

Treasurer and Mineral Deeds

CCTA Summer 2009 Conference

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Treasurer Deeds

- Treasurer and Mineral Deeds are conveyances of property by the Treasurer given to lien holders that request them after a 3-year holding period to satisfy non-payment of taxes.

Overture

- Deeds
- Statutory references
- Annotations
- Diligent Inquiry
 - Real Events From the Trenches
- Weld Process for Issuing deeds



Statutory References Title 30

- Title 30
- Gen. Treasurer Fees:
- CRS 30-1-102



Statutory References Title 31

- Redemption: CRS 31-25-1115
- Deed Form: CRS 31-25-1116
- Effect of Deed: CRS 31-25-1117
- Not Mandatory: CRS 31-25-1118
- 15-Year Limit: CRS 31-25-1119

Statutory References Title 39

- Presentation of Certificate for Deed: CRS 39-11-120
- Deed Notice: CRS 39-11-128
- Issuance: CRS 39-11-129
- Fees for Redemption: CRS 39-11-130
- Notice of Application for Deed: CRS 39-11-131

Statutory References

Title 39

- Suit to quiet title: CRS 39-11-133
- Defects in tax deed: CRS 39-11-134
- Form of tax deed: CRS 39-11-135
- Treasurer executes deed: CRS 39-11-136
- Successor shall act: CRS 39-11-138

Annotations – Did You Know...

- Forbids deed issuance without proper notice
 - Swofford v. Colo Nat'l Bank 1981
- Tax deed is invalid absent full compliance of statutory requirements
 - Siddoway v. Ainge 1975

Diligent Inquiry Not Defined

- Satisfaction of requirements is a question of fact for the trier of fact
 - *Siddoway v. Ainge* 1975;
 - *Turkey Creek, LLC v. Rosania* 1998



Deed is Not Evidence

- Even though the deed be conceded to be fair on its face so as to make it prima facie evidence of facts occurring before or at the time of sale, **it constitutes no evidence of the acts which the cash purchaser is required to perform, or the treasurer for him, after the sale and before the deed can be lawfully executed**
 - Sheesley v. Voorhees 1913

II. Notice, A. General

- No tax deed may be issued until notice is given
- Notice to ALL persons having an interest or title of record to land sold for taxes is a prerequisite to the issuance of a tax deed
 - French v. Golston 1928

Parties Claiming Title Have the Burden of Proof

- Parties claiming title must prove notice.
 - It is **incumbent on the parties claiming title** under a tax deed to prove either that the statutory notice was given or that the assessed valuation rendered it unnecessary to give notice before the deed would be admissible in evidence
 - Jackson v. Larson 1913

Title Void if Untrue

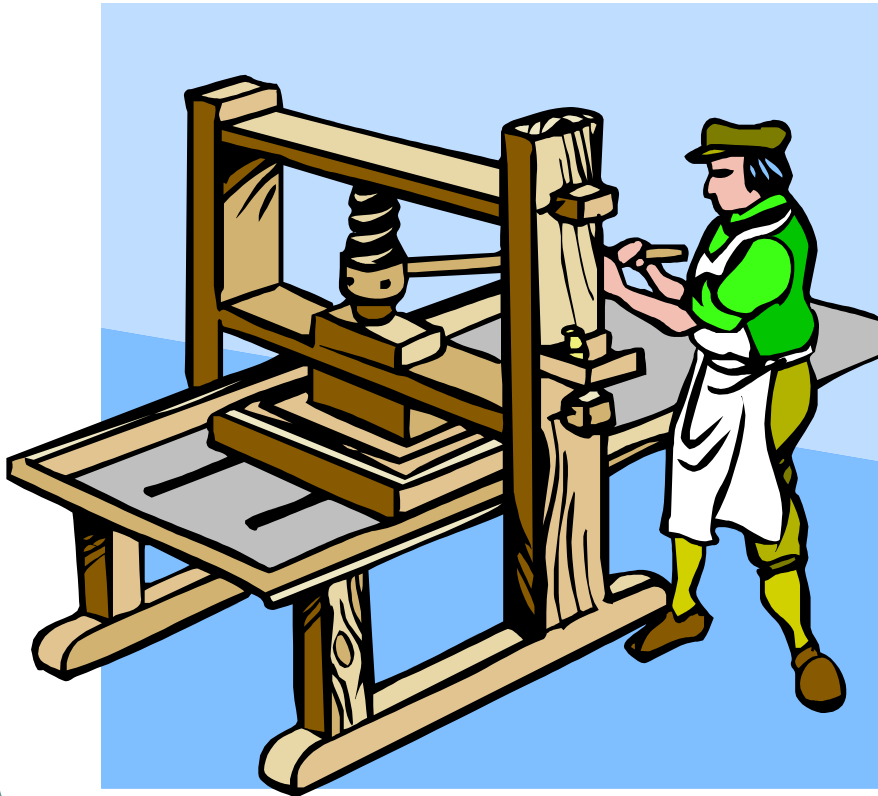
- Must state the truth or the title is void
 - Young v. Rohan
1925
 - Staples v. Todd
1941
 - Tewell v. Galbraith
1949



When Contesting Party is Noticed

- When a contesting party is properly noticed and did not avail themselves of the opportunity, **such party has not demonstrated any injury to their right to notice** under the section
 - Turkey Creek, LLC v. Rosania 1998

Despite Alleged Defects



- Despite alleged defects because of the publication requirements, party contesting the issuance of tax deeds lacks standing to contest the validity of the tax deeds under either paragraph (a) or (b) of the subsection (1).
 - Turkey Creek, LLC v. Rosania 1998

B. Service

- Treasurer's duty to serve or cause to be served notice
- Who should be served?
 - Anyone in the chain of title



Service is Complete



- When the Treasurer registers and deposits in U.S. mail the statutory notice directed to the proper post office address of the parties to be notified is complete

Publication Required

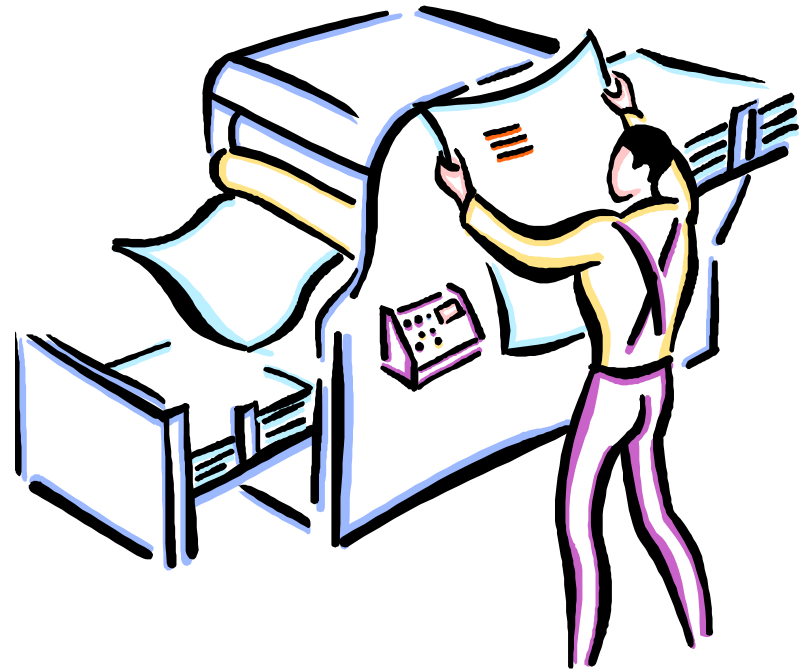
- If the property is valued by the Assessor at \$500 or more you must advertise it



Publication Required Also When

- Actual notice is not possible
- No address in the county records for recorded interest holders
- Not given to the owner and to persons having an interest of record in the land

- *Henrie v. Greenlees* 1922



Publication Sufficient

- Publication was sufficient where the record interest holder's correct address was not available in the County records
 - Schmidt v. Langel
1993



Flowers Case

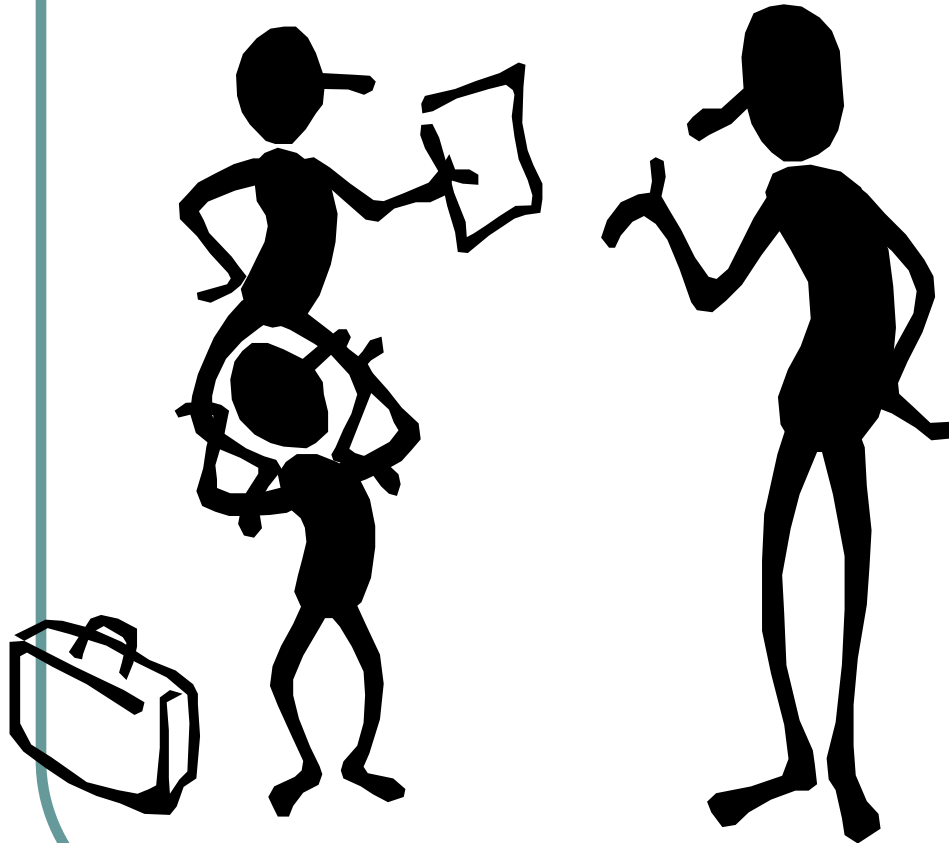
- This case indicated that posting the property should also be part of the diligent inquiry process



Notice to General Partners

- Notice to general partners imputes notice to limited partners
 - The general partner has authority to act for the limited partner and receive appropriate notice
 - BMS Partnership v. Winter Park Devil's Thumb 1996

Limited Partners



- Not entitled to notice
 - BMS Partnership v. Winter Park Devil's Thumb 1996

Tenants

- A tenant occupying the premise must be served with notice, and service on the record owner, without service on the tenant in possession, is not a compliance with subsection (1)(a).

- Brown v. Davis



Persons having an Interest



- Record of title
 - Excludes persons of known but unrecorded contracts of sale

Failure to Notice Record Holders

- Invalidates Deed
 - If a bank had a recorded interest but was not noticed it would invalidate the Treasurer's Deed
 - Swofford v. Colo Nat'l Bank 1981



Spousal Service



- It is not necessary to notice a wife living with her husband occupying the premises involved
 - Ford v. Genereux 1939

Diligent Inquiry

- This section directs the Treasurer to learn the address of the record owner and serve notice on them if the address can be learned
 - Bald Mountain Mining & Ref. Co. v. Brunton 1968
- Doesn't say what constitutes diligent inquiry other than subsection (1)(a)

Absent Diligent Inquiry



- Deed is void
- Voided upon complaint of the owner being deprived of notice concerning their property
 - Siler v. Investment Sec. Co. 1952
 - Wittemyer v. Cole 1984

Secretary of State Records



- Treasurer need not check for business owners here
 - But since you can via the Internet why wouldn't you try?
 - <http://www.sos.state.co.us>

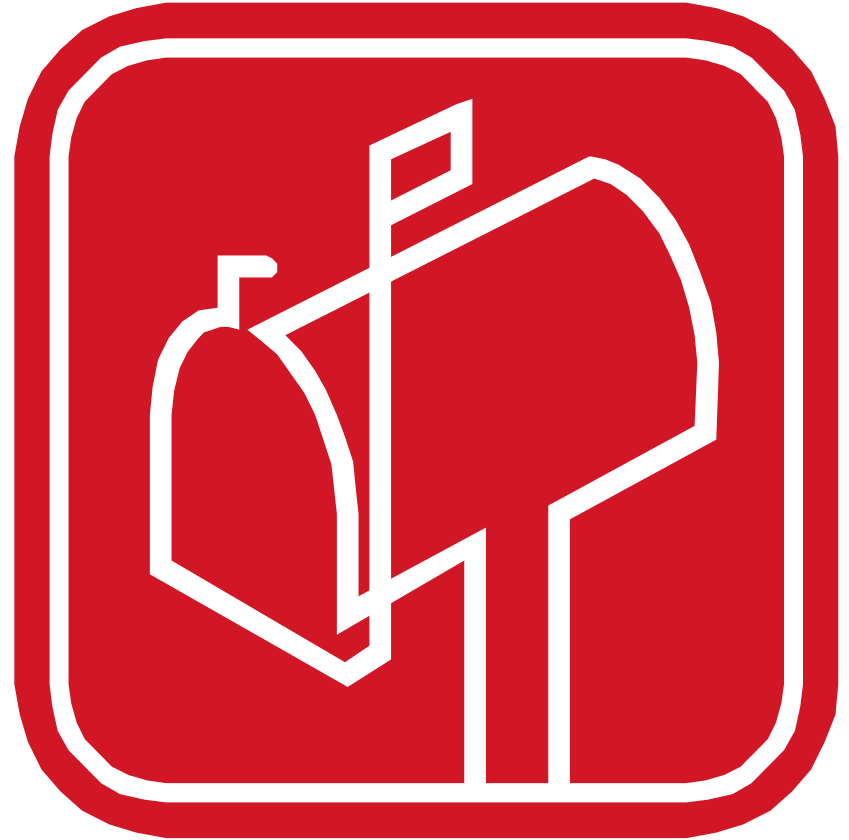
Duty

- Duty to collect the tax not to transfer property
 - White Cap Mining v. Resurrection Mining Co. 1946



Record Owner Fails to Change Address with Assessor

- Not relevant
- Cannot rely strictly on the Assessor's data



Limit to Treasurer's Search

- Not required to be familiar with current address
- Not required to search correspondence files
- Especially when Treasurer was not notified of an address change
 - Siddoway v. Ainge 1975

Assessor's Role

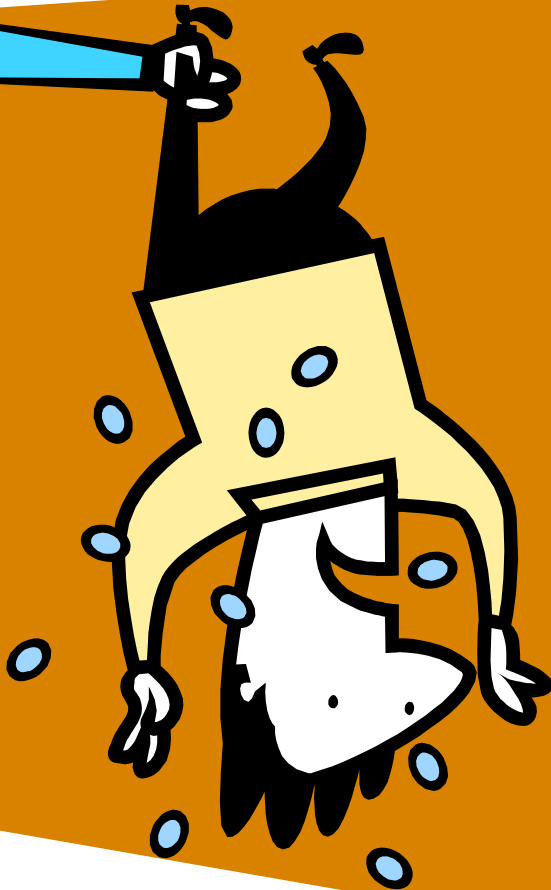
- Treasurer cannot rely on the Assessor's role/records for a current address
- Doesn't replace diligent inquiry
- Must check all County records
 - Doesn't define all County records
 - Schmidt v. Langel 1993

Tax Deed Issuance



- Signing or delay in acknowledgement shall not affect the deed
- May sign any time after the 3-year period but within 5 months of notice of service
 - CRS 39-11-128

Fees for Redemption



- CRS 39-11-130
- A person who may have a right to redeem must pay all taxes and fees including publishing and title work

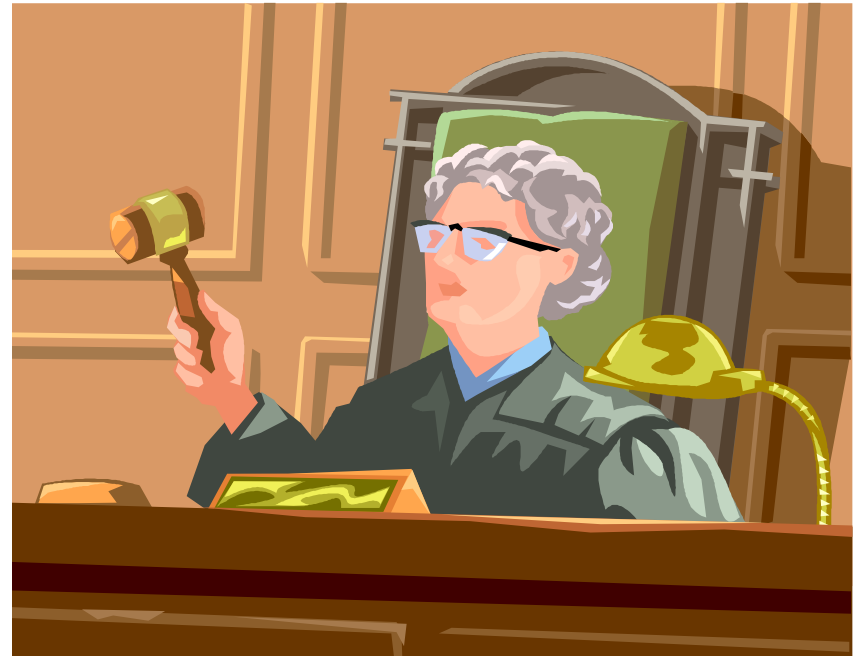
Notice of Application for Deed

- A single notice may contain **up to 25 parcels** contiguous or noncontiguous parcels
- To single or same joint ownership



Suit to Quiet Title

- Maintained by grantee or successors
- One or more parcels at a time
 - Invites anyone with an ownership claim to come forward and make that claim

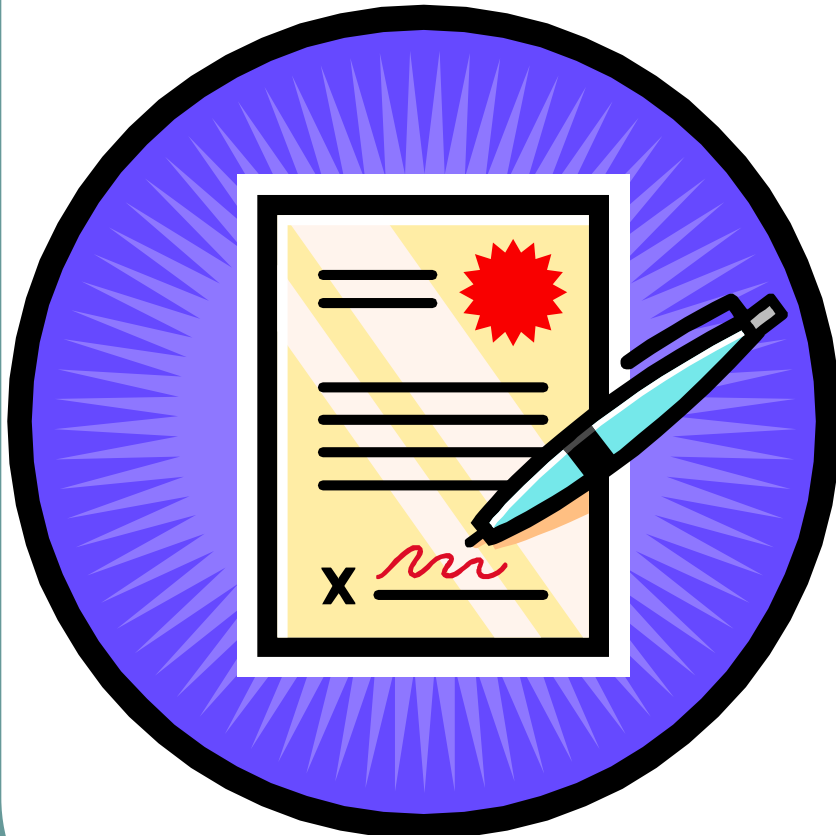


Defects in Tax Deed



- CRS 39-11-135
- A defect in one deed does not affect any others

Form of Tax Deed



- CRS 39-11-135
- Tax deed must be according to form
- Becomes effective on the date of delivery
 - See annotations for necessary recitals in deed

Defects Voiding Deeds

- If in violation of a positive statute
- Deed showing an incorrect location of sale
- Deed failing to state amount of subsequent taxes paid by assignee
- Failure to recite date of transfer of county tax certificate

Steps to a Treasurer's Deed

- Tax lien holder may apply for a Treasurer's Deed anytime after August 1st of the third year after the tax lien sale year
- For example $2008 + 3 = 2011$



Check for Bankruptcy

- Deeds may not be applied for or issued during a bankruptcy
- Wait for discharge



Deed Application Form



- Investor must sign the form
- If property at the time of the tax lien sale was assessed under \$500, the deposit is \$300
- If property was over \$500 the deposit is \$350

Deed Deposit Receipt



- One copy to accountant
- One copy to the deed file

Check for Other Tax Sales

- If previous then notify
- If subsequent then lien holder can redeem



Unrecorded Assignments

- Get them recorded now



Tax Lien Book

- Stamp the tax lien book with a deed number



Assignments



- If there are any that haven't been recorded do so now

Title Report

- Order title report
- Costs vary
- Enter the deed number in remarks
- Enter charges
- If tax certificate is taken to the Clerk & Recorder ask for recording information and give to title company

Deed Worksheet



- Prepare a worksheet for the Red deed book and a brown expanding deed file

Type of Deed

- 1) No assignment
- 2) One assignment
- 3) Two assignments



Notice of Purchase

- Notice of purchase of real estate at tax sale and of application for issuance of Treasurer's deed
- To the owner and anyone listed on the title report as a lien holder or encumbrance
- Send via certified mail with return receipt

Address Sources

- Internet
- Water offices
- Research department of libraries
- County records

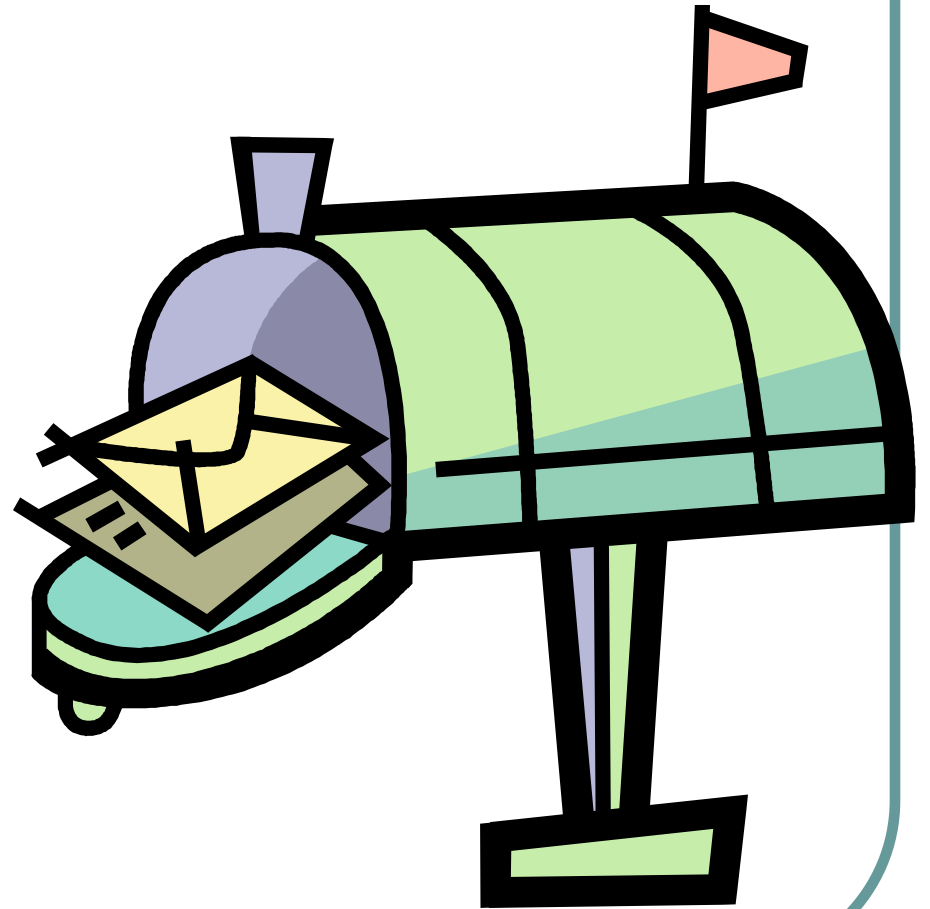


Publication

- Official county newspaper, if there is one
- Otherwise public posting
- Publish for 3 consecutive weeks
- Deed date is set 3 months and 10 days after last publication date but after any holiday or weekend

Investor Notification

- Send notice to the investor by regular mail so they know the deed date has been set



BOCC Notification



- Must serve the Clerk and Recorder
- Serving the County Commissioners directly is not valid

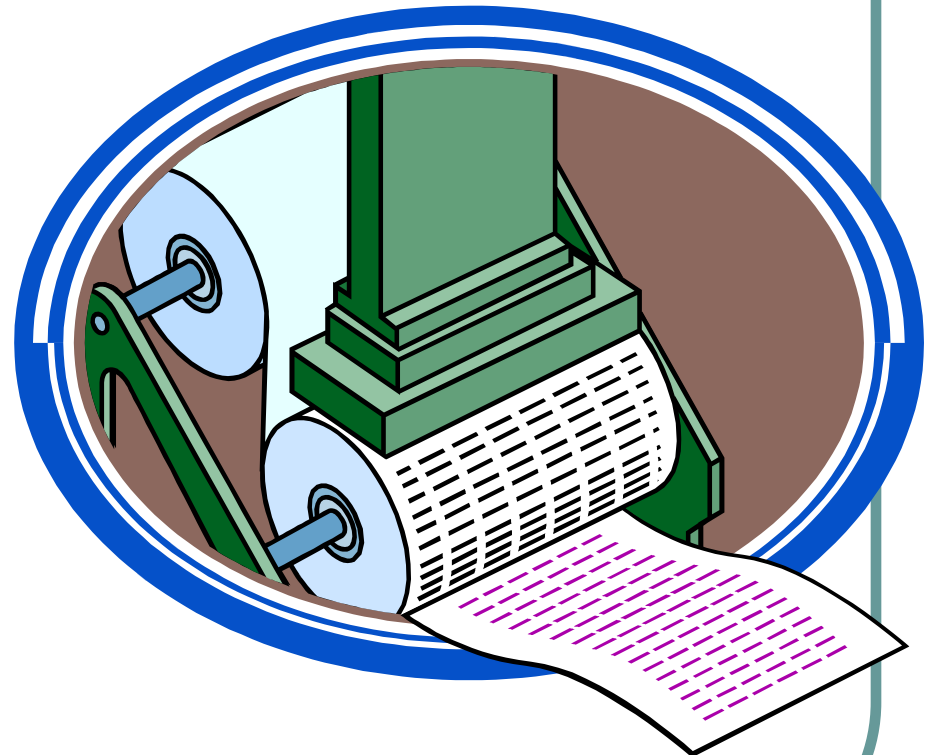
Add Mailing Costs



- Add the certified mail costs to the account

Publication Costs

- The official county newspaper will send a bill for the advertising
- Plus affidavit of advertising
 - Pay the ad bill
 - Keep a copy in the deed file
 - Add to the account



Deed Fee



- If not advertised
\$35
- If advertised
\$75

Recording Fee

- If deeded \$11
- Charge to the deed costs, but do not write a check to the Clerk and Recorder



Milking More from the Investor

- Ask for a separate check for the current year of tax
- Try and get the current year taxes paid by the time the deed issues
- If not give the new owner 30 days to pay without delinquent charges



Tax Notice to Deed Applicant

- Stamp the tax notice “DEED” with a deed date so the staff knows not to charge delinquent interest



Treasurer's Job

THE WALL STREET JOURNAL.



"I don't sign anything till my lawyers have had a chance to look at it."

- Work, work, work...
 - Treasurer must sign and seal the deed
 - Deed needs to be notarized

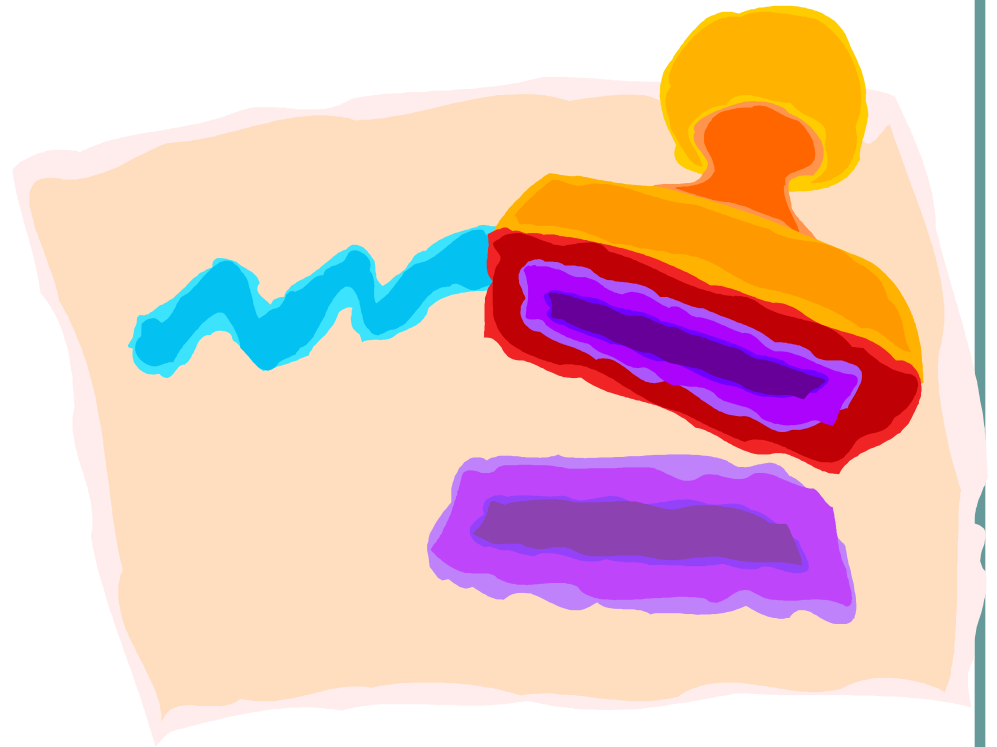
Deed Transaction

- Deed the property on the computer
- Write this into the tax sale book



Tax Lien Sale Book

- Write in tax sale book
 - Property deeded



Balance Expenditures

- Balance expenditures to zero
- Give paperwork to the accountant
 - They verify by writing the closed date on the file



Loose Ends



- If any prior tax liens remain have the Commissioners cancel them by resolution

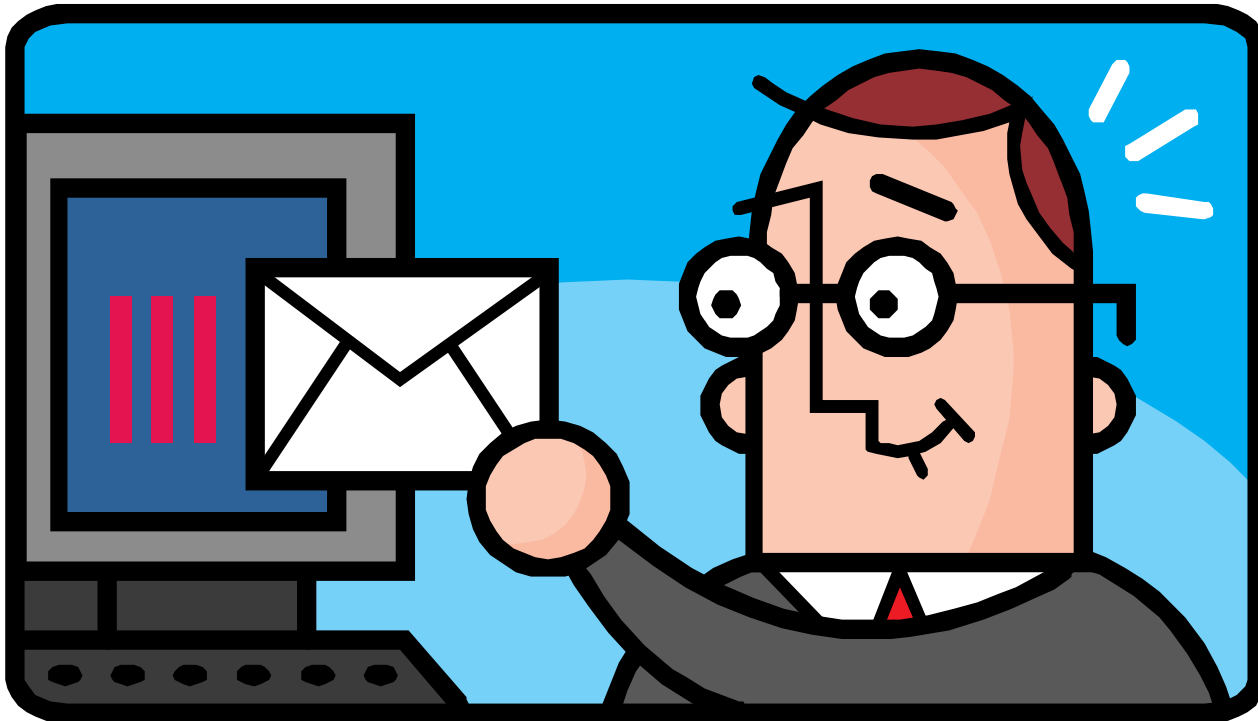
Deed Returned From Clerk

- Copy it for the deed file
- Send a deed cost expenditure sheet with the deed to the new owner



Change the Address

- “c/o NEW OWNER NAME”



Notify Assessor



- Send a notification to the transfer department of the Assessor's office
 - Include any special notes such as combine minerals going to surface owner, etc.

Weld County Results

- Since September 1987
 - Started 769 Deeds
 - Deeded 361
 - Of the 361 only 27 were minerals
 - Only 3 had a home on them
 - A lot are clean up deeds for strips of land that were missed

Wrap Up Essentials

- Notice everyone in the chain of title
- Dig for good addresses
- Document every step
- Keep good records



Day of meetings

THE WALL STREET JOURNAL.



"Y'know, a day full of meetings is like a night on the town. By the end, you've had one too many and no one remembers much of anything."