

Commonwealth of Massachusetts

Division of Local Services

Supporting a Commonwealth of Communities

Delinquent Real Estate Taxes:

Tax Taking Process



Introduction: Overview of the Division of Local Services

- ❑ DLS promotes sound municipal finance management practices and supports local officials by providing guidance, training, and oversight

- ❑ Five bureaus:
 - Bureau of Accounts
 - Bureau of Local Assessment
 - Data Analytics and Resource Bureau
 - Financial Management Resource Bureau
 - Bureau of Municipal Finance Law

Most Requested



[Mass.gov/dls](https://www.mass.gov/dls)



Municipal Finance Training and Resource Center •



Bulletins, Guidelines and Opinions (IGR/BUL/LFO) •



Cherry Sheets, Data Analytics & Visualizations •



COVID-19 Guidance for Municipal Officials •



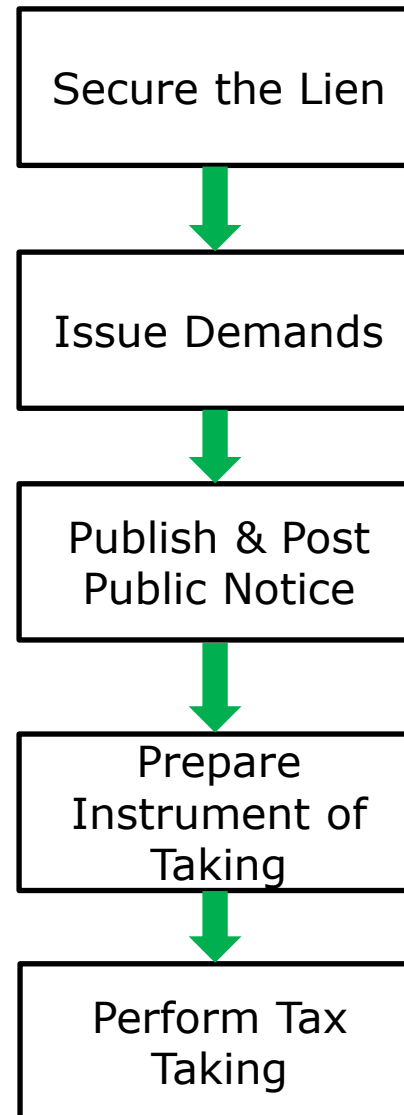
Municipal Accounting Guidance and Oversight (BOA) •



Overview

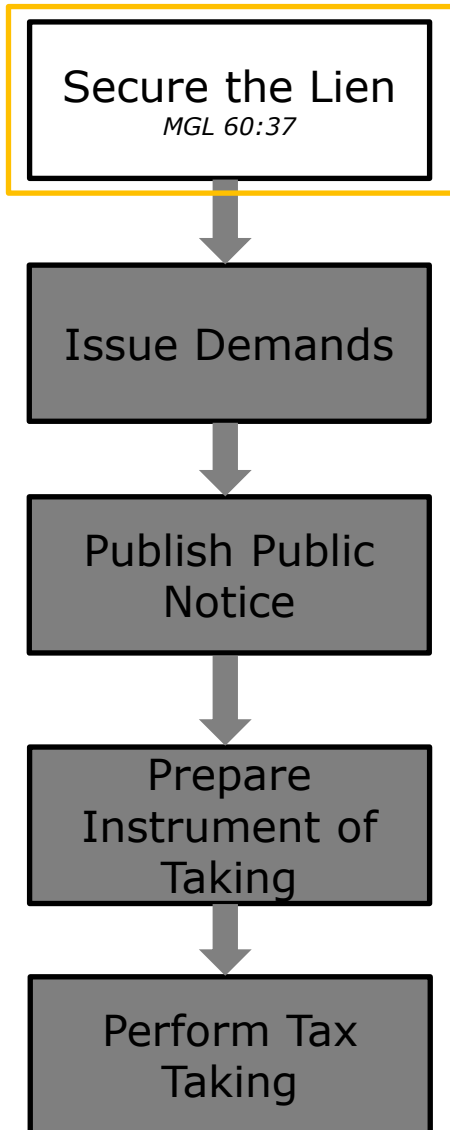
What happens when outstanding property taxes remain unpaid?

- Collectors manage Tax Sale, or Tax Taking, process
- Process municipalities should take to secure the lien on delinquent real estate taxes for collection





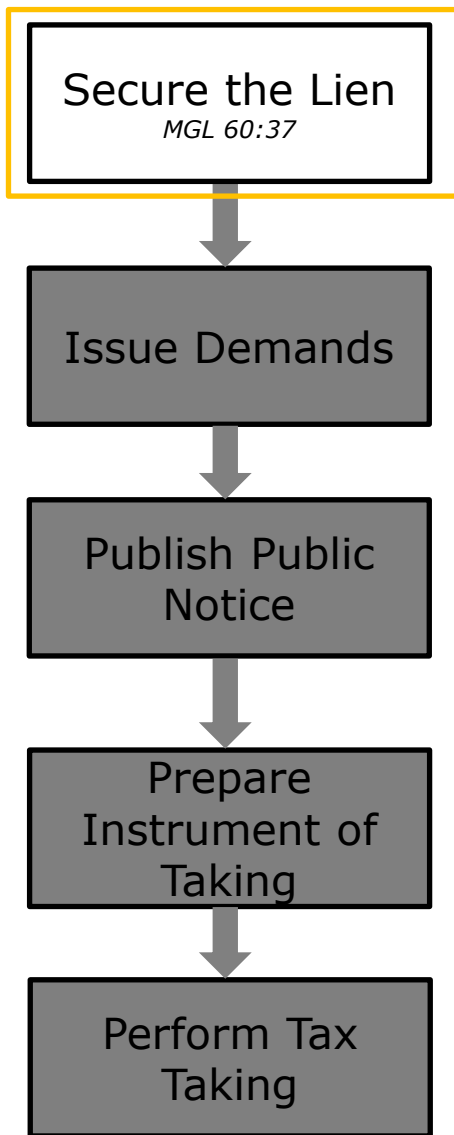
Secure the Lien



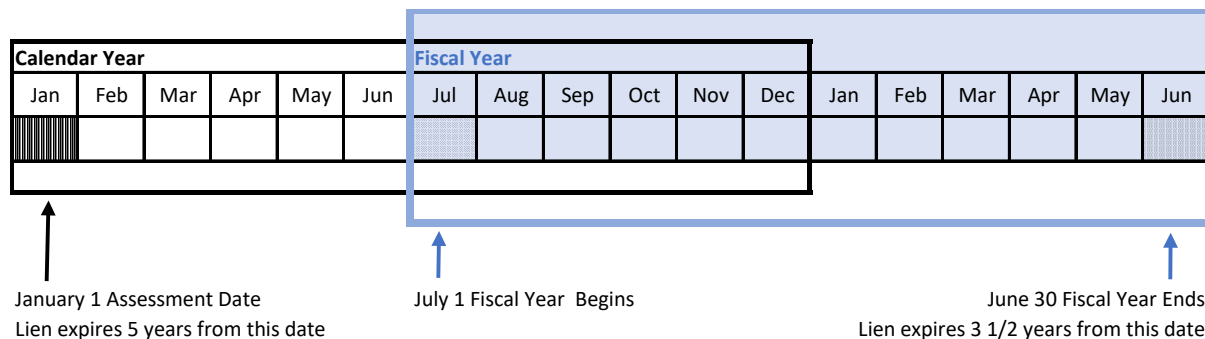
- A lien is an encumbrance, or claim, attached to a real estate parcel
- The issuing of taxes is an automatic lien as of January 1 in the year of assessment, or six months prior to the start of the relevant fiscal year



Secure the Lien

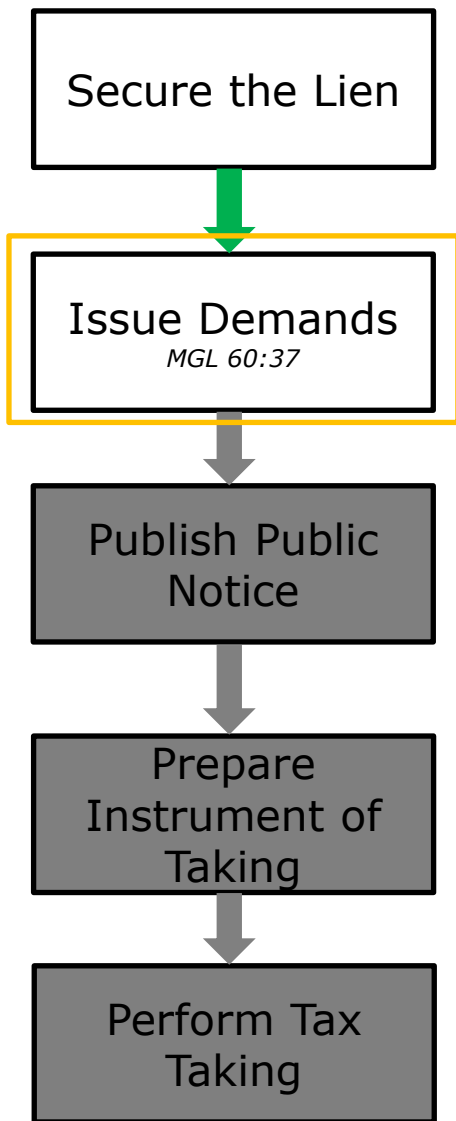


- ❑ The automatic statutory lien continues for at least 3½ years from end of fiscal year of assessment (or five years after the lien date) but is unsecured until Instrument of Taking is recorded





Issue Demands

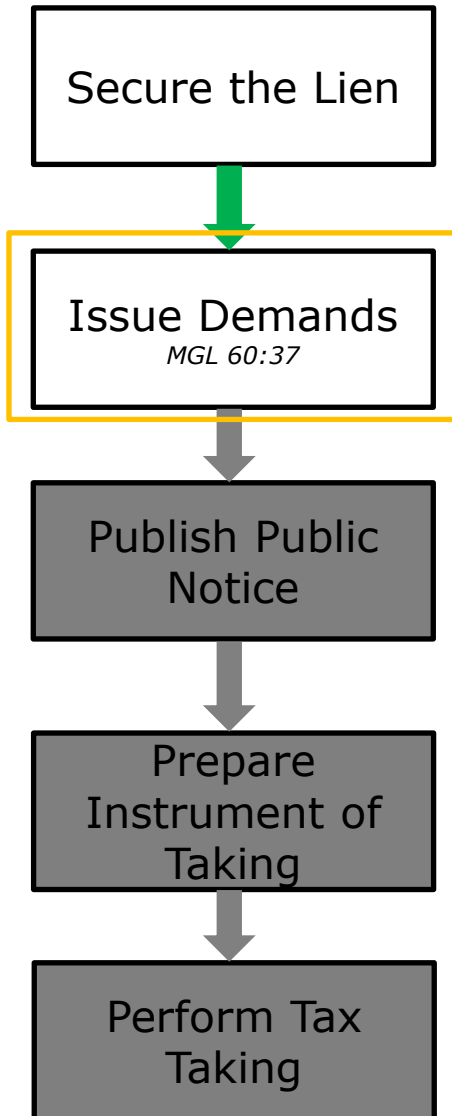


- Demands can be issued the day following the final due date, generally, May 2nd
- To proceed, the collector must make demand (send demand bills) to the assessed owner for all outstanding real estate accounts
- If the taxes remain unpaid for 14 days after demand, the collector may proceed to the next step of the tax taking process
- The collector must wait 14 days before proceeding

	Due Date +1	Demand Date +14
Due Date	Demand Date	Taking process can commence (Notice of Taking)



Issue Demands: Optional Additional Notice

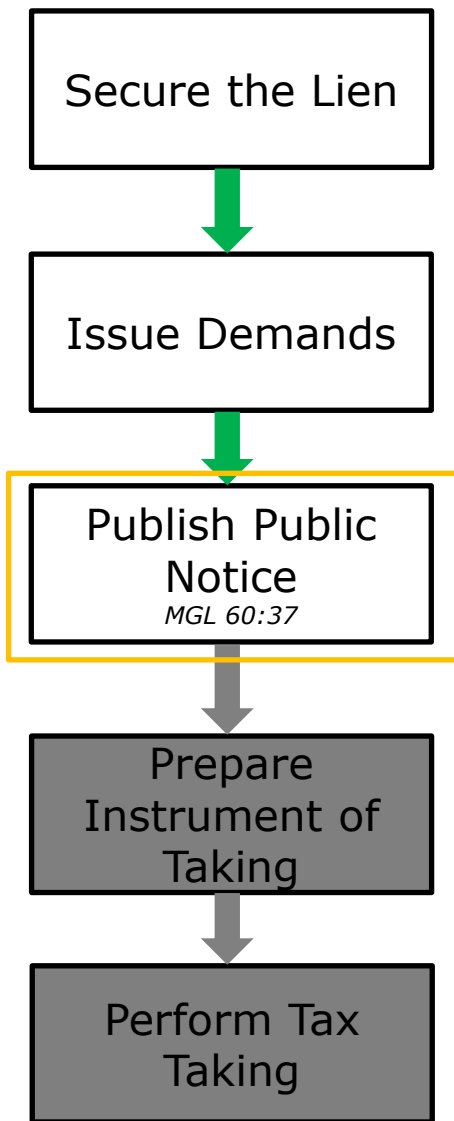


Optional Warning Letters:

- After demand, the collector has the option to give additional notice to the property owner warning of the impending action
- The collector may also provide a final notice warning the property owner of the forthcoming notice of advertising



Overview

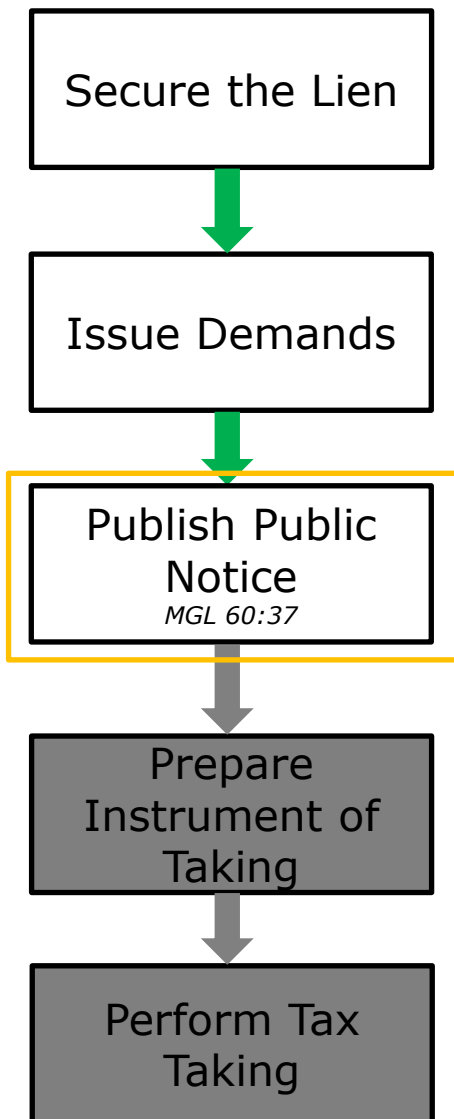


- ❑ No sooner than 14 days after the demand is issued, the collector publishes the Notice of Tax Taking in a local newspaper (State Tax Form 300)
- ❑ The notice must state the date, time, and location of the taking which must be at least 14 days after the publication date

Demand Date +14	Notice Date +14
Taking process can commence (Notice of Taking)	Tax Taking



Overview

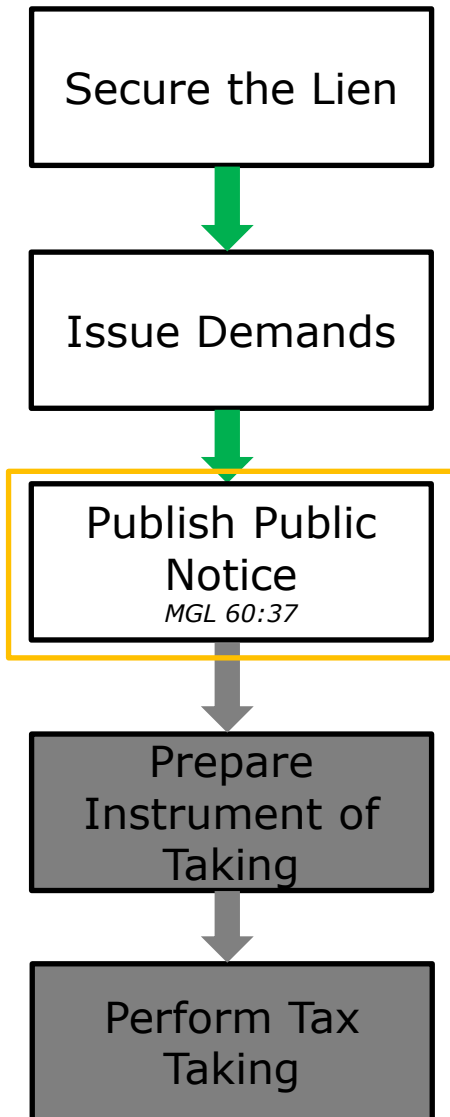


- ❑ Copies of the notice must be posted in two or more convenient public places (e.g., town or city hall, library)
- ❑ Both the printed and posted notices must be publicized at least 14 days prior to the taking

Demand Date +14	Notice Date +14
Taking process can commence (Notice of Taking)	Tax Taking



Overview

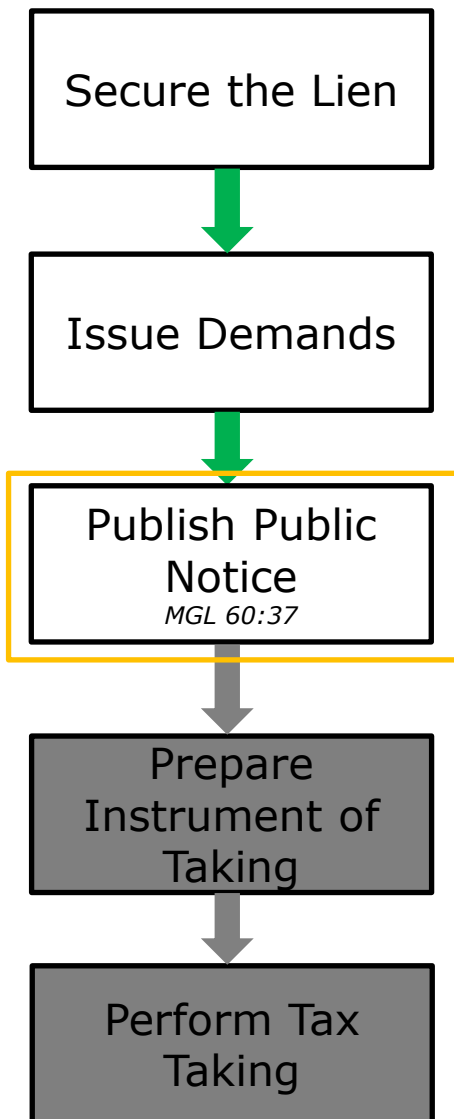


- ❑ The notice must include:
 - Names of all owners known to the collector
 - Substantially accurate description of the land, including size, location, and assessors' parcel ID
 - Source of title (e.g., registry book and page)
 - Tax year and total amount of the tax, interest, and associated costs (Oldest year of outstanding taxes)

- ❑ If the owner is deceased, list the names of all the heirs if the estate has been probated.



Overview

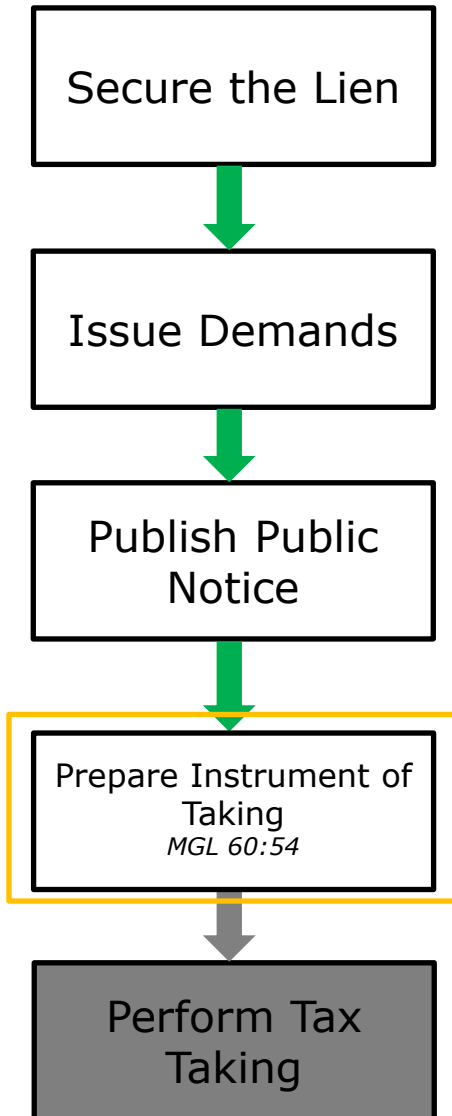


Collection Period:

- The collector may mail a copy of the advertising to the property owner offering one last opportunity to make payment prior to securing the lien
- Partial payment is not permitted under Chapter 60 Section 22 once the advertisement is prepared for the taking or sale
- Collectors can require payment to be only by certified or bank check



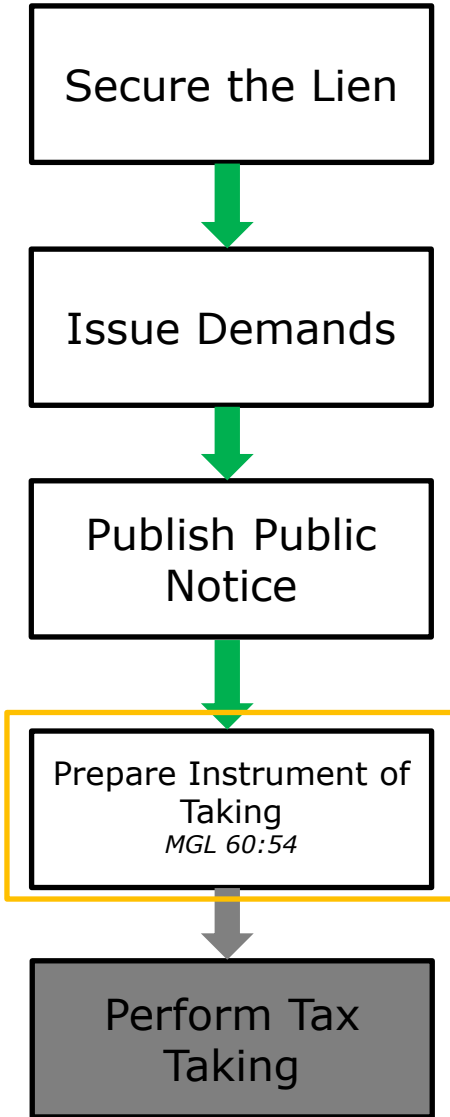
Overview



- ❑ At the designated time and place (as published and posted in the public notices), the collector announces the property is taken for the community
- ❑ The collector prepares the Instrument of Taking (State Tax Form 301)



Overview



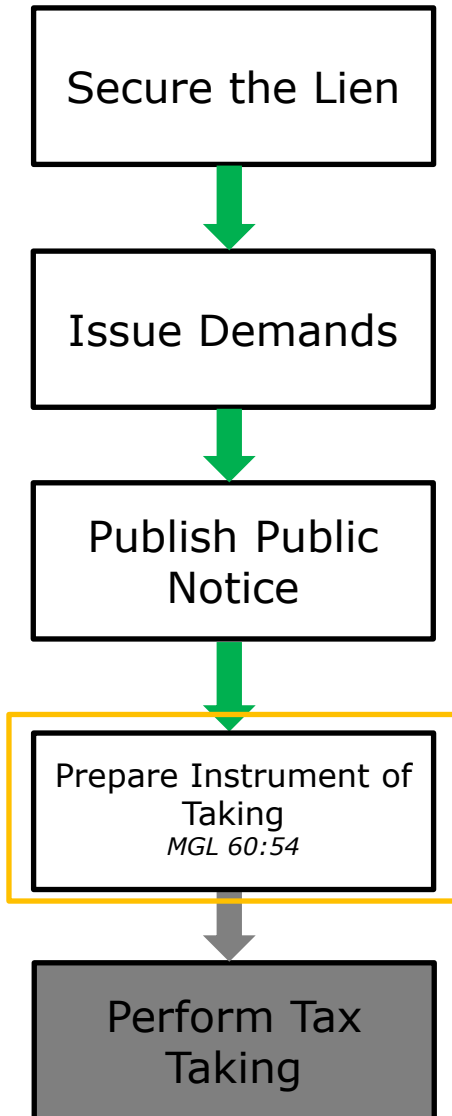
☐ The instrument must:

- Be notarized
- Recorded/filed at the registry within 60 days after the taking

Notice Date +14	Tax Taking +60
Tax Taking	Record Instrument of Taking



Overview

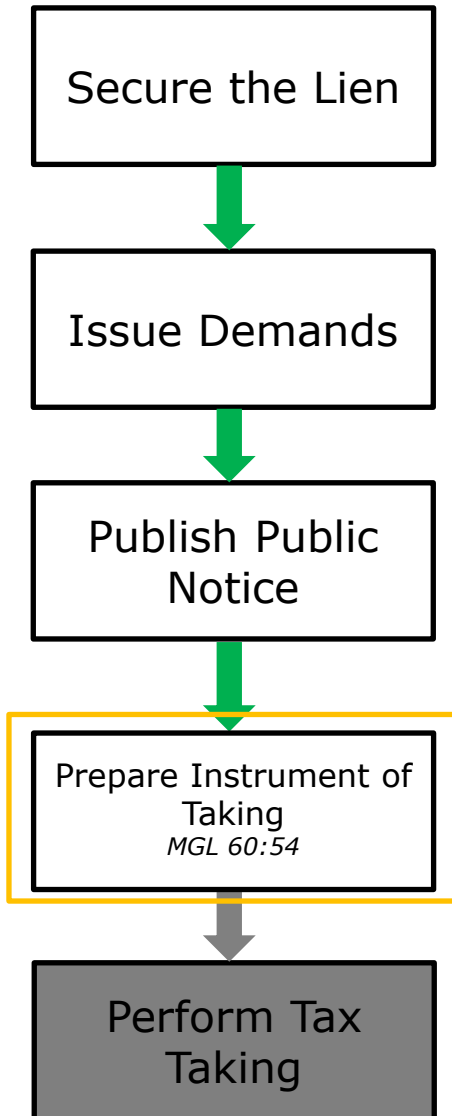


❑ The instrument must include

- An accurate description of each parcel of land taken
- The assessed owner as defined in MGL Chapter 59, Section 11
- The known heirs of deceased owners
- Fiscal year when lien is perfected/secured
- Detail of the outstanding amounts



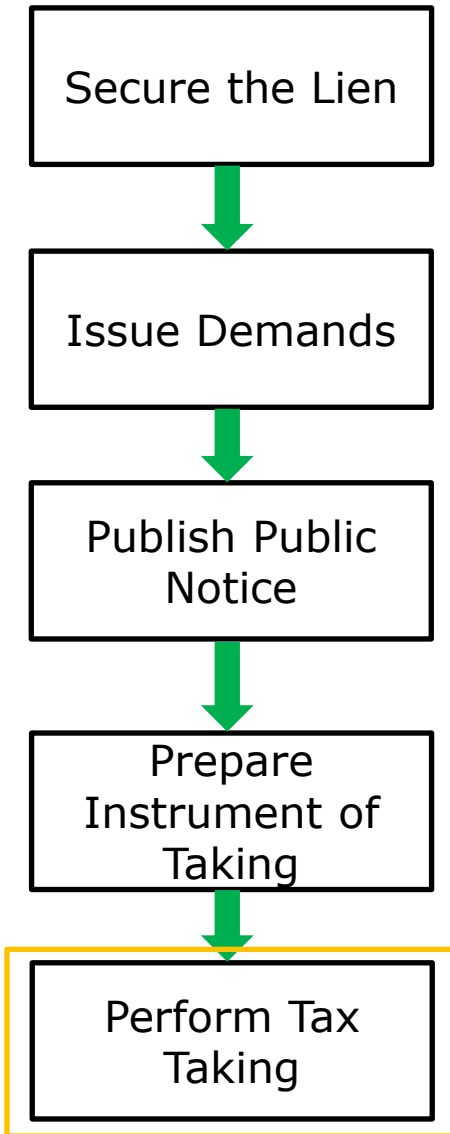
Overview



- ❑ An incorrect Instrument of Taking will invalidate the lien
- ❑ Examples of incorrect Instruments include:
 - Incorrect assessed owner
 - Deceased owner with known heirs
 - Wrong address
 - Other description error (e.g., acreage)



Overview



- List of Recorded Takings
 - The collector prepares a list of recorded takings (State Form 346)
 - Provide the list to the treasurer and town accountant or auditor

- The treasurer is now responsible for maintaining tax title accounts and further collection of all outstanding amounts
 - Overdue tax
 - Collector's interest as of the date of taking
 - Collector's charges and fees (MGL C.60, §15)

- The town accountant or auditor records the tax lien receivable and reduces the outstanding real estate receivable



Results

- Outstanding taxes move from Real Estate receivables to Tax Title Receivables category

 - The interest rate on outstanding taxes changes from 14% annum to 16% annum

 - Instrument of Taking recorded at Registry of Deeds
 - Instrument of Taking must be recorded within 60 days of taking date

 - The lien of the city or town has been perfected
-



Recommendations – Payment Plans

- MGL C.60, §62 gives Treasurer authority to temporarily pause foreclosure proceedings for a period not exceeding two years by entering a payment plan in which the taxpayer makes installment payments against their tax title balance

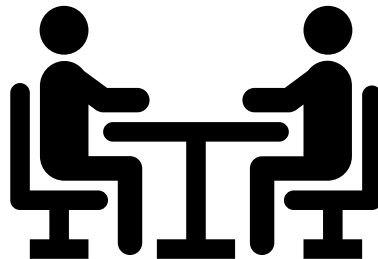
 - Establish a policy regarding payment plans
 - Payment agreements should be consistent and uniform to ensure all taxpayers are treated equally and given same opportunity
 - Example: all agreements require deposit of X% of tax title balance

 - Communicate with the taxpayer about their options for a payment plan
 - Secure the lien first to protect the Town's interest
 - Clearly explain the rules of the payment agreement to the taxpayer and encourage a realistic time frame to pay off the tax title
-



Recommendations – Best Practices

- ❑ Send notifications to all parties related to the parcel
 - For properties with assessed owner changes, mail a copy of the demand to both the prior and current owner
 - For properties with joint ownership, send demands and notices to all joint owners
 - Research if there is any undischarged mortgage on the property
- ❑ Communicate as much as possible with the owners with outstanding taxes:
 - Send optional collection letters and final notice letter warning the owner of impending advertisement
 - Communicate the tax taking process, timeframe, and consequences (such as higher interest rate, and lien recorded against property)





Recommendations – Best Practices

- ❑ Review the properties currently in tax title to determine if any of the current outstanding accounts can be certified as subsequent taxes added to tax title
 - ❑ Initial takings should be for the oldest year only—Instrument of Taking should reflect this. Subsequent years should then be certified into the original account.

 - ❑ Work with the Board of Assessors on tax title parcels
 - Abate uncollectable taxes and receivable files [MGL C.58 S.8]
 - Research ‘Owner Unknown’ parcels
 - When liens are foreclosed on and become town owned, update the parcel ownership before the next tax billing cycle, so that future tax bills are not generated

 - ❑ The taxpayer can petition the Land Court to vacate the decree of foreclosure within one year after the decree was entered upon full payment of the amount owed as provided in Chapter 60 Section 69A
-



Recommendations - Overall

Be Consistent

- Establish a timeframe to complete Tax *Taking* process annually
- Establish a Tax Title policy regarding Tax Taking procedure, payment guidelines, and payment agreements
- Ensure all parcels, taxpayers, and liens are treated fairly and equitably

Be Careful and Methodical

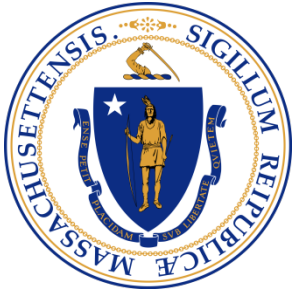
- Verify assessed owners through the registry of deeds
- Keep records of all actions, payments, and correspondence—future legal action will require this documentation

Prioritize takings

- Ownership changes subject to 3½ year deadline
- All other properties subject to 3½ year deadline
- Multiple years of outstanding taxes
- Properties requiring research

Consult a tax title attorney for guidance





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**Delinquent Real Estate Taxes:
How Failing to Collect Receivables
Affects Free Cash**



Definition of Free Cash

- Unrestricted funds available for appropriation by a majority vote of the legislative body (Town Meeting/City Council)

 - Certified as of July 1st based on the results of the previous year's June 30th balance sheet

 - Cannot be appropriated until it has been certified by the DLS Bureau of Accounts, per MGL 59:23

 - Any unappropriated balance expires on June 30th of that fiscal year and becomes the base for the next year's calculation
-



Generating Free Cash

- Certified Free Cash > Appropriated Free Cash

 - Actual Revenues > Budgeted Revenues

 - Budgeted Expenditures > Actual Expenditures and Encumbrances

 - Outstanding Property Taxes Prior Years > Outstanding Property Taxes Current Year
-



The Significance of Free Cash

- An available fund that can be appropriated for any legal spending purpose including to “Reduce the Tax Rate”

 - Depletion of free cash, particularly to balance annual budgets, endangers future spending plans if it is not regenerated

 - Drawdown on reserves may also cause a negative impact on the community’s credit rating

 - Retention of ample free cash balance provides municipalities with financial flexibility and confidence
-




Free Cash Formula

$$\begin{aligned} &+ \text{Undesignated Fund Balance} \\ &\quad - \text{Accounts Receivables} \\ &\quad - \text{Any Illegal Deficits} \\ &\quad + \text{Deferred Revenue} \\ &\hline &= \text{FREE CASH} \end{aligned}$$



How to Maximize Free Cash

❑ What reduces Free Cash?

- Illegal deficits
 - Failure to borrow for capital project deficits by year-end
 - Failure to collect real estate receivables 
 - Failure to file grant reimbursement paperwork timely/draw down on grants timely
 - Failure to reconcile cash and receivables/variances
-



Budget Illustration – Year 1

<u>Revenue Budget</u>		<u>Expenditure Budget</u>	
Tax Levy	1,400,000	Payroll	1,271,250
State Aid	525,500	Supplies	450,000
Local Receipts	345,750	Hwy/Snow and Ice	550,000
Free Cash	100,000	Capital Plan	100,000
	2,371,250		2,371,250

Budget results year 1:

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Tax Levy	1,400,000	1,200,000	-200,000
State Aid	525,500	525,500	0
Local Receipts	345,750	650,750	305,000
Free Cash	100,000	100,000	0
Expenditures	2,371,250	2,250,000	121,250
		<u>Free Cash at end of year:</u>	226,250
Accounts Receivable - Beginning of Year		1,400,000	
Property tax levy collections		-1,200,000	
Accounts Receivable - End of Year		200,000	



Proof of Free Cash – Year 1

IDENTIFIED FREE CASH CALCULATION

Add revenue deficits			-
Excess / shortfall local receipts (CL#9)			305,000
Add actual revenues received but not estimated (CL#10)			-
Excess / shortfall cherry sheet receipts (CL#11)			
Add unencumbered / unexpended appropriations (CL#14)			121,250
Subtract negative free cash certified 7/1/19			-
Add prior year free cash not appropriated (CL#15)			
Add overlay surplus closed (CL#16)			-
	June 30, 2019	June 30, 2020	
Personal Property	-	-	
Real Estate	-	200,000	
Tax Liens	-	-	
Foreclosures	-	-	
Deferred and Rollback	-	-	
Totals	-	200,000	(200,000)
Net change in adjustments to free cash	June 30, 2019	June 30, 2020	
	-	-	-
Other adjustments (identify)			-
_____			-
_____			-
_____			-
Identified free cash 7/1/20			226,250



Budget Illustration – Year 2

Revenue Budget

Tax Levy	1,400,000
State Aid	525,500
Local Receipts	345,750
Free Cash	100,000
	2,371,250

Expenditure Budget

Payroll	1,271,250
Supplies	450,000
Hwy/Snow and Ice	550,000
Capital Plan	100,000
	2,371,250

Budget results year 2:

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Tax Levy	1,400,000	1,100,000	-300,000
State Aid	525,500	525,500	0
Local Receipts	345,750	650,750	305,000
Free Cash	100,000	100,000	0
Expenditures	2,371,250	2,250,000	121,250
		<u>Free Cash at end of year:</u>	126,250
Accounts Receivable - Beginning of Year		1,600,000 (200,000 + 1,400,000)	
Property tax levy collections		-1,100,000	
Accounts Receivable - End of Year		500,000 (200,000 + 300,000)	



Proof of Free Cash – Year 2

IDENTIFIED FREE CASH CALCULATION

Add revenue deficits			-
Excess / shortfall local receipts (CL#9)			305,000
Add actual revenues received but not estimated (CL#10)			-
Excess / shortfall cherry sheet receipts (CL#11)			
Add unencumbered / unexpended appropriations (CL#14)			121,250
Subtract negative free cash certified 7/1/19			-
Add prior year free cash not appropriated (CL#15)			
Add overlay surplus closed (CL#16)			-
	June 30, 2020	June 30, 2021	
Personal Property	-	-	
Real Estate	200,000	500,000	
Tax Liens	-	-	
Foreclosures	-	-	
Deferred and Rollback	-	-	
Totals	200,000	500,000	(300,000)
Net change in adjustments to free cash			
	June 30, 2020	June 30, 2021	
Other adjustments (identify)	-	-	-
_____			-
_____			-
_____			-
Identified free cash 7/1/21			126,250



Budget Illustration – Year 3

Revenue Budget

Tax Levy	1,400,000
State Aid	525,500
Local Receipts	345,750
Free Cash	100,000
	2,371,250

Expenditure Budget

Payroll	1,271,250
Supplies	450,000
Hwy/Snow and Ice	550,000
Capital Plan	100,000
	2,371,250

Budget results year 3:

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Tax Levy	1,400,000	1,550,000	150,000
State Aid	525,500	525,500	0
Local Receipts	345,750	650,750	305,000
Free Cash	100,000	100,000	0
Expenditures	2,371,250	2,250,000	121,250

Free Cash at end of year: 576,250

Accounts Receivable - Beginning of Year	1,900,000 (200,000 + 300,000 + 1,400,000)
Receivables moved to tax title	-200,000
Property tax levy collections	-1,550,000
Accounts Receivable - End of Year	150,000
Tax Title Receivable - End of Year	200,000



Proof of Free Cash – Year 3

IDENTIFIED FREE CASH CALCULATION

Add revenue deficits			-
Excess / shortfall local receipts (CL#9)			305,000
Add actual revenues received but not estimated (CL#10)			-
Excess / shortfall cherry sheet receipts (CL#11)			
Add unencumbered / unexpended appropriations (CL#14)			121,250
Subtract negative free cash certified 7/1/19			-
Add prior year free cash not appropriated (CL#15)			
Add overlay surplus closed (CL#16)			-
	June 30, 2021	June 30, 2022	
Personal Property	-	-	
Real Estate	500,000	150,000	
Tax Liens	-	200,000	
Foreclosures	-	-	
Deferred and Rollback	-	-	
Totals	500,000	350,000	150,000
Net change in adjustments to free cash			
	June 30, 2021	June 30, 2022	
Other adjustments (identify)	-	-	-
_____			-
_____			-
_____			-
Identified free cash 7/1/22			576,250



Budget Illustration – Year 4

Revenue Budget

Tax Levy	1,400,000
State Aid	525,500
Local Receipts	345,750
Free Cash	100,000
	2,371,250

Expenditure Budget

Payroll	1,271,250
Supplies	450,000
Hwy/Snow and Ice	550,000
Capital Plan	100,000
	2,371,250

Budget results year 4:

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Tax Levy	1,400,000	1,722,000	322,000
State Aid	525,500	525,500	0
Local Receipts	345,750	650,750	305,000
Free Cash	100,000	100,000	0
Expenditures	2,371,250	2,250,000	121,250
		<u>Free Cash at end of year:</u>	748,250

Accounts Receivable - Beginning of Year	1,550,000 (150,000 + 1,400,000)	
Receivables moved to tax title	-100,000	
Property tax levy collections	-1,422,000	
Accounts Receivable - End of Year	28,000	
Tax Title Receivable - Beginning of Year	200,000	
Additions to tax title	100,000	
Tax Title Collections	-300,000	
Tax Title Receivable - End of Year	0	
		1,722,000



Proof of Free Cash – Year 4

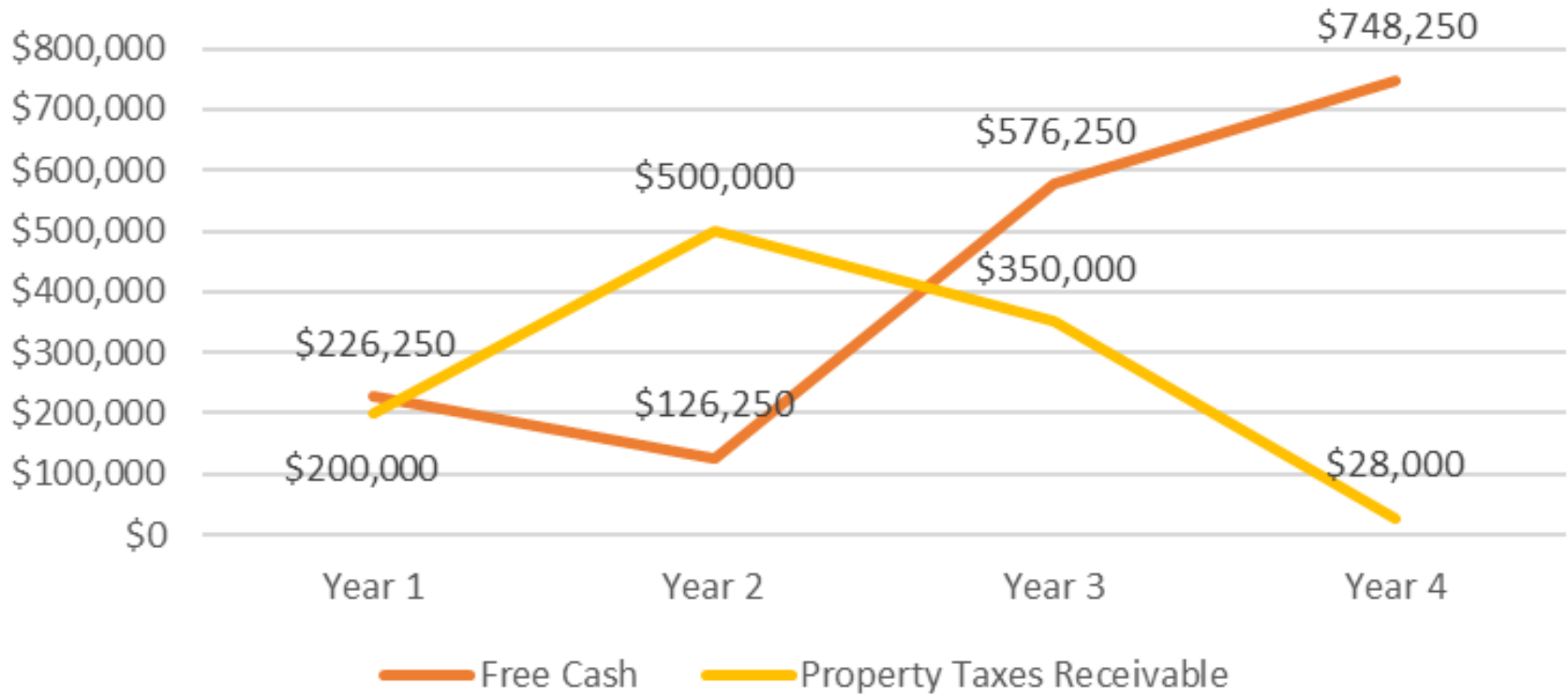
IDENTIFIED FREE CASH CALCULATION

Add revenue deficits			-
Excess / shortfall local receipts (CL#9)			305,000
Add actual revenues received but not estimated (CL#10)			-
Excess / shortfall cherry sheet receipts (CL#11)			
Add unencumbered / unexpended appropriations (CL#14)			121,250
Subtract negative free cash certified 7/1/19			-
Add prior year free cash not appropriated (CL#15)			
Add overlay surplus closed (CL#16)			-
	June 30, 2022	June 30, 2023	
Personal Property	-	-	
Real Estate	150,000	28,000	
Tax Liens	200,000	-	
Foreclosures	-	-	
Deferred and Rollback	-	-	
Totals	350,000	28,000	322,000
Net change in adjustments to free cash			
	June 30, 2022	June 30, 2023	
Other adjustments (identify)	-	-	-
_____			-
_____			-
_____			-
Identified free cash 7/1/23			748,250



Free Cash Graph

Free Cash Relation to Outstanding Property Taxes Receivable





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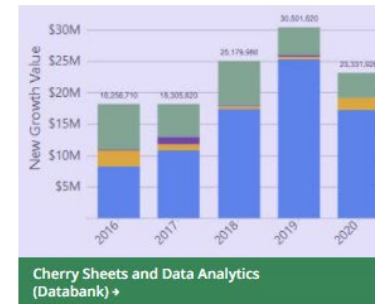
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