

## Reforming Buffalo's Tax Foreclosure Process

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### The Need for Reform

The City of Buffalo holds an annual foreclosure auction to collect on delinquent taxes and fees owed by its residents. This is a way for the City to raise revenue that would otherwise go unpaid and for Buffalo citizens to buy buildings and lots at bargain prices. But the foreclosure process is imposing a high cost upon some of Buffalo's most vulnerable citizens, creating an unnecessary burden on people trying to stay in their homes, and adding to the already existing epidemic of housing abandonment and blight.

The 2011 foreclosure list includes 982 properties that owe only garbage fees of less than \$300 and 41 properties owing only sewer taxes of less than \$50 – each of which is assessed a foreclosure fee of \$445.

Due in part to changes in how the City funds its garbage service, the net of foreclosure is being cast far too wide; in 2011, for example, of the 5,680 properties in the City's January foreclosure filing, 2,967 properties, or 52%, did not owe property taxes but only garbage fees. Of these, 982 properties owed less than \$300. Also included were 41 properties owing only sewer taxes of less than \$50.

Buffalo's current system hurts not only the individuals caught up in the foreclosure action, but also the neighborhoods where these actions are occurring and the City of Buffalo itself.

Foreclosure is an important tool. The City of Buffalo must collect its taxes, and when it comes to properties that have already been abandoned, a fast foreclosure process is essential in getting the properties transferred to a responsible owner or demolished. However, in some cases the current system may actually fuel abandonment by forcing out owners who owe only small amounts of money.

Options for reform include the following:

- Limit foreclosure to bills over \$500;
- Do not foreclose where only fees, and no property taxes, are owed;
- Reduce the foreclosure fee (currently \$445) for lower amounts of debt;
- Accept partial payments and charge late fees and interest based only on the current balance;

- Offer hardship assistance for people suffering a temporary loss of income due to no fault of their own; and
- Improve or eliminate user fee billing.

**Buffalo’s Foreclosure Process**

The City of Buffalo’s tax foreclosure process is governed by §§1120-40 of New York’s Real Property Tax Law: a section known as the Uniform Delinquent Tax Enforcement Act (UDTEA). The UDTEA provides for an accelerated tax foreclosure process that municipalities may use when taxes are two years delinquent or more.<sup>1</sup> This is the only foreclosure proceeding in state law, but municipalities may also adopt their own system for tax foreclosures. Erie County, for example, has opted out of the UDTEA.<sup>2</sup> Should Buffalo choose, it may opt out and create its own system.

*Properties Offered at Buffalo Foreclosure Auction*

|      |       |
|------|-------|
| 2004 | 1,074 |
| 2007 | 2,498 |
| 2008 | 2,960 |
| 2009 | 3,304 |
| 2010 | 1,914 |

Typically, the City of Buffalo files a tax foreclosure list in January. The categories of taxes and fees owed are property taxes, sewer liens, “user fees” (imposed for garbage service), and water bills. Once a property is on the list, and the list is filed and a judgment issued, the owner must pay a foreclosure fee (the 2011 fee is \$445, the 2010 fee was \$444) that is used by the City to pay for legal costs,

the cost of the auction and other costs incurred by the City from the entire foreclosure process.

This fee may not be legal. In September 2011 the Western New York Law Center filed a class action suit arguing that the State’s Real Property Tax Law requires prior court approval for fees over \$150, and that the City’s own Code allows a fee of such size only after litigation has been commenced and only where the debt exceeds \$10,000.

Between the filing in January and the auction, which is typically held in October, people with delinquent taxes may be removed from the list if they pay the entire amount owed, including the foreclosure fee. During that time, they may also be able to negotiate a payment plan with the City if they are not able to pay the entire amount immediately. These payment plans are typically structured so that the entire amount owed must be paid prior to the next foreclosure filing, meaning that the plan cannot extend for longer than a year.

For several days immediately before the foreclosure auction, which occurs over a period of several days, the City holds a massive negotiating session in which owners plead with the City attorney for a last minute payment plan. The City of Buffalo partners with several legal services organizations to provide representation at this time for those who do not have their own legal counsel. These plans are not normally as favorable as those negotiated early in the year. At no point are partial payments accepted for a stay of foreclosure unless they are accompanied by a complete payment plan approved by the City.

The foreclosure auction takes place over several days in October. Bidders register prior to the auction and receive bidder numbers. The City has some leeway in setting the minimum bids for properties, but often it is the amount owed on the property including late fees and the foreclosure fee. If the amount owed is very high, the City will lower the minimum bid in order to effectuate a sale instead of having to take other action<sup>3</sup>.

All properties that remain on the list at the time of the auction are offered, but only some are actually sold. Not all properties attract successful bids, and of the successful bids, not all are paid. If a bid fails, the number two bidder is approached to see if he or she is still interested in the property. If, in the end, there is no successful bid, the City will either adjourn the property (allow owners to retain title until the next auction), or the property will be “struck” to the City (the City will take the title).

In 2009, of 3,304 properties auctioned, only 826 were sold and only 200 taken by the City. Thus, 2,278 were left in limbo with their delinquent owners.

For example, in 2009, of the 3,304 properties auctioned, only 826 were sold, and only 200 taken by the City. The remaining 2,278 were adjourned – meaning, left in the hands of the delinquent owner with all their liens still in effect – leaving them unmarketable and in most cases vacant and abandoned.<sup>4</sup>

Owners of adjourned properties tend to be in the following year’s filing with an even larger

late fee and interest burden than the previous year.

The City has varied in how many properties it takes title to and for what purposes, but, in general, it takes title to properties that it wishes to demolish right away or that it think may be marketable for a reasonable sum, despite the lack of a sale at the auction. The City has a long waiting list for demolition of properties, and the cost of the average demolition is around \$14,000.

### **The 2011 Proceeding<sup>5</sup>**

The January 2011 filing, commonly known as In Rem 45, included 5,680 properties in its listing. These properties had delinquent property taxes, sewer liens or user fees. Of these properties, 982 owed only user fees of less than \$300 dollars, and many more owed only user fees of more than \$300<sup>6</sup>. Also in this listing were 41 properties owing only sewer liens of less than \$50 dollars. Many more properties owed less than \$445 – in other words, their underlying debt was less than the foreclosure fee that was added to it.

New water-bill-only cases were not included in the initial listing. For the past few years, the City of Buffalo has taken different approaches to water bill foreclosures due to concerns about tricky and confusing accounting measures, and also because of inaccuracies in the bills on properties that need to be resolved. In 2008, the City did not foreclose on water-bill-only cases, but in 2009 the City did foreclose. In 2010, the City foreclosed on them, but appeared to treat them more leniently when it came to negotiating payment plans.

In 2011, the City did not add new water-bill-only cases to the list, but did include water-bill-only cases from prior years. Water bills put back on the list were not added until June of this year, expanding the auction list and giving the owners of those properties less notice to confront their foreclosure.

Properties are taken off the auction list as the taxes and fees are paid, so not every property that is on the filing makes it to auction. The auction listed posted by the City in May listed 6,089 properties as part of the foreclosure action. Of those, 4,701 were from the In Rem 45 filing in January 2011, and 1,388 were adjourned from previous years. As of July 18, 2011, the City had 5,692 properties still on the list, of which 3,749 properties came from the January 2011 filing.

**Problems Arising From the City’s Tax Foreclosure Procedure**

The current structure of tax foreclosures is creating problems not only for those struggling to stay in their homes, but also for their neighbors, neighborhoods, and the City of Buffalo itself.

For those facing financial difficulties, foreclosure can lead to the loss of the home – sometimes not because of inability to pay the initial debt, but because of inability to pay the added foreclosure fee of \$445. Many people end up behind in payments because of temporary problems, rather than because of a long-term inability to afford the property. Examples include major medical expenses, injuries preventing work, and periods of unemployment between jobs.

For neighborhoods and the City, the current process is fueling abandonment and blight. There is little demand for housing in the City limits, and so many of the vacated properties are not being bought on the market. Houses are sitting vacant for long periods of time without residents or other owners to take care of them, and are becoming dilapidated.

The City of Buffalo has the third highest percentage of vacant housing in the nation, following only Detroit and New Orleans. From 1990 to 2000, for cities of at least 250,000, Buffalo went from the fifty-fifth highest vacancy rate in the nation (10.2%) to third in the nation (15.7%). The numbers have continued to skyrocket. According to the 2006 Census, the City had a vacancy rate of 22.8%, with 32,647 units vacant.<sup>7</sup>

*City of Buffalo Vacancy Rates*

|      |       |
|------|-------|
| 1970 | 4.4%  |
| 1980 | 9.9%  |
| 1990 | 10.2% |
| 2000 | 15.7% |
| 2006 | 22.8% |

An even more accurate measure of abandonment comes from the Post Office, which measures chronically undeliverable addresses. From 2005 to 2010, Buffalo went from 15,651 chronically undeliverable addresses to 20,692, representing an increase of 32 percent and now encompassing 15 percent of the City’s total addresses. As of 2007, it was estimated that the City had 14,517 vacant lots totaling 3,222 acres.

Vacant houses have significant effects on the value of the surrounding properties and thus on the property tax revenues that the City collects<sup>8</sup>. In addition, the presence of vacant and dilapidated houses has been shown to attract crime to neighborhoods, putting a strain not only on the residents of that neighborhood, but also on the resources of the City.<sup>9</sup>

## **Policy Options**

### **Stop Foreclosing for Garbage, Water, and Sewer Fees**

The City of Buffalo could decide not to foreclose for water bills, garbage user fees and sewer liens. These differ in character from normal property taxes in that they are based on services provided and the amounts owed tend to be much lower. In the case of water bills, the City also has another, very potent collection tool: the water shut off.

### **Limit Foreclosures to Debts over \$500**

There is a severe disproportion between the amount owed in many cases and the \$445 fee imposed, not to mention the ultimate sanction of losing the home. A self imposed floor on the amount eligible for foreclosure would aid the City by helping to keep residents in their homes and also keep a large burden off of some of the City's most vulnerable residents.

A threshold of \$500 is low enough that homeowners will not get too far in debt before they are forced to deal with the issue. This floor will affect mostly occupied homes, not abandoned ones. An abandoned property typically would be delinquent on all fees and taxes and thus owe more than \$500.

It is possible that there are some properties where little tax is owed because of a STAR exemption or other reason – so that the amount owed might be less than \$500 even if the property is abandoned and no one is paying taxes. If this is a significant issue, the City might want to allow foreclosure of properties with under \$500 in fees if postal records or other evidence shows that the property has been abandoned.

### **Reduce the Fee for Those Who Owe Little**

A fee of \$445 on properties that owe relatively little is both unjust and impractical, swelling the ranks of those who lose their homes each year.

A sliding scale might be the most fair, but, if that proves too complicated, a simple two or three fee system would still be a great improvement. Those owing \$1000 dollars or less (including all late fees already attached to the property) should see their In Rem fee cut in half to \$222.50. If the City continues to foreclose on those owing less than \$500, the City could charge them \$111.25.

By reducing the fee, the City might not lose as much revenue as it may fear. Currently, the fee is so high that it pushes some properties into the foreclosure auction. In 2009, of the 3,304 properties that went to auction, only 826 were sold, so the City failed to collect foreclosure fees from over three-fourths of the properties. If more owners were able to settle their cases with payment plans, because the fee was lower, then the City might recoup more of its expenses.

### **Accept Partial Payments**

Currently, the City of Buffalo only allows payments of delinquent taxes and fees in full prior to the In Rem filing. This makes the process simpler for the City, but puts an extra burden on taxpayers. If the City accepts partial payments, owners will be able to pay into their tax debt when able, keeping them on the tax rolls instead of forcing them into a larger delinquency. In return for making these payments, the interest which is owed on delinquent taxes and fees should reflect what they currently owe and not the amount of the original bill. These two steps incentivize people to stay more current.

### **Hardship Assistance Programs for the Elderly, Disabled and Low-Income Residents**

Buffalo needs a foreclosure prevention program to offer cash assistance or no-interest loans to people who have suffered a temporary loss of income through no fault of their own but who have the long-term ability to afford their home. One of many national models is the Ohio Home Rescue Fund, which keeps people in their homes by providing zero interest mortgages.<sup>10</sup>

Several organizations already exist with the capabilities and experience to identify and help these people on behalf of the City. These organizations have already helped people avoid mortgage foreclosure and assist with tax foreclosure in a similar way. The Urban League, Belmont, the local NHS groups and various legal service agencies already have done similar work.

### **Improve or Eliminate User Fee Billing**

Currently, residents receive one bill a year for their user fees. This bill contains one portion

that may be sent in to pay the entire annual fee and three other parts that can be sent in if the resident wished to pay quarterly<sup>11</sup>. The problem with this is that there is no notice or reminder when the quarterly payments become due. The lack of a reminder makes it more likely that people will forget to pay their user fees. The City charges substantial late fees and penalties on missed payments (although the City is considering waiving the fee since the new system was implemented<sup>12</sup>), thus adding to the risk that the amount will rise so high as to push the property into foreclosure

In some cities, the water bills, user fees and sewer liens are folded into the tax bill that is received every year. This reduces the risk that the owner will neglect to pay one of the bills and end up facing foreclosure for a relatively small debt.

In Buffalo, garbage service used to be financed out of general property tax revenues, rather than by a separate fee. A separate fee has two possible advantages. If the City is coming close to its constitutional taxing limit, the separate fee helps keep the property tax rate lower. Currently, the City is not close to its limit, so this point is less relevant. The second advantage is that, with a separate fee, the City can charge different amounts for different sized garbage totes, which is more fair and gives residents an incentive to recycle more and throw out less. However, it should be possible to find other ways, with rebates or other methods, to reward recyclers.

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<sup>1</sup> NYS RPTL § 1122.

<sup>2</sup> Warren's Weed New York Real Property § 134.02

<sup>3</sup> Correspondence with Attorney Desmond Hughes, July 18, 2011.

<sup>4</sup> Personal Communication from City of Buffalo Assessment Division, March 25, 2011.

<sup>5</sup> The information in this section comes directly from the initial In Rem 45 filing. This document was obtained directly from the City of Buffalo Assessment and Taxation office and comprises over 2,000 pages of property listings.

<sup>6</sup> This information was gathered as a glimpse of possibly problematic issues with the current In Rem foreclosure system. A fact sheet with the findings can be found at <http://www.ppgbuffalo.org/wp-content/uploads/2010/07/Inrem45.pdf>.

<sup>7</sup> <http://factfinder.census.gov>

<sup>8</sup> Dan Immergluck and Geoff Smith, "The External Costs

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of Foreclosure: The Impact of Single Family Mortgage on Property Values", Housing Policy Debate, Vol. 17, Issue 1.

<sup>9</sup> Dan Immergluck and Geoff Smith, "The Impact of Single Family Mortgage Foreclosures on Neighborhood Crime", Housing Studies, Vol. 21, No. 6, November 2006.

<sup>10</sup> Neighborhood Housing Services of Greater Cleveland, <http://www.nhscleveland.org/programs/OhioHomeRescueFund.htm>

<sup>11</sup> Brian Meyers, *Plan to Fund the Arts Supported*, Buffalo News, July 27, 2011, at B7, <http://www.buffalonews.com/City/communities/buffalo/article502442.ece>.

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