

Tax Sales: All In For Change!

Presented by

Jeff Oberman

President

Realtax Inc.



Legislation Changes

- **Municipal Act, 2001** (MA) amendments December 10, 2016 to accommodate Forfeited Corporate Properties Act (FCPA)
- **Modernizing Ontario's Municipal Legislation Act** (MOMLA) passed May 30 2017 with some sections not proclaimed until January 1, 2018
- **Forfeited Corporate Property Act** December 10, 2016
- **Land Transfer Tax Act** amendments and regulations regarding PIPS and NRST (no grandfathering)
- **Land Titles Act** registration procedures (no grandfathering)

Be aware of “grandfathering” clauses:

Tax registrations and sales under a Tax Arrears Certificate (TAC) registered prior to the change in legislation proceed under the legislation as it read at the time the TAC was registered

MA s. 388.2 *If, before the day this section comes into force, a tax arrears certificate is registered in respect of land, this Part as it read immediately before the coming into force of this section applies in respect of the proceedings or other steps that may be taken as a result of the registration of that certificate.*



Tax Registration After Second Year of Arrears

MOMLA

- Came in to force on May 30, 2017 (MA s. 373(1))
- Can register a Tax Arrears Certificate if there are taxes owing from 2016 or earlier
- May need to revise your Collections Policy
- Suggestion: give owners a final warning before you register

Forfeited Corporate Properties Expedited Process MOMLA

- Came onto force January 1, 2018
- These are properties owned by cancelled corporations
- Can register Tax Arrears Certificate (TAC) on title as soon as there are arrears (MA s. 373.1)
- First notices to be sent within 30 days of registration (MA s. 374(1)6)
- No final notices
- Begin tax sale 90 days after registration of TAC (MA s. 379(2.0.1))
- No priority lien awarded if cancellation price paid (MA s. 375(3.1))
- Person paying cancellation price may, within 30 days of payment, request in writing an itemized breakdown of cancellation price (MA s. 376(1))



Forfeited Properties (continued)

MOMLA/FCPA

- Tax Arrears Certificate cannot be registered if,
 - **Order Cancelling Encumbrances** has been registered on title by Provincial Crown (MA s. 373.2(1)(a))
 - **Notice of Intent to Use** property has been registered on title on title by Provincial Crown (MA s. 373.2(1)(b))
- Tax Arrears Certificate can still be registered if Order Cancelling Encumbrances registered **with** consent of Crown (MA s. 373.2(2))
- Crown will not register Notice of Intent to Use if Tax Arrears Certificate already registered on title (FCPA s. 24(8))

Forfeited Properties (continued)

FCPA

Order Cancelling Encumbrances

- Crown may register an Order Cancelling Encumbrances if a corporation has been cancelled 3 years or more (2 years or more for cooperatives) (*FCPA s. 18(5-6)*)
- Province will give municipality 90 days notice of its intent to cancel encumbrances (*FCPA s. 19*)
- Municipality must respond to notice, setting out unpaid taxes and any other municipal debt, and if they intend to enforce claim (*FCPA s. 22*)
- Registration of Order doesn't cancel property taxes owed by former corporate owner (*FCPA s. 18(12)*)

Forfeited Properties (continued)

FCPA

Notice of Intent to Use for Crown Purposes

- Province may register Notice of Intent to Use for Crown Purposes on title at **any time** (do not need to wait 2-3 years) (FCPA s. 24(1))
- **Limitation:**
Province will not register if municipality has registered a Tax Arrears Certificate (FCPA s. 24(8))

Forfeited Properties (continued)

FCPA

Order to Transfer

Province may transfer 'certain' properties directly to municipality (without tax sale) if appropriate (*FCPA s. 29*)

Includes properties such as 1 foot reserves, storm water retention ponds, blocks for walkways and parks that were to be granted to the municipality as part of the Subdivision/Development Agreement but the corporation was cancelled before this was completed

Distribution of Proceeds of Sale of Forfeited Land by Crown (*FCPA s. 33*)

1. Federal Crown interests
2. Provincial Crown interests
3. **Municipal taxes**
4. Others



New Notice Requirements

MOMLA

Where the **Crown is shown as the assessed owner** as a result of an escheat or forfeiture, also send notice to:

- Directors and Officers of the dissolved corporation
- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* – this is currently the Minister of Infrastructure (MOI) (MA s. 374(1)4)

Where the **treasurer is aware that assessed owner is a dissolved corporation** (corporate search will show this), also send notice to:

- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* – MOI (MA s. 374(1)5)



New Notice Requirements (continued)

MOMLA

- Within **15 days** after registering a Tax Deed or Notice of Vesting, must send notice of registration to:
 - the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015 (Minister of Infrastructure) (MA s. 379(6.1))*
- When surplus funds paid into court, the Statement of Facts (Form 5) filed in court and sent to interested parties must now include a list of all the parties to whom the Statement is to be sent (MA s. 380(2))
- Title and execution searches must be updated for current interested parties and addresses (MA s. 380(3)2)
- Statement must now also be sent to:
 - Public Guardian and Trustee and;
 - Minister of Infrastructure (MA s. 380(3)4&5)

Land That Belongs to the Crown as a Result of Death – No Heirs

MOMLA

- Land that belongs to the Crown as a result of the death of an individual who did not have any lawful heirs can be sold for tax arrears. This applies regardless of whether the individual died before or after the registration of a Tax Arrears Certificate (MA s. 373(3.1))
- A Tax Arrears Certificate cannot be registered if the Crown had registered a notice that it intends to use the land for Crown purposes (MA s. 373.2(c))
- If an interested party pays the cancellation price, they will not be given a priority lien on the Cancellation Certificate (MA s. 375(3.1))
- Person paying cancellation price may, within 30 days of payment) request in writing an itemized breakdown of cancellation price (MA s. 376(1))

Extension Agreements Authorized by Treasurer

MOMLA

- Came into force January 1, 2018 but, due to “grandfathering” clause MA s. 388(2), only pertains to properties where Tax Arrears Certificate was registered after January 1 2018.
- ‘Municipality’ may enter into extension agreement; authorizing by-law is no longer required each time (MA s. 378(1))
- Municipality (Council) may delegate this authority to Treasurer or other Officer and set limits, or may decide to maintain status quo
- Party to extension agreement can be anyone the treasurer is satisfied has an interest in the property (MA s. 378(1)(1.1))
- If extension agreement is in regards to cancelled corporate property, consent of the Minister of Infrastructure is required (MA s. 378(1.2))

New Tax Sale Payment Provisions

MOMLA – Municipal Tax Sale Rules (MTSR)

- For files registered after January 1st (due to grandfathering clause MA s. 288.2)
- Acceptable deposit, forms of payment and definition of “cash” in MTSR expanded to include Credit Unions
- Tender deposit:
shall be made by way of money order or by way of bank draft or cheque certified by a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a trust corporation registered under the *Loan and Trust Corporations Act* or a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* (MTSR s. 6(1)(b))
- Cash defined as:
cash or money order or by way of bank draft or cheque certified by a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a trust corporation registered under the *Loan and Trust Corporations Act* or a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* (MTSR s. 25)

New Tax Sale Advertisement Provisions

MOMLA – MTSR

- Full Form 6 (sale by tender) or Form 8 (sale by auction) advertisement still goes once in Ontario Gazette and in the first of the four locally published ads, but abbreviated ads are permitted for subsequent three local publications (MTSR s. 5)
- Abbreviated ads must contain certain “prescribed” information and refer purchasers to a website of Treasurer’s choosing and include municipal contact for more information
- Requirements for abbreviated ad do not include municipal disclaimer in the full ad, but we would strongly suggest this be included

Except as follows, the municipality makes no representation regarding the title to or any other matters relating to the land(s) to be sold. Responsibility for ascertaining these matters rests with the potential purchasers.
- Full Form 6 ad must now include:
 - Description consisting of street address (or location if no street address) and PIN
 - Assessed value of the lands according to the last assessment roll
 - Form of Tender available on website of the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs
- If no local paper that, in the Treasurer's opinion provides reasonable notice of the sale, there is still the option to post notice in the municipal office and one other prominent place

Payments Out of Court Ended to Municipalities ... MOMLA

- For files in which the Tax Arrears Certificate was registered **AFTER** January 1, 2018 (grandfathering clause MA s. 288.2)
- If municipality registered a Tax Arrears Certificate before January 1, 2018 , it will still be eligible to apply for payment out of court under the old provisions of the Act in place at the time of registration
- Under new payment out of court provisions, persons claiming entitlement to funds must apply between 90 days and 10 years after payment into court (MA s. 380(4-5))
- Persons claiming entitlement must **serve** a notice of application on persons listed in the Statement of Facts (Form 5) (MA s. 380(6))
- If no one makes an application, or there are funds remaining in court after 10 years they are deemed forfeited to Ontario Crown (MA s. 380(8)(a))

New Forms & Schedules

MOMLA – Municipal Tax Sale Rules (MTRSR) O. Reg 181/03

- MTRSR sets out Forms and Schedules containing information to be included in documents when Tax Arrears Certificate was registered AFTER January 1, 2018 (*MA s. 288.2 and MTRSR s.27*)
- Forms 1 to 10
(First and Final Notices, Statutory Declarations re: sending of Notices, Statement of Facts, Advertisements, Tender Form, etc.)
are no longer found attached to the MTRSR regulation but are available online on the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs:
<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/>
- Index of Forms and their official names for searching the Repository can be found in the MTRSR Schedule 5
- Updated Schedules 1 to 4 for the Tax Arrears and Cancellation Certificates and Statements to include with Tax Deeds and Vestings are attached to the MTRSR



NRST-Non-Resident Speculation Tax Under *Land Transfer Tax Act s. 2.1*

- 15% tax on purchase of qualifying land (between one and six residential units) within the Greater Golden Horseshoe (GGH)
- Purchasers must make applicable statements on Tax Deed or Deed will not be accepted for registration
- If qualifying property is purchased by a non-resident, 15% Speculation Tax *plus* Land Transfer Tax must be **pre-paid** to

Ministry of Finance
Manager, Land Taxes
PO Box 625
33 King St. West
Oshawa, ON L1H 8H9
- See Ministry of Finance Bulletin web page for more information
<https://www.fin.gov.on.ca/en/bulletins/nrst/>



PIPS-Prescribed Information for the Purposes of Section 5.0.1 of the *Land Transfer Tax Act*

- Province is now collecting more data on purchase/purchasers of residential and agricultural land throughout Ontario
- **Purchasers** must submit a completed and commissioned PIPS form to Minister of Finance. It is an offence under the Land Transfer Tax Act to fail to submit this information when required
- For more information and a “PIPS” form in a fillable Adobe format go to <http://www.fin.gov.on.ca/en/tax/ltt/prescribedinfo.html>

KEY TAKE AWAYS

- Familiarize yourself with the new provisions of Part XI of the *Municipal Act, 2001* and which ones don't affect "grandfathered" registrations.
- The Forfeited Corporate Property Act has changed the way we deal with this type of property.
- Information on certain residential and agricultural properties throughout Ontario must be provided. Payment of a Non Residency Speculation Tax might be required on some residential properties within the Greater Golden Horseshoe before a Tax Deed can be registered.

Thanks for joining us!

Jeff Oberman

President

Realtax Inc.

1-888-585-7555 Ext. 1

JeffOberman@Realtax.ca

