

Tax Deeding

2019

Spring Workshop

DEED PROCESS

- RSA 80:77 Notice of Impending Tax Deed
- RSA 80:77-a Notice to Mortgagees of Impending Tax Deed
- RSA 80:76 Tax Deed (After 2 Years)
- RSA 80:89 Notice to Former Owner and Opportunity for Repurchase
- RSA 80:88 Distribution of Proceeds from the Sale of Tax Deeded Property

Steps Prior to Tax Deeding

- 1) Establish Deed Date – 2 years from lien date
- 2) Notice of Intent to Deed to Property owners and mortgagees(RSA 80:77 and 80:77-a)
 - No notice to property owners in Bankruptcy
 - Duplicate letters to multiple owners(RSA 80:73)
- 3) Notify the Governing Body of Impending Tax deeding and Deed Waivers (RSA 80:76)

RSA 80:76 Tax Deed

- The collector, after 2 years from the execution of the real estate tax lien, **shall** execute to the lienholder a deed of the land subject to the real estate tax lien and not redeemed.
- Notwithstanding the provisions of paragraph I, the collector shall not execute a deed of the real estate to a municipality when the governing body of the municipality has notified the collector that it **shall not accept the deed** because acceptance would subject the municipality to **potential liability** as an owner of property under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq.; RSA 147-A and 147-B, and any other federal or state environmental statute which imposes strict liability on owners for environmental impairment of the real estate involved.

RSA 80:76 Tax Deed Continued

- In addition to the circumstances described in paragraph II, the governing body of the municipality may refuse to accept a tax deed on behalf of the municipality, and may so notify the collector, whenever in its judgment acceptance and ownership of the real estate would subject the municipality to **undesirable obligations or liability risks**, including obligations under real estate covenants or obligations to tenants, or for any other reason would be contrary to the public interest. **Such a decision shall not be made solely for the benefit of a taxpayer.**
- When a governing body has, under paragraph II or II-a, served notice upon the collector it shall not accept the deed, the **tax lien shall remain in effect indefinitely**, retaining its priority over other liens. The taxpayer's right of redemption as provided by RSA 80:69 shall likewise be extended indefinitely, with interest continuing to accrue as provided in that section.
- The tax lien may be enforced by the municipality by suit as provided under RSA 80:50, and through any remedy provided by law for the enforcement of other types of liens and attachments.
- If, at any time, in the judgment of the municipal governing body, the reasons for **refusing the tax deed no longer apply**, and the tax lien has not been satisfied, **the governing body may instruct the collector to issue the tax deed**, and the collector shall do so after giving the notices required by RSA 80:77 and 80:77-a.

RSA 80:77 Notice to Current Owner.

RSA 80:77-a Notice to Mortgagee.

- **At least 30 days prior to executing the deed:**
 - Tax Collector shall notify the **current owner** of the property or his representative or executor.
 - By **certified mail**, return receipt requested.
 - Tax Collector shall notify each person holding a mortgage upon such property.
 - Any **mortgagee** whose mortgage was recorded in the office of the register of deeds at least 30 days prior to the mailing of the notice.
- Notice shall, at the minimum, contain:
 - Name of the delinquent taxpayer.
 - Description of the property subject to the tax lien.
 - Amount of the tax lien and the amount of tax collector's fee and expenses necessary for redemption.
 - Issue date of the tax lien deed.
 - Expiration date of the right of redemption.
 - Warning that the legal interest of the taxpayer and each mortgagee will be extinguished by the tax lien deed.

Due Process Notice

- The purpose of the mailings is to provide parties “due process” notice of a procedure which may deprive them of a property interest. See, *Mullane vs. Central Hanover Trust Company*, 339 U.S. 306 (1950).
- Generally notice by mail is sufficient to satisfy due process, even if it turns out the recipient did not receive it. *Appeal of City of Concord*, 161 N.H. 169 (2010).
- **HOWEVER**, if the municipality knows it was not received (i.e. returned unclaimed or undeliverable as addressed), then you must take “additional reasonable steps” to provide notice to the property owner. *Jones vs. Flowers*, 547 U.S. 220 (2006).

Bank Search Tools

- National Information center:
<https://www.ffiec.gov/nicpubweb/nicweb/nic/home.aspx>
- FDIC: <https://www.fdic.gov/>
- NH Banking Division:
<https://www.nh.gov/banking/>
- Wikipedia:
https://en.wikipedia.org/wiki/List_of_bank_mergers_in_the_United_States

26 U.S.C. 7425 Real Estate Subject to IRS Tax Liens

- Although property tax liens can take priority over federal tax liens (26 USC 6323(b)(6)), a tax deeded property will be subject to the lien (26 USC 7425(a)(1)), unless appropriate notice is provided to the IRS.
- The notice required must:
 - Be sent at least 25 days before the date of deeding.
 - Be sent registered or certified mail to the District Director, marked for the attention of the “Special Procedures Staff”.
 - Include your name and address.
 - Include a copy of the IRS lien.
 - Provide a detailed description of the property to be deeded.
 - The date, time and place of the “sale” (notice of impending deeding should suffice).
 - The amount of the obligation due from the taxpayer.
- Even if notice is given the **IRS has a “redemption right” for 120 days after the deeding** to claim the property by paying the purchaser the amount paid and taking title.

IRS continued

- Contact information for the IRS is:
 - IRS Special Procedures
 - 380 Westminster St
 - 4th Floor
 - Providence RI 02903
 - Phone 1-617-316-2608
- You can use this address to send your notices or to check on the status of an account.

“D” Day – Deeding Day

- Prepare deeds (if not done ahead of time) see RSA 80:76 for language.
- At appointed time & date, sign deeds before any witnesses and notary.
- Give deeds to governing body for recording (should also include copies of entire file on property).
- Accounting entries to tax lien accounts are made (deed process through software system; print account statement **BEFORE** processing).

Information for Deeding File

- Copy of current **assessing card**.
- Copy of **latest tax bill**.
- **Statement of account** showing “due” amount as of deeding date.
- **Copies of all notices:** (for deeded year and subsequent years) Notice of Arrearage, Notice of Impending Tax Lien and certified mail receipt, Notice to Mortgagee (re: lien) and certified mail receipt, Notice of Impending Tax Deed and certified mail receipt (owner & mortgagee), “courtesy notices” (if sent), any correspondence with former owner (if sent certified, copies of certified mail receipt).
- **Copies of mortgage search** (at lien and prior to deed).
- Any information related to returned mail and attempts to find a current owner or mortgagee, if applicable.
- Copies of any/all other **correspondence** or information relative to parcel and/or owner contact.
- Copy of the **recorded deed**.
- Copy of notice to owner of recorded deed and **right to repurchase** (RSA 81:89).

Miscellaneous – continued

RSA 80:89 Notice to Former Owner and Opportunity for Repurchase

- I. At least 90 days prior to the offering for sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipal governing body or its designee shall send notice by certified mail, address service requested, return receipt requested, to the last known post office address of the owner of the property at the time of the tax deed, if known, or to the person to whom notice of the impending tax deed was given under RSA 80:77. The notice shall set forth the terms of the offering and the right of the former owner or owners to repurchase the property, as set forth in paragraph II. Copies of any such notice shall also be sent by certified mail, return receipt requested, to any mortgagee to whom notice of the impending tax deed was sent under RSA 80:77-a. For any notice sent pursuant to this paragraph, \$10 may be added to the municipality's "costs" as defined in RSA 80:90. In this section, an "offering for sale" means the authorization by the municipality's governing body to its designee to sell the property.
- II. Within 30 days after the notice required by paragraph I, or if no such notice is received, at any time within 3 years after the date of recording the tax deed, any former owner of the property may give notice by certified mail, return receipt requested, of intent to repurchase the property from the municipality, and stating that such owner is ready, willing, and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90. If all such back taxes, interest, costs and penalty have not been actually tendered within 15 days of such notice of intent to repurchase, the municipality may proceed with its offering and dispose of the property without any interest by the former owner.

- III. The deed from the municipality upon such repurchase shall convey the municipality's interest in the property, or such portion as has not been previously disposed of by the municipality, to all record former owners in the same proportional undivided interests as the former owners of record.
- IV. The former owners' title upon repurchase shall be subject to any liens of record against the property as of the time of the tax deed to the municipality, and subject to any leases, easements, or other encumbrances as may have been granted or placed on the property by the municipality. In the case of multiple former owners, any owner paying more than a proportional share of the purchase price to the municipality shall have a lien against the other owners for the amount of the excess paid.
- V. A notice of intent to repurchase under this section may also be filed by the holder of any recorded mortgage interest in the property which was unredeemed as of the date of the tax deed. Upon payment the property shall be deeded as provided in paragraph III, but the mortgagee shall be entitled to add the amount paid to the municipality to the amount due under the mortgage.
- VI. Conveyances to a former owner under this section shall not be subject to the real estate transfer tax under RSA 78-B.
- VII. The duty of the municipality to notify former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners' right of repurchase under this section shall terminate 3 years after the date of recording of the deed.
- Source. 1998, 238:2. 2007, 184:2, 3, eff. Aug. 17, 2007.

RSA 80:78 Incontestability

- No action, suit or other proceeding shall be brought to contest the validity of an execution of the real estate tax lien or any other collector's deed based thereon after 10 years from the date of record of the collector's deed.
 - Note: This does not bar a challenge to the assessment process that may have resulted in the wrong party being listed as the assessed owner. BHC Development vs. Town of Plaistow, 146 N.H. 500 (2001).

Property is Deeded - Now what????

- Deed is recorded.
- Any partial payments made are refunded (RSA 80:71).
- Municipality may choose to keep the property or dispose of it (RSA 80:80).

To Retain or Dispose?

- In order to dispose of tax deeded property the municipality must have “authority”.
- RSA 80:80 provides authority to dispose of tax deeded property. It must be adopted annually at town meeting or adopted with “until rescinded”.
- Property can be sold by auction or sealed bid OR in another manner **if** “as justice may require” is adopted. (RSA 80:80 III).