

# PUBLICATION

---

## Spotlight on Recent Louisiana Mortgage Case Decisions

October 22, 2010

The Louisiana Supreme Court recently decided two cases involving the rights of property owners/borrowers and mortgagees as they relate to tax sales. In the first case, the court reversed the appellate court and reinstated the trial court's nullification of the tax sale, but passed on the important issue of whether a state statute that required a mortgagee to register with the tax authority and pay a nominal fee annually in order to receive notice of tax sales was unconstitutional. In the second case, the court held that proper notice of a tax sale to fewer than all joint, indivisible co-owners of property violates constitutional due process and nullifies the tax sale.

In *Tietjen, et al. v. City of Shreveport, et al.*, 2009-2116 (La. 5/11/10), 36 So.3d 192, the Tietjens bought property in 1985, providing their addresses in the text of the deed. In 1999, the Tietjens mortgaged the property with a local bank. The 2001 city ad valorem taxes were not paid. The property was sold at a 2002 tax sale. The Tietjens discovered the tax sale when trying to sell the property in 2006. They filed a declaratory judgment action against the City of Shreveport and tax sale purchaser to nullify the sale. The trial court agreed. The appellate court reversed, finding the owners had been notified of the tax delinquency and tax sale, and that the unnotified mortgagee had no legal right to notice because it failed to register with the city in order to receive notice as required by La.R.S. 47:2180.1. The Louisiana Supreme Court reversed the appellate court, reinstating the trial court nullification of the sale, and holding the record evidence supported the trial court conclusion that Tietjens had not received proper notice of the delinquency or sale. Because the decision nullified the sale, the court did not review the issue of whether the statutory registration requirement on the mortgagee in order to receive notice was constitutional. The court acknowledged that the circuits in Louisiana are split on that issue, implying it would review the issue under the right circumstances.

In *C&C Energy, L.L.C., et al. v. Cody Investments, L.L.C.*, 2009-2160 (La.7/6/10), - So.3d - , 2010 WL 2723691, George and Marilyn Gurlowsky acquired the property in 1992; Marilyn died; and in 1995 George was recognized as owner of one-half of the property and as a usufructuary (life estate recipient) of Marilyn's half, while their seven children were recognized in the succession as naked owners (remaindermen) of the property. In 2000, George received a notice of tax sale for delinquent 1999 parish ad valorem taxes; the children did not. The tax sale was completed. In 2008, new owners that acquired the children's interests contested the validity of the tax sale deed. The lower courts ruled the failure to give notice of the delinquent tax and notice of the tax sale to the children was a constitutional due process violation that nullified the tax sale and deed. The supreme court affirmed, relying on *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983), saying: ... failure to provide the requisite notice of the tax sale to each co-owner of record of immovable property results in a denial of due process afforded by the federal and state constitution as to all co-owners and renders the tax sale null and void in its entirety with regard to all co-owners, including the co-owner who received the notice of the tax sale. The court laid to rest the contention of the tax sale purchaser that its deed was valid at least as to George's interests in the property, finding it unavailing.