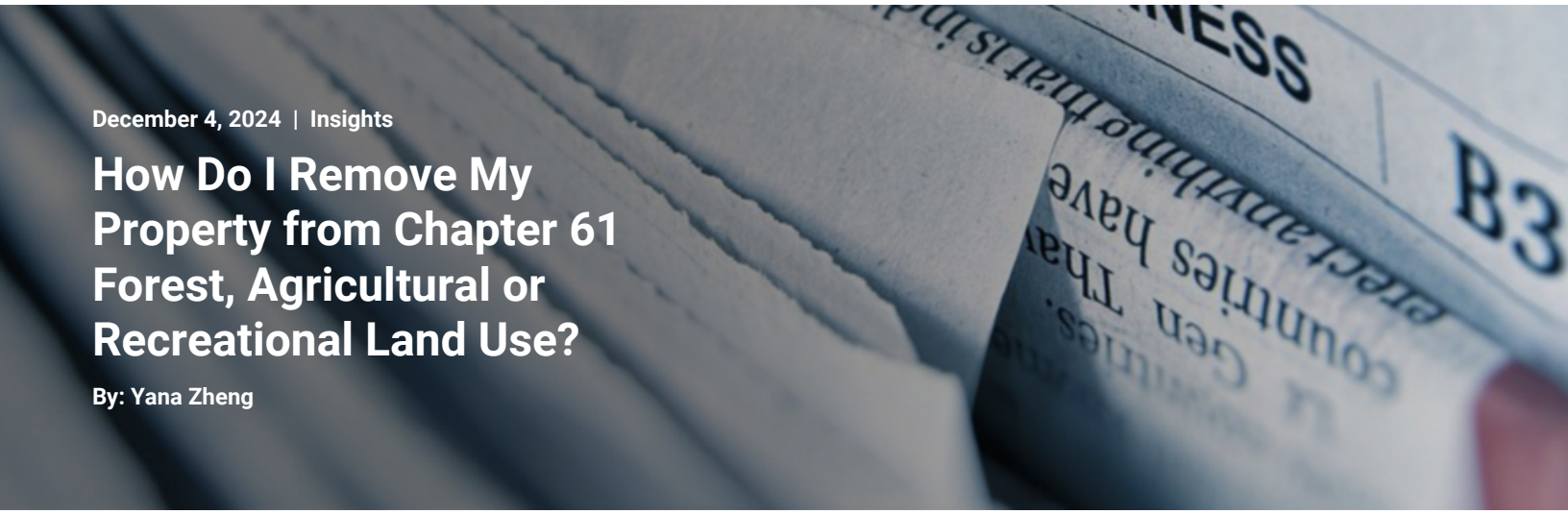

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# How Do I Remove My Property from Chapter 61 Forest, Agricultural or Recreational Land Use?

By: Yana Zheng

Our previous article on Chapter 61, 61A and 61B programs (each a "Ch. 61 Program") discussed the eligibility for your land to qualify for real estate tax reductions for forest, agricultural or recreational land use, including how to maintain such status. This article discusses what happens if you do not maintain Ch. 61 Program status and/or wish to remove your land from the chapter.

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**Understanding Triggers: What Causes Withdrawal?**

*Missing Renewal*: If you are new to the Ch. 61 Program, it's important to note that enrollment does not renew automatically; landowners must renew their status each year to maintain eligibility. If you forget to renew your Ch. 61 status, you will lose your eligibility for the program and, as a result, forfeit the tax break benefits for the year. It's crucial to complete the renewal process annually to keep the tax reduction.

*Conversion to Non-Chapter Use*: Sale or transfer of the property could also lead to withdrawal from the Ch. 61 Program, but this is not always the case. When a landowner enrolls in the Ch. 61 Program, it creates a lien on the property. This lien stays with the land even if it is sold or transferred to a new owner, as long as the land continues to comply with the eligibility requirements of one of the three Ch. 61 Programs. The trigger for withdrawal occurs when the enrolled land is sold or converted to a use that does not meet the eligibility criteria of one of the three Ch. 61 Programs ("non-Chapter use"). The land then will no longer qualify for the Ch. 61 tax benefits and may incur tax penalties, such as rollback taxes or conveyance taxes. However, if the new owner submits a notarized affidavit stating their intention to maintain the land in a use covered by any Ch. 61 Program for at least five years after the purchase, then the property can keep its Ch. 61 status.

**Tax Penalties: Rollback Tax and Conveyance Tax**

When the property is converted to a non-Chapter use within a specified timeframe, one potential penalty is the rollback tax. The rollback tax is the difference between what you would have paid in property taxes at the full rate (Ch. 59 taxes) and what you actually paid

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under the Ch. 61 Program, plus an additional 5% interest per year. For all three programs, the rollback tax will apply if the land use changes while enrolled in the Ch. 61 Program or within 5 years of withdrawal from the Ch. 61 Program. The rollback tax is calculated for each year the landowner has been enrolled in the program, up to 5 years. There are no rollback tax penalties for withdrawing a property from Ch. 61, provided that the landowner keeps the land in a use eligible for any one of the Ch. 61 Programs for a period of 5 years after it is withdrawn from the program.

The other potential penalty is the conveyance tax. For properties within the definitions of Chapters 61 and 61A, the conveyance tax is 10% of the property's total sale price if the land is sold or converted within the first year of ownership (or uninterrupted use in forestry by the current owner). The tax decreases by 1% each year, dropping to 9% in the second year, and continues to decline until it reaches zero after ten years. Once the first ten years of enrollment are complete, the conveyance tax no longer applies. For properties within the definitions of Chapter 61B, the conveyance tax is 10% of the sale price if the land is sold within the first 0-5 years of enrollment and 5% if sold between 6-10 years. After ten years, the conveyance tax also ceases to apply. When enrolled land is sold or converted to a non-Chapter use, the higher of the applicable rollback tax or conveyance tax will apply.

However, certain exceptions exist such that portions of land may be converted to non-Chapter use without triggering penalties. First, if a landowner wishes to build a house on Chapter 61 land as their family members' primary residence, this change in use will not render the entire property ineligible for the Chapter 61 Program. Similarly, converting part of the land to build a dormitory for an employee who manages the property will also not affect its eligibility. The land will still be eligible for tax benefits, but the residential buildings will be assessed separately and won't qualify for the tax reduction. Also, the tax penalties only apply to the portion of the land that is converted to a non-Chapter use. For example, if you convert only half of the land to non-Chapter use, the tax penalties may apply to half of the land and the other half may still qualify for tax reductions.

**Right of First Refusal**

In addition to tax penalties, property owners should be aware of the municipality's right of first refusal when selling or converting property to a non-Chapter use. Landowners who intend to transfer or convert their land to a non-Chapter use, or who withdraw from the program and change the use within 12 months, are required to notify the municipality in which the property is located of this change. Upon receiving this notice, the municipality has the right (but not the obligation) to purchase the enrolled land at full market value, as determined by an independent appraiser, within 120 days. A private sale cannot proceed until the municipality waives its right or the 120-day period lapses. Once again, if the new owner submits a notarized affidavit stating their intention to maintain the land in a use covered by any Ch. 61 Program for at least five years after the purchase, the right of first refusal does not come into play. Moreover, the exceptions discussed above also apply to the right of first refusal. Finally, withdrawing from the Ch. 61 Program and paying real estate taxes at the full rate for 12 months prior to the sale or change in use will terminate the municipality's right of first refusal.

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If you have any additional questions regarding the withdrawal, please feel free to reach out to Danielle Justo and Yana Zheng.

*Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to Danielle Justo or Yana Zheng.*

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