



TOWN OF BALDWIN, MAINE
OFFICE OF THE SELECTMEN
534 PEQUAWKET TRAIL, WEST BALDWIN, ME 04091



Policy for Management and Disposition of Tax-Acquired Property
Town of Baldwin, Maine

Background

A tax lien mortgage sometimes has been referred to as a "self-foreclosing mortgage" because no court action is required on the part of the municipality. Mere passage of time, non-payment of taxes by the owner, and the provision of required notices is sufficient to cut off the taxpayer's right of redemption and transfer title to the municipality. If the statutory process has been followed correctly, the tax lien forecloses automatically at the end of the 18-month redemption period, and the taxpayer's right to redeem the property expires. This policy assumes that the Town Tax Collector has properly issued the notice of the tax lien, properly recorded the tax lien certificate, and the tax lien certificate has foreclosed do to the expiration of the 18-month redemption period.

If you don't pay your taxes, you can lose your property to the town. Inaction is not a good policy in this regard. Ignoring the problem won't make it go away.

It is not necessary for the municipality to take physical possession of the property or perform any other act. If the taxpayer wishes to regain title after foreclosure, he or she must buy the property back from the municipality. After foreclosure, the Board of Selectmen becomes responsible for the care and management of the property, subject to the direction of the Town Meeting or provisions of a municipal ordinance. The 2016 Town Meeting passed Article 12. "TAX-ACQUIRED PROPERTY: To see if the Town will vote to authorize the Selectmen on behalf of the Town to sell or dispose of any real estate acquired by the Town for nonpayment of taxes on such terms as they deem advisable and to execute quit-claim deeds for such property."

This policy should be reviewed annually and annotated to confirm the Board of Selectmen has received authority to sell tax-acquired properties. If the wording of the article changes, this policy should be updated accordingly to reflect any changes in the authority granted to the Board of Selectmen.

The primary concern of the Baldwin Board of Selectmen is to obtain equitable payment of taxes by those capable of contributing to the public charge. The Board of Selectmen and the Town of Baldwin have no interest or desire to own real estate property. It is preferred to have real-estate in private, taxpaying hands.

Purpose:

This policy establishes a standard procedure whereby real estate property acquired in accordance with M.R.S.A. §§ 942 and 943, as amended, shall be managed, administered and/or disposed of by the Board of Selectmen in the name of the Town of Baldwin. This is a policy and not an ordinance. Failure of the Board of Selectmen to strictly adhere to this policy does not negate the validity of a property disposition.



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Definitions:

Foreclosed Tax Lien: A tax lien mortgage that has automatically foreclosed pursuant to 36 M.R.S.A. §§ 942 and 943.

Just Value for the Current Year Taxes Not Assessed: The amount of taxes that would have been assessed to the property had it not been owned by the municipality on April 1 of the year in which it is sold by the municipality. (NOTE: The purpose of this definition is to recover for the municipality those taxes which would have been assessed to the municipality if it had been privately owned on April 1 in the year in which it is sold. These taxes would be lost under current law if the municipality sells tax-acquired property after April 1.)

Land or Lands: That portion of the physical surface of the earth either natural or modified by man to a permanent or semi-permanent site and all natural or man-made resources therein and thereon. For the purposes of this policy, "land" shall be commonly referred to as "real estate property," as cited below.

Mail: Regular, first-class mail posted at any United States Post Office, postage prepaid.

Manufactured Real Estate Property: Any structure, building or dwelling, the same being constructed or fabricated elsewhere and transported, in whole or in part, to and placed, set or installed permanently or temporarily upon land within the municipality. For the purpose of this policy, "manufactured real estate property" shall also be commonly referred to as "real estate property," as cited below.

Municipality: The Town of Baldwin, Maine.

Municipal Officers: The Board of Selectmen of Baldwin, Maine.

Prior Owner: The person or persons, entity or entities, heirs or assigns to which the property was most recently assessed for municipal taxes.

Quitclaim Deed: A signed, legal instrument releasing the municipality's right, title or interest in real estate property, acquired by virtue of foreclosed tax liens, to an individual or individuals, entity or entities, without providing a guaranty or warranty of title to the same.

Real Estate Property: All land and all structures, buildings, dwellings, tenements and hereditaments, including manufactured real estate property, located or relocated upon any land or lands connected therewith and all rights thereto and interests therein.

Tax-Acquired Property: That real estate property tax acquired by the municipality by virtue of a foreclosed tax lien.

Tax Lien: A statutory lien created IAW 36 M.R.S.A. § 552



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Policy
Management and Administration

1. The Baldwin Town Treasurer shall annually provide the Baldwin Board of Selectmen with an inventory of all tax-acquired property within 45 days of the date of foreclosure of tax liens. The inventory shall include all tax-acquired property from prior years in which the municipality continues to retain an interest. The purpose of the inventory is to advise the Baldwin Board of Selectmen of that real estate in which the municipality has acquired an interest.
2. The Baldwin Board of Selectmen should obtain fire loss insurance for tax-acquired property that includes buildings in a dollar value not less than all outstanding taxes, liens, costs and other attendant expenses. (See also MMA Municipal Liens Manual pages 49 and 50 concerning liability insurance.)
3. The Board of Selectmen will determine on a case-by-case basis whether to request a quitclaim deed from the foreclosed prior owner. Alternatively, the Baldwin Board of Selectmen may pursue an action for equitable relief in accordance with the provisions of 36 M.R.S.A. § 946, as amended, as a means of securing a "Quiet" or clear title to any tax-acquired property, whether it is to be sold or retained. This should only be pursued in cases where the Board of Selectmen seeks to sell the property at market value or to retain it for municipal purposes. (See attached article on clearing title to tax foreclosed properties and page 54 and 56 of the MMA Municipal Liens Manual concerning clearing and obtaining quiet titles)
4. The Baldwin Board of Selectmen shall determine when and if any occupants of tax-acquired property shall vacate the same. The Town of Baldwin will not charge a monthly rental fee to occupants of tax-acquired property. (See MMA Municipal Liens Manual page 50 advice against rental agreements with occupants of tax-acquired properties).
5. The Maine Tort Claims Act (MTCA), 14 M.R.S.A. § 8104-A (2)(B), specifically provides that municipalities are **immune** from tort liability for damages arising out of the ownership, maintenance or use of any building acquired for non- payment of taxes **until** the former owner (or his lessee or licensee) has given up possession for a period of 60 days. Because this immunity only applies while the property is occupied and for 60 days after it becomes vacant, the Board of Selectmen shall act promptly to sell any property, which is or becomes vacant, or to insure it for \$400,000 – the current cap on damages under the MTCA (*see* 14 M.R.S.A. § 8105). Buildings shall be padlocked and a signed posted on the door indicating the property is Foreclosed Town Owned Property.

Disposition of Tax-acquired Property.

1. For a thirty-day period following the date of foreclosure, the Treasurer may accept payment from the prior owner for **ALL due taxes** (including the Just Value for the Current Year Taxes Not Assessed), accrued interest and costs associated with the tax lien



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foreclosure process if offered by the prior owner. Following acceptance of payment, the municipality shall deliver a municipal quitclaim deed to the prior owner releasing the municipality's interest in the property.

2. The Baldwin Board of Selectmen shall within **30 days of receipt of the inventory of foreclosed properties**, annually determine whether a tax-acquired property is to be retained for municipal use, retained as tax-acquired property, or disposed of in accordance with the terms of this policy. The Baldwin Board of Selectmen shall also determine which lots, if any, shall be appraised prior to sale to determine which method of disposal to pursue. An appraisal can be either from a professional real-estate appraiser or a market assessment from a registered real-state agent.

3. There are several methods that the Board of Selectmen may use to sell tax-acquired properties including public auction or sale through a registered real-estate agent. Regardless of the method of sale chosen, the Baldwin Board of Selectmen shall send notice of the impending sale, via mail only, to any and all prior owners of said property. Such notification shall be made at least 45 days prior to the scheduled sale or listing with a real-estate agent. Said prior owner may redeem the property within the 30 days immediately following this notification, with full payment of all outstanding taxes, including a Just Value for the Current Year Taxes Not Assessed, liens, interest and all costs, including but not limited to notice and insurance costs.

4. The Baldwin Board of Selectmen shall provide notice of intent to sell tax-acquired property by posting a notice within the Town Office, on the town website, and advertise for two successive weeks in the newspaper generally used by the Town for legal advertisements. The last notice shall be published at least seven days prior to any sale or listing date.

5. For sale via real-estate agent, the Board of Selectmen will enter into a six-month contract with the sales agent. Real-estate agent sales will generally be reserved for those instances where there is an expectation of a sale at close to market value.

6. For sale via public auction, the Baldwin Board of Selectmen shall solicit public bids and shall receive, open, and read aloud, submitted bids at a regularly scheduled meeting of the Board of Selectmen. The solicitation for bids can be accomplished via the notice of intent to sell or in a separate notice.

7. The Baldwin Board of Selectmen shall require the following for proper submission for a bid:

- (1) A bid sheet containing a full description of the property being bid upon, and the bid price in United States currency.
- (2) A certified cashier's check or postal money order, in an amount not less than 10% of the bid price, to be included as a deposit on the bid. Failure to submit a deposit shall cause the bid to be automatically rejected.



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The Baldwin Board of Selectmen shall require that these bid items cited in this paragraph be sealed in a single plain envelope marked only "Tax-Acquired Property Bid" on the exterior and either be hand delivered to the municipality or, if mailed, enclosed within a second envelope addressed to the Baldwin Selectmen, 534 Pequawket Trail, West Baldwin, ME 04091. All bids must be received by the town clerk no later than 4:00 PM on the date that bids shall be opened and read.

8. The Baldwin Board of Selectmen generally will not accept any bid for a dollar amount less than the total outstanding taxes, including a just value for current year taxes not assessed, liens, interest and all costs, including but not limited to public notice fees and insurance costs, appraisal fees, and fees as a result of clear-title action. **An estimate of that amount will be included in the public notice requesting bids.**

9. The Baldwin Board of Selectmen shall retain the right to accept or reject any and all bids submitted and shall include this disclaimer in any public notice soliciting bids.

10. The Baldwin Board of Selectmen shall open the bids at a Selectmen's meeting and the successful bidder announced. The successful bidder shall also be notified by mail. Should the Baldwin Board of Selectmen reject all bids, the property may be offered again for public sale without notice or offer to any prior owner or owners.

11. The Baldwin Board of Selectmen shall, as a credit to payment, retain the submitted bid price deposit of any successful bidder and shall return all unsuccessful bidders' deposits within 10 days of the bid opening.

12. The Baldwin Board of Selectmen shall require payment in full from any successful bidder within 30 calendar days following the date when bids are opened and read. (See Subsection L for exception.) Should the bidder fail to pay the full balance, the municipality shall retain the bid price deposit and title to the property.

13. The Baldwin Board of Selectmen may, subject to a show of good faith on the part of the bidder, extend the time limit a one-time-only additional 20 days in which full payment must be received.

14. The Baldwin Board of Selectmen shall issue only a quitclaim deed to convey title to tax-acquired property.

15. The successful bidder shall be responsible for the removal of any and all occupants of purchased tax-acquired property and shall, in writing, forever indemnify and save harmless the municipality from any and all claims arising out of the sale of the tax acquired property brought by the occupants of the purchased property, their heirs or assigns.



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16. In those cases where the municipality has taken possession of the real estate, and personal property of someone other than the municipality remains on the real estate, the municipality shall comply with Maine law with respect to the disposition of abandoned personal property. In those cases where the municipality has not taken possession of the real estate, the successful bidder shall be responsible for complying with Maine law with respect to the disposition of abandoned personal property and shall indemnify and hold harmless the municipality from any and all claims, which may be made against the municipality with respect to such personal property.

17. Bids may not be withdrawn at any time after submission.

18. Maine law prohibits a municipal officer (selectman or councilor) from purchasing tax-acquired property unless a competitive bid process is used and unless the municipal officer takes no part in the bid acceptance process. The law also requires that the offer of sale be advertised at least twice during a 7-day period prior to the acceptance of bids. See 36 M.R.S.A. § 946. There is an exception for tax-acquired property previously owned by the municipal officer's son, daughter, spouse, or parent immediately before its acquisition by the municipality. In such a case, the legislative body (Town Meeting) of the municipality may authorize the purchase by the municipal officer without a sealed bid. These requirements are found in the third paragraph of 36 M.R.S.A. § 946.

Applicability

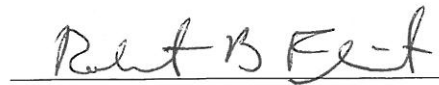
This policy is intended as a guideline with regard to tax-acquired property. The Baldwin Board of Selectmen may vote at a regularly schedule Board of Selectmen's meeting to take action different from the guidelines set forth in this chapter if, in their judgment, it is in the best interest of the Town of Baldwin.

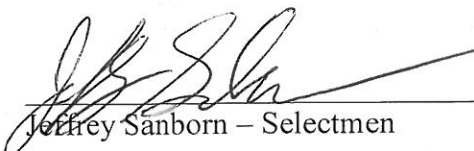
References

1. Article on clearing title to tax acquired property by Linnell, Choate & Webber, LLP
2. Maine Municipal Association Municipal Liens Manual dated Nov 2016

Sincerely,
 Baldwin Selectmen


 Olin Thomas - Selectman


 Robert Flint - Selectman


 Jeffrey Sanborn - Selectmen

31 Jan 2017
 Policy Adoption Date



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ARTICLE ON CLEARING TITLE TO TAX ACQUIRED PROPERTY

Municipal, Real Estate

Increasing the Value of Tax-Acquired Property

It is not surprising that when municipalities acquire title to real estate as a result of the expiration of a tax lien, the property is usually returned to the delinquent taxpayer by filing a tax lien discharge or delivering a quitclaim deed. Ordinarily the value of the real estate subject to the tax lien greatly exceeds the amount owed in real estate taxes.

However, municipal officials are often reluctant to pocket a windfall at the taxpayer's expense, being mindful of the fact that the failure to pay the taxes in a timely manner may have been the result of unfortunate circumstances beyond the taxpayer's control.

The municipality's reluctance to assert its title under an expired tax lien may also result from concern about the taxpayer's ability to find an alternative place of residence if evicted from his property. If the taxpayer is evicted, his or her family may be obliged to apply for welfare assistance in order to obtain substitute housing.

Municipal tax collectors may also be concerned about the difficulty of complying with statutory eviction procedures and incurring the legal expense of doing so. Such concerns may lead to procrastination in the hope that threatening letters will motivate the taxpayer to beg or borrow the money to pay the delinquent tax bill.

Sometimes municipalities enter into installment payment arrangements with delinquent taxpayers, which allow them to repay the back taxes in installments. However, such arrangements can bring about unintended consequences. Such agreements would ordinarily be subject to state laws regulating "land installment contracts" and therefore be subject to burdensome disclosure [1] and recording [2] requirements. Since they must be recorded, some way must be found to clear the record when the installment contract is completed or the taxpayer defaults.

Some municipalities dispose of tax-acquired properties by simply auctioning them off to the highest bidder. Purchasers at such sales assume the burden of clearing up any title defects and evicting the delinquent taxpayers or squatters.

Prices of properties sold at such auction sales are depressed by the fact that title to such properties will ordinarily not be certifiable by real estate attorneys [3] or title insurance companies. [4] Municipalities may nevertheless be motivated to proceed with such sales even in cases in which the auction price is less than the unpaid taxes because of concerns about liability for accidents occurring on the property or a desire to get the property in question back on the tax rolls.

The sale of tax-acquired property at below market prices is not an inevitable consequence of acquiring such properties through expired tax liens. 36 M.R.S.A. § 946 establishes a little-used procedure, which enables the taxing municipality to clear its title to the taxacquired property. After the municipality files suit, the statute places the burden on the taxpayer to prove that there was some defect in the process of assessing or liening the property. [5] Switching the burden of proof to the taxpayer is an enormous benefit to the municipality since it would be virtually impossible for it to prove affirmatively that all of the required steps in the tax assessing and tax collection process were performed correctly. The taxpayer will be defaulted if he or she fails to answer the complaint within



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20 days. The municipality can then prepare a default judgment, which will be signed by the court and recorded in the Registry of Deeds. The municipality is then free to advertise the property at its current market value through a broker or by simply advertising it for sale.

If the taxpayer does not default, the municipality must take further steps to pursue the litigation process. These could include serving the taxpayer with interrogatories requiring him or her to identify any defects alleged to have occurred in assessing the property or preparing the lien and lien notices. The taxpayer's answers to the interrogatories or his or her failure to answer may well establish the municipality's right to obtain a summary judgment from the court obviating the need for a trial. All of this can be done in a relatively short time frame.

Before deciding to bring an action under § 946 to quiet its title, a municipality must make some decisions based on the economics of the situation. First it must decide whether the anticipated appreciation in the sale price of the property which will result from the fact that title will become marketable after the proceedings are completed will more than offset the legal expenses incurred in performing a title search to determine whether the taxpayer had a clear title at the time that the tax lien was filed. This is necessary because the title acquired through the tax lien process is only as good as that title which the taxpayer possessed at the time that the lien was filed. [6]

The economic analysis should also include the legal expense of bringing the title-clearing action. These expenses should not be substantial if the length of the litigation can be minimized in the manner described above.

The application of § 946 in clearing the title to tax-acquired real estate is illustrated by the rather unusual case of *City of Auburn v. Mandarelli*, 320 A.2d 22 (Me. 1974) in which this office was involved. In that case, the tax-acquired property consisted of a recently constructed residential property in Auburn. The market value of the property very substantially exceeded the amount of taxes owed.

After the 18-month tax lien redemption period had expired, a relative of the taxpayer came in and offered to pay the several thousand dollars, which were owed in taxes, interest, and costs. The City of Auburn refused to accept the offer for several reasons. One was that the Chief of Police believed that Mr. Mandarelli was associated with the Mafia and that the purchase money had been obtained through illegal activity. The second reason for refusing to accept payment was that the City believed that the premises might be uniquely suited for a future municipal use, which it was contemplating. After declining to accept Mandarelli's proposal, the City of Auburn brought an action under § 946 to quiet its title.

The Maine Supreme Court ultimately resolved the case. The Court ruled that the notice requirements set forth in the statutory tax lien process met constitutional standards even though the end result might be the forfeiture of a taxpayer's substantial property interest. The Court also ruled that the City of Auburn was not unjustly enriched by the fact that it stood to receive substantially more value from the property than the amount of taxes which were owed. Although the Mandarelli litigation was protracted, the Maine Supreme Court's decision in favor of the City hopefully cleared the way for more expeditious decisions in such cases in the future.



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The facts of the Mandarelli case are unusual in several respects.[7] For example, most taxpayers who can afford to build expensive residences will be financially able to keep up with their real estate tax obligations. Also, taxpayers who don't pay their real estate taxes sometimes can't afford to properly maintain their properties. In the case of properties which have become run down through a lack of maintenance, the increase in the sale value, even with a marketable title, might not be sufficient to offset the expense of bringing a lawsuit under § 946. However, in a case in which the increase in the sale price of tax-acquired property which would result from clearing the title would substantially exceed the taxes owed, a lawsuit under § 946 should be considered.

This article was prepared for the municipal law clients of Linnell, Choate & Webber, LLP as well as others who are interested in municipal law issues. It does not cover every legal issue that a municipality might encounter in the sale of tax-acquired property. If you are unsure about how to proceed in such a matter, you can contact Attorney Jack Conway at jconway@lcwlaw.com or 207-784-4563.

[1] 33 M.R.S.A. § 482(1)

[2] 33 M.R.S.A. § 482(2)

[3] Standard of Title #902 states that real estate titles resting on expired tax liens are not certifiable unless the lien expired more than 15 years ago and otherwise meets the requirements of 36 M.R.S.A. § 946-A.

[4] It is understood that title insurance companies sometimes do not insist on strict compliance with standard #902 if they are satisfied from the facts of a particular case that the risks of a failure of title are minimal.

[5] 36 M.R.S.A. § 947

[6] It should be noted, however, that, if the notice required by § 946 has been given to anyone holding a mortgage on the property, the mortgage will be cut off by the foreclosure of the tax lien unless the mortgagee steps in to pay the delinquent taxes. *Ocwen Federal Bank v. Gile*, 777 A.2d 275 (Me. 2001).

[7] The unfortunate end of the story is that, after the Law Court issued its opinion, the Mandarelli residence, although unoccupied, mysteriously burned to the ground.