



What is Tax Title?

The tax title process provides a city or town the ability to recover unpaid and overdue municipal taxes. Municipal taxes fund a variety of essential local services, including public K-12 education, road maintenance, public safety as well as many other services. Certain property owners, such as non-profit organizations, may be exempt from payment of local property taxes.

However, in general, commercial, and residential property owners are responsible for paying local property taxes based on the assessed valuation of the property, which is "full fair cash value" in Massachusetts.

Property owners that become delinquent in payment of their local property taxes are subject to the tax title process. Ultimately, the tax title process can result in foreclosure and the loss of ownership.

Benefits of Tax Title?

The primary benefit of the tax title process is to address the loss of municipal revenue by collecting the assessed property taxes so that those funds are available for municipal services.

Additional benefits exist when properties are abandoned by an owner. If no longer maintained, this may result in an unsightly property and, ultimately, an unsafe building that must be demolished.

Acquisition by means of tax title can mean that an abandoned building is acquired by the municipality before it must be demolished. By obtaining ownership, the municipality has the option of selling the building to a qualified buyer that will properly rehabilitate it.

Potential Changes Coming?

In 2023, the U.S. Supreme Court issued a determination in *Tyler v. Hennepin County* which determined that it is unconstitutional for communities to retain income received through the foreclosure process above what is owed in taxes.

In that case, the county government in Minnesota foreclosed on a home because of a \$15,000 debt, and the property sold for \$40,000. The county government kept the difference, and the homeowner ultimately obtained a court decision that the practice was unconstitutional.

Massachusetts laws are not identical to Minnesota, but there are pending court cases relating to the amount a community retains during a foreclosure process.

The Supreme Court ruling may set a precedence for challenges to Massachusetts laws.

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The Tax Title Process:

The tax title process is complicated and subject to many variables. While it is an essential tool for municipal revenue collection, tax title can be a difficult route for municipal officials, legal counsel, and the property owner themselves.

When property owners are delinquent in paying property taxes, an automatic tax lien is placed on the property as of January 1st in the full amount assessed, including all fees and charges. The lien exists for three and a half years from the end of the fiscal year in which the taxes were assessed. Even when a lien is placed on the property, the owner has the right to pay the balance and have the lien removed.

The lien must be "perfected" or properly secured in order to formally take the property for non-payment. It is the municipal Collector's role to properly "demand" payment of the taxes in arrears, give notice, and then record the taking.

If the taxes are not paid within 14 days of the Collector's demand, the city or town can record a document called a "tax taking" or "instrument of taking" within 60 days at the Registry of Deeds.

At this point, the city or town acquires title to the property but still must relinquish the title if all required taxes and fees are paid in full prior to final foreclosure by the Court.

If unpaid after a six-month waiting period, the municipality may opt to file a complaint in Land Court to foreclose the rights of redemption. Registry of Deeds filing fees, court complaint fees, and attorney fees are added to the tax title account. The property owner is notified by the Land Court. If the account is fully paid, the complaint is withdrawn in Land Court. If not paid, a title examiner is assigned by the court to identify all persons with an interest in the property, including mortgage holders.

Ultimately, if the taxes are not paid, the city or town may be granted full possession of the property by the court via a motion for Judgment and Hearing. At this hearing, the Court may make a judgment of foreclosure. If the Court makes a judgment of foreclosure, the owner's ability to get the property back ends and the town or city gets full ownership of the property.

Subsequent to a foreclosure of the right of redemption, the municipality may choose to sell the property to the highest bidder at auction, subject to a minimum price the municipality will accept. Municipalities may schedule an auction when a sufficient number of such properties are acquired. In other cases, a municipality may choose to transfer the property to a qualified buyer that will renovate the property according to a set of criteria.

Other Considerations:

There are several factors to consider regarding tax title. Unforeseen financial circumstances can result in a property owner being unable to pay municipal taxes. Avoiding foreclosure and acquisition is often beneficial to both property owners and municipalities. As a result, cities and towns should consider options for how repayment of owed taxes can be accomplished.

A private party can become the owner of a municipal tax lien. For example, the city or town can bundle tax bills together and sell them to a private party. The city or town can also auction off the tax title to a private party.

The recent US Supreme Court case questioned the validity of acquiring revenue from the disposition of acquired property beyond what was owed. This decision will likely impact the tax title foreclosure process in Massachusetts.

Under state law, some liability relief is granted to municipalities that acquire contaminated properties. However, extra caution must be applied to the acquisition of contaminated properties. On all aspects of the tax title process, consult with municipal legal counsel.

The tax title process is complicated and subject to many variables. Acquisition by a municipality for non-payment of taxes is typically a multi-year undertaking.