
MATTHEW J. THOMAS, ESQ.

Attorney at Law

4 PARK PLACE • SUITE 101 • NEW BEDFORD • MA 02740
MJT@MJTHOMASLAW.COM
508-994-1500 • FAX: 508-990-1916

AFFIDAVIT OF ADDRESS G.L. CHAPTER 59, SECTION 57D

In 1914 a Special Commission was appointed by the Governor and General Court of Massachusetts to review and make recommendations regarding the practices and procedures followed by tax collectors and the process by which land was sold for non-payment of taxes.¹ The Commission held hearings across the Commonwealth.² As a result of the hearings and testimony, the Commission found that only about two out of every one hundred tax titles were valid in large part due to issues surrounding lack of actual notice and therefore lack of due process.³ The Commission proposed legislation that created a process that sought to secure actual notice on real parties in interest and gave exclusive jurisdiction over the process to the Land Court⁴. A major element in the “new” system was that a Citation would be mailed to the taxpayer by registered or certified mail, return receipt requested.

¹Chapter 121 of the Acts and Resolves of 1914

²The Commission held hearings in Boston, Springfield, Pittsfield, Fall River and Worcester and also heard testimony from tax collectors, the Tax Collectors Association, corporation counsel of various cities, the Association of City and Town Solicitors, assessors and individual tax title buyers. Report, House Doc.# 1600 of 1914, page 3 (January, 1915).

³Report, page 18.

⁴Report, page 19.

Due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.306 (1950). The U.S. Supreme Court has stated that mailing to the address provided in the Affidavit of Address provides strong support that the mailing was reasonably calculated to reach the taxpayer⁵ Nonetheless, local adoption and implementation of the provisions of G.L. Chapter 59, Section 57D is an important factor that the Land Court will consider in determining whether the municipality has performed due diligence in its efforts to mail notice to a taxpayer and whether Notice by Publication should be allowed.

WHAT MUST AN AFFIDAVIT OF ADDRESS INCLUDE & WHO IS EXEMPTED FROM FILING AN AFFIDAVIT OF ADDRESS?

Section 57D provides that a:

“notice of preliminary, estimated or actual tax for real estate and personal property shall include an affidavit of address, to be signed and sworn to by the owner of record of such property.”

The affidavit shall include the following information:

1. name of the owner,
2. street number, street name, city or town, state and zip code.

⁵*Jones v. Flowers* at 230. However, the Supreme Court has also stated that even though the notice was mailed to an address pursuant to an Affidavit of Address, further actions may be reasonably required when the letter is returned unclaimed.

Affidavits of Address are not required from:

1. a property owner for any parcel that was granted a residential exemption under Chapter 59, Section 5C for the previous fiscal year ;
or
2. owners of parcels subject to chapter 183A.

WHAT IF THE OWNER OF RECORD RESIDES OUTSIDE THE COMMONWEALTH?

The use of Affidavits of Address are especially helpful if the owner of record of a parcel resides outside the Commonwealth. Section 57D requires that if an owner of record resides outside the Commonwealth, then the owner must appoint an agent located within the Commonwealth. In such instances the Affidavit of Address must include:

1. the agent's full name;
2. the agent's street number, street address, city or town, zip code; and
3. the agent's telephone number

Neither the owner of record nor the agent can list a post office box as their address.

WHAT IF THE OWNER OF RECORD'S INFORMATION CHANGES?

Section 57D also provides that if there is any change in the information provided on the affidavit for the owner of record or the agent, the owner shall immediately notify the local board of assessors by mailing a new affidavit.

IS THE INFORMATION PROVIDED ON AN AFFIDAVIT OF ADDRESS A PUBLIC RECORD?

Information provided by a taxpayer pursuant to an Affidavit of Address is not public records and shall be used by the municipality for either the mailing of legal notices or to contact property owners for other municipal purposes. In no event shall any information

provided pursuant to an Affidavit of Address be sold, distributed or copied to any individual or organization in any form.

WHAT IS THE BENEFIT OF AN AFFIDAVIT OF ADDRESS?

Section 57D creates a very strong presumption that the address of the owner of record or the agent that has been provided is good and sufficient service for the purpose of instituting any legal action relating to the property.

WHAT IF AN OWNER FAILS TO FILE AN AFFIDAVIT OF ADDRESS?

If an owner fails to comply with Section 57D, the municipality would then notify the owner of that noncompliance. The owner shall have an additional 30 days from the date of service of the notice of noncompliance within which to file an affidavit or otherwise comply with the requirements of Section 57D. If an owner failed to file the affidavit within this additional 30-day period then the municipality may impose a fine of \$100.00 per preliminary tax bill on the owner.

If an owner fails to pay any fine imposed under Section 57D, the municipality would then collect the fine as part of the outstanding real estate taxes. For good cause shown, a municipality may abate any part or all of a fine that was imposed under this section, if the Affidavit of Address is filed with the municipality.

As with any such matter, Treasurers & Collectors should discuss the issues raised by this paper with their Tax Title Attorney and Town Counsel or City Solicitor.