

## RESOLUTION NO. 141

### **ADOPTING AN UPDATED DISPOSITION PLAN BY ALBANY COUNTY FOR REAL PROPERTY ACQUIRED THROUGH THE 'IN REM' DELINQUENT TAX FORECLOSURE PROCESS**

Introduced: 4/14/25

By Audit and Finance Committee:

WHEREAS, The United States Constitution reserves the right of Real Property taxation to the States, and

WHEREAS, New York State prescribes collection and enforcement proceedings in adopted law, and

WHEREAS, Albany County adopted the proceedings specified under New York State Real Property Tax Law Article 11, Title 3 by Resolution 46 of 1995, and

WHEREAS, After the United States Supreme Court decision in *Tyler V. Hennepin County*, New York State amended the Real Property Tax Law in April of 2024 to require distribution of “surplus proceeds” from conveyance of tax foreclosed parcels as well as other related procedures, and

WHEREAS, The Albany County Legislature, working in conjunction with the County Executive's Office, the Department of Law, and various County Offices, has created an updated Disposition Plan to comply with the amended New York State Real Property Tax Law, now, therefore, be it

RESOLVED, By the Albany County Legislature that the updated “Disposition Plan for Real Property Acquired by Albany County Through the ‘In Rem’ Delinquent Real Property Tax Foreclosure Process” as annexed hereto is hereby approved and adopted, replacing all prior disposition plans for real property tax foreclosed properties, and, be it further

RESOLVED, That the County Executive is authorized to enter into any and all necessary agreements regarding the implementation of the approved Disposition Plan, and, be it further

RESOLVED, That the County Attorney is authorized to approve any necessary agreements related to the aforementioned approved plan as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

#### **§ 360-34. Applicability.**

All conveyances authorized by the County Legislature of the County's RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosed properties after January 1, 2025 shall be subject to the provisions of this updated Disposition Plan.

#### **§ 360-35. Adoption of disposition plan.**

This updated "Disposition Plan for Real Property Acquired by Albany County Through the RPTL Article 11 Title 3 'In Rem' Delinquent Tax Lien Foreclosure Process," as filed with the Clerk of the County Legislature, is hereby approved and adopted, replacing all prior disposition plans for delinquent tax lien foreclosed properties.

#### **§ 360-36. Authority to implement agreements.**

- A. The County Executive is authorized to enter into any and all agreements regarding the implementation of this updated Disposition Plan.
- B. The County Attorney is authorized to approve all agreements related to this updated Disposition Plan as to form and content.

#### **§ 360-37. Legal authority.**

- A. Real Property Tax Law ("RPTL") § 1166 provides that: "Whenever any tax district shall become vested with the title to real property by virtue of a foreclosure proceeding brought pursuant to the provisions of this article, such tax district is hereby authorized to sell and convey the real property so acquired, either with or without advertising for bids, notwithstanding the provisions of any general, special or local law."
- B. That section further provides that: "No such sale shall be effective unless and until such sale has been approved and confirmed by a majority vote of the governing body of the tax district, except that no such approval shall be required when the property is sold at public auction to the highest bidder. The provisions of title six of this article shall govern the distribution of any surplus attributable to such sale."
- C. Real Property Actions and Proceedings Law ("RPAPL") § 231 provides that "sale of real property made in pursuance of a judgment affecting the title to, or the possession, enjoyment or use of real property shall be at public auction to the highest bidder." The County's Tax Enforcement Officer, as defined in RPTL §1102.3 (i) and County Charter §502 (h), appointed by Legislative Resolution ("Enforcing Officer") is appointed by RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien proceeding State Court filings as the officer to make such sale.
- D. This Disposition Plan is intended to be compliant with the United States Supreme Court decision in *Tyler v Hennepin County, Minnesota*, 598 U.S. 631 (2023) and compliant with the RPTL as amended in April of 2024.

- E. Nothing contained in this Disposition Plan shall prohibit consideration of sales which the County has determined in its sole judgement and discretion will best benefit the public use or community benefit of the people of the County which may result from such disposition.

### **§360-38. Rescinded Resolutions.**

The following Legislative Resolutions are hereby rescinded to allow for the County to comply with the RPTL as amended in 2024: Resolution 306 of 2000, related to County staffing public auctions; Resolution 80 for 2008, related to bidder requirements and Resolution 29 of 2019, which established the current County Disposition Plan.

### **§ 360-39. Statement of intent, policy and plan.**

It is the intent, policy and plan of Albany County to sell and convey all properties, title to which have been acquired by it through the RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosure process, in accordance with the following provisions which it has determined in its sole judgment and discretion will best effectuate the benefit to the community that will result from such disposition.

Pursuant to Resolution 46 of 1995, the County of Albany will proceed with enforcement of delinquent real property taxes as prescribed in Article 11 Title 3 of the RPTL. The County notes that in response to recent United States Supreme Court precedent, *Tyler v Hennepin County*, Minnesota, 598 U.S. 631 (2023), amendments to the RPTL have been adopted, which address municipal distribution of "surplus proceeds" of sales of its delinquent tax lien foreclosed real property, which distributions were previously not required in RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosure proceedings.

The amount of the "surplus proceeds" shall be established by the Enforcing Officer, or his designee, and shall be the calculation of funds received in excess of extinguished real property taxes, fees and interest due at foreclosure, together with any County expenditures related to each parcel while in County ownership. This amount is hereafter referenced as the "County Cost".

It is the intent of the Albany County Legislature to bring its County "In Rem" delinquent real property tax lien foreclosed properties Disposition Plan into compliance with recent State law amendments and current Federal case law.

### **§ 360-40. Disposition plan provisions.**

The County shall henceforth convey all properties acquired by it through Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosure subject to the following provisions:

A. Once the County's RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosure proceeding Deed in Foreclosure is filed with the County Clerk, a list of foreclosed properties shall be forwarded to the County Legislature for review. This listing shall contain assessment roll records of former owner(s)' names, the property address, tax map number, in which County legislative district it is located, and the amount of taxes, fees, and interest extinguished by the foreclosure, as well as any other applicable information requested by the County Legislature.

Requests for reacquisition by former owners, or by the estates of former owners, of properties may be considered while the property remains in County ownership. If and when certified funds are deposited in an amount required by the Legislature or by Court Order, the County shall convey the parcel back to the former owner, or the estate thereof, as per RPTL § 1136(4)(b), thereby restoring potential equity in the property to the them.

Where no reacquisition request is made, the County Legislature may approve any, all, or none of the parcels so listed, for sale at public auction. Properties approved for sale through public auction under this process shall proceed under the following conditions:

- (1) Properties Legislatively approved for auction shall not require additional legislative review and approval of recorded bids, pursuant to RPTL § 1166 as amended.
  - (2) The approved properties shall be publicly listed by the Enforcing Officer or his designee, for a minimum of thirty (30) days. Bidding on these properties shall be conducted by in accordance with RPAPL §231 and by a licensed auctioneer under contract with the County, under conditions previously set by that legislatively approved contract.
  - (3) The County reserves the right to set a minimum bid on any or all properties. Where a minimum bid is set, that amount shall be the County Cost needed to calculate surplus proceeds. The licensed auctioneer shall begin the bidding the amount so specified.
  - (4) Auction properties shall be conveyed to the highest qualified bidder, per the terms and conditions of that auction. Closings shall be conducted by the County Department of Law, or its designee, at the direction of the Enforcing Officer as defined in §360-37 above. All Deeds conveying these properties shall be recorded by the County.
- B. It is the intent of the County for the auction sale to establish “full value” for each property as defined by RPTL § 1197.2(a): “Where the property was sold by a public sale/auction, the amount paid for the property shall be accepted as the full value of the property. No party may maintain a claim for surplus or any other claim or action against the tax district on the basis that the amount paid for the property did not fairly represent the property's value.”
- C. Where no bid advances above the minimum bid set for a property pursuant to Section A (3) above by the officer/individual appointed to conduct the sale, then no “surplus proceeds” will be due to the former owner or other interested parties from future County conveyance of that property.
- D. Where the County of Albany retains a property for public use, or transfers a property by a process other than by public sale, including those processes noted in § 360-41(A)(1)-(7) of this Disposition Plan, the potential surplus equity shall be established via RPTL § 1196(1)(a)(i)-(ii). Any claim to said surplus, to the extent it exists, shall be distributed consistent with RPTL § 1197.
- E. Local municipality(ies) shall be provided with written notice of any proposed sale of property located within that municipality (City, Town or Village), no less than 30 days prior to listing such property for sale.

#### **§360-41. Dispositional Alternatives to Public Auction.**

RPTL §1166 allows County discretion in the conveyance of delinquent real property tax lien foreclosed properties. Where the County Legislature withholds properties from approval for public auction sale as defined in §360-40 above, it may discretionarily authorize conveyance of properties according to the following conditions:

A. Properties may be discretionally conveyed by the County to itself for its stated governmental purposes. The Legislature shall request a calculation of potential surplus proceeds that may arise from such sale, from the Enforcing Officer as defined above.

These parcels are intended for review by the Legislative Conservation, Sustainability and Green Initiatives Committee. Where requested, that review will be undertaken by the staff of the County Department of Economic Development, Conservation and Planning.

All properties conveyed in this manner shall comply with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus proceeds exist.

B. Properties may be discretionally conveyed by the County back to their immediate former owner(s) upon a showing of hardship. The sale price for reacquisition of these properties shall be the amount of their outstanding delinquent tax liability (inclusive of interest, penalties, and legal charges) with respect to the property prior to foreclosure and all current taxes levied (inclusive of interest, penalties, and legal charges) prior to the date of reacquisition. The full amount of the sale price and closing costs must be submitted to the County to be held by it in escrow as a prerequisite to the request for approval of the County Legislature for the reacquisition, which monies will be refunded only in the event such approval is not granted.

The recipient of the property is required to close within 120 days of certified legislation approving the reacquisition. The Deed back shall provide that any and all liens upon and other interests in the property which were extinguished as the result of its foreclosure, except to the extent they were subsequently reduced, discharged, satisfied and/or otherwise terminated of record, upon the recording of said Deed shall be thereby reinstated and restored to the full extent they existed at the time they were so extinguished.

All property sales conveyed in this manner shall resolve claims for surplus proceeds via the reacquisition.

C. Properties may be discretionally conveyed by the County to individuals or entities who own an abutting or adjacent property. The sale price for these properties shall be the appraised value, an amount equal to the extinguished delinquent real property tax liability with respect to the property being conveyed, or such other value set by legislative Resolution. The recipient of the property is required to close within 120 days of certified legislation approving the conveyance. All property sales conveyed in this manner shall comply with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus exists.

D. Properties may be discretionally conveyed by the County to other municipal corporations for use for a governmental purpose. The amount to be paid for the property shall be its assessed value, outstanding delinquent tax liability (inclusive of interest, penalties and legal charges) prior

to its foreclosure, or some other amount which reflects the benefit to the community stemming from the proposed use of the property.

Where conveyed pursuant to this section, the municipal corporation shall be required to agree to accept liability for any potential “surplus proceeds” as set forth in RPTL §§ 1196 and 1197(2)(a)-(b). The County shall thereby be released from liability for any payments related to “surplus proceeds” as a condition of sale.

A Deed provision requiring that the property be used for a stated governmental purpose or open space preservation or conservation purpose and providing that the County shall have a right of reacquisition through reverter in the event the property is at any time not or no longer being so used may be required.

E. Properties may be discretionally conveyed by the County to not-for-profit/nonprofit entities for use for a public purpose. The amount to be paid for the property shall be its assessed value, outstanding delinquent tax liability (inclusive of interest, penalties and legal charges) prior to foreclosure, or some other amount which reflects the benefit to the community stemming from the proposed use of the property. All property sales conveyed in this manner shall comply with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus exists.

A Deed provision requiring that the property be used for a stated public purpose and providing the County shall have a right of reacquisition through reverter in the event the property is at any time not or no longer being so used may be required.

F. Properties may be discretionally conveyed by the County to individuals or entities for economic development purposes:

The amount to be paid for these properties shall comply with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus exists.

A Deed provision requiring a right of reacquisition through reverter in the event the property is not or no longer being so used may be required. Public notification of the availability of the property proposed for private sale shall be made through all appropriate means (newspaper, website, etc.) prior to authorization of sale by the County Legislature. Additional written notice to the local municipality(s) in which the property is located shall be required no less than 30 days prior to consideration by the County Legislature of such property transfer. Proof of compliance with the aforementioned written notice requirement shall be provided to the Legislature as a precondition to the Legislature's consideration of any conveyance falling under this subsection.

The recipient of the property is required to close within 120 days of certified legislation approving transfer.

G. Where properties have been withdrawn from foreclosure under NYS RPTL §1138 the County may conditionally offer such parcels for public bid via sealed bid for consistent with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus exists.

It shall be the bidder's responsibility to research all information relevant to their bid. Prior to submission for Legislative approval of conveyance from these bids, the full amount of the sale price and closing costs must be submitted to the County in escrow.

A signed statement by the bidder acknowledging receipt of full disclosure regarding the condition of the property, insofar as known to the County, will be required as a condition of bidding.

The County shall not be liable for any conditions known or unknown with respect to these properties, and the purchaser will be required to execute a release, hold-harmless and indemnification agreement in this regard at the closing of the sale. Deed title will be transferred directly to the successful bidder pursuant to assignment without recourse.

Certified funds in the amount offered shall be deposited with the County Treasurer prior to the County Legislature's authorization of the conveyance.

The County reserves the right and authority to offer any parcel for public bid in this manner, even if not withdrawn under §1138.

H. Properties which may be discretionally conveyed by the County to the Albany County Land Bank Corporation ("Land Bank"):

(1) The Land Bank shall be authorized to bid at any Albany County Public sales, subject to review and approval of its Board.

(2) Where conveyed outside of the auction or sealed bid processes set forth above, the sale price for the conveyance of properties to the Land Bank or its LLC shall be consistent with the conditions set forth in RPTL §§ 1196 and 1197(2)(a)-(b) to establish the full value of the parcel related to the conveyance, and to determine if any surplus proceeds exist.

(3) County employees and members of the Albany County Legislature who are involved with the negotiation or preparation of the sale and closing process of properties title to which has been acquired by the County through the "In Rem" delinquent tax lien foreclosure process, have access to knowledge or information about a parcel conveyed by the County to the Land Bank or about the present or proposed use of nearby parcels through their County position, which knowledge or information is not accessible to the general public, or who have the authority to appoint employees who have any of the foregoing powers or access to the foregoing information, are specifically precluded from purchasing properties conveyed to the Land Bank by the County during and for two years after the termination of their County employment.

(4) Properties which have received EnergizeNY benefit loan financing from the Energy Improvement Corporation for energy-efficiency or renewable energy upgrades shall not be conveyed to the Land Bank unless that loan, inclusive of interest, has been completely repaid.

**§ 360-42. All Sales and conveyances discretionary; additional requirements or conditions; approval.**

All County sales and conveyances of properties title to which has been acquired by the County through the RPTL Article 11 Title 3 "In Rem" delinquent tax lien foreclosure process, are discretionary and the County Executive and/or County Legislature may for any reason reject any sale request or rescind any approval, except in the conveyance of parcels bid under the conditions of § 360-40. A. above.

**§360-43. Sale and Conveyance of County owned surplus property:**

County owned surplus real property which was not acquired by the RPTL Article 11 Title 3 "In Rem" delinquent real property tax lien foreclosure process shall continue to be disposed of pursuant to provisions of Albany County Code § 653, which authorizes the County Executive to sell and convey surplus real property owned by the County subject to County legislative approval.

**§ 360-44. Closing procedure.**

- A. Closings will proceed at the Direction of the Department of Law or its designee. Terms of sale will be reviewed by the County Attorney, prior to bid. Conditions of private sale are set forth above and subject to conditions set by adopted Resolutions authorizing those conveyances.
- B. In the event Albany County has acquired title to these properties through "In Rem" delinquent real property tax lien foreclosure proceedings in accordance with RPTL Article 11, Title 3 and the right, title, interest, claim, lien, and equity of redemption of all persons therein have been presumptively extinguished under said provisions of law, such presumption will become conclusive after two years from the date of the recording of the deed thereof to the purchaser.
- C. The Deed conveying title to the purchaser will be a Quit Claim Deed from the County containing the assessment roll description of the property as it appeared on the delinquent tax roll for the year upon which the County acquired title by foreclosure and not a metes and bounds description, per existing law.
- D. All sales shall be final, absolute, and without recourse, and in no event shall the County be or become liable for any defects in title or for any cause whatsoever, and no claim, demand, or suit of any nature shall exist in favor of the purchaser, their heirs, successors, or assigns, against the County arising from such sales.
- E. Private Sale conveyances must close within 120 days of Legislative approval. If any such property fails to close within the required period of time, only the County Legislature may grant an extension.
- F. Property(s) authorized for conveyance to the Land Bank must close within six months (180 days) of Legislative approval. If any such property fails to close within the required period of time, only the County Legislature may grant an extension.
- G. Parcels conveyed from Public Auction Bid will be governed by the Terms of Conditions of auction, but are required to close within 120 days of bid deposit(s), if not otherwise stated at the time of bidding.



- H. The County will provide the necessary Deeds, transfer tax statements (TP584), and real property transfer reports (RP5217). The County will be responsible for costs that arise during its ownership. Any amounts not payable to the County when bid or authorized for closing shall be the responsibility of the bidder. There will be no pro-rations of unpaid real property tax bills at closing.

#### **§ 360-45. Reporting**

- A. A yearly summary of RPTL Article 11 Title 3 "In Rem" delinquent tax lien foreclosed property conveyances will be provided to the Legislature. The report will contain information on the number of properties sold by type and location, and will contain information on the projected public auctions for the coming year.
- B. A copy of any "surplus proceeds" report required for submission to the Court(s) by State Law will also be forwarded to the County Legislature when submitted to the Court. Such reporting will contain identification of properties with "full value" below the County cost of foreclosed taxes and additional costs incurred.