

Municipal Act, 2001
PART XI
SALE OF LAND FOR TAX ARREARS

Note: Shaded areas are amendments made under the Municipal Statute Law Amendment Act, 2002 (Bill 177), which was given royal assent on November 26, 2002.

Realtax Inc.

Interpretation

371. (1) In this Part,

"environmental site assessment" means an investigation in relation to land to determine the environmental condition of the land, and includes a phase one environmental site assessment or phase two environmental site assessment, both within the meaning of Part XV.1 of the *Environmental Protection Act*; ("évaluation environnementale de site")

(2) If section 4 of the *Brownfields Statute Law Amendment Act, 2001* is in force on December 31, 2002, this section comes into force on January 1, 2003 but if section 4 of the *Brownfields Statute Law Amendment Act, 2001* is not in force on December 31, 2002, this section comes into force on a day to be named by proclamation of the Lieutenant Governor.

Note: Section 4 of the Brownfields Statute Law Amendment Act, 2001 was proclaimed on December 1, 2002.

Realtax Inc.

"cancellation price" means an amount equal to all the tax arrears owing at any time in respect of land together with all current real property taxes owing, interest and penalties thereon and all reasonable costs incurred by the municipality after the treasurer becomes entitled to register a tax arrears certificate under section 373 in proceeding under this Part or in contemplation of proceeding under this Part and may include,

- (a) legal fees and disbursements,
- (b) the costs of preparing an extension agreement under section 378,
- (c) the costs of preparing any survey required to register a document under this Part, and

(d) a reasonable allowance for costs that may be incurred subsequent to advertising under section 379; ("coût d'annulation")

"mobile home" means a dwelling that is designed to be made mobile and that is assessed under the *Assessment Act* as part of the land on which it is situated; ("maison mobile")

"municipality" means a local municipality; ("municipalité")

"notice of vesting" means a notice of vesting prepared under section 379 and includes the title conferred by the registration of the notice of vesting; ("avis de dévolution")

"public sale" means a sale by public auction or public tender conducted in accordance with this Part and the prescribed rules; ("vente publique")

"real property taxes" means the amount of taxes levied on real property under this Act, the *Education Act* and under section 21.1 of the *Provincial Land Tax Act* and any amounts owed under the *Drainage Act*, the *Tile Drainage Act* and the *Shoreline Property Assistance Act* with respect to the real property and includes any amounts deemed to be taxes by or under any other Act; ("impôts fonciers") and any amounts given priority lien status by or under any Act .

"spouse" means spouse as defined in subsection 1 (1) of the *Family Law Act*; ("conjoint")

"tax arrears" means any real property taxes placed on or added to a tax roll that remain unpaid on January 1 in the year following that in which they were placed on or added to the roll; ("arriérés d'impôts")

"tax deed" means a tax deed prepared under section 379 and includes the title conferred by the registration of the tax deed. ("acte d'adjudication") 2001, c. 25, s. 371 (1).

Application to tax sales under *Education Act*

[\(2\)](#) Where, under the *Education Act*, an officer or collector has the powers and duties of a treasurer and the board has the powers and duties of the council of a municipality, this Part and the regulations made under it apply to tax arrears and to every sale of land for tax arrears owed to the board. 2001, c. 25, s. 371 (2).

Interpretation

[372.](#) For the purposes of this Part,

"abstract index" and "parcel register" include an instrument received for registration before the closing of the land registry office on the day the tax arrears certificate was registered even if the instrument has not been abstracted or entered in the index or register at that time; ("répertoire par lot", "registre des parcelles")

"index of executions" and "index of writs received for execution" include a warrant or other process or a certificate of lien that is filed with the sheriff and recorded in the index of executions under the *Land Titles Act* or in the index of writs received for execution by the sheriff, as the case may be. ("répertoire des brefs d'exécution", "répertoire des brefs d'exécution reçus") 2001, c. 25, s. 372.

Registration of tax arrears certificate

373. (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the third year following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land. 2001, c. 25, s. 373 (1).

Form

(2) A tax arrears certificate shall indicate that the land described in the certificate will be sold by public sale if the cancellation price is not paid within one year following the date of the registration of the tax arrears certificate. 2001, c. 25, s. 373 (2).

Escheated land

(3) 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. 2001, c. 25, s. 373 (3).

Scope of certificate

(4) A tax arrears certificate shall not include more than one separately assessed parcel of land. 2001, c. 25, s. 373 (4).

Notice of registration

374. (1) Within 60 days after the registration of a tax arrears certificate, the treasurer shall send a notice of the registration of the certificate to the following persons:

1. The assessed owner of the land.
2. Where the land is registered under the *Land Titles Act*, every person appearing by the parcel register and by the index of executions to have an interest in the land at the time of closing of the land registry office on the day the tax arrears certificate was registered, other than a person who has an interest referred to in clause 379 (7) (a) or (b).
3. Where the *Registry Act* applies to the land, every person appearing by the abstract index and by the index of writs received for execution by the sheriff for the area in

which the land is situate to have an interest in the land at the time of closing of the land registry office on the day the tax arrears certificate was registered, other than a person who has an interest referred to in clause 379 (7) (a) or (b). 2001, c. 25, s. 374 (1).

Spouse of owner

(2) If a notice is sent under this section to a person appearing by the records of the land registry office to be the owner of the land, a notice shall also be sent to the spouse of that person and, where this subsection is complied with, section 22 of the *Family Law Act* shall be deemed to have been complied with. 2001, c. 25, s. 374 (2).

Statutory declaration

(3) The treasurer shall, immediately after complying with subsections (1) and (2), make a statutory declaration in the prescribed form stating the names and addresses of the persons to whom notice was sent. 2001, c. 25, s. 374 (3).

Inspection

(4) The treasurer shall permit any person, upon request, to inspect a copy of the statutory declaration made under subsection (3) and shall provide copies of it at the same rate as is charged under section 253. 2001, c. 25, s. 374 (4).

Limitation

(5) A person is not entitled to notice under this section if,

(a) after a reasonable search of the records mentioned in subsection 381 (1), the treasurer is unable to find the person's address and the treasurer is not otherwise aware of the address; or

(b) the person has expressly waived the right to notice, either before or after the notice should have been sent. 2001, c. 25, s. 374 (5).

Cancellation of tax arrears certificate

375. (1) Before the expiry of the one-year period mentioned in subsection 379 (1), any person may have the tax arrears certificate cancelled by paying to the municipality the cancellation price as of the date the payment is tendered and, after the expiry of the one-year period, a public sale shall be conducted by the treasurer in accordance with section 379. 2001, c. 25, s. 375 (1).

Cancellation certificate

(2) If payment has been made under subsection (1), the treasurer shall immediately register a tax arrears cancellation certificate. 2001, c. 25, s. 375 (2).

Lien

[\(3\)](#) If the cancellation price is paid by a person entitled to receive notice under subsection 374 (1) or an assignee of that person, other than the owner of the land or the spouse of the owner, the person has a lien on the land concerned for the amount paid. 2001, c. 25, s. 375 (3).

Priority of lien

[\(4\)](#) A lien under subsection (3) has priority over the interest in the land of any person to whom notice was sent under section 374. 2001, c. 25, s. 375 (4).

Contents of certificate

[\(5\)](#) Where there is a lien under subsection (3), the tax arrears cancellation certificate shall state that the person named therein has a lien on the land. 2001, c. 25, s. 375 (5).

Accounting for cancellation price

[376. \(1\)](#) Except where the cancellation price has been determined in accordance with a by-law passed under section 385, 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. 2001, c. 25, s. 376 (1).

Application to court

[\(2\)](#) If the treasurer fails to provide the itemized breakdown of the calculation within 30 days of the request or if the person who made the request is of the opinion that the cancellation price has not been calculated properly or that the costs included in the cancellation price by the municipality as costs incurred in proceeding under this Part are unreasonable, the person who made the request may apply to the Superior Court of Justice for an accounting of the cancellation price. 2001, c. 25, s. 376 (2).

Determination by court

[\(3\)](#) The court shall determine the matter and, if the court determines that the cancellation price was not calculated properly or the costs included in the cancellation price are unreasonable, it may make an order setting a cancellation price which is proper and reasonable but no such order shall relieve a taxpayer of any liability to pay any validly imposed real property taxes. 2001, c. 25, s. 376 (3).

Effect of cancellation certificate

377. Unless otherwise shown in the tax arrears cancellation certificate, the certificate, when registered, is conclusive proof of the payment of the cancellation price as of the date set out in it. 2001, c. 25, s. 377.

Extension agreements

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. 2001, c. 25, s. 378 (1).

Conditions

(2) The agreement may be subject to such conditions relating to payment as are set out in it but shall not,

(a) reduce the amount of the cancellation price; or

(b) prohibit any person from paying the cancellation price at any time. 2001, c. 25, s. 378 (2).

Mandatory contents

(3) Every extension agreement shall state,

(a) when and under what conditions it shall cease to be considered a subsisting agreement;

(b) that any person may pay the cancellation price at any time; and

(c) that it terminates upon payment of the cancellation price by any person. 2001, c. 25, s. 378 (3).

Calculation of time

(4) The period during which there is a subsisting extension agreement shall not be counted by the treasurer in calculating the periods mentioned in subsection 379 (1). 2001, c. 25, s. 378 (4).

Inspection of extension agreement

(5) The treasurer, on the request of any person, shall permit the person to inspect a copy of an extension agreement and shall provide copies of it at the same rate as is charged under section 253. 2001, c. 25, s. 378 (5).

Cancellation certificate

(6) When the terms of an extension agreement have been fulfilled, the treasurer shall immediately register a tax arrears cancellation certificate. 2001, c. 25, s. 378 (6).

Public sale

379. (1) If the cancellation price remains unpaid 280 days after the day the tax arrears certificate is registered, the treasurer, within 30 days after the expiry of the 280-day period, shall send to the persons entitled to receive notice under section 374 a final notice that the land will be advertised for public sale unless the cancellation price is paid before the end of the one-year period following the date of the registration of the tax arrears certificate. 2001, c. 25, s. 379 (1).

Advertisement

(2) If, at the end of the one-year period following the date of the registration of the tax arrears certificate, the cancellation price remains unpaid and there is no subsisting extension agreement, the land shall be offered for public sale by public auction or public tender, as the treasurer shall decide, and the treasurer shall immediately,

(a) make a statutory declaration stating the names and addresses of the persons to whom notice was sent under subsection (1); and

(b) advertise the land for sale once in *The Ontario Gazette* and once a week for four weeks in a newspaper that, in the opinion of the treasurer, has such circulation within the municipality as to provide reasonable notice of the sale or, if there is no such newspaper, post a notice in the municipal office and one other prominent place in the municipality. 2001, c. 25, s. 379 (2).

Exclusion of all mobile homes

(3) The municipality may by by-law determine that all mobile homes situate on the land offered for sale shall not be included in the sale. 2001, c. 25, s. 379 (3).

Advertisement

(4) If a by-law is passed under subsection (3), the advertisement of the sale shall state that the land to be sold does not include the mobile homes on the land. 2001, c. 25, s. 379 (4).

Conduct of sale

(5) The treasurer, in accordance with the prescribed rules, shall conduct a public sale and determine whether there is a successful purchaser and,

(a) if there is a successful purchaser, shall prepare and register a tax deed in the name of the successful purchaser or in such name as the successful purchaser may direct; or

(b) if there is no successful purchaser, may prepare and register, in the name of the municipality, a notice of vesting. 2001, c. 25, s. 379 (5).

Statement

(6) The treasurer shall make and register, at the time of registering a tax deed or notice of vesting, a statement in the prescribed form stating that,

(a) the tax arrears certificate was registered with respect to the land at least one year before the land was advertised for sale;

(b) notices were sent and the statutory declarations were made in substantial compliance with this Part and the regulations made under this Part;

(c) the cancellation price was not paid within one year following the date of the registration of the tax arrears certificate;

(d) the land was advertised for sale, in substantial compliance with this Part and the regulations made under this Part; and

(e) if applicable, the municipality passed a by-law under subsection (3) excluding mobile homes from the sale of the land. 2001, c. 25, s. 379 (6).

Effect of conveyance

(7) A tax deed or notice of vesting, when registered, vests in the person named in it or in the municipality, as the case may be, an estate in fee simple in the land, together with all rights, privileges and appurtenances and free from all estates and interests, subject only to,

(a) easements and restrictive covenants that run with the land;

(b) any estates and interests of the Crown in right of Canada or in right of Ontario other than an estate or interest acquired by the Crown in right of Ontario because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*;

(c) any interest or title acquired by adverse possession by abutting landowners before the registration of the tax deed or notice of vesting. 2001, c. 25, s. 379 (7).

Restriction

(8) If the municipality passes a by-law under subsection (3), a tax deed or notice of vesting does not vest in the person named in the tax deed or the municipality, as the case may be, any interest in the mobile homes situate on the land. 2001, c. 25, s. 379 (8).

Adverse possession

[\(9\)](#) A tax deed or notice of vesting, when registered, vests in the person named in it or in the municipality, as the case may be, any interest in or title to adjoining land acquired by adverse possession before the registration of the tax deed or notice of vesting if the person originally acquiring the interest or title by adverse possession did so as a consequence of possession of the land described in the tax deed or notice of vesting. 2001, c. 25, s. 379 (9).

No warranty

[\(10\)](#) A tax deed does not,

(a) impose an obligation on the municipality to provide vacant possession; or

(b) invalidate or affect the collection of a rate that has been assessed, imposed or charged on the land under any Act by the municipality before the registration of the tax deed and that accrues or becomes due after the registration of the tax deed. 2001, c. 25, s. 379 (10).

Municipal bid or tender

[\(11\)](#) The municipality to which the tax arrears are owed may by resolution authorize the municipality to bid at or submit a tender in a public sale conducted under this section if the municipality requires the land for a municipal purpose. 2001, c. 25, s. 379 (11).

Inspection of statutory declaration

[\(12\)](#) The treasurer, on the request of any person, shall permit the person to inspect a copy of the statutory declaration made under clause (2) (a) and shall provide copies of it at the same rate as is charged under section 253. 2001, c. 25, s. 379 (12).

Power of treasurer

[\(13\)](#) Despite anything in the prescribed rules, except the rules relating to the determination of the successful purchaser, the treasurer, in conducting a sale under this Part, may do all things that, in his or her opinion, are necessary to ensure a fair and orderly sale. 2001, c. 25, s. 379 (13).

Value of land

[\(14\)](#) The treasurer is not bound to inquire into or form any opinion of the value of the land before conducting a sale under this Part and the treasurer is not under any duty to obtain the highest or best price for the land. 2001, c. 25, s. 379 (14).

No registration

(15) If a notice of vesting is not registered within one year after a public sale is conducted at which there is no successful purchaser, the tax arrears certificate with respect to the land shall be deemed to be cancelled. 2001, c. 25, s. 379 (15).

Effect

(16) Subsection (15) does not,

(a) prevent the treasurer from registering a new tax arrears certificate with respect to the land and proceeding under this Part; or

(b) relieve the taxpayer of any liability to pay any real property taxes imposed before the sale. 2001, c. 25, s. 379 (16).

Application of proceeds

380. (1) The proceeds of a sale under section 379 shall,

(a) firstly, be applied to pay the cancellation price;

(b) secondly, be paid to all persons, other than the owner, having an interest in the land according to their priority at law; and

(c) thirdly, be paid to the person who immediately before the registration of the tax deed was the owner of the land. 2001, c. 25, s. 380 (1).

Payment into court

(2) The treasurer shall pay the proceeds of sale, minus the cancellation price, into the Superior Court of Justice together with a statement outlining the facts under which the payment into court is made including,

(a) whether the land, at the time of the registration of the tax arrears certificate, was vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*;

(b) the date that payment is being made into court; and

(c) a notice that a person claiming entitlement to the proceeds of sale must apply to the Superior Court of Justice within one year of the payment into court. 2001, c. 25, s. 380 (2).

Notice

(3) Within 60 days after making a payment into court under subsection (2), the treasurer shall send a copy of the statement to the Public Guardian and Trustee and to the persons to whom the treasurer sent notice under subsection 379 (1). 2001, c. 25, s. 380 (3).

Payment out of court

[\(4\)](#) Any person claiming entitlement under clause (1) (b) or (c) may apply to the Superior Court of Justice within one year of the payment into court under subsection (2) for payment out of court of the amount to which the person is entitled. 2001, c. 25, s. 380 (4).

Same

[\(5\)](#) The court shall, after one year has passed from the day the payment was made into court, determine all of the entitlements to receive payments out of the proceeds of sale. 2001, c. 25, s. 380 (5).

Forfeiture

[\(6\)](#) If no person makes an application under subsection (4) within the one-year period referred to in that subsection, the amount paid into court under subsection (2) shall be deemed to be forfeited,

(a) to the Public Guardian and Trustee if, at the time of the registration of the tax arrears certificate, the land was vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*; or

(b) in any other case, to the municipality. 2001, c. 25, s. 380 (6).

Payment out

[\(7\)](#) The Public Guardian and Trustee or the municipality, as the case may be, may apply to the Superior Court of Justice for payment out of court of the amount that was paid in. 2001, c. 25, s. 380 (7).

Statement to be relied on

[\(8\)](#) In the absence of evidence to the contrary, the Superior Court of Justice may rely on the statement of the treasurer under subsection (2) in determining whether the amount paid into court under that subsection is forfeited to the Public Guardian and Trustee or the municipality under subsection (6). 2001, c. 25, s. 380 (8).

Payment into general funds

[\(9\)](#) Money received by a municipality under subsection (6) shall be paid into the general funds of the municipality. 2001, c. 25, s. 380 (9).

Methods of giving notice

381. (1) Any notice required to be sent to any person under this Part may be given by personal delivery or be sent by certified or registered mail,

- (a) in the case of the assessed owner, to the address of the person as shown on the last returned assessment roll of the municipality;
- (b) in the case of any person whose interest is registered against the title of the land, to the address for service of the person furnished under the *Land Registration Reform Act*, or if none, to the address of the solicitor whose name appears on the registered instrument;
- (c) in the case of a person appearing to have an interest in the land by the index of executions for land registered under the *Land Titles Act* or by the index of writs received for execution by the sheriff for land registered under the *Registry Act*, to the address of the person or person's solicitor as shown in the index of executions or in the records of the sheriff for the area in which the land is situate;
- (d) in the case of a spouse of the person appearing by the records of the land registry office to be the owner of the land, addressed to the spouse of (name of person) at the usual or last known address of such spouse or, if unknown, at the address of the land; and
- (e) in the case of the Public Guardian and Trustee, addressed to the Public Guardian and Trustee. 2001, c. 25, s. 381 (1).

Statutory declaration, effect

[\(2\)](#) A statutory declaration made under subsection 374 (3) or made under clause 379 (2) (a) is proof in the absence of evidence to the contrary that the notices required to be sent were sent to the persons named in the statutory declaration and received by them. 2001, c. 25, s. 381 (2).

Statement, effect

[\(3\)](#) A statement registered under subsection 379 (6) is conclusive proof of the matters referred to in clauses 379 (6) (a) to (d). 2001, c. 25, s. 381 (3).

Receipt of notice

[\(4\)](#) Nothing in this Part requires the treasurer to ensure that a notice that is properly sent under this Part is received by the person to whom it was sent. 2001, c. 25, s. 381 (4).

Voidable proceedings

[382. \(1\)](#) No proceedings for the sale of land under this Part are void by reason of any neglect, omission or error but, subject to this section and to section 383, any such neglect, omission or error may render the proceedings voidable. 2001, c. 25, s. 382 (1).

Same

(2) Subject to subsection (4) and to section 383, the proceedings under this Part are voidable if there is,

(a) a failure on the part of the treasurer to substantially comply with section 374 or subsection 379 (1); or

(b) an error or omission in the registration or sale of the land, other than an error or omission mentioned in subsection (5). 2001, c. 25, s. 382 (2).

Duty of treasurer

(3) If, before the registration of a tax deed or notice of vesting, the treasurer becomes aware of a failure, error or omission referred to in subsection (2), the treasurer shall immediately register a tax arrears cancellation certificate but this subsection does not apply so as to prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part. 2001, c. 25, s. 382 (3).

Actual prejudice

(4) Proceedings for the sale of land under this Part are not voidable unless the person complaining of any neglect, error or omission establishes that he or she suffered actual prejudice as a result of the neglect, error or omission. 2001, c. 25, s. 382 (4).

Proceeding not voidable

(5) No proceedings under this Part are rendered voidable by reason of,

(a) a failure on the part of the treasurer to distrain for any reason or take any other action for the collection of taxes;

(b) an error in the cancellation price other than a substantial error;

(c) any error in the notices sent or delivered under this Part if the error has not substantially misled the person complaining of the error;

(d) any error in the publishing or posting of advertisements if the error has not substantially misled the person complaining of the error; or

(e) any error in the description of the land in the tax arrears certificate if the error has not substantially misled the person complaining of the error. 2001, c. 25, s. 382 (5).

Treasurer may halt proceedings

(6) The treasurer may register a cancellation certificate if, in his or her opinion,

(a) it is not in the financial interests of the municipality to continue with proceedings under this Part; or

(b) because of some neglect, error or omission, it is not practical or desirable to continue proceedings under this Part. 2001, c. 25, s. 382 (6).

Effect

(7) Subsection (6) does not apply so as to prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part. 2001, c. 25, s. 382 (7).

Effect of registration

383. (1) Subject to proof of fraud, every tax deed and notice of vesting, when registered, is final, binding and conclusive and not subject to challenge for any reason including,

(a) the invalidity of any assessment upon which the tax arrears were based; and

(b) the breach of any requirements, including notice requirements, imposed by this or any other Act or otherwise by law. 2001, c. 25, s. 383 (1).

No action

(2) No action may be brought for the recovery of the land after the registration of the tax deed or notice of vesting if the statement required by subsection 379 (6) has been registered. 2001, c. 25, s. 383 (2).

Exception

(3) Subsection (1) does not apply so as to prevent a person from bringing an action for damages against the municipality. 2001, c. 25, s. 383 (3).

Mining rights

384. (1) Despite sections 373, 379 and 383, if mining rights in land are liable for taxes under the *Mining Act* and the land is sold for taxes or is vested in a municipality under this Act on or after April 1, 1954, the sale or vesting severs the surface rights from the mining rights and only the surface rights pass to the tax sale purchaser or vest in the municipality and the sale or registration does not affect the mining rights. 2001, c. 25, s. 384 (1).

Same, earlier vesting

(2) Despite this or any other Act but subject to any forfeiture to the Crown legally effected under the *Mining Tax Act*, if mining rights in land were liable for area tax under the *Mining Tax Act* and the land was sold for taxes under this Act or was vested in a municipality upon registration of a tax arrears certificate under the *Municipal Affairs Act* before April 1, 1954 and, before the sale or registration the surface rights were not severed from the mining rights and the sale or certificate purported to vest all rights in the land in the tax sale purchaser or in the municipality, that sale or certificate shall be

deemed to have vested in the tax sale purchaser or in the municipality, without severance, both the surface and mining rights. 2001, c. 25, s. 384 (2).

Scale of costs

385. A municipality, instead of charging the municipality's actual costs in determining any cancellation price, may fix a scale of costs to be charged as the reasonable costs of proceedings under this Part, which scale shall be designed to meet only the anticipated costs of the municipality. 2001, c. 25, s. 385.

Collection of tax arrears by upper-tier municipality

385.1 (1) An upper-tier municipality may by by-law enter into an agreement with any local municipality within the upper-tier municipality authorizing the treasurer of the upper-tier municipality to perform the duties of a treasurer under this Part in respect of land within the local municipality and providing for,

(a) the payment to the upper-tier municipality of that portion of the cancellation price that reflects the reasonable costs incurred by the upper-tier municipality;

(b) the method of cancelling any such agreement; and

(c) such other matters as are necessary to carry out the agreement.

Upper-tier treasurer, etc.

(2) Where an agreement is in force under this section, the treasurer of the upper-tier municipality has all of the powers of the treasurer of the local municipality in relation to the collection of tax arrears, including the power to sell land under this Part, and the treasurer of the upper-tier municipality shall perform all of the duties of the treasurer of the local municipality in relation thereto and only the upper-tier municipality may pass by-laws under sections 378 and 385.

Treasurer of local municipality

(3) Where an agreement under this section is in force, the treasurer of the local municipality shall provide the treasurer of the upper-tier municipality with such information and assistance as is needed by the treasurer of the upper-tier municipality to exercise the powers and duties of a treasurer under this Part.

Cancellation of agreement

(4) Subject to the terms of the agreement, the upper-tier municipality may by by-law cancel at any time an agreement entered into under this section.

Notice of cancellation

(5) Where a by-law is passed under subsection (4), the clerk of the municipality passing the by-law shall forthwith send a certified copy of the by-law by registered mail to the treasurer of the other municipality.

Effect of repeals

(6) Where an agreement under this section is cancelled, the treasurer of the local municipality shall assume the duties of a treasurer under this Part in respect of all land within the municipality except the land referred to in subsection (7).

Same

(7) Where an agreement under this section is cancelled, any proceedings under this Part started by the treasurer of the upper-tier municipality in respect of land within the local municipality affected by the repeal or cancellation shall be continued and concluded by the treasurer of the upper-tier municipality.

Immunity from civil actions

386. No action or other proceeding for damages shall be brought against the treasurer or any officer or employee of the municipality acting under the treasurer's authority as a result of any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Part or the regulations made under this Part or any neglect or default in the performance or exercise in good faith of such duty or power but any such action or proceeding may be brought against the municipality. 2001, c. 25, s. 386.

Delegation

(2) The treasurer may, in writing, delegate any power or duty granted to or vested in the treasurer under this Part to any officer or employee of the municipality.

Power of entry

386.1 (1) For the purpose of assisting a municipality to determine whether it is desirable to acquire land that has been offered for public sale under subsection 379 (2) but for which there is no successful purchaser, the municipality may, during the 12 months following the public sale referred to in subsection 379 (5), enter on and inspect the land.

Inspections

- (2) In carrying out an inspection, a municipality may do anything reasonably necessary to carry out an environmental site assessment of the land, including,
- (a) conduct surveys, examinations, investigations and tests of the land, including the excavation of test pits, and for those purposes, place equipment on the land for such period as the municipality considers necessary;
 - (b) take and remove samples or extracts;
 - (c) make inquiries of any person; and
 - (d) record or copy information by any method.

Entry to dwellings

- (3) A person who is carrying out an inspection on behalf of a municipality under this Part shall not enter or remain in any room or place actually being used as a dwelling unless,
- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, entry made only under the authority of a warrant issued under section 386.3; or
 - (b) a warrant issued under section 386.3 is obtained.

Non-application

- (4) Section 430 and clauses 431 (a) and (b) do not apply to inspections under this Part.

Registration of notice of vesting

- (5) Clauses 431 (c) and (d) do not apply if, under clause 379 (5) (b), the treasurer registers a notice of vesting, in the name of the municipality, in respect of the land.

Inspection without warrant

386.2 (1) The following apply to an inspection under this Part carried out without a warrant:

1. At least seven days before entering to carry out an inspection, the municipality shall, by personal service or by prepaid mail, serve a written notice of the inspection on the owners and occupants of the land as shown by the records of the land registry office and by the last returned assessment roll of the municipality in which the land is located.

2. The notice shall specify the date on which the municipality intends to enter on the land to commence the inspection.
3. If the municipality intends to enter on the land more than once during a period of time, the notice shall specify that period.
4. If the municipality intends to leave equipment on the land for a period of time, the notice shall set out a description of the equipment and the period of time during which the municipality intends to leave it on the land.
5. A notice served under this section by prepaid mail shall be deemed to have been received on the fifth day after the date of mailing of the notice.
6. A municipality shall not use force against any individual in carrying out the inspection.
7. A municipality shall only enter on land to carry out an inspection between the hours of 6 a.m. and 9 p.m. unless, after or concurrent with serving the notice under paragraph 1, the municipality has given at least 24 hours written notice of the intent to inspect the land at other hours to the occupants by personal service, prepaid mail or by posting the notice on the land in a conspicuous place.

Waiver of requirements

(2) The owners and occupants may waive any requirements relating to the notice described in paragraph 1 of subsection (1).

Same

(3) The occupants may waive any requirements relating to entries described in paragraph 7 of subsection (1).

Inspection warrant

386.3 (1) The municipality may apply to a provincial judge or a justice of the peace for a warrant authorizing a person named in the warrant to inspect land.

Notice of application for warrant

(2) The municipality shall give the owners and occupiers of the land seven days written notice of,

(a) the time when and the place where the application for the issuance or extension of a warrant is to be considered;

(b) the purpose of the application and the effect of the application being granted;

(c) the length of time the municipality is asking for a warrant to be issued or extended;

(d) the right of an owner or occupant or an agent of an owner or occupant to appear and make representations; and

(e) the fact that if the owner, occupant or agent fails to appear, the judge or justice of the peace may issue or extend the warrant in their absence.

Right to be heard

(3) A person who is served with a notice under subsection (2) or an agent of that person has the right to appear and make representations when the application is being considered.

Issue of warrant

(4) The judge or justice of the peace may issue a warrant authorizing a person to inspect land if the judge or justice of the peace is satisfied by evidence under oath that,

(a) inspection of the land is reasonably necessary for the purposes set out in subsection 386.1 (1);

(b) a notice has been served upon the owners and occupants of the land in accordance with paragraphs 1, 2, 3, 4 and 5 of subsection 386.2 (1); and

(c) the municipality has been prevented or is likely to be prevented from entering on the land or exercising any of its other powers or the entrance to the land is locked or the land is otherwise inaccessible.

Execution

(5) A warrant shall specify the hours and days during which it may be executed and name a date on which it expires and may specify a period of time during which equipment may be left on the land.

Inspection with warrant

386.4 The following apply to an inspection carried out by a person with a warrant:

1. The warrant shall be executed between the hours of 6 a.m. and 9 p.m. unless it provides otherwise.

2. The person may use such force as is reasonably necessary to execute the warrant and call on police officers to assist in the execution of the warrant.

Obstruction

386.5 (1) Where a person is carrying out an inspection under section 386.1 without a warrant, a refusal by the owner or occupant of land to allow the person

to enter or remain on the land is not obstruction within the meaning of subsection 426 (1).

Refusal to answer

(2) A refusal to answer the inquiries of a person carrying out an inspection under section 386.1 is not obstruction within the meaning of subsection 426 (1).

(2) If section 4 of the *Brownfields Statute Law Amendment Act, 2001* is in force on December 31, 2002, this section comes into force on January 1, 2003 but if section 4 of the *Brownfields Statute Law Amendment Act, 2001* is not in force on December 31, 2002, this section comes into force on a day to be named by proclamation of the Lieutenant Governor.

Note: Section 4 of the Brownfields Statute Law Amendment Act, 2001 was proclaimed on December 1, 2002.

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Regulations

387. (1) The Minister may make regulations prescribing rules for the sale of land under this Part by public sale and the rules,

(a) shall set out the method of determining a successful purchaser; and

(b) may require the submission of deposits, in such amount and in such form as may be set out in the rules, and for the forfeiture and disposition thereof. 2001, c. 25, s. 387 (1).

Forms

(2) The Minister may make regulations,

(a) requiring that any certificate, notice, statutory declaration, advertisement, tender, tax deed or statement referred to in this Part contain the provisions prescribed, be in a prescribed form or be in a form approved by the Minister, including an electronic form;

(b) providing for the use of the forms described in clause (a), which may vary for different land registration systems and areas. 2001, c. 25, s. 387 (2).

Transition, prior registrations

388. (1) This section applies to land in respect of which a tax arrears certificate was registered under the *Municipal Affairs Act*, being chapter 303 of the Revised Statutes of Ontario, 1980, before January 1, 1985 or a certificate was given under section 433 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, before January 1, 1985. 2001, c. 25, s. 388 (1).

Notice of forfeiture registered

(2) If, before January 1, 2003, a notice of forfeiture was registered with respect to any land under section 23 of the *Municipal Tax Sales Act, 1984*, the land is vested in the municipality upon registration of the notice in accordance with that section as it read on December 31, 2002. 2001, c. 25, s. 388 (2).

Certificate registered

(3) If, before January 1, 1985, a tax arrears certificate was registered under the *Municipal Affairs Act* in respect of any land and a notice of forfeiture has not been registered with respect to the land,

(a) a municipality may register a notice of forfeiture in accordance with section 23 of the *Municipal Tax Sales Act, 1984*, as it read December 31, 2002 and the land is vested in the municipality upon registration of the notice in accordance with that section; or

(b) a municipality may register a tax arrears cancellation certificate. 2001, c. 25, s. 388 (3).

Effect of registration

(4) Registration of a tax arrears cancellation certificate under clause (3) (b) does not,

(a) prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part; or

(b) relieve the taxpayer of any liability to pay real property taxes imposed under this Act or a predecessor of this Act before registration of the certificate. 2001, c. 25, s. 388 (4).

No registration

(5) If, one year after the day this section comes into force, no notice of forfeiture or tax arrears cancellation certificate is registered in accordance with subsection (2) or (3), the land shall be deemed to vest in the municipality in fee simple, together with all rights, privileges and appurtenances, free from all estates and interest subject only to,

(a) easements and restrictive covenants that run with the land;

(b) any estates and interests of the Crown in right of Canada or in right of Ontario;
and

(c) any interest or title acquired by adverse possession by abutting landowners before the day of the deemed vesting. 2001, c. 25, s. 388 (5).

Restriction

389. Despite the order of any court, after the day this Act comes into force, no person may apply to the Ministry to make a direction to a treasurer under section 46 of the *Municipal Affairs Act*, being chapter 303 of the Revised Statutes of Ontario, 1980. 2001, c. 25, s. 389.

Note: This paper is not a legal document. It is intended for discussion purposes only. For legal purposes readers are advised to refer to the original legislation and to any and all amendments made thereto.

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