



Erie County Real Property Tax Services
Presents:
How to Purchase Tax Foreclosed
Properties

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Erie County is a tax act County
Unpaid Taxes are typically
enforced through what is known as the In Rem Process.

In rem ([Latin](#)) is a legal term describing the power a court may exercise over property. Jurisdiction *in rem* assumes the property or status is the primary object of the action, rather than personal liabilities.

Erie
COUNTY
ENFORCES
UNPAID TAXES FOR:

VILLAGES
TOWNS
SCHOOLS

**ERIE COUNTY MAKES TOWN
SCHOOL DISTRICTS
AND
VILLAGES WHOLE**

**ADMINISTRATIVE ENFORCEMENT
TAKES 3 YEARS BEFORE WE CAN
COMMENCE FORECLOSURE**

**AUTHORITY TO COMMENCE THE
FORELCOSURE IS GRANTED BY THE
ERIE COUNTY LEGISLATURE**

**AUTHORITY IS GRANTED
FORECLOSURE LIST IS PRODUCED
WHAT IS NEXT FOR AN INVESTOR
TO DO
?**

GO TO THE DEPARTMENT OF REAL
PROPERTY TAX SERVICES WEBSITE!

<http://www2.erie.gov/ecrpts/>

LEGAL ISSUES

MARGARET A. HURLEY, ESQ
ASSOCIATE ATTORNEY
MOSEY/PERSICO LLP.

Rich Labarba

Investor/Realtor/Property

Management

Preparing to bid on tax foreclosed property

Due Diligence Process

What to do with occupants/tenants

You Got the floor!

?????

Legal Guidance

Margaret A. Hurley, Esq.

Mosey Persico, LLP

The In Rem Tax Lien Foreclosure Proceeding

- Unique vehicle
 - One proceeding for all properties
 - Streamlined and efficient
 - Available to municipalities, only
 - Governed by the Erie County Tax Act (the “ECTA”)

The In Rem Tax Lien Foreclosure Proceeding

- The List of Delinquent Taxes (the “List”)
 - Filing of List serves as the docketing of an individual Complaint and Notice of Pendency/Lis Pendens for each property
 - Date of filing establishes which taxes are paid from the bid proceeds, which taxes are the responsibility of the purchaser and which taxes are extinguished as a matter of law
 - Dates of filing
 - In Rem 163: May 8, 2015
 - In Rem 162: May 9, 2014
 - In Rem 161: May 10, 2013
 - In Rem 160: October 5, 2012
 - In Rem 159: October 5, 2011

The In Rem Tax Lien Foreclosure Proceeding

- Petition and Notice of Foreclosure
 - Provides notice of foreclosure and information relative to redemption and answer
 - Mailed to each property owner and anyone with an interest in the property
 - Mailing of the Notice serves to extinguish any interest in the property so that the property can be sold free and clear of any/all liens, except outstanding taxes and assessments

Timeline

- Filing of List of Delinquent Taxes (May 8, 2015)
- Service of Petition and Notice of In Rem Foreclosure upon anyone with an interest in the properties
 - Mailing via regular and certified mail
 - Publication and Posting
 - Published in the Buffalo Law Journal and Business First for 6 weeks
 - Posted in 3 places in each Town/Village, the Department of Real Property Tax Services and the County Hall
- Redemption Date (July 10, 2015)
- Last day to file and serve Answer (July 30, 2015)
- Judgment of Foreclosure and Sale
- Notice of Sale
 - Provides notice of auction date/time/venue
 - Mailed to everyone with an interest in the properties
 - Published in the Buffalo Law Journal 1x per week for 3 weeks before the auction
- Auction (September 24, 2015)
- Closing (on or before October 24, 2015)
- Surplus Money Proceedings

Auction

- September 24, 2015 at 9:30 am in the auditorium of the Buffalo and Erie County Public Library (registration beings at 8:30 am)
- In Rem 163, 162, 161, 160 and 159
- What to bring:
 - Cash or certified funds (20% down payment)
 - Information for Referee's Deed
 - Name of entity taking title
 - Address of entity taking title (cannot use PO Box)
 - If represented by an attorney, their name and contact information
 - Note: \$75 fee for change of information
 - Due diligence

Terms and Memorandum of Sale

- The Terms and Memorandum of Sale are the **formal contract** between the purchaser and the Referee
- Purchaser agrees to the following terms of sale:
 - **Closing** within 30 days of auction, or on or before October 24, 2015
 - **Distribution of Proceeds** (the manner in which the bid proceeds are distributed to pay outstanding taxes)
 - All taxes, assessments, water and sewer rates which are liens upon the property, but which have become such subsequent to the filing of the Lis Pendens (May 8, 2015), are paid in reverse chronological order

Terms and Memorandum of Sale

– The Terms of Sale provide that, “[a]ny and all **taxes arising after the date of the filing of the Notice of Pendency survive the foreclosure sale to the extent not paid by the proceeds of sale and are the responsibility of the purchaser.**” In other words:

- All taxes/assessments that have accrued **prior** to the filing of the Lis Pendens are extinguished if they are not paid by the bid proceeds
- All taxes/ assessments that have accrued **after** the filing of the Lis Pendens that are unpaid by the bid proceeds are the responsibility of the purchaser

Terms and Memorandum of Sale

– County performs a **Tax Search**

- The Terms of Sale provide that, “[t]he Referee will exercise due diligence in ascertaining the taxes, assessments, water, sewer and other municipal liens against the property as of the date of the sale, but makes no guarantees or warranties as to that information. Any liens or other encumbrances which are not disclosed to the Referee or the County’s closing attorney prior to the closing date or are discovered after the closing date become the sole *responsibility of the purchaser.*”

– See example Distributions of Proceeds

Distribution of Proceeds In Rem 160- Deficiency					
160 Street, Cheektowaga					
DISTRIBUTION OF SALE PROCEEDS (ECTA Section 9-10.0)					
SALE PRICE				\$10,000.00	
				Total Paid Total Due	
Taxes/Assessments which have become liens subsequent to Lis Pendens 10/5/2012					
2014	Town Tax			\$5,000.00	\$5,000.00
2014	Water			\$300.00	\$300.00
2014	Clean Up			\$300.00	\$300.00
	Foreclosure Fee			\$400.00	\$400.00
	2013 County Taxes			\$4,000.00	\$5,000.00*
	2012 County Taxes			\$0.00	\$5,000.00
	2011 County Taxes			\$0.00	\$5,000.00
	2010 County Taxes			\$0.00	\$5,000.00
	2009 County Taxes			\$0.00	\$5,000.00
	2008 County Taxes			\$0.00	\$5,000.00
	2007 County Taxes			\$0.00	\$0.00
	2006 County Taxes			\$0.00	\$0.00
TOTAL DISTRIBUTION				\$10,000.00	
TOTAL DUE				\$31,000.00	
DEFICIENCY				\$21,000.00	
Erie County:			\$10,000.00		
TOTAL:			\$10,000.00		
* \$1,000.00 difference is the responsibility of the purchaser					
Extinguished					

Distribution of Proceeds In Rem 160- Surplus						
160 Street, Cheektowaga						
DISTRIBUTION OF SALE PROCEEDS (ECTA Section 9-10.0)						
SALE PRICE					\$40,000.00	
					Total Paid Total Due	
Taxes/Assessments which have become liens subsequent to Lis Pendens 10/5/2012						
	2014	Town Tax			\$5,000.00	\$5,000.00
	2014	Water			\$300.00	\$300.00
	2014	Clean Up			\$300.00	\$300.00
		Foreclosure Fee			\$400.00	\$400.00
	2013	County Taxes			\$5,000.00	\$5,000.00
	2012	County Taxes			\$5,000.00	\$5,000.00
	2011	County Taxes			\$5,000.00	\$5,000.00
	2010	County Taxes			\$5,000.00	\$5,000.00
	2009	County Taxes			\$5,000.00	\$5,000.00
	2008	County Taxes			\$5,000.00	\$5,000.00
	2007	County Taxes			\$0.00	\$0.00
	2006	County Taxes			\$0.00	\$0.00
TOTAL DISTRIBUTION					\$36,000.00	
TOTAL DUE					\$36,000.00	
SURPLUS					\$4,000.00	
Erie County:					\$36,000.00	
Erie County Comptroller-Surplus Monies					\$4,000.00	
TOTAL:					\$40,000.00	

Distribution of Proceeds In Rem 162- Deficiency					
162 Avenue, West Seneca					
DISTRIBUTION OF SALE PROCEEDS (ECTA Section 9-10.0)					
SALE PRICE		\$15,000.00			
		Total Paid		Total Due	
Taxes/Assessments which have become liens subsequent to Lis Pendens 5/9/2014					
2014	Town Tax			\$5,000.00	\$5,000.00
2014	Water			\$500.00	\$500.00
2014	Clean Up			\$500.00	\$500.00
	Foreclosure Fee			\$500.00	\$500.00
2013	County Taxes			\$5,000.00	\$5,000.00
	2012 County Taxes			\$3,500.00	\$5,000.00
	2011 County Taxes			\$0.00	\$5,000.00
2010	County Taxes			\$0.00	\$0.00
2009	County Taxes			\$0.00	\$0.00
2008	County Taxes			\$0.00	\$0.00
2007	County Taxes			\$0.00	\$0.00
2006	County Taxes			\$0.00	\$0.00
TOTAL DISTRIBUTION				\$15,000.00	
TOTAL DUE					\$21,500.00
DEFICIENCY				\$6,500.00	
Erie County:			\$15,000.00		
TOTAL:			\$15,000.00		
\$1,500.00 difference is extinguished					

Terms and Memorandum of Sale

- **No warranties**
 - The property is sold in “as is” condition
 - No guarantees regarding the accuracy or completeness of information provided about the property
 - **Purchaser is responsible for performing his/her own independent investigation**
 - No representations/warranties as to the marketability or insurability of title

- **No access** to the property until the closing takes place and the Referee’s Deed is filed at the Erie County Clerk’s Office

- Purchaser’s responsibility to evict or remove any parties in possession of the premises

- The risk of loss or damage by fire, vandalism or other cause between the time of sale and delivery of the deed is assumed by the Purchaser

Terms and Memorandum of Sale

- **Default by Purchaser**
 - Forfeit of deposit
 - In the event of resale, Purchaser shall be held liable for the difference between the amount received upon resale and the amount of purchaser's original bid plus interest on the original bid at 9% per annum, plus costs, expenses and fees (including attorneys' fees) occurring as a result of said resale. Purchaser's deposit shall be applied to said deficiency, with any overage refunded to said purchaser. Purchaser shall be liable for any remaining deficiency

- The County will prepare and provide a Referee's Deed, only. All other expenses of closing, including but not limited to, costs of Recording the Referee's Deed, including Real Property Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the Purchaser

Closing

- Before Closing, counsel for the County obtains a Tax Search and prepares the Referee's Deed
- Upon receipt of the Tax Search and the preparation of the Referee's Deed, counsel for the County will contact Purchaser to schedule the Closing date
- Closing takes place at the law office of Mosey Persico, LLP, located at 625 Delaware Avenue, Suite 304, Buffalo, New York 14202 and **NOT AT THE CLERKS OFFICE**
- Balance of bid is paid via cash/certified funds
- Referee's Deed is filed at the Erie County Clerk's Office (only upon filing of the Referee's Deed is the property effectively transferred to Purchaser)

Summary

- Properties are sold in “as is” condition
- No warranties as to condition of property or marketability/insurability of title
- County due diligence in ascertaining any/all unpaid taxes, assessments and/or clean-up charges, however, if an assessment is later discovered, it is the responsibility of the Purchaser
- Purchaser due diligence
- County of Erie In Rem Foreclosure attorney contact information:
Margaret A. Hurley, Esq.
Mosey Persico, LLP
625 Delaware Avenue, Suite 304
Buffalo, New York 14202

