

# Preserving Homeownership Series, Part 1: Property Tax Lien Foreclosures

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**September 28, 2022**

# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLR

The National Center on Law and Elder Rights (NCLR) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLR provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLR through a contract with the Administration for Community Living's Administration on Aging.

# About NCLC

The National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness service; and training and advice for advocates.

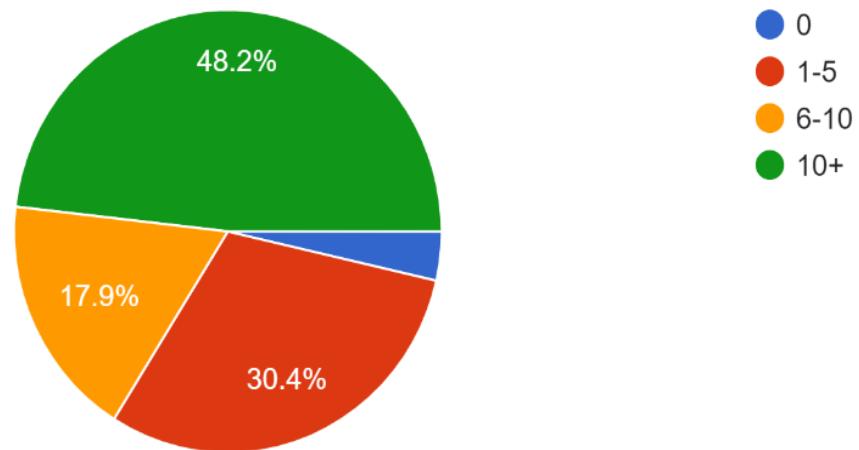
# Preserving Homeownership Series

- Property Tax Lien Foreclosure
- Tangled Title
- Medicaid Estate Recovery

# Survey of Advocates #1

5. In the past 5 years, approximately how many older (55+) homeowners have you worked with who were at risk for losing their home?

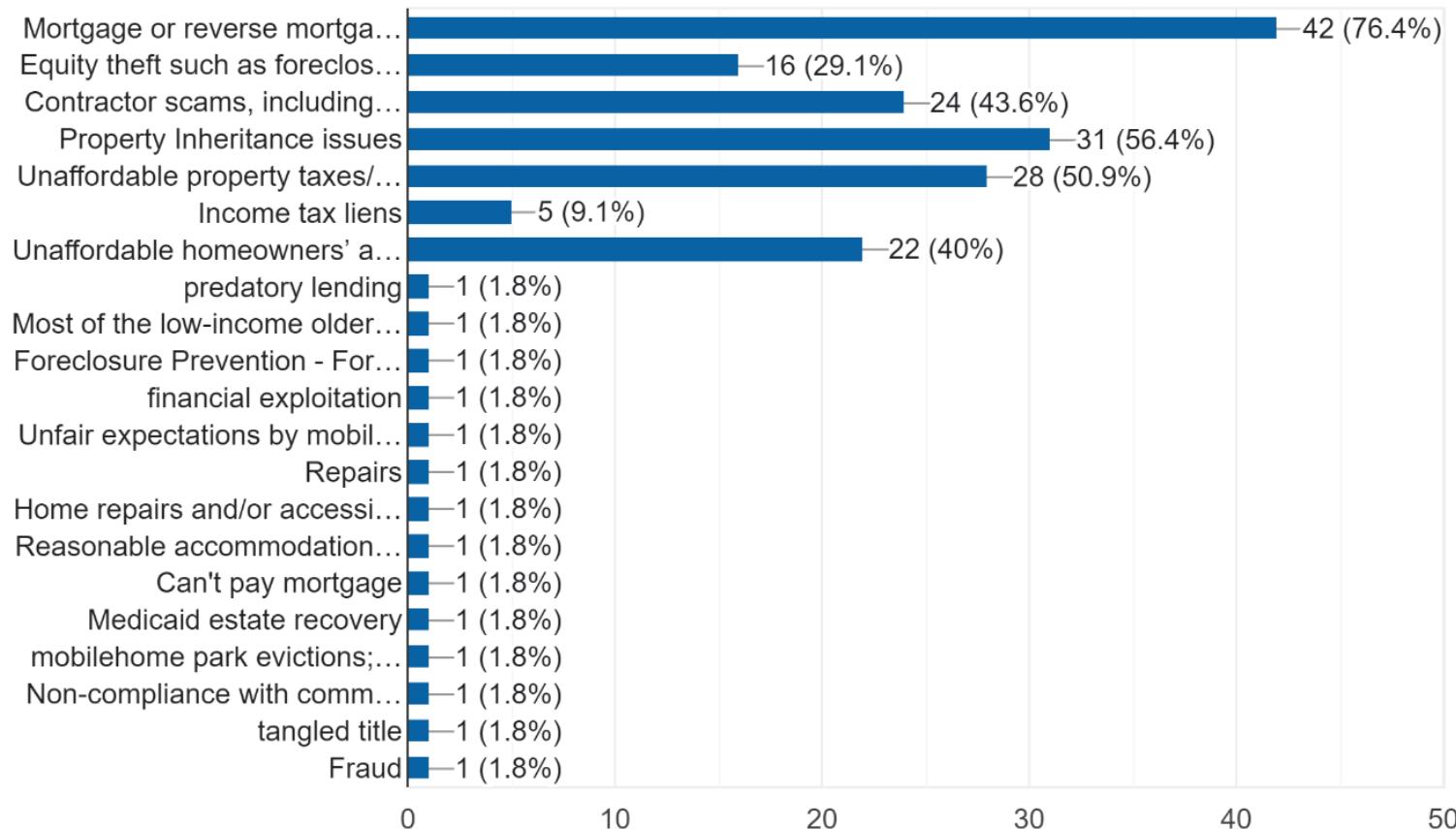
56 responses



# Survey of Advocates #2

4. Have you worked with older (55+) homeowners who face potential loss of their home due to any of the following issues (please check all that apply)

55 responses



# Legacy of Housing Discrimination

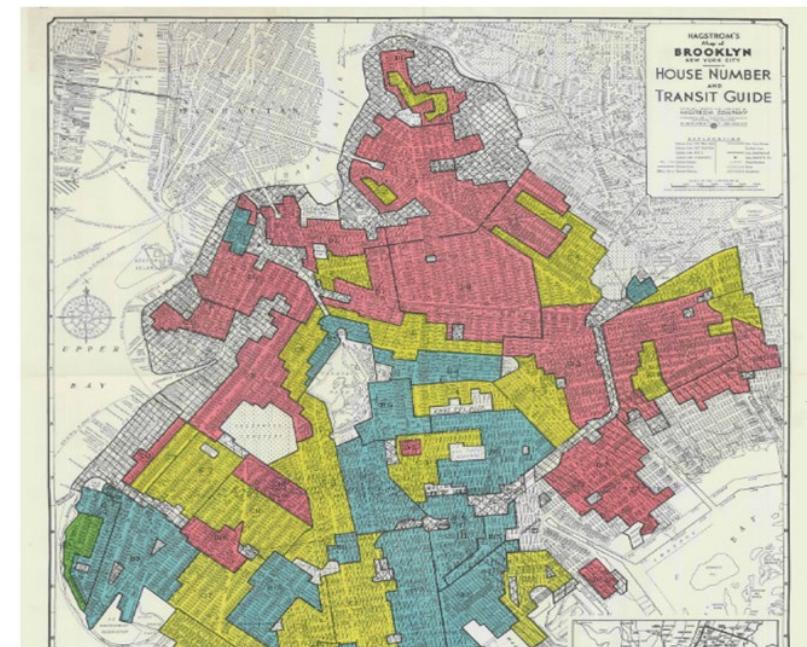
- Laws and policies that segregated public & private housing
  - Redlining
  - Financing
  - Exclusionary zoning
- Age 65-74  
Homeownership Rate—  
84% white & 58% Black

The New York Times

TheUpshot

SELF-FULFILLING PROPHECIES

*How Redlining's Racist Effects Lasted for Decades*

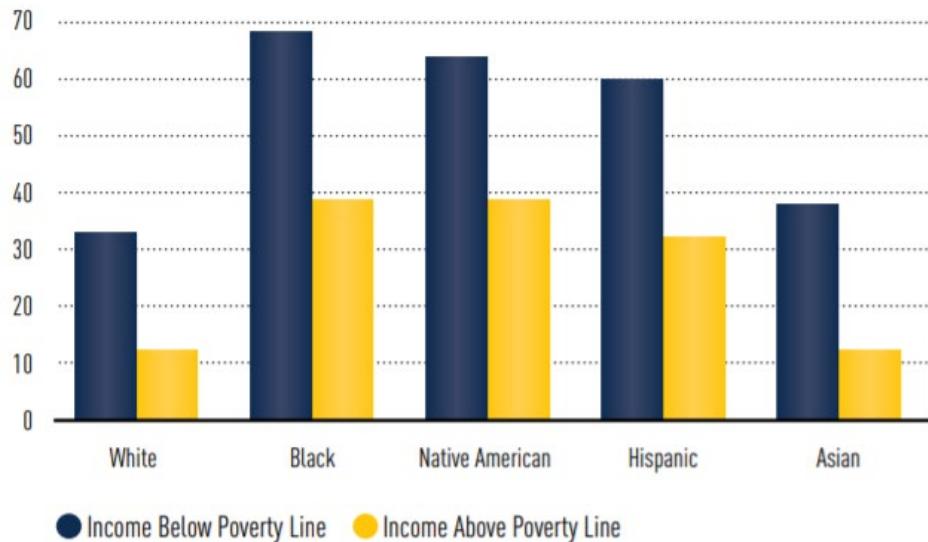


# Residential Segregation

- According to the 2020 State of the Nation's Housing report, Joint Center for Housing Studies, Harvard
- Nearly two-thirds of poor Black, Latino and Indigenous people live in high poverty neighborhoods, twice the rate of white people living in poverty

## People of Color Are More Concentrated in High-Poverty Neighborhoods than White People with Similar Incomes

Share of Population Living in Census Tracts with 20% or Higher Poverty (Percent)



Notes: Incomes above or below the poverty line are defined by the official measure of poverty established by the Office of Management and Budget (OMB). Only white individuals are non-Hispanic. Since Hispanic individuals may be of any race, there is some overlap with other racial categories.  
Source: JCHS tabulations of US Census Bureau, 2018 American Community Survey 5-Year Estimates.

# Property Taxes: Poll Question #1

- In the past five years have you assisted older (55+) homeowners with unaffordable property taxes or tax liens?
  - a) Yes
  - b) No

# Property Taxes: Poll Question #2

- Have you assisted older (55+) homeowners with a delinquent property tax who had not applied for an exemption, abatement, or other assistance?
  - a) Yes
  - b) No

# Advocate Survey: Property Tax Foreclosure

- What are the main hurdles for older adults facing unaffordable taxes or tax liens?
  - High taxes, death of a spouse, increase in expenses
  - Insufficient exemptions, inadequate repayment plans or other relief options for low-income seniors
  - Addition of interest and penalties to account for late payment
  - Dementia/ cognitive impairment/ difficulty remembering to apply for property tax relief programs
  - Lack of technology or difficulty applying for property tax relief programs

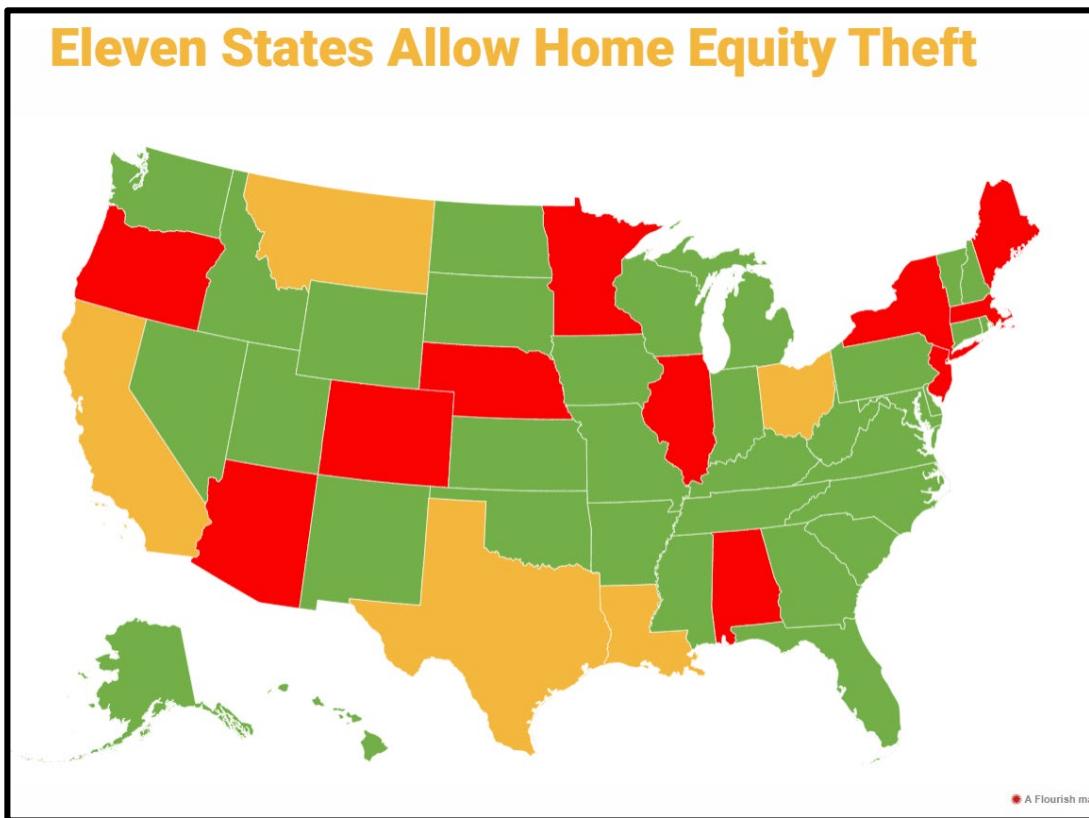
# Quick Overview of Property Tax Foreclosures

- Every state has specific laws about property tax assessments & what happens if those property taxes aren't paid.
  - The penalties and process of property tax foreclosure vary from state to state.
- Similarly, state and local relief options may be available. Good idea to contact local taxing authority and non-profits often & find out if new programs exist.
  - State Homeowner Assistance Funds (HAF) program may cover property tax arrears! Check with state housing agency to see if program is still open.

# General Questions & What to Look For

- Did the person get a notice about unpaid taxes?
  - A letter, court papers, eviction notice, something else?
- Do they own the property/are they on the deed? If not, who is?
- When is the last time the person paid their property taxes?
- Do they know how much is owed on the taxes?
- Do they have the money available to pay the taxes, or family members who can help?
- What is their goal for the house? Save/sell/something else?

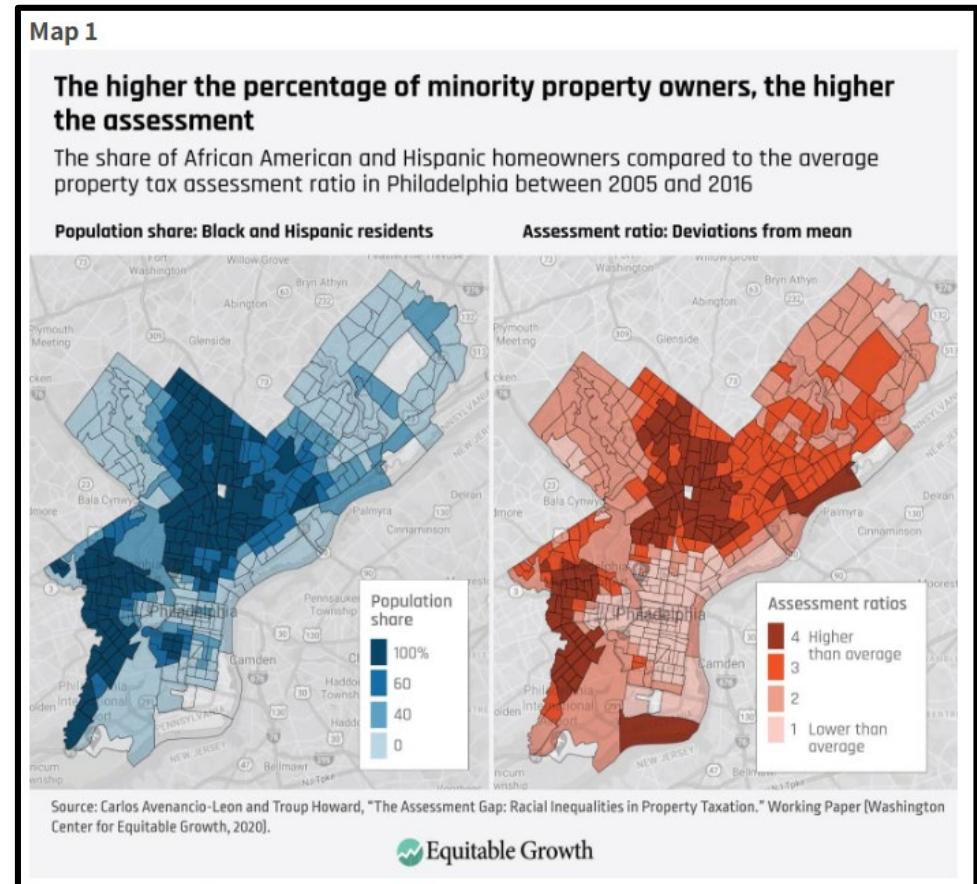
# Home Equity Theft Consequences



<https://pacificlegal.org/home-equity-theft/>

# Racial Impact of Property Tax Foreclosures (1 of 3)

- Article: [Misvaluations in local property tax assessments cause the tax burden to fall more heavily on Black, Latinx homeowners](#)



# Racial Impact



Have Tax Assessment Raised \$3000, But Commission Lowers It Again  
THREATENING LETTERS AND WARNINGS SENT  
Police Give Cooperation By Tagging Car Property Parked

NEWARK, N.J. (UPI) — After an admission from Tax Assessor Henry Williams that white, of East Orange that an increase from \$7,000 to \$10,000 of an assessment on property of Mrs. Lucy Carter, 45 Washington terrace, that city, was the only one in the neighborhood, Colonel Isaac Shoenheit at the County Tax Board hearing put the assessment back at the lower figure.

"The homeowner told us yesterday I was threatening her right to live in Newark," said Shoenheit. "The only reason I did this is because the assessments are colored people. I would stand for the Ku Klux, because they are the ones that are not even bold to do it to force them."

Williams doesn't think there was any intent of disenfranchisement, as the property was assessed at \$10,000 by the county tax assessor for the property and not the city tax assessor.

Williams lowered the assessment to \$7,000, which he said would be before it for seven years, resulting in property tax savings of \$100 a year.

Williams said if the East Orange tax assessor had been involved, the State Tax Board would have the authority to overturn the tax bill.

State Officer Marjorie Dernhardt, Newark, who handles property tax assessments, said Williams' tax bill was presented in the right amount for the value and deposit.

John Van Dam, executive director of the Carter Center, said 30 black families in Newark were under threat of losing their homes because of property tax increases of \$2,000 to \$3,000.

Lucy Carter and her husband, John, 72, a real estate broker, produced the letter signed M. R. E. These are the initials of Newark. They are the only colored people in the neighborhood, according to the 1990 census.

Williams said 200 of the 300 people who live in a row house in a neighborhood called the Hillside, which sprung up in the 1970s, are not paid 20% of what they are asked to pay.

Williams said he is not afraid to stand up to Williams, that if the Carter's tax bill is not lowered, he will file a complaint with the state.

"We all think some night, in a dark room, there also was a warning to do this to the colored people."

The note was pasted on the front door of the Carter's home, which is a two-story, three-bedroom, 1,200-square-foot home.

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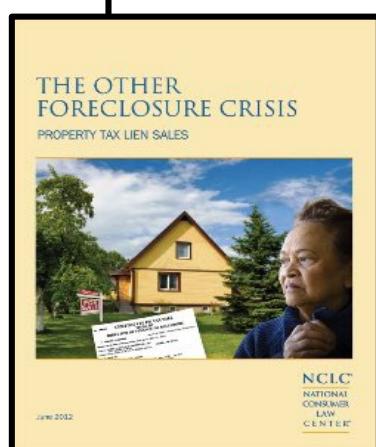
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Suburban Taxes Are Higher For Blacks, Analysis Shows.

By DIANA JEAN SCHEMO,  
Published: August 17, 1994.  
New York Times

Business • Analysis

## Black families pay significantly higher property taxes than white families, new analysis shows

Unfair property assessments lead to widespread overtaxation of black Americans' homes



"A black family who has been disenfranchised from these systems wouldn't challenge it," said Damali Vido, a member of the City Council for the Carter Center.

Van Dam

a.m. EDT



Black Homeowners Pay More Than 'Fair Share' in Property Taxes  
STATELINE ARTICLE June 25, 2020 By: Teresa Wiltz

# Tax Reveal is About 'Justice'

- Jersey City Together tells city council tax reveal is about 'justice'
- April 14, 2016 - [Jersey City, News](#) - Written by [Jeannette Josue](#)
- Members of activist group Jersey City Together told the city council a tax reveal is about "justice" and "fairness" for many families and residents at last night's meeting.
- "One house is worth half a million dollars, probably more today, the other house worth \$175 000, right now both of these houses are paying the same taxes of \$6,733.80 per year," said Rev. William Sweeting.

Dorothy Brown, an Emory University law professor who researches systemic racism in tax policy and was not involved in this study, sees the same pervasive effect. "The structure of the property tax system operates to disadvantage black Americans," she said. "That's how structural racism is. It's built into the system. The property tax system itself discriminates against black Americans."

Inequities in tax assessment are among many factors weighing on black homeownership rates nationwide. Facing the accumulated disadvantages of centuries of repression and systemic racism, black Americans are likely to earn less than similar white workers in lower-paying service jobs, a dynamic that makes it more difficult to buy a home. Now, by hitting those jobs first and hardest, the [coronavirus](#) pandemic has made a bad situation worse. One in five black households have [reported](#) missing a mortgage payment since mid-March, compared with about 1 in 20 white ones.

"During the Jim Crow era, local white officials routinely manipulated property tax assessments to overburden and punish black populations and as a hidden tax break to landowning white gentry," said University of Virginia historian Andrew Kahrl.

Many county assessors intentionally overvalued black properties, sometimes in direct retaliation for black political action. Kahrl, whose has long researched the history of property tax discrimination against black Americans, has [found](#) white officials going to extreme lengths to hike black taxes. In one such case in 1932, a black North Carolina resident was taxed for the value of two stray dogs that had been seen on her property.



As early as 1901, W.E.B. Du Bois showed that because of their unequal tax burden, black people paid more in taxes than they received in public education funds, Kahrl noted. Du Bois worked to counter the racist narrative of white people as "makers" and black people as "takers."

# Racial Impact of Property Tax Foreclosures (2 of 3)

- Loss of homeownership & home equity for historically disadvantaged groups—majority of whom were denied access to homeownership until the 1960s.
- Loss of generational wealth.
- Loss of community stability.
  - Tax investors may renovate and “price out” the former residents in home sale prices. This quickly erases the ethnic and racial history of a neighborhood.
  - Investors may hold ownership of properties & offer rental rates that “price out” prior residents from staying in the community as tenants.

# Racial Impact of Property Tax Foreclosures (3 of 3)

- Loss of diversity in neighborhoods
- Loss of affordable housing (homeownership and rentals)
- Acceleration of gentrification

# Legal Defenses/Practice Tips

- Review and speak with attorneys in your state to understand legal defenses.
  - Proper procedures followed at the tax sale
  - Proper parties, notice, & compliance with requirements
  - Lawful calculation of fees and costs by lienholder
  - Tax lien already paid
  - Fraud
  - Enjoining sale
  - Bankruptcy



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Department of Justice  
Office of Public Affairs

FOR IMMEDIATE RELEASE   Wednesday, December 19, 2012

New Jersey Company Pleads Guilty for Role in Bid-Rigging Scheme at Municipal Tax Lien Auctions

Investigation Has Yielded 11 Guilty Pleas

# Bankruptcy Strategies

- Chapter 13 bankruptcy repayment plan: homeowner can repay property tax arrears over 60 months. Confirm the deadline for bankruptcy filing under state law.
- Challenging the property tax foreclosure
  - Argument under 11 USC § 548(a) of the Bankruptcy Code that a transfer may be avoided if the debtor received less than a reasonably equivalent value for the transfer at a time when the debtor was insolvent.
  - Argument under 11 USC § 547(b) to avoid transfer as a “preferential treatment” to a creditor.
- Be sure to review relevant District & Circuit guidance and interpretation.

# Other Options – Big Picture

- Community advocacy
- State or municipal senior, disabled, or Low-Income tax freeze/tax reduction programs
- If there is a mortgage on the property, the bank might advance funds to pay the property taxes—homeowner will probably have to repay the money
- Depending on available funds from family or friends, or if client's financial situation improves –
  - Lump sum lien redemption
  - Loan or mortgage to pay off the lien—family investment
  - Reverse mortgage for eligible senior citizens

# Advocacy Example – Philadelphia, PA

**Need help paying your property taxes in Philadelphia? Consider a Current Year Installment Plan! (Video)**

This video from Community Legal Services of Philadelphia provides information on a program from the City of Philadelphia that lets you pay your annual property tax bill in affordable monthly payments, and any interest or penalties on the taxes will be forgiven by the City if you complete your payment plan on time.

[Apply here!](https://www.phila.gov/services/payments-assistance-taxes/payment-plans/real-estate-tax-installment-plan) | <https://www.phila.gov/services/payments-assistance-taxes/payment-plans/real-estate-tax-installment-plan>

If you are a low-income Philadelphian who needs legal help with your property taxes, visit [www.clsphila.org/taxes](http://www.clsphila.org/taxes).



**Popular Resources**

- Pennsylvania Accepting Applications for Homeowner Assistance Fund
- Coronavirus (COVID-19) Info
- Hurricane Ida Information
- Eviction Help
- Divorce Law in Pennsylvania
- Get Help Paying for Rent and Utilities
- What Every Utility Customer Should Know
- Custody Proceedings - Representing Yourself
- Divorce Proceedings - Representing Yourself

**News from PALawHelp.org**

- Pennsylvania is Now Accepting Applications for the Homeowner Assistance Fund
- PA Marijuana Pardon Project Available until Sept. 30, 2022
- Application Deadline of Oct. 28 Set for Low Income Household Water Assistance Program
- Consumer Alert: What Pennsylvanians Need to Know about the New Debt Collection Regulation Set to Take Effect 11/30/21
- View All News Items

**News from Pennsylvania Legal Aid Network (PLAN)**

Get the latest news items of interest to the legal aid community and it's clients on PALegalAidNet. Sign up for the PLAN Newsletter.

The Current Year Installment Plan takes your yearly tax bill and divides it into equal monthly payments. This allows you to budget an affordable amount monthly instead of having to make a large lump sum once a year.

**Article: [Need help paying your property taxes in Philadelphia? Consider a Current Year Installment Plan!](#)**

**The Philadelphia Inquirer**

**RESIDENTIAL REAL ESTATE**

## Philly is giving \$7.6M to legal aid agencies to clear residents' tangled titles

Legal aid groups expect to help an additional 1,000-plus Philadelphia families to clear up muddled ownership of their properties.



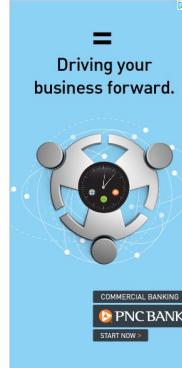
Philadelphia homeowner Robert Blanton, 73, describes how lawyers helped him become the legal owner of his property at a news conference in West Philadelphia on Wednesday.

**MICHAELLE BOND / Staff**

by Michaelle Bond  
Updated Sep 7, 2022

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**Article: [Philly is giving \\$7.6M to legal aid agencies to clear residents' tangled titles](#)**

# Advocacy Example – New Jersey

Home / Property Tax Relief Programs / Senior Freeze

## Senior Freeze (Property Tax Reimbursement)

The Senior Freeze Program reimburses eligible senior citizens and disabled persons for [property tax](#) or [mobile home park site fee](#) increases on their [principal residence](#) (main home). To qualify, you must meet all the [eligibility requirements](#) for each year from the [base year](#) through the application year.

All property tax relief program information provided here is based on current law and is subject to change.

### 2021 Senior Freeze Applications

You can still file for the 2021 Senior Freeze. The deadline for 2021 applications is October 31, 2022. See [How to File](#) for more information.

We have begun mailing 2021 Senior Freeze (Property Tax Reimbursement) checks to applicants who filed before May 1, 2022. We will mail checks to qualified applicants as follows:

Application filed:	Checks will be issued on or before:
Before May 1, 2022	July 15, 2022
May 1 - June 1, 2022	September 1, 2022
June 2 - September 1, 2022	November 1, 2022
September 2 - November 1, 2022	December 1, 2022

State of New Jersey Webpage: [Senior Freeze \(Property Tax Reimbursement\)](#)

Home / All Taxes / Property Tax Relief Programs

## Property Tax Relief Programs

**Attention ANCHOR Applicants**

**i** The deadline for filing your ANCHOR benefit application is December 30, 2022. We will begin paying ANCHOR benefits in the late Spring of 2023. ANCHOR payments will be paid in the form of a direct deposit or check, not as credits to property tax bills. We are currently mailing ANCHOR benefit information mailers to homeowners and tenants. Allow until the first week in October to receive your mailer. Homeowners who filed a homestead benefit application last year may be able to obtain their ID and PIN numbers online. Tenants do not need an ID or PIN number to file. Visit the Division's [ANCHOR](#) page for all filing information. Due to high call volume, the ANCHOR and Homestead Benefit Hotline may be unable to take your call at certain times. If that occurs, please try your call at another time. Our hours of operation are Monday through Friday from 8:30 a.m. to 5:30 p.m.

[General FAQs about ANCHOR](#)

Request for a Letter of Property Tax Relief Ineligibility – Out-of-State Residents

ANCHOR Program

Senior Freeze Program (Property Tax Reimbursement)

Homestead Benefit Program (Replaced by ANCHOR)

Deductions, Exemptions, and Abatements

State of New Jersey Webpage: [Property Tax Relief Programs](#)

# Policy Changes & Advocacy

- Procedural changes
  - Right of redemption
  - Right to surplus funds
  - Use of community land trusts
- Structural changes
  - Caps on assessing accrued value (physical additions and capital improvements can be assessed differently)
- Substantive changes
  - Repayment plans/installment agreements (including for heirs of decedent homeowners)
  - Exemptions/deferrals of tax

# Local NYC Policies

- Exemptions
  - Veterans (and spouses), disabled, senior homeowners (reduces property tax burden by 50%)
  - Income limits (adjusted for inflation, household size)
- Payment plans
  - Income-based (equity requirement)
  - Standard (multiple plans allowed with demonstration of hardship, protection for heirs)
- Emergency grants available through Department of Social Services
  - Previously only permitted for tenants

# NYC Advocacy

- **Mapping**
  - Plotting the homes lost to tax foreclosure and layering over the racial composition of the neighborhoods based on census data.
- **Community education**
  - Most people are unaware of the property tax policy and how it affects them and their neighbors. Awareness can lead to grassroots activism.
- **Relationships with elected officials**
  - Contact those officials whose districts are most affected by inequitable property tax policies and procedures.

# Constitutional Grounds for Challenging Tax Sales: Due Process

- Violation of Due Process (Notice)
  - Failure to provide adequate/proper notice to homeowner at each stage of the tax foreclosure process
  - Not actual notice, but notice reasonably calculated, under circumstances to inform interested parties
  - For *in rem* actions, first notice must be reasonably reliable, then “notice by publication”

# Constitutional Grounds for Challenging Tax Sales: Takings Clause

- Violation of 5th Amendment to U.S. Constitution (Takings clause)
  - “Private property [shall not] be taken for public use, without just compensation”
  - Where no adequate means to claim the surplus equity in foreclosed property, deprives owner of “just compensation”
  - Extends to state and local governments through the 14th amendment
  - Look at your state or local redemption process
    - How are foreclosed property owners apprised of this process?
    - Is there an adequate period of time and means to claim the surplus equity?

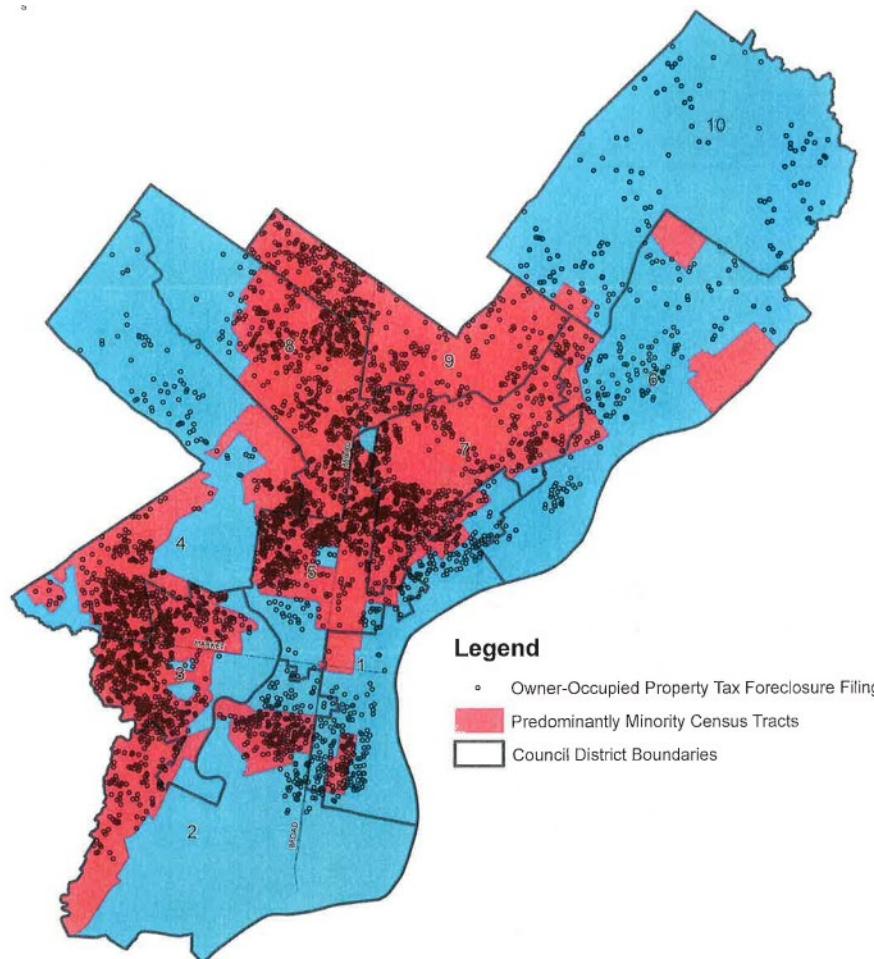
# Constitutional Challenges to Tax Sales: Equal Protection, Excessive Fines/Fees

- Equal Protection challenge if it can be shown that disparate impact on protected class is result of intentional discrimination.
- Eighth Amendment: Prohibits “excessive fines and fees”
  - Does the forfeiture of property far in excess of what’s needed to satisfy a delinquent tax debt plus interest, penalties, and costs, constitute an excessive fine within the meaning of the Eighth Amendment?

# Fair Housing Act Challenges

- Tax sale policies that lead to a *disparate impact* on racial minorities or other protected classes may violate the Fair Housing Act.
- FHA applies to tax lien policies that “make unavailable or deny, a dwelling because of race, color, religion, sex, familial status, or national origin.”
- Often proven with mapping showing how majority minority communities are disproportionately subject of tax lien foreclosures.

# Philadelphia Property Tax Foreclosure Filings



# NCLC Publications

- Credit Discrimination
- Consumer Credit Regulation
- Fair Debt Collection
- Consumer Bankruptcy Law and Practice
- Home Foreclosures

# Thank You!



# Visit Our Website: [ncler.acl.gov](http://ncler.acl.gov)

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Learn about upcoming trainings

**[ncler.acl.gov](http://ncler.acl.gov)**



# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).