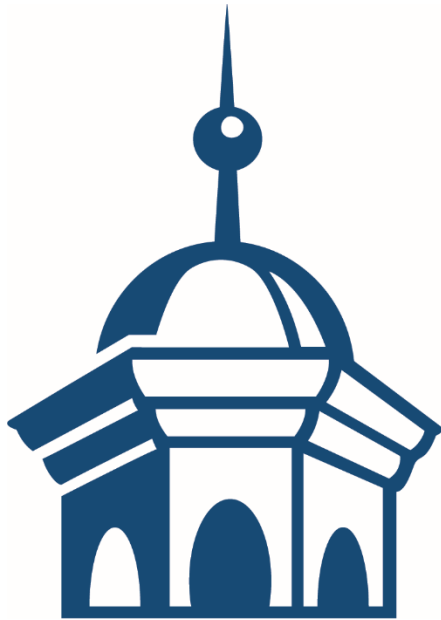

DELINQUENT TAX COLLECTION OVERVIEW

SUSAN SENNING, STAFF ATTORNEY II

MUNICIPAL ASSISTANCE CENTER



**Vermont League
of Cities & Towns**

AGENDA OVERVIEW

The Role of the Delinquent Tax
Collector



The Municipal Property Tax Process



Collection of Delinquent Taxes

THE ROLE OF THE DELINQUENT TAX COLLECTOR IN MUNICIPAL GOVERNMENT

Introduction
to the office.

The 7 types of
delinquent
tax collectors.

HANDBOOK CHAPTER 1

INTRODUCTION TO THE OFFICE INCOMPATIBILITIES

Incompatibilities

17 V.S.A. 2647

- A delinquent tax collector may not also be a:
 - Town auditor;
 - Selectboard member; or a
 - School board member.
- Chart online at <https://www.vlct.org/resource/chart-incompatible-offices>

HANDBOOK CHAPTER 1

INTRODUCTION TO THE OFFICE DUTIES

Notify

- Notify taxpayers when their taxes are overdue;

Provide

- Provide an accounting and pay all collected taxes over to the town treasurer;

Direct

- Direct the application of payments received (principal/interest/penalty);

Take

- Take formal collection actions [e.g. foreclosure, distraint, action at law, tax sale].

Keep

- Keep accounts of every delinquent taxpayer; the amounts of principal/interest/penalties owed; payments made; and provide an accounting to the town auditors.

THE TYPES OF DELINQUENT TAX COLLECTORS

Elected DTCs

17 V.S.A. 2646(9)

- A town may elect a delinquent tax collector for a one-year or three-year term.
- Term stays in effect until voters rescind it.

HANDBOOK CHAPTER 1

TYPES OF DELINQUENT TAX COLLECTORS

Town Manager as DTC

24 V.S.A. 1236

- Town may vote to have the town manager collect all taxes (current and delinquent) unless the town has voted to have the town treasurer collect current taxes.
- The town manager will continue to collect until the town votes otherwise.

HANDBOOK CHAPTER 1

TYPES OF DELINQUENT TAX COLLECTORS

Appointed DTCs

17 V.S.A. 2651d

- Town can vote to authorize the selectboard to appoint a delinquent tax collector who may be any person.
- Can be town treasurer, no requirement to be registered voter in the town.
- Appointment authority stays in effect until rescinded by the voters.

TYPES OF DELINQUENT TAX COLLECTORS

Constable: Default DTC

24 V.S.A. 1529

If a town fails to elect a delinquent tax collector at town meeting and does not provide another method (e.g. town manager, appointment), the first constable automatically becomes responsible for collecting both current and delinquent taxes.

HANDBOOK CHAPTER 1

TYPES OF DELINQUENT TAX COLLECTORS

Appointed DTC Due to Disability

32 V.S.A. 4674

If the delinquent tax collector is unable to discharge their duties because of sickness or some other reason, the selectboard may certify the disability on the warrant for the collection of delinquent taxes and appoint someone to collect and pay over such taxes.

HANDBOOK CHAPTER 1

TYPES OF DELINQUENT TAX COLLECTORS

Hired DTC

32 V.S.A. 4799

When a town is without a delinquent tax collector, the selectboard may hire a qualified person (regardless of residency) to act as tax collector for the town.

Charter Provision

Some towns have town governance charters that provide for the selection of the delinquent tax collector.

THE MUNICIPAL PROPERTY TAX PROCESS

- Who pays property taxes?
- When do taxes become delinquent?
- The warrant.
- Penalty (commission) & interest.
- Water & sewer, mobile homes, & personal property.

WHO PAYS PROPERTY TAXES?

Taxes are **set** in the Grand List to the owner or possessor as of **April 1** in each year in the town where it is located. [32 V.S.A. 3651](#)

The owner, as of April 1, **remains liable** for the year's taxes regardless of whether the property is sold after April 1 of that year.



WHO PAYS PROPERTY TAXES?

Unpaid property taxes are both:

- A personal obligation of the record owner on April 1st (a debt);

AND

- An encumbrance on the title to the property (a lien) that arises automatically by operation of law.



HANDBOOK CHAPTER 2

WHEN DO TAXES BECOME DELINQUENT?

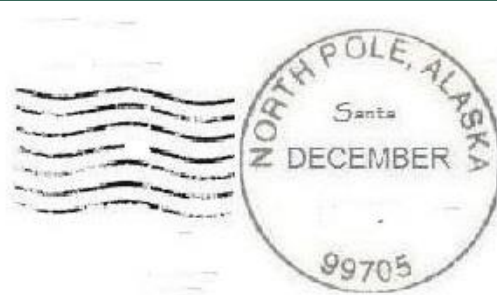
DUE DATES

Taxes become **delinquent** when a taxpayer **fails to pay the taxes by the due date.**

- Due date, time, and method of payment may be set by the voters.
- If the due date is set by the voters but no notice is mailed to the taxpayers 30 days prior to the date fixed (as often happens when budgets are defeated), then the due date is 30 days from the date of mailing of the notices to the taxpayers.
- If a due date is not set by the voters, taxes are due 30 days from the date the tax bill is mailed.

WHEN DO TAXES BECOME DELINQUENT?

DUE DATES



Postmarks = due date?

32 V.S.A. 4773

A town may vote to accept a postmark as proof of on-time payment of property taxes.

A town that does not vote to fix a date, time or method of delivery must accept payment of a tax delivered or postmarked before midnight on the tax due date.

WHEN DO TAXES BECOME DELINQUENT? DUE DATES

Sunday due date = Monday

- Any act required to be done on or before a Sunday is valid if done on the following Monday.
 - Saturday due date: make plan & communicate.
 - Recommend opening the office that day OR allowing payment on the next day that the office is open.
- Best Practice: Tax bill should clearly explain when payments will be accepted.

HANDBOOK CHAPTER 2

THE WARRANT



MODEL DELINQUENT TAX COLLECTION WARRANT

STATE OF VERMONT)
COUNTY OF _____)

TO: [name of collector of delinquent taxes]
COLLECTOR OF DELINQUENT TAXES
of the [name of town]
in the County of [name of county]

GREETINGS:

By the Authority of the State of Vermont, you are hereby commanded to levy and collect of the person(s) named in the list herewith committed to you, the sum of money annexed to the name of each person respectively, and pay the same to the Treasurer of the [name of town] on or before 60 days from the date hereof; and if any person neglects or refuses to pay such sum with fees, you are hereby commanded to distrain the goods and chattels of such delinquent person, and the same dispose of according to law, for the satisfying of such sum, with your own fees; and for want thereof, you are hereby commanded to extend this warrant, for the collection of such sum so assessed against such delinquent person, with costs, together with fees, upon any land in this state belonging to such delinquent, according to law.

Within 15 days after the tax due date (or shorter time if town so voted), treasurer must issue warrant and copy of the tax bill to the delinquent tax collector against the delinquent taxpayers in the amount that remains unpaid.

HANDBOOK CHAPTER 2

THE WARRANT

- **MANDATORY**, even if DTC and treasurer are the same person.
 - Lack of evidence of any prescribed step in the process may cause problems with collection or result in court challenge.
- Gives the DTC legal authority to act but notice of time and place where payments/fees made required.
 - Residents = at least ten days' advance notice
 - Non-residents = at least twenty days' advance notice.

THE WARRANT

Payments between due date and warrant?

- The collector of current taxes must accept on behalf of the DTC;
- Payment must include interest and fee/penalty;
- The taxes, interest, and fee collected by the treasurer must be paid over to the DTC when the warrant is issued.

PENALTY (COMMISSION OR FINE)

The DTC may charge and collect a commission of **eight percent** on the amount of the tax, **unless a town votes otherwise** on all delinquent taxes.

Voters may adopt the percent of the amount of the tax collected that is to be charged as a commission, provided it **does not exceed eight percent.**

INTEREST

Towns **may vote** to charge interest on overdue taxes.

Interest is **not** automatic:

- May only be charged on overdue taxes if the town has voted to collect interest.



INTEREST V. PENALTY DISCRETION



No discretion regarding the assessment and collection of **interest**.



Discretion over **penalty/commission** (if compensation – otherwise, no discretion).

INTEREST

1% per month for the first three months;

AND

1.5% per month thereafter.

*Interest is imposed on a fraction of a month as if it were an entire month.

HANDBOOK CHAPTER 2

CALCULATING INTEREST

Year 1

(1% for each of the first three months + 1.5% for every month thereafter) = 16.5%

End of Year 1: $8\% + 16.5\% = 24.5\%$

End of Year 2: $24.5\% + 18\% = 42.5\%$

End of Year 3: $42.5\% + 18\% = 60.5\%$

End of Year 4: $60.5\% + 18\% = 78.5\%$

End of Year 5: $96.5\% + 18\% = 96.5\%$

Year 2 and every subsequent year = 18%

HANDBOOK CHAPTER 2

PENALTY & INTEREST INSTALLMENTS

Penalty:

- Taxes do not become delinquent until the due date for the final installment has passed.
- A penalty may not be charged until after the final installment due date.

Interest:

- If a town collects taxes in installments, it may vote to charge interest on the late installments.

PENALTY & INTEREST OTHER

- **Grace period:** a town may also vote to establish a grace period or graduated penalty/fee schedule.
- **Military exemption:** Selectboard or town may vote to exempt the principal residence of full-time active-duty military personnel from the payment of any delinquent tax penalty or interest.

WATER & SEWER, MOBILE HOMES, & PERSONAL PROPERTY

WATER AND SEWER DELINQUENCIES

- ❖ Delinquent water and sewer charges create **liens** against the property and can be collected in the same manner as delinquent property taxes.
- ❖ Typically, more effective to use authority given in the **Uniform Water and Sewer Disconnect** statutes.
- ❖ Towns can **vote to charge interest** on overdue water and sewer charges.

MOBILE HOMES

Taxes lawfully assessed upon a mobile home attach as a lien just like on real estate.



In addition to the due date established, taxes assessed against a mobile home are due as of the date of removal from the town in which the mobile home was last listed.



Owner of the mobile home is liable for commission/penalty and collection costs as of date of removal.

HANDBOOK CHAPTER 6

PERSONAL PROPERTY LIEN

The tax lien on **real** property is automatic.

BUT

The tax lien on **personal** property does not exist until the tax collector exercises their discretionary authority to act with respect to a particular taxpayer by filing a notice of tax lien.



NOT



HANDBOOK CHAPTERS 2, 5

PERSONAL PROPERTY LIEN

- DTC's discretionary authority with selectboard's approval.
- Personal property tax lien notice must:
 - use form in 32 V.S.A. § 5073;
 - be filed in personal property records after April 1 in the year the tax assessed.

PERSONAL PROPERTY LIEN NOTICE

Notice of personal property lien must be given to:

- Taxpayer (if not owner);
- Owner of the property; and
- All persons having a duly recorded lien on the property.

Sent to last known post office address of each person by registered or certified mail, return receipt requested.

- If a partnership, notice to one of partners;
- If corporation, notice to the president or treasurer of the corporation.

PERSONAL PROPERTY LIEN LEGAL EFFECT



Good for **two years**
from the date it is
filed;



Lien has **priority**
over all others;



Property generally
may **not** be sold,
mortgaged,
exchanged or
pledged.

HANDBOOK CHAPTER 5

COLLECTION OF DELINQUENT TAXES

- ❖ Accepting payment/agreements
- ❖ Handling the money
- ❖ Receipts and reports
- ❖ Formal collection methods

HANDBOOK CHAPTERS 3 & 4

ACCEPTING PAYMENTS

Anyone can make
a payment.

DTC can require
form of payments;
be sure this is
clearly stated in
collection policy.

DTC can and
should reject
postdated checks.



ACCEPTING PAYMENTS

PARTIAL PAYMENT

It is up to each **elected** DTC to decide whether to accept partial payments.

Villeneuve v. Town of Underhill, 130 Vt. 446 (1972).

Accepting a partial payment does not prevent the town from collecting the unpaid balance.

ACCEPTING PAYMENTS

ALLOCATING PARTIAL PAYMENT

Recommendation:

Allocate partial payments proportionally to principal, interest, and penalty.

NOTE: If the taxpayer is delinquent for more than one year, it is up to the taxpayer to determine which year the payment should be applied.

ACCEPTING PAYMENTS

PAYMENT PLANS

Payment plans should:

- ❖ Be in writing in the form of a contract or letter of agreement,
- ❖ Be signed by the delinquent taxpayer.
- ❖ Require the outstanding balance to be paid off in a year.
- ❖ Clarify that, if breached (i.e. taxpayer fails to abide by the terms of the agreement), DTC will proceed with tax sale or other collection actions.

HANDLING THE MONEY

Rules: Must pay treasurer every two months or when selectboard requests. If DTC paid a salary or other compensation in lieu of fees or commissions, pay at least once a month.

Recommendation: Money collected should be remitted **immediately** over to the town. Receive commission sooner and prevent any liability for mishandled or lost funds.

HANDLING THE MONEY

FEDERAL TAX WITHHOLDING

- ❖ DTC is town employee for tax purposes.
- ❖ Turn funds over to town and get paid with proper withholding.
- ❖ A W-2 must be issued at the end of the year.

HANDBOOK CHAPTER 3

RECEIPTS AND REPORTS

A receipt for every payment must be written in triplicate in a bound book or other permanent record and provided as follows:

1. Original receipt to the person making the payment (forthwith);
2. Copy of the receipt to the town clerk (within 30 days of payment);
3. Copy remains with the DTC:

Annually, on or before February 5th, the DTC shall deliver to the auditors a copy of all the receipts for the preceding year (ending on January 31st).

RECEIPTS AND REPORTS

DTC report to town treasurer:

- Every two months
- On or before January 15th of every year

DTC report to town clerk:

- Within 30 days from the redemption period's expiration

FORMAL COLLECTION METHODS

4 collection methods authorized by law:

- * Foreclosure
- * Distraint
- * Action at Law (Civil Action)
- * Tax Sale

- Methods not exclusive, can be used cumulatively (but the debt can only be collected once).
- Tax sale is the usually the most useful and appropriate method for collection.

- Legal action brought in Superior Court; allows real property to be attached and sold to satisfy debt to town.
- After taxes delinquent at least 2 years.
- Hearing and court order to sell property if not redeemed within one year of court's order.

FORMAL COLLECTION METHODS: FORECLOSURE

- If not redeemed, property sold and proceeds applied to taxes, expenses, and fees. Residual applied first to satisfy the junior liens and then paid to the taxpayer.
- Pros and cons to this method.

HANDBOOK CHAPTER 4

FORMAL COLLECTION METHODS: FORECLOSURE

FORMAL COLLECTION METHODS

DISTRAINT

- ❖ DTC can **seize and detain personal property** to force payment of taxes owed.
- ❖ If delinquency not paid **within four days** after the property is seized, DTC can sell property at **public auction**.

FORMAL COLLECTION METHODS

DISTRAINT

- ❖ At least **six days** before public action, DTC must post **notice** of sale in a public place where the property was taken.
- ❖ If property **sold**, **title passes** to the new owner by operation of law.
- ❖ After deducting tax, interest, penalty, and costs due, any **excess** paid to the **delinquent taxpayer**.

FORMAL COLLECTION METHODS

ACTION AT LAW

- Lawsuit against the delinquent taxpayer to recover taxes, fees, and costs; brought in the name of the town.
- **Superior court** when:
 - Delinquent tax amount is >\$5,000 **or**
 - Abandoned mobile home.
- **Small claims court** when the delinquent amount is <\$5,000.

FORMAL COLLECTION METHODS

ACTION AT LAW: SMALL CLAIMS

- The taxpayer can **admit** that the taxes, interest, fee, and costs are owed; court issues judgment.
- If the taxpayer **denies** the claim, the court will schedule a hearing.
 - At trial, DTC must prove certain elements, and
 - Taxpayer allowed to rebut the DTC's evidence.
- If DTC **prevails**, judgment order = trustee process or lien.

FORMAL COLLECTION METHODS ABANDONED MOBILE HOMES

Action in Civil Division of Superior Court seeking:

1. Court order to allow public auction of mobile home; **OR**
2. Court order approving transfer to town without public auction; only if mobile home “unfit for human habitation.”

9 V.S.A. 2608

HANDBOOK CHAPTER 6

COURT ORDERED SALE OF ABANDONED MOBILE HOMES: PROCESS

- Town **files** complaint in Superior Court and satisfies **publication and notice** requirements.
- **Hearing scheduled** for 15-30 days after filing complaint.
- At the hearing, the **town must prove**:
 - Ownership of the mobile home;
 - The amount of taxes, charges, and fees due the town including the amount of attorney's fees claimed;
 - Compliance with court's notice and publication requirements; and
 - Mobile home abandoned (question of fact).

HANDBOOK CHAPTER 6

FORMAL COLLECTION METHODS

ABANDONED MOBILE HOMES: PROCESS

- Town has complied = **order** approving sale at public auction to be held within 15 days;
- Town must send order by **first class mail** to:
 - Mobile home owner;
 - Landowner if the mobile home is located on leased land; and
 - All lien holders of record.

FORMAL COLLECTION METHODS

ABANDONED MOBILE HOMES: PROCESS

- Court establishes **minimum bid & terms** of sale
 - Highest bidder over minimum wins.
 - No minimum bid received = court orders transfer of the mobile home to town.
- File **objections** to conduct of sale within 7 days.
- Sale proceeds **distributed** on 8th day if no objections.

FORMAL COLLECTION METHODS

TAX SALE

Words of caution:

- ❖ Specific statutory requirements and forms.
- ❖ Constitutionally protected interests involved.
- ❖ Legal assistance strongly recommended.

FORMAL COLLECTION METHODS

TAX SALE

ACT 182 & VHAP

- ❖ **Notice of pending application = tax sale prohibited**
- ❖ **VHAP notices required at various stages**

(Until Sept. 2025 or funds expire)

[VLCT article](#)

[VHAP Info for Towns](#)

FORMAL COLLECTION METHODS

TAX SALE



Process:

- ❖ **Preparing** for tax sale.
- ❖ Provide **notice** of tax sale.
- ❖ **Settling** before the sale.
- ❖ **Conducting** the tax sale.

HANDBOOK CHAPTER 4

FORMAL COLLECTION METHODS

TAX SALE

Process:

- ❖ **Report** of sale.
- ❖ **Treatment** of sale **proceeds**.
- ❖ **Redemption**.
- ❖ Collector's **deed** and property transfer tax.
- ❖ **Report** to clerk.
- ❖ **Accounting** to taxpayer.
- ❖ **Challenges** to deed.

FORMAL COLLECTION METHODS IN COURT

Recommendation: WORK WITH AN ATTORNEY

- Some processes are quick but complex;
- Constitutionally-protected property interests at stake;
- Ensure a fair, legitimate, and defensible outcome.

**MAC INQUIRY
SERVICE:**
INFO@VLCT.ORG
(802) 229-9111

