Navigating Tax Deed Traps

An NHMA Webinar

By **NH Tax Deed & Property Auctions**
and **Sager & Smith, PLLC**

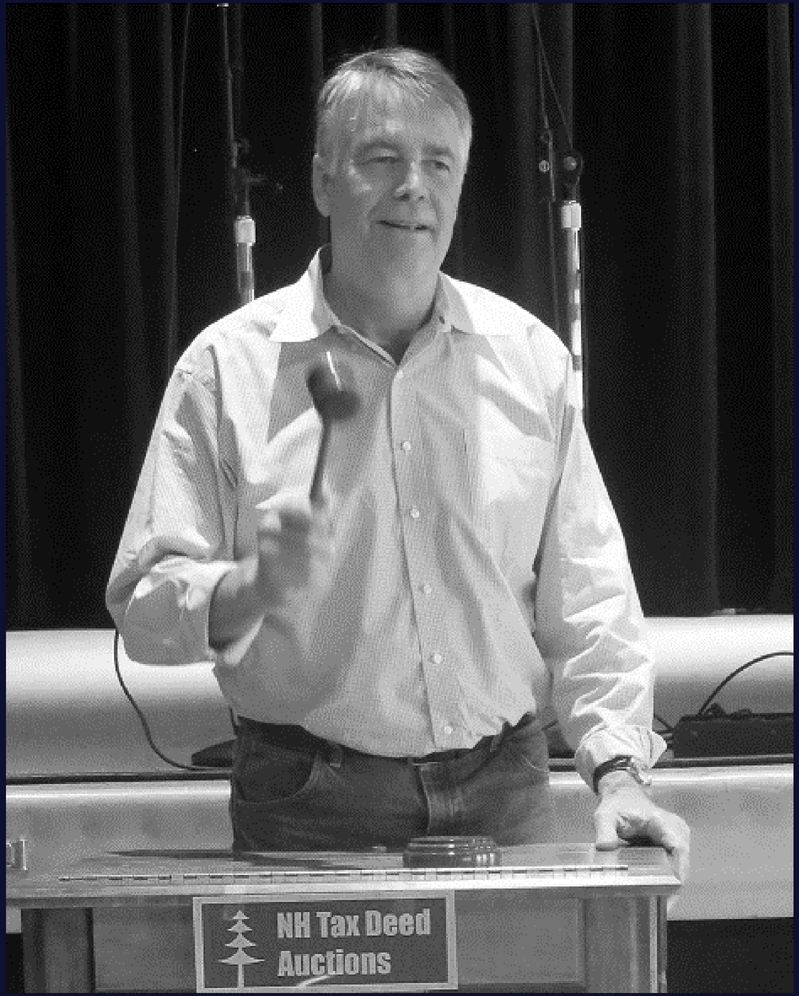
August 28, 2024

***NOTE:* Not legal advice. Informational purposes only.**

Presenters

Richard “Rick” Sager

- Auctioneer (NH license #6104) with decades of experience conducting tax deed auctions for NH municipalities
- NH lawyer with over 40 years of experience practicing municipal and real estate law
- Trinity College (BA), University of New Hampshire Franklin Pierce School of Law (JD)



Presenters

Weston Sager

- Third-generation auctioneer (NH license #6224)
- NH and NY lawyer with years of experience representing the State of New Hampshire and New Hampshire municipalities
- Dartmouth College (AB), Northwestern University School of Law (JD)

Presentation Overview

- This presentation is limited to the tax lien process (RSA 80:58 through 80:91)
- The tax sale process (essentially RSA 80:18 through 80:57) will not be addressed
- This presentation will focus on post-tax deed considerations

Presentation Overview

Tax Lien Process

1. Owner fails to pay property taxes
2. Municipality imposes tax liens
3. Municipality takes property by tax collector's deed
4. Municipality chooses sale approach (auction, sealed bid, other)
5. Municipality sells the property and pays itself what it is owed
6. Municipality distributes excess proceeds (if any) to former owners and lienholders

Presentation Overview

Topics Covered

Constitutional considerations for tax-deeded real estate

Identifying former owners

Choosing to keep or sell a property

Imposing requirements on the new owner

Selecting a sale approach

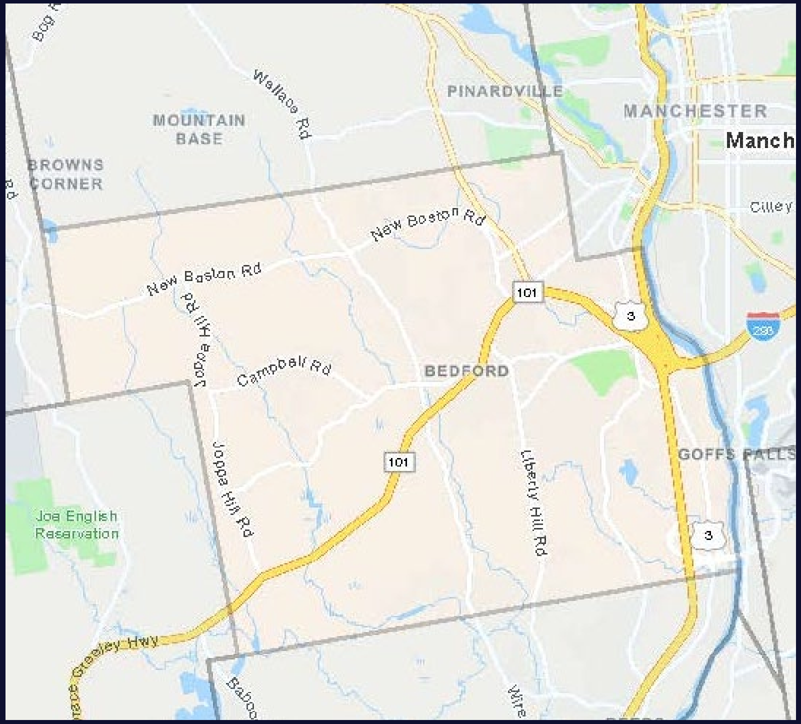
Distributing funds

Constitutional considerations for tax-deeded real estate

Polonsky v. Town of Bedford, 173 N.H. 226 (2020)

Relevant Facts

- Polonsky inherited a Bedford, NH property in 2008
- Property had an assessed value of $309,000
- Polonsky failed to pay his taxes, and the Town of Bedford took the property by tax deed for an outstanding tax lien of approximately $90,000
- After redemption negotiations failed, the Town elected to sell the property
- Because the sale would occur three years after the date of the tax deed, the Town could, pursuant to RSA 80:89, VII, keep its "back taxes, interest, costs and penalty" **<u>as well as all excess proceeds</u>**



Polonsky v. Town of Bedford, 173 N.H. 226 (2020)

Trial Court Decision

- Polonsky sued the Town, alleging that the Town's intention to retain the excess proceeds violated the Takings Clause of the NH Constitution because the Town was taking his property without "just compensation"
- The trial court agreed with Polonsky and ruled that RSA 80:89, VII was unconstitutional
- The Town appealed the trial court's decision to the NH Supreme Court

Polonsky v. Town of Bedford, 173 N.H. 226 (2020)

NH Supreme Court Decision

- On April 24, 2020, the NH Supreme Court affirmed the trial court, holding that “the termination under RSA 80:89, VII of the municipality’s duty to provide excess proceeds three years after the date of the recording of the tax deed violates . . . the New Hampshire Constitution”
- The Court repeatedly emphasized that its ruling was “narrow” and pertained only to the excess proceeds language contained in RSA 80:89, VII
- **<u>However</u>**, in support of its central ruling, the Court stated that “when the municipality acquires property by tax deed that is worth more than the amount owed, the municipality is required to provide compensation to the former owner”

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by e-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court’s home page is: http://www.courts.state.nh.us/supreme.

THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough-northern judicial district
No. 2019-0339

RICHARD POLONSKY

v.

TOWN OF BEDFORD

Argued: February 13, 2020
Opinion Issued: April 24, 2020

<u>Alfano Law Office, PLLC</u>, of Concord (<u>John F. Hayes</u> on the brief and orally), for the plaintiff.

<u>Upton & Hatfield, LLP</u>, of Concord (<u>Barton L. Mayer</u> and <u>Michael P. Courtney</u> on the brief, and <u>Mr. Mayer</u> orally), for the defendant.

<u>Beaumont & Campbell, Prof. Ass’n</u>, of Salem (<u>Bernard H. Campbell</u> on the brief), for New Hampshire Tax Collectors’ Association, as <u>amicus curiae</u>.

<u>Stephen C. Buckley</u>, of Concord, for New Hampshire Municipal Association, by brief, as <u>amicus curiae</u>.

Tyler v. Hennepin County, 598 U.S. 631 (2023)

Relevant Facts

- In 1999, Tyler—an elderly woman—purchased a condo in Minneapolis
- In 2010, she moved to a senior community, and no one paid the property taxes on her condo in her absence
- In 2015, Hennepin County, Minnesota took her condo for approximately $15,000 in unpaid taxes, interest, and penalties
- Hennepin County subsequently sold her condo for $40,000
- Pursuant to Minnesota statutory law, Hennepin County kept not only the $15,000 owed, but also the excess proceeds of $25,000

Tyler v. Hennepin County, 598 U.S. 631 (2023)

Lower Court Decisions

- Tyler sued Hennepin County, asserting that it had violated the Takings Clause of the Fifth Amendment of the US Constitution and the Excessive Fines Clause of the Eighth Amendment of the US Constitution
- The trial court dismissed Tyler's lawsuit for failure to state a claim
- The Eighth Circuit Court of Appeals affirmed
- Tyler appealed the Eighth Circuit's decision to the US Supreme Court

Tyler v. Hennepin County, 598 U.S. 631 (2023)

US Supreme Court Decision

- On May 25, 2023, the US Supreme Court reversed the Eighth Circuit in a unanimous decision
- The Court held that an unconstitutional taking occurs when the government seizes a property for non-payment of taxes and retains the excess value, stating that the government cannot "use the toehold of the tax debt to confiscate more property than was due"
- Additionally, the Court noted that, in one of its prior decisions, it held that when the government *kept* a tax acquired property, the former owner was "**<u>still entitled to the surplus . . . just as if the [g]overnment had sold the property</u>**"

(Slip Opinion) OCTOBER TERM, 2022 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TYLER *v.* HENNEPIN COUNTY, MINNESOTA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 22–166. Argued April 26, 2023—Decided May 25, 2023

Geraldine Tyler owned a condominium in Hennepin County, Minnesota, that accumulated about $15,000 in unpaid real estate taxes along with interest and penalties. The County seized the condo and sold it for $40,000, keeping the $25,000 excess over Tyler's tax debt for itself. Minn. Stat. §§281.18, 282.07, 282.08. Tyler filed suit, alleging that the County had unconstitutionally retained the excess value of her home above her tax debt in violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The District Court dismissed the suit for failure to state a claim, and the Eighth Circuit affirmed.

Held: Tyler plausibly alleges that Hennepin County's retention of the excess value of her home above her tax debt violated the Takings Clause. Pp. 3–14.

(a) Tyler's claim that the County illegally appropriated the $25,000 surplus constitutes a classic pocketbook injury sufficient to give her standing. *TransUnion LLC* v. *Ramirez*, 594 U. S. ___, ___. Even if there are debts on her home, as the County claims, Tyler still plausibly alleges a financial harm, for the County has kept $25,000 that she could have used to reduce her personal liability for those debts. Pp. 3–4.

(b) Tyler has stated a claim under the Takings Clause, which provides that "private property [shall not] be taken for public use, without just compensation." Whether remaining value from a tax sale is property protected under the Takings Clause depends on state law, "traditional property law principles," historical practice, and the Court's precedents. *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 165–168. Though state law is an important source of property rights, it cannot be the only one because otherwise a State could "sidestep the

Impact of *Polonsky* and *Tyler* on NH Municipalities

- A municipality may not hold a tax-deeded property for at least three years and then keep the excess proceeds generated from the sale of the property. Consequently, there is little benefit for municipalities to hold onto tax-deeded properties for three years or more.
- Additionally, given the language of both *Polonsky* and *Tyler*, a municipality should strongly consider compensating the former owners and lienholders for the equity in a tax-deeded property if the municipality keeps it for municipal or other purposes.

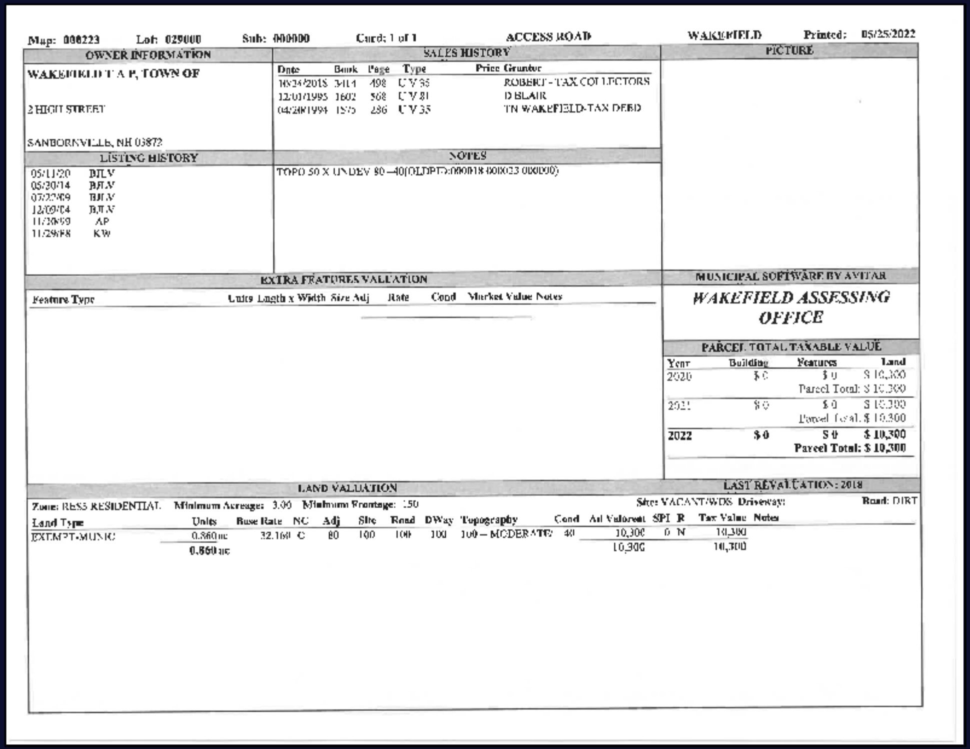
Impact of *Polonsky* and *Tyler* on NH Municipalities

- Before *Polonsky* and *Tyler*, in practice, municipalities only needed to go back three years to locate former owners and lienholders
- After *Polonsky* and *Tyler*, municipalities may need to go back decades to locate these parties
  - Former owner deceased? Can heirs be located?
  - Lienholder entities still exist? Deceased? Acquired by other entity?
- Overall, increased expense, time, and uncertainty for municipalities

Identifying former owners

Identifying former owners

- The municipality should know who the former owners (and lienholders) are before keeping or selling a property
- Former owners are not always easy to identify
- Sometimes, a municipality's records reflect that a property belongs to "unknown owners"



Map: 000223 Lot: 029000 Sub: 000000 Card: 1 of 1 ACCESS ROAD WAKEFIELD Printed: 05/25/2022

OWNER INFORMATION

WAKEFIELD T A P, TOWN OF

2 HIGH STREET

SANBORNVILLE, NH 03872

SALES HISTORY

Date	Book	Page	Type	Price	Grantor
10/24/2018	3414	498	U V 35		ROBERT - TAX COLLECTORS
12/01/1995	1602	568	U V 81		D BLAIR
04/28/1994	1575	286	U V 35		TN WAKEFIELD-TAX DEED

PICTURE

LISTING HISTORY

05/11/20	BJLV
05/20/14	BJLV
07/22/09	BJLV
12/09/04	BJLV
11/30/99	AP
11/29/88	KW

NOTES

TOPO 50 X UNDEV 80 –40(OLDPID:000018 000023 000000)

EXTRA FEATURES VALUATION

Feature Type	Units	Length x Width	Size Adj	Rate	Cond	Market Value	Notes

MUNICIPAL SOFTWARE BY AVITAR

WAKEFIELD ASSESSING OFFICE

PARCEL TOTAL TAXABLE VALUE

Year	Building	Features	Land
2020	$ 0	$ 0	$ 10,300
		Parcel Total:	$ 10,300
2021	$ 0	$ 0	$ 10,300
		Parcel Total:	$ 10,300
2022	**$ 0**	**$ 0**	**$ 10,300**
		Parcel Total:	**$ 10,300**

LAND VALUATION **LAST REVALUATION: 2018**

Zone: RESS RESIDENTIAL Minimum Acreage: 3.00 Minimum Frontage: 150 Site: VACANT/WDS Driveway: Road: DIRT

Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Ad Valorem	SPI	R	Tax Value	Notes
EXEMPT-MUNIC	0.860 ac	32.160	C	80	100	100	100	100 – MODERATE	40	10,300	0	N	10,300	
	0.860 ac									10,300			10,300	

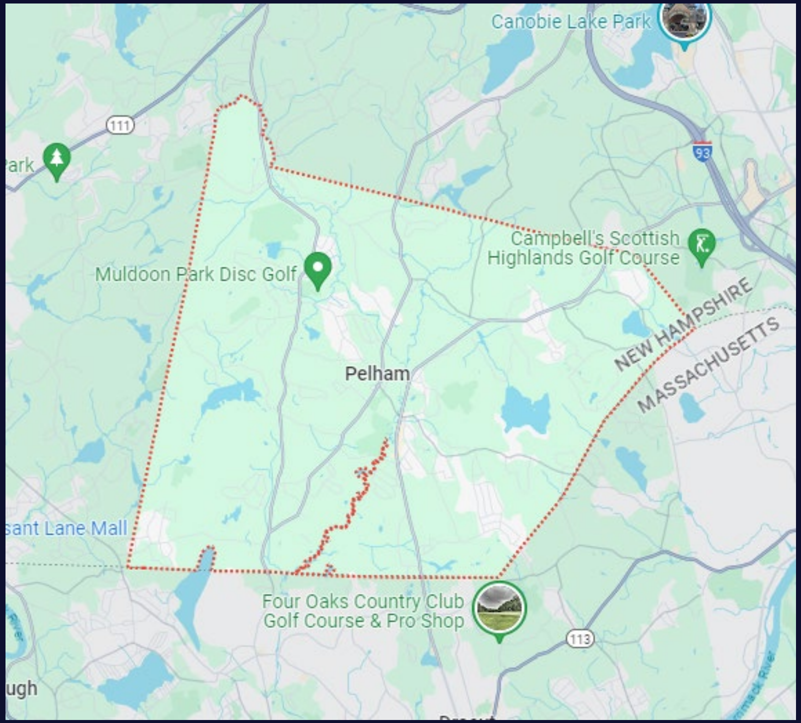
Identifying former owners

- Taking and keeping/selling properties that belong to unknown owners is not impossible, but it requires the municipality to 'do its homework' beforehand
- Otherwise, the municipality will open itself to legal challenges

Kakris v. Montbleau, 133 N.H. 166 (1990)

Relevant Facts

- In 1957, the Kakris family bought 83 acres of land in Pelham, NH
- Starting in 1963, they transferred (1) a 20-acre parcel to a third party, (2) a 39.5-acre parcel to a different third party, and a (3) a 2-acre parcel to a daughter
- After these transfers, the Kakris family owned 20+ acres of land (i.e., the 2-acre parcel plus the remaining non-transferred land)



Kakris v. Montbleau, 133 N.H. 166 (1990)

Relevant Facts Continued

- Likely due to the Town's error, ~20 acres of Kakris land was listed as being held by "owner unknown"
- For years, no one paid taxes on the parcel
- In 1982, the town took the ~20-acre property and sold it to an individual named Montbleau
- In 1985, the Kakris family became aware of this sale and sued to set aside the conveyance because the Town allegedly violated due process by failing to notify them of the tax sale

Kakris v. Montbleau, 133 N.H. 166 (1990)

NH Supreme Court Decision

- Despite the Town's error in believing that the property in question belonged to an "owner unknown," the Court rejected the Kakrises' due process claim
- The Court determined that the Town acted "reasonably" because it:
  - (1) complied with relevant statutes by sending notices to "owner unknown," and
  - (2) made "great efforts" to identify the owners, including:
    - (a) searching its tax warrants, assessment records, and blotter sheets
    - (b) sending letters of inquiry to abutters

Kakris v. Montbleau, 133 N.H. 166 (1990)

NH Supreme Court Decision Continued

- The Court rejected the Kakrises' assertions that the Town should have undertaken a more exhaustive search because:
  - (1) the Town was not reasonably able to locate the former owners because they had no "starting point" for a search
  - (2) the Kakris family failed to inform the Town that they were not being taxed on all their 20+ acres despite receiving tax bills for their 2-acre parcel
- The Court found that the Town's decision to notify "owner unknown" was the "best notice" it could give "under the circumstances"
- In sum, the Court wrote that "**due process simply required the [T]own to undertake reasonable efforts, not Herculean ones, to determine the identity of the owner of this property**."

Takeaways from *Kakris*

- When dealing with properties with unknown owners, **process matters**.
- Before taking a property with unknown owners, a municipality should first:
  (1) Search municipal records for any information about the subject parcel's ownership
  (2) Search the registry of deeds for owner information about the subject parcel
  (3) If none, investigate abutting parcels in the registry of deeds for information about the subject parcel (a plan, metes and bounds description, or other information may provide clues about the owner's identity)
  (4) If still none, send inquiry letters to abutters to see if they have any knowledge about the subject parcel's owner
- If no ownership information is found, a municipality should send notices for tax liens and tax deeding to its address for "unknown owners" as though it were sending these notices to a known owner before taking the property.
- **ADDITIONAL NOTE**: If someone claims to be the owner of a parcel with "unknown owners," be sure to investigate—but the municipality may put the burden on the individual to provide proof of ownership.

Choosing to keep or sell a property

Keep or sell?

Reasons to <u>keep</u> tax-deeded property:

- Using land for municipal purposes, such as municipal buildings, ballfields, and landfills
- Protection of natural resources (town forest, wetlands, etc.)
- Buffer zones

Keep or sell?

Reasons to <u>sell</u> tax-deeded property:

- Municipally-owned properties generate no tax revenue
- Increased insurance costs
- Vandalism risks
- Municipality likely has an obligation to reimburse former owner(s) and/or lienholder(s) if it keeps the property

Keeping Tax-Deeded Property

- If a former owner or lienholder were to challenge a municipality's decision to retain a tax-acquired property without attempting to distribute excess proceeds, a court may determine that the municipality has failed to provide just compensation to the former owner or lienholder as required by the state and federal constitutions.
- To avoid lawsuits, a municipality should consider one or more of the following before retaining a tax-acquired property.

Keeping Tax-Deeded Property

(1) Analyze potential claims against the municipality.

- Working with municipal counsel, the tax collector, and the assessing department, municipal leadership and staff should evaluate each property the municipality wishes to retain, including:
  - the length of time the municipality has owned the property,
  - the total amount owed to the municipality,
  - the property's development potential, and
  - the property's probable market value.
- If the municipality is owed more than the property is worth, or if the property is clearly undesirable (such as being adjacent to a landfill or transfer station), a former owner or lienholder may have little basis to claim that the market value of the property exceeds what the municipality is owed.

Keeping Tax-Deeded Property

(2) Negotiate with the former owners and lienholders.

- Before a municipality decides to keep a property, it should contact the former owners and lienholders to discuss payment for excess proceeds.
- Even though the process is not yet clearly established by law, the amount of excess proceeds may be determined by calculating the appraisal amount and subtracting what is owed to the municipality for back taxes, interest, costs, and penalty pursuant to RSA 80:88 and RSA 80:90.
- When distributing excess proceeds to the former owners and lienholders, **the municipality should obtain releases from all parties to protect itself from future litigation**.

Keeping Tax-Deeded Property

(3) Alternatively, attempt to buy the property at auction.

- Although counterintuitive, the municipality should also consider auctioning a property it intends to keep.
- At auction, the municipality may, subject to certain requirements, bid on the property along with private individuals.
- A well-advertised auction is a reliable way to generate market value for real estate and could protect the municipality from claims by former owners and lienholders that it did not fairly assess the property.
- However, this process is risky because the municipality may be outbid and lose the property.

Selling Tax-Deeded Property

- The governing body must be authorized by a specific warrant article or by ordinance
- Such authorization is good for one year, or perpetual if the words "indefinitely, until rescinded" or similar language is included in the warrant article or ordinance
- If the governing body seeks to dispose of tax deeded properties other than by sealed bid or public auction, *it must make an affirmative finding that disposal by a method other than sealed bid or public auction is in the public interest*

(RSA 80:80)

Selling Tax-Deeded Property

90-Day Letters

- Notice must be sent to all former owners (AKA "90-Day Letters"):
    1. By the governing body (e.g., the selectboard) or its designee,
    2. at least 90 days prior to the offering the property for sale,
    3. by certified mail, address service requested, return receipt requested,
    4. 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
- Copy of the notice must also be mailed to mortgage holders by certified mail, return receipt requested
- *<u>Note</u>: 90-Day Letters not required for former owners three years after the date of recording of the tax deed*

(RSA 80:89)

Selling Tax-Deeded Property

90-Day Letters

- Be specific (i.e., date, time & location of sale, etc.)
- The right of the former owner(s) to repurchase the property, and the terms by which the former owner can exercise such right, to include:
  - Former owner notice to municipality to be received by municipality with 30 days of the notice to the former owner(s)
  - Notice to municipality from former owner to be sent by certified mail, return receipt requested
  - Must state former owner is ready, willing, and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90 (except that if the property is the former owner's principal residence, or was the former owner's principal residence at the time of execution of the tax deed, the additional 10% penalty under RSA 80:90, I(f) shall not apply)

(RSA 80:89)

Selling Tax-Deeded Property

If Municipality is paid everything it is owed in a timely manner:

- Municipality issues deed for its interest in the property to "to all record former owners in the same proportional undivided interests as the former owners of record"
- "Former owner" includes any heir, successor, or assign of any former owner
- However, any person to whom a former owner has attempted to convey any interest, lien, or expectancy in the property subsequent to the date of the tax deed shall not be deemed a former owner

(RSA 80:89 and 80:90)

Selling Tax-Deeded Property

- RSA 80:89, II provides, in part: “[I]f the property is the former owner’s principal residence, or was the former owner's principal residence at the time of execution of the tax deed under RSA 80:76, the . . . penalty . . . shall not apply”
- Thus, a municipality should conduct due diligence into whether the property being redeemed is indeed the former owner’s *principal* residence
- The burden of proof is on the former owner, who should provide the municipality with documentary evidence of such residency/domicile (car registration, voter registration, driver’s license, etc.)

Selling Tax-Deeded Property

"If all such back taxes, interest, costs and penalty have not been actually tendered within 30 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." (RSA 80:89, II)

In other words, if the former owner has not paid the municipality what the municipality is owed within 30 days of the notice of intent to repurchase, the municipality may proceed with the sale of the property.

Calculating Amount Due to Municipality

Municipality is entitled to the following prior to issuing a deed back to the former owner (RSA 80:89 and 80:90)

- All taxes assessed but unpaid as of the date of the tax deed, together with all taxes which would thereafter otherwise have been assessed against such property based on its valuation
- All statutory interest actually accrued on all back taxes as of the date of the tax deed, together with all statutory interest which would otherwise thereafter have accrued on all taxes
- Statutory fees charged for notice and recording
- All legal costs and incidental and consequential costs
- A penalty equal in amount to 10 percent of the assessed value of the property as of the date of the tax deed, adjusted by the equalization ratio for the year of the assessment (subject to RSA 80:89, II)

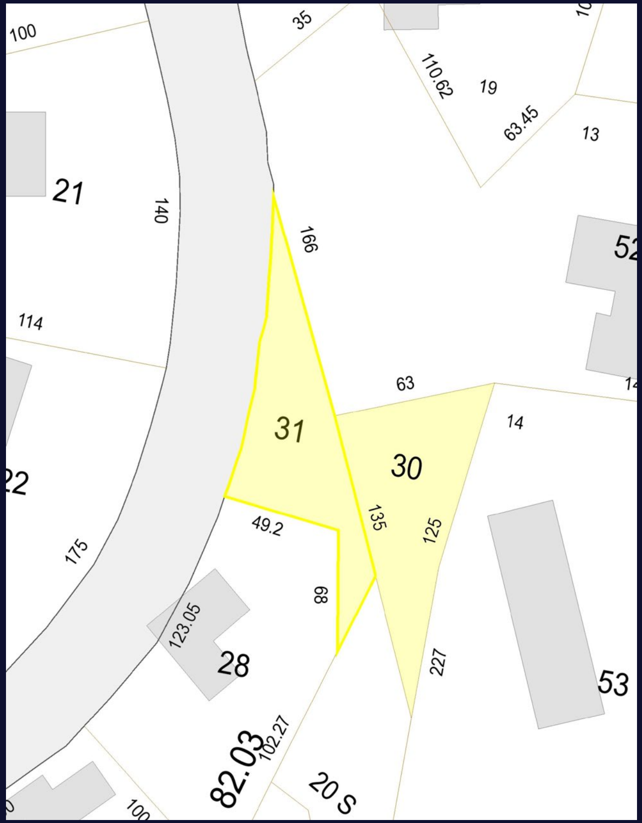
Imposing requirements on the new owner

Merger of adjacent lots

Q: Should the municipality sell adjacent tax-deeded properties together and require the new purchaser to merge the lots?

A: It depends:

- If the adjacent properties were owned by the **<u>same former owner</u>**, and it is reasonably likely that selling them together will generate a higher amount than selling them separately, then selling the properties together is probably appropriate. Typically, the lots can be easily merged during the closing process.
- If the adjacent properties were owned by **<u>different former owners</u>**, however, the properties generally should not be sold together:
  - Allocating the sale price between two or more properties for reimbursing the municipality may prove difficult.
  - Following the sale, former owners and lienholders may complain that they didn't receive their fair share of the excess proceeds.

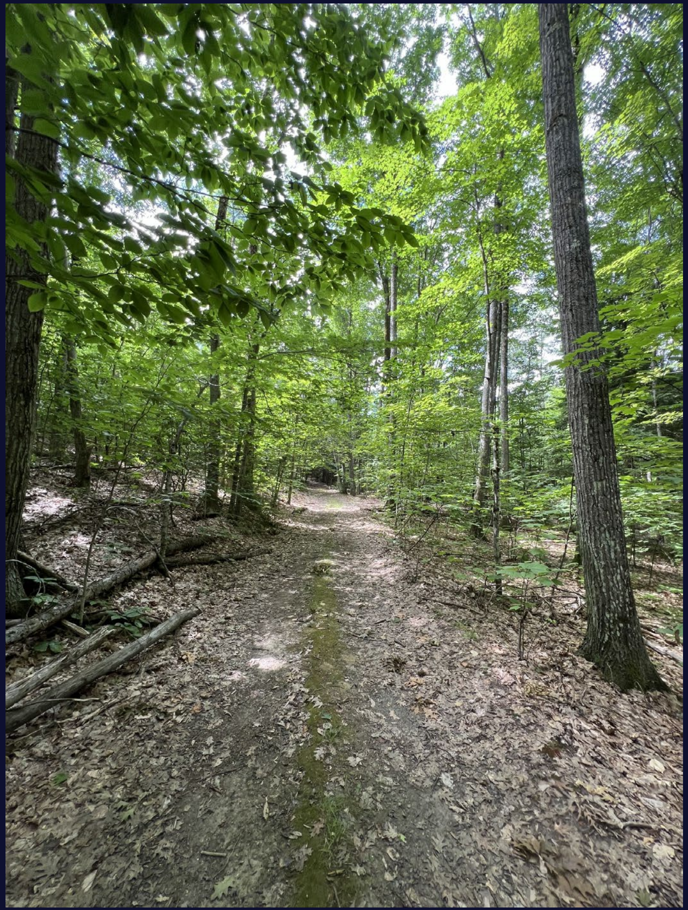


New permanent restrictions

Q: Should the municipality sell tax-deeded properties with new <u>permanent</u> restrictions such as prohibitions on future development?

A: Generally, no:

- Tax-deeded properties are subject to the same zoning and building regulations as other similarly situated properties. Such properties generally should not be singled out and burdened by the addition of permanent municipally imposed restrictions.
- Adding restrictions to tax-deeded properties likely will reduce the amount the property sells for, thus decreasing the amount of excess proceeds payable to the former owners and lienholders. Former owners and lienholders may later sue the municipality for failing to generate sufficient value.
- Additionally, imposing new property restrictions may hamper the municipality by lowering the probability that it will fully recover what it is owed.



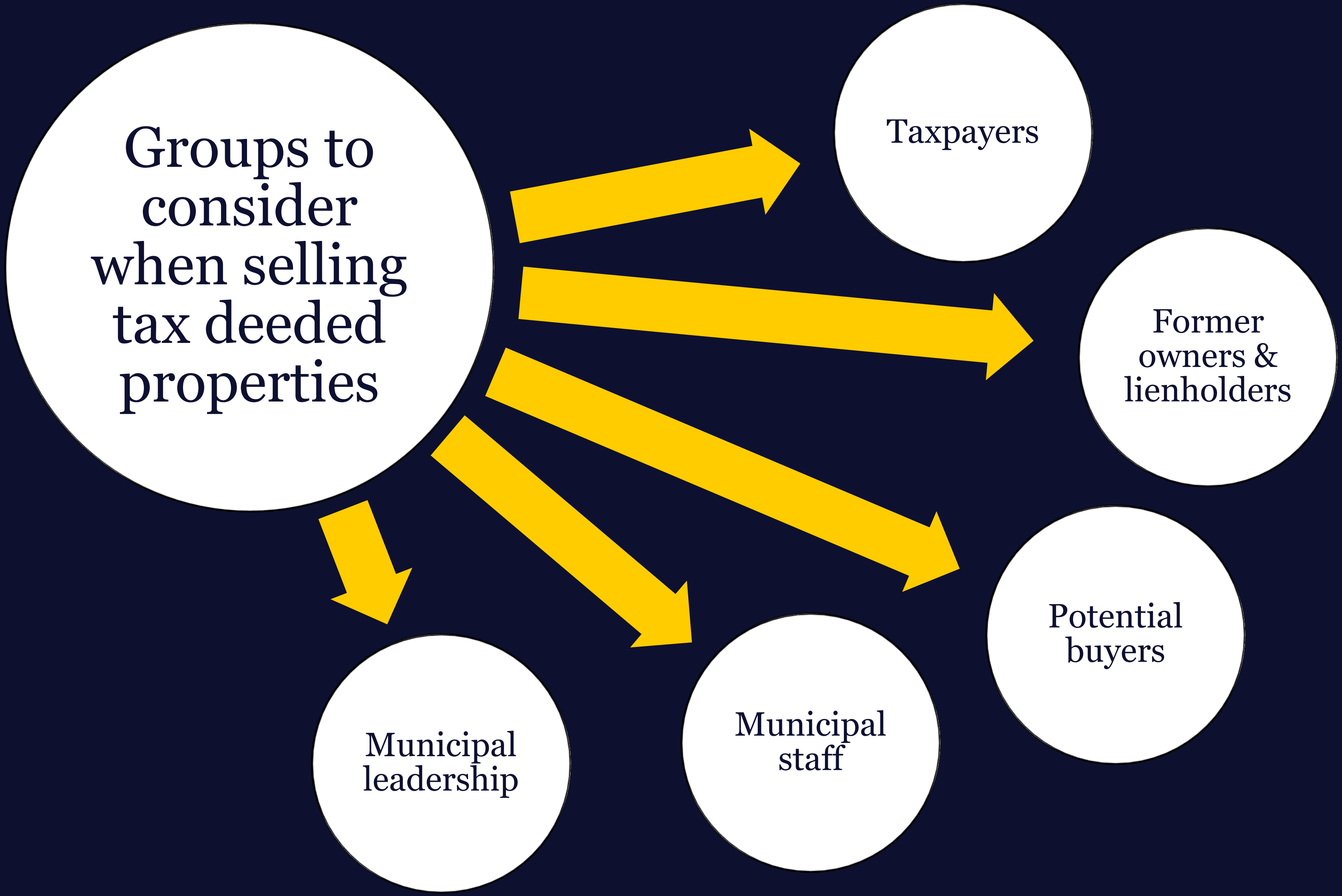
New temporary restrictions

Q: Should the municipality sell tax-deeded properties with new <u>temporary</u> restrictions such as prohibitions on future development?

A: Generally, okay:

- If a municipality acquires a tax-deeded property that is non-compliant with local regulations, it may reasonably impose a remedial restriction requiring the new owner to bring the property into compliance.
- For example, if a structure on the property is dilapidated and requires repairs or removal, the municipality could either
  (1) pay for the structure's repair or removal and hope to recover those costs from the proceeds generated from the sale of the property, or
  (2) require the purchaser to pay to repair or remove the structure within a certain time (e.g., one year) following the sale.
- Option 2 is probably better: although the bids likely will be lower to account for the cost of removal, the municipality protects itself from the sale not generating sufficient proceeds to cover what it is owed.
- The amount of excess proceeds will be roughly equal regardless of whether the municipality or the purchaser pays to remove the structure, meaning that the municipality will not unduly expose itself to lawsuits from the former owners.

Choosing a sale approach


Groups to consider when selling tax deeded properties
Taxpayers
Former owners & lienholders
Potential buyers
Municipal staff
Municipal leadership

Sale Options

Sale options include:

1. Advertised sealed bids (RSA 80:80, II)
2. Public auction (RSA 80:80, II)
3. "As justice may require" (RSA 80:80, III):
   - Listing with real estate agent (RSA 80:80, VI(a))
   - Sale to abutter for consolidation into adjoining lots for the purpose of affordable housing development, preserving open space, or reducing development density (RSA 80:80, VI(b))
   - Convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to in writing (RSA 80:80, VI(c))

Sale Options

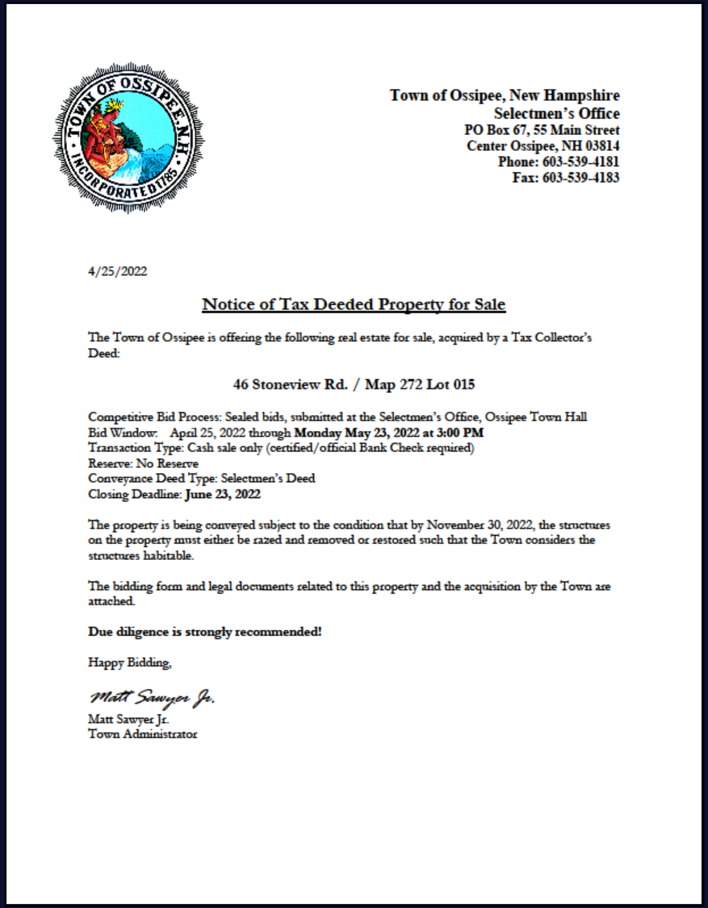
Advertised Sealed Bids

Pros

- Specifically approved in RSAs (RSA 80:80, II)
- Often completed in-house without third-party involvement
- May be best option for disposing of one or two properties of lower value

Cons

- Generally lower sale prices than auctions
- May invite "insider dealing" allegations against municipality (such as if a friend of a municipal official acquires a property at a low value)
- Municipality must do all the legwork (e.g., advertising, legal tasks)
- Properties may not receive any bids and remain unsold
- If not advertised adequately, could invite challenges from former owners and lienholders



Town of Ossipee, New Hampshire
Selectmen's Office
PO Box 67, 55 Main Street
Center Ossipee, NH 03814
Phone: 603-539-4181
Fax: 603-539-4183

4/25/2022

Notice of Tax Deeded Property for Sale

The Town of Ossipee is offering the following real estate for sale, acquired by a Tax Collector's Deed:

46 Stoneview Rd. / Map 272 Lot 015

Competitive Bid Process: Sealed bids, submitted at the Selectmen's Office, Ossipee Town Hall
Bid Window: April 25, 2022 through **Monday May 23, 2022 at 3:00 PM**
Transaction Type: Cash sale only (certified/official Bank Check required)
Reserve: No Reserve
Conveyance Deed Type: Selectmen's Deed
Closing Deadline: **June 23, 2022**

The property is being conveyed subject to the condition that by November 30, 2022, the structures on the property must either be razed and removed or restored such that the Town considers the structures habitable.

The bidding form and legal documents related to this property and the acquisition by the Town are attached.

Due diligence is strongly recommended!

Happy Bidding,

Matt Sawyer Jr.

Matt Sawyer Jr.
Town Administrator

Sale Options

Public Auctions

Pros

- Specifically approved in RSAs (RSA 80:80, II)
- Generally yield higher sale prices than other methods
- Properties almost always sell (particularly with absolute auctions)
- Negate "insider dealing" allegations against municipal officials
- Less demanding on municipal staff (if engaging third-party auctioneer)
- With absentee/online bidders, also retain many benefits of sealed bids

Cons

- Often requires municipality to reserve and set up a space for holding a live auction
- Municipality may need to field numerous calls and questions before the auction

Sale Options

Other Methods

Pros

- May be best option for unusual properties or properties that have limited market appeal

Cons

- Requires governing body to make a finding that disposal of property other than by sealed bid or public auction is in the public interest (RSA 80:80, III)
- Can be more complicated than advertised sealed bids or public auctions
- Using alternative method not specifically mentioned in RSAs could invite legal challenges
- May need to calculate values of properties for purposes of distributing excess proceeds

Distributing funds

Distributing funds

- Following *Polonsky* and *Tyler*, former owners and/or lienholders are typically entitled to receive excess proceeds
- The two main scenarios for making such payments are:
  1. Direct disbursement to the former owners and/or lienholders
  2. Interpleader actions

Distributing funds

- If excess proceeds are low, the municipality should consider retaining the proceeds if they would otherwise be exhausted on statutorily-recoverable legal fees and costs
- If excess proceeds will likely exceed anticipated legal fees and costs, the municipality should first determine if there are any lienholders on the property by searching title
- If no lienholders, may be able to pay former owner(s) directly (RSA 80:88, III)
- If one or more lienholders, typically must file interpleader

Distributing funds

- If former owner(s) can be located, first seek to reach an agreement
- If agreement is reached, have counsel prepare an agreement to be signed by all parties
- Agreement should state that, by accepting payment, it is in full satisfaction of any and all claims the former owner could possibly bring against the municipality
- Is the property was sold, the agreement should also include provision for attorney to be paid from the funds generated from the sale of the property (rather than from municipal funds)

Distributing funds

Interpleaders

- An interpleader is a lawsuit filed in superior court for distributing funds to certain parties
- The municipality names the parties and asks the court to rule on who should receive the funds
- Typically used when parties cannot be found, the former owners/lienholders are numerous, or the property history is legally complex
- Because interpleader actions are a logistical headache (including for the courts), excess proceeds distributions should be resolved without court involvement when possible

Distributing funds

Ideally, interpleaders should be filed within 60 days of closing, but in practice, this is often a difficult timeline to meet

After closing, the municipality must determine the amount of excess proceeds, research the property's history to identify the former owners and lienholders, attempt to contact the former owners and lienholders, and draft the interpleader complaint

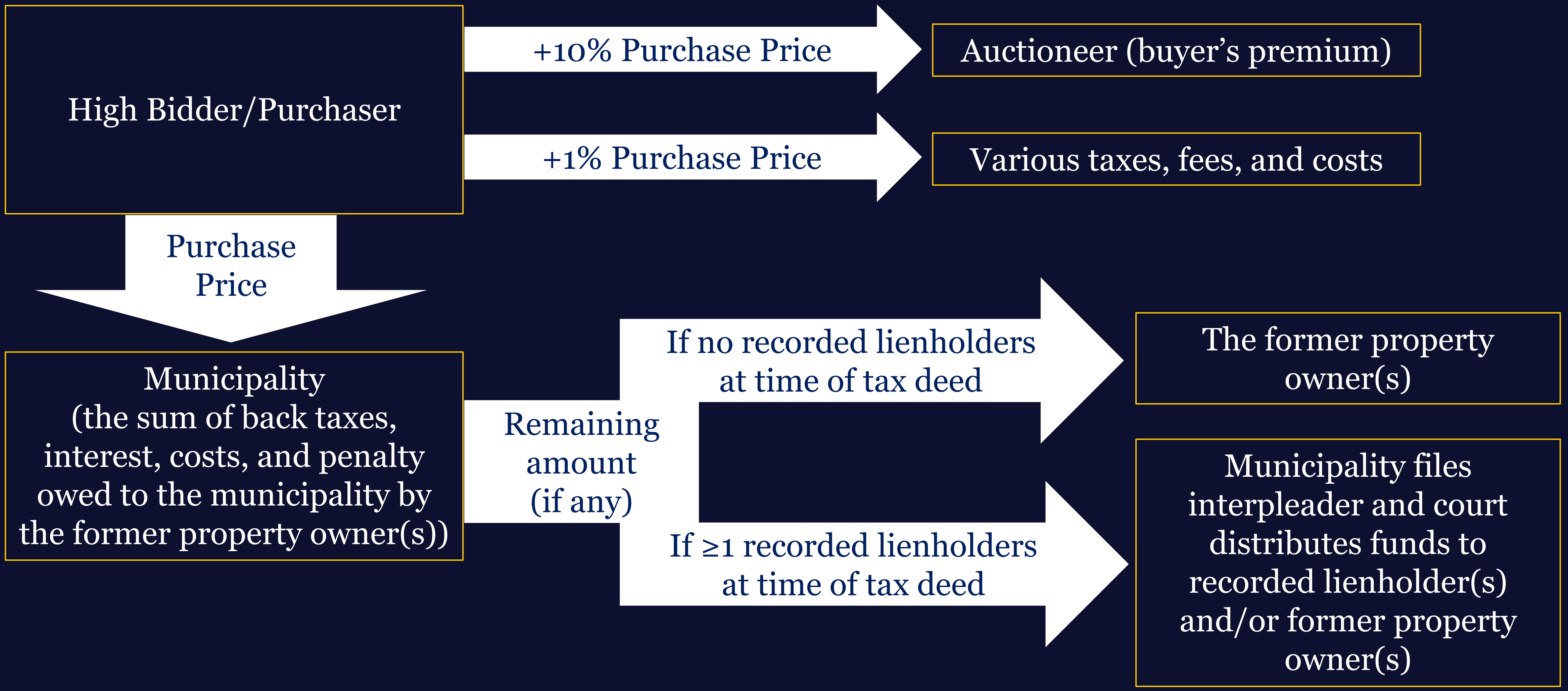
Sometimes, the municipality tries to contact the former owner, is unsuccessful, and then must file an interpleader after the 60-day period has elapsed

Bottom line: The municipality should make a good faith attempt to distribute the excess proceeds to the former owners and lienholders in a timely fashion

Distributing funds

- Even though RSA 80:88, II implies the municipality has no active involvement in the court case after filing the interpleader, in practice the court will rely on the municipal attorney to do most tasks, such as serving the parties and filing proposed orders
- When distributing excess proceeds, the municipality likely will incur significant legal fees and costs
- The municipality may recover these costs only if sufficient funds exist to reimburse the municipality

Tax-Deeded Property Auction Proceeds Flowchart



Questions?

Thank you for attending!

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