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REAL PROPERTY TAX DELINQUENCY AND THE REHABILITATION OF MULTI-FAMILY HOUSING STOCK IN CHICAGO, ILLINOIS: THE ROLE OF THE COLLECTION PROVISIONS OF THE ILLINOIS REVENUE ACT

*John J. Lawlor**

Although it is well known that an increase in property tax delinquency may indicate a declining housing market, and that widespread property tax delinquency is not unusual in blighted urban areas, it is not well known that property tax delinquency is often a stumbling block to rehabilitation. This Article reveals how tax liens accumulate, how their accumulation discourages rehabilitation, and how the use of present statutory provisions in the Illinois Revenue Act may dissolve tax liens so that rehabilitators may bring tax delinquent property back into the housing stock.

The accumulation of large tax liens can seriously hinder the transferability of property, make substantial rehabilitation economically unfeasible, and encourage the destructiveness of "slumlord" style property management. This Article will explore the subtle relationship between tax delinquency and urban blight in Cook County, Illinois. In particular, it will examine: 1) why the tax collection provisions of the Illinois Revenue Act²

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1. "Slumlord" style property management, resulting in delinquency, may or may not be intentional. In the "cost squeeze" situation, property tax delinquency is the result of a property owner's genuine inability to meet his operating expenses. In the second set of circumstances, a "slumlord" intentionally skips property tax and maintenance expenditures in order to acquire a certain level of profit out of a multi-family apartment building.

2. ILL. REV. STAT. ch. 120, §§482 *et seq.* (1975). The statutes controlling tax collection vary widely from state to state. Their effectiveness as tax enforcement mechanisms in urban areas can depend on a number of different factors. This Article will not, therefore, attempt to make generalizations about the delinquency situation in other parts of the country.

One other device for clearing back taxes does not appear in the Revenue Act itself and will not be discussed in this Article. Pursuant to the Blighted Vacant Areas Development

presently are not able to prevent the accumulation of tax liens on multi-family apartment buildings in certain areas of the City of Chicago; and 2) why there is a need for a comprehensive approach, particularly in regard to financial assistance, if multi-family housing stock is to be preserved.

THE ROLE OF THE ANNUAL TAX SALE

The annual tax sale³ is the primary device for collecting unpaid tax debts in Illinois. The sale, which is designed to return lost income to the taxing body as soon as possible, places actual responsibility for collection in the hands of a profit-seeking private party, the tax lien purchaser. By paying off the tax lien to the local government, the tax purchaser subsequently is entitled to earn as much as 12% interest⁴ from the owner of the property should the owner exercise his constitutional right to redemption.⁵ If the owner fails to redeem by paying the purchaser of his lien the amount of the lien plus statutory interest, after two years the lien purchaser can petition the court for a tax deed that conveys title to the property to him.⁶

Until recently, commentators could remark that this tax collection machinery was operating efficiently.⁷ Over the past five years, however, real property tax delinquency in Cook County has

Act, ILL. REV. STAT. ch. 67 ½, §91.1-91.7 (1975), the State of Illinois can pay off tax delinquencies on parcels that are located in municipally designated "blighted areas" through eminent domain proceedings. After condemning a blighted area, the State of Illinois sells the property to a public or private developer for an amount agreed to in advance by the State Department of Local Government Affairs. The constitutionality of the Act was upheld in *People ex rel Gutknocht v. City of Chicago*, 414 Ill. 600, 111 N.E.2d 626 (1953).

A critical problem with its use in preventing the spread of urban blight and tax delinquency is that these eminent domain proceedings can occur only in 1) underdeveloped contiguous urban areas of not less than one acre where 2) there exists diversity of ownership of lots and where tax delinquencies exceed the fair cash market value of the parcels. This latter requirement means that the housing stock within these areas usually cannot be saved before it has deteriorated to the point where it must be completely demolished.

3. ILL. REV. STAT. ch. 120, §706 (1975).

4. *Id.* §734.

5. ILL. CONST. art. 9, §8(b).

6. ILL. REV. STAT. ch. 120, §747 (1975).

7. Turano, *Equitable Relief, Collateral Attack and the Illinois Tax Deed*, 51 CHI.-KENT L. REV. 725, 726 (1975).

been rising steadily.⁸ Although a portion of this increased delinquency may be attributed to an increase in the tax burden, the increase also reflects serious problems in the tax collection apparatus.

A recent cause for alarm, for example, is the increasing number of delinquent parcels failing to attract bidders at the annual tax sale. The data implies that property which has become tax delinquent is staying delinquent and that the tax sale, which is designed to recoup delinquent tax dollars, is not working. For example, Cook County Treasurer Edward J. Rosewell has reported that 40,266 items were not purchased, and thus "forfeited," at the tax sale for 1974 taxes.⁹ This compares to 34,871 forfeitures from 1973, 20,601 for 1972, and 18,102 for 1971.¹⁰ Perhaps even more alarming is the fact that the number of parcels which fail to attract bids at the annual tax sale is becoming very high in certain townships. For example, the south suburban townships of Bloom and Thornton contained 1,606 and 1,904 such parcels respectively.¹¹ In the City of Chicago, three of the eight urban townships reported much greater figures. In Hyde Park Township, 3,100 parcels were forfeited; in Lake Township, 4,888; in West Chicago, 3,356.¹² County Treasurer Rosewell observed that at the tax sale for 1974 taxes, thousands of parcels were offered for sale in several townships such as Hyde Park, and none were purchased.¹³ In short, the County is facing a situation where tax purchasers have "red-lined" huge sections of Chicago. The result is that growing por-

8. In 1970, 55,000 items were delinquent. By 1973, this figure had risen steadily to 92,000 delinquent parcels. D. Haider, Report to the Mayor's Committee for Economic and Cultural Development for the City of Chicago; Summary of Consultant's Report at 21, Fall, 1975 (unpublished) [hereinafter cited as Haider].

In terms of dollars, the subsequent cost of real property tax delinquency also has been growing. In tax year 1971, there was \$54,412,375.87 in uncollected property tax bills in Cook County. In tax year 1972, this figure had risen to \$64,733,994.88. By 1973, delinquency cost the County a net of \$73,119,410.79. Interview with Joseph M. Yaeger, Manager of Systems, Department of Data Processing, Cook County, Illinois, in Chicago, Illinois, July 1976. The figure for tax year 1971 does not include the offsetting proceeds of the annual tax sale.

9. Chi. Daily L. Bull., Mar. 12, 1976, at 3, col. 3.

10. *Id.*

11. Cook County Department of Data Processing, Real Estate Statistical Analysis for Tax Year 1973, November 22, 1974.

12. *Id.*

13. Chi. Daily L. Bull., *supra* note 9, at 3, col. 1-2.

tions of the City remain in the hands of property owners who do not pay their share of the cost of municipal services.

"Professional" tax lien purchasers are primarily investors who are interested in earning collection fees. They are not particularly interested in purchasing urban land.¹⁴ Since their objective is to reap handsome profits in the form of interest and penalties from a redeeming owner, tax bidders select only those properties in which the prospects of payment by delinquent owners are good. This explains the apparent "redlining," or persistent refusal to purchase tax liens, in three out of eight urban townships. If the tax delinquent property does not appear to be economically viable to the lien purchaser due to its physical condition or location in a deteriorating neighborhood, he will not bid because the chances of redemption seem remote.

The recent performance of the annual tax sale frustrates not only those who are interested in maintaining the city's tax base, but also those who are interested in housing preservation and rehabilitation. Tax liens have to be cleared before redevelopment can proceed.¹⁵ Unless the statutory supplements to the annual tax sale, described below, can clear these liens at a reasonable cost, rehabilitators will do their investing elsewhere. In the words of Edward A. Zimmerman, author of "Tax Planning for Land Use Control," the property tax delinquency can serve as "the frosting on the cake" which "locks the property into its deteriorating condition."¹⁶

14. It is commonly, and erroneously, believed that tax lien purchasers are interested primarily in gaining title to delinquent property. A few well-publicized instances of lien purchasers taking title away from the aged or infirm have left this impression with the public, and in the legislature's mind. A very low percentage of tax lien sales result in deeds. In 1964, for example, of 18,640 parcels sold at the tax sale, only 462 resulted in tax titles; in 1973, of 9,651 items sold, 355 eventually resulted in deeds. See Haider, *supra* note 8, at 23.

15. For example, in order to qualify for §221 rehabilitation loan mortgage insurance, the mortgagee must certify that the mortgagor has good title to the unit, "subject only to the mortgage which is a valid first lien on the property." See 24 C.F.R. §221.60(1)(2)(ii) (1976).

16. Zimmerman, *Tax Planning for Land Use Control*, 5 URBAN LAW 639, 649 (1973). For example, banks interested in rehabilitating property in Chicago's South Shore neighborhood are faced not only with the cost of restoring the building, but also with clearing the property of large liens. In some cases, the size of the outstanding liens may make rehabilitation economically unfeasible.

STATUTORY BACKSTOPS TO THE TAX SALE

The Illinois Revenue Act anticipates that some property will not be purchased, and therefore will be "forfeited," at the tax sale. It is important to understand that the term "forfeited" carries "a connotation of change in ownership which the actualities deny, for the state makes no claims to title or possession."¹⁷ The term means only that these parcels are subject to six statutory procedures which are meant to serve as a sort of "backstop" for property which passes through the tax sale without attracting a bid. Each of these supplementary procedures ultimately is capable of taking property away from a floundering owner while recouping some, if not all, back taxes and penalties.

What frustrates both public officials, eager to return delinquent parcels to the tax roles, and rehabilitators, seeking to obtain delinquent buildings at a low acquisition cost, is that each of these statutory supplements to the annual sale has political, legal or economic drawbacks. Of the six statutory procedures outlined below, only two, Section 697 foreclosure and Section 756 in personam suits, appear to be potentially useful. A brief discussion of the distinctive features of the various sale procedures will reveal the strengths and weaknesses of each.

Redemption or Purchase of Forfeited Properties

Section 753 of the Revenue Act, enacted in substance in 1872, is optimistic. It will permit the transfer of property to the redeeming party only upon payment of "the amount of the forfeited general taxes, statutory costs, interest prior to forfeiture, printers' fees due thereon and, in addition thereto, forfeiture interest" Because Section 753 can only transfer title to a potential developer at a greater cost than is entailed at the annual tax sale, it is no surprise that these "over the counter sales" result in only 400 sales per year.¹⁸ Due to the rate at which forfeiture interest accrues on delinquent property, redemption pursuant to Section 753 is feasible only where the liens have not been outstanding for a long period of time.¹⁹

17. Speck, *Collection of "Forfeited" Real Estate Taxes in Illinois*, 16 U. CHI. L. REV. 655 (1949) [hereinafter cited as Speck].

18. Haider, *supra* note 6, at 21.

19. For example, if the delinquent property has failed to attract a bid at the annual

The Three Officer Plan

Unlike the "over the counter sales" described above, Section 727 of the Revenue Act, the "three officer plan", allows liquidation of back taxes by sale for less than the amount of the outstanding principal, interest and penalties. The plan, enacted in 1881 when the conditions which gave rise to a wave of chronic delinquency were somewhat similar to those of the 1930's,²⁰ derives its name from the fact that the county judge, county clerk, and county treasurer must certify that the taxes and special assessments on the parcel exceed its value. Once this certification is made, the liquidation is by sale to the highest bidder even if the bid is substantially less than either the total of the outstanding liens or the value of the land.

By acknowledging that some property may be so encumbered that a measure of tax forgiveness is the only practicable way to transfer the parcel to a new owner and recover any tax revenue, Section 727 would appear capable of reviving interest in some tax delinquent property. Its use in Cook County, however, has been rare, largely for political reasons. There is a potential for abuse in unconscionably low bidding, "which makes possible the wholesale avoidance of tax liability by the owner or the purchase by someone else of 'acres for cents'. . . ."²¹ The Illinois Legislative Council in 1939 indicated that "some experience tends to show that unwillingness [to use Section 727] based on the fear of such abuse is far from unreasonable."²²

tax sale, it is necessary to pay the amount of outstanding general taxes and various statutory costs together with an annual "forfeiture interest" at a rate not less than 12% per year in order to redeem. See ILL. REV. STAT. ch. 120, §753 (1975).

In different circumstances, where delinquent property has attracted a purchaser at an annual tax sale in Illinois, the owner must pay the amount of the tax purchaser's "penalty bid" at the sale in order to redeem. If he fails to redeem within the first six months after the tax sale, this "penalty bid," which originally may be as high as 12% of the delinquent tax lien, will double. If redemption occurs between twelve and eighteen months, it is necessary to pay the amount for which the property was sold, together with three times the amount of the penalty bid; if redeemed between eighteen months and two years from the sale, the penalty is quadrupled. See ILL. REV. STAT. ch. 120, §734 (1975). Where delinquency occurs year after year, the total penalties which accrue on a building under either method of calculation are staggering.

20. Comment, *Chronic Tax Delinquency in Chicago and Cook County*, 44 ILL. L. REV. 341, 352-53 (1949).

21. *Id.* at 353.

22. *Id.*

In addition to the potential for abuse, Section 727 has another drawback. Parties seeking to rehabilitate multi-family apartment buildings would be frustrated by the requirement that a sale cannot occur until the time when accrued tax liens exceed the value of the parcel. Unfortunately, it is often the case that the longer a tax delinquent building is managed by its owner, the further it physically deteriorates. By the time a Section 727 sale could occur, the building might be beyond the point where it is economically feasible to restore it.²³

Receivership of Tax Delinquent Parcels

The "Skarda Act"²⁴ allows taxing units to take delinquent parcels into receivership and apply the income of such properties toward the outstanding tax indebtedness. When effectively used, the receivership device can aid in reducing one of the social costs of tax delinquency, the deterioration of multi-family apartment buildings in the hands of those who have chosen to "run the building into the ground."²⁵ The Skarda approach has not been used, however, apparently because the County is reluctant to get into the receivership business. Though receivership is still utilized in New York City, governmental units can prove to be very poor managers of property, particularly if their responsibilities run to thousands of buildings.²⁶ The Federal Housing Authority's record of maintaining foreclosed, abandoned buildings through the use of receivers recently has been attacked,²⁷ possibly deterring other governmental bodies from attempting any receivership ventures.

23. Section 727 could potentially be more useful to those who plan to demolish existing structures and redevelop the property.

24. The "Skarda Act" was enacted in 1933; its legislative successor after repeal in 1935 is now found in ILL. REV. STAT. ch. 120, §697 (1975).

25. See note 1 *supra*.

26. See Mann, *Receivership of Problem Buildings in New York City and Its Potential for Decent Housing of the Poor*, 9 COLUM. J. OF L. & SOC. PROB. 309 (1973); Listokin, *Housing Receivership Is No Panacea*, 4 REAL ESTATE REV. 130 (1974).

27. See U.S. Report Scores HUD Here for Loss of Millions, Chicago Tribune, Sept. 5, 1976, Section 1, at 19, col. 1; REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES: PROTECTING AND DISPENSING OF SINGLE FAMILY PROPERTIES ACQUIRED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, August 31, 1976, General Accounting Office.

The Scavenger Act

Another "backstop provision" of the Revenue Act is the "Scavenger Act," Section 716a, passed in 1943. The Act calls for the mandatory foreclosure of general tax liens against all property which is ten or more years delinquent. Special assessments may also be included in the foreclosure at the written request of the taxing body which levied them. Sale is to the highest bidder for cash regardless of the amount bid. The sale price, however, is often low since the property has been in the hands of a delinquent property owner for ten years and is likely to be in dilapidated condition.²⁸ Between 1967 and 1973, the 6,000 items sold at the Scavenger sale averaged bids of only \$143.²⁹

The Foreclosure of Tax Delinquent Property Pursuant to Section 697

A statutory supplement to the annual tax sale which deserves particular attention is the foreclosure of forfeited property pursuant to Section 697, commonly referred to as "forfeiture foreclosure." There are several reasons why Section 697 may prove to be useful in promoting housing rehabilitation. First of all, as in the "three officer plan," a purchaser may acquire tax delinquent property although his bid is less than the amount of accumulated tax encumbrances. Secondly, unlike either the "three officer plan" or foreclosure pursuant to the Scavenger Act, there is not an extremely long delay between the time of initial delinquency and the time when Section 697 can act to transfer ownership away from the delinquent taxpayer. Rather than waiting for ten years or until the value of the tax lien is greater than the fair market value of the land, as with the "three officer plan," a suit to foreclose may be brought by a county state's attorney in the

28. A more meaningful "recycling" of this property onto the tax rolls might occur if the ten year "grace" period were reduced to five. Amending the Scavenger Act in this way would accommodate the needs of rehabilitators because the property offered for sale would presumably be in better physical condition. At first impression, such an amendment also would result in higher Scavenger sale income for the county. Local taxing units would welcome such an amendment, however, only if they were certain that property owners could not use the Scavenger sale to redeem their own property at a very low price. Their understandable fear is that the incentive to pay taxes in a timely manner otherwise would be destroyed.

29. See Haider, *supra* note 8, at 22.

name of the People of the State of Illinois once the taxes have, for two or more years, "been forfeited to the state." Another feature which makes Section 697 administratively attractive is the fact that a state's attorney's office wins a small fee for each foreclosure it brings. It is not surprising that, when compared with other procedures supplemental to the annual tax sale, Section 697 has been called "the only practical means to clear taxes."³⁰

There is some evidence of its effectiveness. Section 697 was the vehicle for placing a large number of parcels which were forfeited to the State during the Depression back on the tax rolls.³¹ The County Board estimated that this foreclosure program effected 92,000 parcels.³²

Unfortunately, as with sales pursuant to the "three officer plan," there is a potential for very low bidding. As a result, tax foreclosure programs ran into political difficulty as soon as they had started. In 1942, the State's Attorney of Cook County was accused of arranging deals on tax forfeit land for his friends, allegedly resulting, for example, in a \$10,745.09 tax loss on one particular sale. The dispute led to the Illinois Supreme Court decision of *People ex rel. Schneiner v. Courtney*.³³ The court held that the state's attorney was not obligated to calculate the fair market value of the forfeited land or take any steps not specifically required by statute to guarantee that a reasonable price was recovered upon foreclosure. While the Cook County State's Attorney emerged legally unscathed by the *Courtney* decision, it was becoming clear that wholesale foreclosure was no longer politically acceptable to the taxpayers of Cook County. Critics of these programs were arguing that voluntary foreclosure did not appreciably broaden the tax base because, in their view, it encouraged non-payment of current taxes.³⁴ The County Board abandoned

30. See Speck, *supra* note 1, at 34.

31. For a more detailed discussion of the post-Depression forfeiture foreclosure program, see Comment, *Legislative Remedy for Cook County's "Chronic Delinquents,"* 44 ILL. L. REV. 806, 808-09 (1950). The county's early experience with forfeiture foreclosure occurred in a much different social context—that is, with vacant lots which had been abandoned during the 1930's. For example, as late as 1948 it was estimated that there were as many as 30,000 vacant lots in Skokie, "many of which were being farmed." H. MAYER & R. WADE, CHICAGO: GROWTH OF A METROPOLIS 341 (1973).

32. Comment, *supra* note 31, at 809.

33. 380 Ill. 171, 93 N.E.2d 982 (1942).

34. Chicago Daily Tribune, Dec. 1, 1949, pt. 1 at 24, col. 4.

the widespread use of Section 697 during the 1950's.³⁵

In spite of this checkered history, the Cook County Board and Cook County State's Attorney have decided to experiment with Section 697 as a means to convey tax delinquent property at low cost to rehabilitators.³⁶ To ameliorate criticism that a Section 697 forfeiture foreclosure program will give rise to political abuse and very low bidding, the County will sue to foreclose only when a rehabilitator with a sound plan guarantees a minimum bid in an acceptable amount.³⁷

Another problem is the possibility that Section 697 will be used by delinquent property owners to forgive their own back taxes. The County Board presumably would be hostile to this use of the program because it would, in a sense, benefit a "wrongdoer" and remove the incentive to pay taxes when they become due. In order to avoid the use of Section 697 for the purpose of forgiving a delinquent's taxes, the State's Attorney will carefully investigate the interests of the party who is requesting the foreclosure suit.³⁸

Given the necessity for close scrutiny of those seeking to use the Section 697 program, it may be that forfeiture foreclosure would not be practical on a large scale. The Cook County State's Attorney has considered a complicated set of administrative guide-

35. Its current use in Cook County is restricted to a program concerning buildings which have been demolished by the City of Chicago. After foreclosing its demolition lien, the City must foreclose any tax liens in order to obtain a good title to the land. The County Board and Cook County State's Attorney's Office have been cooperating with the City of Chicago's requests to bring involuntary foreclosures against such property. These properties are bid upon pursuant to §697; they usually are purchased by the City and added to its inventory of unused land.

36. The Revenue Committee of the Cook County Board first held hearings concerning the revival of Section 697 in October of 1975. The matter has been under consideration for over a year.

37. Paul Biebel, Chief of the Civil Division of the Cook County State's Attorney's Office, confirms that the State's Attorney and the County Board have agreed to use § 697 to permit the rehabilitation of a multi-family apartment building on Chicago's Southside. The initial request to take action on this particular building was made by a group of Catholic priests. Conversation with the author in Oct. 1976. See also *Go and Repair the House of the Lord*, *The Chicago Reader*, May 7, 1976, at 1, col. 1.

38. See text accompanying notes 46-56 *infra* for a discussion of the problems posed by the delinquent property owner's constitutional right to redeem.

39. These guidelines, which have not been implemented, were aimed at preventing the evasion of taxes by the delinquent property owner. The guidelines required disclosure of owners of the beneficial interest in land trusts, disclosure of planned financing, and a liquidated damages clause which required full payment of all liens should it be determined

lines³⁹ that could deter the abuse of Section 697 if widely used, but for the immediate future forfeiture foreclosure will occur on a case by case, experimental basis.

In Personam Suits Against the Owner of Forfeited Property

In personam suits against the owner of forfeited property brought under Section 756 is the other statutory backstop meriting particular attention. On its face, Section 756 appears capable of restoring the incentive to pay taxes even in those areas which are ignored by bidders at the annual tax sale. Section 756 allows taxing bodies to bring civil in personam proceedings for debt in order to recover the full amount of taxes due the taxing body in whose name the suit is brought. It is clear that this section of the Revenue Act, enacted in 1869, is not capable of large scale use against thousands of delinquent property owners. It is simply too expensive for the County to be engaged in so many civil actions. There has been conjecture, however, whether Section 756's "timely use during critical years in Cook County might not have partially checked the accumulation of hopeless delinquencies in many areas, and whether the investment represented by the costs entailed might not have been well spent."⁴⁰ Tax collection officials in St. Louis, for example, reported a dramatic increase in tax payments once new property tax enforcement mechanisms were put to use.⁴¹

that the delinquent property's owner was the purchaser and that he had concealed his identity in petitioning the county to bring a section 697 foreclosure suit. The guidelines were drafted by the author in conjunction with Michael Igoe, Secretary to the President of the County Board, and Sheldon Gardner, former Chief of the Civil Division of the Cook County State's Attorney's office, in August 1975.

40. See Comment, *supra* note 20, at 352.

41. Mr. Kenneth Langsdorf, author of *Urban Decay Property Tax Delinquency: A Solution in St. Louis*, 5 URBAN LAW 729, 732 (1973), reports that as a result of new tax enforcement programs in St. Louis, "The percentage of delinquencies has been dramatically reduced from approximately 5% in 1969 to less than 1% today." Letter from Kenneth Langsdorf to Sheldon Gardner, Chief, Civil Actions Bureau, Office of the State's Attorney, Cook County, Illinois, Oct. 22, 1975.

The Neighborhood Preservation Program of Yonkers, New York, is similarly premised on the assumption that the decline of large scale rental housing is the greatest single contributor to neighborhood deterioration. See Bureau of Housing and Buildings, Department of Development, City of Yonkers, New York, Summary of Neighborhood Preservation Program (1975) (unpublished). Unfortunately, this theory has not been the subject of an in-depth empirical study.

The use of in personam actions could assist the goal of housing preservation as well as deter delinquency. The strategic use of Section 756 in parts of the city which are starting to decline could deter the spread of slumlord-style activity by thwarting its profit-maximizing strategy.⁴² This might help to reverse the process of deterioration at an early stage. Subsequent court-ordered sales ultimately might place multi-family buildings into the hands of entrepreneurs or community groups interested in preserving these housing units.

There are a number of unique problems with suing in personam. An obvious concern is for fairness on the part of County officials in choosing who, out of thousands of delinquents, will be sued in this way. Other difficulties involve adequate service of process⁴³ and the legal ability to satisfy a judgment by reaching the personal assets of the beneficiaries of a land trust.⁴⁴

Realizing these difficulties, the Cook County State's Attorney has decided to begin using in personam actions, but only on an experimental basis. Guidelines for using Section 756 have not been issued, but its target will probably be those parcels with large accumulated tax liens. It may be most practicable for the County deliberately to restrict its use of Section 756 to large

42. See note 1 *supra*.

43. This problem may be alleviated, however, by the presumption created by §756 that: [T]he fact that real estate or personal property is assessed to a person, firm or corporation, shall be prima facie evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof.

ILL. REV. STAT. ch. 120, §756 (1975).

44. Henry W. Kenoe states in I.C.L.E., LAND TRUST PRACTICE §7.2 (1972) that: There is no case in which this personal liability [for real estate taxes] has sought to be asserted against a land trustee or a beneficiary, although there is precedent for such a suit against a titleholder. *Douthett v. Winter*, 108 Ill. 330 (1884).

After noting the presumption created in §756 that the assessee is the owner of delinquent property, Kenoe continues:

The practice of having the trustee appear as the assessee on the tax rolls may expose it to this liability and subject it to the prima facie proof described in the statute. The trustee may find itself in the position of being required to refute this evidence, the burden of which may present some difficulties. It would appear that the trustee should insist that the beneficiary be designated as assessee.

multi-family apartments in neighborhoods that are beginning to physically decline, but where the process of deterioration can still be reversed. An emphasis on multi-family dwellings may be justified by their importance to the viability of an area. The emerging pattern in the South Shore neighborhood in Chicago, for example, indicates that where large rental structures begin to deteriorate, nearby buildings will also decline.⁴⁵

PROBLEMS POSED BY A DELINQUENT PROPERTY OWNER'S RIGHT TO REDEEM

Rehabilitators also are faced with potential problems posed by the delinquent property owner's constitutional right to a two-year opportunity to redeem his tax debt. Because Article 9, Section 8(b) of the 1970 Illinois State Constitution applies this right "to all sales of real estate for the non-payment of taxes," a redemption period attaches after all of the supplemental sales described above. For example, a tax delinquent parcel's owner is entitled to redeem for two years even though his property was sold at a scavenger sale ten years after his real property taxes first went unpaid.⁴⁶

Unless the rehabilitator and the delinquent property owner enter a sales agreement,⁴⁷ the obvious problem which the redemp-

45. J. Feins, G. Stallings, C. Bradford and S. Hallet, *SOUTH SHORE HOUSING STUDY* 20, 22 (South Shore Issues Forum, undated).

The County's intention to begin suing in personam for back taxes was revealed to the author by Paul Biebel, Chief of the Civil Division of the Cook County State's Attorney's Office in a conversation on Aug. 13, 1974.

46. ILL. REV. STAT. ch. 120, §716a (1975) states:

Redemptions may be made from sales pursuant to this Section in the same manner and upon the same terms and conditions as redemptions from sales made pursuant to the County Collector's annual application for judgment and order of sale. . . .

47. Where it is possible for a potential rehabilitator to enter a sales agreement with a tax delinquent property owner, the two-year period of redemption will not pose a problem.

ILL. REV. STAT. ch. 120, §734 (1975) states:

Real property sold under the provisions of this Act may be redeemed by owners and persons interested in such real estate, other than undisclosed beneficiaries of Illinois land trusts, whether or not the interest in such property is recorded or filed.

Thus, after the sale, the owner will no longer be a person "interested in such real estate" entitled to redeem. Reaching a sales agreement voluntarily will be the preferred route of rehabilitators who care for their public image, given the dim view that the public seems to have of tax purchasing.

tion period poses for a rehabilitator is that he cannot be sure if and when his project will get under way. Unless the tax delinquent owner is willing to sell his property to the rehabilitator, the rehabilitator cannot enter the property for two years after his tax purchase. Although it is possible for the tax purchaser to prevent waste by the owner of a building during this period by petitioning for the appointment of a receiver,⁴⁸ nevertheless, rather than put money "up front" and get stymied by a two-year delay, potential rehabilitators may choose to do their investing elsewhere. This is unfortunate in neighborhoods where large numbers of multi-family buildings are delinquent.⁴⁹

The ease with which owner redemption may be accomplished may prove to be a further deterrent to the County's use of the two most viable backstop procedure, Section 697 forfeiture foreclosure, and Section 756 in personam suits. After one of these supplemental tax sales has occurred, the delinquent property owner need not repay the full amount of tax delinquency and penalties that have accumulated over the years. The delinquent owner need pay only the *amount for which the property was sold* plus some fairly low penalty interest on this amount.⁵⁰ As a result, the best thing that could happen to a delinquent property owner who can afford to redeem is for county officials to allow someone to foreclose his liens by way of one of these provisions.

The ability of a tax delinquent property owner to redeem at a fraction of his original tax debt not only threatens the plans of rehabilitators but also could limit the willingness of county gov-

48. See ILL. REV. STAT. ch. 120, §697a (1975).

49. For example, the South Shore Housing Study indicates that large multi-family apartment buildings are "the real crisis of South Shore's housing." One hundred and two out of 256 buildings with greater than six living units were found to be either tax delinquent, in the process of mortgage foreclosure, or abandoned. J. Feins, *supra* note 45, at 22. A "large proportion" of South Shore buildings with three or more consecutive years of tax delinquency were large multi-family units. J. Feins, *supra* note 45, at 16. This pattern seems to support an inference that slumlords are deliberately taking advantage of the weak spot of the tax collection system: the "redlining" of certain neighborhoods at the tax sale. Nevertheless, it might be wrong to reach this conclusion solely on the basis of circumstantial evidence. A tax enforcement policy designed to snare slumlords should be different than a policy that tries to accommodate the problems of property owners caught in a cost squeeze during recessionary times. For this reason, case histories of delinquent parcels are being studied by the Cook County Assessor.

50. See ILL. REV. STAT. ch. 120, §734 (1975) and the separate schedule of penalties due upon redemption found in ILL. REV. STAT. ch. 120, §697 (1975).

ernment to use Section 697 for the benefit of rehabilitators in the first place. Where a delinquent redeems in this fashion, he receives a tax break that might prove intolerable to county officials. The decision in *E.L. DuPuy v. Mack Morse*,⁵¹ however, demonstrates how the County might conduct a Section 697, forfeiture foreclosure program in such a way that it encourages rehabilitation while preserving the incentive to pay taxes. As in *DuPuy*, the County would make a bid on the delinquent parcel at the foreclosure sale which would be in excess of the fair market value of the property.⁵² It then would sell its certificate to the rehabilitator for an amount less than the bid price. Because the Revenue Act requires the delinquent to redeem at the price at which the property was sold at the foreclosure sale,⁵³ the delinquent would be prevented from redeeming his property from the rehabilitators for an unconscionably low amount. The plaintiffs in *DuPuy* alleged that they were entitled to redeem at the reduced price for which the county sold its certificates of purchase. The court rejected this argument, noting that certificates of purchase are assignable by indorsement, and that legislative instructions regarding the manner of redemption are to be obeyed without judicial interference. In summary, while the ease of redeeming delinquent property does not render a Section 697 program impossible in a county that is unwilling to permit a delinquent taxpayer to get off "easy," it does make the program more complicated.

The ability of a tax delinquent property owner to redeem at a fraction of his original tax debt might also lessen the ability of Section 756 in personam actions to put the bite back into local real property tax enforcement. The liberal redemption terms will be troublesome where the judgment can be satisfied only by judicial sale of the delinquent parcel.⁵⁴ If the judicial sale of the tax delinquent property is construed as a tax sale, the right to redeem

51. 337 Ill.App. 1, 85 N.E.187 (4th Dist. 1949).

52. ILL. REV. STAT. ch. 120, §697d (1975) authorizes such a purchase and states that "no cash need be paid," thus permitting a non-cash bid.

53. See ILL. REV. STAT. ch. 120, §697, §734 (1975). ILL. REV. STAT. ch. 120, §697d (1975) authorizes the sale of a county's certificate of purchase, and provides that the proceeds of such a sale shall be distributed among local taxing districts in proportion to their interests therein.

54. See Kenoe, *supra* note 44, regarding the potential personal liability of trustees and beneficiaries of Illinois land trusts for unpaid real estate taxes.

will apply. The debtor then could redeem his parcel at the low sale price. It is, therefore, advantageous for the County to sue only where there is a "deep pocket" of personal assets other than the delinquent property which can be levied against.

The existence of the two-year period of redemption, as indicated above, can present difficulties for both rehabilitators and government officials attempting to improve the tax collection process. Since Illinois does not have a "two sale"⁵⁵ tax enforcement mechanism, however, it cannot be denied that the redemption period serves the valid purpose of giving a measure of protection to property owners. It may be possible to modify the terms of redemption in Illinois in order to recycle urban property more readily, while still protecting real property taxpayers. The period of redemption, for example, might be restricted to the two-year period following the initial attempt to sell the lien at the annual tax sale.⁵⁶ The difficult way to accomplish this would be to amend Article 9, Section 8(b) of the Illinois Constitution.

Utilization of Section 697d of the Revenue Act might be more feasible. Section 697d allows counties to make non-cash bids equal to the amount of a tax lien where there are no other bidders at the annual tax sale. This "sale" would trigger the two-year period of redemption at an earlier time, making it less of an obstacle for the purpose of "recycling" delinquent parcels should an interested redeveloper come along.

THE NEED FOR A COMPREHENSIVE APPROACH TO THE PROBLEMS OF MULTI-FAMILY HOUSING STOCK

Using Section 697 of the Illinois Revenue Act in the manner described above can make rehabilitation of tax delinquent buildings more feasible by lowering acquisition costs. Nevertheless, the rehabilitation of substantial portions of many communities will

55. In the "two sale" tax enforcement procedure, the tax lien purchaser is merely given credit for his bid at the earlier lien sale when the second sale—that of the actual property—occurs after the redemption period expires. As a result, there is less chance for a "windfall" to the lien purchaser should he acquire title; surplus bids above the amount of delinquency are held for the benefit of the former (delinquent) owner.

56. It is interesting to note that in St. Louis, where there has been some progress in recycling urban land, there is no period of redemption beyond the initial tax sale.

never occur unless financial, administrative, and technical support⁵⁷ is forthcoming from various levels of government as well as the private sector.

The Need for Financial Assistance

Neither a Section 697 nor a Section 756 enforcement program can have a substantial positive impact on the fate of multi-family housing stock unless sufficient rehabilitation and mortgage loan money is made available in Chicago neighborhoods. For example, through the involuntary foreclosure process, well-meaning parties who hope to rehabilitate multi-family buildings can acquire them at a very low cost. If investment dollars are not available, however, they may soon find themselves facing the same financial crunch which might have hindered previous owners.⁵⁸

It is also possible to make a strong argument that a Section 753

57. Some agency or group under contract to a unit of government should also serve as a source of technical counseling to organizations that plan to rehabilitate. In Yonkers, New York, for example, members of the City's Bureau of Housing and Buildings perform this type of service. See Summary of Neighborhood Preservation Program, *supra* note 41.

Technical counselors could also help not-for-profit groups apply for available forms of federal, state, and municipal housing rehabilitation assistance.

The City of Chicago would be in a good position to tie administrative and technical counseling programs together. In St. Louis, new legislation created a "Municipal Land Reutilization Authority" which was made responsible for the redevelopment of tax delinquent property.

In October 1975, the Land Reutilization Authority was experiencing "a growing interest in the purchase of delinquent real estate property for a variety of purposes." Several hundred properties were acquired for an Urban Homesteading Program; some industrial property was sold to the city's Industrial Revenue Bond Authority for use in an inner city industrial park at a nominal sum. The Authority is disposing of approximately thirty parcels a month; most of its dispositions are to private, not public purchasers. There is currently an inventory of approximately 8,000 parcels. A private real estate firm is managing property which has not been demolished. Langsdorf, *supra* note 41.

58. The City of Chicago and State of Illinois have recently passed laws designed to prohibit the practice of redlining: that is, the practice of arbitrarily rejecting mortgage loans for residential properties within a specific geographic area. See P.A. 79-632 (1975), "The Financial Institutions Disclosure Act" (requiring banks and other institutional lenders who do business in neighborhoods within a county having a population over 100,000 to file semi-annual disclosures of their volume of loan applications and subsequent lending activity by zip code area); P.A. 79-634 (1975), "The Illinois Fairness in Lending Act" (permitting those discriminated against for reason of sex, marital status, race or location of security to sue lenders in violation of the Act for actual damages in circuit courts). See also Chicago, Ill., Code §7-30 (1939) (requiring banks that want deposits of City funds to disclose their lending activities by zip code).

in personam tax collection effort should not be attempted unless low-cost rehabilitation loans are made readily available. Intense tax collection activity will frighten the owners of small, multi-family apartments into paying their taxes. But due to budgetary pressure caused by the inability to raise the rent of their low income tenants, these landlords may have to cut their other major expense—maintenance—and hope to escape housing code enforcement. The result of the tax enforcement therefore will be counterproductive, assuming that a major concern of the enforcement program is housing preservation.

In addition, it should be recognized that the rehabilitation efforts made possible by tax sale transactions may have a negative impact on housing conditions for low income people. If their buildings are rehabilitated, subsequent rent increases may force them to relocate into even worse living quarters than what they had before. Subsidies would be necessary to permit former tenants to remain in those buildings which, despite low acquisition prices, have been rehabilitated at substantial costs.

Possible Sources of Financial Assistance

One should pause to consider possible sources of low-cost investment capital. The federal government has been modifying the shape and size of its commitment to housing over the past several years. At the present time, the only federal source of low interest loans is the Section 312 loan program, which applies only to officially designated "urban renewal" areas.⁵⁹ There are also two basic federal rehabilitation mortgage loan insurance programs in operation. Section 207 has been called "HUD's basic multi-family insurance program," but it has turned into a program for creating luxury apartments.⁶⁰ The programs which are more use-

59. These loans are available in an amount as high as \$17,400 at a 3% interest rate and a 20-year term. Priority has been given to applicants whose annual adjusted gross income is within the limitations prescribed for occupancy of projects financed with below market interest rate loans insured under Section 221(d)(3) of the National Housing Act, 12 U.S.C. §1715l (1964). About one-third of all Section 312 loans have been in combination with another form of federal assistance: the Section 115 Grant. These grants are made in amounts not greater than \$3,500 to finance the rehabilitation of one-to-four unit, owner-occupied dwellings located within Urban Renewal Areas. BNA HOUSING & DEVEL. REP. ¶ 60:0015, 60:0016 (May 15, 1974).

60. BNA HOUSING & DEVEL. REP. ¶ 60:0014 (May 14, 1974); Telephone conversation

ful for rehabilitating units for low and moderate income people are Section 221(d)(3) and Section 221(d)(4).⁶¹ Unfortunately, these mortgage insurance programs are not being used for rehabilitating existing structures in the Chicago area.⁶²

The 1974 Housing and Community Development Act⁶³ provides a potential source of federal funds which can make it possible for low income families to benefit from multi-family apartment rehabilitation efforts.⁶³ Under Section 8 of the Act, low income families who have been certified as eligible by local public housing agencies are encouraged to negotiate directly with landlords to secure rental accommodations best suited to their needs and which meet both rental and housing requirements of the program. The Department of Housing and Urban Development then provides the needy family with an appropriate level of rent payment assistance.⁶⁴

The uncertainty of federal commitment to housing assistance, together with dissatisfaction with administration of federal loan programs, has led some states and municipalities to finance their own housing rehabilitation programs through the sale of tax-exempt bonds.⁶⁵ The Illinois Housing Development Authority, for example, has lent money at low interest rates for rehabilitation purposes.⁶⁶

with James Albrecht, U.S. Department of Housing and Urban Development, in Chicago, on Dec. 18, 1975.

61. 12 U.S.C. §1715f (1964).

62. The U.S. Department of Housing and Urban Development's Chicago regional office reports that the basic reason is that the cost of borrowing rehabilitation loan money is too high. Albrecht, *supra* note 60. It should be remembered that the federally supported low interest loan programs, described above, are only available in specifically designated "Urban Renewal," "Neighborhood Development Project," or "Concentrated Code Enforcement" areas.

63. 42 U.S.C. §§1401 *et seq.* (1974).

64. HUD contracts directly with the owner of existing, new, or rehabilitated units for the payment of the difference between the fair market rent for the dwelling and the tenant's ability to pay. Owners may be either private or public. Only "low" or "very low" income families are eligible for this assistance. "Low income" families are defined as those who earn no more than 80% of the area's median income. "Very low income" families are defined as those who earn no more than 50% of the area's median income.

65. State Housing Finance Agencies, BNA HOUSING & DEVEL. REP. ¶ 50:0011 (Nov. 17, 1975).

66. Concerning IHDA activity in the rehabilitation of single family homes, see Illinois Housing Development Authority Annual Report, 1974. Regarding IHDA's involvement in the rehabilitation of multi-family buildings, see Rescorp Activity Report, July 1975.

Rather than depend solely on state and federal finances, the City of Chicago might take advantage of the "Double A" bond rating which it acquired in July 1974 by initiating a rehabilitation loan program of its own. For example, in 1974, a state law authorized the City of Minneapolis to issue ten million dollars in general obligation bonds to pay the costs of administration, loan guarantees, and subsidies in a housing rehabilitation program for low and moderate income property owners.⁶⁷

In short, there must be a genuine financial commitment to housing preservation before these tax enforcement devices can do very much to contribute to restoration of the multi-family housing stock. Financial requirements of rehabilitation underscore the need for intergovernmental cooperation and the assistance of the local banking community. The City of Chicago and State of Illinois need to enforce their anti-redlining legislation.⁶⁸ Banks can show their agreement with the spirit of these laws by investing in areas where the government and community groups are taking positive action. Federal, state, and municipal funds can provide additional investment dollars. The county can then contribute to the attempt substantially to rehabilitate major residential buildings by forgiving a portion of back taxes through foreclosure programs. All these things have to happen simultaneously, however, before the scores of tax delinquent buildings in a community can be taken out of the deterioration cycle, and before the financial difficulty which threatens the hundreds of other large multi-families can be avoided.⁶⁹

CONCLUSION

It is obvious that one benefit of the use of supplementary sales of property "forfeited" in the annual tax sale is to recoup tax revenue that otherwise might be lost. In addition to contributing to the financial health of local government, however, the revival of supplemental tax sale provisions also can help achieve the goal of preserving the housing stock in a city in need of an estimated

67. J. Fitzsimmons, J. Nutter & K. Gilder, *Housing Rehabilitation Loan Programs in Minnesota* 1, May 1975 (Center for Urban and Regional Affairs, University of Minnesota).

68. See note 58 *supra*.

69. See note 49 *supra*.

58,920 rental housing units.⁷⁰ These sales could transfer title to rehabilitators at a reasonable cost, thereby encouraging rehabilitation activity. The use of these sales provisions could preserve housing in a more indirect sense as well, by thwarting the "slumlord" profit-maximizing strategy of property owners that is so devastating to society's housing resources.

Cook County officials have shown renewed interest in reviving the use of certain tax enforcement mechanisms of the present Revenue Act.⁷¹ Rather than accept decay as inevitable, public officials are beginning to engage in the type of experimentation⁷² that has been occurring in other, smaller cities throughout the nation. This effort will require tenacious dedication in order to be successful. The growth of housing-oriented community groups⁷³ already reflects the public's concern. Carl Sandburg described an earlier Chicago as a city with bravado, with the

70. Illinois Housing Development Authority, *Illinois Regional Housing Needs 1975*, 3 (April 1975). The IHDA report also indicates that the majority of any new rental units will require a subsidy from both federal and state housing programs in order to provide affordable units to the citizens of Illinois.

71. Since each of these statutory devices has inherent shortcomings in the modern urban context, a comprehensive legislative revision of substantial portions of the Illinois Revenue Act should be given serious consideration.

The Illinois legislature recently added the Real Property Tax Increment Allocation Redevelopment Act, Senate Bill 1074, P.A. 79-____, to Article 11 of the Illinois Municipal Code, authorizing municipalities to finance the redevelopment of blighted areas through the issuance of obligations that are, in turn, financed by the increased property tax revenues derived from the increased value of the redeveloped property. This act, however, is aimed at blighted areas and will not offer much aid to transitional areas.

72. The Cook County Assessor has suggested that the Cook County Board exercise the power found in Article 9, Section 4(b) of the Illinois Constitution of 1970 to create a new property tax classification for the purpose of stimulating redevelopment. The newly created "Class 5" embraces real estate "located in an area certified by the Assessor to be in need of economic development or rehabilitation," and extends a tax break to those making improvements upon multi-family residential or commercial property within these areas by taxing the value of such improvements at 16%, rather than 33%, of its actual market value for a period of five years.

73. During the past ten years, more than twenty not-for-profit and profit making groups unsuccessfully have asked Cook County officials to use their powers under the Illinois Revenue Act to clear property of tax liens so that rehabilitation can proceed. Statement of Mr. Michael Igoe, Secretary to the Cook County Board of Commissioners, made before the Revenue Committee of the County Board on October 9, 1975 at the County Building, Chicago, Illinois.

mannerisms of a "fighter . . . who has never lost a battle."⁷⁴ Chicago is in a very important battle at this very moment. In order to combat further housing deterioration, Sandburg's "city of the big shoulders" must quickly use its head.

74. Carl Sandburg, "Chicago."