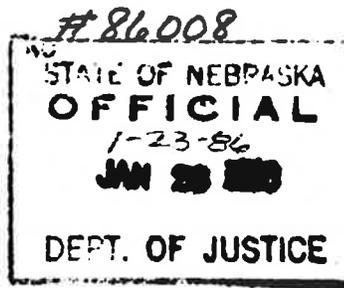


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: January 22, 1986

SUBJECT: The Length of the Redemption Period in a Tax Foreclosure Action

REQUESTED BY: Robert H. Conner  
Saline County Attorney

WRITTEN BY: Robert M. Spire, Attorney General  
John Boehm, Assistant Attorney General

This is in response to your letter of December 27, 1985, concerning the length and timing of the redemption period in a tax foreclosure action.

Your first question is "Must a three-year redemption period expire before a tax foreclosure action can be instituted?" There are three statutes which have a bearing on this question. The first is Neb.Rev.Stat. §77-1824 (Reissue 1981) which provides in part that "The owner or occupant of any land sold for taxes . . . may redeem the same at any time before the delivery of tax deed by the county treasurer. . . ."

Neb.Rev.Stat. §77-1837 (Reissue 1981) further provides in part that "at any time within 90 days after the expiration of three years from the date of sale of any real estate for taxes . . . if the same shall not have been redeemed, the county treasurer, on request . . . shall execute and deliver to the purchaser . . . a deed of conveyance. . . ."

Finally, Neb.Rev.Stat. §77-1902 (Reissue 1981) allows the holder of a tax certificate to foreclose the lien of the tax certificate by filing an action in District Court and provides in part that "such action shall only be brought within ninety days after the expiration of the time for redemption from the tax sale upon which the tax sale certificate or tax deed is based."

The Nebraska Supreme Court dealt with these statutes in the case of Bish v. Fletcher, 219 Neb. 863, 366 N.W.2d. 778 (1985). After examining the three statutes the court in reference to §77-1837 stated as follows:

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"We read that section as plainly stating that a holder of a tax certificate may request a deed at any time after 3 years from the date of sale and up until 90 days thereafter, and because §77-1824 allows the owner to redeem at any time before delivery of a tax deed, it would be possible for the period of redemption to cover at least 3 years and 90 days."

Id. at 865.

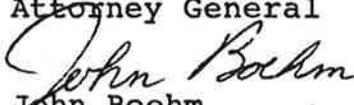
As indicated above §77-1902 authorizes a mortgage foreclosure action to be brought only within ninety days after the expiration of the period of redemption stemming from the tax sale. Based upon the plain wording of this statute and the Supreme Court's interpretation of these three provisions in the above case, the answer to your question would clearly appear to be that a three-year redemption period must expire before any tax foreclosure action can be initiated. See also Attorney General's Opinion No. 108, dated July 18, 1975, (copy enclosed) in which we addressed a similar question concerning these provisions.

Your second question is "Does the redemption period begin to run only upon an administrative sale of the property for taxes?" As noted above, §77-1837 provides that the county treasurer shall deliver a deed of conveyance "at any time within ninety days after the expiration of three years from the date of sale," if the property has not been otherwise redeemed. Section 77-1902 also indicates that a foreclosure action may only be brought within ninety days after the expiration of "the time for redemption from the tax sale upon which the tax sale certificate or tax deed is based." (Emphasis added.)

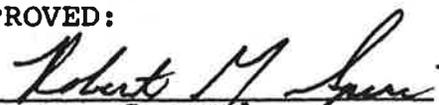
It likewise seems apparent from an analysis of the case of Bish v. Fletcher, cited above, that the Supreme Court interpreted these provisions to plainly mean that the redemption period commences to run on the date of the sale of the property for taxes. Thus, the impact of these statutory provisions and the Supreme Courts interpretation of them, is that an action for foreclosure on a tax certificate may only be brought within the ninety day period following the three-year redemption period which commences to run on the date of sale of the property.

Sincerely,

ROBERT M. SPIRE  
Attorney General

  
John Boehm  
Assistant Attorney General

JB:jem  
Enclosure  
86-01  
APPROVED:

  
Attorney General