Testimony before the City Council Committee on Finance:
Sale of Tax Liens and Notice to Property Owners When Property Tax Bills are Available Online

January 11, 2017

Good afternoon. My name is Caroline Nagy, and I am the Deputy Director of Policy and Research at the Center for NYC Neighborhoods. I would like to thank Chair Ferreras-Copeland and the members of the Committee on Finance for holding today's hearing regarding the sale of tax liens in New York City.

About the Center for NYC Neighborhoods

The Center promotes and protects affordable homeownership in New York so that middle- and working-class families are able to build strong, thriving communities. Established by public and private partners, the Center meets the diverse needs of homeowners throughout New York State by offering free, high quality housing services. Since our founding in 2008, our network has assisted over 40,000 homeowners. We have provided approximately $33 million in direct grants to community-based partners, and we have been able to leverage this funding to oversee another $30 million in indirect funding support. Major funding sources for this work include the New York City Department of Housing Preservation and Development, the New York City Council, and the Office of the Attorney General, along with other public and private funders.

Every year, the Center works to keep as many homeowners as possible out of the lien sale by conducting direct outreach to homeowners on the pre-lien sale lists, and by coordinating with our network partners to assist homeowners in obtaining a payment plan or qualifying for an exemption. We also support homeowners who have had tax liens sold by connecting them to foreclosure prevention services and, in cases where a tax lien foreclosure is imminent, by providing interest-free loans through our Mortgage Assistance Program to pay off liens.

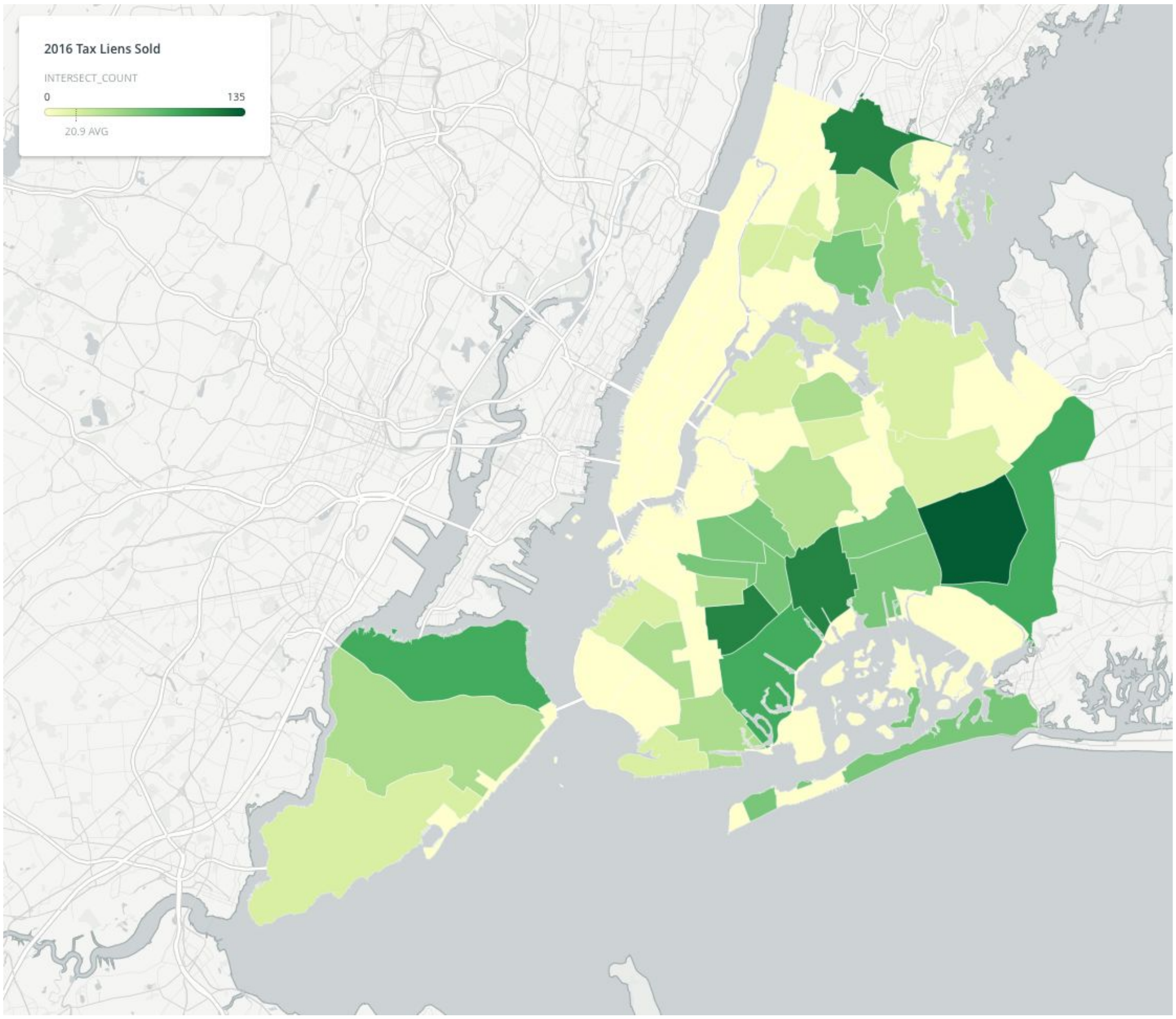
New York City's Tax Lien Sale

The sale of tax liens for one-to-four family homes in New York City causes severe financial hardships for thousands of low-income or otherwise vulnerable families each year. As we have testified at previous lien sale legislation renewal hearings, the lien sale as it currently exists presents significant challenges to the Center's mission of promoting and protecting affordable and sustainable homeownership in New York City. In November, the Center joined with our fellow members of the Coalition for Affordable Homes to release an analysis of the City's lien sale as it impacts homeowners of Class 1 properties (properties with 1-3 units).[1]

The analysis confirmed many of the Center's concerns regarding the impact of the lien sale, specifically regarding its disproportionate impact on communities of color, the steep interest and fees charged to homeowners, and the impact of the lien sale on the loss of affordable housing in New York:

[1] Coalition for Affordable Homes, Compounding Debt: Race, Affordability, and NYC's Tax Lien Sale.

- **The tax lien sale disproportionately impacts communities of color.** Tax liens that are sold through the City's lien sale are heavily concentrated in communities of color, the same communities that have been hard hit by predatory lending and high rates of foreclosure. For Class 1 liens sold in 2016, the analysis found that the City is six times more likely to sell a lien in a majority African American neighborhood than in a majority white neighborhood. The City is twice as likely to sell a lien in a majority Hispanic neighborhood than in a majority white neighborhood.



- **Once sold to private investors, debts to homeowners mount quickly.** While a homeowners may enter into the tax lien sale with a relatively small debt, interest rates and fees can often double in a relatively short period of time. The Coalition for Affordable Homes analysis of a sample of lien sale payoff statements found that the median debt of $6,562 increased by 65 percent to $10,847 once fees and interest rates were included. Homeowners in the sample paid an average of $2,730 in legal expenses, an excessive amount. These debts can further destabilize homeowners who were already in a precarious financial position.

- **The tax lien sale contributes to property turnover and speculation.** The communities most impacted by the sale of Class 1 liens, such as East New York and Jamaica, are already those most impacted by speculative property transactions.[2] For homes that have liens sold, the analysis found that the tax lien sale process may contribute to the displacement of longtime homeowners and their renters: of Class 1 liens sold in Brooklyn in the 2011 lien sale, nearly half (42 percent) were sold within five years of the lien sale, compared to 13 percent of all such properties in the borough during that period.

The Proposed Renewal Legislation Makes Important Reforms But Does Not Go Far Enough

When the lien sale was last renewed in 2015, the legislation called for the creation of a task force to review and evaluate the City's lien sale program. The resulting task force report found that the lien sale is successful in its primary purpose "to increase the collection of debts owed to the City in order to provide funds for government services, and to minimize cost-shifting from tax delinquent property owners to tax compliant ones." It acknowledged that the City also aims "to make the Program efficient and fair and to ensure that protections exist to avoid any additional financial burden on property owners or, in extreme cases, the needless loss of property ownership," but only to the extent that any changes are consistent with its primary purpose.[3]

To that end, the task force recommended limiting the number of liens sold each year by improving notification to at-risk property owners, providing greater flexibility to owners making good faith efforts to repay their debt, modifying payment plans to make them more affordable, and lowering interest rates for delinquent taxes. The task force also recommended creating clear and user-friendly bills and notifications, conducting further research to the impacts of the lien sale on property owners and their communities, and assessing whether other city priorities, like preserving affordable housing, could be advanced through the City's debt resolution policies.

Int. 1385A-2016, the proposed lien sale renewal legislation, moves a number of these recommendations forward:

- For tax debts, it gives property owners a one-time opportunity to enter into a second payment plan with a twenty percent down payment if the owner has defaulted on the first payment plan. It also gives owners with DOF payment plans the option of entering either monthly or quarterly payment plans. For DEP liens, DEP has the discretion to choose either monthly or quarterly options.
- It clarifies that the interest rate on liens sold is that set by the City for nonpayment of taxes on Jan 1 of the year the lien is sold. Thus, the rate for liens sold in 2017 will be six percent for

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[2] Center for NYC Neighborhoods, House Flipping is a Flop for NYC Neighborhoods. April 18, 2016. Available at: cnycn.org/2016/04/house-flipping-is-a-flop-for-nycneighborhoods

[3] New York City Lien Sale Task Force, Report of the Lien Sale Task Force, September 2016. Available at: council.nyc.gov/ downloads/pdf/Lien-Sale-Task-Force.pdf, at 12.

assessed values under $250,000, though the nine percent rate for water liens remains, as does the eighteen percent rate for property tax on assessed values over $250,000.
- The bill expands the sale of HPD Emergency Repair Liens to non-owner occupied one-, two-, and three-family homes.
- The bill improves communications to property owners impacted by the lien sale, requiring DOF to notify property owners by email when property tax bills are mailed, if an email has been registered with the City. It also requires DOF and DEP to contact by phone or email property owners on the 90-day lien sale list, if an email or phone number has been registered with the City, though it notes that failure to do so will not invalidate the sale.
- Finally, it requires information about the lien sale to be made public, information on what happens to properties after the lien sale, including charges accrued to properties after the lien sale, whether the property has been sold, or whether the lien is in foreclosure.

These are positive developments that will certainly help to reduce the numbers of properties impacted by the lien sale, and we thank City Council and the de Blasio administration for taking the initiative to make these improvements. We are particularly appreciative of the improvements to pre-sale notifications, lowering the tax lien interest rate, and the new option of entering into a second repayment plan. We are also enthusiastic about the integration of financial counseling and financial empowerment into lien sale outreach. However, the legislation still does not go far enough to address our serious concerns about the impact of the lien sale on homeowners and their communities.

To start, the City's Lien Sale Task Force report called on the City to assess whether the resolution of outstanding debt could be an opportunity to advance other city priorities, but this is not reflected in the bill. Specifically the bill does not address the need to support the preservation of affordable housing that is put at risk by the lien sale each year. It does not address the need for more flexible repayment plans that are based on a homeowner's ability to pay, though DOF has proposed to examine adopting such plans in 2017. It also does not make reforms for heirs who have inherited debts along with their property and struggle to negotiate payment plans with the City without obtaining an expensive Surrogate Court Order. Finally, it does not address excessive post-sale legal fees imposed by the lien sale trust, nor does it lower interest rates for water debt.

Therefore, we respectfully urge City Council to strengthen the lien sale legislation by adopting the following recommendations:

1. **Provide more flexible payment options to low-income homeowners**

Current policy does not take a homeowner's income into account when determining exemptions from the lien sale (unless the homeowners is also a senior or has a disability) or when negotiating payment plans. This leaves many low-income homeowners without options when seeking to avoid the lien sale and keep their home. Rather than selling their debts to private investors, the City can develop new approaches, specifically by expanding the Water Debt Assistance Program and offering income-based repayment plans.

One promising approach can be seen in the City's Water Debt Assistance Program, which allows qualifying homeowners at risk of water lien foreclosure to defer the debt to the City and be excluded from the lien sale. The debt becomes "frozen," meaning it will not be sold but instead will be repaid upon sale, refinance, or death. This program should be used as a model to expand exemptions for other low-income or vulnerable households, such as low-income homeowners who do not owe a mortgage on their home, but fall behind on their payments due to economic hardship. It should also be expanded to include tax debt as well as water debt.

Other homeowners will be able to repay their debts to the City if the payments are set to affordable levels based on their income. An income-based payment plan would provide tax revenues for the City while keeping payment burdens manageable for vulnerable homeowners. Income-based repayment plans are commonly used for federally-backed student loans and have been adopted for property tax payments in Philadelphia.

It is encouraging that DOF plans to investigate new repayment plan options for low-income taxpayers. However, greater legislative direction would be useful to ensure that these options are implemented, and we encourage you to amend the proposed legislation to this end.

2. Reduce post-sale charges to homeowners

Once liens are sold, homeowners face excessive interest rates and legal fees. While the interest rate reduction for some property tax liens is a promising development, water debt interest rates remain at nine percent, a high rate given current low interest rates at the national level. Additionally, there are no limitations on legal fees, which can become excessive. Therefore, we recommend amending the proposed legislation to lower water interest rates and restrict legal fees to reasonable charges that are rationally related to the amount of work incurred when servicing homeowners' liens.

3. Improve options for heirs inheriting tax debts

Many heirs struggle to pay off the debt that came with the property they inherited. Unfortunately, under current practices, DOF will not enter into payment plans with heirs unless they have a Surrogate's Court order that names them administrator of the estate. For many families, obtaining these orders can be expensive and is cost-prohibitive. This policy causes unnecessary hardship for low-income heirs and puts them at risk of the lien sale, even when they are making efforts to resolve the debt. Therefore, the lien sale reauthorization legislation should address this issue and develop more explicit guidance regarding the ability of heirs without Surrogate's Court orders to enter into payment plans with the City and avoid the lien sale.

4. If these reforms cannot be made before renewal, reduce the renewal period to one year

Significant progress has been made towards reforming the lien sale since its last renewal. While the proposals found in Int. 1385A are a promising step forward, we believe more can be accomplished to keep the momentum going forward. This is especially the case given the potential serious consequences of the lien sale and its impact on housing affordability in New York City. Therefore, we recommend shortening the renewal period from four years to one year.

Moving to Solutions

Thank you for the opportunity to testify today. At the Center, we are committed to working with City Council and the de Blasio administration to reduce the impacts of the lien sale on low- and moderate-income homeowners. We thank the City Council and the de Blasio administration for the reforms contained within this legislation and look forward to continuing to partner with you on further improvements.