

WELLS SANITARY DISTRICT

POLICY FOR DISPOSITION OF SEWER LIEN FORECLOSURE ACQUIRED PROPERTY

Article 1. PREAMBLE

- 1.1 The purpose of this policy is to establish procedures for the management, administration and disposition of real property acquired for non-payment of sewer liens by the Wells Sanitary District in accordance with Title 38, MRSA Section 1208.

This statute causes the title of property to pass to the District when the period of redemption has expired. The objectives of this powerful remedy are both to aid in collecting delinquent debts and as an incentive for others to pay Sanitary District charges on time.

In order to facilitate the disposition of property which is acquired by the District by lien, and in an attempt to partially mitigate the harsh result of the statutory provisions on individuals who may inadvertently allowed the liens to mature due to mistake or other justifiable circumstance, the following policy is to serve as a guide for routine handling of such matters.

The Trustees shall, in their discretion, as may be warranted on a case by case basis, and notwithstanding these guidelines, retain the statutory authority to use the full power granted the District under 38 M.R.S.A., Section 1208.

Article 2. PROCEDURES PRIOR TO RECORDING OF LIENS

- 2.1 At least 3 months, but within one year, after a rate, toll, rent or other charge becomes due and payable (and at such times as may be convenient to the routine accounts receivable operations of the District), the Superintendent shall prepare a list of debts to the District to be committed to the treasurer for collection. 38 M.R.S.A., Section 1208.
- 2.2 The office shall prepare and send by certified mail the appropriate lien notice letters according to 38 M.R.S.A., Section 1208.
- 2.3 The notice letter, which by statute must inform the debtor that the District is willing to arrange installment payments of the outstanding debt, shall also clearly state that such an installment agreement will not prevent the filing -- and eventual maturing -- of the lien if the debt remains unpaid.
- 2.4 At the discretion of the Board of Trustees, if a debtor shows good faith in abiding by an agreement, the filing of the lien certificate may be delayed, but not beyond one year after the sending of the lien notice.

Article 3. PREPARATION AND FILING OF LIENS/ADDITIONAL NOTICE

- 3.1 The office shall prepare, send an record the appropriate treasurer's certificate and send a true copy of certified mail to each record holder of any mortgage, according to 38 M.R.S.A., Section 1208, and send a photocopy by certified mail to the rate payer.
- 3.2 The treasurer of the District shall notify the party named on the sewer lien mortgage and each record holder of a mortgage on the real estate not more than 45 days nor less than 30 days before the foreclosing date of the sewer lien mortgage, in accordance with the requirements of 38 M.R.S.A. §1208. This notice of impending automatic foreclosure shall be substantially consistent with the suggested statutory form of notice. (Approved by Board of Trustees – June 26, 2008)
- 3.3 A separate record of the notice and mailings thereof shall be maintained by the District. (Approved by Board of Trustees – June 26, 2008)
- 3.4 Prior to the expiration of the redemption period of recorded liens, the Trustees may review the properties and consider whether it would be in the best interest of the District to release the lien and file suit for the collection of the debt (this is an alternative remedy under 38 M.R.S.A., Section 1208). This may be appropriate, for example, if it is known that the land lacks sufficient market value, a tax lien also exists, there is known of suspected toxic waste on the property, or other potential liability associated with holding title to the property.

Article 4. MANAGEMENT OF SEWER LIEN FORECLOSURE ACQUIRED PROPERTY PENDING FINAL DISPOSITION

- 4.1 At least once a year, the Superintendent of the District shall prepare a list of properties acquired by foreclosure of sewer liens, and not otherwise disposed of, and shall present the list to the Board of Trustee at a regular scheduled meeting of the Trustees.
- 4.2 The responsibility for the management of foreclosure acquired property rests with the Board of Trustees of the Wells Sanitary District. Pending the Board of Trustees' decision regarding the final disposition of property, the Board of Trustees and the Superintendent shall:
 - a.) Determine whether, the best interest of the District would be served by immediately disposing of the property. If so, the Board may do so on terms it deems advisable without regard to any other provisions of this policy.
 - b.) Obtain an appropriate level of insurance to protect the District's interest in the property and to protect the District from liability.
 - c.) Determine if and when any occupants of foreclosure acquired property shall be required to vacate the property and take such steps as necessary to cause the property to be vacated, including legal action.

- d.) Determine whether a rental fee should be charged to any occupants of the property. A rental fee shall not be imposed unless the District has acquired sufficient liability insurance. (See Maine Tort Claims Act).

Article 5. REVIEW OF SEWER LIEN FORCLOSURE ACQUIRED PROPERTIES

5.1 The Treasurer of the District, in consultation with the Superintendent, shall make recommendations regarding the disposition of foreclosure acquired property. At the next regular meeting of the Trustees, following the presentation by the Superintendent of the list (Selection 4.1), the Treasurer shall summarize those recommendations for each acquired property as follows:

- a.) Offer to sell the property on a negotiated basis to the former owner or to a third party with or without conditions or restrictions.
- b.) Sell the property through a competitive bidding process, with or without conditions or restrictions.
- c.) Retain for public use by the District in its operations.
- d.) Retain the property on a temporary basis.

*DISCUSSED @ 4/27/97 – File a waive of automatic foreclosure. (ONLY DISCUSSED NOT VOTED ON).

5.2 The Superintendent of the District shall present the recommendations to the Board of Trustees which shall make the final determination regarding the disposition of the property within 90 days of receipt of the recommendations. The Board of Trustees shall also determine the conditions or restrictions, if any, for property sales.

Article 6. SALE OF PROPERTY TO FORMER OWNER, MORTGAGEE OR THIRD PARTY.

6.1 After the lien has been foreclosed, if the decision is to offer to sell the property back to the prior owner with a penalty, the office shall make a reasonable attempt to contact the prior owner or mortgagee by telephone and/or by mail. A “reasonable attempt” shall be deemed to be 5 attempts at telephone contact with an appropriate person within a 2 week period and upon failure of phone contact, a request by regular mail for the customer to contact the District.

6.2 Sell to prior owner with penalty

The property may be conveyed by quit claim deed to the prior owner only upon the payment of all charges, including current sewer charges billed and owing, all costs, and interest owed, plus reasonable attorney fees, plus an additional penalty of no less than

10% of all amounts due. Action by the Board of Trustees shall be required to convey to a prior owner by quit claim release deed on these terms.

6.3 Sale of Property to Mortgagee with penalty

The property may be conveyed by quit claim deed to the mortgagee only upon the payment of all charges, including current sewer charges billed and owing, all costs, and interest owed, plus reasonable attorney fees, plus an additional penalty of no less than 30% of all amounts due. Action by the Board of Trustees shall be required to convey to a prior owner by quit claim release deed on these terms.

6.4 Negotiate case by case

In any event, and notwithstanding these guidelines, after the period of redemption has expired, and except for tax liens, the District has title to the real estate. The Trustees may negotiate with a former owner or any others, in any manner and for any reasons as they see fit, on a case by case basis.

(Article 6 was amended by action of the Board – May 29, 2014)

Article 7. **PROPERTY TO BE SOLD BY COMPETITIVE BIDDING**

7.1 When the Trustees determine that a parcel of foreclosure acquired property is to be sold through a competitive bid process, the Treasurer shall cause to be published a notice of the sale of the foreclosure acquired property in a newspaper of general circulation in the area served by the District. Said notice shall be published at least three (3) times with the last publication occurring at least fourteen (14) days prior to the sale. The notice shall also be posted for public viewing in a conspicuous place in the District's office. The notice shall specify the time and date bids are due and the general terms of the bid. It shall also contain the following information for each piece of property.

- a.) Brief description of the property: i.e. land, building, mobile home, etc.
- b.) Location of the property.
- c.) Brief description of any conditions of the sale or restrictions on the property.
- d.) The minimum bid and the minimum bid deposit.
- e.) The disclaimer describe in Section 7.6 of this police

At least 14 days prior to the sale, the district's Treasurer shall send a copy of the notice of sale, by regular mail, to the last known owner of the acquired property at said owner's last know address.

7.2 Unless the Board of Trustees stipulates otherwise, the minimum bid for any foreclosure acquired property shall be the total of all outstanding sewer liens, interest, lien costs

relating to the property including, but not limited to insurance, notice and advertising costs and the District's reasonable attorneys fees, if any, incurred in relation to the property. The Board of Trustees may refuse to award the bid to the party from whom the property was acquired unless all other obligations due from the party to the District are also paid.

- 7.3 All interested bidders shall be provided with a copy of the notice of sale and bid forms. All bids shall be submitted on forms prescribed by the Treasurer of the District in an envelope clearly marked "Foreclosure Acquired Property Bid" and accompanied by a cashier's or certified check equal to the minimum bid deposit. Bids shall be publicly opened and read on the date and at the time specified.
- 7.4 The District's Treasurer shall review all bids and make recommendations to the Board of Trustees. The Board of Trustees shall determine the successful bidder within 30 days of the date bids are due, unless by Board action that time is extended.
- 7.5 The District's Treasurer shall notify the successful bidder by certified mail promptly after the Trustees' determination.
- 7.6 The Board of Trustees of the Wells Sanitary District reserves the right to reject any or all bids, to accept a bid other than the highest bid and waive any of the requirements of this policy when, in its sole determination, it deems such actions to be in the best interest of the District.
- 7.7 Should the Board of Trustees reject all bids, the property may again be offered for public sale without notification to the prior owners.
- 7.8 The bid deposit of the successful bidder shall be retained as a credit towards the purchase price. All other deposits shall be returned to the bidders.
- 7.9 The Board of Trustees shall require payment in full from any successful bidder within thirty (30) days from the date the bids are opened. Should the bidder fail to pay the full price within thirty (30) days, the District shall retain the bid deposit and title to the property. The Board of Trustees may offer the property to the next highest bidder who shall also have thirty (30) days to make payment in full.
- 7.10 Title to foreclosure acquired property shall be transferred by the District only by means of a quit claim release deed.
- 7.11 The successful bidder shall be responsible for the removal or eviction of any and all occupants and the removal or disposal of any contents of purchased foreclosure acquired property.
- 7.12 **SALE AT PUBLIC AUCTION.** The Board of Trustees may elect to sell the lien-acquired property at public auction to be held at the District Office, in a manner consistent with the customary real estate auction procedure, upon such terms and

conditions as the trustees may determine on a case by case basis. (Approved by Board of Trustees – June 26, 2008)

Article 8. **PROPERTY TO BE RETAINED**

- 8.1 If the property is retained by the District, the Board of Trustees may pursue legal action, including a Clear Title Action in Court, as necessary to secure clear title to the property.
- 8.2 The Board of Trustees shall cause all sewer lien foreclosure acquired property retained for public use to be managed and insured as it would any other District property.

EFFECTIVE SEPTEMBER 28, 1995

Approved by Board – 9/28/95

Last amended May 29, 2014