v. First American Title Insurance Co., 755 N.W.2d 144 (Table), 2008 WL 2514019 (Iowa Ct. App. 2008).

36. **Iowa Code Section 447.8 Procedures for Challenging Tax Sale Deeds from Tax Sales after June 1, 2005, for Improper Service of Notice.**

a. For all tax sale deeds issued to parcels sold at tax sales after June 1, 2005, amended Section 447.8 provides comprehensive standards governing the type of case seeking judgment to allow redemption based on alleged failure to properly serve notices of expiration of right of redemption. The complete text of Section 447.8 is as follows:

447.8 Redemption after delivery of deed.

1. After the delivery of the treasurer's deed, a person entitled to redeem a parcel sold at tax sale shall do so only by an equitable action in the district court of the county where the parcel is located. The action may be maintained only by a person who was entitled to redeem the parcel during the ninety-day redemption period after the filing of the affidavit of service, except that said person may assign the person's right of redemption or right to maintain the action to another person.

In order to establish the right to redeem, the person maintaining the action shall be required to prove to the court either that the person maintaining the action or a predecessor in interest was not properly served with notice in accordance with the requirements of sections 447.9 through 447.12, or that the person maintaining the action or a predecessor in interest acquired an interest in or possession of the parcel during the ninety-day redemption period in section 447.12. A person shall not be entitled to maintain such action by claiming that a different person was not properly served with notice of expiration of right of redemption, if the person seeking to maintain the action, or the person's predecessor in interest, if applicable, was properly served with the notice. A person is not allowed to redeem a parcel sold for taxes in any other manner after the execution and delivery of the treasurer's deed.

2. The person maintaining the action shall name as defendants all persons claiming an interest in the parcel derived from the tax sale, as shown by the record.

3. If the court determines that notice was properly served, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law.

4. If the court determines that notice was not properly served and that the person maintaining the action is entitled to redeem, the court shall

so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption. The redemption amount shall include the amount for redemption computed in accordance with section 447.1, including interest computed up to and including the date of payment of the total redemption amount to the clerk of court; the amount of all costs added to the redemption amount in accordance with section 447.13; and, in the event that the person claiming under the tax title has made improvements on or to the parcel after the treasurer's deed was issued, an amount equal to the value of all such improvements. The order shall direct that the person maintaining the action shall pay to the clerk of court, within thirty days after the date of the order, the total redemption amount established in the order.

5. Upon timely receipt of the payment, the court shall enter judgment declaring the treasurer's deed to be invalid and determining the resulting rights, claims, and interests of all parties to the action. In its judgment, the court shall direct the clerk of court to deliver the entire amount of the redemption payment to the person who previously claimed title under the treasurer's deed.

If the person maintaining the action fails to timely deliver payment of the total redemption amount to the clerk of court, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law. No subsequent action shall be brought to challenge the treasurer's deed or to recover the parcel.

6. If an affidavit is filed pursuant to section 448.15, and if the time period for filing a claim under section 448.16 expires with no claims having been filed, all persons are thereafter barred and estopped from commencing an action under this section.

b. Prior to the 2005 amendment, the Supreme Court interpreted Iowa law to allow a person who was properly served with notice of expiration of right of redemption to have the right to challenge a tax sale deed based on alleged failure to serve notice on a different person. *See Dohrn v. Mooring Tax Asset Group, L.L.C.*, 743 N.W.2d 857, 862-63 (Iowa 2008); *Burks v. Hedinger*, 167 N.W.2d 650, 654-55 (Iowa 1969). Under the 2005 amendment to Section 447.8(1), a tax sale deed may be challenged only by a person who claims he or she was not properly served, and the person may not challenge on the basis of the alleged failure to serve a different person, unless the other person assigns his

or her interest to the claimant. Prior to the 2005 amendment, the law was unclear whether a person had the right to assign the right of redemption to another. New Section 447.8(1) specifically authorizes assignment of a person's right of redemption.

c. If the person maintaining the action is successful in obtaining a court ruling that notice was not properly served, the person is required to pay the total amount necessary to redeem before the court may order that the tax sale deed be invalidated. Section 447.8(4) establishes the manner of computing the amount required to redeem the parcel upon a determination by the court that notice to redeem was not properly served and that the person maintaining the action is entitled to redeem. If the person who claimed under the tax title made improvements to the parcel after the deed was issued, then the court is required to include the value of the improvements in its order establishing the total amount to redeem.

d. Section 447.8(5) provides that a tax sale deed may be invalidated by the court only if the person maintaining the action makes full payment of the total redemption amount within thirty days of the court's order establishing the amount necessary to redeem. If timely payment is not made, the court is required to "enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law."

37. **Applicability of Iowa Code Sections 448.15 and 448.16 to Bar Actions under Section 447.8.**

a. The final subsection 6 of Section 447.8 provides that the filing of the so-called 120-day affidavit under Section 448.15, together with the expiration of the time period for filing a claim under Section 448.16 with no claims having been filed, bars all persons thereafter from commencing an action under Section 447.8. The referenced Iowa Code Sections 448.15 and 448.16 also were amended in 2005 to clearly establish that all claims challenging a tax sale deed are barred if not filed within 120 days after the filing with the county recorder of the 120-day affidavit. The complete text of amended Section 448.15 is as follows:

448.15 Affidavit by tax-title holder.

1. After taking possession of the parcel, after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

State of Iowa,)
..... County.) ss.

I,, being first duly sworn, on oath depose and say that on (date) the county treasurer issued a tax deed to (grantee) for the following described parcel: ; that the tax deed was filed for record in the office of the county recorder of county, Iowa, on (date), and appears in the records of the office in county as recorded in Book Page of the Records; and that claims title to an undivided percent interest in the parcel by virtue of the tax deed, or purported tax title.

Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired. A person who files such a claim shall commence an action to enforce the claim within sixty days after the filing of the claim. If a claimant fails to file a claim within one hundred twenty days after the filing of this affidavit, or files a claim but fails to commence an action to enforce the claim within sixty days after the filing of the claim, the claim thereafter shall be forfeited and cancelled without any further notice or action, and the claimant thereafter shall be forever barred and estopped from having or claiming any right, title or interest in the parcel adverse to the tax title or purported tax title.

.....
Subscribed and sworn to before me this day of
(month), ... (year).

.....
Notary Public in and for
..... County, Iowa.

2. An owner or holder of a title or purported title who has entered into a lease agreement conveying possessory rights in the parcel to a tenant in possession shall be deemed to be in possession for purposes of filing an affidavit under this section.

3. For purposes of this section, if a tax deed or instrument purporting to be a tax deed has been issued to convey an undivided

interest in the parcel of less than one hundred percent, the owner or holder of the tax title interest or purported interest shall be deemed to be in possession and entitled to file the affidavit in subsection 1. However, before filing the affidavit, the owner or holder of the tax title interest or purported interest shall serve a copy of the affidavit on any other person in possession of the parcel by both regular mail and certified mail to the person at the address of the parcel or at the person's last known address if different from the address of the parcel. Such service is deemed completed when the notice by certified mail is deposited in the mail and postmarked for delivery. An affidavit of service shall be attached to, and filed with, the affidavit identified in subsection 1. The affidavit of service shall include the names and addresses of all persons served and the time of mailing.

b. The complete text of amended Section 448.16 is as follows:

448.16 Claims adverse to tax title barred.

1. When the affidavit described in section 448.15 is filed, it shall be notice to all persons, and any person claiming any right, title, or interest in or to the parcel described adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the county recorder of the county in which the parcel is located within one hundred twenty days after the filing of the affidavit, which claim shall set forth the nature of the interest, the time when and the manner in which the interest was acquired.

2. At the expiration of the period of one hundred twenty days, if no such claim has been filed, the validity of the tax title or purported tax title shall be conclusively established as a matter of law, and all persons thereafter shall be forever barred and estopped from having or claiming any right, title or interest in the parcel adverse to the tax title or purported tax title, including but not limited to any claim based on alleged improper service of notice of expiration of right of redemption. An action shall not thereafter be brought to challenge the tax deed or tax title.

3. An action to enforce a claim filed under subsection 1 shall be commenced within sixty days after the date of filing of the claim. The action may be commenced by the claimant, or a person under whom the claimant claims title, under either section 447.8 or 448.6. If an action by the claimant, or such other person, is not filed within sixty days after the filing of the claim, the claim thereafter shall be forfeited and cancelled without any further notice or action, and the claimant, or the person under whom the claimant claims title, thereafter shall be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title.

c. The 2005 amendment also amended Section 448.15(1) to impose the new requirement that a person who files a 120-day affidavit must be in possession of the parcel at the time of filing. Since a 1995 amendment to Section 448.16, and prior to the 2005 amendment, Iowa law did not require that a tax sale deed holder take possession of the parcel before filing the 120-day affidavit.

d. Prior to the 2005 amendment, Section 448.16 authorized a claimant to file a claim with the county recorder in response to the 120-day affidavit, but provided no specific guidance as to the procedures or time frames for litigating or otherwise resolving the claim. The 2005 amendment amended Section 448.16(3) to add the new requirement that a person filing such a claim must commence an action in the district court to enforce the claim within sixty days after filing the claim. If such enforcement action is not filed within the sixty-day period, the claim is deemed forfeited and cancelled, and the claimant is thereafter barred from claiming any interest in the parcel adverse to the tax title. The 2005 amendment also amended the form of the 120-day affidavit, set forth in Section 448.15(1), to add new provisions that reference the requirement for commencing an enforcement action within sixty days after filing a claim.

38. **Applicability of Iowa Code Section 448.12 to Bar Actions under Section 447.8.** Iowa Code Section 448.12 provides that no action under Section 447.8 may be brought “after three years from the execution and recording of the county treasurer’s deed.”

39. **Applicability of 2008 Amendment to Iowa Code Section 448.3 to Actions under Section 447.8.**

a. In 2008, the Legislature enacted an amendment to Iowa Code Section 448.3 that substantially improved the marketability of tax sale deeds in Iowa. The amendment, House File 2642, Iowa Acts 2008 (82 G.A.) ch. 1050, added a new subsection 2 to Section 448.3, providing as follows:

2. In the event that an owner of record or a person in whose name the parcel is taxed establishes that such person was not served with notice of expiration of right of redemption in accordance with section 447.9, then the county treasurer’s deed is void, subject to the provisions of sections 448.15 and 448.16. If a person entitled to service of notice under section 447.9, other than an owner of record or a person in whose name

the parcel is taxed, establishes that such person was not served with notice in accordance with section 447.9, the deed is not thereby rendered invalid. However, the deed is subject to all of the right and interest of such person not served with notice, as provided in sections 448.15 and 448.16.

b. The amendment was enacted on April 8, 2008, to further the state's interest in the marketability of tax sale deed titles, in direct response to the negative impact on tax titles resulting from the January 25, 2008 decision of the Iowa Supreme Court in Dohrn v. Mooring Tax Asset Group, L.L.C., 743 N.W.2d 857 (Iowa 2008). In Dohrn, the Court determined that a tax deed is subject to invalidation, even years after it was recorded, if it is challenged by a person who shows that notices were not served on persons with unrecorded possessory rights, such as (a) a tenant under an unrecorded lease, (b) a person who had parked a truck on the premises, and (c) a person who stored personal items in a building on the premises, (d) a person who maintained a pile of lumber behind an uninhabited home, (e) a neighbor who went every other day to the house in an attempt to exterminate vermin, (f) a person who periodically cut weeds and hauled dirt from the premises, and (g) a person who removed timber from an uncultivated wood lot.

c. Under their title standards, Iowa attorneys examining abstracts of title for a potential buyer or lender rely on matters of record in rendering opinions as to the marketability of title. In Dohrn, the Court dictated that a tax sale deed is subject to invalidation for reasons that are not disclosed by the abstract. The abstract can furnish no notice to the examiner of the existence of persons with unrecorded possessory interests of the types discussed in Dohrn. Where such persons only exercise their possessory rights infrequently, their interests may not be disclosed even upon close inspection of the property.

d. As amended, Section 448.3(2) addresses the problem of tax sale deed marketability by providing that a tax sale deed is not subject to invalidation if notice was not served on a person entitled to service. Instead, the interest of the person not served with notice simply survives the issuance of the deed. The only exception is that a deed remains subject to invalidation in the case of failure to serve the owner of record or the person in whose name the parcel is taxed. Section 448.3(2) further provides that any

claims by persons allegedly not served with notice are subject to the 120-day affidavit bar of Sections 448.15 and 448.16. Therefore, any person allegedly not served with notice must file a claim with the recorder within 120 days of the filing of the affidavit, or the claim would be barred under Sections 448.15 and 448.16.

e. The provisions of Section 448.3(2) apply to all tax sale deeds issued on or after April 8, 2008.

40. **Iowa Code Section 448.6 Procedures for Challenging Tax Sale Deeds from Tax Sales after June 1, 2005, for Mistake in Selling Parcel as to which Taxes were Paid.**

a. Iowa Code Section 448.6 provides different standards to govern the second type of case seeking judgment to invalidate a treasurer's deed based on the allegation that taxes actually were paid and that the parcel was improperly sold at tax sale by mistake. Under the 2005 amendment, Section 448.6 was completely rewritten and now provides as follows:

448.6 Action to Challenge Treasurer's Deed.

1. A deed executed by the county treasurer in conformity with the requirements of sections 448.2 and 448.3 shall be presumed to effect a valid title conveyance, and the treasurer's deed may be challenged only by an equitable action in the district court in the county in which the parcel is located. If the action seeks an order of the court to allow redemption after delivery of the treasurer's deed based on alleged improper service of notice of expiration of right of redemption, the action shall be brought in accordance with section 447.8. If the action is not brought on that basis, then the action shall be controlled by the provisions of this section.

2. A person shall not be permitted to maintain the action unless the person establishes that the person, or the person under whom the person claims title, had title at the time of the sale, or that title was obtained from the United States or this state after the sale, and that all amounts due upon the parcel for the applicable tax years have been paid by that person or by the person under whom that person claims title.

3. The person maintaining the action shall name as defendants the holder of the tax title and the treasurer of the county in which the parcel is located.

4. The person challenging the deed shall be required to prove, in order to invalidate the deed, any of the following:

a. That the parcel was not subject to taxes for the year or years named in the deed.

b. That the taxes had been paid before the sale.

c. That the parcel had been redeemed from the sale and that the redemption was made for the use and benefit of persons having the right of redemption.

d. That there had been an entire omission to list or assess the parcel, or to levy the taxes, or to give notice of the sale, or to sell the parcel.

5. If the court determines that the person challenging the treasurer's deed has established one or more of the elements required under subsection 4 to be proven in order to invalidate the deed, the court shall enter judgment declaring the deed to be invalid. The judgment shall order the treasurer to refund to the person claiming under the tax title all sums paid to the treasurer for the purchase of the tax sale certificate and for any subsequent taxes paid by the certificate holder. If the person claiming under the tax title is determined by the court to have made improvements to the parcel, the court shall enter judgment for an amount equal to the value of such improvements in favor of the person claiming under the tax title for an amount equal to the value of such improvements made after the treasurer's deed was issued, and such judgment shall be a lien on the parcel until paid.

6. If an affidavit is filed pursuant to section 448.15, and if the time period for filing a claim under section 448.16 expires with no claims having been filed, all persons are thereafter barred and estopped from commencing an action under this section.

41. **Applicability of Iowa Code Section 448.12 to Bar Actions under Section 448.6.** Iowa Code Section 448.12 provides that no action under Section 448.6 may be brought "after three years from the execution and recording of the county treasurer's deed."

42. **Ten-year Statute of Limitations under Iowa Code Section 614.22.** Iowa Code Section 614.22(2) provides that, "[o]n and after January 1, 1992, an action shall not be maintained to set aside, cancel, annul, declare void or invalid, or to redeem

from a tax deed . . . if the deed has been recorded in the office of the recorder for more than ten years.” However, the statute provides that it does “not apply to real property described in a deed which is not in the possession of those claiming title under the deed.”