



**CHANGES TO
TAX REGISTRATIONS, TAX SALES, AND PAYMENTS OUT OF COURT
UNDER BILL 68
*MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2017***

June 9, 2017

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* ("MOMLA") is now law. It passed third reading and received royal assent on May 30, 2017.

The following is an overview of the resulting changes to the *Municipal Act, 2001* ("MA") that pertain to tax registrations, tax sales, and payments out of court. Please note that this is an overview only. For any and all legal and/or procedural purposes, please refer directly to the applicable legislation.

Some of these changes have already come into force. Others will come into force on a day to be named by proclamation of the Lieutenant Governor.

Tax arrears certificate can now be registered in the second year of arrears

MOMLA s. 55(1)

Came in to force on May 30, 2017

Previously, a tax arrears certificate could be registered if there were arrears owing on January 1 of the third year following that in which the taxes became owing (*Municipal Act, 2001*, s. 373(1)). In other words, if there were arrears owing from 2014 or earlier, a tax arrears certificate could be registered after January 1, 2017.

A tax arrears certificate can now be registered if there were tax arrears owing on January 1 of the second year following that in which the taxes became owing.

- Suggestions:
1. Before you register a tax arrears certificate against any property, we suggest that you provide the property owner(s) with fair warning of when you are going to take this step.
 2. If you are going to register a tax arrears certificate when a property is in its second year of arrears, you should update your written collection policy.



Municipalities will not be able to apply for payment out of court

MOMLA 63(6)

Will come into force on a day to be named by proclamation of the Lieutenant Governor

Clauses 380(6)(b) and 380(6.1)(b) of the *MA*, which enable municipalities to apply for payments out of court, will be repealed.

Interested parties can apply for payment out of court between 90 days and ten years after payment into court was made (*MOMLA 63(6)5*). Parties applying for payment out of court must serve notice of the application to the other interested parties and the Public Guardian and Trustee (*MOMLA 63(6)(6)*). Any money remaining in court after 10 years is deemed forfeited to the Crown, and the Public Guardian and Trustee may apply for that amount (*MOMLA 63(6)(8) and(9)*).

According to the **Transition** section at the end of this article, if a tax arrears certificate is registered before this section comes into force, the municipality will still be able to apply for payment out of court one year after the payment into court.

Forfeited corporate land

MOMLA 55(3)

Came in to force on May 30, 2017

Subsections 373(3) to (3.2) of the *MA* are repealed. *MA 373(3)* stated

This section applies to land that is vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act* before or after the registration of a tax arrears certificate and that land may be sold under this Act for tax arrears.

This has been replaced with

MA 373(3) This section applies to land that is vested in the Crown because of an escheat or forfeiture as a result of the dissolution of a corporation, whether the land vested before or after the registration of a tax arrears certificate, and that land may be sold under this Act for tax arrears.



Land that belongs to the Crown as a result of a death

MOMLA 55(3)

Came in to force on May 30, 2017

Land that belongs to the Crown as a result of the death of an individual who did not have any lawful heirs can be sold for tax arrears. This applies regardless of whether the individual died before or after the registration of a tax arrears certificate (*MA 373(3.1)*).

A tax arrears certificate cannot be registered if the Crown registers a notice that it intends to use the land for Crown purposes (*MA 373.2 (1)(c)*) (*MOMLA 57*).

If an interested party pays the cancellation price, they will not be given a lien on the cancellation certificate (*MA 375(3.1)(b)*), (*MOMLA 59(3)*).

Expedited sale of forfeited corporate land

MOMLA 56

Will come into force on a day to be named by proclamation of the Lieutenant Governor

If there are tax arrears owing with respect to land that is vested in the Crown because of an escheat or forfeiture as a result of the dissolution of the corporation, a tax arrears certificate can be registered immediately (*MA 373.1*).

First notices must be sent within 30 days of the registration (*MA 374(1)*) (*MOMLA 58(1)*). There is no mention of final notices.

Tax sale procedures can begin 90 days after the registration (*MA 373.1(2)*) (*MOMLA 62(4)*).



Limits on registration of forfeited corporate land

MOMLA 57

Came in to force on May 30, 2017

A tax arrears certificate cannot be registered if (MA 373.2(1))

- a. an order cancelling encumbrances under section 18 of the *Forfeited Corporate Property Act, 2015* is registered on title;
- b. a notice under section 24 of the *Forfeited Corporate Property Act, 2015*, indicating the Crown intends to use the land for Crown purposes is registered on title; or
- c. a notice that the Crown intends to use the land for Crown purposes is registered on title, where the land belongs to the Crown as a result of the death of an individual who did not have any lawful heirs.

Clause a. above does not apply if the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015* consents to the registration of a tax arrears certificate (MA 373.2(2)) (MOMLA 57(2)).

Notice to Public Guardian and Trustee

MOMLA 58(2)

Will come into force on a day to be named by proclamation of the Lieutenant Governor

Notice of registration must be sent to The Public Guardian and Trustee, if it has registered a notice or other document on title.

Accounting for cancellation price

MOMLA 60

Will come into force on a day to be named by proclamation of the Lieutenant Governor

The existing legislation (MA 376(1)) states

"...a person who pays the cancellation price before the expiry of the one-year period mentioned in subsection 379(1), by a written request made within 30 days after making the payment, may require the treasurer to provide an itemized breakdown of the calculation of the cancellation price that has been paid."

This is amended by striking out "before the expiry of the one year period mentioned in subsection 379(1)".

This is pertinent where the cancellation price is paid after the expiry of the one-year period. It is also pertinent when dealing with the expedited sale of forfeited corporate lands, as you would be dealing with a 90-day period, not a one-year period.



Extension agreements

MOMLA 61(1)

Will come into force on a day to be named by proclamation of the Lieutenant Governor

Extension agreements are dealt with in the *MA* as follows:

- 378(1) "A municipality, by a by-law passed after the registration of the tax arrears certificate and before the expiry of the one-year period mentioned in subsection 379 (1), may authorize an extension agreement with the owner of the land, the spouse of the owner, a mortgagee or a tenant in occupation of the land extending the period of time in which the cancellation price is to be paid."

The above subsection is repealed (s. 61(1)) and the following substituted:

A municipality may, after the registration of the tax arrears certificate and before the expiry of the one-year period mentioned in subsection 379 (1), enter into an extension agreement, extending the period of time in which the cancellation price is to be paid, with any of the following persons:

1. Any owner of the land.
2. The spouse of any owner.
3. Any mortgagee.
4. Any tenant in occupation of the land.
5. Any person the treasurer is satisfied has an interest in the land.

Note that the clause, " by a by-law passed" has been removed.

These changes also apply to extension agreements with regard to expedited sale of forfeited corporate lands, in which case the extension agreement must be entered in to before the expiry of the ninety-day period mentioned in *MA 373.1(2)*. In this situation, however, a person who wishes to enter into an extension agreement must first obtain the consent of the Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015 (MA 378(1.2))*.

Changes to advertising requirements

MOMLA 62(3)

Will come into force on a day to be named by proclamation of the Lieutenant Governor

The requirements to advertise once a week in the *Ontario Gazette* and once a week for four weeks in a local newspaper (*MA 379(2)(b)*) are being struck out and replaced with, "in accordance with the regulations". We don't yet know what advertising requirements will be included in the yet to be proclaimed regulations.



Payment into court

MOMLA 63(3)

Will come into force on a day to be named by proclamation of the Lieutenant Governor

When making payment into court of tax sale proceeds minus the cancellation price, you will have to submit, in addition to a statement of facts, the names and addresses to whom the statement will be sent (*MA 380(2)*). These parties include the everyone who had an interest in the property on the day the tax deed and the Public Guardian and Trustee, as well as one new one:

The Minister responsible for the administration of the *Forfeited Corporate Property Act, 2015*.

This will require an updated title search and execution search on the day that the tax deed is registered.

Transition

MOMLA 68

Will come into force on a day to be named by proclamation of the Lieutenant Governor

If a tax arrears certificate is registered before the day that this section comes into force, the proceedings or other steps in *MA Part XI* as it read immediately before the coming into force of this section will apply.

Changes that went into effect on December 10, 2016

A number of legislative changes were made that affected tax registrations and tax sales. These included

- Escheated land—limits on registration of a tax arrears certificate
- New notice requirements after registering a tax arrears certificate
- No lien on escheated or forfeited land if cancellation price is paid by an interested party
- New notice requirement after registering a tax deed or notice of vesting
- Notice after making payment into court
- Province may transfer certain properties to a municipality, if appropriate
- Crown disposing of forfeited corporate property

On November 9, 2016 we sent a memo to our clients about these changes. You can see this memo at

realtax.ca/resource/news-articles/

We hope you find this overview helpful.

All the best,
The Realtax Team