

# **The Role of the Delinquent Tax Collector in Municipal Government**

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Municipal Assistance Center  
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# The Role of the Delinquent Tax Collector in Municipal Government

- **The types of delinquent tax collectors.**
- **The independence of the officer.**
- **The way collectors are compensated.**
- **Legal liability for yourself and your town.**



# Collector of Delinquent Taxes

## Elected Delinquent Tax Collector

**The town may elect a delinquent tax collector for a one-year or three-year term. 17 V.S.A. § 2646(9)**

**When a town votes for a three-year term for the collector of delinquent taxes, that three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose.**



# Collector of Delinquent Taxes

## Town Manager Delinquent Tax Collector

If a town has adopted a manager form of government, the voters may vote to have the Town Manager collect all current and delinquent taxes. 24 V.S.A. § 1236(10)

Such manager shall continue so to do until the town votes otherwise at a meeting duly warned for the purpose of voting on such a question.



# Collector of Delinquent Taxes

## Constable as Default Delinquent Tax Collector

**If a town does not indicate how it wants to have its taxes collected, the first constable automatically becomes the collector of current and delinquent taxes. 24 V.S.A. § 1529.**



# Collector of Delinquent Taxes

## Appointed Collector of Delinquent Taxes

**As of 7/1/14, a town may vote to authorize the selectboard to appoint a collector of delinquent taxes who may be the town treasurer.**

**When a town votes to have the selectboard appoint a collector of delinquent taxes, that authority will remain in effect until the town rescinds the authority by the majority vote of the legal voters present and voting at a town meeting duly warned for that purpose. 17 V.S.A. § 2651d(a), (b)**



# Collector of Delinquent Taxes

## Vacancy Appointment

If there is a vacancy in the office or the collector is unable to discharge his or her duties because of sickness or other reason, the selectboard may appoint or hire the delinquent tax collector for the town. 32 V.S.A. §§ 4674, 4799

## Charter Provision

Some municipalities may have specific governance charter that provide alternate methods as well.



# Independence of Office APPOINTED

An appointed collector is subject to oversight by the appointing body and has significantly less independence.

The job duties are the same as for the elected delinquent collector, however there is just more control and oversight from the body that appointed you.

For example, the town manager is “subject to the direction and supervision and shall hold office at the will of the selectmen, who by majority vote, may remove him at any time for cause.”



# Independence of the Office ELECTED

An elected delinquent tax collector holds an independent office. Absent a charter provision to the contrary, the elected delinquent tax collector is not answerable to any other municipal official.

If you are elected, neither the selectboard or town manager have the authority to tell you how to do your job.

Nevertheless, it is critical that you work effectively with other officials, especially the treasurer and the selectboard, in your role as delinquent tax collector.



# Independence of Office Relationship with the Selectboard

- The selectboard sets and pays for your bond.
- The selectboard may set a salary if the voters do not and that is how you are compensated.
- The selectboard sets the budget for voter approval.
- Must provide accounting of every delinquent property tax to the selectboard upon their request



# Independence of Office Relationship with the Selectboard

- The selectboard may demand in writing that you pay all taxes collected.
- The selectboard has no authority to approve or disapprove of your delinquent tax policy, however it's best that you at the least present it to the board, and at best get the approval of the board.
- You will need selectboard approval for retaining legal counsel to assist in conducting a tax sale or placing a lien on personal property.



# Independence of Office Relationship with the Treasurer

- It's not uncommon for the treasurer to also be the elected or appointed delinquent tax collector, or the person collecting current taxes.
- Within 15 days of the due date of a property tax, the treasurer must issue you a warrant against the delinquent taxpayers.
- Treasurer may accept late payment of taxes prior to the issuance of the warrant.



# Independence of Office Relationship with the Treasurer

- **Every two months you must pay over all collected taxes to the treasurer**
- **You must turn over fees and commission to the treasurer.**
- **Treasurer is responsible for making sure the appropriate withholdings are made for your personal income tax and FICA requirements.**



# Delinquent Tax Collector Compensation

## Commission, aka “Penalty” or “Fee”

Most delinquent tax collectors are paid with the commission collected on delinquent accounts.

32 V.S.A. § 1674

Some collectors even pay the operating expenses of the office (e.g. postage and stationary) from the commission.

Voters may reduce the commission, provide for a grace period, or provide for a graduated commission schedule.

32 V.S.A. § 1674(3)



# Delinquent Tax Collector Compensation

## Salary

In some municipalities the delinquent tax collector is paid a salary set by the voters or the selectboard.

24 V.S.A. § 1530

## Combination

In some municipalities, the collector receives the fee PLUS a salary.



# Waiving the Fee

**A collector compensated by the fee on delinquent taxes has the authority to waive a penalty fee if she chooses to do so.**

**32 V.S.A. § 1674**

**Interest and principal cannot be waived by the collector, but can be abated by the board of abatement.**

**24 V.S.A. § 1535**

**Delinquent Tax Collector Workshop, April 2016**



# Waiving the Fee

If the town has voted to set the compensation of the delinquent tax collector at a specific amount, and has voted that such compensation is in lieu of the commission, then the commission must be collected on every property and turned over to the treasurer.

24 V.S.A. § 1530

VLCT believes that the town manager can waive the fee (but should get the selectboard's consent). If the fee is collected, it must be paid to the town.

24 V.S.A. § 1236(10)



# Delinquent Tax Collector Legal Liability

**Neglect of Duty.** A delinquent tax collector who neglects his or her lawful duty can be fined up to \$100 for each instance of neglect.

24 V.S.A. § 902

***“The treasurer shall deliver such warrant, together with a rate bill of such delinquent taxes, to the collector of the town or municipality within it, who shall proceed forthwith to collect such taxes.”***

32 V.S.A. § 4793(a)



# Delinquent Tax Collector Legal Liability

## Willful Neglect of Duty

A delinquent tax collector who willfully neglects to perform his lawful duties may be imprisoned not more than one year and/or fined up to \$1,000.

32 V.S.A. § 3006

Willful in this context means intentionally or by design.

*State v. Williams*, 94 Vt. 423 (1920)



# Delinquent Tax Collector Legal Liability

## False Claims

A person who in any matter in the jurisdiction of a municipality makes any false, fictitious or fraudulent claim or entry may be imprisoned up to 2 years and/or fined up to the \$5,000 if the loss to the municipality is \$500 or less and may be imprisoned up to 5 years and/or fined up to \$10,000 if the loss is more than \$500.

13 V.S.A. § 3016

## Embezzlement

A town or municipality officer who embezzles or fraudulently converts to his own use money belonging to the municipality may be imprisoned up to ten years and/or fined not more than \$1,000.

13 V.S.A. § 2537

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# Delinquent Tax Collector Legal Liability

**“no state shall...deny to any person within its jurisdiction the equal protection of the laws...”**

**“nor shall any State deprive any person of life, liberty or property without due process of law...”**

**14<sup>th</sup> Amendment of the U.S. Constitution**

**“Every person who, under color of any statute, ordinance, regulation...of any State...subjects...any citizen of the United States...to the deprivation of any rights...secured by the Constitution...shall be liable to the party injured in an action at law...”**



**42 U.S.C. § 1983**

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# Delinquent Tax Collector - Legal Liability

## You Are the Government

**“In any action or proceeding to enforce a provision of ...[42 U.S.C.] 1983...the court, in its discretion, may allow the prevailing party...a reasonable attorney’s fee as part of the costs...”**

**42 U.S.C. § 1988(b)**

**Attorney’s fees in this type of litigation can amount to tens of thousands of dollars.**



# Delinquent Tax Collector - Legal Liability

## You Are the Government

### Bottom Line: This is serious stuff.

- You are the government, taking people's property to satisfy a legal obligation owed to the municipality.
- There is no small town exception to the law.
- The consequences of making a mistake can be significant and costly.

**Best practice: Develop a relationship with the town attorney. IF you are unsure of how to proceed, contact your town attorney before you act.**



# Delinquent Tax Collector Legal Liability

## The Good News

A delinquent tax collector is not liable for the consequences of an illegality, mistake or overcharge in a tax bill committed to him for collection.

32 V.S.A. § 4642

You are no responsible for the mistake of the listers, treasurer or selectboard.



# Delinquent Tax Collector Legal Liability

## The Good News

Because the delinquent tax collector is an elected or appointed municipal official, any action brought against the collector must instead be brought against the municipality.

The municipality must assume all reasonable legal fees incurred by the tax collector, so long as the tax collector was acting in the performance of her duties and did not act with malicious intent.



24 V.S.A. § 901

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# Questions?

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**Contact VLCT's  
Municipal Assistance Center:  
(800) 649-7915  
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