

November 9, 2013

Testimony of Montgomery L. Wilson, Esq., of
Community Legal Services of Philadelphia, Inc.
to the House Urban Affairs Committee regarding HB 1409

Good Afternoon. My name is Montgomery Wilson and I am a senior attorney at Community Legal Services, Inc., (CLS) in Philadelphia. CLS is non-profit legal services agency that provides free legal advice and representation to low-income and working class individuals and families in Philadelphia. We provide free representation on issues ranging from family and employment law to consumer and housing rights. In 2013, so far CLS has advised or represented over 7,000 individuals and families. I have worked in CLS' Homeownership and Consumer Law Unit since 2001 where especially since 2011 I have represented an increasing number of homeowners who are facing a municipal property tax foreclosure on their homes each year. As some of you may know, there are over 100,000 tax delinquent parcels in Philadelphia. While many of these properties are vacant, abandoned and or "investor-owned", an extensive series published in the Philadelphia Inquirer and PlanPhilly.com in March of 2013 revealed that "only 21,600 tax delinquents - about 21 percent - are owner-occupants living in neighborhoods with low to moderate median household incomes."¹ According to data from the Philadelphia Department of Revenue, in 2012 the average total amount of delinquent property taxes due on residential property in Philadelphia is \$4,542 dollars including principal, interest, taxes and legal fees and costs.

I want to thank you for allowing me to speak to you today regarding HB 1409 – the Delinquent Real Estate Tax Sale Reform Bill. In the short time I have I want to focus on the potential effect HB 1409 could have on these 21,000 homeowners in Philadelphia and by extension on the potential effect of the bill on the tens - if not hundreds - of thousands of homeowners just like them across all of Pennsylvania. Much of the support for HB 1409 has focuses on its role in expediting the sale of vacant and abandoned properties. CLS agrees that municipalities need to have tools to fight blight and to increase collection of revenue.

However, the General Assembly must not ignore the impact that passage of HB 1409 will have on *homeowners* all over the state, especially senior citizens and people with a disability

¹ See "*Ravaged by Neglect, Part II: A broken property tax system where everyone loses except investors*" by Patrick Kerkstra (March 11, 2013). Available on-line at <http://planphilly.com/series/ravaged-by-neglect> [March 17, 2013].

living on a fixed income as well as on families that are still struggling to find work or to make ends meet because of the Recession.

1. **“One size does not fit all” – the need for local flexibility.**

The “Hardship Protections” offered in HB 1409 impose a strict 24 month limit on repayment plans and prohibit the forgiveness or abatement of penalties and interest unless such a compromise is otherwise allowed by law. See Section 9014(f). These strict limits may work in some municipalities or for homeowners who become delinquent for the first time in 2015 or who are only one year behind due to a sudden emergency. However, these limits are too strict to offer a realistic way out of debt for low-income homeowners and homeowners who are already dealing with a substantial tax delinquency. We are aware that that the proposed amended version of HB 1409 would allow municipalities to “elect” to opt-out’ of most of the bill. See HB 1409B1873A03864.

This ability to ‘elect’ to opt out is crucial. The bill must include the right for local governments to elect to opt out of HB 1409 and chose to implement a more flexible collection plan if a municipality believes that this is in its best interest. For example, in June of 2013 the Philadelphia City Council unanimously adopted a new “tax collection reform” ordinance that follows a “carrot” and “stick” approach. The Philadelphia ordinance gives tax delinquent homeowners a affordable monthly payment based on their income and offers them some forgiveness of penalties and interest *if and only if* the homeowners pays off 100% of the principal and legal costs owed first. At the same time, the ordinance requires that homeowners must maintain their future tax payments in order to avoid getting further in the hole going forward. The law makes clear that these “owner-occupied payment plans” are a one-time only deal: homeowners who fail to make the monthly payments or who fail to pay their future taxes will not be eligible for a second repayment plan and may face tax foreclosure within one year of defaulting on their agreement. It is a “one strike and you’re out” offer but it also gives struggling homeowners a real path out of tax debt and a fair chance to preserve their homes.

This Philadelphia ordinance is the result of two years of work by the Philadelphia Department of Revenue, Collection firms hired by the City and legal service agencies like CLS working together at the local level to create a collection system that is fair, consistent and transparent. A system which reflects local circumstances and which balances Philadelphia’s

need to collect property taxes with a real chance for homeowners to preserve their homes while paying what they owe. I have included a copy of the Philadelphia ordinance with my testimony for your review and I would be happy to answer any questions about it.

If HB 1409 moves forward it absolutely must include the proposed amended language in Amendment (A03864) which would allow a taxing district to 'elect' to opt out of the most of HB 1409 including the hardship protections if a city or municipality felt it was in their own best interest. Rather than pre-empting the entire field of tax collection and setting a 'one size fits all policy', the "election" power in Section 9001(b) would allow local governments to 'opt out' of HB 1409 if it failed to adequately address local concerns while still establishing HB 1409 as a state-wide base regarding the form and means of property tax collection. This would be a fair compromise between the need for a degree of uniformity across the state and the recognition of the need for some amount of local control over the collection of local property taxes.

2. The cost of notice required by HB 1409 should not impose exorbitant fees on homeowners.

Even if a taxing district, including Philadelphia, opts out of most HB 1409, all districts in the state will still need to comply with the substantial notice requirements set out in HB 1409. See Sec. 9008(a). These notice requirements are extensive. Requiring notice of a tax delinquency to be sent out by certified mail to the owner and to all *other interested parties* and then additional notice when legal action is filed if the interested parties fail to respond to the first mailing. Section 9008(a) also requires a due diligence investigation by the tax bureau of all interested parties' last known addresses and posting of the notices on the property and publication in at least two newspapers. CLS approves the *form and content* of the notice requirements and believes that every owner (of record or not) and mortgagee of record should get notice of a tax delinquency as well as any legal action.

However, HB 1409 also makes it clear that the *cost* of notice will be added to the redemption amount and paid by the owner. See Sec. 9008 (a) (6). This could impose very significant costs on homeowners if the number of "interested parties" is very large. It is one thing to impose a cost of \$200 for notice; it is entirely another to potentially add \$1,000 in costs simply to insure that every credit card carrier listed on a taxpayer's credit report is given notice as an interested party by certified mail. We recognize that there are federal due process requirements

that much be satisfied regarding notice. However, since these notice requirements will be mandatory state-wide, we would strongly recommend that the General Assembly: i) investigate the actual cost of compliance with these notice requirements and ii) carefully review the definition of “interested parties” and “owner” in sec. 9002 to ensure that it is not over inclusive, imposing heavy costs on taxpayers.

3. Taxpayers should retain the right to pay off the tax debt before Sherriff Sale.

Current law allows a taxpayer to pay off a delinquent property tax debt (including penalties, interest and costs) by offering payment *in full* up to one hour before a sheriff’s sale occurs. The same rule also applies in mortgage foreclosure cases. However, section 9009(a) of HB 1409 explicitly limits the right to pay off (“redeem”) the amount owed to any time “prior to entry of an order for the sale of the property. Except as otherwise provided by Federal law, entry of an order for sale shall extinguish all rights of redemption.” Section 9009(a) (emphasis added). Thus, even though a taxpayer still owns and had legal title to his or her home, under HB 1409 as it currently stands, the homeowner or business person would not have the right to pay off the taxes owed before the sheriff’s sale date. The entry of a judicial decree would become fatal. This would be a radical departure from the current norm in both tax and mortgage foreclosures. Section 9001(b) would allow taxing districts to elect to opt out of HB 1409 and retain the current right to pay the debt prior to sale. However, we can see no good rationale for a policy depriving a taxpayer of the simple right to pay a debt in full while he or she still owns the property. We would recommend that HB 1409 be amended to allow pre-sale ‘redemption’ at any time prior to sheriff sale.

4. Conclusion.

In closing, I want to recognize that HB 1409 (as amended via A03864) represents a major step forward from prior versions of the bill that CLS has been very concerned about. In addition to the “opt out” provision in Section 9001, it is important to recognize that there are parts of HB 1409 that will help homeowners. These include:

- The creation in Section 9016 of a “taxpayer advocate” to advise taxpayers of their options. However, this requirement should have full time staff rather than being filled by a volunteer.

- The creation of a detailed Internet website providing information about individual tax claims and delinquencies; however, this section (9003(d)) should be amended to add a requirement that information on assistance available to taxpayers also be prominently posted on the web as well as a list of agencies where taxpayers can seek advice and assistance.
- The creation of a website allowing users to register their interest in a property in order to receive notice, forms, bills and other information. However, this section (9003(d) (3)) should be mandatory rather than merely optional.

I feel that it is crucial that the "opt out" provision in the proposed amendment (A03864) must be adopted by this Committee and it is also important that the Committee carefully consider the potential cost of the extensive notices before imposing those costs across the state. Additionally, taxpayers should retain the right to 'redeem' their properties by paying in full up prior to Sheriff Sale. In short, while HB 1409 as amended represents a major step forward, it is not finished yet and I would urge the members of the Urban Affairs Committee to look at it closely and carefully before voting. I thank the Committee and your staff for allowing me to speak to you today. I would be happy to speak with any of you individually or to answer your questions about my concerns with HB 1409.

Respectfully Submitted,

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Attachment.