



# TitleNews Online Archive

## The Docket: Death and Tax Foreclosures

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*The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee which reviews significant court rulings and other legal developments and explains the relevance to the title insurance industry.*

Lance Pomerantz reviews a recent New York case that addressed the jurisdictional nuances of *in rem* tax foreclosure when the assessed owner has died, or in the case of a corporation, has been dissolved prior to commencement of the foreclosure action. He is a New York-based sole practitioner who provides expert testimony, litigation consulting and strategic advice in land title disputes. Pomerantz is also the author of the chapter on "Tax Titles" in the most recent edition of the treatise *Real Estate Titles*, published by the New York State Bar Association in 2020. He can be reached at [lance@landtitlelaw.com](mailto:lance@landtitlelaw.com).

**Citation:** *In the Matter of the Foreclosure of Tax Liens by City of Schenectady*, 201 A.D.3d 1, (3<sup>rd</sup> Dept., Nov. 20, 2021).

**Facts:** Many, but not all, taxing jurisdictions in New York State enforce the payment of delinquent real estate taxes through a so-called *in rem* foreclosure action pursuant to New York's version of the Uniform Delinquent Tax Enforcement Act (the UDTEA). The city of Schenectady is one of them.

In April 2019, the city commenced an *in rem* tax foreclosure proceeding against numerous parcels. The owner of record of each parcel is deemed by the UDTEA to be a "party entitled to notice" of commencement of the proceeding, and any person with an ownership or other interest of record may redeem the parcel or present a defense. Although the decision addresses many different defenses raised in connection with multiple parcels, this note will focus on two that challenged the jurisdiction of the court, *viz.* the "Congress Holding Corp. Parcel" and the "Paul Parcel."

- **The Congress Holding Corp. Parcel:** Mr. Whitney had been the sole shareholder of Congress Holding Corp. He died in 2006, and Congress Holding Corp. was dissolved by the Secretary of State in 2009. The tax foreclosure notice was commenced against, and noticed to, the corporation. The administrator of Whitney's estate argued, first, the city had failed to substitute Whitney's estate as the named party for the affected parcel and, second, the administrative dissolution meant the corporation couldn't own any property.
- **The Paul Parcel:** Paul is the adult son of the decedent, Allicock, who purchased the property in 2004 and resided there with her son until she passed away in 2015, after which the son continued to reside at the property. Pertinent here was a split between the Second and Fourth Departments (of the four departments that comprise the intermediate appellate courts in New York) as to whether a tax foreclosure proceeding may include a parcel where the owner is deceased at the time the action is commenced.

In connection with its statutory obligation to notify any “party entitled to notice,” the city utilized the services of a title company “to search title of all properties subject to the ... foreclosure” in order to notify “each owner and any other person whose right, title, or interest was a matter of public record....” Under the UDTEA, the “public record” for these purposes includes the land records as well as the records of the Surrogate's (*i.e.* “Probate”) Court, where Allicock’s last will and testament was found. Following completion of the search, the city mailed separate notices of the tax proceeding to (1) Paul and the “Heirs at law of the estate of ... Allicock,” addressed to the delinquent property and (2) Allicock 's nephew at an address in another county. The nephew was named as the executor of the estate in decedent's will.

## Holdings

- **The Congress Holding Corp. Parcel:** The court unanimously rejected both arguments with the parallel observations that “[a] corporation does not cease to exist or lose its corporate form upon the death of its sole shareholder,” and that “a corporation continues to exist as a legal entity after dissolution for purposes of appearing in legal actions and proceedings, including the ability to be sued in connection with its debts.” Thus, jurisdiction had been properly obtained under the statute.
- **The Paul Parcel:** Although the city went to great lengths to determine the persons interested in decedent's estate and revised its mailing list in an effort to notify them, the court found this informal approach flawed, in that no one at that point had been duly appointed by Surrogate's Court to serve as the personal representative of the estate and, absent an appointment, both Paul and the nephew lacked authority to represent the interests of the Allicock estate. The court held, under these circumstances, **“that the proceeding was a nullity from its inception with respect to the property...”**!! There are cogent legal and policy arguments to support both sides of this issue. The majority analysis prompted a lengthy two-judge dissent in this case, which, in and of itself, would make an appeal to the Court of Appeals a virtual certainty, and the Departmental split only heightens the need for a final determination of the doctrine.

**Relevance to the Title Industry:** Real estate tax enforcement proceedings in the chain of title are one of those things that cause title insurance underwriters to lose sleep. In many places, jurisdictional defects can render void the underlying proceedings, regardless of the savings clauses frequently found in tax enforcement statutes. When the assessed entity is an artificial “person,” careful underwriting requires a thorough knowledge of the effect of death on the disposition of corporate shares held by a sole shareholder, as well as the “death” of a corporation by dissolution or other means. When the assessed entity is a deceased natural person, prudent underwriting can require proof of strict adherence to the intricacies of estate administration formalities.

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