

**Lippes Mathias**  
ATTORNEYS AT LAW

**How to Purchase Erie County  
Tax Foreclosed Properties**

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Responsible Bidder/Experienced Investor*


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**In Rem Tax Lien Foreclosure  
in Erie County**

1. Role of Erie County in Tax Collection and Enforcement – Scott A. Bulewski, Esq., Director, Erie County Real Property Tax Services
2. Legal Guidance – Margaret A. Hurley, Esq., Partner, Lippes Mathias, LLP
  1. The In Rem Proceeding
  2. Tax Lien Foreclosure Public Auction
  3. COVID-19 Considerations in Tax Lien Foreclosure Proceedings
  4. Relief for Residential Homeowners
3. Responsible Bidder/Experienced Investor Guidance – Lorne Catalano, Nickel City Real Estate

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**Role of Erie County in Tax Collection and Enforcement**

- > Erie County is a "Tax Act County"
  - Tax collection and enforcement governed by the Erie County Tax Act.
- > Tax collection – Local
- > Tax enforcement – County
  - Erie County guarantees Town, School District and Village taxes.
  - Erie County enforces unpaid taxes through Tax Lien Foreclosure
- > *In Rem* is the legal term describing the power a court may exercise over property. Jurisdiction *in rem* assumes the property is the primary object of the action, rather than personal liability.
- > Administrative: approximately 3 years before foreclosure can be commenced.
- > Parcels subject to In Rem foreclosure are certified by the Erie County Legislature.


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**In Rem Tax Lien Foreclosure in  
Erie County – Legal Guidance**

Presented by: *Margaret A. Hurley*




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- > Concentrates her practice primarily in commercial and municipal litigation, land disposition and use, tax enforcement, and contract disputes.
- > Ms. Hurley has represented clients in all phases of trial and appellate practice before local, state and federal courts, as well as alternative dispute resolution forums.
- > Extensive experience in the field of commercial litigation and in the interpretation and application of the New York Civil Practice Law and Rules.
- > Clients include individuals, small and large business enterprises and municipalities.
- > Admitted in New York and North Carolina.

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## In Rem Proceeding

- > In Rem Proceeding
  - Summary proceeding governed by Article 11 of the New York State Real Property Tax Law ("RPTL") or local tax act.
  - Available to municipalities only.
  - Erie County Tax Act ("ECTA") Article 11
    - Erie County is entitled to foreclose upon lien(s) outstanding, unredeemed and unpaid for a period of 2 years.
  - Unique Vehicle
    - One proceeding for all properties (~1600)
    - Streamlined and efficient
- > No personal liability in tax lien foreclosure

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## In Rem Proceeding

- > In Rem Foreclosure is the preferred method of tax lien foreclosure.
- > Tax liens are presumptively valid: "It shall not be necessary for the county to plead or establish by proof the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the land set forth in the list of delinquent taxes and properties, and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. Any answering defendant alleging any jurisdictional defect or invalidity of the tax... must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense". ECTA §11-18.0.

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## In Rem Tax Lien Foreclosure Proceeding Timeline

- > Filing of List of Delinquent Taxes
- > Service of Petition and Notice of In Rem Foreclosure upon interested parties
- > Redemption Date
- > Answer
- > Judgment of Foreclosure and Sale
- > Auction
- > Closing Transactions
- > Surplus Money Proceedings

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## In Rem Tax Lien Foreclosure Commencement

- > List of Delinquent Taxes contains:
  - Brief description of each parcel;
  - Name of the last owner as it appears on the latest tax roll;
  - Statement of the amount due upon lien(s); and
  - Verification stating that the last known owners and their last known addresses were ascertained from current records and tax rolls of the county.

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### In Rem Tax Lien Foreclosure Commencement

#### > Effect of filing of List:

- Constitutes and has the same force and effect as the filing of an individual Notice of Pendency and separate and individual complaint by the county against the owners of the real property proceeded against and described in the List.
- Date of filing of List establishes which taxes are paid from sale proceeds, which taxes are the responsibility of the purchaser and which taxes are extinguished.
- Filing/Lis Pendens dates:
  - In Rem 170 – May 9, 2022
  - In Rem 169 – May 10, 2021
  - In Rem 168 – July 13, 2020

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### Petition and Notice of In Rem Foreclosure

- > Provides notice of foreclosure and information relative to redemption and answer.
- > Public notice of foreclosure
  - Filed at County Clerk's Office
  - Publication – 6 weeks

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### Petition and Notice of In Rem Foreclosure (continued)

#### > Personal notice of foreclosure

- Posting
  - Department of Real Property Tax Services ("DRPTS");
  - Erie County Hall; and
  - 3 places within each city, town or village in which the proceeding applies.
- Mailing
  - Last known address of each owner as the same appears upon the current records and tax rolls of DRPTS; and
  - Any person who has filed a Declaration of Interest (ECTA §11-14.0).

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### Petition and Notice of In Rem Foreclosure (continued)

#### > Notification method

- Mailing requirement:
  - Notice mailed via regular mail to property owner, and via certified mail to anyone who has submitted a Declaration of Interest.
- In practice, County mails via regular and certified mail to anyone with a recorded interest in the subject property.

> Proof of filing, publication, posting and mailing made via affidavits.

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## Redemption

- > Redemption: Each person having any right, title, interest in or lien upon parcel may redeem such parcel by paying sums before expiration of the redemption period set forth in the Notice.
  - ECTA §11-10.0: Redemption (or answer) by deadline established in Petition and Notice
  - Collective Statement of Redemption – operates to cancel Notice of Pendency

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## Answer

- > Each person having any right, title, interest in or lien upon parcel may submit verified answer.
- > Summary judgment striking answer and for Judgment of Foreclosure and Sale – payment as a complete defense.
- > Unsuccessful answer – party is in same position as if he/she did not answer or redeem.

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## Judgment of Foreclosure and Sale

- Determines:
  - Priorities, rights, claims and demands of the parties; and
  - Whether there has been conformity with the In Rem provisions of the ECTA.
- Directs:
  - Sale of lands
    - Erie County does not take title to subject properties.
  - Distribution of proceeds of sale – payment of liens in inverse order as far as sale proceeds suffice.
  - Cancellation of taxes/assessments remaining after proceeds of sale have been applied.

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## In Rem Proceeding: Statute of Limitations

- > Statute of Limitations – Two (2) Years
  - ECTA provides that the Referee's Deed is conclusive evidence of the validity of the In Rem proceeding.
  - To challenge the sale, an action must be commenced and a notice of pendency filed within 2 years of the Referee's Deed.
  - If no such action is commenced, the presumption that the Referee's Deed is valid becomes conclusive, and any challenge to the sale is time barred.

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## Public Auction

- > Notice of Sale
  - Director of DRPTS as Referee
  - Publication – once weekly for three weeks
  - Mailing to anyone who has submitted a Declaration of Interest (ECTA §11-14.0)
  - In practice, (though not required) County mails to all interested parties.
- > Parcels eligible:
  - Unredeemed parcels contained in Judgment
  - Continued matters from prior In Rem proceedings
    - 2022 Auction will involve parcels from In Rems 170, 169 and 168, only.

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## Public Auction

- > Computation of opening bid - factors to consider:
  - Amount of Judgment
  - Lis Pendens date
  - Assessed value of property
- > Purpose of sale:
  - Return property to tax roll
  - Recoup outstanding taxes

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## Tax Lien Foreclosure Auction: Terms and Memorandum of Sale

- > Purchaser agrees to the following terms of sale:
  - 20% (or \$500 minimum) deposit via certified funds or cash.
  - Balance of the bid due within 30 days (November 7, 2022) at closing.
  - Distribution of Proceeds
    - 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 are paid in reverse chronological order.
    - 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.

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## Tax Lien Foreclosure Auction: Terms and Memorandum of Sale

- County performs a Tax Search
  - "[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."

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### 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.
- > 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.

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### Terms and Memorandum of Sale

- > The County will prepare and provide a Referee's Deed, only. All other expenses of closing shall be borne by the Purchaser.
- > County shall refuse to transfer title to any person or entity who is not current on all obligations owed to municipalities throughout the County.
- > County shall refuse to transfer title to delinquent homeowner who purchases his/her property or another property at auction and such person will forfeit his/her deposit and/or final payment.
- > Referee shall have the right to set aside any bid by any person deemed by him/her to not be a responsible bidder.
- > County reserves the right to rescind the sale due to Bankruptcy and/or inadequate notice to any interested party.

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### Terms and Memorandum of Sale

- > Default by Purchaser
  - Forfeit of deposit; and
  - 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.

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### Terms and Memorandum of Sale (continued)

- > Distribution of Proceeds
  - Governed by Judgment of Foreclosure and Sale
  - Taxes paid in reverse chronological order:
    - Pre-Lis Pendens liens are extinguished if not paid by bid proceeds.
    - Post-Lis Pendens liens, to the extent not paid by bid proceeds, are the responsibility of the purchaser.
  - Lis Pendens dates:
    - In Rem 170 – May 9, 2022
    - In Rem 169 – May 10, 2021
    - In Rem 168 – July 13, 2020

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## 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 9/22, 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
2022 School Tax	\$1,500.00	\$1,500.00
2022 Village Tax	\$100.00	\$100.00
2022 Water charges	\$100.00	\$100.00
2022 Foreclosure Fee	\$500.00	\$500.00
2022 County Taxes	\$3,000.00	\$3,000.00
2021 County Taxes	\$3,100.00	\$3,100.00
2020 County Taxes	\$1,700.00	\$3,200.00
2019 County Taxes	\$0.00	\$3,300.00
2018 County Taxes	\$0.00	\$3,400.00
2017 County Taxes	\$0.00	\$3,500.00
2016 County Taxes	\$0.00	\$3,600.00
2015 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

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## 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 9/22, 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
2022 School Tax	\$1,000.00	\$1,500.00
2022 Village Tax	\$0.00	\$100.00
2022 Water charges	\$0.00	\$100.00
2022 Foreclosure Fee	\$0.00	\$500.00
2022 County Taxes	\$0.00	\$3,000.00
2021 County Taxes	\$0.00	\$3,100.00
2020 County Taxes	\$0.00	\$3,200.00
2019 County Taxes	\$0.00	\$3,300.00
2018 County Taxes	\$0.00	\$3,400.00
2017 County Taxes	\$0.00	\$3,500.00
2016 County Taxes	\$0.00	\$3,600.00
2015 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

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## 2022 County In Rem Auction

- > October 6, 2022 at 9:00 am at the Buffalo Niagara Convention Center, 153 Franklin St, Buffalo, New York 14202, Room 101.
- Bidder registration begins at 8:00 am.
- Pre-registration online at <https://www3.erie.gov/ecrpts/> now through September 26, 2022.
- > Must present valid identification, a telephone number, email address and information for deed.
  - Deed information: Name, address (no P.O. Box), attorney name (if applicable).
- > Owner of foreclosed property may not bid on said property or send any agent(s) to the auction to bid on the property owner's behalf.



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## 2022 County In Rem Auction

- > Successful bidders are required to deposit 20% of the purchase price (or \$500, whichever is greater) **immediately**.
- > Please provide the In Rem number, serial number, and address of the property when paying your deposit.
- > Payments must be made in cash or certified funds. Certified checks should be made payable to **Scott A. Bylewski, as Referee**.
- > Bidders may not leave the auction to go to the bank.
- > Be prepared – do your research.
- > Read and understand the Terms of Sale.



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## Closing

- > Counsel for the County will contact purchaser's attorney to schedule the closing date.
- > Closing takes place at the law offices of Lippes Mathias LLP, NOT at the Clerk's Office.
- > The balance of the bid is paid via certified funds at closing.
- > Purchaser is responsible for costs associated with changes, recording, title insurance (if applicable), etc.
- > Taxes will be paid from the bid proceeds per the Distribution of Proceeds.
  - Any taxes re-levied prior to closing will be held in escrow pending next ensuing Town & County tax bill.



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## Closing

- > There is a \$75 fee should purchaser desire to change the name of the entity taking title prior to closing.
- > If you are the successful bidder and you desire to retain an attorney to handle your closing, please do so immediately as the County is not responsible for purchaser-related delays.

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## Surplus Money

- > County application for Order directing deposit with Comptroller
- > Notice
- > Application for surplus moneys:
  - Filing of Notice of Claim
  - Notice of application to interested parties
  - Court appointment of referee
  - Hearing on notice

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## The Land Bank - BENLIC

- > As a New York State Land Bank, the Buffalo Erie Niagara Land Improvement Corporation (BENLIC)'s objective is to return vacant and abandoned properties to productive use.
- > BENLIC works in partnership with Erie County municipalities to identify and acquire specific vacant and abandoned properties via In Rem auction. These properties are multiple years' tax delinquent, often the source of resident complaint, and are generally in need of substantial repairs.
- > As a New York State Land Bank, BENLIC uses its legal preferred bid or "Super Bid" at tax auctions.
  - By doing so, BENLIC can supersede any other bidder and acquire property.
- > After acquisition, properties are rehabbed or stabilized and sold.
- > For more information on BENLIC, visit [www.benlic.org](http://www.benlic.org)
- > For list of properties scheduled to be struck to BENLIC, visit <https://www3.erie.gov/ecrpts/>



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### COVID-19 Considerations

- > In Rem foreclosure is distinguishable from new mortgage foreclosures in that there has been no "default" during the COVID-19 pandemic.
- > Broadened relief for tax delinquent property owners:
  - Postponement of commencement and/or auction.
  - Payment plans with reduced down payments and extended terms to pre-screened residential, owner-occupied property owners.
  - Additional time to make payments prior to auction.
  - Acceptance of payments online.
- > Health precautions
  - Limit in-person contact
  - Virtual appearances
  - Stipulated conditional orders
  - Auction measures

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### COVID-19 Considerations

- > Homeowner assistance funds
  - The New York State Homeowner Assistance Fund (HAF) is a federally funded program dedicated to assisting homeowners who are at risk of default, foreclosure, or displacement because of a financial hardship caused by the COVID-19 pandemic.
  - The East Buffalo Homeowner Assistance Fund (BEHAF) is a New York State funded program dedicated to assisting homeowners who are at risk of default, foreclosure, or displacement because of a financial hardship.
- > NYS HAF or BEHAF funds can be used to pay County tax arrears.
- > NYS HAF or BEHAF funding is contingent upon program eligibility and availability of funds.
- > For more information on HAF, visit <https://hcr.ny.gov/homeowners>
- > For more information on BEHAF, visit <http://www.wnyc.com/>

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### Relief for Residential Homeowners

- > Cooperation with Legal Service Agencies
  - Information sharing – a two-way street
  - WNY Foreclosure Assistance Legal Agencies (<http://www2.erie.gov/ecrpts/index.php?q=legal-assistance>)
- > Installment Payment Plans
  - Forbearance agreement
  - Owner occupied, residential property, with no default on prior agreement
  - Down-payment (about 20%)

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### Frequently Asked Questions

- > FAQ and list of properties for sale under "Auction & Foreclosure" online at <https://www3.erie.gov/ecrpts/>
- > The County will not provide additional information on the properties.
- > Opening bids will not be made available before the auction.
- > Bidder pre-registration open through September 26, 2022: <https://www3.erie.gov/ecrpts/>
- > To recommend a property for inclusion in future In Rem proceeding, email [ecrpts@erie.gov](mailto:ecrpts@erie.gov).

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**Questions?**

Type your questions in the Q&A box (bottom of screen), or

Visit <https://www3.erie.gov/ecrpts/> for FAQ, information on bidder registration, and list of properties to be offered at auction.



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