

TOWN OF MADISON, MAINE
Chapter 720:
Tax-Acquired Property, Disposition Of
Revised Draft 8.19.24

§ 720-1. Purpose & Authority.

The purpose of this chapter is to establish procedures for the efficient and fair management, administration and disposition of property acquired under the tax lien mortgage foreclosure procedures set forth in Title 36 M.R.S. § 942 and § 943, as may be amended. Nothing in this chapter shall be interpreted to give additional substantive or procedural rights to owners or former owners of property forfeited for non-payment of taxes, or limit the right of the Select Board to waive these guidelines if the Select Board deems it to be in the Town's best interest to do so.

Property acquired by means of sewer lien foreclosures is not subject to 36 M.R.S. § 943-C, but pursuant to the constitutional principles set forth in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023), any excess sale proceeds still must be returned to the former owner.

§ 720-2. Management & Administration.

Following statutory foreclosure of a tax lien mortgage, title to real estate property automatically passes to the municipality. The management of this property rests exclusively with the municipal officers, subject to the provisions of state statutes and local municipal ordinances and regulations.

The municipal officers shall consider the following when disposing of tax-acquired property and tax-acquired mobile homes:

- A. The municipal officers shall determine, by majority vote, whether a tax-acquired property is to be retained for municipal use, sold to the former owner, or disposed of in accordance with provisions of this chapter.
- B. Insurance:
 - a. The municipal officers may obtain fire loss insurance for tax-acquired property in a dollar value not less than all outstanding taxes, liens, costs and other attendant expenses.
 - b. The municipal officers may obtain general liability insurance coverage for the tax acquired property sixty (60) days following foreclosure.
- C. If the municipality will retain tax-acquired property for municipal use, the municipal officers must procure an appraisal of the property. The appraiser must be licensed to provide appraisals in Maine and may not hold an elected or appointed office in, or otherwise be employed by, the municipality

D. Excess Sale Proceeds:

- a. Municipal officers must calculate whether any excess sale proceeds exist using the appraised value (instead of sale price) and then must provide the notices otherwise required for post-sale distribution of proceeds. The appraisal must be prepared within 120 days before the distribution of excess proceeds, if any. The appraisal fee may be included in the calculation of excess proceeds.
 - b. Calculation the amount of excess sale proceeds to be returned to the former owner is equal to the amount of sales proceeds remaining after the municipality deducts the following amounts
 1. All taxes owed on the property.
 2. Total property taxes that would have been assessed on the property after foreclosure while the property was owned by the municipality.
 3. All accrued interest.
 4. Fees, including advertising, mailing, recording, property listing, real estate agent's and broker's fees, to the extent that those fees were not included in the broker or agent fee agreement.
 5. Any other expenses incurred by the municipality in selling, maintaining, or improving the property, including, but not limited to, documented administrative costs and reasonable attorney's fees.
 6. The municipality's lien and foreclosure process costs, including but not limited to, reasonable attorney's fees.
 7. Unpaid sewer, water, or other utility charges and reasonable fees imposed by the municipality.
- E. In the event the property is to be retained by the town, then the occupants thereof should be evicted. If the property is to be returned to the prior owner or sold, eviction should be avoided.

§ 720-3. Procedure for Disposition of Tax-Acquired Property.

- A. The Town Manager and Treasurer shall annually prepare and provide to the Select Board a list identifying all properties acquired due to non-payment of property taxes and foreclosure of tax lien mortgages under Title 36 M.R.S. § 943. The list shall be in alphabetical order and include
 - a. Property street address
 - b. Assessed property value

- c. Names of the prior owner(s)
 - d. Date of automatic foreclosure
 - e. Total amount of outstanding taxes
 - f. Costs and interest accrued by Town
 - g. All steps taken by the Town in establishing its right to the tax lien imposed against the property
- B. The Town will send a notice, via certified mail, return receipt requested and with a copy sent via regular first class mail, to the former owner(s) of the property in question that will explain that the municipal tax lien certificate recorded against the property has matured because of the failure to pay the taxes during the redemption period and that the title to the property has automatically vested in the Town of Madison. The notice shall also indicate that by virtue of this chapter, the Select Board is providing the former owner(s) an additional ninety (90) days from the date of the notice to pay in full all outstanding taxes, costs, and interest in order to redeem the property. A copy of this chapter shall be included with the notice.
- C. If the former owner makes no effort to make payments to the Town or to bring the account out of arrears within that ninety (90) day period, the Town will have the right to dispose of the property.
- D. The Select Board, acting at its next regular meeting, immediately following the expiration of the ninety (90) day period, will authorize the Town Treasurer to issue quitclaim deeds for all properties in which all such outstanding taxes, costs, and interest were paid in full within the ninety (90) day period.
- E. Any properties not issued a quitclaim deed to the prior owner will be brought before the Select Board for a determination of disposition. The Select Board shall determine the method of sale for properties that are owned or acquired by the Town. Methods of sale may include, but are not limited to, brokerage sale, negotiated sale, auction, or public bid process.
- F. Retention
- a. If the Select Board decided to retain tax-acquired property, proper steps will be taken to assure the Town of a good title to the same.
 - b. All tax-acquired property will be listed, if retained, in the name of inhabitants of the Town of Madison.
 - c. If the Town will retain tax-acquired property for municipal use, the municipal officers must procure an appraiser of the property. The appraiser must be licensed

to provide appraisals in Maine and may not hold an elected or appointed office in, or otherwise employed by, the municipality.

- d. In the event the property is to be retained by the Town, then the occupants thereof should be evicted.

G. Sale Procedures

- a. If the real estate property is not sold to the former owner(s), a pre-sale notice must be issued ninety (90) days prior to listing property for sale. Municipal officers must send a written notice (a Maine Revenue Service form should be used to provide the notice), to the last known address of the former owner(s) by U.S. Postal Service certified mail, return receipt requested and by first-class mail, notifying the former owner(s) of the sale process required by Title 36 M.R.S. § 943-C.

- b. Real Estate Broker

1. Under Title 36 M.R.S. § 943-C, upon notice of intent to sell tax acquired property, the former owner has the right to require the Town of Madison hire a real estate broker to list and sell the property via quitclaim deed at the highest price at which the property is able to sell or at the price which the real estate broker anticipates it to sell within six months after the listing (the “alternative sale process”).
2. If within ninety (90) days of notice, the former owner does not demand the alternative sale process, the Select Board will determine, in its sole discretion, what disposition should be made of the property based on what is in the Town’s best interest regarding the future use of the property. Options may include, but will not be limited to, retaining ownership of the property, selling the property at auction, selling the property through use of a licensed real estate agent, selling the property by sealed bid, demolishing the property or no action.
3. The municipal officers must list the property for sale with a real estate agent or broker licensed in Maine. Licensed real estate agents or brokers may not hold an elected or appointed office in the municipality nor be employed by the municipality.
4. The municipality must allow at least twelve (12) months after the listing for the property to sell.
5. If the municipality is unable to list the property with a real estate agent or broker (after three tries) or to sell the property within twelve (12) months after listing with an agent or broker, the municipal officers may proceed to sell the property as otherwise allowed, provided that the former owner must still receive any excess sale proceeds.

- c. Public Bid

1. If the property is to be sold, and unable to be listed with a real estate agent or broker, then the Select Board shall cause a public notice of impending public sale of tax-acquired property to be posted and advertised for two (2) successive weeks in the newspaper(s) generally used for the towns legal advertisements and shall be posted in the public notice space in the Town Office.
 2. The Treasurer shall prepare a bid backage that includes:
 - i. General description of the land and location
 - ii. Bid requirements
 - iii. Bid form
 - iv. A clause reserving the right to reject any and all bids and/or accept any bid
 - v. A clause reserving the right for the Select Board to withdraw the offer to sell the property
 - vi. Dates Town will be accepting bids and date bid acceptance will close
 3. Bids shall be placed in a sealed envelope clearly marked with the map and lot number and given to the Town Manager. The Town Manager shall hold all bids until the close of business on the day designated in the notice, when the bids shall be opened at the next Select Board meeting.
 4. Bids received from delinquent tax payers in the Town shall be rejected.
 5. Should the municipal officers reject all bids, the property may be offered again for public sale without notice.
 6. Unless otherwise stated in the bid notice, the highest bid shall be the sole consideration for awarding the bid.
 7. The Select Board shall notify, via mail, any successful bidder.
 8. The Select Board shall require payment in full from any successful bidder within thirty (30) calendar days following the date when bids are opened, read and accepted. Should the bidder fail to pay the full balance, the municipality may offer the property to the next bidder or restart the sale process, whichever is in the best interest of the Town.
- d. The Treasurer is hereby authorized for an on behalf of the Town of Madison to make, execute, and deliver a quitclaim deed to convey the title to the purchaser.

§ 720-4. Waiver of Foreclosure.

- A. In those situations where it has been determined that it would not be in the best interest of the Town to acquire the property, Town Meeting, as the legislative body of the Town, may authorize the Treasurer to record a waiver of foreclosure in the Registry pursuant to 36 M.R.S. § 944 provided that this determination is made before the right of redemption expires.
- B. In those instances where it has been determined that it would not be in the best interest of the Town to acquire the property, and this determination has been made by Town Meeting prior to the issuance of the Notice of Impending Automatic Foreclosure under 36 M.R.S. § 943, the Select Board may instruct the Treasurer not to send the Impending Foreclosure Notice, thereby preventing the foreclosure from occurring.

§ 720-4. Disposition of Funds.

- A. Any proceeds from the sale of the property must be provided to the former owner(s) in excess of:
 - a. The sum of all real estate taxes owed on the property;
 - b. Property taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the Town;
 - c. All accrued interest;
 - d. Fees, including property listing and real estate broker's fees;
 - e. Any other expenses incurred by the Town in selling or maintaining the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed, prorated insurance expenses for building coverage while owned by the Town, and reasonable attorney's fees;
 - f. The cost to the Town of the lien and foreclosure process, including but not limited to, reasonable attorney's fees; and
 - g. Unpaid sewer fees, liens, costs and interest imposed by the Town.
- B. If excess proceeds exist, at least thirty (30) days before the Treasurer distributes the proceeds to the former owner(s), the municipal officers must provide notice of the proceeds to the former owner(s) and any recorder holder of interest in the property. Notice must be sent by first class mail and certified mail, return receipt requested. The former owner(s) may request a written accounting of the amount of excess sale proceeds, and an itemization of any deductions allowed.

- C. If the former owner(s) cannot, after reasonable diligence, be located in order for the

municipal officer to send the written notice of intent to distribute proceeds, the Select Board may publish notice once a week for three (3) consecutive weeks in a newspaper of general circulation in the area. The published notice must contain the name of the former owner, a description of the property, the amount of excess proceeds, and the date by which the proceeds must be claimed. If the owner fails to claim the excess proceeds within thirty (30) days after the final notice is published, the proceeds must be transferred to the Unclaimed Property Fund in the State Treasurer's office.

- D. Within ten (10) days after distributing excess proceeds are paid to a former owner(s), the municipality must record a notice in the county registry of deeds documenting its compliance with the law (36 M.R.S. § 943-C). A template of the recorded notice shall be provided by the Maine Revenue Service. The notice shall contain the name of the former owner(s) to whom the excess proceeds paid; the amount of excess proceeds; the date proceeds were paid to the former owner, or State Treasurer, a description of the property, and a statement that the former owner(s)'s receipt of excess proceeds is deemed to be a waiver of the former owner(s)'s rights to commence a challenge to the foreclosure pursuant to 36 M.R.S. § 946-B. The municipality may include the names of those with a recorded interest in the property and the date that the notice of intent to distribute proceeds was sent to those parties.

§ 720-4. Exceptions.

- A. There are times when tax liens are not paid on time due to administrative detail, such as departmental error or mix-up and/or when a lien is not valid because of some legal insufficiency.
- B. In either of the instances above, or other valid reasons other than just nonpayment, where the taxpayer is not at fault, it is the policy that the Treasurer, upon evidence and contingent upon payment of all amounts due the Town, will issue a quit-claim deed to the property owner.
- C. A detailed report will be kept on file to substantiate the action taken, and a report will be given to the Board of Selectmen prior to the issuance of the quit-claim deed.