



October 3, 2024

Dear Council Member Sanchez, members of the Committee on Housing and Buildings and staff,

Thank you so much for accepting our comments on [the Housing Rescue and Resident Protection Act](#) today. We are thrilled that we share a priority for using municipal debt collection as a strategy for tenant protection, increasing cooperative homeownership opportunities and the preservation and development of homes and other community assets. We also share the Council’s urgency to bring a city foreclosure program for distressed properties back online as a tenant protection measure--the longer we don’t have such a program, the more tenants make their homes in buildings that are not safe for their occupancy while landlords shirk their obligations to maintain safe housing.

Our comments on the bill fall into three categories: (1) which properties are included in the city foreclosure program to maximize tenant, neighborhood and citywide impacts, (2) owners’ rights and (3) harnessing the preservation powers of community land trusts (CLTs).

Maximizing Impacts

Limiting City Foreclosure to 500 properties (or any other arbitrary limit) for reasons of administrative limitations should not mean that properties that should rightfully be routed into City control will fall back into the lien sale. We are concerned that this limit will mean that:

- **Tenants continue to live in dangerous conditions** while their landlords collect the rent and don’t pay their municipal charges; sending that debt into the lien sale

pool will forfeit the City's power to control both the timing of enforcement actions by the Tax Lien Trust administrator and the ultimate outcomes for the properties. Tax Lien Trust foreclosures result only in auctions to the highest bidder, not coop conversions or preservation purchases.

- **Vacant land that can be used for housing development or the provision of other City infrastructures will never reach the agencies** with capacity to ensure such transformations.¹
- **Unoccupied buildings will continue to blight our neighborhoods** (without residents to complain about conditions and create a record of violations).
- Opportunities for preservation and development of community assets beyond housing will slip through the City's fingers and fall to predatory actors.

We would like to see these changes made:

- Clarification that any properties that qualify for City Foreclosure based on characteristics of distress will be removed from all lien sales; this removal should be automatic based on set criteria, even if the actual foreclosures are staged and prioritized to honor HPD's capacity limitations.
- Vacant land, no matter the tax class, should be routed directly to City Foreclosure without any reference to violations. Such properties should not be counted as part of any limit on the properties in the program.
- Unoccupied buildings, particularly ones with vacate order issued by the Department of Buildings where the order was not resolved in three years or more, should likewise be routed directly to City Foreclosure without any reference to violations, and regardless of the administrative cap of 500 properties (or similar limit). The City should not allow neighborhoods to suffer the blight of such properties nor waste the opportunity to transform them to deeply affordable housing. The Tax Lien Trust is not an ally to the City when it comes to administering debt on such properties: as we have seen from decades of its past practice, it will not foreclose quickly and if it does, will send the property to auction.
- The program should be expanded to include Tax Class 4 properties since they represent opportunities for the preservation and development of crucial community resources beyond housing.
- Since this is a companion program to the lien sale and the criteria for inclusion in this revamped program will be expanded, the bill should be amended to require

¹ See

<https://www.neweconomy-nyc.org/2021/12/new-analysis-shows-nyc-set-to-squander-3600-potential-units-of-affordable-housing-in-fridays-tax-lien-sale/>.

that properties with outstanding liens sold in past lien sale rounds—those currently held by 1998-2 and 2021-A trusts—be examined for potential inclusion in City Foreclosure based on indications of physical distress. The tax lien trust managers have no accountability to tenants in buildings with liens and neighborhoods with deteriorating buildings. Where such buildings can be routed to more responsible ownership, existing liens should be defected to give the City the opportunity to foreclose instead of the privately managed tax lien trust (which will auction to the highest bidder should it succeed in foreclosure, instead of transferring to HPD-vetted landlords). Such review should happen at every round of City Foreclosure to identify properties that should be routed to the program that might have been previously included in a lien sale.

Owner's Rights

The law should both streamline opportunities and to avoid foreclosure and the waste of City resources, as well as make sure that any City Foreclosure program protects property rights.

First, the City should provide direct **supportive services to HDFC Cooperatives** that are eligible for City Foreclosure as a result of debts and housing code violations. DOF simply meeting with coop shareholders to inform them they have the option to enter into a payment plan is not enough. Frequently the issue that such Cooperatives face is the expiration of a tax exemption; shareholders with supportive services can engage with HPD and get additional exemption in exchange for entering / renewing regulatory agreements. Payment plans for taxes accrued when exemptions have lapsed unbeknownst to the owners will not set the coop on a preservation pathway. There is no need to put the shareholders through foreclosure and force them to reapply to become a cooperative and get a regulatory agreement when simply entering an agreement can result in forgiveness of the property taxes.

At minimum, the bill must **add a requirement that a majority of shareholders and/or the duly elected board of directors have a meeting with HPD staff to discuss the possibility of a retroactive exemption before payment plans or foreclosure are pursued.**

Secondly, we are concerned that the new program will give rise to accusations of equity stripping and be unable to move forward.

The United States Supreme Court recognized that where value remains in a property subject to municipal foreclosure in [Tyler v. Hennepin County \(2022\)](#), the prior owner has a right to that value. Our own framework for municipal debt collection, [Leaving the Speculators in the Rearview Mirror](#), developed prior to the Supreme Court decision, did the same for properties without distress. We think it is fair to extend this practice to all City Foreclosures, and that this is necessary in light of the changing law.

The bill language does not ensure that this will happen. It only ensures that *if* there is a sale of property after foreclosure, funds will flow to the former owner; it does not require

that there be a sale at all.

In some cases properties will be eligible for City foreclosure as a result of municipal debts that are only a fraction of the properties' values. Those same properties may have violations the repair of which cannot be reasonably appraised to account for all remaining value in heated real estate markets. For example a four-unit brownstone property with \$800,000 in past-due municipal charges, and another \$1.5M in repairs could still have a "market value" if it is located in Bed Stuy; appraisals of similar properties are typically \$3-4M.

In contrast, our proposal is that there would be a sale:² preservation would be achieved through the community land trust split deed model. Land would be transferred to a Qualified Community Land Trust (or similar) while the buildings upon that land would be sold to qualified low income buyers, possibly through a wait list or other monitored process; not through a public auction. The price of buildings would be made attainable because it would not include the value of the land, but the price would not be nominal. Long term preservation would be ensured by the terms of the ground lease between the Land Trust and the buyer, and a regulatory agreement with HPD; at the same time, former owners would have access to some of their equity through the proceeds of these restricted property sales.

We urge the Council to look closely at our proposal, or to develop a similar strategy to make sure that **where the City Forecloses on properties with equity remaining after municipal debts and the costs of correcting violations are paid, that equity is made available to the former owners.**

Harnessing the Preservation Powers of Community Land Trusts (CLTs)

The bill as drafted requires HPD to "consider whether" a third party applying for property disposition is a "responsible legal tenant, not-for-profit organization, neighborhood-based-for-profit individual or organization, or community land trust." We think this language should be strengthened to prohibit awarding property to a for-profit entity unless no legal tenant, not-for-profit organization, or community land trust has expressed a willingness to partner with HPD on redevelopment.³

A further improvement would be to require priority to be given to legal tenants, not-for-profit organizations and neighborhood-based-for-profit individuals or organizations **that are partnering with community land trusts** for permanent preservation of affordability over all other potential redevelopment partners HPD considers.

² See page 14: "the City transfers the land to a CLT and the improvements are sold to buyers eligible per ground lease terms. The value of the land will be partial satisfaction for arrears owed to the City by the investor; any funds remaining from the sale of the improvements after remaining debt and cost of foreclosure are paid to go to the former owner."

³ Similar to the language of Public Land for Public Good, [Int. No. 637-2022](#).

Thank you so much for all you do,

The Abolish the Tax Lien Sale Coalition

Members:

Community Service Society of New York
East New York Community Land Trust
New Economy Project
TakeRoot Justice
Western Queens CLT
Brooklyn Level Up
Bronx CLT
Northwest Bronx Community and Clergy Coalition
Coalition for Community Advancement
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