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Losing Your Home

Ignoring unpaid taxes can lead to big trouble — fast

BY JEFF WOODBURN

Illustration by Victoria Marcelino

Benjamin Franklin noted that "nothing [is] certain, except death and taxes." But few know the combined power of those words than Richard Polonsky. The 72-year-old Bedford resident has defied death by overcoming a nine-hour prostate surgery and 22-day hospital stay, but lost his home, assessed at around $300,000, to the town for $4,500 tax liability.

"I was surprised by how hard-edged, unforgiving and convoluted the process is," Polonsky says. He takes responsibility for falling behind in paying his taxes — for three years and total tax obligation of around $17,000 (not including interest, penalties, etc.) "Essentially I ignored it. I was out of my mind in pain," he says.

Such problems are all too familiar to John Tobin, a retired Concord attorney, who ran New Hampshire Legal Assistance for many years and was involved in an important case to reform the process by balancing property rights with the pressure of local government to collect taxes.

"This happens all the time," he says, "and it comes down hard on elderly and disabled people in towns with revenue challenges." And, Tobin says, to add insult to injury the tax bill is often a small fraction of the total property value.

Up until 2001, it was common for the municipality to take all of the proceeds from the sale of the tax-deeded property — one that is owned by the town because of delinquent taxes — regardless of the amount owed. The state Supreme Court ruled in favor of the owner of a $65,000 property that was taken by the town of Croydon for an outstanding tax bill of $376.

The court ruled it was "unduly harsh" and a violation of the property rights section of the federal and state constitutions. The Legislature responded by creating the Alternative Tax Lien Procedure, which instituted a two-year tax lien and redemption period, followed by tax-deed transfer of ownership to the town. During that two-year redemption period, interest on the unpaid taxes accrues at the rate of 18 percent per year. Even after the tax deeding, there is a three-year period in which the former owner can repurchase the property by paying all the taxes, interest, costs, attorney□s fees and a penalty of 15 percent of the property□s assessed value.

The tax lien process has supplanted the archaic, abusive practice — still legal but no longer utili□ed — of allowing private individuals to “buy the taxes” at the tax collector□s sale, wait out the redemption period and then take ownership of the property at a greatly discounted price.

□ithout a broad-based tax, New Hampshire relies heavily on real estate taxes — a full 64 percent of all taxes raised come from it. And while state, municipal, county and school coffers are filled by the source, the collector is the local municipality. “There is a lot of unevenness and pressure” for communities to vigilantly collect taxes, Tobin says. This responsibility falls on a local elected or appointed tax collector (part-time in some places).

The tax collector is responsible for billing and collecting of all municipal taxes. They are also responsible for overseeing the tax lien and tax-deeding process. □n these matters, the power is exclusively statutory or “by the book.”

“Like a kink in a hose,” explains Margaret Byrnes, an attorney with the New Hampshire Municipal Association, “a defect anywhere along the line will impact the municipality□s ability to perfect its lien and take the property by tax deed.”

□nly the elected governing body can make the decision to take ownership of a property or to arbitrarily abate or negotiate. Up until recently, some communities had a history of never taking properties for unpaid taxes.

The problem occurs slowly at first with a missed tax bill and few immediate consequences. Unlike other overdue debts, there are no harassing phone calls or letters. The practice of listing delinquent taxpayers in the official town report has all but ended.

□hen a property tax bill goes unpaid, a series of legal notices (dictated exactly by state law) follow□a notice of Arrearage (late bill), Notice of Impending Lien (pay up or lien will be placed), then Report of Tax Lien (lien placed) and finally the Notice of Lienholder to Mortgagee (that□s it, we□re telling your bank). This single notice —more than any other — causes a chain reaction that applies important pressure and protection for the property owner. And while the taxpayer has two years to pay off the one year of taxes, plus interest and costs, if the taxpayer doesn□t pay the taxes for the next year, then the process starts all over again for the subsequent year□s taxes.

□ith the interest accumulating on both tax bills, the amount the taxpayer owes the town increases rapidly. In the meantime, the municipality gains important leverage because municipal tax liens take priority over mortgage liens. And most mortgages give banks the right to foreclose if the homeowner does not keep up with the property taxes.

Advice on Unpaid Real Estate Taxes

1. Always, always communicate. Too many people bury their head in the sand. You are not alone. Speaking up and asking questions opens up a line of communication, which could contain the lifeline you need.

2. Time is money. Financial problems don’t happen in vacuum. Moving fast while the problem is small, while your credit is good and interest and penalties are low.

3. Help is often hidden. With obvious pressure to collect every available nickel, Attorney Tobin says, “Towns sometimes hide the ball.” There are options like poverty abatements, exemptions and an effective, little-known program called the Elderly and Disabled Tax Deferral Application, which is similar to a reverse mortgage by putting property tax bills off until the property sells. Ask municipal officials how to apply.

At this point, the lender kicks into action and applies pressure on their borrower to pay up or face foreclosure. If necessary, the lender will pay the taxes to protect their interest in the real estate. Two-thirds of all residential property owners have mortgages, and financial institutions have honed their practices, but what about those property owners, like Polonsky, who own their property free and clear?

Such a situation pits an individual taxpayer against the municipality. The series of notices continue and consequences quietly mount as do the costs. When the property owner's time runs out, the property is taken by a tax deed, sometimes called a collector's deed.

> 4. Get a line of credit when you don't need it (doesn't mean you have to use it). "It's a doubled-edge sword," warns Tobin, but sometimes a little credit can save the day and it also brings in added notice and protection.

For the next three years, the previous owner has a right to repurchase the property by paying all back taxes, interest, deeding costs and, as noted above, a penalty of 15 percent of the property's entire assessed value. For Polonsky, this meant $44,187, more than twice what the rest of the charges were.

This was a triple whammy for Polonsky. In one moment, he learned that he simultaneously lost his property, the price of getting it back more than doubled and he couldn't tap his property's equity.

Polonsky says he responded by making an offer to pay the balance less the 15 percent assessment penalty and later, in response to a notice to sell the property by the town, another to pay the entire $□4,271, but the town refused both. The latter rejection came from the town's attorney (who chose not to be interviewed for this story) and indicated that the "right to repurchase has terminated," that the earlier "notice was sent in error and is no longer operative" and that the "Council will not entertain further negotiations."

Polonsky's attorney John Hayes, of Concord, says he was "surprised they [the town] wouldn't talk at all."

But the bottom line, he says, "This is a technical issue." According to court documents he wrote, "The process was grossly flawed □ [and the town] has chosen to capitalize upon their own inaction by unjustly enriching the town coffers by the entire value of Polonsky's home."

In the meantime, Polonsky and with his wife are still in his family home of 30 years. Since he is disputing the ownership, they pay $1,200 per month rent to Bedford. The case is scheduled to be heard in June. "I just keep going," he says.