NYC Tax Lien Sale: Implications of the Sale and How to Help Homeowners Avoid It

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- Will be held May 12, 2016
- Authorized by the NYC Administrative Code 11-319, the city is authorized to sell unpaid debts to the city as part of an annual lien sale to a private bidder (negotiated sale to a trust)
- In NYC the types of unpaid city debts that can be sold include:
 - unpaid property taxes,
 - unpaid water & sewer charges, and
 - unpaid fines or charges to HPD under the Emergency Repair Program (ERP) or Alternative Enforcement Program (AEP)
- Whether the debt can be sold also depends on both the amount owed and the length of time it has been owed

WHEN THE CITY CAN SELL A LIEN ON A PROPERTY

Depending on your type of property, there can be as many as four conditions that make your property eligible for the sale. Use this table to understand the rules that apply to your property. If the last column says "YES" read Note 2 to see how your property could be excluded from the sale.

	Property	operty Tax Debt Water/Sewer Debt		AEP Debt		ERP Debt			
Type of Property	Minimum Amount	Years Overdue	Minimum Amount	Years Overdue	Minimum Amount	Years Overdue	Minimum Amount	Years Overdue	May Be Excluded (Note 2)
1-Family House	\$1,000	з	(Not	te 1)	N/A	N/A	N/A	N/A	YES
2-Family House	\$1,000	3	\$2,000	1	N/A	N/A	N/A	N/A	YES
3-Family - Owner Occupied	\$1,000	з	\$2,000	1	N/A	N/A	N/A	N/A	YES
3-Family - Non-Owner Occupied	\$1,000	3	\$2,000	1	\$1,000	1	N/A	N/A	NO
Residential Condominium	\$1,000	3	\$1,000	1	\$1,000	1	\$1,000	1	YES
Residential Cooperative Building	\$1,000	3	\$1,000	1	\$1,000	1	\$1,000	1	NO
Vacant Lot Zoned Residential	\$1,000	з	N/A	N/A	\$1,000	1	\$1,000	1	NO
Small Store or Office with 1 or 2 Apartments Above	\$1,000	3	\$2,000	1	\$1,000	1	\$1,000	1	YES
Housing Development Fund Corporation (HDFC) Rental Building	\$5,000	2	\$5,000	2	\$5,000	2	\$5,000*	2	NO
All other	\$1,000	1	\$1,000	1	\$1,000	1	\$1,000*	1	NO

*Only charges posted on or after Jan. 1, 2006, may be included.

Note 1: If you own a **1-family house** and only owe **water/sewer charges** but not property taxes, the City may NOT sell a lien on your property. Although the water/sewer debt may not be sold, DEP may terminate your water/sewer service if charges remain delinquent.

Note 2, Exclusion Rules: We will <u>not</u> sell the liens if your property is a 1- to 3-family house or a residential condominium, if it is owner-occupied and if you qualify for one or more of the following benefits:

- Senior Citizen Homeowners Exemption: Homeowners who are age 65 or older who meet income requirements
- Disabled Homeowners Exemption: People with disabilities who meet income requirements
- Certain Veteran Exemptions: If you have an "Old Law" Veteran Exemption, you are excluded from the lien sale only if you purchased the property with payments received as prisoner of war compensation from the U.S. Government. All Veteran Exemptions of the "combat" or "disability" benefit type are excluded from the lien sale. If you are not sure of your benefit type, go to nyc.gov/finance, click on Property and under Online Tools click "Your Exemptions and Abatements."

Those who received the State Real Property Tax Credit for Homeowners ("Circuit Breaker" credit) in Tax Year 2015 will also be excluded.

Active military duty personnel may request an exclusion from the lien sale by completing an affidavit available at nyc.gov/liensale.

If you think you are eligible for any of our exemptions, application forms are available at our website: www.nyc.gov/taxreductionprograms. Please note: You must apply for exemptions by March 15, 2016.

Notice Before Sale

- Homeowners will receive Notices of Intent to Sell Lien at 90, 60, 30, and 10 days before the sale
- Additionally, lists of the properties and amounts of liens to be sold are published in newspapers at 90 days and 10 days and are maintained on the NYC Annual Lien Sale website: <u>www.nyc.gov/liensale</u>

Defenseless to the Lien Sale

- A lien can be sold even if the homeowner is disputing the assessed value of the property or amount of charges
 - If the dispute is successful, the homeowner will receive a full refund of the overcharge
- Not receiving one of the prescribed 90, 60, 30, or 10 day notices is not a defense to the lien being sold or a subsequent foreclosure. Adm. Code of NYC 11-320.

What are the roles of the **Department of Finance (DOF)**, the **Department of Environmental Protection (DEP)**, and the **Department of Housing Preservation and Development (HPD)**?

These are the agencies that are responsible for maintaining the records of the outstanding charges owed to the city. Disputes of the charges are made to those agencies. DOF & DEP are also the agencies where a homeowner can enter into a payment plan to avoid the sale.

How Can a Homeowner Avoid the Lien Sale?

Avoiding the Lien Sale

- <u>Payment in full</u> of outstanding charges plus fees (advertising, etc.)
- Enter into a <u>payment agreement</u> (\$0 down payment, 10-year repayment period max.)
 - Charges are subject to 9% interest in payment agreements
- Meet <u>exemption eligibility</u> and complete and submit "Exemption Checklist" before May 2, 2016
- Bringing a defaulted payment agreement current
- "One-shot deal" from HRA for unpaid property taxes
- DEP Water Debt Assistance Program for multi-family homes
- DOF Office of the Taxpayer Advocate for property tax issues

Avoiding the Lien Sale: Payment Agreements

- Deadline: May 11, 2016
- Payment agreements can be \$0 down payment and up to 10-year repayment period and are subject to 9% interest and interest continues to be added until paid off
- Cannot get a payment agreement if the property was in a previous tax lien sale or foreclosure
- Cannot be in default on previous payment agreement for more than six months
- Five-year ban on new agreements

Avoiding the Lien Sale: Payment Agreements (cont'd)

- DOF: Payment plans for unpaid property taxes and HPD charges
 - Can be set up for quarterly or monthly payments
 - To apply, homeowner must fill out basic application for payment agreements and prove relationship to property
 - Heirs now eligible
- DEP: Plans for unpaid water & sewer charges. Only offers monthly payments.

- To apply, go to borough office with government ID

Avoiding the Lien Sale: Exemption Checklist

- Deadline: May 2, 2016 (checklist must be postmarked by that date)
- Can be excluded from the lien sale with a completed checklist if
 1) property is 1-3-family or condo, 2) owner-occupied, and 3) meets criteria for:
 - Senior Citizen: 65 or older and combined income of all owners is less than \$37,400
 - Disability: Owner receives disability benefits and combined income of all owners is less than \$37,400
 - Active Duty Military: At least one owner is active military
 - Veterans: Can be excluded just for being a veteran but may not get abatement and future exemption unless disabled veterans or veterans who served in certain conflict periods
 - New York State Property Tax Credit (the "Circuit Breaker" credit) for Tax Year 2015
 - Build It Back recipients not included on Checklist

EXEMPTIONS ELIGIBILITY CHECKLIST

Instructions

- 1. Please fill out the checklist below. If you check both boxes in Section A and at least one box in Section B, you may qualify for an exemption.
- 2. When you are done with the checklist, complete Section C and then return the Exemptions Eligibility Checklist to us at the address below.
- If we think you may be eligible for a senior, disabled homeowner or veteran exemption or meet the "Circuit Breaker" credit or active duty military requirements, we will send you an application upon receipt of this checklist.
- 4. You must complete the exemption application in order to be considered for removal from the lien sale. This checklist is not an exemption application.

Section A

By checking these boxes, I certify that:

- □ My property is a 1- to 3-family house or residential condominium.
- l own my property and use it as my primary residence.

Section B

I also certify that:

- One of the owners was born in 1951 or earlier and the total combined income for all owners is less than \$37,400.
- One of the owners receives disability benefits and the total combined income for all owners is less than \$37,400.
- One of the owners is active duty military personnel.
- One of the owners is a veteran (or spouse / widow / widower of a veteran) or a Gold Star parent.
- □ I received the New York State Property Tax Credit (the "Circuit Breaker" credit) for Tax Year 2015.

Section C

Due date: May 2, 2016				
Mail to NYC Department of Financ York, NY 10038	e, Lien Sale Exemptions Unit	59 Maiden Lane, 24th Floo	or, New	
8. EMAIL ADDRESS (Option	al):			
7. BOROUGH:	BLOCK:	LOT:		
5. STATE:	6. ZIP CO	DE:		
4. CITY:				
3. STREET ADDRESS:				
2. PHONE NUMBER: ())	=		
1. OWNER'S NAME:				

Avoiding the Lien Sale: Water Debt Assistance Program

- Deadline: May 11, 2016
- WDAP will remove the lien from the lien sale and put unpaid water charges of \$2000 or more as non-interest bearing balloon due upon sale, transfer or refinance
- Requirements: on 90-day lien sale list, owner-occupied 2-family or 3-family residence (or one family over a store), at least 30 days delinquent in paying mortgage, and is not currently in bankruptcy
- Other requirements: Must agree that water/sewer debt is valid and all future bills must be paid in full or property will be included in future lien. Owner must be qualified through a means-test showing future ability to pay the debt
- To apply, fill out form, attach proof of residency (current bill) and mortgage delinquency (*lis pendens* or 90-day pre-foreclosure notice)



Water Debt Assistance Program **Customer Participation Form**

Program

In conjunction with New York City HPD's Mortgage Assistance Program (MAP)⁽¹⁾, DEP launched the Water Debt Assistance Program. Qualified customers are offered immediate and temporary relief from Water and Sewer debt. Customers who qualify are those that received a pre-lien sale notice dated November 3, 2015, or are on the 2016 Lien Sale list that own and occupy one of the property types listed below. For enrollment, customers must complete this form, acknowledge responsibility for their past due debt, and be approved/sign the Water Debt Assistance Program Agreement (Agreement)(2).

Property

The property located at Borough _	Block	_ Lot	 (the "	'Property"), with

has received water and sewer service and service address of

has been billed on account number . As of , the above referenced account is past

due in the payment of charges for water and sewer service and owes a total amount due of

Customer

In this form, the owner(s) or authorized representative(s) of the Property may be referred to as the Customer.

Checklist

Review the following questions, check/provide the appropriate response, and bring all applicable attachments and documentation required with this form to a DEP Bureau of Customer Services office.

- 1. I am the owner of the Property, or a. I am an authorized representative of the owner. i. If Yes for 1a, I have attached a notarized Letter of Authorization. 2. The Property type is a 2 Family 3 Family 1 Family w/Store or Office 2 Family w/Store or Office 3. The owner occupies the Property. 4. I have attached a recent Water Bill listing the owners name and Property service address.
- 5. I have attached a recent original utility bill (other than a DEP Water Bill) with owner's name and Property service address. 🗌 Yes 🗌 No ☐ Yes ☐ No ☐ Yes ☐ No
- 6. I have attached a recent Lis Pendens filing for the Property, or a. I have attached a recent bank Mortgage Delinguency notification for the Property.
- 7. The owner is currently in bankruptcy.
- 8. I am providing one of the following valid Photo ID's: NYS Drivers license NYS Non-Drivers license Resident Alien Card Medicaid Card Passport
- 9. The following phone number(s) can be used to contact me _____
- 10. The following email address can be used to contact me

⁽¹⁾ Completing this form and/or executing the Agreement does not automatically guarantee or qualify a customer for MAP. Participants interested in qualifying for MAP need to fill out the required MAP forms. Call 311 to learn more about MAP. (2) The completion and/or signing of this form by the Customer and/or DEP do not enroll or guarantee enrollment in the Water Debt Assistance Program, which can only occur with an executed Agreement.

> Customer Participation Form Page 1 of 2



Yes No

Yes No

Yes I No

🗌 Yes 🗌 No

☐ Yes ☐ No

Water Debt Assistance Program **Customer Participation Form**

Acknowledgments⁽²⁾

By Signing below, the Customer acknowledges that all statements above and documents provided to DEP in support o these statements are true and accurate. Customer acknowledges that they have received, read, and understand the terms and conditions required of the Agreement. Customer acknowledges that access to the water meter and an assessment of property use, if required, must be granted to DEP prior to execution of the Agreement. Customer acknowledges that DEP may conduct a background check to validate information and determine eligibility for the Program.

Customer – Print Name	Signature	Date	
<u>Customer – Print Name</u>	Signature	Date	
DBP use only: Processed By	Umt	Location	

⁽¹⁾ Completing this form and/or executing the Agreement does not automatically guarantee or qualify a customer for MAP. Participants interested in qualifying for MAP need to fill out the required MAP forms. Call 311 to learn more about MAP. (2) The completion and/or signing of this form by the Customer and/or DEP do not enroll or guarantee enrollment in the Water Del Assistance Program, which can only occur with an executed Agreement.

> Customer Participation Form Page 2 of 2

DOF: Office of the Taxpayer Advocate

Contact (212) 312-1800 or <u>DOFTaxpayerAdvocate@finance.nyc.gov</u> when:

- DOF is not providing a timely or accurate response regarding property tax issues, including exemptions, and
- when problem also affects other similar taxpayers and is a problem with DOF's systems or processes

NY	C Department of Finance • The Of	ffice of the Taxpaye	er Advocate	Request for Help From the Office of the	
Department of Finance	REQUEST FOR HE OFFICE OF THE TAXP	LP FROM TH	FORM	TELL US IF YOU NEED HELP W	ITH COMMUNICATING WITH US Braille Large type
IMPOF	RTANT: Read the instructio	ons BEFORE fill	ing out this form	Language other than English:	Other:
YOUR INFOR			<u> </u>		
	s shown on your documents):	Social	Security Number:		
•	openning and openning and the second s			TELL US ABOUT YOUR NYC TA	X PROBLEM
Ducinese Nor			ver Identification Number:	Which tax is giving you a problem?	
Susiness Name	e (as shown on your documents)	enpio			iness Tax O Other
Your current m	ailing address:			Where in the Department of Finance	
		1			ection (property tax lien sale, business tax warrant, levy)
NUMBER	STREET		APARTMENT OR OFFICE NUMBER	Filing a Form. What form nu	umber? Payment of a tax?
				Property tax exemption. Wh	nich one?
BOROUGH			ZIP		nich one?
OR CITY:		STATE	CODE		
-or property ta	x problems, address of property:			Rent Freeze. Select which a	applies: O SCRIE O DRIE O Tenant O Landlord
NUMBER	STREET		BOROUGH	Other. Explain:	
				What tax pariods/years does your p	roblem cover?
BLOCK		LOT		What tax periods/years does your periods/years does yo	
NUMBER		NUMBER			NE SO FAR TO FIX THE PROBLEM of Finance you have talked to or written to, when you did so, and
elephone Nun	nber (home/work/office/cell):	Best time t	o call:		of Finance. If you have a case number, include it below. If you
				have letters, emails or other documents	s that the Department of Finance sent you, please attach copies.
f we cannot co	ontact you by phone, we will send	d vou an e-mail to t	ell you when to contact us.		
i no ou not oc		a you an o man to t	on you whom to contact up.		
Print your ema	il address:				
TELL US IF Y	YOU HAVE SOMEONE HELPI	NG YOU			
	med a tenant representative with		Freeze matter, please print		
hat person's n	ame and telephone number.				
		TELEPHONE		You may attach additional pages if	
NAME:		NUMBER:		Tou may attach additional pages if	neeueu.
	person who is representing you b er of Attorney on file. If they do,				
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What Happens After A Tax Lien is Sold?

After the Lien Sale

- Liens are sold en masse as part of a negotiated sale to a Trust that will be entitled "NYCTL 2016" with Bank of New York as trustee
- Tax liens sold in 2011 or later are subject to 9% interest compounded daily, payable semi-annually (liens prior to 2011, or with an "Assessed Value" of \$250,000 or greater are subject to 18%) as well as a 5% surcharge on the lien and any other charges involved in conducting the lien sale
- The homeowner will receive a notice from the City within 30-90 days of the sale informing him or her who purchased the lien and what company will be the servicer of the lien.

After the Lien Sale

- The Trust's liens are serviced by one of two companies: Mooring Tax Asset Group (MTAG) (mtagservices.com) or Tower Capital Management (tcmfund.com). MTAG took over all of XSPAND's servicing rights. Tower may be more flexible with payment plans or with Sandy victims.
- Payment agreements can be negotiated with the two servicers but often require down payments and short repayment terms of less than 3 years unlike the repayment plans offered by the city (\$0 down, ten years). The exact terms depend on the financial situation of each homeowner.
- Foreclosures can be initiated by the Trust after one year if the debt remains unpaid (or as soon as six months if the interest on the debt is unpaid when no payment plan has been initiated) and the Trust stands in the same position as the city to enforce the lien. NYC Adm. Code 11-332

After the Lien Sale

- Tax Lien Certificates as the basis of the foreclosure are given presumptions of regularity, validity and enforceability. Adm. Code of NYC 11-336.
- If a party or person in interest in any such action or proceeding claims that a tax lien or tax lien certificate is invalid, irregular or defective, it must be specifically pleaded or set forth, and must be established affirmatively by the party or person pleading or setting forth the same. Adm. Code of NYC 11-336.
- Plaintiffs in tax lien foreclosures are entitled to reasonable attorney's fees for maintaining the action.
- **NOTE:** There are few defenses to these foreclosures and the filing of an answer may result in higher attorneys fees as the fee structure changes from uncontested (flat fee) to contested (hourly) and thus will be more expensive to settle.

What Happens After a Tax Lien Foreclosure is Initiated?

Post-Foreclosure Resolution

- Recommend not filing an answer unless there are strong defenses:
 - Lack of Personal Jurisdiction
 - Trust sued a dead person and not the estate or personal representative of the estate
 - Lien is based on a non-existent tax lot
- The homeowner should file a notice of appearance instead of an answer.
- Even after a foreclosure has been started, payment agreements are usually still possible but will be even shorter in duration and thus expensive for the homeowner to complete

Post-Foreclosure Resolution

- If there is a mortgage on the property, try to get the mortgage servicer to pay outstanding lien to maintain a mortgage priority claim
- Often, the mortgage servicer is unaware of water liens (since they don't receive quarterly notices like tax bills) and sometimes tax liens in dual lot situations (owner owns two adjacent tax lots and servicer is only aware of the one with the house on it)
 - Once paid by the servicer it will be treated as an escrow advance that will need to be paid off or wrapped into a modification. Under RESPA, it will usually be spread over 12 months but sometimes longer repayment periods can be negotiated (i.e. 2 or 5 years)

After Foreclosure Sale: Surplus

- Unlike some jurisdictions around the country, New York allows for the homeowner to apply for the surplus after a tax lien foreclosure. Adm. Code of NYC 11-341. NY RPAPL 1361
- The trust, after paying the lien, interest, surcharge and all costs, is required to pay the surplus funds into court and after three months the surplus funds should be invested and begin to accrue interest
- A motion must be made for the surplus funds because an order is needed to direct the DOF to release the surplus funds

Where Do I Refer Challenging Cases?

- City Agencies
 - DOF: <u>taxlien@finance.nyc.gov</u>
 - HPD: <u>hpderp@hpd.nyc.gov</u>
 - DEP: <u>ombuds@dep.nyc.gov</u>
- Legal Service Providers
 - Staten Island Legal Services
 - Brooklyn Legal Services
 - Legal Services NYC Bronx
 - Queens Legal Services
 - Legal Aid Society
 - Queens Legal Services for the Elderly/JASA
 - NY Legal Assistance Group (NYLAG)
 - MFY Legal Services
- City Councilmembers

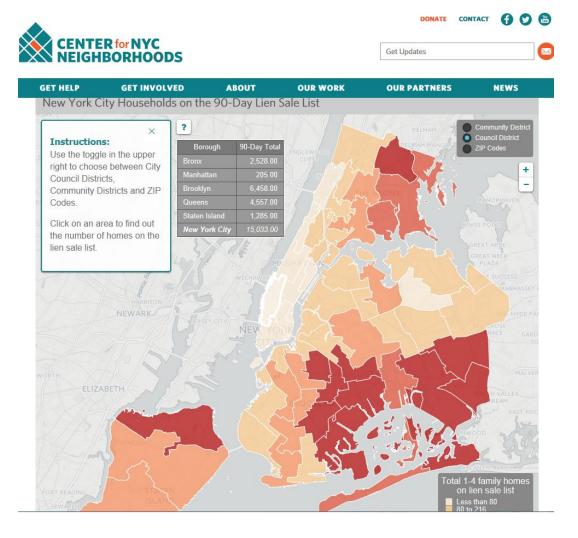
Resources

- Annual Lien Sale Information: <u>www.nyc.gov/liensale</u>
- Exemption Details: <u>http://www1.nyc.gov/nyc-resources/service/2271/property-tax-exemptions-and-abatements</u>
- Payment Agreements:
 - DOF: <u>http://www1.nyc.gov/site/finance/taxes/property-payment-plans.page</u>
 - DOF Payment agreement Calculator: <u>https://webapps.nyc.gov/cics/txpa/TXPA0011</u>
 - DEP: <u>http://www.nyc.gov/html/dep/html/customer_services/lienfaq.shtml</u>
- Exemption Checklist: http://www1.nyc.gov/assets/finance/downloads/pdf/lien_sale/2016/checklist.pdf
- Sample 90-day Notice: <u>http://www1.nyc.gov/assets/finance/downloads/pdf/lien_sale/2016/90_day/90-day_notices.pdf</u>
- Water Debt Assistance Program: <u>http://www.nyc.gov/html/dep/html/customer_assistance/water_debt_assistance_program_multi.sht</u> <u>ml</u>
- DOF Office of the Taxpayer Advocate: <u>http://www1.nyc.gov/site/finance/about/taxpayer-advocate.page</u>
- MTAG: <u>http://www.mtagservices.com/contactUs.html</u> payoff quotes: <u>https://www.taxliensupport.com/</u>
- Tower: http://www.tcmfund.com/new-york-city.html

The Center's Tax Lien Tracker

- A web-based tool that allows users to view the number of one-to-four family homes on the Department of Finance's lien sale list by ZIP Code, City Council District, and Community District
- The tracker currently shows households on the 90-day lien sale list
- The tool can be found at http://cnycn.org/NYC-tax-lien-sale

The Center's Tax Lien Tracker



Upcoming Lien Sale Events

Date	Time	Location			
March 10, 2016		Staten Island Business Center 350 St. Marks Place, 1st Floor, Staten Island, NY			
March 15, 2016		Brooklyn Business Center 210 Joralemon Street, 1st Floor, Brooklyn, NY			
March 16, 2016		Council Member Inez E. Dickens – CD 9 w/West Harlem Group Assistance, Inc., City College - 160 Convent Ave., North Academic Center – Rm 211, 1st Floor, New York, NY			
March 17, 2016		Manhattan Business Center 66 John Street, 2nd Floor, New York, NY			
March 22, 2016	•	Bronx Business Center 3030 Third Avenue, 2nd Floor, Bronx, NY			
March 24, 2016		Council Member Ruben Wills – CD 28 Queens Business Center – 144-06 94th Ave., 1st Floor, Jamaica, NY			
March 28, 2016		Council Member Alan Maisel – CD 46 P.S. 276, 1070 East 83rd Street, Brooklyn, NY			
March 29, 2016		Brooklyn Business Center 210 Joralemon Street, 1st Floor, Brooklyn, NY			
April 5, 2016	•	Staten Island Business Center 350 St. Marks Place, 1st Floor, Staten Island, NY			
April 6, 2016	•	Council Member David G. Greenfield – CD 44 Georgie Ballroom, 4424 16th Avenue, Brooklyn, NY			
April 12, 2016		Council Member Ruben Wills – CD 28 Starlight Ballroom, 130-05 101st Avenue, Jamaica, NY			
April 20, 2016		Council Member I. Daneek Miller – CD 27 Majority Baptist Church, 115-21 Farmers Blvd, St., Albans, NY			
April 26, 2016	26, 20165:00pm- 8:00pmCouncil Member Robert Cornegy – CD 36 Restoration Plaza, 1360 Fulton Street, Brooklyn, NY				

Get Involved in Reforming the Lien Sale

- The NYC Tax Lien Task Force, made up of City Councilmembers and Administration, is currently reviewing the annual lien sale and considering changes
- The <u>Coalition for Affordable Homes</u> has made some initial recommendations about changes to the lien sale to benefit clients, especially low-income senior citizens and disabled clients
- We need your help and experience in dealing with homeowners in the lien sale or tax lien foreclosure
- Contact Caroline Nagy (<u>caroline.nagy@cnycn.org</u>) or Leo Goldberg (<u>leo.goldberg@cncyn.org</u>) to get involved

Get Involved in Reforming the Lien Sale (cont'd)

- The Coalition for Affordable Homes is recommending:
 - means-based repayment plans for low-income homeowners (e.g., 120% AMI)
 - improved outreach and education on exemptions
 - longer timeframes for applying for exemptions and mechanism for city to purchase back liens that should have been excluded from sale
 - limitations on post-sale interest and fees
 - creation of a lien sale ombudsperson/homeowner advocate to navigate various agencies

QUESTIONS?