State of California

County Tax Sale Procedural Manual

Volume II: Chapter 8 Tax Sales

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California State Controller's Office

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Introduction

The *County Tax Sale Procedural Manual, Volume II: Chapter 8 Tax Sales*, is the second of a two volume manual (*Volume I: Chapter 7 Tax Sales*) produced by the State Controller's Office, Division of Accounting and Reporting, Property Tax Standards Unit. This volume provides comprehensive instructions and recommendations on how to prepare, conduct, and complete a Chapter 8 Tax Sale outlined in the California Revenue and Taxation Code.

Volume II: Chapter 8 Tax Sales, outlines the procedures necessary to conduct an agreement sale within the statutory guidelines.

All statutory references cited are from the Revenue and Taxation Code, unless otherwise noted.

The State Controller's Office forms referred to within this manual are samples that contain all of the required information pursuant to statute. The county tax collector's office may use the sample forms or they may create their own forms. Forms used should contain all information required by statute.

NOTICE: This publication is provided by the State Controller's Office, Property Tax Standards Unit, as a general resource for California's county tax collectors. Processes and forms are recommended to assist the counties in performing their duties under the law. This publication is written primarily for use by county tax collectors and does not constitute legal advice. This publication has been reviewed by The Committee on County Tax Collecting Procedures and members of the California Association of Treasurer Tax Collectors.

Section 1: Agreement Sale Overview

The material in this volume is intended to provide step-by-step recommendations on the procedures and processes necessary to properly conduct an agreement sale.

The agreement sale is designed to allow eligible taxing agencies or nonprofit organizations the opportunity to purchase tax defaulted property for the purpose of public benefit and/or to offset the tax owed to them by utilizing some other characteristic of the property for financial compensation.

As a completed agreement sale deprives a person of property ownership, specific procedural requirements have been added to statute to ensure that individuals are afforded consistent and appropriate opportunities to retain their property. Statue also gives counties the authority to initiate responsive measures should property owners fail to meet their property tax obligations.

Below is a summary of the general logistics concerning the sale of a property that has become tax defaulted:

- When a property owner fails to pay his or her property tax by the final due date and it becomes tax-delinquent, the tax collector sends the property owner, or assessee, a notice of impending default, followed by a declaration of default if the delinquency is not satisfied.
- The declaration of default opens a waiting period, during which the defaulted taxes, penalties, and costs accumulate until redeemed. At the end of the waiting period, if the taxes remain unpaid, the tax collector has the power to sell the property.
- Length of the waiting period will depend on the property type.

Property Type	Waiting Period
Residential or Farmland	5 years
Nonresidential Commercial	3 years

- Before the sale, the tax collector is required to notify the assessee and all parties of interest, by certified mail, of the tax collector's power and intent to sell the property for nonpayment of taxes. The property must meet specific conditions to qualify for sale at an auction.

Waiting period exceptions: If a county board of supervisors has, by resolution or ordinance, opted out of the three-year provisions for commercial property, then the waiting period is five years. Property also may be eligible for sale after three years if a nuisance abatement lien has been recorded against the property, or if a qualified public agency or nonprofit organization has identified a property for low-income housing and has sent a completed application to the county.

Only after all of the statutory requirements are met, and not less than 45 days nor more than 120 days have elapsed since the mailing of the notice by certified mail, can the tax collector exercise his or her authority to sell the property.

Upon completion of the sale, the tax collector must file reports with the county recorder, county treasurer, and the assessor to address the transfer of title and the distribution of sale proceeds. The tax collector also must be prepared to submit, upon request, a report to the State Controller's Office on the disposition of all properties (§3691.6).

Additionally, within the first year following the date of the execution of the tax deed to the purchaser, the tax collector must respond to challenges concerning the validity of the sale and accept excess proceeds claims.

An action to overturn a sale based on alleged invalidity or irregularity of any proceedings may be commenced in court only if both of the following are satisfied (§3725):

- The person commencing the proceeding has first petitioned the board of supervisors pursuant to §3731 within one year of the date of the execution of the tax collector's deed; and
- The proceeding is commenced within one year of the date on which the board of supervisors determines that a tax deed sold under this part should not be rescinded pursuant to §3731.

Section 2: Significant Factors Timeline

The timeframes for each of the significant factors are given in ranges rather than in fixed increments. For many significant factors, the timeframes are suggested upper and lower cutoff points from which certain tasks should begin. For the significant factors that are in bold typeface and followed by an *asterisk*, the latter cutoff point is the statutory deadline to complete the task, rather than a suggested time to begin.

Several requirements dictate when the actual sale may occur, and each of these requirements is contingent upon a block of tasks being completed, therefore the significant factors are divided into three separate sections: Pre-Sale Authorization from the Board of Supervisors and the State Controller, Statutory Requirements for Processing the Sale, and Post-Sale Statutory Requirements.

Pre-Sale Authorization from the Board of Supervisors and the State Controller

Review the Purchase Application	35 - 20 days prior to submitting the request for the State Controller's authorization
Prepare the Request for Approval from the Board of Supervisors	25 - 15 days prior to submitting the request for the State Controller's authorization
Submit the Approval Request to the Board of Supervisors	20 - 10 days prior to submitting the request for the State Controller's authorization
Prepare the Request for the State Controller's Office Authorization	10 - 5 days prior to submitting the request for the State Controller's authorization
Submit the Request for the State Controller's Office Authorization	Allow up to 45 days for authorization results from the State Controller.

Statutory Requirements for Processing the Sale

Search for Parties of Interest	40 - 30 days prior to mailing the Notice to Parties of Interest
Notify Parties of Interest	**45 - 60 days*** prior to the effective date of sale (§3799)
Notify the IRS	**At least 25 days*** prior to the sale (26 US Code §7425(d))
Publish/Post the Notice of Agreement	**At least 21 days*** prior to the effective date of sale (§3798)
Agreement Sale Becomes Effective	**No sooner than the 21st day*** after the first publication of the notice of agreement (§3802)

Post-Sale Statutory Requirements

Execute a Deed to the Purchaser	**Immediately*** after the effective time and date of the sale (§3804)
Record the Deed with the County Recorder	**Immediately*** after executing the deed to the purchaser (§3804)
Report to the County Assessor and the County Auditor	**Immediately*** after the execution of the deed (§3811)
Report to the State Controller	**Within 30 days*** after the effective date of the sale (§3811)
Mail the Notice of Excess Proceeds	**Within 90 days*** after the effective date of the sale (§4676(b))
Publish the Notice of Excess Proceeds (Only if the last known address of a party of interest cannot be obtained)	**Within 90 days*** after the effective date of the sale (§4676(b))
Distribute the Excess Proceeds	**At least 1 year*** following the recordation of the tax collector's deed to the purchaser (§4675(e))

***Denotes statutorily required event**. These items are also listed on the State Controller's Office sample form, *Checklist of Mandatory Requirements* (*Chapter 8)* (SCO 8-17.1). The list will help to track requirements that should be initiated by the tax collector to lawfully initiate, process, conduct, and complete a Chapter 8 Tax Sale.

Section 3: Identifying the Purchasing Entity

At any time after the tax collector records a notice of power to sell for a tax defaulted property pursuant to §3691, any eligible taxing agency, revenue district, city, special district, or nonprofit organization may submit a proposal to purchase the property (§3773). As the Chapter 8 Sale is initiated by an outside agency, the scheduling of such a sale is not predictable. However, once a purchase proposal is received, there is a well defined schedule that should be followed, with certain tasks and related timelines dictated by statute.

Upon receipt of a purchase proposal, identify the type of entity.

- Public Agency (includes the State, counties, cities, taxing agencies, revenue districts, special districts, and other state agencies).
- Nonprofit Organization (must be an entity that includes among its bylaws an express purpose of acquiring single-family or multifamily dwellings for rehabilitation and sale or rent to low-income persons, or for other use to serve low-income persons; vacant land for the purpose of constructing residential dwellings for subsequent sale or rent to low-income persons, or for other use to serve low-income persons, or for dedication of that vacant land to public use (§3772.5)).

If the entity is a public agency, proceed to **Section 4: Public Agency Purchase Eligibility Review**. If the entity is a nonprofit organization, proceed to **Section 6: Nonprofit Organization Purchase Eligibility Review**.

Section 4: Public Agency Purchase Eligibility Review

The State, taxing agencies, revenue districts, and special districts are eligible to acquire tax defaulted property without taking part in a public auction. They also may request that the tax collector withdraw property that is currently scheduled for public auction if the agency provides compelling evidence that the tax defaulted property is or may be needed for public use (§3695.4).

Purchasing Scenarios

Step 1: Determine the procedure by which the purchase is being proposed. A public agency may apply to purchase properties as follows:

- Submit a written application to purchase a property that is currently in tax default pursuant to §3691 but not yet approved for any other tax sale, see State Controller's Office sample form *Application to Purchase Tax Defaulted Property* (SCO 8-16). If the application to purchase the property follows this scenario, proceed to subsection **Qualifications and Conditions of Sale to a Public Agency**.
- Submit a written application to purchase a property, along with an objection to the sale of that property if it is currently approved for public auction or sealed bid sale, see State Controller's Office sample form *Application to Purchase Tax Defaulted* (SCO 8-16). If the application to purchase the property follows this scenario, determine when the application was filed with the tax collector's office. If the purchase application was filed before the date of the first published or posted notice of sale, proceed to subsection **Qualifications and Conditions of Sale to a Public Agency**. If the purchase application was filed after the date of the first published or posted notice of sale, stop the review and return the application to the agency. Inform the agency that objections and agreement sale purchase proposals are not valid if they are filed after the date of the first published or posted notice of public auction or sealed bid sale.

Qualifications and Conditions of Sale to a Public Agency

Step 1: Determine whether the type of public agency and the conditions for the purchase match any of the following categories:

- **Taxing Agency that is not also a Revenue District** – The State of California, the county, or any district that assesses property for taxation purposes and levies taxes or assessments on the assessed property is included in this classification (§121). A taxing agency that is not also a revenue district may acquire tax defaulted property if it needs the property for a public purpose. A taxing agency that assesses and collects its own taxes may enter into a pro rata agreement with the county for the purpose of property resale if that agency has been owed delinquent taxes or assessments for at least two years prior to the date of the agreement (§3695, §3791).
- **Taxing Agency that is also a Revenue District** – A revenue district is every district for which taxes are assessed, levied, and collected by county officers. A taxing agency that is also a revenue district

may acquire tax defaulted property if it needs the property for a public purpose. A city is considered a taxing agency that is also a revenue district (§122, §3695.4).

- **Special Districts** – "District" or "special district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries (Government Code §56036). Special districts may be eligible to purchase property, but may have jurisdictional boundaries to consider. The county's Local Agency Formation Commission (LAFCo) should have documentation related to the jurisdiction of a special district, as well as whether a given agency fits into this category.

Step 2: After determining the type of public agency and whether or not it meets the eligibility requirements outlined in this subsection, locate the property description in the agreement proposal and proceed to Property Description.

Note: If the boundaries of the special district do not include, or are not expanded to include the property, the taxes will not be exempt and the purchaser will have to pay taxes to the jurisdiction in which the property is located.

Note: Consider consulting county counsel as an additional measure to verify whether a public agency is qualified to make the purchase.

Property Description

A description of the property must be included with the purchase proposal.

Existing Property Conditions

Ensure that the property has no existing condition that would disqualify it from being offered at an agreement sale. Appendix V describes conditions that can disqualify a property and explains how to remedy those conditions, if possible.

Step 1: Determine whether one or more of the following conditions exist for each property:

- **Bankruptcy** – Property files may be flagged with information about bankruptcy proceedings. If the files are not flagged or the information is not current, do not conduct any further research on the bankruptcy status until the parties of interest search is begun or until notification of a bankruptcy is received from the assessee.
- **Unprobated Property** – If the file for a particular property contains any returned letters showing that the assessee is deceased, follow up with the county public administrator to determine if probate of the decedent's estate has begun.
- **Contaminated Property** – The State Controller's Office recommends asking the environmental health and safety agency to review the list of properties to determine if any are or may be contaminated.

- **Damaged Property** – If a property has sustained damage, determine whether the cause was related to a county, state, or federally declared disaster. The county may have files or records containing this information, including dates and locations. If not, the information may be obtained by calling the California Office of Emergency Services (Cal OES) at (916) 845-8510. The Cal OES website address is www.caloes.ca.gov.
- **Cemetery Property** – If the property is a known cemetery, determine whether it falls under the requirements of Health and Safety Code §8585. Information may be obtained by contacting the Department of Consumer Affairs, Cemetery and Funeral Bureau at (916) 574-7870. The Department of Consumer Affair's website address is www.cfb.ca.gov.

Note: A cemetery under an historical society's jurisdiction is exempted from any requirements under Health and Safety Code §8585.

Step 2: If any of the conditions in step 1 apply, proceed according to the corresponding instruction.

- **Bankruptcy** – If the assessee has filed bankruptcy proceedings, then the property cannot be sold. However, an opportunity may exist to remedy the situation before the date of sale; maintain compliance with 11 U.S. Code §362 and seek guidance from county counsel (See Appendix II for more information).
- **Unprobated Property** – Properties for which the assessee is deceased and no probate has commenced cannot be sold. However, an opportunity may exist to remedy the situation before the date of sale (see Appendix II for more information).
- **Contaminated Property** – Any properties that are on the Superfund list should be removed from the sale. Contaminated properties not on the Superfund list may be offered for sale, but information about the contamination should be disclosed to prospective buyers. The tax collector's office may have a file containing Superfund list information for the county. If there are no files to refer to, contact the Department of Toxic Substances Control (DTSC) at (800) 728-6942. The DTSC website address is: www.dtsc.ca.gov/sitecleanup.
- **Damaged Property** – If a tax defaulted property has sustained damage due to a local, state, or federally designated disaster, the default status may be tolled until five years have elapsed from the date the damage to the property was incurred. During this tolled period, the tax collector's power of sale cannot arise, and the property is ineligible for sale (§3691). However, if and when the damage is substantially repaired, or after five years from the date of damage, whichever comes first, the tolling period ends and the default status resumes. For questions on the tolling period (see Appendix V for calculation method), or for a specific situation, please contact the State Controller's Office, Government Compensation and Property Tax Standards Section, by e-mail at propertytax@sco.ca.gov.

- **Cemetery Property** – If a property falls with Health and Safety Code §8585 the tax collector must notify the cemetery authority who will in turn notify the Cemetery and Funeral Bureau in the Department of Consumer Affairs.

Homeowner's Exemption/Situs

Determine whether the property has a valid homeowner's exemption. This information is located on the tax roll.

Note: If the homeowner's exemption is not on the tax roll, check the roll to determine whether the mailing address for the last tax bill is the same as the situs.

If a property does have a homeowner's exemption or the mailing address and situs are the same, then a personal contact visit must be made in addition to mailing a notice to parties of interest. The tax collector or his or her agent must make a reasonable effort to contact the owner occupant of the property in person not more than 120 days nor less than 10 days prior to the date of the sale (§3704.7(a)). For detailed instructions regarding the personal contact visit, refer to **Section 13: Notice to Assessee by Personal Contact (Public and Internet Auctions)** with in the *County Tax Sale Procedural Manual, Volume I: Chapter 7 Tax Sales*.

Section 5: Public Agency Application Requirements

Eligible public agencies may purchase all or any portion of tax defaulted property subject to the tax collector's power to sell, including a right-of-way or other easement. Multiple properties may be consolidated into one purchase agreement. The agreement may provide for either the purchase of, or for an option to purchase, the tax defaulted properties. An option to purchase is limited to a period of three years (§3794).

The public agency should be encouraged to acquire the entire interest in the property if the acquisition of a right-of-way or other easement would impair the salability of the remaining portion of the property. The purchaser must submit the executed agreement, including all supporting documents.

Note: "Executed" means that the signatures and titles of all authorizing officials appear on the agreement. The signatures of all attestants, their respective titles, and the seal of their individual offices must be included.

Purchase Agreement

Outline the conditions of the sale in the purchase agreement for all purchase agreements between eligible public agencies and the county board of supervisors. See State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Property* (SCO 8-13).

Note: Do not use the criteria in State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Property* (SCO 8-13) for agreement sales with nonprofit organizations. Refer to **Section 6: Nonprofit Organization Purchase Eligibility Review** for information on nonprofit agreement sales.

The purchase agreement should contain the following elements:

- **Date** – Agreement must be dated;
- **Name of the Purchasing Agency** – Must be entered on the purchase agreement in the same manner in which the agency is to acquire title and the taxing status of the agency must be shown directly after the name of the agency;

  For example:

  - The City of Watsonville, a municipal corporation, as a Taxing Agency;
  - The State of California, acting by and through its Department of General Services, as a Taxing Agency;
  - The Sacramento County Flood Control District, as a Revenue District;

- **Property Description** – Property must be identified by the Assessor's Property Number(s), the default number, the fiscal year of default, and either the metes-and-bounds or lot-and-block description;

If all of the elements required for the property description will not fit on the agreement, a document named *Exhibit A* may be used to accommodate the description of the property. See State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Property: Exhibit* A (SCO 8-14);

- **Purchase Amount** – Determined as follows:

  - If the property is currently authorized by the board of supervisors to be sold by a Chapter 7 sale, and, therefore, a minimum bid amount has already been established using Chapter 7 procedures, the purchase price must be equal to the minimum bid approved and set by the board. Under no circumstances may the property be sold for less (§3695). For more information on Chapter 7 procedures, refer to the *County Tax Sale Procedural Manual, Volume I: Chapter 7 Tax Sales;*
  - If the property has never been authorized for sale pursuant to Chapter 7, the purchase price may be negotiated between the purchaser and the board of supervisors. The tax collector may recommend a sale price to the board. While the price is negotiable, it must not be less than the amount required to redeem the property plus costs (§3793.1). See Appendix V for more information;
  - If the property has already been offered at least once for a Chapter 7 sale but has not sold, and the property is not currently authorized for a new Chapter 7 sale, the purchase price may be lowered with the approval of the board of supervisors (§3793.1(b));
  - If the property is being purchased by the State or county, the State Controller and the county board of supervisors must agree upon the price (§3775);

- **Terms and Conditions** – The board of supervisors may set terms and impose conditions regarding the conveyance to and use of the property by the acquiring agency;
- **Sale Costs** – The board of supervisors may require the purchasing agency to pay for other expenses beyond the purchase price of the property;

- These expenses may include, but are not limited to:

  - Cost of publication;
  - Cost of a guaranty of title;
  - Cost of proceedings to obtain a clear title to the property; and
  - Expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the property.

Note: When calculating the minimum bid, it is important to remember that the redemption penalties and fees portion must be based on the amount due during the month for which the property will be sold (§3793.1(d)(2&3)). If the intended schedule is delayed, the amount would need to be increased accordingly. This statutory requirement should be incorporated into the agreement sale contract to avoid any misunderstanding should the purchase price need to be adjusted.

Note: When a taxing agency, as defined by §3791, objects to the sale of tax defaulted property, it is not entitled to a portion of the distribution of the sale proceeds (§3720). Ensure that this circumstance is addressed in the terms and conditions of the agreement on item 4 of the State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Property* (SCO 8-13).

Parties to the Agreement

- If the purchaser is the State of California or a county, and the property lies within the boundaries of a city, then the city must approve the purchase price (§3775).
- If the purchaser is a city, then the signatories to the agreement are the governing body of the city, the board of supervisors, and the State Controller.
- If the purchaser is a taxing agency, then the signatories to the agreement are the governing body of the taxing agency, the board of supervisors, and the State Controller.
- If the purchaser is a revenue district, then the signatories to the agreement are the governing body of the revenue district, the board of supervisors, and the State Controller.
- If the purchaser is the State, then the signatories to the agreement are the director of the Department of General Services on behalf of the purchasing agency (or the agency itself if authorized by law to purchase on its own behalf), the board of supervisors; the State Controller, and the governing body of the city in which the property is located, if the property is within the city limits.
- If the purchaser is a county, then the signatories to the agreement are the board of supervisors or their designee on behalf of the purchasing agency within the county (e.g., the county flood control district or the parks and recreation district), the board of supervisors, the State Controller, and the governing body of the city in which the property is located, if the property is within the city limits.
- If the purchaser is a special district, then the signatories to the agreement are the governing body of the special district, the board of supervisors, the State Controller, and the governing body of the city in which the property is located, if the property is within the city limits.

Note: The facsimile signature of the chairperson of the board of supervisors is acceptable. A facsimile signature has the same authority as an original signature.

Note: No agreement is valid until it is approved by the State Controller (§3795).

Section 6: Nonprofit Organization Purchase Eligibility Review

Nonprofit organizations that meet certain criteria also may purchase property under the provisions of Chapter 8 of the Revenue and Taxation Code. A nonprofit organization may purchase property only for the purposes of constructing or rehabilitating property to rent or sell to low-income persons, dedicating vacant land for open space, or otherwise using the property to serve low-income persons (§3791.4).

Purchasing Scenarios

Step 1: Determine the procedure by which the purchase is being proposed. A nonprofit organization may apply to purchase properties by:

- Submitting an application form to purchase a property, along with an objection to the sale that is currently in tax default pursuant to §3691 and has not yet been approved for any other type of tax sale. See State Controller's Office sample form, *Application to Purchase Tax Defaulted Property* (SCO 8-16). If the application to purchase the property follows this scenario, proceed to the next section on **Qualifications and Conditions of Sale**.
- Submitting an application form to purchase a property, along with an objection to the sale of that property currently approved for public auction or sealed bid sale. See State Controller's Office sample form, *Application to Purchase Tax Defaulted Property* (SCO 8-16). If the application to purchase the property follows this scenario, proceed to Step 2

Step 2: Determine when the application was submitted to the tax collector's office.

- If the purchase proposal was filed with the tax collector's office **before** the date of the first published or posted notice of sale, proceed to the next section on **Qualifications and Conditions of Sale**.
- If the purchase proposal was filed with the tax collectors' office **after** the date of the first published or posted notice of sale, stop the review and return the application to the organization. Inform the organization that objections and purchase agreement proposals are not valid if they are filed after the date of the first published or posted public auction or sealed bid sale.

Qualifications and Conditions of Sale

Step 1: Determine whether the nonprofit entity is incorporated in the State of California (§3772.5(b)).

Step 2: Verify that the entity is incorporated for the purpose of acquiring single-family dwellings for rehabilitation and sale to low-income persons, vacant land for construction of low-income housing, or vacant land to be dedicated to public use.

A nonprofit entity incorporated as a church, a general philanthropy organization, or a nonprofit with other charitable purposes is qualified to purchase through Chapter 8 proceedings only if its incorporation papers include any of the aforementioned purposes.

Step 3: If the nonprofit entity meets **both** of the criteria in Steps 1 and 2, proceed to Property Description. If the nonprofit entity does not meet the criteria in Steps 1 and 2, then the entity cannot purchase the property under the Chapter 8 agreement sale process. However, the entity may bid on the property at a public auction.

Note: Consult county counsel as an additional measure to verify whether a nonprofit corporation is qualified to purchase a property. County counsel may recommend that a qualified nonprofit entity submit additional supporting documentation or that additional conditions be made a part of the purchase agreement.

Property Description

A description of the property must be included with the purchase proposal.

Existing Property Conditions

Ensure that the property has no existing conditions that would disqualify it from being sold. Appendix II describes conditions that can disqualify a property from being sold through an agreement sale and explains how to remedy those conditions, if possible.

Step 1: Determine whether one or more of the following conditions exist for each property:

- **Bankruptcy** – Property files may be flagged with information about bankruptcy proceedings. If the files are not flagged or the information is not current, do not conduct any further research on the bankruptcy status until the parties of interest search is begun or until notification of a bankruptcy is received from the assessee.
- **Unprobated Property** – If the file for a particular property contains any returned letters showing that the assessee is deceased, follow up with the county public administrator to determine if probate of the decedent's estate has begun
- **Contaminated Property** – Ask the environmental health and safety agency to review the list of properties to determine if any are or may be contaminated.
- **Damaged Property** – If a property has sustained damage, determine whether the cause was related to a county, state, or federally declared disaster. The county may have files or records containing this information, including dates and locations. If not, the information may be obtained by calling the California Office of Emergency Services (Cal OES), at (916) 845-8510. The Cal OES website address is www.caloes.ca.gov.
- **Cemetery Property** – If the property is a known cemetery, determine whether it falls under the requirements of Health and Safety Code §8585. This information may be obtained by contacting the Department of Consumer Affairs, Cemetery and Funeral Bureau at (916) 574-7870. The Department of Consumer Affairs' website address is www.cfb.ca.gov.

Step 2: If any of the conditions listed in Step 1 exist, proceed to the corresponding instruction.

- **Bankruptcy** – If the assessee has filed bankruptcy proceedings, the property cannot be sold. However, an opportunity may exist to remedy the situation before the date of the sale; maintain compliance with 11 U.S. Code §362 and seek guidance from county counsel (See Appendix II for more information).
- **Unprobated Property** – Properties for which the assessee is deceased and no probate has commenced cannot be sold. However, an opportunity may exist to remedy the situation before the date of the sale (See Appendix II for more information).
- **Contaminated Property** – Properties that are on the Superfund list, if any, should be removed from the sale. Contaminated properties not on the Superfund list may be offered for sale, but information about the contamination should be disclosed to prospective buyers (See Appendix III for more information). The tax collector's office may have a file containing Superfund list information for the county. If there are no files to refer to, contact the Department of Toxic Substances Control (DTSC) at (800) 728-6942. The DTSC website address is: www.dtsc.ca.gov/sitecleanup.
- **Damaged Property** – If a tax defaulted property has sustained damage due to a local, state, or federally designated disaster, the default status may be tolled until five years have elapsed from the date the damage to the property was incurred. During this tolled period, the tax collector's power of sale cannot arise, and the property is ineligible for sale (§3691). However, if and when the damage is substantially repaired, or after five years from the date of damage, whichever comes first, the tolling period ends and the default status resumes. (See Appendix IV for calculation method and the power to sell schedule.) For questions on the tolling period or a specific situation, please contact the State Controller's Office, Government Compensation and Property Tax Standards Section, by e-mail at: propertytax@sco.ca.gov.

- **Cemetery Property** – If a property falls with Health and Safety Code §8585 the tax collector must notify the cemetery authority who will in turn notify the Cemetery and Funeral Bureau in the Department of Consumer Affairs.

Homeowner's Exemption/Situs

Determine whether the property has a valid homeowner's exemption. This information is located on the tax roll.

Note: If a homeowner's exemption is not indicated on the tax roll, check the roll to determine whether the mailing address for the last tax bill is the same as the situs.

If a property does have a homeowner's exemption or the mailing address and situs are the same, then a personal contact visit must be made in addition to mailing a notice to parties of interest. The tax collector or his or her agent must make a reasonable effort to contact the owner-occupant of the property in person not more than 120 days nor less than 10 days prior to the date of the sale (§3704.7(a)). For detailed instructions regarding the personal contact visit, refer to the *County Tax Sale Procedural Manual, Volume I: Chapter 7 Tax Sales*.

Section 7: Nonprofit Organization Application Requirements

Eligible nonprofit organizations may purchase all or any portion of residential or vacant tax defaulted property subject to the tax collector's power to sell. It is important to know that the purchasing criteria for a nonprofit organization are very different from those for a public agency in a Chapter 8 sale.

The potential purchaser must submit a completed and executed copy of the purchase agreement, with all supporting documents.

Note: "Executed" means that the signatures and titles of all authorizing officials appear on the agreement. The signatures of all attestants, their respective titles, and the seal of their individual offices must be included.

Purchase Agreement

Outline the conditions of the sale for all purchase agreements between eligible nonprofit organizations and the county board of supervisors. See State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Land (Non Profit)* (SCO 8-15). Do not use the criteria listed on this form for agreement sales with public agencies. Refer to **Section 4: Public Agency Purchase Eligibility Review** for information on public agency agreement sales. The purchase agreement should contain the following elements:

- **Date** – Agreement must be dated;
- **"Substandard Building" Documentation** – If the property is going to be acquired for rehabilitation and sold or rented as low-income housing, then the purchase agreement must include documentation from the local building department certifying that the property is currently substandard, as defined in §17920.3 of the California Health and Safety Code (§3772.5(c));
- **Property Description** – The property must be identified by the Assessor's Property Number(s), the default number, the fiscal year of default, and either the metes-and-bounds or the lot-and-block description. If all of the elements required for the property description do not fit on the agreement, create an exhibit A. See State Controller's Office sample form, *Agreement to Purchase Tax Defaulted Property: Exhibit A* (SCO 8-14);
- **Purpose of Acquisition** – The purchase agreement must include a signed statement declaring the purpose of the acquisition and the subsequent disposition of the property. The property must be used for any of the following: vacant land for public use, including preservation of open space; rehabilitation or construction of residential dwellings for either sale or rent to low-income persons; or for other use to serve low-income persons (§3772.5(b));
- **Purchase Amount** – This is determined by one of the following methods:

    - If the property is currently authorized by the board of supervisors or their designee to be sold by a Chapter 7 sale and, therefore, a purchase amount has already been established using Chapter 7 procedures, then the purchase price must be equal to the minimum bid approved and set by the board or its designee. Under no circumstances may the property be sold for less (§3695). For more

information on Chapter 7 procedures, refer to the *County Tax Sale Procedural Manual, Volume I: Chapter 7 Tax Sales;*

- If the property has never been authorized for sale pursuant to Chapter 7, the purchase price may be negotiated between the purchaser and the board of supervisors. The tax collector may recommend a sale price to the board. While the price is negotiable, it must not be less than the amount required to redeem the property plus costs (§3793.1). See Appendix V for more information;
- If the property has already been offered at least once for a Chapter 7 sale but has not sold**,** and the property is not currently authorized for a new Chapter 7 sale, then the purchase price may be lowered with the approval of the board of supervisors (§3793.1(b));

- **Terms and Conditions** – The board may set terms and impose conditions regarding the conveyance to and use of the property by the acquiring nonprofit organization (§3795.5). If the board establishes any terms or conditions, they shall include, but are not limited, to the following:

  - **Project Compliance** – Documentation showing consistency and compliance with the jurisdiction's consolidated plan or community development plan. It is recommended that the documentation be in the form of a letter or resolution signed by an officer of the local jurisdiction that administers the housing plan for the region; and
  - **Articles of Incorporation** – The purchase agreement must include a copy of the nonprofit organization's articles of incorporation, approved by the California Secretary of State, clearly stating the purpose of rehabilitating or constructing low-income housing or dedicating vacant land to public use.

Other terms or conditions not specifically outlined in statute, but granted to the board under the general authority of §3795.5, may include:

- **Sale Costs** – The board may require the purchasing nonprofit entity to pay for other expenses beyond the purchase price of the property. These expenses may include, but are not limited to:

  - Cost of publication;
  - Cost of a guaranty of title;
  - Cost of proceedings to obtain a clear title to the property; and
  - Expenses incurred in the payment, compromise, or other method of removal of any liens or adverse claims against the property.

- **Project References** – The board may ask the nonprofit organization to include a list of successful projects and/or references and any other documentation deemed necessary

Note: When calculating the purchase price, it is important to remember that the redemption penalties and fees portion must be based on the amount due during the month for which the property is eventually sold (§3793.1(d)(2&3)). Consequently, if the intended schedule is delayed, then the amount would need to be increased accordingly. As such, this statutory requirement and fact should be incorporated into the agreement sale contract to avoid any misunderstanding should the purchase price need to be adjusted.

Note: A nonprofit entity that does not meet specifications pursuant to §3772.5(b) is not qualified to purchase property through Chapter 8 proceedings.

Section 8: Requesting Approval from the Board of Supervisors

Once the review of the purchase proposal is complete, the next step is to submit a request to approve the agreement sale to the county board of supervisors for review. Prepare a request form, see State Controller's Office sample form *Request for Approval to Sell Tax Defaulted Property Subject to the Power of Sale (Chapter 8),* (SCO 8-02.2).

Include in the request package the following items:

- Complete executed copy of the agreement; and
- All supporting documents.

Note: "Executed" means that the signatures and titles of all authorizing officials appear on the agreement. The signatures of all attestants, their respective titles, and the seal of their individual offices must be included.

Section 9: State Controller's Authorization

The final step of the agreement sale approval process is to obtain the State Controller's Office authorization, pursuant to §3795. In order to receive State Controller authorization, certain documents must be submitted, depending on the type of sale.

Documents required for Chapter 8 Agreement Sales

_____ Notice of Power to Sell (§3691, §3773)

- One per property

_____ Objection Letter (§3695.4, §3695.5)

_____ Application (SCO 8-16) (§3695.4, §3695.5)

- List all properties or include as an exhibit or attachment
- Must be dated prior to the first publication if the property is currently scheduled for a Chapter 7 Tax Sale

_____ Agreement (SCO 8-13 or 8-15) (§3795)

- List all properties or include as an exhibit or attachment
- Must be signed and dated

_____ Chapter 8 Purchase Resolution (§3695)

- From purchasing entity

_____ County Board of Supervisors Resolution or Minute Order Approving the Sale (§3794.3)

_____ Chapter 7 Tax Sale Resolution (§3694)

- Only needed if the property is currently scheduled for a Chapter 7 Tax Sale

_____ Publication (§3702)

- Only needed if the property is currently scheduled for a Chapter 7 Tax Sale

Additional Components for Nonprofit

_____ Articles of Incorporation (§3772.5, §3795.5)

_____ Document listing each property and intended use (§3772.5, §3695.5)

Send the materials to:

California State Controller's Office
Division of Accounting and Reporting
Attn: Property Tax Standards Unit
3301 C Street Suite 740
Sacramento, CA 95819

Agreement Approved

Once the State Controller's Office receives the Chapter 8 Agreement Sale package, the materials will be reviewed for compliance with all applicable statutes. Upon completion of the review, the State Controller's Office, Property Tax Standards Unit will keep a copy of the agreement package and will send the original back to the tax collector's office, with the following:

- The agreement contract, signed, and affixed with the State Controller's seal; and
- A notice that the State Controller's authorization certifies that the agreement has been approved by the State Controller and directs the tax collector to publish a notice of the agreement, pursuant to §3796.

For more information on publishing a notice of the agreement, refer to **Section 15: Publishing/Posting Notice of Sale**. Before publishing the notice of the sale, all parties of interest must be notified, as well as the IRS if there is an IRS lien on the property. Refer to **Section 11: Searching for Parties of Interest.**

Agreement Materials Not Complete

If the State Controller cannot determine that compliance with all relevant statutes has been met based on the information provided, then the materials will be returned to the tax collector with a letter outlining the additional elements needed. A new or modified agreement containing the requested materials may be resubmitted for authorization review (§3795).

Section 10: Effective Date of the Sale

The agreement sale becomes effective, by operation of law, no sooner than 5:01 p.m. on the 21st day after the date of the first published or posted notice of agreement (§3802). The right to redeem terminates on the date and at the time the agreement becomes effective. However, if all or any portion of the property is redeemed before the agreement becomes effective, the agreement is null as to the property redeemed (§3803).

Note: The recommended period which the purchaser should complete the payment, plus costs, is within 14 days after the effective date. Regardless of the payment date determined in the agreement, if the purchaser fails to pay the purchase price within the agreed-upon time, do not execute the deed to the purchaser. The right of redemption is automatically restored to the last assessee or his or her successor in interest.

The board of supervisors may permit a nonprofit organization to purchase property or a property interest by way of installment payments (§3793.1(c)).

If the agreement sale involves specific terms or conditions regarding the rehabilitation of the property, the board of supervisors may take measures to ensure compliance. The board may direct the tax collector to execute these measures.

Section 11: Searching for Parties of Interest

(40– 30 days prior to mailing Notice to Parties of Interest)

Once the board of supervisors has approved the tax sale agreement, begin research to identify potential parties of interest. The search may begin prior to receiving the State Controller approval for the agreement. Do not mail the notices until after receiving the State Controller's written authorization for the sale (§3796).

Note: Parties of interest are defined as lienholders of record and any persons with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser (§4675).

The preliminary task consists of researching, for each property, the identities of all individuals or entities considered a party of interest, as defined in §4675. This procedure is usually the most complex and can be the most time consuming of the entire tax sale process. Therefore, the timeframe selected to complete this procedure depends on both the number of properties included in the agreement and the method used to conduct the research. The tax collector is required to make a reasonable effort to obtain the names and addresses of all parties of interest and then notify those parties of the agreement by certified mail to their last known address, if available, no more than 60 days nor less than 45 days before the effective sale date pursuant to §3799.

Begin the search for parties of interest by identifying the names and last known addresses of all of the parties of interest for each property. One of the following methods or a combination thereof may be used:

- **Research Consultant -** Hiring a research consultant involves contracting with a company that locates lienholders or parties of interest of real property. Research agency reports tend to be moderately expensive, but they provide a comprehensive listing of all parties of interest on record.
- **Title Company -** This option involves the purchase of a litigation guarantee, which provides information sufficient to determine the parties of interest. Title company reports can be expensive and take some time to generate.
- **In-House Research -** Initially, in-house research involves updating existing parties of interest lists or, when a list is absent, updating from a point in the past at which all parties of interest were definitively known. Once that date is known, a search is conducted for any updated information that may have been recorded about the property from the current year back to the point when the initial analysis was done. The following conditions may favor in-house research over contracting out:

    - If the property has been offered at a previous tax sale, an extensive list of parties of interest may already exist in the file. Although the list may not be up-to-date, the fact that it exists may justify doing in-house research rather than purchasing another report.
    - If the property has not sold at *several* previous sales, it may not be prudent to spend additional funds on reports for the property; in this case, in-house research may be the best alternative.

Note: Although hiring a research consultant and doing a title search can save a substantial amount of research time, in each instance in which a property does not sell, the money spent for the information is not immediately recouped. The cost can be added to the redemption amount, but the county may not collect the money until the property is redeemed or purchased through a tax sale.

Section 12: Notice to Parties of Interest

(60 – 45 days prior to effective date of sale)

Once a list of parties of interest has been compiled for each property, mail the notice of agreement to the last assessee and each party's last known address.

Send the notice of agreement to the assessee and other parties of interest by registered mail not more than 60 days nor less than 45 days before the effective date of sale(§3799). It is not necessary to mail a copy of the notice to any party who files a written waiver of notice with the tax collector's office (§3799). See State Controller's Office sample form, *Notice of Agreement to Purchase Tax Defaulted Property* (figure 9.7a or 9.7b).

Note: Although the parties of interest search may begin before receiving approval for the agreement from the State Controller, the notices cannot be mailed until *after* written authorization from the State Controller is received (§3796).

Step 1: Prepare the transmittal form to include with a copy of the notice of agreement. See State Controller's Office sample form, *Notice of Sale of Tax Defaulted Property to Parties of Interest (Chapter 8)* (SCO 8-05.13).

Note: The notice of agreement must contain information pursuant to §3797. See Section 15: Publishing/Posting Notice of Sale

Step 2. Determine whether an IRS lien exists on any property.

- If a property with an attached IRS lien exists, proceed to **Section 14: Notice to the IRS.**
- If no property with an IRS lien exists, proceed to **Section 15: Publishing/Posting Notice of Sale.**

Mailing Considerations

Do not use an envelope with a requested return date printed on it because, if the notice is returned without having been delivered, the sale may be made void (Numitor Gold Mining Co. v. Katzer, 83 Cal. App. 161). When an envelope is returned, do not alter or open it; keep it in the property file. After the sale, it may become necessary to show proof that the notice was mailed. If the envelope is opened or altered in any way, this proof may be compromised.

If an envelope is returned showing the assessee as deceased, check the records of the superior court for a probate. If the estate is in probate, mail the notice to the executor or administrator of the estate. If evidence of probate cannot be found, withdraw the property from the sale and notify the public administrator. See Appendix II for more information.

Section 13: Notice to Assessee by Personal Contact

(120 – 10 days prior to sale)

For certain properties, attempt to contact the assessee in person to notify him or her of the impending sale as soon as the parties of interest notices are mailed. Attempting to notify the assessee is required for each property having either: a valid homeowner's exemption on file with the county assessor in the name of the last known assessee; or a mailing address for the last tax bill that is the same as the situs.

The tax collector or his or her agent is required to make a reasonable effort to contact the owner/occupant of the property in person, not more than 120 days nor less than 10 days prior to the date of the sale (§3704.7(a)).

Note: In most cases, the parties of interest notice will have already been mailed. Contacting the assessee by mail does not, however, eliminate the need for a personal contact. These are two separate notification requirements.

Step 1: Make a personal appearance at the property. A law enforcement agent may accompany the tax collector's representative or serve the notice on the tax collector's behalf.

Step 2: Whichever method of contact is used, the owner/occupant must be informed of the following:

- That the property will be offered for sale if it is not redeemed (§3704.7(a) (1)); and
- That redemption rights are afforded to the owner/occupant pursuant to Part 7, commencing with §101 (§3704.7(a) (2)).

Step 3: If, after making a reasonable effort, personal contact cannot be made with the assessee, serve a written notice (e.g., posting notice on the property) no fewer than five days before the date of the sale (§3704.7(b)). The notice must include a statement requiring the assessee to contact the tax collector's office immediately regarding the redemption of the property (§3704.7(b)).

Step 4: Calculate the actual and reasonable cost involved in making the personal contact and, if applicable, serving notice, and include that cost in the amount required to redeem the property (§3704.7(c)).

Note: In a number of counties, it is the tax collector's policy to notify, by personal contact, the owner/occupants of each property slated for public auction, regardless of whether a valid homeowner's exemption exists or the mailing address is the same as the situs. No law or statute requires this practice. Be aware that any cost incurred from a personal contact for a property that does not meet the criteria outlined in Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code cannot be added to the redemption amount (§3704.7(c)).

Section 14: Notice to the Internal Revenue Service

(45 – 25 days prior to sale)

Notification to the Internal Revenue Service (IRS) for properties with an IRS lien can begin immediately after the board of supervisors approves the sale, but it is recommended that notification be to the IRS as close to the 25-day deadline as possible, to avoid missing any filed liens.

The United States (U.S.) Code, Title 26, Section 7425(c), requires that, whenever an IRS lien is discovered on a property subject to a tax sale, the IRS be given notice of that fact before the sale occurs. The United States has the right to redeem from the purchaser, up to 120 days after the date of the sale, any property sold at a tax sale that has an IRS lien on it (26 U.S. Code §7425(d)). If a property has an IRS lien on it, that information should be included in the property description announcement prior to the sale.

Step 1: Prepare the notice. It must contain the following information, pursuant to Title 26 of the Code of Federal Regulations (CFR), Section 301.7425-3:

- The name and address of the person submitting the notice of sale;
- A copy of each notice of Federal Tax Lien affecting the property to be sold, or the following information as shown on each such notice of Federal Tax Lien:
    - The IRS office named thereon;
    - The name and address of the taxpayer;
    - The date and place of filing of the notice;
- With respect to the property to be sold, the following information must be included:
    - A detailed description, including location, of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title);
    - The date, time, place, and terms of the proposed sale of the property;
    - In the case of a sale of perishable property described in paragraph (c) of CFR, Section 301.7425-3, a statement of the reasons why the property is believed to be perishable; and
    - The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

Step 2: Send the notice by registered mail, certified mail, or personal service no fewer than 25 days prior to the date of the sale (26 U.S. Code §7425(c)).

Section 15: Publishing/Posting Notice of Sale

(Not less than 21 days prior to the sale)

A notice must be published once a week for three successive weeks in a newspaper published in the county where the property to be sold is located. If no newspaper is published in the county seat or in the judicial district, a notice may be posted in three public places (§3798). If a newspaper of general circulation is published in both the county seat and the judicial district where the property is located, publication in that paper alone will satisfy the notice-of-sale requirements. Also, if in the judgment of the board of supervisors, any property to be sold by public auction will bring at sale less than the cost of the newspaper publication, a notice may be posted in three public places rather than published in a newspaper (§3798.1).

Step 1: Determine the publishing or posting dates. The agreement sale shall become effective no sooner than 5:01 p.m. on the 21st day after the first publishing or posting date pursuant to §3802. However, the effective sale date must be no more than 60 days and no less than 45 days after the notice to parties of interest is mailed. Therefore, the first notice of sale must be published or posted 24-39 days after the notice to parties of interest is mailed.

Step 2: Prepare the notice of sale. See State Controller's Office sample forms, *Notice of Agreement to Purchase Tax Defaulted Property (Purchase by a City)* (Figure 9.7a)and *Notice of Agreement to Purchase Tax Defaulted Property (Purchase by an Entity Other Than a City)* (Figure 9.7b) respectively.

Pursuant to §3797 the notice of agreement shall state:

- A description of the property substantially as described in the agreement;
- The name of the last assessee of the property. To ascertain the name of the last assessee of the tax defaulted property, an examination shall be made of the assessment of this property on the last equalized roll, or if this property does not appear thereon, the last previous roll on which it was assessed;
- That an agreement for the sale of the property or for an option to purchase it, or both, as the case may be, has been made by the board of supervisors of the county with the taxing agency or nonprofit organization named in the agreement and has been approved by the State Controller;
- That a copy of the agreement is on file in the office of the board of supervisors;
- If the right to redeem the property has not already been terminated, there shall also be a statement that unless the property is redeemed before the agreement becomes effective, the right of redemption will cease;
- The date and time that the agreement will become effective;
- That parties of interest, as defined in §4675, have the right to file a claim with the county for any proceeds received by the tax collector under the agreement which are in excess of the liens and costs required to be paid from the proceeds; and
- If excess proceeds result from the agreement, notice will be given to parties of interest pursuant to law.

Note: Although the amount required to redeem the property is not a required element of the notice to parties of interest pursuant to §3797, it is recommended that the tax collector include it. This will help any party of interest determine whether redeeming the property is the best course of action.

Step 3: File an affidavit in the tax collector's office showing that notice has been given as prescribed (§3801). If the notice was published, the affidavit is provided by the newspaper. This affidavit is not recorded if the notice was posted. Affidavits should be prepared by the tax collector. See State Controller's Office sample form, *Affidavit of Posting Notice of (Public Auction/Sealed Bid) Sale* (SCO 9-02).

Section 16: Redemptions and Other Issues Prior to the Sale

Last minute variables can affect a property's eligibility to be sold by agreement, such as whole or partial redemption or bankruptcy of the assessee. This section outlines these variables and the methods for addressing each.

Redemption

The right to redeem the property terminates at the date and time the agreement becomes effective (§3803). If the property or any portion of the property is redeemed before the agreement becomes effective, the agreement is null as to the property redeemed (§3803).

If a payment for redemption is received by mail and the postmark date on the envelope is the same as or prior to the date the agreement becomes effective, payment must be accepted as a valid redemption and the sale of the property redeemed is null (§2512, §3803).

Note: Last-minute redemption payments for properties under a Chapter 7 sale are handled differently; the payment must be physically received in the tax collector's office before the date of the sale.

If the redemption payment is made 90 days or less prior to the sale date, add $150 to the total amount to redeem (§4112(a) (3)). If personal contact was attempted or a written notice was served, calculate the cost of one or both actions and add that cost to the total amount to redeem (§3704.7(c)).

Properties Withdrawn for Any Other Reason

The tax collector may withdraw a property from a tax sale, with consent of county counsel, if it is deemed to be in the best interest of the county to do so (§3698.8).

Injunction Brought Against Tax Sale

An injunction, restraining order, or other legal action cannot be brought against the county to either prevent or enjoin the collection of property taxes sought to be collected (§4807). However, an injunction can be used to stop the county from offering a property at a tax sale.

If an injunction for a particular property is brought against the tax sale, take the following steps:

Step 1: Notify county counsel.

Step 2: If the county counsel is unable to have the injunction or restraining order lifted before the effective sale date or if the hearing is within 90 days of the sale, notice must be given to parties of interest of the postponement of the sale of the affected property (§3706.1).

Note: Withdraw the property from the sale if it becomes known that the assessee is in bankruptcy.

Other Conditions

Additional factors that may require withdrawing property from the agreement sale are as follows:

- Property is determined not to be subject to tax default, e.g. mobile homes without permanent foundation, possessory interests, leasehold estates, and property subject to the conditions listed;
- Assessee declares bankruptcy; and or
- Power to sell is cancelled.

Section 17: Recording of Deed and Deposit of Proceeds

Once the sale is concluded, a number of follow-up procedures must be completed, including collecting payment, title transfer, and deposit of proceeds.

Deed Preparation and Recording

Upon completion of the sale, a deed must be recorded in the purchaser's name, see State Controller's Office sample form, *Tax Deed to Purchaser of Tax Defaulted Property* (SCO 8-19). The form must contain the required information specified in §3710.

The recommended preparation procedures are as follows:

Step 1: Prepare and execute a deed in the purchaser's name only after the purchaser has made full payment for each property and the funds have been verified (§3708). The deed must specify any conditions necessary to comply with the agreement (§3804).

Step 2: Record the deed with the county recorder (§3804(b)).

Step 3: Within 30 days, notify the county assessor of the change of ownership (§3716). For the complete change of ownership notification procedures, see **Section 18: Fee Calculation and Post-Sale Required Reports**.

Note: A preliminary change of ownership report is not required when recording a deed transfer from a sale for defaulted taxes. The information given to the assessor pursuant to §3716 or §3811 is considered sufficient (§480.3(e)).

Step 4: Prepare a copy of the recorded deed or a conformed copy. This document must be included in the report to be submitted to the State Controller's Office (§3804(b)).

Step 5: Note the fact and date of sale on each delinquent roll (or abstract) and current roll on which the property sold appears (§3813).

Note: Do not record a rescission of notice of power to sell or a cancellation of notice of power to sell for property redeemed as a result of a tax sale. The recorded tax deed to purchaser is considered public notice that taxes have been satisfied and the property has been conveyed to a bona fide purchaser.

Additional Deed Recording Provisions

In addition to the provisions required of a deed conveying real property, the deed shall specify the following (§3805):

- That the real property was subject to a power of sale pursuant to §3691 for nonpayment of taxes which had been legally levied and were a lien on the property;
- The name of the purchaser; and
- Any condition deemed necessary to effect compliance with the agreement, including, but not limited to, a condition that the real property be used by the taxing agency or nonprofit organization for the public use specified in the agreement.

Note: If the entire description of the conditions does not fit into the space provided on the tax deed document, include them on a separate page.

Deposit of Proceeds

Deposit the money received from a tax sale as all money collected for tax payments is deposited (§3808). Allocate the proceeds in the following manner:

- Deposit the amount of the cost of advertising the sale into the county general fund (§4673, §3719);
- Deposit the balance of the proceeds, less the recorder's fee and the transfer tax, in the delinquent tax sale trust fund (§3719); and
- Deposit the recorder's fee and the transfer tax in an appropriate fund (such as the tax collector's trust fund) (§3719) and draw a warrant, or separate warrants, in favor of the county recorder for payment.

Section 18: Fee Calculation and Post Sale Reports

After the sale has been completed, compile reports and supporting documentation to record and track various aspects of the post-sale property condition and the distribution of proceeds.

Fee Calculations

Before preparing the reports, make the following calculations for each property:

- Purchase price
- Recording fee
- Transfer tax
- $1.50 State fee (§4672)
- $150 county fee (§4672.1)
- Cost of researching and giving notice to the parties of interest (§4672.2)
- Cost of advertising the sale (§4673)
- Cost of personal contact, if applicable, and follow-up service of written notice, also if applicable (§4672.3)
- Property Tax Postponement distribution (§4673.1)
- The sum of the proceeds remaining after subtracting the amounts above from the purchase price

Other Elements of the Sale

The following information, which should be available from previous research or tasks, should also be gathered:

- Name of each purchaser;
- Date of the sale; and
- Legal description of each property.

Required Reports

After completing all calculations and obtaining the additional information, prepare the various post-sale reports. Although the schedule for preparing reports may be based on the schedule for depositing proceeds, always give reports with statutory deadlines top priority.

Report to the County Treasurer and the County Auditor

After depositing sale proceeds, immediately transmit a report of the sale to the county treasurer and the county auditor (§3718). See State Controller's Office sample form, *Report of Sale of Tax Defaulted Property* (SCO 8-07).

The report of sale must include the following information (§3718):

- The cost of advertising the sale, including but not limited to the published notice required by §3702;
- The sums received for individual properties;
- Identification of the properties by year, page, and number of the delinquent and current roll; and
- The cost of recording the deeds.

Report to the Assessor

Within 30 days after the sale, the tax collector is required to report to the assessor (§3716). The report must include the following:

- The name of the purchaser;
- The date the property was sold;
- The amount for which the property was sold; and
- The description of the property conveyed.

Notations on Tax Roll

The tax collector must note the fact and date of a Chapter 8 sale in the permanent record notes of the property account appearing on the delinquent and current rolls in the tax operating system. Any charges against the tax collector having custody of the delinquent and current rolls must be reduced accordingly (§3813).

Section 19: Excess Proceeds Notification and Claim Request Processing

(0 – 90 days after the sale)

Excess proceeds are the amount remaining from the sale after all required distributions have been made (§4674). When excess proceeds from the sale exceed $150, notice of the right to claim the excess proceeds must be given to all parties of interest (§4676(a)). The notice and claim form must be mailed within 90 days after the date of sale (§4676(b)).

Notification

Step 1: Identify those properties that have excess proceeds, pursuant to §4674 and §4675.

Step 2: Develop a parties of interest list for each of these properties. Make a reasonable effort to obtain the names and last known mailing addresses of each party of interest (§4676(b)).

Step 3: Prepare a written notice of the right to claim excess proceeds and mail it, no later than 90 days after the sale, to each party of interest with a last known address (§4676(b)). See State Controller's Office sample form, *Notice Of Right To Claim Excess Proceeds From The Sale Of Tax Defaulted Property (Parties of Interest)* (SCO Figure 9.8).

Step 4: If the last known address of a party of interest cannot be obtained, then the county shall publish notice of the right to claim excess proceeds in a newspaper of general circulation in the county. The notice shall be published once a week for three successive weeks and shall commence no later than 90 days after the sale of the property (§4676(c)).

Note: If the cost of publishing the notice is greater than or equal to the amount of excess proceeds, then a published notice is not required (§4676(c)).

Step 5: Upon completion of the notification process, calculate the notification costs and deduct them from the balance of the excess proceeds. The amount deducted must be deposited into the county general fund (§4676(d)).

Step 6: Retain excess proceeds in the delinquent tax sale trust fund for a period of one year following the date of recordation of the tax deed to the purchaser. After one year, and upon order of the board of supervisors, disburse proceeds, in proper proportion, to all eligible parties of interest who submitted a claim (§4675(e)).

Note: An excess proceeds claim form may be sent with the written notice of right to claim excess proceeds. See State Controller's Office sample form, *Claim for Excess Proceeds* (SCO 8-21).

Claim Request Processing

Step 1: Review the claim form to determine whether the claimant has provided the necessary proof to establish his or her interest in the property (§4675).

Step 2: Determine both the ownership interest and the ownership portion, as proceeds are distributed in direct proportion to the ownership interest that was held in the property. For example, the holder of a one-quarter divided interest could claim no more than one-quarter of the total excess proceeds (*First Corporation Inc. v. Santa Clara County*, 146 Cal App. 3d 841).

Step 3: If the information submitted on the claim application meets the requirements outlined in §4674 and §4675, make the proper distribution according to the policy of the office.

Step 4: If the distribution involves more than one person and/or entity and the total monetary claims are more than the available proceeds, determine the order of priority for parties of interest as follows (§4675(e)):

- Lienholders of record prior to recordation of the tax deed to purchaser in the order of their priority;
- Any person with title of record to all or any portion of the property prior to recordation of the tax deed to the purchaser; and
- In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds.

APPENDICES

I. Chapter 8 Sample Forms

Request for Approval to Sell Tax Defaulted Property Subject to the Power of Sale.....SCO 8-02.2

Notice of Sale of Tax Defaulted Property.....SCO 8-05.1

Notice of Personal Contact for Sale of Tax Defaulted Property.....SCO 8-05.4

Report of Sale of Tax Defaulted Property.....SCO 8-07

Agreement to Purchase Tax Defaulted Property.....SCO 8-13

Agreement to Purchase Tax Defaulted Property: Exhibit A......SCO 8-14

Agreement to Purchase Tax Defaulted Property (Non Profit).....SCO 8-15

Application to Purchase Tax Defaulted Property.....SCO 8-16

Checklist of Mandatory Requirements (Chapter 8).....SCO 8-17.1

Tax Deed to Purchase of Tax Defaulted Property.....SCO 8-19

Claim for Excess Proceeds.....SCO 8-21

Request for Probate Investigation.....SCO 8-26

Affidavit of Posting of Notice.....SCO 9-02

Notice of Agreement to Purchase Tax Defaulted Property (Purchase by a City).....SCO Figure 9.7a

*Notice of Agreement to Purchse Tax Defaulted Property (Purchase by an entity other than a City).*SCO Figure 9.7b

Notice of Right to Claim Excess Proceeds.....SCO Figure 9.8

II. Disqualifying Parcel Conditions

The following conditions will cause a given property to be exempted or excluded from agreement sale. However, in some cases, these conditions can be remedied. Where applicable, there are corrective measures included in these descriptions.

1) Property with an Indefinite or Improper Description

Reference made to acreage without specifying boundaries is an improper description. For example, "the south 10 acres of the NW 1/4" creates probable lines but may lead to conflicts over boundaries. Examples of inadequate descriptions are: a description that is dependent upon another description, a lot shown on an official map without reference to that map, and metes-and-bounds descriptions that do not establish a basic reference such as township, range, meridian, or name of a valid Spanish or Mexican land grant. See section 8120 of the *County Tax Collectors' Reference Manual* for the full explanation and definition of "indefinite description."

2) Property Belonging to Public Agencies

Properties belonging to public agencies normally should not be sold, pursuant to Article XIII, Section 3, of the Constitution and §202 of the Revenue and Taxation Code. Contact the State Controller's Office for any situation regarding a public agency.

3) Unpatented Property

Unpatented property is land that has never been granted or conveyed to an individual by either the federal government or the State. It is not subject to taxation and, therefore, cannot be sold at a tax defaulted land tax sale.

4) Property Assessed to an Individual Who Has Filed for Bankruptcy

The filing of a bankruptcy petition creates an automatic stay in the enforcement of any lien against the estate of the debtor, and the stay continues until the case is closed or the real property no longer belongs to the estate. If the tax collector learns that bankruptcy proceedings have begun for the assessed owner, the tax collector must ensure that no attempt is made to sell the secured property covered by the bankruptcy without the bankruptcy court's permission. This permission is in the form of a relief from stay. The tax collector should contact the county counsel to file such a motion with the court.

5) Property Assessed to Individuals Not Responsible for Their Affairs

If a property that is subject to sale is owned by a person who is committed to a state hospital, the property cannot be offered for sale until the status of the property owner has been determined. It may be necessary to call one or both of the following agencies to locate that information.

Department of Developmental Services
Client Financial Services
(916)654-1690

Department of Health Care Services
(916)445-4171

If the individual in question is responsible for his or her affairs, proceed with advertising the sale. If a conservator or guardian has been appointed on behalf of the individual, notify the appointed party before including the property in the sale.

6) Indian Allotment Land

Indian allotment land on which a trust patent has been issued or reissued may not be sold at a tax sale. A trust patent is the instrument by which the United States government conveys title of public lands to Indian tribes.

7) California Veteran's Land (CalVet Property)

If taxes become delinquent on a Cal Vet property, contact the California Department of Veterans Affairs at 800-952-5626 and inform the office of the delinquency. The department may pay the taxes to prevent the property from becoming tax defaulted or subject to the tax collector's power of sale.

8) Property Exempted under the Service Member's Civil Relief Act

Title 50 of the United States Code (USC), Appendix, §502 and §561, affords protection to a person in the military service from the loss of real property through enforcement of the collection of taxes when such property is owned and occupied by dependents or employees as a dwelling or for professional, business, or agricultural purposes. If the real property is subject to the tax collector's power of sale, the enforcement action may be commenced only by court permission granted upon the application of the tax collector.

The serviceperson's exemption extends for a period not exceeding 180 days (six months) following termination of service. Pursuant to 50 USC App. §526, when computing the tax-default time period, do not include in the calculations the period of military service.

9) Contaminated Property

It is recommended that any property on the Superfund list not be sold at a tax sale. Property not on the Superfund list but known or suspected to be contaminated may be sold. In such cases, consult county counsel on the specific circumstances. If the sale goes forward, disclose all that is known; do not attempt to estimate the extent of the contamination or the cost of cleanup.

10) Unprobated Property

If, prior to the tax sale, the tax collector receives delivery of a certified death certificate showing that an assessee is deceased, the tax collector should initiate an inquiry with the clerk of the superior court to determine whether probate proceedings have been commenced (§4986.6).

Note: On occasion, the notice mailed to the last known assessee of record may be returned by the post office with the word "deceased" stamped on the envelope. This type of documentation is not considered conclusive or an official determination of whether the assessee is deceased. Further investigation may be initiated by the

office, but it is not required by statute. Only upon receipt of a certified death certificate is the tax collector required to take any action related to the probate process.

Probate Scenarios

- If it is determined that probate proceedings have been initiated, then notice of the sale should be sent to the court appointed representative (and his or her attorney of record) and the sale should proceed as scheduled.
- If it is determined that probate proceedings have not been started, notification should be sent to the public administrator of the county in which the decedent resided at the time of death, as well as to the county public administrator where the property is located, stating that the property is subject to tax sale and that the public administrator shall take possession of the property pursuant to §7601 of the Probate Code and will conduct an investigation as authorized.
- If the public administrator has located a person or persons with higher authority to assume responsibility for the estate, notice of sale should be sent to that person(s). However, the property may only be offered for sale if the person(s) located by the public administrator initiated a probate.

Note: It is recommended that staff members involved in the tax sale process continue to follow up on the public administrator's investigation progress periodically. Following the public administrator's investigation, the public administrator is required to either notify the tax collector that the value of the estate does not warrant opening a probate (and thus the sale of the property may proceed) or commence a probate proceeding if no person of a higher authority can be discovered, at which time the property must be withdrawn from the sale.

Note: Generally, the public administrator may not be able to complete the investigation and report of findings as required by §4986.6 within the statutory time frames required for noticing. As such, once a certified copy of the death certificate is received, it is recommended that the property be pulled from the scheduled sale to allow sufficient time for the investigation. Monitoring the public administrator's progress on a regular basis during the conduct of their investigation will assure tax sale staff of the proper timing for scheduling the property at the next sale if not redeemed.

III. Establishing the Negotiable Selling Price

Supplemental Procedures

When the board of supervisors has not previously established the selling price of a property and an agency has submitted an application to purchase the property by agreement sale, the price can be negotiated between the purchasing agency, the board, and the tax collector. It is recommended that the following criteria be used to determine the selling price:

Step 1: Determine which category the property falls into:

Category A - Properties that have not been offered at a tax sale previously and do not have a welfare exemption
Category B - Properties that have been offered at a tax sale previously and not sold
Category C - Properties with a welfare exemption and have not been offered for sale previously

Step 2: For any properties that meet the criteria in Category A, proceed to Step 3. For any properties that meet the criteria in Category B or C, proceed to Step 4.

Step 3: For properties meeting the criteria in Category A, the minimum selling price must be at least the sum of the following amounts, pursuant to §3698.5(a)(1):

- All unpaid defaulted taxes;
- Delinquent penalties and interest;
- Redemption penalties;
- Redemption fee ($15) ((§4102)(d));
- Additional costs, as described in §3704.7(c), 4112(a)(b), 4672, 4672.1, 4672.2, 4673, and 4673.1(b), which include:
    - The actual and reasonable costs incurred in obtaining the names and addresses of parties of interest and for mailing notices to these entities for each property, pursuant to §4112(a)(1); These costs and any increases shall be established by the county board of supervisors and shall be subject to the requirements of Chapter 12.5 (commencing with §54985) of Part 1 of Division 2 of Title 5 of the Government Code;
    - Recording Fee. This cost references a required fee for recording any notice by a county, pursuant to Government Code §27361.3. If the cost has increased, the current rate may be applied;
    - $1.50 State fee (§4672);
    - $150 county fee (§4112(a)(3));
    - Publication cost. This cost must be estimated, because the publication notice takes place several procedures after the minimum selling price is established (§4673);

- The actual and reasonable costs incurred in conducting personal contact and, if necessary, also serving written notice, for each property that is a primary residence for the last known assessee (§3704.7(c)). Indicators of primary residence include:

  - A valid homeowners exemption;
  - Evidence showing that the mailing address on the tax bill is the same as the situs (§3704.7);

- The outstanding balance of any property tax postponement loan is the sum of the following:

  - The tax payments made by the State Controller's office on behalf of the claimant in the Property Tax Postponement Program;
  - Accrued interest pursuant to §16183 of the Government Code, subject to §20644 and 20644.5;
  - Other associated fees and penalties as deemed appropriate by law; and
  - Less any payments already made on the property tax postponement loan.

Note: This information should be available from previous research; see Section 4: Public Agency Purchase Eligibility Review, or Section 6: Nonprofit Organization Purchase Eligibility Review.

Step 4: For property meeting the criteria in Category B, the minimum selling price must be determined by one of the following options:

- The tax collector, with the approval of the board of supervisors, may offer the property at less than the required minimum selling price. The tax collector may set the minimum price that he or she deems appropriate (§3698.5(c)). This option is usually exercised when it is apparent that the market value of a property is substantially less than the sum of the standard minimum bid amount outlined in §3698.5(a).
- The tax collector may offer the property at the standard minimum price as calculated in Step 2 (§3698. 5(a)).

IV. Establishing the Minimum Selling Price-Welfare Exemptions

Calculate the minimum selling price for each property, pursuant to §3698.5. For those with welfare exemptions, determine a minimum selling amount using each of two categories. Once the total for each category has been determined, use the higher total as the minimum selling price (§3698.5(a)). Descriptions of the categories follow.

Category 1 – Fifty Percent of the Fair Market Value of the Property

Fair market value is "the amount as defined in Section 110 as determined pursuant to an appraisal of the property by the county assessor within one year immediately preceding the date of the public auction. From the proceeds of the sale, there shall be distributed to the county general fund an amount to reimburse the county for the cost of appraising the property. The value of the property as determined by the assessor pursuant to an appraisal shall be conclusively presumed to be the fair market value of the property for the purpose of determining the minimum price at which the property may be offered for sale." (§3698.7(a)(1)).

Category 2 – The Total Amount Necessary to Redeem the Property, Plus Costs

Category 2 includes the following, which are the same totals of all factors outlined in §3698.5(a)(1):

- The amount of defaulted taxes;
- Delinquent penalties and costs;
- Redemption penalties;
- Redemption fee of $15 ((§4102)(d));
- Additional costs, as described in §3704.7(c), 4112, 4672, 4672.1, 4672.2 and 4673 include:
    - The amount of the actual and reasonable costs incurred by the tax collector (§3704.7(c));
    - The actual and reasonable costs incurred in obtaining the names and addresses of parties of interest and for mailing notices to these entities for each property (§4112(a)(1));
    - A fee of one hundred fifty dollars $150 if redemption is within 90 days of the proposed date for the tax sale of the redeemed property (§4112(a)(3));
    - The actual and reasonable costs incurred in conducting personal contact and, if necessary, also serving written notice for each property that is a primary residence for the last known assessee (§4112(a)(4));
    - $1.50 State fee (§4672);
    - $150 County fee for the cost of conducting the sale (§4672.1);
    - The costs of researching and giving notice to the parties of interest (§4672.2);
    - The cost of advertising the sale of the property (§4673);
    - The amount necessary to satisfy current taxes and assessments and applicable penalties and costs thereon for the fiscal year in which the tax sale is held (§4673.1);

- The outstanding balance of any property tax postponement loan is the sum of the following:
  - The tax payments made by the State Controller's office on behalf of the claimant in the Property Tax Postponement Program;
  - Accrued interest pursuant to §16183 of the Government Code, subject to §20644 and §20644.5;
  - Other associated fees and penalties as deemed appropriate by law; and
  - Less any payments already made on the property tax postponement loan.

V. Calculating the Power of Sale Schedule for Disaster-Damaged Property

Consider the following steps in order to calculate when property damaged by a local, state, or federally declared disaster is subject to power of sale.

Step 1: Calculate the Total Default Time

The default status for disaster-damaged property is suspended (tolled) until substantial repair is made or after five years have passed, whichever comes first. A disaster-damaged property will not be subject to power of sale in the standard five consecutive years after the initial date of default. Use the equation below to incorporate the time period during which default was suspended into the overall default time, from the date that the property first became defaulted to the current date. To illustrate, consider that:

X – Y = 5 years or more

Let **X** represent the total time the property has been in default status (i.e., the current date minus the date the property first became defaulted). For example: Current date 11/01/15 minus default date 07/01/2011 = seven (7) years and four (4) months.

Let **Y** represent the total time the property has been in suspended default, (i.e., the date the property was substantially repaired minus the date the damage occurred). For example: Repair date 8/01/2014 minus damage date 05/01/2011 = three (3) years and three (3) months.

In the example provided, the difference of x – y (seven years, four months minus three years, three months) is four (4) years and one month, which is less than five years. Thus, the property is not subject to power of sale, nor can it be offered for sale.

Once five years of default have passed for disaster-damaged property, additional considerations remain regarding the property becoming subject to power to sell. See Step 2.

Step 2: Calculate the Power of Sale Schedule

Assuming that the calculation in Step 1 has shown that a disaster-damaged property's total default time, less the suspended default time, exceeds five years, the next step is to determine when the property becomes subject to the power of sale. The code states that all property that has been defaulted for five years or more becomes subject to the power of sale as of 12:01p.m. on July 1 of the fifth year of default.

The notice of impending power to sell must be published on or before June 8 of the fifth year of default.

If the tax collector fails to provide such notice, or the property has not been defaulted for five years or more as of June 8 of a given year (and thus could not be included in the notice), any sale made until proper notice is provided (within the statutory guidelines) would be invalid.

As such, if a disaster-damaged property's five-year default time is calculated to occur just after June 8 of a given year, then the property would not qualify for inclusion in the current notice; it would have to appear in the following year's notice. Accordingly, it would not be subject to the power of sale until the following year.

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http://www.sco.ca.gov/ardtax_tcs_taxguide.html

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