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Interrupting the Blight Cycle: Managing the Future of Properties in Tax Foreclosure Sales Through Pre- and Post-Sale Initiatives

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— Note —

INTERRUPTING THE BLIGHT CYCLE:
MANAGING THE FUTURE OF
PROPERTIES IN TAX FORECLOSURE
SALES THROUGH PRE- AND POST-
SALE INITIATIVES

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INTRODUCTION

Vacant, abandoned, and blighted properties have troubled communities for decades, starting with foreclosures caused by “flipping”¹

1. Flippers are purchasers who buy cheap properties, often in various states of disrepair, with the intention of quickly reselling them for a small profit. See Margaret Dewar, Eric Seymour & Oana Druta, *Disinvesting in the City*:

schemes in the early 1970s.² The mortgage crisis in 2007, however, created “unprecedented surges in vacant homes across many metropolitan areas, including regions that had not experienced significant vacancy problems earlier.”³ Between 2000 and 2010, vacant housing in the United States increased by 4.5 million, or forty-four percent.⁴ Vacant properties are not only visually problematic: vacant properties cause surrounding properties to decline in value and fall into disrepair, and vacant properties encourage criminal behavior in the declining neighborhoods.⁵ These properties may have become vacant for a variety of reasons, one of which being overwhelming tax debt.⁶

A tax-delinquent property is not an immediate source of blight, but tax delinquency can carry over onto the financial value of the surrounding homes.⁷ “The untimely payment of property tax bills is another form of financial distress, and delinquent property taxes are likely to cause negative spillovers on nearby properties that are similar to [mortgage] foreclosures.”⁸ Because of this, tax-collecting governments must

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- The Role of Tax Foreclosure in Detroit*, 51 URB. AFF. REV. 587, 605 (2015) (describing how buyers act as “flippers” when they purchase foreclosed properties at auctions then resell their purchases at a higher price).
2. DAN IMMERGLUCK, YUN SANG LEE & PATRICK TARRANOVA, LOCAL VACANT PROPERTY REGISTRATION ORDINANCES IN THE U.S.: AN ANALYSIS OF GROWTH, REGIONAL TRENDS, AND SOME KEY CHARACTERISTICS 5 (2012).
 3. *Id.*
 4. ALAN MALLACH, BROOKINGS INST., LAYING THE GROUNDWORK FOR CHANGE: DEMOLITION, URBAN STRATEGY, AND POLICY REFORM 3 (2012).
 5. Vacant properties can cause surrounding properties to lose \$7,627 in value on average and cause \$73 million in property damage due to fire each year. Patrick Gunton, *Detroit’s Vacant Property Dilemma: The Illusory Power of Demolition Statutes in a Post-“Great Recession” World*, 59 WAYNE L. REV. 119, 121 (2013) (citing Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV’T L. REV. 101, 110–12 (2009)).
 6. See Thomas Gunton, *Coping with the Specter of Urban Malaise in a Post-modern Landscape: The Need for a Detroit Land Bank Authority*, 84 U. DET. MERCY L. REV. 521, 521–23 (2007) (explaining how vacant properties decrease property values and, consequently, lower revenue from taxes); Gunton, *supra* note 5, at 133–34 (describing the community and municipal costs of vacant properties).
 7. See Stephan Whitaker & Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes* 2 (Fed. Reserve Bank of Cleveland, Working Paper No. 1123R, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1935510 [<https://perma.cc/KB57-P5VJ>] (finding that a vacant or delinquent property within 500 feet of a home reduces the home’s selling price by approximately 1.4 percent, with a negative impact of four percent in low-poverty areas).
 8. JAMES ALM, ZACKARY HAWLEY, JIN MAN LEE & JOSHUA J. MILLER, PROPERTY TAX DELINQUENCY AND ITS SPILLOVER EFFECTS ON NEARBY

find solutions to tax delinquency and blight that encourage repayment of at least some of the lost tax revenue and provide an enforceable way to ensure renovation and repair to blighted properties, but that also avoid the creation of undue hardship, such as home loss, for financially troubled homeowners.

Local governments use tax foreclosures as an opportunity to reclaim delinquent, problem properties and attempt to put them to more productive use, whether by directing the properties to a land bank program or by reselling the properties to new owners.⁹ When tax-foreclosed properties are put to sale, local governments have an opportunity to recoup some of the lost tax revenue.¹⁰ Because local governments manage property-tax collection through authority given by state statute and local procedures, the processes vary widely from place to place, as do the rates of successful collection.¹¹ Tax foreclosure and foreclosure sales serve as tools to redirect problem properties. However, when used in troubled housing markets, those same procedures may merely send problem properties from one irresponsible owner to another.¹² Because tax delinquency and foreclosure are strong indicators of blight and distress in a neighborhood,¹³ government involvement in shaping tax foreclosure programs is particularly important in cities facing depopulation and decreased housing demand.¹⁴ Local governments generally put

PROPERTIES 1 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507049 [<https://perma.cc/US2Y-U7CN>].

9. See William Weber, Comment, *Tax Foreclosure: A Drag on Community Vitality or a Tool for Economic Growth?*, 81 U. CIN. L. REV. 1615, 1630–31 (2013) (suggesting economically productive uses for tax delinquent and abandoned properties).
10. See Jenny Wilkes Robertson, Recent Case, *Jones v. Flowers*, 126 S. Ct. 1780 (2006), 30 U. ARK. LITTLE ROCK L. REV. 179, 179 (2007) (describing how local governments seize delinquent taxpayers' property to generate revenue).
11. Daniel J. Hammel & Sujata Shetty, *Complexity and Change in the Foreclosure Process in Toledo, Ohio*, 23 HOUS. POLICY DEBATE no. 1, 2013 at 35–36 (2013).
12. See, e.g., Christine MacDonald, *Detroit Area Investor Gains from Others' Real Estate Mistakes*, DETROIT NEWS (Feb. 3, 2011, 1:00 AM), http://www.detroitnews.com/article/20110203/METRO01/102030368_ [<https://perma.cc/WNM8-ZBF2>] (describing how auction buyers, including some real estate investors, manipulate the foreclosure process at the local community's expense).
13. NIGEL G. GRISWOLD, BENJAMIN CALNIN, MICHAEL SCHRAMM, LUC ANSELIN & PAUL BOEHNLEIN, W. RESERVE LAND CONSERVANCY THRIVING CMTYS. INST., ESTIMATING THE EFFECT OF DEMOLISHING DISTRESSED STRUCTURES IN CLEVELAND, OH, 2009–2013: IMPACTS ON REAL ESTATE EQUITY AND MORTGAGE-FORECLOSURE 8 [hereinafter THRIVING COMMUNITIES REPORT] (noting that there are various forms of distress indicators, including mortgage-foreclosure, tax-foreclosure, tax-delinquency, and vacancy, which have different impacts on property values).
14. Dewar, Seymour & Druta, *supra* note 1, at 588–89.

considerable effort into processes for obtaining and selling properties, but greater issues may arise following that sale.¹⁵ “A decision to maximize income through the sale of city-owned property to the highest bidder may offer short-term financial benefits but choke off development opportunities offering substantially greater benefits in the long run. . . . [D]isposition policies should still balance their immediate fiscal demands against long-term goals.”¹⁶ This is particularly true when foreclosure auctions offer properties for minimum bids below the outstanding tax balance due. Purchasers may walk away with properties they are either unprepared to cope with (e.g., significant blight requiring extensive repairs, high future property tax liabilities in comparison to the minimal initial purchase price), or purchasers may obtain properties with negative intentions (e.g., plans to milk property value by renting out the property without making repairs or paying taxes).¹⁷

A variety of individuals purchase properties from local government tax foreclosure sales. Some individuals use these auctions as a means to purchase affordable homes to live in, while others purchase the properties as investments.¹⁸ Mallach divides these investors into a few groups: “Rehabbers” purchase poor-condition properties, fix them up, and sell them to homebuyers; “flippers” purchase similarly distressed properties to sell, but do not fix any of the issues and often engage in misleading

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15. See ALAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS 103 (2006) (“Although local officials often devote considerable time and energy to framing property acquisition policies, few pay equal attention to seeing that their property disposition policies effectively further the community’s redevelopment goals.”).
 16. *Id.* at 103.
 17. See Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 749 (2000) (explaining how property buyers are sometimes unable to afford property taxes on their purchases); see also ALAN MALLACH, LOCAL INITIATIVES SUPPORT COAL., MEETING THE CHALLENGE OF DISTRESSED PROPERTY INVESTORS IN AMERICA’S NEIGHBORHOODS 11 (2010) (explaining how the cost of obtaining and maintaining a property to rent as compared to the rental income could persuade some property buyers to skip renovations and other responsibilities in favor of milking property value until they dump the property).
 18. The types of properties that end up in these auctions vary as well. For example, the famous Packard Plant in Detroit was subject to an auction purchase that ended up falling through, causing some commentators to suggest certain properties should never be sent to auction in the first place. Instead, those properties might be better served by direct transfer to a land bank. See Nancy Kaffer, *Blame Packard Plant Auction Debacle on Broken System*, DETROIT FREE PRESS (Oct. 31, 2013, 1:16 PM), <http://archive.freep.com/article/20131030/COL43/310300122/packard-plant-auction-van-horn-texas-doctor-detroit> [<https://perma.cc/5QUH-Y42B>] (noting Wayne County’s Deputy Treasurer David Szymanski saw the reverter plan as a solution to these types of problems).

behavior to make the sale;¹⁹ “milkers” purchase distressed properties, make few changes to the condition, and rent the homes out;²⁰ and “holders” purchase properties to rent out in fairly good condition.²¹ All of these types of foreclosure-sale buyers have the potential to impact areas struggling with foreclosure.²² While rehabbers and holders would likely best benefit a property, these individuals are much harder to attract to urban Rust Belt properties, as the necessary renovations on these distressed properties will often cost more than the increase in the property value.²³ “In those cities or neighborhoods where most investors are flippers or milkers, a case can be made that their activities at most delay abandonment for a year or two, while perpetuating dangerous and unhealthy conditions.”²⁴ Bulk buyers, though easily assumed to be flippers or milkers, may fall within any of these categories.²⁵ In most cases, tax-collecting governments would rather see properties sell at auction to new taxpayers than sit empty, but Mallach suggests sitting empty would be preferable to ownership by some of these more troublesome buyers.²⁶ Mallach recommends setting ground rules for responsible investment in these communities rather than cutting investors out of the picture altogether. Not all investors will act irresponsibly, and it may create more damage to block all investors than to manage the problematic ones.²⁷

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19. Flippers are common in the Detroit-area auctions—of a sample of properties purchased in the auction between 2002 and 2008, twenty-five percent had been resold at least once within the first twelve months since the auction, and several more had been resold more than once. Dewar, Seymour & Druta, *supra* note 1, at 605.
 20. Other kinds of holders purchase properties solely to interfere with upcoming projects for their own financial gain, such as the owner of the only bridge from Detroit to Canada who purchased property that had been planned for use for a new bridge, just to delay the new project. *Id.* at 606.
 21. MALLACH, *supra* note 17, at 10.
 22. *Id.* at 12.
 23. *See id.* at 11 (“[Rust Belt] properties are more likely to attract milkers, who spend little on maintenance, ignore property tax bills, and are able to recoup their investment in short order.”).
 24. *Id.* at 14.
 25. *See, e.g.*, Dewar, Seymour & Druta, *supra* note 1, at 605 (describing anecdotally one bulk buyer that rehabbed auction properties and then made them available on a rent-to-own basis for homeowners, as compared to Detroit’s “notorious slumlords” who would buy auction properties to rent them without improvements to low-income tenants).
 26. *See* MALLACH, *supra* note 17, at 14–15 (arguing that, in some cities, it may be better for a property to remain vacant rather than purchased by flippers or milkers, who are likely to perpetuate dangerous and unhealthy conditions).
 27. *Id.*

The procedures vary widely, but tax delinquent properties will almost always go through a process that includes forfeiture, foreclosure, and subsequent sale or transfer. These sales are almost always auctions, whether in person or online.²⁸ When dealing in large quantities of low-price properties, tax-collecting the potential cycle of blight emanating from the initial tax foreclosure sale, tax-collecting governments must either target problem purchasers before selling tax foreclosed properties or create mechanisms to police buyer behavior following the sale. Using the long-standing property doctrine of possibilities of reverter, quick-moving local governments may be able to effectively force out problem buyers after the sale. This practice, however, will not translate well to tax-collecting governments managing large foreclosure sales with high incidents of delinquency. If a government is going to use a possibility of reverter for tax foreclosure sales, the tax-collecting government must write its deed clearly to prevent disputes about its meaning, communicate clearly with the public about the reverter procedure and the conditions that trigger the reverter, and maintain sufficient resources to reclaim the property quickly and decisively when any of the triggering conditions are met. For many governments, managing a reverter program is just not realistic. In such a case, presale limitations and restrictions on buyers provide more easily managed alternatives that can still help to curb delinquency post-sale. Successful implementation of these programs would require the state legislature to pass enabling legislation, along with strong county or municipal leadership to create on-the-ground procedures based on the state's collection options.

This Note will examine the Wayne County's novel use of a reverter plan in its postauction tactics, along with its preauction tactics, to suggest when and how other local governments may successfully apply similar programs to their own problems with blight and delinquency following tax auctions. This Note will also consider from a practical, policy perspective whether reverter programs are actually the best choice for local governments struggling with vacant, blighted, and tax delinquent properties. Because Wayne County took such a drastic measure to combat tax delinquency and blight in such an accelerated process, this Note focuses on the economic climate and policy of Wayne County in analyzing the legality and policy considerations of a tax foreclosure reverter clause. However, other cities grapple with similar issues of bulk buying, absentee landlords, and homeowners simply unable to afford property tax payments.²⁹ As such, a thorough examination of the implications of the plan within the Wayne County and its existing tax

28. Debra Pogrud Stark, *Facing the Facts: An Empirical Study of the Fairness and Efficiency of Foreclosures and a Proposal for Reform*, 30 U. MICH. J.L. REFORM 639, 643–48 (1997) (explaining the basic types of foreclosures).

29. See, e.g., Dewar, Seymour & Druta, *supra* note 1, at 605 (providing an example of bulk buyers behaving irresponsibly with properties purchased from Sheriff's sales).

foreclosure procedures will help in determining whether the reverter program might be replicated in other local government systems.

I. TAX COLLECTION, DELINQUENCY, AND FORECLOSURE

To discuss local responses to tax auction buyers, it is helpful to understand the procedure through which ordinary properties find their way into foreclosure and to auction. This Part details the property tax and foreclosure activities in Wayne County, Michigan as those procedures apply to the County's reverter plan and presale delinquency-prevention programs.

A. *Property Tax Problems in Wayne County, Michigan*

Wayne County, Michigan, home to Detroit, has coped with blight and sinking tax revenues for quite some time.³⁰ One Michigan researcher described the foreclosure crisis as “unprecedented in our lifetimes, to have so many properties going through foreclosure in Wayne County and all over Michigan,”³¹ and explained that such a serious crisis requires “the right mix of responses.”³² An estimated 78,000 vacant and blighted properties sit within the City of Detroit alone.³³ As of January 2014, forty-eight percent of Detroit's properties were tax delinquent, leaving twenty percent of the City's total tax revenues uncollected.³⁴ Wayne County has recently implemented progressive programs to try to address these problems before, during, and after its tax foreclosure sale. These programs serve as helpful examples for other communities. Although Wayne County's vacant property problems are much larger than those found in other communities, the causes and consequences of

30. Gunton, *supra* note 6, at 524.

31. Bill Laitner, *Tax-Foreclosure Crisis Looming as Lawmakers Set to Act*, DETROIT FREE PRESS (Nov. 29, 2014, 12:13 AM), <http://www.freep.com/story/news/local/michigan/wayne/2014/11/29/detroit-wayne-county-property-tax-foreclosures-evictions-bills-interest-mike-duggan-rick-snyder-evictions/19639265/> [https://perma.cc/9QT2-ULXF] (quoting Eric Luper, president of the Citizens Research Council of Michigan, a nonprofit think tank in Livonia).

32. *Id.*

33. David Muller, *Wayne County Treasurer Expects up to 10,000 Metro Detroit Properties to Be Sold in Auction*, MICH. LIVE (Oct. 22, 2013, 10:35 AM), http://www.mlive.com/business/detroit/index.ssf/2013/10/wayne_county_treasurer_expects.html [https://perma.cc/7J64-SUPX].

34. James Alm, Timothy R. Hodge, Gary Sands & Mark Skidmore, *Property Tax Delinquency—Social Contract in Crisis: The Case of Detroit 2* (Victoria Univ. of Wellington, Working Paper No. 05/2014, 2014), <http://research.archive.vuw.ac.nz/handle/10063/3149> [https://perma.cc/2EVB-FTCE].

the problems are true for nearly every city battling blight and tax delinquency.³⁵ Wayne County deals with significantly higher numbers of delinquency and abandonment than many other communities,³⁶ but it is not dealing with a unique problem.

For some communities, tax foreclosure and subsequent auction is a means to reclaim lost income and reestablish the income streams from previously delinquent properties. For many of Wayne County's properties, this has not been the case. Wayne County has been unlikely to see any tax payments from the purchasers in its tax foreclosure auctions: Seventy-eight percent of the properties sold in the auctions since 2011 fell back into delinquency by 2014. Starting in 2011, Wayne County included a "reverter" clause in its tax foreclosure auction deeds to allow local governments to break the cycle of blight and bring recently purchased tax-foreclosed properties back to productive use if the new purchasers fail to meet their responsibilities. In June 2014, the Wayne County treasurer sued to enforce those reverter clauses on over 20,000 tax-delinquent or condemned auction sale properties,³⁷ and the Wayne County Third Circuit Court granted the treasurer's request.³⁸ This tactic has rarely been used by a tax-collecting government agency to combat tax delinquency and blight, particularly on such a large scale.

B. Wayne County's Basic Tax Collection Procedures

While tax collection and foreclosure procedures vary widely from state to state and by local government units within states, Wayne

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35. In 2013, Detroit's property tax delinquency rate was forty-eight percent. Philadelphia's tax delinquency rate two years earlier was nineteen percent. Delinquencies this high can force local governments to cut back services or raise taxes to balance the losses. ALM, HAWLEY, LEE & MILLER, *supra* note 8, at 3.
36. See Karen Weise, *A Surprising Bid for a Blighted Slice of Detroit*, BUSINESSWEEK (Oct. 30, 2014), <http://www.businessweek.com/articles/2014-10-30/detroit-blight-bundle-draws-surprising-bid> [<https://perma.cc/8UZB-ESDD>] (describing the thousands of foreclosed homes in Detroit that Wayne County seeks to sell or destroy).
37. Marlon A. Walker, *Wayne County Treasurer Suing to Recover Homes of Tax Scofflaws*, DETROIT FREE PRESS (June 23, 2014), <http://archive.freep.com/article/20140623/NEWS02/306230016/wayne-county-tax-sale> [<https://perma.cc/M3XP-4JFN>].
38. Christine MacDonald, *Wayne Co. Could Reclaim Nearly 20K Auctioned Properties Over Unpaid Bills*, DETROIT NEWS (Aug. 16, 2014), <http://www.detroitnews.com/story/news/local/wayne-county/2014/08/16/wayne-co-could-reclaim-nearly-20k-auctioned-properties-over-unpaid-bills/14146103/> [<https://perma.cc/S57M-3D37>].

County's overall procedure is fairly representative of procedures in other states and localities.³⁹ The period from tax nonpayment to foreclosure and auction sale is, at its fastest, three years. In Wayne County, a homeowner pays property taxes each December and each July. Homeowners may pay the local municipal treasurer any tax balance by February. If the homeowner misses this deadline, on March 1⁴⁰ the taxes become delinquent and the balance is sent to the county treasurer for collection.⁴¹ At this point, the county treasurer adds in penalties at four percent per month and interest at one percent per month.⁴² The treasurer may provide taxpayer assistance for taxpayers with certain extenuating circumstances.⁴³ Based on the shortened tax foreclosure timeline implemented by Michigan state legislators in 1999, if the taxpayer does not pay the balance, penalties, and interest by March of the next year, the property will forfeit to the county treasurer, which brings along additional fees and higher interest.⁴⁴ By November of that year, the list of forfeited properties will be published, and by March of the year foll-

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39. For a helpful overview of tax foreclosure procedures in various states, see Daniel J. Hammel & Sujata Shetty, *Complexity and Change in the Foreclosure Process in Toledo*, 23 HOUSING POL'Y DEBATE 35, 39–40 (2013).
40. *Real Property Tax Foreclosure Timeline*, MICHIGAN.GOV, http://michigan.gov/documents/taxes/ForfeitureForeclosureTimelinesChart_317028_7.pdf [<https://perma.cc/TKH4-UFEK>]; *Real Property Tax Forfeiture and Foreclosure Flow Chart*, MICHIGAN.GOV, https://www.michigan.gov/documents/taxes/FF-FC-TimelineFlowChart_Printable_317032_7.pdf [<https://perma.cc/97LA-335H>].
41. *Compassionate Leader: A Talk with Wayne County Treasurer Raymond Wojtowicz*, MICH. CHRON. (March 14, 2012) <http://michronicleonline.com/2012/03/14/compassionate-leader> [<https://perma.cc/47ET-6F7Q>] [hereinafter *A Talk with Wayne County Treasurer*]; *Delinquent Property Taxes-Foreclosure Timeline*, WAYNE COUNTY TREASURER, <http://www.waynecounty.com/treasurer/783.htm> [<https://perma.cc/UP9E-9WRN>]; MICH. COMP. LAWS ANN. § 211.78 (West Supp. 2016). After serving as Wayne County Treasurer for thirty-nine years, Raymond Wojtowicz retired in late 2015. Initially replaced by Richard Hathaway, Eric Sabree now serves as Wayne County Treasurer. Marti Bendetti, *'Time to Pass the Torch,' Says Wayne County Treasurer Raymond Wojtowicz After 39 Years on Job*, CRAIN'S DETROIT BUS. (Oct. 4, 2015, 8:00 AM), <http://www.crainsdetroit.com/article/20151004/NEWS/310049995/time-to-pass-the-torch-says-retiring-wayne-county-treasurer> [<https://perma.cc/9ZHA-2QTL>]; Robert Snell, *Wayne County Treasurer Hathaway Abruptly Quits Post*, CRAIN'S DETROIT BUS. (March 4, 2016, 4:18 PM), <http://www.crainsdetroit.com/article/20160304/NEWS/160309913/wayne-county-treasurer-hathaway-abruptly-quits-post> [<https://perma.cc/VEC6-CY7K>].
42. *A Talk with Wayne County Treasurer*, *supra* note 41.
43. *Id.*
44. *Id.*; MICH. COMP. LAWS ANN. § 211.78.

owing the forfeiture, a Wayne County Circuit Court will enter a judgment of foreclosure against those properties.⁴⁵ Delinquent property owners have one final opportunity to redeem properties by paying the balance due by March 30. If the homeowner has not paid, on April 1 the property is foreclosed, the county treasurer takes title to the property, and the homeowner no longer retains any rights to the property unless he or she works with the treasurer to enter into a taxpayer assistance program.⁴⁶ The foreclosed properties are then put up for public auction each fall.⁴⁷ In 2014, Wayne County began foreclosure proceedings on 76,000 properties, 62,000 of which are located within the City of Detroit.⁴⁸ Approximately 20,000 of those Detroit properties are currently owner occupied.⁴⁹

Wayne County does not always follow its foreclosure process on tax-delinquent properties, as evidenced by Wayne County's decision not to pursue foreclosures on approximately 40,000 Detroit properties in 2012 and 36,000 in 2013 because of the extremely high volume of properties.⁵⁰ According to the Detroit News, the treasurer has opted against foreclosure on properties with low tax balances since at least 2005, setting \$1,700 as the limit in 2012 and \$1,600 in 2013.⁵¹ In 2015, Wayne County's treasurer extended payment deadlines multiple times to attempt to keep as many homeowners in their homes as possible.⁵² The Detroit News found that some area speculators had been taking advantage of this unwritten policy, which "means that taxes are essentially optional on nearly one in ten city parcels."⁵³ These uncertainties may also deter potential developers from working in the Detroit area,

45. *A Talk with Wayne County Treasurer*, *supra* note 41.

46. *Id.*

47. *Id.*

48. Laitner, *supra* note 31.

49. Chad Livengood, *Detroit Scores Tax Foreclosure Victories*, DETROIT NEWS (Dec. 18, 2014, 8:32 PM) <http://www.detroitnews.com/story/news/politics/2014/12/18/detroit-tax-foreclosure/20617761/> [<https://perma.cc/6XMU-EJRY>].

50. Christine MacDonald, *Overwhelmed Wayne County Ignores Thousands of Possible Detroit Foreclosures*, DETROIT NEWS (Feb. 21, 2013, 1:00 AM) <http://www.detroitnews.com/article/20130221/METRO01/302210394> [<https://perma.cc/C3X9-7C46>].

51. *Id.*

52. Christine MacDonald, Christine Ferretti & Joel Kurth, *Wayne County Extends Foreclosure Deadline to May 12*, DETROIT NEWS (Mar. 31, 2015, 12:49 PM) <http://www.detroitnews.com/story/news/local/wayne-county/2015/03/31/wayne-county-property-tax-deadline/70722084/> [<https://perma.cc/2ZM8-Z5ME>].

53. MacDonald, *supra* note 50.

as parcels of interest may remain tied up in delinquency or in the foreclosure process for some time.⁵⁴

C. Foreclosure Prevention Initiatives

In 2014, Michigan lawmakers passed statewide initiatives to reduce tax delinquency and foreclosure and to prevent Wayne County owner-occupants from losing their homes.⁵⁵ Under the new plan, the County reduced interest rates for owner-occupants,⁵⁶ in some cases capping tax bills at one-quarter of the market value of the home to keep the tax bill at a reasonably repayable level.⁵⁷ As a second effort to prevent homeowner-occupants from losing their homes, Michigan lawmakers approved HB 4882 in late 2014 to allow county treasurers to waive interest entirely for homeowners at or below federal poverty levels if a homeowner pays off all back taxes through an installment plan.⁵⁸ Detroit Mayor Mike Duggan called the payment plans a “once-in-a-lifetime break” for Detroit owner-occupants.⁵⁹

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54. Brian Gormley, *Appraising Detroit: A Follow-Up to HUD’s “Barriers to the Rehabilitation of Affordable Housing Study”*, 12 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 314, 318 (2003).
55. Laitner, *supra* note 31.
56. Where once the treasurer would charge all homeowners delinquent for greater than one year an eighteen percent interest rate, a twelve percent annual rate will apply instead. The eighteen percent interest rate made repayment virtually impossible for some homeowners. Lawmakers explained that the eighteen percent tax rate was set before the legislature even imagined the foreclosure crisis the state would face, and so lawmakers did not foresee the high number of owner-occupants who would be harmed by the higher rates. *Id.*
57. Christine MacDonald, *Snyder Signs Bill Closing Tax Foreclosure Loophole*, DETROIT NEWS (Jan. 14, 2015, 6:10 PM) <http://www.detroitnews.com/story/news/local/michigan/2015/01/14/snyder-bills-close-foreclosure-loophole/21768471/> [<https://perma.cc/82RP-PJ24>].
58. Because interest and penalties can cause tax bills to double and triple overtime, this new legislative effort will help extremely distressed taxpayers create a plan to keep their homes and repay their tax debt. *See id.*; *see also* Sarah Cwiek, *Detroit, Wayne County Could Get Foreclosure Help Out of “Lame Duck”*, MICH. RADIO (Dec. 5, 2014) <http://michiganradio.org/post/detroit-wayne-county-could-get-foreclosure-help-out-lame-duck> [<https://perma.cc/UB6T-D5N7>]. Low-income homebuyers are also more likely to purchase homes without knowing about existing tax debts on the property, as those purchasers may not have the financial capacity to hire a lawyer or complete a title search. Laitner, *supra* note 31.
59. Dave LewAllen, *March 31 Deadline Nears for Detroit Foreclosure Prevention Effort*, WXYZ DETROIT, (Mar. 13, 2015, 5:52 PM) <http://www.wxyz.com/news/region/detroit/march-31-deadline-nears-for-detroit-foreclosure-prevention-effort> [<https://perma.cc/BW8M-B363>].

D. Wayne County's Tax Foreclosure Sale

Since 2011, Wayne County has used a multistep online auction to sell its foreclosed properties.⁶⁰ The process begins with an auction of every property foreclosed that year, with bidding starting at the value of the back taxes on the property.⁶¹ The properties that do not sell in the first round of bidding go on to a second round, where the minimum bid on most residential properties is only \$500.⁶² Generally, the bulk of the auctions' sales happen in this second round.⁶³ Before Wayne County implemented its presale affidavit program,⁶⁴ a homeowner who had lost a home to tax foreclosure could buy the property back during the tax foreclosure auction. This loophole helped a number of homeowners reclaim properties for just a small portion of the original tax bill,⁶⁵ a benefit to a struggling homeowner, but a huge revenue loss for Wayne County local governments and their services.

While the move online has made the sale process significantly less arduous, the Wayne County annual auction, "one of the largest land sales in the world,"⁶⁶ makes Wayne County's properties available to everyone—even those who have never even visited the area. Because of this, out-of-state and out-of-country buyers may purchase a number of properties, then flip them onto other auction sites, like eBay.⁶⁷ Chief

60. Muller, *supra* note 33.

61. Alex Alsup, *Detroit Foreclosure Auction: All the Basics You Need to Know Before You Bid on Property*, HUFFINGTON POST (Aug. 9, 2013, 8:32 AM), http://www.huffingtonpost.com/2013/08/09/detroit-foreclosure-auction-wayne-county-properties_n_3726834.html [<https://perma.cc/9NNN-T56S>].

62. *Id.*

63. In 2013, only about 800 properties sold during the first round, while the treasurer anticipated at least 8,000 properties to go during the \$500-dollar minimum round. Muller, *supra* note 33.

64. *Infra* Part III.B.

65. Sarah Cwiek, *Wayne County Sues to Collect Back Taxes on Properties it Once Sold at Tax Foreclosure Auctions*, MICH. RADIO (June 19, 2014), <http://michiganradio.org/post/wayne-county-sues-collect-back-taxes-properties-it-once-sold-tax-foreclosure-auctions> [<https://perma.cc/YJ4K-7F8W>] (explaining that this simple way for property owners to wipe clean a large amount of debt from their tax bills was a problematic hurdle in Wayne County's attempts to replace problematic property owners with tax-abiding owners who will maintain the properties).

66. Muller, *supra* note 33.

67. Amy Swift, *Some Sold Tax Auction Properties Already Listed on Ebay*, DETROIT CURBED (Oct. 31, 2012) <http://detroit.curbed.com/archives/2012/10/going-through-auction-withdrawal-check-out-ebay-for-sold-properties.php> [<https://perma.cc/59JF-F2Y3>]. This practice is not unique to Wayne County or to online auctions. Even Cuyahoga County, which holds its tax auctions in person in Downtown Cleveland, and Hamilton County, which holds its auctions at the Hamilton County Court House in Cincinnati struggle with

Deputy Treasurer David Szymanski explained that the County has had bulk buyers take advantage of the low pricing to buy a large number of properties and then sort through them later. The bulk buyers would then decide to “neglect[] both physically and financially” those properties the bulk buyers did not find valuable enough to want to keep.⁶⁸ Because of the high volume of properties selling at auction each October, about 20,000 each in 2013⁶⁹ and 2014,⁷⁰ buyers may bid on properties with very little information on their condition.⁷¹ Wayne County has attempted to shield the very worst properties from ending up in the hands of unknowing investors by organizing the problem lots into large bulk groupings during the foreclosure auction.⁷² The idea of such an arrangement is that the bidders who could afford to obtain a bulk grouping of problem lots would be experienced investors with very high available capital, and those investors would more likely know better than to take on properties they cannot handle.⁷³ Still, given the relatively low sale prices for some of Wayne County’s most troubling properties, even these bulk lots cannot guarantee that irresponsible or ill-willed investors will not step in.

out-of-state investors. FRANK FORD, FED. RESERVE BD., REO AND VACANT PROPERTIES: STRATEGIES FOR NEIGHBORHOOD STABILIZATION, 141–42 (2010); *Foreclosure Sales*, CUYAHOGA CNTY. SHERIFF, <http://sheriff.cuyahogacounty.us/en-us/foreclosure-sales.aspx> [https://perma.cc/E3SG-3NJD] (last visited May 5, 2016); Hagit Limor, *Fox19 Investigates: Are Demolished Cincy Homes Being Sold Online?*, FOX19 (Feb. 21, 2014), <http://apmobile.worldnow.com/story/24777377/fox19-investigates-are-demolished-cincy-homes-being-sold-online> [https://perma.cc/DV4Q-X4D8]; *Weekly Property Sales Search Page Disclaimer*, HAMILTON CTY. SHERIFF’S OFFICE <http://apps.hcso.org/Property.aspx> [https://perma.cc/P8ZJ-NQTD] (last visited May 5, 2016); John Kroll, *eBay Auctions Become House Flippers’ Tools*, THE PLAIN DEALER (Sept. 5, 2008, 10:20 PM), http://blog.cleveland.com/metro/2008/09/ebay_auctions_become_house_fli.html [https://perma.cc/VQ9A-RKWQ].

68. Muller, *supra* note 33.
69. *Wayne County Auction Offers Nearly 20,000 Properties for Sale*, DETROIT 20/20 ABC 7 (Sept. 10, 2013) <http://detroit2020.com/2013/09/10/wayne-county-auction-offers-nearly-20000-properties-for-sale/> [https://perma.cc/HSY3-5ZH4] [hereinafter *20,000 Properties for Sale*].
70. Karen Weise, *A Mystery Bidder Offers \$3 Million for 6,000 of Detroit’s Worst Homes*, BUSINESSWEEK (Oct. 24, 2014) <http://www.businessweek.com/articles/2014-10-24/buying-derelict-detroit-mystery-bidder-wants-6-000-foreclosed-homes> [https://perma.cc/98H3-3LQW].
71. *20,000 Properties for Sale*, *supra* note 69.
72. Gary Anglebrandt, *Wayne County Sees Bigger as Better in Foreclosure Auction*, CRAIN’S DETROIT BUS. (Aug. 17, 2013, 8:25 AM) <http://www.craindetroit.com/article/20130804/NEWS/130819879/wayne-county-sees-bigger-as-better-in-foreclosure-auction> [https://perma.cc/Q9DS-CHC5].
73. *Id.*

E. Land Bank Disposition

If no buyers bid on properties after the second round of bidding in the tax foreclosure auction, the treasurer will first offer the properties to the city in which they are located. If the city does not want the properties, the treasurer will direct the properties to one of Wayne County's local land banks.⁷⁴ From there, properties can be directed to a variety of new, productive uses without any hindering tax liens.⁷⁵ Properties reclaimed through the reverter proceeding will also transfer to either the Wayne County or Detroit land banks, though the land banks have not yet announced the projects planned for the 20,000 properties.⁷⁶

II. ENCOURAGING RESPONSIBLE AUCTION BUYERS AND
REDUCING POST-SALE DELINQUENCY

The State of Michigan and Wayne County have implemented two distinct programs meant to address problem auction buyers. In theory, both show great promise in addressing problematic auction buyers, but only one of these potential solutions appears to be widely transferrable to the other tax-collecting governments facing similar tax foreclosure auction issues. Wayne County's first and most innovative effort, retaining a possibility of reverter in each of the properties it sells at auction, is a near perfect solution in theory, but falls short in practice due to Wayne County's huge volume of properties and the potential legal issues created by delays in the process. If a tax-collecting government is to implement such a post-sale approach to preventing blight and tax delinquency, it must only do so if it has a clear deed to create the future interest, a clear communications plan in place related to the reverter, and the resources to act quickly and decisively when the triggering condition occurs. The reverter option is also likely of greatest benefit when dealing with small numbers of investors and business buyers, rather than new homeowner-occupants. To address issues with owner-occupants, local governments should follow Michigan's lead on its second delinquency-combatting effort: presale affidavits that will at least weed out those buyers who have a history of nonpayment or problematic property maintenance.

74. Muller, *supra* note 33.

75. Weise, *supra* note 70.

76. Walker, *supra* note 37; *infra* Part III.A.

III. SOLUTION ONE: TARGET BLIGHT AND DELINQUENCY WITH POST-SALE REVERTER

Wayne County's approach to tax foreclosure auctions stands out from its peers because of the reverter clause the County has added into the sales deeds for the tax foreclosure auctions since 2011.⁷⁷ Possibility of reverter, the future interest associated with the possessory estate of fee simple determinable, is a long-standing component of property common law.⁷⁸ While Wayne County's use of reverter in its auction was a novel plan with a potential for success, its slow implementation in practice⁷⁹ illustrated why this plan should not be used by other tax-collecting governments unless those governments are able to act quickly and decisively on a limited number of problem properties.

A. Wayne County's Approach to the Reverter Clause

Wayne County's reverter clause, explained to buyers before the auction in the Bidding Rules,⁸⁰ specifies that the treasurer will convey properties won in the auction through quit claim deeds with conditions subsequent requiring the purchaser to: (1) pay all taxes for the year of purchase and the following two years; (2) either maintain the property for two years or demolish the structure within six months; (3) comply with the conditions or remedy failure to comply within thirty days of written notice; and (4) keep and not sell, transfer, or convey the property subject to the reverter clause until the required payment term has ended.⁸¹ The conditions address each of the main problems Wayne County faces after its auctions: tax delinquency, property disrepair, and quick property flipping.⁸²

The treasurer or other local government agent will provide the homeowner with written notice of the default of either tax payments or property maintenance, delivered to the address written on the deed, unless the homeowner has filed paperwork with the treasurer noting

77. Muller, *supra* note 33.

78. *Infra* Part III.A.

79. See Bill Laitner, *Wayne Co. Residents Get 5 More Months to Pay Tax Debts*, DETROIT FREE PRESS (Nov. 26, 2014), <http://www.freep.com/story/news/local/michigan/wayne/2014/11/26/tax-foreclosure-wayne-county-detroit-craig-fahle-rashida-tlaib/70118822> [https://perma.cc/U8SY-6A4S] (granting taxpayers an extension to pay back taxes).

80. OFFICE OF THE WAYNE COUNTY TREASURER, TERMS AND CONDITIONS OF SALE OCTOBER 1–OCTOBER 28, 2014, TAX FORECLOSED PROPERTY AUCTION 10, http://voiceofdetroit.net/wp-content/uploads/Wayne-County-Treasurer-Bidding_Rules.pdf [https://perma.cc/6GLJ-6WA8].

81. *Id.*

82. See *supra* Part I.D.

some other address.⁸³ If a property owner served with such notice pays the balance due or demolishes the requisite property, the County will no longer pursue the reverter. Instead of paying the balance in a lump sum, the homeowner may choose to take advantage of the court hearing to which each homeowner is entitled to contest the tax due, or the homeowner may take on a new four- or ten-month payment plan to bring the tax bill current.⁸⁴ If the homeowner does not cooperate with the available options within thirty days, the condition of the reverter has therefore been met, and title to the property will revert back to Wayne County.⁸⁵

For years, neither the city governments nor Wayne County took advantage of this option to combat tax delinquency and property mismanagement following the foreclosure sale.⁸⁶ In 2014, however, faced with a seventy-eight percent delinquency rate on all properties sold at auction since 2011, the Wayne County treasurer decided to sue to enforce the clause on all 20,000 tax-delinquent auction sales. Those properties together represented approximately \$80 million in lost revenue for the County.⁸⁷ As explained further in Part V, not all citizens were pleased with the County's choice to use the reverter clause to deal with the massive number of auction properties that returned to delinquency post sale. Many critics suggested the government intervention should have come earlier to prevent irresponsible foreclosure-auction buying.⁸⁸ Other Wayne County property owners were simply happy to see some consequence for irresponsible investors who harm property values in areas where they purchase properties quickly but never repair them.⁸⁹

Even after the hearing and the court's approval of the property's reversion to Wayne County, Wayne County has not taken possession of any of the reverter properties, and homeowners have had a number of opportunities to redeem their properties.⁹⁰ As deadlines have come and passed, the treasurer has extended dates and offered more time for

83. OFFICE OF THE WAYNE COUNTY TREASURER, *supra* note 80.

84. Cwiek, *supra* note 65.

85. *Id.*

86. One study hypothesized, before the treasurer attempted to enforce the reverter, that "the Treasurer and city officials likely lack the capacity to enforce this policy." Dewar, Seymour & Druta, *supra* note 1, at 606.

87. Cwiek, *supra* note 65.

88. *Id.*

89. *See* Muller, *supra* note 33 (talking to one such property owner).

90. As of July 2015, there had been no news of how or when Wayne County planned to address the reverter properties.

struggling homeowners.⁹¹ The Wayne County Third Circuit court hearing was held on August 15, 2014. After the judge approved the reverter, owners could still opt to reclaim the property through mid-December 2014 simply by paying the delinquent bill. The County had planned to take back all properties that had not been paid off by January 2015 and transfer those properties to the Wayne County Land Bank or the Detroit Land Bank. In late November 2014, however, the treasurer extended repayment deadlines for an additional five months, meaning struggling homeowners could take until May 26, 2015 to repay back taxes before Wayne County would step in and reclaim its property interest.⁹² Even if the treasurer had decided not to give any extensions and transfer the properties directly to the land bank, the transaction would remain open-ended, as the land bank gives homeowners the opportunity to pay their delinquent tax bills along with a \$500 processing fee to take the properties back.⁹³

B. Future Interests as Helpful Governmental Tools

When used efficiently and fairly, a fee simple determinable with a government entity holding the possibility of reverter seems to be a sound means to maintain some control over the future of the parcel. A possibility of reverter is one type of future interest in a property, meaning the original grantor retains some right to the property, based on the conditions agreed upon by the parties.⁹⁴ The Anglo-American property regime has always given the option for full property owners to grant only some of the rights to the property, rather than granting the entire bundle of rights in the property.⁹⁵ The grantor may give those other retained rights to another party, or the grantor may keep them for him or herself.⁹⁶ The grantee, here the bidder in the foreclosure auction, receives a fee simple determinable. This means the bidder has full ownership of the property, limited by the conditions triggering the reverter. The grantor, in this case the treasurer, retains future interest in the property, which automatically vests upon the occurrence of the

91. Laitner, *supra* note 79; David Muller, *Wayne County Treasurer Extends Tax Deadline for Homes Bought Off Auctions*, MLIVE (Nov. 26, 2014, 8:37 PM), http://www.mlive.com/news/detroit/index.ssf/2014/11/wayne_county_treasurer_extends.html [<https://perma.cc/QF3G-477D>].

92. Laitner, *supra* note 79; Muller, *supra* note 91. However, the treasurer's office has not made any subsequent announcements regarding the recollection or treatment of these properties.

93. MacDonald, *supra* note 38.

94. See Frona Powell, *Defeasible Fees and the Nature of Real Property*, 40 U. KAN. L. REV. 411, 411–12 (1992) (explaining reverters).

95. *Id.*

96. *Id.*

conditions of the reverter.⁹⁷ Once the condition has occurred and the property reverts back to the grantor, the grantor then holds the property in fee simple absolute.⁹⁸

Possibilities of reverter serve as a fairly common strategy among land banks.⁹⁹ Generally, land banks require prospective owners to provide detailed plans before purchase to ensure the properties will be put to an approved use and will be brought up to code, and reverters give land banks a means to hold purchasers accountable for making the required repairs and improvements.¹⁰⁰ Land bank reverter clauses are usually focused on the condition of the property, as compared to Wayne County's interest in full tax payment over two years. While reverters offer a means to control future behavior related to the property, reversionary interests are not always favored when trying to spur development through new land use because of the severe potential results if the purchasing party violates the agreement and because of the wariness of banks to finance projects on property with such possible reverters.¹⁰¹

Other fee simple defeasibles exist to allow property owners to control future land use and subsequent disposition, but fee simple deter-

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97. See Danaya C. Wright, *Eminent Domain, Exactions, and Railbanking: Can Recreational Trails Survive the Court's Fifth Amendment Takings Jurisprudence?*, 26 COLUM. J. ENVTL. L. 399, 441 (2001) (explaining reverters).
98. See Darren A. Prum & Robert J. Aalberts, *Our Own Private Sustainable Community: Are Green Covenants, Conditions, and Restrictions a Viable Alternative to a More Environmentally Sustainable Future for Homeowners?*, 43 N.M. L. REV. 157, 161 (2013) (illustrating a fee simple determinable).
99. FRANK S. ALEXANDER, *CTR. FOR CMTY. PROGRESS, LAND BANKS AND LAND BANKING* 74 (2d ed. 2015) (noting that this approach is problematic in a number of ways, and listing alternative approaches). The City of Detroit and its land bank have also used reverter rights to encourage responsible renovation when auctioning city-owned homes. The City could reclaim auction-purchased homes if the buyers did not obtain a certificate of occupancy and an actual occupant within six months of purchase. Christine Ferretti, *Detroit Home Auction Program Falters*, DETROIT NEWS (Jan. 23, 2015), <http://www.detroitnews.com/story/news/local/wayne-county/2015/01/22/detroit-home-auction/22202417/> [<https://perma.cc/ZNN3-HVH4>].
100. Gunton, *supra* note 6, at 552, 562–63 (2007) (including St. Louis, Cleveland and Atlanta Land Banks); see U.S. DEP'T OF HOUS. AND URBAN DEV., *NSP LAND BANKING TOOLKIT: OVERVIEW OF LAND BANK DECISIONS AND TOOLS* 12, <https://www.hudexchange.info/resources/documents/LandBankOverview.pdf> [<https://perma.cc/D636-G6QV>] (“Even with careful due diligence, the land bank should still be mindful of these risks, and should make sure that to the extent possible, properties are conveyed with strict terms to ensure that they are in fact re-used properly, and with provisions that allow the land bank to recapture the property (reverter or reversionary rights) if the terms are not complied with.”)
101. Gunton, *supra* note 6, at 563–65.

minable and possibility of reverter seem best suited for the tax foreclosure sale scenario. The grantor's other option would be the fee simple subject to a condition subsequent and its complementary future interest, the right of reentry.¹⁰² Possibilities of reverter differ from rights of reentry because possibilities of reverter vest to the grantor immediately after the condition happens, while rights of reentry merely offer the grantor the option to choose to take the property back.¹⁰³

Potentially problematically, the distinction between these two future interests has blurred in many courts,¹⁰⁴ and it can be difficult to predict whether a court will find a possibility of reverter or a right of reentry based on the conveyance language.¹⁰⁵ Fee simple determinable and fee simple subject to a condition subsequent are both often used to restrict the use of property¹⁰⁶—the main difference is that a grantor does not need to do anything to trigger repossession once the condition occurs when using a fee simple determinable or a possibility of reverter.¹⁰⁷ A tax-collecting government planning to recollect properties without the court's help may prefer reverters for this reason. Practically, however, even though a possibility of reverter vests at the moment the condition occurs,¹⁰⁸ a grantor will still likely need the assistance of the courts to establish that the condition did occur and to finalize the return.¹⁰⁹ A local government may even elect to use a fee simple subject to a condition subsequent instead of the fee simple determinable if it expects procedural delays like those experienced by Wayne County. In those situations, it could prioritize recollection and only pursue the properties it wants back,¹¹⁰ rather than face the return of thousands of properties to its inventory at once.

102. Powell, *supra* note 94, at 412–13.

103. 3 RICHARD R. POWELL, *POWELL ON REAL PROPERTY* § 20.03 (Michael Allan Wolf ed., 2015).

104. *Id.*

105. *E.g.*, Allison Dunham, *Possibility of Reverter and Powers of Termination—Fraternal or Identical Twins?*, 20 U. CHI. L. REV. 215, 215 (1953).

106. Prum & Aalberts, *supra* note 98, at 160. *See also* Dunham, *supra* note 105, at 218–19 (noting another difference between the immediately vesting possibility of reverter and the delayed right of reentry is the possibility for damages for waste: because of the reverter's immediate vestment, the grantor may be able to collect waste damages from the grantee for the time between the commission of the limiting act and the actual transfer or property which would be unavailable in the reentry situation).

107. Powell, *supra* note 94, at 412.

108. *Id.*

109. Jonathan L. Entin, *Defeasible Fees, State Action, and the Legacy of Massive Resistance*, 34 WM. & MARY L. REV. 769, 772 (1993).

110. This would actually be a similar approach to Wayne County's current tax foreclosure activities, where certain properties with only small values in

C. *Homeowners' Potential Challenges: Agreement
Construction and Equity*

Reverter is a long-standing property interest, and, as such, it would not infringe on the purchasers' rights through its normal use—the purchaser only owns a fee simple determinable, so that property interest ends as soon as the limiting condition occurs.¹¹¹ The Wayne County Third Circuit Court agreed that the clause in Wayne County's tax auction deeds should be enforced and the treasurer should reclaim the delinquent properties. Due to the varying ways a court may interpret the condition or limitation in conveyance language, other tax-collecting governments may need to plan for the possibility the court may not opt to approve the properties' forfeiture back to the government. The court may find the deed restrictions to be real covenants or another type of agreement not subject to automatic vestment of the property to the grantor, based either on the deed agreement construction or on principles of equity.¹¹²

Like defeasible fees, real covenants are products of early common law. They differ from defeasible fees because rather than placing limitations on ownership rights, real covenants place contractual restrictions on property use.¹¹³ These restrictions are tied to the property itself, continuing on even when the property is sold or transferred.¹¹⁴ If the grantor has not included a forfeiture provision in the deed, the court is more likely to find a restrictive covenant instead of a possibility of reverter. This means the court may enforce the terms of the covenant, but the grantee may not lose the property because it has violated the covenant.¹¹⁵ A court may prefer this option to the singular, harsh result under a defeasible fee: covenants give the court greater latitude to act equitably, and to consider social policy in creating the best possible resolution to the property disagreement.¹¹⁶ The auction buyer would prefer the real covenant application, as a damages judgment would be less immediately problematic than an instant transfer of the property. However, tax-collecting governments would likely almost always prefer the defeasible fees to a covenant so as to maintain greater control and

delinquency or with some development purpose remain in the original owner's possession, even though the County could opt to foreclose. *Supra* Part I.D.

111. *Supra* Part III.A.

112. Powell, *supra* note 94, at 425–26.

113. Prum & Aalberts, *supra* note 98, at 165–68.

114. *Id.*

115. See Kevin A. Bowman, *The Short Term Versus the Dead Hand: Litigating Our Dedicated Public Parks*, 65 U. CIN. L. REV. 595, 604–07 (1997) (collecting cases).

116. Powell, *supra* note 94, at 425–26.

to avoid only earning damages from homeowners who would not have the money to pay.¹¹⁷

In some states, the court may even apply equitable principles to defeasible fees, limiting enforcement or even canceling the future interest altogether.¹¹⁸ Existing research suggests equity generally may overpower written reverters when those provisions are affected by “change of conditions” or “passage of ‘reasonable time.’”¹¹⁹ When dealing with property and tax maintenance post-auction, as long as the tax-collecting government uses a provision covering only a short period of time, such as Wayne County’s two-year payment requirement, the provision should remain reasonable¹²⁰ and should not be limited by equity. Tax-collecting governments should be aware of possible “change[s] of condition” during any planned reverter periods, such as the severe housing market troubles in Detroit.¹²¹

Often in attempts to limit defeasible fee enforcement, the roles are reversed: governments often receive donated land for specific uses, such as a park or a school, and they may attempt to challenge reverter rights on those properties when they hope to use the land for some other purpose.¹²² In the case of the tax foreclosure sale, the roles are reversed, but the arguments remain applicable. Defeasible fees give grantors significant power over the buyer’s land use, so courts tend to prefer to construe conveyances in ways that will limit that power to the extent that it would cause grantee forfeiture.¹²³ The possible construction challenge is not enough to rule out the reverter as a potential solution for

117. *Id.* at 413.

118. *Id.*

119. *Id.* at 426.

120. *Id.* at 428–29.

121. While the housing market in Detroit was struggling before this plan was implemented in Wayne County, Detroit continued to lag to such an extent that many were pushing for a full tax-foreclosure moratorium in the city. See Rebecca Kruth, *Groups Press for Tax Foreclosure Moratorium as Wayne Co. Extend Deadline*, MICH. RADIO (May 12, 2015), <http://michiganradio.org/post/groups-press-tax-foreclosure-moratorium-wayne-co-extend-deadline#stream/0> [<https://perma.cc/FSX6-E2LY>]. Such a significant strain on the entire city’s ability to keep up with taxes on properties appraised for much higher values than the values for which such a property could currently sell, could be enough to argue a change of condition.

122. See Entin, *supra* note 109 at 781–82 (explaining case where conveyance of land for white-only park); Bowman, *supra* note 115, at 596 (explaining case where state sought to sell land to Walmart, while land was conveyed for public use).

123. See generally Powell, *supra* note 94. (explaining grantor’s power over defeasible fees).

tax foreclosure auctions, particularly since Wayne County's Third Circuit upheld the reverter on more than 20,000 properties last year. This preference for nonforfeiture simply means any tax-collecting government attempting to use this plan for its foreclosure sales must be certain to use well-drafted language in its sales agreements that does not give the government more power over grantee than necessary.¹²⁴

D. Delays in Taking Possession

As Wayne County's example has shown, even though reverters transfer immediately on the occurrence of the triggering condition, significant delays to the process are possible.¹²⁵ Most communities will not likely face the extremely high numbers of problem properties that Wayne County did, but a less burdened community may still deal with some difficult-to-reach buyers or bureaucratic hold-ups when trying to enforce its possibilities of reverter. These issues could leave a property outside of the tax-collecting government's possession long after the triggering condition transfers ownership, just as they did for Wayne County's 20,000 possibilities of reverter. In those situations, the tax-collecting government must be prepared to address the potential issues created by allowing the original owners' continued use of properties that have technically already transferred back to the tax-collecting government. Depending on the applicable adverse possession or squatters' rights laws in the state containing the auction properties,¹²⁶ and therefore depending on the length of time during which the government fails

124. While this Note does not emphasize the drafting aspect of the possibility of reverter, the clearly drafted conveyance will likely need to include the traditional words of limitation to create a defeasible fee, such as "while," "during," or "so long as," which would suggest the property right being granted is less than a full fee simple absolute. However, these words of limitation are not necessarily a mandatory component of the conveyance. *See* Powell, *supra* note 94, at 414–15.

125. In this example, tax nonpayment not corrected within thirty days would trigger the reverter and would transfer ownership from the purchaser back to Wayne County. However, even after the treasurer went to court to enforce the County's interests, the treasurer continued to offer grace periods that allowed the purchaser or purchaser's tenants to remain on the property that had technically already reverted back. Laitner, *supra* note 79.

126. In Michigan, the statutory period for all claims of title under a deed or other court-ordered sale is five years, and the period for all other cases not involving a deed or court-ordered sale, a tax deed, or a will is fifteen years. MICH. COMP. LAWS ANN. § 600.5801 (West 2013). In Michigan, a claim for adverse possession requires possession to have been open, notorious, exclusive, continuous, and uninterrupted for statutory period, hostile, and under cover of claim of right. *See, e.g.,* Beach v. Twp. of Lima, 802 N.W.2d 1, 8 (Mich. 2011) (explaining a family farm's use of undeveloped land previously purchased by the township did establish a claim of adverse possession). Auction buyers who remain in the reverted homes are openly, notoriously, exclusively, and continuously occupying the property. The occupant's claim may fail, however,

to take possession of the reverted property, a government may face future challenges to quiet title once the government opts to step in.¹²⁷

IV. SOLUTION TWO: PRESALE AFFIDAVIT: KEEPING PROBLEM BUYERS OUT

At the same time the Michigan legislature was debating new debt relief provisions for struggling taxpayers, it was also considering means to limit who may purchase new properties in annual tax foreclosure auctions. In January 2015, Michigan Governor Rick Snyder signed S.B. 0295, which requires auction participants to sign an affidavit before bidding stating the bidder: (1) does not owe fines for tax collection violation; (2) has not or is not working for someone who has held property that a government agency foreclosed upon within the past three years; and (3) did not own property that a government agency has filed foreclosure proceedings upon within the same taxable year.¹²⁸ If the individual lies on the affidavit, that individual would be subject to perjury charges.¹²⁹

An additional bill has passed in the Michigan House and is awaiting Senate approval¹³⁰ to give the County the option to cancel a sale if, after the auction ends, the County finds out the purchaser lied on the affidavit. In that case, the County could then offer the property to the next highest bidder, assuming that second bidder had been truthful in its affidavit.¹³¹ This plan would give the Michigan County treasurers additional power to preempt problem purchasers¹³² and reduce need for post-sale collection options. This amendment would immediately close

in regards to hostility: The treasurer in Wayne County has so far given a number of additional redemption periods, so the government could argue this was simply permissive use.

127. However, if these auction properties are located in an area with a history of squatter troubles, the municipality may also have laws to help the owner (in this case, the tax-collecting government) remove trespassers from the property. See Khalil AlHajal, *Detroit Looks to Alert Property Owners, Trespassers to New Anti-Squatting Laws*, MLIVE (Oct. 13, 2014, 7:00 PM), http://www.mlive.com/news/detroit/index.ssf/2014/10/detroit_looks_to_alert_propert.html [<https://perma.cc/EZ83-W327>].

128. S.B. 295 (Mich. 2013); SENATE FISCAL AGENCY, SALES OF TAX DELINQUENT PROPERTY ANALYSIS AS REPORTED FROM COMMITTEE (2013).

129. MacDonald, *supra* note 57.

130. H.B. 5960 (Mich. 2014).

131. Chad Livengood, *Michigan House OKs Tax Foreclosure Bidder Ban*, DETROIT NEWS (December 10, 2014, 11:13 PM), <http://www.detroitnews.com/story/news/politics/michigan/2014/12/10/house-tax-foreclosure-bidder-ban/20213961/> [<https://perma.cc/98Z7-2YCH>].

132. *Id.*

the loophole that has allowed tax-delinquent homeowners to wait out the first round of the tax auction and repurchase their own foreclosed properties for the \$500 minimum bid in the second phase, thus clearing out all tax debt over the price paid in the auction.¹³³ These loophole buyers made up 400 of the overall 2011 tax foreclosure auction purchasers.¹³⁴

V. PRACTICAL CONCERNS AND POLICY CONSIDERATIONS

As explained in Part III, a well drafted deed providing a fee simple determinable to the auction purchaser and possibility of reverter to the grantor government is a workable means to prevent neglect and delinquency post-sale. However, this type of plan may not be the optimal policy choice in terms of fairness in dealing with various types of buyers and in terms of efficiency in preventing future blight and tax delinquency. Before a state legislature or local tax-collecting government decides to pursue a reverter plan or a presale affidavit plan, it should consider the resources and staffing available for each type of initiative to address the following practical concerns.

A. *Treatment for Bulk Real Estate Investors v. Owner-Occupants*

Taxpayers have a variety of reasons for choosing whether to pay property taxes and whether to bring a home up to code,¹³⁵ and that decision may hinge upon whether the individual is an investor with many properties meant to maximize profit, or an owner-occupant just trying to stay afloat.¹³⁶ This is particularly true in legacy cities and other communities continuing to struggle in the wake of the foreclosure crisis.¹³⁷ At the court hearing on Wayne County's bulk reverter action, several homeowners argued that they should not have to give up their homes because they had no idea such a reverter policy existed.¹³⁸ While

133. Dewar, Seymour & Druta, *supra* note 1, at 20 (explaining that before this loophole was closed, it was a common plan for tax-delinquent owners, including investors holding large numbers of properties.). The loophole is closed under the current affidavit law, except where homeowners lie and get through the sale without detection. In those cases, if the County found out, the owner would still have the property and would just face perjury charges. *See infra* note 162.

134. Cwiek, *supra* note 65.

135. *See supra* notes 19–27 and accompanying text (explaining the difference between flippers, holders, milkers, and rehabbers).

136. *Id.*

137. THRIVING COMMUNITIES REPORT, *supra* note 13, at 6.

138. MacDonald, *supra* note 38.

ignorance of law in real estate transactions is no excuse for tax delinquency,¹³⁹ the homeowners' confusion suggests that perhaps these policies are unfair to unsophisticated owner-occupant homebuyers who either do not have the means to or do not understand the importance of obtaining legal advice when purchasing property.¹⁴⁰ Scholarship on traditional tax foreclosure has suggested different treatment for different segments of the population, such as increased leniency for senior citizens,¹⁴¹ so it seems at least worth considering alternative options for disadvantaged homebuyers.

In addition to knowledge disparity between investors and owner-occupants, these auction buyers also differ in the potential loss created by losing a property. Losing an investment property in as quickly as thirty days through a reverter program may not be a life-changing event for a bulk-property investor, but a Detroit owner-occupant who receives the thirty-day notice of losing their recently purchased sole residence is in a much different situation.¹⁴² The deadline extensions Wayne County has provided in its reverter proceedings seemed to show some understanding for such situations,¹⁴³ but without providing some other assistance for payments, an extended deadline is unlikely to make the difference for a family struggling to pay its bills.¹⁴⁴ State Representative from Detroit Rashida Tlaib commented on the need for greater assistance, and, soon after, the Michigan legislature passed its homeowner assistance plan to reduce interest rates for tax-delinquent, low-income homeowners.¹⁴⁵ When Wayne County measures repayment rates on these reverted properties in May 2015, the measures of success will include

139. See Alexander, *supra* note 17, at 779 (“Every owner of property knows or should know that real property is subject to taxation.”).

140. MacDonald, *supra* note 50.

141. See, e.g., Jennifer C.H. Francis, *Redeeming What is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales*, 25 GEO. MASON U. CIV. RTS. L.J. 85 (2014) (providing a legal basis and policy justifications for different tax foreclosure standards to meet the unusual needs of elderly homeowners and to make it easier for elderly homeowners to continue living in their homes).

142. See, e.g., Prashant Gopal, *Another Blight for Detroit: Property Taxes*, BLOOMBERGBUSINESS (March 11, 2015, 3:00 AM), <http://www.bloomberg.com/news/articles/2015-03-11/detroit-comeback-derailed-as-taxes-kill-homeowner-dreams> [<https://perma.cc/4KW6-4A9V>] (discussing the difficulties created for homeowners who lose homes through quick foreclosure processes).

143. Laitner, *supra* note 79 (including a comment from the Wayne County treasurer that he does not want to have to take anyone's home in these proceedings).

144. *Id.*

145. Dewar, Seymour & Druta, *supra* note 1, at 5.

effects from both the reverter program and the new interest rate reduction program.¹⁴⁶ If the planned reverter program were to follow more closely its proposed timeline, unlike the Wayne County program,¹⁴⁷ these homeowner-occupants could lose properties before they even have a chance to find a replacement home.

That does not mean that a more drawn out program would necessarily be better. In tax foreclosure proceedings, speed in putting properties to new uses is often given greater weight than considerations of the broad economic issues that cause homeowners to lose control of tax payments to begin with.¹⁴⁸ However, speed in the process is not necessarily bad for the homeowner. Some researchers suggest delays in mortgage foreclosures create problematic uncertainty for homeowners, who might be better served by receiving clear deadlines and timelines for the process.¹⁴⁹ This delicate balance applies equally to the proposed reverter program as it does to traditional foreclosure—the state legislature and tax-collecting government must decide together where to draw the line on how much help to provide the homeowner versus helping the local government obtain and repurpose the property.¹⁵⁰ Some of the homeowners facing the 2014 reverter action suggested that not all the buyers should be subject to this accelerated property return.¹⁵¹ Because investors make up a large proportion of the tax-foreclosure-sale buyers,¹⁵² including the reverter clauses only in deeds to non-owner-occupants may give the flexibility needed to protect vulnerable low-income buyers without limiting the tax-collecting government's ability to act fast on problem bulk buyers.

146. Because these programs have been implemented simultaneously, affecting some of the same homeowners, measuring success of one program independent of the other may be difficult.

147. Muller, *supra* note 33.

148. Dewar, Seymour & Druta, *supra* note 1, at 4.

149. CHARLES CALOMIRIS & ERIC HIGGINS, SHADOW OPEN MKT. COMM., ARE DELAYS TO THE FORECLOSURE PROCESS A GOOD THING? (March 25, 2011).

150. MacDonald, *supra* note 38.

151. *Id.*

152. One author noted:

More than 40% of properties [up for sale] with residential structures sold at the auctions between 2002 and 2009, but most of these went to investors. Few buyers purchased houses as owner-occupants, and few homeowners purchased adjacent lots for expanding a yard, although these were frequent types of purchases from the city's inventory of properties.

Dewar, Seymour & Druta, *supra* note 1, at 14.

As was suggested during the 2014 Wayne County reverter enforcement action,¹⁵³ using a presale tactic to keep problem buyers from getting involved in the auction in the first place may be a more equitable solution. The homeowners facing loss suggested instead that problem property owners—those owners known to buy in bulk and then collect rent and ignore the property without paying the requisite taxes—should not participate in future auctions.¹⁵⁴ The homeowners suggested the county government should be more diligent in vetting buyers before the sale in order to prevent delinquency and blight post-auction and keep from needing strict consequences for non-payment after the sale.¹⁵⁵ Reducing the number of buyers could get Wayne County properties to the same result—the land banks—without the added reverter procedure in between. Particularly with fewer bulk buyers, questionable properties may be less likely to sell and more likely to pass straight through to the land banks.¹⁵⁶ The State of Michigan has seemingly answered those homeowners' requests in passing SB 0295, which created affidavits to hold bidders more responsible for their previous problems with tax foreclosure and blight control.¹⁵⁷ Of particular importance to fairness considerations between owner-occupants and investment companies was the legislature's differentiation between the two when setting time limits since prior foreclosures: Owner-occupants must only wait one year following a tax foreclosure, while those who work for an investment company must wait three years after any tax foreclosures on that organization's properties.¹⁵⁸

Success of affidavit programs implemented elsewhere will likely depend on how successfully the program encourages truthfulness and creates means to punish purchases made by unidentified problem buyers. While the only current remedy in Wayne County if a bidder lies about prior involvement in these problems is perjury, additional legislation currently awaiting approval could strengthen the County's ability

153. MacDonald, *supra* note 38.

154. *Id.*

155. *Id.*

156. Many of these homes would not sell if problem bulk buyers did not participate, which would give the land banks an opportunity to take these nonselling properties as soon as the foreclosure sale ended. See David Muller, *Wayne County Adds June Auction to Massive Tax Foreclosed Property Sale Noted by Detroit Blight Removal Task Force*, MLIVE (Oct. 22, 2012, 8:00 AM), http://www.mlive.com/business/detroit/index.ssf/2014/05/wayne_county_adds_june_auction.html [<https://perma.cc/6C2X-DVKT>].

157. See *supra* Part IV (explaining how the Michigan legislature is restricting auction participation to nondelinquent buyers, with different time restrictions for homeowner-occupants versus employees of real estate companies).

158. See *id.* (explaining the provisions of the new affidavit program).

to preemptively fight back against repeat offenders.¹⁵⁹ Actual enforcement of affidavit discrepancies may prove difficult due to the number of properties and bidders the County manages in each sale. Still, this method has at least greater potential for practicability than a more in-depth vetting process,¹⁶⁰ and would still likely take less resources than Wayne County and its land banks will use taking in more than 20,000 properties from previous problem buyers.

Unfortunately, the affidavit solution may still put a greater strain on individual, financially limited homeowner-occupants than it will on savvy serial investors. Investors may create new business entities each auction to avoid detection as the same problematic buyer. Owner-occupant homebuyers—who may not have even had the resources to complete a title search—will not have the same resources or know-how to circumvent the system.¹⁶¹ Hiding behind new entity names is not a foolproof means of buying without detection, but it could at least buy an investor some time to take on properties and earn rent or sell before being detected. Additionally, a perjury charge may not be enough to motivate an investor to answer truthfully about previous foreclosure actions, depending on the volume and income generated by their delinquencies.¹⁶² With this new affidavit rule, because the buyer must swear that they have not been involved in a foreclosure in the last taxable year, an individual homeowner who has lost his or her home to foreclosure and failed to reclaim it during the redemption period cannot come through the auction to repurchase the home and wipe the tax bill

159. Livengood, *supra* note 131.

160. When a tax-collecting government is dealing with large volumes of sale properties, it is unreasonable to expect that government to be able to individually vet each buyer. See Sarah Cwiek, *The 2014 Wayne County Tax Foreclosure Auction is Over, but Key Details Slow to Emerge*, MICH. RADIO (Oct. 29, 2014), <http://michiganradio.org/post/2014-wayne-county-tax-auction-over-key-details-slow-emerge> [<https://perma.cc/BVM7-3TR8>] (noting that approximately 24,000 properties sold in the final round of Wayne County's tax foreclosure auction). Even in less distressed markets, the affidavit can keep the buyer responsible or being truthful even if the tax-collecting government misses something when inquiring into the auction participants before the sale.

161. See, e.g., Frank Ford, Senior Policy Advisor, Thriving Cmty. Inst., Cuyahoga County Housing Issues: In the Shadow of the Foreclosure Crisis (June 27, 2014), organizeohio.org/uploads/2/8/7/7/2877533/ford.pptx (providing one example of bulk buyers using different names and fake addresses to evade detection as problem buyers in Cuyahoga County).

162. As discussed in MALLACH, *supra* note 4, if one of the high-volume flippers' or milkers' potential income is great without many resources expended up front, a perjury charge may not tip the scale enough to make bulk buying a losing deal.

clean,¹⁶³ The new interest rate reductions have the potential to help to keep at least some homeowners from getting to such a desperate situation,¹⁶⁴ but issues communicating with taxpayers about available assistance programs¹⁶⁵ may still put owner-occupants at a disadvantage as compared to the more savvy investors. While a tax-collecting government should put its owner-occupant citizens first in its solutions to tax auction problems, it should not do so at the expense of other taxpayers as the Wayne County loophole did.¹⁶⁶

B. Reversing Blight

A forward-thinking abandoned property auction should include an agreement that explicitly defines what the tax-collecting government expects to be done to the property, and the standards by which performance on improving the property will be judged.¹⁶⁷ These requirements should also include the timetables by which the purchaser must complete the agreed-upon tasks, and the method by which the government will enforce the requirements.¹⁶⁸ This may include a reverter right, where the government can take the property back upon nonperformance.¹⁶⁹ The Michigan Chronicle described the reverter clauses as means to “address the fight against blighted neighborhoods and property neglect by speculators.”¹⁷⁰ When used in other community development contexts, the reverter rights are usually tied to land improvements.¹⁷¹ Wayne County has taken them a step further by also requiring timely property tax payment. Because properties going up for sale in these tax-foreclosure auctions are likely to be “concentrated . . . in the areas

163. *Supra* Part IV (explaining how the new affidavit program has closed Wayne County’s previous tax delinquency loophole).

164. *See, e.g., supra* notes 133–134 and accompanying text (providing some insight on past auction buyers who used the auction as a means to wipe out old tax debt).

165. Anecdotally, those arguing for a tax foreclosure moratorium have referenced homeowners who are not getting assistance, even though they should qualify for one or more of the programs available through the county. *See* Sarah Cwiek, *Wayne County Extends Foreclosure Deadline as Protesters Call for Moratorium*, MICH. RADIO (June 8, 2015), <http://michiganradio.org/post/wayne-county-extends-foreclosure-deadline-protesters-call-moratorium#stream/0> [<https://perma.cc/LQ92-KH4W>] (citing hardship and property exemptions).

166. MacDonald, *supra* note 57.

167. MALLACH, *supra* note 15, at 115.

168. *Id.*

169. *Id.*

170. *A Talk with Wayne County Treasurer, supra* note 41.

171. *Supra* Part III.B.

where disinvestment and vacancy were greatest,¹⁷² the potential for continual blight post-sale is high. Foreclosure sale purchases themselves may even cause blight, as bulk buyers tend to dominate, picking up high volumes of low-price homes.¹⁷³ “This means that purchase at auction by investors with a record of blight violations and nonpayment of taxes could speed neighborhood disinvestment.”¹⁷⁴ With these facts in mind, a tax-collecting government should at least consider a plan to ensure proper care and renovations of auction properties, whether through post-sale consequences or presale qualifications.

Land banks are effective vehicles for redirecting troubled properties to more productive uses, but land banks do have limits on the number of properties they can handle effectively. This capacity issue was most evident in the Wayne County example, as Wayne County had more than 20,000 properties that would probably best be served through the land bank but could not all realistically transfer. The Detroit Land Bank Authority’s representative shared its concerns about taking in high volumes of problem auction properties with Detroit Free Press after the treasurer announced it was extending the deadline for repayment on the reverted properties.¹⁷⁵ As of November 2014, the Detroit Land Bank Authority held 34,000 properties, and was set to receive 6,000 more in January 2015, not including any of the reverter properties. Even though the Wayne County-area land banks have specialized expertise in dealing with large numbers of problem properties,¹⁷⁶ these professionals found the 20,000 reverter properties to be a daunting addition. As such, other tax-collecting governments may find a similar struggle in bulk-returned tax delinquent auction sales, even if the number of delinquent properties is much lower than Wayne County’s.

C. Halting delinquency or Preventing Future Delinquency

The need to stop tax delinquency is two-fold: tax delinquency of course limits local government funding for service, but research suggests stopping tax delinquency is also a means to prevent and mitigate blight.¹⁷⁷ Tax-collecting governments considering additional measures to

172. *Supra* Part III.B.

173. Dewar, Seymour & Druta, *supra* note 1, at 605 (noting that from 2002 through 2010, eleven buyers, each who purchased more than eighty properties, had purchased twenty-four percent of all of the auction sale properties).

174. *Id.* at 595.

175. *Supra* note 91 and accompanying text.

176. Wayne County and the Detroit area are dealing with some of the highest rates of tax foreclosure in their region of the United States. Weise, *supra* note 36.

177. THRIVING COMMUNITIES REPORT, *supra* note 13, at 6–8, 30, 33, 37, 40 (discussing general governmental concerns regarding tax delinquent homes; also providing empirical data from Cleveland, Ohio describing home value reductions between 1.6 and 4 percent for each additional tax-delinquent

prevent tax delinquency in auction properties may prevent some issues by targeting suspected problem buyers before the sale, but the post-sale reverter is the fastest way to stop post-sale delinquency as soon as it sets in.

Particularly when dealing with flippers or milkers, a tax-collecting government will likely need to foreclose on the same property again after the normal procedural timeframe, generally two to three years.¹⁷⁸ If properties are already in problematic conditions and if governments desperately need the property tax income, the extra wait for a second foreclosure could make the difference between saving a neighborhood block and watching it slide further into blight. Past Wayne County Treasurer Raymond Wojtowicz called the reverter clause “the best way to break the cycle.”¹⁷⁹ In theory, the treasurer is right. When enforced in a timely fashion, reverter provisions like Wayne County’s will dramatically reduce wait time for nonpaying auction purchases. Within thirty days of nonpayment, Wayne County could in theory direct the property to the land bank.¹⁸⁰ However, the properties facing reverter in Wayne County were delinquent for varying lengths of time up until the August 2014 Third Circuit case. Following the court’s approval of the reverter, the properties will remain in the hands of the delinquent buyers at least until May 2015,¹⁸¹ marking almost an entire year of the properties remaining delinquent and in limbo. By the time these properties make it to the land bank, a normal judicial foreclosure may have been the more expedient option.

Given the potential uncertainties, if the government has no way to know the buyer will be delinquent, reverter may still be the best option. However, for those buyers the government has reason to believe may cause problems, a more preemptive approach may be preferable. While reverter programs require waiting for property owners to fall back

structure located within 500 feet of a home, depending on the level of market function in the area, with even greater value reductions when the tax-delinquent structures are also vacant).

178. MacDonald, *supra* note 38; *see also* Mich. Dep’t of Treasury, Real Property Tax Forfeiture and Foreclosures, http://www.michigan.gov/taxes/0,4676,7-238-43535_55601---,00.html [<https://perma.cc/FYW9-9PSW>] (noting that in Michigan, properties forfeit to the county after the second year of nonpayment, and the county forecloses on the properties if the balance is not paid by March 31 of the following year).

179. Marlon A. Walker, *Wayne County Treasurer Suing to Recover Homes of Tax Scofflaws*, DETROIT FREE PRESS (June 23, 2014), <http://archive.freep.com/article/20140623/NEWS02/306230016/wayne-county-tax-sale> [<https://perma.cc/DDY9-429X>].

180. *See supra* Part III.A (describing the terms of the Wayne County reverter provision).

181. *See supra* Part III.A.

into delinquency, presale measures provide an opportunity for the tax-collecting government to reach out to struggling taxpayers before they lose control of tax payments.¹⁸² Particularly in areas of high delinquency, like Wayne County, this presale measure may be more useful.

Looking at delinquency over the long term, the reverter program may not serve as a real deterrent for tax delinquency in future auction purchases in the same way a presale affidavit could. According to Alexander, homeowners become delinquent on property taxes in three situations: (1) when the economy causes property values and income levels to drop, and the assessed value of properties for tax purposes no longer reflects the actual values; (2) when property tax is higher than what the general public will tolerate, and the citizens choose not to pay in protest; and (3) when investors choose to maximize income and minimize expenses for the property by foregoing property tax payments.¹⁸³

Alm et al. suggest that tax delinquency in Detroit in many cases is a calculated plan for tax evasion based on knowledge of the system and how likely or unlikely it is that they would lose the property for nonpayment.¹⁸⁴ Whydontweownthis.com, an online database described by Wayne County's then-deputy treasurer as the most reliable source of information on abandoned properties and foreclosures,¹⁸⁵ identified several bulk buyers who are tens of thousands of dollars behind on taxes. These investors may either flip the property later, or simply let the property fall back into tax foreclosure after making a profit on the rental payments.¹⁸⁶ The Detroit News investigated such bulk buyers, and found business organizations, from across the country and internationally, picking up foreclosed homes, and selling them between various other organizations, raising the price each time, but never actually improving the quality of the home.¹⁸⁷

The number of out-of-state buyers in the tax foreclosure auction went up significantly when the auctions switched from in person to

182. Dewar, Seymour & Druta, *supra* note 1, at 596.

183. Alexander, *supra* note 17, at 749.

184. Alm, Hodge, Sands & Skidmore, *supra* note 34, at 9.

185. Nick Carey, *Cheap Detroit Houses Scooped Up by Investors Can Be Costly for Communities, Bad News for Buyers*, HUFFINGTON POST (Sept. 2, 2013, 5:12 AM), http://www.huffingtonpost.com/2013/07/03/cheap-detroit-houses_n_3538213.html [<https://perma.cc/CDL4-Z8TG>] (noting, however, that some "benevolent speculators" also have begun buying property in Detroit, intending to make more beneficial investments in Detroit's neighborhoods).

186. *Id.*

187. Christine MacDonald, *Out-of-state Real Estate Owners Spark Complaints from Detroit Area Activists*, DETROIT NEWS (Feb. 3, 2011), http://www.detroitnews.com/article/20110203/METRO01/102030369&template=art_iphone [<https://perma.cc/EXG5-EP8H>].

online. In 2008, four percent of foreclosure purchasers were from out of state.¹⁸⁸ In 2010, immediately following the first online Wayne County auction, that number increased to fifteen percent, and included some out-of-the-country investors from Singapore and Australia.¹⁸⁹ These investors will not likely ever see the properties they have purchased.¹⁹⁰ If implemented without delay, reverters would allow the tax-collecting government to reduce the financial benefit of nonpayment and deter these investors, as these bulk buyers would have a shorter ownership period to derive income from the property. If consistently enforced, this may eventually deter these investors. However, if a tax-collecting government has any doubt about its ability to quickly and consistently use the provision, a presale measure to limit participation would likely yield better protection for the government's tax income.

While the more seasoned bulk buyers use knowledge of the tax system to get the most value out of nonpayment, unsophisticated purchasers may opt not to pay their taxes because of a lack of understanding of the system. To give owner-occupants a fair chance at successfully paying taxes on auction properties, tax-collecting governments may consider greater education as part of the presale program. Some homeowners underestimate future property taxes and find themselves with bills they cannot afford.¹⁹¹ Much of this problem may stem from the purchaser's view of the value of the property versus the actual assessed tax value of the land. According to Alm et al., Detroit property taxes are more than twice the average of the rest of the state of Michigan, with homestead property tax rates at 3.257 percent of home value.¹⁹² Citing Hodge, Alm et al., explained that property values in Detroit are overassessed by at least five times, and the slow and problematic processing system for tax bills creates barriers for successful tax collection.¹⁹³ One homeowner who lost his property in the 2014 reverter enforcement supports these assertions. Larry Sargent explained to the Detroit News that he would be happy to pay property tax were it based on a more proper assessment of the home's value. He purchased the

188. *Id.*

189. *Id.*

190. *Id.*

191. Alm, Hodge, Sands & Skidmore, *supra* note 34, at 3–4 (citing Sebastien Bradley, *Property Tax Salience and Payment Delinquency*, (Drexel University, Working Paper 2013) http://www.bus.umich.edu/ConferenceFiles/MTAXI-2012/tax_delinquency_draft_May2012.pdf [<https://perma.cc/8P3S-HRKH>]).

192. *Id.* at 7.

193. *Id.* at 8 (citing Timothy R. Hodge, Mark Skidmore, Gary Sands & Daniel McMillen, *Assessment Inequity in a Declining Housing Market: The Case of Detroit* (Michigan State University, Working Paper 2013), <https://www.bostonfed.org/economic/nesg/papers/hodge-skidmore-sands-mcmillen.pdf> [<https://perma.cc/24L2-97X4>]).

home in the 2013 tax foreclosure auction for \$500, and he felt as such the \$22,000 assessment price is much too high.¹⁹⁴

CONCLUSION

Even as some housing markets begin to bounce back, unscrupulous investors and unprepared new owner-occupants remain a threat to local governments' successes in putting tax delinquent properties to productive use. Local governments may choose to combat these issues before the sale, with seemingly positive results, or the government may opt to target the issue post-sale. If a local government elects as post-sale reverter approach, the government must be certain it has written the deed in a way that will clearly establish the defeasible fee and possibility of reverter and the government must be able to act quickly and decisively to repossess the property without creating any of the potential issues that could come with delay. A quick-moving and clearly communicated reverter program has the potential to successfully address blight before it happens. Even when the program is legally sound, tax-collecting governments should consider the long-term societal consequences of acting quickly to remove delinquent buyers. The government must decide whether the burden it may place on uneducated, low-income buyers is worth the chance to stop the more sophisticated buyers trying to game the system.

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194. MacDonald, *supra* note 38.

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