

Missouri Lawyers, Avoid a Halloween Fright! An Important Update to IRS Notice Procedures For Non-Judicial Foreclosures

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The worst frights occur when we feel secure in our surroundings or confident in our actions. Just ask a horror flick babysitter. Lawyers also become secure and confident (some say complacent) with our practice area expertise. And, then . . . BOO! An unknown rule change not only derails your case plan but may expose your client to a negative outcome. Such is the case with a recent change in the procedure for providing the IRS with notice of a Missouri non-judicial deed of trust foreclosure.

When the pre-foreclosure title search reveals a federal tax lien on the subject real property, the practitioner knows that adequate notice must be sent to the IRS at least 25 days prior to the sale. 26 CFR 400.4 1(c)(1). *The notice must be* mailed to the district director (marked for the attention of the chief, special procedures section) for the internal revenue district in which the sale is to be conducted. *Id.* For a very long time, the Missouri address was: Stop 5333STL, Rm 9203, 1222 Spruce St., St. Louis, MO 63103. This address is so common it is populated in practitioner forms across the state.

With no fanfare, the IRS issued Publication 786, Instructions for Preparing Notice of Nonjudicial Sale of Property and Application for Consent to Sale, on January 11, 2022. <https://www.irs.gov/pub/irs-pdf/p786.pdf> Pub. 786, and its companion revised Form 144797, Nonjudicial Notice of Sale, quietly changed the address for submission of a Notice of Sale. It was not until August 23, 2022, the IRS updated Publication 4235, Collection Advisory Offices Contact Information, to outline the changed contact provisions for a variety of foreclosure subjects. <https://www.irs.gov/pub/irs-pdf/p4235.pdf>. Under 26 CFR 400.4 1(c)(1), a notice of sale is not effective if it is given to the incorrect office and may be deemed inadequate. The new address is:

Internal Revenue Service

Advisory Consolidated Receipts

7940 Kentucky Drive

Stop 2850F

Florence, KY 41042

For the entirety of 2022, few have noticed this new mailing address silently lurking in the corner, waiting for someone to send notice of sale to the old St. Louis address. The unsuspecting practitioner, confident with his existing forms in hand mails the notice. And, then -- Eek! Eek! Eek! He discovers at the last minute he did not provide adequate notice to the IRS! Does he stop the sale and republish? Will this delay upset his client's timeline? Or worse yet, did he complete the Trustee's sale before learning that the federal tax lien will go untouched thus damaging his client's shot at a clear title? Claims, stress, damages, and lack of client confidence bubble up at the practitioner's feet all while the deranged IRS clown cackles at his demise!

Wake up! It is a bad dream. But do not let it become your reality. Change the IRS address in your forms now and avoid this nightmare.