

**DEPARTMENT OF THE TREASURY
EXECUTIVE OFFICE FOR ASSET FORFEITURE**

DIRECTIVE NO. 12

DATE: August 20, 2015

SUBJECT: Payment of Taxes, Liens and Mortgages on Forfeited Real Property

1. PURPOSE. This Department of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive No. 12 establishes the policies and procedures for making payments from the Treasury Forfeiture Fund (TFF) for tax liens, non-tax liens and mortgages associated with forfeited real property.

This policy is intended to ensure the expeditious payment of tax liens, non-tax liens and mortgages associated with forfeited property so that the Department of Treasury may timely obtain clear title, and promptly dispose of forfeited real property.

2. SCOPE. This Directive applies to all seizing agencies participating in the Treasury Forfeiture Fund (TFF) and TEOAF and its contractors.

3. POLICY. In all forfeiture cases, it is the policy of the Department of Treasury that as a general matter, state and local real property tax liens, plus interest that accrues up to the date of the entry of a final order of forfeiture, should be timely paid. Generally, all other types of liens such as mortgage liens, plus interest that accrues on those liens up to the date payment is made, will also be paid. However, under no circumstance may any lien payment amount exceed the value of the property at the time of seizure.¹ Further, a lien that exceeds the net sales proceeds from the sale of such property may be paid only with TEOAF approval.

4. RESPONSIBILITIES.

A. It is the responsibility of the seizing agency to confirm that a final order of forfeiture is recorded with the appropriate county or municipal officials prior to issuing instructions to TEOAF's national seized real property contractor for the disposition of forfeited property. Disposition instructions sent to TEOAF's national seized real property contractor prompts the contractor to verify lien amounts and to seek payment from the TFF.

The filing or recording of the final order and the lifting of any associated lis pendens is normally the responsibility of the United States Attorney's Office (USAO). Nevertheless, it is in the best interests of the Department of Treasury to ensure that all final orders of forfeiture are timely filed or recorded at the county level. Thus, in those judicial districts where the USAO does not perform this function, the TFF participating agency or TEOAF's national seized real property contractor may file and record documents as needed.

¹ See 31 U.S.C. § 9705(b)(1) (limiting payment of liens to the value of the property at the time of seizure).

B. The TFF participating agency shall ensure that the Disposition Order, copies of any court documents, and the agency's instructions are provided to the national seized real property contractor as soon as is practicable after learning that the final order has been recorded with the appropriate county or municipal office(s), but no later than 20 days from entry of a final order of forfeiture by the court.

C. Upon receipt of those items set forth in 4(B) above, the national seized property contractor will verify lien, mortgage, and tax information, conduct appropriate title and appraisal actions; and advise the TFF participating agency of any discrepancies that may require resolution by the TFF participating agency.

D. If the national seized real property contractor does not find any discrepancy that could delay the sale and closing of the property, it will send a letter to the TFF participating agency requesting its concurrence with the payment of taxes, liens and mortgages, and the initiation of sale. Under no circumstance may the amount of any lien request exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

E. The seizing agency shall return the letter of concurrence to the national seized real property contractor within 10 calendar days. If the TFF participating agency does not concur with the national seized real property contractor's proposed payment of taxes, liens and mortgages, it shall promptly contact the national seized real property contractor's district office to resolve any issues such that concurrence can be timely granted.

F. Upon receipt of the letter of concurrence from the TFF participating agency, the national seized real property contractor shall send copies of the signed concurrence document, as well as final tax and lien payoff information to TEOAF for review and funding approval. TEOAF will not approve any lien request that exceeds the value of the property at the time of seizure. See 31 U.S.C. §9705(b)(1).

G. Within seven days of granting a request to pay taxes, liens and mortgages from the TFF, TEOAF will submit a request to the National Finance Center (NFC) so that funds may be disbursed to the appropriate lien holders. TEOAF will also provide the national seized real property contractor with a copy of the request sent to NFC.

H. The NFC ensures that approved payments are distributed within fourteen (14) calendar days from receipt of a request from TEOAF. The NFC notifies the national seized real property contractor when any tax or lien payment is made.

I. Upon sale and subsequent closing of real property, the national seized real property contractor shall ensure that the gross proceeds of sale are provided to the NFC within five days of the date the funds are received from the closing agent.

5. GUIDANCE.

A. Payment of Real Property Tax Liens

- (1) As a general matter, state and local real property taxes that accrued up until the date of entry of a final order of forfeiture should be paid upon receipt of a valid tax bill by the national seized real property contractor or the USAO. Under no circumstance may the lien payment amount exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). On rare occurrences, taxes may be paid at closing, with TEOAF approval.

- (2) In limited circumstances, TEOAF may approve the payment of taxes which accrued up until the date the forfeiture order was recorded (as opposed to entered by the court) if a state or local taxing authority has already assessed such taxes and is unwilling to waive them after being requested to do so by TEOAF's national seized real property contractor, provided such payment does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).
- (3) In most instances, the Department of Treasury will only pay real property tax liens up to the amount realized from the sale of property. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit the payment of real property tax liens that exceed net sales proceeds. Any payment of a real property tax lien that exceeds the net amount realized by the sale of the property will require a written waiver from TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

B. Payment of Interest and Penalties on Real Property Tax Liens

- (1) The Department of Treasury will pay interest but not penalties on taxes that accrued up until the date the final order of forfeiture was entered by the court, provided such interest on taxes does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). TFF participating agencies shall also coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit any payment of interest that exceeds net sales proceeds.
- (2) In limited circumstances, TEOAF may approve the payment of interest on taxes that accrued up until the date the forfeiture order was recorded (as opposed to entered by the court) if a state or local taxing authority has already assessed such interest and is unwilling to waive it after being requested to do so by TEOAF's national seized real property contractor, provided such payment does not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).
- (3) As a general rule, the Department of Treasury will pay interest at the rate set forth in 28 U.S.C. § 1961(a).
- (4) In rare circumstances, higher rates of interest may be paid where (a) the taxing authority can show it incurred out-of-pocket interest expenses in excess of the rate specified by 28 U.S.C. § 1961(a), such as where tax certificates have been sold to private investors; or (b) the United States Attorney's Office agrees to a higher rate of interest provided such higher rate is not punitive. TFF participating agencies should coordinate such action with TEOAF counsel prior to the filing of such a motion, or entry into such an agreement, by the AUSA.
- (5) In most instances, the Department of Treasury will only pay interest up to the net amount realized from the sale of property. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit any payment of interest on real property taxes that exceeds net sales proceeds. Any payment of interest which exceeds the amount realized by the sale of the property will require a written waiver by TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

C. Payment of Mortgages and Other Non-Tax Liens

- (1) As a general matter, mortgages and other non-tax liens are paid prior to sale after an appraisal confirms sufficient net equity exists to satisfy such lien. TFF participating agencies shall coordinate with the USAO to ensure, to the extent practicable, that any written agreements or orders prohibit the payment of any non-tax lien or mortgage that exceeds net sales proceeds. Under no circumstance may the lien payment amount exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1). If a court order or stipulated agreement directs a lien payment that exceeds the value of the property at the time of seizure, TEOAF counsel should be promptly notified and requested to take any appropriate corrective action.
- (2) In limited circumstances, TEOAF may be required by either stipulated agreement or court order to pay mortgages and other non-tax liens absent sufficient net equity. TFF participating agencies should consult with USAOs to ensure that such agreements are made, or court orders granted, in only the rarest instance when it is in the public interest to do so. In the event that a written agreement or court order requires TEOAF to satisfy a lien absent sufficient net equity, such payment will generally be paid at the time of sale.
- (3) In the event that a written agreement or order is silent or ambiguous on the issue of whether a lien payment must be made absent sufficient net equity, the national seized real property contractor or the USAO (at the request of the TFF participating agency or national seized real property contractor) shall make every reasonable attempt to negotiate downward the amount of any lien payment such that the payment does not exceed net equity.
- (4) Any payment of a mortgage or other non-tax lien which exceeds the net amount realized by the sale of the property will require a written waiver by TEOAF. A waiver may be granted, on rare occasions, provided the payment amount will not exceed the value of the property at the time of seizure. See 31 U.S.C. § 9705(b)(1).

D. Lien Subordination

- (1) The disposition of forfeited property is an executive branch decision and not a matter for the court. Consequently, preliminary and final orders of forfeiture should include language directing forfeiture of the property "for disposition in accordance with the law." In addition, orders of forfeiture should specifically address any third party claims against forfeited property that are recognized by the United States. If the interests of claimants (to include liens) are to be satisfied in whole or in part by payments from the proceeds of a sale of property by a TFF participating agency or its contractors, the proposed forfeiture order should provide specific guidance for Treasury or its contractors concerning such payments and, where possible, specify that such claims shall be paid only after the costs of the United States are recovered, and shall be paid only up to the amount realized from the proceeds of the forfeited property.

6. **AUTHORITY.** 31 U.S.C. § 9705; 21 U.S.C. § 881(h); 18 U.S.C. § 981(f); Treasury Directive 27-03, "Organizations and Function of the Office of the Assistant Secretary (Enforcement)"; Delegation Memorandum dated May 19, 1995, "Technical Correction to EOAF Delegation of Authority"; and Treasury Order 102-14, March 24, 2007, "Delegation of Authority with Respect to the Department of the Treasury Forfeiture Fund."

7. **INFORMATION CONTACT.** Any inquiries pertaining to this Directive should be directed to the TEOAF Real Property Team at (202) 622-9600.

8. **CANCELLATION.** The following TEOAF Directives are hereby superseded: Directive No. 12, "Liability of the United States for State and Local Taxes on Seized and Forfeited Property," (July 11, 1994); Directive No. 14, "Expeditious Payment of Liens, Mortgages and Taxes by the Department of Treasury," (October 1, 1995); and Directive No. 28, "Payment of Interest and Penalties on Taxes on Real Property Forfeitures," (December 23, 1994).

9. **EFFECTIVE DATE.** August 20, 2015.

/S/

John Farley
Acting Director
TEOAF