

Federal Alignment of Liens Policies with Provincial Counterparts

Issue

The misalignment of federal and provincial policies around liens on derelict properties creates hardships for municipalities and slows regeneration.

Background

Already struggling with a massive infrastructure deficit and responsibility for funding services downloaded from the provincial and federal governments, Canadian municipalities face the additional challenge of paying off provincial and federal liens on abandoned properties before they can be sold and redeveloped or made attractive and functional.

A lien is a legal claim on the property of another as security against the payment of a debt. Business liens are attached to a property, rather than to the owner. As a result, the sale of the property is the only recourse available to recoup unpaid taxes on derelict properties. Often buildings are left in such a state of disrepair that they are in violation of provincial building codes and the amount of the cumulative liens far exceeds the market value of the property. With limited resources at their disposal to pay off the liens and demolish or upgrade the structures, municipalities often leave derelict buildings to further deteriorate and stand as eye sores, impeding future development around them and lowering the value of surrounding properties.

When the property tax on land goes into arrears for a period of three years, the Ontario Municipal Act states that a municipality can initiate a “tax sale” in an attempt to recover the amount of unpaid taxes. There follows a one-year registration period before a municipality can advertise for this tax sale.

In a tax sale, tenders are accepted from parties interested in owning the property, including the municipality, and ownership is transferred to the highest bidder. If there are no bids received, but the municipality feels that the property may be of some value for future development, it can vest the ownership to the municipality. The term “vesting” refers to the transfer of ownership of property to a municipality with no monetary compensation.

For example, if an Ontario municipality sells or vests the property within seven years, it is required to pay the province for any provincial liens that exist on the property. If the municipality is not able to sell the property because it does not receive any bids that meet or exceed the total unpaid taxes plus the cost of undertaking the tax sale, it has the option of assuming ownership free of provincial Crown liens. (Source: The Municipal Act, 2001, www.e-laws.gov.on.ca). If it does not want the property and it is un-sellable, the property remains in the owner's name and the cycle is repeated.

There are, however, no similar provisions for federal Crown liens that continue to be tied to the property. While the federal government has agreed to remove all or part of liens on an ad hoc basis to encourage the redevelopment of contaminated sites (see “A National Framework for Encouraging Redevelopment of Qualifying Brownfields through Removal of Crown Liens and Tax Arrears”, Annex 1, 2005, The National Round Table on the Environment and the Economy and The Canadian Brownfields Network, page 25-26), no formal mechanism is in place to have federal Crown liens removed from uncontaminated, derelict properties.

Liens that remain on derelict properties serve as a significant deterrent for individuals who wish to purchase the land for the purpose of redevelopment. With no process whereby properties may be completely freed of Federal liens, the propensity for properties that are in a state of disrepair to continue to deteriorate and burden municipalities will surely continue.

That the federal government:

- 1) Immediately allow for the removal of federal liens against a property by establishing and maintaining lien policies that are in alignment with those of provincial/territorial governments.
- 2) Work collaboratively with provincial/territorial governments to establish and maintain a nationally consistent, coordinated approach to removing Crown liens and tax arrears on qualified properties.

SUBMITTED BY THE TIMMINS CHAMBER OF COMMERCE

THE ECONOMIC POLICY COMMITTEE SUPPORTS THIS RESOLUTION