

TOWN OF BRUNSWICK
TAX ACQUIRED REAL ESTATE
POLICY

Proposed to Town Council – March 18, 2013

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Article 1. Purpose

- 1.1 Sections of Title 36 of the Maine Revised Statutes Annotated (MRSA) govern the collection of property taxes including the tax lien mortgage process. The tax lien mortgage process allows the Town to preserve its lien interest in real properties on which taxes remain unpaid. Should taxes remain unpaid, the lien process may result in the Town acquiring those properties. The purpose of this policy is to establish procedures for the review of properties on which a lien is about to foreclose and to establish procedures for the management, administration, and disposition of real property acquired by virtue of a tax lien mortgage foreclosure.
- 1.2 The procedures outlined in MRSA Title 36 §943-C. *Sale of homesteads formerly owned by persons 65 years of age or older*, effective December, 2019, are included in this policy as applicable. The text of the law is incorporated herein as APPENDIX A.
- 1.3 With the exception of the requirements of MRSA Title 36 §943-C , the Town of Brunswick reserves the right to waive any requirements of this policy, should the Town Council in its sole judgment determine such waivers to be in the best interest of the Town of Brunswick.

Article 2. Impending Foreclosure and Review of Properties

- 2.1 At the time of the mailing of the notice of impending foreclosure required under Title 36 MRSA section 943, the treasurer shall forward a copy of the list of properties subject to foreclosure to the town manager. The town manager, tax assessor, and codes enforcement officer are encouraged to review the list of properties subject to foreclosure to determine if it would be in the Town's best interest, as determined by the town manager, to waive foreclosure. Instances where the Town may not want to foreclose include but are not limited to:
 - a. The property is known to have or is suspected of having environmental problems.
 - b. The property may be a hazard to the public health or welfare.
 - c. There is an easement on the property that makes the property an undesirable one to own.
 - d. The property has value only to the owner(s) and would have little or no market value.
- 2.2 Should the town manager determine it to be in the Town's best interest to waive foreclosure under Title 36 MRSA section 944 (1), the town manager shall make that recommendation to the town council at its next regularly scheduled meeting or at a special meeting if the next scheduled meeting would be after the foreclosure date. Should the town council vote to waive foreclosure, it shall notify the treasurer immediately so treasurer will have the opportunity to file the waiver of foreclosure prior to the date of foreclosure.

Article 3. Tax Acquired Property - Treasurer Notification

- 3.1 Following the foreclosure of the tax lien mortgage, the treasurer, by certified mail return-receipt, shall notify the last known owner of record that his or her right to redeem the property has expired. The notification shall advise the last known owner of record that the property will be disposed of in accordance with this policy, a copy of which shall be included with the notification.
- 3.2 The treasurer shall prepare a list of properties acquired and forward a copy to the town manager.

Article 4. Re-acquisition after Foreclosure

- 4.1 Prior to the delivery of the town manager's recommendations to the town council under articles 6 and 7, any property acquired by the foreclosure of a tax lien may be re-acquired by the original property owner. The party from whom the property was acquired may re-acquire the property by paying all outstanding obligations to the Town.
- 4.2 After the town council receives the town manager's recommendations, properties to be sold with or without conditions may be reacquired by the re-acquisition date established by the town council in accordance with article 9. Also in this case, the party from whom the property was acquired may re-acquire the property by paying all outstanding obligations to the Town
- 4.3 Outstanding obligations include any taxes, including estimated taxes for the current tax year if the conveyance is after April 1, interest, lien costs and any other costs relating to the property including, but not limited to legal, insurance, notice and advertising costs. The Town shall also require the payment of any other delinquent taxes or obligations due the Town. When a tax has been estimated to determine the re-acquisition price, the Town is not obligated to refund any amount later determined to be in excess of the estimate.
- 4.4 Properties the town council has decided to retain for public use or to retain on a temporary basis may not be re-acquired, unless specifically authorized by the town council.

Article 5. Management of Tax Acquired Property

- 5.1 Responsibility for management of tax acquired properties is delegated to the town manager who, at a minimum, shall:
 - a. Determine whether the Town's best interest would be served by immediately disposing of the property in accordance with Article 5 of this policy.
 - b. Determine and obtain the level of insurance, if any, that is necessary to protect the Town's interest in the property and to protect the Town from liability.

- c. Determine if and when any occupants of tax acquired property should be required to vacate the property.
- d. Determine whether a rental fee should be charged to any occupants of the property. A rental fee shall not be imposed unless the Town has acquired sufficient liability insurance.

5.2 In the event the property is vacated for sixty (60) consecutive days, the town manager shall obtain liability coverage for the property.

Article 6. Immediate Disposition of Tax Acquired Property

6.1 If the town manager determines it is in the Town's best interest to immediately dispose of the tax-acquired property, the town manager shall immediately make that recommendation to the town council. Reasons to immediately dispose of the property include but are not limited to:

- a. Potential liability in owning the property.
- b. Rent or maintenance obligations resulting from the ownership of the property.
- c. The property is a potential hazard to the public health or welfare.

6.2 The town council shall consider the town manager's recommendation and may dispose of the property on terms it deems advisable without regard to any other provisions of this policy.

Article 7. Review of Tax Acquired Properties and Determination of Disposition

7.1 The town manager shall review the properties, and may seek input from the appropriate Town boards and commissions. The tax-acquired properties shall be reviewed in accordance with the following categories and guidelines:

- a. Retain for public use. By way of example, but not limitation, the Town may retain a property where:
 - i. the property has or will have economic, recreational or conservation value to the Town.
 - ii. the property has or will have potential for use as a public facility or an addition to public facilities.
- b. Retain on a temporary basis. By way of example, but not limitation, the Town may retain a property on a temporary basis where:
 - i. immediate sale of the property would cause the occupants to be placed on public assistance.
 - ii. it is determined that the property has significant potential for appreciation if held thereby increasing its value to the Town in a later sale.

- c. Sell the property with or without conditions.
The Town may sell properties with any conditions it deems to be in the best interest of the Town. The Town may also determine whether it wishes to consider proposed uses in the sale of properties, and set conditions for any sale.

7.2 The town manager shall classify the properties in one of the categories and make a recommendation to the town council for each property.

7.3 The town council shall review the town manager's recommendations and make the final determination regarding disposition of each property.

Article 8. Property to be Retained

8.1 If the property is retained for public use, the town council may direct the Town Attorney to pursue an action for equitable relief in accordance with the provisions of Title 36 MRSA section 946, as amended, as a means of securing clear title to the property.

8.2 The town council shall cause the tax-acquired property retained for public use to be managed and insured as it would any other municipal property.

Article 9. Property to be Sold

9.1 At the meeting the town council makes its determination that a tax acquired property will be sold, it shall take the following action:

- a. Establish a final re-acquisition date by which the tax acquired property may be re-acquired by the original property owner pursuant to article 4. The final re-acquisition date shall be no more than ninety (90) days from the date the town council makes its determination regarding the disposition of a property.
- b. Determine the sale mechanism to be used in the sale of the tax acquired property.
 - i. Identify properties which meet the conditions specified in MRSAs Title 36 §943-C, and follow the procedures required. See APPENDIX A, herein.
 - ii. For properties to be sold at auction by sealed bid in accordance with Article 10, establish a sale date. The sale date shall be at least thirty (30) days after the final re-acquisition date.
 - ii. When the town council has determined it wishes to consider a bidder's proposed use for a property in making the bid award, it shall also determine the form and content required for the submission of proposals.
 - iii. For properties to be sold by another means, determine the process to be taken and authorize the town manager accordingly.

9.2 The town manager shall, by certified mail return receipt, provide the party from whom the property was acquired, notice of the town council action to sell the tax acquired

property. This notice shall include the final re-acquisition date set by the council, and the total amount due to the Town with interest calculated through that date. Notice of the sale date shall be included if an auction sale date has been set. A copy of this Tax Acquired Real Estate Policy shall be enclosed.

Article 10. Auction by Sealed Bid

- 10.1 Unless the town council stipulates otherwise, the minimum bid for any tax-acquired property shall be the total of all outstanding taxes, including estimated taxes for the current tax year if the conveyance is after April 1 and the exact amount of tax has not been determined, interest, lien costs and any other costs relating to the property including, but not limited to legal, insurance, notice, and advertising costs. The Town may refuse to award the bid to the party from whom the property was acquired unless all other obligations due from that party are also paid.
- 10.2 The town manager shall cause to be published a notice of the sale of the tax-acquired property in a local newspaper at least ten (10) days prior to the sale. The notice shall also be posted on the Town's website and in at least one other conspicuous place within the Municipal Building. The notice shall specify the time and date bids are due and the general and/or specific terms of the bid. It shall also contain the following information for each piece of property:
- a. Brief description of the property. i.e. land, building, mobile home etc.
 - b. Location of the property.
 - c. Brief description of the conditions of the sale including whether the bidder is required to submit a proposal regarding use.
 - d. The minimum bid.
 - e. Amount required as deposit.

The notice of sale shall also contain the following statement: "The Town of Brunswick reserves the right to reject any or all bids, accept other than the highest bid and waive any of the requirements of its policy on tax acquired property should the town council, in its sole determination, judge such actions to be in the best interest of the Town of Brunswick."

- 10.3 All bids shall be on, or in, the form prescribed by the Town. At a minimum, the bid form shall contain:
- a. Name, address, and telephone number of the bidder.
 - b. The amount of the bid in both written and numeric form.
 - c. The Map, Lot, and Location of the property being bid.
 - d. If applicable, any requirements for submission of bidders' use proposal.

- 10.4 The town manager shall, by certified mail return receipt, provide the party from whom the property was acquired a copy of the notice of the sale and bid forms. The town manager shall, by certified mail return receipt, provide a copy of the notice of the sale and bid forms to the abutters of the acquired property.
- 10.5 All interested bidders shall be provided with a copy of the notice of sale and bid forms. All bids shall be submitted on forms prescribed by the town manager in an envelope clearly marked "Tax-Acquired Property Bid" and accompanied by a cashier's or certified check equal to the minimum bid. Each property being bid shall be bid in separate envelopes so that there is one property bid per envelope. Each envelope shall also indicate the Map and Lot of the property being bid. Bids shall be publicly opened and read on the date and at the time specified.
- 10.6 The town manager is not obligated, but may provide potential bidders with the opportunity to inspect the properties being offered for sale. This may be done in the manner the town manager deems to be in the Town's best interest. The Town and its employees shall refrain from making any representations regarding property condition or title.

Article 11. Review and Award of Bids

- 11.1 The town manager shall review all bids and make recommendations to the town council. The town council shall determine which bid, if any, will be accepted. All bids shall be held until the town council makes its determination. No interest will be paid on the held bids unless the bids are held for more than seven (7) calendar days from the bid opening. If bids are held beyond seven (7) calendar days, interest will be paid on all held bids at the rate of 5% per annum. No interest will be paid on the accepted bid.
- 11.2 The Town of Brunswick reserves the right to reject any or all bids, accept other than the highest bid and waive any of the requirements of this policy should the town council, in its sole determination, judge such actions to be in the best interest of the Town of Brunswick. Instances where this right may be invoked include, but are not limited to:
- a. The town council may wish to sell the property to an abutting property owner rather than the highest bidder.
 - b. The town council may determine it prefers a use proposed by a party other than the highest bidder.
 - c. The town council may wish, but is by no means obligated, to sell the property to the party from whom the property was acquired rather than the highest bidder.
- 11.3 Should the town council reject all bids, the property may again be offered for public sale without notification to the prior owner or abutters.

Article 12. Closing on Sale

- 12.1 The bid deposit of the successful bidder shall be retained as a credit towards the purchase price. All other deposits shall be returned to the bidders immediately upon notification of the successful bidder.
- 12.2 Full payment for the successful bidder is required within thirty (30) days from the date the bids are opened. Should the bidder fail to pay the full price within thirty (30) days, the Town shall retain the bid deposit and title to the property. The town council may review the bids submitted and offer the property to another bidder who shall have thirty (30) days to make payment in full or it may order that bids be solicited again.
- 12.3 Title to tax-acquired property shall be transferred only by means of a quit-claim deed. Unless otherwise advised by the Town Attorney, neither the Town and nor any of its employees shall make any representations regarding title to the property.

Article 13. Other Conditions

- 13.1 The Town of Brunswick shall make no warranties or representations of any kind whatsoever concerning the nature, extent, validity, value or utility of any rights to be conveyed. Properties will be conveyed “as is, where is,” with no warranties, express or implied, including but not limited to, warranties of title, habitability, merchantability, or fitness for any particular purpose or use. The successful bidder shall be responsible for the removal of all occupants and contents of purchased tax-acquired property.

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APPENDIX A
MRSA Title 36 §943-C

§943-C. Sale of homesteads formerly owned by persons 65 years of age or older

Notwithstanding any provision of law to the contrary, after the foreclosure process under sections 942 and 943 or sections 1281 and 1282 is completed and the right of redemption has expired, if a municipality chooses to sell to someone other than the immediate former owner or owners property that immediately prior to foreclosure received a property tax exemption as a homestead under subchapter 4-B, the municipal officers or their designee shall notify the immediate former owner or owners of the right to require the municipality to use the sale process under subsection 3 as long as the immediate former owner or owners demonstrate that the property meets the requirements of subsection 1. The notice must be sent by first-class mail to the last known address of the immediate former owner or owners. If the municipality agrees to sell the property back to the immediate former owner or owners, the alternative sale process under this section does not apply. If the sale to the immediate former owner or owners is not completed, the requirements of this section are reinstated. [PL 2019, c. 401, Pt. A, §10 (AMD).]

1. Subject property. Property is subject to the requirements of this section if:

A. Immediately prior to foreclosure the property was owned by at least one person who, on the date the tax lien certificate was recorded, was 65 years of age or older and occupied the property as a homestead as defined in section 681, subsection 2; and [PL 2017, c. 478, §3 (NEW).]

B. The former owner or owners of the property demonstrate to the municipal officers or their designee that:

(1) The income, as defined in section 5219-KK, subsection 1, paragraph D, of the former owner or owners of the property was less than \$40,000, after medical expenses have been deducted, for the calendar year immediately preceding the calendar year in which the right of redemption expired; and

(2) The value of liquid assets of the former owner or owners of the property is less than \$50,000 in the case of a single individual or \$75,000 in the case of 2 or more individuals. For the purposes of this paragraph, "liquid assets" means something of value available to an individual that can be converted to cash in 3 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.

The former owner or owners must provide documentation verifying the former owner's or owners' income and liquid assets. [PL 2017, c. 478, §3 (NEW).]

All applications or information submitted in support of an application under this subsection, files and communications relating to the application and the determination on the application are confidential records. Hearings and proceedings held pursuant to this subsection must be held in executive session. [PL 2017, c. 478, §3 (NEW).]

2. Notification; appeal. At least 90 days prior to listing property described in subsection 1 for sale, the municipal officers or their designee shall notify the former owner or owners, by first-class mail, of the former owner's or owners' right to require the sale process described in subsection 3. The municipal officers or their designee shall include with the notice an application form with instructions concerning application procedures and submission of information necessary for the municipality to determine whether the former owner or owners meet the conditions required under subsection 1. The former owner or owners must be allowed at least 30 days from the date the notice is mailed to submit the required application form and information. The municipal officers or their designee, within 30 days after receiving the required form and information, shall notify the former owner or owners whether the former owner or owners have been determined to be eligible for the sale process described in subsection 3 and inform the former owner or owners of the right to appeal pursuant to the Maine Rules of Civil

Procedure, Rule 80B. The State Tax Assessor shall prepare application forms, notices and instructions that must be used by municipalities to inform former owners of their right to apply for the sale process provided under subsection 3.

[PL 2017, c. 478, §3 (NEW).]

3. Sale process requirements. If a municipality determines that the former owner or owners meet the conditions specified under subsection 1, the municipal officers or their designee shall:

A. List the property for sale with a real estate broker licensed under Title 32, chapter 114 who does not hold an elected or appointed office in the municipality and is not employed by the municipality; [PL 2017, c. 478, §3 (NEW).]

B. Sell the property at fair market value or the price at which the property is anticipated by the real estate broker to sell within 6 months after listing; and [PL 2017, c. 478, §3 (NEW).]

C. Pay to the former owner or owners any proceeds from the sale in excess of:

(1) The sum of all taxes owed on the property;

(2) Property taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the municipality;

(3) All accrued interest;

(4) Fees, including real estate broker's fees; and

(5) Any other expenses incurred by the municipality in selling or maintaining the property, including, but not limited to, reasonable attorney's fees. [PL 2017, c. 478, §3 (NEW).]

[PL 2017, c. 478, §3 (NEW).]

4. Effect of inability to contract or sell property. If, after attempting to contract with at least 3 real estate brokers who meet the requirements of subsection 3, paragraph A, a municipality is unable to contract with a real estate broker for the sale of the property as described in subsection 3 or the broker cannot sell the property within 6 months after listing, the municipality may retain, sell or dispose of the property in the same manner as other property acquired through the tax lien foreclosure process.

[PL 2017, c. 478, §3 (NEW).]

5. Property in the unorganized territory. With regard to the sale of property acquired by the State through tax lien foreclosure in the unorganized territory, the State Tax Assessor has the obligations of a municipality under this section.

[PL 2017, c. 478, §3 (NEW).]

SECTION HISTORY

PL 2017, c. 478, §3 (NEW). PL 2019, c. 401, Pt. A, §10 (AMD).

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