

Municipal Government Act

progressive powers for municipalities

Guide to Part VI of the Municipal Government Act Tax Collection

- Revised -

Topic: Provisions of the Municipal Government Act respecting Tax Collection.

Legislation: *The Municipal Government Act*
Specific: Part VI

Regulations prescribing Definitions related to Selling Mobile Homes at Tax Sale

Regulations prescribing Forms related to Selling Mobile Homes at Tax Sale

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
COLLECTION OF OVERDUE TAXES	2
SUING ON THE DEBT	2
WARRANT FOR COLLECTION	3
SALE OF REAL PROPERTY	4
THE TAX BILL	4
THE SCHEDULE	5
THE PRELIMINARY NOTICE	7
THE TITLE SEARCH AND SURVEY	7
THE FORMAL NOTICE	8
ADVERTISEMENT AND NOTICE REQUIREMENTS BEFORE THE TAX SALE	9
THE TAX SALE	10
THE PROCEEDS OF THE TAX SALE	12
THE RIGHT OF REDEMPTION	12
THE TAX DEED	13
CALENDAR OF STEPS TO COMPLETE A TAX SALE	14
TAXES ON MOBILE HOMES	14
OTHER TAXES	15
TAX CERTIFICATES	15
POLICIES	16
OTHER TAX COLLECTION MECHANISMS	17
PART PAYMENTS	17
SCHEDULE A	
FORM A - WARRANT	18
FORM B - RETURN	18
FORM C - CERTIFICATE OF SALE FOR TAXES	19
FORM D - CERTIFICATE OF DISCHARGE	19
FORM E - TAX DEED	20
FORM F - CERTIFICATE OF SALE FOR TAXES WITH RESPECT TO A MOBILE HOME	22
FORM G - CERTIFICATE OF DISCHARGE WITH RESPECT TO A MOBILE HOME	23
FORM H - AGREEMENT FOR SALE FOR TAXES WITH RESPECT TO A MOBILE HOME	24
SCHEDULE B	
SAMPLE NOTICE - NOTICE TO ENCUMBRANCERS	25
SCHEDULE C	
 EXCERPTS FROM THE MUNICIPAL CONFLICT OF INTEREST ACT	26
ADDENDUM RESPECTING TAX SALES AND LAND REGISTRATION ACT	27

INTRODUCTION

This guide has been prepared to assist municipal officials and municipal clerks, clerk-treasurers, treasurers and others who are involved in the collection of taxes. All matters concerning the collection of taxes, including tax exemptions, formerly found in the *Assessment Act*, will, as of April 1, 1999 be found in the *Municipal Government Act*. The *Assessment Act* continues to govern all assessment matters including classification of property, valuation of property and assessment appeals.

This guide explains some of the sections of the *Municipal Government Act* (the “MGA”) and makes practical suggestions for procedures to be followed. It provides some sample forms and documents and includes a copy of the relevant parts of the *Municipal Government Act*. Sections of the MGA are referenced in brackets throughout the guide.

The reader is cautioned that preparation of a guide containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act*, the *Assessment Act* and to legal advisors.

COLLECTION OF OVERDUE TAXES

To collect overdue taxes, a municipality can sue on the debt, issue a warrant for collection, use the tax sale procedure to sell the real property or mobile home, or set off the sum due against a claim that the person has against the municipality. Each of these first three options is described in more detail below.

SUING ON THE DEBT

The Act provides that taxes may be sued for in a common action at law (S-s. 119(1)).

The *Small Claims Court Act* does not allow a municipal unit to sue in Small Claims Court for taxes that are liens, but it does allow for suits for taxes that are not liens, subject to the court's limit of **\$10,000.00**, exclusive of interest: *Small Claims Court Act*, clause 9 (b). While most municipal taxes are liens on the property (refer to the definition of taxes in clause 3 (bz), S. 115 and s.-ss. 133 (1) and (2)), business occupancy taxes are not a lien on the property: *Assessment Act.*, S-s. 11 (8).

For taxes which are liens, the debt may be sued upon in the Supreme Court.

The judgement may then be registered in the Registry of Deeds so that it is registered as a charge against the taxpayer's real property for the next twenty years, or enforced like any other judgement, by **registration in the Personal Property Registry and** execution or possibly garnishee of wages.

The *Municipal Government Act* provides for a simple method to prove tax debts to the court. A certificate signed by the treasurer is *prima facie* evidence that the taxes have not been paid (S. 118).

This method of collection is useful where a sale of the realty is pending. A judgement would secure payment of the taxes from the transaction. This method also is useful when difficulties are foreseen in seizing personal property of sufficient value to satisfy the debt, but it is believed the debtor has assets for such payment.

Where a taxpayer leases Crown property, he or she is assessed and sent a tax bill for the area he or she leases and any building he or she puts on it. If the taxes go into arrears, the property cannot be sold because it is Crown land. The building cannot be sold alone because it is a fixture. In this situation, the municipal unit may either sue on the debt or issue a warrant against the individual's personal property, which may be located on the Crown land or elsewhere. The most common situations in which there is an occupant of Crown land occur with respect to properties being financed through the Nova Scotia Farm Loan Board, since normally title to the land is vested in the Farm Loan Board and the borrower buys it back over time.

WARRANT FOR COLLECTION

The sections in the Act which refer to warrants for collection concern the warrants which are used to seize personal property (Ss. 120 - 125). These warrants provide an effective method to collect taxes which are not liens. Forms are provided in Schedule A of the Act.

Section 120 provides authority for a special warrant to distrain the goods of a person who is about to leave the municipality, who is indebted to the municipality for taxes, even if the taxes are not yet due.

Section 121 provides for the warrant issued by the treasurer in respect to overdue taxes. The warrant is issued by the treasurer at any time within six years from the time the taxes became due, and may be acted upon by any police officer, civil constable, by-law enforcement officer or other employee of the municipality, anywhere in the province (S. 123).

The articles which are exempt from seizure under the *Judicature Act* are exempt from seizure under a warrant for collection. Section 45 of the *Judicature Act* exempts the following items from execution:

- a) the wearing apparel and household furnishings and furniture which are reasonably necessary for the debtor and his family;
- b) all fuel and food reasonably necessary for the ordinary use of the family,
- c) all grain and other seeds, and all cattle, hogs, fowl, sheep and other livestock which are reasonably necessary for domestic use of the debtor and his family;
- d) all medical and health aids reasonably necessary for the debtor and his family;
- e) all farm equipment, fishing nets, tools and implements of, or other chattels, as are used in the debtor's chief occupation, not exceeding in aggregate value the sum determined by the Governor in Council;
- f) one motor vehicle, not exceeding in aggregate value the sum of three thousand dollars or such sum as may be determined by the Governor in Council.

The sale of the personal property under a warrant must be advertised a minimum of once seven days before the sale by placing an advertisement in the local newspaper (S-s. 124(1)). The advertisement should advise anyone with an interest in the property to contact the municipal office. This will assist municipal units to avoid selling property which does not actually belong to the taxpayer.

Any surplus from a sale of personal property under a tax warrant must be held for 30 days to allow any person with a claim to it to come forward (S. 125). A person with a valid claim would include, for example, the true owner of the property or the holder of a chattel mortgage or conditional sales contract in respect to the property. If no one comes forward, then, at the end of the thirty day period, the surplus should be paid to the person in whose possession the property was when it was seized.

If a warrant cannot be completely collected, then the warrant can be used again, or another warrant issued (S-s. 124(3)).

SALE OF REAL PROPERTY

Under the Act, the real property of the taxpayer is subject to a lien for taxes. The Act provides that there is a six year limit on the lien, however, according to case law, it appears that municipal taxes, at least on real property, are a specialty debt and a twenty year limitation period applies. The six-year limit on the lien may, therefore, only apply to the municipal unit's authority to collect by way of tax sale, without necessarily limiting its authority to collect older taxes by suing on the debt, for example, and is probably meant to encourage municipal units to collect the taxes before they go many years in arrears. For municipalities, taxes include all sums due to the municipality that are liens on property, and include village and service commission taxes that the municipality collects. In the case of villages that collect their own taxes, the tax sale provisions of the *Municipal Government Act* apply as if the village were a municipality.

The situations which result in tax sales include the following:

- (a) Someone cannot afford to pay, refuses to pay or doesn't know they should be paying the taxes.
- (b) Someone has poor title in the records at the Registry of Deeds, or has no deed or paper title at all. He or she lets the taxes go unpaid so that he or she can get a tax deed, which, though regarded by some as a good root of title, is not warranted to be a good title by the municipal unit. On this point refer also to the *Marketable Titles Act*, which provides further assurances for titles conveyed by tax sale deed after six years.
- (c) The owner has accumulated numerous judgements against his or her name. Judgments attach to all real estate owned by the judgment debtor or acquired after the judgment is registered. The tax deed conveys the interest in the land free and clear of all judgements. The only protection for the judgement holder is to bid the price up to an amount to cover all outstanding judgments and other encumbrances, plus the tax arrears, interest and expenses.

The following is an explanation of the steps to be followed to complete a valid tax sale.

THE TAX BILL

The tax bill is the first item sent to the tax payer: S. 117. It should include a statement that if the tax bill is not paid by the end of the taxation (fiscal) year, the property owner may be exposed to additional expense.

THE SCHEDULE

Tax sale proceedings can commence after June 30 in the year immediately following the taxation year to which the taxes relate (S-s. 134(1)). The first step in the proceedings is the preparation of the tax sale list (S. 137).

Effective April 1, 2003, it will be mandatory for the treasurer to put a property on the tax sale list when taxes on the property are three years in arrears, unless the treasurer chooses to ask Council to postpone the sale for up to two years, for special reasons (S-s. 134(3)) . The postponement of the tax sale might be justified where there is a new business which is having settling in problems, for example, or where an error has been made which will take time to straighten out. Subsection 134(4) provides additional times when a tax sale is not mandatory. If the three year limit cannot be met, because the title search or survey is not completed, for example, then the treasurer should put the property on the schedule as soon as possible. Therefore, the Act should be considered directory when it states that the property shall be put on the tax sale list within three years. The six year limit on the lien will continue to apply unless the Act states otherwise.

The exceptions from the requirement to sell land for taxes owing for the past three years (five years if council has deferred the proceedings in the case of a particular property) as set out in subsection 134 (4) are:

- the solicitor advises that a sale would create an unacceptable risk of litigation: usually where there are serious defects in the title or boundaries, including a likelihood that there has been a duplicate assessment or that the property does not in fact exist
- the amount of taxes due is below the collection limit council sets by policy
- the property has been put up for sale three times in the preceding three years and no satisfactory offer has been made
- the taxes have been deferred pursuant to a by-law under Section 70
- there is a tax arrears payment arrangement and the taxpayer is not in breach of the agreement.

Impoverished taxpayers may qualify for a deferral of taxes. Where taxes are deferred the property should not be put on the schedule. Deferral of taxes for those who are unable to pay due to poverty, etc., must be provided for by a by-law of the municipal unit. Section 70 of the Act gives the municipal unit the power to adopt such a by-law. The tax lien is extended for the period of any tax deferral.

In some cases, the municipality and a taxpayer may enter into a tax arrears payment arrangement and so the tax sale may be deferred (clause 134(4)(e)). The lien is extended for the period of the arrangement.

In the case of mobile homes, it will also be mandatory that the property be put on the list for tax sale when the taxes are three years in arrears.

The tax sale schedule used to be sent to the Director of Assessment. This is no longer required (S. 137). The title information formerly provided by the assessors is now covered by the title search required under subsection 139 (1).

The tax sale list (S. 137) must contain the name and address of the person assessed, a brief description of the land to be sold sufficient to identify it, the amount of the arrears, including interest, and the years in which the arrears were first levied. The tax sale list is conclusive evidence of its contents (which means it cannot be challenged in court). It is therefore important to be particularly careful that the facts contained in it are accurate, since it becomes the foundation of further tax sales proceedings.

A new procedure was added to the array of tools for tax collection contained in Part VI in 2003. This is an application to court under Section 139A to settle potential issues concerning a tax sale where there may be significant problems. The order requested may:

- (a) establish that there are actually taxes owing and in arrears sufficient to allow the sale;***
- (b) define the interests in the property that would be sold at the tax sale;***
- (c) prescribe who must be notified of the sale and how notice is to be given;***
- (d) set out any other matters respecting the sale that the court deems appropriate.***

An application under Section 139A may be necessary where some owners of the property can be ascertained, but their whereabouts is unknown, where the value of the property would not cover the expenses of normal notification procedures, or similar problems exist.

The order would then authorize the tax sale.

The advantage of the procedure is that the tax sale, if conducted according to the terms of the order, could not be challenged for any reason whatsoever. The effect is to resolve issues in advance of any action being taken, and in this sense resembles the authority for a court application under s. 347 respecting dangerous or unsightly premises.

A tax deed given pursuant to a sale authorized by a court order under Section 139A ought to refer to the order, and perhaps a copy should be included in the deed.

THE PRELIMINARY NOTICE

A preliminary notice must be sent by ordinary mail to the owners of property listed in the tax sale list, advising them that they have not paid their taxes and giving them a minimum of 14 days from the date of the notice (or such longer period as council may set by a policy recorded in the by-law book) in which to pay the bill before tax sale procedures are commenced and additional expenses, such as those for a title search, are incurred (S. 138). This is for the protection of the taxpaying public; it is easy enough to overlook a bill, even a tax bill, without a reminder. Many owners may pay their taxes at this point and save themselves the costs of the title search and survey expenses, which may be incurred if formal notices must be sent.

If the property is assessed as owner unknown, notice that the property is liable to be sold for taxes must be sent to the Minister of Lands and Forests at least 120 days before the date of the tax sale. The notice must include a general description of the land, the amount of taxes and interest owing, and any information the municipality has concerning possible owners of the land. The Minister may then choose to acquire the land for the taxes and interest outstanding (plus ten per cent). See Sections 135 and 136.

THE TITLE SEARCH AND SURVEY

At any time after the expiration of the preliminary notice period, a title search must be done (S. 139). The cost forms part of the expenses of the sale. Note that under clause 134 (4) (a), a municipality is not required to carry through with a tax sale of a property where the solicitor advises that the sale would expose the municipality to an unacceptable risk of litigation.

A survey should be ordered if the treasurer considers it necessary to properly identify and describe the land. It may be that the treasurer will not be able to determine the necessity of a survey until after receiving the results of the title search. The statute authorizes a survey either before or after the sale. Getting a survey will normally protect the municipality from future claims that the property is not the same as described in the legal description, does not exist, or is overlapped by other property on which the taxes are paid. The cost is recoverable as part of the lien against the real property.

The cost of having a municipality's staff solicitor or staff surveyor do the work is acceptable as long as the fees are reasonably equivalent to the fees charged by private firms. A full and accurate description of the property will be required for the certificate of sale and the tax deed, if the property goes to sale. The information for this description should be obtained from the title search and

survey.

If the title search shows that an error has been made, this information should be given to the Assessment Division of *Service Nova Scotia and Municipal Relations* so that the proper owner can be assessed (and taxed).

If, after the title search, there is a property that was previously classified as an owner unknown property, which now has an owner which is known, then the property should be removed from the schedule and a tax bill sent to the owner.

If the title search produces evidence of a spouse, or if there is some reason to believe that the delinquent taxpayer has a spouse, notices should also be sent to the spouse as the *Matrimonial Property Act* makes it necessary to advise spouses when a lien is being enforced (S-s. 140(2); *Matrimonial Property Act*, s. 9 (1)). **Note that amendments to the Vital Statistics Act require that persons who have filed a “domestic-partner” declaration under the Act be treated as “spouses” under the Matrimonial Property Act and the MGA.**

THE FORMAL NOTICE

After the title search, formal notice that the property could be sold for arrears should be sent to the property owner and spouse, if the spouse has not already been notified as an owner, and any person with a mortgage, lien or other charge on the land, such as a judgment (S. 140). Owners to be notified in addition to the assessed owner include others with an interest in the property as shown in the title search.

The Act requires that the notice be “served”. Section 166 of the MGA provides that a notice required to be served by Part VI may be served by mailing it by ordinary mail to the last known address. If no address is known, the notice should be mailed to a tenant or occupant of the property, or may be posted in a conspicuous place on the premises.

Section 165 permits proof of service of notice by affidavit of the person who served or gave the notice setting out how it was done. Many municipalities keep such affidavits in the tax sale file in the event of future claims. Even though the MGA clearly says that a tax sale deed is conclusive evidence that all of the tax sale proceedings were correct (S. 156), the attitude of the courts to tax deeds has been so hostile that it is a sensible precaution to maintain a full record to be able to prove that the proceedings complied fully with the law.

The notice should include all of the information listed in subsection 140(3) concerning the property, the amount of arrears of taxes, including any current taxes which are levied or due under an interim tax bill or a regular tax bill and any taxes owed to another municipal unit in which the property is also located, the interest which can be calculated from the date the rate was set to the proposed date

of the tax sale, an estimate of the costs which could be expended if the tax sale procedures are continued, confirmation of the costs that have been incurred to date, and the taxpayer's liability for them, and the proposed date for the sale. Note that Section 145 provides that if the municipality collects taxes for a village, service commission or other body, those taxes are treated as if they were taxes originally due to the municipality. The title search and survey fees, the court costs, the advertisement costs, and the costs for notices are all expenses that a municipality can recover at the tax sale. Of course, the notice must also state that the property is liable to be sold unless the arrears, interest and expenses are paid within sixty days. The notice should also advise that the taxpayer may wish to seek legal advice.

By advising the taxpayer that he or she may wish to seek legal advice, the notice advises the taxpayer that he or she has a remedy in the event that the power of the municipality to sell the property is contested.

If the property is located in more than one municipal unit, one unit is authorized to sell the entire parcel (S-s. 141(4)). However, the other unit(s) must be notified that the property is on the list for tax sale and the treasurer requires information concerning any taxes outstanding or overdue in the other municipal unit(s), because this amount must be recovered in the amount for which the land is to be sold and paid to the other municipal unit immediately after the tax sale.

ADVERTISEMENT AND NOTICE REQUIREMENTS BEFORE THE TAX SALE

If the amount owing is not paid, the property may be sold at public auction, or the treasurer may seek council's consent to sell the property by tender (S. 141). Calling tenders might produce a higher price in the case of some properties, particularly where there is a possibility that an auction might not realize enough to cover the taxes, interest and expenses.

The property should be advertised for sale by auction, or by tender if authorized. There must be at least two advertisements in a local newspaper: once at least thirty days immediately prior to the sale and once during the thirty days prior to the sale (S. 142). If the land is to be sold at tax sale auction, the advertisement should indicate that payment at the tax sale must be by cash, certified cheque, money order, bank draft or lawyer's trust cheque, only (S-s. 148(1)).

When selling properties belonging to an owner unknown, the property must be posted with signs giving notice of the sale. The person posting the signs should sign an affidavit that the property was posted, and the affidavit should be kept in the file as proof for the application to court or any possible case which may arise. It is useful to post the property in other circumstances, and some treasurers like to see the property posted in all circumstances. It provides additional security if the notices which are sent by the mail miss someone.

Council should be informed of the properties which will be going to tax sale. This is for information only, since the rules for putting property up for tax sale are set out in the statute and

municipal discretion is quite limited.

THE TAX SALE

The tax sale must be held on the date indicated in the notice. The person conducting the sale should announce that purchasers will be responsible for paying the costs to prepare and register the certificate of sale and the tax deed. The right of redemption should be mentioned, if there is a right to redeem. It may be useful to note that a tax deed is not subject to deed transfer tax: S-s. 109 (4).

Municipal ~~officers~~ **council members** and employees are not permitted to purchase property at a tax sale. Nor are they permitted to have an "interest" in the purchase: S. 144. An interest in the purchase is defined to have the same meaning as a direct or indirect pecuniary interest under Sections 3 and 4 of the *Municipal Conflict of Interest Act*. Companies in which an employee or councillor has an interest (including companies that employ an employee or a member of council) cannot purchase property at a tax sale. Similarly, the family members and other residents of the same household as an employee or council member (more fully described in Section 4 of the *Municipal Conflict of Interest Act*) cannot purchase property at a tax sale. Sections 3 and 4 of the *Municipal Conflict of Interest Act* are appended to this Guide. ***their spouses or companies in which they or their spouses own the majority shares permitted to purchase property at a tax sale: S. 144. This includes purchasing the property either directly or through an agent.***

Council members, ~~and~~ employees ***or their spouses, or companies of any of them,*** are subject to serious penalties if they violate the conflict of interest rules in Section 144. They should be informed of this by an announcement at the tax sale prior to the call for bids. It also makes sense to circulate a memorandum to staff and council presenting the conflict of interest rules before tax sales to ensure no one breaks the law by mistake and loses a job or an office as a result.

The same rules apply to villages that collect their own taxes.

If an owner has let his property go to tax sale in an attempt to clear title, he may ask that no one else be allowed to bid. The person conducting the sale may announce that the present owner has allowed the taxes to go into arrears on purpose and the owner is requesting that no one bid on the property, however, others cannot be prevented from bidding if they wish to. The point of the announcement is to deter other bidders since the person attempting to clear title will presumably redeem the property immediately if there are other bidders. Since the point of a tax sale is to collect taxes, a sale can normally be stopped even where the bidding has started if the taxes, interest and expenses are tendered. This sometimes happens where one person is attempting to clear title and someone else does not wish to see that person get a clear title.

Payment of an amount equal to the current taxes which are levied or due, the arrears, interest on the arrears and expenses is no longer necessarily the minimum acceptable purchase price or deposit. The council may direct the treasurer that some lesser amount is acceptable where there is a chance

that the total outstanding may not be recovered: S-s. 141 (3). ***Most often, this would be requested by the treasurer after one unsuccessful attempt at a tax sale, or in special circumstances, such as for a property that contains an environmental hazard. Note that the meeting at which the minimum acceptable bid or tender is set may be held in private, so that the possibility that the outstanding amount may be paid in full is maintained.***

The purchaser must pay the lesser of the purchase price or the taxes, interest and expenses for which the property was sold immediately upon the purchase by cash, money order, bank draft, certified cheque or lawyer's trust cheque: S. 148. It is a good idea for the municipal unit to have a cashier in the room where the sale is being conducted to accept payment so that they can be sure that payment is immediate and in the correct form. A potential purchaser should be able to ascertain the minimum amount from the municipality before the sale, so that he or she can come prepared to pay at least the deposit in the proper form. If the purchaser cannot pay immediately and in the required form, the property should be opened up for bids again.

A representative of the municipal unit may bid with the other potential purchasers if the property is wanted for a municipal purpose.

If only a deposit is paid, the balance has to be paid within three business days or the property is to be listed for sale again. The expenses of the resale are to be deducted from the deposit and the balance refunded after the resale: S. 148. The owners and encumbrancers will have to be notified of the new sale date. New advertising and notices are costs to be paid from the original deposit, and would not be added to the municipality's expenses on the resale.

Where a municipality calls tenders instead of proceeding to an auction, the proceedings are similar to those at a tax sale by auction, substituting tenders for bids: S. 149. ***The treasurer may seek council's direction on a minimum acceptable bid that is less than the amount outstanding prior to the call for tenders (141(3)), or, if a sufficient bid is not received, the treasurer may seek council's approval to accept less (149(1)(b)). The treasurer may want to re-print S. 149(1) in the tender advertisement, for the bidders' information.***

If no one bids the minimum price for the property, the treasurer may bid in taxes, interest and expenses and purchase the property for the municipality even if it is not required for a municipal purpose. Direction from council, or a council policy, should authorize such purchases as there is no requirement for the municipality to acquire the property. If the municipality chooses not to acquire the land and no one else makes a minimum bid, the municipality may sell the property again, without further notice to the owners and encumbrancers, for the best price that it can get, subject to any direction from council as to an acceptable minimum. Alternatively the municipality may choose to call tenders: S. 143.

It would be best for the municipal unit to insist that the full payment from a purchaser also be by cash, money order, certified cheque or lawyer's trust cheque, to minimize any delays or problems with collection if the purchaser should pay with an N.S.F. cheque.

A certificate of sale must be registered within ten days of the sale: S. 150. The form is in the Schedule (attached). The form in some versions of the statute has an error, as it refers to a three month right to redeem where the statute (S. 152) provides for six months. The form of the certificate attached to this guide has been corrected. A copy of the certificate of sale should be kept in the municipal office for the public to see. A copy should also be sent to owners who are sent a notice of the right of redemption (below).

THE PROCEEDS OF THE TAX SALE

The proceeds of the sale are applied to payment of the arrears of taxes, interest and expenses, and current taxes. In calculating this sum, remember that all sums due the municipality that are liens qualify as "taxes". If there is any balance remaining, it must be used to pay any outstanding village rates (as noted, if the municipality collects taxes for the village, the village taxes are included in the taxes for which the property was sold). After that, anything remaining is applied to taxes, charges and other sums due that are not a lien: S-s. 146 (1). The surplus, if any, is deposited in a tax sale surplus account pending an application to the court to recover it by a person entitled to it.

An application to Court to pay out the tax sale surplus will usually be made by the former owner, but might be a trustee in bankruptcy, or some of the heirs of a former owner. None of the surplus is paid out until the redemption period, if there is one, has expired. Where there is no application to recover the surplus, after twenty years, the municipal unit may use the surplus for a capital purpose. This is provided for by transferring the balance to the capital reserve fund. The unit remains liable to a person entitled to the surplus for twenty years: S. 147.

THE RIGHT OF REDEMPTION

Notice of the right to redeem the property, and a copy of the certificate of sale, is required to be sent to original property owners who still have the right to redeem: S-s. 150 (4). If taxes were more than six years in arrears at the time of the sale, the original owner does not have a right to redeem the property (but must still get a copy of the certificate of sale). Municipal units should insist that payment of the amount to redeem be made by cash, money order, certified cheque or lawyer's trust cheque to avoid the complications which could result if payment is made by an N.S.F. cheque.

The right of redemption exists for up to six months after the tax sale: S. 152. The right to redeem may be exercised by an owner of the property, the holder of a mortgage or other lien, or a person with an interest in the land. To redeem, the person redeeming must pay:

- the sum paid by the purchaser (less any surplus remaining after paying the taxes, interest, expenses and other charges included in Section 146): S-s. 146 (2)
- interest at ten per cent per annum on the total amount paid by the purchaser

- taxes and interest for the next fiscal year after the sale
- the recording fee for the certificate of discharge
- all fire insurance premiums paid by the purchaser
- all sums paid by the purchaser for necessary repairs to the property *so long as those repairs were approved by the treasurer in writing*
- less any rent or other income earned by the purchaser from the property.

See subsection 152 (2). If the property was bought by the municipality, which is exempt from taxation, the person redeeming has to pay the taxes that would have been levied if the municipality was not exempt: S-s. 152 (3). If the tax rate has not been set, the person redeeming has to pay the taxes from the previous year.

Where the property has been redeemed a certificate of discharge is to be recorded: 152 (5). See the Schedule to this Guide.

The purchaser must be contacted to get the amount spent on fire insurance and on approved necessary repairs, and the rent received. The purchaser, once the land is redeemed, is paid the original sum paid plus interest plus the cost of insurance and repairs, less the rent or other income earned.

During the redemption period and after, the purchaser has all of the rights of the owner, but as long as the property may be redeemed, the purchaser may not cut down trees, injure the premises or allow anyone else to do so. The purchaser must insure the buildings. If the purchaser makes repairs that the treasurer has not approved in writing, the purchaser will be unable to recover the cost if the property is redeemed. Once the property is redeemed, the purchaser ceases to have any right to it.

Redemption does not create any kind of property right in a property, and an owner who redeems has no better title than before the tax sale.

THE TAX DEED

After the six month redemption period has expired (if the taxes are more than six years in arrears there will be no redemption period), the purchaser may apply for a tax deed. The purchaser is obliged to pay the cost of preparing the deed, and is responsible for recording it. There is no deed transfer tax, however. Some municipalities make a practice of reminding purchasers to apply for the deed, since some forget.

The tax deed conveys fee simple title to the property conveyed, free and discharged from all encumbrances. It does not discharge easements and rights of way across the property; these remain in force.

CALENDAR OF STEPS TO COMPLETE A TAX SALE

STEP 1: prepare list of properties to be sold (S.137) no earlier than June 30

STEP 2: mail out preliminary notice (warning) stating procedures will begin in fourteen days (or a longer period if council so determines) (S.138)

STEP 3: carry out title search, survey if needed (S.139)

STEP 4: serve notice of tax sale (sale to be held no earlier than 60 days after notice) (S.140)

STEP 5: tax sale (Ss.141, 142) or tenders close (S.149)

STEP 6: receive full payment within three business days (Ss.148, 149)

STEP 7: issue certificate of sale to purchaser, record in Registry of Deeds and send to owner, with notice of right to redeem if applicable (S.150)

STEP 8: Issue tax deed at request of purchaser and upon payment of fee provided there is no right to redeem; if there is a right to redeem it expires six months after the tax sale, and if redemption has not taken place the tax deed can be issued then.

TAXES ON MOBILE HOMES

The taxes levied against mobile homes which are situated on property which does not belong to the owner of the mobile home, do not constitute a lien on the real property (the land it sits on). The taxes are a lien on the mobile home itself: S-s. 133 (2). Therefore, even if the mobile home changes hands, the mobile home may be sold for the taxes, if it can be found. The tax sale must be advertised in the same way that a sale of real property must be. Although a mobile home can still be sold under a tax collection warrant, selling it for taxes directly makes taxes the first charge, not the last as they might be under a warrant. The *Municipal Government Act* requires that once taxes are three years in arrears, the mobile home must be put on the schedule for tax sale. As well, the taxpayer can be sued on the debt, or his personal property seized under a warrant for collection.

The Minister of Housing and Municipal Affairs Service Nova Scotia and Municipal Relations has passed regulations defining various terms in Sections 137 through 156 and prescribing forms which clearly identify the tax sale procedures which apply to the mobile homes. Copies of these

regulations including the forms may be found at the back of this guide and behind Tab 6 of the office consolidation of the Municipal Government Act.

If a mobile home is parked on land which the owner of the home also owns, it can be assessed as part of the real property if it is permanently fixed to the property. In that case, the taxes would be collected by sale of all the real property, including the mobile home, at a tax sale.

OTHER TAXES

Where a municipality collects taxes for a village, fire protection commissioners or a service commission, these rates may be collected at the tax sale as if they were taxes of the municipality: S.145. If the municipality does not have an agreement with a village to collect its taxes, the village taxes are claims against any surplus realized at the sale, as are rates for municipally supplied electric power or water: S-s. 146(1).

Villages have their own rights to collect taxes, and may put property up for tax sale.

Any other taxes which are made a lien by any other legislation, are also collectible at the tax sale. These taxes would include area rates, area school rates, business improvement district commission rates, pollution control charges, trunk sewer charges and taxes, local improvement charges, and waste-water management charges, as well as the cost of work carried out by the engineer or administrator. Since all of these costs fall within the definition of taxes, it is not necessary that a taxpayer be behind in general or area rates in order for the property to be put up for tax sale if any of these other charges have not been paid.

TAX CERTIFICATES

The wording of Section 132 respecting tax certificates has been changed substantially from the previous wording in the *Assessment Act*. Tax certificates are to be issued on request. The Act no longer imposes a duty on the seller to obtain the certificate, so most certificates will be obtained by purchasers or those acting for them. The fee for a tax certificate is set by the council by resolution. The former provision requiring that the fee be paid in advance has been deleted. The municipality must now choose whether to allow credit and provide tax certificates before the fee is paid or not.

A tax certificate is binding on the municipality. It must now show all charges that are a lien on the property. Note that many charges, particularly for work done on the property by the engineer or the administrator, are liens. If these are not shown on the tax certificate, the municipality will likely lose the lien.

If taxes may be imposed for change of use, that must be indicated on the tax certificate. There may be other taxes due from the purchaser (for example, property ceasing to be exempt under Section

9 of the *Assessment Act*). A tax certificate will not prevent the collection of these taxes, although it would be wise to warn a purchaser of the possibility.

The Act provides that when property is sold, the taxes due for that year are a lien even when the rate has not been set. This is a well-known principle, and tax certificates generally do not contradict it. The only likely case where this could cause difficulty is with mobile homes, and even here most conveyancers allow for taxes on them, and usually obtain tax certificates when they are being bought from someone other than a dealer.

The *Municipal Government Act* provides for the validity of a tax even where there are errors in names, notices or the like: S-s. 117 (5), S. 164; see also Ss. 167 and 168 of the *Assessment Act*. This is a problem for the municipal offices if they are careless in the granting of a certificate, since if the certificate is issued, it is binding even if the taxpayer actually owes taxes under a variant of the name. This is a simple error, especially in the computer age, but one for which the unit, not the purchaser, should be at risk.

POLICIES

Many of the matters that must be decided by council under the provisions of Part VI of the *Municipal Government Act* must be determined by policy. A policy is a resolution of council passed after the members of the council have received at least seven days notice and that is kept in the by-laws book of the municipality: Ss. 48, 3 (az), 187.

Policies that council may adopt under Part VI are

- payment of taxes before the rate is set (interim billing) under S. 112
- rate of interest on overdue taxes under S-s. 113 (2) and clause 49 (1) (a)
- rate of interest on taxes overpaid as a result of a reduction in an assessment on appeal under S-s. 114 (2). Note that if there is no policy, the rate will be the same as the rate of interest on overdue taxes, likely substantially higher than the municipality earns from its investments
- fees to be allowed a person executing a warrant for taxes: S-s. 123 (6)
- a collection limit, below which properties will not be sold for arrears: clause 134 (4) (b)
- time to pay up arrears after preliminary notice of tax sale if more than fourteen days: S. 138.

OTHER TAX COLLECTION MECHANISMS

The *Municipal Government Act* contains a number of other tax collection provisions and priorities that assist in tax collection, mostly based on the existing legislation from the *Assessment Act*.

Sections 126 and 127 impose a duty on executors and administrators to pay any taxes owed by the deceased or that are levied on property of the deceased after death.

Section 128 **and 129** requires the holder of any personal property security to pay all outstanding taxes owed by the debtor before realizing on (selling) the security **or out of the proceeds of the sale. Sheriffs selling property must do the same.** Section ~~129~~ **129A** imposes the same requirements where real property is sold under legal process, such as a foreclosure sale. **For additional information on Sections 128, 129 and 129A, please see Information Bulletin 41.** Landlords who pay their tenants' taxes are entitled to recover them from the tenant in the same manner as if the taxes formed part of the rent: S. 130. However, this does not impose a requirement on the landlord to pay the tenant's taxes (unless the landlord seizes the tenant's property to collect back rent).

PART PAYMENTS

Sometimes only part payment of taxes is made, particularly where a person owns several properties and only one of them is sold. Section 131 prescribes how these part payments are to be applied. In the first place, a part payment is applied to business occupancy tax. Next, if there is anything left over the payment is applied to all other taxes that are not liens. It is doubtful if there are any other taxes that are not liens. Thirdly, anything left over is applied to the payment of accumulated interest and taxes longest in arrears, but in this case, and only after the other taxes have been paid, the person paying can designate the property to which the taxes are to be applied. This allows a person to let one property go to tax sale without having to risk the sale of all of his or her property. If the taxpayer does not designate a property, the payment is to be applied to the taxes longest in arrears. Note that these rules do not leave the municipality with any discretion, and are designed to ensure that taxes that are not liens are paid first.

There is one exception. When taxes are paid on behalf of a person *purchasing* real property, only the business occupancy taxes levied with respect to the owner's occupation of the property have to be paid before the balance of the payment can be applied to the payment of the taxes on that property. See S-s. 131 (4).

SCHEDULE A

FORM A

WARRANT

TO: Any police officer, civil constable, by-law enforcement officer or other municipal employee

(taxpayer) is indebted to the (Municipality) for (amount) taxes and interest.

You are required forthwith to distrain the goods and chattels of (taxpayer) for that amount and for the expenses of collection, and if need be to remove them to some place of safekeeping.

If the property distrained is not redeemed by payment of that amount, with the expenses of collection, and any additional charges and expenses, you shall sell the goods and chattels distrained upon to satisfy the amount due.

Given under my hand and the municipal seal
this day of , 19 .

Treasurer

FORM B

RETURN

The warrant of distress for taxes hereto annexed was directed to me to be executed, and I have executed it by

(or I have been unable to find sufficient goods to realize the amount due for taxes, and interest and costs, fees and expenses and that the amount remaining due after the levy and sale is)

(or I have been unable to find any goods whereon to levy)

date

FORM C

CERTIFICATE OF SALE FOR TAXES

THIS IS TO CERTIFY that on (date) , (purchaser) of (address) purchased for the sum of \$ the lands and premises described in Schedule "A" hereto annexed, which were sold for arrears of taxes due to the (Municipality) , the same having been assessed to (assessed owner) , and described in a deed recorded in Book at Page .

A deed conveying the property to the purchaser or as directed by the purchaser will be provided upon payment of the prescribed fee at any time after six months from the date of the sale if the property is not redeemed.

Given under the hand of the treasurer and the seal of the (Municipality) this day of , 19 .

Treasurer

FORM D

CERTIFICATE OF DISCHARGE

THIS IS TO CERTIFY that the (Municipality) has been paid the amount required to redeem the land described in Schedule "A" hereto annexed, which had been assessed to (assessed owner) and was on (date) sold for arrears of taxes to (purchaser) , and with respect to which a certificate of sale for taxes was issued and was recorded in Book at Page .

The certificate of sale for taxes is now released.

Given under the hand of the treasurer and the seal of the (Municipality) this day of , 19 .

Treasurer

PROVINCE OF NOVA SCOTIA)
COUNTY OF)

ON THIS day of , A. D., , before me, the subscriber, personally came and
appeared , the subscribing witness to the foregoing Indenture, who, having been by me duly
sworn, made oath and said that and , the Mayor/Warden and Clerk of the
Grantor herein, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme
Court of Nova Scotia

Note: Schedule "A" is to contain a full metes and bounds description of the property being conveyed, and
must also contain a proper back reference to the next earlier deed, and to the deed to the delinquent taxpayer.

FORM F

CERTIFICATE OF SALE FOR TAXES
WITH RESPECT TO A MOBILE HOME

THIS IS TO CERTIFY that on *(date)*, *(purchaser)* of *(address)* purchased for the sum of \$
the mobile home described in Schedule "A" hereto annexed, which was sold for arrears of taxes due to the
(Municipality), the same having been assessed to *(Assessed owner)*.

A contract for sale for taxes transferring the mobile home to the purchaser or as directed by the purchaser
will be provided upon payment of the prescribed fee at any time after six months from the date of the sale
if the mobile home is not redeemed.

Given under the hand of the treasurer and the seal of the *(Municipality)* this _____ day of
, 20 ____ .

Treasurer

FORM H

AGREEMENT FOR SALE FOR TAXES
WITH RESPECT TO A MOBILE HOME

THIS AGREEMENT FOR SALE FOR TAXES is made this day of , 20 .

BETWEEN:

The Municipality of , hereinafter called the "Vendor"

OF THE ONE PART

- and -

The Purchaser's Name, hereinafter called the "Purchaser"

OF THE OTHER PART

Whereas the Vendor did advertise and sell on (date) the mobile homes assessed to described in Schedule "A" hereto annexed for arrears of taxes, interest and expenses.

Now This Agreement Witnesses that in consideration of the sum of One Dollar and other good and valuable consideration, the Vendor hereby sells to the Purchaser the mobile home described in Schedule "A".

In Witness Whereof, we have set out hands and affixed the seal of the Municipality the day and year written above.

SIGNED, SEALED AND DELIVERED
in the presence of

MUNICIPALITY OF

_____ per: _____

_____ per: _____
Mayor/Warden

per: _____
Clerk

SCHEDULE B

SAMPLE NOTICE

NOTICE TO ENCUMBRANCERS

19

No.

TAKE NOTICE that the lands and premises described in the annexed advertisement of sale will be sold at public auction by the [Municipality] at the _____, on the day of 19 , at the hour of _____, unless before that date the amount of arrears of taxes, interest and expenses chargeable under the *Municipal Government Act* are paid in full.

THIS NOTICE is sent to you as an encumbrancer of the property which is described in the advertisement.

DATED at _____ in the County of _____ Province of Nova Scotia, this _____ day of _____ 19 .

Treasurer for Town/Municipality of...

~~SCHEDULE C~~

~~EXCERPT FROM THE MUNICIPAL CONFLICT OF INTEREST ACT~~

Indirect pecuniary interest

~~3~~ A member has an indirect pecuniary interest in any matter

~~(a)~~ if the member of the member's nominee

~~(i)~~ is a shareholder in, or a director or senior officer of, a corporation that does not offer its shares to the public,

~~(ii)~~ has a substantial interest in, or is a director or senior officer of, a corporation that offers its shares to the public, or

~~(iii)~~ is a member of a body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned; or

~~(b)~~ if the member is a partner of or associated in a joint venture with a person, or is in the employ of a person or body, whether incorporated or not, that has an interest in any matter in which the council or local board is concerned. R.S., c.299, s. 3.

Deemed pecuniary interest

~~4~~ The pecuniary interest of

~~(a)~~ the spouse of a member;

~~(b)~~ any son, daughter, father, mother, brother or sister of a member of the member's spouse;

~~(c)~~ the spouse of the persons referred to in clause (b); and

~~(d)~~ any other person who normally resides in the same home as the member;

shall, if known to the member or of which the member reasonably should have known, be deemed to be also a pecuniary interest of the member. R.S., c.299, s. 4.

Addendum respecting Tax Sales and the Land Registration Act

The Land Registration Act (LRA) makes substantial changes in the way Nova Scotia records title to land. It is being proclaimed in force on a county by county basis, and is already in force in several counties. The LRA will be in force throughout Nova Scotia by the March 2005. While it is certainly possible for a person to change from the present registry system to the new land registration system voluntarily, most transfers are taking place because the property in question has sold or is being mortgaged. Therefore it is unlikely that properties that have been registered under the LRA will come up for tax sale for several years.

It is very simple to check through Property Online to determine whether a property has been registered under the LRA. The status shows clearly on the first page. Every property lawyer will have access to Property Online if the municipality does not have its own access. Both registered and unregistered parcels may be sold for taxes if the conditions prescribed in the MGA exist.

The differences between the two systems are based on a change from the existing registry system, that simply accumulates documents and indexes them by name, to the new system where almost all documents are related to a specific parcel and the government guarantees the ownership of the parcel. Once a parcel has been entered into the new system, a title search becomes very simple. Like any other major change, the complications arise in the change from the present to the new systems. Fortunately, tax sales do not trigger the change, so the new Act does not have a big effect on tax sale procedures.

For parcels that have not been registered under the LRA, procedures will be much as they have always been. The LRA regulations specifically exclude a tax sale from the definition of sale for value, so a tax sale does not trigger the requirement to register a parcel under the LRA. About the only change will be that in order to record the certificate of sale or the tax sale deed, there will have to be a cover page (LRA Form 44) to specify why the document does not have to be registered or recorded under the new system. In this case, the document does not have to be recorded under the LRA because it is not a transfer for value.

Where the parcel to be sold is registered under the LRA, there are a few changes. In the first place, of course, the title search is much simpler. The certificate of sale is recorded in the parcel register after the tax sale, not in the registry of deeds. If the property is redeemed, a certificate to that effect is recorded, and the recording of the certificate of sale is cancelled. No change in ownership occurs. If the property is not redeemed, when the person to whom the tax deed was issued takes the deed in for registration, the parcel register is

revised to show the new owner. Since the form of a tax deed is prescribed by the MGA, a certificate of legal effect is not needed for a tax deed, although it is required for most other transfers. See generally Section 31 of the Land Registration Act.

Note that a tax deed to a registered property will create an immediate change in ownership that cannot be challenged except for fraud. While this creates much greater certainty about the effect of tax deeds, it also points out the need for extra caution in the conduct of the tax sale.