THE OTHER FORECLOSURE CRISIS

PROPERTY TAX LIEN SALES

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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TABLE OF CONTENTS

Executive Summary 4

I. Introduction 8

II. Economic Conditions Contribute to Increase in Tax Lien Sales 9

III. Overview of the Tax Lien Sale Procedure 11

1. *Tax Sale by Auction* 13
   - A. Tax Deed Sale 13
   - B. Tax Lien Certificate Sale 13
   - C. Transfer Without Auction 14
   - D. Bidding Procedure at Auctions 14
2. *Negotiated Bulk Sales* 16
3. *Securitization* 16
4. *Redemption and Foreclosure* 17
5. *Tax Sale Purchasers* 17

IV. Findings and Recommendations 19

1. *Availability of Tax Relief Programs* 19
   - A. Encourage enrollment in abatement programs 21
   - B. Adopt tax deferral programs 21
2. *Availability of Pre- and Post-Sale Payment Plans* 22
   - A. Make pre-sale payment plans available 22
   - B. Implement redemption payment programs 23
3. *Notice of the Tax Sale Process and Redemption Rights* 24
   - A. Adequate notice should be given at every stage of the tax sale process 26
   - B. Provide detailed notice of redemption rights 26
   - C. Provide for in-hand personal service of the final foreclosure notice 28
   - D. Provide enhanced notice to at-risk homeowners 29
4. *Redemption Costs and Investor Profits* 30
   - A. Make redemption costs affordable by keeping investor profits reasonable 33
   - B. Place reasonable limitations on fees and costs 35

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5. *Redemption Rights and Foreclosure Avoidance* 35
A. Length of Redemption Period 35
B. Create redemption assistance programs 36
6. *Safeguards against Loss of Equity* 38
A. Establish a two-step tax sale procedure, with court supervision over the final stage 39
B. Conduct fair market value sales with proper treatment of surplus 40
C. Create an indemnity fund to compensate owners for defective tax sales 41

V. Conclusion 42

Appendix A: Summary of State Tax Sale Laws 43

Endnotes 47

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SECTION BY SECTION STATE REFERENCES

I. Introduction 8

II. Economic Conditions Contribute to Increase in Tax Lien Sales: FL, MS, RI 9

III. Overview of the Tax Lien Sale Procedure 11
- 1. *Tax Sale by Auction* 13
  - A. Tax Deed Sale 13
  - B. Tax Lien Certificate Sale: IL 13
  - C. Transfer Without Auction: MN, NH 14
  - D. Bidding Procedure at Auctions: IL 14
- 2. *Negotiated Bulk Sales:* NY, OH 16
- 3. *Securitization:* CT, DC, GA, NJ, PA 16
- 4. *Redemption and Foreclosure* 17
- 5. *Tax Sale Purchasers:* DC, FL, GA, IA, IL, NJ, NY, PA, TX 17

IV. Findings and Recommendations 19
- 1. Availability of Tax Relief Programs: IL, MD, TX, UT 19
  - A. Encourage enrollment in abatement programs: NY 21
  - B. Adopt tax deferral programs: UT 21
- 2. Availability of Pre- and Post-Sale Payment Plans 22
  - A. Make pre-sale payment plans available: NY, PA, VA 22
  - B. Implement redemption payment programs: NH 23
- 3. Notice of the Tax Sale Process and Redemption Rights: DE 24
  - A. Adequate notice should be given at every stage of the tax sale process: NY 26
  - B. Provide detailed notice of redemption rights: IN, LA, MD, OH, PA 26
  - C. Provide for in-hand personal service of the final foreclosure notice: CA, PA, SD 28
  - D. Provide enhanced notice to at-risk homeowners: MI, OK, RI 29
- 4. Redemption Costs and Investor Profits: CT, GA, IA, MD, MS, NH, NJ, NY, OH, OK TX, WY 30
  - A. Make redemption costs affordable by keeping investor profits reasonable: CO, FL, IA, TX, UT 33
  - B. Place reasonable limitations on fees and costs 35
- 5. Redemption Rights and Foreclosure Avoidance: AR, CA, DE, DC, MA, MD, MO, NM, NV, UT, VA 35
  - A. Length of Redemption Period: IL, KS 35
  - B. Create redemption assistance programs: CT, DE, MD, MI, MN, NJ, NY, NC, PA, RI, TX, VT, WA 36
- 6. Safeguards against Loss of Equity: CA, MT, NJ 38
  - A. Establish a two-step tax sale procedure, with court supervision over the final stage: ME, WA 39
  - B. Conduct fair market value sales with proper treatment of surplus: CT 40
  - C. Create an indemnity fund to compensate owners for defective tax sales: IL 41

V. Conclusion 42

Appendix A: Summary of State Tax Sale Laws 43

EXECUTIVE SUMMARY

In recent years, policymakers and housing advocates have focused on the home mortgage crisis. The unprecedented rate of foreclosure filings has prompted federal legislation, inspired the creation of foreclosure mitigation programs, and spurred local and state efforts to preserve homeownership. However, another type of foreclosure threatens households: property tax lien foreclosures.

All states have laws that permit local governments to sell property through a tax lien foreclosure process if the owner falls behind on property taxes or other municipal charges. These laws place a lien on the property for the amount of past due taxes. A tax lien almost always has first priority over all other liens, including mortgages. If the taxes remain unpaid, municipalities auction the lien or the property to private purchasers and investors. Prior to foreclosure, most owners have a right to redeem their property by paying the tax sale purchaser the purchase price plus interest, penalties, and costs within the time period allowed by statute. The failure to redeem leads to foreclosure.

These laws serve an important purpose in ensuring that local governments recover tax revenue needed to provide essential government services. However, states rarely update these laws to reflect current economic conditions or to ensure that proper safeguards exist to avoid unnecessary loss of homeownership.

For example, the interest and penalties homeowners must pay to redeem their property after a tax sale are set by laws that were enacted decades ago in most states and do not reflect the current cost of funds. Tax sale purchasers are entitled to a return on investment, but these laws produce profits in many states at a much higher rate than ordinary investments. Although banks currently provide interest on savings accounts at less than 1 percent, many states permit tax sale purchasers to recover interest at rates of 18 percent or more, even as high as 20–50 percent. As noted by the director of a tax sale investor group, these interest rates "beat the heck out of any certificate of deposits." It is for this reason that tax lien sales are often promoted on websites and late-night television advertisements as "get-rich-quick" schemes for investors. These excessive penalties can make it impossible for some homeowners to save their homes from foreclosure.

The structure of tax lien sales also makes it far more likely a homeowner will suffer a devastating loss of home equity as compared with other auction sales. In many states, the property is sold only for the amount of back taxes owed. A tax lien sale may be started over nonpayment of a tax bill of only a few hundred or thousand dollars. Thus, a $200,000 home may be sold at a tax lien sale for $1,200. These bidding procedures mean that homeowners may lose not only a homestead but also thousands or even hundreds of thousands of dollars in equity. This equity may represent their sole savings and security for retirement. As a result, tax lien sales may destabilize communities. Very few states have enacted procedures to protect owners' equity interests or to avoid windfalls to purchasers.

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The tax sale procedures in most states are exceedingly complicated and are generally understood only by investors and purchasers. Inadequate notice and a lack of judicial oversight over the process leave many homeowners in the dark about steps they can take to avoid a home loss. Homeowners most at risk are those who have fallen into default because they are incapable of handling their financial affairs, such as individuals suffering from Alzheimers, dementia, or other cognitive disorders.

Those with subprime loans also face additional challenges to remain current on their property taxes. In the conventional mortgage market, lenders usually establish an escrow account that covers the costs of property taxes and insurance. However, the vast majority of subprime mortgage loans made prior to 2008 did not include an escrow account. Some lenders used the lower monthly loan payment without an escrow to induce consumers into believing the loans were affordable. Of course, since the monthly mortgage payments on many of these loans were unaffordable even without considering property tax obligations, many homeowners with subprime mortgages have failed to make property tax payments. Local studies have shown that property tax foreclosures are highly concentrated among low-income communities with large African American and Latino populations, groups also targeted by subprime lenders.

As homeowners navigate a difficult job market, declining home values, and high mortgage foreclosure rates, property tax delinquencies are increasing. Annual property tax delinquencies amount to approximately $15 billion.

Local governments face financial pressures that necessitate a steady stream of tax revenue. At the same time, many homeowners have experienced the negative effects of the recession. States and local governments must reform their property tax lien laws to preserve homeownership. Property tax collection procedures should encourage repayment rather than property loss and they should not provide an opportunity for speculators to earn huge profits off of homeowner distress.

The following recommendations outline the reforms states and local taxing authorities can take to fend off property tax foreclosures. Although most of the recommendations are directed at the state level, some of the actions can be independently pursued by municipalities, such as redemption assistance programs. The recommendations reflect the goals of preserving homeownership and ensuring prompt payment of local taxes.

State Recommendations

- **Make redemption costs affordable by keeping investor profits reasonable.** State laws should be reformed to set the maximum interest or penalty rate for redemption amounts based on current economic conditions. The interest rate should seek to discourage speculation and promote redemption.
- **Place reasonable limitations on additional fees and costs.** States should not permit investors to pad their profits by charging homeowners unreasonable fees to redeem after the foreclosure process has been initiated. State law should establish a maximum fee schedule based on reasonable, market rates for title searches, attorneys’ fees, and other fees.

- **Establish a two-step tax sale procedure, with court supervision over the final stage.** States should limit the initial tax sale to the sale of a tax lien certificate, rather than granting an entire interest in the property to a purchaser. If a homeowner fails to redeem the property, state law should require the purchaser to seek a court order authorizing final sale of the property. The court should confirm the final sale results and ensure that the sale price is fair and that any surplus funds are promptly paid to the homeowner.
- **Conduct fair market value sales with proper treatment of surplus.** Nearly one-third of states never even attempt to sell the property itself at a highest bid auction, instead settling for the amount owed for the delinquent taxes. States should change their tax sale procedure to sell the tax lien certificate or deed to the highest bidder. Purchasers could no longer scoop up properties for a fraction of their value.
- **Encourage enrollment in property tax abatement programs.** Many states operate programs to assist property taxpayers. Every state has a special property tax abatement or exemption program which grants full or partial relief to taxpayers due to age, disability, income, or personal status. The benefits are not automatic and most programs require the homeowner to proactively apply for the abatement or exemption. Local governments should publicize abatement and exemption programs at every stage of the tax assessment and collection process.
- **Adopt tax deferral programs.** Some states permit homeowners to defer property taxes. Taxpayers experiencing temporary economic problems, such as unemployment, can delay payment without losing their home. States without a tax deferral program should implement one.
- **Provide for in-hand personal service of the final foreclosure notice.** States should require personal service for owner-occupied property prior to the final proceeding to foreclose the right of redemption. State tax sale laws should operate with the greatest possible care to ensure that homeowners have actual notice of ongoing proceedings and can make informed decisions in response.
- **Provide enhanced notice to at-risk homeowners.** In some states, local social service agencies contact homeowners if records indicate the homeowner is elderly or disabled. Enhanced notice can help avoid property loss by individuals who may be at risk due to conditions affecting their ability to handle financial matters.
- **Vary the length of the redemption period.** States should grant owner-occupied properties at least one year to redeem their property. A year-long redemption period prior to foreclosure can allow homeowners to recover from temporary economic setbacks and become current on their property taxes. We urge states to adopt shorter redemption periods for abandoned and vacant properties.
- **Create redemption assistance programs.** Several states maintain small emergency loan funds for homeowners who face home mortgage foreclosures. Other states allow housing agencies to acquire the property tax lien before private investors. The housing agencies work with the homeowner to avoid a loss of the home. Most of these programs target homeowners who are experiencing temporary financial

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difficulties. States should adopt an emergency assistance program to assist homeowners in exercising the right of redemption after a tax sale.

- **Create an indemnity fund to compensate owners for defective tax sales.** State laws limit the bases and time frames on which a tax sale can be set aside. States should create an indemnity fund for property owners who sustain losses or damages as a result of a defect in the tax sale, but who cannot bring legal claims.

Local Recommendations

- **Make pre-sale payment plans available.** Local tax collectors should adopt a formal installment payment program. Homeowners without an escrow account for taxes and insurance benefit from such payment programs and are able to maintain a budget to stay current on their taxes.
- **Implement redemption payment programs.** Local tax offices should collect redemption payments to eliminate the possibility that an unscrupulous purchaser may thwart the owner's attempt to redeem. The local tax office should accept partial and installment payments.
- **Adequate notice should be given at every stage of the tax sale process.** Although municipalities must provide notice to property owners prior to a tax sale, notifications should be used as a tool to avoid loss of homeownership. Comprehensive notices should use plain language, include information about tax exemptions, abatements, and repayment plans, and note the consequences of each stage of the tax sale process.
- **Provide detailed notice of redemption rights.** The notice should give all of the essential details on how the redemption right can be exercised, including the name and address to which the homeowner can remit payment, itemized costs, and the deadline for the redemption payment.

I. INTRODUCTION

Much attention has been focused rightly on the home mortgage foreclosure crisis. The devastation it has caused individual homeowners, the housing market, and the broader national and international economies is unlike anything experienced since the Great Depression. It is not surprising that some of the same economic conditions that have fueled the mortgage foreclosure crisis have also had a significant impact on another type of home foreclosure proceeding—property tax lien sales. This report looks at ways in which states can help homeowners with this "other" foreclosure crisis.

All states have laws that permit local governments to sell property through a tax lien foreclosure process if the owner fails to pay the property taxes. These laws serve an important purpose in ensuring that local governments recover tax revenue needed to provide essential government services. However, the procedures in most states are exceedingly complicated and are understood only by investors who profit from the purchase of properties at tax sales. Rarely do states update these laws to ensure that the penalties imposed on homeowners are equitable based on current economic conditions or that proper safeguards exist to avoid unnecessary loss of homeownership.

> Although banks currently provide interest on savings accounts at less than 1%, many states permit tax sale purchasers to recover interest at rates of 18% or more, even as high as 20–50%.

For example, most states permit owners to buy back or "redeem" their homes after a tax lien sale by paying the purchaser the taxes owed plus interest and penalties. Purchasers should receive this additional interest as a reasonable return on investment in exchange for payment to local governments of needed tax revenue. However, the laws in most states that set the redemption interest rates were enacted decades ago and do not reflect the current cost of funds, thereby giving tax sale purchasers profits at much higher rates than ordinary investments. Although banks currently provide interest on savings accounts at less than 1 percent, many states permit tax sale purchasers to recover interest at rates of 18 percent or more, even as high as 20–50 percent. As noted by the director of a tax sale investor group, these interest rates "beat the heck out of any certificate of deposits."[1] It is for this reason that tax lien sales are often promoted on websites and late-night television advertisements as "get-rich-quick" schemes.

These excessive penalties can make it impossible for some homeowners to save their homes from foreclosure. **In the case of a Baltimore homeowner whose home was sold because of a $362 unpaid water bill, she could not come up with the $3,600 needed to redeem after interest, penalties and legal fees were added to the redemption costs. She was eventually evicted from her home.**[2]

The structure of tax lien sales also makes it far more likely that a homeowner will suffer a devastating loss of home equity as compared with other auction sales. Unlike a home mortgage foreclosure where the owner typically owes the lender an amount close to the value of the property, a tax lien sale may be started over nonpayment of a tax bill of only

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a few hundred or thousand dollars. In many states the property will be sold simply for the amount of the taxes owed, based on the bidding procedures used at tax sale auctions. Thus, a $200,000 home may be sold at a tax lien sale for $1,200. If the homeowner fails to take the necessary steps to buy back the property through the redemption process, the purchaser may acquire the property for a fraction of the home's value. Very few states have enacted procedures to protect owners' equity interests or to avoid windfalls to purchasers.

These bidding procedures mean that homeowners who are unable to redeem their property can lose not only a homestead that may have been in the family for years but also thousands or even hundreds of thousands of dollars in equity. This equity may represent their sole savings and security for retirement. Homeowners most at risk are those who have fallen into default because they are incapable of handling their financial affairs, such as individuals suffering from Alzheimers, dementia, or other cognitive disorders. **An 81-year-old Rhode Island homeowner was evicted two weeks before Christmas from the home she had lived in for more than 40 years because she had fallen behind on a $474 sewer bill.[3] A corporation bought her house at a tax sale for $836.39 and then resold it for $85,000.**

We begin this report by acknowledging the critical need for local governments to collect property taxes in a timely manner. Now more than ever, local governments are facing financial pressures that necessitate a steady stream of tax revenue. At the same time, many homeowners have been affected by the difficult economic times, either directly by facing foreclosure or experiencing unemployment, or indirectly through the loss of home equity from falling home values. This report looks at ways in which local governments can assist homeowners who justifiably have payment problems, without also increasing the cost of collection or limiting tax revenues. Most importantly, property tax collection procedures should encourage repayment rather than property loss, and they should not provide an opportunity for speculators to gain huge profits off homeowners in distress.

Property tax collection procedures should encourage repayment rather than property loss, and they should not provide an opportunity for speculators to gain huge profits off homeowners in distress.

II. ECONOMIC CONDITIONS CONTRIBUTE TO INCREASE IN TAX LIEN SALES

A survey by RAND researchers found that 39 percent of American families during the period between November 2008 and April 2010 had experienced one or more of the following effects of the recession: had been unemployed, had negative equity in their homes, or were in foreclosure or two or months behind on their home mortgage.[4] Five years into the foreclosure crisis, one in four, or nearly 15 million, households have underwater mortgages.[5] As of early 2011, 2.7 million homes had been foreclosed on mortgages made during the subprime boom years from 2004 to 2008.[6] By the fall of 2011, nearly four million homes were in foreclosure or had mortgages that were seriously in

default.[7] It is projected that in addition to the homes already foreclosed and now facing foreclosure, another eight to ten million home mortgages are likely to default and enter foreclosure before the crisis is over.[8] Homeowners who are unable pay their mortgages are likewise struggling to keep up with payments on home property taxes.

In the conventional mortgage market, lenders typically insist that an escrow account be set up to cover the costs of taxes and insurance. However, the vast majority of subprime mortgage loans that were made before 2008 did not include an escrow account.[9] The reasons for this are not entirely clear, though some lenders and mortgage brokers used the lower monthly loan payment amount without escrow as a means to induce consumers into believing that the loans were affordable.[10] Many homeowners who refinanced conventional loans with escrow accounts into subprime loans wrongly assumed the new loan would also have an escrow and did not know that they would be responsible for making tax payments directly to the local municipality. Of course, since the monthly mortgage payments on many of these loans were unaffordable even without considering property tax obligations, many homeowners with subprime mortgages have failed to make property tax payments. In 2010, Congress passed legislation that limits the types of consumer loans that can be made without an escrow account,[11] but many subprime mortgages without escrows still exist.

During the 2008 holiday season, **Plymouth Park Tax Services**, a tax lien investor, filed 450 foreclosure actions against taxpayers who fell behind on their bills in Lucas County, Ohio. Plymouth Park's foreclosure filings accounted for more than 10% of all tax foreclosures in the county for that year.[12]

Homeowners with mortgage escrow accounts are not immune from tax sale problems. Ordinarily if a borrower falls behind on the mortgage and there is an escrow account, the mortgage servicer will pay the property taxes even if there are not sufficient funds in the escrow account. This will often lead to foreclosure, as the account will be put into default if the homeowner does not repay the funds advanced by the servicer to pay the property taxes. However, due to the inability of some mortgage servicers to adequately handle default servicing and the sheer volume of foreclosure cases, a number of homes have mistakenly proceeded to tax sale.[13] One example: In 2011 a home in Rhode Island with an assessed value of $309,500 was sold at a lien sale for the amount of an outstanding $504.35 water bill because the servicer who was handling a foreclosure of the property for Fannie Mae failed to pay the bill.[14]

Another contributor to the increase in tax sales is the growth of reverse mortgages. The Department of Housing and Urban Development (HUD) provides reverse mortgage insurance through the Home Equity Conversion Mortgage (HECM) program. A HECM loan provides homeowners who are 62 or older with cash payments or a credit line based on the equity in their homes. Borrowers are not required to repay the loans as long as they continue to live in the home, though they are generally required to keep the property in good repair and pay property taxes and hazard insurance premiums in a timely manner.[15]

Reverse mortgages can assist older property owners in avoiding tax sales by making equity in the home available to pay outstanding property tax obligations, and in some cases even ongoing property tax bills. However, as with subprime loans, reverse

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mortgages generally have not included escrow accounts for future property tax bills and borrowers are expected to make these payments directly to the taxing authority. If the borrower fails to pay the property taxes, the servicer will usually pay them and that amount will be added to the loan principal, which may cause the loan to go into default if the loan balance exceeds the principal limit. Servicers attempt to avoid a tax sale by paying the taxes once they become delinquent, but often they are not actually paid until after the sale.

The economic downturn has also put additional pressure on the strained budgets of local governments. Declining property values and high unemployment have contributed to a drop in property tax revenues. The National League of Cities reports that local property tax revenues dropped in 2009, which was the first year-to-year decline in local property tax revenues in 15 years.[19] Because local tax assessments lag behind changes in the real estate market, the League has also predicted that property tax collections will likely decline further in 2012 and 2013. Understandably, local governments have sought to bridge these budget gaps by instituting more aggressive tax collection practices.

All of these factors have contributed to an increase in tax sales. The National Tax Lien Association reports that the number of property owners delinquent on property taxes has been on the rise during the financial crisis and that annual delinquencies total approximately $15 billion.[20] One industry participant estimated that $5 billion worth of tax liens are sold to investors at tax sales each year.[21] In Bay County, Florida, the sale of tax lien certificates in 2008 increased by 48 percent over 2007, and certificates sold in 2009 increased by 25 percent.[22] The head of the Florida Tax Collector Association's committee on property tax liens reported that the state had nearly $2 billion in delinquent taxes in 2008 and had sold $1.8 billion of those liens at tax sales in 2009.[23] In a county in Mississippi, the number of properties included in the annual tax sale has doubled in recent years.[24]

Reverse Mortgages at Risk?

An August 2010 audit report by the Office of Inspector General (OIG) documented an increasing number of reverse mortgage borrowers who were in default because they had not paid property taxes.[16]

The four servicers contacted by the OIG reported that they held almost 13,000 of these defaulted loans, and that the servicers had paid taxes and insurance premiums totaling more than $35 million on these loans.[17]

HUD has recently issued a guidance outlining steps servicers and housing counselors should take to help reverse mortgage borrowers avoid tax payment problems.[18]

III. OVERVIEW OF THE TAX LIEN SALE PROCEDURE

All states have enacted laws which authorize both the creation of a lien against residential property when taxes on the property are not paid and the enforcement of this lien by a sale of the property. These laws are not uniform. However, enough common

features exist to permit some generalizations which we discuss in this section, so as to acquaint the reader with the tax lien foreclosure process. Readers interested in specific state procedures should consult the detailed summaries of state tax sale laws that will be published in the 2012 edition of National Consumer Law Center's *Foreclosures*, and the summary of key features of state tax sale laws included in this report in Appendix A.

While this report will focus primarily on tax sales based on *ad valorem* property tax assessment liens (that is, taxes based on the value of the property), it should be noted that there are other types of governmental liens authorized by state statutes. For example, a municipality may impose a lien for unpaid water and sewer charges or for charges connected with the repair of a building after building code violations were found. The enforcement process of these liens in many states is similar or identical to the enforcement of regular *ad valorem* property taxes.

Most jurisdictions follow three sequential steps to foreclose on properties delinquent on taxes: 1) imposition of a lien and notification of a pending tax sale, 2) sale of the tax lien or tax deed, and 3) final enforcement of the lien or deed through foreclosure. The final step generally results in a transfer of the property to the tax sale purchaser and eliminates all ownership interests of the homeowner in the property. In between the first and final stages, homeowners typically have a redemption period during which they can remove the lien and reacquire full ownership of the property by paying the taxes owed, plus interest, penalties, attorney fees and costs. In some states, this period to redeem is provided before the municipality conducts the tax sale (and is therefore more accurately described as a right to "cure"). In most states, however, the redemption period comes after the tax sale.

In the first stage, the tax obligation becomes a lien on the property if the taxes are not paid within a certain time period. Often this is the first day of the year following the year in which the tax is assessed.[25] The creation of a tax lien generally occurs automatically by operation of state statute. A tax lien almost always has first priority over all other liens, including mortgages, whether created before or after the tax lien.[26] These laws have been upheld on the grounds that priority is essential to the government collecting the revenue necessary to conduct its business.[27]

There are three different approaches taxing authorities use to dispose of tax liens during the second "tax sale" stage following nonpayment of taxes by homeowners: auction, negotiated bulk sale, and securitization.[28] The auction method was the only method used until the 1990s, and it remains the most common tax sale procedure today. Following efforts to privatize government functions in other areas, some local governments have used bulk sales of tax liens as a means to shift tax collection responsibility to private entities. This same goal has been achieved by a small number of local governments through the pooling and sale of tax liens in a securitization process similar to that used in the mortgage industry for mortgage-backed securities. Although homeowner protections can be provided no matter which method is used, each approach presents different challenges for local governments.

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1. Tax Sale by Auction

Municipalities exclusively used the auction method prior to 1993. As mentioned earlier, property taxes which remain unpaid for a specified time period become a lien on the property automatically by operation of law. If a tax lien is not discharged by payment, the taxing authority will generally initiate a tax sale procedure which may result in the property being sold at an auction. In some states, there is a specified "waiting period" before the municipality may proceed with a tax sale. The sale process is usually commenced when the taxing authority prepares a list of delinquent taxes, identifying the taxpayer, property, and amount of taxes due. The list is typically recorded and published in the local newspaper. All states also require some form of notice to the taxpayer before the sale. An order of sale or directive from the local municipality or taxing authority then issues commanding the appropriate government official to conduct the sale.[29] The initial sale in most jurisdictions takes place without any involvement of a court.

A. Tax Deed Sale

In some jurisdictions, the property itself is sold at the tax sale auction. After the sale is completed, the taxing authority provides the tax sale purchaser with a deed to the property. The purchaser becomes the new owner of the property, either immediately following the sale or after a redemption period expires. Because the purchaser typically receives a tax deed to the property, the tax sale procedure in such states is often referred to as a "tax deed" sale. The proceeds from the sale are used to satisfy the outstanding tax bill and pay any costs of the sale to the municipality. Any surplus above the tax obligation and costs is paid to the former owner or to junior recorded lienholders if required by law. Such surpluses, however, are rare on residential properties, because, as discussed below, there is generally little or no competitive bidding.

B. Tax Lien Certificate Sale

In other states, something less than full title to the property is initially sold. In these states the taxing authority provides the tax sale purchaser with a "certificate" that gives the purchaser the right at some later point to foreclose the tax lien. Because the purchaser typically receives a tax lien certificate, the tax sale procedure in such states may be referred to as a "tax lien certificate" sale. For example, in Illinois, the purchaser at the tax sale receives a certificate of purchase upon payment of the delinquent taxes and costs.[30] After the expiration of the period of redemption, the certificate holder may obtain the tax deed by initiating a court action.[31] The taxing authority receives the amount of the outstanding lien; the right to collect interest and penalties on the outstanding tax obligation transfers to the lien purchaser. The ability to collect interest and penalties, which can be substantial, makes these sales attractive to purchasers even if the homeowner eventually redeems the property.

C. Transfer Without Auction

Although rare, in some jurisdictions there is no sale at all. The taxing authority simply executes on its lien by taking the property. For example, in New Hampshire, unpaid taxes become a lien against the property after expiration of a statutory period.[32] The taxpayer and others with a recorded interest in the property are given notice of the lien together with a redemption period of two years and one day to pay off the lien. If the lien is not paid, the town takes the property free and clear of all liens.[33] Once the property is acquired by the taxing authority or local government, state law generally provides a procedure for final disposition of the property. In Minnesota, the property is initially forfeited to the state for unpaid taxes and fees and then sold at public auction to the highest bidder for not less than the appraised value.[34]

D. Bidding Procedure at Auctions

Unlike traditional auction sales and mortgage foreclosure sales, potential buyers at a tax sale in many states do not bid based on the value of the property because the property is sold for the amount of unpaid taxes, interest, fees, penalties, and related costs. In these states that do not permit the property to be sold for more than the unpaid tax debt, there is generally no competitive, value-based bidding such as might exist at other auction sales. However, when there is more than one bidder on the property, states generally have devised some proxy for competitive bidding through three primary methods: the percentage ownership method, the interest rate method, and the overbid method.

In the **percentage ownership method**, the "highest" bidder is the purchaser who is willing to accept the smallest proportional share or fraction of the total tax sale interest in the property that is sold. For example, in a tax deed sale in which there is bidding, the sale may result in the purchaser acquiring a 10 percent interest in the property. If the property is not redeemed by the homeowner and the tax deed is foreclosed, the homeowner would still retain a 90% interest in the property. Because fractional interests are not as marketable as full title in property, this form of bidding is generally less desirable to potential purchasers. However, for many tax sale purchasers who are interested in gaining a large return on investment in the form of interest and penalty payments upon redemption, and have no desire to obtain a full ownership interest in the property, this bidding procedure is not a deterrent.

The **interest rate method** assigns the lien to the bidder who accepts the lowest rate of interest due upon redemption in addition to the unpaid taxes. For example, state law may set the maximum interest to be paid by the homeowner upon redemption at 18 percent, but the winning bid may be awarded to the potential purchaser who is willing to accept redemption interest at the rate of 14 percent. This type of bidding can benefit the homeowner by reducing the costs of redemption. However, there have been many reported examples of collusive practices between potential investors that prevent any effective bid down of interest rates.

The last method, **the overbid method**, assigns the lien certificate or deed to the bidder who pays the highest additional amount after paying the unpaid taxes on the property.

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Bid-Rigging Drives Up Interest Rates in Illinois County

Even in states which potentially soften the impact of high interest rates by setting only a maximum rate and permitting bidders to bid down the rate, there may be a variety of reasons why no competitive bidding occurs. For example, an investigation by reporters for the Belleville News-Democrat into the property-tax sale system of Madison County, Illinois uncovered actions by the former Treasurer to thwart competitive bidding.[35] Unlike other Illinois counties where tax certificates were typically sold for interest penalties as low as 2%, they were sold to tax purchasers in Madison County for the maximum interest rate of 18%. Instead of awarding liens to the bidder who agreed to the lowest interest rate, the Treasurer conducted a "bid opening" auction where buyers could not underbid each other. The first bidder was awarded the lien, resulting in an average interest rate hovering around the maximum 18%.

It was reported that the Treasurer received tens of thousands of dollars in campaign donations from tax lien investors from 1998 to 2009. Of course, bid-ridding proved to be quite lucrative for certificate buyers. Property owners paid over $2 million in interest to buyers in 2009, and three of the largest certificate buyers received over $200,000 in interest that year. Because interest compounds biannually under the Illinois tax sale law, one property owner was required to pay $4,348 in interest on a tax bill of $6,040 in order to redeem the property.[36]

What is particularly disturbing about the actions of the Madison County Treasurer is that the Illinois Supreme Court had ruled in an earlier case involving another Illinois county that the practice violated state law. Following the 1996 tax sale in Cook County in which approximately 95% of the properties sold at the maximum 18% interest rate, the new Treasurer adopted a policy providing that multiple, simultaneous, identical bids would be forfeited. The new policy restored competitive bidding to the tax sale process and interest rates fell to as low as 0% percent for some properties. Several purchasers whose bids were forfeited under the new policy brought a legal challenge. The Illinois Supreme Court upheld the policy, stating its reasoning as follows:

> Where bidders at the sale all make simultaneous, identical bids for the same parcels at the maximum penalty percentage, as happened here, that goal is subverted. If the collector were required to accept such bids, tax purchasers would have the power to act in concert to force owners to redeem at rates prearranged by the potential purchasers. The likely outcome, and the one reflected by collector's actual experience here, is that potential purchasers would be able to set the rates at the statutory maximum. Even if the maximum rates were not reached in every case, the loss of competition would mean that whatever rates the tax purchasers decided to bid would tend to be higher than otherwise possible. In either instance, owners would be deprived of the opportunity to redeem at the lowest possible rate. The reason for the law would be thwarted.[37]

For example, if the minimum bid at the auction sale is $2,500 (which represents the delinquent taxes and costs) for a home valued at $100,000, and the highest bid at the sale is $10,000, the purchaser will obtain the home itself or a lien certificate for the property in return for payment of $10,000 to the taxing authority. Any surplus above the tax obligation and costs of sale (which would be $7,500 in this example) is usually paid to the former owner or to junior recorded lienholders if required by law.

2. Negotiated Bulk Sales

A negotiated bulk sale is the second procedure used by taxing authorities to sell off tax liens. This involves the pooling of delinquent tax liens which are then sold as a package at a discount to a private entity. The local government relinquishes its ability and obligation to collect on the tax liens. The private entity essentially steps into the shoes of the taxing authority and becomes the owner of the liens. It then services the liens, communicates with property owners, and keeps any funds paid on the past-due taxes, interest, and penalties.[38]

In past years, companies paid a premium to cities for the right to acquire tax liens under this procedure. In a 2007 agreement with Erie County in New York, Xspand, a bulk lien purchaser, paid 105 percent of the total value of the liens due because it expected to recoup the face value of the liens plus the 18 percent penalty rate.[39] Due to the prolonged distress in the real estate market, negotiated bulk sales are now less common, but several purchasers still contract to buy liens at a discount. In 2011, Montgomery County, home to Dayton, Ohio, sold liens on 93 properties to the Ohio Lien Fund LLC for $532,220.[40] Cuyahoga County in Ohio negotiated a $14 million sale of liens to Wood Cove LLC.[41] At the end of December, officials in Rochester, New York sold millions of dollars of liens to American Tax Funding Services (ATF).[42] Typically, ATF has paid between 43 percent and 46 percent of the face value of the lien, earning a large profit if the property owner repays the face value of the lien amount plus interest and penalties.[43] While state law limits the interest a municipality (and by extension, the third party purchaser) can charge on delinquent taxes, some servicers and bulk sale purchasers have taken the position that they are not subject to these restrictions. One company was charging nearly twice the state cap of 10 percent interest on tax delinquencies before a lawsuit ended the practice.[44] These companies often operate with little or no oversight.[45]

3. Securitization

The final method available to taxing authorities is similar to a bulk sale but is done through the securitization process. Officials in Jersey City, New Jersey pioneered this method in 1993, and it initially became popular with large cities having cash-flow problems. Major cities like New Haven, Atlanta, New York, Washington D.C., and Philadelphia have also completed similar securitization transactions on their property owners' tax debt.[46]

In most securitization cases, the municipality creates a trust which purchases the tax liens at a discount. After the purchase, the trust issues bonds backed by the liens. The taxing authority receives a portion of the proceeds from the bond sale. Typically, the price of the bonds issued is less than the face value of the tax liens. Although the discounted sale price results in reduced receivables, securitizations can be beneficial to a taxing authority because they receive payment for a portion of the delinquent taxes right away and can avoid collection risks and transaction costs. Moreover, some securitization deals are structured so that the taxing authority retains a residual interest in the tax liens that are sold and can therefore recover any payments made in excess of the principal and interest due to bondholders. In other cases, the municipality may securitize its tax receivables without actually selling the tax liens at auction. Servicers manage the pool of

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liens or receivables purchased by the trust, collect the delinquent taxes, and handle foreclosure of the liens if the property is not redeemed.[47]

Another form of securitization involves investment firms that purchase large numbers of tax liens certificates at tax auctions and then securitize the liens or certificates they have purchased.[48] The municipality receives its money for the full face value of the lien up front at the sale, depending on the bidding method, and the banks or hedge funds purchasing the liens then bundle large numbers of liens to sell to investors. As homeowners redeem their properties and pay the high interest penalties, investors profit. Bank of America and Fortress Investment Group, a hedge fund run by ex-Fannie Mae CEO Daniel Mudd, marketed a tax-lien securitized bond to private investors in 2009, estimating bondholders would earn a 7 to 10 percent return.[49] The tax receivable securities are managed by large firms such as Xspand and Capital Asset Research Corporation.

4. Redemption and Foreclosure

Full rights to the property sold at a tax sale generally do not pass immediately to the purchaser. Rather, the purchaser acquires an interest in the property subject to redemption by the former owner. The former owner in most states has a right to redeem the property by paying to the purchaser the purchase price plus interest, penalties, and costs within the time period allowed by statute.[50] If the former owner does not redeem within the prescribed period, the purchaser acquires title to the property free and clear of all liens created prior to the sale.[51] In some states the deed is issued to the purchaser automatically upon expiration of the redemption period; in other states a tax sale purchaser must apply for the deed. This may involve simply making a request to the local taxing agency or it may require the purchaser to bring a foreclosure action to cut off the right of redemption or an action to quiet title.[52]

Judicial supervision over the tax sale process varies considerably from state to state. In approximately half of the states, particularly those in which the redemption right terminates automatically, there is no court oversight of the tax sale process.[53] Similar to nonjudicial mortgage foreclosure proceedings, there is no judge reviewing the process to ensure that the law has been followed.

5. Tax Sale Purchasers

Tax lien investing has been a source of profits for individuals and small investment groups for many years. However, in the past two decades tax sales have received more attention by investors, including large corporations. In 1998, when tax lien purchases by individuals and small investment groups were becoming popular, one investor predicted a 50 percent rate of return on tax lien purchases if foreclosure occurred.[54] Particularly in times when conventional investment opportunities are providing low yield returns, there is heightened interest by investors in tax sales. This is because some states have permitted investors to collect penalties and interest on the delinquent taxes that produce rates of return at 18 percent or more.[55] One large tax lien investor, Capital Asset Research Corp., reported that during the period before it was acquired in 1999, it had achieved a return on equity in the very high double digits, and during some periods

Homeowner Fights Foreclosure After Investor Commits Anti-Trust Violations

Jeanne Lang Boyer, a senior citizen in New Jersey, has fought to keep her home for ten years, as of March 2012. Crusader Servicing purchased a $5,000 tax lien on her home in 2002 at an auction. Under New Jersey law, investors at tax lien auctions bid down the interest rate homeowners pay upon redemption through a competitive process, from the maximum 18% interest to as low as 0%. However, Crusader Servicing conspired with other investors to bid on liens at the maximum interest rate allowable by law. No investor undercut another investor's maximum bid and home owners were forced to redeem their tax liens as they accrued interest at 18%.

Now, with interest accruing at 18%, Ms. Boyer's tax debt has reached nearly $80,000 and she has been trying to stop foreclosure proceedings. The president of Crusader Servicing, Robert W. Stein, pled guilty to an antitrust conspiracy charge brought by the U.S. Department of Justice and will go to prison.[59]

the return was well over 100 percent.[56] A cursory Internet search yields hundreds if not thousands of web sites promising to show curious investors how to make a huge profit off of other people's unpaid tax obligations. These websites often highlight the states that provide the highest rates of return. One such website lists the top five states as: Texas, Illinois, Iowa, Georgia, and New York (Nassau County).[57]

The increased interest in tax sales has raised concerns that some of the companies and individual investors engage in questionable practices to profit from tax sales. The structure of tax sales in some states encourages collusion between investors, which often wreaks disastrous consequences on homeowners. Several big tax lien investment groups have been under investigation for antitrust violations and a few individuals have been convicted or entered plea agreements.[58]

The questionable use of political influence also plays a role as tax sale purchasers seek contracts in a state.[60] Xspand, for example, an investment company founded by former New Jersey governor Jim Florio, purchased tax liens in a negotiated bulk sale from cities around the country. The firm was accused of using political influence to obtain a variety of contracts in the state of Pennsylvania. Xspand paid former Pennsylvania Governor Mark Schweiker $90,000 a year to arrange meetings with state officials. Critics of the arrangement say he was instrumental in lobbying officials to allow Xspand to work in Pennsylvania. The company also worked closely with, and made campaign contributions to, a Pennsylvania state representative who secured passage of a bill that permitted Xspand to operate in the state.[61]

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Tax lien auctions have attracted some of the biggest banks and hedge funds in the country.[62] Bank of America, JPMorgan Chase, and Fortress Investment Group all have owned or financed tax lien investment firms. In a recent tax lien sale in Pinellas County, Fla., Fortress Investment Group bought the county's liens using 17 different limited liability companies (LLCs) it created to expand its bidding presence.[63] Cross-ownership often exists among the multiple LLCs and investors create shell companies as quickly as they destroy them to bid at auctions, finance a deal, or manage a portfolio of liens.[64]

Overall, the transfer of the right to collect tax liens from an accountable public entity to unaccountable businesses has resulted in problems for some homeowners. In theory, statutory limits set a cap on the amount of interest private companies can collect on delinquent taxes; however, in the absence of oversight, companies have inflated homeowners' bills by adding on expensive lawyer's fees. Former Washington, D.C. Attorney General Peter Nickles sued Aeon Financial, a tax lien investing company, for charging homeowners exorbitant legal fees. The Attorney General's office alleged that Aeon charged homeowners thousands of dollars in legal fees for homeowners that owed a few hundred dollars in delinquent taxes. [65] According to the Attorney General's complaint, Aeon demanded the fees regardless of the legal work completed and misled homeowners into thinking they could not redeem their property unless they paid the fees.[66] Without oversight of this area, companies routinely can and do add on expensive fees.

Bank of America, JPMorgan Chase, and Fortress Investment Group all have owned or financed tax lien investment firms.

IV. FINDINGS AND RECOMMENDATIONS

In preparing this report, the National Consumer Law Center reviewed the tax sale laws in every state and compiled a summary of each state's laws. These summaries will be published in the upcoming release of NCLC's *Foreclosures* (3d. 2012), Appendix G. For each state we have included information about the method of tax sale, bidding and sale procedures, notice requirements, pre-sale cure rights, and post-sale redemption rights. Although we have not attempted a comparative evaluation of these state laws in this report, the following section discusses certain problem areas which make it more likely that a homeowner will lose a home to a tax sale. We also provide recommendations to state policymakers on how these problems may be addressed.

1. Availability of Tax Relief Programs

In many states it may be possible to avoid a tax lien and eventual sale by obtaining an abatement or reduction of property taxes before the taxes become delinquent. Every state has enacted special property tax abatement schemes or exemption programs which relieve at least some taxpayers of a portion of their property tax liability by virtue of age, disability,[67] income level,[68] or personal status (e.g., veterans, firefighters, police officers).[69] All states have approved tax relief for older homeowners.[70] A summary of these

state property tax abatement and exemption laws is provided in Appendix F of NCLC's *Foreclosures* (3d ed. 2010).

The exemption or abatement can be provided in a variety of forms. In some states, a dollar amount of the home's taxable value is declared exempt. For example, the first $200,000 of a 100 percent disabled veteran's home in Utah is exempt from taxation, with lesser exemption amounts if the veteran is not totally disabled.[71] In other states, the homeowner receives a credit against the property tax or a refund for taxes paid. For example, in Maryland owners over age seventy and disabled veterans receive a credit, the amount of which is a percentage of their income and the percentage is graduated by income level.[72] Another form of exemption is a property tax freeze. In Tennessee, towns may freeze the tax assessment for persons over age sixty-four at the level in place the year the town enrolled in the program, the year in which the person turned sixty-five, or the year the person purchased the property, whichever is later.[73]

Another approach that some municipalities find attractive is tax deferral, because it affects only the timing of receipt of tax revenue. For example, in addition to other forms of tax relief, property owners over age sixty-five in Illinois can apply for a deferral of all or part of the property taxes on their residence.[74] The deferral amount plus interest cannot exceed 80 percent of the owner's equity in the property. If the taxes deferred equal 80 percent equity, the owner must pay interest each year at 6 percent. The taxes and interest are then paid upon sale of the property. Upon the death of the owner, taxes plus interest become due from the owner's heirs, unless the heir is a surviving spouse. If the heir is the surviving spouse, the deferral can be continued. Otherwise, the heirs must pay the taxes. If the taxes are not paid, then the town can initiate the tax sale process.

By addressing tax affordability before payment problems occur, local taxing authorities can increase the stream of tax revenues, avoid collections costs, and avoid subjecting their homeowners to unnecessary tax sales.

The tax relief provided by these programs can be significant. Their benefits are not automatic, however. Most programs require that the homeowner apply for and submit proof of eligibility for the abatement or exemption.[75] Application must usually be made within a short period before or after the issuance of the tax bill. These time periods are generally not extendable, and if an application is not timely made, the right to the exemption may be lost.[76]

Often homeowners who stand to benefit most are not even aware of these existing programs and eventually get into payment problems. For some homeowners, an affordable tax bill can make the difference as to whether or not payments are made. For some older or disabled homeowners, a tax bill adjustment can make it possible for them to remain in the home. By addressing tax affordability *before* payment problems occur, local taxing authorities can increase the stream of tax revenues, avoid collections costs, and avoid subjecting their homeowners to unnecessary tax sales. Local taxing authorities should take steps to ensure that these programs are effectively utilized.

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RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Encourage enrollment in abatement programs

Despite the widespread availability of abatement and exemption programs, very few states provide information about them in notices to homeowners at the early stage of the tax sale process. Efforts should be made by local governments to spread the word about these programs at every stage of the tax assessment and collection process. Although it may be too late for homeowners to receive the benefits of such programs as to existing tax liability once the tax sale process has begun, signing up homeowners for these programs as to future tax bills and providing an affordable payment plan on the back bill can solve the homeowner's payment problem. Notices to taxpayers about these programs should provide information about eligibility requirements and application procedures.

For example, New York City passed a local ordinance in March of 2011, introducing a number of new protections and exemptions for homeowners.[77] The City must provide the property owner notice four times prior to selling the tax lien. The first notice must be mailed 90 days prior to the sale and subsequent notices must be sent 60, 30, and 10 days before the sale.[78] The City Department of Finance must be proactive in identifying property owners who may be exempt for the sale. Notices must include an "exemption eligibility checklist," which lists conditions that would make the property or owner subject to various exemptions or credits. If the owner returns the checklist the Department of Finance must review it. If it appears the person could be eligible, the Department of Finance must send an application for the appropriate exemption. If it does not receive a returned application within 20 business days, the Department is obligated to send another application and follow up with a phone call, if the owner's information is available. If a property is sold that is exempt from sale, the sale will be considered defective if the City is notified within 90 days. Seniors, disabled individuals, prisoner of war (POW) veterans, and military service members are exempt from the sale.

The impact of the 2011 tax lien sale reforms has been significant. A recent report issued by the New York Comptroller found that there had been 12,525 properties on the initial 90-day tax lien sale list in 2011.[79] This number decreased to 9,881 sixty days before the sale, 8,022 thirty days before the sale, 6,936 ten days before the sale, and only 2,045 were included in the final lien sale. Of the final 2,045 properties, which represented 16 percent of the initial 90-day list, 1,704 were one-to-three family homes. Unfortunately, the report also concluded that the tax liens actually sold in 2011 were highly concentrated in low-income communities with large populations of African-American and Hispanic New Yorkers.

B. Adopt tax deferral programs

For individuals who do not qualify for an exemption or abatement program, or whose eligibility still does not provide sufficient assistance to avoid a tax sale, states should consider tax deferral programs. This may be of particular benefit to homeowners who are facing a temporary loss of income due to unemployment. In Utah, for example, an owner may apply to the county legislative body for an adjustment or deferral of taxes levied against the

property before the tax sale. The body may decide that a sum less than the full amount due may be accepted or the full amount may be deferred. Any amount deferred shall be recorded as a lien on the property and shall bear interest a rate equal to the lesser of six percent or the federal funds target rate established by the Federal Open Markets Commission that exists on January 1 immediately preceding the day on which the taxes are deferred.[80]

2. Availability of Pre- and Post-Sale Payment Plans

When homeowners have missed several tax payments, the outstanding balance can quickly grow due to penalties and interest. For homeowners whose financial situation may have improved and are able to make payments again, it may be impossible for them to get current or "cure" a tax default by making a lump-sum payment of the outstanding balance. Just as mortgage servicers have seen the benefits of forbearance and loss mitigation programs, some local tax collectors permit property owners to enter into payment plans, both pre-sale to avoid the sale or post-sale to repay the redemption amount. However, the tax laws in most states do not require tax collectors to adopt explicit policies or procedures for such payment plans.

By making arrangements for homeowners to pay their taxes and save their homes, municipalities likely avoid substantial indirect expenses by avoiding neighborhood blight caused by vacant homes and by reducing the demand for emergency services for displaced families.

While there are administrative costs to servicing such plans, and pre-sale payment plans can delay receipt of tax revenue to the local government, these costs in most cases are offset by the interest that continues to be paid by the property owner during the repayment period and the avoidance of tax sale related administrative costs. In addition, by making arrangements for homeowners to pay their taxes and save their homes, municipalities likely avoid substantial indirect expenses by avoiding neighborhood blight caused by vacant homes and by reducing the demand for emergency services for displaced families.

RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Make pre-sale payment plans available

Local tax collection offices that do not currently offer payment plans for delinquent taxes should consider adopting a formal installment payment program, and the availability of the program should be described in all tax payment notices. Unlike other recommendations in this report that require an amendment to the tax sale law by the state legislature, local tax collection offices in most states can implement payment programs on their own or with approval of the city council or other local government. The program may be designed in a variety of ways, but should at minimum address eligibility criteria, length of the payment term, and the consequences of nonpayment.

Once again, the City of New York has led the way with a payment program that other local governments may wish to adapt. Property owners are permitted to enter into agreements for payment in installments of any property tax, sewer, water, or other municipal charge that is a lien on the property.[81] The agreement must provide for

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payments on a quarterly or monthly basis, as determined by the tax commissioner. Because property tax bills in New York City are considerably higher than in other parts of the state and country, the repayment period may extend for not less than eight years and not more than ten years, or for such shorter period as agreed to by the property owner. No downpayment on the installment agreement is required.

The New York City Code also provides that if payments under the agreement are not made for a period of six months, the property owner shall be in default and the tax lien may be sold. However, the owner is permitted to cure the default prior to the date of the lien sale by paying the missed payments and all outstanding interest and fees. If the agreement is not cured before the sale, the property owner is not eligible to enter into another agreement for a period of five years, unless there is a finding of extenuating circumstances.

The Treasurers in York County, Pennsylvania and Newport News, Virginia, have adopted a proactive approach to help property owners manage their tax payments. York County residents can set up a monthly automatic debit payment plan. Newport News provides homeowners with the option to have tax payments paid monthly directly from their bank account. Similar to a mortgage escrow account in which payments are made monthly rather than annually or quarterly, such plans help homeowners avoid becoming delinquent. Enrollment in the York County and Newport News programs has increased in the past few years. Homeowners without an escrow account for taxes and insurance, especially those who have paid off their mortgages, benefit from such payment programs and are able maintain a budget to stay current on their taxes.[82] However, such programs require that the homeowners who use them have sufficient, regular income and budgeting skills so as to avoid bank overdraft fees.

B. Implement redemption payment programs

Payment programs should also be made available for repayment of the redemption amount. In many states, the amount required to redeem property sold at a tax sale is paid directly to the local taxing authority rather than the purchaser. To avoid problems with property owners not knowing how to contact a private purchaser during the redemption period, and to eliminate the possibility that an unscrupulous purchaser may thwart attempts by an owner to redeem, states should require that redemption payments be made through the local tax office which conducted the sale. The office which receives the redemption payments should accept partial payments from property owners during the redemption period.

Since interest and penalties in most states accrue during the redemption period and are calculated based on the outstanding redemption amount, the acceptance of partial payments can facilitate redemption and reduce the owner's total costs.

For example, tax collectors in New Hampshire are required to accept partial payments of the redemption amount, in sums of $5.00 or multiples thereof.[83] Ohio law provides that the treasurer or the purchaser of a tax lien certificate may enter into a redemption payment plan with the property owner.[84] A plan with the treasurer requires the owner to pay the certificate redemption price in installments, with the final installment due no later than one year after the certificate was sold. A plan with the certificate

holder requires the owner to pay the certificate redemption price, an administrative fee not to exceed $100 per year, and the actual fees and costs incurred, in installments, with the final installment due no later than six years after the certificate was sold.

Since interest and penalties in most states accrue during the redemption period and are calculated based on the outstanding redemption amount, the acceptance of partial payments can facilitate redemption and reduce the owner's total costs. Local taxing authorities should also consider extending more formal pre-sale payment programs to cover post-sale redemption amounts.

3. Notice of the Tax Sale Process and Redemption Rights

The tax sale process in most states is complicated and rarely understood except by investors. It generally involves a multi-step procedure, with critical events occurring within each of the major stages: pre-sale stage, tax sale and redemption stage, and foreclosure stage. Different legal rights and responsibilities for homeowners apply at these various stages. Homeowners generally do not know at what point in the process they will lose their legal interest in the property or what steps they can take to regain ownership.

The right of redemption is a significant property interest entitled to due process protection under the Fourteenth Amendment of the U.S. Constitution. Tax sale statutes which fail to require meaningful notice of the right to redeem property after a tax sale are subject to challenge on constitutional grounds.

As a result of several U.S. Supreme Court decisions involving tax sales,[86] states now generally provide an initial notice to property owners that a tax sale will be conducted. While much emphasis is placed on making certain that these pre-sale notices satisfy minimum due process requirements by informing the property owner of the time and place of the sale, most states have failed to address the need for information about post-sale procedures that can lead to a final property deprivation. The right of redemption is a significant property interest entitled to due process protection under the Fourteenth Amendment of the U.S. Constitution. Tax sale statutes which fail to require meaningful notice of the right to redeem property after a tax sale are subject to challenge on constitutional grounds.[87]

In many states, the pre-sale notice does not describe the post-sale procedure, and no significant follow-up by the taxing authority or the purchaser is provided. Although the statutory procedures in most states provide for a right of redemption, they generally do not require taxing authorities to inform homeowners after the tax sale about the right of redemption or the procedure for exercising it. Homeowners are not told how much time they have to redeem, how much it will cost, and what will happen if they do not redeem. In some states, the first official notice of the redemption right comes only at the very end of the process when a formal court action is filed to foreclose the right of redemption. By this time, accumulating redemption costs may make redemption impossible for cash-strapped homeowners who are unable to make a substantial lump-sum payment. The lack of access to home equity financing in recent years has also virtually eliminated refinancing as a source of redemption funding.

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Delaware Homeowners Get Notice of "Praecipe for Monition"

The notices provided to homeowners in some states do little to explain the arcane tax sale process. Often the form legal notices required to be used are cast in legalese and are almost incomprehensible. For example, the procedure in Delaware begins with the filing of a "praecipe for monition" in the office of the prothonotary by the tax collecting authority.[85] The monition is then issued, which briefly states the amount of the taxes and penalties due and the years owed, together with a brief description of the property. The monition is posted by the sheriff on the property. The actual language used in the monition must be substantially as follows:

"To all persons having or claiming to have any title, interest or lien upon the within described premises, take warning that unless the judgment for the taxes or assessment stated herein is paid within 20 days after the date hereof or within such period of 20 days, evidence of the payment of taxes herein claimed shall be filed in the office of the Prothonotary, which evidence shall be in the form of a receipted tax bill or duplicate thereof, bearing date prior to the filing of the lien in the office of the Prothonotary for the county where the property is located, the tax collecting authority may proceed to sell the property herein mentioned or described for the purpose of collecting the judgment for the taxes or assessments herein stated, including accrued penalties and all costs incurred in the collections process."

If the taxes are not paid within 20 days after the monition has been posted by the Sheriff, the tax collector applies a "writ of venditioni exponas" from the office of the prothonotary. The writ directs the Sheriff to sell the property. The writ must be substantially in the following form:

NEW CASTLE (KENT) (SUSSEX) COUNTY, SS.
The State of Delaware.

TO THE SHERIFF OF __________ COUNTY,

GREETINGS:

WHEREAS, by a Monition issued out of the Superior Court dated at __________, the _________ day of _________ A.D. 19____, IT WAS COMMANDED, that you should post the said Monition or copy thereof upon the real estate therein mentioned and described, and make a return to the said Superior Court within ten days after said posting.

That on the __________ day of __________ A.D. 19____ you returned that a copy of the said Monition was posted on the real estate therein mentioned and described on the __________ day of _________ A.D. 19____.

We therefore now command you to expose to public sale, the real estate mentioned and described in said Monition as follows: __________ and that you should cause to be made as well a certain debt of ______ Dollars ($_______) lawful money of the United States, which to the said Department of Finance of New Castle (Sussex) County (Receiver of Taxes for Kent County), is due and owing, as also the sum of _____ Dollars ($_______) lawful money as aforesaid, for its costs, which it has sustained by the detaining of that debt, whereof the said __________ was convicted as it appears of record and against which said property it is a lien:

And have you that money before the Judges of our Superior Court at __________, on Monday the ________ day of Next, to render to the said Department of Finance of New Castle (Sussex) County (Receiver of Taxes for Kent County) as aforesaid, for its debt and costs as aforesaid, and this writ:

WITNESSETH, the Honorable __________ at __________, the __________ day of _________ A.D. 19____

____
Prothonotary
Issued:

Even homeowners who try to figure out the termination date might not be successful in states in which the redemption period does not extend for a specified time duration. These states set only the minimum period for redemption, leaving it to the tax sale purchaser to decide when to initiate the final procedure for foreclosing the right of redemption. For example, if notice of this final procedure is not properly given or received, the homeowner may not become aware that expiration of the redemption right is imminent. Procedures that keep homeowners in the dark about ways they can save homes from tax foreclosure ultimately impose substantial indirect expenses on local and state governments by increasing the demand for services for displaced families and destabilizing neighborhoods.

RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Adequate notice should be given at every stage of the tax sale process

States should require that notice be provided to property owners and other interested parties, including mortgage holders, at every stage in the tax sale process. Detailed pre-sale notification should be designed to assist owners in avoiding the tax sale. These notices should do more than simply inform owners of the time and place of the planned sale. As discussed previously, information about tax exemptions, abatements and repayment plans should be provided. For example, New York City now sends out four notices (90, 60, 30, and 10 days prior to the tax sale) to owners and includes information on available tax exemptions and payment plans.[88]

States must do more to inform homeowners what they can expect after the tax sale stage. *This is particularly important in states that do not provide for a fixed time period for redemption.*

Efforts to provide notice should not end with the tax sale itself. Both as a constitutional mandate and as a practical means to avoid loss of home ownership, states must do more to inform owners of exactly what they can expect after the tax sale stage. Comprehensive notices using plain language should be provided to owners after the initial tax sale with clear instructions about the steps that will lead to foreclosure of the right of redemption and the consequences of failing to redeem. *This is particularly important in states that do not provide for a fixed time period for redemption.*

B. Provide detailed notice of redemption rights

Emphasis should be placed in the post-sale notices on informing owners of the right of redemption. Depending upon the length of the redemption period, multiple reminder notices may be helpful, and perhaps necessary if the redemption period extends for several years. For example, Louisiana requires that the tax collector send notice each year during the three-year redemption period explaining redemption rights and warning of the consequences of failing to redeem.[89]

In some states where post-sale notice is provided, the taxing authority delegates responsibility for providing these notices to the private tax sale purchaser. This raises serious concerns if local governments do not have procedures in place to prevent fraudulent schemes by tax sale investors.[90]

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Good Model: Indiana Tax Sale Notice

The Indiana tax sale statute is good example of a state law that requires detailed notification of the redemption right and the post-sale process. For a tax sale purchaser to be entitled to obtain a tax deed, the purchaser must give notice of the sale and redemption rights to the owner and to any person with a substantial property interest which is of public record.[95] This notice must be given no later than nine months after the sale date. The notice must contain at least the following:

- A statement that a petition for a tax deed will be filed on or after a specified date.
- The date on or after which the purchaser intends to petition for a tax deed to be issued.
- A description of the tract or real property shown on the tax sale certificate.
- The date the tract or real property was sold at a tax sale.
- The name of the purchaser or purchaser's assignee;
- A statement that any person may redeem the tract or real property.
- The components of the amount required to redeem the tract or real property.
- A statement that the purchaser is entitled to reimbursement for additional taxes or special assessments on the property that were paid by the purchaser subsequent to the tax sale, and before redemption, plus interest.
- A statement that the tract or real property has not been redeemed.
- A statement that the purchaser is entitled to receive a deed for the property if it is not redeemed before the expiration of the period of redemption.
- A statement that the purchaser is entitled to reimbursement for costs.
- The date of expiration of the period of redemption.
- A statement that if the property is not redeemed, the owner of record at the time the tax deed is issued may have a right to the tax sale surplus, if any.
- The street address, if any, or a common description of the property.

While it is strongly preferred that post-sale notices come from the municipality, those states which elect to have this function performed by private parties should at a minimum include some method for verification that the notice requirements have been fulfilled. Ideally, this would be handled as part of the court supervision over the final foreclosure stage, by requiring the purchaser to prove to the court's satisfaction that all required notices have been properly served. For example, the tax sale purchaser in Maryland files an affidavit with the court in the redemption foreclosure proceeding attesting that the purchaser has provided the two required notices to the owner concerning the right of redemption.[91] In states where there is no court supervision, the foreclosing purchaser should provide to the taxing authority proof of service and a certification of compliance with all notice requirements. In a similar vein, if redemption is not made by payment to the taxing authority but rather directly to the purchaser, then the foreclosing purchaser should be required to verify that no attempt to redeem was made before a final deed is issued or the redemption right terminated.

The notice should give all of the essential details on how the redemption right can be exercised. This would include the name and address of the party to whom the redemption payment is to be made, the form of acceptable payments, an itemization of the precise redemption amount (including all interest, penalties and costs), and the final deadline for making the redemption payment. The notice should describe how the owner may pay the redemption amount in installments, if that is permitted. In Ohio, the notice sent to the owner after the sale of a tax lien certificate must describe the redemption options, including the right to enter into redemption payment plan with the county treasurer or certificate purchaser.[92]

If the purchaser rather than a government official is required to give notice of redemption rights state law should require the use of a form notice. This will ensure that property owners are given consistent, meaningful information and avoid the potential for abuse by private purchasers. In one recent case, the notice provided by a purchaser failed to specify when the right to redeem would expire, as required by state law, and instead referred the owner to a copy of the state statute "for your perusal."[93]

Importantly, the notice should warn the owner about the consequences of failing to redeem. For example, Pennsylvania requires that the notices sent to the owner (other than published notice) contain a conspicuously placed warning in at least 10-point type that property is about to be sold without the owner's consent for delinquent taxes, that the property may be sold for a fraction of its fair market value, and that an attorney, the tax claim bureau, or a county lawyer referral service should be called regarding how to save the property.[94]

C. Provide for in-hand personal service of the final foreclosure notice

A tax sale can result in the irrevocable loss of what is typically an individual's most important asset. Besides the emotional value the home holds for many families, home equity may also represent their sole savings and security for retirement. State tax sale laws should operate with the greatest possible care to ensure that homeowners have actual notice of ongoing proceedings and can make informed decisions in response to them. State laws that permit the final foreclosure to be conducted through a non-judicial process raise the most significant concerns about notice.

The most common form of tax sale notice is a letter sent by regular and certified mail to the property owners and other interested parties, rather than by personal service in which the notice and other documents are hand-delivered to the property owner by a process server or court official. In fact, most states do not require in-hand personal service at any point during the tax sale process. While notice by mail may be sufficient for the initial pre-sale notice, states should minimally require for owner-occupied property that notice of the final proceeding to foreclose the right of redemption (or whatever process is used in the final stage to terminate the owner's property interest) must be personally served on the owners by hand-delivery.

For example, in Pennsylvania where there is no post-sale redemption right, the law provides that in addition to other required forms of pre-sale notice, an owner occupant

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must be given written notice at least ten days prior to the date of the actual sale by personal service by the sheriff or a person duly appointed by the county.[96] Similarly, the tax collector is required to make a reasonable effort to personally contact the owner-occupant prior to the tax sale in California, another state that does not permit post-sale redemption.[97] In South Dakota, where the redemption period after a tax lien certificate sale can extend for up to four years, the certificate holder is required to personally serve a notice of intent to take a tax deed on the owner and any person in possession of the property, and an affidavit from the process server must be filed with the county treasurer who executes the tax deed.[98]

D. Provide enhanced notice to at-risk homeowners

When a notice of sale is returned to the local tax collection office as undeliverable or unclaimed, additional steps should be taken to verify that the property is still occupied and that the owner is actually notified.[99] Particularly where the most recent records of the tax assessor or tax collector show that the property is owner-occupied, some effort should be made to contact the owner personally at the property. In some states, this task is assigned to a local social service agency if the local records indicate that the homeowner is elderly or disabled. For example, Rhode Island requires that if the homeowner is listed in the tax records as receiving or having applied for a property tax exemption based on age, then a copy of the tax sale notice must also be sent to the Department of Elderly Affairs.[100] In addition, a homeowner age sixty-five and older, or disabled, may designate a family member, friend or any other third party to receive notices from the tax assessor.[101] These additional steps can help avoid loss of property by individuals who may be at risk due to conditions affecting their ability to handle financial matters.

The notice procedure in Michigan provides a good model for states to follow. The initial notice of the tax foreclosure court action is sent by the county treasurer by certified mail.[102] If the property is occupied, the county treasurer must attempt personal service. If personal service is made, the occupant must also be orally notified that the property will be foreclosed if the delinquent tax amounts are not paid, the time within which the amounts must be paid, and the agencies or other resources that may be able to assist in avoid loss of the property. If the occupant displays a lack of ability to understand, the Department of Human Services must be notified or the occupant informed of agencies that may be able to assist. If personal service is not made, the notice must be posted in a conspicuous place on the property, and, in addition, a notice must be posted which contains the information that otherwise would have been orally provided had personal service been accomplished.[103] If the court determines that the owner of the property subject to foreclosure is a minor heir, incompetent, without means of support, or is undergoing a substantial financial hardship, the court may withhold the property from foreclosure for one year or extend the redemption period. If the court withholds the property from foreclosure, the lien is not prejudiced and the property is included in the immediately succeeding year's tax foreclosure proceeding. [104]

States should also consider enacting a narrowly drafted law that exempts certain property owners from tax sales. For example, Oklahoma provides that in counties with a

population greater than one hundred thousand (100,000), the county treasurer shall not conduct a tax sale of property if all of the following conditions are met: (1) the property contains a single-family residence; (2) the taxpayer residing on the property is sixty-five (65) years of age or older or has been classified as totally disabled; (3) the property is not currently being used as rental property; (4) the taxpayer's annual income does not exceed the Dept. of HHS poverty guidelines in effect at the time of the proposed tax sale; and (5) the property's fair market value does not exceed $125,000.[105]

4. Redemption Costs and Investor Profits

In most states, a homeowner may redeem property sold at tax sale by paying to the purchaser or tax collector the purchase price, which includes the outstanding taxes that gave rise to the tax lien. In addition, the homeowner typically must pay interest, penalties, costs of sale, and attorneys' fees (if a petition to foreclose a right of redemption has been brought). In some states, the redemption amount will also include any intervening post-sale taxes paid by the purchaser or otherwise assessed against the property.

In most states the law is not periodically updated to reflect the current cost of funds and therefore can give tax sale purchasers profits at a much higher rate than ordinary investments. Example: Banks currently provide less than 1% interest on savings accounts while several states permit tax lien purchasers to recover interest rates of 18% or more.

These costs of redemption serve a legitimate purpose in providing incentives to potential purchasers to participate in tax sales. In general, they are designed to provide purchasers with a reasonable return on investment in exchange for their immediate payment to local governments of needed tax revenue. The problem, however, is that in most states the law is not periodically updated to reflect the current cost of funds and therefore can give tax sale purchasers profits at a much higher rate than ordinary investments. Although, in June 2012, banks provide interest on savings accounts at less than one percent, a number of states permit purchasers to recover interest at rates of 18 percent or more. For example, the redemption penalty in Texas is 25 percent of the tax lien amount if the property is redeemed in the first six months following the sale, and 50 percent if redeemed in the first year. Iowa permits tax sale purchasers to recover 24 percent. In Mississippi, purchasers can recover interest at 18 percent and a penalty at 5 percent of the sale for a total 23 percent return. In New Jersey, a state with some of the highest property taxes in the country, interest and additional sums can amount to 20 to 26 percent. Investors can receive 20 percent in Georgia. Five states (Connecticut, New Hampshire, Ohio, Oklahoma, Wyoming) permit interest and penalties set at 18 percent. As noted by the director of a tax sale investor group, these interest rates "beat the heck out of any certificate of deposits."[106]

In some states, local counties are given authority to set their own interest penalty rate. For example, the Maryland tax sale law provides that the rate of redemption is 6 percent or the rate "fixed by the County Commissioners."[107] This authority to deviate from the 6 percent general rate is frequently used by Maryland counties. In Baltimore City, the redemption rate is currently 18 percent, though it has been as high as 24 percent in recent years.

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High interest costs become even more problematic when they are combined with legal fees and costs once a court action is brought by the tax sale purchaser to foreclose the right of redemption. In the case of **Vicki Valentine, an unemployed Baltimore homeowner, the redemption costs made it impossible for her to redeem. *The Huffington Post* reported that she had fallen behind on a $362 water bill she owed the city.[108] As interest, penalties and legal fees accrued, the debt ballooned to $3,600, ten times the original amount. The tax certificate purchaser eventually foreclosed on the home and Ms. Valentine was later evicted.**

Large cities in some states are also exempted from the general tax sale laws or are given special authority to sell tax liens in bulk sales rather than to individual investors. This authority may include the right to structure the bulk sale deal so that homeowners are required to pay interest in excess of the general statewide cap on tax sale penalty rates. For example, tax sales in New York State are generally made by a tax deed sale with redemption interest set at 14 percent. However, the City of New York has been given authority to sell tax certificates, which it began using in 1996. The securitization and sale of the tax certificates is administered by New York City's Department of Finance. Before recent amendments to the New York City Administrative Code, the redemption interest rate applied to the lien balance had been 18 percent, plus other costs associated with the sale such as legal fees and advertising costs.

The costs of redemption for New York City residents were highlighted at a hearing before the New York City Council on September 28, 2010. Neighborhood Economic Development Advocacy Project Co-Director, Josh Zinner, testified that tax certificate sales were "disproportionately concentrated in communities of color" in New York City, the same communities which had been hurt by predatory lending and mortgage foreclosures.[109] His assertion was recently verified by a report of the New York City Comptroller which found that the tax liens sold in 2011 were highly concentrated in low-income communities with large populations of African-American and Hispanic New Yorkers.[110] Mr. Zinner described how "unconscionable" fees were preventing many homeowners from redeeming their homes. As an example, he noted that a Bronx homeowner's property tax lien was sold for $13,890.59. After a year, the homeowner owed an additional $10,219.94, consisting of $3,450.44 in interest and $6,769.50 in fees.

A report of the New York City Comptroller found that the tax liens sold in 2011 were highly concentrated in low-income communities with large populations of African-American and Hispanic New Yorkers.

In response to numerous examples of tax lien debt quickly doubling or tripling through the combination of high interest rates and fees, the New York City Council amended the Administrative Code on March 16, 2011. The council established a minimum amount threshold in order for a lien to be included in the tax sale and capped the interest rate on tax lien certificates at 9 percent per annum. The law also specifies that any attorney's fees assessed by certificate holders in conjunction with the servicing and collection of the tax lien must be reasonable and according to customary practice.

High penalty interest rates not only inhibit redemption but can also encourage homeowners to sign up for high cost loans. Under Texas law, the redemption penalty is 25

How a Mishandled Water Lien Set Up a Disabled Woman to Lose Her Home of 25 Years

Testimony of Laurie Izutsu-Keener, Public Hearing on Discriminatory Mortgage Practices, South Brooklyn Legal Services, September 28, 2010.[111]

Doraldina Younge illustrates well the myriad difficulties homeowners encounter due to the sale of water liens. Ms. Younge has resided with her husband for over 25 years in the home formerly owned by her deceased aunt. Ms. Younge's aunt died intestate and Ms. Younge is the closest known surviving relative. Ms. Younge has a tumor behind one of her eyes and is legally blind. In addition, she is mobility-impaired due to complications from diabetes and must use either a wheelchair or walker. She receives only $935/month in Supplemental Security Income and does her best to pay both the property taxes and water bill each year.

In or about May 2008, the Department of Finance sold both the property tax and water liens for the property where Ms. Younge resides. In June 2008, Ms. Younge paid off both liens in their entirety. However, while the Department of Finance forwarded the monies for the property taxes to the appropriate servicer, it held onto the monies for the water lien to be applied towards future charges. The amount of the water lien was $1,286.33. The servicer brought a foreclosure action against Ms. Younge for the water lien. She is now at risk of losing the home where she has resided for nearly 30 years. Moreover, given the high interest charged by the servicer, the amount of the water lien more than quadrupled so that as of July 2010, the balance due for that account is $6,292.33.

While Ms. Younge is disabled, she is unable to apply for any tax exemptions because the home remains in her aunt's name while Ms. Younge petitions for letters of administration. Further, while the Department of Finance informed South Brooklyn [Legal Services] in August of this year that it plans to declare the water lien "defective," it has yet to confirm that it has done so or that the foreclosure action would be suspended or cancelled.

Available at **http://www.sbls.org/index.php?id=496**

percent of the tax lien amount if the property is redeemed in the first six months following the sale, and a staggering 50 percent if redeemed in the first year. This has prompted lenders to solicit homeowners for "property tax loans." A report issued by the Texas Center for Public Policy Priorities in 2007 shows that property tax loans have surged in recent years, primarily due to increased marketing by lenders and the refusal of local taxing authorities to offer alternative payment plans.[112]

In exchange for paying off the tax debt, the tax lien is transferred from the local taxing authority to the lender. Property tax loans in Texas are regulated by the state, and interest is capped at 18 percent.[113] Although these loans may seem like a good deal for homeowners as compared to a 25 percent or 50 percent penalty, they are considerably more expensive than other home secured loans. When closing costs are added, the total of payments on a $5,000, five-year loan can exceed $9,500. More importantly, a property tax lender acquires an immediate right to foreclose on the property if there is a default.

If redemption costs are not affordable and repayment plans are not available, homeowners are also likely to seek loans from payday lenders to avoid tax sales. The fees for these

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short-term, small loans are exorbitant, with effective interest rates of 300 percent to 1,000 percent or even higher.[114] Lead generating websites for payday lenders advertise "tax lien loans." One site entices prospective borrowers by noting they can get "Fast Cash in Minutes."[115] Another states, "$$$ tax lien loans—Fast Cash Delivery. Immediate Online Approval. Visit Us Now."[116]

RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Make redemption costs affordable by keeping investor profits reasonable

State laws should be reformed to provide that the maximum interest or penalty rate on redemption amounts be set at a fair rate that is adjusted periodically to reflect current economic conditions. This will serve two important goals—discourage speculation and promote redemptions. Moreover, this change has no negative revenue impact on local governments as it affects only the investor's return on investment.

Tax lien investors should receive a reasonable return on investment, taking into consideration potential risks related to the particular state foreclosure process. But promoting excessive investor profits should not be the goal of the tax sale system, and these profits should not come at the expense of home preservation for property owners. Moreover, there is no reason to believe that setting maximum penalty rates at a reasonable amount will deter investment. In states that have a competitive "bid down" procedure for setting tax penalty rates and there are no illegal collusive practices by purchasers, it is not uncommon for there to be robust bidding, producing interest rates at or near those for ordinary investments.

Tax lien investors should receive a reasonable return on investment, taking into consideration potential risks related to the particular state foreclosure process. But promoting excessive investor profits should not be the goal of the tax sale system, and these profits should not come at the expense of home preservation for property owners.

While most residential property owners do redeem, poor economic conditions and high unemployment in some states have caused a slow-down in redemptions. A 2010 ratings report for a tax lien securitization in Florida noted that residential redemption rates have declined in that state over the past three years.[117] It is important that states ensure that the costs of redemption do not contribute to this trend in which homes are lost due to the inability of homeowners to redeem following a tax sale.

It is unrealistic to expect that state legislatures will amend the redemption interest rate statute whenever market conditions change. Instead, the law should provide for automatic annual adjustment of the rate based on a readily available benchmark. Many states already do this with respect to the interest rate used for the collection of court judgments. States typically specify by statute the interest rate that applies to a monetary judgment for the period beginning when a judgment is entered in a court case and ending when the judgment is paid.

For example, in Iowa the post-judgment interest rate is tied to U.S. Treasury bills, and is set at 2 percentage points plus the average auction price of 52-week Treasury bills.[118] This is similar to the federal court system in which post-judgment interest rates are adjusted weekly based on the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System.[119] Some states have used the federal judgment rate in annually setting their own judgment rate. For example, Utah provides that court judgments bear interest at the federal post-judgment interest rate as of January 1 of each year, plus 2 percent.[120] In Texas, the post-judgment interest rate is the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation, or 5 percent if the prime rate is lower than 5 percent, or 15 percent if the prime rate is greater than 15 percent.[121] While these states provide for reasonable interest rates for court judgments, they do not apply similar methodology for adjusting rates for tax lien redemptions.

All states that require the payment of redemption interest should amend their laws to mandate use of an interest rate that is automatically updated through reference to a widely known index, such as rates published by the Federal Reserve Board. The law would also designate the appropriate adjustment to the index to reflect potential risks of tax lien investors (*e.g.*, the prime rate plus two points). A state treasury or finance agency could be designated to set the rate, based on the index and margin, once per year for all tax sales conducted by local governments in the state. Alternatively, the tax collector in each municipality could announce the rate based on the index applicable at the time of each tax sale, and that rate would apply for redemptions of all property sold at that tax sale. In states such as Iowa that currently provide for an adjustable post-judgment rate, an easy way for these states to set the appropriate tax sale redemption rate, without incurring any additional administrative burdens, would be to use the interest rate already set for the collection of court judgments.

All states that require the payment of redemption interest should amend their laws to mandate an automatic annual adjustment of tax sale interest rates based on an index and margin for all tax sales conducted by local governments. Doing so would benefit homeowners, local governments, and potential buyers of tax liens.

Colorado is one of the few states that currently provides for automatic adjustment of the tax sale redemption rate, though we believe the margin used is set too high. The annual rate of redemption interest in Colorado is nine points above the discount rate, which is defined as the interest rate a commercial bank pays to the Federal Reserve Bank of Kansas City using a government bond or other eligible paper as security, rounded to the nearest full percent.[122] The Colorado Commissioner of Banking establishes the annual rate of redemption interest on September 1 of each year to become effective on October 1 of the same year.

This small change would have a dramatic impact on redemptions in most all states. For example, if Iowa were to set the tax lien redemption rate at even three points above its current post-judgment interest rate of 2.12 percent,[123] this 5.12 percent rate would be significantly less that the current tax lien certificate rate of 24 percent. Similarly, adding three points to the Texas five percent judgment rate[124] for a total eight percent penalty

rate would be far less than the current 25 to 50 percent penalty. For redemption periods that extend over two to three years, this change can save homeowners hundreds or thousands of dollars.

The automatic adjustment of tax sale interest rates based on market conditions also benefits local governments and potential buyers. In times when interest rates are climbing, a redemption rate frozen at a lower rate will deter bidding. Interest rates that adjust upward during periods of high market rates will help local governments attract purchasers at tax sales.

B. Place reasonable limitations on fees and costs

States should also ensure that additional costs, such as attorney's fees, do not deter redemption. State law should establish a maximum fee schedule for certain tasks, such as title searches, which are based on reasonable, market rates for such services. **Most importantly, homeowners should be given a sufficient time period to redeem before these additional fees are permitted to accrue and be charged to the homeowner.** This can be accomplished by prohibiting the assessment of costs and attorney's fees until the very end of the final stage of the tax sale process, usually when a proceeding to foreclose the right of redemption has been initiated. Homeowners should be notified that payment of these additional fees and costs can be avoided by redeeming early, before the final foreclosure stage. Consistent with our recommendation that the final foreclosure stage should be court supervised (see Part 6), the court hearing a homeowner's request to redeem should determine whether the fees and costs are reasonable and actually incurred.

5. Redemption Rights and Foreclosure Avoidance

To avoid the possibility of a complete forfeiture of an owner's interest in property, based on the nonpayment of a tax obligation that may be a mere fraction of the property's value, most states provide owners with a right of redemption after the tax sale. The redemption period generally extends for a period of one to three years.[125] However, the period to redeem can be quite brief in some states. For example, a homeowner in Arkansas has only 30 days to redeem after the sale, and in Delaware the redemption period for owners is only 60 days. The District of Columbia, Maryland and Massachusetts permit the redemption period to be foreclosed as soon as six months after the tax sale. Some states do not provide any post-sale redemption rights, but instead provide for a waiting period before the tax sale or issuance of a tax deed in which the owner may pay the outstanding taxes. For example, this waiting period before sale is five years in California, four years in Utah, three years in New Mexico, and two years in Nevada and Virginia.

RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Length of Redemption Period

We make no specific recommendation on the maximum length of the redemption period. We do urge states that have no post-sale redemption period, or have redemption periods of less than one year, to establish a minimum one-year redemption period for owners who occupy the property. This would include "homestead" property in which

the owner may be temporarily living elsewhere, such as a member of the military[126] or an individual residing in a health care facility.

Rather than have a "one-size-fits-all" law, states should adopt redemption rights that are targeted to specific properties or owners, with the greatest protections provided to homeowners. Given the many problems associated with vacant property, we urge states to adopt shorter redemption periods for properties that are determined to be vacant, abandoned or creating a nuisance in the community. For example, Kansas provides a three year redemption period for homestead property, one year for vacant property, and two years for all other property.[127] Illinois permits redemption over a two year period after the tax sale, except that only six months is provided for vacant non-farm property, improved property with seven or more residential units, or commercial or industrial property.[128]

B. Create redemption assistance programs

Several states have programs to provide small emergency loans or assistance to homeowners who are facing home mortgage foreclosures. Most of these programs are aimed at assisting homeowners who are experiencing temporary financial difficulties such as loss of employment, illness, disability, death, divorce or legal separation. Typically the programs provide small, short term loans, either interest-free or at rates less than six percent. Generally, there are two types of loans: 1) a continuing loan which pays the homeowner's delinquent balance and assists the homeowner with his or her monthly payments for a period of time that ranges from 12 months to 24 months, or 2) a non-continuing loan with a one-time disbursement which permits the homeowner to pay off the delinquent mortgage balance. Statewide programs currently exist in Connecticut, Delaware, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Pennsylvania, Vermont and Washington. There are also several local programs that provide small emergency funds, such as in St. Louis, Missouri; Syracuse, New York; Waco, Texas; and New York City.

These programs all provide emergency assistance for homeowners to pay mortgage loans, not tax debts. Very few states currently have formal programs to assist homeowners in exercising the right of redemption after a tax sale.

States should consider adopting programs similar to those developed to assist homeowners facing foreclosure. A revolving fund could be set up to provide interest-free or below market rate loans that owners could use to redeem. Funding for the program could come from a small $50 to $100 fee that could be assessed on tax sale purchasers when a tax lien certificate or deed is acquired. The fund would also be replenished by loan repayment. It should be treated under state law as a continuous fund and therefore not subject to fiscal year limitations in states in which such limitations exist.

Many states have an agency which operates a variety of housing programs, including first time home buyer financing and mortgage assistance programs. Such an agency would be ideally suited to administer a tax sale redemption program.

Even if a separate redemption revolving fund is not created, the state agency may be able to provide assistance through existing programs. For example, the Rhode Island

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Reform in Rhode Island: The Madeline Walker Act

Tax sales can produce harsh results and it is often these results that cause policymakers to consider reforms. In Rhode Island, the sad story of 81-year-old Madeline Walker brought about calls for legislative action. **In 2005, Ms. Walker was evicted two weeks before Christmas from the home she had lived in for more than 40 years because she had fallen behind on a $474 sewer bill. A corporation bought her house at a tax sale for $836.39 and then sold it for $85,000.** In response to intense media coverage of the story, a settlement was reached with the new owner to return the property to Ms. Walker, and the Rhode Island legislature enacted the Madeline Walker Act as an amendment to the tax sale statute.

The law requires that notice be sent by the taxing authority 90 days before the tax sale to the taxpayer and the public corporation that administers housing programs in the state, Rhode Island Housing.[129] A second notice is sent to these same parties by certified mail not less than 40 days before the tax sale. The law also requires that if the taxpayer is listed in the tax records as receiving or having applied for a property tax exemption based on age, then notice must also be sent to the Department of Elderly Affairs.

During the notice period, Rhode Island Housing engages in outreach efforts to those property owners who are owner-occupants of properties containing three or fewer units.[130] An initial "can we help" letter is sent to the homeowner after the 40-day notice is sent by the tax assessor. If the homeowner responds, Rhode Island Housing will attempt to determine the cause of the tax payment problem and provide counseling and make appropriate referrals based on that assessment. Referrals will be made to community agencies as well as financial, legal and social service providers. The homeowner's tax bill is reviewed to determine if there are potential tax abatements that are not being received. An internal referral is also made to determine if the homeowner may be eligible for Rhode Island Housing loan products or mortgage assistance programs that might assist in repayment of the outstanding taxes. If the homeowner does not respond to contact letters, Rhode Island Housing will send staff to conduct an on-site home visit.

If these outreach efforts do not stop the pending tax sale, the law gives Rhode Island Housing the authority to exercise a right of first refusal and purchase a tax lien on the property. Rhode Island Housing must notify the tax collector of its intention to exercise this right no later than 10 days before the date of sale.[131] The decision to purchase the tax lien is not made based on whether the homeowner has responded to the outreach efforts (on the assumption that homeowners such as the bill's namesake, Madeline Walker, would not have responded). After a lien is purchased, Rhode Island Housing renews its efforts to contact the homeowner. If contact is made, it will attempt to enter into a payment plan for the homeowner to redeem the property. If all of these efforts fail, Rhode Island Housing can bring a court proceeding to foreclose the right of redemption five years after it acquires the lien.[132]

legislature recently amended its tax sale law to require that Rhode Island Housing (a public housing financing agency) be notified of all tax sales in the state. The law also gives Rhode Island Housing the authority to exercise a right of first refusal and purchase a tax lien on owner-occupied property. If Rhode Island Housing elects to acquire the lien, it then works with the homeowner to avoid a loss of the home. States should consider implementing similar programs through existing state housing agencies.

6. Safeguards against Loss of Equity

Tax sale laws are generally designed to provide recovery of only the taxes owed to the local taxing authority. In many states the minimum bid (the taxes owed) is effectively also the maximum bid. If there is any competitive bidding at all, purchasers of tax lien certificates typically do not bid on the estimated fair market value of the property. Rather, they bid on concessions they are willing to grant, such as a lower interest rate for redemption payments, in exchange for payment of the taxes owed. Even in states such as California that permit a full title deed to be conveyed at the tax sale with no redemption right for the homeowner, investors generally seek to buy the property for no more than 50 percent of its fair market value.[133]

These bidding procedures mean that homeowners who are unable to redeem their property can lose not only a homestead that may have been in the family for years but also thousands or even hundreds of thousands of dollars in equity. Homeowners most at risk are those who have fallen into default because they are incapable of handling their financial affairs, such as individuals suffering from Alzheimers, dementia, or other cognitive disorders. Because mortgage lenders typically pay delinquent taxes and then charge the homeowner, these are also homeowners who are not likely to have a mortgage on the property and therefore may have significant equity.

For example, **Betty Museus had lived alone for many years in her home in Missoula, Montana.** [134] **With no close family to assist her, she fell behind on her property taxes. Her home was purchased at tax sale by Virginia-based Mooring Tax Asset Group for the $5,822.09 tax debt. Ms. Museus did not respond to letters sent to her by Mooring and she failed to redeem the property. Mooring evicted her, eliminating the remaining equity in Ms. Museus' house, valued at $150,000.** Missoula's City Attorney responded to Ms. Museus' loss by requesting that the state legislature revise the tax sale procedures to include an in-home visit to provide property owners with an explanation of their financial options. He believed that a reverse mortgage was one such option that could have saved Ms. Museus' home.

Frank Cummings' condominium in New Jersey was sold at a tax sale because he failed to pay a $716.45 tax bill.[135] **If the tax sale certificate were foreclosed, Mr. Cummings would lose approximately $120,000 of his equity in the condominium.** In his legal battle to recover his home, Cummings informed the court that for at least five years before the tax sale, he was suffering from depression and alcohol abuse. His condition caused him to neglect paying many of his bills, to the point that he was living in the condominium without utility service. The court eventually found that Mr. Cummings was not properly served with the complaint to foreclose the tax sale certificate, thus permitting him an opportunity to redeem his home.

If the tax sale process has gone beyond the point where the property may be redeemed, it may mean that continued homeownership for the owner is no longer a viable option. Still the tax sale laws should ensure that the property is sold in a manner that permits some recovery of equity to the homeowner and avoids a windfall to the tax sale purchaser. Providing for an orderly and fair market value sale of the property also benefits the taxing authority as ownership will be transferred to someone more likely than a speculator to maintain the property and continue payment of taxes in the future.

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RECOMMENDATIONS FOR HOMEOWNER PROTECTIONS

A. Establish a two-step tax sale procedure, with court supervision over the final stage

States should limit the initial tax sale to the sale of a tax lien certificate and not the entire interest in the property. The purchaser's interest acquired at the initial sale should extend only to enforcement of the tax lien. The certificate should not be permitted to automatically convert into a transfer or conveyance of the property, eliminating the homeowners' property interest, merely through the passage of time, expiration of the redemption period, or upon the ministerial act of the local taxing authority. For example, if tax sale property is not redeemed in Maine, a tax sale deed is delivered by the municipal treasurer to the purchaser after the redemption period expires.[136] No further action is required.

If the property is not redeemed and the property is owner-occupied, state law should require that the purchaser initiate a court-supervised procedure for the sale of the property itself. The purchaser should be required to seek an order from a state court authorizing sale of the property. In cases in which the property is owner-occupied and has not been abandoned, and the homeowner fails to respond to the court action after being personally served, the court should be allowed to require the purchaser to notify appropriate social service or housing counseling agencies, and may consider the appointment of a guardian or conservator if there is reason to believe the homeowner is not competent. If these outreach attempts fail to resolve the matter, the court may authorize a final sale of the property, employing notice and auction procedures similar to those that the state uses for foreclosure of mortgages and deeds of trust.

If the property is not redeemed and is owner-occupied, state law should require that the purchaser initiate a court-supervised procedure for the sale of the property.

The court should confirm the final sale results and make certain that the costs of sale are reasonable, and that the surplus funds are promptly paid to the homeowner. An appraisal of the property should be obtained before the sale and the court should have authority to withhold confirmation of the sale if the auction bid is significantly below the appraised value. Alternatively, the court could require use of an "upset bid" as a threshold to bidding at the auction. Under this practice, which is used by several states in the mortgage foreclosure process, the court requires a fair market value appraisal before the sale and sets an "upset bid," or required minimum bid, based on the appraised value.[137] If the minimum bid is not received, the sale will not be completed.

While these procedures do not ensure that the property will be sold at fair market value or that homeowners will recover all equity they have in the property, this two-step, court-supervised process will at least prevent a $200,000 home from being acquired by an investor through the mere payment of a $1,500 tax bill.

Court supervision also provides a mechanism to guard against predatory speculators that seek to profit by manipulating the tax sale process. In many communities, there is a group of these speculators that buy properties at tax sale (see sidebar: "Overbid Play"). They then seek to lure unsophisticated homeowners to transfer their redemption rights in exchange for expensive or fraudulent sale-leaseback schemes or high rate loans. Others lure homeowners into transferring the property before the tax sale and then take no

“Overbid Play” Fraudulent Rescue Scheme

The Attorney General of the State of Washington filed an enforcement action against Joseph Kaiser and his various partners and business entities alleging violation of the state Consumer Protection Act. Between 1998 and 2008, Kaiser engaged in approximately 400 transactions with property owners facing tax sales. See State of Washington v. Kaiser, Wash. App. 1035, 2011 WL 982189 (Wash. App. Mar. 21, 2011).

Kaiser sent thousands of solicitation letters and postcards to owners who received tax delinquency notices. The solicitations offered to act on the owner’s behalf to “help them keep their property” or “keep their home,” and falsely claimed that they successfully prevented tax sales. For example, Kaiser claimed in the “Equalizer” letter that he would explain the available options and help “stop foreclosure and save your property.” Another letter described one of his partners as “Wonder Woman” and falsely claimed she was “an experienced foreclosure professional.” The “Missed Opportunity,” “Can You Believe It” and “Why This Postcard?” solicitations also falsely claimed that Kaiser would “help the owner keep their home” and prevent foreclosure “like it never happened in the first place,” and they “will help owners by fixing real estate problems and figure out solutions to their unpaid taxes.”

If a property owner responded to the solicitations, the owner was induced to enter into a transaction that Kaiser referred to as an “overage play” agreement, or a “partial interest deal” or “partnering up” agreement. Kaiser typically paid the owners $100 to $500 after they signed various documents which gave Kaiser title to the property. As part of the overage play agreement, the owner signed (1) a purchase and sale agreement, (2) a quit claim deed, (3) a seller acknowledgement, and (4) a power of attorney to Kaiser. After acquiring title to the property, Kaiser took no action to assist the owner and allowed the property to go to tax sale. He then either kept the entire overage amount or a percentage of the overage. Under Washington law, after deducting the delinquent taxes and fees from the tax sale purchase price, the county pays the remaining or “overage” amount to the property record owner at the time the certificate of delinquency was issued. To collect the overage, Kaiser used the power of attorney he had the owners sign, and was able to apply for the overage on behalf of the record owner. Kaiser also retained attorneys to represent the owners. The attorneys would apply for the overage amount on behalf of the owner, but the attorneys would pay Kaiser the overage funds based on his agreement with the owners.

In the trial, Kaiser testified that he never explained the overage agreement to owners and that the disclosures were hidden in boilerplate in the contract. He admitted that if the property owners knew about the overage, they would not allow him to collect it. Overages were often ten times greater than what Kaiser paid to the owners. One of his partners estimated that 50 to 80 percent of the overage play transactions generated overages greater than $5,000 at the tax sale. In one example, Kaiser paid the owners $500 and did not pay the back taxes as promised. After the unpaid taxes and fees were deducted, the tax sale produced an overage of $37,994, which Kaiser collected.

actions to assist the homeowner in stopping the tax sale. It is far more likely that such fraudulent schemes will be detected and remedied if there is a required court proceeding to foreclose the redemption rights and confirm a final sale.

B. Conduct fair market value sales with proper treatment of surplus

A forced sale, such as those held in the foreclosure and tax sale process, almost never produces a sale price reflecting the fair market value of the property. However, in

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almost one-third of the states, there is never even an attempt to sell the property itself at an unlimited or highest bid auction. These states require that the only bid that may be accepted at the tax sale is in the amount owed for the delinquent taxes. Even if the home is worth $200,000 or $300,000, the tax lien certificate or tax deed will be sold for $2,000 if that is the amount of taxes owed. If the homeowner fails to redeem in these states, there is no further sale of the property and the homeowner's equity is lost once the redemption right is foreclosed.

Nearly one-third of states require that the only bid that may be accepted at the tax sale is in the amount owed for the delinquent taxes. So, for a home worth $300,000, the tax lien certificate or tax deed would be sold for $2,000 if that is the amount of taxes owed.

Again, we recommend that these states adopt a court-supervised, two-step sale process as described previously. If not adopted, these states should at a minimum change their tax sale procedure to provide for sale of the tax lien certificate or tax deed at public auction to the highest bidder. Additionally the procedure must ensure that any surplus funds (the amount bid in excess of the delinquent taxes) are treated in a manner that does not deter redemption. This can be done by keeping the redemption amount set at the taxes owed plus costs and interest, rather than the tax sale bid amount. For example, Connecticut law provides that any bid amount received above what is owed on the taxes, plus extras, is held in an interest-bearing account.[138] If the property owner redeems by paying the taxes owed, the surplus is returned to the purchaser. If no redemption occurs, the surplus is used to pay all other taxes owed by the taxpayer and then turned over to the court overseeing the process. The taxpayer can then request turnover of the surplus and the court will decide if some or all of the surplus should be paid to the taxpayer, after considering claims of any lienholders on the property.

C. Create an indemnity fund to compensate owners for defective tax sales

Once a tax sale has been completed and the redemption right has been foreclosed, the only option a homeowner may have is an attempt to set aside the sale. However, the bases on which a tax sale can be set aside are limited by state laws which restrict certain claims and prescribe short statutes of limitations within which claims can be raised. Defects in the foreclosure process which render the sale voidable must be raised within the statutorily prescribed time or be lost.

Illinois law creates an indemnity fund to reimburse property owners from loss caused by an improper tax sale. Tax sale purchasers in Illinois pay a fee of $20 in counties with less than 3,000,000 inhabitants and $80 in counties with more than 3,000,000 inhabitants (and a like sum for each year that subsequent taxes are paid by the tax purchaser) to the county clerk for the creation of an indemnity fund.[139] Any owner of property sold at a tax sale who sustains loss or damages resulting from the issuance of a tax deed and who is barred from bringing an action for recovery of the property has the right to indemnity from the fund for the loss or damage. States should consider adoption of such indemnity funds, particularly in states which have short statutes of limitation of two years or less within which to bring an action to set aside a tax sale.

V. CONCLUSION

Nonpayment of property taxes is a serious concern for local governments and the residents and taxpayers of all local cities and towns. Prompt receipt of tax revenue is essential to balancing municipal budgets and providing critical municipal services. While it may be necessary to impose monetary penalties on property owners who fail to promptly pay taxes, and ultimately to sell property when payment is not made, these tools should not be used exclusively by states in addressing payment problems by property taxpayers. We urge states to take a fresh look at their tax lien sale procedures and to adopt recommendations made in this report to assist payment-troubled homeowners avoid tax lien sales, and to make tax sales more equitable when they are used as a last resort.

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APPENDIX A

SUMMARY OF STATE TAX SALE LAWS

Sale Procedure Legend					
Tax Lien Certificate	(C)	Sale to Highest Bidder	(HB)	Strict Foreclosure	(SF)
Tax Deed	(D)	Lowest Interest Rate	(LI)	Other	(O)
		Lien Amount	(LA)		

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL
Sale Procedure														
Tax Lien Certificate (C) or Deed (D)	C	D	C	D	D	D	D	D	C	C and D	D	D	D	
Sale to Highest Bidder (HB); Lowest Interest Rate (LI); Lowest Percentage Interest (LP), Lien Amount (LA); Strict Foreclosure (SF); or Other (O)	HB	LA	LI	HB	HB	HB	HB	HB	HB	LI for certificate; HB for sale of tax deed	HB	HB	HB	
Post-Sale Protections														
Redemption Period	3 yrs	1 yr	3 yrs	30 days	none after sale—5 yr cure or redemp-tion before sale	3 yrs	6 mos	60 days	until redemption right foreclosed—no sooner than 6 mo after sale	before tax deed issued (no sooner than 2 yr after April 1 of year of issuance)	12 mos after sale and until redemption right foreclosed by notice	1 yr	until property sold	
Redemption Interest (per annum unless specified) and Penalties	12%	not speci-fied	int. as per bid	10% int.; 10% pen.	n/a	9% above discount rate	18% int.	pur-chase price plus 15%	purchase price excluding surplus, interest at 18%, expenses, intervening taxes	no less than 5% interest	20% int. for first year, then 10% thereafter	12% int.	12% int.	

Sale Procedure Legend					
Tax Lien Certificate	(C)	Sale to Highest Bidder	(HB)	Strict Foreclosure	(SF)
Tax Deed	(D)	Lowest Interest Rate	(LI)	Other	(O)
		Lien Amount	(LA)		

	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Sale Procedure													
Tax Lien Certificate (C) or Deed (D)	C	C	C	D	C and D	C	D	C	D	D	D	C	C
Sale to Highest Bidder (HB); Lowest Interest Rate (LI); Lowest Percentage Interest (LP); Lien Amount (LA); Strict Foreclosure (SF); or Other (O)	HB	HB	LP	LA and then HB	HB	LP or lowest penalty	LP	HB	LP	HB	HB for not less than appraised value	LP	LA
Post-Sale Protections													
Redemption Period	2 yrs and 6 mos from sale	1 year (120 days for vacant prop)	21 mos plus 90 day notice	3 yrs for home-stead; 2 yrs other; 1 yr for aban-doned prop	60 days or 1 yr depending upon method	3 yrs	2 yrs	until redemption foreclosed—no sooner than 6 mos and no later than 2 yrs from sale	until redemption foreclosed—no sooner than 6 mos. from sale	any time before March 31 succeeding entry of judgment foreclosing property	none	2 yrs	1 year (90-days if sold at third auction)
Redemption Interest (per annum unless specified) and Penalties	3%–48%	110%–115% of min. bid, plus 10% interest on excess	24% int.	int. rate not speci-fied	12% or 18% int.	12% int. and 5% penalty	8% int.	6%–10% int. depending upon county or as set by county (Balt. city = 24%)	16% int.	12-18% int.	N/A	18% int. plus 5% damages	10% int. plus 8% for sub-sequent taxes

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Sale Procedure Legend					
Tax Lien Certificate	(C)	Sale to Highest Bidder	(HB)	Strict Foreclosure	(SF)
Tax Deed	(D)	Lowest Interest Rate	(LI)	Other	(O)
		Lien Amount	(LA)		

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
Sale Procedure													
Tax Lien Certificate (C) or Deed (D)	C	C	D	D	C	D	D (except C for New York City and Nassau County)	D	D	D and C	D	D	D
Sale to Highest Bidder (HB); Lowest Interest Rate (LI); Lowest Percentage Interest (LP); Lien Amount (LA); Strict Foreclosure (SF); or Other (O)	LA	LP	LA held by county and then HB	LP	LI	HB	HB	HB	HB	HB for D and LI for C	HB	SF	HB
Post-Sale Protections													
Redemption Period	not less than 3 yrs	not less than 3 yrs	none after sale—2 yr cure or redemption before sale	until deed issued—no sooner than 2 yrs from sale	until redemption foreclosed—no sooner than 2 yrs from sale to private indiv.	none after sale—3 yr cure or redemption before sale	2 yrs (optional 3 or 4 yrs in some districts)	until sale confirmation	none	for C sale, until redemption foreclosed—no sooner than 1 yr from sale. None for D.	none	2 yrs	none
Redemption Interest (per annum unless specified) and Penalties	10% int. plus 2% penalty	14% int.	n/a	18% int.	int. as per bid (max. 18%), plus 2–6% additional sum	n/a	20% (9% for New York City)	5% commissioner's fee plus int.	n/a	For C sale, maximum 18%	n/a	int. @ judgment rate plus 5% penalty	n/a

Sale Procedure Legend					
Tax Lien Certificate	(C)	Sale to Highest Bidder	(HB)	Strict Foreclosure	(SF)
Tax Deed	(D)	Lowest Interest Rate	(LI)	Other	(O)
		Lien Amount	(LA)		

	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Sale Procedure												
Tax Lien Certificate (C) or Deed (D)	D	C	C	D	D	D	D	D	D	C		C
Sale to Highest Bidder (HB), Lowest Interest Rate (LI); Lowest Percentage Interest (LP); Lien Amount (LA); Strict Foreclosure (SF); or Other (O)	LI	HB	LI	HB	HB	HB	HB	HB	HB	HB	SF	HB
Post-Sale Protections												
Redemption Period	until redemption foreclosed—no sooner than 1 yr from sale	1 yr	3–4 yrs	1 yr	2 yrs	none after sale—4 yr cure or redemp-tion before sale	1 yr	none after sale—2 yr cure or redemption before sale	none after sale—3 yr cure or redemption before sale	until deed issued—approx. 18 mos after sale	none after sale—2 yr cure or redemption before sale	until deed issued—no sooner than 4 yrs after sale
Redemption Interest (per annum unless specified) and Penalties	10% for first 6 mos plus 1% per mo penalty—plus 12% annual interest	3–12%	int. as per bid (max. 10%),	penalty plus 10% int.	25% in 1st yr; 50% in 2nd yr	n/a	12% int.	n/a	n/a	12% int.	n/a	3% of purchase price plus 15% int.

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ENDNOTES

1. Jack Healy, "Tax Bills Put Pressure on Struggling Homeowners," *New York Times* (August 18, 2009) (quoting Howard Liggett, executive director of National Tax Lien Association).
2. Fred Schulte et al., "The Other Foreclosure Menace," *Huffington Post Investigative Fund* (May 18, 2010).
3. *See* Part IV.5, *infra*.
4. Michael D. Hurd and Susann Rohwedder, "Effects of the Financial Crisis and Great Recession on American Households," *National Bureau of Economic Research* (Sept. 1, 2010).
5. Martin S. Feldstein, "How to Stop the Drop in Home Values," *New York Times* (Oct. 12, 2011).
6. Debbie Gruenstein Bocian et al., "Lost Ground 2011: Disparities in Mortgage Lending and Foreclosure." *Center for Responsible Lending* (Nov. 2011), p. 3.
7. Lender Processing Services, "LPS Mortgage Monitor, November 2011 Mortgage Performance Observations," (data as of Oct. 2011), p. 3.
8. Amherst Securities Group LP, "Testimony of Laurie S. Goodman Before Subcomm. on Housing, Transportation and Community Development," *S. Comm. on Banking, Housing & Urban Affairs* (Sept. 20, 2011), p. 2.
9. Center for Responsible Lending, "A Snapshot of the Subprime Market," (Nov. 27, 2007).
10. Ken Harney, "The Lack of Escrow Account is 'Killer,'" *Baltimore Sun* (March 30, 2007).
11. *See* 15 U.S.C. § 1639d; Ira Gerlin & Jon Zefi, "U.S. Financial Reform: Mortgage Reform & Lending Provisions," *Metropolitan Corporate Counsel* (Sept. 1, 2010).
12. Alex M. Parker & Erica Blake, "Debt collector drowns Lucas County court with tax-lien foreclosures," *Toledo Blade* (Dec. 25, 2008).
13. *See* Choi v. Chase Manhattan Mortgage Co., 63 F. Supp. 2d 874 (N.D. Ill. 1999) (home lost to tax foreclosure after servicer failed to make tax payment from borrowers escrow account and then failed to take corrective action to redeem the property).
14. Christine Dunn, "Fannie Mae-owned house lost for $504.35," *Providence Journal* (Nov. 21, 2011).
15. 24 C.F.R. § 206.27(b)(5), (6). The lender may elect to pay property taxes or hazard insurance premiums by withholding funds from monthly payments or charging funds to a line of credit. 24 C.F.R. § 206.205.
16. 16 *See* Gerald R. Kirkland, "Audit Report Number 2010-FW-0003," *Dep't of Housing and Urban Development Office of the Inspector General* (August 25, 2010).
17. The OIG concluded that these defaulted loans could produce potential claims on the HUD insurance program of more than $2.5 billion, and that more claims were likely if HUD did not respond to the problem.
18. 18 *See* Dept. of Housing and Urban Development, Mortgagee Letter 2011-01, January 3, 2011.
19. Christopher W. Hoene & Michael A. Pagano, "Research Brief on America's Cities: City Fiscal Conditions in 2011,"*National League of Cities* (Sept. 2011), p. 4.
20. Patrick D. Dolan et al., "Tax Lien Securitization: Opportunities and Risks," *Dechert On Point* (Dec. 15 2010).
21. Prashant Gopal, "JPMorgan Unit Subpoenaed in U.S. Tax-Lien Inquiry (Update 1)," *Businessweek* (April 20, 2010).
22. 22 Scarlet Sims, "Property owners struggle, delinquent taxes rise," *News Herald* (Jan. 24, 2010).
23. Id.
24. In Jackson County, Mississippi, the number of properties included in the annual tax sale nearly doubled from 2008 to 2010. The Treasurer reportedly sold 4,500 parcels in 2008 and more than 8,000 in 2010. *See* Karen Nelson, "Jackson County property tax sales nearly double in 2 years," *Sun-Herald* (August 30, 2010).

25. See, e.g., Mo. Rev. Stat. § 140.310 (on January 1st any unpaid taxes become a lien on the property); N.M. Stat. Ann. § 7-38-48 (unpaid taxes become a lien on January 1st for the tax year for which the taxes are imposed).
26. E.g., Ky. Rev. Stat. Ann. § 134.420 (West); N.M. Stat. Ann. § 7-38-48 (tax lien is the first lien and is paramount to any other interest in the property, perfected or unperfected). See also Solarte v. Washington Mut. Bank, 2005 WL 3291813 (Cal. Ct. App. Dec. 6, 2005) (unpublished) (liens for real property taxes have priority over all private liens, regardless of time of creation).
27. See ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983) (citing Minneapolis Threshing Mach. Co. v. Roberts County, 34 S.D. at 501, 149 N.W. 163); 72 Am. Jur. 2d State & Local Taxation § 898.
28. *See* Georgette Poindexter et al., "Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress," *Connecticut Law Review* (Fall 1997), p. 172.
29. *See, e.g.*, N.M. Stat. § 7-1-44; S.C. Code Ann. § 12-45-180.
30. 35 Ill. Comp. Stat. §§ 200/21-205, 200/21-240, 200/21-250.
31. 35 Ill. Comp. Stat. §§ 220/22-30, 200/22-40. *See* A.P. Properties v. Goshinsky, 186 Ill. 2d 524, 714 N.E.2d 519 (1999) (describing Illinois procedure).
32. *See* N.H. Rev. Stat. Ann. § 80:59.
33. N.H. Rev. Stat. Ann. § 80:69.
34. Minn. Stat. chs. 280, 281, 282.
35. Brian Brueggemann and Mike Fitzgerald, Belleville News-Democrat, "Tax buyers, politicians benefit form sales", Oct. 5, 2010.
36. Id.
37. Phoenix Bond & Indemnity Company, et al., Appellees, v. Maria Pappas, Cook County Treasurer, Docket No. 89098-Agenda 27-September 2000. Opinion available at: **http://law.justia.com/cases/illinois/supreme-court/2000/89098.html**
38. Georgette Poindexter, et al., "Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress," *Connecticut Law Review* (Fall 1997), p. 178-181.
39. Matthew Spina, "County votes to allow private company to collect overdue taxes," *Buffalo News* (Sept. 12, 2007).
40. Joanne Huist Smith, "Delinquent property taxes recouped in lien sale: Montgomery County school districts, cities will share onetime $2.9M payout," *Dayton Daily News* (June 10, 2011).
41. Laura Johnston, "Cuyahoga County sells tax liens for $14.6 million," *Plain Dealer* (Nov. 9, 2011).
42. David Andreatta, "County aims to raise cash, sell tax liens," *Rochester Democrat and Chronicle* (Dec. 13, 2011).
43. Brian Sharp, "American Tax Funding Services Owes Rochester," *Rochester Democrat and Chronicle* (Oct. 13, 2011).
44. *See* Pollice v. Nat'l Tax Funding, 225 F.3d 379 (3d Cir. 2000) (private company that contracted to collect municipal water and sewer debts was covered by Fair Debt Collection Practices Act and violated it by seeking interest and penalties not authorized by law); *see also* Piper v. Portnoff Law Assocs., 262 F. Supp. 2d 520 (E.D. Pa. 2003), *aff'd,* 225 F.3d 379 (3d Cir. 2000) (granting preliminary injunction of sheriff's sale based on likely finding that collection letters on overdue water bill were misleading or deceptive within meaning of FDCPA and that $150 charge for attorney fees to prepare and mail form collection letter was not reasonable under state law); Pentlong Corp. v. GLS Capital, Inc., 820 A.2d 1240 (Pa. 2003) (assignee of tax liens did not acquire greater rights than municipality and therefore was not entitled to collect attorney fees from taxpayers).
45. *See* Fred Schulte & Ben Protess, "The New Tax Man: Big Banks and Hedge Funds," *Huffington Post Investigative Fund* (Oct. 18, 2010).

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46. Id.
47. Georgette C. Poindexter, "Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress," *Connecticut Law Review* (Fall 1997), p. 186-200.
48. Patrick D. Dolan & Ryan D. McNaughton, "Tax Lien Securitization: Opportunities and Risks," *Dechert on Point* (Dec. 2011).
49. Fred Schulte, "Wall Street Sees New Profits In Homeowner Distress," *Huffington Post Investigative Fund* (Dec. 9, 2010).
50. *See, e.g.*, Md. Code Ann., Tax-Prop. § 14-827; 14-828; 14-833 (West) (owner has right to redeem until right of redemption has been foreclosed by buyer; buyer can bring foreclosure action not less than six months and not more than two years after sale).
51. *See, e.g.*, S.C. Code Ann. § 12-51-130 (tax deed is evidence of good title). *See also* Williams v. McCallum, 917 P.2d 794 (Idaho 1996) (redemption payment tendered one day late was ineffective to redeem property).
52. *See, e.g.*, Md. Code Ann., Tax-Prop. § 14-833 (West) (holder of certificate of sale must bring action to foreclose).
53. See Frank Alexander, "Tax Lien, Tax Sales and Due Process," *Indiana Law Journal* (2000), p. 743, fn. 14.
54. *See* Andrew Blum, "Through a U.S. Loophole, Investors Everywhere Have a Shot at Tax-Lien Deals," *New York Times* (Feb. 21, 1998).
55. See Part V for recommendations on investment profits.
56. *See* Court of Chancery of the State of Delaware, "Memorandum Opinion: Donald E. Greetham et al. v. Sogima L-A Manager LLC," (Nov. 3, 2008).
57. *See* Joanne Musa, "The Top 5 States For Tax Lien Investing," *TaxLienLady.com* (August 2011).
58. Prashant Gopal, "JPMorgan Unit Subpoenaed in U.S. Tax-Lien Inquiry (Update 1)," *Businessweek* (April 20, 2010); David Glovin & David Voreacos, "New Jersey 'Round Robin' Tax Lien Auction Spurs Probe," *Bloomberg* (March 21, 2012).
59. Lillian Shupe, "Foreclosure looms for Lebanon Township homeowner, while the banker has admitted fraud," *Hunterdon County Democrat* (March 9, 2012); David Glovin & David Voreacos, "New Jersey 'Round Robin' Tax Lien Auction Spurs Probe," *Bloomberg* (March 21, 2012).
60. *See* Brian Brueggeman and Mike Fitzgerald, "Tax buyers, politicians benefit form tax sales," *Belleville News-Democrat* (Oct. 5, 2010).
61. John Shiffman et al., "Schweiker's dual role and a question of influence," (April 25, 2007).
62. *See* Ben Protess & Fred Schulte, "The New Tax Man: Big Banks and Hedge Funds," *Huffington Post Investigative Fund* (Oct. 18, 2010).
63. Id.
64. Court of Chancery of the State of Delaware, "Memorandum Opinion: Donald E. Greetham et al. v. Sogima L-A Manager LLC," (Nov. 3, 2008).
65. Fred Schulte & Ben Protess, "The New Tax Man: Big Banks and Hedge Funds," *Huffington Post Investigative Fund* (Oct. 18, 2010).
66. Aeon Financial LLC v. District of Columbia, et al, "Amended Answer to Amended and Supplemental Complaint," (August 26, 2010), p. 4, 5.
67. *See* S.C. Code Ann. § 12-37-250 (first $50,000 of value of dwelling of person disabled or sixty-five or older is exempt); N.D. Cent. Code § 57-02-08.1 (relief available for persons over sixty-five or totally disabled with annual income less than $26,000).
68. *See* Mich. Comp. Laws § 211.7u; R.I. Gen. Laws § 44-3-3(16); Utah Code Ann. § 59-2-1109.
69. *E.g.*, Massachusetts grants property tax abatements to the surviving spouse of a firefighter or police officer killed in the line of duty. Mass. Gen. Laws ch. 59, § 5 cl.(42).

70. Some abatement programs have income criteria as well as age. *E.g.*, Cal. Rev. & Tax Code §§ 20501-20564 (income limitation adjusted annually for inflation); Md. Code Ann., Tax-Prop. § 9-104 (West) (no property tax credit if annual income exceeds $200,000).
71. Utah Code Ann. § 59-2-1104.
72. Md. Code Ann, Tax-Prop. § 9-104.
73. Tenn. Ann. Code § 67-5-705.
74. 320 Ill. Comp. Stat. § 30/1 – 30/8.
75. *See, e.g.*, *In re* Samaniego, 224 B.R. 154 (Bankr. E.D. Wash. 1998)(right to disability exemption lost by failure to make timely application).
76. *See, e.g.*, Guzman v. Bd. of Assessors, 24 Mass. App. Ct. 118, 120 (1987).
77. Office of Council Member Albert Vann, "Council Passes Lien Sale Reform and Reauthorization Act," *The Council of the City of New York* (March 2, 2011).
78. Administrative Code of City of New York, § 11-320(b), as amended Mar. 16, 2011.
79. New York City Comptroller's Office, "The New York City Tax Lien Sale: History and Impact," May 2012.
80. Utah Code Ann. § 59-2-1347.
81. Administrative Code of City of New York, § 11-322(b), as amended Mar. 16, 2011.
82. Amanda Kerr, "Tax Man Finds Way to Buck Economy," *Daily Press* (March 12, 2012).
83. N.H. Rev. Stat. Ann. § 80:33-a.
84. Ohio Rev. Code Ann. § 5721.38(C).
85. Del. Code Ann. tit. 9, §§ 8701 through 8779.
86. Jones v. Flowers, 547 U.S. 220 (2006); Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1982).
87. *See In re* Pontes, 310 F. Supp. 2d 447 (D.R.I. 2004).
88. Office of Council Member Albert Vann, "Council Passes Lien Sale Reform and Reauthorization Act," *The Council of the City of New York* (March 2, 2011).
89. La. Rev. Stat. Ann. § 47:2156.
90. *See, e.g.*, Parks v. Wells Fargo Home Mortgage, Inc., 398 F.3d 937 (7th Cir. 2005) (noting that state court had vacated tax sale deed based on actual fraud of purchaser in falsely swearing that she had caused sheriff to personally serve homeowners with statutory notice).
91. Md. Code Ann., Tax-Prop. § 14-833(c)(1).
92. Ohio Rev. Code Ann. § 5721.32.
93. Sneil, LLC v. Tybe Learning Center, Inc., 2012 WL 639525 (Mo. App. E.D. Feb 28, 2012).
94. 72 Pa. Stat. Ann. § 5860.602.
95. Ind. Code Ann. § 6-1.1-25-4.5.
96. 72 Pa. Stat. Ann. § 5860.601.
97. Cal. Rev. & Tax. Code § 3704.7.
98. S.D. Codified Laws §§ 10-25-3; 10-25-8.
99. The Supreme Court in *Jones v. Flowers*, 547 U.S. 220 (2006), rejected arguments by a taxing authority that no additional notice is required in this situation because the property owner fails to provide updated location information or based on the position that the property owner was on "inquiry-notice" of tax sales after failing to receive a tax bill.
100. R.I.G.L. § 44-9-10(d).
101. R.I.G.L. § 44-9-10(b).
102. Mich. Comp. Laws § 211.78i(2).
103. Mich. Comp. Laws § 211.78i(3).
104. Mich. Comp. Laws § 211.78k(4).
105. Okla. Stat. Ann. tit. 68, § 68-3105.

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106. Jack Healy, "Tax Bills Put Pressure on Struggling Homeowners," *New York Times* (August 18, 2009) (quoting Howard Liggett, executive director of National Tax Lien Association).
107. Md. Code Ann., Tax-Prop. § 14-820.
108. Fred Schulte et al., "The Other Foreclosure Menace," *Huffington Post Investigative Fund* (May 18, 2010).
109. *See* Josh Zinner, Testimony before the New York City Council Committee on Community Development and Committee on Consumer Affairs: "The Effects of Water and Sewer Lien Sales on Low Income Residents," New York City Council Committee on Community Development and Committee on Consumer Affairs (September 28, 2010).
110. New York City Comptroller's Office, "The New York City Tax Lien Sale: History and Impact," May 2012.
111. Ms. Younge was successful in avoiding foreclosure of the tax lien but the tax lien servicing company still assessed her $650 in fees.
112. Don Baylor, "What We Know About Property Tax Lending So Far," *Center for Public Policy Priorities* (Oct. 18, 2007), p. 301.
113. See Texas Tax Code § 32.06 and 065. The Texas Property Tax Lender Licenses Act (SB 1520) required that all property tax lenders be licensed by March 1, 2008.
114. For more information on payday loans, see **http://www.nclc.org/issues/payday-loans.html**.
115. "Loans Tax Liens," **http://loans.tax.lien.quickpaydayquickloans.us/** (March 15, 2012).
116. Cash Apply, "$$$ tax lien loans—Looking for $1500 Loan Online. Quick Cash Now," (Jan. 2, 2012).
117. Moody's Investors Service, "Ratings Rationale for Series 2010-1 Tax Lien Asset-Backed Pass-Through Certificates to be issued by Tax Liens Securitization Trust 2010-1," (Sept. 15, 2010).
118. Iowa Code Annot. § 668.13.
119. 28 U.S. C. § 1961.
120. Utah Code Ann. § 15-1-4. The federal post-judgment interest rate is publically available on the website of the Administrative Office of the U.S. Courts, at: **http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/CourtRecords/pjrate.pdf**.
121. Tex. Fin. Code §304.003.
122. Colo. Rev. Stat. Ann. § 39-12-103(3).
123. See Iowa Judicial Branch, "Post-Judgment Interest Rate Table," (March 15, 2012).
124. Tex. Fin. Code §304.003.
125. See Appendix A.
126. The Service Members Civil Relief Act generally prohibits a tax sale of property owned and occupied by a servicemember on active duty or his or her dependents, and extends the right to redeem for up to 180 days after leaving active duty. 50 U.S.C. app. § 561.
127. Kan. Stat. Ann. § 79-2401a.
128. 35 Ill. Comp. Stat. Ann. 200/21-350(a).
129. *See* R.I.G.L. § 44-9-10.
130. This description of Rhode Island Housing's tax sale program is based on the author's conversation with Amy Rainone, RIH Policy Director and Leslie McKnight, RIH Loan Servicing Director.
131. See R.I.G.L. § 44-9-8.3(a).
132. For properties that are vacant, Rhode Island Housing is seeking an amendment to the law that would permit it to foreclose sooner.
133. *See* Michael Williams, "California Tax-Defaulted Land Sales," *Rogue Investor* (2010) (describing purchase strategies for properties in California).
134. Jessica Mayrer, "Evicting the elderly," *The Missoula Independent* (Oct. 20, 2011).
135. See Arianna Holding Co., Inc. v. Cummings, 2011 WL 2671805 (N.J. Super. A.D. July 11, 2011).

136. Me. Rev. Stat. Ann. tit. 36, § 1080.
137. *E.g.*, Ohio Rev. Code Ann. § 5721.19.
138. Conn. Gen. Stat. Ann. § 12-157(i)
139. 35 Ill. Comp. Stat. Ann. 200/21-295; § 21-305.

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