

Delinquent Tax Collectors Workshop

Dealing with Bankruptcy and Other Difficult Situations

**Sarah Jarvis, Staff Attorney II
Municipal Assistance Center**



DTC WORKSHOP MAY 2015

Session Topics

- **Bankruptcy**
 - **Types of creditor claims and classes of bankruptcy cases**
 - **The automatic stay against collection**
 - **Taxes that accrue after bankruptcy filing**
 - **Filing a proof of claim**
- **Foreclosure**
- **Handling Uncollectable Debts**
 - **Mobile Homes**



Bankruptcy

Bankruptcy is a process to legally eliminate (or discharge) debt or to pay off debt at a reduced rate.

Bankruptcy cases are always filed in federal court (US Bankruptcy Court)

6 Types of bankruptcy under the federal Bankruptcy Code (within Title 11 of the US Code)



Types of Creditor Claims

General unsecured claim – claim of a debt but no measures taken to guarantee payment

Secured claim – claim of debt with a guarantee of payment based on an instrument such as a mortgage

Priority / Preferred claim – claim given priority over other claims by bankruptcy laws (e.g. unpaid wages, child support, etc.)



Types of Claims

State law: municipal property taxes are a first lien

“Commencing with the date of the filing by the listers of the grand list ... taxes lawfully assessed upon real estate shall be a first lien thereon, underlying all mortgages, attachments, liens, or other encumbrances thereon...” 32 V.S.A. § 5061

Bankruptcy Court (operating under federal law):

- Municipal taxes may be considered secured, unsecured OR priority claims



Types of Claims

Play it safe:

Record (in land records) a notice of delinquent taxes as a lien
Send notice to the delinquent taxpayer by certified mail.

The notice of tax lien should include:

Taxpayer's name, a legal description of the property, the time period for which the taxes are due and the amount of delinquent taxes including penalties and interest, the statutory authority for the lien and the signature of the delinquent tax collector.



Types of Bankruptcy

Chapter 7 Liquidation

- For individuals and businesses
- Simplest and quickest form of bankruptcy available
- Usually take 3-5 months
- Trustee collects and sells all of debtor's nonexempt assets and distributes proceeds to creditors according to their status
- Secured claims (such as municipal property taxes) must be paid in full before unsecured claims can be paid



Types of Bankruptcy

Chapter 11 Reorganization (“corporate bankruptcy”)

- Used primarily by business debtors, but sometimes by individuals with substantial debts and assets
- Form of financial reorganization
- Typically allows companies to continue to function while they follow debt repayment plans
- Debtor remains in possession of property and operates subject to reorganization plan that classifies claims and provides for payment in full or in part as available assets permit.



Types of Bankruptcy

Chapter 13 Adjustment of Debts

- Only for individual debtors
- Debtor must have regular source of income
- Repay creditors through 3-5 year court-approved process
- Debtor retains ownership of all assets but must devote part of future income to repayments
- Trustee collects plan payments by the debtor and disburses in accordance with the scheduled plan payments

Secured claims are paid in full with interest



Bankruptcy Stay

WHAT?

Automatic Stay of Collection

The filing of a bankruptcy petition immediately creates an injunction to prevent creditors from taking action to recover any obligation existing on the date of the bankruptcy filing.

11 U.S.C. § 362(a)



Bankruptcy Stay

WHY?

- Relieves the debtor of creditor harassment and protects the debtor's property from piecemeal seizure.
- Gives the Bankruptcy Court time to evaluate creditors' claims and to determine what assets of the debtor are available to pay claims.
 - Remains in place until the Bankruptcy Court grants a motion for relief from the automatic stay or the bankruptcy case is closed.



Bankruptcy Stay

WHEN?

- Goes into effect as soon as notice is received by the municipality:
 - Written notice from Bankruptcy Court; or
 - Oral or written notice from taxpayer or attorney
- Notice may be imputed from one official to another.



Bankruptcy Stay

WHAT NEXT?

- Consult with the town's attorney about how to proceed.
- **DON'T DO ANYTHING ELSE** in regard to delinquent taxes. No collection letters, no phone calls, no tax sales, etc.



Bankruptcy

Filing a Proof of Claim

- The town will generally file a “Proof of Claim” in all cases.
- Used by the court to determine what bankruptcy plan to approve, and what payments to set.
- The amount claimed should be the total of current and delinquent taxes incurred to date plus all interest and penalty. Can also claim current and delinquent water and sewer charges.
- Claim all as “secured” claims



Bankruptcy Stay

Stay does NOT impact current taxes or current water and sewer charges

- Ordinary tax collection procedures, including assessing and billing current taxes and charges, *are allowed* during the stay. 11 U.S.C. § 362(b)(9)
- Debtor's payment plan must provide for payment of post-petition property taxes /charges and the scheduled payment of pre-petition taxes / charges
- Court *may* reduce interest and may waive penalty/fee.



Bankruptcy Stay

Current taxes are “administrative expenses”

- Paid in the ordinary course of a bankruptcy proceeding (before all other claims except other administrative expenses).
- A municipality is not required to request payment of current taxes in order for them to be paid as an administrative expense (but may request).

11 U.S.C. § 503



Foreclosure

Notice of foreclosure ≠ stay in debt collection.

- Legally, a municipality may proceed with collection (including tax sale)
- Practically, there may be no point

Delinquent taxes not discharged in foreclosure. If the property is foreclosed, the new owner is liable for taxes



Foreclosure

Notice of foreclosure: call attorney

- Protect town's interests
- Foreclosure often a precursor to bankruptcy



Questions



Uncollectable Debts

Factors can include:

- The collateral securing the debt is destroyed.
- The amount of the debt grossly exceeds the value of the collateral.
- The amount of the debt is so small that continued collection efforts are impractical.
- The taxpayer disappears.
- The taxpayer is judgment-proof.



Uncollectable Debts

Potential Strategies:

- File lien on other real property in town
 - “Within 10 years from the time of receiving a tax bill, the collector may collect a tax in any place in the State and execute his or her warrant wherever he or she finds the property or person of a delinquent.” 32 V.S.A. § 5138
 - If the property changes hands, the purchaser will likely pay the town to discharge the lien.



Uncollectable Debts

Potential Strategies:

- Abatement
 - DTC may initiate abatement process
- Court-ordered sale or transfer of abandoned mobile home



Abandoned Mobile Homes

Municipality may bring an action in Civil Division of Superior Court seeking:

1. Court order to allow public auction of MH;
- OR
2. Court order approving transfer to municipality without public sale. May be done only when MH is “unfit for human habitation”

9 V.S.A. § 2608



Abandoned Mobile Homes

Is the MH unfit for human habitation?

- contains functioning appliances and plumbing fixtures;
- contains safe and functioning electrical fixtures and wiring;
- contains a safe and functioning heating system;
- contains a weather-tight exterior closure;
- is structurally sound; and
- is reasonably free of trash, debris, filth, and pests.



Abandoned Mobile Homes

Quick process:

Court Clerk must set hearing at least 15 but not more than 30 days after filing complaint

If municipality proves its case, sale may occur within 15 days of hearing.

Successful bidder other than municipality generally must remove MH within 5 working days after auction



Abandoned Mobile Homes

Court establishes minimum bid & terms of sale

The minimum bid must cover the total costs of the sale, court costs, attorney's fees, publication and mailing costs, delinquent taxes, including interest and penalties, and reimbursement for the landowner for unpaid rent if the mobile home is located on leased land.

If no minimum bid received, Court orders transfer to municipality & municipality only pays costs of conducting sale.



Abandoned Mobile Homes

Proceeds of sale distributed to:

- person conducting the sale for costs of the sale;
- municipality for court costs, publication and mailing costs, and attorney's fees incurred for court action;
- municipality for taxes, penalties, and interest owed;
- landowner for unpaid lot rent if the mobile home is located on leased land; and
- balance to a bank account, municipality as trustee, for the benefit of the mobile home owner and lienholders of record.



Abandoned Mobile Homes

Work with an attorney

Quick but complex process

Constitutionally-protected property interests at stake

Ensure a fair, legitimate, and defensible outcome



Questions

