Long Island Housing Services, Inc.

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Protecting Civil Rights for Long Islanders since 1969

Long Island celebrates the 50th Anniversary of the Fair Housing Act

MEMORANDUM IN SUPPORT

S.5213/A.4935

March 16, 2023

BILL NUMBER: S.5213/A.4935

SPONSORS: Senator Thomas/Assemblywoman Weinstein

Title of Bill: An ACT to amend Sections 924-a and 1104 and add Sections 1185 and 1185-a to the Real Property Tax Law

SUMMARY OF BILL: Relates to tax lien foreclosure; caps the interest rate charged on all taxes received after the interest free period and all delinquent taxes at 16% per year; creates a taxpayer bill of rights and requires compliance therewith by each county, city and town.

STATEMENT REGARDING THE BILL: Long Island Housing Services, Inc. strongly supports S.5213/A.4935, which would provide much-needed reform of the laws governing foreclosures on tax liens, which disproportionately impact seniors and homeowners of color, and which have the effect of displacing seniors, stripping equity and generational wealth, and destabilizing communities. Tax lien foreclosures have an especially pernicious effect on the elderly, because many senior homeowners have paid off their mortgages, and therefore have considerable equity invested in their homes—equity which, unlike in a mortgage foreclosure, is not preserved for the owner in a tax lien foreclosure—and may have defaulted on their property taxes because of illness or the recent death of a spouse or partner. Additionally, senior citizens tend to be on fixed incomes such as Social Security or other retirement income, which do not keep up with increased costs of living. This makes it difficult for seniors to keep up with rising property taxes, especially in rapidly gentrifying neighborhoods where property taxes increase exponentially. In many tax lien foreclosures, relatively nominal property tax arrears (or water arrears or other property-related levies or assessments which are also included in the statutory definition of a "tax lien") can lead to the loss of a home the value of which far exceeds the unpaid taxes, causing needless displacement, stripping of equity from families with multigenerational roots in the community, and promoting gentrification and the loss of affordable housing. The basic due process protections that S.5213/A.4935 would provide for the tax lien foreclosure process would make for a fairer tax lien foreclosure process and would curb some of the worst abuses associated with the existing tax lien foreclosure processes across the state.

Long Island Housing Services, Inc. ("LIHS") is a private, not-for-profit 501(c)(3) corporation, and Long Island's only private fair housing advocacy and enforcement agency serving Nassau and Suffolk counties. LIHS's mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Our founding objectives are to promote racial and economic integration and equal housing opportunity throughout Long Island, to reduce and eliminate unlawful housing discrimination, to encourage the development of low-income and affordable housing, and to educate and assist the public regarding housing rights and opportunities in the region. As part of our efforts to meet these objectives, LIHS provides housing counseling and legal services to homeowners facing mortgage default and foreclosure.

As New York continues to grapple with the health and economic implications of the COVID-19 pandemic, many homeowners have experienced staggering losses of income just as increasing property values and gentrification leave homeowners tax-burdened across the state. The loss of life as a result of the pandemic, disproportionately impacting seniors and people of color, has contributed to the decreased financial stability of many households. Property tax collection and enforcement of property tax lien methods vary from one taxing authority to another, but the common theme across the state is the absence of the consumer protections enacted for mortgage foreclosures in the tax lien foreclosure process. The protections built into the judicial mortgage foreclosure process have helped homeowners across the state to prevent avoidable foreclosures and has mitigated the associated dislocation and costs to communities impacted by foreclosures, by ensuring that homeowners receive notice of a threatened foreclosure action and have access to free, trusted housing counseling services before they are sued in a foreclosure action, and by providing a mandatory settlement conference process and an opportunity to preserve defenses in the judicial foreclosure process so that foreclosure actions are decided on the merits and not on default.

S.5213/A.4935 remedies the absence of consumer protections in the tax lien foreclosure process by setting certain baseline rights for distressed homeowners at risk of tax lien foreclosure and by replicating the pre-foreclosure notice requirements and mandatory settlement conference process that have transformed the mortgage foreclosure judicial process. Accordingly, whether taxing authorities pursue tax lien foreclosures *in rem* or whether they sell tax liens to investors who pursue individual foreclosure actions, the right to pre-foreclosure notices, a settlement conference process, and other basic protections, will be mandated, ensuring a fairer process for all New York homeowners.

One of the barriers to resolution of property tax lien arrears is the accumulation of excessive interest on tax liens. S.5213/A.4935 addresses that problem by setting a cap on the amount of interest added to all taxes after the interest free period on delinquent taxes of sixteen percent per annum. While this maintains the deterrence needed to encourage timely payment of real property taxes, it will prevent excessive accrual of interest and encourage affordable repayment plans.

S.5213/A.4935 mandates a "homeowner bill of rights" to provide basic fairness in the judicial tax lien foreclosure process and to provide analogous protections to those that have been in effect for mortgage foreclosure actions since 2009 for tax liens on residential property occupied as a primary residence:

(a) It requires that any foreclosure on a tax lien be a judicial proceeding specific to each parcel;
(b) It protects the most vulnerable homeowners by barring maintenance of a foreclosure action if the property is the primary residence of an owner entitled to a tax exemption based on age, disability, or veteran status, to protect homeowners entitled to such exemptions who may not be receiving the exemptions to which they are entitled;
(c) It bars taxing authorities from removing tax exemptions for vulnerable homeowners based on nonpayment of property taxes;
(d) It mandates that homeowners be informed of the amount of the tax due, the number of years the taxes have been in arrears, accepted forms of payment and where payments can be made, and contact information for the taxing authority, in order to promote resolution of tax arrears without the need for a foreclosure process;
(e) It requires a pre-foreclosure notice to homeowners ninety days before an action can be commenced to foreclose on a property tax lien, which provides information comparable to that required for mortgage foreclosures, including information about local housing counseling agencies who can assist homeowners in resolving their arrears;
(f) It establishes a mandatory settlement conference process modeled after the mortgage foreclosure settlement conference process established by New York Civil Practice Law and Rules 3408, requiring good faith negotiation and procedural protections to prevent default judgments and to encourage homeowner defendants to access free legal services helping with answering complaints and providing representation in the settlement conference process;
(g) It requires that payments toward delinquent taxes be applied by taxing authorities in the order in which the liens became due to avoid a homeowner paying more recent property tax debts while the redemption period on an older debt causes the home to be foreclosed on;
(h) It preserves the right of a homeowner whose residence is foreclosed upon for a tax lien to receive any surplus remaining after the property tax lien is satisfied, to address the absence of such remedy in some jurisdictions, which results in windfall profits to those prosecuting tax lien foreclosures and the stripping of equity from homeowners;
(i) It mandates that if a municipality takes possession of a property after a foreclosure, any subsequent sale of the property must be an arm's length transaction in which the owner of the property has a right to any surplus funds.

These protections address some of the most common problems seen in the various jurisdictions regarding tax liens and tax lien foreclosures. In many areas of New York state, tax lien foreclosures are conducted *en masse*—properties are bundled and foreclosed on as part of a single judicial case or a single transaction. Notice, if required, might be posted publicly with all parcels included. Providing a specific proceeding for each parcel allows homeowners to be specifically notified regarding their home and also ensures that the attention of a decision-maker is given to each foreclosure. This will reduce the number of avoidable or "surprise" foreclosures, where proceedings are conducted quickly and indiscriminately, without giving a homeowner sufficient opportunity to appear in the case and save their home.

Another common problem is that homeowners may be provided little to no notice regarding the foreclosure. By law, each homeowner has a date by which they must pay or lose ownership of their home. In jurisdictions where no notice is required (or where lack of proper notice will not defeat a foreclosure), or where notice is required but does not include all the information necessary to satisfy the debt, a homeowner capable of satisfying the debt can needlessly lose their home to foreclosure.

The requirement of a settlement conference is another layer of protection that will ensure that each homeowner is given an opportunity to resolve an unnecessary foreclosure. The requirement of the goal of preserving homeownership in the settlement conference process, which tracks the requirements of the mortgage foreclosure mandatory settlement conference process, will discourage speculators and investors looking to get a windfall, acquiring someone's home for a mere fraction of its value, and will thereby promote stabilizing neighborhoods and communities and keeping the elderly housed.

The most egregious abuse in tax lien foreclosures is that in many jurisdictions across the state homeowners have no legal right to the equity remaining in their homes upon satisfaction of the tax lien upon execution of the foreclosure. Some jurisdictions do not hold public auctions, and merely transfer the property to the taxing authority, perhaps for a later sale in which the former owner is not a party to the transaction and does not receive any of the proceeds exceeding the amount of the debt. In such cases, the taxing authority receives many times over the amount of the satisfied debt, which in other states has been deemed an unconstitutional taking of property. If someone is forced to lose their home to foreclosure due to inability to pay property taxes, they should be permitted to retain their remaining equity invested in the property after the tax debt has been satisfied.

While practices vary from one taxing authority to another across the state, S.5213/A.4935 provides minimal due process protections to all New York homeowners at risk of foreclosure on tax liens by ensuring a pre-foreclosure notice, a settlement conference process, and the ability to access any surplus in the event a property tax lien foreclosure is concluded. These basic protections will benefit the most vulnerable New Yorkers at risk of foreclosure on tax liens, which are concentrated in communities of color and which primarily impact the elderly, who have paid off their mortgages and stand to lose substantial equity when a valuable home is lost to a foreclosure sale in order to satisfy tax arrears which represent a small fraction of the value of the property.

Please Trina Kokalis at trinakokalis@lifairhousing.org or 631-567-5111 x 325 with any questions.