

LOCAL LAW NO. 1 - 2024

A LOCAL LAW PROVIDING FOR THE DISTRIBUTION OF SURPLUS FROM THE SALE OF TAX DELINQUENT PROPERTY

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ONONDAGA, AS FOLLOWS:

Section 1. Purpose and Intent. This local law is enacted pursuant to and in accordance with Part BB of the New York State 2024-2025 Budget, Senate Bill No. S.8305 and Assembly Bill No. A.8805, to provide a mechanism for former owners and other parties whose interests were extinguished by the foreclosure of a delinquent real property tax lien to claim a surplus in the manner provided by title 6 of article 11 of the Real Property Tax Law. This local law and the mechanisms set forth herein are in addition and supplemental to the Onondaga County Tax Act, Chapter 690 of the Laws of 1937, as amended (“Onondaga County Tax Act”).

Section 2. Definitions.

In this local law:

“Charges” or “legal charges” means:

- (a) the cost of the mailing or service of notices required or authorized by this local law and/or the Onondaga County Tax Act;
- (b) the cost of publication of notices required or authorized by this local law and/or the Onondaga County Tax Act;
- (c) the amount of any interest and penalties imposed by law;
- (d) the cost of recording or filing legal documents required or authorized by this local law and/or the Onondaga County Tax Act;
- (e) the cost of appraising a parcel for the purpose of determining the existence and amount of any surplus pursuant to Section 3 of this local law;
- (f) the reasonable and necessary cost of any search of the public record required or authorized to satisfy the notice requirements of this this local law and/or the Onondaga County Tax Act, and other reasonable and necessary expenses incurred by the County of Onondaga in connection with a proceeding to foreclose a tax lien, including but not limited to administrative, auction and reasonable attorney fees and/or costs associated with the foreclosure process; provided, that: (i) a charge of up to either two hundred fifty dollars (\$250.00) per parcel, or two percent (2%) of the sum of the taxes, interest and penalties due on the parcel, whichever is greater, shall be deemed reasonable and necessary to cover the combined costs of such searches and the other reasonable and necessary costs and expenses delineated in this paragraph, and such an amount may be charged without substantiation, even if salaried employees of the County of Onondaga performed some or all of such services; and (ii) the County of Onondaga may charge a greater amount with respect to one or more parcels upon demonstration to the satisfaction of the court having jurisdiction that such greater amount was reasonable and necessary; and

(g) the amount owed to the County of Onondaga by virtue of a judgment lien, a mortgage lien, or any other lien held by the County of Onondaga that is not a delinquent tax lien.

Charges shall be deemed a part of the delinquent tax for purposes of redemption and determination of surplus.

“Former homeowner” means a person or persons who lost title to and/or ownership of residential property due to a tax foreclosure.

“Public sale” means a sale resulting from a public auction conducted in accordance with the provisions of the Onondaga County Tax Act and Resolution No. 71 - 1967.

“Surplus” means the net gain, if any, realized by the County of Onondaga upon the sale of tax-foreclosed property, as determined herein. Where no such gain was realized, no surplus shall be attributable to that sale.

“Tax-foreclosed property” means a parcel for which a deed has been recorded to foreclose a real property tax lien pursuant to the provisions of the Onondaga County Tax Act.

### Section 3. Determination of Existence and Amount of Surplus.

1. (a) Within forty-five (45) days after the sale of tax-foreclosed property, the Chief Fiscal Officer shall determine whether a surplus is attributable to such sale and if so, the amount thereof. Subject to the provisions of subdivision two of this Section 3, such determination shall be made by ascertaining the sum of the total amount of taxes due plus interest, penalties and other charges as defined by Section 2 of this local law, and subtracting such sum from whichever of the following is applicable:

(i) where the sale was a public sale, the amount to be so subtracted shall be the amount paid for the property;

(ii) where the sale was not a public sale, the amount to be so subtracted shall be either (A) the full value of the property as shown on the most recent tax roll, (B) if available, an appraisal prepared by a licensed New York state appraiser that establishes the full value of the property as of the date of the transfer of title, or (C) the full value of the property as of the date of the transfer of title as determined by such other valuation method as the Chief Fiscal Officer reasonably determines will result in just compensation to the former owner and other parties whose interests were extinguished by the foreclosure.

(b) For purposes of this subdivision, where the Chief Fiscal Officer has been notified that the County of Onondaga intends to retain tax-foreclosed property for a public use, the property shall be deemed to have been sold on the date that the Chief Fiscal Officer was so notified, and the Chief Fiscal Officer shall determine the existence and amount of a surplus relative to such property in the manner provided by subparagraph (ii) of paragraph (a) of this subdivision.

2. Notwithstanding the provisions of subdivision one of this Section 3, when the County of Onondaga has sold or conveyed tax-foreclosed property to a land bank, a housing development agency or another public entity, and such sale or conveyance was not the result of a public sale, or when the County of Onondaga has determined to retain tax-foreclosed property for a public use, no surplus shall be payable if all of the following conditions are satisfied:

- (a) prior to such sale, conveyance or determination, the property had been offered for sale at two
  - (2) separate public auctions conducted at least three (3) months apart from one another;
  - (b) both auctions had been conducted in full compliance with the provisions of the Onondaga County Tax Act and Resolution No. 71 - 1967;
  - (c) the minimum acceptable bid at each auction had been set at an amount no greater than the sum of the taxes due plus interest, penalties and other charges; and
  - (d) no qualifying bids were received for the property at either auction.
3. (a) If the Chief Fiscal Officer determines that no surplus is attributable to the sale, the Chief Fiscal Officer shall submit a report to the court describing the circumstances of the sale, stating that no surplus was attributable to the sale and demonstrating how the Chief Fiscal Officer reached that conclusion.
- (b) If the Chief Fiscal Officer determines that a surplus is attributable to the sale, the Chief Fiscal Officer shall submit a report to the court describing the circumstances of the sale, stating that a surplus was attributable to the sale, and demonstrating how the amount of the surplus was determined. Such surplus shall be paid to the court therewith. Within ten (10) days of submitting such report, the Chief Fiscal Officer shall notify the former property owner that a surplus was attributable to the sale of such property, that such surplus has been paid into court, and that the court will notify the interested parties of the procedure to be followed in order to make a claim for a share of the surplus.
- (c) Where the Chief Fiscal Officer's determination of surplus is based upon his/her estimate of the property's value, the Chief Fiscal Officer's report to the court shall set forth an explanation of how this estimate was made, including the evidence upon which it was based.
4. Upon approval by the court of the Chief Fiscal Officer's report, the County of Onondaga shall have no further responsibilities in relation to the parcel or any surplus attributable thereto, except to the extent the court directs otherwise pursuant to Section 4 of this local law.

#### Section 4. Claims for Surplus.

1. Any person who had any right, title, interest, claim, lien or equity of redemption in or upon a parcel immediately prior to the parcel becoming tax-foreclosed property may file a claim with the court having jurisdiction for a share of any surplus resulting from the sale of such property. Such claims shall be administered and adjudicated, and such surplus shall be distributed, in the same manner as in an action to foreclose a mortgage pursuant to article thirteen of the Real Property Actions and Proceedings Law, subject to the provisions of this Section 4.
2. (a) Where the property was sold by a public sale, the amount paid for the property shall be accepted as the full value of the property. No party may maintain a claim for surplus or any other claim or action against the County of Onondaga on the basis that the amount paid for the property did not fairly represent the property's value.
- (b) Where the property was sold by other than a public sale, a claimant may make a motion, upon notice to the Chief Fiscal Officer, for the surplus to be recalculated on the basis that the property's full value on the date of the sale was substantially higher than the value used to measure the surplus pursuant to subparagraph (ii) of paragraph (a) of subdivision one of Section 3

of this local law. If the court or its referee finds that a preponderance of the evidence supports the claimant's position, the court may direct the Chief Fiscal Officer to recalculate the surplus based upon the property's value as determined by the court or referee. The court may further direct the Chief Fiscal Officer to pay the difference into court to be distributed as required by this Section 4.

3. Where the court has appointed a referee to preside over the proceedings pursuant to subdivision two of section thirteen hundred sixty-one of the Real Property Actions and Proceedings Law, it shall not be necessary for such referee to make a report of such proceedings; nor shall it be necessary for the court to confirm by order or otherwise such proceedings.

4. In the case of residential property, if at the time of the confirmation of the report of sale, no former homeowner has filed a claim for surplus, and there are surplus proceeds that remain to be distributed, the proceeding shall remain open for at least three (3) years from the confirmation of the report of sale, or for such longer period as the court may direct. If a former homeowner should file a claim for surplus during such period, the court shall proceed as if it had been timely filed.

5. At the conclusion of such proceedings, any surplus funds that have not been claimed shall be deemed abandoned but shall be paid to the County of Onondaga, not to the state comptroller, and shall be used by the County of Onondaga to reduce its tax levy.

6. To the extent the provisions of article thirteen of the Real Property Actions and Proceedings Law are inconsistent with the provisions of this local law, the provisions of this local law shall govern.

#### Section 5. Administration of Surplus in Connection with Tax Lien Sales.

Real property tax liens owned by third parties, including those tax liens sold pursuant to the Onondaga County Tax Act, shall only be enforced in the manner described in this Section 5:

1. Upon written application and the surrender of the tax lien certificate of sale, a treasurer's deed may be issued vesting in the tax lien certificate holder an absolute estate in fee pursuant to and in accordance with the Onondaga County Tax Act, subject to all claims the County of Onondaga or state may have thereon for taxes, liens or encumbrances, if (a) a New York state licensed real estate appraiser conducts an appraisal of the property prior to the issuance of the deed to establish the property's fair market value and (b) the property's appraised value does not exceed the outstanding amount due to the tax lien holder. The County of Onondaga shall levy the cost of conducting the appraisal as a lien upon the property to be collected along with any other pending taxes, liens, or encumbrances; or

2. Notwithstanding any other law to the contrary, after the applicable redemption period has elapsed, a conveyance of the property so sold to the owner of a tax sale certificate issued in accordance with the Onondaga County Tax Act may occur pursuant to the Onondaga County Tax Act and Sections 2, 3, and 4 of this local law.

3. Notwithstanding any other law to the contrary, when a tax lien has been sold to a third party, the lienholder shall send a homeowner warning notice in the manner provided by section eleven hundred forty-four of Real Property Tax Law at least one hundred eighty (180) days prior to making application for a treasurer's deed, as the case may be.

#### Section 6. Effect on Prior Legislation.

The Onondaga County Tax Act, Chapter 690 of the Laws of 1937, as amended, Resolution No. 71 - 1967, and any additional local law or resolution regarding the sale of tax delinquent property by Onondaga County shall remain in full force and effect, as supplemented by the provisions contained herein.

Section 7. Partial Invalidity.

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

Section 8. Effective Date.

This local law shall take effect immediately and shall be filed consistent with the provisions of the New York State Municipal Home Rule Law.

PASSED 6/4/24



I hereby certify that the foregoing is a true and exact copy of the legislation duly adopted by the County Legislature of Onondaga County on the 4<sup>th</sup> day of June 2024.

A handwritten signature in blue ink, appearing to be "Jm", followed by a horizontal line extending to the right.

Clerk, County Legislature