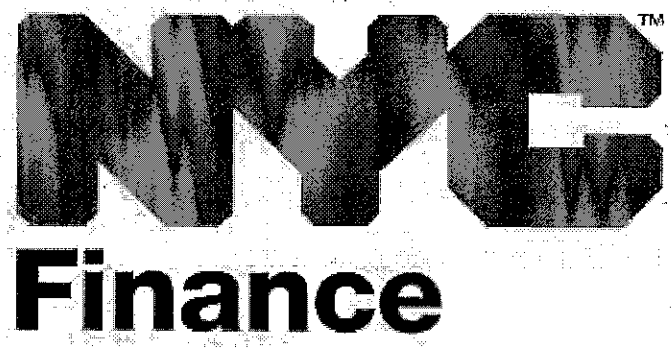

Testimony of Commissioner David M. Frankel
New York City Department of Finance
Before the New York City Council
Committees on Finance and Community Development

On Intro 26A, in relation to the Sale of Liens on Property

February 18, 2011

Good morning, Chairs Recchia and Vann, and members of the Finance and Community Development Committees. I am Finance Commissioner David M. Frankel and appreciate greatly the opportunity to be with you this morning to discuss Intro 26A, which would reauthorize the City to sell liens on properties that are delinquent in property-related charges. My colleagues from OMB and HPD have already shared many of our reactions and I will try not to be repetitive.

Let me start by saying we must be as aggressive as possible in collecting unpaid funds. I certainly appreciate that the prospect of losing a home or other property is traumatic and the process must be absolutely fair and, to the extent possible, protect our most vulnerable citizens. However, our focus must be on the overwhelming majority of New Yorkers who pay their taxes, who pay their charges, who pay their fines. They are the ones suffering because of those that don't pay in the form of increased taxes or reduction of services. While we will work with individuals who may be in financial distress, we must be sure we collect the money that City residents depend on to provide their services. We must be mindful that every dollar owed that we choose to consciously forego, represents a real choice of not funding some other worthwhile service or raising revenue through taxes or some other source.

As has already been outlined, the lien sale is a critical collection tool for New York City. Over the last 15 years, the sale has been a true success story as we have collected over $1.5 billion in property-related debts efficiently and relatively quickly, not to mention the billions more from

people who paid on time because of the strong enforcement threat. As the lead agency in conducting the annual lien sale, the Finance Department notices thousands of delinquent properties, and then works diligently to whittle that list down – by sending multiple notices, publishing and republishing lists of delinquent properties, holding outreach sessions with our sister agencies —before we ever get to the act of selling a lien to the Trust.

While we are fully supportive and appreciative of the inclusion of ERP charges as qualifying, the current draft of Intro 26A creates some significant and unnecessary new challenges for us. It also does not go far enough by failing to qualify other agency charges, such as those assessed by the Health or Buildings Departments for unhealthy or unsafe conditions. As I said earlier, most New Yorkers pay these charges. There should be no hesitation in protecting them by using all our tools to collect from those who don't pay.

Many of the proposed changes would make our work either harder or require significant new resources. In other aspects, the bill raises serious legal questions. I will outline our issues on both administrative and policy grounds. In doing that, I underscore that we are completely open and anxious to work with Council members and staff on addressing these issues to fashion a bill of which we can all be proud.

Administrative Challenges

Income Exemption

Under the current system, properties that have received certain homeowner property-tax exemptions – for senior citizens, disabled and those that qualify for what is known as the state circuit breaker – are ineligible for the lien sale. This bill expands these exemptions by including all properties with the veterans' exemption, as well as some of those seniors with the Enhanced STAR exemption.

. While we can debate the policy merits of granting full exemption from the lien sale and thus from property tax obligations for whole groups of homeowners, I hope the Committees will recognize as unworkable a requirement that we split hairs with new income levels for removing properties. This bill would require that homeowners who get an Enhanced STAR exemption are ineligible for the sale, but only if they earn less than one and one half times the Senior Citizen Homeowners Exemption (SCHE) income limit. Enhanced STAR has an income limit at $79,050 and SCHE's limit is $37,400. This bill would force Finance to create a third category, where lien-sale staff would have to check private personal income documentation and then create a process to verify and audit the information.

While tying benefits to income has obvious merits, the process can be immensely complicated and costly to administer. At Finance, we learned this the hard way when we took over responsibility for the Senior Citizen

Rent Increase Exemption program. We thought we could turn SCRIE into a fully automated process. We were wrong. For example, Finance cannot simply "data match" to discover income. First, our income tax information is tax-secret and can only be used for income tax enforcement purposes if a resident signs a waiver. Second, when we went to the SCRIE population and asked for waivers to review their tax information, we found that most did not file income tax returns since their income was below the threshold. We then had to collect different kinds of income information from the entire group and analyze it separately. Third, reviewing income information, whether through tax returns or other submitted forms, is always problematic since definitions of "income" differ under different laws. For example, income for SCHE is reduced by some prescribed modifications while Enhanced STAR uses Federal or State Adjusted Gross Income for all eligible residents in the home, with no modification allowed. It is not clear which of these two definitions or perhaps a third would be used with respect to Intro 26A. In any event, it is problematic.

Before taking on SCRIE, we had concluded we could administer the program with little or no additional staff. However, we now have 12 full-time employees staffing the program. Many of you are more than familiar with the problems this caused before we cleaned up our act, and none of us would like to see that repeated here. The provisions of this bill would create a program that is more complicated and requires more resources than SCRIE.

Payment Plans

The legislation also requires that payment plans be created on a means-basis, which presents the same problem of obtaining, verifying and auditing income information from applicants. That is, Finance would have to create an income formula that would allow those with lower incomes to make smaller down payments to begin a payment plan, and collect and verify the income information.

As members of this Committee who have been past partners with us in lien-sale outreach events already know, Finance has traditionally been extremely flexible in providing payment plans to individuals who come forward to settle debts during the notice period. We offer a quarterly payment schedule that is tied to the payment schedule that we have established for the majority of homeowners who remain current on their debts. We also extend those payments out as far as eight years.

The new bill creates a monthly payment system and a 10-year window for payments, both of which add significant new administrative hurdles. Our Statement of Account, which is a quarterly billing system, has proven fairly effective. Our system would need to be reprogrammed for little added benefit.

Additionally, it appears that under this draft bill a property is permanently excluded from the lien sale once the owner has entered into a payment agreement – even if the owner later defaults on that agreement. I am sure that the Council did not intend this result. Our data shows that a high percentage of properties that entered into agreements in earlier lien sales are now in default of those agreements: Of the $79 million currently outstanding in the approximately 4,000 open payment plans, some $50 million – or 63% -- comes from properties that are in default on their commitment. The law needs to create incentives to keep up with payment agreements, not default on them.

New Notices and Mailings

The bill requires that DOF send quarterly mailings to all property owners informing them about the lien sale. We estimate that these provisions would require us to produce an additional 2 million pieces of mail annually at a cost of at least $1.5 million. Given that 98% of property owners pay their taxes on time, this is not a sensible use of City resources.

Another challenge of the new legislation is a requirement to add a 100-day and a 120-day notice. Further lengthening the notice period would do little to enhance property owner's awareness and would do nothing in terms of getting people to pay.

Under the lien-sale reauthorization law that the Council passed in 2007, the previous 60-day notice period was extended to 90 days. However, our data shows little additional revenue was collected because of the increased time. In fact, 85% of debt is settled in the last 60 days prior to the lien sale and almost a third settled in the final ten days. The new notices and extended time frame would add significant cost and delay without any substantial benefit.

Certified Mail Noticing

As I mentioned, Finance already does extensive noticing of those properties eligible for the lien sale. In fact, by the time the average Class One property owner gets their first notice for the lien sale, they must have already received at least 12 statements in the mail. Once the lien sale process starts, the City will contact affected property owners at least three additional times with targeted messages. We send delinquent owners a notice of our intent to sell a lien if they do not resolve their debt within 90 days. We also publish this list of properties in a local major daily newspaper, place ads in other daily papers and community papers across the City, and post the list on our website. Thirty days later and sixty days before the sale, we send a second notice to owners. Thirty days after that we send a third notice. Ten days before the sale, we publish an updated list in the newspapers and advertise again. Our website is updated throughout this process.

Only after all of these notices and warnings, do we sell a lien for all the properties that have failed to address their debt. Over the past three years, of the approximately 25,000 properties that were initially noticed annually, less than 5,000 had a lien sold. And, as OMB noted, very few of these properties actually go into foreclosure.

An additional unnecessary burden of Intro 26A is a new requirement that a lien-sale notice must also be sent via Certified Mail (with return receipt) four months in advance of the sale to anyone with an interest in the property. First, the postage for this alone would range between $250,000 and $500,000. Second, the administrative burden of mailing and matching tens of thousands of return receipts is onerous. Finally and perhaps most troublesome, is the possible interpretation under the bill's language, that if an owner does not sign the certified return receipt, we would be unable to include the property in the lien sale. I am certain that the Council did not intend to create a provision where evading certified mail sent to your address became another means of evading your financial obligations to the City.

Defective Lien Provisions

There are also many questions raised by the language relating to liens being deemed defective at the time of the lien sale, if the owner would have been eligible for a specified exemption even though they never applied for it. Are applicants required to come in and prove their past or current eligibility for an exemption, or both? Is the City required to determine on its own whether a property would have received an exemption had the owner made a

timely application? What if the liens on a property that is eligible for one of the newly stated exemptions were sold and the servicer collected the money from the taxpayer--is the City now going to be required to reverse prior sales of tax liens and refund the Trust for the defected liens for an indefinite number of back years? Are the tests for eligibility those that may have existed in the relevant tax year or the current year? While the bill may not have intended to create this series of complex operational issues, they need to be addressed.

In addition, these provisions if not amended, will mean that the lien pool is potentially subject to change even after the liens have been sold. When the City declares liens defective after they are sold, the money to make the trust whole comes from the City's own tax levy. We leave it to OMB to calculate how much more this might cost, but warn that it could also drive down the Trust's payment to the City for the lien pool since a retroactive defect process could contradict the City's representation as to validity and enforceability of the liens.

Communication with Servicers

This bill requires Finance to continue playing a role as an intermediary after the lien sale date. Currently we are out of the process after the lien has been sold and we should remain so. We have serious legal concerns about the City maintaining a mandated role once a lien has been sold. Simply put, while our ombudsman unit remains helpful when inquiries come to us about properties where liens have already been sold, the remedies

we can offer are very limited. We are not and do not want to be privy to payments made or interactions with the servicer subsequent to the sale of the lien. We believe that having more than this arm's-length relationship with the servicer is inadvisable from a legal, administrative and cost perspective.

More burdensome SOA

The bill includes significant new language that would require the Statement of Account to be used as an enhanced collection tool. There are many issues regarding the Statement of Account that must be solved before we could efficiently include lien notifications. We acknowledge that the SOA could be more effective in communicating information to property owners and we have been working to re-cast the SOA to make it more helpful and understandable. Past changes made before my time have significantly improved the SOA. However, the property tax provisions are so complex that a more simple and understandable summary remains a true challenge.

There are more than 1 million properties in the City. Last year, we stopped mailing SOAs to property owners who did not owe anything – in other words, limiting SOA mailings only to those properties with outstanding charges. This saves over $800,000 annually. Because property owners with no open balance no longer receive a quarterly SOA, fewer than half of the City's homes still receive it. This legislation would require us to give up those savings and more. In fact, going forward, we are seeking to expand the use of electronic mailing when owners opt for email over paper

documents. These beneficial changes and others that we have in the works would be precluded by the new statutory requirement that SOAs get mailed to every property.

Another issue involves the requirement that Finance add disputed charges to the SOA. This provision while appealing in concept is quite broad and alarming in scope. First, we interpret the bill's provision on disputed charges to mean that Finance cannot include disputed charges in determining whether a property has met the dollar threshold to be included in the sale. As you know, many property owners challenge their assessments each year before the Tax Commission or in court, and we encourage them to use their administrative remedies when they truly believe we have made an error in assessment. This language would preclude us from including as an eligible charge unpaid property tax that is the subject of a Tax Commission or court protest. This undermines a basic underpinning of tax law that while taxes may be in dispute, they are still fully payable. It is a long standing public policy, upheld by the courts, that delinquent taxpayers must first pay their taxes and then challenge them. Courts have upheld that a dispute about a tax bill does not stop enforcement proceedings. We must remain mindful of that basic obligation of all of the City's property owners. Given the administrative procedures in place for property owners to challenge Finance's assessments, DEP's water bills or other property-related charges there is no need for Intro. 26-A's requirement that Finance create yet another procedure. In fact, an additional tier of review would only cause confusion.

The provisions concerning other agency charges are problematic for other reasons. It creates an incentive for a homeowner to frivolously dispute a charge to get out of the lien sale. In addition to the policy challenges, there are significant practical issues in implementing these provisions. Today, 25 different charges appear on the SOA and each agency has a different method of resolving disputes. Tracking charges would require a complete change to the City's billing model, which now simply depends on agencies to pass along their charges by address. Given that each agency has its own due process procedures on disputing charges, it would be a monumental challenge to track them all.

Additional Costs of Compliance

The bill creates significant new costs for the City that we estimate at approximately $400,000 on a one-time basis and $3.5 million recurring annually.

The most significant one-time cost is the reprogramming of our IT infrastructure. We know the resources involved in the 2007-08 reprogramming after the law was last reauthorized, and this and other mandated additions within this bill lead us to an estimate that we may need four to six months for 5 full time IT programming staff to get our systems ready for the changes envisioned by this bill. Six months for 5 IT staff comes at a cost of over $400,000.

Finally, there is an addition to the bill which we believe would be extremely beneficial. Our estimates are that Intro 26A leaves $56 million on the table this year along with a recurring $21 million. Most of this is water

debt which Commissioner Holloway will discuss in detail. However, more than $17 million immediately and $3 million in annually recurring collections will be foregone if the bill is not amended to qualify for the lien sale other stand-alone agency charges. Including such charges is not merely for revenue purposes. For example, property owners need to know that when the Health Department is forced to clean up your vacant lot or exterminate in your building to correct unsafe conditions, you will be held accountable. We have specific properties in many of your districts where such debts to the City are going unpaid because we do not now have this power. This bill already adds similar charges with respect to ERP, and we respectfully ask that you include the other stand-alone agency charges when considering changes to the bill.

Everyone recognizes that this is a difficult issue. I want to assure you that the Finance Department will continue to work with individuals who may be in financial distress to try to find ways for them to meet their obligations. However, our primary focus must be on the vast majority of New Yorkers who pay their taxes, who pay their charges, who pay their fines. It is unfair to penalize them by either increasing their share of the cost of government, or reducing their services.

Thank you for this opportunity to share our thoughts, and I look forward to your questions. With that, I will turn the floor over to Commissioner Holloway.

TESTIMONY OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT TO THE NEW YORK CITY COUNCIL COMMITTEES ON FINANCE AND COMMUNITY DEVELOPMENT FRIDAY, FEBRUARY 18TH 2011 – 9:30AM

Good Morning Chairmen Recchia and Vann and members of the Finance and Community Development Committees. My name is Rafael E. Cestero and I am Commissioner of the Department of Housing Preservation and Development. Thank you for the opportunity to discuss the renewal of and amendments to New York City's authority to sell outstanding liens on municipal arrears contained in Intro 26-A. I would like to begin by saying that I concur with the statements made by all my colleagues here today. This legislation is vital to the City's ability to conduct business and I look forward to working with you and your staff to make sure we find the appropriate solutions.

I would like to focus my testimony on two items in Intro 26-A that significantly affect the maintenance and preservation of New York City's housing stock. The first is the establishment of stand alone lien sale authority for costs the agency incurs in operation of the Emergency Repair Program (ERP). As you recall, this proposal was a key component of the Proactive Preservation initiative we announced last month with Speaker Quinn and Chairman Dilan. ERP allows HPD to intervene to make repairs on residences when the owner cannot or will not make the repairs on their own. The costs for these repairs are then billed to the property owner – ultimately becoming a lien on the property if left unpaid. Under the previous lien sale authority, ERP liens could only be sold to a servicer when the property also had outstanding real estate tax liens and/or water and sewer liens. This presented a scenario where scofflaw property owners would pay outstanding real estate taxes and water charges while allowing ERP debt to accumulate without any threat of penalty – in essence making the City responsible for building maintenance and the corresponding cost. There are currently over 2400 properties that fall into this potential bad actor category with a total balance of over $31 million in unpaid ERP charges. The authority proposed in Intro 26-A to allow the Department of Finance to sell outstanding ERP liens not only helps the City recoup the funds expended on protecting the habitability of housing units across the City, but it also provides an incentive for landlords to maintain their property in good order reducing the need for ERP all together. This coupled with the recent amendments to the Alternative Enforcement Program (AEP) give us a set of new tools to address some of the most physically distressed buildings in the City and to more aggressively protect our City's housing stock.

The stand alone lien authority proposed in Intro 26-A would take affect once a property has accumulated a minimum of $2000 in ERP arrears and been left unpaid for a minimum of 2 years. Under these criteria the City would capture 581 properties with outstanding ERP debt and no corresponding real estate and water debt totaling over $9.5 million. We feel that a two year threshold allows recalcitrant owners more time to ignore their buildings while tenants' living conditions continue to degrade. We propose reducing that threshold to 1 year to capture an additional 363 properties and an additional $9.8 million of outstanding debt. This amended threshold will capture a larger portion of the potential bad actors and force as many owners as possible to keep their property in

good order. Furthermore, requiring such an elevated threshold would only serve to undermine the recent amendments made to Local Law 29. In fact, 110 buildings currently in AEP would not be captured in the lien sale if the 2 year criteria is utilized. Allowing buildings a free pass to accumulate more debt will limit our ability to force owners to make needed improvements and drain our AEP/ERP budget at a time when resources are constrained. And practically speaking, the higher the lien value, the more difficult it will be for owners to pay off their debt and get themselves out of the lien sale.

As you know, HPD has made a significant commitment to preserving the long term viability of the 300,000 units we have invested in over the past 30 years. To do this, we will require new tools to ensure affordability of this stock. Intro 26-A also proposes to remove the existing exclusion from the tax lien sale on Housing Development Fund Corporations (HDFCs) operating as rental units. HDFCs are housing units incorporated under State law to provide affordable housing to New York State residents. Under the previous lien sale authorization, HDFCs were excluded from the lien sale. Unfortunately, this exclusion has lead to a significant accumulation of outstanding tax arrears in some of the City's HDFCs – some individual buildings having arrears as high as $5 million. The accumulation of this level of arrears is indicative of a need for an assessment of the building's financial and physical profile. Removing the statutory exclusion will assist HPD in making contact with these HDFCs in hopes of providing guidance and resources while ensuring they remain in good standing with their municipal debt. For those buildings that we identify as distressed with absentee landlords, the Third Party Transfer program may ultimately be the appropriate vehicle for conveyance to a responsible new owner.

We thank you for your efforts in pursuing these amendments and for this opportunity to offer suggestions we think will improve this legislation. Renewal and expansion of New York City's ability to sell liens is a vital tool that enables HPD to protect tenants' rights to a well maintained and safe residential dwelling. We welcome any follow-up questions you might have.

Testimony of Caswell F. Holloway
Commissioner, New York City Department of Environmental Protection

New York City Council Committees on Finance and Community Development
Concerning Intro. 26-A in Relation to the Sale of Water Liens

250 Broadway
(Friday, February 18, 2011 at 9:30a)

Good morning, Chairs Vann and Recchia and Members of the Committees. I am Cas Holloway, Commissioner of the New York City Department of Environmental Protection (DEP). Thank you for the opportunity to testify on Intro 26-A, a bill that would amend Local Law 68, the water and sewer debt lien-sale authority created in 2007 through the leadership of Mayor Bloomberg, Council Speaker Quinn, and this entire body. Local Law 68 re-authorized the sale of tax-based liens and, for the first time, authorized the sale of liens based solely on delinquent water charges.

I want to start by expressing my gratitude to Chairman Vann and Chairman Recchia and their staffs for the time they have taken to meet with me over the past year to discuss water rates, revenue collection, and the importance of lien sale reauthorization. I have heard from you, and from every community that I've presented to throughout the five boroughs, that recent water rate increases have been too steep, and that that trend cannot continue. I agree, and re-authorizing—and as I will explain shortly, expanding lien sale authority—is absolutely essential to keeping water rates as low as possible.

I also understand that the authority to initiate a lien sale is a powerful tool, and has to be administered carefully, and with adequate protections for the most vulnerable New Yorkers, who truly may not be able to keep up with their bills—particularly in these tough financial times. Recognizing this, last year, Mayor Bloomberg

introduced the Water Debt Assistance program, which provides relief for homeowners facing foreclosure by temporarily relieving them of their outstanding water and sewer debt. This successful program alone excluded 533 homeowners from the lien sale process. In addition to the Water Debt Assistance Program, DEP also exempts seniors, disabled and low-income homeowners who meet the criteria for DHE, SCHE, and the New York State Personal Income Tax circuit breaker credit, and properties with significant mortgage arrears (*lis pendens*). Taken together, these exemptions excluded more than 3,200 homeowners from the lien sale process, even though they would have qualified based on the amount and duration of their unpaid water bills. That is a significant number of our most vulnerable customers.

Some members of the public and the Council may have the impression that the authority to conduct a lien sale means that the City will take away someone's home. That is not the case. The vast majority of properties that start on the lien sale list pay their bill or enter a payment plan with DEP, which means their liens are never sold. For example, in 2010, 18,359 properties were lien-sale eligible at the start of the process. After three months of outreach, 87% of these properties were removed from the lien sale because their owners either paid their bill or entered into a payment agreement, or their property was removed based on one of the exemptions I just listed. Only 13% of liens that started the process were sold, and in terms of foreclosure, since 1997, only 396 occupied Tax Class 1 properties have been foreclosed, and that total includes all liens – for property taxes and water charges.

These numbers show that lien sale authority is not a meaningful step towards foreclosure—it's a necessary tool to collect unpaid water bills from New Yorkers

who can afford to pay, but don't do so unless compelled. For reasons that may have to do with the history of how the City used to bill for water and sewer service, a small but persistent group of people do not pay their water bills until they are threatened with the prospect of a lien sale. Since 2008, DEP has recovered $285 million in delinquent water and sewer payments through the lien sale process. Without lien sale authority, this revenue would have gone uncollected—which would have necessitated higher water rates for everyone else. In fact, we estimate that without lien sale authority, water rates would have been increased by an additional 2.2% or $51 each year. That's a tremendous burden for good, bill-paying customers to bear on behalf of those who can afford to pay, but refuse to do so.

Turning to the specifics of Intro 26-A, the fact that the Council is considering this legislation means that we agree on a fundamental point—those who can afford to pay their water bill should pay, and lien sale authority is necessary to achieve that result. But there are elements of the draft bill that undercut that goal, and will drive up water rates for the majority of New Yorkers who pay their bills.

My colleagues at OMB, Finance and HPD have already expressed their concerns regarding variable down payments; notification via return receipt certified mail; and the difficulty of determining a property owner's "eligibility" for a program in which they are not actually enrolled.

A significant concern is that the current bill raises the eligibility thresholds for selling liens on two-and three-family homes in Tax Class I from a delinquency of one year and $1,000, to a delinquency of two years and $2,000. This change would have dramatic consequences, not just for the vast majority of responsible New

Yorkers who pay their bills and who would be stuck with higher water rates because of decreased revenues. It will also harm the distressed homeowners that we all agree need help.

If the two-year eligibility threshold were in effect this year, it would reduce the number of lien-sale eligible accounts in Tax Class 1 from 16,791 to 2,091, and the amount of underlying lien sale-eligible debt would drop from $94 million to just $27 million. The reduction in collections we project from the change in eligibility criteria translates to an additional rate increase of more than 1% for everyone who pays their bills, and would go a long way to restoring the status quo prior to Local Law 68, when a small, but persistent segment of New Yorkers regarded water and sewer charges as something that simply did not have to be paid.

In addition, if the intent of this provision is to relieve the pressure that unpaid water and sewer bills can create for a homeowner facing financial difficulties, I respectfully suggest that it will have the opposite effect. That's because delinquent homeowners will simply accumulate more water debt during the second year that they would not be eligible for the lien sale, rather than coming to DEP after a year to pay their bill, or enter a manageable payment plan to do so.

Under the proposed legislation, we estimate that the average water and sewer debt of a Tax Class 1 property owner eligible for the lien sale would jump dramatically—from $5,649 today, to nearly $8,400. At that point, the size of the debt and the interest would be overwhelming, and extremely threatening to a property owner's economic well-being. We want property owners to approach us as soon as possible to discuss their bill, make a down payment, and enter a

payment agreement long before their debt approaches $8,400, and true financial distress becomes all but inevitable.

A second serious concern with the bill is the exclusion of single family homes from lien sale eligibility. Approximately 9,000 single family homes would qualify for the lien sale based on the criteria that was in place until this year. Right now, DEP's only recourse to get these funds is to threaten water shut offs. Shutting off water service is a costly measure and a potential public health risk. Last year, we noticed some 18,000 homes that they may be eligible for water shut off, but due to resource constraints, we could only target roughly 3,500 homes for enforcement, meaning that we collect very little from 14,500 homes. To actually terminate service requires a crew to excavate the street, turn off the water, and restore the street to a safe condition, at an average cost of $2,700 per home.

In FY 2010, we served 15-day notices on 3,590 single-family homes, and terminated service at 57 of them. We collected $2.78 million from this group, but we spent $1.99 million to collect it. That means the water system only got to keep 28 cents on the dollar, and terminating service tied up the equivalent of 10 full-time field staff, who would otherwise have performed work that would have benefited many more New Yorkers, such as repairing water mains, maintaining fire hydrants, or cleaning catch basins and sewers.

This makes no sense—particularly in a time of limited resources. Including single family homes in the lien sale process is a much fairer, and certainly more economical way to collect unpaid water bills from New Yorkers who can afford to pay. Currently, single-family home owners who owe over $1,000 for a year or more total just over 9,000 ratepayers and have accrued over $51 million in debt.

Based on past payment patterns, DEP estimates that it would collect nearly $28.5 million through a single family lien sale process in FY 2011, which equals nearly 1% of the water rate. If lien sale authority is not extended to single family homes, this lost revenue will have to be made up by raising the water rate for the New Yorkers who are already paying their bills—truly a perverse incentive.

Since becoming DEP Commissioner in January of last year, I have attended more than a dozen meetings in all five boroughs to explain what DEP is doing—how we're using the tremendous resources we have been entrusted with to carry out DEP's vital mission. We held another dozen meetings throughout 2010, solely to make billing representatives and customer service personnel available at the neighborhood level. At these meetings, and all other public meetings I attend—on capital projects, or flooding, or at Mayoral town halls—people ask me to do three things: (1) continue to provide the critical water and sewer services New Yorkers have rightly come to expect from DEP at the lowest possible cost; (2) do everything in our power to make certain that those who can afford to pay their water bill do so, and are not allowed to pass on their debt to the vast majority of New Yorkers who pay their bills; and (3) to help those who truly cannot afford to pay their bill now, and need assistance.

Reauthorizing and expanding DEP's lien sale authority will accomplish all three of these goals. We know the lien sale process incentivizes people to pay their water bill: since 2008 the three lien sales have brought in $285 million, ensuring that we can meet our capital and operating needs and deliver clean, fresh water to over 8 million New York City residents. By expanding lien sale authority to include single-family homes, DEP will have a proven and effective enforcement tool to make sure all homeowners who can afford to pay actually do so. Finally, DEP has

done much in the last year and will do more in the future to protect those New Yorkers who are the most vulnerable.

The simplest and strongest argument for reauthorizing the lien sale and including single family homes in it is that it will mean a lower rate increase for everyone, without endangering the most vulnerable, who can be protected through targeted exemptions and the Water Debt Assistance Program.

Of course, lien sale authority is only part of the answer to keeping water rates as low as possible. Last year, DEP cut its expense budget by 8% for FY 2011, and I am working on similar reductions for the next fiscal year. But every dollar we can't collect because those who can afford to pay won't, is another dollar that we'll have to make up through future rate increases for everyone else. Every tool we have to avert that outcome and ensure a fair distribution of the cost of our water system is critical; keeping the current lien sale authority intact, and extending it as I've suggested, will maintain one of the most important tools available to us.

Chairman Vann, Chairman Recchia, thank you for the opportunity to testify today, and I'll gladly answer any questions you may have.

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LISC
New York City

Testimony of LISC NYC
On Intro 26-A
NYC Council Committees on Finance and Community Development
Feb 18, 2011

My name is Sarah Hovde and I am the Director of Research and Policy for the NYC Program of the Local Initiatives Support Corporation (LISC). LISC is a national community development intermediary organization that helps community-based groups to transform distressed communities and neighborhoods into healthy ones by providing capital, technical expertise, training and information. In NYC, LISC has provided over $160 million in loans and grants and over $1.7 billion in equity to more than 75 community development corporations (CDCs), resulting in the development of close to 30,000 units of affordable housing in Harlem, the South Bronx, and Brooklyn.

Intro 26-A expands the City's authority to collect payment on delinquent liens via lien sales – including not only property tax liens, but also stand-alone water/sewer and Emergency Repair liens for which there was previously not an adequate enforcement tool. LISC NYC is supportive in principal of the proposed legislation; the imposition of liens is not a meaningful penalty unless the ability exists to collect on them. There are, however, certain categories of properties to which special attention must be paid with regard to the lien sale process, in order not to put at risk vulnerable homeowners and tenants, as well as prior public investment in the affordable housing stock. I want to note these categories, our concerns regarding each, and the extent to which the proposed legislation addresses these concerns.

Given the recent economic downturn, and the continued struggle of many low- and moderate-income NYC home owners with unemployment and mortgage foreclosure, the sale of liens on owner-occupied small homes must be approached with special caution. LISC NYC notes with approval that Intro 26-A contains some additional safeguards, over current law, for the most vulnerable homeowners, including: the exclusion of single-family owner-occupied homes from stand-alone sales of water/sewer or other, non-property tax liens; the longer arrears period and higher minimum arrears amount (two years and $2K versus one year and $1K) for 2- and 3-family homes; and the exemption of Class 1 owners eligible for (as opposed to receiving) the Senior Citizen's Homeowner Exemption, the Disabled Homeowners Exemption, Veteran's Exemption, and STAR program, Circuit Breaker, and Enhanced STAR with incomes up to 1.5 times the SCHE limit. We also approve of the extension of the required notice of lien sale from the current 90 days to 120 days; and of the provision that requires the commissioner of finance to utilize an income-based formula for determining the terms of installment payment agreements.

Another category that merits special attention is properties in which the City has already invested resources in order to develop affordable housing. Given the ongoing, serious shortage of housing affordable to low- and moderate-income households, we are concerned that buildings developed as affordable housing with assistance and subsidy from the City be preserved for this purpose if at all possible. While HDFC co-ops are excluded from lien sales in this legislation, HDFC rentals are not. However, Intro 26-A does build in opportunities for sponsors and owners of HDFC rentals to work with the Dept of Finance and HPD to resolve their lien situation. Liens for HDFC rentals may only be sold after two years of nonpayment, and must be a minimum of $5K (as compared to after one year and a minimum of $1K for other properties). In addition, the legislation delays by one year from date of passage the eligibility of HDFC rental liens for sale – giving additional time for a resolution to be worked out. Finally, it is our understanding that HPD retains, under the proposed legislation, the discretion to remove liens from the sale pool that do not meet the statutory definition of distress (that is a greater than 15% lien-to-value ratio, combined with either 5 or more b/c violations per unit or $1,000 in ERP liens per building), when there are compelling reasons to do so. We urge and trust that HPD will exercise this discretion as needed to insure that affordable housing projects in which substantial public investment has already been made do not run the risk of being "privatized" and lost to the affordable housing stock via lien sale. We also urge and trust that, in properties where HPD has a regulatory agreement in effect, they will use the enforcement tools at their disposal under the regulatory agreement to ensure the continued preservation of the affordable housing.

Finally, it is important that the health and safety of tenants not be jeopardized by the sale of liens on buildings that do not meet the statutory definition of distress, but are nevertheless physically distressed and at risk of further deterioration. Financially overleveraged and physically distressed buildings are especially relevant here. In many overleveraged buildings, we have seen owners and lenders, in order to protect their investment, continue to pay real estate and water charges, even as tenants go without heat and hot water and basic repairs. Such owners and lenders, who previously did not bother paying ERP liens because there was no consequence to nonpayment, now face the threat of sale of their ERP liens – and they will presumably start to pay them as a result. However, such a building would most likely not meet the statutory definition of distress, since it is unlikely that the total amount of ERP liens would exceed 15% of its market value. We suggest that thought be given to amending the statutory definition of distress in order to capture these types of buildings and make them eligible for in rem foreclosure and Third Party Transfer.

Thank you for the opportunity to testify today.

Queens Legal Services

Legal Services NYC

Hearing of the New York City Council Committee on Finance and Committee on Community Development

Oversight Hearing on Proposed Int. 26-A

Friday February 18, 2011
New York, New York

Testimony of Aisha Baruni

My name is Aisha Baruni. I am a staff attorney with the Foreclosure Prevention Project at Queens Legal Services. Queens Legal Services seeks equal access to justice for all low-income residents of Queens. We represent homeowners who have been victims of abusive lending practices. Thank you for inviting me to speak here today about the proposed changes to the Lien Sale Reform and Reauthorization Bill (Proposed Int. 26-A).

I will focus my testimony today on the provisions of the Bill that address the interest rates and fees charged by the purchasers of tax liens. In addition, we support the testimony and recommendations of the other advocates testifying with me today regarding other specific aspects of the Bill.

We and our colleagues in Queens regularly encounter homeowners facing foreclosure as a result of tax and water liens, debts which are worth far less than the value of the house. Typically, once the tax and water liens are sold, the interest and fees that accrue on these debts grow so rapidly that repayment plans are often unattainable.

For example, we assisted a low-income family in Queens who risked losing their home because of a tax lien, despite the fact that they had completely paid off their mortgage. Our clients had a lien of $47,000, which was a combined tax and Department of Health and Mental Hygiene lien, which the City sold; only *eighteen months later*, the amount owed had increased by approximately $27,000, which is over 50% of the original debt. Approximately $15,000 of that amount represented the interest on the debt (18% compounded daily). Approximately $12,000 of that amount represented fees. It is our understanding from our own experience and that of our colleagues around the City that an 18% interest rate is typical of what purchasers charge.

The Bill can be strengthened to address these issues. First, limiting the interest rate that purchasers may charge on tax liens will increase the likelihood that homeowners can negotiate a settlement of their debts

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and save their homes. We propose that a hold be placed on the accrual of interest for the first year after the lien has been sold, after which the fixed interest rate of 9% would apply. A fixed rate interest rate of 9% per annum is reasonable. This is the interest rate fixed by the New York Civil Practice Law and Rules (CPLR) at Section 5004 to be charged on judgments. Placing a hold on charging interest during that first year, together with setting a fixed, reasonable interest rate of 9% to follow will help homeowners reach reasonable payment plans.

This bill ties the interest rate purchasers may charge on these tax liens to the interest rate recommended by the banking commission pursuant to Code § 11-224(g), which sets as a floor the prime interest rate plus six percent (6%) per annum. We are looking for additional clarification on how the interest rate will be calculated.

We are concerned that the interest rates calculated under this section have the potential to be very high, especially as the prime interest rate rises. High interest rates on these tax liens cripple a homeowner's ability to negotiate an affordable repayment plan.

To the extent that interest rates calculated under this provision will be less than the ubiquitous eighteen percent (18%) per annum that purchasers charge on tax liens, this provision is an improvement. However, a fixed interest rate of nine percent (9%) per annum would better help homeowners in their efforts to settle these debts.

Second, the purchasers of these tax liens should be not only required to explain what fees they are charging, but prohibited from charging fees that are not bona fide and reasonable. This proposed bill now requires purchasers to provide to homeowners a detailed itemization of fees, taxes, interest and surcharges charged on any tax lien.

Although this requirement will help homeowners understand what fees are being charged, it does not go to the heart of the problem: purchasers frequently charge homeowners fees that are exorbitant. These high fees often include legal fees associated with a foreclosure action on the tax lien. Yet, these legal fees, if they were to be awarded by the court in a foreclosure action, are typically either governed by statute or must be supported by evidence. Purchasers, however, disregard these limits when assessing legal fees to the homeowners on a tax lien.

Under the current proposed language, purchasers would still be permitted to charge homeowners unreasonably high fees, they just have to itemize those fees. To address these concerns, we recommend that purchasers be prohibited from charging any fees that are not bona fide and reasonable. In addition, with respect to legal fees, we recommend that purchasers only be permitted to charge fees that are reasonable and customary for such work. This will help address the problem of purchasers charging foreclosure legal fees in excess of what could be awarded in the foreclosure action.

These requirements, together with the need to itemize fees, will protect homeowners from abusive billing and will still permit purchasers to charge reasonable fees.

Strengthening the provisions of the bill that address the interest rate and fees permitted to be charged will give homeowners the opportunity to save their homes before high interest and fees make this right meaningless for many.

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Testimony before the New York City Council Committees on Finance and Community Development

Proposed Int. 26-A, a Local Law to amend the administrative code of the City of New York, in relation to the sale of tax liens.

February 18, 2010

Alexis Iwanisziw
NEDAP

Thank you, Councilmembers Recchia and Vann, and thanks to all of the Committee members who called this hearing today. I am Alexis Iwaniszíw, Program Associate at the Neighborhood Economic Development Advocacy Project (NEDAP), a resource and advocacy center that works with community groups to promote financial justice in low-income communities and communities of color.

With thousands of one- to four-family homes on the 2010 lien sale list, the sale of both property tax and water/sewer liens is a massive problem. Both this year and in past years, the liens that were sold were disproportionately concentrated in communities of color in NYC —the same communities already hard hit by predatory lending and foreclosure, as well as unemployment, underemployment, and the other numerous effects of the recession. (*See attached maps.*) The lien sale causes additional and substantial financial harm for the families and seniors that are most struggling to stay afloat and make ends meet in tough economic times.

We think that the City could best address this fundamental problem by carving-out all Class One owner-occupied properties from the lien sale, but recognize that this approach may not be politically feasible. At the very least, changes to the lien sale law are critical toward achieving a balance that will enable the City to collect needed revenue, but not be destructive to low income communities and communities of color.

Fees and interest

The two principal purchasers of tax and water liens are Xspand and Mooring Tax Asset Group (MTAG). Xspand, the largest purchaser, is a wholly owned subsidiary of JP Morgan Chase.

The current law allows lien purchasers to gouge homeowners with 18% interest rates after the sale, and provides no limitations on the fees that these purchasers can charge. Once the liens are sold, interest and fees make it extremely difficult for homeowners to settle their debts. Xspand and MTAG routinely charge unconscionable fees to homeowners facing foreclosure on their liens. Following are two of many examples, which are not atypical (my colleagues will provide further examples in their testimony):

1) A Bronx homeowner has a $13,890.59 property tax lien certification which was sold in the 2009 lien sale (this total already includes the 5% surcharge). One year later, the Xspand payoff includes $6,769.50 in fees, and $3,450.44 in interest, for a total payoff of $24,110.53.
2) A Queens homeowner has $5,370.75 water lien certification which was sold in the 2008 lien sale (this total already includes the 5% surcharge). The most recent MTAG payoff includes $5,747.71 in fees and $2,652.10 in interest, for a total payoff of $13,770.56.

The tax and water lien sale should serve the public interest, and should not be a profit generator for JP Morgan Chase. Chase and MTAG should have to answer as to why they are gouging the City's must economically vulnerable homeowners with unjustifiable, exorbitant fees, and the City must address the fact that the current law allows lien purchasers to charge inflated fees without any apparent accountability.

The lien law should contain a one-year hold on interest and fees for Class One properties, to give distressed homeowners an opportunity to redeem the lien after it has been sold and before the lien amount rapidly doubles with fees and interest. For Class One properties, the interest rate and fees that are allowable after the one-year hold period should be capped at a far lower and more reasonable amount. Lien servicers should be required to provide borrowers (and the Department of Finance) with a detailed breakdown of fees that are charged, including the basis for such fees, as required in Int. 26-A.

The Commissioner of Finance is currently obligated, under §11-355 of the NYC Administrative Code, to submit an annual report to the Council concerning the sale of tax liens during the preceding year. One category of information that DOF is supposed to report to the Council on includes "a report of servicer activities during the immediately preceding year." NEDAP submitted a FOIL request to DOF for such reports and found no information whatsoever regarding servicer activities, providing further evidence that Chase and MTAG are operating without any oversight.

Affordable pre-lien payment plans

Many low income homeowners are unable to afford the pre-lien payment plans offered by DOF and DEP. As a result, these homeowners are put into the lien sale, where their debt only multiplies, leaving them at risk of foreclosure. The lien law should provide a statutory affordable payment plan scheme for distressed homeowners in owner-occupied Class One properties. This would help preserve low income homeownership, particularly in communities of color, by allowing those homeowners who come forward in the period before the lien sale to enter into a payment plan based on their actual ability to pay.

The payment plan proposal included in Int. 26-A is a step in the right direction, but does not sufficiently address the needs of low and moderate income homeowners in New York City. Homeowners in financial distress may not be able to afford a 10% down payment on a several thousand dollar tax bill, and in those cases, a payment plan modeled after DEP's pilot Water Debt Assistance Program is necessary. The Water Debt Assistance Program "freezes" the lien amount and the lien is not sold, rather, it is paid upon death, sale or refinance as long as the homeowner can pay their current water bill going forward. The statutory plan might provide that a certain portion of the tax or water lien could be frozen, with the low income homeowner making affordable monthly payments on the remaining part. The Water Debt Assistance Program is only available to homeowners who are delinquent or in foreclosure on their mortgages. The statutory payment plan (for both water and tax liens) should be expanded to senior, disabled, and low income homeowners, based on need.

Notice

The current notice requirement is woefully inadequate. When the lien sale list is published in the newspaper, homeowners are often unaware that their home is on the list, and the 30 day notice that homeowners subsequently receive in the mail does not provide enough time for many distressed homeowners to find a solution.

The proposed Int. 26-A addresses this problem for Class One properties by requiring that one notice be sent by certified mail 120 days prior to the sale and a second notice be sent thirty days prior to the sale. These notices ensure that a homeowner has the maximum ability to enter into a payment plan or otherwise resolve the matter before lien is sold. Notices should be in easy to understand language and should include clear information about available exemptions. Notices should also state that, if the lien is sold, the homeowner will face additional fees and the risk of foreclosure.

Exemptions

Advocates have gotten numerous calls from senior or disabled homeowners whose lien was sold, even though they should have qualified for an exemption from the lien sale. For years, too many homeowners have been unaware that they qualify for an exemption, and are put at risk of foreclosure when their liens are sold. This is bad for the City, and bad for communities.

The City should be obligated to identify all seniors or disabled homeowners who should be exempted from the lien sale and Int. 26-A must be amended to include such a provision. This requirement should apply equally to both tax and water liens—given that both can have devastating effects on low income homeowners, there is no reason to differentiate. Once the exempt homeowners are removed from the lien sale, they can enter into affordable payment plans directly with the City, thereby avoiding thousands, and sometimes tens of thousands, of dollars in unaffordable fees and interest.

Buy-backs

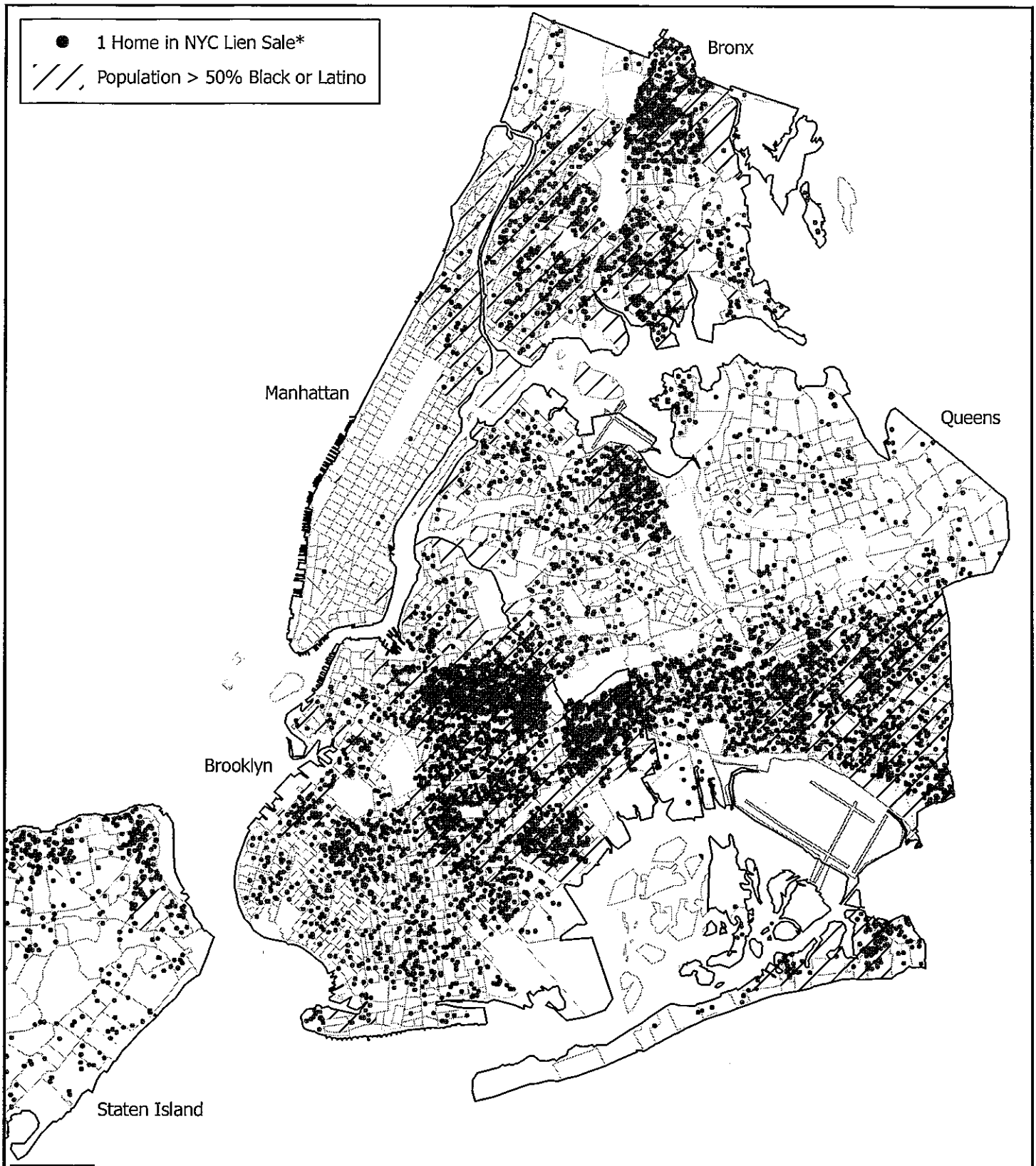
The lien law must contain a remedy for homeowners whose liens are erroneously sold, in order to prevent irreparable harm to homeowners. If a lien is mistakenly sold, or if the homeowner whose lien is sold is a senior or disabled homeowner and eligible for an exemption from the lien sale, the City should be obligated to repurchase the lien from the Trust following the sale. There should be a mechanism for a homeowner to request a review of the sale of their lien, through DOF or DEP, if the homeowner believes that their lien was erroneously sold. The buy-back of erroneously sold liens should be required, not left at the discretion of the commissioner of finance.

Stand-alone water liens

Stand-alone water liens are a particular problem for lower income homeowners. Because a stand-alone water lien can now be sold after only one year of non-payment, a huge number of stand-alone water liens now dominate the lien sale. Since stand-alone water liens were authorized to be sold, the vast majority of the liens sold on Class One properties in some of the City's most distressed neighborhoods have been stand-alone water liens. NEDAP strongly supports the proposed provision of Int. 26-A which would extend the period for which water arrears must be unpaid before they can be converted to a lien and sold.

We recognize the City's need to generate revenue on unpaid tax and water arrears through a lien sale. It is critical, however, that this need is balanced with reasonable safeguards to make the lien sale less onerous for the City's most economically vulnerable homeowners, and to prevent gouging by lien sale purchasers.

Homes in the 2010 NYC Tax Lien Sale

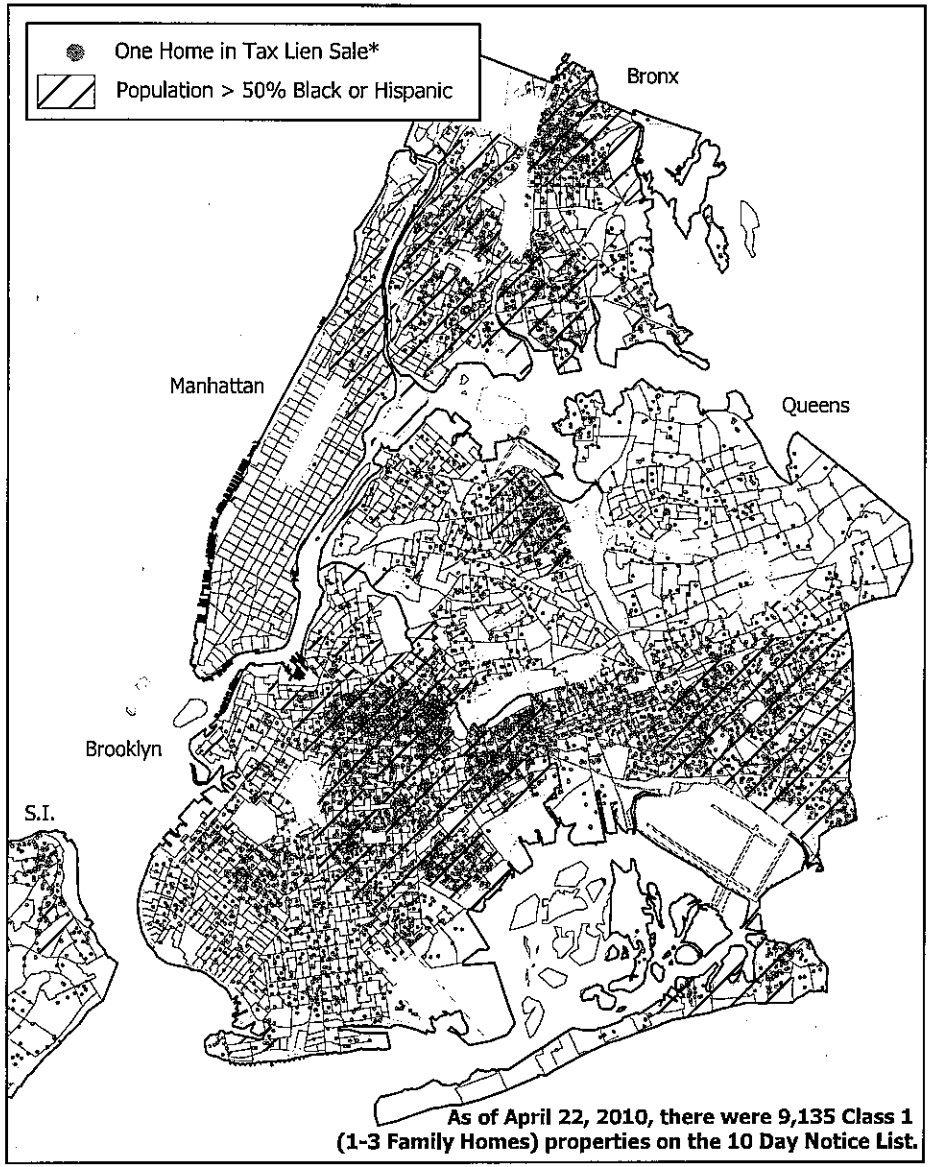


*Includes tax and/or water liens. There were 9,135 Class One (1-3 family) properties, including 7,139 homes with water liens only, included in the NYC lien sale as of April 22, 2010.

Sources: NYC Department of Finance (2010), U.S. Census (2000)

NEW YORK CITY

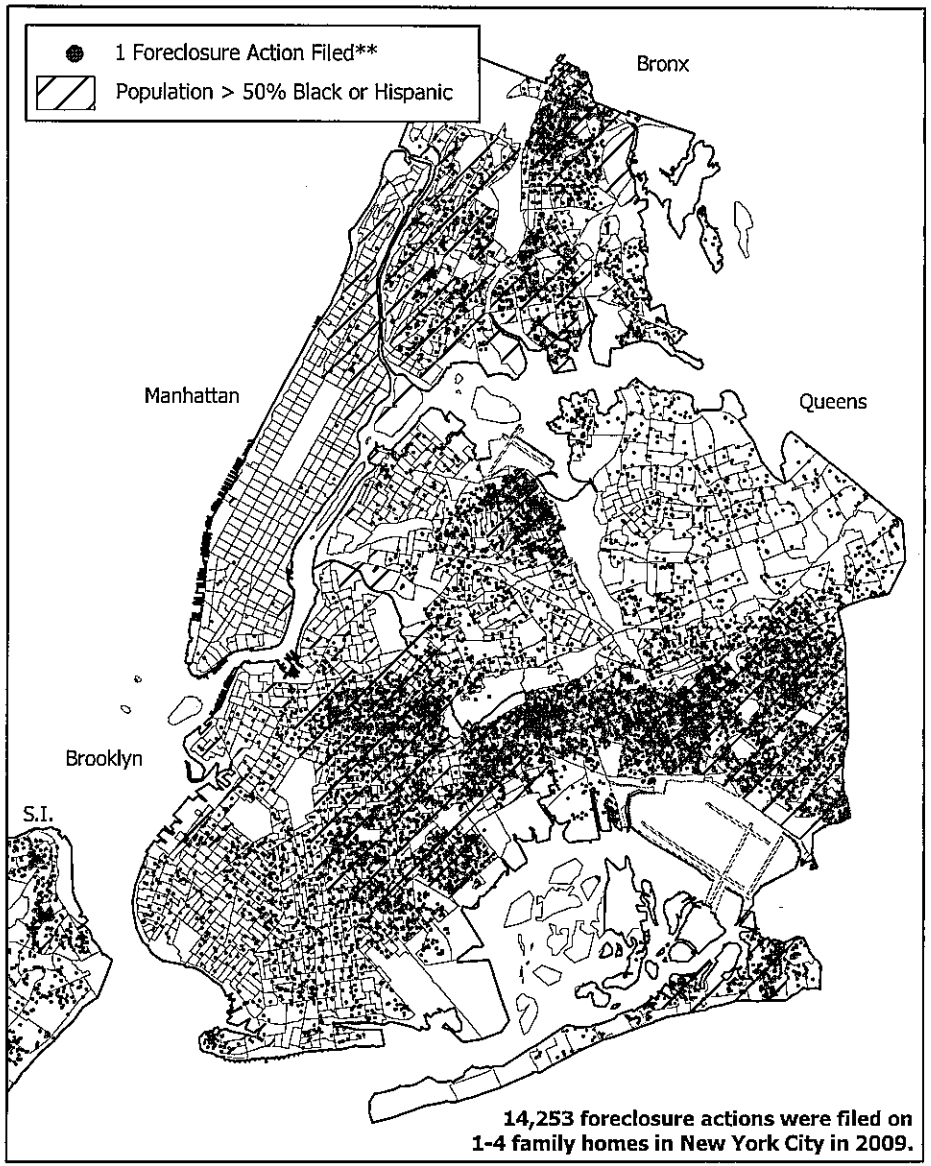
Homes in the 2010 NYC Tax and Water Lien Sale



As of April 22, 2010, there were 9,135 Class 1 (1-3 Family Homes) properties on the 10 Day Notice List.

Sources: NYC Department of Finance (2010) , US Census (2000)
*1-3 family homes; based on 10 Day Notice List, Class 1 Residential Property, NYC Tax Lien Securitization.

Foreclosures (2009)



14,253 foreclosure actions were filed on 1-4 family homes in New York City in 2009.

Sources: First American CoreLogic (2009); U.S. Census (2000)
** Based on *lis pendens* filings on 1-4 family homes.

THE LEGAL AID SOCIETY

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Testimony of The Legal Aid Society
At The Oversight Hearing On
Proposed Int. 26-A
held jointly by the
New York City Council
Committees on Finance and
Community Development

February 18, 2011

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.

We thank the Committee Chairs Albert Vann and Dominic Recchia for holding this important hearing and for giving us the opportunity to testify before you today on the proposed Int. 26-A which would significantly strengthen the protections for low-and moderate-income homeowners to prevent them from losing their homes to the sale of tax and water liens.

The foreclosure crisis confronting homeowners and their neighborhoods as a result of abusive lending practices and the economic crisis continues unabated. 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, for the past years the City has been conducting 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 stand-alone water liens has had a disproportionate impact on communities of color, communities already suffering the brunt

of the foreclosure crisis. Homeowners who seek to save their home from the lien sale and ultimately 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 have been felt particularly by low-income senior citizens. Many senior 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 some low-income homeowners were exempted from lien sales where their property taxes were 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 therefore applaud Councilmember Al Vann along with his co-sponsors for introducing legislation, Int. 26-A, to reauthorize and amend Sections 11-319 and 11-320 of the Administrative Code of the City of New York, which, if enacted, would greatly mitigate the harm caused to home owners by the sale of property and stand-alone water liens. The bill would significantly increase the number of low-and moderate-income homeowners whose liens could not be sold by covering not only owners who currently are protected by the various property tax exemptions available to seniors, persons with disabilities, veterans and other low-and moderate-income homeowners but also owners who are eligible for such exemptions. This important provision goes a long way to preserve shelter for vulnerable homeowners who were not made aware of the various existing exemption programs.

The bill also somewhat mitigates the negative impact of the stand-alone water lien sale. Instead of permitting the sale of a water lien (due to arrears of water and sewer charges) for two and three family homes after merely one year of delinquency and arrears of $1000 or more, the bill now would require delinquency of two years together with arrears of $2000 or more. Further, the bill would provide for more effective notification of homeowners who under the old law would only get one letter 30 days prior to sale. The bill now would require an additional notice to be sent 120 days before the sale by certified mail with enhanced information on the lien sale process itself, actions the homeowner may take to avoid the lien sale, and, most importantly, information on all available tax exemption programs. Further, homeowners would be entitled to information about lien sales and exemption programs on a quarterly basis.

Homeowners, especially those on fixed income, who tried to prevent the lien sale frequently faced payment plans imposed by the City under the old law that were completely unaffordable. We therefore welcome the provision that would mandate the Commissioner of Finance to promulgate rules by July 1, 2011 for developing income based repayment plans to avoid the sale of the tax or water lien. We urge that such rules be subject to comments. In addition, such rules should be flexible and take into account household income, expenses and household composition. Where the owner has no means to pay the delinquent property tax and- /or water charges but is able to pay such charges going forward, the Department of Finance should adopt and expand on a program developed by the Department of Environmental Protection (DEP), called the Water Debt Assistance

Program (WDAP), with the goal of avoiding lien sales by freezing the lien which becomes payable only upon the owner's death, refinancing or sale.

As stated earlier, a critical issue once the lien is sold to a trust is the exorbitant and unexplained fees along with 18% interest imposed on the home owner which make it virtually impossible to settle the debt and avoid foreclosure. The bill as currently proposed requires that the purchaser of a tax lien provide the owner with a detailed itemization of taxes, interest, surcharges and fees charged to such owner. We propose that for class one properties there should be a one year freeze on interest after which the rate should be capped, and fees should be reasonable and bona fide. Any claimed legal fees should conform to the statutory limits as set forth by the Civil Practice Law and Rules (CPLR).

Int 26-A would significantly enhance the protection of low-and moderate-income homeowners. We urge passage of Int. 26-A with the above outlined additional changes and thank you for the opportunity to testify today.

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

Hearing of the New York City Council Committee of Finance

Public Hearing on Discriminatory Mortgage Practices

Friday, February 18, 2011
New York, New York

Testimony of Laurie Izutsu

Good Morning. My name is Laurie Izutsu and I am a staff attorney in the Foreclosure Prevention Project at South Brooklyn Legal Services. Thank you for inviting South Brooklyn to speak today on the proposed local law to amend the administrative code in relation to the sale of tax and water liens.

For more than a decade, the Foreclosure Prevention Project has represented low- and moderate-income homeowners at risk of losing their homes because of abusive lending practices. Through litigation and advocacy we have been able to save hundreds of homeowners from foreclosure.

New York City low- and middle-income communities have been devastated by the subprime lending crisis as record numbers of families face losing their homes to foreclosure. Exacerbating the impact of the subprime lending crisis are the many foreclosures threatening homeowners because of past due property tax and water liens. The opening of the lien sale to water-only debts which are one year delinquent has only served to further destabilize neighborhoods and place our most vulnerable community members at risk of losing their homes.

In the past year, our office has received dozens of calls from homeowners, mostly elderly, who have been threatened with foreclosure because of a tax or water lien. Many were eligible for exemption from the lien sale, but either were not aware of available exemptions, did not receive proper notification of the pending sale, or did not understand the notices sent to them. Most of the homeowners who have reached out to South Brooklyn paid off their mortgage long ago, but now strain to meet their current expenses on a limited income. Others fell behind trying to make unaffordable mortgage payments. Still other homeowners struggling with sub-prime and high-cost loans, often discover too late that the taxes are not being paid by their mortgage servicers.

Once tax and water liens are sold, the debt increases quickly and substantially, making it difficult for low income homeowners, especially the elderly and the disabled, to avoid foreclosure. The servicers routinely charge 18% interest and levy extraordinary fees and costs. It has been our experience that these companies refuse to negotiate settlements with homeowners who are unable to pay the full amount of the debt and interest claimed to be due. The payment plans are completely unaffordable and onerous.

The elderly and disabled are particularly susceptible to tax and water liens, given that most subsist on fixed incomes. Any unanticipated significant expense, such as home repairs or an uncovered medical bill, can substantially temporarily hamper their ability to pay their charges. Moreover, these vulnerable populations are often isolated, unaware of potential exemptions, or otherwise unable to access resources available to them. The current notices do not adequately explain the exemptions or options that might apply to these homeowners, who are often confused by the lien sale process. All too frequently, their homes land on the lien sale list, despite the homeowners' eligibility for an exemption. Subsequently, these homeowners face egregious fees and interest rates, with little recourse, eventually finding themselves in foreclosure.

The case of Laurence and Dolores W is one such example of how current weaknesses in the City Code detrimentally impact the elderly and disabled. Lawrence and Dolores are senior citizens who have lived in their property since 1967. Residing with them is their 44-year-old disabled son. Lawrence is a veteran and both he and Dolores are also disabled. They do not have a water meter installed and, as a result, they are being charged based on the frontage of their lot, averaging about $12,000 a year. They have tried several times to get a water meter installed, to no avail. In May 2009, they received a water bill for approximately $20,000. Lawrence spoke with someone at the DEP who told him he had been approved for a senior tax exemption and that he should not make any payments. In fact, there was no exemption in place and the lien was sold in the 2009 lien sale. In April 2010, Lawrence and Dolores learned that their home was in foreclosure.

Just this past week, our office was contacted by Mr. Neville S, a 68-year-old disabled homeowner who purchased his home in Brooklyn in 1980. An amputee and diabetic, Neville receives approximately $360 each month from SSI. Despite his fixed income, he has managed to remain current on both his property taxes and water charges. However, in 2008 or 2009, Neville received a notice from DEP that he owed around $9,000. He had no knowledge of such arrears and promptly disputed these charges. Nevertheless, without resolving this dispute or identifying Neville as a senior citizen with a disability eligible for related exemptions, the City sold the water lien. Neville has since learned that his home is in foreclosure.

We applaud the proposed amendments to extend to three years the minimum period of partial or full nonpayment of tax and water liens before a sale may occur; extend to 120 days the notice period required before a lien may be sold; require the Commissioner to provide homeowners on a quarterly basis with written information on the tax lien sale process and the exemptions available; and require the DEP and the Department of Finance to offer affordable, means-based repayment plans to borrowers.

We urge the Council to provide these increased protections to homeowners at risk of tax and water lien sales, as well as even greater protections for homeowners struggling with tax and water arrears. Further protections should include: two notices sent directly to homeowners both at 120 and 45 days prior to sale; a one-year hold on interest and fees

for Class One properties; and a requirement that fees charged by the purchaser of a tax lien be reasonable and bona fide.

In addition, in light of the countless elderly and disabled homeowners throughout the City who qualify for but do not currently receive exemptions, we urge that the City take measures to proactively identify these persons and ensure that they are excluded from the lien sale.

Further, the amended code should contain a clear remedy for homeowners whose tax liens are erroneously sold. Our office has seen a number of cases of homeowners served with a tax or water lien foreclosure who had proof they had paid their bills; others who never received proper notice; and still others who should have been exempted from the lien sale in the first instance. Despite the fact that these liens never should have been sold, these unfortunate homeowners now face an exorbitant interest rate of 18% with very limited, if any, options. In order to prevent irreparable harm to homeowners in such circumstances, the City should be obligated to repurchase tax liens sold erroneously and where the homeowner was eligible for an exemption.

We share your commitment to addressing these critical issues and believe that reasonable amendments will allow the City to achieve its financial goals while protecting vulnerable homeowners and tempering the conditions that have aggravated the foreclosure crisis now threatening the stability of our communities. We thank you again for inviting us to speak today and look forward to continue working with the Council to prevent unnecessary foreclosures.

The Center for New York City Neighborhoods

Testimony before the *Finance and Community Development Committees* of the New York City Council

February 18, 2011

Good morning Chairpersons Vann and Recchia, and members of the Community Development and Finance Committees. My name is Michael Hickey, Executive Director of the Center for New York City Neighborhoods (CNYCN), and I appreciate this opportunity to testify today on proposed legislation concerning the sale of water liens.

CNYCN is a non profit organization whose mission is to provide free housing counseling and legal services to New York City residents at risk of losing their homes to foreclosure. Since we opened our doors in June of 2008, over 12,000 New York City residents have accessed our services (many of them by calling 311 to get connected). Of these homeowners, our network has submitted over 6,000 modification request packages, and over 1,700 of those homeowners are now in trial or permanent modifications. On average, homeowners who receive modifications are lowering their mortgage payments by $1,000 a month – a tremendous increase in the sustainability of their monthly debt service.

The foreclosure crisis remains quite desperate. According to new data from the Federal Reserve Bank of New York, while new monthly foreclosure actions appear to be holding steady at a dangerously high plateau, the number of pending foreclosure actions is rising precipitously (see chart below).

Thanks to innovative programs like the Water Debt Assistance Program announced over a year ago by the Mayor and Commissioners Cestero and Holloway, we have new tools to extricate distressed homeowners from

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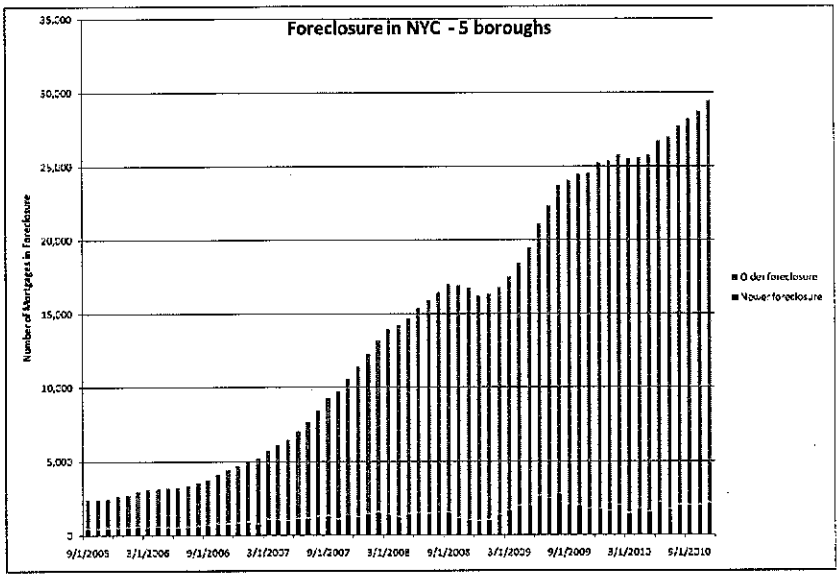
mortgage foreclosure. Similarly, efforts to remove homeowners in foreclosure proceedings from tax and water lien sale lists, allowing housing counselors and



homeowners more time to find solutions for outstanding mortgage and municipal debt arrears, have proven to be valuable tool.

CNYCN is particularly eager to begin deploying federal funds from HUD's Emergency Home Loan Program, which will allow homeowners to pay down arrears (including tax arrears) using 0% financing. Over $100 million has been set aside for New York State to implement this program, pending final promulgation from HUD. Used alongside tools such as the Mortgage Assistance Program, which also provides 0% financing for homeowners attempting to modify their mortgages, we believe that hundreds more homes can be stabilized and retained.

I would like to direct my comments today to concerns CNYCN has about the process of selling liens, and to the proposed legislation's lack of clarity on circumstances where purchasing back the lien could be appropriate.

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Lien sales have clearly proven to be an effective tool in collecting outstanding municipal debt, and their judicious use appears appropriate to insure the city is properly compensated for the services it provides. We believe, however, that the City should carefully manage its relationships with the entities purchasing these liens. Many homeowners are already experiencing high interest costs, expensive and opaque surcharges and fees coupled with poor customer service as they negotiate with their mortgage servicers. The City must endeavor to insure that lien sales are transparent, fair, and appropriately applied. The recently introduced "NYC Responsible Banking Act" includes provisions that allow for public review of proposed City banking service contracts. We recommend that entities proposing to purchase liens face similar review in regards to proposed interest and fees, structure of services, customer supports and commitments to consumer protection. Members of our network have observed too many circumstances where lien sales were improperly made, where costs associated with the sales are exorbitant, and where efforts to save a home can be foiled by petty procedural obstacles.

Similarly, the proposed legislation does not speak clearly enough to those circumstances where a lien should be purchased back by the City, or where a homeowner should be given the opportunity to purchase the lien back without penalty. This is particularly true in those circumstances where a lien sale is procedurally flawed, but should also apply to sales where the homeowner clearly qualified for an exemption that was not applied. Buy backs in these circumstances should be fast-tracked, and should include provisions where interest costs, surcharges and fees are removed.

These are public service contracts, with the homeowners of the City of New York and the City itself as the customer. With the good faith and reputation of the City on the line, such contracts should be carefully designed to allow for flexibility, transparency and fairness.

cnycn

TESTIMONY BY

IMELBA RODRIGUEZ, HOMEOWNER SERVICES MANAGER

BRIDGE STREET DEVELOPMENT CORPORATION

BEFORE

JOINT TASK FORCE OF FINANCE AND COMMUNITY

DEVELOPMENT COMMITTEE'S

PUBLIC HEARING

ON WATER LIEN REFORM BILL

FEBRUARY 18, 2011

Good morning Councilman Vann, members of the Finance and Community Development Committees and distinguished guest and colleagues. My name is Imelba Rodriguez and I am the Homeowner Services Manager at Bridge Street Development Corporation. Thank you for inviting BSDC to speak today about the proposed changes to the administrative code.

Bridge Street Development Corporation's motto is "Building on Community Strength." It should then come as no surprise that BSDC's main focus is on assisting residents with creating and sustaining assets. With the recent economic downturn, we have done way too much sustaining and not enough creating. Central Brooklyn has, not only one of the highest concentrations of water liens, but also some of the highest rates of unemployment. In addition to rampant under and unemployment, our community has had to deal with years of predatory subprime lending practices. All of these factors have led to the destabilization of a disproportionate number of minority communities.

In order for New York City to overcome the economic downturn, we must have a system in place that protects the pillars of our communities; Our Senior citizens, who have inextricably contributed to making Central Brooklyn the culture and tradition rich neighborhood that it is today. Our Disabled who only seek equal access and opportunity. Our Veterans, whose sacrifices and bravery ensure freedom and opportunity for not only New Yorkers, or Americans, but for Citizens of the global community. Initiative 26-A ensures a safety net for these New Yorkers.

Recently, the director of our Senior Residence had the opportunity to help a homebound senior with her Water Lien. The sale of her lien was eminent, but the

cooperation of the Department of Environmental Protection and the Department of Finance, we were able to establish a payment plan for her and get her off of the lien sale list. Initiative 26-A, seeks to establish means based payment plans which offer longer repayment periods and caps down payments. BSDC has firsthand knowledge of how helpful this measurement will be. In addition, Bridge Street Development Corporation supports the provisions of Initiative 26A that would:

- Remove disputed charges from the lien sale list
- Require certified return receipt notification of inclusion on the lien sale list
- Expand qualifying exemption categories
- Require itemization of fees taxes and interest from servicers
- Coordinate interest rates with the corresponding Banking Commission rates for delinquent property taxes.

BSDC, for years has been at the forefront of assisting residents who were on the lien sale list for delinquent Real Estate taxes and has made an impact on reducing the number of homeowners on the list. Last year there were nearly 14,000 people on the tax-lien sale list with more than half of the list having water liens. Too many of these 14,000 homeowners were in Central Brooklyn. With the introduction of water and sewer lien, there has been a marked increase in the number of residents in jeopardy of losing their homes.

BSDC firmly believes that it is essentially important to the continued viability of our community, to assist the residents who have remained committed to their

neighborhoods and have recently struggled to keep their homes. They deserve adequate notice of the Lien Sales. They deserve to know who holds their liens if they have been sold. They deserve an itemized list of fees, taxes, and interest. They deserve a payment plan that actually gives them a chance to pay off their debt. And they deserve to know if they are eligible for any assistance programs. Initiative 26-A addresses all of these needs in a manner that protects community residents and allows New York City to recoup financial losses in a fair manner.

Thank you.

Testimony of John Grathwol

Assistant Director, NYC Office of Management and Budget
Before The NYC Council Finance/Community
Development Committees:
Intro 26-A - on the Sale of Tax Liens

February 18, 2011

Good morning Chairman Recchia and Chairman Vann, and members of the Finance and Community Development Committees. I am John Grathwol, Assistant Director of the Tax Policy, Revenue Forecasting and Economic Analysis Task Force at the NYC Office of Management and Budget (OMB). In this position I oversee forecasts of the City's $42 billion tax revenue budget. As part of that job I oversee OMB's forecasts of proceeds from the City's tax lien sale program. Thank you for inviting me to testify on behalf of OMB Director Mark Page.

Before I turn my attention to Intro 26-A, the bill before your committees today, I would like to review with you some background about the lien sale and its history.

Prior to the lien sale, the City's primary collections enforcement tool was the "in rem" program, which allowed the City to take ownership of properties in debt. Despite the fact that these properties owed on average $36,000 in back taxes when taken "in rem", the cost averaged $2.2 million per building to acquire, manage, renovate, and return to the tax rolls through a sale. In the early 1990s, the City determined that it could no longer afford the high costs associated with the "in rem" program.

The lien sale program was implemented in 1996. Prior to its inception, similar programs were established in many cities including Philadelphia and Washington D.C. The lien sale program goal has always been to reduce the costs associated with collecting

outstanding property tax, water and other municipal debt, while increasing the overall collection rates.

Since 1996, when the City Council first authorized the City to sell tax liens, the Council has passed ten local laws extending, amending or expanding the lien sale program. The authority to sell tax liens was expanded three times, in 1997, 2001 and in 2007.

Over this long, successful history the annual tax lien program has completed over 16 bond sales totaling over $1.5 billion in bond proceeds and residual payments. Since implementation, the City has received over $5 billion in additional property tax and water payments as a result of increased voluntary compliance due to the lien sale program. Most recently, in December of 2007 the Council passed legislation expanding City's authority to sell stand alone water charges on 2- and 3-family homes in Class 1 and Class 2 properties. This authority helped raise the water-only lien sale revenues to nearly $300 million over the last three years. The lien sale program has been a successful and important tool for the City's collections effort.

The strength of the lien sale program as a voluntary compliance mechanism is demonstrated by the recent results of the program. On average over the last three years about 25,000 parcels with delinquent liens were contacted on the initial noticing date, the 90 day notice. By the time the 90 day notice period had expired, only

about 5,000 liens remained to be sold to the tax lien trust. Most of the noticed parcels, about 20,000, were removed from the sale prior to the sale date. Of these, about 15,000 were removed because taxpayers paid off their debt or entered into a payment plan with the City. The remaining 5,000 were removed because of the added safeguard of the statutory exclusions, HPD discretionary exclusions and other corrective removals.

The history of the last three years also demonstrates that the protections built into the current lien program (noticing prior to the lien sale, statutory exclusions for needy taxpayers, and servicer actions after the sale) result in very few foreclosures. Of the roughly 5,000 liens sold to the trust in recent years, the vast majority pay their delinquent tax and water debt, including associated fees and penalties, and do not lose ownership of their properties. Only about 42 tax liens per year - for all property tax classes - were sold at foreclosure auctions in the last three years. This is out of the roughly 5,000 liens sold to the trust each year! This is less than one percent! Results for 1- to 3- family homes are even smaller, on average only about 10 properties per year were sold at foreclosure auctions, in the last three years.

Now by way of review, let me briefly explain how the lien sale program works with respect to property taxes. Very similar procedures apply to water liens but in the interests of time, I'll focus on property taxes.

The law allows the City to sell the right to collect outstanding property and/or water debt. This is a key point: When we sell a lien, we are not selling the property. We are selling the right to collect the debt. Properties that do not pay their tax on time are in danger of having a lien sold if they meet the following criteria:

- For 1-, 2-, and 3-family homes, residential condominiums and cooperative apartments, an owner is at risk if he or she owes more than $1,000 in property taxes that has been delinquent for at least three years;
- For commercial condos and apartment buildings, utility properties and commercial buildings, an owner is at risk if he or she owes more than $1,000 for at least one year.

As a built in safeguard, the typical homeowner will receive at least 12 quarterly notices stating their property tax past due balance, or debt, before they are entered into the lien sale process. That's four notices per year for three years, before entering the lien sale process.

Once the lien sale process starts, as a further safeguard, the City will contact affected property owners at least three additional times with targeted messages. The City Department of Finance sends delinquent owners a notice of our intent to sell a lien if they do not resolve their debt within 90 days. Finance also publishes this

list of properties in a local major daily newspaper, places ads in other daily papers and community papers across the City, and posts the list on the Finance website. Thirty days later, Finance sends a second notice to owners. Thirty days after that, Finance sends a third notice. Ten days before the sale, Finance publishes an updated list in the newspapers. In addition, Finance conducts outreach meetings at various communities across the City informing the taxpayers about the lien sale program and payment plans offered to needy taxpayers

Finally, the City sells a lien for all the properties that have failed to address their debt. This past year, of the about 25,000 properties initially noticed, roughly 5,000 had the lien actually sold.

This sale is technically a transfer of the debt to a Trust. Once the lien is sold it is no longer an asset owned by the City. Depending on the year, the Trust in turn pays the City 70 to 80 cents on the dollar up front for the debt that is sold. The Trust funds the payment to the City by selling bonds backed by the debt and value of the associated properties.

The Trust relies on lien servicers to collect on the debt and the amounts collected are used to redeem the bonds issued by the Trust. As the City no longer owns the property tax and water delinquencies, the actions of the servicers are governed by a servicing agreement between the servicers and the Trust. In

addition, The Real Property Actions and Proceedings Law of the State of New York and The Civil Practice Law and Rules of the State of New York govern the actions of the servicers with regard to foreclosure practices. Once the bonds are redeemed through the collection of the debt by the lien servicers, the City receives the remaining residual collections on the property tax and water debt.

Lien servicers are selected by the City on behalf of the Trust every several years through an RFP process. The servicers are required to submit an annual audit on agreed upon procedures that meet the City's standards of conduct. The servicers pursue outstanding debt by sending letters and starting foreclosure proceedings in court. The servicers also offer delinquent taxpayers the opportunity to enter into an installment plan. Liens accrue interest as prescribed in the local law. The lien sale is designed so the cost of collecting on the delinquent debt is borne by those who did not pay their property tax, water bills and other municipal charges, rather than by City taxpayers/water ratepayers who abide by the law. Currently, 98% of property tax is paid on time and 88% of DEP water accounts pay their balance within two billing cycles.

We prefer to collect delinquent charges without having to sell a lien. In many of these cases property owners have received as many as 15 notices, but decide to ignore their debts until enforcement action is imminent.

The overwhelming majority of owners avoid foreclosure. The lien sale program incorporates a number of safeguards to make it easy for owners to avoid having a lien sold.

- We offer payment plan agreements to all property owners who have fallen behind on their tax payments. No "needs based test" is applied. Property owners/water ratepayers can secure a payment plan at any time, from the day they receive their first bill to the day of the lien sale.

- We have worked with members of the City Council to conduct outreach sessions in each borough, giving owners a chance to meet with Finance, DEP and HPD after work hours to resolve their debt.

- Finance and DEP keep offices open late during the notice period to help customers, and HPD has joined us in an effort to protect owners against predatory lenders and to offer loan and other advice.

- We have also targeted those homeowners we believe may be eligible for the Senior Citizen Homeowner Exemption or Disabled Homeowner Exemption and sent specialized outreach letters with exemption application forms.

That's an overview of the current lien sale program.

Let me turn my remarks to the proposed legislation before your committee, Intro-26-A.

The administration welcomes the expanded authority to sell other municipal charge liens and Housing Development Finance Company (HDFC) liens incorporated in this bill. As you heard at yesterday's budget briefing, despite an improving economy, the City is still facing teacher layoffs and an across-the-board agency expense reduction program announced in November. If the additional State aid sought in the budget announced yesterday fails to materialize, further cuts will be necessary. The City badly needs additional revenue.

However, there are a number of areas where Intro-26-A needs to be improved. As there are a number of other administration officials waiting to follow my testimony, I will restrict my comments to the provisions of the bill that may interfere with the successful securitization of the tax liens.

First, we are particularly concerned about the certified mailing requirement. It is generally recognized within the debt collection industry that debtors avoid accepting certified mail from creditors. If a signed receipt of a piece of certified mail is required to make the sale of a lien to the trust valid, the legislation may open a very

wide back door to allow any delinquent taxpayer or water/sewer rate payer to avoid inclusion in the lien sale.

Second, the legislation provides that certain taxpayer' delinquencies which were initially sold to the lien trust will be deemed defective if the taxpayer was eligible for a statutory exclusion, say the Senior Citizen Home Owner Exemption for example, but was not enrolled (because the taxpayer has not yet applied). This proposed authority of the City to remove liens after their sale, based on retroactively reapplying eligibility rules for certain tax credits, may undermine the strength of the "true sale" between the City and the Trust. This may make it more difficult for the City to make a "true sale" representation at the time of the sale. Having a legal "true sale" between the City and the Trust is crucial to structuring and marketing the bonds.

Third, this bill adds significantly to the complexity of the sale criteria. It adds other municipal ERP liens and HDFC liens - property tax, water and ERP liens - which we welcome. But it applies different aging and minimum threshold criteria to each. It also redefines and increases the aging and minimum thresholds for 2- and 3-family home water liens. It does not always allow the sale of all outstanding liens, once the property qualifies for sale under the various prescribed qualification criteria. All a property's liens are not put in the sale, once the property qualifies. The result is a pool of eligible liens that is much more complex to value than under

the current law or under the administration's proposal. This is likely to have three unforeseen negative consequences:

a.) High complexity makes it harder to get a high valuation of the collateral by the rating agencies and bond investors. The likely result will be the City receiving less up-front bond proceeds from the sale of the liens to the Trust.

b.) High complexity significantly increases the likelihood of taxpayer confusion. Imagine explaining to one of your constituents the current lien sale eligibility criteria. Now imagine explaining the lien sale eligibility criteria of your proposed bill to this same constituent.

c.) Finally, high complexity will likely increase "sales-in-error" - which would raise the rate of defective liens.

Finally, let me briefly review the revenue impact of the bill. The administration lien proposal which requested a 4 year extension, asked to reduce the aging criteria for Class 1 and co-op and condo property taxes, added single family homes to the water only lien sale criteria, authorized the stand alone sale of other municipal charges-including ERP liens, and repealed the exclusion of HDFC liens from the sale, was conservatively estimated to yield $87 million in additional collections and lien sale proceeds in the first year and about $24 million per year in recurring additional funds. Intro 26-A, with no authority to sell single family water/sewer liens, no reduced aging for Class 1 and co-op/condo property tax liens, only partial authority to sell other municipal charge and HDFC liens,

reduces this estimated revenue yield to $31 million in the first year and $3 million in recurring collections and lien proceeds. The revenue left on the table by Intro-26-A is $56 million in the first year and $21 million in recurring revenues.

This estimate, however, is without factoring in the cost of the increased aging criteria, the shortened look back periods for ERP liens, the expanded minimum threshold criteria for 2- and 3-family water, ERP and HDFC liens, lowering the interest rates and the additional loopholes created by the bill, principally by the certified letter issue and the disputed charge lien removals. We have not yet had the time to develop a revenue estimate for all of the detailed components of the bill. But let us look closely at one of the loopholes. It seems clear that either the certified letter requirement or the disputed charge lien removal could potentially be large loopholes. If ten percent of taxpayers noticed with the certified letter, refuse to sign, the lien sale proceeds would decline by $4 million per year, plus the City would lose an additional $55 million per year in enhanced collections over time. And this is just lost property tax revenue alone. It be more once lost water proceeds and lost water enhanced collections were counted. The bottom line is that the loopholes and relaxations in lien eligibility criteria could, if enacted, result in a significant baseline revenue loss at a time the City needs all the revenue it can get.

Thank you for the opportunity to speak to you this morning. I look forward to working with you and your staff to improve the bill you have before you today.

Testimony of Harold M. Shultz
Senior Fellow
Citizens Housing and Planning Council
Before the the Committees on Finance and Community Development
On Intro 26-A
February 18, 2011

My name is Harold Shultz and I am Senior Fellow at the Citizens Housing and Planning Council. Thank you to Chairs Recchia and Vann for this opportunity to testify on Intro 26-A, a bill to renew and expand the authority of the City to sell tax liens to securitized trusts.

CHPC has done a review of the City's tax lien securitization program and found it remarkably successful. In our report, *The Invisible Transformation*, we noted the extent to which the tax lien securitization process has improved tax collection in New York City. A copy of the report is available at our website, www.chpcny.org.

Our report also notes the extent to which New York City's tax lien securitization process has been uniquely successful. Many such attempts around the nation have failed miserably including those in Jersey City which was an early model for New York City's process.

We believe an important reason for that is the extent to which New York City makes sure that the liens that it sells are only those that have actual value. In this respect both the statute, which exempts distressed property from sale, and the work of HPD, which utilizes its discretionary authority to prevent worthless liens from being sold, have worked to make the NYC process uniquely effective.

Intro 26-A renews and expands the authority of the City to securitize tax liens. We support this expansion and this bill. However for any possible amendments and future legislation we want to emphasize to the committees that HPD's discretionary authority to remove bad liens from the tax lien securitization, is in our view, vital to the success of this program. The retention of that authority should always be an objective of any legislation considered by the Council.

Thank you.

NEW YORK CITY COUNCIL

Joint Hearing of
Community Development and
Finance Committees

February 19, 2011

Testimony of Colvin W. Grannum on behalf of Bedford Stuyvesant Restoration Corporation in support of Proposed Int. No. 28-A, a Local Law to amend the administrative code of the City of New York in relation to the sale of water liens.

My name is Colvin W. Grannum. I am representing Bedford Stuyvesant Restoration Corporation (Restoration), the nation's first community development corporation. Restoration partners with residents and businesses to improve the quality of life of the residents of Central Brooklyn by fostering economic self-sufficiency, enhancing family stability and growth, promoting the arts and culture, and transforming the neighborhood into a safe, vibrant place to live, work and visit.

Restoration supports the provisions of proposed Int. No. 26A that are intended to improve the water lien sales law by injecting transparency, evenhandedness, fairness and a recognition of the severity of the current economic climate. The current economic climate confronts New Yorkers with heavy financial burdens. Working-class and middle-income families who own homes or rental properties in New York City are besieged by ever increasing costs of property ownership including charges for water, insurance, energy and

maintenance, not to mention rising non-housing costs related to other essentials of living such as food and transportation.

Predominantly working-class communities like Bedford Stuyvesant were hard hit by the Great Recession and continue to suffer from the effects of the recession. Such communities will likely bear the brunt of municipal lien sales even though they are already being severely tested. For example, the most recent "State of New York City's Housing and Neighborhoods 2009," published by Furman Center for Real Estate and Urban Policy reports the conditions in Community Planning District 3 in Brooklyn, which largely consists of Bedford Stuyvesant, compared to other Community Planning Districts:

- Homeownership rate below the city-wide average;
- Housing price appreciation below the city-wide average;
- Home values declined by 30%;
- The rate of serious housing code violations in rental properties above the city-wide average;
- Third highest percentage of residential properties delinquent on real estate tax for greater than one year;
- Second highest percentage of high cost refinance loans;
- Sixth highest percentage of high cost home purchase loans;
- Second highest rate of notices of foreclosure for one- to four-family properties; and
- An unemployment rate above the city-wide average.

Given the dire circumstances facing families in Bedford Stuyvesant and other comparable communities across New York City, the City Council has justifiably incorporated into the lien sales law provisions affording property owners a process that is more transparent, evenhanded and fair. The City Council is wise to resist the enactment of laws that will further destabilize economically fragile households and communities.

Accordingly, Restoration supports the City Council proposal to expand the qualifying exemptions to include the veteran exemption and Enhanced STAR. We also support the requirement that the exemptions be extended to all eligible individuals, not just those who have successfully applied. Those qualifying for exemptions often are not knowledgeable of their rights or limited in their ability to take advantage of their rights. The Council's focus on eligibility will ensue that such citizens are not disadvantaged by the very status that affords them entitlement.

The Council's proposals calling for the establishment of a formal dispute resolution process and means-based payment plans will also add transparency and evenhandedness to the process. Small property owners are frequently deeply challenged in navigating the current process. Oftentimes payment plans were difficult to negotiate because of the amount of upfront cash required and the limited repayment period. In addition, the absence of a formal dispute resolution process unfairly and improperly subjects some property owners to lien sales and significant unnecessary expenditures to remove their properties from the lien sale list or challenge recovery on the defective lien.

The onerous interest rates, fees and charges authorized by the lien sales process are antithetical to the public interest. While the rates may have been

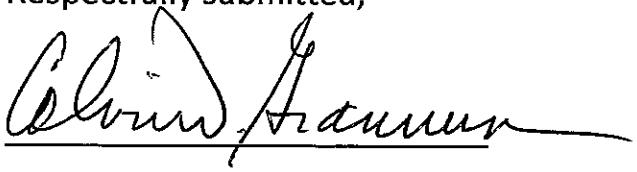
intended to coerce payment, many property owners fail to pay because they don't have the resources, not because they are choosing to withhold payment. The exorbitant interest rates and charges simply add burdens and fail to achieve any useful purpose. The City Council's proposal to require itemization of taxes, interest and fees on the bills of servicers adds much needed transparency.

Some of the omissions from and additions to Proposed Int. 26-A are objectionable. Specifically, the bill should treat owner-occupied four-family homes the same as owner-occupied two- and three-family homes, but fails to do so. In Bedford Stuyvesant, there is a substantial stock of owner-occupied, four-family homes which, for all intents and purposes, are no different than occupied two- and three-family homes. Owner-occupants of four-family homes are often working class and moderate-income households who use the rental income to cover the expenses of ownership rather than earn commercial profits. These properties frequently are the same size as owner-occupied one-, two- and three-family properties and function exactly the same. The owners of such properties should enjoy the same protections as owner-occupied residences with fewer units.

We also object to the new emergency repair charge liens provision applicable to housing development fund corporations (HDFCs). HDFCs generally provide affordable housing to low income New Yorkers. Many HDFCs are experiencing difficult operating environments due to rising costs and aging facilities. Lien sales against these properties are likely to result in a diminution of services to the residents of the properties who in all likelihood are already living in less than desirable conditions.

Overall, Restoration is very supportive of Proposed Int. 26A, as it reflects the Council's recognition of the challenges facing homeowners who are senior citizens, and otherwise facing challenging economic circumstances. Proposed Int. 26-A also reflects the Council's understanding that most homeowners are law abiding and do not intend to walk away from their obligations as property owners in New York City. Property owners in New York City are in need of more understanding and assistance, not more threats and burdens.

Respectfully submitted,



Colvin W. Grannum, President
Bedford Stuyvesant Restoration
Corporation

Bronx Legal Services NYC

Testimony of Legal Services NYC – Bronx Before a Joint Oversight Committee Hearing on Int. No. 26-A To Amend the Administrative Code of the City of New York In Relation to the Sale of Water Liens Held by the New York City Council Committee on Finance and Community Development February 18, 2010

Good Morning, members of the Finance and Community Development Committees. My name is Justin Haines and I am the Director of the Foreclosure Prevention Unit of Legal Services NYC – Bronx office. I thank you for this opportunity to testify before the committee on this important issue affecting many low and moderate income New Yorkers. I would particularly like to thank Chairman Vann for his leadership on this issue.

Legal Services NYC - Bronx is an integral partner of the largest provider of free civil legal services to the poor in the nation. Our Bronx-based office is a crucial part of the legal services delivery system in New York City, and we are the largest single provider in the Legal Services NYC system. We provide a broad range of civil legal services and established a foreclosure defense unit to address the unmet needs of Bronx homeowners trying to preserve homeownership and combat predatory lending. The needs of Bronx borrowers facing foreclosure are particularly dire – and the crisis is further compounded by the fact our office is one of only two Bronx-based providers of free foreclosure defense.

While it is commendable that DEP has created new programs such as the Water Debt Assistance Program (WDAP) and removed liens from the sale in cases where a foreclosure action is pending because a *lis pendens* has been filed, my colleagues and I are here because the current operation of lien sale is seriously flawed and disproportionately affects some of the most vulnerable New Yorkers. We are society's safety net and have assisted numerous disabled and senior homeowners, who despite having satisfied their mortgages, did not know they are eligible for exemptions and now face foreclosures as a result of the unpaid charges that have doubled once foreclosure was initiated.

Specifically, I would like to speak to the inadequacies of the current lien sale notice provisions and endorse the proposed changes to the Administrative Code that would require two lien sale notice mailings, a post sale notice informing homeowners of a Department liaison to the new lien servicer, and quarterly mailings to delinquent homeowners about the various exemptions that would prevent their charges from being sold in the lien sale.

Legal Services NYC- Bronx
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Phone: 718-928-3700 Fax: 718-402-7586 (1st floor) 718-402-7585 (2nd floor) 718-402-7566 (3rd floor) www.Bronx.LegalServices.NYC.org
Jill Siegel, Interim Project Director **Ellen P. Chapnick,** Board Chair

The current notice requirement for the lien sale in the Administrative Code Section 11-320 only requires publication in two newspapers at 90 days and 10 days prior to sale and one mailing of notice by first class mail 30 days prior to sale. The first publication occurs in a paper of general circulation in the city. The second publication takes place in a newspaper designated by the Commissioner of Finance. The liens are listed in the publication by block and lot and state the amount of tax or water lien owed. Because only one notice is sent by regular first class mail, DEP has no guarantee that the notice has been received by the homeowner. There is no current obligation under the Administrative Code for DEP to mention in the publication or mailed notice that homeowners may be entitled to a pre-sale payment plan or that eligible senior citizens, veterans and disabled homeowners may be exempted from the sale. In my experience, homeowners are still not aware that there unpaid water charges alone can be sold as liens resulting in foreclosure despite three years of their inclusion in the lien sale.

It is fundamental concept of American law embodied in both the United States and New York Constitutions that no person shall be deprived of life, liberty, and property without due process of law. Here we are talking about the City taking action by selling unpaid taxes and water charges to a trust whose main collection mechanism of foreclosure will result in the loss of property. The possible loss of a property interest mandates improved notice procedures for the lien sale to ensure due process and fairness.

Due process is comprised of both a notice component and a right to a fair hearing on the matter. The current Code provides such minimal notice that it barely comports with the notion of due process. First, it is questionable given the modern diverse media landscape and the diverse populations of New York City that newspapers remain the best forum to reach the public. Plus there are really no guarantees that the homeowner was actually put on notice of the sale. Courts have held that notice by publication although acceptable, is the weakest form of notice. Second, the current mailed notice fails to inform the homeowner of their rights and options in trying to avoid the lien sale. Third, the time frames of the current notice provisions are too short and should be increased to allow for more resolution pre-sale.

The proposed amendments create a meaningful notice requirement that will inform the homeowner not only of the charges owed, but that the homeowner has options that can save his or her home. The proposed amended bill achieves this by:

1. Increasing the pre-sale notices from one to two;
2. Informing the homeowner of the tax lien sale deadlines and what could happen once the lien is sold;
3. Conspicuously informing the homeowner that pre-sale payment plans can avoid the lien sale and that eligible tax credits and exemption may also exempt a homeowner from the lien sale;
4. Increasing the notice period from 90 to 120 days giving the homeowner ample opportunity to resolve the delinquency or to apply for exemptions prior to sale;

5. Requiring the second notice to be sent by certified mail so that the respective departments can have more assurances that the homeowner was actually reached and the intended information was delivered;

6. Informing post-lien sale homeowners of department contacts that can help them resolve any inappropriate sale or to liaison with the new servicer after sale but prior to foreclosure; and

7. On a quarterly basis, informing all class 1 property owners of exemption programs, payment plans and contacts that can assist in resolving their issues prior to the lien sale.

In the last year, I have personally assisted three seniors and one disabled person to resolve their arrears after foreclosure actions were initiated. Since I have seen the doubling of the delinquent charges once the default interest rate is applied and attorney fees incurred, it is critical to reach homeowners to find a solution before the foreclosure is filed so that they can resolve their arrears on their fixed or limited incomes.

The common thread amongst their stories was that they did not know they were eligible for the senior and disabled exemptions that could have prevented their lien from being sold. We assisted them with application for exemptions and they were approved, however, there was an annual deadline in March by which they had to apply. Under the current scheme, this meant that if you saw them in April, their application would not protect them from the next sale in June but instead the next lien sale a year later. Their lack of information meant that they lost out on over a year's worth of reduced taxes and remained eligible for the lien sale. Under the proposed scheme, homeowners would be informed of their options, and have time to apply for exemption prior to the sale.

The proposed changes greatly enhance communication between homeowners and the respective departments. These changes increase the chance of collection for DEP while avoiding the equity-stripping, charge-doubling, home-threatening tax and water lien foreclosures.

While the proposed amendments make great strides in protecting the rights of homeowners, there could still be improvements regarding notice provisions. First, if the department does not receive a return receipt from the certified mailing, then further attempts at contact should be made before entering a homeowner into the lien sale or perhaps removing them from the lien sale altogether. Second, although it is not specified in the proposed amendments, the notices should be mandated to go out in at least English and Spanish at a minimum. Several of the senior citizens I assisted were mono-lingual Spanish speaking and reading and their limited English proficiency created further barriers in their ability to apply for exemptions and to understand the consequences of not making a pre-sale payment plans.

Thank you again for the opportunity to testify before the Committee.

Respectfully submitted,

Justin L. Haines
Director, Foreclosure Prevention Unit
Legal Services NYC- Bronx
579 Courtlandt Avenue
Bronx, NY 10451
718-928-2894
JHaines@bx.ls-nyc.org

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 26-A Res. No. _____

☐ in favor ☐ in opposition

Date: 2-18-2010

(PLEASE PRINT)

Name: John Grathwol

Address: 75 Park Place NY NY 10007

I represent: NYC-OMB

Address: 75 Park Place NY NY 10007

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 26A Res. No. _____

☐ in favor ☐ in opposition

Date: Feb. 18, 2011

(PLEASE PRINT)

Name: Mary Ann Rothman

Address: Council of New York Cooperatives

I represent: & Condominiums

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 26A Res. No. _____

☑ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Judith Goldiner

Address: _____

I represent: Legal Aid Society

Address: _____

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THE CITY OF NEW YORK

Appearance Card

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☑ in favor ☐ in opposition

Date: 2/18/2011

(PLEASE PRINT)

Name: Colvin W. Grannum

Address: 1368 Fulton Street Bklyn

I represent: Bedford Stuyvesant Restoration

Address: 1368 Fulton

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Appearance Card

2/18/11

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Imelda Rodriguez

Address: _____

I represent: Bridgestreet Development Corp

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 002 Ce Res. No. _____

☒ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Michael Hickey

Address: 74 Trinity Pl Suite 1402 NY NY 10006

I represent: Center for NYC Neighborhoods

Address: same

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Appearance Card

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☐ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Sarah Hovde

Address: 501 7th Ave NYC 10018

I represent: LISC NYC

Address: _____

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Appearance Card

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☑ in favor ☐ in opposition

Date: 2/18/2011

(PLEASE PRINT)

Name: Bonita Dowling

Address: 1224 Bedford Avenue

I represent: Pratt Area Community Council

Address: 201 DeKalb Ave 11205

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Appearance Card

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☐ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Harry Epstein

Address: 122 East 42nd

I represent: Urban Justice Center

Address: 123 William Street

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☒ in opposition

Date: 2-17-2011

(PLEASE PRINT)

Name: Moses Gates

Address: 50 Broad St.

I represent: ANHD

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Catherine Isobe - Bed Stuy Legal Services

Address: B

I represent: Bedford Stuyvesant Community Legal Services

Address: 1360 Fulton St. Brooklyn NY 11216

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Appearance Card

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☐ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: April Tyler

Address: 1580 Amsterdam Ave

I represent: _____

Address: _____

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THE CITY OF NEW YORK

Appearance Card

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☑ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Alexis Iwanisziw

Address: [illegible]

I represent: NEDAP

Address: _____

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THE CITY OF NEW YORK

Appearance Card

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☑ in favor ☐ in opposition

Date: 2-18-11

(PLEASE PRINT)

Name: Aisha Baruni

Address: _____

I represent: Queens Legal Services

Address: _____

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Appearance Card

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☑ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Justin Holmes

Address: [illegible]

I represent: Legal Services NYC - Bronx

Address: _____

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Appearance Card

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☑ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Oda Friedheim

Address: _____

I represent: Legal Aid Society

Address: _____

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Appearance Card

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☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Laurie Izutsu

Address: _____

I represent: South Brooklyn Legal Services

Address: _____

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Appearance Card

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☐ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Rafael Cestero, Commissioner

Address: 100 Gold Street

I represent: HPD

Address: _____

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 2.18.11

(PLEASE PRINT)

Name: DAVID FRANCE FINANCE COMMISSIONER

Address: _____

I represent: DEPT OF FINANCE

Address: _____

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THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Caswell F. Holloway

Address: 59-17 Junction Blvd, Flushing

I represent: DEP

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 26-A Res. No. _____

☑ in favor ☐ in opposition

Date: 2/18/2011

(PLEASE PRINT)

Name: Harold M. Shultz

Address: 42 Bway

I represent: Citizens Housing & Planning Council

Address: 42 Broadway

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