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June 9, 2015

The Honorable Michael J. Rodrigues, Chair  
Joint Committee on Revenue  
State House, Room 213B  
Boston, MA 02133

The Honorable Jay R. Kaufman, Chair  
Joint Committee on Revenue  
State House, Room 34  
Boston, MA 02133

**Re: S.B. 1463/H.B. 2605, *An Act Relative to the Improvement in the Process for Collecting Delinquent Property Taxes***

Dear Chairman Rodrigues and Chairman Kaufman:

On behalf of the Attorney General's Office, I am writing to express our support for S.B. 1463 and H.B. 2605, *An Act Relative to the Improvement in the Process for Collecting Delinquent Property Taxes*, filed by Senator Sal DiDomenico and Representative John Mahoney. We believe several changes proposed in the bills, along with additional provisions discussed below, will provide important and necessary protections for homeowners, without impeding the ability of municipalities to collect these taxes. Municipalities typically make great efforts to avoid tax takings and tax foreclosure on occupied residential properties, because generally they do not have an interest in displacing their residents. The incentives for private investor purchasers of these tax liens are much different, however. We believe that reforms are crucial so that homeowner retention is prioritized and private investor purchasers are required to make reasonable efforts to facilitate homeowner cures and avoid foreclosure.

Homeowners who fall behind on their property taxes are at risk of tax foreclosure. Often these homeowners are elders living on fixed incomes, and may have significant equity in the property.<sup>1</sup> If a tax foreclosure is completed, the homeowner not only loses his or her home, but also any equity in the property. Unfortunately, the current statutory scheme provides limited homeowner protections, and can result in the inequitable outcome where the homeowner is left with nothing due to a tax obligation that was a fraction of the house's value at its inception. Homeowners have very little information early on and are often confused by the process. By the time the Land Court foreclosure proceeding is filed, the debt has ballooned to an amount they cannot pay in order to retain the property, and they have insufficient time to sell the property to retain the equity.

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<sup>1</sup> Where a mortgage exists on the property, typically the mortgagee will pay off the tax obligation in order to preserve their secured interest in the property. As such, tax foreclosure is often recognized as an elder issue, as elders are more likely to own the property free and clear of other encumbrances.

We are particularly concerned about the lack of homeowner protections when private investor purchasers collect and foreclose on tax obligations purchased from municipalities. If efforts to work with the homeowner to resolve the debt fail, municipalities can collect delinquent tax obligations by completing a tax taking, through which the municipality takes the property, subject to a period of redemption of at least six months, followed by a Land Court foreclosure proceeding. *See* M.G.L. c. 60, § 53. Instead of completing the tax collections and foreclosures themselves, many municipalities sell the tax obligations to third-party investors at different points in the tax foreclosure process (as receivables, liens, or tax titles), to raise immediate revenue. *See* M.G.L. c. 60, §§ 2C, 37, & 52. Through these sales, the private investor purchaser becomes the holder of the tax receivable or tax title, essentially standing in the municipality's shoes to collect the obligation and continue the tax foreclosure process.

Under the current statutory scheme, what begins as a minimal investment of as little as a few thousand dollars can result in a windfall profit for private investor purchasers, at the homeowner's expense.<sup>2</sup> The investor purchasers of tax liens collect interest on the tax obligation during the redemption period at the statutorily mandated rate of 16%, and upon foreclosure gain title to the property.<sup>3</sup> Investors need not offer repayment plans or communicate regularly with homeowners. They have very little reason to encourage repayment as the obligation continues to accrue interest and they will ultimately receive title. On the other hand, our experience shows that these problems rarely, if ever, manifest where municipalities collect their own taxes. Many municipalities make great efforts to reach homeowners, beyond those required by the statute. Unlike investors, municipalities have political accountability that drives them to encourage and assist their residents to cure the tax obligations. Investors have no such incentives to assist homeowners. Accordingly, the need for targeted, homeowner-oriented reform is clear.

We believe that the changes proposed in S.B. 1463/H.B. 2605, as well as the additional changes proposed by our Office, will bring greater predictability and transparency to the tax foreclosure process and, critically, allow more struggling homeowners to stay in their homes. As a general matter, we support providing minimum homeowner protections at each stage of the tax foreclosure process to avoid inequitable results and unnecessary displacement of families.

***Increased Notices Prior to the Tax Lien Sale:*** We support the enhanced notice requirements in the proposed legislation, which will better inform homeowners about the tax foreclosure process. Homeowners are often confused by the process, especially when the tax debt is assigned to a third party. Homeowners also rarely understand the ramifications of a tax foreclosure—that they lose title and all equity. Notice, early and often, is essential to addressing

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<sup>2</sup> Several recent press accounts have highlighted significant concerns around a spike Massachusetts tax foreclosures. The New England Center for Investigative Reporting focused on this issue in a series of articles over the past year. *See* Jenifer McKim, Andrea D'Ermo, *Homeowners sold out by cities? Investors buy tax liens and foreclose*, New England Center for Investigative Reporting, (Nov. 23, 2014); Jenifer McKim, *Proposed law aims to protect homeowners from private tax lien sales*, NECIR (Jan. 28, 2015) (attached). Additionally, a 2012 report by John Rao of the National Consumer Law Center, *The Other Foreclosure Crisis: Property Tax Lien Sales* (attached), similarly highlights increases in tax foreclosures in the aftermath of the Great Recession. In response, other states revised their tax foreclosure statutes to enhance homeowner protections. *E.g.*, Madeline Walker Act, R.I.G.L. § 44-9-8.3.

<sup>3</sup> Tax receivables follow a similar process.



any lack of transparency in the process, and informing homeowners of available resources and the risks they face if they do not act.

Specifically, the proposed legislation requires adding information to the notices currently mandated in the process, including notices sent when the tax receivable is assigned pursuant to M.G.L. c. 60, § 2C, the tax title is assigned pursuant to M.G.L. c. 60, § 52, and the collector makes the demand pursuant to M.G.L. c. 60, § 16. The legislation also adds a requirement to serve notice with similar information prior to a tax taking pursuant to M.G.L. c. 60, § 53. The proposed information to be added to each notice includes a warning to homeowners that failure to pay may ultimately result in a tax foreclosure, contact information for the appropriate municipal tax authority, and reference to resources such as abatements and exemptions. This basic information is essential to communicate to homeowners during the tax foreclosure process.

***Protections During the Redemption Period:*** We support the proposed legislation's language amending M.G.L. c. 60, § 65, to extend the redemption period following the issuance of a tax deed or execution of a tax taking from six months to one year for occupied residential properties. By extending the redemption period, homeowners gain additional time during which they may cure the amount owed, before the cost of the Land Court proceeding and attorneys' fees are added to the account.<sup>4</sup> We further support the proposed amendments to M.G.L. c. 60, § 62A, giving municipalities greater flexibility to enter into payment agreements with homeowners during the redemption period and additional options for payment agreements with elderly and disabled homeowners. Under the current law, the minimum payments and term limitations often pose an insurmountable barrier for homeowners on limited incomes. The proposed amendments will provide much needed options to allow these homeowners to retain their properties.

In addition to these important changes, we believe it is critical this legislation go further and specifically address private investor conduct during the redemption period. As discussed above, investor purchasers have little, if any, incentive to facilitate cures or even communicate during the redemption period. Thus, for investor-held tax titles, the redemption period can turn into a black hole during which the homeowner receives few communications related to the ever-increasing debt until served with a summons to the Land Court. Investors also reportedly often refuse to enter into payment agreements. To remedy this situation, we propose targeted reforms requiring investor purchasers to offer homeowners a repayment plan, and provide homeowners periodic itemized accountings (similar to a mortgage statement) of the amount owed. We also propose requiring investors to inform homeowners of the impending Land Court foreclosure and a final pre-filing cure amount in writing thirty days before filing a petition to foreclose. These reforms will bring transparency to the redemption period, and provide meaningful opportunities for homeowners to cure the obligation before significant interest, costs, and fees accrue.

***Protection in the Land Court:*** Your consideration of these bills also presents an opportunity to bring fairness and equity to the Land Court proceeding, the final stage of the tax

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<sup>4</sup> In the case of abandoned properties, we propose shortening the redemption period to less than six months. Abandoned properties result in a host of ill effects on the surrounding properties and communities. This is especially important for tax lien purchasers, who may purchase a tax lien for minimal amounts and allow an abandoned property to languish, either as part of a calculated cost-benefit analysis or with no thought at all. Where private investors purchase liens on abandoned properties, they should be required to file a tax foreclosure promptly.

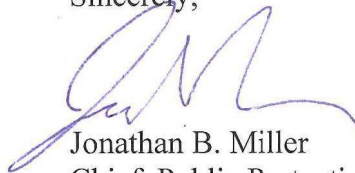
foreclosure process. Accordingly, we suggest additional language providing homeowner protections in such proceedings. The tax foreclosure is a judicial foreclosure process, wherein the Land Court hears the tax deed holder's petition to foreclose upon the property owner's equity of redemption. The judicial proceeding provides an essential level of protection for homeowners, as the Land Court reviews the accounting, ensures proper procedures, and allows homeowners the opportunity to offer defenses. However, the extent of the Land Court's authority to fashion equitable remedies has been the subject of some ambiguity and inquiry by the Land Court.

In particular, the legislation should explicitly clarify the court's authority to remedy the inequitable outcomes that may result from tax foreclosures. Specifically, the Land Court should have explicit authority to order repayment plans, appoint representatives for absent parties, and order a sale of the property with an equitable distribution of the proceeds among all interested parties. By clarifying the Land Court's authority, homeowners and other interested parties may be protected from deeply inequitable investor windfalls.

**Interest Rate:** Finally, but critical to maintaining homeownership and community stability, we support adding language to the bills to reduce the current statutory interest rate charged by investor purchasers of tax lien from its current excessive rate of 16%.

Thank you for the opportunity to submit testimony on this important issue. We welcome an opportunity to meet with you or your staff to discuss these issues further. If you have any questions, please do not hesitate to contact Benjamin Meshoulam, Senior Policy Advisor, at (617) 963-2601.

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. Miller', written over a horizontal line.

Jonathan B. Miller  
Chief, Public Protection and Advocacy Bureau

cc: The Honorable Sal DiDomenico  
The Honorable John Mahoney