



Housing Court Law 826

Collection of Housing Judgments: Buffalo's Practice Compared to Other Municipalities

Memorandum

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¹EXECUTIVE SUMMARY

Each year the City of Buffalo files thousands of dollars in housing violation fines as judgments at the Erie County Clerk's Office.¹ Unfortunately, much of this money goes uncollected, in part due to the limited steps the City takes to collect outstanding fines. The problem the City faces in pursuing collections is a lack of resources and judgment proof defendants.²

Some options that I feel the City of Buffalo should consider in their collection of judgments include using warrant blocks on defendants' licenses. Cleveland, Ohio currently uses warrant blocks and has found it to be successful since people are so dependent on their cars.³ Another option that the City may pursue is the expansion of Buffalo's current rental registry system. The new system would require all out-of-county property owners, not just those who own rental properties to register. This would make providing notice and service of process much easier and perhaps alleviate some of the difficulties in pursuing foreign jurisdiction. Here we will look at how the City of Buffalo currently collects fines and how comparable cities collect fines in their jurisdictions.

COLLECTION OF HOUSING JUDGMENTS IN BUFFALO, NEW YORK

The goal of Buffalo's Housing Court is to help owners solve code violation problems and increase the quality of life for all those involved.⁴ The court first looks at what can be done to help a property owner bring a home up to code and will work with the owner for solutions before imposing a fine.⁵ As a result, filing a judgment with the Erie County Clerk's Office is often a

last resort, used when property owners do not show up to court or show total disregard and refuse to take action.⁶

A large number of the judgments filed are against property owners that live out-of-county or out-of-state.⁷ In these cases, before hearing the evidence, the court is required to take affirmative steps to locate the defendant property owner's most recent address and give him/her sufficient notice of the proceedings.⁸ The court gives notice by mailing letters to the defendant, providing him/her with the trial date and charges.⁹ These letters also include the defendant's right to an attorney, right to be present at trial, the ways in which these rights may be waived and the consequences of not appearing.¹⁰ Where the defendant has waived his/her rights or the letters are returned to the court, the court can still proceed with a trial *in absentia* if reasonable measures were taken to locate the defendant.¹¹

The court is given much discretion as to what remedy or penalty it would like to employ, Section 204 of the Housing Court Act states,

Regardless of the relief originally sought by a party, the court may recommend or employ any remedy, program, procedure or sanction authorized by federal, state or local law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote public interest.

Housing violation proceedings are quasi-criminal, allowing the court to impose a sentence up to a \$1,500.00 fine and/or 15 days in jail for each City or State Code violation, and a sentence up to a \$500.00 fine and/or 15 days in jail for each Erie County Sanitary Code violation.¹² Generally, the court sets a lower penalty because its goal is to work with the people to solve their housing problems.¹³ Housing violation fines do not increase as time goes on, since they are criminal fines.¹⁴ In order for the amount of the fine to change, the parties have to go back to court.¹⁵

It is not only individuals that pay the price for not keeping their properties up to code, but corporate defendants are also held accountable for their actions or inactions in many cases. In these cases, the court often sends letters giving notice of the charges relating to multiple properties.¹⁶ Hearing dates are included, and, if applicable the transcripts of unpaid fines that have been previously filed as judgments at the Erie County Clerk's Office.¹⁷ The corporation is made aware that these cases may all be called together if they decide to take action or address them.¹⁸ The court cites §204 of the Housing Court Act in addition to New York Criminal Procedure Law §600.20 which allows the court to enter a guilty plea and fine upon the nonappearance of a corporate defendant.¹⁹

Once a sentence has been given and it is apparent the defendant is unwilling to work with the court to pay the fine or make the repairs, a transcript of judgment is filed at the Erie County Clerk's Office.²⁰ When a housing violation fine is filed, a lien is created.²¹ The lien attaches to the person and not the property and will therefore come up during any title search involving the defendant, even if the defendant were to try to sell an unrelated property.²² In order for the defendant to sell, he must then pay the lien.²³

The Erie County Clerk takes no action on the collection of the judgments for it is the responsibility of the City's Corporation Counsel to initiate collection of housing and demolition judgments.²⁴ Currently, the City relies mainly on liens getting paid when defendants sell properties. The only other action taken is when defendants initiate contact regarding paying an outstanding fine.²⁵ In these cases, payment plans as well as a plan to address the violations are often arranged.²⁶

HOW BUFFALO, NEW YORK COLLECTS OTHER FINES

The City of Buffalo's Collections Department is responsible for collecting all other outstanding fines and judgments, not including taxes, which are dealt with by the City Assessment and Tax Department.²⁷ When the City Collections Department receives a fine to pursue, the first thing it does is determine if it has a good lead.²⁸ A good lead means having an accurate address and social security number for the person that owes the fine.²⁹ This is done through the use of Accurint and pulling of DMV records.³⁰ Good leads are pursued through a series of letters mailed to the person's last known address.³¹ When a debt becomes 90 days past due, the City sends it to an outside collection agency.³² If the outside collection agency has difficulty collecting on a fine over \$500 it will send it back to the City's Collection Department so that they can take another look at it.³³ What often happens is the Collection Dept. will look at the fine again and then send it back to the outside collection agency.³⁴ If a debt has not been collected after two years, the outside collection agency will deem it uncollectable.³⁵

Outside collection agencies are not used in the collection of housing and demolition judgments because a majority if not all of the judgments are over \$1000.³⁶ The City has found that outside collection agencies have difficulty collecting on fines over \$500 and therefore it is not worth spending the resources for a minimal return.³⁷

Some other collection tools at the City's disposal include income execution and cash withdrawal from bank accounts.³⁸ To use income execution, the City must provide the Clerk with the defendant's name and work address, and the Clerk will prepare the papers for an additional fee. The judgment will then be paid out of the defendant's earnings.³⁹ A similar thing will happen if the City provides the clerk with the defendant's name and bank account information.⁴⁰

These methods are sometimes used to collect on parking violations and other smaller fines.⁴¹ They are not currently used to collect housing judgments because often this information is not available and because the City lacks resources.⁴² Also, since many housing and demolition judgments are thousands of dollars, defendants often do not earn enough wages or have large enough bank accounts to garnish.⁴³

If the defendant is local, the City may request that the Marshalls collect against them.⁴⁴ The City Collections Department and Corporation Counsel have an agreement with the Marshalls in which they will accept administrative judgments and the fee for service will be waived.⁴⁵ If the defendant does not reside locally, the City has the ability to file judgments in foreign jurisdictions.⁴⁶ To do this they must file the judgment with the Erie County Clerk's Office and then pay an additional \$5.00 fee for the Clerk to prepare a transcript of judgment to be filed in another county.⁴⁷ Besides the transcript of judgment, each foreign jurisdiction has different requirements.⁴⁸

Buffalo Housing Court defendants reside across the country and the world and it would take the City time and resources to determine the proper procedures for each jurisdiction.⁴⁹ As a result, foreign jurisdiction is not actively pursued. If given increased resources and personnel, this is a collection option Corporation Counsel has expressed it would like to pursue.⁵⁰

Parking Violations

The initial ticket is left on the vehicle.⁵¹ If this is not responded to in three weeks, a bill will be mailed to the person's home address by Buffalo's Parking Violation Bureau.⁵² Three bills will be mailed out and if still not paid after six months, a pending suspension notice will be sent to the address.⁵³ The file is then sent to the DMV and they will send a notice stating that the

person's registration has been suspended.⁵⁴ If this still doesn't get the individual to pay their fines, the DMV will hand over the file to the City's Collection Department.⁵⁵ City Collections does not make phone calls, but will send the individual several more letters, and, after a year of noncompliance, the City will send the file to an outside collection agency.⁵⁶

City Clean Ups

If a defendant owns a vacant lot and lets their property get bad enough that the City must come in and clean the lot or cut the grass, the expenses (fines/fees) incurred will be added to the property tax.⁵⁷ These are the only fines that currently roll over to the tax assessments.⁵⁸

WAYS COMPARABLE NYS CITIES COLLECT HOUSING JUDGMENTS

Rochester, NY

Rochester's Housing Court is much like Buffalo's in that it works with property owners to bring homes up to code, by setting a schedule and identifying resources an owner can use.⁵⁹ Once all positive avenues are exhausted, a judgment is entered, and a letter is sent to the owner with a list of the violations they are guilty of.⁶⁰ Attached to the letter is a formal agreement that the owner must sign.⁶¹ This agreement is a schedule of dates in which the owner must fix the violations by.⁶² If the owner does not sign or respond to the letter, after six weeks Code Enforcement Officers (inspectors) will start ticketing.⁶³ They follow a fine schedule determined by New York State, for which the fine is determined by the severity of the violation.⁶⁴ A "high" violation is \$150, "medium" is \$100 and "low" is \$50.00.⁶⁵ These fines can double or triple with subsequent tickets if the violation is not taken care of.⁶⁶ This ticketing system is similar to how Buffalo Housing Inspectors ticket for uncut grass.

After a year, if the violations are still not corrected and fines not paid, the fines will be added to the owner's property tax.⁶⁷ If the owner defaults on their taxes, the city will then take the property in foreclosure.⁶⁸ This usually is a two year process if followed to fruition.⁶⁹

Binghamton, NY

In Binghamton, it is the court system that initiates collection after a judgment.⁷⁰ Housing violation proceedings are criminal proceedings and if a fine is not paid, a bench warrant is issued for the defendant's arrest.⁷¹ If picked up on a bench warrant the defendant may spend the night in jail.⁷² A fine is not given unless the defendant appears in court to ensure due process.⁷³ Typical housing violation fines range between \$150 and \$250.⁷⁴

For defendants that live out-of-state, a notice of violation is mailed as well as a criminal summons.⁷⁵ Binghamton recently passed a local law that requires rental property owners that live out-of-county to register their properties and to appoint a property manager who then acts as the owner's agent and can be served with legal papers.⁷⁶ There is no fee to register, and the forms are available on the City of Binghamton's website.⁷⁷ Property owners found guilty of failing to register may be charged with up to a \$500 fine for a first time offense.⁷⁸

As in Buffalo, unpaid fines become a lien on the property⁷⁹, preventing the owner from selling a property with good title unless the fine is taken care of. The only fines that Binghamton rolls onto taxes are those incurred when the city is required to do repairs or demolition.⁸⁰ Another similarity with Buffalo is that collections agencies are not used to collect housing violation fines.⁸¹

Albany, NY

Albany is another city that treats housing violations as quasi-criminal.⁸² When a fine is not paid, the court has a few options available to it.⁸³ A receiver of rent may be set up or a bench warrant issued.⁸⁴ The court also has the authority to issue a default judgment if the defendant does not appear in court.⁸⁵ It is the responsibility of the city's law office to pursue collections.⁸⁶ Often a lien is placed on the property and in many cases the city ends up collecting on it from the county after a tax foreclosure.⁸⁷

Generally, when Albany's law office is collecting on judgments they will send a notice stating that the defendant has 10 days to respond and 10 days to pay.⁸⁸ If the defendant contacts the department and is unable to pay the whole amount a payment plan may be set up.⁸⁹ In addition to notices, phone calls are also made to the defendant by a city collections attorney.⁹⁰ When this does not work, a subpoena will be issued.⁹¹ The subpoena will require the defendant to provide their bank information, allowing the city to put a restraining order on that person's bank accounts, essentially freezing their assets until the fine is paid.⁹² This has been found to be very effective.⁹³

WAYS CITIES IN OTHER STATES COLLECT HOUSING JUDGMENTS

Cleveland, OH

In Cleveland, once a fine is rendered, judgments are filed with the Clerk of Courts.⁹⁴ One method used to collect on judgments is the issuance of a warrant block that is placed on the defendant's license.⁹⁵ This prevents the defendant from being able to get a new license or plates for their car. In effect, a defendant is unable to use any of the services at the DMV until their fine is paid.⁹⁶ Notices are mailed to the defendant informing him/her of the judgment and warrant block placed on their license.⁹⁷

Another way in which the fine may be collected is by converting the criminal judgment into a civil judgment.⁹⁸ The judgment is then given to an attorney licensed with the Clerk of Courts to proceed with collections.⁹⁹ Judgments made against corporations are sent straight to a collections attorney.¹⁰⁰

Pittsburgh, PA

The Pittsburgh Municipal Housing Court Division follows Pennsylvania Criminal Procedures in the collection of fines.¹⁰¹ When a defendant defaults on a fine they send a notice which gives defendants 10 days to pay the fine.¹⁰² After 10 days a warrant may be put out for the defendant's arrest.¹⁰³ In addition to issuing arrest warrants Pittsburgh uses collection agencies to collect on judgments.¹⁰⁴

BUFFALO'S PRACTICES COMPARED TO THE OTHER MUNICIPALITIES

A common practice of New York State municipalities in the collection of housing violation judgments is the placing of liens on the defendants' property. Buffalo, Binghamton and Albany all depend heavily on liens for the collection of their judgments.

Rochester differs from the other NYS municipalities because it rolls unpaid fines onto the property tax. This is a method that the City of Buffalo practiced about five or six years ago.¹⁰⁵ The City found that many defendants would default on their taxes causing the property to be sold at the City's In Rem sale.¹⁰⁶ The property often sold for a price lower than the judgment itself, if it sold at all, since property values in the City have continued to decline.¹⁰⁷ The City is only allowed one remedy to collect and once sold at In Rem the title is cleared and the City is then no

longer able to collect on the judgment.¹⁰⁸ The City changed their collection policy so that they could continue to collect on judgments even if the problem property went into foreclosure.¹⁰⁹

Binghamton's collection method, while it relies on liens, also differs from that of Buffalo. Unlike Buffalo and Albany, Binghamton does not allow for trials *in absentia* or default judgments.¹¹⁰ The city only sets fines and judgments for defendants that appear in court.¹¹¹ I feel that Buffalo's system allows for the collection of more fines.

Binghamton's rental registry is also different from that in Buffalo. Binghamton's registry requires all out-of-county rental property owners to register their property and designate an agent irrelevant of the size of the dwelling.¹¹² Buffalo's requires the registry of only one and two family rental dwellings, the appointment of an agent not required as long as the name and address of owner is given.¹¹³ Binghamton's fines for noncompliance are also much higher than Buffalo's. The end result is that Binghamton's registry is broader, including more properties and gives owners more incentives to register due to the lack of a registry fee and a high fine for noncompliance.

Although I think adopting Binghamton's registry model would be a step in the right direction, I think an even broader registry would be more effective. One that requires all out-of-county property owner to register, regardless of if it is a rental property or not. I understand that this would require updated computer systems and resources that the City probably does not have.¹¹⁴ So gradually expanding and changing our registry to be like that of Binghamton is more practical at this time.

Out of the three New York State municipalities looked at; Albany's collection of housing judgments is the closest to the City of Buffalo's. Both cities rely on the placement of liens. It is how Albany collects other fines that vary greatly from Buffalo's common practice. Albany has

its city's collection attorneys issue subpoenas, freezing defendants' assets until their fines are paid.¹¹⁵ While Albany finds this to be effective, David Rodriguez explained that Buffalo's large judgment proof population in addition to the lack of resources and personnel make it impractical to issue numerous subpoenas.¹¹⁶ Buffalo's Corporation Counsel would have to hire additional lawyers to take on the increased litigation.¹¹⁷ If the City did have the resources, I think that this may be a good way to collect against defendants who are not judgment proof because it will definitely grab their attention and is not something they can easily ignore.

Having a collections method that is difficult to ignore is one of the reasons why I support Buffalo adopting a method like that of Cleveland, Ohio. Cleveland's warrant block focuses on an aspect of peoples' lives that is relied upon every day, the use of an automobile. People rely on their cars in order to make a living and to acquire necessities, such as food, clothing etc. Being unable to renew your license or pass inspection will definitely get someone interested in paying off their fines. Defendants need to realize that if they cannot afford to pay the whole fine they can go to court and work out a payment plan or even have the judgment reduced if they are willing to make repairs. Half the battle is just getting defendants to realize that there is a judgment against them and putting a block on their license is one way to do that. These are the collection practices of the City of Buffalo and comparable municipalities.

¹ Judge Henry J. Nowak, Address to Housing Court Law 826 students at Buffalo City Court Library (September 18, 2009).

² Interview with David Rodriguez, Acting Corporation Council, City of Buffalo (November 16, 2009). This interview as well as all other interviews does not necessarily reflect the views and policies of the administration.

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- ³ Telephone interview with Clerk, Cleveland Clerk of Courts (October 2009).
- ⁴ Henry J. Nowak, *Buffalo Housing Court Reform Project 2* (2006), available at https://www.nycourts.gov/courts/8jd/Erie/housing_publications.shtml.
- ⁵ Judge Henry J. Nowak, Address to Housing Court Law 826 students at Buffalo City Court Library (September 18, 2009).
- ⁶ Id.
- ⁷ Id.
- ⁸ Interview with Melinda J. Gullo, Executive Director, City of Buffalo Housing Court (September 18, 2009).
- ⁹ Id.
- ¹⁰ Id.
- ¹¹ Memorandum from Mike Nisengard on Trials *In Absentia* to Judge Henry J. Nowak (February 27, 2007).
- ¹² Letter from Henry J. Nowak, City of Buffalo Housing Court Judge, to Housing Court defendant (2009) (on file with the City of Buffalo Housing Court).
- ¹³ Interview with Melinda J. Gullo, Executive Director, City of Buffalo Housing Court (September 18, 2009).
- ¹⁴ Interview with Kathleen Palka, Collection Paralegal, City of Buffalo Corporation Counsel (November 16, 2009).
- ¹⁵ Id.
- ¹⁶ Interview with Melinda J. Gullo, Executive Director, City of Buffalo Housing Court (September 18, 2009).
- ¹⁷ Id.
- ¹⁸ Letter from Henry J. Nowak, City of Buffalo Housing Court Judge to Housing Court corporate defendant (2006) (on file with the City of Buffalo Housing Court).
- ¹⁹ Interview with Melinda J. Gullo, Executive Director, City of Buffalo Housing Court (September 18, 2009).
- ²⁰ Judge Henry J. Nowak, Address to Housing Court Law 826 students at 237 Main St., Suite 1200 (September 18, 2009).
- ²¹ Telephone interview with Mary Scarpine, Corporation Counsel, City of Buffalo (October 2009).
- ²² Mary Scarpine, Address to Housing Court Law 826 students at Buffalo City Hall (October 30, 2009).
- ²³ Id.
- ²⁴ Telephone interview with Clerk, Erie County Clerk's Office (October 16, 2009).
- ²⁵ Telephone interview with Mary Scarpine, Corporation Counsel, City of Buffalo (October 2009).
- ²⁶ Id.
- ²⁷ Interview with Joe LoTempio, Collections Department, City of Buffalo (November 16, 2009).
- ²⁸ Interview with Joe LoTempio, Collections Department, City of Buffalo (October 30, 2009).
- ²⁹ Id.
- ³⁰ Id.
- ³¹ Id.
- ³² Interview with Joe LoTempio, Collections Department, City of Buffalo (October 30, 2009).
- ³³ Id.
- ³⁴ Id.
- ³⁵ Id.
- ³⁶ Interview with Kathleen Palka, Collection Paralegal, City of Buffalo Corporation Counsel (November 16, 2009).
- ³⁷ Interview with Joe LoTempio, Collections Department, City of Buffalo (November 16, 2009).
- ³⁸ Id.
- ³⁹ Id.
- ⁴⁰ Id.
- ⁴¹ Interview with Joe LoTempio, Collections Department, City of Buffalo (November 16, 2009).
- ⁴² Telephone interview with Mary Scarpine, Corporation Counsel, City of Buffalo (October 2009).
- ⁴³ Interview with Kathleen Palka, Collection Paralegal, City of Buffalo Corporation Counsel (November 16, 2009).
- ⁴⁴ Interview with Joe LoTempio, Collections Department, City of Buffalo (October 30, 2009).
- ⁴⁵ Id.
- ⁴⁶ Id.
- ⁴⁷ Telephone interview with Clerk, Erie County Clerk's Office (October 16, 2009).
- ⁴⁸ Telephone interview with Mary Scarpine, Corporation Counsel, City of Buffalo (October 2009).
- ⁴⁹ Id.
- ⁵⁰ Interview with Kathleen Palka, Collection Paralegal, City of Buffalo Corporation Counsel (November 16, 2009).
- ⁵¹ Telephone interview with Liam Caulfield, Collections Dept., City of Buffalo (October 16, 2009).

52 Id.
53 Id.
54 Id.
55 Id.
56 Id.
57 Interview with Joe LoTempio, Collections Department, City of Buffalo (October 30, 2009).
58 Id.
59 Telephone interview with Executive Assistant, Inspection and Compliance Services, Rochester, NY (October 16, 2009).
60 Id.
61 Id.
62 Telephone interview with Executive Assistant, Inspection and Compliance Services, Rochester, NY (October 16, 2009).
63 Id.
64 Id.
65 Id.
66 Id.
67 Telephone interview with Executive Assistant, Inspection and Compliance Services, Rochester, NY (October 16, 2009).
68 Id.
69 Id.
70 Telephone interview with Brian Seachrist, First Assistant Corporation Counsel, Binghamton, New York (November 2, 2009).
71 Id.
72 Id.
73 Id.
74 Id.
75 Telephone interview with Brian Seachrist, First Assistant Corporation Counsel, Binghamton, New York (November 2, 2009).
76 City of Binghamton: Code Enforcement, <http://www.cityofbinghamton.com/departments.asp?zone=dept-code-enforcement> (October 13, 2009).
77 Id.
78 Id.
79 Telephone interview with Brian Seachrist, First Assistant Corporation Counsel, Binghamton, New York (November 2, 2009).
80 Id.
81 Id.
82 Telephone interview with William Kelly, City Collections Attorney, Albany, New York (November 5, 2009).
83 Id.
84 Id.
85 Id.
86 Telephone interview with William Kelly, City Collections Attorney, Albany, New York (November 5, 2009).
87 Id.
88 Id.
89 Id.
90 Id.
91 Telephone interview with William Kelly, City Collections Attorney, Albany, New York (November 5, 2009).
92 Id.
93 Id.
94 Telephone interview with Clerk, Cleveland Clerk of Courts (October 2009).
95 Id.
96 Telephone interview with Clerk, Cleveland Clerk of Courts (October 2009).
97 Id.
98 Id.
99 Id.

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- ¹⁰⁰ Id.
- ¹⁰¹ Telephone interview with person in Housing Ct. Division of the Municipal Court, Pittsburgh, PA (November 4, 2009).
- ¹⁰² Id.
- ¹⁰³ Id.
- ¹⁰⁴ Id.
- ¹⁰⁵ Interview with Kathleen Palka, Collection Paralegal, City of Buffalo Corporation Counsel (November 16, 2009).
- ¹⁰⁶ Id.
- ¹⁰⁷ Id.
- ¹⁰⁸ Id.
- ¹⁰⁹ Id.
- ¹¹⁰ Telephone interview with Brian Seachrist, First Assistant Corporation Counsel, Binghamton, New York (November 2, 2009).
- ¹¹¹ Id.
- ¹¹² City of Binghamton: Code Enforcement, <http://www.cityofbinghamton.com/department.asp?zone=dept-code-enforcement> (October 13, 2009).
- ¹¹³ Rental Registration: Registration Information, http://www.city-buffalo.com/files/1_2_1/Misc/rrflyer2008.pdf.
- ¹¹⁴ Alexa Rissoff, law student, Presentation to Housing Court Law 826 students at 237 Main St., Suite 1200 (November 20, 2009).
- ¹¹⁵ Telephone interview with William Kelly, City Collections Attorney, Albany, New York (November 5, 2009).
- ¹¹⁶ Interview with David Rodriguez, Acting Corporation Council, City of Buffalo (November 16, 2009).
- ¹¹⁷ Id.