

Tax Lien Foreclosure Procedures & Relevant Issues

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Ms. Hurley is a Senior Associate in the Litigation practice group at Lippes Mathias Wexler Friedman LLP in Buffalo. She concentrates her practice primarily in commercial and municipal litigation, contract disputes, commercial mortgage foreclosures, tax lien foreclosures and tax certiorari defense matters. She also handles real estate transactions and bond underwriting. Ms. Hurley has represented clients in all phases of trial and appellate practice before local, state and federal courts, as well as alternative dispute resolution forums.

Additionally, Ms. Hurley has extensive experience in the field of commercial litigation and in the interpretation and application of the New York Civil Practice Law and Rules. Her clients include individuals, small and large business enterprises and municipalities. She has been successful in her role as special counsel to municipalities in a wide range of matters including risk assessment, tax certiorari and tax lien foreclosure proceedings and project management.

Ms. Hurley is qualified to receive Office of Court Administration Part 36 appointments and routinely serves as Referee in surplus money proceedings. Additionally, Ms. Hurley is qualified to serve as Referee in foreclosure matters and as Court Evaluator in Mental Hygiene Law Article 81 Guardianship Proceedings in Supreme Court.

Ms. Hurley is registered with the American Bar Association's Military Pro-Bono Project Operation Stand-By as a civilian attorney. In this role, she provides civil litigation consultation to military attorneys on New York State-specific legal information in order to further assist their service member clients.

EDUCATION

- University at Buffalo School of Law, J.D.
- University at Buffalo, MSW
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PROFESSIONAL ASSOCIATIONS

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Tax Lien Foreclosure Procedures and Relevant Issues

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1) Tax Lien Foreclosure Procedures: In Rem Proceeding or Judicial Foreclosure Action

- a) In Rem Proceeding
 - i) Summary proceeding governed by Article 11 of the New York State Real Property Tax Law (“RPTL”) or local tax act.
 - ii) Available to municipalities, only.
 - iii) Erie County Tax Act (“ECTA”) Article 11
 - (1) Erie County is entitled to foreclose upon lien(s) outstanding, unredeemed and unpaid for a period of 2 years.
 - iv) Tax liens are presumptively valid: “It shall not be necessary for the county to plead or establish by proof the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the land set forth in the list of delinquent taxes and properties, and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. Any answering defendant alleging any jurisdictional defect or invalidity of the tax... must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense”. ECTA §11-18.0. See also, RPTL §1134.
 - v) Preferred method of tax lien foreclosure
 - (1) Cost effective
 - (2) Streamlined
 - vi) Unforgiving
- b) Judicial Foreclosure Action
 - i) Availability:
 - (1) RPTL §1194: Available to a purchaser of tax lien, or its successors/assigns.
 - (2) ECTA Article 9: Available to Erie County as an alternative to In Rem provisions.
 - ii) Foreclosure of tax lien as in an action to foreclose mortgage:
 - (1) Procedure governed by New York State Real Property Actions and Proceedings Law (“RPAPL”) Article 13.
 - (2) Court has power to determine and enforce priorities, rights, claims and demands of parties, including those amongst defendants.
 - (3) Resolution of more complex issues:
 - (1) Deleted, split, merged SBLs
 - (2) Institutionalized property owners
 - (3) Cases necessitating relief in Bankruptcy Court
 - (4) Costs, disbursements and attorney’s fees recoverable.
- c) No personal liability.



2) In Rem Proceeding

- a) Commencement- Filing of List of Delinquent Taxes
 - i) List of Delinquent Taxes:
 - (1) Brief description of each parcel
 - (2) Name of the last owner as the same appears on the latest tax roll
 - (3) Statement of the amount due upon lien(s)
 - (4) Verification stating that the last known owners of the real property set forth in the List and their last known addresses were ascertained from an inspection of the current records and tax rolls of the county.
 - ii) Effect of filing of List:
 - (1) Constitutes and has the same force and effect as the filing of an individual Notice of Pendency of a tax foreclosure action and of the filing of a separate and individual complaint by the county against the owners of the real property proceeded against and described in the List.
 - (2) Date of filing of List establishes which taxes are paid from sale proceeds, which taxes are the responsibility of the purchaser and which taxes are extinguished.
- b) Petition and Notice of Foreclosure
 - i) Provides notice of foreclosure and information relative to redemption and answer.
 - (1) RPTL §1124: Must be filed at County Clerk's Office
 - (2) ECTA: No filing requirement
 - ii) Public notice of foreclosure
 - (1) Publication requirement – two newspapers:
 - (1) RPTL §1124: Once a week for three non-consecutive weeks in a two month period.
 - (2) ECTA §11-12.0: Once a week for six successive weeks.
 - (2) Posting requirement – on or before first day of publication:
 - (1) Office of enforcing officer;
 - (2) Courthouse; and
 - (3) ECTA §11-13.0: Three places within each city, town or village.
 - (3) Lyon v. Estate of Cornell, 269 A.D.2d 737 (4th Dept. 2000): "Once actual notice is received, strict compliance with the statute is no longer required."
- c) Personal Notice of In Rem Tax Lien Foreclosure Proceeding
 - i) On or before the first date of publication, county must mail notice to parties entitled thereto.
 - ii) Parties entitled to notice
 - (1) RPTL §1125:
 - (1) Each owner and any other person whose right, title, or interest was a matter of public record as of the date the list of delinquent taxes was filed, which right, title or



- interest will be affected by the termination of the redemption period, and whose name and address are reasonably ascertainable from the public record, including the records in the offices of the surrogate of the county, or from material submitted to the enforcing officer evidencing a change of address;
- (2) Any other person who has filed a declaration of interest; and
 - (3) The enforcing officer of any other tax district having a right to enforce the payment of a tax imposed upon any of the parcels described upon such petition.
- (2) ECTA §11-13.0:
- (1) Each owner as the same appears upon the current records and tax rolls in the office of the commissioner of finance; and
 - (2) Mortgagee or lienor who has filed with commissioner a notice stating his name, residence and address.
- (3) Declaration of interest
- (1) Any mortgagee, lienor, lessee or other person having a legally protected interest in real property who wishes to receive copies of the notices may file with the enforcing officer a declaration of interest containing the name and mailing address of the person submitting such declaration, a description of the parcel or parcels in which such person claims an interest, and a description of the nature of such interest.
 - (2) Duration
 - (i) RPTL §1126: 10 years
 - (ii) ECTA §11-13.0: 2 years
- (4) Missing names and/or addresses from tax roll:
- (1) No duty to ascertain names and/or addresses when missing from tax roll.
 - (2) Lily Dale Assembly, Inc. v. Chautauqua County, 72 A.D.2d 950 (4th Dept. 1979): Requirement of mailing of notice of tax sale and notice to redeem to names and addresses of taxpayers as they appear on assessment roll does not apply where roll contains no name and address; applicable statutory sections do not impose an additional duty upon enforcing officer to ascertain such names and addresses before proceeding with the enforcement.
 - (3) ECTA §11-13.0: Affidavit of enforcing officer establishing absence of name or address.
- iii) Notification method
- (1) Mailing requirement
 - (1) RPTL §1125: Regular and certified mail.
 - (2) ECTA distinctions:
 - (i) ECTA §11-13.0: Regular mail to property owner (no requirement to mail via certified mail).
 - (ii) ECTA §11-14.0: Certified mail to mortgagee or lienor (no requirement to mail via regular mail).



(2) Notice deemed received unless both regular and certified are returned within 45 days of mailing.

(1) If both mailings are returned within 45 days of mailing:

(i) Mailing to alternate address if same is ascertainable from reasonable search of the public record.

1. Kennedy v. Mossafa, 100 N.Y.2d 1 (2003): For purposes of determining whether a property owner received sufficient notice of foreclosure proceedings for unpaid taxes under the due process clause, enforcing officer's obligation is not always satisfied by sending notice to address listed in tax roll, even where notice is returned as undeliverable; when notice is returned as undeliverable, tax district should conduct a reasonable search of the public record. A reasonable search of the public record does not necessarily require searching the Internet, voting records, motor vehicle records, the telephone book or other similar resource.
2. Matter of County of Schuyler (Solomon Fin. Ctr., Inc.), 83 A.D.3d 1243 (3rd Dept. 2011): In context of notice of tax lien foreclosure proceedings, a reasonable search of the public record includes a search of land records contained in the offices of the County Clerk and Surrogate, but does not necessarily require either an Internet search or a search of records of the Supreme Court or County Court.
3. Mac Naughton v. Warren County, 20 N.Y.3d 252 (2012): County's failure to provide property owners with actual notice that tax foreclosure proceeding had been initiated against their property after documents sent to their home address had been returned by postal service as undeliverable did not violate due process, where county published notice of foreclosure proceeding and sent copy of petition to owners at address listed on deed by first class mail, and there was no evidence that further search of public records would have yielded any additional information about property owners' whereabouts.

(ii) If no alternate address ascertained, notice is posted at subject property.

(2) If both mailings returned more than 45 days after mailing, no further obligation.

(i) Matter of County of Clinton (Greenpoint Assets, Ltd.), 116 A.D.3d 1206 (3rd Dept. 2014): Mailings that county sent to property owner, a foreign corporation, were deemed received, and county's statutory obligation to provide notice of tax lien foreclosure proceedings was satisfied, where one first class mailing sent to owner was never returned to county by United States Postal Service (USPS), and, although later first class and certified mailings were both returned, that did not occur within 45 days after being mailed.

iv) Proof of service



- (1) Proof of filing, publication, posting and mailing made via affidavits.
 - (2) Matter of Tax Foreclosure Action No. 34, 191 A.D.2d 679 (2nd Dept. 1993): Affidavit of mailing, viewed in context of presumption of regularity which attaches, amply demonstrates that taxpayer was properly and timely served.
- v) Change of address:
- (1) Property owner bears responsibility to update property address in order to protect her property rights. Harner v. County of Tioga, 5 N.Y.3d 136 (2005); Kennedy v. Mossafa, 100 N.Y.2d 1 (2003).
 - (2) Change in address must be clear – return address label or address contained on check insufficient
 - (1) Kennedy v. Mossafa, 100 N.Y.2d 1 (2003): County's receipt of checks in payment of real estate taxes owed on property, in envelopes showing owner's current address, did not constitute notice of change of address requiring county to use new address when mailing owner notice of foreclosure proceedings.
- d) Due Process
- i) Where the names and addresses of interested parties are known, due process requires “notice reasonably calculated under all the circumstances, to apprise that party of the foreclosure action, so that the party may have an opportunity to appear and be heard... key word is “reasonably”, which balances the interests of the state against the rights of the parties”. Kennedy v. Mossafa, 100 N.Y.2d 1, 9 (2003).
 - (1) Harner v. County of Tioga, 5 N.Y.3d 136 (2005): County's notices of tax delinquency foreclosure satisfied due process, even though the county took no steps to obtain an alternative address, and even though record owner asserted he was unaware that his mailing address on the tax rolls was improperly changed eight years earlier from his residential address to the address of the property, where notices sent to record owner of the property by certified mail pursuant to statute providing for personal notice of commencement of foreclosure proceeding were returned “unclaimed,” but ordinary first-class mailings were not.
 - (2) Kennedy v. Mossafa, 100 N.Y.2d 1 (2003): Former owner of real property received adequate notice, under the due process clause of State and Federal Constitutions, of foreclosure proceeding triggered by nonpayment of property taxes for one year period, when county posted and published public notice of proceeding and mailed notice to former owner at address appearing on tax records, though owner had moved and did not in fact receive notice. Ownership carries responsibilities. Owner failed to protect her ownership interest by updating her address.
 - ii) Notice sufficient:
 - (1) Wilczak v. City of Niagara Falls, 174 A.D.3d 1446 (4th Dept. 2019): City substantially complied with statutory notice requirements in its tax foreclosure action against



property owner, despite property owner's averment that he never received such notice; city's billing supervisor deposited with postal service one set of postage prepaid certified letters and one set of postage prepaid regular letters containing a copy of petition and notice of foreclosure addressed to property owner's last known address, city's mailing book confirmed this mailing, neither regular nor certified mailings were returned to sender, property owner did not dispute that address to which notice was sent was his mailing address, and property owner's denial of receipt was insufficient to rebut presumption, raised by city's submitted evidence, that he received notice.

- (2) Matter of County of Sullivan (Matejkowski), 105 A.D.3d 1170 (3rd Dept. 2013): Property owner was not deprived of his property without due process after default judgment was entered, since county had provided notice reasonably calculated to apprise him of the pendency of the proceeding and had afforded him an opportunity to present his objections; county had mailed petition and notice of foreclosure to property owner's last known address as stated in tax roll public records, published notice of foreclosure in two newspapers in the tax district, and posted notice of the foreclosure in county treasurer's office, government center, courthouse, and five separate post offices in the county, and property owner had failed to notify county of any new address to which the tax bills should have been sent.
- (3) Matter of County of Ontario (Helser), 72 A.D.3d 1636 (4th Dept. 2010): County's notices of tax delinquency foreclosure satisfied due process, even though county's certified mailings were returned by United States postal service, where county sent certified and first-class notices to property owner's address of record and to forwarding address supplied by postal service, only the certified mailings were returned, and first-class mailings were not returned as undeliverable within 45 days of mailing; under such circumstances, county was entitled to conclude that property owner was attempting to evade notice.

e) Presumptions and Burdens of Proof

i) County enjoys

- (1) Presumption of Validity of tax lien(s)
- (2) Presumption that notice received

(1) Matter of County of Seneca (Maxim Dev. Group), 151 A.D.3d 1611 (4th Dept. 2017): Tax foreclosure proceedings enjoy a presumption of regularity through due process, such that the tax debtor has the burden of affirmatively establishing a jurisdictional defect or invalidity in such proceedings; where the proof exhibits an office practice and procedure followed in the regular course of business which shows that notices have been duly addressed and mailed, a presumption arises that those notices have been received by the party to whom they were sent.



- (2) Franzone v. Quinn, 303 A.D.2d 812 (3rd Dept. 2003): Where tax officials show, through evidence concerning the office procedures they followed in the regular course of business, that the required notice and petition of foreclosure was properly addressed and mailed to a party interested in the proceeding, they are entitled to a presumption that the notice was received.
- ii) Burden on respondent to affirmatively establish defect and/or defense to proceeding.
 - (1) Mere denial of receipt insufficient:
 - (1) In Rem Tax Foreclosure Action No. 47, 19 A.D.3d 547 (2nd Dept. 2005): Mortgagees' mere denial of receipt of notice of foreclosure from city failed to overcome presumption of regularity of mailing or presumption of regularity of all proceedings taken in action.
 - (2) Johnson v. County of Erie, 309 A.D.2d 1278 (4th Dept. 2003): Dismissal of complaint proper where county's proof that notice was sent to plaintiff at the subject property gave rise to the presumption that plaintiff received the notice and plaintiff's denial of receipt is insufficient to rebut presumption.
 - (3) Franzone v. Quinn, 303 A.D.2d 812 (3rd Dept. 2003): County raised presumption that notice of foreclosure for nonpayment of property taxes was received by property owner, and owner failed to rebut the presumption; county sent to property owner by first class mail the notice and petition of foreclosure at address for prior tax notices and an additional address, and owner submitted no evidence that additional address was not proper or that he had notified county of address change and owner had made partial payment on tax bill that indicated prior taxes were due and failure to pay could result in loss of property.
- f) Redemption
 - i) Each person having any right, title, interest in or lien upon parcel may redeem such parcel by paying sums before expiration of the redemption period set forth in the Notice.
 - (1) Collective Statement of Redemption – operates to cancel Notice of Pendency (see Appendix 1)
 - (2) ECTA §11-12.0: Assignment of Tax Lien
- g) Answer
 - i) Each person having any right, title, interest in or lien upon parcel may submit verified answer.
 - (1) Requirements:
 - (1) Must be filed and served by the deadline set forth in the Notice
 - (2) Must set forth in detail the nature of interest and any defense or objection to foreclosure



- (3) Must specify with particularity any jurisdictional defect or invalidity and must affirmatively establish any defense
- ii) Trial of Issues
- (1) Proper filing and service of answer operates to sever parcel from main proceeding.
 - (2) The Court has the power to summarily hear and determine the issues raised by the petition and answer in the same manner and under the same rules as it hears and determines other proceedings or actions.
 - (3) Summary judgment striking answer and for Judgment of Foreclosure and Sale:
 - (1) Presumption of validity of liens
 - (2) Presumption of regularity
 - (3) Payment as a complete defense
 - (4) Unsuccessful answer – party is in same position as if he/she did not answer or redeem.
 - (1) Court cannot extend time to redeem.
 - (2) Matter of City of Binghamton (Ritter), 128 A.D.2d 266 (3rd Dept. 1987): The Court cannot extend time to redeem. County court was without power to extend taxpayer's time to redeem parcels of land after expiration of redemption period, and thus taxpayer who interposed answer setting forth defenses or objections to foreclosure, which were rejected by county court, was not entitled to redeem parcels, and under circumstances, sale was appropriate, with surplus moneys, if any, to be awarded to taxpayer.
- h) Judgment
- i) Default Judgment
- (1) In the event of a failure to redeem or answer by any person having the right to redeem or answer, such person shall forever be barred and foreclosed of all right, title, and interest and equity of redemption in and to the parcel in which the person has an interest.
 - (2) Once time to redeem/answer expired, rights are fixed.
 - (3) RPTL §1131: Motion to reopen default judgment:
 - (1) Must establish both reasonable excuse for default and meritorious defense.
 - (2) Statute of limitations: One month from entry of judgment.
 - (i) RPTL §1131: “A motion to reopen any such default may not be brought later than one month after entry of the judgment”.
 - (ii) Failure to move within one month, forever barred.
 1. Matter of City of Utica (Martin), 75 A.D.3d 1047 (4th Dept. 2019): Court erred in determining that it had discretion to grant motion seeking to vacate underlying judgment of foreclosure in the interests of substantial justice. “RPTL 1131 provides, in unambiguous and prohibitory language, that a motion to reopen any such default *may not* be brought later than one



month after entry of the judgment... Thus, the exercise of such discretion is available to the courts only upon consideration of a timely motion.”

2. Wilczak v. City of Niagara Falls, 174 A.D.3d 1446 (4th Dept. 2019): Property owner was not entitled to consideration of equitable relief in his action seeking to set aside deeds conveying two of his properties to city upon a default judgment of tax foreclosure against him, where property owner never made a request to reopen default judgment.
3. Matter of County of Wayne (Schenk), 169 A.D.3d 1501, 1502–1503 (4th Dept. 2019): Court without discretion to vacate judgment in the interests of substantial justice where motion to vacate untimely.
4. Matter of Foreclosure of Tax Liens, 171 A.D.3d 1175 (2nd Dept. 2019): There was no dispute that property owner failed to move to reopen within one month of entry of default judgment entered in favor of county in county's action to foreclose on tax lien encumbering property, and owner's untimeliness forever barred and foreclosed it of all equity of redemption in and to the parcel in which it formerly had an interest, and therefore owner was not entitled to redeem the property.

(iii) One month statute of limitations even where party alleges that he/she did not receive notice.

1. Matter of County of Clinton (Greenpoint Assets, Ltd.), 116 A.D.3d 1206 (3rd Dept. 2014): Statute of limitations for motions to reopen a default judgment of tax foreclosure, stating that such a motion may not be brought later than one month after the judgment is entered, applies even where the property owner asserts that he or she was not notified of the foreclosure proceeding.
2. Matter of County of Herkimer (Moore), 104 A.D.3d 1332 (4th Dept. 2013): Denial of motion to vacate default judgment proper where motion made in excess of the thirty-day statute of limitations for the reopening of default judgment. The thirty-day statute of limitation applies even where the property owner asserts that she was not notified of the foreclosure proceeding.

ii) Final Judgment

(1) Determines:

- (1) Priorities, rights, claims and demands of the several parties to the proceeding, including the priorities, rights, claims and demands of the respondents as between themselves.
- (2) Whether there has been conformity with the In Rem provisions (RPTL or tax act).

(2) Directs:

- (1) Sale of lands.



- (2) Distribution of proceeds of sale – payment of liens in inverse order as far as sale proceeds suffice.
 - (3) Cancellation of taxes/assessments remaining after proceeds of sale have been applied.
- i) Statute of Limitations – Two (2) Years
- i) RPTL §1137: “Every deed given pursuant to the provisions of this article shall be presumptive evidence that the proceeding and all proceedings therein and all proceedings prior thereto from and including the assessment of the real property affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After two years from the date of the recording of such deed, the presumption shall be conclusive. No proceeding to set aside such deed may be maintained unless the proceeding is commenced and a notice of pendency of the proceeding is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive.”
 - ii) Limitations period begins upon filing of deed.
 - iii) Presumption is conclusive two years from filing of deed.
 - (1) Matter of City of Troy (Kingsley—Nationstar Mtge., LLC), 115 A.D.3d 1088 (3rd Dept. 2014): Where an entity with a purported interest in real property that was subject to a tax sale neglects to challenge the sale in any fashion for two years, a conclusive presumption arises regarding the procedural regularity of all proceedings regarding the sale.
 - (2) Matter of County of Rockland (Piermont Commercial Corp.), 29 A.D.3d 791 (2nd Dept. 2006): Motion to vacate, brought nearly five years after a deed to real property was conveyed to the petitioner in a proceeding to foreclose tax liens and recorded, was barred by the two-year statute of limitations.
 - iv) Timely attack on sufficiency of notice
 - (1) Separate action
 - (1) When deed has been delivered and recorded, attack on sufficiency of notice can only be made in an action to set the deed aside. A motion to vacate the default judgment in the foreclosure proceeding is not the proper remedy. Town of Somers v. Covey, et al, 2 N.Y.2d 250 (1957).
 - (2) Supreme Court
 - (1) County Court lacks subject matter jurisdiction to grant equitable relief where, as the result of default judgment and subsequent deed, purchaser acquired full and complete title to the subject property and having failed to redeem its interest, answer the foreclosure proceeding or seek to reopen the default judgment in a timely matter, the applicant was barred and foreclosed of its right, title, interest and equity of redemption. “A court of equity cannot divest legal titles, except in accordance with its settled and acknowledged jurisdiction”. Matter of County of



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Sullivan (Congregation Khal Chaside Skwera, Inc.), 86 A.D.3d 671, 672 (3rd Dept. 2011).



3) Tax Lien Foreclosure Auction

- a) Notice of Sale
 - i) Publication and posting requirements
 - ii) ECTA §11-14.0: mailing to mortgagee or lienor
- b) Public sale at the direction of the enforcing officer
- c) Parcels eligible:
 - i) Unredeemed parcels contained in Judgment of Foreclosure and Sale
 - ii) Continued matters from prior In Rem proceedings
- d) Computation of opening bid
 - i) Factors to consider:
 - (1) Amount of Judgment
 - (2) Lis Pendens date
 - (3) Assessed value of property
 - ii) Purpose of sale:
 - (1) Recoup outstanding taxes
 - (2) Return property to tax roll
- e) Terms of Sale (see Appendix 2)
 - i) The Terms and Memorandum of Sale is the formal contract between the purchaser and the Referee. Purchaser agrees to the following terms of sale:
 - (1) Closing within 30 days of auction.
 - (2) Distribution of Proceeds (the manner in which the bid proceeds are distributed to pay outstanding taxes)
 - (1) All taxes, assessments, water and sewer rates which are liens upon the property, but which have become such subsequent to the filing of the Lis Pendens are paid in reverse chronological order.
 - (2) The Terms of Sale provide that, “[a]ny and all taxes arising after the date of the filing of the Notice of Pendency survive the foreclosure sale to the extent not paid by the proceeds of sale and are the responsibility of the purchaser.” In other words: All taxes/assessments that have accrued prior to the filing of the Lis Pendens are extinguished if they are not paid by the bid proceeds. All taxes/assessments that have accrued after the filing of the Lis Pendens that are unpaid by the bid proceeds are the responsibility of the purchaser.
 - (3) County performs a Tax Search: The Terms of Sale provide that, “[t]he Referee will exercise due diligence in ascertaining the taxes, assessments, water, sewer and other municipal liens against the property as of the date of the sale, but makes no guarantees or warranties as to that information. Any liens or other encumbrances which are not disclosed to the Referee or the County’s closing attorney prior to the closing date or are discovered after the closing date become the sole responsibility of the purchaser.”
 - (3) No warranties.



- (4) The property is sold in “as is” condition.
 - (5) No guarantees regarding the accuracy or completeness of information provided about the property.
 - (6) Purchaser is responsible for performing his/her own independent investigation.
 - (7) No representations/warranties as to the marketability or insurability of title.
 - (8) No access to the property until the closing takes place and the Referee’s Deed is filed at the Erie County Clerk’s Office.
 - (9) Purchaser’s responsibility to evict or remove any parties in possession of the premises after Deed is filed.
 - (10) The risk of loss or damage by fire, vandalism or other cause between the time of sale and delivery of the deed is assumed by the Purchaser.
 - (11) Default by Purchaser: Occurs when Purchaser fails to comply with any of the terms of sale
 - (1) Forfeit of deposit
 - (2) In the event of resale, Purchaser shall be held liable for the difference between the amount received upon resale and the amount of purchaser's original bid plus interest on the original bid at 9% per annum, plus costs, expenses and fees (including attorneys’ fees) occurring as a result of said resale. Purchaser's deposit shall be applied to said deficiency, with any overage refunded to said purchaser. Purchaser shall be liable for any remaining deficiency.
 - (12) The County will prepare and provide a Referee’s Deed, only. All other expenses of closing, including but not limited to, costs of Recording the Referee’s Deed, including Real Property Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the Purchaser.
 - (13) County shall refuse to transfer title to any person or entity who is not current on all obligations owed to municipalities throughout the county.
 - (14) County shall refuse to transfer title to delinquent homeowner who purchases his/her property or another property at auction and such person will forfeit his/her deposit and/or final payment.
 - (15) Referee shall have the right to set aside any bid by any person deemed by him/her to not be a responsible bidder.
 - (16) County reserves the right to rescind the sale due to Bankruptcy and/or inadequate notice to any interested party.
- f) Distribution of Proceeds
- i) Governed by Judgment of Foreclosure and Sale and Terms of Sale.
 - ii) Taxes paid in reverse chronological order: (see Appendix 3)
 - (1) Pre-Lis Pendens liens extinguished if not paid by bid proceeds. (see Appendix 4)
 - (2) Post-Lis Pendens liens, to the extent not paid by bid proceeds, are the responsibility of the purchaser. (see Appendix 5)



- (1) Continued matters may involve significant purchaser responsibility
 - (2) Negotiation of post-Lis Pendens municipal liens (likely requires board approval)
- g) Surplus Money
 - i) Referee Report of sale not required (ECTA §11-26.0)
 - ii) Order directing deposit with Comptroller
 - iii) Courtesy notice to property owners (see Appendix 6)
 - iv) Application for surplus moneys:
 - (1) Filing of Notice of Claim
 - (2) Notice of application to interested parties
 - (3) Court appointment of referee
 - (4) Hearing on notice
- h) The Land Bank & the “Super Bid”:
 - i) Mission of the Buffalo Erie Niagara Land Improvement Corporation (BENLIC) is to return the thousands of vacant and abandoned properties found throughout Erie County to productive use.
 - ii) BENLIC works in partnership with Erie County municipalities to identify and acquire specific vacant and abandoned properties at the In Rem auction. These properties are multiple years’ tax delinquent, often the source of resident complaint, and are generally in need of substantial repairs.
 - iii) “Super Bid”
 - (1) As a New York State Land Bank, BENLIC uses its legal preferred bid or “Super Bid” at tax auctions.
 - (2) By doing so, BENLIC is able to supersede any other bidder and acquire property.
 - iv) After acquisition, properties are rehabbed when deemed appropriate, or stabilized and sold. BENLIC prioritizes first time homebuyers and responsible investors in the sale process.
 - v) Strong partnerships between BENLIC, community leaders, local residents and investors enable the land bank to meet its mission and continue to improve the community.



4) **Bankruptcy Considerations and Relief in Tax Lien Foreclosure**

- a) The filing of a bankruptcy petition merely to prevent foreclosure, without the ability or intention to reorganize is an abuse of the Bankruptcy Code. In re Felberman, 196 B.R. 678 (Bankr. S.D.N.Y. 1995).
- b) Relief from the automatic stay provisions of the Bankruptcy Code
 - i) 11 U.S.C. §362(d)(1): Relief from automatic stay for “cause”
 - (1) Cause for relief from the automatic stay includes a finding that a filing was made in bad faith. In re Eclair Bakery Ltd., 255 B.R. 121, 137 – 38 (Bankr. S.D.N.Y. 2000) (“Bad faith has frequently been held to provide sufficient cause to warrant” either dismissal or relief from an automatic stay).
 - (2) Bad faith inquiry is meant to ensure that the debtor actually intends to use the Bankruptcy to reorganize and rehabilitate itself “and not simply to create hardship or delay to its creditors by invoking the automatic stay”. In re RCM Global Long Term Capital Appreciation Fund, Ltd., 200 B.R. 514, 522 (Bankr. S.D.N.Y. 1996).
 - (3) A number of factors may be indicative of a bad faith filing, including whether the debtor’s filing demonstrates an intent to delay or otherwise frustrate the legitimate efforts of secured creditors to pursue their rights. In re AMC Realty Corp., 270 B.R. 132, 141 (Bankr. S.D.N.Y. 2001) (citing In re C-TC 9th Avenue P’ship, 113 F.3d 1304, 1311 (2d Cir. 1997)).
 - ii) 11 U.S.C. §362(d)(4)(B): Relief from automatic stay upon finding that Bankruptcy filing is part of a scheme to delay, hinder, or defraud creditors that involves the existence of multiple Bankruptcy filings affecting the subject property.
 - (1) The Court “can infer intent to hinder, delay and defraud creditors from the fact of serial filings alone without holding an evidentiary hearing.” In re Richmond, 513 B.R. 34, 38 (E.D. N.Y. 2014). The “extent of the efforts by a debtor to prosecute his bankruptcy case and the timing and sequencing of filings are important factors in determining whether a debtor has engaged in a scheme to delay, hinder and defraud.” Id. at 38 *quoting In re Montalvo*, 416 BR 381 at 387 (Bankr. E.D.N.Y. 2009).
 - (2) In re Richmond, 516 BR 229, 235 (Bankr. E.D.N.Y. 2014): “The timing of both filings permitted an inference that the Debtor is attempting to hinder or delay [creditor]’s efforts to enforce the Foreclosure Judgment.”
 - iii) 11 USC §362(c)(3)(A): If Debtor files Bankruptcy proceeding within one (1) year of a prior dismissal, the Debtor is only entitled to an automatic stay of thirty (30) days.
 - (1) 11 USC §362(c)(3)(B): To obtain an extension of the automatic stay, the Debtor must demonstrate that the latter Bankruptcy proceeding was filed in good faith.
 - (2) 11 USC §362(c)(3)(C)(i)(III): A case is presumed to be filed not in good faith if there has not been a substantial change in the financial or personal affairs of the Debtor since the dismissal of the next most previous case or any other reason to conclude that the later case will be concluded.



- (3) 11 USC §362(c)(3)(C): To rebut the presumption, the Debtor must establish, via clear and convincing evidence, that the later proceeding is filed in good faith.
- iv) In some cases, relief from the automatic stay can be retroactive and/or prospective.
 - (1) In re Jean-Francois, 516 B.R. 699, 703-704 (Bankr. E.D.N.Y. 2014): Annulment of the automatic stay grants retroactive relief therefrom, thereby validating past proceedings or actions that would otherwise be deemed void.
- c) 11 U.S.C. §1307(c): Dismissal of Bankruptcy proceeding for “cause”
 - i) Bad faith constitutes “cause” for dismissal. In re Froman, 566 B.R. 641, 647 (S.D.N.Y. 2017) (affirming bankruptcy court finding that debtor’s bad faith constitutes “cause” under 11 U.S.C. §1307[c] and §362[d][1]).
 - ii) In determining whether a bankruptcy was filed in bad faith, the Court must review the totality of the circumstances. In re Froman, supra at 647; In re Kaplan Breshaw Ash, LLC., 264 B.R. 309, 333 (Bankr. S.D.N.Y. 2001) (holding that bankruptcy filing on eve of foreclosure does not in itself establish a bad faith filing, rather, it is only one of several indicia to be examined by the Court under the totality of the circumstances).
 - iii) In re Froman, 566 B.R. 641, 647 (S.D.N.Y. 2017): Relevant factors that may indicate a bad faith filing include: (1) whether the debtor has few or no unsecured creditors; (2) whether there has been a previous petition filed by the debtor or a related entity; (3) whether the debtor's conduct pre-petition was proper; (4) whether the petition permits the debtor to evade court orders; (5) whether the petition was filed on the eve of foreclosure; (6) whether the foreclosed property is the sole or major asset of the debtor; (7) whether the debtor's income is sufficient such that there is a likely possibility of reorganization; (8) whether the reorganization essentially involves the resolution of a two party dispute, and (9) whether the debtor filed solely to obtain the protection of the automatic stay.



5) Relief for Residential Homeowners

- a) Cooperation with Legal Service Agencies
 - i) Information sharing – a two way street
 - ii) WNY Foreclosure Assistance Legal Agencies
<http://www2.erie.gov/ecrpts/index.php?q=legal-assistance>
- b) Installment Payment Plans
 - i) Forbearance agreement
 - ii) Owner occupied, residential property
 - iii) Down-payment
- c) Court Order (see Appendix 7)
 - i) Available in limited circumstances
 - ii) Acknowledgment of outstanding tax liability and validity of Judgment
 - iii) Conditional – if Judgment not satisfied, County can proceed with sale without further order, subject to statutory notice requirements



6) COVID-19 Considerations in Tax Lien Foreclosure Proceedings

- a) Due to COVID-19, municipalities are facing
 - i) Budget deficits
 - ii) Housing issues
- b) Tax lien foreclosure actions/proceedings are distinguishable from new mortgage foreclosures in that there has been no “default” during COVID-19.
- c) Broadened relief for tax delinquent property owners:
 - i) Delay/Postponement of commencement and/or auction
 - ii) Payment plans with low or no down payments and longer plan term to residential, owner-occupied property owners pre-screened by a credible local legal services organization and/or housing counseling agency as experiencing COVID-19 related financial hardship.
 - (1) Pre-screened applicants who have had a prior payment plan will be eligible for this payment plan.
 - iii) Additional time for residents to make payments prior to auction.
 - iv) Acceptance of payments online and through the mail to avoid the need for in-person contact.
- d) Limited need for in-person contact
 - i) Virtual appearances
 - ii) Stipulated conditional orders

Appendix 1

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

IN THE MATTER OF FORECLOSURE OF TAX
LIENS BY PROCEEDING IN REM PURSUANT
TO THE IN REM PROVISIONS OF THE ERIE
COUNTY TAX ACT AND THE RESOLUTION OF
THE ERIE COUNTY LEGISLATURE AS SHOWN
BY RESOLUTION NO. 54 AT PAGE 179 OF
THE MINUTES OF THE PROCEEDINGS OF
SAID LEGISLATURE FOR THE YEAR 2019

**FIRST COLLECTIVE
STATEMENT OF
REDEMPTIONS**

IN REM NO. 167
INDEX NO.

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

I, SCOTT A. BYLEWSKI, Director of Real Property Tax Services, Enforcing Officer for the County of Erie, as such, I am familiar with the facts and circumstances herein. I do hereby certify as follows:

1. The following parcels identified on Schedule "A" which is annexed hereto and made a part hereof were included on a List of Delinquent Tax Liens, which was filed in the office of the Erie County Clerk on the 6th day of May, 2019, pursuant to Article 11 of the Erie County Tax Act.
2. These parcels were redeemed pursuant to §11-11.0 of the Erie County Tax Act on the date stated in the column entitled "Date Paid" on the attached Schedule "A", upon payment of the amount due thereon, including all charges authorized by law.
3. The Erie County Clerk is hereby authorized and directed, upon the filing of this Collective Statement of Redemptions, to enter on the List of Delinquent Tax Liens the word "redeemed" and the date of the filing of this Statement, opposite the description of the parcel described above. This notation will operate to cancel the Notice of Pendency with respect to this parcel described above.

IN WITNESS WHEREOF, I have hereunto set my hand this day of July, 2019

SCOTT A. BYLEWSKI
Director of Real Property Tax Services
Enforcing Officer

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

On this day of July, in the year 2019, before me the undersigned, personally appeared SCOTT A. BYLEWSKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public:

Schedule A

Property Address	Property Owner(s)	City	Zip Code	SBL	Serial
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Appendix 2

TERMS OF SALE

IN REM NO. _____ AUCTION

«Property_Address», «City»
«Serial»

All properties upon which judgment has been obtained by the County of Erie (hereinafter "County") in the proceeding known as In Rem _____ will be sold under the direction of the Erie County Director of Real Property Tax Services, the Referee, pursuant to the following terms:

1. The minimum bid may not be less than \$500. However, the Referee does reserve the right to set the minimum bid for a specific property at an amount in excess of \$500. The greater of twenty percent (20%) of the purchase money of said premises or \$500 will be required to be paid in cash or certified check to the said Referee at the time and place of sale, for which the Referee's receipt will be given. The Referee will give full credit for any deposit in excess of the amount paid. In the event that the property reverts back to the County, the Referee is not required to collect the deposit.

2. The remainder of said purchase price will be required to be paid in cash or certified check payable to: Scott A. Bylewski, Referee, and deliverable to the offices of Lippes Mathias Wexler Friedman LLP, 50 Fountain Plaza, Suite 1700, Buffalo, New York or at such other place designated by the Referee or his attorney no later than October 26, 2018 (the "Settlement Date").

3. The Referee is not required to send any notice to the purchaser; and if purchaser neglects to call at the time and place above specified to receive his deed, he will be deemed to be in default under these Terms of Sale and all monies will be forfeited. Purchaser will be charged with interest at nine per cent (9%) per annum on the balance due from the date of sale to the ultimate date of delivery of the Referee's Deed, plus any additional costs and fees, including attorneys' fees, unless the Referee shall deem it proper to extend the time for completion of said purchase.

4. The Referee conducting the sale shall pay out of the proceeds of sale, if any, as follows:

(a) expense of the sale;

(b) costs awarded in the foreclosure judgment;

(c) all taxes, assessments and water and sewer rates which are liens upon the real estate, but which have become such subsequent to the filing of the Notice of Pendency (_____), or for the non payment of which no tax sale has been had prior thereto, shall be paid in the inverse order of the time at which such taxes and assessments became liens;

(d) all tax sale certificates against the property which may have been issued subsequent to the filing of the Notice of Pendency and shall be paid in the inverse order of the date of issuance of such certificates;

(e) so far as such proceeds shall suffice to pay the same, the several amounts due to the plaintiffs and defendants in such action, including the County of Erie, on the tax sale certificates held by them against the property, with all interest, penalties, additions and expenses allowed by law, in the inverse order of the date of issuance of such tax sale certificates.

Any and all taxes arising after the date of the filing of the Notice of Pendency survive the foreclosure sale to the extent not paid by the proceeds of sale and are the responsibility of the purchaser.

The Referee will exercise due diligence in ascertaining the taxes, assessments, water, sewer and other municipal

liens against the property as of the date of the sale, but makes no guarantees or warranties as to that information. Any liens or other encumbrances which are not disclosed to the Referee or the County's closing attorney prior to the closing date or are discovered after the closing date become the sole responsibility of the purchaser. Further details are provided on Exhibit A attached.

The aforesaid terms of this paragraph 4 do not apply if the County shall, previous to the delivery of the deed, produce to the Referee proof of the payment thereof.

5. The purchaser of said premises will, at the time and place of sale, sign a memorandum of his purchase, and an agreement to comply with the terms and conditions of sale herein contained.

6. In case any purchaser shall fail to comply with any of the terms conditions of sale, including without limitation not paying the required deposit, the bidder and/or purchaser shall be deemed to be in default and the premises so struck down to him may again be put up for sale under the direction of said Referee, without application to the Court, unless the County's attorney shall elect to make such application.

The bidding will be kept open after the property is struck down and in any case where a bidder and/or purchaser failed to comply with any of the terms and conditions.

The Referee reserves the right to sell the premises to the second highest bidder and/or an alternate bidder.

In the event of a resale, purchaser shall be held liable for the difference between the amount received upon resale and the amount of purchaser's original bid, interest on the original bid at 9 per cent per annum from the date of the first sale to the ultimate delivery of the Referee's deed, plus costs, expenses and fees (including attorneys' fees) occurring as a result of said resale. Purchaser's deposit shall be applied to said deficiency, with any overage refunded to said purchaser. Purchaser shall be liable for any remaining deficiency.

Should the County be the successful bidder at said resale or if the premises is not resold, the purchaser's deposit shall be forfeited. Such forfeiture shall not be a waiver of any rights of the County to seek and obtain other damages as allowed for by law.

7. The premises are being sold in "AS IS" condition defined as the condition of the premises as of the date of the sale and continuing through the date of the closing. And subject to: any zoning restrictions and any amendments thereto, according to law, and now in force; subject to the state of facts an accurate survey may show; rights of the public and others in and to any part of the premises that lies within the bounds of any street, alley, or highway; covenants, restrictions, agreements, reservations and easements of record, if any, and to any and all violations thereof; any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are located, and violations and/or liens of same, including, but not limited to, reapportionment of lot lines, and vault charges, if any; any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and violations of the same; the physical condition of any buildings or structure on the premises as the date of sale hereunder; the rights of the United States of America to redeem, if any; rights of tenants, occupants or squatters, if any. It shall be the responsibility of the purchaser to evict or remove any parties in possession of the premises being foreclosed herein. There shall be no adjustment on a pro-rata basis in favor of the purchaser for any rents that are paid for a period after the date of this sale.

8. The risk of loss or damage by fire, vandalism or other cause between the time of sale and delivery of the deed is assumed by the Purchaser.

9. As to any information from whatever source provided on behalf of the County concerning the premises, the County makes no guarantee regarding the accuracy or completeness of such information. Purchaser is responsible for performing his own independent investigation.

10. The County makes no representations or warranties with respect to the marketability or insurability of the title to the premises being sold and in the event that the Referee is unable to convey title to the subject premises

as set forth herein and/or in the Judgment of Foreclosure and Sale, or the Referee's Deed is found to be defective subsequent to the delivery of the deed, purchaser's remedy shall be limited to the return of those sums actually paid on account of the purchase price, and neither the Referee nor the County nor the County's attorneys herein shall be liable to the purchaser for any sum whatsoever, including consequential or other damages, or for any monies advanced for any purpose whatsoever by purchaser.

11. The County shall prepare and provide a Referee's Deed to the purchaser. All other expenses of closing, including but not limited to, costs of Recording the Referee's Deed, including Real Property Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the purchaser. Referee will not furnish an abstract of title or survey.

12. If there is a conflict between these terms of sale and any pleading filed in the foreclosure action, then the provisions of these Terms of Sale shall control.

13. The bidder and/or purchaser and/or assignee has no legal authority to enter the property or to remove belongings of prior owner(s) or tenant(s) or to alter or modify the property in any way, to charge rents or to evict until the closing is finalized and the deed is recorded.

14. The bidder and/or purchaser and/or assignee represents that he/she is not the presumptive owner of the foreclosed premises.

15. The bidder and/or purchaser and/or assignee represents that he/she is current with any and all financial obligations to municipalities throughout the County of Erie within which he/she owns property (i.e. taxes, water, sewer, user fees, violations, etc.).

16. The County shall refuse to transfer title to any person, including without limitation to an individual, corporation, partnership, association, Individual Retirement Account (IRA) Owner, Limited Liability Company or vendor (and each of such person's principals, partners, associates, members, etc.), who is not current on all obligations owed to municipalities throughout the County of Erie, its authorities and agencies, as of the Settlement Date. The County shall also refuse to transfer title to a delinquent homeowner who purchases his/her own property or another property at auction and such person will forfeit his/her deposit and/or final payments. If a person (bidder, purchaser and/or assignee) is not current on all such obligations as of the Settlement Date, all monies tendered by the bidder, purchaser and/or assignee shall be forfeited or be applied towards the outstanding obligations owed to the County of Erie and its authorities and agencies.

17. The Referee shall have the right to set aside a bid by any person deemed by him not to be a responsible bidder and/or purchaser and immediately put up the premises for sale again.

18. The County reserves the right to rescind the sale due to filing of Bankruptcy and inadequate notice to the prior owner and/or any other party in interest/lienholder.

Dated: September 26, 2018

SCOTT A. BYLEWSKI, ESQ.
Erie County Director of Real Property Tax Services, as Referee

Exhibit A

Bidders at the tax foreclosure sale are advised that if winning bid amounts are not sufficient to satisfy certain real estate tax liens, these liens remain open, valid and enforceable.

At the beginning of this foreclosure proceeding, the List of Delinquent Properties was filed in the Erie County Clerk's Office on _____. This document served as a Notice of Pendency relative to the property at issue herein. The Notice of Pendency confirms the filing of the foreclosure against the premises involved. By law, tax liens arising after the date of the filing of the Notice of Pendency survive the foreclosure sale. If the funds paid by the winning bidder to acquire the premises are not sufficient to pay these taxes, they continue to attach to the premises and are the responsibility of the new owner.

For each parcel in this In Rem _____ auction, the Notice of Pendency date is _____. Tax liens arising subsequent to that date survive the sale to the extent not paid by the bid proceeds. Tax liens arising prior to _____ are eliminated by the sale if not fully paid by the bid proceeds.

Any and all taxes that arise after the Notice of Pendency filing on _____ survive the sale to the extent not paid by the bid proceeds.

The Referee shall not be responsible for any liens, assessments or other encumbrances not discovered until after the closing. In such a circumstance, the purchaser shall be responsible for paying or otherwise resolving such liens, assessments or encumbrances and shall have no recourse against the Referee, the County of Erie, its agents, servants or employees.

MEMORANDUM OF SALE

«Property_Address», «City»
«Serial»

I, _____ have this 26th day of September, 2018, purchased the premises described in the annexed Notice of Sale for the sum of _____ dollars (\$ _____) and hereby promise to comply with the terms and conditions of the sale of said premises as set forth in the attached Terms of Sale and in this Memorandum of Sale.

1. The County will prepare a Referee’s Deed in the name of the person or entity set forth below. Any requests for assignments, name changes, additional descriptions or other changes made after the date of the sale will not be processed unless a fee of \$75.00 is paid by the party requesting the same.

Name on Deed: _____

Address: _____

Phone: _____

2. All property is sold “AS IS”. Purchaser is responsible for all liens for taxes, water, sewer and other municipal charges arising after _____ to the extent that the bid price does not cover those liens.

3. The balance of the bid price shall be paid in **cash or certified funds** payable to: **Scott A. Bylewski, Esq., Referee** on or before **October 26, 2018** or the deposit will be forfeited. Funds must be delivered to Referee’s agent 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202. The Referee, at his sole discretion, may extend the deadline, but is in no way obligated to do so.

4. The County shall prepare and provide a Referee's Deed to the purchaser. All other expenses of closing, including but not limited to costs of Recording the Referee's Deed, including Real Property Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the purchaser.

Dated: September 26, 2018

Purchaser

Received from the said purchaser the sum of _____
_____ dollars (\$ _____), being at least twenty
percent (20%) of the amount bid (or a sum of \$500.00 whichever is greater) by said purchaser for the property
sold by me pursuant to the Judgment of Foreclosure and Sale relative to the property described in the Notice of
Sale.

Scott A. Bylewski, Esq.
Erie County Director of Real Property Tax Services
Referee

Closing Contact Information

Lippes Mathias Wexler Friedman, LLP
Margaret A. Hurley, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
716 884-3135 phone
716 853-5199 fax
mhurley@lippes.com
Amy Honan, Legal Assistant
ahonan@lippes.com

Appendix 3

345 Smith Street			
DISTRIBUTION OF SALE PROCEEDS			
FOR INFORMATIONAL PURPOSES ONLY - THIS DOCUMENT IS NOT A BILL			
Please note that any Taxes/Assessments that have become liens subsequent to the Lis Pendens date of 5/6/2019, that are not paid by the proceeds of sale, are the responsibility of the purchaser			
SALE PRICE		\$177,000.00	
Taxes/Assessments Due		Total Paid	Total Due
2019	School Tax payable to Town by 12/2/2019	\$4,525.75	\$4,525.75
2020	Village Tax (relevy)	\$2,872.77	\$2,872.77
2019	Water charges	\$103.21	\$103.21
2016	Foreclosure Fee	\$500.00	\$500.00
2019	County Taxes	\$11,532.89	\$11,532.89
2018	County Taxes	\$13,251.50	\$13,251.50
2017	County Taxes	\$15,368.98	\$15,368.98
2016	County Taxes	\$12,542.79	\$12,542.79
TOTAL DISTRIBUTION		\$60,697.89	
TOTAL DUE			\$60,697.89
SURPLUS		\$116,302.11	
Taxes Paid:		\$60,697.89	
Erie County Comptroller-Surplus Monies		<u>\$116,302.11</u>	
TOTAL:		\$177,000.00	

Appendix 4

123 Smith Street			
DISTRIBUTION OF SALE PROCEEDS			
FOR INFORMATIONAL PURPOSES ONLY - THIS DOCUMENT IS NOT A BILL			
Please note that any Taxes/Assessments that have become liens subsequent to the Lis Pendens date of 5/6/2019, that are not paid by the proceeds of sale, are the responsibility of the purchaser			
	SALE PRICE	\$1,000.00	
	Taxes/Assessments Due	Total Paid	Total Due
2019	School Tax payable to Tax Receiver by 10/31/19	\$47.90	\$47.90
2019	Water charges (none -vacant land)	\$0.00	\$0.00
2016	Foreclosure Fee	\$500.00	\$500.00
2019	County Taxes	\$107.86	\$107.86
2018	County Taxes	\$125.20	\$125.20
2017	County Taxes	\$137.86	\$137.86
2016	County Taxes	\$81.18	\$151.40
2015	County Taxes	\$0.00	\$163.36
2014	County Taxes	\$0.00	\$175.80
2013	County Taxes	\$0.00	\$188.43
	TOTAL DISTRIBUTION	\$1,000.00	
	TOTAL DUE		\$1,597.81
	DEFICIENCY	\$597.81	
	Taxes Paid:	\$1,000.00	
	TOTAL:	\$1,000.00	

Appendix 5

	678 Smith Street		
	DISTRIBUTION OF SALE PROCEEDS		
	FOR INFORMATIONAL PURPOSES ONLY - THIS DOCUMENT IS NOT A BILL		
	Please note that any Taxes/Assessments that have become liens subsequent to the Lis Pendens date of 5/8/2017, that are not paid by the proceeds of sale, are the responsibility of the purchaser		
	SALE PRICE	\$20,000.00	
	Taxes/Assessments Due	Total Paid	Total Due
2019	School Tax payable to Town by 12/2/2019	\$10,498.64	\$10,498.64
2019	Water charges (none -service is shut off)	\$0.00	\$0.00
2014	Foreclosure Fee	\$500.00	\$500.00
2011	Foreclosure Fee	\$500.00	\$500.00
2009	Foreclosure Fee	\$400.00	\$400.00
2019	County Taxes	\$8,101.36	\$21,755.66
2018	County Taxes	\$0.00	\$24,951.88
2017	County Taxes	\$0.00	\$29,365.65
2016	County Taxes	\$0.00	\$34,199.79
2015	County Taxes	\$0.00	\$40,316.62
2014	County Taxes	\$0.00	\$49,786.35
2013	County Taxes	\$0.00	\$48,675.21
2012	County Taxes	\$0.00	\$51,659.25
2011	County Taxes	\$0.00	\$55,192.34
2010	County Taxes	\$0.00	\$58,736.53
2009	County Taxes	\$0.00	\$61,135.03
2008	County Taxes	\$0.00	\$62,693.50
	TOTAL DISTRIBUTION	\$20,000.00	
	TOTAL DUE		\$550,366.45
	DEFICIENCY	\$530,366.45	
	Taxes Paid:	\$20,000.00	
	TOTAL:	\$20,000.00	

Appendix 6



**Lippes
Mathias**
Wexler Friedman LLP

50 Fountain Plaza
Suite 1700
Buffalo, NY 14202
Phone: 716.884.3135
Fax: 716.853.5199
lippes.com

IMPORTANT NOTICE
FORECLOSURE SURPLUS MONIES
INDEX NO.: 2019-600121

Date: February 11, 2020

John Smith
123 Street
Town, NY 14000
Serial: 000000

Property: 123 Street
SBL:

Dear Sir or Madam:

The above noted property was sold at the Erie County In Rem foreclosure auction on September 25, 2019. Our records indicate that you were the owner of this property.

You are receiving this notice because, as the prior owner of the property, you may be entitled to surplus monies remaining after the foreclosure auction of the property.

All surplus monies have been deposited with the Erie County Comptroller's Office. A copy of the surplus monies report is attached for your reference.

You must follow the required legal procedure to determine if you are eligible to receive and/or obtain the surplus monies. Therefore we suggest you contact an attorney to assist you.

Please be advised that neither this office nor the County of Erie can represent you in the proceeding to obtain surplus monies. Contact the Department of Real Property Tax Services at (716) 858-8333 or go online to <http://www2.erie.gov/ecrpts/> for more information.

Very truly yours,

Lippes Mathias Wexler Friedman, LLP
Counsel for the County of Erie

Margaret A. Hurley, Esq.

Enclosure(s)

Appendix 7

At a Special Term of Erie County Court,
held in the county Hall in the City of
Buffalo, New York on the ____ day of
September, 2020

PRESENT: HONORABLE

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

IN THE MATTER OF FORECLOSURE OF TAX
LIENS BY PROCEEDING IN REM PURSUANT
TO THE IN REM PROVISIONS OF THE ERIE
COUNTY TAX ACT AND THE RESOLUTION OF
THE ERIE COUNTY LEGISLATURE AS SHOWN
BY RESOLUTION NO. 54 AT PAGE 179 OF
THE MINUTES OF THE PROCEEDINGS OF
SAID LEGISLATURE FOR THE YEAR 2019

ORDER

IN REM NO. 167
INDEX NO. 2019-
SERIAL NO. 000000

PROPERTY ADDRESS:

MOTION having been made by the Respondent for an Order restraining and enjoining the Petitioner, County of Erie, from enforcing the In Rem Judgment of Foreclosure and Sale relative to the property referenced above;

NOW, upon the application of the Respondent; and upon the appearance of (attorney) on behalf of the Respondent, and of Margaret A. Hurley, Esq. on behalf of the Petitioner, County of Erie; and upon all pleadings and proceedings herein; it is hereby

ORDERED that the Respondent's application is granted insofar as it seeks an Order enjoining and restraining the Petitioner, County of Erie, from selling the premises known as 123

Street, Town, New York at the In Rem Public Auction scheduled for September 30, 2020; and it is further

ORDERED that the Respondent remit payment in the amount of \$2,250.00 to the Erie County Department of Real Property Tax Services via certified funds; and it is further

ORDERED that should the Judgment of Foreclosure and Sale remain unsatisfied for Sixty (60) days after entry of this Order, the Petitioner may, without further proceedings, auction the property located at 123 Street, Town, New York, and that the Respondent shall be responsible to reimburse the County of Erie for any additional expenses incurred or associated with any subsequent sale and that such expenses shall become a lien against the above noted property.

DATED

HON.