

“At the 11th Hour”: Saving Homes From Property Tax Foreclosure in NYS Part 2



RPTL Article 11 Foreclosures

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Opt Out Jurisdictions

- Real Property Tax Law section 1104 establishes the requirements for jurisdictions to opt out of the default In Rem procedure.

Opt Out Jurisdictions

The New York State Department of Taxation and Finance maintains a list of tax districts that have opted out. The list can be found at:

<http://www.tax.ny.gov/research/property/legal/localop/1104.htm>

Opt Out Jurisdictions

Municipal tax districts may opt out and then make arrangements that grant their county tax office enforcement powers.

Six villages in Wyoming County opted out but then agreed to let the (non-opt out) county handle in rem foreclosures.

Opt Out Jurisdictions

Counties and municipalities with conflicting opt out status need to establish a policy for precedence with respect to enforcement.

Erie County, an opt out tax district, does not include properties within the City of Buffalo, deferring to Buffalo's annual Article 11 foreclosure process.

Opt Out Jurisdictions

Village opt outs only apply to delinquent taxes that became liens from 1995 through 2009.

Opt Out Jurisdictions

The opt out/ Article 11 distinction can have ramifications beyond foreclosure defense. Differences in the status of ownership during the process of foreclosure or reliance on the wrong procedural authority in a given tax district can have ramifications in many practice areas such as bankruptcy or landlord/tenant.

For a taste of these issues see Wisotzke v. Ontario County, 409 B.R. 20 (W.D.N.Y. 2009), and AJM Re Holdings v. Cortese, 40 Misc. 3d 444 (2013, Nassau Co.).

Opt Out Jurisdictions

When representing homeowners in an opt out district the governing foreclosure code can usually be obtained directly from the tax office or its legal department.

As always, beware information gleaned from the internet as in this instance there is a good chance that it will be incomplete or inaccurate.

Tax Certificates

Tax districts may establish procedures for selling tax liens to individuals or specially establish trusts.

Depending on the details of the acts enabling such sales, purchasers may themselves sell the lien certificates or they may initiate court actions to set up a foreclosure sale.

Tax Certificates

Currently the two major areas in New York State that allow for tax certificate sales are New York City and Nassau County. Erie County, after offering tax certificates for a number of years, has returned to its prior in rem regime.

The New York City Department of Finance sells delinquent tax bills to NYCTL Trusts in keeping with NY Code Chapter 3 and NY ADC Law sec.11-327 et seq.

Nassau County offers annual tax lien sales in keeping with Nassau County Charter sec. 2201.

Tax Certificates

Sales involving tax certificates present the homeowner advocate with a number of challenges that are less common when defending in rem foreclosures.

Tax Certificates

In general, although the lien sales are held on a regular basis, the actual property auction can occur at any point. For those used to defending a large number of in rem actions once a year, the possibility of rolling foreclosures may strain resources.

Tax Certificates

The tax certificate process is geared completely towards investors. Unlike some of the in rem auctions in the state, these sales involve well financed parties who are less likely to change their mind after the sale and will be less open to arguments based on fairness and compassion.

Tax Certificates

Advocates who negotiate with a single entity when defending in rem foreclosures often develop a degree of rapport with their opponent. A consistent, even if hostile, negotiating style on the part of the tax district at least allows for strategic action on the part of the defense. Tax certificate purchasers will each have their own counsel, necessitating a more complex approach when advocating for homeowners.

Advocacy/Practical Approaches

Some ideas regarding practical approaches and advocacy regarding tax foreclosures.