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ASSESSMENT OF BALTIMORE CITY'S TAX SALE SYSTEM:

Impacts on City Finances, Vacant Properties, and Vulnerable Owner Occupants

Center for Community Progress Report to Baltimore City
2016 Technical Assistance Scholarship Program Recipient

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ABOUT CENTER FOR COMMUNITY PROGRESS

Founded in 2010, the Center for Community Progress is the only national 501(c)(3) nonprofit organization solely dedicated to building a future in which entrenched, systemic vacancy, abandonment, and blight no longer exist in American communities. The mission of Community Progress is to ensure that communities have the vision, knowledge, and systems to transform blighted, vacant, and other problem properties into assets supporting neighborhood vitality. As a national leader on solutions for blight and vacancy, Community Progress serves as the leading resource for local, state, and federal policies and best practices that address the full cycle of property revitalization.

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EXECUTIVE SUMMARY

Baltimore is in the enviable position to become the nation's model for creating an equitable, efficient, and effective property tax enforcement system.

WHY CARE ABOUT PROPERTY TAXES?

While property taxes may not be everyone's favorite dinnertime discussion topic, the reality is that property taxes impact **everyone** – they are the lifeline revenue source for the provision of basic city services, one of the primary barriers to returning a vacant and abandoned property to responsible ownership, and a common cause of low-income homeowners' financial hardship and loss of home equity. Indeed the property tax enforcement system has tremendous influence on the ability of local government to serve its residents, on quality of life and neighborhood stability, and on the ability of each and every constituent throughout Baltimore City to access generational wealth.

IS THERE A PROBLEM WITH THE CURRENT SYSTEM OF COLLECTING PROPERTY TAXES IN BALTIMORE CITY?

There is general agreement from local City and community partners that the current system of collecting property taxes is not equitable, efficient, or effective. Currently, once a property is considered delinquent on property taxes and other municipal liens (such as housing and building code enforcement fines or water liens) and attempts by Baltimore City to collect this debt have proven unsuccessful, the amount of delinquency is offered for sale as a "tax sale certificate" to the private market for any and all investors. These investors, making rational decisions, generally purchase those certificates where there is a strong likelihood of maximizing profits. This means they purchase certificates where the property owner is most likely to pay the delinquent amount and avoid the possibility of losing his or her property. In fact, approximately 80% of all tax sale certificates that were sold annually to investors in Baltimore City over the past six years were redeemed (paid) by the property owner. Depending on the timing of this redemption, the result is that all interest, penalties, and legal fees go into the pocket of a private investor, instead of to Baltimore City to provide basic services for residents.

The approximately 39% of tax sale certificates that are not sold at the annual tax sale are transferred to the Mayor and City Council of Baltimore (MCC Certificates). Since these certificates represent just the municipal *lien* on the property, and not the actual property itself, Baltimore City

functionally has no legal rights to own, control, or manage these properties. Roughly 4,000 such properties are recycled through the annual tax sale each year and continue to become upside-down in value, since the debt exceeds the fair market value of the property. Therefore, at any given time, there are a minimum of 4,000 properties in Baltimore City for which it is highly likely that the owners have walked away. These properties remain vacant while costs continue to accrue for local government and adjacent residents, given public safety as well as housing and building code enforcement needs.

Yes, the system in its current form is upside down. Private investors are profiting from purchasing the most desirable tax sale certificates, which leaves Baltimore City with those tax sale certificates that continue to amass delinquency, impose public safety costs, recycle through the system, and deter new responsible ownership.

WHAT IS THE SOLUTION?

If Baltimore City has the appetite to turn the system right-side up, embrace wholesale system change, and become the model for others across the country to emulate, then one solution is to consider amending state law and local policy to develop a new tax enforcement system that would be equitable, efficient, and effective.

At the core of this new model of property tax enforcement are two features: the elimination of the sale of tax certificates to the private market, and an end to the recycling of a substantial “shadow” inventory of vacant and abandoned properties through the tax sale each year. In this new approach, Baltimore City would establish a date certain by which property owners would either have to pay off delinquent taxes (or, if eligible, enter into a payment plan) or face foreclosure. Baltimore City would then auction off the actual deed of a foreclosed property, and in the absence of any bidder, would assume ownership of the property.

How would the new system be Equitable?

Under this new system, vulnerable populations, defined as low-income homeowners, would be eligible to receive additional notice of their delinquency and given the opportunity to enter into a hardship plan for their current delinquent property taxes and other municipal liens. In addition, Baltimore City and the State Department of Assessments and Taxation (SDAT) could explore ways to prevent delinquency in the first place. Specifically, the circuit breaker programs such as Homeowner *and* Homestead Tax Credit Programs could be modified to ensure more qualified homeowners are receiving critical tax relief.

How would the new system be Efficient?

Amending state law would permit Baltimore City to create a one-step system that creates a date certain in which a property owner must remit payment or lose their property. This new system would create various efficiencies by eliminating duplicative processes and reducing transaction costs. The new system would eliminate the recycling of vacant and abandoned properties with MCC Certificates through the tax sale process, and put these properties on a clear path to new ownership. If when auctioned there is no private

bidder, Baltimore City would assume full ownership of the property. These recycled properties are already imposing costs on local government, presenting safety risks, and negatively impacting adjacent neighbors. The new system would provide Baltimore City the opportunity to not only own the costs and problems, but the actual properties as well—and preside over a more predictable pathway to neighborhood stabilization and revitalization.

How would the new system be Effective?

Amending state law would permit Baltimore City to create a system where maximum tax revenue is collected by local government before properties become vacant and abandoned. If payment is not made by a date certain, there is a judicial proceeding that results in the transfer of title that is insurable and marketable to a new responsible owner, rather than the sale of a certificate. Ownership of the property will no longer be left in the hands of the highest-bidding private investor, with a title that is replete with title defects and clouds on title. As previously mentioned, it will be necessary to create different time periods and supplemental support services for vulnerable homeowners in order to increase the likelihood of retaining ownership and equity while also maximizing the payment of delinquent taxes.

If Baltimore City is not ready for this type of change, smaller tweaks can be made to the system that might not result in a “best practice” model, but could serve to address a few key problems related to maximizing revenue, preventing vacancy and abandonment, and protecting vulnerable homeowners.

WHAT OTHER RESOURCES WILL BE NEEDED FOR COMPREHENSIVE SYSTEMS CHANGE?

Strong leadership and departmental coordination will be needed to ensure this system change is one piece of a comprehensive effort for neighborhood stabilization and revitalization. Moving to this process, which is called “judicial *in rem* foreclosure,” requires meeting a high bar of giving adequate notice to all parties with a legal interest in the property. Therefore, additional resources to conduct comprehensive title examinations will be needed. Additional legal services, or the reallocation of existing legal resources, to help vulnerable homeowners through this new system will also be essential. Fortunately, the current process consistently generates approximately \$1-2 million in profits for the private investors who purchase the tax certificates. Since under this new system Baltimore City would eliminate this sale and instead internally collect all delinquent taxes, it can reasonably expect to draw upon this new revenue stream (from late fees and interest payments) to support these additional resources.

Last but certainly not least, strategic thinking will be needed about how to stage the transition to a new system. While Baltimore City will want to minimize the number of properties with little market potential that end up in their care, the City will inevitably have to own and maintain a growing

inventory of distressed properties. Part of this strategic thinking will involve analysis of whether those properties that get transferred to Baltimore City stay within local government or become the responsibility of a new legal entity, such as a formal land bank.

HOW DOES THIS BUILD OFF THE CURRENT STRENGTHS OF BALTIMORE CITY?

Baltimore City is quite unique, in that city and community leadership are incredibly knowledgeable of and open about the problems with the current tax sale system—and *committed to working together to find solutions*. Baltimore City excels at collecting property taxes and municipal liens before they become delinquent and can continue building on this strength by focusing more efforts on the collection process rather than the sale of the tax certificates. Although the sale of the tax certificates does result in an infusion of revenue, it also creates a continuous recycling of MCC Certificates as well as delinquent municipal liens that continue to be appear on the City's balance sheet but are not likely to be collected.

INTRODUCTION

In March 2016, the Center for Community Progress (Community Progress) selected Baltimore City as one of three recipient communities for the Technical Assistance Scholarship Program (TASP).¹ TASP is a competitive merit-based scholarship for communities that are ready to engage in a forward-thinking technical assistance process to address large-scale vacancy and abandonment.² The successful application was submitted by Baltimore City's Department of Finance in partnership with the Baltimore City Tax Sale Work Group (Work Group). The Work Group is a consortium of nonprofit leaders, Baltimore City government officials, State representatives, and foundation executives committed to identifying ways to improve Baltimore City's tax sale system.

Through a partnership between Finance, City Council, and the Tax Sale Work Group, several reforms have recently been made to Baltimore City's tax sale that impact vulnerable owner occupants, such as increasing the threshold amount of liens eligible for tax sale from \$250 to \$750 and reducing the interest rate for redemptions from 18% to 12% for owner occupants.³ An ombudsman position has also been created within Baltimore Housing to help coordinate interdepartmental efforts and increase public outreach around the tax sale process. These reforms were recommended in the 2014 report written by Joan Jacobson and published by the Abell Foundation, "The Steep Price of Paying to Stay: Baltimore City's Tax Sale, the Risks to Vulnerable Homeowners, and Strategies to Improve the Process."

Vacant buildings: "Unoccupied structures that are unsafe or unfit for human habitation or other authorized use" or a nuisance property, with "nuisance property" being an unoccupied structure with two or more unabated Building Code, Fire Code, or Property Maintenance Code violations or six or more violations in the past twelve months for trash and debris on the site, that are issued a vacant building notice.⁴

Vacant lot: An individual parcel of real property that is unimproved by an assessed building.⁵

Abandoned property: A vacant lot or improved property cited as vacant and unfit for habitation on a housing or building violation notice.⁶

¹ The geographic focus of this report is Baltimore City, which serves as an independent city and is not part of Baltimore County. As such, Baltimore City Department of Finance is the primary entity that is responsible for property tax enforcement.

² For more information on TASP, please visit <http://www.communityprogress.net/technical-assistance-scholarship-program--tasp--pages-494.php>.

³ As of the 2017 tax certificate sale, Baltimore, MD. Code Article 28, Subtitle 8-1, sets the annual redemption interest at 12% for owner occupants and 18% for other property owners.

⁴ Baltimore, MD. Building, Fire and Related Codes Section 116.4.1.2.

⁵ Baltimore, MD. Code Article 13, Subtitle 11.

⁶ Md. Code Ann. Tax-Property §14-817(c).

The focus of the Baltimore City TASP engagement is to evaluate the overall property tax enforcement system with particular attention given to the following **three focus areas**:

- Increasing revenues and reducing expenses
- Reducing vacancy and abandonment
- Protecting vulnerable owner occupants

During an initial site visit in June 2016, Community Progress met with multiple Baltimore City department leaders from Finance, Housing, Law, the Environmental Control Board, and Public Works in addition to members of the Work Group.⁷ The purpose of these meetings was to explore the challenges associated with the current tax sale system and its perceived negative impacts on city finances, vacant and abandoned properties, and vulnerable populations. Community Progress also reviewed state and local law and policies related to delinquent property tax enforcement, in conjunction with tax sale datasets provided by Baltimore City describing the last six years of tax sales. These on-the-ground interviews coupled with the legal and data analysis led to the observations and recommendations contained in this report, including the following key takeaways:

1. The existing legal system for enforcement of delinquent taxes in Maryland, and in Baltimore City, permits, indeed mandates, that Baltimore City sell to private investors those tax liens that have the highest probability of redemption, while functionally retaining in Baltimore City's own portfolio those tax liens that have the lowest probability of redemption.
2. Vacant buildings, as defined by the issuance of a Vacant Building Notice (VBN), represent the overwhelming majority of tax certificates that are not purchased at the annual tax sale and therefore continue to recycle through the system, causing negative impacts to adjacent residents and Baltimore City as a whole.
3. Circuit breaker programs, those programs that provide specific populations with property tax relief (or tax credits in the State of Maryland) to prevent delinquency and foreclosure, are available to vulnerable owner occupants in Maryland. There are opportunities to expand access to these programs to ensure more qualified owner occupants are receiving this critical assistance. Doing so would require the support and coordination of Baltimore City and the State Department of Assessments and Taxation (SDAT).

In addition to the above key takeaways, it is important to recognize that any meaningful reform to Baltimore City's Tax Sale will require strong leadership, coordination, and data:

1. **Departmental Coordination:** To truly improve the tax sale system, there should be a direct mandate from the Mayor and/or their top advisor to ensure that all departments work together, coordinate efforts, and communicate effectively with the public. The tax sale is *just one* critical part of a system that impacts city finances, vacancy and abandonment, and vulnerable residents. For example, Baltimore City's Data and Information Systems, Housing, Public Works, and Finance should consider meeting regularly and working jointly on shared goals.

⁷ A listing of individuals with whom the authors of this report met during one or more meetings is set forth in Appendix D.

2. **Data:** Reliable and comprehensive data enable policy makers and the community to identify the problem and track progress. Given Baltimore City’s “main frame” technology, it was reported that data related to the tax sale is difficult to integrate with other datasets from different departments throughout Baltimore City. It is therefore difficult to analyze multiple layers of data for one parcel in any one database or GIS system. As part of any departmental coordination effort, leaders should consider developing a unified and non-static system of parcel-level data collection.

This report is organized into the following sections: Section One sets the context, highlights some of the macro challenges and opportunities for Baltimore City, and outlines the local tax sale system. Section Two lays out the components of an equitable, efficient, and effective property tax enforcement system and evaluates the current Baltimore City approach against each of these benchmarks. The next three sections correspond to the three focus areas outlined above, followed by recommendations and concluding observations. Section Three provides insights regarding how to maximize the collection of property tax revenues and eliminate duplicative, inefficient, or ineffective components of the current tax sale system. Section Four focuses on the need to develop common definitions of vacancy, and the key function of data collection mechanisms in understanding the impacts of the tax sale on vacant and abandoned properties. Section Five focuses on how the tax sale system can protect vulnerable owner occupants, through enhanced circuit breaker programs such as the Homeowner Tax Credit and Homestead Tax Credit, and strengthen support and advocacy for targeted vulnerable populations. Finally, Section Six concludes the report with a few key observations and actionable next steps for Baltimore leadership to consider, including the possibility of revising state law to abolish the sale of tax liens.⁸

It is important to note items that are not the focus of this report, mainly given the time limitations of this TASP engagement. This report does not evaluate the structure of local government, the State’s role in property assessments, or the accuracy of assessments either systemically or as to individual parcels. This is not an historical overview on nor accounting of previous or current initiatives related to tax delinquent, vacant, and abandoned properties such as Project 5000 or the Vacants to Value program, nor are complementary programs evaluated such as the vacant property registry and receivership even though they are referenced when appropriate in analyzing the three focus areas.⁹ There are also a number of legislative and programmatic strategies, such as a formal land banking program, which are referenced when appropriate, though not a focus of this report. Finally, although delinquent water bills are currently included in the Baltimore City tax sale, we did not evaluate the implications of this policy decision, but do note that most jurisdictions that Community Progress has worked in do not include water bills as part of their delinquent property tax enforcement system.

The observations and recommendations contained in this report are offered from our outside perspective, based on our work throughout the country. Decisions about implementation are left entirely to Baltimore leadership, and we look forward to participating in the robust discussions we hope the report generates, and supporting Baltimore City and community leadership in reform efforts.

⁸ Please see Appendix C for sample draft legislation.

⁹ Community Progress has been contracted by Baltimore Housing to undertake an evaluation of the Vacants to Value program that is separate from this engagement.

I. SETTING THE CONTEXT

There are many reasons why Baltimore is called “Charm City,” with its diverse fabric of neighborhoods, civic pride, and waterways that bring visitors from across the globe. Baltimore is also a tale of two cities, where as a result of a variety of historical factors including white flight, middle class flight, redlining, and inequitable housing policy, a disproportionate percentage of African American residents of Baltimore City live below the poverty line in communities where the challenge of vacant and abandoned properties is concentrated. Addressing the challenges of vacancy and abandonment, then, is a critical part of serving and remaining responsive to the needs and demands of many of Baltimore’s most vulnerable residents.

One of the most common predictors of vacancy and abandonment across the country is the presence of unpaid property taxes. Unfortunately, the process by which delinquent property taxes are enforced can impede the timely return of such property to responsible ownership and productive use. In Baltimore, vacancy is defined in different ways, which for the purposes of this report, makes any substantive analysis regarding the impacts of the tax sale difficult. According to Baltimore Housing,¹⁰ there are approximately 17,000¹¹ vacant buildings, which are defined as “unoccupied structures that are unsafe or unfit for human habitation or other authorized use” *or* nuisance properties. “Nuisance property” is defined as an unoccupied structure with two or more unabated Building Code, Fire Code, or Property Maintenance Code violations or six or more violations in the past twelve months for trash and debris on the site.¹² It is important to note that although a property may be unoccupied and/or considered a nuisance, it is not considered vacant until it meets this criteria *and* a violation notice has been issued. An alternate definition of vacancy is those properties that do not receive mail for 90 days. Using mail service as an indicator, the U.S. Census identified 46,782 vacant dwelling units in Baltimore City in 2010. Taking into account the number of vacant lots identified by Baltimore Housing, which is approximately 14,000,¹³ there could be approximately 31,000 – 60,000 vacant properties in Baltimore City. This scale of vacancy, coupled with a 30% population loss over the past 40 years, warrants a comprehensive approach that also considers the reality of market conditions.

Baltimore’s tale of two cities becomes even more nuanced when considering the range of market conditions throughout the city. In 2014, the Baltimore City Department of Planning, Baltimore Housing, and The Reinvestment Fund updated the City’s Housing Market Typology. The typology is a quantitative and statistical analysis of housing market conditions that is used by Baltimore City departments to align public resources to market conditions. The following map illustrates

¹⁰ Baltimore Housing is the consolidated agency which includes the Housing Authority of Baltimore City and the Baltimore City Department of Housing and Community Development: http://www.baltimorehousing.org/vtov_faq, also known as HCD, which is referenced later in report.

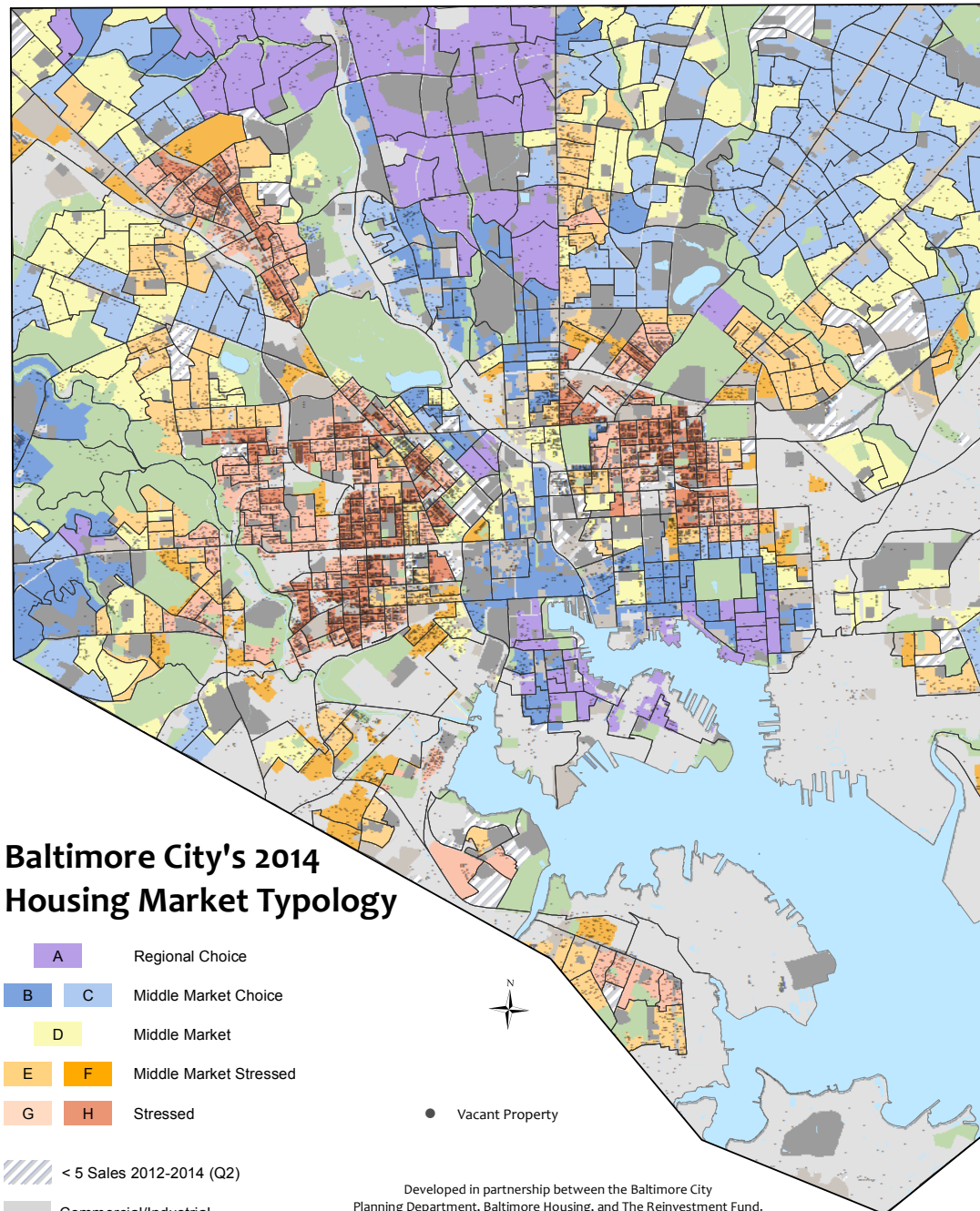
¹¹ As of September 26, 2016, there are 16,725 vacant building notices: issued in Baltimore City: <https://data.baltimorecity.gov/Housing-Development/Vacant-Buildings/gqcv-ihn5/data>

¹² Baltimore, MD. Building, Fire and Related Codes Section 116.4.1.2.

¹³ Baltimore, MD. Code Article 13, Subtitle 11.

the concentration of vacant properties, as defined by VBNs and vacant lots, in those areas that have stressed market conditions. As discussed in Section Four, it will be incredibly useful to begin to overlay different datasets regarding tax delinquency and tax sales with this type of vacancy and market data to begin truly defining the problem and identifying opportunities to reform the tax sale.

**Map developed by Baltimore Planning Dept:
Overlay of 2014 Housing Market Typology, VBNs and Vacant Lots**



 Stephanie Rawlings-Blake
Mayor
  Thomas J. Stosur
Director of Planning
  Paul T. Graziano
Commissioner
  The Reinvestment Fund

Date: 8/16/2016

In most jurisdictions, especially those, like Baltimore, with declining populations and increased demand for public services, property taxes are an essential source of local government revenue. It is therefore critical to create a system for property tax enforcement that is equitable, efficient, and effective, resulting in maximum tax revenue without undue harm to a city's most vulnerable residents. Over the past few decades, in light of municipal staffing cuts and increased need for revenue, jurisdictions from across the country have reduced in-house property tax collection and enforcement efforts and instead now transfer and sell the delinquent tax digest ("tax liens or tax certificates") and the power of collection and enforcement to third party private investors. This process can result in a quick infusion of revenue to cash-strapped jurisdictions, but also has unintended consequences.

By transferring tax liens and all accompanying enforcement mechanisms to the private market, local governments lose the ability to force a transfer in property ownership through tax foreclosure. In areas with stressed market demand, this loss of government leverage may lead to private investors choosing to hold the lien on the property and speculate on future payments of interest and accrued penalties rather than foreclosing and selling to a responsible party. Many times these properties become or remain vacant and impose significant costs on the surrounding community and on the local government in terms of police, fire, and code enforcement calls. A 2013 analysis of tax delinquency and collection in Rochester, New York, found that the most effective intervention in reducing the negative community impacts of vacant and tax delinquent properties is to force transfer to a more responsible owner.¹⁴

In 2015, several nonprofit partners of the Work Group organized a series of clinics staffed by pro-bono attorneys designed to help residents impacted by the tax sale. At these clinics, 151 clients received services. Below is a sampling of the demographic information they collected from participants of these clinics:

- 68% reported annual household income below \$20,000, with 32% below \$10,000
- 38% reported as disabled
- 51% were seniors over 60 years old
- 82% reported as African-American
- 64% had no mortgage on the property
- The average time in their homes was 28 years, with an average value of just over \$103,000 according to Zillow
- The average lien amount for these properties was \$4,218

These demographics help to paint the picture of the owner occupants who are most likely impacted by the tax sale system, and should be considered when exploring any additional reforms to the tax sale system.

¹⁴ From 2012-2013, Community Progress was hired by the City of Rochester to conduct this analysis and to produce a report, Analysis of Bulk Tax Lien Sale: City of Rochester which can be found at http://www.communityprogress.net/filebin/pdf/new_resrcs/022513_Final_Rochester_Report.pdf.

II. REDESIGNING THE PROPERTY TAX ENFORCEMENT SYSTEM

The optimum system of real property *ad valorem* taxation is one that is equitable, efficient, and effective. Equitable tax enforcement is premised on a fair assessment system, recognizes the nonmonetary value of housing and the marginal utilities of the dollar, and incorporates provisions for additional notices, support services, and “hardship” repayment plans for vulnerable owner occupants. An efficient tax enforcement statute has clarity and predictability about the priority of the lien, the amount of the lien, and the time frames for payment in a manner consistent with local government budget and revenue processes. An effective tax enforcement statute yields maximum tax payments prior to deterioration and abandonment and culminates, in the event of nonpayment, in a transfer of title that is insurable and marketable to a new responsible owner.

AN OVERVIEW OF BALTIMORE’S CURRENT SYSTEM

The existing system of delinquent property tax enforcement in the State of Maryland and in Baltimore City is a system that is largely consistent with property tax systems designed and utilized throughout the country in the first half of the twentieth century. It rests primarily on collection activities by the Bureau of Revenue Collections from the date taxes are due, through the issuance of the Final Bill and Legal Notice (FBLN) in February, and then to the public auction each May of the remaining outstanding tax certificates (the May Certificate Sale, and May Certificates). To the extent that private third-party investors purchase the May Certificates, the Bureau of Revenue Collections continues to act in a limited capacity in receiving and distributing redemptions payments on the certificates sold. To the extent that May Certificates are not sold to private third-party investors, they are transferred to the Mayor and City Council of Baltimore City (the MCC Certificates).

This existing system of enforcement consists of two distinct stages or events. The first event is the sale of certificates and the second is the foreclosure of the right of redemption. The sale of certificates does not involve judicial process. The sale or transfer of the certificate does not transfer any rights, possession, or control, with all such rights remaining in the original owner.¹⁵ The second event is the termination of the right of redemption of the owner, and other interested parties, and the vesting of title in the certificate holder. The right of redemption continues until foreclosed upon by judicial judgment and the certificate becomes void in the event that a foreclosure proceeding is not initiated within the 24-month period.¹⁶ Foreclosure proceedings may be commenced six months after the issuance of the certificate when the property is a vacant lot or is an improved property cited as vacant and unfit for human habitation,¹⁷ or nine months in the case of owner occupied property.¹⁸ All

¹⁵ Md. Code Ann. Tax-Property § 14-830. The holder of a certificate may apply for appointment of a receiver.

¹⁶ Md. Code Ann. Tax-Property § 14-830(c)(1). A certificate for abandoned property sold for less than the lien amount may expire within three months. Md. Code Ann. Tax-Property § 14-830(c)(2).

¹⁷ Md. Code Ann. Tax-Property § 14-833(f), (g).

¹⁸ Md. Code Ann. Tax-Property § 14-833.

taxes, interest, and penalties continue to accrue against the property notwithstanding the issuance of a certificate, and must be paid prior to the recording of a foreclosure deed.¹⁹ Foreclosure and the recording of a final judgment and deed is neither automatic nor mandatory. Indeed, it appears that only in a very small number of cases of unredeemed certificates (both private third party certificates and MCC Certificates) is the foreclosure process completed and a deed recorded.²⁰

Timeline of Property Tax Enforcement and Tax Sale Process in Baltimore City	
July	Tax bill is due
October or January	If payment is not made, owner is considered delinquent
February	Final Bill and Legal Notice is sent to owner
March	List of properties eligible for tax sale is published in two local papers of general circulation
April	Second letter of delinquency is sent to property owner
May	Certificate Sale (bidders pre-registered; highest bidder pays the lien amount and receives right to receive payment plus interest and legal fees from owner)
July (within 60 days of sale)	<p>Notice to owner that certificate was sold; if not redeemed within 4 months (or 7 months for owner occupants), third party investor must send two additional notices to owner</p> <ul style="list-style-type: none"> • If paid within 4 months of sale, payment goes directly to Baltimore City (lien plus 18% interest and current taxes)¹⁵ • If paid after 4 months of sale, two payments must be made: 1) to investor for legal fees and expenses and 2) to Baltimore City for lien amount, interest and current taxes • Baltimore City then pays investor lien and interest
Up to 2 years after May Sale	<p>Investor has right to terminate owner's rights to repay amounts owed (foreclosure of right to redeem)</p> <ul style="list-style-type: none"> • For abandoned property, after 3 months from the date of the May Sale • For owner occupants, after 9 months from the date of May Sale • Investor has no responsibility for subsequent taxes until a foreclosure judgement is entered
<p>The chart above highlights the timeline and process for delinquent property tax enforcement and tax sales for Baltimore City. As revealed by the data analysis of the past six years of tax sales, which can be found in Appendix A, there are approximately 220,000 taxable parcels within Baltimore City. Of the approximately 10,000 certificates that are offered in the May Certificate Sale each year, the following averages apply: 61% are sold to third-party investors (80% of which are owner-occupied as per Homestead Exemptions filed through State) and 39% revert to Mayor and City Council. As measured by the aggregate dollar amount of the tax liens, sales to third-party investors recover less than 25% of the total delinquency.</p>	

Efficient

There are numerous points of inefficiency in the existing property tax enforcement system, but they all tend to derive from the fundamental point that, given the two-step process of delinquent tax enforcement, there is some period of time – whether six months, nine months, two years, or longer – of inherent uncertainty as to ownership, maintenance, and control of the property. Up until the date of the May Certificate Sale, the owners of a property with delinquent taxes pay the delinquencies at a

¹⁹ Md. Code Ann. Tax-Property § 14-847(a)(1).

²⁰ Appendix A, Row IX.B.

²¹ As of the 2017 tax certificate sale, Baltimore City Code, Art. 28, §8-1, sets the annual redemption interest at 12% for owner occupants and 18% for other property owners.

rate that is consistent with tax collection efforts in most efficient jurisdictions in the United States. If the amount of recycled MCC Certificates is removed from the aggregate FBLN amounts, the Bureau of Collections' collection rates prior to the May Certificate Sale are quite strong.

The relative indeterminacy of the time frame following the May Certificate Sale, with the possibility of a potential foreclosure proceeding, does permit an additional period of time for payment and redemption. It is not self-evident why that is more efficient than having a single final date for payment or loss of the property. To the extent that the time frame between the FBLN issuance and the May Certificate Sale is not sufficient, a longer time frame may be set prior to a single final date for payment or loss of the property. A multiple step process is inherently more inefficient than a single step process both because of transaction costs of the process and because of the perception created that failure to comply with the first step is at no or low cost to the owner.

When state law creates a time period for redemption, whether in property tax enforcement laws or in mortgage foreclosure laws, two justifications have been advanced historically. One justification is to permit an owner to regain the property after the sale event and after the owner knows the sales price by paying the sales price, thereby protecting the "equity" in the property. The difficulty with this rationale as a matter of practice and experience is that enforcement actions and auction sales bear little correlation to fair market value. If an owner is likely to redeem, the economic justification for redemption is the same before the sales event as after the sales event. The second justification is simply to afford the owner (or other interested parties) additional time to gather the necessary funds for redemption. This perspective has evidence to support it, as is shown by increased collections between the date of the FBLN and the date of the May Certificate auction. If this is the primary justification for periods of redemption, then it is just as reasonable to provide such time frames prior to the auction event as after the auction event.

Relying on the existing two-step system creates multiple layers of notices even after issuance of the FBLN each February. After issuance of the FBLN, Baltimore City must publish notice of the pending certificate sale.²² Subsequently, notice must be sent to the owner (but not to mortgagees or other interested parties) that a certificate has been sold.²³ Prior to filing a complaint to foreclose, two additional notices must be sent.²⁴ Following filing of the complaint, and service of the complaint, additional notice must be provided.²⁵ Due process does indeed require extensive notice prior to the potential loss of property and property rights. What due process does not require is providing those same notices multiple times for separate steps in the process. Fairness and justice do require maximum constitutionally required notice. Giving inadequate notice multiple times is neither constitutionally sufficient nor economically efficient. Giving constitutionally adequate notice once as part of a single final step is the most efficient system.

Another inefficiency in the existing system of property tax enforcement is its structure, which transfers to Baltimore City the MCC Certificates that are not sold to private third-party investors. Because the minimum bid at the May Certificate auction is the total lien amount, and because the

²² Md. Code Ann. Tax-Property § 14-813.

²³ Md. Code Ann. Tax-Property § 14-817.1.

²⁴ Md. Code Ann. Tax-Property § 14-833(a)(1).

²⁵ Md. Code Ann. Tax-Property § 14-836.

total lien amount exceeds the probable fair market value of the property, at least in the perception of the private market, these certificates are not a financially viable investment. The consequence is that Baltimore City becomes the holder of the MCC Certificates, which have a face value in excess of the property value, but it is not yet the owner of the underlying property, in the absence of undertaking its own foreclosure proceedings. Though Baltimore City is, through Baltimore Housing, commencing foreclosures and acquiring title to certain properties that have strategic value, it appears that several thousand of the MCC Certificates simply remain open, continuing to accrue not only interest but additional public liens and assessments, and are then recycled through the May Certificate Sale three years later. These properties, which have a very low likelihood of ever being redeemed, continue to deteriorate in condition, decline in value, and drain tax dollars through service demands.

An evaluation of the efficiency of the sale of May Certificates to private third-party investors needs to be undertaken cautiously. As an initial proposition, Baltimore City does receive immediate payment of approximately \$20 million each May for these sold certificates in outstanding taxes and accrued interest with minimal additional transaction costs.²⁶ The receipt of this single lump sum payment each May must be evaluated against the ability of Baltimore City to collect these amounts itself and retain the corresponding interest payments that are presently received by the third-party investors.

Embedded in the sale of certificates to private third-party investors is that the dominant incentive of the investors is to maximize the rate of return on their investment. This leads investors, quite rationally in those situations where there is a high probability of redemption, to wait as long as possible to push for redemption because of the 18% rate of return due to interest (plus legal fees and court costs). It also leads private third-party investors to determine that if at some point after the date of the May Sale the property value has declined or additional liens and assessments have been added, it is no longer productive to pursue a foreclosure action. In these situations they simply, and rationally, allow the certificate to expire or abandon foreclosure proceedings, if proceedings had commenced. The net result of this is that, though Baltimore City received payment in May of the then-outstanding taxes, the ownership, maintenance, and control of the property remains in limbo for three years or more and then ultimately reverts once again to the same status of tax delinquency and deterioration.

KEY OBSERVATIONS:²⁷

- 2.1. Consider the possibility of revising state law to specify appropriate periods of time prior to a final date for payment to prevent loss of the property.
- 2.2. Consider the possibility of revising state law to eliminate the two-step process of sale of certificates followed by post-sale foreclosure proceedings, and replace it with a single step proceeding which, if the lien has not been paid, results in a sale of the property itself and no further post-sale redemption rights.

²⁶ The City is required to send notices, shortly after the certificate sale, of the fact of the sale and consequent rights and remedies. It appears that the City also incurs costs relative to receiving and distributing post-sale redemptions that are paid – which is on 80 to 90% of the sold certificates.

²⁷ Please see Appendix C for sample draft legislation which is referenced throughout this section.

- 2.3. Consider the possibility of reducing or “writing down” the aggregate lien amount on MCC Certificates to an amount not greater than the fair market value of the property.
- 2.4. Consider amending state law to abolish the concept of the MCC Certificate and provide that all certificates, or properties, not sold at a public action be transferred to Baltimore City in fee simple.
- 2.5. Consider the possibility of amending state law to abolish the concept of certificate sales entirely and conducting a single sale event at which the successful bidder becomes the owner of the property, fully and legally responsible as of the moment of the sale for all attributes of property ownership.

Effective

The existing system of delinquent property tax enforcement in Maryland and in Baltimore City does indeed appear effective through the time of issuance of the FBLN, and even to the date of the May Certificate auction. It is at that point, however, that the existing system loses its effectiveness. The ineffectiveness is evidenced by the simple fact that when property taxes go unpaid and certificates are unredeemed, the transfer of title to new ownership occurs very rarely. An effective system of enforcement is one that, upon nonpayment by a date certain, results in the transfer of title that is insurable and marketable to a new responsible owner.

Underlying the potential effectiveness of all property tax enforcement systems is the fact that state law grants super priority status to property tax liens.²⁸ This exception to the general rule of “priority in time,” with respect to claims against property, lies in the proposition that property taxes are a recognition of the contribution to the common good in exchange for the benefits of being in a community. All jurisdictions in the United States accord this super priority status to property taxes, allowing the annual imposition of taxes to have a senior claim above all preexisting liens, judgments, and claims. It is this special priority status that permits a local government to conduct a sale of the property, when property taxes remain unpaid, to a new owner free and clear of all other liens, judgments, and claims.

For an effective system to have a transfer of title on a date certain, there must be an express procedure for a foreclosure event. In most jurisdictions, the foreclosure event is a public sale, or auction, of the underlying property to the highest bidder for cash. It follows extensive notice of the auction to maximize bidding. The scheduling of the auction is presumptively automatic, whether judicial or non-judicial, and upon acceptance of the high bid, the foreclosing entity (in this case Baltimore City) would prepare and record in public records the deed transferring title to the purchaser.

An ineffective tax enforcement system is one that leaves ownership of the property in the hands of the purchaser replete with title defects and clouds on title. “Tax titles” historically are notoriously not insurable. The common remedy is that the purchaser must initiate some form of Quiet Title Action in order to resolve potential title questions, which itself is another form of inefficiency.

²⁸ Md. Code Ann. Tax-Property § 14-805(a).

For an effective system to provide insurable and marketable title to the property in the hands of the purchaser, all requirements of federal and state constitutional due process notice and hearing must be met. This requirement, in turn, means that all parties with an interest in the property whose names and addresses are reasonably ascertainable based upon reasonably diligent efforts are entitled to notice. The best method of meeting this constitutional standard is to conduct a comprehensive title examination, provide notice to all interested parties, publish notice, and post notice on the property. The optimum method for ensuring these legal requirements are met is for state law to provide for judicial *in rem* tax enforcement proceedings. A trial court reviews the adequacy of notice, provides opportunity to be heard, and if satisfied, the court orders the property to be sold at public auction. The results of the sale are reported back to the court for confirmation, at which time the court orders the foreclosure deed to be recorded. If title insurance companies are involved in the identification of interested parties and either conduct or review the notices, there is a high likelihood of marketable and insurable title upon recordation of the deed.

In summary, an ineffective system of delinquent property tax enforcement is one which lacks a clear and final event that transfers title to a new responsible owner, and which fails to deliver insurable and marketable title to that owner. An effective system of delinquent property tax enforcement is one which has a single final event for the transfer of title to a new responsible owner and is able to provide to that new owner an insurable and marketable title.

KEY OBSERVATIONS:²⁹

- 2.6. Consider amending state law to provide for a single sale event, on a date certain, at which time the underlying property itself is sold and not simply a certificate or lien on the property.
- 2.7. Consider amending state law to provide that the final step in delinquent property tax enforcement is undertaken by Baltimore City in judicial proceedings rather than by a sale of certificates in which private third parties may or may not ever complete foreclosure proceedings and receive title by recorded deed.
- 2.8. Consider amending state law to provide that at the time of commencement of judicial *in rem* tax enforcement proceedings, notice is given to all interested parties as revealed by a comprehensive title examination, and that notice is published as well as posted on the property.
- 2.9. Consider amending state law to provide that any interested party may redeem the property at any point up to the moment of the sale at public auction.
- 2.10. In the creation of a new judicial *in rem* property tax enforcement system, create differential time periods and supplemental support services to be provided to the vulnerable owner occupants of tax delinquent properties in a manner that both minimizes the forced sales of such properties and maximizes the payment of taxes that may be due.

²⁹ Please see Appendix C for sample draft legislation which is referenced throughout this section.

III. INCREASING REVENUES AND REDUCING EXPENSES

Based upon our research and the data we have received, there appear to be three key areas in which the existing systems of and approaches to property tax enforcement could result in increased revenues and reduced expenses, or both, for Baltimore City. These three areas are:

1. Interest and penalties on certificates that are redeemed: By selling the liens with the highest probability of redemption to private third-party investors, Baltimore City is effectively transferring to the private market the high rates of interest payable, and paid, on the redemption of all of these parcels rather than collecting these amounts as public revenues.
2. The “phantom” nature of defaulted and recycled MCC Certificates: It is neither efficient nor effective to “recycle” the MCC Certificates in subsequent May Certificate Sales, as the lien amount is ultimately not collectible.
3. Collection in civil liability enforcement actions: The relatively low rates of collection and recovery in civil liability enforcement actions suggest that these collection expenses would yield greater returns if devoted to other forms of enforcement actions.

1. Interest and penalties on certificate redemptions.

To understand the impact of the tax enforcement system on revenue collected versus foregone, it is necessary to examine rates of redemption and interest paid at each stage of the tax enforcement process from the issuance of FBLM to the May Certificate Sale and beyond.

Over the six year period examined (2011 through 2016), the number of parcels receiving the February FBLN ranged from 31,680 to 40,071.³⁰ During these same years, the number of May Certificates offered for sale three months later ranged from 8,241 to 10,737.³¹ Of all FBLNs, only 24% to 31% of them went to the May Certificate Sale.³² Though the breakdown is not available, it is plausible that for the majority of the FBLN notices, which did not go to the May Certificate Sale, this was due to payments of the lien amounts.³³ On all of the FBLN parcels that were not taken to the May Certificate Sale and for which the total lien amount was paid, the interest component of such payments as well as the underlying tax amount was collected directly by Baltimore City. This suggests that the direct single event of the FBLN by Baltimore City results in an efficient and effective rate of collection on both taxes and interest at that point in the process.

³⁰ Appendix A, Row II.A.

³¹ Appendix A, Row III.A.1.

³² Appendix A, Row III.A.4.

³³ The reduction in the FBLN inventory size prior to the May Certificate auction is likely also due to the exclusion of parcels at the request of HCD, see Appendix A, Row VII.A., to recognized errors in bills and payments, to repayment plans, and to bankruptcy filings.

The data shows that the interest and penalty component continues to provide a substantial rate of return even after the May Certificate Sale is conducted. The private market of investors in May Certificates purchased between 57% and 84% of all available May Certificates over the six-year period.³⁴ As a percentage, however, of the aggregate face amount of total liens on all May Certificates being offered, the private investor market purchased certificates for only 9% to 28% of the total lien amount.³⁵ What this indicates is that the private market of investors carefully identifies those properties with the lowest lien amounts relative to the assessed values of the property and with the highest probability of redemption. The average lien amount per parcel for all May Certificates offered for sale is between \$7,621 and \$19,846.³⁶ The average lien amount per parcel for the certificates sold to third parties ranges from \$2,784 to \$3,306.³⁷

The net effect of this is that the existing legal system for enforcement of delinquent taxes in Maryland, and in Baltimore City, permits, indeed mandates, that Baltimore City sell to private investors those tax liens that have the highest probability of redemption, while functionally retaining in Baltimore City's own portfolio those tax liens that have the lowest probability of redemption. May Certificates sold to third parties had an effective redemption rate of 86% in 2015 and 89% in 2014.³⁸ By selling to private third-party investors the liens with the highest probability of redemption, Baltimore City is effectively transferring to the private market the high rates of interest payable, and paid, on the redemption of all of these parcels.

Over the six-year period from 2011 through 2016, a total annual aggregate dollar amount of certificates sold ranges from \$17.9 million to \$21.8 million.³⁹ In 2014, the total dollar amount of liens sold to third-party investors was \$20.8 million, and \$15.25 million was paid in redemptions. In 2015, the total dollar amount of liens sold to third-party investors was \$21.8 million, with \$22.1 million paid in redemptions.⁴⁰ The annual dollar amount of the interest and penalties paid toward the redemption of certificates held by third parties was \$1.78 million (2012), \$1.54 million (2013), \$1.5 million (2014), and \$1 million (2015).⁴¹

The existing legal system for the enforcement of delinquent taxes effectively transfers to the private investor market between \$1 and \$2 million each year.⁴² These private market investors do serve functionally as collection agents for this portion of the delinquent tax digest. The critical point for

³⁴ If Assignment Sales are included in the May sales, the total percentage of available certificates that is sold to third parties ranges from 60% to 87%. Appendix A, Row VI.G.1.

³⁵ Appendix A, Row IV.B.1.

³⁶ Appendix A, Row III.A.3.

³⁷ Appendix A, Row IV.D.

³⁸ Appendix A., Row VIII.C. The redemption rates for 2011, 2012 and 2013 are not available as the gross dollar amount, and number of liens, for these years included all MCC "repeat" certificates as being redeemed certificates. The actual effective redemption rate on certificates sold to third parties is likely to exceed 90% given the payments and redemptions that may occur after the commencement of formal foreclosure procedures.

³⁹ Appendix A, Row IV.C.

⁴⁰ Appendix A, Row IV.B. and Row VIII.B.

⁴¹ Appendix A, Row VIII.E.

⁴² The practice of redemption of a tax certificate appears to be inconsistent in that owners may redeem by payment to the Department of Finance, or by payment to the tax certificate holder. This results in an inability to verify the accuracy of redemption payments demanded by the certificate holder. It also means that when redemption is paid to the Department of Finance, and then forwarded to the certificate holder, the Department of Finance is effectively "servicing" the receivable of the certificate holder at no cost (hence a subsidy to private market investors).

Baltimore City to evaluate is whether forgoing the 18% percent rate of interest⁴³ on the base amount of the liens is an efficient and effective means of collecting payments when there is such a high rate of redemption. The data suggest that the current FBLN results in a relatively high rate of payments prior to the May Certificate Sale. Could Baltimore City, if state law permitted, achieve a parallel redemption rate on these certificates that are sold?

KEY OBSERVATIONS:⁴⁴

- 3.1. The existing legal system transfers to private market investors between \$1 million and \$2 million each year. Consider amendments to state law to permit Baltimore City to retain the certificates on properties with high redemption probability and “service” this digest through city personnel or through a contract with a third party servicer.
- 3.2. Consider the possibility of amendments to state law to shift from a system based on the sale of high-value tax certificates followed by judicial foreclosure proceedings, to a single-step judicial tax enforcement system, with administrative policies pre-foreclosure to maximize collection of both base taxes and interest on delinquent taxes.

2. The “phantom” nature of defaulted and recycled MCC Certificates.

The existing legal system for the enforcement of delinquent taxes and related operational policies in Baltimore City is built upon the sale of certificates to third party purchasers and the transfer of all remaining unsold certificates to Baltimore City as MCC Certificates. The advantage to this approach is that Baltimore City receives payment each May of approximately \$20 million for unpaid taxes and accrued interest.⁴⁵ One disadvantage of this approach is that Baltimore City elects to forgo the \$1 to \$2 million in interest, which is paid through redemptions over the subsequent months.

A far greater disadvantage to this approach is that the certificates transferred to Baltimore City each year are largely uncollectible receivables, which result in an overstatement of the size of the annual delinquent tax digest and functionally gives Baltimore City no legal rights to own, control, or manage the properties that are encumbered by the MCC Certificates.

Approximately 39% of all May Certificates offered for sale each year are transferred to Baltimore City as MCC Certificates.⁴⁶ The dollar amount of those unpurchased May Certificates, however, represents 80-90% of the total dollar amount of *all* May Certificate liens.⁴⁷

⁴³ Baltimore City Code, Tax Article 28 sec. 6-2(a)(1)(i),(ii).

⁴⁴ Please see Appendix C for sample of draft legislation which is referenced throughout this section.

⁴⁵ Appendix A, Row IV. C.

⁴⁶ Appendix A, Row V.B. Note that in May 2014 only 16% of the certificates became MCC Certificates. The reason for this discrepancy is not self-evident. It may be attributable, at least in part, to the larger number of parcels removed by HCD from the FBLN inventory in 2014.

⁴⁷ Appendix A, Row V.E.

The average lien amount per MCC Certificate ranges from \$15,395 to \$42,280.⁴⁸ In contrast, the average lien amount on certificates sold to third parties ranges from \$2,784 to \$3,306.⁴⁹ The higher lien amounts for MCC Certificates are explained by two underlying factors. The first is that for those properties on which a certificate is being offered for the first time, the lien-to-value ratio exceeds what the private market estimates as resulting in probable redemption. These properties are functionally “underwater” in their lien-to-value ratio as of the date of the May Certificate Sale and no third party will purchase the certificate.

The second factor, however, is the one that causes even far greater distortion of the “value” of the certificate liens. The MCC certificates remain open on the records of Baltimore City for purposes of outstanding lien amounts and are recycled through the FBLN system and May Certificate auctions three years later. Approximately 25% of all May Certificates offered for sale each year are “repeat” certificates.⁵⁰ These repeat certificates include the dollar amount of all liens that were included in the May Sale three years earlier as well as all liens arising in the intervening three years. If the certificate is functionally “underwater” in one year, there is little reason to expect that in doubling or tripling the lien amount over three more years the lien-to-value ratio will improve and lead to greater sales or redemptions.

The total dollar value of all liens on all certificates at the May Certificate auctions during the period from 2011 through 2016 ranged from \$73.077 million to \$233.6 million. The value of certificates actually sold to third parties, however, remained relatively consistent in the range of \$18 million to \$22 million. This indicates that the overwhelming majority of the aggregate May Certificate lien amount is in reality a phantom amount – it has not been collectible in prior years and is not likely to be collectible in subsequent years. Baltimore City is spending time, energy, and resources devoted to public attempts to collect 80% to 90% of a property tax receivable that is simply not collectible. In parallel fashion, the aggregate amount of FBLN is grossly overstated. For the period from 2011 through 2016, those published amounts ranged from \$148.4 million to \$313.1 million. These aggregate dollar amounts, however, included within them an annual average of almost 2,000 “repeat” MCC Certificates.⁵¹ In five of the past six years, the aggregate dollar amount of MCC Certificate liens ranged from 35% to 68% of the total amount of the liens at the time of the FBLN. If 35% to 68% of the aggregate FBLN lien amount is ultimately uncollectible, and 80% to 90% of the May Certificate Sales lien amount is not collectible, the system in its present form is neither efficient nor effective.

⁴⁸ Appendix A, Row V.D.

⁴⁹ Appendix A, Row IV.D.

⁵⁰ Appendix A, Row III.E.2.

⁵¹ Appendix A, Row III.E. This is the average of the repeat May Certificates over the six-year period. Note that the average would be higher but for the low number in 2014.

KEY OBSERVATIONS:

- 3.3. It is neither efficient nor effective to “recycle” the MCC Certificates in subsequent May Certificate Sales.
- 3.4. Baltimore City is incurring unnecessary costs and expenses in carrying, and recycling, MCC Certificates in subsequent May Certificate auctions.
- 3.5. A receivable that is not collectible should not be booked as a collectible receivable and should not be assigned any value.
- 3.6. The aggregate size of the delinquent tax digest of Baltimore City is overstated by continuing to count liens that are not collectible through any form of tax enforcement action.
- 3.7. From a financial management perspective, the “value” of a lien represented by a MCC Certificate should be reduced (or “written down”) at the time of transfer of the Certificate to an amount that is no greater than the fair market value of the underlying property.
- 3.8. The gross amount of all FBLN notices includes the gross amount of all existing liens on MCC Certificates, which are essentially uncollectible receivables to the extent that the lien exceeds fair market value of the underlying property.
- 3.9. The effective collection rate by Baltimore City, as to all liens that have value and are otherwise collectible, is higher than appears from the published data, which includes the non-collectible MCC Certificate lien amounts.
- 3.10. Consider amendments to state law, which will permit for those May Certificates that are transferred to Baltimore City, the City to initiate foreclosure proceedings on all of the underlying properties other than owner occupied properties.

3. Relatively low rates of collection and recovery in civil liability enforcement actions.

Relatively low rates of collection and recovery in direct civil actions for liability also impact the amount of revenue associated with property tax enforcement. As a general proposition, though formal civil (and in some jurisdictions criminal) liability may arise on behalf of the owner of the underlying property for property taxes, code enforcement citations, or other code violations, the nature of property ownership renders such legal actions both complex and problematic.

It is increasingly common throughout the United States for non-residential properties to be owned by some form of Limited Liability Corporation, or by a partnership. Frequently such entities are single-asset entities, with the only “asset” being the property in question. In these situations, liability may exist in theory, but there will be no recovery in practice.

A second reason that civil liability actions for delinquent taxes are difficult is the legal standards for judicial jurisdiction and for due process. Seeking to hold a defendant personally liable requires judicial jurisdiction over the person or corporation and this becomes a high threshold to meet with out-of-state defendants. Correspondingly, due process requires higher standards of notice and hearings whenever civil or criminal liability is at stake.

For the period 2011-2016, it appears that of the aggregate total dollar amount of all liens on all May Certificates, between 9% and 28% is recovered, or paid, through the process of selling the certificates to private third-party investors.⁵² This means that between 72% and 91% of the aggregate lien amount remains unpaid. In 2016, the aggregate dollar amount of May Certificates was \$123 million; the amount received from private third-party certificate sales was \$20 million. In 2015, the aggregate dollar amount of May Certificates was \$233 million; the amount received from private third-party certificate sales was \$22 million. In 2014, the aggregate dollar amount of May Certificates was \$73 million; the amount received from private third-party certificate sales was \$20 million. Though the time frame for recovery on civil liability actions is much longer than a single year, the total recovery on civil liability actions was \$555,544 in 2015, \$526,416 in 2014, and \$1,805,785 in 2013.⁵³ The dollar recovery rate – not counting direct and indirect costs of pursuing recovery – appears to be less than 1% of the face amount of liability. This analysis does not in any way suggest that the actions by Baltimore City to seek civil liability recoveries are not being undertaken in the best possible manner in accordance with the highest possible standards of professionalism. What this analysis does raise is the fundamental question of whether allocating public resources to pursue a highly difficult goal with low rates of return is the most efficient and effective use of the existing public resources.

KEY OBSERVATIONS:

- 3.11. Undertake a cost/benefit analysis of the total direct and indirect costs of personnel and transaction costs of Baltimore City related to civil liability actions in comparison to the actual financial recoveries.
- 3.12. Consider the possibility of reallocating existing legal resources away from pursuit of civil liability recovery and using the same legal resources to focus on acquisition of marketable and insurable title in Baltimore City of properties encumbered by MCC Certificates.
- 3.13. Consider the possibility of amending state law for the enforcement of delinquent property taxes from the current system of civil liability coupled with a two-step enforcement process to a new single-step judicial *in rem* foreclosure process through which liability is the liability of the property, and if the liability is not paid the property is sold to a new owner in compliance with due process.⁵⁴

⁵² Appendix A, Row IV.B.1.

⁵³ Appendix A, Row X.B.

⁵⁴ Please see Appendix C for sample draft legislation.

IV. REDUCING VACANCY AND ABANDONMENT

1. Understanding Vacancy

Vacancy can be defined in different ways in Baltimore City, which makes any substantive analysis regarding the impacts of the tax sale system difficult. According to Baltimore Housing, a property may be unoccupied but is not considered vacant until it meets criteria for being unsafe or unfit for human habitation or other authorized use and a vacant building notice (VBN) has been issued.⁵⁵ Vacant buildings are issued a VBN if it is an unoccupied structure that is considered “unsafe or unfit for human habitation or other authorized use” or a nuisance property, which is an unoccupied structure with two or more unabated Building Code, Fire Code, or Property Maintenance Code violations or six or more violations in the past twelve months for trash and debris on the site.⁵⁶ According to 2016 data from Baltimore Housing, there are approximately 17,000 vacant buildings in Baltimore City.⁵⁷ As stated in Section I, several cities across the country define a vacant property based on discontinuance of mail service for at least 90 days. Using this indicator, the 2010 U.S. Census identified 46,782 vacant dwelling units in Baltimore. There are also approximately 14,000 vacant lots identified and defined by Baltimore Housing as an “individual parcel of real property that is unimproved by an assessed building.”⁵⁸ In total, therefore, there are approximately 31,000 to 60,000 vacant properties in Baltimore City (buildings and lots).

Based on the 2016 May Certificate Sale and using Baltimore Housing’s definition of vacancy, the average lien amount for vacant buildings was three times more than owner-occupied property.⁵⁹ It is likely these accumulated liens exceed the fair market value of the property. As a consequence, liens on vacant properties are purchased by third-party investors far less often and these liens on vacant properties are far more likely to be transferred to the Mayor and City Council as MCC Certificates. As MCC certificates, they are recycled into the next May Certificate Sale in another three years. Regardless of whether the lien is purchased or not, these vacant properties continue to impose significant costs on the surrounding community and on the local government in terms of police, fire, and code enforcement calls.

Baltimore Vacant Properties		
SOURCE	BALTIMORE HOUSING	U.S. CENSUS
Vacant Buildings	~17,000	46,782
Vacant Lots	~14,000	

⁵⁵ For more information on Baltimore Housing, please visit http://www.baltimorehousing.org/vtov_faq.

⁵⁶ Baltimore, MD. Building, Fire and Related Codes Section 116.4.1.2.

⁵⁷ As of September 26, 2016, there are 16,725 vacant building notices: issued in Baltimore City: <https://data.baltimorecity.gov/Housing-Development/Vacant-Buildings/ggcgv-ihn5/data>

⁵⁸ Baltimore, MD. Code Article 13, Subtitle 11.

⁵⁹ Compare Appendix A, Row III.C.4 with Row IV.D.4.

Members of the Work Group reported other challenges related to vacant properties in the tax sale that result in third-party investors purchasing the certificate, foreclosing on the right of redemption, and taking title to the property, and then renting to vulnerable populations without bringing the property up to basic habitability and Housing Code standards. We were not able to find data to support this, but encourage this type of data to be included in any comprehensive data collection effort moving forward.

KEY OBSERVATIONS:

- 4.1. Consider creating a more inclusive definition regarding vacant and abandoned properties that accounts for the existing inventory.
- 4.2. Consider creating a Vacant Property Data Task Force that includes members of Baltimore City and the Work Group to ensure that critical datasets from Baltimore City Finance, Housing, Code Enforcement, IT, Public Works, Environmental Control Board, Police and Fire, and Maryland Judiciary can be located in one database, have common property identifiers, and can be spatially mapped. This data can then be used to truly understand the extent to which the current tax sale system may be contributing to additional vacancy and abandonment.

2. Declining value and increased expenses related to properties with MCC Certificates.

Entirely separate from the foregone interest that is paid on certificates sold at the May Certificate Sales, and entirely separate from the transaction costs of perpetually recycling a non-collectible digest of tax liens, there is also a full array of direct and indirect costs attributable to the inventory of parcels on which Baltimore City holds certificates. We do not know the total number of properties, on an annual basis, in Baltimore City encumbered by MCC Certificates, but the data show that roughly 2,000 such properties are recycled in the May Certificate Sale each year. Using that as a base number suggests that there are a minimum of 2,000 properties in Baltimore at any given time for which public liens and charges are equal to or exceed the fair market value of the property. For this entire inventory, ownership of the property remains in the private sector, whether in one individual or corporation or highly fractured among numerous mortgagees, partnerships, judgment creditors, and heirs. No single owner, or combination of owners, has sufficient financial interest to redeem property from the public liens.

As to virtually all of the properties in Baltimore with MCC Certificates, there is an extremely high probability that no redemption will occur,⁶⁰ and that property taxes will not be paid in subsequent years. There is also a strong probability that, at least as to such properties that are not owner occupied, the physical condition of the property will deteriorate and the underlying value of the property will decline. Between 18% and 28% of all May Certificates are on vacant properties,⁶¹

⁶⁰ See Appendix A, Row VIII.G. It appears that somewhere in the range of 3% to 7% of MCC Certificates are redeemed.

⁶¹ Appendix A, Row III.D.1.

with the average lien amounts on vacant parcels running between \$7,805 and \$22,622. Of the May Certificates on vacant properties, private third-party investors purchase approximately 26% to 37% of the certificates.⁶² The certificates on the vacant properties that were transferred as MCC Certificates had much higher average lien amounts, ranging from \$11,157 to \$70,373.

Vacant properties pose a particularly powerful example of the inefficiencies and ineffectiveness of the existing legal system for enforcement of delinquent property taxes. Such properties have higher average lien amounts, are more likely to be transferred to Baltimore City through MCC Certificates, and are more likely to emerge as repeat MCC Certificates. Such properties also tend to have the most rapid rate of physical deterioration and further declines in value. It is beyond the scope of this report to examine direct and indirect costs of code enforcement, or the internalized benefits of specialized programs such as Vacants to Value. It is clear, however, that the current legal system results in Baltimore City holding liens on significant inventories of property, with the liens largely uncollectible, without holding legal title to the properties and yet incurring ongoing direct public costs while the property values continue to decline.

KEY OBSERVATIONS:

- 4.3. Holding MCC Certificates imposes maximum costs with minimum benefits. Maximum costs are incurred relative to direct public expenditures for maintenance and code enforcement yet without any of the benefits of ownership and control.
- 4.4. Holding MCC Certificates creates an ever-increasing pool of liens, both in terms of dollar amounts and in terms of numbers of parcels.
- 4.5. Holding MCC Certificates that equal or exceed the fair market value of the underlying property results functionally in completely unsecured claims, which have a low probability of financial recovery.
- 4.6. Properties encumbered by MCC Certificates that equal or exceed the fair market value of the underlying property are those properties which decline in value most rapidly, and which cause declines in neighboring property values most rapidly.
- 4.7. Consider the possibility of amending state law to eliminate the concept of MCC Certificates entirely, and provide, through judicial process, that legal ownership of all properties not sold at public action is transferred to Baltimore City. To the extent necessary and appropriate, consider the viability of creating a Baltimore City land bank to receive legal ownership of these properties.⁶³
- 4.8. Consider shifting the fundamental approach of the legal system such that if Baltimore City is going to own the problem that no existing owners will address, it should own the property itself.

⁶² Appendix A, Row IV.F. Note that in 2014, the percentage of certificates purchased by third-party investors was 62%. As previously noted the reason for this significant one year difference is not self-evident, though it may be attributable at least in part to the significantly lower number of repeat MCC Certificates in the May Certificate Sale that year.

⁶³ Please see Appendix C for sample draft legislation.

V. PROTECTING VULNERABLE OWNER OCCUPANTS

VULNERABLE OWNER OCCUPANTS

For purposes of this analysis, “vulnerable owner occupants” are defined as low-income owner occupants of residential property. This narrow definition necessarily excludes low-income individuals and families who are tenants rather than owners. Rental properties, both single family and multifamily, are beyond the focus of this analysis, yet tenants who are renting properties that are in the tax sale can also be negatively impacted because they may be evicted by the new owner once the court forecloses on the right to redeem. Similarly, low-income owners of non-residential property (whether retail, commercial, or vacant lots) may well be “vulnerable,” particularly in the context of “heir property,”⁶⁴ but such categories are beyond the focus of this analysis.

REDUCING THE TAX BURDEN FOR VULNERABLE OWNER OCCUPANTS

There are two different property tax credit programs in Maryland relative to vulnerable owner occupants.⁶⁵ They are structured quite differently, and have different policy consequences.

The Homeowner Tax Credit⁶⁶ is a state-provided credit against property taxes, which is available to vulnerable owner occupants that meet certain net worth and annual income limits. In general terms, it is a credit for most if not all property taxes and is available to owner occupants with an annual income limit of \$60,000 and a maximum net worth of \$200,000 (including the value of the property). For example, vulnerable owner occupants with an annual income of \$30,000 and a home value of \$70,000 would receive a tax credit of the *total* real property tax less an amount tiered to a maximum of \$2,700. A vulnerable owner with an annual income of \$8,000 or less and a net worth of less than \$200,000 will receive a credit against *all* property taxes. The strength of this Homeowner Tax Credit lies in its dual foundation on net worth and on annual income, providing essentially 90% or higher property tax relief to vulnerable owner occupants with net worth less than \$200,000 and annual income less than \$60,000. The Homeowner Tax Credit does permit retroactive applications for owner occupants over the age of 70,⁶⁷ as well as special provisions for continuing care for the elderly and for disabled veterans.⁶⁸

⁶⁴ “Heir Property” is a term which refers to real property that descends through state laws of intestacy in the absence of formal probate of a will and estate. The consequence is that legal ownership transfers, through intestacy, to relatives of the deceased owner. When this occurs with respect to a specific parcel of real property there are likely to be large numbers of separate family members owning a partial interest in the property, many of whom cannot be located or identified with accuracy.

⁶⁵ Note there are credit and discount programs related to delinquent water bills that are not the focus of this report but can be found here: <http://publicworks.baltimorecity.gov/water-billing/discount-programs>.

⁶⁶ Md. Code Ann. Tax-Property § 9-104.

⁶⁷ Md. Code Ann. Tax-Property § 9-104(v)(1).

⁶⁸ Md. Code Ann. Tax-Property § 9-104(u).

One potential drawback to this form of “circuit breaker” for vulnerable owner occupants is the relative complexity of the program coupled with the requirement for annual applications for the credit by the owner occupant.

In addition to the *Homeowner* Tax Credit, vulnerable owner occupants can benefit from the *Homestead* Tax Credit.⁶⁹ The Homestead Tax Credit operates as a limit on the permissible (taxable) annual increase in assessed valuation.⁷⁰ The amount of the permissible increase, or tax credit for increases in excess of the permissible amount, is set by the Mayor and City Council of Baltimore City.⁷¹ At the present time, the maximum annual increase set by Baltimore City is 4%, with tax credits available to eligible properties for assessment increases in excess of 4%. The Homestead Tax Credit is applicable to owner occupants regardless of owner income, owner assets, and property valuation, and appears to require only a single application.⁷² The Homestead Tax Credit terminates upon transfers,⁷³ or non-occupancy (with exceptions for illness).⁷⁴

The policy justifications for the structure of the Homestead Tax Credit appear to be designed to provide protections to owner occupants from increases in annual property taxes attributable solely to sharp annual increases in the underlying assessed valuation of the property. With respect to vulnerable owner occupants, this tax credit may well provide a form of protection in the face of rapid price increases due to various forms of neighborhood stabilization and gentrification.⁷⁵

Both the Homeowner Tax Credit and the Homestead Tax Credit need to be empirically evaluated to determine the efficacy of these programs in protecting the vulnerable population in Baltimore City, particularly the vulnerable owner occupants.

Protecting low-income owner occupants, who are by our definition a vulnerable population, by annual requirements of certifications of income and net worth creates significant transaction costs in the form of time, energy, and educational resources by individuals least capable of bearing such costs. It also imposes significant transaction costs on the Maryland State Department of Assessment and Taxation (SDAT) in the processing of annual applications. SDAT reports suggest that 20% to 25% of applications each year are rejected by SDAT.⁷⁶

It has not been possible to measure the extent to which this Homeowner Tax Credit is utilized by the eligible pool of potential vulnerable owner occupants. Approximately 11,000 properties in Baltimore City are awarded this valuable credit each year, but the size of this eligible pool is not known. The

⁶⁹ Md. Code Ann. Tax-Property § 9-105.

⁷⁰ Md. Code Ann. Tax-Property § 9-105(e).

⁷¹ Md. Code Ann. Tax-Property § 9-105(e)(4).

⁷² Md. Code Ann. Tax-Property § 9-105(d)(6)(i).

⁷³ Md. Code Ann. Tax-Property § 9-105(d)(1).

⁷⁴ Md. Code Ann. Tax-Property § 9-106(c)(2).

⁷⁵ This report has not attempted to gather or analyze data on the relative annual appreciation in owner occupied residential property in Baltimore City. It is thus beyond the focus of this report to address the efficacy of this approach to protecting vulnerable owner occupants from burdens of rapid increases in valuations.

⁷⁶ Appendix A, Rows B.1 and B.2.

data suggests that approximately 52% of all taxable parcels in Baltimore City are owner occupied,⁷⁷ or over 115,000 properties, but the data is not available as to the number or percentage of these which are owned by low-income individuals and families – the vulnerable owner occupants.

With respect to the Homestead Tax Credit (not the Homeowner Tax Credit), it is difficult to quantify the nature and extent of over-inclusiveness of this claimed exemption. Because it is a one-time filing, available to all owner occupants only regardless of income or net worth, it is subject to remaining in place long after the property is no longer owner occupied or subject to being claimed by single individuals or families on multiple properties simultaneously. It appears that SDAT and Baltimore City are implementing increased requirements to mitigate against such inappropriate exemptions by monitoring of social security numbers and addresses on income tax filings.

Other jurisdictions also correlate names and addresses on utility bills with homestead addresses, highlighting inconsistencies and duplications. One of the most overlooked immediate sources of exemption revocations are foreclosure deeds. The filing of each and every foreclosure deed (whether mortgage or other lien foreclosure) should trigger an automatic termination of the homestead exemption. Probate records could also provide a corresponding data source for evaluation.

TAX ENFORCEMENT AND OWNER OCCUPIED PROPERTIES

These tax credit programs seek to reduce the tax burden for vulnerable owner occupants in order to prevent or reduce delinquency in the first place. There is also a need to examine the impacts of the delinquent tax enforcement process on those vulnerable owner occupants who do become delinquent and thus subject to enforcement. There are approximately 220,000 taxable properties in Baltimore City. Of this total inventory, approximately 52% to 55%, or 116,000 properties are classified as “owner occupied.”⁷⁸ At the time of the Final Bill and Legal Notice (FBLN),⁷⁹ which is sent in February of each year, approximately 15% to 18% of the total number of taxable parcels in Baltimore City have delinquent liens.⁸⁰ At the time of the annual May Sale of Tax Certificates (May Certificate Sale), approximately 20% of the properties involve owner occupied properties.⁸¹ Put another way, roughly 2,000 owner occupied properties fall into the May Certificate Sale each year.

Once the owner occupied properties enter the tax sale process, certificates on roughly 80% of them are sold to third-party investors.⁸² The purchasers of these certificates are entitled to interest at the rate of 18% per year, plus certain fees and costs that accrue beginning seven months after the May

⁷⁷ Appendix A, Row I.D.2. The use of “Owner Occupied” for purposes of property tax enforcement analysis differs from our use of “vulnerable owner occupants” as a vulnerable population. In the context of “Owner Occupied” properties in property tax enforcement analysis includes all properties which are owner occupied, regardless of income, net worth, or property value.

⁷⁸ Appendix A, Row I.D.2.

⁷⁹ Md. Code Ann. Tax-Property § 14-812.

⁸⁰ Appendix A, Row II.B.

⁸¹ Appendix A, Row III.C.2.1. Data for prior years was not available.

⁸² Appendix A, Row IV.I. Data for prior years was not available.

Certificate Sale.⁸³ By comparison, on average, approximately 62% of all certificates (as measured by parcel count) are sold to third parties each year at the May Certificate Sale.⁸⁴ An additional .5% of available certificates is subsequently acquired through the assignment sales.⁸⁵

The pool of private third-party purchasers in the May Certificate Sale is more interested in acquiring certificates on owner occupied properties than on other properties because of the higher rates of redemption on owner occupied properties. The dominant motivation for investors in the May Certificate Sales is the return on their financial investment as reflected by redemptions. The rate of redemption on all May Certificates sold to third parties is approximately 90%.⁸⁶ While a small percentage of the May Certificates appear to be acquired by investors in anticipation of ultimate acquisition of the underlying property, the very small numbers of certificates that result in foreclosure judgments and deeds suggest that this is not a significant motivating factor in May Certificate Sales.⁸⁷

The average total lien amount on all parcels in the May Certificate Sale ranges from \$7,621 to \$19,846 over the past six years.⁸⁸ In contrast, the average total lien amount on certificates sold to third parties has consistently been in a much lower and more narrow range, between \$2,783 and \$3,305. This dramatic variance is attributable to the desire of third-party investors to focus primarily on owner occupied properties, with lower average lien amounts but with significantly higher rates of redemption.

Thus, owner occupied properties are disproportionately affected by the sale of certificates to third-party investors. This is problematic because the incentives and concerns of third-party investors are different from the incentives and concerns of Baltimore City. Third-party investors have as the dominant incentive maximizing return on the base financial investment. Baltimore City has as its dominant concerns receiving payment of taxes while protecting vulnerable populations.

If 80% of all owner occupied certificates in the May Certificate Sale are sold to third-party investors, the puzzling question is the treatment of the remaining 20% of certificates on owner occupied properties. These certificates are all transferred to the Mayor and City Council of Baltimore City (MCC Certificates)⁸⁹ and are part of the average 37% of all certificates which are simply “defaulted” back to Baltimore City as a result of a failure to sell at the May auction. One plausible explanation is that the total lien amount on each of these 20% of the owner occupied properties has neared or exceeded the plausible fair market value of the parcels. As explained in previous sections, approximately one-quarter of all May Certificates consists of MCC Certificates held by Baltimore City as a result of prior May Certificate auctions, with no third party purchasers.⁹⁰ These “defaulted” properties are simply recycled through the May Certificate auction three years later, with the aggregate lien amount inclusive of three or more years of taxes

⁸³ Md. Code Ann. Tax-Property § 14-843.

⁸⁴ Appendix A, Row IV.B.

⁸⁵ Appendix A, Row VI.C.

⁸⁶ Appendix A, Row X.C.

⁸⁷ Appendix A, Row IX.A., B, C.

⁸⁸ Appendix A, Row III.A.3.

⁸⁹ The use of “MCC” in Appendix A is a reference to “Mayor & City Council” of Baltimore City.

⁹⁰ Appendix A, Row III.E.2.

and charges. It is likely that the 20% of owner occupied properties in which private third-party investors have no interest falls into this category of repeat certificates. Falling into this cycle of repeat certificates increases dramatically the obstacles to the preservation of owner occupied properties.

The net effect of the current policies and practices in Baltimore City is that of all properties that enter into the May Certificate Sale process, the category of owner occupied properties is the one most likely to end up in the control of third-party investors. Though we do not know the percentage of these owner occupied properties that are owned by vulnerable owner occupants it is plausible that vulnerable owner occupants are disproportionately represented either in the owner occupied certificates that are sold, or in the inventory of MCC Certificates, each of which carries with it the concerns outlined above.

KEY OBSERVATIONS:

- 5.1. Consider amending state law to replace the Homeowner Tax Credit with a blanket Tax Credit applicable to the first \$50,000 of assessed valuation and do not tie it to annual income or net worth.⁹¹ This would eliminate the transactions costs and inefficiencies of annual applications and certifications. It would likely decrease the under-inclusiveness of protections for vulnerable owner occupants. It would increase the tax expenditure cost to the state and local government by its applicability to all owner occupants regardless of income and net worth, but the marginal dollar impact on vulnerable owner occupants would be greater. A flat base exemption will cover a higher percentage of the typical property value of a vulnerable owner occupant's property value.
- 5.2. Consider increasing the base exemption for elderly and disabled. In the case of age exemptions, and possibly disability exemptions, this could be accomplished by a one-time application.
- 5.3. Consider providing for electronic data submission by Baltimore City to SDAT of all mortgage foreclosure deeds as a presumptive trigger for loss of the Homeowner Tax Credit and Homestead Tax Credit. This would address the inefficiency of over-inclusiveness of claimed exemptions.
- 5.4. Consider the possibility of excluding from the May Certificate Sale all certificates on owner occupied properties. These certificates appear to have the highest rates of redemption, and correspondingly yield the highest rates of return (at 18% per annum plus costs). In lieu of selling certificates on owner occupied properties, engage a third party servicer to work with vulnerable owner occupants on redemption and repayment plans. Such a servicing arrangement, instead of a sale to a third party investor, would permit Baltimore City to target repayment plans in a manner that protects the vulnerable population.

⁹¹ This suggested dollar amount is purely illustrative. The optimum dollar amount would be determined by examining the assessed valuations of vulnerable owner occupants – the low income Owner Occupied properties.

- 5.5. Consider the possibility of amending state law to provide specific statutory protections to vulnerable owner occupants, or to all owner occupied properties. This could be done by increasing notices to such owners, providing longer time frames for repayment of delinquent taxes, and targeting such owners with direct legal services or consumer financial literacy support.

VI. CONCLUSION

Numerous stakeholders interviewed for this engagement expressed concerns that the current system of collecting property taxes is not equitable, efficient, and effective. Private investors are profiting from purchasing the most desirable tax sale certificates, which leaves Baltimore City with those tax sale certificates that continue to amass delinquency, impose public safety costs, recycle through the system, and deter new responsible ownership.

Baltimore is in the enviable position to become the nation's model for creating an equitable, efficient, and effective property tax enforcement system. This report lists several observations for tweaks to the system, which may not result in a best practice but could serve to address several key problems related to maximizing revenue, preventing vacancy and abandonment, and protecting vulnerable homeowners. *There is, however, one recommendation that would entail a comprehensive system change and shift power in the tax sale process from the private investor into the hands of local government by amending state law and local policy and developing a new judicial in rem foreclosure process that would be equitable, efficient, and effective.*⁹²

At the core of this new model of property tax enforcement are two features: the elimination of the sale of tax certificates to the private market, and no longer recycling a substantial “shadow” inventory of vacant and abandoned properties through the tax sale annually. In this new approach, Baltimore City would establish a date certain by which property owners would either have to pay off delinquent taxes (or, if eligible, enter into a payment plan) or face foreclosure. Baltimore City would then auction off the actual deed of a foreclosed property, and in the absence of any bidder, assume ownership of the property.

HOW WOULD THE NEW SYSTEM BE *EQUITABLE*?

Under this new system, vulnerable populations, defined as low-income owner occupants, would be eligible to receive additional notice of their delinquency and be provided the opportunity to enter into a hardship plan for their current delinquent property taxes and other municipal liens. In addition, Baltimore City and the State Department of Assessments and Taxation (SDAT) could explore ways to prevent delinquency in the first place. Specifically, the circuit breaker programs such as Homeowner *and* Homestead Tax Credit Programs could be modified to ensure more qualified homeowners are receiving critical tax relief.

⁹² Please see Appendix C for sample draft legislation.

HOW WOULD THE NEW SYSTEM BE *EFFICIENT*?

Amending state law would permit Baltimore City to create a one-step system that creates a date certain in which a property owner must remit payment or lose their property. This new system would create various efficiencies by eliminating duplicative processes and reducing transaction costs. The new system would eliminate the recycling of vacant and abandoned properties with MCC Certificates through the tax sale process, and put these properties on a clear path to new ownership. If when auctioned there is no private bidder, Baltimore City would assume full ownership of the property. These recycled properties are already imposing costs on local government, presenting safety risks, and negatively impacting adjacent neighbors. The new system would provide Baltimore City the opportunity to not only own the costs and problems, but the actual properties as well—and preside over a more predictable pathway to neighborhood stabilization and revitalization.

HOW WOULD THE NEW SYSTEM BE *EFFECTIVE*?

Amending state law would permit Baltimore City to create a system where maximum tax revenue is collected by local government before properties become vacant and abandoned. If payment is not made by a date certain, there is a judicial proceeding that results in the transfer of title that is insurable and marketable to a new responsible owner, rather than the sale of a certificate. Ownership of the property will no longer be left in the hands of the private investor who has the highest bid with a title that is replete with title defects and clouds on title. As previously mentioned, it will be necessary to create different time periods and supplemental support services for vulnerable homeowners in order to increase the likelihood of retaining ownership and equity while also maximizing the payment of delinquent taxes.

Strong leadership and departmental coordination will be needed to ensure this system change is one piece of a comprehensive effort for neighborhood stabilization and revitalization. Moving to this judicial in rem foreclosure process requires meeting a high bar of noticing all parties with an interest in the property. Therefore, additional resources to conduct comprehensive title examinations will be needed. Additional legal services, or the reallocation of existing legal resources, to help vulnerable homeowners through this new system will also be essential. Fortunately, the current process consistently generates approximately \$1-2 million in profits for private investors who purchase the tax certificates. Since under this new system Baltimore City will now eliminate this sale and internally collect all delinquent taxes, it can reasonably expect and draw upon this new stream of revenue (from late fees and interest payments) to support these additional resources.

Strategic thinking will also be needed in deciding how to stage the transition to a new system. While Baltimore City will want to minimize the number of properties with little market potential that end up under their care, there will inevitably be a growing inventory of distressed properties that the City will have to own and maintain. Part of this strategic thinking will require analysis of whether those properties that get transferred to Baltimore City stay within local government or become the responsibility of a new legal entity, such as a formal land bank.

The good news is that Baltimore City has all of the necessary ingredients for change – an incoming new Mayor, strong and knowledgeable City Departmental leadership, and a Work Group committed to challenging the status quo and working together to find solutions to the current challenges of the tax sale system. Property taxes remain the lifeline revenue source for the provision of basic city services and yet can also be one of the primary barriers to returning a vacant and abandoned property to responsible ownership, and a common cause of a low-income homeowner's financial hardship and loss of home equity. Working together, these changes to the Baltimore City property tax enforcement system can have a tremendous influence on the ability of local government to serve its residents, on quality of life and neighborhood stability, and on the ability of each and every constituent throughout Baltimore City to access generational wealth.

APPENDIX A.

BALTIMORE CITY PROPERTY TAX ENFORCEMENT DATA (AS OF 7/25/16)

	2016	2015	2014	2013	2012	2011
I. Base Line Data (Note 1)						
A. Aggregate Parcel Data (Note 2)						
A.1 Total Parcels	238045	238306	238358	237036	236923	236626
A.2 Total Taxable Parcels	220799	220870	220475	219295	218826	218663
B. Homeowner Tax Credit Parcels (Note 3)						
B.1 Applications			13192	15573	13565	13702
B.2 Credits Issued			10436	11525	10834	10846
B.3 Total Credit Amount			\$14,418,127	\$15,630,184	\$14,366,562	\$13,547,195
B.4 Average Credit			\$1,381.00	\$1,356.00	\$1,326.00	\$1,249.00
C. Vacant Parcels (Note 4)						
C.1 Number of Vacant Parcels	16654					
C.2 Percent of Taxable Parcels - Vacant	8%					
D. Owner Occupied Parcels						
D.1 Number of Owner Occupied Parcels	115360	115774	116253	117991	119409	121106
D.2 Percent of all Taxable Parcels - Owner Occupied	52%	52%	53%	54%	55%	55%
II. Tax Collection Prior to May Sale						
A. Number of All Final Bill & Lien Notices	31680	39694	34370	40071	39186	35713
B. Percentage of Taxable Digest Subject to FBLN	14%	18%	16%	18%	18%	16%
C. Dollar Amount of all FBLN Liens	\$182,766,033	\$313,104,554	\$148,072,877	\$238,842,694	\$431,987,264	\$155,353,748
D. Average Lien Amount of FBLN	\$5,769	\$7,888	\$4,308	\$5,960	\$11,024	\$4,350
E. Percentage of Lien Amount = Taxes						
F. Percentage of Lien Amount = Interests & Penalties						
G. Percentage of Lien Amount = Other						
H. Percentage of all FBLN that are Owner Occupied						
III. May Certificate Sales						
A. Total Certificates						
A.1 Total Certificates Offered for Sale	9832	11770	8241	9898	10487	10737
A.2 Total Dollar Amount of Liens on all Certificates	\$122,912,978	\$233,589,444	\$73,077,899	\$75,430,367	\$180,731,293	\$102,439,488
A.3 Average Lien Amount	\$12,501	\$19,846	\$8,868	\$7,621	\$17,234	\$9,541
A.4 Certificates as Percent of FNLB	31%	30%	24%	25%	27%	30%

Appendix A.

Baltimore City Property Tax Enforcement Data (as of 7/25/16) *Continued*

	2016	2015	2014	2013	2012	2011
B. Value Allocation of all May Certificates						
B.1 Dollar Amount of Taxes (including interest and penalties) (Note 8)	\$15,158,800	\$15,587,865	\$10,554,646	\$14,064,579	\$14,716,316	\$13,773,872
B.2 Dollar Amount of Other Liens	\$107,754,177	\$218,001,578	\$62,523,253	\$61,365,787	\$166,014,977	\$88,665,616
B.3 Taxes as Percentage of Total Lien Value	12%	7%	14%	19%	8%	13%
C. Certificates on Owner Occupied Properties (Note 7)						
C.1 Number of Certificates on Owner Occupied	1986					
C.2 Percentage of total May Certificates on Owner Occupied Properties	20%					
C.3 Total Dollar Amount of Liens on Owner Occupied Properties	\$10,284,847					
C.4 Average Lien Amount on Owner Occupied Properties	\$5,178.67					
D. Certificates on Vacant Properties						
D.1 Number of Certificates on Vacant Properties	2721	3206	1449	2529	2161	2527
D.2 Percentage of total May Certificates on Vacant Properties	28%	27%	18%	26%	21%	24%
D.3 Dollar Amount of Liens on Vacant Properties	\$42,991,494	\$72,525,475	\$13,600,989	\$20,463,693	\$33,050,637	\$19,722,944
D.4 Average Lien Amount on Vacant Properties	\$15,800	\$22,622	\$9,386	\$8,092	\$15,294	\$7,805
E. Number of MCC Certificates Repeated in May Sale	2649	2798	550	1850	2491	1081
E.1 Total Dollar Amount of MCC Repeat Certificates in May Sale						
E.2 Percentage of all May Certificates that are repeat Certificates	27%	24%	7%	19%	24%	10%
F. Total Certificates Sold to Third Parties	5979	6762	6897	6210	6807	6463
G. Total Certificates Transferred to MCC	3853	5008	1344	3688	3608	4274
IV. May Certificates Sold to Third Parties						
A. Number of Certificates Sold to Third Parties	5979	6762	6897	6210	6807	6463
B. Percent of all May Certificates Sold to Third Parties	61%	57%	84%	63%	65%	60%
B.1 Dollar Amount of Third Party Sales as percent of total lien amount on all Certificates	16%	9%	28%	25%	12%	18%
C. Aggregate Dollar Amount of Liens sold to Third Parties	\$19,766,044	\$21,805,640	\$20,776,278	\$18,650,994	\$21,013,020	\$17,991,926
C.1 Dollar Amount of Taxes on Certificates sold to Third Parties (Note 8)	\$8,526,528	\$9,150,987	\$9,047,837	\$9,236,872	\$10,702,921	\$10,143,824
C.2 Dollar Amount of Other Liens on Certificates sold to Third Parties (Note 8)	\$11,239,515	\$12,654,652	\$11,728,441	\$9,414,121	\$10,310,099	\$7,848,102
D. Average Lien Amount on all Certificates Sold to Third Parties	\$3,305.91	\$3,224.73	\$3,012.36	\$3,003.38	\$3,086.97	\$2,783.84
E. Number of Certificates on Vacant Properties sold to Third Parties	742	830	895	666	795	765
F. Percentage of all Vacants sold to Third Parties	27%	26%	62%	26%	37%	30%
G. Number of Certificates sold on Owner Occupied Properties (Note 7)	1594					
H. Owner Occupied Certificates as percentage of all certificates sold to Third Parties	27%					
I. Percentage of all Owner Occupied Property Certificates sold to Third Parties (Note 7)	80%					

Appendix A.
Baltimore City Property Tax Enforcement Data (as of 7/25/16) *Continued*

	2016	2015	2014	2013	2012	2011
V. May Certificates Transferred to MCC						
A. Number of MCC Certificates	3853	5008	1344	3688	3608	4274
B. MCC Certificates as percentage of all May Certificates	39%	43%	16%	37%	34%	40%
C. Aggregate Dollar Amount of Liens transferred to MCC	\$103,146,934	\$211,783,804	\$52,301,621	\$56,779,373	\$159,718,273	\$84,447,562
C.1. Dollar Amount of Taxes on MCC Certificates (Note 8)	\$6,632,272	\$6,436,878	\$1,506,809	\$4,827,707	\$4,013,395	\$3,630,048
C.2. Dollar Amount of Other Liens for MCC Certificates (Note 8)	\$96,514,662	\$205,346,926	\$50,749,812	\$51,951,665	\$155,704,878	\$80,817,514
C.3. Dollar Amount of Liens transferred to MCC as percentage of FBLN amounts	56%	68%	35%	24%	37%	54%
D. Average Lien Amount on Certificates transferred to MCC	\$26,770.55	\$42,289.10	\$38,914.90	\$15,395.71	\$44,267.81	\$19,758.44
E. MCC Certificates Dollar amount as percentage of all May certificates	84%	91%	72%	75%	88%	82%
F. Number of MCC Certificates on Vacant Properties	1979	2376	554	1863	1366	1762
G. Total Dollar Amount of MCC Certificates on Vacant Properties	\$41,211,408	\$70,373,671	\$11,157,392	\$18,596,916	\$31,149,683	\$17,674,167
H. Average Dollar Lien amount on MCC Certificates on Vacant Properties	\$20,824.36	\$29,618.55	\$20,139.70	\$9,982.24	\$22,803.57	\$10,030.74
I. Number of Certificates on Owner Occupied transferred to MCC (Note 7)	392					
J. Percentage of all Owner Occupied Certificates transferred to MCC	20%					
VI. Assignment Sale Data						
A. Certificates Offered	4176	5311	1588	4021	4034	4735
B. Total Dollar amount of Certificates	\$104,477,991	\$213,282,574	\$53,370,602	\$58,164,671	\$161,162,508	\$85,722,868
C. Number of Certificates sold to Third Parties	306	283	248	330	362	471
D. Value of Certificates sold to Third Parties	\$1,197,342	\$1,235,619	\$1,034,481	\$1,310,409	\$1,421,522	\$1,106,120
E. Percentage of total available Certificates Sold	7%	5%	16%	8%	9%	10%
F. Percent of Total Lien Amount Sold	1%	1%	2%	2%	1%	1%
G. Number of Certificates sold to Third Parties at May auction plus Assignment Sales	6285	7045	7145	6540	7169	6934
G.1 Third Party Auction Certificates Plus Assignment Certificates as Percent of total May Certificates	64%	60%	87%	66%	68%	65%
VII. HCD Properties and Bulk Sales (Note 6)						
A. Number of Properties Removed from May Sale at request of HCD	1176	310	111	1725	314	0
B. Number of Bulk Sale Certificates		935	1255	771	2252	436
C. Dollar Amount of Liens in Bulk Sales		\$22,866,472	\$27,461,063	\$12,983,550	\$102,459,309	\$6,366,472
D. Number of Vacant Properties in Bulk Sale		676	835	505	1653	258
E. Dollar amount of Liens on Vacant Properties in Bulk Sale		\$13,774,894	\$10,249,514	\$6,791,730	\$52,576,463	\$2,302,189
F. Average amount of Liens on Vacant Properties in Bulk Sale		\$20,377.06	\$12,274.87	\$13,448.97	\$31,806.69	\$8,923.21

Appendix A.

Baltimore City Property Tax Enforcement Data (as of 7/25/16) *Continued*

	2016	2015	2014	2013	2012	2011
VIII. Redemptions						
A. Number of all May Third Party Certificates Redeemed	1368	5818	6156	8950	9395	10226
B. Dollar amount of May Third Party Certificates Redeemed	\$4,403,149	\$22,086,681	\$15,250,190	Not Applicable (Note 5)	Not Applicable (Note 5)	Not Applicable (Note 5)
C. Percentage of all May Third Party Certificates Redeemed	23%	86%	89%	Not Applicable (Note 5)	Not Applicable (Note 5)	Not Applicable (Note 5)
D. Dollar amount of taxes in Third Party Certificate Redemptions						
E. Dollar amount of interest and penalties in Third Party Certificate Redemptions		\$982,246	\$1,495,893	\$1,536,283	\$1,781,606	
F. Dollar amount of Other Charges in Third Party Certificate Redemptions						
G. Number of MCC Certificates Redeemed	115	413	240	Not Applicable (Note 5)	Not Applicable (Note 5)	Not Applicable (Note 5)
H. Dollar Amount of MCC Certificates Redeemed	\$431,482	\$6,894,459	\$446,240	Not Applicable (Note 5)	Not Applicable (Note 5)	Not Applicable (Note 5)
I. Dollar amount of interest and penalties in MCC Certificate redemptions		\$71,520	\$110,432	\$437,843	\$384,762	
IX. Foreclosures						
A. Number of Foreclosures		5	158	288	242	176
B. Number of Foreclosures Recorded		4	131	273	236	174
C. Number of Vacant Properties Foreclosed		3	65	98	96	50
X. Civil Liability Recoveries						
A. Cases Filed		265	137	908	1449	2265
B. Total Dollar Recoveries on MCC Certificates		\$555,544	\$526,416	\$1,805,785	\$994,957	\$639,728
C. Total annual direct and indirect costs of civil liability enforcement actions						
Note: This summary does not account for high bid premiums.						
NOTES						
1	All basic data shown in this report is provided by Baltimore City, unless otherwise indicated. Calculations of averages, percentages, and differences are created based on the basic data.					
2	This data is provided by Baltimore City. The aggregate numbers differ slightly from the parallel data of Maryland Department of Assessments and Taxation, Report AIMS 1, but we elected to use Baltimore City data for internal consistency.					
3	Maryland Department of Assessments and Taxation, Annual Report, Table XI. This data is for the Fiscal Years.					
4	As used in this summary, "vacant" refers to properties with improvements, and does not include raw land without improvements. Data for years prior to 2016 was not available. It is not clear whether this number is limited to those properties formally certified by Housing & Community Development as "vacant" or is the larger set of all such properties in Baltimore.					
5	Because MCC Certificates for 2011, 2012, and 2013 were taken to a repeat sale, the "redemption" amount is blurred by the book entry for redemption by repeat sales.					
6	Properties summarized in this section are properties for which there are delinquent tax liens. There are included in the aggregate count of the FNLB, but are withdrawn and not included in the May Certificate Sale at the request of Housing & Community Development. HCD then conducts a single "bulk sale" of these liens in October.					
7	This data for 2016 Auction was provided by ProBonoMd. Prior years data was not available.					
8	The amounts reflected for "taxes" include only current year taxes and two prior years of delinquent taxes. Taxes attributable to three and more years of delinquency are included in "Other Liens". The amounts for "Other Liens" also includes water liens, miscellaneous bills, environmental citation charges, rental registration, alleys and footways paving, and other matters.					

APPENDIX B

SUMMARY OF KEY OBSERVATIONS

II. REDESIGNING THE PROPERTY TAX ENFORCEMENT SYSTEM⁹³

- 2.1. Consider the possibility of revising state law to specify appropriate periods of time prior to a final date for payment to prevent loss of the property.
- 2.2. Consider the possibility of revising state law to eliminate the two-step process of sale of certificates followed by post-sale foreclosure proceedings, and replace it with a single-step proceeding which, if the lien has not been paid, results in a sale of the property itself and no further post-sale redemption rights.
- 2.3. Consider the possibility of reducing or “writing down” the aggregate lien amount on MCC Certificates to an amount not greater than the fair market value of the property.
- 2.4. Consider amending state law to abolish the concept of the MCC Certificate and provide that all certificates, or properties, not sold at a public action be transferred to Baltimore City in fee simple.
- 2.5. Consider the possibility of amending state law to abolish the concept of certificate sales entirely and conducting a single sale event at which the successful bidder becomes the owner of the property and fully and legally responsible as of the moment of the sale for all attributes of property ownership.
- 2.6. Consider amending state law to provide for a single sale event, on a date certain, at which time the underlying property itself is sold and not simply a certificate or lien on the property.
- 2.7. Consider amending state law to provide that the final step in delinquent property tax enforcement is undertaken by Baltimore City in judicial proceedings rather than by a sale of certificates in which private third parties may or may not ever complete foreclosure proceedings and receive title by recorded deed.
- 2.8. Consider amending state law to provide that at the time of commencement of judicial *in rem* tax enforcement proceedings, notice is given to all interested parties as revealed by a comprehensive title examination, that notice is published, and is posted on the property.

⁹³ Please see Appendix C for sample draft legislation which is referenced throughout this section.

- 2.9. Consider amending state law to provide that any interested party may redeem the property at any point up to the moment of the sale at public action.
- 2.10. In the creation of a new judicial *in rem* property tax enforcement system, create differential time periods and supplemental support services to be provided to the vulnerable owner occupants of tax delinquent properties in a manner that both minimizes the forced sales of such properties and maximizes the payment of taxes that may be due.

III. INCREASING REVENUES AND REDUCING EXPENSES⁹⁴

- 3.1. The existing legal system transfers to private market investors between \$1 million and \$2 million each year. Consider amendments to state law to permit Baltimore City to retain the certificates on properties with high redemption probability and “service” this digest through city personnel or through a contract with a third party servicer.
- 3.2. Consider the possibility of amendments to state law to shift from a system based on the sale of high value tax certificates, followed by judicial foreclosure proceedings, to a single-step judicial tax enforcement system, with administrative policies pre-foreclosure to maximize collections of both base taxes and interest on delinquent taxes.
- 3.3. It is neither efficient nor effective to “recycle” the MCC Certificates in subsequent May Certificate Sales.
- 3.4. Baltimore City is incurring unnecessary costs and expenses in carrying, and recycling, MCC Certificates in subsequent May Certificate auctions.
- 3.5. A receivable that is not collectible should not be booked as a collectible receivable and should not be assigned any value.
- 3.6. The aggregate size of the delinquent tax digest of Baltimore City is overstated by continuing to count liens that are not collectible through any form of tax enforcement action.
- 3.7. From a financial management perspective, the “value” of a lien represented by a MCC Certificate should be reduced (or “written down”) at the time of transfer of the Certificate to an amount that is no greater than the fair market value of the underlying property.
- 3.8. The gross amount of all FBLN notices includes the gross amount of all existing liens on MCC Certificates, which are essentially uncollectible receivables to the extent that the lien exceeds fair market value of the underlying property.

⁹⁴ Please see Appendix C for sample draft legislation which is referenced throughout this section.

- 3.9. The effective collection rate by Baltimore City, as to all liens that have value and are otherwise collectible, is higher than appears from the published data, which includes the non-collectible MCC Certificate lien amounts.
- 3.10. Consider amendments to state law, which will permit, for all May Certificates transferred to Baltimore City, the City to initiate foreclosure proceedings on all of the underlying properties other than owner occupied properties.
- 3.11. Undertake a cost/benefit analysis of the total direct and indirect costs of personnel and transaction costs of Baltimore City related to civil liability actions in comparison to the actual financial recoveries.
- 3.12. Consider the possibility of reallocating existing legal resources away from pursuit of civil liability recovery and using the same legal resources to focus on acquisition of marketable and insurable title in Baltimore City of properties encumbered by MCC Certificates.
- 3.13. Consider the possibility of amending state law for the enforcement of delinquent property taxes from the current system of civil liability coupled with a two-step enforcement process to a new single-step judicial *in rem* foreclosure process through which liability is the liability of the property, and if the liability is not paid the property is sold to a new owner in compliance with due process.

IV. REDUCING VACANCY AND ABANDONMENT

- 4.1. Consider creating a more inclusive definition regarding vacant and abandoned properties that accounts for the existing inventory.
- 4.2. Consider creating a Vacant Property Data Task Force that includes members of Baltimore City and the Work Group to ensure that critical datasets from Baltimore City Finance, Housing, Code Enforcement, IT, Public Works, Environmental Control Board, Police and Fire, and Maryland Judiciary can be located in one database, have common property identifiers, and be spatially mapped. This data can then be used to truly understand the extent to which the current tax sale system may be contributing to additional vacancy and abandonment.
- 4.3. Holding MCC Certificates imposes maximum costs with minimum benefits. Maximum costs are incurred relative to direct public expenditures for maintenance and code enforcement yet without any of the benefits of ownership and control.
- 4.4. Holding MCC Certificates creates an ever-increasing pool of liens, both in terms of dollar amounts and in terms of numbers of parcels.

- 4.5. Holding MCC Certificates that equal or exceed the fair market value of the underlying property results functionally in completely unsecured claims, which have a low probability of financial recovery.
- 4.6. Properties encumbered by MCC Certificates that equal or exceed the fair market value of the underlying property are those properties which decline in value most rapidly, and which cause declines in neighboring property values most rapidly.
- 4.7. Consider the possibility of amending state law to eliminate the concept of MCC Certificates entirely, and provide, through judicial process, that legal ownership of all properties not sold at public action is transferred to Baltimore City. To the extent necessary and appropriate, consider the viability of creating a Baltimore City land bank to receive legal ownership of these properties.⁹⁵
- 4.8. Consider shifting the fundamental approach of the legal system such that if Baltimore City is going to own the problem that no existing owners will address, it should own the property itself.

V. PROTECTING VULNERABLE OWNER OCCUPANTS

- 5.1. Consider amending state law to replace the Homeowner Tax Credit with a blanket Tax Credit applicable to the first \$50,000 of assessed valuation and do not tie it to annual income or net worth.⁹⁶ This would eliminate the transactions costs and inefficiencies of annual applications and certifications. It would likely decrease the under-inclusiveness of protections for vulnerable owner occupants. It would increase the tax expenditure cost to the state and local government by its applicability to all vulnerable owner occupants regardless of income and net worth, but the marginal dollar impact on vulnerable owner occupants would be greater. A flat base exemption will cover a higher percentage of the typical property value of a vulnerable owner occupant's property value.
- 5.2. Consider increasing the base exemption for elderly and disabled. In the case of age exemptions, and possibly disability exemptions, this could be accomplished by a one-time application.
- 5.3. Consider providing for electronic data submission by Baltimore City to SDAT of all mortgage foreclosure deeds as a presumptive trigger for loss of the Homeowner Tax Credit and Homestead Tax Credit. This would address the inefficiency of over-inclusiveness of claimed exemptions.

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⁹⁶ This suggested dollar amount is purely illustrative. The optimum dollar amount would be determined by examining the assessed valuations of vulnerable owner occupants – the low income Owner Occupied properties.

- 5.4. Consider the possibility of excluding from the May Certificate Sale all certificates on owner occupied properties. These certificates appear to have the highest rates of redemption, and correspondingly yield the highest rates of return (at 18% per annum plus costs). In lieu of selling certificates on owner occupied properties, engage a third party servicer to work with vulnerable owner occupants on redemption and repayment plans. Such a servicing arrangement, instead of a sale to a third party investor, would permit Baltimore City to target repayment plans in a manner that protects the vulnerable population. The incentives and concerns of third-party investors are different from the incentives and concerns of Baltimore City. Third-party investors have as the dominant incentive maximizing return on the base financial investment. Baltimore City has as its dominant concerns receiving payment of taxes while protecting vulnerable populations.
- 5.5. Consider the possibility of amending state law to provide specific statutory protections to vulnerable owner occupants, or to all owner occupied properties. This could be done by increasing notices to such owners, providing longer time frames for repayment of delinquent taxes, and targeting such owners with direct legal services or consumer financial literacy support.

APPENDIX C

Draft Maryland Judicial *In Rem* Property Tax Enforcement Legislation (Draft 9/27/16)

The legislation in this Appendix C has been prepared as a result of and as part of the research, analysis, observations, and conclusions of the ASSESSMENT OF BALTIMORE CITY'S TAX SALE SYSTEM: IMPACTS ON CITY FINANCES, VACANT PROPERTIES, AND VULNERABLE POPULATIONS (Center for Community Progress, October, 2016), the full text of which is available at www.communityprogress.net.

This legislation is in draft form only and is intended to provide the basic form and structure of a new system for property tax enforcement in Maryland, and in Baltimore City. The basic approach of this draft legislation is the addition to existing Maryland law of a new statutory section to be part of the existing statutes on collection of property taxes. This new statutory section is permissive enabling legislation. No county, municipality, or Baltimore City would be required to use its provisions. All existing laws and procedures would continue to be available to all jurisdictions that wish to continue current practices. As enabling legislation this new statute requires formal affirmative action by a local government to use these procedures. In the adoption of an ordinance authorizing use of these new procedures the local government can and must address certain matters specified in this new legislation.

This draft legislation is not complete in its present form as key policy decisions still need to be addressed by local policymakers and stakeholders. These decisions points are identified in italics in this draft legislation.

Maryland Code Ann. Tax-Property
Title 14: Procedure
Subtitle 8: Collection
Part V: Judicial In Rem Tax Foreclosure

§ 14-881. Scope

The provisions of this Part are intended to be supplemental to all other provisions of law and to enable counties, municipalities and Baltimore City to adopt in their discretion the provisions of this Part to be applicable to the collection of delinquent taxes as to real property located within their geographical jurisdictions.

§ 14-882. Definitions

As used in this Part, the following words and phrases shall have the following definitions. To the extent not defined in this section any and all words and phrases shall have the definitions applicable to this Title.

(a) “Interested Party” shall mean:

- (1) The person who last appears as owner of the real property on the collector’s tax roll;
- (2) The current mortgage(s) of the property or assignee of the mortgage of record
- (3) The current holder of a beneficial interest in a deed of trust recorded against the real property; and
- (4) Any party having an interest in the real property whose identity and addresses are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse by the clerk of the court or as revealed by a full title search, consisting of 50 years or more.

(b) “Local Government” shall mean any county, any municipality or Baltimore City.

(c) “Redemption Amount” shall mean the full amount of the delinquent real property taxes, accrued interest at the rate specified in the Code of Maryland Annotated Section 14-601, penalties in accordance with Code of Maryland Annotated Section 14-702, and costs incurred by the Local Government in collecting such taxes including without limitations the cost of title examination and publication of notices.

(d) “Owner Occupied” shall mean.....

[This is a critical policy decision that needs to be resolved. This draft legislation is structured on the premise that there is a category of residents and property owners which deserves and needs additional support and protections in the strict enforcement of this judicial in rem property tax enforcement system. For purposes of clarity and simplicity this draft uses “Owner Occupied” as the definitional category. This legislation contemplates that additional notices, time frames, and support services must be provided to “Owner Occupied” properties as part of the enforcement proceedings.

Alternative definitions of “Owner Occupied” might include and are certainly not limited to: (i) properties which have the Homestead Tax Credit; (ii) properties which have the Homeowner’s Tax Credit, (iii) properties that are eligible for, but have not received, the Homestead Tax Credit or the Homeowner’s Tax Credit, or (iv) properties that are occupied by the family of a deceased owner.

It is also plausible that the determination of the appropriate definition of “Owner Occupied” could be left to the decision of the Local Government electing to adopt these enforcement procedures.

Whatever definition is determined for purposes of this legislation, all existing internal references to “Owner Occupied” should be examined for purposes of internal consistency and policy ramifications.]

(e) “Tax Collector” shall mean the entity in the Local Government responsible for the collection of the taxes.

(f) “Taxes” shall mean

[A significant policy decision needs to be made about the core definition of “taxes” for purposes of these judicial in rem foreclosure proceedings. Md. Code Ann. Section 14-801 defines tax to include any tax or charge of any kind due the state or Local Government that is a lien against the real property, including interest, penalties, and service charges.]

§ 14-883. Nature of Rights and Remedies

(a) Any Local Government within the State of Maryland may proceed with judicial in rem tax foreclosures for delinquent real property taxes in accordance with the provisions of this Part by enactment of an ordinance or resolution of the governing authority of the Local Government in which the real property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this Part by a Local Government as to its taxes.

(b) The ordinance of a Local Government authorizing and approving the use of this Part shall include the following matters:

- (1) The initial effective date for application of these procedures;
- (2) If the Local Government elects not to apply these procedures to all real properties as of the same future date, then the phase-in of these procedures over a period of time and the manner of determination of which real properties are subject in which sequence to these procedures;
- (3) *[The definition of “Owner Occupied” for purposes of this Part to the extent that this Part authorizes Local Governments to create its own definition of “Owner Occupied”];*
- (4) The extended time frame, if any, applicable to Owner Occupied properties prior to the filing of a petition for judicial in rem foreclosure;
- (5) The nature and extent of supplemental notices, support services, and referrals to be provided to the owners and occupants of Owner-Occupied properties;
- (6) Such other matters of the ordinance of the Local Government specifies to be addressed through administrative regulations and policies.
- (7) The provisions of the Local Government ordinance, and administrative regulations and policies issued pursuant thereto, shall not derogate from or be in conflict with Section § 14-885 to 14-888 of this Part.

(c) Proceedings in accordance with this Part are designed solely to enforce the lien for real property subject to such taxation and shall not constitute an action for personal liability for such taxes of the owner or owners of such real property.

- (d) The rights and remedies set forth in this Part are available solely to the governmental entities authorized by law to collect real property taxes and shall not extend to any nongovernmental transferee of tax certificates.
- (e) The judicial in rem proceedings of this Part shall be the sole remedy available, to any Local Government having adopted this chapter, for the sale of real property to enforce delinquent taxes.
- (f) Nothing in this Part shall be construed to limit the ability of any Local Government having adopted this Part to pursue separate and independent personal liability for the delinquent taxes.
- (g) The enforcement proceedings authorized by this Part may be initiated by a Local Government, by a Local Government acting on behalf of the another Local Government other pursuant to an intergovernmental agreement, or by joint action pursuant to an intergovernmental agreement in a single proceeding.

§ 14-884. Filing Petition for foreclosure; form of petition; notice

- (a) After a real property tax lien has become payable and is past due and thereby delinquent, the Tax Collector may identify those properties on which to commence a judicial in rem foreclosure in accordance with this Part. The Tax Collector shall not commence a judicial in rem foreclosure in accordance with this Part for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this Part, the enforcement proceedings may be amended to include any and all taxes which become delinquent subsequent to the date of the initial real property tax lien that was the original basis for the enforcement proceedings.
- (b) At least 60 days prior to filing the petition, the Tax Collector shall notify all other taxing agencies within the jurisdiction of the Local Government in which the collector is elected or appointed, except the State, of the Tax Collector's intention to file a petition for judicial in rem foreclosure of the lien on real property on which taxes are in arrears. Each taxing agency shall, on or before 30 days after receiving the notice from the collector, certify to the Tax Collector a statement of all taxes then due to it. All taxes certified to the Tax Collector shall be included in the judicial in rem foreclosure proceeding. Any taxes not certified to the Tax Collector may not be included in the proceeding and shall not be a lien against the real property after the conclusion of the judicial in rem foreclosure proceedings.
- (c) The Tax Collector shall file a petition with the circuit court of the Local Government in which the real property is located, which petition shall have form and content substantially identical to that form as provided in subsection (i) of this section. When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such real property lying within the jurisdiction of the taxing authority of the petitioner.
- (d) The petition shall be filed against the real property for which taxes are delinquent and shall provide:
 - (1) The identity of the petitioner and the name and address of the Tax Collector;
 - (2) The real property address;
 - (3) A description of the real property;
 - (4) The tax identification number of the real property;
 - (5) The year or years for which the taxes are delinquent;

- (6) The principal amount of the delinquent taxes together with interest and penalties; and
 - (7) The names and addresses of parties to whom copies of the petition are to be sent in accordance with subsection (e) of this Part.
- (e) The petitioner shall mail copies of the petition by first class mail to all Interested Parties whose identity and address are reasonably ascertainable. Copies of the petition shall also be mailed by first-class mail to the real property address to the attention of the occupants of the property, if any, and shall be physically posted on the real property.
- (f) If the petitioner has reason to believe that the real property is Owner Occupied then the petitioner must mail copies of the petition to any other person or entity for support and counseling services as may be identified in the applicable Local Government ordinances or regulations for such notices.
- (g) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition to be filed in the appropriate lis pendens docket in the county in which the real property is located.
- (h) Within 30 days of the filing of the petition, the petitioner shall cause a notice of the filing of the petition to be published on two separate dates in the official organ of the county in which the property is located. Such notice shall specify:
- (1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;
 - (2) The real property address;
 - (3) A description of the real property;
 - (4) The tax identification number of the real property;
 - (5) The applicable period of tax delinquency;
 - (6) The principal amount of the delinquent taxes together with interest and penalties; and
 - (7) The date and place of the filing of the petition
- (i) The petition for judicial in rem foreclosure shall be in substantially the following form:

**IN THE CIRCUIT COURT FOR _____ COUNTY--
STATE OF MARYLAND—**

Petitioner:

Tax Collector)
Name, Address,)
Telephone Number)

v.

Case No: _____

Respondents:

_____, ACRES OF LAND LYING)
AND BEING IN _____,)
_____ COUNTY, MARYLAND)

_____))
_____))
(Address of Property)

And

_____))
Name and mailing address of Owner

PETITION FOR JUDICIAL IN REM TAX FORECLOSURE

COMES NOW (Petitioner) and petitions this Court for judicial in rem foreclosure in accordance with Md. Code Ann. § 14-884 by showing this Court as follows:

1.

_____ is the owner of certain real property located at _____ (the "Property") having a tax identification number of _____. (A legal description of the Property is attached hereto as Exhibit "A" and by this reference incorporated herein).

2.

The taxes assessed against the Property by City/County of _____ for the year(s) _____ in the amount of \$ _____ (amount includes principal amount of taxes owed and any accrued interest and penalties as of this date) have not been paid.

3.

Attached hereto as Exhibit "B" is a list of the names and addresses of Interested Parties also receiving a copy of this Petition by first class mail.

4.

Occupants of the respondent Property shall be served by mailing the petition by first-class mail to the attention of the occupants at the above-listed Property address.

5.

Based upon the information and belief of the Petitioner the Property [is] [is not] Owner Occupied property.

6.

The Petition has also been posted on the Property in accordance with Code Section 14-884(e) of the Code of Maryland Annotated.

7.

Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

WHEREFORE, Petitioner demands (1) a hearing in the Circuit Court of _____ County (the "Court") and (2) a judgment by the Court stating that (a) the taxes for the Property are delinquent and (b) that Notice has been given to all Interested Parties, and ordering that the Property may be sold at public outcry pursuant to Maryland Rules 14-300.

TAX COLLECTOR
CITY/COUNTY OF _____
By: _____
Its: _____

--NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES--

This Petition serves as notice to the Respondents and all Interested Parties that (1) each party is presumed to own or have a legal interest in the Property, (2) that foreclosure proceedings have been commenced because of the failure to pay the real property taxes cited above, and (3) foreclosure will result in the loss of ownership of the Property and all rights or interests of all Interested Parties.

To avoid loss of ownership or any interest in the Property, payment of the full amount of taxes, penalties, interest, and costs must be paid to the _____ office located at _____ by _____ date. Respondents and all Interested Parties are also reminded that each of you may wish to contact an attorney to protect your rights.

A Hearing on the above matter shall take place in the Circuit Court of _____ County no earlier than 30 days after the filing of this Petition. To determine the exact time and date of such hearing, please call Clerk of Circuit Court of _____ County.

This _____ day of _____, _____.

Deputy Clerk
Circuit Court of _____
County

EXHIBIT A
Description of the Property

Together with all rights, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

EXHIBIT B
Names and Addresses of Interested Parties

§ 14-885 Judicial Hearing

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing any Interested Party shall have the right to be heard and to contest the delinquency of the taxes, the adequacy of the proceedings and the classification of the property as Owner Occupied. If the circuit court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

- (1) Taxes are delinquent;
- (2) Proper notice has been given to all Interested Parties;
- (3) The property is either Owner Occupied or non-Owner Occupied

- (4) The property as described in the petition be sold in accordance with the provisions of this Part; and
 - (5) The sale shall become final and binding 60 days after the date of the sale in accordance with section 14-886 of this Part.
- (b) The order of the circuit court shall provide that the Property be sold free and clear of all liens, claims, and encumbrances other than:
- (1) Rights of redemption provided under federal law;
 - (2) Tax liens held by the State of Maryland which are not assessed and collected by the petitioner;
 - (3) Easements and rights of way of holders who are not Interested Parties under section 14-882(a) of this Part; and
 - (4) Benefits or burdens of any real covenants filed of record as of the date of filing of the petition
- (c) If the court makes a determination that the property is Owner Occupied then, to the extent that the Local Government has not complied with supplemental notices, supportive services and referrals that may be required by statute or by Local Government ordinances and regulations:
- (1) The court shall order that the sale of the property not occur no earlier than ____ months after the date of the order.
- [Note that this conceptual point directly relates to the decision to be made with respect to the most efficient and effective manner of protecting the category of "Owner Occupied" properties. As a general proposition the supplemental protections to be provided to Owner Occupied properties can and should occur in an extended period of time prior to the filing of the petition for foreclosure rather than after the judicial hearing and authorization for a sale.]*
- (2) During the period of time between the issuing of the order and the sale date, the owner may redeem the real property by paying the redemption amount.
- (d) If, upon production of evidence to the court by any party, it is determined by the court that any Interested Party died within the six-month period of time immediately preceding the filing of the petition, the court may postpone the hearing, for a period of up to six months.

§ 14-886. Redemption of property prior to sale by payment of redemption amount

- (a) At any point prior to the moment of the sale, any Interested Party may redeem the real property from the sale by payment of the Redemption Amount. Payment shall be made to the Petitioner. Following receipt of such payment, the Petitioner shall file for dismissal of the proceedings.
- (b) In the event of such payment by the owner of the real property, the proceedings shall be dismissed and the rights and interests of all Interested Parties shall remain unaffected.
- (c) In the event of such payment by any Interested Party other than the owner, the party accomplishing such payment shall possess a lien on the real property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such

lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the Petitioner as described in this Part.

§ 14-887 Foreclosure sale; right of redemption; form of tax deed

(a) Following the hearing and order of the circuit court in accordance with section 14-884 of this Part, a sale of the real property shall be advertised and conducted on the date, time, place, and manner as contemplated by Maryland Rules 14-300. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the circuit court.

[A narrow legal policy decision will need to be made as to whether the procedures contemplated by Maryland Rules 14-300 are the appropriate set of procedures for conducting these sales. Procedures applicable to sheriff's sales and mortgage foreclosure sales do not appear adequate or appropriate.]

(b) Except as otherwise authorized by law, the minimum bid price for the sale of the real property shall be the Redemption Amount. In the absence of any higher bid, the Local Government or its designee shall tender its own bid in an amount equal to the minimum bid price and thereby become the purchaser at the sale pursuant to Section 14-826 of the Maryland Code Tax-Property. A governing body, or its designee, may tender a credit bid and receive title to the property at the time of sale.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the real property to redeem the property from the sale upon payment into the circuit court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(1) Redemption by an owner in accordance with this subsection shall result in a dismissal of the proceedings. Immediately following such redemption by an owner, if the property was sold to a third party at the sale, the Petitioner shall refund to such purchaser the full amount paid by such purchaser at the sale;

(2) For purposes of redemption under this subsection, "owner" shall mean the owner of record of fee simple interest in the property as of the date of filing of the petition, together with such owner's successors-in-interest by death or operation of law. This right of redemption shall not otherwise be transferable; and

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60 day period following the date of the sale.

(d) If the property is not redeemed by the owner in accordance with section 14-887(c) of this Part, then within 90 days following the date of the sale, the Petitioner shall cause to be executed on behalf of the Petitioner and recorded in the appropriate public records for recordation of instruments of transfer of interests in real property a deed to the real property identified in the petition.

(e) Within 90 days following the date of the sale, the Petitioner shall file a report of the sale with the circuit court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

(f) In the event that the foreclosure sale price exceeds the minimum bid amount at the foreclosure sale, the Petitioner shall deposit into the registry of the circuit court the amount of such surplus. Such surplus shall be distributed by the circuit court to the Interested Parties, including the owner, as their interests appear and in the order of priority in which their interests exist.

(g) The form of the deed provided for in subsection (d) of this Code section shall be substantially as follows:

When recorded please return to:

Cross-reference:

Deed Book _____, Page

_____ County, Maryland Records

STATE OF MARYLAND
COUNTY OF _____

JUDICIAL IN REM TAX FORECLOSURE DEED

This indenture (the "Deed") made this _____ day of _____, _____, by and between _____, a _____ ("Grantor") and _____, a _____ ("Grantee").

--WITNESSETH--

WHEREAS, on the _____ day of _____, _____, during the legal hours of sale, Grantor did expose for sale at public outcry to the highest bidder for cash before the courthouse door in _____ County, Maryland, the Property (as hereinafter defined) at which sale Grantee was the highest and best bidder for the sum of \$_____ and the Property was then and there knocked off to Grantee for said sum. The sale was made by Grantor pursuant to and by virtue of the power and authority granted to it in that certain Order granted _____, _____, Case No. _____, Circuit Court of _____ County, Maryland (the "Order"). Said sale was made after advertising the time, place, and terms thereof in the _____, published in _____, Maryland, in the aforesaid county, and being the publication in which Tax Collector's advertisements for said county are now published, once a week for four consecutive weeks prior to said sale on the _____, _____, _____, and _____ of _____, _____, and said advertisement in all respects complied with the requirements of Code Section _____ of the Code of Maryland Annotated. Notice of the time, place, and terms of the sale of the Property was given pursuant to Code Section _____ of the Code of Maryland Annotated. Said sale was made for the purpose of paying the real property taxes owed to _____, the interest and penalties on said indebtedness, the expenses of the sale including attorneys' fees, all of which were mature and payable because of failure of the owner to pay the real property taxes owed.

NOW, THEREFORE, Grantor, acting under and by virtue of the Order and pursuant to Code Section _____ of the Code of Maryland Annotated, for and in consideration of the facts hereinbefore recited, has bargained, sold, and conveyed and does hereby bargain, sell, and convey unto Grantee, its successors and assigns, the following described property (herein referred to as the "Property"); to wit:

All that tract or parcel of land lying and being in Land Lot _____ of the _____ District, _____ County, Maryland, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

This Deed is given subject to all restrictions and easements, if any, to which the Deed is junior and inferior in terms of priority.

TO HAVE AND TO HOLD, the Property unto Grantee, its successors and assigns in fee simple.

IN WITNESS WHEREOF, Grantor, has caused its duly authorized officer to sign and seal this Deed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public
Commission Data:

[Notarial Seal]

EXHIBIT

Description of the Property

Together with all right, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

APPENDIX D

PARTICIPANTS IN VARIOUS SITE ASSESSMENT MEETINGS

[The identification of the following individuals is solely to indicate their attendance at one or more meetings with the authors of this report, and neither suggests nor implies their agreement with any of the information, analysis, observations, or conclusions contained in this report.]

1. Henry Raymond, Director, Baltimore City Finance
2. Dan Ellis, Executive Director, Neighborhood Housing Services of Baltimore
3. Ed Scrivener, Bureau of Revenue Collections, Baltimore City Finance
4. Mary Keenan, Baltimore City Laww
5. Jason Goldberg, Baltimore City Law
6. Julie Day, Land Resources, Baltimore Housing
7. Joe Kershner, Land Resources, Baltimore Housing
8. Brian Kilgore, Land Resources, Baltimore Housing
9. Jason Hessler, Code Enforcement, Baltimore Housing
10. Evan Helfrich, Code Enforcement, Baltimore Housing
11. Marcia Collins, Department of Public Works
12. Maria DeChellis, Department of Public Works
13. Kristyn Oldendorf , Department of Public Works
14. Rebecca Woods, Environmental Control Board
15. Members of the Tax Sale Work Group Members (consortium of nonprofit leaders, Baltimore City government officials, State representatives, and foundation executives)
16. Various third-party investors and representatives involved with Baltimore City's annual tax sale



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