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*123 WASHINGTON STATE PROPERTY TAX FORECLOSURES: QUOERERE DAT SAPERE QUOE SUNT LEGITIMA VERE [FNa]

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Table of Contents

*124 I. Introduction

Prior to 1900, "tax titles" were notoriously weak. [FN1] Since the laws on the subject were complicated and difficult to comply with, an "investigator of titles always look[ed] with suspicion upon a title that depend [[[ed] upon a tax deed." [FN2] This is no longer true. Since the turn of the century, Washington's property tax foreclosure statute has provided a stable underpinning for the foreclosure process and thus security to the eventual purchaser. A county following the statute's mandate and giving heed to the many judicial interpretations of its provisions can legally foreclose and sell the property of a delinquent owner. Correspondingly, few remedies exist when a property tax foreclosure divests an owner's interest in real property.

Although a tax foreclosure is a relatively common process with grave results, it has never been subject to significant scholarly treatment. This article attempts to fill this void by explaining both the nature of the tax foreclosure process and the effect it has on particular property rights and interests. First, this article identifies the policies and purposes underlying tax foreclosures, describes the statutory foreclosure procedure, and then considers the delinquent party's rights. Second, this article attempts to analyze how the tax sale affects various real property interests. The article emphasizes private interests, although it also considers the interests of governmental entities. In this section, the uniqueness of the deed issued at a tax sale is identified in relation to other interests in land. This article also identifies those interests which will survive a tax sale and briefly comments on the illogical preservation of demolition and assessment liens. Finally, this article provides practical advice to parties either challenging the foreclosure or attempting to obviate its effects on their property interests at the conclusion of the process. It identifies two actions to challenge the sale and recover the property sold as well as the preeminent bases for collaterally attacking the sale.

*125 II. Tax Foreclosure Process

Tax foreclosure has changed little since its inception. Scholarly treatment written over a half-century ago still provides a comprehensive view of the process. [FN3] Despite its antiquity, most do not understand the nature of a tax foreclosure and its effect on the rights and obligations of parties possessing property interests. An appreciation of the process requires some fundamental knowledge of the steps undertaken prior to the sale of property and the policies that the foreclosure sale seeks to promote or protect. Finally, and most importantly, with a background of the policies and the procedural steps, a discussion and analysis can be made of the effect of the foreclosure sale on the various rights, interests, and obligations of parties concerning the property subjected to the sale.

A. The Tax Foreclosure Sale

The tax foreclosure sale is a creature of statute. [FN4] Despite the exclusiveness of its origins, relying solely on the statutory framework to understand the foreclosure sale is at one's own peril. Critical in applying the statute and either avoiding its application or obviating its impact is understanding the manner in which the statute is applied judicially. Although, for the most part the judicial treatment is dated, the reasoning and analysis of earlier opinions provide a comprehensive backdrop for more contemporary treatment. The first step is identifying the policies the foreclosure process seeks to promote or protect. These policies provide a means of validating a remedy to those suffering from the foreclosure sale's effect and a foundation for predicting more contemporary judicial interpretations of the statute. Second, to adequately analyze tax foreclosure, a party must identify the actual steps in the foreclosure. Understanding the statutory steps aids in determining procedural irregularities, grounds for substantive challenges, and identifying avenues of relief available to the disenfranchised owner.

1. Purpose of Tax Foreclosure Sales

The purposes and policies that the tax foreclosure process seeks to promote underlie the statutory framework and subsequent judicial interpretations. The purposes are two-fold. [FN5] First and foremost, the procedure under the statute *126 establishes and enforces liens for public revenue. [FN6] Second, the statute ensures that delinquent property taxpayers are not deprived of title to their property without the due process protection afforded by a public treasurer's sale. [FN7] The tension between these two policies is at the heart of most conflicts regarding the foreclosure statute. [FN8] When the two collide, courts have sided on the need for ensuring an effective means of collecting taxes. [FN9]

An early illustration of the tension caused by these competing policies, as well as an example of the court's inclination to favor collection, is found in the Washington State Supreme Court decision, Spokane County ex rel. Sullivan v. Glover. [FN10] The Court in Glover considered whether an earlier version of the statute required the treasurer to notify each taxpayer after an exhaustive search of the public records and if unsuccessful in finding the property owner's name, to make other attempts. [FN11] A recent legislative amendment had changed the directive from "the treasurer when requested, shall notify each taxpayer . . ." [FN12] to "the treasurer shall notify each taxpayer." [FN13] Despite the amendment, the court found the statute only obligated the treasurer to send notice based on the office records. [FN14] According to the court, a contrary conclusion would result in "an utter perversion of our system of taxation, the entire procedure of which is for the purpose of establishing and enforcing liens for public revenue." [FN15] Hence, even earlier decisions reflect the courts' willingness to allow the policy of revenue collection triumph when in tension with due process. More recent decisions have done little to alter this hierarchy. [FN16]

It is unlikely that this taxonomy will change in the near future, although the existence of superior means of property registration suggests it could. [FN17] More *127 likely, however, the courts will continue to rely on the oft-cited reason for favoring tax collection over due process--the property owner possesses constructive knowledge that foreclosure may eventually divest one of title. [FN18]

2. Process of Tax Foreclosure

The foreclosure statute's attempt to balance the general interests of ensuring payment of tax monies and the property owner's due process rights leads to a procedurally stringent foreclosure process. Despite its rigidity, the process itself is commendable in its relative simplicity and attempt to provide the property owner with notice. Tempered by time, the antiquated procedural steps still serve as an effective vehicle for both policy goals.

The starting point for all foreclosure actions is the imposition of property taxes. The statute provides that all taxes and levies are liens upon the real and personal property which they may be imposed. [FN19] Taxes attach to the property on January 1 of the year they are levied. [FN20] All real property subject to assessment is assessed with reference to its value on January 1. [FN21]

A discussion on the means of challenging an assessment is beyond the scope of this article. However, the two actions--challenging an assessment and challenging a foreclosure--need to be distinguished. The assessment of property is an action for

"valuation" primarily conducted under the auspices of the county assessor. Foreclosure is the manner of "collecting" the valuation. Challenges to foreclosure do not attack the amount of the tax. [FN22]

*128 The failure to pay assessments initiates the foreclosure process. After three years of delinquency, the county treasurer issues "certificates of delinquency" on the property for all years' taxes, interests, and costs. [FN23] The certificates of delinquency are prima facia evidence that (1) the property was subject to taxation, (2) the property was assessed as required by law, and (3) the taxes or assessments were not paid at any time before the certificate issued. [FN24] The certificate has the same effect as a lis pendens. [FN25]

In addition to taxes, the county treasurer is permitted to include in the amount any assessments owing that the treasurer is required to collect. [FN26] The treasurer is then required to give notice to the owner or any person having a recorded interest of the foreclosure action. [FN27] The statute allows the treasurer to proceed in one general foreclosing proceeding as opposed to separate actions against each parcel of property. [FN28]

Next, the treasurer files notice in the superior court of the county where the property is situated. The superior court examines the application for judgment foreclosing the lien and any defense offered. [FN29] Any person alleging that they are the owner or that they possess an interest in the property may attack the foreclosure decree. [FN30] Without any further pleadings, the court determines the matter in a summary manner although with its discretion, can continue individual cases to such time as necessary. [FN31] The statute also provides that the court shall not consider any assessments of property illegal because of any irregularity in the tax list or assessment roles; the assessment roles not having been made, *129 completed or returned within the time required by law; the property having been charged in any other name than that of the owner; or because of the manner in which officers connected with the assessment levied or collected the taxes. [FN32]

The court subsequently issues an order giving the county treasurer full authority to sell the property. The treasurer must fully comply with any stipulations contained in the order. [FN33] Provisions in the court's order directing that the sale should only pertain to part of the property necessary to collect the amount due have been deemed a proper exercise of this discretion. As a proceeding in rem [FN34] any action undertaken by the treasurer and subsequently by the superior court need only conform to the law in force at time of the commencement of the action. [FN35]

All sales are made in the county on a date and at a time set by the county treasurer. Notice of the sale must be posted in three public places in the county, one of which is the treasurer's office for ten consecutive days. [FN36] The sale will continue daily during the same hours until all lots or tracts are sold. [FN37] No county officer or employee can directly or indirectly purchase the property at the sale. [FN38] *130 The property is sold to the highest bidder for cash. [FN39] The acceptable minimum bid is the amount of taxes, interests, penalties, and costs. [FN40] Despite the statute's decree of cash, the bidders need not have cash in their possession at the time of the sale. [FN41]

If the sale price exceeds the minimum due on the property, the treasurer refunds the excess, less payment of all water and sewer district liens to the record owner of the property. [FN42] No excess is required to be refunded when the county obtains title by virtue of the sale and then, subsequently resells the property. [FN43] The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. [FN44]

The county treasurer executes a tax deed to the purchaser. [FN45] The deed is recorded in the same manner as other conveyances of real property and vests in the grantee the property title. [FN46] Most importantly, in all controversies and suits regarding the rights of the purchaser, the tax deed acts as prima facie evidence of certain facts associated with the sale. [FN47] Among these facts are the following: the property was subject to taxation at the time the property was assessed; the assessment was in the time and manner required by law; the taxes were not paid; the property had not been redeemed from the sale at the date of the deed; the *131 property was sold for taxes, interests and costs in the deed; the grantee in the deed was the purchaser; and the sale was conducted in a manner required by law. [FN48] The statute also precludes a party from raising a defense that existed before judgment that could have been presented when judgment was rendered. [FN49] However, the most notable exceptions are that the taxes had been paid and that the real property is not liable to the tax. [FN50]

In those instances where no bids are received at a tax sale, the county is considered a bidder for the full area of the tract and acquires title as if purchased by an individual. [FN51] The county does not pay anything at a sale without bidders, but is considered a bidder to the amount of all taxes, interests, and costs due on the property. [FN52] The right of redemption is extinguished the day of the original tax sale and thus cannot be exercised despite the fact the county retains possession of the property. [FN53]

Any lands subsequently held by the county are not held in the county's proprietary capacity, but rather in trust for state and taxing municipalities in the county. [FN54] Because the county holds the property in trust, the county must sell or attempt to sell the property. [FN55] Thus, the county's resale of those properties is but part of the statutory tax collecting process [FN56] and requires the county to justly apportion the proceeds to the state, municipality, and other funds. [FN57] In the *132 interim,

despite not being in a proprietary capacity, the county is entitled to rentals from the property. [FN58] Upon resale, the county may sell the property at a lesser sum than the amount for which the property is offered in the notice of sale. [FN59] When the county sells the property to a third party, the party takes the title free and clear of all prior liens including taxes. [FN60] Any outstanding liens are intended to be transferred to the funds obtained from the sale and will be preserved to the extent that further preservation would require sacrifice by the county or state. [FN61]

The statute provides special provisions for selling certain types of property. Counties can sell property when it is deemed advantageous by combining any or all of the lots. [FN62] It may reserve from sale any mineral rights or resources and sell these rights at a later time. [FN63] The county may enter into real estate contracts with the purchaser. [FN64] The presumed intention of these provisions is to provide flexibility to county governments to ensure willing buyers and receive the maximum proceeds for the sale in light of the property being sold. Alternatively, the county may sell the property to any governmental agency for public purposes, or without public auction if the property is impractical to build on or no acceptable bids were received at the public auction. [FN65] Finally, the county itself has the ability to retain the property in its proprietary capacity. [FN66]

*133 B. The Rights of the Delinquent Party

A delinquent party's rights are extensive at the beginning of the foreclosure process but narrow after the foreclosure sale occurs. Starting at one end of the continuum, the statute entitles a delinquent party to redeem with little if any restrictions other than the redemption must be completed by the date of the sale. [FN67] At the other end of the continuum, after the sale occurs, the delinquent party's rights are severely limited to a few bases for challenging the sale. [FN68] Therefore, understanding the rights and the time for exercising those rights is imperative to avoid losing one's interest in the property.

1. Redemption Rights

Any person owning an interest in the property may pay the taxes, interests and costs due on the property to the treasurer before the sale date. [FN69] This is the only means of "redemption" provided within the statute. The right of redemption, however, is liberally construed in favor of the right to redeem. [FN70] Earlier cases interpreted the statute as codifying a legislative intent to secure the right of redemption to anyone who had an existing pecuniary interest. [FN71] Having a pecuniary interest creates an interest in having the title remain unimpaired. [FN72]

Even though a party has neglected to pay taxes for many years, that inaction does not bar the party from redeeming the property if it is within the statutory period. [FN73] Parties with only a partial interest in the property are entitled to redeem their partial interest. [FN74] Thus, if the redeeming person is a tenant in common or joint tenant, the interest allowed to be redeemed would be that individual's interest. [FN75] Logically, a party with a partial interest should also be allowed to *134 redeem the entire value of the property. [FN76] Not allowing a redemption of the entire property may impact the value of the partial interest held by the party and would undermine the statute's purpose of receiving the full payment of delinquent taxes. If allowed to do so, the individual redeeming the entire property should not acquire title to the entire property but is only entitled to reimbursement or a lien on the remainder of the property for the payment exceeding their proportion of ownership. [FN77] Likewise, a non-owner but interested party who pays the amount due is entitled to lien on the property for the amount of the payment. [FN78] However, mere payment does not entitle an interested party to a greater preference to their interest but is rather added to their original interest. Further protection is afforded to property sold belonging to a minor and a person deemed legally incompetent. They may redeem at any time within three years after the date of the sale. [FN79]

Redemption must occur any time before the close of the business day before the day of the sale. The amount due upon redemption must include both the amount of the delinquent taxes and interest at the statutory rate per annum from the date of the issuance of the certificate of delinquency. [FN80]

2. Parties in Interest

While the courts liberally construe the tax redemption statute in favor of the right of redemption, the courts strictly construe persons owning an interest in the property to avoid the unscrupulous intervention by a third party who *135 subsequently becomes a lienholder. [FN81] As the Washington State Supreme Court has explained:

> There is no quarrel with the authorities . . . upon the subject of redemption that "a mere stranger" cannot meddle with it . . . . Unless this rule were established it is evidence that any third person who might suppose a tax purchaser to have secured a good bargain could relieve him of it and appropriate its benefits to himself by simply paying the redemption money. [FN82]

A party must therefore demonstrate some interest in the property—whether it be present possessory, a future vested or divested interest, or even as a judgment or lienholder. The preceding list is by no means exhaustive. As an illustration of perhaps the limit of the tenuousness of an interest, the court has allowed a landowner's association formed to look after individual interests of

a large number of owners of property, to redeem lands of members provided the landowners authorized or ratified the action. [FN83] The result in that case should be seen as the exception to the rule.

3. Recovery of Taxes Paid

A party that fears a tax foreclosure will occur and thus pays the property tax is not without a remedy if they believe the property tax was imposed improperly. The preeminent manner of challenging an improper tax is immediately questioning the valuation or assessment of the property. [FN84] If a party has not timely challenged the assessment but pays the property tax the procedural avenues become more limited but are nonetheless available. They consist of an action to recover taxes paid and an action seeking a refund. [FN85] While these statutory approaches also have strict time limitations associated with them, [FN86] they may prove to be the only available approaches to avoid a tax foreclosure but still allow recovery of taxes.

a. Action to Recover Taxes Paid

In those instances where a property owner does not want to risk foreclosure, the statute allows for an action to recover taxes paid by "paying under protest." [FN87] Two reasons justify considering a taxpayers' right to pay under protest in a discussion about tax foreclosures. First, the taxpayer's ability to make a tax payment under protest originates from the county's ability to foreclose on the taxpayer's property. [FN88] In the 1904 decision, Tozer v. Skagit County, [FN89] the Washington State Supreme Court first recognized a property owner's ability to pay taxes under protest. Before, the court considered any payment voluntary and effectively eliminating the right to challenge the taxation. [FN90] But since the taxing statute allows the attachment of property and eventual foreclosure, an ability to make a payment in protest is necessary to ensure that a "practical confiscation of property" does not occur. [FN91]

Second, payment under protest remains one of two statutory ways a party can retain possession of their property yet preserve any defense to an obligation to pay property taxes other than actions challenging the original assessment or valuation. In other words, payment under protest is only one of two approaches available to a party attacking the tax's validity yet avoiding the consequences if the tax is not paid after the time period for attacking the assessment or valuation has passed. Chapter 84.68.070 of the Revised Code of Washington states that except as permitted by the payment under protest chapters, "no action shall ever be brought or defense interposed attacking the validity of any tax, or any portion of any tax. . . ." [FN92] The remedy is "one of two statutory approaches" since occasionally the court, under the cloak of equity, has provided relief to a *137 delinquent taxpayer from the effects of a foreclosure proceeding despite not having paid taxes. [FN93]

The right to pay under protest benefits both the state and the taxpayer. It ensures first, that the taxpayer's property is not sold pending an outcome to the tax dispute and second, that the state's liability is not significant if the state has erroneously assessed a property. [FN94] Even if the assessment is correct, the tax is not lost that "the property in justice ought to pay." [FN95]

A taxpayer paying a tax under protest must send a written protest with the tax payment to the county treasurer setting forth all the grounds how the tax is unlawful or excessive. [FN96] Once made, the party is entitled to bring an action to recover the tax in superior court. [FN97] Unlike earlier law, no additional claim need be presented to the taxing authority for a return of the protested tax as a condition precedent for initiating the action. [FN98] Because each year's tax is considered an individual unit with no relation to taxes for any other year, a *138 payment under protest should be made with each payment. [FN99] Otherwise, a party is only entitled to recover those taxes attributable to the installment paid under protest. [FN100] In fact, the requirement that each tax be paid "under protest" is a jurisdictional requirement. [FN101] Failing to protest each portion eliminates the court's jurisdiction over that portion of the payment. [FN102]

Written notice of the protest is required even if the county has actual notice. [FN103] The party suing to recover the tax paid has the burden of showing the excessiveness of the tax. [FN104] However, the successful taxpayer is entitled to recover the amount of the unlawful tax imposed plus interest. [FN105] The action for the recovery of the taxes paid under protest is brought in the county where the tax was collected or in any federal court having jurisdiction. [FN106] To be timely, the action must be brought within thirty days of the next "succeeding June following the year in which said tax became payable." [FN107]

*139 b. Refunds

The second statutory approach to challenge the validity of a tax after paying the tax is by seeking a refund. [FN108] The taxpayer must pay the challenged tax and then file a claim for a refund within three years of paying the challenged tax with the county treasurer. [FN109] The claim must state the statutory ground upon which the refund is claimed. [FN110] A refund differs from paying in protest since the party seeks the refund from the county legislative authority rather than filing an action in the superior court. Further, a party does not have to pay the taxes under protest. [FN111]

The statute authorizes the county treasurer to refund taxes under a number of unique circumstances. [FN112] They include if the taxes were paid more than once, as a result of clerical errors, as a result of a mistake or inadvertence, or the valuation has been reduced by either a county board of equalization or the state Board of Tax Appeals. [FN113] A refund order by the county legislative authority may include any taxes collected by the county for the county or other taxing districts. [FN114] If the county treasurer rejects the claim or fails to act within six months from filing the claim, the taxpayer may then commence an action in the superior court against the county to recover the taxes the treasurer has refused to refund. [FN115] The action under that circumstance must be filed within one year after filing the date of the refund claim. [FN116]

4. Enjoining the Collection of Tax or Sale of Property

An action to prevent the collection of taxes or the sale of property is limited. [FN117] These limits attempt to ensure the "expeditious collection of taxes" *140 and that collection is not delayed by protracted litigation. [FN118] The statute appears to have been the legislative reaction to the Washington State Supreme Court's earlier attempts to provide relief solely on the basis of equity when the excessive valuation of the land was so great as to constitute constructive fraud. [FN119] The act attempts to force the owner to pay the tax before asserting the defense. [FN120] Thus, injunctions and restraining orders before the sale are prohibited except in two instances. [FN121]

First, an injunction or restraining order is allowed when the law under which the tax is imposed is void. [FN122] A careful distinction must be made between arguments against the assessment of the tax and the arguments that the statute is void. A permissible argument must contend solely that the law under which the purported levy was made is void and not that the manner or amount of the tax is void. [FN123] The latter argument challenges the method used under a statute while the former attacks the statute's validity. Therefore, the latter requires a payment under protest while the former will not as "a void tax is no tax." [FN124]

Second, an injunction and restraining order is permitted where the property upon which the tax is imposed is exempt. [FN125] This particular exception can allow *141 for injunction when a party challenges the imposition on the basis of a constitutional exemption, [FN126] or when the taxpayer has already paid the tax. [FN127] A few instances do exist though despite the legislature's express limitations, courts have invoked their inherent equitable powers to issue injunctions or restraining orders even when the two exceptions were not present. [FN128]

5. Obligations after Foreclosure

Taxes that attach to property are not the owner's personal obligation. This is in contrast to personal property taxes whereby the owner of the property is personally liable. [FN129] As there is no statutory method for the enforcement of collection of taxes on real property, other than by foreclosing a lien as provided, that method is exclusive. [FN130] Thus, if because of the lack of bidders the amount of delinquent taxes are not recovered, any deficiency cannot be sought from other assets of the property owner.

III. Tax Foreclosure's Effect on Real Property Interests

A tax sale poses an unique situation to the law of real property. It is one of the few instances where a lien, imposed later in time, has priority over prior encumbrances. Subsequent foreclosure of the tax lien, often minuscule in *142 amount when compared to other competing interests, extinguishes those other interests and provides title to the purchaser free from any prior encumbrances. Before one assumes that a tax sale remains the surest manner to clear a title, there are exceptions to the general rule. While undoubtedly the tax sale limits almost all private interests in the property, the interests held by municipal corporations are almost never affected.

A. Priority of the Tax Lien

A tax lien has priority over any encumbrance on a property regardless of the time of its imposition. Chapter 84.60.010 of the Revised Code of Washington provides that the lien is to "have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which said real and personal property may become charged or liable." [FN131] Despite the statute's apparent mandate, the priority of the tax lien only truly has an effect when private rights are asserted against the tax deed. At first glance, it appears inherently unfair for a state to allow a tax lien imposed later it time to be superior to private interests that are both recorded and attached years earlier. Nonetheless, the power of the legislature to allow the superiority of tax liens over all other liens regardless of priority of time has been upheld. [FN132] In Carstens & Earles v. Seattle, the Washington State Supreme Court addressed this issue. [FN133] The Court's determination of

priority rested on:

the fact that it is imposed by virtue of the sovereign power of taxation; that the procedure by which it becomes a charge upon the land is a proceeding in rem with no requirement for personal service of notice upon any person, and that the statute in terms makes it a lien upon the real estate without reference to any person's title or interest therein. . . . [FN134]

The court summarized the historical reasons that in short, the "vastly superior force" of the sovereign power of taxation triumphs over the limited private interests of the individual. [FN135]

*143 B.Private Interests

The tax foreclosure sale most significantly effects the interests of private parties. It is in this particular area where the statute's mandate of the primacy of the tax lien has the most influence. The one notable exception is easements that are protected by statutory mandate.

Admittedly, most real estate financing devices contain standard language that relegates the responsibilities of paying taxes to property purchasers and allows the financier to make up any delinquency since the failure to pay the taxes is grounds for breaching the agreement. But, there are times that because of questions regarding the responsibilities of particular parties, the taxes are not paid by the purchaser or by the financing party. Eventually, the property will end in foreclosure. In those circumstances, the rights of the parties may become very confusing depending on the particular financing schemes and obligations that were accepted by the interested parties.

1. Mortgage or Deed of Trust

The effect of a tax foreclosure on a mortgage or deed of trust is simple. In most instances, the tax sale will cause the loss of the property. But the sale of the property does not eliminate the obligation that the deed of trust or the mortgage represents. In other words, the foreclosure will effect the "collateral" but not the "obligation" which the collateral secures. [FN136] Consequently, the party that has allowed the taxes to become in arrears--either by not complying with their express obligations or as implied by law by being in physical possession of the property--is still liable for the original obligation. Thus, where the mortgagor has not paid the taxes and the property has been sold, the mortgagor is required to pay the full mortgage despite not having possession of the property. In situations where the lender has agreed to pay the taxes, the lender is responsible for the failure to comply with that requirement.

The distinction between the "collateral" and the "obligation" also influences the manner the courts will treat situations when a mortgage is outstanding on the property but the tax deed is acquired by the mortgagor or mortgagee. The courts allow neither to assert the tax deed to the detriment of the other. For instances, the mortgagee cannot acquire title adverse to the mortgagor by purchasing the property at the tax sale. [FN137] Otherwise, the mortgagee would hold the legal title to the property (the collateral) and also hold the right to receive payment under *144 the mortgage (the obligation). [FN138] Thus, in equity, the court considers the payment as a means of preserving the collateral for the mortgagee. [FN139] The mortgagee is only entitled to recover the amount against the mortgage paid at the tax sale with interest. [FN140] The same rules apply when a junior mortgagee tries to assert a tax title against a senior mortgagee. [FN141] Likewise, the mortgagor cannot defeat the encumbrance of a mortgagee by trying to assert the superior title of a tax deed. Despite the supremacy of the tax title, the mortgagor would remain responsible for the obligation of the original mortgage.

2. Real Estate or Installment Sales Contract

The effect of a tax sale on an executory installment sales contract or a real estate contract is more complicated. When the contract is still executory, the contract should possess express provisions detailing the responsible party for paying all taxes and assessments that come due. [FN142] When no provision covers the responsibility, the general rule is that they are the obligation of the party who is in possession and receiving the use of the property. [FN143] Hence, the obligations are almost always the purchasers' responsibility. [FN144]

A question not addressed by either the statute or by Washington case law, is the effect of a foreclosure sale on the contractual rights of the particular parties where the tax sale purchaser is not the original contract vendor or vendee. Although some would argue to the contrary, the rule likely is that the non-responsible party for payment of the taxes is entitled to any damages available under the contract but their right of specific performance is extinguished.

The first possibility is that the vendee is responsible to pay taxes and the failure to pay causes the sale of the property. Under that circumstance, the vendor should be able to sue for all damages available under the contract except for specific performance. Allowing the vendor of an installment contract to exercise their rights to the entire contract balance yet unable to provide title is

nonsensical. In most instances, the title passes through the tax foreclosure and the holder of the property, the purchaser at the tax sale, would not be a party to the suit. Allowing specific performance would require a vendee to pay the contract balance but not receive title in return. The result is inimical to the notion that a "vendor who seeks to compel the purchaser's final performance *145 must himself tender full performance." [FN145] Nonetheless, one jurisdiction has allowed just such a result. In a Minnesota decision, Graham Investment Co. v. Grouse, [FN146] a vendee failed to make payments under the terms of a contract for deed which resulted in forfeiture to the state for non-payment of taxes. The vendor was entitled to judgment for the entire balance of purchase money. [FN147] But the court allowed the vendor to recover the contract amount in addition to other damages recovered. [FN148] A strict reading of Graham Investment implies that the court awarded the full contract price without requiring the transfer of the property. [FN149]

Likewise, after foreclosure has occurred, the vendor who retained responsibility for paying taxes is subject to an action for damages available under the contract but not specific performance. Normally these damages will include a refund of what has been paid under the contract; costs the purchaser has incurred in connection with the contract; any increase in land value because of improvements the purchaser has made; and interest. [FN150]

Unique situations arise when the purchaser at the tax sale is the original vendor or vendee on the contract. A seasoned Washington State Supreme Court decision, Wilson v. Korte, [FN151] establishes the rule that when the purchaser is the vendor, who is also obligated to pay the taxes, the purchaser is capable of performing the agreement. In Wilson, the vendor was required to deliver a warranty deed that conveyed title free from all encumbrances. [FN152] However, before conveying the deed to the vendee, the county had foreclosed on the property and the vendor had been the purchaser at the sale. [FN153] The vendee complained that the title was not marketable because of the continual existence of previous encumbrances. [FN154] The court dismissed the vendee's objections and provided that because of the nature of a tax deed, which extinguishes prior encumbrances, the title was marketable. [FN155] The court's decision appears to indicate that even when the title is technically different than the one contracted for--the difference between a title with encumbrances that must be eliminated, *146 and that of a tax title which by definition is free from prior encumbrances--the vendor may still seek the normal remedies available to them. [FN156] A more recent appellate case has further clarified the particular rights of the vendor who purchases at a tax sale. [FN157] In Kofmehl v. Steelman the appellate court determined that the fact the vendor had purchased the property at the tax sale did not extinguish any of the rights available to the vendor for a breach of contract. [FN158] The vendor was thus able to sue for specific performance which would naturally require the vendor to transfer the tax deed. [FN159] The appellate court dismissed the vendee's objections that the tax deed was fundamentally different than the title contracted for prior to the tax sale. [FN160]

If the purchaser is the vendee, the result will depend on the party obligated to pay the taxes. If the vendee is obligated, they generally cannot acquire title of any validity against the vendor. [FN161] The requirement to pay taxes is interpreted as a covenant of the contract. [FN162] Thus, the courts deem acquisition of title by breaching that covenant, even if its via a third party and not through direct purchase at the tax sale, a violation of good faith, manifestly inequitable, and in fraud of the rights of the vendor. [FN163] But if the vendor is obligated to pay the taxes, a rather unusual situation, the result is less clear. One approach may allow the vendee to offset the purchase amount against the amount due. [FN164] That approach is consistent with the notion that if the property is subject to an encumbrance entitled to removal prior to its transfer, the purchaser may remove the encumbrance and deduct the amount of the encumbrance from any balance due on the purchase price. [FN165] An alternative approach would allow the vendee to claim superior title against the vendor and then bring a breach of contract action against the vendor when they cannot provide title to the property. This approach is consistent with the court's treatment of when a tenant who is not obligated to pay taxes acquires title to the property. [FN166]

*147 3. Easements

In 1959, the Washington Legislature passed a statute allowing for the protection of one individual property right from a tax sale--easements. [FN167] The statute serves as an exception to the general rule and counter to earlier judicial treatment. Chapter 84.64.460 provides in part:

> Any foreclosure of delinquent taxes on any tract, lot or parcel of real property subject to such easement or easements, and any tax deed issued pursuant thereto shall be subject to such easement or easements, provided such easement or easements were established of record prior to the year for which the tax was foreclosed. [FN168]

Previously, the tax foreclosure on the servient estate destroyed the dominant estate's interest. [FN169] The easement's existence did not appear on the tax rolls or in the tax deeds. Thus, the servient estate, unrestricted by the easement, would pass by the tax deed. [FN170] The easement owner was left in the unenviable position of either paying the delinquent taxes or allowing the easement to be extinguished for, while it was often essential, it was not as valuable as the delinquent taxes. [FN171] The statute alters the earlier approach and protects the interest of the dominant estate.

Whether the foreclosure of the dominant estate for nonpayment of tax allows the easement to be passed with the tax title to the dominant estate title has not been addressed. At least one commentator has suggested it would because of consistency, and also to prevent a windfall to the servient owner. [FN172] Dictum in one case suggests that courts will follow the commentator's

suggestion. [FN173]

While chapter 84.64.860 protects some easements, not all easements will survive the foreclosure sale. Easements by implication and necessity are not covered by the law and thus, are still susceptible to destruction by foreclosure. [FN174] Even duly acknowledged easements will not survive if they were not established before the first year for which the tax was foreclosed. [FN175] Therefore, an easement owner, especially when valuable to the dominant estate, should be aware that for *148 the first few years of the easement's existence a tax foreclosure could extinguish their interests. [FN176]

On the other hand, the statute has been liberally interpreted to protect covenants not normally considered as easements. For instance, the court has interpreted the statute as protecting restrictive covenants in a planned unit development. [FN177] Similarly, a covenant requiring a landowner to pay the proportional costs of maintaining the community's facilities, has been held to survive a tax sale. [FN178]

4. Interests of Adverse Possessors and Leaseholders

Regardless of the legal or equitable interest, as a general rule, a tax sale will extinguish the interest. A consideration of miscellaneous interests and rights illustrates the principle. For instance, tax foreclosure wipes out any rights acquired by adverse possession. [FN179] In Label v. Cleasby, [FN180] the court rejected the contention that the relative equities of the parties should determine the effect on an adverse possessor. [FN181] The court likewise rejected an argument that an adverse possessor's lack of notice should be given consideration. [FN182]

The court has not addressed the effect a tax sale has on the tenant's leasehold. Undoubtedly, the tenant's leasehold is extinguished when faced with the superior title acquired by the tax sale purchaser. Since the leasehold derives from the original owner's title, the extinguishment of the owner's title will likewise extinguish the right of the tenant to possession. [FN183] The tenant would then have the right to pursue a breach of contract action against the original owner of the property. [FN184] The tenants are not barred from acquiring the property *149 at the tax sale. [FN185] This is more likely in instances where the tenant possesses a long-term and favorable rental agreement. Under those circumstances, paying the delinquent taxes and purchasing the property at the sale may be less costly than attempting to acquire another favorable lease or renegotiating the terms of the lease with the tax sale purchaser. Additionally, the tenant may wish to acquire the property when they have made improvements to the land. [FN186] The tenant is under no obligation based on the mere existence of the landlord-tenant relationship to notify the landlord of delinquent taxes. [FN187]

Allowing the tenant to acquire superior title to the landlord may appear contrary to the traditional rule that a tenant is estopped to deny or dispute his landlord's title. [FN188] Yet, the rule does not prohibit the tenant from becoming a purchaser at a sale because of a court judgment or decree. [FN189] By purchasing at the tax sale the tenant does not dispute the landlord's title at the time the tenancy was created. Rather, the tenant acquires a title that subsequently arose. [FN190] But other situations may arise where the tenant will not be allowed to acquire title by a tax sale such as, where the tenant's fault or neglect brings about the sale. [FN191]

C. Liens Imposed by Governmental Entities

The existence of liens imposed by other local governmental entities presents one of the biggest problems for an unwary purchaser at a foreclosure sale. In an effort to protect these entities from the deleterious effects of a tax lien's priority, the courts have ignored the statute's mandate and allowed assessment and demolition liens to survive the foreclosure sale. The types of surviving local *150 liens are roughly categorized into two areas-- assessment liens of local improvement districts and demolition liens.

1. Assessment Liens of Local Improvement Districts

A tax sale purchaser takes the property subject to the liens of local improvement assessments. [FN192] The liens survive despite the ability of any city or town to protect the liens of any local improvement assessments against a property subjected to the foreclosure sale. [FN193]

The first decision recognizing this exception was Tacoma v. Fletcher Realty Co. [FN194] There, the court gave two justifications for its holding. First, the court relied on its determination of legislative intent. [FN195] The court reasoned that the legislature had overruled prior court decisions when it passed a statute giving a holder of a "certificate of delinquency" the option of either paying the delinquent assessments at the time of foreclosing on the certificate or acquiring title to the property subject to the assessments. [FN196] The court interpreted this enactment as evidence of an intent that "lien[s] of local assessments must be preserved and maintained up to the point where to further preserve such a lien would cause a sacrifice on the part of the county

and the state. . . ." [FN197] Second, the court in *151 Fletcher Realty relied on the forerunner to chapter 84.64.230 of the Revised Code of Washington, which requires a county that acquires the property at a foreclosure sale to first discharge the lien for general taxes and to use the remainder to discharge all local assessment liens upon the property. [FN198] The court reasoned that if the statute requires a county to pay assessment liens when it acquires the property, a private individual should not be given preferential status and avoid payment of the assessment liens. [FN199] Subsequent decisions have adhered to the rule espoused in Fletcher Realty. [FN200]

The rule in Tacoma v. Fletcher Realty Co. is misguided for several reasons. First, the superiority of the tax lien is explicit. [FN201] Even those statutes giving preference to assessment liens reflect the legislature's intentions to give the tax lien superiority. [FN202] Second, the bases that underlie Fletcher Realty are no longer persuasive. In 1994, the legislature repealed chapter 35.49.120, which was the statute interpreted by the court in Fletcher Realty as requiring the holder of a certificate of delinquency to pay assessment taxes or take the property subject to the taxes. [FN203] Using the court's own reasoning, the statute's repeal would seem to express the legislature's intent to reinstate the earlier decisions that extinguished such assessments upon foreclosure. [FN204] At the very least, the basis for the court's decision in Fletcher Realty is eliminated.

The second basis relied upon by the court in Fletcher Realty--the belief that the individual should not receive greater benefits than a county can receive upon acquisition of a foreclosed property--misinterprets the purpose of the statutory provision requiring proportionment by the county to other taxing *152 authorities. The provision applies only when a county is considered the bidder for the property by default because of the lack of bidders. [FN205] In those situations, the county is not required to bid any money. [FN206] Because of the county's unique position--becoming the property owner if there are no other bidders--it appropriately possesses the heightened responsibility to account for the other assessments. This is in contrast to the private individual that does not become the owner by default but rather must compete against other bidders. Regardless, contrary to the court's analysis in Fletcher Realty, the county is not necessarily required to pay local improvement assessments. The statute only obligates the county to the extent that any proceeds it receives from the sale exceed the lien for general taxes. [FN207] Thus, the county technically is not subjected to greater limitations than that of a private individual except for those obligations that naturally arise from the trust position the county holds because of its taxing authority. [FN208]

Additionally, statutes already protect cities and towns. Chapter 35.49.130 of the Revised Code of Washington allows any city or town who has an outstanding lien of any local improvement assessment against a property to purchase that property at the foreclosure sale. [FN209] While one court has dismissed the significance of this protection, [FN210] more recent legislation adds prominence to this provision. Not only is the court's basis for rejecting the argument no longer tenable, [FN211] but in 1994, the legislature amended that portion of chapter 35.49.130 which required the county treasurer to send notice to the treasurer of the city or town where the property is located. [FN212] Despite the amendment, the legislature did not alter the second paragraph that allows the city or town to protect their lien on any local improvement assessment outstanding against the property. [FN213] A reasonable interpretation is that the legislature still intends that portion of the statute to have significance. Court opinions that a city or town *153 need not do anything to protect its assessment liens undermines this intent and renders that portion of the statute meaningless. [FN214] Additionally, chapter 35.49.150 allows a city or town to acquire the property subject to a local improvement assessment from a county that had acquired the property at the tax sale. [FN215] The city or town must only pay taxes and costs, without penalty or interest, before the resale of the property by the county. [FN216]

Finally, practical reasons suggest why the assessment liens should be extinguished. The existence of the liens imposed by the towns and cities serve to undermine bidding at the tax sale. [FN217] The lack of bidding forces the county to acquire and then sell the property in a non-competitive manner. Not only does this hinder the local improvement districts that will not receive a greater proportion of their assessment, but it causes the county not to acquire the full payment of delinquent taxes. The latter serves to undermine a fundamental policy of the foreclosure statute--collecting revenues. [FN218]

Regardless, the statute does not require the county to pay the local improvement assessments if the county subsequently decides to keep the property. If the county determines that the tax title land is valuable for public use, it is authorized to convey the land in its proprietary capacity. [FN219] The county must pay only the amount of delinquent taxes and interest owing at the time the county acquired the property at the tax sale. [FN220]

*154 2. Demolition Liens

Similar to assessment liens, a tax sale does not eliminate liens for a city's demolition costs. They are considered liens against the property of equal rank with state, county, and municipal taxes. [FN221]

The first case to consider a tax sale's effect on demolition liens was Pierce County v. Schwab. [FN222] There, the appellate court rejected a purchaser's contention that delinquent demolition liens imposed by the City of Tacoma were extinguished by a tax sale. [FN223] In 1971, 1972, 1974, and 1975, the City of Tacoma repaired and demolished structures on the property. [FN224] Each time, the city treasurer issued certificates for demolition costs to the county treasurer. [FN225] In 1975, the real

property taxes on the property for 1970 came due and a foreclosure sale occurred in the winter of 1975. [FN226] The purchaser at the foreclosure sale contended that the real property foreclosure extinguished or barred actions on the demolition liens. [FN227] Among his arguments, the purchaser argued the following: (1) in the absence of statutory authority providing the survival of the demolition liens, the foreclosure extinguished those liens; (2) that under chapter 84.64.080 [FN228] and chapter 84.64.180, [FN229] he acquired the title free of the unpaid demolition lien; and (3) the doctrines of res judicata and collateral estoppel barred the subsequent foreclosure of the demolition lien. [FN230] The court rejected each argument.

In addressing the first contention, the court found that by its terms, the real property tax foreclosure did not affect the demolition liens. [FN231] Moreover, there exists overwhelming legal authority to the contrary. [FN232] Likewise, the court rejected the argument that the liens were barred because of res judicata, as the foreclosing of the demolition lien was a distinct form of action than the foreclosure of the real property taxes. [FN233] Finally, the court distinguished chapter 84.64.080 and chapter 84.64.180 as the county did not object to the judgment, ***155** deed or title, but was foreclosing on the delinquent demolition liens. [FN234] Schwab also provides the rule that the lack of notice of the demolition lien will not save an unfortunate purchaser. [FN235]

The court's holding in Schwab is even more circumspect than the holding in Tacoma v. Fletcher Realty Co. Carefully analyzing the court's decision exposes its weakness. In rejecting the first argument, the court misconstrues the effect of a foreclosure sale. By statute, all taxes and levies imposed under the property tax statute have priority over any other obligations on the property. [FN236] Thus, the well-established rule is that a successful bidder acquires title in fee, free from any existing encumbrances. [FN237] Other portions of the statute codify this intention that the tax lien is a "prior lien." [FN238] For instance, the legislature obviously sought to protect other liens that may be extinguished by allowing the treasurer to include in the lien any other costs it is empowered to collect, [FN239] and allowing the treasurer to require the purchaser to pay any taxes delinquent at the time of the sale, regardless of whether the taxes, interests, or costs are included in the judgment. [FN240] Clearly, the sale is meant to eliminate any outstanding obligations on the property. With the overwhelming authority and the apparent legislative intent to the contrary, the court's cursory conclusion, that by its terms the foreclosure did not affect later liens, is unsupportable.

The additional rationale relied on by the court, the considerable legal authority, is also unsubstantiated. The court relied on Palzar v. Tacoma [FN241] for the proposition that "[t]ax liens can be canceled by a foreclosure sale only where the county, not an individual, is the purchaser." [FN242] First, the court does not explain why Palzar, which dealt with assessment liens, provides authority for the survival of tax liens or demolition liens. Second, even if applicable, Palzar in turn relied on the questionable reasoning of Tacoma v. Fletcher Realty Co. [FN243] The other sources relied upon by the court in Schwab are unrelated to the ***156** survival of demolition liens but refer to general property tax liens. [FN244] These sources, in turn, even recognize a tax lien is discharged by a tax sale. [FN245] Finally, the court cites Brower v. Wells [FN246] for the proposition of caveat emptor. [FN247] The conclusory statement ignores the precursory question of whether demolition liens are extinguished. In short, the Schwab decision ignores the foreclosure sale's practical effect and the clear intent as expressed by the legislature. [FN248]

Not extinguishing demolition liens creates the same disadvantages as the preservation of assessment liens. Property subjected to a tax sale usually has been abandoned, in disrepair and no longer habitable. Because tax foreclosure is a lengthy process, a city, county or municipality will have often in the interim intervened and demolished the building or conducted other code enforcement to prevent injury to the public. [FN249] The municipality then imposes a lien for their mitigation efforts. [FN250] Thus, enormous liens several times that of the property's value encumber the property. The liens discourage potential buyers and the county acquires the property by default. The county must then sell the property for less than what would be obtainable had the foreclosure sale originally been successful.

3. Extinguishing Local Liens

Despite the judicial protection afforded to both local assessment liens and demolition liens, a tax sale eliminates these liens in particular circumstances. When the county obtains title to property because of the lack of purchasers and then resells the property, it cancels the claims from any municipality, school district, road district, or other taxing district. [FN251] But the claims transfer to the resale proceeds. [FN252] The proceeds of the eventual sale are apportioned to the ***157** various funds existing at the date of the sale by first paying the general tax lien, discharging all local improvement assessments, and finally apportioning among other county funds. [FN253] Likewise, when the county sells property acquired at a foreclosure proceeding, an irrigation district is entitled to a share of the proceeds. [FN254] Thus, a party acquiring the property from the county, when the county had obtained the property at the tax sale, takes the property free from any existing encumbrances. [FN255]

D. Federal Interests

A comprehensive analysis of what federal liens take precedence over the county's foreclosure of a tax lien is beyond the scope of this article. As a general rule, however, a lien in favor of the United States is not preferred over a foreclosure of a lien for property taxes. [FN256] The priority will depend upon whether the lien attached to the property and became choate first in time

[FN257] and whether Congress has designated that the federal lien shall have priority. [FN258]

E. Purchaser's Interests in the Property

Besides the protection afforded to governmental interests, a purchaser at a tax sale is relatively secure in the title they acquire. A purchaser's interests are similar to those in any foreclosure proceeding but without the problems of future redemption. Additionally, acquisition of the tax title serves to extinguish any other private lienholders or interested parties in the property besides those specifically protected by the statute.

To understand the extent of a purchaser's rights, the limit of those rights must be delineated. The paramount rule governing the rights acquired by the purchaser of a tax deed is that the deed extends only to property that the court ***158** in foreclosure proceedings had obtained jurisdiction. [FN259] As a result, subsequent action by the prior property owner that effectively challenges the court's jurisdiction based on the lack of notice or other jurisdictional grounds deprives the purchaser of title to the property. The purchaser, however, is not without remedies. The purchaser can recover from the county the monies spent on the property's acquisition plus interest. [FN260] A court without jurisdiction to foreclose on property deprives the county of providing sufficient consideration for the purchaser's bid. [FN261] But any action for damages by a purchaser because of the their title's divestiture has so far been denied. [FN262] A purchaser that has made improvements on the property who is subsequently divested of the property may seek reimbursement for the amount of the improvements. [FN263] Likewise, although not allowed in that case, the court has at least impliedly suggested that restitution may be appropriate in cases where the purchaser's possession has been delayed because of an unsuccessful challenge to the tax sale. [FN264]

With this principal serving as a backdrop, two corollaries are generally true. The first is that a successful bidder acquires title in fee against the owner and free from any existing encumbrances. [FN265] The tax deed's effect is to ensure stability in property titles. [FN266] Consequently, a tax foreclosure creates a new and complete title and extinguishes any other interests. [FN267] A tax foreclosure does not ***159** determine title, but as a proceeding in rem, it is a source of a new and independent title, superior to all prior titles. [FN268] As the Washington Supreme Court aptly described the title in Bassett v. Spokane, "It marks a straight line between the old and the new titles, destroying the validity of the old title as a title and forever barring any enforcement of that title as a valid subsisting title." [FN269] Unlike the antiquated notion of a tax title, [FN270] the Washington Legislature, since the statute's earliest inception, has intended the tax title's primacy. [FN271] Earlier decisions have found that even a title issued under a void tax foreclosure a good title if not attacked within a certain period of time, [FN272] or that the tax title is equivalent to a decree quieting title in the purchaser as a grant from the sovereign state. [FN273] Consequently, the resulting title should be considered the same as any other title based upon execution or a judicial sale. [FN274] Even when there may be facial defects, because of the stringency in challenging a foreclosure sale and title issued as a result of the sale, a party will likely have to accept the title as marketable. [FN275]

The second corollary is that while a successful bidder at a tax sale acquires title and fee as against an owner, the tax deed does not warrant title and the ***160** county is not responsible for defects that exist. [FN276] No statute requires the county to provide any warranties in the tax deed or disclose any potential encumbrances that would impair the purchaser's title. Thus, the court has routinely concluded that the rule of caveat emptor applies to a purchaser at a tax sale. [FN277] Probably the more apt description is that the rule of caveat emptor applies as between purchaser and the governmental entities but the rule of caveat venditor applies as between the purchaser and the previous owner or interested party. Thus, if an outstanding assessment or demolition lien exists on the property, the purchaser will not be entitled to reimbursement for those liens even if they relied on representations made by the county during the sale. [FN278] Likewise, if the purchaser relied on the existence of improvements on the property, but the improvements were demolished by the county before the sale, reimbursement for the amount of the improvements is not required. [FN279] One case has extended this principle to include any encumbrances that may impair the purchaser's title to the property acquired initially by the county at the tax sale and later resold. [FN280]

The purchaser is entitled to any rental monies which accrue after the sale and can maintain an action against the former owner for their recovery. [FN281] This is consistent with the proposition that the true property owner is entitled to the rent.

IV. Challenging the Foreclosure Sale

While formidable, overcoming a tax deed issued at a foreclosure sale is nonetheless possible. The burden is, rightfully so, on the one asserting its invalidity. To overcome the deed, the evidence must be "competent and controlling." [FN282] The Washington Supreme Court aptly explained in Sparks v. Standard Lumber Co. the limits placed on the previous owner's right to set aside a tax sale:

***161** Tax proceedings do not necessarily depend upon the practice acts. Nor does our special proceedings, in form of a foreclosure of a delinquency certificate, in any way violate the constitutional guaranties of due process. The proceeding is in rem and may be prosecuted, . . . regardless of ownership. The state is the one party, the property is the other . . . . The owner of the property is bound to take notice of every step from the initial listing and levy until the power of the sovereignty, then in motion,

is exhausted. It is enough that the owner may question the validity of the tax either before or after the tax is levied, or is made a charge upon the property. But this means an inquiry into the legality of the tax. It gives no right to question the procedure if the record is fair upon its face and shows a compliance with the statue. [FN283]

Pursuant to this notion, the statute provides only two bases for invalidating a tax deed--that the taxes had been paid or that the property was exempt from taxation. [FN284] Despite the statute's edict, a number of additional bases exist to defeat the foreclosure. They reside in both the statute and those defenses carved out by court interpretation. [FN285]

A. Review Process

Two avenues of review are available depending on the present circumstances of the foreclosure action. These include a review of the actual foreclosure judgment or an action to recover any property sold for taxes. While the latter is more common because of the liberal time limitations, both actions are similar in the type of defenses allowed.

1. Review of the Foreclosure Proceeding

First, a party may seek appellate review of the actual foreclosure proceeding as allowed in any other civil case. [FN286] The review must be within thirty days after the entry of the judgment. [FN287] Judgment refers to the superior court's granting of the county treasurer's action to foreclose the tax liens. This potentially poses a special burden on the party losing its interest as the result of the sale. A party not responding to delinquent tax notices will unlikely appear at the foreclosure action or even be aware of the foreclosure proceeding. Further, the statute provides no minimum or maximum amount of time between the judgment's *162 entry and the actual sale, [FN288] even if the sale occurs within thirty days after the judgment. The first real notice will probably not occur until the purchaser takes possession of the property. But a purchaser may not take possession of the property, if ever, until more than thirty days after the judgment. Hence, appealing within the thirty days is unlikely. [FN289] Although it is not readily apparent whether a contemporary court would reach a similar result, the Washington State Supreme Court's decision in Gould v. Knox is illustrative of one possible means of avoiding the thirty-day limitation; the court allowed an action to vacate the foreclosure judgment 57 days after the original appeal should have been filed. [FN290] Despite the appeal's tardiness, the court concluded it was not the legislature's intention to abolish the power of the court in equity to entertain an appeal. [FN291] Conceivably, contemporary appellate courts could reach a similar result. [FN292]

Even if the appeal is timely, a party must first deposit a sum equivalent to all taxes, interest, penalties, and costs with the clerk of the court prior to judicial review of the foreclosure. [FN293] In those instances where the defense depends on the fact the taxes have already been paid, it is paradoxical to require the party to pay the taxes again. Nonetheless, failure to pay the required amount prevents the appeal from being heard. [FN294]

Attacks on the foreclosure judgment are difficult to succeed. The burden is not only on the party contending the judgment is invalid, all presumptions are also in favor of the judgment's validity. [FN295] Thus, a judgment has the same verity and raises the same presumption as to facts essential to jurisdiction as in the case of a judgment in the ordinary course of the court's general jurisdiction. [FN296]

*163 2. Action for Recovery of Property Sold for Taxes

The second possible remedial route is an action for recovery of property sold for taxes. [FN297] In order to bring an action to recover property, the party instituting the action must pay all taxes, penalties, interests, and costs justly due on the property sought to be recovered. [FN298] The tender need only be the amount that was actually foreclosed upon. [FN299] Tender after commencing the action coupled with amendment of the complaint at trial is insufficient. [FN300] The exception to requiring payment is when the foreclosure action is void on its face. [FN301] Under those circumstances the payment is not for those taxes, penalties, interests and costs justly due and unpaid. [FN302]

The complaint must state specifically that the tax is justly due with penalties, interests and costs, and that the taxes have been paid. Further, the complaint must state that the purchaser at the tax sale has been fully paid or has been offered a tender of the payment and it has been refused. [FN303] These are not the sole conditions to recover the property but are additional conditions. [FN304]

An action to cancel the tax deed must be brought within three years from the date the deed was issued. [FN305] The statute of limitations applies when the action's ultimate object is to recover land sold for delinquent taxes [FN306] and even when the tax judgment which the deed was based on was void for lack of jurisdiction. [FN307] Thus, a void tax deed is still a sufficient basis to start the running of the statute *164 of limitations. [FN308] Likewise, a tax deed issued more than three years before commencing the action becomes invulnerable even if there are jurisdictional defects; [FN309] the foreclosure was premature;

[FN310] the deed contains improper information; [FN311] the treasurer did not sign the deed; [FN312] or not all the proper parties are served. [FN313] Tendering the taxes after the time required to commence the action will not bar the statute of limitations defense. [FN314] Whether the statute of limitations bars a tax deed issued by fraud is unclear. [FN315]

More recent cases have limited when and by whom the statute of limitations defense may be raised. While any party can assert the statute of limitations as a defense, including a successor in interest to the original purchaser and a vendee to an executory real estate contract, [FN316] the statute only applies in those instances where the purchaser actually possesses the property under the tax deed. [FN317] The actual possession need not be the original purchaser, but can be any person who is a successor of the original owner. [FN318] The degree of control that a purchaser must exercise depends both on the physical characteristics of the property [FN319] and on the degree the divested owner has control or possession of the property during the interim. [FN320] Similarly, the statute of limitations defense is not available when *165 the tax title is acquired by the mortgagee, a vendee who has expressly agreed to pay the taxes, or a junior lienholder against a senior lienholder. [FN321] Perhaps most importantly, the statute of limitations will not apply if taxes have actually been paid and a tax deed issued because of the alleged delinquent taxes. [FN322] If the action is brought within the statute of limitations, other defenses depending on laches are inapplicable. [FN323]

B. Bases for Challenging a Tax Foreclosure

The foreclosure state attempts to prove only two statutory bases for challenging a foreclosure. These bases are that the taxes have been paid or that the property is not subject to taxation. [FN324] Despite the statute's limits, other bases exist and often provide relief. As a precursor, one requirement must be met before any basis is asserted. Namely, the party challenging the action must have some title or interest in the land. [FN325] Without some interest in the land, the party has no right to seek "judicial inquiry into the title which another takes under a tax sale." [FN326]

*166 1. Payment of Taxes

Initially, a party may defeat a foreclosure sale by proving they had already paid the property taxes. [FN327] The prima facie presumption that taxes or assessments were not paid at the time of the deed's issuance can be overcome if proof of actual payment exists. [FN328] In such instances, the property owner would have no reason to believe or expect that foreclosure proceedings would be instituted or be "on the lookout lest some negligent or corrupt official should cause or suffer his property to be sold for a tax that had long since been paid." [FN329] Therefore, in such instances, the policies underlying the foreclosure process are nonexistent because first, the state has received payment of the taxes it is owed and second, the property owner likely either had not been provided notice, or if provided notice, had no reason to expect that proceedings would be taken against them because of their actual payment of taxes. [FN330]

2. Exemption from Taxation

One of the preeminent bases to avoid a tax foreclosure's effects is to fall under a base for deferral of taxes. [FN331] Not only is the property exempted from taxation, [FN332] but the county treasurer is barred from selling property eligible for deferral provided that the owner of the property has filed a declaration to defer taxes. [FN333] The real property exemptions are numerous. Even so, a party trying to avoid foreclosure yet not falling within one of the exemptions is hard pressed to prove that another exemption should be created. [FN334] A statutory provision creating an exemption is strictly construed in favor of the taxing authority. [FN335] *167 Exemptions are not extended by judicial construction, [FN336] and the burden of showing a party qualifies for the exemption is with the potential taxpayer. [FN337]

The following exemptions are the most common although they should not be considered exhaustive. The first common exemption is for public property. [FN338] This exemption encompasses any property belonging to the United States, any county or municipal corporation, and any foreign national government. [FN339] A person cannot avoid paying taxes by transferring the property to public ownership before the tax levy. [FN340] But a party can avoid paying the tax if they do not fully acquire their property interest from the public entity. Under those circumstances the party can assert governmental immunity. [FN341] The second common exemption is for cemeteries and churches. [FN342] The property's function and whether it is owned by a sectarian or non-sectarian body will determine whether it is exempt from taxation. [FN343]

Other exemptions include property owned by nonprofit organizations used for nonsectarian purposes; [FN344] churches used as camp facilities; [FN345] organizations engaged in "character building" of children under age eighteen; [FN346] veterans' organizations; [FN347] corporations formed for volunteer aid to members of the armed forces and relief purposes; [FN348] and nonprofit organizations under section 501(c)(3) of the Internal Revenue Code. [FN349] Other miscellaneous exemptions include the following: nonprofit organizations engaged in procuring *168 blood and plasma; [FN350] nonprofit organizations' property connected with the operation of public assembly halls; [FN351] nonprofit day care centers, libraries, orphanages, hospitals; [FN352] nonprofit homes for the aging; [FN353] nonprofit organizations that provide shelter to the homeless or victims of

domestic violence; [FN354] schools and colleges; [FN355] museums; [FN356] and property used in conservation enterprises. [FN357]

Another exemption that may avoid the effects of a tax foreclosure is the homestead exemption. [FN358] One federal court has found that the homestead exemption prevents a foreclosure sale notwithstanding the in rem nature of the tax obligation, the inconsistency between the refund and minimum-bid procedures of the foreclosure statute, and the protections afforded by the homestead statute. [FN359] But a recent attorney general opinion disagrees with that court's conclusion. [FN360] The attorney general's opinion relies on two grounds in determining the homestead exemption is inapplicable to tax foreclosures. First, the attorney general, relying on legislative history, interpreted an amendment that added the language that a homestead is exemption for "the debts of the owner." [FN361] The attorney general concluded that the amendment clarified that only personal obligations of the homeowner, and not in rem obligations, fall under the homestead statute. [FN362] Second, the attorney general found the amendment following the appellate decision of Algona v. Sharp, [FN363] which held that the homestead exemption applied to a city's effort to foreclose on an assessment, reflected a legislative objective of not exempting property taxes. [FN364] The legislature had simply limited the homestead exemption to "debts of the owner" rather than adding the exception to the statute. [FN365] Whether the courts *169 will follow the attorney general's or the federal court's interpretations remains to be seen. [FN366]

3. Insufficient Notice

Basing the defense on the lack of or insufficient notice is the most common method of avoiding the effects of a foreclosure sale. Not only is one of the statute's fundamental goals to provide notice to delinquent property owners but because of the technical requirements for notice and the unique problems that arise in describing property, it remains one of the most effective ways to challenge the sale.

Failing to comply with the statute's requirements of content and manner of notice deprives the superior court of jurisdiction over the tax foreclosure proceeding and renders void any sale or deed issued. [FN367] Even if a foreclosure judgment is entered without jurisdiction, it is as if the tax deed never existed. [FN368] The court lacks jurisdiction whether the treasurer fails to provide the appropriate notice to the right people or no notice at all to parties with an interest in the property. [FN369] Recently, the Washington State Supreme Court has provided that a demonstration of prejudice on the part of the original owners is not required to challenge the sufficiency of the notice. [FN370]

Generally, the statute requires that owners and others with interest in the property be served with notice of foreclosure proceedings either personally or by publication following mailing. [FN371] The notice must contain a sufficiently accurate property description. [FN372] Thus, an accurate property description is the linchpin for most challenges to the notice requirements. It serves three important purposes. It informs the owner of the claim on the property, alerts those who wish to buy the property at the tax sale, and facilitates the proper execution of *170 the tax deed. [FN373] The notice must include the legal description on the tax rolls and the local street address, if any. [FN374] Whether the description in the notice is sufficient is a question of fact. [FN375] The description is liberally construed and extrinsic evidence may be consulted. [FN376] As a general rule, the property description will suffice if when read as a whole, it provides an intelligent means of identifying the property and was not misleading. [FN377]

But whether any given notice suffices depends on the facts of a particular situation. Again, earlier cases identified the need to balance the need for efficient collection of taxes and exact notice to the owner. [FN378] The need for collection outweighed exact notice. [FN379] Examples of earlier treatments reveal the truth of this proposition. For instance, when the notice would direct the property owner to the assessor's office where they could have ascertained its exact location, the property description was adequate. [FN380] Likewise, the inclusion in the description of another party's right of way was permissible. [FN381] Also the use of commonly understood abbreviations in the description of land is sufficient. [FN382] But a property description is insufficient if it merely indicates that the subject property is part of a larger tract; [FN383]describes the property by referring to an *171 unrecorded plat; [FN384] or only contains the tax parcel numbers but not the section, township, or range. [FN385] A particular factual situation should be considered in the light of these cases.

All parties with an interest in the property are entitled to notice. [FN386] What constitutes an interest in property, however, is debatable. In contrast to earlier decisions, more recent approaches have placed an interested party and the amount of notice required on a continuum. The increased level of property interest, the need for greater notice to the party. In 1984, in response to the United State Supreme Court decision in Mennonite Board of Missions v. Adams [FN387] the Washington Legislature amended chapter 84.64.050 and added the words, "and any person having a recorded interest in or lien of record upon the property. . . ." [FN388] Based on the Mennonite decision and chapter 84.64.050, the Washington State Supreme Court formulated a four-part test to determine whether notice to a particular party is adequate. [FN389] First, the party must have a substantial property interest significantly affected by the tax sale. A significant property interest is determined by consulting state law. [FN390] Second, if there is a legally protected property interest, the person holding the interest is entitled to notice reasonably

calculated to apprise them of the pending tax sale. [FN391] Third, mere publication or notice to the property owner is insufficient and notice by mail or other means is required if the name and address of the person with an interest is reasonably ascertainable. [FN392] Finally, the notice of the delinquency is insufficient if the person is entitled to notice that the tax sale is pending. [FN393] Outcomes of earlier cases will likely remain persuasive as they usually *172 recognized that anyone holding an interest in the property that could be forfeited by the sale was entitled to notice. [FN394]

Other defects in notice may allow invalidation of the foreclosure proceeding. Thus, notice was insufficient when it failed to inform the owner of the right to appear and defend in the foreclosure action; the right to redeem; the date, time and place of sale; and that the failure to appear and defend would lead to foreclosure. [FN395] Also, notice of a foreclosure proceeding by telephone is too informal to satisfy the notice requirements. [FN396] In contrast, notice is sufficient even though it does not indicate that a certificate of delinquency was issued by the county treasurer, [FN397] or it fails to include characters or words indicating the denomination of numerals. [FN398] Finally, an incorrect calculation of taxes is insufficient to allow the prior owner to invalidate the sale although the purchaser is allowed to "complain." [FN399]

Although a foreclosure for delinquent property taxes will be void for inadequate notice, the county is not precluded from curing any deficiencies in notice by refiling for foreclosure with a correct property description. [FN400] Also, notice that exceeds the minimum statutory or due process requirements of informing the parties affected by the proceeding is not grounds for invalidating a tax foreclosure proceeding. [FN401]

If the notice is insufficient and the tax sale declared void, the purchaser is not without a remedy. Any money paid by the purchaser is considered to be *173 without consideration and may be recovered with interest from the date of the sale. [FN402] No other damages are permitted. [FN403]

4. Bonafide Attempt to Pay Taxes

An additional ground for setting aside a tax sale involves a bonafide attempt by a taxpayer to pay taxes who is prevented from doing so by an act of the county treasurer. [FN404] This defense is limited to instances where the taxpayer is frustrated by a public official. [FN405] The evidence must be clear, cogent, and convincing. [FN406] If there is no proof the taxpayer was actually prevented from paying because of a public officer's actions the defense is inapplicable. [FN407] There is no requirement of intentional misrepresentation by the public officer. [FN408]

This defense is particularly unique as it is one of the only methods where a party's neglect in paying the full amount of taxes can be excused. Hence, the defense runs counter to the overwhelming number of cases that have found that a taxpayer's neglect or innocent mistake is not a ground for relief. [FN409] For instance, the court has allowed a party to set aside a tax title when they attempted to pay taxes on the property, but the county treasurer did not make it clear that taxes for preceding years were still delinquent. [FN410] The defense has also *174 been successful when a party's failure to pay taxes was because of their failure to check the statement sent to them. [FN411] At the very least, even if the particular situation does not lend itself to the exact basis for asserting the defense, a party who has conceivably been mislead by a representation by the county or has not received notice of the property taxes would be advised to at least assert it. As one commentator noted about the exception:

> A comparison of the cases in Washington involving the avoidance of tax titles . . . reveals an interesting illustration of the initial adoption of a rule of law to meet a particular problem, and the gradual extension of the rule, case by case, to new situations, each in turn relying upon those preceding, until the end result is quite different from the rule originally propounded. [FN412]

5. Other Defenses

In the absence of asserting one of the four commonly recognized defenses, a disenfranchised owner has little chance of relief. Despite the innovation of the parties and their attorneys, courts have and do routinely dismiss other defenses that would apply in normal disputes.

For example, a delinquent taxpayer or their agent's mistake is not grounds for relief. [FN413] The general rule is that a foreclosure will not be vacated on the grounds of mistake, inadvertence, or excusable negligent if purely because of the lienholder's mistaken belief that the delinquency did not relate to their property. [FN414] Thus, in Label v. Cleasby [FN415] the Washington Court of Appeals stated:

> No amount of good faith misunderstanding on the part of a property owner as to the accuracy of the legal description in his deed, or bad faith on the part of one who purchaser a tax deed, can bring the owner within the protection against tax foreclosure afforded by the three recognized exceptions. [FN416]

*175 If a property is sold in excess of the due taxes because of a mistake such as miscalculation, the prior owner may not

challenge the sale, although recovery is allowed for the purchasers. [FN417]

Other decisions declining to vacate judgments illustrate this general rule. For example, the county's failure to file a lis pendens does not deprive the court of jurisdiction to enter the foreclosure. [FN418] Likewise, the inadequacy of the bid price is ineffective as a defense. [FN419] If a fair price for the land was essential to the sale, the sale itself would be useless. [FN420] While the courts often sympathize with the prior owner when the property is worth many times more than the amount of taxes, the sympathy generally does not result in invalidation of the sale. [FN421] Other ineffective defenses include insufficient acknowledgment on a tax deed, [FN422] arguments that the taxes are fraudulently excessive, [FN423] and omitting from the judgment a direction to produce and render the order of sale. [FN424]

Similarly, a faulty tax deed is not usually grounds for voiding the foreclosure sale. While a few older cases suggest deeds are absolutely void when the description does not apply to any property, [FN425] technical or immaterial defects typically do not affect the validity of a tax deed. Thus, descriptions that merely identify the numbered tax lots carried in the assessor's records have been upheld as sufficient to convey title to land, [FN426] and ones containing clerical errors in the description have sufficed. [FN427] Important is the understanding that the tax deed is not to identify the land but to furnish a means of identification. Thus, a deed is not void where the land can, with any reasonable degree of certainty, be identified from the description by extrinsic evidence. [FN428]

*176 Fraud may be a sufficient basis to attack a tax deed. [FN429] Collusion between the bidders may rise to the level of fraud. The reasoning is that the fundamental purpose of having competitive bidding is destroyed if collusion occurs among the participants. [FN430] To be successful, though, the evidence of collusion must be clear. [FN431] Fraud on part of county officials has also been ineffective in the absence of clear, cogent, and convincing evidence. [FN432] Thus, the court has found a claim of fraud insufficient when a government official had said they would accept a redemption then withdrew the offer despite the fact the property had not been sold. [FN433]

Conclusion

Changes in the tax foreclosure process are unlikely in the near future. Given the historical steadfastness Washington has affixed to the means of foreclosing on property and the lack of any acknowledgeable desire to alter the system, the present foreclosure process will continue for the near future. Thus, continual reference by the current judiciary will be to those early cases that defined the rudiments of the statutory framework and the relationship between the government's desire to ensure an effective means of collecting taxes and the constitutional protections of due process. When those interests collide, the government's interests inevitably triumphs. As a result, the means and bases for either challenging the sale or the issuing tax deed are limited. The most effective defense is avoiding the foreclosure altogether by timely paying all assessed property taxes. But when because of unwittingness or negligence, the taxes are not paid and the property is subject to a foreclosure sale, a party is well-advised to peruse the early court decisions to define the basis for their redress and to understand the precedent controlling the present decision maker. To neglect history is to do so at one's own peril, or as more aptly stated, at the peril of one's property.

[FNa]. "To inquire into them, is the way to know what things are truly lawful." Black's Law Dictionary 1240 (6th ed. 1990).

[FNaa]. J.D., magna cum laude, Gonzaga University School of Law, 1995; M.P.A., University of Washington, Graduate School of Public Affairs, 1992; B.A., cum laude, Political Science & Speech Communication, Gonzaga University, 1990. Clerk for the Honorable Dennis J. Sweeney, Chief Judge, Washington State Court of Appeals, Division III.

[FN1]. Lawrence M. Friedman, A History of American Law 432-33 (2d ed. 1985).

[FN2]. Id.

[FN3]. Douglas H. Eldridge, Property Tax Collection Procedure in Washington, 17 Wash. L. Rev. 123 (1942).

[FN4]. For the most significant aspects of the tax foreclosure, see Wash. Rev. Code s 84.64 (1994).

[FN5]. Arguably, there is a third policy of ensuring stability in titles. Sparks v. Standard Lumber Co., 92 Wash. 584, 586-87, 159 P. 812, 814 (1916) (explaining the tax title is favored by legislative intent).

[FN6]. Spokane County ex rel. Sullivan v. Glover, 2 Wash. 2d 162, 170-71, 97 P.2d 628, 632 (1940); Williams v. Pittock, 35 Wash. 271, 274, 77 P. 385, 386 (1904); Colby v. Himes, 171 Wash. 83, 88, 17 P.2d 606, 608 (1932).

[FN7]. Pierce County v. Wingard, 5 Wash. App. 568, 570-71, 490 P.2d 129, 131, review denied, 80 Wash. 2d 1003 (1971) (citing Wash. Rev. Code s 84.64.080 as illustrating the due process protections afforded); Pierce County v. Desart, 9 Wash. App.

760, 762, 515 P.2d 550, 552 (1973) (indicating the rights of delinquent taxpayers is the statute's paramount policy).

[FN8]. See, e.g., Colby, 171 Wash. at 91-92, 17 P.2d at 609 (the court weighs the value of the taxation system versus adequate notice to the owner).

[FN9]. Id.

[FN10]. 2 Wash. 2d 162, 97 P.2d 628 (1940).

[FN11]. Id. at 164, 97 P.2d at 629; see Remington Rev. St. s 11245 (codified at Wash. Rev. Code s 84.56.050 (1994)).

[FN12]. 1937 Wash. Laws ch. 121, s 2, amended by 1939 Wash. Laws ch. 206, s 41.

[FN13]. 1939 Wash. Laws ch. 206, s 41.

[FN14]. Glover, 2 Wash. 2d at 172, 97 P.2d at 632.

[FN15]. Id. at 171, 97 P.2d at 632.

[FN16]. See discussion infra part IV.B.3.

[FN17]. For instance, the Torrens registration system, which exists in Washington, could allow an emphasis placed on notice since the system allows the true property owner to be readily ascertainable. See Wash. Rev. Code s 65.12 (1994); 18 William B. Stoebuck, Washington Practice: Real Estate: Transactions ss 13.13-13.15 (1995) (providing comprehensive overview of the Torrens system).

[FN18]. See Larson v. Murphy, 105 Wash. 36, 40, 177 P. 657, 658 (1919); Williams v. Pittock, 35 Wash. 271, 278, 77 P. 385, 387 (1904); Sparks v. Standard Lumber Co., 92 Wash. 584, 586, 159 P. 812, 814 (1916).

[FN19]. Wash. Rev. Code s 84.60.010 (1994). In turn, all property existing presently or created and brought into the state is subject to assessment and taxation except that property exempted by law. Id. s 84.36.005 (1994).

[FN20]. Id. s 84.60.020 (1994). There are exceptions for mobile homes and property sales that occur prior to the full payment of taxes. In the former, the lien for property taxes assessed on a mobile home is terminated for the year subsequent to the year of its removal from the state. In regards to the latter, when there is no express agreement, the grantor or vendor is liable for the proportion that the taxes bear to the date of the sale. The grantee or vendee is responsible for the remainder. Wash. Rev. Code s 84.60.020. The statute does not shift liability, rather it provides a cause of action to the grantee against the grantor for the grantor's proportion of the taxes which the grantee was compelled to pay and which the grantor should have paid. United States v. Alberts, 55 F. Supp. 217, 220 (E.D. Wash. 1944).
Nothing in the Constitution prevents a state from fixing the time when a tax lien attaches to real property. United States v. Alabama, 313 U.S. 274, 280 (1941).

[FN21]. Wash. Rev. Code s 84.36.005.

[FN22]. See discussion infra part IV.

[FN23]. Wash. Rev. Code s 84.60.050 (1994). Historically, the statute also provided for the issuance of certificates of delinquency to private parties. Id. s 84.60.010, repealed by 1991 Wash. Laws ch. 245, s 42; see also Eldridge, supra note 3, at 123 (explaining the historical manner private parties could obtain certificates of delinquency and eventually initiate their own private foreclosure action).

[FN24]. Wash. Rev. Code s 84.64.050 (1994).

[FN25]. Id.; see also id. s 4.28 (1994).

[FN26]. See, e.g., id. s 36.58.140 (1994) (solid waste disposal); id. s 36.94.150 (1994) (sewer and water); id. s 85.08.480 (1994) (diking, drainage, and sewerage improvement districts).

[FN27]. Id. s 84.64.050. The treasurer is required to do a title search of the property to determine the record title holder. If that title holder differs from the person on the treasurer's rolls, they are entitled to notice and will be treated as owners of the property. Id.

The Washington Supreme Court has recently upheld a title search that only sought any recorded interest in the portion of the property sold although the interest was only 1/36th of the entire property. See In re Proceedings for Clallam County for the Foreclosure of Liens for Delinquent Real Property Taxes for the Year 1991, and Some Prior Years, 130 Wash. 2d 142, 148, 922 P.2d 73, 77 (1996) [hereinafter In re Clallam County]. The court reasoned the statute only requires a title search of "the property to be sold." Id.

[FN28]. Id. This appears to be the common practice. See, e.g., Spokesman Rev., July 14, 1995, at C7-C9.

[FN29]. Wash. Rev. Code s 84.64.080 (1994).

[FN30]. King County v. Rea, 21 Wash. 2d 593, 596, 152 P.2d 310, 312 (1944) (allowing a successor in interest to the owner at the time of the foreclosure to intervene).

[FN31]. Wash. Rev. Code s 84.64.080.

[FN32]. Id.

[FN33]. Id.; Chelan County v. Fellers, 65 Wash. 2d 943, 946, 400 P.2d 609, 611 (1965). A photocopy of the order suffices. Cinebar Coal & Coke Co. v. Robinson, 1 Wash. 2d 620, 627, 97 P.2d 128, 132 (1939).

[FN34]. Colby v. Himes, 171 Wash. 83, 88, 17 P.2d 606, 608 (1932); Sparks v. Standard Lumber Co., 92 Wash. 584, 586, 159 P. 812, 814 (1916) (indicating the clearest expression of the legislature that it is a proceeding in rem); Williams v. Pittock, 35 Wash. 272, 274, 77 P. 385, 386 (1904); Coolidge v. Pierce County, 28 Wash. 95, 100, 68 P. 391, 392 (1902); Washington Timber & Loan Co. v. Smith, 34 Wash. 625, 638, 76 P. 267, 271 (1904).

[FN35]. Taylor v. Huntington, 34 Wash. 455, 462-63, 75 P. 1104, 1106-07 (1904); Woodham v. Anderson, 32 Wash. 500, 505, 73 P. 536, 538 (1903).

[FN36]. Wash. Rev. Code s 84.64.080 (1994). The form of the notice is provided within the statute. Id. The requirement that a notice of a sale be posted for ten successive days is mandatory and may not be satisfied by anything less than strict compliance. Stritzel v. Smith, 20 Wash. App. 218, 221, 579 P.2d 404, 406 (1978). According to the court in Stritzel, the posting ensures that prospective purchasers are aware of the sale and thus an adequate prices is paid. Id. at 221, 579 P.2d at 406. Also, the posting provides a reasonable opportunity to the owner to redeem the property before the sale. Id.; see also March v. Banus, 151 A.2d 612, 614-15 (Pa. 1959) (providing that the requirement as any less than ten days is "so flagrantly contrary to the most elementary principle of justice that an interpretation of that character should be accepted only when driven to it by battalions of grammar armed with crystalline spears of clarity."); Ward v. Walters, 22 N.W. 844, 846-47 (Wis. 1885).

[FN37]. Wash. Rev. Code s 84.64.080. Saturdays, Sundays and legal holidays are excepted. Id. The sale may be adjourned from day to day for an unlimited period but probably not beyond four weeks. 1935-36 Op. Wash. Att'y Gen. 53 (1935).

[FN38]. Wash. Rev. Code s 84.64.080. The prohibition includes all county officers and employees. Kitsap County v. Bubar, 14 Wash. 2d 379, 384, 128 P.2d 483, 485 (1942) (invalidating sale to assessor). For instance, a party who was not a full time or continuous county employee that worked in repairing and maintaining roads was barred. Empey v. Yost, 182 Wash. 17, 19-21, 44 P.2d 774, 775 (1935); but see Burroughs v. McArthur, 147 Wash. 550, 552, 266 P. 194, 195 (1928) (holding foreclosure statute does not prevent purchase by party who formerly acted as part-time field deputy for county assessor but who had done no work for more than four months prior to sale); 1941-42 Op. Wash. Att'y Gen. 38 (1942) (justice of peace not county officer prohibited to purchase property). If a county employee is involved, the sale is void as against public policy. Burbar, 14 Wash. 2d at 385-86, 128 P.2d at 485; Coughlin v. Holmes, 53 Wash. 692, 694, 102 P. 772, 773 (1909) (purchase by deputy in treasurer's office makes sale void). Accordingly, the county treasurer has the discretion to refuse to sell property to a person the treasurer believes to be a county employee or officer. 1941-42 Op. Wash. Att'y Gen. 39 (1942).

[FN39]. Wash. Rev. Code s 84.64.080.

[FN40]. Id. The title search is an acceptable cost. Id. s 84.64.050 (1994).

[FN41]. Pierce County v. Desart, 9 Wash. App. 760, 761-62, 515 P.2d 550, 551 (1973) (indicating nothing in statute requires bidders to have cash in hand at the time of the sale). This author has attended sales where unexplainedly the sale was stopped while a successful purchaser left to acquire cash and then restarted when the purchaser returned.

[FN42]. Wash. Rev. Code s 84.64.080 (1994).

[FN43]. In re Clallam County, 130 Wash. 2d 142, 155, 922 P.2d 73, 81 (1996) (dicta); King County v. Odman, 8 Wash. 2d 32, 37-38, 111 P.2d 228, 230 (1941) (interpreting foreclosure statute as only requiring refund when purchase is in excess at the tax sale); Longview Co. v. Cowlitz County, 1 Wash. 2d 64, 72-74, 95 P.2d 376, 379 (1939) (declining to find former owner as "person" entitled to surplus when county was for all practical purposes the former owner after it acquired property for lack of bidders).

[FN44]. Wash. Rev. Code s 84.64.080. The person holding title according to the county on the date need not always be the party possessing actual equitable title. In those instances, the true owner probably could maintain an action against the record owner for the monies refunded.

[FN45]. The statute should not be read too strictly. Early cases have recognized the ability of a deputy authorized by the treasurer to issue the deed. Huber v. Brown, 57 Wash. 654, 656, 107 P. 850, 851 (1910).

[FN46]. Wash. Rev. Code s 84.64.080. The language of the tax deed is set out in the statute. Id. The treasurer has no authority to execute a new deed to the purchaser when the original has been lost prior to recording and filing. 1945-46 Op. Wash. Att'y Gen. 641 (1946).

[FN47]. Wash. Rev. Code s 84.64.180 (1994).

[FN48]. Id.

[FN49]. Id.

[FN50]. See discussion infra part IV.B.

[FN51]. Wash. Rev. Code s 84.64.200 (1994). The county should not bid if a party is willing to pay the entire amount of taxes, interest, and costs due on the property. 1943-44 Op. Wash. Att'y Gen. 272 (1944); 1901-02 Op. Wash. Att'y Gen. 287 (1902). The lack of bidders is commonplace since most lots are either landlocked, unsuitable for development, only partial lots, or uninhabitable.

[FN52]. State ex rel. Seattle v. Stacy, 4 Wash. 2d 589, 594, 104 P.2d 575, 577 (1940).

[FN53]. Sasse v. King County, 196 Wash. 242, 247, 82 P.2d 536, 539 (1938). The county cannot enter into a stipulation with the former owner setting aside the deed and reverting the title in the former owner. 1905-06 Op. Wash. Att'y Gen. 103 (1906).

[FN54]. Stacy, 4 Wash. 2d at 596, 104 P.2d at 578; 1947-48 Op. Wash. Att'y Gen. 59 (1948); 1939-40 Op. Wash. Att'y Gen. 156 (1940). The county is not required to pay taxes on the property while in its possession. Wash. Rev. Code s 84.64.220 (1994); 1923-24 Op. Wash. Att'y Gen. 46 (1924).

[FN55]. Commercial Waterway Dist. No. 1 v. King County, 10 Wash. 2d 474, 479, 117 P.2d 189, 192 (1941) (finding county's retention of foreclosed property subject to unpaid taxes of other taxing districts, without attempts to resell the property, violated the trust established by the taxing statute). The county can retain the property without paying other unpaid taxing districts in certain circumstances. See Wash. Rev. Code s 36.35.030 (1994).

[FN56]. Sasse, 196 Wash. at 249, 82 P.2d at 540; Wolff v. Commercial Waterway Dist. No. 1, 14 Wash. 2d 45, 47, 127 P.2d 262, 263 (1942); Commercial Waterway Dist. No. 1, 10 Wash. 2d at 478, 117 P.2d at 191; State ex rel. King County Water Dist. v. Stacy, 10 Wash. 2d 248, 254-55, 116 P.2d 356, 359 (1941); Shelton v. Klickitat County, 152 Wash. 193, 198, 277 P. 839, 841 (1929); Longview Co. v. Cowlitz County, 1 Wash. 2d 64, 72, 95 P.2d 376, 379 (1939).

[FN57]. Wash. Rev. Code s 84.64.230 (1994); id. s 35.49.160 (1994); Shelton, 152 Wash. at 198, 277 P.2d at 841.

[FN58]. Wash. Rev. Code s 84.64.310 (1994); King County v. Odman, 8 Wash. 2d 32, 36, 111 P.2d 228, 230 (1941). Any rental money obtained is to be shared in proportion to other taxing authorities. See Wash. Rev. Code s 84.64.310.

[FN59]. Thestrup v. Gray Harbor County, 12 Wash. 2d 545, 547-48, 122 P.2d 797, 798 (1942). The county has express authority to sell for a sum lesser than the notice of sale in case of drainage, diking, and sewerage improvement district assessments. Wash. Rev. Code s 85.08.500 (1994); 1991 Op. Wash. Att'y Gen. 25 (1991). In other cases, presumably, the price requested must still be an amount within the "best interests" of the county which in certain cases could be less than the amount originally offered. See Wash. Rev. Code s 84.64.270 (1994).

[FN60]. Wolff, 14 Wash. 2d at 47, 127 P.2d at 263; Moe v. Brumfield, 182 Wash. 608, 610, 47 P.2d 847, 848 (1935); Walla

Walla v. State, 197 Wash. 357, 360, 85 P.2d 676, 677 (1938); Thestrup, 12 Wash. 2d at 546-47, 122 P.2d at 798; but see Shelton, 152 Wash. at 198-99, 277 P. at 841-42 (finding that despite acquisition of title by county because of lack of bidders and subsequent resale, the property was still subjected to outstanding irrigation lien).

[FN61]. Moe, 182 Wash. at 610, 47 P.2d at 848.

[FN62]. Wash. Rev. Code s 84.64.270.

[FN63]. Id. But Christmas trees may not be sold from tax title land separately from the land itself. 1939-40 Op. Wash. Att'y Gen. 223 (1940).

[FN64]. Wash. Rev. Code s 84.64.270 (1994). The county may have no discretion to order the sale by contract or for cash as it could be left to the option of the purchaser. See 1927-28 Op. Wash. Att'y Gen. 124, 126 (1928).

[FN65]. Wash. Rev. Code s 84.64.320 (1994).

[FN66]. Wash. Rev. Code s 36.35.030 (1994). The county must pay the delinquent taxes. Id.

[FN67]. As illustration of this principle is the fact that it costs nothing to redeem other than the delinquent taxes and assessments plus interest. Wash. Rev. Code s 84.64.070 (1994).

[FN68]. See discussion infra part IV.B.

[FN69]. Wash. Rev. Code s 84.64.060 (1994); Commissioner of Internal Revenue v. Peterman, 118 F.2d 973, 975 (9th Cir. 1941) (interpreting Remington Rev. Stat. s 11280 (codified at Wash. Rev. Code s 84.64.070). The treasurer has no duty to inquire into the interest of the party paying taxes on the property. 1915-16 Op. Wash. Att'y Gen. 233, 235 (1916).

[FN70]. Kienbaum v. New Republic Co., 139 Wash. 298, 304, 246 P. 925, 927 (1926) (allowing a shareholder and trustee to pay delinquent taxes on property owned by a corporation); see also 1901-02 Op. Wash. Att'y Gen. 317 (1902).

[FN71]. Kienbaum, 139 Wash. at 303, 246 P. at 926.

[FN72]. Id.; see also Meagher v. Sprague, 31 Wash. 549, 553, 72 P. 108, 109 (1903) (finding city's acquisition of property from city tax foreclosure sale followed by immediate redemption sufficient to establish an ownership interest).

[FN73]. Gould v. White, 54 Wash. 394, 398, 103 P. 460, 462 (1909).

[FN74]. In re Clallam County, 130 Wash. 2d 142, 149, 922 P.2d 73, 78 (1996) (dicta stating rule); State ex rel. McClaine v. Reed, 29 Wash. 383, 386, 69 P. 1096, 1097 (1902) (allowing a party with an undivided one-sixth interest in property to redeem).

[FN75]. Wash. Rev. Code s 84.64.070 (1994); see also id. s 84.56.340 (1994). The county is still allowed to sell that portion of the property that the taxes have not been paid. In re Clallam County, 130 Wash. 2d at 150, 922 P.2d at 78.

[FN76]. Dicta in a recent case supports this proposition. See In re Clallam County, 130 Wash. 2d 149, 149, 922 P.2d 73, 78 (1996); see also Dwight v. Waldron, 96 Wash. 156, 161 P. 761 (1917) (dicta); Cf. Dahlstrom v. Beard Fruit Co., 73 Wash. 13, 16, 131 P. 450, 451 (1913) (implying it was appropriate with one-half interest in property to pay entire amount of delinquent taxes).

[FN77]. See Stone v. Marshall, 52 Wash. 375, 378-79, 100 P. 858, 859 (1909) (refusing to allow co-owner who paid entire amount of delinquent taxes to acquire other owner's interest). See also Dahlstrom, 73 Wash. at 16, 131 P. at 452.

[FN78]. Wash. Rev. Code s 84.64.060 (1994). See also id. s 84.56.320-.330. When a judgment creditor pays the delinquent taxes the lien for the taxes will merge into the judgment. Trumbull v. Bruce, 64 Wash. 644, 649, 117 P. 472, 475 (1911) (assignee of judgment creditor, who also was a party with interest in the property, took no greater interest then the judgment creditor by paying delinquent taxes).

[FN79]. Wash. Rev. Code s 84.64.070. They must also pay the reasonable value of all improvements made in good faith on the property less the value of the use. Id.; see also 1903-04 Op. Wash. Att'y Gen. 125, 126-27 (1904). Burdick v. Kimball, 53 Wash. 198, 204, 101 P. 845, 849 (1909) (Chadwick, J., concurring). But a minor may not redeem where they are the beneficiary of a trust which possesses full legal title. Id. In such situations, the sole remedy for the minor is against the trustee. Id.

[FN80]. Wash. Rev. Code s 84.64.070 (1994).

[FN81]. 1960 Op. Wash. Att'y Gen. 126 (1960) (requiring at least an existing pecuniary interest in the property). But see Kienbaum v. New Republic Co., 139 Wash. 298, 304, 246 P. 925, 927 (1926) (allowing a stockholder and trustee in defunct corporation to redeem).

[FN82]. Birge v. Cunningham, 118 Wash. 458, 460-61, 203 P. 954 (1922).

[FN83]. Id. at 459-60, 203 P. at 955.

[FN84]. A consideration of the approaches to challenge the assessment and valuation of property is beyond the scope of this article. For a comprehensive overview of available approaches, see 3 Graham H. Fernald, Washington Real Property Deskbook ss 72.45-72.47 (2d ed. 1986).

[FN85]. Wash. Rev. Code s 84.68.010-84.68.150 (1994); id. s 84.69.010- 84.69.170 (1994); see Coluccio v. King County, 82 Wash. App. 45, 52, 917 P.2d 145, 148 (1996) (indicating that a taxpayer may either protest upon paying taxes and seek relief in superior court or pay taxes without protest and file a claim for an administrative refund).

[FN86]. An action to recover taxes paid must be commenced after the 30th day of the next succeeding June following the year in which the tax became payable. Wash. Rev. Code s 84.68.060 (1994). Thus, for taxes payable in 1996, the action must begin by June 30, 1997. For an action seeking a refund, the taxpayer must file the claim with the county treasurer within three years after making the payment sought to be refunded. Wash. Rev. Code s 84.69.030(2) (1994). One court has recently found the period of limitations for Chapter 84.69 dispositive despite the fact the taxpayer paid property taxes on parcels assessed five and six times their true value. See Coluccio, 82 Wash. App. at 48-52, 917 P.2d at 146-48.

[FN87]. Wash. Rev. Code s 84.68.020 (1994); 1955-56 Op. Wash. Att'y Gen. 198 (1956); see generally Pacific Fin. Corp. v. Spokane County, 170 Wash. 101, 102, 15 P.2d 652, 652 (1932) (finding voluntary payment when no written protest made despite the fact taxes were solely paid based on the authority of a void taxing statute).

[FN88]. Tozer v. Skagit County, 34 Wash. 147, 149, 75 P. 638, 638 (1904).

[FN89]. 34 Wash. 147, 75 P. 638 (1904).

[FN90]. See generally Montgomery v. Cowlitz County, 14 Wash. 230, 232-33, 44 P. 259, 260 (1896) (requiring a determination whether the sale would have been a cloud of title before a determination of voluntary or compulsory payment could be made).

[FN91]. Tozer, 34 Wash. at 150, 75 P. at 638-39.

[FN92]. Wash. Rev. Code s 84.68.070 (1994).

[FN93]. See O'Brien v. Johnson, 32 Wash. 2d 404, 407-08, 202 P.2d 248, 250 (1948) (quoting Wash. Rev. Code s 84.68.070) (allowing action provided party paid alleged delinquent amount in court registry due to allegations payment had originally been made). There is some statutory support for the court to exercise its inherent equitable jurisdiction. Chapter 84.68.070, which provides that the statute is the exclusive remedy nonetheless states: "[T]his section shall not be construed as depriving the defendants in any tax foreclosure proceeding of any valid defense allowed by law to the tax sought to be foreclosed therein except defenses based upon alleged excessive valuations, levies or taxes." Wash. Rev. Code s 84.68.070. One commentator has aptly described the exception as seemingly swallowing the rule. Fernald, supra note 84, at s 72.53; but see Coluccio v. King County, 82 Wash. App. 45, 52-53, 917 P.2d 145, 148-49 (1995) (refusing to provide equitable relief when remedy existed via statute).

[FN94]. Tozer v. Skagit County, 34 Wash. 147, 150, 75 P. 638, 639 (1904).

[FN95]. Id. at 150-51, 75 P. at 639.

[FN96]. Wash. Rev. Code s 84.68.020 (1994). The necessity for making a protest is a historical anomaly:

> [T]he protest goes to the county treasurer, an officer with no authority over the tax levy or assessment process. There is no mechanism by which the treasurer can take any action on any protest, and taxes paid under protest are not segregated from other taxes paid. Thus, there is no good reason for requiring the written protest, but the statutory requirement is specific, and it cannot be ignored.

Fernald, supra note 84, at s 72.49. See also First Nat'l Bank of Chicago v. King County, 4 Wash. 2d 91, 95-96, 102 P.2d 263, 265 (1940).

[FN97]. Wash. Rev. Code s 84.68.020. The statute is considered a condition precedent to maintaining a suit for refund. Odom v. King County, 78 Wash. 2d 505, 507, 477 P.2d 6, 8 (1970) (not requiring payment as tax was void); First Nat'l Bank of Chicago, 4 Wash. 2d at 95-96, 102 P.2d at 265 (stating general rule).

[FN98]. Wash. Rev. Code s 84.68.020. See Yakima Valley Bank & Trust Co. v. Yakima County, 149 Wash. 552, 553-54, 271 P. 820, 821 (1928). Pettit v. Board of Tax Appeals, 85 Wash. 2d 646, 650, 538 P.2d 501, 503 (1975); but see Wright v. Woodward, 83 Wash. 2d 378, 382-83, 518 P.2d 696, 721 (1974) (dismissing case for party's failure to pursue available administrative remedies). The result in Wright may be distinguishable as the taxpayer sought an injunction and not a refund of taxes. See Fernald, supra note 84, s 72.51 ("There may be good reason to prohibit injunctive actions where alternative administrative remedies exist.").

[FN99]. Longview Fibre Co. v. Cowlitz County, 114 Wash. 2d 691, 694, 790 P.2d 149, 151; Morf v. Johnston, 173 Wash. 215, 216, 22 P.2d 663, 663 (1933).

[FN100]. Longview Fibre, 114 Wash. 2d at 695-96, 790 P.2d at 151-52; see also Transamerica Title Ins. Co. v. Hoppe, 26 Wash. App. 149, 155, 611 P.2d 1361, 1365 (1980) (allowing dismissal of petition when taxpayer had filed petition but failed to pay additional tax under protest); 1956 Op. Wash. Att'y Gen. 233 (1956) (stating general rule). A "short form" protest which incorporates by reference a comprehensive "form of protest" already on file with the treasurer will suffice. 1956 Op. Wash. Att'y Gen. 234 (1956).

[FN101]. Longview Fibre, 114 Wash. 2d at 695, 790 P.2d at 151.

[FN102]. Id. The court also dismissed Longview Fibre's assertion that it should not have to protest more than what it wanted to recover because such a rule requires a taxpayer to determine how much the excessiveness of their taxes were. Id. at 696, 790 P.2d at 152. Longview Fibre's position ignored the fact that the taxpayer could not know the extent to which the property was overvalued until the dispute was resolved. Id.; see also Longview Fibre Co. v. Cowlitz County, 55 Wash. App. 309, 313, 777 P.2d 556, 588 (1989) (Reed, J., concurring separately).

[FN103]. Longview Fibre, 114 Wash. 2d at 697, 790 P.2d at 152; see also First Nat'l Bank of Chicago v. King County, 4 Wash. 2d 91, 96-97, 102 P.2d 263, 265 (1970) (payment into court registry without any recitation of the claimed invalidity of the tax bars action for recovery of taxes even when treasurer personally apprised of reasons).

[FN104]. Great N. R.R. Co. v. Okanogan County, 223 F. 198, 201-02 (E.D. Wash. 1915); American Smelting & Ref. Co. v. Whatcom County, 13 Wash. 2d 295, 304, 124 P.2d 963, 968 (1942).

[FN105]. Wash. Rev. Code s 84.68.030 (1994). A party is entitled to a refund only to extent of taxes collected in excess of those due based on the proper assessment plus interest. Trans W. Co. v. Klickitat County, 22 Wash. App. 798, 808, 591 P.2d 469, 475 (1979).

[FN106]. Wash. Rev. Code s 84.68.050 (1994). There are exceptions for those parties who operate property located in more than one county and assessed as a unit. Id.

[FN107]. Wash. Rev. Code s 84.68.060 (1994). A property owner is not entitled to extend the statute of limitations by neglecting to pay their taxes but rather must act within the period fixed by the statute. Puget Sound Power & Light Co. v. King County, 10 Wash. 2d 424, 434, 116 P.2d 827, 831 (1941) (declining to allow the statute of limitations to run from the time the tax is paid); but see O'Brien v. Johnson, 32 Wash. 2d 404, 407-08, 202 P.2d 248, 249 (1949) (allowing an action beyond the statute of limitations because foreclosure action commenced after the time allotted for an action based on payment of protest, although evidence existed payment had been made originally).

[FN108]. See Wash. Rev. Code ss 84.69.010-84.69.170 (1994).

[FN109]. Id. s 84.69.030(3) (1994). Alternatively, the county legislative authority may act upon its own motion. Id.

[FN110]. Id. s 84.69.030(2). No recovery will be allowed upon a ground not asserted in the claim for the refund. Id. s 84.69.130 (1994).

[FN111]. Id. s 84.69.170.

[FN112]. Id. s 84.69.020 (1994).

[FN113]. Wash. Rev. Code s 84.69.020(1)-(4); id. s 84.69.020(7)-(9). Among other significant bases justifying a refund include

when the taxing statute has been declared illegal or unconstitutional or the valuation was adjudicated as unlawful or excessive. Id. s 84.69.020(6)-(12).

[FN114]. Id. s 84.69.048 (1994).

[FN115]. Id. s 84.69.120 (1994).

[FN116]. Id.

[FN117]. See generally Etter v. Kronlund, 198 Wash. 341, 343, 88 P.2d 417, 418 (1939) (holding tax cannot be attacked except by paying the tax under protest); Denny v. Wooster, 175 Wash. 272, 275-76, 27 P.2d 328, 329 (1933) (stating general rule).

[FN118]. Roon v. King County, 24 Wash. 2d 519, 528, 166 P.2d 165, 169 (1946); Denny, 175 Wash. at 276-77, 27 P.2d at 330.

[FN119]. See e.g., Roon, 24 Wash. 2d at 523, 166 P.2d at 167; Western Mach. Exch. v. Grays Harbor County, 190 Wash. 447, 451, 68 P.2d 613, 615 (1937); First Thought Gold Mines Ltd. v. Stevens County, 91 Wash. 437, 439, 157 P. 1080, 1081 (1916).

[FN120]. Western Mach. Exch., 190 Wash. at 452, 68 P.2d at 615.

[FN121]. Wash. Rev. Code s 84.68.010 (1994). The provision does not pertain to a levy of taxes. Allen v. Public Util. Dist. No. 1, 55 Wash. 2d 226, 238, 347 P.2d 539, 544 (1959); Denny, 175 Wash. at 276, 27 P.2d at 324- 30.
The restraint on the power of the courts is not an unconstitutional encroachment. Casco Co. v. Thurston County, 163 Wash. 666, 2 P.2d 677 (1931). In Casco, the court dismissed attacks on the statute's "unlawful encroachment" on the judiciary's power, creation of unlawful discrimination through "classification of possible procedure," and deprivation of right to invoke the court's equity powers. Id. at 669, 2 P.2d at 679. See generally Western Mach. Exch., 190 Wash. at 455, 68 P.2d at 616; but see Roon, 24 Wash. 2d at 526-27, 166 P.2d at 168 (questioning the circumscribing of the court's equity power).
A third exception existed, "Where the sale is a result of an error made by an officer or employee of the county, ... and the county has issued an order pursuant to the provisions of [section] 84.64.145." Wash. Rev. Code s 84.68.010(3). But section 84.64.145 was repealed in 1991 and thus it is impossible to acquire an order pursuant to its terms. 1991 Wash. Laws ch. 245, s 42.

[FN122]. It would be unreasonable and a useless proceeding to require that a tax be first paid and then action brought to recover it if the statue was absolutely void. Petroleum Navigation Co. v. King County, 1 Wash. 2d 489, 496, 96 P.2d 467, 470 (1939) (recognizing basis but declining to find the tax void).

[FN123]. Petroleum Navigation Co., 1 Wash. 2d at 496, 96 P.2d at 469-70; Ballard v. Wooster, 182 Wash. 408, 413, 45 P.2d 511, 513 (1935).

[FN124]. Petroleum Navigation Co., 1 Wash. 2d at 496, 96 P.2d at 470; Ballard, 182 Wash. at 413, 745 P.2d at 513.

[FN125]. Washington Chocolate Co. v. King County, 21 Wash. 2d 630, 639, 152 P.2d 981, 985 (1944), cert. denied, 324 U.S. 880 (1944) (allowing injunction when tax asserted against exempt personal property); Petroleum Navigation Co., 1 Wash. 2d at 503, 96 P.2d at 472 (Beals, J., concurring); Port Angeles W. R. Co. v. Clallam County, 20 F.2d 202, 205 (W.D. Wash. 1927) (stating rule); but see Andersen v. King County, 18 Wash. 2d 176, 178, 138 P.2d 872, 873 (1943) (payment of taxes does not make property exempt for purposes of issuing injunction).

[FN126]. Washington Chocolate, 21 Wash. 2d at 639, 152 P.2d at 985 (considering interstate commerce exemption).

[FN127]. O'Brien v. Johnson, 32 Wash. 2d 404, 407, 202 P.2d 248, 249 (1949), partially overruling Anderson v. King County, 18 Wash. 2d 176, 138 P.2d 872 (1943); see generally Note, Taxation--Collection--Injunction, 25 Wash. L. Rev. 198 (1950). The mere payment is not grounds for a determination of an exemption per se, but the equity of the situation will play a large part in determining of whether it rises to an exemption. O'Brien, 32 Wash. 2d at 407, 202 P.2d at 249 (indicating court could be warranted in exercising its equity powers but not that ipso facto a restraining order should issue).

[FN128]. See generally O'Brien, 32 Wash. 2d at 407, 202 P.2d at 249, partially overruling Anderson v. King County, 18 Wash. 2d 176, 138 P.2d 872 (1943). For a earlier treatment of the competing view as to whether injunctions should be entirely prohibited in the absence of paying the tax, see Saul D. Herman, Note, The Right to Enjoin Collection of Taxes, 7 Wash. L. Rev. 230 (1932). Federal courts have never felt bound by the statute's limitation on its equitable jurisdiction. See Skagit County v. Northern Pac. Ry. Co., 61 F.2d 638, 643 (9th Cir. 1932).

[FN129]. In re Electric City, Inc., 43 B.R. 336, 341 (Bankr. W.D. Wash. 1984) (analyzing the distinction).

[FN130]. Clizer v. Krauss, 57 Wash. 26, 30, 106 P. 145, 146 (1910); see also Pierce County v. Merrill, 19 Wash. 175, 178, 52 P. 854, 855 (1898) (interpreting personal property liens as an exclusive method of collection).

[FN131]. Wash. Rev. Code s 84.60.010 (1994).

[FN132]. Carstens & Earles v. Seattle, 84 Wash. 88, 106-07, 146 P. 381, 388 (1915) (finding tax liens superior to other liens).

[FN133]. Id.

[FN134]. Id. at 99, 146 P. at 385. The court reasoned that, in technical terms, a party's private lien is not a proceeding in rem. Id. at 106, 146 P. at 388. Rather, it must be commenced against a person by virtue of a contract with the owner of the land, or as a judgment rendered against someone with the owner of the land, or as a judgment rendered against someone who has an interest in the land. Id. In other words, "[t]here must be a suit against the party promising, not a mere proceeding in rem, regardless of contract." Id. at 106, 146 P. at 388.

[FN135]. Id. at 106-07, 146 P. at 388.

[FN136]. Kofmehl v. Steelman, 80 Wash. App. 279, 283, 908 P.2d 391, 393 (1996) (stating the principle in the context of a real estate contract).

[FN137]. Stephens v. Kesselburg, 19 Wash. 2d 427, 434, 143 P.2d 289, 292 (1943) (stating general rule); Shepard v. Vincent, 38 Wash. 493, 500, 80 P. 777, 779 (1905); Maher v. Potter, 60 Wash. 443, 445, 111 P. 453, 453 (1910); Oregon Mortgage Co. v. Leavenworth Secs., 197 Wash. 436, 440, 86 P.2d 206, 207 (1938).

[FN138]. Shepard, 38 Wash. at 500, 80 P. at 779.

[FN139]. Id.

[FN140]. Id.; see Maher, 60 Wash. at 445, 111 P. at 453.

[FN141]. Oregon Mortgage Co., 197 Wash. at 440, 86 P.2d at 207.

[FN142]. 18 Stoebuck, supra note 17, at s 20.77; 3 A. James Casner, American Law of Property s 11.35 (1974).

[FN143]. 18 Stoebuck, supra note 17, at s 20.20; Casner, supra note 142, at s 11.35.

[FN144]. Form real estate contracts almost always place the duty on the purchaser. 18 Stoebuck, supra note 17, at s 20.20.

[FN145]. 18 Stoebuck, supra note 17, at s 20.26; Stevens v. Irwin, 132 Wash. 289, 291, 231 P. 783, 784 (1925); Rose v. Rundall, 86 Wash. 422, 425, 150 P. 614, 616 (1915); see generally Hoyt v. Rothe, 95 Wash. 369, 374, 163 P. 925, 927 (1917).

[FN146]. 369 N.W.2d 342 (Minn. Ct. App. 1985).

[FN147]. Id. at 344.

[FN148]. See also Smith v. King, 106 Wash. 2d 443, 449, 722 P.2d 796, 800 (1986).

[FN149]. The vendor in Graham was required to provide warranty deeds for the property, but the deeds would be conceivably worthless as the property had passed to the state. Graham, 369 N.W.2d at 343.

[FN150]. 18 Stoebuck, supra note 17, at s 20.25.

[FN151]. 91 Wash. 30, 32, 157 P. 47, 48 (1916).

[FN152]. Id. at 31, 157 P. at 48.

[FN153]. Id. at 32, 157 P. at 48.

[FN154]. Id. at 31-32, 157 P. at 48.

[FN155]. Id. at 32-33, 157 P. at 48.

[FN156]. Wilson, 91 Wash. at 34, 157 P. at 49.

[FN157]. Kofmehl v. Steelman, 80 Wash. App. 279, 908 P.2d 391 (1995).

[FN158]. Id. at 284, 908 P.2d at 393. The court reasoned that, as a proceeding in rem, the tax sale affects the property (the security for the real estate contract) but not the obligation itself (the real estate contract). Id. at 283, 908 P.2d at 393.

[FN159]. Id. at 285, 908 P.2d at 394.

[FN160]. Id.

[FN161]. 18 Stoebuck, supra note 17, at s 20.11; 3 A. Casner, supra note 142, at s 11.35; see Stephens v. Kesselburg, 19 Wash. 2d 432, 432-33, 143 P.2d 289, 291-92 (1943).

[FN162]. Finch v. Noble, 49 Wash. 578, 580, 96 P. 3, 4 (1908).

[FN163]. Id. at 581, 96 P. at 4; see generally Slocum v. Peterson, 131 Wash. 61, 70-73, 229 P. 20, 23-24 (1924) (disallowing a vendee-purchaser at a tax sale to acquire title against the vendor).

[FN164]. Slocum, 131 Wash. at 72-73, 229 P. at 24.

[FN165]. Id.

[FN166]. See text accompanying infra notes 183-187.

[FN167]. 1959 Wash. Laws ch. 129.

[FN168]. Wash. Rev. Code s 84.64.460 (1994).

[FN169]. Harry M. Cross, Washington Legislation--1959, 34 Wash. L. Rev. 332 (1959).

[FN170]. Id. at 333.

[FN171]. Id. at 332.

[FN172]. Id. at 333.

[FN173]. Clippinger v. Birge, 14 Wash. App. 976, 986, 547 P.2d 871, 878 (1976).

[FN174]. Cross, supra note 169, at 333.

[FN175]. Genesee, Inc. v. Firstline Inv., Inc., 48 Wash. App. 707, 711, 740 P.2d 367, 370 (1987) (finding easement owner not entitled to notice because their interest was not recorded prior to the first year for which the tax was foreclosed).

[FN176]. The potential purchaser of an easement would be wise to ensure no delinquent taxes exist before the year their easement is recorded.

[FN177]. Olympia v. Palzer, 107 Wash. 2d 225, 232, 728 P.2d 135, 138 (1986). For an earlier contrary interpretation, see Messett v. Cowell, 194 Wash. 646, 658-59, 79 P.2d 337, 342 (1938) (purchasing property at tax sale extinguished condition, although court reimposed condition on all the property because other portion of property was acquired by purchaser's successor in interest and was subjected to the same condition).

[FN178]. Lake Arrowhead Community Club, Inc. v. Looney, 112 Wash. 2d 288, 297, 770 P.2d 1046, 1051 (1989). The court interpreted the covenant as an "appurtenant easement" for purposes of the statute. Id.

[FN179]. See, e.g., Rushton v. Borden, 29 Wash. 2d 831, 839, 190 P.2d 101, 105 (1948).

[FN180]. 13 Wash. App. 789, 792, 537 P.2d 859, 861 (1975).

[FN181]. Id.

[FN182]. Id. at 792 n.2.

[FN183]. 17 William B. Stoebuck, Washington Practice: Real Estate: Property Law s 6.5, at 301-02 (1995).

[FN184]. Id. at 383. As Stoebuck correctly surmises, "If the land is sold for unpaid taxes to a third person who ousts the tenant, that would constitute a breach of the landlord's covenant of quiet enjoyment." Id.

[FN185]. See Holzer v. Rhodes, 24 Wash. 2d 184, 189, 163 P.2d 811, 813 (1945); Twardus v. Crewson, 182 Wash. 522, 525, 47 P.2d 829, 830 (1935).

[FN186]. See 17 Stoebuck, supra note 183, s 6.56 at 383.

[FN187]. Holzer, 24 Wash. 2d at 193, 163 P.2d at 815 (finding that tenant that received notice of sale was not legally obligated to inform owner).

[FN188]. See Stephens v. Kesselburg, 19 Wash. 2d 427, 432, 143 P.2d 289, 291 (1943); Finch v. Noble, 49 Wash. 578, 581, 96 P. 3, 4 (1908); First Nat'l Bank v. Mapson, 181 Wash. 196, 203, 42 P.2d 782, 785 (1935).

[FN189]. Holzer, 188 Wash. 2d at 189, 163 P.2d at 813; see also Atwood v. McGrath, 137 Wash. 400, 407, 242 P. 648, 651 (1926); Stephens, 19 Wash. at 432, 143 P.2d at 291; Twardus, 182 Wash. at 525, 47 P.2d at 830 (stating the general rule).

[FN190]. Twardus v. Crewson, 182 Wash. 522, 525, 47 P.2d 829, 830 (1935); Atwood, 137 Wash. at 407, 242 P. at 651.

[FN191]. See Holzer v. Rhodes, 24 Wash. 2d 184, 190, 163 P.2d 811, 814 (1945); Frost v. Perfield, 44 Wash. 185, 188, 87 P. 117, 118 (1906) (tenant told owner he would attend sale and bid in property for her). This rule is consistent with other situations where parties contract to pay the taxes or other liens and their failure leads to a default and acquisition by the promisee. See Finch, 49 Wash. at 581, 96 P. at 4; First Nat'l Bank, 181 Wash. at 203, 42 P.2d at 785; McGuigan v. Simpson, 197 Wash. 260, 264-65, 84 P.2d 1012, 1014 (1938); Dahlstrom v. Beard Fruit Co., 73 Wash. 13, 16, 131 P. 450, 452 (1913).

[FN192]. Tacoma v. Fletcher Realty Co., 150 Wash. 33, 37, 272 P. 43, 44 (1928) (indicating "the legislative intent is clearly discernible that a private person ... may in either event pay the local assessments or acquire title to them, but he has no other choice.").

[FN193]. Wash. Rev. Code s 35.49.130 (1994); Ephrata v. Each & Every Lot, 1 Wash. App. 372, 376, 461 P.2d 574, 576 (1969) (interpreting Tacoma v. Fletcher Realty Co., 150 Wash. 33, 272 P. 43 (1928), as also rejecting this position). Chapter 35.49.130 provides:

> If any property situated in a local improvement district or utility local improvement district created by a city or town is offered for sale for general taxes by the county treasurer, the city or town shall have power to protect the lien or liens of any local improvement assessments outstanding against the whole or portion of such property by purchase at the treasurer's foreclosure sale.

Wash. Rev. Code s 35.49.130; see also id. s 35.49.150 (1994) (allowing city or town to acquire property subject to local improvement assessment struck off to or bid in by a county prior to resale by county).

[FN194]. 150 Wash. 33, 272 P. 43 (1928).

[FN195]. Id. at 35-36, 272 P. at 44.

[FN196]. Remington Compiled Stat. s 9393 (1922) (codified at Wash. Rev. Code s 35.49.160 (1994)). This was before the adoption of more recent legislation barring private parties from becoming holders of a certificate of delinquency. See discussion supra note 23. For cases that provided payment of the local assessments was not a prerequisite to foreclosure of the certificates of delinquency for general taxes, see McMillan v. Tacoma, 26 Wash. 358, 363-64, 67 P. 68, 69-70 (1901) (holding confusion would result if required as prerequisite); Ballard v. Way, 34 Wash. 116, 122, 74 P. 1067, 1069 (1904) (stating general rule); Pennsylvania v. Tacoma, 36 Wash. 656, 657-58, 79 P. 306, 306 (1905) (finding assessment liens extinguished with foreclosure even though some had not matured); Ballard v. Ross, 38 Wash. 209, 211, 80 P. 439, 440 (1905) (holding primacy of the tax lien prevents interference of assessment lien with the collection of taxes).

[FN197]. Fletcher Realty, 150 Wash. at 36, 272 P. at 44.

[FN198]. Id. at 36-37; Remington Compiled Stat. s 9393 (codified at Wash. Rev. Code s 35.49.160).

[FN199]. Fletcher Realty, 150 Wash. at 37, 272 P. at 45.

[FN200]. See, e.g., Ephrata v. Each & Every Lot, 1 Wash. App. 372, 376, 461 P.2d 574, 577 (1969).

[FN201]. Wash. Rev. Code s 84.60.010 (1994); see also 1919-20 Op. Wash. Att'y Gen. 59 (1920).

[FN202]. See, e.g., Wash. Rev. Code s 35.50.010 (1994); id. s 85.08.430 (1994). Chapter 35.50.010 provides in part: "The assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes." Wash. Rev. Code s 35.50.010 (emphasis added). Likewise, chapter 85.08.430 provides in part: "Such lien shall be of equal rank with other liens assessed against the property for local improvements and paramount to all other liens except the lien for general taxes...." Wash. Rev. Code s 85.08.430 (emphasis added).

[FN203]. See Wash. Rev. Code s 35.49.120, repealed by 1994 Wash. Laws ch. 301, s 57.

[FN204]. McMillan v. Tacoma, 26 Wash. 358, 363-64, 67 P. 68, 69-70 (1901) (indicating other municipal liens extinguished less confusion would result); Keene v. Seattle, 31 Wash. 202, 206-07, 71 P. 769, 770 (1903) (finding lien for general taxes extinguishes other municipal liens); State ex rel. Craver v. McConnaughey, 31 Wash. 207, 208, 71 P. 770, 771 (1903) (holding that party possessing tax certificate not required to pay delinquent street assessments to entitle party to certificate of delinquency on general taxes); Maryland Realty Co. v. Tacoma, 121 Wash. 230, 236, 209 P. 1, 3 (1922) (allowing assessment liens to survive would hinder the collection of taxes).

[FN205]. Wash. Rev. Code s 84.64.200 (1994).

[FN206]. State ex rel. Seattle v. Stacy, 4 Wash. 2d 589, 594, 104 P.2d 575, 577 (1940).

[FN207]. Wash. Rev. Code s 35.49.160 (1994).

[FN208]. See discussion supra note 54. The dissent in Fletcher Realty recognized this shortcoming of the majority opinion. See Fletcher Realty, 150 Wash. at 42-43, 272 P. at 46 (Mitchell, J., dissenting); see also Gustaveson v. Dwyer, 78 Wash. 336, 340, 139 P. 194, 196 (1914) (explaining that the trust position is created by nature of the county as the collector of all general taxes levied for the state as well as all of the political subdivisions of the state within the county).

[FN209]. Wash. Rev. Code s 35.49.130 (1994).

[FN210]. Ephrata v. Each & Every Lot, 1 Wash. App. 372, 376, 461 P.2d 574, 577 (1969).

[FN211]. In Ephrata, the appellate court relied on the premise that the statute was also considered by the court in Fletcher Realty and refused to find that the assessments were extinguished. Id. at 376, 461 P.2d at 577. Given that the presumption underlying Fletcher Realty is now circumspect with recent amendments, the basis of the court's decision in Ephrata is also circumspect.

[FN212]. Wash. Rev. Code s 35.49.130, amended by 1994 Wash. Laws ch. 301 s 4.

[FN213]. 1994 Wash. Laws ch. 301 s 4.

[FN214]. See Tacoma v. Fletcher Realty, 150 Wash. 33, 46-47, 272 P. 43, 47 (1928) (Mitchell, J., dissenting) (recognizing the uselessness of the notice provision to city or town if foreclosure does not extinguish an assessment lien). To the court's credit in Ephrata, they sympathized with this position and suggested any changes would have to come with action by the legislature or the supreme court. Ephrata, 1 Wash. App. at 376, 461 P.2d at 577.

[FN215]. Wash. Rev. Code s 35.49.150 (1994).

[FN216]. Id.

[FN217]. The effect was recognized in an early decision that held local liens were extinguished when the county obtained the property from the lack of bidders and resold the property. Moe v. Brumfield, 182 Wash. 608, 610-11, 47 P.2d 847, 848 (1935). As the court reasoned:

If when the property is resold by the county, it remains subject to the lien for local improvements, this would demand a sacrifice by the county, because in such an event the county might not, and in many cases in all probability would not, receive sufficient money to pay what is due for general taxes.

Id. at 611, 47 P.2d at 848. The court's reasoning is equally applicable in this instance.

[FN218]. See discussion supra part II.A.1.

[FN219]. Wash. Rev. Code s 36.35.030 (1994).

[FN220]. Id. If the land is eventually sold or leased, the possibility that the money may have to go towards delinquent assessments and other county funds does arise. Id.

[FN221]. Id. s 35.80.030(1)(h) (1994); Pierce County v. Schwab, 48 Wash. App. 418, 419, 739 P.2d 116, 117 (1987).

[FN222]. 48 Wash. App. 418, 739 P.2d 116 (1987).

[FN223]. Id. at 421, 739 P.2d at 118.

[FN224]. Id. at 419, 739 P.2d at 116.

[FN225]. Id.

[FN226]. Id. at 420.

[FN227]. Schwab, 48 Wash. App. at 420, 739 P.2d at 118.

[FN228]. See Wash. Rev. Code s 84.64.080 (1994).

[FN229]. See Wash. Rev. Code s 84.64.180 (1994).

[FN230]. Schwab, 48 Wash. App. at 420-22, 739 P.2d at 117-18.

[FN231]. Id.

[FN232]. Id.

[FN233]. Id. at 422-23, 739 P.2d at 118.

[FN234]. Id.

[FN235]. Schwab, 48 Wash. App. at 423-24, 739 P.2d at 119.

[FN236]. Wash. Rev. Code s 84.60.010 (1994); see discussion infra part III.A.

[FN237]. See generally Carlson v. Stair, 3 Wash. App. 27, 30, 472 P.2d 598, 599 (1970).

[FN238]. "Prior lien" denotes a first or superior lien, and not one necessarily antecedent in time. Black's Law Dictionary 1194 (6th ed. 1990).

[FN239]. Wash. Rev. Code s 84.64.050 (1994) (authorizing treasurer to include any assessments due on the property which are the responsibility of the county treasurer to collect); see, e.g., id. s 36.58.140 (1994) (solid waste disposal); id. s 36.94.150 (1994) (sewer and water); id. s 85.08.480 (1994) (diking, drainage, and sewerage improvement districts).

[FN240]. Id. s 84.64.200 (1994). This is the only manner which taxes for subsequent years enter into the foreclosure proceeding. State ex rel. Seattle v. Stacy, 4 Wash. 2d 589, 594-95, 104 P.2d 575, 578 (1940).

[FN241]. 17 Wash. App. 745, 565 P.2d 1191 (1977).

[FN242]. Schwab, 48 Wash. App. at 421, 739 P.2d at 118.

[FN243]. Palzar, 17 Wash. App. at 749, 565 P.2d at 1193.

[FN244]. See 16 Eugene McQuillin, Municipal Corporations s 44.147, at 595- 96 (3d ed. 1984).

[FN245]. Id.

[FN246]. 103 Wash. 2d 96, 690 P.2d 1144 (1984).

[FN247]. Schwab, 48 Wash. App. at 421, 739 P.2d at 118.

[FN248]. Of course, with an interpretation contrary to Schwab, a new dilemma is created. Namely, whether foreclosing a tax lien imposed later in time extinguishes a prior demolition lien. Chapter 35.80.030(1)(h) provides ambiguous language: "The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes." Wash. Rev. Code s 35.80.030(1)(h) (1994). If equal rank, seemingly a general tax lien imposed later will not have the priority as provided in chapter 84.60.010. See Wash. Rev. Code s 84.60.010 (1994). Thus, the demolition lien would not be extinguished.

[FN249]. See Wash. Rev. Code s 35.80.010-35.80.040 (1994) (providing authority for municipalities and counties to repair and demolish unfit buildings).

[FN250]. See Wash. Rev. Code s 35.80.030(1)(h).

[FN251]. Wash. Rev. Code s 84.64.230 (1994).

[FN252]. Palzar v. Tacoma, 17 Wash. App. 745, 747, 565 P.2d 1191, 1192 (1977); see also Moe v. Brumfield, 182 Wash. 608, 610, 47 P.2d 847, 848 (1935); Maryland Realty Co. v. Tacoma, 121 Wash. 230, 234-35, 209 P. 1, 3 (1922).

[FN253]. Wash. Rev. Code s 84.64.230; id. s 35.49.160 (1994); Tacoma v. Pierce County, 79 Wash. 2d 361, 363, 485 P.2d 454, 455 (1971). The basis for the requirement is that the county holds the property in trust for the state, county, and other political subdivisions entitled to apportionment of tax on resale. Gustaveson v. Dwyer, 78 Wash. 336, 340, 139 P.2d 194, 196 (1914); State ex rel. King County Water Dist. v. Stacy, 10 Wash. 2d 248, 254-55, 116 P.2d 356, 340 (1941). Thus, the county is prohibited from diverting the proceeds to particular expense funds. Ocosta Consol. Sch. Dist. No. 123 v. Grays Harbor County, 44 Wash. 2d 525, 528, 268 P.2d 663, 665 (1954) (prohibiting transfer of property to county in order to divert funds from timber sale without apportioning funds among other government agencies).

[FN254]. 91 Op. Wash. Att'y Gen. 25 (1991).

[FN255]. But see Shelton v. Klickitat County, 152 Wash. 193, 198-99, 277 P. 839, 842 (1939) (finding that despite acquisition of title by county because of the lack of bidders, subsequent resale did not extinguish an outstanding irrigation lien).

[FN256]. McQuillin, supra note 244, s 44.143.

[FN257]. United States v. New Britain, 347 U.S. 81, 86 (1954).

[FN258]. In re Pennsylvania Cent. Brewing Co., 114 F.2d 1010, 1012 (3d Cir. 1940).

[FN259]. See generally Carlson v. Stair, 3 Wash. App. 27, 30, 472 P.2d 598, 599 (1970).

[FN260]. Brower v. Wells, 103 Wash. 2d 96, 108, 690 P.2d 1144, 1151-52 (1984); Wingard v. Heinkel, 70 Wash. 2d 730, 732, 424 P.2d 1010, 1011-12 (1967). This has not always been the case. See Anderson v. King County, 200 Wash. 354, 364-65, 93 P.2d 284, 288 (1939) (refusing to reimburse purchaser, who relying on its existence, purchased property where building had been demolished before the tax sale); Shelton v. Klickitat County, 152 Wash. 193, 197-98, 277 P. 839, 840 (1929) (refusing to refund purchase money when property acquired by county at tax sale was subsequently sold to purchaser without notice of outstanding assessments).

[FN261]. Wingard, 70 Wash. 2d at 732, 424 P.2d at 1011.

[FN262]. Brower, 103 Wash. 2d at 108, 690 P.2d at 1151-52. Earlier cries for greater protection have also gone unheeded. See L. R. Bonneville, Jr., How Secure is Your Tax Foreclosure Title?, 23 Wash. L. Rev. 132, 137-38 (1948) (suggesting purchaser should be protected by holding public officers responsible for the true value of the property at the time of the purchase or the actual loss to the taxpayer).

[FN263]. Wash. Rev. Code s 7.28.160 (1994); Ward v. Huggins, 16 Wash. 530, 535, 48 P. 240, 242-43 (1897) (allowing recovery of taxes paid).

[FN264]. See Sac Downtown Ltd. Partnership v. Kahn, 123 Wash. 2d 197, 204-06, 867 P.2d 605, 609 (1994).

[FN265]. See generally Carlson v. Stair, 3 Wash. App. 27, 30, 472 P.2d 598, 600 (1970).

[FN266]. Hilton v. DeLong, 188 Wash. 162, 170, 61 P.2d 1290, 1295 (1936) (refusing to "unsettle" tax title despite fact that delinquent taxes was one-tenth of property's value); see also Savage v. Ash, 86 Wash. 43, 47, 149 P. 325, 326 (1915). There, the court succinctly summarized the statute's purpose, "The purpose of statutes like the present is to make such titles desirable as investments by making them more secure." Id.

[FN267]. See, e.g., Eagles v. General Elec. Co., 5 Wash. 2d 20, 35, 104 P.2d 912, 918 (1940); Wilson v. Korte, 91 Wash. 30, 33, 157 P. 47, 49 (1916); Sparks v. Standard Lumber Co. 92 Wash. 584, 586, 159 P. 812, 814 (1916); Rushton v. Borden, 29 Wash. 2d 831, 839, 190 P.2d 101, 106 (1948); Label v. Cleasby, 13 Wash. App. 789, 791, 537 P.2d 859, 861 (1975). With the exceptions, of course, being those interests that are unaffected or prevail despite the foreclosure sale or a suit by the former interested parties that subjects the purchaser to divestment. See discussion infra part IV.

[FN268]. Bassett v. Spokane, 98 Wash. 654, 656, 168 P. 478, 479 (1917).

[FN269]. Id. at 656, 168 P. at 478; see Gustaveson v. Dwyer, 78 Wash. 336, 338-39, 139 P. 194, 195 (1914).

[FN270]. As the court recognized in Savage v. Ash:
[T]ax titles, seemingly, especially in earlier periods of our history, did not meet with favor from the courts; indeed, with such little regard were such titles held that the phrase "worthless as a tax title" was proverbial, and no one but those of a speculative turn would deal with property under such titles, and those only in cases where the chances of gain were large and the amount risked proportionally small.
86 Wash. at 47, 149 P. at 326.

[FN271]. Sparks, 92 Wash. at 587, 159 P. at 814.

[FN272]. Lara v. Sandell, 52 Wash. 53, 55, 100 P. 166, 167 (1909) (stating rule); Hamilton v. Witner, 50 Wash. 689, 695, 97 P. 1084, 1086 (1908) (stating rule); Huber v. Brown, 57 Wash. 654, 657, 107 P. 850, 851-52 (1910) (iterating void tax deed constitutes sufficient basis for running of statute of limitations); Baylis v. Kerrick, 64 Wash. 410, 412, 116 P. 1082, 1082 (1911) (dismissing owner's argument that statute of limitations could run without entry of foreclosure decree); Fish v. Fear, 64 Wash. 414, 414-15, 116 P. 1083, 1083 (1911) (companion case of Baylis); Fleming v. Stearns, 66 Wash. 655, 656-57, 120 P. 522, 523 (1912) (dismissing claim despite allegations of fraud); Savage v. Ash, 86 Wash. 43, 46-47, 149 P. 325, 326 (1915) (dismissing claim despite allegations of fraud); Wilson v. Korte, 91 Wash. 30, 34, 157 P. 47, 49 (1916) (stating rule).

[FN273]. Sparks v. Standard Lumber Co., 92 Wash. 584, 587, 159 P. 812, 814 (1916); Wilson, 91 Wash. at 33, 157 P. at 49.

[FN274]. 2 Rufford G. Patton & Carroll G. Patton, Patton on Land Titles s 490, at 379-80 (2d ed. 1957).

[FN275]. Id. s 490.

[FN276]. Carlson v. Stair, 3 Wash. App. 27, 30, 472 P.2d 598, 599 (1970) (stating rule); Shelton v. Klickitat County, 152 Wash. 193, 197-98, 277 P. 839, 841 (1929).

[FN277]. Pierce County v. Newbegin, 27 Wash. 2d 451, 455, 178 P.2d 742, 743 (1947); Brower v. Wells, 103 Wash. 2d 96, 108, 690 P.2d 1144, 1152 (1984). The underlying reasoning is that the purchaser gambles on the validity of the title for a nominal price with expectations of large profits. Brower, 103 Wash. 2d at 108, 690 P.2d at 1152. But see Sparks, 92 Wash. at 586, 159 P. at 814 (indicating that the rule of caveat emptor is overthrown by statute). Sparks is reconcilable as it applies to actions between the purchaser and the party seeking to invalidate the tax deed. Id.

[FN278]. Shelton, 152 Wash. at 197-98, 277 P. at 841 (refusing to reimburse purchaser for assessment liens not disclosed in tax sale).

[FN279]. Anderson v. King County, 200 Wash. 354, 365, 93 P.2d 284, 288 (1939).

[FN280]. Shelton, 152 Wash. at 198-99, 277 P. at 841-42. The result in Shelton appears overruled to the extent that it conflicts with more recent interpretations of the effect of a county selling property acquired by the county at a tax sale. See discussion supra part III.C.3.

[FN281]. King County v. Odman, 8 Wash. 2d 32, 33, 111 P.2d 228, 229 (1941).

[FN282]. Larson v. Murphy, 105 Wash. 36, 39, 177 P. 657, 659 (1919).

[FN283]. Sparks v. Standard Lumber Co., 92 Wash. 584, 588-89, 159 P. 812, 815 (1916); see also Williams v. Pittock, 35 Wash. 271, 274, 77 P. 385, 386 (1904) ("It is the land itself with which the state is concerned....").

[FN284]. Wash. Rev. Code s 84.64.180 (1994).

[FN285]. For an early discussion of the remedies available to a taxpayer, see Breck P. McAllister, Taxpayers' Remedies--Washington Property Taxes, 13 Wash. L. Rev. 91 (1938).

[FN286]. Wash. Rev. Code s 84.64.120 (1994).

[FN287]. Id.

[FN288]. Although the county treasurer does not have the power to indefinitely postpone carrying out the foreclosure proceedings. 1929-30 Op. Wash. Att'y Gen. 843 (1930).

[FN289]. The paucity of cases reveals the truth of this proposition. But see In re King County for the Foreclosure of Liens for Delinquent Real Property Taxes for the Years 1985 Through 1988, 117 Wash. 2d 77, 78, 811 P.2d 945, 949 (1991) (providing an exception to the rule) [hereinafter In re King County]. The sophisticated purchaser, then, would seemingly wait more than thirty days after the judgment for foreclosure is entered before asserting any ownership or possessory rights. The delay would at least eliminate this route of relief for the unsuspecting former owner.

[FN290]. 53 Wash. 248, 249, 101 P. 886, 886 (1909).

[FN291]. Id. at 251-52, 101 P. at 887.

[FN292]. See Wash. R. App. P. 1.2(a); id. 18.8(a).

[FN293]. Wash. Rev. Code s 84.64.120 (1994).

[FN294]. Id. In extraordinary circumstances, the tender can be waived if the purchasers at the foreclosure sale assert title and refuse to consider the tender.

[FN295]. Old Republic Mining Co. v. Ferry County, 69 Wash. 600, 601-02, 125 P. 1018, 1019 (1912).

[FN296]. Taylor v. Huntington, 34 Wash. 455, 462, 75 P. 1104, 1106 (1904).

[FN297]. Wash. Rev. Code s 84.68 (1994). An action to "impress a trust upon the lands" acquired by a tax sale purchaser has been determined to fall under this type of remedial route. Eagles v. General Elec. Co., 5 Wash. 2d 20, 27, 104 P.2d 912, 914 (1940).

[FN298]. Wash. Rev. Code s 84.68.080 (1994).

[FN299]. Everett v. Morgan, 133 Wash. 225, 233, 233 P. 317, 319 (1925) (not requiring preliminary tender of taxes when amount foreclosed on was only for delinquent local assessment).

[FN300]. Merritt v. Corey, 22 Wash. 444, 446-47, 61 P. 171, 172 (1900); but see Empey v. Yost, 182 Wash. 17, 22, 44 P.2d 774, 776 (1935) (finding tender at trial sufficient). Empey is reconcilable on the basis the sale was to a county employee and thus it was void on the basis of public policy. Id. See discussion supra note 38 (indicating sale to county employee makes sale void).

[FN301]. King County v. Rea, 21 Wash. 2d 593, 596, 152 P.2d 310, 311 (1944).

[FN302]. Id.; see also Lewiston Water & Power Co. v. Asotin County, 24 Wash. 371, 374, 64 P. 544, 545 (1901) (non-property foreclosure case illustrating the general rule).

[FN303]. Wash. Rev. Code s 84.68.090 (1994); see Wilfong v. Ontario Land Co., 171 F. 51, 53-54 (9th Cir. 1909) (failure of complaint to allege tender is a fatal defect when an objection is made).

[FN304]. Wash. Rev. Code s 84.68.100 (1994).

[FN305]. Id. s 4.16.090 (1994); see, e.g., Anderson v. Spokane, P. & S.R. Co., 57 Wash. 439, 440, 107 P. 183, 184 (1910).

[FN306]. Eagles v. General Elec. Co., 5 Wash. 2d 20, 27, 104 P.2d 912, 914 (1940).

[FN307]. Fish v. Fear, 64 Wash. 414, 414-15, 116 P. 1083, 1083 (1911); Baylis v. Kerrick, 64 Wash. 410, 413-14, 116 P. 1082, 1083 (1991); Huber v. Brown, 57 Wash. 654, 657, 107 P. 850, 857 (1910).

[FN308]. Jorgenson v. Thurston County, 145 Wash. 282, 283, 259 P. 720, 720 (1927); Twardus v. Crewson, 182 Wash. 522, 524, 47 P.2d 829, 830 (1935); Turpen v. Johnson, 26 Wash. 2d 716, 721, 175 P.2d 495, 497-98 (1946); White v. Gehrman, 1 Wash. 2d 504, 507, 96 P.2d 453, 454 (1939); Huber, 57 Wash. at 657, 107 P. at 851; Eagles, 5 Wash. 2d at 26, 104 P.2d at 913; Lara v. Sandell, 52 Wash. 53, 56, 100 P. 166, 167 (1909); Savage v. Ash, 86 Wash. 43, 47, 149 P. 325, 327 (1915).

[FN309]. White, 1 Wash. 2d at 507, 96 P.2d at 455.

[FN310]. Tamblin v. Crowley, 99 Wash. 133, 141, 168 P. 982, 985 (1917).

[FN311]. Porter v. Burkley, 112 Wash. 282, 284, 191 P. 799, 800 (1920).

[FN312]. White, 1 Wash. 2d at 509, 96 P.2d at 455.

[FN313]. Dabney v. Stearns, 73 Wash. 583, 586, 132 P. 400, 402 (1913) (property had become community property and both parties were not served within the three-year period).

[FN314]. Ryno v. Snider, 58 Wash. 457, 460, 109 P. 55, 56 (1910).

[FN315]. Savage v. Ash, 86 Wash. 43, 46-47, 149 P. 325, 327 (1915) (barring action although fraud alleged); Maher v. Potter, 60 Wash. 443, 445, 111 P. 453, 453 (1910) (allowing action after three years when title was acquired by conspiracy).

[FN316]. Turpen v. Johnson, 26 Wash. 2d 716, 727, 175 P.2d 495, 501 (1946).

[FN317]. Morcom v. Brunner, 30 Wash. App. 532, 534, 635 P.2d 778, 780 (1981); Kupka v. Reid, 50 Wash. 2d 465, 472-73, 312 P.2d 1056, 1660 (1957); Berry v. Pond, 33 Wash. 2d 560, 564-65, 206 P.2d 506, 509 (1949). A corollary of this rule is that, if a tax sale purchaser subsequently brings an action for ejectment after three years from the date of the tax deed, the purchaser cannot assert the statute of limitations as a defense against the defendant's assertion that the tax deed is void. Buty v. Goldfinch, 74 Wash. 532, 542, 133 P. 1057, 1060 (1913).

[FN318]. Morcom, 30 Wash. App. at 534, 635 P.2d at 780.

[FN319]. Fitzgerald v. Neves, Inc., 15 Wash. App. 421, 426, 550 P.2d 52, 55 (1976) (indicating when property is "wild and unimproved," the purchaser must have exhibited a degree of dominion and control sufficient to directly confront and challenge the dominion and control previously enjoyed by the original owner).

[FN320]. Morcom, 30 Wash. App. at 535, 635 P.2d at 780 (no possession at all by purchaser insufficient to allow invoking the statute of limitation's defense).

[FN321]. Stephens v. Kesselburg, 19 Wash. 2d 427, 436, 143 P.2d 289, 293 (1943); Oregon Mortgage Co. v. Leavenworth Secs. Corp. 197 Wash. 436, 439, 86 P.2d 206, 207 (1918); Maher v. Potter, 60 Wash. 443, 445, 111 P. 453, 453 (1910); Shepard v. Vincent, 38 Wash. 493, 500, 80 P. 777, 779 (1905).

[FN322]. Port of Port Angeles v. Davis, 21 Wash. 2d 660, 666, 152 P.2d 614, 617 (1944); Smith v. Jansen, 43 Wash. 6, 8-9, 85 P. 672, 673 (1906).

[FN323]. Blinn v. Grindle, 58 Wash. 679, 681, 109 P. 122, 123 (1910); Hembree v. McFarland, 55 Wash. 605, 607, 104 P. 837, 838 (1909).

[FN324]. Wash. Rev. Code s 84.64.180 (1994). One commentator, though, has argued that the case of Pierce County v. Newbegin, 27 Wash. 2d 451, 178 P.2d 742 (1947), created a third exception of "frustration of the taxpayer in the payment of his taxes by the public officer." L. R. Bonneville, Jr., How Secure is Your Tax Foreclosure Title?, 23 Wash. L. Rev. 132, 133 (1948). Shortly after, other commentators suggested a fourth exception was created by the Washington Supreme Court's decision in Berry v. Pond, 33 Wash. 2d 560, 566, 206 P.2d 506, 509 (1949). Priscilla A. Townsend & Harry M. Cross, Security of Tax Foreclosure Titles, Chapter 2, 25 Wash. L. Rev. 83 (1950). Namely, "where property on which tax is foreclosed is immediately adjacent to that on which a taxpayer has paid taxes and which the taxpayer believes and has reason to believe is included in the description in his tax treatment." Id. at 90. Subsequent treatment by the courts has borne out the third exception's existence but

not the fourth. See Label v. Cleasby, 13 Wash. App. 789, 792, 537 P.2d 859, 861 (1975) (iterating third exception and refusing to find the fourth exception); Nalley v. Hanson, 11 Wash. 2d 76, 85, 118 P.2d 435, 439 (1941) (iterating third exception); Palin v. Sherman, 38 Wash. 2d 806, 808, 232 P.2d 105, 106 (1951) (refusing to apply fourth exception). But see Smith v. Henley, 53 Wash. 2d 71, 72, 330 P.2d 712, 712 (1958) (applying presumably both the third and fourth exception).

[FN325]. Sasse v. King County, 196 Wash. 242, 250, 82 P.2d 536, 540 (1938).

[FN326]. Id. The court opines regarding where a party did not possess an interest:
[E]very purchaser at resale would be subject to the hazard of later suits by persons having no direct interest in the property. As a consequence, there would be no safety in existing tax titles, nor would there be any incentive in the future to bid at such sales. The county would thus be hampered in collecting delinquent taxes, and properties sold under tax foreclosure would remain on the rolls indefinitely.
Id. at 251, 82 P.2d at 541.

[FN327]. Solberg v. Baldwin, 46 Wash. 196, 200, 89 P. 561, 563 (1907) (dismissing argument that only if the tax is void is it assertable as a defense).

[FN328]. Port of Port Angeles v. Davis, 21 Wash. 2d 660, 666, 152 P.2d 614, 616 (1944).

[FN329]. Port of Port Angeles, 21 Wash. 2d at 666, 152 P.2d at 617; Smith v. Jansen, 43 Wash. 6, 8-9, 85 P. 672, 673 (1906).

[FN330]. See Smith, 43 Wash. at 8, 85 P. at 673.

[FN331]. See Wash. Rev. Code s 84.38 (1994).

[FN332]. Id. s 84.36.005 (1994).

[FN333]. Id. s 84.64.050 (1994); id. s 84.38.

[FN334]. Libby, McNeil & Libby v. Ivarson, 19 Wash. 2d 723, 730, 144 P.2d 258, 261 (1943) (stating a legislature has wide discretion in classifying property for exemption from taxation and the exercise is not subject to judicial review unless clearly arbitrary).
A recent attorney general opinion has concluded that a property owner cannot avoid paying property taxes by claiming to hold the property as an allodial free estate. 1996 Op. Wash. Att'y Gen. (1996), available in 1996 WL 117789.

[FN335]. Pacific Northwest Conference of the Free Methodist Church v. Barlow, 77 Wash. 2d 487, 492, 463 P.2d 625, 629 (1969); Norwegian Lutheran Church of Am. v. Wooster, 176 Wash. 581, 589, 30 P.2d 381, 385 (1934); Spokane v. Spokane County, 169 Wash. 355, 358, 13 P.2d 1084, 1085 (1932); Corporation of the Catholic Archbishop of Seattle v. Johnston, 89 Wash. 2d 505, 507, 573 P.2d 793, 794 (1978).

[FN336]. E.g., Pacific Northwest Conference, 77 Wash. 2d at 492, 463 P.2d at 629; Thurston County v. Sisters of Charity, 14 Wash. 264, 266, 44 P. 252, 252 (1896).

[FN337]. Catholic Archbishop of Seattle, 89 Wash. 2d at 507, 573 P.2d at 794.

[FN338]. Wash. Rev. Code s 84.36.010 (1994).

[FN339]. Id.

[FN340]. Air Base Hous., Inc. v. Spokane County, 56 Wash. 2d 642, 645, 354 P.2d 903, 904 (1960).

[FN341]. Skate Creek Logging Co v. Fletcher, 46 Wash. 2d 160, 162, 278 P.2d 1009, 1010 (1955). The exception is when the legal title is retained by the government entity only for security. Id.; Wildy v. Henry, 86 Wash. 387, 391-92, 150 P. 620, 622 (1915) (indicating that until performance of condition precedents are completed by purchaser of government lots, the lots are not subject to taxation); but see Washington Iron-Works Co. v. King County, 20 Wash. 150, 153, 54 P. 1004, 1005 (1898) (deeming property not exempt from taxation although legal title remained with state and only part of purchase price was paid).

[FN342]. Wash. Rev. Code s 84.36.020 (1994).

[FN343]. See Corporation of the Catholic Archbishop of Seattle v. Johnston, 89 Wash. 2d 505, 509-10, 573 P.2d 793, 795 (1978).

[FN344]. Wash. Rev. Code s 84.36.030(1) (1994).

[FN345]. Id. s 84.36.030(2).

[FN346]. Id. s 84.36.030(3).

[FN347]. Id. s 84.36.030(4).

[FN348]. Id. s 84.36.030(5).

[FN349]. Wash. Rev. Code s 84.36.030(6) (1994).

[FN350]. Id. s 84.36.035 (1994).

[FN351]. Id. s 84.36.037 (1994).

[FN352]. Id. s 84.36.040 (1994).

[FN353]. Id. s 84.36.041 (1994).

[FN354]. Wash. Rev. Code s 84.36.043 (1994).

[FN355]. Id. s 84.36.050 (1994).

[FN356]. Id. s 84.36.060 (1994).

[FN357]. Id. s 84.36.260 (1994).

[FN358]. Wash. Const. art. XIX, s 1 ("The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families."). The legislature has implemented that provision through the enactment of chapter 6.13. See Wash. Rev. Code s 6.13 (1994).

[FN359]. In re Cunningham, 163 B.R. 593, 595-96 (Bankr. W.D. Wash. 1994).

[FN360]. 1996 Op. Wash. Att'y Gen. (1996), available in 1996 WL 117789.

[FN361]. Wash. Rev. Code s 6.13.070(1) (1994).

[FN362]. 1996 Op. Wash. Att'y Gen. (1996), available in 1996 WL 117789 at *3.

[FN363]. 30 Wash. App. 837, 638 P.2d 627 (1982).

[FN364]. 1996 Op. Wash. Att'y Gen. (1996), available in 1996 WL 117789 at *6.

[FN365]. Id.; see Wash. Rev. Code s 6.13.080 (1994) (listing exceptions when the homestead exemption is not available).

[FN366]. If allowed, in most cases the homestead exemption would protect the real property the owner uses as a residence to the lesser of its net value or thirty thousand dollars. See Wash. Rev. Code ss 6.13.010(1), .030, . 070(1) (1994).

[FN367]. In re King County, 117 Wash. 2d 77, 84, 811 P.2d 945, 948-49 (1991); Morcom v. Brunner, 30 Wash. App. 532, 533, 635 P.2d 778, 778 (1981); In re Clallam County, 130 Wash. 2d 142, 146, 922 P.2d 73, 76 (1996).

[FN368]. In re King County, 117 Wash. 2d at 85, 811 P.2d at 949.

[FN369]. In re Sienkiewicz, 900 F.2d 206, 208 (9th Cir. 1990).

[FN370]. In re King County, 117 Wash. 2d at 87, 811 P.2d at 950, n.3 (holding that since the disposition of the case turns on statutory and not constitutional grounds no showing of prejudice is required).

[FN371]. Wash. Rev. Code s 84.64.050 (1994).

[FN372]. In re King County, 117 Wash. 2d 77, 84, 811 P.2d 945, 949 (1991); Kupka v. Reid, 50 Wash. 2d 465, 467-68, 312 P.2d 1056, 1057 (1957); Centralia v. Miller, 31 Wash. 2d 417, 423-24, 197 P.2d 244, 247 (1948); Wingard v. Pierce County, 23 Wash. 2d 296, 304, 160 P.2d 1009, 1013 (1945); Napier v. Runkel, 9 Wash. 2d 246, 253, 114 P.2d 534, 537 (1941).

[FN373]. In re King County, 117 Wash. 2d at 85, 811 P.2d at 949; Kupka, 50 Wash. 2d at 467, 312 P.2d at 1056; Ontario Land Co. v. Yordy, 44 Wash. 239, 244, 87 P. 257, 258 (1906); Napier, 9 Wash. 2d at 253, 114 P.2d at 537.

[FN374]. Wash. Rev. Code s 84.64.050. The chapter provides in part: "The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for information purposes only." Id.

[FN375]. Sac Downtown Ltd. Partnership v. Kahn, 123 Wash. 2d 197, 202, 867 P.2d 605, 608 (1994); In re King County, 117 Wash. 2d at 87, 811 P.2d at 950; Centralia, 31 Wash. 2d at 425, 197 P.2d at 248.

[FN376]. In re King County, 117 Wash. 2d at 86-87, 811 P.2d at 950; Centralia, 31 Wash. 2d at 425, 197 P.2d at 249.

[FN377]. See generally Sac Downtown, 123 Wash. 2d at 202, 867 P.2d at 605. This is notwithstanding the listing in the notice of an incorrect street address. In re King County, 117 Wash. 2d 77, 86-87, 811 P.2d 945, 950 (1991). In In re King County, the court declined to alter the common law rule despite the amendment which required a legal description and a local address. Id. at 87, 811 P.2d at 950. Documents that are necessary to identify the property do not need to be referenced in the notice. Sac Downtown, 123 Wash. 2d at 203, 811 P.2d at 609 n.2.

[FN378]. Spokane County ex rel. Sullivan v. Glover, 2 Wash. 2d 162, 170- 72, 97 P.2d 628, 631-32 (1940).

[FN379]. Id. at 170-72, 97 P.2d at 631-32.

[FN380]. Wenatchee Reclamation Dist. v. Mustell, 102 Wash. 2d 721, 728, 684 P.2d 1275, 1279 (1984).

[FN381]. Coolidge v. Pierce County, 28 Wash. 95, 102, 68 P. 391, 393 (1902).

[FN382]. Washington Timber & Loan Co. v. Smith, 34 Wash. 625, 630, 76 P. 267, 268 (1904) (description sufficient); McMurren v. Miller, 158 Wash. 284, 289, 290 P. 879, 881 (1930) (description insufficient).

[FN383]. Wenatchee Reclamation Dist., 102 Wash. 2d at 727-28, 684 P.2d at 1278; Asotin County Port Dist. v. Clarkston Community Corp. 2 Wash. App. 1007, 1010-11, 472 P.2d 554, 557 (1970).

[FN384]. Napier v. Runkel, 9 Wash. 2d 246, 263, 114 P.2d 534, 541 (1941) (finding notice insufficient when it referenced plat in assessor's possession but not recorded).

[FN385]. Stritzel v. Smith, 20 Wash. App. 218, 220, 579 P.2d 404, 405 (1978).

[FN386]. A tenant-in-common is not a party entitled to notice of the foreclosure of another tenant-in-common's fractional interest. In re Clallam County, 130 Wash. 2d 142, 148, 922 P.2d 73, 77 (1996). The court in Clallam County reasoned that both the nature of tenant-in-common's interest and the right of a tenant-in-common to transfer or encumber that interest without the consent of co-owners justifies the conclusion that other co-owners are not parties with an interest in the property. Id. The subsequent sale does affect the co-tenant's interest. Id. at 152, 922 P.2d at 79. The court notes prophetically that its holding will not apply in the "community property context." Id. at 158, 922 P.2d at 82.

[FN387]. 462 U.S. 791 (1983). There, the United States Supreme Court held that neither notice by publication and posting, nor mailing notice to the property owner provided a mortgagee of real property with adequate notice of a tax sale of the mortgaged property. Id. at 799-800.

[FN388]. 1984 Wash. Laws ch. 179, s 2.

[FN389]. In re King County, 117 Wash. 2d 77, 90-91, 811 P.2d 945, 952 (1991)

[FN390]. Id. at 90, 811 P.2d at 952.

[FN391]. Id.

[FN392]. Id. at 90-91, 811 P.2d at 952.

[FN393]. Id. at 91, 811 P.2d at 952.

[FN394]. See, e.g., In re Sienkiewicz, 900 F.2d 206, 208 (9th Cir. 1990); Rosholt v. County of Snohomish, 19 Wash. App. 300, 305, 575 P.2d 726, 729 (1978) (county's failure to provide both co-owners of property with proper notice renders the sale and tax deed void).

Other property interests the court considered in In re King County illustrate the rule's application. Persons with an interest in condominium property under easements and restrictive and affirmative covenants do not have substantial property interests that would entitle them to notice. In re King County, 117 Wash. 2d 77, 91, 811 P.2d 945, 952 (1991). The court found the protection afforded by chapter 84.64.460 "plainly means that an easement holder does not have a 'substantial property interest that is significantly affected by a tax sale.'" Id.; see also discussion supra part III.B.3. Likewise, a deed of trust beneficiary was not entitled to notice where the proceedings commenced before the beneficiary took interest in the property, before the deed of trust was recorded, and the beneficiary's name and address was not "readily ascertainable" at the time of the foreclosure. In re King County, 117 Wash. 2d at 92, 811 P.2d at 952. The beneficiary normally, though, would have a substantial interest affected by the sale. Id.

[FN395]. Pierce County v. Evans, 17 Wash. App. 201, 205, 563 P.2d 1263, 1266 (1977).

[FN396]. Id. at 206, 563 P.2d at 1266.

[FN397]. Colby v. Hines, 171 Wash. 83, 90, 17 P.2d 606, 609 (1932).

[FN398]. Id.

[FN399]. Burroughs v. McArthur, 147 Wash. 550, 553, 266 P. 194, 195 (1928).

[FN400]. In re King County, 117 Wash. 2d 77, 85, 811 P.2d 945, 949 (1991).

[FN401]. Larson v. Murphy, 105 Wash. 36, 177 P. 657 (1919) (finding notice sufficient when letters were sent, investigation of public records made, and inquiries at place of property were attempted).

[FN402]. Wingard v. Heinkel, 70 Wash. 2d 730, 732, 424 P.2d 1010, 1011 (1967) (purchaser at void tax sale entitled to full amount of purchaser price paid together with interest from the date of the sale). The court has interpreted the statute's requirements as creating a duty between the county and the subsequent purchaser. Id.

[FN403]. Cf. Wingard, 70 Wash. 2d at 732-33, 424 P.2d at 1012.

[FN404]. See, e.g., Pierce County v. Newbegin, 27 Wash. 2d 451, 455, 178 P.2d 742, 744 (1947); Smith v. Henley, 53 Wash. 2d 71, 75, 330 P.2d 712, 714 (1958); Nalley v. Hanson, 11 Wash. 2d 76, 87, 118 P.2d 435, 439 (1941). Newbegin was the first case that actually allowed the defense although a case ten years earlier had recognized its validity but found it inapplicable in that instance. See Shultz v. Kolb, 189 Wash. 187, 194, 64 P.2d 79, 82 (1937) ("We concede that this principle expresses the law of this state, but we are convinced that respondent has not brought herself within that principle under the degree of proof required.").

[FN405]. See Label v. Cleasby, 13 Wash. App. 789, 793, 537 P.2d 859, 861 (1975) (finding no frustration by a public official but rather only error of the taxpayer).

[FN406]. Shultz, 189 Wash. at 195, 64 P.2d at 82 (finding no clear, cogent, and convincing evidence where there was merely a statement that they had "talked to someone behind the counter" at the treasurer's office and the government employee had said "everything was all right"); Nalley, 11 Wash. 2d at 87-88, 118 P.2d at 439 (finding evidence definite, clear, and cogent when owner testified he went to treasurer's office with a map of his property, asked to pay taxes but was told to do so later, and paid taxes on statement later sent out but which misidentified all the property he owned).

[FN407]. Label, 13 Wash. App. at 793, 537 P.2d at 861.

[FN408]. Nalley, 11 Wash. 2d at 86, 118 P.2d at 439.

[FN409]. See discussion infra part IV.B.5. One dissenting opinion has recognized this peculiarity. See Bornstein Sea Foods, Inc. v. Whatcom County, 55 Wash. 2d 44, 50-51, 345 P.2d 601, 605 (1959) (Donworth, J., dissenting).

[FN410]. Pierce County v. Newbegin, 27 Wash. 2d 451, 452-55, 178 P.2d 742, 742-43 (1947).