



Pitfalls of Outstanding Municipal Taxes

By
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A borrower who fails to pay municipal taxes may not be entitled to renew his or her mortgage if the mortgage states, as a condition of being able to renew the term, that taxes must be kept in good standing.

The case *1284342 Ontario Inc. v. KMTC-Key Management Technology Corp.*, 2005 Carswell Ont 7748 (Ont. S.C.J.) 243 highlights the importance of a borrower continually fulfilling his/her/its obligations under the terms of the mortgage in order to be able to enforce an option to renew the mortgage.

In the above case, on the date the mortgage matured the borrower had outstanding municipal taxes owing in the amount of \$338,238.60. According to the lender, the outstanding taxes owing by the borrower was a violation of a term of the mortgage which essentially meant that the borrower's right to renew was no longer enforceable. The borrower argued that he was only obligated to pay the outstanding tax balance if the original mortgage was renewed. This argument was based on the assumption that the obligation to pay the outstanding taxes was tied to the lender's obligation to renew the mortgage.

The court strongly rejected the borrower's argument and sided with the lender. The court stated that the requirement on the borrower's behalf of keeping the mortgage in good standing was a condition precedent to the right of renewal being available to the borrower. The borrower lost his right to renew based on the fact that he did not fulfill an independent provision of the mortgage. The municipal taxes were in arrears at the time the mortgage matured which essentially meant that the mortgage was in default. Since the mortgage was in default the borrower was required to pay the outstanding balance owing to the lender in order to keep the lender from legally claiming possession over the property.

It is important to be aware of all the provisions contained in a mortgage, including standard charge terms, at the time of entering into such an agreement. If there is any uncertainty as to whether a provision can affect the rights of either party, it is wise to consult your lawyer for legal advice on the matter. Assuming that certain terms of a mortgage will have no effect on the ability to renew a mortgage or on other terms contained in the mortgage is a risk that can bring about unfavorable consequence for the borrower.



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This article was prepared with the assistance of Rick Forno, law student, University of Ottawa, Faculty of Law.

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