

New York City Tax Sales

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On May 20, 1996, the City of New York sold tax liens representing unpaid real estate tax obligations and related charges of approximately \$250,000,000.00, involving a reported four thousand six hundred and forty-five properties within the five boroughs to a trust identified as the NYCT96-1 Trust. The Trust purchased the liens at a discount from the proceeds of bonds underwritten by Morgan Stanley & Company, and Tax Lien Certificates were executed by the City to The Bank of New York, acting as Collateral Agent and Custodian. This sale procedure is a dramatic change from the City's usual method of dealing with property in tax arrears. Tax lien sales are authorized to be conducted no later than December 31, 1997.

Although provision for tax lien sales has been included in the Administrative Code for many years, the City's sole device for dealing with tax delinquent property has in practice been to use an In Rem procedure whereby the City takes title to all scheduled tax delinquent properties after mailing and publishing notice to all interested parties of the scheduled taking, entry in Supreme Court of a judgment of foreclosure for those parcels not withdrawn from the action by reason of the payment of arrears or the entry into arrangements for payment, and the execution and recording of a deed to the City. By selling tax liens at a discount to investors, the City expects to remove itself from taking title to numerous tax delinquent properties.

The new procedures were enacted by Local Law 26 of 1996 (amended in part by Local Law 37 of 1996) which amended Chapter 3 of Title 11 of the Administrative Code of the City of New York captioned "Tax Liens and Tax Sales". A companion provision enabling the removal from a tax sale of so-called "distressed property" was enacted by Local Law 37 of 1996, which otherwise generally deals with changes to procedures effecting the In Rem foreclosure of tax liens. This article discusses the provisions of these Local Laws providing for the sale of tax liens and changes relative to proceeding In Rem.

TAX SALES

A tax lien represents the amount of unpaid real estate taxes and assessments billed by the Department of Finance, water and sewer charges and other charges posted by either the Department of Finance or the New York City Water Board, together with interest and penalties thereon. In the case of Class One property and of Class Two property that is a residential

cooperative or a condominium unit, a tax lien can be sold by the Commissioner of Finance when a real estate tax has been unpaid for three years. For all other property, it is sufficient that any type of charge, be it a real estate tax, a water charge or a sewer charge is unpaid for one year so long as there is a real estate tax other than a Business Improvement District tax then unpaid.

Class One real property is generally defined in Real Property Tax Law, Section 1802 to include one-to-three family residences, residential condominium units in buildings not more than three stories in height, one-family owner-occupied house structures situated on property held in cooperative form, and certain vacant land other than land in Manhattan south of 110th Street. Class Two real property includes all other residential real property, excepting hotels and motels and other similar commercial property. Class Three includes real property of a utility and Class Four generally includes other commercial property.

Local Law 26 allows for the sale of individual tax liens through competitive bidding. Tax liens in individual sales cannot be sold at a discount. It is expected, however, that sales of tax liens will continue to be negotiated bulk sales at discount with designated institutional purchasers insofar as no criteria for the eligibility of individual tax sale purchasers has been issued. The Commissioner of Finance is required to publish notice of the intention to sell tax liens in a newspaper of general circulation not less than fifteen days prior to the date designated for the receipt of bids in the case of competitive bidding or statements of interest for negotiated sales.

Notice of the sale of tax liens is required to be published not less than sixty days and again not less than ten days preceding the date of sale. The property owner of record and any other person or entity registered for notice by filing of a statement of interest in the office of the City Collector or of either an Owner's Registration card or an In Rem notice card in the Department of Finance are to be sent notice of the sale no less than thirty days prior to the date of the sale by first class mail.

DISTRESSED PROPERTY

Tax sales taking place subsequent to fiscal year 1996 will not include parcels designated by the Commissioner of the Department of Housing Preservation and Development at least ten days prior to the date of a tax lien sale as being "distressed". Such property is defined in Local Law 37 to include Class One and Class Two property having a lien to value ratio equal to or greater than 15% when the parcel either (a) has an average of five or more hazardous or immediately hazardous violations of the housing maintenance code per dwelling unit, or (b) is subject to an HPD lien for the repair or elimination of any dangerous or unlawful condition. Distressed property will be subject, instead, to either In Rem tax foreclosure (under which the City of New York will take title) or inclusion by the Commissioner of the Department of Housing Preservation and Development in a program for the rehabilitation and preservation of existing housing.

THE SALE

At the tax lien sale the Commissioner may require a deposit of five percent of the sale price in cash or a cash equivalent. The tax lien certificate is delivered to the purchaser on payment of the balance of the sale price. Transfer of the tax lien certificate to the purchaser transfers the right of the City to receive the amounts due. A certificate is assignable but only to persons or entities which have no interest in the property to which the tax lien relates. In the event that this restriction is violated, the full purchase price of the tax lien becomes due, the tax lien certificate sold is deemed void, and the lien reverts to the City as if no sale had occurred.

Notice of the sale having taken place is to be sent by first class mail to the owner of the property of record and to any other person or entity that has registered to receive notices within ninety days after delivery of the tax lien certificate to the purchaser. The notice is to set forth the date of the sale, the name and address of the purchaser of the lien, and the terms and conditions of the certificate.

A public record of the sale and the assignment of tax liens is to be maintained in the Department of Finance. In addition, tax lien certificates and assignments of tax liens are deemed to be "conveyances" under Article 8 of the Real Property Law and thus able to be recorded in the real estate records in the County wherein the property is located. The Local Law provides, however, that the recording of the tax lien certificates and assignments of the certificates are not subject to mortgage recording tax.

For the May 1996 tax sale, tax lien certificates have been recorded in the four county offices of the City Register and in the office of the Richmond County Clerk. Each Certificate, one per county, sets forth on an annexed schedule the tax and street address of each parcel on which tax liens were sold, the name of the property owner, the amount of real property taxes and other charges, and the tax lien principal balance that was due on the date of the sale.

The tax sale purchaser is entitled to payment of the amount of the lien (including all outstanding taxes and charges encompassed thereby), the costs of provided notice of and publishing advertisements for the sale, a surcharge of five percent on the amount due at the time of sale, and interest of the sum of the preceding amounts payable semi-annually computed at the rate of eighteen percent compounded daily. The aggregate amount is due and payable to the holder of the tax liens one year from the date of the tax sale. If the lien then remains unpaid, the holder has the option of commencing an action in the Supreme Court to foreclose the lien in the manner of a real estate mortgage. The City of New York is authorized but not required to purchase the property when sold pursuant to a foreclosure judgment.

The holder of the tax lien certificate need not, however, wait one year from the date of sale to commence a foreclosure proceeding. The tax lien certificate is subject to foreclosure, at the option of the tax lien holder, on default in the payment of interest for thirty days, or on default in the payment for six months of any other taxes or charges posted by the Department of Finance or the Water Board.

It is possible that during the pendency of the foreclosure of the tax lien sold under this procedure, unpaid taxes and other charges posted against the same property after the date of the tax lien sale may render a property subject to an In Rem tax proceeding by the City of New York. The holder

of the tax lien certificate can, to protect its position, satisfy the later posted taxes and charges. It will be deemed as to those amounts to be in the same position as a purchaser of a tax lien certificate, entitled to receive eighteen percent interest compounded daily on those arrears but not the five percent surcharge. At the request of the purchaser of that subsequent tax lien, the Department of Finance will issue an additional tax lien certificate.

The Commissioner of Finance is authorized, however, to forbear commencing an In Rem action against property which has outstanding an unredeemed tax lien certificate held by a third party.

PAYMENT TO THE HOLDER

The "Notice of Sold Tax Lien" mailed for the May 20, 1996 tax sale states that payments made to "NYCTL-1 Trust" should be mailed to the Trust at an address specified. Payments can, however, be also walked-in or wire transferred to the Bank of New York. It is suggested that either J. E. Robert Company at 888-783-8250 or the Capital Asset Research Company at 407-689-9700, (the servicing companies engaged for the May 20, 1996 tax sale) be contacted in advance to obtain written payoff figures with the amount payable computed through the anticipated payoff date. Additional interest will be charged if the payment does not include interest due up to the date the payment is received. The name of the Borough in which the property sold is located, and its tax block and tax lot, will need to be provided to obtain payoff figures. While each servicing company is responsible for administering particular tax liens, a call to either one will enable the person making an inquiry to be directed to the proper party.

Local Law 26 requires that on full payment of a tax lien the tax lien certificate is to be surrendered to the Department of Finance. The tax lien must also be discharged of record by an instrument in recordable form. This author has been advised that a release for recording will be issued within thirty days of the receipt of full payment if payment was made by wire transfer or by certified funds. Otherwise, it can take up to ninety days for a release to issue. Advice received was also that one of the servicing companies will issue a letter confirming the receipt of funds and the intention to deliver a recordable release to enable a transaction involving the property in question to go forward.

PROCEEDINGS IN REM

Local Law 37 of 1996 made a number of changes to Title 11, Chapter 4 of the Administrative Code of the City of New York ("Tax Lien Foreclosure By Action In Rem") which sets forth the procedures whereby the City of New York takes title to properties in tax arrears by use of In Rem actions. This has been the method exclusively used by the City for tax foreclosures since the 1960s.

Prior to enactment of Local Law 37, a parcel improved by a one or two family dwelling on which the annual real estate tax was no more than \$2,750.00 was subject to In Rem tax foreclosure when a real estate tax or assessment, or a water or sewer charge, remained unpaid for a period of three years from the date on which the amount in question became a lien. All other property was subject to In Rem tax foreclosure after nonpayment for one year. The three year

period has been expanded to include all Class One real property and Class Two residential condominiums and cooperatives and, with the consent of the Department of Housing Preservation and Development, Housing Development Fund Companies organized under Article XI of the Private Housing Finance Law.

All foreclosure eligible parcels have in the past been required to be included in an In Rem action. The tax arrears property to be foreclosed In Rem can now be limited to property within specific tax classes and the property can be restricted to those within only a geographic section of a borough giving the City the ability to target a specific area.

THIRD PARTY PURCHASERS

It is now possible for the judgment of foreclosure to authorize the Commissioner of Finance to execute a deed to Class One or Class Two In Rem foreclosed property to a third party deemed qualified by the Department of Housing Preservation and Development. The third party will be required to meet criteria for eligibility to be promulgated by HPD such as that which relates to financial responsibility, the third party's experience in residential management and housing rehabilitation, and its an apparent ability to work with government agencies and community organizations. The City Council on notice has forty-five days to enact a local law disapproving the proposed conveyance. If the Council takes no action and a deed to the third party is executed, the purchaser will take title to the property free and clear of the title or interest to the premises of any person or entity and the appointment of any receivers or Article 7-A Administrators will be deemed terminated. The third party taking title must continue the property's existing use.

PAYMENT OF OUTSTANDING CHARGES

Administrative Code provisions concerning payment and the recovery of the property after filing of the list of property to be foreclosed In Rem, after entry of the judgment of foreclosure and, in the case of Class One and Class Two property, after a deed to the property has been executed to the City have been changed by Local Law 37.

Title 11, chapter 4, section 11-424 of the Administrative Code has enabled the City to enter into installment agreements with a person or entity having an interest in a property within two years from the date on which the In Rem deed to a property was recorded when authorized by the In Rem Foreclosure Release Board. In addition, section 11-424 has provided for the release of the City's interest even more than two years after recording of the In Rem deed into the City on resolution of the City Council and approval of the In Rem Foreclosure Release Board.

For installment agreements entered into for Class One and Class Two real property up to four months after the date on which a final judgment in an In Rem action has been entered, the first installment is now to be fifty percent of the sum of all arrears with a contemporaneous payment of a five percent penalty not to exceed \$1,000.00. The balance of the arrears is payable over four equal installments, and at the time of each installment all real estate taxes and assessments and other charges accruing since payment of the prior installment must be paid. The vacate order will provide that on default in the installment agreement all amounts paid will be forfeited, a

supplemental judgment of foreclosure will be entered, and a deed will be recorded giving title to either the City of New York or a third party.

Provisions governing installment agreements for Class Three and Class Four property have also been amended. For example, under Section 11 of Local Law 37, from the date on which the In Rem action is commenced up to the date on which the Commissioner of Finance is advised by the Corporation Counsel that preparation of the judgment of foreclosure has commenced, an agreement can be entered into for Class Four real property under which a first installment of twenty-five percent of the arrears is made and the balance is payable quarterly based on twice the number of unpaid quarters of real estate taxes not to exceed twenty quarters. Again, the vacate order will provide that on default in the installment agreement all amounts paid will be forfeited, a supplemental judgment of foreclosure will be entered, and a deed will be recorded giving title to either the City of New York or a third party.

In addition, under Local Law 37, within four months of the entry of the In Rem foreclosure judgment, a person or entity with an interest in Class One or Class Two real property can, by paying all outstanding charges and a penalty of five percent not to exceed \$1,000.00, cause the judgment to that parcel to be set aside and the lis pendens canceled. Within sixteen months of the date on which a deed to the City is recorded, an interested person or entity can now redeem Class One or Class Two property on payment of the above amounts and any deficiency due to the City for expenses incurred in its maintenance of the property. In either case, an order will be caused to be entered by the Corporation Counsel discontinuing the action, canceling the lis pendens, and vacating the judgment and the deed for the property in question. If, however, a deed conveying a Class One or Class Two real property to a third party has been recorded, the release procedure will not be available. In the unlikely event that the Commissioner of Finance does not execute a deed conveying Class One or Class Two property to either the City or a third party within eight months after the date of the entry of the judgment of foreclosure in the In Rem action, an order is to be entered by the Corporation Counsel discontinuing the In Rem action, canceling the notice of pendency, and vacating the judgment. All persons and entities that had an interest in the property are restored to the status they had prior to final judgment. The eight month period is tolled for the period of time during which the City Council considers the transfer to a third party, as noted above.

"Distressed" property" can be removed from an In Rem action at the direction of the Commissioner of Finance and entered by the Commissioner of the Department of Housing Preservation and Development in a program for housing rehabilitation and preservation.

ADDITIONAL PROCEDURE

Section 45 of Local Law 26, as amended by Section 1 of Local Law 37 also provides that the City of New York can maintain an action in Supreme Court to foreclose a single lien for real estate taxes, assessments, water or sewer or other posted charges (or interest and penalties thereon) remaining unpaid and sell the parcel effected to either the City or to the highest responsible bidder qualified to bid under rules to be promulgated by the Commissioner of Finance in consultation with the Commissioner of the Department of Housing Preservation and Development. Tax liens subject to this procedure must be unpaid for at least three years in the

case of Class One property or Class Two property that is a residential condominium or cooperative, or a multiple dwelling owned by a Housing Development Fund Company organized under Article XI of the Private Housing Finance Law, and unpaid for one year in all other cases. Foreclosure of a tax lien on property of a Housing Development Fund Company can proceed only on approval of the Department of Housing Preservation and Development.

CONCLUSION

With the changes that have been made to the In Rem procedures and the reinstatement of the long dormant tax lien sales, the City of New York has afforded itself more flexibility in dealing with property in tax arrears. It will presumably avoid becoming the owner of last resort of many tax distressed properties and parcels will be able to be transferred free and clear of outstanding liens outside of the City Charter's cumbersome and lengthy Uniform Land Review Process ("ULURP") which otherwise applies to the disposition of City owned real property.

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(Additional Information on New York City Tax Lien Sales)