

Existing and Potential Remedies for Illegal Flipping in Buffalo, New York

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## **Executive Summary:**

The City of Buffalo should amend the documents used at the annual In Rem foreclosure auction to require more information from bidders and purchasers under penalty of perjury, thereby making it easier to detect, deter, and punish parties interested in purchasing properties to illegally flip them.

There are already more abandoned houses in the City of Buffalo than it can even keep track of. These houses lower property values of surrounding homes in already distressed neighborhoods and in turn, lower tax revenues for the city. Abandoned houses also invite vandalism, drug users and squatters. They pose a threat in the form of potential instances of arson and cost the city millions of dollars in demolition expenses. Houses become abandoned for many reasons, but one is that they sometimes fall into the hands of illegal flippers.

Unlike legal flippers, illegal flippers generally spend no further money on a property, make fraudulent misrepresentations as to its value, and sell it for a higher price to an unsuspecting buyer. Often in these situations, upon finding out the true condition of the property, the new owner will be unwilling or unable to pour even more money into the distressed home in order to rehabilitate it and will simply abandon it. Therefore, there is a strong incentive for the City of Buffalo to take every measure possible to keep properties out of the hands of illegal flippers by detecting them before they can obtain property and by creating as many options as possible to take legal action against them when they do manage to illegally flip.

Buffalo has already taken positive steps through added precautions at its annual In Rem foreclosure auction. The anti-flipping provisions already implemented have helped to deter illegal flippers. Now, by requiring more information from bidders and purchasers –such as whether they plan to occupy the property, whether they own other properties in the city and whether they have any agency relationships with real estate companies –, the city can better monitor purchasers who show signs that they are planning to illegally flip. These new policies will also deter potential illegal flippers and offer another legal alternative to take action against bidders and purchasers: if they lie on the proposed documents, their statements will be punishable as perjury.

### **Introduction to Flipping in Buffalo:**

“Flipping” is the practice of buying property and quickly reselling it for a profit. In many parts of the country, flipping is a positive term used to describe the honest practice of purchasing real estate, making renovations to it and selling it for a legitimately higher price. In areas like Buffalo, however, it has taken on negative connotations because of those who have “flipped” fraudulently at the expense of buyers, lenders, and Buffalo neighborhoods. As a result, there is some confusion over the fact that the word “flipping” is used to describe both a helpful practice and a fraudulent one. The focus of this project is to detail ways in which the Buffalo area has already dealt with fraudulent flipping and to offer an option for continuing to deter to and punish those who engage in it. Therefore, some comparison between the two sides of flipping is necessary to clarify the line where flippers cross into fraud.

One of the major obstacles to bringing legal action against flippers is that often they are not doing anything illegal. Unfortunately flippers will often work right along the lines of legality, and their actions may be contrary to public policy without being illegal. Though it may be in the area's best interest to deter some of those flippers who are not doing anything illegal but are behaving unethically and not improving properties, the city should remain primarily concerned with illegal flipping. Illegal flipping will almost always contain a serious misrepresentation on the part of the seller: generally, false information about the nature of the seller, the condition of the property, or the value of the property.

Illegal property flipping has been especially problematic in Buffalo, where a steadily declining population has led to a surplus of houses and, therefore, extremely low housing costs in many of the city's neighborhoods.<sup>1</sup> This allows buyers the opportunity to buy at well below typical market values and creates ideal conditions for flipping. In illegal flipping, the seller typically misrepresents the condition of the house. Often, the house is in utter disrepair and has numerous housing code violations, causing the buyer to give up on the home once he discovers the truth. Illegally flipped properties then sit vacant with little chance of being rehabilitated. This negatively affects what is likely already a distressed neighborhood by further lowering the values of surrounding homes and creating a breeding ground for crime.<sup>2</sup> When such houses are unattended they often get stripped of useful materials such as copper and serve as host to drug users and squatters.

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<sup>1</sup> <http://www.buffaloflipping.com/Learn.htm>

<sup>2</sup> <http://www.buffaloflipping.com/Learn.htm>

The City of Buffalo as a whole is also negatively affected. Lower property values mean lower city tax revenues, while at the same time the city is forced to spend more money on the properties by attempting to regulate unwelcome guests, respond to fires, and demolish the property. Mayor Byron Brown's office estimates that each abandoned house in Buffalo costs the city an average of \$20,060 over five years in lost taxes, debris removal, inspections and policing. Also, the price to demolish a house has been rising because of stiffer regulations on the handling of asbestos. The city now spends an average of \$16,040 to take down a house with asbestos inside, 31 percent more than two years ago. Last year, 41 percent of all fires in Buffalo were in vacant buildings, and more than 90 percent of all arson cases involved abandoned houses.<sup>3</sup> Therefore, deterring illegal flippers and getting homes into the hands of honest flippers and homeowners so that they do not become abandoned is of paramount importance in combating Buffalo's housing problems. The fact that the City of Buffalo went so far as to establish an Anti-Flipping Task Force (AFTF) serves as proof.

The AFTF was established in response to residents' complaints regarding property flipping of homes in distressed neighborhoods. It started operations in June 2005 and serves to combat the unethical and fraudulent property flipping that contribute to neighborhood destabilization and community disinvestment.<sup>4</sup> Among many other functions, the AFTF works to counter illegal flippers by investigating complaints of possibly illegal flipping and referring such cases to the appropriate law enforcement agencies when necessary.

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<sup>3</sup> <http://www.nytimes.com/2007/09/13/nyregion/13vacant.html>

<sup>4</sup> [http://www.buffaloflipping.com/What\\_Is\\_AFTF.htm](http://www.buffaloflipping.com/What_Is_AFTF.htm)

Though it is clear that illegal flipping is widespread throughout Buffalo, according to Kathleen Lynch who serves as the AFTF's Coordinator, the actual number of flips in the city is virtually impossible to ascertain. One problem is that the Task Force cannot search the clerk's database by property address, only by party name. Many flippers hide behind corporate entities, and it is not always easy to follow the trail back to an individual. As an alternative, the AFTF analyzes flips by obtaining historical real estate transaction data from the clerk's office on a periodic basis to review and attempt to detect patterns of flips and who is behind them. The AFTF also regularly checks the Internet auction site eBay for bids on local properties and real estate transactions recorded in newspaper. They also respond to specific complaints, many times from building inspectors and community residents, and watch the activities of known flippers on an ongoing basis. However, given the fact that properties are often sold via the Internet through many different companies such as eBay, Craigslist and private sites run by various entities there is ultimately no way to detect daily offers for sale of local properties in the virtual universe.

The AFTF's Second Year Report showed that nearly half of the flips in the City involve properties bought by flippers at foreclosures, with HUD and the City's In Rem Foreclosure Auction as the primary sources for such properties. With respect to the In Rem auction, the AFTF already reviews the entire list of available properties and determines which entities and persons should be monitored most closely for flipping. According to Kathleen Lynch, much of the flipping that they discover, though distasteful, is not illegal. When they do find evidence of illegal or unethical behavior, however, especially among real estate professionals, they notify law enforcement agencies,

licensing entities, and professional associations as appropriate. Additionally, the AFTF has made recommendations for changes to the procedures of the In Rem auction that have made it easier for city officials to detect and punish illegal flippers.

Though Buffalo has done a great deal of work to curb illegal flipping, especially compared to other major cities in the country, the city can do more. After taking a closer look at the theories that have been successful in combating illegal flipping in Buffalo and elsewhere, we can identify some additional options.

### **Litigation already brought against flippers in Buffalo:**

Two major cases initiated in 2007 serve as examples of ways in which the State of New York can bring action against those who engage in illegal flipping.

#### ECC

In the spring of 2007, New York State Attorney General Andrew M. Cuomo brought Buffalo's first major illegal flipping lawsuit – suing an investment company, East Coast Capital (ECC) and others involved in a pyramid scheme.<sup>5</sup> According to Assistant Attorney General James Morrissey, the case is still in “the wheels of litigation”.

The complaint alleges that ECC promised investors high returns on safe investments in distressed real estate but then paid those returns from the investors' own money rather than with actual profits, leaving many investors at a loss. The company

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<sup>5</sup> [http://www.oag.state.ny.us/press/2007/may/may23a\\_07.html](http://www.oag.state.ny.us/press/2007/may/may23a_07.html)



bought more than 60 properties in the Buffalo area and then obtained mortgages for several times the purchase price of the homes. A college student complicit in the scheme named Jessica Doucette would then assume obligation on the mortgages. The defendants pocketed hundreds of thousands of dollars and allowed dozens of the properties to fall into disrepair.

The scheme worked in one of two ways, both of which involved persistent fraudulent activities. Both schemes involved ECC first purchasing a distressed Buffalo property for a relatively low price. In the first scheme, they would then obtain a mortgage with funds from a private investor at several times the purchase price of the house, after having misrepresented its worth. They would then “sell” the house to Doucette, telling the investor that she was a contractor with the skills to make improvements to the house. Doucette would actually pay nothing for the house and make no improvements to it. The second scheme involved immediately “selling” the purchased property to Doucette for several times the purchase price. ECC would then procure mortgages for those inflated amounts with the funds from private investors, who believed that they would receive a high return from the resale of the rehabilitated properties. Of course, ECC was not actually rehabilitating the properties. In the few instances that ECC made payments to investors, it was with the investors’ own money.

The Attorney General sued under NY Executive Law Section 63(12) and NY General Business Law Sections 23-A (The Martin Act), 352-C and 353(1), as well as the City of Buffalo Building Code and Debtor and Creditor Law, Art 10, Sections 273 and 274.

Section 63, part 12 of the Executive Law says that “whenever any person shall engage in *repeated fraudulent* or illegal acts or otherwise demonstrate *persistent fraud or illegality* in the carrying on, conducting or transaction of business, the attorney general may apply, in name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages.” This section is a potentially useful tool against illegal flippers, but , unfortunately, some its terms limit its applicability in many cases.

In the statute, the word "fraud" or "fraudulent" includes any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" includes continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" includes repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Therefore, a scheme must involve some persistent and repeated fraudulent aspects as defined in the statute before the Attorney General may take action. Not all fraudulent schemes will qualify.

The suit seeks to enjoin the defendants from continuing their activities, obtain restitution for the financial damage they have done to their investors, and force them to cure all violations of the Buffalo building code. The suit also asks for compensation to the city for costs incurred for demolitions of houses allowed to fall into disrepair. Finally, the suit asks that, the defendants be barred from buying property without first paying a one million dollar performance bond.

The city cited forty-two of the properties involved for 263 code violations. There has been prolific criminal activity in and around the properties including drug use and vandalism. This case also serves as an example of the power of the Housing Court to punish illegal flippers by citing the owner of flipped houses for property code violations. Jessica Doucette, who held title to the majority of the flipped properties in the scheme was cited for numerous violations, failed to appear in Housing Court, and was briefly imprisoned as a result.

### Furan

Later in 2007, the Attorney General brought an action involving another house-flipping scheme.<sup>6</sup> Joseph Furan fraudulently represented himself as a distressed property owner on the Internet auction site eBay. Furan did not own any of the properties he advertised but would entice people to “buy” them from him. His actions do not constitute “illegal flipping” per se, but apparently, if he had not been caught, Furan was planning to buy and flip some of the properties involved. Additionally, this action concerning Furan’s online misrepresentations involves some of the same legal theories used against illegal flipping, as in the ECC case. The Furan case also serves as an example of the effectiveness of the AFTF, which referred the matter to the Attorney General’s Office after discovering Furan’s scam on the Internet.

The complaint in this case alleges deceptive, fraudulent, and illegal business practices. Furan claimed that he owned a real estate company called Rent-to-Own

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<sup>6</sup> [http://www.oag.state.ny.us/press/2007/aug/aug2a\\_07.html](http://www.oag.state.ny.us/press/2007/aug/aug2a_07.html)

Properties LLC, which, in fact, did not exist. Furthermore he held himself out to have a real estate license when, his had expired, and he falsely claimed to be a foreclosure expert with over 30 years of experience. The complaint further alleges that he misrepresented that he owned two business, that he was qualified to advise others on real estate matters, and that he owned 20 for-sale properties in the Buffalo area when, in fact, he owned none of them.

The legal argument used in this case is similar to the one used in ECC. General Business Law Article 23-A (otherwise known as the Martin Act) deals with fraudulent practices in respect to stocks, bonds and other securities and Section 353 allows action by the attorney general. The statute essentially allows the Attorney General to bring action for permanent injunctive relief whenever he believes a person has engaged in fraudulent practices. The 1926 case of *People v. Federated Radio Corp.*, 244 N.Y. 33, made clear that the Martin Act provides for the investigation by the Attorney General of fraudulent practices in respect to the sale of bonds, stocks and other securities and commodities (via N.Y. Gen. Bus. Law 352) and authorizes him to bring suit to enjoin persons and corporations from engaging therein (via N.Y. Gen. Bus. Law 353) and to obtain the appointment of a receiver to take title to all property derived by defendants by means of such fraudulent practices and liquidate the same for the benefit of persons intervening in the action and establishing an interest in the property (via N.Y. Gen. Bus. Law 353-a).

The court in *Federated Radio* defined fraud in a broad sense and said the term includes all deceitful practices contrary to the plain rules of common honesty. (*Id.* at 38) Furthermore, the court said “the words “fraud” and “fraudulent practice” should be given a wide meaning so as to include “all acts, although not originating in any actual evil

design or contrivance to perpetrate fraud or injury upon others, which do by their tendency to deceive or mislead the purchasing public come within the purpose of the law.” This decision is still used today to show that a defendant in a civil case may be held liable for fraudulent practices, even in the absence of intent. Because the interpretation of statutory fraud has been broader than that of common law fraud, prosecutors need only display the capacity or tendency to deceive or create an atmosphere conducive to fraud.

An Order to Show Cause has been filed in the Furan case pursuant to Exec. Law 63(1) and Gen. Bus. Law 353(1) demanding that Furan show why he should not be permanently enjoined from advertising or selling any real property in New York over the Internet unless he files a \$100,000 performance bond.

As of April 7, 2008, Attorney General Cuomo announced that his office was seeking a criminal contempt-of-court order against Furan, who had refused to cease his illegal operations.<sup>7</sup> He is additionally going to be charged with Grand Larceny for allegedly taking nearly \$52,000 from one investor. Without posting the \$100,000 bond he continued to fraudulently advertise on the Internet, this time on the popular classifieds web site Craigslist. He violated the original court order 13 times. Each violation carries with it a maximum penalty of a 30-day jail term and a \$1,000 fine. According to court documents, Furan violated the original court order in every respect by continuing to place ads on the Internet and continuing to fake his credentials and companies that he claimed to own and operate. He repeatedly told the Attorney General’s Office that the actions taking place after the order was issued were actually done on behalf of a licensed real

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<sup>7</sup> See [http://www.oag.state.ny.us/press/2008/apr/apr07a\\_08.html](http://www.oag.state.ny.us/press/2008/apr/apr07a_08.html)

estate broker. However, the real estate broker said he had no knowledge of any of Furan's actions and that he merely rented Furan office space.

Though having less to do with illegal flipping and more to do with general illegal real estate activity, the Grand Larceny charge in the 3rd Degree, a class D felony, is for selling two Niagara Falls properties over the Internet to a buyer from England, using the money to pay off various debts and never providing the buyer with titles to the properties. According to the felony complaint, Furan did not even own one of the properties, as it had already been foreclosed when it belonged to his wife, and simply never transferred title to the other.

#### **An alternative option in Buffalo involving the Housing Court:**

Another option for deterring and pursuing action against illegal flippers is the City of Buffalo Housing Court. Often a flipper may sell – at an inflated price – a home with numerous property code violations, without disclosing the violations to the new owner. This is a misrepresentation on the seller's part but may not meet be a repeated and persistent instance of fraudulent conduct such that it would be worth the state's time to pursue legal action. The Housing Court offers a remedy in this instance because housing code violations in Buffalo are charged based on occurrence. This means that the court is able to charge previous owners of homes with violations if they existed at the time the home was sold to a new owner. Unfortunately, an unsuspecting new owner may be charged for the violation as well, but the fact that the court can issue a citation for a violation up to one year from the date of its occurrence means that fraudulent flippers

will not escape unscathed from the situation either. Each building code violation means a maximum penalty of a \$1,500 fine and fifteen days in jail. Furthermore, housing code violations are strict liability offenses, which means that no intent is necessary for a conviction. Ideally, this would be enough to deter an illegal flipper from selling a house with outstanding violations, but if not, the Housing Court can hold the seller accountable.

However, there are some problems with this strategy. Illegal flips are often executed by people living outside of Erie County. Problematically, the warrant jurisdiction of the City of Buffalo Housing Court does not reach beyond county lines. In response to this limitation, the Court can conduct a trial in absentia, without the accused being present, but only if the defendant waives their right to be present. This waiver requires a knowing, voluntary and intelligent decision, which may be either express or implied. The Court can obtain this waiver by issuing a warning pursuant to the *People v. Parker*, 57 N.Y.2d 136 (1982), that states the date of the trial, the defendant's right to be present, the consequences of the defendant's failure to appear, and the fact that the trial will proceed in the defendant's absence. Even with this option available, however, it is often difficult to locate the out-of-county defendant. The Court can respond to this by making reasonable effort to locate the defendant prior to holding the trial in absentia; if the defendant proves impossible to locate, the Court may proceed. After finding the former owner of a property guilty of code violations, the court may set another date for sentencing, accompanied by another *Parker* warning informing the defendant of their right to be present. If the defendant fails to appear for sentencing and fails to pay whatever fines are assessed, the City of Buffalo will file a judgment wherever the

defendant lives. The judgment attaches to the defendant and their property, and the defendant will no longer be allowed to do business in Buffalo.

When all is said and done, however, there is no guarantee that an illegal flipper will be held accountable. At the very least, it seems unlikely that, if the Housing Court is forced to go through every action listed above, the code violations will be cured in a reasonable amount of time. Therefore, while the Housing Court does offer a viable option for deterring and punishing illegal flipping, it is somewhat inconvenient compared to alternatives that carry more legal weight or address the problem at its root when the flipper is first obtaining the property.

### **Mortgage Fraud as a Nationwide Strategy:**

Similar to the way in which the State of New York has already pursued action against illegal flippers, the prevailing legal theory for such actions in the rest of the country appears to be fraud. More specifically, other states seem to be targeting schemes involving mortgage fraud.<sup>8</sup> Also, the Federal Bureau of Investigation is part of a plan called “Operation Quick Flip” to combat mortgage fraud. The outline for this plan treats “property flipping” as one example among many of mortgage fraud. This plan describes property flipping for mortgage fraud purposes as instances in which property is purchased, falsely appraised at a higher value, and then quickly sold.<sup>9</sup> These schemes typically involve fraudulent appraisals, doctored loan documents, and inflation of the buyer’s income. On a state-by-state level, mortgage fraud actions will differ slightly,

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<sup>8</sup> <http://www.mortgagefraudblog.com/>

<sup>9</sup> <http://www.fbi.gov/page2/dec05/operationquickflip121405.htm>



based on a particular state's statutory interpretation of fraud, but most states tend to have similar requirements. The action generally requires proof of fraud in the loan files themselves. This may come in the form false information concerning what the property is worth, such as misrepresentations about the condition of the house. It may also come in the form of the buyer's ability to repay the mortgage, such as falsified or fabricated tax returns or other documents representative of the buyer's financial status.<sup>10</sup>

Other areas of the country are generally not as organized as Buffalo as far as having a coherent, government-sponsored group put together for the sole purpose of fighting fraudulent flipping. There has however, been some national-level documentation of the problem in the form of websites devoted to collecting articles from around the country concerning litigation brought against fraudulent flippers.<sup>11</sup> Most, if not all, of these cases involve fraud, and the major web sites involved with tracking these cases seem to more or less equate property flipping with mortgage fraud, probably because it is the most prevalent way to bring suit against illegal flippers. Also, casting "illegal" property flippers as mortgage fraud artists helps to eliminate the confusion caused by the neutral term "flipping". In the majority of the cases documented, defendants are charged with mortgage fraud but also bank fraud, mail fraud, and wire fraud.<sup>12</sup>

### **Why has there not been more action against illegal flippers in Buffalo?**

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<sup>10</sup> <http://www.nhi.org/online/issues/113/focer.html>

<sup>11</sup> <http://www.mortgagefraudblog.com/>

<sup>12</sup> [http://www.mortgagefraudblog.com/index.php/weblog/permalink/illinois\\_man\\_gets\\_8\\_years\\_for\\_flipping/](http://www.mortgagefraudblog.com/index.php/weblog/permalink/illinois_man_gets_8_years_for_flipping/)

Because of the precarious nature of flipping and the fact that often times the practice isn't illegal, there are not as many options to pursue legal action against those who engage in it as may be hoped. As has already been illustrated, fraud actions require fairly extensive investigations to prove repeated and persistent offenses. The AFTF is available for such investigation and has already proven effective in referring some cases to the attorney general, but many times a fraudulent flip will never reach their ears. Also, in many cases the stakes may not be high enough for the prosecutors to spend staff time on schemes that involve only a few houses, or only one house. The Housing Court helps to offer some relief for smaller scale instances of flipping, but its jurisdiction is limited. Many potential illegal flippers may not be deterred by the threat of facing the City of Buffalo Housing Court, especially where they have no plans to ever visit the area.

Another option is private action on the part of a buyer who has been taken advantage of via an illegal flip. If such a buyer were interested, he would likely have a cause of action available to him for rescission of contract for sale of the house. With respect to transactions in real estate, New York adheres to the doctrine of caveat emptor and imposes no duty upon the vendor to disclose any information concerning the premises (*London v Courduff*, 141 AD2d 803) unless there is a confidential or fiduciary relationship between the parties (*Moser v Spizzirro*, 31 AD2d 537) or some conduct on the part of the seller which constitutes "active concealment." Normally, some affirmative misrepresentation (*e.g.*, *Tahini Invs. v Bobrowsky*, 99 AD2d 489 [industrial waste on land allegedly used only as farm]; *Jansen v Kelly*, 11 AD2d 587 [land containing valuable minerals allegedly acquired for use as campsite]) or partial disclosure (*Junius Constr. Corp. v Cohen*, 257 NY 393 [existence of third unopened street concealed]; *Noved Realty*

*Corp. v A. A. P. Co.*, 250 App Div 1 [escrow agreements securing lien concealed]) is required to impose upon the seller a duty to communicate undisclosed conditions affecting the premises (*contra, Young v Keith*, 112 AD2d 625 [defective water and sewer systems concealed]). “Where a condition which has been created by the seller materially impairs the value of the contract and is peculiarly within the knowledge of the seller or unlikely to be discovered by a prudent purchaser exercising due care with respect to the subject transaction, nondisclosure constitutes a basis for rescission as a matter of equity.” *Strambovsky v. Ackley*, 169 A.D.2d 254 (1<sup>st</sup> Dept. 1991). Unfortunately, while a plaintiff may be able to achieve the equitable remedy of rescission where a seller makes a material misrepresentation or fails to disclose, the doctrine of caveat emptor prevents an action for damages. *Id.* Another problem is that often times a buyer in this position will lack the resources to successfully bring suit. They are many times going to be in a financially difficult situation after having been cheated by an illegal flipper and unwilling to engage in a lengthy litigation that may or may not allow them recoup their loss. Kathleen Lynch has attempted to somewhat remedy this problem by setting up a referral system with the Bar Association of Erie County in order to send them complaints from buyers who have been subjected to illegal flipping. She encourages consumers that feel they have been victimized to seek legal assistance, but says that most are reluctant to spend even more money on an attorney if they are dealing with a problem house or have lost money already. This is especially true of situations in which the seller does not live in the United States. Clearly, then, the government needs to find more ways to deter illegal flipping in Buffalo.

## **Remedy for bringing more action against illegal flippers in Buffalo:**

Numerous properties are purchased at an extremely low price every year at the City In Rem auction, giving a great opportunity for those interested in fraudulently flipping properties.<sup>13</sup> The AFTF responded by helping to implement measures to prevent such conduct; the AFTF's Second Annual Report notes that as a result, there has been a significant decrease in properties purchased at the In Rem sale for flipping. The new policy requires bidders at the auction to sign an affidavit agreeing

- not to sell any acquired property for over 120% of its purchase price for a period of six months
- to bring the purchased house up to code within six months.

The new policy encourages buyers who plan to occupy the houses or to make improvements such that selling them for a profit would be fair to the next owner and an improvement to the neighborhood.

Additional changes to the In Rem auction policy would further improve it. As of now, bidders need only fill out a document with very general information concerning their name/address, etc. followed by a perfunctory signature with no indication of legal ramifications for fraudulent statements.<sup>14</sup> By requiring more specific information, officials may more easily identify possible illegal flippers. The form should ask whether the bidder intends to occupy the house they are bidding on, and, if not, whether they are going to be responsible for property maintenance, whether they have bid on or purchased

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<sup>13</sup> <http://www.buffaloflipping.com/Learn.htm>

<sup>14</sup> See Appendix A

other properties at the In Rem Auction, and whether they have been cited for code violations on other properties in the City of Buffalo.<sup>15</sup> This information would quickly expose bidders pursuing multiple properties while already burdened with numerous code violations: a sure sign that their intentions are not ideal.

Also, many fraudulent flippers attempt to avoid detection by having an agent bid on properties for them. Because only the bidder's information is required at the auction, the purchaser can escape notice by hiding behind their bidder. While some honest purchasers may also employ an agent at auction, requiring both purchasers and bidders to fill out information forms would deter those purchasers who wish to remain anonymous for unsavory reasons. The purchaser information form should require all of the same information as the bidder form. Assuming that the purchaser and bidder are different people or entities, both forms should make clear the relationship of the two to each other and any affiliation they may have with any corporation, business or entity relating to, or engaging in, real estate transaction. This would help to disclose agency relationships between bidders and purchasers and allow an investigation of any companies – such as East Coast Capital –lurking in the shadows, buying properties en masse.

In order for these numerous disclosures to carry weight, both the bidder and purchaser should be required to sign the documents under penalty of perjury. Furthermore, the current requirements that the auction has adopted on recommendation of the AFTF, located on the current In Rem Notice<sup>16</sup>, should be merged into the

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<sup>15</sup> See Appendix D

<sup>16</sup> See Appendix B

Memorandum of Sale<sup>17</sup> and that entire document should be signed by both bidder and purchaser under penalty of perjury as well.<sup>18</sup>

Such measures would deter fraudulent flippers and allow another legal remedy against them if they make misrepresentations on these forms. New York Penal Law Article 175 governs Offenses Involving False written Statements. Section 175.30 reads “a person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.” Offering a false instrument for filing in the second degree is a class A misdemeanor. Furthermore, Section 175.35, says “a person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.” Offering a false instrument for filing in the first degree is a class E felony.

As the second-degree offense doesn't require intent to defraud, legal action would be available even in cases where it couldn't be proven that the bidder or purchaser intended to frustrate the efforts of the state through their misrepresentation. On the other

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<sup>17</sup> See Appendix C

<sup>18</sup> See Appendix F

hand, the purpose of first degree offense is to guard against the possibility that officers of the state or its political subdivisions would act on false or fraudulent instruments that had been filed with their offices in belief that such documents were accurate. *People v. Jacob*, 248 A.D.2d 638 (2d Dept.1998). This would allow action against those bidders or purchasers who purposefully withhold information concerning property code violations in order to avoid having to ameliorate them. Additionally, the statute does not require that the content of instruments be accepted or relied on by the government, but rather only that intent to defraud be proven. *Id.*

While potential honest bidders and purchasers may not appreciate having to fill out additional paper work, they have already committed to the process and should expect to go through such tasks to take part in an activity as important as purchasing real estate. It seems unlikely that, given the paper work already necessary, any honest purchaser would be dissuaded from taking part in the auction due to an additional few pages. The real deterrent here will be to those who wish to take advantage of the auction for fraudulently flipping houses and have something to hide in regard to agency relationships or property code violations.

Additionally, while these forms may be tedious for the City of Buffalo to compile and collect, any cost or time spent on these measures will surely be countered by the positive effect that they will have on helping to put the titles to Buffalo properties in the hands of responsible homeowners.

**In Conclusion:**

An important distinction exists between legal flippers who intend to properly rehabilitate a home, ameliorate any code violations and sell it for a legitimately higher price and illegal flippers who purchase properties with the intent to defraud potential buyers or investors. Illegal flipping is one of the many factors that have contributed to the abandoned housing crisis in the City of Buffalo. Therefore, the city must take every opportunity to implement policy changes to curbs its effects.

Homeowners that find themselves on the short end of an illegal flip will often abandon those houses rather than spend even more money rehabilitating a house that is already distressed. There is little incentive to invest in such a house, especially if it is located in one of the numerous low value markets in Buffalo or is in such poor condition that rehabilitation is illogical. Furthermore, if a homeowner is willing to abandon a property for financial reasons, they are unlikely to have the monetary means to bring a private cause of action for fraud against the seller of the property. While there are already state and city-level actions available in the form of suits by the Attorney General's Office and Housing Court citations, these methods have their limitations.

By implementing the changes to the In Rem documents proposed above, city officials and the AFTF will be able to more easily identify purchasers that seem inclined to illegally flip. Additionally, prosecutors will have yet another option for pursuing legal action against illegal flippers when bidders and purchasers make fraudulent misrepresentations on the proposed documents. Hopefully, it will also be the case that potential illegal flippers will be dissuaded from attempting to obtain properties through



the auction and Buffalo properties will end up exclusively in the hands of honest homeowners and investors.

**Key Sources:**

The Anti-Flipping Task Force Second Year Report:

[http://www.buffaloflipping.com/docs/AFTF\\_2nd\\_Year\\_Report.pdf](http://www.buffaloflipping.com/docs/AFTF_2nd_Year_Report.pdf)

The Anti-Flipping Task Force Web Site:

<http://www.buffaloflipping.com/>

Kathleen A. Lynch, Esq., AFTF Coordinator

Assistant Attorney General Jim Morrissey's Pleadings in the ECC and Furan cases

Problem or Opportunity? Fraudulent House Flipping in Buffalo, New York – Michael L. Nisengard: Section V (Statutes and cases concerning the City of Buffalo Housing Court)

<http://www.mortgagefraudblog.com/>

**Appendix A**  
**Current Bidder Form**

PHOTO I.D. REQUIRED

DEPARTMENT OF ASSESSMENT AND TAXATION  
IN REM 40  
FORECLOSURE SALE  
WEDNESDAY, 25, 2006

61

ID: DRIVER'S LICENSE #:  
NON-DRIVER'S LIC #:  
OTHER:

NAME:

ADDRESS:

CITY:

STATE:

ZIP CODE:

DOB:

PHONE:

A \$20.00 FEE WILL BE CHARGED FOR ANY BID CARDS NOT RETURNED AT  
THE END OF THE AUCTION.

---

SIGNATURE REQUIRED

**Appendix B**

**Current In Rem Notice**

**Please Take Notice**

The City of Buffalo has placed the subject property described below on its In Rem auction list.

In Rem #	Serial #	Assessed As
----------	----------	-------------

I, \_\_\_\_\_, as winning bidder and/or purchaser of this property, understand that by bidding on and/or purchasing the above-named property, I assume any and all risks, costs, and liabilities which may be incurred as a result of the conditions at this parcel, including responsibility for housing code violations.

As winning bidder, I agree to remedy all housing code violations within a period of six (6) months of the date his affidavit is executed.

As purchaser, I agree to remedy all housing code violations within a period of six (6) months from the date that the purchase transaction is completed with the City of Buffalo.

Furthermore, as a winning bidder, I agree that I am prohibited from conveying the above-named property to a bonafide purchaser for value for a sales price of greater than 120 % of my bid price for a period of six (6) months from the date of this document. I further agree, as bidder, that I am prohibited from encumbering the subject property with a security interest in the principal amount of greater than 120 % of my bid price for a period of six (6) months from the date this document is executed.

As a purchaser of this property, I agree that I am prohibited from conveying the above-named property to a bonafide purchaser for value for a sales price of greater than 120% of my purchase price for a period of six (6) months from the date of the deed. I further agree that as purchaser, I am prohibited from encumbering the subject property with a security interest in the principal amount of greater than 120% of my purchase price for a period of six (6) months from the date of the deed.

These restrictions shall run with the land and are not personal to the grantee.

I understand that if I breach this agreement, the City may rescind the sale and award the property to the next highest bidder or sell the property at the next tax foreclosure auction.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
Bidder Name

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
Purchaser Name

## Appendix C

### Current Memorandum of Sale

#### Memorandum of Sale

**THE PURCHASER HEREBY AGREES TO PURCHASE THE PREMISES IDENTIFIED IN THIS AGREEMENT AT THE PUBLIC AUCTION** held under the direction on **MICHAEL A. SEAMAN**, Deputy Commissioner of Administration and Finance as REFEREE, on October 23 and 24 and 25, 2006 upon the following terms and conditions:

1. Bidder and Purchaser **MUST SIGN** a property completed **TERMS OF AGREEMENT OF SALE**.
2. All property sold "AS IS".
3. Twenty percent (20%) of the bid price, or \$400.00, whichever is greater (not to exceed the bid price) must be paid in **US FUNDS ONLY, CASH, OR BY MONEY ORDER, CERTIFIED OR TRAVELERS CHECKS PAYABLE ONLY TO THE CITY OF BUFFALO**, as a deposit at the time of sale, and purchaser or its agent must IMMEDIATELY sign and deliver a copy of this Agreement and the purchaser shall be bound by the terms of this Agreement. Requests for assignment, name changes, additional descriptions or other changes made after the date of the foreclosure sale will not be processed unless a fee of \$75.00 is paid by the party requesting same.
4. The balance of the bid price must be paid in **US FUNDS ONLY, CASH, OR BY MONEY ORDER, CERTIFIED OR TRAVELERS CHECKS PAYABLE ONLY TO THE CITY OF BUFFALO, ON OR BEFORE FRIDAY, DECEMBER 15, 2006, (the "SETTLEMENT DATE")** at 117 City Hall.
5. A deed will be prepared transferring title to the **PURCHASER IDENTIFIED IN THIS AGREEMENT** and recorded by the City of Buffalo within approximately eight (8) weeks after payment if the balance of the bid price.
6. **If purchaser fails to pay the bid price and /or filing fee, bring all obligation to the City, its authorities and agencies current by the "Settlement Date", the DEPUTY COMMISSIONER OF FINANCE AND ADMINISTRATION as REFEREE will declare all monies forfeited** and will resell the property.
7. The bidding will be kept open after the property is struck down, and in any case where a bidder and/or purchaser shall have failed to comply with any of these terms and conditions found in this Agreement of Sale, including, without limitation, not paying the required deposit **IMMEDIATELY**, not paying the balance of the bid price or bringing all

- obligations current by the Settlement Date, the bidder and/or purchaser shall be deemed to be in default and will be held liable for any deficiency between the sum of the first sale, and the bid for which it may be sold on the resale, and also for all costs and expenses incurred as a result of the default.
8. All real property will be sold and accepted subject to any existing easements or restrictions and subject to the right of redemption, if any, of the United States of America, and the REFEREE makes no warranty to title and is under no obligation to evict occupants of premises.
  9. The REFEREE will not furnish an abstract of title or survey. Any request for a deed description in addition to that contained in the Judgment of Foreclosure and Sale must be made at the time the purchaser pays the balance of the bid price, and such requests must be accompanied by the purposed description in typed form with 1-1/2 inch left and right margins. The purchaser shall separately identify the source of such description by Liber and Page reference to a recorded document.
  10. The risk of loss or damage by fire, vandalism or other cause (except by taking under the power of eminent domain) between the time of sale and delivery of the deed is assumed by the purchaser.
  11. Neither the REFEREE nor the City of Buffalo will be liable to the bidder or purchaser either before or after delivery of deed, for any sum in excess of the bid price received by the Referee for the property.
  12. The REFEREE shall refuse to transfer title to any person including without limitation, an individual, corporation, partnership, association, limited liability company or vendor (and each of such person's principles, partners, associated, members, etc.) who is not current on all obligations owed to the City of Buffalo, its authorities and agencies, including without limitation, taxes, fees, water bills, sewer rents and other charges, as of the settlement date. The Referee may also refuse to transfer title to any person who has current Code Violations on other properties owned by such person within the City of Buffalo. **If a person (Bidder, Purchaser and/or assignee) is not current on all such obligations as of the "Settlement Date", all monies tendered by the bidder, purchaser and /or assignee shall be applied towards the outstanding obligations owed to the City of Buffalo, its authorities and agencies.**
  13. The REFEREE shall have the right to set aside a bid by any person deemed by him not to be a responsible bidder and /or purchaser and immediately put up the premises for sale again.
  14. Upon final payment, the City of Buffalo will record the deed and return the original deed to purchaser. The purchaser will be required to pay a fee depending on the classification of the property purchased, reflecting the cost of recording, handling and mailing of the deed as follows: Single, Two or Three Family properties, 411 C, to pay a filing fee of \$150.00 (one hundred and fifty dollars), condominium and co-

op's, commercial properties, residential vacant land and commercial vacant land to pay a filing fee of \$240.00 (two hundred and forty dollars).

**15. ALL PROPERTY IS SOLD SUBJECT TO THE LIENS OF ALL TAXED, WATER BILLS, SEWER RENTS AND USER FEE LEVIED AFTER THE AUCTION DATE (October 23, 24, 25, 2006).**

I, the undersigned on the \_\_\_\_\_ day of October, 2006, purchased (or as agent for the below named Purchaser has purchased) the following described premises for the amount set forth and hereby promise and agree to comply with the terms and conditions of the sale as herein set forth:

IN REM  
SERIAL #  
PROPERTY ADDRESS  
CLASS CODE  
PURCHASER'S NAME  
ADDRESS  
CITY  
STATE  
ZIP  
PURCHASER'S TELEPHONE #  
PURCHASER'S SS#  
BIDDER'S NAME  
ADDRESS  
CITY  
STATE  
ZIP  
BIDDER'S TELEPHONE #  
BIDDER'S SS#  
PURCHASER OR BIDDER'S, AS AGENT OF PURCHASER, SIGNATURE  
BID #  
BID AMOUNT  
20% AMOUNT DOWN  
DEPOSIT  
FILING FEE  
(BALANCE IS DUE BY December 15, 2006)  
(OFFICIAL INFORMATION ONLY)  
PAID IN FULL  
CLEARED BY COLLECTIONS  
CLEARED BY INSPECTIONS



**Appendix D**

**Proposed Bidder Information Document**

**Drafted by Kathleen Lynch**

**CITY OF BUFFALO  
DEPARTMENT OF ASSESSMENT AND TAXATION  
IN REM  
FORECLOSURE SALE**

**BIDDER INFORMATION FORM**

**INSTRUCTIONS: Please answer all questions completely and in legible PRINT. If the answer is NONE, write "NONE". Do not leave a blank space. "Unknown" or similar response is not an acceptable answer. If the question does not apply, write "N/A" and explain why in the space provided. Please staple any documents with additional information to this one.**

**PHOTO I.D. REQUIRED**

Full Name \_\_\_\_\_

DOB \_\_\_\_\_ Social Security Number \_\_\_\_\_

Home Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_  
(Required)

Alternative Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_  
(Including P.O. Box)

Telephone \_\_\_\_\_ Cellular \_\_\_\_\_ Fax \_\_\_\_\_

Employer Name \_\_\_\_\_

Employer Address \_\_\_\_\_

Driver's License #: \_\_\_\_\_

Bidder's Non-Driver's License #: \_\_\_\_\_

Other ID#: \_\_\_\_\_

Are you placing this bid on behalf of another individual, business or other party?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, please provide the following information.

Name of Individual/Entity \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Principals/Officers \_\_\_\_\_

Bidder's Relationship to individual/entity \_\_\_\_\_

Is Entity registered to do business in New York State?

Yes \_\_\_\_\_ No \_\_\_\_\_

Entity's Agent and Address in New York State \_\_\_\_\_

If your bid is successful, do you intend to purchase these premises?

Yes \_\_\_\_\_ No \_\_\_\_\_

Do you intend to occupy the subject premises? Yes \_\_\_\_\_ No \_\_\_\_\_

If you intend to rent but not occupy the premises, please provide the following information.

I will be responsible for property maintenance:

Yes \_\_\_\_\_ No \_\_\_\_\_

I will hire another to be responsible for property maintenance:

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, please provide the following information:

Name of State Licensed Real Estate Broker/Property Manager \_\_\_\_\_

Address of State Licensed Real Estate Broker/Property Manager \_\_\_\_\_

List addresses of all real property that you have bid upon at City of Buffalo In Rem Auctions.

List addresses of all real property that you have purchased at the City of Buffalo In Rem Auctions.

List addresses of all properties that you own(ed) in the City of Buffalo that have been cited for code violations.

Disclosure of Affiliations with Business, Corporations or Entities

Disclose all affiliations with any corporation, business or entity relating to, or engaging in, real estate transactions. Attach additional pages as needed.

Name of Business \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Principals/Officers \_\_\_\_\_  
Bidder's Relationship to Business/Corporation/Entity \_\_\_\_\_  
State of Business/Entity's Incorporation \_\_\_\_\_  
Is Entity registered to do business in New York State? Yes \_\_\_\_\_  
No \_\_\_\_\_  
Business/Entity's Designated Agent and Address for Service of Process in New York State \_\_\_\_\_

**AFFIRMATION:**

I swear under penalties of perjury that I have answered the questions asked on this affidavit completely and accurately. I acknowledge that this information is being provided to a public servant and is a matter of public record. I also understand that the failure to complete the questions completely and accurately could result in forfeiture of the property, loss of my deposit, and subject me to civil and criminal remedies.

---

SIGNATURE REQUIRED

DATE

A \$20.00 FEE WILL BE CHARGED FOR ANY BID CARDS NOT RETURNED AT THE END OF THE AUCTION

**Appendix E**

**Proposed Purchaser Information Form**

**Drafted by Kathleen Lynch**

**CITY OF BUFFALO  
DEPARTMENT OF ASSESSMENT AND TAXATION  
IN REM  
FORECLOSURE SALE**

**PURCHASER INFORMATION FORM**

**INSTRUCTIONS: Please answer all questions completely and in legible PRINT. If the answer is NONE, write "NONE". Do not leave a blank space. If the question does not apply, write "NA" in the space provided. "Unknown" or similar response is not acceptable. Please staple any document with additional information to this one.**

**PHOTO I.D. REQUIRED**

Full Name \_\_\_\_\_

DOB \_\_\_\_\_ Social Security Number \_\_\_\_\_

Home Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

(Required)

Alternative Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

(Including P.O. Box)

Telephone \_\_\_\_\_ Cellular \_\_\_\_\_ Fax \_\_\_\_\_

Employer Name \_\_\_\_\_

Employer Address \_\_\_\_\_

Driver's License #: \_\_\_\_\_

Purchaser's Non-Driver's License #: \_\_\_\_\_

Other ID#: \_\_\_\_\_

Are you purchasing this property on behalf of another individual, business or other party?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, please provide the following information for that person or entity.

Name of Individual/Entity \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Principals/Officers \_\_\_\_\_

Purchaser's Relationship to

Individual/Entity \_\_\_\_\_

Is Entity registered to conduct business in New York State?

Yes \_\_\_\_\_ No \_\_\_\_\_

Entity's Agent and Address in New York

State \_\_\_\_\_

Do you intend to occupy the subject premises? Yes \_\_\_\_\_ No \_\_\_\_\_

If you intend to rent but not occupy the premises, please provide the following information.

I will be responsible for property maintenance:

Yes \_\_\_\_\_ No \_\_\_\_\_

I will hire another to be responsible for property maintenance:

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the following information:

Name of State Licensed Real Estate Broker/Property

Manager \_\_\_\_\_

Address of State Licensed Real Estate Broker/Property

Manager \_\_\_\_\_

List addresses of all real property that you have bid upon at City of Buffalo In Rem Auctions.

List addresses of all real property that you have purchased at the City of Buffalo In Rem Auctions.

List addresses of all properties that you own(ed) in the City of Buffalo that have been cited for code violations.

DISCLOSURE OF RELATIONSHIP TO AFFILIATED BUSINESSES AND/OR

CORPORATIONS

Disclose all affiliations with any corporation, business or entity relating to, or engaging in, real estate transactions.

Name of  
Business \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Principals \_\_\_\_\_  
Purchaser's Relationship to  
Business/Corporation/Entity \_\_\_\_\_  
State of Entity's  
Incorporation \_\_\_\_\_  
Is Entity registered to conduct business in New York  
State \_\_\_\_\_  
Entity's Designated Agent and Address for Service of  
Process \_\_\_\_\_

I swear under penalties of perjury that I have answered the questions asked on this affidavit completely and accurately. I acknowledge that this information is being provided to a public servant and is a matter of public record. I also understand that the failure to complete the questions completely and accurately could result in forfeiture of the property, loss of my deposit, and subject me to civil and criminal remedies.

---

SIGNATURE REQUIRED

DATE

## Appendix F

### Proposed Memorandum of Sale

Drafted by Kathleen Lynch

#### Memorandum of Sale

**THE PURCHASER HEREBY AGREES TO PURCHASE THE PREMISES IDENTIFIED IN THIS AGREEMENT AT THE PUBLIC AUCTION** held under the direction on **MICHAEL A. SEAMAN**, Deputy Commissioner of Administration and Finance as REFEREE, on October and, 2007 upon the following terms and conditions:

16. Bidder and Purchaser **MUST SIGN** a properly completed **TERMS OF AGREEMENT OF SALE**.
17. All property sold "AS IS".
18. Twenty percent (20%) of the bid price, or \$400.00, whichever is greater (not to exceed the bid price) must be paid in **US FUNDS ONLY, CASH, OR BY MONEY ORDER, CERTIFIED OR TRAVELERS CHECKS PAYABLE ONLY TO THE CITY OF BUFFALO**, as a deposit at the time of sale, and purchaser or its agent must IMMEDIATELY sign and deliver a copy of this Agreement and the purchaser shall be bound by the terms of this Agreement. Requests for assignment, name changes, additional descriptions or other changes made after the date of the foreclosure sale will not be processed unless a fee of \$75.00 is paid by the party requesting same.
19. The balance of the bid price must be paid in **US FUNDS ONLY, CASH, OR BY MONEY ORDER, CERTIFIED OR TRAVELERS CHECKS PAYABLE ONLY TO THE CITY OF BUFFALO, ON OR BEFORE FRIDAY, DECEMBER, 2007, (the "SETTLEMENT DATE")** at 117 City Hall.
20. A deed will be prepared transferring title to the **PURCHASER IDENTIFIED IN THIS AGREEMENT** and recorded by the City of Buffalo within approximately eight (8) weeks after payment if the balance of the bid price.
21. **If purchaser fails to pay the bid price and /or filing fee, bring all obligation to the City, its authorities and agencies current by the "Settlement Date", the DEPUTY COMMISSIONER OF FINANCE AND ADMINISTRATION as REFEREE will declare all monies forfeited** and will resell the property.
22. The bidding will be kept open after the property is struck down, and in any case where a bidder and/or purchaser shall have failed to comply with any of these terms and conditions found in this Agreement of Sale, including, without limitation, not paying the required deposit IMMEDIATELY, not paying the balance of the bid price or bringing all obligations current by the Settlement Date, the bidder and/or purchaser shall be deemed to be in default

- and will be held liable for any deficiency between the sum of the first sale, and the bid for which it may be sold on the resale, and also for all costs and expenses incurred as a result of the default.
23. All real property will be sold and accepted subject to any existing easements or restrictions and subject to the right of redemption, if any, of the United States of America, and the REFEREE makes no warranty to title and is under no obligation to evict occupants of premises.
  24. The REFEREE will not furnish an abstract of title or survey. Any request for a deed description in addition to that contained in the Judgment of Foreclosure and Sale must be made at the time the purchaser pays the balance of the bid price, and such requests must be accompanied by the purposed description in typed form with 1-1/2 inch left and right margins. The purchaser shall separately identify the source of such description by Liber and Page reference to a recorded document.
  25. The risk of loss or damage by fire, vandalism or other cause (except by taking under the power of eminent domain) between the time of sale and delivery of the deed is assumed by the purchaser.
  26. Neither the REFEREE nor the City of Buffalo will be liable to the bidder or purchaser either before or after delivery of deed, for any sum in excess of the bid price received by the Referee for the property.
  27. The REFEREE shall refuse to transfer title to any person including without limitation, an individual, corporation, partnership, association, limited liability company or vendor (and each of such person's principles, partners, associated, members, etc.) who is not current on all obligations owed to the City of Buffalo, its authorities and agencies, including without limitation, taxes, fees, water bills, sewer rents and other charges, as of the settlement date. The Referee may also refuse to transfer title to any person who has current Code Violations on other properties owned by such person within the City of Buffalo. **If a person (Bidder, Purchaser and/or assignee) is not current on all such obligations as of the "Settlement Date", all monies tendered by the bidder, purchaser and /or assignee shall be applied towards the outstanding obligations owed to the City of Buffalo, its authorities and agencies.**
  28. The REFEREE shall have the right to set aside a bid by any person deemed by him not to be a responsible bidder and /or purchaser and immediately put up the premises for sale again.
  29. Upon final payment, the City of Buffalo will record the deed and return the original deed to purchaser. The purchaser will be required to pay a fee depending on the classification of the property purchased, reflecting the cost of recording, handling and mailing of the deed as follows: Single, Two or Three Family properties, 411 C, to pay a filing fee of \$150.00 (one hundred and fifty dollars), condominium and co-op's, commercial properties, residential vacant land and commercial vacant land to pay a filing fee of \$240.00 (two hundred and forty dollars).



30. **ALL PROPERTY IS SOLD SUBJECT TO THE LIENS OF ALL TAXED, WATER BILLS, SEWER RENTS AND USER FEE LEVIED AFTER THE AUCTION DATE (October 23, 24, 25, 2006).**
31. **The winning bidder and/or purchaser of this property agrees to assume any and all costs, risks, and liabilities that may be incurred as a result of the conditions of this parcel, including responsibility for code violations.**
32. **The winning bidder agrees to remedy all code violations within a period of six (6) months of the date this memorandum of sale is executed.**
33. **The purchaser agrees to remedy all housing code violations within a period of six (6) months from the date that the purchase transaction is completed with the City of Buffalo.**
34. **The winning bidder is prohibited from conveying the named property to a bonafide purchaser for value of a sales price of greater than 120% of the bid price for a period of six months from the date this Memorandum of Sale is executed.**
35. **The winning bidder is prohibited from encumbering the subject property with a security interest in the principal amount of greater than 120% of the bid priced for a period of six (6) months from the date this Memorandum of Sale is executed.**
36. **The purchaser of this property is prohibited from conveying the named property to a bonafide purchaser for value of a sales price of greater than 120% of the bid price for a period of six months from the date the Deed is transferred to purchaser.**
37. **The purchaser of this property is prohibited from encumbering the subject property with a security interest in the principal amount of greater than 120% of the bid priced for a period of six (6) months from the date the Deed is transferred to purchaser.**
38. **These restrictions shall fun with the land and are not personal to the grantee.**
39. **The bidder/purchaser understands that if the agreement is breached, the City may rescind the sale and award the property to the next bidder or sell the property at the next tax foreclosure auction.**

IN REM  
SERIAL #  
ASSESSED VALUE  
PROPERTY ADDRESS  
CLASS CODE  
PURCHASER'S NAME  
ADDRESS

CITY  
 STATE  
 ZIP  
 PURCHASER'S TELEPHONE #  
 PURCHASER'S SS#  
 BIDDER'S NAME  
 ADDRESS  
 CITY  
 STATE  
 ZIP  
 BIDDER'S TELEPHONE #  
 BIDDER'S SS#  
 PRUCHASER OR BIDDER'S, AS AGENT OF PURCHASER, SIGNATURE  
 BID #  
 BID AMOUNT  
 20% AMOUNT DOWN  
 DEPOSIT  
 FILING FEE  
 (BALANCE IS DUE BY December 15, 2007)  
 (OFFICIAL INFORMATION ONLY)  
 PAIN IN FULL  
 CLEARED BY COLLECTIONS  
 CLEARED BY INSPECTIONS

I, the undersigned on the \_\_\_\_\_ day of October, 2007, bid upon, purchased (or bid or purchased as agent for the below named Purchaser) the above described premises for the amount set forth and hereby promise and agree to comply with the terms and conditions of the sale as set forth herein. I further swear under penalties of perjury that I have answered the questions asked on this affidavit completely and accurately. I acknowledge that this information is being provided to a public servant and is a matter of public record. I also understand that the failure to complete the questions completely and accurately could result in forfeiture of the property, loss of my deposit, and subject me to civil and criminal remedies.

\_\_\_\_\_  
Bidder Name (Print)

\_\_\_\_\_  
Bidder Address (Print)

\_\_\_\_\_  
Bidder Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Purchaser's Name (Print)

\_\_\_\_\_  
Purchaser's Address (Print)

---

Purchaser's Signature

---

Date

If Bidder is acting as Agent, please complete the following additional section:

---

Purchaser (Print)

---

Purchaser's Address (Print)