

# TOWN OF GRAY TAX ACQUIRED PROPERTY PROCEDURES ORDINANCE

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**Adopted: March 1, 2011 effective March 31, 2011**

## **Title:**

This Ordinance shall be known and cited as the Town of Gray Tax Acquired Property Procedures Ordinance.

## **Purpose:**

The purpose of this ordinance is to establish procedures for the Town of Gray in accordance with 36 MRSA §§ 942 and 943 which directly relate to disposition of property acquired for non-payment of taxes. The underlying purposes of this ordinance are to make a reasonable efforts to return owner occupied residential properties (one-family or two-family) to their its previous owner(s) and to give the previous owners of all other classes of properties a reasonable opportunity to re-acquire them, while maintaining the integrity and fiscal well-being of the Town's interests in having all properties pay their fair share of the public tax burden.

## **Definitions:**

**Foreclosed tax lien:** A tax lien mortgage that has automatically foreclosed pursuant to 36 MRSA §§ 942 and 943.

**Certified/Return Receipt Mail:** Certified/return receipt, first class mail, posted at any U.S. post office, postage prepaid.

**Municipality:** Town of Gray, Maine.

**Municipal Officers:** Gray Town Council.

**Manufactured Real Estate Property:** Any structure, building or dwelling, the same being constructed or fabricated elsewhere and transported, in whole or part, to and placed, set or installed permanently or temporarily upon land within the municipality. For the purposes of this Ordinance, manufactured real estate property shall be commonly referred to as real estate property as defined in this Ordinance.

**Prior Owner:** The person or persons, entity or entities, heirs or assigns to whom the property was most recently assessed for municipal tax assessment purposes.

**Quitclaim Deed:** A signed legal instrument releasing the municipality's right, title or interest in real estate property, acquired by virtue of foreclosed tax lien(s), to an individual or individuals, entity or entities without providing any guarantee or any warranty of title to same.

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**Real Estate Property:** All land or lands and all structures, buildings, dwelling, tenements and hereditaments, including manufactured real estate property, located or relocated upon any land or lands connected therewith and all rights thereto and interests therein.

**Tax Acquired Property:** That real estate property interest acquired by the municipality by virtue of a foreclosed tax lien as defined in this Ordinance.

**Tax Lien:** The statutory lien created by 36 MRSA § 552, as the same may be amended or re-codified.

## **Management:**

Following statutory foreclosure of a tax lien mortgage, title to the real estate property automatically passes to the municipality. The management of this property rests exclusively with the municipal officers, subject to the provisions of state statutes and local municipal ordinances and regulations. The procedures described in Step 1 below are only for owner-occupied residential properties (one-family or two-family only); for all other types of properties, the municipal officers shall determine on a case by case basis whether to offer the previous owner(s) the right to redeem under Step 1 based on the best interests of the Town of Gray, or whether to proceed directly to Step 2 below.

## **Post-foreclosure Procedures:**

- 1) The municipal officers authorize the Town Clerk to send notification by certified/return receipt mail of the previous foreclosure and the Town's intention to exercise its rights under 36 MRSA §§ 942 and 943 to dispose of the property, in accordance with this Ordinance, to the previously assessed owner(s). The notification shall allow the previously assessed owner(s) the ability to repurchase the property within 30 days of the date of the written notification by paying all outstanding property taxes, including the total amount of all delinquent taxes plus the total taxes for the current year (and the estimated taxes for the next year after commitment) plus accrued interest, lien costs and any other costs relating to the property and this process (including, but not limited to insurance and notice costs). This notification is a matter of courtesy only, and the failure of the municipality or municipal officers to send this notice shall not create any legal rights in any person. The failure of the municipal officers or the Clerk to send this notice, or the fact that the notice has not been received or understood by the person to whom it was sent, shall not invalidate the sale or disposal of the tax-acquired property pursuant to this Ordinance, nor shall such failure provide a legal basis for any legal action against the municipality or municipal officers or any employee thereof.

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- 2) In the event that the previous owner(s) has not repurchased the property in accordance with Step 1, the Treasurer shall then prepare a list of tax-acquired properties to be presented to the municipal officers at the next Council meeting which list shall include the following:
  - a. Legal identification of the property including location within the municipality;
  - b. Zoning of the property;
  - c. Assessed value and size of the property; and
  - d. Report from the Tax Assessor concerning occupancy and current state of the property (including, but not limited to, current occupancy status and/or commercial use status).
- 3) The municipal officers shall then decide whether to direct the Town Attorney to undertake an action to quiet title in accordance with the provisions of 36 MRSA § 946, as it may be amended or re-codified, or as otherwise provided under Maine law, as a means of securing a clear title to the tax-acquired property.
- 4) The municipal officers shall determine whether a tax-acquired property is to be retained for public use or disposed of in accordance with the provisions of this Ordinance.
- 5) The municipal officers may charge a monthly rental fee to any and all occupants of tax-acquired property. Should a rental fee be charged, the municipal officers immediately shall obtain general liability insurance coverage for the rented tax-acquired property. The rental fee shall be determined by the municipal officers and will include the cost of the general liability insurance coverage and any attorney's fees incurred in connection therewith, as well as any other applicable fees and charges.
- 6) The municipal officers may, if the property is vacated for 60 or more consecutive days, obtain a general liability insurance coverage for the tax-acquired property and secure the property appropriately.

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## **Disposition:**

Should the municipal officers determine that title to tax-acquired property be relinquished rather than retained by the municipality, the following shall be observed:

- 1) The municipal officers shall determine the method of public sale of the tax-acquired property on or before the first Council meeting in April, choosing either the auction process or the bid process (although failure to comply with this April 1 date shall be directory only, such that failure to comply does not prejudice the Town's position in any way).
- 2) The bid information on the tax acquired property for either process shall be available at the Town Office upon advertisement of the sale and shall include the following:
  - a. Legal identification of the property including location within the municipality;
  - b. Zoning of the property;
  - c. Assessed value and size of the property; and
  - d. Report from the Tax Assessor concerning occupancy and current state of the property (including but not limited to: current occupancy status and/or commercial use status).
- 3) Advertising for the sale of tax-acquired property for either process will be done by posting in the Town Office and publishing notice once per week in a paper of general circulation in Gray, no later than three consecutive weeks before the date of sale.
- 4) The sale of tax-acquired property shall be subject to any additional terms and conditions of sale which the municipal officers may require and the Town Attorney may reasonably advise.
- 5) The bid price for either process shall be determined by the municipal officers in no event being less than all outstanding property taxes, including the total amount of all delinquent taxes plus the total taxes for the current year (and the estimated taxes for the next year after commitment) plus accrued interest, lien costs and any other costs relating to the property and this process (including, but not limited to, insurance, attorney's fees, auction/bid or notice costs). If the tax-acquired property is sold for a sum which exceeds the determined bid price, the municipality is entitled to retain the entire proceeds. There is no requirement to refund to the former owner(s) any of the "surplus" realized upon the sale.
- 6) The municipal officers shall convey any property sold through either process by Quitclaim Deed.

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- 7) The purchaser of any tax-acquired property sold through either process shall purchase the tax-acquired property and any improvements thereon on an “as is/where is” basis and shall acknowledge such in writing with the signing of a Town-provided form to that effect. The municipality and its officers, agents and employees make no representations or warranties of any kind, express or implied, including, but not limited to, the warranties of fitness, habitability, merchantability, satisfaction of building requirements or use for any particular purpose or otherwise, all of which shall be disclaimed.
- 8) The purchaser of any tax-acquired property sold through either process shall be responsible for the removal of any and all occupants and contents of said property, as may otherwise provided by law, and shall, in writing with the signing of a Town-provided form to that effect, forever defend and indemnify the municipality and its officers, agents and employees from any and all claims arising out of the said sale, whether by the occupants of the purchased property, their heirs or assigns or otherwise, or by the owners of any contents therein, whether by the occupants, their heirs or assigns or otherwise.
- 9) A Purchase and Sale Agreement as well as a Notice and Acknowledgement prepared by the Town Attorney shall be entered into between the municipality and the successful bidder no later than 30 days from the date of the award of bid and upon successful completion of all terms of sale. Such agreement shall require the buyer to close in full on the property within thirty (30) days thereafter.

## **AUCTION PROCESS:**

Pursuant to 32 MRSA § 286 (6), as the same may be amended or re-codified, the Town is not required to use a licensed auctioneer for the sale of tax acquired property.

- 1) The auction shall be advertised to include the following information:
  - Notice of date of auction;
  - The minimum bid price, if any;
  - A deposit at the time of award shall be required in the amount of not less than 10% of the awarded auction bid price. Failure to submit a deposit in the said manner at the time of award shall cause the bid to be rejected and allow the municipality to negotiate with unsuccessful bidders without holding another public auction;
  - The awarded bidder has ten (10) business days from the date of award to comply with the terms of the sale in full;
  - Must specify that the auction is being held “With Reserve” in order for the municipality to reserve the right to reject all bids that fail to comply with any minimum bid price or other terms or conditions imposed by the municipality; and

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- Should the awarded bidder fail to comply with the terms of the sale, the deposit shall be forfeited and the municipality may negotiate with unsuccessful bidders without holding another public auction.
- 2) The municipal officers shall retain the right to accept or reject any and all bids submitted, and shall cause the same disclaimer to be noted in any public advertisement of auction in accordance with this Ordinance. Should the municipal officers reject all bids, or in the absence of any bids, the property may be offered again for public sale on such terms as the municipal officers determine.
- 3) The municipal officers shall, as a credit to payment, retain the submitted bid price deposit of any successful bidder.
- 4) The municipal officers shall require payment in full from any successful bidder within ten (10) business days following the award of the bid. Should the awarded bidder fail to comply with the terms of the sale, the deposit shall be forfeited and the municipality may negotiate with unsuccessful bidders without holding another public auction.

## **BID PROCESS**

- 1) The municipal officers shall solicit sealed bids for sale of the tax-acquired property and shall read aloud all submitted bids at the first Council meeting in June (although failure to comply with this April 1 date shall be directory only, such that failure to comply does not prejudice the Town's position in any way).
- 2) The bid shall be advertised to include the following information:
  - Notice of date of bid;
  - The minimum bid price, if any;
  - A certified/return receipt bank check or postal money order, in the amount of not less than 10% of the bid price, shall be included as the deposit on the bid. Failure to submit a deposit shall cause the bid to be automatically rejected;
  - Bids shall be sealed in a single plain envelope marked only "Tax-Acquired Property Bid" on the exterior and either be hand-delivered to the Town Clerk's office or, if mailed, be enclosed within a second envelope addressed to the Gray Town Clerk, Town Offices, 24 Main Street, Gray, Maine 04039. All bids must be received by the municipality no later than 10:00 a.m., prevailing local time, on the date that is seven (7) calendar days before the date the bids are to be read aloud by the municipal officers;
  - The awarded bidder has ten (10) business days from the date of award to comply with the terms of the sale in full;

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- Must specify the bid is being conducted "With Reserve" in order for the municipality to reserve the right to reject all bids that fail to comply with any minimum bid price or other terms or conditions imposed by the municipality;
  - Should the awarded bidder fail to comply with the terms of the sale, the deposit shall be forfeited and the municipality may negotiate with unsuccessful bidders without holding another public auction.
- 3) The municipal officers shall require the following for proper submission:
- The bid information sheet shall be submitted containing a full description of the property being bid upon and the bid price of the bidder in U.S. currency;
  - A certified bank check or postal money order, in the amount of not less than 10% of the bid price, shall be included as the deposit on the bid; failure to submit a deposit shall cause the bid to be automatically rejected;
  - A self-addressed stamped envelope must be included in the bid envelope;
  - Bids shall be sealed in a single plain envelope marked only "Tax-Acquired Property Bid" on the exterior and either be hand delivered to the Town Clerk's office or, if mailed, be enclosed within a second envelope addressed to the Gray Town Clerk, Town Offices, 24 Main Street, Gray, Maine 04039; and
  - All bids must be received by the municipality no later than 10:00 a.m., prevailing local time, on the date that is seven (7) calendar days before the date the bids are to be read aloud by the municipal officers.
- 4) The municipal officers shall retain the right to accept or reject any and all bids submitted, and shall cause the same disclaimer to be noted in any public notice soliciting bids in accordance with this Ordinance. Should the municipal officers reject all bids, or in the absence of any bids, the property may be offered again for public sale on such terms as the municipal officers determine.
- 5) The municipal officers shall notify any successful bidder, via mail, with the self-addressed stamped envelope submitted with the bid.
- 6) The municipal officers shall, as a credit to payment, retain the submitted bid price deposit of any successful bidder, and shall return all other submitted deposits via mail, with the self-addressed stamped envelope submitted with the bid within fifteen (15) business days. Unsuccessful bidder deposits will be retained in the event that the successful bidder fails to comply with the terms of the sale, the municipality may negotiate with unsuccessful bidders without holding another public bid.
- 7) The municipal officers shall require payment in full from any successful bidder within ten (10) business days following the award of the bid. Should the awarded bidder fail to comply with the terms of the sale, the deposit shall be forfeited and the municipality may negotiate with unsuccessful bidders without holding another public bid.

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## **SEVERABILITY:**

If any provision of this Ordinance shall be finally held to be invalid by any court of competent jurisdiction, this invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application. For this purpose, the Tax Acquired Property Procedures Ordinance is severable.