



February 17, 2010

Donna Champagne O'Keefe
Assistant Assessor
Board of Assessors
22 Monument Avenue
Swampscott, MA 01907

Re: Tax Deferral Agreements
Our File # 2010-13

Dear Ms. O'Keefe:

You have requested our opinion on whether the approval of a mortgagee is necessary for participation in the tax deferral program of G.L. c. 59, § 5, Clause Forty-first A. As you know, Clause Forty-first A allows qualifying taxpayers age 65 or older to defer payment of the property taxes due on their homes, until either the property is conveyed to another owner or the participating senior dies. A valid tax deferral and recovery agreement is a prerequisite to the deferral of taxes in accordance with Clause Forty-first A, to ensure the town eventually receives the full amount of the taxes postponed for payment, plus interest.

The statute unambiguously requires the "prior written consent" to the tax deferral and recovery agreement of "any joint owner or mortgagee holding a mortgage on such property, which written approval shall be made a part of such agreement." *Id.* at subsection (5). The approval of the mortgage holder is necessary to ensure the validity of the town's lien which secures repayment of the deferred taxes. Without the consent of the mortgagee to the tax deferral and recovery agreement, an otherwise qualifying senior cannot participate in the tax deferral program.

Seniors may apply for tax deferral "within three months after the date on which the [actual tax] bill or notice is first sent...." *Id.* Denial occurs automatically at the end of three months after the filing of a timely application without action by the assessors, yet a denial notice should be sent to the taxpayer regardless.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG