



August 30, 2019

Via Electronic and U.S. Mail

Deb Cherry
Genesee County Treasurer
1101 Beach Street
Flint, MI 48502

**Re: Moratorium on Placement of Liens on Homes for Unpaid
Water Bills**

Dear Treasurer Cherry:

We write to follow up on our May 30, 2019 letter regarding the City of Flint's ("City") and the County of Genesee's ("County") practices of placing liens on homes for unpaid water bills and foreclosing upon them. We understand, based on your and the City's public representations, that the City has not placed any water liens, nor has the County accepted liens for owner-occupied residential properties during Flint's ongoing water emergency. Nonetheless, because you failed to respond to our May 30 letter—sent after the City erroneously mailed approximately 8,000 lien notices to residents on April 23, 2019—we remain concerned that the County may not be abiding by its public guarantee to discontinue its practice of foreclosing upon water liens.

Moreover, even if the County is observing the moratorium with fidelity, that temporary reprieve alone is insufficient to meet the County's obligations under federal and state law. In fact, you have publicly expressed an intention to: (1) continue to place liens on *rental* properties with overdue water accounts (even during the water emergency), and (2) begin foreclosing on water liens as soon as the mayor declares an end to the City's water emergency.¹ As previously stated, each of these policies is unjust and potentially illegal.²

First, your intention to accept liens for rental properties is unfair to tenants, even if the City and County are temporarily refraining from placing liens on owner-occupied properties. There is no principled reason for the County to treat renters differently: No

¹ Zarah Ahmad, *Flint mistakenly sends out 7,931 water lien notices*, MLive.com (May 8, 2019), <https://www.mlive.com/news/flint/2019/05/flint-mistakenly-sends-out-7931-water-lien-notices.html>.

² Letter from Michael Steinberg, Legal Director, ACLU of Michigan, and Sherrilyn Ifill, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc. ("LDF"), to Mayor Karen Weaver, Flint City Council, and Deb Cherry, Genesee County Treasurer (May 30, 2019), <https://www.naacpldf.org/wp-content/uploads/Flint-Letter-2019-05-29-Final.pdf>.

resident, whether renter or owner, should face foreclosure, and ultimately eviction, for failing to pay for dangerously contaminated water. In recognition of the unfairness inherent in treating renters and owners differently, Mayor Weaver has committed to cease placing liens on rental properties.³ We respectfully request that the County likewise commit to cease foreclosing on renter-occupied properties with water liens.

Second, the practice of placing liens and foreclosing on residential properties *in general* may violate federal and state civil rights laws, among other statutes.⁴ Although we recognize that the City has disclaimed any intention to place liens on residential properties until Flint's water emergency is resolved, and the County has promised not to accept liens (at least for owner-occupied properties), this temporary promise is insufficient to satisfy the City's and County's obligations under federal and state civil rights law. Therefore, we urge the County to refrain indefinitely from foreclosing on *any* residential properties for unpaid water debt.

The County's practice of foreclosing on residential properties subject to water liens likely has an illegal and discriminatory effect. Section 3604(a) of the Fair Housing Act ("FHA"), for example, makes it unlawful "[t]o . . . make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."⁵ This prohibition covers not only intentionally discriminatory conduct, but also any conduct that disparately impacts members of a protected class.⁶ Studies have shown that such foreclosure practices not only make housing "unavailable" for FHA purposes, but also disproportionately harm Black and Latinx homeowners in violation of the FHA and other statutes.⁷

The County Treasurer has considerable discretion whether to foreclose upon a property to collect water debt.⁸ We urge the County to refrain indefinitely and completely from foreclosing on

³ See Letter from Mayor Karen Weaver, City of Flint, to Michael Steinberg, Legal Director, ACLU of Michigan, and Sherrilyn Ifill, President and Director-Counsel, LDF (Jun. 10, 2019).

⁴ See Steinberg & Ifill, *supra* note 2.

⁵ 42 U.S.C. § 3604(a).

⁶ See *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2519 (2015).

⁷ See, e.g., Coty Montag, LDF, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities* (2019), https://www.tminstituteldf.org/wp-content/uploads/2019/06/Water_Report_FULL_8_8_19.pdf (finding that water lien sales in Cleveland are disproportionately located in predominantly Black neighborhoods); Michael D'Onofrio, *City Council Calls for Moratorium on Sheriff Sales*, The Phila. Tribune (Oct. 6, 2018), https://www.phillytrib.com/news/city-council-calls-for-moratorium-on-sheriff-sales/article_87ef9708-712b-5dfd-8390-f213114c7842.html

(noting that, in October 2018, the Philadelphia City Council requested a moratorium on tax sales, which were found to be concentrated in Black and minority neighborhoods); Coalition for Affordable Homes, *Compounding Debt: Race, Affordability, and NYC's Tax Lien Sale* 5 (2014), <https://cnycn.org/wp-content/uploads/2014/02/CAH-tax-lien-sale-report-final.pdf> (determining that New York City is six times more likely to sell a tax lien in a majority-Black neighborhood than a majority-white neighborhood).

⁸ Cf. Mich. Comp. Laws Ann. § 211.78 ("The foreclosure of forfeited property by a county is voluntary and is not an activity or service required of units of local government for purposes of section 29 of article IX of the state constitution of 1963."). See also Brief for AARP as Amicus Curiae Supporting Plaintiffs-Appellants, *Wayside Church v. Van Buren County*, 847 F.3d 812 (6th Cir. 2017) (Nos. 15-2463/2525) ("County Treasurers have considerable discretion whether to foreclose on a property to collect taxes.").

homes of residents for unpaid water debt to avoid unjust discriminatory impacts upon Flint's Black and Latinx homeowners and renters.

Very truly yours,



Dave Noble, Executive Director
ACLU of Michigan



Sherrilyn Ifill, President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.