

Condemnation Conundrum:

Pre-Condemnation Municipal Liens Causing Problems for Homebuyers

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The idealized image of the American Dream goes something like this: You work hard, raise a family, buy a home, send your children to college and live happily ever after. Over the past decade, Regional Housing Legal Services represented several nonprofit community development corporations (CDCs) developing affordable homeownership housing, enabling many low-income buyers to become successful homeowners.

Achieving this dream was made possible by city funding and by an innovative Pennsylvania Housing Finance Agency initiative to fund affordable low-income and workforce developments, the Homeownership Choice Program. Prospective homebuyers attended workshops conducted by trained housing counselors to assure they had good credit and could afford to buy the affordable homes, so the mortgage default rate has been extremely low in these developments.

The impact in the neighborhoods where this affordable housing development was developed is astounding. Where there were once abandoned homes and vacant lots strewn with debris, there are now energy-efficient houses. You see moms with baby strollers on the sidewalks instead of broken glass and cracked pavement. The neighborhoods feel safer.

Some of these homes were rehabilitated to remove the blight of one or two abandoned homes on an otherwise stable street. Others were new home construction on entire blocks of vacant land, where small parcels were consolidated and then subdivided into lots for building new homes with yards. Ten percent of the homes are fully accessible for households with people with disabilities. Most of the parcels needed for development were acquired by the Philadelphia Redevelopment Authority using its power of eminent domain.

Although funding for most of this affordable homeownership housing has disappeared since the market crash in 2008, there is an ongoing problem that has affected the CDCs, their title insurance agents, and the buyers of these homes. The issue is caused by the city of Philadelphia's practice of leaving the pre-condemnation municipal liens on the property, rather than removing them as required by Pennsylvania law. For many of these buyers, achieving the so-called American Dream is affected by a harsh reality. While the same issues affect affordable rental properties, the impact is greater on the individual homebuyers, so the focus of this article is on homeowners.

When the affordable homeownership program funding was ramped up several years ago and the housing market was robust, everyone was excited to see the construction activities. There were ribbon cuttings with first-time homebuyers beaming with pride. The first inkling of more severe problems yet to come often surfaced within a few days of a closing, when a new family was just settling in. Despite marked-up title insurance commitments removing all pre-condemnation municipal liens, one of the first letters delivered to a new owner was often a water shut-off notice stating that service would be terminated because of several thousand dollars in arrears.

Such problems with pre-condemnation liens have still not abated for many homebuyers. The old liens linger or new ones pop up. A recent e-mail from a buyer impatient for a resolution asked, "How long do I have to wait ... ?" A frustrated nonprofit developer demanded an emergency meeting with the comment, "I think years of this is enough!"

How would you feel if you bought a house and got a notice threatening a sheriff's sale shortly after the purchase? What if your mortgage company discovered old real estate tax liens, paid them without telling you, then unexpectedly increased the tax escrow, making your mortgage payment unaffordable and putting you at risk of foreclosure? Or what if your application for the 10-year tax abatement was denied because of the tax arrears, and thus your tax escrow is increased, resulting in a significant increase in your mortgage payments? Or what if your mortgage company paid the 2012 taxes, but the city automatically applied the payment to pre-condemnation arrears, so your credit was ruined because the records showed you owe 2012 taxes? Countless buyers of affordable homes have experienced these problems.

In May of 2010 and 2011, RHLS called meetings with representatives from the Law Department, the Revenue Department and the Redevelopment Authority to try to resolve these issues. The CDCs and the title agents at the meetings described the homeowners facing foreclosure, huge escrow bills and collections activities as "frantic," in "immense pain" and "sobbing hysterically."

How could this happen? Title insurance agents issue title insurance policies removing the billings for these pre-condemnation municipal liens in reliance on a letter from the Philadelphia Law Department, called a "comfort letter." One of these comfort letters states in part:

"Pursuant to the Eminent Domain Law, the City of Philadelphia will recover for any pre-condemnation real estate, water/sewer, nuisance and other municipal liens (including PGW liens) that it was entitled to by law. As a result, the succeeding owners are not responsible for any pre-condemnation municipal claims nor municipal claims that accrue after the date of condemnation."

Copies of the comfort letter are sent to city departments with pre-condemnation municipal liens on the properties; these liens include large water/sewer liens and years of liens for real estate taxes, as well as nuisance liens for any Licenses and Inspections (L&I) proceedings for code enforcement violations, including the cost of demolitions. The city's Water Revenue Bureau seems to have developed internal procedures to remove their pre-condemnation municipal liens from the properties, but old L&I liens continue to surface and the Revenue Department's policy is to wait to remove the pre-condemnation real estate liens from the public record on the property until they receive the just compensation check from the court.

How should the condemnation process remove the pre-condemnation liens? The Redevelopment Authority uses eminent domain as a tool to address blight in Philadelphia. According to Pennsylvania eminent domain law, once the condemnor (the Redevelopment Authority) has the legal right of possession, any municipal liens existing on the date of the filing of the condemnation (the "taking") cease to be encumbrances against the condemned property. These municipal liens continue instead as liens against the condemnation proceeds. In the title insurance underwriting world, this concept is known by a short-hand phrase: "The liens fall to the fund."

In Philadelphia, contrary to Pennsylvania law and contrary to its own Law Department's "comfort" letter, the practice has been to leave these pre-condemnation municipal liens on the record for the properties. As a result, it can take years of effort by the staff of the Redevelopment Authority and various city departments to "unpack" these issues.

Due to the pre-condemnation real estate tax liens on the city's website, at least one title insurance agency is also reassessing whether it will insure properties with such liens in the future. So now a new wave of distress is being caused to the CDCs and their prospective buyers because affordable housing sales are delayed for weeks while urgent pleas are made to the Redevelopment Authority and city departments to resolve the lien issues. The title insurance agencies' reluctance to insure the sales of homes funded by city dollars and built on land condemned for a public purpose should concern the city. Yet the city's practices, especially the Revenue Department's, remain unchanged.

In one recent example, a family with an 18-year-old quadriplegic daughter was living in a rented row house. Her bedroom was on the second floor. The family had to carry their adult daughter up and down interior and exterior stairs. They were ecstatic to learn about the opportunity to buy an affordable, physically accessible house from one of our clients, Habitat for Humanity Philadelphia. The homebuyer family participated in homeownership workshops, completed 350 hours of sweat equity, and saved for settlement costs. With move-in day approaching, they gave their landlord

notice. As the date for the closing drew nearer, and despite numerous desperate calls and e-mails, the city still had not removed these liens from the property. Eventually, the Revenue Department agreed to suspend billings on the real estate taxes so the closing could occur.

The city departments' practice of leaving pre-condemnation municipal liens on the record on the condemned property is contrary to the requirements of the law and the instructions set forth in the Law Department's letter.

The CDCs and the title companies have spent countless hours trying to resolve the problems, but need the city's commitment to expedite the resolution of all remaining issues. The city should ask each department and agency to:

- Understand the urgency of resolving these long-standing problems to avoid such "intense pain."
- Recognize that this affordable housing development has been funded by the city.
- Work cooperatively and diligently to resolve existing lien and 10-year tax abatement issues immediately.
- Assist the buyers in restoring any bad credit caused by these liens.
- Create a system for removing municipal liens on RDA-conveyed properties to avoid such problems in the future.

For the past several years, RHLS has repeatedly urged the city to find a comprehensive solution for these problems. It is now time for the city to act.

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