

MISSISSIPPI DELINQUENT TAXES

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**10th Edition
February 5, 2020**

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Authors' Preface

All Chancery Clerks have encountered difficulty with delinquent taxes. Many have been the subject of litigation, reported decisions of higher courts, or opinions of the Attorney General. In the bright light of hindsight, the path seems clear, but in the fog of everyday work, things are rarely well illuminated. The Mississippi Supreme Court, the Mississippi Court of Appeals, and various statutes and other authorities have imposed exceedingly high standards on Chancery Clerks. This is particularly true with respect to the duty to notify record owners and lien holders of the impending maturity of delinquent taxes.

The standards are rightly high because quite often a citizen's most precious possession – her real property – is at stake. Tax sales represent a taking – if not by the government, then at least with the government's urging and blessing and for its ultimate benefit. Thus, it is rightly the job of government to do everything within its power to provide notice and due opportunity to redeem delinquent taxes and avoid forfeiture of title. The job falls to Chancery Clerks, and they are up to the task. It is a high and sacred responsibility.

Recent changes to MISS. CODE ANN. §§ 25-7-21 and 27-43-3 have provided Clerks with increased financial resources to deal with and improve the mechanics of handling delinquent taxes. The aim of this paper is just that – to help Chancery Clerks improve the performance of their delinquent tax duties by thoroughly reviewing them, isolating those that pose the greatest difficulties, and offering suggestions on carrying them out in conformity with the demands of statute and the rulings of our high courts.

Chapter 1.

Mechanics of the Tax Sale Process and its Nature and Purpose.

Section 1.01 Why Do We Have a Tax Sale? At the county government level, taxes fund a number of services, including hospitals, public schools, law enforcement, parks, and road construction and maintenance. When taxes are not paid, county governments do not have the operating funds needed for these programs. The debt owed to the county in unpaid taxes is collected in the tax sale as a result of the money tendered by the tax purchasers. Thus, the tax sale is the means by which county governments generate lost income from delinquent tax payers. Moreover, it is the force by which county governments are guaranteed the collection of ninety-five percent or more of the revenue projected by their tax rolls.

Section 1.02 What Actually Happens at the Sale? The tax sale takes place at the Courthouse or the place designated as the Courthouse by the Board of Supervisors. On the day of the tax sale – which is either the first Monday in April or the last Monday in August – the Tax Collector offers for sale the land of each delinquent taxpayer for the payment of taxes then remaining due and unpaid, together with all fees, penalties and damages provided by law. MISS. CODE ANN. § 27-41-59. The sale will continue from day to day within the hours of 8:30 a.m. and 4:30 p.m. until completed. After the tax sale, the Tax Collector has no further authority to collect that year's taxes. Such taxes must be paid to the Chancery Clerk by means of redemption. Also, the Tax Collector should not collect current year taxes if delinquent taxes are still owed.

Section 1.03 The Amount of Bids. The minimum bid is the amount owed for taxes and fees. A tax sale purchaser may bid more; however, if the parcel is redeemed, the purchaser will only get the amount owed for taxes and fees at the time of the sale and interest since then. The excess or "overbid" will be retained by the county. According to MISS. CODE ANN. § 27-41-77, if a parcel is sold for more than the amount of taxes due and all costs, the Tax Collector reports the excess to the Chancery Clerk and pays it into the County Treasury where it should be held in escrow because, if the parcel is not redeemed by the maturity date, the "owner of the land" may request payment of the overbid. Such request must be made within two years of the expiration of the maturity date. If no request is made within that time frame, the overbid will be retained by the County.

Section 1.04 When There is a Maturity, to Whom is the Overbid to be Paid – the Owner at the Time of the Tax Sale or the Tax Purchaser? Occasionally, when there is a maturity, the tax purchaser will request a refund of his overbid. MISS. CODE ANN. § 27-41-77 says that when there is no redemption and the redemption period has expired, the excess bid amount "shall, upon request of the owner, be paid to such owner." Elsewhere in that code section the words "owner of the land" are used. What about a situation where the tax purchaser has received and recorded a tax deed to the property? Is he then "the owner" and entitled to the overbid amount he paid at the sale two years prior? This question has yet to be clearly answered. However, the OPINION TO GERALD GEX, Docket No. 1997-0150 (March 21, 1997) appears to indicate that the owner at the time of the tax sale rather than the purchaser who received a tax deed is entitled to the excess bid amount. That is, the land owner who "lost" the property gets the benefit of the purchaser's overbid. The OPINION TO WILLIE L. BAILEY, Docket No. 1997-0736 (November 14, 1997) also lends support to the notion that the word "owner" does not mean "tax purchaser who received a

tax deed” but rather “owner at the time of the tax sale.” Therefore, until further clarification is received, the tax purchaser should not be refunded excess bid amounts, unless the sale is declared void by the Board or the Court.

The OPINION TO PIETER TEEUWISSEN, Docket No. 2016-00091 (March 25, 2016) sheds more light on the subject, although it involves a convoluted chain of tax sales and maturities. The conclusion supports the view that the record owner at the time of the tax sale in question is entitled to the overbid amount, whether that owner acquired title by prior tax deed or by fee simple ownership.

Section 1.05 When the Sale is Declared Void, the Tax Purchaser can be Refunded the Amount of the Overbid. In the OPINION TO EDDIE R. MYERS, Docket No. 2000-0410 (July 28, 2000), the Attorney General stated that when a tax sale is declared void by the Board or the Court, the county should refund the amount of the excess bid to the tax purchaser.

Section 1.06 The Certified List and the Lien Created Thereby. The Tax Collector will transmit separate certified lists¹ of the lands struck to the state and those sold to individuals to the Chancery Clerk each year on or before the second Monday of May, in the case of an April sale and on or before the second Monday of October, in the case of an August sale. The certified lists will specify to whom the property is assessed, the date of the sale, the amount of taxes for which the sale was made, and each item of cost incident thereto, and, where sold to individuals, the name of the purchaser. The certified lists will vest in the State or in the individual purchaser perfect title to the land sold for taxes, but without the right of possession for the period of, and subject to, the right of redemption. MISS. CODE ANN. § 27-41-79. If the property is redeemed within the two-year maturity period, the tax purchaser has no other interest in the parcel.

Section 1.07 Lands Sold to Individuals vs. Lands Struck to the State. According to MISS. CODE ANN. § 27-41-59, if no one bids the whole amount of taxes and all costs incident to the sale, the Tax Collector must strike the parcel off to the State. According to the Attorney General, perfect title vests in the State on the date the land is struck off to the State, without the right of possession and subject to the equitable right of redemption in the property owner. See OPINION TO KAY PACE, Docket No. 2010-0036 (February 10, 2010). Therefore, once property is struck to the State, it cannot be offered for sale at a subsequent year’s tax sale by the County unless it was redeemed in the meantime. When a parcel is struck to the State (often referred to as “sold to the State”) and is thereafter sought to be redeemed, all delinquent taxes and current taxes must be paid by the redeemer at the same time. MISS. CODE ANN. § 27-35-63. Indeed, the Attorney General has opined that one redeeming property which has been struck off to the State is required to pay all accrued taxes since the tax sale. OPINION TO NORMAN MCLEOD, Docket No. 1999-0276 (June 11, 1999). After the redemption period is over, assuming the property is not

¹In OPINION TO JACK ALLEN, Docket No. 2014-00065 (February 21, 2014), the Attorney General noted that “[t]here is no requirement that the list be in a particular form, i.e. printed hard copy or electronic,” presumably indicating that either format was acceptable. One thing is certain, though: the list must be certified in some form or fashion.

redeemed, the Secretary of State "shall have charge. . .of the lands forfeited to the state for nonpayment of taxes." MISS. CODE ANN. § 7-11-11.

Section 1.08 Collecting all Accrued Taxes Upon Redemption of Lands Struck to State.

Given that MISS. CODE ANN. § 27-35-63 requires the taxpayer to pay all taxes, including current year taxes, at the time of redemption of lands struck to the state, how should the current year taxes be handled? There is a difference of opinion – and of practice – among the various Chancery Clerks in this regard. Some Chancery Clerks (a minority, it seems) require all taxes including current year taxes to be paid to and collected by the Chancery Clerk, and then the current year amounts are remitted to the Tax Collector. A majority of Chancery Clerks, however, collect only the delinquent amounts, and direct the taxpayer to tender separate funds to the Tax Collector in payment of current year taxes. Either method is probably acceptable.

Section 1.09 Effect of a Foreclosure. Liens created by delinquent taxes survive a foreclosure and run with the land. OPINION TO JOSEPH D. NEYMAN, JR., Docket No. 2010-00178 (April 23, 2010); OPINION TO W. BRUCE LEWIS, Docket No. 2014-00370 (October 3, 2014).

Section 1.10 Public Servants are Prevented from Purchasing at Tax Sale in Home County.

The Ethics in Government Act, particularly MISS. CODE ANN. § 25-4-105 (3) states that no public servant may be a purchaser at any sale made by "the governmental entity of which he is an officer or employee." Thus, Chancery Clerks and all other county officials and employees are prohibited from purchasing at a tax sale in the county where they serve. This prohibition would likely extend to prohibit such an official or employee from acting on behalf of another company or an LLC, whether he has an ownership interest in that entity or not. See ETHICS ADVISORY OPINION No. 13-075-E (August 9, 2013) (holding that a county employee may not buy property on behalf of a company at that county's tax sale). The penalty for violating this statute is set forth in MISS. CODE ANN. § 25-4-109 and will be imposed by the Mississippi Ethics Commission. It could include a \$10,000 fine and removal from office.

Section 1.11 However, Public Servants may Purchase at Sales in Another County and at Sales in Home County After Retirement. This prohibition discussed in Section 1.10 above does not apply to tax sales in other counties. That is to say, a county employee or official in one county may purchase at a tax sale in another county where he is not an employee or official. ETHICS ADVISORY OPINION No. 15-023-E (May 8, 2015). Similarly, a former or retired chancery clerk or former or retired county employee may purchase taxes at a sale in the county where he or she was formerly employed. ETHICS ADVISORY OPINION No. 13-060-E (July 12, 2013).

Section 1.12 Tax Collector may not Exclude Bidders. In OPINION TO JOHN D. SUTTON, Docket No. 20179-0202 (July 21, 2017), the Attorney General stated that "potential bidders of a tax sale may not be limited or excluded" absent specific statutory authority. The opinion may be construed to prevent Tax Collectors from engaging the long-standing practice of allowing owners or family members of owners – as well as prior purchasers of specific parcels – to have the opportunity to buy parcels at the sale prior to offering those parcels to the bidders at large.

Chapter 2. **The Redemption Process**

Section 2.01 Who May Redeem? The question often arises, “who may redeem delinquent taxes?” The short answer is – anyone who asserts that he is interested in the property. The issue is not as easy as it first appears because sometimes parties seeking to redeem taxes think that by doing so, or by paying taxes for so many years, they acquire ownership of the property. That is incorrect. A redemption inures to the benefit of the assessed owner no matter by whom it is made -- that is, no matter who pays. *Jamison v. Thompson*, 65 Miss. 516, 5 So. 107 (1888). Thus, it may behoove a Clerk to ask a few questions to determine why a person is seeking to redeem and to explain that the payment of taxes or the redemption of taxes will not create ownership outright. Nevertheless, just about anyone who wants to redeem taxes should be allowed to do so, and the discussion which follows will render an explanation.

Section 2.02 Mississippi Constitution § 79. We begin with Section 79 of the Mississippi Constitution of 1890, which states that the Legislature (a) must establish laws for the sale of all delinquent lands and (b) shall apply “liberal principles in favor of such titles as in sale by execution.” The right of redemption from all sales of real estate for the non-payment of taxes “shall exist . . . in favor of owners **and persons interested in** such real estate.” (Emphasis added).

Section 2.03 Mississippi Code § 27-45-3. The laws mandated by Section 79 of the state constitution are set forth in Chapter 45 of Title 27 of the Mississippi Code of 1972. In particular, MISS. CODE ANN. § 27-45-3 deals specifically with who may redeem:

The owner, or any persons for him with his consent, **or any person interested in the land sold for taxes**, may redeem the same, . . . at any time within two (2) years after the day of sale . . .

Note that both in the statute and in the Constitution, the wording is:

“any person *interested in*,”
– and **not** –
“any person *with an interest in*. ”

There is a difference. The latter (“with an interest in”) is a legal term of art and connotes a legal interest, such as title to the property, partial title to the property, or a lien on the property. It has a relatively narrow application. The former (“interested in”), however – and the way the Constitution and the law actually read – is not a term of art and has very broad application. The Mississippi Supreme Court and the Mississippi Court of Appeals have expounded upon these provisions of law, so there are a number of court decisions which give us even more guidance on this topic. We will examine some of the more helpful ones.

Section 2.04 Liberal Construction. In *Darrington v. Rose*, 128 Miss. 16, 90 So. 632 (1920), the Mississippi Supreme Court held that although there is some slight variation in the language used in the constitutional provision and statute as to who is given the right to redeem, when both are

construed together, the right to redeem is as broad in one as in the other. Thus, any owner of land, or person interested therein, is given the right to redeem.

Among the reasons given by some of the courts for such a liberal construction of statutes of this character is that the purchaser at a tax sale suffers no loss; he buys with full knowledge that his title cannot be absolute until the time for redemption expires, and that, if his title is defeated by redemption, it reverts to the original owner; and if it is redeemed, he is fully reimbursed for his outlay, with interest.

Perret v. Loflin, 814 So. 2d 137, 139 (2002)(quoting *Darrington*, 90 So. at 634). In *Perret*, the Court held that since redemption must be construed liberally in favor of the right to redeem, then a judgment creditor was “a person interested in the land sold for taxes” within the meaning of MISS. CODE ANN. § 27-45-3. *Perret*, 814 So. 2d at 140.

Section 2.05 Liberal Construction in Action. In *Marathon Asset Management, LLC v. Otto*, 977 So. 2d 1241 (Miss. App. 2008), the Court of Appeals upheld the Chancellor’s ruling that the redemption period could be extended by an additional sixty days. The facts in this case differ from the above-referenced cases in that the party attempting to redeem in those cases was either the original owner, had acquired a deed, or otherwise had some claim of ownership during the redemption period. In *Marathon*, the Ottos purchased the subject property through a foreclosure sale held on June 4, 2002. However, because of separate court proceedings involving the original owners and the property, the Ottos did not actually obtain legal title to the property until September 9, 2002, two months after the foreclosure sale and twelve days after the expiration of the redemption period. The Chancellor found that at the time of the foreclosure sale, the Ottos stood ready to redeem the property, but could not due to the delay caused by the actions of the original owners. There is an argument that, as the winning bidders at the foreclosure sale, the Ottos were sufficiently “interested in” the property, but their interest was contingent on the Chancellor confirming the sale. The Ottos did not want to pay the taxes (redeem) and then have the Chancellor rule that they did not have title. In other words, prior to the expiration of the redemption period, the Ottos did not hold record title and could not be certain whether or not the Chancellor would confirm the foreclosure sale. Thus, the Court found that since there is no statute that explicitly prohibits the extension of the redemption period and in light of decisions by the Supreme Court which provide for liberal construction of the statute, there was no error in the Chancellor’s decision to extend the redemption period. *Marathon*, 977 So. 2d at 1245.

Section 2.06 Clerks Should Allow Almost Anyone to Redeem. Although it seems clear that Mississippi law requires the redeemer to have some connection to the property in question, that connection can certainly be minimal – and it may even be non-existent. Regardless, it is not the duty of the Chancery Clerk to inquire into the nature or sufficiency of the redeemer’s connection to, or interest in, the property. Rather, as the *Darrington* court observed, when there is an offer to redeem, “the officer before whom the redemption is sought to be made is not required to try the title of the alleged owner” and Chancery Clerks should not “stop to see whether [the redeemer] has good title.” *Darrington*, 128 Miss. 16 at 26, 90. So. 132 (1920). The requirement of some legal interest or connection was further eroded in *Perret* when the court held that “the exclusion of anyone not meeting the test of *Darrington* [i.e. having some legal connection to the land] is an overly restrictive view.” *Perret*, 814 So. 2d 137, 139 (Miss. 2002). Given the liberal construction

which is applied to the right to redeem, these two cases taken together inescapably lead to the conclusion that Chancery Clerks should never refuse an offer of redemption and should allow virtually anyone to redeem taxes.

Section 2.07 Prior and Subsequent Years' Tax Purchasers. Individuals who purchase delinquent taxes at a sale prior to or after the sale in question should be allowed to redeem if they so desire. They are sufficiently "interested in" the property. OPINION TO THOMAS J. O'BEIRNE, 1991 WL 577532 (April 3, 1991). The fact that a tax purchaser has not requested a tax deed does not prevent him from redeeming subsequent year's taxes – or paying current year's taxes. OPINION TO PARKER H. STEEL, Docket No. 2009-00172 (May 8, 2009).

Section 2.08 Collecting the Proper Amounts, Forms of Payment, and Failure of Payment. It is important that Chancery Clerks collect the proper amount when accepting payment for delinquent taxes. Unlike the Tax Collector, the Chancery Clerk cannot accept partial payments except as a part of a Chapter 13 bankruptcy. (See Section 5.14 below.) Therefore, if payment is not tendered in full, the property cannot be redeemed. Indeed, the Attorney General has opined that when a check for the redemption amount is later dishonored, the redemption is void unless and until the taxpayer redeems the property within the time allowed by law, with sufficient good funds. OPINION TO FRANK EDENS, Docket No. 1993-0837 (November 19, 1993). The tender of a check which is later returned for insufficient funds does not extend the redemption period. The property will mature if the proper amount is not presented prior to the expiration of the redemption period. When insufficient funds are tendered for the payment of delinquent taxes, it may be a good practice for the Clerk to notify the taxpayer immediately and explain that the proper amount must be tendered before the maturity date.

Section 2.09 Tips on Collecting the Proper Amounts. Chancery Clerks can avoid such problems by refusing to accept personal checks as a form of payment. A safer alternative may be to elect to accept cash, certified funds, and credit cards for the payment of delinquent taxes.

Section 2.10 Delinquent Taxes Must be Redeemed Before Current Taxes May be Paid. Under MISS. CODE ANN. § 27-41-31 (2), the Tax Collector is prevented from accepting payments of current year's taxes where delinquent taxes are owed. The only exception to this rule is where a prior or subsequent year's tax purchaser seeks to make payment of current year taxes. He will not be required to redeem off himself – or redeem off any other purchaser – in order to pay current taxes and protect his un-matured interest. OPINION TO BETTY BYRD, 2004 WL 870169 (March 12, 2004).

Section 2.11 The Release – its Contents and Effect. The tax release is a written statement of the amount of the delinquent taxes and all penalties, interests and fees that were paid to redeem the land. Upon payment, the Chancery Clerk is required to execute to the redeeming party a release of all claim or title of the state or tax sale purchaser, by virtue of the tax sale. The release is the County's certification that the taxes have been paid and the lien has been removed. When the tax release is executed, the necessity for an action to cancel the title of the purchaser at the tax sale no longer exists. *Lee v. Smith*, 189 Miss. 636, 198 So. 296, 298 (1940). The release effectively cancels the title of the state or tax sale purchaser. [See *Appendix A* for an example of a Tax Release.]

Section 2.12 Release Should be Recorded. MISS. CODE ANN. § 27-45-3 contemplates that each release is to be recorded in the land records. The statute says that releases “shall be entitled to be recorded without acknowledgment as deeds are recorded.” Further, MISS. CODE ANN. § 89-5-35 provides that “every conveyance . . . by an official . . . shall be indexed by the Clerk;” thus, the each release should be indexed in the general index to deeds, both direct and reverse, as well as in the appropriate sectional or subdivision index.

Section 2.13 A Rare Occurrence – Redemption in Part. According to MISS. CODE ANN. § 27-45-7, a bank, mortgagee, or any person interested in the property, may apply in writing to the Chancery Clerk and request to be allowed to redeem a portion of a tract of land secured by a deed of trust or mortgage. The application must be made prior to the expiration of the maturity date. Once the application is filed, the Chancery Clerk must give ten (10) days’ written notice of the application to the owner, the tax sale purchaser, and to all persons holding mortgages or other liens of record on the land. The Chancery Clerk must make notations on the tax sale record indicating the date the notices were mailed, as well as the names and addresses of persons to whom the notices were mailed. The notices must be sent by registered mail, return receipt requested and must designate a time, not less than ten (10) days from the date of the mailing of the notices when the Chancery Clerk will make investigation and ascertain the relative value of that certain portion of the land, as it relates to the value of the entire land sold for taxes, and he will then apportion the taxes on that certain portion of the land accordingly. (On the date appointed, he will conduct a hearing of sorts. This is really more of a job for the Tax Assessor and it is recommended that he or she be consulted as to the best means of assessing a proportionate value to the parcel sought to be carved out and redeemed.)

Once this apportionment is made, the mortgagee or holder of the deed of trust, or any person interested in the property, will be entitled to redeem that part of the land by payment of the sum apportioned by the Chancery Clerk, regardless of the purchaser’s bid at the tax sale. The redeemer must pay the sum apportioned to that portion of the property, as well as all costs, damages and interest. The redeemer must also pay all current year taxes that have accrued upon that portion of land since the sale. In other words, the redeemer must pay all delinquent and current year taxes on that certain portion of the parcel, as apportioned by the Chancery Clerk. See MISS. CODE ANN. § 27-45-7. [See *Appendix B* for an example of Notice to Owner of Application To Redeem in Part; See *Appendix C* for an example of Notice to Lienor of Application To Redeem in Part; See *Appendix D* for an example of Notice to Tax Sale Purchaser of Application To Redeem in Part; See *Appendix E* for an example of a Tax Release for a Partial Redemption.]

It is important to note that the need to make a redemption in part rarely occurs. It usually happens when a lien holder who has a mortgage on less than a whole tract of land wants to clear up the taxes on the part it has a mortgage on – and not on the remainder. It could also arise in the case of heirship property where an heir wants to preserve a portion of the property that he thinks or claims he owns either by devise or by adverse possession.

Section 2.14 Redemption in Part Does not Mean Allowing Partial Payments. A redemption in part should **not** be confused with or mis-interpreted as a partial payment. As stated above, the Chancery Clerk cannot accept partial payments. However, the Chancery Clerk can allow a redemption in part if the steps highlighted above are carefully followed.

Section 2.15 Handling the Settlement in a Redemption in Part. In practice, the settlement of a redemption in part works like this: Following the payment of a redemption in part, the Chancery Clerk will send a redemption check to the tax sale purchaser **for the portion of the property that is redeemed through the redemption in part** including his purchaser's interest prorated based on the proportion. After the redemption in part, the remaining portion of the parcel is left unredeemed. If the remaining portion is redeemed prior to the expiration of the maturity date, the Chancery Clerk will send another redemption check for that remaining portion to the tax sale purchaser. If such portion is not redeemed prior to the expiration of the maturity date, that remaining portion – and the remaining portion only – will mature to the tax sale purchaser.

Chapter 3. **The Settlement Process**

Section 3.01 The Settlement Process, Generally. According to MISS. CODE ANN. § 27-45-1, the Chancery Clerk shall make his redemption settlements within twenty (20) days after the end of each month and shall make a complete report thereof to the Board of Supervisors.² The Chancery Clerk sends out redemption checks each month to the purchasers of parcels that were redeemed the previous month. The Chancery Clerk must also settle with the County and the Sheriff. When a parcel is redeemed, the Chancery Clerk remits a five percent (5%) damages fee to the County and a \$35.00 fee to the Sheriff for each notice served. (An additional \$5.00 is payable to the Sheriff for each additional notice served at the same address.) The Chancery Clerk receives a three percent (3%) redemption fee, as well as other fees associated with ascertaining record owner, recording the redemption, and sending notices. Payment of settlement amounts and fees are not to be made until redemption, or, if there is no redemption, upon the recording of a tax deed. OPINION TO JEANNE R. WALKER, 1980 WL 28405 (February 8, 1980).

Section 3.02 The Settlement Process, Continued. The settlement process involves several aspects. First, by reference to all of the releases issued by the office for the month, the Chancery Clerk must total all funds received in the redemption of taxes for that month. This aggregation must be done category by category according to how redemption monies are broken out on the releases. Careful records must be kept (usually on computer) reflecting each individual purchaser and how much money each purchaser and other payees are entitled to in the categories set forth in Sections 3.03 – 3.06 below. The aggregate amounts due each purchaser must be sent to each based on the releases issued during the month.

Section 3.03 Money Owed to the Tax Purchaser. Each tax purchaser who has a redemption issued on a parcel he purchased at a tax sale is entitled to the following for each parcel redeemed:

1. The amount of the delinquent tax (Section 27-45-3)
2. The interest from February 1 to date of sale (1%) paid by purchaser (Section 27-41-9)
3. The publisher's fee paid by purchaser (Section 25-7-21(3))
4. The interest at 1.5 % per month from date of sale (Section 27-45-3).

Section 3.04 Money Owed to the County. Then, for each redemption issued during the month, the following amounts must be paid over to the county general fund in the aggregate:

5. Damages at 5% of amount of delinquent tax *without* interest, etc. (Section 27-45-1)
6. Actual postage cost, if redeemed after notice sent to newspaper (Section 27-43-3)
7. Publisher's actual fee per parcel (if paid with county funds) (Section 27-43-3).

Section 3.05 Money Owed to the Sheriff. Next, the following amounts must be paid over to the Sheriff, including, where applicable, the Sheriff of other counties if notices were issued to that Sheriff and actually served by him:

²This code section formerly required that the report also be filed with the State Auditor; however, this requirement was deleted from the law during the 2009 legislative session.

8. Fee for serving first notice (Section 27-43-3)
9. Fee for serving second notice (Section 27-43-3).

Section 3.06 Money Owed to the Chancery Clerk. Finally, the Chancery Clerk must pay himself an aggregate amount representing the totals from the following categories for every redemption issued in the month:

10. Ascertaining record owners (Section 27-43-3)
11. Abstracting the list of lands sold for taxes (Section 25-7-21(4)(a))
12. Issuing first sheriff's notice to owner (Section 27-43-3)
13. Mailing first owner's notice (Section 27-43-3)
14. Issuing second sheriff's notice to owner (Section 27-43-3)
15. Mailing second owner's notice (Section 27-43-3)
16. Issuing each lienor's notice (Section 27-43-11)
17. Publisher's actual fee (if paid by the clerk, not county) (Section 27-43-3)
18. Recording each redemption (Section 27-7-21(4)(d))
19. Abstracting each redemption in section or subdivision index (Section 25-7-21(4)(e))
20. Certifying the amount necessary to redeem (Section 25-7-9(1)(a))
21. Certifying release from sale (Section 25-7-9(1)(a))
22. 3% fee on the total amount necessary to redeem (Section 25-7-21).

Section 3.07 When are the Clerk's Fees to be Collected? The short answer to this question is that the fees listed in Section 3.06 above may be collected when they are earned. It would seem that the fees set forth in items 11, 18, 19, 20, 21, and 22 should be collected by the Chancery Clerk every time a release is issued – that is, every time a redemption is taken. This is because a Chancery Clerk should always abstract each redemption (11); he should always record each redemption (18); he should always abstract each redemption in the sectional or subdivision index (19); he should always certify the amount necessary to redeem each year's taxes on the face of each release (20); and he should always certify the release from each sale (22). Also, the 3% fee is applicable for every redemption no matter when it is taken. Most of our computer programs and form releases already provide for this.

Section 3.08 Certain Redemption Fees Should be Collected When Issuing a Tax Deed. If the property taxes on a particular piece of property are not redeemed, remember to collect the fees set forth in MISS. CODE ANN. §§ 27-43-3, 27-43-11 **from the purchaser** after maturity when a tax deed is requested. (Many of our computer programs calculate these sums automatically.) These three code sections clearly state that if the taxes are not redeemed, these costs are "to be taxed as part of the cost against the purchaser." In addition, MISS. CODE ANN. § 25-7-21 (4) sets forth the recording fee for a tax deed at \$10.00 and carries forward the index entry fee of \$1.00. Obviously, some will not be collected if the service for which they are applicable is not performed, e.g., if a 2nd Notice to Owners was not issued, the associated fee would not apply.

Thus, the following fees are to be collected when issuing a tax deed:

- (1) Clerk's Fee for Ascertaining Record Owner(s) (§ 27-43-3).....\$50.00

(2) Clerk's Fee for Issuing 1 st Notice to Owners (§ 27-43-3)	2.00
(3) Clerk's Fee for Mailing and Notating 1 st Notice (§ 27-43-3)	1.00
(4) Sheriff's Fee for Serving Notice (§ 27-43-3)	35.00
(3) Clerk's Fee for Issuing 2 nd Notice to Owners (§ 27-43-3)	5.00
(6) Clerk's Fee for Mailing and Notating 2 nd Notice (§ 27-43-3)	2.50
(7) Sheriff's Fee for Serving 2 nd Notice (§ 27-43-3)	5.00
(8) Clerk's Fee for Ascertaining Lienors, per lienor identified (§ 27-43-11)	7.00
(9) Clerk's Fee for Filing Tax Deed (§ 25-7-21 (4)(b))	10.00
(9) Clerk's Fee for Certifying Tax Deed (§ 25-7-9 (1)(a))	1.00
(10) Clerk's Fee for Indexing Tax Deed (§ 25-7-21 (4)(c))	1.00
(11) Archive Fee for Tax Deed (§ 25-60-5)	1.00
(12) Clerk's Fee for Filing 1 st Affidavit (§ 25-7-9 (1)(b)(i))	10.00
(14) Clerk's Fee for Certifying 1 st Affidavit (§ 25-7-9 (1)(a))	1.00
(15) Clerk's Fee for Indexing 1 st Affidavit (§ 25-7-9 (1)(b)(ii))	1.00
(16) Archive Fee for 1 st Affidavit (§ 25-60-5)	1.00
(17) Clerk's Fee for Filing 2 nd Affidavit (§ 25-7-9 (1)(b)(i))	10.00
(18) Clerk's Fee for Certifying 2 nd Affidavit (§ 25-7-9 (1)(a))	1.00
(19) Clerk's Fee for Indexing 2 nd Affidavit (§ 25-7-9 (1)(b)(ii))	1.00
(20) Archive Fee for 2 nd Affidavit (§ 25-60-5)	1.00
(21) Actual Cost of Publication (pro rata) (§ 27-43-3)	as applicable

Section 3.09 A Special Note About the \$50.00 Fee for Ascertaining Record Owner. MISS. CODE ANN. § 27-43-3 establishes the procedure for giving notice to the record owner of property which is about to mature as a result of a tax sale and provides that “[f]or examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars (\$50.00).” Importantly, this \$50.00 fee “shall be taxed against the owner of said land if the same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser.”

In OPINION TO STACEY PICKERING, Docket No. 2012-00135 (July 20, 2012), the Attorney General opined that the Chancery Clerk may perform work required to ascertain record owner at **any time** and “may charge the fee whenever the property is redeemed.” The question posed to the Attorney General by the Auditor was whether the \$50.00 fee could be applied and collected by Chancery Clerks only during the 180-day period prior to the expiration of the two-year redemption period. The Attorney General made it clear that this was not the case and that there was no time limitation on when the fee can be collected within the redemption period. Indeed, the Attorney General unequivocally stated that

[t]he clerk’s right to charge the \$50 fee accrues, according to Section 27-43-3, upon redemption. The statute does not consider when the redemption occurs. The statutory scheme allows for redemption anytime within 2 years of the tax sale . . . Further, the statute does not state when the clerk must perform the work necessary to ascertain who is or will be the record owner . . .

According to the opinion, "the clerk is entitled to the fee whenever the land is redeemed, whether before or after the 180-day period." **However, the Opinion contains one important caveat – "the clerk or his deputy must actually perform the task of examining the records to ascertain the record property owner, in order to earn the fee."**

Section 3.10 Earning the \$50.00 Fee for Ascertaining Record Owner. If a Chancery Clerk intends to apply and collect the \$50.00 fee for ascertaining record owner prior to 180 days before maturity, then he must be able to demonstrate that he has performed the task of examining the records to determine record owner prior to or contemporaneously with issuing the redemption/release. One way to demonstrate that such tasks have been performed is to run a quick title update through the general index by owner name and then make a notation on each release as to the results of this examination. Another method would be to check the parcel number in the current year land roll (as opposed to the land roll on which the delinquency arises). This examination necessarily reflects updated records because the land roll is more current. There may be other ways to make this demonstration.

In Madison County, deputy clerks taking redemptions do both. That is, they run the owner's name through the general index and they consult the current year land roll prior to issuing each redemption. The deputy then makes the notation "R/O:" followed by the name of the record owner who is revealed in this examination. Another way to satisfy the requirement of ascertaining record owner before the 180-day period would be to conduct a brief title update in a similar manner and mail out early notice cards, provided the Chancery Clerk makes a notation of the mailing of the notice on the Tax Sale Record Book. There can be no doubt but that a Chancery Clerk must actually perform the task of ascertaining a current record owner and making a notation of that fact for future reference in order to apply and collect the \$50.00 fee.

Section 3.11 A Word About Interest Earned on the Redemption Account. Although there appears to be no specific ruling on the point, the best practice is to treat the interest earned on the Chancery Clerk's redemption account as belonging to the county. Therefore, it should be paid out on a monthly or annual basis to the county treasury. See MISS. CODE ANN. § 27-45-5 and OPINION TO IRL DEAN RHODES, 1980 WL 28408 (March 14, 1980)(both stating that "all such funds are hereby declared to be public funds" and shall be secured "as other public funds are required to be secured by law"). Thus, the interest most likely does **not** belong to the Clerk, nor should it be allowed to simply remain in the account. Rather, the best practice is to make a monthly settlement of interest to the county to coincide with the settlement to purchasers.

Section 3.12 IRS Form 1099 INTs Must be Sent to Purchasers Annually. The IRS requires that interest income over \$10.00 paid by a public body to a tax buyer in any given year be reported to the IRS and the tax buyer using Form 1099-INT. Thus, for each tax purchaser to whom interest exceeding \$10.00 is paid in any given year, the Chancery Clerk must issue and file a Form 1099-INT.

Section 3.13 The Importance of Balancing the Settlement. The settlement must balance. That is, there must always be enough money in the redemption account to pay out to all purchasers the entirety of what they are owed each month. Most purchasers are sophisticated and keep careful track of their redemptions – and the money to which they are entitled. Any discrepancy will

result in a check to a purchaser drawn on the redemption account being returned for insufficient funds, and that development will lead to other, more serious problems – including a visit from the State Auditor.

Section 3.14 Always Reconcile the Redemption Account Bank Statement Each Month. The Chancery Clerk should never write checks totaling more than he or she has in his or her redemption account at the end of the month. The Attorney General has stated that the Chancery Clerk must reconcile his redemption account regularly and keep all actual bank statements and cancelled checks – and he must keep these in his office. OPINION TO H. H. “HERKY” HARDEE, Docket No. 94-0376 (July 13, 1994). Reconciliation means that the aggregate total of all checks issued each month must match exactly to the total of all deposits made during the month plus interest paid by the bank.

Section 3.15 Reconcile the Releases to the Settlement and the Checks Issued Each Month. The totals on the releases issued during the month should also reconcile to the settlement totals and to the total amount of the checks to be issued each month. Accomplishing this task is best illustrated by way of an example. In Madison County, the releases are linked both to the settlement and to the checks issued by the use of a number of reports which are discussed below. These reports are not mandatory but are illustrative of one method for insuring that the redemption account is balanced and reconciled regularly.

A. The Daily Register Report. First off, our office bookkeeper maintains a spreadsheet in Microsoft Excel which is updated daily and which contains columns reflecting the following information for each redemption taken each day:

- the year of the sale
- the release number
- the receipt number
- the tax parcel number
- the amount due to the purchaser (amount he paid at the sale plus his interest)
- the amount of the sheriff's notices if applicable
- the amount of the damages and fees accruing to the county
- the amount of total fees due to the chancery clerk
- the total amount of the release
- the total amount of the redemption deposit for each day.

[See *Appendix F* for the Daily Register Report for the month of September, 2011.] he purpose of this spreadsheet is to account for each release (using the release number) and the funds received for each redemption.

B. The Monthly Computer Summary Report. Shortly after the first of a new month (and always before the 20th of the month), our office bookkeeper will run the monthly computer summary report from our AS400 computer system. Based on the total releases issued, this report shows the exact total amount of money that should have been collected during the month and shows exactly how much money each purchaser should be receiving as a part of the month's settlement. [See *Appendix G* for the Monthly Computer Summary Report for the month of

September, 2011.] Our bookkeeper then compares the totals on the Daily Register Report [*Appendix F*] with the totals on the Monthly Computer Summary Report [*Appendix G*], taking into account strike-offs to the state and refunds for any overpayments. The totals should equal.

C. The Settlement and Reconciliation Report. Once the totals are verified as equal, our bookkeeper then performs a formal reconciliation [See *Appendix H* for the Settlement and Reconciliation Report for the month of September, 2011.] This report forces our office to account for even the slightest difference between the total amount of checks to be written and what the Monthly Computer Summary Report [*Appendix G*] indicates should be paid based on the actual releases issued in the computer system. Explanations for any difference must be reflected on this report and may include: interest earned on the account, current year taxes paid to the Tax Collector due to redemptions of strike-offs, any overpayments that may be due to redeemers, and any other variances or anomalies. Once the reconciliation is performed and all discrepancies accounted for, checks are issued:

- to each of the purchasers for the funds discussed in Section 3.03 above;
- to Madison County for the funds discussed in Section 3.04 above
- to Sheriffs of counties serving notices for the funds discussed in Section 3.05 above;
- to the Chancery Clerk for the funds discussed in Section 3.06 above;
- to the redeemers who are due refunds for any overpayments; and
- to Madison County again for the interest earned on the account.

Checks are issued using Quickbooks, and reference is made to each individual release for thorough verification.

D. The Checks Issued Report. Quickbooks then generates a report which reflects the date of each release, the release number, and the amount due to each purchaser for each release. [See *Appendix I* for an example of this Quickbooks report, known as the Checks Issued Report, for the month of September, 2011.] The total on this report should equal the totals on the computerized report.

The Chancery Clerk himself then reviews all of the above-referenced reports, and signs each check personally after satisfying himself that the checks are reconciled to the releases and all discrepancies are accounted for.

Section 3.16 A Helpful Note About an Audit Test. One audit test which is routinely performed on the Chancery Clerk's redemption account is a test to determine whether there are sufficient funds in the account to enable the Clerk to settle with all purchasers and all other parties who are entitled to a fee at any given point in time. A good practice may be to have your accountant or someone else in your office perform this test on a regular, yet random basis in your office just to insure you remain in compliance. Have him or her total up all the redemption amounts due to be paid out for the month to date and have your bank run a monthly statement snapshot showing the bank balance to date. The funds in the bank should be sufficient to cover the total redemption amounts to be paid out.

Section 3.17 A Strong Word of Caution. Without a doubt, issues arising out of the co-mingling of, mis-use of, or outright theft of, delinquent tax monies is the most common act of malfeasance committed by Chancery Clerks. See, e.g., CROCKETT, JAMES R. HANDS IN THE TILL: EMBEZZLEMENT OF PUBLIC MONIES IN MISSISSIPPI (University Press of Mississippi, 2007), pp. 15 – 22 and 39– 50. It cannot be over-emphasized that these funds do not belong to the Chancery Clerk (except for the specific fees noted above and payable only after a correct and proper settlement is done each month). **If you take, borrow from, or co-mingle the money in this account – or if you fail to collect this money in full from a redeemer/taxpayer – or if you pay yourself or your employees or your office expenses out of this account – you will be caught, you will be prosecuted, and you will go to jail.** The funds a Chancery Clerk receives in the redemption of delinquent taxes are funds to be held in trust for the benefit of the purchaser and the county. They do not belong to the Clerk except for the fees as specifically noted above.

Section 3.18 Payment by County When There is a Shortage in the Redemption Account. If the redemption account is short to the extent that monies in the account are insufficient to cover the amounts owed to purchasers, then payments to the purchasers who are due their money “must be made from any available county funds after first being lawfully transferred into the land redemption fund by the board of supervisors.” However, in this event, **“the county must seek restitution from the . . . clerk on his official bond.”** OPINION TO WAYNE THOMPSON, Docket No. 2009-00638 (October 28, 2009).

Section 3.19 Some Important Tips. Here are some important tips about how to handle these funds correctly:

- Do not co-mingle these funds with any other funds in the office.
- Always deposit all redemption amounts into a separate account.
- Do not use these funds to cover any shortage in any other account, not even to make payroll!
- Do not “borrow” from these funds – for any reason!
- Do not pay yourself or your employees or pay any expenses out of this account.
- Even the bank charges associated with the costs of checks printed on this account should be paid for out of the General Fee Clearing Account and not from funds in this account.
- Do not take a redemption and fail to **collect and deposit** the entire amount shown on the release.
- Do not take partial payments on a redemption.
- Personally sign all checks drawn on this account. Do not allow deputy clerks to do so except in exigent circumstances – and even then carefully review the checks which were signed by the deputy.
- Tend to this account daily and have others looking over your shoulder.
- Make deposits in this account every day that you take a redemption. Here's the rule – if you take a redemption, you make a deposit.
- Balance and reconcile this account every month.
- Have someone, preferably a trained accountant, perform the audit test for this account at least once a month.

Chapter 4. **The Notification Process**

Section 4.01 Identifying and Notifying Record Owners. MISS. CODE ANN. § 27-43-3 requires that when property is sold for unpaid taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period. *Deweese Nelson Realty, Inc. v. Equity Services Co.*, 502 So. 2d 310, 311 (Miss. 1986). This creates a 120- day window of time in which the Chancery Clerk must act. A search must be conducted to determine the physical address of the owner. In the event that a physical address cannot be found, the notice should be sent to a post office address. It is imperative that Chancery Clerks employ effective search methods in order to identify and notify record owners. **The goal is to get actual notice to the record owner and document this for your records.** This means that often, the search is as much about figuring out good contact information on someone connected with the property who is likely to see that the taxes are paid, as it is discovering who owns or has a lien on a parcel. [See *Appendix J* for an example of a Notice to Owners.]

Section 4.01 A Owner Noticed Must be Current Owner. In its OPINION TO JOHN HEDGLIN, Docket No. 2015-00422 (February 12, 2016) the Attorney General made it clear that the notice to owner must be directed to the current owner at the time the notice is issued. This could be different than the owner at the time the taxes in question were assessed. Hence, where a change in ownership is determined, the notice must reflect the name(s) of the new owner(s).

Section 4.02 Identifying and Notifying Lien Holders.³ MISS. CODE ANN. § 27-43-5 requires Chancery Clerks to examine the records of deeds, mortgages and deeds of trust in the office to determine the names and addresses of all mortgagees, beneficiaries and holders of vendors' liens of each parcel of land sold for taxes. The Chancery Clerk is further required to send notice by certified mail, return receipt requested to all lien holders of record. Section 27-43-5 once required only a six (6) year search, but this limitation was removed by the legislature in 1995. The Attorney General has opined that the Chancery Clerk need not give notice of the maturity of a tax sale to any lien holder whose lien appears to be barred. OPINION TO JOHN MCADAMS, Docket No. 2000-0055 (February 18, 2000). [See *Appendix K* for an example of a Notice to Lienors.]

Section 4.02A ♪ **Goodness, Gracious, Great Balls of Fire!** ♪ -- **an Important Distinction About Notices to Lienors.** The case of *Cleveland v. Deutsche Bank National Trust*, 207 So.3d 710 (Miss. App. 2016), which involved a suit to set aside a tax sale brought by the sixth wife of Jerry Lee Lewis, makes an important point about the procedure for issuing and sending the notices to lienor. Unlike the code section dealing with notices to owners, MISS. CODE ANN. § 27-43-5, which details the procedure for notices to lienors, says the chancery clerk "must, within the time fixed by law for notifying owners, **send by certified mail**" the notice to lienors. The notices

³The words "lien holders," "lienors," "mortgagees," and "lenders" are used interchangeably in this paper to describe persons or entities having an encumbrance on a parcel of real property.

to owners must be issued within the 120-day window, but the notices to lienors must be sent within that time.

Section 4.03 Importance of Identifying the Correct Address of Lien Holders. MISS. CODE ANN. § 27-43-7 provides that notice shall be mailed to lienors of record, if any, to the post-office address of the lienors, if such address is set forth in the instrument creating the lien, otherwise to the post-office address of said lienors, if actually known to the Clerk, and if unknown to the Clerk then addressed to “the county site of the said county,” which probably means the lienor’s local office address. See *Gober v. Chase Manhattan*, 918 So. 2d 840, 845 (Miss. App. 2005) (referencing the words “county site” and alluding to the county seat but otherwise shedding no light on the meaning of the phrase); see also *Curtis v. Carter*, 906 So. 2d 758 (Miss. 2005).

In *Rebuild America, Inc. v. Milner*, 7 So. 3d 972 (Miss. App. 2009), the tax sale was set aside, in part, because of the Chancery Clerk’s failure to send the lien holder’s notice to the address shown on the recorded instrument. The original deed of trust executed by the Milners in favor of Jim Walter Homes was subsequently assigned seven different times with most of the assignments being to various branches or offices of First Union National Bank. The Clerk mailed the notice to the address for First Union National Bank in Charlotte, North Carolina, which was found in the third assignment. However, at the time the notice was sent, the deed of trust had been assigned for a **seventh** time to First Union with an address in Tampa, Florida. MISS. CODE ANN. § 7-43-7 requires the notice to be mailed to the address set forth in the instrument evidencing the lien.

Thus, the *Milner* court concluded that the notices to lien holders **should have been mailed to the current lien holder at its current address as determined by reference to the most recent assignment or modification of record.** *Milner*, 7 So. 3d at 976. In instances where there are multiple lien holders, notice should be sent to each. A tax sale in which a lien holder fails to receive notice is void as to that lien holder. *Gober v. Chase Manhattan*, 918 So. 2d 840, 843 (Miss. 2005) (quoting *Lamar Life Ins. Co. v. Billups*, 169 So. 32, 35-36 (1936)).

Section 4.04 Practical Tips for Complying with Lienor Notice Requirements. On notices to lien holders, Chancery Clerks should be sure the name of the record owner is the name of the borrower. In other words, the notice sent to the lien holder must not simply reference the record owner as it appears on the record of land sold for taxes. Rather, the notice must give the lien holder the correct name of its borrower if different from the record owner. If the parcel has changed hands since the record of lands sold for taxes was created, the lienor’s notice must reference the new owner, which is most likely its borrower. It is equally important to send the lienor’s notice to the proper address. In the event that the lien has been assigned, be sure to send the notice to the address noted on the last recorded assignment. If no address is listed on the instrument, the notice should be sent to the last address of record for the lienor and to any local address for the lienor. This is probably what the statute means by reference to “the county site of the said county.”

Section 4.05 Mechanics of Giving Notice to Owners. Chancery Clerks must give notice to owners through personal service, certified mail, and newspaper publication. MISS. CODE ANN. § 27-43-3. In *Viking Investments, LLC v. Addison Body Shop, Inc.*, 931 So. 2d 679, 681 (Miss. App. 2006), the Chancery Clerk met two of these three statutory notice requirements by mailing

a copy of the notice to the owner via certified mail and by publishing the notice in the newspaper within the statutorily-mandated time frame. However, the personal service that the owner received did not meet statutory requirements, since the Sheriff simply posted the notice to the property. The three methods of providing notice are not alternatives. Rather, all three requirements must be met in order for our notification duties to be complete. *Viking Investments*, 931 So. 2d at 681. “Any deviation from the statutorily-mandated procedure renders the sale void.” *Id.* Thus, the Court held the tax deed was void because the owner was not given adequate notice of the expiration of the redemption period. The Supreme Court held in *Alexander v. Womack*, 857 So. 2d 59 (Miss. 2003), that both the tax sale and tax deed were void when there was no record that the Chancery Clerk and Sheriff actually served the statutorily-required notice in person. Note, however, that personal service by the Sheriff is not required when the property owner is not a Mississippi resident. See MISS. CODE ANN. § 27-43-3. Nor is personal service required on lien holders.

Section 4.06 All Three Methods of Notice are not Absolute in All Cases. In *Rebuild America v. Norris*, 64 So. 3d 480 (Miss. 2011), the Mississippi Supreme Court granted certiorari from a Court of Appeals decision⁴ for the specific purpose of noting that MISS. CODE ANN. § 27-43-3 contemplates cases in which the lack of personal service will not necessarily render the tax sale void. The Court observed that “the requirement of all three methods of notice is not absolute in all cases.” *Norris*, 64 So. 3d at 481. When the sheriff and clerk have complied with their duties, the tax deed may be confirmed “even though the owner never received actual notice of the tax sale.”

The holding in *Norris* was relied on by the U. S. Bankruptcy Court for the Northern District of Mississippi in the case of *In re Holyfield*, 2012 WL 1579335 (N. D. Miss. Bnkr. May 4, 2012) rev'd on other grounds, 2014 WL 7739345 (N. D. Miss. September 5, 2014) in which the court found that a notice to owner sent to that owner's residence by certified mail and signed for by the owner's son was sufficient compliance with the requirement of notice by certified mail. The court also complimented Panola County Chancery Clerk Jim Pitcock for his diligent notification efforts.⁵

Section 4.07 Personal Service and the Return. According to MISS. CODE ANN. § 27-43-3, Chancery Clerks must issue notice to the Sheriff, who in turn is required to serve such notice according to RULE 4⁶ of the Mississippi Rules of Civil Procedure (MRCP), and make his return.

⁴*Rebuild America v. Norris*, 64 So. 3d 499 (Miss. App. 2010).

⁵On appeal, the District Court reversed and remanded the case on other grounds, finding that a creditor whose lien appeared only in the UCC records (which are not the type of records Chancery Clerks must search) was not entitled to receive a lienor's notice, thus overturning the bankruptcy court's finding that the lack of notice to that creditor caused the tax sale to be invalid. *Holyfield v. Whitehead*, 2014 WL 7739345 (N. D. Miss. September 5, 2014).

⁶RULE 4 of the MISSISSIPPI RULES OF CIVIL PROCEDURE says: “The summons and complaint shall be served together. Service by sheriff or process server shall be made as follows: (1) Upon an individual other than an unmarried infant or a mentally incompetent person, (A) by delivering a copy of the summons to him personally or to an agent authorized by appointment or

RULE 4 requires **PERSONAL** service⁷. Service of process under this code section is not effective if it is made by a private process server, a city police officer, or even a Constable. Only the Sheriff or his deputy may effectively serve the notice to owners. OPINION TO MARVIN WILLIAMS, 1983 WL 179394 (November 18, 1983); OPINION TO RYAN EVERETT, Docket No. 2016-00338 (July 29, 2016).

Section 4.08 Posting on Property is not Sufficient. Often, if the Sheriff cannot find the owner at the home, he will post the notice to the door of the property. However, our courts have made it clear that this practice is not effective to satisfy the personal service requirement. In the *Viking* case cited above, the Court of Appeals ruled that the Sheriff's posting of notice at the defendant's business, when the intended recipient could not be located, was clearly not one of the methods for perfecting personal service under RULE 4 and, therefore, the tax sale was held void. *Viking Investments*, 931 So. 2d at 682 (Miss. App. 2006). That is not to say posting should not be done; rather, it is just not sufficient. [See *Appendix L* for an example of a Sheriff's Notice and Return.] However, it may be helpful as a part of a Clerk's acts of further search and inquiry. (See Section 4.20 below.)

Section 4.09 Difficulty Meeting the Personal Service Requirement. Adherence to the personal service requirement is the most difficult means of providing notice to the delinquent taxpayer and is one of the most troublesome aspects of our notification duties. It may be advisable for Chancery Clerks to simplify the process for the Sheriff in order to ensure that service is effective. One way to do this is to copy the return on the back of each notice and submit two copies to the Sheriff. Explain to the deputies serving process that service of the redemption notice is the same as with service of civil process. Also, be sure to review the completed returns immediately after receiving them and check for notices that were served on family members. In the case of *Brown v. Riley*, 580 So. 2d 1234 (Miss. 1991), the deputy served the notice on the son of the property owner but failed to mail a copy of the served notice to the owner. The Supreme Court affirmed the Chancellor's dismissal of the tax sale purchaser's complaint to confirm the tax deed because, among other things, there was noncompliance with RULE 4. *Brown*, 580 So. 2d at 1237. Under RULE 4, substituted service is allowed. However, when service is made on a member of the owner's family, the service cannot be effective until a copy of the served notice is sent to the

by law to receive service of process; or (B) if service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of 16 who is willing to receive service, and thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing."

⁷One could argue that the language in MISS. CODE ANN. § 27-43-3 could not possibly mean service of process under RULE 4 since this code section was written into law long before the Rules of Civil Procedure were adopted. However, the words of Section 27-43-3 plainly state that "the Sheriff shall be required to serve personal notice as summons issued from the courts are served." And, RULE 4 is the current means for serving summonses in civil court in Mississippi.

owner, at the place where the notice was left, by first class mail, postage prepaid. Service is then deemed complete after ten (10) days of such mailing.

Section 4.10 More Tips for Personal Service Compliance. What happened to the certified mail notice is a good indicator of whether or not someone is available to be served by the Sheriff. If the owner signed the certified mail notice to owner, but the Sheriff's notice to owner is returned "unable to serve/not found," the Chancery Clerk should reissue the notice and inform the Sheriff that someone signed for the certified mail notice at that same address. This is paramount because before an affidavit can be employed to satisfy the statutory notice requirements, there must be a failure of personal service AND a return of the notice by mail as undelivered. *Rebuild America, Inc. v. Estate of Wright*, 27 So. 3d 1202 (Miss. App. 2010) offers an example. In this case, the Chancery Clerk properly served the owner by certified mail and by publication. However, the Sheriff's return stated that the Deputy Sheriff serving process had been unable to locate the owner, and that the deputy had left a copy of the notice attached to a door of a structure on the property. Rebuild America argued that the Sheriff's failure to personally serve the owner was cured by an affidavit executed by a deputy Chancery Clerk. The Court disagreed and affirmed the Chancellor's decision to set aside the tax deed, specifically holding that the Chancery Clerk's affidavit cannot be a substitute for personal service where notice by mail was completed. However, in light of the holdings in *Rebuild America v. Norris* and *In re Holyfield*, discussed above, such an absolute rule might not be upheld in the future.

Section 4.11 Certified Mail Notice Must Be Sent to Each Owner. The notice to owner must be mailed to the record owner's street address or, in absence of a street address, her post office address, and such action should be noted on the tax sale record. MISS. CODE ANN. § 27-43-3. The notice should be sent by registered or certified mail. The Supreme Court has held that Section 27-43-3 "contemplates that *each owner* shall receive the notice required by statute." *Brown v. Riley*, 580 So. 2d 1234, 1237 (Miss. 1991). Therefore, notices should be sent to each owner individually, even in the case of married couples. They must also be signed for separately.

Section 4.12 Example. In *Rebuild America v. Milner*, the Chancery Clerk sent notice to Robert Milner, but not to his wife, Patricia. The notice was sent by certified mail to "Milner, Robert K ETUX." Although the "et ux" following Mr. Milner's name translates to "and wife," Robert Milner was the only owner to sign for the letter and, therefore, was the only owner to receive notice. *Milner*, 7 So. 3d 972, 975 (Miss. App. 2009). A single notice, attempting to serve multiple owners is fatally defective. If the notice was addressed to Patricia Milner but signed by Robert Milner, as was the case in *Rebuild America, Inc. v. McGee*, 49 So. 3d 499 (Miss. App. 2010), a strict reading of the statute would still render the notice improper. In *McGee*, the Chancery Clerk sent notices by certified mail, addressed individually to Robert McGee and Mattie McGee. Robert McGee signed for each of the notices that were sent to Mattie McGee. The Court held that the notice by mail to Mattie was ineffective because the notices were signed by Robert. The Court of Appeals affirmed the Chancellor's ruling and the tax sale and tax deed were set aside.

Section 4.13 If There are Multiple Addresses of Record, Then Multiple Notices Should be Sent. *Campbell Properties, Inc. v. Cook*, 258 So.3d 273 (Miss. 2018) illustrates the importance of sending multiple notices to owner where multiple addresses appear of record. Here, early

notices were sent to the owner at an address in Vicksburg; however, the three recently filed deeds of trust and the owner's original deed to the property reflected a similar address, only with a Redwood, Mississippi city and ZIP listed. Subsequent official notices to owner were only sent to the Vicksburg address, which the post office returned to the chancery clerk's office marked "undeliverable." The high court reversed and rendered the chancellor's decision that confirmed the tax sale even though a deputy chancery clerk "personally handed Osborne [the record owner] a certified notice that had been returned to the clerk's office" which had been signed by Osborne. The court said the statute "does not allow service in this manner" and that the notice statute "must be followed strictly."

Section 4.14 Tips for Certified Mail Compliance. Mailing the notice to the owners and receiving a signed return receipt is not enough. Chancery Clerks should review those return receipts and note whether or not they were signed by the proper party. If the signature of the owner/addressee does not appear on the return receipt card, the Chancery Clerk should re-send the certified mail notice. Chancery Clerks should also compare such receipts with the corresponding Sheriff's returns, as discussed above.

Section 4.15 A Helpful Conclusion. In *Rush v. R & D Properties LLC*, 2017 CA-01441 COA (October 9, 2018), the Court of Appeals upheld a chancellor's decision declining to set aside a tax sale arising out of the original owner's having incurred a homestead chargeback as the result of her husband's income tax liability. The chancery clerk timely published notice in the paper, had documentation showing that the owner received and signed a notice to owners sent by certified mail. The opinion also implies that personal service by the sheriff was made. The court noted that "the responsibility was on [the owner] to give accurate information to the county officials who cannot possibly keep track of the relationship statuses and federal tax filing habits of every landowner in Winston County." A rare win for chancery clerks.

Section 4.16 Publication. Notice should be published in the newspaper of the county or, if no such newspaper, a newspaper having general circulation within the county. The publication should contain the name, address, and legal description of the parcels which are about to mature. The publication must occur at least 45 days prior to the expiration of the redemption period. MISS. CODE ANN. § 27-43-3. In *Brown v. Riley*, referred to above, the Chancery Clerk's published notice which occurred 43 days before the expiration of the maturity period was deemed insufficient to comply with the statutory notice requirements and the tax deed was set aside. *Brown*, 580 So. 2d at 1237 (Miss. 1991).

Section 4.16A Chancery Clerks Must Publish Full Names of Record Owners and may not Rely on Abbreviated Names from Tax Rolls. To properly comply with the newspaper publication requirement of MISS. CODE ANN. § 27-43-3, the Chancery Clerk must insure that the full name or names of the record owners are published in the newspaper. The Clerk may not merely utilize abbreviated names which may be reflected on the land roll. This is the holding of the Mississippi Court of Appeals in *Christiana Trust v. Megan A. Ciota*, No. 2018-CA-00906 COA (November 5, 2019).

Here are the facts in the *Christiana Trust* case:

- By reference to the most recent warranty deed of record in the Chancery Clerk's office, the real property located at 116 Poplar Point in Pass Christian was owned by "Christopher B. Schulz and his wife, Megan A. Ciota." ¶ 3.

- For the 2013 tax roll, the Tax Assessor abbreviated the ownership listing for this parcel to "Schultz Christopher B & Megan A C". *Id.*

- Christopher B. Shultz and Megan A. Ciota divorced and did not pay the 2013 taxes; thus, the property went to the 2014 Harrison County tax sale and sold to Christiana Trust. ¶ 4 and fn 2.

- The Chancery Clerk issued notice by certified mail to Ms. Ciota multiple times, and she admitted that she received one of the notices. However, the notices were addressed to "Schultz Megan A C," apparently following the Tax Assessor's abbreviations. ¶ 5 and fn 3.

- The Chancery Clerk issued notice by publication in *The Sun-Herald* newspaper but listed the owners as "Schultz Christopher B & Megan A C," again repeating the Tax Assessor's abbreviations. ¶ 13.

- Before maturity, Ms. Ciota attempted to pay the delinquent taxes by mailing a check to the Tax Collector instead of the Chancery Clerk. Rather than taking the check to the Chancery Clerk's office, the Tax Collector belatedly returned it to Ms. Ciota along with a letter telling her to send it to the Chancery Clerk. Apparently, she did not do so timely, and the taxes matured to Christiana Trust. ¶ 9.

Despite actual notice received by Megan Ciota, the Chancery Court and the Court of Appeals held the sale void due to the incorrect, abbreviated listing of the owners' names in the newspaper publication. Predictably, both courts cited Mississippi's requirement of strict compliance with the notice provisions. The opinion also notes that "it was error for the Chancery Clerk to publish [for Ciota] by relying on records from the Harrison County Tax Assessor and not searching his own land records to determine the record owner as required . . ." ¶ 28.

On remand, the Court of Appeals properly instructed the Chancellor to "(a) calculate the amount of statutory damages and (2) order Ciota to pay that amount to Christiana Trust." *Id.*

Section 4.17 Further Search and Inquiry, Part 1. Our notification efforts quite often do not stop at notice by mail, personal service, and publication. What happens when notice by mail is returned undelivered and personal service by the Sheriff is **not** achieved? In that event, MISS. CODE ANN. § 27-43-3 says that the Chancery Clerk "shall make further search and inquiry to ascertain the reputed owner's street and post office address." If, as a result of such efforts, the address – or a better or an additional address(es) – is found, then we should re-issue notice and follow the procedures outlined above for both notice by mail and notice by personal service as to the new address. If this additional notice is again unsuccessful, then the Chancery Clerk "shall file an affidavit to that effect" and set forth in that affidavit all that he did in his effort to find the

street and post office address for the property's owner. If the Chancery Clerk is still unable to ascertain a good address, he must re-double his efforts and then file a **second** affidavit explaining what actions he took in **further** effort to find a good address for the owner. All of this should be noted on the tax sale record, preferably on the certified list of lands sold for taxes itself – but at least in work papers or other documents kept as a permanent record in the Chancery Clerk's office. In the sections that follow, we will briefly explore what the courts have said "further search and inquiry" means.

Section 4.18 Further Search and Inquiry, Part 2. In *O.C. Rush v. Wallace Rentals, LLC*, 837 So. 2d 191 (Miss. 2003), the Mississippi Supreme Court explained what should be considered "further search and inquiry." It is important to note the facts in *Rush*. In *Rush*, the assessed owner did not provide any financial assistance in the purchase of the property and testified that she was not concerned with the assessment of taxes on the property and did not feel accountable for those assessed taxes.

The Court's decision was largely based on the fact that the assessed owner's actions and lack of actions caused the confusion. She allowed a relative to purchase property in her name and made no attempt to correct the confusion caused by an improper address being placed on the quitclaim deed and stated that she did not consider the property at issue to belong to her. The Chancery Clerk filed a form affidavit reciting the nature of the further search and inquiry performed. One item on the list was a search of telephone directories. Although a search of telephone directories was not conducted, a search of several other resources was performed. The affidavit, though, erroneously reflected that the directories were searched. If the telephone directories had been searched, deputy Chancery Clerks would have discovered a current address. The *Rush* court ruled that strict adherence to the checklist was not required, so long as efforts reflected a diligent search and inquiry. Based on what the Court determined was diligent search and inquiry by the Chancery Clerk, and based on the well-reasoned opinion of the Chancellor, the tax sale was confirmed. This is one of the few reported decisions upholding the validity of a tax sale in Mississippi.

Section 4.19 Similar Issue – Different Result. It is important to note that the decision in *Rush* was fact-driven and that cases involving a similar issue would likely yield a different result. *Alexander v. Gross*, 996 So. 2d 822 (Miss. 2008) offers an example. In this case, the Chancery Clerk made phone calls, mailed an additional notice to an alternate address, and even left a message at a nearby convenience store, all as a part of his efforts to serve notice to the record owners. However, an examination of the record owner's 2003 tax receipt would have led the Clerk to the owner's correct post office address. Somehow the Tax Assessor did not pick up the correct address during a reappraisal. The Court held that the Chancery Clerk failed to conduct a diligent search as required by statute, and because of this error it upheld the Chancellor's ruling which set aside the tax sale.

Section 4.20 Clerks Must Be Diligent in Their Search and Inquiry Efforts. *Roach v. Goebel*, 856 So. 2d 711 (Miss. 2003), offers another example of a Chancery Clerk failing to meet the statutory requirement of "further search and inquiry." In this case, a deputy Chancery Clerk testified that even though she executed an affidavit detailing the office's efforts of further search and inquiry, she had no personal knowledge of any efforts to locate the owner, because such

efforts were undertaken by another deputy clerk who was no longer employed with the office. In such affidavit, the deputy clerk claimed that phone directories and land and tax records had been searched for the property owner's most recent address. However, the Court held that the deputy Clerk's repudiation of the affidavit is indicative of the Chancery Clerk's failure to conduct further search and inquiry. The Court further held that a diligent search would have revealed that the owner had filed an application for homestead exemption for the subject property prior to it being sold in the tax sale. A review of that application would have revealed the owner's true address. Based on the foregoing, it is important that Chancery Clerks be diligent in their search and inquiry efforts. It is not enough to perform a cursory search of the land and tax records. Chancery Clerks must strategically and thoughtfully search for the owners of property which has sold in the tax sale. For additional guidance, see OPINION TO JOE MOORE, 1988 WL 249944 (September 12, 1988) (listing a number of suggestions for clerks in carrying out further search and inquiry).

Section 4.21 Suggestion From the Mississippi Supreme Court. The Supreme Court made a suggestion to Chancery Clerks: although not a requirement, "The Chancery Clerks could perhaps consider a 'check list' form affidavit containing a general list of the description of actions normally taken in a search and inquiry, and then merely 'check off' on the list the action actually taken in any particular search and inquiry." *Rush*, 837 So. 2d at 200. In *Reed v. Florimonte*, 987 So. 2d 967 (Miss. 2008), the deputy Clerk did not check any blanks on the face of the affidavit and did not note any sources of her search. Thus, the tax deed was set aside due to the Chancery Clerk's failure to properly document his efforts to locate the property owner. A deputy Clerk testified that she believed that further search and inquiry had been conducted by another deputy Clerk; however, since no such efforts were noted on the form affidavit, the tax sale was held void. [See *Appendix M* for a sample checklist which may be helpful in performing a diligent search and inquiry.]

Section 4.22 Further Search and Inquiry is Required by the U. S. Constitution. In the case of *Jones v. Flowers*, 547 U. S. 220 (2006), the United States Supreme Court weighed in on the matter of further search and inquiry. In striking down the Arkansas delinquent tax notification statute (ARK. CODE ANN. § 26-37-301 (1997)), the Court held that the Due Process Clause of the 14th Amendment requires that when a government agent (such as Chancery Clerks) receive notice from the U. S. Postal Service that a certified mail piece sent in an effort to notify a land owner of the impending loss of his property due to the failure to pay taxes is returned "unclaimed," the government agent "must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Jones*, 547 U. S. 220, at 225. Importantly, in footnote 2 of the opinion, the Court cited with approval MISS. CODE ANN. § 27-43-3, noting that Mississippi's law properly required Chancery Clerks to make "a diligent inquiry to find a property owner's correct address when mailed notice is returned." 547 U. S. 226, at 228, n. 2.

Several facts associated with the *Jones* case are important:

- (1) Under the Arkansas statute,
 - (a) A state government official known as the Commissioner of State Lands, rather than a local official such as a Chancery Clerk, is charged with notifying delinquent property owners of their delinquency and right to redeem.

(b) No acts of further search and inquiry were required after certified mail was sent. In other words, there was no requirement for follow-up notification.

(c) The sale did not occur until two years after the taxes were certified as delinquent, and the redemption period thereafter was just thirty (30) days.

- (2) The taxpayer, Gary Jones, went through a divorce in 1993 and paid off his mortgage in 1997. Being accustomed to the mortgage company paying his taxes, and having lost possession but not ownership of the house in the divorce, he did not pay his taxes for the next several years.

The Supreme Court cited the well-known case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950) for the proposition that the level of notice required under the Due Process Clause must be the same as if the government agent was a person truly desiring to get actual notice to the delinquent landowner. Based on the facts before the *Jones* Court, and writing for a five (5) to three (3) majority of the Court, Chief Justice John Roberts concluded:

We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed. If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again. No one "desirous of actually informing" the owners would simply shrug his shoulders as the letters disappeared and say "I tried." Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

Jones, 547 U. S. 220, at 229. The case thus keenly turned on the fact that the government was informed that its efforts at providing notice to the landowner had failed – that is, it got a response from the Post Office that its certified mail piece was returned "unclaimed."

Responding to a refrain often uttered by Mississippi Chancery Clerks, the Court observed that

Jones should have been more diligent with respect to his property, no question. People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking. U. S. CONST., AMDT. 14.

Id. at 234. Although the Court stated that it was not its responsibility to set forth the steps the government should take upon being informed that its certified mail notice did not reach its intended recipient, the Court did offer some suggestions. In its view, the government should:

- (1) "resend the notice by regular mail" since a new owner or occupant "might scrawl the owner's new address on the notice . . ." or might notify the owner directly.
- (2) "post notice on the front door . . ."
- (3) "address otherwise undeliverable mail to 'occupant.'"

Id. at 36. But, the Court concluded that the Constitution does not necessarily require the government to look up new addresses in phone books, search other governmental records, or conduct "an open-ended search for a new address." *Id.* at 37. However, Mississippi's law regarding acts of further search and inquiry does contain such requirements.

The bottom line is that when certified mail notice fails and the government (i.e., the Chancery Clerk) becomes aware that the notice has failed, the government "cannot simply ignore that information in proceeding to take and sell [convey via a tax deed in Mississippi's case] the owner's property. . ." *Id.*

Section 4.23 Document, Document, Document. The holdings in each of the aforementioned cases highlight one very important point for Chancery Clerks to remember in their search and inquiry efforts: **DOCUMENTATION** is very important. Chancery Clerks should always remember to document their search efforts. It is not enough to simply provide a checklist. The checklist must reflect the Clerk's actual efforts undertaken to get actual notice to the proper owner and lienor. Clerks must not ignore the obvious, and should always consult the land roll, homestead roll, tax receipts, court records, and land and tax records when attempting to locate owners.

Section 4.24 The Internet and Social Media. In today's world, many people have traded home phone service for cell phones. As a consequence, Chancery Clerks must employ non-traditional methods to locate owners. To this end, the internet is an effective search tool. Google and social media websites, such as Facebook, are also very helpful when searching for those hard-to-find property owners. Many of the internet phone book sites, such as yellowpages.com and whitepages.com, offer the option to search by address. Thus, you can enter the address of the property and possibly discover the phone number to the property, even if the listing is under someone else's name. Subscription services are also available.

Section 4.25 Leave No Stone Unturned. When notices to the owner are continually returned to the Chancery Clerk, the Clerk should search for relatives, neighbors, or others who may know how to contact the owner. If such individuals are located, send them a copy of the notice to owner and a letter requesting their help in locating the owner of the subject property. Be sure that the letter is clear and concise so as not to cause confusion. Each redemption period will bring different challenges in locating certain property owners. [See *Appendix N* for an example of a letter to a family member.]

Section 4.26 Affidavits. MISS. CODE ANN. § 27-43-3 imposes additional requirements upon the Chancery Clerk when further search and inquiry does not reveal the owner's street and post office addresses. The Clerk must "file an affidavit specifying therein the acts of search and

inquiry made by him." The Clerk "shall retain" the affidavit "as a permanent record in the office of the clerk and such action shall be noted on the tax sale record." MISS. CODE ANN. § 27-43-3.

Section 4.27 Contents of Affidavits. The Clerk's affidavits should be detailed and narrowly-tailored to the efforts associated with the parcel in question. In the recent case of *High Sierra Tax Sale Properties, LLC v. Daley et al*, 188 So.3d 1224 (Miss. App. 2015), the Mississippi Court of Appeals noted that affidavits should contain, among other things, a confirmation of the dates of mailing and serving, and should have a copy of the notices issued to the owners attached.

Section 4.28 Importance of Affidavits. Several Court of Appeals decisions illustrate the importance of preparing and filing the appropriate affidavits. In *Moore v. Marathon Asset Mgmt., LLC*, 973 So. 2d 1017 (Miss. 2008), the Court overruled a Chancellor and declared a tax sale void, at least in part, because the Chancery Clerk did not file the affidavits required by MISS. CODE ANN. § 27-43-3. Nothing in the record indicated that the Chancery Clerk took any steps beyond mailing the notice and sending the Sheriff to the property to deliver the notice. The Court stated, "the Clerk was required to conduct additional diligent search and inquiry and file two affidavits detailing her efforts to locate the owner." *Moore*, 973 So. 2d 1017, 1021. Because there were no affidavits in evidence or noted in the tax sale record, the Court found that it was erroneous for the Chancellor to conclude that the Clerk complied with the statutory notice requirements.

Section 4.29 Affidavits Must Be Filed. In *Lawrence v. Rankin*, 870 So. 2d 673 (Miss. 2004), the Chancery Clerk searched telephone directories, records in the office of the Tax Collector, school index and tax rolls, Tax Assessor records, and court department records, all in an effort to locate the owner after the initial certified mail notice was returned unclaimed. The Clerk sent notice by certified mail on two separate occasions and the notices were returned both times. The Chancery Clerk properly issued notice to the Sheriff with the result being a notation on the back of the notice stating that the owner had relocated. A deputy clerk prepared an affidavit setting forth her efforts. At first glance, it appears that the Chancery Clerk properly carried out his duties as outlined by the statute. However, the Clerk failed to file the affidavit. The Court of Appeals held that the failure to file the supporting affidavits rendered the tax deed void.

It is important to note that in *Lawrence*, the Court did not require the Clerk to record the affidavit, but simply required that the affidavit be filed in the Clerk's office. The Attorney General has opined that the Clerk is not required to record the affidavits in the land records. However, any purchaser or interested party, may at their expense, have the affidavit(s) – or certified copies thereof – recorded in the land records upon payment of the appropriate recording fee. OPINION TO JIMMY JONES, Docket No. 1997-0664 (October 17, 1997). In the Madison County Chancery Clerk's office, affidavits are stamped "filed" soon after the Clerk affixes his signature. The affidavits are then placed in a file which consists of the search notes, certified mail receipts, Sheriff's returns, and any returned mail associated with that specific parcel. The file is kept as a permanent record in the Clerk's office. This would appear to be sufficient to meet the requirements of the *Lawrence* case.⁸

⁸In Madison County, the affidavits are recorded in the land records when a tax deed is issued. The recording fee for each affidavit is included in the fee quoted to and collected from

Section 4.30 Making Affidavits Count. According to the Court of Appeals, for affidavits to satisfy the statutory requirements, the Clerk's first affidavit should detail his efforts in the initial search and inquiry; while the second affidavit should detail the Clerk's efforts from any subsequent search and inquiry. The following example may be instructive: If notice is sent by certified mail and returned undeliverable and the sheriff's return is returned not found, the Chancery Clerk is obligated to search and inquire further in an effort to locate an accurate address. That further search should be documented in the Clerk's First Affidavit, specifying the particular acts of search and inquiry. If after that initial search and inquiry, the Clerk is still unable to determine an appropriate address for the record owner, the Clerk's efforts should be documented in the Clerk's Second Affidavit. (See *Roach v. Goebel*, 856 So. 2d at 715.)

Section 4.31 One Affidavit or Two? Although the statute is not entirely clear about requiring two affidavits, the Court of Appeals says that two affidavits are required in most all cases. See *Norwood v. Moore*, 932 So. 2d 63, 66 (Miss. App. 2006) (holding that "failure of the Chancery Clerk to file the second affidavit renders a tax deed void" (emphasis added)). What if nothing more can be or is done to get notice to the proper owner? The answer is probably to file a second affidavit anyway, indicating that the Chancery Clerk has redoubled his efforts. All affidavits must be sworn to and properly filed. [See *Appendix O* for an example of a Clerk's First Affidavit & *Appendix P* for an example of a Clerk's Second Affidavit.]

Section 4.32 Documentation for the Record – Notations On the Tax Sale Book. It is important to note all notices sent by mail or served by the Sheriff in the tax sale book. A simple way to do this is to print an additional label when preparing notices for mail. That label can then be affixed in the tax sale book. This should be done when notices are sent to owners and lien holders. In *Pace v. Wedgeworth*, where the Chancery Clerk's notation on record did not show that notice had been sent by registered mail, the tax sale was held void. *Pace v. Wedgeworth*, 20 So. 2d 842 (1945). [See *Appendix Q* for an example of Notations On the Tax Sale Book.]

Section 4.33 Documentation for the Record – Redemption/Maturity Files. The maintenance of redemption files requires strategic organization at the outset of the notification process. The easiest way to do so is to reference each parcel by the page and line number noted in the tax sale book. These numbers can then be noted on each notice and Sheriff's return sent from the Chancery Clerk's office. When a notice is returned, the disposition of the notice should be noted on the corresponding work papers. All of these documents (return receipts, returned mail, Sheriff's returns) must be kept together and maintained so as to allow for easy review, since these documents can be used as reference tools in subsequent redemption periods and may also be important evidence in a subsequent suit to quiet title or confirm a tax deed. [See *Appendix R* for an example of a Redemption File and *Appendix S* for an example of a Maturity File.]

the tax purchaser when she requests a tax deed. This seems to be a safe practice – if a tax deed is recorded, so are the affidavits.