

DONAHUE, TUCKER & CIANDELLA, PLLC

ATTORNEYS AT LAW

225 Water Street

Exeter, New Hampshire 03833

Telephone: (603) 778-0686

Fax: (603) 772-4454

Web Site: www.DTCLawyers.com

Tax Deed Time, By Katherine B. Miller, Esq.

With the economy the way it is, New Hampshire towns and cities may be faced with more delinquencies of property taxes. The tax deeding requirements are complex, but doing a careful job at the outset can save time and money in the end.

A municipality must comply with “due process of law” in order to obtain good title to real property through a tax deed. What does this mean as a practical matter? It means that municipalities must do what is “reasonable under the circumstances” to notify the owner before a property is tax deeded. The municipality must comply with a complicated statutory process, plus the requirements of case law and bankruptcy law.

First, tax collectors should comply strictly with the requirements of RSA 80:77, Notice to Current Owner:

- send the notice to the current owner by certified mail, return receipt requested;
- if the receipt is returned and the letter accepted, good, but;
- if the letter is not accepted by the owner, the tax collector must follow up with additional steps to ensure notice, such as:
 - Sending the notice again by regular mail;
 - Posting the notice on the property;
 - Checking other municipal records for a more current address, and sending the notice again.

Second, tax collectors must notify all mortgagees pursuant to RSA 80:77-a. Municipalities are well served to notify all those who have recorded liens on the property in the last 35 years, not just mortgagees. Many older liens, attachments and mortgages are no longer enforceable, but it takes little time or effort to send the notice, and if this results in the payment of back taxes, that is good.

Third, tax collectors should also keep track of bankruptcy notices received. If an owner is in bankruptcy, creditors, including municipalities owed real estate taxes, water or sewer fees, etc., are subject to an “automatic stay,” meaning they cannot take any action against the bankrupt or the property of the bankrupt to collect the amount owed. Notices of tax liens and impending tax deeds need to be modified to address In re Doolan, 2011 WL 855860 (Bankr. D.N.H. March 14, 2011). Please contact us for more information on that. To be sure the municipality has not misfiled a bankruptcy notice, we recommend that, shortly before properties are tax deeded, all municipalities check bankruptcy court filings in New Hampshire. If municipal officials have reason to believe that the owner has moved to another state, then they should check the bankruptcy court filings in that state as well. Our office can assist you with making sure your notices and procedures are up to date. We can also check bankruptcy court filings.