



May 30, 2019

Via Electronic Mail and U.S. Mail

Mayor Karen Weaver
Flint City Council
Flint City Hall
1101 S. Saginaw Street
Flint, MI 48502

Deb Cherry
Genesee County Treasurer
1101 Beach Street
Flint, MI 48502

**Re: Moratorium on Placement of Liens on Homes for Unpaid
Water Bills**

Dear Mayor Weaver, Flint City Council Members, and Treasurer Cherry:

On behalf of the ACLU of Michigan and the NAACP Legal Defense & Educational Fund, Inc. ("LDF"), we write to express our concern about the approximately 8,000 lien notices that the City of Flint ("City" or "Flint") erroneously mailed to residents on April 23, 2019. We recognize that the City and County have disclaimed any intention to place liens on owner-occupied residential properties until Flint's water emergency is resolved. Nevertheless, a mistake of this magnitude is disconcerting, especially considering the unnecessary distress it inflicted on residents of an already-beleaguered community. Moreover, the City's retraction of these letters is insufficient to assuage our misgivings. Because the continued placement of liens on rental properties with overdue accounts is unfair to tenants, and because the practice of placing liens on residential properties in *general* may violate federal and state civil rights laws, among other statutes, we urge you to refrain indefinitely from placing water liens and foreclosing on any residential properties for unpaid water debt.

In May 2017, after a federal court declared Flint's water unsafe to drink, we expressed our support for a city ordinance imposing a moratorium on the Flint's practice of putting liens on homes for unpaid water bills.¹ The City Council passed that ordinance, recognizing the inherent

¹ Letter from Sherrilyn Ifill, President and Director-Counsel, LDF, & Kary L. Moss, Director, ACLU of Michigan, to Mayor Karen Weaver and Flint City Council (May 16, 2017), <https://www.naacpldf.org/files/about->

injustice in penalizing homeowners for failure to pay exorbitant charges for grievously contaminated water. Although the state-appointed Receivership Transition Advisory Board (“RTAB”) ultimately struck down the council’s moratorium, Mayor Weaver ordered the City’s Chief Financial Officer to refrain from transferring liens to Genesee County (“the County”).²

Since then, we understand that the City has not enforced residential water liens, nor has the County accepted liens for owner-occupied residential properties since Flint has been under a water emergency. Nonetheless, County Treasurer Cherry has made two things clear: (1) she will continue to place liens on rental properties with overdue water accounts, and (2) as soon as the mayor declares an end to the water emergency, the County will begin foreclosing on water liens.³ Each of these policies is unjust and potentially illegal.

First, we are concerned with the differing policy for owners and renters. There is no principled reason for the City and County to deprive renters of the reprieve it has extended to owner-occupants. Renters, just as much as owners, have suffered health-related harms and anxiety resulting from Flint’s contaminated water supply. And renters, just as much as owners, deserve repose from the after-effects of the water crisis: neither renters nor owner-occupants should be made to worry that their failure to pay for dangerously contaminated water might result in foreclosure upon their properties and ultimately eviction. We request that you apply the same policy for both owners and renters and do not place liens on tenant-occupied properties with overdue water accounts.

Second, by transferring *any* liens based on residential water debts—whether or not for rental properties—to the County, which then forecloses on the liens, the City and County may violate federal and state law, including the Fair Housing Act (“FHA”), 42 U.S.C. § 3604 *et seq.* Section 3604(a) of the FHA makes it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a). This provision has been construed broadly by courts and prohibits conduct that disparately impacts members of a protected class, even if unintentionally. *See Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2519 (2015).

Studies have shown that tax liens and foreclosures have precisely such illegally discriminatory effects on Black and Latinx homeowners.⁴ For example, in 2016, we sued Wayne

[us/Letter to Flint City Council RE Moratorium on Property Liens.pdf](#).

² Press Release, City of Flint, MI, Statement from Mayor Weaver on RTAB Decision to Strike Down Proposed Water Lien Moratorium (June 27, 2017), <https://www.cityofflint.com/2017/06/27/statement-from-mayor-weaver-on-rtab-decision-to-strike-down-proposed-water-lien-moratorium/>.

³ Zarah Ahmad, *Flint mistakenly sends out 7,931 water lien notices*, MLIVE.COM (May 8, 2019), <https://www.mlive.com/news/flint/2019/05/flint-mistakenly-sends-out-7931-water-lien-notices.html>.

⁴ *See, e.g.,* Coty Montag, NAACP Legal Def. & Educ. Fund, Inc., *Overview, Water/Color: A Study of Race and the Water Affordability Crisis in America’s Cities* (May 2019) (finding that water lien sales in Cleveland are disproportionately located in predominantly Black neighborhoods), https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf; Michael D’Onofrio, *City Council Calls for Moratorium on Sheriff Sales*, The Phila. Tribune (Oct. 6, 2018), https://www.phillytrib.com/news/city-council-calls-for-moratorium-on-sheriff-sales/article_87ef9708-712b-5dfd-8390-f213114c7842.html (noting that, in October 2018, the Philadelphia City Council requested a moratorium on tax sales, which were found to be concentrated in Black and minority neighborhoods);

County, Michigan, alleging that its tax foreclosure practices had a disparate impact on African-American homeowners in violation of the FHA.⁵ The court ruled that we adequately alleged a claim for race discrimination under the FHA, although it ultimately dismissed the case on jurisdictional grounds that do not apply to water liens. Here too, we have reason to believe that the City's and County's water lien foreclosures would disparately impact African-American homeowners in violation of the FHA, if the County were to resume such foreclosures.

As we have explained previously,⁶ these illegal and discriminatory effects are avoidable: the City is not legally *required* to place water liens on properties with overdue water bills. Instead, if utility charges are delinquent for six months or more, a municipality "may" certify the lien to be entered on the next tax roll. *See* MCL 141.121(3). But the law leaves the City with discretion to collect debts by alternative, nondiscriminatory means.

Given the injustice and potential illegality inherent in imposing water liens on Flint residents and then foreclosing upon them, we continue to implore the City and County to exercise their discretion and refrain indefinitely from placing water liens and foreclosing on homes of residents for unpaid water debt.

Very truly yours,



Michael Steinberg, Legal Director
ACLU of Michigan



Sherrilyn Ifill, President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

Coalition for Affordable Homes, *Compounding Debt: Race, Affordability, and NYC's Tax Lien Sale 5* (2014), <https://cnycn.org/wp-content/uploads/2014/02/CAH-tax-lien-sale-report-final.pdf> (determining that New York City is six times more likely to sell a tax lien in a majority-Black neighborhood than a majority-white neighborhood).

⁵ Complaint, *MorningSide v. Sabree*, Case No. 16-008807-CH, at 2-3 (Wayne Cnty. Circuit Ct. Jul. 13, 2016), <http://www.naacpldf.org/document/morningside-v-sabree-tax-foreclosure-complaint>.

⁶ *See* Ifill & Moss, *supra* note 1.