

134.128 Process for sale of certificate of delinquency by clerks to persons not listed in KRS 134.127(1)(a).

- (1) The sale of certificates of delinquency by county clerks to persons other than those listed in KRS 134.127(1)(a) shall be conducted in accordance with the provisions of this section.
- (2) The department shall promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. The process developed by the department shall:
 - (a)
 1. Establish an annual statewide schedule for the sale of certificates of delinquency in each county. The schedule shall be published on the department's Web site at least ten (10) days prior to the first sale. The sale in each county shall be administered by the county clerk.
 2. The sale in each county shall be scheduled at least ninety (90) days but not more than one hundred thirty-five (135) days after the unpaid tax claims are filed by the sheriff with the county clerk, unless the provisions of subparagraph 3. of this paragraph apply. The department may stagger the schedule so that sales are conducted on different dates and times in different counties.
 3. A county clerk who:
 - a. Due to the assessment schedule established by the department, anticipates receiving certificates of delinquency relating to unmined coal, oil or gas reserves, or any other mineral or energy resources assessed separately from the surface real property pursuant to KRS 132.820 too late to be included in the annual sale scheduled during the timeframes established by subparagraph 2. of this paragraph; and
 - b. Wants to include those certificates in the annual sale for the year in which the certificates of delinquency are created;may submit a request to the department to hold the annual sale for that county up to one hundred ninety-five (195) days after the bulk of the unpaid tax claims are filed by the sheriff with the county clerk in accordance with KRS 134.122;
 - (b) Except as provided in KRS 134.127(1)(a), prohibit the payment of any newly filed certificates of delinquency by a third party prior to the scheduled annual sale of certificates of delinquency for that year for that county;
 - (c) Prohibit the payment of any certificates of delinquency:
 1. Involved in bankruptcy litigation in which the county attorney or department has filed a claim;
 2. Involved in other litigation initiated by the county attorney or the department, or in which the county attorney or department responds or files a claim; or
 3. Under a payment plan that has been agreed to by the taxpayer and the county attorney or the department, and on which the payment agreement is in good standing;

- (d) Establish a process to be used by county clerks in determining the order in which interested third-party purchasers may select and pay available certificates of delinquency at the annual sale. The process shall, at a minimum:
 - 1. Be uniform in all counties to the extent practicable;
 - 2. Establish a process, if there is more than one (1) purchaser registered to purchase certificates of delinquency at the sale, that allows all interested purchasers an opportunity to purchase certificates of delinquency on an equitable basis. The sale shall not be structured in such a manner to allow one (1) third party to purchase all of the certificates of delinquency if there are other properly registered third parties that are also interested in purchasing certificates of delinquency;
 - 3. Establish fairness for all participants by prohibiting the participation of multiple related entities, or multiple individuals representing related interests as separate entities in the selection process at an annual sale. The department shall define "related entities" and "related interests" as part of the regulatory process; and
 - 4. Establish a process to be used by county clerks in identifying, verifying, and selling priority certificates of delinquency. The process shall:
 - a. Require third-party purchasers to submit a list of priority certificates of delinquency to the county clerk up to ten (10) days before the annual sale so that the clerk may identify and allocate priority certificates of delinquency to third-party purchasers prior to the annual sale;
 - b. Require that all priority certificates of delinquency allocated to a third-party purchaser prior to the annual sale be removed from the annual sale;
 - c. Allow any third-party purchaser holding a certificate of delinquency on a parcel of property from a prior year to submit a priority list and purchase any priority certificates of delinquency to which the third-party purchaser is entitled, notwithstanding that the third-party purchaser may be related to another third-party purchaser participating in the sale; and
 - d. Give priority to the third-party purchaser holding a certificate of delinquency from the most recent tax year if more than one (1) third party holds an outstanding certificate of delinquency on a parcel of property;
- (e) Require all potential participants in the sale to register at least one (1) week in advance with the county clerk;
- (f) Require a review of the list of registered participants, either by the county clerk or the department, prior to the sale to ensure that:
 - 1. All registered participants seeking to pay multiple certificates of delinquency are properly registered with the department as required by KRS 134.129; and

2. No registered participants or related entities or related interests prohibited from separate participation in the annual sale pursuant to the provisions of paragraph (d)3. of this subsection and the administrative regulations promulgated thereunder have separately registered to participate in the annual sale;
 - (g) Establish advance deposit requirements for registered participants based upon the maximum amount the registered participant may pay for desired certificates of delinquency;
 - (h) Establish a registration fee to be paid to the clerk. The registration fee paid to each county shall not exceed two hundred fifty dollars (\$250) annually and may be tiered;
 - (i) Establish payment requirements, which may include nullification of the payment and forfeiture of the advance deposit if a third-party purchaser fails to produce full payment within the specified time; and
 - (j) Establish payment methods.
- (3) Any person who, in any calendar year:
- (a) Pays or plans to pay more than five (5) certificates of delinquency statewide;
 - (b) Pays or plans to pay more than three (3) certificates of delinquency in any county; or
 - (c) Invests or plans to invest more than ten thousand dollars (\$10,000) in the payment of certificates of delinquency on a statewide basis in any calendar year;
- shall register with the department annually as provided in KRS 134.129.
- (4) The department shall be responsible for monitoring the sale of certificates of delinquency.
- (5) (a) At least thirty (30) but not more than forty-five (45) days before the scheduled sale date, the county clerk shall cause a notice to be published in accordance with the provisions of KRS Chapter 424. The notice shall list by property owner, property address, and if available, parcel number or lot number, all certificates of delinquency available for sale. The notice shall provide the date, time, and location of the sale. In addition, the notice shall list, in a separate section, all personal property certificates of delinquency held by the county clerk.
- (b) As compensation for advertising the sale, the county clerk shall receive five dollars (\$5) for each certificate of delinquency and personal property certificate of delinquency advertised. The fee shall be added to the amount of the certificate of delinquency or personal property certificate of delinquency and shall be paid by the person paying the certificate of delinquency or personal property certificate of delinquency.
- (c) The cost of placing the advertisement shall be paid by the county. The cost shall be added to the amount of the certificate of delinquency or personal property certificate of delinquency and shall be paid by the person paying the certificate of delinquency or personal property certificate of delinquency. The department shall establish a formula that may be used by counties in allocating the advertising costs among the

delinquent tax claims. The formula shall take into account that a percentage of delinquent tax claims remains unpaid.

- (6) Any certificate of delinquency not paid at the annual sale, not subject to a payment plan with the department or county attorney, and not known to be in litigation may be paid to the county clerk at any time by any person after the sale, provided that:
 - (a) Any person required by KRS 134.129 to register with the department shall hold a current certificate of registration at the time of purchase;
 - (b) Any person not previously registered with the county clerk during the calendar year shall register with the county clerk and shall pay the registration fee established by administrative regulation pursuant to subsection (2)(h) of this section; and
 - (c) Any person previously registered with the county clerk during the calendar year who has not paid the maximum registration fee for that year shall pay the appropriate amount for each certificate of delinquency paid, as established by administrative regulation pursuant to subsection (2)(h) of this section, until the maximum registration has been paid.
- (7) Any certificate of delinquency received by the county clerk too late to be included in the annual sale in any year shall be retained by the clerk until the next scheduled annual sale. During that time period, the clerk may accept payment on the certificate of delinquency only from those individuals and entities listed in KRS 134.127(1)(a).

Effective: April 23, 2012

History: Amended 2012 Ky. Acts ch. 161, sec. 4, effective April 23, 2012. -- Amended 2010 Ky. Acts ch. 75, sec. 7, effective April 7, 2010. -- Created 2009 Ky. Acts ch. 10, sec. 10, effective January 1, 2010.

Legislative Research Commission Note (4/23/2012). The internal numbering of subsection (2)(a) of this statute has been modified by the Reviser of Statutes from the way it appeared in 2012 Ky. Acts ch. 161, sec. 4, under the authority of KRS 7.136(1). The words in the text were not changed.

Legislative Research Commission Note (1/1/2010). A reference to "paragraph (d)2." in subsection (2)(f)2. of this statute has been changed in codification to "paragraph (d)3." to correct a manifest oversight during the amendment process. House Committee Amendment 2 to House Bill 262, which became 2009 Ky. Acts ch. 10, inserted a new subparagraph 2. in subsection (2)(d) of this statute and renumbered the subsequent subparagraphs, but did not make the conforming change to the reference in subsection (2)(f)2. This manifest clerical or typographical error has been corrected by the Reviser of Statutes under the authority of KRS 7.136(1).