



D I S T R I C T O F C O L U M B I A B A R
S e c t i o n s

D.C. Bar Antitrust and Consumer Law Section Statement of Support for Proposed Reforms to District of Columbia's Residential Real Property Tax Sale Procedures

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

The D.C. Bar's Antitrust and Consumer Law Section Steering Committee (the "Section") submits this statement in support of Bill 20-23, legislation to reform the real property tax sale process in the District of Columbia. The Section previously submitted a statement supporting a similar proposal on May 23, 2012.

The current procedure for tax sales, which was summarized in our previous statement and by others, and which has recently received significant news coverage, raises issues of fundamental fairness. Under the current statute, a tax lien can be imposed quickly and often without effective notice to the homeowner. Then, a lien purchaser at auction can move quickly to execute the lien, and require payment for collection expenses which are frequently several multiples of the delinquent tax itself. There seems to be little time or opportunity for the homeowner to respond or address any actual delinquencies. It has been reported that, in many cases, homeowners who are sometimes only slightly behind in their tax payments have lost their homes in the tax lien auction sale and, even more troubling, have lost the significant equity they accumulated in the property—well above the underlying tax liability and a fair valuation of the costs incurred to recover that debt. A system that leads as a matter of course to these kinds of outcomes should be reformed. The reforms proposed in the bill begin to strike an equitable balance between the District's need to recover overdue real property taxes and homeowners' interest in protecting their domiciles and the significant equity they have often built in that property.

The Section supports the proposed reforms, and recommends an additional reform to help achieve their objectives. The proposed reforms involve stronger notice requirements to homeowners, a fair opportunity for the homeowner to address a delinquency before the tax lien is sold and foreclosure takes hold, and putting a reasonable limit on fees charged to the homeowner. An additional reform we support would allow an appropriate return of equity to the foreclosed homeowner, similar to an ordinary mortgage foreclosure. The Section also supports the testimony previously provided by representatives for AARP Legal Counsel for the Elderly and AT HOME—The Alliance to Help Owners Maintain Equity.²

¹ The Section Steering Committee voted, without dissent (2 members recused), on February 18, 2014, to adopt this public statement.

² See, Testimony of Amy R. Mix, AARP Legal Counsel for the Elderly, October 17, 2013, with attachments; Testimony of Joanne Savage, AARP Legal Counsel for the Elderly, October 17, 2013, with attachments.

The Section, and others, have identified four major flaws in the current process, three of which Bill 20-23 seeks to address. First, many homeowners of record have not received effective notice that they are in arrears, or that proceedings have begun to place and enforce a lien on the property. Notices are sometimes delivered to incorrect addresses. The bill addresses this problem by requiring quarterly delinquency notices to be sent to the homeowner *both* at the property and, if the homeowner lives elsewhere, to the homeowner's address. The required notice must provide clear and meaningful notification of the delinquency, the potential consequences of failure or delay in payment, and the homeowner's procedural rights. The required notice also must set out the homeowner's possible opportunity to arrange for a forbearance agreement providing additional time to make payments on the debt before it is sold, as well as other procedural safeguards. The bill also raises to \$2,500 the threshold before a tax lien may be sold. These reforms should reduce instances in which homeowners either do not receive notice of their delinquency or do not get the opportunity to resolve the debt in a way that allows them to keep the home.

A second flaw in the current law is that even when the homeowner receives notice of the tax delinquency, there are insufficient opportunities to address the delinquency before the tax lien is sold and the foreclosure process takes hold. The bill's creation of an ombudsman, combined with more effective notice, should allow homeowners to take advantage of the existing six-month post-sale "grace period" to redeem the property before the foreclosure suit may be filed. The Section supports creation of an ombudsman office to assist homeowners with navigating the complex tax sale process.

A third problem, one that has received significant attention in the press, is the extremely high legal and related processing fees that private purchasers of tax liens impose on the homeowner to resolve the debt. It has been reported that tax delinquencies of less than \$1,000 have led to redemption charges of many thousands of dollars, and that homeowners who could have paid off the tax delinquency along with reasonable fees have lost their homes because they were unable to pay these excessive additional charges. The bill addresses this problem by placing reasonable limits on the fees that the purchaser of the lien can charge,³ and subjecting other charges to court review and approval. The Council should consider limiting the interest rate even further, perhaps capping it at some percentage above a relevant benchmark for real property loans, with a total maximum cap of some reasonable percentage, perhaps 12 percent.

A fourth problem, not addressed in the bill as introduced, is that a homeowner who loses his or her home in a tax lien sale and foreclosure will also stand to lose all equity that has accumulated in the home. And in most cases that equity is very significant.⁴ A legal process that leads to a homeowner's loss of her home due to a tax delinquency should not provide a windfall to the lien purchaser, but should be limited to the debt, reasonable

³ The bill as introduced limits interest accrual to six percent (reduced from the current 18 percent)—the committee draft raises that to 12 percent.

⁴ As others have noted, homeowners with mortgages usually pay their property taxes through escrows established by the mortgage lender. Accordingly, most tax lien sales are of property that the homeowner owns free of any mortgage debt.

legal and related processing fees, and reasonable compensation. Similar to the process for mortgage lenders' foreclosure on mortgage delinquencies, the value of any equity that remains after the debt and related fees and reasonable compensation have been paid should be returned to the former homeowner. We urge the Council to make further changes, to prevent a homeowner from losing her equity in a windfall to others.

The Section appreciates that the District needs an effective procedure for collecting real property taxes, and that liens, including auctions and enforcement, are at times a necessary tool to maintain the integrity of the real property tax system. Nevertheless, a better balance can be struck between the District's need to collect overdue taxes, the lien purchaser's need to recover its reasonable costs and reasonable compensation, and the homeowner's right to timely and adequate notice, an opportunity to pay the debt, and the ability to protect any equity in excess of the liability and related enforcement costs. The Section believes Bill 20-23 begins to address this need to strike a more equitable balance, and the Section therefore supports it. We also urge the Council to address the additional concern we note above. We look forward to working with the Council and other interested parties to achieve these goals.