

# MCTA Treasurer's Manual

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## **Chapter 5**

## Tax Titles and Foreclosures

When a taxpayer becomes delinquent in paying real estate taxes or other local charges that constitute liens on real estate, the municipality has statutory authority to take title to the taxpayer's property and, subsequently, to undertake proceedings to foreclose the owner's right to redeem that property from tax title.

Ch 60 §54, provides in pertinent part:

Title to...land...taken [for nonpayment of taxes] shall...vest in the town, subject to the right of redemption. Such title shall, until redemption or until the right of redemption is foreclosed..., be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges with interest....

### Tax Title Process

The tax collector may not initiate a taking on any particular parcel of real property until at least 14 days have elapsed following the mailing to the property owner of a demand for the overdue taxes and charges. In order to commence the taking process, the collector must prepare a notice of taking for each parcel to be taken. At least 14 days before the date of the taking, the collector must publish the notice in a local newspaper and must post copies of that notice in 2 or more public places. At the designated time and place, the collector must announce the taking on behalf of the city or town.

Subsequent to an announcement of taking, the collector must prepare *an Instrument of Taking* (State Tax Form 301, pp. 5-19 & 5-20) for each parcel and record or register these documents at the appropriate registry of deeds within 60 days of the date of taking.

Upon the completion of a taking process, the collector must transmit to the treasurer a list of the recorded takings. (State Tax Form 346, p. 5-21) The list must detail for each property the name(s) of the delinquent taxpayer(s), a brief description of the property, the years for which the property was taken and the amount of the unpaid taxes and other liens at the time of the taking. Upon receiving this list, the treasurer becomes responsible to collect the delinquencies.

The treasurer must set up a separate *Tax Title Account* (State Tax Form 410, p. 5-22) for each parcel of real estate included in a list of recorded takings. (See also the tax title form on page 5-23.) Each *Tax Title Account* must contain the following information:

- Name and address of person assessed.
- Name(s) of subsequent owner(s).
- Date of taking.
- Legal description and location of property.
- Book and page of the recording of the *Instrument of Taking* or, in the case of

registered land, certificate and document number.

- Unpaid tax amount for the year(s) for which the property was taken.
- Other additional costs, such as betterments, utility charges, district taxes etc.
- Collector's interest to the date of taking.
- Collector's fees and charges, as outlined in Ch. 60 §15.
- Subsequently certified taxes.

Upon setting up a new *Tax Title Account*, the treasurer should promptly notify the delinquent taxpayer, as well as the current owner of the subject property, if different from that taxpayer, to give notice that the property is in tax title and to inquire whether either party wishes to redeem the property. A current owner may have purchased the property subsequent to the tax year in question and may not know of the delinquent status. The notice may prove particularly helpful in such a circumstance.

## **Maintaining Records on Tax Title Accounts**

The treasurer's tax title duties also include taking custody of all tax deeds and instruments of taking and maintaining records on all properties in tax title. Nurturing a good relationship with the collector and the assessors generally facilitates the record collection and preservation process.

Proper maintenance of tax title records will permit an accurate determination of the amounts necessary for redemption and will establish a legal basis for a petition for foreclosure of the right of redemption with the Land Court. To expedite record keeping, the treasurer might consider acquiring one of the available computer programs that electronically track and monitor tax title accounts.

The tax title account sheets should be kept alphabetically in a uniform manner, either by delinquent's name or by street location. If time and resources permit, the treasurer should cross-index the accounts alphabetically by location. With some computer software, a treasurer can maintain account sheets in map and parcel order, a system which assessors favor. In any case, treasurers should not keep account sheets chronologically. A treasurer using a chronological filing system, upon receiving an inquiry, would have to examine account sheets for multiple dates of taking.

The treasurer should retain on file a copy of each instrument of taking, perhaps attaching the actual newspaper clipping containing the advertisement to the tax title sheet.

Further, the treasurer should determine whether any mortgages exist on tax title property by performing research at the registry of deeds. Generally, the register of deeds can provide online computer access to registry records, facilitating the treasurer's research. Upon discovering the existence of a mortgage, the treasurer should notify the mortgagee of the tax title status and about foreclosure proceedings. Since a municipality possesses a priority lien on unpaid taxes, a mortgage holder has a substantial interest in redeeming a tax title on mortgaged property.

The treasurer should also know the identity of local developers and other persons who own multiple properties, particularly multi-unit buildings. Frequently, such properties become subject to tax titles. A treasurer who is diligent and aggressive in communicating with the owners of such properties can often facilitate tax title payments.

In addition, the treasurer should know the identity of surveyors who are active in the area. A surveyor may be able to assist the treasurer in identifying the owner of properties listed as "owner unknown" in the assessors' records. For example, if a surveyor surveys a land parcel adjacent to owner unknown property in tax title, the survey results might disclose the tax title property's owner. If the treasurer has cultivated the surveyor's acquaintance, the surveyor may communicate the ownership information to the treasurer, and to the collector and assessors, as well.

### **Redeeming a Tax Title with Installment Payments**

Any person with an interest in a tax title property can redeem that property with the treasurer at any time up until a petition to foreclose has been filed in the Land Court by paying all of the outstanding taxes, interest and other charges due on the property. (60:62) Such a person may also redeem the property by making installment payments to the treasurer. (60:62) Each installment, except the last, must be in an amount not less than 25% of the total taxes, interest, and charges due. The fourth and final payment must leave a zero balance in the tax title account.

The treasurer, upon accepting the payment of any installment, may extend the time for institution of proceedings to foreclose the rights of redemption for a period of one year beyond the time authorized in Ch. 60 §65; however, no more than one extension may be granted. If an extension is granted, the treasurer must record the extension on the tax title account and give a written statement to the person who made the payment.

### **Assignment of Tax Title**

Although the Commissioner of Revenue recommends against the procedure, Ch. 60 §52 permits a municipal treasurer to assign a tax title to the highest bidder after a public auction, provided that the sum paid for an assignment is not less than the amount necessary for redemption. Surplus proceeds from an assignment are general revenue of the municipality. The assignee does not acquire any right to possession of, or receive any rent or income from, the tax title property. The assignee is entitled to collect only 6.5% interest, not the 16% owed to a municipality under G.L. Ch. 60 §62. Subsequent years' taxes for the property must still be assessed and billed to the owner of record, not the assignee. An assignee selling property after acquiring title through a Land Court foreclosure does not have to pay any surplus proceeds to persons who could have redeemed the property before foreclosure. (See State Tax Form 430, pp. 5-31 through 5-35.)

### **Bulk Assignments**

Ch. 60 §52 authorizes collectors and treasurers to make bulk assignments of their

delinquent property tax receivables. This power supplements a collector's power to make tax sales under Ch. 60 §§40 -50 and a treasurer's power to make assignments of tax titles under Ch. 60 §52. The power to make bulk assignments applies to delinquent personal property taxes as well as to real estate taxes. In the case of real estate taxes, the assignment must include non-tax obligations, such as water and sewer charges, that have been added to the tax and are secured by the tax lien. (See IGR 97-201.)

## **Land Ownership Records**

Massachusetts maintains two concurrent systems for determining real estate title. The oldest and most common is the abstract system. The abstract of a parcel of real property is made up of all of the deeds and other instruments which relate to that parcel that have been recorded in the registry of deeds for the district in which the land lies. To determine the ownership of a particular parcel, a title examiner must review the abstract of the property, tracing the ownership from person to person and from deed to deed over the years. All deeds for recorded land are identified by the book and page number in which the deed is recorded at the appropriate registry of deeds.

The concomitant title system in the Commonwealth is the registered land system. Land becomes registered when the Land Court issues a decree certifying that the person(s) named on the *Certificate of Title* hold(s) ownership rights to the land and that the land is free of any encumbrances not listed on the certificate. Once a parcel of land has been registered, all subsequent instruments affecting that land must be filed with the registered land section of the registry of deeds and must be noted on the appropriate *Certificate of Title* in order to be effective.

## **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 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 either induce a delinquent taxpayer 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 municipality.

In 1999, in a Bulletin entitled, "Budgeting for Expense of Tax Titles and Foreclosures," the Division of Local Services 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.
- 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.
- Outside counsel fees.
- 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 \$410.00 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 decree 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 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.)

### **Redemption of Tax Titles Which Have Been Foreclosed**

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 up to \$500.00 in 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 Possessions**

The mayor in cities and the selectmen in towns may appoint a custodian to manage property acquired through the foreclosure of tax titles. (60:77B) The treasurer is often appointed as the custodian, especially in smaller towns.

The custodian has authority to sell tax possession property at public auction. However, at least 14 days before a tax possession sale, the municipality must notify, by certified mail, the person who was the owner of record of the property prior to its acquisition by the community. The municipality must also post notice in two or more, public places at least 14 days prior to the sale. The notice must include a description of the property; the date, time and place of sale; and the terms and conditions of that sale. (60:77B)

The custodian may reject any and all bids at such sale if, in his or her opinion, none of the bids represent the market value of the property. The custodian may also adjourn the sale. Upon the consummation of a sale, the treasurer must execute and deliver all instruments necessary to transfer title after payment has been made.

### **Pro Rata/Pro Forma Taxes**

If property belonging to a municipality is sold, the board or officer executing the deed must receive a pro-rated payment in lieu of taxes before the deed can be delivered. (44:63A) The payment is calculated by multiplying the tax rate for the fiscal year of the sale by the sale price. For example, if a property were to sell for \$100,000.00 on December 15<sup>th</sup> and the tax rate were \$25.00, the in lieu of tax payment would be calculated as follows:

$$\text{Sale Price} \times \text{Tax Rate} \times \text{Days Remaining in FY} \div \text{Days in FY} = \text{Tax Due}$$

$$\$100,000.00 \times .025 \times 197 \div 365 = \$1,349.32$$

If the property is sold between January 2<sup>nd</sup> and June 30<sup>th</sup>, the municipality should receive an additional payment in lieu of taxes for the next succeeding fiscal year.

This pro-forma tax is calculated by multiplying the sales price by the tax rate. The pro-rata/pro-forma taxes must be received before delivery of the deed. The deed should recite compliance with Ch. 44 §63A.

### **Leasing of Tax Possession Property**

A custodian who believes that selling a tax possession property would not be practicable may lease the property for a period not exceeding 3 years, subject to the approval of the mayor or selectmen.

### **Persons Not Eligible to Purchase Tax Possession Property**

Real property that has been acquired through foreclosure may not be sold to persons convicted of certain crimes, such as arson or fire insurance fraud, or to certain tax delinquents. (60:77B) A prospective grantee must swear under the pains and penalties of perjury that neither he or she, nor any other person who would gain equity in the property, has ever been convicted of arson or fire insurance fraud or is currently a tax delinquent. (See IGR 87-217, pp. 5-38 through 5-42.) The deed for a tax possession property must contain a recitation that such affidavits have been received by the custodian or other person signing the deed.

### **Foreclosure Procedures for Land of Low Value**

A treasurer can expedite the disposal of tax title land of low value through utilizing the procedures set out in Ch. 60 §§79-80C. A treasurer cannot initiate these procedures until after the expiration of at least 90 days from the date of taking. To utilize this process for any particular parcel, the treasurer must first obtain a certification by the Commissioner of Revenue that the parcel qualifies as low value land.

The Department of Revenue has promulgated 2 state tax forms for use by municipal treasurers in obtaining low value certification. These forms are: (1) State Tax Form 452, an *Affidavit to Foreclose Tax Title Land of Low Value* and (2) State Tax Form 452A, *Statement Relative to Tax Title*. The treasurer must submit a separate statement (Form 452A) for each parcel for which low value certification is sought. Each submission, whether or not the submission includes one or multiple statements, must be accompanied with an affidavit (Form 452).

The front side of a Form 452A must be filled out by the treasurer. The information on the front side relates primarily to the details of the tax taking of the subject parcel. The Commissioner will not issue an affidavit certifying property to be low value land if any of the information relating to the taking indicates that this process may not have strictly conformed with statutory requirements. The information provided by the treasurer must be complete and accurate; otherwise, the Commissioner will return the form to the treasurer for completion or correction.

The back side of Form 452A must be filled out by the assessors. The information on the back side relates primarily to the valuation of the subject parcel. The Commissioner will not issue an affidavit certifying property to be low value land if in

the assessors' opinion the value of that property exceeds the statutory maximum. The information provided by the assessors must be complete and accurate; otherwise, the Commissioner will return the form to the treasurer for completion or correction by the assessors.

If the Commissioner determines that a parcel (a) is of insufficient value to cover all delinquent taxes, interest, charges and prospective foreclosure costs, (b) that the parcel does not exceed \$15,000<sup>[1]</sup> in value and (c) that the property has been properly taken, the Commissioner must transmit to the treasurer a written affidavit of this determination. The treasurer must record this affidavit in the registry of deeds for the district wherein the land lies.

Once an affidavit in which the Commissioner has certified particular parcels as low value land has been recorded, the treasurer, pursuant to Ch. 60 §79, "may sell th [ose] parcels..., severally or together, at a public auction to the highest bidder," without any city council or town meeting involvement.

That portion of the proceeds of a land of low value sale which constitutes the aggregate of the taxes, interest and charges and expenses of the sale must be deposited in the general fund, pursuant to G.L. Ch. 44 §53, where it becomes available for city council or town meeting appropriation for any lawful purpose. Any surplus, pursuant to Ch. 60 §79, must be deposited by the treasurer in a separate account "to be paid to the person entitled thereto if demanded within five years." If no demand is made, the surplus inures to the municipality's general fund for subsequent appropriation for any lawful purpose.

The treasurer must receive the Commissioner's affidavit that a parcel qualifies as low value land in order to utilize the expedited, land of low value process for the disposal of that parcel. If a parcel does not so qualify, the treasurer must utilize the regular tax foreclosure process, discussed above, for its disposal.

## **Collection Procedures, Tax Titles and Foreclosures**

To minimize the necessity of taking property into tax title and subsequently pursuing foreclosure proceedings, municipalities might undertake some or all of the various actions discussed below:

### **Subdivision Rules and Regulations**

Through its planning board, a municipality could include language in its subdivision rules and regulations specifying that prior to the release of any lots in a subdivision, the planning board will require the submission of percolation test results for all lots in the subdivision, not just for lots subject to a particular request. The language might further provide that any lot within the subdivision that failed a percolation test will be joined with a buildable lot that has passed a percolation test. Moreover, the planning board might also develop its rules and regulation in such a way as to optimize the likelihood that lots will be laid out in a manner that will decrease the occurrence of tax delinquencies. For example, these rules and regulations could require applicants, at the time of presenting their applications, to include the

percolation test results for all of the lots in their subdivision plans, thereby assisting the board's ability to ensure that all the lots are buildable and, therefore, less likely to become tax delinquent. The rules might further establish that, at the time of the release of the initial lot in a subdivision, any other lot that does not comply with state and local percolation standards must be combined with an adjacent, buildable lot. These kinds of planning board provisions would, in particular, permit municipalities to avoid future tax title problems in subdivisions where part of the land is wet or unbuildable and likely, therefore, to be eventually abandoned.

### **Suspension, Denial or Revocation of Local Licenses and Permits**

Through the acceptance of Ch. 40 §57 and the adoption of a by-law or ordinance in accordance with its provisions, municipal licensing authorities may deny, revoke or suspend the licenses or permits of persons and businesses that have outstanding taxes or charges. If the bylaw or ordinance has been amended pursuant to Ch. 408 of the Acts of 1993, the local licensing officials have an expanded power to deny, suspend or revoke licenses or permits "with respect to any activity ... which is the subject of such license or permit and which activity ... is carried out ... on or about real estate owned by any party whose name appears on" the annual delinquent list. (Emphasis supplied.) This statute is particularly effective in collecting tax delinquencies of commercial enterprises.

### **Intermunicipal Agreements**

A municipality might enter into an intermunicipal agreement with another governmental entity to utilize the license or permit suspension, denial or revocation provisions of Ch. 40 §57. Such intermunicipal agreements are permitted under the provisions of Ch. 40 §4A, which state in pertinent part:

The chief executive officer of a city or town, or a board committee or officer otherwise authorized by law to execute a contract in the name of a governmental entity, as hereinafter defined, may enter on behalf of such unit into an agreement with one or more other governmental units to perform jointly or for such other unit or units any service, activities or undertakings which any of the contracting units is authorized by law to perform, if such an agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, and in a town or district by the town or district meeting.

### **Assessment of Future Taxes by Bank or Mortgage Companies**

A municipality might utilize the provisions of Ch. 59 §§12A & 12B, which permit cities and towns to levy taxes upon mortgagee banks for real property on which those banks hold mortgages if the equity owners of those properties are delinquent. The assessments may be up to the face amounts of the mortgages, or the fair cash values of the properties, whichever is less. The statute encourages banks to create tax escrows for commercial properties.

### **Collection by Suit**

A municipality may collect a delinquent tax or charge by bringing a lawsuit against the person assessed the tax or charge, within 6 years of the due date, pursuant to the provisions of Ch. 60 §35. A suit filed in a superior court normally takes about 3 months. Once a municipality wins a judgment, it can set up a sheriff's sale to auction off delinquent property. The statute is very effective for mortgaged property. The municipality can also use this statute to collect rental income on commercial property.

### **Collection from Descendants Estates**

If a property tax bill is issued before the owner's death, the executor or administrator should pay the excise, however; the collector must commence an action within 12 months of that owner's death or lose the community's right to recover the obligation. (197:9) If the bill is issued after the owner's death, the bill should be addressed to the owner's estate. The executor or administrator becomes personally liable for any non-payment up to 6 years after the owner's death.

### **Use of Credit Bureau**

A municipality might consider using the provisions of Ch. 93 to report tax liens to a credit bureau as a means to collect delinquent taxes.

### **Deed(s) in Lieu of Foreclosure**

Pursuant to, G.L. Ch. 60 §77C, cities and towns, as an alternative to tax taking and foreclosure, may accept a deed from all persons with an interest in certain properties on which there are outstanding taxes and charges. Only municipal liens can exist on such properties, and the municipal legislative body must vote to accept the deed. Once the accepted deed has been recorded, the property should be treated as a tax possession. The grantors are permanently barred from reacquiring the parcel from the municipality. (See text of Ch. 60 §77C, pg. 5-43; see also *Certification of Assessed Valuation and Redemption Amount*, pg. 5-44.)

## **Tax Title Collection Policies and Procedures**

The treasurer and collector should jointly develop and maintain detailed, tax collection policies and procedures to facilitate the timely collection of delinquent property taxes in the most effective manner. These policies and procedures might include some or all of the following:

### **Policies**

1. The municipality will report tax delinquents to a credit bureau in cases in which the outstanding tax amount exceeds some threshold amount established by the community.
2. The municipality will report to the credit bureau any tax lien that it obtained through a court proceeding.
3. In appropriate cases, the collector will bring a lawsuit against a tax delinquent,



pursuant to the provisions of Ch. 60 §35.

4. The municipality will contact mortgagees and inform them of their intentions to utilize the provisions of Ch. 59 §§12, 12A & 12B in the case of delinquent taxes on mortgaged properties. The treasurer will meet regularly with the assessors to discuss the implementation of these statutory provisions and will regularly provide them with a list of delinquent owners of mortgaged property and of their mortgagees.
5. The treasurer will seek an attachment on any rental income that is paid on commercial tax title property.
6. The treasurer will initiate foreclosure proceedings when appropriate.
7. In fitting situations, the treasurer will communicate with bankruptcy trustees to seek dismissal of proceedings or relief from a stay of foreclosure actions.
8. The treasurer and collector will report regularly to the municipality's executive officer(s) and its finance director on the status its collection activities.

### **Procedures:**

- The tax collector will send a copy of the municipality's tax collection policy to each delinquent taxpayer prior to advertising a property for tax taking.
- Twenty-one days after a tax title is filed at the registry of deeds, the treasurer will notify the property owner, in writing, and will request full payment of all delinquent taxes, interest, and charges within 14 days. (60:61)
- If the owner does not make full payment or sign an installment payment agreement (and the municipality has accepted the provisions of Ch. 40, §57), the treasurer will transmit the owner's name to all departments, boards, and committees that issue licenses or permits and, if that owner has any application license or permit in effect or pending, will request the pertinent department, board or committee to deny, suspend or revoke that license or permit pursuant to the statute.
- The treasurer will ascertain whether or not a mortgage exists on tax title property. If so, the treasurer will assess the mortgagee under the provisions of Ch. 59 §§12, 12A & 12B.

### **Certification of Subsequent Taxes to Tax Title Accounts (60:61)**

For all parcels of real estate taken into tax title for nonpayment of taxes in prior year (s) and not redeemed, the collector must certify to the treasurer all unpaid taxes and assessments, together with any costs and interest accrued, in each subsequent year, using State Tax Form 347. (See pg. 5-23) A delinquent taxpayer may tender payments on current taxes without penalty until the due date. The collector should make the certification prior to September 1<sup>st</sup> of the year following that of its assessment, preparing Form 347 in triplicate.

The treasurer must return a certified copy of Form 347 to the collector, retain the original for the treasurer's records and forward the remaining copy to the accounting officer.

Upon the accounting officer's receiving a certified copy of Form 347 from the treasurer, that officer will credit the collector for the amount certified to the tax title account as if the tax had been actually paid. The collector must then post the amount shown on the certificate to the applicable account in the tax title column in the commitment book, thereby clearing this account for the tax year.

Upon a taxpayer's redeeming a tax title, the treasurer must issue a *Certificate of Redemption* and notify the collector. The collector must note the redemption in the commitment book and on the tax title record and remove the record from the active tax title file, noting on the record the name of the person who made the redemption, the date and the redemption amount.

## Disputed Tax Title Accounts

If any claim is made that a tax title is improper or invalid, the treasurer should refer the complainant to assessors and the tax collector. The treasurer has no authority to disclaim a tax title. Only the collector possesses this authority. (60:84)

## Tax Title Redemption

Any person with an interest in a property in tax title can redeem that property with the treasurer at any time up until a petition to foreclose has been filed in the Land Court. If a person elects to redeem a tax title, the treasurer must perform the following actions:

- Compute the amount due. This amount is the aggregate of the tax title account balance, including fees, charges and other costs. The interest must be calculated each year separately, at the rate specified in Ch. 60 §62, from the date of taking or subsequent certification to the date of payment.
- Collect the amount computed as the full amount due, plus the cost of recording an *Instrument of Redemption*, and record the payment in the cash receipts book.
- File an *Instrument of Redemption* at the appropriate registry of deeds. (See State Tax Form 441, pp. 5-28 & 5-29.)
- File the redeemed tax title account in the inactive file with the book and page number of the *Instrument of Redemption*.
- Issue a *Notice of Final Disposition of Tax Title Account* to the collector, accountant and assessors. (See State Tax Form 486, pg. 5-37.)

Most tax title records are permanent records, pursuant to the Secretary of State's retention schedule for records of municipal treasurers.

## Abatement of Tax Titles

Cities and towns that accept a new local option statute, Ch. 58 §8C, may enter into agreements with developers of affordable housing for the payment of outstanding property taxes, including the abatement of an amount that makes developing the site economically feasible. A municipality that accepts the statute must first adopt an implementation by-law or ordinance. Abatements must be approved by the

Commissioner of Revenue and are limited to 75% of the amount of outstanding real estate taxes and 100% of the accrued interest and collection costs. (See IGR 02-206, pp. 5-45 through 5-54).

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[1] This dollar value increases every January 1<sup>st</sup>, beginning January 1, 2003, by the percentage increase of the Consumer Price Index for Urban Consumers prepared by the Bureau of Labor Statistics of the U.S. Department of Labor for the previous calendar year.

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