

# **Delinquent Tax Collection Methods**

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Municipal Assistance Center**

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# Delinquent Tax Collection Methods

- **Collection Policy**
- **Communicating with delinquent taxpayers**
- **Informal collection efforts**
- **Accepting payments**
- **Payment agreements**
- **Handling money**
- **Receipts and records**
- **Formal Collection efforts**



# Delinquent Tax Collector's Policy

## WHY HAVE A POLICY?

- DTCs have discretion to determine when and how delinquent taxes will be collected.
- Since property interests are at stake, the exercise of discretion brings up Constitutional due process and equal protection issues.
- A written policy tells taxpayers what to expect and reduces the likelihood of allegations that DTC is acting arbitrarily or treating taxpayers differently.



# Delinquent Tax Collector's Policy

## RECOMMENDED ELEMENTS:

1. Frequency with which taxpayers will be given notice of the delinquency.
2. When mortgage and other lien holders will be notified.
3. Forms of payment accepted.
4. How partial payments will be applied.
5. The conditions under which tax sale or other formal collection methods will be utilized.
6. The right to seek abatement.
7. The right to request that only a portion of the property be sold and how to exercise that right.
8. What happens if a tax sale is held and no one purchases the property.



# Delinquent Tax Collector's Policy

## WHO ADOPTS THE POLICY?

- DTC if he or she is elected.  
(But DTC should discuss it with the selectboard and treasurer and get their input)
- Selectboard if DTC is appointed.  
(But they should draft it with input from DTC since DTC will be implementing the policy)



# Communicating with Delinquent Taxpayers

## REQUIRED COMMUNICATION

Takes place in conjunction with formal collection efforts:

- Initial notice of delinquent taxes
- Letter giving notice of tax sale

## SUPPLEMENTAL COMMUNICATION

Takes place in conjunction with informal collection efforts:

- Additional letters, notices phone calls, etc.



# Communicating with Delinquent Taxpayers

## Initial notice of delinquent taxes **MUST:**

- Allow residents at least 10 days and nonresidents at least 20 days to pay the amount due before the collector will proceed with any collection action; and
- Specify the time and place of payment, amount owed, including taxes, fee and interest.

32 V.S.A. §§ 4842, 4874



# Communicating with Delinquent Taxpayers

## Initial notice of delinquent taxes **SHOULD**:

- Include a copy of the tax bill;
- Include your collection policy; and
- Include a notice of the right to request abatement and the specific way in which to make that request.



# Communicating with Delinquent Taxpayers

**After the initial notice of delinquent taxes and up until there is a decision to proceed to tax sale:**

- DTC may use any method or frequency of supplemental communication (or none at all).
- Many attorneys recommend regular letters to remind of delinquency. This is not required by law but may be effective.
- Frequency of notices should be spelled out in the DTC policy.



# Communicating with Delinquent Taxpayers

**In all correspondence to the delinquent taxpayer:**

- Make it personal. Use the taxpayer's name, not "Dear delinquent taxpayer."
- Be clear and specific about your expectations. Don't leave any room for misunderstanding.
- Be diplomatic and professional.



# Informal Collection Telephone Calls

**Telephone communication may humanize the relationship.**

- Get to know your debtors, work with them, and gain their trust by humanizing the collection process.
- But keep in mind that the first goal is to get the delinquency paid; whereas establishing a positive rapport is secondary.



# Informal Collection Telephone Calls

- Explain who you are and why you are calling.
- Express your concern and the consequences of being delinquent.
- Offer to make a payment arrangement when it seems appropriate.
- Keep a record of your phone calls and notes regarding the conversation.



# Informal Collection

## The Town Report

The names of delinquent taxpayers may be published in the town report.

The warrant for delinquent taxes is a public record.

32 V.S.A. §§ 5162, 5163

The law states that the annual report “shall show a detailed statement of the financial condition of the such town . . . and such other information as the municipality shall direct.”

24 V.S.A. § 1683(a)



# Informal Collection The Town Report

Vermont Department of Property Valuation and Review gives the following advice, either:

1. List only the parcels and owners that are delinquent but not the amount of the delinquency for any individual property (though you certainly could include the total amount of delinquent taxes in the town); or
2. Publish a list of delinquent properties but only show the total amount of the delinquency for the parcel, not the components of the delinquency (years owed, principal, interest, etc.)



# Informal Collection The Town Report

Act 174, enacted in June 2014, granted Vermont's Commissioner of Taxes the ability to compile and publish lists of delinquent taxpayers. These lists consist of the 100 individual taxpayers and 100 business taxpayers with the highest amount of unpaid tax debt.



# Informal Collection The Town Report

Each municipality has different expectations for its delinquent tax collector.

Consider putting it to a public vote. 24 V.S.A. 1683(a)

## ARTICLE X.

*Shall the town require the name of delinquent taxpayers be published in the town report?*



# Dealing with Abusive Taxpayers

Attempt a positive tone; be friendly and rational.

Don't take their anger personally.

Remember that you hold all the cards.

There is no reason to subject yourself to abuse or mistreatment.



# Questions?



# Accepting Payment

Anyone can make a payment on a delinquent tax bill, (e.g., mortgagee, lessee, lien holder, relative).

DTC can require that payments be made by bank check, cashier's check, or other certified funds.

DTC should not accept postdated checks.



# Accepting Payment

Accept of partial payment does not preclude the town from collecting the unpaid balance.

32 V.S.A. 5142

Partial payments must be allocated.

Recommendation: Allocate partial payments proportionally to principal, interest and fee.

If the taxpayer is delinquent for more than one year, it is up to the taxpayer to determine which year the payment should be applied.



# Payment Agreements

Payment plans should be in writing in the form of a contract or letter of agreement, signed by the delinquent taxpayer.

Require the outstanding balance to be paid off in a year.

Make clear that in the event of a breach, the collector will proceed with tax sale or other collection action.

**This is a legal contract.**



# Receipts

*“A collector of taxes...shall receipt for every payment made to the collector on account of delinquent taxes. Such receipt shall be written in triplicate in a bound book or other permanent record and shall indicate the date of the payment, the name of the person making the payment, the name of the person against whom was assessed the tax on which such tax was assessed and if a partial payment on an annual tax bill, whether applied on poll, personal property or real estate taxes...”*

**32 V.S.A. § 5137**



# Receipts

## RECEIPTS IN TRIPLICATE:

1. Original receipt to the person making the payment (forthwith)
2. Copy of the receipt to the town clerk (within 30 days)
3. Copy remains with the collector

Annually, on or before February 5, the collector shall deliver to the auditors a copy of all the receipts for the preceding year.

32 V.S.A. 5137



# Handling the Money

Some collectors have established their own bank accounts in which collected taxes are deposited until transferred to the town treasury.

All funds must be paid over every 2 months or as requested by the selectboard. 32 V.S.A. § 4646

VLCT recommends remit the money immediately to the treasurer. You will get your commission sooner and prevent any liability for mishandled or lost funds.



# Handling the Money

Regardless of how the collector is compensated, he/she must be treated as an employee of the town for purposes of income tax and FICA (social security) withholding.

If the collector is compensated by the fee on delinquencies, any fee collected must be turned over to the town and the town must issue a check back to the collector with proper withholding.

A W-2 must be issued at the end of the year.



# Required Reports

## DTC Report to Treasurer every two months:

A list of all taxpayers from whom taxes have been collected, showing the amounts collected and the years in which the taxes were due.

32 V.S.A. 4646

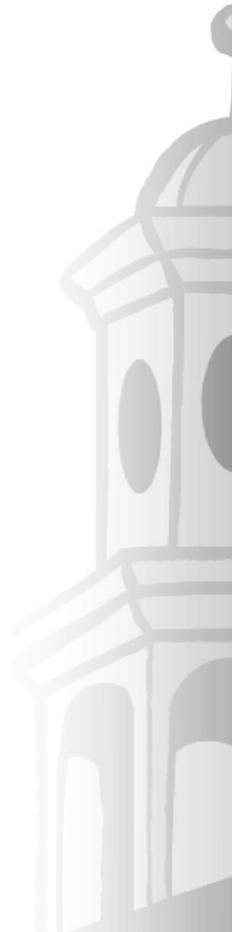
## DTC Report to the Treasurer and Auditors on or before January 15 of every year:

List of all the delinquent taxpayers as of December 31<sup>st</sup>, amounts due and years in which taxes were due.

32 V.S.A. 5162



# Questions?



# Formal Tax Collection Methods

## 4 methods of collection authorized by law:

- \* Foreclosure
- \* Action at Law (Civil Action)
- \* Distraint
- \* Tax Sale

The methods are not exclusive and can be used cumulatively (but the debt can only be collected once).

In most instance, tax sale is the most useful and appropriate method for collection.



# Foreclosure

**Foreclosure is a legal action brought in Superior Court to allow property to be attached and sold to satisfy the debt to the town.**

**32 V.S.A. § 5061**

Taxes must be delinquent for a minimum of 2 years

After a hearing, the court issues an order setting out a redemption period and directing that the property be sold if it is not redeemed by paying the outstanding taxes and costs due to the town, expenses of the sale, and attorney's fees.



# Foreclosure

If the property is not redeemed, it is sold and the proceeds are applied outstanding taxes and costs due to the town, expenses of the sale and the attorney's fees. The residue is applied to satisfy the junior liens. Any amount left over is paid to the taxpayer.

The primary objection to foreclosure is that tax sale accomplishes the same result without the necessity for a hearing or court intervention.

But there are advantages of court-supervised sales



# Distraint

**After taxes become delinquent, the collector can seize “the goods, chattels and capital stock in a corporation of a person whose tax is not paid.”**

**32 V.S.A. § 5191**

**If the delinquency is not paid within four days after the property is seized, the collector can sell the property at public auction.**

**32 V.S.A. § 5193**



# Distraint

At least six days before the sale, the collector must post a notice of the sale in a public place where the property was taken.

If the property is sold at the auction, title to the property is passed to the new owner by operation of law.

After deducting the tax and the collector's charges, the balance must be paid over to the delinquent taxpayer.

**32 V.S.A. § 5193**



# Distrain

At one time, the law required a tax collector to distrain personal property before real estate could be sold.

Distrain was probably the most commonly used tax collection method. Cows were the most commonly seized property.

Today distrain is hardly ever used but is still a lawful collection method.



# Action at Law

Property taxes “and all fees accruing or accrued against the taxpayer on account of delinquency may be recovered with costs in an action brought in the name of the town or municipality within it to which such taxes are due.”

32 V.S.A. § 5222

“action at law” = lawsuit against the delinquent taxpayer



# Action at Law

## Action must be brought in Superior Court if:

1. Delinquent amount is >\$5,000; or
2. Abandoned MH

Superior Court process is generally more complex and more costly than Small Claims Court since it generally requires the use of an attorney.



# Action at Law

**Action must be brought in Small Claims Court if:**  
**Delinquent amount is  $\leq$ \$5,000**

Procedures are simplified so that participants do not need a lawyer (but can be represented by a lawyer).

Small claims court is located at the Superior Courthouse in each county.



# Action at Law

## The Small Claims Court Option

The filing fee is between \$50 and \$80 (depending on amount of claim).

If the collector prevails, the taxpayer will be required to pay the filing fee.

The collector fills out a complaint that outlines the basis for the town's claim.



# Action at Law

## The Small Claims Court Option

The court mails a summons, copy of the complaint, and an answer form to the taxpayer by first class mail.

If the taxpayer does not respond in 30 days, the court will send this same information to the collector to have the taxpayer served by the sheriff or constable.



# Action at Law

## The Small Claims Court Option

If the taxpayer fails to answer after being personally served, the collector will be notified of the default by the court.

If the collector files a motion and affidavit for default judgment within 30 days, the judge will issue a default judgment.



# Action at Law

## The Small Claims Court Option

The taxpayer can admit that the taxes, interest, fee, and costs are owed.

If the taxpayer agrees to pay all at once, the court will issue a judgment of the entire amount.

If the taxpayer offers to make weekly or monthly payments, the court will probably issue a judgment stating the installments that must be paid to the collector.



# Action at Law

## The Small Claims Court Option

The taxpayer can deny the claim. If so, a trial date will be set.

At the trial, the collector will be required to prove that the taxpayer owes the delinquent taxes, interest, fees and costs.

The taxpayer will be allowed to rebut your evidence.



# Action at Law

## The Small Claims Court Option

When the collector prevails, he will receive a judgment order against the taxpayer.

Once judgment is obtained, the collector can use the remedy of trustee process to garnish the taxpayer's wagers or other income to pay the judgment.

The town can also record a copy of the judgment order in the land records in any town where the taxpayer owns real estate. The recorded judgment will become a lien against any property located in the town.



# Court Ordered Sale of Abandoned Mobile Home

**Municipality may bring an action in Civil Division  
of Superior Court seeking:**

1. Court order to allow public auction of MH;
- OR
2. Court order approving transfer to municipality without public sale. May be done only when MH is “unfit for human habitation”

**9 V.S.A. § 2608**



# Court Ordered Sale of Abandoned Mobile Homes

## Is the MH unfit for human habitation?

- contains functioning appliances and plumbing fixtures;
- contains safe and functioning electrical fixtures and wiring;
- contains a safe and functioning heating system;
- contains a weather-tight exterior closure;
- is structurally sound; and
- is reasonably free of trash, debris, filth, and pests.



# Court Ordered Sale of Abandoned Mobile Homes

## Quick process:

Court Clerk must set hearing at least 15 but not more than 30 days after filing complaint

If municipality proves its case, sale may occur within 15 days of hearing.

Successful bidder other than municipality generally must remove MH within 5 working days after auction



# Court Ordered Sale of Abandoned Mobile Homes

## Court establishes minimum bid & terms of sale

The minimum bid must cover the total costs of the sale, court costs, attorney's fees, publication and mailing costs, delinquent taxes, including interest and penalties, and reimbursement for the landowner for unpaid rent if the mobile home is located on leased land.

If no minimum bid received, Court orders transfer to municipality & municipality only pays costs of conducting sale.



# Court Ordered Sale of Abandoned Mobile Homes

## Proceeds of sale distributed to:

- person conducting the sale for costs of the sale;
- municipality for court costs, publication and mailing costs, and attorney's fees incurred for court action;
- municipality for taxes, penalties, and interest owed;
- landowner for unpaid lot rent if the mobile home is located on leased land; and
- balance to a bank account, municipality as trustee, for the benefit of the mobile home owner and lienholders of record.



# Abandoned Mobile Homes

## Work with an attorney

Quick but complex process

Constitutionally-protected property interests at stake

Ensure a fair, legitimate, and defensible outcome



# Questions?

