

**134.504 Department to collect or contract with county attorney for collection of certificates of delinquency.**

- (1) The department shall be responsible for the collection of certificates of delinquency and personal property certificates of delinquency. The provisions of this section relating to certificates of delinquency shall also apply to personal property certificates of delinquency unless otherwise specifically noted. The department shall offer the collection duties related to certificates of delinquency and personal property certificates of delinquency to the county attorney in each county, unless the department determines that a county attorney has previously failed to perform collection duties in a reasonable and acceptable manner.
- (2) Any county attorney desiring to perform the collection duties shall enter into a contract with the department on an annual basis.
- (3) The terms of the contract shall specify the duties to be undertaken by the county attorney, which shall include, at a minimum, the duties set forth in subsection (4) of this section. The terms of the contract shall also provide that, if the county attorney fails to perform the duties required by the contract during the contract period, the department may assume all collection responsibilities.
- (4) The following duties shall be performed by the department or the county attorney, as the case may be, with regard to each certificate of delinquency:
  - (a) Within thirty (30) days after the establishment of a certificate of delinquency, the county attorney or the department shall mail a notice by regular mail to the owner of record on the assessment date at the address on the records of the property valuation administrator, or to the in-care-of address if an in-care-of address is provided as required by subsection (5) of this section. The notice shall:
    1. Include the name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;
    2. Advise that:
      - a. The certificate of delinquency is a lien of record against the property on which the taxes are due;
      - b. The amounts due are a personal obligation of the taxpayer on the assessment date; and
      - c. The certificate bears interest at the rate of twelve percent (12%) and, if not paid, will be subject to collection by the county attorney or the department as provided by law;
    3. Include the total amount due as of the date of the notice;
    4. Advise that anytime after ninety (90) days from the creation of the certificate of delinquency, the certificate of delinquency may be paid by a third-party purchaser and, that if so paid, the certificate of delinquency will be subject to collection by the third-party purchaser as provided by law. The notice shall also advise that a third-party purchaser may impose substantial additional administrative costs and fees associated with collection in addition to the amount due on the certificate of

delinquency, and that collection actions may include foreclosure. This provision shall not be included in notices sent for personal property certificates of delinquency; and

5. Advise that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department, and if terms are agreed to prior to the date of the sale.
- (b) The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the thirty (30) day notice was mailed along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.
  - (c)
    1. All thirty (30) day notices returned as undeliverable shall be submitted by the county attorney or department to the property valuation administrator, and a list of the returned notices shall be filed with the county clerk, who shall record the list in the order book of the county.
    2. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner, current mailing address, and in-care-of address, if any, as provided in KRS 382.135.
    3. The property valuation administrator shall return the notices with the corrected information to the county attorney or the department within twenty (20) days of receipt.
    4. Upon receipt of the new information from the property valuation administrator, the county attorney or the department shall resend the notice required by paragraph (a) of this subsection using the updated information.
  - (d)
    1. At least twenty (20) days after the mailing of the thirty (30) day notice required by paragraph (a) of this subsection, but within sixty (60) days of the establishment of a certificate of delinquency, the county attorney or department shall send a second notice, by regular mail, to owners of record whose tax bills remain delinquent, or to the in-care-of addresses or corrected address, if information regarding a new property owner has been received by the county attorney or the department under the provisions of paragraph (c) of this subsection. The notice shall include, at a minimum, the following information:
      - a. The name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;
      - b. A statement that a sale of tax claims will be held by the county clerk on the date established by the department for the sale. The text of the statement shall include the actual sale date, as well as a statement noting that the certificate of delinquency may be paid by a third-party purchaser at the sale, and if the certificate of delinquency is paid by a third-party purchaser, it will be subject to

collection by the third-party purchaser as provided by law, that significant additional collection fees will be imposed by the third-party purchaser, and that collection actions may include foreclosure. This statement shall not be included in notices sent to owners of property subject to a personal property certificate of delinquency; and

- c. A statement that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department and if terms are agreed to prior to the date of the sale.
2. The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the sixty (60) day notice was mailed, along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.
  3. If the notice required by paragraph (c) of this subsection is returned as undeliverable, and the property valuation administrator is not able to provide a corrected or updated address, the county attorney or the department shall address the sixty (60) day notice to "Occupant" and shall mail the notice to the address of the property to which the certificate of delinquency applies.
- (e) The county attorney or the department shall deliver to the property valuation administrator, at the same time the notice required by paragraph (d) of this subsection is sent, a list of the owners whose tax bills remain delinquent. The property valuation administrator shall review this list in accordance with KRS 132.220 to establish that the properties on the list can be identified and physically located.
  - (f) Anytime after the expiration of the one (1) year tolling period established by KRS 134.546, the county attorney or department may institute an action to collect the amount due on a certificate of delinquency owned by the taxing jurisdictions and in the possession of the county clerk. At least forty-five (45) days before instituting a legal action, the county attorney or department shall send, by regular mail, a notice of intent to initiate legal action to enforce the lien. The notice shall be sent to the owner of record of the property or to the in-care-of address or corrected address if either has been provided pursuant to this section.
- (5) If property subject to a certificate of delinquency has been transferred in any year after the assessment date, the property valuation administrator shall determine the in-care-of address supplied in the deed pursuant to KRS 382.135 and shall provide that information to the county attorney or the department.
  - (6) (a) Failure of the county attorney or the department to mail the notices required in subsection (4) of this section shall not affect the validity of the claim of the state, county, school district, and taxing district. However, the county attorney or the department shall not receive any compensation, commission, or

payment related to any certificate of delinquency for which the notices required by the provisions of subsection (4) of this section are not sent.

- (b) For each notice mailed, one dollar (\$1) shall be added to the amount of the certificate of delinquency, to offset the cost of mailing, and, upon collection, the county attorney or the department shall be paid such amounts as reimbursement for mailing costs.
- (7)
- (a) As compensation for the collection duties performed pursuant to a contract with the department, a county attorney shall be paid twenty percent (20%) of the amount due each taxing unit during the contract period, whether the amount is paid voluntarily, through sale, or under court order, and whether the amount is paid to the county clerk or the county attorney. The fee for the county attorney shall be added to the amount of the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.
  - (b) If payment in full is voluntarily made by the taxpayer to the county attorney or county clerk within five (5) days of the filing of the tax claim with the county clerk, the county attorney fee shall be waived.
  - (c) If a county attorney files a court action or files a cross-claim, the county attorney shall be paid an additional fee of thirteen percent (13%) of the amount of the certificate of delinquency and shall be reimbursed for costs incident to the court action. The additional fee and costs incident to the litigation shall be added to the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.
  - (d) If more than one (1) county attorney renders necessary services to collect on a certificate of delinquency, the county attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee.
- (8)
- (a) The county attorney shall establish a system to accept installment payments from delinquent taxpayers. The county attorney may, during the contract period, enter into an agreement with a delinquent taxpayer to accept installment payments on the certificates of delinquency. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.
  - (b) The county attorney may, upon written request of the taxpayer for good cause and with agreement of the affected taxing jurisdiction or fee recipient, waive or reduce fees and penalties that are part of a certificate of delinquency during settlement or negotiation with a taxpayer in accordance with guidance provided by the department.
- (9) Any action by the county attorney authorized by this chapter shall be filed on relation of the commissioner. A copy of any judgment obtained by the county attorney shall be sent to the department.
- (10)
- (a) The county attorney shall notify the county clerk and the department of the filing of a suit at the time the suit is filed and of payment agreements at the

time such agreements are entered into. The county clerk shall note on the certificate of delinquency the filing of the lawsuit or the existence of the payment agreement, and these certificates of delinquency shall not be available for purchase or payment by a third-party purchaser.

- (b) The county attorney shall provide to the county clerk at least ten (10) days but not more than twenty (20) days prior to the annual sale date for the county established pursuant to KRS 134.128, a protected list of current year certificates of delinquency that are:
  - 1. Under a payment plan with the county attorney on which payments are current;
  - 2. Involved in litigation initiated by the county attorney or in which the county attorney responds or files an answer; and
  - 3. Involved in bankruptcy litigation in which the county attorney has filed a claim.

The list shall include sufficient detail for the county clerk to accurately identify the property.

- (c) The county attorney shall notify the county clerk of the failure of any payment agreement and, upon notification to the clerk, the certificate of delinquency shall be available for purchase.
- (11) The department may make its delinquent tax collection databases and other technical resources, including but not limited to tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the department to protect taxpayer confidentiality, to ensure database integrity, or to address the concerns of the department.
- (12) (a) If a county attorney chooses not to contract for collection duties, or if a county attorney fails to perform the duties required by the contract, the department shall assume responsibility for all uncollected certificates of delinquency and personal property certificates of delinquency, including, at the option of the department, those with pending court action or for which the county attorney has entered into an installment payment agreement.
- (b) If the department assumes or retains responsibility for the collection of certificates of delinquency and personal property certificates of delinquency, the twenty percent (20%) fee that would have been paid to the county attorney under subsection (7) of this section, and any other fees or costs established by this section for the county attorney shall be paid to the department for deposit in the delinquent tax fund provided for under KRS 134.552.

**Effective:** April 7, 2010

**History:** Amended 2010 Ky. Acts ch. 75, sec. 9, effective April 7, 2010. -- Created 2009 Ky. Acts ch. 10, sec. 12, effective January 1, 2010.

**Legislative Research Commission Note** (4/7/2010). 2010 Ky. Acts ch. 75, sec. 7, subparagraphs 1., 2., and 3. of subsection (2)(c), codified as KRS 134.128(2)(c)1., 2., and 3., describe the types of certificates of delinquency for which payment is to be prohibited by third-party purchasers and are joined by the conjunction "or." 2010 Ky.

Acts ch. 75, sec. 9, creating subparagraphs (b)1., 2., and 3. of subsection (10) of this section, uses very similar language to describe the certificates of delinquency to be included on the protected list provided by the county attorney to the county clerk prior to the annual sale, however, these subparagraphs are joined by the conjunction "and." The drafter advises and the context indicates that the conjunction joining subparagraphs 1., 2., and 3. of subsection (10)(b) of 2010 Ky. Acts ch. 75, sec. 9, should be "or"; however, it could not be corrected as a manifest clerical or typographical error under the authority of KRS 7.136(1)(h), therefore subsection (10) of this statute retains the language as it appeared in 2010 Ky. Acts ch. 75.

**Legislative Research Commission Note (1/1/2010).** A reference to "subsection (8)" in subsection (12)(b) of this statute has been changed in codification to "subsection (7)" to correct a manifest oversight during the drafting of 09 RS BR 4, which became House Bill 262 and 2009 Ky. Acts ch. 10. Materials in the bill folder reveal that a subsection was deleted and subsequent subsections renumbered, but a conforming change was not made to the reference in subsection (12)(b). This manifest clerical or typographical error has been corrected by the Reviser of Statutes under the authority of KRS 7.136(1).