

MEMORANDUM

TO: Tax Lien Investors

FROM: Mark L. Manoil
TIFFANY & BOSCO, P.A.

DATE: July, 1999

RE: Preparation of 30-Day Notices, Follow-Up and Other Initial Issues

This Memorandum accompanies our standard engagement agreement letter. We offer the following additional information to our tax lien investor clients to explain our retainer request, to preview the legal representation, and to disclose the potential issue of conflicts of interest.

The 30-day Notice and Follow-Up

As you may be aware, Arizona law now requires that a 30-Day Notice of Intent to Foreclose a property tax lien be sent to the owner of record according to the records of the county recorder in the county in which the property is located and to the County Treasurer. (Prior to August 6, 1999, the statute simply required sending the Notice to the owner of record as listed on the tax roll and to the County Treasurer.) This notice requires specific information about the property and the lien to be foreclosed.

Our fee for preparation of a 30-Day Notice of Intent to Foreclose includes: basic research required to identify pertinent parties, drafting of the Notice and delivery of the Notice by certified mail. In some cases more than one letter may be necessary and is included in this fee. Additionally, discounts may be available for multiple parcels which are contiguous and that have identical ownership. The fee does not include any title investigation or report, nor negotiations with property owners or other entities of interest to the property, nor redemption collection services. These types of pre-litigation services may result in additional fees of \$100 or more per parcel concerned.

Delivery of the 30-Day Notice usually elicits one of three results:

- 1) the property owner contacts the Treasurer's Office and redeems the tax lien(s),
- 2) the property owner ignores the Notice, the 30 days elapse, and the tax lien is eligible for foreclosure by an action in the Superior Court, or

- 3) the property owner contacts this office and indicates that he/she is not interested in redeeming the tax lien, yet wishes to avoid a lawsuit.

Our Notice encourages the property owner to contact us if appropriate. This may result in our client avoiding some of the time and expense of obtaining title through a foreclosure suit. However, fees and costs will still likely be incurred in negotiations on our client's behalf to reach an agreement, although usually far less than the cost of a foreclosure.

The property owner who does not receive the Notice (because of a bad address, for instance) is usually treated the same as in result number 2 above.

Foreclosure Process & Financial Risks

Should the foreclosure suit be necessary, our experience suggests that the action may take from four to nine months, beginning with the filing date of the lawsuit, and culminating with the recording of a Treasurer's Deed.

Additionally, we remind you that pursuant to Arizona law (A.R.S. §42-18206) recovery of reasonable attorney's fees and costs upon redemption of a property tax lien is authorized **only** if the lawsuit has been filed and the redeeming party has been served prior to redemption. Attorney's fees and costs accrued prior to the service of all interested parties are therefore at risk. Filing of the lawsuit and proper service cannot be completed until a Litigation Guarantee (title report) is received and reviewed (at a cost of \$200 to \$300 on average), and until the whereabouts of each party to the action is identified via investigative research efforts by our office. In addition, costs generally include filing and recording fees (typically \$150) and service of process charges (\$100 or more). We conscientiously strive to reduce our clients' risk of suffering a loss due to a redemption after all or part of the time and costs are expended, but before a defendant can be served. Nonetheless, we cannot absorb this risk nor guarantee that such contingencies will not befall our clients.

Suit Filed Out of County of Tax Lien

Although the tax lien foreclosure statutes suggest that the action should be filed in the Superior Court of the county where the property is located, recent Arizona appellate court law indicates that this is not a jurisdictional bar to filing the suit elsewhere. Each county's Superior Court has statewide jurisdiction. We may file the foreclosure action in Maricopa County (where our office is located) to reduce likely travel-related expenses. If a defendant requests a change of venue, the case will likely be transferred and require the payment of additional filing and transmittal fees which might not be recoverable in the event of late redemption.

The legal process can be complicated and confusing. We keep you informed through monthly billings and case status updates. We will also alert you

to legislative and judicial developments affecting the area. Once you have retained us, please feel free to contact our office with any questions you may have.

Acknowledgment and Waiver of Conflicts of Interest

A significant portion of our practice focuses on advising and representing parties with respect to tax lien investments, including discussions of strategies and in performing foreclosure services. In many of these cases it is difficult or impractical, if not impossible, to know what properties the parties are buying tax liens on at any given time. Also, Tiffany & Bosco's Financial Services Department represents many mortgage lenders.

Because the underlying property subject to a tax lien purchased by a client may be owned by another of our clients, or be subject to a different-year tax lien owned by a different client, or be encumbered by another client's mortgage lien, we request that our clients acknowledge at the outset of our representation that these situations may occur, and that for us to continue in the practice area it is important that any conflicts unknowingly created with respect to representation of adverse parties be waived.

While we strive to keep informed of our clients' property and lien portfolios, we often do not know the identities of the adverse parties until the work is underway. Conflicts may become apparent only after significant work has been performed. In those cases, provided the lien being foreclosed or the property interest being adjudicated is not one we have worked on directly for you in the past, we request that you waive any conflict of interest in our representation of the party in whose interest we have initiated the matter.

By engaging our Firm you acknowledge that other clients of the Firm may be advised regarding payment of taxes, acquisitions, acquisitions of tax liens, and other tax lien investment strategies. You agree to waive any conflict of interest such advice might be deemed to create. This is in no way to be deemed a waiver of our duty of confidentiality to you.

If we consider that the conflict cannot be waived or the other client involved refuses to waive the potential conflict, we will provide a list of alternate counsel whom we believe are competent to complete or defend your foreclosure action, or otherwise advise you given the specified matter.

We appreciate the opportunity to be of service to you.

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