“Commodifying our communities:”

The case for abolishing NYC’s tax lien sale and prioritizing community land trusts in a new tax collection and property disposition system

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NYC community land initiative

Fighting for vibrant, equitable and sustainable housing and neighborhoods through community ownership of land

Introduction

New York City's tax lien sale accounts for a vanishingly small percentage of the City's overall property tax revenue: the sale brings in, on average, less than $70 million annually[1], relative to the roughly $30 billion that the City collects in property taxes each year. But the practice of selling municipal debt to a private, investor-backed trust fuels speculation and displacement in Black and brown neighborhoods, and siphons wealth from communities already disproportionately harmed by historic inequities like redlining and disinvestment. A citywide coalition convened by the East New York Community Land Trust is calling on the City to abolish the tax lien sale, and develop an alternative system of tax collection and property disposition that promotes neighborhood stability and equity through supporting community land trusts (CLTs).

This memo provides a brief introduction to CLTs and proposes alternatives to the lien sale that prioritize CLTs, in partnership with mission-driven, nonprofit developers, as both resources for vulnerable homeowners and recipients of foreclosed properties. The tax lien sale is a missed opportunity to preserve land and housing for permanent public benefit at a time when it is most sorely needed. In the wake of COVID-19, the city must invest in proven community-led institutions, like CLTs, to stem evictions, foreclosures, and speculation, and to promote an equitable recovery in Black and brown neighborhoods hardest-hit by the pandemic. Abolishing the tax lien sale is a critical step toward this goal.

Negative effects of the lien sale on NYC communities of color

An analysis from the Coalition for Affordable Homes found that the City was six times more likely to sell liens on one-to-three family homes in majority Black neighborhoods, and twice as likely to sell liens in majority Latinx neighborhoods, than in majority white neighborhoods. Once sold, high interest rates and fees cause debts to quickly balloon; on average, debts increase by 65 percent. And when property addresses are published on the lien sale list, vulnerable homeowners are targeted by speculators and predatory buyers, who pressure them to sell before they ever have the opportunity to work out their debt with the City.[2] In addition to harming homeowners, the lien sale hurts tenants in distressed multi-family buildings that appear on the list year after year, with no real consequences for negligent landlords. The negative effects of the lien sale on NYC's Black and Latinx communities far outweigh the minimal revenue it brings to the City. "It's a Wall Street entity making money off the backs of communities of color during a pandemic," said Al Scott, member of the East New York Homeowners Association and East New York Community Land Trust[3]. "They are commodifying our communities."

Eliminating the private, investor-backed tax lien trust from NYC's municipal debt collection toolkit will create opportunities to stabilize communities by (1) keeping homeowners in their owner-occupied homes, (2) intervening on behalf of tenants with delinquent landlords and (3) expanding the pipeline of

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[1] Furman Center. (2015). Selling the Debt: Properties Affected by the Sale of New York City Tax Liens, citing Department of Finance Testimony at City Council Hearing on Legislation to Extend the City's Authority to Sell Tax Liens. New York City Council (2015, January 8).

[2] Coalition for Affordable Homes. (2016). Compounding Debt: Race, Affordability, and NYC's Tax Lien Sale.

[3] Senzamici, P. & Dikanovic, A. (2020). Council Considers Killing the Tax-Collection Machine Rudy Giuliani Built. *The City* (October 22).

properties that can be used to preserve and develop new permanently affordable housing. As community-led nonprofits dedicated to the stewardship of land for permanently affordable housing and other critical community needs, community land trusts (CLTs) are ideally positioned to work with the City and other mission-driven, nonprofit developers to achieve these key goals.

What are community land trusts?

Community land trusts (CLTs) are community-controlled nonprofits that own land and ensure it is used to provide permanently-affordable housing and meet other critical community needs. CLTs typically issue 99-year, renewable ground leases that lay out affordability requirements and other terms for the buildings on CLT land. CLTs promote democratic governance and community decision-making over development through ongoing organizing and their board structure. Most CLT boards strive for a balance of people who live or work on CLT land, members of the surrounding community, and public stakeholders--such as advocates and technical assistance providers--with a professional interest in the success of CLTs. CLTs are, therefore, flexible, and can be used to preserve multifamily rental housing, multifamily cooperative housing, single-family housing with deed and resale restrictions, and even commercial and community properties with specifications for use and below-market rents.

Where have CLTs been used effectively, and at scale?

The national CLT landscape includes over 225 CLTs comprising around 35,000 units of permanently affordable housing,[4] along with community spaces, urban gardens, and more, in rural and suburban communities as well as hot-market cities like Boston, Los Angeles, San Francisco, and Seattle. The Champlain Housing Trust in Burlington, Vermont, is the nation's largest CLT, with 2,000 units of housing across three counties. Formed in the early 1980's under the mayoral administration of Bernie Sanders, Champlain Housing Trust has stewarded a range of housing types, from emergency shelters and supportive housing to mobile home parks, nonprofit rentals, limited-equity cooperatives, and deed-restricted, shared-equity single-family housing. It also stewards sites with commercial uses and social services, as well as open space and parks.

In New York City, Cooper Square CLT on Manhattan's Lower East Side has successfully preserved 21 affordable buildings, including 328 deeply affordable homes and 23 commercial storefronts, since its

[4] Boone, C. & Roseland, M. (2020). [What Community Land Trusts Can Do for Racial Equity.]
Yes! Magazine (September 17).

founding in 1994. Residential units include a mixture of HDFC cooperatives and rentals, and are affordable to people earning 28-36% AMI; commercial units are rented at below-market rates that support a retail mix of small businesses and arts organizations valuable to the neighborhood, while cross-subsidizing lower residential rents. Cooper Square CLT's stewardship mission is further strengthened by working closely with the Cooper Square Mutual Housing Association, which owns and manages buildings on CLT land, and the Cooper Square Committee, which provides tenant organizing and other support to the broader community.

Role of CLTs in a new tax collection and property disposition system

Numerous CLTs have developed relationships with local governments to address foreclosure and property disposition in diverse ways. Abolishing the tax lien sale would advance three critical affordable housing and equitable development goals: prevent displacement of vulnerable homeowners, support tenants and the preservation of affordable units, and expand the pipeline of properties for new development.

Prevent displacement of vulnerable homeowners (Class 1 and small Class 2 properties)

Tax Class 1 properties include residential buildings of one to three units, while Class 2 consists of residential properties with more than four units. Owner-occupied Class 1 and small Class 2 buildings (e.g., four-to-six units) without significant liens could be offered a payment plan. Properties in significant arrears could be offered a write-down of the debt in exchange for preservation of continuous occupancy and preservation of the housing as affordable after vacancy, as we see in the Minneapolis program. For example, prior to any foreclosure proceeding by the City, owners could be offered to instead sell land from under their houses to a CLT, or offered a regulatory agreement. This is also an attractive option for Class 1 properties whose owners are the primary residents, but who have tenants in secondary units. As in Minneapolis, a CLT could buy the underlying land and facilitate a mortgage refinance based on the value of the improvements[5].

If owners are unable to settle debts to the City, the City can initiate foreclosure in the State Supreme Court. Owners will have the chance to defend in court if, for example, the debt was charged in error. If the court grants the City foreclosure, the City will become the owner of the property and can work to transfer the land to a CLT in order to preserve continuous occupancy or to find a new buyer at a target affordability level. A program such as this could work more like the Boston Neighborhood CLT program, in which the original owner might have the option to remain a tenant--in which case, the home could be owned as a rental by a nonprofit owner--or to repurchase the property at far more favorable rates, but subject to strict resale limitations per the CLT ground lease. The key is that foreclosure, either on a mortgage or municipal debt, need not lead to displacement.

Unoccupied buildings could be treated the same way as vacant lots: foreclosure proceedings could be expedited and properties added to the pipeline for the development of affordable housing and other uses if owners do not settle debt or successfully defend the foreclosure in court.

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[5] In this model, the appraisal of the land and the financing of the purchase would require (1) understanding that the land value will have changed; and (2) access to financing. In situations in which the home is owned by the primary resident free and clear, this process becomes simpler. In both cases, the home will be subject to the CLT's shared equity restrictions.

Single-family case examples

The Oakland CLT in Oakland, CA, partnered with the City government to preserve 17 real estate-owned (REO) homes using funds from the federal Neighborhood Stabilization Program. While this number fell far short of the original goal of 200 homes, a study[6] of the program found that the failures lay largely with the City and other partners, including a real estate marketing firm that did not support CLTs, as well as a rapidly changing market for REO properties[7]. Oakland CLT's experience underscores the need for strong city support and collaboration with CLTs to ensure success.

In Minneapolis, MN, the City of Lakes CLT developed its Sustained Legacy Program to purchase land from under the houses of owners threatened with foreclosure. Here, the CLT is concerned mainly with keeping seniors in their homes and then converting the homes to shared equity properties once they are vacated. The CLT's ability to choose which homes to take on and set clear parameters around purchases is important to its success; for example, the total outstanding loans on a home cannot exceed $50,000. Access to capital is also key: having merged with Minneapolis Neighborhood Housing Services, City of Lakes CLT is also a community development financial institution (CDFI) and has access to federal CDFI funds, which means that it can provide the financing for these projects.

Similarly, the Boston Neighborhood CLT focuses on occupied homes in foreclosure, with the goal of preserving continued occupancy. The CLT recently acquired its first four buildings comprising 15 homes, and intends to separate title to the land and transfer the housing to a third party for a year while any needed repairs are completed and the homeowner stabilizes their finances. After the year, the occupant can either buy back the property or rent from the nonprofit owner. In addition to working with local lenders to develop a loan product to allow homeowners to repurchase their homes, the CLT worked with city agencies and banks to acquire its first buildings.

In NYC, the Interboro CLT, a partnership of the Center for New York City Neighborhoods, the Mutual Housing Association of New York (MHANY), the Urban Homesteading Assistance Board (UHAB) and Habitat for Humanity New York City, is working with a set of single-family homeowners and a cooperative in foreclosure in order to preserve continued occupancy by buying the land under the housing and refinancing the homes with lower monthly charges. This approach is much like that of City of Lakes CLT, but unlike City of Lakes, Interboro does not have immediate access to CDFI financing.

Support tenants and preserve affordable housing (larger Class 2 properties)

Class 2 properties with more than six units that are not owner-occupied and have significant liens should be directed to community stewardship entities, such as CLTs, to improve living conditions for tenants and preserve affordable housing. Many larger Class 2 properties are part of much larger portfolios--and frequently multiple buildings in these portfolios enter the tax lien sale. For example, in zip codes 11207 and 11208, 24 of 90 buildings in the tax lien sale from 2014 to 2019 were owned by landlords with

[6] Yelen, J. (2017). Community Land Trusts as Neighborhood Stabilization: A Case Study of Oakland and Beyond (Master's thesis, University of California Berkeley, Berkeley, CA).

[7] Other CLTs that have used the Neighborhood Stabilization Program to acquire REOs include City of Lakes CLT in Minneapolis, MN; Newton CLT in Tempe, AZ; Pima County CLT in Tucson, AZ; and Proud Ground CLT in Portland, OR.

multiple other properties in the lien sale. In nearly all cases, moreover, the buildings have significant numbers of housing violations. For these properties, the city could exercise its *in rem* foreclosure power on an expedited timeline. Buildings could then be placed into HPD programs for disposition to community stewardship entities. Alternatively, the city could create a land bank tasked with acquiring property to develop, rehabilitate and preserve affordable housing, for eventual disposition to CLTs and other other mission-driven, community-led nonprofits committed to permanent affordability and meaningful community control. Comptroller Scott Stringer and Council Member Brad Brad Lander have both introduced proposals for land banks,[8] and NYCCLI is exploring these and other proposals.

Unoccupied larger Class 2 buildings could be treated the same way as vacant lots: foreclosure proceedings could be expedited and properties added to the pipeline for the development of affordable housing and other uses if owners do not settle debt or successfully defend the foreclosure in court.

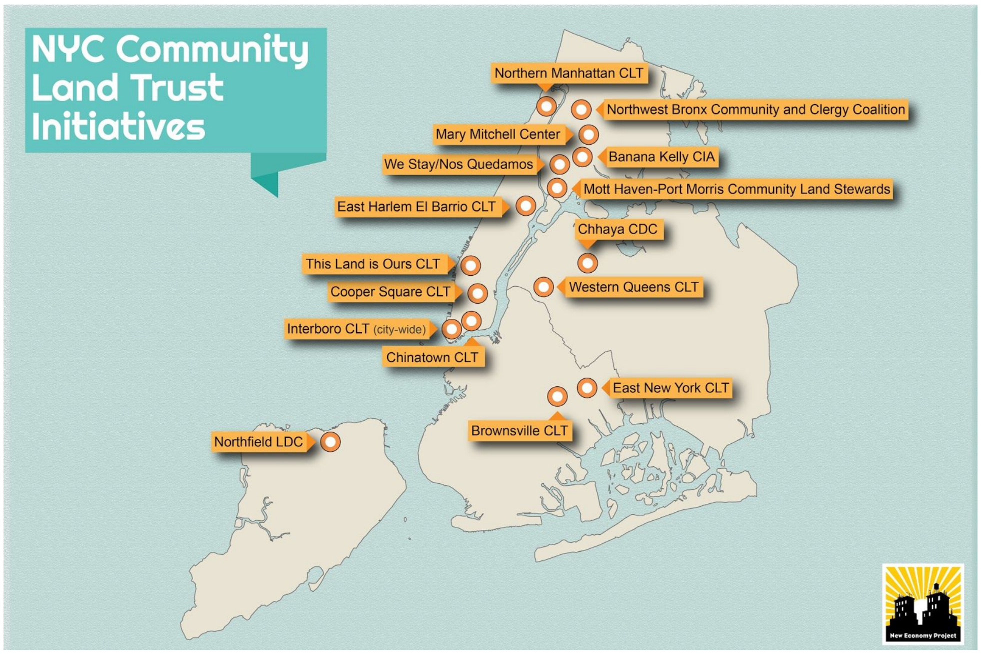
Multi-family case-examples
NYC already has a successful track record of disposing multi-family tax-foreclosed and other city-owned properties for rehabilitation and stewardship to tenant cooperatives or nonprofits, including CLTs. Cooper Square CLT and MHA's success was made possible by strong community organizing and the city's commitment of tax-foreclosed and other city-owned properties. Cooper Square CLT acquired its buildings after they had been held in city ownership for decades, pursuant to urban renewal plans that never came to fruition. The MHA and CLT were formed under a special program of HPD's Division of Alternative Management Programs (DAMP) and had access both to funds from the range of DAMP subsidy programs, and cross-subsidy funds from the sale of several large lots in the neighborhood for market-rate development. Along with the no-cost transfer of city-owned properties to the CLT, capital subsidies were key to keeping the CLT-MHA apartments deeply affordable to residents. This public investment of land and resources will be protected in perpetuity.

Similarly, the East Harlem El Barrio CLT will soon close on its first preservation project, which consists of four multi-family buildings in East and Central Harlem. Established in 2014 as a demonstration project of the New York City Community Land Initiative, the East Harlem El Barrio CLT is working with developer partners Banana Kelly and CATCH to acquire and rehabilitate the properties, which came into long-term city ownership due precisely to the city's use of *in rem* tax foreclosure. Following Cooper Square's model, the East Harlem El Barrio CLT will own the land under a scatter-site mutual housing association, which will eventually become majority-resident-controlled.

Expand the pipeline of properties for new development (vacant lots and unoccupied buildings)
Vacant and underutilized City-owned land is an increasingly scarce resource in NYC, partially because of the City's move away from the use of *in rem* foreclosure and reliance on the tax lien sale. Vacant lots and parking lots sold through the lien sale are a missed opportunity to add new units of permanently affordable housing and other development that meets community needs. Between 2008 and 2015, 62 vacant lots and parking lots in a residential zoning district or a commercial zoning district that permits

[8] See: Office of the New York City Comptroller Scott Stringer. (2016). [Building and Affordable Future: The Promise of a New York City Land Bank] and [NYC Council Int. 0118-2018].

residential uses were foreclosed on by the tax lien trust and auctioned,[9] moving those properties to private speculative ownership. The October 2020 lien sale list contained 93 vacant lots with residential zoning that allow for new construction of 2,500 square feet or more (equivalent to approximately three two-bedroom units).[10] Together, these lots represent 934,820 zoning square feet--enough to build approximately 1,000 units of affordable housing. By preserving its leverage over these vacant properties and parking lots, the City can significantly increase the supply of permanently affordable housing.
For vacant lots, the City could expedite initiating *in rem* foreclosure proceedings. Properties could become eligible for foreclosure once there is more than $5,000 in municipal debt that is more than 12 months past-due. If property owners do not settle municipal debts or defend the foreclosure successfully in court, a foreclosure judgement would be issued and the City would become the owner of the properties in fee simple. The City would then add these properties to its inventory of lots available for development by mission-driven, nonprofit developers partnering with CLTs to preserve affordability.



Local CLT capacity

More than 15 CLTs have organized across NYC, from the South and Northwest Bronx, East New York and Brownsville to Jackson Heights, Staten Island's North Shore, and other Black, Latinx, immigrant, and low-income neighborhoods. In addition to being some of the hardest-hit by COVID-19[11], these neighborhoods bear a disproportionate share of Class 1 tax lien sales. Roughly 30 percent of all the parcels in the lien sale between 2015 and 2019 were in just 10 City Council districts in the Bronx and Brooklyn;[12] for Class 1 properties on the 2020 lien sale list, nearly half are located in 10 City Council

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[9] Office of the New York City Comptroller Scott Stringer. (2016). Building and Affordable Future: The Promise of a New York City Land Bank (citing data provided by the Department of Finance on October 1, 2015)
[10] New York City Department of Finance. (2020). 2020 Lien Sale - Listing of Sale Eligible Vacant Land (as of October 16, 2020)
[11] Afridi, L. & Block, L. (2020). Frontline Communities Hit Hardest by COVID-19. Association of Neighborhood & Housing Development
[12] Calculations based on data from the NYC Council Finance Division staff.

districts in Southeast Queens, Brooklyn, and Staten Island's North Shore.[13] The geography of tax lien sale properties is therefore generally well-matched to local CLT organizations.

NYC CLT organizations have developed capacity to acquire property, including through participation in an intensive two-year training initiative called the CLT Learning Exchange.[14] With additional support from the NYC Council CLT discretionary funding initiative launched in FY 2020, CLT groups have led intensive community organizing and education efforts, conducted participatory property research, developed local leadership of their CLT boards and steering committees, and more. Council discretionary funding has also supported technical assistance to CLTs, including transactional legal support provided by TakeRoot Justice and community education and outreach support provided by New Economy Project and City College. CLT organizations are also exploring potential partnerships to support their work: many CLTs envision their role as primarily a land stewardship and community organizing entity, and intend to partner with existing mission-driven, nonprofit developers for rehabilitation and ownership of buildings on CLT land, for example. The NYC Community Land Initiative coalition is facilitating collaboration and coordination between NY CLTs, and educating nonprofit developers, funders, and other stakeholders on the CLT model to support future partnerships.

Whether the city creates a new entity like a land bank or reforms existing city agencies and programs to manage the disposition of properties that come into city ownership, it will also need to support CLT organizing, technical assistance, operating subsidies, and capital financing for construction and rehabilitation, particularly given the distressed condition of many properties in the lien sale.

Enforcing property tax payments without the lien sale

Despite the city's claim that the lien sale is an enforcement mechanism, properties that cycle through the lien sale year after year demonstrate that this practice does not incentivize all owners to pay their property taxes, particularly for multi-family buildings and larger portfolios in neighborhoods where real estate values are rising. In neighborhoods such as East New York and Brownsville, for example, a 4-unit building that is part of a 30-building portfolio may have doubled in market value in the last five years (see, e.g., 740 Sutter Avenue). Appreciation on this scale is more than enough to more than offset the back taxes, interest, and fees should the landlords sell the building. In these cases, the tax lien sale effectively functions as a high-interest loan to landlords with poor records of maintaining decent living conditions for tenants: landlords defer payment of municipal charges while their properties continue to rise in value, knowing they can sell their buildings, pay off their debts, and still make a profit.

The ongoing economic impacts of COVID-19 may change this calculus, as owners can no longer count on speculative value projections and may accrue additional debt as more and more tenants struggle to pay rent. In anticipation of this real estate downturn, private equity and other investors are already raising funds to purchase distressed properties[15]. The City must take swift action to promote the transfer of such properties to community stewardship, rather than to speculative buyers. Replacing the lien sale with *in rem* foreclosure and disposing of foreclosed properties to CLTs and similar entities--along with

[13]Kully, S. A. (2020). Which Neighborhoods Could Be Hardest Hit By the Lien Sale? *City Limits* (August 26)
[14] The NYC CLT Learning Exchange ran from 2017-2019 and was supported by the NYS Attorney General, HPD and Enterprise Community Partners and coordinated by New Economy Project.
[15]Hornbach, C.; Mironova, O.; Stein, S.; and Udell, J. (2020). Corporate Windfall or Social Housing Conversion? The looming mortgage crisis and the choices facing New York. Community Service Society

passing and funding Community Opportunity to Purchase legislation[16] to give qualified nonprofits a right of first offer and a right of first refusal in multi-family residential building sales--are two policies that can work together to achieve this goal.

PROPERTY TAX COLLECTION WITHOUT LIEN SALE, PROPOSED WORKFLOW

T*ext in italics* is proposed variations on NYC's current system of municipal debt collection.

1. The City sends bills for water, property taxes, emergency repairs
2. When bills aren't paid, the City sends threatening letters and adds interest
    a. The City does outreach to property owners, who have a chance to correct billing errors with the City
    b. Interest rates:
        i. Current law (these are the rates that both the City and the lien trust charges) - uniform for all property:
            1. 7% interest for properties assessed under $250K, interest compounds daily
            2. 18% interest for properties assessed over $250K, interest compounds daily
        ii. The City could create new escalating interest rates over time, or different interest rates based on tax class, building size or property use, e.g. higher rates for unpaid dept on vacant land
3. *After a threshold of time / money is passed, the City can offer the property owner a resolution that includes transferring deed to land to non-profit CLT (the owner keeps the improvements) (a deed in lieu of municipal debt payment per NYC Admin Code § 11-422) or signing a regulatory agreement*
4. *If the owner does not accept the offer,* the City can start a court case to foreclose. *During the foreclosure case, the City can again offer the property owner a resolution to the foreclosure that includes transferring deed to land to non-profit CLT (the owner keeps the improvements) or regulatory agreement.*
5. If the City wins its foreclosure case in court, the City decides what to do with the property: keep, sell, transfer to someone else
    a. The City can keep the properties in its inventory, either through an existing agency *or by creating a land bank.*
    b. The City can transfer them to another owner, e.g. a non-profit developer partners with a community land trusts that will work with current residents to create permanently affordable housing and keep existing residents as tenants.
        i. Distressed apartment buildings could continue to go through HPD's Third Party Transfer (TPT). *CLTs could be added to TPT program.*
        ii. Small homes (1-6 unit) could be directed to CLTs without a developer partner

[16] See NYC Council Int. 1977-2020

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