

**TAX FORECLOSURE CONCERNS  
FOR CONNECTICUT MORTGAGE LENDERS  
By Martha Croog**

**From time to time mortgage lenders doing business in Connecticut are faced with an imminent or pending tax foreclosure filed by a municipality. This summary is intended to address basic issues for Connecticut mortgage lenders with respect to municipal tax foreclosures.**

- In Connecticut, tax collectors, at their discretion, may foreclose delinquent tax liens. The tax collector has the legal authority to foreclose both recorded tax liens as well as statutory tax liens for current taxes due, as to which a tax lien has not yet been recorded.
- There is no law as to the number of liens that must be in arrears before a tax foreclosure may be commenced. Nor is there a law as to the amount of the tax arrearage that must have accrued before a tax foreclosure may be filed. Some municipalities rarely begin foreclosure proceedings, while some cities with a significant percentage of distressed properties may regularly foreclose tax liens that relate to only ½ Grand List of unpaid taxes. Most tax collectors will not foreclose until at least one full Grand List is delinquent.
- A tax foreclosure, like a mortgage foreclosure, requires that all lienholders of record be served with a summons and complaint. If a mortgage loan was sold but the assignment was not recorded at the time the tax foreclosure was filed, the current owner will need to rely on receipt of notice from the record mortgage lender who was actually served.
- Before a judgment may enter, the mortgage lender must have been served with a motion for default.
- Under Connecticut law, if an appearance is filed by the mortgage lender at any time prior to the judgment hearing, a default for failure to appear that previously was entered is automatically set aside.
- If the mortgage lender retains counsel to file an appearance, the lender is entitled, by law, to a copy of the foreclosing tax collector's appraisal report as well as an affidavit of debt.
- In most tax foreclosures the court should order that a foreclosure sale be held because there will be substantial equity in the property over the amount of the tax liens proposed to be foreclosed. However, some courts will enter a judgment of strict foreclosure on the theory that the mortgage lender's lien consumes that equity. ***The mortgage lender has the right to request a judgment of foreclosure by sale.***
- If a judgment of strict foreclosure enters in a tax foreclosure, and if the mortgage lender fails to redeem (payoff) the tax liens ***on or before its law day***, the mortgage lender will lose its mortgagee interest in the property.
- If the mortgage lender previously acquired title to the property in its own foreclosure action, and if the mortgage lender fails to redeem (payoff) the tax liens ***on or before its law day***, the mortgage lender will lose its ownership interest in the property.

- ***In a strict foreclosure there is no redemption period after the mortgage lender's assigned law day has passed.*** In a strict foreclosure the redemption period runs from the date of judgment until the mortgage lender's law day.
- The mortgage lender's right to redeem effectively "piggybacks" on the redemption right of the mortgagor/tax payer by operation of the mortgage contract.
- In a judgment of foreclosure by sale, the mortgage lender's ***right of redemption continues until the date that the court approves the foreclosure sale, and not the date that the sale is held.*** The court usually approves the sale 2-3 weeks after the sale is held.
- If a mortgage lender does not redeem prior to the court's approval of the sale in a judgment of foreclosure by sale, its mortgage will be foreclosed or its ownership interest in the property will be foreclosed, as the case may be. There is no other redemption period.
- If the mortgage lender does not bid at the auction in a judgment of foreclosure by sale, and if the sales proceeds exceed the amount of the debt owed to the foreclosing tax collector and any other priority lienors, the mortgage lender, through local counsel, may apply to the court to recover the excess sales proceeds. This is achieved by a "further motion for supplemental judgment".
- It is significant to note that in Connecticut, mortgage foreclosures are conducted *subject to* the payment of municipal taxes. Therefore, a mortgage lender may acquire title to a property in its own foreclosure action despite the existence of a municipal tax liability.