

Tax Registrations 101

Presented for AMCTO Zone 2
On April 25, 2022
By Jeff Oberman
President



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Realtax.ca

Resources

Tax Registrations 101



This presentation is only an overview

When conducting, or considering conducting, a tax registration, please refer to the pertinent legislation and regulations.



When is a property eligible for tax registration?

Second year of arrears

You can register a *tax arrears certificate* when a property is in at least its second year of arrears

373 (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the second year following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

Not two calendar years!

In plain English...

If there are arrears from any time in 2020

- On 1 January 2021 property is in its first year of arrears
- On 1 January 2022 property is in its second year of arrears, so you can register a tax arrears certificate any time after this day



When is a property eligible for tax registration?

Do you need to amend your collection policy?

If you were previously registering when a property was in at least its third year of arrears, you might need to amend your collection policy

Suggestion

Send a final warning letter—it's not in the legislation, but it's a good idea!



Definitions for the purposes of this webinar

Tax sale

The set of procedures that are required in order to offer a property for sale in order to recover realty tax arrears

Tax registration

The one-year long set of procedures that must be followed before you can commence tax sale procedures

Expedited tax sale

An expedited process that's available if property was owned by a corporation that has been cancelled



Legislation and Rules

Legislation

Main legislation is the *Municipal Act, 2001, Part XI*

- Some sections outside of *Part XI* are involved
- Other Acts that may also be involved, such as
 - *Farm Debt Mediation Act,*
 - *Forfeited Corporate Property Act, 2015*

All section numbers in this presentation refer to the *Municipal Act, 2001*, unless otherwise noted

Rules

Municipal Tax Sales Rules ("Rules")
O. Reg. 181/03 as amended by 571/17



Why do a tax registration?

All collection efforts to date have failed

- This is the last resort

Highly effective

- On 85% of the properties we've handled, the arrears were paid within 1 year—did not have to go to tax sale

No cost to municipality (usually)

- Costs are charged back to the properties that are in arrears (371(1))
- When the taxes are recovered, your costs are recovered



Why do a tax registration?

There is a cost to a municipality if

- A property is advertised for tax sale, but no one buys it

There's still some cost recovery when this happens

- You must charge back to the school board and upper-tier (if applicable) a proportionate share of the amount that is being written off (353)

Fairness

- Not right for some property owners to have to pay taxes, while others don't

Get property back into productive use, generating tax revenue



Notice under the *Farm Debt Mediation Act*

FDMA is federal legislation, gives farmers an opportunity to re-organize their debts before a creditor can take action to realize on a debt

Creditor must send a farmer a *NOTICE OF INTENT TO REALIZE ON SECURITY* (“*Farm Debt Notice*”) at least 22 business days before taking action to realize on a debt (FDMA (21) and FDM Regulations (SOR/98-168) 17(1) and (2))

The way the Act is worded, it does not have to be a farm that is in tax arrears

If the property owner has an interest in a farming operation anywhere in Canada, you must send them a notice

Notice should be sent to assessed owner(s) **before** proceeding with tax registration

Link to the NOTICE

<https://agriculture.canada.ca/en/agricultural-programs-and-services/farm-debt-mediation-service/notice-intent-secured-creditor>





Agriculture and
Agri-Food Canada
Farm Debt
Mediation Service

Agriculture et
Agroalimentaire Canada
Service de médiation en
matière d'endettement agricole

Roll No. 12 34 567 890 12345 0000
File No. AEAN12-01

NOTICE OF INTENT TO REALIZE ON SECURITY

PRÉAVIS DE RÉALISATION DE SÛRETÉ

As required under Section 21 of the Farm Debt Mediation Act, you are hereby notified that it is the intent of:

Conformément à l'article 21 de la Loi sur la médiation en matière d'endettement agricole, vous êtes, par la présente, avisé qu'il est dans l'intention de:

**THE CORPORATION OF THE
TOWN OF ANYTOWN**

(name of creditor / nom du créancier)

To realize on security given against the assets of:
De réaliser sur la sûreté contre les biens de:

DOE, Jane

(name of farmer / nom de l'agriculteur(trice))

of
domicilié au:

**123 Some Street
Anytown, Ontario A1A 2B2**

(address / adresse)

The security being:
La sûreté qui est:

Unpaid Realty Taxes on / sur
(type(s) of security / genre(s) de sûreté)

**123 Some Street
Lot 1, Plan 65M-1234**

Town of Anytown, Region of Anywhere, Province of Ontario

(asset(s) / bien(s))

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

Vous êtes, par la présente, avisé de votre droit de présenter une demande en vertu de l'article 5 de la *Loi sur la médiation en matière d'endettement agricole* en vue d'un examen de vos affaires financières, de la médiation avec vos créanciers et de l'obtention d'une suspension des procédures contre cette action. Sous réserve que vous êtes :

- a) currently engaged in farming for commercial purposes; and
- b) insolvent, meaning that you are:
 - unable to meet you obligations as they generally become due;

- a) actuellement engagé en agriculture à des fins commerciales;
- b) insolvable, ce qui signifie :
 - que vous ne pouvez vous acquitter de vos obligations au fur et à mesure de leurs

Title search and execution search

Need to find

- Legal description of property
- Name and address of *Interested Parties* (374(1)), because you have to send notices to them

(we'll discuss *Interested Parties* shortly)

Conduct a corporate search if property is owned by a corporation



Can't register a tax arrears certificate if...

Order Cancelling Encumbrances has been registered by Crown (373.2(1)(a))

- This only applies to forfeited corporate lands
- Order does not cancel property taxes owed by former corporate owner
- You can still register if you obtain consent from the Crown

Notice of Intent to Use for Crown Purposes has been registered

- This can apply to forfeited corporate lands (373.2(1)(b)), or to
- Land that belongs to the Crown as a result of the death of an individual who did not have any lawful heirs (373.2(1)(c))
- Province will not register this if a tax arrears certificate has already been registered



The registration

Prepare a tax arrears certificate and register it on title (373(1))

- *Municipal Tax Sales Rules, Schedule 1*

Tax arrears certificate can't include more than 1 separately assessed property (373.1(3))

- For example, if you have a subdivision of 10 separately assessed properties that are all in arrears, you need 10 tax arrears certificates

You need to know who the interested parties were on the day the tax arrears certificate was registered



This document has not been submitted and may be incomplete.

Properties

PIN [REDACTED]
Description DT LT 10 C/S HOLL AND CT DL 102A & DT LT 10 E/S SIMCOE ST PL 102A
Address [REDACTED]

Applicant(s)

Name THE CORPORATION OF THE TOWN [REDACTED]
Acting as a company
Address for Service 1st Holland Street East
[REDACTED]
P.O. Box 100
[REDACTED]

This document is not authorized under Power of Attorney by this party.
This document is being authorized by a municipal corporation [REDACTED]

Statements

Schedule: Tax Arrears Cancellation Certificate, Municipal Act, 2001
On [REDACTED] the [REDACTED] Corporation of the Town of [REDACTED]
hereby verifies that
(i) the tax arrears certificate registered on June 5, 2018 as Instrument No. [REDACTED] cancelled in respect of the land described in this tax arrears cancellation certificate,
(ii) the cancellation price was paid on June 4, 2019,
(iii) the cancellation price was paid by or on behalf of the owner or the spouse of the owner of the land or a person who was not entitled to receive notice under subsection 374(1) of the Municipal Act, 2001, or under the circumstances where subsection 375 (3.1) of the Municipal Act, 2001 applies to the land and accordingly there is no lien on the land described in this document in respect of the payment.

Signed By

Jeffrey Frank Oberman [REDACTED] acting for Applicant(s) Signed 2019 06 10

Tel
Fax 905-853-5885
I have the authority to sign and register the document on behalf of the Applicant(s).

File Number

Applicant Client File Number : [REDACTED]



Who the Interested Parties are 374(1)

These are the parties you must send notices to

- Assessed owner(s)
- Spouse of assessed owner(s)
- Registered owner(s)
- Spouse of registered owner(s)
- Everyone else who had a registered interest on the day the tax arrears certificate was registered, *except*
 - Parties whose interest is only through an easement or restrictive covenants (379 (7.1)(a))
 - Crown in right of Canada (379 (7.1)(b))

There's more...



More Interested Parties (374(1))

If the Crown is shown as the assessed owner as a result of an escheat or forfeiture, you must also send notices to

- The Directors and Officers of the dissolved corporation
- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*

Where the Treasurer is aware that the assessed owner is a dissolved corporation, must also send notices to

- Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*. That minister is:

Manager, Portfolio Performance
Ministry of Government and Consumer Services, Realty Division
777 Bay Street
2nd Floor, Suite 230
Toronto, Ontario M5G 2E5



Can you accept a partial payment?

If you have not yet registered a tax arrears certificate

- Yes, you can accept a partial payment
- If you'll still be continuing with registration, it's a good idea to advise the owners of this

If you have registered a tax arrears certificate

- No, you cannot accept a partial payment

(347(3)) "No part payment shall be accepted on account of taxes in respect of which a tax arrears certificate is registered under this Act except under an extension agreement entered into under section 378."

(We'll discuss extension agreements shortly)



Form 1—Notice of Registration of Tax Arrears Certificate (“*First Notices*”)

Within 60 days of registration, prepare and send First Notices to *Interested Parties*
(374(1))

- By “...personal delivery or be sent by certified or registered mail” (381(1))
- ‘Certified mail’ is a product that Canada Post had many years ago, but it has been discontinued



NOTICE OF REGISTRATION OF TAX ARREARS CERTIFICATE
THE CORPORATION OF THE TOWN OF ANYTOWN

To: DOE, Jane
Address: 123 Some Street
Anytown, Ontario A1A 2B2 AEAN19-01

Regarding property located at: 123 Some Street Anytown, Ontario A1A 2B2

Re: PIN: 12345-6789(LT)
PCL 1-1, SEC 65M1234
Lot 1, Plan 65M-1234, Town of Anytown

1. A tax arrears certificate, a copy of which is attached, was registered on January 15, 2019 against the title to the land to which the certificate applies as instrument number LT1234567 .
2. If you are a person entitled under the *Municipal Act, 2001* to receive this notice and you pay the cancellation price, you will, if you are not the owner or the spouse of the owner of the land, have a lien on the land for the amount paid in priority over the interest of any other person to whom notice is sent under that Act.
3. If, at the end of the one-year period following the date of the registration of the tax arrears certificate, the cancellation price remains unpaid and there is no subsisting extension agreement, the land will be sold by public sale.
4. The treasurer has no obligation to inquire into or form any opinion of the value of the land before conducting a sale under the *Municipal Act, 2001* and the treasurer is not under any duty to obtain the highest or best price for the land.
5. You may claim entitlement to a share in the proceeds of the sale of the land by applying to the Superior Court of Justice within one year of the payment into court by the treasurer of the proceeds of sale minus the cancellation price.
6. If there is no successful purchaser at the public sale, the land, upon the registration of a notice of vesting will vest in the municipality (or board).
7. Inquiries related to the matters set out in this notice may be directed to:

Title Mr. I. Am Tax Collector, <i>Please quote Roll No. 12 34 567 890 12345 0000</i>
Name of Municipality or Board The Corporation of the Town of Anytown
Address of Municipality or Board 500 Any Street Anytown, ON A1B 2C2

Dated at The Town of Anytown this day of February, 2019.

Signature of Treasurer or Other Officer or
Employee Authorized to Give this Notice

Treasurer
Title

Form 2—Statutory Declaration Regarding Sending of Notice (374(3))

Sets out names, addresses, nature of interest, date notice was sent

Must be signed and commissioned

Does not have to be registered on title

If someone asks to inspect it, you must allow them to do so (374(4))



STATUTORY DECLARATION REGARDING SENDING OF NOTICE

In the matter of the title to the land mentioned below situate in the Town of Anytown in the Region of Anywhere I, Ms. U. B. Treasurer, Treasurer of the Town of Anytown in the Region of Anywhere, do solemnly declare as follows:

In accordance with section 374 of the *Municipal Act, 2001*, notice was sent of the registration of a tax arrears certificate relating to the land described in this document to each of the interested parties whose names and addresses are listed below on the date set forth opposite their respective names.

Names and Addresses of Interested Parties and Dates of Mailing of Notice:

Name	Nature of Interest	Address	Mailing Date
1. Jane DOE	Assessed Owner	123 Some Street Anytown, Ontario A1A 2B2	January 28, 2019
2. Spouse of Jane DOE	Spouse of Assessed Owner	123 Some Street Anytown, Ontario A1A 2B2	January 28, 2019
3. Jane DOE	Registered Owner	500 Ontario Street Othertown, Ontario 2B2 4D4	January 28, 2019
4. Spouse of Jane DOE	Spouse of Registered Owner	500 Ontario Street Othertown, Ontario 2B2 4D4	January 28, 2019
5. MORTGAGE & LOAN CO.	Mortgagee	200 Main St. Anytown, Ontario 1A1 3C3	January 28, 2019
6. BUSINESS DEVELOPMENT BANK	Mortgagee	1 Bay St. Anytown, Ontario B1B 2C2	January 28, 2019

Municipal Address of land: 123 Some Street
Anytown, Ontario A1A 2B2

Legal Description of land: PIN: 12345-6789(LT)
PCL 1-1, SEC 65M1234
Lot 1, Plan 65M-1234, Town of Anytown

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

Declared before me

at The Town of Anytown

this day of February 2019

.....
A Commissioner, etc.

.....
Treasurer or Authorized Officer or Employee of the
Municipality or Board

.....
Treasurer
Title

Roll No. 12 34 567 890 12345 0000
Realtax Inc. File No. AEAN19-01

Note: This document need n



Form 3—Final Notice (379(1))

If the taxes have not yet been paid, must be sent between 280 and 310 days after the registration of the tax arrears certificate

Must be sent to the parties who were entitled to receive First Notices

Update the searches before you prepare the Final Notices
Need to know if any interested parties have a new address



FINAL NOTICE

THE CORPORATION OF THE TOWN OF ANYTOWN

To: «Name»
Address: «Address»

AEAN19-01

Regarding property located at:
123 Some Street
Anytown, Ontario A1A 2B2

Re: PIN: 12345-6789(LT)
PCL 1-1, SEC 65M1234
Lot 1, Plan 65M-1234, Town of Anytown

1. You are hereby notified, as a person to whom a notice of registration of a tax arrears certificate against the land described above was sent, that the cancellation price remains unpaid and that there is no subsisting extension agreement.
2. The land will be advertised for public sale unless the cancellation price is paid or an extension agreement is arranged before NONE, between the municipality (or board) and the owner of the land, the spouse of the owner, a mortgagee or a tenant in occupation of the land.
3. The treasurer has no obligation to inquire into or form any opinion of the value of the land before conducting a sale under the *Municipal Act, 2001* and the treasurer is not under any duty to obtain the highest or best price for the land.
4. Any inquiry regarding this notice may be directed to:

Title Mr. I. B. Contact, Tax Collector 000-123-4567 <i>Please quote Roll No. 00 00 000 123 45678 0000</i>
Name of Municipality or Board The Corporation of the Town of Anytown
Address of Municipality or Board 100 Main Street Anytown, Ontario A2B 3C4

Dated at The Town of Anytown this day of November, 2019.

Signature of Treasurer or Other Officer or
Employee Authorized to Give this Notice

Treasurer
Title



Extension Agreements (378(1))

Before the expiry of the *one-year period*

(that's one year from the date of the registration of a tax arrears certificate)

a municipality may enter into an Extension Agreement with any of the following:

- Any owner of the land
- Spouse of any owner
- Any mortgagee
- Any tenant in occupation of the land
- Any person the treasurer is satisfied has an interest in the land



Extension Agreements (378(1))

Agreement cannot reduce the amount of the cancellation price, or prohibit any person from paying the cancellation price (378(2))

Extension Agreement “freezes the clock” that’s ticking down in the one-year period (378(4))

Agreement must state under what conditions it ceases to be considered a subsisting agreement (378(3)(a))

For example:

If any of the terms of the Agreement are not met, it ceases to be considered a subsisting agreement on the day that the treasurer notifies the party by registered mail.

When it ceases to be considered a subsisting agreement, the clock starts ticking again (378(4))

You may enter into an extension agreement, you do not have to!



Extension Agreements Authorized by Treasurer

Only pertains to properties where Tax Arrears Certificate was registered after January 1 2018 (388(2))

'Municipality' may enter into extension agreement; authorizing by-law is no longer required each time (378(1))

Municipality (Council) may delegate this authority to Treasurer or other Officer and set limits, or may decide to maintain status quo

If extension agreement is in regards to cancelled corporate property, consent of the Minister responsible for the administration of the *Forfeited Corporate Properties Act* is required (378(1.2))



SCHEDULE "A"

To By-Law No. _____

EXTENSION AGREEMENT

THIS AGREEMENT made in triplicate this ___ day of _____, 2019.

BETWEEN:

THE CORPORATION OF THE _____
(Hereinafter called the "Corporation")

OF THE FIRST PART;

- and -

Hereinafter called the "Owner(s)/Spouse/Mortgagee/Tenant/person the Treasurer is satisfied has an interest in the land"

OF THE SECOND PART;

WHEREAS ► *insert the name of person(s) of the second part is the/a ► pick one of the underlined parties: Owner(s)/Spouse/Mortgagee/Tenant/person Treasurer is satisfied has an interest in the land* of the land in the ► *insert name of Municipality* described in Schedule "A" attached hereto and forming part of this Agreement;

AND WHEREAS the Owner(s)/Spouse/Mortgagee/Tenant/person the Treasurer is satisfied has an interest in the land is in arrears of taxes on the ___ day of _____, 2019 in the amount of \$ _____ and a tax arrears certificate was registered in the Land Registry or Land Titles Office on the ___ day of _____, 2019 in respect of the Owner(s)/ Spouse/ Mortgagee/ Tenant/ person the Treasurer is satisfied has an interest in the land;

AND WHEREAS Section 279 of the Municipal Act, 2001 provides that the Corporation of _____

Schedule 2—Cancellation Certificate (375(1))

Legislation states,

“Before the expiry of the one-year period...any person may have a tax arrears certificate ...cancelled by paying to the municipality the cancellation price as of the date the payment is tendered” (375(1)), (1.1)

But what if the one year-period has already expired? Can you accept payment in full?



Can you accept payment in full after 1-year period has expired?

Yes, you can accept payment in full and then cancel the tax sale

It's probably your best option

According to the Cunningham case, 2004, the treasurer retains the discretion to cancel a tax sale at any time prior to the registration of a tax deed or notice of vesting

More on the Cunningham case

Realtax.ca
Resources

[Article—The Cunningham Case](#)



Expedited Tax Sales

These are properties owned by corporations that were cancelled or dissolved

Can register Tax Arrears Certificate (TAC) on title as soon as there are arrears (373.1)

First notices to be sent within 30 days of registration (374(1))

No final notices

Extension agreement can only be done within 90 days of registration (378(1.1))

Begin tax sale 90 days after registration of TAC (379(2.0.1))

No priority lien awarded if cancellation price paid (375(3.1))



Transferring certain properties to municipality without doing a tax sale

Order to Transfer

Province may transfer 'certain' properties directly to municipality (without tax sale) if appropriate (*Forfeited Corporate Properties Act, 29*)

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



Suspension of Limitation Periods due to COVID-19

O. Reg. 73/20 suspended Provincial timelines, limitation periods for duration of the emergency, effective March 16, 2020

Extended by O. Reg. 106/20, amended by O. Reg. 259/20

Suspended until September 11, 2020

=180 days



Recalculating...

Adding 180 days onto the date of the original limitation or time period, will give you the new date. For example, if the redemption period expired April 10, the new expiration date for the redemption period will be 180 days later or October 7 (April 10 + 180 days = October 7)

If a tax sale date had been set prior to the Order Suspending Limitation Periods and the tax sale was delayed due to the suspension, it might be advisable to send a courtesy notice to the owner and Interested Parties setting out the new date for the tax sale once it has been booked.



Which limitation periods were suspended, which ones not?

Suspended:

- One year ups (aka Redemption Period)
- Notices (Firsts, Finals, etc.)
- Advertising for tax sales
- Deadline for balance of tender amount
- Payment out of Court eligibility dates
- Postponement of advertised tax sale up to 90 days under s. 22 MTSR
- 2 year vesting deadline

Not suspended:

- Limitation periods under *Farm Debt Mediation Act*
- Compliance with or payments set out in an extension agreement
- The timelines in extension agreements are made by the municipality and not the province so they are not subject to the suspension in O.Reg 73/20
- Once the extension agreement is terminated, however, the countdown on the one year redemption period **is** suspended and the countdown resumed when the suspension was lifted on September 12, 2020.



New Forms & Schedules

Forms 1 to 10

(First and Final Notices, Statutory Declarations re: sending of Notices, Statement of Facts, Advertisements, Tender Form, etc.) are no longer found attached to the MTSR regulation but are available on line on the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs:

<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/>

Be sure you get the right forms!

Forms for City of Toronto look almost identical to forms for the rest of the province

Index of Forms and their official names for searching the Repository can be found in the MTSR Schedule 5

Updated Schedules 1 to 4 for the Tax Arrears and Cancellation Certificates and Statements to include with Tax Deeds and Vestings are attached to the MTSR



KEY TAKE AWAYS

Make sure you have all of the correct

- Lands for registration
- Parties and addresses for notification

Don't accept a partial payment when you cannot, do accept payment in full when you can

Don't use the City of Toronto forms

