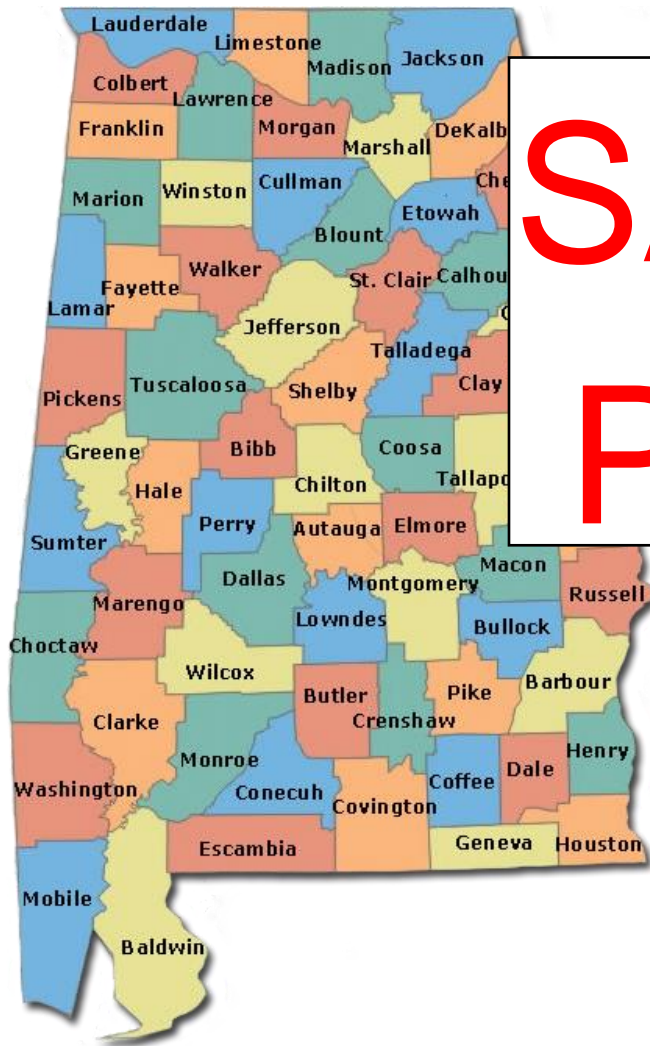


# Alabama Tax Sales

(13<sup>th</sup> ed.)

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## Denise L. Evans



# SAMPLE PAGES

Denise L. Evans, JD

[www.ButlerEvansEducation.com](http://www.ButlerEvansEducation.com)

[Denise@ButlerEvansEducation.com](mailto:Denise@ButlerEvansEducation.com)

# Alabama Tax Sales

*Denise L. Evans, JD*

This book is written for five audiences: Tax sale investors, taxpayers with redemption questions, county tax administrators, the attorneys who represent all of them, and the judges who must resolve their disputes. These audiences look for different things in their reference materials. While the research quality and citations are equivalent to the typical legal treatise, the writing style is much more informal. Some topics include far more detail than would interest the typical layperson. Disclosure is made at the beginning of those sections, with directions to the next page of interest to non-lawyers. Some topics include more practical advice than is meaningful to the average lawyer. Despite that, I think all groups will find this book an invaluable resource.

Denise Evans combines her Texas legal experience, her Alabama real estate brokerage experience, and her investment experiences to create no-fluff practical advice for lawyer and practitioner alike. She is a nationally recognized expert on Alabama tax sale law, a very popular seminar speaker, a former adjunct Professor at the University of Alabama's Culverhouse College of Business, and the author of other real estate-related books, including *The Complete Encyclopedia of Real Estate*, published by McGraw-Hill.

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# CHAPTER ONE

## Chapter One: Background to Tax Sales

Each year, millions of property owners in Alabama receive a bill from their County tax collector's office. The bill is for that year's *ad valorem* taxes. *Ad valorem* is a Latin phrase that means "according to the value." State and local governments impose a tax on all property, and the amount of the tax is calculated according to the value of the property. If you don't pay the tax, the government takes your property away from you.

*Ad valorem* taxes are assessed on all non-exempt real property, and on all business personal property in the State. Depending on the owner's age, income, disability status or charitable organization status, it might be exempt from the tax.

The combination of forced sales of property, plus very low purchase prices, is what makes tax sale investing so popular among investors. It also explains the legal protections that allow people with temporary economic problems, or inattention, the ability to regain their property.

Most investors believe the tax sale laws are for their benefit. As a result, they think many of the laws are unreasonable. Property owners are often surprised at hidden expenses in redeeming tax sale properties. They also think many of the laws are unreasonable. In reality, tax sale laws are written to ensure revenues to local government, with a desire to provide fairness to taxpayers but also incentives to investors. It is a balancing act. Everyone needs to understand that.

### Definitions

As the lawyers reading this understand, all important documents begin with the definitions to be used in that written material. If I sign a contract that says I will work for \$250 per hour, but the Definitions say an hour will consist of fifty minutes, then that controls. Three hundred minutes of work in the real world might be five hours, but for purposes of my contract, it is six hours. I will be paid \$1,500, not \$1,250.

Similarly, certain words in this book will be used in a particular way, and perhaps not as generally understood in the world at large. This is done to make the text more readable. If you allow me to say

“person” instead of “natural person and/or other legally recognized entity, whether singular or plural” then life will be easier for both of us. My definitions, for purposes of this book, follow.

### **“Abandoned”**

Someone no longer cares about property and has no intention of ever using it, fixing it up, selling it, or keeping it until the children or grandchildren can afford to fix it up. Most tax sale properties are merely “vacant.” Vacant means nobody has used the property, possibly for years, but somebody still considers themselves the owner and has plans for the property. You can change the locks and take over abandoned property. You cannot simply change the locks and take over vacant property. Taking possession of property that is only vacant requires an ejectment order from a court. Who knows FOR SURE if property is abandoned or vacant? Only the taxpayer. Property with lots of liens against it is often abandoned. Property that used to belong to a person who has died is usually only vacant.

### **“Appraised value”**

Appraised value means the tax appraisal, not an independent third-party appraisal. If an independent appraisal is meant in the context, I will specifically describe a “third party appraisal.”

### **“Investor”**

Investor is the owner of the tax certificate or tax deed. Sometimes such people buy for their own account, for a home in which to live or a location for their business. It is easier to call all of them “Investor,” no matter what their motivation.

### **“Redemption Clerk”**

Redemption Clerk means the person who handles redemptions at the county level. Some counties have a dedicated redemption clerk. In other counties, all personnel handle redemptions.

### **“Probate Judge”**

Probate Judge means the county official with responsibilities for tax sale redemptions. In some counties it is indeed the Probate Judge. In other counties it is the Revenue Commissioner or Tax Collector, depending on how those officials negotiate the various responsibilities and workloads between themselves.

### **“Tax Collector”**

Tax Collector means the official charged with the responsibility of collecting ad valorem taxes. In some counties, that person is called the Revenue Commissioner. It’s easier if I just call all of them “tax collector” instead of boring you silly by constantly writing “tax collector or revenue commissioner depending on the county.”

with nothing happening in the meantime. In a situation such as that just described, someone dropped the ball and neglected to request a default judgment. Eventually, the tenant came out from under the ether and filed an answer, and then the case was set for trial.

If you are going to be a landlord, there is, of course, much more to learn. The points above are simply a list of my version of landlord FAQs.

### **Networking and education**

Spend the money and the time to join a landlord's trade association. The advice, forms, resources, and relationships will make you more money, and save you more expenses, than the cost of membership. There are many national, regional, statewide, local, and Internet-only. Choose the one that best fits your pocketbook, your needs, and your style.

One excellent resource is the Institute of Real Estate Management is usually shortened to IREM, pronounced "eye rem." IREM is an affiliate of the National Association of Realtors, but you do not have to be a Realtor® to join IREM. It offers education, forms and other similar resources, national and regional conferences, and industry strength for new legislation and such matters.

If you ask around, you'll probably find that your community (or the largest city near your community) has a local property managers association and/or a local IREM chapter. You'll be able to learn from other people's mistakes instead of learning the hard way from your own mistakes. You'll find out about local laws that can hurt or help you, recommendations for lawyers, accountants, insurance agents, repair people, cleaning crews and other services and professionals. Even if you are one of those people who HATE going to meetings, I strongly encourage you to join one of these organizations.

# CHAPTER TWENTY-TWO

## Chapter Twenty-Two: Buying from Land Bank

The Alabama Code, in Title 24, Chapter 9, makes provision for the Alabama Land Bank Authority. The law was passed in 2009,<sup>465</sup> and then amended in 2010 and again in 2013. Although the Land Bank is a state-wide authority, some counties can establish their own land banks, also. One of the 2013 amendments said that if a municipality has more than 1,000 tax delinquent properties, then it can establish its own land bank.<sup>466</sup> The following counties have more than 1,000 tax sale properties. It is probably a safe bet that, except for Baldwin and Shelby counties, most of the properties will be within a single municipality. Here are the largest inventories of tax sale properties owned by the State, by county:

- Jefferson, almost 24,000 (includes Bessemer cutoff)
- Mobile, over 5,000
- Etowah, almost 2,000
- Calhoun, slightly over than 1,600
- Talladega, around 1,400
- Montgomery, slightly more than 1,100
- Shelby has the next largest inventory, with slightly less than 500 properties. All the other counties have smaller numbers.

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<sup>465</sup> When it was first passed, then-mayor of Birmingham, Larry Langford, praised it as the most significant piece of legislation in the last fifty years for combatting urban flight. He estimated the city of Birmingham spent more than \$17 million a year in cutting overgrown lots and demolishing abandoned homes. Now, that price tag is probably much larger, because the Alabama Department of Environmental Management (ADEM) usually requires an asbestos inspection, and remediation if asbestos is found, before it will allow a city to demolish an unsafe structure.

<sup>466</sup> Ala. Code §24-9-10



The purpose of the Land Bank is set out in Alabama Code §24-9-2:

“The Alabama Land Bank Authority is hereby created for the purpose of acquiring tax delinquent properties in order to foster the public purpose of rehabilitating land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status in order to provide housing, new industry, new commercial and economic development, other productive uses, jobs for the citizens, assemble parcels of real property for redevelopment, stabilize property values, and remove blight.”

When the law first passed in 2009, the driving factor was to redevelop blighted areas. Alabama Department of Economic and Community Affairs Director Bill Johnson said, “The No. 1 hurdle for these organizations [Habitat for Humanity and Mission Birmingham] has not been finding volunteers or materials, but locating sites on which to build. If you put a house on one of these properties, you improve the neighborhood and people’s lives; property that produced no income now provides revenues for the community in the form of property taxes.”<sup>467</sup>

If you will think about its original purpose, and read the next few sections, you will see opportunities for you, as a tax sale investor. Keep reading!

### **How does the land bank obtain tax delinquent properties?**

After tax sale property has been held by the State for five (5) years, the Land Bank Authority can apply for a tax deed. It does not have to buy the property, or pay any price at all. The property is just transferred to it, free of charge.

This is not an eminent domain law. The land bank does not condemn property in order to use it for public purposes. It purchases tax sale property from the state, although the purchase price can be as low as \$0. The ultimate use of the property can be for the profit of a private individual, and does not have to directly benefit the public as a whole. Of course, the public benefits if blighted property is put to good use, and that might be constitutionally permissible after the *Kelo*<sup>468</sup> decision, but it is not allowed in Alabama. That’s why it is important to point out this is not an eminent domain situation.

Prior versions of the law allowed the Authority to go through with a foreclosure, which would destroy any outstanding rights of redemption. As you know from prior chapters, the right of redemption can exist for

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<sup>467</sup> Lauren B. Cooper, *State Sets up Authority to Attack Urban Blight*, Birmingham Business Journal, May 28, 2009.

<sup>468</sup> *Kelo v. City of New London*, 545 U.S. 469 (2005). The court held that, under the facts of that case, it was a permissible use of eminent domain powers for a government to condemn private property, and then transfer the property to another private owner for re-development. That is because the general benefits a community enjoyed from private redevelopment and resulting economic growth qualified as a “public use” under the 5<sup>th</sup> Amendment. Although such actions are now allowed under the United States constitution, Alabama passed a law prohibit *Kelo*-type eminent domain. The Supreme Court did not hold that local governments had a RIGHT to such eminent domain uses. It held that COULD engage in such eminent domain practices, provided no other local law or statute prohibited it.

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