



**Collecting Tax Title
in a
Post Chapter 140 World**

MGFOA

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“The only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of the taxes due on the property, together with other costs and interest.”

Town of Lynnfield v. Owners Unknown
397 Mass 470, 474 (1986)



A little context to the “excess equity” issue:

- The 1915 Amendments to Chapter 60 transformed the nature of the Taking from ownership to a perfected security interest.
- Chapter 60, Section 77 transforms this perfected security interest into fee simple absolute upon the entry of the Decree of Foreclosure.



A little context to the “excess equity” issue:

- “The absolute title conveyed under § 64, however, extinguishes only the interests of any party claiming rights “through the record owner, such as ‘mortgagees, lienors, [or] attaching creditors.

Buk Lhu v. Dignoti,
431 Mass. 292 (2000)
citing Sandwich v. Quirk,
409 Mass. 380, 384 (1991)



A little context to the “excess equity” issue:

- The purpose of absolute title under § 64 is to clear the new title of all encumbrances placed on the property by the prior record owner.

Buk Lhu v. Dignoti,
431 Mass. 292 (2000)
citing Sandwich v. Quirk,
409 Mass. 380, 384 (1991)



A little context to the “excess equity” issue:

- In *Kelly v. City of Boston*, 348 Mass. 385 (1965), the Supreme Judicial Court held that a property owner who had lost his property to a tax foreclosure was not entitled to recover any surplus value of the property in excess of the taxes, interest and costs owed.



So....how do we effectively collect Tax Title Post Chapter 140?

- The Best way is to prevent it from becoming Tax Title in the first place:
 - Affidavit of Address – Ch. 59, § 57D
 - Right of Offset – Ch. 60, § 93
 - Denial of Permits/Licenses – Ch. 40, § 57
 - Aggressive Pre-Taking Collection – Collect don't just receive.



So....how do we effectively collect Tax Title Post Chapter 140?

- If that does not work, then aggressively, yet equitably collect the Tax Title:
 - Contact Mortgage Holders – Ch. 60, § 59
 - Installment Agreements – Ch. 60, § 62
 - Denial of Permits/Licenses – Ch. 40, § 57



Aggressive but effective Tax Title collection works:

- Between 2/1/2011 and the end of FY24, the City of Fall River:
 - Has Collected over \$25 Million in Tax Title;
 - Has Collected just under \$ 8 Million in Treasurer's Interest;
 - And only foreclosed on 35 parcels.



Municipal Policy/Budget Impacts

- **Demand Notices**
 - **Very little impact**
- **Tax Title Assignments**
 - **There will most likely not be much of a market for Tax Title Assignments**
 - **There will be a major impact on municipalities who primarily used assignments to collect Tax Title.**



Municipal Policy/Budget Impacts

- **Takings**
 - **There will be a major impact**
 - **New STF6053 (Notice of Intent to Take) must be mailed to last known address.**
 - **Must include names of all owners known to tax collector;**
 - **If owner deceased, then must include names of all heirs as appearing in Probate Court records.**



Municipal Policy/Budget Impacts

- **Takings**
 - **New STF6053 must be posted on all Class One Residential Property**
 - **Procurement of Person Posting Notice & Cost**
 - **Advertise on Municipal Website all residential properties which may be taken.**



Municipal Policy/Budget Impacts

- **Takings**
 - **Some issues:**
 - **Class One residential and all other properties advertised in different places.**
 - **Significant added expense in light of the relative ease of collecting a significant portion before Taking.**



Municipal Policy/Budget Impacts

- **Treasurer's Interest**
 - **Some issues:**
 - **8% creates disincentive for taxpayer to pay Tax Title vs. credit card bills.**
 - **Ambiguity as to whether retroactive or only prospective.**
 - **This is a hit to Estimated Receipts.**



Municipal Policy/Budget Impacts

- **Disposition of Tax Possessions**
 - **There are major impacts**
 - **Need for pre-Decree planning on the part of the municipality – 14 days to decide whether to sell or retain.**
 - **Need to have an Independent Appraiser already retained.**
 - **Need to hire a Real Estate Broker to list property for one year.**



Municipal Policy/Budget Impacts

- **Disposition of Tax Possessions**
 - **There are major impacts**
 - **Ability to only sell at Auction for a minimum bid of 2/3 of “Highest & Best Use Value” as determined in the Appraisal.**
 - **Former Owner, or any mortgagee or lienholder can contest the value.**



Municipal Policy/Budget Impacts

- **Disposition of Tax Possessions**
 - **Post Retention/Sale Procedures**
 - **Accounting to former owner and all mortgagees or lienholders.**
 - **Former Owner, or any mortgagee or lienholder can contest the sales price.**
 - **Surplus Funds escrow**



Municipal Policy/Budget Impacts

- **Disposition of Tax Possessions**
 - **Post Retention/Sale Procedures**
 - **If no one claims the surplus, it's turned over the State Treasurer under Chapter 200A.**
 - **What happens if municipality accepted Chapter 200A, § 9A (Tailings retention)?**



Municipal Policy/Budget Impacts

- **Retroactive Claims for Excess Equity**
 - **These are contingent liabilities.**
 - **If successful claim is made, an appropriation will be necessary to pay the judgment.**
 - **Cannot be paid out of the Overlay Acct.**



Municipal Policy/Budget Impacts

- **Some Suggestions**
 - **Appoint a Custodian of Tax Possessions**
 - **Use Mutual Releases with every Deed In Lieu of Foreclosure.**
 - **Contact your State Representative and State Senator now and begin to advocate for changes.**

Thank You!

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