



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable B. Jay Jackson
County Attorney
Hood County
Granbury, Texas

Dear Sir:

Opinion No. 0-6841

Re: Proper procedure for clearing title to property purchased from the State four years after the State's purchase at a delinquent tax foreclosure sale when said property is now occupied by a "squatter".

We have your request for an opinion from which we quote:

"Under a Judgment out of the District Court of Hood County, Texas, at Tax suit, an Order of Sale was issued - in 1939 - the property sold at such sale to one of the taxing units -Hood County.

"Then, under Order of the County Judge, the same property was duly advertised and sold at public outcry - second sale - about 4 years after the date of first sale. A local citizen bid this property in and paid his money therefor, but finds a party - not defendant in judgment occupying - merely a 'Squatter'. Now, is the present purchaser entitled to a writ of Possession by virtue of the Original Tax Judgment provision, or shall he be required to bring an action of Forcible entry and detainer and obtain his Writ of Possession through the Justice Court?

"In the event he obtains a Writ of Possession out of the District Court is it the duty, expense and obligation of the Taxing Unit that sold this property - Second sale, to bear such obligation, or shall the late purchaser be required to pay same?"

From the above it would appear that everything in the proceeding is regular until the purchaser finds the "Squatter" occupying the premises.

Both of your questions pertain to the same matter and that is -- how to get the "Squatter" off the premises, and at whose expense? We will treat both questions as one, therefore.

Section 6 of Article 7345b, Vernon's Annotated Civil Statutes, provides:

"All court costs, including cost of serving process, in any suit hereafter brought by or in behalf of any taxing unit for delinquent taxes
..... shall be chargeable as court costs."

Article 7332 fixes the fees of officers in delinquent tax suits and Article 7333, of the Revised Civil Statutes, provides for taxing of costs and reads as follows:

"In each case such fees shall be taxes as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor."

Article 7328, V.A.C.S., provides:

"All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution."

Section 7 of Article 7345b, V.A.C.S., reads as follows:

"In the case of foreclosure, an order of sale shall issue, and, except as herein otherwise provided, the land shall be sold thereunder as in other cases of foreclosure of tax liens."

Article 7330, V.A.C.S., reads as follows:

"In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, the sheriff selling the same, or any of his successors in office, shall make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, . . ."

Article 3816, Revised Civil Statutes, reads as follows:

"When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold."

In sales of real property under judgment of foreclosure of delinquent tax liens these three articles apply conjunctively to the making of the conveyance (deed) to the purchaser, and the officer can only convey all right, title, interest and claim which the defendant in execution (order of sale) had in and to the property sold. In the case of Logan v. Stevens County, (C.A. 1904) 81 S. W. 109, affirmed by the Supreme Court, 98 Tex. 283, 83 S.W. 365, speaking of warranty by an officer the Court said:

"It necessarily follows that the Court properly denied Appellant's relief upon the asserted warranty. For, premitting the question as to whether, in the absence of express authority, E. L. Walker would be empowered to make a covenant of warranty, there was no such covenant in this case; there being no authority for the execution of the deed which contained it."

In Houston Oil Company of Texas v. Niles, 255 S.W. 604 (Com. App. 1923) Rev. (C.A. 1916), Niles v. Houston Oil Company of Texas, 191 S.W. 748, our Supreme Court said:

"A deed of 'all the right, title, interest, and claim which we have in and to' certain land, which undertaking to warrant and defend all such right, title and interest, is a quitclaim."

Section 8 of Article 7345b reads as follows:

". . . The net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong to and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the cost of suit and sale and other expenses hereinabove made chargeable against said property, shall be paid to the parties legally entitled to such excess." (Underscoring ours)

Section 9 of Article 7345b, V.A.C.S., reads as follows:

"If the property be sold to any taxing unit . . . costs and expenses shall not be payable until sale by such taxing unit so purchasing same. . . ; and when such property is sold by the taxing unit purchasing the same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax liens against said property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax lien against said property as established in said judgment. . . ."

Section 10 of said Article 7345b, V.A.C.S., reads as follows:

"The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit or which had been served with citation in said suit as required by this Act. (Under scoring ours)

Section 12, Article 7345b, V.A.C.S., reads as follows:

"In all suits heretofore or hereafter filed to collect delinquent taxes against property, judgment in said suit shall provide for issuance of writ of possession within twenty (20) days after the period of redemption shall have expired to the purchaser at foreclosure sale or his assigns;"

While said Section 12 of said Article above-mentioned provides "in all suits . . . judgment . . . shall provide for issuance of writ of possession," the writ of possession cannot issue now in favor of the assignee because Section 8 of said Article provides that "the net proceeds of any sale of such property made under a decree of court in said suit to any party other than such taxing unit shall belong and be distributed to all taxing units which are parties to the suit", etc. AND it further provides that "any excess in the proceeds of sale over and above the amount necessary to defray the cost of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgment against

said property, shall be paid to the parties legally entitled to such excess." (Underscoring ours)

In the case of *Watson v. Tamez*, 136 S. W. (2d) 645, after appellant failed to recover real property in trespass to try title suit and attempted to recover money paid upon purchase of property at the tax sale, the court held:

"The mere fact that a party pays money upon the purchase of property at a tax sale does not entitle him to a recovery of the amount paid, when years later he is unsuccessful in an attempt to establish his title in an action of trespass to try title. *American Realty Corp. v. Tinkler*, T. C. S. 107, S.W. (2d) 627."

Now in view of the statutory provisions hereinabove set out the same having been fully complied with, and the decisions, it is the opinion of this department that the county cannot be required nor would it have any authority to expend any money to pay the cost of removing the "squatter" from the premises and that it is altogether an issue to be settled between the purchaser and the "squatter", neither of whom were parties to the suit in which the foreclosure was had, and there is no provision of law to make them parties thereto now as it is finally concluded and closed.

Trusting this fully answers your questions, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

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APPROVED OCT. 20, 1945
s/Grover Sellers
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Approved Opinion Committee By s/BWB Chairman