

R.C. 5709.91 Synopsis

The proposed amendment to the statute specifies that any agreement between a property owner and a governmental entity with respect to tax increment financing (TIF) service payments and minimum service payments (payments in lieu of taxes) is to be considered a covenant running with the land and enforceable against subsequent property owners and their successors and assigns.

- The statute already specifies that these payments are to be considered taxes for all purposes, including lien priority and collection.
- The amendment clarifies that the agreement between a property owner and a governmental entity to the tax lien treatment of all minimum service payment obligations is a covenant running with the land, binding on all future property owners without the need for additional covenants or agreements.
- Without this clarification, bond lawyers in Ohio have required mortgage language in service payment agreements (as a form of belt and suspenders) which creates issues with lenders who provide private financing for projects that are subject to the minimum service payments.
- By adding this clarifying language, the apparent need for mortgage language in service payment agreements goes away.

Examples:

Current Statute

- Tax parcel has a hotel constructed on it which is paid for with private construction financing secured by a mortgage.
- Tax parcel is subject to a form of real estate tax referred to as a minimum service payment (the “Minimum Service Payment”) that acts as a floor for real estate taxes to ensure the repayment of the bonds issued to pay for public improvements surrounding the hotel parcel.
- Since the Minimum Service Payment is effectively a real estate tax, it is considered a tax lien by statute, but due to some uncertainty within the Minimum Service Payment statute, lawyers for bond buyers and/or municipalities are requiring a first lien mortgage be filed to further secure the Minimum Service Payment.
- Hotel lender is prohibited from making second lien mortgages and won’t make the loan unless the Minimum Service Payment mortgage is subordinated
- If bond counsel or counsel to the municipality refuses to subordinate the mortgage lien, the hotel cannot get financed.

Amended Statute

- A hotel is constructed on a tax parcel with private construction financing secured by a first lien mortgage.
- The tax parcel is subject to the Minimum Service Payment that ensures the repayment of the bonds issued to pay for public improvements surrounding the hotel parcel
- The Minimum Service Payment is considered a tax lien by statute and the new language satisfies bond lawyers and lawyers for municipalities that no additional mortgage is required.
- Hotel lender can make its first lien mortgage loan without having to deal with the Minimum Service Payment mortgage.