

134.452 Third-party purchaser of certificate of delinquency -- Fees -- Reasonable attorneys' litigation fees -- Collection limitations -- Notice to proper owner -- Legislative findings.

- (1) Notwithstanding any other provisions of this chapter, a third-party purchaser of a certificate of delinquency shall be entitled to collect only the following prelitigation fees:
 - (a) The amount actually paid for the certificate of delinquency;
 - (b) Interest as provided in KRS 134.125, calculated on the amount actually paid to the county clerk from the date the certificate of delinquency was purchased until paid; and
 - (c)
 1. Prelitigation attorneys' fees, which may include amounts incurred for collection efforts and costs related to notification, processing, research, communication, compliance, legal costs, documentation, and similar expenses, from the date the third-party purchaser purchases the certificate of delinquency from the county clerk, to the date on which the notice required by KRS 134.490(2) is mailed by the third-party purchaser.
 2. The amount that may be collected by the third-party purchaser as prelitigation attorneys' fees shall be subject to the following limitations:
 - a.
 - i. If the amount paid for a certificate of delinquency is between five dollars (\$5) and three hundred fifty dollars (\$350), actual reasonable fees incurred up to one hundred percent (100%) of the amount of the certificate of delinquency, not to exceed three hundred fifty dollars (\$350);
 - ii. If the amount paid for a certificate of delinquency is between three hundred fifty-one dollars (\$351) and seven hundred dollars (\$700), actual reasonable fees incurred up to eighty percent (80%) of the amount of the certificate of delinquency, not to exceed five hundred sixty dollars (\$560); and
 - iii. If the amount paid for a certificate of delinquency is above seven hundred one dollars (\$701), actual reasonable fees incurred up to seventy percent (70%) of the amount of the certificate of delinquency, not to exceed seven hundred dollars (\$700); and
 - b. If a third-party purchaser is the owner of more than one (1) certificate of delinquency against the same taxpayer, actual and reasonable prelitigation attorneys' fees for all certificates of delinquency against the same taxpayer shall not exceed one and one-half (1.5) times the maximum amount permitted in subdivision a. of this subparagraph for the largest tax bill owed by the taxpayer.
 3. The amounts allowed by subparagraph 2. of this paragraph shall not accrue to the account of the delinquent taxpayer, nor be charged by

the third-party purchaser against the delinquent taxpayer all at one (1) time unless the amount of certificate of delinquency is one hundred seventy-five dollars (\$175) or less. The third-party purchaser may accrue to the account of the delinquent taxpayer, and charge the delinquent taxpayer an amount equal to the lesser of prelitigation attorney's fees incurred by the third-party purchaser since the prior notice was sent or one hundred seventy-five dollars (\$175), for each notice sent to the delinquent taxpayer, provided that:

- a. The total aggregate amount of prelitigation attorneys' fees that may accrue to the account of the delinquent taxpayer and be charged by the third-party purchaser against the delinquent taxpayer shall not exceed the limitations established by paragraph (a) of this subsection; and
 - b. Additional fees shall not accrue to the account of the delinquent taxpayer or be charged by the third-party purchaser against the delinquent taxpayer more frequently than every ninety (90) days, regardless of how many notices the third-party purchaser may send.
- (2) If the delinquent taxpayer and the third-party purchaser enter into a payment agreement, the third-party purchaser may collect the installment payment processing fee authorized by KRS 134.490(5).
- (3) (a) In addition to the fees established by subsections (1), (2), and (4) of this section, a third-party purchaser may collect actual, reasonable attorneys' fees and costs that arise due to the prosecution of collection remedies or the protection of a certificate of delinquency that is involved in litigation. Fees and costs permitted under this subsection include fees and costs incurred from the first day after the notice required by KRS 134.490(2) is sent through the day any litigation is finally concluded.
- (b) For purposes of this subsection:
1. Actual attorneys' litigation fees up to two thousand dollars (\$2,000) may be reasonable if the fees are based upon documented work performed at a rate commensurate with hourly rates customarily charged by private attorneys in that jurisdiction for similar services. A flat rate, without hours documented for work performed, may be reasonable if the flat fee is determined to be discounted from the usual and customary rates for comparable work; and
 2. Any attorneys' litigation fee in excess of two thousand dollars (\$2,000) shall be allowed if authorized by the court upon a finding that the third-party purchaser incurred actual attorneys' litigation fees in excess of two thousand dollars (\$2,000) and that those attorneys' litigation fees were warranted based upon the complexity of the issues presented in the litigation.
- (4) The third-party purchaser may collect administrative fees incurred for preparing, recording, and releasing an assignment of the certificate of delinquency in the county clerk's office, not to exceed one hundred fifteen dollars (\$115).

- (5) The General Assembly recognizes that third-party purchasers play an important role in the delinquent tax collection system, allowing taxing districts to receive needed funds on a timely basis. The General Assembly has carefully considered the fees and charges authorized by this section, and has determined that the amounts established are reasonable based on the costs of collection and fees and charges incurred in litigation.
- (6) A certificate of delinquency owned by a third-party purchaser shall be deemed a general intangible for the purposes of Article 9 of KRS Chapter 355.

Effective: July 15, 2014

History: Amended 2014 Ky. Acts ch. 71, sec. 6, effective July 15, 2014. -- Amended 2013 Ky. Acts ch. 103, sec. 4, effective June 25, 2013. -- Amended 2012 Ky. Acts ch. 161, sec. 13, effective April 23, 2012. -- Amended 2009 Ky. Acts ch. 10, sec. 14, effective January 1, 2010. -- Created 2007 Ky. Acts ch. 14, sec. 1, effective June 26, 2007.

Legislative Research Commission Note (7/15/2014). 2014 Ky. Acts ch. 71, sec. 6, amended subsection (1) of this statute to correct improper formatting and replace an incorrect reference to "paragraph (a) of this subsection" with "subdivision a. of this subparagraph" in what is now subsection (1)(c)2.b. During codification, it was brought to the attention of the Reviser of Statutes that a second reference to "paragraph (a)" in subsection (1)(c)3.a. should have been corrected, but was not. The Reviser determined that the statutory authority necessary to make the change was lacking, and that citation has not been altered.

Legislative Research Commission Note (4/23/2012). The internal numbering of subsection (1)(c) of this statute has been modified by the Reviser of Statutes from the way it appeared in 2012 Ky. Acts ch. 161, sec. 13, under the authority of KRS 7.136(1). The words in the text were not changed.

Legislative Research Commission Note (4/23/2012). 2012 Ky. Acts ch. 161, sec. 15, provides that this statute, as amended by 2012 Ky. Acts ch. 161, sec. 13, shall apply to certificates of delinquency purchased on or after the effective date of the Act, April 23, 2012.