

**CITY OF NEW YORK  
DEPARTMENT OF FINANCE**

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within amendments to the Rules Relating to Foreclosure of Tax Liens by Action In Rem.

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Andrew S. Eristoff  
Commissioner of Finance

Note: New matter underscored. Matter to be deleted in [brackets].

§1. The title of Chapter 13 of Title 19 of the Rules of the City of New York is amended to read as follows:

**Foreclosure of Tax Liens By Action in Rem**

§2. Section 13-01 of such rules is amended to read as follows:

**§13-01 [Definitions.** As used below, the term "immediate family" shall mean and include only the following: a spouse, son, daughter, grandson, granddaughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law, grandfather, grandmother, stepfather or stepmother.]

**Late Payments.** (a) Application for release of property by the City. Receipt and deposit by the New York City Department of Finance of a payment made with respect to a property that was acquired by the City through in rem foreclosure shall not cause the release of the City's interest in the property unless such payment has been made in compliance with the provisions of §11-424 of the Administrative Code of the City of New York.

(b) Application to vacate and set aside final judgment for class one and class two properties. If a payment of arrears of real property taxes and other real property related charges is tendered for a property classified as class one or class two under § 1802 of the Real Property Tax law with respect to which a final judgment in foreclosure has been entered pursuant to §11-412.1(b) of the Administrative Code of the City of New York more than four months after the date of entry of such final judgment, receipt and deposit by the New York City Department of Finance of any such payment shall not constitute receipt of the payment required to vacate and set aside such final judgment.

§3. Section 13-02 of such rules is amended to read as follows:

**§13-02 [ Waiting Periods Prior to Foreclosure of Liens.** § 11-404(a) of the Administrative Code of the City of New York provides, in general, that whenever a tax lien has been due and unpaid for a period of at least one year, it may be summarily foreclosed by an action in rem. However, pursuant to subdivision (b) of that § 11-404, a tax lien on a parcel on which the only improvement is a dwelling containing no more than two dwelling units, including condominium units, cannot be foreclosed until such tax lien has been due and unpaid for a period of at least three years, provided:

(a) the property is occupied by the owner thereof or a member of his immediate family; and

(b) the annual real estate tax on the property is not more than \$2,000.]

**In rem installment agreements for class one and class two properties.**

(a) Where in rem foreclosure action has been filed. (1) Application period. A request for an installment agreement for a class one or a class two property against which an in rem foreclosure action has been commenced may be made only during the period commencing with the filing of the in rem action against such property, and ending on the date on which the Commissioner of Finance is advised by the Corporation Counsel that the preparation of the judgment of foreclosure in such in rem action has been commenced.

(2) Agreement with Department of Housing Preservation and Development. The Commissioner of Finance, in his or her discretion, may approve a request for an installment agreement for a class one or class two property against which an in rem foreclosure action has been commenced if the owner of the property has (i) executed an agreement with the Department of Housing Preservation and Development to correct existing Housing Maintenance Code violations issued against such property and to participate in a housing education program as directed by the Department of Housing Preservation and Development, and (ii) filed all registration statements for the property that are required under article 2 of subchapter 4 of title 27 of title 27 of the Administrative Code of the City of New York.

(b) Where in rem foreclosure judgment has been entered. (1) Application period. A request for an installment agreement for a class one or class two property against which an in rem foreclosure judgment has been entered may be made to the Department of Finance only during the period commencing on the date judgment is entered pursuant to Administrative Code § 11-412.1(b) authorizing the award of possession of the property, and ending upon the expiration of four months immediately following such date.

(2) Referral to Department of Housing Preservation and Development. When the Department of Finance receives a request for an installment agreement for a class one or class two property against which an in rem foreclosure judgment has been entered, the Department of Finance may refer such application to the Department of Housing Preservation and Development for a recommendation as to whether such installment agreement should be granted. The basis for such recommendation may include but shall not be limited to the following:

- (i) History of ownership and management of such property and other real property of the owner;
- (ii) Record of Housing Maintenance Code violations, including but not limited to: class B and class C violations; legal proceedings to enforce the Housing Maintenance Code including, but not limited to, litigation by the Department of Housing Preservation and Development's Housing Litigation Bureau and outstanding judgments in relation thereto; and Emergency Repair Program charges against such property and other real property of the owner;

- (iii) History of arrears of taxes, water and sewer charges, or other real property related charges or past tax, mortgage, or lien foreclosure or enforcement proceedings with respect to such property and other real property of the owner;
- (iv) History of tenant complaints and tenant-initiated housing court proceedings against the owner;
- (v) Financial capacity of the owner;
- (vi) Intent and ability of the owner to improve, manage and maintain such property;
- (vii) Ability of the owner to obtain financing for the improvement and rehabilitation of such property;
- (viii) Plans by the City for transfer of such property pursuant to Administrative Code § 11-412.1;
- (ix) Plans by the city for disposition of such property through sale, development or alternative management;
- (x) The execution by the owner of an agreement with the Department of Housing Preservation and Development to correct any existing Housing Maintenance Code violations issued against such property and to participate in a housing education program where directed to do so by the Department of Housing Preservation and Development;
- (xi) Whether the owner has filed all registration statements that are required for the property under article 2 of subchapter 4 of title 27 of the Administrative Code of the City of New York; and
- (xii) Any other factors that the Department of Housing Preservation and Development deems relevant to such recommendation.

(c) Default on prior agreement. The Department of Finance shall not approve an application for an installment agreement pursuant to subdivisions (a) or (b) of this section where there has been a default on a previous installment agreement on the same property, and any amount due thereunder, including current taxes and charges and interest accrued thereon, remains unpaid, except that if the property is a class one property or a property owned by a company organized pursuant to article XI of the Private Housing Finance Law with the consent and approval of the Department of Housing Preservation and Development, the Department of Finance may, in its discretion, approve such an application upon recommendation by the Department of Housing Preservation and Development.

(d) Notwithstanding any other provision of these rules or any other provision in title 19 of the Rules of the City of New York, these rules shall not apply to any property for which a 60-day notice of the sale of tax liens has been published by the Department of Finance pursuant to §11-320 of the Administrative Code of the City of New York if an installment agreement is executed no later than the earlier of 120 days after the first date on which liens were sold pursuant to such 60-day notice, or such other date chosen by the Commissioner of Finance and published in a notice in the City Record.

(e) As used in these rules, the term “owner” shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee in possession, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a property.

§4. Sections 13-03 and 13-04 of such rules are repealed.

**[§13-03 Proof That Real Estate Tax on a Parcel Does Not Exceed \$2,000.** The determination whether the annual real estate tax on a particular parcel is not more than \$2,000 shall be made at the time the Commissioner of Finance prepares a list of delinquent taxes covering the borough or portion of a borough in which such parcel is located, and shall be based on the annual tax levied on such parcel for the fiscal year of the City in which such list is prepared.]

**[§13-04 Proof of Occupancy by Owner or Member of Immediate Family.** For the purpose of establishing that a parcel of real property is occupied by the owner thereof or a member of his immediate family, the owner shall file with the Department of Finance a certificate, on a form provided by it, which certificate shall contain such information, and shall be filed at such time or times, as the Commissioner of Finance may require.]

§5. This rule shall take effect thirty days after its final publication and shall be deemed to be in full force and effect from and after July 1, 1999.

## STATEMENT OF BASIS AND PURPOSE

These amendments repeal outdated provisions and provide guidelines for requesting in rem installment agreements pursuant to chapter 4 of title 11 of the Administrative Code of the City of New York. The amendments add provisions that are intended to clarify that payments made after the expiration of the statutory period for obtaining release of a property from a foreclosure action do not prevent the City from carrying out its statutory duties once such period has elapsed.

The amendments also provide guidelines for consideration of applications for in rem installment agreements for class one and class two properties against which an in rem action has been filed. The Department of Finance may approve an application by an owner of class one or class two property for an installment agreement for payment of delinquent taxes and charges on property for which an in rem foreclosure action has been commenced and prior to judgment if the owner has complied with statutory property registration requirements and enters into an agreement with the Department of Housing Preservation and Development (HPD) to correct all existing Housing Maintenance Code violations issued against the property and to participate in a housing education program as directed by HPD.

The amendments further provide that when an owner of class one or class two property against which an in rem judgment has been entered applies to the Department of Finance for an installment agreement, the application will be referred to HPD for a recommendation as to whether it should be approved. The amendments provide the criteria that HPD may consider in making its recommendation.

The amendments require that an application for an installment agreement be denied where an owner had previously defaulted on an agreement for the same property, unless the property is a class one property or a property owned by a housing development fund company and HPD recommends approval. The amendments also include a provision making the rules inapplicable to any property that has been included in a 60-day notice of sale of tax liens, and for which an installment agreement was executed within the period designated by such provision.

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Andrew S. Eristoff  
Commissioner of Finance