

Ombudsman Toronto Enquiry Report

Enquiry into A Vulnerable Homeowner's Claim to Surplus Proceeds After a Tax Sale by the City

September 25, 2017

Complaint Summary

1. This is a story about a vulnerable, low-income senior ("the complainant") who owned a house in Toronto with his late mother. After she died, he did not pay the property taxes, and in 2013 the City of Toronto ("the City") ended up selling the house to recover the tax owing.
2. After deducting the taxes, penalties and interest owed to it, the City sent notices to the complainant, advising him that it would pay the leftover money ("the surplus") into court, and that he would have one year to apply for that money to be paid out of court to him.
3. On September 5, 2013, the City paid the surplus of \$462,534.33 into court.
4. When, after one year, the complainant had not applied for payment of the surplus, it was deemed forfeited to the City under the *City of Toronto Act, 2006*.
5. In 2016, the City applied to the court to have the surplus paid out to it, and absorbed the money into its general revenue.
6. The complainant's only source of income is his monthly Canada Pension Plan ("CPP") payment. He has used up his personal savings. He is unable to pay his rent and is facing eviction.
7. Recently, with the help of his social worker and his late mother's lawyer, he approached the City to try to get back the surplus money it got from the sale of his house.

8. When the City did not agree to his request to repay him, he complained to Ombudsman Toronto. He made it clear that he did not have the financial means to hire a lawyer to help him claim the surplus.

Our Enquiry: Steps Taken

9. We gathered information from the complainant, his social worker, and his late mother's lawyer. We also tried to contact his sister but we were unsuccessful.
10. We then collected information from the City's Revenue Services Division about the tax sale of the house, the steps it took to notify the complainant of the sale and his right to claim the surplus.
11. We also spoke with the City Councillor for the ward in which the house is located.
12. Finally, we inquired about the City's view of the situation and possible ways of resolving it.

The Complainant Owned the House with his Late Mother

13. The complainant and his family moved into their house in Toronto in 1974. His mother originally owned the house, but in 1993, as part of her estate planning, she transferred ownership to a joint tenancy with the complainant.
14. In spring 2001, the complainant moved into his mother's rental apartment to care for her, although they still owned the house jointly. His mother died on January 9, 2007. The complainant still lives in the same apartment.
15. After his mother died, the complainant stopped paying the property taxes on the house.

The City Sold the House and Tried to Contact the Complainant

16. On September 4, 2012, as required by the tax sale process, the City sent final notices to the complainant, both at the house and at his apartment, to inform him that it would be selling the house because of the unpaid taxes.
17. The City then sent someone to the house on March 5, 2013. A neighbour told them that the house had been vacant for at least six years.
18. On April 15, 2013, the City then sent someone to the complainant's apartment. The property manager said that there was no one living there with the complainant's name.
19. The City also contacted the complainant's late mother's lawyer on March 5, 2013. She put the City in touch with the complainant's sister, who was also the executor of their mother's estate.

20. On April 24, 2013, the sister told the City that the complainant did, in fact, live in the apartment to which it had sent the final notice. According to the City's notes, she said the complainant "suffers from mental health issues" and that he had "not really had contact" with her since their mother's death in 2007.
21. On June 20, 2013, the City sold the house by public tender for \$525,000. The City processed payment of the tax arrears and then paid surplus funds in the amount of \$462,534.53 into court on September 5, 2013.
22. On September 18, 2013, the City sent the required notices to both the complainant's apartment and to the house, stating that it had sold the property and had paid the surplus into court. The notices said the complainant could claim entitlement to proceeds of the sale within one year of payment into court. The City also sent notices to the Office of the Public Guardian and Trustee, as required by law.
23. Despite being the former owner of the house, the complainant did not make any application to court for the surplus proceeds of the tax sale, as he was entitled to do.
24. Three years later, on October 4, 2016, the City applied for and obtained an order from the court paying the forfeited surplus to it. The City took the money into general revenues.

The Complainant's Current Circumstances

25. By March 2017, the complainant had no source of income, and had been living off his quickly depleting personal savings. His landlord had started eviction proceedings for non-payment of rent.
26. On March 6, 2017, the complainant's sister contacted Toronto Seniors' Health Line with concerns about his possible eviction and well-being. They connected the complainant to a social worker at Crisis Outreach for Seniors at LOFT Community Services.
27. According to LOFT's website, it provides "crisis support services to seniors in mental health (including dementia) or addictions crisis in the City of Toronto."
28. The social worker quickly applied for retroactive CPP and Old Age Security (OAS) payments on the complainant's behalf. The complainant received a lump sum of about \$8,000 in CPP. He used this money to pay his rental arrears and his living expenses. He is still waiting for OAS.
29. The social worker recently told us that the complainant has now used up the lump sum he received from CPP and will be unable to pay his October rent.
30. Currently, the complainant's only source of income is his monthly CPP payment of \$629 per month.

31. The social worker continues to visit the complainant once a week. He has expressed concerns about the complainant's mental health and wellbeing, although he told us that as far as he knows the complainant has not been diagnosed with, or treated for, any mental illness.
32. In April, 2017, the complainant executed a Continuing Power of Attorney for Property in favour of his sister. This gives her the legal authority to manage his property (including his financial affairs) on his behalf if he is found incapable of doing so. She has accepted this responsibility.
33. The complainant has not been found incapable of managing his property. His sister is however available to help him do so if he wishes.

The Law on Claiming Tax Sale Surplus Funds is Changing

34. Bill 68, *Modernizing Ontario's Municipal Legislation Act*, received Royal Assent on May 30, 2017. It has not yet come into force. When (and if) it is proclaimed, it will extend the time for property owners to claim tax sale surplus funds paid into court from one year to ten years. It will also provide that unclaimed surplus funds will revert to the Province after the new 10 year waiting period. They will no longer be forfeited to municipalities.

How the City Can Repay the Complainant

35. Revenue Services told us that that even if it wished to do so, it cannot simply return the surplus funds to the complainant.
36. However, the City can make a discretionary grant, at the direction of City Council.
37. Revenue Services told us that it would prepare a report to Council on this case and the City's options for repayment if the Ombudsman recommends that it do so, and/or if Council directs it.
38. In the final stages of our preparing this report, the City's Deputy City Manager and Chief Financial Officer (the "CFO") contacted us. He said he believed that the City should pay the complainant the surplus. He told us he would welcome Council's direction to pay the complainant.

Analysis and Findings

39. We found that the City complied fully with the requirements of the *City of Toronto Act, 2006* governing the tax sale process. It also took additional steps to try to ensure that the complainant was notified: City staff spoke with the complainant's sister, the City sent a notice not only to the house but the complainant's apartment, and City staff members went to both the house and the apartment to try to notify him in person.

40. Despite the City's efforts, however, the complainant did not claim the significant surplus funds after the tax sale. On its face, his inaction seems illogical.
41. However, the results of our Enquiry and a closer look at his personal circumstances make it clear that he likely failed to claim the funds only because he either did not understand his right to make such a claim and/or because he was not able to do so.
42. It is reasonable to assume the complainant's mother left him her house so that he could live there, or live off the proceeds, after her death.
43. After his mother's death, however, the complainant let the tax arrears build up to a point where the City sold the house in a tax sale. He then missed his chance to make a claim to the surplus.
44. Based on information gathered in our Enquiry, it appears that his mental health, a lack of understanding of his rights and obligations, and/or a simple inability to cope may provide some explanation for his inaction.
45. The complainant is now living alone with no assets and an income of \$629 per month. He is facing eviction.
46. The Province recently enacted new legislation affecting tax sales which, when it comes into force, will give people like the complainant ten years (rather than one) to claim surplus funds that a municipality has paid into court.
47. Although this change has no direct legal application to this case, it shows a legislative intent to enact measures to ensure that people entitled to surplus funds are better able to claim them.
48. In all the circumstances, it is neither reasonable nor realistic to expect the complainant to take the City to court to pursue a claim in the law of equity against the City to recover this money. He should not have to do so.
49. Considering the information we gathered during our Enquiry, it would be unfair and inequitable for the City to keep the surplus in the face of the complainant's request to recover it in this case. Basic fairness demands that the City return the surplus funds to him.

Ombudsman Recommendations

50. Therefore, in consideration of the information gathered through this Enquiry:
1. We recommend that Council direct the CFO to immediately make arrangements for the City to pay the surplus to the complainant.
 2. We further recommend that the CFO report back to Ombudsman Toronto every two weeks until the Ombudsman is satisfied that the City has made the payment in accordance with Recommendation 1.

The City's Response

51. The Director of Revenue Services, the CFO, and the Treasurer reviewed a draft of this report and had an opportunity to comment on it.
52. They agree with the report's findings and accept our recommendations.

(Original signed)

Susan E. Opler
Ombudsman