

## UPCOMING CHANGES TO LEGISLATION AND CHANGES UNDER CONSIDERATION REGARDING TAX REGISTRATIONS AND TAX SALES

On December 10, 2016, a number of legislative changes to the *Municipal Act* will take effect that will impact tax sales and related matters. These changes are being brought about by implementation of the *Forfeited Corporate Property Act, 2015*.

As well, the Ministry of Municipal Affairs has recently announced some key changes to the *Municipal Act* that are under consideration as part of its municipal legislation review. Some of these changes will have a significant impact on tax registrations and tax sales.

The following is an overview of changes that pertain to tax registrations, tax sales, and related matters. Please note that this is an overview only. For any and all legal and/or procedural purposes, please refer directly to the applicable legislation.

### CHANGES COMING INTO EFFECT ON DECEMBER 10, 2016

You can see the exact wording of these changes to Part XI of the *Municipal Act* on E-Laws at <https://www.ontario.ca/laws/statute/01m25#BK439>.

#### **Escheated Land—limits on registration of a tax arrears certificate**

According to the new subsection 373 (3.1) a tax arrears certificate cannot be registered if,

- a. an order cancelling encumbrances against the land under section 18 of the *Forfeited Corporate Property Act, 2015* is registered; or
- b. a notice under section 24 of the *Forfeited Corporate Property Act, 2015*, indicating that the Crown intends to use the property for Crown purposes, is registered.

However, a municipality can apply to the Minister for consent to register a tax arrears certificate.

#### **New notice requirements after registering a tax arrears certificate**

Where the assessed owner is shown as the Crown as a result of an escheat or forfeiture, notice must be sent to the directors and officers of the corporation, as well as the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* (subsection 374 (4)).

Where the treasurer is aware that the corporation shown as the assessed owner is dissolved, notice must be sent to the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* (subsection 374 (5)).

**No lien on escheated or forfeited land if cancellation price is paid by an interested party**

If land is vested in the Crown because of an escheat or forfeiture as a result of the dissolution of a corporation, and the cancellation price is paid by an interested party, that party will **not** have a lien on the land (subsection 375 (3.1)).

**New notice requirement after registering a tax deed or notice of vesting**

Within 15 days, notice of the registration must be sent to the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* (subsection 379 (6.1)).

**Notice after making payment into court**

Instead of sending notice to "Public Guardian and Trustee", notice must be sent to "Public Guardian and Trustee, to the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*" (subsection 380(3)).

**Transition**

If a tax arrears certificate is registered before December 10, 2016, the *Municipal Act, 2001* as it read immediately before that day applies in respect of the proceedings or other steps that might be taken as a result of that registration.

## CHANGES DUE TO THE **FORFEITED CORPORATE PROPERTY ACT, 2015**

These changes will come into effect on December 10, 2016. You can see the exact wording at <https://www.ontario.ca/laws/statute/15f38>.

### **Order Cancelling Encumbrances**

The province may cancel encumbrances against forfeited corporate property (subsection 11(18)).

The province will send notice of intent to cancel encumbrances to the municipal Clerk (sections 19, 20). If the municipality intends to initiate tax sale proceedings, it must respond to this notice in writing, by a specified date (section 22).

The registration on title of an order cancelling encumbrances does not cancel property taxes owed by a former corporate owner.

### **Property to be used for Crown purposes**

The province may register a notice on title to forfeited corporate property indicating that the Crown intends to use the property for Crown purposes (section 24).

If a municipality has registered a tax arrears certificate in respect of the property, the province would not register a notice until the tax arrears certificate is cancelled or deemed to be cancelled (subsection 24(8)).

A tax arrears certificate cannot be registered if the province has registered a notice indicating that the Crown intends to use the property for Crown purposes

### **Province may transfer certain properties to a municipality, if appropriate**

This could include, for example, one-foot reserves, walkways, pathways, and more (section 29).

### **Crown disposing of forfeited corporate property**

The Province may dispose of forfeited corporate property and may deduct costs it incurred from the proceeds. If there are remaining proceeds of disposition, distribution must be made in the following order (subsection 33(5)):

1. Amounts in respect of trusts in favour of the Crown in the right of Canada
2. Amounts in respect of trusts in favour of Ontario
3. Unpaid property taxes
4. Property taxes owing to the Crown under the *Provincial Land Transfer Act, 2006*
5. Amounts required to satisfy encumbrances to which the property is subject
6. Other amounts owing to the Federal Crown, Ontario, or a municipality in full or on a pro rata basis



## CHANGES UNDER CONSIDERATION TO THE **MUNICIPAL ACT, 2001**

The following proposed changes are under consideration by the Ministry.

### **End to payments out of court for municipalities**

Municipalities will no longer be eligible to apply for and receive excess proceeds of a tax sale that remain in court after those with an interest in the property have been paid, nor after the expiry of one year since the payment into court was made.

Also under consideration is eliminating the one year waiting period for a court to make a determination of entitlement to proceeds of a tax sale paid in to court.

### **Tax arrears certificate can be registered after two years**

Presently, a tax arrears certificate can not be registered until a property is in its third year of arrears.

### **Expedited timeframe for registering against escheated lands**

Give municipalities an option to expedite a tax sale process for properties that have vested in the Crown because of the dissolution of a corporation.

### **Extension agreements to be authorized by Treasurer, rather than by Council**

Presently, extension agreements must be approved by Council and passed as a by-law. As well, clarification will be given regarding flexibility for a municipality to enter into an extension agreement with any of the owners of property that is the subject of tax sale proceedings.

### **Allow for alternative methods of advertising a tax sale**

This could result in lower costs to municipalities.

### **Amounts imposed after a property has forfeited to the Crown**

Deem amounts that municipalities impose after a property has forfeited to the Crown to be treated in the same manner as taxes, in order to allow municipalities to recover these amounts in a tax sale.

### **Death of a property owner who did not have any lawful heirs**

Clarify municipality's ability to use tax sales to recover unpaid property taxes on property that becomes the property of the Crown due to the death of an individual who did not have any lawful heirs.



### Next Steps

- The Province will continue to review the feedback it has received, but the consultation period has ended
- The scope and nature of these changes remain subject to change as the decision making process continues
- The Province is aiming to introduce new legislation this year

We hope that you find this overview to be beneficial.

Best regards,

The Realtax Team