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TAX DEBT AND AFFORDABLE HOUSING PRESERVATION:

AN ALTERNATIVE TO THE TAX LIEN SALE FOR MULTIFAMILY PROPERTIES

A Preservation Trust should be created to purchase the tax debt of distressed properties in order to encourage the preservation of affordable housing.

October 2016

Introduction

In 1996, the New York City Council passed Local Law 26, establishing the Tax Lien Sale as a way to address unpaid property taxes and distressed buildings, largely replacing the *in rem* foreclosure process that had been in place since 1978.[1] The legislation permits unpaid property taxes—later, water and sewer fees and emergency repair costs were authorized as well—to be sold to a "tax lien trust" that pays the City up front an average of 73 percent of the value of the liens, which the trust pays by issuing bonds to private investors. The trust employs a servicer which then endeavors to collect the value of the liens plus interest, and which has the ability to foreclose on the properties if the debt is not paid. After investors are repaid, any surplus revenue goes to the City.[2]

Certain properties are excluded from the Tax Lien Sale if they meet the statutory definition of distressed,[3] whereupon they either enter the Department of Housing Preservation and Development's (HPD's) Third Party Transfer (TPT) Program or enter into a period of HPD monitoring and oversight. For properties that enter TPT, the nonprofit organization Neighborhood Restore takes ownership of the building and works with developers to rehabilitate the building, preserve it as affordable housing, and eventually transfer ownership to a nonprofit developer or to the tenants themselves as a cooperative.[4]

For many property owners, the Tax Lien Sale—by tacking on an interest rate of 18 percent and creating the risk of foreclosure—serves as sufficient incentive to pay their debts, thereby generating reliable revenue for the City. However, as the Independent Budget Office (IBO) explains in a June 2014 report, a large portion of the properties that go through the annual Tax Lien Sale do so multiple times. For example, 43 percent of the 4,100 liens sold in 2012 were from properties that had already had liens sold at least once in the past for other debts.[5] The IBO found that while the vast majority of properties that have only one lien sold repay the debt in full, properties that have multiple liens sold followed the opposite pattern: the majority, 53 percent, made no payments at all on any of their liens, and only 28 percent paid their liens in full.[6]

Methodology

Beginning in December 2015, the Public Advocate's Office has held regular meetings with community organizers, lawyers, and nonprofit developers interested in reforming the City's approach to collecting tax debt on multifamily properties with the purpose of identifying reforms that could result in the rehabilitation of distressed properties and their preservation as affordable housing. Based on the IBO's findings in its 2014 report that the owners of properties that have been through Tax Lien Sales multiple times are less likely to repay their debt, we determined that these properties would be good candidates for a new City-sponsored preservation program. The Public Advocate's Office, the Mutual Housing Association of New York, the Urban Homesteading Assistance Board (UHAB), New York Communities for Change (NYCC), and Picture the Homeless,

Introduction, cont'd

studied a selection of those buildings by analyzing available data and by visiting those buildings and speaking to the tenants.

Looking at City records, we chose 22 buildings that contained six or more units and were part of the annual lien sale more than twice in the past four years for closer study. We collected data about their histories from the Department of Finance (DOF), HPD, the Department of Buildings (DOB), and the University Neighborhood Housing Program's Building Indicator Project (BIP). Finally, the Public Advocate's Office, UHAB, Picture the Homeless, and NYCC, visited each building to talk to tenants directly about their experiences in the buildings.

Executive Summary

Beginning with the premise that the City of New York should continue collecting the delinquent tax revenue that the existing Tax Lien Sales Program effectively incentivizes, this study focusses on those properties for which owners are less likely to pay when the threat of a Tax Lien Sale is looming. As was previously found by the IBO in a 2014 report, those are the properties that have their liens sold on the private market multiple times.[7] Twenty-two buildings were selected that had been through the tax lien sale multiple time in the last four years. The questions the report seeks to answer are:

- Are the buildings physically distressed?
- Were the debts discharged?
- Were tenants in these buildings harassed, thereby compromising rent stabilization and potentially eliminating units of affordable housing forever?

Based on our investigation, we determined that:

- The 22 buildings overall exhibited poor conditions that had worsened between 2010 and 2016;
- The properties had gone through the Tax Lien Sale an average of five times and very few debts were discharged ; and
- All of the buildings appear to meet the criteria for rent stabilization, but reports of harassment and high turnover were common and several were vacant, indicating a correlation between tax debt, distress, and a loss of affordable housing options.

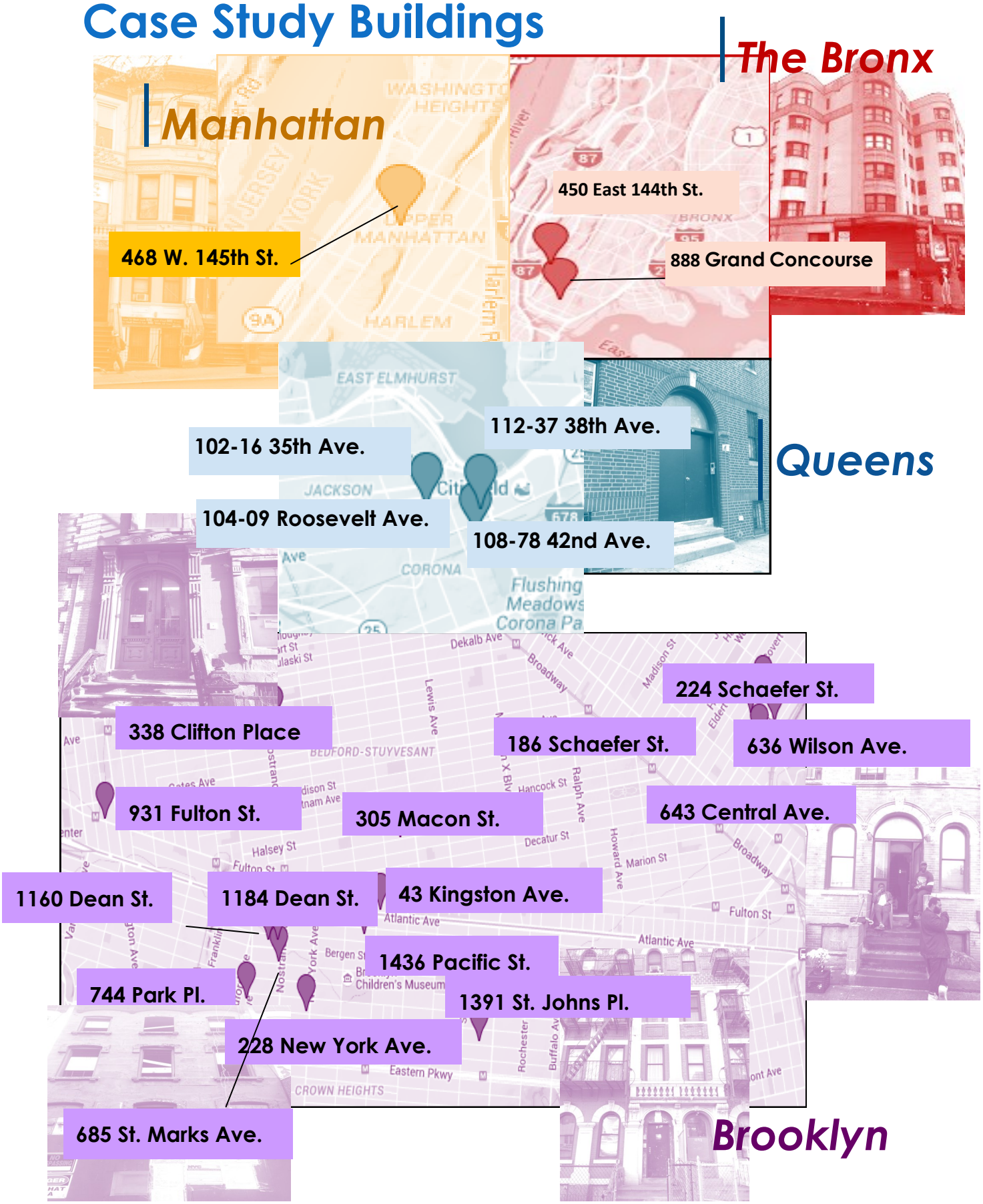
The existing Tax Lien Sale program, while generating income for the City, does not optimize the City's potential to leverage debt to encourage or require the rehabilitation and maintenance of affordable housing. Instead, existing policies result in further degradation of the City's most vulnerable housing stock and are incentivizing deregulation rather than preservation.

Executive Summary, cont'd

We therefore propose the following changes to the City's approach to tax debt collection in 2016:

- Create a "Preservation Trust" to purchase the liens of properties that meet the statutory definition of "distressed" but are presently not included in Third Party Transfer; and
- Expand the pool of properties available for preservation by expanding the statutory definition of "distressed," including any properties that go through Tax Lien Sale multiple times.

Case Study Buildings



Part I: Housing Conditions and Code Violations

1436 Pacific St., Brooklyn

The 22 buildings we studied were in a significant state of disrepair that had worsened over time. They had an average of 87 open Housing Maintenance Code (HMC) violations per building.[8] 1436 Pacific St. in Brooklyn, topped the list with 298 violations.

The buildings had an average of 72 HMC violations that were classified as hazardous or immediately hazardous. 468 West 145th St. in Manhattan had the highest number of violations per unit at 28.5. Across the case study buildings, the average number of violations per unit was 8.5. To put these numbers in context, buildings with 3 serious open violations per unit made the Public Advocate's Office worst landlord Watchlist in 2015. The case study buildings have an average of 6.4 serious violations per unit.

In addition to HMC violations, the buildings had an average of 13 DOB violations and 7 ECB violations. 888 Grand Concourse in the Bronx, had the highest number of DOB violations at 68 and the highest number of ECB violations at 79.

In aggregate, the 22 buildings had 1,915 HMC violations, 296 DOB violations, and 151 ECB violations. Further, the number of HMC violations increased by 21 percent between 2010 and 2016. The number of DOB violations increased by 528 percent in that same period, and the number of ECB violations increased by 66 percent.

888 Grand Concourse, Bronx

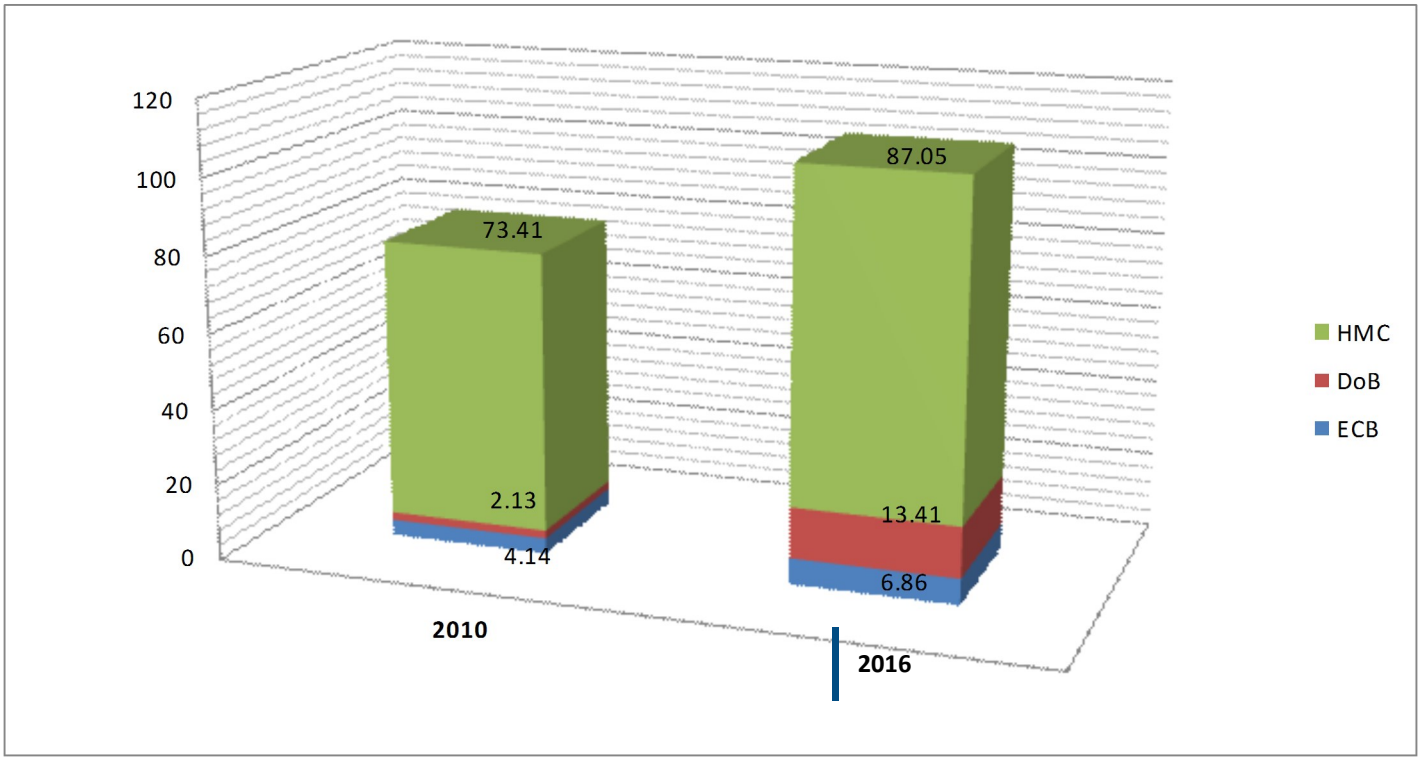
888 Grand Concourse, Bronx

With 147 combined violations from the DOB and ECB, this Bronx building—and historical landmark—tops all the case study buildings in those types of violations. The building has been on the Public Advocate's Worst Landlord Watchlist for years, despite involvement with numerous city programs. There is a foreclosure proceeding pending against owner Tiny Fiesta Realty Associates.[9] Tenants also have two ongoing Housing Part (HP) actions for repairs in housing court.[10]

Open Violations

Address	Borough	HMC	Hazardous HMC	DOB	ECB
43 KINGSTON AVE.	BK	57	45	2	19
102-16 35TH AVE.	**QN**	15	13	0	0
104-09 ROOSEVELT AVE.	**QN**	8	6	10	0
108-78 42ND AVE.	**QN**	47	43	11	11
112-37 38 AVE.	**QN**	2	0	0	0
186 SCHAEFER ST.	**BK**	21	18	2	1
224 SCHAEFER ST.	**BK**		0	3	8
228 NEW YORK AVE.	**BK**	108	76	18	0
305 MACON ST.	**BK**	1	1	21	0
338 CLIFTON PL.	**BK**	213	167	15	4
450 E.144TH ST.	**BX**	0	0	2	0
643 CENTRAL AVE.	**BK**	21	21	2	0
685 ST MARKS AVE.	**BK**	146	133	22	9
744 PARK PL.	**BK**	11	8	11	0
1160 DEAN ST.	**BK**	18	18	16	0
1184 DEAN ST.	**BK**	45	31	15	0
1391 ST JOHNS PL..	**BK**	100	89	23	3
1436 PACIFIC ST.	**BK**	298	237	22	1
888 GRAND CONCOURSE	**BX**	238	197	68	79
636 WILSON AVE.	**BK**	199	156	14	1
931 FULTON ST.	**BK**	180	157	10	12
468 W. 145TH ST.	**MN**	187	171	8	3
TOTAL		**1915**	**1587**	**295**	**151**
AVERAGE		87.05	72.14	13.41	6.86

Increase in Average Number of Violations Per Building



43 Kingston Ave., Brooklyn

43 Kingston Ave.

Between 2010 and 2013, 43 Kingston Ave. in Brooklyn racked up 19 ECB violations, with 18 of them classified as Class 1 "immediately hazardous." These violations included: illegal conversion of a cellar into living quarters; work without a permit; and failure to comply with DOB orders. Fines totaling more than a quarter of a million dollars were issued, but no payments have been made to date.[10] A partial vacate order exists on the property, issued after a 2010 violation for illegal partitions in the basement.[11] HPD has brought two court cases against the landlord since 2009 for heat and hot water violations.[12]

Our investigative team spoke to one tenant who has lived in the building for twelve years, struggling with conditions such as sewage backups, leaks that caused her walls and ceilings to crumble, broken floors, rats and roaches, and mold. The landlord at the time started eviction cases in Housing Court, and she countered with her own actions for repairs, without success. While the building went through foreclosure, she discovered that one of her children had lead poisoning.

HPD Programs

Nine of the buildings have been placed in one of HPD's Code Enforcement Programs[13], but in most hundreds of violations remain. These programs include the 7A program, under which management responsibilities are taken from the owner and a receiver is appointed to make repairs and collect rent. The Alternative Enforcement Program (AEP) includes buildings with the worst conditions in the City and works with owners to remedy the conditions. If the owner is uncooperative, HPD makes the repairs and charges the landlord for the cost. The Underlying Conditions (UC) program is designed to address the underlying conditions that lead to persistent violations, and under the Proactive Preservation Initiative (PPI), HPD identifies multifamily properties at risk of deterioration and provides tools and incentives to owners to make repairs.

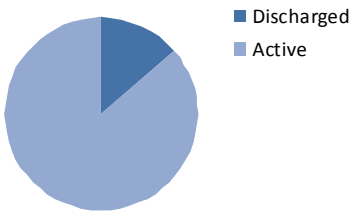
Buildings in HPD Programs

Address	AEP	7A	PPI	UC	Open Violations
43 Kingston Ave., BK	No	No	Yes	No	57
224 Schaefer St., BK	No	No	No	Yes	0
338 Clifton Pl., BK	No	No	No	Yes	213
685 St Marks Ave., BK	No	No	No	Yes	146
1391 St. Johns Pl., BK	Yes	No	Yes	No	100
888 Grand Concourse, BX	No	No	No	Yes	238
636 Wilson Ave., Bk	No	Yes	No	No	199
931 Fulton St., Bk	No	No	No	Yes	180
468 West 145th St., MN	Yes	No	No	Yes	187

1391 St. Johns Place, Brooklyn

This an 8 unit building in Crown Heights, Brooklyn. A tenant who has lived in the building for 9 years described her constant struggle to have repairs completed. Recurring leaks cause the paint to bubble and water to cascade down her walls. Her apartment has mold, broken floor tiles, and an oven that has been broken for over a year. She says that the apartment had never been painted. HPD has initiated 9 court cases for repairs since 2005, and tenants filed 3, including cases for heat and hot water and lead.[24] The building has three "immediately hazardous" ECB violations with a balance of $18,000 in unpaid penalties.[25]

Part 2: Liens and Property Value



The 22 buildings that are the subject of this report were chosen because they were among those that had liens sold more than once in the last four years. Upon closer study, many of the buildings had entered this cycle much earlier, some at the inception of the Tax Lien Sale program in the 1990s. Despite their long involvement in the Tax Lien Sale program, only a very small percentage of the liens had been officially discharged; the liens still appear in City records as active debt. In aggregate, the buildings have had 109 liens sold on the private market, or an average of five per building. Of the 109 liens sold, only 13 liens (for $400,000) were discharged, leaving a total of just over $2.5 million in apparently active liens.[16] (It is possible that some of these liens were, in fact, paid even though the public record doesn't reflect that they were satisfied.) Tables of active and discharged debts can be found in Appendix A and B.

Property Value

On average, the aggregated active liens on the properties totaled 17 percent of the property's value, as determined by the City's Department of Finance.[35] This is a further indicator of distress. The existing statutory definition of distress is having a lien to value ratio of 15 percent. Almost half the buildings in the study had aggregated liens that exceeded that ratio.

Properties with an Undischarged Lien to Value Ratio Higher Than 15 Percent

Address	Total Active Liens	Market Value 2016-2017 (DOF)	Liens as a Percentage of Value
305 Macon St., BK	$70,665	$161,000	44%
636 Wilson Ave., BK	$204,273	$563,000	36%
1160 Dean St., BK	$166,460	$488,000	34%
228 New York Ave., BK	$274,296	$833,000	33%
685 St Marks Ave., BK	$190,940	$584,000	33%
104-09 Roosevelt Ave., QN	$118,800	$433,000	27%
468 W. 145th St., MN	$119,428	$452,000	26%
108-78 42 Ave., QN	$219,202	$832,000	26%
1391 St. John's Place, BK	$236,163	$1,111,000	21%
1184 Dean St., BK	$81,057	$527,000	15%

1391 St. Johns Place has the most liens sold of all the properties on our list. This building went through the Tax Lien Sale 12 times, beginning in 1998 and continuing almost every year following. To date, no documents indicating the discharge of the liens have been filed.

DATE OF SALE	PROPERTY LIENS	OTHER LIENS	ERP LIENS	WATER & SEWER,CIS LIENS	FEES AND SURCHARG-ES	LIEN TOTAL
7/28/1998	$7,902.04	-	-	$2,681.54	$552.42	$11,135.99
7/25/2000	$9,786.14	$1,711.81	-	$5,906.27	$906.96	$18,311.18
8/6/2002	$9,632.22	$289.59	-	$18,307.68	$1,465.07	$29,694.56
8/20/2004	$10,661.42	$3,177.83	-	$3,293.4	$1,113.2	$18,245.85
8/9/2005	$7,551	$2,513.76	-	$2,592.69	$1,019.88	$13,677.33
8/9/2006	$6,246.17	$5,251.77	-		$992.18	$12,490.12
8/7/2008	$13,642.59	$1,262.82	-	$7,661.96	$1,415.9	$23,983.27
8/3/2010	$16,203.19	$21,504.37	-	$10,108.4	$2,636.17	$50,452.13
8/14/2012	$9,000.71	$66.82	$165.21		$659.68	$9,892.42
8/14/2013	$9,357.9	-	-	$7,650.78	$1,023.03	$18,031.71
8/11/2014	$9,739.1	$84.04	-	$8,139.71	$1,059.65	$19,022.5
8/12/2015	$10,234.12	$84.04	$153.11	-	$754.47	$11,225.74
TOTAL	**$11,9956.60**	**$35,946.85**	**$318.32**	**$66,342.43**	**$13,598.61**	**$236,162.80**

468 W. 145th St., Manhattan

468 W. 145th Street is a single room occupancy building with 6 rooms and a basement holding 2 apartments.[17] In June 2015, John Kojo Zi was indicted for filing a fraudulent deed for this property along with 4 other buildings.[18] Over a year later, the true owner of 468 W. 145th St. has failed to register the property with HPD.[19] The property went through the Tax Lien Sale for the fifth time on August 12, 2015 with the incorrect owner listed.[20] Five liens have been sold for a total of $119,427.70.[21] The property is now being marketed for sale for $1.7 million,[22] while the Department of Finance estimates it has a market value of $444,000.[23]

Part 3: Tenant Harassment and Turnover

A building is generally rent stabilized if it has 6 or more units and was constructed prior to January 1, 1974.[25] According to HPD and the Rent Guidelines Board, 19 of the 22 case study buildings have filed records with the Division of Housing and Community Renewal (DHCR) indicating that they contain rent regulated units.[24] The 3 buildings that were never registered as rent stabilized all appear to meet the criteria for rent stabilization.

While two of the buildings that were not registered had obtained new certificates of occupancy in the last 10 years (102-16 35th Ave.,[26] Queens and 112-37 38th Ave., Queens[27]), they appear to be covered by rent stabilization by virtue of the fact that the owner receives a 421-a tax abatement.[28] The third (305 Macon St., Brooklyn) appears to meet the general criteria for rent stabilization, but has never been registered.

Among the 22 buildings we surveyed, 5 were vacant or almost vacant: 338 Clifton Pl., 685 St. Marks Ave., 1436 Pacific St., 931 Fulton St., and 305 Macon St.

At least 10,812 housing units left rent stabilization in 2015.[29] Seventy-four percent of units were deregulated through high-rent vacancy deregulation, which permits an owner to take a unit out of rent stabilization if the rent lawfully reaches a threshold of $2,700 per month during a vacancy.[30] Owners can also deregulate units through substantial rehabilitation, when 75 percent of building-wide systems are replaced and if the building is considered to be in "substandard or seriously deteriorated condition;" buildings with 80 percent vacancy are automatically assumed by the DHCR to fall into this category.[31] Moreover, whenever a unit is vacated, a much higher rent increase is permitted by law than when a lease is simply renewed.[32] Because of these loopholes in the rent stabilization laws, a high rate of turnover in a building makes it easier for landlords to increase rent and eventually deregulate rent stabilized units. This creates an incentive to harass or otherwise compel a tenant to move out.

338 Clifton Place, Brooklyn

When the Public Advocate's Office visited 338 Clifton Place in Brooklyn, there was only one tenant remaining in the building. That tenant was planning to move out after accepting a buy-out offer from the new owners.

In 2014, an entity called the Shine Corporation had asserted itself as the new management company for the building and brought eviction cases against all of the tenant occupants alleging they were squatters. The tenants then sued Shine Corp. saying that the deed was a forgery and that the building was rent stabilized. They also sued to prohibit the management company from engaging in harassment.

338 Clifton Place, Brooklyn, cont'd

In their Supreme Court action the tenants said that, in addition to bringing eviction cases against all of them, the Shine Corporation had made threats. One tenant said the management company told her that she would have to vacate the building because the "party was over." Another tenant claimed that the landlord kicked in the front door of the building and removed the locks. Another tenant claimed that the landlord was demolishing the vacant unit adjacent to hers without a permit. The landlord sought to get the tenants' case dismissed from Supreme Court, but the judge ruled that the tenants' case had sufficient merit to proceed.[33] The landlord then offered buy-outs to all of the tenants, which they accepted.

The building has a serious history of neglect. A 2014 complaint to the DOB says that a fire ignited in an electrical box, causing electrical service to be shut down and a vacate order to be issued to the building owner.[34] DOB records also point to violations for the lobby collapsing, the door jamming due to the shifting of the building, clogged chimney base causing an inoperative boiler, parts of sheetrock missing in walls, exposed asbestos, a broken toilet and a missing sink.[35] Between 1993 and 2016, there were 9 HP actions filed seeking repairs to the building.[36]

685 St. Marks Ave., Brooklyn

According to its 1954 certificate of occupancy, 685 St. Marks Ave. has a legal occupancy of three families and seven furnished rooms.[37] There are a number of ECB violations issued for erecting illegal dwelling units and work without a permit, dating back to 2007.[38] City records show violations for terrible conditions, including a cascading leak and defective connection to waste line that created 5-6 inches of sewage leak and mosquito larvae in the cellar.[39] Shortly after this violation was issued and HPD reported joist beams rotting, defective staircases, water leaks in the basement[40] and a 311 caller reported their floor was sinking,[41] the DOB finally issued a full vacate order Dec. 31st, 2011.[42]

The building was then sold in 2012 to Beta Services Corp.,[43] which filed for permits with DOB in December 2014 to convert the building into an 8 family dwelling with a new certificate of occupancy; the job was approved in January 2016.[44] Housing Court records indicate that 14 HP actions have been filed for repairs in the building between 1988 and 2012; one holdover case and 52 non-payment cases were brought against tenants, the last in 2009.[45]

1436 Pacific St., Brooklyn

1436 Pacific Street has a history of tax delinquency from long before it entered the hands of its current owner; it was subject to a City tax foreclosure in 1983.[46] A fire at the adjacent building in 2006 damaged 1436 Pacific and resulted in a partial vacate order in March 2006.[47] At the same time, an ECB violation was issued for failure to maintain the building. Inspectors reported a hole in the wall causing water to leak into one tenant's ceiling, as well as large holes in the hall of the first floor.[48] In November 2008, a stop work order was served due to construction without permits. Records of complaints to DOB indicate that the owner was doing a gut rehabilitation in the building, including the installation of new partitions, plumbing and electrical supply, while one tenant remained living there. Complaints also indicate that work continued despite the stop work order, which remains in place today.[49] In 2011, the owner filed an application to install new partitions in the building. Despite the stop work order, the application was approved by the DOB.[50]

931 Fulton St., Brooklyn

931 Fulton Street was in serious disrepair as recently as 2011. ECB records indicate that as result of a water leak, part of the sheetrock ceiling in the hallway was missing. Floor joists were exposed, a fire rated ceiling was missing, there were holes in the walls, and tree roots were growing into portions of the wall, causing it to split in places and water to leak inside.[51] Another ECB violation in March 2014 says there was construction debris obstructing egress through the fire escapes.[53] In April 2014, a complaint was recorded indicating that the lobby walls were "leaning and collapsing due to water damage" and had been that way for seven months without repair." On September 10, 2014, an application was filed and permit issued to "replace defective/sagging floor joist and restore affected area."[54] The building has been in and out of HPD's AEP since 2008 and the owner currently owes more than a quarter of a million dollars in repair and inspection fees for work that HPD has done to correct violations.[55] In 2015, Bank of New York began to foreclose on the 2009 tax liens but ended up settling with the owner.[56]

Recommendations

Recommendation 1: Create a Preservation Trust

A "Preservation Trust" should be created as a non-profit alternative to the for-profit debt-buyers with the mission of encouraging the rehabilitation and preservation of affordable housing. We propose that this Trust be empowered to purchase both those properties that HPD opts not put into Third Party Transfer in addition to a broader range of buildings that will be pulled out of the for-profit Tax Lien sale because they meet an expanded definition of distress.

The Preservation Trust would be a new municipal debt purchaser for buildings that are good candidates for preservation outcomes. The existing trusts currently set up to purchase municipal liens do not have an affordable housing mission; arguably their only mission is to collect prepaid debt and navigate the foreclosure process for properties in the current post tax lien sale pipeline. The Preservation Trust would pay a discounted rate to the City for outstanding municipal debt and would have access to the same enforcement mechanisms available to current municipal debt purchasers. The moderate acquisition costs (of the debt) would be included in permanent HPD financing in order to allow the Trust to continue to operate, replenish itself, and purchase additional debt over time.

The two general pathways for a Trust preservation outcome would be to either:

- Work with existing owners and HPD to stabilize the building and enter into a regulatory agreement; or,
- Pursue private foreclosure, and transfer the property to a new, preservation minded owner. Preservation should give priority to non-profit owners, mutual housing associations, or community land trusts, as these governance models prioritize permanent affordability and can address financial instability through geographic clustering and shared resources.

Recommendation 2: The Preservation Pool

Buildings That Are Currently Excluded From the Tax Lien Sale

Today, the City removes a small number of buildings from the Tax Lien Sale if they meet a statutory definition of "distress."[57] A portion of these properties are put into TPT, an affordable housing program that has helped to preserve and stabilize nearly 5,000 units of affordable housing since the program began in 1996.[58] However, HPD currently has an inventory of multifamily buildings that are in tax debt but are neither sold in the tax lien sale, nor preserved through TPT. These buildings are ideal candidates

Recommendations, cont'd

for preservation. Under our proposal, those properties that meet the definition of "distress" that HPD cannot develop through TPT could have their debt sold to the Trust.[59]

Increasing the Pool

The pool of properties available for preservation should be expanded by adjusting the definition of "distress" to exclude additional properties from the traditional tax lien sale. Buildings that currently fit the definition of distress—and are therefore eligible to be moved into affordable housing programs—have 5 or more hazardous violations per unit, and a lien to value ratio of 15 percent.[60] The definition of distress should be adjusted for tax class 2 multifamily buildings to reduce the number of B&C code violations per unit to 3, reduce the lien to value ratio to 10 percent, and include buildings that end up in the Tax Lien Sale multiple years in a row. This would help the City create new permanently affordable housing for little cost.

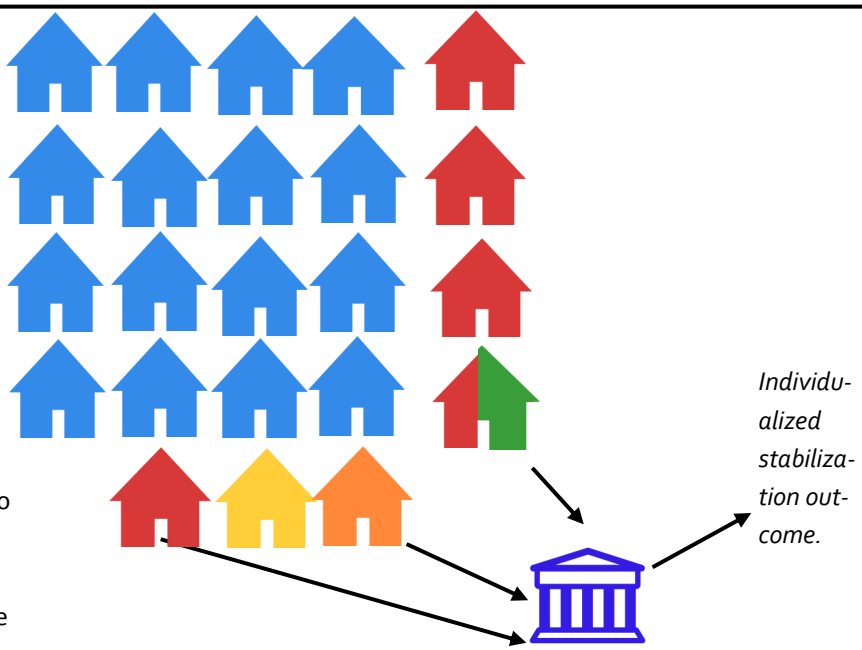
Recommendations, cont'd

Tax Delinquent Properties: What Happens Now?

- Each year, the city sells between 4,000—5,000 **tax liens to private financiers**.
- Approximately 2% of the homes that are the subject of the liens are ultimately **foreclosed** upon by the bank.
- 300-400 buildings are exempt from the tax lien sale every year because they meet the statutory definition of "**distressed.**"
- Of those buildings that are "distressed," only about 15% get rehabilitated and developed for affordable housing through the City's **Third Party Transfer** program.
- Approximately 200 buildings with tax debt are exempt from the tax lien sale because they are in **HPD's HDFC co-op** program.

Our Recommendation

The City should broaden the definition of "distress" to capture buildings that are the subject of multiple lien sales and end up in foreclosure while giving HPD more flexibility to use the liens as leverage for affordable housing preservation. This can be done by permitting HPD to sell the liens on distressed properties not suitable for Third Party Transfer to a "preservation trust." The trust would work with the property owners to come up with an individualized stabilization outcome. If stabilization is not feasible, the trust would work with HPD to rehabilitate the property and refinance the debt .



Conclusion

Public Advocate's Office, the Mutual Housing Association of New York, the Urban Homesteading Assistance Board, Picture the Homeless, and New York Communities for Change, found that buildings that have gone through the Tax Lien Sale multiple times were indeed in severe physical distress, were unlikely to discharge their debts, and that many had been emptied of tenants through a combination of harassment and the failure to correct egregious conditions. Because of existing loopholes in the rent stabilization laws, those vacant units may be lost to regulation forever. The City's approach to future Tax Lien Sales must be reformed to increase the City's ability to leverage tax and other City arrears for the rehabilitation and preservation of affordable housing. In 2015, if a Preservation Trust had purchased the distressed debt excluded from the Tax Lien Sale, but not placed into TPT, the City would be on a path to preserve 318 at-risk buildings.[61]

Acknowledgements

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Active liens

Address	Total Lien Sales	Active Liens	Property liens	"Other" liens	ERP liens	Water and Sewer/CIS	Fees	Total
43 KINGSTON AVE.,BK	2	2	$12,336	$1,871	$5,625	$16,952	$2,173	$38,957
102-16 35th AVE.,QN	4	1	$12,766	$99	$0.00	$0.00	$874	$13,739
104-09 ROOSEVELT AVE.,QN	11	9	$78,167	$587	$0.00	$33,007	$7,039	$118,800
108-78 42nd AVE., QN	8	7	$138,532	$654	$0.00	$68,127	$11,887	$219,200
112-37 38th AVE., QN	2	2	$6,469	$0.00	$0.00	$0.00	$696	$7,165
186 SCHAEFER ST., BK	4	3	$32,738	$0.00	$8,967	$29,590	$4,164	$75,459
224 SCHAEFER ST., BK	6	1	$5,083	$382	$0.00	$0.00	$273	$5,738
228 NEW YORK AVE., BK	6	6	$178,131	$0.00	$626	$81,320	$14,219	$274,296
305 MACON ST., BK	7	7	$63,964	$453	$0.00	$1,683	$4,565	$70,665
338 CLIFTON PL., BK	2	2	$14,250	$721	$6,204	$0.00	$1,429	$22,604
450 EAST 144th ST., BX	3	3	$7,887	$211	$0.00	$111,444	$6,518	$126,060
643 CENTRAL AVE., BK	2	2	$9,262	$193	$9,225	$0.00	$1,326	$20,006
685 ST MARKS AVE., BK	4	4	$37,833	$3,743	$0.00	$9,501	$16,192	$67,269
744 PARK PL., BK	5	5	$66,959	$309	$0.00	$65,037	$7,439	$139,744
1160 DEAN ST., BK	11	11	$123,659	$715	$0.00	$32,660	$9,427	$166,461
1184 DEAN ST., BK	5	5	$59,076	$0.00	$607	$2,732	$4,686	$67,101
1391 ST JOHNS PL., BK	12	12	$119,957	$35,947	$318	$66,342	$13,599	$236,163
1436 PACIFIC ST., BK	3	3	$67,668	$351	$0.00	$0.00	$4,744	$72,763
888 GRAND CON-COURSE, BX	2	2	$229,777	$69,000	$18,717	$0.00	$16,209	$333,703
636 WILSON AVE., BK	2	2	$7,546	$173,025	$0.00	$13,448	$10,253	$204,272
931 FULTON ST., BK	3	2	$3,013	$1,745	$44,310	$29,692	$4,434	$83,194
468 W. 145TH ST., MN	5	5	$19,313	$844	$79,364	$35,029	$8,697	$143,247
TOTALS	109	96	$1,294,386	$290,850	$173,963	$596,564	$150,843	$2,506,606
AVERAGES	4.95	4.36	$58,836	$13,220	$7,907	$27,117	$6,857	$113,937

Discharged Liens

Address	Discharged	Property	Other	ERP	Water and Sewer/CIS	Fees	Total
43 KINGSTON AVE., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
102-16 35th AVE., QN	3	$63,801	$0.00	$0.00	$3,166	$4,031	$70,998
104-09 ROOSEVELT AVE., QN	2	$13,637	$6	$0.00	$8,204	$1,362	$23,209
108-78 42nd AVE., QN	1	$18,002	$201	$0.00	$5,463	$1,570	$25,236
112-37 38th AVE., QN	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
186 SCHAEFER ST., BK	1	$9,011	$2,070	$0.00	$4,466	$1,195	$16,742
224 SCHAEFER ST., BK	5	$49,582	$11,959	$90,033	$65,008	$11,939	$228,521
228 NEW YORK AVE., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
305 MACON ST., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
338 CLIFTON PL., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
450 EAST 144 ST., BX	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
643 CENTRAL AVE., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
685 ST MARKS AVE., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
744 PARK PL., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
1160 DEAN ST., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
1184 DEAN ST., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
1391 ST JOHNS PL., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
1436 PACIFIC ST., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
888 GRAND CON-COURSE, BX	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
636 WILSON AVE., BK	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
931 FULTON ST., BK	1	$7,853	$0.00	$0.00	$25,329	$1,875	$35,057
468 W. 145TH ST., MN	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
TOTALS	**13**	**$161,886**	**$14,236**	**$90,033**	**$111,636**	**$21,972**	**$399,763**
AVERAGES	0.59	$7,359	$647	$4,092	$5,074	$999	$18,171

Endnotes

[1]Liu, John C., *The New York City Tax Lien Sale: History and Impact*, New York City Comptroller (May 2012), pp. 3-4, available at http://comptroller.nyc.gov/wp-content/uploads/documents/NYC_TaxLienReport_v8.pdf.

[2]Bland, Justin, *Property Owners' Delinquencies for Sale: City's Annual Lien Sales Trigger Payments From Owner, Often Exceeding Original Amount Owed*, New York City Independent Budget Office (June 2014). Available at: http://www.ibo.nyc.ny.us/iboreports/2014taxlien.pdf.

[3]The statutory definition of "distressed" is having a lien to value ratio of 15% or more and either five or more hazardous or immediately hazardous Housing Maintenance Code violations per unit or $1,000 or more in Emergency Repair Program liens. N.Y.C Admin. Code §11-401(4).

[4]Moelis Institute for Affordable Housing Policy, New York University School of Law – Wagner School of Public Services, "Third Party Transfer Program," *Directory of New York City Affordable Housing Programs,* available at http://furmancenter.org/institute/directory/entry/third-party-transfer-program(last visited Sept. 7, 2016).

[5]Bland, *supra*, p.1
[6]Id., at 8-9.

[7]Id.

[8]Unless otherwise indicated, all data concerning Housing Maintenance Code, Department of Buildings, and Environmental Control Board violations, and participation in Department of Housing Preservation and Development programs was compiled from the March 2016 Building Information Project database provided by the University Neighborhood Housing Program. And is available upon request.

[9]SDF63 CAP NY 2 LLC v. Tiny Fiesta Realty Assoc., et al., 35480/2013 (Bronx County Sup. Ct.)

[10] ECB Violations 35053222M, 34741172X, 34741173H, 35058514R, 34862616Z, 34862638J, 35053623N, 34950060M, 35051397P, 34963975N, 35050364Y, 34900106N, 34906035M, 34917371P, 3491474X, 35051120M, 34962658P, 35052854X, and 35054222R, available on DOB BIS (2014) at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3054028.

[11]Complaint no. 3329355, available on DOB BIS (2014) at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=1&allbin=3054028&fillerdata=B.

[12]https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

[13]A description of Department of Housing Preservation and Development programs can be found here http://www1.nyc.gov/site/hpd/owners/compliance-housing-quality-enforcement-programs.page.

[14]https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

Endnotes, cont'd

[15]ECB Violations 32071541J, 32071542L, and 32071397Y, available on DOB BIS (2014) at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3036833.

[16]All lien information referenced herein was compiled from Tax Lien Sale Certificates recorded with the Department of Finance Office of the City Register available on ACRIS at http://a836-acris.nyc.gov/CP/. PDF copies of each tax lien sale document is available on request.

[17]Certificate of Occupancy 65906, dated May 2, 1968, available in DOB's BIS at http://a810-bisweb.nyc.gov/bisweb/COsByLocationServlet?requestid=1&allbin=1061323.

[18]Mark Maurer, *Landlord indicted for alleged deed transfer fraud,* The Real Deal, (June 18, 2015,), *available at* http://therealdeal.com/2015/06/18/landlord-indicted-for-alleged-deed-transfer-fraud/.

[19]According to HPDOnline as of September 20, 2016, https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

[20]Tax Lien Sale Certificate, recorded August 25, 2015, DOF Office of the City Register CRFN2015000294856, available at https://a836-acris.nyc.gov/DS/DocumentSearch/DocumentDetail?SearchType=DocID.

[21]All lien information referenced herein was compiled from Tax Lien Sale Certificates recorded with the Department of Finance Office of the City Register available on ACRIS at http://a836-acris.nyc.gov/CP/. PDF copies of each tax lien sale document is available on request.

[22]Douglas Elliman Real Estate Listing, available at https://www.elliman.com/new-york-city/468-west-145-street-manhattan-wvnqkyc 7/27/16, accessed on July 27, 2016.

[23]http://nycprop.nyc.gov/nycproperty/statements/mvh/jsp/stmtassessmvh.jsp?statementId=238154450.

[24]This data was obtained by entering the subject buildings' addresses into HPDOnline, available at https://hpdonline.hpdnyc.org/HPDonline/provide_address.aspx.

[25]http://www.nyshcr.org/rent/faqs.htm#rsrc3.

[26]Certificate of Occupancy 410093241F, dated July 1, 2015, available in DOB's BIS at http://a810-bisweb.nyc.gov/bisweb/CofoJobDocumentServlet.

[27]Certificate of Occupancy 402209711F, dated January 17, 2008, available in DOB's BIS at http://a810-bisweb.nyc.gov/bisweb/CofoJobDocumentServlet.

[28]A list of all properties in receipt of a 421-a tax exemption is available at https://www1.nyc.gov/site/finance/benefits/benefits-421a.page.

[29]New York City Rent Guidelines Board, *Changes to the Rent Stabilized Housing Stock in New York City in 2015*, (May 26, 2016), *available at* http://www.nycrgb.org/downloads/research/pdf_reports/changes2016.pdf.

[30]Id., at 6,9.

Endnotes, cont'd

[31]New York State Division of Housing and Community Renewal Office of Rent Administration 1, *Fact Sheet #38 Substantial Rehabilitation* (October 2003), *available at* http://www.nyshcr.org/Rent/FactSheets/orafac38.pdf.

[32]Between October 1, 2015 and September 30, 2016, rent increases were permitted at 18% for one year or 20% for two-year leases during a vacancy, compared to 0% or 2%, respectively, for a lease renewal, http://www.nycrgb.org/html/guidelines/orders/order47.html.

[33]Bey et al. v. 338 Clifton Gardens, LLC, et al., Sup. Ct. Index No. 9545/2014 (Jan. 15, 2016), pdf available on request.

[34]Department of Buildings Complaint # 3475498 (April 11, 2014), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/OverviewForComplaintServlet?requestid=2&vlcompdetlkey=0001736173.

[35]ECB Violations 35097641L, 35153482R, 34859715R, 35153481, 32074055H,available on DOB BIS (2014) at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=4&allbin=3050167.

[36]https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

[37]Certificate of Occupancy 141660/56, dated Nov. 18, 1954, available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/CofoJobDocumentServlet.

[38]i.e. ECB Violations 34745343J, 34782044M, 34871967P, 34839486Y, 34562262X, available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3030672.

[39]HPD Violations 9241579 and 9241539 (December 2011), available on HPDOnline at https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

[40]DOB complaint 3397689 (December 2011), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?next.x=46&next.y=16&allcount=0021&allbin=3030672&requestid=2.

[41]DOB Complaint 3398011 (December 2011), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?previous.x=40&previous.y=5&allcount=0001&allbin=3030672&requestid=3.

[42]http://a810-bisweb.nyc.gov/bisweb/ActionsByLocationServlet?stypeocv3=&stypeocv3_sel=VAC*&requestid=1&allbin=3030672.

[43]Deed Agreement between Moussa Ouedraogo and Beta Services Corp., recorded Aug. 28, 2012, DOF Office of the City Register CRFN #2012000335674, available on ACRIS at https://a836-acris.nyc.gov/DS/DocumentSearch/BBLResult.

[44]Job #321046159, available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/JobsQueryByLocationServlet?requestid=1&allbin=3030672&allstrt=ST%20MARKS%20AVENUE&allnumbhous=685.

[45]Housing Court data was obtained by the Public Advocate's Office from the Office of Court Administration and is available on request.

Endnotes, cont'd

[46]Deed Agreement between Moussa Ouedraogo and Beta Services Corp., recorded Aug. 28, 2012, DOF Office of the City Register CRFN #2012000335674, available on ACRIS at https://a836-acris.nyc.gov/DS/DocumentSearch/BBLResult?page=3.

[47]Complaint 3183417 notes (entered Feb. 21, 2006), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=1&allbin=3030146.

[48]ECB Violation 34508087K (March 15, 2006), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3030146.

[49]DOB Complaints 328742, 3297545, 3297547, 3465203, available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=1&allbin=3030146.

[50]Job #320332555, failed July 6, 2011 and approved September 23, 2011, available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/JobsQueryByLocationServlet?requestid=1&allbin=3030146&allstrt=PACIFIC%20STREET&allnumbhous=1436.

[51]ECB Violations 34916781N, 34925401R (2011), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3056622.

[52]ECB Violation 35016187N(2014) available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ECBQueryByLocationServlet?requestid=1&allbin=3056622.

[53]DOB Complaint #347714 (April 29, 2014), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?previous.x=60&previous.y=13&allcount=0001&allbin=3056622&requestid=3.

[54]DOB Job #320972319 (Sept. 10, 2014), available on DOB BIS at http://a810-bisweb.nyc.gov/bisweb/JobsQueryByLocationServlet?requestid=1&allbin=3056622&allstrt=FULTON%20STREET&allnumbhous=931.

[55]HPD, *Building Charge Report as of 7/28/16*, available on HPDOnline under "Charges," available at https://hpdonline.hpdnyc.org/HPDonline/select_application.aspx.

[56]https://iapps.courts.state.ny.us/webcivil/FCASCaseInfo?parm=Motion&index=A44b46grLVDHezHX84cgHg%3D%3D&county=YG%2FBc6yrlHfIZ5Xid0B53Q%3D%3D.

[57]*Supra,* nt. 3.

[58]The number of units preserved is derived from data obtained by the Public Advocate's Office from HPD through Round 9 of TPT. Data is available on request.

[59]HDFC cooperatives are also currently excluded from the tax lien sale, regardless of their level of distress. These buildings, which provide housing to families under 40% of Area Median Income, present unique preservation challenges because their arrears accumulate without any preservation option available to them. The Trust should be authorized to purchase municipal debt on HDFC cooperatives. The Trust would then use its power as note-holder to negotiate preservation outcomes on individual or geographically clustered buildings.

Endnotes, cont'd

[60]*Supra*, nt. 3.

[61]A list of buildings pulled from the Tax Lien Sale because of distress was provided by HPD and is available on request.

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