

Municipal Home Rule Law §§ 10(1)(ii)(a)(9-a), 10(1)(ii)(a)(12); Village Law §§ 4-412(1)(a), 4-414, 5-518(5); Real Property Tax Law §§ 1110-1122, 1123-1137, 1136(3), 1442, 1442(1), 1442(3), 1442(4), Article 11

Discussion of certain procedures to abate dangerous conditions of abandoned buildings and to recoup costs of such abatement.

August 4, 2015

William L. Nikas  
Village Attorney  
Village of Hudson Falls  
116 Oak Street  
P.O. Box 267  
Hudson Falls, New York 12839-0267

Informal Opinion  
No. 2015-3

Dear Mr. Nikas:

You have asked several questions relating to the Village's authority with respect to unsafe buildings. You have explained that the Village is faced with several properties that have been abandoned by owners unable to pay the mortgage but on which the mortgagees have not yet begun to foreclose. Under these circumstances, the condition of the property may deteriorate and become unsafe. Your questions relate to the process through which the Village can remediate unsafe conditions and seek reimbursement for its remediation costs from the property owner or another party with an interest in the property.

As background, it is well-established that a village may adopt a local law establishing standards for maintaining safe conditions on privately-owned real property. Municipal Home Rule Law § 10(1)(ii)(a)(12); Village Law § 4-412(1)(a); *D'Angelo v. Cole*, 67 N.Y.2d 65 (1986); Op. Att'y Gen. (Inf.) No. 98-35. Further, the local law can provide that the village is authorized to perform the necessary maintenance or remediation if the property owner fails to and that the village's costs of remediation may be imposed on the real property owner as an assessment. Municipal Home Rule Law § 10(1)(ii)(a)(9-a),(12); Village Law §§ 4-412(1)(a); 4-414; *D'Angelo v. Cole*, 67 N.Y.2d 65 (1986); Op. Att'y Gen. (Inf.) No. 85-13. Under the same authority, the local law can provide that the village can demolish an unsafe building and that the property owner must reimburse the village for demolition costs. *Lane v. City of Mount Vernon*, 38 N.Y.2d 344 (1976); Op. Att'y Gen. (Inf.) No. 98-35; 9 Op. Counsel State Bd. of Equalization & Assessment No. 105 (1992). I understand that the Village has adopted such a local law.

Your first question is whether the Village must provide notice to the mortgagee of the real property abandoned by the owner if the Village intends to maintain, repair, or demolish the property. Of course, a village faced with emergency circumstances that necessitate the immediate demolition or remediation of an unsafe building to protect the public from imminent danger will not have time to, and need not, provide advance notice to the owner or the mortgagee. See *Calamusa v. Town of Brookhaven*, 272 A.D.2d 426 (2d Dep't 2000). But in the absence of such circumstances, the Village would be well-advised to provide notice to the holder of a publicly-recorded mortgage. Such a mortgagee possesses a legally protected interest in the mortgaged property. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983); *U.S. Bank Nat'l Ass'n v. Denisco*, 96 A.D.3d 1659, 1661 (4th Dep't 2012). To the extent the Village's remediation would significantly affect the mortgagee's interest in the property, the Village must provide the mortgagee with notice of its intended action and an opportunity to address the conditions to be remediated. See *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983); *Zaccaro v. Cahill*, 100 N.Y.2d 884 (2003). Demolition of the building on the property likely would significantly diminish the value of the mortgaged property and, if so, notice must be provided to the mortgagee. See *U.S. Trust Co. of N.Y. v. Town of Ramapo*, 168 Misc. 2d 931 (Sup. Ct, Rockland Co., 1996); *First Nat'l Acceptance Co. v. City of Utica*, 26 F. Supp. 3d 185 (N.D.N.Y. 2014). Similarly, assessing significant remediation costs against the property likely would require notice. See *Garden Homes Woodlands Co. v. Town of Dover*, 95 N.Y.2d 516 (2000). The impact of other actions related to remediation of dangerous conditions must be determined on a case-by-case basis; the safest course, however, would be for the Village to provide the mortgagee with notice in instances where notice would be provided to the property owner.

Your second question relates to the Village's ability to recover unpaid remediation costs from the county that serves as the Village's collector of unpaid taxes (the County). As described above, a village is authorized to adopt a local law under which expenses incurred by the village while remediating dangerous conditions on private property that the property owner was obligated but refused to do himself are imposed as an assessment against the real property. Such an assessment, if unpaid, becomes part of the annual village tax levy against the property for the purpose of collection. Village Law § 5-518(5).

Under Real Property Tax Law § 1442(1), a village may request and a county can enact a local law providing that the county will collect delinquent village taxes. I understand that the Village and the County have done so. Under this arrangement, the county relieves the unpaid village taxes upon the real property owner for collection by and owing to the county and pays the village the amount of

unpaid village taxes. Real Property Tax Law § 1442(3),(4). Thus, if the Village has adopted a local law that assesses unpaid remediation costs against the real property, delinquent village taxes to be relieved and collected by the County might include costs incurred by the Village in abating dangerous conditions on abandoned property. You have advised that these costs could amount to tens of thousands of dollars. Accordingly, your question is whether the County validly can refuse to relieve the remediation costs and pay the amount of the costs to the Village.

We are of the opinion that the County cannot refuse to relieve the remediation costs and pay the amount of the costs to the Village. Section 1442 of the Real Property Tax Law, authorizing a county to adopt a local law providing for the collection of delinquent village taxes, does not authorize a county that has adopted such a local law to choose which unpaid items included in a village tax bill to relieve and collect. We are of the further opinion, however, that the County can refuse to collect all of the Village's delinquent taxes in the future unless the Village agrees not to include such special assessments in its tax roll. To do so, the County can simply repeal its local law providing that it will collect the Village's delinquent taxes.

Your third question is whether a mortgage lien will be extinguished by the sale of real property conducted after the village tax, including a special assessment for remediation costs, is relieved by the County and remains unpaid. As explained below, we are of the opinion that the mortgage lien generally will be extinguished.

Article 11 of the Real Property Tax Law establishes the procedure for the enforcement of the collection of delinquent property taxes. Under this procedure, the property owner and other parties with an interest in or lien upon the property are given a period of time in which to redeem the property by paying the delinquent taxes and associated penalties. Real Property Tax Law §§ 1110-1122. If the owner or another interested party does not redeem the property within the redemption period, the County can begin a proceeding to foreclose on the property. Real Property Tax Law §§ 1123-1137. By following this procedure, the mortgage interest is extinguished and the County will obtain full title to the property. Real Property Tax Law § 1136(3); *Anderson v. Pease*, 284 A.D.2d 871 (3d Dep't 2001). Assuming the County complies with all legal requirements, a purchaser of the real property at a subsequent tax sale will obtain title in fee simple absolute. *Melahn v. Hearn*, 60 N.Y.2d 944, 946 (1983); *Mittelmark v. County of Saratoga*, 85 A.D.3d 1359, 1360 (3d Dep't 2011); *cf. In re Killmer*, 513 B.R. 41 (Bankr. S.D.N.Y. 2014) (tax sale void when conducted while property subject to bankruptcy stay).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD  
Assistant Solicitor General  
in Charge of Opinions