

How to comply with Maine's senior tax lien foreclosure law

MMA's Legal Services Department has received many inquiries about the new requirements. Here are the answers to some commonly asked questions.

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Last September, the Legislature enacted LD 1629, *An Act to Protect Homeowners Affected by Tax Lien Foreclosure* (PL 2017, c. 478). Maine Municipal Association's Legal Services Department has received many questions about this new law and its requirements. Some common questions are addressed below.

Q. When is the new law effective?

A. The new law takes effect Dec. 13, 2018. It will apply to 30-day demand notices sent after that date. It also imposes a special sale process for some tax-acquired real estate sold after that date.

Q. How will the new law change municipal tax lien procedures?

A. Remember that the new law applies only to real estate tax liens; it does not impact personal property tax liens or sewer liens.

Almost all of the new law's requirements apply post-foreclosure to the sale of covered tax-acquired real estate. During the pre-foreclosure process, the new law merely requires additional information in the "30-day demand" notice sent pursuant to 36 M.R.S. § 942. Specifically, a 30-day demand notice for real estate constituting a "homestead" under the Maine Resident Homestead Property Tax Exemption program must contain a statement informing the taxpayer of the right to file a poverty abatement application, that the municipality will provide information regarding application procedures, and upon request, will help the taxpayer apply. The 30-day demand notice must also provide contact information for the Maine Bureau of Consumer Credit Protection and state that the taxpayer may contact the bureau for assistance in locating an advisor to help the taxpayer avoid lien foreclosure.

Although this information need be provided only to "homestead" properties, we recommend that the tax collector simply send the same information to all delinquent taxpayers receiving a 30-day demand notice. This provides all taxpayers with the same resources, avoids the need to research homestead properties and avoids the chance of overlooking any required recipient.

Aside from the new information now required in the 30-day demand notice, there is no change to the real estate tax lien foreclosure process.

Q. *Must we research which properties have received the homestead exemption?*

A. No. Although the municipality will normally have information on homestead properties, it is not necessary for the collector to research homestead properties during the lien process. As noted above, we recommend simply including the required information in all 30-day demand notices.

Q. *Does the special sale process apply to all property tax-acquired after Dec. 13, 2018?*

A. No. The new special sale process applies only to real estate: (1) that, on the date the lien certificate was recorded, was owned by at least one person who was 65 years of age or older and occupied the property as a “homestead” as defined in 36 M.R.S. § 681(2) (the Maine Resident Homestead Property Tax Exemption law); and (2) whose former owner(s) meet income and asset requirements stated in the new law (outlined below).

Q. *What does the new law require after a tax lien forecloses?*

A. At least 90 days before listing for sale any real estate that immediately prior to foreclosure received the homestead exemption, the municipal officers or their designee must notify the former owner(s) of their right to apply for the special sale process. The notice must be mailed by first class mail to the last known address of the former owner(s), and must include an application form, instructions and guidance on the type of supporting information necessary to include with the application. If the taxpayer files an application and meets eligibility criteria, the municipality must use the special sale process.

The State Tax Assessor is required to provide municipalities with forms for required notices, applications and instructions.

Note that the law does not require that covered property be offered for sale at all, or require that it be offered for sale within any time frame after foreclosure. As with any sale or disposition of tax-acquired property, general authorization from the municipal legislative body is necessary before covered property may be sold.

Q. *Must we research the birth date and income of all taxpayers?*

A. No. There is no need to investigate taxpayer birth dates or incomes. There is no reliable means for a municipality to do so anyway. Although the special sale process applies to homestead properties formerly owned by persons 65 years and older who meet income limits, the post-foreclosure notice and application forms must be mailed to any property that immediately prior to foreclosure received the homestead exemption, irrespective of the income or age of former owner(s). Moreover, we recommend that the notice and application simply be mailed to all former owners of tax-acquired real estate

at least 90 days before listing the real estate for sale. Former owners who meet age and income requirements may then file an application to request the special sale process.

Q. *What does the application process involve?*

A. After the notice and application materials (described above) are mailed to former owners of tax-acquired property, the former owner(s) must be allowed at least 30 days from the date of the mailing to submit an application and supporting information to qualify for the special sale process.

Within 30 days after receipt of an application and supporting materials, the municipal officers or their designee must determine if the former owner(s) qualify for the special sale process.

Within this 30-day period, the municipal officers or their designee should hold a meeting to review the application. The former owner(s) should have the opportunity to attend the meeting to provide information or answer questions. If the municipal officers will review the application, the board must meet in executive session because the application and all supporting materials are confidential.

To qualify for the special sale process, the former owner(s) must demonstrate that:

- On the date the lien certificate was recorded, the real estate was owned by at least one person who was at least 65 years old and who occupied the real estate as a “homestead” as defined in 36 M.R.S. § 681(2); and
- The former owner’s income, as defined in 36 M.R.S. § 5219-KK(1)(D) (Maine income tax laws) was less than \$40,000 after medical expenses are deducted, for the calendar year immediately preceding the calendar year in which the lien foreclosed; and (2) the value of their liquid assets is less than \$50,000 for one person (or \$75,000 for two or more persons). “Liquid assets” means “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 an individuals’ possession whether they are in cash or have been converted to another form.” The former owner(s) must provide documentation verifying income and assets.

The municipal officers or their designee must mail written notice of their decision via first class mail to the formers owner(s) including notice of the right to appeal the decision pursuant to Maine Rule of Civil Procedure 80B. The notice must be mailed within 30 days after the application is received.

Q. *If the former owner qualifies for the sale process, how must the sale be conducted?*

A. If the former owner's application is approved, the municipal officers must list the tax-acquired real estate with a licensed real estate broker. The broker may not be an elected or appointed municipal official or employee of the municipality. Also, the real estate must be sold at fair market value or at a price at which the broker thinks it is likely to sell within six months after listing.

If the municipality is not able to list the real estate with a broker after contacting at least three licensed real estate brokers, or if a broker accepts the listing but cannot sell it within six months after listing it, the municipality may then sell, retain, or dispose of the real estate according to its regular procedures relating to tax-acquired property.

Q. *If the property is sold using the special sale process, how are sale proceeds handled?*

A. If the real estate is sold while listed with a broker, sale proceeds in excess of back taxes, taxes that would have been assessed between the foreclosure and sale, accrued interest, fees including broker fees, and other expenses incurred in selling or maintaining the property, including reasonable attorney's fees, must be returned to the former owner(s). See 36 M.R.S. § 943-C(3) for a complete listing of costs that may be deducted from sale proceeds.

Q. *Does the special sale process apply if the municipality sells the property to the former owners?*

A. The law appears to assume, but does not specifically state, that the special sale process is intended to apply only when the municipality intends to sell covered tax-acquired real estate to someone other than the former owner(s). If the municipality wishes to sell real estate back to the former owner(s), the former owner(s) could decide not to exercise their right to require the special sale process.

Q. *Can we recoup the additional costs in administering the law?*

A. The state must reimburse municipalities 90 percent of additional costs incurred in implementing these new requirements. Primarily, these costs will consist of postage and copying costs resulting from additional notices and mailings. Claims for reimbursement should be presented to the Maine Revenue Services, which is expected to create reimbursement forms and guidance for this purpose.

Q. *Where can we find additional resources?*

A. MMA's *Guide to Municipal Liens* contains extensive guidance on lien procedures. A supplement detailing requirements of the new law, with sample forms, is available now in the "members" area of our website at www.memun.org.