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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Ad Valorem Taxes -- Tax Sales --
Real Property -- Owner -- Funds

Excess proceeds arising from tax
sale are properly payable to owner of
property or representative or agent
of owner.

Original owner can contract with
third party to receive the excess
funds.

Dear Mr. Pinkston:

This opinion of the Attorney General is issued in response to your
request on behalf of the Elmore County Commission.

QUESTION

Can anyone other than the true owner make
a claim for excess funds arising from a tax sale?

FACTS AND ANALYSIS

Section 40-10-28 of the Code of Alabama states as follows:

The excess arising from the sale of any
real estate remaining after paying the amount of
the decree of sale, and costs and expenses sub-
sequently accruing, shall be paid over to the
owner, or his agent, or to the person legally
representing such owner, or into the county trea-
sury, and it may be paid therefrom to such owner,

agent or representative in the same manner as to the excess arising from the sale of personal property sold for taxes is paid. If such excess is not called for within three years after such sale by the person entitled to receive the same, upon the order of the county commission stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold and the amount of such excess, the county treasurer shall place such excess of money to the credit of the general fund of the county and make a record on his books of the same, and such money shall thereafter be treated as part of the general fund of the county. At any time within 10 years after such excess has been passed to the credit of the general fund of the county, the county commission may on proof made by any person that he is the rightful owner of such excess of money order the payment thereof to such owner, his heir or legal representative, but if not so ordered and paid within such time, the same shall become the property of the county.

ALA. CODE § 40-10-28 (2003).

In an opinion issued by this Office to Preston Hornsby, this Office stated that any excess funds arising from the sale of real estate for unpaid property taxes is properly payable to the former owner, i.e., the person who initially failed to pay the taxes on the property. Opinion to Preston Hornsby, Macon County Probate Judge, dated July 26, 1983, A.G. No. 83-00401. Your question goes further and asks whether the term "owner" could mean someone who has a legal right to the funds but who was *not* the former owner of the property.

Specifically, you state that certain companies are persuading individuals in your county to convey away their right to these excess funds. Apparently, these companies contact individuals in the county who have a right to excess funds pursuant to section 40-10-28. For a service fee, for example 30 percent of the amount recovered, the company will attempt to retrieve this excess on behalf of the prior owner. Your question asks whether Elmore County can rightfully pay over any excess to this third party.

Section 40-10-28 states that the excess can be paid to the owner, his agent, or to the person legally representing such owner. If the third party

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discussed above has a valid agreement with the prior owner rightfully to obtain the excess, Elmore County could rightfully pay this money over as the third party has become the person legally representing such owner.

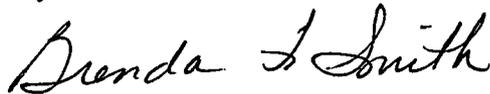
CONCLUSION

Excess proceeds arising from a tax sale are properly payable to the owner of the property or a representative or agent of the owner. The original owner can contract with third party to receive the excess funds.

I hope this answers your question. If this Office can be of further assistance please contact Keith Maddox, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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