

PREVENTING TAX FORECLOSURES IN THE CITY OF BUFFALO

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I. Executive Summary

Over the past three years, tax foreclosures have risen approximately 150% in the city of Buffalo. While tax foreclosures are spread across the city, they are heavily concentrated in the Masten and Fillmore districts of the city.

To combat the increase in tax foreclosures, Buffalo should study the principle causes of tax foreclosures in the area and be prepared to provide financial education classes, payment plans extending for more than one year, and financial assistance to qualified individuals (low to 0% interest loans). Unfortunately, the lack of definitive information on the causes of tax foreclosures in Buffalo makes it impossible to provide a specific combination/ratio that the city should follow in applying these remedies to prevent tax foreclosures.

The causes of tax foreclosure are not entirely clear, but it is possible to divide the principal causes into two general categories. First are those that are in danger of foreclosure because they are suffering financial hardships due to circumstances outside of their control. People that fall into this category are those that fell into arrears because they lost their job through injury, layoffs, or other incidents of that nature, or those that incurred significant unexpected expenses such as medical bills following a serious injury. Second are those that are in danger of foreclosure due to circumstances within their control. Circumstances within a person's control include quitting a job, committing a crime and being jailed, and money mismanagement.

Measures to prevent tax foreclosures should depend on which category the majority of homeowners in danger of foreclosure fall under. Providing extended time periods for payment plans would benefit homeowners that fall under both categories, but

direct financial assistance would not be very wise or effective if provided to those who face tax foreclosure due to circumstances within their control. Similarly, providing financial education services to those who are facing foreclosure due to circumstances beyond their control would probably be ineffective. Rather, direct financial assistance should be provided only to qualified homeowners that face foreclosure due to circumstances outside of their control while financial education should be provided to those who face foreclosure due to circumstances within their control.

After concluding a study on the causes of tax foreclosures in the city limits, Buffalo should adopt a two-tiered preventative strategy that distinguishes between these two groups. The first tier should be directed toward those who face foreclosure due to circumstances outside their control. This program should include financial assistance to qualified individuals and/or a repayment schedule that would extend over a number of years. The second tier should be directed at those who face foreclosure due to circumstances within their control. This program would provide financial education classes coupled with a repayment schedule that would extend over a number of years.

II. The Scope and Causes of Tax Foreclosures in Buffalo

Over the past few years, foreclosures have increased across the country. However, the causes of foreclosures are not the same in all instances. While most of the country has seen a sharp rise in sub-prime loan mortgage foreclosures, Buffalo has been spared the worst of this epidemic. Unfortunately, not all is well in Buffalo, as it has

suffered a terrible rise in tax foreclosures over the last four years. Since 2004, tax foreclosures have risen approximately 150% from 1,074 in 2004 up to 2,489 in 2007.¹

While the causes are not entirely clear or common to all who suffer foreclosure, there are some general situations that may lead to foreclosure. A foreclosure may be caused by the loss of income through unemployment, or injury, or by a homeowner's decision that it is not worth the cost to maintain a home. Significant unexpected expenses may also lead to foreclosure because homeowners may not have the resources to cover both the costs of owning a home and paying down the unexpected debt. Homeowners may decide it is not worth the cost to maintain a home because the value of the home has decreased due to the decay of the neighborhood or the deterioration of the house itself.

Tax foreclosures are caused by many of the same forces that lead to other types of foreclosures, but they also have some distinct causes. Interestingly, a tax foreclosure may be caused by the fear of a mortgage foreclosure. This situation may arise when a homeowner abandons a property that they have been told will be lost to foreclosure. The bank threatening foreclosure may decide it is not worth the cost of foreclosure and choose not to take the property. If a bank decides not to take the property, the taxes may not be paid because the homeowner has left – thinking that they no longer own the home. A tax foreclosure could also be caused by something as simple as someone choosing to not pay their taxes.

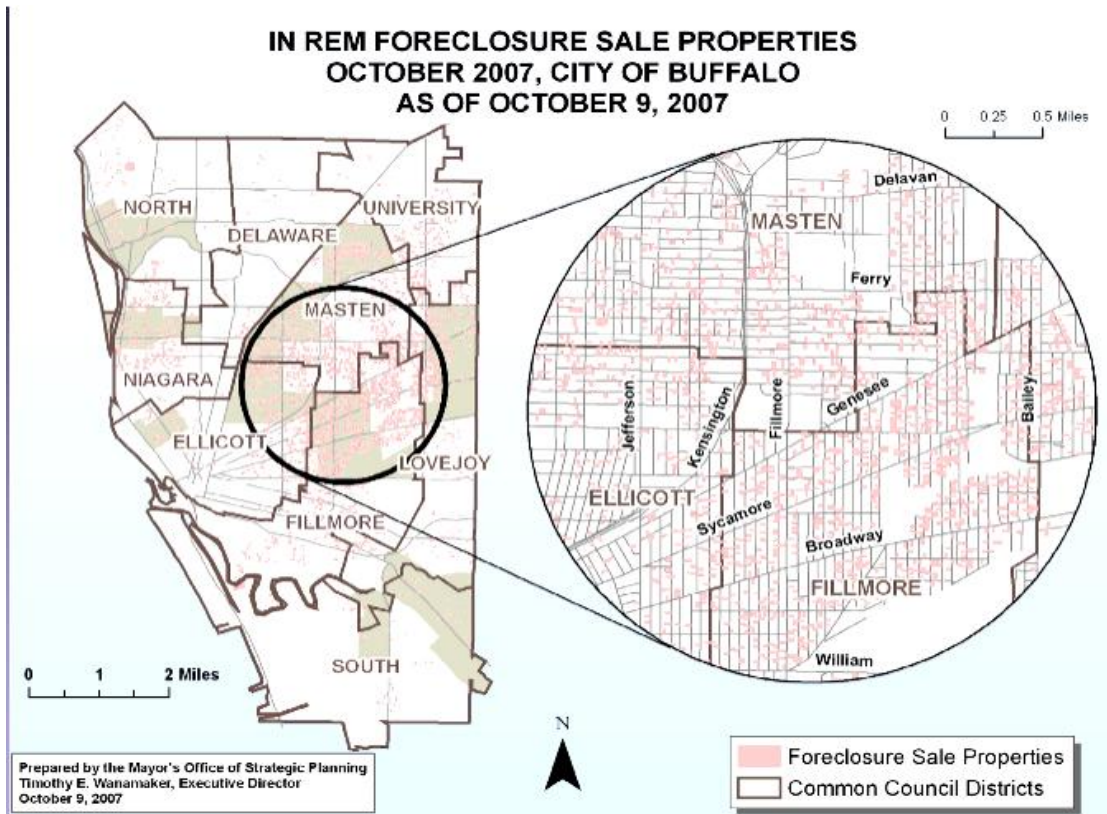
The causes of foreclosures mentioned above can be divided into two general categories. First, are those that face foreclosure due to circumstances outside of their

¹ Buffalo Department of Assessment and Taxation December 12, 2007 Report [*hereinafter* December 12, 2007 Report], http://www.ci.buffalo.ny.us/files/1_2_1/Mayor/CitiStat/Assessment_Taxation/12-12-07/AT.pdf.

control. Homeowners that fall into this category are those that have fallen into arrears because they lost their job through injury or layoffs, and those that incurred significant unexpected expenses such as medical expenses or property damage due to natural disasters. Second, are those that face foreclosure due to circumstances within their control. Homeowners that fall into this category are those that have fallen into arrears because they chose not to pay their taxes, money mismanagement, or incarceration.

Not all areas of Buffalo are equally affected by the increased incidence of tax foreclosures. Tax foreclosures are dispersed across the city of Buffalo, but they are concentrated in the Masten and Fillmore sections of the city.² Unfortunately, Buffalo's Department of Assessment and Taxation does not keep statistics regarding the causes of foreclosure, or the ethnicity or financial status of those whom are foreclosed upon. However, the Masten and Fillmore sections of the city are plagued by high crime rates, housing decline, and they are predominantly populated by minorities with lower incomes.

² December 12, 2007 Report



III. Buffalo's Tax Foreclosure Process

In order to understand how to prevent tax foreclosures in Buffalo, one must understand the tax foreclosure process. First, the City of Buffalo will make the decision to foreclose upon a property when a taxpayer is behind in their taxes. When a taxpayer goes into arrears, the city sends a series of 'courtesy' letters notifying the taxpayer that they are in danger of foreclosure if they don't pay their taxes.³ The first 'courtesy' letter is sent in August of the year prior to the impending foreclosure and a series of 'courtesy' letters follow in December, March, and August.⁴ Only the 'courtesy' letter sent in March is legally required, but the city sends the other 'courtesy' letters to notify the taxpayer of the possibility of foreclosure and to inform the taxpayer that legal services are

³ Secret Thompson, Buffalo City Employee, Department of Assessment and Taxation, (Apr. 4, 2007).

⁴ December 12, 2007 Report.

available to them.⁵ Taxpayers are further informed of the availability of legal services through brochures that are available at Buffalo's Department of Assessment and Taxation.

Finally, in September, the City notifies the taxpayer that their property has been foreclosed upon and will be sold at auction in October.⁶ At this point, a foreclosure fee of \$442 is assessed, and the property will be sold at auction in October if the taxpayer does not rectify their tax deficiencies.

IV. Buffalo's Limited Programs Designed to Prevent Tax Foreclosures

Unfortunately, Buffalo does very little to curb the rising incidence of tax foreclosures. The city offers two programs designed to aid homeowners in paying their taxes, thus avoiding foreclosure. Upon receipt of the first 'courtesy' letter in August of the year preceding the impending foreclosure, homeowners have the opportunity to contact the Department of Assessment and Taxation to schedule a payment plan. This opportunity is available to the homeowner from the date they receive the initial courtesy letter up to the September just prior to the foreclosure auction. The city is generally amenable to accepting very low payments in order to avoid foreclosure, but the tax must be paid in full by the end of the year. However, this is frequently not successful because homeowners often miss their payments and end up in foreclosure anyway.

Second, after receiving the foreclosure notice in September, a homeowner may enter Housing Court and negotiate payment plans *pro se*. It is important to note that there can be no compromise in these negotiations with regard to the amount of tax paid. The negotiation is merely a homeowner's last chance to schedule a payment plan in order to

⁵ Thompson.

⁶ *Id.*

avoid foreclosure and the taxpayer is required to pay the taxes in full. Furthermore, the taxpayer has only a four-week window in which they can schedule a payment plan with the Housing Court.

At the very least, the last chance at negotiating payment plans appears to be effective in postponing foreclosures. For example, in 2007 there were 3,705 foreclosure notices sent out in September, but there were only 2,489 properties available at auction in October.⁷ While the numbers appear promising, the ultimate effectiveness of the last chance at negotiating payment plans at preventing tax foreclosures is not clear because there are no statistics showing how many of these homes fell into foreclosure at a later point in time.

V. Shortcomings of Buffalo's Attempts at Preventing Tax Foreclosures

Buffalo's current program directed at preventing tax foreclosures is ineffective because scheduling a repayment plan often does very little. People often face tax foreclosure because they have lost their source of income or have incurred some significant unexpected cost such as a medical emergency. In cases where a person cannot pay their taxes because of poor financial planning or circumstances outside of their control such as layoffs from work or large medical expenses, scheduled payments do little in preventing a tax foreclosure because the taxes must be paid off in a relatively short period of time. Those that are in arrears must pay the taxes by the end of the current taxable year, and it is unlikely that those who couldn't pay their taxes due to a loss of income, unexpected expense, or circumstances within their control will find enough income to pay the taxes by the end of the year.

⁷ December 12, 2007 Report.

VI. Other Attempts Directed at Preventing Tax Foreclosure

Although cities across the nation have encountered problems with tax foreclosures, there seem to be few methods besides scheduling repayment plans designed specifically to prevent tax foreclosures. However, some cities have initiated interesting programs, that could help prevent tax foreclosures.

In an attempt to prevent tax foreclosures in Cleveland, Franklin County also offers property owners the chance to negotiate repayment plans. Franklin County however, allows the repayment schedule to be spread across 60 months, whereas Buffalo limits repayment plans to one year. Franklin County also offers a free 10-hour personal finance education class and free financial counseling to taxpayers who successfully complete the first year of their payment plan.⁸

Spreading payments out over a period of 60 months could be extremely helpful in preventing tax foreclosures. Tax foreclosures are caused by many different circumstances, but extending the period in which payment can be made would help those who have gone into arrears due to circumstances beyond their control as well as those who are having financial problems due to circumstances within their control. Prolonging the time for those who are in arrears for reasons outside their control allows them time to get back on their feet and find a way to pay their taxes and prevent foreclosure. A prolonged payment schedule allows those who are facing foreclosure due to circumstances within their control to benefit from educational courses that will help them meet their financial responsibilities.

⁸ Franklin County Website,
<http://www.co.franklin.oh.us/treasurer/dlqnt/paymentplans.htm>.

In addition to the education programs provided by Franklin County, the state of Ohio has initiated the Ohio Home Rescue Fund (OHRF). The OHRF provides a two tiered rescue system that is being used to prevent both tax and mortgage foreclosures by providing financial assistance to qualified individuals.⁹ The first tier requires that the homeowner earn 65% or less than the area's median income and provides the lesser of \$3,000 or 3 months of mortgage, interest, or taxes.¹⁰ This loan is secured as a mortgage against the property and lasts for three years at 0% interest. The second tier requires that the homeowner earn 65% to 115% area's median income and provides the lesser of \$3,000 or 3 months of mortgage, interest, or taxes.¹¹ However, if the mortgage, interest, or taxes is more than \$1,000 a month the loan will provide the lesser of \$5,000 or 3 months of mortgage, interest, or taxes. The second tier loan is also secured by a mortgage and is provided at 0% interest.

A. Methods for Preventing Mortgage Foreclosures

Many cities and organizations across the country have implemented programs with the goal of preventing mortgage foreclosures. These attempts at preventing mortgage foreclosures range from educational classes and advice to providing financial assistance in the form of loans.

The city of Minneapolis - through Twin Cities Habitat for Humanity - has implemented the Mortgage Foreclosure Prevention Program, which provides an education plan similar to the classes provided by Franklin County in Ohio.¹² The

⁹ Neighborhood Housing Services of Greater Cleveland, <http://www.nhscleveland.org/programs/OhioHomeRescueFund.htm#statewide>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Twin Cities Habitat for Humanity, <http://www.tchabitat.org/content/view/563/60/>.

Mortgage Foreclosure Prevention Program offers intensive in-person counseling, phone counseling and referrals, negotiation with lenders, and works with homeowners who are behind on their mortgage payments, property taxes, or homeowner's association dues.

Syracuse has also adopted a program that provides education and financial planning assistance. This comprehensive effort, operated by Home Head Quarters, uses city funds to attack the problem from many angles: financial counseling, negotiations with lenders, foreclosure prevention loans, homebuyer education, and grassroots marketing.¹³ Significantly, the program offers foreclosure prevention loans, which must be approved by a volunteer foreclosure advisory committee made up of lenders, lawyers, city employees, residents and representatives of other nonprofits. The loans are available only to homeowners whose financial situation has stabilized and will be forgiven if the homeowner attends Home Head Quarters' quarterly counseling sessions on budget and credit for one year.

Pennsylvania also offers financial assistance to qualified individuals who are in danger of foreclosure through the Homeowners' Emergency Mortgage Assistance Program (HEMAP). HEMAP is the only program of its kind in the nation and is designed to protect people who, through no fault of their own, are financially unable to make their mortgage payments and are in danger of losing their homes to foreclosure.¹⁴ If approved for HEMAP assistance, the borrower gets a loan to bring the delinquent payments current. Two types of assistance are available to the homeowner depending on their income and financial situation: continuing mortgage assistance loans and non–

¹³ Neighbor Works America, <http://www.nw.org/newsroom/articles/netNews050106.asp>.

¹⁴ Pennsylvania Housing Finance Agency, <http://www.phfa.org/consumers/homeowners/hemap.aspx>.

continuing mortgage assistance loans.¹⁵ Under the program, those who receive non-continuing mortgage assistance have their mortgage brought current to a specified date, and the homeowner is responsible for making all subsequent monthly mortgage payments to their lender along with a monthly payment to HEMAP.¹⁶ For those who receive continuing mortgage assistance, their mortgage is brought current to a specified date and then HEMAP subsidizes their monthly mortgage payment to their lender.¹⁷

In order to receive a HEMAP loan, a homeowner must meet certain qualifications. The most significant are: (i) Homeowner must be at least 60 days delinquent on their mortgage; (ii) the property must be a one – or two –family residence; (iii) the homeowner must have had a favorable mortgage credit history prior to the delinquency during the previous five years; (iv) the homeowner must be suffering financial hardship due to circumstances beyond their control; (v) the homeowner must have a reasonable prospect of resuming full mortgage payments within 24 months and paying the mortgage in full by maturity; (vi) a HEMAP loan cannot exceed \$60,000.00; (vii) and a HEMAP loan cannot exceed 24 months from the date of the delinquency.

Pennsylvania has provided guidance on how to determine whether one is suffering financial hardship due to circumstances beyond one's control. Loss of employment due to layoff, strike or plant closing, serious medical problems, an divorce or separation are deemed circumstances beyond one's control.¹⁸ However, quitting a job,

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Pennsylvania Housing Finance Agency,
http://www.phfa.org/hsgresources/faq.aspx#hemap_q9.

committing a crime and being jailed, or money mismanagement are all examples of circumstances within one's control.¹⁹

Finally, New York State is considering a bill that would provide significant funds for direct assistance to homeowners in default or foreclosure in their sub-prime and nontraditional mortgages.²⁰ This bill would provide \$180 million dollars, \$150 million of which would be used for small grants - up to three months of monthly payments - to help homeowners in default to negotiate payment plans and loan modifications with their lenders. The remaining \$30 million would go to housing counseling agencies and civil legal services to serve an intermediary role between homeowners and lenders, directly assisting homeowners with workouts such as loan modifications and repayment plans. Furthermore, the bill also calls for targeted education and outreach to eligible homeowners.

B. Are the Alternative Methods Feasible for Buffalo?

Some of the alternative plans for preventing mortgage foreclosures provided by Syracuse, Franklin County, Ohio, Pennsylvania, and Minneapolis would be feasible and effective in preventing tax foreclosures in the area. The extended payment schedule is feasible for Buffalo because although the City would forego the revenue raised by the auction of the property, the City would not incur the significant expenses of foreclosing, and maintaining the property until it is sold, and it would eventually recover the tax owed in full.

¹⁹ *Id.*

²⁰ Empire Justice Center,

<http://www.empirejustice.org/library/ForeclosurePreventionActSumm2008.pdf>.

Education programs similar to those provided by Franklin County, Minneapolis, and Syracuse would also be feasible for Buffalo so long as the cost of the programs is not prohibitively high. Even with the cost of the education programs, the cost of the programs might be outweighed by the tax that is eventually collected from the homeowners that successfully pay their taxes because of the education they receive, and by the money saved by forgoing the cost of foreclosure and maintenance of vacant properties.

Financial assistance packages such as those provided by Pennsylvania, Syracuse, and that being considered by New York State are also feasible for Buffalo, so long as it can find a source of funding for the loan programs. If funding can be found, the City can cooperate with nonprofit organizations as well as private lenders to use loans for qualified individuals to prevent tax foreclosures in the area.

VII. Conclusion

In order to stem the rising tide of tax foreclosures in Buffalo, the City should study the principle causes of tax foreclosures in the area. Upon completion of the study, the City should provide a combination of educational services, financial assistance, and payment plan extensions, depending on the conclusions of the study.

A combination of education and payment plan extensions should be provided where the homeowner has gone into arrears due to circumstances within their control. Where a person has failed to pay their taxes due to circumstances within their control, educational programs, particularly budgeting classes, could be helpful in preventing tax foreclosures. By providing education to those who lack the skills or knowledge to make

good financial decisions, the City would receive more tax revenue and would be spared the expenses of foreclosure and maintenance of abandoned properties.

Where a homeowner has fallen in arrears due to circumstances beyond their control such as job loss due to layoffs or injury, or significant unexpected expenses, the City should provide extended payment plans as well as financial assistance to qualified individuals. Buffalo should adopt a financial assistance package based on that provided by Pennsylvania, especially with regard to the requirements that the homeowner suffer from financial hardships beyond their control. In order to determine whether homeowners meet the requirements of the proposed financial assistance package, Buffalo should establish a volunteer panel of lenders, lawyers, city employees, residents, and representatives of nonprofit organizations similar to that in Syracuse.

Key Sources

Buffalo Department of Assessment and Taxation December 12, 2007 Report,
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