

Tax Sales and the COVID-19 Emergency

Presented for the Municipal Finance Officers Association
of Ontario on April 22, 2020, by

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Disclaimer

The following is not to be construed as legal advice. In administering tax sales and related procedures, you should refer to the appropriate legislation, regulations and rules, and seek legal advice from a solicitor when appropriate.

Emergency Management and Civil Protection Act

ONTARIO REGULATION 73/20

ORDER UNDER SUBSECTION 7.1 (2) OF THE ACT

Consolidation Period: From March 20, 2020 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

Whereas an emergency has been declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 at 7:30 a.m. Toronto time pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (the “Act”);

And Whereas the criteria set out in subsection 7.1 (2) of the Act have been satisfied;

Now Therefore, an Order is made pursuant to subsection 7.1 (2) of the Act, the terms of which Order are the following:

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.
2. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.

The duration of this Order is subject to any renewal required under subsection 7.1 (4) and, if applicable, subsection 7.1 (5) of the Act.

Does O. Reg. 73/20 suspend the following deadlines?

- First notices, final notices
- Extension agreements
- Commencement of advertising at the end of the 1-year period (or 90-day period for an expedited tax sale)
- Postponement of a tax sale that's already being advertised
- Realtax obtained a legal opinion from Aird & Berlis LLP

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Does O. Reg. 73/20 suspend the following deadlines?

- The legal opinion provides that municipal tax sales deadlines under the *Municipal Act, 2001* and the *Municipal Tax Sale Rules* are suspended
- These limitation periods and procedural timelines are imposed by provincial legislation
- The temporary suspension does not apply to municipally-imposed limitation periods or procedural timelines

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Effect of the suspension on first notices, final notices

Example:

- On March 16, 2020, there were 20 days left to send notices, and the emergency is lifted on June 15, 2020
- On June 15, 2020, there will be 20 days left to send the notices

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Effect of the suspension on extension agreements

- If the emergency were to last, for example, for 90 days, would that add 90 days onto the amount of time given in an extension agreement?
 - No, because the temporary suspension under O. Reg. 73/10 does not apply to municipally-imposed limitation periods or procedural timelines
- If an extension agreement were breached during the emergency, would the countdown of the 1-year/90-day period commence from the date it was breached?
 - No, tax sale procedures are created by provincial statute, regulations and rules, and are therefore suspended during the emergency
 - Do your extension agreements state that it is deemed to be breached when notice of the default has been sent to the interested party?

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Effect of the suspension on commencement of advertising

- If the *one-year period since the registration of a tax arrears certificate was registered expired before the emergency, but you have not yet advertised the property
 - Should the tax sale be delayed?
 - Proceed with the tax sale?

* Or the 90-day period since the registration of a tax arrears certificate was registered, in the case of an expedited tax sale

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Effect of the suspension on commencement of advertising

- If you delay the tax sale, do you have to take any steps to let people know that the tax sale has been delayed?
 - No, you do not
 - After the emergency is over, you can proceed with the tax sale

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If you proceed with the tax sale during the emergency

- Rule 9(1) of the *Municipal Tax Sales Rules* requires that tenders must be opened “...at a place in the municipality that is open to the public...”
 - If you are not able to comply with this Rule, and all the other Rules, then you should *not* proceed with a tax sale at this time

If you are still proceeding,

- You should notify the interested parties that the treasurer has exercised their discretion pursuant to s. 2 of O. Reg. 73/20 to continue the tax sale proceedings under Part XI of the *Municipal Act, 2001* and, if possible, include brief reason(s) why this discretion has been exercised in this way
- We suggest that if you do not put the reason(s) in the notice, then you should be prepared to provide the reason(s) if challenged
- You should place an advertisement in your local newspaper, and post on your website, and any other website you may have advertised on, announcing that the treasurer has exercised their discretion pursuant to s. 2 of O. Reg. 73/20 to continue the tax sale proceedings under Part XI of the *Municipal Act, 2001*

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If the tax sale has already been advertised

- If you want to postpone the tax sale, pursuant to Rule 22(1),
 - Rule 22(1) “...completing the sale would be impractical or would be unfair to the bidders or tenderers, the treasurer may postpone the sale and conduct it on a later date after readvertising it...”
 - Subsection 379(13) “Despite anything in the prescribed rules, except the rules pertaining to the determination of the successful purchaser, the treasurer, in conducting a sale under this Part, may do all things that, in his or her opinion, are necessary to ensure a fair and orderly sale”
 - Put a notice on your website, and any other website you may have advertised on
 - The 90-day period for readvertising is also suspended

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Questions?

Thanks very much for joining us

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