

**The Third Party Transfer Program: A Tool Buffalo
Can Use to Reduce Property Abandonment**

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Executive Summary:

Buffalo needs an effective program to quickly fight abandonment. In the past twenty years, Buffalo's tax-foreclosure abandonment rate has increased. If the City does not sell these abandoned properties or at its an annual In-rem auction, then it generally takes title to them, selling a small number and putting the rest on the City's long demolition list. This leaves the City to maintain many unsold dilapidated properties that drain City resources and decrease property value in their neighborhoods. The current processes are slow and do not adequately address the abandonment problem.

Buffalo should replicate New York City's Third Party Transfer Program. The program modifies the existing legal tax enforcement authority so that the city never has to take title to a property. Instead of waiting out the foreclosure process, the city takes an active role in finding dilapidated foreclosed homes and selling them to new owners. The process starts by letting the city initiate tax foreclosure proceedings at the earliest date possible. During the proceedings the city is also finding a prospective owner for the property. Once the judgment is made, the city gives title to a non- profit group that is working with the prospective owner on finding financing for the property repairs. Once the prospective owner is in place and there is funding for the property rehabilitation, then the non-profit transfers the title to the new owner. Thus, the city does not have to spend money to maintain the property, and it is never abandoned for an extended period of

time. The program has flourished in New York City. Buffalo's governmental infrastructure already has the capacity to implement the program at little expense. Also, any expenses will be offset by lower costs in maintaining the City's tax foreclosed housing stock.

Background:

Abandoned properties in Buffalo have increased in the past twenty years. When abandonment occurs, owners fail to pay property tax. Eventually, through tax foreclosure proceedings, the properties become the City's responsibility. This decreases the City's coffers because it has to respond to fire or police emergencies, inspect, maintain, forego taxes, and if conditions are dilapidated, demolish the property. Each property can entail twenty or more city actions and cost the taxpayers close to \$12,000 over a five-year period.¹ In addition, Buffalo has spent over \$30 million to demolish more than 4,500 vacant buildings, with little help from New York State.²

New York City ("NYC") experienced parallel problems from the 1970s through the early 1990s. The City spent upwards of \$300 million to maintain properties which it took title to through foreclosure proceedings while waiting to auction them off.³ NYC then took the initiative to change the property law – resulting in a new system to quickly and cost effectively transfer properties to pre-qualified new owners.

NYC effectively changed the process by which the City foreclosed on tax delinquent properties. Combining local law with public resources to leverage private funding to complete the buildings rehabilitation, the City preserved and rehabilitated

¹ Cornell Cooperative Extension Association Report

² Precious, Buffalo News, March 22, 2006

³ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

much of its abandoned housing. Buffalo should adopt the third party transfer program because it will hasten the tax foreclosure process, thereby decreasing abandonment and saving Buffalo money.

Buffalo's Blight:

Buffalo has seen a rise in residential tax foreclosures and In-rem proceedings because of the economy's distress.⁴ When the United States came out of its fifteen year recession in 2001 with a 20.4 percent rise of employment, Buffalo did not.⁵ It experienced only a 1.9 percent increase in employment.⁶ The lack of employment suppressed incomes in the region.⁷ The lack of capital flowing into Buffalo subsequently hurt the housing market. As home values declined, homeowners with debt exceeding the expected equity of the home had little incentive to continue paying taxes and their mortgage. As a result of Buffalo's weak economy and low property value, population declined from 328,234 in 1990 to 292,646 in 2000 and vacant units increased by almost 8000 in the same span.⁸ Because of this increase in tax foreclosure, Buffalo has to pay increased costs for the In-rem proceedings, as well as maintenance and demolition.

In-Rem Foreclosure:

Generally, tax foreclosures occur because owners cannot afford to stay their homes due to a change in circumstance like a death in the family or a downturn in the economy. If property taxes are not paid, the government has a legal right to put a tax lien

⁴ The Buffalo-Niagara MSA (metropolitan statistical area) is defined by the U.S. Census Bureau as Erie and Niagara counties

⁵ U.S. Department of Commerce, Bureau of Labor Statistics, 1990, 2000.

⁶ Id.

⁷ Id.

⁸ U.S. Census Bureau / OSP Information & Data Analysis

on the property in the amount of the back taxes. If the taxes remain unpaid the government's tax lien authority gives it the right to hold an In-rem foreclosure proceeding.⁹ This is a proceeding "taken against property, and has for its object the disposition of the property, without reference to the individual claimant."¹⁰ In most Cities, this gives the government title to the property and the responsibility to maintain it. Then the government can transfer title by selling the property at an In-rem auction, often at a fraction of its market value.

In Buffalo, when the City's property taxes go unpaid for two years, the City is entitled to obtain a foreclosure judgment and then sell the property at its annual public auction.¹¹ The property owner is notified in the third year of the delinquency that the property is on a foreclosure list.¹² The delinquent owner has title to the property until back taxes are paid or until the City sells or auctions the property.¹³ Buffalo obtains the proceeds of the sale of any property obtained through sale or auction without having to take title.¹⁴ Alternatively, if the property is not sold or auctioned, the property is "struck to the City."¹⁵ The City will take the title and attempt to dispose of it through other initiatives.

Currently, NYC's and Buffalo's tax foreclosure laws are similar. The difference is NYC's ability to initiate a tax foreclosure action if property taxes go unpaid for only one

⁹ NYS § 2435-b

¹⁰ 71 A. 2d 911, 914

¹¹ http://www.foreverelmwood.org/clientuploads/Neighborhoods_Committee/pdf/FAQ-Inspections_and_Housing_Court.pdf?PHPSESSID=d9ae7a9f8c36f8db7e5a174bea21c394

¹² Id.

¹³ Id.

¹⁴ A04971

¹⁵ http://www.foreverelmwood.org/clientuploads/Neighborhoods_Committee/pdf/FAQ-Inspections_and_Housing_Court.pdf?PHPSESSID=d9ae7a9f8c36f8db7e5a174bea21c394

year, instead of the two year period in Buffalo.¹⁶ After an ongoing search for candidate properties, Local law 37 of 1996 specifically empowers the City to initiate foreclosure actions when residential property owners do not pay taxes and other municipal liens.¹⁷ Once In-rem judgment is entered, which takes about six months, there is a mandatory four-month redemption period where the prior owner may pay outstanding taxes to retain title.¹⁸ Meanwhile the Housing Department reviews and selects a qualified third party owner for each property from a pool of qualified entries. After the redemption period is over, the Housing Department has four months to transfer title to the new owner.¹⁹ If the process is not completed within about four months after the redemption period the property remains with the prior owner.²⁰ The Housing Department then has another four months to transfer the title to an interim not for profit organization in preparation for the final transfer to the new owners.²¹ The interim owner holds the title while providing technical support and assistance to the selected owner in managing the properties.²² Then the new owner is responsible for upgrading and maintaining the building, presumably with financial assistance from the City, State, and Federal Government.²³ In total, the process may take as little as just over one year or at most two years.

The third party transfer program works in NYC because it uses the law to decrease the amount of time after tax delinquency that the government can obtain a foreclosure judgment. When NYC has a foreseeable buyer for a tax foreclosed property, it can act quickly to get the title in the hands of that buyer instead of having the property

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¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

open to vandals and the weather. The less time the property is abandoned, the greater value it has to the community and the overall housing market.

Instead of abandonment, Buffalo's tax foreclosure process focuses on fiscal issues. The New York State Legislature permits Buffalo to retain amounts received when a property is sold at local tax foreclosure in excess of the amount of the municipality's tax lien. The New York State Legislature passed this law only because Buffalo was struggling financially.²⁴

However, Buffalo still has to go through the long process of bringing the In-rem proceeding. The time taken to wait out the judicial system is time taken when vandals or weather can destroy a property. This can lower the value of the property and in turn decrease neighborhood value. The law does not allow Buffalo to attack abandonment directly.

Although the laws governing NYC and Buffalo are similar, Buffalo will have to make a minor change to hasten the foreclosure procedures. A amended law will enable Buffalo to take an active role in finding dilapidated foreclosed homes while stepping in and finding a new owner: someone is invested in the property and who will not let its value decrease.

Implementing the Program:

The structure of the Buffalo's governmental departments will change much less than the law. In NYC, the Department of Housing Preservation and Development oversee the third party transfer program. As the municipal developer of affordable housing, it protects the existing housing and expands housing options while trying to improve

²⁴ A04971

affordability, availability, and quality of housing. In an effort to promote private investment in communities, the Department oversees development, implementation, and operation of the third party transfer process.

Buffalo has the Office of Strategic Planning - Real Estate Division, which is a comparable department working to increase the affordability and quality of housing. It manages real estate for the City of Buffalo, including some 4,000 abandoned properties acquired through In-rem judgments. It also works closely with the City of Buffalo's not for profit organizations.²⁵ The Real Estate Division is in a unique position to initiate the program without changing its own structure. It already manages two programs similar to third party transfers. One called "Making Houses Homes," enables local community based organizations to link potential buyers with housing available for purchase now or to vacant lots where they can build homes.²⁶ The other relevant Buffalo program is the negotiated sale of taxed foreclosed properties. Any person wishing to acquire an improved property or vacant lot owned by the city can do so by making an application to acquire the property.²⁷ State law requires the city to receive fair market value for its property.²⁸ The purchase price is established at the time of application using current market data.²⁹ If the buyer purchases an improved parcel, the purchaser is required to provide estimates for necessary repairs and proof of financial ability to complete purchase and repairs.³⁰ Structurally, the Real Estate Division only needs to change the

²⁵ <http://www.ci.buffalo.ny.us/>

²⁶ http://www.city-buffalo.com/files/making_houses_homes_UPDATE.pdf

²⁷ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

http://www.ci.buffalo.ny.us/Home/Leadership/City_Departments/Office_of_Strategic_Planning/RealEstate/Purchasing_City_Owned_Properties

²⁸ Id.

²⁹ Id.

³⁰ Id.

way it links the finding of abandoned housing most in need of a new owner with a new prospective owner.

Within the division, it will need to increase its capabilities to distinguish the foreclosed homes which are salvageable and potentially ready for speedy repair and new ownership from the foreclosed homes, which should be publicly auctioned. In NYC, the Department of Housing looks through the lists of city foreclosures and cross references it with those that might need special attention or meets the legal definition of “distressed.”³¹ The lists are compiled from other programs, housing inspectors, and neighborhood groups. Based on the Buffalo Mayor’s current focus on abandonment, these lists will not be hard to compile in Buffalo. The lists can come from the multitude of established anti-abandonment programs, litigation in the Housing Court, housing inspectors, and emergency repair programs.

While changing the structure of operations is not difficult, it will be harder to find the money for the Real Estate Division to initiate third party transfers. However, once the initial start up is completed and the program has developed, Buffalo will see an increase in funds from not managing and demolishing the properties. Once it started its program, NYC saved over \$300 million.

Buffalo’s hurdle in starting the third party program will be the selection of qualified responsible owners.³² NYC was able to start the program because of its strong housing market. While there are abandoned buildings, there is generally a new owner ready to step in and take title. In addition, NYC is constantly looking through its rolls to determine which properties are necessary for the program. Therefore, NYC is able to be

³¹ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

³² Id.

selective in picking new owners. The program requires that the applicant demonstrate residential management experience. If the new owner wants to buy a five- story building, NYC does not want the applicant to know only about rehabilitating single family units. NYC also wants the applicant to be able to receive private funding to rehabilitate the property.

Buffalo does not have a housing bubble. Instead of seeing property as economically viable assets, many people are migrating from the City to the suburbs.³³ The program will initially hinge on demand in Buffalo's housing market. Therefore, Buffalo cannot afford to be as selective. But it does not have to be. The third party program is flexible and can be tailored to a city as it sees fit. Buffalo may include only properties such as single or multi-family homes. This will broaden the possibility of applicants because more people are fit to run smaller dwellings than hi-rises.

If decreasing selectivity alone does not increase applicant demand, then the City has to actively seek applicants. In Buffalo, again, because the Mayor has instituted many anti-abandonment programs, the third party transfer initiative can collaborate with the other programs to find synergy. For example, when a person wants to know about buying a lot in the Making Housing Homes program, the Real Estate Division can inform them about the third party transfer program. In addition, the Real Estate Division can also work actively to inform the public about the incentives that the program provides. The new owner will be able to acquire what will be viable properties at a low cost– less than what it would be on the open market. There are also no liens or debts on the property; the

³³ http://www.city-buffalo.com/files/1_2_1/Mayor/COB_Comprehensive_Plan/index.html

building is given a fresh start.³⁴ In return for actively marketing this program, Buffalo can prevent property from being abandoned for a long period of time.

Another incentive to increase demand for the tax foreclosed property is the ability for the applicant to receive specialized financing. NYC offers low interest loans to rehabilitate properties where rents and incomes are too low to support market-rate financing.³⁵ In addition, NYC offers tax incentive programs that reduce the cost of operation prior to and after rehabilitation.³⁶

Buffalo will not have to create additional financing packages for applicants because it already offers loan programs for rehabilitation. The Office of Strategic Planning gives direct financial assistance through a variety of programs designed to “ensure that housing in the City of Buffalo is safe and in compliance of local codes.”³⁷ Two such programs are the Target Street Rehab Initiative and the Fifty-Fifty Program. Funds are available from these programs and include low interest and no interest loans depending on income of the applicant. Reducing the financial burden on the rehabilitated properties reduces the cost of operating the buildings, and reduces the pressure to increase rents or make expensive repairs. The cost of the property becomes even lower as the applicant increases the ability to raise the property value. This will increase the neighborhood’s value and decrease the number of abandoned buildings.

When the redemption period ends and the city selects an applicant as a qualified new owner, the property sometimes gets transferred to an interim party to ease the new owner’s responsibilities. The non-profit steps in the shoes of the government in

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ http://www.city-buffalo.net/files/making_houses_homes_UPDATE.pdf

maintaining the property until the new owner takes title. This is essential, not only for keeping the new owner apprised of damages, but for saving the city money and for the appearance that the property is occupied. This will keep vandals away and save the property value from depreciating.

The interim owner, usually a non-profit, inspects the property to identify which repairs or hazardous conditions must be addressed immediately and which can be deferred. The interim party also settles any legal issues which need to be addressed. For example, if it is an apartment building, the interim party will begin legal proceedings against unlawful residents.³⁸ In NYC, the interim party is called “Neighborhood Restore.”³⁹

Neighborhood Restore oversees the qualified new owners as they stabilize, manage, and plan the rehabilitation of the newly acquired properties. In addition to being the intermediary between NYC and the buyer, it is also the intermediary between the buyer and contractors. The organization helps the buyer identify the needed repairs and estimate how much they will cost; then it helps the buyer find financing for the repairs. Because the cost of each project varies, funding for the organization is important.

Neighborhood Restore is fully-funded by the Department of Housing Preservation and Development and its partners, the Enterprise Foundation and the Local Initiatives Support Coalition.⁴⁰ The organization was expensive because it was built from the ground up. However, the third party transfer program offset the cost of the organization.

Buffalo does not have to provide for the same initial costs of starting a new organization. There are already organizations in place to handle transitions, so the

³⁸ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

³⁹ Id.

⁴⁰ Id.

financial allocations can remain the same. The public benefit corporation Buffalo Urban Renewal Agency (“BURA”) was created to help operate various urban renewal programs in Buffalo.⁴¹ BURA currently works with other community based organizations to provide for the renovation and resale of homes already in the City’s inventory, thus saving acquisition costs.⁴² BURA also has programs to directly assist buyers of foreclosed properties with purchase and rehabilitation of the property.⁴³ When the third party transfer program is initiated, BURA does not have to make any changes to its structure.

Other organizations, such as Homefront, Inc perform similar tasks as BURA, but to a lesser extent. Homefront is a community development agency developing and implementing equitable, sustainable, and efficient strategies for community development and revitalization in Buffalo.⁴⁴ Organizations like Homefront can work to supplement BURA in implementing the program, but they lack the funds to do all the tasks. Once Buffalo saves money because of the program’s success, it can afford to fund these community-based organizations and expand third party transfers and other anti-abandonment programs.

Initiative – South Bronx:

Three years after changing the law, establishing the organizations, and putting together a plan, the third party transfer program was successfully implemented. The first project – in the South Bronx – had an important result.

⁴¹ http://www.ci.buffalo.ny.us/Home/Leadership/City_Departments/BURA

⁴² E-mail from Mary Lesniak, Housing Specialist, Buffalo’s Office of Strategic Planning, Division of Compliance, to Douglas Michaels, Second Year Law Student, SUNY Buffalo Law School (March 27, 2008, 14:47 EST) (on file with author).

⁴³ Id.

⁴⁴ <http://www.homefrontbflo.org/about/overview.php>

The second and more important result was the transfer of property to new responsible owners. Neighborhood Restore and the new owners stabilized the property, removed Housing Maintenance Code violations, and memorialized rent structures with tenants.⁴⁵ Emergency conditions were also corrected. For example, the first step taken was to fix the lead paint problem in apartments where small children lived.⁴⁶ They also fixed failing boilers, inspected all the roofs to determine if they were water tight, and made many smaller important repairs.⁴⁷ These initial repairs, not made by NYC, prevented the building from dilapidation and blight.

While repairing the property Neighborhood Restore was preparing for final transfer. The owners worked with Neighborhood Restore and other lenders to develop the scope of rehabilitation and secure financing to fund the renovations.⁴⁸ Finally, 15 multi-family buildings were transferred and when the one to four unit properties were finally transferred, 300 units were rescued.⁴⁹

In ten years, after the initial Bronx Pilot, NYC has saved \$382.8 million.⁵⁰ The personnel costs have been low because most of the work was such that it could be performed by existing staff and absorbed into their already established responsibilities. The value of work done by the pre-existing staff in implementing the program was \$523,000.⁵¹ Also, “[b]uildings are flowing through the program nicely,” said Michael Bosnick, assistant commissioner of the anti-abandonment program of the city’s Department of Housing Preservation and Development. “And we certainly don’t hear a

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ <http://home2.nyc.gov/html/hpd/downloads/pdf/2005-annual-report.pdf>

⁵¹ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

lot of tenant complaints.”⁵² Due to the low costs and effectiveness of the program, it has won several “good government” awards.⁵³

Recommendation:

Buffalo should emulate NYC’s third party transfer program. Even with the cost of creating a new organization the program has proven workable and affordable in NYC’s large housing market. Unlike NYC, Buffalo does not have to make major changes to its governmental structure or invest large sums of money into the program for it to be effective. The structure for implementation and initialization is already in place. Through other initiatives, the government departments and not for profits already perform the majority of the program’s requirements. This existing staff can accomplish the extra work with little burden.

Instead of implementation, the funding for the program can focus on finding prospective owners to buy and rehabilitate the properties. With Buffalo’s housing market in a recession, finding prospective owners in any anti-abandonment program is important. Buffalo can already entice buyers with its financial programs and not for profits paying for much of the rehabilitation. The capital the City saves by not taking title and maintaining a property can have value in explaining the advantages of rehabilitating a property or neighborhood to the prospective buyer. As in NYC, once the program is established and proven workable, it can be expanded as Buffalo’s main anti-abandonment and tax foreclosure program. However, if the third party initiative does not flourish due to lack of market demand for property, the money saved from the initiative can be used to support other programs.

⁵² <http://www.gothamgazette.com/article/housing/20030917/10/526>

⁵³ http://www.nyc.gov/html/hpd/downloads/pdf/bgc_winner.pdf

Changing Buffalo's law to emulate Local Law 37 allows the government power to fight the tax foreclosure problem with more efficiency. This change eliminates the property from the Buffalo's stock and allows it to be returned quickly to the private market in sound physical condition. This strategy for restoring buildings, avoiding costs to the city, and shortening rehabilitation time prevents abandonment and helps to support Buffalo's existing investments.

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