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“REASONABLE UNDER THE CIRCUMSTANCES:” CHECK LIST FOR COMPLIANCE WITH ALL NOTICE REQUIREMENTS FOR SALE OF TAX DEEDED PROPERTY

INTRODUCTION

RSA 80:89, I and VIII require that the municipality notify the former owner by certified mail, return receipt requested, of an impending sale of tax deeded property, if the property is offered for sale within three years of the date the tax deed is recorded. Because the sale of property acquired by tax deed deprives the former owner of the opportunity to repurchase the property, NH and federal constitutional due process protections come into play. Thus merely following the statutory notice procedure is not sufficient, because the statute does not specify what the municipality must do if it does not receive confirmation from the former owner that he, she or it has received notice of the impending sale and of the right to repurchase. In addition, to be on the safe side, notice should be given to former owners for ten years from the date the tax deed is recorded.

NH case law, the NH Constitution, the US Constitution and federal constitutional case law all govern the notice requirements for sale of tax deeded property. They all boil down to a deceptively simple formula: a municipality must use efforts that are reasonable under the circumstances to provide actual and constructive notice to former owners of the impending sale of tax deeded property and of their opportunity to repurchase. *Kakris v. Montbleau*, 133 N.H. 166, 176 (1990); *Jones v. Flowers*, 547 U.S. 220 (2006). What does this mean in practice?

A review of the NH cases shows that a municipality must make good faith efforts to locate and notify former owners. When a municipality tries hard to locate a former owner, a court will generally find that the efforts comply with NH and federal constitutional due process requirements. If a municipality does little or nothing, especially if notified of an error in the tax records, generally it will not have complied with due process requirements, and the deed may be invalid. As a practical matter, this may mean that the municipality may not be able to sell the property because the title is questionable, or that a former owner who sues could get tax-deeded property back, exposing the municipality to the costs of defending a lawsuit.

DISCUSSION

Actual notice means that the City can prove that the former owner received notice, either by getting the notice in person or by returning a certified mail receipt. The City needs a record of the mail receipt or in-person delivery. Also, a conversation by municipal officials with the former owner about repurchase of the property, if properly documented with names and dates, can show actual notice.

Constructive notice is indirect notice designed to notify the former owner if actual notice is not possible, such as if the owner and/or the owner's whereabouts are unknown. Constructive notice includes recording the tax deed and, under some circumstances, publication in a newspaper of general circulation.

The following specific actions are culled from several NH cases and from conversations with attorneys who insure titles in NH. **A complete, separate file on each property, with copies of all correspondence and notices, and names and dates for in-person or telephone conversations filled in, will provide the documentation needed to establish that all statutory and constitutional requirements have been met. At any time, if you locate the former owner, proceed with the statutory notice requirements in RSA 80:89, I.**

CHECKLIST

- Mail notice of impending sale or conveyance of property acquired by tax deed to last known post office address of the owner of the property at the time of the tax deed, or to the person to whom notice of the impending tax deed was given, by certified mail, address service requested, return receipt requested, and do the same for mortgagees to whom notice of the impending tax deed was sent. RSA 80:89, I. Check municipal records to be sure former owner and mortgagee/lienholders' addresses are correct. The tax deed will not be effective against those who did not receive notice. See Olson v. Town of Fitzwilliam, 142 N.H. 339,343 (1997); White v. Lee, 124 N.H. 69, 74 (1983). **Keep copies of the notices sent and of the returned receipts. If this step is complete, it should suffice. If not, complete as many of the following, to the extent possible.**
- Make inquiries by telephone or mail to abutters and/or family of former owners who can be identified, asking for information on former owners' whereabouts. **Keep copies of all correspondence and notes, names and dates for all in-person or telephone conversations.**
- Search telephone books and on-line data bases, such as Whitepages.com or Google.com for former owner. If a Google search provides an obituary, there is sometimes a funeral home listed that can provide help. **Keep notes of directories and data bases searched, date searches performed, results and name of searcher.**
- Request Municipal Counsel to search data base available to attorneys for locating individuals, such as Accurint. **Request and keep in file notes of Accurint or other data bases searched, date searches performed, results and name of searcher.**
- Ask Municipal Counsel to search bankruptcy filings in Federal Bankruptcy Court. If former owner lived in another state, ask counsel to search for bankruptcy filing by former owner in that state. Currently, PACER system provides directory for searching federal court files. **Request and keep in file notes of bankruptcy court files searched, date searches performed, results and name of searcher.**
- Check probate filings for former owner. Probate file if it exists should list next of kin. A death certificate of a deceased former owner (obtained from the municipality in which former owner died) also sometimes lists family members. **Keep notes of courts searched, date searches performed, results and name of searcher.**
- **Last resort: publish notice in a newspaper of general circulation, once per week for three successive weeks, the last publication of which is not less than fourteen (14) days before the deadline for contacting the municipality. This is the same procedure used to begin a civil action and notify defendants with unknown addresses. N.H.**

Superior court Rule 128. Keep copies of the notice as published and the dates on which they were published.

CONCLUSION

Meeting all legal requirements is difficult in this area. DTC is available to assist with preparation of notices and consultation on steps taken, to help you ensure your municipality is in compliance with the law.