



COURT OF APPEALS: TREAT PROPERTY MAINTENANCE LIENS AS TAXES

The Court of Appeals handed down a decision in the *Matter of the Town of Irondequoit v. County of Monroe* and found that property maintenance liens imposed by towns should be treated as taxes. This is a big win for towns, but why?

Pursuant to their general police powers, specific provisions in Town Law, and Municipal Home Rule Law, towns can adopt local laws that allow them to enter and maintain private property when the landowner refuses to do so and the condition of the property poses a public nuisance or threat to the health, safety and welfare of the community. In accordance with the language in Town Law and Real Property Tax Law, the charges for this work had been treated as tax, and under the Real Property Tax Law, if there is a difference between taxes collected and taxes owed because someone doesn't pay their taxes, the county bears the shortfall, or to use the language of the statute, it "credits" towns with the amount of unpaid delinquent taxes and makes them whole (see RPTL § 936[1]). In turn, counties have the exclusive ability to recover any and all unpaid taxes by instituting foreclosure proceedings

against the delinquent properties (see RPTL § 1123; cf. RPTL § 1102[3],[6][a][d]).

Over the last several years, some counties stated that they would no longer treat property maintenance liens as taxes, and therefore would no longer credit the town for any unpaid maintenance liens. The argument was that unpaid property costs weren't really taxes. This put towns in a difficult position and left them with no real way to recoup property maintenance costs. However, the Court of Appeals took a look at the language in Town Law and Real Property Tax Law and found that the statutory language required counties to treat property maintenance liens like taxes; therefore, counties are required to make the town whole if someone does not pay those costs. Counties are still able to foreclose on a property to cover those unpaid costs.

The Association of Towns submitted an amicus brief on behalf of towns.

Read the full decision at: <https://www.nycourts.gov/ctapps/Decisions/2020/Dec20/90opn20-Decision.pdf>