

## **Reg. § 1.3777 Subordination of Current Use Lien**

### **Reg. § 1.3777-1 Introduction**

Upon enrollment in Vermont's Use Value Appraisal Program, also known as the Current Use Program (the "Program"), a lien arises on the enrolled property to secure the payment of the Land Use Change Tax. 32 V.S.A. § 3757(f). This lien is superior to any subsequent encumbrances upon the land and serves to protect the State's interest in collecting the Land Use Change Tax that may subsequently be imposed on the property, pursuant to 32 V.S.A. § 3757. The Commissioner has discretion to subordinate the State's lien in favor of a lender's mortgage interest in circumstances in which the State's interest is protected. 32 V.S.A. § 3777. Subordination of the Current Use Lien relegates the State's priority claim on the property to a subordinate position. Therefore, as the administering agency of the Current Use Program, the Department of Taxes (the "Department") reviews subordination requests to ensure protection of the State's lien and compliance with Program standards.

### **Reg. § 1.3777-2 Application for Subordination of Current Use Lien and Application**

#### **Review**

To request subordination of the State's lien, a completed Application for Subordination of Current Use Lien (Form CU-306), together with a nonrefundable statutory fee of \$179, must be submitted to the Department by the landowner, buyer or lender (Applicant). To subordinate its lien, the State will also require copies of the following documents:

(1) A title opinion issued by a licensed attorney or commitment for title insurance issued by a company licensed to issue title insurance in the State of Vermont with an effective date no more than thirty (30) days prior to the date of the application for the subordination, which describes the property for which the subordination is requested and all encumbrances and claims against that property. Following review of the title report or title commitment by the Department, the Department may require that the applicant provide copies of one or more of the documents identified in the title report or commitment letter;

(2) A copy of a commitment letter or other evidence of the proposed term and provisions of the loan to which the current use lien will be subordinated. In the event of a material change

in the terms of the proposed loan during review of the subordination request, the applicant shall submit the revised commitment letter or revised term or provisions of the loan to the Department.

(3) Such other documentation as the Department deems necessary to protect its interest in collecting the land use change tax.

**Reg. § 1.3777-3 Inspection of Relevant Materials**

(A) The Department will review completed applications to assess whether:

(1) There is sufficient equity to satisfy all existing mortgages and liens superior to the State's lien, the proposed mortgage, and the potential land use change tax. A subordination request for which the value of all mortgages, liens, and the land use change tax constitute no more than 90 percent of the fair market value of the property shall be generally considered to have sufficient equity.

(2) Whether the parcel presently complies with the eligibility requirements of the program as set forth in statute and regulation.

(B) In the course of its review the Department may:

(1) Review the relevant parcel file in order to establish whether any changes have been made to the parcel since enrollment, including, by way of example:

(a) Changes in the owner(s) of record;

(b) Subdivision or sale of the parcel to a different owner;

(c) Development of the parcel as defined in 32 V.S.A. § 3752(5);

(2) Determine whether Program standards are being met. Such determination may be made through review of relevant documents, including parcel maps. The Department may review the relevant parcel maps to determine, by way of example, whether:

(a) Parcel maps on file meet Program mapping standards;

(b) Parcel maps are accurate regarding excluded land location, enrolled land location, land uses, house sites, and other geographical information;

- (3) Consult with county and consulting foresters regarding relevant parcels;
  - (4) Request and review legal documents, such as a title report, in order to ascertain property ownership and the existence of other liens and encumbrances upon the property;
  - (5) Request and review bank documents, such as property appraisals, in order to calculate residual equity in the parcel;
  - (6) Require the applicant to submit new or revised documents as a condition of subordination in order to ensure compliance with Program requirements and standards.
- (C) Unless all requested documents and information are provided to the State, its lien will not be subordinated. If a requested document or information is not provided to the Department within 45 days of the Department's request, the application will be denied.

**Reg. § 1.3777-4 Denial of Subordination Requests**

Subordination requests may be denied when:

- (1) The applicant has not provided all required documents or information to the Department;
- (2) There is insufficient equity in the parcel to satisfy the proposed mortgage, all current liens and mortgages superior to the State's lien, and the potential land use change tax; or back taxes are owed on the enrolled property to be subordinated;
- (3) The subordination request is not an active condition of the loan, as evidenced, for example, by receipt of a subordination request for a mortgage that closed before the completed Application for Subordination of Current Use Lien and required documents were submitted.

**Reg. § 1.3777-5 Recording a Subordination Request**

The applicant bears the responsibility and the cost of filing any approved subordination agreement for recording in the appropriate town land records.