Course #167 Municipal Lien Certificates

State Tax Form 290
Certificate: 10026115
Issuance Date: 07/02/2024

MUNICIPAL LIEN CERTIFICATE
CITY OF NEWTON
COMMONWEALTH OF MASSACHUSETTS

Requested by FIRST AMERICAN TITLE INSURANCE COMPANY
121 W. TRADE ST
STE 2175
CHARLOTTE, NC 28202

I certify from available information that all taxes, assessments and charges now payable that constitute liens as of the date of this certificate on the parcel of real estate specified in your application received on 07/02/2024 are listed below.

Ron Mendes, CMMT, CMMC
Treasurer/Collector
City of Newton

Peter Sygnator, CMMAC
Assistant Collector
City of Springfield

Agenda

- What is a “Municipal Lien”?
- Why (and from whom) are we getting these requests for Lien Certificates?
- Anatomy of a real estate closing.
- The law on Municipal Lien Certificates.
- What fees can we charge?
- Final tips & takeaways

What is a “Lien”?

lien noun

ˈlēn ˈlē-ən

1 **:** a charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law

The bank had a *lien* on our house.

Merriam-Webster Est. 1828

- Liens can be enforceable against property either through a document recorded at the appropriate Registry of Deeds, or by operation of law.

- Liens “run with the land,” meaning that it doesn’t matter who “incurred” the debt. The debt is chargeable against the land itself and whomever owns the property at the time the lien is enforced is in danger of losing the property.

What is a “Lien”?

What Types of Liens Exist in Massachusetts?

There are three basic lien types:

1. **<u>Statutory Liens</u>**: These are liens created by statute and create legal rights if the paying party to a transaction does not live up to its obligations. Common statutory liens in Massachusetts include mechanic’s liens, **<u>tax liens</u>**, liens imposed by an attorney, and other types.
2. **<u>Judgment Liens</u>**: These are liens in which a court typically awards the creditor a lien on the property of the debtor for failure to make payment. If the property involved in a judgment lien is real property (real estate), the lien must be recorded in the Registry of Deeds in which the property is located. In Massachusetts, the judgment lien stays attached to the property of the debtor, even if the debtor sells the property (unless satisfied by payment), for a 20-year period.
3. **<u>Consensual Liens</u>**: Consensual liens exist when a property owner agrees to the lien as a condition of a loan or credit line. A mortgage (first or second) is a good example of a consensual lien because the homeowner agrees to allow the mortgagee (usually the bank) to place a lien on the home in return for the benefit of receiving funds to purchase the home or another financial benefit to the homeowner.

What is a "Municipal Lien"?

G.L. Chapter 60, Section 37. "Taxes assessed upon land…..shall with all incidental charges and fees be a lien thereon from January first in the year of assessment. Except as provided in section sixty-one (i.e., tax takings/sales), such lien shall **terminate** at the expiration of **three years and six months from the end of the fiscal year** for which such taxes were assessed……" *(there is more to this story……)*

What is a “Municipal Lien Certificate”?

G.L. Chapter 60, Section 23. “The collector of taxes for any city, or for any town....shall, on written application by any person....furnish to such applicant a certificate of all taxes and other assessments, including water rates and charges, and charges due to municipal lighting plants….which at the time constitute liens on the parcel of real estate specified in such application and are payable on account of such real estate.”

What is the purpose of a "Municipal Lien Certificate"?

G.L. Chapter 60, Section 23. "A certificate issued….under this section may be filed for record or registration, as the case may be, within one hundred and fifty days after its date, and if so filed shall operate to discharge the parcel of real estate specified from the liens for all taxes, assessments, or portions thereof, rates and charges which do not appear by said certificate to constitute liens thereon, except taxes, assessments, or portions thereof, rates and charges with respect to which there has been filed for record or registration evidence of a taking or a sale by the municipality."

Why are we getting these requests (and from whom)?

Since municipal liens "run with the land" it is in the interests of anyone receiving title to land that the property is conveyed free and clear of all liens.

- Buyers don't want to "inherit" liens from prior owners.
- Mortgage Companies want to always be in "1st Position" in the event they need to foreclose.
- Title Insurance Companies want to mitigate insurance claims from homeowners.

Requests for Municipal Lien Certificates are typically received from Attorneys handling some type of real estate transaction:

- Mortgage re-finance
- Purchase & Sale of Real Estate
- Probate following death of owner

Anatomy of a Real Estate Closing

MASSACHUSETTS ASSOCIATION of REALTORS®

STANDARD RESIDENTIAL PURCHASE AND SALE AGREEMENT *[#503]*

(With Contingencies)

The parties make this Agreement this ______ day of ______, ______. This Agreement supersedes and replaces all obligations made in any prior Contract To Purchase or agreement for sale entered into by the parties.

1. **Parties**:

______ the "SELLER," agrees to sell and ______, the "BUYER," agrees to buy, the premises described in paragraph 2 on the terms set forth below. BUYER may require the conveyance to be made to another person or entity ("Nominee") upon notification in writing to SELLER at least five business days prior to the date for performance set forth in paragraph 5. Designation of a Nominee shall not discharge the BUYER from any obligation under this Agreement and BUYER hereby agrees to guarantee performance by the Nominee.

2. **Description Of Premises**. The premises (the "Premises") consist of:

(a) the land with any and all buildings thereon known as ______ ______ ______, as more specifically described in a deed recorded in the ______ Registry of Deeds at Book ______, Page ______, [Certificate No. ______], a copy of which is / is not *[choose one]* attached; and

TITLE REPORT

SHEET # ____

LOCUS: [redacted] Framingham MA

OWNERS: [redacted]

(d)(4)(A) Trust (u/d/t 11-15-22)

L. Trustee Cert - Bk. 80989-470 25

DESCRIPTION: Lot #4 PLAN: Bk: 9798-502 (#624 of 1961) 2

DEED/CERTIFICATE# Bk: 80989-473 (11-15-22) 28

LOCUS SUBJECT TO:

(1) Statement Tax Deferral, dtd 2-25-08 - Bk. 50977-205 16

(2) Mass Health Lien - Bk: 74591-163 17

(3) Planning Board Agreement, dtd 4-17-61 - Bk: 9798-502 6

(4) Easements as shown on locus Plan (#624 of 1961) 2

Bk: 50977 Pg: 205

1C

THIS INSTRUMENT MUST BE FILED FOR RECORD OR REGISTRATION

please return to —

State Tax Form 97-2

THE COMMONWEALTH OF MASSACHUSETTS

BOARD OF ASSESSORS
MEMORIAL BUILDING
150 CONCORD STREET
FRAMINGHAM MA
01702

Framingham
Name of City or Town

OFFICE OF THE BOARD OF ASSESSORS

STATEMENT OF ENTRY INTO TAX DEFERRAL AND RECOVERY AGREEMENT

The Board of Assessors in the city/town of Framingham hereby states that on the 25th day of February, 2008 it entered into a Tax Deferral and Recovery Agreement with

[redacted]

owners of the real property described below.

2008 00052987

Bk: 50977 Pg: 205 Doc: STATE
Page: 1 of 1 04/02/2008 09:13 AM

DESCRIPTION OF PROPERTY

MASSACHUSETTS ASSOCIATION of REALTORS®

STANDARD RESIDENTIAL PURCHASE AND SALE AGREEMENT *[#503]*

(With Contingencies)

The parties make this Agreement this ______________ day of ____________, ______. This Agreement supersedes and replaces all obligations made in any prior Contract To Purchase or agreement for sale entered into by the parties.

13. **Adjustments.** At the time for performance of this Agreement adjustments shall be made as of the date of performance for *current real estate taxes, fuel value, water rates, sewer use charges*, collected rents, uncollected rents (if and when collected by either party), security deposits, prepaid premiums on insurance if assigned. The net total of such adjustments shall be added to or deducted from the purchase price payable by the BUYER at the time for performance. If the real estate tax rate or assessment has not been established at the time for performance, apportionment of real estate taxes shall be made on the basis of the tax for the most recent tax year with either party having the right to request apportionment from the other within twelve months of the date that the amount of the current year's tax is established. *[If tenants will continue to occupy the Premises, use of the Rental Property Addendum to Purchase And Sale Agreement should be considered.]*

City of Framingham
150 Concord Street
Framingham, MA 01702

Municipal Lien Certificate

Certificate Number	37850
Book/Page	12709-257
Land Value	206,400
Building Value	265,800
Land Use	0
Exemptions	0
Taxable Value	472,200

REQUESTER	ISSUANCE DATE
[redacted]	05/17/2023

OWNER	ACCOUNT NUMBER
[redacted] FRAMINGHAM, MA 01701	0

DEED DATE	LOCATION	LAND AREA
10/03/1974	16 BROSSI CIR	0.18 AC

YEAR 2023 CHARGES

CPA CHARGE	48.72
RESIDENTIAL TAX	6,181.10
TOTAL BILLED	6,229.82

YEAR 2022 CHARGES

CPA CHARGE	44.96
RESIDENTIAL TAX	5,869.73
TOTAL BILLED	5,914.69

YEAR 2021 CHARGES

		DUE DATE	AMOUNT BILLED	BALANCE DUE
RESIDENTIAL TAX	5,695.87	07/01/2020	$1,459.20	$0.00
		10/01/2020	$1,459.20	$0.00
		03/09/2021	$1,388.74	$0.00
		04/01/2021	$1,403.73	$0.00
		CHARGES/FEES		$15.00
		ABATEMENTS/EXEMPTIONS		$0.00
		PAYMENTS/CREDITS		$5,710.87
		INTEREST		$0.00
TOTAL BILLED	5,695.87	**TOTAL BALANCE DUE:**		$0.00

UTILITY

AMOUNT BILLED	INTEREST	PER DIEM	BALANCE DUE
276.45	0.01	0.00	147.95

OTHER UNPAID BALANCES

2008 DEFERRED RESIDENTIAL TAX	9,595.71	2009 DEFERRED RESIDENTIAL TAX	9,131.95
2010 DEFERRED RESIDENTIAL TAX	9,166.58	2011 DEFERRED RESIDENTIAL TAX	9,248.41
2011 DEFERRED RESIDENTIAL TAX	10,006.11	2013 DEFERRED RESIDENTIAL TAX	7,506.28
2014 DEFERRED RESIDENTIAL TAX	7,441.62	2015 DEFERRED RESIDENTIAL TAX	6,291.01
OTHER CHARGES	27,201.89		

There is a 14% interest charge on all unpaid bills from the *Due Date* of the bill. Please notify the Water Department of any change of ownership to request a final reading.

C. Lyons
Carolyn Lyons, Collector of Taxes

American Land Title Association

ALTA Settlement Statement - Combined
Adopted 05-01-2015

File No./Escrow No.:
Print Date & Time: 08/07/2024 3:36 PM
Officer/Escrow Officer:
Settlement Location:

Property Address:
Buyer:
Seller:
Lender:

Settlement Date: June 27, 2024
Disbursement Date: June 27, 2024
Additional dates per state requirements:

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	400,000.00	Sale Price of Property	400,000.00	
		Deposit		20,000.00
		Borrower's Loan Amount		320,000.00
		Rent Adjustment from 6/27/2024 to 6/30/2024		153.33
		Adjustment for Last Month's Rent from Seller to Buyer		1,150.00
		Prorations/Adjustments		
	37.07	City/town taxes from 06/27/2024 to 06/30/2024	37.07	
		Loan Charges to		
		3.0000% of Loan Amount (Points) to		
		Lender		
		Apprai Intellig		
		Apprai ($490.		
		Credit		
		eClosin		
		Flood		
		Tax Se		
		Verification Services to Information Research	250.00	
		Prepaid Interest to	280.20	
		Other Loan Charges		

Prorations/Adjustments

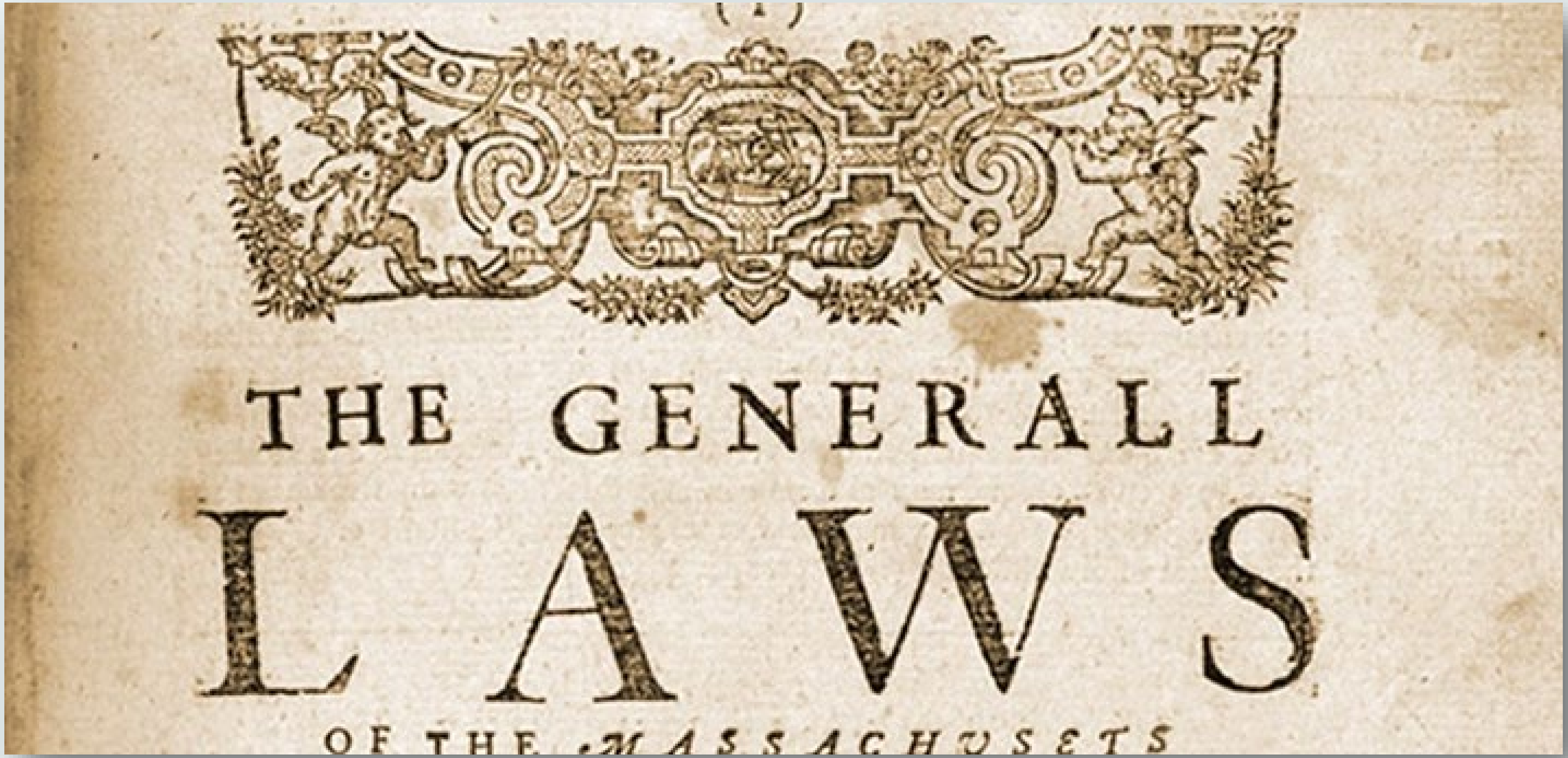
	37.07	City/town taxes from 06/27/2024 to 06/30/2024	37.07	

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		1st Quarter Fiscal Year 2025 8/1 Taxes to City of X	1,158.93	
		Homeowner's Insurance Premium to MA Property Insurance Underwriting Association	2,725.00	
			681.24	
			772.62	
			- 227.08	
			850.00	
			835.00	
			800.00	
			25.00	
		Title - Title Exam Search to Hathaway Title Inc.	250.00	
		Title - Obtain Municipal Lien Certificate to City of X	75.00	
		Title - Survey Fee to	125.00	
			370.00	
220.00		Record MLC, Trustee Certificate & Discharge to Commonwealth of Massachusetts	85.00	
		Payoff(s)		
153.33		Rent Adjustment from 6/27/2024 to 6/30/2024		
1,150.00		Adjustment for Last Month's Rent from Seller to Buyer		
83,395.96		Payoff to Freedom Mortgage Corporation		
.00		Final Water & Sewer Bill to		
750.00		Seller's Attorney Fee to		
		Miscellaneous		
125.00		Discharge Tracking Fee to		
85.00		Wire Fee / FedEx Charges to		
Seller			Borrower/Buyer	
Debit	Credit		Debit	Credit
87,703.29	400,037.07	Subtotals	420,299.48	341,303.33
		Due From Borrower		78,996.15
312,333.78		Due To Seller		
400,037.07	400,037.07	Totals	420,299.48	420,299.48

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		1st Quarter Fiscal Year 2025 8/1 Taxes to City of X	1,158.93	
		Homeowner's Insurance Premium to MA Property	2,725.00	

		Title - Obtain Municipal Lien Certificate to City of X	75.00	

Massachusetts General Laws on Municipal Lien Certificates



G.L. Chapter 60, Section 23

- Establishes requirement of the collector to issue municipal lien certificates:
  - More than 5,000 inhabitants, required to issue within 10 days, excluding Saturdays, Sundays & Holidays.
  - 5,000 inhabitants or less, required to issue within 20 days, excluding Saturdays, Sundays & Holidays.

- Certificate shall be itemized and show the amounts then payable, so far as such amounts are fixed and ascertained.
  - If amounts are not ascertainable at the time certificate is issued, then it must be "expressed in the certificate" (i.e., betterments in early stages of assessment).

- Requires any town officer or board "doing any act toward establishing" any tax, assessment, lien or charge upon any real estate in the town to transmit notice of such act to the collector.

- Issuance of a Municipal Lien Certificate does not operate to release personal liability for any tax, assessment or charge by reason of being the assessed owner at the time the certificate is issued.

G.L. Chapter 60, Section 37

- Taxes assessed upon land…..shall with all incidental charges and fees be a <u>lien</u> thereon from January first in the year of assessment…
- …such lien shall <u>terminate</u> at the expiration of <u>three years and six months from the end of the fiscal year</u> for which such taxes were assessed…….
- ……, if in the meantime the estate has been "alienated" and the instrument "alienating" the same has been recorded, otherwise it shall continue until a recorded "alienation" thereof…

What does “alienation” mean?

alienation

Alienation refers to the process of a property owner voluntarily giving or selling the title of their property to another party. When property is considered alienable, that means the property is able to be sold or transferred to another party without restriction.

Some properties may be subject to a restraint on alienation, that can prohibit the property owner from transferring or selling the property to another party.

Alienation typically refers to transfers done when the property owner is alive but can also include transfers done when the property owner has died. Property can be alienated through a sale, mortgage, lease, or bail. Alienation becomes effective as soon as the property is transferred.

Cornell Law School

LII Legal Information Institute

G.L. Chapter 60, Section 37

- Taxes assessed upon land…..shall with all incidental charges and fees be a <u>lien</u> thereon from January first in the year of assessment…
- …such lien shall <u>terminate</u> at the expiration of <u>three years and six months from the end of the fiscal year</u> for which such taxes were assessed…….
- ……, if in the meantime the estate has been SOLD and the DEED has been recorded, otherwise it shall continue until a DEED has been recorded.

G.L. Chapter 60, Section 37 (cont.)

what are other "exceptions" to the 3-year + 6-month "deadline"?

The Municipal Lien may, possibly, not "terminate" if:

- The property has not been "alienated" and/or the instrument "alienating" the same has not been recorded at the time the Municipal Lien Certificate is being issued.
  - In this case, the Municipal Lien continues until either:
    1. An "alienation" (DEED) is recorded, or
    2. A tax taking or tax sale is conducted and is recorded within 60 days of the date of taking or sale.

G.L. Chapter 60, Section 37 (cont.)

what are other "exceptions" to the 3-year + 6-month "deadline"?

The Municipal Lien may continue beyond the scheduled "termination" date if:

- while a municipal lien is in force, a tax sale or tax taking cannot, in the opinion of the collector, be legally made due to any federal or state law, or because of an injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body.
- The collector is required to file a "Statement to Continue Municipal Lien" with the registry of deeds in these cases (typically bankruptcy)…. *(see Section 37A)*

G.L. Chapter 60, Section 37 (cont.)

what are other "exceptions" to the 3-year + 6-month "deadline"?

- Finally, said taxes, if unpaid for fourteen days after Demand Notices are sent, may with charges and fees, be levied by sale or taking of the real estate (tax title sale or tax title taking), **if the lien has not terminated.**
- At this point, the relevant sections related to tax sales or tax takings supersede this section.

Municipal Lien Certificate Fees

MUNICIPAL LIEN CERTIFICATE REQUEST

Request From:

Name ______________________________

Address ______________________________

____

Phone # ______________________________

Fax # ______________________________

Request For:

Property Address ______________________________

Current Owner(s) ______________________________

Parcel ID ______________________________

*If mail, please include a SASE.

Fees: $ 50.00 (1, 2, or 3 Family Res. Property and Land)
$100.00 (4 or more Res. Property)
$150.00 (Commercial Property)

G.L. Chapter 60, Section 23 (default rule):

- The Collector of Taxes shall charge twenty-five dollars for each certificate so issued, and the money so received shall be paid into the city or town treasury (i.e., general fund).
- The Collector of Taxes for any town having fewer than five thousand inhabitants as determined by the last preceding national census may, <u>if permitted by local by-law, keep such certificate fee for his personal services</u>.
    - Does anyone actually still do this?

G.L. Chapter 60, Section 23A (local acceptance option #1):

In any city or town accepting the provisions of this section, prior to January 1, 1988, the Collector of Taxes shall furnish a certificate of liens as provided in section twenty-three according to the following fee schedule:

- Vacant Land less than one acre, $10.00;
- Single Family Residence: $10.00;
- Two Family Residence: $15.00;
- Three Family Residence: $20.00
- Four or more Family Residence: $40.00
- Commercial/Industrial: $100.00
- All other parcels: $50.00
- In no case may the fee exceed 1½% of the property value.
- All funds must be deposited into the town treasury (general fund) – no option for collector to keep fees as personal income.

G.L. Chapter 60, Section 23B (local acceptance option #2):

In any city or town accepting the provisions of this section, the Collector of Taxes shall furnish a certificate of liens as provided in section twenty-three according to the following fee schedule:

- Vacant Land less than one acre, $25.00;
- Single Family Residence: $25.00;
- Two Family Residence: $25.00;
- Three Family Residence: $25.00
- Four or more Family Residence: $100.00
- Commercial/Industrial: $150.00
- All other parcels: $50.00
- In no case may the fee exceed ½%(0.5%) of the property value.
- All funds must be deposited into the town treasury (general fund) – no option for collector to keep fees as personal income.

G.L. Chapter 40, Section 22F:

- Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town…provided, however, that in the case of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

- The provisions of this section may be accepted in a city by a vote of the city council, with the approval of the mayor if so required by law, and in a town by vote of the town meeting, or by vote of the town council in towns with no town meeting.

- All funds must be deposited into the town treasury (general fund)
  – no option for collector to keep fees as personal income.

G.L. Chapter 40, Section 22F:

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

Property Tax Bureau
Informational Guideline Release (IGR) No. 91-212
October 1991

<u>SETTING MUNICIPAL FEES & CHARGES</u>
Section 123 of Chapter 138 of the Acts of 1991
(Adding G.L. Ch. 40, S. 22F)

5. Statutory- schedules of fees and charges, such as the charges for municipal lien certificates, under G.L. Ch. 60 §23B, are presumptively reasonable. Charges higher than those set out in a statute, or charges for which there is no statutory schedule, are reasonable if they reflect the full Cost of providing the service or issuing the permit or license. Charges are unreasonable only if they regularly produce revenues substantially in excess of the full cost of providing the service or issuing the permits or licenses.

G.L. Chapter 40, Section 22F:

"Under the Massachusetts Constitution, municipalities do not have an independent power of taxation; however, they may impose fees." *Silva v. City of Fall River, 59 Mass. App. Ct. 798, 800 (2003).* Fees fall into two broad categories: user fees charged for special municipal services and regulatory fees designed to compensate the municipality for regulating particular activities. Fees that do not meet these guidelines may be deemed "illegal taxes."

For a fee to be valid, it must be:

1. "charged in exchange for a particular governmental service which benefits the party paying the fee in a manner 'not shared by other members of society,'"
2. "paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge," and
3. "collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." *Emerson College v. City of Boston, 391 Mass. 415, 424-425, quoting National Cable Television Ass'n v. United States, 415 U.S. 336, 341 (1974).*

Tips & Takeaways.....

Thank you

Ron Mendes, CMMT, CMMC
Treasurer/Collector
City of Newton

Peter Sygnator, CMMAC
Assistant Collector
City of Springfield