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## Taxation

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# TAXATION

## TAX: DEFINITION OF LEGAL DISABILITY FOR REDEMPTION PURPOSES

When a property owner fails to pay property taxes, that property may be sold by the state or local government at a tax sale to satisfy the outstanding obligation.<sup>1</sup> The property owner is, however, generally given a statutory period within which to redeem the property.<sup>2</sup> Moreover, some states and the District of Columbia, extend or toll the redemption period where the property owner is suffering from a legal disability.<sup>3</sup> In the District of Columbia, the definition of a legal disability has been left to the courts.

The District of Columbia Court of Appeals first attempted to define the legal disability exception in 1979. In *Nelson-Bey v. Robinson*,<sup>4</sup> the property owner failed to pay property taxes; consequently the property was sold and a deed was issued to the defendant. The plaintiff unsuccessfully brought suit to set aside the tax deed under the legal disability exception. The trial court found that the plaintiff failed to meet the burden of showing legal disability at the time of the tax assessment or sale.<sup>5</sup>

On appeal, plaintiff-appellant argued that the legal disability exception should be available for the same reasons a court may appoint a conservator for that person's property.<sup>6</sup> The defendant-appellee, offering much stricter standards, argued that the exception should be available only if: (1)

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1. In the District of Columbia, the procedures and requirements of a tax sale are set forth in D.C. CODE ANN. §§ 47-1301 to 47-1319 (1981).

2. D.C. CODE ANN. § 47-1306 (1981) provides in pertinent part: "[t]he owner of any property sold [at a tax sale] . . . may redeem the same from such sale at any time within 2 years after the last day of sale . . ." See also D.C. CODE ANN. § 47-1304 (1981).

3. Several jurisdictions consider infants, insane persons, and married women as qualifying for this disability. See 72 AM. JUR. 2D *State and Local Taxation* §§ 1006-07.

In the District of Columbia, "minors or other persons under legal disability [are] allowed 1 year after attaining full age or after the removal of such legal disability to redeem the property so sold . . ." D.C. CODE ANN. § 47-1304 (1981).

4. 408 A.2d 999 (D.C. 1979).

5. *Id.* at 1000-01.

6. *Id.* at 1001. D.C. CODE ANN. § 21-1501 (1981) provides that a conservator shall be appointed "[w]hen an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness . . . or physical incapacity, properly to care for his property . . ." Once appointed, the conservator has the authority to manage and control all real and personal property, to manage financial affairs, and to serve as the legal representative of the person to whom he has been appointed conservator. D.C. CODE ANN. § 21-1503 (1981).

a conservator has been appointed, (2) the person is insane, or (3) the person has been adjudged incompetent.<sup>7</sup> Rather than define legal disability, however, the District of Columbia Court of Appeals merely affirmed the lower court holding.

In 1981, the District of Columbia Court of Appeals considered the meaning of legal disability on two occasions. In *Robinson v. Jones*,<sup>8</sup> the court allowed a one year extension to the redemption period. Elderly plaintiffs, minimally literate and in poor health, lost their property to the Monarch Novelty Company. Two days later, Monarch posted an eviction notice on the house. The District of Columbia Superior Court found plaintiffs legally disabled at the time taxes were due, when the house was sold at the tax sale, and during the two year redemption period, because they were mentally incapable of meeting their obligations.<sup>9</sup>

On appeal, the court of appeals affirmed. Finding plaintiffs legally disabled, the court of appeals decided that the standard to be applied was essentially the same as that used for the appointment of a conservator. The court provided that the exception should be available when the person asserting the disability could prove that by reason of "advanced age, mental illness or instability, mental defect or physical incapacity, [that he] did not appreciate [his] obligation to pay taxes and [was] thus unable to care for [the] property."<sup>10</sup> Renouncing the strict standards advanced by the defendants in *Nelson-Bey*, the *Robinson* court stated that neither prior adjudication of insanity or prior appointment of a conservator was necessary. In addition, expert testimony is not required. Rather, testimony of friends and the person claiming the exception would be sufficient.<sup>11</sup>

The court of appeals further refined the definition of a legal disability in *Bynes v. Scheve*.<sup>12</sup> Bynes, a senior citizen with poor vision, and her son, William, who had a seventh grade education, lived together. William, who handled his mother's business affairs, had previously paid off the mortgage on her house and had paid delinquent taxes in prior years when he became aware of the delinquency.<sup>13</sup> Bynes' property was sold at a tax sale before William could pay the back taxes, however. A tax deed was issued to Mr. and Mrs. Sheves. Over three years later, Mr. and Mrs. Sheves sued for

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7. *Nelson-Bey*, 408 A.2d at 1001.

8. 429 A.2d 1372 (D.C. 1981).

9. *Id.* at 1373.

10. *Id.*

11. *Id.* at 1374.

12. 435 A.2d 1058 (D.C. 1981).

13. *Id.* at 1059 n.1.

declaration that they had free and clear title in fee simple absolute.<sup>14</sup> The trial court disallowed Bynes' claim of legal disability because she was living with a son who was managing her affairs, and granted fee simple absolute to the Sheves.<sup>15</sup>

Reversing the trial court, the District of Columbia Court of Appeals held that a legal disability is a personal condition of the property owner. The fact that Bynes' son was conducting her business and property affairs should not preclude her claim of legal disability. On the contrary, the court felt that assistance from friends or family might be an indication of need to appoint a conservator and thus of the property owner's disability.<sup>16</sup>

The liberal interpretation espoused by the court of appeals distinguishes the District of Columbia from other jurisdictions. The person asserting the disability must prove by a preponderance of the evidence that he or she is unable to manage his or her own property or business affairs alone, and cannot meet the property tax obligation even though the government may have followed all statutory notification procedures.<sup>17</sup> In other jurisdictions, the redemption statute restricts "legal disability" to circumstances of infancy and insanity.<sup>18</sup> The District of Columbia Court of Appeals has been able to provide this lenient standard primarily because the District of Columbia Code did not specifically define "legal disability."

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14. *Id.*

15. *Id.* at 1059-60.

16. *Id.* at 1062.

17. In both *Robinson* and *Bynes*, the District of Columbia Court of Appeals left open the question whether a legally disabled person would have a constitutional challenge to the statutory notice procedure. *Robinson*, 429 A.2d at 1374 n.3; *Bynes*, 435 A.2d at 1060 n.3.

18. Moreover, most courts are reluctant to find any disability absent a statutory provision. *See, e.g.*, *Donaghy v. Leighton*, 351 A.2d 125, 127-28 (Me. 1976) (no provision for tolling redemption period because of imprisonment, absence, incompetence, or minority and the court refused to imply one).