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September 25, 2013

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Mayor Gray and D.C. Councilmembers
September 25, 2013

The Honorable Vincent Orange
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The Honorable David Grosso
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The Honorable David Catania
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Re: District of Columbia's Real Property Tax Lien Sales System

Dear Mayor Gray and D.C. Councilmembers:

The NAACP Legal Defense & Educational Fund, Inc. (LDF) writes to offer its comments on the District of Columbia's Real Property Tax Lien Sales System, codified at D.C. Code § 47-1301, *et seq.* Founded by Thurgood Marshall in 1940, LDF is the nation's oldest civil rights legal organization, and has labored, since its inception, to eliminate racial barriers from all aspects of American life and to create a more just and fair democracy. LDF has especially worked to combat policies and practices by both public and private entities that deny African Americans housing opportunity and isolate African-American communities.

LDF strongly encourages the District to take concrete and meaningful steps to substantially reform its real property tax lien sales system. As the Washington Post recently uncovered in its multi-part investigative series, the system has not only unfairly deprived District residents of their property, but it has also disproportionately impacted both African Americans and the elderly.

I. The District's Real Property Tax Lien Sales System has Unfairly and Unnecessarily Deprived Residents of Their Homes

Owning a home has long been the cornerstone of the "American Dream" and a foundation for long-term financial security. For many households—both in the District and around the nation—the home they own not only represents their most valuable asset, but it also serves as their primary source for intergenerational wealth and wealth-creation. Unfortunately, the recent economic crisis had a devastating impact on homeownership rates. Data released by the United States Census Bureau shows that homeownership rates, after increasing during the late 1990s and early 2000s, have steadily declined over recent years, and have now returned to

their 1995 level.¹ The District has not been immune to this trend, and has one of the lowest homeownership rates in the country.² Homeownership rates among African Americans are at an all-time low: in the second quarter of 2013, less than 43% of African Americans owned a home.³ The foreclosure crisis has also highlighted the importance of meaningful government oversight in the housing market, and showed—to a devastating degree—the result when such oversight is lacking.

Despite the considerable progress that has been made to strengthen the housing market, there are still a number of unjust, predatory practices that continue to prey on vulnerable households. One such practice involves the sale of tax liens by municipalities. While tax liens, which many local jurisdictions use to collect unpaid property taxes, are not inherently predatory or problematic, they can be abused, as the Washington Post's investigation revealed. Specifically, investors, who have bought the liens during auctions, manipulated the system as used in the District, by charging homeowners high interest rates and then moving to foreclose on them when they could not afford to pay.⁴ Homeowners have been left to wrestle with snowballing legal costs, without any assistance or aid from the government.⁵ In addition, the Washington Post revealed that the District's Office of Tax and Revenue has not only failed in its oversight of the tax lien sales system, but has also made a number of avoidable blunders that have left homeowners who have paid their property taxes at risk of losing their properties.⁶

By giving so much authority to third-party investors without also providing any meaningful government oversight, the District's tax lien sales system has resulted in an unfair and predatory debt collection system. Hundreds of families in the District have lost their homes as a result of minor property tax debts. The Washington Post highlighted the experiences of Bennie Coleman who lost his home in Northeast Washington due to a \$134 property tax bill.⁷ Even more disturbing, people of color, and particularly African Americans, have suffered the most because of this practice. According to the Washington Post, 72% of pending foreclosures resulting from the tax lien sales system were in neighborhoods where less than 20% of the population is white.⁸ The District's Seventh and Eighth Wards, which have the largest

¹ U.S. CENSUS BUREAU, RESIDENTIAL VACANCIES AND HOMEOWNERSHIP IN THE SECOND QUARTER 2013, *available at* <http://www.census.gov/housing/hvs/files/qtr213/q213press.pdf>.

² U.S. CENSUS BUREAU, HOMEOWNERSHIP RATES BY STATE: 2005-PRESENT tbl.3 (2013), *available at* <http://www.census.gov/housing/hvs/data/rates.html>.

³ U.S. CENSUS BUREAU, HOMEOWNERSHIP RATES BY RACE AND ETHNICITY OF HOUSEHOLDER: 1994 TO PRESENT tbl.16 (2013), *available at* <http://www.census.gov/housing/hvs/data/histabs.html>.

⁴ Michael Sallah, Debbie Cenziper, and Steven Rich, *Left with nothing*, WASH. POST, Sep. 8, 2013, <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/?hpid=z2>.

⁵ Mike DeBonis, *Courthouse is last safeguard for D.C. homeowners struggling with tax liens*, WASH. POST, Sep. 11, 2013, http://www.washingtonpost.com/local/dc-politics/courthouse-is-last-safeguard-for-dc-homeowners-struggling-with-tax-liens/2013/09/11/ee1e93c2-1b10-11e3-8685-5021e0c41964_story_1.html.

⁶ Michael Sallah, Debbie Cenziper, and Steven Rich, *Mistakes put homes in peril*, WASH. POST, Sep. 10, 2013, <http://www.washingtonpost.com/sf/investigative/2013/09/10/mistakes-put-homes-in-peril/>.

⁷ Sallah et al., *supra* note 4.

⁸ *Id.*

concentration of African Americans at 94.9% and 93.5% respectively,⁹ account for more than half of these foreclosures.¹⁰

II. The District Should Reform its Real Property Tax Lien Sales System

LDF applauds the emergency measures passed by the D.C. Council on September 18, 2013, to address some of the flaws in the real property tax lien sales system. The “District Tax Sale Emergency Act of 2013” provides for a temporary tax sale moratorium for homes owned by senior citizens, veterans, or the disabled; increases, to \$2,000.00, the threshold at which tax liens can be sold; and caps attorneys’ fees at \$1,500.00.¹¹ The “Tax Lien Compensation and Relief Reporting Emergency Act of 2013” mandates the District’s Office of the Chief Financial Officer and the Office of Integrity and Oversight to conduct a review of all residential real property tax liens that have been sold over the last decade, and requires them to inquire whether any homeowners are deserving of relief because they were foreclosed upon due to governmental neglect or error.¹²

While these emergency measures represent important first steps in curbing the abuses in this practice, more work needs to be done to permanently reform this nefarious practice. LDF believes that D.C. government can, and should, implement a number of changes that will comprehensively address the flaws in the property tax lien sales system. Each of these changes is briefly discussed below.

(1) Institute a Government Task Force to Analyze and Address the Flaws of the Current Tax Lien Sales System

While the “Tax Lien Compensation and Relief Reporting Emergency Act of 2013” calls for the review of tax liens in order to determine foreclosure instances that warrant relief, it does not call for a review that would help lawmakers make necessary changes to the tax liens sale system. As such, a government task force should be convened in order to: (i) carefully analyze the flaws of the system, (ii) determine the most vulnerable communities affected by those flaws, and (iii) recommend changes that would protect these vulnerable communities in the future. This task force should also include participation from community stakeholders who could represent the interests of the most vulnerable homeowners such as senior citizens, veterans, disabled, and residents of color.

⁹ D.C. OFFICE OF PLANNING, DEMOGRAPHIC AND HOUSING PROFILES 2010 BY WARD, *available at* <http://planning.dc.gov/DC/Planning/DC+Data+and+Maps/DC+Data/Tables/Data+by+Geography/Wards/Ward+7/Demographic++and+Housing+Profiles+2010+by+Ward>; Sallah et al., *supra* note 4.

¹⁰ Sallah, et al., *supra* note 4

¹¹ D.C. COUNCIL LEGIS. #B20-0449, DISTRICT TAX SALE EMERGENCY ACT OF 2013, *available at* <http://dcclims1.dccouncil.us/images/00001/20130920132101.pdf>.

¹² D.C. COUNCIL LEGIS. #B20-0441, TAX LIEN COMPENSATION AND RELIEF REPORTING EMERGENCY ACT OF 2013, *available at* <http://dcclims1.dccouncil.us/images/00001/20130919160245.pdf>.

(2) Increase the Minimum Lien Offered for Sale

As part of the “Real Property Tax Sale Emergency Act of 2013,” only tax liens greater than \$2,000.00 are eligible for sale to investors. However, LDF recommends that the government task force conduct an evaluation to determine whether that threshold needs to be raised even higher or otherwise changed. This threshold should also be reviewed regularly and updated to account for fluctuations in the housing market and other economic changes.

(3) Payment Plan for Low-Income Homeowners

The District’s current tax lien sales system is overly harsh and does not accommodate the needs of vulnerable members of the community. There are, however, other options available. For example, the County of San Diego provides for a more flexible system of property tax collection.¹³ There, they allow homeowners to pay their taxes in two installments, subject to a penalty of 10%, and enrollment in a five-year payment plan as an alternative. Such a system encourages financial security that ultimately benefits the County, and only uses the property tax lien sales system as the last resort in property tax debt collection. The District should consider alternatives, including instituting a payment plan to assist low-income homeowners pay off their tax debts.

(4) Compensation for Loss of Equity in the Event of a Foreclosure

Under the current system, homeowners with delinquent tax debts far too often find themselves at risk of losing their homes—and the accompanying equity and wealth—due to foreclosure. As the system operates today, homeowners would only be left with two impracticable options to recover equity: (i) refinance to redeem the property, or (ii) sell the property to receive the equity.¹⁴ Thus, they are forced with either incurring more debt or losing their home entirely. The District should reform the tax lien sales system so that even those homeowners who lose their homes to foreclosure have the opportunity to recover at least some of the built-up equity they have earned over the years.

(5) Enhance the Pre- and Post-Sale Notice Requirements

The current system provides that a tax lien sale is valid even when the Mayor fails to provide a homeowner with notice of delinquency prior to a tax lien sale.¹⁵ After a sale, the District is not required to advise homeowners that it has sold the lien on their property.¹⁶ Homeowners get their first notification on the tax lien sale from third-party lien purchasers only after a foreclosure proceeding has been initiated six months later.¹⁷ This should be changed.

¹³ See CAL. REV. & TAX CODE § 3691 *et seq.*; see also Cnty. of San Diego Tax Collection FAQs, available at <http://www.sdtreastax.com/faqs-tax.html#pt7>.

¹⁴ See Letter from Stephen Cordi, Deputy Chief Financial Officer, D.C. to the Alliance to Help Owners Maintain Equity (Apr. 19, 2012) (available at <http://legaltimes.typepad.com/files/otr-response-to-at-home.pdf>).

¹⁵ D.C. CODE § 47-1341(b)(1)-(4).

¹⁶ See *supra* note 14.

¹⁷ D.C. CODE § 47-1370(a) (indicating that a purchaser may file a complaint to foreclosure only after the expiration of a 6-month waiting period following the date of sale).

Mayor Gray and D.C. Councilmembers
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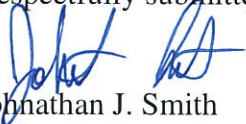
Homeowners must be given timely notice that the lien placed on their property is about to be auctioned, and given the opportunity to address any discrepancies in their property tax records before the lien is sold. Additionally, the District should notify homeowners that the lien placed on their property has been sold instead of placing the responsibility on third party purchasers who have the incentive to delay notification until a foreclosure proceeding. Promptly notifying homeowners after a tax lien sale allow them to immediately redeem their property without incurring exorbitant interest rates, or legal and court fees due to foreclosure proceedings.

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Homeownership is indispensable to both the District's economic development and its resident's long term financial security. LDF applauds both Mayor Gray and the D.C. Council for taking proactive steps in addressing the flaws in the property tax lien sales system. But more needs to be done to reform this system. We strongly encourage the District to enact the aforementioned remedies to ensure that the tax lien system operates in a manner that is fair, and also does not disproportionately impact communities of color.

We welcome the opportunity to provide additional information and to work with the Mayor's office and/or the D.C. Council to remedy the abuses in the tax lien sales system. We can be reached at (202) 682-1300 or jsmith@naacpldf.org.

Respectfully submitted,


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