12 THINGS YOU NEED TO KNOW TO SUCCESSFULLY BUY TAX DEED PROPERTIES

by

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Buying property at the County Treasurer's tax deed auction sounds easy and profitable. However, during my 30 years of representing tax deed buyers, I have seen a multitude of mistakes made. I have written this article to help you avoid making the same mistakes I have seen.

I have listed the 12 things you must do to avoid stepping into a bear trap when you buy a tax sale property. If you stick to the following steps, I believe your experience will be much more profitable and you will be happy to go to the County Treasurer's Tax ReSale next year as well.

1) **Determine the Value of the Property**. How do you determine the fair market value of the property? Market valuation is more of an art than a science. Appraisers are paid well to determine market values and even these professionals can sometimes be way off the mark. Start by contacting your County Assessor's Office. Provide them the legal description or Tax ID number of the tax deed property you are interested in purchasing and ask them to tell you what the fair market value of the property is as shown on the County Assessor's Records. This is only a starting point. While the County Assessor's value can be fairly accurate, very often a property sold for back taxes has not been very well taken care of. Therefore, the property could be worth considerably less than the value the County Assessor has placed on the property at the time of his prior inspection. A good rule of thumb to stay out of trouble is to never pay more than one-third of the County Assessor's fair market value. Sometimes even that is still too high of a price to pay. Next, talk to local realtors about the value of the property you plan to purchase at tax sale and what they believe they could sell the property for once you obtain clear title to it. Also, check the County Assessor's records of the similar properties surrounding the one you are

interested in buying at the tax sale to help in your calculation. Once the value of the property has been determined, in the immortal words of Karen Carpenter "We've Only Just Begun" the journey through your due diligence process.

2) **State of Oklahoma Liens**. Check with the County Clerk's Office to determine if the property you are interested in is encumbered by any liens in favor of the State of Oklahoma. If there is a state lien on the property, treat it like the baby alligator you see at the pet store. Don't buy it! Why? Because it will grow up and bite you. Oklahoma state liens against the property are not discharged by the County Treasurer's Tax Deed. Therefore, if you buy the property you will also get to pay the state lien before you will have marketable title. In very few cases, you may be willing to pay the state tax lien if the lien is small and the property is very valuable. However, just like the baby alligator, state liens grow up. What I mean by this is that they accrue interest from the date of filing through the date you pay off the lien. For the most part, if you see a state tax lien on the property, the best policy is to run. State tax liens never expire.

3) **Federal Tax Liens**. Check with the County Clerk's Office to determine if the property is encumbered by any federal tax lien. Federal tax liens are the little brother to state tax liens. Federal tax liens are not quite as bad as state tax liens because they do expire after seven (7) years. However, the federal tax liens can be renewed by the IRS and the property forced to be sold to pay the taxes. Therefore, they are not much safer than properties encumbered by state tax liens. This could be the very reason that valuable property is being sold for taxes. The owner of the property may not be able to sell the property for enough to pay the state and federal tax liens; thus, he simply lets the property go to the tax deed sale.

4) **Flood Plain**. Check your County's flood plain map against the property you are interested in purchasing. Unless your plan is to raise catfish, there is not much reason to purchase property located in a flood plain as you will not be able to obtain the permits necessary to build on the property. I have had situations where clients have brought me properties with existing houses located in a flood plain on which they could not obtain occupancy permits. We have had some success in obtaining occupancy permits when clients have purchased flood insurance. But such insurance is expensive if the property is located in a known flood plain.

Therefore, unless you have an alternative use for the property, it is best to stay away from properties located in a flood plain.

5) **Personally Inspect the Property**. I have had clients try to short circuit their due diligence by purchasing tax deeds solely by looking at pictures on the County website. This is akin to choosing your life long spouse by logging on to a Russian website of attractive women wanting to get married and move to America. If you choose this method, you pay your money to the County Treasurer and roll the dice. I have had clients show me pictures from the County website of a beautiful house only to learn after the tax sale that it had burned or is in terrible condition. I have had situations where clients have bought five acres for $500.00 sight unseen "because it had to be worth at least that." Then when they go to see the prize they won at the tax sale auction, they learn they are the proud owner of a 5-acre ditch. Often when properties are developed into housing additions and the lots are all sold, the developer quits paying the taxes for the roads or the common areas. Never, Never, Never buy a property at Tax ReSale without first personally inspecting it. Go inside the house if at all possible. If the property is occupied, I have had clients successfully inspect the interior by offering the tenant a small fee for letting them come inside and look around for damage.

6) **Condemnation**. Check with the City where the property is located to make sure the property has not been condemned. Often Cities will wait for a new owner to purchase a property by tax deed and then send them notices that expensive repairs are required to be made in a short amount of time or that the property must be torn down. Unless this is in your budget, stay away from condemned properties.

7) **Tribal Lands**. Tribal lands are exempt from ad valorem taxes (real estate taxes) but every so often there is an error in which the County has been assessing taxes against tribal land. The tribe obviously does not pay the taxes and then the property is listed for tax sale. If you buy a tax deed to land owned by an Indian tribe, you will have wasted your money. Determine what tribal boundaries surround the land you are looking at and contact that tribe to make sure it is not tribal land. I would suggest contacting the Department of Interior as well.

8) **Environment**. Check with the Department of Environmental Quality to make sure there are no environmental problems with the property. For example, if there had been an

oil spill, asbestos or mold, you could be personally liable to remediate these environmental problems.

9) **Limited Liability Company**. Don't buy properties in your own name but instead take title through a limited liability company. As the name implies, this is to limit your potential liability in the event someone is hurt on the property or there are liens on the property that could become personal liabilities of yours. In this way, neither judgment creditors nor lien holders can reach your personal assets.

10) **Undivided Interests**. An undivided interest involves more than one person having a percentage ownership in the property. For example, Farmer Smith died owning 160 acres and left 10 children. Each of the children has an undivided 1/10th interest in the whole 160 acres. If one of the children doesn't pay their ad valorem taxes, then years later their undivided 1/10th interest in the whole property will be sold at the County Treasurer's Tax Deed Sale. Don't buy undivided interests unless you are willing to hire an attorney to bring a partition action for you. An example of a partition action would be Farmer Smith's 10 kids each have an undivided 1/10th interest in the whole 160-acre farm, but the partition action would divide the farm so that each of the children has a specific 16-acre tract of land.

11) **Statutes**. Make yourself aware of the Oklahoma Statutes dealing with County Treasurer Tax Deed Sales of real property. The relevant law can be found in Title 68, Article 31 of the Oklahoma Statutes. The Oklahoma Statutes can be found at www.oscn.net, then click "Legal Research," then click "Oklahoma Statutes Citationized," then click "Title 68" and scroll down to "Article 31."

12) **Quiet title**. You have gone to the County Treasurer's Tax Sale, purchased a property and filed the County Treasurer's ReSale Tax Deed. Now What? Just because you have a tax deed, you will not be able to convey marketable title to the property as the former owner still has ten years to attempt to vacate your tax deed. To avoid this and to obtain good and marketable title, you will need to hire an attorney to bring a Quiet Title action for you. Once this is completed, you will have a judgment determining that you are the sole owner of the property and that the prior owners no longer have any right or interest in or to your tax deed. The Quiet Title action your attorney files should include an eviction of any occupants.

Attorneys specialize in different areas of the law. Be sure that you hire an attorney who has had a great deal of experience in handling Quiet Title actions. Different attorneys are good at different things. I have a great deal of experience in Quiet Title actions having corrected and cleaned up the title to hundreds of tax deed properties. If I can be of assistance to you, please feel free to contact the Law Offices of Kermit M. Milburn, PLLC, in Oklahoma City and Shawnee at 405-275-2551. Or simply click on my website "TheTaxDeedAttorney.com" and click on the button that says "Tax Deed Properties." I hope you have found this article helpful to you.