Testimony of the Boston Bar Association
to the Joint Committee on Revenue
Regarding Legislation Relative to Property Tax Debt
July 23, 2021

The Boston Bar Association (BBA) -- a volunteer organization of 13,000 members drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools -- strongly urges the Legislature to address the need for reforms to Massachusetts laws regarding so-called tax-lien foreclosures.

We very much appreciate the opportunity to offer this written testimony in conjunction with the Revenue Committee's July 22, 2021, hearing on local bills -- in particular:

- H. 2993 (Madaro), An Act supporting residents and communities in resolving tax debt
- H. 2994 (Mahoney), An Act relative to the improvement in the process for collecting delinquent property taxes
- H. 3026 (Nguyen), An Act relative to providing better notices and protections in the process for collecting delinquent property taxes
- S. 1926 (Montigny): An Act protecting homeowners from unfair tax lien practices by cities and towns

Two other bills before the Committee -- but not on this hearing's agenda -- also address these issues:

- S. 1802 (Brady): An Act relative to providing better notices and protections in the process for collecting delinquent property taxes
- S. 1887 (Jehlen): An Act relative to providing better notices and protections in the process for collecting delinquent property taxes

The Boston Bar Association is concerned about existing Massachusetts laws regarding the enforcement of foreclosure on homeowners with outstanding tax arrears. Under current law, these “tax-lien foreclosures” can lead to outcomes in which a homeowner loses not only their real property but all of the equity they have built up—regardless of the amount of debt actually owed. Municipalities can sell the outstanding debt to third parties, who have an incentive to take advantage of that windfall provision but no incentive to consider the effect of foreclosure on the community as a whole.

Meanwhile, rising property values and property-tax rates often combine to make it difficult for homeowners to stay current on their tax bills—especially for those on low or fixed incomes, including the elderly, the disabled, or anyone who is house-rich and cash-poor. Some seniors may not be aware of the deferrals and abatements available to them by law, while others with cognitive disabilities or surviving spouses may have trouble understanding their obligations in the first place.

These problems are frequently compounded by inadequate notice of the possibility of being foreclosed upon. Regardless of the cause, once a homeowner falls behind, punishing statutory interest rates of 16% and late fees work to put a potential solution further out of reach. And even when homeowners seek an agreement to pay off their back taxes, they are faced with a statutory minimum initial payment of at least 25% of the debt, with additional requirements imposed by some municipalities. The law actually provides that debtors can potentially face arrest.

Tenants in housing that has been taken by tax foreclosure find themselves with little recourse – and often little warning, since they may not even be aware of the owners' non-payment of taxes, the foreclosure that results, or the change in ownership. Their first inkling of a problem may come in the form of an eviction notice. And unlike tenants after a mortgage foreclosure, they have no legal protections after tax foreclosures.

Incentives for municipalities holding property-tax debt, and for private third-party buyers of municipal tax liens, only exacerbate the problem for homeowners: The former can sell their tax liens to try to recoup the money they are owed. The latter can reap a windfall profit by foreclosing, evicting the former owner (or tenant) and re-selling. In some instances, the underlying equity to be gained may be great enough that a debt-buyer is willing to pay even more than the value of the debt—thus producing a profit for the municipality as well. And the homeowner loses not only a residence but all of the equity they may have spent decades building.

Legal-services providers have reported that tax foreclosures are on the rise, whether by municipalities or the private companies that buy tax liens from them. This can lead to homelessness and financial ruin, one family at a time, with a cascading destabilizing effect on vulnerable communities. The small number of third-party buyers responsible for the bulk of tax-debt purchases have been accused of unscrupulous practices in the course of pushing properties toward foreclosure.

The BBA recognizes that municipalities are entitled to collect all taxes due and believes they should have the tools to work out repayment agreements to help fairly achieve that result. We encourage municipalities to make use of the existing flexibility provided in G.L. c. 62A as part of this process. We remain concerned nevertheless about certain vulnerable homeowners, who may face their own particular challenges in confronting tax arrears—especially given the statutory default interest rate of 16%—and may be especially prone to misunderstanding the penalties and outcomes that may result. Finally, the BBA is concerned that current law does not adequately consider the impact on tenants who live in properties subject to tax-lien foreclosure proceedings.

Therefore, without taking a position on any of the aforementioned bills as a whole, the BBA concludes that any legislation to reform the way in which tax-lien foreclosures are handled should:

- Eliminate the windfall to private purchasers of tax titles upon foreclosure, as well as any incentive to pursue that option in place of a potentially workable repayment agreement.
- Allow municipalities to adopt repayment plans with more flexibility in repaying back taxes and allow for greater reduction in accrued interest, especially for low-income and elderly individuals who are house-rich but cash-poor.
- Provide for more-effective notices of tax deficiencies and foreclosures, including delivery to the local Council on Aging and more understandable language explaining what steps homeowners can take to address tax arrearages and what the consequences of non-payment may be, including foreclosure and loss of equity.
- Require a reasonable attempt to notify tenants whose property may be subject to tax foreclosure.
- Eliminate arrest as a possible consequence of tax delinquency.
- Require that third parties who purchase tax liens be licensed as debt collectors.

We thank you in advance for the Legislature's attention to this important issue, and we offer our assistance if we can be helpful in any way in fashioning an appropriate legislative remedy.