



## How to Purchase Tax Foreclosed Properties

July 27, 2019  
Erie County Real Property Tax Services  
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Responsible Bidder/Experience Investor

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 and SCHOOLS.

Erie County makes Towns, School Districts and Villages whole.

Administrative enforcement:  
3 years before foreclosure can  
be commenced.

The authority to commence  
foreclosure is granted by the  
Erie County Legislature.

THE DEPARTMENT OF REAL  
PROPERTY TAX SERVICES  
WEBSITE:

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



Lippes  
Mathias  
Wexler Friedman LLP

## Legal Guidance

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## 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 167: May 6, 2019
    - In Rem 166: May 7, 2018
    - In Rem 165: May 8, 2017
    - In Rem 164: May 23, 2016

## 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

## Legal Assistance for Residential Homeowners

- ▶ FAQ and resources:
  - <http://www2.erie.gov/ecrpts/>
- ▶ Foreclosure relief for residential homeowners:
  - WNY Foreclosure Assistance Legal Agencies (<http://www2.erie.gov/ecrpts/index.php?q=legal-assistance>)
  - Court-ordered stay
  - Installment Payment Plans
    - Owner occupied, residential property
    - Down-payment

## Timeline

- ▶ Filing of List of Delinquent Taxes (May 6, 2019)
- ▶ 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 1, 2019)
- ▶ Last day to file and serve Answer (July 22, 2019)
- ▶ 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
- ▶ Auction (September 25, 2019)
- ▶ Closing (on or before October 25, 2019)
- ▶ Surplus Money Proceedings

## Auction

- ▶ September 25, 2019 at 9:00 am in Room 101 at the Buffalo Niagara Convention Center (registration beings at 8:00 am)
- ▶ In Rems 167, 166, 165 and 164
- ▶ What to bring:
  - Certified funds (20% down payment or minimum \$500);
  - Information for Referee's Deed:
    - Name and address for entity taking title (**cannot** use PO Box)
    - Note: \$75 fee for change of information
    - Attorney name and contact information, if applicable (please notify attorney of pending closing); and
  - Due diligence

## Terms and Memorandum of Sale

- ▶ The Terms and Memorandum of Sale is 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 25, 2019
  - **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 6, 2019), are paid in reverse chronological order

## Distribution of Proceeds

- 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.*"

## Distribution of Proceeds – Sufficient Bid

DISTRIBUTION OF SALE PROCEEDS (ECTA Section 9.10.0)		
"Please note that any Taxes/Assessments that have become liens subsequent to the Lis Pendens date of 5/6/19, that are not paid by the proceeds of sale, are the responsibility of the purchaser"		
SALE PRICE	\$10,000.00	
Taxes/Assessments Due	Total Paid	Total Due
2019 School Tax	\$1,500.00	\$1,500.00
2019 Village Tax	\$100.00	\$100.00
2019 Water charges	\$100.00	\$100.00
2019 Foreclosure Fee	\$500.00	\$500.00
2019 County Taxes	\$3,000.00	\$3,000.00
2018 County Taxes	\$3,100.00	\$3,100.00
2017 County Taxes	\$1,700.00	\$3,200.00
2016 County Taxes	\$0.00	\$3,300.00
2015 County Taxes	\$0.00	\$3,400.00
2014 County Taxes	\$0.00	\$3,500.00
2013 County Taxes	\$0.00	\$3,600.00
2012 County Taxes	\$0.00	\$3,700.00
TOTAL DISTRIBUTION	\$10,000.00	
TOTAL DUE		\$29,000.00
DEFICIENCY	\$19,000.00	
Erie County:	\$10,000.00	
TOTAL:	\$10,000.00	

Extinguished

## Distribution of Proceeds – Insufficient Bid

DISTRIBUTION OF SALE PROCEEDS (ECTA Section 9.10.0)		
"Please note that any Taxes/Assessments that have become liens subsequent to the Lis Pendens date of 5/6/19, that are not paid by the proceeds of sale, are the responsibility of the purchaser"		
SALE PRICE	\$1,000.00	
Taxes/Assessments Due	Total Paid	Total Due
2019 School Tax	\$1,000.00	\$1,500.00
2019 Village Tax	\$0.00	\$100.00
2019 Water charges	\$0.00	\$100.00
2019 Foreclosure Fee	\$0.00	\$500.00
2019 County Taxes	\$0.00	\$3,000.00
2018 County Taxes	\$0.00	\$3,100.00
2017 County Taxes	\$0.00	\$3,200.00
2016 County Taxes	\$0.00	\$3,300.00
2015 County Taxes	\$0.00	\$3,400.00
2014 County Taxes	\$0.00	\$3,500.00
2013 County Taxes	\$0.00	\$3,600.00
2012 County Taxes	\$0.00	\$3,700.00
TOTAL DISTRIBUTION	\$1,000.00	
TOTAL DUE		\$29,000.00
DEFICIENCY	\$28,000.00	
Erie County:	\$1,000.00	
TOTAL:	\$1,000.00	

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 **after Deed is filed**
- 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**
  - Occurs when Purchaser fails to comply with any of the terms of sale
  - 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 Lippes Mathias Wexler Friedman, LLP, located at 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202 and **NOT AT THE CLERK'S OFFICE**
  - Closings are by appointment only; no walk-ins
- ▶ Balance of bid is paid via 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). The cost of filing the deed is the ***purchaser's responsibility***.

## After Closing

- ▶ Upon closing, taxes will be paid from the bid proceeds per the Distribution of Proceeds.
- ▶ Any bid proceeds in excess of the taxes owed will be deposited with the Erie County Comptroller as surplus money.
- ▶ Once the original deed is returned from the Clerk's office (2-3 weeks after filing) it will be mailed to the purchaser for safe keeping.
- ▶ The Housing Stability and Tenant Protection Act of 2019 (NYS).

## 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:  
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Buffalo, New York 14202  
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## The Buffalo Erie Niagara Land Improvement Corporation (BENLIC)

& the “Super Bid”

### BENLIC

- ▶ Mission: To return the thousands of vacant and abandoned properties found throughout Erie County to productive use.
- ▶ BENLIC works in partnership with Erie County municipalities to identify and acquire specific vacant and abandoned properties at the Erie County In-Rem Auction. These properties are multiple years’ tax delinquent, often the source of resident complaint, and are generally in need of substantial repairs.

### “Super Bid”

- ▶ As a New York State Land Bank, BENLIC uses its legal preferred bid or “Super Bid” at tax auctions:
  - By doing so, BENLIC is able to supersede any other bidder and acquire property. After acquisition, BENLIC Staff survey each property carefully with professional building inspectors and real estate professionals.
  - Properties are rehabbed when deemed appropriate, or stabilized and sold. BENLIC Staff and its Board of Directors take pride in prioritizing first time homebuyers and responsible investors in the sale process.

### BENLIC

- ▶ BENLIC seeks responsible and professional real estate investors and welcomes contact from those with an interest in a BENLIC-owned property. Strong partnerships between BENLIC, community leaders, local residents and investors will enable the Corporation to meet its Mission and continue to improve every Erie County community.

▶ <https://www.benlic.org>