

CONDUCTING TAX SALES

by Kevin M. O'Toole, Esq.

Introduction

Tax sales should be viewed by tax collectors as a last resort to enforce a statutory mandate to collect amounts owed to the municipality by individuals and entities. When conducted in accordance with the requirements of 32 V.S.A. §§5251 *et seq.*, and in keeping with a consistent, public policy for collection of taxes, scheduled tax sales can reinforce the public's confidence that every property owner will be required to meet his or her financial obligation. When the public knows that the tax collector means business, the amount of delinquencies diminishes and the need to conduct actual tax sales becomes less and less frequent.

I. Have a collection policy.

Under 32 V.S.A. §4874, within fifteen days after the due date of the final installment, the town treasurer must deliver to the collector a "list of such unpaid taxes with the name of each delinquent. After giving ten days' notice in writing of the time and place of payment to each delinquent of the amount of the unpaid taxes and the legal fees thereon, the collector may immediately proceed to collect the same by proper process." Under the treasurer's warrant to the collector, authorized under 32 V.S.A. §4913, the collector may resort to tax sales of real property owned by delinquent taxpayers if the amounts owed are not paid within sixty days of the collector's demand.

Okay, so that's the job description in a nutshell. It's not a policy. What is the collector's method to collect amounts owed from each and every delinquent? While the financial plights of delinquents are not necessarily the collector's concern, a fair collection policy allows for some individual setbacks, but does not permit delinquents to get in too deep.

A collector should send the initial written demand for payment, and then follow up with regular monthly or, perhaps, bi-monthly statements to the delinquent. If there is a known problem, the collector can ask the delinquent to pay the amounts owed over a period of time.

Under 32 V.S.A. §5142, the acceptance of full or partial payment of overdue taxes by a town official does not preclude the town from collecting any unpaid balance of taxes, accrued interest and collection costs still owed to the town. Any installment plan, however, should be geared to bringing the delinquent current by a certain date. Typically, a collector will require that the amounts owed be paid in full prior to the beginning of the following fiscal year, or at the latest, within two years. This policy should appear in the annual town report, next to the list of delinquents.

Unfortunately, many collectors send the initial demand letter and that's it. What then happens is that the delinquent doesn't begin to pay until it's too late. The collector is then faced with initiating tax sale proceedings and there is resentment expressed by the delinquent, who can't pay, by the collector, who can't collect, and by the public, who pay even more in taxes because the town must borrow funds to make up for the shortfall.

Attached as Appendix A is a Letter of Agreement used by the collector for the Town of Manchester. It permits individuals to pay taxes for a particular year, but insists that all future tax bills be paid timely during the life of the agreement.

How should partial payments be applied? Under 32 V.S.A. §5137, "a collector of taxes for a town or municipality within it shall receipt for every payment made to him on account of delinquent taxes". Section 5137 further states that "if a partial payment on an annual tax bill," the collector must note whether the payment is being "applied on personal property or on real estate taxes." The statute is unclear, however, on whether a partial payment should be applied, prorata, to principal, accrued interest, penalty, etc., or applied to penalty and interest first, and then to principal.

It is recommended that the former method be used, as a collector who also acts as treasurer for a town using the latter method could be criticized for taking care of himself before the town he or she serves. Computer programs available to collectors uniformly use the prorata method for recording partial payments.

Note that while 32 V.S.A. §3142 states that "the acceptance of full or partial payment of overdue taxes by a town official shall not preclude the town from collecting any unpaid balance of taxes and any interest and collection fees accruing to the town," it does not require that the

collector accept partial payments. For years, the Arlington tax collector adamantly refused to do so.

Finally, the collector should make all delinquents aware that they may seek relief from the Town's Board of Abatement, and also how to schedule a hearing before that Board. In a 2000 decision of the Windsor Superior Court, a tax sale in Windsor was vacated because although the collector may have provided the delinquent, who owed property taxes dating back five years, with a copy of the tax abatement statute, the collector did not explain to the delinquent when, how, or where she could apply for an abatement. *Town of Windsor v. Blanchard*, Windsor Sup. Ct. Docket No. S528-11-99 Wrev (April 4, 2000).

The Board of Abatement consists of the treasurer, the listers, and the members of the Board of Civil Authority, or, in the alternative, the town treasurer, a majority of the listers and a majority of the select board. 24 V.S.A. §1533.. Pursuant to 24 V.S.A. § 1535, the Board of Abatement may abate, in whole or in part, taxes, interest, and collection fees accruing to the Town in the following cases: (1) taxes of persons who have died insolvent; (2) taxes of persons who have removed from the state; (3) taxes of persons who are unable to pay their taxes, interest and collections fees; (4) taxes in which there is manifest error or a mistake of the listers; (5) taxes on real or person property lost or destroyed during the tax year; and (6) taxes for real and personal property owned by veteran of any war or that veteran's spouse, widow, widower, or child, under certain circumstances.

I understand and appreciate that very few Boards of Abatement abate taxes based upon an inability to pay. Still, the Board of Abatement is statutorily required to formally consider doing what every collector is informally asked to do.

So, establish a collection policy, make it known, and then apply it uniformly.

II. Preliminaries.

Let's say that all reasonable efforts on the part of the collector to collect from a delinquent have failed, for whatever reason. Before proceeding to tax sale, it can be very helpful to mail a final demand letter. This letter can come from the collector, or, perhaps, from the

collector's attorney. In any event, it will prevent any misunderstandings down the road.

Attached as Appendix B is a form demand letter sent to a delinquent taxpayer on behalf of the Town of Sunderland tax collector, who has a two-year policy. In Sunderland, property taxes for the fiscal year beginning July 1st become due in two equal installments on October 15th and on April 15th. Note that the letter states that if the 2008-2009, 2009-2010, 2010-2011 and 2011-2012 taxes, penalties, etc. are not paid by December 2nd, a tax sale will be scheduled on all amounts then owed.

By December 2nd, the required sixty days from the issuance of the warrant by the treasurer for those tax years will have elapsed. The delinquent knows that if he or she doesn't pay the account within that period, the bill will be much higher. Moreover, there is no sense in scheduling a tax sale until the collector can legally proceed with a tax sale on all delinquent amounts.

I do not recommend that a copy of the demand letter be mailed to the delinquent's mortgagee, if any. Under the terms of almost any mortgage deed, the failure to pay property taxes owed on the property secured by the mortgage deed constitutes a default. A bank will often pay the amount owed and then initiate foreclosure proceedings if the bank is not reimbursed promptly. A demand letter can serve as added incentive for the delinquent who wants to avoid getting his or her bank involved prior to formal tax sale proceedings. In addition, the collector that sends a final demand letter to the delinquent's bank may fall into treating delinquents with mortgages differently than those without mortgages.

A word about fees and costs. Under 32 V.S.A. §5258, the collector may collect principal, interest, and the 8% penalty, but may not collect other fees, such as attorney's fees, until the sale has been authorized by the Select Board and after the warrant and levy for delinquent taxes has been recorded at the Town Clerk's Office. Until then, the collector is digging into his or her own pocket to pay those fees.

III. Levy and Notice of Sale.

Let's assume that the final demand letter fails to produce positive results and the collector

has decided to “extend” his or her warrant. 32 V.S.A. §5252 details exactly what steps must be taken prior to tax sale.

- (1) File at the Town Clerk’s Office “for record” a true and attested copy of the warrant, a sufficient description of the land levied upon, and a statement in writing that “by virtue of the original tax warrant and the tax bill committed to the collector for collection, the collector has levied upon the described land;”

Attached as Appendix C is an example of a “levy letter” to the Sunderland Town Clerk and Treasurer. The letter uses the Notice of Tax Sale for the description of the property. What should be recorded are the levy letter, the attested copy of the warrant, and the Notice of Tax Sale.

In many towns, the treasurer, the collector and the town clerk are one and the same person. This was (and remains) true in Sandgate, where Ann “Bunny” Wuerslin (since deceased), in her capacity as treasurer, wrote the levy letter to herself, in her capacity as collector, and then, as town clerk, recorded the letter in the Sandgate Land Records. As silly as this seems, by doing so, Bunny complied with the letter of the statute and thus protected the subsequent tax sale from attack.

Attached as Appendix D is an example of a true and attested copy of a warrant. Note that the warrant is dated as of the date the original warrant was issued. This warrant conforms to the form set forth in 32 V.S.A. §4913.

Attached as Appendix E is an example of a Notice of Tax Sale, which must be signed by the collector. All that is necessary is a “sufficient description” of the property being levied upon. There is no need to recite the entire legal description set forth in a deed or Uniform Mobile Home Bill of Sale and thus add to the publication costs being passed on to the delinquent.

It is very important, however, to get the description right. A thorough “front” search of title at the Town Clerk’s Office is a must. Here is where an attorney can be most helpful. It may be that the delinquent on the list no longer owns the property. There may be outstanding mortgages or liens. This information will be needed. More about that later.

Note that the sample Notice of Tax Sale does not state, as is set forth in the form found at 32 V.S.A. §5253, that “so much” of the property will be sold as is necessary. More about that later, too.

- (2) Advertise forthwith such land for sale at public auction in the town where it lies three weeks successively in a newspaper circulating in the vicinity, the last publication to be at least ten days before such sale;

Obviously, the tax sale cannot take place before the above time has expired. When calculating the ten day period, note that the period may not end on a Saturday, Sunday, or holiday. Give yourself a little leeway, too, just in case the newspaper doesn't print the Notice of Tax Sale when promised. Also, make sure the newspaper, indeed, is sold in the vicinity. For example, the *Rutland Herald* is sold at the only market in the Town of Rupert, which is situated in Bennington County. The *Bennington Banner* is not. For the Rupert tax sale, the Notices of Tax Sale should be published in the *Rutland Herald*.

- (3) Give the delinquent taxpayer written notice by registered mail requiring a return receipt directed to the last known address of the delinquent of the date and place of such sale at least ten days prior thereto if the delinquent is a resident of the town and twenty days prior thereto if the delinquent is a nonresident of the town;

Note that the certified letter doesn't have to be received by the delinquent, who may wish to avoid signing for anything at the post office. It must only be forwarded by certified mail to the last known address. Attached as Appendix F is an example of a certified letter to a delinquent. In *Jones v. Flowers*, 547 U.S. 220 (2006), the United States Supreme Court, citing the Due Process Clause of the Fourteenth Amendment, overturned an Arkansas tax sale in which a certified letter was returned “unclaimed.” Writing for the majority, Chief Justice Roberts noted that if the notice of sale had been also sent via First Class Mail, the process would have passed constitutional muster, as the municipality was only required to take steps reasonably calculated to

provide notice, even if actual notice was not obtained.

In *Hogaboom v. Jenkins v. Town of Milton*, 2014 Vt. 11 (filed February 21, 2014), the Vermont Supreme Court affirmed a decision by the trial court, voiding a tax sale of property in Milton, Vermont. In doing so, it echoed the holding in *Jones v. Flowers*. In *Hogaboom*, notice by certified mail was returned unclaimed almost two weeks prior to the tax sale. No notice of the sale was provided by First Class Mail, although after the sale, a notice was mailed to the taxpayer, informing the taxpayer of the one-year redemption period. The Court concluded that “once notice of a tax sale is returned unclaimed, a town must take additional steps to apprise the taxpayer of the impending tax sale before the sale occurs. This notice must be more than a “mere gesture” and must be reasonably calculated to provide the taxpayer notice of the impending sale.” The Court, citing *Jones v. Flowers*, identified re-sending the notice by regular mail as one such reasonable step.

So, if this happens, for goodness sake, send it by First Class Mail to the same address. To be on the safe side, send the second notice via First Class Mail at least ten (10) days prior to the sale whether or not the green receipt cards have been returned by the Post Office.

In case you were wondering, it is permissible to forward the letter via certified mail, return receipt requested, even though the statute states “by registered mail.” Under 1 V.S.A §134a, “registered mail,” as the words appear in the Vermont Statutes Annotated, “when used solely for the purpose of securing evidence of delivery, shall include any method of mail delivery requiring the signature of the addressee or his agent.”

What if there is reason to believe that the delinquent taxpayer is dead? Pursuant to 32 V.S.A. §5140, “when the property of a deceased person is set in the list to such person’s estate without naming the executor or administrator, if the executor or administrator does not pay the taxes assessed on such estate, . . . real estate belonging to the estate may be sold as provided by 32 V.S.A §§5252-5255.”

Also note that at the bottom of the attached letter, the delinquent is told that he or she can take certain steps if he or she does not wish the entire property to be sold. Pursuant to 32 V.S.A. §5254, the delinquent may request, in writing, that only a portion of the property be sold. This request must clearly identify the portion of the property to be sold, and must be accompanied by a

certification from the town's zoning administrator, if any, and from the District Environmental Commission, that the portion identified may be legally subdivided. If, however, the identified portion cannot be sold for the total amounts owed, then the entire property may be sold.

- (4) Give the mortgagee or lien holder of record written notice of such sale at least ten days prior thereto if a resident of the town and if a nonresident, twenty days' notice to the mortgagee or lien holder of record or his or her agent or attorney by registered mail requiring a return receipt directed to the last known address of the such person;

This step is very important because unless the mortgagee or lien holder is properly notified, the sale will not extinguish the secured interest of the mortgagee or lien holder. That secured party will be less likely to satisfy the amounts owed by the delinquent and potential buyers will be frightened off by the liens to which the property will remain subject.

Attached as Appendix G is an example of a letter to a mortgagee.

If one lien holder is the Internal Revenue Service, notices must be sent to the proper address and twenty-five days' notice is required. According to a 2011 IRS Publication 786 on this matter: "the 25-day period commences upon the receipt of an adequate notice of non-judicial sale. The date of receipt for notices sent by certified or registered mail is determined by the U.S. Postal Service postmark date." Attached as Appendix H is a copy of IRS Publication 786, which details what the notice must contain. The proper address to forward the notice is to the Collection Advisory office of the IRS for the district in which the IRS lien is located. The current address for Vermont tax sales, found in IRS Publication 4235, is as follows:

Internal Revenue Service
JFK Federal Building
PO Box 9112, Room 800
Stop 20800A
Boston, Massachusetts 02203

- (5) Post a notice of such sale in some public place in the town.

To be on the safe side, if possible, make that two public places in the town. Note, too, the date that the Notices of Tax Sale are posted. That information must be recited in the collector's Report of Tax Sale, should the tax sale occur.

IV. Getting Ready for the Tax Sale

Once the Collector has satisfied the requirements of 32 V.S.A. §5252 , there are still some additional steps that need to be taken prior to the scheduled tax sale.

First, the Collector must ensure that the Town has an opportunity to protect its interests in case no third party bids at the time of the sale. Under 32 V.S.A. §5259, the Town, by act of its mayor or selectmen, may become a purchaser at a tax sale if no bid equal to the tax and costs is made at the time of the tax sale. So, the collector should ask that the mayor/selectmen vote to authorize an agent to bid for the Town at the sale. Otherwise, the collector may be left with publication and other costs, should no one bid at the tax sale.

Next, the Collector should prepare to field telephone calls and letters from delinquent taxpayers who own property scheduled for tax sale. Many will want to bring their account current and will want to know the exact amount owed. Attached as Appendix I is a form that my office has found useful. The form incorporates the fees and costs permitted under 32 V.S.A §5258. The Collector may also find Microsoft Excel or Corel Quattro programs helpful for this.

Also attached, as Appendices J and K, are sample "cancellation" letters to the town clerk and Collector. Once a delinquent has paid, he or she has every right to expect to have the weekly newspaper publication of the Notice of Tax Sale cease, and the recorded lien in the land records discharged. 32 V.S.A. §5262 only requires that the collector record with the Town Clerk a list of the properties that have not been redeemed, but that seems unfair. Most town clerks will record this without charge.

Some delinquents who telephone will not be in a position to pay. These individuals should be directed to the Board of Abatement. In addition, the collector should inform them of the year-long redemption period following a tax sale to assuage the delinquent's genuine fears concerning the possible loss of a home.

V. Conducting the Tax Sale

The tax sale is an auction of the delinquent's property to the highest bidder. On the day of the sale, prior to the start of any bidding on properties, the collector should determine the exact amount owed as of that date, including \$60.00 allowed under 32 V.S.A §5258 for attending the sale, issuing the Report of Tax Sale, recording the Report of Tax Sale, and for preparing the Tax Deed, in the event the property is not redeemed. Potential bidders should be told that the Town will bid this amount if no third party does so at the sale (provided the Select Board has authorized a bid under 32 V.S.A §5259).

Bidders should also be told that under 32 V.S.A §5260, delinquents, mortgagees and lien holders have one year in which to redeem the property by paying the purchase price paid at the tax sale, plus accrued interest on the purchase price at a rate of 1% per month or fraction thereof. Bidders also should be informed that during the redemption period, they have absolutely no right to enter upon the property without the consent of the delinquent taxpayer, who, presumably, also is the record owner.

Finally, potential bidders also should be informed that should they bid on a property, and the property is not redeemed within one year, (1) they will be issued a tax deed that will not purport to give them good and marketable title to the delinquent's property, but instead, whatever title the delinquent had, minus liens and mortgages acquired by mortgagees or lien holders during the delinquent's period of ownership who have been provided adequate notice; and (2) they will have an instant delinquent tax bill for the amount of taxes, penalty and interest that became due during the redemption period.

If there is an I.R.S. lien, the IRS has an additional 120 days from the end of the one-year period in which to redeem its interest. 26 U.S.C. §7425(b); *see Green Mountain Fence Co., Inc v. Vigarino*, 147 Vt. 74 (1986)(See Appendices K(1-2). Note, too, that 26 V.S.A. §7425(b)(3) states that:

“in any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption *and to record title to such property in the name of the United States.* . . .” [Emphasis added].

The Vermont statutes are silent as to what form of payment will be accepted by the collector at a tax sale, and as a result, the form of required payment across the state varies widely. Some towns require cash or a cashier's or certified check. The Town of Manchester requires payment in the form of certified funds, but only within ten days of the sale. That allows for 'cold feet' by a bidder. Moreover, what if the delinquent taxpayer redeems within that ten days?

I recommend that collectors accept a personal check from the winning bidder, but insist before the bidding commences that the next highest bidder deliver his or her check as well, so that the tax sale will not fail if the first personal check does not clear for whatever reason. This will make it easier on bidders, who might otherwise be unable to bid on more than one property.

As an aside, collectors should note neither they, nor their agents, are permitted to bid at the tax sale. *Chandler v. Moulton*, 33 Vt. 245 (1860).

Under 32 V.S.A. §5254(a), "when the tax with costs is not paid before the day of sale, the real property on which the taxes are due shall be sold to pay such taxes". As discussed above, the collector must try to accommodate the delinquent's request in writing that only a portion of the property be sold, if certain requirements are met. If, however, the identified portion cannot be sold for the total amounts owed, then the entire property may be sold. 32 V.S.A. §5254.

What if at the tax sale, the winning bid is in excess of the amount owed for taxes and costs? See *Bogie v. Town of Barnet*, 129 Vt. 46 (1970). Under the Vermont Supreme Court's decision in *Ran-Mar, Inc. v. Town of Berlin*, 181 Vt. 26 (2006), a collector may hold the difference and only pay it to the taxpayer if the property is redeemed or a tax deed is issued, citing that there was no statute prohibiting it. The Court reasoned that as during the redemption period, title was not conveyed and the delinquent taxpayer retained possession, the taxpayer's right to receive the overage was inchoate.

I recommend that in most cases, the excess amount be forwarded to the delinquent taxpayer. There is no statute or case prohibiting that, either. Holding on to the funds brings its own set of headaches, and paying excess tax sale proceeds to the delinquent taxpayer has forced the hand of many mortgagees, who have opted to pay the amounts due and prevent the tax sale from happening. Retaining the proceeds for up to one year might cause area lenders to re-think that, and wait until the redemption period has almost expired to make a payment. That means

that the Town will have to pay for all of the costs of the tax sale, if it is forced to bid under 32 V.S.A. §5259.

VI. Post-Sale Requirements

Within thirty days of the sale of the delinquent's property at tax sale, the collector must "make a complete return of his doings and file the same for record in the town clerk's office of the town wherein such land lies, which return shall be prima facie evidence of the facts therein stated. . . ." 32 V.S.A. §5255. Attached as Appendix L is a sample letter to a Town Treasurer, breaking down the disbursements. Attached as Appendices M and N, are two sample Reports of Tax Sale, each of which is based upon the form set forth in the statute. The first sample form concerns a tax sale at which a third party purchased the property. The second concerns a tax sale at which an agent for the Town purchased the property pursuant to 32 V.S.A. §5259.

The collector should mail copies of the Report of Tax Sale to the delinquent and to the delinquent's mortgagees and lien holders, together with a copy of 32 V.S.A. §5260, which sets forth their redemption rights. The collector's cover letter should emphasize that the collector cannot accept anything less than the entire redemption amount. *See Westine v. Whitcomb, Clark & Moeser*, 150 Vt. 9 (1979)(where the Vermont Supreme Court ruled that a tax deed was properly delivered to a purchaser at tax sale after the redemption period had passed, where during that period, the delinquent property owner tendered the amount paid by the tax sale purchaser, but only part of the interest due). A copy of a sample cover letter to a delinquent used by my office is attached as Appendix O.

Under 32 V.S.A. §5261, when the one-year redemption period has passed without payment of an amount equal to the purchase price at tax sale plus accrued interest on that amount, the collector or his successor must execute a deed to the purchaser, "which shall convey to him a title against the person for whose tax it was sold and those claiming under him". In *Morse v. King*, 137 Vt. 49, 50-51 (1979), the Vermont Supreme Court ruled that §5261 "does not contemplate that a collector's deed shall be one of warranty. Under its terms, the purchaser at a tax sale gets no better title than was held by the person against whom the tax was assessed".

Attached as Appendix P is a sample Tax Deed, which incorporates many of the recitals contained in the Report of Tax Sale. In the sample, the overage was paid to the Winhall Town Treasurer, to be held in escrow by the Town of Winhall until such time as the same is claimed by the delinquent taxpayer or the sum is turned over to the State of Vermont as abandoned property pursuant to 27 V.S. A. §1241, *et seq.* In that case, previous correspondence to the delinquent taxpayer, addressed to her last known address at “8 Eagle Place, London, EN sw 7erg” had been returned to the sender, marked “not known as this address.”

Finally, under 32 V.S.A. 5262, within thirty days of the expiration of the time for redemption, the collector is required to deposit with the town clerk a list of the properties which have not been redeemed. Don’t worry if you have not done this in the past; the statute further provides that the failure to do so “shall not affect the title of the purchaser.” Presumably, however, tax deeds were prepared and recorded in the land records for properties that were not redeemed.

VII. Miscellaneous Issues

A) Bankruptcy Filing by Delinquent Taxpayer

What do you do when you learn that the delinquent taxpayer has filed for bankruptcy? You stop. If the tax sale has not yet been scheduled, don’t schedule it. If the tax sale has been scheduled, cancel it. If the tax sale has occurred, the one-year redemption period stops running as of the date of filing, and only resumes after the delinquent has been discharged by the Bankruptcy Court. *In Re: L.H. & A Realty Co., Inc.*, 57 BR 265 (Bkrty. D. Vt. 1986). Under federal law, the filing of a bankruptcy petition operates as a “stay” against the enforcement of any lien or claim against the delinquent taxpayer that arose prior to the filing of that petition. 11 U.S.C. §362(a). A tax sale commenced under state law while the delinquent taxpayer is in bankruptcy has been ruled void from the outset. *In Re: Shamblin*, 878 F. 2d 324 (9th Cir. 1989).

Moreover, an individual injured by any wilful violation of a stay “shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may recover

punitive damages”. 11 U.S.C. §362(h).

The good news is that property taxes are not dischargeable. 11 U.S.C. §523(a)(1). The collector may be required to file a proof of claim in Bankruptcy Court provided to him or her by the debtor in order to preserve the claim for back taxes, penalties and costs. Property taxes that become due after the filing of the bankruptcy petition are not covered by the automatic stay and payment of these taxes by the debtor are routinely required under an approved Chapter 13 Bankruptcy Plan. Note that there is case law stating that the claim for back taxes, penalties and costs is subject to the terms of the approved Chapter 13 Bankruptcy Plan. Without filing a proof of claim, the Town may not be provided notice of a hearing to argue that its claim should be preserved intact.

The bad news is that the delinquent is not required to inform the collector when the bankruptcy action has ended. The collector may have to contact the delinquent’s attorney or the Bankruptcy Court periodically to verify that the collector may lawfully resume collection efforts.

A good practice is to cross-check the delinquent taxpayer with the PACER internet database at the outset for a possible bankruptcy filing.

B) Mobile Homes

Until just over fourteen years ago, the Vermont statutes treated liens on personal property differently than liens on real property. Effective May 29, 2000, however, 32 V.S. A. §5079(g) now states that “taxes lawfully assessed upon a mobile home shall attach as a lien on the mobile home as provided in Section 5061 of this title.” Under 32 V.S.A. §5061, taxes assessed against real property shall be a first lien on that real estate, a lien enforceable for a period of fifteen years. No longer must the collector first determine whether the delinquent’s mobile home is to be considered real or personal property for tax sale purposes.

How does the collector treat mobile homes which are not affixed, which are not located on the delinquent’s land? Well, a mobile home may only be moved or sold by filing a mobile home uniform bill of sale with the town clerk. Pursuant to 32 V.S.A. §5079, the form must include a statement endorsed by the town clerk, indicating that all real and personal property

taxes assessed against the owner have been paid. So, treat as you would any other real estate, except the legal description in the notice of tax sale should refer to the Uniform Bill of Sale and state the physical location of the mobile home.

C) What sort of title is conveyed by a deed from a tax collector?

Pursuant to 32 V.S.A. §5261, when the one-year redemption period has passed and the land has not been redeemed, the collector or the collector's successor must execute to the purchaser a deed, against the person for whose tax it was sold and those claiming under him. There is no authority to warrant the title. In other words, the purchaser at a tax sale gets no better title from the delinquent tax collector than was held by the delinquent taxpayer. *Morse v. King*, 137 Vt.49, 51 (1979).

Note that the deed *may* convey title to the purchaser free and clear of liens held by individuals or entities claiming under the delinquent taxpayer, provided those individuals or entities have been provided with proper notice under 32 V.S.A. §5252(4).

Also note that when the one-year redemption period has passed and the land has not been redeemed, the land will be subject to a tax bill that accrued during that period and is now delinquent.

Finally, note that according to Sherry Martin of the Vermont Department of Taxes, for land gains tax purposes only, the closing occurs at the end of the redemption period.

D) What rights does the purchaser have during the one-year redemption period?

None. The purchaser does not have the right to go on the property, and does not have any right to secure homeowner's insurance against any loss or damage to the property during the redemption period. If the purchaser pays the property taxes that become due during the redemption period, he or she does so at his or her own risk. There is no privity between the purchaser and delinquent taxpayer. The purchaser has the right to collect 12% (prorated) on top of the purchase price if the property is redeemed and the right to a deed if it is not redeemed.

E) What parties may redeem the property from the lien of the tax sale during the redemption period?

Pursuant to 32 V.S.A. §5260, the property may be redeemed within one year from the day of sale by payment to the delinquent tax collector from “the owner or mortgagee of lands sold for taxes, his representatives or assigns.” (Again, if there is an I.R.S. lien, the IRS has an additional 120 days from the end of the one-year period in which to redeem its interest.) That does not mean that a family member cannot step in and pay the amount necessary to redeem the property; it just means that the family member may not do so without the delinquent taxpayer’s consent. This situation came some years ago in Rupert, when the delinquent taxpayer refused to consent to a payment from his mother or from his brother. The redemption period passed and he lost the property.

More commonly, the property subject to the lien of a tax sale is sold to a third party and the settlement agent writes and delivers the check for the redemption amount directly to the delinquent tax collector, much as he or she would do to redeem the property from the lien of a foreclosure judgment. Andy Mikell of VATIC now endorses this position.

A few years ago, the Vermont Department of Taxes was floating the position that since §5260 did not expressly mention lien holders, then their security interests were not extinguished after the expiration of the redemption period. That the omission was a simple oversight is supported by the requirement in 32 V.S.A. §5252 to “give the mortgagee or lien holder of record written notice of such sale. . . .” There would be no reason to provide notice to a lien holder if the lien holder had no right to redeem. Moreover, 32 V.S.A. §5061 states that “taxes lawfully assessed upon real estate shall be a first lien thereon, underlying all mortgages, attachments, liens, or other encumbrances thereon. . . .”

F) Is there a problem because all, and not just a portion of the property, was sold at tax sale?

Prior to 1995, 32 V.S.A. §5254 stated that “so much of the land may be sold as it is

necessary to pay such tax and costs.” There was a line of Vermont Supreme Court cases reversing tax sales because an excessive amount of the lands were sold. (See, e.g., *Peterson v. Moulton*, 120 Vt. 439 (1958), *Price v. Leland*, 149 Vt. 518 (1988).)

This is no longer a problem. In 1995, 32 V.S.A. §5254 was amended. Now, the delinquent taxpayer, not less than 24 hours before the tax sale, may request, in writing, that only a portion of the property be sold. This request must clearly identify the portion of the property to be sold, and must be accompanied by a certification from the Town’s zoning administrator, if any, and the District Environmental Commission, that the portion may be legally subdivided. If, however, the identified portion cannot be sold for the total amounts owed, then the entire property may be sold.

In 2000, the Windsor Superior Court reversed a tax sale because the delinquent taxpayer had not been apprised of the tax abatement process. *Town of Windsor v. Blanchard*, Windsor Sup. Ct. Docket No. S528-11-99 Wrev (April 4, 2000). Using the court’s line of reasoning, it might be argued that the delinquent tax collector must apprise the delinquent taxpayer of this procedure as well.

G) What is the applicable statute of limitations for challenges to tax sales by the delinquent taxpayer?

The period for challenges against the tax collector is one year from the date of the levy thereon (not the tax sale) by the delinquent tax collector. 32 V.S.A. §§5294 & 5295. (See *Turner v. Spera*, 140 Vt. 19 (1981).) Also, there is a three-year statute of limitation for actions against the grantee of a deed from a tax collector. That’s four years from the date of sale, when the one-year redemption period is included. This statute of limitations is conditioned upon the continuous and open possession of the property by the grantee and the subsequent payment of all property taxes by the grantee. It’s sort of a super adverse possession statute.

Note, however, that the tax sale process may still be challenged as part of a subsequent ejectment action, should the delinquent taxpayer refuse to vacate the property after the one-year redemption period has passed. There is no statute of limitations for defenses to ejectment

actions.

H) How much credence may be given to the recitals in the Report of Tax Sale as to the steps taken by the delinquent tax collector prior to tax sale?

Pursuant to 32 V.S.A. §5255, the Report of Tax Sale, which is to be recorded at the Town Clerk's Office within 30 days of the tax sale, is "prima facie evidence of the facts therein stated." Even so, make an effort to examine the tax collector's file, include the green cards evidencing that notices were property forwarded to the last known address of the delinquent taxpayer and any lien holders within the statutory time periods. This may affect whether or not the secured lien of a party will be extinguished once the one-year redemption period has passed.

There also is case law supporting a rebuttable presumption that a municipal official did his official duty properly. In *Kelly v. Town of Barnard*, 155 Vt. 296, 303 (1990), the Vermont Supreme Court, citing *Bacon v. Boston & Maine R.R.*, 83 Vt. 421, 434 (1910), stated that "[w]here the regularity of an official act is dependant upon some coexisting or pre-existing act or fact there is a presumption in favor of the doing of such act or the existence of such fact." (That's an ancient road case, too!)

www

Kevin M. O'Toole, Esq. has a solo general law practice with an office in Dorset, Vermont. Since 1988, he has helped delinquent tax collectors conduct tax sales in Arlington, Danby, Dorset, Ira, Londonderry, Mount Tabor, North Bennington, Pawlet, Peru, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Wallingford, Wells, Weston, Winhall, and Woodford, Vermont. He received his B.A. degree from the University of Vermont in 1978 and his law degree in 1982 from the University of Notre Dame Law School. Mr. O'Toole is a member of the Vermont and Bennington County Bar Associations. He has served as Chairman of the Zoning Board of Adjustment and Moderator for the Town of Dorset, where he lives with his wife, Nancy.

