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# DELINQUENT TAX STATUTES




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## Fourteenth Amendment of the United States Constitution

- ▶ ...Nor shall any state deprive any person of life, liberty, or **PROPERTY**, without due process of law. . . .




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- ▶ Part 1: TAX SUIT
- ▶ 67-5-101 All property, real and personal shall be assessed for taxation for state, county and municipal purposes. . . .
- ▶ 67-5-102(a)(1) For county general purposes, the various counties are authorized to levy an ad valorem tax upon all property. . . .
- ▶ 67-5-305(a) It is **unlawful** for any assessor of property or deputy assessor to willfully fail, refuse or neglect to perform, obey and observe the duties or requirements of this chapter. {it is a **Class C misdemeanor** 67-5-306}




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### T.C.A. 67-5-2001 et. seq. Delinquent Taxes

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- ▶ After taxes become delinquent, the county trustee shall have power to appoint such deputies as may be necessary for the collection of the taxes. . . The trustee shall furnish the deputy with a list of the delinquent taxpayers, with the description of the property assessed against each and the amount of taxes due from each. T.C.A. 67-5-2001(a)(1)




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### T.C.a. 67-5-2101

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- ▶ The taxes assessed . . . shall become and remain a **first lien upon such property**. . . .
- ▶ In addition to the lien on property, property taxes shall become and remain a **personal debt of the property owner**. . .




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### t.c.a. 67-5-2103

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- ▶ The whole proceeding for the enforcement of property tax liens, from the assessment to sale for delinquency, shall be a **proceeding in rem**. . . .
- ▶ **All interested persons shall be deemed to have constructive notice of the proceedings by virtues of the seizure of the parcel** occurring upon the filing of a complaint for the purpose of enforcement of the first lien. . . .




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### Enforcement of tax lien 67-5-2401 et. Seq.

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- ▶ Notice of intent to file suit shall be inserted once a week for two consecutive weeks in January in the local newspaper paraphrasing 67-5-2401
- ▶ 67-5-2402 Notice to Property Owner
- ▶ If a taxpayer. . . Appeals a judgment. . .in an action to collect or enforce a lien for unpaid taxes . . . or to set a side a tax sale . . . the court may, in its discretion, and upon the tax entity prevailing in such action, **award reasonable attorneys' fees" against the taxpayer.**




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### t.c.a.67-5-2405 filing and prosecution of suits

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- ▶ The attorney shall after February 1 and not later than April 1, file suits in the . . . Chancery court of the county for the collection of delinquent land taxed
- ▶ Suits for the collection of delinquent taxes are to be
- ▶ Prosecuted ASAP and are to be
- ▶ ACCORDED PRIORITY BY THE COURT




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### t.c.a. 67-5-2406

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- ▶ **FAILURE TO PROSECUTE-DUTIES OF DISTRICT ATTORNEY GENERAL-REMOVAL OF ATTORNEY FOR NON-PROSECUTION** (of the delinquent tax suit)
- ▶ DA can hire an attorney to sue for the tax collection
- ▶ Or file a mandamus action to compel the trustee to sue




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t.c.a. 67-5-2409

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- ▶ CONSOLIDATION OF SUITS
- ▶ City and county taxes due on a parcel are consolidated into one suit




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t.c.a. 67-5-2414

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- ▶ All such suits . . . shall be prosecuted according to the rules of procedure in courts of chancery . .




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**Notice to taxpayer of delinquent TAX SUIT**

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- ▶ 67-5-2415
- ▶ The delinquent taxpayer does not have to receive a copy of the complaint. Rather the county can furnish to the defendant a notice identifying the proceedings as to the parcel
- ▶ Notice shall be sufficient if received by an owner in time to afford the owner a reasonable period to prevent the loss of owner's interest in the parcel




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- ▶ After suit is filed if the delinquent taxpayer does not pay the taxes, penalties, fees and interest due, then the county will file a motion for default
- ▶ The court grants the motion for default and orders the property sold to pay the debt due

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## Part 2: TAX SALE

### T.C.A. 67-5-2501

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## Notice of TAX SALE

- ▶ Notice to parties of the pending tax sale may be forwarded to the address of an owner of the property that is on record in the office of the assessor or property
- ▶ It is the responsibility of the property owner to register the property owner's name and address with the assessor of property of the county in which the land lies

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t.c.a. 67-5-2502

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- ▶ T.C.A. 67-5-2502(c)(2) the delinquent tax attorney shall make a reasonable search of the public records in the offices of
- ▶ (1)The assessor of property
- ▶ (2)Trustee
- ▶ (3) The register of deeds
- ▶ and
- ▶ (4) The local office where wills are recorded




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DILIGENT EFFORT TO GIVE NOTICE

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- ▶ THE COUNTY MUST MAKE A DILIGENT EFFORT TO GIVE NOTICE OF THE PROCEEDINGS BUT SUCH EFFORT **DOES NOT REQUIRE THAT AN INTERESTED PERSON RECEIVE ACTUAL NOTICE**
- ▶ **NOR DOES IT REQUIRE THE COUNTY TO SEARCH RECORDS OR SOURCES OF INFORMATION IN ADDITION TO THAT INFORMATION AVAILABLE IN THE SPECIFIC OFFICES LISTED IN T.C.A. 67-5-2502(c)(2)**




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*Maccaughelty v. Sherrod,*  
M2020-00403-COA-R3-CV (April 13, 2023)

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- ▶ The statute only requires the county to search for addresses in the records of the four offices **not** to search records of certain utilities.
- ▶ Thus the subsequent service by publication was effective on the delinquent taxpayer




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- ▶ After the properties are sold, the court enters orders confirming the sale of the different parcels to the respective tax sale purchasers

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Part 3: REDEMPTION T.C.A. 27-5-2701

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When the statute is amended, Which version of the statute applies?

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- ▶ The statute that was in existence at the time of the TAX SALE applies
- ▶ 2011 *Delinquent Taxpayers v. the Metropolitan Government of Nashville*, M2015-02450-COA-R3-CV (July 23, 2018) The right of redemption and the procedure by which it is exercised are created by statute and originate on the date of the tax sale. Thus the law in effect at the time of the sale applies

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- ▶ Tennessee law favors redemption. *Lock v. Edmunson*, 60 Tenn 282 (1872)
- ▶ The right to redeem should be construed liberally in favor of the taxpayer. *State v. Delinquent Taxpayers*, M2004-00951-COA-R3-CV (December 7, 2006) Judge Koch

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### WHO CAN REDEEM THE PROPERTY

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### T.C.A. 67-5-2701(a)(1)(a)

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- ▶ Upon entry of an order confirming a sale of a parcel,
- ▶ A right to redeem shall vest IN ALL INTERESTED PERSONS




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## INTERESTED PERSON

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- ▶ T.C.A. 67-5-2502(B) "interested person," "person owning an interest in a parcel" and "owner" means
- ▶ (1) a person . . .that owns an interest in a parcel
- ▶ (2) a lienholder
- ▶ or
- ▶ (3) an assignee of the lienholder

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## Persons entitled to redeem

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- ▶ Person entitled to redeem means
- ▶ 1. any interested person as of the date of the sale
- ▶ OR
- ▶ 2. as of the date that the motion to redeem is filed (because the right of redemption is
- ▶ Transferable)
- ▶ T.C.A. 67-5-2701

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## HOW LONG after the tax sale DOES AN INTERESTED PERSON HAVE TO REDEEM?

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## REDEMPTION PERIOD

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- ▶ T.C.A. 67-5-2701(B) **one year** from date of entry of order confirming sale to the tax sale purchaser




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## The redemption period can be shortened

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- ▶ T.C.A. 67-5-2701(a)(1)(D) and (2)
- ▶ The redemption period can be shortened to 30 days if the tax sale purchaser can show that the property is vacant and abandoned based upon 3 periodic inspections of the property over a two month period at different times of the day




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## T.c.a. 67-5-2701 (a)(3) evidence of abandonment

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- ▶ Overgrown of dead vegetation
- ▶ Accumulation of newspapers or mail
- ▶ Past due utility notices, disconnected utilities
- ▶ Accumulation of trash
- ▶ Absence of window coverings
- ▶ Broken windows
- ▶ Property open to trespass
- ▶ Structurally unsound building
- ▶ Mortgagor has informed mortgagee that mortgagor does not intend to occupy the property




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### Who is entitled to rents from the property?

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- ▶ After the tax sale, who is entitled to the rent from that property?




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### t.c.a. 67-5-2503

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- ▶ An order confirming the sale of a parcel shall confer the right to possession of the parcel to the tax sale purchaser effective upon entry of the order
- ▶ On such date, the risk of loss shall transfer from the owner to the tax sale purchaser
- ▶ Upon application by the tax sale purchaser, a writ of possession SHALL be ordered by the court




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### Wright v. Williams, 75 Tenn. 700 (1881) but, see, 2017 WL 5495401

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- ▶ If the delinquent taxpayer remains in the home then later redeems the property, he shall not be liable for rent for the months prior to the redemption, because he became again the absolute owner
- ▶ if the delinquent taxpayer is not living in the home, but later redeems, he is still entitled to the rent from his tenant (or from the tax sale purchaser if TSP moves into the home.
- ▶ If the delinquent taxpayer does NOT redeem the property, the tax sale purchaser is entitled to rent from the person who resides in the home (delinquent taxpayer or tenant)




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### t.c.a. 67-5-2701(n)

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- ▶ Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be divested out of the purchaser, and the clerk shall promptly refund the purchase money and pay all sums due to the purchaser under this section. The interests of the Interested persons are restored to that state which existed as of the date of entry of the order confirming sale.
- ▶ Any lienholder who redeems may thereafter foreclose upon the parcel

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- ▶ The right of redemption is treated as an estate or interest in land
- ▶ Thus it is transferable
- ▶ *State v. Delinquent Taxpayers*, No. M2002-00718-COA-R3-CV, 2003 WL 21171858 (May 20, 2003)

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### Who can pay for the redeemer to redeem? ANYONE

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- ▶ *City of Chattanooga v. 2011 Delinquent Taxpayers*, No. E2016-00025-COA-R3-CV, 2017 WL 541535 (February 10, 2017) "the source of the funds, the owner of the checking account, or the identity of the person who delivered the payment to the Clerk & Master makes no legal difference." "There is no statutory requirement as to the ownership or source of the funds."

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AFTER motion to redeem is filed,  
tax sale purchaser has 3 choices

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- ▶ 1. waive protest
- ▶ 2. protest the redemption
- ▶ 3. file motion for lawful charges




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Part 4: Motion for  
lawful charges

T.C.A. 67-5-2701 (D) MUST BE FILED WITHIN 30 DAYS AFTER  
THE MAILING OF THE NOTICE OF REDEMPTION

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lawful charges  
t.c.a. 67-5-2701(e)

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- ▶ The tax sale purchaser can seek reimbursement from the redeemer for ONLY the following six items:
  - ▶ 1. additional ad valorem taxes paid
  - ▶ 2. Insurance and REASONABLE improvements made thereon
  - ▶ 3. Costs to avoid permissive waste
  - ▶ 4. Expenses paid due to a judicial or administrative notice to bring property into compliance with code regulations
  - ▶ 5. HOA dues
  - ▶ 6. additional interest




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- ▶ Note:
- ▶ A recording fee is not allowed as a lawful charge




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- ▶ Ad valorem taxes=this year's current taxes paid to city or county or both




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*State v. Delinquent Taxpayers*, No. M2004-00951-COA-R3-CV, (November 2, 2006) Judge Koch

- ▶ Reasonable improvements
- ▶ This simply codifies the tax sale purchasers duty to refrain from committing permissive waste but IT DOES NOT GIVE A TAXPAYER FREE REIN TO IMPROVE THE PROPERTY DURING THE REDEMPTION PERIOD




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### Costs to avoid waste

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- ▶ COSTS TO AVOID WASTE= Unreasonable conduct by a person in rightful possession of real property that results in the destruction or permanent physical damage of the property and in substantial diminution of the value of other persons' interest in the property
- ▶ Waste can be caused by either acts of commission or acts of omission. Thus voluntary waste results from deliberate affirmative acts while permissive waste results from the failure to exercise the reasonable care to preserve and protect the future estate of another

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- ▶ The question of what constitutes permissive waste is a question of law
- ▶ The question of whether permissive waste has been committed is a question of fact

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- ▶ Normal wear and tear is not permissive waste
- ▶ The tax sale purchaser must keep the property in the same general condition that it was at the time of the tax sale
- ▶ Thus a person can commit permissive waste if the person allows a structure to deteriorate for lack of repair
- ▶ *Id.*

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- ▶ Not all work performed on a structure is compensable
- ▶ Work that goes beyond maintenance and preservation and that enhances or upgrades an existing structure is not compensable, because this is an improvement
- ▶ Requiring a redeemer to pay for all improvements made during the redemption period would impair or defeat the right of redemption

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- ▶ *Rutherford County v. Delinquent Taxpayers*, No. M2016-01254-COA-R3-CV, 2017 WL 5495401 (November 15, 2017)
- ▶ Tax sale purchaser installed a new roof; replaced moldy carpet, removed moldy drywall, and installed drywall, painted the interior walls, installed new bathroom, fixtures, reconnected electricity to the house, installed a new HVAC unit and replaced the mailbox
- ▶ Court held that the tax sale purchaser's obligation to refrain from committing permissive waste only obligated him to make the house **"WIND TIGHT AND AIR TIGHT"** and to stabilize the house to prevent additional deterioration

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- ▶ Court determined that the
- ▶ New carpet
- ▶ New drywall
- ▶ Paint the interior walls,
- ▶ Installation of new bathroom fixtures
- ▶ Reconnecting the electricity
- ▶ Replacing the mailbox
- ▶ Did NOT constitute lawful charges but rather improvements

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- ▶ As to installation of an HVAC unit, the court noted that this could be a lawful charge if it is necessary to prevent damage that can occur due to frozen pipes
- ▶ However, When this tax sale purchaser installed the HVAC, the pipes had already frozen and burst the previous year so the damage had already been done. A new HVAC unit was not necessary to prevent further damage especially since the house had no electricity or running water

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- ▶ As to new roof, a tax sale purchaser prevents waste and preserves a property's value by replacing leaking roof. If it is possible to repair an existing roof, however, a tax sale purchaser is not entitled to reimbursement for money paid to install a new roof

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- ▶ Tax sale purchaser must prove the amount of the expenditures

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- ▶ Tax sale purchaser can sue in general sessions court (or circuit or civil if the amount is over \$25,000) for unjust enrichment to the property for items not covered by lawful charges
- ▶ But there is a filing fee and the TSP has to get service on the taxpayer, discovery may occur etc.
- ▶ Whereas in the Tax suit, it just requires a motion to recover for lawful charges

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### Part 5: MOTION TO PROTEST REDEMPTION

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- ▶ TCA 67-5-2701 (d)
- ▶ TSP may protest that the redemption was not timely file or not filed by an interested person etc.

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### T.C.A. 67-5-2701

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- ▶ Motion to Protest Redemption must be filed within 30 days after the mailing of the notice of redemption

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Part 6: Motion for excess sale proceeds

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After CONFIRMATION OF SALE, ANY INTERESTED PERSON MAY FILE FOR EXCESS SALE PROCEEDS AND IF GRANTED THE COURT SHALL ORDER THAT ANY REMAINING REDEMPTION PERIOD SHALL BE TERMINATED AS TO THE MOVANT



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Motion for excess sale proceeds

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- ▶ T.C.A. 67-5-2702
- ▶ Following the entry of the order confirming sale, ANY INTERESTED PERSON may file a motion with the court requesting disbursement of any excess sale proceeds



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Priority for payout

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- ▶ Lienholder at time of sale
- ▶ Lienholder after sale
- ▶ Delinquent taxpayer ACCORDING TO SUCH TAXPAYER'S INTEREST AT THE TIME OF THE TAX SALE provided that the taxpayer was a defendant in the underlying action or acquired by will or intestate succession the interest in the property of a former taxpayer who was a defendant in the underlying action



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- ▶ A person who claims to be the owner of an interest in a parcel which is the subject of a motion to claim any excess proceeds from a delinquent tax sale shall record the document effecting such ownership or an affidavit of heirship in the office of the register of deeds for the county in which the parcel is located prior to 30 days before the day on which the motion is scheduled to be heard. A person who failed to timely record such document shall not be entitled to **notice** of the motion to claim excess proceeds

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### Chancellor's friend

- ▶ In the event an interested person who failed to receive notice of the motion to claim excess sale proceeds, absent any fault on the interested person's part, claims that a person has received excess proceeds in error or in excess of the person's correct share to the detriment of the interested person, the interested person has a **RIGHT OF RECOVERY AGAINST SUCH PERSON** for the recovery of such proceeds as may have been paid in error. Such right of action shall be the exclusive remedy of such an interested person. In addition to any other available actions, the interested person may by motion seek relief from the order disbursing the excess proceeds in the court in which the tax proceeding was filed.

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A tax sale purchaser cannot seek the excess sale proceeds TCA 67-5-2702-this is based on statutory construction and construing the statutes *in pari materia*

- ▶ Any interested person may file a motion for excess sale proceeds TCA 67-5-2502
- ▶ An interested person is a person that owns an interest in the parcels or a lienholder or an assignee of a lienholder
- ▶ This statute governs notice of the tax sale
- ▶ Thus interested person means the owner of the parcel prior to the sale (at the time of the delinquency in order to get notice)
- ▶ also TCA 67-5-2701(a)(1)(A) upon entry of an order confirming a sale of a parcel, a right to redeem shall vest in all interested persons.
- ▶ A tax sale purchaser does not have a right to redeem the property from himself. Thus the tax sale purchaser is not and cannot be an interested person for purposes of the tax statutes and certainly not to file a motion for excess sale proceeds.
- ▶ Moreover a tax sale purchaser is not a person which is entitled to any excess proceeds. Rather only a lienholder, delinquent taxpayer, or heir of delinquent taxpayer

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THUS DON'T DEPEND ON THE LUCK  
OF THE IRISH-PAY YOUR TAXES!

HAPPY ST PATRICK'S DAY!

A dark teal rectangular box with a gradient background. It contains two lines of white text at the top, a smaller line of white text below it, and a light blue circle on the right side. A small white triangle points to the right from the bottom of the circle. A small red square with the number '61' is located in the top right corner of the box.

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