



NEW YORKERS FOR RESPONSIBLE LENDING

By E-Mail: rulecomments@nycourts.gov
and First Class Mail

May 17, 2019

John W. McConnell, Esq.
Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

Re: Comments on February 25, 2019 Proposal to Send Court Notices to Homeowners of Court Date in Tax Lien Foreclosure Cases

Dear Mr. McConnell:

The undersigned members of the Mortgage Working Group of New Yorkers for Responsible Lending (NYRL) commend the Office of Court Administration's Office of Policy and Planning (the "Office") for considering providing written notice to homeowners in tax lien foreclosure proceedings in order to advise them of the first court date in such proceeding, to alert them about the possible loss of title to their property, and to provide information about local legal services providers and housing counseling providers. Tax lien foreclosures disproportionately impact seniors who have paid off their mortgages, who are therefore paying their property taxes directly, and such foreclosures based on relatively small tax delinquencies can result in egregious loss of equity built up over generations, to say nothing of the displacement occasioned when longstanding residents are ousted from their homes and communities.

As the Office has correctly noted, the consumer protections applicable to residential mortgage foreclosures, such as pre-foreclosure 90-day notices pursuant to RPAPL § 1304, the Help for Homeowners in Foreclosure notice required to accompany the summons and complaint mandated by RPAPL § 1303, and mandatory settlement conferences pursuant to CPLR § 3408 (including statutory rights to court-provided information and to avert a default by interposing an answer within 30 days of the first conference) do not exist for homeowners at risk for the loss of their homes based on tax delinquencies, even though such delinquencies are often for relatively small arrears compared to mortgage delinquencies. Accordingly, providing the proposed notice for homeowners against whom *in rem* proceedings have been commenced pursuant to RPTL § 1120 will provide some measure of protection to homeowners confronting those proceedings.

However, we note that the proposed notice seems to contemplate provision of this notice only in *in rem* proceedings pursued directly by municipalities filing petitions pursuant to RPTL § 1121, and on its face does not appear applicable to tax liens that have been sold by municipalities to third party debt buyers who proceed by way of foreclosure complaints. In New York City, for example, the vast majority of 1-4 family home tax liens are sold to one of two "debt buyers" (at



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highly discounted rates), who securitize these debts and pursue the foreclosures in the name of trusts created for those purposes, and which commence actions (rather than petitions) pursuant to Sections 11-332 and 11-335 of the Administrative Code of the City of New York.

Similarly, other local taxing entities also sell tax liens to entities that pursue tax lien foreclosure actions, rather than petitions. In Monroe County, tax liens are sold to third parties who then bring foreclosure actions, rather than petitions, as is the case in Nassau County.

Accordingly, we would respectfully suggest that the proposed notice of commencement of an action be adapted to accommodate the range of tax lien foreclosure proceedings, in order to maximize the impact of this well-intentioned proposal. Similarly, it bears noting that the same pernicious effects of tax lien foreclosures pursued by debt buyers also obtain with respect to utility lien foreclosures, such as New York City water liens which are also sold to debt buyers who also pursue similar water lien foreclosure actions. We would therefore urge the Office to consider making this notice applicable to utility lien foreclosures as well.

Additionally, we note that in the mortgage foreclosure process, the most effective home-saving tool has proven to be the settlement conference process, coupled with direct assistance for homeowners. Homeowners typically do not comprehend the verbiage in the summons and complaint, leaving them unable to timely appear or answer a complaint, but they do understand a plain language letter from the Court directing them to appear in court for a settlement conference on a specified date.¹ The settlement conference calendars-- and the legal services clinics operating in tandem with them-- have brought otherwise defaulting homeowners into court to participate in the process and it has connected distressed homeowners with service providers. We would respectfully suggest that the judiciary could pioneer a comparable process for tax and utility lien foreclosures, just as it did in the early years of the foreclosure crisis before the legislature created the CPLR § 3408 process, that would provide homeowners an opportunity to negotiate resolution of these foreclosures. Many of these cases are resolvable, given the amounts involved, once homeowners are able to access counsel who can apprise them of their rights to repayment plans and other resources that can help resolve these cases, and a settlement conference process before the case proceeds to motion practice or trial could help streamline these cases with early intervention.

Finally, with respect to the content of the proposed notice, we offer a few comments:

- a. While there may be some homeowners who are able to access a website and obtain information about local service providers, many may not be able to access such information, particularly the elderly, those in rural areas, low and moderate-income homeowners, or those with limited English proficiency. The notice would be more

¹ Indeed, the Office has acknowledged this, noting in one of its earliest reports on the settlement conferences to the Legislature that the default rate in foreclosure cases dropped from an estimated 90% to 10% following implementation of settlement conferences. Pfau, Ann, State of NY Unified Court System, "2011 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009," at 4.



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- effective if, as is the case with RPAPL § 1304 notices, the specific information about local providers accompanies the written notice sent to homeowners. We suggest the notice attach a list with contact information of at least five agencies serving the geographic region of the homeowner. Additionally, as is required pursuant to RPAPL § 1304, the notice should be provided in translation to the top NY State non-English languages.
- b. In addition, the notice should include the Office of the Attorney General’s telephone hotline to be connected with an agency in their area. Modified language from the 1304 notice we suggest is: “You can also call the NYS Office of the Attorney General’s Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free housing counseling or legal services in your area at 1-855-HOME-456 (1-855-466-3456).
 - c. The reference to a “Court Date” is not entirely clear. Homeowners (or attorneys for that matter) might not understand whether the referenced date is an initial conference, a settlement conference, an oral argument on a motion, or a trial. We would suggest greater specificity (and would suggest that to mirror the efficacy of the CPLR § 3408 process, the contemplated date be a settlement conference).
 - d. Homeowners at risk of foreclosure—whether mortgage, tax lien, or utility lien, are victimized by scammers combing the public record. We would encourage incorporation of language similar to that used in the amended RPAPL § 1304 notice alerting homeowners not to fall prey to such scammers. Similarly, in order to avoid precipitous abandonment of properties by homeowners who may confuse a notice of this kind with an eviction notice, this notice could incorporate the analogous language in the RPAPL § 1304 notice.

We commend OCA for identifying and addressing this lapse in protections for homeowners facing tax (and other non-mortgage) lien foreclosures. The value of access to legal services providers and housing counselors for homeowners facing mortgage foreclosure has been profound, and extending the strides made to homeowners with tax arrears could be equally transformative.

Thank you for your consideration of our comments. If you have any questions, please contact Jacob Inwald, Director of Foreclosure Prevention, Legal Services NYC, at (646) 442-3634, jinwald@lsnyc.org, or any of the undersigned organizations.

Respectfully submitted,

Bronx Legal Services
Brooklyn Legal Services
Center for NYC Neighborhoods
District Council 37 Municipal Employees Legal Services
Empire Justice Center
Foreclosure Resisters



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JASA/Legal Services for the Elderly
Long Island Housing Services, Inc.
Legal Services NYC
Mobilization for Justice
New York Legal Assistance Group
Queens Legal Services
Rockland Housing Action Coalition, Inc.
Staten Island Legal Services
The Legal Aid Society
Westchester Residential Opportunities, Inc.
Western New York Law Center

cc: Hon. Sherry Klein Heitler
Steven Helfont, Esq.