APRIL 1, 2026
12:00 – 1:00 p.m.

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

Legal Lunch and Learn: **Sneaky Mistakes that Doom Tax Deeds**

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1

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2

ZOOM INSTRUCTIONS

1. Click the "CC" (Show Captions) button at the bottom of your Zoom screen.
   a. If you don't see it, click "More (...)" and then select "Show Captions."
2. Captions will appear at the bottom of your Zoom window.
3. To change the font size, click the arrow (^) next to the CC button, then choose "Caption Settings," then change Font Size on scale to either Small or Large.

3

AGENDA

Why Mistakes Matter

What Can Go Wrong?

What Can We Do?

4

Why Tax Mistakes Matter

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5

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TAXING AUTHORITY IS LIMITED

Towns and cities have no inherent authority to act

- All authority comes from the legislature through statutes

  Girard v. Allenstown, 121 N.H. 268 (1981)

The power to tax arises solely through statutes.

- *Pheasant Lane Realty Trust v. Nashua*, 143 N.H. 140 (1998)

A municipality cannot acquire a valid tax deed or validly take property by tax deed without strict compliance with all provisions of RSA 80.

- *Olson v. Fitzwilliam*, 142 N.H. 339 (1997)

6

TAXING AUTHORITY IS LIMITED

- A municipal lien on real estate for unpaid property taxes under RSA 80 has priority over "all other liens." RSA 80:19.
- Ultimate remedy for delinquent taxes = acquire property by tax deed, sell it, retain the amounts owed. RSA 80:91. **This is a taking.**
- Part I, Article 12 of NH Constitution: No part of a person's property may be taken from them without just compensation.

7

TAXING AUTHORITY IS LIMITED

- **Notice** is the emphasis of most procedures required
- Designed to give taxpayer the information and opportunity to pay taxes, cure delinquency, avoid deed, recover property, or recover excess value after a sale.
- When there are mistakes at any point in the process, courts can (and DO) invalidate that step and everything that followed it.
- *Olson v. Town of Fitzwilliam*, 142 N.H. 339 (1997)

8

10-Year Limit to Challenge Tax Deeds?

- RSA 80:78 - "No action, suit or other proceeding shall be brought to contest the validity of an execution of the real estate tax lien or any collector's deed based thereon after 10 years from the date of record of the collector's deed...."
- However – this may not apply if notice requirements designed to give the taxpayer the chance to pay the taxes or challenge the tax deed are done improperly.
  - *J&N Fieldstone Supply, Inc. V. BHC Dev. Corp.*, 146 N.H. 500 (2001)

9

Mistakes Bide their Time

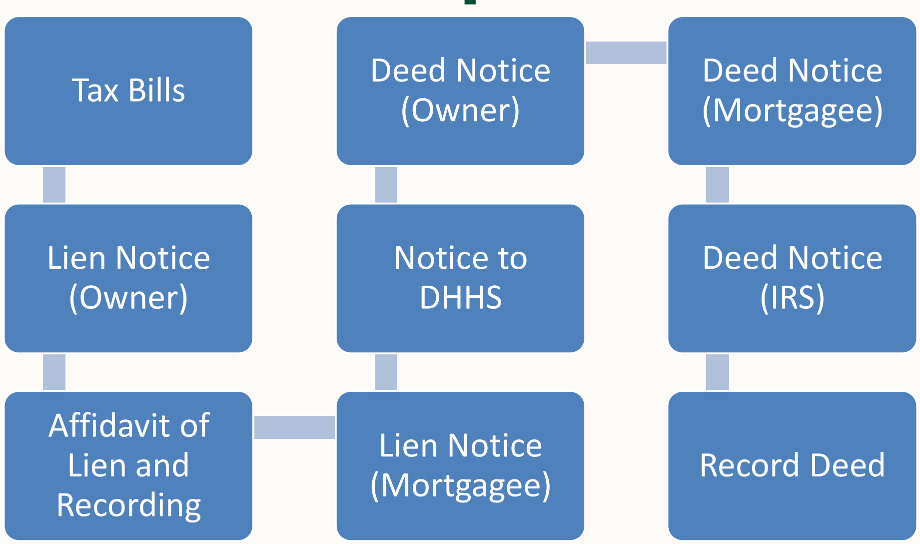
- Mistakes may have occurred months, years, or decades before they are discovered.
- Those who knew what happened are gone.
- Tend to get noticed when it is time to take property by tax deed, when it is often too late to fix them.
- Often uncovered when town or city is ready to sell property and buyer's title company won't insure it.

10

What Could Go Wrong?

11

Procedural Requirements



12

Not Taxing a Parcel at All

Errors can result in property getting "lost" in the system:
- Comprehensive update to tax map
- Inputting information on subdivisions, lot line adjustments, mergers
- Road layouts

Municipality may impose tax on the owner if it discovers property has "escaped taxation," but only before the end of the year for which the tax is assessed. They can never go back and assess taxes for prior years!
RSA 76:14

13

Unknown Owners

- Property may be escaping taxation completely because the owner is unknown.
- Town knows the property exists, but can't figure out who owns it or whom to tax, so no bills are sent.
- Can arise from the same situations as on previous slide.

- Cannot go back and fix the problem for prior years, so the only way to fix it is going forward.

14

Taxing the Wrong People

- If the wrong person is listed in the tax system as the owner, not only do they have no obligation to pay it, but the true owner is not getting the bills and notices.

- Municipality has a limited time to fix the problem.
  - RSA 76:14 – may abate taxes billed to the wrong person and issue the bill to the correct person.
  - However – it must be done before the end of the year for which that tax was assessed. Cannot go back and fix the problem for prior years.

15

Not Notifying All Owners

- When there are multiple owners, notice must be sent to all or it may not affect the interests of the owners who don't receive notice.
  - Whose names are on the notices **and** envelopes?

- Tax lien based on notice sent to some but not all owners wasn't valid or enforceable as to those who didn't receive notice, nor was a tax deed based on that lien. *Olson v. Town of Fitzwilliam*, 142 N.H. 339 (1997).

16

Not Notifying Mortgage Holders

- Tax deed should extinguish any outstanding mortgages, even if they were recorded before the tax liens arose. RSA 80:77-a.
- This doesn't happen unless the mortgage holder receives notice of the tax lien and of the impending tax deed. RSA 80:65, 80:77-a.
- Mortgage holder would still have an interest in the property, which could seriously impact the municipality's ability to sell the property and recover the taxes, interest, costs and penalty.
  - *Fannie Mae v. Town of Fremont*, 141 N.H. 156 (1996).

17

Undeliverable Bills & Notices

- No forwarding address/forwarding order has expired, deceased owner, vacant property, failure to pick up certified mail, PO box to which certified mail can't be delivered, etc.
- What is required? "Notice reasonably calculated under all the circumstances to apprise interested parties."
- When municipality knows notice has failed, it has an obligation to take additional "reasonable" steps.
- What steps are reasonable in response to new information depends on what that information is.
- *Jones v. Flowers*, 547 U.S. 220 (2006).

18

Mistakes in Tax Lien Affidavit

- Errors in the property identification, owner names, lien amount, failure to include date and time of execution.
- Notary block that simply "acknowledges" tax collector signed it instead of including the required certification that the information is true. RSA 80:61.
- If the recorded affidavit is inaccurate or doesn't contain the required information, the lien won't be perfected properly and will expire "one year from October 1 following the assessment" of those taxes. RSA 80:19.

19

Recording Tax Deed or Affidavit Incorrectly

- Failure to record the affidavit means the lien cannot be used as the basis of a tax deed later, and failure to record a tax deed means the 10-year limitations period to challenge it does not run. RSA 80:64, :78.
- Recording documents with errors, particularly in name(s) of owner, can have the same effect.
- The purpose of recording is to provide constructive notice to affected parties of something that affect real estate.
- Recording "outside chain of title" provides no notice.
- *J&N Fieldstone Supply, Inc. v. BHC Dev. Corp.*, 146 N.H. 500 (2001).

20

What Can We Do?

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21

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Property Transfer Information

- Copies of deeds from registry
- PA-34 Inventory of Property Transfer
- Notice to Towns and Cities (from probate court)

- Use care entering names correctly and completely
- Is a document actually transferring ownership?
- How much of the property is being transferred?
- Transfer on Death Deed – RSA 563-D

- ASK QUESTIONS

22

Investigate and Follow Up

- Potential change in ownership or mailing addresses from a move, death, divorce, etc.?
- When people in the office learn things, they should bring them to the attention of someone who can do something about it and/or tell people to contact the office with changes in information.
- Deceased owner – contact family members, neighbors, search obituaries, search public records and registry of deeds
- Anything that looks like a typo or is confusing – people should ask questions and not just let it go!

23

Investigate and Follow Up

Take proactive steps to deal with "owner unknown" before taxing, deeding and selling to get back on the tax rolls:

- Search municipal records (land use and assessing)
- Registry of Deeds
- Records for abutting properties
- Ask abutting property owners
- Notices in newspaper asking for information
- Assistance from municipal or real estate attorney

24

Multiple Owners

What does your software do with multiple owners?
- Are they all listed with full names?
- Do you have an address for each?
- When bills and notices are generated, are all owners getting them?
- If owners have separate addresses, is one bill or notice going to each address?
- If more than one owner at the same address, are all names on both the envelope and the bill/notice?

25

Mortgage Holders

- Run an updated search for mortgage holders **every time** notices are being sent for tax liens and tax deeding.
- Don't limit the time period for the search to the time since the current owner took title (older, unreleased mortgages may still be out there and enforceable).
- If notice is returned, ask your searcher to check to see whether the mortgage has been sold to a new bank.

26

Notices Returned

If notice of impending lien or notice of impending deed is returned, you must do *something* else, reasonable under the circumstances.

- Send again via verified mail (no signature needed)
- Post notice on the front door of the property
- Mail notice addressed to "occupant" on envelope
- Contact family or friends of owner, if known
- Contact abutting owners
- Search on social media, probate records, registry of deeds, other public records
- Notice by publication (last resort)

27

Keep Good Records

Keep records of every step!

- Notices, letters, envelopes, certified/verified mail receipts, returned mailings
- Notes and records of internet searches, telephone calls, conversations with owners and other people
- Copies of obituaries and other documents

RSA 33-A:3-a, CXXXVI – retain tax-deeded property file **permanently** (including mailing receipts)

- Don't delete the rest of it after 10 years, either – you may still need it!

28

QUESTIONS?

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29

Our Vision

NHMA is known as the premier source of information and support needed for town and city officials to effectively serve the public.

Our Mission

NHMA supports effective municipal government by leveraging the collaborative strengths of New Hampshire cities and towns through education, training, advocacy, and legal services.

Our History

The New Hampshire Municipal Association, Inc. (NHMA) is a nonprofit, non-partisan membership organization of municipalities. Founded in 1941 for the purpose of exchanging information to facilitate more efficient and effective local government, NHMA was reorganized in July 2003 under the umbrella of the New Hampshire Local Government Center (LGC). At that time all services provided to municipalities by NHMA were assumed by LGC except legislative advocacy, which remained in NHMA LLC, a separate subsidiary of LGC. In the fall of 2012 all "traditional municipal league services" including legislative advocacy, legal advisory services, training programs, and educational publications, were consolidated under NHMA with oversight by the NHMA Board of Directors. Currently, NHMA, Inc. operates as a totally separate, independent organization from the former LGC risk pools (HealthTrust, Inc. and Property Liability Trust, Inc.) with a board comprising only elected and appointed municipal officials elected by NHMA members.

30

CONTACT US

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Please refer to NHMA's Legal Services FAQ for details about how our service works.

31

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32