



Report of LGA Ad Hoc Committee on Judicial Sales

The following response represents the collective membership of the Local Government Attorneys of Virginia, crafted by its *ad hoc* Committee to Respond to the Boyd-Graves 2021 Report of the Study Committee on Judicial Sales (“Boyd-Graves Committee” or “Committee”), specifically on the Committee’s proposed amendments to the real estate tax sales statutes (see attachments 1 and 2). While the *ad hoc* Committee agrees with the proposal to require Guardians Ad Litem be appointed in all cases naming Parties Unknown, it finds that many of the proposed due process recommendations regarding tax sales would only cause more difficulty to owners and heirs in retaining their interest in the property. The text that follows represents a comprehensive review of the current tax sale process and an as-applied analysis of the suggested changes proposed by the Boyd-Graves Committee.

It is important to establish a basic tenet - The collection of taxes is vitally important to society to secure resources for education, health care, public safety (police, fire fighters and roads) and sanitation. While most local government taxpayers satisfy their tax obligation timely, still many do not, and it becomes incumbent upon the local government to take measures to remediate those accounts. A number of expedient collection mechanisms are available to local governments specifically to assist in making those public funds due readily available. The tax sale proceedings in §58.1-3965 *et seq.* is one of those mechanisms.

Real Estate Tax Sale Statutory History

Virginia has long permitted localities multiple options in collecting taxes. In the late 19th Century, Virginia law permitted an expedited method of sale for real estate taxes requiring posted notice and the advertisement of sale. Such sales were to be reported to the circuit court for confirmation, but no judicial proceedings were required to authorize the sale. At the turn of the 20th Century, localities were permitted to bring equitable proceedings for the collection of real estate taxes. *See* Acts of 1901, Ex. Sess., Ch. 140., p. 148. The judicial equitable sale of delinquent real property was in addition to the expedited collection method.

These processes remained largely unaltered until 1973 when the General Assembly modified the collection procedure under Virginia Code §58-1117.1, *et seq.*, to require judicial real estate sales be conducted exclusively through equitable proceedings. Even then, however, the General Assembly afforded the dichotomy of judicial real estate tax sales from that of standard bills in equity available to general creditors.

Throughout the years, the judicial tax sale provisions of Title 58 and now Title 58.1 have evolved in an effort to recognize the various rights of property owners and creditors, along with the recognized necessity of collecting taxes for governmental operations in an effective and fair

manner. For instance, 1983 amendments called for the provision of prior notice to property owners thirty days from initiating proceedings to sell real estate for taxes due. Financial institutions were added as necessary parties in 1994. Payment plan allowances and permission to sell condemned properties were added in 1995. The delinquency term was reduced from the third anniversary of the delinquency to the second and the requirement that a commissioner in chancery be appointed was made discretionary to the court in 1997. The requisite for a decree of sale upon the deposition of a licensed real estate appraiser under Virginia Code §58.1-3969 was modified in 2006 to allow the receipt of a written report of an appraiser. Acts of 2006, Ch. 333.

In 2004 the General Assembly recognized that it would not be economical to subject certain low value and unimproved parcels to judicial tax sale through equitable proceedings and authorized Virginia Code §58.1-3975 to include nonjudicial sale of tax delinquent real properties. The necessity of these provisions is outlined in the attendant Fiscal Impact Statement and the vote to create this separate non judicial tax sale process passed the General Assembly unanimously. Acts of 2004, Ch. 100. This statute was again amended in 2006 to provide detailed rules related to the sale of such properties and to specify that the sale did not affect other liens or recorded interests. The General Assembly Session of 2020 modified the minimum value allowed to invoke this process to include properties valued under \$10,000 to qualify regardless of their improved status and between \$10,000 and \$25,000 so long as the property is unimproved or is considered a nuisance, blighted or condemned property.

Public Policy

Taxation is an attribute of sovereignty and the levy of such is an essential governmental function. *See S. Ry. Co. v. City of Danville*, 175 Va. 300, 305, 7 S.E.2d 896, 898 (1940). Sovereigns have the authority to devise their fiscal systems to provide suitable revenue to foster their interests. *See Ohio Oil Co. v. Conway*, 281 US 146, 50 S. Ct. 310 (1930). The considerable importance of the timely collection of public revenue is also evidenced by the General Assembly's adoption of the anti-injunction statute relative to the collection of tax in Virginia Code §58.1-3993.

Real estate tax sales are conducted as a means to bring a non-paying property back to the active tax rolls in the most efficient manner, while also providing requisite due process. To understand the nuances of the public policy involved in collecting taxes, it is necessary to first establish the overarching requirement that funding of the government is an absolute necessity. The government is the foundation of the civilized society to which we belong and enjoy its benefits. The operation of government cannot be sustained without the certainty and timeliness of those public funds being made available. The vital functions provided by local governments include the provision of public safety, health and education to its citizens. This principle has been recognized over the centuries by various judicial bodies.

“The prompt collection of taxes by a governmental unit is, of course, vitally necessary to the discharge of its functions.” *Pollard & Bagby v. City of Richmond*, 181 Va. 181, 186, 24 S.E.2d 564, 567 (1943).

Commission to Examine Racial Inequity in Virginia Law

On June 4, 2019 by Executive Order Number 32, Governor Northam established the Commission to Examine Racial Inequity in Virginia Law (the “Commission”) with the stated purpose, “[t]o review the Virginia Acts of Assembly, Code of Virginia, and administrative regulations with the goal of identifying and making recommendations to address laws that were intended to or could have the effect of promoting or enabling racial discrimination or inequity.”

The Commission issued its Second Interim Report on November 15, 2020 highlighting, “One of the lesser-known problems in our housing crisis is the reluctance of local governments to engage in foreclosure for vacant tax delinquent properties, which would move those properties back onto the market where they can be redeveloped.” Report from The Commission to Examine Racial Inequity in Virginia Law, November 15, 2020, Page 21. The Commission also recognized the need to allow for further protection of the rights of heirs to property and supported modifications to Virginia Code §58.1-3965 that allowed for payment plan allowances and participation in the equitable proceedings. *Id.* at 79.

The tax sale process at present balances the need for public revenue, creditor’s rights and the right of owners and heirs to a sale at fair market to preserve funds available after satisfying the priority tax obligation. The proposal of the Boyd-Graves Committee flies in the face of the 2020 Commission’s recommendations and would allow gift into this process by requiring the addition of at least two separate additional attorneys in the process to complete the tax sales, thereby whittling away at excess proceeds available to creditors, owners and heirs.

Due Process Concerns

The Boyd-Graves Committee made its recommendations under the auspices of promoting due process rights of individuals. Due process, however, is not assailed under the present requirements of the Virginia Code. Due process does not require actual notice before the government may take an owner's property. *Jones v. Flowers*, 547 U.S. 220, 226, 126 S. Ct. 1708, 1713-14 (2006). Instead, it requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* A judicial sale is still required for most tax sales, and the Virginia Code currently requires multiple notices reasonably calculated to apprise parties of the action.

The property owner has the duty to pay taxes; this is "an essential incident to such ownership." *Rixey's Ex'Rs v. Commonwealth*, 125 Va. 337, 353 (1919). This duty applies whether or not the owner receives notice of the amount due. 1966-67 *Op. Atty. Gen. Va.* 280 ("The taxpayer knew

he owned the property and had not received a tax bill on the same. He knew it was taxable and the duty was on him to investigate the amount of the tax and to pay the same."); 1982 *Op. Atty. Gen. Va.* 350 ("Thus it is my opinion that the failure of taxing official to properly bill a tax does not relieve a taxpayer of his liability and the treasurer must proceed to collect the taxes due."); 1982 *Op. Atty. Gen. Va.* 393 ("The taxpayer knew he owned the property and had not received a tax bill on the same. He knew it was taxable and the duty was on him to investigate the amount of the tax to the pay the same.").

The Code of Virginia provides substantial protections for the rights of property owners whose property is subject to sale for collection of delinquent real estate taxes. Complaints from owners of a lack of notice or due process are rare and almost unheard of. Requirements that impose additional time and expense could make the process unworkable, and some requirements could make the process impractical, depriving localities of the ability to collect delinquent taxes.

The Code of Virginia currently requires the following process for a locality to collect *ad valorem* property taxes, which include multiple layers of notices to taxpayers:

1. The Treasurer must bill the taxpayer at least fourteen (14) days prior to the due date of any taxes in excess of \$20. *Va. Code* § 58.1-3912.
2. If the taxpayer does not pay, the Treasurer must give notice to the taxpayer of any delinquency. *Va. Code* § 58.1-3919.
3. If the taxpayer still fails or refuses to pay, the Treasurer may then proceed to collect the amount due by distress or otherwise. *Va. Code* § 58.1-3919.
4. The Treasurer must give notice of the tax delinquency to the beneficiary of any deed of trust or other person interested in the property who has requested such notice. *Va. Code* § 58.1-3926.
5. If real estate taxes remain delinquent after two years (one in some circumstances, e.g. derelict or blighted property; or six months if the locality has incurred abatement costs), the locality may file suit and seek a court order to sell the property. *Va. Code* § 58.1-3965(A).
6. Prior to filing suit, the locality must send notice to (1) the last known address of the owner, (2) the property address, and (3) the last known address of any lien holder (unless the lienholder is made a party defendant). *Va. Code* § 58.1-3965(A).
7. Prior to filing suit, the locality must publish at least once a list of real estate on which taxes are delinquent and which will be offered for sale pursuant to the Code. *Va. Code* § 58.1-3965(A).
8. If the taxes are not paid within 30 days after notice and publication, the locality may file suit in the Circuit Court. *Va. Code* § 58.1-3965 to *Va. Code* § 58.1-3969.

9. The locality must first obtain a title search to identify the owner, heirs, and other persons of record. Additional notices pursuant to Va. Code § 58.1-3965 (A) may then be required if the title search identifies new parties in interest, e.g. heirs or lien holders.
10. All necessary parties shall be made parties defendant. *Va. Code* § 58.1-3967.
11. Parties may be served by any means permitted by the Code and may be served by order of publication. *Va. Code* § 58.1-3967.
12. In any civil action, including suits for collection of delinquent taxes, parties unknown may be served by publication. *Va. Code* § 58.1-316(A)(2).
13. In suits for collection of delinquent taxes, an order of publication must be published for two successive weeks (one week if the property is assessed at less than \$50,000). *Va. Code* § 58.1-3921.
14. Parties served by order of publication may petition to have the case reheard within 90 days after confirmation of the sale. *Va. Code* § 58.1-3967.
15. A guardian *ad litem* must be appointed for persons under a disability and parties unknown. *Va. Code* § 58.1-3967.
16. The beneficiary(ies) or trustee(s) of any instrument securing a financial institution must be made parties, but other lien holders are not required if they were previously given notice. *Va. Code* § 58.1-3967.
17. The suit proceeds in the same manner as any other suit to enforce a judgment against real estate (except any order of publication need only be published twice). *Va. Code* § 58.1-3967.
18. Once the parties have been served, and the time for filing responsive pleadings has passed, the Court determines whether the property should be sold for collection of the delinquent taxes. *Va. Code* § 58.1-3969.
19. Upon request of a party respondent, the Court may refer the matter to a commissioner in chancery. *Va. Code* § 58.1-3969.
20. As in any creditor's suit, if the statutory requirements are met, the Court may appoint a special commissioner to sell the properties, the properties are sold at a judicial sale, and the Court decides whether to confirm the sale and how the proceeds should be distributed. *Va. Code* § 58.1-3967.
21. Any other party in interest has ninety days from the receipt of notice to file a claim. *Va. Code* § 58.1-3967.
22. The sale can be challenged for fraud, mutual mistake, surprise or extraordinary equitable cause by taking an appeal within twelve months of the sale and having the sale set aside. *Va. Code* § 8.01-113 ("If a sale of property is made under a decree of a court, and such sale is confirmed, the title of the purchaser at such sale shall not be disturbed unless within twelve months from such confirmation the sale is set aside by the trial court or an appeal is taken to the Court of Appeals or allowed by the Supreme Court, and a decree is therein afterwards entered requiring such sale to be set aside"); *Branton v. Jones*, 222 Va. 305, 281 S.E.2d 799 (1981) ("After confirmation, a judicial sale

cannot be set aside 'except for fraud, mistake, surprise, or other cause for which equity would give like relief, if the sale had been made by the parties in interest, instead of by the court.'").

23. The owner or his heirs and assigns is entitled to any surplus from the sale, but must claim the surplus within two years, or it is paid to the locality. *Va. Code* § 58.1-3967.

A non-judicial process may be used for properties with low value if the taxes have not been paid for three years. *Va. Code* § 58.1-3975. Properties may be sold nonjudicially if they (a) are assessed at \$10,000 or less, or (b) are assessed at more than \$10,000 but less than \$25,000, there is no mortgage or deed of trust, and the properties meet other statutory requirements (e.g., unimproved and less than an acre, condemned, or blighted property). The nonjudicial process requires notice by mail, publication, and posting at least 30 days prior to sale of the property, including notice posted on the property if fronting a road.

Impact of Amendments to the Tax Sale Process Proposed by the Boyd-Graves Committee

The government is not in the business of selling property. Local treasurers, however, have a duty to collect taxes, including real estate taxes. Unlike other liens recorded against real estate, the goal is not to recover on a personal debt but to collect taxes assessed pursuant to statute and used for governmental functions within the locality. This does, of course, sometimes require the sale of tax delinquent property once the taxes are sufficiently delinquent. The Code of Virginia provides a statutory framework specific to the collection of real estate taxes that balances the interest of property owners and heirs with the need of local governments. The proposals of the Boyd-Graves Committee will not better ensure “due process” and will instead only further burden taxpayer’s attempts to redeem property.

The proposed legislation really does little to advance the stated due process concerns which is to ensure that those with interest in the property get full and fair notice of the proceedings and an opportunity to participate. Substantively, the only true additional due process requirement recommended by the Committee is to require all judgment and other lien holders -and not only trustees under a deed of trust, security interest or mortgage securing a financial institution or a lien creditor that is a financial institution- to be named as parties respondent. This requirement, however, would only increase the burden on those creditors and require them to hire an attorney and file an answer where they can currently protect their claim by receiving a 30-day notice from the locality prior to the filing of a tax sale case (*Va. Code* §58.1-3965 (A)) and by their right to payment by filing a claim asserting the amount of their lien and receiving notice of the proposed distribution of sale proceeds (*Va. Code* §58.1-3967). There is no case in Virginia that we know of where a non-financial institution lienholder has asserted a violation of its due process in a tax sale case due to lack of notice. Current law provides creditors with a mechanism to recover their claim from the proceeds following a tax sale based on the priority of their lien. To add all creditors as parties defendants would require them to respond to a

judicial action which would only increase their collection cost. More importantly from the landowner's perspective, the added costs associated with including additional defendants would only increase the amount needed to redeem the property without in any way increasing due process protection.

Alleging lack of due process in the current judicial tax sale proceedings, the Committee also recommends that localities that file a tax sale suit be required to include a party who acquired interest in the subject property after the filing of the action as a necessary party defendant. This proposed amendment would require localities to update title reports through the day of the sale and to amend the Complaint and serve new parties defendant even a day before the auction, which would only increase costs for the localities and the owner of the subject property, delaying the process without adding a single layer of due process protection to the landowner. The inclusion of this additional hurdle to the tax sale process would in fact make a tax sale more onerous than a regular judicial sale under §8.01-96 *et seq.*, where the filing of a *lis pendens* is sufficient to put third parties on notice. By contrast, current Va. Code §58.1-3967 provides, in synchrony with regular practice in any judicial sale, a fair mechanism according to which “after filing of suit and a *lis pendens*, any party who thereafter acquires an interest in the delinquent real estate, including a lienor or a party with a claim of title, shall not be deemed a necessary party, but shall be permitted to intervene in the claim.”

The Committee further seeks to make the appointment of a Commissioner in Chancery mandatory in every tax sale case¹, and to require the appointment of a separate Commissioner of Sale different from the attorney working by the locality under the supervision of the court².

¹ The appointment of a Commissioner in Chancery in tax sale cases was common practice in Virginia until 2012 when the General Assembly, (Virginia Acts of Assembly, 2012 Session, Chapter 627), subjected the appointment of a Commissioner in Chancery to the prior request made by a party defendant when there is a dispute as to title or value of the subject property or the property is worth less than \$100,000. The Committee's proposal incorrectly states that properties advance to tax sale without a hearing when there is no Commissioner in Chancery appointed. In fact, Va. Code §58.1-3969 currently requires a finding by the Court, before a Judge, to enter a Decree of Sale, and the Judge can enter such an Order without a Commissioner in Chancery where there is no challenge to the title or value of property or the property's value is less than \$100,000. The Virginia Courts are certainly competent to review the submitting documentation required by the statute in authorizing such a sale. Furthermore, the Circuit Court again reviews the sale before a Decree of Confirmation can be entered and the sale actually consummated.

²Va. Code §58.1-3969 states that in a tax sale case the court may appoint the attorney employed by the locality as Commissioner of Sale to act under the supervision of the court, at no additional cost to the locality or the taxpayer subject to the suit. By contrast, a Commissioner of Sale appointed in every tax sale case under Va. Code §8.01-96 *et seq.* as recommended by the Committee, would add the attorney fees payable out of the surplus funds after the

The addition of more attorneys in a tax sale case does not guarantee additional layers of due process protection to the owner of a tax delinquent property. Instead, once again, these suggestions from the Boyd-Graves Committee only result in significant additional costs for the landowner to bear if they wish to redeem the property; or for the locality to bear if the property is not redeemed or sells for less than the amount of the taxes and costs.

Another recommendation of the Boyd-Graves Committee is to repeal Va. Code §8.01-321, which allows localities enforcing a lien for taxes to publish the order of publication once a week for two weeks instead of the four weeks required by Va. Code §8.01-317 and to schedule a return on the Order of Publication after 24 days of publication, instead of the 50 days required by Va. Code §8.01-317. The Committee's main theme is that "local governments have successfully lobbied the General Assembly to fast-track tax sales", which makes necessary to bring in line the tax sale proceedings with other judicial sales. What the Committee does not mention is that according to current law, and contrary to other lienholders, localities are required to wait for years before they may initiate a tax sale case. For instance, pursuant to Va. Code §58.1-3965, it is not until December 31 of the year following the second anniversary of tax delinquency, basically three years of delinquency, when localities may move forward with a judicial tax sale proceeding. Other lienholders seeking a judicial sale pursuant to Va. Code §8.01-96 *et seq.* are not subject to years of statutory waiting periods before they may collect. To require publication of two additional notices is a significant cost barrier to tax sales.

The Committee also fails to acknowledge that the current tax sale process requires additional notices to delinquent taxpayers (e.g., a 30-day notice prior to instituting a judicial tax sale or a notice of tax sale to be published at least 30 days prior to commencement of the judicial tax sales pursuant to Va. Code §58.1-3965). These are additional notices not offered to debtors facing a regular judicial sale, which are in most cases more cost effective than two additional publications of an order of publication. Many tax sale parcels are worth \$20,000 or less and the taxes can amount to a few hundred dollars (or less). Adding hundreds of dollars more in costs for two more publications of an order will effectively make tax recovery from sales cost prohibitive to many localities, as those costs are paid from the tax sale proceeds before the localities receive any payment for the taxes due. Once again, from the landowner's perspective, that additional cost will only serve to increase the cost of redeeming the property, without adding any substantive layer of protection. Furthermore, even though the time for a hearing on the return for service by publication in a tax sale case is no less than 24 days instead of no less than 50 days, a delinquent taxpayer has additional layers of protection: Delinquent

sale or the amount to be paid by the taxpayer in order to redeem the property. Pursuant to Va. Code §8.01-109, "...for the services of commissioners or officers under any decree of sale, including the collection and paying over of the proceeds, there may be allowed a commission of five percent on amounts up to and including \$100,000 and two percent on all amounts above \$100,000". Moreover, in accordance with Va. Code §8.01-110, the court could appoint another commissioner to execute the deed, adding more attorney fees.

taxpayers received notices of the tax sale cases at least 30 days before filing (Va. Code §58.1-3965), have an opportunity to appear at the hearing for entry of the Decree of Sale (Va. Code §58.1-3969) and up to the auction to redeem their property (§58.1-3965 B).

The Committee, pursuant to the general statute in Va. Code §8.01-322, also seeks to increase to two years (from 90 days as set in Va. Code §58.1-3967) the time in which a party served by an Order of Publication can request a rehearing in a tax sale proceeding. The Committee overlooks the fact that even in judicial cases, §8.01-322 must be constructed together with §8.01-313, which provides that the title of purchaser at judicial sales shall not be disturbed after 12 months from the date of the Decree or Order confirming the sale but there may be restitution of the proceeds to those entitled. *Robertson v. Stone*, 199 Va. 41, 97 S.E.2d 739 (1957).

Unlike general creditor suits, a taxpayer must be delinquent several years before the tax sale process can start. In many of these cases there are few known heirs, or the heirs actually request the property to be sold as the only alternative to pay the cost of a partition suit. Many of these properties are in poor shape. Extending the time for rehearing to two years as suggested by the Committee, would only serve to limit potential interested buyers and even if the property were sold, would deter the new owner from taking action to improve the property for fear of a later claim. Such a limitation would also make it unlikely for a purchaser to obtain title insurance and would make it practically impossible for any known heirs to share in the proceeds from such a sale for at least 2 years. Without such finality it would be imprudent to distribute excess funds that might eventually have to be clawed back.

A Solution in Search of a Problem

As attorneys representing local governments we are particularly puzzled by these proposals as we are not aware of any significant due process challenges to tax sale proceedings. The proposal of the Boyd-Graves Committee seeks to solve a problem that in fact does not exist and would lead to unintended negative consequences for landowners, creditors and localities. For instance, it eliminates the positive legislative changes to Va. Code §58.1-3965 made in 2020 with respect to blighted properties and derelict structures in certain localities and the collection of delinquent taxes on such properties through tax sale proceedings (Virginia Acts of Assembly, 2020 Session, Chapter 1213), when requiring these tax sales to be subject to a more onerous judicial sale procedure. Surprisingly, and without any explanation, the Committee recommends repealing two extra layers of protection in §58.1-3965 for taxpayers subject to tax sale proceedings approved by the General Assembly in 2021 (Virginia Acts of Assembly, 2021 Special Session I, Chapter 116), and recommended by the Governor's Blue Ribbon Commission on Racial Inequality. The first, allowing local treasurers to suspend a tax sale action if a person who is not a party to the suit gives notice asserting ownership rights, by testate or intestate succession, and upon court finding of such ownership interest, to allow such heir/devisee to enter into an installment payment plan with the treasurer for an extended period of 60 months (as opposed to prior 36 months) similar to the payment plan that could be signed by an owner;

the second, the prohibition to enter a final order confirming a tax sale “sooner than 90 days following the provision of notice” to lienholders different from financial institutions pursuant to §58.1-3965 or sooner than 90 days following the locality treasurer receiving a notice from heirs/devisees who had not been made parties to the suit of their ownership rights on the delinquent property in accordance with same §58.1-3965.

While a purpose of a tax sale is for the locality to collect overdue revenue, it is also a tool to return property into productive hands. Among the tools to facilitate this process, and which the Committee labels as “watered-down due process” are provisions in Va. Code §58.1-3965 and §58.1-3975 to remediate and abate blight (Va. Code §36-49.1:1), nuisances, derelict (Va. Code §§15.2-900, 15.2-901, 15.2-906, 15.2-907, 15.2-907.1, 15.2-908, 15.2-908.1, 15.2-1115), and condemned property. Responsibilities that are shouldered by governments for the health, safety, and welfare of their citizens and, responsibilities which are not faced by general creditors. For the non-judicial sale of delinquent real properties, current law balances the unique position of local governments with required notices to the owners, publication in local newspapers and signage to be located on the property. The Committee’s plan to remove these provisions and require these sales to face a more onerous and lengthy process would also serve to undermine economic revitalization efforts. Similarly, Code of Virginia §58.1-3975 serves to return smaller unproductive parcels worth less than \$10,000 to the tax rolls after almost four years of delinquency where a judicial sale would be inefficient and cost prohibitive requiring the locality to outlay significantly more in costs and fees than would be recovered in taxes.

Tax sale provisions in Va. Code §58.1-3965 *et seq.* do not only apply to local government efforts to collect *ad valorem* taxes, but among others to sale of waste land under §41.1-18; acquisition by land bank entities to address vacant, abandoned, and tax delinquent properties under §15.2-7501 and 15.2-7507; enforcement and collection of business severing coal liens under Va. Code §58.1-3745; enforcement and collection of liens of Public Service Authorities for unpaid utilities under §§15.2-5139, 15.2-2118, 15.2-2119; enforcement and collection of soil and conservation liens under §21-374; enforcement and collection of clean energy, resiliency, and stormwater management programs assessment lien under §15.2-958.3; enforcement and collection of liens on wireless service provided by Virginia Wireless Service Authorities under §15.2-5431.27; and enforcement and collection of special assessments to finance services and facilities provided by a community development authority under §15.2-5158. For instance, in the latter example, the community development authorities operate in a public-private partnership capacity to allow developers of commercial properties to utilize the tax base of the properties under development to aid in paying for much of the curb and gutter improvements that will serve the authority. These costs often accumulate quickly as is best evidenced by the most recent tax sale of the Celebrate Virginia South properties in Fredericksburg. The modifications proposed by the Committee would only serve to add cost and time to this process thereby causing the collectability and the attractiveness of such investments to be diminished.

In conclusion, our experiences suggest that the changes recommended by the Boyd-Graves Committee are not needed and would instead be burdensome for both local governments and the taxpayers/owners/heirs who purportedly would be served by them. Most of the proposed suggestions by the Committee seem to take aim at the government's ability to "short cut" the traditional process to sell property by a creditor's bill in equity. These suggestions plainly ignore the unique role of the government as a tax creditor and overlook the existing requirements that bind the locality and provide adequate time for a parcel owner to address their tax delinquency.

Attachment 1: Boyd-Graves Conference 2021 Report of Study Committee on Judicial Sales received on August 24, 2021

Attachment 2: Redline of Boyd-Graves Committee's Proposed Amendments to Article 4, Chapter 39, Title 58.1 of the Code of Virginia