

TAKEROOT JUSTICE

Testimony Before the New York City Council Committees on Housing and Buildings and Governmental Operations Oversight – Vacant and Neglected Properties & Proposed Intro 352-A

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Good afternoon. My name is Paula Segal. I am speaking today as Senior Staff Attorney in the Equitable Neighborhoods practice of TakeRoot Justice. TakeRoot works with grassroots groups, neighborhood organizations and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of “progress.”

Thank you so much for holding this oversight hearing on the crucial topic of vacant and neglected properties, and inviting testimony on legislation designed to address residential and commercial vacancies. My testimony today will be focused on (1) the interplay between the Giuliani-era tax lien sale and vacancy in our neighborhoods and on (2) Intro 352-A, which will improve registration requirements for commercial spaces.

These comments derive from our work as members of two coalitions: the **Abolish the Tax Lien Sale Coalition**, which is working to replace the City’s recent predatory debt collection practices with solutions that stabilize homeowners and tenants, preserve affordable housing, and bring land into community ownership; and **United for Small Business NYC (USBnyc)**, which is a coalition of community organizations fighting to protect New York City’s small businesses and commercial tenants from the threat of displacement.

The Lien Sale Facilitates Warehousing and Vacancy

In 1996, then-Mayor Rudy Giuliani created the Lien Sale program. For the next quarter century, New York City’s Department of Finance (DOF) sold overdue property tax and water debts to a privately-administered, hedge fund-backed lien trust at a discounted rate of roughly 72 cents on the dollar. The trust tacked on high interest and fees, rapidly ballooning the debt, and can foreclose on the properties of owners unable to repay.

The lien sale has effectively privatized a core public function, removed accountability on the part of the City when it comes to multifamily rental buildings and vacant lots, and served to push low-income homeowners into further distress. As a direct consequence, vacant lots and

unoccupied buildings that have been languishing in private, speculative hands; some for decades. The program continued until February 2022, when City Council's authorizing legislation thankfully sunset.

In the last sale authorized by this Council and held in 2021, which we hope will be the last one the City ever holds, the City sold debt on 373 vacant lots disproportionately concentrated in the outer boroughs¹ instead of pursuing opportunities for new housing construction or open space preservation on those properties. Liens were sold on nearly as many vacant lots in 2018 and 2019, the two sales preceding the 2021 sale.

By allowing a privately managed trust designed to protect the interests of investors to determine the future of these properties instead of a public entity accountable to the political process, the City allowed hundreds of opportunities to slip through its hands.

Worse, the lien trust system is based on the existence of a "graveyard" trust (established in 1998 and called "1998-2") which accepts liens on properties that would pose a risk to bond offering.² Unlike the trusts created in each sale year, this one does not expire when investors have been paid and bonds satisfied; it continues to this day and currently holds nearly 6,000 liens that have not been redeemed or defecked, accumulated during the quarter century of lien sales and assignments from trusts that were closed down after investors were paid. Of those, foreclosure has not been initiated at all on 631 liens and 275 of those are on vacant land. The 1998-2 graveyard trust owns a shocking 5,976 unredeemed liens. Of those the majority are liens placed on the following building classes: Condominiums (2,624), Vacant Land (1,297), One or Two Family Dwellings (689), Elevator and Walk-Up Apartments (393). They are concentrated in the following zip codes: Staten Island 10301 (1715), 10302 (229), 10306 (116) and 10305 (102); Queens 11355 (162); Brooklyn 11203 (141), 11236 (140) and 11233 (101).

While there is little information about the methods that the private managers of the graveyard trust use to determine which liens it will acquire,³ it appears to facilitate keeping properties with

¹ See List of Vacant Land sold parcels (as of 01/04/22), available at <https://www.nyc.gov/site/finance/taxes/property-lien-sales.page> (Manhattan: 12 vacant lots; Queens: 116; Brooklyn: 88 Bronx: 50; Staten Island: 107).

² When originally established, the 1998-2 bond offering was rated A2, which Moody's justified as follows:
The pool consists of "leftover" properties not included in the previous securitizations. The higher LTVs in this pool (weighted average LTV of 138% versus less than 30% for the previous pools) suggest that most of the underlying properties will not redeem, but instead will go through foreclosure and REO liquidation. Because fewer liens are expected to voluntarily redeem, cash flows off of the liens will be significantly impaired during the first two years after closing while the servicer files foreclosure proceedings. The larger proportion of commercial and industrial properties (70% in this pool versus 50% in the previous deals), and a long history of delinquencies, also suggest higher loss frequency and severity than in the City's previous tax lien deals

Moody's Investor Service, "Rating Action: MOODY'S RATES NEW YORK CITY'S NYCTL 1998-2 TAX LIEN DEAL A2," (Dec. 9, 1998).

³ In response to our efforts, quarterly reports mandated by legislation this Council passed as Local Law 4 of 2017 and went into effect later that same year, NYC Admin. Code § 11-320, were finally posted on the

less financial viability in limbo; this appears to include hundreds of vacant lots and a significant number of unoccupied multi-family buildings.

In the future, this Council should not authorize a return to the expired practice. Should debt accumulate on vacant lots, the City should keep the debt, streamline foreclosure proceedings, then either partner with local community land trust (CLTs), community development corporations (CDCs) or nonprofits to help preserve the property as permanently affordable, community-controlled housing or with the Parks Department or its open space land trust partners to create crucial community spaces.⁵ The Council should also examine the possibility of legislating the re-acquisition of all liens still held by the graveyard trust by the City for enforcement through municipal foreclosure.

Intro 352-A

TakeRoot is pleased to see a proposed expansion of Local Law 157 of 2019, which USBnyc worked with the former Council to pass, requiring owners of ground floor and second floor commercial premises to report on vacancies, rents, leases, and other information that is critical for government, the public, and advocates to understand trends for storefront businesses over time. There are some adjustments that must be made to the bill as drafted in order to ensure that the data gains of the last several years are not lost: in order to enable analysis of trends over time, DOF must be required to continue reporting on first and second floor commercial spaces as a set of aggregate data distinct from the full data set collected regarding commercial spaces no matter where they are located in buildings.⁶ We are likewise pleased to see additional reporting requirements for vacant dwelling units. Our partners in Stabilizing NYC and the housing movement will provide further insight on that aspect of the bill.

DOF website yesterday, see “Quarterly Status Reports,” available at <https://www.nyc.gov/site/finance/taxes/property-lien-sales.page>. Other records about the mechanics of the trust are not readily available, though the SEC has posted a set of 2010 disclosure documents here: <https://www.sec.gov/comments/s7-08-10/s70810-167.pdf> (note that some of the players have changed since 2010; e.g. the 2021 servicers are MTAG Services and Tower Capital Management).

⁵ See Abolish the Tax Lien Sale Coalition, *Policy Framework: Leaving the Speculators in the RearView Mirror*, Feb. 2, 2023, available at https://www.eastnewyorkclt.org/wp-content/uploads/2023/02/Leaving-the-Speculators-in-the-Rear-View-Mirror_Feb-2-2023-2.pdf.

⁶ As our USBnyc partner ANHD submitted in their testimony, in order to retain data in a way that will allow for continuing longitudinal analysis of storefront trends over time, we request:

- The registration statement described in §11-3101(b) for commercial premises also require an indication of whether the premises is located on the ground floor or second floor
- The associated dataset described in in §11-3101(h)(1) contain a column designating whether the premises is located on the ground floor or second floor
- The data outlined in §11-3101(h)(2) be published for storefront properties as defined in the existing law, i.e. ground floor and second floor premises. These should be aggregated together, as is currently the case. This dataset that includes just ground floor and second floor premises could either be published separately from the dataset that aggregates all commercial premises, or together with the inclusion of additional rows or columns to designate the premises are located on the ground floor or second floor.