

## INTRODUCTION

Unlike an exemption which discharges a tax obligation, Clause 41A permits an elderly taxpayer to *defer payment* of property taxes which ultimately must be paid to the community upon the death of the taxpayer or sale of the property. This statute enables a taxpayer to use funds which otherwise would go to pay real estate taxes for other important expenses. A taxpayer who is eligible for a personal exemption (e.g. Cl. 41 Elderly Person or Cl.22, Military) is allowed to keep the exemption and defer the remaining taxes leaving a smaller amount to be repaid by their heirs.

A qualified applicant must enter into a written tax deferral and recovery agreement with the town's assessors who will record the agreement at the Registry of Deeds. The recorded agreement is a lien that must be satisfied before the property can change hands. Joint owners and mortgagees must give prior written approval.

## APPLICATIONS

An applicant must satisfy tests relating to age, domicile, ownership and occupancy and income.

## ELIGIBILITY REQUIREMENTS

**Age** – An applicant must be at least 65 years of age as of July 1<sup>st</sup> of the tax year.

**Domicile** – An applicant must have had a domicile or legal home in Massachusetts for the preceding ten years and must be domiciled as of July 1<sup>st</sup> in the property which is the subject of the application.

**Ownership and Occupancy** - An applicant must have owned and occupied the subject property or other real property in the Commonwealth as a domicile for at least 5 years.

The applicant may own the property with their spouse or as a tenant in common with a person not their spouse.

A surviving spouse who qualifies may continue to defer taxes but must enter into a new tax deferral and recovery agreement. A surviving spouse who inherits the property must have occupied it or other real property in Massachusetts as a domicile for 5 years. Any additional taxes plus interest deferred by the surviving spouse together with the amounts previously deferred and unpaid may not exceed 50 percent of the surviving spouse's proportional share of the fair cash value of the property.

The holder of a life estate satisfies the ownership requirement for a tax deferral.

If the domicile is held in a trust, a person can only satisfy the ownership interest if he or she:

1. Is a trustee or co-trustee of that trust

and

2. Possesses a sufficient beneficial interest in the domicile through that trust (Splitting the interest between multiple trusts does not qualify.)

**Gross Receipts** - An applicant's gross receipts from all sources cannot exceed \$35,000. Ordinary business expenses and losses may be deducted but not personal or family expenses.

## DEFERRAL AMOUNT

A taxpayer who qualifies may defer payment of all or a portion of the taxes each year at 8 percent simple interest, provided the deferred taxes and accrued interest do not exceed 50 percent of the applicant's proportional share of the fair cash value of the property.

## **DOCUMENTATION**

An applicant for deferral must furnish whatever information is reasonably necessary to determine eligibility under the terms of the statute. For example, the assessors may request:

1. Birth certificate
2. Evidence of domicile, ownership, and occupancy
3. Income tax returns

## **PAYMENT**

The payment of taxes and accrued interest is due upon the sale of the property or the death of the applicant unless the applicant's surviving spouse remains in the home. When payment becomes due, interest increases to 16% until the deferred amount plus interest is paid in full. Payment must be made within 6 months of becoming due.

### **PLEASE READ AND UNDERSTAND:**

This is a partial summary of the law as it is understood by the Oak Bluffs Assessing Department; it is not a substitute for competent legal advice and your personal knowledge. Please read the law carefully and consult a legal expert before entering into a deferral and recovery agreement. The agreement is a contract the terms of which are dictated by statute and cannot be waived by any government employee regardless of the circumstances.

## **FOR FURTHER INFORMATION CONTACT:**

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Oak Bluffs, MA 02557  
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# **TAXPAYER'S GUIDE TO REAL ESTATE TAX DEFERRALS IN MASSACHUSETTS**

**CLAUSE 41A**  
With Locally Approved  
Options  
Town of Oak Bluffs

Revised 7/2016

**PERSONS  
65 YEARS OR OLDER**

