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# UNPAID LINEAR TAXES

## The Gathering Storm

Rural Municipalities Association

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# Outline

- How Did We Get Here?
- Bankruptcy and Receivership – Brief Overview
- Remedies under the *Municipal Government Act* (“MGA”) to collect taxes
- S. 348 - special lien and priority over every person except the Crown
- What can you do?
- Next Steps



## How Did We Get Here?

- About 2-3 years ago, started seeing uptick in questions from municipalities about tax collection
- Municipalities started seeing significant tax payers failing to keep their taxes current
- Many of these tax debtors started going into receivership or bankruptcy
- In receiverships and bankruptcies timelines are tight making it difficult for municipalities to respond





## How Did We Get Here?

- Further, many municipalities had experience with bankruptcies where taxes get paid, as in the sale of real property. For some, assumption was, if amounts payable to municipalities, receiver or trustee will pay.
- Issue arose with linear taxes. Convention was to treat these as unsecured. But in looking at the legislation, municipalities formed the view that the legislation provided for all property taxes to be secured.





# Bankruptcy and Receivership Brief Overview

- Bankruptcy - Wholesale surrender of the assets/ liabilities to a licensed Trustee; total liquidation
  - Stay of all claims against the bankrupt
  - All claims are dealt with through the liquidation process which involves a sale of assets or certain assets
  - Order of payout governed by *Bankruptcy and Insolvency Act*
  - Secured creditors not stayed





# Bankruptcy and Receivership

- Insolvency - starting point for all receiverships and bankruptcies
- When a debtor cannot pay their debts as they come due. Leads to receiverships, bankruptcy or CCAA proceedings when debts exceed 5 million.





# Bankruptcy and Receivership

- Proposals - process under BIA or CCAA - opportunity to rehabilitate the debtor with some of the same protections as in a bankruptcy
  - Difference is, no wholesale winding up
  - The hope is to have the debtor come out the other side
  - Can be under BIA or can be part of a receivership under the *Alberta Business Corporations Act*





# Bankruptcy and Receivership

- Receivership (court legislated process) - remedy available to secured creditors to recover amounts outstanding
  - Can be private or Court appointed (must be a Trustee licensed in bankruptcy)
    - If there is a Court appointed receiver, that receiver must act on behalf of all creditors
    - If private, the receiver is only acting in the interests of the party that appointed them.





## S. 348: Is a Municipality a Secured Creditor?

- *Virginia Hills* – What was it about?
- Court of Appeal had to decide whether the special lien in s. 348 applied to linear taxes. They found it did not.
- Our view, at this time, is that s. 348 makes municipalities secured creditors for property taxes other than linear property taxes
- Two QB decisions (Regent Resources, COGI) have found that s. 348 only gives municipalities liens on property within their own municipalities.



## *Redwater* – Does it matter to Municipalities and what does it mean?

- *Redwater* dealt with the question of whether a Receiver can avoid using the assets of an estate to remediate wells if he/she disclaims the wells.
- Background Facts of *Redwater* – paramountcy question?
- SCC found that provincial regime could co-exist with bankruptcy regime.
- Why does it matter to municipalities?





## What Does This Mean for Collection of Linear Taxes Where Taxpayer has Ceased to Pay?

- If no receivership in place, could sue but, if sue or enter into a consent judgement, a municipality will lose their status as a special lien holder. They will become an unsecured judgement creditor. Therefore, this should only be considered with respect to outstanding linear tax claims.
- Division 9 - Seizing assets of the taxpayer (distress) is problematic when dealing with linear assets. The AER (if there are unpaid amounts owing) will have priority and may take issue with any seizure. If there is an abandonment or closure order, municipality may be precluded from removing (and selling) seized equipment from a wellsite.
- On the basis of the law today, the collection of linear taxes is highly problematic. Without secure status, for linear taxes, left with distress remedy and right to initiate litigation.
- If there are no AER orders and the AER is not owed any money, there may be some value to seizing equipment that, subject to obtaining permission from the AER, can be sold. However, the municipality will have to weigh the potential recovery against the costs of seizure and sale.





## How Do You Realize on the Special Lien or Get the Taxes Paid?

- If in receivership, and with respect to non-linear taxes, the municipality should work with the receiver by filing a proof of claim and identifying its claim as secured with priority.
- If there is a potential sale of assets, ensure that the municipality's claim is protected by a hold back of funds if the assets are proposed to transfer fee and clear. On non-linear property, taxes should be paid from amounts received from the assets.





## How Do You Realize on the Special Lien or Get the Taxes Paid?

- If there is no receivership, and sale of assets is imminent, a municipality should ensure all parties understand new owner will be liable for taxes and subsequently assessed party.



## Next Steps

- *Virginia Hills* – Municipalities are applying for Leave to Appeal to SCC. Given the magnitude of the issue – it is an important step.
- Understand they will be looking for funding assistance.
- Also will be key step in lobbying government.



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# Thank You For Your Attention Questions Are Welcome

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