

Law Currents



A Quarterly Newsletter

Spring 2003

The sale of New York City tax liens at auction.

By Richard A. Klass, Esq.

Almost every parcel of real property within New York City is assessed taxes on an annual basis. When these real estate taxes are not paid, tax liens are created by law which "attach" to the property. The tax lien, similar to other liens, serves as notice to the public that the City has a claim against the property.

Traditionally, New York City was enabled by statute to bring "in rem" proceedings to foreclose on the lien and, thus, become the owner of the property.

In 1996, New York City's Administrative Code was amended to include an article permitting the City to sell at auction these real estate tax liens. This was done partly to shift the administrative burden of collecting the tax liens outside of the City's system; it was also partly done to get the City immediate money from the sale of the liens from third parties.

The change of process from "in rem" proceedings to the sale of tax liens, affects owners of real property against which tax liens exist in important ways:

1. Unlike in the past, where the City may have been perceived as almost lethargic in collecting the tax arrears, this new process motivates the purchaser of the tax lien to immediately take action to collect on the lien, including the bringing of a foreclosure action in the Supreme Court in the county in which the property is located.

2. The statute gives the purchaser of the tax lien a high rate of interest on the tax lien until paid, plus an award of reasonable attorney's fees and expenses for the prosecution of the foreclosure action.

3. Once the tax lien is sold, it is removed from the records of the City. Unless the homeowner inspects the tax lien records in the City Register's office, the tax lien information will not appear on the owner's tax bill. This may cause confusion, with the assumption that no older tax arrears are due.

Prior to the sale of a tax lien, the City is required to provide notice to the owner of the subject property and to the public. The owner will be sent notice by mail at the registered address for such owner (which, in some cases, may be different than

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the property's address). The public will receive notice by virtue of advertisements of the sale published in newspapers.

Once the tax lien is sold, the purchaser will send notification to the owner of the property. Further, the purchaser will afford the owner the opportunity to satisfy the lien prior to the commencement of a foreclosure action. In the event that payment is not made, a foreclosure action will be commenced for the unpaid tax arrears as indicated in the tax lien, along with a request for interest and attorney's fees. After a Judgment of Foreclosure is entered, the property will be auctioned off to first satisfy the lien and, then, to pay off junior lienors. Any surplus moneys left over will be turned over to the owner of record.

Debt Collection Tips:

A practical guide to collecting on a debt in New York State.

Check out Your Court Street Lawyer's web-site at:

www.courtstreetlaw.com

Installment Payment Agreements with Debtors:

At some point in the collection process, the debtor may be either forced to settle the debt or voluntarily settle the debt with the creditor. The debtor might not have sufficient assets or income to pay off the entire debt at once.

Arrangements with the debtor may be made pre-suit, post-filing/pre-judgment, and post-judgment. The agreement signed will include several key provisions:

1. Acknowledgment of debt, or admission of liability to the creditor. This provision may also include consent to the jurisdiction of the court.
2. Payment schedule, indicating the amount due per period (usually on a monthly basis), the commencement date, and the number of payments. The agreement will indicate whether interest will be paid upon the settled amount.

3. A provision that, upon the completion of the payments, the creditor will provide the debtor one or all of the following: (i) Stipulation of Discontinuance of the action; (ii) Satisfaction of Judgment; (iii) General Release executed by the creditor; or (iv) release of any liens upon assets (such as restraints on a bank account, mechanic's lien, or docketed lien against real property).

4. In the event of a default in payment by the debtor, the method by which the creditor may pursue the debt. This may include, where applicable, the right to: (i) commence an action upon default; (ii) enter judgment for the remaining balance less payments made; or (iii) continuation of post-judgment enforcement.

5. Name and address to whom payments will be made by the debtor.



YOUR REFERRALS:

Any referrals of business would be greatly appreciated:

- ▶ Real estate transactions
- ▶ Cooperative Apartments
- ▶ Matrimonial law/divorce
- ▶ Commercial litigation
- ▶ Federal Court litigation
- ▶ Bankruptcy
- ▶ Appeals
- ▶ Personal Injury
- ▶ Corporate formation/business transactions
- ▶ Wills/estate proceedings

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