CHAPTER 5
REAL ESTATE TAXES

I. GENERAL REAL ESTATE TAXES

In Illinois, counties levy real estate taxes on all non-exempt real estate. These real estate taxes, known as general real estate taxes, become due during the year after the year for which the property is liable for the taxes. So, for example, the 2005 taxes are payable in 2006. In most Illinois counties, real estate taxes are due June 1 and September 1, in two equal installments. In Cook County, the first installment is equal to half of the prior year's entire real estate tax obligation and due March 1. The second installment is equal to the total real estate tax obligation of the property for the year minus the first installment, and due 30 days after the bill date, often in the late fall. Because real estate taxes in Cook County increase almost every year, the second installment is almost always more than the first, often quite a bit more. Other counties may have different systems for billing real estate taxes, so no matter which county the property to be insured is located in, contact the county to determine how and when real estate taxes are billed.

Real estate taxes are a first lien on the property, ahead of all other liens on the property, including purchase money mortgages. When real estate taxes go unpaid, the county has authority to auction the taxes at a tax sale. The owner of the property must reimburse the successful bidder to remove the real estate tax obligation for the year of sold taxes from title to the property. This reimbursement is known as redeeming the taxes and is accomplished through a process that county handles. If unpaid, after specific time periods, the successful bidder then has the opportunity to begin a court procedure, known as a tax deed proceeding, in which the bidder can obtain title to the real estate free of all liens on title.

ATG's largest area of claims arises out of real estate taxes. Because of the nature of the tax sale and tax deed procedures, the risk of failing to identify real estate tax problems and resolve them in a timely manner is a complete failure of title. Thus, although real estate taxes typically involve minor amounts of money in contrast to the purchase price of the property, they can result in very expensive claims if not identified and handled quickly.

Therefore, ATG requires that all current year's taxes due through the date of closing, and all prior years' taxes must be paid at or before closing on all transactions.

There are two important issues to avoiding real estate tax claims. First, your commitment must contain accurate real estate tax information. Second, if a tax payment of any type must be made, then you must make sure that the correct procedures are followed for it to be properly paid.

II. ACCURATE REAL ESTATE TAX INFORMATION

Take the following steps to be sure that your commitment contains accurate real estate tax information:

A. Make sure your search conforms to ATG's search requirements for real estate taxes, listed in Chapter 2A, Search Standards.

B. Check the Sidwell or tax maps to confirm that the PIN or PINs listed on the commitment apply(ies) to the legal description on the commitment. Look at the map for discrepancies in the size of lots on the map versus the size of the legal description to see that all parts of the legal description are assigned PINs and assessed. If the property is a condominium unit that also has a separate garage, parking, or storage unit, be sure to find out if the PIN for the unit also covers those other units, or if each type of unit has its own separate PIN.

C. Make sure that the real estate tax search of the PIN that the Sidwell or tax map shows applies to the subject property. If the PIN searched doesn't match the Sidwell or tax map PIN, have your search provider search the correct PIN. Make sure that the real estate tax search provides information on the last five years of real estate tax payments, regardless of the date of any prior policy that you have. Also, if the search shows the real estate taxes were sold in a particular year, but paid the following year, ask your search provider for information about whether the owner of the property or the prior year's tax buyer paid the following year's taxes.

D. Never rely on information you have received from the county over the phone. Only rely on search results.

E. If your county provides real estate tax information via a website, confirm with the county exactly what information it displays and how it is displayed. In some counties, the website will only show current year tax information, so you will not be aware of whether prior years' taxes have been sold. Also in some counties, the website will show the taxes as paid if a prior year's tax buyer paid them, even though they must be redeemed. Other similarly misleading practices may exist that you should investigate before relying upon website information.

F. Never rely on information you receive from any party to the transaction about the status of real estate taxes. Only rely on county information about the status of taxes. If a party claims to have paid the real estate taxes, but the county records do not reflect that fact, then the party must provide you with a certificate of payment from the county for the proper year before you can change the status of taxes on the commitment.

G. Make sure that all information you obtain about the status of real estate taxes appears on the commitment's Schedule B. For more information on how to show real estate tax exceptions, please see the Commitment Preparation chapter.

III. TAX PAYMENT PROCEDURES

ATG requires that all current year's taxes due through the date of closing, and all prior years' taxes must be paid at or before closing on all transactions.

Review the search results to determine which real estate tax installments are unpaid, delinquent, or sold, and then observe the following guidelines for paying them at closing.

A. Unpaid Current Year Real Estate Tax Installments

To remove an exception for real estate tax installments due in the year of the closing that the commitment shows are unpaid but not yet due, you must obtain one of the following:

1. A certificate of payment from the county; or
2. A new real estate tax search that confirms the installment was paid; or
3. A current tax bill from the county together with a check cut from closing and delivered to the county for the taxes. You may need to order a new tax bill from the county, if the parties do not provide one.

You may not rely on any party's assertion that the taxes are paid. This includes the situation where the lender asserts that they have paid the taxes, because it is common for lenders to make mistakes and pay taxes on the wrong properties.

B. Legal Description Bills and New PINs for Subdivisions and Condominiums

Property may be subdivided in multiple ways: by plat of subdivision, plat of condominium, by deeding a portion of a larger tract using a new metes and bounds legal description, or by deeding a strip of land to an adjoining neighbor. When this happens, the county must assign new PINs to the lots, units, or tracts so that the real estate taxes can be assessed and paid separately. This process takes most counties some time to complete, and in some situations, the new owners find they must pay real estate tax bills before the new PINs are ready. In this situation, the new owners should pay real estate taxes using a legal description tax bill.

A legal description tax bill is one where the owner contacts the county with the legal description for his or her property and asks that a real estate tax bill be issued for only the legal description provided. This is done by filing a petition for tax division or consolidation. 35 ILCS 205/194.

Contact the county where the property is located to determine the procedure for obtaining a legal description tax bill. The procedure to obtain a legal description tax bill in Cook County is as follows:

1. Two forms must be filed with the Cook County Assessor's tax division department, the Petition for Division and /or Consolidation of Property and the Petition for Division Schedule.

2. Attach the original legal description together with the new legal descriptions to the Petition for Division and/or Consolidation of Property.

3. All parties to the division or consolidation must sign the petition before the division or consolidation will be approved. If one party will not sign the petition, a certified letter to that party must be presented at the time of filing to prove that a request was made.

4. The Petition for Division and/or Consolidation of Property must contain all PINs that will be affected by the division or consolidation.

5. To be effective for a certain tax year, the petition must be filed before October 29 of the preceding year. For example, a petition filed on October 1, 2006 will affect the 2007 taxes, payable in 2008.

C. Certificates of Error

1. Explanation

   When a taxpayer discovers an erroneous assessment of his or her real property after the deadline for filing complaints has passed, the certificate of error process may offer relief. Under 35 ILCS 205/45 and 108 (counties containing less than one million inhabitants) and 35 ILCS 205/123 (Cook County), certificates of error may be used to correct assessments at any time after the final installment bill is issued but before judgment or order of sale is entered.

   Although there are slight differences between the Cook County certificate of error process and that of other counties, the basic principles are the same. The taxpayer makes an argument for a lower assessment to the county assessor who, if the assessor agrees with the taxpayer, then revises the assessed valuation and calculates a suggested tax bill for a lower amount. The taxpayer can pay either the original larger bill or the suggested tax amount. If the taxpayer pays the lower amount, a partial payment is posted in the warrant books along with a certificate of error.

   When the county collector applies for a judgment and order of sale, the assessor intervenes with an objection based on the certificate of error. The circuit court then makes a decision as to the correct amount of the tax. If the court agrees with the taxpayer and assessor, the court order will be "judgment refused," and the tax will be satisfied by the partial payment with any overpayment being refunded. If the court disagrees with the taxpayer and assessor, a "petition denied" will be ordered, and any unpaid balance along with interest from the delinquency date will be sold at the annual tax sale if not paid before the sale.

2. Procedure

   a. Many issues arise when a certificate of error appears on a tax search. When a certificate of error appears on a tax report, check the amount of taxes paid for the year in question and determine whether there has been an adjudication of the certificate of error.

      i. If the *full amount of the tax* has been paid, list the certificate of error on the commitment. There is no need to hold a title indemnity escrow because, even if the taxpayer loses his/her appeal, the full amount of the tax has already been paid.

ii. If a *lower amount* has been paid and there has been no adjudication of the appeal, list the certificate of error as an exception. To waive this exception from the final policy, a title indemnity escrow must be held for twice the delinquent tax amount. If the certificate of error is decided against the taxpayer, interest accrues on the delinquent amount during the time the appeal is being decided.

b. If the certificate of error on a search shows that an adjudication has been made, there are two key terms to look for: "petition denied" and "judgment refused."

i. "Petition Denied" means that the taxpayer lost his/her appeal. If the full amount of the tax was not paid at the time of the certificate, the delinquent amount plus interest will be due before the taxes can be considered paid.

ii. "Judgment Refused" means the taxpayer won his/her appeal. If the full amount was paid at the time of the certificate and the judgment was refused, a refund is due the taxpayer. However, if a lower amount was paid at the time of the certificate and the judgment was refused, make sure that the amount of the judgment equals the amount delinquent. If it is less than the amount delinquent, there will still be money owing before the taxes are considered paid.

- **NOTE**: Although a certificate of error protects a parcel from being sold for that year's taxes at the annual tax sale, a delinquency with a pending certificate of error must be included in a subsequent year's tax sale.

D. Delinquent Real Estate Tax Installments and Open Items

After the due date passes for a real estate tax installment, the taxes become delinquent. The taxes remain delinquent until they are sold at a tax sale. In some cases, the county may either choose not to sell certain delinquent installments, or may neglect to include certain delinquent installments in the tax sale. These delinquent real estate tax installments after the tax sale are also known as open items.

1. Current Year Taxes

To remove an exception for current year real estate tax installments that are delinquent, you must obtain one of the following:

a. A certificate of payment from the county; or

b. A new real estate tax search that confirms the installment was paid; or

c. A tax bill from the county for the relevant year's delinquent tax installments, together with a check cut from closing and delivered to the county for the taxes.

You may not rely on any party's assertion that the taxes are paid. This includes the situation where the lender asserts that they have paid the taxes, because it is common for lenders to make mistakes and pay taxes on the wrong properties.

When paying a delinquent tax installment, the amount due is calculated by adding the delinquency and a penalty of 1½ % per month, counting from the due date. An additional fee may be added near the date of the tax sale if notices of the annual tax sale have been sent out. You should confirm with the county that you have correctly calculated the total amount due. If you have any concerns about the accuracy of the amount, hold an escrow for half the amount of the payment until your later date search shows that the taxes have been paid in full for the year. To hold an escrow, use the Personal Undertaking with Title Indemnity Deposit Agreement (ATG Form 3011).

2. Prior Years' Taxes

To remove an exception for a prior year's real estate tax installments that are delinquent, you must obtain one of the following:

a. A certificate of payment from the county; or

b. A new real estate tax search that confirms the installment was paid; or

c. An open item tax bill from the county for the relevant year's delinquent tax installments, together with a check cut from closing and delivered to the county for the taxes.

You may not rely on any party's assertion that the taxes are paid. This includes the situation where the lender asserts that they have paid the taxes, because it is common for lenders to make mistakes and pay taxes on the wrong properties.

If you need to pay a delinquent prior year's installment, or installments, from closing, then you must order an open item tax bill from the county. You will need a separate bill for each year and each PIN for which there are delinquent installments. Once you receive the open item tax bill(s), read it or them carefully to confirm that you have exactly the years' and PINs' information that you need for closing. The bill will state the date through which interest is calculated. Be sure that you will have time to conduct the closing and deliver the check during the time frame the bill covers. In Cook County, open item bills may be ordered from and paid to the Cook County Treasurer.

The statute of limitations period for general real estate taxes is 20 years, 35 ILCS 710/1, so if the search reveals open items 20 years old or older, you do not need to arrange for payment.

E. Sold or Forfeited Real Estate Tax Installments – General Instructions

1. Sometime after the second installment of taxes for a year is due, the county will hold a tax sale of delinquent taxes, known as the annual tax sale. The annual tax sale is an auction where the successful bidder (tax buyer) pays the county the delinquent tax amount in exchange for a tax sale certificate. If no one bids on a particular parcel's taxes, then the taxes are forfeited and the county is considered to have been the successful bidder.

Once the taxes are sold or forfeited, the owner of the property may redeem them by obtaining an estimate of redemption from the county and paying it within the time period required by law, 35 ILCS 205/253, as follows:

a. If the property is less than seven residential units and at least one is owner occupied on the date of the tax sale, the redemption period is two years and six months.

b. All other property can be redeemed before the expiration of two years from the date of sale.

c. The redemption can be extended only by the tax purchaser and only up to three years from the date of sale (four years for farm property).

d. There is no redemption period for forfeited taxes.

Only a party with an interest in the property may redeem. The county will provide the owner with a certificate of deposit for redemption as proof the redemption amount was deposited.

For sold taxes, the county contacts the tax buyer at the tax sale and notifies that person or entity of the amount the owner deposited. The tax buyer then has the opportunity to notify the county of any additional amounts the owner owes before returning the certificate of purchase and picking up the money. To complete the redemption process, the owner must re-contact the county to find out if any additional amounts are owed and pay them. Then the county will cancel the sale.

2. To remove an exception for sold taxes, you must obtain one of the following:

   a. A certificate of deposit for redemption from the county for all tax years' installments that the tax buyer paid, together with confirmation from the county that the sale has been cancelled; or

   b. A certificate of deposit for redemption from the county for all tax years' installments that the tax buyer paid, together with a Title Indemnity Escrow for an amount equaling half the amount of the estimate of redemption until the sale is cancelled.

3. To remove an exception for forfeited taxes, you must obtain the certificate of deposit for redemption from the county. Payment on the estimate of redemption to the county cancels the forfeiture.

   You may not rely on county information showing the installment is paid, because that only means that the tax buyer paid the taxes, not that the owner of the property redeemed them.

   The estimate of redemption may include several payments in addition to the installments of sold taxes requested, as follows:

   a. Interest.

      For sold taxes, interest on the bid amount is added to the estimate of redemption at six month intervals from the date of sale. Because bidders at the tax sale bid on the interest rate, each parcel may owe a different interest rate. For forfeited taxes, interest at the rate of 12% is added to the estimate of redemption at one year intervals from the date of sale.

   b. Prior years' delinquencies.

      The tax buyer must pay any prior years' delinquent taxes at the time of sale and are therefore added to the amount to redeem.

   c. Subsequent years' delinquencies.

      The tax buyer may pay later years' delinquent taxes after the sale and have them added to the sale amount. So, once you find that a tax year's taxes have been sold, find out who paid each later year's taxes and make sure that the estimate of redemption that you order covers all the taxes that the tax buyer paid.

   d. Subsequent years' timely installments.

      The tax buyer may pay later year's taxes *before* they are delinquent after petition for tax deed has been filed and have them added to the sale amount. This means that to successfully redeem, you must be sure the estimate of redemption includes amounts that the tax buyer paid that were never even delinquent.

   If the property owner wishes to buy the certificate of purchase from the tax buyer, rather than redeem the taxes, please contact the Underwriting Department for guidance before doing so.

   Order estimates of redemption from the office of the Cook County Clerk. Estimates of redemption must be paid by cash, certified or cashier's check made payable in full amount of estimate to the Cook County Clerk. Sold taxes must be redeemed in name of party with an interest in the property (owner, lender), but not by an undisclosed beneficiary of an Illinois land trust.

- **NOTE**: Once the redemption period including any extensions has expired, the county clerk will not accept any money for redemption. Also, if after five years from the date of sale no redemption has been made and the tax purchaser has not recorded a deed, the sale is considered a dead sale and no money is due.

F. Sold or Forfeited Real Estate Tax Installments – Cook and Collar Counties

1. General Rules

a. General Rule A

All members must have current (within 60 days) estimates of redemption at closing for sold taxes for tax years three (3) years or more before the current date. (Example: On April 1, 2004, an estimate of redemption must be presented for sales of taxes for the 2001 tax year or before.) This rule applies when only one year of taxes has been sold. If more than one year of taxes have been sold at the annual tax sale or through a scavenger sale, a current estimate of redemption must be at the closing, no matter when the sale occurred. Without the estimate of redemption or approval from a staff attorney, the closing cannot disburse.

b. General Rule B

If General Rule A does not apply, a title indemnity escrow (T.I.) may be held of two (2) times the base amount of the tax due plus interest at the rate of 1½ % per month since the due date, to insure the buyer for the sold taxes.

2. Procedure

a. Estimate of Redemption

i. Cook County

ATG's Search Department will automatically order Estimates of Redemption on every search they perform where there are sold taxes in Cook County in which General Rule A applies. The original estimates, on Title Services transactions only, will be held at ATG in Chicago by the Escrow Department representative handling sold taxes until they are ready to be paid. The Escrow Department representative will fax copies to the member. On non-Title Services transactions, the estimate will be faxed to the member asking for instructions as to what to do with the original. In all cases, it is still the member's responsibility to ensure that the Estimate of Redemption is available at the closing.

ii. Collar Counties

Members are responsible for ordering Estimates of Redemption in General Rule A situations in counties other than Cook and bringing them to closing. Members are also responsible for ordering Estimates of Redemption in Cook County in General Rule B situations and when ATG does not perform the search.

b. Search Information and Commitment Exception

The tax search must give as much information about the tax sale as possible (such as installments sold, tax buyer, interest rate, date sold, subsequent year payments by tax buyer, and final redemption date, if known). All of this information must be added to the tax exception on the commitment. Also, the requirement for having an estimate of redemption at the closing if the General Rule A applies must be added to the exception.

c. Closing Procedure

ATG's Escrow Department is responsible for handling all payments on estimates of redemption for Title Services transactions. Traditional members may also have the Escrow Department handle payments on estimates of redemption, upon request.

To have the Escrow Department handle the payment on an estimate of redemption, take the following steps:

i. At closing, a cashier's check should also be drawn to the County Clerk for the amount of the redemption, based on the estimate of redemption.

ii. At closing, a check should also be drawn to ATG as Escrowee and held for an amount equal to 50% of the redemption amount.

iii. In addition, at closing, a check should also be drawn to ATG Escrow for the T. I. fee (see the Rate Card for current fee information).

iv. At closing, a check should also be drawn to ATG for $20 for the Cashier's check if ATG is conducting the closing.

v. Have a Personal Undertaking with Title Indemnity Deposit Agreement (ATG Form 3011) filled out completely by the seller. Be sure to accurately list the PINs and years' taxes that must be paid for the Escrow Department's information. Also, attach a copy of the commitment to the agreement, for verification.

There are *no* exceptions to these procedures unless authorized by a staff attorney.

3. How to Hold a Title Indemnity Escrow for Real Estate Taxes

When there is a tax delinquency that requires ATG to hold money in an escrow account, or for situations where you plan to escrow money to pay a current year installment not yet due, follow these steps:

a. Have a Personal Undertaking with Title Indemnity Deposit Agreement (ATG Form 3011) filled out completely by the seller. Be sure to accurately list the PINs and years' taxes that must be paid. Also, attach a copy of the commitment to the agreement, for verification.

b. For delinquencies where there is a current estimate of redemption, open item bill, or tax bill available, hold 1½ times the amount of the estimate or bill.

c. If ATG is required to hold an escrow for current year taxes on property *located in the City of Chicago*, the amount escrowed should be two times the first installment. See the Rate Card for Escrow Department fees. There is also a $35 charge to obtain the tax bill.

d. If you are required to hold an escrow for current year taxes on property in *all other locations*, the amount escrowed should be one and one half times the first installment.

e. Where no estimate or bill is available, hold two times the sum of the delinquency and any interest. Please note that for sold taxes, interest may be as high as eighteen percent per six-month period, starting from the beginning of the six-month period.

f. Insure over the exception on policies using a Form E Endorsement (ATG Form 2023) with the following language:

> *ATG hereby insures the Insured against actual loss or damage that may be sustained by reason of the lien of taxes for the year * and shown as exception number *.*

g. Release the funds in the title indemnity only when you have a final receipt (Certificate of Deposit for Redemption) and the sale has been cancelled.

G. Sold Taxes at Scavenger Sale

Parcels of property with multiple years of delinquent real estate taxes can be sold at a scavenger sale. At a scavenger sale, the bidders bid the amount of the tax delinquency to be paid, which is a change from the procedure at the annual tax sale.

Once the taxes are sold at a scavenger sale, the owner of the property may redeem them by obtaining an estimate of redemption from the county and paying it within the time period required by law, as follows:

1. Six months for vacant, non-farm, commercial or industrial parcels, and for parcels improved with a structure or structures, each of which contains seven or more residential units.
2. Two years and six months for property improved with a structure containing six or fewer residential units where at least one unit is owner occupied on the earliest date when notices may be served under the Revenue Act.
3. Two years for all other property.

Please observe the instructions for paying on an estimate of redemption in the section entitled Sold or Forfeited Real Estate Tax Installments, above, when paying on an estimate of redemption from a scavenger sale.

H. Miscellaneous

1. Cook County Duplicate Payments

   Cook County tax officials will not automatically apply payments from one installment to another, even if one installment has been paid twice and the other installment is delinquent. This situation must be raised as an exception to title and cannot be waived until the records have been corrected.

2. Sale in Error

   When a search reveals that a “sale in error” has been posted on the parcel in question, be aware that this does not eliminate the tax delinquency. A “sale in error” only reflects that the sale of the taxes is null and void. The delinquency must still be cured to waive any exception for delinquent taxes.