

Economic and Community Development News

January 23, 2002

Governor signs tax title bill

On Jan. 11, the governor signed a law that makes several reforms to property tax foreclosure and disposition laws.

The House and Senate enacted the proposal on Jan. 2 to promote the return of tax title properties to productive use. The law (Chapter 1 of the Acts of 2002) mirrors the intent of legislation that had been filed by the MMA.

Most notably, the law "fast tracks" properties that owe taxes in excess of the value of the property; eliminates the six-month waiting period between taking and foreclosure; and reduces from one year to 90 days the time period for requesting that the Land Court vacate the final decree.

The law also establishes, at local option, the opportunity to abate up to 75 percent of taxes owed and 100 percent of interest and penalties on property that will be turned into affordable housing. The law requires Department of Revenue approval of abatements as long as the DOR does so within 30 days.

The Executive Office of Administration and Finance had indicated that the governor would veto any proposal that did not include a DOR review. The DOR pushed for a 90-day review period instead of 30 days. The MMA supported the 30-day review as a reasonable compromise.

The law also allows cities and towns to accept a deed-in-lieu-of-foreclosure and then account for it as if the foreclosure has already taken place.

Finally, the law increases from \$10,000 to \$15,000 the amount under which property is considered low value for the purposes of administrative foreclosures; the threshold is indexed to inflation.

By MMA Legislative Analyst Matthew G. Feher

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Public Policy

AN ACT RETURNING TAX TITLE PROPERTIES TO PRODUCTIVE USE FACT SHEET

On January 2, 2002, the Massachusetts legislature enacted *An Act Returning Tax Title Properties to Productive Use* (H. 4726). Governor Swift signed the legislation on January 11. Sponsored by Senator Susan Tucker and Representative Robert Koczera, the bill was filed in response to a report released in February 2000 by CHAPA, with support from the Massachusetts Housing Partnership Fund and the Boston office of Local Initiatives Support Corporation.

The report, *Back on the Roll in Massachusetts*, analyzed the tax title process in Massachusetts and made recommendations on how to improve the speed and the number of successful outcomes within the present system. The recommendations included suggestions for legislative changes with the goal of returning tax title properties to productive use, particularly for affordable housing. The intent of H. 4726 is to reduce the number of tax title properties and to allow communities that choose to do so the opportunity to use tax title properties for affordable housing.

SECTIONS 1 and 2

These sections establish a local option that would allow municipalities that adopt it the opportunity to abate, with Department of Revenue (DOR) approval, up to 75% of taxes owed and 100% of interest and penalties owed on property that will be turned into affordable housing. The term "affordable housing" is defined as housing that is affordable to families and individuals who make no more than 120% of the area median income. The housing would have to be affordable for not less than 45 years.

Outstanding tax liens and interest and penalties can make it uneconomic for a developer to produce affordable housing. The language in section 1 was modeled after the brownfields legislation (see Sec. 33 of Ch. 206 of the Acts of 1998 as amended by Sec. 3 of Ch. 158 of the Acts of 1999) to give cities and towns flexibility and discretion. In some cases, a community may decide that it makes sense to reduce or eliminate accrued taxes and penalties and, perhaps, to reduce the tax liability below the value of the property so as to encourage the development of affordable housing. The language would allow cities and towns to make their own determination based on conditions in their housing market, subject to approval by the DOR, as to the appropriate agreement that should be entered into with developers who seek to redevelop tax title properties.

SECTIONS 3, 4 and 8

These sections allow the city or town treasurer to certify that the taxes and penalties owed on a piece of property exceed the assessed value of the property. The city or town can then proceed to foreclosure on these properties without the usual 6-month waiting period between the taking and the foreclosure. Once the Land Court has issued a final decree, the former owner would have 90 days rather than one year to request that the Land Court vacate the decree.

When the redemption amount exceeds the value of the property, it is unlikely that the owner will pay the money necessary to redeem the property. By acting quickly on properties that are unlikely to be redeemed, the city or town can avoid the deterioration and increased cost of redevelopment that occurs when properties are left vacant for long periods of time. At the same time, the owner of the tax title property still receives all due process under the Land Court's foreclosure proceedings.

SECTION 5

This section allows municipalities to accept a deed-in-lieu of foreclosure and account for the unpaid real estate taxes and other municipal charges and liens as if a tax title foreclosure had been completed, rather than having to take the funds from the overlay account, provided there are no liens on the property other than those of the city or town.

CHAPA's understanding is that this type of tool has worked well in communities that have adopted home rule petitions to implement it. This section allows every community the opportunity to accept deeds-in-lieu of foreclosure and avoid taking the unpaid taxes from the overlay account, without the need for separate legislation. It allows cities and towns to decide when it is wiser to accept a deed-in-lieu of foreclosure and put the property back on the tax roll rather than to incur the costs of a full foreclosure proceeding, particularly if the owner who is not paying taxes is judgment proof.

SECTIONS 6 and 7

These sections increase from ten thousand dollars to fifteen thousand dollars the amount under which property is considered low value for purposes of administrative foreclosures and indexes this amount to inflation.

CHAPA thanks the many people and organizations who helped make this legislation possible, including those who testified at the Joint Committee on Taxation's public hearing: Massachusetts Department of Housing and Community Development (DHCD), Massachusetts Housing Partnership Fund, the Massachusetts Municipal Association, the City of Springfield, the City of Lawrence, the City of Chelsea, the City of Lowell, Local Initiatives Support Corporation, and the Lowell Housing Authority.

For additional information call Chris Norris at CHAPA (617) 742-0820 x107.

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