CHAPTER 6

Municipal and Miscellaneous Liens

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Scope Note

This chapter addresses liens relating to municipal taxes and services, as well as a number of other liens related to obligations owed on the state or federal level. Among the topics discussed are real estate taxes; water, sewer, light, and gas charges; assessments for local improvement projects; and taxes on agricultural and other specially classified land. A number of other obligations giving rise to liens on real property are reviewed as well, such as child support, medical assistance, and condominium and time-share assessments.

§ 6.1 MUNICIPAL LIENS

§ 6.1.1 Real Estate Taxes

General Laws Chapter 60, § 37 creates a lien for real estate taxes assessed to property owners by the city or town in which the property is located. The lien applies as of January 1 in the year of assessment. G.L. c. 60, § 37.

(a) *Ownership of the Property*

While the term "owner" is generally held to mean the owner of record as listed in the registry of deeds where the land lies, there is a procedure under G.L. c. 59, § 11 that allows the commissioner of revenue to authorize the assessment of taxes to the party in possession of the property. If the owner is deceased, it is permissible for the city or town to assess the property to the owner's heirs or devisees without identifying them by name, until they are listed in the probate records. G.L. c. 59, § 12D. In an instance where the titleholder is doubtful or where there is litigation ongoing to determine these individuals, the assessment may be made in the name of the estate of the deceased owner. G.L. c. 59, § 12E. If the true owner cannot be determined after a reasonably diligent search, the commissioner may authorize the assessment to be made against persons unknown. G.L. c. 59, § 11.

Until a mortgagee takes possession of property, the mortgagor is deemed to be the owner. G.L. c. 59, § 11. However, a mortgagee that takes possession prior to foreclosure or acquires title to the mortgaged premises must notify the local assessor's or tax collector's office within thirty days of the event. G.L. c. 244, § 15A.

Practice Note

Under Section 11, taxes may be assessed on the so-called common land of cluster developments or planned unit developments, including cluster development common land held under a conservation restriction pursuant to G.L. c. 184, § 31, where the owners of individual lots or residential units hold a beneficial interest. The taxes may be included as an additional assessment to each individual lot owner in the cluster. In these situations, practitioners should make sure that the certificate of municipal liens for the property includes taxes for such assessments. See § 6.1.1(d), below.

(b) *Timing and Duration of Liens*

The statute permits municipalities to issue estimated tax bills if the tax rate has not been set. G.L. c. 59, § 23D. Buildings and other structures erected on the land between January 2 and June 30 of the fiscal year preceding that to which the tax relates may now become part of the real estate to be assessed. G.L. c. 59, § 2A.

Real estate taxes become a lien on property beginning on January 1 of the year in which they are assessed. This lien continues for a period of three years and six months from the end of the year of assessment if the property has a transfer of ownership and an instrument stating such has been recorded. G.L. c. 60, § 37. If no instrument of alienation is recorded, the lien continues until a change in ownership is recorded. G.L. c. 60, § 37. If, while such a lien is in effect, a tax sale or taking has been made and duly recorded within sixty days at the registry of deeds but the sale or taking is invalid for procedural reasons, the lien continues for ninety days after a release, discharge, or court judgment has been recorded or rendered. G.L. c. 60, § 37.

(c) *Lien Priorities*

Generally, liens for unpaid real estate taxes and assessments and water and sewer charges take precedence over mortgages and other recorded liens because they attach to the real estate as a whole. Therefore, they may be enforced by a sale for taxes, wiping out all existing encumbrances except easements, restrictions, covenants, and agreements running with the land. *See* G.L. c. 60, § 37 et seq. (especially G.L. c. 60, § 45); *Dexter v. Aronson*, 282 Mass. 124 (1933). However, a lien that arises pursuant to a property tax deferral and recovery agreement will be subordinate to a reverse mortgage loan (unless it is a shared appreciation instrument). *See* G.L. c. 59, § 5, cls. 18A(6), 41A(5).

(d) *Certificates*

A certificate of municipal liens may be obtained from the collector of taxes, setting forth all taxes and other assessments, including water and sewer charges, due for the property. The certificate should also identify municipal lighting charges. G.L. c. 60, § 23. It is wise to read the certificate carefully, both to determine that all necessary charges have been disclosed

and that all the property for which the certificate has been requested is included. See also § 6.1.3, below, for specific municipal light certificates.

Practice Note

If the property consists of more than one parcel as listed on the assessor's records, an additional certificate may be necessary. Comparing the square footage on the certificate with that identified on deeds or plans of record is often helpful in identifying discrepancies. Review assessors' maps and record plans carefully to ascertain whether parcels or lots cross municipal boundaries.

Practice Note

The City of Boston also issues separate water and sewer certificates, so practitioners should not rely on the certificate of municipal liens.

Contiguous parcels owned by the same party may be assessed separately or as a whole, but the interests of joint tenants or tenants in common may not be separately assessed.

A municipal lien certificate issued on or after October 12, 1987, and recorded within 150 days thereafter will discharge the property from any liens not mentioned on the certificate, except the charges with respect to the filing of a statement or order continuing the lien or where there is recorded evidence of a taking or sale. G.L. c. 60, § 23. Recording the certificate does not affect the personal liability of the owner of the assessed property—it operates simply to remove the lien from the property.

Practice Note

Because of the duration of the lien, it is important to determine whether the property may have been taken or sold for taxes assessed to a prior owner. The practice for anyone examining the title is to run the owner in the grantor index for the five-year period following a conveyance of the property by the owner.

Practice Note

The second paragraph of G.L. c. 60, § 23, which became effective March 15, 2003, provides as follows:

> No register of deeds or assistant recorder of the land court shall accept for recording or registration . . . a definitive subdivision plan unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the plan have been paid in full. Failure to comply with this section shall not affect the validity of the subdivision plan, the recording of the plan, or any deed of any part or all of the land shown on the plan.

(e) *Reassessments*

In the event that a parcel of real estate has been omitted from assessment, G.L. c. 59, § 75 provides that such land may be assessed no later than June 20 of the tax year or ninety days after the date on which the tax bills are mailed, whichever is later. Reassessments may be made for property that has been valued or classified incorrectly. G.L. c. 59, § 76. Such reassessments may result in a lien for the same period as for the original tax. G.L. c. 59, § 77. When an assessment is determined incorrectly and the amount is too high, the tax is valid up to the amount actually due, and the lien will arise on that amount. G.L. c. 59, § 82.

(f) *Enforcement*

Fourteen days after the tax collector has made the demand for the taxes, the taxes may be levied by sale of the property if the lien has not terminated. The procedure for tax takings, sales, and titles is very precise and is set forth in G.L. c. 60, §§ 35–81B.

To collect real estate taxes in Massachusetts from a titleholder, a municipality may levy by distress or seizure of the owner's goods, arrest and commit the owner to jail until payment, assert a lien on the real estate and satisfy its claim out of the proceeds of a sale, or bring an action in law or equity to enforce collection. *City of Boston v. DuWors*, 17 Mass. App. Dec. 120 (1961).

Where specific federal or state laws prevent a taking or sale, a statement to preserve the tax lien may be recorded by the municipality. G.L. c. 60, §§ 37, 37A.

While an eminent domain proceeding (if properly followed) will result in a title that is free and clear of all liens, a claim of the collector of taxes for taxes and assessments due on the property will be paid prior to any award of damages to any other party. G.L. c. 79, §§ 3, 44A; *see Decota v. Stoughton*, 23 Mass. App. Ct. 618 (1987). In the instance of a temporary regulatory taking, the party whose property was taken is entitled to reimbursement for real estate taxes paid during the period of the taking. *See Lopes v. City of Peabody*, 430 Mass. 305, 313 (1999).

§ 6.1.2 Water and Sewer Charges

Provision is made for water liens in G.L. c. 40, §§ 42A–42D. Under these sections, unpaid water bills are added to real estate bills. However, the water lien itself is not a tax. *City of Worcester v. Hoffman*, 345 Mass. 647, 648 (1963). It is a device to facilitate collection of a public charge. *Epstein v. Exec. Sec'y of the Bd. of Selectmen of Sharon*, 22 Mass. App. Ct. 135, 137 (1986). Like water charges, unpaid sewer charges give rise to a lien and, if they remain unpaid, become committed to the real estate tax bill. G.L. c. 83, §§ 16A–16D. Also in common with water liens, a sewer charge is not a tax. See the brief but informative opinion by Judge Warner in *Town of Winthrop v. Winthrop Housing Authority*, 27 Mass. App. Ct. 645 (1989), which sets forth a three-part test (previously established by the Supreme Judicial Court in another context) to distinguish a fee from a tax. A fee, according to the court, has the following characteristics:

- the charge benefits only the payers, in this case those to whom the sewer is connected;
- the charge is paid by choice, meaning that it is imposed only on those choosing to use the sewer; and
- the charges are based on water consumption, so they are intended to compensate the municipality for the costs incurred in operation and maintenance of the system, rather than to raise revenues.

Town of Winthrop v. Winthrop Hous. Auth., 27 Mass. App. Ct. at 646–48.

The lien takes effect on the day immediately following the due date of the charge and continues until it has been added to or committed as a tax pursuant to G.L. c. 60, § 37, unless dissolved by payment or abatement. If it does not become a tax, the lien will terminate on October 1 of the third year following the year in which the charge became due. G.L. c. 83, § 16B. Notwithstanding the lien, the charge may be collected through any legal means, including shutting off water service or a sewer connection, although in practice this sort of action is taken only as a last resort. After the termination of such a lien, however, no city, town, or sewer district may attempt to enforce collection from any person not liable for these charges, such as a successor in title. G.L. c. 83, § 16B.

A notice by mortgagees taking possession of or conveying property, similar to that given to tax collectors, is also required to be given to water or sewer providers under G.L. c. 244, § 15A.

Water and sewer liens have priority over earlier recorded mortgage liens. This matter of priority is fully discussed in *Mechanics Savings Bank v. Kennedy*, 299 Mass. 404 (1938). The court, in finding that the water lien was superior to an earlier existing mortgage on the real estate, concluded that this result was fully constitutional: "The mortgagee is deprived of no priority that he ever had, for inferiority to a possible water lien was inherent in his position from the beginning." *Mechs. Sav. Bank v. Kennedy*, 299 Mass. at 409 (citation omitted); *see also United States v. Rahar's Inn, Inc.*, 243 F. Supp. 459, 461 (D. Mass. 1965) ("Under Massachusetts law the city's claim for property taxes and water and sewer charges have priority over the bank's claim under its mortgage.") (citations omitted).

If a municipality or sewer district has accepted G.L. c. 83, §§ 16A–16F, filed a certificate of such acceptance in the proper registry of deeds, and filed a copy of the certificate with the collector of taxes of the city or town where the lien is to take effect (in the community where the subject property is located), the unpaid sewer charge can be liened to a parcel in a neighboring community. Mass. Dep't of Revenue Bureau of Mun. Fin. Law Informational Guideline Release (IGR) No. 21-13 (May 2021) [hereinafter IGR].

§ 6.1.3 Municipal Light and Gas Charges

General Laws Chapter 164, §§ 58B through 58F provide that municipal lighting plants (but not investor-owned utilities) have an automatic lien on real estate for nonpayment for gas, electric, or steam service or materials and appliances, plus interest and costs. A certificate of acceptance must be filed and recorded in the proper registry of deeds. The lien takes effect immediately following the due date of the charge and continues until the charge becomes a tax, unless dissolved by abatement or payment. If the property is tax-exempt, the charges are committed as a tax. In the case of a recorded alienation of the property, the lien will expire two years from October 1 of the year recorded. The lien is discharged on the recording of a municipal lien certificate within the proper time that does not show the unpaid charges. No separate

discharge or statement of dissolution is required. G.L. c. 164, § 58C. The lien may be collected by any legal means, including shutting off the service. G.L. c. 164, § 58C.

The forty towns in Massachusetts with municipal lighting plants are Ashburnham, Belmont, Boylston, Braintree, Chester, Chicopee, Concord, Danvers, Georgetown, Groton, Groveland, Hingham, Holden, Holyoke, Hudson, Hull, Ipswich, Littleton, Mansfield, Marblehead, Merrimac, Middleboro, Middleton, North Attleborough, Norwood, Paxton, Peabody, Princeton, Reading, Rowley, Russell, Shrewsbury, South Hadley, Sterling, Taunton, Templeton, Wakefield, Wellesley, West Boylston, and Westfield. Some of these towns also serve other communities, so it is advisable to confirm when a separate statement from a municipality is required.

§ 6.1.4 Betterments

A betterment or special assessment is a special property tax that is permitted by general or special law where real property within a limited and determinable area receives a special benefit or advantage, other than the general advantage to the community, from the construction of a public improvement. *See Berriault v. Wareham Fire Dist.*, 360 Mass. 160, 168 (1971); *Op. of the Justices*, 261 Mass. 556, 608 (1927); IGR No. 2021-1 § I(A) (Feb. 2021). Under G.L. c. 80, when a city or town makes improvements, known as "betterments," that benefit a particular part of the locality, a municipal lien on real property will arise from an assessment for such improvements. The lien becomes effective when an order stating that a betterment will be assessed is recorded in the registry of deeds. G.L. c. 80, § 12. The order must contain a description sufficiently accurate for identification of the area that will receive the benefit, a plan of the area, and an estimate of the amount that will be assessed to each parcel of real estate. G.L. c. 80, § 2. This plan and estimate must be recorded in the registry of deeds for the benefited area within ninety days from the adoption of the order or acceptance by the town. G.L. c. 80, § 2.

Generally, the lien remains in effect for two years from October 1 of the year in which the assessment (or the last installment of an apportioned amount) is placed on the annual real estate tax bill if, during that time, there is a recorded transfer of the property, unless there has been a tax sale or taking or the statement under G.L. c. 60, § 37 has been recorded. *See* G.L. c. 80, § 12. Otherwise, the lien continues until a record transfer or alienation is made. The betterment lien may be dissolved by the recording of a certificate by the collector of taxes in the proper registry of deeds indicating that the assessment has been paid. If the validity of the assessment is challenged in a legal proceeding, the lien continues for one year after a judgment. *See* G.L. c. 60, § 37A; G.L. c. 80, § 12. Assessments for snow removal from sidewalks by a municipality are treated as betterments and are subject to the collection provisions of G.L. c. 80. *See* G.L. c. 85, § 6.

As to betterment assessments created by special act,

> any lien for sewer, drain or sidewalk assessments or for betterment assessments of any other nature created pursuant to the provisions of any special act shall continue in effect until the land subject to the lien has been alienated and the instrument alienating the same has been recorded and for such longer period as any special act may provide.

G.L. c. 83, § 29.

Betterments will sometimes affect only certain units in a condominium, for example, where a septic system benefiting only these units is repaired or replaced by a city or town. The lien will arise as to these units in proportion to their relative percentage interests in the common areas and facilities. *See* G.L. c. 111, § 127B½.

§ 6.1.5 General Municipal Charges Liens

Since 1987, cities and towns have had the authority to impose liens on real property for any local charge or fee not paid by its due date. This "municipal charges lien," as it is characterized in the statute, arises pursuant to a vote at a town meeting or by a city or town council. A separate vote is required for each type of charge. G.L. c. 40, § 58. The lien takes effect upon the recording of a list in the registry of deeds setting out the unpaid fees and charges by parcel of land and by the name of the person assessed. If the charge or fee remains unpaid when the assessors are next preparing the real estate tax list, such fees and charges will be added to the property tax. For tax-exempt property, such a charge or fee will become the tax. G.L. c. 40, § 58.

Liens under this section may be discharged by the recording of a certificate from the tax collector stating that all charges and interest have been paid or legally abated. G.L. c. 40, § 58.

§ 6.1.6 Deferral of Payment of Liens

Certain individuals age sixty-five and older may defer payment of real estate taxes and water charges that arise under G.L. c. 59, § 57. *See* G.L. c. 40, § 42J; G.L. c. 59, § 5, cl. 41A. Individuals experiencing a financial hardship as the result of a change to active military service may also be eligible for a similar deferral. *See* G.L. c. 59, § 5, cl. 18A. A deferral and recovery agreement between the city or town and the property owner, as set forth in G.L. c. 59, § 5, cl. 18A or 41A, is executed and recorded. Separate agreements may be executed for real estate taxes and water charges. The total amount of taxes due, plus interest, cannot exceed 50 percent of the owner's proportionate share of the full and fair cash value of the property. The amount of deferred water charges is not included in this calculation. *See* G.L. c. 40, § 42J.

A statement by the board of assessors, naming the owners and containing an adequate description of the property, when recorded, constitutes a lien for these taxes and interest. G.L. c. 59, § 5, cl. 41A. Unless such a statement is recorded, the lien will not be effective as against a bona fide purchaser for value or other transferee without actual notice of the agreement.

Practice Note

It is a sensible precaution to confirm with the tax collector that the amounts shown on a certificate of municipal liens include, as required by the statute, all amounts due under a deferral and recovery agreement.

Under G.L. c. 80, § 13B, similar agreements may be executed regarding betterment assessments. A lien under such a deferral and recovery agreement is created in the same manner as for deferred real estate taxes.

§ 6.2 OTHER LIENS RELATING TO BUILDINGS OR IMPROVEMENTS AND ACTIONS TAKEN FOR THE PUBLIC WELFARE

§ 6.2.1 Removal or Repair of Dangerous Structures

Liens to secure the repayment of costs incurred in connection with the removal or repair of unsafe or vacant properties can arise under several public health and safety statutes.

(a) *Liens Pursuant to G.L. c. 139, § 3A*

General Laws Chapter 139, § 3A relates to the demolition or removal of buildings or structures, or the securing of vacant land. Under this section, if the owner or their authorized agent fails to comply with an order to abate or remove a nuisance, the costs incurred by the city or town in dealing with the land or property are recoverable from the owner. This debt, together with interest, constitutes a lien on the land on which the structure is or was located if a statement of claim is filed within ninety days after the debt becomes due with the appropriate registry of deeds. G.L. c. 139, § 3A. The statement must indicate the amount claimed for the work, without interest, and must be signed by the official or board that ordered the work. *See* IGR No. 21-14 § II, at 2 (May 2021). Until such debt has been added to or committed as a tax pursuant to this section, unless dissolved by payment or abatement, the debt will continue as provided in G.L. c. 60, § 37. However, if any such debt is not added to or committed as a tax pursuant to G.L. c. 139, § 3A for the next fiscal year commencing after the filing of the statement, the lien will terminate on October 1 of the third year. G.L. c. 139, § 3A. If the debt secured by the lien remains unpaid when the assessors are preparing the next real estate tax list, it is certified to the assessors, who then add it to the tax on the property. If the property to which the debt relates is tax exempt, the debt becomes the tax. A lien under this section may be discharged by recording with the registry of deeds or filing with the registry district of the Land Court a certificate from the collector that the debt constituting the lien, together with any interest and costs due, has been paid or legally abated. G.L. c. 139, § 3A.

(b) *Liens Pursuant to G.L. c. 143, § 9*

General Laws Chapter 143, § 9 provides for a lien for the costs and charges incurred by a city or town to remove or secure any structure found to be "dangerous or . . . unused, uninhabited or abandoned, and open to the weather." The provisions of G.L. c. 139, § 3A, which are outlined above, apply to the lien arising under this statute, except that the local building inspector acts in the place of the mayor or board of selectmen (for example, in signing the required statement of claim). G.L. c. 143, § 9.

(c) *Liens Pursuant to G.L. c. 148, § 5*

General Laws Chapter 148, § 5 involves the removal or remedy of fire hazards. Following the owner's failure to comply with an order requiring the remedy of unsafe conditions, the expenses incurred by or on behalf of the Commonwealth or any city or town in addressing the hazard constitute a debt due to the Commonwealth or the city or town, upon completion of the remedy and the rendering of an account to the owner. The provisions of G.L. c. 139, § 3A relating to liens and collection, as described above, also apply to any debt under G.L. c. 148, § 5, except that the marshal or the head of the fire department acts in place of the mayor or board of selectmen. G.L. c. 148, § 5.

(d) *Liens Pursuant to Public Health Statutes*

Under G.L. c. 111, § 125, if the owner or occupant of property fails to comply with an order to remove what the board of health or, in the cities of Boston, Worcester, and Cambridge, the commissioner of housing inspection, deems to be a "nuisance, source of filth or cause of sickness," G.L. c. 111, § 123, the expenses incurred in their removal constitute a debt due to the city or town. General Laws Chapter 111, § 127B provides that where the board of health or the commissioner of housing inspection, after examination, determines that

> a building, tenement, room, cellar, mobile dwelling place or any other structure (a) is unfit for human habitation, (b) is or may become a nuisance, or (c) is or may be a cause of sickness or home accident to the occupants or to the public, it may issue a written order to the owner or occupant or any of them thereof, requiring the owner or occupant to vacate, to put the premises in a clean condition, or to comply with the regulations set forth in [the] code . . . or to comply with the rules and regulations adopted by the board of health as being necessary for the particular locality.

If the owner or occupant refuses to comply with the order, the board of health may take a number of different actions, including having the premises cleaned at the expense of the owner or occupant, removing the occupant forcibly, or issuing a written notice to the owner requiring that the conditions be remedied. As in the case of the public safety statutes referenced above, the expenses incurred by the board under Sections 125 and 127B constitute a debt due to the city or town, and the provisions of G.L. c. 139, § 3A relative to liens and collection apply to this debt, except that the board of health, or, in the cities of Boston, Worcester, and Cambridge, the commissioner of housing inspection, acts in place of the mayor or board of selectmen.

Note also that the health commissioner of Boston has separate authority to act under 1941 Mass. Acts c. 446, and the building commissioner of Boston can establish a lien for work done on unsafe buildings pursuant to 1941 Mass. Acts c. 445. This is commonly seen on record as a "boarding lien."

In recent years, and particularly with the rise in mortgage foreclosures, abandoned property has become a significant problem for many cities and towns in the Commonwealth. Consequently, there has been an increase in the appointment of receivers, pursuant to G.L. c. 111, § 127I (the state's sanitary code), who have the authority, once duly appointed, to take control of properties and make the repairs necessary to bring the properties into compliance with the code. The expenses for this are secured by a lien on the real estate. *See* G.L. c. 111, § 127J. The receiver may also obtain authority to sell the property to satisfy the lien pursuant to G.L. c. 255, § 26 and otherwise pursuant to the courts' equitable powers.

The Office of the Attorney General's Neighborhood Renewal Division has been involved in the receivership process through the Abandoned Housing Initiative. Further information is available online at https://www.mass.gov/attorney-generals-neighborhood-renewal-division.

§ 6.2.2 Liens for Various Public Improvements

Liens can also be established for the costs of laying water pipes, G.L. c. 40, § 42I; for the construction of sewers, drains, or sidewalks, G.L. c. 83, § 27; for the sprinkling of public ways, G.L. c. 40, § 17; for the widening or altering of public ways for street railway tracks, G.L. c. 161, §§ 78, 79; for the improvement of low land, G.L. c. 252, § 11; and for damage caused by the operation by another of a mill dam, G.L. c. 253, § 14. All such liens arise upon the recording of a statement or other documentation as required by the particular statute, although the amounts of the assessments for street railway charges are more limited. Liens under all these sections are treated the same way as liens arising under G.L. c. 80, except for liens arising under G.L. c. 253, § 4, which allows for enforcement by Superior Court civil action and a subsequent sheriff's sale.

§ 6.3 COTENANT'S LIEN FOR REAL ESTATE TAXES PAID

General Laws Chapter 60, § 85 grants a lien to a joint tenant or tenant in common who has paid the property's full assessed tax on the interest of each of the fellow cotenants. The lien secures repayment of the fellow tenants' proportionate shares of the tax and the costs of claiming the lien. Perfecting this lien requires that a certificate setting forth specified information (including an identification of the property and cotenants as well as the amount of tax paid and due) be filed at the registry of deeds within thirty days after payment of the tax. G.L. c. 60, § 86. A complaint to enforce the lien must be brought in equity within sixty days after recording the certificate. G.L. c. 60, § 86. The lien is enforced in the manner prescribed by G.L. c. 254. A perfected lien has priority over all liens and encumbrances arising after the filing date of the certificate.

§ 6.4 CHILD SUPPORT LIENS

General Laws Chapter 119A sets out the procedure for creating and enforcing liens for child support. The Department of Social Services (identified in the statute as the "IV-D Agency") is required to file a notice of lien with respect to real property in the registry of deeds for any county in the Commonwealth where the party with the support obligation owns property. Notice may be filed in any other registry of deeds as well. Although the statute requires that the Social Security number of the obligor must be noted on the notice of lien, G.L. c. 119A, § 6(b)(3), various recent statutes and regulations override this provision. It does not appear that eliminating the Social Security number invalidates the lien. The filing operates to perfect a lien when duly recorded and indexed in the grantor index. The statute also requires the registry to maintain a special index for liens created under this chapter.

The statute also contains a provision making the lien effective for after-acquired property. If the obligor subsequently acquires an interest in real property, the lien is perfected by recording the instrument for this acquisition in the registry of deeds where the notice of the lien was filed within ten years prior. Under the statute, the perfected lien is not subordinate to any recorded lien except a lien that was perfected earlier, although the IV-D agency may, upon request of the obligor, subordinate the child support lien to a subsequently perfected mortgage. To assist in the collection of a debt, the IV-D agency may disclose the name of an obligor against whom a lien has arisen and other identifying information, including the existence of the lien and the amount of the outstanding obligation. G.L. c. 119A, § 6(b)(3).

If it is determined that the collection of unpaid child support will be jeopardized by delay, the IV-D agency can proceed to collect the unpaid child support by perfecting a lien as described above, by executing a levy or seizure of property under G.L. c. 119A, § 6(b)(6), or by any other available remedy without respect to the thirty-day notice period otherwise required under G.L. c. 119A, § 6(b)(2). *See* G.L. c. 119A, § 4.

A child support lien expires upon either termination of a current child support obligation and payment in full of unpaid child support or upon release of the lien by the IV-D agency. In any event, a child support lien expires ten years from the date on which the lien was first perfected, and may be extended for additional periods of ten years each by recording or registering, within one year before expiration of the lien, a further notice of the lien, as provided in G.L. c. 119A, § 6(b)(3), without affecting the priority of the lien. Expiration of the lien will not terminate the underlying order or judgment of child support. Prior to December 8, 2005, child support liens expired after six years from recording unless brought forward for additional six-year periods. However, two significant changes occurred. By virtue of Chapter 163, §§ 39–45 of the Acts of 2005 and Chapter 64, § 4 of the Acts of 2006, effective as of December 8, 2005, child support liens are effective for ten years from recording and may be brought forward for successive ten-year periods by recording notices of extension within the ten-year period. Such liens also affect after-acquired property of the obligor. Moreover, under the 2005–2006 legislation, any lien that was already of record but not yet expired at the time the act went into effect was automatically extended to the ten-year period.

The IV-D agency may issue a full or partial waiver of any lien imposed under this section. G.L. c. 119A, § 6(b)(5). A waiver or release is conclusive evidence that the lien upon the property covered by the waiver or release is extinguished. Recording the waiver will clear the record title of the lien. G.L. c. 119A, § 6(b)(5).

General discussions of application of the statute can be found in *Gray v. Commissioner of Revenue*, 422 Mass. 666 (1996) and *Laubinger v. Department of Revenue*, 41 Mass. App. Ct. 598 (1996).

§ 6.5 MASSACHUSETTS OLD AGE ASSISTANCE LIEN AND VETERAN'S LIEN

By Chapter 885, § 28 of the Statutes of 1969, approved August 29, 1969, all old age assistance liens that were previously provided for under G.L. c. 118A, § 4 were abolished. Any liens for which enforcement proceedings had been initiated were not affected, but a memorandum of suit must have been recorded pursuant to G.L. c. 184, § 15 in order to provide notice to third parties. While the Old Age Assistance Lien is now primarily of historical interest, there is still applicable a lien concerning property belonging to certain parents of veterans. General Laws Chapter 115, § 5A provides for a lien on the property of dependent parents of veterans, covering veterans' benefits received by such persons. The lien may be recorded by the veterans' agent where the real property is valued over $1,500. A signed and acknowledged instrument by the agent granting such benefits and giving notice of the lien is required to be recorded in the appropriate registry. Upon recording, a lien is created on the fair market value in excess of the parents' $1,500 interest that has priority over any deed, mortgage, lien, or other encumbrance.

Effective October 18, 1979, liens against property owned by persons receiving veterans' benefits dissolve twenty years after the date the lien is recorded. *See* G.L. c. 115, § 5A (amended by 1979 Mass. Acts c. 403); *Veterans' Agent of Greenfield v. Choiniere*, 13 Mass. App. Ct. 912, 912 (1982) (rescript). Liens that are satisfied or ordered discharged are dissolved by a certificate signed by the veterans' agent for the city or town and recorded at the appropriate registry.

After the deaths of both the mother and the father, the lien is enforceable in the Superior Court for the county where the land lies by a petition in equity brought by the veterans' agent against all persons appearing of record to be interested in the property, whether as equity owners, mortgagees, lienors, attaching creditors, or otherwise. Any conveyance of real estate by a mother or father within two years before an application for veterans' benefits unless for fair market value is deemed to be an avoidance of the provisions of the statute and renders the mother or father ineligible to receive such benefits. It is not very common to see these liens.

The statute does not apply to any dependent mother or father of a person who, while in the armed forces of the United States during wartime, was killed in action or died from a service-connected disability incurred in wartime service.

§ 6.6 TRANSITIONAL ASSISTANCE AND MEDICAL ASSISTANCE LIENS

If any individual owning property wrongfully or fraudulently receives transitional assistance (welfare benefits), the amount of these benefits, plus interest, becomes a lien when the amount is acknowledged by the recipient or when a court orders repayment. *See* G.L. c. 18, § 29. The lien is effective against third parties without actual knowledge of the lien when a notice of lien is recorded at the registry where the land lies. It continues for six years, unless renewed or sooner released of record. No particular provisions are identified in the statute for the term or manner of any renewal. The release may be obtained from the Bureau of Special Investigations of the Department of Public Safety, which also has the power to determine, by regulation, the extent to which and the conditions under which the amount due under the lien may be disclosed. G.L. c. 18, § 29. The bureau also has the power to levy and sell the real estate of the obligor, pursuant to the provisions of G.L. c. 235 and G.L. c. 236.

General Laws Chapter 118E, § 31(c), as amended by 2004 Mass. Acts c. 149, defines "estate" as all real and personal property and other assets includible in the decedent's probate estate under the General Laws. The Division of Medical Assistance may present claims against a decedent's estate in accordance with G.L. c. 118E, § 32.

It is also possible for the Division of Medical Assistance under certain circumstances to initiate court proceedings and request that a lien be granted on the property of anyone who received Medicaid benefits incorrectly. G.L. c. 118E, § 34. Once the lien has been granted, it can apply to benefits received properly. *See* G.L. c. 118E, § 31. Because of the detailed and specific provisions of these sections, it is advisable to read them closely to determine the situations where the lien will apply.

Liens to secure the repayment of Medicaid benefits are also permitted after the decedent's death. G.L. c. 118E, §§ 31, 32, 34. For the lien to be effective against third parties, a notice must be recorded at the registry where the land lies. The lien is released by the Division of Medical Assistance.

§ 6.7 LIENS FOR CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND

Chapter 151A is the controlling statutory authority for the payment by employers to the Commonwealth's Unemployment Compensation Fund. Actions to collect payments from employers who fail to make the required payments pursuant to Section 15 of the chapter may result in the imposition of a lien on all the employer's real estate. The lien is effective against subsequent purchasers and lienors upon the recording of a notice of the lien in the registry or registries of deeds where the employer's property may be located. G.L. c. 151A, § 16.

The notice of lien must be filed within ten years from the January 31 following the last day of the calendar year in which wages were paid or within three years from the date a judgment against the employer was entered, whichever is later. The lien terminates ten years after the January 31 following the last day of the calendar year in which wages were paid or, where there has been a judgment against the employer, not later than twenty years from the date it was created. G.L. c. 151A, § 16.

The enforcement of the lien through a civil action or by a petition for entry of judgment is presumably the same as in other actions—i.e., levy of execution and sale by a sheriff. This remedy is specifically provided for in Section 15 following the conclusion of an administrative proceeding, provided no appeal has been taken. The commissioner of labor and industries must begin collection proceedings within six years from the January 31 following the last day of the calendar year in which wages were paid or in which the employer filed the contribution reports required under the chapter, whichever is greater.

§ 6.8 CONDOMINIUM LIENS

General Laws Chapter 183A, § 6 creates a lien for common expenses due from condominium unit owners. These common expenses must be assessed against all units in accordance with their respective percentages of undivided interest in the common areas and facilities. By virtue of this section, the organization of unit owners has a lien on a unit for any common expense assessment levied against that unit from the time the assessment comes due. G.L. c. 183A, § 6(a)(i). The lien also applies to other expenses assessed against the unit owner, including late charges, interest, and attorney fees resulting from the owner's failure to pay timely the common charges and for the owner's failure to abide by condominium rules and regulations. G.L. c. 183A, § 6(a)(ii).

These liens arise at the time the assessment is due and take priority over all other liens and encumbrances against the unit, with the exception of liens recorded prior to the master deed, liens for real estate taxes, and other municipal charges against the unit and a first mortgage recorded prior to the due date of the assessment.

Legislation enacted in 1992 and 1993 created something of a superpriority lien for certain of these common charges (but not special assessments) and attorney fees and costs incurred in the collection of past due common charges. *See Drummer Boy Homes Ass'n v. Britton*, 474 Mass. 17 (2016). Common charges for the six-month period prior to the initiation of collection proceedings take priority over a recorded first mortgage. These charges must be based on a budget adopted on at least an annual basis. *See* G.L. c. 183A, § (6)(a); *Howe v. Norwest Mortg., Inc.*, 11 Mass. L. Rptr. 701 (Super. Ct. 2000). *But see* G.L. c. 183A, § 21(a)(6) (provisions relating to the power of the unit owners' organization to enact bylaws concerning this limited lien priority).

Section 6(d) of the statute provides that the recording of a statement from the unit owners' organization setting out the amounts due will discharge the unit from any other sums claimed owing when the statement is recorded at the registry. The lien is enforced in accordance with the provisions of G.L. c. 254. However, if the first mortgagee recognizes the priority of the lien for the outstanding common charges and pays the amounts due in a timely manner, and continues to pay common expenses until foreclosure or discharge of the mortgage, the unit owners' organization may not bring these enforcement proceedings. *See* G.L. c. 183A, § 6(c).

Where a town takes a condominium unit for unpaid taxes, the Land Court has ruled that the town is responsible for the payment of common charges for the period commencing on the date the unit was taken and the date of the decree of tax foreclosure, even though the decree of foreclosure will operate to extinguish the condominium's lien for all unpaid common charges accruing prior to the date of the decree. *Town of Milford v. Boyd*, 434 Mass. 754 (2001).

Condominium associations and lienors of units have the ability to seek enforcement under G.L. c. 111, § 127I of remedies of violations of the state sanitary code. See § 6.2, Other Liens Relating to Buildings or Improvements and Actions Taken for the Public Welfare, above.

§ 6.9 TIME-SHARE LIENS

Massachusetts adopted the model Real Estate Time-Share Act pursuant to Chapter 760 of the Acts of 1987, which is codified at G.L. c. 183B. Section 29 of Chapter 183B provides that a lien for any unpaid assessment shall be perfected upon the recording of a notice of the lien. If assessments remain unpaid after notice and expiration of a ninety-day cure period, rights of a time-share owner are subject to forfeiture under Section 29B.

Section 44 of Chapter 183B provides that before the sale of a time-share, a seller shall furnish the purchaser with releases of all liens affecting the time-share or shall provide a surety bond, unless the purchaser expressly agrees to satisfy or to assume such liens.

§ 6.10 LIENS ON AGRICULTURAL, RECREATIONAL, AND FOREST LAND

Property devoted to forest, agricultural, horticultural, or recreational uses has long been eligible for favorable local tax treatment under the provisions of General Laws Chapters 61, 61A, or 61B. These provisions were often difficult for taxpayers (and their counsel) to interpret, and they have been the subject of much concern, for reasons discussed below. For a chart outlining the essential terms of Chapter 61 and related provisions, see **Exhibit 6A**. *See also* 304 C.M.R. §§ 8.01–.11 (forest classification regulations).

In 2006, however, the legislature amended these chapters of the General Laws in a number of significant ways. Chapter 394 of the Acts of 2006—entitled "An Act Relative to the Taxation of Forest, Farm, and Recreation Land" and effective March 22, 2007—was designed to simplify and harmonize the three Chapter 61 programs. The amended provisions allow landowners to change their land classification from one chapter to another without a tax penalty. The act also set uniform repayments or penalties for all three chapters when the use is changed to one that is nonqualifying, but at the same time adds some provisions limiting or eliminating rollback taxes.

The favorable assessment provisions come at a price, however. First, a statement identifying the land and the landowner is recorded at the registry of deeds, resulting in a lien against the premises for taxes due under the chapter. *See* G.L. c. 61, § 2; G.L. c. 61A, § 9; G.L. c. 61B, § 6. Second, a conveyance tax will be due if land assessed under Chapters 61 or 61A is sold for another use within ten years from the date of its acquisition or the earliest date of its uninterrupted use by the current owner in agriculture or horticulture or forest production, whichever is earlier, or classification, if under Chapter 61B. *See* G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7. Moreover, if the owner changes the use of land within ten years of acquisition, the change is treated as though it were a conveyance, and a tax will be assessed. Third, in cases where the property no longer qualifies for treatment under the applicable chapter or chapters, a rollback tax may be assessed to recover taxes for the current tax year as well as the four immediately preceding tax years. (Changes among chapter classifications will not trigger a tax under the new act, however.) *See Adams v. Bd. of Assessors of Westport*, 76 Mass. App. Ct. 180, 184–85 (2010) (finding that taxpayers' building of personal residence on their agricultural land did not constitute a change in use of their land that would trigger a conveyance tax under G.L. c. 61A, § 12).

Practice Note

As with other statutory provisions relating to liens, the relevant sections of the chapters should be reviewed carefully for any exceptions that might apply to the client's transaction.

Agricultural, horticultural, and forest land are subject to special or betterment assessments, but only to the extent benefiting the owner personally or financing a service or facility used to improve the agricultural, horticultural, or forest use capability of the land. On application, these assessments may be suspended while the land is in agricultural, horticultural, or forest use, but they will become "due and payable" when the use of the land is changed. G.L. c. 61, § 5; G.L. c. 61A, § 18. The assessments then due, plus interest, will constitute a lien on the property. G.L. c. 61A, § 18. *See generally* Michael Pill, *Real Estate Law* (28 *Massachusetts Practice Series*) §§ 11.6–.8 (Thompson/West 4th ed. 2004 & Supp. 2022). *See also* IGR No. 2021-1 (Feb. 2021), "Betterments and Special Assessments; Assessment and Collections Procedures."

If land that has been assessed under Chapters 61, 61A, or 61B is to be sold or converted for residential, industrial, or commercial use "while so taxed or within 1 year after that time" (language added by 2006 Mass. Acts c. 394, effective March 22, 2007), the city or town in which it is located has the right of first refusal. *See* G.L. c. 61, § 8; G.L. c. 61A, § 14; G.L. c. 61B, § 9. A notice of intent must be provided to the city or town, which is then afforded 120 days within which to exercise its option to meet a bona fide offer to purchase (or to assign the right to the Commonwealth or any of its political subdivisions or to a nonprofit conservation organization) or, in the case of a conversion, to purchase the land at fair market value.

Under the act, the notice must be accompanied by, among other items, an executed purchase and sale agreement representing a bona fide offer to purchase for a fixed price and covering only land being withdrawn from classification. A bona fide offer is defined as a

> good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

G.L. c. 61, § 8.

No sale or conversion can be consummated until the expiration of the 120-day period unless a notice of nonexercise has been recorded in the interim, nor can the sale be completed if the terms of the sale differ in any material way from the terms of the purchase and sale agreement accompanying the required notice to the city or town. However, once the city or town elects to purchase the property, the transaction must be completed within the following ninety-day period unless otherwise agreed to in writing by the landowner. G.L. c. 61, § 8. Additionally, where the land is purchased through an assignment as described above, no less than 70 percent of the land must be preserved for one of the purposes defined in Chapters 61, 61A, or 61B. In no case may the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall be encumbered by a restriction as to the use of this land, meeting the requirements of Chapter 184, recorded with the registry of deeds or registry district of the Land Court as applicable.

While most of the notice provisions have remained substantially the same, the affidavit relating to the notice no longer must be provided by a notary public. In addition, the act provides that failure to record either the notice of exercise of the option or notice of the assignment of the right within the 120-day period will be conclusive evidence that the city or town has not exercised its option.

Certain intrafamily transactions are excluded from these provisions. Mortgage foreclosures are also excluded, except that ninety days' notice must be given before proceeding with the foreclosure sale. G.L. c. 61, § 8; G.L. c. 61A, § 14; G.L. c. 61B, § 9.

Practice Note

While the act has resolved several of the vexing issues surrounding the exercise of the option, a thorough examination of the record title to ensure that there has been compliance with the statutory requirements is still crucial.

While a complete discussion of the case law in this area is beyond the scope of this chapter, there are a few decisions involving right-of-first-refusal provisions under these chapters with which practitioners should be familiar. The first, *Town of Sudbury v. Scott*, 439 Mass. 288 (2002), involved a situation in which the town had not received notice of a pending sale. In the second case, *Plante v. Town of Grafton*, 56 Mass. App. Ct. 213 (2002), the town received notice but exercised its right as to only one of the sellers' properties. *See also Kunelius v. Town of Stowe*, 588 F.3d 1, 10 (1st Cir. 2009) (finding liquidated damages clause in purchase and sale agreement inured to benefit of town and its assignee pursuant to town's right of first refusal under G.L. c. 61).

In *Scott*, the Supreme Judicial Court reviewed a Land Court judge's decision that the town, which had filed an action alleging that it should have been permitted to exercise its right of first refusal under G.L. c. 61A, had not shown that, at the time the purchaser acquired the property, he had not intended to use it entirely for nonagricultural purposes. *Town of Sudbury v. Scott*, 439 Mass. at 302 n.19. The court held that there were questions of material fact as to the purchaser's intentions for the use of the property at the time it was acquired, and remanded the case to the Land Court for trial. *Town of Sudbury v. Scott*, 439 Mass. at 302–03. In *Plante*, the Appeals Court held that, where the sellers owned two parcels of noncontiguous land and had separate agreements for the sale of each lot, the town could exercise its right as to only one parcel. *Plante v. Town of Grafton*, 56 Mass. App. Ct. at 218. Under the facts of that particular case, the sellers could not require the town to purchase on an all-or-nothing basis. *Plante v. Town of Grafton*, 56 Mass. App. Ct. at 218–19.

Subsequently, in 2005, the Supreme Judicial Court decided *Town of Franklin v. Wyllie*, 443 Mass. 187 (2005). The court transferred the case on its own motion to decide whether a fully executed purchase and sale agreement for land valued, assessed, and taxed as agricultural or horticultural under Chapter 61A constituted a "bona fide" offer to purchase when the purchaser's obligation "was conditioned on the receipt of municipal approvals of a proposed residential subdivision plan as well as all necessary permits, and the purchase price was not fixed but was dependent on the number of subdivision

units approved." *Town of Franklin v. Wyllie*, 443 Mass. at 187–88. The town sought a declaratory judgment, arguing that the agreement did not constitute a bona fide offer to purchase for purposes of Chapter 61A. *Town of Franklin v. Wyllie*, 443 Mass. at 188. The Land Court judge disagreed and entered summary judgment in favor of the purchasers. The Supreme Judicial Court affirmed that judgment. *Town of Franklin v. Wyllie*, 443 Mass. at 196–97.

Shortly after the decision was handed down in *Wyllie*, however, the legislature enacted Chapter 394 by 2006 Mass. Acts c. 394, which became effective March 22, 2007. Chapter 394 redefined a bona fide offer, pursuant to G.L. c. 61, 61A, and 61B, to include

> a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

2006 Mass. Acts c. 394, §§ 18, 31, 48.

As the Land Court subsequently noted, "There is no doubt that the passage of Chapter 394 was intended to address the holding in *Wyllie*." *City of Newburyport v. Woodman*, No. 309692 (LJL), 2007 WL 3256964, at *4 (Mass. Land Ct. Nov. 6, 2007). The *Woodman* court refused to extend the holding in *Wyllie* to the facts at hand, finding that Chapter 394's redefinition of bona fide offers did not apply retroactively, and that Chapter 394 was not intended to cover *Woodman*'s agreements to develop affordable housing units pursuant to G.L. c. 40B. *City of Newburyport v. Woodman*, 2007 WL 3256964, at *4–5.

A 2006 Appeals Court decision, *Town of Billerica v. Card*, 66 Mass. App. Ct. 664 (2006), involved both the landowner's wish to withdraw his notice of intent to convert the use of the property and the valuation of the property (the town had voted to exercise its option to purchase at the landowner's appraised value of $405,000, despite a higher assessed value by the town and a later, higher appraisal by the landowner). *Town of Billerica v. Card*, 66 Mass. App. Ct. at 665. The owner argued that he had a right to withdraw his notice under the then-existing version of Chapter 61A and that the town would be unjustly enriched by purchasing the property at the lowest value. The court disagreed with him on both arguments. *Town of Billerica v. Card*, 66 Mass. App. Ct. at 667–71; *cf. Town of Oxford v. EAV Realty, LLC*, No. 323064 (AHS), 2009 WL 1228631, at *4 (Mass. Land Ct. May 6, 2009) (finding seller's notice to town of intent to sell recreational land, pursuant to G.L. c. 61B, § 9, was defective for lack of notice to all required town boards); *Town of Pembroke v. Gummerus*, No. 311622 (GHP), 2008 WL 2726524, at *4–5 (Mass. Land Ct. July 15, 2008) (hand delivery of notice to town boards, rather than certified mail required under G.L. c. 61A, § 14, was sufficient because town received actual notice of intended sale or conversion of agricultural land).

All these issues are addressed in the new version of the statutes. Practitioners should look closely at the new provisions. While new areas of litigation may develop, the legislature has addressed many of the areas that had made it difficult to advise clients as to how the provisions would impact their intended development plans.

§ 6.11 LIENS FOR PURCHASES OF PROPERTY ON THE CAPE AND ISLANDS

The Nantucket Land Bank was established by Chapter 669 of the Acts of 1983, amended by Chapter 392 of the Acts of 1991 and Chapter 354 of the Acts of 2010, and further amended by Chapter 407 of the Acts of 2017 to include provisions relative to affordable housing. Section 10 of the act requires that a purchaser of real property in Nantucket County pay a fee of 2 percent of the purchase price to the Nantucket Islands Land Bank Commission. Section 14 of the act provides that if any purchaser neglects or refuses to pay the fee, the amount, including any interest and penalty, shall be a lien in favor of the commission. In practice, this is a lien that rarely exists for more than a fleeting moment, because the Nantucket registry requires written proof of payment of the fee prior to accepting a deed for recording or registration.

The Martha's Vineyard Land Bank was established by Chapter 736 of the Acts of 1985, as amended by Chapter 673 of the Acts of 1987. This act similarly imposes a fee of 2 percent of the purchase price for any real property in Martha's Vineyard, which is the responsibility of the purchaser. Section 14 of the act provides that if the purchaser neglects to pay the fee, the amount, including any interest or penalty, shall be a lien in favor of the Martha's Vineyard Land Bank Commission. Again, this lien does not ordinarily come into effect because of the practice of the Dukes County Registry to require written proof of payment of the fee prior to accepting a deed for recording or registration.

The Cape Cod Land Bank was established by Chapter 144 of the Acts of 1997. Section 4 of the act requires that a fee of 1 percent of the purchase price after the first $100,000 be paid by the seller at the time of conveyance. Exemptions to this requirement are set forth in Section 6 of the act. Section 5 provides that if, after notice and hearing, the land bank commission determines that a conveyance is made for the purpose of evading the fee, the commission may impose a lien for the unpaid sum, plus interest.

May this chapter honor the late Kathleen M. Mitchell's enduring contributions to MCLE and to the Massachusetts bar and her legacy as a consummate professional and a scholarly and kind colleague. MCLE gratefully acknowledges Attorney Mitchell and David H. Morse, Esq. for their previous contributions to this chapter.

Exhibit Available for Download

The following exhibit is available for download from the MCLE website. See the Electronic Forms Download page for instructions.

EXHIBIT 6A—Chart Summarizing Revised G.L. c. 61