Tax deed sale funds to govt lienholders

Number: AGO 2020-01

Date: March 19, 2020

Subject:
Tax deed sale funds to govt leinholders

Mr. Scott R. Harlowe
1235 SE Indian St., Suite 101
Stuart, FL 34997-5690, Florida 34982-5652

Dear Mr. Harlowe:

On behalf of the Clerk of the Circuit Court for St. Lucie County ("Clerk"), you ask the following questions:

1. Under section 197.582, Florida Statutes (2019), are governmental lienholders barred from obtaining tax deed surplus funds if they fail to submit a timely request for surplus funds?

2. If a request is not required, what effect does the failure of a governmental entity to submit a request for surplus funds have upon the Clerk's determination of how the surplus funds should be distributed?

In sum:

1. Under section 197.582:

§ a timely request for payment from surplus funds is not a prerequisite to the Clerk's obligation to "distribute the surplus to the governmental units for the payment of any *lien of record held by a governmental unit* against the property, including any tax certificates not incorporated in the tax deed application and omitted taxes, if any," prior to distributing the balance of undistributed funds to other persons specified in section 197.582;

§ a *non-governmental unit holder of any recorded governmental lien* (other than a federal government lien or ad valorem tax lien) is barred from obtaining tax deed surplus funds if such lienholder fails to submit a timely written claim for surplus funds.

2. Because governmental units holding "liens of record…against the property" are not required to submit a request for surplus funds, the Clerk is required to distribute funds to governmental units holding such liens before disbursing the balance of undistributed surplus funds to claimants, following the process outlined in subsections (2) through (9) of

section 197.582.

Background

When a property is sold at public auction in a tax deed sale, Florida law provides the statutory minimum bid of the tax certificate holder. § 197.582(1), Fla. Stat. (2019). If the property sells for a price in excess of this amount, section 197.582 specifies the procedure the clerk must use to distribute the surplus.

You have identified, and expressed concern about, a possible conflict between certain provisions in section 197.582 regarding disbursements of excess tax deed sale proceeds in payment of governmental liens. Both subsection 197.582(2)(a) and subsection 197.582(7) require a clerk administering a tax deed sale to "distribute the surplus to… governmental units for the payment of any lien of record held by a governmental unit against the property" subject to the tax deed sale prior to disbursing the balance to nongovernmental "claimants."1 In contrast, the first sentence of subsection (7) provides that "[a] holder of a recorded governmental lien, other than a federal government lien or ad valorem tax lien, must file a request for disbursement of surplus funds within 120 days after the mailing of the notice of surplus funds." You contend that the statute is "ambiguous" as to whether (1) a "governmental lienholder" must submit a timely claim to be eligible for surplus funds or (2) the clerk is required to distribute funds to governmental lienholders regardless of whether they file a claim.

Analysis

As observed by the Florida Supreme Court in *State v. Peraza*, the "starting point for any statutory construction issue is the language of the statute itself—and a determination of whether that language plainly and unambiguously answers the question presented."2 "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning,…the statute must be given its plain and obvious meaning."3

Ambiguity occurs when an "uncertainty of meaning based not on the scope of a word or phrase but on a semantic dichotomy…gives rise to any of two or more quite different but almost equally plausible interpretations."4 Absent ambiguity, "there is no occasion for resorting to rules of statutory interpretation and construction."5 When a statute "is subject to more than one interpretation," however, "the rules of statutory construction should be applied to resolve the ambiguity."6

The statute's plain text is ambiguous.

Here, a "studied analysis of what [the] statute actually says"7 fails to plainly and unambiguously answer the Clerk's question about how liens held by governmental units must be treated following a tax lien sale. Instead, section 197.582 reflects a number of apparent inconsistencies.

For example, in the first sentence of section 197.582(2)(a), the statute provides that "the surplus" resulting from a tax lien sale "must be paid over and disbursed by the clerk as set forth in subsections (3), (5), and (6)." If applied literally, this would ignore procedures contained in the third and fourth sentences of subsection (2) itself. Those provisions require the clerk to

"distribute the surplus to the governmental units for the payment of any lien of record held by a governmental unit against the property," and thereafter, if "there *remains a balance* of undistributed funds," to retain such balance "for the benefit of persons described in s. 197.522(1)(a), except those persons described in s. 197.502(4)(h), as their interests may appear."8 The directive in subsection (2)(a) to pay governmental units holding liens of record is not conditioned on receipt of any request or claim, and this Office has interpreted previous iterations of this process (first directing the clerk to distribute the tax deed sale surplus to governmental units) as allowing the statutorily identified liens "to be *automatically satisfied* from the excess proceeds of a tax sale."9 In fact, it is only after this initial distribution in payment to "governmental unit" lien holders that a "balance of undistributed funds" will "remain" and the notice and claim provisions set forth in subsections (2) through (6) can be implemented. By contrast, subsection (5) provides broadly that "[a] person other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the surplus funds." Because a "person" can include some governmental entities, *see* § 1.02, Fla. Stat. (2019), this provision would appear to require the filing of a claim.

Additionally, the exclusive reference to subsections (3), (5), and (6) in the first sentence of subsection (2)(a) ignores subsections (7), (8), and (9) of the statute. Those subsections contain provisions specifying when and how payments shall be made to "holders[s] of a recorded governmental lien, other than a federal government lien or ad valorem tax lien;" to "tax deed recipient[s]" who "directly pay off all liens to governmental units that could otherwise have been requested from surplus funds"; and (when no claims are made) to the "legal titleholder of record described in s. 197.502(4)(a)."

Subsection (7) directs the clerk to "disburse payments to each governmental unit to pay any lien of record held by a governmental unit against the property, including any tax certificate not incorporated in the tax deed application and any omitted taxes, before disbursing the surplus funds to nongovernmental claimants." In so doing, subsection (7) distinguishes between a "holder of a recorded governmental lien" and a "governmental unit" holding "a lien of record against the property." Where the Legislature uses different language to refer to these classes of lienholders, it must be presumed that a different meaning was intended. The term "holder of a recorded governmental lien" is broader than a "governmental unit" holding a "lien of record," and may include a nongovernmental holder of a governmental lien by assignment, such as an investor. While such nongovernmental claimants (unlike the tax deed recipient, as set forth in subsection (8)) do not receive payment "in the same priority as the original lienholder," they are also not required to file a "timely *claim* under subsection (3)," but only to file a "*request* for disbursement of surplus funds within 120 days after the mailing of the notice of surplus funds,"10 as a precondition to payment. In contrast, the directive to pay governmental lienholders prior to nongovernmental "claimants" is not conditioned upon the governmental lienholder filing either a "claim" or a "request for disbursement."

As the statute is ambiguous, canons of statutory interpretation must be applied.

When thus faced with an apparent ambiguity or conflict within a statute, the canons of statutory interpretation must be applied. It is elemental that "all parts" of the statute "must be read together in order to achieve a consistent whole," and, where possible, "full effect" must be given "to all statutory provisions" and related provisions must be construed "in harmony with one another."11

Further, “significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.” Where separate provisions of the same statute are susceptible of two different constructions—one which harmonizes both provisions, and one which creates an irreconcilable conflict between them—a “rational, sensible construction” that avoids such conflict and leads to a “more reasonable” result will be adopted.

Applying these principles here, section 197.582 should be interpreted to give effect to as much of its language as logically possible. To conclude that liens of record held by governmental units not be paid unless such entities file claims pursuant to the process set forth in subsections (2) through (6) of section 197.582 would ignore both the payment directives set forth in subsection (2)(a) (providing for automatic payment of such liens before the notice and claims process applicable to the “balance of undistributed funds” is even commenced) and the distinction in subsection (7) between a “holder of a recorded governmental lien”, which “must file a request for disbursement of surplus funds” and a “governmental unit” holding a “lien of record” to whom payments must be disbursed before “nongovernmental claimants.” Instead, it is most reasonable to conclude that governmental units holding liens of record must be paid first from any surplus resulting from a tax deed sale, without the prerequisite of filing a claim. Whereas nongovernmental holders of a recorded governmental lien must file a “request for disbursement.”

Conclusion

Based on the foregoing, it is my opinion that, until legislatively or judicially determined otherwise, governmental units holding “liens of record…against the property” are not required to submit a request for surplus funds as a prerequisite to payment. Nongovernmental holders of recorded government liens are required to file a request for disbursement of surplus funds. Because of the mandatory nature of the disbursement under subsection (2)(a) and the second sentence of subsection (7), the failure of a governmental unit holding a lien of record to submit a request for disbursement does not bar the governmental unit from entitlement to payment. Therefore, section 197.582 requires the Clerk to distribute funds to governmental units holding such liens of record before disbursing the balance of surplus funds to claimants that are not governmental unit lienholders, as their interests may appear.

Sincerely,

Ashley Moody
Attorney General

---

1 *See generally Rahimi v. Glob. Discoveries, Ltd.*, LLC, 252 So. 3d 804, 807–08 (Fla. 3d DCA 2018) (outlining the process for distributing surplus funds after a tax deed sale; although portions of the 2014 statute were later amended, the provisions construed remain substantially the

same).

2 259 So. 3d 728, 730–32 (Fla. 2018) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

3 *Holly*, 450 So. 2d at 219 (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931)).

4 Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 425 (2012).

5 *Holly*, 450 So. 2d at 219 (quoting *A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (1931)).

6 *Smith v. Smith*, 224 So. 3d 740, 745 (Fla. 2017) (citing *Greenfield v. Daniels*, 51 So. 3d 421, 425 (Fla. 2010)).

7 *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 316 (Fla. 2017) (Lawson, J., concurring in part and dissenting in part).

8 Section 197.522(1)(a) requires the clerk to notify “the persons listed in the tax collector’s statement pursuant to s. 197.502(4)” of an application for tax deed. Section 197.502(4) requires the tax collector to provide the clerk with a list of persons to be notified of the tax deed sale, including the legal title holder, mortgagees, and lienholders.

9 Op. Att'y Gen. Fla. 76-168 (1976) (emphasis added); *see also* Op. Att'y Gen. Fla. 2006-14, n.1 (2006).

10 § 197.582(7), Fla. Stat. (2019).

11 *Knowles v. Beverly Enterprises-Fla., Inc.*, 898 So. 2d 1, 6 (Fla. 2004) (citing *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)) (emphasis omitted).