

A different method, established in 1929 by G.L. Ch. 80A, was held constitutional in 1966 (**Town of Swampscott v. Remis**, 350 Mass. 523). It authorizes the selectboard or mayor to proceed after a town meeting or city council vote, by adopting an order of “intention to take,” rather than an order of taking. The order contains the municipality’s estimate of damages. After recording the order, a plan and the estimate, the mayor or selectboard file a petition in court to determine the damages to be paid.

Once the court has determined the damages, as in an eminent domain proceeding under G.L. Ch. 79, the municipality has the option either to make a final taking or to abandon the matter. Where easements or so-called “marginal land” such as wetlands are to be taken, damages are hard to predict, and a Commission may well wish to look at the damages as determined in this way by a court before recommending a final taking. However, if the municipality backs out, the landowner is entitled to payment for any damages suffered from delay and for the expense of the proceedings.

6.9 Land Taken for Unpaid Property Taxes (Tax Title Land)

When a landowner fails to pay property taxes, the community may seize the land. These properties are called “tax title lands.” They are often wetlands, lands abandoned by their owners, or small parcels without frontage, not useful for development. If tax title lands contain important wetland resources, the Commission should acquire them if possible. Any other parcels of tax title land should be seriously considered for their value as open space or protection of natural resource values.

Municipalities vary widely in the attention paid to acquiring tax titles. Important parcels of land can sometimes be obtained through the tax title route. The following sections show a Commission how to accomplish this. For additional detail see G.L. Ch. 60.

The ownership of long-neglected lands is often in question. The Department of Revenue has a useful guidance on the process of acquiring such lands: Informational Guideline Release (IGR) 87-238 (September 1987). This IGR is still current in mid 2006.

6.9.1 “Strict Foreclosure” Tax Title Proceedings

Although the Commonwealth’s fiscal year begins July 1, taxes are assessed as of January 1 of the calendar year. Within three years from April 1 of the year when taxes become delinquent, the collector of taxes may issue a “demand” and make a “taking” for unpaid taxes and any additional assessments, water charges, etc. The taking document is recorded in the Registry of Deeds and becomes a lien against the property.

If the landowner is unknown, the city or town may take the land by issuing a “John Doe” notice (**Hardy v. Jaeckle**, 371 Mass. 573 (1976)). The “tax title” account and collection problem then is passed to the municipal treasurer and, unless paid off, each subsequent year’s taxes are added to this account. Six months after the “taking” the treasurer, particularly if requested, may begin foreclosure proceedings by a land court petition (G.L. Ch. 60 §65) or by an optional “low value” procedure for parcels assessed under \$15,000. As of 2002, the Legislature added to Ch. 60 a new §81B, stating that, if the treasurer certifies that the redemption amount exceeds the assessed value, the treasurer must use the formal §65.

Under strict foreclosure proceedings, the Land Court appoints a title examiner who reviews the records at the Registry of Deeds, reports the names of all persons appearing to have title or interests in the real estate, and notifies them by registered mail. If they are unknown or cannot be found, notice is given by publication in the local newspaper. Unless the interested parties appear, the municipality wins by default. If they do appear and either fail to redeem by paying off the amount due plus costs, or are unable to successfully challenge the validity of the “tax title,” the court decree bars right of redemption, and the city or town takes title to the land (G.L. Ch. 60 §69). Liens such as mortgages are extinguished by this process but legal easements remain (**Town of Sandwich v. Quirk**, 409 Mass. 380 (1991)). A request to vacate the court decree may be made within one year after final entry of the decree (G.L. Ch. 60 §69A), but only if the property has not been sold to an innocent buyer (G.L. Ch. 60 §69).

At this stage, the town meeting or city council can transfer control of the land to the Conservation Commission under G.L. Ch. 40 §15A (HB §6.7). This gives the municipality a good title to the land, but it takes many months and is expensive unless many parcels are processed at the same time. Money may be appropriated for the Land Court proceedings (G.L. Ch. 60 §50B).

6.9.2 “Low Value” Tax Title Proceedings

The “low value” process is seldom used today, since almost any property exceeds the \$15,000 value. If the treasurer certifies that the redemption value exceeds the assessed value, the low value approach cannot be used at all (G.L. Ch. 60 §81B).

Furthermore, there has been a lot of litigation about defects in the low value process. Cases include **Bartevian v. Cullen**, 369 Mass. 819 (1976), **Pass v. Town of Seekonk**, 4 Mass. App. 447 (1976), and **Hilde v. Dixon**, 16 Mass. App. Ct. 981 (1983). Courts are reluctant to disallow a taking which took place many years before, even if the description of the property was vague (**Krueger v. Devine**, 18 Mass. App. Ct. 397 (1984)); however, banks may be reluctant to approve a loan. G.L. Ch. 60 §80C sets a 20-year limit on such complaints. This was upheld in **Lamontagne v. Knightly**, 30 Mass. App. Ct. 647 (1991).

Finally, the low value process requires a public auction. This means the Commission would have to bid against other buyers.

6.9.3 Transfer of Tax Title Land

Once the municipality acquires title, the land is usually under the management and control of the selectboard or city council. Money may be appropriated for maintenance (G.L. Ch. 40 §5(38)). Such land is “held and disposed of like any land belonging to it and held for municipal purposes” (G.L. Ch. 60 §77). It can therefore be transferred to the Commission by town meeting or city council vote. Transfer and sale of municipal land are discussed in HB §8.10.1.

Municipal ordinances or bylaws may give the Commission the right of first refusal prior to the sale of tax title land or any municipal land.

Although the transfer method has the advantage of being free, a Commission with a Conservation Fund may save itself time and trouble. It can do so by purchasing tax title land after strict foreclosure by the treasurer by using Commission funds to pay the accrued taxes and costs, and obtain a deed in the name of the city or town for conservation purposes. The Uniform Procurement Act will apply if the property meets the \$25,000 threshold, but the municipality may waive it for transfer to a government body. The other formalities for selling town-owned land will also apply (see HB §8.10.1).



It is a good practice for the Commission to have a working relationship with the board of assessors and tax collector so they will inform the Commission when tax title proceedings are under way. With proper planning, the Commission can then approach the selectboard/mayor about transfer at the earliest opportunity.

6.9.4 Taking Tax Title Land by Eminent Domain

The Commission can clear the title to tax title land by having the area shown on a plan, not necessarily up to Land Court standards, and taking it by eminent domain under the Conservation Commission Act (HB §19.13). If there is land that is shown as “owners unknown,” an award of some purchase money (not too much) is made. The check is payable to the city or town treasurer and deposited in a savings bank (G.L. Ch. 79 §7D). If not claimed within 14 years, the money “escheats” to the state (not the municipality) under G.L. Ch. 200A (**Eldridge v. Board of Selectmen of Brewster**, 18 Mass. App. Ct. 502 (1984)). Some communities are exploring acquiring land in this manner and using Community Preservation Funds to cover any damages.