

# The Ins and Outs of Municipal Liens and Demolitions

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## **PART I — MUNICIPAL LIENS: AN EFFECTIVE DEBT COLLECTION TOOL**

### I. OVERVIEW

a. Municipal liens are important debt collection tools that allow municipalities to perform work and provide services to deteriorating properties and in many cases still recoup those expenditures.

b. When using municipal liens, it is important to know what type of costs/expenditures may be recouped using municipal liens, how to perfect a lien, the priority of the resulting lien, and how to foreclose on a lien.

c. Authority for a lien must be granted by state statute. The statutory language will also control how the lien is created, the operation and priority of a lien. It is critical that an attorney seeking to place a lien identify the statutory authority authorizing the lien and then proceed according to statute.

### II. HOME RULE V. NON HOME RULE CONSIDERATIONS

Except where indicated otherwise, the liens discussed below apply to both home rule and non-home rule municipalities. Home rule municipalities have no power to create liens on real estate except pursuant to the same statutory authority that applies to all municipalities.

### III. TYPES OF LIENS – DEMOLITION LIENS

a. **Demolition Liens. Demolition liens are authorized by Section 11-31-1(a) of the Illinois Municipal Code, 65 ILCS 5/11-31-1(a).** If a municipality files suit pursuant to Section 11-31-1 to cause the demolition, repair or enclosure of dangerous and unsafe buildings or uncompleted and abandoned buildings, then the cost of demolition, repair, enclosure or removal incurred by the municipality, including court costs, attorney fees and other costs related to the enforcement of Section 11-31-1 are recoverable from the owner of the property and are a lien on the property. 65 ILCS 5/11-31-1(a). Before filing suit, a municipality is required to give 15-days written notice to all owners and lien holders of record so that they can make the property in question safe or demolish it. The Property Tax Code requires that the holder of a tax sale certificate of purchase must be made a party to all actions to demolish improvements commenced during the tax sale redemption period. 35 ILCS 200/21-410.

The cost of the demolition/repair/enclosure/removal including court costs and attorney fees are a lien on the property. The lien is superior to all prior existing liens and encumbrances, except taxes, if, within 180 days after the repair/demolition/enclosure/removal the municipality files a notice of lien with the applicable county recorder for where the property is located. The notice must consist of a sworn statement setting forth: (1) a description of the real estate sufficient for its identification (this should include legal description, PIN number and common

address); (2) the amount of money representing the cost and expense incurred; and (3) the date or dates on which the cost or expense was incurred. 65 ILCS 5/11-31-1(a).

The Municipal Code provision allowing a municipality to demolish a building and to recover costs “related to” enforcement of the provision leaves it to the discretion of the court to determine which costs are so related; the court will generally award only the costs the municipality shows to be reasonably necessary. *Village of Franklin Park v. Aragon Management, Inc.*, 298 Ill.App.3d 774, 232 Ill.Dec. 868, 699 N.E.2d 1053 (1st Dist. 1998). The court applies rules and principles applicable to similar statutes, such as the Mechanics Lien Act, to determine which costs are so related. *Id.*

Typically, the decision to award attorney fees is within the trial court’s discretion. However, when Section 11-31-1 is involved, the trial court’s discretion is not whether or not attorney fees should be imposed, but the discretion is instead what the reasonable amount of attorney fees should be. *City of McHenry v. Suvada*, 396 Ill.App.3d 971, 336 Ill.Dec. 583, 920 N.E.2d 1173 (2d Dist. 2009).

Also, please note that the Prevailing Wage Act now requires that prevailing wages be paid for demolition work. 820 ILCS 130/3. This additional cost would, of course, be factored in to the amount sought.

An action to foreclose on the lien pursuant to Article XV of the Code of Civil Procedure may be commenced at any time after the lien is recorded. The costs of foreclosure incurred by the municipality, including court costs, reasonable attorney fees, advances to preserve the property, plus statutory interest are recoverable. 65 ILCS 5/11-31-1(a). The lien is also assignable.

Pursuant to Section 11-31-1(c), a municipality may foreclose on the demolition lien in the same demolition court proceedings where the lien was authorized. 65 ILCS 5/11-31-1(c). This has the obvious advantage of saving time and costs and obtaining a judgment of foreclosure in a more expedient manner.

**b. “Fast Track” Demolition Liens. Municipalities may use the provisions of Section 11-31-1(e) to expedite demolition of certain properties and obtain a lien.** If a building is 3 stories or less in height and the municipal official in charge of enforcing the building code determines that the building is open and vacant and an immediate and continuing hazard, the building may be demolished, repaired or enclosed without the necessity of court proceedings if the notice requirements of Section 11-31-1(e) are complied with. 65 ILCS 5/11-31-1(e). The municipality must post notice on the property and then, within 30 days following the posting, send a Notice to Remediate to all owners and lien holders of record, publish notice for 3 consecutive days, and record the Notice to Remediate. *Id.*

Following the demolition repair or enclosure, the municipality may file a lien against the property for the cost of the demolition, repair, enclosure or removal within 180 days after the repair, demolition, enclosure or removal occurred. The lien must include a

sworn statement setting out: (1) a description of the real estate (the statute indicates that an address would be sufficient, but it is always a good idea to include the legal description and PIN number as well); (2) the expense incurred by the municipality; (3) the date or dates the expense was incurred by the municipality; (4) a statement by the corporate official responsible for enforcing the building code that the building was open and vacant and constituted an immediate and continuing hazard to the community; (5) a statement by the corporate official that the required sign was posted on the building, that notice was sent by certified mail to the owners of record, and that notice was published in accordance with this subsection; and (6) a statement as to when and where the notice was published. 65 ILCS 5/11-31-1(e).

Please note that the fast track demolition lien results in a lien with priority over the interests of those parties named in the Notice to Remediate but not over the interests of third party purchasers for value who obtained their interests in the property before obtaining actual or constructive notice of the lien. 65 ILCS 5/11-31-1(e).

c. **County Demolition Liens. 55 ILCS 5/5-1121.** Generally, these are the same as municipal demolition liens in their application and effect. Of course, counties may only pursue demolition proceedings in unincorporated areas.

d. **Township Demolition Liens. 60 ILCS 1/85-50.** Townships may also advance demolition litigation, but must first request that the county do so pursuant to 55 ILCS 5/5-1121. If the county declines, then the township may proceed. Unlike the Municipal Code and the Counties Code, the Township Code is silent on the priority of a demolition lien placed by a Township. However, Section 85-50 states “the lien becomes effective at the time of filing.” There are no reported cases on this issue.

#### IV. TYPES OF LIENS – WATER AND SEWER SERVICE LIENS

a. **Water and Sewer Service Liens. Water and sewer service liens are authorized by Section 11-139-8 of the Illinois Municipal Code, 65 ILCS 5/11-139-8.**

Section 11-139-8 of the Municipal Code provides that delinquent water and sewer bills are liens upon the real estate upon or for which service is supplied whenever the charges or rates become delinquent as provided by the ordinance of the municipality fixing a delinquency date. 65 ILCS 5/11-139-8. Therefore, it is necessary that the ordinances of the municipality set a delinquency date (for instance, 30 days after the water bill date).

To perfect the lien, the municipality must send to the owner or owners of record of the real estate, as referenced by the taxpayer's identification number, (i) a copy of each delinquency notice sent to the person who is delinquent in paying the charges or rates or other notice sufficient to inform the owner or owners of record, as referenced by the taxpayer's identification number, that the charges or rates have become delinquent and (ii) a notice that unpaid charges or rates may create a lien on the real estate under this Section. This ensures that an owner is notified of the possible lien on his property and

has a chance to pay the delinquent amount, even though it is a tenant who is delinquent in paying the bill.

The notice may then be recorded. The recorded notice shall consist of a sworn statement setting out (1) a description of such real estate sufficient for the identification thereof (again, PIN, legal description and common address should be included); (2) the amount of money due for such service; and (3) the date when such amount became delinquent. The municipality shall send a copy of the notice of lien to the owner or owners of record of the real estate, as referenced by the taxpayer's identification number.

The municipality has no preference over the rights of any purchaser, mortgagee, judgment creditor, or other lien holder arising prior to the recording of the lien. This is incentive for the municipality to file its lien as early as possible.

The ability of a municipality to record a water lien should not be the only method used by the municipality to collect utility debt. A municipality may shut off water service by carefully following statutory procedures and applicable local ordinances. The municipality may also sue the owner in a civil action in circuit court for the amount due plus attorney fees.

There are certain bankruptcy considerations of which a municipality will need to be aware. If a municipality has shut off water service or will be shutting off water service, and an owner files bankruptcy, the Bankruptcy Code provides that a municipal utility cannot refuse service because of a bankruptcy filing or because of an unpaid pre-bankruptcy utility bill. 11 U.S.C. Section 366. However, even though a municipality will be required to restart utility service when requested by the debtor, the municipality can still require that the owner provide "adequate assurance of payment" within 20 days of her bankruptcy case filing. Typically, an adequate assurance of payment is a cash deposit for an amount equal to 2-3 months of water service, but the amount is not set by statute and can be any amount set by the municipality. If the debtor does not agree with the amount of security set by the municipality, the debtor can ask the bankruptcy judge to set the amount. If adequate assurance of payment is not provided within the 20-day period, the Village may discontinue water service, but only for a delinquency arising after commencement of the bankruptcy case.

V. TYPES OF LIENS – WEED CUTTING LIENS, PEST EXTERMINATION LIENS, REMOVAL OF INFECTED TREES LIEN, GARBAGE, DEBRIS AND GRAFFITI, AND BOARD UP COSTS

a. **Nuisance Greenery Liens. Section 11-20-7 of the Illinois Municipal Code authorizes municipalities to cut the grass and weeds of owners and recoup costs. 65 ILCS 5/11-20-7.**

The corporate authorities of a municipality may provide for the removal of nuisance greenery (weeds, grass, trees and bushes) from any parcel of private property within the

municipality if the owners of that parcel, after reasonable notice, refuse or neglect to remove the nuisance greenery. The municipality may collect, from the owners of that parcel, the reasonable removal cost. 65 ILCS 5/11-20-7.

The removal cost under Section 11-20-7 is a lien against the underlying parcel in accordance with Section 11-20-15 of the Illinois Municipal Code. Section 11-20-15 is discussed below. In the case of “abandoned residential property” as that term is defined in Section 11-20-15.1, the municipality may elect to obtain a lien in accordance with that Section. Section 11-20-15.1 is also discussed below.

**b. Pest Extermination Lien. Section 11-20-8 of the Illinois Municipal Code, 65 ILCS 5/11-20-8.**

The corporate authorities of a municipality may provide pest-control activities (extermination of insects, spiders, mites, ticks, rats, mice etc.) on any parcel of private property in the municipality if, after reasonable notice, the owners of that parcel refuse or neglect to prevent the ingress of pests to their property or to exterminate pests on their property. The municipality may collect, from the owners of the underlying parcel, the reasonable removal cost. 65 ILCS 5/11-20-8.

The removal cost under Section 11-20-8 is a lien against the underlying parcel in accordance with Section 11-20-15 of the Illinois Municipal Code. Section 11-20-15 is discussed below. In the case of “abandoned residential property” as that term is defined in Section 11-20-15.1, the municipality may elect to obtain a lien in accordance with that Section. Section 11-20-15.1 is also discussed below.

**c. Removal of elm trees infected with Dutch Elm Disease and ash trees infected with emerald ash borer. Section 11-20-12 of the Illinois Municipal Code, 65 ILCS 5/11-20-12.**

The corporate authorities of a municipality may provide for the removal of elm trees infected with Dutch elm disease or ash trees infected with the emerald ash borer from any parcel of private property within the municipality if the owners of that parcel, after reasonable notice, refuse or neglect to remove the infected trees. The municipality may collect, from the owners of the parcel, the reasonable removal cost. 65 ILCS 5/11-20-12.

The removal cost under Section 11-20-12 is a lien against the underlying parcel in accordance with Section 11-20-15 of the Illinois Municipal Code. Section 11-20-15 is discussed below. In the case of “abandoned residential property” as that term is defined in Section 11-20-15.1, the municipality may elect to obtain a lien in accordance with that Section. Section 11-20-15.1 is also discussed below.

**d. Removal of garbage, debris and graffiti. Section 11-20-13 of the Illinois Municipal Code, 65 ILCS 5/11-20-13.**

The corporate authorities of a municipality may provide for the removal of garbage, debris, and graffiti from any parcel of private property within the municipality if the owner of that parcel, after reasonable notice, refuses or neglects to remove the garbage, debris, and graffiti. The municipality may collect, from the owner of the parcel, the reasonable removal cost.

The removal cost under Section 11-20-13 is a lien against the underlying parcel in accordance with Section 11-20-15 of the Illinois Municipal Code. Section 11-20-15 is discussed below. In the case of “abandoned residential property” as that term is defined in Section 11-20-15.1, the municipality may elect to obtain a lien in accordance with that Section. Section 11-20-15.1 is also discussed below.

**e. Lien for board-up of abandoned residential property. 65 ILCS 5/11-31-1.01**

Pursuant to Section 11-31-1.01, a municipality may secure and board up an abandoned residential property without going to court. If a municipality does board-up a property in this way, the provisions of Section 11-20-15.1, described below, provide the exclusive remedy for recovering the expenditures.

**f. Placing a lien pursuant to Section 11-20-15 of the Illinois Municipal Code, 65 ILCS 5/11-20-15.**

If a municipality incurs a removal cost under Section 11-20-7, 11-20-8, 11-20-12, or 11-20-13 with respect to any underlying parcel, then that cost is a lien upon that underlying parcel.

To perfect the lien, the municipality must, within one year (year defined as a 365 day period) after the removal cost is incurred, record the lien. The lien must consist of a sworn statement setting out: (1) a description of the underlying parcel (to be safe, use legal description, PIN and common address); (2) the amount of the removal cost; and (3) the date or dates when the removal cost was incurred by the municipality. The removal cost is not a lien on the underlying parcel unless a notice is personally served on, or sent by certified mail to, the person to whom was sent the tax bill for the general taxes on the property for the taxable year immediately preceding the removal activities. The notice must be delivered or sent after the removal activities have been performed, and it must: (i) state the substance of Section 11-20-15 and the substance of any ordinance of the municipality implementing this Section; (ii) identify the underlying parcel, by common description; and (iii) describe the removal activity.

If, for any one parcel, the municipality engaged in any removal activity on more than one occasion during the course of one year, then the municipality may combine the costs into a single lien.

A lien under this Section is not valid as to: (1) any purchaser whose rights in and to the underlying parcel arose after the removal activity but before the filing of the notice of lien; or (2) any mortgagee, judgment creditor, or other lienor whose rights in and to the underlying parcel arose before the filing of the notice of lien. Thus, in order to avoid the superior interest of a subsequent purchaser, it is critical that a municipality act quickly to record the lien.

Like other liens discussed above, liens under Section 11-20-15 may be foreclosed upon. However, an action to foreclose a lien under this Section must be commenced within 2 years after the date of filing notice of lien. A failure to file a foreclosure action does not, in any way, affect the validity of the lien against the underlying parcel, only the ability to foreclose.

**g. Abandoned residential property. 65 ILCS 5/11-20-15.1.**

Section 11-20-15.1 allows diligent municipalities incurring removal costs pursuant to Sections 11-20-7, 11-20-8, 11-20-12, or 11-20-13 to up their lien priority when a property is abandoned. For municipalities that board-up a property pursuant to Section 11-31-1.01, Section 11-20-15.1 is the exclusive method for recovering the cost.

If a municipality incurs a removal cost pursuant to Section 11-20-7, 11-20-8, 11-20-12, or 11-20-13, and the property is an “abandoned residential property,” the municipality may elect to enforce a lien pursuant to Section 11-20-15.1 instead of Section 11-20-15.

What is an “abandoned residential property”? As defined in Section 11-20-15.1, “abandoned residential property” means:

any type of permanent residential dwelling unit, including detached single family structures, and townhouses, condominium units and multifamily rental apartments covering the entire property, and manufactured homes treated under Illinois law as real estate and not as personal property, that has been unoccupied by any lawful occupant or occupants for at least 90 days, and for which after such 90 day period, the municipality has made good faith efforts to contact the legal owner or owners of the property identified on the recorded mortgage, or, if known, any agent of the owner or owners, and no contact has been made.

However, if a municipality has been given notice pursuant to subsection (b-10) of Section 10-1508 of the Mortgage Foreclosure Law, the property shall not be deemed to be “abandoned residential property.”



To perfect a lien under Section 11-20-15.1, the municipality must, within one year after the cost is incurred, file the lien in the office of the recorder containing a sworn statement setting out: (1) a description of the abandoned residential property that sufficiently identifies the parcel (legal description, PIN and common address); (2) the amount of the cost; (3) the date or dates (costs may be combined in one lien) when the cost was incurred; and (4) a statement that the lien has been filed pursuant to subsection (d) of Section 11-20-7, subsection (d) of Section 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of Section 11-20-13, as applicable.

Other potential hurdles exist to the ability of a municipality to file a lien pursuant to Section 11-20-15.1. A municipality may not file a lien under Section 11-20-15.1 in the following two circumstances: (1) if the mortgagee or servicer of the abandoned residential property has provided notice to the municipality that the mortgagee or servicer has performed or will perform the remedial actions specified in the notice that the municipality otherwise might perform pursuant to Section 11-20-7, Section 11-20-8, Section 11-20-12, or Section 11-20-13, provided that the remedial actions specified in the notice have been performed or are performed or initiated in good faith within 30 days of such notice; or (2) if the municipality has provided notice to the mortgagee or servicer of a problem with the property requiring the remedial actions specified in the notice that the municipality otherwise would perform pursuant to Section 11-20-7, Section 11-20-8, Section 11-20-12, or Section 11-20-13, and the mortgagee or servicer has performed or performs or initiates in good faith the remedial actions specified in the notice within 30 days of such notice.

To enforce a lien pursuant to Section 11-20-15.1, the municipality must maintain contemporaneous records that include, at a minimum: (1) a dated statement of finding by the municipality that the property for which the work is to be performed has become abandoned residential property, which shall include (i) the date when the property was first known or observed to be unoccupied by any lawful occupant or occupants, (ii) a description of the actions taken by the municipality to contact the legal owner or owners of the property identified on the recorded mortgage, or, if known, any agent of the owner or owners, including the dates such actions were taken, and (iii) a statement that no contacts were made with the legal owner or owners or their agents as a result of such actions, (2) a dated certification by an authorized official of the municipality of the necessity and specific nature of the work to be performed, (3) a copy of the agreement with the person or entity performing the work that includes the legal name of the person or entity, the rate or rates to be charged for performing the work, and an estimate of the total cost of the work to be performed, (4) detailed invoices and payment vouchers for all payments made by the municipality for such work, and (5) a statement as to whether the work was engaged through a competitive bidding process, and if so, a copy of all proposals submitted by the bidders for such work.

Section 11-20-15.1 requires many steps and the careful making of records, but the reward to the diligent and careful municipality is a lien that is superior to all other liens

and encumbrances, except taxes. However, restrictions exist as to the lien's enforceability....

A lien under Section 11-20-15.1 is enforceable exclusively at the hearing for confirmation of the judicial sale of the property held pursuant to subsection (b) of Section 15-1508 of the Mortgage Foreclosure Law. The lien is limited to a claim of interest in the proceeds of the sale. Any mortgagee who holds a mortgage on the property, or any beneficiary or trustee who holds a deed of trust on the property, may contest the lien or the amount of the lien at any time during the foreclosure proceeding upon motion and notice in accordance with court rules applicable to motions generally. Grounds for forfeiture of the lien or the superior status of the lien granted by subsection (a) of this Section shall include, but not be limited to, a finding by the court that: (i) the municipality has not complied with subsection (b) or (c) of Section 11-20-15.1, (ii) the scope of the work was not reasonable under the circumstances, (iii) the work exceeded the authorization for the work to be performed, or (iv) the cost of the services rendered or materials provided was not commercially reasonable.

#### VI. TYPES OF LIENS - MUNICIPAL TAX LIENS

a. **Tax Liens pursuant to Section 8-3-15 of the Illinois Municipal Code, 65 ILCS 5/8-3-15.** The corporate authorities of each municipality have the power to create and enforce liens to collect any tax imposed and collected by the municipality, regardless of whether such tax was imposed pursuant to home rule powers or statutory authorization. Amusement taxes, hotel/motel taxes and the like could be collected using the lien power of this Section.

A municipality seeking to create a lien for taxes should pass an ordinance authorizing such liens, but the procedures should be the same as provided in the Retailers' Occupation Tax Act.

No such tax lien shall affect the rights of bona fide purchasers, mortgagees, judgment creditors or other lienholders who acquire their interests in such property *prior to* the time a notice of such lien is placed on record in the office of the recorder or the registrar of titles of the county in which the property is located.

#### VII. ADMINISTRATIVE ADJUDICATION LIENS – HOME RULE

**Home Rule Administrative Adjudication. Section 1-2.1-8 of the Illinois Municipal Code, 65 ILCS 5/1-2.1-8.** Home rule municipalities may implement an in-house system of adjudication for ordinance violations (except moving vehicle violations) and impose and collect adjudicated fines without going to circuit court. A home rule municipality must enact an ordinance setting forth the procedures for administrative adjudication proceedings. A hearing officer, who will be an attorney licensed to practice law in Illinois, will sit as the finder of fact, and hear evidence in ordinance violation cases. The hearing officer will render a decision that becomes final if not appealed pursuant to the Administrative Review Law. After the decision is final, fines and costs imposed become

a final judgment enforceable in the same manner and with like effect as a judgment obtained in a circuit court proceeding, but without all the cost and expense associated with getting a final judgment in the circuit court.

After the municipality has obtained a final judgment in administrative adjudication court, a lien upon the debtor's property is created by recording a memorandum of judgment. At the time of recording, the judgment becomes a lien. Recording the memorandum of judgment should be done promptly so that the municipality has the highest priority status possible. Judgment liens can be foreclosed in the same way as a mortgage, using the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, *et seq.*

#### VIII. ADMINISTRATIVE ADJUDICATION LIENS – NON-HOME RULE

**Non-Home Rule Administrative Adjudication. Section 1-2.2-55 of the Illinois Municipal Code, 65 ILCS 5/1-2.2-55.** For non-home rule municipalities, there was good news with the adoption of Public Act 99-293 on August 6, 2016, which amended 65 ILCS 5/1-2.2-55. Prior to the amendment, after a final determination in favor of the municipality in local administrative adjudication court, the municipality was required to file an action in the circuit court seeking a judgment on the hearing officer's decision. The court was then tasked with the question of whether the decision of the hearing officer was satisfactory. The resulting final judgment was then converted into a judgment lien by recording a memorandum of judgment.

Now, amended Section 1-2.2-55 provides that when a defendant fails to appeal an administrative adjudication judgment the judgment may be enforced in the same manner as in the circuit court and that any expenses incurred by a municipality to enforce the judgment, including but not limited to attorney fees, court costs, and costs related to property demolition or foreclosure, after they are fixed by a court of competent jurisdiction or a hearing officer, shall be a debt due and owing to the municipality.

Thus, the amendments to Section 1-2.2-55 bring the powers of a non-home rule municipality into line with the powers of what a home rule municipality has been permitted to do under Section 1-2.1-8.

#### IX. TAX ABATEMENT UPON ACQUISITION OF PROPERTY BY MUNICIPALITY

The Property Tax Code provides that when any municipality acquires property through the foreclosure of a lien, through a judicial deed, through the foreclosure of receivership certificate lien, or by acceptance of a deed of conveyance in lieu of foreclosing any lien, unpaid property taxes imposed or pending become null and void. 35 ILCS 200/21-95.

This is especially helpful since a municipality foreclosing on a demolition lien will often confront a situation where the property owner has walked away from the now vacant parcel and has stopped paying property taxes long ago. Whenever a Village has to go

through the foreclosure process, it is likely that property taxes will go unpaid. Unlike a foreclosing bank, a municipality need not pay the property taxes to preserve the status of title because the taxes are extinguished once the Village acquires title. *Id.*

In order to have taxes abated after the municipality has acquired title, the municipality must give written notice of the acquisition to the chief county assessment officer and the county collector (usually this person is the treasurer) and the county clerk of the county in which the property is located, and request the voiding of the tax liens. The notice must describe the acquired property by legal description or property index number (a good practice is to do both). Upon receipt of the notice, the county collector and county clerk shall void the current and all prior unpaid taxes on the records in their respective offices. 35 ILCS 200/21-100.

Please note that in order to head off abuse of the tax abatement provisions above, the legislature has adopted Section 11-31-1.1 of the Illinois Municipal Code, 65 ILCS 5/11-31-1.1, which provides: “no owner of property who held title to the property when property taxes became delinquent and which taxes were still delinquent at the time of the foreclosure of a demolition lien by the corporate authorities of a municipality or the acceptance of a deed of conveyance in lieu of foreclosing such lien and no person, firm, association, corporation or other entity related to or associated with any such owner shall within 10 years after title vests in the municipality reacquire any right, title or interest in or to such property.” 65 ILCS 5/11-31-1.1. No known cases have construed this Section.

#### X. TAX PURCHASERS OF PROPERTY ENCUMBERED BY MUNICIPAL LIEN

Conflicting public policy considerations come into play when a tax purchaser has a lien on a property and a municipality also has a lien. On the one hand, the sale of delinquent taxes to tax purchasers serves to get properties back on the tax rolls and taxes paid. On the other hand, municipal liens enable municipalities to get reimbursed for outlays to protect the public health, safety and welfare.

Section 22-35 of the Property Tax Code resolves these competing public policy considerations:

Reimbursement of municipality before issuance of tax deed. Except in any proceeding in which the tax purchaser is a county acting as a trustee for taxing districts as provided in Section 21-90, an order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a city, village or incorporated town has an interest under the police and welfare power by advancements made from public funds, until the purchaser or assignee makes reimbursement to the city, village or incorporated town of the money so advanced or the city, village, or town waives its lien on the property for the money so advanced. However, in lieu of reimbursement or waiver, the purchaser or his or her assignee may make application for and the court shall order

that the tax purchase be set aside as a sale in error. A filing or appearance fee shall not be required of a city, village or incorporated town seeking to enforce its claim under this Section in a tax deed proceeding.

Thus, a municipal lien will not prevent a tax purchaser from taking title to property, but the tax purchaser must reimburse the municipality before a tax deed will issue. If the tax purchaser does not want to reimburse the municipality, the tax purchaser would take a sale in error. 35 ILCS 200/22-35.

When the municipality acquires title to the property (through foreclosure of lien or deed in lieu of foreclosure for example) prior to the issuance of a tax deed, then Section 21-105 of the Property Tax Code resolves competing public policy issues. Section 21-105 provides:

Sections 21-95 and 21-100 shall not adversely affect the rights or interests of the holder of any bona fide certificate of purchase of the property for delinquent taxes. However, upon acquisition of property by a governmental unit as set forth in Section 21-95, the rights and interests of the holder of any bona fide certificate of purchase of the property for delinquent taxes shall be limited to a sale in error and a refund as provided under Section 21-310.

Thus, the tax purchaser is limited to obtaining a sale in error. 35 ILCS 200/21-105.

#### XI. DENIAL OF TRANSFER TAX STAMPS UNTIL MUNICIPAL LIEN PAID

Many home rule municipalities have passed a referendum authorizing a real estate transfer tax. 65 ILCS 5/8-3-19. As some municipalities have learned, an effective way to require municipal debts and obligations to be paid, including liens, is to condition the issuance of transfer stamps on the payment of all outstanding debts concerning the property in question, including any liens on the property. Since county recorders will not record a deed without a municipal real estate transfer stamp, this practice can be extremely effective in getting debts paid.

Although this practice is not specifically authorized by statute, and no court has ruled on the matter, a municipality acting pursuant to its home rule powers would likely prevail if challenged. The ordinances of a municipality should state specifically that the real estate in question is not eligible for transfer stamps until liens and other debts are paid.

#### XII. FORECLOSURE

The following matters concern recent changes to the Illinois Mortgage Foreclosure Law that will be of particular concern for municipal practitioners.

With respect to residential real estate, a copy of the notice of foreclosure now must be sent by first class mail, postage prepaid, to the municipality within the boundary of

which the mortgaged real estate is located. 735 ILCS 5/15-1503(b). This is for any foreclosed property within the boundary of the municipality. Of course, a municipality with a recorded lien on real estate would likely have been made a party to the foreclosure proceedings. This new requirement will help municipalities to identify possible problem properties early on. A municipality must clearly publish on its website a single address to which such notice shall be sent. In the event that a municipality has not posted an address on its website, then such notice to the municipality or county shall be provided pursuant to Section 2-211 of the Code of Civil Procedure.

Municipalities within which the foreclosed property is located, must also be given notice of the confirmation of sale order pursuant to 735 ILCS 5/15-1508(b-10).

Among other items, the confirmation order must include a name, address, and telephone number of the holder of the certificate of sale or deed issued pursuant to that certificate or, if no certificate or deed was issued, the purchaser, whom a municipality or county may contact with concerns about the real estate. 735 ILCS 5/15-1508(b).

Abandoned Residential Property Municipal Relief Fund. 20 ILCS 3805/7.31. This program will be funded by fees collected at the judicial sale by the buyer of the property. 735 ILCS 5/15-1507.1. Under this program, grants will be made to municipalities to assist with removal and securing costs associated with protecting foreclosed properties. 65 ILCS 5/11-20-15.1. Seventy-five percent of the moneys appropriated to this program shall be distributed to municipalities, other than the City of Chicago, and 25% of the moneys in the Fund shall be distributed to the City of Chicago. The Illinois Housing Development Authority reports that collected funds will be appropriated in FY 2012 with possible supplemental appropriation by the Illinois General Assembly in FY 2011. The Authority further reports that it will draft rules governing the distribution of the funds under this program in the first quarter of 2011. It is currently planned that IHDA will release the application for the Foreclosure Prevention Program portion in early spring of 2011.

If a municipality is given grant money under this program, any funds it recovers pursuant to 11-20-15.1 for removal costs incurred shall be remitted to the state treasurer. 65 ILCS 5/11-20-15.1(i-5).

### XIII. BANKRUPTCY

A municipality seeking to file a lien or recover a debt against a property owner is subject to the bankruptcy automatic stay in the same manner as other non-governmental creditors.

However, Section 362(b) of the Bankruptcy Code sets forth exceptions to the automatic stay. Section 362(b)(4) provides that the bankruptcy stay does not operate as a stay of “the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit’s police or regulatory power.” The phrase “police or

regulatory power” is not defined but legislative history indicates that “where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.” *In re Herrera*, 194 B.R. 178 (1996).

When a municipality takes action to enforce its ordinances, by, for example, issuing citations, cutting weeds or mowing grass under an enforced mowing program, or boarding up a property, the municipality is not in violation of the automatic stay. *Phillips v. City of South Bend*, 368 B.R. 733 (2007). The Village can fix the amount owed, but a municipality cannot attempt to enforce a money judgment or a lien or to otherwise create a pecuniary advantage for itself ahead of other creditors. *Id.* Once liability is fixed, the government acts to vindicate its own interests in collecting or attempting to collect its judgment or to perfect its lien and is therefore no longer acting in its police or regulatory capacity and the exception to the bankruptcy stay no longer applies. *Id.*

## **PART II — DEMOLITION AND ABANDONMENT PROCEEDINGS**

### **I. DEMOLISHING DANGEROUS AND UNSAFE BUILDINGS**

**A. Circuit Court Proceedings to have Property Demolished or Repaired. 65 ILCS 5/11-31-1.** Municipalities are authorized by statute to go to court to obtain an order to demolish, repair, or enclose dangerous and unsafe buildings within the territory of the municipality. Commonly, the attorney representing the municipality will proceed in the following manner:

1. Identify all owners and lien holders of record for the property, including property tax purchasers, and identify in whose name the property was last assessed. Identity of these person(s) is necessary in order to give the required “15 day notice” prior to the filing of a demolition complaint. Usually, a tract search is considered a diligent search for purposes of determining parties to serve under Section 11-31-1. *City of Chicago v. General Realty Corp.*, 133 Ill. App. 2d 662, 668, 273 N.E.2d 712 (1st Dist. 1971).
2. A “15 day notice” must be sent to all owners and lien holders of record of the property giving notice that if the property is not made safe or demolished within 15 days of the notice the municipality will commence demolition proceedings. 65 ILCS 5/11-31-1(a). The language of the statute should be used in drafting the notice. The Property Tax Code requires that the holder of a tax sale certificate of purchase must be made a party to all actions to demolish improvements commenced during the tax sale redemption period. 35 ILCS 200/21-410. Thus, notice should be given to tax purchasers as well.

If the owner cannot be located, it is sufficient to send the “15 day” notice to the person in whose name the property was last assessed. 65 ILCS 5/11-31-1(a).

3. If, after the 15 day notice period, the property is not made safe or demolished, the municipality may apply to the circuit court for an ordering the property to be repaired or demolished or authorizing the municipality to repair or demolish the building.
4. Application to the circuit court typically means filing a verified complaint for demolition. All owners and lien holders of record are made defendants as well as tax purchasers. Also named in the complaint should be “unknown owners” and “non record claimants.” To obtain an order of demolition Section 11-31-1 requires two findings: (1) the court must find that a building is dangerous and unsafe; and (2) the court must find that the building is beyond reasonable repair. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 131, 810 N.E.2d 13, 28, 284 Ill. Dec. 360, 376 (2004). Thus, it is important that facts be plead, that, if proved, would establish these two findings. The first requirement (dangerous and unsafe) is one imposed by the language of the statute. 65 ILCS 5/11-31-1(a). A structure may be deemed “dangerous and unsafe” under section 11–31–1 even if the danger is confined to those connected to the property, rather than the public at large. *Village of Ringwood v. Foster*, 405 Ill. App. 3d 61, 932 N.E.2d 461 (2d Dist. 2010).
5. Courts, through interpretation of the statute, have imposed the second requirement, that there be a finding that a building is beyond reasonable repair. *Village of Lake Villa*, 810 N.E.2d 13, 28. A determination that a building is beyond reasonable repair must be based on a comparison of the cost of repair of the building with the building’s value. *Id.* Courts have noted that Section 11-31-1 contemplates repair when feasible, and that demolition is justified only if repair makes so little economic sense that it is unlikely that an owner would make use of any further opportunity to repair. *Id.* at 29. There are many kinds of deficiencies which would render a building dangerous and unsafe, but which can readily be obviated by appropriate repairs. *City of Aurora v. Meyer*, 38 Ill. 2d 131, 136, 230 N.E.2d 200, 203 (1967). The *City of Aurora* court provides a non exclusive list of examples of deficiencies that could be serious enough to sustain a finding that the building was dangerous and unsafe but could readily be repaired, such as inadequate wiring or a weakened support beam. Because knowledge of the current value of a building is necessary to determine whether repair makes economic sense, a court must determine the current value of the building before issuance of a demolition order. *City of Aurora v. Meyer*, 38 Ill. 2d 131, 136, 230 N.E.2d 200, 203 (1967). A witness who is familiar with the property at issue and has direct knowledge of real estate values in the vicinity is



competent to offer an opinion about value. *Village of Lake Villa*, 810 N.E.2d at 30.

6. A *lis pendens* should be recorded with the county recorder when a demolition complaint is filed giving constructive notice that the property is the subject of a demolition proceeding. 735 ILCS 5/2-1901.
7. Please note that Section 2-206(b) of the Code of Civil Procedure, 735 ILCS 5/2-206(b), provides special service by publication rules in demolition proceedings. Basically, Section 2-206(b) allows a municipality to obtain service on a defendant by publication simultaneous with efforts to make traditional sheriff's service. Section 2-206(b) provides:

(b) In any action brought by a unit of local government to cause the demolition, repair, or enclosure of a dangerous and unsafe or uncompleted or abandoned building, notice by publication under this Section may be commenced during the time during which attempts are made to locate the defendant for personal service. In that case, the unit of local government shall file with the clerk an affidavit stating that the action meets the requirements of this subsection and that all required attempts are being made to locate the defendant. Upon the filing of the affidavit, the clerk shall cause publication to be made under this Section. Upon completing the attempts to locate the defendant required by this Section, the municipality shall file with the clerk an affidavit meeting the requirements of subsection (a). Service under this subsection shall not be deemed to have been made until the affidavit is filed and service by publication in the manner prescribed in subsection (a) is completed.

8. A successful trial or prove-up of a demolition case will typically result in a court order authorizing the municipality to demolish the property or requiring the property owner to repair or demolish the property by a date certain. Obviously, the more specificity in a demolition order the better. The cost of demolition, repair, enclosure or removal incurred by the municipality, including court costs, attorney fees and other costs related to the enforcement of Section 11-31-1 are recoverable from the owner of the property and are a lien on the property. 65 ILCS 5/11-31-1(a). The municipality seeking to recover from a building owner the expenses it incurred in compelling the repair of a building, pursuant to Section 11-31-1, has the burden of proving that the expenses were reasonable. *City of McHenry v. Suvada*, 2011 Ill. App. 2d 100534, at ¶ 18, 954 N.E.2d 276 (2d Dist. 2011). In considering the reasonableness of the fees, a trial court must consider the attorney's skill and standing, the nature of the controversy, the novelty and difficulty of the questions at issue, the importance of the subject

matter, the degree of responsibility in the management of the case, the time and labor required, the usual and customary charge in the community, and the benefits resulting to the client. *Id.* In *Suvada*, the City appealed an award of attorney fees that it believed was too low. The City claimed that the trial court should not have considered whether it pursued “an overly aggressive litigation strategy” in determining the amount of fees. *Id.* The appellate court disagreed stating that whether the city’s litigation strategy was overly aggressive speaks to the reasonableness of the fees. *Id.* Perfection of the lien is discussed in more detail below.

9. Following perfection of a lien, the municipality may choose to foreclose on the lien. An action to foreclose on the lien pursuant to Article XV of the Code of Civil Procedure may be commenced at any time after the lien is recorded. The costs of foreclosure incurred by the municipality, including court costs, reasonable attorney fees, advances to preserve the property, plus statutory interest are recoverable. 65 ILCS 5/11-31-1(a).
  10. Pursuant to Section 11-31-1(c), a municipality may foreclose on the demolition lien in the same demolition court proceedings where the demolition order was obtained. 65 ILCS 5/11-31-1(c). The municipality must petition the court to retain jurisdiction for purposes of foreclosure, give notice of the petition by certified mail and have an order entered that jurisdiction is retained. This has the obvious advantage of saving time and costs and obtaining a judgment of foreclosure in a more expedient manner.
  11. County Demolition. 55 ILCS 5/5-1121. Generally, the process is the same as municipal demolition proceedings. Of course, counties may only pursue demolition proceedings in unincorporated areas.
  12. Township Demolition. 60 ILCS 1/85-50. Townships may also advance demolition litigation in unincorporated areas, but must first request that the county do so pursuant to 55 ILCS 5/5-1121. If the county declines, then the township may proceed.
- B. **“Fast Track” Demolition Proceedings. 65 ILCS 5/11-31-1(e).** Municipalities may use the provisions of Section 11-31-1(e) to expedite demolition of certain properties and obtain a lien.
1. If a building is 3 stories or less in height and the municipal official in charge of enforcing the building code determines that the building is open and vacant and an immediate and continuing hazard to the community, the building may be demolished, repaired or enclosed without the necessity of court proceedings if the notice requirements of Section 11-31-1(e) are complied with and no objections are raised. 65 ILCS 5/11-31-1(e). The following notice requirements must be followed:

- a. The municipality must post notice on the front of the building that is not less than 2 feet by 2 feet in size. The notice shall be dated as of the date of the posting and shall state that unless the building is demolished, repaired, or enclosed, and unless any garbage, debris, and other hazardous, noxious, or unhealthy substances or materials are removed so that an immediate and continuing hazard to the community no longer exists, then the building may be demolished, repaired, or enclosed, or any garbage, debris, and other hazardous, noxious, or unhealthy substances or materials may be removed, by the municipality.
  - b. Not later than 30 days following the posting of the notice, the municipality shall cause to be sent, by certified mail, return receipt requested, a Notice to Remediate to all owners of record of the property, the beneficial owners of any Illinois land trust having title to the property, and all lien holders of record in the property, stating the intent of the municipality to demolish, repair, or enclose the building or remove any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials if that action is not taken by the owner or owners.
  - c. Not later than 30 days following the posting of the notice, the municipality shall cause to be published, in a newspaper published or circulated in the municipality where the building is located, a notice setting forth (i) the permanent tax index number and the address of the building, (ii) a statement that the property is open and vacant and constitutes an immediate and continuing hazard to the community, and (iii) a statement that the municipality intends to demolish, repair, or enclose the building or remove any garbage, debris, or other hazardous, noxious, or unhealthy substances or materials if the owner or owners or lien holders of record fail to do so. This notice shall be published for 3 consecutive days.
  - d. Not later than 30 days following the posting of the notice, the municipality shall cause to be recorded the Notice to Remediate in the office of the recorder in the county in which the real estate is located.
2. If the building is not demolished, repaired, or enclosed within 30 days of mailing the notice to the owners of record, the beneficial owners of any Illinois land trust having title to the property, and all lien holders of record in the property, or within 30 days of the last day of publication of the notice, whichever is later, the municipality shall have the power to demolish, repair, or enclose the building or to remove any garbage, debris, or other hazardous,

noxious, or unhealthy substances or materials. 65 ILCS 5/11-31-1(e). This authority lasts for a 120 day period.

3. Any person with a current legal or equitable interest in the property may challenge the fast track proceeding in court, but it is the challenger's burden to initiate the litigation before the municipality proceeds with any of the actions authorized. If a copy of the complaint has been served on the chief executive officer of the municipality, then the municipality shall not proceed with the demolition, repair, enclosure, or removal of garbage, debris, or other substances until the court determines that that action is necessary to remedy the hazard and issues an order authorizing the municipality to do so. 65 ILCS 5/11-31-1(e). These challenges often come from banks as the mortgagee of the property. Attached as Exhibit A is what fast track challenges often look like.
4. If a challenge is raised, the municipality must consider whether to convert the demolition into a "standard" demolition action under Section 11-31-1(a) so as to utilize the attorney fee provision.

C. **Wrongful Demolition.** Actions for wrongful demolition have a five year statute of limitations, not the 1 year statute of limitations typical of Tort Immunity Act cases. *Harvest Church of our Lord v. City of East St. Louis*, 407 Ill. App. 3d 649, 943 N.E.2d 1230 (5th Dist. 2011). Generally, in calculating damages for wrongful demolition, if the injury is permanent, the measure of damages is the market value of the real estate before the injury, less the market value after the injury; if the injury to real estate is not permanent, then the measure of damages is the cost of restoration. *Hudlin v. City of East St. Louis*, 227 Ill. App. 3d 817, 591 N.E.2d 541 (5th Dist. 1992). The diminution-in-value rule may be inadequate and unfair in some instances, for example, where the building is used for a purpose personal to the owner, such as the family residence. When damaged real property gains its principal value from personal use rather than use for pecuniary gain, the loss in market value is a poor gauge of damage, and so when the property is used in a special personal way, a criterion based on reproduction cost should be used when that can be reasonably done. *Id.*

## II. PETITIONING COURT TO HAVE PROPERTY DECLARED ABANDONED

A. **Abandonment Proceedings Pursuant to 65 ILCS 5/11-31-1(d).** A municipality may petition the circuit court to have property declared abandoned under this subsection (d) if: (1) the property has been tax delinquent for 2 or more years or bills for water service for the property have been outstanding for 2 or more years; (2) the property is unoccupied by persons legally in possession; and (3) the property contains a dangerous or unsafe building for reasons specified in the petition. 65 ILCS 5/11-31-1(d).

- B. If these three conditions are satisfied, all persons having an interest of record in the property, including tax purchasers and beneficial owners of any Illinois land trust having title to the property, shall be named as defendants in the petition and shall be served with process. In addition, service by publication shall be made to unknown owners and non record claimants. 65 ILCS 5/11-31-1(d).
- C. If the municipality proves that the conditions described in this subsection exist and the owner of record of the property does not enter an appearance in the action, the court shall declare the property abandoned. 65 ILCS 5/11-31-1(d).
- D. If that determination is made, notice shall be sent in person or by certified or registered mail to all persons having an interest of record in the property, including tax purchasers and beneficial owners of any Illinois land trust having title to the property, stating that title to the property will be transferred to the municipality unless, within 30 days of the notice, the owner of record or any other person having an interest in the property files with the court a request to demolish the dangerous or unsafe building or to put the building in safe condition, or unless the owner of record enters an appearance and proves that the owner does not intend to abandon the property. 65 ILCS 5/11-31-1(d).
- E. If the owner of record enters an appearance in the action within the 30 day period, but does not at that time file with the court a request to demolish the dangerous or unsafe building or to put the building in safe condition, or specifically waive his or her rights under this subsection (d), the court shall vacate its order declaring the property abandoned if it determines that the owner of record does not intend to abandon the property. In that case, the municipality may amend its complaint in order to initiate proceedings under subsection (a), or it may request that the court order the owner to demolish the building or repair the dangerous or unsafe conditions of the building alleged in the petition or seek the appointment of a receiver or other equitable relief to correct the conditions at the property. 65 ILCS 5/11-31-1(d).
- F. If the owner of record has not entered an appearance and proven that the owner did not intend to abandon the property, and if no person with an interest in the property files a timely request or if the requesting party fails to demolish the building or put the building in safe condition within the time specified by the court, the municipality may petition the court to issue a judicial deed for the property to the municipality. A conveyance by judicial deed shall operate to extinguish all existing ownership interests in, liens on, and other interest in the property, including tax liens, and shall extinguish the rights and interests of any and all holders of a bona fide certificate of purchase of the property for delinquent taxes. 65 ILCS 5/11-31-1(d).

### III. MISCELLANEOUS ISSUES RELATED TO DEMOLITIONS

- A. **Prevailing Wages.** Please note that the Prevailing Wage Act now requires that prevailing wages be paid for demolition work. 820 ILCs 130/3. This additional cost would, of course, be factored in to the amount sought in a lien.
- B. **Tax Abatement upon Acquisition of Property by Municipality.** The Property Tax Code provides that when any municipality acquires property through the foreclosure of a lien, through a judicial deed, through the foreclosure of receivership certificate lien, or by acceptance of a deed of conveyance in lieu of foreclosing any lien, unpaid property taxes imposed or pending become null and void. 35 ILCS 200/21-95. This is especially helpful since a municipality foreclosing on a demolition lien will often confront a situation where the property owner has walked away from the now vacant parcel and has stopped paying property taxes long ago. Whenever a Village has to go through the demolition and foreclosure process, it is likely that property taxes will go unpaid. Unlike a foreclosing bank, a municipality need not pay the property taxes to preserve the status of title because the taxes are extinguished once the Village acquires title. *Id.* In order to have taxes abated after the municipality has acquired title, the municipality must give written notice of the acquisition to the chief county assessment officer and the county collector (usually this person is the treasurer) and the county clerk of the county in which the property is located, and request the voiding of the tax liens. The notice must describe the acquired property by legal description or property index number (a good practice is to do both). Upon receipt of the notice, the county collector and county clerk shall void the current and all prior unpaid taxes on the records in their respective offices. 35 ILCS 200/21-100. Please note that in order to head off abuse of the tax abatement provisions above, the legislature has adopted Section 11-31-1.1 of the Illinois Municipal Code, 65 ILCS 5/11-31-1.1, which provides: “no owner of property who held title to the property when property taxes became delinquent and which taxes were still delinquent at the time of the foreclosure of a demolition lien by the corporate authorities of a municipality or the acceptance of a deed of conveyance in lieu of foreclosing such lien and no person, firm, association, corporation or other entity related to or associated with any such owner shall within 10 years after title vests in the municipality reacquire any right, title or interest in or to such property.” 65 ILCS 5/11-31-1.1. No known cases have construed this Section.
- C. **Tax Purchasers of Property Encumbered by Municipal Lien.** Conflicting public policy considerations come into play when a tax purchaser has a lien on a property and a municipality also has a lien. On the one hand, the sale of delinquent taxes to tax purchasers serves to get properties back on the tax rolls and taxes paid. On the other hand, municipal liens enable municipalities to get reimbursed for outlays to protect the public health, safety and welfare. Section 22-35 of the Property Tax Code resolves these competing public policy considerations:

Reimbursement of municipality before issuance of tax deed. Except in any proceeding in which the tax purchaser is a county acting as a trustee for taxing districts as provided in Section 21-90, an order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a city, village or incorporated town has an interest under the police and welfare power by advancements made from public funds, until the purchaser or assignee makes reimbursement to the city, village or incorporated town of the money so advanced or the city, village, or town waives its lien on the property for the money so advanced. However, in lieu of reimbursement or waiver, the purchaser or his or her assignee may make application for and the court shall order that the tax purchase be set aside as a sale in error. A filing or appearance fee shall not be required of a city, village or incorporated town seeking to enforce its claim under this Section in a tax deed proceeding.

Thus, a municipal lien will not prevent a tax purchaser from taking title to property, but the tax purchaser must reimburse the municipality before a tax deed will issue. If the tax purchaser does not want to reimburse the municipality, the tax purchaser would take a sale in error. 35 ILCS 200/22-35. When the municipality acquires title to the property (through foreclosure of lien or deed in lieu of foreclosure for example) prior to the issuance of a tax deed, then Section 21-105 of the Property Tax Code resolves competing public policy issues. Section 21-105 provides:

Sections 21-95 and 21-100 shall not adversely affect the rights or interests of the holder of any bona fide certificate of purchase of the property for delinquent taxes. However, upon acquisition of property by a governmental unit as set forth in Section 21-95, the rights and interests of the holder of any bona fide certificate of purchase of the property for delinquent taxes shall be limited to a sale in error and a refund as provided under Section 21-310.

Thus, the tax purchaser is limited to obtaining a sale in error. 35 ILCS 200/21-105.

- D. Denial of Transfer Stamps until Municipal Lien Paid. Many home rule municipalities have passed a referendum authorizing a real estate transfer tax. 65 ILCS 5/8-3-19. As some municipalities have learned, an effective way to require municipal debts and obligations to be paid, including liens for demolition, is to condition the issuance of transfer stamps on the payment of all outstanding debts concerning the property in question, including any liens on the property. Since county recorders will not record a deed without a municipal real estate transfer stamp, this practice can be extremely effective in

getting debts paid. Although this practice is not specifically authorized by statute, and no court has ruled on the matter, a municipality acting pursuant to its home rule powers would likely prevail if challenged. The ordinances of a municipality should state specifically that the real estate in question is not eligible for transfer stamps until liens and other debts are paid.

E. Bankruptcy.

A municipality seeking to file a lien or recover a debt against a property owner is subject to the bankruptcy automatic stay in the same manner as other non-governmental creditors.

However, Section 362(b) of the Bankruptcy Code sets forth exceptions to the automatic stay. Section 362(b)(4) provides that the bankruptcy stay does not operate as a stay of “the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit’s police or regulatory power.” The phrase “police or regulatory power” is not defined but legislative history indicates that “where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.” *In re Herrera*, 194 B.R. 178 (1996). Thus, a demolition proceeding would not be prohibited by an automatic stay. However, some attorneys seek relief from the automatic stay anyway.

When a municipality takes action to enforce its ordinances, by, for example, demolition, issuing citations, cutting weeds or mowing grass under an enforced mowing program, or boarding up a property, the municipality is not in violation of the automatic stay. *Phillips v. City of South Bend*, 368 B.R. 733 (2007). The Village can fix the amount owed, but a municipality cannot attempt to enforce a money judgment or a lien or to otherwise create a pecuniary advantage for itself ahead of other creditors. *Id.* Once liability is fixed, the government acts to vindicate its own interests in collecting or attempting to collect its judgment or to perfect its lien and is therefore no longer acting in its police or regulatory capacity and the exception to the bankruptcy stay no longer applies. *Id.*



