CHICAGO TITLE INSURANCE COMPANY

TOPIC: PROPERTY "AD VALOREM" TAXES

"Ad valorem" or property taxes are a super-lien on all property. These taxes have priority over every other lien or encumbrance on the property, even deeds of trust or easements that were created long before the year these taxes were assessed. So a tax sale would extinguish (erase) all other liens or encumbrances on the property.

TITLE SEARCH RULES:

1. Make sure to check all *city and county* tax offices. New towns are incorporating constantly and creating their own separate taxing authorities. Some web sites that may help are:
   http://www.iog.unc.edu/library/counties.html
   http://www.statelocalgov.net/state-nc.cfm

2. Is the *current years' valuation* consistent with the sales price of the property? Or might there be improvements that the seller did not tell the tax office about in January or this or prior years? If you have new construction that was partially done in January, this must be taken into account in calculating this year's taxes. If construction was begun after January, you should note this anticipated change in valuation for *next* year's taxes.

3. Does the tax bill include *all the property* you have searched and any appurtenant easements?

4. Does it include more than you have searched? If so, you will want to allocate the tax valuation between your property and the rest, charge the seller with the taxes for the part not being sold in your closing and prorate the part allocated to your parcel.
   For example:

Property value on tax records is $1,000,000. You are closing on just one lot for which you might know the sales price is only $20,000 or that it is 1-acre out of a total parcel of 50 acres. So you might estimate your lot is 20,000/1,000,000 or 1/50 (depending on which way you look at it), or 2% of the total. (You will want to get a carve-out of valuation from the tax office, item #6 below, if you are unable to pay the entire bill or escrow for the entire bill at the time of closing.) You are closing July 1, so the tax bill has not issued but you believe the tax rate will be 80-cents per $1,000. Therefore, the total tax bill is $8,000. So you would allocate to the seller $7,920: 98% of $8,000, or $7,840 Plus: Prorata Jan 1 to July 1, divided by 365) portion of 2% of $8,000, or $80 And you would allocate to the buyer a prorata portion of 2% of $8,000, which because

you closed at mid-year happens to be $80.

5. If the seller is a developer and either the tax bills have not issued or the seller likes to wait and pay them as late as possible (like January 5 of the next year), you may want to consider:
   a. Escrowing the funds to pay as soon as the bills issue or
   b. Consulting with the title company to see if an indemnity from this regular developer client will be sufficient for the title company to provide coverage to the buyer or construction/development lenders.

You will want to get a carve-out of valuation from the tax office, item #6 below, if you are unable to pay the entire bill or escrow for the entire bill at the time of closing or if this is not a regular developer client upon whom your purchaser can depend for the taxes to be paid.

6. You *must* search taxes for *all owners within the last 10 years* , for the specific years in which your property was listed in their names – personal and real property. If you purport to "tack", you do so at some risk that a particular owner's taxes were not checked (for example, if they were a buyer on the last search) or that taxes were merely "deferred" (through bankruptcy or otherwise) and may be re-activated subsequent to your closing. Even if covered by title insurance, this is a serious inconvenience for your client.

7. For deferred taxes, business personal property taxes, newly subdivided property or a carve out from an existing tract or tracts, or delinquent taxes, *you must get the tax office to calculate the amount and provide a written statement to you of the total needed to release your tract from all of the liens.* Otherwise the entire lien remain a lien on your property, even if you only have a portion of the property originally subject to the lien. (Delinquent and deferred taxes must be paid in full in order to avoid an exception to title and to comply with your lender's closing instructions. A title company *may* consider an indemnity on business personal property or carve out tracts, especially with regular developer clients. But this *must be discussed with and approved by title company counsel prior to closing.)*

8. Prorating taxes at closing:

<u>Seller Pays</u>	**Prorate**	**Buyer Pays**
• Taxes for years prior to closing • Personal property taxes • Deferred taxes for years prior to closing • Discovered taxes • Taxes on other property included in the same tax bill	• Taxes for year of closing, including the "marked up" amount with deferred taxes brought to full value for the year. • "Carved out" value for your lot at estimated tax rate if taxes cannot be paid at closing.	• Taxes for the rest of the year not paid at closing (usually because closing was before tax bill issued), • plus seller's portion (for which they got a credit at closing)

For example:
If you already have the tax bill, or are relying on last year's estimate as probably close to this year's (if this year's bills are not out yet), you prorate as follows:

Seller gives pays (or gives credit to buyer if taxes aren't yet payable):

- Number of days from Jan 1 to closing date
- Divided by 365
- Times the tax bill

Buyer pays (or will have to pay along with seller's credit above when tax bills are issued):

- Number of days from closing date to end of year (should be 365 less seller's number of days above)
- Divided by 365
- Times the tax bill

NOTE: For leap years, the number of days is 366!

9. If the property is new construction, so this year's tax bill was less than for a completely improved property (such as vacant lot, or on 25% complete home), *be sure the <u>lender's escrows for taxes</u> are based on the <u>full sales price</u> times the tax rate.* When these escrows are used to pay the taxes, they will need to be sufficient to pay the full value times rate.

10. Anytime the tax bill indicates a valuation that is substantially less than the purchase price, consider whether this is just because the revaluation was so long ago and prices have increased substantially, *or if there is another cause such as deferred taxes or failure to list all improvements by the seller.*

11. Exemptions end when the property is conveyed. The new purchaser must reapply with the city and county for its own exemptions.

TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:
All property taxes which are due and payable or delinquent should be paid through the closing.

Situation	Requirement	Exception
• Closing Jan 1 – Sept 1, • No prior years' taxes outstanding	NONE	Taxes for the year [current], not yet due and payable.
• Closing Jan 1 – Sept 1, • prior years' taxes outstanding	Payment of all outstanding taxes for years through and including the year [year just past]	Taxes for the year [current], not yet due and payable.
• Closing between tax bill issuing and Sept 1, *or* • Closing between Sept. 1 and Jan 6 of next year; • attorney indicates current year's taxes due and payable (so will probably pay at closing); • whether or not outstanding taxes for prior years	Payment of all outstanding taxes for years through and including the year [current]	Taxes for the year [next calendar year], not yet due and payable.
• Closing between Sept 1 to Jan 6 (of next year) • Current years' taxes not paid or not to be paid at closing • No prior years' taxes outstanding	NONE	Taxes for the year [current year], due and payable but not yet delinquent.
Prior years' outstanding taxes not paid or not to be paid at closing (for example, title opinion says paid through 1995 only)	NONE	Taxes for the year [first year taxes *not* shown as paid] and subsequent years. (In the example, the year inserted would be 1996, the first year taxes were *not* shown as paid)

FORMS:
Tax Sheet (attached)

Especially on commercial properties, it is highly recommended that the searcher obtain a **Tax Certification** from the tax department, pursuant to N.C.G.S. 105-361. Should any issue arise in the future about purported business personal property taxes or other taxes, this could be used in defense of the claim. Many counties have their own forms which they require in order to certify taxes outstanding.

LEGAL DISCUSSION:

By statute, every year the taxes are assessed and become due, payable and delinquent as follows:

"Superlien" or "lien"	January 1	Superlien on the property (even though no bill is issued, no valuations are complete and no rates are set). Taxes are a lien for **10 years.**

“Listed” “valuation”	January 31	Deadline for all property owners to “list” their property, and make sure they tell the tax collector’s office about any improvements or changes on the property.
“Tax rate”	Determined by city or county	The city and county determine a rate schedule which may include other items such as school, fire dept, water service and other costs. The “tax rate” is usually so per $1,000 of the valuation set by the listing earlier in the year. These rates are immediately published in newspapers and tax offices, from early June to August 31, depending on the city and county.
“Payable”	Tax bill issues from county or city	These dates vary. But as soon as the tax bill issues, the taxes become “payable” because rates are set. ***Lenders often require these to be paid at closing, even though not yet “due” by statute. So title companies assume you will pay them at closing and put a requirement in the commitment unless you say otherwise in your preliminary.***
“Due and Payable”	September 1	By statute, taxes for the particular year are *due* on September 1 of each year.
“Delinquent”	January 6 of following year	If taxes for a particular year are not paid by January 6 of the following year, they become delinquent and late payment penalties, interest, publication costs, foreclosure fees and other additions accrue which can substantially increase the balance required to pay off the lien.

Deferred taxes: Owners of farm property often apply for their property to be taxed at a lower farm valuation, rather than its “highest and best” use (for which the property may be valued 2 to 3 times the farm value in some places). The owners pay lower taxes for the year because the valuation is lower. However, if they sell or convey *any interest* in the property, the *full valuation is applied*, retroactive for this year and the past three years, and must all be paid *immediately* (with credit for the amount already paid).

Discovered taxes: If property was not properly listed, including all improvements, the tax office can go back 5 years plus the current year and assess the increased taxes, plus penalties and interest, all of which become immediately due, payable and delinquent!

Business personal property: Personal property taxes are no longer assessed on individual consumer-use personal property, but they continue to be assessed for business personal property. These taxes are a lien on *all real estate owned by the owner-taxpayer in the county* in which the business personal property is located. They are not prorated among real estate parcels or allocated just to a particular parcel *unless* the tax office specifically allocates them *in writing* to particular parcels *prior to the closing.* Therefore, if any business personal property taxes are outstanding in the county in the name of the title owner of the property, either:

- The entire business personal property taxes must be paid in full at closing, or,
- Prior to closing, a "release" amount must be obtained in writing from the tax collector and this amount must be paid at closing.

Otherwise, the entire amount remains an outstanding tax lien on *all* of the real property, even if only a portion of the real property was purchased.

"Carve out" or newly subdivided parcels: The entire real property ad valorem tax bill attaches to the entire parcel of land for which it is assessed. Therefore, if only a portion of the parcel subject to the tax bill is being purchased, either:

- The entire business personal property taxes must be paid in full at closing, or,
- Prior to closing, a "release" amount must be obtained in writing from the tax collector and this amount must be paid at closing.

Otherwise, the entire amount remains an outstanding tax lien on *all* of the tax parcel, even if only a portion of the tax parcel was purchased. (Often, title companies may consider indemnities from a reliable, financially viable seller. But this must be discussed with and approved by the title company prior to closing.)

Exempt: Properties may be exempt from property taxes so long as:

- a particular church or non-profit entity
- owns the particular property,
- uses the particular property for an exempt purpose and
- has applied for and received tax-exempt status.

However, this status must be specifically requested of and approved by the tax office for *each entity and each property.* So a sale automatically ends the exemption, and subjects the property to ad valorem taxes for the upcoming second half of the year (if closed prior to July 1) or upcoming year (if closed on July 1 or after).

TAX SHEET

Account # _______________ **Township** _____________________

Parcel # _________________ Fire Dist. ______________________

PIN # ___________________ Raw Land: Yes____ No ____

Current Owner: ____

Year	**Name Listed In**	**Real Value**	**Personal Value**	**Paid/Due**

Other Fees (Dog, Garbage, etc.) $________________

$ ________________

Assessments: ____

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