

**BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION
PROPERTY TAX AND MAINTENANCE & FORECLOSURE
PROCEEDS DISTRIBUTION POLICY FOR 2019**

FORECLOSING GOVERNMENTAL UNIT: ERIE COUNTY

The Buffalo Erie Niagara Land Improvement Corporation (BENLIC) acquires, and eventually sells, properties for the purpose of advancing the Corporation's mission as follows:

BENLIC seeks to confront and alleviate the problems distressed properties cause to communities by supporting municipal and regional revitalization efforts and strategically acquiring, improving, assembling, and selling distressed, vacant, abandoned and/or tax-delinquent properties.

BENLIC is able to acquire parcels in a variety of ways, including the foreclosure process with Erie County acting as the foreclosing government unit (FGU). The foreclosure is either done directly or via the preemptive (or "*super-bid*") procedure as authorized by Article 16 of New York State Not-for-Profit Corporation Law ("The Land Bank Act"). The foreclosure method of property acquisition presents unique challenges relative to the payment of the bid - the satisfaction of the municipal claim (i.e. accrued back taxes) which was the basis for the judgment - to Erie County, as well as reimbursement of foreclosure service costs incurred by the local government and maintenance costs incurred during the time of BENLIC ownership.

Properties acquired through foreclosure have three or more years of delinquent County property taxes owed by the property owner(s). Erie County has also incurred additional expenses associated with said parcels in complying with the "making the local taxing entity" whole concept. In other words, Erie County pays the municipality the value of delinquent Town and/or Village property taxes owed on the parcel. This also includes emergency demolition, maintenance and other costs that the municipality has incurred relative to the property. In summary Erie County, as required under current laws governing the foreclosure process, both expends substantial monies on each property and defers the full amount of County property taxes owed on the parcel.

It is therefore requisite and appropriate for BENLIC to develop a Proceeds Distribution Policy into its operations which is followed whenever a property originally acquired through a foreclosure process (with Erie County as the FGU) is sold to another entity.

Since it is BENLIC policy to require the "host" local government to cover the cost of foreclosure and maintain any property acquired through the foreclosure process, expenses relative to property care and management will be incurred over the time of BENLIC ownership. It is also acknowledged that BENLIC's purpose in acquiring said properties is to carry out the community needs and revitalization objectives stated in the municipal resolution requesting BENLIC to acquire said property. In summary, BENLIC and the "host" local government are partners in the process and must work in a cooperative manner. Recognizing this need for cooperation as well as the costs that may be borne by the local government by paying for the foreclosure expenses

and for expenses incurred in maintaining a BENLIC property, it is appropriate for the Corporation to reimburse the municipality, where feasible, a portion of the foreclosure and maintenance costs.

ERIE COUNTY PROCEEDS DISTRIBUTION POLICY: BENLIC shall repay Erie County a variable portion of the delinquent County property taxes owed on properties acquired through the foreclosure process pursuant to the following procedure.

PROPERTY FORCLOSURE AND MAINTENANCE REIMBURSEMENT POLICY: BENLIC shall reimburse local governments a variable portion of the foreclosure and maintenance costs said municipalities incur during the time of Corporation ownership with the reimbursement amount being established pursuant to the following procedures.

PROCEDURE

1. Definitions:

- a) Net Proceeds: The primary sale price minus the following:
 - (1) Closing Costs incurred by BENLIC during the initial foreclosure transfer as well as during the primary sale from BENLIC to a new owner.
 - (2) Insurance Premiums
 - (3) Capital Improvements
 - (4) Marketing Costs
 - (5) Utility Costs
 - (6) Other Miscellaneous Costs Incurred by BENLIC Associated With Holding The Property

- b) Maintenance: The costs incurred while:
 - Performing all necessary functions to ensure that the condition and appearance of the property are maintained satisfactorily. Such maintenance functions shall be performed to remain in compliance with local ordinances/association standards year-round. These functions include, but are not limited to, securing the property (changing locks, securing swimming pools, boarding up if necessary), lawn maintenance, debris removal, winterization, snow and ice removal, and emergency repairs.

- 2. Within 30 days following the primary sale closing, the municipality responsible for maintenance of the property shall submit to the Executive Director, or his or her designee, an itemized listing of all costs incurred to maintain the property during BENLIC ownership.

- 3. Within 45 days following the primary sale closing, the Executive Director or his or her authorized designee, shall calculate the net proceeds figure associated with the property in question.

- 4. All items subtracted from the primary sale price to determine the “net proceeds” shall be verified with appropriate written documentation and repaid to BENLIC.

5. The Executive Director, or authorized designee, shall divide the Net Proceeds amount by two to determine the funds to be retained by BENLIC (known as BENLIC Proceeds) and those to be split between Erie County for “property tax recapture” and the municipality for “foreclosure & maintenance cost reimbursement”
6. The funds from “property tax recapture” and “foreclosure & maintenance cost reimbursement” shall be noted as the Local Distribution Proceeds.
7. Where the Local Distribution Proceeds is greater than the total amount of property tax recapture plus foreclosure & maintenance cost reimbursement, the County and the municipality should be paid in full and any remaining balance shall be forwarded to BENLIC. [SEE EXAMPLE 1 BELOW]

However, in such circumstances where the Local Distribution Proceeds is less than the total amount of property tax recapture plus foreclosure & maintenance cost reimbursement, the county and the municipality shall retain an equally proportional amount of the Local Distribution proceeds. To determine the equally proportional amount, the Local Distribution proceeds shall be divided by the total of property tax recapture plus foreclosure & maintenance cost reimbursement to determine Percentage X. Percentage X will then be multiplied by the property tax recapture (to determine how much shall be paid to the County) and by the foreclosure & maintenance cost reimbursement (to determine how much shall be paid to the municipality). [SEE EXAMPLE 2 BELOW]

In such circumstances where there is a *negative amount* of Net Proceeds and the sale is \$1,000 or greater (i.e. when the Carrying Costs are greater than the, \$1,000 or greater Primary Sale Price), a separate and distinct formula will apply. Such circumstances shall require that the Corporation pay the County 10% of the primary sale price toward the costs of back taxes (in the case of the county) and 10% of the primary sale price towards the foreclosure/maintenance expenses (in the case of the Town). If 10% of the primary sale price is greater than either the taxes owed to the County or the actual foreclosure/maintenance costs incurred by the Town, BENLIC shall pay only the actual taxes owed and the actual foreclosure & maintenance costs. In certain circumstances BENLIC may seek a hardship waiver of this repayment policy from the Erie County Legislature. Said waiver requests shall document the public need for BENLIC involvement with the property, property tax history, etc. [SEE EXAMPLE 3 BELOW]

8. Under no circumstances, except as noted in Paragraph 9 below, shall the amount disbursed for property tax recapture and/or foreclosure & maintenance costs exceed the funds available within the “Local Distribution Proceeds”.
9. The Executive Director, or authorized designee, shall prepare a written summary of the Net Proceeds calculation inclusive of the distribution amounts to BENLIC, Erie

County, and local government. Said summary shall be presented to the Board of Directors for information at scheduled meetings of the Board.

10. The Executive Director, shall cause to be distributed all funds as presented to the Board of Directors within 90 days of the primary sale.

EXAMPLE 1:

BENLIC forecloses on a house in the Town of Lancaster having back taxes of \$10,000. BENLIC sells the property two years later for \$60,000. The Town of Lancaster has incurred \$1,400 in foreclosure service expenses and \$1,000 to maintain the property (e.g. cut grass and clear snow). The carrying cost to BENLIC for acquiring, holding, rehabilitating and conveying the property are as follows:

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| • Closing Costs at Initial Acquisition | - | \$ 300 |
| • Insurance Premium | - | \$ 700 |
| • Utility Costs | - | \$ 500 |
| • Marketing Costs | - | \$ 3,000 |
| • Capital Improvements (Rehab) | - | \$15,000 |
| Total: | - | \$16,500 |

The Net Proceeds from the primary sale are $\$60,000 - \$16,500 = \$43,500$. These funds are divided by two to determine the amount retained by BENLIC (i.e. \$21,750) and the Local Distribution Fund (i.e. \$21,750).

From the Local Distribution Fund Erie County is repaid the full amount of back taxes (i.e. \$10,000) and the Town of Lancaster is repaid \$2,400 for foreclosure & maintenance cost. BENLIC disburse these amounts to the governments. Since \$9,350 remains in the Local Distribution Fund, these funds are retained by BENLIC.

EXAMPLE 2:

BENLIC forecloses on a house in the Town of Cheektowaga having back taxes of \$33,000. After considerable rehabilitation, BENLIC sells the property three years later for \$75,000. The Town of Cheektowaga has incurred \$1,400 in foreclosure service expenses and \$1,000 to maintain the property (e.g. cut grass and clear snow). The carrying costs to BENLIC for purchasing, holding, rehabilitating, and reselling the property are as follows:

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| • Closing Costs at Initial Acquisition | - | \$ 300 |
| • Insurance Premium | - | \$ 700 |
| • Utility Costs | - | \$ 500 |
| • Rehabilitation (roof and foundation repairs) | - | \$28,500 |
| • Marketing Costs | - | \$ 1,000 |
| Total: | - | \$31,000 |

The Net Proceeds from the primary sale are $\$75,000 - \$31,000 = \$44,000$. These funds are divided by two to determine the amount retained by BENLIC (i.e. $\$22,000$) and the Local Distribution Proceeds (i.e. $\$22,000$).

The Local Distribution Proceeds is not great enough to pay the total amount owed in taxes to the County (i.e. $\$33,000$) and the amount owed to the town for maintenance (i.e. $\$2,400$). The policy states that the County and the municipality shall retain an equally proportional amount of the local distribution proceeds. As such, the local distribution proceeds amount of $\$22,000$ shall be divided by the total amount owed for property tax recapture plus foreclosure & maintenance costs, namely $\$35,400$ i.e. $\$22,000/\$35,400 = 62.15\%$). The County and the municipality shall each retain 62.15% of what is owed to them out of the local distribution proceeds. In this instance, the County will retain 62.15% of $\$33,000$ (i.e. $\$20,508.47$) and the Town of Cheektowaga will retain 62.15% of $\$2,400$ (i.e. $\$1,491.60$).

EXAMPLE 3

The primary sale of the property is $\$1,400$ however the carrying costs for the property were $\$3,000$. In this circumstance, the net proceeds is a negative number (i.e. $\$-1,600$). In this example, the back taxes owed to the county for the parcel are $\$57,000$ and the foreclosure/maintenance expenses owed to the Town are $\$3,000$. Because the net proceeds is a negative number, the separate and distinct “10% formula” applies. The County will receive 10% of the sale price, namely $\$140$ towards the back taxes and the Town will likewise receive $\$140$ towards their foreclosure/maintenance costs.