

Tax Sales 201

Presented to

MFOA Virtual Annual Conference 2021

by

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On

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You can make notes if you like...

...or you can download this webinar at

Realtax.ca

Resources

Tax Sales 201



This presentation is only an overview

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



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*
 - *Registry Act*
- 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



The one-year period has expired

- You registered a tax arrears certificate more than a year ago
- You sent out Farm Debt Notices, First Notices, Final notices
- Now it's time for tax sale



Tax sale

- Subsection 379(2) requires that tax sale procedures be commenced “immediately” after the expiry of the one-year period
- **Read the *MUNICIPAL TAX SALES RULES***
(O. Reg. 181/03 amended to O. Reg. 580/06)
- Decide if you want to do the tax sale by public tender or by public auction
(vast majority are done by public tender)
- This presentation will focus on sales by public tender



Site visit?

- If no contact has been made with the owner, consider sending a **by-law officer or bailiff** to make personal contact to let them know the property is being advertised for sale
- Not required by the Act, but it might be a good idea just the same



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

- Yes, you can accept payment in full any time before the registration of a tax deed or notice of vesting
- ***It's probably your best option if you want to stay out of court!***
- 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
 - Has an obligation to exercise their discretion to accept or reject the payment
- More on the Cunningham case

Realtax.ca

Resources

[Article—The Cunningham Case](#)



Can you accept a partial payment in after the 1-year period has expired?

- 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."

- You can only enter into an extension agreement before the expiry of the one-year period (378(1))



Check the file!!!

If you're doing the work in-house

- Check the file over with a fine-toothed comb!!! If any kind of mistake has been made, this would be a good time to find it!!!
- Is the legal description correct?
- Were all the statutory deadlines complied with?
- Were notices sent to all the interested parties?
- Were all names and addresses correct?
- Some mistakes can be corrected, some cannot



Form 4—Statutory Declaration Regarding Sending of Notice (379(2a))

- Sets out names, addresses, nature of interest, date notice was sent
- Must be signed and commissioned
- Does not have to be registered on title
- Must allow any person to inspect it (379(12))
- Many municipalities (and Realtax) prepare this statutory declaration shortly after final notices were mailed



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



Which limitation periods were suspended, which ones were not?

Suspended periods include:

- One year up (aka Redemption Period)
- Notices (Firsts, Finals, etc.)
- Advertising for tax sales
- Deadline for receiving 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
- 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.



Mining Act

- In certain municipalities, it is necessary to obtain a statement in Form 9 from the Ministry of Northern Development and Mines before a tax deed or notice of vesting can be registered (Rule 24—Regulation 995, *Registry Act*)
- Don't wait until *after* the tax sale to send Form 9 in to the Ministry
 - Send it in ahead of time
 - Otherwise, it could delay the registration of a tax deed or notice of vesting
- You need to send them
 - Form 9
 - Parcel register
- In our experience, turn-around time is usually about 2 to 5 business days



Mobile homes

- Are there mobile homes on the property?

If so, see 379(3) and (4) regarding exclusion of mobile homes by-law



Set a date for the tax sale

- Must advertise once in the Ontario Gazette, and once a week for four weeks in a local newspaper (if there is no local newspaper, you can post a notice at the municipal office and one other prominent place in the municipality)
- Tender opening (or auction) must be at least 7 days after last ad was published
- Ontario Gazette requires at least 10 days lead time to publish ad
- Check to make sure the ads are published correctly
- **SUGGESTION**
 - Allow yourself leeway with the ads—allow at least 14 days after publication of last ad
 - You don't want to have to postpone a tax sale because a newspaper made a mistake with your ad—it can happen!



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 Notices of Vesting are attached to the MTSR



New Tax Sale Advertisement Provisions as of January 1, 2018

Full Form 6 (sale by tender) or Form 8 (sale by auction) ad must now include:

- Description consisting of street address (or location if no street address) and PIN
- Assessed value of the lands according to the last assessment roll

NOTE: This can be misleading. Consider including a disclaimer:

“The assessed value, according to the last returned assessment roll, may or may not be representative of the current market value of the property.”

- Form of Tender available on website of the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs



Advertising requirements

- **The old way**

- Advertise once in the Ontario Gazette, and
- Once a week for four weeks in a newspaper that has “circulation within the municipality as to provide reasonable notice of the sale”

(this could be quite expensive)

or,

“...if there is no such newspaper, post a notice in the municipal office and one other prominent place in the municipality”



New & improved option for advertising

Only applies if the tax arrears certificate was registered after January 1, 2018 (388.2)

- Advertise once in the Ontario Gazette, and
- Instead of running the full ad once a week for four weeks in a local newspaper, you can
 - Run the full ad the first week
 - Run an abbreviated ad in the second, third and fourth weeks
 - This could save a considerable amount of money



Abbreviated ad—considerably less expensive

Abbreviated ad must contain certain prescribed information

1. The name of the municipality or board.
2. The street address and municipality in which the land is located or, if there is no street address, the location of the land.
3. The deadline for receiving tenders.
4. The minimum tender amount (*set out the cancellation price as of the first day of advertising*).
5. The following statements:
 - i. This sale is governed by the *Municipal Act, 2001* and the Municipal Tax Sales Rules made under that Act.
 - ii. Further information about this matter is available online at (website address), or you may contact (contact information for the municipality or board, such as address, email address, telephone number, and one or more contact names). O. Reg. 571/17, s. 4.



Regular ad

FORM 6

SALE OF LAND BY PUBLIC TENDER

Municipal Act, 2001

Ontario Regulation 181/03, Municipal Tax Sale Rules

SALE OF LAND BY PUBLIC TENDER

THE CORPORATION OF THE TOWN OF ANYTOWN

Take Notice that tenders are invited for the purchase of the land described below and will be received until 3:00 p.m. local time on June 23, 2021, at the Anytown Municipal Office, 100 Main Street, Anytown, Ontario.

The tenders will then be opened in public on the same day as soon as possible after 3:00 p.m. at the Anytown Municipal Office, 100 Main Street, Anytown.

Description of Land:

Roll No. 12 34 567 890 12345 0000; 100 Some Street, Anytown; PIN 98765-4321 (LT); LT 50 PL 100 ANYTOWN; File No. 19-01

According to the last returned assessment roll, the assessed value of the land is \$21,000

Minimum tender amount: \$52,234.51

Tenders must be submitted in the prescribed form and must be accompanied by a deposit of at least 20 per cent of the tender amount, which deposit shall be made by way of a certified cheque/bank draft/ money order payable to the municipality.

Except as follows, the municipality makes no representation regarding the title to or any other matters relating to the land to be sold. Responsibility for ascertaining these matters rests with the potential purchasers. The assessed value, according to the last returned assessment roll, may or may not be representative of the current market value of the property.

This sale is governed by the *Municipal Act, 2001* and the Municipal Tax Sales Rules made under that Act. The successful purchaser will be required to pay the amount tendered plus accumulated taxes and any taxes that may be applicable, such as a land transfer tax and HST.

The municipality has no obligation to provide vacant possession to the successful purchaser.

A copy of the prescribed form of tender is available on the website of the Government of Ontario Central Forms Repository under the listing for the Ministry of Municipal Affairs.

For further information regarding this sale contact:

Mr. T. Collector
Tax Collector
The Corporation of the Town of Anytown
100 Main Street,
Anytown, Ontario A2B 3C4
tcollector@anytown.ca
Telephone 905-555-5555

Abbreviated ad

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Minimum Tender Amount: \$51,234.51

Except as follows, the municipality makes no representation regarding the title to or any other matters relating to the land to be sold. Responsibility for ascertaining these matters rests with the potential purchasers. This sale is governed by the Municipal Act, 2001 and the Municipal Tax Sales Rules made under that Act. A full copy of the tax sale advertisement and further information about this matter is available on line at www.OntarioTaxSales.ca or ► Town web site ◀ or you may contact Mr. T. Collector Tax Collector, The Corporation of the Town of Anytown, 100 Main Street, Anytown, Ontario A2B 3C4 Email tcollector@anytown.ca Telephone 905-555-5555

More effective advertising

- Advertising in a newspaper...

How many people even read a newspaper?

If potential purchasers do see your ad, what will the ad tell them?

- By directing people to a website, can have far more effective advertising
- Let's look at the regular ad again...



Regular ad

FORM 6
SALE OF LAND BY PUBLIC TENDER
Municipal Act, 2001
Ontario Regulation 181/03, Municipal Tax Sale Rules

SALE OF LAND BY PUBLIC TENDER
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The Corporation of the Town of Anytown
100 Main Street,
Anytown, Ontario A2B 3C4
tcollector@anytown.ca
Telephone 905-555-5555

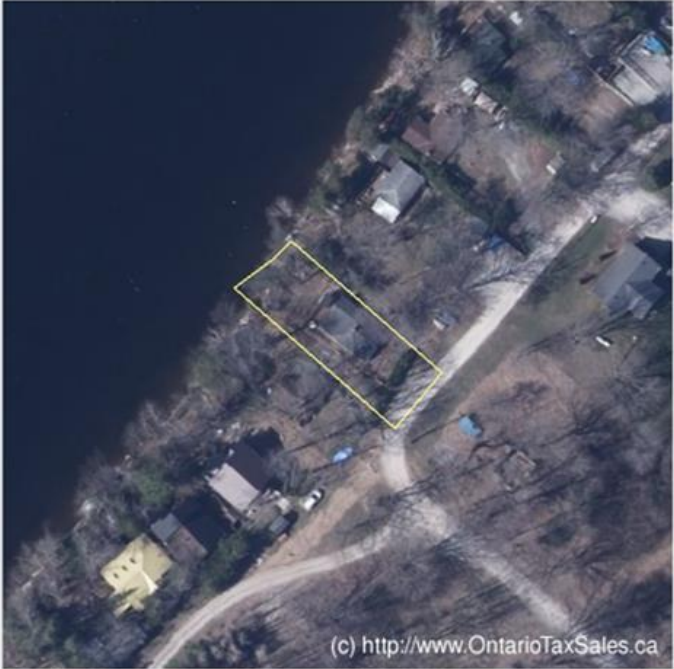
More effective ad, utilizing the Internet

1294 Black Beach Lane, Brechin

Minimum Tender Amount: \$64,485.67

File Number:
Ramara-2021-09-16-Feature-SORA19-02

[Click For More Details](#)



(c) <http://www.OntarioTaxSales.ca>



Property Size (Approximately):	Frontage 50.36; Depth 150; Acres 0.16
Is the property on a lake or a bay or a river?	yes
Is this property accessible by a public or private road?	yes
Is there a house or cottage on the property?	yes
Is there some other structure on the property?	unknown
Zoning	Shoreline Residential (SR)
With the existing zoning, is it possible to obtain a building permit?	Yes – subject to applicable legislation
Is it possible to have the property re-zoned?	Can apply
Waterfront	yes
Residential	yes

Advertising

- You can utilize
 - Your municipality's website
 - OntarioTaxSales.ca (there's no cost to your municipality for this)
- Find out how much money it will cost to run the advertisements
- Calculate the cancellation price for each property as of the first day of advertising
- Submit ads



Prepare tender packages

- Should include
 - Form 6 Advertisement for Tax Sale
 - Form 7 Tender to Purchase
 - Tender envelope
- Also consider including
 - Instructions for submitting a tender
 - Tenderers Checklist
 - Information about the property—is it waterfront? Residential? Vacant?
 - Maps
 - Photos
- Consider charging for tender packages—eliminates the merely curious



Receive tenders

- Date and time they were received must be recorded on the envelope
- Keep them unopened, in a secure place
- Withdrawing a tender
 - A tender is withdrawn if the tenderer's written request is received by the treasurer before 3:00pm on the last day for receiving tenders (MTRSR 8(1))
 - **NOTE:** This is an excellent reason why you **SHOULD NOT** hold a tender opening before 3:00pm!



Opening the Tenders (MTSR 9)

- As soon as possible after **3:00pm** (MTSR9(1)) on the day of the sale, at a place that is open to the public (many municipalities are utilizing Zoom, and/or livestreaming on YouTube)
- In the presence of at least one person who did not submit a tender—may be a municipal employee
- It's a good idea to read the following Rules out loud:
 - 6 (Tender requirements)
 - 9 (Opening of tenders))
- Also a good idea to read out loud
Subsection 382(6) (Treasurer may halt proceedings)



Check the Tenders

- Carefully examine each tender!
- Must reject every tender that
 - Is not equal to or greater than the minimum tender amount
 - Does not comply with Section 6
 - Includes any term or condition not provided for in the Rules
 - Has been withdrawn
- Then reject all but the two highest tenders
- You don't have to do this at the tender opening
 - Many municipalities read out the amount of each tender at the opening
 - Check all the tenders the following day
- What if you aren't sure if a tender complies with Rule 6?
 - Don't make a decision on the spot!!!
 - Defer a decision until you've had an opportunity to get qualified advice on the issue



Rule 6

6. (1) A tender shall be in Form 7 and shall be,

(a) typewritten or legibly handwritten in ink;

(b) accompanied by a deposit of at least 20 per cent of the tender amount, which deposit shall be made by way of money order or by way of bank draft or cheque certified by a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a trust corporation registered under the *Loan and Trust Corporations Act* or a credit union within the meaning of the

(c) submitted in a sealed envelope which indicates on it that it is a tax sale and provides a short description or municipal address of the land sufficient to permit the treasurer to identify the parcel of land to which the tender relates; and

(d) addressed to the treasurer

(2) A tender shall relate to only one parcel of land



Two remaining tenders

- Keep the two highest valid tenders
- Return the tenders, cheques, and the reason for the rejection to the other tenderers
- Send Notice to Higher Tenderer, by regular mail
 - They have 14 days to pay the balance owing on their tender, plus Land Transfer Tax, Accumulated Taxes, and HST (if applicable)
 - If they do not make this payment within 14 days, their deposit will immediately be forfeited to the municipality
- Notice to Lower Tenderer
 - Only send this if the Higher Tenderer does not pay the full balance owing within 14 days
 - Otherwise, do not send it



NRST

NRST—Non-Resident Speculation Tax

- 15% tax on purchase of qualifying residential property (between 1 and 6 single family residences) and within the Greater Golden Horseshoe Area
- If qualifying property is purchased by a non-resident, 15% Speculation Tax *plus* Land Transfer Tax must be **pre-paid** to

Ministry of Finance
Manager, Land Taxes
PO Box 625
33 King St. West
Oshawa, ON L1H 8H9



NRST

Non-Resident Speculation Tax Area

The Greater Golden Horseshoe (GGH) includes the following geographic areas: Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York.



Should you charge HST?

- You should charge HST on the amount tendered unless:
 - This is the re-sale of a residential property
 - To qualify for this, there must be a residence on the property
 - Vacant land that's zoned residential does not qualify
- Or,
- The purchaser is an HST registrant and they provide you with a Declaration and Indemnity



If the balance owing is paid on time

- Prepare a tax deed
 - Have it signed and registered on title
 - Give the registered tax deed to the purchaser
 - It's the treasurer's responsibility to register a tax deed, not the purchaser's (Rule 23)
- 'PIPS'
Have purchaser submit commissioned *Prescribed Information for Purposes of Section 5.0.1 of the Land Transfer Tax Act* form to the Ministry of Finance, if applicable (if the land is either agricultural, or 1 – 6 single family residences)



PIPS

PIPS—Prescribed Information for the Purposes of Section 5.0.1 of the Land Transfer Tax Act

- **Purchasers** must submit a completed and commissioned PIPS form to Minister of Finance:

Ministry of Finance
Manager, Land Taxes
33 King Street West
PO Box 625
Oshawa ON L1H 8H9
- It is an offence under the Land Transfer Tax Act to not submit this information when required
- The “PIPS” form is available on line in a fillable Adobe format For more information go to <http://www.fin.gov.on.ca/en/tax/ltt/prescribedinfo.html>



Send copy of tax deed to Minister (379(6.1))

- Within 15 days of registration of a tax deed or notice of vesting, you must send a copy to the

Minister responsible for the Administration of the *Forfeited Corporate Properties Act, 2015*



Payment into court, notice to interested parties

- If a property sold for more than the cancellation price, you must submit payment into court (380(2))
 - In person, to local Superior Court of Justice
- Must send copy of *Payment into Court-statement of Facts* to (380(3))
 - The Interested Parties
 - Public Guardian and Trustee
 - Minister responsible for the Administration of the *Forfeited Corporate Properties Act, 2015*
- If the tax arrears certificate was registered after 1 January 2018, your municipality cannot apply for payment out of court (380(8))



KEY TAKE AWAYS

- If you did the tax registration internally, *CHECK THE FILE!!!*
- Read the *Municipal Tax Sales Rules*
- Don't accept a partial payment when you cannot, do accept payment in full when you can
- New advertising option is less expensive and can be more effective



Questions?



Thanks for watching this webinar!

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