

## Testimony of the Housing Alliance of Pennsylvania

### Joint Public Hearing on SB 775 and HB 1559

October 30, 2019

Good morning Senator Ward, Representative Helm, and your respective colleagues on the Senate Urban Affairs and Housing Committee and the House Urban Affairs Committee. Thank you for inviting the Housing Alliance of Pennsylvania to testify at this joint public hearing on SB 775 and HB 1559. My name is Winnie Branton. I am a consultant to the Housing Alliance, and serve as its Land Bank and Blight Technical Assistance Program Manager. Seated with me is Levana Layendecker, Deputy Director of the Housing Alliance.

The Housing Alliance is a statewide coalition working to provide leadership and a common voice for policies, practices and resources to ensure that all Pennsylvanians, especially those with low incomes, have access to safe, decent and affordable homes. We promote common-sense solutions to balance Pennsylvania's housing market and increase the supply of safe, decent homes for low-income people.

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Tax sales present an opportunity for county and local governments and school districts to collect delinquent real property taxes. They also present an opportunity for buyers to acquire real property at deeply discounted prices, especially at the judicial or "free and clear" sale. Some of the properties exposed to tax sale are condemned and are in such bad shape that they must be demolished. Many need significant repairs to address serious housing and building code violations. Judicial sale properties can typically be acquired for as little as \$1000.

The low sale price attracts individuals and investors looking for bargains and deals. While many of the buyers at tax sale move forward with improving the property, others are unable or unwilling. Some of the buyers simply lack the skills and money needed to demolish or repair the properties. Others are speculators and slumlords with no intention of improving the property and long histories of negligent and irresponsible property ownership.

The amendments to the Real Estate Tax Sale Law ("RETSL") proposed by SB 775 and HB 1559 will strengthen the tools available to county and local governments to help prevent negligent and irresponsible property owners from buying even more properties at tax sales.

The Housing Alliance supports SB 775 and HB 1559 (collectively referred to as "the Bills") and offers the following comments and recommendations.

#### **I. Section 1. New Article V-A, Bidder Registration Before Sale**

##### **A. Pre-registration Required**

As currently enacted, RETSL gives municipalities an opportunity to try to stop the transfer of a judicial sale property to a winning bidder by petitioning the court, but only *after* the sale. Pre-registration allows municipalities to screen potential bidders for tax delinquency, outstanding utility bills, revoked landlord licenses, and code violations. Bidders get disqualified *before* the sale and municipalities get to avoid the legal costs of challenging a sale.

Some tax claim bureaus already require pre-registration, and are successfully using the process to identify bad actors and disqualify them before the sale. By mandating pre-registration in all counties governed by RETSL, the General Assembly will protect communities from blight and ensure that tax sale properties are transferred to responsible owners with the necessary resources to return them to productive use.

### **B. Application Required**

The Bills require a potential bidder to submit an application with some basic information – name, address and phone number. Where the bidder applicant is other than an individual, the applicant must provide “the applicant’s name, including the name of all officers, business address and phone number.” Section 502-A(2). Additional information should be required where the applicant is a limited liability company (“LLC”).

The protective structure of the limited liability company has made it increasingly popular for real estate investors to use when acquiring property.<sup>1</sup> A limited liability company is just that – it is a separate legal entity and the members of an LLC are not generally responsible for any debt, obligation or liability of the LLC. When forming an LLC, a registered agent must be identified but not the actual LLC members who are the investors. An LLC offers both liability protection and privacy.

Given the increasing use of LLCs for property ownership, it has become more difficult to determine who truly owns the property and hold them accountable. A recent article in the New York Times summarizes the problem this way:

In Memphis, parcel surveys of the city have revealed that a majority of the most blighted properties belong to L.L.C.s. Many have effectively gone out of business without selling the homes, leaving their ownership in limbo. When the city has tried to hold some responsible, there is no one to contact — the duties of those listed as registered agents having expired along with the companies.<sup>2</sup>

When screening potential bidders, a municipality needs to be able to look behind the mere name of the LLC. Requiring disclosure of the members of an LLC will improve transparency and make it easier for municipalities to prevent bad landlords and other bad actors from purchasing tax sale properties.

#### Recommendations:

- Where the applicant is a limited liability company, require that the application include the names of all members, managers, and any other persons with any ownership interest or right in the limited liability company.
- Where the applicant is other than an individual, require that the application include documentation that the signer has the authority to act on behalf of the applicant.

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<sup>1</sup> Badger, Emily (2018, April 30). Anonymous Owner, L.L.C.: Why It Has Become So Easy to Hide in the Housing Market. *The New York Times*. Retrieved from <https://www.nytimes.com>.

<sup>2</sup> Ibid.

- Where the applicant is other than an individual, require that the individual appearing in person to register, as required in section 501-A(a), is the signer of the application or otherwise authorized to act on behalf of the applicant.

### **C. Affidavit Required**

The Bills provide that all applicants must submit an affidavit stating that they meet the criteria for bidders as set forth in section 502-A(3).

#### Recommendations:

- Require that the affidavit include language similar to the following: *Any individual who signs a bidder registration application knowing that it contains a false statement and who causes it to be filed with the Bureau shall be subject to prosecution for the commission of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a) (relating to unsworn falsification to authorities).*
- Delete “not” from line 30, page 2 of SB 775 and HB 1559 – section 502-A(3)(i).

(3) An affidavit stating that the applicant:

- (i) ... has no municipal utility bills, as defined in section 619.1(b), that are **not** more than one year outstanding anywhere in this Commonwealth

### **D. List of Registered Bidders Shared with Municipalities**

The Bills require that a tax claim bureau provide a list of registered bidders to all municipalities within the county at least 10 days prior to the sale, and that the list provide the name, address and phone number of the applicant. Section 503-A. To properly screen applicants that are corporations and LLCs, municipalities will also need to see the names and addresses of officers, members and managers.

#### Recommendation:

- For registered bidders other than individuals, require the bureau to provide municipalities with the names and business addresses of all officers, members, managers, and any other persons with an ownership interest or right in the applicant, as disclosed in the application.

## **II. Section 2. Amendments to Sections 601(d), 618 heading, (a) and (c), 619 (b) and 627(a)**

### **A. Court Challenge Prior to Judicial Sale**

The Bills amend Section 619(b) to allow municipalities to petition the court to prohibit the transfer of a judicial sale property to an ineligible bidder/purchaser *before* the sale. As currently enacted, Section 619(b) only allows municipalities to file petitions after the sale, i.e. within fifteen (15) days of the judicial sale.

Recommendation:

- For clarity, change the language in Section 619(b) to: “A municipality may, ~~before and~~ within fifteen (15) days, before or after, of any sale...”

**B. Sale of Property in Repository**

The Bills amend Section 627 of RETSL to allow tax claim bureaus (1) to set a minimum purchase price for repository properties and (2) to require, as a condition of sale, that the purchaser sign an affidavit similar to the one required for bidder registration. Bureaus are authorized but not required to take those actions.

All taxing districts must consent to the sale of repository properties. The Bills further provide that “if no consent is provided within sixty (60) days, it shall be deemed that the taxing district consents to the sale of the property.”

Recommendations:

- Mandate that bureaus require a purchaser’s affidavit and the submission of the same information as required for pre-registration in Section 502-A. Purchasers of repository properties should be held to the same standards as purchasers at judicial sale.
- Add a new provision allowing taxing districts to condition their consent to a sale:

“As a condition of its consent, a taxing district may require that the purchaser (1) appear in person before the governing body of the taxing district charged with reviewing repository bids, and/or (2) provide all of the information required under Section 502-A.”

- For clarity, after “if no consent is provided within sixty (60) days” insert “receiving notice of the bid.”

**III. Conclusion**

The pre-registration of tax sale bidders will prevent negligent property owners from acquiring more properties. The Housing Alliance urges you to require the names and addresses of LLC members where an LLC is registering for a tax sale. We further urge you to extend the disclosure requirements to sales from repositories. This information helps municipalities screen potential purchasers, hold owners accountable, and return properties to productive use.

Thank you for the opportunity to testify today.