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Up in Smoke: Lender's Property Rights in Alabama

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While lenders know that their secured property can be lost to fire or other hazards, most lenders are not aware that they could lose their collateral to the very organization that should help to protect the property. A previously little known law in Alabama authorizes the creation of fire districts and provides for the sale of property to recover delinquent fire dues. The subsequent sale of property by these fire districts has spawned numerous lawsuits and a constitutional challenge to the relevant statute.

Alabama Act 1966-79 provides for the creation of fire districts in Jefferson County, the most populous county in Alabama. The Act provides that the expense of establishing and maintaining the district shall be paid for by proceeds from a service charge and that such charge is a personal obligation of the occupant and a lien against the property. The lien is enforceable by sale in the same manner as other municipal assessments.

Similar local acts provide for the creation of fire districts in other counties (most of these acts have not been codified). Municipal assessment lien foreclosures are governed by Ala. Code § 11-48-1 (1975), *et seq.*, which does not require notice to the mortgagee of an impending fire dues foreclosure sale. Further, the statute does not require that the fire dues deed reference the record title holder, and, in some cases, the fire dues deed has not been indexed in the grantor-grantee index, making it impossible to locate in a title search.

Two companies owned by an Alabama attorney have purchased most of the properties sold at auction. Recently, property owners and mortgage lenders have filed suit (or counter-claims in eviction actions) in significant number. Other statutes, if read in conjunction

with the fire dues statute, could curtail the harsh results affecting both lenders and owners.

Some pending cases have challenged the constitutionality of the law. In *Mennonite Bd. of Mission v. Adams*, 462 U.S. 791 (1983), the U.S. Supreme Court held that a mortgagee has a legally protected property interest and is entitled to notice reasonably calculated to apprise him of a pending tax sale. Constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known address or by personal service. In pending cases, lenders are arguing that they should receive the same type of notice provided in conjunction with the sale of unpaid property taxes.

Until recently, most fire districts have filed liens for assessments rather than resorting to a foreclosure sale. Given the number of pending cases, an appellate decision further construing and hopefully curtailing the statute should occur in the relatively near future. Lenders and servicers need to pay close attention to any correspondence, notice, or even oral communication by the debtor or from a fire dues foreclosure purchaser, and immediately research the status of the fire district assessment if there is a suggestion of delinquency.

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