



## Poverty Abatements

### MMA Legal Services Information Packet

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This packet includes the following attachments:

- Title [36 M.R.S.A. §§ 841-844](#)
- "[Poverty Abatements](#)," *Maine Townsman*, February 1991
- "[Installment Purchaser Ineligible For Poverty Abatement](#)," *Maine Townsman*, Legal Notes, November 1998
- "[Two New Poverty Abatement Cases](#)," *Maine Townsman*, Legal Notes, April 2004
- [Poverty Guidelines](#) (U.S. HHS)
- [Sample Poverty Abatement Application Form](#) [PDF; Interactive]; [Sample Maine Revenue Services \(MRS\) Abatement Application](#) [PDF; Interactive]
- [Sample Notice of Executive Session](#)
- [Sample Notice of Decision](#)

Important issues and considerations include:

#### I. Generally

Under [36 M.R.S.A. § 841](#), municipalities may abate (forgive) a property tax for "error or mistake," including illegality or irregularity (§ 841(1)), or for reason of "hardship or poverty" (§ 841 (2)). This latter section authorizes the municipal officers, "on their own knowledge or on written application," to "make such abatements as they believe reasonable in the real and personal taxes on all persons who, by reason of hardship or poverty, are in their judgment unable to contribute to the public charges." See 36 M.R.S.A. § 841(2).

Although at first glance Section 841(2) appears succinct and straightforward, it provides very little in the way of guidance on the question of when to grant a poverty abatement. As a result, a review of relevant case law and an understanding of General Assistance (GA) financial analysis are essential for a thorough understanding of poverty abatements (see Sections III and IV below).

#### II. Statutorily Required Procedures

While the statute does little to explain the operation of the eligibility standard that governs a poverty abatement application, it does provide procedures to guide the review of applications for poverty abatements. In summary, Section 841(2) provides that:

- An applicant may apply for an abatement within 3 years from the date the taxes are committed (although municipal officers may extend the 3-year period);
- The municipal officers must provide that any person who indicates an inability to pay all or part of assessed taxes will be informed regarding their right to apply for an abatement;

- Individuals making applications for abatement must receive assistance in filing an application (this assistance however, does not reduce the applicant's burden of proof);
- Application forms for requesting an abatement based on poverty or hardship must be made available to applicants and must contain notice that a written decision shall be made within 30 days of application;
- Municipal officers must provide persons the opportunity to apply for an abatement during normal business hours;
- Municipal officers must maintain the confidentiality of "all applications, information submitted in support of the application, files and communications relating to an application for abatement and the determination on the application for abatement";
- Poverty abatement hearings and proceedings must be held in executive session;
- Municipal officers must provide persons applying for abatement written notice of their decision within 30 days of application; and
- Any decision on an application for poverty abatement must provide the applicant with the specific reason or reasons for the decision and must inform the applicant of the right to appeal and the procedure for requesting an appeal.

### III. Case Law

As previously mentioned, the statute (§ 841(2)) does not set forth an explicit eligibility standard for poverty abatement determinations. Therefore, it is necessary to rely on existing case law for guidance. The following selected principles derived from Maine Supreme Court cases may lead to a clearer understanding of poverty abatements:

- Although the law says municipal officers "may" grant abatements as they think reasonable, "may" will mean "shall" in cases where the word "may" is used for the purpose of imposing a public duty upon public officials for the sake of the public good (such as where an applicant's poverty is indisputable). *Schwanda v. Bonney*, 418 A.2d 163 (Me. 1980).
- Applicants seeking a poverty abatement have the burden of proving that they are eligible for the abatement. It is not the municipal officers' responsibility to prove that applicants are not entitled to an abatement. *Joyce v. Town of Lyman*, 565 A.2d 90 (Me. 1989).
- To obtain a poverty abatement, an applicant has the burden of proving that by reason of poverty or hardship, the applicant is unable to contribute to the public charges. 36 M.R.S.A. § 841 (2); *Macaro v. Town of Windham*, 468 A.2d 604 (Me. 1983); *Joyce v. Town of Lyman*, 565 A.2d 90 (Me. 1989); and *Gilmore v. City of Belfast*, 580 A.2d 698 (Me. 1990).
- The purpose of 36 M.R.S.A. §841(2) (which is not clearly stated in the statute) is "to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay." Therefore, while an applicant may possess a valuable asset such as a house, that applicant still may have no ability to pay property taxes, so that a municipality may not rely on the mere existence of the asset to deny a poverty abatement. The possibility of remortgaging or otherwise borrowing off one's house does not constitute evidence of ability to contribute to the public charges. The municipality instead must look to an applicant's realistic financial capacity to pay his or her taxes. *Macaro v. Town of Windham*, 468 A.2d 604 (Me. 1983).
- An applicant has the burden of proving an inability to contribute to the public charges both at the time of the application and during the tax years for which the abatement is being requested. Thus, if an applicant was indigent at the time of application but not so during the tax year in question, the applicant would not be eligible. Further, if an applicant was indigent during the tax year in question but then at time of the poverty abatement application became able to pay the taxes due, that applicant also would be ineligible. *Gilmore v. City of Belfast*, 580 A.2d 698 (Me. 1990). This also means that the approval of a poverty abatement application is not automatic simply because an applicant qualified and received an abatement in prior years.
- A purchaser under a "land installment agreement" lacks standing to seek a poverty abatement of taxes on the property, even though the agreement may make the purchaser responsible for the payment of taxes, since the legal ownership of the property at issue, and legal liability for the tax, remains with the seller. *Mason vs. Town of Readfield*, 715 A.2d 179 (Me. 1998).
- A taxpayer holding a life estate on a piece of property is the proper party to be assessed for taxes on that property during his or her lifetime. *Kelley v. Jones*, 86 A. 252 (Me. 1913). It follows that a taxpayer holding a life estate also has standing to apply for a tax abatement, including an abatement for reasons of poverty.
- A taxpayer's poverty property tax abatement may be reduced by payments received from the Maine Residents Property Tax Program. The Law Court stated that 36 M.R.S.A. § 841(2) "gives municipal officers considerable discretion to grant complete or partial abatements of real and/or personal taxes for poverty related reasons. The key language authorizes the municipal officials to 'make such abatements as they believe reasonable.'" *Sager v. Town of Bowdoinham*, 845 A.2d 567, 569 (Me. 2004); 36 M.R.S.A. § 6216.

- In 2005, the Legislature amended 36 M.R.S.A. §841(2) to provide that the municipal officers may only grant abatements of taxes "on the primary residence of" applicants. That amendment was a legislative reversal of the Law Court's holding in the 2004 case, *Hustus v. Town of Medway* 845 A.2d 563 (Me. 2004). *Hustus* had provided that a poverty abatement could be granted for an entire property even though a portion of it was dedicated to commercial use. Section 841(2) was further amended in 2017 to add a definition of "primary residence." The definition, effective as of November 1, 2017, makes clear that "primary residence" includes only those structures necessary to support a home and only such acreage necessary to satisfy any municipal minimum lot size, or in its absence the minimum lot size required by 12 M.R.S.A. § 4807-A.

#### IV. Applicant's Right to Submit an Application

The statute establishes an express obligation on the municipality to inform individuals indicating an inability to pay assessed taxes of their right to apply for a tax abatement, and an express obligation to assist individuals with their applications. (36 M.R.S.A. § 841(2)(A), (B)). Implied in these express obligations of the municipality is the inherent right of individuals to apply for a tax abatement for reasons of poverty or hardship. Municipalities cannot deter or prevent someone from submitting an application pursuant to this statute. Even if it is clear at the time of submission that the applicant will not be eligible for an abatement, the applicant is still entitled to a review and determination of her application by the municipal officers. Also, an individual can file for abatement as soon as the tax is committed, a municipality cannot require someone to wait until a lien is in place or is about to foreclose.

#### V. Determining Eligibility

The standard of eligibility identified in the statute is the inability of the applicant to "contribute to the public charges" as a result of "hardship or poverty." Despite the fact that the statute includes both "hardship" and "poverty" as eligibility criteria, the real issue is "poverty." With that said, it is important to recognize that Maine's poverty abatement scheme contains no specific formula for determining poverty, or the inability to contribute to the public charges. Municipal officers have some latitude regarding such determinations, but the test most generally used and accepted is whether a person's reasonable expenses outweigh that person's income.

**Financial Analysis:** A useful starting point is the U.S. DHHS (Department of Health and Human Services) Poverty Guidelines in order to determine whether the applicant meets the federal definition of poverty. However, denying an applicant simply because he or she exceeds these poverty guidelines probably would not be adequate, since this would not establish whether the applicant could in fact "contribute to the public charges" as required by the statute.

Perhaps a more helpful evaluative tool is a modified General Assistance (GA) financial analysis. Such an analysis assists in determining whether the applicant has (or had) sufficient income to meet basic necessities. A GA analysis compares an applicant's income against the applicant's (or household's) actual need and as such may provide a more accurate reading of the applicant's economic situation. By way of example, a family receiving TANF (Temporary Assistance for Needy Families) benefits may be considered over the federal poverty guidelines by virtue of their benefit amount. However, if that family had unforeseen emergency expenses (i.e., a portion of their home burned, a car needed replacement or major medical bills had to be paid), the family might qualify economically under this modified GA financial analysis. Note that certain federal assistance or benefits, such as benefits under the food stamp program (7 U.S.C. § 2011 et seq.), or the federal energy assistance program (42 U.S.C. § 8621 et seq.) may not be counted as income for poverty abatement purposes. Federal law expressly prohibits these benefits from being counted as income or resources for any purpose under state or local laws, including any laws related to taxation, welfare or public assistance (see 7 U.S.C. § 2017(b), 42 U.S.C. § 8624(f)(1)).

A GA-type analysis also will assist in determining whether the applicant failed to make use of available resources, and so may establish that the applicant had been otherwise able to contribute to the public charges. But remember, poverty abatements are not GA and a strict application of the GA rules or GA maximums is therefore not appropriate.

Please refer to the MMA's *General Assistance Manual* for in-depth guidance on conducting a GA financial analysis (posted on MMA's website). Municipalities may also wish to contact MMA Legal Services [1(800) 452-8786 or DHHS 1(800) 442-6003] with specific questions.

**Property:** As discussed above, 36 M.R.S.A. §841(2) now provides that poverty abatements are only available on an applicant's primary residence. However, the statute does not clarify whether the property must be used exclusively as a residence. The statute therefore gives municipal officers little guidance in a situation where an applicant maintains a home occupation out of his or her primary residence. The municipal officers might take the position that any poverty abatement granted be proportional to the percentage of property that is used for residential purposes, or they might take the position that dual-use property is simply not eligible for a poverty abatement. Either position is potentially open to challenge since the amended Section 841(2) has not yet been considered by the courts.

In such instances a municipality may reduce the risk of having a reviewing body or court overturn a denial that results from the nonresidential nature of the property by also determining the merits of the application and seeking legal advice. There are two principal reasons for doing so. First, after performing the analysis the municipality may establish that the applicant does not qualify for the abatement on financial grounds, and not just because of the nature of the property. Second, there also is an argument that the non-residential property in question might be viewed as an available "resource." Available resources are generally viewed as items/property which could be utilized by the applicant to generate funds needed to meet basic necessities (e.g., by selling or mortgaging).

**The Application:** To assist municipal officers in the analysis described above, applicants should be required to complete a poverty abatement application form. A good form will elicit all the basic information about the property in question and the applicant's financial situation for the year(s) in question. All such application forms must include a statement regarding the municipality's obligation to render a written decision within 30 days of receipt of the application (see the sample Poverty Abatement Application Form linked above).

**Period of Inquiry:** It is important to keep in mind that when performing a poverty abatement analysis for past taxes, the applicant's current financial situation is only partially at issue—the applicant's economic situation, both at the time of the application and during the tax years for which the abatement is being requested, is central to the analysis. Also, an applicant's current GA eligibility does not automatically render him or her eligible for a poverty tax abatement for a prior tax year.

## **VI. The Decision-Making Process**

Section 841(2) requires that "[h]earings and proceedings held pursuant to [§841(2)] shall be in executive session." Therefore, a board or council should make a motion at a public meeting "to enter into executive session to deliberate over an abatement pursuant to 36 M.R.S.A. § 841 (2)." The motion must be approved by a 3/5 vote and must be recorded. Any deliberation regarding the application should occur in executive session. The municipal officers may invite other municipal officials to attend, provided their attendance is necessary, i.e., they are involved in the case and will provide information. The applicant must be allowed to attend the executive session, to satisfy due process requirements. A notice (see sample linked above) informing of the hearing should be sent to the applicant/appellant. If the applicant is present, he or she should not interfere with the deliberations but should be allowed to present a summary of his or her application and respond to questions. The board or council cannot make a decision in executive session; the purpose of the executive session is for deliberation only.

After coming out of executive session, the board or council should make a motion such as "I move to grant an abatement of the amount of \$ \_\_\_\_\_ pursuant to Title 36 M.R.S.A. § 841(2)." It may be helpful to assign a case number to each application and refer to that case number when making a motion. The municipal officers' ultimate decision is a matter of public record, but since poverty abatements are confidential, the recipient's name is not included in the public record (as opposed to a record of abatement of an over-assessment, which is a public record).

Regardless of the outcome, the board must issue a written decision to grant the abatement, deny the abatement or partially grant the abatement within 30 days of application.

The municipal officers must include in their written notice the specific reason for the decision made. (See 36 M.R.S.A. § 841 (2)(G), 1 M.R.S.A. § 407(1)). As such, the written decision must include the specific "findings of fact" gleaned from the information in the application and from the applicant, and "conclusions of law" linking those facts to the standards for approval outlined in the statute. The practical purpose of such a record is to provide a clear statement of the facts presented and the reasoning behind the decision for appeal to Superior Court, should one be pursued. The written decision must include the specific reasons for the decision and must inform the applicant of his or her appeal rights and of the procedure

for requesting an appeal (see sample notice of decision linked above, as well as Chapter 2 of MMA's *Planning Board Manual* for a detailed discussion of findings and conclusions).

## VII. Appeal

Applicants whose abatement requests are refused may appeal the decision within 60 days to one of two bodies, depending on the municipality. 36 M.R.S.A. §§ 843.844:

- Board of Assessment Review, in municipalities that have created this board, or
- County Commissioners, in municipalities which have not adopted a Board of Assessment Review.

Decisions of either body may be appealed to the Maine Superior Court.

## VIII. Confidentiality

Section 841 requires that "all applications, information submitted in support of the application, files and communications relating to an application for abatement and the determination on the application for abatement shall be [kept] confidential." For more information on this subject refer to the Information Packet "General Assistance Confidentiality and Disclosure of Information" and also the General Assistance Manual.

## IX. Poverty Abatements & General Assistance

General Assistance is another option for individuals seeking assistance with property taxes, as long as certain conditions are met. According to MMA's model ordinance (for those municipalities that have adopted it) those conditions are:

- a) The property tax in question is for the applicant's place of residence;
- b) There is a tax lien on the property which is due to mature within 60 days of the date of application;
- c) As a matter of municipal policy or practice, or on the basis of information obtained from the applicant's mortgagee, if any, it is reasonably certain that a tax lien foreclosure will result in subsequent eviction from the residential property; and
- d) The applicant, with sufficient notice, applies for property tax relief through other programs, when available.

There are a few differences between the General Assistance and poverty abatement processes. First, General Assistance for property taxes is only available in the event of an imminent eviction, whereas the poverty abatement procedure is available as early as the date the taxes are committed. Second, GA expenditures by the municipality are reimbursed by the state, whereas the burden of the revenue loss for poverty abatements is placed on the taxpayers. Although these differences may provide incentive for the municipality to favor assistance with property taxes through GA rather than poverty abatement, it is essential that the municipality inform the individual seeking assistance of both options. It is then the applicant's choice whether to pursue one program over the other. Whichever process the applicant chooses, the application should be processed by the municipality in good faith – it is not reasonable for a municipality to deny a poverty abatement application because assistance through GA is an option.

## X. Other Tax Relief

Regardless of whether an applicant qualifies for a poverty abatement, municipal officials can provide residents with information regarding other types of property tax relief programs. There are several available programs that, either in lieu of the poverty abatement process or in tandem with it, may offer relief to a taxpayer. These other programs include:

- Homestead Exemption (depending upon income, a portion of the value of a homestead is exempt from taxation; application form must be filed with the municipal assessor)
- Exemptions for widows or children of wartime veterans (see 36 M.R.S.A. § 653)
- Exemptions for veterans (see 36 M.R.S.A. § 653)
- Exemptions for the legally blind (see 36 M.R.S.A. § 654)
- Maine Property Tax Fairness Credit (36 M.R.S.A. § 5219-II) that can be claimed on the Maine Individual Income Tax Form 1040ME. (See the discussion on Maine Revenue Services' website: <http://www.maine.gov/revenue/taxrelief/tnr.htm> .) For more information, contact Maine Revenue Services at 207-626-8475. This replaces the former "Circuit Breaker " tax relief program (36 M.R.S.A. § 6201 et seq).

Note: Given the existence of these tax relief programs, it is not unreasonable for a municipality to advise a poverty abatement applicant to apply for potential tax relief from any or all of the above resources prior to applying for prospective abatements. This instruction should be indicated in the written decision. However, it would be inappropriate to impose such a requirement on an individual who had not been given an earlier instruction and/or when time exigencies (i.e., application deadlines) make it impossible to obtain relief.

General Assistance Resources from MMA's Resource Center

## Poverty Abatements

(from *Maine Townsman*, February 1991)  
by Geoffrey Herman, MMA Paralegal

*Note: The following article is based in large part on an article written by Geoff Herman and published in the February, 1991 edition of the Maine Townsman. The text of the original article has been amended in this 2012 version to reflect an amendment to poverty abatement law enacted in 2005 and include guidance obtained from more recent court decisions with respect to the proper operation of the program. [June 2012]*

A tough economy, shrinking resources for municipalities from the state and federal governments, upward pressure on property taxes and tightened bank credit can push-up the delinquency rate on property tax payments and lead more people to make application to the municipal officers for poverty abatements.

The law governing the poverty abatement process (36 MRSA §841(2)) is short and to the point. The first sentence of that law contains the entire standard by which eligibility for a poverty abatement is determined. After that opening sentence, only seven points of application and administrative procedure follow.

To look at the law, the determination of an applicant's eligibility for a poverty abatement might appear to be quite a simple task, but it isn't. Because the brief poverty abatement statute offers the municipal officers very little in the way of guidance, municipal officials must turn for direction to pertinent court cases and a General Assistance financial analysis.

### Poverty Abatement Law

36 MRSA §841(2) permits the municipal officers on their own knowledge, and requires the municipal officers on written application, to

*"make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges."*

This "reasonable" evaluation represents the entire standard of eligibility as required by statute. The underlying purpose of the poverty abatement law is not expressed in the statute. It is stated, instead, in a Maine Supreme Court decision, *Macaro v. Town of Windham*, 468 A.2d 604 (Me.1983). The Law Court closed that decision with the observation that *"The obvious purpose of 36 MRSA §841(2) is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay."*

The procedural requirements of the law are as follows:

—All persons who have indicated an inability to pay all or part of their property taxes must be informed of their right to apply for a poverty abatement. The formal method of ensuring compliance with this requirement

is to include a statement declaring the taxpayer's right to apply for a poverty abatement on all 30-day notices served on delinquent taxpayers prior to filing tax liens. This does not mean that a tax lien must be filed before a poverty abatement can be considered. An applicant may apply for a poverty abatement whenever he or she owes taxes to the municipality, from the date the tax bill is received to 3 years from the date of that tax commitment. The 3-year limitation can be extended by the municipal officers.

—The municipality must prepare and make available poverty abatement application forms. These application forms must include a statement that the municipal officers will issue a written decision to the applicant within 30 days of the date of application.

—The municipal officers must ensure that individuals receive the assistance necessary to file an application. The requirement that municipal assistance be provided when preparing an application does not alter or lessen the applicant's burden of proof. The petitioners for a poverty abatement have the burden of proving that they are unable to contribute to the public charges. *Joyce v. Town of Lyman*, 565 A.2d 90 (Me. 1989).

—The entire hearing and deliberation process regarding a poverty abatement application must be conducted by the municipal officers in executive session, and all application documentation and decision paperwork must be treated as confidential. A full discussion of the confidential nature of the poverty abatement procedure is found below.

—A written decision on the poverty abatement request must be issued to the applicant within 30 days of the date of application. In the past, municipal officers sometimes “tabled” an abatement decision until the property was ripe for tax lien foreclosure. There is nothing in the poverty abatement law allowing any tabling action. For this reason, the municipal officers should recognize that their responsibility in the process is to carefully evaluate the information presented by the applicant and determine if the applicant has met both (1) his or her burden of proof, and (2) the eligibility standards in the law based on a “reasonable” evaluation. Quite clearly, a denial could be issued if the municipal officers were unable to determine eligibility because the applicant had failed to produce necessary documentation or the actual year for which the taxes were levied had not yet concluded.

The written decision must include the specific reason or reasons for the decision. The municipal decision must also explain the right of appeal, the route of appeal, and the appeal procedure. Specifically, the written decision must state that any appeal request must be made within 60 days from the date the municipal officers' decision was issued to the applicant. For municipalities with an established Board of Assessment Review (BAR), the BAR is the route of appeal. For the few municipalities still designated as primary assessing areas, the appeal route is to the State Board of Assessment Review. For all other municipalities, the appeal goes to the County Commissioners or the County's Board of Assessment Review if the county has established one.

## **Determining Eligibility**

The standard of eligibility in state law is the inability of the applicant "to contribute to the public charges." The two applicable causes of that "inability to contribute" are cited as "hardship or poverty." From a practical standpoint, the central standard of eligibility for a poverty abatement is simply poverty, and the demonstration of "hardship" is only helpful to the extent it throws light on the reasons behind the household's economic situation. Along the same lines, in the absence of illness or disability or any other obvious factor causing the applicant's impoverishment, the municipal officers may seek to ascertain not only if the applicant is impoverished but also why. Decisions handed down by Maine courts on this subject indicate that the analysis of "inability" can go beyond a simple financial analysis to include as well a review of all the circumstances surrounding or causing the poverty.

**Non-residential or second-home property.** Before the poverty abatement law was amended in 2005 there was room for confusion over whether the owners of non-residential property or a "summer camp" could be found eligible for a poverty abatement. The Legislature addressed that confusion in 2005 by amending the law to make it clear that only the taxes paid on a "primary residence" could be abated under this program.

**The period of inquiry.** The first step in the eligibility determination process is to ascertain the applicant's financial ability to pay his or her property tax. An initial question that presents itself here concerns the period of time for which an applicant's poverty should be evaluated. A Maine Supreme Court case from the early 1990s (*Gilmore v. City of Belfast*, 580 A.2d 698) provided guidance in this area.

The plaintiffs in this case applied for a poverty abatement for the three tax years from 1986 through 1988. The Belfast municipal officers granted the abatement for the 1988 tax year but denied the abatement for the two earlier tax years. The plaintiffs subsequently appealed the Belfast board's decision through the local Board of Assessment Review and into the courts. One of the plaintiffs' main arguments was that the City was bound to grant their abatement for the entire three-year period under review because they were clearly impoverished at the time of application.

The Maine Supreme Court rejected this argument with gratifying clarity, finding that the poverty abatement statutes "do not mandate that the determination of poverty must be made only on the basis of circumstances existent at the time of the hearings before the City Council or Board of Assessment Review. Rather, the City . . . may take account all of the facts and circumstances relevant to the taxpayer's alleged inability to pay."

It is fair to interpret this decision to mean that a poverty abatement applicant has the burden of proving an inability to contribute to the public charges both at the time of the application and during the tax years for which the abatement is being requested.

**The financial analysis.** The most simple eligibility test is to determine if the applicant's income during the tax year(s) in question falls above or below the federal poverty level. Despite the simplicity of such a test, the municipal officers should require a more detailed review of financial ability such as would result from a General Assistance (GA) analysis.

A GA analysis compares an applicant's income against that applicant/household's actual need, which may or may not include expenses generally assumed to be necessary. For example, Social Security benefits frequently place Social Security recipients just over the

federal poverty level, but when actual household or medical expenses are taken into account it may become clear the household is, in fact, impoverished.

The poverty abatement application, therefore, should include a GA application or something quite similar. One relevant distinction, however, is that eligibility for GA is determined by looking only at a 30-day *prospective* period of time. For that reason, the GA analysis prepared for a poverty abatement applicant should be *annualized*. The municipal officers should be able to ascertain the applicant's GA eligibility during the course of the tax year or years in question, rather than only the applicant's immediate and prospective financial situation.

There are at least two other advantages of using a GA application (or something similar) as the poverty abatement application. First, there are certain forms of federal public assistance (benefits issued through the Supplemental Nutrition Assistance Program, formerly known as “food stamps,” and the LIHEAP fuel assistance program) which should not be considered as income for the purposes of evaluating an applicant's eligibility for a poverty abatement, and the GA application already avoids their consideration. Also, a GA application gathers information regarding the applicant's household make-up, assets, employment history and debt burden which throws light on the reasons behind the applicant's financial situation.

As indicated above, it is possible (although perhaps not frequently so) for an impoverished applicant to be found able to contribute to the public charges. One reason for such a finding might be that the applicant unreasonably failed to make use of available resources or liquidate unnecessary assets. Another reason might be that despite the applicant's limited income on paper, he or she nonetheless managed to purchase goods or services of considerable value during the tax years in question which are clearly non-necessities. From a poverty abatement analysis, property taxes fall immediately behind all reasonably required expenditures for basic needs, as defined by the GA program. After the basic needs are covered, however, property taxes are the next highest priority.

### **The Application Process**

Although MMA has not prepared a model poverty abatement application form, we have several sample application forms that are currently being used by Maine municipalities which the municipal officers may want to review. Generally, the application should elicit basic information about the property in question (map and lot number, total number of acres, assessed value, etc.) and the necessary financial information for the tax year(s) under review. The application must also include a statement declaring the municipal officer's obligation to issue a written decision within 30 days of receipt of the application.

Because the municipal officers have only 30 days to act on the application, the board's deliberation on the request should be scheduled for a meeting well within that 30-day time period. Prior to the deliberation, the GA administrator or another municipal official assigned to the task should be reviewing the application to make sure it is complete and informing the applicant of any documentation the town will require to support the application.

**Confidentiality.** Unlike the administration of a GA application, which is an entirely non-public process, the deliberation on a poverty abatement request must be held in executive session, which is a behind-closed-door deliberation embedded within a regular public proceeding. Furthermore, poverty abatement law provides that *"all applications, information submitted in support of the application, files and communications relating to an application for (the poverty) abatement and the determination on the application for abatement shall be confidential."*

The conjunction of Maine's Right to Know law and the confidentiality provisions of poverty abatement law give the municipal officers only a narrow path upon which to proceed. The Right to Know law now requires the articulation of the specific authorizing statute within the motion to enter into executive session. Therefore, when it becomes time during a regular meeting of the selectboard or council to deliberate on a poverty abatement request, the municipal officers should entertain a motion "to enter into executive session to deliberate on an abatement request pursuant to 36 MRSA, Section 841(2)." An appropriate alternative motion would be "to enter into executive session pursuant to 1 MRSA, Section 405, sub-section 6(F)." This particular subsection 6(F) of the Right to Know statute governing permitted executive session allows behind-closed-door meetings for *"Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute."* Since complete anonymity is the key to all poverty abatement procedures, the content-neutral wording of this authorizing statute might be the preferred way to enter into this somewhat unique type of executive session.

Either way, the motion to enter into executive session may not mention the applicant's name or other information that might identify the applicant to the general public. The Right to Know law also provides that executive sessions must be used exclusively for deliberation, and that no formal action may be taken behind closed doors.

Therefore, the board's formal action on a poverty abatement request must be taken after returning to public session, but again the motion to act would be phrased in such a manner as to not identify the applicant. The wording of the motion should be something to the effect of "to (grant/deny/or partially grant) an abatement request made pursuant to 36 MRSA § 841(2) in the sum of \$\_\_\_ for tax year 20\_\_." Another option is to assign a case number to the application and refer to that case number in the motion and discussion.

36 MRSA §841(5) provides that nonpoverty abatements, such as abatements granted when the property in question was over-assessed, must be certified to the tax collector and a record of that abatement be kept in a special book for regular public inspection. This section of law expressly prohibits poverty abatement records from being kept in such a book. The tax collector would still be issued a fully informative certification of the poverty abatement, but that certification should be clearly identified as a confidential record which may not be released to the general public.

Finally, some towns list all abatements granted in the town report. If such a listing is to include poverty abatements, the poverty abatements should be recorded in such a way that the recipient of the abatement cannot be identified.

### **Poverty Abatements vs. General Assistance**

The General Assistance program is another option on the local level for people needing help with their property taxes. Partly because a GA analysis plays such an important role in the poverty abatement determination, there is some confusion as to how these two programs are coordinated. Another source of this confusion is the one-time claim by the Department of Health and Human Services (DHHS) that General Assistance could not be used to pay a property tax until the applicant had refused to apply for or been denied a poverty abatement.

After DHHS issued its "interpretive memo" in 1989 prohibiting GA payments for property taxes unless the poverty abatement process had been exhausted, there was a considerable back-and-forth between DHHS and MMA. The end result is the language in MMA's model General Assistance Ordinance and the DHHS Maine General Assistance *Policy Manual*, both of which allow General Assistance to be issued for property taxes under certain circumstances.

By MMA's model ordinance, those circumstances are that: (1) the property tax in question is for the applicant's place of residence; (2) there is a tax lien on the property which is due to mature within 60 days of the date of application; and (3) the applicant, with sufficient notice, applies for the Maine Resident Property Tax Program (the "Circuit Breaker" Program). Furthermore, the MMA model ordinance and the DHHS regulation require the municipality to inform anyone applying for GA for property tax purposes about the poverty abatement process.

Given the current state of pertinent DHHS and local regulation, it should be noted that one of the most significant differences between GA and the poverty abatement process is that GA is not available to directly pay a property tax unless a foreclosure shall occur within 60 days, whereas a person may apply for and be granted a poverty abatement whenever his or her taxes are owed.

Generally, the municipal officers have an interest in assisting people with their property taxes through the GA program rather than through the poverty abatement process. GA expenditures are reimbursed to some degree by the state, while abatements represent an entire revenue loss and a shifting of the tax burden to the rest of the taxpaying population. The municipal officers should not, however, allow this financial interest to interfere with the applicant's choice of assistance option.

The procedure which should be followed, therefore, is to inform all persons requesting property tax assistance of the two local programs: GA and the poverty abatement process. The differences between the two procedures should be explained. After the applicant has decided to apply for either GA or a poverty abatement, that application should be processed in good faith.

Finally, the potential availability of GA does not equate with an "ability to contribute to the public charges." Therefore, it would be inappropriate to deny a poverty abatement request for the reason that the GA program is an "available resource."

**Poverty abatements and "Circuitbreaker" benefits.** The Maine Residents Property Tax Program is a state-administered assistance program that provides cash rebates to qualified property owners and renters whose income is determined to be insufficient to pay the property taxes on their primary residences (or the presumptive property tax

component of their rent). Ever since the program's inception, it has been universally referred to as the "Circuitbreaker" program because a benefit is triggered as soon as a certain income-to-tax-obligation ratio is reached. *As currently designed, a person fully qualifying for Circuitbreaker benefits could receive a \$1,600 cash benefit from the state. In previous years, the maximum cash benefit was as much as \$2,000.*

Municipal officials typically harbor the reasonable belief that Circuitbreaker benefits should be used by the recipients for the program's intended purpose; namely, to pay property taxes. That belief was just recently codified in 2012 when the poverty abatement law was amended to allow, but not require, municipal officers to "*set off or otherwise treat as available benefits provided to an applicant under [the Circuitbreaker program] when determining if the applicant is able to contribute to the public charges.*" As a result, the municipal officers are explicitly authorized to count the value of the Circuitbreaker benefit as available to the applicant for the purpose of paying property taxes and deduct from the amount of the taxes to be abated the value of the Circuitbreaker benefits actually received. As noted, the law does not mandate such a set-off policy, so if the municipal officers believe the set-off approach should not be applied, they would be within their rights.

**Abating taxes on foreclosed property.** It is sometimes the case that poverty abatements are requested for property which has already gone through tax lien foreclosure. For example, a person applies for an abatement for the three tax years from 2008 through 2010, foreclosure has occurred on the 2008 lien, but the liens for the other two tax years have yet to mature.

In this case, the municipal officers could deny the abatement for the 2008 tax year with a finding that the foreclosure has discharged the lien and otherwise satisfied the applicant's tax obligation for that year. The property owner has a burden to apply for an abatement in a timely manner, and the municipal officers would not have the authority to reverse or annul the foreclosure through an after-the-fact abatement. (The municipal officers would still be obliged, however, to review the applicant's abatement request for the more recent tax years.) Along the same lines, the Maine Supreme Court indicated in a case in the late 1990s (*Mason vs. Town of Readfield*, 1998 ME 201) that "standing" (i.e., possessing a right, title or interest in the property at issue) is required in order to apply for and receive a poverty abatements. Once the municipality forecloses on property, the former owner no longer has standing, at least with respect to the tax year for which the foreclosure occurred.

## **Conclusion**

The various issues raised by this article represent but a few of the questions that are generated by this seemingly simple law. The poverty abatement application process is reasonably straightforward. Applications are processed and written decisions are issued within 30 days. The decision is made by the municipal officers rather than the assessor(s) and the deliberations are conducted in executive session. The entire process is confidential. The written decision must give the specific reasons for the decision and must also state the appropriate appeal route.

The actual decision-making process is less straightforward, but a fairly meticulous financial analysis of the applicant's ability to "contribute to the public charges" is usually determinative.

The extraordinary importance of the property tax as the municipality's fundamental revenue source, and the related importance that the property tax burden be fairly borne, place the municipal officers in a difficult position when reviewing a poverty abatement request. They become caught between the tragedy of the poverty itself and the strong disinclination to shift the tax burden onto others, many of whom are only slightly more (and sometimes less) able to "contribute to the public charges."

The reasonableness of the municipal officers is the ultimate standard against which poverty abatement requests must be weighed. While reasonableness is easy to talk about, it can be an annoyingly elusive concept when its application is required.