



Part 5. Collecting Process

Chapter 12. Federal Tax Liens

Section 4. Judicial/Non-judicial Foreclosures

5.12.4 Judicial/Non-judicial Foreclosures

- 5.12.4.1 [Foreclosure Overview](#)
- 5.12.4.2 [Judicial Foreclosures](#)
- 5.12.4.3 [Non-judicial Foreclosures](#)
- 5.12.4.4 [Notice of Non-judicial Sale](#)
- 5.12.4.5 [Non-Judicial Sale of Perishable Goods](#)
- 5.12.4.6 [Consent to Sale of Property Free of Lien](#)
- 5.12.4.7 [Non-judicial Sale Activities and Tasks](#)
- 5.12.4.8 [Redemption](#)
- Exhibit 5.12.4-1 [Letter 1840 \(DO\)](#)

5.12.4.1 (06-11-2010) Foreclosure Overview

1. A foreclosure is the process by which an owner's right to a property is terminated, the foreclosing party's interest is liquidated, and junior creditor interests on the property are extinguished. This IRM contains instructions and information related to third party foreclosures. It does not address the Service's suits to foreclosure lien interests.
2. There are two types of foreclosures discussed in this IRM. Judicial foreclosures as referenced in 28 USC § 2410 and 26 USC § 7425(a) and non-judicial foreclosures as referenced in 26 USC § 7425(b). State law governs whether the foreclosure is judicial or non-judicial. The location of the property being foreclosed will determine which state's laws are followed.
3. Judicial foreclosures are processed either in federal or state courts and are the primary responsibility of the Department of Justice (DOJ). When DOJ requires assistance or information, the request is handled through Advisory. Non-judicial foreclosures are the primary responsibility of Advisory. When Advisory requires assistance they issue an OI to the Field. Field Revenue Officers may also find that property belonging to an assigned taxpayer is in foreclosure.
4. Non-judicial foreclosures are possible when a power of sale clause exists in a mortgage or deed of trust. A "power of sale" clause is where the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event the borrower defaults.
5. There are four classes of participants to keep in mind when working foreclosures. They are:
 - Foreclosing party or the lender
 - Foreclosed party or the borrower
 - Creditors

- Foreclosure sale purchaser

Each has differing responsibilities or needs during the process. The Service has an education responsibility, when working foreclosures, to ensure the participating parties have knowledge of the applicable Federal statutes pertaining to their part of the foreclosure process.

6. In general:

- A. The foreclosing party has the responsibility to provide notice of the foreclosure suit commencement or sale, conduct the foreclosure sale, and distribute surplus or excess proceeds resulting from the foreclosure sale.
- B. The foreclosed party may have tax consequences arising from the process. A portion of their debt may be forgiven which translates to taxable income. See Mortgage Debt Relief Act of 2007 and IRM 5.12.4.1.3(5).
- C. Creditors such as the IRS need to determine whether they were properly noticed, how the foreclosure impacts their interest in the property, whether there are surplus or excess proceeds they may be entitled to, and whether redemption from the foreclosure sale purchaser is a consideration.
- D. The foreclosure sale purchaser's acquisition of the property may be temporary if redemption is a consideration.

7. The percentage of real estate foreclosures rise in bad economic times because they are tied to:

- Real estate values
- Loan to value rates
- Borrower's ability to pay the loan

Real estate loans become high risk investments for lenders when the first two items below are compounded by the third item:

- Loan amount encumbers 100% or more of the value of the property
- Loan collateral is only the property encumbered by the loan
- Loan payment more than 40% of borrower's monthly net income

If the value of real estate drops it inhibits the lender from renegotiating these types of loans. Then it takes only a shift in the borrower's income or cost of living to cause a loan to default.

5.12.4.1.1 (06-11-2010)

Investigation Guidelines for Judicial/Non-judicial Sales

1. The purpose of a judicial or non-judicial investigation is to determine first whether the foreclosing party holds an encumbrance senior or junior to the IRS position. If the foreclosing encumbrance is junior to the IRS position the IRS lien remains on the property undisturbed by the foreclosure. If the foreclosing encumbrance is senior, the employee investigates how the Service's equity in the property is impacted by the foreclosure and whether any action is warranted to protect that interest.
2. Other Investigations (OI) to investigate foreclosures originate in Advisory. For detailed information, see IRM 5.12.4.7(1).
3. During the course of a judicial or non-judicial investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than** 14 calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate.
4. When circumstances dictate, the employee should use problem solving and negotiation techniques, and in so doing consider the taxpayer's/POA/third party's perspective when working toward case resolution.
5. Any written notification or other communication should address the issue(s) clearly and in a language understandable to someone unfamiliar with Service terms, acronyms, and jargon.

5.12.4.1.2 (06-11-2010)

Lien Discharge Consideration During Foreclosure Investigation

1. Foreclosing mortgagees should be encouraged to request discharges under IRC 6325(b)(2) before the sale rather than join the United States in a judicial proceeding. It would be to their advantage to eliminate the Government's right of redemption and to the Government's advantage to eliminate lengthy litigation. However, a Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of Area Counsel.
2. A commitment letter will be furnished to foreclosing parties within thirty calendar days of receipt of a complete application. Certificates will be issued after receipt of proof that the taxpayer has been divested of right, title or interest in the property.
3. A commitment letter should not be issued to parties in the non-judicial foreclosing process when adequate notice of sale has been provided as required by IRC 7425 and outlined in Publication 786. In these circumstances the parties should be advised, if interested, of the procedures for requesting the government release its right of redemption. The instructions for application are in Publication 487.
4. If a Federal agency has foreclosed non-judicially and given adequate notice, they may feel that the lien remains a cloud upon the title. As an accommodation to that agency, a discharge will be issued.

5.12.4.1.3 (06-11-2010)

Mortgage Forgiveness

1. The subject of mortgage forgiveness may be encountered when working foreclosure cases. It is provided here as an awareness of a taxpayer's potential tax consequence arising from foreclosure.
2. When lenders foreclose and sell a borrower's property or restructure the borrower's loan, the lender may forgive or cancel portions of the loan. A lender may use this as an alternative to or in conjunction with a deficiency judgment against the borrower for the balance remaining on the loan after the foreclosure sale. The tax code treats the amount forgiven as income to be taxed. The following are typical scenarios where loan forgiveness may be encountered.
 - Lender modifies loan reducing the principal balance of loan and the borrower keeps house
 - Property is sold and deeded back to the lender
 - Lender forecloses and the property sells for less than the amount of the loan
3. Cancellation of debt may impact the Service's decision to discharge or subordinate a lien interest related to a foreclosure investigation. Asking the lender or borrower whether a portion of the debt will be cancelled should be added to the foreclosure investigation questions for those parties.
4. The amount forgiven is all or a portion of the remaining amount on the original loan minus the new loan or minus the sale amount of the property. This forgiven amount becomes cancellation of debt income (COD) to the taxpayer. COD income must be included as ordinary income on the taxpayer's return unless exclusion is allowable.
5. The Mortgage Forgiveness Debt Relief Act of 2007 increases incentives for borrowers and lenders to work together when the foreclosure involves the borrower's principal residence. The objective is to allow families to secure lower mortgage payments without facing higher taxes.

Note:

Any questions related to these considerations should be referred through appropriate channels, to the Milwaukee Area Counsel Attorneys who are the subject matter experts on this topic.

References on this topic which may be of assistance are:

- IRS FAQs – Mortgage Forgiveness Debt Relief Act found at <http://www.irs.gov/individuals/article/0,,id=179414,00.html>
- Form 982 & Instructions Reduction of Tax Attributes Due to Discharge of Indebtedness (And Section 1082 Basis Adjustment) found at <http://www.irs.gov/pub/irs-pdf/f982.pdf>
- Pub 4681 Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals) found at <http://www.irs.gov/pub/irs-pdf/p4681.pdf>

- Pub 544 Sales and Other Dispositions of Assets found at <http://www.irs.gov/pub/irs-pdf/p544.pdf>

5.12.4.2 (08-11-2006)

Judicial Foreclosures

1. Section 2410 of Title 28 of the United States Code is the authority under which the United States consents to be sued in suits to quiet title, to foreclose a mortgage or other lien, to partition, to condemn, or interpleader suits, or suits in the nature of interpleader with respect to property on which the United States has or claims a mortgage or other lien.
2. If the foreclosure action involves an encumbrance which is junior to the NFTL, the sale of the property shall be made without disturbing the NFTL unless the United States agrees that the property be sold free and clear of its liens, in which event the proceeds are distributed according to the priorities of the interests of the various parties involved.
3. When a foreclosure action, to which the United States has been made a party, involves an encumbrance which is prior in right to the NFTL, a judicial sale has the same effect on the Government's lien as it would on any other junior lien under local law in the place where the property is situated, i.e., junior tax liens are extinguished on that particular property.

5.12.4.2.1 (06-11-2010)

Judicial Foreclosure Case Responsibility

1. It is the responsibility of the Department of Justice (DOJ) to work 28 USC Section 2410 foreclosures. These are actions initiated by third parties where a NFTL has been recorded against the property and the process takes place in the judicial system. DOJ requests the assistance from Advisory as needed when working these cases but case priority is dependent on DOJ resources.
2. The type of assistance required by DOJ of the Service includes:
 - A. Determination of the IRS lien priority
 - B. Determination whether surplus or excess proceeds need addressing
 - C. Redemption investigation
 - D. Other information as requested

Note:

A Certificate of Discharge will not be issued during the pendency of litigation without the prior approval of Area Counsel.

5.12.4.2.2 (06-11-2010)

Judicial Foreclosure Activities and Tasks

1. The U.S. Attorney will forward a copy of the summons and complaint, along with a request for the information needed to prepare an answer, to the area director, Attention: Manager, Advisory, when the United States or the area director is joined in a suit to foreclose a mortgage or other lien (Section 2410 (Title 28, USC)).
2. The request will be promptly screened against the Notice of Federal Tax Lien files to determine the balance due on the lien(s) which involved the United States in the proceedings. In cases where records indicate no outstanding liability, the area director will advise the U.S. Attorney, and the U.S. Attorney will file a disclaimer on behalf of the United States.
3. In all other cases, Advisory will:
 - A. open a NF OI - 146 - Judicial Foreclosure on ICS no later than 7 calendar days after receipt,
 - B. document the receipt date of the notice of judicial foreclosure,
 - C. establish a file, and

D. furnish any information requested by the U.S. Attorney that may be obtained without a formal investigation

The U.S. Attorney will take the legal action deemed appropriate.

4. Advisory will follow up with the U.S. Attorney or the clerk of the court until a date of sale is established, unless a redemption investigation is not required.
5. In many cases the property will be sold for an amount more than sufficient to satisfy the mortgage or other liens which are prior to those of the United States. In such cases action should be taken to obtain the surplus proceeds for application to the taxpayer's account.
6. Each area is responsible for establishing the time frame and methodology for following up. However, during the course of an investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than 14** calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate. Established procedures should strive to provide a minimum of 90 days remaining available to conduct a redemption investigation.
7. The revenue officer assigned the investigation will provide to Advisory by the date specified on the Form 2209, Courtesy Investigation:
 - a completed Form 4376, Report of Investigation (IRC 7425 or 2410 USC), or
 - a memorandum in accordance with IRM 5.12.5.6.4; IRM 5.12.5.6.4
 - the original history documentation if not on ICS, and
 - any other information requested by the U.S. Attorney

5.12.4.2.3 (06-11-2010)

Right to Redeem Property Sold at Judicial Sale

1. Redemptions and redemption investigations are covered in IRM 5.12.5.
2. 28 USC 2410(c) provides that where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have not less than 120 days from the date of sale within which to redeem. This provision gives the Service time to investigate and determine whether it would be to the advantage of the United States to redeem the property. Redemption allows the Service to resell the property for more than the cost of redemption with the resulting benefit to the Government. A principal consideration in such an investigation entails a determination as to whether the value of the property sold in the foreclosure proceeding is reasonably in excess of the amount required to effect the redemption.
3. Advisory generally will not work or issue a courtesy investigation, for the purpose of determining whether or not to exercise the right of redemption, more than 30 days prior to the scheduled date of sale. An effort should be made to issue the investigation no more than 30 days after the sale is completed, thus allowing the maximum amount of time to complete the redemption process.
4. In cases where it appears that redemption may be feasible, the assigned employee will retain:
 - the Form 2209, and
 - the original Form 4376.
5. The assigned employee will send a copy of the Form 4376, and any other information requested by the U.S. Attorney to the Advisory GM by the due date of the Form 2209. See IRM 5.12.5 for procedures related to redemptions and redemption investigations.

5.12.4.3 (08-11-2006)

Non-judicial Foreclosures

1. Non-judicial foreclosures are possible when the borrower has granted the lender, through the loan documents, the ability to foreclose outside of a court's jurisdiction. The process is determined by state statutes. When working non-judicial foreclosures Advisors and Revenue Officers need to be aware of the foreclosure statutes in the state where the property is located.

2. Property is discharged from the tax lien when the holder of a superior lien forecloses by non-judicial sale under IRC 7425(b)(2). Foreclosure by a lienholder junior to the NFTL does not disturb the tax lien (IRC 7425(b)(1)).

5.12.4.3.1 (06-11-2010)

Investigation Elements and Responsibilities for Non-Judicial Foreclosures

1. The elements of a non-judicial foreclosure investigation generally the responsibility of Advisory deal with whether the Service was properly notified:
 - A. IRS lien priority determination
 - B. Notice of Non-Judicial Sale adequacy determination (IRC 7425(c)(1))
 - C. Consent to Sale review and determination (IRC 7425(c)(2))
 - D. OI issuances to the Field for assistance
2. The elements of a non-judicial foreclosure investigation which can be the responsibility of either Advisory or the Field deal with foreclosure sale and post foreclosure sale activities:
 - A. Foreclosure sale monitoring
 - B. Surplus or excess foreclosure sale proceed availability determination and pursuit
 - C. State law research relating to claiming surplus or excess foreclosure sale proceeds
 - D. Status of CDP process research related to tax liabilities associated with claims for surplus or excess foreclosure sale proceeds
 - E. Redemption investigation

5.12.4.4 (06-11-2010)

Notice of Non-judicial Sale

1. Except for perishable goods, *IRM 5.12.4.5.a* notice of a sale will be given, in writing, by registered or certified mail or by personal service, not less than 25 days prior to the sale, to the Advisory group manager, in the Field Collection Area where the sale is to be held. (See IRC §7425(c)(1)).
2. Persons seeking information on when or how to submit a notice of non-judicial sale should be furnished a copy of Publication 786, Instructions for Preparing Notice of Non-judicial Sale of Property and Application for Consent to Sale and Publication 4235, Advisory Group Addresses.
3. In situations where a notice of Federal tax lien has not been filed or has been filed less than 31 days before the sale, it is not necessary to notify the Advisory group managers office of a sale of the taxpayer's property. In these situations, the sale shall have the same effect with respect to the discharge of the Federal tax lien/NFTL as provided by local law with respect to junior liens.
4. When the sale is postponed, the seller of the property is required to give notice of the postponement to the Advisory group managers office in the same manner required under local law with respect to other secured creditors.
5. Notice of sale is required to be given even though such notice was not originally required because no NFTL was filed less than 31 days before the scheduled date of sale, if the postponed sale date is more than 31 days from the lien filing date.
6. In cases of forfeiture of land sales contracts, Area Counsel should be consulted to determine if the Service has a redemption right.

5.12.4.4.1 (06-11-2010)

Determining the Date of Non-judicial Sale

1. The date of the sale shall be determined in accordance with the following rules:

- A. in the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred,
- B. in the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date on which title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and
- C. in the case of divestment of junior liens on property, not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law.

5.12.4.4.2 (06-11-2010) Review of IRC 7425 Notice

1. Review of the IRC 7425 Notice will be completed by the advisor for timeliness and adequacy.
2. If the notice was not submitted timely, the Notice of Tax Lien will not be impacted by the pending sale unless the United States consents to the sale free of the tax lien or title of the United States in the property. Otherwise the foreclosing lienholder will be required to either:
 - pay the amount of the tax lien in full; or
 - prepare a request to discharge the property from the tax lien.
3. No formal investigation will be required when the items to be sold are consumer goods. A copy of the notice of sale should be given to the person charged with the balance due to decide what further action is required, if any.

Note:

If the case does not appear on IDRS, has been reported currently not collectible or is assigned to ACS, the advisor will file accordingly.

5.12.4.4.3 (06-11-2010) Adequacy of IRC 7425 Notice

1. Once it has been determined that an investigation will be worked, the employee will:
 - A. open a NF OI-147 - Non-Judicial Foreclosure on ICS no less than 7 calendar days prior to the date of sale,
 - B. include the receipt date of the IRC 7425 notice, and
 - C. review notice for adequacy.
2. The notice will be considered adequate if it contains the following information:
 - A. Name and address of the person submitting the notice of sale
 - B. Copy of each Notice of Federal Tax Lien (Form 668(Y)) affecting the property to be sold, or list containing the IRS area office responsible for filing the lien, name and addresses of the taxpayer, date of filing, and place of filing
 - C. Detailed description of the property to be sold including location and any distinctions or particularities as can happen with multiple tracts of land; in the case of real property, inclusion of the street address, city, state, legal description contained in the title or deed to the property, and, if available, a copy of the abstract of title
 - D. Date, time, place, and terms of the proposed sale of the property; and, in the case of a perishable property sale as described in IRM 5.12.4.5.1, a statement of the reasons the property is believed to be perishable.
 - E. Approximate amount of the principal obligation, including interest, due the person selling the property, and
 - F. Description of other expenses (such as legal, selling costs, etc.) which may be charged against sale proceeds.

3. The notice will be considered inadequate if it does not contain the information described in (2) above. In the case of an inadequate notice, the Advisory Advisor will provide written notification via Pattern Letter 1840, Notice of Inadequacy. *Exhibit 5.12.4-1*.
4. Any written notification or other communication should address the issue(s) clearly and in a language understandable to someone unfamiliar with Service terms, acronyms, and jargon.
5. In case of an inadequate notice, the Advisory group manager may, at his or her discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is not given 25 days prior to the sale.
6. In any case where the person who submitted a timely notice does not receive written notification that the notice is inadequate more than five days prior to the date of the sale, the notice will be considered adequate.
7. In situations where the acknowledgement of the notice or inadequacy of the notice is the only issue such that the case will not be entered onto ICS, the AIQ executive will provide alternative methods for the internal tracking of receipts and dispositions.

5.12.4.4.4 (06-11-2010)

Acknowledgment of Notice

1. A written request that the receipt of a notice of sale be acknowledged will be honored. Acknowledgement can be made through the mailing of a duplicate notice, via facsimile as long as the third party is agreeable to receiving same.
2. In accordance with Service wide Delegation Order 5.4, the authority to acknowledge IRC 7425 Notices, and to reject them because of inadequacies, is delegated to the Advisory group manager.

5.12.4.4.5 (06-11-2010)

Disclosure of Adequacy of Notice

1. The Advisory group manager is authorized to disclose to any person who has a proper interest, whether an adequate notice of sale was given. Disclosure may be made either before or after the sale.
2. Any person desiring this information should submit to the Advisory group manager a written request which clearly describes the property sold, identifies the applicable NFTL(s), gives the reasons for requesting the information, and states the name and address of the person making the request.

5.12.4.5 (06-11-2010)

Non-Judicial Sale of Perishable Goods

1. IRC 7425(c)(3) provides for the sale of perishable good. The Code defines perishable goods, describes noticing requirements, and provides sale proceed distribution requirements.

5.12.4.5.1 (06-11-2010)

Definition of Perishable Goods

1. The term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

5.12.4.5.2 (06-11-2010)

Notice of Non-judicial Sale of Perishable Goods

1. If notice of the sale is given, in writing, by registered or certified mail, or by personal service to the Advisory group manager before such sale, the sale will discharge or divest such property of the lien or title of the United States in the property but not the proceeds.
2. The notice of sale of perishable goods shall contain the same information required in IRM 5.12.4.5.

3. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Advisory group manager of the postponement. For provisions relating to the authority of the Advisory group manager to discharge property subject to a NFTL in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, please refer to IRM 5.12.3.12.

5.12.4.5.3 (06-11-2010)

Non-Judicial Perishable Sale Proceeds

1. The proceeds (exclusive of costs) of the sale are held as a fund for not less than 30 days after the date of the sale and remain subject to the liens and claims of the United States. Distribution of the fund is in the same manner and with the same priority as the liens and claims had with respect to the property sold.
2. If the seller fails to hold the proceeds of the sale in a fund in accordance with the provisions of IRC 7425(c)(3), the seller becomes personally liable to the United States for an amount equal to the value of the interest of the United States in the fund.
3. The buyer of the perishable property is afforded certain protection. Even if the proceeds of the sale are not held by the seller, but all the other provisions are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States.

5.12.4.6 (06-11-2010)

Consent to Sale of Property Free of Lien

1. A consent to sale IRC 7425(c)(2) shall discharge or divest the foreclosing property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title. The consent may be granted even if the IRC § 7425(b)(2)(c) notice of sale requirements have not been met. The area, in which the sale occurs, is responsible to determine whether consent will be granted.
2. Consent to the sale may be given when adequate protection is afforded the lien or title of the United States. Protection is considered adequate if,
 - A. taxpayer has no equity in the property,
 - B. proceeds of sale are substituted as provided in IRC 6325(b)(3)
 - C. taxpayer's interest in the property is assigned to the Director, AIQ,
 - D. assignment of proceeds in excess of prior encumbrances is secured, or
 - E. any other circumstances acceptable to the area.
3. The consent will be effective only if given in writing and shall be subject to such limitations and conditions as may be required by the area and may not be given after the date of the sale.
4. The right to redeem remains even though a consent to the sale is given.
5. The consent to a sale under IRC 7425 will be approved by the Advisory group manager.
6. All payments, directly related to consents to sale, secured by Advisory staff will be applied to the taxpayer's account using Designated Payment Code (DPC) 57. Payments received by a revenue officer should be applied using TC 670 DPC 07.

5.12.4.6.1 (08-11-2006)

Application for Consent

1. Any person desiring the Advisory Group Manager's consent to sell property free of a NFTL or a title derived from the enforcement of a NFTL of the United States in the property shall submit an original and two copies of the information required in Publication 786, Notice of Non-judicial Sale of Property and Application for Consent to Sale, as stated in the section titled, Application for Consent.
2. The information required as stated in Publication 786 can be received from an external source, such as a foreclosure attorney electronically, as long as the electronic transmission includes all of the required information and is submitted with a declaration that the information is submitted under the penalties of perjury. An electronic signature is acceptable. Internally, the information can be forwarded electronically from office to office via secured messaging.

5.12.4.6.2 (08-11-2006)

Processing Applications

1. As a general rule, consent may be given without a field investigation if the property is of nominal value, is consumer goods or if the property is real property and the Government's interest is less than the criteria established in IRM 5.12.5.1.1 and LEM 5.12.5 for redemption investigations.
2. If the property is real property and the Government's interest is more than the redemption investigation criteria, the application for consent should be investigated to determine the most feasible administrative action to be taken.

5.12.4.6.3 (08-11-2006)

Form of Consent

1. When consent to a non-judicial foreclosure sale is given, the consent letter, prepared in triplicate by Advisory, will contain the following:
 - A. name and address of person requesting consent.
 - B. restatement of Internal Revenue Code authority (7425(c)(2)).
 - C. detailed description of property to be divested.
 - D. description of lien(s) to be divested.
 - E. unpaid balance of FTL/NFTL, including interest, lien fees, etc.
 - F. place and date NFTL filed.
 - G. statement that surplus proceeds are subject to the FTL/NFTL of the United States.
 - H. signature of Advisory group manager.
2. Copies of the consent letter will be disposed of as follows:
 - A. original and duplicate to requestor.
 - B. triplicate to be associated with related NFTL.
3. When it is determined that consent to the sale should not be given, the Advisory group manager will prepare in triplicate a letter of non-consent containing the following:
 - A. name and address of person requesting account.
 - B. restatement of IRC 7425(c)(2)
 - C. recommended alternate procedure (discharge of property, substitution of proceeds of sale, etc.)
 - D. signature of the Advisory group manager.

5.12.4.7 (06-11-2010)

Non-judicial Sale Activities and Tasks

1. Generally, Other Investigations (OIs) to investigate non-judicial sales originate in Advisory. Certain situations may warrant revenue officer involvement. When this occurs, the Advisory Group Manager will assign the OI to a revenue officer field group. This decision will be contingent upon factors such as geographic feasibility and the need for investigative field work. Due to the need for immediate assignment of these cases, OIs will be routed directly to the field revenue officer group working the zip code. The group manager will be required to treat these OIs as priority work. Non-judicial foreclosure OIs will be assigned to a revenue officer expeditiously, to ensure that the Government's interest is not compromised and that the investigation is completed accurately and timely. Non-judicial foreclosure OIs will be exempt from existing case delivery parameters. Consideration should be given to:

- the dollar amount of the liability,
 - the type of property involved,
 - the economic condition of the particular locality,
 - the practical impact of local law, or
 - any other significant factor.
2. The only time Advisory needs to review notices of sale is when the notice meets the criteria in (1) above.
 3. For notices of sale where investigations will be performed, Advisory should request Area Counsel provide redemption periods applicable under local law, which will be used in determining the time available for a revenue officer to conduct the investigation.
 4. A copy of the Notice of Sale will be given to the person charged with the balance due to decide what further action should be taken. If the case does not appear on IDRS, has been reported currently not collectible or is assigned to ACS, the Advisory file will be noted.
 5. As mentioned previously, the Advisory group manager will determine whether to issue an OI to the field or to have the investigation worked by the advisor.
 6. The advisor assigned the case will issue an outgoing NF OI - 147- Non Judicial Foreclosure via ICS no earlier than 30 days prior to the scheduled date of sale. Advisory will determine if the fair market value of the property in question exceeds the amount required to redeem, prior to the issuance of a Courtesy Investigation. Sources from which this information can be secured varies; but examples include the tax assessor's office and the foreclosing creditor's attorney.
 7. The revenue officer need not attend the sale, unless specifically directed by the advisor. Attendance should be requested only in unusual cases. The necessary information may generally be secured from the seller or seller's agent immediately after the sale.
 8. Each area is responsible for establishing the time frame and methodology for following up. However, during the course of an investigation, when the applicant, taxpayer, representative, or IRS employee misses a specific deadline, follow-up is based on meeting the Service's requirements to maintain its standing in the proceeding and should be initiated **no later than 14** calendar days after the missed deadline. This follow-up includes closing the case if this action is appropriate. Established procedures should strive to provide a minimum of 90 days remaining available to conduct a redemption investigation.
 9. The Form 4376, Report of Investigation (IRC 7425 and 2410 USC) will be prepared to provide a basis for a recommendation to exercise the right of redemption.

5.12.4.7.1 (06-11-2010)

Surplus or Excess Proceeds from Non-Judicial Sales

1. In the event the sale produces an amount in excess of prior encumbrances (surplus proceeds), the employee assigned determines what party at the state level handles these funds. It could either be the party who conducted the sale or another party charged with that responsibility by state law.
2. The purpose of the non-judicial foreclosure sale investigation is to determine whether the proceeds more than fully satisfied the foreclosing party's encumbrance. When this occurs there are two parallel paths to investigate. Either or both may result in action by the Service. One investigation path is whether there are surplus or excess sale proceeds. The other investigation path is whether sufficient equity in the property remains after sale for the Service to consider exercising its redemption rights. Even if there are no surplus or excess proceeds from the sale, sufficient equity in the property may remain to consider redemption.
3. There are two methods the Service has to pursue surplus or excess proceeds.
 - A. Issuance of a *Form 668 A, Notice of Levy* will only be considered when a Letter 1058, Final Notice has been issued for all applicable tax periods and the Service has reason to believe that the "holder" of the excess proceeds is not disbursing the funds in accordance with the legal requirements for disbursement of excess proceeds or if we have knowledge that funds are being disbursed to a creditor junior to the IRS secured position. A levy may only include those modules where all Collection Due Process (CDP) appeal rights are extinguished or resolved. If the CDP process has been completed on some but not all modules issue the levy containing only those modules. If the proceeds available will more than full pay the levy and there are remaining liabilities or the liabilities have not been through the appropriate CDP process, the second method must be used.

- B. If the Service cannot levy for the excess sale proceeds, the statutory lien remains and the IRS must look to its rights as a creditor under the laws of the state in which the foreclosure and sale took place. Use *Form 10492, Notice of Federal Taxes Due* where levy is not appropriate. This form will serve as written notice to the settlement attorney or other third party that the IRS may be entitled to excess proceeds. State law controls how and to whom claim for the proceeds is submitted. Some but not all states require the party distributing the proceeds to ensure distribution using the priority order the junior liens attached to the property prior to the foreclosure sale. Sometimes an interpleader suit is initiated by the party responsible to distribute the funds to determine who has rights to the funds. Questions should be addressed to Area Counsel.
4. All payments, directly related to non-judicial sales, secured by Advisory staff will be applied to the taxpayer's account using Designated Payment Code (DPC) 57. Payments received by a revenue officer should be applied using TC 670 DPC 07.
 5. The employee's investigation should determine if there is a problem with the distribution of the funds and if appropriate recommend action by Area Counsel.

5.12.4.7.2 (06-11-2010)

Right to Redeem Property Sold at Non-judicial Sale

1. IRC 7425(d) provides for the redemption by the Government of real property sold in a non-judicial proceeding when such sale is made to satisfy a lien that is prior to the United States. The period for redemption is 120 days, or the period provided by State law, whichever is longer.
2. If the sale is of real property, based on assignment of the investigation, either the advisor or the revenue officer will determine whether to recommend the exercise of the right of redemption. Form 4376, Report of Investigation (IRC 7425 or 2410 USC), will be used for this purpose. This process may also require assistance from a Property Appraisal and Liquidation Specialist (PALS). The final review and processing of Form 4376 is the responsibility of Advisory. When a revenue officer and/or a PALS is involved in the investigation, it is essential that all required documentation be included with Form 4376 when forwarding the results of the investigation to Advisory.

5.12.4.7.2.1 (06-11-2010)

Redemption Investigations

1. Redemption investigations are found in IRM 5.12.5. That IRM covers the investigation leading up to the decision to redeem, the redemption itself, and the sale of the redeemed property.

5.12.4.7.2.1.1 (06-11-2010)

Upset Bidding

1. Upset bidding after a foreclosure sale is allowed in some states like North Carolina. An upset bid is a recorded bid placed after a foreclosure sale has ended. It is higher than the highest bid received at the actual foreclosure sale. This type of bidding can cause confusion when conducting a redemption investigation because it impacts the person from whom the IRS would redeem the property. An upset bid extends the bidding period but does not change the sale date which IRS uses to start the redemption period. Consult Advisory and Counsel when encountering upset bidding when considering redeeming property.

5.12.4.7.2.1.2 (06-11-2010)

Upset Price

1. The upset price, also called the judgment amount or minimum bid, is what the lender is owed on the property. This sum usually includes the outstanding loan and any interest and fees accumulated since the start of the foreclosure process. It is a bid made after a judicial sale but before the successful bid at the sale has been confirmed, larger or better than such successful bid, and made for the purpose of upsetting the sale and securing to the "upset bidder" the privilege of taking the property at this bid or competing at a new sale.

5.12.4.8 (06-11-2010)

Redemption

1. Redemptions and redemption investigations are covered in IRM 5.12.5.
2. IRC § 7425(d) provides the Internal Revenue Service the right to redeem real property sold in nonjudicial foreclosure action by a third party which has a priority over the Notice of federal Tax Lien.
3. Title 28 U.S.C. § 2410(c) provides the United States the right to redeem real property sold in a judicial foreclosure to satisfy a lien that is prior to that of the United States.

4. The time period for a redemption after a foreclosure sale with respect to either a nonjudicial or judicial foreclosure is 120 days or the period allowable for redemption under State law, whichever is longer.
5. IRS redemptions can benefit both the government and the taxpayer. The purpose of redemption is to pay off the foreclosing instrument and apply funds to the taxpayer's liability. The key to a successful redemption case is locating a guaranteed purchaser willing to advance a deposit generally in the amount of 20 percent of the amount bid.

**Exhibit 5.12.4-1
Letter 1840 (DO)**

Letter 1840 (DO)

Internal Revenue Service

Department of the Treasury
Director, Advisory Insolvency and Quality (AIQ)

Date:

In re:

Person to Contact:

Contact Telephone Number:

Information Copy Only

We are returning your notice of non-judicial sale because it does not contain adequate information. This letter is a NOTICE OF INADEQUACY , which we are required to send to you. We have indicated either missing and/or incorrect information in the boxes checked below.

- The name and address of the person submitting the notice of sale.
- A copy of each Federal tax lien affecting the property to be sold, or
 - a. The location of the IRS Area office that issued the lien.
 - b. The name and address of the taxpayer, and
 - c. The date and place the lien was filed.
- A detailed description of the property to be sold including the location of the property (if real property), must include the street address, City, State, the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title.
- The date, place, time, and terms of the proposed sale.
- The approximate amount of the principal obligation, including interest due the person selling the property and a description of other expenses that may be charged against the sale proceeds.
- Other: _

Please resubmit your notice and all required documentation with the copy of this letter attached within sufficient time so that we receive it at least 25 days before the sale.

Please resubmit your notice along with a copy of this letter and the necessary information to consider your notice as being adequate. The 25 day notification period (above) begins upon receipt of an adequate notice of non-judicial sale. For additional information, please refer to Publication 786, Instructions for Preparing a Notice of Non-judicial Sale of Property and Application for Consent to Sale.

Strip in "Director, AIQ, (City) Area" in bottom left corner (face only)
aligned with form number
(1/2" left, 3/8" bottom margin). (10 pt News Gothic Bold)

(Choice of facsimile, hand or stamped signature to be determined by using office. Area will strip in
facsimile signature if one is requested.)

(over)

Letter 1840 (DO) (Rev. MM-YY)

In case we find it necessary to contact you, please include your name and a daytime telephone number and/or email address in your response. If you have any questions,
please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Advisory Group Manager

Enclosures:

Notice of Non-judicial Sale

Copy of this letter

Letter 1840 (DO) (Rev.MM-YY)

[More Internal Revenue Manual](#)