

A Guide to Tax Recovery in Alberta

Alberta Municipal Affairs

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A Guide to Tax Recovery in Alberta
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The Government of Alberta and Municipal Affairs will not be liable for any damages that result from the use of this manual. While Municipal Affairs attempts to ensure the accuracy of the information contained within this manual, a municipality may wish to obtain advice from a lawyer, in order to ensure the correct steps are taken throughout the tax recovery process. Municipal Affairs and the Government of Alberta do not warrant or make any other representations regarding the use, accuracy, applicability, or reliability of this manual.

It is important to recognize that this manual has been developed as a reference for, and as an explanatory document to, Part 10 of the Municipal Government Act (MGA), RSA 2000, Chapter M-26. This manual is not legal advice, and it cannot be used in place of consulting with a lawyer. This manual cannot anticipate every aspect, circumstance or situation that municipalities may encounter while working through their specific tax recovery process. If a municipality needs help finding a lawyer, please visit the [Law Society of Alberta website](#).

Should this manual conflict with the *Municipal Government Act* (MGA), RSA 2000, Chapter M-26, in word or interpretation, the legislation shall prevail.

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Introduction

This manual has been created to assist municipal officials and other stakeholders in working through the three tax recovery processes allowed under the *Municipal Government Act* (MGA), RSA 2000, Chapter M-26. This manual contains detailed descriptions of the steps required to satisfy the legislative requirements relating to the various tax recovery processes. It also contains checklists that highlight the main steps and timelines. Links to the various forms required by Alberta Land Titles or the Personal Property Registry are also included.

How to Use this Manual

This manual has been separated into four “Units.” Unit 1 provides a general overview of the tax recovery process. It outlines the main purpose of the tax recovery process and highlights the key principles that apply to each of the tax recovery proceedings. Unit 1 also describes the general roles and responsibilities of the various parties that are involved in the tax recovery process – specifically, the municipality, the assessed person, and Alberta Municipal Affairs.

Units 2, 3 and 4 outline the three separate tax recovery processes as set out in Part 10 of the MGA. Unit 2 covers “Recovery of Taxes Related to Land” (Division 8); Unit 3 covers “Recovery of Taxes Related to Designated Manufactured Homes” (Division 8.1); and Unit 4 covers “Recovery of Taxes Not Related to Land” (Division 9).

Units 2, 3 and 4 are each divided into three parts, each containing the following:

- A detailed explanation of the specific tax recovery process - its purpose, as well as the steps, timelines and legal requirements stated in the MGA. This material is particularly helpful for anyone who is unfamiliar with the tax recovery process or who wishes to refresh their understanding and knowledge with respect to tax recovery.
- A checklist that summarizes the key steps that must be carried out during each tax recovery process.
- A tax agreement template, sample letters and best practices for municipalities to utilize during the tax recovery process are also included in the Appendix.

Unit 1: The Tax Recovery Process

Understanding the Tax Recovery Process

Municipalities rely on the collection of property taxes to provide services, to make improvements to their infrastructure and to meet their financial obligations. The provincial government recognizes municipalities' reliance on property tax revenue. To ensure that everyone who is required to pay municipal taxes does so, the province has passed legislation that ensures the municipality can collect the taxes that are due.

The legislation gives the municipality the authority to enforce payment of legally levied taxes.

Part 10 of the MGA provides for three tax recovery processes:

1. Recovery of Taxes Related to Land (Division 8);
2. Recovery of Taxes Related to Designated Manufactured Homes (Division 8.1); and,
3. Recovery of Taxes Not Related to Land (Division 9)

It is important to recognize that the purpose of the tax recovery process is to provide a means through which the municipality receives the taxes to which it is entitled.

Municipalities should be aware of the provisions of the *Farm Debt Mediation Act*, when tax recovery proceedings are undertaken involving land, designated manufactured home(s) and/or other property owned by a farmer.

The *Farm Debt Mediation Act* is Government of Canada legislation that provides for mediation between insolvent farmers and their secured creditors. Municipalities should take note of Section 21 of the federal *Farm Debt Mediation Act*, which states:

1. *Every secured creditor who intends to:*
 - (a) *enforce any remedy against the property of a farmer, or*
 - (b) *commence any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of a farmer shall give the farmer written notice of the creditor's intention to do so, and in the notice shall advise the farmer of the right to make application under Section 5.*
2. *The notice must be given to the farmer and to an administrator, in the form established by the Minister and in accordance with the regulations, at least 15 business days before the doing of any act described in paragraph (1) (a) or (b)."*

An insolvent farmer may apply to the administrator appointed under the *Farm Debt Mediation Act* for a stay of proceedings or assistance with mediation. Where an insolvent farmer has applied for and received a stay of proceedings, no action can be taken by the secured creditor. When section 21 has not been complied with, section 22 declares any acts taken by the creditor against the property of the farmer to be null and void.

The *Farm Debt Mediation Act* has been the subject of considerable litigation much of which is highly dependent on the specific factual circumstances of the particular case. Accordingly, municipalities are strongly encouraged to consult with their legal counsel regarding the application of the *Farm Debt Mediation Act* and especially prior to taking any action that may involve the property of a farmer and require notice under section 21 of that Act.

Additional information may be obtained by contacting:

Agriculture and Agri-Food Canada
Farm Debt Mediation Service
301-2010 12th Avenue
Regina, SK S4P 0M3
Toll Free Number: 1-866-452-5556

The Role of the Municipality in the Tax Recovery Process

Sections 411, 436.02 and 438 allow a municipality to attempt to recover tax arrears by following the legislated requirements of the MGA and in accordance with any other Act or common law right. If the municipality chooses to recover the arrears using section 411(2) it must occur before the municipality sells the parcel at public auction or before the parcel is disposed of under section 425. The municipality must ensure that the process is completed as required by the legislation. The municipality is the central participant in the tax recovery process.

It is the municipal council that establishes the tax rates for each fiscal year and administration that is responsible for the collection of taxes. If attempts to collect overdue taxes from assessed persons are unsuccessful, the council is responsible for setting reserve bids for properties, or designated manufactured homes, at as close as reasonably possible to fair market value (the amount a property might be expected to realize if it were sold on the open market by a willing seller to a willing buyer), and the conditions of sale for the auction, while administration conducts the tax auctions.

Given these numerous responsibilities, it is extremely important that each municipality put in place a process that ensures not only that the steps are completed properly and at the proper times, but also that an accurate and complete record of each step is kept.

If proper controls and processes are not developed, the tax recovery process can become more complicated than need be. The municipality must act in the best interest of the person responsible to pay the tax and to protect the rights of the landowner throughout the entire process. Therefore, it is critical that the municipality ensures that all steps are followed. Failure on the municipality's part to do this may result in the tax recovery process being set aside by the courts and the municipality being directed to begin the process again.

Similarly, other parties who hold a registration against the title to the parcel (mortgage holders, lien holders, etc.) must also be advised of the tax recovery proceedings so that they are aware and have the opportunity to protect their interests. Given that all encumbrances, with the exception of those outlined in sections 423(1), 424(3), 428.2(4), 436.14(1), and 436.2(1)(b), are removed following the sale of land or property at public auction it is important that municipalities ensure that anyone who has an interest or encumbrance registered against the land or property is notified of the tax recovery proceedings.

The Role of the Assessed Person in the Tax Recovery Process

Section 304 of the MGA identifies the assessed person responsible for paying the appropriate property tax. Section 331 of the MGA obligates this person to pay taxes. The fact that tax recovery proceedings are being undertaken reflects that the assessed person has not or cannot fulfill this obligation. Regardless of how co-operative an assessed person is in terms of paying taxes, it is critical to ensure that they are advised of the key steps of the tax recovery process and are aware of the options available so that they have every opportunity to pay the taxes owing.

The Role of Municipal Affairs in the Tax Recovery Process

Municipal Advisors with the Municipal Services and Legislation Division of Alberta Municipal Affairs are available as resources if municipal staff needs assistance. If a municipality is conducting a tax recovery proceeding and cannot find the information needed in this manual, or if there is a detail in the MGA that needs to be clarified, please contact the Division at:

Municipal Services and Legislation Division
17th Floor, 10155 - 102 Street
Edmonton, Alberta T5J 4L4
Phone: 780-427-2225
Fax: 780-420-1016

Staff at the Alberta Land Titles Office and at Alberta Personal Property Registries are not responsible to ensure that the proper steps are taken with respect to the registration of the tax arrears notification or tax recovery liens. Guaranteeing that forms are completed properly, that land descriptions or serial numbers are correct and complete, and that there is no duplication of tax recovery notifications or tax recovery liens is the sole responsibility of the municipality. Alberta Land Titles will not accept tax arrears lists at any time other than in a period just before March 31 of each year.

Unit 2: Recovery of Taxes Related to Land

Unit 2.1: Overview Part 10, Division 8

The Purpose of Part 10, Division 8

The purpose of Part 10, Division 8 is to provide municipalities with the authority to collect tax arrears that relate to property taxes for parcels of land. Division 8 defines the taxes applicable to this process as a property tax, a community revitalization levy, a special tax, a local improvement tax or community aggregate payment levy. The Alberta Land Titles system is a tool used to aid in the enforcement of the collection of taxes levied against land and improvements as all properties must be associated with land for tax recovery under this Division.

When are Taxes in Arrears?

The issue of when parcels of land with outstanding taxes are to be placed on the tax recovery arrears list causes confusion for some. Therefore, before the tax recovery process is considered, it is important to understand when taxes are in arrears.

The MGA identifies outstanding taxes in two different ways: taxes that are “unpaid” and taxes that are in “arrears.” It is important to understand the difference between these terms to ensure that parcels of land are not mistakenly placed on, or left off, the tax arrears list.

Section 326(1)(c) of the MGA defines “tax arrears” as “taxes that remain unpaid after December 31 of the year in which they are imposed.” The key part of this definition is the phrase “that remain unpaid after December 31 of the year in which they are imposed.” Many individuals confuse unpaid taxes, which may be subject to penalty under section 344, with taxes in arrears. Again, taxes are in arrears only if they are unpaid as of January 1 of the year following the year in which they are imposed.

Section 332 states that taxes imposed under Part 10, other than a supplementary property tax or a supplementary business tax, are deemed to have been imposed on January 1. Therefore, regardless of whether the tax notice is sent in May or October, legally, January 1 is the date the taxes are considered imposed.

For example, the Town of Wherever mails its tax notices on May 1, 2017. The taxes are due by June 30. On July 1 any outstanding taxes are considered “unpaid” and a tax penalty may be applied under section 344. If these taxes remain unpaid as of January 1, 2018, the taxes are then considered to be in arrears (section 326(1)(c)). However, the property taxes must continue to be in arrears past January 1, 2019, (two years after the date imposed), before the property is added to the tax arrears list – (March 31, 2019).

Therefore, when a municipality is preparing a tax arrears list for properties that have tax arrears of more than one year, calculations begin from January 1 following the year in which the tax was imposed, not from the date the tax notice was sent.

When discussing the penalty associated with unpaid taxes, do not refer to the penalty as “interest.” The MGA provides for a penalty for non-payment of taxes. While the amount of penalty is determined by using a percentage calculation as set out in a Tax Penalty Bylaw, municipalities should ensure that ratepayers are aware that they are being penalized for not paying their taxes.

Adding Amounts Owing to the Tax Roll

Section 553(1)(f) allows municipalities to add the costs associated with tax recovery proceedings to the tax roll of a parcel of land. From the date the tax recovery costs are added to the tax roll, they are deemed to be a tax imposed under Part 10, Division 2 of the MGA.

The Tax Recovery Process

Prepare an Arrears List

Section 412

The tax recovery process begins with the preparation of a tax arrears list. Each year a municipality **must, not later than March 31**, prepare a list of all parcels of land in the municipality that are more than one year in arrears.

Prior to developing the tax arrears list, a municipality may want to consider sending a letter to each affected property owner. Late January to mid-February is a good time to send such a letter. Advise him or her that the property is going to have a tax notification placed on the title and that he or she can avoid this action from occurring by paying the outstanding amount of taxes that have been in arrears for more than one year. This is because taxes must be in arrears for more than one year before the tax recovery process is started. If the property owner pays the taxes that have been in arrears for more than one year, then the property would no longer qualify for the tax recovery process.

Municipalities should complete the tax arrears lists and have the designated officer, in most cases the Chief Administrative Officer, sign and put the municipal seal on the forms. **Two lists with the municipality’s seal must be forwarded to the Registrar at the Land Titles Office no later than March 31 of each year.** The postmark for lists must clearly indicate that it was forwarded by or on March 31, or other evidence must be obtained to substantiate any claim that it was forwarded on time. For complete information on tax related documents, please visit [Alberta Land Titles Procedures Manual](#) and review TAX-1 through TAX- 6.

The contact information for both Calgary and Edmonton offices can be found on the website at www.spin.gov.ab.ca or by emailing lto@gov.ab.ca.

A copy of the arrears list must also be sent to the Minister of Treasury Board and Finance, for the [Unclaimed Property Program](#) prior to March 31 of each year.

EMAIL: unclaimed.property@gov.ab.ca

Enter “Unclaimed Property” in the subject line and please include your return address in your message.

MAIL:

Tax and Revenue Administration
Alberta Treasury Board and Finance
9811 - 109 Street
Edmonton, AB T5K 2L5

PHONE: 780-427-3044 - For toll free service in Alberta, call 310-0000; then enter 780-427-3044

A copy of the arrears list must then be posted in a place in the municipal office that is accessible to the general public during regular business hours.

A tax arrears list must not include a parcel of land that has a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.

Therefore, when completing the tax arrears list, ensure that one of two things occurs:

- If a previous tax recovery notification should be there (a tax recovery process is underway), exclude the property from the new tax arrears list.
- If a previous tax recovery notification should not be there (a previous tax recovery process has been concluded but the notice was not removed when it should have been), have the tax recovery notification previously endorsed against the parcel of land removed prior to the registration of a new tax recovery notification. There is no prescribed form for requesting the removal of the tax notification, but the “Discharge of Tax Notification” form, provided in the Land Titles Procedures Manual (Tax-2) can be used. The request for removal must be sent to the Land Titles Office. The municipality is solely responsible to ensure that no duplicate tax notifications occur.

The municipality must also notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar of Land Titles. It is suggested that this letter be sent at the same time that the arrears list is forwarded to the Land Titles Office. While it is not a legislated requirement, a municipality may wish to send a letter prior to preparing the arrears list advising of what is coming in order to mitigate and encourage property owners to pay before the tax notification is placed on the certificate of title.

Section 23(1) of the *Interpretation Act* states that when notification is properly addressed and sent by prepaid mail other than double registered or certified mail, it is presumed, unless the contrary is proved, to be received seven days from the date of mailing if the document is mailed in Alberta to an address in Alberta, or 14 days from the date of mailing if the document is mailed in Canada to an address in Canada. If the document is returned to the sender by someone other than the addressee, presumption of service does not apply. When a municipality receives a returned letter, the letter should be filed in the tax arrears file so the municipality can prove the effort to contact the person responsible for paying the taxes.

It is the taxpayer's responsibility to ensure that the municipality and the Land Titles Office has the current and correct address on file.

Tax Recovery Notification

Section 413

Once Alberta Land Titles receives the arrears list, prior to April 1 of each year, the Registrar must endorse a tax recovery notification on the Certificate of Title. One of the two copies of the tax arrears list submitted by the municipality should be stamped with the certification stamp and returned to the municipality with a statement of the costs payable to the Land Titles Office by the municipality and a computer generated hardcopy of the list. The municipality is responsible for this cost but it may add this cost to the taxes owing for the appropriate parcel(s) shown on the tax arrears list (section 553(f)).

Once the tax recovery notification is in place, only the municipality that requested the endorsement can authorize the removal of the notification. Again, there is no prescribed form for requesting the removal of the tax notification, but the "Discharge of Tax Notification" form, provided in the Land Titles Procedures Manual (Tax-2) can be used.

When a tax recovery notification has been endorsed on the Certificate of Title for a parcel of land, the person who is liable to pay the taxes must not remove any improvements for which taxes can be levied and for which that person is responsible (section 414) without the approval of the municipality.

Right to Pay Tax Arrears

Section 415

After a tax recovery notification has been endorsed on the Certificate of Title, anyone can pay the tax arrears owing against the property. When the municipality receives payment of the tax arrears, the designated officer requests the discharge of the tax recovery notification, which may be done with the "Discharge of Tax Recovery Notification" form, and sends it to the Land Titles Office.

Do not request the discharge of a tax recovery notification until the arrears and penalties are received in full (e.g., the cheque clears the bank). Remember, after a notice is removed, it is not possible to have it reinstated without starting the tax recovery process from the beginning.

Warning of Sale

Section 417

Once the Registrar of Land Titles has endorsed the tax recovery notification he or she must, not later than August 1, send a notice to the owner of the parcel of land, to any person who has an interest evidenced by a caveat registered against the parcel, and to each owner of an encumbrance as shown on the Certificate of Title. The notice states that if the tax arrears are not paid by March 31 of the following year, the municipality will offer the parcel for sale at public auction, and the municipality may become the owner of the parcel if it is not sold at public auction.

Unless the municipality decides to pursue the options listed at the end of this Unit under the heading Alternate Collection Options, the municipality must wait until after March 31 of the following year before proceeding with the following tax recovery steps.

Offer of Parcel for Sale

Section 418

If the taxes have not been paid, an action under section 411(2) has not been started, and a tax agreement providing for the payment of arrears is not reached between the municipality and the landowner, the municipality **must** offer for sale at a public auction any land shown on its tax arrears list.

An agreement can be for no more than three years and should include the current taxes, future penalty charges, and an estimate of the future taxes over the length of the agreement in the payment calculation. If the property owner breaches the agreement, the property must then be offered at public auction.

Properties that are offered for sale are those properties that received notification from the Registrar of Land Titles by August 1 of the previous year.

Reserve Bid and Conditions of Sale

Section 419

The council must establish a reserve selling price before it can auction a property. The reserve bid is set at a level that is as close as reasonably possible to the market value of the parcel. The municipality may use a current assessment value or acquire the services of an independent, professional appraiser to provide it with a written report that establishes market value for setting the reserve price.

In addition to the reserve bid, the council must establish any terms and conditions that apply to the sale. For example, the council may require full payment for the parcel by cash or certified cheque or the council may allow partial payment on the day of the auction with full payment to be made within 30 or 60 days following the auction.

Advertisement of Public Auction

Section 421

The municipality must advertise the public auction. The information in the advertisement must specify the date, time, and location of the auction and a description of each parcel of land to be offered for sale. The advertisement must also include any terms and conditions of the sale (e.g., cash only, percentage down, or payment by a specified date). The advertisement must also state that the municipality may, after the public auction, become the owner of any parcel of land not sold at the auction.

The property or properties being auctioned must be advertised in one issue of the Alberta Gazette. The auction date must be listed in the Gazette not less than 40 days and not more than 90 days before the auction. It is strongly advised that the municipality contact the Gazette to determine the time frame for publication.

Municipalities may wish to list the Certificate of Title number in Gazette advertisements along with the legal land description of the parcel.

For advertising in the Alberta Gazette contact:

The Alberta Gazette
7th Floor, Park Plaza
10611 – 98 Avenue
Edmonton, Alberta T5K 2P7
Website : http://www.qp.alberta.ca/Alberta_Gazette.cfm
Email: albertagazette@gov.ab.ca
Fax: 780-452-0668

The Gazette is published twice monthly, first on the 15th and again at the end of the month. A calendar of Gazette publication dates can be viewed at http://www.qp.alberta.ca/alberta_gazette.cfm?page=gazette_publication_dates.cfm. The deadline for submission of an advertisement is two weeks prior to the publishing day. Make sure the submission deadline is taken into account when setting the auction timelines.

A second advertising requirement is the auction must be advertised in one issue of a newspaper having general circulation in the municipality. The advertisement must appear not less than 10 days and not more than 20 days before the date on which the public auction is to be held.

These advertising processes are mandatory requirements. If they are not met the auction results can be nullified if challenged through the courts.

Contacting the Owner and Interested Parties Before the Auction

Section 421(4)

Besides sending a copy of the advertisement to the assessed person named on the tax roll, the municipality must also obtain a copy of the current Certificate of Title in order to send a copy of the advertisement to all individuals or organizations with a registered interest in the property. A copy of the advertisement must be sent to all parties not less than four weeks before the date of the public auction.

Adjournment of Auction

Section 422

A municipality may adjourn a public auction to any date within two months of the advertised sale date. The municipality is not required to advertise the adjournment but a notice must be posted, in an accessible public place, which includes the new date and place when the auction will be held.

Adjournments are often put in place to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met.

As an example, if the advertisement in a local newspaper was not placed within the 10 to 20 day period preceding the auction, the auction could be postponed to meet this condition.

Holding the Auction

Section 423

The municipality must select a person to conduct the auction. While a professional auctioneer may be used, in most cases the Chief Administrative Officer or other designated officer will act as the auctioneer. Guidelines for the auction process are included in this manual.

Once the auctioneer declares a property as sold, the sale is final and no further approval is required. The auctioneer cannot reopen a property for sale after it is declared sold. The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council with information in case a sale is protested. The person purchasing the property acquires the land free of all encumbrances, except those listed in section 423(1).

Section 429 restricts the auctioneer, councillors, the Chief Administrative Officer, and the employees of the municipality from bidding on, or acting as an agent in buying the property. However, a designated officer or employee can be directed by council to bid for or buy a parcel of land for the municipality if it wishes to become the owner.

Once the property is sold to another individual, the previous owner has no further right to pay the tax arrears.

If no offer is received on a property or the reserve bid is not met, the property cannot be sold at the auction. In this case the property remains unsold. The following sections describe options for dealing with unsold properties.

Municipal Responsibilities/Rights Following the Auction

The municipality has three options when a property is not sold at public auction.

1) 'Tax Forfeiture' Title

The municipality does not purchase the property, but registers its name on title if the property goes unsold at public auction by registering a Tax Forfeiture Instrument (a "Notification of Municipal Acquisition" form). This allows the municipality to rent, license, lease, or dispose of the property at a price as close as reasonably possible to market value in an effort to recoup the arrears and taxes. If the property is not disposed of under section 425(1), the municipality may, 15 years following the date of the public auction, request that the Registrar cancel the existing certificate of title marked 'Tax Forfeiture' and issue a certificate of title in the name of the municipality.

2) Clear Title

After the municipality has acquired Tax Forfeiture Title, the municipality can acquire the property by depositing an amount equal to the reserve bid (market value) into a separate account. The amount paid goes to the tax arrears and all costs and expenses as required under section 427(2). The municipality must notify the previous owner if there is money remaining. The property is then the municipality's to do with as it wishes.

3) Do nothing

Taxes continue to accrue, and remain on the municipality's books as a growing liability. The municipality cannot dispose of the property or rent, licence or lease it. This option does not allow the property to revert to the municipality after the 15 year time period.

Municipalities' Right to Possession Following the Public Auction

Section 420

When a property is not sold, a municipality is entitled to possess the property from the date on which a parcel of land is offered for sale at public auction. If a property is occupied and the municipality encounters resistance, it will have to apply to the Court of Queen's Bench for an order for possession (section 420(2)).

In the case of properties being rented out as a residence by the previous owner, the municipality must follow the processes to obtain vacant possession outlined in the Residential Tenancies Act.

Transfer of Parcel to Municipality

Section 424 ('Tax Forfeiture' Title)

A municipality **may** become the owner of a parcel immediately after the public auction if the parcel is not sold. If it chooses to take title, the municipality must request that the Land Titles Office cancel the existing Certificate of Title and issue a new one in the municipality's name (section 424(2)). This request is made by submitting the "Notification of Municipal Acquisition" form to the Land Titles Office.

If the municipality takes title, the property is exempt from future taxation under MGA section 362(1)(b), and the municipality can dispose of the property in accordance with section 425 of the MGA. If the municipality chooses not to take title, the property remains taxable; however, the municipality cannot dispose of the property.

Where a municipality acquires title under this section, the title, while placed in the municipality's name, retains a tax forfeiture notification against it.

Municipal Responsibilities for Properties Sold at the Public Auction

Anyone purchasing a property at a public auction acquires the property free of all encumbrances aside from the exceptions listed in section 423(1).

After the successful sale of a property at a public auction, the municipality must complete a "Notification of Sale by Public Auction" form and submit it to a Land Titles Office. The form should be accompanied by an "Affidavit re Value" form, and (if applicable) a "Foreign Ownership of Land Declaration" form, available from a Land Titles Office.

Municipal Process for Disposing of Unsold Properties

The municipality must acquire title to the land, pursuant to section 424, before disposing of the property in accordance with section 425(1).

After title is obtained under section 424, the municipality may sell the property at a price as close as reasonably possible to the market value, per section 425(1)(a).

After receiving the title to a property under section 424, a municipality may also grant a lease, licence, or permit in respect of the parcel. The municipality can establish the conditions for these types of dispositions.

If the municipality should rent or lease a property before selling or acquiring it under section 425(1), and in the process generates revenue equal to or exceeding the arrears, the municipality must return the title and any surplus revenues to the previous owner (section 426).

Some possible options to assist in selling the property include direct sale, by tender, or through a real estate agreement. On selling the property, the municipality must transfer the title to the purchaser by submitting a “Transfer of Land” form to a Land Titles Office. Also contained on the “Transfer of Land” document is an “Affidavit re Value of Land,” which must be completed. The only liens and encumbrances remaining will be those in favour of the Crown in right of Canada and the other exceptions noted in section 424(3).

Following the sale of a property, the municipality must request the discharge of the tax recovery notification for the Registrar of Land Titles to remove the words “Tax Forfeiture” from the new title.

Should the municipality wish to acquire clear title to a property, the property can be purchased by the municipality by paying the market value of the property in accordance with section 425(1)(b).

There is a substantial difference between the titles the municipality receives to properties not sold at public auction (and subsequently transferred to the municipality), and the title that the municipality receives should it purchase the property under section 425(1)(b). In the first situation (Tax Forfeiture Title), the Certificate of Title retains the Tax Forfeiture clause and in the second (Clear Title) it does not. In the latter situation, the municipality can use or dispose of the property, the same as any other clear title landowner and in accordance with section 70 of the MGA.

Revival of Title

Section 426

If the tax arrears in respect of a property are paid after the municipality acquires the title to the property (Tax Forfeiture Title) under section 424 but before selling the property under section 425, it must notify the Registrar to revive the title of the original owner. As noted previously, payment of tax arrears can be handled in a number of ways, including by lease or rent or by payment by the previous owner(s) or by any other party. Under section 426(3)(a), the property would then be subject to the same notifications, charges and encumbrances before the municipality became the owner. A “Notification of Revival of Title” form must be completed and sent to the Registrar of Land Titles.

Proceeds from the Sale or Rental of Tax Recovery Property

Sections 427 and 428

All sale, lease, licence, or permit revenues must be paid into a separate account maintained by the municipality for proceeds from Division 8 tax recovery properties. It is important to recognize that any remedial costs owed to the province have first priority in terms of the sale proceeds. The issue of remedial costs is described in greater detail under “*Contaminated Land*” below.

The municipality must pay itself the tax arrears and other legal costs provided for under section 427(2). Any money remaining after the payment of the tax arrears and costs set out in subsection (2) must be paid to the Minister of Treasury Board and Finance if the municipality is notified that the property is vested in the Crown. A property may be vested in the Crown by virtue of being owned by a dissolved business corporation. (See section 15(a) of the *Unclaimed Personal Property and Vested Property Act*.)

The municipality may, if it is satisfied that there are no debts secured by an encumbrance against the certificate of title of the property, pay the remaining funds to the previous landowner. If the municipality is not satisfied that there are no debts secured by an encumbrance against the certificate of title of the property, it must notify the previous owner of the surplus funds and that he or she must make application under section 428 to recover all or part of the proceeds.

Under section 428, the former owner or other interested party will have up to 10 years after either the date of the public auction or the date of a sale under section 425, depending on how the property was sold, to make an application to the courts to be paid the surplus sale proceeds. If no application is made within the 10 year period, the municipality may use the money for its own purposes (section 428.1). This does not apply if the municipality is notified that the property is vested in the Crown.

Transfer to Municipality after 15 Years

Section 428.2

When a tax forfeiture parcel of land has been offered for sale but not sold at a public auction, and has been designated as a 'tax forfeiture' on its certificate of title (section 424), the municipality may, 15 years after the date of the public auction, request the Registrar to cancel the existing certificate of title and issue a new one in the name of the municipality.

Once this new title is issued, all responsibilities of the municipality to the previous owner of the parcel under Part 10, Division 8 of the MGA cease.

A municipality that becomes the owner of a parcel of land under this section acquires it free of all encumbrances, except those listed in section 428.2(4).

Special Cases

Tax Arrears on Subdivided Land

Section 429.1

If there are tax arrears on a parcel of land that is to be subdivided, the municipality may distribute the tax arrears and any taxes that may be imposed on the newly created parcels.

Contaminated Land

Section 434.1

One area of concern for many municipalities is their potential liability should they acquire property under tax arrears and then find out that the property is contaminated.

Section 434.1 relieves a municipality of liability for such contamination provided that the municipality did not cause the contamination, that the municipality does not release any additional or new substance onto the parcel of land, or that the municipality does not aggravate the adverse effect of the contaminant that already exists on the parcel of land.

Should a contaminated tax arrears parcel be sold, the proceeds of the sale must first be applied to any remedial costs relating to the property. Remedial costs are defined as all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the Environmental Protection and Enhancement Act (section 410 of the MGA). Any remaining funds are available to satisfy the tax arrears and administrative costs specified in section 427(2).

Alternative Collection Options

Collection of Rent

Section 416

After a tax recovery notification has been placed on a title, a municipality may send a notice to any person holding a lease on a parcel of land to pay rent to the municipality instead of to the owner (section 416(1)). Any rent received must be applied to the taxes until the arrears have been paid. Once the arrears have been paid the municipality must request the Land Titles Office to remove the notification.

Not less than 14 days before asking a renter to pay rent to the municipality, the municipality must notify the owner of the municipality's intent (section 416(2)).

Tax Agreement

Section 418(4)

A municipality may enter into an agreement with the landowner to provide for the payment of the taxes. The term of such an agreement cannot exceed three years.

Should the municipality choose to exercise this option, future taxes and penalties that will occur during the term of the agreement should be considered within the agreement. A template is included in the Appendix.

Lease of Property

Section 425(2)

For the municipality to exercise this option it must first acquire title to the property under section 424. Once the municipality holds title, should it enter into a lease agreement through which the municipality receives enough money to offset the tax arrears, the municipality must return the title to the landowner. The landowner would be required to adhere to the conditions of the lease entered into by the municipality while the title was in its name.

Extension of Time

If a municipality misses any of the legislated time lines under this division, it must request a Ministerial Order providing an extension of time to complete the tax recovery process. The most common time extension provided is for not meeting the designated time period to auction the property.

The request must be sent to the Minister of Municipal Affairs and include:

- the reason that the time commitment was not met;
- the date the property should have gone for auction;
- the dates and types of correspondence that have been sent to the assessed person regarding the arrears;
- legal land description;
- Linc Number;
- Certificate of Title number; and
- the date the municipality requires the extension to for each property that was not auctioned during the designated time period.

All forms required are available in the Alberta Land Titles Procedures Manual.

Unit 2.2: Legislated Requirements Checklist

The following checklist provides an outline of the legislated requirements and various steps in Division 8, **Recovery of Taxes Related to Land** and provides a cross-reference to those sections.

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|--|----------------|-------------------------------|
| 412 | <p>Prepare Tax Arrears list:</p> <p>Send 2 copies of list to the Registrar of Land Titles no later than March 31</p> <p>Send a fax or email a copy to the Unclaimed Property Program.</p> <p>Post 1 copy for public viewing.</p> <p>Notify the person liable to pay arrears that the property has been placed on the tax arrears list.</p> | | |
| 413 | <p>Registrar's endorsement on Certificate of Title for each parcel with a Tax Recovery Notification; Registrar's certification on copy of the tax arrears list received.</p> <p>Costs for Registrar's endorsement can be added to applicable property.</p> | | |
| 414 | With Tax Recovery Notification in place improvements on property for which taxes are imposed cannot be removed without municipal consent. | | |
| 415 | If tax arrears, penalties and costs are paid in full (any time prior to being sold at public auction or disposal under s. 425), remove tax recovery notification. | | |
| 416 | <p>If parcel is rented at the time the tax notification is placed on the property the municipality may send a notice to the renter and owner directing that the rent be paid to the municipality.</p> <p>If municipality decides to exercise this option, the owner must be notified 14 days before the notice is sent to the renter.</p> | | |
| 418 | If tax agreement is in place, or an action has been started under s. 411(2), then there is no auction held. If the tax agreement is defaulted on the municipality must start where they left off prior to entering into the agreement. (Tax notification remains on title until the agreement has been fulfilled). | | |
| 418 | The date set for Public Auction is _____. Remember, this date must be between April 1st and the following March 31st one year after placing property on tax arrears list. | | |
| 419 | <p>Council must set Reserve Bid as close as reasonably possible to market value.</p> <p>Council must set any terms and conditions that apply to sale of property.</p> | | <p>Council</p> <p>Council</p> |

Municipal Checklist
Recovery of Taxes Related to Land

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|--|----------------|--------------------------|
| 420 | Municipality is entitled to possession of parcel from the date of the public auction. Application may be made to courts if owner is living on the property. | | |
| 421 | Advertise public auction in Alberta Gazette not less than 40 days and not more than 90 days prior to date of auction. Gazette Publication Date: _____ Place in one issue of a local newspaper, not less than 10 days and not more than 20 days from the date of the public auction. Publication Date: _____ | | |
| 421 | Send a copy of the Gazette advertisement not less than four weeks before the date of the auction to: 1. owner/owners of the parcel. 2. each holder of a registration against the title to the parcel. | | |
| 422 | If a adjournment of the auction is required or if the auction is cancelled due to taxes being paid, post the appropriate notice in a public place. | | |
| 423 | If a parcel is sold at public auction, and upon the purchaser meeting the conditions of the sale, transfer the title to the new owner by submitting the appropriate form to a Land Titles Office. | | |
| 424 | If parcel is not sold at public auction, municipality may, if it wishes, take title by forwarding request to a Land Titles Office to cancel existing Certificate of Title and issue new one in the name of the municipality. | | |
| 425 | If municipality acquires title pursuant to section 424 it may sell property by: Selling parcel at price as close as reasonable to market value. Purchase price \$ _____ Municipality acquires clear title by paying amount required under section 425(1)(b). Purchase price \$ _____ Municipality may grant lease, licence or permit. | | |

Municipal Checklist
Recovery of Taxes Related to Land

| MGA Section | Action | Date Completed | Person Completing Action | | | | | | | | | | | | | | | | |
|---|--|--------------------------------|--------------------------|------------------------------|--|---------------------------------------|----------|-------------|----------|-------------------------------------|----------|--|----------|---|----------|-------------------------------|----------|--|--|
| 426 | After municipality acquires title under section 424 but before parcel is sold under section 425, should all tax arrears be paid, the municipality must request a Land Titles Office to revive the title of the previous owner. | | | | | | | | | | | | | | | | | | |
| 427 | <p>Money paid for property sold at or after the public auction, or paid through a lease, licence, or permit are to be deposited into a separate account designated solely for Division 8 tax recovery proceeds.</p> <p>Surplus funds are determined as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Revenue from sale, rent, lease</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td colspan="2">Less: (in order of priority)</td> </tr> <tr> <td style="padding-left: 20px;">Remedial costs relating to the parcel</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="padding-left: 20px;">Tax arrears</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="padding-left: 20px;">Lawful expenses of the municipality</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="padding-left: 20px;">Other costs or expenses (see section 553)</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="padding-left: 20px;">Administration fee of 5% of amount paid for parcel</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Balance: Tax Recovery Surplus</td> <td style="text-align: right;">\$ _____</td> </tr> </table> | Revenue from sale, rent, lease | \$ _____ | Less: (in order of priority) | | Remedial costs relating to the parcel | \$ _____ | Tax arrears | \$ _____ | Lawful expenses of the municipality | \$ _____ | Other costs or expenses (see section 553) | \$ _____ | Administration fee of 5% of amount paid for parcel | \$ _____ | Balance: Tax Recovery Surplus | \$ _____ | | |
| Revenue from sale, rent, lease | \$ _____ | | | | | | | | | | | | | | | | | | |
| Less: (in order of priority) | | | | | | | | | | | | | | | | | | | |
| Remedial costs relating to the parcel | \$ _____ | | | | | | | | | | | | | | | | | | |
| Tax arrears | \$ _____ | | | | | | | | | | | | | | | | | | |
| Lawful expenses of the municipality | \$ _____ | | | | | | | | | | | | | | | | | | |
| Other costs or expenses (see section 553) | \$ _____ | | | | | | | | | | | | | | | | | | |
| Administration fee of 5% of amount paid for parcel | \$ _____ | | | | | | | | | | | | | | | | | | |
| Balance: Tax Recovery Surplus | \$ _____ | | | | | | | | | | | | | | | | | | |
| 427(3.1) | Subject to subsection (3.3), if there are surplus proceeds following a sale, and the municipality is satisfied that there are no debts secured by an encumbrance on the certificate of title for the parcel of land, the municipality may pay the surplus to the previous owner. | | | | | | | | | | | | | | | | | | |
| 427(3.2) | If not satisfied there are no debts secured by an encumbrance on the certificate of title, the surplus funds are not paid out and the previous owner must be notified that he or she can make an application, under s. 428(1), to the Court of Queen's Bench to obtain the surplus funds. | | | | | | | | | | | | | | | | | | |
| 427(3.3) | If the municipality is notified that the property is vested in the Crown, remaining funds are to be paid to the Minister of Treasury and Finance. | | | | | | | | | | | | | | | | | | |
| 428.1 | If no application is made by the previous landowner, or any other person who may be entitled to the proceeds, to the Courts for the surplus proceeds, the municipality can, after the 10 year period referred to in s. 428(2), make use of the funds for any purpose. | | | | | | | | | | | | | | | | | | |

Unit 3: Recovery of Taxes Related to Designated Manufactured Homes

Unit 3.1: Overview Part 10, Division 8.1

The Purpose of Part 10, Division 8.1

Division 8.1 came into effect January 1, 1999. This Division provides for the collection of tax arrears associated with designated manufactured homes (DMH); specifically, manufactured homes, mobile homes, modular homes and travel trailers – and uses the Personal Property Registry to enforce collection of property taxes levied against mobile property.

Please note that Division 8.1 only relates to DMHs that are assessed under section 304(1)(j)(i) or (k) of the *Municipal Government Act* (MGA). This Division does not apply to DMHs that are affixed to and considered improvements to land.

Divisions 8.1 and 9 may be used to recover taxes on DMHs, but in different ways. Division 8.1 allows municipalities to auction DMHs to pay tax arrears. Division 9 allows municipalities to seize goods owned by persons in tax arrears (from a tax on a designated manufactured home) and sell those goods to pay tax arrears.

When are Taxes in Arrears?

It is important to understand when DMHs with outstanding taxes are to be placed on the tax arrears list. Therefore, before looking at the Division 8.1 tax recovery process, let us consider when taxes are in arrears for a designated manufactured home.

The MGA identifies outstanding taxes in two different ways - taxes that are “unpaid” and taxes that are in “arrears.” Section 326 and section 332 are important sections in understanding this issue.

Section 326(1)(c) of the MGA defines “tax arrears” as “taxes that remain unpaid after December 31 of the year in which they are imposed.” The key part of this definition is the phrase “that remain unpaid **after December 31** of the year in which they are imposed.” Many individuals confuse unpaid taxes, which may be subject to penalty under section 344, with taxes in arrears. Again, taxes are in arrears only if they are unpaid as of January 1 of the year following the year in which they are imposed.

Section 332 states that taxes imposed under Part 10, other than a supplementary property tax or a supplementary business tax, are deemed to have been imposed on January 1. Therefore, regardless of whether the tax notice is sent in May or October, the taxes are considered to be imposed as of January 1 and are therefore one year in arrears if they remain unpaid on January 1 of the following year.

For example, the Town of Wherever mails its tax notice on May 27, 2017. The taxes are due by June 30. On July 1 any outstanding taxes are considered “unpaid” and a tax penalty may be applied under section 344. If these taxes remain unpaid as of January 1, 2018, the taxes are then considered to be in arrears (section 326(1)(c)).

With respect to tax recovery related to DMHs, section 436.03 directs municipalities regarding the preparation of the arrears list.

Municipalities should note that section 436.03 requires them to place DMHs with taxes in arrears of more than one year on the arrears list. Section 436.03 also authorizes municipalities to place DMHs with taxes in arrears for less than one year on the list. Should a municipality choose to exercise its option to list DMHs with taxes less than one year in arrears on the tax arrears list, the municipal council should adopt a policy directing its administration to undertake this action. The policy should address the circumstances under which the municipality will take this action and ensure consistent treatment.

For example, the Town of Wherever mails its tax notices on May 27, 2015, to the owner of a designated manufactured home. Any taxes that remain unpaid on that property on January 1, 2016, are considered in arrears. If those taxes remain unpaid in the year 2017, the municipality must include the designated manufactured home on its tax arrears list. However, given that section 436.03 allows a municipality to place DMHs with taxes less than one year in arrears on the tax arrears list, a municipality may include the designated manufactured home on the tax arrears list in the year 2016.

Section 357(1.1) provides for the municipality to pass a bylaw for compulsory tax installment payments for DMHs. If the installments are not kept current, a policy for including homes with less than one year of arrears on the tax arrears list may improve collections.

The Tax Recovery Process

Prepare an Arrears List

Section 436.03

The tax recovery process begins with the preparation of a tax arrears list. A sample is provided in this manual.

Each year a municipality **must, not later than March 31**, prepare a list of all DMHs that are in arrears for more than one year. As noted above, municipalities must place DMHs on the tax arrears list where taxes are in arrears for more than one year and have the option of placing DMHs on the tax arrears list with taxes less than one year in arrears.

Four to six weeks before developing its tax arrears list, the municipality may wish to send a letter to the owner of each affected DMH advising that tax recovery proceedings against his or her DMH will be started unless the tax arrears are paid. The letter should advise the owner that the municipality is required to register a lien for the amount of the arrears by March 31, and that this may be avoided by the payment of the outstanding taxes and penalties.

Once the tax arrears list is completed the municipality must post a copy of it in a place that is accessible to the general public during regular business hours, which is generally the municipal office.

Tax Recovery Lien

Section 436.03

The municipality must register a tax recovery lien against each DMH shown on its tax arrears list. The tax recovery lien is registered by completing and submitting a Financing Statement to a registry agent or a Registries Online Customer of the Personal Property Registry.

The Division 8.1 tax recovery process is dependent on the municipality having the correct serial number for the designated manufactured home. To confirm that the serial number the municipality has is correct, it may wish to check that number against the serial number located on the DMH.

Common practice today has all the relevant information about the homes placed on a Data Label. On newer homes, those produced after 1985, this label is inside the door that covers the electrical panel. Older homes, those produced prior to 1985, should have the serial number in the same location as described above. In homes built prior to 1980 the data label is usually mounted on the inside of a door on one of the kitchen cabinets. The cabinet under the sink is the most likely location. It could also be on the electrical panel door. Be sure to check all locations. If nothing is found inside the home, the most likely place to look is the front cross member of the home.

The owner of a manufactured home community should also have the serial number, make, and model of the designated manufactured home and is required to provide monthly reports regarding ownership and movement of all DMH containing this information to the municipality (section 436.24).

Another way that a municipality may be able to obtain the serial number is to require the serial number on the development application form, where required, when the designated manufactured home is moved into the municipality.

Municipalities are strongly encouraged to complete an electronic search through the Personal Property Registry using the name of the owner to see if the designated manufactured home has a unique identification number or description to determine and/or verify the serial number of the home. It may also be useful to search the Personal Property Registry by the serial number identified and any other identifiable numbers to ensure the DMH is not listed under a different owner.

If a serial number does not exist, the Modular Housing Association - Prairie Provinces may be able to provide a unique identification number for the DMH. The Modular Housing Association, located in Sherwood Park, Alberta, may be contacted at 780-429-1798. To request a new Manufactured Housing Identification Number (MHIN) the municipality will be required to complete the appropriate request form which is available from the Association.

It is critical that the municipality uses the correct serial number throughout the Division 8.1 tax recovery process. If an incorrect serial number is used, the municipality may be unable to collect its taxes or it will have to begin the process again.

Registering the Tax Recovery Lien (Statutory Charge)

Registries Online Customers or registry agents may not be familiar with the term “tax recovery lien.” Within the Personal Property Registry, the term used is “statutory charge,” which refers to a broader group of liens of which a tax recovery lien is only one.

Section 436.03(1)

To register the Tax Recovery Lien, the municipality must submit a **Financing Statement (Form REG 3411)**, to one of the registry agents throughout the province or to a Registries Online Customer (e.g., a law firm).

Unless otherwise indicated, the following areas on the Financing Statement form must be completed.

Type of Registration

The type of registration is “Statutory Charge.” Enter the amount of tax arrears.

Print or type the phrase “Designated Manufactured Home Tax Recovery Lien” in this area of the form. Also include the applicable legislation, (e.g., MGA section 436.03(1).)

Debtor #1

Identify whether the Debtor is a Business or Individual. The business or last name, the first name, middle name, street address, city, province, and postal code areas must all be completed. Include the birth date of the debtor (if available).

If the municipality needs to register the tax recovery lien against more than one debtor for the same designated manufactured home, use the “Debtor/Secured Party Additions” form and submit it along with the Financing Statement.

Secured Party

Select “Business” and include the complete municipal name, municipal office street address, province, and postal code. A municipality that deals with the Personal Property Registry frequently may have been issued a “Secured Party Code,” if so, use it.

Collateral: Serial Number Goods

It is extremely important that municipalities use the correct serial number. Also include the year, make and model of the designated manufactured home.

Collateral: General

Do not complete this section.

Authorized Signature

Type or print the name of the registering party, the phone number and sign the appropriate area of the form. If the municipality assigns file numbers to its tax recovery files, it can include this number under the “Your Reference #.” If other forms such as a “Financing Change Statement,” or “Debtor/Secured Party Additions,” are included, complete the “Page Of” section so that the Registries Online customer or registry agent knows that there are other documents associated with the Financing Statement form. The “Court Order, Other Changes and Additional Information” form, should also be submitted along with the Financing Statement. The “Additional

Information” area of that form should be completed to state the type of statutory charge and specify the Act that authorizes the charge. For example, the area should state “Manufactured Home Tax Recovery Lien - Part 10 of the Municipal Government Act, Division 8.1.”

Personal Property Security Act

There are additional rules contained in the Personal Property Security Act (RSA 2000, c P-7) that apply to registrations in the Personal Property Registry. Those requirements must also be met during the Division 8.1 tax recovery process.

Avoid Duplication

Section 436.03 (2) and (3)

Do not register a tax recovery lien if one already exists on the designated manufactured home. If two tax recovery liens are registered against a designated manufactured home, the second lien has no effect.

If the municipality wishes to make a change to an existing lien, complete a Financing Change Statement.

The Financing Change Statement is completed as follows:

Fill out all areas in the “Identification of Original Registration and Amendments.” This information will be available from the original Financing Statement or the verification statement that the municipality received when the original statement was filed. The “Additional Information” area of “Court Order, Other Changes and Additional Information” form should be completed listing the amount of the subsequent tax arrears and the year for which the additional taxes are due. This form should be included with the Financing Change Statement.

By amending the tax recovery lien, the municipality retains its priority in terms of registration and also ensures that the additional tax arrears are registered against the DMH.

Information may also be amended or corrected by using a Financing Change Statement form. For example, if the year of the DMH was listed incorrectly, a Financing Change Statement is used to make that correction.

Notification by Municipality

Section 436.03 (4) and (5)

The municipality must give written notice to the owner of each DMH shown on the tax arrears list that a tax recovery lien has been registered against it. The municipality must also give written notice to the owner of each manufactured home community where the DMH is located, advising that a tax recovery lien has been registered against the DMH.

Removal of Designated Manufactured Home or Improvements

Section 436.05

Once the tax recovery lien is registered, no person is allowed to remove the designated manufactured home or any other improvement for which the owner of the DMH is also liable to pay the taxes without the permission of the municipality.

Right to Pay Taxes

Section 436.06

After a tax recovery lien has been registered, any person can pay the tax arrears owing against that home before it is sold at public auction or disposed of in accordance with section 436.15(a).

When the municipality receives payment of the tax arrears, the municipality must discharge the tax recovery lien. Again, this discharge can be done either through a “Financing Change Statement” or by using the discharge form on the bottom of the verification statement that the municipality, or its agent, received when the Tax recovery lien was registered. The form is then submitted to any registry agent office or Registries Online Customer throughout the Province.

Do not discharge a tax recovery lien until the arrears are received in full (e.g., the cheque clears the bank). Remember, after a lien is removed, it is not possible to have it reinstated without starting the tax recovery process from the beginning.

Section 436.08(1)

The **municipality must, not later than August 1**, send a notice to the owner of the DMH, the owner of the manufactured home community where the designated manufactured home is located, and to each person who has a security interest in or a lien, writ, charge or other encumbrance against the designated manufactured home. These interests can be discovered by doing an electronic search through the Personal Property Registry using the serial number of the designated manufactured home. Again, this search is done through a registry agent or Registries Online Customer.

The notice must state that if the tax arrears are not paid by March 31 of the following year, the municipality will offer the designated manufactured home for sale at public auction.

Offer of Designated Manufactured Home for Sale

Section 436.09

If the taxes have not been paid, the municipality has not started an action under section 436.02(2), and a tax agreement has not been reached between the municipality and the homeowner, the municipality **must** offer for sale at a public auction any DMH shown on its tax arrears list. The public auction must be held following the period referred to in the notice sent pursuant to section 436.08(2) and ending on March 31 of the year immediately following that date.

Advertising the Auction

Section 436.12

The municipality must advertise the public auction by placing an advertisement in a local paper not less than 10 days and not more than 30 days before the auction. The information in the advertisement must specify the date, time, and location of the auction and a description of each DMH to be offered for sale. The advertisement must also include any conditions of the sale (e.g., cash only, percentage down, or payment by a specified date) as set by council (see section 436.1).

These advertising processes are mandatory. If they are not met the auction results can be nullified.

Contacting the Owner and Interested Parties Before the Auction

Section 436.12(3) states that not less than four weeks before the date of the public auction, the municipality must send a copy of the newspaper advertisement to the owner of the DMH, the owner of the manufactured home community and to each person who has a security interest in or a lien, writ, charge or other encumbrance against the DMH as disclosed by doing a search of the Personal Property Registry using the serial number of the DMH.

It is strongly suggested that municipalities complete another search of the Personal Property Registry at this time to ensure that no other registrations have occurred since the previous year.

Setting a Reserve Bid and Sale Conditions

Section 436.1

Council must establish a reserve selling price before the DMH can be auctioned. The reserve bid must be set as close as reasonably possible to the DMH's market value. The municipality's assessor or an independent appraiser can provide Council with a current written report that establishes market value.

Remember, the reserve bid must be set as close as reasonably possible to market value and not just at the amount that is owed to the municipality (taxes and costs). Council must also set any conditions applying to the sale.

For example, Council may require full payment by cash or certified cheque or Council may allow partial payment at the time of auction with full payment required within 30 or 60 days.

Adjourning the Auction

Section 436.13

A municipality may adjourn a public auction to any date within two months after the advertised sale date (section 436.13). It is not required to advertise the adjournment, but the municipality must post a notice, in an accessible public place, of the new date and place when the auction will be held and send a notice to the parties referred to in section 436.08(1).

Adjournments can be used to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met.

For example, if the municipality failed to place the advertisement in a local newspaper within the 10 to 30 day period preceding the auction, the municipality can postpone the auction to meet this condition.

Sometimes tax arrears are paid just hours or days prior to the public auction. In such cases, it is recommended that the auction be adjourned rather than cancelled, to allow for the cheque to clear the bank. Municipalities should remember that if the public auction is cancelled, and the cheque does not clear the bank, the tax recovery process will have to begin again from the advertising point.

Holding the Auction

The municipality must select the person to conduct the auction. It can choose a professional auctioneer, but in most cases the designated officer acts as the auctioneer. Guidelines for conducting the auction process are provided in this manual.

Once the auctioneer declares a DMH sold, the sale is final and no further approval is required. The previous owner has no further right to pay the tax arrears.

Section 436.21 restricts the auctioneer, councillors, the Chief Administrative Officer, and the employees of the municipality from bidding on, or acting as an agent in buying the DMH. However, a designated officer or employee can be directed to bid for or buy a DMH for the municipality if the municipality wishes to become the owner of the DMH.

The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council with information in case a sale is protested.

If no bids are received on a DMH or if the reserve bid is not met, the DMH cannot be sold at the auction.

Municipal Responsibilities/Rights Following the Auction

Section 436.15

A municipality can dispose of a DMH not sold at the public auction at any time following the auction. However, it must follow the steps as outlined below in disposing of the DMH and in retaining and paying out any proceeds generated from selling the DMH.

Municipality's Rights to Possession Following the Public Auction

Section 436.11

The municipality is entitled to possession of the DMH from the date on which the DMH is offered for sale at a public auction. If a DMH is occupied and the municipality encounters resistance, the municipality may apply to the Court of Queen's Bench for an order for possession.

Municipal Rights and Responsibilities for DMHs Not Sold at the Public Auction

Section 436.15

When disposing of an unsold DMH, the municipality is obligated to sell the DMH at a price as close as reasonably possible to the market value. Options regarding this sale include direct sale, sale by tender, or sale through a real estate agreement.

If the municipality exercises this option, transfer of the DMH is accomplished by issuing a bill of sale under the name of the municipality to the purchasing party. The bill of sale should reflect that the sale is in relation to tax recovery proceedings. On selling the DMH, the municipality must discharge the tax recovery lien using a Financing Change Statement. It must also amend or discharge any security interest in, or lien, writ, charge or other encumbrance against the DMH that exists as of the date of the sale (see section 436.14(2)).

If a DMH is sold, the municipality should advise the purchaser that it is his or her responsibility to deal with the community owner regarding site rental if they wish to leave the home in the community.

Second, the municipality can purchase the home itself by depositing in its tax sale account an amount equal to the amount at which it would be prepared to sell the DMH to a private individual.

The third option is to lease the DMH. If the municipality exercises this option it must ensure that the lease agreement includes a thirty (30) day cancellation condition given the provisions of section 436.16.

Municipal Responsibilities on DMHs Sold at the Public Auction

Section 436.14

Anyone purchasing a DMH at a public auction acquires the DMH free of all security interests, liens, writs, charges and other encumbrances except claims arising of the Crown in right of Canada.

After the sale of a DMH at a public auction or sale under section 436.15(a), the municipality must complete and submit a Financing Change Statement to amend or discharge the tax recovery lien. The municipality must amend to exclude the home from the registration, or discharge the registration if the DMH is the only collateral described.

Return of Designated Manufactured Home

Section 436.16

If tax arrears for the DMH are paid before the municipality sells the DMH under section 436.15(a), or while leasing the DMH, the municipality must return the DMH to its owner.

Before returning the DMH to the owner, the municipality must send a written notice to the owner of the DMH, to the owner of the manufactured home community where the DMH is located, and to each person who has a security interest in or a lien, writ, charge or other encumbrance against the DMH as registered in the Personal Property Registry. If the municipality leased the DMH, the municipality must also send a notice to the person who has leased the DMH.

Municipalities must ensure that this notification occurs as it allows the notified parties an opportunity to ensure that their secured interests, writs, etc., are still in place, or to reinstate those interests if the situation requires.

The notice must state that the DMH will be returned to the owner after 30 days from the date of the notice. If a lease was entered into, the lease will expire 30 days after the date of the notice.

Ensure that any lease the municipality enters into concerning DMHs includes a 30-day termination clause. The lease provisions of section 436.16 apply despite anything contained in the Residential Tenancies Act. Any lease beyond that 30 day notification period will be null and void.

Selling Occupied Designated Manufactured Homes

Sometimes a sale of a DMH cannot be completed without, or is conditional on, the previous owner or a renter being removed from the DMH. If the municipality encounters resistance from the DMH owner when they attempt to take possession, the municipality may apply to the Court of Queen's Bench for an order for possession (section 436.11).

Proceeds from Sales and Leases

Sections 436.17 and 436.18

All funds generated from the public auction, a private sale, leases or other forms of revenues from a DMH must first be deposited into a separate account established solely for Division 8.1 tax recovery revenues.

The municipality must pay, in order of priority, the tax arrears, any lawful expenses related to the tax recovery process, and an administration fee of five percent of the sale amount.

If any funds from the public auction or sale remain, the municipality must notify the previous owner that there is money remaining. If the municipality is satisfied after a search of the Personal Property Registry using the serial number of the DMH that there are no security interests in, liens, writs or other encumbrances against the DMH, the municipality may pay the money remaining to the previous owner.

If the municipality is not satisfied after a search of the Personal Property Registry using the serial number of the DMH that there are no security interests in, liens, writs or other encumbrances against the DMH, it must notify the previous owner that an application may be made to the Court of Queen's Bench to recover all or a part of the proceeds.

Under section 436.18, the former owner or other interested party will have five (5) years after the date of the public auction or the date of sale, depending on how the DMH was sold, to make an application to the courts to be paid any surplus sale proceeds. If no application is made within either five-year period, the municipality may use the money for its own purposes (section 436.19).

Transfer to the Municipality After 10 years

Section 436.2

If a DMH has not been sold ten (10) years after the date of the auction, sections 436.16, 436.17 and 436.18 no longer apply. The municipality becomes the owner of the DMH free of all security interests, liens, writs, charges or other encumbrances, except encumbrances arising from claims of the Crown in Right of Canada. To accomplish this, the municipality needs to discharge, or amend as necessary, the registrations.

Designated Manufactured Home Moved to Another Municipality

Section 436.22

If the DMH is moved to, or its site becomes part of, another municipality, the other municipality must continue the tax recovery proceedings. The designated officer of the receiving municipality should ensure that a Financing Change Statement is registered to list the new municipality as the Secured Party.

The receiving municipality must pay to the municipality that started the tax recovery proceedings, to the extent that the second municipality receives sufficient money to do so, the costs incurred by the original municipality in connection with the tax recovery proceedings.

Alternative Collection Options

Collection of Rent

Section 436.07

After a tax recovery lien has been registered against a DMH, the municipality may send a notice to any person who rents or leases the DMH directing them to pay the rent for the DMH only to the municipality, instead of to the owner of the DMH. The rent for the DMH must be applied to the outstanding taxes until the arrears have been paid. Once the arrears have been paid, the municipality must then direct the tenant to forward payment to the DMH owner.

At least 14 days before asking a renter to pay rent to the municipality, the municipality must notify the owner of its intention to collect the rent. The municipality must also send a copy of the notification to the owner of the DMH community.

Tax Agreement

Section 436.09(4)

A municipality may enter into an agreement with the owner of the DMH to provide for the payment of the taxes. It is suggested that when drafting such an agreement, the municipality should also consider any penalties and taxes that may accrue during the term of the agreement.

A tax agreement template is included in the Appendix.

Lease of Designated Manufactured Home

Section 436.15

If a DMH is not sold at a public auction, the municipality may grant a lease in respect of it.

Should the lease payment pay off the tax arrears, the DMH is to be returned to the previous owner and the lease will be considered null and void 30 days after the date of the notice (section 436.16(3))

Extension of Time

If a municipality misses any of the legislated timelines under this division, they must request a Ministerial Order providing an extension of time to complete the tax recovery process. The most common time extension provided is for not meeting designated time period to auction the property.

The request must be sent to the Minister of Municipal Affairs and include:

- the reason that time commitment was not met;
- the date the DMH should have gone for auction;
- the dates and types of correspondence that has been sent to assessed person regarding the arrears;
- the year;
- make/model;
- serial number; and
- the date to which the extension is required;

for each DMH that requires an extension of time during the tax recovery process.

All forms are available online at Personal Property (Lien) Registry Information and Forms or from a registry agent.

Unit 3.2: Checklist

The following checklist provides an outline of the legislated requirements and various steps in Division 8.1, **Recovery of Taxes Related to Designated Manufactured Homes** and a cross-reference to those sections.

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|---|----------------|--------------------------|
| 436.03 | <p>Prepare Tax Arrears list:</p> <p>Date: _____ (ensure date is prior to March 31).</p> <ul style="list-style-type: none"> - Post one copy for public viewing. - The serial number has to be obtained to register the Tax Recovery Lien on the Personal Property Registry. - Notify the owner that a tax recovery lien has been registered against the DMH. - Notify the owner of the manufactured home community that a tax recovery lien has been registered against a DMH. | | |
| 436.05 | File a financing statement with Alberta Registries. With Tax Recovery Lien in place the DMH and improvements on the site cannot be removed without municipal consent. | | |
| 436.06 | If the tax arrears, penalties and costs are paid in full (any time prior to being sold at public auction or being disposed of under s. 436.15(a)), discharge the tax recovery lien. | | |
| 436.07 | If the DMH is rented at the time the tax recovery lien is registered against the DMH, the municipality may send a notice to the renter and owner directing that the rent be paid to the municipality. If the municipality exercises this option, the owner of the DMH and the owner of the manufactured home community must be notified at least 14 days before the notice is sent to the renter. | | |
| 436.08 | <p>Not later than August 1, send a written notice advising that unless the tax arrears are paid by March 31, the municipality will offer the DMH for sale at public auction. Notice sent to:</p> <ul style="list-style-type: none"> - owner of the DMH. - owner of the manufactured home community. - each person with a security interest in or a lien, writ, charge or other encumbrance against the DMH. | | |
| 436.09 | If tax agreement is in place, or an action has been started under s. 436.02(2), then there is no auction held. If the agreement is defaulted on the municipality must start where they left off prior to entering into the tax agreement. (Tax notification remains on title until the agreement has been fulfilled). | | |
| 436.09 | The date set for Public Auction is _____. Remember, this date must be between April 1st and March 31st in the year following when the DMH was placed on the tax arrears list. | | |

Municipal Checklist
Recovery of Taxes Related to Designated Manufactured Homes (DMH)

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|---|----------------|-------------------------------|
| 436.1 | <p>Council must set the reserve bid as close as reasonably possible to market value.</p> <p>Council must set any conditions that apply to the sale of the DMH.</p> | | <p>Council</p> <p>Council</p> |
| 436.11 | <p>The municipality is entitled to possession of the DMH from the date of the public auction.</p> <p>Application may be made to the courts if owner or renter resists.</p> | | |
| 436.12 | <p>Place a notice of the public auction in one issue of a local newspaper, not less than 10 days and not more than 30 days before the date of the public auction.</p> <p style="text-align: center;">Publication Date: _____</p> <p>Send a copy of the advertisement not less than four weeks before the date of the auction to:</p> <ol style="list-style-type: none"> 1. owner/owners of the DMH. 2. manufactured home community owner. 3. each person/organization with a security interest in or a lien, writ, charge or other encumbrance against the DMH. | | |
| 436.13 | <p>If an adjournment of the auction is required, or if the auction is cancelled as the taxes are paid, post the appropriate notice, as required by either ss. 436.13(2) or 436.13(3), in a public place and send notice to all parties referred to in s. 436.08(1).</p> | | |
| 436.14 | <p>If the DMH is sold at a public auction, and the purchaser meets the conditions of the sale, transfer the ownership to the purchaser by:</p> <ul style="list-style-type: none"> - issuing a bill of sale, and discharge the tax recovery lien and discharge or amend other security interests, liens, writs, charges or other encumbrances by completing and registering a Financing Change Statement. - sell the DMH at a price as close as reasonable to market value. - Sale price \$ _____ - purchase the DMH at the amount equal to the price the municipality would be willing to sell the DMH under 436.15(a)(i) at. - Purchase price \$ _____ - grant a lease. - Date of lease: _____ Lessor's Name: _____ | | |
| 436.16 | <p>If all tax arrears are paid before the municipality disposes of the DMH, or while a lease is in place, the DMH must be returned to the previous owner. Written notice of this action must be sent to:</p> <ol style="list-style-type: none"> 1. owner of the DMH. 2. owner of the manufactured home community. 3. each person with a security interest in or a lien, writ, charge 4. the person leasing the DMH (if applicable). | | |

Municipal Checklist
Recovery of Taxes Related to Designated Manufactured Homes (DMH)

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|--|----------------|--------------------------|
| 436.17 | <p>Money paid for property sold at the public auction, sold after the public auction, or paid through a lease is to be deposited into a separate account designated solely for Division 8.1 tax recovery proceeds.</p> <p>Surplus funds are determined as follows: Revenue from sale, nd/or lease \$ _____ Less: (in order of priority) Tax arrears \$ _____ Lawful expenses of the municipality re: DMH \$ _____ Other costs or expenses (see section 553) \$ _____ Administration fee of 5% of amount paid for DMH \$ _____ Balance: Tax Recovery Surplus \$ _____</p> <p>If there are surplus proceeds following a sale, the municipality must notify the previous owner and may pay the surplus to the previous owner if, the municipality is satisfied that there are no security interests in or liens, writs, charges or other encumbrances against the DMH (section 436.17(5)).</p> | | |
| 436.18 | <p>If the municipality is not satisfied after a search of the Personal Property Registry that there are no security interests in or liens, writs, charges or other encumbrances against the DMH, the surplus funds are not paid out and the previous owner must be notified that he or she may apply to the Court of Queen's Bench to obtain the surplus funds within 5 years after the date of the public auction or date of sale.</p> | | |
| 436.19 | <p>If the previous DMH owner, or other persons who may be entitled to the surplus proceeds, does not apply to the Courts within a five (5) year period after the date of public auction or sale, the municipality can use the surplus funds for any purpose.</p> | | |
| 436.2 | <p>If the DMH has been offered for sale but is not sold at public auction and the municipality has not disposed of it by private sale, the municipality becomes owner of the DMH, free of all security interests, liens, writs, charges and other encumbrances except encumbrances arising from claims of the Crown in right of Canada, 10 years after the date of the public auction. The municipality may complete a Financing Change Statement to amend the collateral description in a registration in order to exclude the DMH, or discharge registrations, if the DMH is the only collateral described in the registration. The municipality should discharge the tax recovery lien.</p> | | |
| 436.22 | <p>If the DMH is moved to another municipality, the new municipality must continue with tax recovery proceedings.</p> <p>Records forwarded Date: _____ Recovery costs paid on: _____ Amount \$ _____</p> | | |

Unit 4: Recovery Of Taxes Not Related To Land

Unit 4.1: Overview Part 10, Division 9

The Purpose of Part 10, Division 9

Division 9 provides for the collection of tax arrears not related to land. **The taxes to which Division 9 applies are: a business tax, a well drilling equipment tax, a community aggregate payment levy, or a property tax or community revitalization levy imposed in respect of property referred to in section 304(1)(c), (f), (g), (h), (i), (j)(i) or (k) of the MGA.**

Division 9 provides for the **seizure of personal property** of the person responsible for the taxes, through an order called a “distress warrant,” to enforce collection of the tax arrears. When using this method for tax recovery on a designated manufactured home, the municipality is still seizing goods, not the home.

When are Taxes in Arrears?

The tax arrears provisions of Division 9 are different than the provisions that apply to Division 8 and Division 8.1. Therefore, before discussing the tax recovery process, it is important to understand when taxes are in arrears.

The MGA identifies outstanding taxes in two different ways, taxes that are “unpaid” and taxes that are in “arrears.” Section 437(d) of the MGA defines “tax arrears” as “taxes that remain unpaid after the expiry of the period for payment.”

The “period of payment” (section 437(b)) is defined as:

- (i) if the person liable to pay the tax is a resident of the municipality, the 14 days following the sending of the tax notice by the municipality, or
- (ii) if the person liable to pay the tax is not a resident of the municipality, the 30 days following the sending of the tax notice by the municipality.

This means if the notice is mailed to an address within the municipality, the taxes are in arrears after the 14 day payment period; and if the notice is mailed to an address outside the municipality, the taxes are in arrears after the 30 day payment period.

It is important to note that the tax notice must indicate and allow for the correct period of payment, before this method of tax recovery is used.

It is also important to ensure that the person or business considered in tax arrears under Part 10, Division 9 is the “assessed person” identified under Column 2 of section 304 of the MGA, the person liable to pay a business tax according to section 373 of the MGA, or the person liable to pay a well drilling equipment tax according to section 389 of the MGA.

The Tax Recovery Process

Prepare a Distress Warrant

Section 437 of the MGA defines a distress warrant as “written instruction to seize goods of the person named in the warrant.”

A distress warrant is the formal authorization from the municipality directing a civil enforcement agency or a designated officer of the municipality to enforce the collection of the tax arrears through the seizure of personal property.

Section 439

The tax recovery process provided for within Part 10, Division 9 begins with the preparation of a distress warrant. Prior to the issuance of the distress warrant, the municipality will have to determine who will be acting on its behalf regarding the preparation and issuance of the distress warrant. It may use a civil enforcement agency (previously known as a “sheriff”) or the municipality may use one of its staff, who must either be, or be appointed as, a designated officer.

The distress warrant should:

- a) identify the person or agency authorized to act on behalf of the municipality;
- b) identify the person or business whose personal property is being seized;
- c) include the amount of the debt to be satisfied;
- d) identify the location of the personal property to be seized; and
- e) include the date, the location where the warrant is signed, and the name of the person authorizing the issuance of the distress warrant.

The distress process used by the designated officer or the civil enforcement agency is guided by the MGA, not the Civil Enforcement Act.

The nearest civil enforcement agency can be located by contacting the Sheriff’s Civil Enforcement Office at 780-422-2481.

Except when specifically authorized, a distress warrant must not be issued until the period for payment has expired. If circumstances require, the municipality may apply to a justice of the peace for an order authorizing it to issue the distress warrant before the period of payment expires (section 442).

For example, if the municipality is aware that a company intends to move some equipment out of the municipality and the period of payment has not expired, the municipality may make an application to a justice of the peace to allow it to issue the distress warrant prematurely.

Seizure of Goods

Section 440

Once the distress warrant has been issued, a civil enforcement agency or the designated officer must place **sufficient** goods under seizure to satisfy the claim shown on the warrant.

Section 441

The person or agency directing the seizure must ensure that the value of the goods is sufficient to satisfy the value of the tax arrears and other lawful expenses (as per section 449(2)) of the municipality.

For example, a person owes \$8,000 in tax arrears. If the person has a house valued at \$80,000, the civil enforcement agency cannot place the house under seizure. If that person has a boat valued at \$3,000, a stereo valued at \$1,000 and a truck valued at \$5,000, those items could be seized because their total value is equal to the person's tax arrears. A motor home valued at \$9,000 could also be seized to satisfy the tax arrears.

While not a requirement of the tax recovery process, it would be prudent for the municipality to have an independent appraiser determine the value of the goods at the time of seizure.

Section 441

The following goods may be seized under a distress warrant:

- (a) Goods belonging to the person who is liable to pay the tax arrears or in which that person has an interest;
- (b) Goods of a business that is liable to pay business tax arrears, even if the goods have been sold to a purchaser of the business; and
- (c) Goods of a corporation that are in the hands of
 - i) a receiver appointed for the benefit of creditors,
 - ii) an authorized trustee in bankruptcy, or
 - iii) a liquidator appointed under a winding-up order.

If the person who is responsible to pay the taxes is storing goods for someone else, the municipality must not seize those goods. Therefore, it is prudent to check on the ownership of the goods the municipality is seizing.

It is also recommended to seek legal advice to ensure any requirements under other provincial and federal legislation are met.

Bailee's Undertaking

Section 440(2)

The designated officer or civil enforcement agency placing the goods under seizure may ask the person who owns or has possession of the seized goods to sign a bailee's undertaking.

The bailee's undertaking is an agreement between the municipality and the person whose property is being seized or, in the case where a third party is storing property for the person whose property is being seized, the third party. By signing the bailee's undertaking the individual is agreeing to hold and be responsible for the seized property for the municipality.

The individual also agrees to deliver the personal property whenever and wherever it may be required. This means that the municipality does not have to remove the goods from the property. If the person refuses to sign a bailee's undertaking, the designated officer or the civil enforcement agency is allowed to remove the goods from the premises.

Leaving seized goods in their environment is especially useful in cases where removing them is complicated or impossible. Once the goods have been placed under seizure and the bailee's undertaking signed, only the municipality - not the person from whom they have been seized - can legally remove or sell them.

If seized goods are left in their place, there is a chance that someone else may remove them, leaving the municipality with nothing to cover its tax arrears. Therefore, the municipality should consider the implications and risk to the municipality before agreeing to leave the seized goods.

Once a bailee's undertaking has been signed, the goods specified in it are considered seized until the municipality abandons the seizure by written notice or sells the goods at a public auction. In addition, the goods are to be released from seizure if the taxes and the municipality's lawful expenses are paid before the goods have been sold.

If a bailee's undertaking is signed, the municipality is not liable for wrongful or illegal seizure or for loss or damage to the goods that it has seized.

Right to Pay Tax Arrears

Section 443

Once the goods have been seized under a distress warrant any person may pay the taxes until the goods are sold under section 445(1) or acquired by the municipality under section 448.

Do not release the goods from seizure until the arrears and penalties are received in full (e.g., the cheque clears the bank). Remember, after the distress warrant is removed, it is not possible to have it reinstated without starting the tax recovery process by issuing another distress warrant.

Advertising the Auction

Section 445

Advertisement of the public auction must be posted not less than 10 days before the date of the auction in at least three public places in the municipality near the goods to be sold. The information in the advertisement must specify the date, time, and location of the auction, a description of the goods to be sold, and the name of the person whose goods are to be sold. The advertisement must also include any conditions of the sale (e.g., cash only, percentage down, or payment by a specified date). As well, the advertisement must state that the municipality will become the owner of any goods not sold at the auction immediately after the public auction.

The advertisement of the public auction must be properly posted. If the above

requirements are not met the auction results can be nullified.

Date of Auction

Section 446

Unless the municipality has started another type of legal action under another Act or common law right, the municipality must hold a public auction **not more than 60 days after seizing the property.**

Section 447

There is one exception: grain does not have to be sold at public auction. The grain can be hauled to an elevator or other convenient storage place and be disposed of at the current market price.

Adjourning the Auction

Section 446(2)

The municipality may adjourn the public auction by posting new auction notices in at least three public places in the municipality near the goods showing the new date when the auction will occur.

Adjournments are often put in place to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met. If payment is received shortly before an auction, the municipality should adjourn, rather than cancel, the auction to ensure that the cheque clears the bank.

Holding the Auction

The municipality **must hire a licenced auctioneer** to conduct the auction. Under section 120(2) of the Fair Trading Act, goods taken in distress for the recovery of taxes must be sold by a qualified auctioneer. See section 6 of the Public Auctions Regulation, Alta Reg 196/1999.

Once the auctioneer declares the goods as sold, the sale is final and no further approval is required.

The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council and the municipality with information in case a sale is protested.

Municipal Responsibilities/Rights Following the Auction

Section 448

The municipality becomes the owner of any goods offered for sale that are not sold at a public auction immediately after the public auction, and may dispose of the goods by selling them.

There is no need for the establishment of a reserve bid.

Proceeds from Sale of Goods

Section 449

The money received from the sale of the goods must first be deposited into a separate account specifically established for Division 9 tax recovery proceeds. The municipality must then pay in order of priority:

- 1) the tax arrears, and
- 2) any lawful expenses incurred by the municipality in respect of the goods.

Examples of lawful costs are: civil enforcement agency fees, advertising costs, auctioneer costs, filing fees, and legal costs.

Distribution of Surplus Sale Proceeds

Section 450

If there are any funds remaining, the municipality must notify the previous owner that there are surplus funds, and that the owner may apply to the Court of Queen's Bench for the money. This application may be made within five years after the date of the public auction. It is up to the Court to decide whether any person other than the applicant should be notified.

Seizure of Designated Manufactured Homes

Section 451

In addition to the provisions of Division 8.1, a municipality may use the provisions of Division 9 to seize goods in the amount of the tax arrears owed for designated manufactured homes located in a manufactured home community. Part 10 of the Civil Enforcement Act deals with who can be appointed as a civil enforcement bailiff. The MGA allows the CAO or a designated officer to fill that role.

Alternative Collection Options

Collection of Rent

Section 451

If the distress warrant has been issued to recover tax arrears in respect of a business, and the person who is liable to pay the business tax arrears owns property and leases or rents the property to one or more tenants, the municipality may direct those tenants to pay their rent to the municipality until the business tax arrears have been paid.

Not less than 14 days before notifying a renter to pay rent to the municipality, the municipality must notify the owner of the municipality's intent.

If the municipality exercises this option, it may still pursue the distress warrant options or any other right to collect taxes.

If the municipality chooses not to hire an authorized Civil Enforcement Agency to perform the seizure of goods, the required forms are available from the Alberta Queen's Printer in the Civil Enforcement Regulation.

Unit 4.2: Checklist

The following checklist provides an outline of the legislated requirements and various steps in Division 9, **Recovery of Taxes Not Related to Land** and a cross-reference to those sections.

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|--|----------------|--------------------------|
| 442 | Period of Payment determined to have expired. Date of Tax Notice: _____ Person liable for taxes lives: 1. in municipality (14 days). 2. outside municipality (30 days). | | |
| 439/440 | Prepare Distress Warrant. Authorize designated officer, in writing, to prepare and issue a Distress Warrant and to seize goods, or Appoint staff member to position of designated officer, and authorize in writing the preparation and issuance of a Distress Warrant, and the seizure of goods, or Hire a Civil Enforcement Agency to seize goods on behalf of the municipality. | | |
| 449 | Estimate of Tax & Other Costs Amount of taxes owing \$ _____ Estimated total lawful costs \$ _____ | | |
| 440 441 | Seize Goods Date Seized _____ Items Seized: Description _____ Serial # _____ Estimated Value _____ (list as necessary) TOTAL: _____ Bailee's Undertaking Signed (optional) | | |
| 440/443 | Seizure discontinued because: Taxes Paid (s. 443(2)) Abandoned Reason (Section 440(5)(a)) _____ Other (e.g., sold the goods; Court Order) (describe) _____ Tax arrears, penalties and costs are paid in full (any time prior to public auction). Date Paid _____ | | |
| 444 | Collection of Rent for Business Tax arrears. Notice sent to person liable to pay tax (if a property owner) 14 days prior to notification of renter, advising of municipality's intention to collect rent. Date Sent _____ | | |

Municipal Checklist
Recovery of Taxes Not Related to Land

| MGA Section | Action | Date Completed | Person Completing Action | | | | | | | | |
|-------------|---|----------------|--------------------------|-------------|-------|--|--|--|--|--|--|
| 445 | <p>Sale of Personal Property</p> <p>Municipality has initiated other action under 438(2). Auction delayed. If not, then:</p> <ul style="list-style-type: none"> • Set date for Auction (must be within 60 days after goods seized - section 446). Date for Auction: _____ • Post notice in at least 3 public places in the municipality close to goods advertising date of auction (at least 10 days notice). Locations Posted: _____ _____ • Notice must include date, time, location, conditions of sale, description of goods to be sold, and name of person whose goods are to be sold, and must also state that the municipality will become the owner immediately after auction if goods are not sold. | | Council Council | | | | | | | | |
| 446 | <p>Adjournment of Public Auction</p> <ul style="list-style-type: none"> • Auction adjourned to: • Post notice in at least 3 public places in the municipality close to goods advertising new date of auction (at least 10 days notice). Locations Posted: _____ _____ • Notice must include date, time, location, conditions of sale, description of goods to be sold, and name of person whose goods are to be sold, and must also state that the municipality will become the owner immediately after auction if goods are not sold. | | | | | | | | | | |
| 447 | <p>Sale of Grain</p> <p>Grain seized:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Type</th> <th style="width: 15%;">Grade</th> <th style="width: 20%;">Sold At</th> <th style="width: 50%;">Price</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | Type | Grade | Sold At | Price | | | | | | |
| Type | Grade | Sold At | Price | | | | | | | | |
| | | | | | | | | | | | |
| 448 | <p>Goods not sold at auction so municipality becomes owner. The municipality may retain ownership or sell the property.</p> | | | | | | | | | | |
| 448 | <p>Money received:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Item</th> <th style="width: 25%;">Serial #</th> <th style="width: 50%;">\$ Received</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | Item | Serial # | \$ Received | | | | | | | |
| Item | Serial # | \$ Received | | | | | | | | | |
| | | | | | | | | | | | |

Municipal Checklist
Recovery of Taxes Not Related to Land

| MGA Section | Action | Date Completed | Person Completing Action |
|-------------|---|----------------|-------------------------------|
| 449 | <p>Money paid for goods sold at the public auction, sold after the public auction, or paid through rent from leased property owned by the person liable to pay business tax arrears, are to be deposited into a separate account designated solely for Division 9 tax recovery proceeds.</p> <p>Surplus funds are determined as follows: Revenue from the sale or rent from property per s. 444(1) \$ _____</p> <p>Less: (in order of priority)</p> <p style="padding-left: 20px;">Tax arrears \$ _____</p> <p style="padding-left: 20px;">Lawful expenses of the municipality in respect of the goods (e.g., Sheriff's fee) \$ _____</p> <p>Balance: Tax Recovery Surplus \$ _____</p> <p>If there are surplus proceeds following a sale, the municipality must notify the previous owner of the surplus money and that an application may be made under s. 450 to recover all or part of the money.</p> | | <p>Council</p> <p>Council</p> |
| 450 | <p>If there are surplus funds, the previous owner can make an application to the Court of Queen's Bench to obtain the surplus funds.</p> | | |

Appendices

Tax Agreement Template

Disclaimer: This template is provided as an example of what a tax agreement concerning tax recovery might contain. Municipalities wishing to enter into such a tax agreement are strongly encouraged to contact their lawyer with respect to an agreement. The inclusion of this template within this manual is in no way intended as an endorsement of the legality of it.

MEMORANDUM OF AGREEMENT made this ____ day of _____, ____.

BETWEEN:

(hereinafter referred to as the "Landowner")

AND

(hereinafter referred to as the "Municipality")

WHEREAS the Landowner is the owner of the parcel legally described as

(hereinafter after referred to as the "Lands") and,

WHEREAS the Landowner acknowledges that the Lands are in tax arrears, as property taxes have not been paid since (insert date) and are subject to tax recovery proceedings; and,

WHEREAS, the Landowner wishes to enter into an agreement to provide for the timely payment of all tax arrears and any taxes that will be levied during the term of this Agreement; and,

WHEREAS, the Municipality is agreeable to entering into such an agreement, pursuant to section 418(4) of the Municipal Government Act (MGA);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual terms, covenants, and conditions herein, the parties hereto agree as follows:

1. **TERM OF THIS AGREEMENT**

The term of this Agreement shall be from _____, ____ to _____, _____. *(Note: The term of the agreement cannot exceed three years.)*

2. **METHOD OF PAYMENT**

a) Payment shall be made as calculated _____.

b) Payment shall be received on the _____ day of each month beginning on the ____ day of _____, ____.

3. MUNICIPAL RESPONSIBILITIES

- a) _____.
- b) _____.

4. GENERAL

- a) _____.
- b) _____.

5. TERMINATION

This Agreement shall come to an end:

- a) As per section 418(4).

6. REPRESENTATIVES

For the Landowner: For the Municipality

(Name)

(Name)

(Address)

(Address)

(Municipality)

(Municipality)

(Phone)

(Phone)

7. SIGNATURE

Witness

Witness

Landowner

Municipality

Letter - Tax Notification or Tax Lien

[Date]

[Name]

[Address]

Dear [Name]

This letter is to inform you that a Tax Notification has been filed on title for (Insert legal description) or a tax recovery lien has been registered against your designated manufactured home. Under the Municipal Government Act, we are required to start tax recovery proceedings. The end result of this process may be the sale of your property (designated manufactured home) through a public auction. If we receive payment in the amount of \$XXX, to cover the tax arrears, the auction will not take place. Please contact the office at (XXX) XXX-XXX to discuss this matter further or to make arrangements for the payment of the outstanding taxes.

Thank you.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Note: Also send a similarly worded letter to the owner of the DMH community (per sections 436.03(5)).

Letter – Notification of Public Auction

[Date]

[Name]

[Address]

Dear [Name]

Enclosed is a copy of the advertisement relating to the public auction of your property.

Please be aware that unless payment in the amount of \$XXX (arrear balance) is received prior to, the date of auction, the public auction the auction will proceed and the parcel (or designated manufactured home) may be sold. If your parcel (or designated manufactured home) does not sell, the municipality will have the option of taking title.

If you have any questions regarding the public auction or with respect to payment options please contact me at (XXX) XXX-XXXX.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Note: Also send a similarly worded letter to the owner of the DMH community and each individual/organization with registration against DMH (per sections 436.03(5) and 436.08(1)).

Public Auctions

The following are considered best practices for conducting a public auction:

- Declare the public auction open.
- Advise the audience of the auction procedures - how the auction will be conducted.
- Repeat the terms and conditions as outlined in the advertisement; for example, full payment, partial payments (percent down with remainder over a prescribed period, etc).
- Announce that you will be reading, only once, the description of each property that is being offered for sale, and, if there are no bids, you will automatically go on to announce the next property up for bid. Bidders will not be able to go back and bid on a property that has closed (which is after subsequent properties have been put up for auction). The order of properties being auctioned will follow the order presented in the advertisement.
- Announce that bidders will be notified of the reserve bid for each property at the time it is put up for auction.
- Remind bidders that if there are any questions, they should ask them now, or they may question specifics of a particular property at the time the property is offered.
- Let potential bidders know that after all properties have been announced, the auction will be concluded. There will not be an opportunity to bid after that time.
- Notify successful bidders that payment for properties will be received after bidding has been concluded for all properties.
- If there is a question and you do not know the answer, adjourn the auction until you are able to obtain and give an answer. You can adjourn the auction to any date within 2 months after the advertised date.
- If you have hired a private auctioneer, it is advisable to have a municipal representative present at the auction to verify that the proper processes and procedures have been followed. This is important so that the council is not put in an awkward position by unhappy bidders following the auction.
- Minutes and/or a report of the auction should be kept and the information included in a report to council (for example, legal descriptions or designated manufactured home description, whether or not the property was purchased, and the amount of the sale) for each property.

Arrears List - Designated Manufactured Homes

Tax Recovery Arrears List

To be posted no later than March 31

Municipal Government Act s. 436.03

| | | | |
|---|-------|-------------------|--------------|
| Municipality: | | Telephone Number: | |
| Street: | City: | Prov: | Postal Code: |
| P.O. Box (if applicable): | | Reference #: | |
| Signature of authorized officer and seal: | | Date: | |

The descriptive information is not required if the make, model and serial number is provided.

| Serial Number | Year | Make | Model | Location of Manufactured Home Community |
|---------------|------|------|-------|---|
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