

ARTICLE 11 SALE OF TAX LIENS

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39-11-101. Notice to delinquent owner.
Except as otherwise provided in section 39-2-117 (1) (a), the treasurer, no later than September 1 of each year, shall notify by mail, at the person's last-known address, each person by whom taxes for the previous year are known to be due and unpaid of the amount of the person's delinquency and shall allow fifteen days from the time of mailing of said notice for the payment of such delinquent taxes and delinquent interest thereon. The treasurer shall make a list of all lands and town lots the tax liens on which are subject to sale, describing such land and town lots as the same are described on the tax roll, with an accompanying notice stating that the tax lien on each such tract of land or town lot described in said list, on a day specified thereafter and the next succeeding days, will be sold by the treasurer at public auction for the taxes, delinquent interest, and charges thereon at the treasurer's office or at any other location in the county deemed suitable by the treasurer; except that all of the property offered for sale on the same day shall be offered for sale at the same location. If such list is not made until after September 1, the sale held thereunder shall not be void by reason thereof.

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-1. L. 85: Entire section amended, p. 1234, § 1, effective July 1. L. 88: Entire section amended, p. 1293, § 26, effective May 23. L. 92: Entire section amended, p. 2230, § 17, effective April 9. L. 94: Entire section

amended, p. 756, § 7, effective April 20. L. 96: Entire section amended, p. 116, § 4, effective March 25.

Cross references: For time when tax lien attaches, see § 39-1-107.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 728-732, 743, 744.

C.J.S. See 85 C.J.S., Taxation, § 1106.

Law reviews. For note, "Tax Deeds in Colorado", see 18 Rocky Mt. L. Rev. 393 (1946).

Substantial departure from section as to land description voids sale. Where the assessment roll upon which the tax sale was based described the tract in question as containing 160 acres, the notice of tax sale, as published, described the tract as 36 acres, and the notice posted by the treasurer described it as 60 acres, there was a substantial departure from this section which is fatal to the validity of the sale. *Callbreath v. Hapney*, 24 Colo. App. 202, 132 P. 1143 (1913).

39-11-102. Treasurer to publish and post notice.
The treasurer shall cause said notice to be published in the newspaper selected pursuant to section 39-11-105, the first publication being at least four weeks before the day of sale, and shall post a written or printed notice in a conspicuous place in the office of the treasurer for not less than four weeks before the sale. If there is no newspaper published in the county, a like notice shall be given by posting one written or printed notice for the above length of time on or near the outer door of the treasurer's office. When publication is made in a weekly newspaper, the notice shall be published in three successive weekly issues. When publication is made in a daily newspaper, the notice shall be published only three times, once each week, on the same day of the week.

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-2. L. 94: Entire section amended, p. 756, § 8, effective April 20.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 728-732, 743, 744.

Purpose of this section is to give the fullest publicity to the notice of tax sale and list of delinquent taxes. *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

Treasurer to see that notice stays posted. This section contemplates a single act of posting a notice by the treasurer in a certain place within a prescribed time and imposes on him the further duty to see that it remains so posted until the day of sale. *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

39-11-103. Treasurer to make affidavit of posting.
The treasurer shall also make, or cause to be made, an affidavit showing the posting of such list and notice, all of which affidavits shall be deposited by the treasurer with the county clerk and recorder to be filed and entered by the county clerk and recorder in the reception book or other permanent record of said office and there carefully preserved.

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-3. L. 94: Entire section amended, p. 756, § 9, effective April 20.

C.J.S. See 85 C.J.S., Taxation, § 1132.

Legislative intent to create record. This section manifests a legislative intent that affidavits should become a permanent, enduring record of the fact of publication of the tax list. *Herr v. Graden*, 22 Colo. App. 511, 127 P. 319 (1912), rev'd on other grounds, 59 Colo. 372, 148 P. 863 (1915).

Purpose for requiring deposit of affidavits is to furnish proof. The sole purpose for requiring the deposit of affidavits with the county clerk is to preserve and furnish proof that the requisite notices of the sales of property for delinquent taxes were given in the manner required by law, when that question becomes material. *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903); *Johnson v. Cork*, 106 Colo. 72, 102 P.2d 471 (1940).

The evident purpose of this section is to make the affidavit exclusive evidence of a compliance with the section with reference to notice by publication. This is in accordance with the fundamental rule that where proof by written evidence is required, oral evidence will not be received, unless in case of loss or destruction of the writing. *Rustin v. Merchants' & Miners' Tunnel Co.*, 23 Colo. 351, 47 P. 300 (1896).

Affidavits are not required to be filed at any particular time, nor does the failure to file them before the issuance of a tax deed render such deed invalid. *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903); *Sternberger v. Moffat*, 44 Colo. 520, 99 P. 560 (1908).

They must show substantial compliance with requirements. It is evident that the affidavit must be sufficiently certain and specific to reasonably show that, in fact, the requirements of this article relative to the contents of the notice have been substantially complied with, and

Source: L. 64: R&RE, p. 724, § 1. L. 65: p. 1110, § 1. C.R.S. 1963: § 137-11-6. L. 67: p. 212, § 3. L. 71: p. 328, § 7. L. 85: (2) amended, p. 1234, § 2, effective July 1. L. 91: (2) amended, p. 1972, § 2, effective March 27.

39-11-107. Erroneous assessments - abatement.

It is the duty of the treasurer of each county, before making sale of tax liens on any lots or land for unpaid taxes, to carefully examine and compare the delinquent list with the assessment roll and block books in his office, and to omit from such sale the tax liens on all lots and lands doubly or erroneously assessed, insofar as he is able to ascertain the same, and to make an itemized report to the board of county commissioners of his county showing such double or erroneous assessment. The board of county commissioners, on receipt of such itemized report, by resolution to be entered in its proceedings, shall abate the taxes levied upon such double or erroneous assessments.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-7. L. 85: Entire section amended, p. 1235, § 3, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 636.

C.J.S. See 84 C.J.S., Taxation, § 690.

39-11-108. Manner of conducting sale.

On the day designated in the notice of sale, the treasurer shall commence the sale of the tax liens on those lands and town lots on which the taxes and charges have not been paid and shall continue the same from day to day, Saturdays and Sundays excepted, until the tax liens on each parcel are sold. Where two or more lots or tracts of land are valued and assessed as one parcel, the treasurer shall sell a single tax lien on such land or tract. If there is no bid for any tax lien offered, the offering of such tax lien shall remain open until all the tax liens are offered for sale and the sale is ended or until the treasurer is satisfied that no more sales can be effected, whereupon it is his duty to strike off to the county, city, town, or city and county the tax liens on those lands and town lots remaining unsold, for the amount of such taxes, delinquent interest, and costs thereon. When the treasurer strikes off a tax lien on any tract of land or town lot, he shall issue to the county, city, town, or city and county a certificate of purchase. No taxes levied against any lands for which a county has purchased a tax lien under the provisions of this section shall be payable until the same have been derived by the county from the sale of a tax lien on such lands or from the redemption of such lands.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-8. L. 85: Entire section amended, p. 1235, § 4, effective July 1. L. 92: Entire section amended, p. 2230, § 18, effective April 9.

Analysis

I. General Consideration.

II. Sale in Entirety or Parcels.

III. Purchase by County.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 841.

C.J.S. See 85 C.J.S., Taxation, § 1179.

Law reviews. For comment, "The Effect of Certified Realty Corp. v. Smith on Mortgage Foreclosure in Colorado", see 52 U. Colo. L. Rev. 301 (1981).

Purpose of section. The purpose of this section is to give a reasonable opportunity to all desiring to bid, and to make sure that there are no bidders present before striking any property off to the county. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Section requires strict compliance. This section authorizing the sale of property for taxes must be strictly complied with or the proceedings will be void. *Charlton v. Toomey*, 7 Colo. App. 304, 43 P. 454 (1896), *rev'd* on other grounds, 24 Colo. 278, 50 P. 1042 (1897).

Void tax deed cannot be supported by evidence aliunde. A tax deed, void on its face because of its showing a fatal irregularity in the conduct of the sale, cannot be supported or validated by evidence aliunde that the sale was conducted in conformity with this section. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

Proof of damages is unnecessary where statute governing sale is violated. Once it is shown that a positive mandate or statute has been ignored in connection with a tax sale, the grantor under a tax deed flowing therefrom will not be heard to say that his adversary must go further and prove the damages he has suffered as a result of the violation of the statute. *Newcomb v. Henderson*, 22 Colo. App. 167, 122 P. 1125 (1912).

Formal rereading of notice of sale at reoffering not required. The requirement of this section is only that the treasurer shall reoffer the property the next day. It does not require the formal rereading of the notice of sale or legal description of the property. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Failure to show first offering date not invalidation of deed. A tax deed is not invalid because of its failure to disclose the day upon which the land involved was first offered for sale for delinquent taxes. *Ford v. Genereux*, 104 Colo. 17, 87 P.2d 749 (1939).

Applied in *City & County of Denver v. Keeler*, 48 Colo. 54, 108 P. 998 (1910); *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919).

II. SALE IN ENTIRETY OR PARCELS.

Object of separate valuation, assessment, and sale is to create a lien upon each tract for its own assessment and levy. It is manifest that this is not done if the sale is en masse for a gross sum. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

The only land which the treasurer may sell jointly is such as the assessor can jointly value and assess, namely, adjoining parcels, returned by the same person. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910); *Gilbreath v. Doe*, 24 Colo. App. 205, 132 P. 1146 (1913).

Sale in parcels of body of land assessed as a whole is violation of this section and one contesting the sale is not required to prove that he has sustained damage by this violation of the statute. *Newcomb v. Henderson*, 22 Colo. App. 167, 122 P. 1125 (1912).

Sale en masse for taxes of noncontiguous lands for a gross sum is void; and a tax deed which, upon its face, shows that the sale was made in this manner is void. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

A tax deed is not objectionable because it conveys several noncontiguous tracts of land. *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

III. PURCHASE BY COUNTY.

County becomes purchaser only in default of outside bid. Before land may be legally bid in by the county, it must, after being first offered, be continually offered from day to day until the sale is concluded, and the county can only become a purchaser of the entire tract in default of an outside bid, after the same has been offered each day. *Empire Ranch & Cattle Co. v. Howell*, 23 Colo. App. 265, 129 P. 245 (1913).

Certificate of purchase must be dated as of sale date. The certificate of purchase issued to the county for land struck off to it at the tax sale must be dated as of the day of the sale. *Dalander v. Karr*, 21 Colo. App. 170, 121 P. 136 (1912).

Tax deed cannot issue while certificate of purchase outstanding. A tax deed cannot issue on property so long as an outstanding tax certificate of purchase is still held by the county and a deed issued in such circumstances will be held invalid. *Cowen v. Driscoll Constr. Co.*, 97 Colo. 74, 47 P.2d 390 (1935).

Taxes are not paid by striking off the land to the county. *Hecox v. Teller County*, 198 F. 634 (8th Cir. 1912), appeal dismissed, 234 U.S. 766, 34 S. Ct. 675, 58 L. Ed. 1582 (1914).

Unnecessary for county to pay taxes until property sold. It is not necessary for the county, after the purchase of a tax sale certificate, to pay any taxes that may have become due subsequent to the issuance of said tax sale certificate, until the county has sold the property which it has acquired by virtue of the treasurer's deed. *Rock v. Fastenau*, 122 Colo. 41, 219 P.2d 781 (1950).

39-11-109. Time and place of sale.

The sale of tax liens on lands upon which taxes remain delinquent shall commence on or before the second Monday in December of each year and shall be held at the treasurer's office in each county or at any other location in the county deemed suitable by the treasurer; except that all of the property offered for sale on the same day shall be offered for sale at the same location.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-9. L. 85: Entire section amended, p. 1235, § 5, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 843.

C.J.S. See 85 C.J.S., Taxation, §§ 1180, 1181.

Tax deed void if based on sale held later than time designated. A tax deed based on a sale held later than the time designated in this section where there is no explanation for the delay is void. *Kingore v. Wallace*, 85 Colo. 381, 276 P. 332 (1929); *Ireland v. Gunnison Mt. Coal & Coke Co.*, 87 Colo. 193, 286 P. 280 (1930); *Hochmuth v. Norton*, 90 Colo. 453, 9 P.2d 1060 (1932); *Sierra Mining Co. v. Lucero*, 118 Colo. 180, 194 P.2d 302 (1948); *Timroth v. Oken*, 62 P.3d 1042 (Colo. App. 2002).

39-11-110. When sale can be held.

If, from any cause, the tax lien on real property cannot be duly advertised and offered for sale on or before the second Monday of December, it is the duty of the treasurer to hold the sale on any subsequent day in which it can be held, allowing time for the publication of notice as provided in section 39-11-102.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-10. L. 85: Entire section amended, p. 1236, § 6, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 843.

C.J.S. See 85 C.J.S., Taxation, §§ 1181, 1182.

Intent of section to save late tax sales. This section is intended to save from invalidity a tax sale made after the second Monday in December where it is impossible to commence the sale on that day. *City & County of Denver v. Bach*, 92 Colo. 594, 22 P.2d 1114 (1933).

If a deed shows reason for delayed sale, it is not void. Where a tax deed shows on its face that the sale was held on a day subsequent to that designated by § 39-11-109, without a recital of any cause for the delay such as would authorize a sale on the subsequent day, the deed shows its falsity; but the deed is not void where it contains a recital of sufficient cause for the delay. *Richardson v. Halbekann*, 97 Colo. 175, 48 P.2d 1014 (1935).

But where the deed does not explain the cause for delay and the court considered extrinsic evidence, the finding of cause for delay does not support the determination that the deed was valid, but only that the sale was valid and hence a valid deed should be issued. *Timroth v. Oken*, 62 P.3d 1042 (Colo. App. 2002).

39-11-111. Purchase price to be paid in cash.

When the treasurer sells any tax lien on any lands or lots for delinquent taxes, he shall require the purchase price thereof to be paid in cash.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-11. L. 85: Entire section amended, p. 1236, § 7, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 844.

C.J.S. See 85 C.J.S., Taxation, § 1194.

Part payment with bonds and warrants. A purchaser at a tax sale of lands included within an irrigation district may pay in part with bonds and warrants of the district under the provisions of § 37-41-109. *Tew v. Phillips*, 73 Colo. 408, 216 P. 525 (1923).

39-11-112. Erroneous name or assessment in wrong county - effect.

(1) When tax liens on any lands or town lots are offered for sale for any delinquent taxes, it shall not be necessary to sell the same as the property of any person. No sale of any tax lien on any land or town lots for delinquent taxes shall be considered invalid because charged on the roll in any other name than that of the rightful owner, or charged as unknown; but the tax lien and such land or lots in other respects shall be sufficiently described on the tax roll to identify the same, and the taxes for such land or lots shall be due and unpaid at the time of such sale.

(2) When any land lying in one county is erroneously taxed and a tax lien on such land is sold for delinquent taxes in another county, the county so erroneously taxing and selling a tax lien on such land for delinquent taxes shall be liable to the owner of such land for any expense or damage caused to such owner by such erroneous sale.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-12. L. 85: Entire section amended, p. 1236, § 8, effective July 1.

Description must enable purchaser to know what is for sale. The assessment is made with a view to a possible sale, and the property should, therefore, be so described as to enable the owner to know what land is charged with the tax, and also to enable a possible purchaser to know what land is offered for sale. Hence the description should be sufficient in itself to identify the land or, if reference to a map on record is required, that should be indicated in the assessment. *Stough v. Reeves*, 42 Colo. 432, 95 P. 958 (1908).

Description by block number without a map is insufficient. The description of a parcel of land, in connection with tax sales, as a portion of an entire larger tract simply by number and block, without any reference to a map, is not sufficient prima facie evidence to identify the portion assessed. *Stough v. Reeves*, 42 Colo. 432, 95 P. 958 (1908).

39-11-113. Abbreviations, letters, and figures may be used.

In all advertisements for the sale of tax liens on real property for delinquent taxes and in entries required to be made by the assessor, county clerk and recorder, treasurer, or other officers in lists, books, rolls, certificates, receipts, deeds, or notices, letters, figures, and abbreviations may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates and amounts of taxes, delinquent interest, and costs.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-13. L. 85: Entire section amended, p. 1236, § 9, effective July 1. L. 92: Entire section amended, p. 2231, § 19, effective April 9.

C.J.S. See 85 C.J.S., Taxation, §§ 1121, 1123, 1126.

39-11-114. Record of sales of tax liens on real estate and mobile homes.

(1) The treasurer shall make a correct record of all sales of tax liens on real estate for delinquent taxes in a well-bound book or other permanent record to be kept by the treasurer for that purpose. Said book shall contain:

- (a) The date of sale;
- (b) The description of each tract of land or town lot for which a tax lien is sold;
- (c) The name of the owner thereof, if known;
- (d) The name of the purchaser;
- (e) The total amount of taxes, delinquent interest, and costs at time of sale;
- (f) Columns for amount of subsequent taxes paid by the purchaser and the date of payment;
- (g) To whom assigned and the date of assignment;
- (h) The name of person redeeming and date of redemption;
- (i) The total amount paid for redemption;
- (j) The name of person to whom conveyed and date of deed.

(2) The treasurer shall also note in the tax list, opposite the description of the property for which a tax lien is sold, the fact and date of such sale.

(3) (a) Upon recordation of the tax sale, the treasurer shall also make a separate list of all mobile homes for which tax liens are sold at the sale and file such list with the department of revenue. Such list shall include the mobile home's identification number, year and make, parcel number, and all pertinent tax sale information. For maintaining this recorded tax sale information on mobile homes, the executive director of the department of revenue may impose a fee of five dollars which shall become part of the mobile home tax sale redemption cost.

(b) Notwithstanding the amount specified for the fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-14. L. 82: (3) added, p. 551, § 17, effective July 1. L. 85: IP(1), (1)(b), (2), and (3) amended, p. 1237, § 10, effective July 1. L. 92: (1)(e) amended, p. 2231, § 20, effective April 9. L. 94: IP(1) and (2) amended, p. 756, § 10, effective April 20. L. 96: (2) amended, p. 1393, § 12, effective July 1. L. 98: (3) amended, p. 1347, § 81, effective June 1. L. 2000: (3)(a) amended, p. 1638, § 17, effective June 1.

Cross references: For tax sale procedure and redemption of a mobile home, see § 39-10-111 (10).

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 789-792.

C.J.S. See 85 C.J.S., Taxation, §§ 1202-1205.

Record is best evidence of facts contained in it. The tax sale record, being one required by law to be kept by the treasurer, is not only competent, but the best evidence of the facts required to be stated therein, including the date of sale. *Knowles v. Martin*, 20 Colo. 393, 38 P. 467 (1894); *Empire Ranch & Cattle Co. v. Lanning*, 49 Colo. 458, 113 P. 491 (1911); *Mulqueen v. Lanning*, 53 Colo. 146, 124 P. 577 (1912).

39-11-115. To whom tax lien shall be stricken off.

(1) When the taxes levied for the preceding year or years on any lands remain unpaid, the tax liens on such lands offered at public sale at the times provided by law shall be sold to the persons who pay therefor the taxes, delinquent interest, and costs then due thereon or who further pay the largest amount, in cash, in excess of said taxes, delinquent interest, and costs. Said excess amount in cash shall be credited to the county general fund. Each

tax lien shall be sold for an entire piece of property. The taxes, delinquent interest, and costs shall draw interest at the rates fixed by law, and, when the tax liens on any lands are bid in by the county, city, town, or city and county, the amount for which they are bid in shall draw interest at the same rates. Real property for which a tax lien is sold may be redeemed in the manner provided by law.

(2) In order that the sale may be conducted in an efficient and equitable manner, the treasurer is hereby granted broad powers to set bidding rules governing the sale. Such powers shall include, but need not be limited to, the following:

(a) Recognition of buyers in numerical sequence, in rotation, or in the order in which bids are made;

(b) Determining the order in which tax liens are sold, without regard to the order in which they appear in the published notice of sale;

(c) Setting minimum bid increases; and

(d) Setting a minimum total of taxes, delinquent interest, and costs below which competitive bids will not be accepted.

(3) The treasurer may combine and sell as a unit parcels which are contiguous or are contained within one subdivision.

(4) The treasurer shall announce bidding rules at the beginning of the sale, and the rules announced shall apply to all bidders throughout the sale.

Source: L. 64: R&RE, p. 727, § 1. L. 65: p. 1112, §§ 1, 2. C.R.S. 1963: § 137-11-15. L. 67: p. 213, § 4. L. 85: Entire section amended, p. 1237, § 11, effective July 1. L. 87: Entire section amended, p. 1422, § 1, effective May 8. L. 92: (1) and (2)(d) amended, p. 2231, § 21, effective April 9.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 850.

C.J.S. See 85 C.J.S., Taxation, §§ 1190, 1191.

39-11-116. Procedure when purchaser fails to pay.

If any person bidding fails to pay the amount due, the treasurer may again offer the tax lien on such land for sale if the sale has not closed, and, if it has closed, he may again advertise it specially in the same manner as in the original advertisement and for not less than one week, when he may again offer and sell the tax liens on such lands or lots as provided in section 39-11-115; or, at his option, the treasurer may recover the amount bid by civil action brought in the name of the county in any court of competent jurisdiction.

Source: L. 64: R&RE, p. 727, § 1. C.R.S. 1963: § 137-11-16. L. 85: Entire section amended, p. 1238, § 12, effective July 1.

C.J.S. See 85 C.J.S., Taxation, § 1220.

39-11-117. Certificate of purchase.

The treasurer shall prepare, sign, and retain for safekeeping or deliver to the purchaser of a tax lien on any real property sold for the payment of delinquent taxes a certificate of purchase describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the record of sales, and also stating the rate of interest and the total amount of all taxes, delinquent interest, and costs on each tract or lot for which the tax lien was sold, as described in the record of sales, and that payment thereof has been made, with columns for subsequent taxes. For each certificate so delivered, the purchaser shall pay a fee to the treasurer as provided in section 30-1-102, C.R.S.

Source: L. 64: R&RE, p. 727, § 1. C.R.S. 1963: § 137-11-17. L. 69: p. 1122, § 2. L. 71: p. 328, § 8. L. 75: Entire section amended, p. 1479, § 4, effective July 1. L. 85: Entire section amended, p. 1238, § 13, effective July 1. L. 92: Entire section amended, p. 2231, § 22, effective April 9. L. 96: Entire section amended, p. 1393, § 13, July 1.

Cross references: For certificate of sale for a mobile home, see § 39-10-111.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 760, 790.

C.J.S. See 85 C.J.S., Taxation, § 1208-1211.

County treasurer is entitled to fee for issuing certificate of purchase. *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919).

Fee becomes property of collecting officer. A fee which is provided for a specified public service presumably becomes the property of the officer authorized to collect it, subject to the power of the proper public authority to limit the amount retainable by the officer to a certain sum. *Moffat Tunnel Imp. Dist. v. McGuire*, 103 Colo. 539, 87 P.2d 753 (1939).

39-11-118. Certificate of purchase assignable.

Such certificate of purchase shall be assignable by endorsement, and an assignment thereof, when entered upon the record of sales in the offices of the county clerk and recorder and the treasurer, shall vest in the assignee or his legal representative all the right and title of the original purchaser.

Source: L. 64: R&RE, p. 728, § 1. C.R.S. 1963: § 137-11-18.

C.J.S. See 85 C.J.S., Taxation, §§ 1388-1395.

Assignee becomes lawful holder of certificate even if assignment not recorded. The assignee of a certificate of purchase, who in good faith and for a valuable consideration purchases the interest of his assignor and receives from him the certificate bearing his indorsement, with the intent of transferring to the assignee the right and title represented thereby, would become the lawful holder of the certificate of sale, even though the assignment was not recorded as provided in this section. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

Assignment of certificate carries rights of original purchaser. The assignment of a tax sale certificate carries with it and vests in the assignee all the rights of the original purchaser. *Board of Comm'rs v. Whelen*, 28 Colo. 435, 65 P. 38 (1901).

39-11-119. Subsequent payment by holder.

Any person desiring to pay any subsequent taxes on any lands or town lots for which such person holds the tax certificates shall produce such certificates to the treasurer, or, if certificates are retained by the treasurer, the person shall be notified by the treasurer of the amount due. Upon receipt of payment, the treasurer shall record the amount of the subsequent tax and the date of payment on the permanent record. The treasurer may receive a fee for such services, as provided in section 30-1-102 (1) (j), C.R.S.

Source: L. 64: R&RE, p. 728, § 1. C.R.S. 1963: § 137-11-19. L. 69: p. 1122, § 3. L. 71: p. 328, § 9. L. 75: Entire section amended, p. 1479, § 5, effective July 1. L. 83: Entire section amended, p. 1230, § 20, effective July 1. L. 94: Entire section amended, p. 757, § 11, effective April 20. L. 96: Entire section amended, p. 1393, § 14, effective July 1.

Payment of subsequent taxes is permissive, not mandatory. This section provides for the payment of subsequent taxes by the holder of a tax certificate, and it clearly appears that the right to pay subsequent taxes is permissive, not mandatory. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Payment of subsequent taxes on land in irrigation district. One holding a tax purchase certificate for lands in an irrigation district is entitled to pay subsequent taxes with interest coupons of the district maturing in a year for which the tax is levied. *Orchard Mesa Farms Co. v. Canon*, 61 Colo. 347, 157 P. 192 (1916).

39-11-120. Presentation of certificates for deed.

(1) At any time after the expiration of the term of three years from the date of the sale of any tax lien on any land, or interest therein or improvements thereon, for delinquent taxes, on demand of the purchaser or lawful holder of the certificate of such tax lien, other than the county wherein such property is situated, and on presentation of such certificate of purchase or properly authenticated order of the board of county commissioners, where the certificate has been lost or wrongfully withheld from the owner, and upon proof of compliance with section 39-11-128, the treasurer shall make out a deed for each such lot, parcel, interest, or improvement for which a tax lien was sold and which remains unredeemed and deliver the same to such purchaser or lawful holder of such certificate or order.

(2) The treasurer shall be entitled to a fee for each such deed made and acknowledged by him and a fee for the acknowledgment thereof, as provided in section 30-1-102, C.R.S.

(3) Whenever any certificate given by the treasurer for a tax lien on any land, interest, or improvement sold for delinquent taxes is lost or wrongfully withheld from the rightful owner thereof and such land, interest, or improvement has not been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention and, upon satisfactory proof of such fact, may cause a certificate of such proof and finding, properly attested by the county clerk and recorder under the seal of the county, to be delivered to such rightful claimant, and a record thereof shall be duly made by the county clerk and recorder in the recorded proceedings of such board.

(4) Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for the county, city, town, or city and county at any tax sale, and a certificate of purchase is made to such county, city, town, or city and county therefor, the treasurer of such county, city, town, or city and county may sell, assign, and deliver any such certificate to any person who desires to purchase the same upon payment to the treasurer of the amount for which said tax lien was bid in by the county, city, town, or city and county with interest and costs accrued thereon from the date of sale, together with a fee for making such assignment, as provided in section 30-1-102, C.R.S., and the taxes assessed thereon since the date of such sale or, in case of a county, city, town, or city and

county, for such sum as the board of county commissioners or other board authorized to perform the duties of a board of county commissioners at any regular or special meeting may decide and authorize by order duly entered in the recorded proceedings of such board. Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for a city, town, or city and county, as the case may be, such city, town, or city and county shall be entitled to a deed, as provided for purchasers at tax sales.

Source: L. 64: R&RE, p. 728, § 1. C.R.S. 1963: § 137-11-20. L. 71: p. 329, § 10. L. 75: (2) amended, p. 1480, § 6, effective July 1. L. 85: (1), (3), and (4) amended, p. 1238, § 14, effective July 1.

Analysis

I. General Consideration.

II. Assignment by the County.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 884.

Law reviews. For article, "Property Law", see 32 Dicta 420 (1955). For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

Purchaser has right to demand deed any time after three years from sale. Pelton v. Muntzing, 24 Colo. App. 1, 131 P. 281 (1913).

Purchaser may set process in motion before expiration of time. A purchaser at a tax sale may set into motion the machinery to obtain a deed before the end of the three-year period of redemption although the tax deed may not properly be issued until the expiration of the time fixed. Knutson v. Dickson, 105 Colo. 42, 94 P.2d 691 (1939).

Subsequently-assessed taxes must be paid prior to issuance of deed. One who purchases a tax purchase certificate is not entitled to a deed until he has paid all taxes subsequently assessed upon the lands. Schneider v. Hurt, 25 Colo. App. 335, 138 P. 422 (1914), aff'd, 61 Colo. 104, 156 P. 600 (1916); Henrie v. Greenlees, 71 Colo. 528, 208 P. 468 (1922).

Single tender for more than one certificate permitted. A single tender to the county by the purchaser is sufficient, even though the transaction covers several certificates, on several parcels of land, issued pursuant to sales in different years. Lackey v. Killey, 80 Colo. 408, 252 P. 351 (1927).

Tax deed may convey more than one tract of land, whether they are contiguous or noncontiguous. Johnson v. Cork, 106 Colo. 72, 102 P.2d 471 (1940).

Recordation of assignment is unnecessary to deed's validity. Recording the assignment of a tax sale certificate is not a necessary prerequisite to the validity of the deed issued thereon. White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946).

Tax lien extinguished by issuance of deed from subsequent sale. A tax lien held by virtue of a certificate issued as result of sale is extinguished by the issuance of a tax deed by the county on a subsequent sale. Benedict v. Coriolanus Corp., 30 Colo. App. 306, 491 P.2d 985 (1971).

Issuance of subsequent corrective tax deed authorized. The county treasurer has authority to issue a second tax deed, for the purpose of correcting a former defective deed, at any time before redemption, and, if he refuses to do so, mandamus will lie to compel him. Duggan v. McCullough, 27 Colo. 43, 59 P. 743 (1899).

A void deed fails to convey legal title even if the underlying sale was valid. However, if the deed was defective because of a mistake by the treasurer, but the proceedings were properly conducted, the holder of the defective deed is entitled to a corrected deed anytime before the owner's redemption. Timroth v. Oken, 42 P.3d 1042 (Colo. App. 2002).

Speculation in tax certificates allowed. One has the right to speculate in tax certificates if one complies with the law concerning their purchase and assignment. Lackey v. Killey, 80 Colo. 408, 252 P. 351 (1927).

Interplay of this section and § 39-11-122. Subsection (4) authorizes the county treasurer to sell any tax certificate for full value without requiring any action by the county commissioners. Only if the amount to be received is less than such full amount does an order by the commissioners become necessary, in which case § 39-11-122 applies. RTV, L.L.C. v. Grandote Int'l Ltd., 937 P.2d 768 (Colo. App. 1996).

Applied in Bottom v. Young, 52 Colo. 533, 125 P. 500 (1912); Vandermeulen v. Burwell, 22 Colo. App. 486, 125 P. 131 (1912); Fishel v. City & County of Denver, 105 Colo. 120, 95 P.2d 1 (1939); Swofford v. Colo. Nat'l Bank, 628 P.2d 184 (Colo. App. 1981).

II. ASSIGNMENT BY THE COUNTY.

This section does not contemplate the issuance of a deed to the county. Hecox v. Teller County, 198 F. 634 (8th Cir. 1912); Bennett v. Shotwell, 118 Colo. 206, 194 P.2d 335 (1948).

There is no limitation on time within which assignment may be made, provided that the assignment of the certificate by the treasurer and board of county commissioners is after the expiration of three years from the date of the certificate. Lovelace v. Tabor Mines & Mills Co., 29 Colo. 62, 66 P. 892 (1901).

Board cannot make actual assignment. While this section confers upon the board of county commissioners the authority to determine the sum at which the certificate may be sold, it does not further extend the authority of the board but leaves the duty of making the assignment in the hands of the county treasurer. Empire Ranch & Cattle Co. v. Neikirk, 23 Colo. App. 392, 128 P. 468 (1913).

Board has no power to prefer customers. In fixing a sum less than the face value at which tax certificates may be assigned, the board of county commissioners has no power to prefer purchasers. Radetsky v. Palmer, 70 Colo. 146, 199 P. 490 (1921).

Power of board of county commissioners is limited to fixing of price at which each certificate shall be sold and it neither extends to a bulk sale for a lump sum nor to the selection of a particular purchaser. Board of Comm'rs v. Utah-Colorado Land & Livestock Co., 101 Colo. 372, 73 P.2d 987 (1937).

Owner of land sold for taxes not entitled to notice of assignment. The rights of an owner of land sold for taxes cannot be affected by mandamus to compel assignment of the certificate of purchase by the county, and there is no reason for giving him notice of such an assignment. Lackey v. Killey, 80 Colo. 408, 252 P. 351 (1927).

39-11-121. Municipalities, prior sales validated.

All sales of such certificates made by any treasurer or ex officio treasurer of any city, town, or city and county, antecedent to or without the passage of any ordinance prescribing the terms of such sales, are hereby approved, affirmed, ratified, and validated as of their respective dates.

Source: L. 64: R&RE, p. 729, § 1. C.R.S. 1963: § 137-11-21.

39-11-122. Transfer of certificates by counties.

Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution of the board of county commissioners of such county. Thereafter such county shall execute and deliver such instruments as may be necessary fully to convey all of the right, title, and interest of the county in or to such certificates; but no sale of any certificate of purchase issued upon any real estate upon which taxes in excess of ten thousand dollars are then due shall be valid unless and until the sale of said certificate and the terms of said sale are approved by the administrator after notice of said proposed sale and the terms thereof have been published in at least one issue of a newspaper published regularly in the county where said real estate is located, or if no newspaper is published in said county, then by posting notice of said proposed sale and the terms thereof at the county courthouse and two other public places in said county.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-22. L. 85: Entire section amended, p. 1239, § 15, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1388-1395.

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by reference to title only. District Landowners Trust v. Adams County, 104 Colo. 146, 89 P.2d 251 (1939).

Purpose of section. To make the authority of the board of county commissioners more definite and certain, and to clarify their position with reference to tax sale certificates, the general assembly enacted this section. Bennett v. Shotwell, 118 Colo. 206, 194 P.2d 335 (1948).

Object of sale is to collect revenue. While the purpose of the law in divesting the estate of a landowner, upon sale for delinquent taxes, is to coerce the negligent and unwilling citizen to obey the law by payment of his taxes, the sole object of the state in making the sale is to collect its revenue. Knutson v. Dickson, 105 Colo. 42, 94 P.2d 691 (1939).

Recordation of assignment unnecessary. It is not necessary that the assignment of the certificates of purchase be entered upon the records of sale in the office of the county clerk in order to vest complete title thereto in the assignee. White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946).

No inconsistency or repugnancy exists between this section and § 39-11-120, pertaining to the disposition of certificates held by the county when taxes thereon are tendered in full; therefore, there is no repeal by either direction or implication. *Knutson v. Dickson*, 105 Colo. 42, 94 P.2d 691 (1939); *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Interplay of this section and § 39-11-120. Section 39-11-120 (4) authorizes the county treasurer to sell any tax certificate for full value without requiring any action by the county commissioners. Only if the amount to be received is less than such full amount does an order by the commissioners become necessary, in which case this section applies. *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Board may name individual purchaser. Under this section, a resolution of a board of county commissioners authorizing the sale of a certificate to a named individual, and not to the first person offering to pay the amount fixed by the board, is valid. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

The board has the power to fix the price at which individual tax sale certificates of purchase held by the county may be assigned by the treasurer. *Board of Comm'rs v. Utah-Colorado Land & Livestock Co.*, 101 Colo. 372, 73 P.2d 987 (1937).

Applied in *McMillan v. Board of Comm'rs*, 113 Colo. 387, 157 P.2d 146 (1945).

39-11-123. Transfer of certificates - irrigation or drainage district taxes.

Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments, by agreement with the board of directors of the district involved, may assign, sell, or transfer such certificates as provided in section 39-11-122.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-23. L. 85: Entire section amended, p. 1239, § 16, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1388-1395.

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by reference to title only. *District Landowners Trust v. Adams County*, 104 Colo. 146, 89 P.2d 251 (1939).

39-11-124. Counties, prior sales validated.

All assignments, sales, or transfers of certificates of purchase by counties made before August 1, 1964, are validated and confirmed.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-24.

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by reference to title only. *District Landowners Trust v. Adams County*, 104 Colo. 146, 89 P.2d 251 (1939).

39-11-125. Disposal of certificates by districts.

Any irrigation or drainage district in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution adopted by the board of directors of such district, and thereupon such district shall execute and deliver such instruments as may be necessary fully to convey all of its right, title, and interest in or to such certificates.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-25. L. 85: Entire section amended, p. 1239, § 17, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1388-1395.

39-11-126. Agreement with county commissioners.

Any irrigation or drainage district having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may, by agreement with the board of county commissioners of the county in which the land is situated, assign, sell, or transfer such certificates as provided in section 39-11-125.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-26. L. 85: Entire section amended, p. 1240, § 18, effective July 1.

39-11-127. Irrigation or drainage districts, prior sales validated.

All assignments, sales, or transfers of certificates of purchase by irrigation or drainage districts made before August 1, 1964, are validated and confirmed.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-27.

39-11-128. Condition precedent to deed - notice.

(1) Before any purchaser, or assignee of such purchaser, of a tax lien on any land, town or city lot, or mining claim sold for taxes or special assessments due either to the state or any county or incorporated town or city within the same at any sale of tax liens for delinquent taxes levied or assessments authorized by law is entitled to a deed for the land, lot, or claim so purchased, he shall make request upon the treasurer, who shall then comply with the following:

(a) The treasurer shall serve or cause to be served, by personal service or by either registered or certified mail, a notice of such purchase on every person in actual possession or occupancy of such land, lot, or claim, and also on the person in whose name the same was taxed or specially assessed if, upon diligent inquiry, such person can be found in the county or if his residence outside the county is known, and upon all persons having an interest or title of record in or to the same if, upon diligent inquiry, the residence of such persons can be determined, not more than five months nor less than three months before the time of issuance of such deed. In such notice the treasurer shall state when the applicant or his assignor purchased the tax lien on such land, lot, or claim, in whose name such property was taxed, the description of the land, lot, or claim for which a tax lien was purchased, for what year taxed or specially assessed, and when the time of redemption will expire or when the tax deed shall be issued.

(b) In all cases or instances where the valuation for assessment of the property is five hundred dollars or more, the treasurer shall publish such notice, three times, at intervals of one week, in some daily, weekly, or semiweekly newspaper published in such county, not more than five months nor less than three months before the time at which the tax deed may issue, and he shall send by registered or certified mail a copy of such notice to each person not found to be served whose address is known or can be determined upon diligent inquiry. If no such newspaper is published in the county, then said notice shall be published in the newspaper that is published in Colorado nearest the county seat of the county in which such land, lot, or claim is situated. The purchaser or assignee, at the time of making such request for notification on the treasurer, shall pay to the treasurer a fee, as provided in section 30-1-102, C.R.S. The treasurer shall make and carefully preserve among the files of his office a record of all things done in compliance with this section and shall certify to the same.

(2) When request is made for a tax deed to lands situated wholly within the exterior boundary lines of an irrigation district, the holder of tax sale certificates of purchase to such lands may include in one request or demand for a tax deed all contiguous tracts for which he holds such certificates of purchase. When all of such lands for which a tax deed is so requested or demanded are unoccupied and no taxes have been paid thereon, or upon any parcel of such lands embraced in such request or demand, for five consecutive years prior to the making of such request or demand, the only notice which the treasurer shall be required to give of the fact that a request or demand for tax deed has been made upon him shall be a notice of publication as provided in this section, in which as many tracts or parcels of land shall be described as are embraced in any one demand or request for deed.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-28. L. 71: p. 329, § 11. L. 85: IP(1) and (1)(a) amended, p. 1240, § 19, effective July 1. L. 96: (1)(b) amended, p. 116, § 5, effective March 25.

Cross references: For publication of legal notices generally, see part 1 of article 70 of title 24.

Analysis

I. General Consideration.

II. Notice.

A. In General.

B. Service.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 884.

C.J.S. See 85 C.J.S., Taxation, § 1408.

Law reviews. For article, "Inadequacy of Notice Provision for Obtaining Treasurers' Deeds", see 25 *Dicta* 144 (1948). For article, "Property Law", see 32 *Dicta* 420 (1955). For comment on *Mitchell v. Espinosa* appearing below, see 25 *Rocky Mt. L. Rev.* 101 (1952). For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 *Colo. Law.* 798 (1987).

The evident purpose of this section and § 39-5-104 is to forbid the issuance of a deed where the property is of substantial value, without giving notice to those interested, and particularly to one having the right of redemption. *Bogue v. Miles*, 107 Colo. 320, 111 P.2d 1055 (1941); *Swofford v. Colorado Nat'l Bank*, 628 P.2d 184 (Colo. App. 1981).

The requirements of this section are jurisdictional. *Sheesley v. Voorhees*, 24 Colo. App. 428, 134 P. 1008 (1913); *Brown v. Davis*, 103 Colo. 110, 83 P.2d 326 (1938); *Siler v.*

Investment Sec. Co., 125 Colo. 438, 244 P.2d 877 (1952); Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960); Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

There must be full compliance with statutory requirements relating to notice of application for issuance of a treasurer's deed, and, if a noncompliance with any such statutory direction is shown, the treasurer's deed will be adjudged invalid. Siler v. Investment Sec. Co., 125 Colo. 438, 244 P.2d 877 (1952); Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960).

Tax deed is invalid absent full compliance of statutory requirements relating to the issuance of the deed. Siddoway v. Ainge, 34 Colo. App. 210, 526 P.2d 669 (1974), aff'd, 189 Colo. 173, 538 P.2d 110 (1975).

Satisfaction of requirements question of fact. The determination of whether each requirement of this section relating to issuance of tax deeds by county treasurers has been sufficiently satisfied is a question for the trier of fact. Siddoway v. Ainge, 189 Colo. 173, 538 P.2d 110 (1975); Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

Deed, although proper, is not evidence of acts necessary. Even though the deed be conceded to be fair on its face so as to make it prima facie evidence of facts occurring before or at the time of the sale, it constitutes no evidence of the acts which the cash purchaser is required to perform, or the treasurer for him, after the sale and before a deed can be lawfully executed. Sheesley v. Voorhees, 24 Colo. App. 428, 134 P. 1008 (1913).

Written request for unsigned tax deed immaterial. It is immaterial that a written request for a tax deed is unsigned where demand for the deed was actually made on the treasurer. Sanderford v. Walker Inv. Co., 84 Colo. 203, 269 P. 14 (1928).

Treasurer may issue a correction deed. Where there was some mistake of the county treasurer which made a former deed irregular or defective, a correction deed should be issued. White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946).

Applied in Johnson v. Cork, 106 Colo. 72, 102 P.2d 471 (1940).

II. NOTICE.

A. In General.

No tax deed may be issued until notice is given. Notice to all persons having an interest or title of record to land sold for taxes is a prerequisite to the issuance of a tax deed therefor. French v. Golston, 105 Colo. 578, 100 P.2d 581 (1940).

Parties claiming tax title must prove notice. It is incumbent upon the parties claiming title under a tax deed to prove either that the statutory notice was given or that the assessed valuation rendered it unnecessary to give such notice before the deed would be admissible in evidence. Jackson v. Larson, 24 Colo. App. 548, 136 P. 81 (1913).

Title void. Under this section, proof of notice is necessary, and the notice must state the truth, failing in which, the deed will be void. Young v. Rohan, 77 Colo. 70, 234 P. 694 (1925); Staples v. Todd, 108 Colo. 386, 117 P.2d 1005 (1941); Tewell v. Galbraith, 119 Colo. 412, 205 P.2d 229 (1949).

Tax deed not void for issuance after date in notice. A tax deed is not void for the reason that it is executed and issued after the date fixed by the notice for issuance of the treasurer's deed. Mitchell v. Espinosa, 125 Colo. 267, 243 P.2d 412 (1952).

For when notice is false and defective, see Bottom v. Young, 52 Colo. 533, 125 P. 500 (1912); Flader v. Campbell, 120 Colo. 66, 207 P.2d 1188 (1949).

Where party contesting issuance of tax deed had actual notice and the opportunity to redeem the tax certificates prior to the tax deeds being issued and did not avail himself of such opportunity, such party has not demonstrated any injury to his right to notice under this section. Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

Despite alleged defects and the failure to follow strictly the publication requirements, party contesting the issuance of tax deeds lacks standing to contest the validity of the tax deeds under either paragraph (a) or (b) of subsection (1) of this section. Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

B. Service.

Treasurer's duty to serve notice. This section makes it the duty of the treasurer to serve the notice or cause it to be served. Richardson v. Halbekann, 97 Colo. 175, 48 P.2d 1014 (1935).

This section contemplates that service is complete when the county treasurer registers and deposits in the United States mails the statutory notice directed to the proper postoffice address of the party to be notified. Ford v. Genereux, 104 Colo. 17, 87 P.2d 749 (1939).

Publication required only when actual notice not possible. The evident intent of the general assembly was to require publication only in the event that actual notice cannot be given to the owner and to persons having an interest of record in the land. Henrie v. Greenlees, 71 Colo. 528, 208 P. 468 (1922).

Notice by publication was sufficient where the record interest holder's correct address was not available in the county records. Schmidt v. Langel, 874 P.2d 447 (Colo. App. 1993).

Service on general partner imputes notice to the limited partners. Because the general partner had authority to act for the limited partnership and received appropriate notice of the sale and application for deed, the general partner's notice and knowledge are imputed to each limited partner. BMS Partnership v. Winter Park Devil's Thumb Inv. Co., 910 P.2d 61 (Colo. App. 1995), aff'd on other grounds, 926 P.2d 1253 (Colo. 1996).

Limited partner not entitled to notice of time for issuance of tax deed because limited partner does not own an interest in real property owned by the limited partnership. Winter Park Devil's Thumb Inv. Co. v. BMS Partnership, 926 P.2d 1253 (Colo. 1996).

A tenant occupying the premises must be served with notice, and service on the record owner, without service on the tenant in possession, is not a compliance with subsection (1)(a). Brown v. Davis, 103 Colo. 110, 83 P.2d 326 (1938); Taylor v. Lutin, 106 Colo. 170, 102 P.2d 484 (1940).

"Persons having an interest or title of record". "Persons having an interest or title of record", referred to in subsection (1)(a), is equivalent to "record owners", and that language is held to exclude even holders of known but unrecorded contracts of sale. Godfrit v. Judd, 116 Colo. 489, 182 P.2d 907 (1947).

Failure to serve notice to record owner invalidates deed. Where a diligent inquiry of the records of the clerk and recorder of the county by the treasurer or by the purchaser under a treasurer's deed would have disclosed that a bank had an interest of record in the property and, since the bank was entitled to be served with notice by the treasurer under this section, where the bank did not receive such notice, the treasurer's deed was invalid. Swofford v. Colorado Nat'l Bank, 628 P.2d 184 (Colo. App. 1981).

The original beneficiaries of a note and deed of trust secured by real property, who subsequently transferred the note and deed to a bank as security for indebtedness by an agreement purporting to assign all right, title, and interest in the deed, did not retain an interest in the real property sufficient to warrant notice of pending issuance of a treasurer's deed. Columbus Invs. v. Lewis, 48 P.3d 1222 (Colo. 2002).

Section does not contemplate service on wife. The requirement of subsection (1)(a) that the county treasurer shall serve "notice of such purchase" on every person in actual possession of the land does not necessitate service on a wife living with her husband and occupying the premises involved. Ford v. Genereux, 104 Colo. 17, 87 P.2d 749 (1939).

This section directs the treasurer to make diligent inquiry to learn the address of the record owner and serve notice upon him at that address if it can be learned. Bald Eagle Mining & Ref. Co. v. Brunton, 165 Colo. 28, 437 P.2d 59 (1968).

This section imposes a duty of diligent inquiry upon the county treasurer. Siddoway v. Ainge, 34 Colo. App. 210, 526 P.2d 669 (1974), aff'd, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer held to have not acted with diligence in failing to determine address of record owners prior to issuing a tax deed. Parkison v. Burley, 667 P.2d 780 (Colo. App. 1983).

Deed is void absent diligent inquiry. Where, upon application to a county treasurer for issuance of a treasurer's deed, no "diligent inquiry", required by subsection (1)(a), is made by that official to ascertain the address of the person in whose name the property sold for taxes was taxed, and such "diligent inquiry" would have disclosed the correct address of the owner, and where no notice of application for the tax deed was served upon or received by the owner because of the failure of the official to make "diligent inquiry", and where no statute of limitations is involved, the treasurer's deed will be voided upon the complaint of the owner who thus was deprived of notice concerning the application for issuance of the treasurer's deed. Siler v. Investment Sec. Co., 125 Colo. 438, 244 P.2d 877 (1952); Wittmyer v. Cole, 689 P.2d 720 (Colo. App. 1984).

Diligent inquiry not extended to matters unrelated to subject property. The requirement of diligent inquiry by the treasurer to determine the proper address of record owner of property subject to tax sale does not extend to a search of the treasurer's files for miscellaneous correspondence between the treasurer and owner in matters unrelated to the subject property. Siddoway v. Ainge, 34 Colo. App. 210, 526 P.2d 669 (1974), aff'd, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer need not check records of secretary of state to be diligent. To constitute diligent inquiry upon the part of the county treasurer, he was not obliged to go to the records in the office of the secretary of state to ascertain the address of the corporation in whose name

the property was taxed or its officers. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

Failure of record owner to report change of address irrelevant. Failure of the record owner to advise the county assessor's office regarding his change of address is not relevant in determining whether county treasurer complied with his duty under this statute to make a diligent inquiry. *Siddoway v. Ainge*, 34 Colo. App. 210, 526 P.2d 669 (1974), *aff'd*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer cannot be required to search for current address. The county treasurer cannot be held to a standard requiring him to be familiar with the current addresses of delinquent property tax payers, or to search his correspondence files to ascertain such current addresses, especially where the treasurer was not put on notice that the address in his records was incorrect. *Siddoway v. Ainge*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer cannot blindly rely on assessor's rolls for correct address. Blind reliance on erroneous assessor's rolls, when the correct address was easily available to the treasurer, does not satisfy the diligence requirements of subsection (1)(a), nor does it permit forfeiture of property when the owner of the property does not receive notice of the impending forfeiture because of the lack of diligent inquiry on the part of the treasurer. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

"Diligent inquiry" requires the county treasurer to inquire into information available within county records, but the county treasurer need not inquire into every possible source for the record interest holder's correct address. As a matter of law, the treasurer exercised due diligence by reexamining the county records for an alternative address when the original notice was returned. *Schmidt v. Langel*, 874 P.2d 447 (Colo. App. 1993).

For nonrecord owners who are not in possession, see *DeCola v. Bochaty*, 161 Colo. 95, 420 P.2d 395 (1966); *Ponzio v. Arapahoe Inv. Enter.*, 161 Colo. 102, 420 P.2d 398 (1966).

39-11-129. Tax deed - issuance, execution, requirements.

The words "issue", "issued", "execute", and "executed" when used in this article in connection with a treasurer's deed mean the signing of such a deed by the treasurer, and the delay in the acknowledgment of such a deed or the delivery thereof shall not in any way affect the validity of such deed. If the notice required in section 39-11-128 for a deed is prepared subsequent to three years after the date of sale of a tax lien for delinquent taxes, it shall not be necessary to make any statement in such notice concerning the time of expiration of the period of redemption. The treasurer may sign such treasurer's deed at any time after the time specified therefor in such notice if no redemption has then been made, if the signing of such deed is within five months from the service of said notice as required in section 39-11-128.

Source: L. 64: R&RE, p. 732, § 1. C.R.S. 1963: § 137-11-29. L. 85: Entire section amended, p. 1240, § 20, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 792.

C.J.S. See 85 C.J.S., Taxation, § 1430.

39-11-130. Fees included in redemption money.

In case the treasurer is compelled to serve or to publish such notices in a newspaper, then before any person who may have a right to redeem such land or lot from such tax sale is permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money the entire amount paid by the applicant for a tax deed for such notices, for abstract and search fees, and for the cost of publishing such notices for the use of the person compelled to pay such charges. If the property therein described is redeemed before the expiration of the period of redemption named in such notice, the purchaser or his assigns shall recover, in addition to his interest and costs, the cost of such publication and the abstract and search fee.

Source: L. 64: R&RE, p. 732, § 1. C.R.S. 1963: § 137-11-30. L. 85: Entire section amended, p. 1241, § 21, effective July 1.

C.J.S. See 85 C.J.S., Taxation, § 1321.

39-11-131. Notice of application for deed.

Any number of tracts or parcels of land not exceeding twenty-five, whether contiguous or noncontiguous, or whether claimed or held under one or more titles or ownerships, or whether included in an irrigation district or not so included, and although tax liens for such tracts or parcels of land were separately sold at the tax sale or covered by more than one tax sale certificate, may be included and described in one notice of application for tax deed provided for in section 39-11-128. Such tracts or parcels, not exceeding twenty-five in number, may also be included and described in a single request for tax deed if such notice and the service thereof and such request are in conformity with section 39-11-128 in other respects. The name of the person in whose name the land for which a tax lien was sold was taxed or specially assessed for the year for which the tax lien was sold shall be prominently displayed in said notice at or near the beginning thereof and near or with a reference to the

number of the tax sale certificate and the description of the land involved, sufficient to enable identification of the land with the name of the person assessed if all certificates so sought to be included in a single notice or request are held by but one person, or jointly held by more than one person.

Source: L. 64: R&RE, p. 733, § 1. C.R.S. 1963: § 137-11-31. L. 85: Entire section amended, p. 1241, § 22, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 791.

C.J.S. See 85 C.J.S., Taxation, § 1408.

39-11-132. Prior notices or requests containing more than one parcel - validation. (Repealed)

Source: L. 64: R&RE, p. 733, § 1. C.R.S. 1963: § 137-11-32. L. 75: Entire section repealed, p. 1480, § 8, effective July 1.

39-11-133. Suit to quiet title.

Suit to quiet title or to try title may be maintained by the grantee or his successors for all or any one or more of the parcels or tracts acquired under tax deed issued pursuant to said notices and requests, and it shall not be a defense or ground of objection to such action that there is a misjoinder of parties or causes of action; but if a defense to such action or a counterclaim is interposed by a claimant to one or more of said parcels, less than all, then the action shall be tried as between the plaintiff and such claimant, separately from the suit as to other parties and other parcels.

Source: L. 64: R&RE, p. 733, § 1. C.R.S. 1963: § 137-11-33.

C.J.S. See 85 C.J.S., Taxation, §§ 1492-1495.

39-11-134. Defects in tax deed, effect.

Invalidities or defects in or concerning one or more tax deeds, titles, or certificates, or in proceedings relating thereto, shall have no effect on other deeds, titles, or certificates, and redemption from one or more sales shall be without effect as to other sales, titles, or certificates; and, in case of redemption from one or more sales, the treasurer shall compute and collect a fair proportion, as nearly as may be, of the costs, fees, and charges required by law to be paid on redemption from tax sales.

Source: L. 64: R&RE, p. 734, § 1. C.R.S. 1963: § 137-11-34.

39-11-135. Form of tax deed.

Deeds executed by the treasurer under the provisions of this article shall be substantially in the following form:

Know all men by these presents, that, whereas, the following described real property, viz: (description of property taxed), situated in the county of _____, and state of Colorado, was subject to taxation for the year (or years) A.D. 20....;

And, whereas, the taxes assessed upon said property for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and, whereas, the treasurer of the said county did, on the _____ day of _____, A.D. 20...., by virtue of the authority vested in him by law, at the sale begun and publicly held on the _____ day of _____, A.D. 20...., expose to public sale at the office of the treasurer, in the county aforesaid, in substantial conformity with the requirements of the statute in such case made and provided, the tax lien on the real property above described for the payment of the taxes, delinquent interest, and costs then due and remaining unpaid on said property;

And, whereas, at the time and place aforesaid, _____ of the county of _____ and _____ of _____ bid on the tax lien on all of the above described property the sum of _____ dollars and cents, being the whole amount of taxes, delinquent interest, and costs then due and remaining unpaid upon said property for that year, and the said having offered in his said bid to pay the sum of _____ dollars and cents in excess of said taxes, delinquent interest, and costs, and the said bid being the largest amount which any person offered to pay in excess of the said taxes, delinquent interest, and costs so due upon said property for that year (or those years), and payment of the said sum having been made by him to the said treasurer, the said tax lien on such property was stricken off to him at that price;

And, whereas, the said _____ did, on the _____ day of _____, A.D. 20...., duly assign the certificate of the sale of the tax lien on the property as aforesaid, and all his rights, title, and interest in said property, to _____ of the county of _____, and _____ of _____;

And, whereas, at the sale so held as aforesaid by the treasurer, no bids were offered or made by any person or persons for the tax lien on said property, and no person or persons having offered to pay the said taxes, delinquent interest, and costs upon the said property for that year, and the treasurer having become satisfied that no sale of the tax lien on said property could be had, therefore the said tax lien on said property was, by the then treasurer of the said county, stricken off to the said county, and a certificate of sale was duly issued therefor to the said county in accordance with the statute in such case made and provided;

And, whereas, the said county, acting by and through its treasurer, and in conformity with the order of the board of county commissioners of the said county, duly entered of record on the day of, A.D. 20.... (the said day being one of the days of a regular session of the board of county commissioners of said county), did duly assign the certificate of sale of the tax lien on said property, so issued as aforesaid to said county, and all its rights, title, and interest in said property held by virtue of said sale;

And, whereas, the said (or) has paid subsequent taxes on said property to the amount of dollars and cents;

And, whereas, more than three years have elapsed since the date of the said sale, and the said property has not been redeemed therefrom as provided by law;

And, whereas, the said property was valued for assessment for that year at the amount of

And, whereas, all the provisions of the statutes prescribing prerequisites to obtaining tax deeds have been fully complied with, and are now of record, and filed in the office of the treasurer of said county;

Now, therefore, I,, treasurer of the county aforesaid, for and in consideration of the sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell the above and foregoing described real estate unto the said (or), his heirs and assigns, forever, subject to all the rights of redemption by minors, or incompetent persons, as provided by law.

In witness whereof, I,, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto set my hand and seal this day of, A.D. 20....

.....
(Seal) Treasurer
STATE OF COLORADO)
) ss.

County of

The foregoing instrument was acknowledged before me this day of, 20...., by as treasurer of said county.

Witness my hand and official seal. (If notary public, state date commission expires).

(Seal)
.....
Title of Officer

Source: L. 64: R&RE, p. 734, § 1. C.R.S. 1963: § 137-11-35. L. 69: p. 1124, § 1. L. 85: Entire section amended, p. 1241, § 23, effective July 1. L. 92: Entire section amended, p. 2232, § 23, effective April 9.

Analysis

I. General Consideration.

II. Necessary Recitals in Deed.

III. Defects Voiding Deed on Its Face.

IV. Deed Conveying Several Tracts.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 885.

C.J.S. See 85 C.J.S., Taxation, § 1496.

Law reviews. For note, "Tax Deeds in Colorado", see 18 Rocky Mt. L. Rev. 393 (1946).

General assembly has the authority to prescribe a tax deed's form and requisites. Sayre v. Sage, 47 Colo. 559, 108 P. 160 (1910); Minter v. King, 27 Colo. App. 233, 148 P. 275 (1915).

Treasurer must comply with statutory provisions. A treasurer, in executing deeds, acts under a naked statutory power, and he must comply substantially with the applicable statutory provisions. The form of a treasurer's deed is a special one, and it will not be assumed that the general assembly intended to modify it in any way by subsequent statute, unless the intention to do so clearly appears. Colpitts v. Fastenau, 117 Colo. 594, 192 P.2d 524 (1948).

Treasurer's affidavit prerequisite to valid tax deed. An affidavit of the treasurer, in substantial compliance with § 39-11-103, is a prerequisite to a valid tax deed. Norris v. Kelsey, 23 Colo. App. 555, 130 P. 1088 (1913).

Tax deed must be according to form. In order to give color of title, the instrument of conveyance must at least be good in point of form, profess to convey the title, and be properly and duly executed. Dussart v. Abdo Mercantile Co., 57 Colo. 423, 140 P. 806 (1914).

The form of a deed prescribed for cash purchasers should be substantially followed as far as its terms are applicable to the county as a bidder, and it should be varied only so far as may be necessary to show the truth of the transaction in substance. Dyke v. Whyte, 17 Colo. 296, 29 P. 128 (1892).

Controlling date as to when deed becomes effective is the date of delivery. Sanderford v. Walker Inv. Co., 84 Colo. 203, 269 P. 14 (1928).

Applied in United States Sec. & Bond Co. v. Wolfe, 27 Colo. 218, 60 P. 637 (1900); Carnahan v. Sieber Cattle Co., 34 Colo. 257, 82 P. 592 (1905); Bryant v. Miller, 48 Colo. 192, 109 P. 959 (1910); Knoch v. County of Mesa, 159 Colo. 241, 411 P.2d 1 (1966).

II. NECESSARY RECITALS IN DEED.

No title acquired to improvements unless described in tax deed. Where tax deeds do not describe improvements or the land to which they are incident, the holders of the deeds acquire no title to such improvements. Smith v. Highland Mary Mining, Milling & Power Co., 82 Colo. 288, 259 P. 1025 (1927).

Deed containing proper recitals is prima facie evidence as to legal prerequisites. Richardson v. Halbekann, 97 Colo. 175, 48 P.2d 1014 (1935); Walter v. Harrison, 101 Colo. 14, 70 P.2d 335 (1937); White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946); Grusing v. Parke, 120 Colo. 555, 212 P.2d 102 (1949).

The recitals in a tax deed must generally be taken as true in the absence of evidence to the contrary. Shaw v. Pioneer State Bank, 81 Colo. 528, 256 P. 636 (1927).

Statutory tax deed fair on face. A tax deed in statutory form, containing no affirmative recitals which state that the prerequisites to obtaining it have been complied with, is fair and not void on its face. North Am. Realty Co. v. Brady, 77 Colo. 56, 234 P. 1054 (1925).

Recitals in correcting deed prevail over former recitals. Positive affirmative recitals in a correcting tax deed must prevail over former recitals in an invalid first deed. Shaw v. Pioneer State Bank, 81 Colo. 528, 256 P. 636 (1927).

III. DEFECTS VOIDING DEED ON ITS FACE.

Deed showing that sale was in violation of a positive statute is void. Gomer v. Chaffee, 6 Colo. 314 (1882); Knowles v. Martin, 20 Colo. 393, 38 P. 467 (1894).

Deed showing incorrect location of sale is void. A deed which shows upon its face that the sale was held at a place other than that designated by statute is void. Crisman v. Johnson, 23 Colo. 264, 47 P. 296, 58 Am. St. R. 224 (1896).

Deed failing to state amount of subsequent taxes paid by assignee. A tax deed based upon a sale to the county and a subsequent assignment of the certificate, which fails to state the amount of taxes assessed on the land subsequent to the date of the certificate and which fails to state the amount of subsequent taxes paid by the assignee is void upon its face. Empire Ranch & Cattle Co. v. Neikirk, 23 Colo. App. 392, 128 P. 468 (1897); Empire Ranch & Cattle Co. v. Gibson, 23 Colo. App. 399, 128 P. 472 (1913).

Failure to recite date of transfer of county tax certificate renders deed void. The failure of a tax deed based upon a tax certificate originally issued to the county under § 39-11-108 and assigned by the county to the grantee in the tax deed to recite the date and manner of the transfer of the certificate renders the deed void on its face. Empire Ranch & Cattle Co. v. Neikirk, 23 Colo. App. 392, 128 P. 468 (1913).

Deed failing to show name of officer assigning certificate void. A deed showing a sale to the county and an assignment of the certificate of purchase by the county, "by its proper officers", but not showing by name or official title what officer made the assignment, is void upon its face. Poage v. E. H. Rollins & Sons, 24 Colo. App. 537, 135 P. 990 (1913); Emerson v. Valdez, 24 Colo. App. 458, 135 P. 137 (1913).

Deed showing county as purchaser on first day of sale void. A deed which shows that the land was sold to the county on the first day of the sale is void on its face. Dussart v. Abdo Mercantile Co., 57 Colo. 423, 140 P. 806 (1914).

Tax deed showing a wrong date is void on its face. Hamer v. Glenn Inv. Co., 75 Colo. 423, 226 P. 299 (1924).

Evidence aliunde not admissible to contradict recitals of deed void on its face. Evidence aliunde, for the purpose of showing that all preliminary steps up to the time of the tax sale were valid in all respects, was not admissible to contradict and vary the positive recitals of the tax deeds which make them void on their face, although, in a suit to reform such tax deeds so as to speak the truth, it might have been admitted and become sufficient with other evidence to authorize a court of equity to decree the reformation. Emerson v. Valdez, 24 Colo. App. 458, 135 P. 137 (1913); Poage v. E. H. Rollins & Sons, 24 Colo. App. 537, 135 P. 990 (1913).

If extraneous evidence is necessary to show illegality, deed is not void on its face. North Am. Realty Co. v. Brady, 77 Colo. 56, 234 P. 1054 (1925).

Tax deed void on its face cannot set statute of limitations in motion. *Jackson v. Larson*, 24 Colo. App. 548, 136 P. 81 (1913).

Extrinsic evidence may be considered only on the issue of the validity of the sale and not to validate a treasurer's deed that is void on its face. *Timroth v. Oken*, 62 P.3d 1042 (Colo. App. 2002).

IV. DEED CONVEYING SEVERAL TRACTS.

Tax deed is not objectionable because it conveys several contiguous tracts of land. *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

Where a tax deed conveys title to several tracts of land, and the deeds show that they were advertised separately and that the purchasers bid for them separately, this is sufficient to show that they were sold separately. *Waddingham v. Dickson*, 17 Colo. 223, 29 P. 177 (1892); *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

Selling noncontiguous tracts en masse for gross sum voids deed. A tax deed is void on its face, where it shows that noncontiguous tracts of land were sold en masse for a gross sum. *Norris v. Kelsey*, 23 Colo. App. 555, 130 P. 1088 (1913).

39-11-136. Treasurer to execute deed - effect.

(1) The deed shall be signed by the treasurer in his official capacity and when so signed shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed and also all right, title, interest, and claim of the state and county thereto. Such deed may be acknowledged in the same manner as other deeds to real estate and, if so acknowledged and recorded in the proper county, shall be prima facie evidence of the following facts:

(a) That the real property conveyed was subject to taxation for the year or years stated in the deed;

(b) That the taxes were not paid at any time before the sale;

(c) That the real property conveyed had not been redeemed from the sale at the date of the deed;

(d) That the property had been listed and assessed at the time and in the manner required by law;

(e) That the taxes were levied according to law;

(f) That the tax lien on said property was advertised for sale in the manner and for the length of time required by law;

(g) That the tax lien on said property was sold for delinquent taxes as stated in the deed;

(h) That the grantee named in the deed was the purchaser, or the heir at law, or the assignee of such purchaser;

(i) That the sale was conducted in the manner required by law;

(j) That the deed was properly signed, acknowledged, and delivered by the treasurer.

(2) All the right, title, interest, and estate conveyed by any such deed executed before August 1, 1964, by the treasurer shall be deemed to have vested in the purchaser at the time such deed was signed by the treasurer in his official capacity.

(3) Execution of a deed pursuant to this section shall not affect the existence of any public or private roads, rights-of-way, conservation easements, other easements, or equitable servitudes that run with land and have both benefits and burdens, all as claimed or existing prior to the execution of such deed.

Source: L. 64: R&RE, p. 736, § 1. C.R.S. 1963: § 137-11-36. L. 85: (1)(f) and (1)(g) amended, p. 1243, § 24, effective July 1. L. 93: (3) added, p. 305, § 4, effective April 7. L. 2001: (3) amended, p. 10, § 1, effective August 8; (3) amended, p. 308, § 1, effective August 8.

Editor's note: Amendments to subsection (3) by House Bill 01-1082 and House Bill 01-1321 were harmonized.

Analysis

I. General Consideration.

II. Deed as Prima Facie Evidence.

III. Burden of Proving Tax Deed Invalid.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 792.

C.J.S. See 85 C.J.S., Taxation, §§ 1457-1460.

Law reviews. For note, "The Effect of a General Tax Sale on the Special Assessment Lien", see 20 Rocky Mt. L. Rev. 288 (1948). For note, "The Effect of Tax Titles Upon Easements and Restrictions Upon the Use of Land in Colorado", see 33 Dicta 228 (1956). For article, "The Tax Deed -- Modern Movement Towards Respectability", see 34 Rocky Mt. L. Rev. 181 (1962).

Valid tax deed extinguishes all previous encumbrances. *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919); *Sanderford v. Walker Inv. Co.*, 84 Colo. 203, 269 P. 14 (1928); *Benedict v. Coriolanus Corp.*, 30 Colo. App. 306, 491 P.2d 985 (1971).

Title by adverse possession vanishes when treasurer issues deed for unpaid taxes. *Linville v. Russell*, 168 Colo. 459, 452 P.2d 18 (1969).

Unless claim of adverse possession asserted prior to issuance of treasurer's deed. Where claims to ownership of real property based upon adverse possession are asserted in a judicial proceeding to quiet title prior to the issuance of the treasurer's deed and payment of taxes has been tendered, the policy considerations compelling application of the absolute rule that title by adverse possession vanishes upon issuance of a treasurer's deed do not apply. *First Nat'l Bank v. Fitzpatrick*, 624 P.2d 927 (Colo. App. 1981).

Omission of inked scroll around word "seal" of no import. Where there appears next to the county treasurer's signature, the printed word "seal", encircled by a printed scroll, the omission of an inked scroll on the deed has no legal import. *Linville v. Russell*, 168 Colo. 459, 452 P.2d 18 (1969).

Tax deed cannot pass title to previously severed mineral rights. A tax deed does not pass title to oil and mineral rights which have previously been severed from the surface and on which no proper assessment has been made. *Mitchell v. Espinosa*, 125 Colo. 267, 243 P.2d 412 (1952).

Purchaser with general tax deed entitled to maintain action. A purchaser of lands at a tax sale, having obtained the treasurer's deed, may maintain a bill against one holding a certificate of the sale of the same premises for the nonpayment of a special tax, which was invalidated by the sale for the general tax. *City & County of Denver v. Keller*, 48 Colo. 54, 108 P. 998 (1910).

Showing of substantial compliance required. A party asserting a claim to lands under tax proceedings must show at least substantial compliance with this article. *McPherrin v. Paul*, 21 Colo. App. 154, 120 P. 1051 (1912).

Defects in tax deed must be alleged in pleadings. Defects in a tax deed good on its face cannot be shown in the trial unless they have been pointed out in the pleadings; but it is not necessary that this be done in any particular manner or exclusively by the party relying on the defects. It is sufficient if it clearly appears from the pleadings that certain defects are relied upon and an issue is made as to their existence. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

Sale without proper notice invalid although deed executed and recorded. Among other prerequisites to a valid sale of land for taxes is the giving of notice thereof, and, when it is shown that such notice has not been given in substantial conformity with this article, the sale will be adjudged invalid notwithstanding a tax deed in proper form may have been duly executed and recorded. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892); *Paine v. Palmborg*, 20 Colo. App. 432, 79 P. 330 (1905).

Claimant under invalid tax deed may assert right of reimbursement. One claiming title under an invalid tax deed may assert the right to reimbursement for taxes paid as against the holder of the regular title from the government, but a subsequent valid tax deed cuts off the right. *Young v. Rohan*, 77 Colo. 70, 234 P. 694 (1925).

Only when a deed issues does a tax lien purchaser acquire all right, title, interest, and estate of the former owner in the land conveyed. *Hughey v. Jefferson County Bd. of Comm'rs*, 921 P.2d 76 (Colo. App. 1996).

Applied in United States Sec. & Bond Co. v. Wolfe, 27 Colo. 218, 60 P. 637 (1900); *Lovelace v. Tabor Mines & Mills Co.*, 29 Colo. 62, 66 P. 892 (1901); *Richard v. Beggs*, 31 Colo. 186, 72 P. 1077 (1903); *Imperial Sec. Co. v. Morris*, 57 Colo. 194, 141 P. 1160 (1914); *Hamer v. Glenn Inv. Co.*, 75 Colo. 423, 226 P. 299 (1924); *Pyles v. Portland Gold Mining Co.*, 76 Colo. 598, 233 P. 618 (1925); *City & County of Denver v. Bach*, 92 Colo. 594, 22 P.2d 1114 (1933).

II. DEED AS PRIMA FACIE EVIDENCE.

Deed prima facie evidence of facts occurring before or at time of sale. The things of which the tax deed is made prima facie evidence relate to facts which occurred before or at the time of the sale and not to acts which the cash purchaser is required to perform subsequent to the sale and as a further condition precedent to his right to a deed. *Carnahan v. Sieber Cattle Co.*, 34 Colo. 257, 82 P. 592 (1905); *Sternberger v. Moffat*, 44 Colo. 520, 99 P. 560 (1908); *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

Tax deed is evidence only of matters declared so by this section. The party relying upon a tax deed as evidence must still show the assessed value of the land, that the notice required by § 39-11-131 was given, whether the land was vacant or occupied, and, if occupied, that notice was given to the occupant as well as to all other persons specified in the statute. *Mitchell v. Trowbridge*, 47 Colo. 6, 105 P. 878 (1909).

Deed prima facie evidence of title conveyed. It is apparent that it was the intention of the general assembly to provide that, when a duly executed and recorded tax deed shows that the statutory requirements for the assessment and collection of taxes have been substantially complied with, the deed shall be prima facie evidence of title to the property, thereby conveyed in favor of the purchaser, his heirs, and assigns, as against the former owner. *Dyke v. Whyte*, 17 Colo. 296, 29 P. 128 (1892); *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948); *Rock v. Fastenau*, 122 Colo. 41, 219 P.2d 781 (1950); *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Evidence that property subject to taxation. A tax deed is prima facie evidence, as provided in subsection (1)(a), that the property described therein was subject to taxation, and the introduction into evidence of a tax deed establishes a prima facie title in the grantee. *Mitchell v. City of Denver*, 33 Colo. 37, 78 P. 686 (1904).

Deed not prima facie evidence that subsequent taxes paid. The form of the deed prescribed by § 39-11-135 contains a recital that subsequent taxes were paid. Subsection (1) of this section does not make the deed prima facie evidence of that fact, but clearly the statutory recital must be given that effect. *Richardson v. Halbekann*, 97 Colo. 175, 48 P.2d 1014 (1935).

Unexecuted deed not evidence of anything. A tax deed not executed as required by this section is not prima facie evidence of anything. *Eaches v. Johnston*, 46 Colo. 457, 104 P. 940 (1909).

Officials' inability to remember procedure followed insufficient to overcome recitals. Evidence that officials are unable to remember the precise procedure they followed is insufficient to overcome the effect of their own recitals in the affidavits and the deed itself. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Executing and recording of deeds as provided by this section. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892).

III. BURDEN OF PROVING TAX DEED INVALID.

Presumption of regularity rebuttable. The treasurer's deed is prima facie evidence of the regularity of the proceedings, but the presumption of regularity raised is a rebuttable one; when evidence is presented which shows that the proceedings did not follow the statutory requirements, the deed must be set aside. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968); *Arabasz v. Schwartzberg*, 943 P.2d 463 (Colo. App. 1996).

Claimant under title must prove preliminary steps to sale. A party claiming under a tax title has the burden of proving the preliminary steps leading up to the sale. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

Burden of overthrowing deed upon adverse claimant. The burden of overthrowing a tax deed, regular in form, is upon the party claiming adversely thereto. *Waddingham v. Dickson*, 17 Colo. 223, 29 P. 177 (1892); *Knight v. Boring*, 38 Colo. 153, 87 P. 1078 (1906); *Grusing v. Parke*, 120 Colo. 555, 212 P.2d 102 (1949).

39-11-137. Validation of acknowledgments of tax deeds. Any tax deed executed by a treasurer pursuant to section 39-11-135, if acknowledged in conformity with the provisions of section 38-35-101, C.R.S., shall be considered for all purposes as having been properly acknowledged, and such acknowledgment shall carry with it the presumptions provided for by section 38-35-101, C.R.S.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-37.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 *Dicta* 281 (1949).

39-11-138. When successor of treasurer shall act. If any treasurer dies, resigns, or is removed from office or his term of office expires after selling any tax liens on any real estate for delinquent taxes and before executing a

certificate or deed for the same, his successor in office shall execute such certificate or deed in the same manner that the treasurer making such sale might have done.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-38. L. 85: Entire section amended, p. 1243, § 25, effective July 1.

39-11-139. Posting list of tax sale certificates and tax deeds. No later than the fifteenth day of January of each year, each county treasurer shall deliver to the county clerk and recorder of the county treasurer's county a list showing all tax certificates theretofore issued and held in the name of the county and a list of all property the title to which has been acquired by the county through issuance of a tax deed. A copy of such lists shall be posted in a conspicuous place in the courthouse for not less than thirty days.

Source: L. 67: p. 803, § 5. C.R.S. 1963: § 137-11-49. L. 93: Entire section amended, p. 440, § 8, effective July 1.

39-11-140. Tax deed recorded - entry. When any tax deed is filed for record, the county clerk and recorder shall also enter the name of the grantee in the proper column of his record of land for which a tax lien was sold for delinquent taxes.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-39. L. 85: Entire section amended, p. 1243, § 26, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, § 792.

C.J.S. See 85 C.J.S., Taxation, §§ 1433-1435.

39-11-141. Action to determine validity of certificates. Whenever any county or city and county in this state holds tax sale certificates which are believed by the board of county commissioners to be void for irregularity in the assessment of property or sale of a tax lien on property or otherwise, the board of county commissioners of the county or city and county may institute an action in the district court of the county, under the provisions of article 51 of title 13, C.R.S., to have the matter determined as to whether said certificates are void. Such actions shall be brought in the name of the board of county commissioners. Any number of such certificates may be included in one action, and the fee owners of record of the tax liens on the lands on account of the sale of which the certificates were issued shall be made defendants in the action. If any defendant is a nonresident of the state or cannot be found, service of summons may be had upon such defendant in accordance with the provisions of rule 4 of the Colorado rules of civil procedure. If the court, by its decree, finds and determines that any such certificate is void, then the tax lien on the real estate on account of the sale of which such certificate was issued shall be resold for taxes at the next succeeding sale for delinquent taxes; and if the irregularity on account of which such certificate was held void is in the assessment of the property, then the board of county commissioners shall direct the assessor to reassess the same, and, if the delinquent taxes are not thereafter duly paid pursuant to such reassessment, the tax lien on such property shall likewise be sold at the next delinquent tax sale following such reassessment. No appeal shall lie from the final decree of the court in cases brought under this section. No costs of the action shall be assessed against any defendant who files a disclaimer or fails to appear in the action.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-40. L. 85: Entire section amended, p. 1244, § 27, effective July 1.

39-11-142. Disposition of certificates held by counties. (1) In all cases where a tax lien on real estate has been struck off to the county at tax sales and the county has held the certificate of sale for three years or more, the board of county commissioners may apply for and receive a tax deed in like manner as is provided by law in the case of delinquent tax sale certificates held by individuals. The board of county commissioners, whenever the county becomes entitled to a tax deed, may cause the treasurer to issue, serve, and publish notices, pursuant to law, of application for such tax deed in like manner as in the case of individual certificate holders.

(2) In cases where the county has held the tax certificate for five years or more and such real estate is not located within the limits of any incorporated town or city within the said county, the county may include in one request or demand any or all separate parcels of real estate for which it holds tax sale certificates for sales in any one year, and the board of county commissioners may apply for and receive tax deeds therefor. In cases where the county has held the tax certificate for eight years and in the opinion of the board of county commissioners such real estate is not used, operated, or maintained wholly or in part in the interest or for the benefit of the public, said board shall apply for and receive a tax deed therefor.

(3) Upon making application in the case of tax certificates held by the counties for five years or more, the treasurer shall not be required to give the notice that a request or demand for tax deed has been made upon him provided for in section 39-11-128. The treasurer, in lieu of such notice, at least sixty days before the day said tax deed issues, shall give notice by

registered or certified mail, addressed to the last-known residence of the person in whose name the real estate is assessed for the years during which said taxes have not been paid, that a tax deed has been applied for on the particular described property and that said tax deed will issue on a day certain. The treasurer shall also post in a public place in the county courthouse, at least sixty days before said deed issues, a notice stating that a deed will be issued to the county on the real estate described in said notice. Said notice shall contain the name of the person to whom the property is assessed together with the date said tax deed will issue.

(4) In all cases, the owner of the property shall have the right of redemption of the property as provided by law.

(5) Any tax deed, when issued to the county, shall be duly recorded, but no fee shall be required to be paid therefor. Thereafter, the board of county commissioners shall list such property for sale and post such list in the county courthouse and, out of the county general fund, may make such essential repairs thereon and pay such premiums for fire insurance as are necessary for the protection and preservation of any improvements on such property. The board of county commissioners, after a county has acquired such tax deed, in its discretion, may institute and prosecute suits to quiet the title to any such real estate so acquired under such tax deeds.

(6) (a) In all cases where a tax lien on real property has been struck off to the county at a tax sale and the county has held the certificate of sale for thirty years or more without obtaining a tax deed as provided in this section, then such certificate may be declared void and of no effect.

(b) It is the duty of the treasurer at least once each year to prepare and present, at any regular or special meeting of the board of county commissioners, a list of all tax liens on all real property struck off to the county and all certificates of sale relating thereto, which certificates have been held by the county for thirty years or more without obtaining a deed or being otherwise disposed of under this article.

(c) Upon being presented with such list, the board of county commissioners shall determine that the tax liens were struck off to the county, that such certificates of sale relating thereto have been held by the county for thirty years or more, and that no tax deed has been obtained or applied for as provided in this section. Upon making such determination, the board of county commissioners may declare that such certificates are void, and an order to that effect shall be duly entered in the recorded proceedings of the board, which order shall direct the treasurer to cancel such certificates of sale.

(d) Upon receipt of an order of the board of county commissioners declaring that any certificates of sale are void, the treasurer shall record said order in his records and shall cancel all such certificates specified in said order.

(e) Any action concerning a determination and declaration by a board of county commissioners made pursuant to this subsection (6) shall be commenced within one year after the date of the board's order, or said action shall be forever barred.

Source: L. 64: R&RE, p. 738, § 1. C.R.S. 1963: § 137-11-41. L. 67: p. 802, § 2. L. 85: (1) and (6)(a) to (6)(c) amended, p. 1244, § 28, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1403-1408.

39-11-143. Appraisal - county may retain, lease, or sell - definitions.

(1) Whenever real property is conveyed by a treasurer to the county by tax deed under section 39-11-142, the assessor shall annually value the same in the manner prescribed by law for taxable property and shall notify the board of county commissioners of such valuation.

(2) The board of county commissioners has the power to retain for public projects, rent, lease, or sell such real property as provided in this section.

(2.5) If the board of county commissioners retains such real property for a present or future public project, as defined in section 30-20-301 (2), C.R.S., it shall pass a resolution describing the project for which the property is retained. The board of county commissioners may rent or lease any lot or parcel retained for a present or future public project in accordance with subsection (3) of this section. For purposes of this section, using property to generate revenue for the county is not a public project.

(3) The board of county commissioners may lease such real property to an affiliated entity, but no lease shall be for a period exceeding five years. For purposes of this subsection (3), "affiliated entity" means a nonprofit entity with which the county enters into a contract for the delivery of goods or services to the county or to third parties on behalf of the county.

(4) (a) Any such real property that is not retained or leased in accordance with subsection (2.5) or (3) of this section shall be sold at public sale by the board of county commissioners within one year after the property is conveyed to the county; except that the board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Prior to offering such property for sale, the board of county commissioners

shall obtain from the assessor a certificate as to the current actual value and the valuation for assessment of the same. A notice of such sale shall be posted in a public place in the county courthouse at least thirty days before the date of sale, and such notice of sale shall also be advertised in two issues of a newspaper of general circulation in the county in which the property is situated, said newspaper notices to appear one week apart and within the thirty days as above provided. Such notice shall reserve the right upon the part of the board of county commissioners to reject any bid that is less than the value determined by the assessor. Said notice shall be substantially in the following form:

"NOTICE

Public notice is hereby given that the following real property acquired by the County of, Colorado, by tax deed, to wit:

(description of property)

will, according to law, be offered at public sale at the county courthouse,, Colorado, on the day of, 20...., at the hour of to the highest and best bidder. The board of county commissioners reserves the right to reject any bid that is less than the current actual value fixed by the county assessor.

.....
County Clerk and Recorder."

(a.5) The notice of sale posted pursuant to paragraph (a) of this subsection (4) shall contain a statement substantially in the following form: "If this property is at least fifty years old, it may be eligible for inclusion in the state register of historic properties or designation as a landmark. Such property may be eligible for certain rehabilitation grants and incentives.

(b) Such real property shall be sold at public sale for the highest and best bid for any lots or parcels, as determined in the discretion of the board of county commissioners; except that the board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Such real property may be sold in such lots or parcels and upon such terms of payment as the board of county commissioners deems acceptable, but no deed shall be issued until the purchaser has made payment in full. Upon written application of any person, the board of county commissioners shall offer for sale the property requested by such person to be sold; except that no parcel shall be divided for the purpose of such requested sale unless the board of county commissioners specifically permits such division. The board of county commissioners may, prior to the sale of any lot or parcel, reserve or grant streets, alleys, or roads or utilities or other easements, public or private, under such terms and conditions as it may deem advisable.

(5) Such deeds shall be issued by a commissioner to convey, duly appointed by the board of county commissioners, which commissioner shall act upon the direction of the board of county commissioners, but such deed shall be issued without covenants of warranty.

(6) The foregoing provisions of this section shall not apply to any city and county having a population of more than three hundred thousand. Sales and leases by such city and county shall be made in compliance with the applicable provisions of its charter or ordinances. All sales and leases made before August 1, 1964, by such city and county of any real estate acquired by it under tax deeds, whether made or authorized by the board of county commissioners, the mayor of said city and county, or in purported compliance with its charter or ordinances, are deemed valid, and such sales and leases are hereby confirmed. All actions or proceedings to set aside or question the validity of such sales or leases made before August 1, 1964, by such city and county shall be brought within six months from said date and not thereafter. This subsection (6) shall not reinstate any such action or proceeding barred by law before August 1, 1964.

Source: L. 64: R&RE, p. 739, § 1. C.R.S. 1963: § 137-11-42. L. 2004: (1), (2), (3), and (4) amended and (2.5) added, p. 159, § 2, effective August 4.

Editor's note: Section 3 of chapter 43, Session Laws of Colorado 2004, provides that the act amending subsections (1), (2), (3), and (4) and enacting subsection (2.5) applies to property seized by or conveyed to a county on or after August 4, 2004. The act was passed without a safety clause. For an explanation concerning the effective date, see page vii of this volume.

39-11-144. County lands, prior sales validated.

All sales of such real estate made by the board of county commissioners of any county shall be deemed valid, and such sales are hereby confirmed if such sales were made at either public or private sale, whether made by deed issued by the treasurer upon direction of the board of county commissioners or by deed issued by a duly appointed commissioner to convey upon direction of the board of county commissioners.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-43.

39-11-145. Proceeds of sales.

All net proceeds from the sale, lease, or other disposition of such real estate so conveyed to the county by the treasurer shall be paid to the treasurer of such county, and the

treasurer shall distribute said proceeds to the various taxing jurisdictions in which such real estate is situated in the same proportion that the ad valorem taxes levied by each taxing jurisdiction in the preceding calendar year bears to the total of all ad valorem taxes levied on such real estate in the preceding calendar year.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-44. L. 69: p. 1127, § 1.

39-11-146. Lien of special assessment not affected.

Nothing in sections 39-11-143 to 39-11-145 shall be construed to affect in any manner or degree whatsoever the lien of any special assessment to which such real estate and the conveyance thereof by the treasurer is subject under law.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-45.

39-11-147. Treasurer to report payments.

A complete report of all payments made to and accepted by the treasurer under sections 39-11-142, 39-11-143, and 39-11-145 shall be made by him, a copy of which shall be sent to the board of county commissioners of his county, to the administrator, and to the controller at the end of each month.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-46.

39-11-148. Limitations on tax certificates - special improvement liens.

(1) No lien upon real property created by a tax certificate or a certificate of purchase issued by a treasurer on account of any delinquent property taxes or any special assessment of any kind or nature shall remain a lien thereon for a period longer than fifteen years after the original issuance thereof, except as provided in subsection (3) of this section. This section shall not apply to any tax certificate or certificate of purchase issued to and held by the county, city, city and county, or district levying such tax or special assessment; except that, in the event of an assignment of such tax certificate or certificate of purchase so issued to and held by such county, city, city and county, or district, the lien of such tax certificate or certificate of purchase shall cease fifteen years after the date of its issuance subject only to the provisions of subsection (3) of this section.

(2) No treasurer's deed shall issue on any tax sale evidenced by tax certificate or certificate of purchase where such tax certificate or certificate of purchase has ceased to be a lien pursuant to the provisions of this section and application for such treasurer's deed is not pending at the time of the expiration of the limitation period provided for in this section.

(3) In the event of an assignment of a tax certificate or certificate of purchase held by a county, city, city and county, or district levying such tax wherein such certificate is fifteen years old at the time of assignment or will become fifteen years old within one year from the date of such assignment, the assignee thereof shall be entitled to a tax deed in the manner provided by law if such assignee or other legal holder of such certificate institutes proceedings to procure a tax deed by making a demand upon the treasurer for same, as provided by law, within one year from the date of such assignment by the county, city, city and county, or district levying such tax.

(4) Whenever a lien created by a tax certificate has expired by reason of the provisions of this section, the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation, and he shall also make proper entries in the book of sales in his office as follows: "Cancelled by provision of section 39-11-148, C.R.S.", with the date of such entry. He shall also present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall not be entitled to any fees for the issuing of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (4).

(5) Whenever a lien created pursuant to a tax certificate becomes unenforceable pursuant to section 31-25-1119, C.R.S., the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate indicating thereon the date of cancellation and shall make the appropriate entries in the book of sales in his office, as follows: "Cancelled by provision of sections 31-25-1119 and 39-11-148, C.R.S.", with the date of such entry. He shall present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the said certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall

not be entitled to any fees for the issuing and recording of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (5).

Source: L. 64: R&RE, p. 742, § 1. C.R.S. 1963: § 137-11-47. L. 67: p. 802, §§ 3, 4. L. 81: (5) amended, p. 1627, § 40, effective July 1. L. 85: (4) and (5) amended, p. 1245, § 29, effective July 1.

39-11-149. Sales en masse valid.

If two or more noncontiguous lots, tracts of land, or mining claims or portions thereof have not been separately valued and assessed or, having been separately valued and assessed, whether having a common ownership or not, have had tax liens thereof sold en masse for a gross sum for the nonpayment of taxes and charges thereon, then, after seven years from the date of any such sale, such assessment and sale and any tax sale certificate issued thereon shall be deemed valid and legal and shall be so considered in all actions, suits, or proceedings in which is involved the validity of any such assessment, sale, tax sale certificate, or treasurer's deed issued thereon. There is excepted from this section any such action, suit, or proceeding pending on August 1, 1964, wherein any party thereto has or may assert the invalidity of any such assessment, sale, tax sale certificate, or treasurer's deed. Nothing in this section shall be construed to alter, amend, or repeal section 39-11-148.

Source: L. 64: R&RE, p. 743, § 1. C.R.S. 1963: § 137-11-48. L. 85: Entire section amended, p. 1246, § 30, effective July 1.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

39-11-150. Sales of tax liens on severed mineral interests.

Sales of tax liens for delinquent taxes due on severed mineral interests shall take place at the same place and time and under the same circumstances as in this article, but, where the surface estate ownership is coterminous with the severed mineral interest, the owner of the surface estate shall have the right of first refusal to purchase the tax lien on the severed mineral interest, and the surface owner shall be allowed to pay all delinquent taxes due and owing for the severed mineral interest in lieu of the proceeds that would be collected from a tax sale of a tax lien on the severed mineral interest. The treasurer shall notify the surface owner, by mail, at his last-known address, of his right of refusal at least ten days prior to the sale of a tax lien on the severed mineral interest. The surface owner shall have until two days prior to the sale to exercise the right of first refusal. If the surface owner does not exercise his right of first refusal, the tax lien on such severed mineral interest shall be sold. No action for the recovery of a severed mineral interest for which a tax deed was issued under the provisions of this article shall lie unless brought within the same time period as that limiting actions for the recovery of land pursuant to section 39-12-101.

Source: L. 73: p. 1430, § 3. C.R.S. 1963: § 137-11-50. L. 85: Entire section amended, p. 1246, § 31, effective July 1.

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L.J. 1 (1974).

This section does not give a reciprocal right of first refusal to the owner of a severed mineral interest to obtain a tax lien on the surface. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

39-11-151. County officials and employees may not acquire a tax lien or property by sale of a tax lien.

(1) (a) No property for which a tax lien is sold for delinquent taxes under this article shall be conveyed to an elected or appointed county official, to a county employee, or to a member of the immediate family of any such person or to the agent of any such county official or employee, if the tax lien on such property is sold during the time the official or employee holds office or is employed.

(b) No tax lien shall be sold to an elected or appointed county official, to a county employee, or to a member of the immediate family of such person or to the agent of any such county official or employee during the time the official or employee holds office or is employed.

(2) The purchase of any tax lien or the conveyance of any property by tax deed pursuant to this article is exempt from the provisions of this section under the following circumstances:

(a) If the property to be conveyed was owned by the county official or county employee, or by a member of the immediate family of any such person, immediately prior to the sale of a tax lien on such property for delinquent taxes;

(b) If such property is situated within a county other than the county to which such county official or employee is elected, appointed, or employed; or

(c) If the property to be conveyed is a severed mineral interest and, at the time of the conveyance, the county official or county employee is the owner of the surface estate which is coterminous with the severed mineral interest.

(3) Any county official, county employee, or member of the immediate family of any such person, or the agent of any such county official or employee, who knowingly purchases any tax lien or receives a conveyance of property in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 75: Entire section added, p. 1481, § 1, effective June 29. L. 85: (1) and (2) amended, p. 1246, § 32, effective July 1. L. 94: Entire section amended, p. 757, § 12, effective April 20. L. 2002: (3) amended, p. 1555, § 346, effective October 1.

Cross references: (1) For other provisions relating to standards of conduct for public officers and employees, see article 18 of title 24.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

39-11-152. Combined sale of delinquent tax liens and special assessment liens. Whenever provision is made in this article for the sale of a tax lien on property, such sale shall include the sale of any lien for delinquent special assessments on such property which have been certified to the county treasurer for collection. The separate sale of liens for delinquent general taxes and for delinquent special assessments on property is hereby prohibited.

Source: L. 93: Entire section added, p. 81, § 1, effective March 26.

ARTICLE 12 REDEMPTION

39-12-101. Limitation of actions for recovery of land.

39-12-102. Action to recover mining property.

39-12-103. Redemption made - interest.

39-12-104. Redemption of real property of person under disability.

39-12-105. Certificate of redemption.

39-12-106. Entry by county clerk and recorder of redemption certificate. (Repealed)

39-12-107. Fee for entering certificate. (Repealed)

39-12-108. Payment of redemption money.

39-12-109. Payment upon surrender of tax certificate.

39-12-110. Payment when certificate lost.

39-12-111. Land wrongfully sold - repayment.

39-12-112. Allowance for erroneous assessments.

39-12-113. Redemption of proportionate interest.

39-12-101. Limitation of actions for recovery of land.

No action for the recovery of land for which a tax deed was issued under the provisions of article 11 of this title for delinquent taxes shall lie unless the same is brought within five years after the execution and delivery of the deed therefor by the treasurer, any laws to the contrary notwithstanding; except that, when any owner of such land, for which a tax deed has been issued, at the time of the execution and delivery of the deed by the treasurer is under legal disability, it shall be lawful for him to bring a suit or action for the recovery of the land within the period during which he has the right to make redemption of such land from the tax sale upon which the deed is based. When a recovery of any of such land is effected in any suit, action, or proceeding, the value of all improvements made in good faith on such lands, and all sums paid for the tax lien on said land and for improvements, and all costs incident to the issuance and recording of the treasurer's deed, and all taxes and assessments paid thereon after the sale of the tax lien thereof, including the redemption value of all tax sale certificates redeemed, held, or surrendered for redemption by the grantee in such treasurer's deed or his heirs or assigns, shall be ascertained by the court or jury trying the action for recovery and shall be paid, together with interest thereon at the rate of twelve percent per annum, by the person recovering said land to the persons entitled thereto, and the payment of such sum shall be a condition precedent to the entry of judgment or decree in such suit, action, or proceeding. All such treasurer's deeds executed by the treasurer purporting to convey lands and improvements thereon for all purposes shall be deemed to be color of title from and after the time the same is recorded in the office of the county clerk and recorder for the county in which said lands are located. The term "improvements" includes sums and amounts of money expended thereon in good faith by the grantee and his successors and assigns in search of minerals and oil, as well as other expenditures for the improvements of such lands which add to the cost and value thereof.

Source: L. 64: R&RE, p. 743, § 1. C.R.S. 1963: § 137-12-1. L. 85: Entire section amended, p. 1247, § 33, effective July 1.

Cross references: For limitation of actions with respect to persons under disability, see article 81 of title 13.

Analysis

I. General Consideration.

II. Conditions Precedent to Recovery.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 914, 915.

C.J.S. See 85 C.J.S., Taxation, § 1336-1343.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949). For article, "Summary of Denver Bar-Sponsored Bills Passed by General Assembly", see 28 Dicta 173 (1951). For comment on *Fuschino v. Lutin*, see 24 Rocky Mt. L. Rev. 257 (1952). For note, "Adverse Possession in Colorado", see 27 Rocky Mt. L. Rev. 88 (1954). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959).

Section is for the purpose of protecting claimants under tax deeds, and to that end it is provided that an action by the owner shall be barred if not brought within five years after the sale thereof. *Wood v. McCombe*, 37 Colo. 174, 86 P. 319, aff'd, 208 U.S. 226, 28 S. Ct. 263, 52 L. Ed. 464 (1906); *Cripple Creek Trading & Mining Co. v. Stewart*, 100 Colo. 271, 67 P.2d 1032 (1937).

Purpose of section was to give landowner time to redeem land. This section was passed for the purpose of affording any landowner an ample opportunity of redeeming his lands sold for nonpayment of taxes. *Fastenau v. Asher*, 124 Colo. 161, 235 P.2d 587 (1951).

Section is to be liberally construed. *Fastenau v. Asher*, 124 Colo. 161, 235 P.2d 587 (1951).

Statutes of limitation provide sufficient protection for purchasers under tax deeds. The statutes of limitation, appearing in §§ 38-41-111, 39-12-102, and this section, provide sufficient protection for the purchasers of property under tax deeds without further limitations being imposed by the courts. Until the applicable periods of limitation have expired, tax deeds, even though valid on their face, are subject to attack for irregularities in the proceedings. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Tax deed must be in substantial compliance with statutory form prescribed at the time of the tax sale, and a tax deed in statutory form is fair and not void on its face. *Aspen-Western Corp. v. Board of County Comm'rs*, 650 P.2d 1326 (Colo. App. 1982).

"Recovery", "recovering", and "obtain possession" defined. The terms "recovery", "recovering", and "obtain possession", as used in this section, mean not merely the regaining of possession which has been once lost, or the obtaining of possession not theretofore had, but also the retention of possession already had and which has not been disturbed. *Central Realty Co. v. Frost*, 76 Colo. 413, 232 P. 1111 (1925).

Section is no defense in an action to quiet title. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

It applies only to actions for recovery of possession. By its plain language, this section seems not to have been intended as a defense when the removal of cloud from title alone is involved, but instead it is meant to apply as a defense only to actions for the recovery of possession and the ouster from the land of someone in possession. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892).

Action to set aside voidable tax deed. An action brought by the owner of the fee to set aside a tax deed that is not absolutely void, but voidable, is an action for the recovery of land sold for taxes; therefore, this section is applicable. *Phillips v. City & County of Denver*, 115 Colo. 532, 175 P.2d 805 (1946).

Unless action to quiet title in essence one for possession. Where an action is brought to the quiet title against the holder of a tax deed in possession over five years and the holder relies on the limitations of this section, this defense is good, since the action is in reality one for possession of land and not to quiet title. *Vogt v. Hansen*, 123 Colo. 105, 225 P.2d 1040 (1950).

Section inapplicable where premises not sold for taxes. This section does not have any application if the subject matter of the controversy is not sold for taxes, meaning if the rights of the parties are not dependent upon the validity of the tax deed but upon whether it embraces the premises involved. *Denver Trackage & Imp. Co. v. Colorado & S. Ry.*, 58 Colo. 313, 145 P. 707 (1914).

It has no application to the purchaser at a tax sale. It applies solely to the owner of the property, whose title is sought to be divested by the tax proceedings. *Sullivan v. Collins*, 20 Colo. 528, 39 P. 334 (1895).

Section inapplicable unless holder of treasurer's deed in possession. The five-year statute of limitations in this section may not be relied upon as a defense unless the holder of the treasurer's deed is in actual possession of the property at the time the action is commenced. *Welsh v. Levy*, 612 P.2d 80 (Colo. 1980); *Aspen-Western Corp. v. Board of County Comm'rs*, 661 P.2d 1175 (Colo. App. 1982).

To qualify for the protection afforded by this five-year statute of limitations in a quiet title action, the holder of a tax deed must demonstrate actual possession of the property at the time the action is commenced. *Aspen-Western Corp. v. Board of County Comm'rs*, 650 P.2d 1326 (Colo. App. 1982).

Action for recovery barred unless filed within five years. This section bars an action for the recovery of land sold for taxes unless such action is filed within five years from the delivery of the treasurer's deed. *Board of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

All questions with reference to tax proceedings generally barred. The design of this section is, generally, to bar all questions with reference to the tax proceedings, except such as go to the power and jurisdiction of the taxing officers, or the fraud and misconduct of the parties, unless an action is brought within the time limited. *Crisman v. Johnson*, 23 Colo. 264, 47 P. 296 (1896).

Grantee need not wait five years before bringing action. A party whose rights are affected by a tax deed may bring an action within five years to have it set aside, but this limitation does not require the grantee in a tax deed, or those claiming under him, to wait that period before bringing an action to quiet title based upon the deed. *Held v. Houser*, 53 Colo. 363, 127 P. 139 (1912).

Tax deed without effect until recorded. A tax deed is without effect to set in motion the statute of limitations until it is recorded. *Empire Ranch & Cattle Co. v. Lumelius*, 23 Colo. App. 51, 127 P. 452 (1912).

Statute of limitations not set into motion by void deed. A tax deed void on its face does not set in motion the five-year limitation under this section. *Miller v. Weldon*, 26 Colo. App. 108, 140 P. 930 (1914); *Jones v. Empire Ranch & Cattle Co.*, 25 Colo. App. 382, 138 P. 62 (1914); *Buckland v. Fiedler*, 25 Colo. App. 565, 140 P. 472 (1914); *Empire Ranch & Cattle Co. v. Weldon*, 26 Colo. App. 111, 141 P. 138 (1914); *Empire Ranch & Cattle Co. v. Brownson*, 26 Colo. App. 228, 142 P. 421 (1914); *North Am. Realty Co. v. Brady*, 77 Colo. 56, 234 P. 1054 (1925); *Hochmuth v. Norton*, 90 Colo. 453, 9 P.2d 1060 (1932); *Knoch v. County of Mesa*, 159 Colo. 241, 411 P.2d 1 (1960).

Deed not reciting notice given of purchaser's application. A tax deed does not set in motion the five-year statute of limitations where there is no recitation of the notice given of the tax purchaser's intention to apply for his deed. *Sheesley v. Voorhees*, 24 Colo. App. 428, 134 P. 1008 (1913).

Section bars action if the tax deed is fair on its face. *Wood v. McCombe*, 37 Colo. 174, 86 P. 319, aff'd, 208 U.S. 226, 28 S. Ct. 263, 52 L. Ed. 464 (1906); *North Am. Realty Co. v. Brady*, 77 Colo. 56, 234 P. 1054 (1925).

Applied in *Knowles v. Martin*, 20 Colo. 393, 38 P. 467 (1894); *Charlton v. Kelly*, 24 Colo. 273, 50 P. 1042 (1897); *Pueblo Realty Co. v. Tate*, 32 Colo. 67, 75 P. 402 (1904); *Knight v. Boring*, 38 Colo. 153, 87 P. 1078 (1906); *Pollen v. Magna Charter Mining & Milling Co.*, 40 Colo. 89, 90 P. 639 (1907); *Whitehead v. Callahan*, 44 Colo. 396, 99 P. 57 (1908); *Halbouer v. Cuenin*, 45 Colo. 507, 101 P. 763 (1909); *Empire Ranch & Cattle Co. v. Lanning*, 49 Colo. 458, 113 P. 491 (1911); *Empire Ranch & Cattle Co. v. Saul*, 22 Colo. App. 605, 127 P. 123 (1912); *Empire Ranch & Cattle Co. v. Howell*, 23 Colo. App. 265, 129 P. 245 (1913); *Gibson v. Interior Realty & Inv. Co.*, 70 Colo. 5, 201 P. 680 (1921); *Langley v. Young*, 72 Colo. 466, 211 P. 640 (1922); *Bennett v. Rohan*, 73 Colo. 551, 216 P. 1052 (1923); *Fuschino v. Lutin*, 124 Colo. 42, 234 P.2d 906 (1951).

II. CONDITIONS PRECEDENT TO RECOVERY.

Owner must pay tax title claimant amount for which lands sold. This section provides that, as a prerequisite to a recovery of lands by the owner against one claiming under an invalid tax deed, the owner must pay the tax title claimant the amount for which the lands were sold. *Delta Land & Orchard Co. v. Zaninetti*, 64 Colo. 268, 170 P. 964 (1918).

The owner must pay taxes paid by purchaser, with interest. In an action brought to quiet title to certain lands clouded by a void tax deed, the taxes upon which it is based being legal, the owner, as a condition precedent to an absolute decree in his favor, must pay to the defendant the taxes paid by him subsequent to the sale, with interest, in accordance with this section and also the amount for which the property was sold at the tax sale with interest and penalties in accordance with § 39-12-103. *Buchanan v. Griswold*, 37 Colo. 18, 86 P. 1041 (1906); *Central Realty Co. v. Frost*, 76 Colo. 413, 232 P. 1111 (1925).

Taxes need not be paid in action for trespass. This section refers only to land sold for taxes. Where an action is not to recover land but for trespass on land, the claim for reimbursement for taxes paid can only be a claim for mitigation of damages. *Smith v. Highland Mary Mining, Milling & Power Co.*, 82 Colo. 288, 259 P. 1025 (1927).

Recovery of taxes under invalid deed allowed only when record discloses property taxed. He who pays a tax and gets a deed which is invalid can recover only when the record

discloses upon what property the tax was paid and it appears that reimbursement will discharge the tax. *Cripple Creek Trading & Mining Co. v. Stewart*, 100 Colo. 271, 67 P.2d 1032 (1937).

Purchaser to be reimbursed for improvements. That a vendee who remains in possession for a long period of time and who makes improvements and pays taxes necessarily acquires equitable rights is recognized in this section, which provides that the vendee is entitled to reimbursement for expenditures of this nature. *White v. Widger*, 144 Colo. 566, 358 P.2d 592 (1960).

No interest prior to judgment. The value of improvements made by the defendant, allowed to him under this section, does not bear interest prior to judgment. *Hapney v. Dunn*, 26 Colo. App. 412, 142 P. 423 (1914).

39-12-102. Action to recover mining property.

No action shall be maintained for the recovery of mining or placer claims unless such action is brought within a period of two years from the commencement of actual possession obtained under tax deed.

Source: L. 64: R&RE, p. 744, § 1. C.R.S. 1963: § 137-12-2.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 914, 915.

C.J.S. See 85 C.J.S., Taxation, §§ 1336-1343.

Statutes of limitations provide sufficient protection for purchasers under tax deeds. The statutes of limitations, appearing in §§ 38-41-111, 39-12-101, and this section, provide sufficient protection for the purchasers of property under tax deeds without further limitations being imposed by the courts. Until the applicable periods of limitation have expired, tax deeds, even though valid on their face, are subject to attack for irregularities in the proceedings. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Applied in *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

39-12-103. Redemption made - interest.

(1) Real property for which a tax lien was sold under the provisions of article 11 of this title as a result of delinquent taxes may be redeemed by the owner thereof or his agent, assignee, or attorney, or by any person having a legal or equitable claim therein, or by a holder of a tax sale certificate; except that such holder may redeem such real property from any sale of a tax lien thereof made subsequent to the time of the issuance of the tax sale certificate upon which he is relying, and the amount paid for the redemption of the subsequent certificate of purchase shall be endorsed as subsequent taxes paid on the certificate upon which he is relying.

(2) An undivided interest may be redeemed upon payment of a ratable share of the sum required to redeem the whole even though a tax lien for the whole has been sold. In case a tax lien on any tract of land sold for delinquent taxes under the provisions of article 11 of this title belongs to two or more separate and distinct parties in severalty, the treasurer, when satisfied of the fact and upon application of any one of the parties or his agent, assignee, or attorney and upon payment of the proper proportional amount, shall issue a certificate of redemption for such party's interest in said land.

(3) The redemption may be made at any time before the execution of a treasurer's deed to the purchaser or his heirs or assigns upon payment to the treasurer, to be held by him subject to the order of the purchaser, of the amount of taxes, delinquent interest, and costs for which the tax lien on the property was sold, with redemption interest thereon from the date of sale at the rate which is determined as provided in this subsection (3), together with the amount of all taxes accruing on such real property after the sale, paid by the purchaser and endorsed on his certificate of purchase, with redemption interest at the rate which is determined as provided in this subsection (3) on such taxes so endorsed on the certificate of purchase. Any payment under this section shall be deemed received by the treasurer on the date that it is actually received in the treasurer's office. The annual rate of redemption interest shall be nine percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. The commissioner of banking shall establish the annual rate of redemption interest based upon the computation specified immediately above. Such annual rate of redemption interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of redemption interest shall be established in the same manner, to become effective on October 1 of the same year.

(4) If subsequent taxes are paid before the time when they would become delinquent, interest shall be computed only from the time of their delinquency. Such taxes shall bear interest at the annual rate set forth in subsection (3) of this section, and no more, from the

time when the purchaser becomes entitled to a deed up to the time of issuance of such deed.

(5) All statutory fees paid by the purchaser in connection with such certificate shall bear the same rate of interest as the original amount for which the tax lien on the property was sold, the same to be prorated among the several tracts described in said certificates.

(6) In computing the amount of interest due, portions of months shall be counted as whole months.

Source: L. 64: R&RE, p. 744, § 1. C.R.S. 1963: § 137-12-3. L. 69: p. 1126, § 2. L. 71: p. 330, § 12. L. 79: (3) amended, p. 1421, § 3, effective January 1, 1980. L. 81: (3) amended, p. 1861, § 1, effective September 1. L. 85: (1) to (5) amended, p. 1247, § 34, effective July 1. L. 89: (4) amended, p. 1467, § 34, effective June 7. L. 92: (3) amended, p. 2233, § 24, effective April 9.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 910, 911.

C.J.S. See 85 C.J.S., Taxation, §§ 1247, 1248.

Law reviews. For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

The policy underlying the right of redemption is the general policy of the law that no man shall forfeit his estate because of his inability to meet engagements on the day prescribed by law for their payment. Because the law favors redemption, redemption statutes are construed liberally to afford property owners ample opportunity to redeem. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

In Colorado, delinquent taxpayers have no constitutional right to redemption. Instead, redemption is a statutory privilege created by the general assembly, which may be exercised only as provided by statute. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

Section is to be liberally construed in favor of the redemptioner. *Bean v. Westwood*, 101 Colo. 288, 73 P.2d 386 (1937).

Attempted redemption by person having no interest in the property is ineffectual and may be set aside by the holder of a valid certificate of purchase obtained at a tax sale. *Saunders v. Bankston*, 31 Colo. App. 551, 506 P.2d 1253 (1972).

One having lease and option to purchase may redeem. One having a lease and an option to purchase land, having exercised his option and received a deed from the reputed owner, thereby acquires an equitable claim to the property under which he has the right to redeem it from a tax sale. *Bean v. Westwood*, 101 Colo. 288, 73 P.2d 386 (1937).

Assignee with security interest in property entitled to redeem. An assignee of a note, which note carries with it a security interest in real property, has a right to redeem and has an interest in the property. *Swofford v. Colorado Nat'l Bank*, 628 P.2d 184 (Colo. App. 1981).

One with a lien interest in land may redeem from tax sale. *Miller v. First Nat'l Bank*, 164 Colo. 449, 435 P.2d 899 (1968).

Lienor's acquisition of title cannot cut off other lienor. Equity will not permit one lienor to acquire a tax title while cutting off other lienor but will treat his purchase of the tax title as a payment of the taxes by a redemption, thereby giving him a preferred lien to the extent paid out to redeem. *Miller v. First Nat'l Bank*, 164 Colo. 449, 435 P.2d 899 (1968).

Amount payable on redemption not purchase price, but amount of tax involved. Where, at a tax sale, a certificate of purchase is issued to the county which thereafter is sold for a price fixed by a resolution of the board of county commissioners, the amount payable on redemption is not the sum paid by the purchaser as established by the board but the amount of the tax involved, which sums may be very different. *Tarabino Real Estate Co. v. Dunlavy*, 105 Colo. 523, 99 P.2d 926 (1940).

Redemption interest is a statutorily determined penalty exacted from the taxpayer for the privilege of redemption. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

The plain language of subsection (3), which explicitly warns a taxpayer that redemption interest will accrue based on the amount of taxes paid by the purchaser, did not provide the taxpayers with any basis to conclude that if they failed to pay their property taxes in a timely manner, and later redeemed their property, that the redemption interest on the amount paid by the purchaser would not apply to them. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

Colorado scheme does not guarantee predeprivation relief; however, due process requirements were met since the taxpayers received their "full refund" - the over assessed

tax plus refund interest - even though redemption interest, which due process does not extend to, was not refunded. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

County was not unjustly enriched by the payment of redemption interest calculated on the basis of an assessment determined to be excessive at a date after the county conducted the tax lien sale. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

County treasurer acts in a quasi-judicial capacity in matters concerning redemption of property from tax sales. *Johnson v. Dunkel*, 132 Colo. 383, 288 P.2d 343 (1955).

Treasurer receives redemption money as agent of purchaser. Subsection (3) provides that the redemption money may be paid to the treasurer, but that officer holds it subject to the order of the purchaser; therefore, he receives it not as the agent of the state or county but as the agent of the purchaser. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

No mandamus to release land except upon payment of entire sale amount. Where land covered by a deed on trust is sold for taxes, part of which were assessed against the land and part of which were assessed as the personal tax of the owner, in a proper proceeding, the beneficiary of the trust deed is entitled to a release as to his interest in the land from the tax sale by payment only of the amount properly chargeable against the land, but mandamus will not lie against the county treasurer to compel him to release the land from the tax sale except upon payment of the entire amount for which it was sold, with interest and penalties. The proper remedy would be a proceeding in equity against the holder of the certificate of purchase. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

Action to set aside voidable tax deed not within section. In an action to set aside a voidable tax deed, interest on taxes paid on the land by the holder on the deed is not computed according to this section, but according to § 39-12-101. *Phillips v. City & County of Denver*, 115 Colo. 532, 175 P.2d 805 (1946).

Owner of severed mineral rights underlying property may not redeem. Although both common law and the deed in question gave the owner of severed mineral interests the right to use a reasonable amount of the surface estate for mineral development, such right was not a "legal or equitable claim" within the meaning of subsection (1). To hold otherwise would allow the mineral owner to augment his ownership, which is not a right recognized as part of the redemption process. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

The right to bring an equitable action cannot be considered synonymous with an equitable claim in the property. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Redemption does not transfer title to the redemptioner, but rather prevents a transfer of title by tax deed. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Title to a severed mineral interest is not conveyed under a tax deed issued for delinquent taxes levied against the surface estate. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Limited partner does not have a right to redeem real property owned by the limited partnership because limited partner has no legal or equitable interest in the real property. *Winter Park Devil's Thumb Investment Co. v. BMS Partnership*, 926 P.2d 1253 (Colo. 1996).

Right of redemption distinguished from right of co-owner to pay delinquent taxes. Unlike the right of an interest holder to redeem, the right granted to certain co-owners to pay delinquent taxes under § 38-41-110 does not result in issuance of a redemption certificate or acquisition of an interest in the delinquent co-owner's estate. Rather, the paying co-owner is granted the right to foreclose the lien for unpaid taxes. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Applied in *Harrison v. City & County of Denver*, 102 Colo. 98, 76 P.2d 1110 (1938); *French v. Golston*, 105 Colo. 578, 100 P.2d 581 (1940); *Eshe v. Clough*, 116 Colo. 266, 179 P.2d 979 (1947); *Boyle v. Culp*, 159 Colo. 423, 412 P.2d 543 (1966).

39-12-104. Redemption of real property of person under disability.

(1) When the owner of real property for which a tax deed was issued under the provisions of article 11 of this title as a result of delinquent taxes is under legal disability at the time of execution and delivery of a tax deed therefor, such person shall have the right to make redemption of such property at any time within nine years from the date of the recording of such tax deed. In the event that the disability of such person is removed or ceases within such nine-year period, such redemption must be asserted and take place within a period of not more than two years after the removal or cessation of such legal disability. All redemptions under this section shall take place within nine years of the recording of the tax deed, irrespective of the time that such disability was removed or ceased.

(2) In order to make such redemption, such owner, or some person in his behalf, shall pay to the treasurer the sum for which the tax lien on such real property was sold, and the cost

of the tax deed and the recording of the same, with interest thereon from the date of such sale at the rate of fifteen percent per annum, and all other taxes, costs, and charges which remain unpaid on such real property at the time of making such redemption, levied or accrued thereon subsequent to the assessment date of the taxes for which the tax lien was sold, and all other taxes levied subsequent to the date of such sale, which have been paid by the person to whom the tax lien on said real property was sold, or by any other person claiming under him, with interest thereon at the rate of fifteen percent per annum from the date of such payment, insofar as such payments can be ascertained from the books and records in the office of such treasurer. If the person to whom the tax lien on such real property was sold, or any other person claiming under him, has made improvements, the person redeeming said real property shall pay the then present value of such improvements. The improvements shall be appraised by three disinterested persons appointed by the board of county commissioners. For all the money so paid, the treasurer shall give a certificate of redemption to the persons making such payment. From the time of making the redemption, the deed given upon the same shall be void as against such owner. In the event a redemption is not made within the periods of time provided for in this section, all rights of redemption shall cease and be forever barred as to all persons.

Source: L. 64: R&RE, p. 745, § 1. C.R.S. 1963: § 137-12-4. L. 85: Entire section amended, p. 1248, § 35, effective July 1.

Am. Jur.2d. See 72 Am. Jur.2d, State and Local Taxation, §§ 913, 916.

C.J.S. See 85 C.J.S., Taxation, §§ 1254, 1258-1264.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949). For article, "Summary of Denver Bar-Sponsored Bills Passed by General Assembly", see 28 Dicta 173 (1951). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969).

39-12-105. Certificate of redemption.

(1) Upon application of any party to redeem any real property for which a tax lien was sold or a tax deed was issued under the provisions of article 11 of this title, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, the treasurer shall issue to such party a certificate of redemption, describing the tract redeemed as in the certificate of sale and giving the date of redemption, the amount paid, and by whom redeemed and shall make the proper entries in the book of sales in the treasurer's office.

(2) For each certificate so delivered, the treasurer shall be entitled to a fee as provided in section 30-1-102, C.R.S.

Source: L. 64: R&RE, p. 746, § 1. C.R.S. 1963: § 137-12-5. L. 69: p. 1123, § 4. L. 71: p. 330, § 13. L. 75: (2) amended, p. 1480, § 7, effective July 1. L. 85: (1) amended, p. 1249, § 36, effective July 1. L. 96: (1) amended, p. 1393, § 15, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1333-1335.

39-12-106. Entry by county clerk and recorder of redemption certificate. (Repealed)

Source: L. 64: R&RE, p. 746, § 1. C.R.S. 1963: § 137-12-6. L. 85: Entire section amended, p. 1249, § 37, effective July 1. L. 96: Entire section repealed, p. 1395, § 16, effective July 1.

39-12-107. Fee for entering certificate. (Repealed)

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-7. L. 83: Entire section amended, p. 1231, § 21, effective July 1. L. 96: Entire section repealed, p. 1395, § 17, effective July 1.

39-12-108. Payment of redemption money.

All moneys received by the treasurer for the redemption of lands under the provisions of section 39-12-104 shall be paid over to the person to whom the tax lien on such land was sold or a tax deed was issued, or those claiming under him, on his deliverance to the treasurer, for the use of the person redeeming the same, a quitclaim deed of all the title to such land acquired under the sale, duly executed and acknowledged.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-8. L. 85: Entire section amended, p. 1250, § 38, effective July 1.

C.J.S. See 85 C.J.S., Taxation, §§ 1327-1329.

39-12-109. Payment upon surrender of tax certificate.

On demand of any person entitled to redemption money in his hands, the treasurer shall pay the same to any such person, upon his surrendering to him the tax certificate to such land or lot as has been redeemed. If only a portion of the land or lots described in the tax certificate has been redeemed, the treasurer shall endorse on such certificate the portion redeemed and the amount of money paid to each person and shall take a receipt therefor.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-9.

C.J.S. See 85 C.J.S., Taxation, §§ 1327-1329.

Section is applicable to property sold for special municipal improvement taxes. House v. Board of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

County treasurer is not entitled to a commission on money paid into his hands for the redemption of land sold to individuals for delinquent taxes nor to any fee for entering on his books an assignment of a certificate of purchase. Mitchell v. Wheeler, 20 Colo. App. 159, 77 P. 361 (1904).

39-12-110. Payment when certificate lost.

If there is a loss or wrongful detention of such certificate and the land therein described has been redeemed, the owner thereof may exhibit to the treasurer evidence of such loss or detention, and, upon his making the same to appear satisfactory to the treasurer and upon his executing a bond with sufficient surety that he will refund such redemption money, with twenty-five percent per annum interest thereon, if any person thereafter shows his right thereto, the treasurer shall pay such redemption money to the person so executing such bond.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-10.

39-12-111. Land wrongfully sold - repayment.

(1) When, by mistake or error of the treasurer, county clerk and recorder, or assessor or from double assessment, a tax lien has been sold on land upon which no tax was due at the time, the county shall reimburse the purchaser in the amount paid by him in connection with the purchase of the tax lien on such land, together with interest from the date of purchase at the rate which is determined as provided in this section. Reimbursement shall be made from the various funds to which the tax was originally distributed; except that interest shall be paid from the county general fund. The treasurer, county clerk and recorder, or assessor, as the case may be, and his sureties on his official bond shall be liable to the county for such amounts reimbursed as a result of sales made only through willful misconduct.

(2) (a) The annual rate of interest shall be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than eight percent per annum compounded annually.

(3) The commissioner of banking shall establish the annual rate of interest based upon the computation specified in subsection (2) of this section. Such annual rate of interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of interest shall be established in the same manner, to become effective on October 1 of the same year.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-11. L. 67: p. 951, § 24. L. 69: p. 1128, § 1. L. 81: Entire section amended, p. 1862, § 2, effective September 1. L. 85: (1) amended, p. 1250, § 39, effective July 1. L. 88: (2) amended, p. 1294, § 28, effective May 23.

"Assessor" defined. The word "assessor" in subsection (1) means the assessing power. Board of Comm'rs v. Floaten, 66 Colo. 540, 181 P. 122 (1919).

Nothing in this article limits its intentment to general taxes; the word "tax" may include a special improvement tax as well as a general tax. House v. Board of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

Purchaser at tax sale buys at his peril in absence of special statute. Board of County Comm'rs v. Lavington, 91 Colo. 252, 14 P.2d 493 (1932).

Counties liable where property not subject to taxation. Counties are not liable for void sales except where the property was not subject to taxation, or, by reason of a double assessment, no tax was due. Elder v. Board of County Comm'rs, 33 Colo. 475, 81 P. 244 (1905).

Where property erroneously sold for special municipal improvement tax. Where the property of a railway company is erroneously sold for a special municipal improvement tax, the county is held liable for a return of the purchase price, notwithstanding the fact that the money received has been turned over to the municipal corporation. House v. Board of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

Assignee of purchaser may sue county. The assignment of a tax sale certificate carries with it and vests in the assignee all the rights of the original purchaser. Where the original purchaser had a right of action against the county to recover the purchase money, the same right vests in the assignee without a specific assignment of the right of action. Board of Comm'rs v. Whelen, 28 Colo. 435, 65 P. 38 (1901).

Applied in *Larimer County v. National State Bank*, 11 Colo. 564, 19 P. 537 (1888); *Richardson v. City of Denver*, 17 Colo. 398, 30 P. 333 (1892); *Board of Comm'rs v. Yingling*, 14 Colo. App. 449, 60 P. 582 (1900).

39-12-112. Allowance for erroneous assessments.

The state treasurer shall allow each treasurer to take credit for the amount of state tax that may have been refunded to the taxpayer as double or erroneous assessments or refunded to the purchaser of a tax lien on real estate which lien was erroneously sold.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-12. L. 85: Entire section amended, p. 1250, § 40, effective July 1.

39-12-113. Redemption of proportionate interest.

(1) Any person who has or claims an interest in or a lien upon all or any part of any undivided or divided estate or interest in any piece or parcel of land or lot for which a tax lien was sold pursuant to article 11 of this title may redeem such undivided or divided estate or interest by paying to the treasurer his proportionate part of the amount required to redeem the whole. In such case the treasurer shall issue to such party a certificate of redemption for his interest in such land or lot, as provided by law.

(2) In the event that the treasurer cannot definitely ascertain the amount required to redeem the portion sought to be redeemed, he shall request the assessor to determine the valuation for assessment on such portion sought to be redeemed as of the original assessment date for the tax upon which the sale of the tax lien was based. Such assessor shall furnish such valuation for assessment to the treasurer forthwith. The treasurer shall thereupon ascertain such proportionate redemption amount as that amount which bears the same proportion to the amount required to redeem the entire piece or parcel of land or lot for which a tax lien was sold as such valuation for assessment so furnished bears to the original valuation for assessment of the entire piece or parcel of land or lot for which a tax lien was sold.

Source: L. 64: R&RE, p. 748, § 1. C.R.S. 1963: § 137-12-13. L. 85: Entire section amended, p. 1251, § 41, effective July 1.

Tenant in common may pay tax upon share of land. A tenant in common of lands may, under subsection (1), pay the tax upon his share thereof, though the tax is assessed upon the whole estate, and he may redeem his interest from a previous tax sale of the whole. *Hallett v. Alexander*, 50 Colo. 37, 114 P. 490 (1911).

A tenant need not discharge tax upon cotenant's interest. A tenant in common is under no necessity to discharge the tax upon the interest of his cotenant and will not be allowed a lien thereon for such payment made without the request of the cotenant. *Hallett v. Alexander*, 50 Colo. 37, 114 P. 490 (1911).

Section inapplicable to undivided interest separately assessed and sold. This section has no applicability where an undivided interest has been separately listed, assessed, and sold; to effectuate a redemption thereof, the owner of the undivided interest is obliged to pay the entire redemption money upon that interest. *Garbanati v. Patterson*, 37 Colo. 230, 85 P. 845 (1906).