Established 1872

Reprinted from December 6, 2015

www.BankerandTradesman.com

BANKER & TRADESMAN

THE REAL ESTATE, BANKING AND COMMERCIAL WEEKLY FOR MASSACHUSETTS

A PUBLICATION OF THE WARREN GROUP

DISRUPTING THE PROCESS

Bill To Revise Delinquent Property Tax Collection Is A Lose-Lose

Without Private Tax Lien Holders, A Workable System Falls Apart

BY DONNA TRUEX AND GEMMA YPPARILA
SPECIAL TO BANKER & TRADESMAN

Pending Massachusetts legislation proposes to amend laws governing the collection of delinquent taxes in a way that will significantly restrain the ability of municipalities to assign real estate tax liens, or "tax titles," to private parties who complete the foreclosure process. Proponents argue that the bill will help low-income constituents statewide, but, after looking at the bigger picture, Senate Bill 1463 seems to be a lose-lose for both municipalities and tax payers.

DONNA TRUEX

GEMMA YPPARILA

Property taxes are what provide funding for municipal programs that include education, infrastructure, public safety and the like. When property owners do not pay their taxes, municipalities do not have an alternate revenue stream to maintain these important community resources. The private sale of tax liens fills this deficit. The bill disrupts these sales by eliminating any incentive for private tax lien holders to purchase tax titles, which will substantially cut this critical revenue to local municipalities. Destroying these benefits to solve a non-existent "foreclosure crisis," a term taken out of context by proponents, is a lose-lose.

The proponents of Senate Bill 1463 would have you believe there is a foreclosure crisis because the third-party assignees are making it difficult for homeowners to redeem their properties, forcing them into foreclosure and out of their homes to reap a windfall. This could not be further from the truth. The fact is more than 90 percent of all tax titles are redeemed and most tax title properties are not owner-occupied, but abandoned, blighted or vacant commercial and residential properties. Those properties that are owner-occupied are usually redeemed in the normal course through lump sum payments, payment plans and/or refinancing. The few owner-occupied properties that remain are people who are having problems making ends meet. When taxpayers do not pay their taxes or maintain their properties, the properties become run down, blighted or condemned, which in turn affects surrounding property values. The proposed bill will only perpetuate this problem; when municipalities are not able to move forward to collect unpaid taxes, properties cannot return to the tax roll and the number of blighted or condemned buildings grows.

Lost Incentives

Current law provides that once property taxes become overdue, municipalities have two options to collect the delinquent taxes: either sell the property by a tax collector deed (subject to the right of redemption), or execute and record a tax taking in the name of the municipality. Under the second option, once the tax taking is executed and recorded, the municipality may assign it to a third party. Both options, however, require an open bidding process. Delinquent taxpayers are also afforded no less than six notices before a tax title is eligible for assignment to a private party and the commencement of foreclosure proceedings in Land Court.

Currently, private tax lien holders collect 14 to 16 percent interest on their investment. This may seem high, but it does not generate sufficient revenue to sustain a business, so private party tax lien holders must have other sources of income. Moreover, the high interest rate provides tax payers incentive to pay their taxes promptly. If and when a property is foreclosed upon, the municipality or private party holder, as the case may be, will own the property. This may seem like a windfall, but most of the properties not redeemed are blighted. The third-party investor must secure, repair and rent or sell the property. This can be a significant investment to turn a dilapidated property around, put it back on the tax roll and into productive use. This process is not a means to turn a quick profit; it takes a significant investment of time and money, ultimately benefiting communities.

As proposed, the incentive to third parties is lost in Senate Bill 1463. For example, an assignee of a tax title must wait one year before filing a complaint to foreclose, which process can take another six to 12 months and, once foreclosure is completed, they must hold the property for an additional year before it can be sold. After all of that, the foreclosing entity will be required to pay any surplus equity to the former owner. The bill also affords no guidance as to who maintains the property or pays the real estate taxes in the interim, who is liable for subsequent property damage, or what happens if the prior owner cannot be located.

It is a very small number of low-income owners who are not in a position to redeem their properties; however, in those instances the tax title process and procedure is not the issue. The issue is some property owners are being crushed by the expense of property ownership. Very rarely does this procedure result in a homeowner being displaced without the value of their equity in the property, but it does force them to get the help they need to change their lives and relieve the stress of the financial strain. Through every step of the current process, the owner is given ample opportunity to protect and recapture the equity, if any, in the property through redemption, refinance or sale of the property. Only on very limited occasions does a homeowner choose not to do so, thereby opting for foreclosure and abandonment of any remaining equity.

While some provisions of the bill could improve the tax collection process by helping property owners understand their rights, ultimately, it imposes greater constraints on municipalities and private tax lien assignees. These constraints will cripple the municipalities' ability to recoup the financial shortfall when taxes go unpaid. In the end, Senate Bill 1463 creates a disservice to the overall community (to whom this bill aims to protect) by effectively cutting an important source of municipal revenue. This municipal revenue is necessary to provide each community essential services. Under the proposed bill, no one wins. ■

Donna Truex is a partner at the Boston law firm of Bowditch & Dewey. She focuses in the areas of real estate and environmental law. Gemma Ypparila is an associate in the real estate and environmental practice group.