

Regular Session, 2008

ACT No. 819

HOUSE BILL NO. 337

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(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To enact a new Chapter 5 of Subtitle III of Title 47 of the Louisiana Revised Statutes of 1950, formerly comprised of Parts I through III, to be comprised of new Parts I through VII; to enact Part I, to be comprised of R.S. 47:2121 through 2124, Part II, to be comprised of R.S. 47:2126 through 2137, Subpart A of Part III, to be comprised of R.S. 47:2141 through 2147, Subpart B of Part III, to be comprised of R.S. 47:2151 through 2163, Subpart A of Part IV, to be comprised of R.S. 47:2196 through 2197, Subpart B of Part IV, to be comprised of R.S. 47:2201 through 2211, Subpart C of Part IV, to be comprised of R.S. 47:2231 through 2237, Subpart A of Part V, to be comprised of R.S. 47:2241 through 2245, Subpart B of Part V, to be comprised of R.S. 47:2246 and 2247, Subpart A of Part VI, to be comprised of R.S. 47:2266, Subpart B of Part VI, to be comprised of R.S. 47:2271 through 2280, and Part VII, to be comprised of R.S. 47:2286 through 2292, and to repeal R.S. 13:4951, Subparts E, F, and G of Part II of Chapter 6 of Title 33, comprised of R.S. 33:2861 through 2892.9, Chapters 13A, 13B, and 13C of Title 33, comprised of R.S. 33:4720.11 through 4720.49, and Part II of Chapter 4 of Subtitle III of Title 47, comprised of R.S. 47:2101 through 2114; and to repeal former Parts I, II, and III of Chapter 5 of Subtitle III of Title 47, comprised of R.S. 47:2171 through 2194, 2221 through 2230, and 2251 through 2262, all relative to the payment and collection of property taxes, tax sales, and adjudicated property; to provide general provisions and definitions; to provide for payment and collection; to provide for tax sales of movable and immovable property; to provide for adjudicated property; to provide for

1 persons to carry out the title search and notification procedures considered necessary
2 under contemporary standards of due process to acquire merchantable title to those
3 properties.

4 (6) Avoid the imposition on the public of extensive title search and
5 notification expenses for properties that are redeemed or that fail to attract any party
6 willing to bear the expenses of establishing merchantable title.

7 (7) Retain, to the extent not inconsistent with the preceding purposes, the
8 traditional procedures governing tax sales, adjudications, and redemptions in this
9 state.

10 B. Effect of tax sale on property interest. No tax sale shall transfer or
11 terminate the property interest of any person in tax sale property or adjudicated
12 property until that person has been duly notified and both the redemptive period and
13 any right held by that person to assert a payment or redemption nullity under R.S.
14 47:2187 have terminated.

15 C. Tax sale title. (1) A tax sale confers on the tax sale purchaser, or on the
16 political subdivision to which the tax sale property is adjudicated, only tax sale title.
17 If the tax sale property is not redeemed within the redemptive period, then at the
18 termination of the redemptive period, tax sale title transfers to its holder ownership
19 of the tax sale property, free of the ownership and other interests, claims, or
20 encumbrances held by all duly notified persons. Tax sale title is fully transferable
21 and heritable, but any successor of a tax sale title takes it subject to any existing right
22 to redeem the property, or to assert a nullity, to the extent and for the period of time
23 that the right would have existed in the absence of the transfer or succession.

24 (2) A person who acquires ownership of property through a tax sale title
25 takes the ownership subject to any interests that are not terminated in accordance
26 with this Chapter. Other than taking subject to those interests, the acquiring person's
27 ownership of the tax sale property after termination of the redemptive period is not
28 affected by any lack of notice to the holders of those interests.

29 (3) Notwithstanding any provision in this Chapter to the contrary, the
30 following interests affecting immovable property shall not be terminated pursuant

1 to this Chapter to the extent the interests remain effective against third parties and
2 are filed with the appropriate recorder prior to the filing of the tax sale certificate:

3 (a) Mineral rights.

4 (b) Pipeline servitudes.

5 (c) Predial servitudes.

6 (d) Building restrictions.

7 (e) Dedications in favor of political subdivisions, the public, or public
8 utilities.

9 D. Deficiencies in notices or procedures. Except for acts or omissions that
10 result in redemption or payment nullities, none of the provisions in this Chapter
11 concerning notices or procedures required in connection with a tax sale provides a
12 ground for nullifying:

13 (1) The tax sale.

14 (2) The transfer at the end of the redemptive period of the ownership of
15 property to which tax sale title has been issued.

16 (3) The transfer or termination of any duly notified person's interest in the
17 tax sale property or the adjudicated property.

18 §2122. Definitions

19 The following terms used in this Chapter shall have the definitions ascribed
20 in this Section, unless the context clearly requires otherwise:

21 (1) "Acquiring person" means either of the following:

22 (a) A person acquiring tax sale title to a tax sale property.

23 (b) A political subdivision or any other person seeking to acquire or
24 acquiring ownership of adjudicated property.

25 (2) "Adjudicated property" means property of which tax sale title is acquired
26 by a political subdivision pursuant to R.S. 47:2196.

27 (3) "Authenticate" means either of the following:

28 (a) To sign.

1 **(b) To execute or otherwise adopt a symbol, or encrypt or similarly process**
 2 **a written notice in whole or in part, with the present intent of the authenticating**
 3 **person to identify the person and adopt or accept a written notice.**

4 **(4) "Duly notified" means, with respect to a particular person, that an effort**
 5 **meeting the requirements of due process of law has been made to identify and to**
 6 **provide that person with a notice that meets the requirements of R.S. 47:2156, 2157,**
 7 **2206, 2236, or 2275, or with service of a petition and citation in accordance with**
 8 **R.S. 47:2266, regardless of any of the following:**

9 **(a) Whether the effort resulted in actual notice to the person.**

10 **(b) Whether the one who made the effort was a public official or a private**
 11 **party.**

12 **(c) When, after the tax sale, the effort was made.**

13 **(5) "Governmental lien" means all liens imposed by law upon immovable**
 14 **property in favor of any political subdivision and filed in the mortgage records,**
 15 **including without limitation, those imposed under R.S. 13:2575, R.S. 33:1236, 4752,**
 16 **4753, 4754, 4766, 5062, and 5062.1, other than statutory impositions.**

17 **(6) "Ordinance" means:**

18 **(a) An act of a political subdivision that has the force and effect of law,**
 19 **including but not limited to an ordinance, a resolution, or a motion; or**

20 **(b) A rule or regulation promulgated by the State Land Office, the division**
 21 **of administration, or by another state agency with authority over adjudicated**
 22 **properties.**

23 **(7) "Owner" means a person who holds an ownership interest that has not**
 24 **been terminated pursuant to R.S. 47:2121(C).**

25 **(8) "Payment nullity" means a nullity arising from payment of taxes prior to**
 26 **a tax sale, including payment based on dual assessment.**

27 **(9) "Political subdivision" means any of the following to the extent it has the**
 28 **power to levy ad valorem taxes and conduct tax sales for failure to pay ad valorem**
 29 **taxes:**

30 **(a) The state.**

1 **(b) Any political subdivision as defined in Article VI, Section 44 of the**
 2 **Louisiana Constitution.**

3 **(c) Any other agency, board, or instrumentality under Subparagraph (a) or**
 4 **(b) of this Paragraph.**

5 **(10) "Redemption nullity" means the right of a person to annul a tax sale in**
 6 **accordance with R.S. 47:2286 because he was not duly notified at least six months**
 7 **before the termination of the redemptive period.**

8 **(11) "Redemptive period" means the period in which a person may redeem**
 9 **property as provided in the Louisiana Constitution.**

10 **(12) "Send" means either of the following:**

11 **(a) To deposit in the mail or deliver for transmission by any other**
 12 **commercially reasonable means of communication with postage or cost of**
 13 **transmission provided for, and properly addressed to any address reasonable under**
 14 **the circumstances.**

15 **(b) In any other way to cause to be received any written notice within the**
 16 **time it would have arrived if properly sent.**

17 **(13) "Signed" includes using any symbol executed or adopted with present**
 18 **intention to adopt or accept a writing in tangible form.**

19 **(14) "Statutory imposition" means ad valorem taxes and any imposition in**
 20 **addition to ad valorem taxes that are included on the tax bill sent to the tax debtor.**

21 **(15) "Tax debtor" means, as of the date of determination, the person listed**
 22 **on the tax roll in accordance with R.S. 47:2126.**

23 **(16) "Tax notice party" means, as of the date of determination, the tax debtor**
 24 **and any person requesting notice pursuant to R.S. 47:2159.**

25 **(17) "Tax sale" means the sale or adjudication of tax sale title to property**
 26 **pursuant to R.S. 47:2155 and 2196.**

27 **(18) "Tax sale certificate" means the written notice evidencing a tax sale to**
 28 **be filed in accordance with R.S. 47:2154 and 2196.**

29 **(19) "Tax sale party" means the tax notice party, the owner of property,**
 30 **including the owner of record at the time of a tax sale, as shown in the conveyance**

1 records of the appropriate parish, and any other person holding an interest, such as
 2 a mortgage, privilege, or other encumbrance on the property, including a tax sale
 3 purchaser, as shown in the mortgage and conveyance records of the appropriate
 4 parish.

5 (20) "Tax sale property" means property for which tax sale title is sold
 6 pursuant to R.S. 47:2154.

7 (21) "Tax sale purchaser" means the purchaser of tax sale property, his
 8 successors, and assigns.

9 (22) "Tax sale title" means the set of rights acquired by a tax sale purchaser
 10 or, in the case of adjudicated property, on the applicable political subdivision,
 11 pursuant to this Chapter.

12 (23) "Written notice", "notice", "written", or "writing" means information
 13 that is inscribed on a tangible medium or which is stored in an electronic or other
 14 medium and is retrievable in perceivable form.

15 §2123. Affidavits

16 A certified copy of any affidavit filed in accordance with R.S. 47:2157, 2208,
 17 2236, and 2277 with the appropriate recorder of mortgages pursuant to the provisions
 18 of this Chapter shall be self-authenticating. A certified copy of the affidavit shall
 19 constitute prima facie evidence of the facts stated in the affidavit concerning the
 20 subject matters specified in the statutory form of affidavits provided by R.S.
 21 47:2157, 2208, 2236, and 2277.

22 Comments – 2008

23 (a) This Section is new. Other provisions of this Chapter allow tax sale
 24 purchasers, acquiring persons, political subdivisions or their representatives to file
 25 affidavits. See R.S. 47:2157, 2208, 2280, and 2291. This Section provides the effect
 26 of these affidavits. A certified copy of the affidavit is self-authenticating for
 27 evidentiary purposes and is prima facie evidence of the facts recited in the affidavit
 28 to the extent such facts are set forth if the statutory form for affidavits is used.

29 (b) It is the giving of notice and the passage of time that converts tax sale
 30 title to a full ownership interest, not the filing of an affidavit under this Chapter. The
 31 affidavit merely evidences these facts so that there is evidence, via a certified copy,
 32 that is admissible in court, without further authentication or testimony, in the chain
 33 of title that there has been a conversion of tax sale title to a full ownership interest
 34 on which a title examiner can rely to determine merchantability.

1 except as otherwise provided by law. At the same time, the assessor may file the tax
 2 roll in the mortgage records of the parish in which property subject to the taxes is
 3 located. The assessor shall use reasonable efforts to list on the tax roll all co-owners
 4 of record of the property, or if there has been a tax sale to a party other than a
 5 political subdivision, the tax sale purchaser and the other owners, to the extent their
 6 interests were not sold at tax sale. The tax roll shall be updated as of January first
 7 or later of the year in which the taxes are collectible. There shall be only one
 8 assessment for each tax parcel, and the full assessment shall be on each tax bill sent
 9 pursuant to R.S. 47:2127(C), provided, however, if requested by a tax debtor, the
 10 assessor may, but shall not be obligated to, make separate assessments for undivided
 11 interests in each tax parcel.

12 Comments – 2008

13 (a) This Section is new. It changes the law in part. The tax assessors are
 14 required to deliver the tax rolls to the tax collectors by November 15. The tax
 15 collectors, however, are no longer required to file the tax rolls in the mortgage
 16 records, although they are allowed to do so. Further, the assessors are required to use
 17 reasonable efforts to insure the tax rolls are complete in several respects. All co-
 18 owners are to be listed as tax debtors. Further, the tax roll is to list a tax sale
 19 purchaser as an owner, or in the case when the tax sale purchaser purchased an
 20 undivided interest, as a co-owner, along with other owners.

21 (b) This Section does not require the assessor to split assessments for one tax
 22 parcel. In this case, this Section overrules *Farmco, Inc. v. Wilson*, 944 So. 2d 665
 23 (La. App. 1 Cir. 2006). The assessor, however, is allowed to make separate
 24 assessments for undivided interests, but is not obligated to do so.

25 §2127. Time for payment; interest; notification

26 A. Time for Payment. Taxes assessed shall be due in that calendar year as
 27 soon as the tax roll is delivered to the tax collector, and they shall be paid on or
 28 before December thirty-first in each respective year.

29 B. Interest. The interest on all ad valorem taxes, whether levied on movable
 30 or immovable property, which are delinquent shall begin thirty days after the
 31 deadline for payment of taxes, and shall bear interest from that date until paid, at the
 32 rate of one percent per month or any part thereof. In the event of an erroneous
 33 assessment and adjustment by the tax commission, the tax debtor shall have fifteen
 34 days after the date of receipt of notice of the revised assessment in which to pay the
 35 adjusted amount without interest penalty. If the address provided by the tax assessor

1 on the tax roll proves to be incorrect and the tax debtor does not receive a timely
2 notice, the tax collector may extend to the tax debtor a fifteen-day notice in which
3 to pay without interest penalty.

4 C. Notification. As soon as practical following the sending of the tax roll to
5 the tax collector as required by Subsection A of this Section, the tax collector shall
6 use reasonable efforts to send each tax notice party written notice by United States
7 mail of taxes due, at the address listed for each tax debtor on each tax roll. The
8 written notice shall disclose the total amount of taxes due by the tax debtor for the
9 current year, the ward in which the property is located, and the number of the
10 assessment. The written notice shall request the tax debtor to return the written
11 notice to the tax collector with remittance and shall remind the tax debtor of the date
12 that taxes become delinquent following issuance of the notice and that interest will
13 accrue on the taxes from and after the date the taxes become delinquent. Interest
14 shall accrue at the rate prescribed by law, which rate, or a brief description of the
15 manner in which the rate is calculated, shall be stated in the written notice. The tax
16 collector may also notify any other tax sale party but shall not be obligated to do so.
17 The written notice shall be deemed sufficient if it is in the following form:

18 [Name of Political Subdivision]

19 [YEAR] Property Tax Notice

20 [List All Tax Notice Parties and their addresses]

<u>Description of Charges</u>	<u>Amount</u>
<u>Estimated Tax Due</u>	
<u>[Name of Tax District]</u>	
<u>Total Taxes</u>	

<u>Property Address</u>
<u>Legal Description</u>

1 have been collected on any tax, the tax sale shall be for the amount of the unpaid
2 balance of the tax.

3 B. Any political subdivision of the state, through its governing body, when
4 an emergency has been declared to exist by resolution or ordinance adopted by such
5 governing body, shall be authorized and empowered to reduce the interest charge or
6 penalties on ad valorem taxes due to the political subdivision, but in no event shall
7 the rate of interest be reduced to less than six percent, and no reduction in penalties
8 shall exceed fifty percent of the amount of the penalty.

9 C. In case of overflow, general conflagration, general destruction of crops,
10 or other public calamity, or whenever lands or other property, including buildings,
11 structures, or personal property, is damaged or destroyed during a disaster or
12 emergency declared by the governor, in any parish or any political subdivision
13 therein, or of which the parish is a part, rendering impracticable the forcible
14 collection of taxes therein, there shall be no collection of taxes on lands or other
15 property, including buildings, structures, or personal property, damaged or destroyed
16 during the year of the events described in this Section, or the preceding year when
17 the payment of such taxes for the preceding year is affected by the events described
18 in this Section, but the collection of taxes shall be postponed in accordance with the
19 following procedure:

20 (1) The owner wishing to avail himself of the provisions of this Section shall
21 make a sworn statement in triplicate, no later than December thirty-first of the year
22 in which the damage or destruction occurred, or thirty days after the tax bill has been
23 mailed, whichever is later, that his property has been or is overflowed, or is or has
24 been otherwise damaged or destroyed, giving the description of his property as
25 assessed, and that by reason thereof, the forcible collection of the taxes of the year
26 during which the injury occurred, or the preceding year, would be oppressive, and
27 that he is unable to pay the same without a sacrifice of his property. Each copy of
28 the statement shall be signed and sworn to by the tax debtor claiming the benefit of
29 this Section; one copy of the statement shall be filed with the officer charged with
30 the collection of the taxes, one filed in the office of the state auditor, and one shall

1 be filed in the office of the recorder of mortgages of the parish in which the property
2 is located. Thereupon, the owner shall be relieved from the payment of taxes for the
3 year in which he claims a postponement. The filing shall operate as a first lien and
4 privilege, and the statement shall be preserved in book form and duly indexed.

5 (2) A statement of the right of the owner to have his taxes postponed as
6 provided for in Paragraph (1) of this Subsection shall be included with the tax bill
7 mailed to the tax debtor if such tax bill is mailed after the effective date of this
8 Section.

9 (3) The taxes thus postponed shall be divided into ten equal parts, and one
10 part shall be assessed on the immovable property affected and described in the sworn
11 statement for each year for ten subsequent years, or until the whole of the postponed
12 tax is paid, provided that when the tax debtor is assessed with movables only, the
13 postponed taxes shall be assessed against the tax debtor in this manner.

14 (4) All of the postponed taxes may be paid at any time, and the lien canceled.
15 No installment of such tax, if paid at the postponed maturity, shall bear either costs
16 or penalties when so collected, but shall bear interest at the rate of six percent per
17 annum from December thirty-first of the year in which they were originally due until
18 paid.

19 (5) The tax collector shall make a separate statement and list of all persons
20 claiming the benefits of this Section, together with the respective amount of their
21 taxes, and the property upon which the taxes are due, and shall deliver over one copy
22 of the same to the assessor of the parish, who will assess in each subsequent year
23 upon the respective immovable properties therein described a one-tenth part of the
24 taxes referred to in the respective triplicate sworn statements and thus postponed
25 until all of said taxes have been assessed, and the respective immovable properties
26 shall be liable for the respective parts of the postponed taxes. In case the list shows
27 that a tax debtor owns movables only, the postponed taxes shall be assessed against
28 the debtor in this manner. The statement thus prepared by the tax collector shall be
29 prepared in duplicate, sworn to, and one copy delivered to the state auditor.

1 located, and after that assessor advises the tax commission that a refund is due the
2 claimant, the tax commission shall duly examine the merits and correctness of each
3 claim presented to it and shall make a determination thereon within thirty days after
4 receipt of the claim.

5 B. If the claim is approved, the tax commission shall authorize and direct the
6 collector, when applicable, to correct the assessment on the roll on file in his office
7 and shall authorize and direct, when applicable, the recorder of mortgages to change
8 the inscription of the tax roll. The tax commission shall also authorize and direct the
9 refund and repayment of those taxes found to be erroneously paid as provided in this
10 Section. Provided that when the claim accrues to more than one person, as for
11 example, the heirs and legatees of another, and the claim is determined by the tax
12 commission to be properly due and owed, payment thereof to the party or parties
13 asserting the same shall not be denied because of the failure or refusal of others to
14 join in and assert the claim, but in such event only the portion due such claimant or
15 claimants shall be paid.

16 C. The collector of ad valorem taxes in each political subdivision, upon
17 receipt of written notice from the tax commission that a particular refund or
18 repayment is owed, shall do one of the following:

19 (1) If the claim is made for taxes erroneously paid on property which is or
20 could be homestead exempt or otherwise exempt, the collector shall immediately
21 notify the affected tax recipient bodies to remit to him within thirty days their pro
22 rata share of the refund or repayment. Upon receipt of those funds from the tax-
23 recipient bodies, the collector shall have an additional thirty days to remit the
24 payment in full to the tax debtor. Failure by any tax recipient body or the collector
25 to timely remit such monies shall cause interest at the legal rate to accrue in favor of
26 the tax debtor to be paid by the political subdivision or tax collector failing to so
27 timely remit.

28 (2) If the claim is made for taxes erroneously paid on property which would
29 not qualify for a homestead or other exemption, the collector shall note and record
30 the amount of the refund or repayment owed and shall have full responsibility to

1 ensure that such amount shall operate as a credit against future ad valorem tax
 2 liability of that property. No ad valorem taxes shall be due or collected on such
 3 property until such time as the collector certifies that a sufficient amount of taxes
 4 assessed have been waived to satisfy the refund or repayment ordered by the tax
 5 commission. No interest shall accrue or be due on any such refund or repayment.

6 (3) If the claim is made in a political subdivision which has established an
 7 alternative procedure for providing for refunds of ad valorem taxes erroneously paid
 8 as authorized by this Section, and if that alternative procedure has been submitted
 9 to and approved by the tax commission, such procedure may be utilized in lieu of the
 10 provisions of Paragraphs (1) and (2) of this Subsection.

11 D. An action of the assessor or of the tax commission rejecting or refusing
 12 to approve any claim made under the provisions of this Section may be appealed by
 13 means of ordinary proceedings to the district court having jurisdiction where the
 14 property which is the subject of the claim is located.

15 Comments – 2008

16 (a) This Section consolidates former R.S. 47:2108 and 2108.1. It is not
 17 intended to change the law.

18 (b) Since after the Louisiana Constitution of 1974 the state no longer collects
 19 ad valorem taxes for each political subdivision and each political subdivision collects
 20 its own taxes, the board of tax appeals has been eliminated and the Louisiana Tax
 21 Commission has been made the proper authority to deal with tax appeals.

22 §2133. Prior payment of taxes

23 If within the redemptive period, the tax collector determines that the statutory
 24 impositions on a certain property subject to a tax sale were paid prior to the tax sale
 25 or that the tax sale was conducted in violation of a stay under federal bankruptcy law,
 26 the tax collector shall cancel the affected tax sale and shall reimburse the tax sale
 27 purchaser the bid price. The tax collector may credit the reimbursement pro rata
 28 against future disbursements to the tax recipients. The tax collector shall record the
 29 cancellation with the recorder of conveyances in the parish in which the property is
 30 located. Such cancellation reinstates the interests of the tax debtor and his
 31 successors and all interests in the property that have been otherwise terminated

1 pursuant to this Chapter, to the extent the interest has not otherwise terminated
 2 pursuant to its terms or by operation of law.

3 Comments – 2008

4 (a) This Section is new. It allows the tax collector, without having to resort
 5 to a lawsuit, to cancel a tax sale when the statutory impositions have been paid or
 6 when the tax sale was conducted in violation of the automatic stay in a federal
 7 bankruptcy proceeding.

8 (b) The tax collector is required to reimburse the tax sale purchaser the
 9 purchase price and to set off the amount pro rata against future payments to the tax
 10 recipients.

11 (c) This Section makes clear that the effect of the cancellation is to reinstate,
 12 to the extent such interest was terminated, the interest of the tax debtor and all other
 13 holders, mortgages, liens, and encumbrances. To the extent such interests would
 14 have been terminated in accordance with the document creating such interest or by
 15 operation of law, such as peremption, such interests are not reinstated. See e.g., Civil
 16 Code Arts. 3357 et seq.

17 §2134. Suits to recover taxes paid under protest

18 A.(1) No court of this state shall issue any process to restrain, or render any
 19 decision that has the effect of impeding, the collection of an ad valorem tax imposed
 20 by any political subdivision, under authority granted to it by the legislature or by the
 21 constitution.

22 (2) A person resisting the payment of an amount of tax due or the
 23 enforcement of a provision of the tax law shall timely pay the amount due to the
 24 officer designated by law for the collection of the tax and shall give him, the
 25 assessor, and the Louisiana Tax Commission notice at the time of payment of his
 26 intention to file suit for the recovery of the tax. Upon receipt of notice, the amount
 27 paid shall be segregated and held by the officer for a period of thirty days. If a suit
 28 is timely filed contesting the correctness of the assessment pursuant to R.S. 47:1856,
 29 1857, or 1998 and seeking the recovery of the tax, then that portion of the taxes paid
 30 that are in dispute shall be deemed as paid under protest, and that amount shall be
 31 segregated and shall be further held pending the outcome of the suit. The portion of
 32 the taxes that is paid by the tax debtor to the officer and is neither in dispute nor the
 33 subject of the suit contesting the correctness shall not be made subject to the protest.

34 (3) If the tax debtor prevails, the officer shall refund the amount to the tax
 35 debtor with interest at the actual rate earned on the money paid under protest in the

1 escrow account during the period from the date such funds were received by the
2 officer to the date of the refund. If the tax debtor does not prevail, the tax debtor
3 shall be liable for the additional taxes together with interest at the rate set forth above
4 during the period from the date the notice of intention to file suit for recovery of
5 taxes was given to the officer until the date the taxes are paid.

6 B. The right to sue for recovery of a tax paid under protest as provided in this
7 Section shall afford a legal remedy and right of action in any state or federal court
8 having jurisdiction of the parties and subject matter for a full and complete
9 adjudication of all questions arising in the enforcement of the right respecting the
10 legality of any tax accrued or accruing or the method of enforcement. In any such
11 suit, service of process upon the officer or agency designated and provided for in
12 R.S. 47:1998(A)(2) or (B)(3), or Subsection A of this Section, shall be required.

13 C. The right to sue for recovery of a tax paid under protest as provided in this
14 Section shall afford a legal remedy and right of action at law in the state or federal
15 courts where any tax or the collection thereof is claimed to be an unlawful burden
16 upon interstate commerce, or in violation of any act of the Congress of the United
17 States, the Constitution of the United States, or the constitution of the state. Upon
18 request of a tax debtor and upon proper showing by the tax debtor that the principle
19 of law involved in an additional assessment is already pending before the courts for
20 judicial determination, the tax debtor, upon agreement to abide by the pending
21 decision of the courts, may pay the additional assessment under protest but need not
22 file an additional suit. In such cases, the tax so paid under protest shall be segregated
23 and held by the officer designated by law for the collection of the tax until the
24 question of law involved has been determined by the courts and shall then be
25 disposed of as provided in the decision of the court.

26 D. An assessment valuation or claim of exemption shall be challenged only
27 pursuant to the method or procedures as provided first in R.S. 47:1992, then in R.S.
28 47:1989, and finally in R.S. 47:1998.

29 E. Any tax debtor in the state who has paid his disputed taxes under protest
30 as provided in this Section and who has filed suit under the provisions of R.S.

1 (4) Thirty days after receipt of said notice, the tax collector will seize and
2 advertise for sale the movable property on which the taxes are due in the manner
3 provided by law for judicial sales.

4 (5) At the principal front door of the courthouse, where the civil district court
5 of the parish is held or at the place of seizure or storage in the parish of Orleans, he
6 will sell within the legal hours for judicial sales, for cash, cashier's check, certified
7 check, money order, or wire transfer, without appraisalment, such portion of the
8 movable property as the tax debtor shall point out and deliver to the tax collector,
9 and in case the tax debtor shall not point out sufficient property that he will at once
10 and without further delay sell for cash, cashier's check, certified check, money order,
11 or wire transfer, without appraisalment, the least quantity of the movable property
12 which any bidder will buy for the amount of taxes assessed upon it with interest and
13 costs for the current and all preceding years and attorney fees.

14 B. The tax collector in the parish of Orleans, as well as in other parishes of
15 the state, shall mail to each tax debtor one of the notices provided for above, for
16 which he shall be entitled to collect from each tax debtor actual mailing costs of each
17 certified, with return receipt, notice, and further provided that mileage shall be
18 charged for service of this notice, provided that no notice shall be charged for unless
19 it has been actually delivered or mailed to the tax debtor. The collector shall certify
20 on both tax rolls that he has served or mailed all of such notices, and such certificate
21 on either tax roll shall make full proof until disproved in a judicial proceeding.

22 C. The tax collector shall publish once in the official journal published in his
23 district or parish, if there be one, or in the manner provided by law for judicial sales,
24 one general notice substantially in the foregoing form, addressed to all owners of
25 assessed movable property situated in his parish or district, whose names, post
26 offices, or agents are unknown, in which he shall set forth substantially that the taxes
27 of the unknown owners are due and unpaid, and if not paid within twenty days, that
28 he will proceed to seize and sell such quantity of the movable property of each said
29 unknown owner as will pay all the taxes, interest, and costs. He shall pay for the
30 publication and shall be entitled to reimbursement of actual costs from each owner

1 due by the debtor, as attorney fees, which amount shall be collectable in the same
2 manner as the taxes, interest, and costs due by such debtor.

3 C. The tax collector is authorized to seize and sell any growing or gathered
4 crops or shares therein whenever such seizure may be necessary to collect taxes
5 assessed. The tax collector is also authorized to proceed in the courts to procure the
6 garnishment of any salary, compensation, or reward for personal services, or of any
7 obligations, rights, credits, or debts due to the tax debtor in any form whatever
8 whenever such garnishment may be necessary to collect such taxes. No deposits or
9 security for costs shall be required in such cases.

10 D. The state and its subdivisions and all cities, towns, and villages shall have
11 a first lien and privilege on all movable property for the payment of all taxes on
12 personal property, in all judicial or insolvency proceedings, receiverships, or
13 liquidations, whether seizure has been made or not, for such taxes previous to such
14 proceedings, receiverships, or liquidations.

15 E. All movable property sold at tax sales shall be immediately delivered
16 without the right of redemption into actual possession of the purchaser by the tax
17 collector, who shall have full authority and power to make all the seizures necessary
18 to take and deliver such actual possession.

19 F. However, if the tax collector is unable to locate the debtor, any of the
20 movable property liable for the said tax, or any other movable property belonging to
21 the tax debtor, the said tax collector shall make a notation on the tax rolls "NO
22 PROPERTY FOUND". Making such notation on the tax rolls shall relieve said tax
23 collector from any further obligation for the collection of said tax, provided,
24 however, nothing herein shall discharge the obligation of the tax debtor, and if
25 property is found or the tax debtor is located, the tax collector shall proceed to
26 collect such taxes as are due.

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Comment – 2008

This Section reproduces former R.S. 47:2175.

§2146. Movable property; tax debtors' rights

A. Any person shall be allowed to point out the particular movable property which he may desire to have sold for taxes due by him, delivering the property to the tax collector at his office on or before the day of sale, provided that the property be sufficient in the opinion of the tax collector to realize the amount of the taxes due.

B. When seizure is made of movable property in any of the forms provided to enforce the payment of taxes, the debtor may secure release of the same until the day of sale upon his forthcoming bond, with solvent security in solido, which shall be executed in the same manner as forthcoming bonds for property seized under writs of fieri facias. Anyone so releasing his property shall return the same into the possession of the tax collector for sale on or before the day of sale; unless so returned, the forthcoming bond shall be considered forfeited and shall be filed in the office of the clerk of the civil district court of the parish and shall have the force and effect of a twelve months' bond to be executed by a writ of fieri facias issued thereon by the clerk against the principal and sureties in solido, as provided by law for the enforcement of twelve months' bonds. The forfeiture of the bond shall be made to appear by certificate of the tax collector written thereon.

Comment – 2008

This Section reproduces former R.S. 47:2176.

§2147. Movable property; payment of taxes by party taking possession

A. When a sheriff, constable, marshal, receiver, liquidator, syndic, or other judicial or court officer or functionary takes possession of movable property, he shall pay at once all the taxes that may be due or may become due upon the same, and if he fails to do so, he shall become responsible personally upon his bond for the payment of the same. He shall file with his provisional and final accounts in the case or proceeding a certificate of the tax collector showing that all taxes upon such property seized or administered have been paid, and in the event of failure to do this, he shall not be discharged upon his official bond.

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Comments – 2008

(a) This Section reproduces the substance of former R.S. 47:2179. It is not intended to change the law.

(b) This Section makes clear that the tax collector has no obligation to accept only a portion of the statutory impositions assessed on a tax parcel based on the proportional size of a lot or parcel contained within the whole tax parcel.

§2153. Notice of delinquency and tax sale

A. On the second day after the deadline for payment of taxes each year, or as soon thereafter as possible, the tax collector shall send a written notice by United States mail postage prepaid to each tax notice party when the tax debtor has not paid all the statutory impositions which have been assessed on immovable property, notifying the person that the statutory impositions on the immovable property shall be paid within twenty days after the sending of the notice or as soon thereafter before the tax sale is scheduled, or that tax sale title to the property will be sold according to law. The notice shall be sufficient if it is in the following form:

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<u>"Year</u>	<u>Ward</u>	<u>Sect.</u>	<u>Ass. #</u>	<u>Property #</u>	<u>Notice #</u>

*****PLEASE NOTE*****	<u>[NAME OF POLITICAL SUBDIVISION]</u>
<u>*By law your taxes are delinquent after December thirty-first. The law requires interest be charged as follows: A flat rate of one percent (1%) per month on delinquent ad valorem taxes.</u>	
<u>*If monies for payment of taxes are in escrow, please forward tax notice to your mortgage company.</u>	
<u>*If a receipt is requested, enclose a self-addressed stamped envelope along with your payment.</u>	
<u>*Please notify the sheriff's office or the assessor's office with all address changes.</u>	
<u>*For questions about assessed value or millages contact: Assessor's Office: Property Tax Dept:</u>	
<u>*Payment may be made online at _____</u>	
<u>*[DATE OF NOTICE]. If taxes are not paid within twenty days after this date, the political subdivision will proceed to sell tax sale title to the property at [list location of the tax sale] beginning on [list first day of sale]. You will have the right to pay the amounts due until the day before the actual sale. If tax sale title to the property is sold, you will have three years [or other applicable redemptive period] from the date of the filing of the tax sale certificate in which to redeem the property according to law, but in order to redeem, you will be required to pay a 5% penalty and 1% per month on the amounts past due together with other costs in accordance with law.</u>	

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<u>Total Assessed Value Tax Distributions</u>	<u>Millages</u>	<u>Homestead Exemption</u>	<u>Taxes and other Statutory Impositions Due</u>	<u>Assessment Information</u>
[add taxing districts]			[add amount of tax due each district]	<u>Total Assessed Value</u>
				<u>Property Description</u>
<u>Total Statutory Impositions Due</u>				
<u>Interest</u>				
<u>Costs</u>				
<u>Total</u>				

12

[Name of Tax Collector and Address]

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<u>Total Statutory Impositions Due</u>	
<u>Interest</u>	
<u>Cost</u>	
<u>Total</u>	

17

[Tax Collector Name]

18

<u>YEAR</u>	<u>WARD</u>	<u>SECT</u>	<u>ASS.#</u>	<u>PROPERTY</u>	<u>NOTICE #</u>

19
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Name of Tax Debtor
[address] _____

21

Make checks payable to: _____ [Tax Collector Name]

22

Mail this portion of tax bill and payment to: _____ [address]"

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B.(1) At the expiration of twenty days' notice, counting from the day when the last of the written notices are sent, or as soon thereafter as practicable, the tax collector shall proceed to publish a notice to the tax debtors of the delinquency and to advertise for sale the consolidated delinquent tax list under one form two times within thirty days in the official journal of the political subdivision. The publication and advertisement shall be sufficient if it is in the following form:

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"DELINQUENT TAX LIST

vs. Delinquent Tax Debtors

(insert appropriate taxing bodies)

By virtue of the authority vested in me by the constitution and the laws of the State of Louisiana, I will sell, at _____, within the legal hours for judicial sales beginning at _____ o'clock a.m. on _____, the day of _____, _____, and continuing on each succeeding legal day, until said sales are completed, tax sale title to all immovable property on which taxes are now due to _____, to enforce collection of taxes (insert affected taxing bodies) assessed in the year _____, together with interest thereon from January 1, _____, at the rate of one percent (1%) per month until paid and all costs. The names of said delinquent tax debtors, the amount of statutory impositions due, including any due for prior years, and the immovable property assessed to each to be offered for sale are as follows: (Insert names of delinquent tax debtors in alphabetical order, the amount of statutory impositions due, including any due for prior years on each specific piece of property, and the description of each specific piece of immovable property to be offered for sale.)

On the day of sale I will sell a tax sale title to such portions of the property as each tax debtor will point out and, in case the debtor will not point out sufficient property, I will at once and without further delay sell the least quantity as undivided interests of said property of any tax debtor which any bidder will buy for the amount of the statutory impositions for which the sale is made, together with interest and costs due by said tax debtor. The sale will be without appraisalment, for cash or other payment method acceptable to the tax collector, in legal tender money of the United States, and the tax sale title to property sold will be redeemable at any time during the applicable redemptive period by paying the price given, including costs and five percent (5%) penalty thereon, with interest at the rate of one percent (1%) per month until redeemed."

(2) For the purpose of tax sales, it shall be sufficient to advertise all property in the name of the tax debtor at the time the assessment was made.

1 (3) For the purpose of tax sales, it shall be sufficient to assess and describe
2 all property assessed in the following manner: by designating the tract or lot by the
3 name by which it is commonly known, or by the number or letter by which it may
4 be usually designated upon the regular assessment roll or upon an official or private
5 plan or sketch or by giving the boundaries or the names of the owners upon each
6 side, or by the dimensions or description or name given in the act transferring the
7 ownership thereof, or by such other further description as may furnish the means of
8 reasonable identification.

9 (4) No tax sale shall be set aside or annulled for any error in description or
10 measurement of the property assessed in the name of the tax debtor, provided the
11 property sold can be reasonably identified. When advertisements are required to be
12 made in relation to the sale of property for unpaid taxes, the advertisements shall be
13 made in the English language only.

14 (5) The tax sale shall convey and the purchaser shall take tax sale title to the
15 whole of the property assessed to the delinquent tax debtor, or if there are separate
16 assessments of undivided interests in an entire property, tax sale title to the whole of
17 the undivided interests assessed to the delinquent tax debtor if it is the least quantity
18 sufficient to satisfy the aggregate of all taxes, interest, penalties, and costs. The least
19 quantity shall be determined by undivided interests. The tax collector shall then
20 proceed to sell the lesser undivided interest of the whole property as will satisfy the
21 charges and shall not entertain a bid in excess thereof. The tax collector may
22 determine and establish that the least quantity that can be sold by undivided interests
23 is one percent or less of the whole. The tax sale shall convey, and the purchaser shall
24 take, tax sale title to the entirety of the property, or in the case of separate
25 assessments for undivided interests in the property, tax sale title to the entirety of the
26 undivided interest, intended to be assessed and sold as it was owned by the
27 delinquent tax debtor regardless of any error in the dimensions or description of the
28 property as assessed and sold. The tax collector in the advertisement or tax sale may
29 give the full description according to original titles.

1 third party buyer may be entitled to take actual possession and full ownership of the
2 property after this time.

3 After the expiration of the redemptive period the property cannot be
4 redeemed. Continued possession of the property does not extend the redemptive
5 period.

6 Please contact the [name of tax collector] if you believe that you received this
7 notice in error, have sold or transferred this property, or for further information and
8 assistance.

9 Thank You,

10 Tax Collector of [name of political subdivision]

11 This notice concerns only the property described in the "regarding" portion
12 of this letter; the address of that property may or may not be the same as the mailing
13 address of this notice. Again, please contact our office if you feel that your received
14 this notice in error.

15 [Enclose or list the amount of statutory impositions due.]"

16 Comments – 2008

17 (a) This Section consolidates and generally reproduces the substance of
18 former R.S. 2180, 2180.1 and 2181 with certain modifications.

19 (b) The notice of delinquency and the notice of tax sale are combined in a
20 single notice and a single publication. Statutory safe harbor forms for the notice and
21 publication are provided in the Section.

22 (c) The form of publication provided in Subsection B clarifies that the least
23 quantity of the property sold will be by undivided interests. The tax collector is not
24 required to determine whether the property is divisible in kind thereby allowing a
25 portion of the property to be separately sold for taxes. Therefore, the price at the tax
26 sale will be the statutory impositions due. See R.S. 47:2154. The bidding will be by
27 undivided interest such as, 90%, 85%, etc. of the whole parcel, with the lowest
28 undivided interest bid being the winning bid. Of course, the tax debtor has the right
29 to point out a portion of the property sufficient to satisfy the statutory impositions.
30 See La. Const. Art. VII, § 25.

31 (d) Since under the revision to the Chapter the only causes for nullity are a
32 redemption nullity, a payment nullity, or a sale to a prohibited buyer, problems with
33 the notice or the publication do not create a nullity action. See R.S. 47:2122(7) &
34 (9), and 47:2286; 47:2162.

35 §2154. Tax sales; time of sale; price

36 The tax collector shall seize, advertise, and sell tax sale title to the property
37 or an undivided interest therein upon which delinquent taxes are due, on or before

1 May first of the year following the year in which the taxes were assessed, or as soon
2 thereafter as possible. The price shall be the amount of statutory impositions due on
3 the property, costs, and interest.

4 Comment – 2008

5 This Section reproduces the substance of former R.S. 47:2182. It also
6 provides that the price to be paid at the sale is the amount of statutory impositions.
7 See also R.S. 47:2196(C). Bidding at the sale is by undivided interests. See R.S.
8 47:2153.

9 §2155. Tax sale certificate

10 A. The tax collector shall authenticate and file in accordance with law, in
11 person or by deputy, in the political subdivision's name, a tax sale certificate to
12 purchasers of any property to which tax sale title was sold for taxes, in which he
13 shall relate in substance a brief history of the proceedings had, shall describe the
14 property, state the amount of the taxes, interest, and costs and the bid made for the
15 property, and the payment made to him in cash, cashier's check, certified check,
16 money order, credit card, or wire transfer, or other payment method, shall sell tax
17 sale title, and shall conclude the sale with the statement that the property shall be
18 redeemable at any time during the applicable redemptive period beginning on the day
19 when the tax sale certificate is filed with the recorder of conveyances in the parish
20 in which the property is located. The tax sale certificate shall contain the full name
21 and address of the tax sale purchaser. The tax sale certificate shall be sufficient if
22 it is in the following form:

23 "Tax Sale Certificate

24 [Name of Political Subdivision]

25 v.

26 [Name of Tax Debtor]

27 State of Louisiana

28 Parish of _____

29 City of _____

30 To: _____

1 BE IT KNOWN AND REMEMBERED, that, I, [Name of tax collector], Tax
 2 Collector in and for the [Name of political subdivision], in the name of the [name of
 3 political subdivision], and by virtue of the authority in me vested by the constitution
 4 and laws of the State of Louisiana and in pursuance of the requirements of those
 5 laws, having mailed and published the notice required by law and having strictly
 6 complied with each and every requirement of the laws relating to delinquent taxes
 7 and tax debtors and to seizures, advertisements, and sale of tax sale title to the
 8 property in full, did in the manner prescribed by law, advertise and list in [name of
 9 appropriate journal for legal notices] the property to be sold for delinquent property
 10 taxes with interest and costs for the year(s) of _____ in the [place of sale] on
 11 [dates of publication], beginning at ten o'clock A.M., giving notice in the issues of
 12 the newspaper and in said list as advertised the following described immovable
 13 property appearing in the name of _____.

14 To-wit:

15 <u>Ward _____</u>	15 <u>Section No. _____</u>	15 <u>Taxes \$ _____</u>
16 <u>Assessment No. _____</u>		16 <u>Interest _____</u>
		17 <u>Costs _____</u>
		18 <u>Total _____</u>

19 Property description: _____

20 And on said [date], after beginning but not completing said list, I continued
 21 the same within legal hours each succeeding legal day offering tax sale title to said
 22 property for sale at public auction in the manner required by said laws and the whole
 23 or the undivided interest of the tax debtor therein being the smallest amount of said
 24 property that any bidder would buy and pay the taxes and costs, and [Name of
 25 Purchaser] being the bidder, and having complied with the terms of sale, became the
 26 purchaser of tax sale title to the whole of the property or the undivided interest of the
 27 tax debtor therein.

28 NOW, THEREFORE, all the formalities of the law having been complied
 29 with, I [Name of Tax Collector], Tax Collector for said [Name of Political
 30 Subdivision], by virtue of the authority in me vested by the laws of the State of

1 §2156. Post-sale notice

2 A. Within the applicable redemptive period, the tax sale purchaser may send
3 a written notice to any or all tax sale parties notifying the parties of the sale. The
4 notice shall provide full and accurate information necessary to contact the tax sale
5 purchaser, including the name, physical address, and telephone number of the
6 purchaser. It shall be accompanied by a copy of the tax sale certificate received by
7 the tax sale purchaser under the provisions of this Part and copies of the documents
8 that the purchaser received with that sale. The notice shall inform the tax sale parties
9 that the failure to redeem the property prior to the expiration of the applicable
10 redemptive period will terminate the right to redeem the property, and the purchaser
11 will have the right to seek confirmation of the tax title and take actual possession of
12 the property. The notice shall be sufficient if it is in the form set forth in Subsection
13 B of this Section.

14 B. For each property for which tax sale title was sold at tax sale to a tax sale
15 purchaser:

16 (1) If the redemptive period is greater than two years, each January or as
17 soon as practical thereafter, each tax collector shall send a written notice by United
18 States mail, postage prepaid, to each tax notice party and each tax sale party whose
19 interest would be shown on a thirty-year mortgage certificate in the name of the tax
20 debtor and whose interest was filed prior to the filing of the tax sale certificate that
21 tax sale title to the property has been sold at tax sale.

22 (2) If the redemptive period is two years or less, within thirty days after
23 filing a tax sale certificate to a third party, and thereafter each January and June or
24 as soon thereafter as practical, each tax collector shall send a written notice by
25 United States mail, postage prepaid, to each tax notice party and each tax sale party
26 whose interest would be shown on a thirty-year mortgage certificate in the name of
27 the tax debtor and whose interest was filed prior to the filing of the sale that tax sale
28 title to the property has been sold at tax sale.

29 (3) The notice shall be given until the end of the applicable redemptive
30 period. The notice shall specify the property upon which the taxes are delinquent.

1 (f) To the extent that a person is duly notified pursuant to other provisions
2 of this Chapter and fails to take action in the applicable time period, the failure to
3 give the notices provided in this Section do not give rise to an action based on a
4 redemption nullity. See R.S. 47:2286.

5 §2157. Notice of tax sale; affidavit; cancellation

6 A.(1) Upon the expiration of the applicable redemptive period, the tax sale
7 purchaser may send a notice to a tax sale party whose interest the tax sale purchaser
8 intends to terminate that the party has until the later of:

9 (a) Sixty days after the date of the notice provided in this Subsection, if five
10 years have elapsed from the filing of the tax sale certificate to challenge, in a court
11 of competent jurisdiction, the tax sale.

12 (b) Six months after the date of the notice if five years have not elapsed from
13 the filing of the tax sale certificate, to challenge, in a court of competent jurisdiction,
14 the tax sale.

15 (2) This notice shall constitute a notice of sale, and sending of this notice
16 shall constitute the service of the notice of sale under Article VII, Section 25 of the
17 Louisiana Constitution. This notice shall be sufficient without regard to whether the
18 notice of the tax sale or any other notice has been given. The notice shall be
19 sufficient if it is in the following form:

20 **"This is an important legal notice.**

21 **Please read it carefully. You will receive no further notice.**

22 [Date]

23 [Name]

24 [Address]

25 [City], [ST] [Zip]

26 RE: Property: [Property Address]

27 [Description of Property Abbr]

28 Parish of _____, State of Louisiana

29 Tax sale title to the above described property has been sold for failure to pay
30 taxes. You have been identified as a person who may have an interest in this
31 property.

1 how the tax sale parties whose interest the purchaser intends to be terminated were
 2 identified, how the address of each tax sale party was obtained, how the notice was
 3 sent, the results of sending the notice, and the dates of publication. The affidavit
 4 may also contain a statement of the interests to which the purchaser takes subject.
 5 The recorder of mortgages shall index the affidavit only under the names of the tax
 6 sale purchaser and the tax debtor as mortgagors. The affidavit shall be sufficient if
 7 it is in the following form:

<u>"AFFIDAVIT</u>	<u>UNITED STATES OF AMERICA</u>
<u>BY</u>	<u>STATE OF LOUISIANA</u>
<u>[NAME OF AFFIANT]</u>	<u>PARISH OF</u>

11 This affidavit shall be indexed under each of the following names as
 12 mortgagor:

- 13 (a) [Name of tax sale purchaser]
- 14 (b) [Name of tax debtor]

15 BE IT KNOWN, on the _____ day of _____ [MONTH], _____ [YEAR]
 16 BEFORE ME, the undersigned notary public, duly qualified in and for the
 17 state and parish aforesaid, and in the presence of the undersigned competent witness,

18 PERSONALLY CAME AND APPEARED:

19 _____ [name of affiant], major
 20 domiciliary of the Parish of _____, State of
 21 Louisiana ("affiant"), who, after being duly sworn, deposed and stated that on his
 22 personal knowledge:

- 23 1. Affiant personally examined [name of abstract] [title certificate] [the
 24 public records] (the "Abstract") affecting the following described immovable
 25 property located in the Parish of _____, State of Louisiana (the "property"):

1 [Legal description of property]

2 2. Affiant's review of the abstract revealed the following persons or entities
3 with an interest in the property, which such interest being listed beside the name:

<u>Name</u>	<u>Interest In Property</u>	<u>Recordation Information</u>

5 3. Affiant reviewed the documents listed in the abstract, the telephone book
6 published by [name of telephone book publisher] for the Parish of
7 _____ dated for use until [date], and utilized all the resources
8 under [list other examination resources, including Internet search engines, if any],
9 and such search revealed the following last known addresses for the persons listed
10 in Item 2 above:

<u>Name</u>	<u>Address</u>

12 4. Affiant reviewed the records of the Louisiana Secretary of State and the
13 secretary of state of the states set forth by the names of the entities listed below, and
14 such search revealed the following addresses for the entities listed in Item 2 above:

<u>Name</u>	<u>State</u>	<u>Address</u>

16 5. Affiant caused to be sent a written notice notifying the persons or entities
17 listed in Item 2 above at the addresses listed in Items 3 and 4 above. A sample of the
18 form of the written notice is attached and satisfied R.S.47:2157(A).

19 6. The method and results of the notifications set forth in Item 5 above are
20 listed by name and address as follows:

<u>Name</u>	<u>Method</u>	<u>Results</u>

1 recorder of mortgages shall index the affidavit only under the name of the tax debtor
 2 and current owner.

3 F. Upon filing of the affidavit under Subsection D of this Section, the
 4 recorder of mortgages and recorder of conveyances shall treat as canceled,
 5 terminated, released, or erased, as applicable, all the liens, privileges, mortgages,
 6 interests, or other encumbrances canceled, terminated, released, or erased under
 7 Subsection E of this Section, only insofar as they affect the property.

8 G. The tax sale purchaser shall be liable to and indemnify the recorder of
 9 mortgages, the recorder of conveyances, and any other person relying on the
 10 cancellation, termination, release, or erasure by affidavit for any damages that they
 11 may suffer as a consequence of such reliance if the recorded affidavit contains
 12 materially false or incorrect statements that cause the recorder to incorrectly cancel,
 13 terminate, release, or erase any interest as provided in the affidavit. The recorder of
 14 mortgages and the recorder of conveyances shall not be liable for any damages
 15 resulting to any person or entity as a consequence of the cancellation, termination,
 16 release, or erasure of any interest in compliance with this Section.

17 Comments – 2008

18 (a) This Section is new. It is designed to evidence as a matter of public
 19 record the conversion of tax sale title to ownership. See Civil Code Art. 477(A).

20 (b) Subsection A of this Section allows the tax sale purchaser to send a
 21 notice to any tax sale party that the redemptive period has expired and that an action
 22 for nullity must be brought within certain time periods or the cause of action for
 23 nullity is lost. If the tax sale purchaser desires to take the property subject to any tax
 24 sale party's interest, then the tax sale purchaser may elect not to send notice to that
 25 tax sale party. If the notice is given between the expiration of the redemptive period
 26 and five years after filing of the tax sale certificate, the tax sale party has six months
 27 to bring a nullity action. When the notice is given during this time period, the notice
 28 constitutes a notice of sale and the sending of the notice constitutes service of the
 29 notice under Louisiana Constitution Article VII, § 25. If the notice is given after five
 30 years has elapsed from the filing of the tax sale certificate, the tax sale party is given
 31 at least sixty days to bring a nullity action. A statutory safe harbor form of notice is
 32 provided. Nothing in this Subsection limits the method by which the notice is sent.
 33 It can be sent by ordinary mail, certified mail, return receipt requested, email or other
 34 electronic means, or a by a combination of methods. See R.S. 47: 2122.

35 (c) Subsection B allows the tax sale purchaser also to publish a notice setting
 36 forth the applicable time period within which a tax sale party must bring an action
 37 for nullity. A safe harbor form is provided.

1 (d) Subsection C allows the tax sale purchaser to file in the mortgage records
 2 a notice letter sent to the tax debtor or the current owner. Any alienation of the
 3 property after the filing of this notice is ineffective.

4 (e) Subsection D allows the tax sale purchaser to file in the mortgage records
 5 an affidavit evidencing how the tax sale parties were identified, that the notice under
 6 Subsection A was sent, the results of sending the notice, and what interests are to be
 7 terminated. The affidavit may also list the encumbrances to which the tax sale
 8 purchaser takes subject. The affidavit is just one method of evidencing that a
 9 particular tax sale party was duly notified. See R.S. 47:2123. Other competent
 10 evidence may be used to prove that a tax sale party was duly notified. Filing of the
 11 affidavit, however, will allow title examiners to rely on the information contained
 12 in the affidavit as evidencing that title to the property is merchantable, and free and
 13 clear of the encumbrances listed in the affidavit. The recorder of mortgages is
 14 required only to index the affidavit under the names of the tax sale purchaser and tax
 15 debtor.

16 (f) Nothing in this Section should be construed to limit who can send the
 17 notice or who executes the affidavit. It could be the original tax sale purchaser, his
 18 successors or assigns, or their agent, attorney or title agent. Cf. *Laney v. City of New*
 19 *Orleans*, 945 So. 2d 79 (La. App. 4 Cir. 2006). The issue is whether a particular tax
 20 sale party was duly notified regardless of who sent the notice or how the notice was
 21 sent. Subsection E provides that the filing of the affidavit cancels all statutory
 22 impositions due prior to the recordation of the tax sale certificate since the purchase
 23 price paid was the amount of those statutory impositions of the taxing authority
 24 conducting the tax sales. It does not, however, cancel statutory impositions of other
 25 taxing districts which conduct separate tax sales. See R.S. 47:2160. Other
 26 governmental liens, such as condemnation liens, weed liens, etc., that were not
 27 included as statutory impositions are not cancelled.

28 (g) Subsection F requires the recorders to treat those items listed as
 29 terminated in the affidavit as in fact terminated. Therefore, a mortgage certificate
 30 should not reflect those terminated encumbrances. Moreover, any such termination
 31 affects only the property subject to the tax sale. For example, a judicial mortgage
 32 would be released as to the property affected by the tax sale only. The judicial
 33 mortgage would still be effective as to other property still owned by the tax debtor.

34 (h) Subsection G provides a statutory hold harmless and indemnity from the
 35 tax sale purchaser to the various recorders for reliance on any material false
 36 statements contained in the affidavit.

37 §2158. Writ of possession

38 A. When necessary to comply with an order of a political subdivision for the
 39 purpose of enforcing property standards, upon the presentation of the order and a
 40 certified copy of a tax sale certificate for immovables to a judge of a competent
 41 jurisdiction (determined by the value of the immovables described and not the
 42 amount of the taxes), the judge shall grant ex parte an order of seizure and
 43 possession, commanding the sheriff to seize the property and place the purchaser in
 44 actual possession. A writ of possession shall be issued by the clerk, but the

1 purchaser may take actual possession without the order with the consent or
 2 acquiescence of the tax debtor or otherwise, provided no force or violence is used.

3 B. The purchaser shall have a privilege on the property for the costs of
 4 complying with the order of the political subdivision. To preserve this privilege, the
 5 purchaser shall file the writ of possession with the recorder of mortgages of the
 6 parish in which the property is located within fifteen days after its issuance. The
 7 effect of recordation shall cease one year after the date of filing the writ of
 8 possession, unless a statement of privilege referencing the writ and detailing the
 9 costs is filed with the recorder of mortgages before the expiration of one year from
 10 the date of filing the writ. In this case, the effect of recordation shall cease one year
 11 after the date of filing the statement of privilege, unless a suit to enforce the privilege
 12 and a notice of lis pendens is filed with the recorder of mortgages prior to the
 13 cessation of the effects of recordation.

14 Comments – 2008

15 (a) Subsection A is based on former R.S. 47:2185. It modifies the law in
 16 part. This Section allows a writ of possession to be issued only when the possession
 17 by the tax sale purchaser is necessary to comply with the order of a political
 18 subdivision for enforcing property standards, such as a condemnation order.

19 (b) Subsection B is new. It provides for a privilege in favor of the tax sale
 20 purchaser for the cost of complying with an order of a political subdivision. To
 21 preserve this privilege, the writ of possession must be filed within fifteen days of its
 22 issuance. The effect of recordation ceases in one year unless a statement of privilege
 23 is filed detailing the costs prior to the expiration of the one year period. This second
 24 one year period peremptts unless a suit is filed and a lis pendens is filed prior to the
 25 expiration of the second one year period.

26 §2159. Request for notice

27 Any person may request that all notices that are sent to a tax debtor also be
 28 sent to the requesting person by sending a written notice to the appropriate tax
 29 collector listing the name of the tax debtor, a legal description of the property, and
 30 the address to which the notice is to be sent. The person requesting notice shall also
 31 pay a reasonable sum not to exceed twenty dollars to the tax collector to defray the
 32 cost of providing the notice. A mortgage holder who has requested notice and paid
 33 the fee shall receive notices until such time that the tax collector receives notice of
 34 the cancellation of the mortgage inscription.

1 Comments – 2008

2 This Section reproduces the substance of former R.S. 47:2180.1(A). It also
 3 expands the persons who may request the notice from mortgagees only to any
 4 person.

5 §2160. Tax sale title; effect on other statutory impositions

6 Tax sale title to property shall not affect, invalidate, or extinguish the claim
 7 of another political subdivision for the taxes due on the property that were not
 8 included in the bid price.

9 Comments – 2008

10 (a) This Section is based on former R.S. 47:2192.

11 (b) In several parishes there are multiple taxing districts that conduct their
 12 own tax sales. For example, the Parish of Caddo and the City of Shreveport conduct
 13 separate tax sales on property located in the City of Shreveport. This revision does
 14 not address the issue of overlapping tax sales of the same property for the same tax
 15 year by different political subdivisions. This issue is left for the courts to decide.
 16 See e.g., *Phillips v. Abney*, 377 So. 2d 1314 (La. App. 1 Cir. 1979). This Section
 17 makes clear that the tax sale by one political subdivision does not affect the statutory
 18 impositions of another political subdivision on the same property. In those parishes
 19 where multiple political subdivisions conduct tax sales on the same properties, all the
 20 political subdivisions within a parish should enter into a cooperative endeavor
 21 agreement allowing the tax collector of the parish to conduct one tax sale for all the
 22 political subdivisions within a parish.

23 §2161. Tax sale title; payment of taxes by purchaser

24 From the date of filing a tax sale certificate selling tax sale title to a tax sale
 25 purchaser, all taxes on the property shall, after that date, be assessed to and paid by
 26 the tax sale purchaser until the property, or any part, is redeemed. If redeemed, the
 27 person redeeming shall pay all statutory impositions assessed upon the property
 28 subsequent to the tax sale. The failure to assess the property in the name of the tax
 29 sale purchaser shall not affect the validity of the tax sale.

30 Comments – 2008

31 (a) This Section reproduces the substance of former R.S. 47:2193. It is not
 32 intended to change the law. It requires the person redeeming to pay all subsequent
 33 statutory impositions as well. See R.S. 47:2241 et seq.

34 (b) This Section clarifies the law by providing that failure to assess the
 35 property in the name of a tax sale purchaser is not a cause for annulling the tax sale.
 36 See R.S. 47:2286.

37 (c) The purpose of this Section is to insure that the original tax debtor does
 38 not receive a notice the next tax year after a tax sale that only the taxes due for the
 39 tax year subsequent to the tax sale are due. This notice would not indicate that there
 40 was a tax sale for the previous year's taxes, and those taxes remain due.

1 Notwithstanding the fact that the property is assessed in the name of the tax sale
 2 purchaser and the tax sale purchaser will receive notice of the subsequent taxes, the
 3 tax debtor should receive a notice that there was a tax sale and of his right to redeem
 4 the property under R.S. 47:2156.

5 §2162. Purchase by tax collectors and assessors at tax sale forbidden

6 The tax collector or tax assessor for the political subdivision, or any other
 7 person acting on behalf of the political subdivision whose duties are to assess or
 8 collect ad valorem taxes for the political subdivision, shall not buy, either directly
 9 or indirectly, any property or tax sale title sold or offered for sale for ad valorem
 10 taxes imposed by that political subdivision. The sale shall be subject to an action for
 11 nullity except that the violation of this Section shall not be a cause for annulling the
 12 sale if the property or tax sale title has been sold by the violator, his successor, or
 13 assigns to a person who purchased the property in good faith by onerous title. In
 14 addition to any other penalties provided by law for violation of this Section, the
 15 violator shall disgorge any profits he has made, either directly or indirectly, to the
 16 tax debtor.

17 Comments – 2008

- 18 (a) This Section reproduces the substance of former R.S. 47:2194.
- 19 (b) A sale in violation of this Section can be annulled if the property has not
 20 been sold by the violator, but cannot be annulled if the violator sold the property
 21 under onerous title to a person in good faith.
- 22 (c) Regardless of whether the property has been sold by the violator, the
 23 violator must disgorge any profits made from violation of this Section in addition to
 24 any other penalties imposed by criminal law or laws governing ethics of public
 25 officials.

26 §2163. Purchase by co-owners

27 An owner or co-owner may pay the statutory impositions plus interest and
 28 costs due at the time of the tax sale. The purchase of tax sale title to property at a tax
 29 sale by an owner or co-owner of the property shall be deemed a redemption.

30 Comments – 2008

- 31 (a) This Section is new. It is not intended to change the law. It codifies a
 32 rule created by jurisprudence constant. See e.g., *Keller v. Haas*, 24 So. 2d 610 (La.
 33 1945).
- 34 (b) This Section is not intended to overrule the jurisprudence constant that
 35 provides that purchase of tax sale title at a tax sale may serve as an overt and
 36 unambiguous act that the tax sale purchaser intends to possess adversely to his co-

1 owners under Civil Code Article 3478. See e.g., *Givins v. Givins*, 273 So. 2d 863
2 (La. App. 2 Cir. 1973).

3 PART IV. ADJUDICATED PROPERTY

4 SUBPART A. GENERAL PROVISIONS

5 §2196. Adjudication to political subdivisions

6 A. Subject to Article VII, Section 25(A)(2) of the Constitution of Louisiana,
7 the bid to be accepted in tax sales shall be at least equal to the statutory impositions,
8 costs, and interest; otherwise, the tax collector shall bid in tax sale title to the
9 property for the political subdivision. The tax collector shall make out a tax sale
10 certificate and file the tax sale certificate with the recorder of conveyances of the
11 parish in which the property is located. The tax sale certificate shall be sufficient if
12 it is in the following form:

13 "[Name of Political Subdivision]

14 v.

15 [Name of Tax Debtor]

16 State of Louisiana

17 Parish of _____

18 City of _____

19 To: _____

20 BE IT KNOWN AND REMEMBERED, that, I, [name of tax collector], Tax
21 Collector for the [name of political subdivision], in the name of the [name of
22 political subdivision], and by virtue of the authority in me vested by the Constitution
23 and laws of the State of Louisiana and, pursuant to the requirements of the law,
24 having mailed and published the notice required by the law, and having strictly
25 complied with each and every requirement of the law relating to delinquent taxes,
26 tax debtors, and to seizures, advertisements, and sale of tax sale title to the property
27 in full, did in the manner prescribed in the law, advertise and list in [name of
28 appropriate journal for legal notices] the property to be sold for delinquent property
29 taxes with interest and costs for the year(s) of _____ in the [place

1 subdivision uses this amount as the minimum bid, there is only one public sale. If
 2 the minimum bid is not met, there is no sale.

3 (c) Alternatively, the minimum bid can be based on the appraised value. In
 4 this case, there can be two sets of bidding. At the first public sale the minimum bid
 5 must be two-thirds of the appraised value. If there is no bid of at least two-thirds the
 6 appraised value, there is a second public sale where the minimum is one-third of the
 7 appraised value. In order to determine the appraised value, the political subdivision
 8 must appoint a licensed appraiser.

9 (d) If the adjudicated property is encumbered by numerous governmental
 10 liens and outstanding statutory impositions so that the amounts due are near or
 11 exceed the value of the property, the political subdivision should consider using the
 12 appraised value in determining a minimum bid.

13 §2203. Pre-bidding procedures; sale of adjudicated property

14 A. Initiation by political subdivisions. A political subdivision may provide
 15 by ordinance for the sale of adjudicated property at a public sale and may include the
 16 date for the sale in the ordinance. However, the date of the sale may be provided by
 17 a subsequent ordinance, or the date may be set administratively by the political
 18 subdivision.

19 B. Initiation by persons. (1) Whenever any person desires to initiate the
 20 public sale of adjudicated property and the political subdivision desires to sell, the
 21 person shall deposit an amount determined by the political subdivision to be
 22 sufficient to cover the expenses of the sale, including advertising, appraisals, and
 23 other costs associated with the sale.

24 (2) Should the depositor at the sale fail to be the highest bidder, the money
 25 deposited shall be returned to him. However, if no one at the sale bids up to the
 26 minimum price provided in this Subpart, then the money shall be retained to pay the
 27 expenses of the sale, but any money remaining after the expenses are paid shall be
 28 returned to the depositor.

29 C. Advertisement. A public sale shall be advertised twice in the official
 30 journal for the political subdivision, once at least thirty days prior to the date of the
 31 public sale, and once no more than seven days prior to the date of the public sale.
 32 The advertisement shall provide for the minimum bid, the latest date written bids
 33 will be accepted, the time and date of in-person bidding, and any other terms of sale.

1 Comments – 2008

2 (a) Subsection A is new. It allows the political subdivision to initiate the sale
 3 of adjudicated property by ordinance. It does not prohibit the public auction of
 4 numerous adjudicated properties at one time.

5 (b) Subsection B reproduces the substance of R.S. 33:2867.1. Subsection B
 6 allows individuals to initiate a public sale of particular adjudicated property. This
 7 requires a deposit for the costs of the political subdivision to be refunded to the
 8 initiator if the initiator is not the successful bidder unless the minimum bid is not
 9 met, in which case, the deposit is retained by the political subdivision to cover its
 10 costs.

11 §2204. Additional terms of ordinance; sale of adjudicated property

12 The ordinance allowing for the public sale of adjudicated property may
 13 provide that the public sale may be subject to terms and conditions imposed by the
 14 political subdivision in the ordinance. An ordinance may provide that a subsequent
 15 ordinance is required to approve the sale.

16 Comments – 2008

17 (a) This Section is new. It is not intended to change the law.

18 (b) This Section allows the political subdivision to impose terms and
 19 conditions on any public sale. Such terms and conditions could be that low to
 20 moderate income housing be built within a certain time period, the property only be
 21 used for first time homebuyers, construction must commence in one year, and the
 22 like.

23 (c) An ordinance can provide that any successful bid is subject to approval
 24 by the governing body in a subsequent ordinance. The subsequent approval
 25 ordinance also may contain terms and conditions.

26 §2205. Donations of adjudicated property

27 The governing body of a political subdivision may by ordinance allow the
 28 donation of any identified adjudicated property to any person to the extent allowed
 29 by the Louisiana Constitution. The donated property can be used only for purposes
 30 allowed by the Louisiana Constitution.

31 Comment – 2008

32 This Section is new. It allows the donation of adjudicated property subject
 33 to constitutional limits. See La. Const. Art. VII, § 14.

34 §2206. Notice; sale or donation of adjudicated property

35 A.(1) Either the political subdivision or the acquiring person shall send a
 36 written notice notifying any tax sale party whose interest the successful bidder or

1 donee intends to be terminated that the party has until the later of the following to
2 redeem the property or otherwise challenge in a court of competent jurisdiction the
3 potential sale or donation:

4 (a) Sixty days from the date of the notice provided in this Subsection, if five
5 years have elapsed from the filing of the tax sale certificate, or six months after the
6 date of the notice provided for in this Subsection, if five years have not elapsed since
7 the filing of the tax sale certificate.

8 (b) The filing of the sale or donation transferring the property.

9 (2) If this notice is given after the expiration of the applicable redemptive
10 period, this notice shall constitute a notice of sale. The sending of this notice shall
11 constitute service of the notice of sale under Article VII, Section 25 of the Louisiana
12 Constitution. The notice required by this Section shall be sufficient, and it shall not
13 be necessary to determine whether notice of the tax sale or any other notice was
14 given. The written notice shall be sufficient if it is in the following form:

15 **"This is an important legal notice.**

16 **Please read it carefully. You will receive no further notice.**

17 [Date]

18 [Name]

19 [Address]

20 [City], [ST] [Zip]

21 RE: Property: [Property Address]

22 [Description of Property Abbr]

23 Parish of _____, State of Louisiana

24 Tax sale title to the above described property has been sold for failure to pay
25 taxes. You have been identified as a person who may have an interest in this
26 property.

27 Your interest in the property **will be terminated** if you do not redeem the
28 property by making all required payments to the tax collector listed below or file a
29 lawsuit in accordance with law within [60 days] [6 months] of the date of this notice,
30 or the recording of an act transferring ownership, if later.

1 notices that was sent to the tax debtor or the current owner. A transfer, mortgage,
 2 lien, privilege, or other encumbrance filed after the filing of the notice shall not
 3 affect the property. The recorder of mortgages or recorder of conveyances shall
 4 cancel, erase, terminate, or release the acts upon the request of the acquiring person.

5 Comments – 2008

6 (a) This Section is based on former R.S. 33:2881 and 33:2870.

7 (b) This Section is substantially similar to R.S. 47:2157(A), (B), and (C). See
 8 the Comments to R.S. 47:2157. The only substantive differences from R.S. 47:2157
 9 (A), (B) and (C) are two fold. First, a duly notified person has until the later of the
 10 expiration of the applicable six month or sixty day time period or the recording of
 11 the act of sale/donation in which to either redeem or bring an action of nullity.
 12 Second, the Section allows the notice to be sent prior to the expiration of the
 13 applicable redemptive period. If the notice is sent prior to the applicable redemptive
 14 period, the duly notified party would still have to the later of the six month time
 15 period, the recordation of the act of sale or the expiration of the redemptive period
 16 in which to redeem or bring a nullity action. Under either of these two scenarios, as
 17 a practical matter, the duly notified person only has the right to redeem, whether
 18 through the standard redemption process or through a lawsuit, since he would have
 19 been duly notified by the notice, unless of course the duly notified person is claiming
 20 a payment nullity.

21 (c) Successors and assigns of an acquiring person may utilize this
 22 notification process as well.

23 §2207. Sale or donation of adjudicated property; authentication; form

24 A. At any time after the expiration of the sixty-day or six-month periods, as
 25 applicable, set forth in R.S. 47:2206(A) and (B), and, if applicable, upon the
 26 satisfaction of any terms or conditions required in the ordinance authorizing the sale
 27 or donation, the acquiring person, or his successors and assigns, may send to the
 28 political subdivision a written notice requesting that the political subdivision
 29 authenticate a sale or donation. The political subdivision shall authenticate the sale
 30 or donation within ten days from the date of the request or as soon thereafter as
 31 practical. The acquiring person shall be responsible for filing the sale or donation
 32 and payment of all filing fees. The only warranty owed by the political subdivision
 33 shall be a warranty against eviction resulting from a prior alienation by the political
 34 subdivision. Otherwise, all sales and donations shall be without warranty, either
 35 expressed or implied, even as to return or reduction of the purchase price, including
 36 without limitation the warranty against redhibitory defects or vices and the warranty
 37 that the thing sold is reasonably fit for its ordinary purpose or the acquiring person's

1 intended or particular purpose. These waivers or exclusions of warranties shall be
 2 self-operative regardless of whether the waivers or exclusions are contained in the
 3 act of sale or donation, and regardless of whether they are clear and unambiguous,
 4 and regardless of whether they are brought to the attention of the acquiring person.
 5 This provision supersedes the requirements of any other law.

6 B. The writing constituting the sale shall be sufficient if it is a writing in the
 7 following form:

8 "NON-WARRANTY CASH SALE
 9 STATE OF LOUISIANA
 10 PARISH OF _____

11 BE IT KNOWN, on the dates written below before the undersigned Notaries
 12 Public, duly commissioned and qualified in their respective parishes, personally
 13 came and appeared:

14 [NAME OF POLITICAL SUBDIVISION],

15 a political subdivision of the State of Louisiana, represented herein by
 16 _____ , authorized by virtue of the attached ordinance of [name
 17 of governing body for the political subdivision], referred to as "Seller", who declared
 18 that:

19 Seller sells, without any warranty of title whatsoever, either expressed or
 20 implied, even as to the return or reduction of the purchase price, except for the
 21 warranty against eviction resulting from a prior alienation by the political
 22 subdivision, but with full substitution and subrogation in and to all the rights and
 23 actions of warranty which Seller may have, to:

24 [NAME OF PURCHASER]
 25 a _____ , [for individuals, add marital status] whose
 26 permanent mailing address is _____ , referred to
 27 as "Purchaser", all of Seller's right, title and interest in and to the property more fully
 28 described on Exhibit "A" attached hereto and made a part hereof, together with all
 29 appurtenances thereunto belonging or in any way appertaining, and all buildings and
 30 improvements located on the property, if any, collectively referred to as the
 31 "Property".

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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Printed Name:

Name:
Title:

NOTARY PUBLIC

Printed Name: _____
Notary/Bar Roll No.: _____

C. The writing constituting the donation shall be sufficient if it is a writing in the following form:

"NON-WARRANTY DONATION

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, on the dates written below before the undersigned Notaries Public, duly commissioned and qualified in their respective parishes, personally came and appeared:

[NAME OF POLITICAL SUBDIVISION],

a political subdivision of the State of Louisiana, represented herein by _____, authorized by virtue of the attached Ordinance of [name of governing body for the political subdivision], hereinafter referred to as "Donor", who declared that:

Donor donates and delivers, without any warranty of title whatsoever, either express or implied, except for the warranty against eviction resulting from a prior alienation by the political subdivision, but with full substitution and subrogation in and to all the rights and actions of warranty which Donor may have, to :

[NAME OF DONEE]

a _____, [for individuals, add marital status] whose permanent mailing address is _____, referred to as "Donee", all of the right, title and interest of the Donor in and to the property more fully described on Exhibit "A" attached hereto and made a part hereof, together with all appurtenances thereunto belonging or in any way appertaining, and all buildings and

1 improvements located on the property, if any, collectively referred to as the
2 "Property".

3 This donation is accepted by Donee.

4 Donee warrants and acknowledges to and agrees with Donor that Donee is
5 accepting the property subject to any and all conditions and restrictions which may
6 be required or recited in the attached ordinance.

7 Donor has been advised that the property donated can be used only for the
8 purposes set forth in Article VII, Section 14(B) of the Louisiana Constitution.

9 The _____ ad valorem taxes are to be paid by Donee.

10 THUS DONE AND PASSED by Donor, before me, Notary, and the
11 undersigned competent witnesses, on this _____ day of _____,
12 _____, in the city of _____, Louisiana.

13 WITNESSES: DONOR:
14 _____ [NAME OF POLITICAL SUBDIVISION]
15 Printed Name:
16 _____
17 Printed Name:
18 _____ Name:
19 _____ Title:
20 _____

21 _____
22 NOTARY PUBLIC
23 Printed Name:
24 Notary/Bar Roll No.:

25 THUS DONE AND PASSED by Donee, before me, Notary, and the
26 undersigned competent witnesses, on this _____ day of _____,
27 _____, in the city of _____, Louisiana.

28 WITNESSES: DONEE:
29 _____ [NAME OF DONEE]
30 _____
31 Printed Name:
32 _____
33 Printed Name:
34 _____ Name:
35 _____ Title:

36 _____
37 NOTARY PUBLIC
38 Printed Name:
39 Notary/Bar Roll No.: "

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<u>"AFFIDAVIT</u>	<u>UNITED STATES OF AMERICA</u>
<u>BY</u>	<u>STATE OF LOUISIANA</u>
<u>[NAME OF AFFIANT]</u>	<u>PARISH OF _____</u>

This affidavit shall be indexed under each of the following names as mortgagor:

(a) [Name of owner causing the filing of the affidavit]

(b) [Name of tax debtor]

BE IT KNOWN, on the _____ day of _____ [MONTH], _____ [YEAR].

BEFORE ME, the undersigned notary public, duly qualified in and for the state and parish aforesaid, and in the presence of the undersigned competent witness, PERSONALLY CAME AND APPEARED:

_____ [name of affiant], major domiciliary of the Parish of _____, State of Louisiana ("affiant"), who, after being duly sworn, deposed and stated that on his personal knowledge:

1. Affiant personally examined [name of abstract] [title certificate] [the public records] (the "abstract") affecting the following described immovable property located in the Parish of _____, State of Louisiana (the "property"):

[Legal description of property]

2. A review of the abstract by the Affiant revealed the following persons or entities with an interest in the property, which such interest being listed beside the name:

<u>Name</u>	<u>Interest in property</u>	<u>Recordation information</u>

1 3. Affiant reviewed the documents listed in the abstract, the telephone book
 2 published by [name of telephone book publisher] for the Parish of
 3 _____ dated for use until [date], and utilized all the resources under
 4 [list other examination resources, including Internet search engines, if any], and the
 5 search revealed the following last known addresses for the persons listed in Item 2
 6 above:

<u>Name</u>	<u>Address</u>

8 4. Affiant reviewed the records of the Louisiana Secretary of State and the
 9 secretary of state of the states set forth by the names of the entities listed below, and
 10 the search revealed the following addresses for the entities listed in Item 2 above:

<u>Name</u>	<u>State</u>	<u>Address</u>

12 5. Affiant caused to be sent a written notice notifying the persons or entities
 13 listed in Item 2 above at the addresses listed in Items 3 and 4 above. A sample of the
 14 form of the written notice is attached and satisfied R.S. 47:2206(A).

15 6. The method and results of the notifications set forth in Item 5 above are
 16 listed by name and address as follows:

<u>Name</u>	<u>Method</u>	<u>Results</u>

18 7. Notification was also published in [journal of general circulation for the
 19 political subdivision] on [list dates] [and was posted on the property]. The form of
 20 the publication is attached and satisfied R.S. 47:2206B).

21 8. Pursuant to R.S. 47:2208(C), the following interests are cancelled,
 22 terminated, erased or released, as applicable, only insofar as they affect the Property:

<u>Name of interest holder</u>	<u>Name of instrument</u>	<u>Recordation information</u>

1 may suffer as a consequence of such reliance if the recorded affidavit contains
 2 materially false or incorrect statements that cause the recorder to incorrectly cancel,
 3 terminate, release, or erase any interest listed in the affidavit. The recorder of
 4 mortgages and the recorder of conveyances shall not be liable for any damages
 5 resulting to any person or entity as a consequence of the cancellation, termination,
 6 release, or erasure of any interest in compliance with this Section.

7 Comment – 2008

8 This Section is new. It is substantially similar to R.S. 47:2157 (D), (E), (F)
 9 and (G). See the Comments to R.S. 47:2157. The only substantive difference is the
 10 statutory impositions and governmental liens cancelled by the filing. In case of the
 11 sale of adjudicated property, all statutory impositions, including statutory
 12 impositions of other political subdivisions, as well as all governmental liens, are
 13 terminated, since the proceeds of the sale will either be sufficient to pay these or
 14 these will be divided pro rata between the holders of the statutory impositions and
 15 governmental liens. See R.S. 47:2202(1) and 2211. In the case of a donation, only
 16 the statutory impositions and governmental liens of the donee political subdivision
 17 are cancelled.

18 §2209. Sale or donation to tax debtor

19 Notwithstanding any provision of law to the contrary, when a tax debtor or
 20 an owner participates, directly or indirectly, in a post-adjudication sale or donation
 21 during or subsequent to expiration of the redemptive period, it shall be treated as a
 22 redemption, and the tax debtor or owner shall be required to pay all taxes and costs
 23 in accordance with all laws applicable to redemptions. However, if the property is
 24 redeemed, all mortgages, liens, privileges, and other encumbrances affecting the
 25 property prior to the sale shall remain in full force and effect with the same validity
 26 and priority as if the sale had not occurred.

27 Comments – 2008

- 28 (a) This Section is not intended to change the law.
- 29 (b) This Section provides that a tax debtor or owner cannot use the sale or
 30 donation of adjudicated property process to clear the property of encumbrances. The
 31 words "directly or indirectly" mean that the tax debtor or owner cannot use agents,
 32 other entities, or similar arrangements to circumvent this Section.
- 33 (c) If the tax debtor or owner does use the process, then the sale or donation
 34 is treated as a redemption. See R.S. 47:2241 et seq.

1 §2236. Claim of ownership of adjudicated property by political subdivision

2 A. Whenever property or tax sale title to property is adjudicated to a political
3 subdivision, the political subdivision may declare, by ordinance duly enacted, that
4 the political subdivision intends to acquire a full ownership interest in the property.

5 B. A copy of the ordinance shall be filed with the recorder of mortgages.
6 The recorder shall index the names of the tax debtor and the political subdivision as
7 mortgagees. A transfer, mortgage, lien, privilege, or other encumbrance filed after
8 the filing of the ordinance shall not affect the property. The recorder of mortgages
9 or recorder of conveyances shall cancel, erase, terminate, or release the acts upon the
10 request of the political subdivision.

11 C.(1) Political subdivisions that intend to acquire full ownership in property
12 as provided in this Section shall, within thirty days after the filing of the instrument
13 and ordinance described in Subsection B of this Section, or as soon thereafter as
14 practical, send a written notice regarding the acquisition to the tax sale parties whose
15 interest the political subdivision intends to be terminated that the party has until the
16 applicable time period set forth below to redeem the property or otherwise challenge
17 in a court of competent jurisdiction the acquisition:

18 (a) Sixty days after the date of the notice, if five years have elapsed from the
19 filing of the tax sale certificate.

20 (b) Six months after the date of the notice, if five years have not elapsed
21 from the filing of the tax sale certificate.

22 (2) If this notice is given after the expiration of the applicable redemptive
23 period, this notice shall constitute a notice of sale. The sending of this notice shall
24 constitute service of the notice of sale under Article VII, Section 25 of the
25 Constitution of Louisiana. The notice required by this Section shall be sufficient,
26 and it shall not be necessary to determine whether notice of the tax sale or any other
27 notice was given. The notice shall be sufficient if it is in the following form:

1 "This is an important legal notice.

2 Please read it carefully. You will receive no further notice.

3 [Date]

4 [Name]

5 [Address]

6 [City], [ST] [Zip]

7 RE: Property: [PropertyAddress]

8 [DescriptionofPropertyAbbr]

9 Parish of _____, State of Louisiana

10 Tax sale title to the above described property has been adjudicated to [name
11 of political subdivision] for failure to pay taxes.

12 [Name of political subdivision] now intends to acquire full ownership in the
13 above described property. You have been identified as a person who may have an
14 interest in this property.

15 Your interest in the property **will be terminated** if you do not redeem the
16 property by making all required payments to the tax collector listed below, or file a
17 lawsuit within [60 days] [6 months] of the date of this notice.

18 [Tax collector name, address, and telephone number]"

19 D.(1) The political subdivision shall cause to be published in the official
20 journal of the political subdivision a notice that any tax sale party whose interest the
21 political subdivision intends to be terminated has until the applicable time period set
22 forth below to redeem the property or otherwise challenge in a court of competent
23 jurisdiction the acquisition:

24 (a) Sixty days, for property on which a tax sale certificate was filed over five
25 years before the first publication.

26 (b) Six months if the tax sale certificate was filed less than five years before
27 the first publication of the notice provided in this Subsection.

28 (2) The publication shall be sufficient if it is in the following form:

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"NOTICE

[Names of Tax Sale Parties]

THIS NOTICE BY PUBLICATION IS NOTIFICATION THAT YOUR RIGHTS OR INTEREST IN THE FOLLOWING DESCRIBED PROPERTY LOCATED IN _____, LOUISIANA MAY BE TERMINATED BY OPERATION OF LAW IF YOU DO NOT TAKE FURTHER ACTION IN ACCORDANCE WITH LAW:

[Brief legal description of property]

Improvements thereon bear Municipal No. _____.

Tax sale title to the above described property has been adjudicated to [name of political subdivision] for failure to pay taxes.

[Name of political subdivision] now intends to acquire full ownership in the above described property. You have been identified as a person who may have an interest in this property.

Your interest in the property **will be terminated** if you do not redeem the property by making all required payments to the tax collector listed below or file a lawsuit in accordance with law within [60 days] [6 months] of the date of the first publication of this notice, or the recording of an act transferring ownership, if later.

[Tax collector name, address, telephone number]"

E. If the property is not redeemed within the time limit set forth in Subsection C of this Section, the ordinance shall become operative, and the political subdivision shall acquire full ownership of the property as provided in the ordinance, subject only to such rights as determined by a final judgment rendered in an action filed within the time limits set forth in Subsection C of this Section. The political subdivision shall file a notice in the conveyance records indicating that the political subdivision has acquired full ownership of the property in compliance with this Section. The notice shall be sufficient if it is in the following form:

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"NOTICE

[Name of political subdivision] certifies that it has complied with the provisions of R.S. 47:2236 and that it has acquired full ownership in the following described property:

[Legal description of property]

[Name of political subdivision]

by _____

Name: _____

Title: _____ "

F. Contemporaneously with or subsequent to the filing of the notice, the political subdivision may file with the recorder of mortgages an affidavit indicating how the tax sale parties whose interest the political subdivision intends to be terminated were identified, how the address of each tax sale party was obtained, how the written notice was sent, the results of sending the written notice, and the dates of publication. The affidavit may also contain a statement of the interest to which the political subdivision takes subject. The recorder of mortgages shall index the affidavit only under the names of the political subdivision and the tax debtor, as mortgagors. The affidavit shall be sufficient if it is in the following form:

<u>"AFFIDAVIT</u>	<u>UNITED STATES OF AMERICA</u>
<u>BY</u>	<u>STATE OF LOUISIANA</u>
<u>[NAME OF AFFIANT]</u>	<u>PARISH OF _____</u>

This affidavit shall be indexed under each of the following names as mortgagor:

(a) [Name of political subdivision]

(b) [Name of tax debtor]

BE IT KNOWN, on the _____ day of _____ [MONTH].

_____ [YEAR]

1

<u>Name</u>	<u>State</u>	<u>Address</u>

2

5. Affiant caused to be sent a written notice notifying the persons or entities

3

listed in Item 2 above at the addresses listed in Items 3 and 4 above. A sample of the

4

form of the written notice is attached and satisfied R.S. 47:2236(C).

5

6. The method and results of the notifications set forth in Item 5 above are

6

listed by name and address as follows:

7

<u>Name</u>	<u>Method</u>	<u>Results</u>

8

7. Notification was also published in [journal of general circulation for the

9

political subdivision] on [list dates] [and was posted on the property]. The form of

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the publications is attached and satisfied R.S. 47:2236(D).

11

8. Pursuant to R.S. 47:2236(G), the following interests are cancelled,

12

terminated, erased or released, as applicable, only insofar as they affect the property:

13

<u>Name of Interest Holder</u>	<u>Name of Instrument</u>	<u>Recordation Information</u>

14

THUS DONE AND PASSED on the day, month and year set forth above, in

15

the presence of the undersigned competent witness, who have signed their names

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with Affiant, and me, notary, after reading of the whole.

17

WITNESSES:

AFFIANT:

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Printed Name:

Printed Name:

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Printed Name:

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NOTARY PUBLIC

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Printed Name:

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Notary/Bar Roll No.: _____"

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G. The filing of the affidavit provided in this Section with the recorder of

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mortgages of the parish in which the property is located shall operate as a

1 (e) Subsections C and D are the substantially similar to R.S. 47:2157 (A) and
 2 (B). See the Comments to R.S. 47:2157. The one substantive difference is that since
 3 the property is adjudicated property, a duly notified person has both the right to
 4 redeem or file an action for nullity. Safe harbor forms for both the notice and
 5 publication are provided.

6 (f) Subsection E provides for the recordation of a notice by the political
 7 subdivision in the conveyance records indicating that the political subdivision has
 8 acquired full ownership because the applicable time period to redeem has expired.
 9 A safe harbor form notice is provided.

10 (g) Subsection (F), (G), (H) and (I) are substantially similar to 47:2157 (D),
 11 (E), (F) and (G). See the Comments to 47:2157. The only substantive difference is
 12 that all statutory impositions, including statutory impositions due other political
 13 subdivisions, and governmental liens are canceled by this procedure.

14 §2237. Sale or donation of adjudicated property; authority

15 A political subdivision may sell adjudicated property acquired in accordance
 16 with R.S. 47:2236 as provided by law. It may donate the property acquired in
 17 accordance with R.S. 47:2236 to the extent allowed by the constitution. The
 18 provisions of R.S. 41:1338 shall not apply to the property being sold or donated in
 19 accordance with R.S. 47:2236.

20 Comment – 2008

21 This Section reproduces the substance of R.S. 33:2864.1 and 2866.1. It is not
 22 intended to change the law.

23 PART V. REDEMPTIONS

24 SUBPART A. GENERAL PROVISIONS

25 §2241. Redemptive period preemptive

26 All redemptive periods provided in the Louisiana Constitution shall be
 27 preemptive.

28 Comment – 2008

29 This Section is new. It is not intended to change the law. This Section
 30 codifies a rule established by *jurisprudence constant*. See e.g., *Harris v. Estate of*
 31 *Fuller*, 532 So. 2d 1367 (La. 1988).

32 §2242. Person entitled to redeem

33 Any person may redeem tax sale title to property, but the redemption shall
 34 be in the name of the tax debtor.

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Comment – 2008

This Section is new. It is not intended to change the law. Any person may pay the price for a redemption, but the redemption restores title as it was prior to the tax sale. See e.g. *Housing Authority of Shreveport v. Breen*, 10 So. 395 (La. App. 2 Cir. 1942); *Blocker v. Continental Security Corp.*, 157 So. 155 (La. App. 2 Cir. 1934); *Stockbridge v. Martin*, 4 La. App. 410 (2 Cir. 1926). The concept of subrogation under former R.S. 47:2105 has been eliminated.

§2243. Redemption payments

Redemptions shall be made through the tax collector of the appropriate political subdivision. Payment shall include all statutory impositions accruing before the date of payment with a five percent penalty and simple interest accruing at one percent per month, as well as all other sums required to be paid pursuant to this Subpart. The tax collector shall promptly remit the redemption payment to the tax sale purchaser.

Comments – 2008

(a) This Section is new. It changes the law in part. It provides that redemption is made only through the tax collector. Redemptions may no longer be made through or by negotiation with the tax sale purchaser, particularly since the tax sale purchaser is no longer entitled to costs. This change eliminates the potential of abuse by a tax sale purchaser by overwhelming the redeeming person with so called costs and other fees. Since the tax sale purchaser is no longer entitled to costs as part of a redemption, the redemption should take place through the tax collector without any involvement of the tax sale purchaser. Of course, the tax collector must send the amount of the bid price plus the interest and penalties to the tax sale purchaser.

(b) The Section further requires that the person redeeming pay not only the amount due plus interest and penalties for the year of the tax sale, but also all subsequent statutory impositions, plus a five percent penalty and one percent interest per month to the extent not paid by the tax debtor. See *Op. Atty. Gen, Feb 15, 1967*. To the extent subsequent statutory impositions remain unpaid, the tax collector is entitled to retain the additional funds to satisfy these amounts due. To the extent the tax sale purchaser paid the subsequent statutory impositions, the tax sale purchaser is entitled to reimbursement of these amounts, plus interest and penalties.

(c) The former rule allowing a person to redeem only a portion of the tax parcel has been eliminated.

§2244. Additional payments to political subdivision

Payment also shall include the actual costs incurred by the political subdivision for the cost of mail, notice, publication of notice, personal service of notice, appraisal, and costs associated with the determination of tax sale parties and their notification. The political subdivision may also require the payment of all amounts accrued under other governmental liens as of the date of payment.

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Comment – 2008

This Section is new. It modifies the law in part. The Section details the costs that a political subdivision may impose as part of the redemption price. It eliminates the right of a tax sale purchaser to collect costs. It modifies the law to allow the political subdivision to require that governmental liens be paid as well as part of the redemption price.

§2245. Redemption certificate

Upon payment of the redemption costs, the tax collector shall issue a redemption certificate in the name of the tax debtor and file the redemption certificate in the appropriate conveyance records. The redemption certificate shall be sufficient if it is in the following form:

"CERTIFICATE OF REDEMPTION

STATE OF LOUISIANA

PARISH OF _____

CITY OF _____

Having this day received from _____ the sum of _____ Dollars (\$ _____), being the full amount of taxes, costs, penalties and interest, plus any subsequently paid taxes, accruing from that certain tax sale on the _____ day of _____, _____, for the delinquent [name of political subdivision] taxes for the year _____, assessed to _____ covering tax sale title to that certain immovable property located in the parish described as which property was adjudicated at said tax sale to _____.

NOW THEREFORE I, under the authority conferred on me by act R.S. 47:2245, hereby certify said property as being redeemed to said tax debtor, or his successors in title, from any claims arising out of said tax sale.

DONE AND SIGNED at my office in _____, Louisiana this _____ day of _____, _____.

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Comment – 2008

This Section is new. It modifies the law in part. The political subdivision or an acquiring person of adjudicated property to the extent either has initiated the process to acquire full ownership in adjudicated property are allowed to be reimbursed certain costs as part of the redemption price. Tax sale purchasers are not allowed this reimbursement right.

PART VI. PROCEDURES TO QUIET TAX TITLE

SUBPART A. PROCEEDING TO QUIET TITLE

§2266. Procedure to quiet tax titles

A.(1) After expiration of the redemptive period, an acquiring person may institute an ordinary proceeding against the tax sale parties whose interests the petitioner seeks to be terminated. The petition shall contain a description of the property, the time and place of the sale, and the name of the officer who made the sale, the page and record book and date of filing of the tax sale certificate, and for adjudicated properties sold or donated by a political subdivision, reference to the page of record book and date of filing of the sale or donation, notice that the petitioner is the holder of tax sale title to the property by virtue of tax sale or is the owner of the property by virtue of a sale or donation of adjudicated property, and notice that the title and full ownership in the property will be confirmed unless a proceeding to annul is instituted within six months after the date of service of the petition and citation. This suit shall be brought in the parish in which the property is located unless it lies in two or more parishes, in which case this suit may be instituted in either of the parishes.

(2) The petition and citation shall be served as in ordinary suits; however, if a tax sale party is a nonresident of the state, is unknown, or his residence is unknown, the court shall appoint a curator ad hoc to represent him and receive service. The curator shall receive a reasonable fee for his services to be fixed by the court in each suit, which shall be taxed as costs of suit. If no proceeding to annul the sale has been instituted after the lapse of six months after the date of service of petition and citation, judgment shall be rendered quieting and confirming the title and the full ownership interest therein.

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<u>"AFFIDAVIT</u>	<u>UNITED STATES OF AMERICA</u>
<u>BY</u>	<u>STATE OF LOUISIANA</u>
<u>[NAME OF AFFIANT]</u>	<u>PARISH OF _____</u>

If filed in the mortgage records, this affidavit shall be indexed under each of the following names as mortgagors:

(1) [Name of petitioner]

(2) [Name of tax debtor]

BE IT KNOWN, on the _____ day of _____ [MONTH], _____ [YEAR],

BEFORE ME, the undersigned notary public, duly qualified in and for the state and parish aforesaid, and in the presence of the undersigned competent witness; PERSONALLY CAME AND APPEARED:

[Name of affiant] major domiciliary of the Parish of _____, State of Louisiana ("affiant"), who after being duly sworn, deposed and stated that on his personal knowledge:

1. Affiant personally examined [name of abstract] or [title certificate] or [public records] (the "abstract") affecting the following described immovable property located in the Parish of _____, State of Louisiana (the "Property"):

[Legal description of property]

2. A review of the abstract by the Affiant revealed the following persons or entities with an interest in the property, with such interest being listed beside the name:

<u>Name</u>	<u>Interest in property</u>	<u>Recordation information</u>

1 3. Affiant reviewed the documents listed in the abstract, the telephone book
 2 published by [name of telephone book publisher] for the Parish of
 3 _____ dated for use until [date], or utilized all the resources under
 4 [list other examination resources, including Internet search engines, if any], and the
 5 search revealed the following last known addresses for the persons listed in Item 2
 6 above:

<u>Name</u>	<u>Address</u>

8 4. Affiant reviewed the records of the Louisiana Secretary of State and the
 9 secretary of state of the states set forth by the names of the entities listed below, and
 10 the search revealed the following addresses for the entities listed in Item 2 above:

<u>Name</u>	<u>State</u>	<u>Address</u>

12 5. Affiant caused to be sent a written notice notifying the persons or entities
 13 listed in Item 2 above at the addresses listed in Items 3 and 4 above. A sample of the
 14 form of the written notice is attached and satisfied R.S. 47:2275(B).

15 6. The method and results of the notifications set forth in Item 5 above are
 16 listed by name and address as follows:

<u>Name</u>	<u>Method of Sending</u>	<u>Results</u>

18 7. A Petition for monition was filed on [date of filing] under In Re: [name
 19 of petitioner] Applying for Monition, Docket No. [docket number], on the docket of
 20 the [name of court], State of Louisiana (the "monition proceeding").

21 8. Pursuant to an order of the court in the monition proceeding, the monition
 22 was published in the [journal of general circulation for the political subdivision] on
 23 [date(s)] [and was posted on the property]. The form of publication is attached and
 24 satisfied.

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Comment – 2008

This Section is based on R.S. 13:4945. It requires a judgment after the expiration of the applicable time upon application of the petition if the affidavit under R.S. 47:2277 has been filed and no opposition has been filed. If an opposition has been filed, it is to be tried in accordance with the rules applicable to an action for nullity. See R.S. 47:2286 et seq.

§2279. Costs

When no opposition is made to the confirmation of the sale, the costs of the proceeding shall be paid by the party who prays for the monition.

Comment – 2008

This Section incorporates R.S. 13:4949 in the tax sale monition proceeding. It is not intended to change the law.

§2280. Filing of the judgment; affidavit

A. The judgment rendered in the monition proceeding may be filed with the recorder of mortgages of the parish in which the property is located.

B. The petitioner may file the affidavit provided in R.S. 47:2277 with the recorder of mortgages. The recorder of mortgages shall index the affidavit only under the names of the petitioner and the tax debtor as mortgagors.

C. The filing of the affidavit provided in Subsection B of this Section with the recorder of mortgages of the parish in which the property is located shall operate as a cancellation, termination, release, or erasure of record of:

(1) All statutory impositions due and owing to the selling or donor political subdivision prior to the date of the original acquisition by a tax sale purchaser or donee of adjudicated property.

(2) All statutory impositions of all political subdivisions and all other interests, liens, privileges, and other encumbrances under governmental liens arising prior to the original sale of adjudicated property to the acquiring person, or the filing of the notice required under R.S. 47:2236(E).

(3) All interests, liens, mortgages, and other encumbrances recorded against the property and listed in the affidavit, other than governmental liens not included in Paragraph (2) of this Subsection.

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Comments – 2008

(a) This Section is new. It modifies the law in part.

(b) In keeping with the emphasis of the revision, the important notice is a notice of the right to redeem. Therefore, the only reason a tax sale can be set aside or declared a nullity is for a redemption nullity, a payment nullity, or a sale to a prohibited person under R.S. 47:2162. A tax sale can no longer be set aside for minor procedural violations in noticing the tax sale and in the conduct of the tax sale, etc.

(c) This Section makes clear that all of these nullities are relative nullities since the nullities can be cured. A claim of a redemption nullity can be cured by the giving of notice and the passage of time under this Chapter. A claim of a payment nullity can be cured by acquisitive prescription. A violation of R.S. 47:2162 is cured by a sale to a good faith purchaser. An action for nullity under this Chapter is also subject to liberative prescription. See 47:2287. The action may be brought only by a tax sale party whose interest in the property has been adversely affected.

(d) A nullity action or action to annul may be brought as its own action, as a reconventional demand or intervention in a suit to quiet title or as an intervention in a monition proceeding.

§2287. Time in which to file an action for nullity; defenses

A. Any action to annul a tax sale on grounds of a redemption nullity shall be brought before the earlier of:

(1) Six months after a person is duly notified using a notice, other than the notice provided in R.S. 47:2156 that is sent between the time that the redemptive period ends and five years after the date of the recordation of the tax sale certificate.

(2) If a person is duly notified more than five years after the date of the recordation of the tax sale certificate, sixty days after the person is duly notified.

B. An action to annul a tax sale on grounds of a payment nullity shall be brought before the later of:

(1) Five years after the recordation of the tax sale certificate.

(2) If the person bringing the action was not duly notified at least sixty days before the end of that five-year period, then within sixty days after the date that the person was duly notified.

C. When a nullity is asserted as a reconventional demand in a quiet title action or as an intervention in a quiet title action or monition proceeding, the nullity shall be asserted within the time specified for a reconventional demand or intervention in the action or proceeding.

1 D. To the extent the interest of the person asserting a nullity has not been
 2 terminated, or if the property remains subject to the interest pursuant to this Chapter,
 3 including without limitation R.S. 47:2121(C)(2) or other applicable law, such fact
 4 shall be an absolute defense to the action of nullity.

5 Comments – 2008

6 (a) This Section is new. It modifies the law and sets for the time periods in
 7 which an action for nullity must be brought.

8 (b) An action for nullity based on a redemption nullity must be brought
 9 within six months or sixty days after a person has been duly notified depending on
 10 when the notice was sent.

11 (c) An action for nullity based on a payment nullity must be brought five
 12 years after the filing of the tax sale certificate if a person was duly notified within the
 13 five year period. If the person is duly notified after the five year period, then the
 14 action must be brought within sixty days of the date the person was duly notified.

15 (d) In addition to Subsections A and B, actions for nullity brought as a
 16 reconventional demand or as an intervention must also be brought within time
 17 periods specified for such actions in the applicable proceedings.

18 (e) An absolute defense to an action for nullity is that the property is still
 19 subject to the interest of the person claiming such nullity.

20 §2288. Acquisitive prescription

21 The tax sale certificate and the act by which an acquiring person obtains full
 22 ownership constitute just title for purposes of acquisitive prescription.

23 Comment – 2008

24 This Section is new. It is not intended to change the law. The Section
 25 codifies *jurisprudence constante*. See e.g., *Giddens v. Mobley*, 37 La. Ann. 41 (La.
 26 1885); *Soniat v. Donovan*, 43 So. 464 (La. 1907); *Wickoff's Heirs v. Miller*, 19 So.
 27 475 (La. 1886).

28 §2289. Effect of judgment

29 A. A judgment based on a payment nullity not only reinstates the interest of
 30 the tax debtor, or person claiming ownership through the tax debtor in the property,
 31 but also reinstates all interests in the property otherwise terminated, released,
 32 canceled, or erased pursuant to this Chapter, to the extent the interest has not
 33 otherwise terminated pursuant to its terms or by operation of law.

34 B. Other than as to the tax debtor, or a person claiming ownership through
 35 the tax debtor, a judgment for a redemption nullity reinstates the interest of the
 36 person claiming the nullity, to the extent the interest has not otherwise terminated

1 pursuant to its terms or by operation of law. A judgment based on a redemption
 2 nullity as to the tax debtor, or a person claiming ownership through the tax debtor,
 3 reinstates all interests in the property otherwise terminated, released, canceled, or
 4 erased pursuant to this Chapter, to the extent the interest has not otherwise
 5 terminated pursuant to its terms or by operation of law.

6 Comments – 2008

7 (a) This Section is new. It clarifies the law.

8 (b) A judgment on a payment nullity reinstates all interests that were
 9 otherwise terminated pursuant to this Chapter. It does not reinstate an interest that
 10 terminated in accordance with its terms, such as a lease that has expired, or an
 11 interest that has prescribed, such as a mortgage. See Civil Code Articles 3357 et seq.

12 (c) A judgment on a redemption nullity in favor of the tax debtor or his
 13 successor reinstates all interests that were otherwise terminated pursuant to this
 14 Chapter. A judgment in favor of an interest holder, other than the tax debtor or his
 15 successors, reinstates that person's interest only. The judgment does not reinstate an
 16 interest that terminated in accordance with its terms, such as a lease that has expired,
 17 or an interest that has prescribed, such as a mortgage. See Civil Code Articles 3357
 18 et seq.

19 §2290. Suspensive conditions to effectiveness of judgment

20 A.(1) A judgment annulling a tax sale or other transfer to an acquiring
 21 person or his successors based on a payment nullity shall not have effect until all of
 22 the following are paid:

23 (a) All statutory impositions for which the sale or adjudication was made.

24 (b) All subsequent statutory impositions and all other governmental liens,
 25 including interest and penalties.

26 (c) Ten percent per annum interest on the statutory impositions.

27 (2) These payments shall not be required upon proof of payment of the
 28 statutory impositions or governmental liens by the persons in whose favor a nullity
 29 is declared.

30 B.(1) A judgment annulling a tax sale or other transfer to an acquiring person
 31 or his successors based on a redemption nullity shall not have effect until all of the
 32 following are paid:

33 (a) All statutory impositions forming the basis of the initial tax sale.

1 B.(1) The tax sale purchaser, the political subdivision, or the purchaser or
2 donee from a political subdivision shall be presumed to be a good faith possessor of
3 the property.

4 (2) Costs pursuant to Article VII, Section 25 of the Louisiana Constitution
5 and R.S. 47:2290 shall include costs of sending notice, costs of publication, and costs
6 of determining tax sale parties. Costs shall also include amounts set forth in Civil
7 Code Articles 496 and 497, if applicable.

8 (3) Within fifteen days after the rendering of the order under Paragraph
9 (A)(1) of this Section, the party claiming costs shall submit proof of costs. Proof of
10 costs may be made by affidavit or other competent evidence and may be contested
11 by the party claiming the nullity. A contest of costs shall be filed within fifteen days
12 after the filing of the proof of costs, and the contest shall be heard within forty-five
13 days after the filing of the proof of costs.

14 (4) Within sixty days after the issuance of the order pursuant to Paragraph
15 (A)(1) of this Section, the court shall render a judgment of nullity, and the judgment
16 shall fix the costs allowed. This judgment shall be a final judgment subject to
17 appeal.

18 C. After a judgment under Subsection B of this Section has been rendered,
19 the governmental liens, other than statutory impositions paid if the nullity has been
20 rendered on the basis of prior payment, and costs, shall be paid within one year from
21 the date of the judgment. This one-year period shall be suspended while an appeal
22 is pending. If the payment is not made within the period allowed, the judgment of
23 nullity shall be vacated and the case dismissed with prejudice at the request of the
24 person against whom the judgment of nullity was rendered.

25 D. After payment has been made, the party in whose favor judgment has
26 been rendered may apply for an ex parte order stating that the required payments
27 have been made. The application shall be verified and shall state, or an affidavit
28 accompanying the application shall state, the amount and method of payment, that
29 the payment was made to the party against whom the judgment has been rendered,
30 and that a request for dismissal under Subsection C of this Section has not been filed.

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Comments – 2008

(a) This Section is new. It sets for the procedure for setting the costs and finality of nullity judgment for appeal purposes. At the conclusion of the trial on the merits for the nullity, the judge is required to issue either a preliminary order that the tax sale will be declared a nullity or issue a final judgment dismissing the action with prejudice. The judgment dismissing the action is final for appeal purposes.

(b) If a preliminary order that the tax sale will be declared a nullity is issued, Subsection B defines what costs are required to be paid before a judgment becomes effective under the Louisiana Constitution and R.S. 47:2290 and provides the procedure by which the cost are determined.

(c) Under Subsection B costs include costs incurred in providing notice and in determining tax sale parties, such as the costs of mailing, publication, the abstract or title report, and title examination. Costs also include what would be due a good faith or bad faith possessor under Civil Code Articles 496 and 497, such as the lesser of the costs of the improvements or the enhanced value of the property. Of course the possessor of the property is presumed to be in good faith, but the person claiming the nullity may offer evidence of bad faith.

(d) Proof of costs must be made within fifteen days of the issuance of the preliminary order that the tax sale will be declared a nullity. An opposition to such costs must be made within thirty days of the issuance of the preliminary order. A hearing, if necessary, must occur within forty-five days of the issuance of the preliminary order. A judgment declaring a nullity and setting costs must be issued within sixty days of the preliminary order. This judgment is final for purposes of appeal.

(e) Subsection C requires payment of the costs within one year of the issuance of the final judgment declaring the tax sale a nullity and setting the costs. This period is suspended while an appeal is pending. Payment of costs must be made within this time period, or else the judgment can be vacated and the case dismissed with prejudice.

(f) Subsection D allows the person paying the costs to apply by verified petition or with an accompanying affidavit for an *ex parte* order that the costs have been paid.

§2292. Fruits

If an acquiring person takes corporeal possession of the property and administers the property, the acquiring person shall have the right to natural fruits, as defined in Civil Code Article 551, that are severed in the ordinary course of business prior to the judgment of nullity becoming effective, and the civil fruits, as defined in Civil Code Article 551, accruing prior to a judgment becoming effective to the extent the fruits are used to pay statutory impositions or governmental liens, or to improve the property.

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Comment – 2008

This Section is new. It clarifies the law. An acquiring person is allowed to retain the natural and civil fruits from the property to the extent the proceeds of the fruits are used to pay the statutory impositions and governmental liens.

Section 2. R.S. 13:4951, Subparts E, F, and G of Part II of Chapter 6 of Title 33, comprised of R.S. 33:2861 through 2892.9, Chapters 13A, 13B, and 13C of Title 33, comprised of R.S. 33:4720.11 through 4720.49, Part II of Chapter 4 of Subtitle III of Title 47, comprised of R.S. 47:2101 through 2114, and Parts I, II, and III of Chapter 5 of Subtitle III of Title 47, comprised of R.S. 47:2171 through 2194, 2221 through 2230, and 2251 through 2262, are hereby repealed in their entirety.

Section 3. This Act shall become effective on January 1, 2009.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____