What effect Does Bankruptcy Have on the Processes and Procedures Surrounding Delinquent Ad Valorem Taxes?

- **What is an Automatic Stay in bankruptcy and when does it expire?**
  - Federal Bankruptcy Law (Section 362) **creates an Automatic Stay** on actions against the Debtor as soon as the petition for bankruptcy is filed.
  - The **Automatic Stay expires** when the **bankruptcy case is closed, dismissed or when the debtor receives a discharge of his debts.**

No matter when...

Sending a notice is OK

- **Exceptions to the Automatic Stay:**
  - The **assessment of taxes** does not normally violate the Automatic Stay.
  - Generally, the mere **notice of a tax deliquency** does not violate the Automatic Stay.
- **General Treatment of Ad Valorem Taxes in Bankruptcy:**
  - Generally, a debtor who files for bankruptcy will be discharged from his debts unless a particular debt is deemed non-dischargeable by Federal Bankruptcy Law or is otherwise adjudicated on a factual basis by the Bankruptcy Court.
  - Discharge releases the Debtor's *pre-petition* obligations.
  - Taxes which are deemed non-dischargeable are property taxes **assessed before the commencement of the case and last payable without penalty after one year before the date of filing of the petition.**
- **Pre- and Post-Petition Tax Sales, Generally:**

- Petition
- Sale
- Maturity

Violation

  - **The sale of a debtor's property at a tax sale when the Automatic Stay is in force is a violation of the Stay.**
  - **Tax sales that take place before the debtor files for bankruptcy are not prohibited** since the Automatic Stay is not yet in force. Despite filing for bankruptcy, the taxpayer or the bankruptcy trustee maintains a two-year right to redeem the property (*equitable right of redemption*) by paying the amount of taxes owed plus interest and penalties.

- Sale
- Petition
- Maturity

OK

  - **The stay does not toll the running of the redemption period.**
- **However**, the Federal Bankruptcy Law in Section 108 (b) creates a statutory extension of the redemption period under certain circumstances.

    - The debtor or trustee may redeem property sold at a pre-petition tax sale either before the end of the two-year redemption period created by state law, or if less than sixty days remain on the redemption period from the date that the petition was filed, then an extension of sixty days will be provided to the debtor.

  - If the debtor or Bankruptcy Trustee does not redeem the property under state law, then the debtor's statutory right of **redemption lapses** and the **title to the property vests in the tax sale purchaser**.

- **What impact does bankruptcy and the Automatic Stay have on the Chancery Clerk's duties in the delinquent tax process?**

Without regard to when sale occurred

  - The Automatic Stay does not prevent the Clerk from sending notices of the tax delinquencies to the Debtor or lien holders. See 11 U.S.C. Section 362(b)(9).

  - A Clerk should not issue a tax deed to a purchaser at maturity if the tax sale occurred after a petition for bankruptcy was filed by the debtor. If the County was on notice of the bankruptcy filing at the time the sale occurred, penalties could be imposed for willful violation of the Automatic Stay. **A tax sale that occurs after the Automatic Stay takes effect is void.**

  - If a bankruptcy petition is filed subsequent (after) to a tax sale, the clerk may issue a tax deed to the purchaser at maturity, assuming no redemption, and the title to the property would vest in the tax sale purchaser.

  - The Clerk should be aware that there is no requirement that any creditor receive notice of the Automatic Stay for it to be applicable. Thus, if a tax sale is conducted after the petition is filed, which would violate the Automatic Stay, the absence of notice would not in itself validate the tax sale. The sale would nevertheless be void.

  - Notice to the County Tax Collector is likely to suffice as notice to the Chancery Clerk of the bankruptcy filing.

  - Under Section 1322 of the Bankruptcy Code, a debtor who files a Chapter 13 or 11 bankruptcy must file a plan that provides for the payment of debts over a period of time. If the plan provides for partial payments over time to cure the default, the County will be bound by the plan once it is confirmed. Therefore, the County should object to such a plan.