

# OFFICE OF THE COUNTY DELINQUENT TAX AGENT

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## RE: County trustee insulation from liability

**Summary:** The county, as trustee for the taxing districts, holds each parcel in a separate specifically identified trust. No judgment can be enforced against the county trustee, but only against the individual parcel held in the trust.

Under the county trustee program, pursuant to 35 ILCS 200/21-90, the county holds title only as trustee for the taxing district beneficiaries. The county trustee takes such title for the sole purpose of benefiting all of taxing districts related to each particular parcel. By taking the parcel through the tax deed process, the county trustee eliminates the interests held by judgment lienholders, mortgagees, and owners, etc., with the ultimate goal of getting the property back on the tax rolls. Generally, these parcels are sold for *significantly less than the taxes owed*.

735 ILCS 5/12-103 provides, in part: A judgment entered against a person solely because he or she is the holder of title to property as ... trustee of a specifically identified trust, shall be *enforced only against property held in the particular representative capacity*, but no judgment shall be enforced against nor shall the judgment constitute a lien upon, other property owned by such person....

The Illinois Supreme Court dealt squarely with this statute in *Podvinec v. Popov*, 658 N.E.2d 433 (1995). LaSalle National Bank was trustee of a land trust in which Popov was the beneficiary. Podvinec obtained a judgment against Popov and tried to recover from LaSalle Bank, in its capacity as Trustee. The Illinois Supreme Court held that Podvinec could not recover from LaSalle because LaSalle was acting solely as trustee. In Illinois a land trust is a legal fiction and the trustee acts only in a representative capacity. Although legal and equitable title lies with the trustee, true ownership remains with the beneficiary. Outside of relationships based on legal title, the trustee's title has little significance. Any judgment against La Salle could have been enforced *only against the real estate at issue*. 658 N.E.2d at 436-7.

In its capacity as trustee, the county does not have the obligation to perform demolitions or property remediation. Attempts to impose such obligations have always failed, as the law is clear. The county trustee does not have the right to concede liability, as the county would be stipulating to the liability of all of the taxing districts – the school, the library, the fire district, etc. and this would be a violation of its fiduciary duty to those districts.

Sometimes municipalities and associations will assert that the county trustee has liability for assessments, costs, or liens that were incurred prior to the county trustee obtaining its tax deed, but the mere ability to acquire the tax deed does not endow the tax deed purchaser with the obligations and liabilities of a titleholder. *AAM/US Bank LLC v. The Lake Carroll Association*, 869 N.E.2d 1065 (Ill. App. 2d Dist. 2007). Furthermore, while private tax buyers are required to reimburse municipalities for costs incurred in maintenance and demolition, the county trustee is exempt from this requirement. 35 ILCS 200/22-35. In dealing with a property where a taxing district incurs demolition costs in excess of the value of the property, that taxing district can purchase the property for the minimum bid. The county trustee will also usually consent to demolition actions without formal service of summons.