



Back *on the* Roll

IN MASSACHUSETTS

A REPORT ON STRATEGIES
TO RETURN TAX TITLE PROPERTIES
TO PRODUCTIVE USE

Sponsored by the Citizens' Housing and Planning Association



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The editors and readers worked hard to create a readable and accurate document. Their contribution is gratefully acknowledged.

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EXECUTIVE SUMMARY

Tax title properties are visible symbols of community distress. Despite a surging economy in Massachusetts, some people and neighborhoods have been left behind. Tax delinquent properties have a negative impact on neighborhoods, municipal finance, public confidence and community spirit. Citizens' Housing and Planning Association (CHAPA) with support from the Massachusetts Housing Partnership (MHP) Fund and the Boston Local Initiatives Support Corporation (LISC) undertook an examination of tax title properties to promote strategies for returning these properties to productive use, particularly for affordable housing.

Community developers already have many of the tools to create affordable housing, but without an effective means to intervene in the tax title system, they cannot even begin to tackle the problem.

Tax title properties require a series of strategies to be transformed from liabilities into community assets. Community developers already have many of the tools to create affordable housing, but without an effective means to intervene in the tax title system, they cannot even begin to tackle the problem. *Back on the Roll* examines the obstacles that plague the present system, provides a road map to a smoother process and highlights best practices to provide communities with additional tools so that they may use the system to its maximum potential.

Our research into the legal mechanisms and processes was enriched by interviews with municipal officials, state and local administrators, judges, attorneys and community development professionals. Through our research, we developed a clearer picture of a confusing system. By describing the system accurately and in layman's terms, this report will empower communities with information so that they can use the system more effectively and hold those who administer it accountable for its efficiency.

The report concludes that persistent, targeted efforts and efficient use of existing mechanisms can improve the speed and the number of successful outcomes within the present system. We have identified ways to prod the system into action. Understanding the system is the first step. Applying resources and focus is the second. Overarching all is the vision, commitment, and political leadership necessary to return these properties to productive use.

With the application of political will, persistence, resources and the implementation of the recommendations included in this report, we are confident that the tax title system can be used to maximum efficiency as part of a community revitalization agenda. Community developers will then have the tools to insure that tax title properties can become community assets again.

Obstacles we identified include:

- The tax title process in Massachusetts is widely perceived as burdensome and time consuming. Misunderstanding and pessimism permeate the present system and deflate energy for positive action.
- Due process and the heavy hand of precedent impede efforts to move more quickly.
- Lack of communication among municipal departments hampers effective action and slows the process.
- Inability to prioritize properties clogs the system.
- Lack of resources prevents communities from using the system to its maximum potential.
- Absence of a clear plan for disposition allows many distressed properties to languish.
- Municipal finance implications of abatements can paralyze communities' efforts to clear the books and return the properties to the tax rolls.
- The complexity of the system encourages finger pointing and blame and obscures accountability.

Best practices for successfully addressing the tax title inventory include:

- The tax title inventory is catalogued, prioritized and targeted for action.
- Information about properties and process is accessible among departments and to the public.
- There is a clear end use identified for properties. If subsidy is required to bring economic feasibility, it is identified and reserved.
- Political will and leadership set the course.
- Departments think beyond narrow mandates and embrace a community health agenda when dealing with tax title property.
- Administrative and legal resources are devoted to the process.
- Leadership is willing to take risks and be persistent.

Methods to improve the effectiveness of the tax title process include:

- Clarify the process and use existing tools to increase the speed and efficiency of the taking.
- Recognize and promote the convergence of a fiscal and community development agenda as part of a comprehensive community sustainability effort.
- Encourage communities to apply best practices that can immediately pay off in swifter, more certain collection and foreclosure.
- Utilize existing mechanisms for expedited processing and abatements for abandoned property.
- Promote the use of alternative methods for obtaining tax title properties, such as buying tax liens from municipalities, accepting deeds-in-lieu of foreclosure and delegating the administration of the foreclosure process for targeted properties to community-based agencies.

Recommendations for action:

ADMINISTRATIVE

- Municipalities need to adopt best practices and apply leadership, coordination and resources to the problem of tax title properties. Specific best practices for each agency involved in tax title property are identified in the report.
- Additional resources and education must be made available to communities so that they can apply many of the best practices.
- Municipalities should consider delegating processing to community agencies, where appropriate, for quicker action and more certain follow through.

LEGAL

- Improvements at Land Court: more computerization, a web site and staff to increase access to information and to reduce backlogs.
- Clarify procedures regarding redemption to provide more certainty for swift dispositions.
- Review administrative foreclosure policies and procedures with the Land Court and stakeholders such as the Massachusetts Conveyancers and the Massachusetts Bar Association.

DEPARTMENT OF REVENUE

- Issue guidelines on the use of existing mechanisms for expediting abatements for abandoned property.
- Encourage increased delegation of authority to the municipalities to abate taxes.
- Clarify that affordability may be construed as a “public benefit” in order to justify tax abatements.
- Participate in a working group with CHAPA to examine and improve tax taking and abatement strategies for financially distressed communities and properties.

LEGISLATIVE

Modest legislative changes are recommended to expedite the process for a small number of properties that are abandoned, of low value and not owner occupied. These are the properties for which the private market offers no viable alternative reuse. Communities need tools to effectively intervene. Legislation is proposed to:

- Fast track the foreclosure process for a small number of problem properties.
- Increase the amount under which property is designated as “low value”.
- Expand eligibility for the administrative foreclosure process to buildings of low value.
- Allow municipalities to accept deeds-in-lieu of foreclosure and to avoid abatement procedures.
- Allow local assessors authority to grant abatement requests.

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INTRODUCTION

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A once elegant building at Three Aspinwall Street in Dorchester, Massachusetts sits abandoned and boarded, a grand piano gathering dust inside. Last winter, a homeless man died in the boarded building next door. Community groups and neighbors have made plans to bring the Aspinwall properties back to life and to make the prominent corner where they stand a symbol of the revitalization of their neighborhood rather than the mark of disinvestment they now represent. This could be an urban success story. But these sad properties are in “tax title.” Three Aspinwall Street may as well have a sign above its sagging portal, *Abandon all Hope*.

Across the Commonwealth, tax delinquent properties represent visible symbols of personal and community failure. These properties remind us that despite the surging economy, some people and neighborhoods have been left behind. Tax delinquent properties have a negative impact on neighborhoods, municipal finance, public confidence and community spirit.

Municipalities, developers of affordable housing, mortgage holders and neighborhood residents have a common interest in seeing these properties placed back into productive use. Yet, we find a system plagued by delay, inefficiency, misunderstanding and pessimism about whether effective change can occur.

CHAPA believes we must re-examine the issues surrounding tax title property. While the strong

real estate market has helped many municipalities eliminate substantial backlogs of tax delinquent property, the problem remains in the urban and outlying areas that have not experienced an economic rebound in the late 1990's. Even in strong urban economies, such as Boston, the toughest properties in distressed neighborhoods languish in the limbo of tax title.

These distressed properties require a series of strategies to be brought back to productive use. Creating a more efficient system to return tax delinquent property to productive use will not, by itself, solve the problem of neighborhood disinvestment. Removing the delay and uncertainty of the tax taking and abatement processes will help. However, without an effective means to intervene in the tax title system, communities cannot even begin to tackle the job.

The tax title system has been the subject of numerous reports and attempts at interventions over many years. We understand that the system is intended for tax collection and is firmly grounded in due process and protection for citizens against government seizure of property. However, we also know that the system can be made more efficient so that it does not thwart healthy community development.

Back on the Roll provides an examination of the systems presently in place to deal with tax delinquent property. We examine obstacles that delay the return of tax delinquent properties to productive use. By identifying common problems and areas where the system bogs down, we provide a road map for a smoother process. Through highlighting best practices, the report provides communities with additional tools for effective interventions. The report also recommends administrative, legislative and practical strategies to use the tax taking system to its maximum potential. ●●●



REPORT OVERVIEW

A complex web of legal, financial and community issues surround tax delinquent properties.

Back on the Roll examines these issues from the viewpoint that the tax collection, abatement and disposition processes are critically important to the health of the community and are a legitimate focus of a community development agenda. A comprehensive strategy for community and neighborhood sustainability and viability must include community developers, community development agencies and municipal fiscal officials in partnership.

The first chapter outlines the importance of developing a consensus within a community about handling tax delinquent properties. There is a clear convergence of interest between municipal finance and community development. This chapter explores why these interests converge and how their objectives can be compatible and mutually reinforcing. The municipal officials who are charged with tax collection and insuring the financial health of the community will find willing partners in the community development world. A sound community is our shared goal.

The second chapter summarizes the municipal budget process to give community groups a better knowledge of the system and the mandates under which officials work. Different tax title intervention strategies have different implications for municipal budgets, and we need to understand their impact.

The heart of the report, Chapters 3 and 4, illuminates the technical details of the principal mechanisms that community developers encounter when they interact with the tax title system. Municipal Collection by Foreclosure of Tax Title describes the system by which municipalities foreclose in Land Court. Other Strategies for Moving Tax Delinquent Properties into Productive Use describes the “8 of 58”



Understanding broader issues underlying disinvestment will help municipalities and community groups think more strategically about community revitalization

process that developers use when seeking abatements of taxes so that they can undertake an economically feasible rehabilitation for affordable housing. Alternative strategies, such as buying tax liens or petitioning for receiverships are also explored.

Through our research, CHAPA has developed a clearer picture of a confusing system. Our research has been enriched by interviews with municipal officials, state and local administrators, judges, attorneys and with the community development professionals who want to increase the efficiency of the system.

The picture that has emerged has surprised us. We grant that the system is complicated, narrowly focussed, lacking resources and hampered by a diffusion of responsibility and accountability. But rather than finding a system so badly flawed that only wholesale change could save it, we found a system that is essentially functioning as intended. The system is intended to collect taxes. Fortunately, the goals of community development and fiscal soundness are not only compatible, but both are essential to community health.

The system has the capacity to be responsive when pushed. Lack of knowledge and political will have hampered efforts to use the improvements already in place. Legislative improvements such as an expedited process for abandoned property have yet to be fully tested. Delegated authority to abate taxes on abandoned property, although statutorily permitted, has never been requested from the Department of Revenue.

We believe that with persistence, diligence, adoption of best practices, coupled with the will and the resources to maximize the technical capacity of the system, we can dramatically improve the timing and predictability of outcomes. By describing the system, we hope to empower housing providers and community developers with information so that they may use the system effectively for appropriate properties and hold those who administer it accountable for its efficiency.

Armed with a common base of knowledge and a renewed purpose, we are optimistic that we can engage the numerous actors in a positive dialogue to improve the tax title system. With the modest changes recommended in the report and diligent efforts to use the system to its maximum potential we can insure that a property labeled “tax title” has a chance of a becoming a community asset again. •••



TAX DELINQUENT PROPERTIES

Where Fiscal & Community Development Agendas Converge

A shared investment in the health of the community should inform the dialogue among all municipal agencies and community developers. A sound community is the common goal.

Municipal officials in many of the older, urban areas of the Commonwealth face a daunting backlog of tax delinquent cases. When asked for concrete numbers, frequently the reply from an official is a long sigh, eyes rolled upward and an estimate of “hundreds.” In Boston, that number is thousands. The Boston Finance Commission estimates that Boston has \$95 million in tax delinquencies. The Land Court presently has a backlog of over 12,000 cases. New cases are added at the rate of over 3,000 a year. Though many of those cases will be redeemed, many others will languish.

While officials uniformly say that the problem is not as bad as a few years ago, the effects of the fall of the real estate market in the late 1980s and early 1990s are still being felt. Though Haverhill reached a high of \$2.2 million in tax delinquent property in 1993, and is pleased to be below \$600,000 now, they face a daunting challenge. Many of the properties that comprise the backlog are the toughest properties and the ones least likely to be redeemed. Many of our older, distressed communities are confronting similar inventories.

The backlog of tax title cases in many cities consists of properties where the value may be less than the amount of the liens. These properties are frequently distressed. Communities are fearful of foreclosing and becoming the owners of derelict property, especially when the units are occupied or where there is no clear disposition strategy.

Officials in the smaller, rural and ex-urban communities are struggling with even fewer resources to deal with the tax title property in their towns. Obsolete properties (properties with no value and a use that is no longer economically viable) make up the bulk of the properties still in the system. In smaller communities, resources for planning, tracking and carrying cases forward are limited.

Resources are limited in large and small communities alike. More limiting is the lack of a vision or set of comprehensive objectives to guide the tax collection process. This lack of vision combined with a lack of political will impede most attempts to prod the system into more effective action.

Setting the Agenda | *Common Interests*

Municipal fiscal officials and community development professionals have a common interest in maximizing the collection of taxes and in foreclosing on properties that are tax delinquent. Prompt action helps to encourage payment. If the property has no or little value, foreclosure can free the property from a negligent owner so that the community can get to work to get the property back on the tax roll. This is fiscally healthy for the community. It is also healthy for the neighborhoods that benefit from reinvestment.

Getting on sound financial footing requires municipalities to acknowledge and create a plan for dealing with tax delinquencies. Community developers and municipal development agencies working in partnership with municipal finance officials can help. Community development officials know the neighborhoods, the inventory and the needs. They can target properties for intervention and collection. Without the ability to set priorities for collection, the system will remain clogged and inefficient.

Developers of affordable housing already work in partnership with the planning and community development agencies in their municipalities. These developers can help to implement the strategies of the municipalities for distressed property. A shared investment in the health of the community should inform the dialogue among all municipal agencies and community developers. A sound community is the common goal.

Setting a community agenda for tax title property is a critical first step. Initiatives to deal with tax title property involve a matrix of programs and policies that sometime seem at odds. To define and articulate the goals and achieve political consensus is a difficult but essential task. Simplifying collecting the back taxes is not enough. Returning the properties to the tax roll is not enough, if a few years later they reappear in a new state of distress. Creating low-income rental or ownership opportunities is admirable, but it will take resources beyond merely fixing the tax taking system. A hard look at the competing interests, desired result, and a commitment to the resources necessary to achieve the result is key. A series of strategies may be required, and each community will have a different set of issues or approaches.

How do we begin? Throughout this report we refer to ingredients that are essential components in any strategy designed to tackle the problem of tax title property. These components are:

Vision and Goals

Knowledge of the inventory

Coordination

Resources

Competence

Political will

Vision/ Planning for Outcomes

The primary tool for motivating the players and creating the will to move the system is a firm sense of the desired outcome or the “vision”. This applies on a community-wide scale and on a property-by-property basis. On the macro level, neighborhood planning and revitalization efforts will bring a range of ideas, tools and resources together in a comprehensive strategy. For individual properties within that larger plan, disposition planning upfront is useful. Knowing the end use quiets fears of long term municipal ownership of problem properties. Disposition planning sets an agenda and a timeline that is measurable. It creates a goal to rally agencies around. Finally, it creates stakeholders who will demand progress and accountability.

Choosing a Strategy

Tax delinquent properties have a million stories behind them. Knowing the story will help to identify the most effective path to the desired outcome. Examining the ownership and lien characteristics of a property will help a developer and municipality to choose a strategy that fits the property and has the best and quickest route to successful acquisition and rehabilitation. Peter Munkenbeck has worked with LISC and Boston CDCs to create a useful tool for such an assessment. The outline is contained in Chapter VI.

Based on the assessment of the characteristics of the property, the municipality and the developer can jointly plan an acquisition strategy. Certain properties will be routed to tax title foreclosure by the municipality. In other cases, owners will be pursued to make the best deal and abatements will be sought. Alternative approaches like buying the lien or getting the municipality to accept a deed-in-lieu may be best. The next chapters will examine these choices and the technical elements involved in their implementation.

Information | *Inventory & Targeting*

All communities must begin by understanding the scope of the problem and the inventory in their community. Communities should have a database of tax delinquent properties, which is shared among the agencies responsible for some aspect of tax title intervention. The database should include ownership records, assessing data, collection and tax delinquency data (including tracking information about where it currently is the tax taking process) as well as opportunities for input from the code enforcement agency, police and fire departments. The database should be sortable by neighborhood, street, owner and type of property. Frequently, tax title properties are early markers of other kinds of distress. They may also be physically deteriorated and a source of neighborhood crime or disinvestment.

Chelsea uses a matrix with many of these characteristics to target properties for more aggressive action. The matrix includes Building Department code problems, police calls to repeat addresses and other neighborhood complaints. This helps Chelsea to prioritize properties for maximum impact. Many communities have benefited from the Geographic Information System (GIS) system for mapping and targeting.

Access to Information

As critical as information about the inventory is, it is not always easy to gather. Lack of information in some communities is due to the lack of resources to gather it. Some communities have raw information, but no analysis. Other communities have sophisticated databases but are reluctant to share it with the community (or even with other departments sometimes). At first, our inability to gather hard data for the report was frustrating. Then, it became instructive as we encountered the same information gaps in many communities.

The lack of access to information is a gap in the system that communities need to address to move ahead with a successful planning effort. Communities should have a good integrated database that is available to the larger community. The more input and eyes on it, the better. Web sites, on-line reports and integrated systems of all departments make the planning process more substantive and accessible to stakeholders.

Market Conditions and Community Health

Communities should also examine the market forces and underlying issues that are contributing to the disinvestment in the first place. Any plan that does not look at market forces will fail in ways that are strikingly similar to the failures we are dealing with now. Cycles happen, but good planning can create stronger neighborhoods and programs that can withstand market cycles if attention is paid to demographics, market and long term economic projections. Interventions must be strategic and backed by resources. Tax title properties should not be looked at only as a cause of neighborhood disinvestment (just clean them up and things will be better) but also as a symptom. Understanding the broader issues underlying the disinvestment will help municipalities and community groups think more strategically about community revitalization strategies.

Coordination, Competence and Resources

Targeting properties for intervention involves a coordinated effort by many municipal officials. Planning departments gather physical information about neighborhoods and properties and manage resources that are essential to their revitalization. Planning and Community Development Departments frequently work with CDC's and other community partners. Planners also need to coordinate their efforts with the municipal departments that are involved with other aspects of distressed property like tax collection and code compliance. Once a property enters the world of "distressed property", many municipal agencies are involved, includ-

ing police and fire departments. Communities that recognize the interconnectedness of the problem properties and coordinate their efforts towards a solution are most successful.

In Boston, Community Development Corporations (CDCs) worked hard with the City's Department of Neighborhood Development (DND) in planning the 1-4 family program, using tax title property for some acquisitions. It has created several good examples of planning that pays off for neighborhood health and revitalized housing. In the 1-4 Family program, CDCs target property and work with DND to secure it. Resources through Local Initiatives Support Corporation (LISC), Boston Community Capital (BCC) and State and City HOME provide the funding to turn distressed property into affordable homeownership in Boston's neighborhoods. The knowledge of how critical this housing is to neighborhood revitalization and to the new low and moderate-income homeowners who will be served, has kept motivation high. Yet, even with a clear goal, the process of securing property has been difficult for the CDCs.

In many communities, properties identified by Community Development or planning departments have languished in tax title or in property disposition despite sometimes heroic efforts by dedicated city officials. Coordination and clear lines of accountability are essential to manage the acquisition of distressed property effectively. In addition, adequate resources must be allocated to manage the time consuming tax title foreclosure process. The process requires persistence and follow-up. Without sufficient staff and without a sense of priorities, the system becomes bogged down.

Agencies of a municipality must work together to achieve results. If all relevant agencies are working in the same direction, the process of securing tax title property will still be difficult. Without that coordination, it will be impossible.

Political Will

The system itself can be difficult to navigate. There are technical problems and potential glitches at every turn. Abuse of due process, excessive protections accorded to bad owners, bankruptcy, probate and overburdened municipal and judicial systems combine to make the system a nightmare. Yet, we have found that most of the problems are manageable, if the municipality has the vision, the will and the resources to engage the process. If diligence, persistence and competence are applied to the process it is possible to move a property through the system in a timely way. But this will only happen if there is the political will to do so.

Unless a community can envision what their neighborhoods will look like without tax delinquent and abandoned property and move to implement that vision, the system will not budge. The community, on all levels, especially the highest officials, must support a planning process to decide how to salvage these properties. The power of the vision, wedded to comprehensive planning for outcomes, backed up by resources and leadership, can inspire the effort it takes to move an unwieldy system. Without "political buy-in", the efforts will remain fragmented. Involving all relevant agencies with a common goal of returning properties to productive use and backing that goal up with resources is the key. Creating the political will, nurturing it, and making the system work well for priority properties essential to the viability of our communities is our challenge. •••



MUNICIPAL BUDGETING 101

Overview of the Municipal Budget Process and the Tax Title Property

It will help us to reach our goals if we can understand and accommodate the fiscal realities under which our finance partners are working. Perhaps our awareness can bridge the communication gap between the housing development world and the municipal finance world.

The community development and municipal finance worlds intersect when they encounter tax title property. The municipal agencies that community developers most frequently interact with are the planning and community development agencies, but when we enter the world of tax title, we encounter the financial workhorses of municipal government: the Assessor, Treasurer and Collector (frequently the functions of Collectors and Treasurers are combined in a consolidated Finance Department). The Town Counsel or City Solicitor works with the Collector to shepherd the process through the legal system.

To accurately understand how tax title properties are thought of and addressed in municipalities, we must understand the mandates of each office and the restrictions under which they work. Only in understanding this, can we hope to enlist these agencies to work with us to craft policies and recommendations that are realistic and can succeed in meeting our shared goal of a healthy community.

The community development or planning agency plays no formal or statutory role in the tax title process. Best practice communities, however, understand that a strategic approach to tax taking is good business. Prioritizing is essential to prevent the system from becoming overwhelmed. Clear policies utilized to target properties, communicated and understood by all agencies, will help eliminate much of the confusion and balkanization of the process that can cause delay.

glossary of terms¹

BALANCED BUDGET

Refers to the requirement in Massachusetts that budgeted sources of funds (i.e. revenues) must equal the budgeted uses of funds (i.e. expenses).

FREE CASH

The amount of unrestricted fund balance available for use by a city/town. In order to be available, the Department of Revenue each year must certify the amount. Once certified, free cash can be used as a funding source to “pay” for various budgeted expenditures.

FUND BALANCE

The equivalent of Retained Earnings or Equity Accounts in commercial entities. The amount represents the cumulative difference between revenue and expenses over the life of the community. At year-end, the total fund balance is typically subdivided and allocated to various “reserves” to indicate amount obligated for the ensuing year.

Role of Municipal Finance Agencies

Laboring to create balanced budgets and collect maximum revenue in the face of increased expectations for community services, these municipal finance agencies work under strict rules imposed by the Commonwealth. Each municipality is considered a “political subdivision” of the Commonwealth. The legal foundation of municipal finance is in the Massachusetts General Laws (MGL). The Department of Revenue (DOR) oversees and regulates municipal officials in this regard. The relevant statutes that dictate how municipal tax assessing and collecting are conducted are in Chapters 59 and 60². The agencies that have statutory responsibilities are presented here:

Assessor | Determines tax rate and property values; keeps track of owners and addresses.

Collector | Sends tax bills; collects taxes and sends demand for payment when they are late; perfects the lien through a tax taking or sale; records the taking within 60 days; waits the required period before moving to foreclose. Many communities combine Collector and Treasurer function into a Collector-Treasurer (CT).

City Solicitor/ Town Counsel or Special Counsel | Works with Treasurer for more complex cases; will perform legal duties as required, including petitioning Land Court to foreclose “right of redemption” of tax lien; does “diligent search” and moves cases through Land Court; moves for final decree.

Tax Title Custodian | Usually the Treasurer. Takes the property into tax possession and sells it at auction.

The Balanced Budget Requirement and Proposition 2^{1/2}

The balanced budget requirement for Massachusetts’s communities drives municipal financial policy. This requirement combined with Proposition 2^{1/2} restrictions set the tone for the municipal budget debate. Property taxes are the principal source of revenue for towns. The town assessor determines the Net Tax Levy. This is the assessed value of all property in the community, multiplied by the tax rate, minus the overlay account. The overlay or allowance account is the account set up to fund abatements or tax exemptions for the year. The revenues projected must equal the expenditures projected. Because of the balanced budget requirement, if abatements exceed the amount projected in the overlay account, the difference must be raised in the next year’s budget. If there is a surplus it may be transferred to the free cash account.

Exemptions and the Overlay Account

Exemptions to taxes for charitable organizations, veterans, the elderly, the blind or other distinct classes of taxpayers are allowed under MGL c.59, s5. Assessors review and grant exemptions according to established procedures. The assessor budgets funds once a year to cover exemptions and expected abatements to the overlay account. Abatements for back taxes must be charged to the overlay account and raised in

glossary of terms

LEVY CEILING

Massachusetts General Laws limit the amount of property tax revenue a community may raise. The dual implications are known as the levy limit and the levy ceiling. The levy limit means taxes cannot increase more than 2^{1/2} percent over the prior year (excluding new growth). The levy ceiling means that a community’s total property tax revenue cannot exceed 2^{1/2} percent of their total assessed property values.

OVERLAY ACCOUNT | *or the Allowance for Abatements and Exemptions Account*

The amount of property taxes expected to be abated (i.e. due to inflated property value) or exempted (i.e. a property owner is blind, elderly or a veteran). This amount is established by the Assessors when the tax rate is set and is reduced over time as abatements and exemptions are issued.

NET TAX LEVY

A calculation of property taxes expected to be collected:

$$[\text{Assessed Property Value}] \cdot [\text{Tax Rate}] = [\text{Gross Tax Levy}] - [\text{Overlay}] = \text{Net Tax Levy}$$

the budget the following year if the account is deficient. The account can only be reduced when the actual amount of abatements and exemptions is lower than what was projected. Then a surplus is declared and the money may go into the free cash account.

Proposition 2^{1/2}

The amount of taxes a community can levy each year is limited by Proposition 2^{1/2} (M.G.L. Ch.59, s21C). Proposition 2^{1/2} establishes two types of restrictions. First, a community cannot levy more than 2.5% of the value of all taxable real and personal property – the levy ceiling. Second, this levy is limited in how much it can rise each year to 2.5% plus any increase in property value as the result of new development. Some communities with a declining tax base are reluctant to reduce assessments or to write off properties for fear of reaching the Proposition 2^{1/2} limits and reducing their ability to raise revenue. Working within the balanced budget and Proposition 2^{1/2} limits makes budgeting difficult. Revenues are precious and write-offs and uncollected taxes are a problem.

Collecting Taxes

Once the tax rate is established and tax bills are sent, the Collector-Treasurer must do everything possible to collect all taxes. Because property taxes make up such a large portion of the budget (more than half in most communities) collecting these taxes is a high priority. Some municipalities are still “digging out” from the enormous backlog of cases created when the market dipped severely in the late 1980’s and early 1990’s. A surging economy and real estate values have helped many communities. Good administration and efficient processing of the system of tax taking have helped others to get a grip on backlogs.

Importance of Tax Collection Strategies

All municipalities should be concerned about efficient tax collection. However, for distressed communities, good administration of the process is even more necessary. Affluent communities can count on the market to correct the situation when tax delinquencies occur. In fact, some Collectors believe that by doing nothing, they can collect the high interest that is assessed when taxes are delinquent (14%). The rate rises to 16% when the tax taking is filed. When the property is sold, the lien must be paid off. In high value communities, the value will be there to do that. However, many communities do not have that luxury. For these communities, the reasons to collect aggressively go beyond good practice to essential community health.

Good collection practice conveys a clear purpose and certain outcomes to reassure responsible taxpayers that they will not bear the burden of those who don’t pay. It communicates the certainty of loss of property to those who would try to avoid paying taxes. Predictable and aggressive collection also boosts collection rates.

The fiscal health of the community depends on many factors, especially aggressive tax collection. Money not collected in taxes may need to be raised through costly borrowing. Collection rates are the primary indicator of a community’s health. Bond agencies will examine this closely. If taxes are not collected and rights to collect are not enforced, the bond rating of the town suffers.

Landlords need to know that there are consequences if they fail to pay their taxes. Absent a predictable set of consequences, landlords may find it easier to “borrow” money from the municipality when they are running a marginal operation. The correlation between delinquent taxes and abandonment of property, with all the social and other costs that implies, is clear. Stopping abandonment early when intervention might save the housing is essential.

After just a few years, older abandoned property may reach the point where it must be demolished because it is economically infeasible to repair it. The costs of code enforcement, police calls, fire calls and decreases of adjacent property values are high costs of delinquent and abandoned property beyond the cost of the tax liability. The community will experience disinvestment as uncollected taxes mount and the market is not strong enough to create incentives to redeem.

Collecting taxes is critical to the health of the community. However, the fiscal health of a community has many components. Municipalities must think about tax collection as an important piece of a community development agenda. They are well-served by thinking strategically about how tax collection practices and priorities can promote good community health.

Communities that think comprehensively about the health of the community will include planning and community development agencies in devising strategies for tax collection. Indiscriminate filing of takings and foreclosure can clog the system and dilute resources. Community development planning can target strategic property in neighborhoods. Without priorities the tax collection system can easily bog down under the weight of hundreds of cases. Collectors must prioritize those properties that stand the best chance of collection, but for those properties that languish with no possibility of redemption and no market, the best hope of a fiscally responsible end is a planned use by the community for its productive return to the tax roll.

Financial Implications of Tax Collection Strategies.

Not surprisingly, the impact on the budget of not collecting taxes is negative. Writing off taxes even if everyone knows they are uncollectable has implications. The way it is accounted for, however, can make a difference in how rating agencies perceive the fiscal health of a municipality. It will help us to reach our goals if we can understand and accommodate the fiscal realities under which our finance partners are working. Perhaps our awareness can bridge the communication gap between the housing development world and the municipal finance world.

Effects³

If a municipality forecloses on a property in Land Court, all taxes are eliminated and the property is transferred to a tax possession account. It becomes an asset of the town. It does not affect the fund balance. If a tax is abated, the amount of the abatement is taken from the overlay account. If that account does not have enough money to cover it, the amount must be raised in next year's taxes. Municipalities are often wary of granting abatements because of the effect on the overlay account and thus on the tax rate if there is a shortfall. Abatements granted under MGL c.58, s 8 must be approved by DOR.

Special legislation has allowed Lawrence to treat a deed-in-lieu of payment of back taxes as if it has been foreclosed. It is then taken into the tax possession account. Lawrence filed a home rule petition to clarify their ability to accept deeds-in-lieu and to account for them in this way.

Buying a tax lien from the town allows the town to collect the taxes right away and to avoid the costs of collection. It is good for cash flow.

Bond Market Conditions

Increasingly, the bond market is providing additional discipline for cities and towns. The days when large receivables were ignored and assumed that they would be collected are gone. Large receivables are a sign of poor fiscal health and communities have powerful incentives to reduce receivables, even if it means taking the write-off and moving on. A strong financial plan to deal with back taxes and a strategic approach are more important in the assessment of fiscal health than a one-time write-off. Write-offs can even be seen as positive. As Bob Ebersole, DHCD Associate Director for Municipal Development says, "A strategic plan and best practices offset the charge off. Inactivity is worse in the view of the bond markets". A community that takes a strategic approach to tax collection, working in common purpose with all agencies for the health of the community, is likely to increase collections and be a healthier community. •••

¹Prepared by Patricia Squillante | *Melanson, Health CPAs*

²Information compiled from the MA Department of Revenue's *Laws Relating to Municipal Finance & Taxation*.

³Prepared by Patricia Squillante | *Melanson, Health CPAs*



MUNICIPAL COLLECTION BY FORECLOSURE OF TAX TITLE

The Law and The Process

The municipal tax collector has a number of remedies for non-payment of taxes including archaic methods such as collection by suit, collection by distress (sale of goods except plough beasts), and collection by imprisonment. The most common collection method is the collection by foreclosure of tax title in Land Court.

Massachusetts law provides procedures by which municipalities can secure the collection of real estate taxes. These are set forth primarily in Chapter 60 of the Massachusetts General Laws (MGL). The collection of taxes is so critical to the financial health of communities that a municipality may take strong action in collection of its tax debts. A number of remedies are available to the municipality, including: immediate sale of the property; suit against the individual taxpayer for collection; imprisonment of the debtor; and the most common, foreclosure of the municipality's tax lien. This foreclosure of the tax lien must occur in Land Court which has exclusive jurisdiction, except for cases of administrative foreclosure on land of low value (MGL c.60, s79)

As we examine ways to improve the system, we must be mindful of the weight of history, precedent and constitutional law. A Department of Revenue official, in explaining how precedent-bound the Massachusetts system of tax collection and tax taking is, explains that our due dates for taxes still revolve around harvest cycles. The ability of a municipality to lien property on which taxes are owed dates to the 1700's. In those simpler days, it was limited to unimproved property owned by non-residents, but was soon extended to improved property. The lien was more likely to be used on non-residents who could not be tracked down for imprisonment. The system slowly changed to develop procedures for tax sales and for simple takings in the mid-nineteenth century. These sales and tax takings and the recording of them eventually matured into a fee simple title after certain statutory waiting periods.

Wary of the power of the state to seize citizens' land and following a number of cases in which tax sales were invalidated for failure to comply with legal requirements, improvements to the Commonwealth's statute were made which required the municipality to foreclose its lien in Land Court, and there the power has rested since 1915. As a testament to the endurance of the Massachusetts system of taking and foreclosure, very few changes to the basic process have been implemented since 1915.

Due Process and the Protection of the Rights of Property Owners

As we examine ways to expedite the process of tax taking, we run directly into the sacrosanct principle of due process. For every notice period shortened, every “fast track” proposed, every expedited taking, advocates for change must understand that this conflicts with someone’s right to due process and protection. The system, in place for centuries, is designed to “run at a snail’s pace”, as one assessor said. Because the power of the state to take away property is seen as such an extreme measure, protections are built in to insure that the owner has every opportunity to escape the consequences and to redeem his property.

Many additional protections in the Massachusetts laws were put into place during the Depression to protect the poor who were threatened with losing their homes. We may not like it when the owner is an abusive landlord, but to change the system to take away protection for owners is running into “constitutional bedrock”, according to Judge Mark Green of the Land Court. Not everyone caught in the tax title web deserves the ultimate penalty of losing his or her property. In our rush to expedite processes, we want to avoid unintended consequences, such as evicting elderly homeowners.

An understanding of the fundamental allegiance of the system to due process must inform our discussion of strategies to expedite the process. Many attorneys, while sympathetic to community development concerns, are profoundly uneasy about changes to a system so deeply rooted in tradition. We must also be respectful of the legal power of the tax title lien. The tax lien is a superior lien. Foreclosure of the tax lien wipes out all other liens. The due process protections help balance the consequences of such a drastic action. Our recommendations for change to the legal system, of which community development concerns are peripheral, will be modest and involve “carveouts” for expedited processing or fast tracking that have a demonstrable public benefit to offset the due process concerns.

The Land Court

The Land Court has jurisdiction, sometimes with other court departments, over matters of property in the Commonwealth. The Land Court shares jurisdiction with the Superior Court over decisions by local planning boards and zoning boards of

common terms

The terms of law, which define this complicated subject, are often confusing for the lay person. Even lawyers have been stumped by what the “right of redemption” really is and when it applies. Because one of the goals of this project is to demystify the system, a “cheat sheet” of common terms may be useful. These terms will be used throughout the descriptions of the process. Black’s Law Dictionary provides us with the most basic definitions. The Italics are the report’s authors.

DUE PROCESS OF LAW

A course of legal proceedings according to those rules and principles which have been established in our system of justice for the enforcement and protection of private rights. *The process implies the right of the person affected to receive notice, have the right to be heard and to enforce and protect his rights before a court empowered to hear and determine the case.*

LIEN

A security or encumbrance upon property for payment of a debt or obligation; right or claim against some interest in property created by law; right to enforce charge upon property of another for payment or satisfaction of debt or claim. *A municipality, by statute has an automatic lien for real estate taxes due. Unless recorded, this lien goes away in three years and six months. A tax taking [or sale], after the proper notice period perfects the lien. This taking must be recorded within 60 days to be valid.*

FORECLOSE

To shut out, to bar; to destroy an equity of redemption; a termination of all right of the mortgagor or his grantee in the property covered by the mortgage; the procedure by which the a mortgagor of real or personal property, or other owner of property subject a lien is deprived of his interest therein. *After a tax taking, the municipality petitions Land Court to foreclose the owner’s right to redeem the property.*

more terms →

appeal and the processing of mortgage foreclosure cases. It maintains exclusive jurisdiction over the registration of title to real property and disputes concerning title subsequent to the registration of title. The court also has authority over the registered land offices in each registry of deeds in the Commonwealth. The Land Court has exclusive jurisdiction over the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes (MGL c.60, s64). The procedures that it follows are provided for in MGL c. 60, ss65-75.

The Land Court is a busy court. According to their annual report, 59,041 cases were pending in July 1998. This includes all cases over which they have jurisdiction, including appeals from local planning boards, cases involving registered land and proceeding under the Soldiers and Sailors Relief Act. 12,006 tax title cases were pending at the end of 1998. The good news is that 1998 was the second consecutive year in which the Land Court disposed of more cases than were filed. 3,306 new cases were filed and 3,833 were disposed of. Also, in 1998 tax title cases fell below the 1997 level by 10%. Land Court personnel attribute this to the strong economy.

Process and Timeline of a Municipal Tax Taking and Foreclosure

The process by which municipalities take property for taxes and foreclose the right of redemption is prescribed by statute in MGL c60. There are clear notice requirements and

timelines. Almost all of the statutory periods are for the protection of the owners being foreclosed on. No deadlines are imposed that are designed to move the process forward on its own for speedy closure. The speed of the process is dependent upon a number of factors. Chief among them are:

- The competence, resources and will at the municipal level to take all necessary action to collect taxes and dispose of cases.
- The particular facts of the case. A contested case will have additional notice, waiting periods and hearing requirements than a more straightforward, uncontested case.

The attentiveness and skill of the legal department of the municipality is a key factor in moving the case once it gets to Land Court. The system has many hoops to jump through, but they are predictable and clearly defined. Cases themselves may be messy, and may have a number of delays inherent in their complexity, but the roadmap for progress is ascertainable. A "messy" case may involve a contested taking, bankruptcy, or a dispute about ownership or interested parties. Although each case is unique, very little of the work is legally complex, according to practitioners. In most cases it requires organization, diligence, fact finding and other administrative tracking responsibilities.

more common terms

RIGHT OF REDEMPTION

The right to disencumber property or to free it from a claim or lien; specifically the right to free property from the encumbrance of a foreclosure or other judicial sale or to recover the title passing thereby by paying what is due, with interest, costs, etc. *The right of redemption is absolute, upon payment of taxes, penalties, fees and costs, until a final*

RIGHT OF REDEMPTION, cont.

decree of foreclosure is issued. The final decree "forecloses" this right of redemption. After the decree is final, if the former owner comes forward, he is no longer entitled to "redeem" It is not a "right". At that point he must seek to "vacate" the decree and it is within the court's discretion to grant it.

TAX TITLE

A title held by one who purchases property at a tax sale or a title held by a municipality that has made the taking, or assignee of municipality. This

is better defined as a perfected tax lien.

Also used for tax lien. Title to the property taken for payment of taxes vests with the municipality subject to "right of redemption" by the taxpayer.

VACATE

To annul, to set aside. *The vacating of a final decree in Land Court is up to the judgment of the court. It is not a "right" of redemption.*

The Land Court, unlike other courts with tracking systems, does not move cases on its own. The onus is on the municipality to follow the case and push it to the next step.

Our research has shown that while cases have taken years to move through the system, straightforward cases can be completed in 15 months (including the six-month waiting period) with persistence and dedication of resources.

The charts⁴ beginning on page 27 outline the Massachusetts Tax Title procedure. The first is a flow chart, with references from the statute. The second is a timeline which shows the statutory waiting and notice periods requirements. We have added a “real world” annotation based on the experience of a range of municipalities.

Legal and Administrative Practices on the Municipal Level

The goal of the entire system is to collect real estate taxes. This section will focus on the process that municipalities follow in collecting the taxes and bringing appropriate action to secure payment of the debt. Activities that occur prior to bringing a petition to Land Court to foreclose the right of redemption set the tone for the proceeding. The care with which the municipality follows the statute, gives proper notice and records the taking in a timely manner can make the difference between a case which flows smoothly into the Land Court system or one which is delayed or contested based on faulty notice or due process failure. Beyond the statutory waiting periods, municipalities have their own practice and process flow among the multiple municipal agencies that have a formal role in tax collection.

The way the process is handled at the municipal level varies widely. Jim Johnson of DOR says that in some communities the Collector “tapes Chapter 60 on the wall”. Other communities are not that organized. Delays at each agency can add up to a long period of delay before the proceeding even reaches Land Court. Provided below, in narrative form to supplement the flow chart, is a review of the process through the Assessor and the Collector/Treasurer.

Assessor

The first prerequisite for a valid tax title is a proper assessment. Taxes must be assessed to the person who is the owner of record as of January 1. The assessment must be to the correct person and to one defined parcel of real estate. Unless the quarterly billing standard is

adopted, bills are due as of July 1 and payable in two installments on November 1 and May 1 or 30 days after the bill was mailed (whichever is later).

To insure that assessors have proper addresses for bills and that collector/treasurers have proper addresses for notice, towns can adopt the Affidavit of Address. The statute (MGL c.59, s 57d) provides that an affidavit of address be sworn to by the owner of record and returned to the assessor. Any town may adopt this by vote of the Town Council or Selectman. Notices to the address on the affidavit will be presumed to be good and sufficient service of notice. The affidavit will also require owners from out of state to appoint an agent in the Commonwealth. Towns may fine owners for failing to comply. Having current names and addresses can help to avoid improper notice and can speed up diligent search.

In the next chapter we will review the role of the Assessing Department in granting abatements under MGL c. 58, s8.

Collector-Treasurer (CT)

The Collector-Treasurer (CT) sends the tax bill on the property. Then, the CT will send a demand for delinquent taxes when the taxes are overdue. It may be as soon as the taxes are overdue but usually within 30 days. The demand notice must precede the notice of tax taking by at least 14 days. The CT must publish a notice of tax taking at least 14 days before the taking and then after the “taking”, record the instrument of taking within 60 days. If the notice is not recorded within 60 days, it is not valid. Surprisingly, there are many cases where the municipality fails to meet the 60 day deadline. This provides a cause to challenge the taking and the process must begin again. By law, there is a six month waiting period after the taking before the municipality can petition Land Court to foreclose (except for certain exceptions like abandoned property which will be discussed below). The CT may work with Town

⁴Charts provided by David Bright of Brown, Rudnick, Freed & Gesmer.

Counsel or the City Solicitor to file the necessary legal paperwork particularly if the case is complicated. Smaller communities may not use counsel unless the case is contested. Larger municipalities utilize their legal departments for most tax collection work. This is an area where gaps often occur in getting information from one office to the other.

It is in the CT offices that time delays are most likely to occur. The resources needed to track and properly notice delinquent taxpayers can be expensive and budgets may be tight. While the law provides that the CT can set an amount for collection of revenue and add it to the tax rate to fund the collection expenses, it almost never occurs. The budget of the CT office is usually firmly grounded in the political budget process and the CT is unlikely to step outside of that process to raise additional resources for the CT office. In addition, once the tax taking occurs and the 16% interest is imposed, many CTs assume that they will collect upon sale. In strong markets this is often true. In weak markets it is unlikely to pay off, and ignoring the problem makes it worse.

A taxpayer may settle his obligation and remove the lien at any time by payment of taxes, interest, fees and costs and the payment must be accepted until the final decree of foreclosure of the right of redemption is granted by Land Court. Once the taking has occurred, the Collector must receive a minimum partial payment to allow redemption. The taxpayer must either pay in full or enter into an agreement to pay in installments of no less than one-fourth of the taxes due and all interest to date. The balance must be paid within a year and only one extension beyond may be granted (MGL c. 60, s62). Other parties with an interest in the property may also redeem, such as a mortgage holder or joint tenant. Once proceedings have commenced in Land Court, it is within Land Court's discretion to set a time

period for payment if requested by the delinquent taxpayer or interested party. Usually that is within 90 days.

The Land Court Process

After the six month waiting period, the municipality may petition the Land Court to foreclose the "right of redemption". The municipality files the petition and pays \$310. The fee is a deposit and is allocated to: \$110 for a state filing fee; \$100 for the title examiner; and \$100 on deposit for notices, citations and service. When the petition is filed and the fee paid, the Land Court will appoint a title examiner. The Land Court will accept recommendations from municipalities for title examiners. The title examiner, who is paid \$100 for a 20 year examination, must examine the title within 30 days of referral from the Land Court. In practice, the usual time is not less than 60 days. There is no penalty for failing to comply with that time frame.

The title examiner reports to the Land Court on the title. The title examiner reports the names and addresses of interested parties to the Court. If the Land Court magistrate finds there are gaps in the title or bad addresses, the Land Court will refer the case back to the municipality for more information to properly serve notice. This is an area where the process can lose momentum. The search to get proper addresses and track down parties of interest, who may be out of state, dead, or heirs with no knowledge of the property, is very time consuming. It is within the control of the municipality to move this step along. It can also be anticipated and the search can happen even while Land Court is examining the title if the CT or legal department suspects that there are gaps in the information. While time consuming, there are standard practices to find lost parties, including internet search engines now devoted to it. Private investigators may also be employed. Paralegals can help enormously. The tasks involved in tracking heirs and interested parties are generally administrative and involve fact finding and follow-up.

When the parties of interest are properly identified, the municipality forwards the information to the Land Court who then issues notice by certified mail, return receipt requested. The parties have 20 days from receipt of notice to file a response. Municipalities must check manual records at the Land Court in Boston to determine if responses have been received and if notice was served. If the notice is unclaimed but the address is accurate, the municipality may request that a sheriff serve notice. Service by a sheriff is deemed proper notice.

If the notice is undeliverable (no such address) the municipality must go back once more to do a “diligent search” for a better address. If after investigating all ways to find the parties, the municipality fails, it can file a “diligent search” letter and ask the court to publish notice. The diligent search letter must document the efforts of the municipality to find the parties of interest. Municipalities may file affidavits attesting to their actions to locate the parties. The court reviews the request for notice by publication and if satisfied that every reasonable effort was made, grants the request and publishes the notice. Once proper notice is served there are essentially two tracks:

- **Disputed Case** | If a response is filed, the municipality will prepare to go to a hearing. When the municipality has “marked up” the case and is ready, Land Court can schedule the hearing within 3 weeks. Depending upon the facts of the case, the petitioner is likely to be granted a period to work out a payment plan with the CT. A finding may be entered that the taxes are owed and if the payment plan is not kept, a move for judgment is entered. If the facts of case involve a dispute about notice or standing, it is a more complicated case.
- **No Response/ Uncontested** | The municipality may petition for a final decree that will foreclose the right of redemption. They must include a military affidavit under the Soldiers and Sailors Relief Act. The Land Court will once again examine the title and file and then issue a final decree. The city will have absolute title to the property at that point.

The Right of Redemption

A taxpayer has the absolute right, at any time up to the issuance of a final decree of foreclosure of such right, to redeem his property by the payment of all taxes, fees, costs and interest. (MGL c. 60, s62) After the issuance of the final decree, however, there is no longer a “right” of redemption. An interested party, however, may petition the Land Court to have the final decree vacated. This may occur up to a year after the final decree is issued. Petitions to vacate to cure a constitutional defect may be heard for an indefinite period of time. For abandoned property the period to request that the decree be vacated is 90 days. The municipality may also move to vacate the decree. It is up to the discretion of the Land Court to grant the motion to vacate. With the municipality’s approval and if the petitioner pays the full redemption amount, the motion is generally granted. If the municipality objects, the Land Court has indicated that it will be

approved only if there have been errors of law or notice. These errors usually involve failure to identify and notice all interested parties. The motion to vacate is unlikely to be granted in practice if the municipality has done everything properly and the taxpayer had notice and an opportunity to redeem the property in the proper time. If a taxpayer appears with the full tender, the court has on occasion granted the motion to vacate over the objections of the town. This demonstrates again that the system is geared to collection of tax debt.

If the property has been sold to an “innocent party”, the court will not vacate the decree unless errors of law have occurred, in which case the municipality bears the responsibility and risk. In certain cases, municipalities will support the motion to vacate the decree if it means collecting the taxes. It should be clear, however, that the law does not require the CT to accept payment after the final decree.

Exceptions for Land of Low Value and Abandoned Property

Two exceptions to the standard process are of interest to those who are looking for ways to move the system more expeditiously.

1) **Land of Low Value** | The procedures for administrative foreclosure for land of low value are in MGL c. 60, s79. Ninety days from the tax taking, the Commissioner of the Massachusetts Department of Revenue (DOR), upon written request of the CT, may determine that certain parcels of land of “low value” (that is less than \$5,000) in which the taxes and costs exceed the value of the land and the titles on the land are valid, may be foreclosed upon by the municipality and the title shall be absolute upon the recording of a treasurer’s deed. This is known as an administrative foreclosure, because no judicial procedure has been undertaken and no court has issued a decree. The amount has risen over the years. Originally it was \$1,000; in 1968 it was increased to \$2,500 and in 1985 it was increased to \$5,000.

Most attorneys and municipalities do not use this procedure because it is perceived to be more open to challenge than a foreclosure through Land Court which has the clout of a judicial decree. Despite changes to the law over the years to address concerns about the validity of the claim under the land of low value exception, it remains mostly unused.

This statute may hold some promise for vacant parcels in distressed urban communities and for the more than 150 towns in Massachusetts with populations under 2000. Many of these rural or ex-urban communities have abandoned agricultural land or otherwise obsolete parcels. This statute may help them to clear their books without the expense or time-consuming process of Land Court. Recommendations to increase the amount under which the land will be deemed low value, in combination with changes to increase confidence in titles so established, should be pursued. Stakeholders such as the Massachusetts Conveyancers and other attorneys and town counsels should be enlisted to come up with appropriate legal techniques and language to make this a useful exception.

2) Land with unoccupied buildings otherwise known as abandoned property | An expedited process that can be followed

when the property is abandoned and unoccupied is provided for in MGL c.60, s65. This process establishes shortened statutory time periods for both petitioning for foreclosure of the right of redemption and for filing a motion to vacate the decree of foreclosure. The standard process requires a six month waiting period between the initial taking and the petition to foreclose.

Using the expedited process for abandoned property there is no waiting period. Once the final decree of foreclosure is issued, the standard process allows a one-year period during which the Land Court will allow a motion to vacate the final decree. For abandoned property, this one-year period is reduced to 90 days. The process is as follows:

Process for Establishing that a Property is Abandoned for the Purpose of Expedited Foreclosure:

The definition of Abandoned Property for this statute is: Property that is unused, unoccupied, and in such a deteriorated condition as to be uninhabitable or a danger to life and limb. Unoccupied means without lawful occupants. MGL c. 60, s1

- The Building Inspector (BI), upon request by the CT, must inspect the building to determine that it is abandoned.
- The BI notifies the record owner of his findings, and provides notice that if the conditions are not corrected within 30 days the town will move to foreclose.
- The notice must be served as required by law for the service of subpoenas. It must also be published or posted in two places.
- If no response is received, the BI will notify the CT that the property is abandoned.
- The CT notifies DOR of the findings and if DOR concurs, an affidavit is filed affirming the facts as presented by the BI and CT.
- The affidavit, when recorded, is prima facia evidence of the facts as presented by the BI and CT.
- At this point the CT may proceed directly to Land Court without a waiting period, to foreclose on the right of redemption of the owner under MGL c. 60, s65. •••

Despite initial enthusiasm for this as a tool for dealing with distressed properties,⁵ it is little known or used. Charles Trombley, Chief Recorder of the Land Court, affirmed in an interview that he had not seen more than 3 cases where it had been used! In interviews with city solicitors, it appears that the chief reason is that the process of certifying abandonment feels daunting and saves only 6 months. They believe that most of the time saved is consumed with the notices and certifications required. Other reasons include ignorance of the process or unwillingness or at least lack of incentive to act “outside of the box”.

⁵ A Boston FinCOM report from 1983 urges Boston to aggressively pursue the strategy.

However, the precedent established provides us with the basis of at least an administrative change recommendation. Coordination among city departments is essential for this procedure to be effective and fast. DOR must also support this to make it happen efficiently. Developing an inventory and targeting of abandoned property can help the municipality anticipate the procedures and prepare the appropriate town bodies to act immediately. Time is critical to saving many of the older properties. The longer a property is vacant, the more expensive it will be to rehabilitate it. A shortening of the process can reduce costs and save more properties. The ability to shorten the period during which the decree can be vacated to 90 days from a year should also be an incentive to community planners and developers anxious to move the property quickly back onto the tax roll.

Where the System Fails

The system of collection by foreclosure of tax title is complicated but it is understandable and somewhat predictable. Unfortunately, it is a system with potential for cases to fall “between the cracks”. The system’s complexity also provides enough cover for the inevitable blame game and finger pointing that occurs when questions are asked about progress. Here we will identify some of the principal reasons that the system breaks down. Some of these are mechanical and result from a lack of coordination or vision. Most times they intersect. For example, inability to produce accurate addresses for interested parties holds up many cases. This is essentially mechanical. However, a community that is determined to get a handle on tax title properties would understand that this is solvable with additional paralegal or investigative resources and make it a priority to provide resources.

Common Problems

The system is complicated and involves many actions and agencies. The complexity and length of the process can overwhelm municipalities. We have identified several areas where lack of attention or appropriate policy exacerbates the trouble and time of the tax taking process. Failure to focus on tax delinquency as a signal of distress and to intervene early is often the first step down the slippery slope of disinvestment.

- Properties fall behind in taxes and no action is taken to collect the taxes until they are beyond the ability of the owner to redeem them or the community to salvage them. Frequently properties that are delinquent in taxes are in arrears in water and sewer charges.

- Assessing Departments may have overvalued properties or not accurately updated their records as required to reduce assessments on fire damaged or abandoned property. This allows unrealistic taxes to build up beyond the value of the property and makes it more likely that the property will be abandoned.
- Municipal agencies do not share information. Planning departments may have trouble getting information on tax delinquencies or Collector/Treasurers may be unaware that a property that is languishing is needed for a redevelopment project.
- Notice requirements are difficult to meet because the records of addresses are not up to date.
- Municipal departments do not have resources to pursue remedies efficiently.
- Lack of prioritizing leaves the system paralyzed. Absent clear direction, some towns pursue liens or foreclosure by amount owed (without a sense of the likelihood of payment) or even alphabetically. This clogs the system and can feel overwhelming.
- Fiefdoms arise and more time is spent blaming other departments than pursuing the objective. This more frequently happens when there is a lack of political leadership and thus a lack of defined objectives.
- Without a use designated for the property, many towns are reluctant to pursue the taking. There is little municipal interest in being a landlord and less for incurring liability. In Holyoke, it is widely thought that one private landlord keeps his deteriorated properties occupied as “insurance” against a municipal foreclosure.
- Similarly, municipalities are reluctant to foreclose upon environmentally questionable properties because of liability fears. Recent (1998) Brownfields legislation (MGL c. 206) has reduced some of that concern, but more education of towns is needed before they feel comfortable pursuing such properties.

- If tax liens are not perfected within a statutory period 3 years+6 months from the end of the fiscal year in which the taxes were assessed the lien may be extinguished by a sale, thus leaving the town without recourse to collect the taxes due.
- If bankruptcy is declared prior to the appropriate town action to perfect the lien and close on rights of redemption, the town will not be able to file once bankruptcy is declared. Even if the lien has been perfected, no foreclosure may occur unless and until the bankruptcy court releases the automatic stay.
- Once a property gets to Land Court, it can experience delays in a number of predictable ways. The time delay may occur while an action is pending in Land Court, but frequently it is the responsibility of the municipality to solve the problem and expedite the case.
- Diligent search. Tracking down heirs (heirs of heirs!) and deadbeats is hard work. Many cases lose time because of notice and diligent search requirements and lack of resources to tackle diligent search in a thorough and timely manner.
- Failure of the municipality to record a tax taking within 60 days. This failure will send the case back to the beginning.
- Failure to record in the correct registry where the property is located or in Land Court if it is a registered deed requires beginning the process of taking (including notice and waiting periods) again.
- Time may be lost in having the title examined. The pay is low for examiners who have to be experienced and certified by the Land Court. Cases of this type may be a low priority for the title examiners. While they are “required” to produce a report within 30 days of a referral, they rarely do unless prodded. There is no legal penalty. Municipalities may pay more than \$100 for better service. Municipalities also have power in

their ability to recommend to Land Court which title examiners they prefer.

- Manual checking for return of service (checking files to see if the certified mail was delivered and thus notice properly served) is time consuming for counsel. For Western Mass towns, it is a major time commitment to come into Boston to check files each week.
- Cases will not proceed in Land Court unless the municipality takes action. Some status reports from towns say “the tax lien is pending due to insufficient service of process we are commencing a search no further action may be taken until Land Court completes the due diligence process”. This would make you think the Land Court is holding it up, when it is the town’s responsibility to provide the information to Land Court. Once provided, the process resumes promptly.
- Bankruptcy of the owner will stop further action unless the town petitions to have the property removed from the bankruptcy process.
- Delays in issuance of the final decree from Land Court occur because of relatively minor (and solvable) bookkeeping. The \$310 that the town deposits upon filing a petition of foreclosure has to be accounted for and the town must be refunded the overpayment or billed for the balance. This system is slow and archaic and can cause delay at the end of process. The Land Court acknowledges this source of delay and is making plans to hire an additional bookkeeper to solve the problem.

Finally, properties may be redeemed before the final decree is issued. This is excellent news for the Collector Treasurer whose job it is to collect taxes. It is less thrilling for community groups who had hoped to incorporate that property into their revitalization plans. Charles Trombley of the Land Court estimates that more than half of the properties are redeemed. The strong market supports such redemptions although it varies by region and that there are sub markets where it is unlikely that properties will be redeemed.

While stories of backlog and interminable delays at Land Court abound, many are apocryphal and some are self-serving. Frequently, the Land Court is an easy target on which to blame delays that are more often in control of the municipality. In addition, the move from the antiquated old courthouse to new, more efficient space at the New Chardon Street court appears to have helped speed up the process. ●●●



Nelson Manor at 3 Aspinwall St. in Codman Square is an historic building that was built as a family residence in 1895. Early in the 20th century, the building was converted to a hospital and finally a nursing home.

Case Study: Nelson Manor Codman Square

Nelson Manor in Codman Square is a complicated property that illustrates the perils of the system. Delay, bankruptcy, and insufficiency of process complicated the foreclosure process. Over the 11 years during which it has been in tax title foreclosure, the market has significantly rebounded, creating a possibility that after years of effort by the community when the property had virtually no value, the property may now be redeemed by a speculator before the foreclosure decree is final. Redemptions of tax title property are rapidly increasing. The Land Court estimates that more than half of the properties are now redeemed. This would be good news if the redemption meant increased investment in the property. In many cases of distressed urban properties, the same parties who let the building fall into disrepair reclaim them, or sell notes to speculators who redeem them, do minimal work and continue to milk the properties.

Nelson Manor at 3 Aspinwall St. in Codman Square, is an historic building that was built as a family residence in 1895. Early in the 20th Century, the building was converted to a hospital and finally a nursing home. Christina Keefe of the Codman Square Main Streets program has said that Nelson Manor is “a beautiful building, architecturally very much in keeping with Codman Square’s proud architectural tradition as reflected in the Second Church, the Great Hall and the Lithgow Building.” Nelson Manor was run as a family-owned nursing home until the 1980’s when the owners abandoned the building. Numerous liens including tax liens accumulated on the property. The City of Boston condemned the building in 1996 after years of being vacant.

Taxes had not been paid on Nelson Manor since the mid 1970’s. A tax lien was recorded in October 1988. The petition was filed in Land Court in December of 1990. Unbeknownst to the City Law

Department (because of notice not being forwarded from the noticed department) in the intervening time, Nelson Manor filed for bankruptcy in 1989. When the city petition was filed, it was automatically stayed because of the pending bankruptcy under Chapter 11. The bankruptcy attorney abandoned the parcel from the assets of the case in 1996 allowing the city to proceed with the foreclosure. At that time, the City of Boston proceeded to foreclosure but was delayed by “insufficiency of process”. This means that the notice requirements to interested parties were not satisfied. Sufficient notice is one of the more time consuming and complicated areas of the tax title process and is the area which causes the most delay and frustration.

In this case, the city attorney had to track down numerous lien holders and heirs. The city went so far as to find a notary public who had notarized a trust agreement and questioned him about the

whereabouts of the interested parties. When that diligent search failed to obtain the necessary information for good service of notice, the city petitioned the Land Court to issue notice by means of publication. It was granted and notice by publication was undertaken. A notice by publication in newspapers is deemed sufficient service of notice. That request was made in October of 1998. Land Court has agreed to publish the notice of foreclosure and the City is prepared to move ahead.

The Codman Square community, through the Main Streets program and the Codman Square Housing Development Corporation, has identified Nelson Manor and its neighbor, 1 Aspinwall Street, as neighborhood eyesores and a blighting influence on the revitalized Codman Square area. The community has prioritized these properties to the Department of Neighborhood Development for action through tax title foreclosure. The Codman Square NDC notified DND in August of 1998 of their interest in moving these properties as soon as possible.

Lack of action years ago, before the bankruptcy, put the city in the back seat once bankruptcy intervened. Once the bankruptcy trustee abandoned the property two years ago, failure to find the parties of interest further delayed the process.

The neighbors are anxious because they have seen potential buyers examining the property. They believe that a speculator is trying to buy the note and redeem the property. They fear that the cycle of speculation, disinvestment and abandonment can begin again. They are right to worry. The property next door at 1 Aspinwall St. was in tax title for over 10 years. A final decree of foreclosure was finally issued in November 1998. Two months later, an "interested" party showed up to redeem the note. The city, within their rights, refused payment but the Land Court overturned their decision.

While there is no "right" to redeem, the Land Court reviews the circumstances and renders a decision based on the facts in each case. We have been told by Land Court and by practicing attorneys that in most cases, if the party had sufficient notice, the Land Court will decline to vacate the decree. However, in this case, the Land Court scolded the city for taking so long (10 years) to move the property through the system and reminded them of the purpose of the statute-collection. The petition to vacate the decree was granted.

Had the city disposed of the property within the two months between the granting of the final decree and before the redemption, to an innocent party, the redeeming note holder would have been out of luck. Three days after the property was redeemed, a homeless man died in the derelict building. The building sits abandoned.

What will happen now to Nelson Manor? The city will likely push for a final decree. So far, no one has offered to redeem. But the market gets hotter every day, creating incentives for note buying schemes and redemption. Delay for these properties has meant that the likelihood of a community-driven outcome becomes more remote. The community is exploring alternative strategies such as buying the note themselves, or petitioning to have the property placed into receivership.

While there may be nothing to prevent the redemption now that the market is strong, faster action when the value of the lien exceeded the value of the property might have made a difference. As we brace for the next downturn, the saga of Nelson Manor should teach us the value of prompt and diligent action when properties become tax delinquent. ...

⁶Since the case study was completed, we have learned the neighbors have succeeded in having 1 Aspinwall Street placed into receivership.

SUMMARY OF THE MASSACHUSETTS TAX TITLE CREATION AND FORECLOSURE PROCESS

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This chart outlines the legal procedures and statutory timelines of the Massachusetts Tax Title Creation & Foreclosure process. It was prepared by David Bright of Brown, Rudnick, Freed & Gesmer. The author provided the time ranges that municipalities and developers occur in reality.

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|--------------------|------------------|-----------|--|----------------------|--|
| 1. Tax Delinquency | Demand for Taxes | Collector | Makes demand for delinquent taxes (assuming a proper tax assessment has been made). <i>MGL c. 60, §16</i> | Not provided | Varies, usually prompt if computerized |
| | Waiting Period | Collector | Waits fourteen (14) days before sending a Notice of Tax Taking (<i>c. 60, §17</i>) | 14 days | 14 days – years |
| Total Time | | | | 14 days+ | |

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|-------------------------------------|-------------|-----------|--|----------------------|--|
| 2. Tax Taking/Creation of Tax Title | Taking | Collector | Sends Notice of Tax Taking to record owner of land <i>(c. 60 §53)</i> | Not provided | 14 days – Up to 1 year (notices sent annually) |
| | Publication | Collector | Publishes Notice of Tax Taking by posting it for fourteen days in two or more convenient public places in the town in which the land is located. <i>(c. 60 §53)</i> | 14 days | 14 days to months/years |

more →

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|---|--|---|--|---|-------------------------------------|
| 2. Tax Taking/ Creation of Tax Title, <i>continued</i> | Waiting Period | Collector | Must wait six months from the date of a tax taking before filing a petition in the land court to bring petition to foreclose owner's right to redeem land. <i>(c. 60 §65)</i> <i>Note: In the case of "abandoned property," there is no waiting period</i> | Six months or at any time after taking for "abandoned property" | Six months to three years |
| | <i>Note: Right of Redemption</i> | Interested Parties (i.e., owners, mortgagees, lienors, attaching creditors or easement holders) | May exercise their right of redemption at any time during this period by paying to the town treasurer the amount of the tax title account, plus interest and costs, together with all subsequent taxes and charges | n/a | n/a |
| Total Time | | | | 6.5 months + or 14 days + | Varies by city or town + |

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|--|--------------|---|---|------------------------------|---|
| 3. Foreclosure of Right of Redemption in Land Court | Foreclosure | Collector or Town Counsel/ City Solicitor | Files a petition in Land Court to foreclose all rights of redemption of land. <i>(c. 60 §65)</i> | No time required per statute | Upon receipt from court: one to three years |
| | Title Search | Land Court Title Examiner | Conducts a title search, attempting to identify all Interested Parties. <i>(c. 60 §66)</i> | 30 days from referral | 60 – 90 days plus |
| | Notice | Land Court | Serves notice on each of the Interested Parties by registered mail or by publication fixing the time within which Interested Parties must appear and file an answer. <i>(c. 60 §66)</i> | No time requirement provided | Promptly when information is complete |

more →

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|---|------------------------|--------------------|--|---|---------------------------------------|
| 3. Foreclosure of Right of Redemption in Land Court, <i>continued</i> | Response Period | Interested Parties | Have at least twenty days after the time of the issuance of notice in which to enter an appearance and file an answer. (c. 60 §67) | 20 days | Promptly when information is complete |
| | Default | Interested Parties | Fail to respond to notice. (c. 60 §67) | n/a | n/a |
| | Trial: Contested Cases | Interested Parties | Object to a foreclosure by filing an answer and specifications as to the validity of the tax title and court hears case. (c. 60 §70) | No time provided by statute | Land Court schedules in three weeks |
| | Foreclosure Decree | Land Court | Issues foreclosure decree that bars all rights of redemption. (c. 60 §69) | No time provided by statute | Two weeks from hearing to six months |
| Total Time | | | | 15 months, or 12 months for abandoned property | Best Case: 15 months. |

| | Procedure | Who | What | How Long Per Statute | Ranges in Reality |
|--|------------------------|--------------------|---|---|--|
| 4. One Year Period of Redemption by Interested Parties | Vacation of the decree | Interested Parties | May institute a proceeding to have the foreclosure decree vacated within one year from the date of the final entry of decree. (c. 60 §69A) Note: In the case of “abandoned property,” the time limit is ninety days (Id.) | One year or ninety days | Only must be vacated for failure of process: not a right |
| Total Time | | | | One year or ninety days for abandoned property | |

| | Possible in 15 Months | Ranges in Reality |
|---|----------------------------------|-------------------|
| Total Time for Tax Title Creation and Foreclosure Process | 12 months for abandoned property | Two to four years |



ALTERNATIVE STRATEGIES

Moving Tax Delinquent Properties into Productive Use

Understanding the different perspectives that have led to impasses can inform our strategies in recommending improvements to the process.

This chapter will examine alternative mechanisms to use when the time or uncertainty of the municipal tax title foreclosure process presents a barrier to the re-development of a particular property or its prompt acquisition as part of a neighborhood revitalization plan. Developers examining a tax delinquent property's reuse potential need to gather information about the property to make an informed judgment about strategies for its acquisition. This information should include a complete picture of the tax and lien status. Chapter Six includes a primer on how to choose an appropriate strategy based on the particular ownership and lien characteristics of properties.

Acquiring Tax Delinquent Property from an Owner

When property proceeds through tax title foreclosure and is taken into tax possession by the municipality, all taxes and other liens are eliminated. When community developers acquire property from a municipality after tax title foreclosure, no taxes are due and no taxes need to be abated, even if the property is sold for less than the outstanding back taxes. The municipality must recognize the loss on their books, but need not apply to DOR for any relief.

Community developers may also acquire tax delinquent property by purchasing it directly from a delinquent owner. In these cases, taxes and outstanding interest, fees and costs become the obligation of the new purchaser. Frequently, these outstanding charges can exceed the value of the property. The full payment plus the cost of the necessary rehabilitation can make the project prohibitively expensive and economically infeasible. When developers purchase these properties they have two choices:

Developers can apply to the municipality or a public funding agency, such as the Department of Housing and Community Development (DHCD), for a subsidy to fill the gap created by the outstanding taxes. While not necessarily happy to pay the back taxes, communities in their eagerness to advance the project and get units on line, have allowed HOME, CDBG or other subsidy sources to fill the gap. However, the scarcity of housing resources has led DHCD and communities to question whether continuing this practice is the best use of the funds.

The developer, through the Assessor's office of the municipality, can apply for an abatement of back taxes. This abatement through MGL c.58, s8 is available for all property. An expedited process for abandoned property is also available but rarely used.

The Tax Abatement Process

Routine abatements may be granted by the assessor in response to requests by taxpayers within three months of the tax assessment under MGL c.59, s59 or 30 days from the first tax bill. MGL c.58, s8 applies to those extraordinary circumstances where the standard abatement request procedure was not, or could not be, followed. It is an administrative procedure whereby "substantial inequities, which could not otherwise be remedied under the usual abatement process, may be rectified" (from DOR guideline). Three standards apply 1) there must be a unusual circumstance which prevented the normal procedure from being used; 2) granting an abatement would correct an inequity, cure a hardship or provide a considerable public benefit; and 3) the amount to be abated must be appreciable.

Assessors must apply to the Commissioner of DOR to abate these back taxes. MGL c.58, s8 is commonly referred to as "8 of 58". Many in community development are familiar with this term, yet mystery and confusion surround its use and practical application. Section 8 of Chapter 58 governs all extraordinary abatement requests by a municipality. Most housing developers, however, when they refer to 8 of 58 mean the "expedited process" established in 1984 to deal specifically with abandoned property of less than 6 units. Most abatements proceed under the routine process because either municipalities do not know about the expedited process or choose not to use it since no guidelines specifically for the expedited process have not been issued.

The Abatement Process: Abating Back Taxes

Section 8 of Ch. 58 of the General Laws of Massachusetts

- Only the Assessor may apply for an abatement.
- The Assessor must file a request with the Commissioner of DOR. The application for abatement should contain, in addition to the address of the property and the amount owed:
 - 1). the full redevelopment plans of the purchaser;
 - 2). the full financial information about the project to demonstrate the infeasibility of rehabbing it AND paying back taxes;
 - 3). loans and commitment letters for funding to complete the rehabilitation and
 - 4). complete information about the purchaser including financial statements. In addition, the Assessor and petitioner should add "all relevant information on the subject property and applicant which in any way lends support to the application" (DOR's emphasis).
- DOR reserves the right to request additional information.
- No time limit is imposed on the processing the request. •••

This chapter will outline when MGL c. 58, s8 may be used and in what circumstances it is most appropriate. We will identify the common problems that developers have encountered when they have attempted to use it and situations where municipalities have been successful in applying for abatements under this procedure.

The Expedited Processing for Abandoned Properties

Chapter 465 of the Acts of 1984 added an "expedited process for abandoned property" to the 8 of 58 statute. This legislation was the subject of intense advocacy as part of a strategy to deal with the large inventory of abandoned property in the City of Boston.

Who is Eligible for the Expedited Processing?

- Properties must be abandoned properties. The definition, as above, is from MGL c. 60, s1: “Abandoned property is property that is unused, unoccupied and in such a deteriorated condition as to be uninhabitable or a danger to life or limb. As used in the above sentence unoccupied shall mean without lawful occupants.”
- The property must contain six or less units.
- The property must be rehabilitated into six or fewer units.
- Vacant parcels are not eligible.
- Only 15 units a year by the same developer, irrespective of the number of parcels that comprise them, may be considered. Non-profits and CDC’s are exempt from this limitation.

Tax Abatements for Affordable Housing Development

Abatements under 8 of 58 can be given for a number of circumstances but the one that is directly applicable to community developers is: “Situations justifying abatement approval: a new owner of deteriorated property of relatively low value seeks a partial abatement of a delinquent tax in return for obligating himself to an immediate productive use for the municipality; there must be a *clear* showing that the abatement is absolutely essential to the economic feasibility of the project.”⁷ The DOR guideline emphasizes that the abatement process is for unpaid taxes. If taxes have been paid it is impossible to apply for abatement.

Economic Feasibility vs. Affordability

The wording in the DOR guideline is important. The requirement that the abatement “is essential for economic feasibility” has been at the heart of much of the confusion about the willingness of DOR to grant relief. DOR sees their role as insuring that the abatement is necessary to get the project rehabbed

which is a worthy goal. But frequently, requests for abatement have focused more on the importance of the abatement to achieve economic feasibility and affordability. It may sound like semantics, but it has caused the denial of some of the abatements that communities have brought to DOR. If the market for the project can support higher rents than the budget is carrying, DOR will push the developer to close the gap by increasing the rents. If affordability is the objective, the developer can not always raise rents. Therein lies some of disconnect between what DOR perceives as their role and what communities are asking them to do. DOR will also closely examine developer fees and the budget to determine if additional funds can be squeezed out of them. Understanding the different perspectives that have led to impasses can inform our strategies in recommending improvements to the process.

Unwarranted Benefit

Another area of interpretation, which has caused misunderstanding, is the requirement that DOR imposes to prevent “unwarranted benefit”. The guidelines state that DOR will not grant an abatement when the purchase price for the property reflects the existence of the outstanding tax obligation because the granting of the abatement would result in an “unwarranted” benefit to the purchaser. Of course, community developers pass that “benefit” on to the low income end users in increased affordability, but DOR looks only at the narrow issue of the effect of the tax abatement on the purchase price. Again, this is an area for clarification and education if we want the statute to work for affordable housing.

Many may remember RETAP (Rehabilitation of Tax Abated Properties) in the City of Boston. RETAP was Boston’s attempt in the early 1980’s to deal with the growing problem of abandoned property. It used an expedited city process to speed abatement requests. It was designed to help prospective homeowners and non-profits rehab the numerous properties that were abandoned throughout the city. RETAP had some success but was ultimately abandoned as too cumbersome. One cause of the complications was the concern of both the City Assessing Department and the DOR about “unwarranted benefit”, sometimes referred to as “unjust enrichment”. The amount of time it took to prove that no one was getting anything from the project scared off conventional homebuyers and turned off CDC’s. We must address this issue head on this time through education and outreach so that we have common understanding of our goals.

⁷ Application for Authority from the Commissioner of Revenue to Abate Local Taxes and Charges. Informational Guideline Release no. 92-206.

Role of the Department of Revenue

Permission to grant abatements under 8 of 58 is reserved for the Commissioner of DOR. Massachusetts has a long history of state oversight and involvement in the fiscal affairs of communities. Many attribute the relatively good fiscal health of Massachusetts's communities to the discipline the state oversight provides. Nevertheless, municipal officials have raised questions about the involvement of DOR in the details of the tax abatement process and particularly around abatements for affordable housing projects. DOR finds that they are rarely presented with applications for abatements for affordable housing development and when they are, they act promptly and favorably if the circumstances warrant.

While many Assessors purport to be unhappy with DOR's detailed involvement in this process, few have directly challenged DOR on the role it typically plays. We can posit two reasons:

- 1) DOR, as the agency which certifies the municipalities tax rate, has great power over towns and cities. No one wants to be looked at as a troublemaker by complaining about the oversight agency; and
- 2) some Assessors have said that the political cover available in ceding the decisions to DOR protects them from the interference or the backlash that would occur if decisions on abatements were discretionary.

In many cases, for municipalities it is easier to blame DOR than deal with the underlying issues. It is another example where blame and fingerpointing may prevent effective functioning of the system.

The legislation that established the expedited process for abandoned property also allows the Commissioner of DOR to delegate abatement authority to assessors upon the written request of the Assessor and the Chief Executive Officer, with post audit oversight by DOR. It is significant that the delegated authority has neither been used nor applied for in recent history.

A new local option provision, MGL c.59, s59A included in the recent Brownfields legislation, may provide a precedent and guide to using delegated authority for abatement of taxes for affordable housing projects. The legislation provides mechanisms to help with the clean up and redevelopment of abandoned contaminated properties. Protections for "innocent" new owners were created as well as financial incentives to promote clean-up activities. One such incentive, allowed

under local option, is the ability of cities and towns to make agreements regarding abatement of outstanding taxes needed to make the clean-up economically feasible. Abatements granted under this statute do not require DOR review or approval. Revisions to MGL c.58, s8, could clarify that affordable housing may be explicitly construed as a similar "public benefit". Advocates could make arguments of economic feasibility that are parallel to those made for the delegated authority allowed through the Brownfields legislation.

In Practice: An Examination

Talking to various interested parties about the 8 of 58 process is a Rashomon-like experience. The perspectives vary widely. Many municipalities state flat out that they do not use the process for community development projects because it is too complicated and the outcome is too uncertain. Sometimes that perception seems to be inherited wisdom, and frequently the communities have not tried the process in many years. Other communities, like Haverhill, have had success with 8 of 58 and find it a useful tool to clear back taxes and get the properties back on the roll. Still others, recognize the limitations of the process and the work involved, but soldier on because of the importance of the outcome to the community development agenda.

As we know from our discussion of the municipal budget process, there are genuine financial implications for the municipality in writing off taxes. The amount abated must be covered from the municipality's overlay account. The municipality will only have to take the actual amount of the back taxes owed from the overlay account. Interest and penalties are not counted against the overlay. That is why, in many cases, municipalities have an easier time agreeing to waive the interest and penalties than the delinquent taxes.

Harry Grossman, Deputy Commissioner of DOR and the official most closely identified with the 8 of 58 process, has explained that the abating of taxes should be thought of by the municipality as the equivalent of writing a check to that purchaser. He stated that “if the assessor would not be willing to go to town meeting and ask for the funding for that project, they should not be willing to consider an abatement”. Communities should examine their budget and other priorities when determining whether to apply to DOR for abatement. This is why it is so attractive to many communities to use their HOME funds or CDBG funds. The use of such subsidy pays the taxes in full and in effect, as one CD official put it, “transfers funds that were in a restricted account (eg. HOME) into the unrestricted budget of the community.” It is almost irresistible when subsidy resources are not perceived as scarce. However, resources are increasingly scarce and it is time to examine how to make 8 of 58 a better tool for communities and developers.

Two recent success stories are instructive. The Community Development Department of the City of Haverhill took on a distressed neighborhood for a planned revitalization effort after the speculative real estate market of the mid-1980s had left many properties abandoned and tax delinquent. One property which private buyers had acquired for \$200,000 in the 1987 was sold to the City for \$2,500 in 1995. The CD department tracked down owners and mortgage holders and through persistence and diligence was able to acquire a number of the properties. Paula Newcomb of the CD department, personally combed records and hunted down defunct banks successors to acquire deeds. The taxes owed amounted to over \$150,000. The CD department had identified uses for the properties but none were economically feasible when the back taxes were added in. Haverhill perceived their HOME and CDBG resources as scarce. So, working with the Assessor and ultimate developer, Emmaus, Inc, a

non-profit service provider, the CD department and the Assessor’s office developed a substantial package of information and applied to DOR for abatement.

The abatement was granted promptly. Key to DOR’s prompt action was the excellent application by Haverhill but also the abysmal market conditions and the lean non-profit development activity that was to be undertaken. No theory of unjust enrichment or ability to raise rents was possible. As one assessor said, “The more a deal looks like a loser by any conventional standard, the more likely DOR is to grant the abatement”.

A more recent case involved Urban Edge and the City of Boston. According to Jeff Austin of the Boston Assessor’s office, Boston does not use the process frequently but in this situation felt that they had a good case. After compiling an exhaustive application, and responding to many requests for additional information, the request for a partial abatement was granted. The Boston case is instructive in understanding how DOR views non-profit development deals. The underwriting and responsible management requirements that are built into affordable projects strike DOR as too rich. An opportunity may exist to educate and clarify the requirements of the affordable housing lending community to DOR. In turn, developers can hear and be sensitive to DOR concerns about improper windfalls.

Strategies for Dealing with Municipal Budget Implications in Granting Abatements

When municipalities abate taxes, they must take the abatement from their overlay account. This has been said to be the equivalent of “writing a check” to cover the abatement. It is part of the requirement that municipal budgets be balanced and since the municipality has budgeted based on the uncollected tax revenues, they must make up the shortfall.

Because of the budget implications many municipalities have resisted abatements.⁸ Assessments stay on the town’s books as a receivable even though they know it is essentially uncollectable. However, the pain of acknowledging the write-off has been difficult to accept, and many communities with large tax arrearages have tried to postpone what is probably inevitable. Our committee has analyzed various ways to mitigate the budget pain. One suggestion, made by DOR, to grant municipalities the ability to take the “hit” over several years, may not

meet the sound fiscal practice test imposed by the bond market. The reasoning is that if the obligation is known, as the tax write off is, then it is better to take it and not play accounting games. Nothing is scarier to bond underwriters than municipalities who are kidding themselves.

A more fruitful avenue may be acknowledging the problem, accepting the consequences and moving quickly to get the property back on the tax rolls. While tax increment financing is complicated and not now available for residential use, it is worthwhile to explore creative financing solutions based on a projected increase in tax revenues collected on revitalized properties.

Alternative Approaches

After looking carefully at the characteristics of the property, community developers may determine that a judicial foreclosure is the best way to get a clean title and eliminate junior liens. However, if the municipality is overwhelmed with a backlog of cases, it may be years before the property is clear. In that case, the group may decide to purchase the property from the owner, and apply to the Assessor for an abatement. But if approaches to the owner are rebuffed or if the owner can't be located, more creative action is needed. Some groups, with the support and encouragement of certain municipalities and LISC, are examining alternative approaches.

Buying Tax Liens from Municipalities

One such alternative is to buy the tax lien from the tax collector at an auction and then step into the shoes of the municipality and carry out the foreclosure. The advantage of this method is that the non-profit

⁸ Christopher Hinchey of the Department of Revenue clarifies: "Budget implications are neutral if community has positive free cash, because the overlay charge is exactly offset by increase in free cash, which could be used to fund overlay deficit. If free cash is negative and an abatement creates an overlay deficit, the increase in free cash may still leave it negative, so there will be no available funds to cover the overlay deficit; spending will have to be cut to keep the budget balanced. Overlay deficits are avoided even where there are no budget implications because they may be a "black mark" against the assessors, and there may be timing problems with the availability of free cash – it doesn't get certified until the fall which makes it too late for towns to appropriate it in many cases."

Sale of Individual Tax Lien

- The Treasurer may set a public auction for the sale of a tax lien which the municipality holds.
- The auction must be publicly advertised 14 days in advance of the sale. The notice must contain an accurate description of the property and the names of all known owners and be published or posted in two places.
- The highest bidder will prevail if the amount paid is not less than the total of taxes, costs, fees and interest due.
- Notice of the assignment must be sent to the last known owner at least 10 days prior to the assignment.
- The assignment must be recorded within 60 days.
- The purchaser of the lien will step into the municipality's shoes and must foreclose the lien through Land Court.
- Once a final decree of foreclosure is issued, all other liens are wiped out.
- The former owner will have the right to redeem the property until the final decree is issued. •••

developer will control the complicated elements of the process with a single-minded determination and goal-focus that may be lacking in the municipality. Since many of the time delays are due to lack of follow up, it is likely that by devoting attention and resources to the process, by hiring a paralegal for example, the developer can make the system work at maximum efficiency.

Our research indicates that the sale of tax liens is legally permissible under MGL c. 60, s52. Haverhill has done it for years, and Chelsea is exploring it now. Haverhill has found it a good way to collect a receivable and help the cash flow. The Treasurer, Mary Roy, says that it is a lot of work but usually the town is accommodating when developers or abutters want to acquire.

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The downside of buying the lien is that: 1) the purchaser pays the full taxes and interest; 2) the purchaser must foreclose with all the due process protections. The cost of foreclosing may be assessed to the former owner if they redeem their title. The major advantage is the ability to wipe out junior liens by the foreclosure of the superior tax title lien.

Bulk Sale of Liens

The sale of individual liens is different than the bulk sale of tax receivables and liens (Chapter 375 of the Acts of 1996). The bulk lien sale process allows for a small discount on the interest but has other requirements and conditions that have made it difficult to use in Massachusetts. Bulk purchases of liens are generally made by consumer credit and collection agencies in other states with less stringent requirements. Massachusetts requires that any bulk sale must include all properties of the same class: residential, open space, commercial, industrial or personal property, in one transaction. That requirement makes it impractical for a developer seeking one or a few targeted properties.

Accepting a Deed-in-Lieu of Foreclosure

Municipalities may accept a deed-in-lieu of foreclosure from an owner. The advantage to the municipality is that the time and expense of foreclosing are avoided. The property is booked as a tax possession. DOR requires that an abatement request be filed if the property value is less than the outstanding taxes. This requirement is unclear to many communities who simply book the property in their tax possession account. Legislation may be necessary to clarify a procedure through which towns can avoid DOR approval.

As a way to avoid the delay and uncertainty of tax title foreclosure, accepting deeds-in-lieu is a worthwhile tool to explore. However, it may have limited

value for some of the more distressed properties, which have numerous liens. In that case, pursuing foreclosure may be the most effective strategy since the foreclosure of the superior tax title will wipe out all junior liens. It can work with certain properties, with clean titles, and cooperative owners. Lawrence has a large program of accepting deeds-in-lieu for low value lots with clean titles. They have acquired more than 75 lots for use as parking, gardens and open space.

The program arose mostly out of demand for it by taxpayers who had worthless or obsolete (not buildable) lots, which they wanted to wash their hands of. Lawrence filed a home rule petition that was passed by the legislature to clarify that if they accepted a deed-in-lieu they could treat it as if they had foreclosed and take the property into their tax possession account (Chapter 161 of 1996).

Receiverships and the Creation of a “Superlien”

Receiverships are more of a code enforcement tool than an acquisition tool. However, more and more properties with tenants at risk are being examined by community developers to see if they are appropriate for receivership. If the property is neglected by an owner and has code violations it may be eligible to be placed into receivership. Usually receivership is reserved for properties that are occupied and is used to protect those tenants.

Some municipalities (New Bedford) and groups (LISC) are exploring expanding this to vacant, neglected property. The Attorney General’s Office is working on an Abandoned Building Receivership Program. Legislation is pending to make this explicitly eligible as well as to clarify powers of the receiver to enforce the “superlien”. The superlien is the lien that secures work that the receiver undertakes to make the building habitable. It supercedes all other liens except municipal liens. The creation of the “superlien” was intended to give receivers a tool to borrow funds to spend on repairs.

The most recent bond bill, Chapter 257 of the Acts of 1998, allows the Housing Stabilization Fund (HSF) to be used for receiverships. This would be an excellent source for funding a demonstration program to test the power of receiverships to place and to enforce liens and to be a tool for neighborhood revitalization. •••



Disposition of Tax Title Property

Communities should have a strategy to dispose of tax title property once the municipality owns the property for three primary reasons. First, a plan for the end use helps to prioritize properties for action and creates interest in moving properties through the complex tax taking process. Second, a clear disposition plan executed promptly eliminates worry that a municipality will be “stuck” with problem property and, third, disposing of the property to an “innocent” buyer prevents frivolous motions to vacate the decree of foreclosure. Property acquired in tax title foreclosure can be disposed of under Chapter 60 by auction or under Chapter 30B when the tax title custodian transfer the property to another municipal agency. We have described below the options for disposition of property by a municipality. The chart summarizes these options.

| | Auction | Negotiated Sale | RFP |
|---------------|--|--|--|
| Who | Tax Title Custodian | Municipal Agency (CD, Planning) | Municipal Agency; Community Development Agency |
| Circumstances | When the property is acquired in tax foreclosure under MGL c.60 | When the value of the property is <i>below</i> \$25,000 and the municipality is disposing of it through another agency under Chapter 30B | When the value of the property is <i>above</i> \$25,000 and the municipality is disposing of the property under Chapter 30B |
| How | The tax title custodian auctions the property to the highest bidder. | The municipality negotiates with a purchaser for the sale of the property. The sale may include requirements that the property be developed within a time frame and for what uses, such as affordable housing. | The RFP must describe the property, the reuse, and the evaluation criteria and submission requirements. It must be advertised and published in the Central Register. |

Disposition Process

The town may appoint a Tax Title Custodian who is responsible for property in tax possession. (MGL c.60, s77B). Frequently this is the Treasurer. Chapter 30B of the General Laws, which governs procurement and disposition of property, does not apply to land acquired by eminent domain or by tax taking. Property in tax possession is usually sold at auction under provisions of Chapter 60. Many municipalities have recently been reluctant to use the auction process for fear that it gives them less control over the outcomes. In those cases, the municipality may designate another community agency, frequently the Planning or Community Development Department, to dispose of the property through a negotiated sale or a Request for Proposal (RFP). These options have allowed more targeted disposition in coordination with community development efforts. Chapter 30B governs sale of property other than by auction. The Inspector General's Office (IG) oversees the administration of Chapter 30B.

Policy Issues in Disposition

While one of the Treasurer's objectives is to maximize the dollar amount raised in sales of property in tax possession, a community stabilization perspective dictates a less narrow view of the definition of "return" to the community. The disposition process is critically important to the stabilization of the community that is digging out from tax delinquencies.

- The process and timing of taking tax title property and the political will to accomplish this strongly depend on a consensus about the ultimate use of the property. This is particularly true for property that has shaky market value. Frequently, municipal officials are wary of being landlords of occupied, hazardous or other unmarketable property unless there is a disposition strategy in place.
- Properties that go to auction without restriction, as to buyer or use, may be recycled into another round of disinvestment and abandonment. This is particularly true for properties with low market value. Restricting buyers to those who have no tax delinquencies, as now required by law, may help some, but that requirement can be avoided by using a "straw" i.e.: a party that has a disguised interest in collusion with the previous owner.

In distressed communities, some properties may be obsolete or not economically viable or desirable in the present market. Perhaps this is because the housing type or zoning no longer meets the needs of the

community. Without planning for the end use and thinking about ways to use the property that are appropriate for the market today, the municipality may be setting itself up for the same cycle of abandonment to recur.

Chapter 30B

Chapter 30B of the General Laws is the Commonwealth's "Uniform Procurement Act". Among other things, Chapter 30B establishes procedures for disposing of real property. These procedures and regulations govern the disposition processes of municipalities that opt not to auction tax title property. The city or town, by a vote of the proper body, may transfer property within the municipality. Chapter 30B governs dispositions by other agencies within the municipality. The Request for Proposals (RFP) process is used when disposing of property valued at over \$25,000 under this statute. Properties with a value under \$25,000 may be sold by negotiated sale. Prior to 1995, any property with a value of \$500 or over was subject to Chapter 30B provisions. Certain real property transactions entered into by urban renewal agencies and economic development agencies are exempt from Chapter 30B provisions.⁹

Obstacles to Quick Disposition

Many communities successfully craft RFPs that meet their community development objectives, are fair and equitable and comply with Chapter 30B. This can be accomplished in a timely way. Others communities find that the chief obstacle to quick disposition is the lack of consensus about the use of the property. This has paralyzed many communities. Fearful of offending political constituencies by an unpopular disposition, often disposition agents let the property languish, offending almost everyone. Some communities have unwieldy and unresponsive bureaucracies to administer the disposition of property. It is difficult to obtain information and help.

⁹Section 1 (b) 25 of Chapter 30B.

Disposition Process under Chapter 30B

- Determine that property is surplus and document that determination. The appropriate town body will have to vote on it. (City Council or Selectmen).
- Identify re-use restrictions. Any reasonable restriction that is in the best interest of the jurisdiction is permissible. Affordable housing is specifically mentioned in the guidelines as a permissible restriction.
- Determine the value. Municipalities don't need to sell it for the fair market value, but they must know what the value is.
- Develop an RFP that describes the property, the re-use, and the evaluation criteria and submission requirements.
- Advertise for proposals once a week for two weeks.
- Distribute the RFP.
- Receive and evaluate proposals according to the criteria set out in the RFP.
- Publish the name of the successful bidder in the Central Register. If the property is sold for less than its value, the municipality must publish the amount the property was disposed of and an explanation of the difference.
- Send disclosure form to the Department of Capital Asset Management.

The difficulty many communities run into is the holding and maintenance of property before disposition, especially if it is occupied. Some communities stall on recording the final decree, under the false assumption that it makes them less liable (it doesn't). Once the final decree is issued, the community is responsible for the property.

The timing of disposition is confusing to communities and developers alike. The fear of the perceived one year "right of redemption" has scared off lenders, buyers and municipalities. In reality, if a municipality sells to an "innocent party" that party is

held harmless even if the decree is vacated for cause. The municipality will be at risk if it made errors in the taking, however, and must be confident that its foreclosure conformed in all matters of law and notice. If so, they may dispose of the property promptly. New Bedford sells property at auction twice a year and schedules foreclosures to insure inclusion into the auction.

Moving Properties Quickly into Productive Use

Once the property is in tax possession, the disposition process can occur immediately. If the up-front planning has been done, as is done in best practice communities, then the municipality is ready with a plan and disposition strategy. If the property needs rehabilitation beyond what the market or affordability standards can support, the resources should be available and targeted. RFP's can be advertised immediately or even before, subject to the final foreclosure. Community Development Corporations and other developers should be working with the neighborhood and the municipality to determine the appropriate outcome for the community. The RFP can reflect those best uses in the jurisdiction's interest and require that all bidders meet these objectives.

If there is some lag time between possession and disposition, it is important for boarding and stabilizing to occur. Most communities are sophisticated about preserving their assets and have crews or contracts to enable them to move quickly to secure the property.

Rethinking Underlying Zoning or Land Use

As communities think beyond auctions and begin to plan early for uses of tax delinquent property, there should be broader thinking about use and zoning. One problem that has been cited in the disposition of property is the possibility that changes in the market environment have rendered some properties or uses obsolete. Good planning will look at underlying zoning and future trends as they plan for the future of these properties. For example, DHCD suggested the use of 2nd floors within commercial buildings in the older downtowns as possible housing sites to help to revitalize the downtowns. These buildings may be in tax title. Their use as commercial space may be obsolete. Planners, armed with a sense of the market, may increase the value of the property and protect against a repeat of the failure by re-zoning and provid-

ing incentives for developers to think more broadly about other uses, such as housing. For dense neighborhoods with obsolete stock (five story walk-ups), creative de-densification with the addition of parking and play space can help to salvage some of the stock. Marketing strategies directed toward “urban living” may encourage a stronger market. Many years ago, the city of Boston designed a successful campaign to re-market the “obsolete” three decker. Years later, Boston had to cope with the gentrification of these rediscovered “gems”. This kind of creativity is essential if we are to break out of familiar disinvestment patterns. Simple auctions do not allow for creative disposition planning.

Auctions

The above call for more thoughtful disposition planning is not meant to imply that all auctions are bad. Where the property is economically viable and the community’s interest is in returning the property quickly to good physical repair and productive use, auctions can work. The process must be carefully managed and contain appropriate safeguards to insure that the property is actually repaired and made viable.

Within the auction process some towns have been very proactive. Springfield requires that the auctioned property be bought by, or sold to, a first time homebuyer. Developers may buy the building and rehabilitate it but then must be resold to a first-time homebuyer. In Springfield’s estimation, homeowners will stabilize the neighbor-

hood and help the market. Targeting of property occurs to deal with houses that are blighting influences and to help to stabilize neighborhoods by reclaiming property. As they work down the backlog of cases, Springfield hopes to target more precisely so that they can get properties while they still can be rehabilitated.

New Bedford auctions property on many occasions, but it will also target properties and neighborhoods for an RFP process to meet community objectives of affordable home ownership through development by a local non-profit.

Auctions can be the most straightforward and quickest way to dispose of property. In cases where the municipality has chosen to auction the property, community developers should be ready to act to obtain the property if it fits with their revitalization agenda. When auctions cannot be avoided, non-profits should engage in strategies to make auctions work for them. Training in auction bidding and acquisition lines of credit from public and quasi-public agencies and intermediaries will allow non-profits to compete. ●●●



Best Practices

Turning Liabilities into Assets

The strength of the market has helped reduce the inventory. It is vision, persistence and political will to make it work that helps communities succeed.

Despite the many ways that the system can appear burdensome, archaic, convoluted, baroque, byzantine (to name just a few adjectives our interviewees have come up with) it is a system that functions adequately in the majority of cases. It is possible, with persistence and diligence, to make it work effectively and to avoid the more common sources of delay. Communities have had success in tackling their tax delinquent inventory. The strength of the market has helped reduce the inventory. It is vision, persistence and political will to make it work that helps communities succeed. The successful communities have at least some of the following ingredients. The more elements a community uses, the better the chance of making a difference in their tax title inventory.

INGREDIENTS FOR SUCCESS

- Know your inventory and market; target property for action.
- Have a clear program, end use and resources, if necessary, reserved for acquired properties.
- Plan disposition up front.
- Use political capital and leadership to set the course and allow departments to think beyond their narrow mandates.
- Assemble the necessary agencies in a formal process for accountability and action. Set clear goals for staff and hold departments accountable for larger community agendas.
- Require agencies to communicate.
- Devote resources to make it happen. Know the system and use it. Paralegals and outside counsel can help.
- Be willing to “push the envelope” by taking some risks, such as delegating responsibility for the administration of the foreclosure process to non-profits and other non-governmental entities or applying to DOR for delegated authority to abate taxes.
- Think creatively; consider home rule petitions to make the process work for your community.

Communities Can Make the System Work

In some older, distressed communities the escalation of the tax title inventory has led to a sense of helplessness on the part of municipal officials. When the system is overloaded with tax title properties and the market has failed, the town has limited options to recover. In Holyoke, for example, the backlog of cases without hope of market recovery staggers the limited resources of the city system. The scale of the problem was almost overwhelming. Traditional mill town five story walk-up tenements with no parking or outdoor space dominated certain Holyoke neighborhoods and were virtually abandoned. Holyoke floated a bond of \$2.5 million just to demolish valueless property seized in tax foreclosure.

Nevertheless, Holyoke has made progress in dealing with the problem. First, they began to educate themselves and their citizens about the reality of the situation. Resistance to letting tax deadbeats “get away with it” had prevented Holyoke from abating back taxes in the interest of getting the properties rehabilitated, even though the tax liens exceeded the value of the property. Now armed with a more pragmatic assessment, they are investigating abatements where they can make an infeasible project work. Second, the Mayor has convened a Tax Squad to identify abandoned, tax delinquent properties and to prioritize them for action. The impetus was to identify properties to help in the relocation of tenants from a HOPE VI project Holyoke has undertaken. But the process of working together on a more effective system will pay off for other properties as well. Third, Holyoke has hired paralegals and devoted other resources to begin to address the backlog of cases. Proactive engagement with the issue and dedication of resources are the important first steps.

Springfield is another city that provides a good case study. Officials meet every two weeks to review lists of tax title property. Properties are targeted for quick action by neighborhood, use, owner or amount of tax owed. A disposition plan is in place to turn the properties into homeownership units for low and moderate-income families. The officials report to each other on progress. The mayor has made it clear that this is a priority. Progress is slow but steady and will speed up once the backlog of cases is resolved.

New Bedford convened an Abandoned Housing Task Force to target properties in impacted neighborhoods for action. After clearing out years of unpursued tax claims, New Bedford is ready to prioritize for those properties which are blighting neighborhoods and spreading

disinvestment. The mayor of New Bedford meets regularly with the Assessor, Collector-Treasurer, and the City Solicitor and with the Office of Housing and Neighborhood Development (OHND). New Bedford has an aggressive tax collection policy (the Mayor even calls deadbeats!) enhanced by an aggressive and diligent attorney dogging Land Court to insure that the process moves as fast as technically possible.

The experience in New Bedford suggests that a case can move through Land Court in 9 months. The City’s aggressive collection techniques and proactive payment plans to allow owners who act in good faith to catch up has increased New Bedford’s collection rate. The Office of Housing and Neighborhood Development (OHND) has mapped out properties for prompt foreclosure action and has a program in place to resell properties acquired to first time homebuyers. They find a ready market in the new immigrant populations.

Lawrence is another older city that has been drowning in an overwhelming number of tax delinquent properties. So many were neglected that demolition was the only alternative. Lawrence is just beginning to devise strategies to reduce the number of tax delinquencies and to decrease the time it takes to acquire properties.

A small demonstration program to acquire and dispose of vacant lots to abutters and to create parks and parking and other neighborhood priorities has been very successful. Building on that success for abandoned buildings is the next step. Lawrence reduces foreclosure costs and time on the vacant lots by accepting deeds-in lieu of payment of back taxes where the lots are vacant and the value is low. Home rule legislation allows Lawrence to treat such acquired lots as if they had been foreclosed upon, thereby wiping out the back taxes and avoiding the need for an abatement through the DOR.

Municipal Best Practices

Individual municipal agencies contribute to the overall effectiveness of the system. Certain practices can either reduce the amount of tax delinquent property in a community or decrease the time delays of the tax title process when the property is in arrears.

Assessor

- Adopt the Affidavit of Address. This can produce better municipal records for collection of taxes and for proper notice if taxed are delinquent. New Bedford and Boston have recently adopted the Affidavit of Address.

- Accurate Assessment. While not directly related to the tax taking process, accurate assessments are important to the integrity of the tax system. The assessment should be accurate as to the value and be current as to the market of the neighborhood and property. Best practice communities use market studies and sales comparisons continuously so that they are thoroughly familiar with conditions and can perform their required three year re-evaluations competently. Overassessment of property makes it impossible for an owner to meet the tax obligation when the market has changed for the worse. The owner may request an abatement, but owners who have abandoned their property often fail to do so. The Assessor should pay careful notice to property which has been fire damaged or abandoned or has otherwise lost value. In Worcester, the Worcester Housing Partnership had difficulty in reclaiming tax delinquent property for affordable housing because the continued high assessments on abandoned property drove up costs to the point of economical infeasibility.

- Examine municipal budgeting and finance techniques to mitigate the impact of tax abatements and write-offs. Support legislation to make modified and simplified tax increment financing available for residential property as a means to raise additional funds for funding abatements.

- Provide education and outreach to increase elderly homeowners' use of appropriate exemptions, thereby allowing them to protect their homes from foreclosure. In many cases, elderly homeowners fall into tax delinquency because the standard elderly exemptions are not adequate in the rising market or they have not taken advantage of exemptions that are available to them. Advocacy agencies are working hard on "circuit breaker" legislation and increases in standard exemptions to more adequately reflect today's high real estate values and taxes. The law already allows deferral of taxes for the elderly, up to half of the assessed value of their property, until death. Better outreach and education to make elders aware of their options is needed.

Collector/ Treasurer

- Have a consistent, timely approach to tax taking. Predictability of consequences is an excellent collection tool. Many municipalities now lien property as soon as statutorily possible, not only because it is prudent, but because they can raise the interest rate after taking the property into tax to 16% from 14%.

- Have aggressive collection programs to collect as much of the tax as possible and to identify problems with collection early. Collection rates are an important indicator of community health. Early identification and intervention in troubled properties can prevent an escalation of the problem.

- Good databases and other computerized resources, especially in larger municipalities, to automatically process notices and to track the system are essential to good management practice and coordination.

- Examine alternative strategies for collection such as selling municipal liens at auction, under limited circumstances on targeted properties; or accepting deeds-in-lieu of foreclosure.

- Have programs in place to work with taxpayers who get behind in paying taxes. A record of proactive workouts will be a positive indication to Land Court later that the taxpayer had every opportunity to settle his obligations.

- Work with other municipal agencies to prioritize properties for more aggressive collection. While collection is the goal, other community objectives, such as reclaiming abandoned property may be taken into consideration. Prioritization is essential for cities, which have large backlogs and few resources for thorough follow through.

Town Counsel or City Solicitor

- Have a system of tracking and reporting progress on tax title foreclosure.
- Provide sufficient resources to track and follow-up on properties in tax title.
- Contract out legal work where appropriate. Hire paralegals where necessary.
- Consider using local non-profits or agencies as agents to pursue tax title claims.
- Use improved and alternative methods of diligent search like Internet search engines and private investigators.
- Work with Community Development Departments to prioritize properties for expedited processing.
- Educate appropriate departments regarding environmental law changes that make it easier for municipalities to foreclose on sensitive property without liability.

Community Development and Planning Agencies

- Create databases to inventory and target distressed property. Make information accessible to the community and other agencies.
- Engage in a community planning and visioning process with community developers and neighborhood residents.
- Prioritize properties for expedited processing.
- Examine underlying zoning and market conditions.
- Review disposition procedures, timelines and assumptions. Have a plan for properties especially those that are occupied or otherwise troubled.
- Work with tax title custodian and chief executive office to dispose of properties promptly to avoid redemption.
- Promote strict code enforcement and other early intervention strategies.
- Make redemption of property expensive for negligent owners, by imposing boarding and cleaning liens.

Mayor/ Chief Elected Officer

- Convene the appropriate agencies – Assessor, Collector/Treasurer, City Solicitor, Planning and Community Development Departments – with inputs from Police, Fire and Building Inspector and Health Department, to devise and implement tax collection and foreclosure strategies.
- Use the “cabinet” to prioritize property for intervention.
- Insist on accountability.

Community Developers: An Implementation Tool

We have examined many tools and strategies for intervening in properties that are tax delinquent. Educating the development community about these tools will increase awareness about the complex process of tax taking and its importance to a healthy community. To use the process effectively, community developers must understand the applicability of the various options to the particular properties they have targeted for acquisition and development. The attached outline (attachment 1) of a process for matching the tool to the situation was developed by Peter Munkenbeck, a consultant under contract with LISC as part of a training on acquisition strategies with Boston CDC's. We have edited it for applicability statewide and added expanded descriptions of the process. The outline is included to provide concrete examples of situations facing communities that are implementing neighborhood revitalization plans. The implementation of these acquisition strategies frequently require knowledge of the processes discussed in this report. ●●●



RECOMMENDATIONS

Improving the System of Tax Taking and Abatement

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We need to expand our knowledge, create dialogue, cement partnerships and achieve political buy-in to a comprehensive and inclusive approach. This report gives communities ideas and tools to achieve the goal of turning tax title liabilities into community assets.

We have examined and described the complex web of transactions facing communities with tax delinquent property. We have also described how a lack of coordination, resources and accountability plague the present system. Our conclusion is that the system, while complex, is workable for those communities that apply themselves with diligence and persistence. Using the system to maximum efficiency for priority projects that support community health is our goal.

To accomplish this goal we do not need to change the system. We need to change how we deal with the system. One committee member suggested we “quit whining and roll up our sleeves”. Quite seriously, communities that use best practices and diligence find it possible to achieve outcomes in a timely way. Unfortunately, inaction and inefficiency plague most communities’ attempts to wrest properties free from tax title. Understanding tax taking better will provide us with tools to demand accountability of officials.

We have identified ways in which the system can be prodded to work to maximum efficiency. These conclusions form the basis of our recommendations. Understanding the system is the first step. Applying resources and focus to operate it is the second. Overarching all is the vision, commitment and political leadership necessary to make things happen.

This report, like the many before it, will gather dust and communities will continue to be frustrated unless a new approach to tax taking is embraced. That approach includes viewing tax title properties as more than collection headaches with fiscal fall-out. The implications of tax delinquent property are felt throughout the community in countless ways. A community with a comprehensive approach to community health sees the demoralizing impact of distressed property and counts the true costs beyond the simple tax arrearage. The enlightened community understands that returning the tax title property quickly to productive use is the most fiscally prudent strategy.

Community development agencies and professionals share a common objective with fiscal officials in the desire to return the properties to the tax roll. We need to expand our knowledge, create dialogue, cement partnerships and achieve political buy-in to a comprehensive and inclusive approach. This report gives communities ideas and tools to achieve the goal of turning tax title liabilities into community assets.

We have sorted the recommendations into four categories:

- 1). Immediate short-term approaches to the system that can be implemented with little or no cost on the municipal level;
- 2). Improvements at the Land Court to increase efficiency and accessibility;
- 3). Clarifications to MGL c.58, s8 to make the tax abatement process more understandable and useful and;
- 4). Narrow, targeted legislative changes to expedite the tax taking process for certain properties or “carve-outs”.

We believe these proposals have a clear public purpose, and will have an positive effect upon community development without subverting the due process requirements of the system.

CATEGORY 1: Administrative Changes and Best Practices for Municipalities

Municipalities can make a difference right away and some of these ideas can begin tomorrow. We will advocate for support from DHCD and DOR for municipalities to obtain more resources to implement better management and database systems over the long term.

- 1). Review municipal procedures against best practices. Implement new ideas to increase efficiency and accountability.
- 2). Convene a high level working group of appropriate officials to examine the role of tax title property on community health. Make changes to people policies, practices, that do not produce results.
- 3). Utilize the existing mechanisms for expedited processing such as the Abandoned Property Expedited process provided for in MGL c.60 and the delegated abatement authority in MGL c.58, s8. Communities serious about abandoned property need to use these tools.
- 4). Create and integrate databases among departments and open data systems to the public.
- 5). Prioritize properties and follow their progress. Don't give up.
- 6). Implement early intervention strategies. Use aggressive collection and code enforcement to prevent a build up in delinquencies.
- 7). Strengthen or develop programs to assist owner-occupants or elderly owners facing hardship, to avoid tax foreclosure.

Category 2: Improvements at the Land Court

- 1). Make the computerized docket available on the Web. Include results of title examiners research; list dates of notification and return of service.
- 2). Expedite issuance of final decrees. Uncouple the issuance of the final decree from the fee settlement or improve the fee billing system with more accounting help.
- 3). Clarify issues regarding circumstances under which Land Court will grant a motion to vacate a final decree. We will investigate pursuing a legislative solution if necessary.

- 4). Convene the Mass Bar Association, Mass Conveyancers, and Association of Collectors and Association of City Solicitors and Town Counsel and other stakeholders to review practices and to make suggestions for improvements.
- 5). Increase the pay of title examiners. Low pay makes timely examination a low priority for these court-certified experts.

Category 3: Coordination with the Department of Revenue

- 1). Encourage DOR to issue regulations for use of delegated authority to abate taxes as allowed in 8 of 58. Examine Brownfields legislation as precedent.
- 2). Review and clarify economic feasibility parameters and unwarranted benefit acquisition policy with DOR. Promote changes needed to make affordability an explicit objective.
- 3). Convene DOR, community developers and municipal officials in a task force to examine tax taking and abatement strategies and resources for financially distressed communities.
- 4). Invite DOR to work with CHAPA tax title committee and representatives from state associations to develop clear, written policies to guide local officials and developers.
- 5). Coordinate outreach and education sessions with DOR for municipal officials and community developers.

Category 4: Legislative Changes

Modest changes in legislation may be desirable to improve the system for priority properties. Most of these changes are limited in scope and are intended to expedite the process for the small number of properties which are abandoned, of low value and not owner occupied. Other changes deal with the process of tax abatement and encourage more local initiative.

- 1). Propose legislation to fast track properties that owe taxes in excess of the value of the property. The legislation would propose eliminating the 6-month waiting period from the tax taking to the foreclosure, upon documentation that the appraised value is less than taxes owed. It would also propose to reduce from one year to 90 days the ability to request that the Land Court vacate the final decree. Convene a task force of stakeholders to draft legislation and to educate legislators on effects of passage. The stakeholders will include the Mass Bar Association, Collector-Treasurers and municipal Planning Departments.

- 2). Propose legislation to give Assessors delegated authority to abate up to 75% of back taxes and all fees and interest for property that meets certain affordability objectives and public purpose. Use the Brownfields legislation as a precedent.
- 3). Propose legislation to clarify the procedure under which municipalities can accept a deed-in-lieu and account for it on their balance sheet.
- 4). Increase to \$15,000 the amount of under which municipalities can deem a vacant parcel “low value” and proceed with an administrative foreclosure. Include a provision to index this amount to inflation so that it remains useful. Work with the appropriate stakeholders to draft legislation to clarify the procedures in a way that will produce a marketable title. Consider similar legislation for abandoned, low value buildings.

Implementation

Municipalities and community developers, working together, can make the present system work to maximum efficiency. We can also work to implement legislative changes to expedite the process for the toughest properties. We must be prepared to track and hold our local officials accountable. We also need to continue to work with stakeholders and to advocate for and monitor the changes we seek. If we don't follow up aggressively, the system will continue as it has been and we will continue to be frustrated in our community development efforts.

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A specific focus for our implementation strategy is a demonstration project. Additional efforts listed below will keep the issue on the front burner and increase awareness.

- 1). Focus on a limited number of communities in a demonstration project. The communities will commit to make their municipal systems function in a coordinated and diligent way. We will ask DOR and the Land Court to work with us, and the demonstration communities, to test our hypothesis that the system can work. Community development agents will pledge to participate in targeting and planning for the end use and commit energy and resources to make it happen.

Thinking outside the box, a community may try selling the lien or contracting with a non-profit to handle the foreclosures. Communities may file Home Rule petitions to achieve relief from, or clarification of onerous statutory burdens. DHCD will be asked to pledge

financial support, where necessary, to make the projects economically feasible and affordable. The communities should set a goal of numbers of units or lots to be returned for gardens or parking or whatever their planning indicates is right for the community. A timetable for achievement of the goals should be set. A demonstration project has the advantage of testing our recommendations in the real world and applying them concretely.

- 2). Create a task force to draft legislation as specified in Category 4.
- 3). Hold educational forums for the housing community and the municipalities on the tax title issue.
- 4). Collaborate with Mass Municipal Association (MMA) and appropriate professional organizations of municipal officials on education and outreach.
- 5). Educate the community about receiverships as a tool for intervention. Consider demonstration projects and outreach.
- 6). Anticipate and prepare for the next economic downturn by convening public agencies now to begin to think about programs that could mitigate some of the problems that can lead to a large inventory of tax delinquent properties in weakened economies. ●●●



PRIMER ON ACQUISITION STRATEGIES

Communities and developers often need to target and prioritize abandoned and/or tax delinquent property in their neighborhoods for intervention as they develop a strategic approach to neighborhood revitalization.

Choosing a strategy involves a series of steps. It begins with property identification, and proceeds through acquisition, focusing on resources available to develop property, tools to assist in acquisition, and criteria for choosing which properties to invest effort based on increasing levels of knowledge about each property. As information is gathered, groups can assess the most likely development scenario for the property. In some cases communities may decide that the market provides sufficient incentives to get the property re-developed. Pressure through code enforcement, neighborhood marketing and contacts with owners may provide the incentive needed to encourage the owner to act responsibly. Other properties may need stronger public intervention and subsidies to be viable. The objective in either case is to produce an economically viable return to productive use for the properties.

This outline¹⁰ is intended to guide developers and communities in choosing the most effective strategy to return derelict or abandoned properties in neighborhoods to productive use. Each property has a “story”. The ownership, lien record and the tax status are vital pieces of that story. Research into the history of the property will reveal details that will help developers find the appropriate intervention tools. These tools, directly related to the specific ownership, tax status and condition of the property, range from direct negotiation with an owner to working with the municipality on an expedited tax taking. Purchasing deeds-in-lieu of foreclosure, buying the right of redemption, purchasing a bank’s note, placing the property into receivership are interventions that can be added to the tool kit for more complicated transactions.

The outline will lead the community developer through the critical path of information and decisions necessary in choosing an intervention strategy. The path begins with property identification and proceeds through identifying resources for the reuse of the property, to gathering information to establish key property characteristics that will affect the final plan. A chart *Option for Acquisition*, beginning on page 53, lays out which tools and strategies are most effective based on the circumstance identified in the research. Finally, some tips on triage will help maintain some perspective. Remember, in community development you often have to take the long view.

¹⁰This outline was developed by Peter Munkenbeck, a consultant working with LISC and Boston CDCs, as part of a series of property acquisition strategy sessions. It has been adapted for this report and for statewide applicability by Peter Munkenbeck and Charleen Regan. Thanks to Sandra Martin of LISC for her participation in the property acquisition workshops and for creating the outline and charts.

Property Identification

The first step in developing a neighborhood revitalization strategy is to get as comprehensive an inventory as possible in order to identify properties for intervention. The following list identifies resources to develop this inventory.

- 1). Comprehensive Neighborhood Windshield Survey
- 2). CDC's Inventory of Distressed Properties
- 3). City Inventory of City-owned, Tax Title or Distressed Properties
- 4). HUD, Fannie Mae, CHAPA, FHLB or Bank Inventories of owned property.
- 5). Classified Ads from *Banker & Tradesman*, *Boston Herald*, *Bay State Banner*, Legal Notices for Foreclosures, Auctions, Liens, Bankruptcies.
- 6). Water and Sewer Department List of Delinquent Properties.
- 7). Real Estate Brokers / MLS
- 8). Developers who are focused on larger properties but will pass on leads.

Funding for Acquisition and Development

Inventory of Available Funding Sources | Once the community has a good sense of the inventory, it is important to identify sources of possible funding for the revitalization of the properties. Municipalities and community groups should identify properties that will need subsidies in order to be economically viable. Work together to obtain appropriate resources for the development. A clear end use, with funds targeted for the reuse, can create the necessary momentum to help carry the project through the system. Some sources of funding for acquisition and rehabilitation of properties are listed below.

- 1). LISC 1-4 Family Program
- 2). Rental Housing/Tax Credit Rounds
- 3). HOME for Home ownership Rounds
- 4). HUD Section 202 or 811 funding
- 5). Soft Second loans for homeownership

- 6). FHLB Affordable Housing Program
- 7). City CDBG
- 8). Small Cities program funds through DHCD
- 9). Federal OCS/HHS funds for Commercial Development.
- 10). Federal Weed and Seed Program
- 11). State Stabilization and HIF
- 12). Acquisition Loans (CEDAC, BCC, MHP)
- 13). Brownfields Fund (MDFA)
- 14). Historic Tax Credit
- 15). In Kind Materials Donations (e.g., Home Depot)
- 16). Foundations and Bank grants

Important Sorting Criteria

Knowing the "story" of the property is important. As the property's history and status reveal itself through increasingly refined information, an informed strategy can be crafted. Certain kinds of relatively easy-to-find information allow you to make informed decisions about whether to invest additional time and money. Be strategic and incremental in investing time and effort. Choose decision points, constantly reassess your progress and prioritize what is efficient to learn about a property first:

- Does the City own it or is it in tax title?
- Assessor's information
- Registry information – first pass
- Eyeball idea of rehab/cleanup cost
- Match with funding eligibility requirements
- 30 minute pro-forma
- If it's private, is the owner available and interested?

1. Who Has Title, Lien or Other Encumbrance?

Developing information on who may be an "interested party" takes some digging. To find the owner or lien holders, there are a number of sources that can provide information. Much of this information is available through simple research. Once the list of properties is narrowed down, it would be wise to invest in a title search. Sources include:

- Word of mouth
- *Banker & Tradesman* on-line at www.realestate.boston.com/recent-sales/
- Assessor's Records
- Get a lien certificate when you need proof of tax liens or proof there are none (\$25 – 10 days).

- Water and Sewer by phone – call Customer Service
- The Registry of Deeds computer listing (incomplete – a good start only). Check Bankruptcies, too.
- Inspectional Services Department or Building Inspector records (use to research legal occupancy of a property, code violations, Contractor or Owner information)
- Voter registration records at City Hall by request (use to find the name of the property owner).
- Mass. Registry of Motor Vehicles is on-line
- Private Investigator – about \$150 a case
- Internet search engines for tracking down names and addresses
- Probate Court records

2. Is Rehab/Cleanup Cost within Reason?

Knowing the cost involved in putting the property back on-line is important information. The likelihood of amassing the necessary resources to achieve feasibility must be evaluated. At the earliest stage, a preliminary estimate should provide the go/no go information needed that, together with other research on the property, will determine whether to proceed to a more precise estimate.

- Project Manager Quick Assessment
- Rehab Specialist / Small G.C. / Structural Engineer
- Environmental Phase I? – Check at Fire Department for history of oil tanks and with Inspectional Services or Building Department for removal permit.

3. What will The Property Cost to Acquire?

In addition to the cost of back taxes and liens, a community needs to know the market in which they are negotiating. Knowing information about the market and detailed information about the financial situation of the owner and property, are essential in any negotiation with the owner or lienholder. Understanding the value of the property relative to the amount of the liens will help the developer to assess the likelihood of redemption by an owner or the advisability of proceeding with tax title foreclosure to wipe out liens. Petitioning for abatement may be advisable if the amount of back taxes will preclude economic feasibility for the project.

- Find comparable sales using Banker and Tradesman online
- Discover what the owner's idea is for his net take
- The property taxes
- Water and Sewer

- Also ask Water and Sewer Engineering whether the feed from the street is copper – this affects cost; and for 3-family houses, whether a sprinkler system is needed.
- The Bank(s) liens
- The IRS, Medicare and other Lien holders.
- The transaction costs
- Staff time
- Lawyers' fees
- Relocation costs
- Commission a title search to unearth problems on the record

4. Delay/Complexity Factors

Property and ownership characteristics unearthed through the research will give you a good idea about the complexity of acquiring a property. These transactions are rarely straightforward but some are even more difficult than others. Knowing the level of complexity will help you to assess if you have the time and resources to commit to the property. The opportunity costs must be weighed. What happens to this property if no effort is expended right now? Will the market produce an acceptable outcome? Do the time/complexity cost factors outweigh the benefit? Are there more promising opportunities?

- Owner indecision/multiple owners
- Owners cannot be located
- Statutory or backlog time for clearing liens
- Probate or Bankruptcy Court involvement
- Foreclosure currently in progress
- Occupied property requires relocation – does the Uniform Relocation Act apply?

5. What Tools are Available to Leverage Acquisition in this Case?

See chart on page 53.

6. Matching a Property to the Tools

A preliminary level of information is necessary to assess whether to pursue a property. The chart attached will help to match the information about the property with the tools for acquisition. Some tips:

- Scan the entire list of potential tools and compare them to the facts you have. Rule out the inapplicable tools and assess carefully the likely cost and time investment each applicable tool would require. Do you know all you need to know to choose a strategy?
- If not, where the greatest knowledge gaps? Assess where the greatest uncertainties are and address those. You may need additional cost information or more information about lienholders. Assess whether the investment in better information is likely to affect the outcome. For example, no matter how much you know about the costs of structural repairs it may not help you if the owner will not negotiate or can't be found.
- Choose a Strategy; use the tools you choose; and monitor the success and problems you are experiencing.
- Recycle and invest in more knowledge; use what you learn; and revise the strategy regularly.

7. Finally: The Art of Triage

- Do not get stuck on a single property or a short list. Or, if you do, recognize it as a community organizing and community development expense, not a real estate expense.
- Maintain an Inventory of active prospects at all times.
- Do risk assessment on each property regularly.
- List all the hurdles you can identify that remain to clear.
- Assess the likelihood, cost and time to clear each one.
- Decide if you can afford the wait, and afford to spend the money you must commit to attempt each hurdle, not knowing that you will clear it or the subsequent ones!
- Be prepared to wait when it is likely events will play out in your favor.
- Some properties are well suited for private sector solutions; let them go.
- Constantly reassess your strategy for each property; change it as circumstances change.
- Divide the tasks efficiently between yourself and professionals, e.g. rehab specialist, title search, private investigator.
- Remember: Don't be afraid to put a property on ice. Work on more promising ones until the way is clear. ●●●

OPTIONS FOR ACQUISITION

The chart below presents an array of options that can be considered when developing strategies for acquiring tax title properties.

| Options | Time Frame | Circumstances | Steps |
|---|----------------|--|--|
| Negotiate with Owner | 1 to 12 months | When you can find them; when there is net worth in the property; when the owner is realistic about price. | <ol style="list-style-type: none"> 1). Obtain comparable sales prices. 2). Do a thorough inspection. 3). Run numbers on cost, sale and subsidy. 4). Check zoning and building department records for legal use and occupancy. |
| Purchase a bank mortgage for \$1 and foreclose on it. | 6 to 12 months | When there is bank mortgage of record; there is little or no value left in the property; when you can find the mortgage. | <ol style="list-style-type: none"> 1). Do a title search. 2). Be sure you have cash or a strategy for all senior liens. 3). Find the bank! (often failed or bought.) 4). Establish grounds for foreclosure (non-payment, lapse in insurance, etc.) 5). Weigh legal costs, complexity, time. |
| Pursue a property and tax abatement | 4 to 15 months | When the tax liens exceed the net worth left in the property. | <ol style="list-style-type: none"> 1). Get a preliminary understanding on timing with owner. 2). Meet with municipality to get support for abatement. 3). Obtain site control for adequate period. 4). File abatement request through local assessor and state. |

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OPTIONS FOR ACQUISITION, *continued*

| Options | Time Frame | Circumstances | Steps |
|--|----------------|--|--|
| Expedite tax title taking. | 6 to 36 months | When the process is well underway and you think the net worth left is low enough that redemption by the owner is unlikely. | <ol style="list-style-type: none"> 1). Research status of case in Land Court. 2). Hire a title examiner. 3). Work with municipality to insure follow through. 4). Encourage the municipality to establish a disposition strategy for the property. |
| Obtain a Municipal Lien and foreclose on it. | 6 to 18 months | When the city has not gotten far and you think the owner will not redeem. | <ol style="list-style-type: none"> 1). Buy at full price of taxes and costs from municipality at auction. 2). Begin foreclosure process. 3). Add boarding and cleaning liens to prevent redemption. |
| Purchase a right of redemption from the owner recently foreclosed on and redeem. | 6 to 36 months | When the City has title and you are prepared to pay all back charges and costs to avoid having to bid in an RFP process; also when you control surrounding sites and can't wait for process. | <ol style="list-style-type: none"> 1). Track down owner. 2). Research all charges. 3). Strike a deal with owner. 4). Conclude transaction with the City. |
| Persuade the City to issue an RFP with terms that work for you. | 6 to 36 months | When the City owns the property and hasn't put out the RFP. | <ol style="list-style-type: none"> 1). Organize the neighbors in support of a use. 2). Meet with City staff to discuss plans and neighborhood strategy. 3). Work with staff on criteria; ask to see draft. 4). Follow-up until RFP is issued. |

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OPTIONS FOR ACQUISITION, *continued*

| Options | Time Frame | Circumstances | Steps |
|--|----------------|--|--|
| Respond to a City RFP. | 4 to 12 months | When the City has title and the RFP is issued. | <ol style="list-style-type: none"> 1). Obtain the RFP from the disposition agent. 2). Visit the property and obtain all information. 3). Gather support from other agencies and neighbors. 4). Prepare a responsive proposal. |
| Work with Building and Inspection Department to get sanitary code enforcement. | 6 to 24 months | When the owner is not interested in selling and is current on taxes. | Steps vary according to the nature of the problem (fire hazard, litter, rodents, crime magnet). |
| Work with Water and Sewer Department to get control of property with a W&S lien. | 6 to 36 months | When the W&S liens are old and large and there is little value in the property. (This route is useful if the normal tax foreclosure rate is clogged by city bureaucracy), | <ol style="list-style-type: none"> 1). Manage a property with a W&S lien. 2). Buy a property that W&S forecloses on. 3). Buy a lien at discount and foreclose (but you'll have to pay the taxes). 4). Persuade the W&S to foreclose. |
| Work with the Attorney General on Receivership. | 6 to 36 months | When the simpler strategies of negotiation of foreclosure are not available and the value is low enough that opposition to the receivership is unlikely; when the conditions warrant intervention. | <ol style="list-style-type: none"> 1). Petition AG to put property into receivership. 2). Become the receiver. 3). Rehab the property to create super lien. 4). Sell to homeowner or rent to existing tenants. ●●● |

The information in this report is based on the generous sharing of knowledge and experience of the following individuals who were interviewed as part of the research for the report. We are grateful to these participants for their knowledge and insight as well as for their willingness to spend valuable time with us to help us to understand the complex issues surrounding tax title property. Their contributions are gratefully acknowledged.

| | | |
|--|---|--|
| John Affuso <i>City of Boston Department of Neighborhood Development</i> | James Johnson <i>Mass Department of Revenue</i> | Linda Morley <i>Hampshire Hamden Housing Partnership</i> |
| Sharon Anderson <i>Neighborhood Reinvestment Corporation</i> | David Kean <i>City of Worcester Community Development</i> | Emily Morris <i>City of Boston Department of Neighborhood Development</i> |
| Jeff Austin <i>City of Boston Assessors Office</i> | Christina Keefe <i>Codman Square Main Streets Program</i> | Peter Munkenbeck <i>Consultant</i> |
| Katherine Bachman <i>Hale and Dorr</i> | Tom Kegelman <i>The Community Builders</i> | Paula Newcomb <i>City of Haverhill Community Development Department</i> |
| Frank Braconi <i>Citizens Housing & Planning Association of New York</i> | Mary Knassas <i>City of Boston Department of Neighborhood Development</i> | Nils Nordberg <i>Massachusetts Collectors and Treasurers' Association</i> |
| Jeff Conley <i>City of Boston Finance Commission</i> | Gail Lattimore <i>Codman Square Housing Development Corporation</i> | Leonard Raymond <i>Homeowner Options for Massachusetts Elders</i> |
| Matt Donnellan <i>City of Springfield Tax Collector</i> | James Lampke <i>City Solicitors and Town Counsel Association</i> | Sharon Riley <i>Codman Square Housing Development Corporation</i> |
| Bob Ebersole <i>Department of Housing and Community Development</i> | Howard Liebowitz <i>City of Boston</i> | Sandy Rose <i>Urban Resource Group</i> |
| Marion Fatuccio <i>Massachusetts Association of Assessing Officers</i> | Kathleen Lingenberg <i>City of Springfield Housing Department</i> | Mary Roy <i>City of Haverhill Collector-Treasurer</i> |
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| Judge Mark Green <i>Massachusetts Land Court</i> | Elaine Lombardi <i>Massachusetts Department of Revenue</i> | Mark Sweeney <i>City of Boston Corporation Counsel Tax Title Division</i> |
| Harry Grossman <i>Massachusetts Department of Revenue (DOR)</i> | Carol Martinez <i>City of Chelsea Community Development Department</i> | Steve Teasdale <i>Main South Community Development Corporation</i> |
| Pat Havner <i>Urban Edge Housing Development Corporation</i> | Mark Medico <i>City of Boston Water and Sewer Department</i> | Matthew Thomas <i>City of New Bedford Assistant City Solicitor</i> |
| Roger Herzog <i>City of Cambridge Community Development Department</i> | Robert McCarol <i>City of Springfield Planning Department</i> | Charles Trombley <i>Massachusetts Land Court</i> |
| Matt Higgins <i>City of Lowell Planning Department</i> | Carol McGreevey <i>City of Lawrence Law Department</i> | Carl White <i>Housing Investments, Inc</i> |
| Christopher Hinchey <i>Massachusetts Department of Revenue</i> | William McGowan <i>Massachusetts Municipal Auditor's and Accountants' Association</i> | Heidi Zimmerman <i>Massachusetts Office of the Inspector General</i> |
| Ann Houston <i>Massachusetts Housing Partnership Fund</i> | Skip Monahan <i>Former president of Massachusetts Assessors Association</i> | Michael Wurtz <i>City of Boston Corporation Counsel Tax Title Division</i> |
| Jack Hunter <i>City of Holyoke Planning Department</i> | | |

REFERENCES & Materials

Black's Law Dictionary. *Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern.* 5th edition. Henry Campbell Black. West Publishing Co. St. Paul, MN. 1983.

Massachusetts Practice Real Estate Law. Volume 28. Arthur L. Eno, Jr. and William Hovey. West Publishing Co. St. Paul, MN. 1995.

GENERAL ACCOUNTING OFFICE (GAO)
Tax Administrator's Views on Delinquent Tax Collection Methods. GAO/ GGD Fact Sheet 94-59FS.

MASSACHUSETTS DEPARTMENT OF REVENUE INFORMATIONAL GUIDELINE RELEASES (IGR)
Bulk Sale of Tax Receivables and Liens and Duration of Tax Liens. IGR No 97-201.

Application for Authority from the Commissioner of Revenue to Abate Local Taxes and Charges. IGR No. 92-206

BULLETINS

"Brownfields" Tax Agreements. Issued by Joseph J. Chessey, Jr. Deputy Commissioner, May 1999.

Laws Relating to Municipal Finance and Taxation. Bulletin No. 32, April 1998. Reprinted from *Massachusetts General Laws Annotated and the Acts and Resolves of Massachusetts.*

CORRESPONDENCE

Letter to Gayle Smalley, City of Newton Law Department from Harry Grossman, Chief, Property Tax Bureau. Regarding sale of tax liens, May 1991 No. 91-480. Database. www.state.ma.us/DOR/dls for tax revenue information by city and town and summaries of municipal finance information.

GUIDES

A Guide to Financial Management for Town Officials Division of Local Services: Manual for the Collector of Taxes. Published by DOR and the Massachusetts Collectors and Treasurers Association.

OFFICE OF THE INSPECTOR GENERAL
Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property. 3rd edition. August 1998.

Procurement Bulletin. New Chapter 30B Amendment Affects Real Property Transactions.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Community Profiles available at www.state.ma.us/dhcd/iprofile.

MASSACHUSETTS LAND COURT DEPARTMENT OF THE TRIAL COURT

Annual Report on the State of the Massachusetts Court System. FY'98.

Town of Brewster vs. Sherwood Forest Realty, Inc. Case No. 245679. Decision of Judge Green May 4, 1999.

MUNICIPAL DOCUMENTS

City of Boston: Memos

The Tax Foreclosure Process in Boston. Summary of foreclosure process prepared by Public Facilities Department (now DND) staff in September 1994.

Tax Abatement Procedures in Boston. Summary of abatement procedures prepared by PFD staff with attachments from the Assessor's office of the City of Boston.

Property Information. Summary of Property Research resources available through DND; September 1998.

Redemption Memo from John Geary to Patricia Canavan summarizing laws and procedures for the redemption of tax title property, October 1997.

Property Disposition Timeline. Prepared by Real Estate Management Division of DND.

The Clearinghouse. Guide to City-owned Property.

City of Boston website: www.ci.boston.ma.us/dnd

City of Lowell

Yard Sale Guidelines and Application.

City of Springfield

Tracking Procedures. Databases and tracking tools for tax title property targeting and tracking. Spring 1999.

Auction Information. Housing Division. Spring 1999.

CASE STUDY

Codman Square Main Streets Problem Statement. Christina Keefe, Director Codman Square Main Streets Program.

Architect's Report on 3 Aspinwall Road. Dietz Architects. August 1998

Notes and memos. Codman Square NDC files.

ARTICLES, REPORTS

A Special Report on Abandoned Buildings and Related Programs. The Finance Commission of the City of Boston. November 1970.

Tax Delinquency, Condemnation and Arson 1974-1977. Research paper for the City of Worcester by Judy Jacobson and Dik Dagavarian.

Holyoke Rental Market Study. Prepared for the Churchill Neighborhood Partnership by John Ryan. Feb 1995.

Distressed Property in Worcester: The Problems and the Options. Worcester Municipal Research Bureau. Report No. 97-2. April 1997.

Municipal Collection by Foreclosure of Tax Title. Robert J. Kerwin. Massachusetts Law Review. Fall 1998.

Town Must Pay Condo Fees After Taking Title of Units. *MA Lawyer's Weekly.* July 26, 1999.

In Re In Rem: Innovation and Expediency in New York's Housing Policy. Article by Frank Braconi in *Facing the Future: Housing and Community Development in New York City.* State University of New York Press. Albany. 1999.

Housing Receivership: A New Tool for Code Enforcement. Patrick Morrissey. Shelter Force Working Paper on Affordable Housing. No 22.

City-Owned Lots Left Out of Hot Market. *The Boston Globe.* June 30, 1999.



FUNDING & Support

.....

This report was made possible through funding provided by the following organizations:

Citizens' Housing & Planning Association

Massachusetts Housing Partnership Fund

Fannie Mae Foundation through the Local Initiatives Support Corporation



working group

A small working committee of Aaron Gornstein, Chris Norris, Mathew Thall, Judy Jacobson, Ann Houston and Clark Ziegler developed the original idea of improving the tax title system so that municipalities and community developers could return the properties to productive use. The working group provided the motivation, direction, energy, ideas, critical thinking, feedback and funding necessary to produce this report. Their contribution was enormous.

subcommittees

Members of the legal and municipal finance subcommittees contributed incredible time and skill to provide depth and accuracy to this report. Without their specific expertise, generously shared, this report would not have been possible.

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The Property Acquisition Strategies Attachment was created by Peter Munkenbeck for LISC. Peter worked with Boston CDC's and with Sandra Martin at LISC to create a practical guide for evaluating properties to acquire as part of a neighborhood revitalization strategy. We are grateful to Peter and to LISC for making the outline available for use in this report. It is a natural companion piece to our work with tax title properties and its information will be valuable to community developers.



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