

AMENDING AND RESTATING THE CAYUGA COUNTY POLICY FOR THE SALE AND DISPOSITION OF REAL PROPERTY ACQUIRED THROUGH TAX FORECLOSURE

BY: Chris Petrus, Chair, Government Operations Committee
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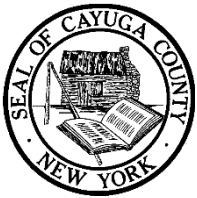
WHEREAS, Cayuga County annually acquires parcels of real property through its tax collection and foreclosure process and has heretofore adopted Policy No. 80, (Resolution No. 109-18) entitled, "Cayuga County Policy For The Sale And Disposition Of Real Property Acquired Through Tax Foreclosure"; and

WHEREAS, periodically, the County has deemed it necessary to update and clarify these procedures (E.g., Resolutions 188-02, 382-04, 517-11, 176-16, 109-18); and

WHEREAS, beginning in February, 2022, a real property review group, comprised of the County Treasurer, Director of Real Property Services, Director of Planning and Economic Development, and County Attorney, began a review of the existing policy and deemed it appropriate and in the County's best interest to amend and restate the County's policy and recommends adoption of same; now therefore be it

RESOLVED, that the County Legislature does hereby adopt the attached Amended and Restated Policy for the Sale and Disposition of Real Property Acquired through Tax Foreclosure which shall supersede all prior policies pertaining to same, and be it further

RESOLVED, that this resolution will take effect immediately upon adoption.



*State of New York }
County of Cayuga }*

I do hereby certify, that I have compared the forgoing copy of a Resolution duly passed and adopted by the Cayuga County Legislature at a meeting held on the 27th day of September 2022 with the original Resolution, and that the same is a true and correct copy and transcript thereof, and the whole thereof.

Given under my hand and official seal September 28th, 2022

Shula P. Smith
CLERK, CAYUGA COUNTY LEGISLATURE

CAYUGA COUNTY POLICY

DEPARTMENT: Office of Real Property Services

POLICY TITLE: CAYUGA COUNTY POLICY AND PROCEDURES FOR THE SALE AND DISPOSITION OF REAL PROPERTY ACQUIRED THROUGH TAX FORECLOSURE

EFFECTIVE DATE: September 27, 2022

RESOLUTION NO.: 371 - 22

SUPERSEDES POLICY OF: Policy No. 80 (Resolution No. 109-18)

Objective: To state the County's policies and procedures for enforcing tax liens pursuant to Article 11 of the Real Property Tax Law (RPTL) and the disposition of tax parcels acquired through tax foreclosure.

Policy:

The County Legislature finds that it is in the public interest to set forth the policies and procedures to be followed in the enforcement of tax liens and the sale and disposition of tax parcels that have not been redeemed for delinquent real property taxes, in accordance with Article 11 of New York State Real Property Tax Law (RPTL).

I. Definitions:

- a. "County" shall mean the County of Cayuga, a political subdivision of the State of New York.
- b. "Delinquent tax" shall mean an unpaid tax, special ad valorem levy, special assessment, or other charge imposed upon real property by or on behalf of a municipal corporation or special district, plus all applicable charges, relating to any parcel which is included in the return of unpaid delinquent taxes prepared pursuant to Real Property Tax Law or such other general, special or Local Law.
- c. "Enforcing Officer" shall mean the Cayuga County Treasurer.
- d. "Person" shall mean any individual, group, association, partnership, corporation, or other legal entity.
- e. "Real Property Advisory Group" shall refer to the following individuals or their respective designees, who shall be responsible for reviewing all properties included in the tax foreclosure process and advise the Legislature as to the recommended disposition of same:

County Treasurer
Director, Real Property Tax Services ("RPTS")
Director, Planning and Economic Development
County Attorney
- f. "Party in Interest" shall mean a person who has a property interest in a tax delinquent parcel, other than the previous owner of record. This may include, by way of example and not by way of limitation, a mortgage holder, judgment lien holder, or an heir of the previous owner of record if deceased.
- g. "Previous owner of record" shall mean the person(s) who were the record title holder to a tax delinquent parcel at the time that the County obtained the Final Judgment in Foreclosure.

II. OVERVIEW OF PROCESS & DUTIES

- a. Overview of foreclosure of tax lien by proceeding in rem. To assist the public and county officials in understanding the timeline involved in the tax foreclosure process, two exhibits are provided with sample timelines. This information is for illustrative purposes only.

Exhibit A is a sample time line for the taxpayer notification process by property type.

Exhibit B is a sample time line for the administrative/legal process for real property tax foreclosures.

III. PRE-FORECLOSURE PROCEDURES

- a. As the Enforcing Officer, the County Treasurer shall be responsible for implementing the foreclosure process pursuant to Article 11 of the Real Property Tax Law with the assistance and guidance of the County Attorney or his or her designee.
- b. After filing the Petition in Foreclosure and prior to obtaining a Final Judgment in Foreclosure, the Enforcing Officer and/or his or her designee shall review the list of tax delinquent properties, and shall cause an inspection to be performed of any tax delinquent parcel which the Enforcing Officer reasonably believes may contain hazardous materials in, on or under the ground, or may be subject to some other environmental risk and shall gather all relevant information pertaining to such parcel's physical and environmental condition.
- c. The Enforcing Officer shall also obtain a title report for each tax delinquent parcel.
- d. The Real Property Advisory Group shall review the list of tax delinquent properties, including title reports, inspection reports and such other information as it deems relevant and necessary to determine whether:
 - 1) There is a legal impediment to taking title to the property;
 - 2) The taxes are subject to cancellation pursuant to RPTL §§ 557 or 558;
 - 3) Enforcement of the tax lien has been stayed by reason of a filing of a petition in bankruptcy;
 - 4) By taking title to the property, there is a significant risk that County would be exposed to liability that exceeds the amount that could be recovered by enforcing the tax lien.
- e. Upon conducting its review of the tax delinquent parcels, the Real Property Advisory Group shall determine for each parcel whether it is in the County's interest to:
 - 1) Complete the foreclosure process and have the County take title to such parcel; or
 - 2) Recommend to the Enforcing Officer to
 - a) Withdrawal the parcel from the foreclosure proceeding pursuant to RPTL § 1138; or
 - b) Take such other action as may be reasonable in order to protect the County's interests taking into consideration the full market value of the parcel, the assessed value, the amount of delinquent taxes due and unpaid, the physical and environmental condition of the parcel, the extent to which the physical and environmental condition of the parcel impacts neighboring properties, and such other factors as may be deemed relevant.

IV. POST-FORECLOSURE PROCEDURES

- a. Upon obtaining a judgment in foreclosure, the Enforcing Officer shall execute and deliver a deed in foreclosure conveying fee title to the tax delinquent parcels to the County. The Enforcing Officer shall deliver copies of all documents and records pertaining to the foreclosure process to the Director of RPTS, including, but not limited to a) title reports, b) inspection reports, c) itemized computation of total delinquent tax, interest, penalty and fees for each individual parcel, d) electronic copies of documentation of all parties given notice together with addresses of same, and e) any/all other pertinent data relating to the subject parcels so acquired by the County of Cayuga.

- b. The County may hold such parcel(s) for its own interest or may sell or dispose of the parcel pursuant to Paragraph III(d).
- c. The Director of RPTS shall be responsible for overseeing and facilitating the disposition of the properties acquired by the County in foreclosure.
- d. Such properties may be disposed of in one of the following ways:
 - 1) Sold to the highest bidder after public advertisement;
 - 2) Sold to a previous owner of record or a party in interest pursuant to Section VI;
 - 3) Sold through a negotiated sale pursuant to Section VII;
 - 4) Disposed of in a manner consistent with the recommendations of the Real Property Advisory Group and approved by the County Legislature due to exceptional circumstances.

V. AUCTION OF REAL PROPERTY

- a. Within a reasonable time (preferably within sixty days) after the Court renders a judgment in foreclosure granting title to the County of the tax delinquent parcels, the Director of RPTS and/or his or her designee shall sell the tax parcels obtained through foreclosure (excluding those disposed of under Sections VI or VII) through a public auction. The auction shall be conducted in a commercially reasonable manner and may be held in person or through a website, video conference or other electronic means, provided that the auction shall be made available to the general public and that all those wishing to participate shall be able to view the auction in real time and submit bids.
 - 1) The Director of RPTS shall determine the date, time and place of the auction.
 - 2) Notice of such auction (including instructions for connecting to the appropriate website if held electronically) shall be placed on the County website as well as in such newspaper(s) or media as may be deemed appropriate.
 - 3) The Director of RPTS may retain the services of a professional auctioneer or related services to facilitate the auction.
- b. Except for those parcels determined to be sold outside of the auction, pursuant to Section VI or VII, the Director of RPTS is authorized to sell all the parcel(s) at public auction without further approval from the County Legislature.
- c. The Director of RPTS is authorized to promulgate Terms of Sale, including rules for registering to bid, terms of payment, bid certification, and document processing after sale; all of which shall be posted on the County's website as well as at the auction site.
- d. The County shall sell the properties to the highest bidder at the auction, provided however, that the Director of RPTS may
 - 1) Reject any bid in his or her sole discretion, if it is in the County's best interest to do so;
 - i. In that event, the Director of RPTS may re-offer the parcel for sale to the next highest bidder;
 - ii. If the next highest bidder declines the offer, the Director of RPTS may then re-post the parcel for sale at auction.
 - 2) Resolve any dispute between two or more bidders.
 - 3) In all events, the decision of the Director of RPTS shall be final.

- e. In the event that a successful bidder's form of payment is rejected for insufficient funds, the bidder shall be immediately disqualified from purchasing the affected parcel and all other parcels for which the person was the successful bidder. The Director of RPTS shall thereupon award the sale to the next highest bidder.
- f. The successful bidder shall be responsible for payment of any buyer's premium, administrative fee, established by the Cayuga County Legislature from time to time, and all costs and expenses of transferring title.
- g. The County may, in its sole discretion, conduct one or more auctions during a calendar year.
- h. The following parties are not eligible to purchase at the County tax auction:
 - 1) A previous owner of record, or any person acting on behalf of, or as an agent or representative of a previous owner of record; including any officer, shareholder, stockholder, director, partner or employee if the parcel was previously owned by a corporation, limited liability company, or partnership.
 - 2) Any person who owns property in the County of Cayuga, either individually or jointly with others, or has ownership interest through an entity of any kind, which is currently tax delinquent, including any person acting on behalf of or as an agent or representative of same;
 - 3) Any officer or employee of the following, including or anyone acting by or on behalf of or for the benefit of same including members of the households of: County Treasurer, County Operations Officer, County Attorney, County Legislators, Clerk of the County Legislature, Director of RPTS.

VI. SALE TO A PREVIOUS OWNER OF RECORD OR PARTY IN INTEREST

- a. After taking title to a tax delinquent parcel through the Final Judgment in Foreclosure, but on or before a date prior to the auction to be set by the Director of RPTS, the Director of RPTS may accept requests from a previous owner of record or a party in interest to re-purchase the parcel. The Director of RPTS shall set the last day in which such requests will be received and shall post the same on the County's website, along with the information pertaining to the auction.
 - 1) Any such request must include a payment to the Enforcing Officer of an amount equal to all accumulated taxes, interest, penalties, and fees plus a foreclosure fee of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500).
 - 2) Request must be submitted on a form prescribed by the Director of RPTS.
- b. The Director of RPTS shall then submit the request to the County Legislature for approval.
- c. Upon approval by the Legislature, the Director of RPTS shall arrange for execution and delivery of a deed conveying the County's interest to the Purchaser.
 - 1) The Director of RPTS shall also cause an application to be made to Supreme Court to vacate the Notice of Lis Pendens and Final Judgment in Foreclosure as the same applied to the parcel(s) subject to repurchase and obtain an Order restoring all pre-existing liens to the condition they were in prior to the filing of the Notice of Lis Pendens.
- d. In the event there are competing requests received from more than one previous owner of record and/or party in interest, the Director of RPTS shall determine the request to be forwarded to the Legislature for approval in the following order of priority:
 - 1) Prior owner of record;
 - A. In the event that more than one prior owner of record makes a request, the first request filed with the Director of RPTS shall be forwarded to the Legislature for approval;
 - 2) 1st mortgage-holder;

- 3) 2nd mortgage-holder;
- 4) Judgment lienholder(s) in order of filing date with the County Clerk's Office;
- 5) Other parties in interest.

VII. NEGOTIATED SALE PRIOR TO AUCTION

- a. After taking title to a tax delinquent parcel through the Final Judgment in Foreclosure, but on or before a date prior to the auction to be set by the Director of RPTS, the Director of RPTS may accept a request to purchase a parcel acquired by the County through foreclosure from a party other than the previous owner of record or party in interest.
 - 1) Request must be submitted on a form prescribed by the Director of RPTS.
- b. The request shall be forwarded to the Real Property Advisory Group who shall review the request taking into consideration the market value of the property, the amount of taxes past due; the physical and environmental condition of the property; and any other factors deemed relevant (including any additional terms or conditions of sale as proposed by the Real Property Advisory Group) which warrant consideration of the purchase offer outside of the public auction.
- c. If the Real Property Advisory Group recommends that the request to purchase (including any additional terms and conditions) should be accepted, it shall forward its recommendation to the County Legislature for further action, provided the proposed purchaser has deposited with the Enforcing Officer such amounts as required by the Real Property Advisory Group.
- d. If approved by the Legislature, the Director of RPTS shall arrange for execution and delivery of a deed conveying the County's interest to the Purchaser in accordance with the terms and conditions of the purchase agreement as negotiated with the purchaser.

VIII. RPTS DUTIES AFTER AUCTION

- a. Transfer of Title - The successful bidder shall be responsible for all filing costs and fees to record the deed. The buyer(s)/grantee(s) shall sign the usual documents necessary and customary to file a deed, e.g., Real Property Transfer Report (RP-5217), Combined Real Estate Transfer Tax Return (TP-584), Acknowledgment of Receipt of Lead Paint Notice (if applicable) and notice required in an Agricultural District regarding smells and dusts and such in agricultural areas (if applicable). Deeds issued pursuant to this resolution shall be executed by the Chair of the Legislature, or, if he/she is not available, the Deputy Chair of the Legislature. Deeds issued by the County shall be immediately filed by the Real Property Director or designee, in the office of the Cayuga County Clerk after all papers are in order as described.
- b. Report to County Legislature - The list of successful bidders shall be maintained by the Auctioneer, and a copy of such list shall be immediately forwarded to the Real Property Director and the County Treasurer after the completion of the auction. Upon successful closing all auction sales, the Real Property Director shall prepare and submit a report to the Clerk of the County Legislature to be distributed to all Legislators.

EXHIBITS

- A Sample Timeline for Tax Delinquent, Lien and Foreclosure Notices to Property Owners of:
 - A-1: Residential & Agricultural Parcels
 - A-2: Commercial, Industrial & Vacant Land Parcels
- B Time line for the Administrative/Legal Process for Real Property Tax Foreclosures
- C Fee Schedule