

***Our town sold a property at tax sale. We are still in the redemption period and now the owner of the property has died. The late owner's daughter lives in the house and there has been no move to settle the estate and there is no executor yet. Can the daughter redeem the property by paying the back taxes, costs and interest?***

No. The property can be redeemed only by the owner or his or her "representatives or assigns." Until there is some formal action to settle the deceased's estate, there is no one with authority to redeem the property. 32 V.S.A. § 5260.

While there is no legal mandate for the municipality to explain the probate system to the daughter and point out that she risks losing the property at the end of the redemption period, a court would likely find that there is a duty to make sure she has the basic facts. We base this on two recent lower court decisions where tax sales were negated by the court because the owner of the property was not informed of certain rights.

In *Fysh v. Town of Bristol*, Addison Co. Sup. Ct, Aug. 1995, the court held that the town had an obligation to advise the property owner of their right to ask for tax abatement before selling the property at tax sale.

More recently, in *Town of Windsor v. Blanchard*, Windsor Sup. Ct., Apr. 2000, that court said that merely sending the taxpayer a copy of the Vermont Statute on abatement of taxes was not adequate. Where the government threatens a person with loss of property, it owes them due process. In the case of a tax sale, that means actually making sure that they understand the basics of the abatement process.

The test which the law applies for due process is to balance the rights and burdens of the taxpayer against those of the government. In the case of a tax sale, the interests of and potential harm to the taxpayer are enormous, but the burden to the town (a brief explanation of abatement) is minimal. So, the town owes at least that much due process to the taxpayer.

Thus, in the analogous situation that you present, it is likely that a court would find that the town owes it to the daughter to give a brief but adequate explanation of the tax sale and redemption process and the need to address the estate settlement issues in order to have the authority to redeem the property.

***VLCT News***, March 2001