

Lt. Governor Kerry Healey

With The Land Court,
The City of New Bedford,
The City Solicitors and Town Counsel Association,
Massachusetts Association of Assessing Officers,
The Massachusetts Collectors & Treasurers Association,
The Massachusetts Municipal Association,
The Real Estate Bar Association, and
The Department of Revenue
present:

**Understanding the
Tax Foreclosure Process**

Tax Title Foreclosure Schedule

March 3, 2005

Gardner Auditorium

10:30 am

- I. Opening Remarks: The Honorable Kerry Healey, Lt. Governor
- II. Alfred Razzaboni, President of the Massachusetts Association of Assessing Officers will discuss elderly exemptions and tax deferrals allowed by Massachusetts General Laws to help the elderly with paying their taxes.
- III. Dr. F. Ellen McKay, Collector in Shutesbury and Collector/Treasurer in Boylston, will discuss the Tax Collection Process from Preparing the Initial Tax Bill through the Tax Title Taking
David Desgroseilliers, Treasurer in Tyngsborough, will discuss the Tax Title Foreclosure process.
Nils Nordberg Executive Director of the Massachusetts Collectors & Treasurers Association will discuss educational forums on the Tax Collection Process provided by MCTA.
- IV. Kathleen M. O'Donnell of the Real Estate Bar Association will discuss the procedures necessary for tax title takings/foreclosures.
- V. The Land Court: Marlene Ayash Staff Attorney and John Harrington Staff Attorney will discuss the process of the Tax Title Foreclosures and review the forms used for the Tax Title Foreclosure process.
- VI. Matthew J. Thomas City Solicitor for the City of New Bedford will discuss disposition of tax possessions.
- VII. Robert J. Kerwin of the City Solicitors and Town Counsel Association will discuss the area of MGL c. 40 Section 57 procedure on license revocations or license withholdings. In addition, he will discuss other non-litigation methods of collecting taxes.
- VIII. Christopher Hinchey Division of Local Services Tax Counsel for the Department of Revenue will discuss when taxes are unenforceable.
- IX. The Honorable Deborah J. Patterson Land Court Recorder will discuss recent innovations such as MassCourts, the Time Standards, and the revision of forms which enhance the efficient handling of tax foreclosure cases, and set the stage for the future.
- X. Closing Remarks: The Honorable Kerry Healey, Lt. Governor
- XI. Question and Answers

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Marlene M. Ayash

Marlene M. Ayash has been a staff attorney at the Land Court since 1998 following service as a law clerk in both the Superior and Probate and Family Courts. Ms. Ayash is also a graduate of New England School of Law.

David F. Desgroseilliers

David F. Desgroseilliers is Treasurer and Past President of the MCTA. He has served as Treasurer in the Town of Tyngsborough since 1989. He is a Certified Massachusetts Municipal Treasurer (CMMT) as well as a Certified Public Accountant (CPA).

The Honorable Deborah J. Patterson

Deborah J. Patterson was sworn in as the ninth Recorder of the Land Court in February of 2004. Previously, she served at the Court for twenty-five years first as a deputy assistant clerk and later as an assistant clerk-magistrate.

John R. Harrington

John R. Harrington has served for seventeen years as a staff attorney at the Land Court, for the last eleven years as the head of the tax department. Mr. Harrington is a graduate of Northeastern University School of Law.

Christopher Hinchey

Christopher Hinchey is currently Division of Local Services Tax Counsel for the Department of Revenue. He has tirelessly worked for DOR for the past twenty-five years. Mr. Hinchey he received his law degree from Boston University Law School.

Robert J. Kerwin

Robert J. Kerwin is a shareholder with the Boston firm of Tarlow, Breed, Hart & Rodgers, P.C., where he heads the firm's municipal practice. Mr. Kerwin is the author of the 1998 article published in the Massachusetts Law Review entitled "Municipal Collection by Tax Foreclosure." A frequent continuing education speaker for the Collector-Treasurer Association, Mr. Kerwin was a Secretary, together with his colleague John Finnegan, for the Special Committee of the Collector-Treasurer Association. Mr. Kerwin serves as Town Counsel to the Town of East Bridgewater and as Special Tax Collection Counsel to the Treasurers of several cities and towns in Eastern and Central Massachusetts. He is a member of the City Solicitors and Town Counsel Association and sits on its Executive Committee.

Dr. F. Ellen McKay

Dr. F. Ellen McKay is the Second Vice-President of the MCTA. She has served as Collector in Shutesbury for 30 years and is Collector/Treasurer in Boylston. She holds a Ph.D. in Accounting, is a CPA, has taught accounting on the college level, and has worked for both the State Auditor's Office and the District Court Department of the Commonwealth.

Nils L. Nordberg

Nils L. Nordberg is the Executive Director of the MCTA, having served in this position since 1998. His prior government service includes ten years as a State Representative, three years as an elected Town Assessor and seven years as Commissioner of the Massachusetts Department of Employment and Training.

Kathleen M. O'Donnell

Kathleen M. O'Donnell is with the firm of Kopelman and Paige, PC, a statewide firm specializing in municipal law. She concentrates her practice in real estate law and manages the tax title practice group. Ms. O'Donnell is a graduate of Boston College and the University of Miami School of Law. Her professional memberships include the Abstract Club and NEWIRE and she presently serves as chair of the Property Law Section of the Massachusetts Bar Association. She is a past president of REBA, formerly known as the Massachusetts Conveyancers Association. She is a frequent lecturer on title issues affecting municipal real estate and re-use and re-development of tax title properties.

Alfred Razzaboni

Alfred Razzaboni has served as an elected assessor in Wakefield for 17 years and has been their Director of Assessments for the past 5 years. He is the President of the Massachusetts Association of Assessing Officers and holds the Massachusetts Accredited Assessor's designation.

Matthew J. Thomas

Matthew J. Thomas has served as City Solicitor for the City of New Bedford since 2002 and has served as Tax Title Attorney for the City since 1994. Matt also represents several other towns in Bristol and Plymouth County as Tax Title Attorney. Matt formerly served as a law clerk to then Land Court Chief Justice Marilyn M. Sullivan. A graduate of Boston College and New England School of Law, Matt maintains a law practice in New Bedford specializing in municipal taxation, Land Court representation and land use.

Elderly Exemptions and Tax Deferrals

Assessors' Use only	
Date Received	
Application No.	
Parcel Id.	

Name of City or Town

FINANCIAL HARDSHIP: ACTIVATED MILITARY -- AGE AND INFIRMITY
FISCAL YEAR _____ APPLICATION FOR STATUTORY EXEMPTION
General Laws Chapter 59 §5, CLAUSE 18

THIS APPLICATION IS NOT OPEN TO PUBLIC INSPECTION
(See General Laws Chapter 59 §60)

Return to: Board of Assessors

Must be filed with assessors on or before December 15
or 3 months after actual (not preliminary) tax bills are
mailed for fiscal year if later.

INSTRUCTIONS: Complete all sections that apply. Please print or type.

A. IDENTIFICATION. Complete this section fully.

Name of Applicant: _____	Marital Status: _____
Social Security No. _____ (optional)	Occupation _____
Legal residence (domicile) on July 1, _____	Mailing address (if different) _____
No. Street _____ City/Town _____ Zip Code _____	Phone Number: (____) _____
Location of property: _____	No. of dwelling units: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> Other <input type="checkbox"/>
Did you own the property on July 1, _____ Yes <input type="checkbox"/> No <input type="checkbox"/>	
<i>If yes, were you:</i> Sole owner <input type="checkbox"/> Co-owner with spouse only <input type="checkbox"/>	<input type="checkbox"/> Co-owner with others <input type="checkbox"/>
Was the property subject to a trust as of July 1, _____? Yes <input type="checkbox"/> No <input type="checkbox"/>	
<i>If yes, please attach trust instrument including all schedules.</i>	
Have you been granted any exemption in any other city or town for this year? Yes <input type="checkbox"/> No <input type="checkbox"/>	
<i>If yes, name of city or town _____</i>	<i>Amount exempted \$ _____</i>

DISPOSITION OF APPLICATION (ASSESSORS' USE ONLY)

Ownership <input type="checkbox"/>	GRANTED <input type="checkbox"/>	Assessed tax \$ _____
Occupancy <input type="checkbox"/>	DENIED <input type="checkbox"/>	Exempted tax \$ _____
Status <input type="checkbox"/>	DEEMED DENIED <input type="checkbox"/>	Adjusted tax \$ _____
Financial condition <input type="checkbox"/>		
Date voted/Deemed denied _____		
Certificate No. _____		
Date Cert./Notice sent _____		
		Board of Assessors
		Date: _____

FILING THIS FORM DOES NOT STAY THE COLLECTION OF YOUR TAXES

THIS FORM APPROVED BY THE COMMISSIONER OF REVENUE

B. EXEMPTION STATUS. Check status that applies to you and complete the questions that follow.

ACTIVATED MILITARY PERSONNEL

- Initially enlisted in the armed forces.
- Military status changed to active duty.

Date of activation to active duty. _____ *Attach copy of orders.*

GO ON TO SECTION D

OLDER AND INFIRM PERSON

You must meet both age and infirmity requisites to qualify.

Date of birth _____ *Attach copy of birth certificate.*

Provide a detailed description of the physical or mental illness, disability or impairment.

Attach a physician's letter documenting your infirmity.

GO ON TO SECTION C

C. EMPLOYMENT STATUS.

Are you able to work? Yes No *If no, your physician's letter must confirm this status.*

If unemployed, state date of last employment _____

D. INSURANCE BENEFITS. Complete this section if you are a surviving spouse.

Date and place of spouse's death _____

Total amount of insurance received _____

Name of insurance company or fraternal society _____

E. FAMILY ASSISTANCE. Complete this section if you are receiving any financial assistance from family members.

Name	Relationship	Residence	Occupation	Wages	Assistance given
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

F. FINANCIAL STATEMENT. Complete this section fully. Copies of your federal and state tax returns and other documentation may be requested to verify your income and assets.

ASSETS		LIABILITIES	
REAL ESTATE			
Domicile value	\$ _____	Mortgage outstanding balance	\$ _____
Other value	_____		_____
PERSONAL ESTATE			
Motor vehicle values (year/make/model)	_____	Car loan balances	_____
	_____		_____
Bank account balances (bank/address/acct. #)	_____		_____
	_____		_____
Other (specify)	_____	Other outstanding debts (personal loans, credit cards, etc.)	_____
	_____		_____
TOTAL	\$ _____		\$ _____
INCOME		EXPENSES	
	Monthly		Monthly
Wages & salaries -Annual \$ _____	\$ _____	Mortgage payments (including taxes).....	\$ _____
Unemployment compensation	_____	Food.....	_____
Social Security	_____	Utilities:	_____
Other pension/retirement	_____	Electricity	_____
Public assistance:		Gas.....	_____
AFDC.....	_____	Heating fuel	_____
Food stamps	_____	Telephone	_____
Fuel assistance	_____	Water/sewer.....	_____
Other	_____	Debt payments:	_____
Rental income	_____	Car loans.....	_____
Business/professional profits	_____	Credit cards.....	_____
Interest/dividends.....	_____	Personal loans.....	_____
Other (specify)	_____	Fixed expenses:	_____
_____	_____	Car insurance	_____
_____	_____	House insurance.....	_____
		Other (specify)	_____
		_____	_____
		_____	_____
TOTAL	\$ _____		\$ _____

G. SIGNATURE. Sign here to complete the application.

This application has been prepared or examined by me. Under the pains and penalties of perjury, I declare that to the best of my knowledge and belief, this return and all accompanying documents and statements are true, correct and complete.

Signature

Date

If signed by agent, attach copy of written authorization to sign on behalf of taxpayer.

TAXPAYER INFORMATION ABOUT FINANCIAL HARDSHIP EXEMPTION

FINANCIAL HARDSHIP EXEMPTION. You may be able to reduce all or a portion of the taxes assessed on your domicile if you do not have the financial resources to pay them because (1) you were called into active military service, or (2) you are older and suffer some physical or mental illness, disability or impairment. Qualifications are established locally by the board of assessors. More detailed information may be obtained from your assessors.

WHO MAY FILE AN APPLICATION. You may file an application if you owned and occupied the property and meet all qualifications for a financial hardship exemption as of July first.

WHEN AND WHERE APPLICATION MUST BE FILED. Your application must be filed with the board of assessors by December 15 or 3 months after the actual bills were mailed for the fiscal year, whichever is later. **THIS DEADLINE CANNOT BE EXTENDED OR WAIVED BY THE ASSESSORS FOR ANY REASON. IF YOUR APPLICATION IS NOT TIMELY FILED, YOU LOSE ALL RIGHTS TO AN EXEMPTION AND THE ASSESSORS CANNOT BY LAW GRANT YOU ONE. AN APPLICATION IS FILED WHEN RECEIVED BY THE ASSESSORS.**

PAYMENT OF TAX. Filing an application does not stay the collection of your taxes. Failure to pay the tax when due may also subject you to interest charges and collection action. To avoid any additional charges, you should pay the tax as assessed if possible. If an exemption is granted and you have already paid the entire year's tax as exempted, you will receive a refund of any overpayment. If you are unable to make your payments, inform the assessors when you file your application.

ASSESSORS DISPOSITION. Upon applying for a financial hardship exemption, you may be required to provide the assessors with further information and supporting documentation to establish your eligibility. The assessors have 3 months from the date your application is filed to act on it unless you agree in writing before that period expires to extend it for a specific time. If the assessors do not act on your application within the original or extended period, it is deemed denied. You will be notified in writing whether an exemption has been granted or denied.

APPEAL. In order to obtain a review of the assessors' decision on your application for financial hardship exemption, you must bring a civil action in the Superior Court or Supreme Judicial Court. This action must be brought within 60 days of the decision.

INTRODUCTION

A tax exemption is a discharge from the obligation to pay all or a portion of a tax. Exemptions are conferred by the Legislature on particular categories of persons or property.

Clauses 41, 41B and 41C of Section 5 of Chapter 59 provide exemptions to persons 70 years of age or older who satisfy certain whole estate or asset, annual income and residency requirements. Persons 70 or older may, alternatively, qualify for an exemption under Clauses 17, 17C, 17C½ or 17D which provide reduced benefits but for which the eligibility requirements are less strict.

Clause 41 was an early Legislative response to the need of the above category of persons for assistance with their tax obligations. It set out original eligibility requirements for the exemption. As property values and income levels rose, however, it became more difficult for persons to satisfy these requirements. Therefore, the Legislature made alternative exemptions (Clauses 41B and 41C) available for cities or towns to accept by town meeting or city council vote. Each alternative has different eligibility requirements. If a city or town has accepted Clause 41B or 41C, the Clause most recently accepted establishes eligibility rules. If a city or town has not so voted, Clause 41 prevails.

EXEMPTION AMOUNT

The exemption amount for each Clause is \$500.

APPLICATIONS

Applications must be filed annually with the local assessors in the city or town where the property is located on or before December 15th, or three months after the actual tax bills are mailed, whichever is later. Filing an application does not entitle the applicant to a delay in tax payment.

DOCUMENTATION

An applicant for an exemption must provide to the assessors whatever information is reasonably required to establish eligibility. This information may include, but not be limited to:

1. Birth certificates.
2. Evidence of domicile and occupancy.
3. Income tax returns.

ELIGIBILITY REQUIREMENTS

For eligibility, an individual must satisfy requirements relating to (1) age (2) ownership and domicile (3) annual income and (4) whole estate or assets.

NUMBER OF EXEMPTIONS

Not more than one exemption may be granted under Clause 41, 41B or 41C on the same parcel of real estate.

AGE

An individual must be (a) 70 years or older or (b) joint owner with a spouse 70 years or older as of July 1 of the tax year.

OWNERSHIP AND DOMICILE

Under Clause 41, an individual must own and occupy the subject property on July 1 of the tax year. Under Clauses 41B and 41C, in addition to so owning and occupying the subject property, an individual must have been continuously domiciled in Massachusetts for the 10 years preceding the application and have owned and occupied the property or other property in Massachusetts for 5 years.

1. To satisfy this ownership requirement, the person's interest must be worth at least \$4,000. The person may own this interest solely, as a joint owner or as a tenant in common. However, if ownership is joint or a tenancy in common with someone other than a spouse, the exemption amount is reduced to that proportion of \$500 as the person's ownership interest in the property.
2. The holder of a life estate satisfies the ownership requirement.
3. If the domicile is held in a trust, a person can only satisfy the ownership interest if he:

- a) Is a trustee or co-trustee of that trust, and
- b) Possesses a sufficient beneficial interest in the domicile through that trust. (Splitting the interest between multiple trusts does not qualify.)

- ◆ \$20,000 if single
- ◆ \$23,000 if married

Clause 41C

Gross receipts minus social security allowance must be less than:

- ◆ \$13,000 if single
- ◆ \$15,000 if married

Whole estate less the value of the home except for the value of any portion which exceeds three dwelling units and produces income cannot exceed:

- ◆ \$28,000 if single
- ◆ \$30,000 if married

ANNUAL INCOME AND WHOLE ESTATE

Eligibility amounts differ for Clause 41, 41B and 41C as follows:

Clause 41

Gross receipts minus social security allowance must be less than:

- ◆ \$6,000 if single
- ◆ \$7,000 if married

Whole estate less the value of the home less any portion which produces income cannot exceed:

- ◆ \$17,000 if single
- ◆ \$20,000 if married

OR

If the home value is included:

- ◆ \$40,000 if single
- ◆ \$45,000 if married

Clause 41B

Gross receipts minus social security allowance must be less than:

- ◆ \$10,000 if single
- ◆ \$12,000 if married

Whole estate less the value of the home less any portion which produces income cannot exceed:

TAXPAYER'S GUIDE TO
REAL ESTATE TAX EXEMPTIONS
IN MASSACHUSETTS

- CLAUSE 41
- CLAUSE 41B
- CLAUSE 41C

ELDERLY PERSONS

(70 years of age or older)



The value of a person's (a) cemetery plots, (b) registered motor vehicles, (c) wearing apparel and (d) household furniture and effects kept at the domicile should be excluded from the calculation of the person's whole estate for purposes of these clauses.

FOR FURTHER INFORMATION, CONTACT
YOUR LOCAL BOARD OF ASSESSORS, OR
CALL:

DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES
PROPERTY TAX BUREAU

(617) 626-2300

Massachusetts Department of Revenue
Division of Local Services
Property Tax Bureau

INTRODUCTION

A tax exemption is a discharge from the obligation to pay all or a portion of a tax. Exemptions are conferred by the Legislature on particular categories of persons or property.

Clauses 17, 17C, 17C½ and 17D of Section 5 of Chapter 59 provide exemptions to three categories of persons who satisfy certain residency and whole estate or asset requirements: (1) widows and widowers, (2) minor children with one parent deceased and (3) persons 70 years of age or older. Persons 70 or older may, alternatively, qualify for an exemption under Clauses 41, 41B or 41C which provide increased benefits but for which the eligibility requirements are stricter.

Clause 17 was an early Legislative response to the need of the above categories of persons for assistance with their tax obligations. It set out original eligibility requirements for the exemption. As property values rose, however, it became more difficult for persons to satisfy these requirements. Therefore, the Legislature periodically made alternative exemptions (Clauses 17C, 17C½ and 17D) available for cities or towns to accept by town meeting or city council vote. Each alternative has different eligibility requirements. If a city or town has accepted Clause 17C, 17C½ or 17D, the Clause most recently accepted establishes eligibility rules. If a city or town has not so voted, Clause 17 prevails.

EXEMPTION AMOUNT

The exemption amount for each Clause is \$175. By local option, upon acceptance by the city council, town council or town meeting, this amount may be annually increased by an amount not to exceed the increase in the Consumer Price Index.

APPLICATIONS

Applications must be filed annually with the local assessors in the city or town where the property is located on or before December 15th, or three months after the actual tax bills are mailed, whichever is later. Filing an application does not entitle the applicant to a delay in tax payment.

DOCUMENTATION

An applicant for an exemption must provide to the assessors whatever information is reasonably required to establish eligibility. This information may include, but not be limited to:

1. Birth certificates.
2. Evidence of domicile and occupancy.
3. Income tax returns.

NUMBER OF EXEMPTIONS

Not more than one exemption may be granted under Clause 17, 17C, 17C½ or 17D on the same parcel of real estate.

ELIGIBILITY REQUIREMENTS

For eligibility, an individual must possess, as of July 1 of the tax year, the status of either (1) a surviving spouse or a minor with a parent deceased who owns and occupies the property as his domicile OR (2) a person 70 years or over who has owned and occupied the property as his domicile for at least 10 years (under Clauses 17, 17C or 17C½) or at least 5 years (under Clause 17D).

OWNERSHIP

1. To satisfy the ownership requirement, a person's interest in the domicile must be worth at least \$2,000. A person may own this interest solely, as a joint owner or as a tenant in common.
2. The holder of a life estate satisfies the ownership requirement.
3. If the domicile is held in a trust, a person can only satisfy the ownership interest if he:
 - a) Is a trustee or co-trustee of that trust, and
 - b) Possesses a sufficient beneficial interest in the domicile through that trust. (Splitting the interest between multiple trusts does not qualify.)

WHOLE ESTATE

In addition, a person's whole estate, real and personal, cannot exceed the following:

Clause 17 - \$20,000, excluding any unpaid mortgage balance on the subject property.

Clause 17C - \$40,000, excluding \$60,000 of value of the subject property and any unpaid mortgage balance on that property.

Clause 17C½ - \$40,000, excluding \$150,000 of value of the subject property and any unpaid mortgage balance on that property.

Clause 17D - \$40,000, excluding the total value of the subject property, not to exceed 3 dwelling units, and any unpaid mortgage balance on that property. For a property containing 4 or more dwelling units, the value of that portion exceeding 3 units must be included.

The value of a person's (a) cemetery plots, (b) wearing apparel and (c) household furniture and effects kept at the domicile should be excluded from the calculation of the person's whole estate for purposes of these clauses.

These clauses prescribe no limitation on annual income for exemption eligibility.

FOR FURTHER INFORMATION, CONTACT
YOUR LOCAL BOARD OF ASSESSORS, OR
CALL:

DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES
PROPERTY TAX BUREAU

(617) 626-2300

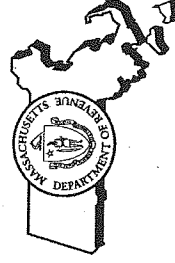
TAXPAYER'S GUIDE TO
REAL ESTATE TAX EXEMPTIONS
IN MASSACHUSETTS

CLAUSE 17
CLAUSE 17C
CLAUSE 17C1/2
CLAUSE 17D

Surviving Spouse
(Husband or Wife)

Minor Child
(Of a Deceased Parent)

Elderly Person



Massachusetts Department of Revenue
Division of Local Services
Property Tax Bureau

**Massachusetts Collectors and
Treasurers Association**

Massachusetts Collectors and Treasurers Association

The following information about the Land Court foreclosure process has been extracted from Chapter 5 of the Massachusetts Collectors and Treasurers Association *Treasurers Manual*. Text of the full Manual is available at www.MassCTA.com

Foreclosures in the Land Court

The Massachusetts Land Court has exclusive, original jurisdiction over the registration of title to real property and over all matters and disputes concerning such title subsequent to registration. The court also exercises exclusive original jurisdiction over the foreclosure and redemption of real estate tax liens.

The offices of the Land Court are located at ^{226 Causeway}~~24 New Chardon~~ Street in Boston, MA 02114-4703. The justices of the Land Court usually sit at these premises. Where circumstances warrant, however, the court holds sessions in other locations within the state.

When a Foreclosure Petition May Be Brought

A municipal treasurer can bring a petition in the Land Court to foreclose an owner's right to redeem a property from tax title. The foreclosure process constitutes probably the most effective payment enforcement tool available to treasurers. Through utilizing this tool, a treasurer can induce a delinquent taxpayer either to redeem a tax title by paying the necessary tax and charges or to forfeit title to the property by action of the Land Court.

In the usual case, at least 6 months must elapse following a tax taking before a treasurer can institute foreclosure proceedings in the Land Court. However, in two, limited circumstances, the treasurer can initiate foreclosure proceedings immediately after the taking. These circumstances are:

- The parcel contains buildings that have been determined to be abandoned pursuant to Ch. 60 §81A.
- The redemption amount exceeds the assessed value of the parcel as determined through a certification process set out in Ch. 60 §81B.

Procuring Legal Assistance

Treasurers undertaking foreclosure proceedings in Land Court should consider engaging the services of a law firm with experience in tax title foreclosures. Land Court cases do not proceed automatically. They require constant monitoring in order to be successful.

Funding Tax Title Foreclosures

Ch. 60 §50B directs that every community include in its annual budget the necessary monies to pay for tax title foreclosure proceedings. This appropriation should be in the amount estimated by the treasurer; however, it must be at least

\$80 for each tax title ripe for foreclosure held by the community involving property having a current assessed valuation greater than \$100,000.00.

The statute contains, in addition, a default provision, which provides that "[i]f in any year the amount so estimated [by the treasurer] is not included in the budget as finally passed, the treasurer shall certify in writing to the assessors such portion of the amount estimated...as has not been provided and the assessors shall raise in the assessment for such year the amount certified to them by the treasurer and thereupon said amount shall be added to the treasurer's appropriation...."

Pursuant to this default provision, the Department of Revenue's tax rate approval process incorporates the automatic inclusion of monies for tax title purposes among "other amounts to be raised" as distinct from amounts appropriated by the municipality.

In a January, 1999 Bulletin entitled "Budgeting for Expense of Tax Titles and Foreclosures," (subsequently amended by Bulletin 2004-04B) the Division of Local Services has clarified what particular amounts may be raised without appropriation pursuant to these default provisions of Ch. 60 §50B. The bulletin identified these amounts as "out-of-pocket expenses" such as:

- Filing and recording fees, including examiner's costs required by the Land Court.
- Outside counsel fees.
- Advertising and publishing costs.
- Certified mailing costs.

Other expenses, such as the following, cannot be raised pursuant to these provisions and must be appropriated:

- Staff expenses of the collector and treasurer.
- Staff expenses of the city solicitor or town counsel.
- Costs for consultants or for service bureaus retained for record keeping.
- Custodial costs and costs for maintaining or insuring property.
- Costs of selling property after foreclosure.

Petition to Foreclose

To initiate foreclosure proceedings at the Land Court, the treasurer must prepare and file a *Petition to Foreclose*. All of the documents necessary for such a filing are available at the offices of the Land Court. In filling out a petition, the treasurer (attorney) must enter the date of taking, the date and the book and page of the recording of the *Instrument of Taking*, the assessed value of the property, the description that appears in the *Instrument of Taking*, and the names and addresses of all persons with any ownership interest in the property. The treasurer must, under oath, sign both the petition and a duplicate. (See Land Court Form LCP-5, pp. 5-24 & 5-25).

Filing at Land Court

The treasurer (attorney) must file the foreclosure petition at the Land Court office in Boston. The Land Court clerks are very knowledgeable and can answer questions about the filing procedure. Upon filing a petition, a treasurer (attorney) must file a *Notice of Filing Petition* in the local registry of deeds. (See Land Court Form LCN-2, pp. 5-26 & 5-27).

Filing Fees

At the time of filing a petition, the treasurer (attorney) must make a deposit in the amount of \$515.00 to the Land Court. Subsequently, the court will draw against this deposit for the costs of the following:

1. A Land Court examiner's services to trace title at the registry of deeds and to provide the court with a list of the names and addresses of all parties with an interest in the property.
2. Making copies of the judgment.
3. Preparing and issuing a memo to the assistant recorder.
4. Mailing certified mail notices.
5. Issuing a motion to withdraw, a motion to vacate or a dismissal.

The Land Court will refund any unexpended balance of the deposit at the conclusion of a case. During the progress of a case, the court may request additional deposits to cover increased costs for title examiner's services, publications, or mailing of notices.

Land Court Examiner

At the commencement of a case at the Land Court, the court will appoint a title examiner who will (a) prepare a mini-title abstract that traces ownership from a period beginning 20 to 25 years prior to the tax taking and (b) submit a written report that sets forth the names and addresses of all parties with an interest in the property, "whether as equity owners, mortgagees, lienors, attaching creditors or otherwise." (60:66)

If the report fails to contain the addresses of all of these parties, the Land Court will contact the treasurer (attorney), requesting the missing information. The court will not proceed further until it receives this information.

Notification by the Land Court to Interested Parties

The Land Court, upon receiving the examiner's report, must give notice, by certified mail, to all interested parties of the pendency of the foreclosure petition. The notice must declare the case number, the property location and the date and time by which an appearance must be entered and an answer filed. Moreover, the notice must "contain a statement that "unless the party notified shall appear and answer within the time fixed a default will be recorded, the petition taken as confessed, and the right of redemption forever barred." (60:66)

If a notice is returned to the court as undeliverable, the court will transmit this notice to the treasurer, requesting the treasurer (attorney) to further research the subject owner's address and to forward any corrected address information to the court. Once the treasurer provides an updated address, the court will send a notice to this new address, containing the same information as the original but with a new return date.

Alternatively, a deputy sheriff may be engaged to serve a citation if certified mail fails to reach an interested party.

If, notwithstanding follow-up efforts, a municipality is unable to discover the address of an owner of tax title property, that municipality must so notify the Land Court in writing, including in its notice documentation of its diligent search to discover the address. If the Land Court finds the municipality's explanation to be satisfactory, it will cause notice of the foreclosure petition to be published in a local newspaper and will send a copy of this notice to all other parties with an interest in the property, assessing the additional notification costs to the municipality.

Filing an Appearance or Objection (60:68)

A person claiming an interest in tax title property who wishes to redeem that property must file an answer with the Land Court. In this answer, the person must (a) describe the derivation of the ownership interest and (b) either file a written affidavit of objection to the foreclosure petition, stating the specific facts and grounds upon which the objection is based, or make an offer to redeem the property from tax title.

After that, subject to preliminary motions filed by the parties, the Land Court will assign the case for a hearing. At the hearing, the treasurer (attorney) will make known to the court the full amount due on the tax title, including all interest, using the interest rate shown on Form 410. The property owner will either (a) offer reasons why the court should refuse to enter a foreclosure degree or (b) offer to pay the amount due. The judge will then either continue the case to a future date or enter a finding, setting out the amount currently due, with the per diem percentage of interest accruing on that amount, and the deadline, generally not less than three months, by which the payment must be made.

If Payment is Made

If the property owner pays the total amount due, including the Land Court costs, the treasurer must issue an *Instrument of Redemption* (State Tax Form 441, pp. 5-28 & 5-29) and record or register that document at the registry of deeds. The treasurer (attorney) must also file a motion with the Land Court to withdraw the foreclosure petition. (See *Motion to Withdraw Petition to Foreclose Rights of Redemption*, pg. 5-30.) The treasurer should also file the redeemed tax title account in the inactive file with the book and page number of the *Instrument of Redemption*. Finally, the treasurer should issue a *Notice of Final Disposition of Tax Title Account* (State Tax Form 486) to the collector, accountant and assessor.

Partial Payments

While Ch. 60 §62, discussed on pp. 5-3 & 5-4 above, permits installment payments of the outstanding taxes and charges on a tax title property, the statute specifies that such payments may only be made, unless the Land Court otherwise approves, "prior to the filing of a petition for foreclosure." (Emphasis supplied.) As a practical matter, however, the court often urges a treasurer to accept installment payments, in which case it continues the case for a specified period of time to permit the taxpayer to pay installments until the total amount of the redemption costs has been paid.

If Payment is Not Made

If an owner fails to make payment on or before the due date specified by the Land Court, then the treasurer (attorney) may file a motion for a foreclosure decree, alleging that the terms of the finding have not been met. The court must hold a hearing on the motion, at which time the court will permit the owner to offer an explanation about why the payment has not been made. The taxpayer may pledge to make the payment in the future. At the hearing, the judge must either allow the motion for a foreclosure decree or continue its consideration to a future date. If the hearing is continued, similar procedures will take place at the continued hearing or subsequent continued hearing(s) until the case is withdrawn, as a result of redemption, or the court allows the motion for a foreclosure decree. (60:69)

Non-Contested Cases

If the owner of tax title property, after having received proper notice of a foreclosure petition, fails to file an answer within the prescribed time period or otherwise to contest the case, the treasurer, in order for the court to issue a foreclosure decree, must first file 2 other documents:

- An *Affidavit as to Military Service*, stating that no parties in the case are away in military service, using Land Court Forms LCA-3 or LCA-4. (See pp. 5-32 through 5-35.)
- A motion for general default, using Land Court Form LC-M-1. (See pg. 5-36.)

Following its receipt of these forms, the court will take under consideration the issuance of a foreclosure decree.

The Issuing of a Foreclosure Decree

If the court allows a motion for a foreclosure decree, it will first consider all other aspects of the case; if it finds them in order, it will then issue the decree, sending an attested copy to the treasurer (attorney) for recording or registering at the registry of deeds.

Upon the issuance of the decree, title to the property vests in the municipality. At this point, the treasurer should notify, in writing, all interested municipal

departments, including the collector, assessors, auditor or accountant and mayor or selectmen. (See State Tax Form 486, pg. 5-37.)

Should any interested party request to redeem a tax title that has been foreclosed, the treasurer must refuse. A treasurer cannot accept payment or issue an *Instrument of Redemption*. Rather, the treasurer should direct the person to the department or body which then has control over the disposition of municipal property. If that department or body indicates to the treasurer, in writing, that it has no objection to the redemption, the treasurer (attorney) may petition the Land Court to have the foreclosure decree vacated upon payment of the full amount of taxes and charges due.

Ch. 60 §69A permits a party with a legal interest in a parcel of foreclosed property to petition the Land Court to vacate the decree during the 1-year period following the entry of the final decree. In a case in which the treasurer has certified that the redemption fee exceeds the value of the property, the statute limits the filing of a petition to vacate to the 90-day period following the entry. This abbreviated time period permits a municipality to more quickly dispose of such property without having to be concerned that a former owner might file a petition to vacate.

It is usually not advisable to have a decree vacated until after payment has been received in full and the check, if any, has cleared. As with a regular redemption, once payment has been received, a petition to vacate the decree filed, and the case withdrawn, the treasurer must prepare and record or register an *Instrument of Redemption*.

If the Request for Redemption is Denied

Should the appropriate department or body deny a party's request for redemption, the party may, within one year of the date of the decree, file with the Land Court a petition to vacate. The court will hold a hearing on the petition and, if the delinquent taxpayer can pay all monies due and the municipality has not conveyed the property to a third person, will generally grant the petition.

Upon the entry of a decree of foreclosure or the denial of a petition to vacate a decree of foreclosure, an interested party may appeal to the Massachusetts Appeals Court. A treasurer should obtain counsel to handle cases allowed by that court.

Recovery of Costs and Fees

A treasurer (attorney) may file a motion with the Land Court to allow adding attorney's fees to the tax title account. (60:65) The party redeeming tax title property is liable for all court costs. The amount of these costs can be obtained from the court's accounting department.

**Tax Title Takings/Foreclosure
Procedures Summary**

TASK	COMMENT
Notice of Filing Complaint (foreclosure petition). Must be recorded/ filed with the Registry of Deeds after filing a petition with the Land Court. \$75.00 recording/filing fee.	When the recorded/ filed Notice is returned by the Registry, it is sent to Land Court in Boston.
Land Court Review	Once the title report has been filed, the Court will review the report and issue instructions regarding any further action that must be taken prior to granting final judgment. These instructions may include such things as amending the petition to name all parties of interest or performing due diligence to locate all named parties of interest, including mortgage holders, heirs to estates, etc.
Notice by Publication - \$200.00	If after due diligence has been performed and the only way to satisfy the Court that all parties of interest can be served is through a legal notice in a local newspaper, a request for notice by publication may be necessary.
Motion for General Default	Prepared and filed with the Land Court after service has been made either by certified mail or publication on all parties of interest by the Land Court and no answer(s) have been filed by any named defendant(s) or parties of interest.
Final Judgment	Once a Final Judgment is issued, the Town has the right to hold any property obtained through the Foreclosure process. However, we recommend that the Town postpone disposition of the property until the one (1) year appeal period has expired. The Final Judgment must be recorded with the Registry of Deeds. A copy of the Final Judgment should be delivered to the Board of Assessors and the Board of Selectmen/Mayor.
Redemptions	Under G.L. c.60 §65, a municipality may collect the actual legal fees and expenses incurred on a foreclosed tax title.
Low Value Applications to DOR	As of March 2004, the maximum assessed value of land to be submitted to the Department of Revenue on a low value application is \$16,127.00 . There is no limit to the number of parcels listed on a low value application. The only exception is that registered land must be listed separately.

©2004 1/31/05 vr.7

Legal Services provided to tax title clients include the following tasks:

- Title research to ascertain the owner of record and any parties of interest entitled to notice and redemption.
- Preparation of the legal notices for publication in the local newspaper.
- Preparation of the Instruments of Taking.
- Record and/or file the Instruments of Taking.
- Preparation of the yearly tax title account ledgers.
- Mailing of legal demand letters of foreclosures.
- Preparation of foreclosure petitions and accompanying notices of filing complaint.
- Land Court filings and recording/filing of notices.
- Assist with and prepare DOR low value applications.
- Assist with and prepare documents necessary for public auction of Town owned property.

TAX TITLE TAKINGS/FORECLOSURE PROCEDURES SUMMARY

TASK	COMMENT
Town issues tax bills	Due date is 30 days from issuance of bill.
Town issues demand notice	Should have current owner title searches performed at Registry of Deeds in order to give notice to any subsequent owner(s) of record. And, when a foreclosure petition is filed, to name any lien holders or other parties of interest.
Letter sent to taxpayer notifying them of the Town's intention to take the property and date of taking.	Fourteen (14) day grace period before exercising such power of taking.
Legal Notice in newspaper of Intent to Take	Notice should include names of all parties of interest, including subsequent owner(s).
Instrument of Taking recorded against property	Must be recorded within 60 days of date of taking.
Title to the property now vests to the Town subject to the right of redemption	Title is held as security for payment of unpaid taxes until redemption or foreclosure.
Subsequent Taxes	Once taking is recorded, all subsequent unpaid taxes are added to tax title account and become part of the terms for redemption.
Redemption	Any person having an interest in taken property may redeem the property by paying the Treasurer the tax title account amount plus all interest, penalties and fees. Upon redemption, the Treasurer must execute, and deliver an instrument of redemption and have it recorded with the Registry of Deeds, acknowledging satisfaction of the debt secured by the tax title.
Foreclosure Petition - \$515.00 Land Court (single petition) as of 2/4/05. Multiple petition fees are \$415.00 for the first parcel and \$150.00 for each additional parcel - up to five parcels listed in one multiple petition. (The Land Court may agree to more than five parcels in a multiple petition if the parcels are all listed in one deed.)	If redemption does not occur within six (6) months of date of taking, the Town may petition the Land Court for foreclosure on the property. The six (6) month period may be waived if the Treasurer/Collector records an Affidavit pursuant to G. L. c.60 §81B that the redemption amount exceeds the assessed value of the property.
Land Court appoints a title examiner to submit Title Report.	To determine and identify all interested parties, the validity of the taking, and chain of title. In October 2004, by Standing Order No. 1-04, the Land Court requires all title reports to be filed within 60 days of the appointment. If a title report is not filed within 60 days, the Land Court will automatically revoke the appointment and assign it to a new examiner.

**The View From The
Land Court**

HANDLING A TAX LIEN FORECLOSURE CASE IN THE LAND COURT

After collector's sale or tax taking, to prepare to file a case at the Land Court

Where possible, obtain

- commissioner's affidavit of abandoned property, or
- treasurer's affidavit that assessed value exceeds redemption amount, or
- written consent of the record owner,

If not possible,

- wait six (6) months before filing the case.

Preparing to file

- Do a brief rundown at the registry of deeds to confirm the identity and address of the current owner.
- [Optional] identify any mortgagees and their addresses at the registry of deeds.
- Prepare the complaint (a completed example is attached as Exhibit A):
- [Optional] combine more than one taking when the owner is the same. Up to five takings may be bundled in each case.
- If you have identified mortgagees, you should list them as interested parties. The Court will send preliminary notice to them as well as to the equity owner(s). Our experience has shown that mortgagees will respond more quickly to this pre-citation notice thus possibly expediting payment for delinquent taxes.
- Prepare the notice of filing complaint except for the case number and the date of filing (a completed example is attached as Exhibit B).

Filing the case

Keep in mind the Land Court Time Standards for tax lien foreclosure cases - "T" Track (Tax)
(See attached Exhibit H).

Submit to the Land Court:

- One original complaint and two (2) two-sided copies;
- Check to cover the \$515.00 deposit per case (plus \$150.00 for each additional taking on the complaint);
- [Optional] Copy of the taking(s);
- [Optional] Copy of the portion of the assessors' map which shows the property;
- Include sufficient self-addressed stamped envelopes for mailing preliminary notices to the interested parties listed on the complaint.

What the Court will then do

- In accordance with the Supreme Court Rule 1:07, the Court will appoint a Title Examiner from a sequential list of Land Court examiners. In exceptional cases, you may recommend a Land Court examiner to do the title report because of his or her familiarity with the title. Along with your recommendation, include your reasons why an examiner should be appointed who is not next on the list. The Land Court examiner has sixty days in which to file his or her report with the Court. If not timely filed, the appointment will be revoked automatically and a new Land Court Examiner will be appointed.

During the early stages of the case

- **Title report:** As soon as you receive your copy of the report, review it and anticipate the questions the Court will have to ask you: for example, addresses the Land Court examiner cannot find at the registry of deeds. After the report is received by the Court, we will review it and issue a citation to those identified by the Land Court Examiner's report.
- **Citations:** Note the return day on the copies of citations you will receive from the Court, and check for evidence of service after those dates. Such evidence would be either a green card returned by the post office, or, in some instances, a deputy sheriff's return of service. Either would appear on the docket, as we have instituted a new policy of docketing green cards.
 - If you are contacted by the Court, you will need to provide the Court with responses to its requests for better addresses promptly. Once the Court receives confirmed addresses, it will prepare special citations to be mailed to those addresses or if requested, to be served by deputy sheriff.
 - If you are unable to locate addresses for any interested parties, you must prepare a letter of diligent search to explain to the Court your efforts to locate those parties.
 - Letters of diligent search should include a statement of the current assessed value of the property and its current use. In addition, the letter should provide a list of the resources utilized to search for the relevant parties. (See Exhibit I, for guidance as to where to search.) Please note that you should search appropriate sites on the internet, and provide the specific sites searched and the results. The purpose of requiring a diligent search letter is to insure that constitutional mandates for due process have been protected.
- **Finances:** The Court is required to disburse funds from the deposit given by each Plaintiff for publication, certified mail, and other expenses. Please respond promptly to any request from the Court for additional funds because no case can proceed if the account for that case is in deficit.

After service is complete

- Once you have determined that all interested parties have been successfully served, you should file an affidavit as to military service (the blue form when there *has* been newspaper publication, otherwise the white form [a completed blue form is attached as Exhibit D, a completed white form as Exhibit E]) and a motion for general default (a completed example is attached as Exhibit F).
- If no appearances or answers have been filed, the case will be reviewed for the entry of a final judgment of foreclosure. You will then receive either a notice that the judgment has entered or a request for additional information.

If the case is contested

- If your review of the docket and case file reveal that appearances or answers have been filed, then you will have to schedule a hearing in court. Treasurers who are not represented by counsel should at this point engage an attorney.
- In order to request a hearing, a form like the attached Exhibit G should be completed. Hearings are held every Tuesday and Thursday at 2:00 p.m., before the Recorder in Courtroom 1 on the second floor at 226 Causeway Street in Boston. A copy of the completed form should be mailed to the parties who have answered (or their counsel if not pro se) at least ten days in advance.
- At the hearing, the plaintiff should present evidence of how much is owed on the tax title account as of this date. In order to avoid a request for a continuance by the defendant, the plaintiff should send a copy of this evidence to the defendant prior to the hearing. If the plaintiff is requesting legal fees, a written statement should be presented to show the basis for the amount of these fees. The Court will hear the arguments of both the plaintiffs and the defendants who have answered. Typically, the Court will then enter a finding which orders the defendant to pay the amount owed for redemption (including court costs) to the plaintiff. The finding will set a date for payment. If any defendant does not appear, the plaintiff can ask that such defendant be defaulted for failure to appear at the hearing. The Court will notify defendant of any default entered.
- If the defendants fail to comply with the payment terms set forth in the finding, the plaintiff should request a second hearing by completing the form attached as Exhibit G. This time the line reading "Judgment of Foreclosure" should be checked. At this hearing, the plaintiff should present evidence that the amount specified in the finding has not been paid in full, as required by the Court. The Court will conduct a hearing. Unless the plaintiff assents to a continuance or the defendants prove extenuating circumstances, the Court will allow the motion. The case will then be reviewed for the entry of a final judgment of foreclosure. Any extensions of time are subject to the Land Court Time Standards.

- To accommodate the requirements of the Land Court Time Standards, if the parties reach agreement for a payment plan at any stage of the proceedings, they should file a letter or notice advising the Court that such agreement has been reached and ask for a docket entry to be made, evidencing such agreement.

Withdrawing a case

- If at any point while a case is pending, property is redeemed (whether or not any defendant has appeared), you should file a motion to withdraw (a completed example is attached as Exhibit C). The Court will then issue a withdrawal.

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

The undersigned hereby represent(s):

that the land hereinafter described was taken on December 31, 2003 for non-payment of taxes by the City of/Town of Enfield in the County of Hampshire by instrument dated December 31, 2003 and recorded or registered on February 27, 2004

(if registered) as Doc. No. Cert. No. (if recorded) Book 4000 Page 150

that (A) more than two years from the date of sale/taking (if before November 24, 1971), or (B) more than six months from the date of said sale/taking (if after November 24, 1971) have elapsed and no redemption has been made;

that the proceedings aforesaid have been conducted according to law:

that the deed was recorded within sixty (60) days from date of sale.*

that the assessed value of said land and buildings is \$ 200,000.00

that said land is described as a certain parcel of land situate in Enfield County of Hampshire and said Commonwealth, bounded:

(Description must be same as in tax deed)

50 Water Street A parcel of land with the buildings thereon, containing about 43,560 sq. ft., being described as Map 100 Parcel 10 in the office of the Assessors of Enfield and identified in Book 3500, Page 25, at the Hampshire County Registry of Deeds.

that the following are the names and addresses of all persons known to the undersigned who have any interest in said land other than the plaintiff, to wit:

Table with 3 columns: Name, Address, Nature of Interest. Rows include ABC Co., Inc.; Enfield Savings Bank; Western Gas Company.

Wherefore your plaintiff(s) pray(s) that the rights of all persons entitled to redeem from said proceedings may be foreclosed; that said Court enter a judgment that the title of the plaintiff to said land under said proceedings is absolute and that all rights of redemption are barred; and for such other and further relief as may seem meet and proper to said Court.

Name A. Treasurer Enfield Town Hall Street 1 Main Street Collector-Treasurer, Town of Enfield City or Town Enfield, MA 01111

On this third day of January, 2005 personally appeared before me the within named A. Treasurer known to me to be the signer of the foregoing complaint, and made oath that the statements therein contained so far as made of his own knowledge are true and so far as made upon information and belief that he believes them to be true.

Before me, A. Notary Notary Public [SEAL] A. Notary, Notary Public My commission expires January 2, 2010 27

NO. 235000, T.L.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

TO ALL WHOM IT MAY CONCERN:

Town of Enfield

hereby give notice that, on the 1st day of March, ~~xxx~~ 2005, it
filed in said Court a complaint against* ABC Co., Inc., Enfield Savings Bank and Western Gas
Company

to foreclose a tax lien acquired under a certain tax deed (or deeds) from the Collector of Taxes for the City (or
Town) of Enfield, in the County of Hampshire and
said Commonwealth, to me dated December 31, 2003, and recorded with Hampshire Deeds
in Book 4000 Page 150, said deed (or deeds) covers a certain parcel of land
situated in Enfield in the County of Hampshire and said
Commonwealth, which is described as follows:

50 Water Street

A parcel of land with the buildings thereon, containing about 43,560 sq. ft.,
being described as Map 100 Parcel 10 in the office of the Assessors of Enfield
and identified in Book 3500, Page 25, at the Hampshire County Registry of Deeds.

Town of Enfield

by A. Treasurer
A. Treasurer, Collector-Treasurer

*Name all respondents as in complaint.

Exhibit C

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

Case No. 235001 T.L.

Town of Enfield

VS.

John Q. Public, et al.

MOTION TO WITHDRAW PETITION TO FORECLOSE
RIGHTS OF REDEMPTION

Now comes the above named petitioner and moves that its petition be withdrawn from further consideration of the Court.

RE: Tax Taking:

Hampshire County Registry of Deeds

Book 4000, Page 151

OR

Document No. _____ Certificate No. _____

A. Solicitor

Attorney for Petitioner

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

Case No. 235000 T.L.

AFFIDAVIT AS TO MILITARY SERVICE

And now comes the plaintiff Town of Enfield, by its attorney A. Solicitor, ~~one~~
~~of the plaintiffs~~ pursuant to an Act of the 76th Congress of the United States known as the Soldiers' and Sailors'
Civil Relief Act of 1940, as amended, and makes affidavit that _____

* _____

_____ all of the defendant(s)

~~is~~ not in the military service; and as to any other persons who may have an interest in the land described
are
in this case I am unable to determine whether or not they are in the military service of the United States within
the meaning of said Act, as now effective. All interested parties who received notice by certified
mail or deputy sheriff were not in the military service of the United States at the date
of taking or subsequent thereto.

September 1, ~~is~~ 2005

A. Solicitor
Plaintiff Attorney for Plaintiff

Subscribed and sworn before me,

A. Notary
A. Notary, Notary Public
My commission expires January 3, 2010

Notes: This affidavit is to be used in all tax lien, miscellaneous and supplemental cases where publication has
been ordered by the Court.

- It must be filled in to cover the military status, as of the date it is filed, of all known defendants.
- * In the body of the affidavit it should be stated that none of the defendants served by registered mail
(or deputy sheriff) are in the military service, if such be the fact.
- The last printed allegation should not be stricken from the affidavit under any circumstances because
it covers interests not of record.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

Case No. 235000 T.L.

AFFIDAVIT AS TO MILITARY SERVICE

And now comes the plaintiff Town of Enfield, by its attorney A. Solicitor, ~~one~~
~~of the plaintiffs~~ pursuant to an Act of the 76th Congress of the United States known as the Soldiers' and Sailors'
Civil Relief Act of 1940, and makes affidavit that there are no parties defendant in said case in the military service
of the United States within the meaning of said Act, as now effective. All interested parties who received
notice by certified mail or deputy sheriff were not in the military service of the United
States at the date of taking or subsequent thereto.

A. Solicitor

September 1, ~~xx~~ 2005

Subscribed and sworn to before me,

A. Notary
A. Notary, Notary Public
My commission expires January 3, 2010

(Strike out what does not apply)

**NOTE: USE THIS FORM ONLY WHEN POSITIVE NO RESPONDENT IS IN MILITARY SERVICE
OF THE UNITED STATES.**

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

MOTION FOR GENERAL DEFAULT

No. 235000 T.L.

In the matter of the complaint of Town of Enfield

And now comes the plaintiff in the above entitled case and moves that a general default of all parties defendant, whether named in the notice or not, who have not appeared or answered, be recorded, and that the application as to them be taken for confessed.

A. Solicitor

Attorney for Plaintiff

Allowed by order of Court

(_____)

Justice

Clerk

Date

COMMONWEALTH OF MASSACHUSETTS
LAND COURT

Exhibit G

CASE NO. 235000 T.L.

~~CITY OF~~/TOWN OF Enfield
Plaintiff(s)

vs.

ABC Co., Inc., et al.
Defendant(s)

MOTION AND NOTICE OF HEARING

Please take notice that a hearing has been scheduled on * September 13, 2005
_____ at the Land Court, 2nd Floor,
226 Causeway Street, Boston, Massachusetts 02114

to consider the following:

- Complaint to foreclose rights of redemption
- Payment of legal fees of \$1,500.00 **
(suggested amount)
- ___ Judgment of foreclosure (after finding has expired)
- ___ Other (please specify)

Please indicate above with an "x" the action(s) sought.

~~CITY OF~~/TOWN OF Enfield
By its Attorney(s)
A. Solicitor
A. Solicitor

BBO # 2222222

Address: 10 Main Street, Suite 1
Enfield, MA 01111-1111

Phone No.: 413-123-4567

Dated: September 1, 2005

NOTE: *MOTIONS BROUGHT ON TAX FORECLOSURE CASES ARE HEARD ON
TUESDAYS AND THURSDAYS AT 2:00 P.M. SAID MOTION
MUST BE ACCOMPANIED BY THE COMPLETED "CERTIFICATE OF SERVICE".

**TO BE DETERMINED BY THE COURT.

CERTIFICATE OF SERVICE

I, A. Solicitor, attorney for the
~~City of~~ Enfield, hereby certify that I have
served the foregoing Motion and Notice of Hearing by mailing a copy of the same, first
class mail, postage prepaid, to the following:

Enfield Savings Bank
c/o A. Barrister, Esquire
Enfield Savings Building
21 Main Street, 2nd Floor
Enfield, MA 01111-1112

~~CITY OF~~ TOWN OF Enfield

By its Attorney(s)

A. Solicitor
A. Solicitor

BBO #2222222

Address: 10 Main Street, Suite 1
Enfield, MA 01111-1111

Phone No. 413-123-4567

Dated: September 1, 2005

TRACKING SCHEDULE - "T" TRACK (TAX)

For all cases under G. L. C. 60, § 65

Three Months (90 days)

- Title report completed and submitted to Land Court examiner (reference to examiner automatically revoked for failure to submit report with reference assigned to another examiner). Title report should include names and addresses for all interested persons, including condominium trustees.

Four Months (120 days)

- Title report docketed and reviewed.
- Citation issued or request for additional information sent by the Court to plaintiff's counsel. (Failure to provide additional information within time specified by the Court may result in dismissal).

Five Months (150 days)

- Return Day. Pleadings closed unless special notice issued.

Six Months (180 days)

- Military Affidavit and motion for general default filed; request for additional service; request for additional hearing in any contested case.

Seven Months (210 days)

- Special notice issued where required; finding entered after hearing.

Eight Months (240 days)

- Return day on special notices. Pleadings close.

Nine Months (270 days)

- Military affidavit and motion for general default submitted in cases with completed special notice; hearing request in contested cases with special notice.

Ten Months (300 days)

- If terms of redemption established in Finding are not satisfied, motion for judgment submitted and marked for hearing.
- Finding entered in any contested cases with special notice.

Eleven Months (330 days)

- Motion for judgment heard and allowed if finding unsatisfied.

Twelve Months (360 days)

- Final Judgment entered after allowance of motion for judgment.

Thirteen Months (390 days)

- If terms of redemption established in Finding in any contested cases with special notice are not satisfied, motion for judgment submitted and marked for hearing.

Fourteen Months (420 days)

- Motion for Judgment heard and allowed if finding unsatisfied in contested case with special notice.
- Final judgment entered after allowance of motion for judgment in contested cases with special notice.

Exhibit I

THE "DILIGENT" DILIGENT SEARCH

In General

The letter of diligent search should be done in letter form to the Justices of the Land Court. It need not be done in affidavit form. The letter should begin with a brief paragraph explaining exactly who is the subject of the search. ("the heirs of John Smith", etc.) and how this person or entity is related to the case. It should be signed by Plaintiff's attorney. It can incorporate the research of other parties but Plaintiff's attorney is responsible for the accuracy and content of that research.

Most letters are clearest when done in narrative form. A family tree is helpful when a number of heirs are involved but not required. The details of the search must be clearly shown for each party. Name the specific resources checked for each party. ("Suffolk County Probate was checked for John Smith" as opposed to "Probates were checked for John Smith".) Clearly state when no information is found on a party after resources are checked. Do not leave loose ends, follow up on information discovered during the search and use common sense. ("John Smith, deceased left one son" then no further search done for son.)

Last city or town of residence for deceased and missing parties should be supplied where possible. (John Smith, deceased, last of Boston, MA.)

Corporations and Business Entities

Diligent searches for corporations should include a check for the status of the corporation and, if dissolved, any information on the last officers and directors whom the Court is required to notify. A diligent search should then be done for any officers and directors identified. This holds true for any type of business entity required to register with the Secretary of State. A diligent search for a trust should include any trust information as to status of the trust, trustees, beneficiaries and the trust instrument itself.

Resources

Each search is unique to the circumstances of the case involved. However, there are a number of resources which are expected to be utilized in almost every case. They include:

- 1) Probates: Probates should always be checked for parties in the county where the property is located and also in any area where a last known residence is provided. Out of state probates should be checked where practical.

- 2) Internet: The Internet provides a wealth of resources for finding parties. Concentrate on people-finder type sites for parties thought to be alive and genealogical sites for parties thought to be deceased. Please provide specific sites searched and the results.
- 3) Vital Statistics: These should be checked for death, birth and marriage certificates where applicable. Death certificates should be checked for spouse or related informant. Out of state Vital Statistics agencies should be checked where applicable and possible. Some states have restrictions on this type of information.
- 4) Local City and Town Records: Voting lists, residence lists and other information are often available at city and town offices. In smaller towns, the Town Clerk may have personal knowledge of a family or person. In other states, cities and towns sometimes keep Registry and Vital Statistics information.
- 5) Known Heirs: Known heirs and heirs found during the search should be contacted, where possible, for further information.
- 6) Registry of Deeds: Grantor/Grantee indexes should be checked for other instruments which may provide further information.
- 7) Secretary of State (or Corporations Office): These offices should be able to provide information on the status of a corporation, agent for service, any information on last officers and/or directors, mergers or name changes.
- 8) Attorney General: This office can provide information on charitable organizations.
- 9) Telephone Listings: Internet checks usually utilize these as a resource. Libraries often have local and regional telephone books.
- 10) Local Courts and Bankruptcy Court: Docket indexes can be checked for other actions involving the parties.
- 11) Registry of Motor Vehicles: Some states restrict access to records. Information can be obtained in Mass. by attorneys.
- 12) Newspaper Obituaries and Cemetery Records: These are infrequently used but can be helpful.

Conclusion

Many times attorneys do a thorough diligent search but do not provide the detail necessary for a Justice to conclude the search is acceptable. Write the letter of diligent search from the perspective a Justice will view it. The Justice will be exposed to all the information provided for the first time. Do not presume that the Justice will assume that certain resources were checked. Provide detail about resources checked and results obtained.

**Early Taxing Considerations that Affect Ability to
Foreclose**

PRACTICAL CONSIDERATIONS DURING THE INITIAL TAXATION PROCESS

MATTHEW J. THOMAS, ESQ.

Over 65 years ago, the Supreme Judicial Court stated that the “importance of collecting taxes in order that government functions be discharged is universally recognized.”¹ The Court continued, stating that “greater latitude must be allowed to the taxing authority than is allowed to individuals seeking to collect claims.”² This presumption in the law is necessary since municipalities begin spending on July 1st of each fiscal year although they have not yet begun to collect the tax revenues for that year. Fortunately over 90% of real estate taxes are paid in response to no other collection activity but receiving a tax bill. The process of foreclosing a taxpayer’s right of redemption in the Land Court, is merely the final step in a collection process that begins with the assessment and valuation of the parcel of land. There are a number of actions that municipalities can take at the very early stages of the taxation process that will significantly facilitate their ability to successfully prosecute a tax lien case in the Land Court. Three such actions are briefly discussed below.

KEEP ASSESSOR’S MAP CURRENT

When a municipality “takes” a parcel for non-payment of real estate taxes it is actually perfecting the lien that automatically arose when the initial tax bill for that fiscal year was issued. While many communities “merge” parcels for billing in an effort to be cost effective, they must insure that the tax bill reflects the parcel as shown on the

¹ *Napier v. City of Springfield*, 304 Mass. 174 (1939).

² *Napier* at 179.

Assessor's Map. A tax bill for Parcel 169 that indicates the parcel has 10,000 square feet when the Assessor's Map shows Parcel 169 as having 8,000 square feet is quite possibly defective and will only cause difficulty when the Land Court Examiner reviews the parcel during the foreclosure process. . For this reason the Assessor's Map must currently reflect the configuration of the parcel.

AFFIDAVIT OF ADDRESS

Although municipalities are given greater latitude in foreclosing the taxpayer's right of redemption, the taxpayer's due process rights must nonetheless be protected. During the foreclosure process, the taxpayer and other interested parties such as mortgage holders and lien holders are given notice by certified mail, return receipt requested. It is sometimes difficult to serve notice on interested parties due to inaccurate addresses. Inability to serve notice on the interested parties will stop the foreclosure process in its tracks. Massachusetts General Laws Chapter 59, Section 57D – Affidavit of Address allows municipalities to require that taxpayers file an affidavit setting forth their address for service of process. Any legal notice mailed to this address shall be presumed to be good and sufficient for the purpose of instituting any legal action relating to the property. A municipality must vote to accept the provisions of Section 57D.

CHASE & WORK RETURNED TAX BILLS

Finally, municipalities should implement good collection practices at early stages of the tax collection process. First and foremost should be a policy to "chase and work" returned mail. When a tax bill is returned by the Postal Service it is imperative that the

municipality contact the owner and update the address. If a taxpayer's address is difficult to update in the first six months of the tax collection process, it will be almost impossible to update over a year later.

CONCLUSION

While there are a number of best practices that should be adopted throughout the tax foreclosure process to facilitate effective collection of unpaid taxes while protecting the taxpayer's due process rights, it is important to remember that good practices should begin at start of the tax collection process.

Disposition of Tax Possessions

DISPOSITION OF TAX POSSESSIONS

Matthew J. Thomas, Esq.

As has been previously discussed, the process of foreclosing a Tax Title in the Land Court is the conclusion of a process that began with the assessment of the parcel by the Assessors. In filing a Petition to Foreclose the Right of Redemption, a municipality is only seeking to collect an unpaid tax, it is usually not seeking to obtain ownership of the parcel. Once the foreclosure process is complete and a Decree of Foreclosure has entered vesting absolute title in the municipality, a new challenge is presented. The municipality must now dispose of the parcel so that it can actually collect the unpaid amount.

In discussing strategies to dispose of tax possessions, it is important to remember that a tax possession is not truly municipal property. Most municipal property has intrinsic value to the community as a result of what it does; it may be a school, police station, municipal building. However, the value of a tax possession lies in fact that it is actually collateral for an unpaid debt. Therefore, the method of disposing tax possessions is different than the method to dispose of typical municipal property.

CUSTODIANS OF TAX POSSESSIONS

Massachusetts General Laws Chapter 60, §77B allows a Mayor in a city or Board of Selectmen to appoint a “custodian who shall have the care, custody, management and control” of all property acquired as the result of a Decree of Foreclosure. This Custodian of Tax Possessions may “notwithstanding any provision of law, ordinance or by-law inconsistent herewith, sell at Public Auction any such property.” Thus the provisions of

Chapter 30B would not apply to such a conveyance. Section 77B sets forth the procedure that must be followed.

ABUTTERS LOTS PROGRAMS

Some communities also sell undersized non buildable parcels to abutting owners through a modified Request for Proposal known as the Abutters Lots Program. Under such a program an abutter to the parcel may purchase the parcel at a reduced cost in return for agreeing to merge the property into his own and maintaining it to the same standards as other properties in the neighborhood. Programs such as these allow these parcels to be returned to the tax rolls and help promote the creation of open spaces in urban neighborhoods.

OPTION TO REDEVELOPMENT AUTHORITY

When a parcel is strategically located or a Brownfield, it is sometimes more desirable to option to parcel to a local Redevelopment Authority who can then dispose of the parcel through a request for Proposals.

CONCLUSION

While there are a number of strategies that allow a municipality to dispose of a tax possession all of the methods have the same purpose – to allow the municipality to recover the unpaid tax and return the parcel to the tax rolls as quickly as possible.

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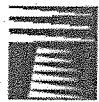
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CONCLUSION

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Non-Litigation Tax Recovery Alternatives



Non-Litigation Tax Recovery Alternatives*			
	Possible Collector-Treasurer Action	Statutory/Regulatory Authority	Brief Summary/Practice Tip(s)
I	Provide a list of the delinquent taxpayers to the Licensing Authorities in the City or Town.	M.G.L. ch. 40 Section 57	If the City or Town has accepted the provisions of M.G.L. ch.40, Section 57 and has adopted a by-law or ordinance in accordance with its provisions, the municipal licensing authorities may preclude persons and businesses that have outstanding taxes from receiving licenses etc. after they receive the list.
II	Foreclosure Procedures for Land of Low Value (if the property is assessed for a value less than \$15,000 (since 2003, this dollar value increases every Jan. 1 st by the percentage increase in the C.P.I. for Urban Consumers and is now approximately \$16,127.00)	M.G.L. ch. 60, Sections 79-80C	To utilize this process, the Treasurer must obtain a certification by the Commissioner of Revenue that the parcel qualifies as Low Value Land. DOR Attorney James Crowley is very helpful in answering questions concerning the 2 state tax forms for use in obtaining the low value certification (State Tax Form 452, an Affidavit to Foreclose Tax Title Land of Low Value and the State Form 452 A, Statement Relative to Tax Title. Note: the back side of Form 452A must be filled out by the Assessors.
III	Deeds in Lieu of Foreclosure	M.G.L. ch. 60 Section 77C	Cities and Towns may accept a deed in (a) the municipal lien is the only lien on the property; and (b) the municipal legislative body (usually the town meeting or the town/city council) votes to accept the deed. Once the deed is recorded, the property is treated as a tax possession and the grantors are permanently barred from reacquiring the parcel from the municipality.
IV	Forbearance Agreements	M.G. L. Ch. 60, Section 62A	Municipalities may by bylaw or ordinance authorize payment agreements for the redemption of parcels in tax title. Such agreements may run no longer than 5 years. Up to 50% of the interest that has accrued on the amount of the tax title account may be waived, as the ordinance or bylaw may specify. A minimum initial payment of 25% of the amount needed to redeem the parcel is required. The treasurer must forebear on foreclosure of the tax title unless payments are not made in accordance with the agreement or timely payments are not made on other amounts due to the municipality that are a lien on the same parcel.

*This chart was prepared by Robert J. Kerwin and John D. Finnegan of the law firm of Tarlow, Breed, Hart & Rodgers, P.C. They are members of the City Solicitors and Town Counsel Association. Comments or suggestions may be sent to rkerwin@tbhr-law.com.

Tax Titles That Cannot Be Foreclosed

Department of Revenue Role When A tax Title Cannot Be Foreclosed

Abatements of Uncollectible Taxes (GL Ch.58 §8)

If a tax title cannot be foreclosed because it is invalid, the town may seek authority from the commissioner of Revenue under GL Ch.58 §8 to abate the taxes if they are uncollectible. See Informational Guideline Release No.92-206 on the web at <http://www.dls.state.ma.us/PUBL/IGR/1992/92-206.PDF>

A tax is uncollectible only if the problem with the tax title cannot be remedied and the personal liability for the tax cannot be enforced. If the defect in the tax title is due to an error in the collection proceedings, such as a failure to send a proper demand, the tax title should be disclaimed (GL Ch.60 §84) and a new taking made within 90 days (GL Ch.60 §37). If the underlying assessment was invalid, so that the town never had a lien on the property, the town may be able to establish a valid lien by reassessing the property under GL Ch.59 §77 after disclaiming the tax title. Then the collector should make a new taking based upon the reassessment. If the town cannot create a valid tax title through either of these mechanisms, and cannot enforce personal liability for the taxes, then the taxes are uncollectible, and the assessors should seek authority from the commissioner to abate them.

The request for abatement authority should include the finding of the land court, land court title examiner, or the municipality's tax title attorney that the tax title is invalid. It must also include facts sufficient to show that the invalidity of the lien cannot be cured by a new taking, or a reassessment followed by a new taking, and to show that the enforcement of personal liability is not feasible. Compare collector's certification to assessors for abatement of personal property taxes under GL Ch.59 §71 that the assessed owner is dead, bankrupt, insolvent or cannot be located. If nothing like such a certification is possible, the request must explain why the personal liability cannot be enforced by any of the available remedies: by suit against the assessed owner (GL Ch.60 §35); by set-off against money owed to the assessed owner (GL Ch.60 §93); or by denial, revocation or suspension of licenses and permits relating to the property or to the assessed owner (GL Ch.40 §57). For instance, the request should either state that the municipality has not accepted GL Ch.40 §57 (authorizing the revocation or denial of licenses and permits to delinquent taxpayers), or should explain why recourse to such a remedy would be unavailing.