



THE NEW YORK CITY **TAX LIEN** SALE: HISTORY AND IMPACT



NEW YORK CITY COMPTROLLER
JOHN C. LIU

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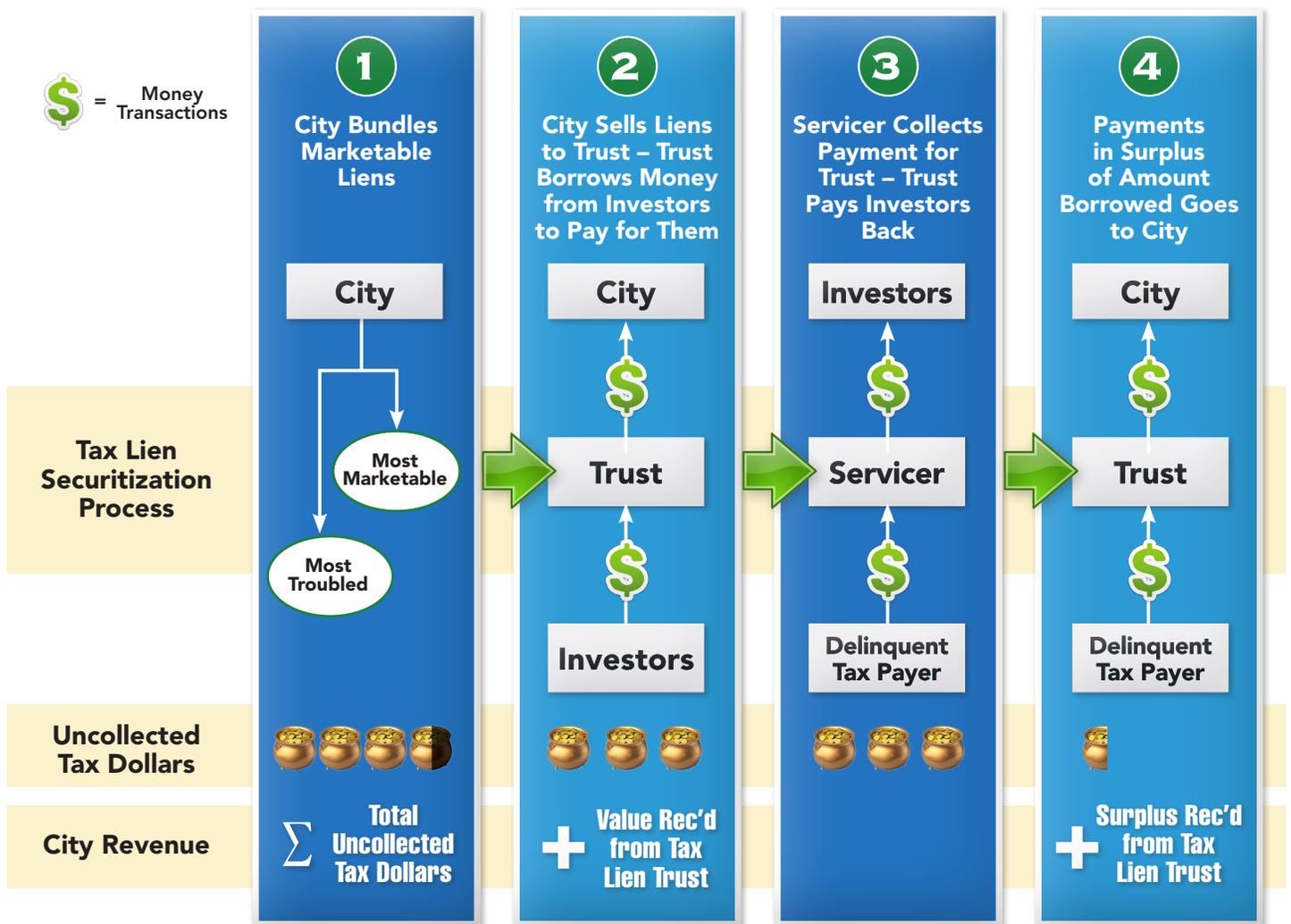
About the New York City Comptroller's Office

The New York City Comptroller, an independently elected official, is the Chief Financial Officer of the City of New York. The mission of the office is to ensure the financial health of New York City by advising the Mayor, the City Council, and the public of the City's financial condition. The Comptroller also makes recommendations on City programs and operations, fiscal policies, and financial transactions. In addition, the Comptroller manages the assets of the five New York City Pension Funds, performs budgetary analysis, keeps the City's accounts, audits City agencies, and registers proposed contracts. His office employs a workforce of more than 700 professional staff members. These employees include accountants, attorneys, computer analysts, economists, engineers, budget, financial and investment analysts, claim specialists, and researchers in addition to clerical and administrative support staff.

The Annual Tax Lien Sale

May 17, 2012 is the deadline for property owners to take action to have their liens excluded from the annual lien sale. Since 1996, New York City has been authorized to conduct tax lien sales on unpaid property taxes. Through required reauthorizations of the legislation, additional forms of debt have been included. Now water, sewer, and other property-related charges can be sold. The lien sale generates revenue for the City by collecting unpaid debt, but there can be negative implications for homeowners who are unfamiliar with the process. This report explains how the lien sale is conducted, identifies criteria for exclusion, provides a brief historical context, and outlines recent reforms. It also highlights communities that have been most impacted by the lien sale, and concludes by suggesting some additional reforms to further ensure the protection of our City's most vulnerable homeowners.

How the Lien Sale Works



Source: New York City Tax Lien 2008-A Trust, "Private Placement Memorandum," June 24, 2008



The debt eligible for the lien sale includes delinquent property taxes, water and sewer charges, as well as emergency repairs, and other municipal charges. The City bundles its most marketable liens into securities for sale to a third party Trust, which borrows money from external institutional investors to pay the City upfront.¹ The Trust then assumes responsibility for collecting the debt through service collectors, and introduces additional fees and interest to property owners, who have one year to pay their debt. After investors have been paid back, the City is entitled to collect additional revenue from interest payments and fees.

Eligibility

A complete list of properties whose liens are eligible for the 2012 sale is available on the Department of Finance (DOF) website.² Here, we focus on a subset of Tax Class One properties: one- to three-family homes. For these homeowners, unpaid property taxes must amount to at least \$1,000 to be included in the lien sale, and remained unpaid in whole or in part for three years. Water and sewer liens have different criteria and eligibility. Single-family homes cannot have their water and sewer debt sold. However, two- and three-family Tax Class One properties can have these liens sold so long as they have been unpaid for one year and amount to at least \$2,000.³

1- 3- Family Homes Eligible for the Lien Sale				
TYPE OF PROPERTY	PROPERTY TAX DEBT		WATER/SEWER DEBT	
	MINIMUM AMOUNT	YEARS OVERDUE	MINIMUM AMOUNT	YEARS OVERDUE
1-Family House	\$1,000	3	Standalone water/sewer liens cannot be sold	
2-Family House	\$1,000	3	\$2,000	1
3-Family House	\$1,000	3	\$2,000	1

Source: New York City Department of Finance. "90 day Notice of Intention to Sell Tax and Water Liens." Accessed on April 6, 2012.

Exemptions and Remediation

Certain homeowners are exempt from having their liens sold. These include individuals receiving the Senior Citizen Homeowners' Exemption, the Disability Homeowners' Exemption, the Veterans Exemption, or the New York State Property Tax Credit. In addition, active military personnel can be excluded if they apply for an affidavit. The chart on page 3 lists some of the eligibility criteria for the five possible exemptions.⁴ These homeowners still have to pay taxes, but cannot have their liens sold.

¹ Properties' liens are deemed unmarketable and are excluded from the lien sale if the Department of Housing Preservation and Development (HPD) categorizes them as "distressed properties," as defined in Local Law 37. Properties qualify as distressed if their tax liens to market value ratio is at least 15 percent and they either have 1) 5 or more hazardous or immediately hazardous Housing Maintenance Code violations per dwelling unit; or 2) \$1,000 or more in HPD Emergency Repair Program liens per building. See Citizens Housing and Planning Council. "The Invisible Transformation Turning Debt into Revenue." 2010, <http://www.chpcny.org/wp-content/uploads/2011/02/final-report1.pdf>, Accessed March 21, 2012, p. 11.

² New York City Department of Finance. "New York City's Annual Lien Sale." http://www.nyc.gov/html/dof/html/property/property_bill_taxlien.shtml, Accessed April 6, 2012.

³ New York City Department of Finance. "90 day Notice of Intention to Sell Tax and Water Liens." http://www.nyc.gov/html/dof/html/pdf/lien_sale/90_day_packet.pdf, Accessed on April 6, 2012. Note: As of March 2011, three-family homes that are not owner-occupied but are included in Class One may also have emergency repair charges and alternative enforcement program expenses and fees included in the lien sale if they total \$1,000 and have been unpaid in whole or in part for at least one year.

⁴ This chart focuses on exemptions for one- to three-family homes in Tax Class One, but other properties are eligible for exclusion from the sale as well including residential condominiums and cooperatives owned by Housing Development Fund Companies (HFDC's). New York City Council. "Int. No 26-A Local Law 15," <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=648866&GUID=BD596712-BAC0-48DD-92BE-1B00DB7A8497&Options=IDIText&Search=tax+lien+sales>, Accessed on April 3, 2012, p. 1-2.



2012 Exclusion Criteria (for owners of 1-3-family homes)				
Senior Citizens	Disabled	Veterans	Active Military Personnel	New York State Property Tax Credit
<ul style="list-style-type: none"> Owner or Spouse is 65+ Total owner income is less than \$37,400 	<ul style="list-style-type: none"> One owner receives disability benefits Combined owner income is less than \$37,400 	<ul style="list-style-type: none"> Served in armed forces Applicable to some relatives (Gold Star parents, spouses) 	<ul style="list-style-type: none"> Must apply for an affidavit Spouses are also eligible 	<ul style="list-style-type: none"> Must have received credit in Tax Year 2011 For properties valued at \$85,000 or less and filers with income below \$18,000

Sources: New York City Department of Finance. "90 day Notice of Intention to Sell Tax and Water Liens." Accessed on April 6, 2012; and, The Hatcher Group, "Tax Credits for Working Families," Accessed on April 26, 2012, <http://www.taxcreditsforworkingfamilies.org/state/new-york/>

Property owners who do not meet the above criteria and who are at risk of having their liens sold can still be removed from the lien sale list. The City offers agreement plans with a zero percent down payment and a ten-year payback period.⁵

In addition, the Department of Environmental Protection (DEP) offers the Water Debt Assistance Program to multi-family homeowners whose properties are on the lien sale list due to unpaid water or sewer charges and are currently under the threat of foreclosure or mortgage delinquency. Owners accepted into this program must agree to pay the debt on or before the sale or refinancing of the property and their properties will be excluded from the lien sale.⁶

Background: Why does New York City Sell Tax Liens?

During the 1970's, the City developed a substantial housing abandonment and vacancy problem. Both national and local economic trends made it more difficult for property owners to pay their taxes.⁷ In 1976, the City responded to this crisis by assuming ownership of properties with one year of delinquent taxes through *in rem* foreclosure actions.⁸ The term "*in rem*" means "against a thing" and refers to a process by which the City forecloses a property without entering into personal judgment against the owner.⁹ The objective was to quickly prevent the housing stock from further deteriorating under landlords who maintained poor conditions for their tenants. However, by the early 1990s, the Department of Housing Preservation and Development (HPD) had become the City's largest landlord, consuming substantial resources. The City spent \$2.2 million to manage, repair, and sell each building, and on average, the City would own a property for 19 years.¹⁰

5 New York City Department of Finance. "New York City's Annual Lien Sale," Op. Cit.

6 New York City Department of Environmental Protection. "Water Debt Assistance Program – Multifamily Homeowners.," http://www.nyc.gov/html/dep/html/customer_assistance/water_debt_assistance_program_multi.shtml, Accessed on April 11, 2012.

7 Neighborhood Restore Housing Development Fund Corporation. "What is Neighborhood Restore HDFC?," http://www.neighborhoodrestore.com/index_nr.html, Accessed on March 22, 2012.

8 Citizens Housing and Planning Council New York. "The Invisible Transformation Turning Debt into Revenue." 2010. <http://www.chpcny.org/wp-content/uploads/2011/02/final-report1.pdf>, Accessed on March 21, 2012, p. 4-5.

9 New York City Department of Finance. "Property *In Rem* Enforcement." http://www.nyc.gov/html/dof/html/property/property_bill_inrem.shtml

10 Neighborhood Restore Housing Development Fund Corporation, Op. Cit., Accessed April 11, 2012.



In an attempt to stem these rising costs, the City stopped assuming ownership of properties through *in rem* foreclosure proceedings in 1993.¹¹ Consequently, the City had no mechanism to actively collect taxes from delinquent owners during this interim period. In 1996, the City enacted Local Law 26, enabling it to collect tax revenue upfront by selling liens on unpaid property taxes and related charges. The 1996 Tax Lien Sale legislation not only removed the City's burden of ownership, but also allowed the City to capture tax revenue immediately.

Brief History of the Lien Sale



Sources: Neighborhood Restore Housing Development Fund Corporation. "What is Neighborhood Restore HDFC?" Accessed on March 22, 2012; Citizens Housing and Planning Council New York. "The Invisible Transformation Turning Debt into Revenue." 2010, p. 4-5, Accessed on March 21, 2012; First American Title Insurance Company of New York. "Current Developments," p. 3, Accessed on April 17, 2012; New York City Council. "Supplement to the City Record," p. 4-5, March 2, 2011; and New York City Council. "Int. No 26-A Local Law 15" Accessed on April 3, 2012.

¹¹ Citizens Housing and Planning Council New York, Op. Cit., p. 6.



2007 Reforms

In the intervening time, the DEP had been struggling to cover operation and maintenance costs. Water consumption fell from 1988 through 2006, but this decline was not matched with a decrease in expenses. Instead, fixed costs of water treatment and delivery rose.¹² Moreover, the DEP faced water and sewer charge delinquencies for which it lacked an enforcement mechanism.¹³ In 2007, through Local Law 68, the City Council attempted to address these problems and prevent large increases in water rates by authorizing the sale of “standalone” water liens for Class One property owners.¹⁴

The 2007 legislation also sought to provide consumer protections for vulnerable populations by exempting them from the lien sale.¹⁵ However, housing advocacy groups, such as the Neighborhood Economic Development Advocacy Project (NEDAP) and the Legal Aid Society, claimed that the risk of foreclosure for low-income homeowners and communities of color was exacerbated by the standalone water lien sales.¹⁶ For example, Legal Aid Society testified to City Council that foreclosure filings in Queens commenced by the tax lien trusts nearly quadrupled since the authorization of the standalone water lien, from 124 in 2006 to 462 in 2008.¹⁷ This testimony does not indicate if the foreclosures were just Class One properties or constituted all tax classes, including commercial and industrial properties in Class Four. Still, low-income and minority homeowners were already struggling with the economic downturn and increased foreclosure actions on account of mortgage defaults.¹⁸ Including standalone water liens in the annual sale created an added foreclosure risk factor for these already vulnerable populations.

Housing advocates also expressed concern that many of the same populations were eligible for exemptions and simply not aware that they qualified.¹⁹

2011 Reforms

In March 2011, the City Council passed Local Law 15 to address some of the problems associated with lien sales.²⁰ The law required the DOF to offer zero percent downpayment agreements so property owners had an affordable way to be removed from the sale. To minimize the risk of foreclosure for properties whose liens were sold, the law lowered the third party interest rates on properties valued at less than \$250,000. Whereas such owners previously paid 18 percent interest rates compounded daily, now they paid 9 percent. In addition, the amount of unpaid water and sewer debt that could qualify for the lien sale increased from \$1,000 to \$2,000.²¹

12 New York City Independent Budget Office. “Water and Sewer Rates: Factors Driving the Increases and Options for Reduction.” May 2008, p. 2-3.

<http://www.ibo.nyc.ny.us/iboreports/waterandsewer0508.pdf>

13 *Ibid.*, p. 3

14 New York City Council. “Supplement to the City Record.” March 2, 2011, p. 4-5. http://www.nyc.gov/html/dcas/downloads/pdf/cityrecord/cityrecord-supplement_4-8-11.pdf

15 New York City Council. “Int. #656 A Local Law to amend the administrative code of the City of New York, in relation to the sale of tax liens.” <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=447849&GUID=09EAF74-DFFE-48B4-B51B-10B868906E41&Options=ID|Text|Search=68>, Accessed on April 5, 2012.

16 The Legal Aid Society. “Testimony of the Legal Aid Society at the Joint Hearing on ‘The Effect of Water and Sewer Lien Sales on Residents’ held by the New York City Council Committee on Finance and Community Development.” September 28, 2011, p. 2. <http://www.legal-aid.org/media/139841/septtaxlientestimony.pdf>

17 *Ibid.*, p. 2.

18 Center for Responsible Lending. “Lost Ground 2011: Disparities in Mortgage Lending and Foreclosures, Executive Summary.” November 17, 2011, p. 4. <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-exec-summary.pdf>

19 Neighborhood Economic Development and Advocacy Project. “Testimony Before the New York City Council Finance Committee Intro 26-A Local Law to amend the administrative code of the City of New York in relation to the sale of water liens.” May 6, 2010, p. 2. <http://www.nedap.org/resources/documents/5-06-10Testimonyonwaterlienlegislation.pdf>

20 New York City Council, “Int. No 26-A Local Law 15,” Op. Cit.

21 New York City Council, “Int. No 26-A Local Law 15,” Op. Cit., p. 8.



The law also increased the amount of outreach required by the DOF to homeowners eligible for exclusion from the lien sale. The DOF sets a deadline for property owners to submit an eligibility checklist or enter into a payment agreement with the City. The DOF considers the deadline to be synonymous to the “lien sale,” though the actual securitization and sale of the liens may occur several weeks later. The DOF must notify property owners that they are on the lien sale list by sending four first-class notices no less than 90, 60, 30, and 10 days prior to the deadline.²² These mailings must include an exemption eligibility checklist. To be excluded from the lien sale, property owners must complete and send the checklist to the DOF in advance of the deadline. Within ten business days of receiving the checklist, the DOF must send an exemption application.

Any property owner who submits an exemption checklist *prior* to the deadline and then submits a completed application to the DOF up to 90 days *after* the deadline must have their application reviewed by the DOF. If the DOF determines *prior* to the lien sale that the property owner meets the criteria for exclusion, then his or her property’s liens will be excluded. If this determination occurs *after* the sale, then the property owner’s liens will be deemed defective.²³ However, it is in the interest of property owners to apply for an exemption before the sale to avoid high legal fees and the risk of increased economic hardship.

The Department of Finance also must provide the City Council a list of property owners, by Council District, who have submitted eligibility checklists but failed to submit the application thirty days before and after the lien sale.²⁴

Current Timeline



Source: New York City Council. “Int. No 26-A Local Law 15,” Accessed on April 3, 2012.

22 Ibid., p. 16-17.

23 Ibid., p. 18.

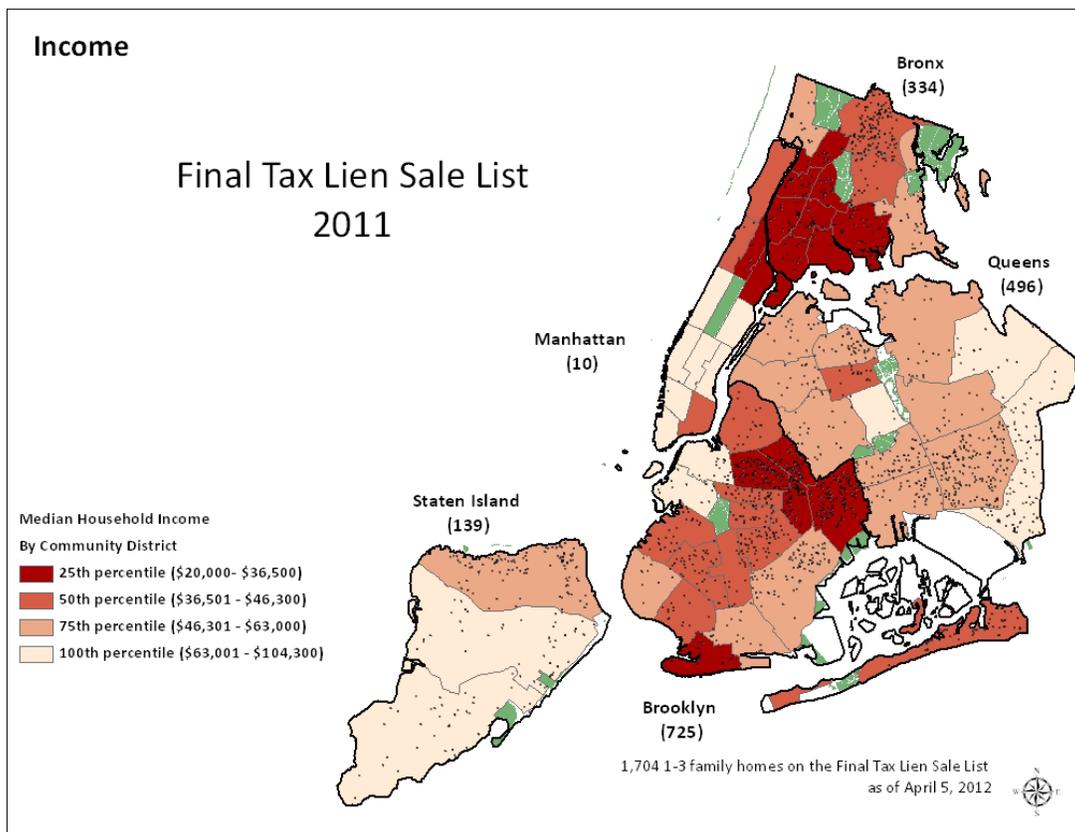
24 Ibid., p. 18.



2011 Impact

In 2011, the final lien sale included 2,045 Class One properties, of which 1,704 were one- to three-family homes.²⁵ The list decreased significantly over the three-month outreach period. The 90-day list began with 12,525 Class One properties, which decreased to 9,881 sixty days before the sale, 8,022 thirty days before the sale, 6,936 ten days before the sale, and 2,045 in the lien sale.²⁶ This final amount represented 16 percent of the initial 90-day list.

The following maps show that the one- to three-family homes whose liens were sold in 2011 were highly concentrated in low-income community districts with large populations of Black or Hispanic New Yorkers.

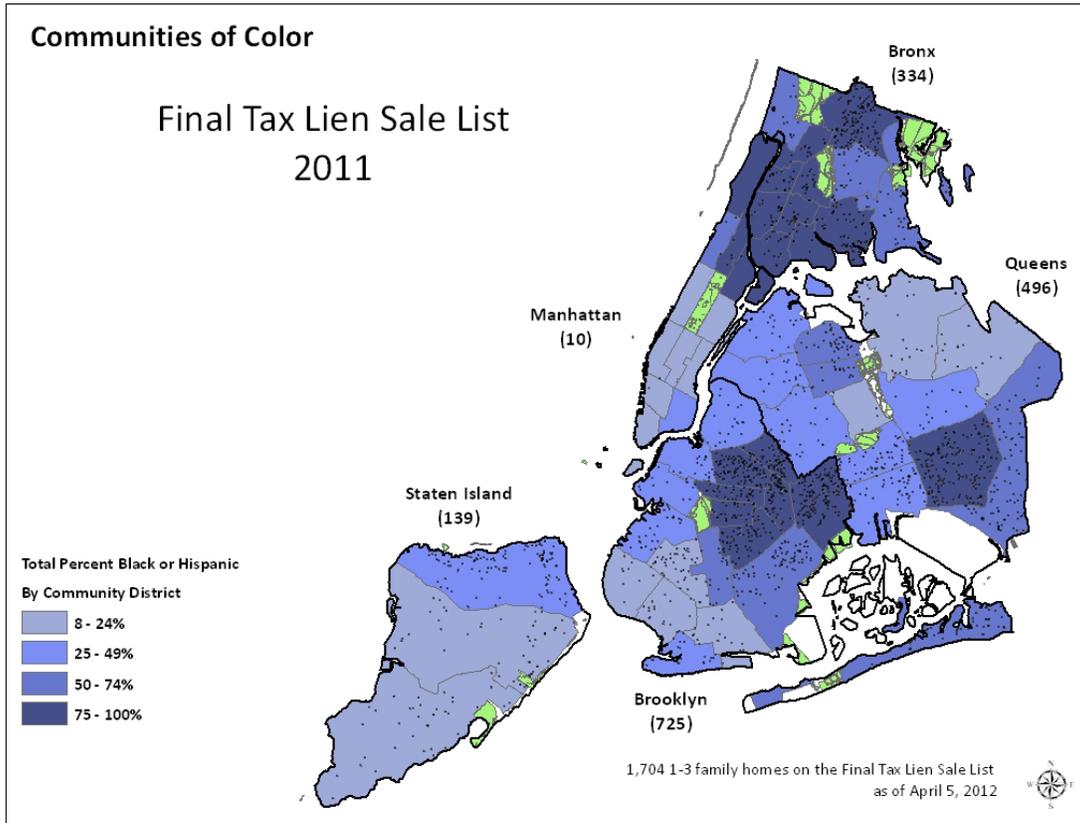


Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.

²⁵ We obtained this number by isolating Class One properties and subtracting those in building class G0, V0, V2, V3, and Z0, which includes vacant lots, garages, and tennis courts.

²⁶ Department of Finance. Email message to author. April 6, 2012.





Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.

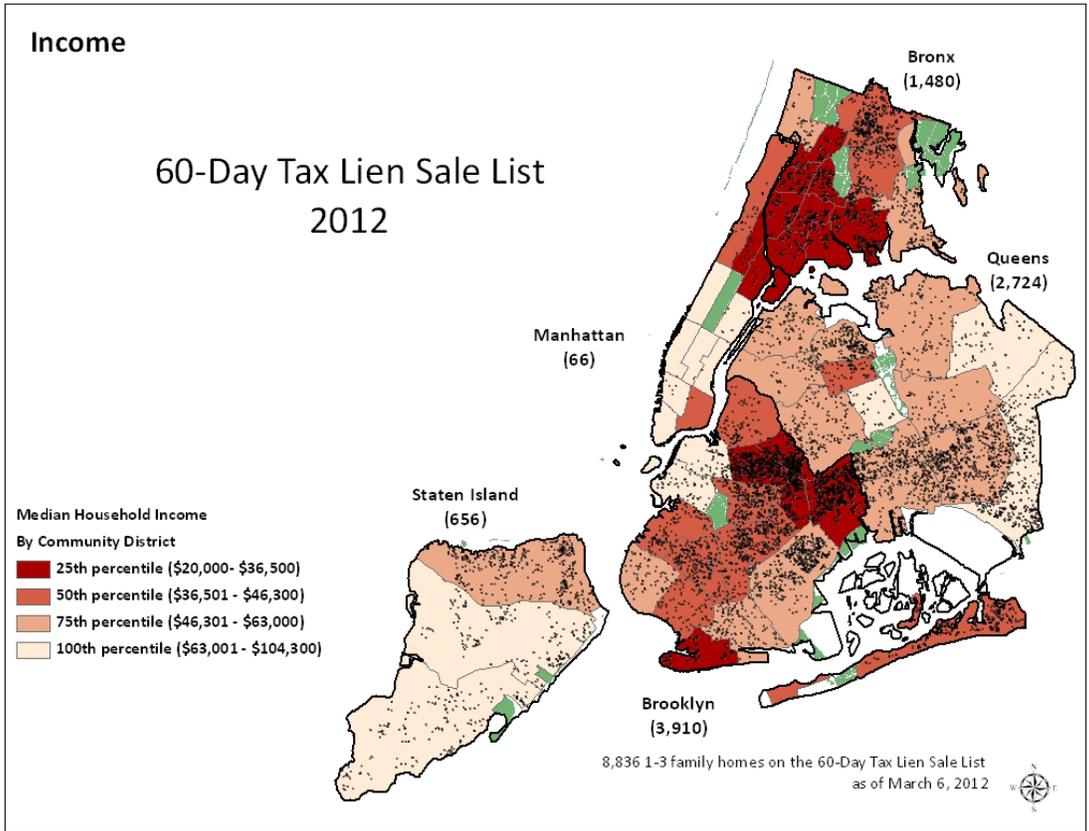
Brooklyn experienced the greatest impact, where 725 one- to three-family homes had their liens sold. Many of these properties were located in Community Districts 3, 4, 5, and 16, which are home to such neighborhoods as Bedford Stuyvesant, Bushwick, East New York, and Ocean Hill. Queens followed Brooklyn, with 496 one- to three-family homes in the lien sale. Many were located in Community District 12, home to Jamaica and St. Albans. In the Bronx, 334 one- to three-family homes had their liens sold. Many were located in Community District 12, home to Wakefield, Williamsbridge, Baychester, and Olinville.

2012 Update

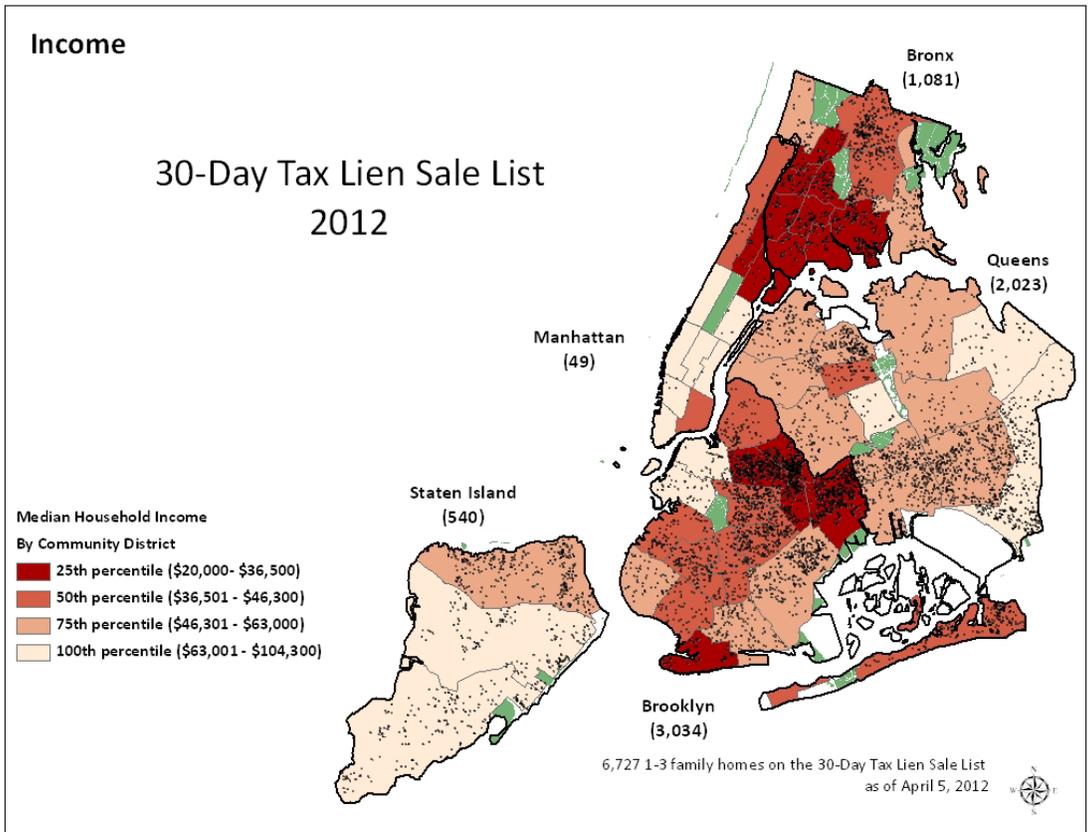
As of the 30-day list, 2012 is on track to have fewer Class One properties included in the final lien sale compared to 2011. The number of one- to three-family homes with tax liens eligible for the 2012 sale has decreased from 8,836 in the 60-day list to 6,727 in the 30-day list.²⁷ This 24 percent reduction is likely due to homeowners applying for an exemption or entering into a payment agreement with the Department of Finance or the Department of Environmental Protection. Still, as demonstrated by the maps below, New York City's low-income communities of color are disproportionately affected by the lien sale.

²⁷ The total number of Class One properties in the 2012 60- and 30-day lists (including vacant lots) were 9,607 and 7,362, respectively.

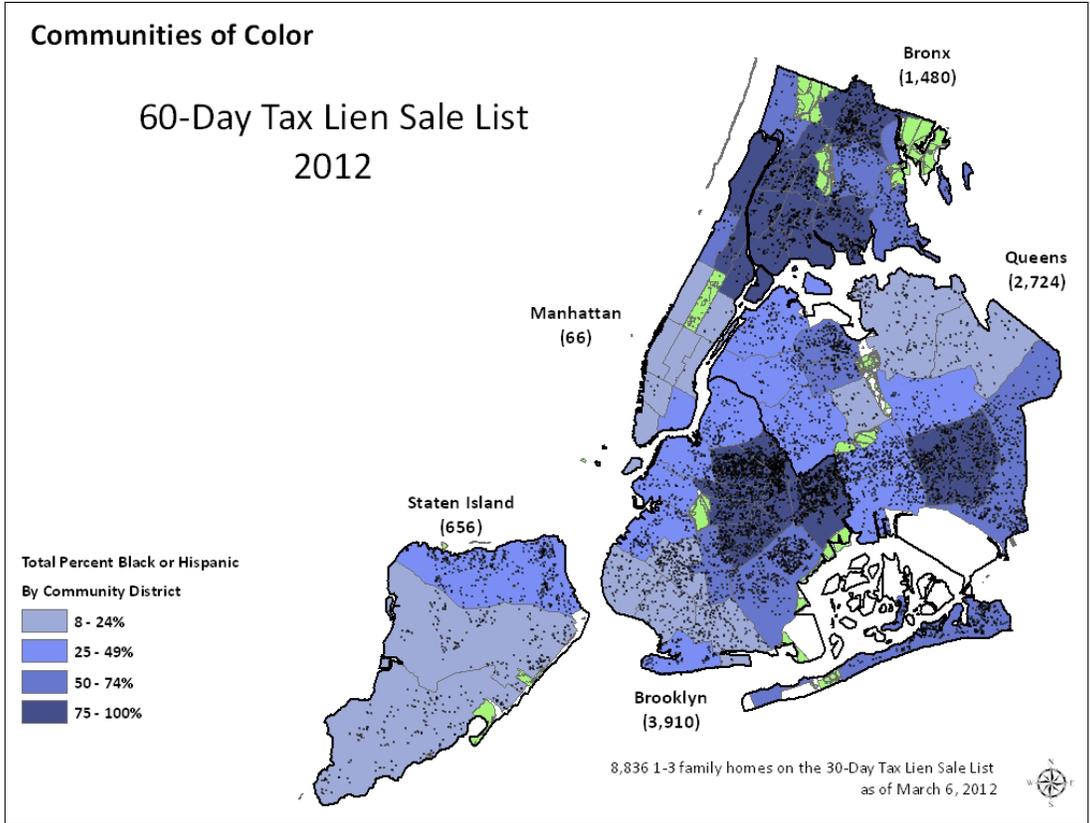




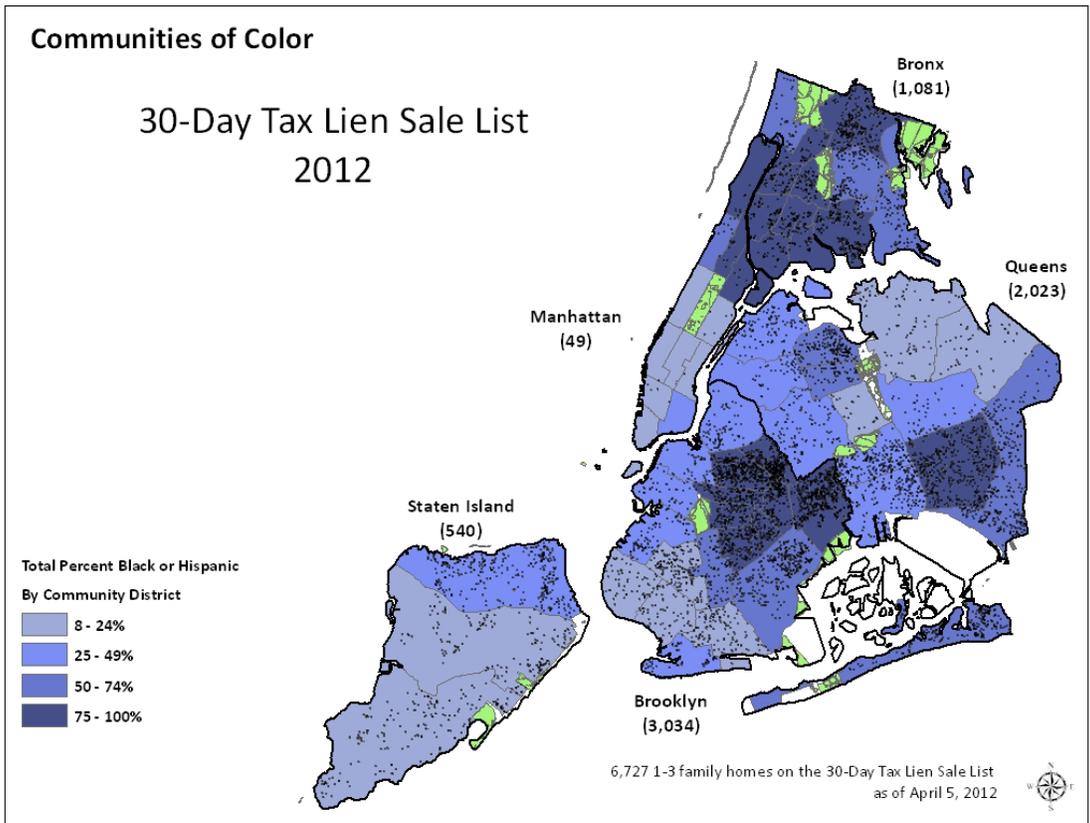
Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.



Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.



Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.



Sources: American Community Survey Demographic and Housing Estimates, American Community Survey 2007-2009 3-Year Estimates; and Department of Finance. Email message to author, April 6, 2012.

Recommendations

The 2011 legislation sought to remediate some of the adverse impacts of the lien sales by offering zero percent downpayment plans, a reduction of interest rates, and more outreach efforts. The substantial reduction in Class One properties from the 90-day lien sale list to the actual sale date reveals its effectiveness.

Still, the City could further reduce the impact by proactively identifying property owners where possible who are eligible for exclusion from the lien sale list. In addition, the City should explore ways to make the process of establishing exemption from the lien sale less burdensome for property owners. Even when outreach efforts succeed, it is still difficult for property owners to demonstrate that they qualify.

A second recommendation is for the DEP to reintroduce the Payment Incentive Program (PIP), which was designed as a one-time program to offer customers a chance to settle outstanding charges prior to the first standalone lien sale in 2008. PIP enabled owners to reduce or eliminate late fees and other charges as a part of a payment agreement.

Experts in the affordable housing industry, such as the Citizens Housing and Planning Council, generally regard the tax lien sale as a superior alternative to *in rem* foreclosures. However, while the lien sale is an effective tool to raise needed revenue for the City, it has the unfortunate consequence of increasing the risk of foreclosure for some of our most vulnerable homeowners.





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