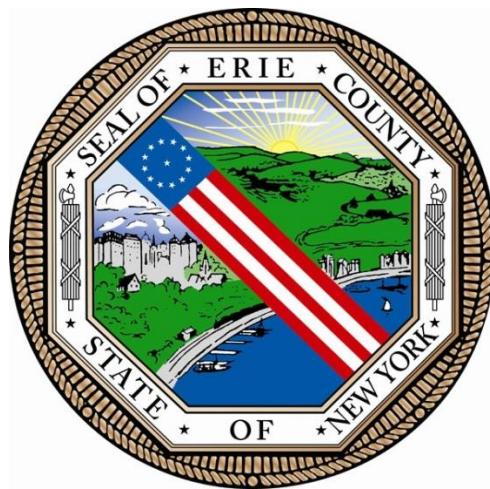


FEBRUARY 2019

**ERIE COUNTY REAL PROPERTY TAX SERVICES
AUDIT OF IN REM FORECLOSURE PROCEEDINGS
JANUARY 1, 2017 THROUGH DECEMBER 31, 2017**



**STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER**

**HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



April 24, 2018

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a compliance audit of the operating procedures and processes handled by the Erie County (County) Department of Real Property Tax Services (Real Property) with respect to in rem foreclosure proceedings for the period January 1, 2017 through December 31, 2017.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our objectives were to determine whether in rem foreclosure procedures comply with the Erie County Tax Act and New York State Real Property Tax Law; whether documentation and records are properly maintained and sufficiently support in rem foreclosure transactions; and whether adequate and effective internal controls exist relevant to the administration of in rem public auctions. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish these objectives, we selected and tested a sample of tax delinquent real properties with various foreclosure proceeding judgments to obtain reasonable assurance that they were in compliance with the Erie County Tax Act and the New York State Real Property Tax Law. Judgments due to delinquency, forbearance, redemption, severance, withdrawal, and stay in abeyance for active military service and bankruptcy were thoroughly examined. Our testing did not identify any weaknesses in Real Property's in rem foreclosure practices.

We did not evaluate the reliability and integrity of the in rem foreclosure transaction data obtained from the contracted law firm since this law firm is reviewed by external auditors as part of their annual audit of financial statements. While we reviewed the hard-copy documents obtained from this law firm, we do not express any opinion or conclusions about the reliability or accuracy of such records since we did not audit the internal controls of their system.

Management of Real Property is responsible for establishing and maintaining a system of internal control. The objectives of such a system are to provide management with reasonable, but not absolute, assurance that transactions are executed in accordance with management's authorization and are recorded properly. Because of inherent limitations in the system of internal control, errors or irregularities may nevertheless occur and not be detected.

In our opinion, for the audit scope period examined, Real Property's operating procedures and processes with respect to in rem foreclosure proceedings are adequately designed. Transactions were accurate, timely, and in compliance with applicable law and regulations set forth by the Erie County Tax Act and the New York State Real Property Tax Law.

No specific matters adversely affecting compliance with applicable laws, rules, and procedures came to our attention, except as disclosed in this report. Our audit was designed for the purpose previously described, and would not necessarily disclose all instances of non-compliance with respect to areas of operations not audited.

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BACKGROUND

Pursuant to the Erie County Tax Act and the New York State Real Property Tax Law, Real Property Tax Services' (Real Property) primary objectives are to ensure the fair and equitable spread of real property taxes across Erie County (County), maximize the collection of real property tax dollars, and assist the local assessment community in maintaining up to date real property tax maps and valuation data. To achieve its purpose, the responsibilities of Real Property are comprised of tax preparation and administration; tax mapping and title searching; and collection of the current County taxes in the City of Buffalo as well as the foreclosure (enforcement) of County-wide delinquent tax liens.

Tax preparation and administration warrants the timely, accurate, and efficient production of real property assessment rolls, tax rolls, and tax bills, while advising and assisting officers of local municipalities and school districts in understanding the complexities of the real property assessment and tax levy process. Tax mapping and title searching maintains and updates the tax maps used for assessment purposes for all municipal corporations. Tax mapping establishes, verifies, and maintains a network of geographic coordinates and legal markers for reference and updating of the Erie County Geographic Information System (GIS), while title searching interprets and sorts real property sales and title documents recorded by and received from the County Clerk's office. In 2017, there were 1,050 tax map revisions and roughly 25,000 transfers of real property.

Real Property is the custodian for the collection of real property taxes and the disposition of tax delinquent property. This service area monitors the collection and receipt of the current and delinquent property tax revenues, while working closely with the Erie County Comptroller's Office to ensure that municipalities properly collect and remit payments to the County. For the scope of this audit, approximately 97% of real property tax receivables were collected by the County related to nearly 371,000 tax account records.

AUDIT FINDINGS

I. ABSENCE OF POLICIES AND PROCEDURES

Real Property does not specifically address the subject matter of tax delinquent property foreclosure in any single repository of policies and procedures maintained by the County.

The County's in rem foreclosure auctions are governed by the Erie County Tax Act (Tax Act), and where the Tax Act is silent, the New York State Real Property Tax Act governs. Given the tenure of the Director of Real Property and strict abidance by the aforementioned acts, the department never created a formal set of policies and procedures. The complexity of the in rem process, as well as the County's relationship with the villages, towns, and cities, is one that needs to be carefully documented and understood. Clear and concise definitions and guidelines should be developed to ensure a smooth transition down the line of succession.

Real Property plans on developing and implementing policies and procedures over tax delinquent property foreclosures.

II. PROPERTY LEAN TO EQUALIZED VALUE PROCESS

Real Property does not specifically address the subject matter of property lean to equalized value process in any single repository of policies and procedures maintained by the County. The Director of Real Property, in conjunction with input from the contracted law firm, determines the priority of property selected to be offered at foreclosure auctions.

Real Property plans on developing and implementing policies and procedures over the property lean to equalized value process.

AUDIT COMMENTS

I. TAX DELINQUENT PROPERTY PER RESOLUTION

Approximately 1,500 property records for which the County owns a tax sale certificate and which has been due and unpaid for a period of at least two years were reviewed. This analysis aimed to ensure that Real Property took reasonable action to collect delinquent tax liens as pursuant to Article 11 of the Tax Act.

Our audit identified three (3) properties not initially documented per the original resolution transmitted to the County Legislature, but properly incorporated in all subsequent filings, including the certified “List of Delinquent Tax Liens” and approved “Judgment of Foreclosure and Sale.” The County successfully recovered the delinquent taxes owed by the three (3) properties on or before the public foreclosure auction on September 28, 2017.

When brought to the attention of Real Property, the department and the contracted law firm promptly acknowledged the oversight, remedied the error, and implemented steps to ensure this does not occur in the future.

II. CITY PROPERTY SOLD AT COUNTY AUCTION

In the event that a City of Buffalo (City) property is included in the County in rem proceeding, the City and County will work closely together in order to ensure that the City property is offered first at the County public auction, which always occurs before the City public auction, and that both the County and City taxes or assessments that have become liens are paid in an inverse order as directed by the “Judgment of Foreclosure and Sale” and the “Terms of Sale,” regardless of whether the City property is sold at the County or the City in rem auction.

Therefore, if a City property is offered and sold at the County public auction, the sale proceeds are used to pay any or all outstanding County and City taxes or assessments that have become liens in an inverse order, with the property removed from the City public auction. In the event that the sale proceeds result in a surplus, the funds are deposited with the Erie County Comptroller’s Office. Alternatively, if a City property is offered at the County public auction but is adjourned, the City will offer it for sale once again at the City public auction. If the City property is offered and sold at the

City public auction, sale proceeds and surplus funds are distributed and deposited in a similar fashion to the County.

Per the Erie County Tax Act, the aforementioned practices are widely accepted as the standard. However, no actual agreement between the City and County exists with respect to the distribution of sale proceeds and surplus funds for City properties sold at County auctions. Real Property is currently in the process of devising such a stipulation pursuant to the terms set forth by the “Judgment of Foreclosure and Sale” and the “Terms of Sale.”

RESULTS OF EXIT CONFERENCE

An exit conference was held on February 15, 2019 with the Director of Real Property, a member of the contracted law firm, and a representative from Budget and Management. The draft of the audit report was reviewed and included a discussion of both the Audit Findings as well as the Audit Comments. Based on the department’s written response to the audit, there was no objection to the content of the report and the auditee was in general agreement with the information it contained.

The Erie County Comptroller’s Office would like to thank the Director and staff of the Department of Real Property Tax Services for the courtesy and timely cooperation extended to us during the audit.

ERIE COUNTY COMPTROLLER’S OFFICE

Cc: Hon. Mark C. Poloncarz, County Executive
Joseph L. Maciejewski, Director of Real Property Tax Services
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority