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### **Tax Deed Acquired Properties: An Opportunity and a Burden** *Legal Issues for Municipalities*

By: **Katherine B. Miller, Esq.**

- I. **The Opportunity: The Intersection of Municipal Economic Development, Housing & Welfare and Green Space Goals**
  - A. **Develop a Plan for Handling Tax Deeded Properties**
    1. Municipalities do not choose which properties will come to them through the tax deeding process (except for the option to choose NOT to accept an otherwise eligible property due to concerns about environmental contamination of the property or taking on other “undesirable obligations or liability risks” .... RSA 80:76, II and II-a.).
    2. For communities with more than a few isolated tax deeded properties which can be dealt with on a case-by-case basis, there needs to be a plan for handling these properties. The plan needs to be flexible enough to accommodate the various properties that will come along but general enough to provide guidance and allow the municipal officials to handle the properties efficiently, without needing to “reinvent the wheel” each time.
  - B. **Questions to Consider:**
    1. Should commercial and residential properties be handled differently? Does the community want to provide stability for businesses by retaining ownership of commercial properties? Is it willing to be a landlord for either commercial or residential buildings, or is that something the municipality is not equipped or inclined to undertake? What would the carrying costs be?
    2. If there is a Master Plan, how do these properties fit into it?
    3. Are there municipal uses to which this property could be put? As a structure or as green space, a park or a community garden?

4. Are there redevelopment or other projects underway, for example in a down town core or in a recreational/park area?
5. Are there other municipal entities that should be involved, such as school districts?
6. What are the property tax and other tax consequences to the municipality of the decision to retain or sell the property?

C. Retain or Sell? Need legal authority either way.

1. Sell: RSA 80:80, I and IV: require Town Meeting or City Council majority vote to authorize sale of property, and that authority will be good for only one year unless the vote contains the following magic language: “indefinitely, until rescinded,” or similar language.
2. Retain: RSA 80:80, V: “Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector’s deed, **upon vote of the town meeting or city council approving the same.**”
3. Regardless of whether the decision is to retain or to sell the property, the municipality will own it for some period of time, either (1) indefinitely, in the case of retention, or (2) in the case of properties that will be sold, for at least three months, since there is a required period in RSA 80:89, I of 90 days prior to the offering of the property for sale by the municipality during which the municipality must notify the former owner of the property of the terms of the offering and the right of the former owner(s) to repurchase the property, as specified in RSA 80:89; II.
4. Therefore, there will be at least three months, at a minimum, that the municipality will need to manage the property, plus whatever time is needed before the closing on the sale.

II. The Burden: Consequences of Municipal Ownership of Property

A. Legal Liability/Insurance

1. Most tax deeded properties are “distressed” – if the owner has been unable to pay the taxes, he/she or it will have probably not been spending money on repairs or maintenance.
2. There may be significant safety issues, potentially exposing the municipality to some legal liability.
3. **The municipal insurer or liability trust should be notified immediately if necessary. Some policies will cover newly-acquired properties but check to be sure what needs to be done to bring the tax deeded properties under the municipal insurance coverage.**

B. Commercial/Residential Tenants

1. Once the municipality has decided whether it wants to act as landlord for commercial and/or residential properties, it must carry out that decision.
2. Notify tenants of new ownership of property and plan on retention (or not) of property and need to pay rent (or not). This can be done at the same time as a Notice to Quit, if that is used.
3. If the property is going to be sold, does the municipality want to evict the tenants first? It may be easier to sell residential properties that are empty and commercial properties that have existing tenants.
4. If tenants are going to be evicted, the statutory process in RSA Chapter 540 must be **strictly** followed. Lavoie v. Szumiez, 115 N.H. 266 (1975). Residential tenants in properties that have been tax deeded are often extremely vulnerable and need to be treated fairly. Courts are particularly protective of such tenants. Additional City or Town departments may need to be involved to assist displaced tenants: housing, welfare, and schools.
5. The eviction process is really worth an additional seminar, but a couple of points to consider for restricted, residential properties:
  1. Grounds for eviction can include “any legitimate business or economic reason,” which could include new ownership.
  2. Be aware of whether there was a lease. If there was, AIMCO Properties, LLC v. Dziewisiz, 152 N.H. 587 (2005) held that the end of the lease terms does not constitute “other good cause” for eviction.
6. There is also the option for a common law action for ejectment and entry.

C. Securing Property/Safety

1. Tax deeded properties are often dilapidated and may need immediate attention, even if the municipality intends to sell them.
2. Occupied properties should be inspected as soon as possible after the tax deeding, with notice to occupants, to determine whether there are fire safety, structural, building and/or sanitary code issues.
3. Any properties that pose an immediate threat to occupants should be vacated immediately, pursuant to an order of the Code Enforcement or Health Officer or the Fire Chief, pursuant to RSA 147:16-a, RSA 154:21-a, or RSA 674:52-a.
4. If occupied properties do not need to be immediately vacated, then attention should be paid to any code violations, and such

immediate, interim steps as are necessary for health and safety should be taken.

5. Utilities for occupied properties that are in the name of the former owner should be switched to the municipality and continued as long as the municipality owns the building.
6. Vacant buildings should be secured to prevent them from becoming a haven for vagrants, a target for arsonists, a home to vermin, etc. This may involve boarding up windows, installing locks, etc. Rubbish and debris should be removed to prevent arson and to improve the safety and attractiveness of the property.

### III. **Conclusion:** Tax Deeded Properties – On Balance a Benefit for Communities

1. The tax deeding process provides obligations for municipalities but also the chance to turn neglected properties into attractive, productive assets to the community, either through new ownership of buildings that are returned to the tax rolls, or in a new incarnation, as open space, parks or new structures.
2. Municipalities are suddenly thrust into multiple demanding roles:
  - a. Tax collectors and municipal officials must properly notify owners and former owners of the tax deeding process and their opportunities to repurchase. They must do this in the context of a convoluted statute (RSA Chapter 80), federal and state Constitutional Due Process requirements and compliance with a body of case law that is constantly evolving. They must also make sure their records will satisfy a potential buyer and/or the potential buyer's title insurance company that the process was legally done and the municipality can transfer title to the property of it is to be sold.
  - b. Communities must have the vision to imagine the best uses to which tax deeded properties can be put, the wisdom to decline properties too contaminated or laden with liabilities to take on and the decisiveness to develop a plan to deal efficiently with the properties as they come along.
  - c. Municipal officials must become, at least temporarily, responsible for some of the most dilapidated properties around, including taking on the responsibility for any occupants, who are likely to be very vulnerable. They need to manage the physical property, at least until it is sold, and deal fairly with the tenants, if any.
3. At the end of the process, municipalities will have less blight and a stronger community to show for their efforts.