



Basics of Florida's Tax Deed Procedures

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Basics of Florida's Tax Deed Procedures

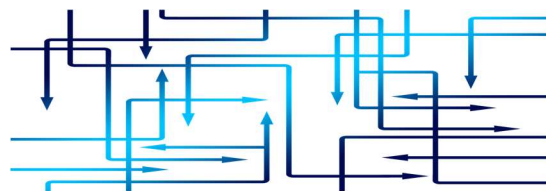


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Program Overview

- How does the FL tax sale procedure work?
- When do the tax certificates go on sale?
- How are they sold?
- Who can buy them?
- What's the difference between a tax certificate and a tax deed?
- How do you convert one to the other?
- What procedures does the clerk follow?
- What interests survive a tax deed sale?
- Surplus Procedures



What are tax certificates?

Tax Certificates

- Essentially the county government's first lien for overdue property taxes
- Right to payment is sold to individuals so the government is paid immediately
- Certificate holders can collect the amount paid plus interest when interested parties redeem (satisfy lien) to protect property rights OR
- After 2 years, certificate holder can pay all other outstanding taxes and trigger a public auction for tax deed, at which they will have a "credit bid" for all amounts they have paid

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What are tax deeds?

Tax Deeds

- Tax certificate lien is "foreclosed" by public tax deed auction (exclusively)
- Tax deed purchaser must bid enough to pay back full amount of taxes owed / paid by certificate holders, plus any excess value auction bidding supports
- Tax deed begins new chain of title, wiping out most prior interests, with specific exceptions

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Basics of the process

- Tax collector notifies taxpayers of delinquent real property taxes
- Tax collector advertises tax certificate sale
- Tax certificates are sold for taxes due, plus fees and costs
- Tax certificates become a first lien, with interest, on the property
- Property owner / interest holders may redeem by paying all fees and interest due until issuance of tax deed
- County still collects the money to redeem, but certificate holder will be paid
- After 2 years, tax certificate holder may apply for a tax deed, triggering a public auction; at which they will have credit bid for amounts they've paid
- Most prior interests eliminated by tax deed; some survive



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It all begins with property taxes

- FL real property taxes become a lien on property as of Jan. 1 each year
- Payable beginning Nov. 1
 - [Sec. 197.122(1), F.S.]



192.053 Lien for unpaid taxes.—A lien for all taxes, penalties, and interest shall attach to any property upon which a lien is imposed by law on the date of assessment and shall continue in full force and effect until discharged by payment as provided in chapter 197 or until barred under chapter 95.

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Unpaid property taxes become delinquent

- Taxes become delinquent as of
 - Apr. 1 the next year, or
 - 60 days after the original tax notice is mailed, whichever is later
 - [Sec. 197.122(1), 197.333, F.S.]



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Delinquent taxpayers receive notice

- Tax collector must send notice of tax assessments to each taxpayer on the tax roll by U.S. mail and electronically, provided the property owner expressly consents to electronic transmission.
- Tax collector must send 2d notice to taxpayers whose payment not received on or before Apr 30.
 - [Sec. 197.322(3), F.S.]
 - [Sec. 197.343(1), F.S.]



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Other interested parties receive notice

- Upon request, notice must also be sent to
 - The mortgagee holding an escrow for taxes and
 - A contract vendee in an Agreement for Deed
 - [Sec.197.343(1)(c) 197.344(1)(b), F.S.]



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Sale of Tax Certificates

- Within 45 days of delinquency
 - Tax collector advertises names of delinquent taxpayers in a newspaper.
- On or before later of the 1st of June or the 60th day after delinquency
 - Tax collector must advertise the sale of tax certificates on properties for which taxes remain delinquent once each week for 3 weeks in a newspaper. [Sec. 197.402, F.S.]



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Sale of Tax Certificates

Once taxes become delinquent, tax collector may issue tax certificates to 3d parties who pay the delinquent taxes, interest and charges, and will demand the lowest rate of interest in return as determined at the tax certificate sale. [Sec. 197.432, F.S.]

Exceptions

- No tax certificates may be sold on governmentally owned property taxed based upon a lease arrangement with a non-governmental entity, or
- Property with a homestead exemption and tax delinquency of less than \$250 results in certificate to county only [Sec. 197.432(10), F.S.]

From Certificate to Lien

Sec. 197.102, F.S.

“Tax certificate” means a paper or electronic legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with this chapter against a specific parcel of real property and becoming a first lien thereon, superior to all other liens, except as provided by s. 197.573(2).”



Tax Certificate Sales



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How do tax certificate sales work?

Q: When do sales take place?
A: Typically in spring, after tax collector has advertised for 3 weeks. [Sec.197.402, F.S.]

Q: Who can participate?
A: Anyone!

Q: Where are sales conducted?
A: Can be in person, but now most often online. Exact procedures vary by county



How do buyers participate?

Q: Is a deposit required to bid?
A: Most counties require 10% of amount outstanding

Q: What determines who wins?
A: Bidders compete to offer lowest interest rate on certificates that are redeemed



Q: What if the bidding is tied?
A: One of the tied bidders will be selected the winner through a randomized process (first bidder, lottery-style drawing, etc.)

Q: What if no one bids?
A: Tax certificate will be issued to the county

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How do buyers participate – multiple entities

Magnolia Florida Tax Certificates, LLC v. Florida Department of Revenue, 266 So. 3d 1190 (Fla. 1st DCA 2018)

- Magnolia challenged Broward, Miami-Dade, and Orange County requirement for separate deposits for each of its entities bidding at tax certificate sales, and Broward County's requirement of an affidavit providing specific information about each entity.
- Trial court granted SJ for counties and for Magnolia in denying a motion to abate the proceedings until Magnolia complied with the registration requirements of Florida's Fictitious Name Act. Both parties appeal.
- 1st DCA affirmed for Magnolia on abatement, but for counties on the rest, citing a failure to raise arguments at trial.
- Held that Broward, as a chartered county, has the power to "enact county ordinances not inconsistent with general law" (citing Art. VIII, Sec. 1(g) Fla. Const.).
- Magnolia's argument that affidavits discriminated against non-natural persons without merit:
 - "(t)here is nothing in section 197.432 expressing an intent to allow business entities to use hundreds of thousands of 'shell' bidders to gain an unfair advantage at tax certificate sales" by "manipulating the lottery selection process to resolve tie bids."

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Who wins?

Q: How does the interest rate bidding work?

A: Bidders willing to pay the taxes due compete for the lowest interest rate they will accept on certificates upon redemption, beginning with 18%, a quarter point at a time, down to a minimum of .25%. *

Q: What happens when you win?

A: Most counties want an additional deposit immediately. Full payment is due within 48 hours. [Sec. 197.432 (7) F.S.]

Most certificates now issued electronically.

*Note: When a tax certificate is redeemed and the interest earned on the tax certificate is less than 5% of the face amount of the certificate, a mandatory minimum interest of an absolute 5% shall be levied upon the face value of the tax certificate. [Sec. 197.472 (2), F.S.]

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Homestead Property

Q: Can tax certificates be sold on homestead property?

A: Tax certificates for <\$250 in taxes due on property granted homestead exemption in the year delinquent taxes are assessed may not be sold at public auction, but must be issued to the county at the maximum rate of interest allowed [Sec. 197.432 (4) F.S.]



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Redeeming Tax Certificates



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Redeeming Tax Certificates

Sec. 197.472, F.S. – Redemption of tax certificates

(1) A person may redeem a tax certificate at any time after the certificate is issued and before a tax deed is issued unless full payment for a tax deed is made to the clerk of the court, including documentary stamps and recording fees. The person redeeming a tax certificate shall pay the tax collector the face amount plus all interest, costs, and charges.

- Anyone with an interest in the property can redeem
- Redemption does not grant a new legal interest (Stranger to property cannot redeem and become the owner)
- Certificate holders may not contact property owners encouraging payment until after 2 years after April 1 of the year of issuance of certificate

How long does someone have to redeem?

Ashear v. Sklarey 247 So. 3d 574 (Fla. 3d DCA 2018)

- Sklarey brings full amount required to redeem the outstanding tax certificate to Miami-Dade tax collector day of sale
- Tax Collector advises his file “flagged” (due to the pending sale) so nothing could be done
- Ashear submits winning bid at sale
- Sklarey returns next day again with the funds to pay
- Kept waiting until just after tax deed was recorded (done twice due to errors). Again told nothing could be done
- Trial court vacates sale and Ashear appeals
- On appeal, 3d DCA, citing Sec.197.472, F.S., affirms vacation of tax deed. Sklarey had the right to redeem until tax deed recorded
- Sale proceeds go back to Ashear with interest from date of sale

Tax Deeds



What is a tax deed?

- **Sec. 197.552, F.S. – Tax deeds**
- All tax deeds shall be issued in the name of a county and shall be signed by the clerk of the county. The deed shall be witnessed by two witnesses, the official seal shall be attached thereto, and the deed shall be acknowledged or proven as other deeds
- The only way a tax certificate lien can be “foreclosed”
- No warranties or guarantees of title
- Essentially a government quitclaim deed
- Ordinary doc stamps and recording fees apply

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Application for Tax Deed

- Holders of tax certificates can apply for a tax deed after 2 years from Apr. 1 of the year of issuance of the certificate
- Applicant must pay tax collector all amounts due for all outstanding certificates and other taxes due, plus interest and costs of sale
- Tax collector obtains title search to locate and notify interested parties by certified mail:
 - Title holders of record
 - Lienholders of record (& now financial institutions who designate address)
 - Mortgagees of record
 - Vendees of recorded contracts for deed
 - Other lienholders who have applied for notice
 - Persons to whom property taxes were last assessed
 - Lienholders against mobile homes on property
 - Titleholders of land contiguous to submerged land or common elements whose names appear in a conveyance to the current titleholder
 - [Sec. 197.502, F.S.]

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How does a tax deed sale work?

- Clerk of circuit court schedules and advertises tax deed sale once a week for 4 consecutive weeks in newspaper
- Clerk notifies parties identified by tax collector by certified mail, at least 20 days prior to sale
- County sheriff serves notice of sale to legal titleholder at least 20 days prior to sale
- If legal titleholder does not reside in the county, sheriff posts copy of notice “in a conspicuous place” on the property
- Anyone can bid at the sale, but certificate holder that applied for the deed (and paid all other taxes due) begins with a credit for amounts paid
 - [Sec. 197.502, 512, F.S.]

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Opening Bid

- County-held certificates on non-homestead property
 - Sum of value of all outstanding certificates against the property, plus omitted years' taxes, delinquent taxes, interest, and all costs and fees paid by the county
- Individual certificates
 - Money paid to tax collector by the certificate holder at the time of application, plus
 - Amount to redeem applicant's tax certificate, all other costs and fees paid by the applicant, and
 - All tax certificates that were sold subsequent to the filing of the tax deed application and omitted taxes, if any
- On property assessed on the latest tax roll as homestead, opening bid must include an amount equal to 1/2 of latest assessed value of the homestead
 - [Sec. 197.502, F.S.]

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Tax Deed Sale

- Clerk of court publishes notice of the sale and conducts public auction of property in county where located at least 30 days after 1st publication of the notice
- Tax certificate holder has automatic credit bid for
 - Amount required to redeem the tax certificate, plus amounts paid by the holder to the clerk for
 - Costs of sale, redemption of other tax certificates on the same property, and
 - All other costs to the applicant for tax deed, plus
 - 1.5% interest per month from month after application for deed through month of sale, and
 - Costs incurred for the service of notice
- Tax certificate holder also “has the right to bid as others present may bid”
- High bidder must post greater of 5% deposit or \$200, and make full payment including doc stamps and recording fees within 24 hours, excluding holidays, or clerk will re-advertise sale
 - [Sec. 197.542, F.S.]

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What if there is no tax deed sale?

- If certificate holder applies for a tax deed but fails to pay costs of sale w/in 30 days of notice
 - Clerk will enter the land on a list entitled “lands available for taxes”
- If no tax deed has been applied for 7 years from date of issuance and
- No administrative proceeding, including bankruptcy, has occurred
 - Tax certificate becomes null and void, and
 - Tax collector will note cancellation of certificate
 - [Sec. 197.542, 197.482 F.S.]



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What title arises from a tax deed?

- “new, complete, & paramount title”
 - *Sullivan v. Woodward*, 582 So. 2d 31, 33 (Fla. 1st DCA 1991)
- Extinguishes all prior existing titles
- Establishes a new chain of title
- Not *per se* marketable
- Only interests specifically protected by statute or common law survive



Results of a Tax Deed Sale



What interests survive a tax deed?

- Easements for conservation, drainage, utilities, other public services, ingress and egress that are recorded or visibly occupied prior to the issuance of a tax deed, and common-law and statutory ways of necessity
 - [Sec. 197.572, F.S.]
- Matters reflected on the plat. (Title Standard 15.1)
- Covenants and restrictions that run with the land
 - [Sec. 197.573, F.S.]
- Interests of co-tenants and co-owners where another owner re-acquires

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What interests survive a tax deed?

- Mineral reservations if the tax deed was issued after July 1, 1973
 - [Sec. 193.481, F.S.]
- Oil, including oil leases, gas, mineral, and other subsurface rights which have been sold separately; retained by reservation; severed from the surface rights; or assessed on tax rolls separately from the fee.
 - [Sec. 193.481, F.S.]
- Land held by the United States, and interests in the State of Florida, if
 - Land was granted by the United States to the State of Florida and
 - There was no conveyance out of Florida

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What interests survive a tax deed?

- Federal tax liens, unless federal government properly noticed of tax deed proceedings.
 - See 12 U.S.C. 7425
 - U.S. may also claim an independent right of redemption under 28 U.S.C. 2410(c)
- Other federal interests, such as mortgages obtained by the FDIC as receiver
 - *Cambridge Capital Corp. v. Halcon Enters, Inc.*, 842 F. Supp. 499, 502 (S.D. Fla. 1993)
 - 12 U.S. Code Sec. 1825(b)(2)
- Subordinate liens held by municipal or county governmental special district or community development units unless satisfied of record or barred (See TN)
- Previous loss of land to an adjoining property owner via mutual boundary line by acquiescence, whether adjudicated or not
 - *Euse v. Gibbs*, 49 So.2d 843 (Fla. 1951)

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What about HOA / condo association rights?



- Survive tax deed
 - HOA covenants & restrictions
- Do not survive tax deed
 - Current HOA and condo liens
 - Past-due assessments not yet recorded as liens

See *Sugarmill Woods Oaks Village v. Wires*, 766 So. 2d 487 (FL 5th DCA 2000)

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What challenges can be made to a tax deed?

- Insufficient notice
 - Due process issue
 - Question is generally whether taxing authorities complied with requirements
 - But where government is aware of
 - Failure of notice, such as returned certified mail, or
 - Ignores a notice of change of address, then
 - “additional steps” may be required
 - *Jones v. Flowers*, 547 U.S. 220 (2006); *Vosilla v. Rosado*, 944 So. 2d 289 (Fla. 2006)
- Other government errors
- Bankruptcy – violation of automatic stay voids tax deed

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How good is a tax title?

- Historically subject to skepticism due to frequency of vacation due to failure of notice
- Former owners barred from action 4 years from tax deed
 - [Sec. 95.192, F.S.]
- Tax titles generally considered marketable after 4 years if
 - Taxes have been paid by tax deed grantee or successors and
 - There has been no adverse claim asserted of record and
 - No adverse possession (F.S. 15.1, Florida Title Standards)
- Some tax titles may require deed from owner or quiet title action to be marketable

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Surplus Procedures



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Surplus Proceeds

- Surplus arises where tax deed sells for more than certificate holder's statutory bid
- Surplus includes situations where the 1/2 homestead assessment was added to opening bid on homestead property
- Clerk shall distribute surplus to gov't units for payment of any lien of record held by a gov't unit against property, including
 - Tax certificates not incorporated in tax deed application and
 - Omitted taxes, if any
- Clerk mails interested parties identified under Sec. 197.502, F.S. and
 - Sec. 197.522, F.S. notice of ability to claim surplus

Surplus Proceeds Procedures

- Clerk pays surplus claimants per their apparent priority
 - Ex) 3d position lien not to be paid before 2^d position
- If conflict arises as to priority, clerk may file interpleader action



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Surplus Proceeds Procedures

- Persons receiving notice of surplus have 120 days to file written claim with clerk
- Written claim substantially similar to sample added to statute deemed sufficient
- Notice of surplus to remaining parties must be substantially as shown in statute
- Notice must include a form for making a claim



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Surplus Proceeds Procedures

- Except claims by property owner, claims not filed on or before close of business on 120th day after mailed notice barred
- Within 90 days after claim period expires, clerk may file interpleader action or
 - Pay surplus according to clerk's determination of priority of claims
- Holder of recorded governmental lien, other than a federal or ad valorem tax lien, must file request for disbursement within 120 days after the mailing of surplus funds notice.
- Clerk must disburse payments to governmental units before disbursing to non-governmental claimants
- If clerk does not receive claims for surplus funds within the 120-day claim period, there is a conclusive presumption the legal titleholder of record is entitled to the surplus funds

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Online Notice Allowed Since 2021

2021: Sec. 50.011, F.S. amended:

- Authorizes publication of legal notices by Internet on the website of any newspaper of general circulation that otherwise meets criteria and on statewide legal notice website

2021 Sec. 50.0211, F.S. amended:

- Gov't legal notices must be published on newspaper's website same day printed notice appears, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language.
- Newspapers publishing legal notices shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com



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Bonus Case

Green Terrace E33, LLC v. Joseph Abruzzo et al., 383 So.3d 106 (Fla. 4th DCA 2024)

- Green Terrace condo development subject to Palm Beach code enforcement action in 2006
- Code issues went unresolved. \$100/day fine imposed
- Years later, one condo unit sold at tax sale. Sale resulted in a surplus
- Prior owner and City of West Palm each applied for the surplus funds. Clerk interpleaded.
- City argued code lien was “against” the individual condo unit
- Trial court rules for the City based on Sec. 197.582(2) F.S.:
 - *The clerk shall distribute the surplus to the governmental units for the payment of **any lien of record held by a governmental unit against the property**, including any tax certificates not incorporated in the tax deed application and omitted taxes, if any*

TOP SECRET

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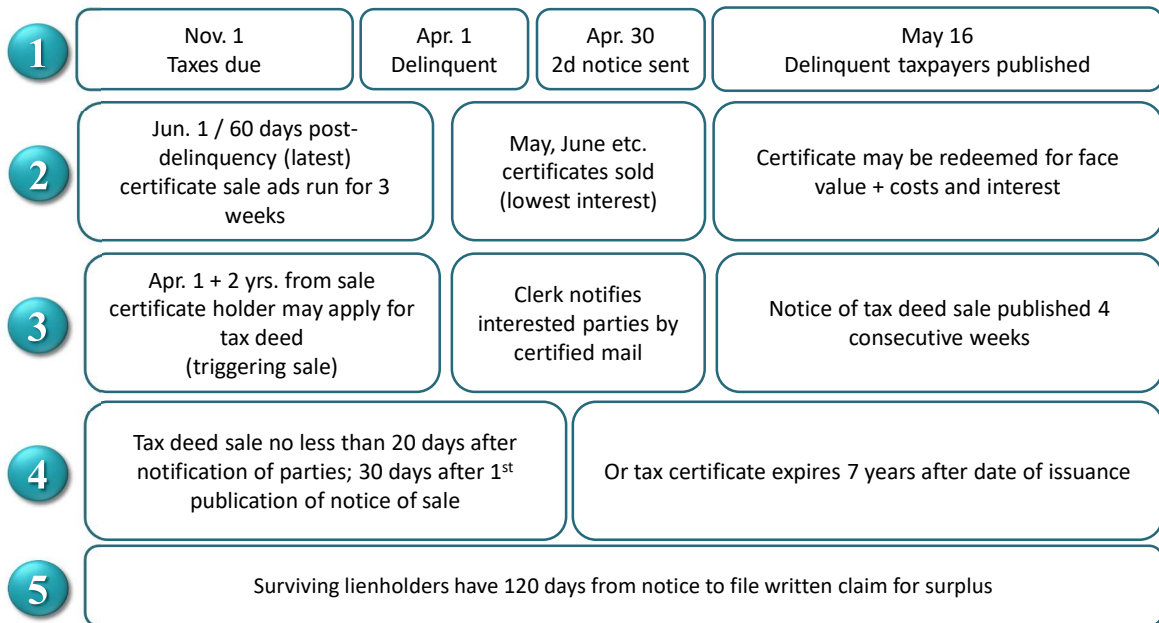
Bonus Case (cont'd)

Green Terrace E33, LLC v. Joseph Abruzzo et al.

- On appeal, 4th DCA reversed and remanded, noting:
 - Face of lien did not state it was against individual units or proportionate share
 - Record shows no notice to unit owners of proceedings to enforce the lien
 - Lien did not appear on title search of the unit
 - Sec. 718.121, F.S. prohibits liens against a condominium as a whole without unanimous consent of the condo unit owners:
 - *Subsequent to recording the declaration and while the property remains subject to the declaration, **no liens of any nature are valid against the condominium property as a whole except with the unanimous consent of the unit owners.***

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Basic Tax Deed Timeline



Basics of Florida's Tax Deed Procedures

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for coming

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FL BAR Reference Number: 2405969N

Title: Basics of Florida's Tax Deed Procedures

Level: Intermediate

Approval Period: 07/01/2024 - 01/31/2026

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