



D I S T R I C T O F C O L U M B I A B A R
Antitrust and Consumer Law Section

D.C. BAR ANTITRUST AND CONSUMER LAW SECTION STATEMENT OF CONCERN ABOUT
DISTRICT OF COLUMBIA GOVERNMENT TAX LIEN FORECLOSURE PROCEDURES

The views expressed herein represent only those of the Antitrust and Consumer Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.¹

Comment to be published and delivered to Hon. Vincent C. Gray, Mayor, District of Columbia; Hon. Jack Evans, Chair, D.C. Council Committee on Finance & Revenue; Members of the Council of the District of Columbia; Natwar Gandhi, Chief Financial Officer, District of Columbia; Nicholas A. Majett, Director, Department of Consumer and Regulatory Affairs; Irvin B. Nathan, Attorney General, District of Columbia; John M. Thompson, Executive Director, District of Columbia Office on Aging.

The D.C. Bar Antitrust and Consumer Law Section Steering Committee has reviewed the attached letter requesting that the D.C. Council take action to address the current perceived inequities in the District's real property tax foreclosure laws. We agree with AT HOME that it is inequitable for people who owe very little in taxes to lose their homes. Even if they don't lose their homes through such foreclosures, it is inequitable for people who owe very little in taxes to end up owing the purchasers at the tax sales many thousands of dollars in attorney's fees in order to straighten out their predicament. This may affect seniors who have paid off their mortgages and either can't afford the taxes, or don't understand their obligations to pay real property taxes. (People with mortgages would usually have these payments made through their payments to their lenders.) We also think that valuable government resources should not be spent on foreclosures where tax liabilities are very small.

The Steering Committee supports the proposals of the attached letter, particularly that District government leaders investigate and consider the inequities alleged to occur concerning tax

¹ The Steering Committee of the Section voted unanimously, by a vote of 9-0, on May 11, 2012, to adopt this public statement.

foreclosures where tax liabilities are relatively low, and consider appropriate proposals for legislative correction. While our Steering Committee includes people with first-hand awareness of tax foreclosure proceedings they considered inequitable, we expect that the first step of government authorities will be to investigate the allegations.

**AT HOME –
THE ALLIANCE TO HELP OWNERS MAINTAIN EQUITY
c/o Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004**

April 19, 2012

VIA HAND DELIVERY

Hon. Vincent C. Gray
Mayor
District of Columbia
1350 Pennsylvania Avenue, NW, Suite 316
Washington, DC 20004

Hon. Jack Evans
Chair, Committee on Finance & Revenue
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 106
Washington, DC 20004

Re: District of Columbia Real Property Tax Sale System

Dear Gentlemen:

AT HOME – the Alliance to Help Owners Maintain Equity writes to highlight several flaws in the District of Columbia’s current real property tax sale system. We ask for your consideration of these flaws and request an opportunity to work with you in addressing them in a manner that not only ensures fair treatment for homeowners, but also alleviates the resulting heavy flow of litigation and adverse impacts on District government resources.

The current tax sale system deprives affected homeowners, many of whom are elderly or economically disadvantaged, of fair treatment, including constitutional protections.

A primary flaw in the current tax sale system results from the District government auctioning homes at tax sales even when property values are exponentially greater than the delinquent taxes (which may be as little as \$500). If a homeowner is unable to redeem the home following the tax sale, the homeowner loses his/her home and all of the accumulated equity.

Additionally, pre-sale notices to homeowners are inadequate, homeowners seeking to avoid a tax sale face significant challenges, post-sale notices are limited and delayed, and the costs of redemption borne by homeowners are disproportionate to the back taxes due. A more complete description of these flaws is attached.

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The current tax sale system's problems cause economic hardship for homeowners, displace families (many of whom have lived in their homes for multiple generations) and burden communities already struggling to make ends meet.

As a result of these issues, thousands of tax sale foreclosure cases are in litigation before the DC Superior Court at all times. These cases drain resources of the judiciary and the other District government agencies involved, including the Office of Tax and Revenue (OTR), the Department of Consumer and Regulatory Affairs (DCRA) and the Office of the Attorney General (OAG).

AT HOME represents an alliance of leading community service and other organizations, including the Legal Counsel for the Elderly and Crowell & Moring LLP. AT HOME looks forward to a constructive dialogue with you, Mayor Gray and Councilmember Evans, as well as other Councilmembers and representatives of the District government in an effort to reform the tax sale system through corrective legislation and regulatory action.

Representatives of AT HOME will contact your offices to seek meetings to discuss our ideas. We believe that there is a real opportunity to identify and implement practical solutions which balance the District's legitimate interest in collecting unpaid taxes with the protections elderly and economically disadvantaged homeowners deserve.

We look forward to your partnership in this important cause and thank you in advance for your time and attention.

If you have any questions regarding this matter, please feel free to reach out to Laura Newland at Legal Counsel for the Elderly, (202) 434-2281 or newland@aarp.org.

With Best Regards,

Lead Sponsors:

Crowell & Moring LLP

Legal Counsel for the Elderly

Co-Sponsors:

AARP District of Columbia

Boies, Schiller & Flexner LLP (pro bono
counsel in foreclosure cases)

Bread for the City

Housing Counseling Services

The Legal Aid Society of DC

Manna Mortgage Corporation

Miller & Chevalier Chartered (pro bono
counsel in foreclosure cases)

Morgan, Lewis & Bockius LLP (co-staffs
DC Bar Pro Bono Program's Tax Sale
Resource Center)

Susan Bennett, Professor of Law, American
University Washington College of Law
Civil Litigation Clinic (in her individual
capacity)

University Legal Services

Washington Legal Clinic for the Homeless

cc: Members of the Council of the District of Columbia
Natwar M. Gandhi, Chief Financial Officer, District of Columbia
Nicholas A. Majett, Director, Department of Consumer and Regulatory Affairs
Irvin B. Nathan, Attorney General, District of Columbia
John M. Thompson, Executive Director, Office on Aging

Major Problems with the District's Tax Sale System

Loss of Equity

Homeowners may lose all of their long built-up equity in a property with the tax sale purchaser enjoying an unjust windfall. There is no incentive in the current process to assure that homeowners receive adequate compensation for the loss of this equity, whether through amounts paid at a tax sale or upon disposition of the property following foreclosure. DC law is more punitive to homeowners in this regard than the law of many other jurisdictions.

Inadequate Pre-Sale Notice

DC law provides for only one pre-sale notice of tax delinquency -- sent by mail to the homeowner's last known address. The contents of the notice do not adequately explain the process of ramification of a tax sale or inform homeowners of opportunities to avoid the sale. Not only is the single notice inadequate, but DC law also provides that OTR's failure to provide notice does not invalidate a tax sale.

Difficulties in Avoiding Tax Sales

Properties may be sold at the tax sale as a result of delinquent taxes or as a result of outstanding utility bills. OTR, however, cannot accurately and easily identify the total amount homeowners who learn of a potential tax sale must pay to bring themselves current. The District's complex system of property reclassification and application of exemptions from real property taxes exacerbates the difficulties property owners must overcome. This collection of issues results in a significant percentage of the pending tax sale litigation.

No Post-Sale Notice

Once a tax sale has occurred, homeowners receive notice of the sale only after the tax sale purchaser files suit to foreclose on the property and serves process. Service of process may not occur until many months after the lawsuit is initiated (which itself occurs only many months after the tax sale). By the time process is served, the costs the homeowner is required to pay to redeem increase dramatically.

Exorbitant Redemption Costs

To redeem a property, the homeowner must reimburse the tax sale purchaser's expenses, including attorney's fees. These fees often greatly exceed the delinquent taxes. The purchaser's expenses, mostly comprised of attorney's fees, are often prohibitive for homeowners and make it exceedingly difficult, if not impossible, for elderly and disadvantaged homeowners to redeem their homes. Use of funds to pay the purchaser's expenses deprives homeowners living on fixed or limited incomes of funds needed for other necessities, in turn burdening family members and other community resources.



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List of additional distributees follows.

FROM: Candace Smith-Tucker, Director of Sections 

DATE: May 15, 2012

RE: **PUBLIC STATEMENT - Sponsored by the Antitrust and Consumer Law Section**
STATEMENT OF CONCERN ABOUT DISTRICT OF COLUMBIA GOVERNMENT
TAX LIEN FORECLOSURE PROCEDURES

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