At last, the Legislature adjourns; senior foreclosure bill is enacted

Described by some as a "solution in search of a problem," LD 1629 creates new pre-foreclosure and post-foreclosure processes for towns and cities to follow.

By Kate Dufour, Director of State & Federal Relations, MMA

The longest "short" legislative session in Maine history finally ended on Sept. 13, 2018. What should have been an 83 business day session extended over 176 work days and included week-long recesses providing legislative leaders the time necessary to negotiate the terms of highly polarizing issues. With the Clean Election Act program funding released, the adoption of an income tax package that conforms with several of the changes recently enacted at the federal level and the passage of several bills seeking to remedy problems with the Department of Health and Human Services' Bureau of Child Protective Services, the members of the 128th Maine Legislature were ready to retire.

With the hot button issues decided, the general consensus among political pundits and gadflies was that the Legislature's last day in session would be perfunctory and celebratory in nature, lasting only a few hours. However, as the members of the House and Senate began to process the final vetoes, confirmations and orders, Governor Paul LePage was mounting a media campaign calling on the Legislature to enact his proposed senior tax lien foreclosure bill. The pressure from the Governor's Office ranged from vowing to call the Legislature back for a special session the day after adjournment to complete its work, to promising to actively campaign against certain legislative candidates.

After several partisan caucuses and discussions, LD 1629, *An Act To Protect Homeowners Affected by Tax Lien Foreclosures*, was placed before the Legislature for a vote. Although many members of the Legislature expressed concerns with and opposition to the bill, with some going so far as to describe it as a "solution in search of a problem," a heavily amended version of the bill was finally enacted.

In a nutshell, the bill makes it more difficult and time consuming for municipalities to dispose of the tax acquired property previously owned by homeowners 65 years of age or older who meet certain income and asset eligibility standards.

Specifically, LD 1629 creates the following new pre-foreclosure and post-foreclosure tax lien processes:

Pre-foreclosure process

Under terms of the new law, tax collectors will now be required to use the "demand notice" currently required under Title 36, §942 to inform a delinquent property taxpayer, who is receiving the homestead exemption, of the right to apply for a poverty tax abatement and of the ability to contact the state's Consumer Credit Protection Bureau for assistance to avoid tax lien foreclosure. The additional information required to be included in the demand notice will be provided by the state to the Maine Municipal Association for distribution to municipal officials.

Post-foreclosure process

As enacted, the law also creates a new process for disposing of the tax-acquired property previously owned by qualifying homeowners.

Special Process. If the municipality decides to sell the tax-acquired property previously owned by a qualifying homeowner, the community is required to try to sell the property on the open market. As provided in the newly enacted law, a municipality must enter into a six-month contract with a real estate broker to sell the property at its fair market value or at a price at which the property is anticipated to sell within six months. If the contracted broker is unable to sell the home within six months, or if after contacting three real estate brokers the municipality is unable to retain the services of a broker to sell the tax-acquired home, the municipality is authorized to dispose of the property in the same manner that all other tax-acquired property in the community is sold.

Qualifications. To qualify for this new process, at least one of the former owners must be 65 years of age or older on the date the tax lien certificate is recorded and have received the homestead exemption. In addition, the former owner or owners must demonstrate to the municipal officers (or officers' designee) that their previous year's adjusted gross income was less than $40,000 after medical expenses, and that the value of liquid assets is less than $50,000 for an individual or $75,000 for a multi-person household. Under the terms of the enacted bill, "liquid assets" are defined as something of value available to an individual that can be converted to cash in three months or less and includes bank accounts, certificates of deposit, money market or mutual funds, life insurance policies, stocks and bonds, lump-sum payments and inheritances and funds from a home equity conversion mortgage that are in the individual's possession whether they are in cash or have been converted to another form."

Determining Eligibility. The law further establishes a timeline and application process for determining eligibility for the sale of tax acquired property. At least 90 days prior to listing the property for sale, the municipal officers (or officers' designee) must notify the former owner, by first-class mail, of the right to require the special sale process. The municipality must include in that notice an application form with instruction and submission information necessary for the municipality to determine eligibility. The former owner(s) must be provided at least 30 days, from the date the notice is mailed, to submit the application. Within 30 days of receiving the application, the municipal officers must determine whether the applicant is eligible for the special process and, if denied, inform the applicant of the right to appeal the decision through the Maine Rule of Civil Procedure, Rule 80B process.

The state tax assessor is directed to prepare the application forms, notices and instructions that must be used by municipalities. Furthermore, all applications or information submitted in support of an application, files and communications related to the application and the determination of eligibility are to be treated as confidential records.

Return of Net Proceeds. If the previous homeowner meets those qualifications, any revenue from the sale of the home must be returned to the former owner – after the municipality is reimbursed for back taxes, property taxes that would have been assessed while the municipality owned the property, accrued interest, fees and other expenses incurred by the municipality while selling or maintaining the property. This return of net proceeds provision is in effect only if the home is sold through the contracted real estate broker process.

Mandate fiscal note

The silver lining in the law is the inclusion of a fiscal note obligating the state to reimburse municipalities for 90 percent of the costs associated with implementing the new mandate. For this reason, municipalities are urged to keep close tabs on the resources, materials and time spent to administer both the pre-foreclosure and post-foreclosure elements of this program and to seek appropriate reimbursement from the state.

Effective Date. The provisions of the law are effective on Dec. 13, 2018.

Other new laws

Provided in a separate article in this edition of Maine Town & City are descriptions of several recently enacted municipally relevant bills. Of special interest are descriptions of two laws (LD 238 and LD 1539) that extend municipal regulatory authority over commercial caregiver medical marijuana operations.

Looking ahead

MMA's newly elected 70-member Legislative Policy Committee is working on the association's 2019-20 legislative platform for consideration by the next Legislature. Not surprisingly, a preliminary survey of LPC members shows that measures focused on restoring funding for the Municipal Revenue Sharing Program and calling on the Legislature to honor the commitment to fund its statutorily required share of K-12 education are on the top of the priority list. Increasing investments in the state's transportation network, workplace recruitment – particularly as it pertains to attracting and retaining public safety officials – and the need to address the opioid and mental health crises that are placing burdens on local resources, are also of concern to municipal leaders.

The LPC met in October and will meet again in November to finalize its legislative platform. Results of those efforts will be described in the December edition of this magazine. ■