



The Legal Aid Society
Civil Practice Law Reform Unit
199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org

Blaine (Fin) V. Fogg
President

Testimony of The Legal Aid Society
At the Joint Hearing on
"The Effect of Water and Sewer Lien
Sales on Low Income Residents"
held by the
New York City Council
Committee on Finance and Community Development

Steven Banks
Attorney-in-Chief

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Scott Rosenberg
Attorney-in-Charge
Law Reform

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The Legal Aid Society is the oldest and largest provider of legal assistance for low income families and individuals in the United States. The Society's Civil Practice operates 14 neighborhood offices and city-wide units serving residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance and other civil areas of primary concern to low income families and individuals. During the past decade, the Legal Aid Society has assisted hundreds of low income homeowners in combating abusive lending and real estate practices in order to prevent the foreclosure of their homes. In the last few years, we also had to confront the devastating impact that the sale of tax and water liens has had on low-income homeowners..

We therefore welcome the opportunity to testify before you today on the critical issue of "The Effect of Water and Sewer Lien Sales on Low-Income Residents." This hearing could not be more timely because at the end of this year Local Law 68 of 2007 is to expire. Local Law 68, in addition to reauthorizing the sale of tax liens based on delinquent property taxes for the first time permitted the sale of "standalone" water liens where the water and sewer charges had been delinquent for at least one years and equaled or exceeded \$1000. The law's sunset and expected reauthorization affords the Council the opportunity to consider changes to more effectively protect vulnerable homeowners while ensuring the collection of adequate revenue.

New York City is in the midst of a tidal wave of home foreclosures. To mitigate this crisis the City has helped to create and fund the Center for New York City Neighborhoods to assist home owners in preventing where possible the loss of their home to foreclosure. Yet, each year the City conducts the sale of tax and water liens to a private trust, thereby

further exacerbating the foreclosure crisis by putting low income homeowners—many of them seniors and disabled on fixed income—at risk of losing their home. Moreover, it is well documented that the sale of standalone water liens has had a disproportionate impact on communities of color, communities already suffering the brunt of the foreclosure crisis. Since the authorization of standalone water liens, foreclosure filings have increased significantly. In Queens alone, foreclosure filings quadrupled since the authorization of the standalone water lien sale. While the NYCTL 2006-A Trust, the trust that purchased liens in 2006, commenced 124 foreclosure filings in Queens Supreme Court, the NYCTL 2008-A trust which purchase liens in 2008 filed 462 foreclosure actions.

Homeowners who seek to save their home from foreclosure face a daunting task. Once the tax lien is sold to a trust--what started out as a minor delinquency--within as little as one year escalates into a debt that makes it virtually impossible for a low-income homeowner to redeem the lien. Companies that service the trust are Xspand, a wholly owned subsidiary of JPMorgan Chase and Mooring Tax Asset Group LLC or MTAG, a private investment firm based in Virginia. These companies not only charge interest on behalf of the Trust at the usurious rate of 18% compounded daily but also extract exorbitant fees. We learned about these abusive practices in the process of assisting homeowners when requesting payoff statements from servicers. A case in point is a 81-year old homeowner on a fixed income who has owned her two-unit home since 1977. She fell behind on water and sewer charges due to a commercial tenant who left the premises without paying. The amount of the water lien at the time of its sale to the trust on August 18, 2009 was \$16,216.88. Within less than a year, the amount due claimed by Xspand grew to the astounding sum of \$29, 452.91, comprised of \$3,958.53 in interest and \$9,277.50 in fees alone. In another case, involving the NYCTL 2008-A trust, the initial debt due to water charges was \$5,370.75 which two years later required a payoff in excess of \$16,000 of which approximately \$8,000 was for fees charged by MTAG..

The harsh effects of the overbroad application of the tax lien process are particularly felt by low-income senior citizens. Many homeowners have paid off their mortgages and may no longer pay their taxes to the lender as part of their monthly payments, others were victims of predatory lending practices where the lender did not require the customary escrow payments in order to induce such owners into loans with seemingly low monthly

payments. Quarterly bills for both property taxes and water and sewer charges may involve several hundred dollars which many seniors on fixed income cannot afford. Although current law exempts some low income homeowners from lien sales whose property taxes are reduced pursuant to the Senior Citizen or Disabled Homeowners exemptions, we have found that many elderly homeowners are not made aware of such programs and, failing to apply, remain subject to the lien sale. Moreover, eligible homeowner can only apply once a year to qualify for such exemptions which become effective only for the next fiscal year.

We applaud Councilmember Al Vann along with his co-sponsors for introducing legislation, Intro 26-A, to amend Sections 11-319 and 11-320 of the Administrative Code of the City of New York, which, if enacted, would represent a first step in mitigating the harm caused by the sale of stand-alone water liens to home owners. The bill would extend the period of delinquency from one year to three years; increase the number of seniors who would be exempted from the lien sale; require the Commissioners of the Department of Environmental Protection in conjunction with the Commissioner of Finance to use "best efforts" to identify homeowners eligible for exemptions from lien sales and provide the Commissioner with discretion to exclude such properties from the lien sale; extend to 120 days the notice period required prior to the tax sale; and require the Commissioner of Finance to provide owners of class one properties on a quarterly basis with comprehensive information on lien sales and the various property tax exemptions which may exclude certain properties from lien sales.

As critical as these amendments to the Code are, we believe that additional changes could further protect vulnerable homeowners from the harsh consequences of the tax and water lien sales. First, current requirements for notifying homeowners of the impending lien sale are inadequate. Under the current law, an owner is only entitled to one mailing prior to sale while the 90-day (or under the Vann bill 120-day) notice and the final 10-day notice is only by publication in a newspaper of general circulation. We propose that homeowners should receive at least two notices, the first 120 days and the final 45 days before the anticipated sale (with the second notice to be sent by certified mail).

The enhanced exemptions contemplated for water lien sales should be extended to property tax liens as well. Homeowners who are identified by the Commissioner as eligible for one of the enumerated exemptions should be removed entirely from the pool of the tax

lien sale. This would not only ensure consistent treatment of homeowners but simplify the administration of the lien sale by eliminating the case-by-case review. Where the sale was conducted in error, or where it is learned that the homeowner was eligible for one of the several exemption programs, homeowners should be able to request a review of the lien sale and, where applicable, the City should reverse the sale and restore the homeowner to the position they would have been in but for the erroneous sale.

Finally and most importantly, the City should take any and all steps to avoid where possible the lien sale for owner occupied homes by offering owners an affordable pre-lien payment plan. The Department of Environmental Protection (DEP) has developed a program, called the Water Debt Assistance Program (WDAP) to avoid the sale of water liens by freezing the lien which becomes payable only upon the owner's death, refinancing or sale. This program which is currently only available to homeowners who are delinquent or in foreclosure on their mortgages should be expanded for all tax liens and should be available to seniors and the disabled and other distressed homeowners.

In order to permit homeowners of class one properties to redeem the lien and avoid foreclosure once the lien is sold, interest and fees should either be put on hold for one year or, in the alternative, be capped.

We hope to continue the dialogue with the City Council in order to arrive at solutions which would balance the City's need to collect revenue with the need to protect vulnerable homeowners.

We thank you for the opportunity to testify today.

Respectfully submitted,
The Legal Aid Society
By: Oda Friedheim, Esq.