

The Fort Scott Tribune, When's the Sheriff's sale? (5 April 2012)

When's the Sheriff's sale?

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By Dan Meara

Editor's Note: This is an editorial piece by attorney Dan Meara and is billed as an interview with a tax collector.

Our fearless reporter caught up with Dan Meara, the local lawyer handling a property tax foreclosure cases for the Bourbon County Commissioners, and asked him some questions about the Sheriff's sale scheduled on Tuesday, April 10:

Dan, according to my information, you promised the County Commissioners that you would have a Sheriff's sale some time ago, why has it taken so long to schedule this sale you are having on April 10?

"The Sheriff's sale is the end result of a long process. Before a Sheriff's sale can be held, we have to provide everyone with what is called due process of law.

That means giving the owner and every person, corporation, or government agency that has some legal interest in the real estate, (1) notice that the County Commissioners have filed a lawsuit to collect the past due property taxes, and (2) an opportunity to contest the foreclosure, if so desired. Due process of law is a constitutional right of every American, so it's important to provide it."

How do you give all those interested parties notice of the filing of a lawsuit?

"We serve a copy of the petition and summons on every person, corporation, or government agency that has some legal interest in the real estate. The Sheriff serves each party, or we send it to them by certified mail, or, if all else fails, we serve notice by a legal notice in your

newspaper. Nearly all of the foreclosure cases have at least two defendants, some have four or more. Believe me, it takes a while."

What do you mean by "service by publication?"

"When we know the name of some person, corporation, or government agency that has an interest in a tract of real estate, but we can't provide them with personal service. As a last resort, Kansas law allows us to arrange for notice to that defendant by publishing a notice in the local newspaper. When a notice of the suit has been published and the defendant does not respond, we can then take judgment and proceed to a Sheriff's sale."

So what's in the petition and summons that's so important?

"The petition tells them we are asking the District Court to enter a judgment for back taxes against the real estate, so we can then sell the real estate to collect the taxes. The summons tells them that if they want to contest the process, they have to notify the District Court by filing a legal document, called an answer, within a certain number of days."

What happens after all interested parties are served with a copy of the petition and summons?

"If the foreclosure is not contested, the Plaintiff Board of Bourbon County Commissioners takes judgment and a Sheriff's sale can then be arranged. If the owner or some other interested party wants to contest the foreclosure, the case enters into a process that eventually ends in a trial. At trial, after hearing all the testimony and considering the evidence, the District Court renders a decision granting or, in some cases, denying the foreclosure."

How many tax foreclosure cases have been filed?

"On Dec. 2, 2011, I filed tax foreclosure suits against 193 tracts, or pieces of real estate."

Are all of those ready for the Sheriff's sale on April 10?

"No, several of those tracts or pieces of real estate have been redeemed, and we will have to get service by publication on several more."

What do you mean by redeemed?

"The owner of a tract or piece of real estate always has the right to stop the tax foreclosure process by paying the back taxes and the expenses paid by the county. When that is done, the real estate is redeemed by the land owner."

What do you find to be the most difficult part of a tax foreclosure case?

"Trying to explain to someone why it takes so long to have a Sheriff's sale."

So when's the next Sheriff's sale?

"Aaagh!"