

Revenue and Taxation Code

Property Taxation

Part 6. Tax Sales

CHAPTER 7. Sale to Private Parties After Deed To State

Section 3712

3712. Title conveyed. The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

- (a) Any lien for installments of taxes and special assessments, that installments will become payable upon the secured roll after the time of the sale.
- (b) The lien for taxes or assessments or other rights of any taxing agency that does not consent to the sale under this chapter.
- (c) Liens for special assessments levied upon the property conveyed that were, at the time of the sale under this chapter, not included in the amount necessary to redeem the tax-defaulted property, and, where a taxing agency that collects its own taxes has consented to the sale under this chapter, not included in the amount required to redeem from sale to the taxing agency.
- (d) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.
- (e) Unaccepted, recorded, irrevocable offers of dedication of the property to the public or a public entity for a public purpose, and recorded options of any taxing agency to purchase the property or any interest therein for a public purpose.
- (f) Unpaid assessments under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code.
- (g) Any federal Internal Revenue Service liens that, pursuant to provisions of federal law, are not discharged by the sale, even though the tax collector has provided proper notice to the Internal Revenue Service before that date.
- (h) Unpaid special taxes under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code)

that are not satisfied as a result of the sale proceeds being applied pursuant to Chapter 1.3 (commencing with Section 4671) of Part 8, or that are being collected through a foreclosure action pursuant to Section 53356.1 of the Government Code. A sale pursuant to this chapter shall not nullify, eliminate, or reduce the amount of a foreclosure judgment pursuant to Section 53356.1 of the Government Code.

History.—Stats. 1941, p. 2464, in effect July 1, 1941, revised subsection (c) and added subsection (d). Stats. 1943, p. 1937, in effect August 4, 1943, added "special" to subsection (a). Stats. 1945, p. 2194, substituted "payable upon the secured roll" for "due" in subsection (a). Stats. 1972, p. 1257, in effect March 7, 1973, added subsection (e). Stats. 1976, Ch. 113, p.175, in effect January 1, 1977, added subsection (f). Stats. 1985, Ch. 316, effective January 1, 1986, substituted "tax-defaulted property" for "property from the sale to the state" after "redeem the", substituted "the" for "such" after "redeem from sale to" in subdivision (c); deleted "of this division" after "Part 8" in subdivision (f). Stats. 1988, Ch. 830, in effect January 1, 1989, added subdivision (g). Stats. 1990, Ch. 992, in effect January 1, 1991, added "taxes and" after "installments of" in subdivision (a). Stats. 1997, Ch. 946 (AB 1224), in effect January 1, 1998, added subdivision (h). Stats. 2007, Ch. 670 (AB 373), in effect January 1, 2008, added ", or that are being collected through a foreclosure action pursuant to Part 14 (commencing with Section 8830) of Division 10 of the Streets and Highways Code." after "of Part 8" in the first sentence and added the second sentence commencing with "A sale pursuant to" in subdivision (f); added ", or that are being collected through a foreclosure action pursuant to Section 53356.1 of the Government Code" after "of Part 8" in the first sentence and added the second sentence commencing with "A sale pursuant" in subdivision (h); and substituted "that" for "which" throughout the text.

Note.—Section 31 of Stats. 1988; Ch. 830, provided that this act shall be applicable to the 1989–90 fiscal year and fiscal years thereafter.

Applicable to chartered cities.—Article XI, Section 6, of the State Constitution, authorizing chartered cities "to make and enforce all laws and regulations in respect to municipal affairs," does not preclude the application of this section to tax-deeded property within a chartered city having its own system of taxation. *Brewer v. Feigenbaum*, 47 Cal.App.2d 171.

Purchase by street bond holder.—Merger.—The purchase of tax-deeded property by the owner of a street bond issued against the property does not necessarily result in a merger of estates and title, so as to bar an action for the foreclosure of the bond. Whether a merger results is a question of intention. *Newman v. Hye*, 64 Cal.App.2d 296.

Deeds from two agencies.—In a case where one person holds title by deed after foreclosure sale of street improvement bonds and another holds title by deed from the state based on prior sale for nonpayment of delinquent general taxes, neither person has rights superior to the other, and the two are deemed to hold the property as tenants in common subject to an equitable lien in favor of each to the extent of the purchase price paid by him. *Monheit v. Cigna*, 28 Cal.2d 19; *Zaslow v. Kroenert*, 29 Cal.2d 541, 878; *Security Investment Co. v. Douglas*, 76 Cal.App.2d 592; *Oswald v. Salter*, 77 Cal.App.2d 599; *Milkes v. Smith*, 91 Cal.App.2d 79; *Sterling Co. v. Garrett*, 108 Cal.App.2d 891; *Elbert, Ltd v. Gawn*, 111 Cal.App.2d 610; *Kipp v. Kipp*, 42

Cal.2d 724; *Elbert, Ltd. v. Federated Income Properties*, 120 Cal.App.2d 194. See also *Cate v. Bourzac*, 74 Cal.App.2d 422, wherein purchasers of property sold for delinquent county taxes and purchasers of the same property sold for delinquent irrigation district assessments were likewise held to own the property as tenants in common where applicable statutes did not establish a priority between general tax liens and special assessment liens.

The interest represented by a certificate of sale issued by a city upon the sale of property for a delinquent street assessment is not a lien within the meaning of Section 2911 of the Civil Code, providing for the presumed extinction of assessment liens within a specified period, and a tax deed based thereon, issued after the expiration of the period is valid and on a parity with a tax deed issued by the state in the interim. *Stafford v. Realty Bond Service Corp.*, 39 Cal.2d 797.

Where one tax deed was issued before the lien arose in pursuance of which the other deed was issued, the deeds are not on a parity, and the earlier deed is subject to future liens and tax deeds based thereon. *Elbert, Ltd. v. Barnes*, 107 Cal.App.2d 659.

The deed issued by a city at a private sale made pursuant to a declaration of delinquent municipal taxes, where the court found the sale invalid, is not on a parity with the tax deed issued by a county pursuant to a delinquent tax sale more than 15 years before. *Callan v. City of San Bruno*, 121 Cal.App.2d 735.

Deed from one agency and lien from another.—Title obtained by an irrigation district through sale, for nonpayment of assessments levied by the district, of land subject to the pre-existing lien of bonds of a sanitary district is subject to the lien of the bonds and the right of the bondholder upon foreclosure to hold and own the property as a tenant in common with the irrigation district under the equal parity rule. *Imperial Irrigation District v. Varney*, 87 Cal.App.2d 264.

In a partition action between a holder of liens on three lots for unpaid street improvement bonds and holders of title by deed from the state for nonpayment of delinquent county and city taxes on the lots the bondholder's enforcement of his existing liens is the measure of his maximum interest in the property, and he cannot participate in a proration of the excess proceeds under any theory of a tenancy in common. *Elbert, Ltd. v. Nolan*, 32 Cal.2d 610.

Franchise tax lien.—A lien for franchise taxes attaching to the property under Section 29 of the Bank and Corporation Franchise Tax Act does not fall under the exception in (b) or under any of the other exceptions in this section and is therefore extinguished by the deed from the State. *Connors v. Jerome*, 83 Cal.App.2d 330.

Prior contract liens.—All prior contract liens against the property are extinguished by the deed from the state. *Elbert, Ltd. v. Aleinick*, 102 Cal.App.2d 169.

Tax on public road.—A public road is not subject to tax and a tax deed based thereon is void and does not establish that the property was not a public road. *Gaspard v. Edwin M. LeBaron, Inc.*, 107 Cal.App.2d 356.

Estoppel.—A purchaser at a tax sale did not receive a title superior to that of a chattel mortgagee, who based his title on an earlier foreclosure sale, where the purchaser had been under a legal obligation to pay the delinquent taxes. Rather, his purchase of the tax-deeded property was considered merely a mode of paying the taxes. *Weisberg v. Loughridge*, 253 Cal.App.2d 416.

Jurisdictional Defects.—This section simply provides conclusive evidence that all taxing procedures, other than those affecting jurisdiction, consonant with due process, have been followed. Among the jurisdictional prerequisites to a valid tax deed is property legally subject to being taxed. It has no application where a tax deed is void from the inception due to the jurisdictional defect caused when tax exempt property has been sold at a tax sale. *L&B Real Estate v. Housing Authority of the County of Los Angeles*, 149 Cal.App.4th 950.