

STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2019-0339

RICHARD POLONSKY

v.

TOWN OF BEDFORD, NEW HAMPSHIRE

**Rule 7 Appeal from
Hillsborough Superior Court (North)**

**BRIEF OF *AMICUS CURIAE*
NEW HAMPSHIRE LEGAL ASSISTANCE
IN SUPPORT OF PLAINTIFF RICHARD POLONSKY**

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.....	5
QUESTIONS PRESENTED	8
INTEREST OF <i>AMICI CURIAE</i>	8
SUMMARY OF ARGUMENT.....	9
ARGUMENT	11
I. The Plain Language of RSA 80:89, VII Precludes Any Equitable Relief to Avoid a Taking Under the New Hampshire Constitution	11
A. The Rules of Statutory Construction Do Not Permit an Interpretation Contradicting the Express Language of the Statute	13
B. The Express Language of the Statute Precludes Equitable Relief ...	13
C. The Duty to Distribute Proceeds is a Conditional Duty Contingent on the Property Being Sold, and Any Right of the Former Owner Created by That Duty is Likewise Conditioned on Whether the Property Has Been Sold	15
II. The Statutory Scheme Remains Constitutionally Infirm Despite the Prior Guidance of this Court and Amendments by the Legislature .	16
A. Following an Earlier Decision of this Court, the Alternate Lien Procedure Was Amended Due to its Interference with Constitutionally Protected Property Rights.....	16
B. The Statutory Scheme Continues to be Constitutionally Infirm Because Whether or Not the Former Property Owner is Paid the Surplus is Within the Sole Discretion of the Municipality	19

III.	Additional Protections for the Rights of Former Property Owners, Beyond What the Current Statutory Scheme Provides, are Demanded by the U.S. and New Hampshire Constitutions	20
A.	The 5 th Amendment to the U.S. Constitution Supports That a Taking has Occurred Under New Hampshire’s Statutory Scheme	20
B.	Private Property Ownership Receives Special Protection Under the New Hampshire Constitution	22
C.	The Arguments Put Forth by the Town and its Amici Do Not Support a Compelling Government Interest.....	25
1.	The Property of Virtually All Former Homeowners Will Continue to Hold Substantial Equity Even After Deducting All Property Tax Debt.....	25
2.	Protections to Former Property Owners in the Tax Deeding Process Do Not Interfere with the Municipalities’ Tax Collection Process	27
IV.	Even if the Courts Have the Equitable Power to Force a Sale of the Property, the Statutory Scheme is Constitutionally Infirm for Lack of Notice	28
V.	RSA 80:89, VII Does Not Create a 3-Year Statute of Limitations Restricting a Former Property Owner’s Right to Receive Excess Proceeds Over the Amount Owed to the Town	31
A.	The 3-Year Period in RSA 80:89, VII Is Not a Statute of Limitations	31
B.	A Statute of Limitation Which Bars Enforcement of an Individual’s Right Before the Conditions Necessary for Enforcement of that Right Exist Violates Pt. 1, Art. 14 of the New Hampshire Constitution and is Therefore Unenforceable	32

C. The Only Possibly Applicable Statute of Limitation is the 10-Year Statute of Limitation in RSA 80:78.....	34
VI. There is No Basis for the Court to Apply the Equitable Doctrine of Laches	34
VII. A Former Owner Should Not Have to File for Bankruptcy Protection in Order to Recover the Excess Proceeds from the Sale of his Home.....	35
VIII. An Implied Right of Action to Force a Sale Raises Serious Questions That Should be Left to the Legislature	36
CONCLUSION	37
STATEMENT OF COMPLIANCE WITH WORD LIMITATION.....	37
ATTESTATION OF CONSENT TO FILING AMICUS BRIEF.....	38
CERTIFICATION OF SERVICE.....	39
ADDENDUM 1 – Constitutional Provisions and Statutes	40
United States Constitution	40
New Hampshire Constitution	40
New Hampshire Statutes.....	41
United States Code (select bankruptcy provisions).....	46
ADDENDUM 2 – 1998 New Hampshire Laws Ch. 238 (H.B. 676)	49

TABLE OF AUTHORITIES

CASES

<i>Appeal of Public Service Co. of New Hampshire</i> , 141 N.H. 13 (1996)	13
<i>Big League Entm't v. Brox Indus.</i> , 149 N.H. 480, 483 (2003)	31
<i>Burrows v. City of Keene</i> , 121 N.H. 590 (1981)	23-24
<i>Carr v. Town of New London</i> , 170 N.H. 10 (2017).....	14
<i>Coleman through Bunn v. District of Columbia</i> , 70 F.Supp.3d 58 (2014)	21, 22
<i>Dincher v. Marlin Firearms Co.</i> , 198 F.2d 821 (2d Cir. 1952)	33
<i>Dowd v. Gagnon</i> , 104 N.H. 360 (1962)	24
<i>First NH Bank v. Town of Windham</i> , 138 N.H. 139 (1994)	16-17, 21, 24, 26-27, 30
<i>Gazzola v. Clements</i> , 120 N.H. 25 (1980).....	23, 24, 30, 33
<i>Gordonville Corp. v. LRI-A Ltd. Pship.</i> , 151 N.H. 371 (2004)	18
<i>Heath v. Sears, Roebuck & Co.</i> , 123 N.H. 512 (1983)	19, 33
<i>In re Baby K.</i> , 143 N.H. 201, 205 (1998)	28
<i>In re LaRocque</i> , 164 N.H. 148 (2012)	34
<i>J.E.D. Associates, Inc. v. Town of Atkinson</i> , 121 N.H. 581 (1981)	22
<i>Lee James Enters. v. Town of Northumberland</i> , 149 N.H. 728 (2003).....	34
<i>Lynch v. Household Finance Corp.</i> , 405 U.S. 538 (1975)	24
<i>Kakris v. Montbleau</i> , 133 N.H. 166 (1990)	24
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	28
<i>Merrill v. City of Manchester</i> , 124 N.H. 8 (1983)	24
<i>Metzger v. Town of Brentwood</i> , 117 N.H. 497 (1977)	24
<i>Miller v. French</i> , 530 U.S. 327 (2000)	13
<i>Nelson v. New York City</i> , 352 U.S. 103 (1956)	20-21, 22

<i>Opinion of the Justices</i> , 139 N.H. 82 (1994)	23
<i>Opinion of the Justices</i> , 140 N.H. 22 (1995)	13
<i>Pennelli v. Town of Pelham</i> , 148 N.H. 365 (2002)	14
<i>Phetteplace v. Town of Lyme</i> , 144 N.H. 621 (2000)	36
<i>Piscataqua Bridge v. N.H. Bridge</i> , 7 N.H. 35 (1834)	23
<i>Polonsky v. Town of Bedford</i> , 171 N.H. 89 (2018)	11, 14, 18, 20, 26
<i>Royer v. State Dep't of Empl. Security</i> , 118 N.H. 673 (1978)	28
<i>Soraghan v. Mt. Cranmore Ski Resort</i> , 152 N.H. 399 (2005)	14
<i>State v. Smagula</i> , 117 N.H. 663 (1977)	13, 14
<i>Thayer v. Town of Tilton</i> , 151 N.H. 483 (2004)	25
<i>Thomas Tool Services v. Town of Croydon</i> , 145 N.H. 218 (2000)	10, 17, 21-22, 24, 25, 26
<i>United States v. Taylor</i> , 104 U.S. 216 (1881)	20
<i>United States v. Lawton</i> , 110 U.S. 146 (1884)	21, 22
<i>White v. Lee</i> , 124 N.H. 69 (1983)	13, 28, 29-30
<u>UNITED STATE CONSTITUTION</u>	
Fifth Amendment.....	20, 22
<u>NEW HAMPSHIRE CONSTITUTION</u>	
N.H. Const., Pt. 1, Art. 2	22-23, 24
N.H. Const., Pt. 1, Art. 12	22, 23
N.H. Const., Pt. 1, Art. 14	19, 32
N.H. Const., Pt. 1, Art. 15	23
N.H. Const., Pt. 1, Art. 18	17-18
<u>STATUTES</u>	
RSA 74:12	18
RSA 76:13	27

RSA 79:12	18
RSA 80:19	27
RSA 80:20	27
RSA 80:69	16, 27
RSA 80:76	17
RSA 80:78	34
RSA 80:80, V	13, 20
RSA 80:88	10, 11, 15, 18, 25, 29, 31
RSA 80:89	11, 15, 18, 26, 28, 29
RSA 80:89, VII.....	9, 10, 11, 15, 18, 29, 31, 32
RSA 80:90	18, 26-27
RSA 80:91	11-12, 13, 14, 19, 20
<u>FEDERAL BANKRUPTCY STATUTES</u>	
11 U.S.C. § 109 (e).....	35
11 U.S.C. § 541(1)(1)	35
11 U.S.C. § 1306	35
11 U.S.C. § 1322(a)(2).....	35
11 U.S.C. § 1325(a)(5).....	35
11 U.S.C. § 1325(b)(4)	35

QUESTIONS PRESENTED TO BE ADDRESSED BY *AMICUS*

1. Whether the trial court erred when it concluded that the statutory scheme contained in RSA 80:88-91 is unconstitutional?
2. Whether RSA 80:89, VII, which extinguishes a former property owner's right to receive excess proceeds after three years, constitutes a taking under Part I, Article 12 of the New Hampshire Constitution?
4. Whether the trial court erred when it concluded that the statutory scheme under RSA 80:88-91 precludes a former property owner from petitioning the court to exercise its equitable powers to compel the sale of a tax deeded property prior to the expiration of the three year period in RSA 80:89, VII?

INTEREST OF *AMICUS CURIAE*

New Hampshire Legal Assistance (NHLA) is a non-profit law firm which represents elderly and low-income residents of New Hampshire with a mission of providing access to justice including representation of homeowners struggling to pay their property taxes. These homeowners often face tax deeding of their homes and the subsequent sale of their tax deeded property and usually lack the financial means to repurchase their property pursuant to RSA 80:89. For these families and individuals, sale of their former home by the town and the return of the excess proceeds is often their last protection against utter destitution.

This Court has recognized the ownership, use, and quiet enjoyment of one's home as a fundamental right. The tax deeding to the municipality of a homeowner's property is an unconstitutional taking of private property

without compensation in violation of the New Hampshire Constitution, unless RSA 80:58-91 is read to limit the taking of the property to the extent necessary to satisfy the tax debt, interest, costs, and a reasonable penalty. If a municipality is allowed to take all the homeowner's equity because the municipality fails to sell the property within three years of recording of the tax deed, the homeowner can lose value far beyond the tax debt and any associated costs, while the municipality can realize an enormous windfall. New Hampshire homeowners surely are worthy of protection from an overreaching tax lien collection statute.

The outcome of this case could affect hundreds of New Hampshire resident homeowners each year whose homes are taken by tax deed due to their inability to pay their property taxes, especially those New Hampshire residents whose income is limited and whose family home is their only asset.

SUMMARY OF ARGUMENT

The ownership, use, and enjoyment of one's home is a fundamental right under the New Hampshire Constitution. Included in this fundamental right is the requirement that property not be taken by any municipality without just compensation. The alternate tax lien statute includes a process for a former property owner to redeem property or receive surplus proceeds from the sale of the property after the property has been taken by tax deed. However, as the trial court ruled, by limiting the municipality's duty to distribute excess proceeds of the sale of the property to three a three-year period, RSA 80:89, VII causes the alternative tax lien procedure to result in an unconstitutional taking. A taking of property without just compensation

occurs when a municipality sells tax deeded property more than three years after it is taken by tax deed and realizes a windfall profit by retaining any surplus beyond the tax debt, interest, costs and the reasonable statutory penalty. In such cases, former owners are denied any opportunity to recover their interest in the value of the property. The express language of the statute is clear that a former property owner's right to receive excess proceeds of the sale of the property is contingent on the sale of the property by the municipality. Likewise, the alternative tax lien statute provides the municipality with sole discretion to sell the property after it has been taken by tax deed.

It is a logical extension of the holding in *Thomas Tool Services v. Town of Croydon*, 145 N.H. 218 (2000), to find that the three-year limitation on a municipality's duty to distribute excess proceeds to the former owner results in a taking. As private property ownership receives special protection under the New Hampshire Constitution, there is no basis in law or logic to support the proposition that after three years a municipality is permitted to seize a person's property without just compensation.

Despite the protestation of the Town of Bedford and its amici, the statute cannot be read to avoid a taking. The plain language of RSA 80:89, VII precludes any equitable relief which would prevent a taking under the New Hampshire Constitution, as the statute denies a former property owner's right to any surplus under RSA 80:88 after three years. Moreover, even if this court were to infer a right of a homeowner to petition the court for the excess proceeds from the sale within three years from the issuance of the tax deed, such a right would be meaningless

without the municipality and the statute providing meaningful notice of such right to the homeowner.

ARGUMENT

I. The Plain Language of RSA 80:89, VII Precludes Any Equitable Relief to Avoid a Taking Under the New Hampshire Constitution.

When this Court previously considered this matter, it determined that the statutory scheme denies former property owners the right to any surplus under RSA 80:88 *after* three years from the recording of the tax deed:

The scheme further provides that, once the three-year period in RSA 80:89, VII has expired, the municipality has *no* duty to the former owner with respect to the excess proceeds. *See* [RSA 80:91] (providing that, “if the municipality has complied with the provisions of this chapter[,] it *shall not have any liability whatsoever to any former owner ... for the amount of consideration received upon disposition of the property.*” (emphases added)). Thus, according to the express language of the pertinent statutes, the legislature did *not* intend to allow a former owner to recover excess proceeds from a municipality after the three-year period has elapsed.

Polonsky v. Town of Bedford, 171 N.H. 89, 95-96 (2018). The key question before the Court now is whether the statutory scheme allows for a former property owner to seek equitable relief *before* three years from recording of the tax deed have expired.

The trial court found that the statutory scheme contains no mechanism to either compel the Town to sell, nor any mechanism to obtain a sum representing the difference between the fair value of the property and what the Town is due. Trial Court Order, p. 3, Appellant Town of

Bedford's ("App.") Brief at 43. In fact, the trial court stated that "forcing a sale would be directly contrary to [the] statute" as "RSA 80:91 reads 'Nothing in this chapter shall obligate a municipality to dispose of property acquired by tax deed except as provided in RSA 80:89,[']" and "RSA 80:89 contains no duty on the part of the municipality to sell, but rather sets out a procedure should the municipality decide to sell the property within the three-year period." *Id.* at 5. The trial court thus held:

Accordingly, because any right of the former property owner to recover excess proceeds under RSA 80:89 is contingent upon the municipality selling the former owner's property and the former owner is otherwise unable to compel the municipality to sell the property to recover an amount representing the difference between the property value and the amount owed to the town, the court finds the statute violates the takings clause of the New Hampshire Constitution.

Id. at 7. Seeking to interpret the alternate lien procedure in a constitutional way, the Town of Bedford continues to propose an interpretation of the statute that would include additional equitable protections for the former homeowner. The Town of Bedford argues that the former homeowner can bring an action seeking equitable relief to compel a sale before the three years expire (App. Brief at 22-25) and that this Court has authority to prescribe the extra-statutory process to render the statute constitutional. *Id.* at 25-27. Such measures contradict the express language of the statutory scheme and are insufficient to cure the continued constitutional infirmities.

A. The Rules of Statutory Construction Do Not Permit an Interpretation Contradicting the Express Language of the Statute.

In New Hampshire, statutes are “‘construed to avoid conflict with constitutional rights wherever reasonably possible.’” *Opinion of the Justices*, 140 N.H. 22, 26 (1995), *quoting State v. Smagula*, 117 N.H. 663, 666 (1977); *White v. Lee*, 124 N.H. 69, 77-78 (1983). However, statutes must be read according to their plain and ordinary meaning. *Appeal of Public Service Co. of New Hampshire*, 141 N.H. 13, 17 (1996). The legislature is presumed to choose the words of a statute advisedly and this Court cannot contradict the intent of the legislature as expressed in the words of the statute.” *Id.* (citations omitted). In considering the equitable authority of the courts, the United States Supreme Court has said that “[w]e cannot press statutory construction ‘to the point of disingenuous evasion’ even to avoid a constitutional question.” *Miller v. French*, 530 U.S. 327, 340-41 (2000) (citations omitted). *See also Polonsky*, 171 N.H. at 96 (“A preference for giving statutes a constitutional meaning is a reason to construe, not to rewrite or ‘improve’” (citation and internal quotation omitted)).

B. The Express Language of the Statute Precludes Equitable Relief.

Prior to three years from the recording of the tax deed, the former homeowner is at the municipality’s mercy to take the steps to sell the property and has no right to force such a sale. *See* RSA 80:91. RSA 80:91 explicitly states that “[n]othing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89.” *See also* RSA 80:80, V. RSA 80:89 only lays out a procedure *if* the

municipality chooses to dispose of property. In fact, “[a]fter the execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof ... without any accountability to former owners....” RSA 80:91. This is not an unconstitutionally vague provision. *See Smagula*, 117 N.H. at 666. “Basic statutory construction rules require that all of the words of a statute must be given effect and that the legislature is presumed not to have used superfluous or redundant words.” *Pennelli v. Town of Pelham*, 148 N.H. 365, 367-68 (2002) (citation omitted). This Court does not construe statutes in isolation; instead, it attempts to do so in harmony with the overall statutory scheme. *Soraghan v. Mt. Cranmore Ski Resort*, 152 N.H. 399, 405 (2005) (citation omitted). Furthermore, this Court has stated, “[i]f a taxing statute is ambiguous, we construe it against the government and in favor of the taxpayer.” *Carr v. Town of New London*, 170 N.H. 10, 14 (2017) (citation omitted). As written, the statute leaves the decision as to whether or not to sell the tax deeded property entirely up to the municipality – there is no equitable remedy.

The Town of Bedford focuses on Justice Horton’s concurrence as supporting a solution in equitable relief. App. Brief at 21, 26. The Town argues that Mr. Polonsky could have filed a petition in equity to compel the sale of the property to realize the Town’s “duty” to distribute the excess proceeds. App. Brief at 22-23. As explained above, this resolution is precluded by the plain language of the statute. As the trial court found, “the municipality’s duty with regard to excess proceeds is a contingent one that does not arise until a sale takes place, a decision left wholly to the discretion of the Town.” *Id.* at 46. The statute must be rewritten as the adoption of RSA80:88-91 has turned out to be only a partial fix. As this

Court stated in its previous decision in this matter: “the legislature is institutionally better equipped to determine what any such changes should be.” *Polonsky*, 171 N.H. at 97 (citation omitted).

C. The Duty to Distribute Proceeds is a Conditional Duty Contingent on the Property Being Sold, and Any Right of the Former Owner Created by That Duty is Likewise Conditioned on Whether the Property Has Been Sold.

The Town’s right and duty argument is flawed as the duty of the Town is narrow. Appellant argues that the text of RSA 80:89, in describing that the duty to “distribute proceeds pursuant to RSA 80:88 ... shall terminate 3 years after the date of the recording of the deed,” implies a corresponding right, which likewise is time-limited. App. Brief at 22-23. However, the implied right of the former homeowner which the Town wishes this Court to recognize – that the former owner may petition in equity to force the sale of the property before three years from the tax deeding have elapsed – does not correspond to the duty described in RSA 80:89; it exceeds it.

The duty of the municipality described in RSA 80:89, VII is conditioned on the municipality selling the property. RSA 80:91 does not require that a municipality dispose of a property acquired by tax deed, except as provided in RSA 80:89. And RSA 80:89 provides a process, not a mandate to dispose of property. RSA 80:89, VII specifies that the distribution of proceeds is “pursuant to RSA 80:88.” Therefore RSA 80:88 describes the required process for distribution of proceeds “for any sale by a municipality of property which is acquired by tax deed.” Unless the municipality has sold the tax-deeded property, no duty to distribute

proceeds exists. The corresponding right to the municipality's duty – which is conditioned on the municipality selling the property – would likewise be contingent on the sale of the property by the municipality. To the extent RSA 80:89 grants a right to the former owner, it is the conditional right to recover excess proceeds if the property is sold by the municipality. The trial court noted the Town's argument and found:

However, the municipality's duty with regard to excess proceeds is a contingent one that does not arise until a sale takes place, a decision left wholly to the discretion of the Town. Therefore, because the municipality's duty to distribute excess proceeds is not triggered until the property is actually sold, it stands to reason that any corresponding right of the former property owner does not materialize until the same event occurs. Thus, there is no right to protect.

Trial Court Order, p. 6, App. Brief at 46. The plain and specific language of the statute is inconsistent with a broad implied right of a property owner to force a sale and receive any surplus.

II. The Statutory Scheme Remains Constitutionally Infirm Despite the Prior Guidance of this Court and Amendments by the Legislature.

A. Following an Earlier Decision of this Court, the Alternate Lien Procedure Was Amended Due to its Interference with Constitutionally Protected Property Rights.

The “alternate tax lien” procedures were enacted in 1987. RSA 80:58-87; *First NH Bank v. Town of Windham*, 138 N.H. 319, 331 (1994). The statute provides that any person holding an interest in land subject to a tax lien can redeem the interest in the property by paying the tax collector all outstanding taxes, interest, and costs. RSA 80:69; *First NH Bank*, 138 N.H. at 322. Prior to the 1998 amendments, this right of redemption

expired when, after two years from the execution of the lien, the tax collector issued a deed. RSA 80:76; *First NH Bank*, 138 N.H. at 322. In his concurring opinion in this Court’s 1994 decision in *First NH Bank v. Town of Windham*, Justice Horton questioned the constitutionality of the alternative tax lien procedure because of the risk of an arbitrary forfeiture and “a fattening of the taxing authority’s treasury” – a taking without just compensation. *Id.* at 331.

In *Thomas Tool Services v. Town of Croydon*, this Court reiterated that “[b]ecause the right to property is a fundamental right in our State, all subsequent grants of power, including the taxing power, are limited as to how they adversely affect it.” *Thomas Tool Services*, 145 N.H. at 220 (citation omitted). Thus the Court “squarely confronted ... the issue of whether the alternative tax lien procedure violates the takings clause of the New Hampshire Constitution.” *Id.* The Court held that it did. *Id.* This Court stated that “the amount of surplus the [town] realized results in an unduly harsh penalty.” *Id.*

Before the decision in *Thomas Tool Services* was issued, House Bill 676 passed the New Hampshire legislature and the Governor signed it on June 25, 1998. The intent of House Bill 676 was to “prevent unjust enrichment of a municipality” when property acquired by tax deed is sold for substantially more than the amount of taxes, costs and interest owed, or is retained by the municipality. Addendum 2 at 50 (Chapter 238:1, Statement of Intent, Laws of 1998.) The law also included a new penalty¹

¹ Amicus for the Town of Bedford, New Hampshire Tax Collectors Association (“NHTCA”) asserts that “the Trial Court ‘overlooked’ the important ‘penal’ nature of the tax deed process.”

as incentive for taxpayers to redeem property prior to tax deedding. *Id.* Accordingly, under the amendments to the alternative tax lien statute, a municipality is prohibited from retaining any amount realized in a tax sale in excess of the back taxes, interest, costs and penalty, as defined in RSA 80:90, if it sells the property. RSA 80:88, I. In enacting the provisions of RSA 80:88-91, the legislature sought to prohibit towns from too harshly penalizing delinquent taxpayers. *Gordonville Corp. v. LRI-A Ltd. P'ship.*, 151 N.H. 371, 374 (2004). Newer amendments further ensure that the statutory scheme is not punitive. The 2016 amendments reduced the additional penalty from 15% to 10%. RSA 80:90, I(f); *see also Polonsky*, 171 N.H. at 98. Further, the statute now provides that “if the property is the former owner’s principal residence, or was the former owner’s principal residence at the time of execution of the tax deed ..., the additional penalty under RSA 80:90, I(f) shall not apply.” RSA 80:89, II.

Notwithstanding the improvements made by these amendments, the statutory scheme remains constitutionally flawed. RSA 80:89, VII provides that “[t]he duty of the municipality to notify former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners’ right of

NHTCA Brief at 20. The NHTCA cites absolutely no statute or precedent to support this proposition. The foregoing legislative history debunks the argument that the tax deed process was intended to be punitive. The statutes cited by the NHTCA involve tax fraud. *Id.* at 21. RSA 74:12 sets a “doomage” of “4 times as much as such property would be taxable if truly returned and inventoried” for “willfully omitted” information or “any false statement.” Similarly, RSA 79:12 sets a “doomage 2 times as much as such wood and timber would have been taxed” for failure to file report of a cut, or willfully making false statements or willfully omitting information. The NHTCA then analogizes the purported “penalty” of a taking to criminal penalties permitted under Pt. 1, Art. 18 of the NH Constitution, while admitting that failure to pay property taxes is not within the scope of that provision. *Id.* at 21-22. The NHTCA’s likening of Mr. Polonsky and other homeowners too impoverished to afford their property taxes to people who essentially have committed tax fraud is grossly inappropriate.

repurchase under this section shall terminate 3 years after the date of recording of the deed.” The 1998 amendments to the alternate tax lien process only provide a remedy to the subset of former homeowners whose property is sold within three years. Although the stated intent of the amendments was to also prevent unjust enrichment as to the homeowners whose property was “retained by the municipality,” the statute precludes *any* remedy to those homeowners whose property is retained for more than three years. The New Hampshire Constitution in chronicling our inherent rights provides that every subject of the State is entitled to a certain remedy by having recourse to the laws for all injuries he may receive to his property. *Heath v. Sears, Roebuck & Co.*, 123 N.H. 512, 523 (1983), *citing* N.H. Const., Pt. 1, Art. 14. The legislative 3-year limit, combined with the provisions of RSA 80:91 restricting a municipality’s obligations and liability, prevents relief to many property owners whose home has been tax deeded. These limitations on the municipality’s duty render the statute unconstitutional. The legislature must revisit the statutory scheme to ensure that property owners who lose their property due to their inability to pay the taxes are compensated whenever the government takes or sells their property.

B. The Statutory Scheme Continues to be Constitutionally Infirm Because Whether or Not the Former Property Owner is Paid the Surplus is Within the Sole Discretion of the Municipality.

The key provisions limiting the duty of municipalities and rendering the statutory scheme unconstitutional are found in RSA 80:91. RSA 80:91 explicitly states that “[n]othing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89.”

In fact, “[a]fter execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof ... without any accountability to former owners....” RSA 80:91. *See also* RSA 80:80, V. The statutory scheme is clear that the municipality may do with a property taken by tax deed what it wants. It is fully in the municipality’s discretion. It is *only* if the municipality chooses to sell the property within three years of the recording of the tax that it has *any* statutory obligation to the former homeowner as to the surplus. If, for whatever reason, the municipality fails to sell the property within three years, the duty to distribute proceeds pursuant to RSA 80:88 results in an unconstitutional taking as to a homeowner who cannot afford to repurchase his home. Changes to the statutory scheme are necessary and warranted. The decision as to what changes should be made involves policy judgments that are for the legislature to make. *Polonsky*, 171 N.H. at 97.

III. Additional Protections for the Rights of Former Property Owners, Beyond What the Current Statutory Scheme Provides, are Demanded by the U.S. and New Hampshire Constitutions.

A. The 5th Amendment to the U.S. Constitution Supports That a Taking has Occurred Under New Hampshire’s Statutory Scheme.

The Fifth Amendment to the U.S. Constitution protects a former homeowner in the situation of Mr. Polonsky from the taking of surplus proceeds. The United States Supreme Court has considered the issue of taking property through tax sales to recover delinquent tax debts with the most recent decision being *Nelson v. City of New York*, 352 U.S. 103

(1956).² The New York statute at issue provided for judicial foreclosure of tax liens on real property. *Id.* at 104, fn 1. The U.S. Supreme Court discussed a New York appellate court decision on the judicial foreclosure process in which the owner had filed a timely answer. *Id.* at 110 (citation omitted). The New York court had construed the statute to mean that upon proof that the property had a value substantially exceeding the taxes due, a sale should be directed so that the owner might receive the surplus. *Id.* Because the judicial foreclosure procedure allowed the owner to assert a right to the excess value, the U.S. Supreme Court noted with respect to the New York statute: “we do not have here a statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale.” *Id.*³ This is contrary to the New Hampshire statute which does preclude the former homeowner from obtaining the surplus, unless the municipality chooses to sell the property within three years.

A much more recent decision of the U.S. District Court for the District of Columbia, *Coleman through Bunn v. District of Columbia*, 70 F.Supp.3d 58 (2014), supports this reading of United States Supreme Court precedent. *Coleman* points out that the determinative question is whether the former property owner has a property interest in his equity. *Id.* at 80. “Because the U.S. Constitution protects rather than creates property

² Two earlier decision were *United States v. Taylor*, 104 U.S. 216 (1881), and *United States v. Lawton*, 110 U.S. 146 (1884).

³ Justice Horton, in his famous concurrence, also discussed this case: “An analysis under the Federal Constitution exists in *Nelson v. New York City*, 352 U.S. 103 (1956). In *Nelson*, a takings claim by a property owner, who had incurred a substantial forfeiture under a New York tax lien foreclosure, was rejected by the Court. The basis for the holding was that the foreclosure procedure, although somewhat summary, permitted opportunity to recover the excess value over taxes by appropriate taxpayer action.” *First NH Bank*, 138 N.H. at 332.

interests, the existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law.” *Id.* at 81 (internal quotation omitted). In *Thomas Tool Services* this Court clearly found that “the amount of surplus” was protected under Part I, Article 12 of the New Hampshire Constitution because “the right to property is a fundamental right in our State.” *Thomas Tool Servs.*, 145 N.H. at 220. Thus, the interpretation of *Nelson* and *U.S. v. Lawton*, 110 U.S. 146 (1884) by the United States District Court for the District of Columbia is directly on point:

Lawton makes clear that a Takings Clause violation will arise when a tax-sale statute grants a former owner an independent property interest in the surplus equity and the government fails to return that surplus.

Coleman, 70 F.Supp.3d at 80, *citing Lawton*, 110 U.S. at 149. Without a process for recovery of the surplus, and notice to the taxpayer thereof, the statute invites municipalities to deprive former property owners of rights guaranteed by the 5th Amendment to the Constitution of the United States.

B. Private Property Ownership Receives Special Protection Under the New Hampshire Constitution.

The New Hampshire Constitution provides greater protection to property rights than the federal Constitution, and greater protection than they are accorded in other states. “Private property enjoys a special protection under the Bill of Rights of our State Constitution.” *J.E.D. Associates, Inc. v. Town of Atkinson*, 121 N.H. 581, 584 (1981) (citations omitted). New Hampshire’s Bill of Rights provides that among the “natural, essential and inherent rights” of all persons is the right of

“acquiring, possessing, and protecting, property.” N.H. Const., Pt. I, Art. 2. This Court has stated that “the law has long recognized that rights in property are ‘basic civil rights.’” *Gazzola v. Clements*, 120 N.H. 25, 30 (1980) (citing *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1975)).

Included in this fundamental right are the requirements that property not be taken or applied to public uses without consent of the person or the legislature, or without just compensation, and that when property is taken, due process will be provided. N.H. Const., Pt. I, Arts. 2, 12, 15. Part 1, Article 12 of the New Hampshire Constitution provides:

Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

In *Opinion of the Justices*, 139 N.H. 82 (1994), this Court held that:

Part 1, Article 12 of the New Hampshire Constitution provides that “no part of a man’s property shall be taken from him, or applied to public uses, without his consent, or that of the representative body of the people.” This clause requires just compensation in the event of a taking.

Id. at 87 (citing *Piscataqua Bridge v. N.H. Bridge*, 7 N.H. 35, 66-70 (1834)). The just compensation principle that is part of the New Hampshire Constitution is a “fundamental truth” “that lies at the very foundation of

civilized society as we know it.” *Burrows v. City of Keene*, 121 N.H. 590, 595-96 (1981).

The natural and inherent right to acquire, possess and protect property set out in Part 1, Art. 2 of the New Hampshire Constitution “limits all subsequent grants of power which deal adversely with this right.” *Burrows*, 121 N.H. at 596 (*quoting Metzger v. Town of Brentwood*, 117 N.H. 497, 502 (1977)). Moreover, the State may not do indirectly that which it is constitutionally prohibited from doing directly. *Id.* at 597. The State may not through its statutes authorize a municipality to take property in violation of the owner’s constitutional rights. *Id.* at 596-97; *see also Merrill v. City of Manchester*, 124 N.H. 8, 14-15 (1983). The power of the tax collector to dispose of property for unpaid taxes is purely statutory, *Kakris v. Montbleau*, 133 N.H. 166, 172 (1990); *Dowd v. Gagnon*, 104 N.H. 360, 361 (1962), and is therefore subject to these constitutional limitations. *See First NH Bank*, 138 N.H. at 331; *Burrows*, 121 N.H. at 596. The taxing power of the State is constrained by the right to acquire, possess, and protect property. Further, “When a fundamental interest is involved, ‘[s]tate statutes are subjected to strict judicial scrutiny with the result that there must be a compelling state interest to sustain the legislation.’” *Gazzola*, 120 N.H. at 30 (citation omitted.)

This Court has explicitly rejected takings which courts in other jurisdictions have upheld, based on the greater protection afforded to property rights by the New Hampshire Constitution. *Thomas Tool Servs.*, 145 N.H. at 221. The decision of this Court in *Thomas Tool Services* confirmed that taking property by tax deed without paying the surplus to the former owner is taking property for public use without just

compensation. That is precisely the situation faced by Mr. Polonsky and any other former homeowner living in a municipality which fails to dispose of property taken by tax deed and distribute the proceeds pursuant to RSA 80:88. The alternative tax lien procedure, even after the 1998 amendments, codified in RSA 80:88 to 80:91, fails to protect these constitutional, and natural and inherent, rights unless it allows for a timely accounting and return of any surplus to all former property owners whose property has been taken through the alternate tax lien process. It is a logical extension of the holding in *Thomas Tool Services* to find the three-year limitation in RSA 80:89, VII resulted in a taking. There is no basis in law or logic to support the proposition that after three years a municipality is permitted to seize a person's property. When a town expropriates a homeowner's equity beyond what is necessary to make it whole, it is a taking whether it occurs three years or three years and a day after the recording of the tax deed. While the additional procedures enacted in 1998 provide more protections, the statute still acts as a taking as to Mr. Polonsky and those similarly situated.

C. The Arguments Put Forth by the Town and its Amici Do Not Support a Compelling Government Interest.

1. The Property of Virtually All Former Homeowners Will Continue to Hold Substantial Equity Even After Deducting All Property Tax Debt.

The Town of Bedford cited to an alleged finding in the legislative history claiming that “[m]uch research was done to determine the break-even point for tax deeded property and three years was determined to be the appropriate time during which the interest and costs equal the value of the

property.” App. Brief at 32. This unsupported claim, without any references, was quoted from the written testimony of a municipal tax collector. Appendix to App. Brief at 95. Similarly, the New Hampshire Municipal Association (“NHMA”), amicus to the Town of Bedford, argues, with no support for its proposition, that “Municipalities often struggle to sell these properties at a price that can even recover all that is due to them.” NHMA Brief at 11. It is belied by Mr. Polonsky who owned a property assessed at approximately \$300,000, with all costs owed to the Town totaling less than \$100,000. *Polonsky*, 171 N.H. at 91-92. In *Thomas Tool Services*, the property for which the plaintiff had paid at least \$65,000, was tax deeded by the Town for \$370.26.⁴ *Thomas Tool Services*, 145 N.H. at 219. The testimony of a single tax collector at a committee hearing – without so much as a reference to any of the “research” to which she referred – is a woefully inadequate basis for terminating a property owner’s right to the net proceeds of his home after three years. And while there may be cases in which municipalities have difficulty in recovering the entire debt of the former property owner, there are other cases, such as that of Mr. Polonsky, in which the town can recover far more than is owed. Again, the bald allegation that towns struggle to recover what is owed them hardly serves as a legitimate basis for taking homeowners’ equity after three years without compensation. It is extremely easy for a town or a court to determine the actual amount of the homeowner’s net equity after the sale of the property. See *First NH Bank*, 138 N.H. at 331 (“The debt or obligation

⁴ This tax sale occurred before the amendments to the alternative tax lien procedure which added a penalty (RSA 80:90, I(f)), but clearly the amount owed after three additional years with interest and the penalty still would have been a fraction of the value. As noted above, the penalty no longer is incurred if the property is (or was) the principal residence of the owner. RSA 80:89, II.

under the tax lien statutes is liquidated and easily determinable.”) When the extent of the homeowner’s loss of equity (and the town’s profit) is so easily determined, the arbitrary conclusive presumption that after three years the homeowner has *no* net equity fails to further a compelling state interest and cannot pass this Court’s constitutional review. The arbitrary conclusive presumption is itself a taking.

2. Protections to Former Property Owners in the Tax Deeding Process Do Not Interfere with the Municipalities’ Tax Collection Process.

The protections required to prevent a taking of property do not interfere with the municipalities’ tax collection process or place a substantial additional burden on the municipalities. The New Hampshire Tax Collectors Association (“NHTCA”), the other amicus of the Town of Bedford, argues that “the cumulative impact of taxpayers, like Mr. Polonsky, who fail to pay their real estate taxes, could have a devastating effect on the provision of municipal services.” NHTCA Brief at 22. The NHMA asserts that “[p]roperty owners that fail to pay taxes cause a disproportionate share of taxes to be borne by their fellow taxpayers.” NHMA Brief at 11. These arguments only hold true if today was the first day of Genesis. The original tax lien procedure has existed since the 1800s. *See, e.g.*, RSA 80:19 and 20. Properties pass through the tax lien and tax deeding pipeline on an ongoing basis. Amicus acknowledges that selling tax deeded properties is a burden on municipalities; however, all of their costs are reimbursed. RSA 80:90, I(d) and (e). Further, the municipalities collect interest of 8% on taxes after their due date, and 14% following the tax lien. RSA 76:13, 80:69. In this era of miniscule interest rates, the

interest rate on unpaid taxes results is a huge windfall to municipalities. Absent some unforeseeable reason for a drastic increase in delinquent taxpayers, nothing supports the argument that enacting additional protections will substantially harm municipalities. The power is in the hands of the municipality – once the tax deed has been recorded, the municipality can start the process to sell the property and realize the money owed to it; nothing requires the municipality to wait an additional three years. RSA 80:89. There is no reason for the position that the protections necessary to avoid a taking would interfere with compelling governmental interests.

IV. Even if the Courts Have the Equitable Power to Force a Sale of the Property, the Statutory Scheme is Constitutionally Infirm for Lack of Notice.

Even if the statutory scheme permits a homeowner to seek equitable relief within three years of the recording of the tax deed, neither the statute nor the town provided Mr. Polonsky with any notice whatsoever of that right. State and federal due process rights require notice and an opportunity to be heard prior to any proceeding that will be accorded finality in the deprivation of property rights. *White v. Lee*, 124 N.H. at 75–76.⁵ The trial court alluded to the notice problem of relying on equitable relief as the

⁵ Typically, to determine the process due, a three-pronged balancing test is employed. *In re Baby K.*, 143 N.H. 201, 205 (1998). The court must consider “the private interest that will be affected by the official action... the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id. citing to Royer v. State Dep’t of Empl. Security*, 118 N.H. 673, 678 (1978) (quotation omitted); *see also Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

solution to the unconstitutional statutory scheme – “even if a property owner knew to seek equitable relief...” Trial Court Order, p. 5, App. Brief at 45. The possibility of equitable relief granted by a superior court without more fails to resolve the constitutional infirmity.

Consistent with the requirements of due process, RSA 80:89 provides notice and an explicit process for the former owner to repurchase the property. The statute also provides notice and a specific process when the municipality sells the property and “there are excess proceeds.” RSA 80:88, II. In that event, “the municipality shall file a bill of interpleader with the superior court..., naming the former owner or owners...” *Id.* at II(a). The court shall issue orders of notice and make an appropriate disposition of the excess proceeds. *Id.* at II(c). Further, if there is only one record owner or joint owners and no lienholders, the municipality simply pays the “excess proceeds” to such owner or owners. *Id.* at III. RSA 80:88, II and III thereby provide detailed notice and procedures for any sale within three years by a municipality of property which is acquired by tax deed. However, the former owner’s right to repurchase and the town’s duty to return excess proceeds both “terminate 3 years after the date of the recording of the deed.” RSA 80:89, VII. The statutes lack any notice or process for the former owner who is unable to repurchase the property, if the municipality fails to sell the property within three years. Whether or not the State’s superior courts have the relevant equitable powers, a whole class of homeowners has no notice that there is any relief for them.

The Town focuses on the equitable relief this Court has crafted in other cases including those involving property tax issues. App. Brief at 25-26. In *White v. Lee*, the town had not notified the actual owner of the tax

sale as the statute at the time required that notice be provided only to the owner *or* the person against whom the tax was assessed. *White*, 124 N.H. at 74. This Court crafted an equitable remedy requiring that notice of a pending tax sale must be sent to the current owner, if listed on the town's current tax warrant. *Id.* at 77. At the time *First NH Bank v. Town of Windham* was litigated, statutes provided for notice to the mortgagee of execution of the tax lien, but not of the tax deed. *First NH Bank*, 138 N.H. at 324 (citation omitted). This Court again created an equitable resolution by requiring notice to the mortgagee of the date the tax deed would issue, the date of expiration of the right to redeem, and "a warning that the mortgage will be eradicated by the tax lien deed if the property is not redeemed." *Id.* at 327-28.

Here, the Town of Bedford would have the property owner glean from thin air that he has (or in this case had) a right to petition in equity to compel the sale of the property within three years of the recording of the tax deed. App. Brief at 25. Even if such a right were not directly contradicted by the plain words of this statute, how is the property owner to know that such a right exists? In *Gazzola v. Clements*, this Court decided that absent an express statutory hearing provision, it would read into the statute hearing requirements similar to those in another statute involving similarly situated property owners. *Gazzola*, 120 N.H. at 30. "We take this step because we believe that the legislature would prefer this course to outright invalidation." *Id.* While the superior courts and this Court have broad equitable power, the Town cites no authority to support that a constitutional defect can be cured by reading a right and a cause of action

into a statute that is contradicted by the plain statutory language, on top of addressing the problem of lack of notice.

V. RSA 80:89, VII Does Not Create a 3-Year Statute of Limitations Restricting a Former Property Owner's Right to Receive Excess Proceeds Over the Amount Owed to the Town.

A. The 3-Year Period in RSA 80:89, VII Is Not a Statute of Limitations.

Statutes of limitation limit the time in which a plaintiff may bring suit after a cause of action accrues. Black's Law Dictionary defines a statute of limitations as:

A statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered).

Black's Law Dictionary (11th ed. 2019), *available at* Westlaw BLACKS. *See also Big League Entm't v. Brox Indus.*, 149 N.H. 480, 483 (2003). The Town asserts that RSA 80:89, VII establishes an effective limit on a municipality's duty to disperse excess proceeds of a sale to former owners of tax-deeded properties. App. Brief at 30-34. The Town argues that the statutory language in RSA 80:89, VII that "[t]he duty of the municipality to ... distribute proceeds pursuant to RSA 80:88 ... shall terminate 3 years after the date of the recording of the deed" constitutes a valid statute of limitations, beyond which a former owner loses all claim to excess proceeds from the sale of their former property. *Id.* RSA 80:89, VII, however, lacks an indispensable prerequisite to form an effective statute of limitations limiting the period in which the former owner may bring suit: a cause of action to limit. There is nothing in the statutory scheme for the

alternative tax lien which provides a cause of action to a former owner until the municipality sells the property. In the absence of such a provision, the Town asks this court to read such a cause of action into the statute by implication. This would amount to a re-writing of the plain language of RSA 80:89, VII. The statute creates a duty in the municipality to distribute proceeds if, and only if, it has chosen to sell the property. The only cause of action it confers upon the former property owner is the right to recover the excess proceeds from a sale if the Town chooses to sell.

B. A Statute of Limitation Which Bars Enforcement of an Individual's Right Before the Conditions Necessary for Enforcement of that Right Exist Violates Pt. 1, Art. 14 of the New Hampshire Constitution and is Therefore Unenforceable.

If RSA 80:89, VII were to be enforced as a valid statute of limitation on a former owner's right to receive excess proceeds from the sale of their former property, it would effectively deny that right in any circumstance where a municipality waits three years prior to selling the property. A former owner would have a statutory right to excess proceeds from the sale of their property but would have no avenue to recover those proceeds if the municipality chose to hold the property for longer than three years. Part 1, Article 14 of the New Hampshire Constitution provides:

Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without denial; promptly, and without delay; conformably to the laws.

Although the legislature's power to impose statutes of limitation on remedies is broad, "[that] power may not be exercised in an unconstitutional manner." *Heath v. Sears, Roebuck & Co.*, 123 N.H. at 524. In *Heath v. Sears, Roebuck & Co.*, this Court found a statute of repose for products liability claims unreasonable and thus unconstitutional for eliminating causes of action before the wrongs could reasonably be discovered. *Heath*, 123 N.H. at 525. In doing so, the Court quoted the dissent in *Dincher v. Marlin Firearms Co.*, 198 F.2d 821, 823 (2d Cir. 1952), saying "it has always heretofore been accepted, as a sort of logical 'axiom', that a statute of limitations does not begin to run against a cause of action before that cause of action exists, i.e., before a judicial remedy is available to the plaintiff." *Id.*

If RSA 80:89, VII were interpreted as a statute of limitation on a former owner's right to receive excess proceeds, it would create the illogical and unreasonable result of barring a cause of action before a judicial remedy is available whenever a municipality chooses not to sell a property within three years. A former owner's right to receive excess proceeds is conditioned on the sale of the property, and the statutory scheme provides no mechanism for the former owner to force the municipality to sell the property. As property rights are fundamental rights under New Hampshire law, any restrictions by the legislature must protect a compelling state interest and are subject to strict scrutiny. *Gazzola v. Clements*, 120 N.H. at 30. Without any statutory right to force the sale of the property, such a statute of limitation would be unconstitutional. An unwritten 3-year statute of limitations is an unconstitutional bar to Mr.

Polonsky's remedy for the municipality's failure to distribute excess proceeds.

C. The Only Possibly Applicable Statute of Limitation is the 10-Year Statute of Limitation in RSA 80:78.

This Court has previously found that the 10-year statute of limitations in RSA 80:78 is applicable to the recovery of surplus proceeds following tax deeding. In *Lee James Enters. v. Town of Northumberland*, 149 N.H. 728, 729 (2003), the former property owner sued the town asserting that the town's retention of funds upon sale of the property in excess of the tax liability constituted an unconstitutional taking. This Court noted that the former homeowner had "filed within the relevant statute of limitations," citing to RSA 80:78, "providing ten-year contestability period for tax liens and collector's deeds." *Id.* The statutory scheme simply contains no other statute of limitations.

VI. There is No Basis for the Court to Apply the Equitable Doctrine of Laches.

In addition to its argument regarding the statute of limitations, the NHTCA argues that this court should apply the equitable doctrine of laches to bar Mr. Polonsky from recovering the excess proceeds from the sale of his home (when and if such sale ever occurs). NHTCA Brief at 25-26. Given the total absence of notice to Mr. Polonsky that he had a right to petition the superior court to force the sale of the home, the equitable doctrine of laches cannot be applied in this case. The essence of the doctrine is that the party against whom it is applied "slept on his rights" causing injury to the opposing party. *In re LaRocque*, 164 N.H. 148, 151 (2012). The NHTCA argues that Mr. Polonsky had "clear knowledge" of

the taking (NHTCA Brief at 26) but this is true only to the point of the tax deeding. As to the purported right upon which he failed to act – petitioning the court to force the sale – he had no notice whatsoever. Mr. Polonsky’s failure to assert an implied right that neither the legislature nor, up to this point in time, this Court has found to exist, cannot be the basis for applying the doctrine of laches to bar his claim.

VII. A Former Owner Should Not Have to File for Bankruptcy Protection in Order to Recover the Excess Proceeds from the Sale of His Home.

Bankruptcy is unlikely to save the homes of Mr. Polonsky and other impoverished former homeowners whose property has been tax deeded. The NHTCA also suggests that the former property owner can recover his property by filing for Bankruptcy under Chapter 13 of the Bankruptcy Code. NHTCA Brief at 32. Bankruptcy subjects the debtor to a host of adverse consequences, among which are having almost all of his non-exempt property and future income (until the case is closed) become property of the bankruptcy estate (11 U.S.C. 541(a)(1), and 11 U.S.C. 1306), the likelihood that all such property will be distributed to creditors, increased difficulty in obtaining credit, and damage to the debtor’s reputation. Moreover, in order to submit a confirmable Chapter 13 Plan, a debtor must have regular income sufficient to meet his basic living expenses and pay off his secured and priority debts within a 3-5 year period (11 U.S.C. 109(e), 11 U.S.C. 1322(a)(2), 11 U.S.C. 1325(a)(5), 11 U.S.C. 1325(b)(4)) – something many persons who have lost their property to tax deeding cannot do. While some former property owners have been able to utilize Chapter 13 to recover their property, it is hard to fathom how a

person could be forced to file bankruptcy, and face all of the potential adverse consequences, in order to vindicate his fundamental property rights.

VIII. An Implied Right of Action to Force a Sale Raises Serious Questions That Should be Left to the Legislature.

In order to stave off Mr. Polonsky's constitutional challenge to the abrogation of his right to the excess proceeds from the sale of his home, the Town and its amici urge this Court to imply a right in former property owners to sue municipalities to force the sale of their tax deeded property. The Town argues that "[t]here is no constraint on when a former owner may assert this right within the three year period," citing to *Phetteplace v. Town of Lyme*, 144 N.H. 621, 625 (2000) for the proposition that a filing deadline means that the petition can be filed "any time prior to that date." App. Brief at 25. In addition to the above-stated reasons why finding such a right would be contrary to established law, it should also be noted that such a ruling would raise many important yet unanswered questions: If the former property owner has a right to bring such an action, when does it accrue? How long should a town have to decide whether and when to sell the property? Could a former property owner file an action to force a sale a week after the town takes title? Can a former property owner who wants to recover his equity as soon as possible bring such an action for that reason alone? What defenses would a town have to such an action? All of these questions can, and should, be answered by the legislature, upon a finding that the statutory scheme found in RSA 80:88 to 91 remains unconstitutional.

CONCLUSION

While the 1998 amendments to the alternate tax lien statute provide additional procedural protections both in the form of notice and the return of any proceeds above those owed, the omissions in that law have left the procedure constitutionally infirm. The statutory scheme does not require the municipality to sell the property at all, let alone within the 3-year time frame from recording of the tax deed. After the three years, the municipality is allowed to keep any surplus money, as classic a taking as there is. The statute cannot be read to preclude a taking. The equitable remedies proposed the Town of Bedford and its amici are inadequate as they are unavailable under a plain reading of the statute. As the statute currently exists, it contains no right to a former owner to force the sale of a property, and thus no way to recover the excess property value prior to the 3-year limitation of the municipality's duty to distribute excess sale proceeds. The three-year limitation of the municipality's duty to distribute excess proceeds found at RSA 80:89, VII of the alternative tax lien procedure results in a taking in violation of the New Hampshire Constitution. RSA 80:89, VII must be found unconstitutional.

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

This brief complies with the word limitation of 9,500 words set forth in Rule 16(11) and contains 8906 words.

ATTESTATION OF CONSENT TO FILING *AMICUS* BRIEF

The Town of Bedford, through its counsel Barton L. Mayer, gave written consent to this filing via email on November 6, 2019, and Mr. Richard Polonsky, through his counsel John Hayes, gave written consent via email on September 30, 2019.

Respectfully submitted,

NEW HAMPSHIRE LEGAL
ASSISTANCE

Amicus Curiae

Date: 12/3/2019

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CERTIFICATION OF SERVICE

I hereby certify that on this date a copy of this BRIEF OF *AMICI CURIAE* is being timely provided, through the electronic filing system's electronic service, to counsel for plaintiff, John F. Hayes, Alfano Law Office, PLLC, 4 Park Street, Concord, NH 03301; counsel for defendant, Barton L. Mayer and Michael P. Courtney, Upton & Hatfield, LLP, 10 Center Street, P.O. Box 1090, Concord, NH 03301; counsel for *Amicus* NHTCA, Bernard Campbell, Beaumont & Campbell, Prof. Assn., 1 Stiles Road, Suite 107, Salem, NH 03079; and counsel for *Amicus* NHMA, Stephen C. Buckley, New Hampshire Municipal Association, 25 Triangle Park Drive, Concord, NH 03301.

Date: 12/3/2019

/s/ Ruth Heintz
Ruth Heintz

ADDENDUM 1

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution - Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

N.H. Const., Pt. 1 (Bill of Rights), Art. 2. [Natural Rights.] All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

N.H. Const., Pt. 1 (Bill of Rights), Art. 12. [Protection and Taxation Reciprocal.] Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

N.H. Const., Pt. 1 (Bill of Rights), Art. 14. [Legal Remedies to be Free, Complete, and Prompt.] Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

N.H. Const., Pt. 1 (Bill of Rights), Art. 15. [Right of Accused.] No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the

expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

N.H. Const., Pt. 1 (Bill of Rights), Art. 18. [Penalties to be Proportioned to Offenses; True Design of Punishment.] All penalties ought to be proportioned to the nature of the offense. No wise Legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind.

RSA 74:12 Doomage. – If any person or corporation shall willfully omit to make and return such inventory, or to answer any interrogatory therein contained, or shall make any false statement therein; or if the selectmen or assessors shall be of opinion that the inventory returned does not contain a full and correct statement of the property for which the person or corporation is taxable; or that the person making the same has willfully omitted to give required information, or has made false answers or statements therein, the selectmen or assessors shall ascertain, in such way as they may be able, and as nearly as practicable, the amount and value of the property for which the person or corporation is taxable, and shall set down to such person or corporation, by way of doomage, 4 times as much as such property would be taxable if truly returned and inventoried.

RSA 76:13 Interest. – Interest at 8 percent per annum shall be charged upon all taxes except resident taxes, except as otherwise provided by statute, not paid on or before December 1 after their assessment, which shall be collected from that date with the taxes as incident thereto, except in the case where a tax bill sent to the taxpayer on or after November 2 and before April 1 of the following year interest shall not be charged until 30 days after the bills are mailed. Interest due in an amount up to \$25 may be waived by the collector, with the approval and consent of the board of selectmen and the board of assessors, if in the collector's judgment the administrative and collection costs involved do not warrant collection of the amount due. The tax collector shall state on the tax bill the date from which interest will be charged and such date shall be determined by the day the collector sends out the last tax bill on the list. The collector shall notify the board of tax and land appeals in writing of the date on which the last tax bill was sent.

RSA 79:12 Doomage. – If an owner neglects or fails to file a report of cut pursuant to RSA 79:11, unless the time is extended by the assessing officials because of accident, mistake or misfortune to a date not later than the following June 1, or willfully makes any false statement in a notice of intent to cut, or a report of cut, or willfully files a report of cut that does not contain a true and correct statement of the amount of wood or timber cut, or has willfully omitted to give any information required by a report of cut, the assessing officials shall ascertain, in such way as they may be able, and as nearly as practicable, the volume and stumpage value of the wood and timber for which such owner is taxable, and shall assess to such owner, by way of doomage 2 times as much as such wood and timber would have been taxed had such report been seasonably filed and truly reported. Such doomage shall be collected by the tax collector in the usual manner and paid over to the town treasurer for use of the town.

RSA 80:19 Lien; Special Assessments and Agreements. – The real estate of every person or corporation shall be holden for all taxes assessed against the owner thereof; and all real estate to whomsoever assessed shall be holden for all taxes thereon. All such liens shall continue until one year from October 1 following the assessment. All such liens imposed in accordance with this chapter shall have priority over all other liens. For the purposes of this chapter, the word "taxes" shall include special assessments and agreements in lieu of or in the nature of special assessments.

RSA 80:20 Sale. – Such real estate may be sold by the collector, in case the owner or person to whom the same is assessed shall die or remove from town and leave there no personal estate on which distress can be made; or in case such person or corporation shall neglect or refuse to expose goods and chattels whereon distress may be made; or in case such tax shall not be paid on or before December 1 next after its assessment.

RSA 80:69 Redemption. – Any person with a legal interest in land subject to a real estate tax lien may redeem the same by paying or tendering to the collector, at any time before a deed thereof is given by the collector, the amount of the real estate lien, with interest at 14 percent per annum upon the whole amount of the recorded lien from the date of execution to the time of payment in full, except that in the case of partial payments in redemption made under RSA 80:71, the interest shall be computed on the unpaid balance, together with redemption costs and costs for identifying and notifying the mortgagees, if any. In case the tax collector who executed the tax lien against the property in question shall have died, become incapacitated, been removed from office or removed from the town or city or shall have been discharged from his or her bond by the selectmen or assessors, then the person with the legal interest in redeeming the property may tender such sums to the tax collector then in office of said city or town. Upon advice from the selectmen or assessors that the amount tendered is the correct amount due, the tax collector shall accept said amount for the redemption of the property.

RSA 80:76 Tax Deed. –

I. The collector, after 2 years from the execution of the real estate tax lien, shall execute to the lienholder a deed of the land subject to the real estate tax lien and not redeemed. The deed shall be substantially as follows:

Know all men by these presents, That I, _____, collector of taxes for the Town of _____, in the County of _____ and State of New Hampshire, for the year 19____, by the authority in me vested by the laws of the state, and in consideration of _____ to me paid by _____, do hereby sell and convey to _____, the said _____, (here describe the land sold), to have and to hold the said premises with the appurtenances to _____, forever. And I do hereby covenant with said _____, that in making this conveyance I have in all things complied with the law, and that I have a good right, so far as the right may depend upon the regularity of my own proceedings, to sell and convey the same in manner aforesaid. In witness whereof I have hereunto set my hand and seal the _____ day of _____, _____.

Signed, sealed and delivered in the presence of _____.

II. Notwithstanding the provisions of paragraph I, the collector shall not execute a deed of the real estate to a municipality when the governing body of the municipality has notified the collector that it shall not accept the deed because acceptance would subject the municipality to

potential liability as an owner of property under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., RSA 147-A and 147-B, and any other federal or state environmental statute which imposes strict liability on owners for environmental impairment of the real estate involved.

II-a. In addition to the circumstances described in paragraph II, the governing body of the municipality may refuse to accept a tax deed on behalf of the municipality, and may so notify the collector, whenever in its judgment acceptance and ownership of the real estate would subject the municipality to undesirable obligations or liability risks, including obligations under real estate covenants or obligations to tenants, or for any other reason would be contrary to the public interest. Such a decision shall not be made solely for the private benefit of a taxpayer.

III. When a governing body has, under paragraph II or II-a, served notice upon the collector it shall not accept the deed, the tax lien shall remain in effect indefinitely, retaining its priority over other liens. The taxpayer's right of redemption as provided by RSA 80:69 shall likewise be extended indefinitely, with interest continuing to accrue as provided in that section. The tax lien may be enforced by the municipality by suit as provided under RSA 80:50, and through any remedy provided by law for the enforcement of other types of liens and attachments. If at any time, in the judgment of the municipal governing body, the reasons for refusing the tax deed no longer apply, and the tax lien has not been satisfied, the governing body may instruct the collector to issue the tax deed, and the collector shall do so after giving the notices required by RSA 80:77 and 80:77-a.

RSA 80:78 Incontestability. – No action, suit or other proceeding shall be brought to contest the validity of an execution of the real estate tax lien or any collector's deed based thereon after 10 years from the date of record of the collector's deed.

RSA 80:80 Transfer of Tax Lien. –

I. No transfer of any tax lien upon real estate acquired by a town or city as a result of the execution of the real estate tax lien by the tax collector for nonpayment of taxes thereon shall be made to any person by the municipality during the 2-year period allowed for redemption, nor shall title to any real estate taken by a town or city in default of redemption be conveyed to any person, unless the town, by majority vote at the annual meeting, or city council by vote, shall authorize the selectmen or the mayor to transfer such lien or to convey such property by deed.

II. If the selectmen or mayor are so authorized to convey such property by deed, either a public auction shall be held, or the property may be sold by advertised sealed bids. The selectmen or mayor shall have the power to establish a minimum amount for which the property is to be sold and the terms and conditions of the sale.

II-a. If the selectmen or mayor are authorized to transfer such liens during the 2-year redemption period, either a public auction shall be held, or the liens may be sold by advertised sealed bids. The selectmen or mayor may establish minimum bids, and may set the terms and conditions of the sale. Such liens may be sold singly or in combination, but no fractional interest in any lien shall be sold. Such transfer shall not affect the right of the owner or others with a legal interest in the land to redeem the tax lien pursuant to RSA 80:69, or make partial payments in redemption pursuant to RSA 80:71, but the transferee shall become the lienholder for purposes of RSA 80:72 and 80:76.

III. The selectmen may, by a specific article in the town warrant, or the mayor, by ordinance,

may be authorized to dispose of a lien or tax deeded property in a manner than otherwise provided in this section, as justice may require.

IV. Such authority to transfer or to sell shall continue in effect for one year from the date of the town meeting or action by the city or town council provided, however, that the authority to transfer tax liens, or to sell real estate acquired in default of redemption, or to vary the manner of such sale or transfer as justice may require, may be granted for an indefinite period, in which case the warrant article or vote granting such authority shall use the words "indefinitely, until rescinded" or similar language.

V. Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector's deed, upon vote of the town meeting or city council approving the same.

VI. For purposes of this section, the authority to dispose of the property "as justice may require" shall include the power of the selectmen or mayor to convey the property to a former owner, or to a third party for benefit of a former owner, upon such reasonable terms as may be agreed to in writing, including the authority of the municipality to retain a mortgage interest in the property, or to reimpose its tax lien, contingent upon an agreed payment schedule, which need not necessarily reflect any prior redemption amount. Any such agreement shall be recorded in the registry of deeds. This paragraph shall not be construed to obligate any municipality to make any such conveyance or agreement.

RSA 80:88 Distribution of Proceeds From the Sale of Tax-Deeded Property. –

I. Notwithstanding any other provision of law, for any sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipality's recovery of proceeds from the sale shall be limited to back taxes, interest, costs and penalty, as defined in RSA 80:90.

II. If there are excess proceeds over and above the amount of municipal recovery permitted under paragraph I:

(a) Within 60 days of settlement by the purchaser or purchasers of the property sold, the municipality shall file a bill of interpleader with the superior court for the county in which the property is located, naming the former owner or owners, and all persons having a recorded interest in the property as defendants, and paying to the court all amounts over and above those entitled to be retained.

(b) The municipality shall also be entitled to retain its reasonable costs and attorneys' fees for the preparation and filing of the petition.

(c) The court shall issue such orders of notice as are necessary, and shall make such disposition of the funds as it finds appropriate, based upon ownership and lienholder interests at the time of the tax deed.

(d) The municipality shall be deemed to have a continuing interest in said funds, and in default of valid claims made by other parties, such funds shall be decreed to be the property of the municipality, free and clear of any remaining liability.

III. No bill of interpleader shall be necessary under subparagraph II(a) if, at the time of the tax deed execution, there were no record lienholders, and only one record owner or joint owners, and such former owner or owners are easily identified and located, in which case the excess proceeds shall be paid to such owner or owners.

RSA 80:89 Notice to Former Owner and Opportunity for Repurchase. –

I. At least 90 days prior to the offering for sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipal governing body or its designee shall send notice by certified mail, address service requested, return receipt requested, to the last known post office address of the owner of the property at the time of the tax deed, if known, or to the person to whom notice of the impending tax deed was given under RSA 80:77. The notice shall set forth the terms of the offering and the right of the former owner or owners to repurchase the property, as set forth in paragraph II. Copies of any such notice shall also be sent by certified mail, return receipt requested, to any mortgagee to whom notice of the impending tax deed was sent under RSA 80:77-a. For any notice sent pursuant to this paragraph, \$10 may be added to the municipality's "costs" as defined in RSA 80:90. In this section, an "offering for sale" means the authorization by the municipality's governing body to its designee to sell the property.

II. Within 30 days after the notice required by paragraph I, or if no such notice is received, at any time within 3 years after the date of recording the tax deed, any former owner of the property may give notice by certified mail, return receipt requested, of intent to repurchase the property from the municipality, and stating that such owner is ready, willing, and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90, except that if the property is the former owner's principal residence, or was the former owner's principal residence at the time of execution of the tax deed under RSA 80:76, the additional penalty under RSA 80:90, I(f) shall not apply. If all such back taxes, interest, costs and penalty have not been actually tendered within 30 days of such notice of intent to repurchase, the municipality may proceed with its offering and dispose of the property without any interest by the former owner.

III. The deed from the municipality upon such repurchase shall convey the municipality's interest in the property, or such portion as has not been previously disposed of by the municipality, to all record former owners in the same proportional undivided interests as the former owners of record.

IV. The former owners' title upon repurchase shall be subject to any liens of record against the property as of the time of the tax deed to the municipality, and subject to any leases, easements, or other encumbrances as may have been granted or placed on the property by the municipality. In the case of multiple former owners, any owner paying more than a proportional share of the purchase price to the municipality shall have a lien against the other owners for the amount of the excess paid.

V. A notice of intent to repurchase under this section may also be filed by the holder of any recorded mortgage interest in the property which was unredeemed as of the date of the tax deed. Upon payment the property shall be deeded as provided in paragraph III, but the mortgagee shall be entitled to add the amount paid to the municipality to the amount due under the mortgage.

VI. Conveyances to a former owner under this section shall not be subject to the real estate transfer tax under RSA 78-B.

VII. The duty of the municipality to notify former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners' right of repurchase under this section shall terminate 3 years after the date of recording of the deed.

RSA 80:90 Definitions. –

I. For purposes of RSA 80:88 and 80:89, the phrase "back taxes, interest, costs and penalty" shall include all of the following:

(a) All taxes assessed but unpaid as of the date of the tax deed, together with all taxes which would thereafter otherwise have been assessed against such property based on its valuation, but for its ownership by the municipality.

(b) All statutory interest actually accrued on all back taxes as of the date of the tax deed, together with all statutory interest which would otherwise thereafter have accrued on all taxes listed in subparagraph (a), but for the property's ownership by the municipality.

(c) All allowable statutory fees charged for notice and recording in connection with the tax collection process.

(d) All legal costs incurred by the municipality in connection with the property, including those connected with the municipality's sale or the former owner's repurchase.

(e) All incidental and consequential costs as are reasonably incurred or estimated to be incurred by the municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses.

(f) An additional penalty equal in amount to 10 percent of the assessed value of the property as of the date of the tax deed, adjusted by the equalization ratio for the year of the assessment.

II. For purposes of RSA 80:88 and 80:89, "former owner" shall mean any person in whom title to the property, or partial interest therein, was vested at the time of the tax deed, and shall include any heir, successor, or assign of any former owner, provided, however, that any person to whom a former owner has attempted to convey or assign any interest, lien, or expectancy in the property subsequent to the date of the tax deed shall not be deemed a former owner.

RSA 80:91 Liability and Obligations Limited. – With respect to actions of a municipality under RSA 80:88 and 80:89, if the municipality has complied with the provisions of this chapter it shall not have any liability whatsoever to any former owner or lienholder in connection with its management of the property or for the amount of consideration received upon disposition of the property. After the execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof, including leasing or encumbering all or any portion of the property, without any accountability to former owners, except that the proceeds of any sale must be accounted for as provided in RSA 80:88. Nothing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89. Nothing in RSA 80:88 or 80:89 shall be construed to preclude a municipality from granting more favorable terms to a former owner pursuant to RSA 80:80, VI.

11 U.S.C. § 109. Who may be a debtor

- (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000 [2] and noncontingent, liquidated, secured debts of less than \$750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title. ...

11 U.S.C. § 541. Property of the estate

- (a) The commencement of a case under section 301 , 302 , or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
...

11 U.S.C. § 1306. Property of the estate

- (a) Property of the estate includes, in addition to the property specified in section 541 of this title—
- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and
- (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.
- (b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

11 U.S.C. § 1322. Contents of plan

- (a) The plan—

- (1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;
- (2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; ...

11 U.S.C. § 1325. Confirmation of plan

- (a) Except as provided in subsection (b), the court shall confirm a plan if-- ...
- (5) with respect to each allowed secured claim provided for by the plan--
- (A) the holder of such claim has accepted the plan;
- (B)(i) the plan provides that--

(I) the holder of such claim retain the lien securing such claim until the earlier of--

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if--

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder; ...

(b) (4) For purposes of this subsection, the “applicable commitment period”--

(A) subject to subparagraph (B), shall be--

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than--

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525¹ per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period. ...

ADDENDUM 2

HB 676-FN-LOCAL - FINAL VERSION

15jan98.....0096h

5/28/98 1507s

1998 SESSION

97-0706

09/02

HOUSE BILL ***676-FN-LOCAL***

AN ACT relative to distribution of proceeds from the sale of tax-deeded property and repurchase of tax-deeded property by a former owner.

SPONSORS: Rep. L. Foster, Hills 10; Rep. M. Fuller Clark, Rock 36

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill establishes procedures for the distribution of proceeds from the sale of tax-deeded property and for the repurchase of tax-deeded property by a former owner.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15jan98.....0096h

5/28/98 1507s

97-0706

09/02

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Eight

AN ACT relative to distribution of proceeds from the sale of tax-deeded property and repurchase of tax-deeded property by a former owner.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Intent. The purpose of this act is to prevent unjust enrichment of a municipality when property which a municipality has acquired by tax deed is sold for substantially more than the amount of taxes, costs and interest owed, or is retained by a municipality, while at the same time retaining a sufficient incentive for a taxpayer to redeem property prior to tax deeding. The accumulation of interest on unpaid taxes does not by itself provide such an incentive, because at the time the owner gets notice of the impending tax deed under RSA 80:77, such interest is already owed. This act therefore provides for an additional penalty, as set forth in RSA 80:90, I(f), of 15 percent of the equalized assessed value of the property. This amount can be thought of as a sort of brokerage commission paid by the taxpayer to the municipality for its marketing and disposal of the property, but one which is sufficiently higher than typical commissions charged by private brokers, so as to dissuade a taxpayer from voluntarily opting to let the municipality market the property.

2 New Sections; Proceeds From Sale of Tax-Deeded Property; Repurchase of Property. Amend RSA 80 by inserting after section 87 the following new sections:

80:88 Distribution of Proceeds from the Sale of Tax-Deeded Property.

I. Notwithstanding any other provision of law, for any sale by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipality's recovery of proceeds from the sale shall be limited to back taxes, interest, costs and penalty, as defined in RSA 80:90.

II. If there are excess proceeds over and above the amount of municipal recovery permitted under paragraph I, then within 60 days of settlement by the purchaser or purchasers of the property sold, the municipality shall file a bill of interpleader with the superior court for the county in which the property is located, naming the former owner or owners, and all persons having a recorded interest in the property as defendants, and paying to the court all amounts over and above

those entitled to be retained. The municipality shall also be entitled to retain its reasonable costs and attorneys' fees for the preparation and filing of the petition. The court shall issue such orders of notice as are necessary, and shall make such disposition of the funds as it finds appropriate, based upon ownership and lienholder interests at the time of the tax deed. The municipality shall be deemed to have a continuing interest in said funds, and in default of valid claims made by other parties, such funds shall be decreed to be the property of the municipality, free and clear of any remaining liability. No bill of interpleader shall be necessary if, at the time of the tax deed execution, there were no record lienholders, and only one record owner or joint owners, and such former owner or owners are easily identified and located, in which case the excess proceeds shall be paid to such owner or owners.

80:89 Notice to Former Owner and Opportunity for Repurchase.

I. Between 120 and 90 days prior to the offering for sale or conveyance by a municipality of property which is acquired by tax deed on or after the effective date of this section, the municipal governing body or its designee shall send notice by certified mail, address service requested, return receipt requested, to the last known post office address of the owner of the property at the time of the tax deed, if known, or to the person to whom notice of the impending tax deed was given under RSA 80:77. The notice shall set forth the terms of the offering and the right of the former owner or owners to repurchase the property, as set forth in paragraph II. Copies of any such notice shall also be sent by certified mail, return receipt requested, to any mortgagee to whom notice of the impending tax deed was sent under RSA 80:77-a. For any notice sent pursuant to this paragraph, \$10 may be added to the municipality's "costs" as defined in RSA 80:90.

II. Within 30 days after the notice required by paragraph I, or if no such notice is received, at any time within 3 years after the date of recording the tax deed, any former owner of the property may give notice by certified mail, return receipt requested, of intent to repurchase the property from the municipality, and stating that such owner is ready, willing, and able to pay all back taxes, interest, costs and penalty, as defined in RSA 80:90. If all such back taxes, interest, costs and penalty have not been actually tendered within 15 days of such notice of intent to repurchase, the municipality may proceed with its offering and dispose of the property without any interest by the former owner.

III. The deed from the municipality upon such repurchase shall convey the municipality's interest in the property, or such portion as has not been previously disposed of by the municipality, to all record former owners in the same proportional undivided interests as the former owners of record.

IV. The former owners' title upon repurchase shall be subject to any liens of record against the property as of the time of the tax deed to the municipality, and subject to any leases, easements, or other encumbrances as may have been granted or placed on the property by the municipality. In the case of multiple former owners, any owner paying more than a proportional share of the purchase price to the municipality shall have a lien against the other owners for the amount of the excess paid.

V. A notice of intent to repurchase under this section may also be filed by the holder of any recorded mortgage interest in the property which was unredeemed as of the date of the tax deed. Upon payment the property shall be deeded as provided in paragraph III, but the mortgagee shall be entitled to add the amount paid to the municipality to the amount due under the mortgage.

VI. Conveyances to a former owner under this section shall not be subject to the real estate transfer tax under RSA 78-B.

VII. For purposes of this section, the date of sale or conveyance of the property shall mean the date the municipality enters into a binding contract to convey the property to a third party buyer, whether or not such contract is subject to any contingencies.

VIII. The duty of the municipality to notify former owners and to distribute proceeds pursuant to RSA 80:88, and the former owners' right of repurchase under RSA 80:89, shall terminate 3 years after the date of recording of the deed.

80:90 Definitions.

I. For purposes of RSA 80:88 and 80:89, the phrase "back taxes, interest, costs and penalty" shall include all of the following:

(a) All taxes assessed but unpaid as of the date of the tax deed, together with all taxes which would thereafter otherwise have been assessed against such property based on its valuation, but for its ownership by the municipality.

(b) All statutory interest actually accrued on all back taxes as of the date of the tax deed, together with all statutory interest which would otherwise thereafter have accrued on all taxes listed in subparagraph (a), but for the property's ownership by the municipality.

(c) All allowable statutory fees charged for notice and recording in connection with the tax collection process.

(d) All legal costs incurred by the municipality in connection with the property, including those connected with the municipality's sale or the former owner's repurchase.

(e) All incidental and consequential costs as are reasonably incurred or estimated to be incurred by the municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses.

(f) An additional penalty equal in amount to 15 percent of the assessed value of the property as of the date of the tax deed, adjusted by the most recently available equalization ratio.

II. For purposes of RSA 80:88 and 80:89, "former owner" shall mean any person in whom title to the property, or partial interest therein, was vested at the time of the tax deed, and shall include any heir, successor, or assign of any former owner, provided, however, that any person to whom a former owner has attempted to convey or assign any interest, lien, or expectancy in the property subsequent to the date of the tax deed shall not be deemed a former owner.

80:91 Liability and Obligations Limited. With respect to actions of a municipality under RSA 80:88 and 80:89, if the municipality has complied with the provisions of this chapter it shall not have any liability whatsoever to any former owner or lienholder in connection with its management of the property or for the amount of consideration received upon disposition of the property. After the execution of a tax deed, the municipality may treat the property in all respects as the fee owner thereof, including leasing or encumbering all or any portion of the property, without any accountability to former owners, except that the proceeds of any sale must be accounted for as provided in RSA 80:88. Nothing in this chapter shall obligate a municipality to dispose of property acquired by tax deed, except as provided in RSA 80:89. Nothing in RSA 80:88 or 80:89 shall be construed to preclude a municipality from granting more favorable terms to a former owner pursuant to RSA 80:80, VI.

3 Effective Date. This act shall take effect upon its passage.

LBAO

97-0706

Amended 2/2/98

HB 676 FISCAL NOTE

AN ACT relative to distribution of proceeds from the sale of tax-deeded property and repurchase of tax-deeded property by a former owner.

FISCAL IMPACT:

The Department of Revenue Administration indicates this bill, as amended by the House, may reduce local revenues by an indeterminable amount in FY 1998 and each year thereafter. There will be no fiscal impact on state and county revenue or on state, county and local expenditures.

METHODOLOGY:

The Department states that the return of equity to the owner as provided by this bill, will return revenue that otherwise would have remained with the municipality. The Department is unable to determine the amount.