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A Taxing Problem

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By Thomas Adcock
[New York Law Journal](#)

Lurking in the shadows of a mortgage industry disaster that has global stock markets skittering is what Manhattan elder law attorney Daniel G. Fish calls a critical "hidden issue," one that has New York City officials and lawyers at Morgan, Lewis & Bockius searching for strategies to help retirees hang on to homes they own free and clear - or so they may think.

Speculators in the shark-infested waters of the real estate world smell the blood of new prey: the elderly who long ago paid off mortgages on houses now worth hundreds of thousands of dollars and who fall behind on likewise increasing property tax payments, facing the prospect of losing title and equity to someone who can cover as little as a few thousand dollars of debt.

Cities and counties are obliged to file tax liens against property owners in arrears. Often, governments are then forced to sell off liens to third parties who become legally entitled to collect the outstanding debt, in addition to a surcharge of 5 percent, according to established national standard, as well as 18 percent interest until restitution is made.

What can happen next is happening in fact, and most egregiously, in the nation's capital, which holds a tax lien auction every July.

Michael J. Wilson, an associate in the Washington, D.C., office of Morgan Lewis, said the elderly are most at risk. Last month at auction time, at the behest of the Superior Court of the District of Columbia and the D.C. bar, he began a unique pilot project that aims to ward off potential homelessness.

Similarly, the New York City Department of Finance and the Department of Housing Preservation & Development will launch a joint survey project in the Bronx in November to determine the dimension of the problem, the reasons homeowners fall behind on taxes and how to help them retain their properties. A similar survey headed by Lee Fiorino, director of business and community outreach for the finance department, is already under way in Bedford-Stuyvesant, Brooklyn.

Unlike New York City, homeowners in Washington, D.C., have no ability to

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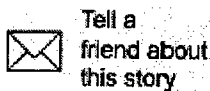
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make installment arrangements with property tax collectors and are left to a cold legal process that commences once they are late by as little as one year.

"The homeowner gets tax bills twice a year, and constructive notice 60 days before a tax sale," said Mr. Wilson. "But practically speaking, he has no idea of the trouble he's in."

Trouble comes in terms of penalties applied to an outstanding tax bill, plus interest. Generally, said Mr. Wilson, the hot properties are homes worth about \$300,000 on the open market, with an outstanding tax bill of about \$2,000.

"You could buy the lien for that amount plus a few thousand more to buy out other liens, and you walk away with a tax sale certificate," said Mr. Wilson. "You wait six months, then you go down to Superior Court and file an action to foreclose with right of redemption."

He added, "This is a problem that's flying under the radar screen. We need to set up some sort of safety net. We need to catch these people - mostly low-income elderly people - before they wind up in a black hole they can't get out of."

To date, said Mr. Wilson, his efforts have saved three elderly Washingtonians from being put out of their homes. Like his other tax lien clients, they walked into the Superior Court anteroom given over to Morgan Lewis for consultation sessions two hours every Wednesday afternoon.

'Cleaning Up Legal Messes'

Amanda D. Smith, based in New York as firmwide pro bono counsel for Morgan Lewis, said Mr. Wilson's project in Washington "is a good example of how large-firm pro bono programs work best."

In addition to what Mr. Wilson called "cleaning up legal messes" for low-income pro bono clients - those at 200 percent of the federal poverty income level - the project finds low-interest loan opportunities or reverse mortgages through the nonprofit American Association of Retired Persons.

"It's our responsibility, along with the judiciary and legal service organizations, to be aware of this really oppressing problem for low-income [homeowners], especially the elderly," said Ms. Smith. "We'll be analyzing our Washington, D.C., project to see if it needs to be replicated in places like Philadelphia and New York."

Mr. Fish, a partner in the elder law firm Freedman Fish & Grimaldi and a Law Journal columnist, said that legal housing issues are the number one problem faced by the elderly, followed by health care matters.

"So this is very serious," he said.

Mr. Fish said he would contact the elder law section of the New York State Bar Association this week and encourage the organization to look into the analysis done through Mr. Wilson's project, with an eye toward developing help for New Yorkers.

Oda Friedheim, a staff attorney for the Legal Aid Society of New York, said elderly people desperate to keep their homes often turn to predatory lenders.

"They get scammed by one-stop-shopping outfits run by brokers who call

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themselves 'home-savers,'" she said. "These brokers push abusive refinance loans. And sometimes the homeowner is even tricked into signing over a deed. They think it's refinancing; they think it's just one more paper to sign in a big stack of papers."

Sometimes, she added, attorneys collude with the scammers.

"Our profession is not behaving very well in many of these cases," she said.

Indeed, Mr. Wilson said his own bar association in Washington, D.C., notwithstanding its concern for the plight of the elderly, hosts informational programs on how to buy tax liens, where member lawyers are taught "how the sharks snap up these properties," as he put it.

Eligible Benefits

Ms. Fiorino of the New York City finance department suggested that a good deal of the problem has to do with seniors who fail to take advantage of existing relief from at least some of their tax burdens through eligible discounts.

"A lot of people don't have the benefits they're entitled to," she said. "We do try to help with that. Or maybe we can hook them up with a reverse mortgage, or get them into a financial literacy program or an installment agreement."

It is entirely common that a house in New York City worth \$800,000 can have its tax lien sold for as little as \$10,000, with foreclosure to ensue, said Ms. Fiorino.

"It just breaks my heart," she added.

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