

Water Liens

For customers of publicly owned water and wastewater utilities, the consequences of unpaid water bills do not stop at late fees and disconnections but, rather, directly contribute to loss of home ownership. Families who cannot pay their water bills can lose their homes, either because a water shutoff makes it uninhabitable or because of a water lien that leads to displacement from the home.

A lien is placed on a person's property to secure a debt the property owner owes to another person or entity, such as a tax debt owed to a municipality. A water lien is a lien based, in whole or in part, on a delinquent water or sewer bill.

A water lien may be sold at an auction sale, potentially leading to foreclosure of the home. In some municipalities, the lien sale and the sale or foreclosure of the property are not separate proceedings but happen at the same time.¹ According to a 2019 study by the NAACP Legal Defense and Educational Fund, every state authorizes a process for placing liens on homes due to unpaid water debts to publicly owned utilities.² Municipalities place these liens on homes for water debts as low as a few hundred dollars. In short, what may start as a relatively small past-due water bill can cost some people their main asset, their home.

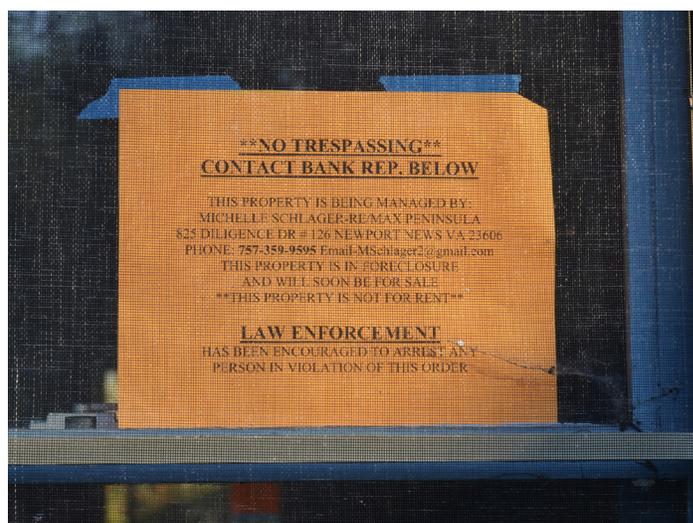
Water liens drive property loss in some cities, and communities of color feel that loss the most acutely.³ A 2019 report found that Cleveland regularly placed liens

on homes for debts as low as \$300, resulting in a decrease in home ownership among Black families.⁴ The problem is not limited to Cleveland.⁵ In this sense, municipal water liens threaten a primary means of wealth building, home ownership, and contribute to the racial wealth gap. Notably, investor-owned water utilities do not have authority to place a lien or to foreclose on a property due to unpaid bills. Investor-owned water utilities can go to court to obtain a judgment for the water debt and place a lien on the home, but this is a judgment lien, and the utility will have to wait in line with other creditors to be paid when the property is sold.⁶

This module provides background on the municipal water lien process and local policies that exacerbate the problem. It then explores rules and programs that can be adopted at the local and state levels to keep people from losing their homes or facing spiraling debt due to a municipal water lien.

SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Banning lien sales of homes based on water debt
- Reforming state law protections regarding water lien sales
- Improving notice of water liens and opportunities to avoid a lien
- Creating an ombudsman position to help people avoid a water lien sale
- Offering customers effective debt relief programs to avoid liens and lien sales



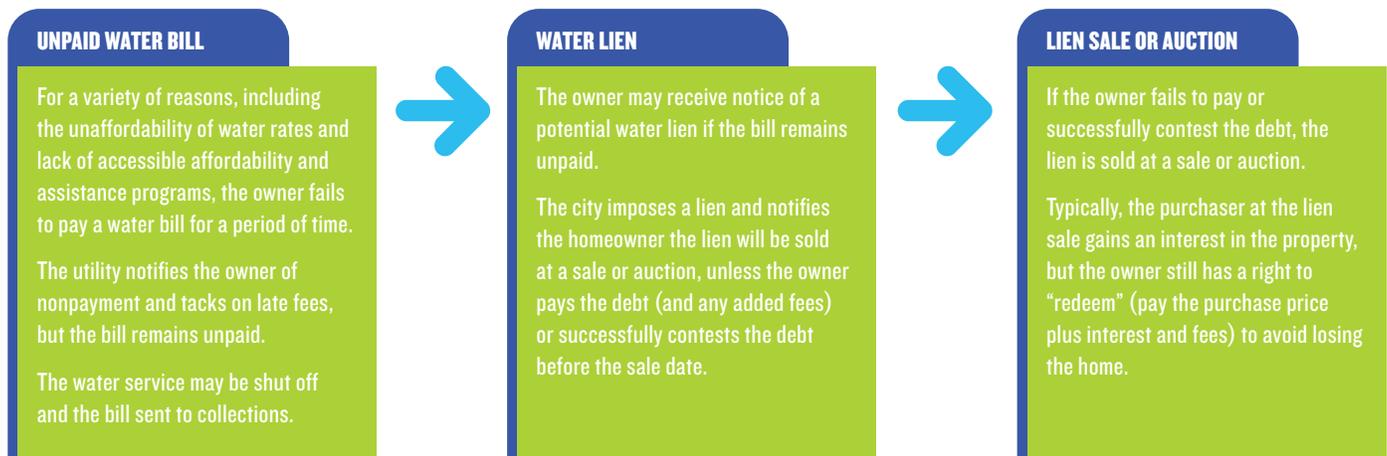
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WATER LIENS DRIVE HOME LOSS

While every state allows municipal water liens, the laws vary from municipality to municipality within states.⁷ In some municipalities, when a homeowner becomes delinquent on his or her water bill, the government can place a lien on the home and sell the lien to satisfy the debt. Sometimes it is difficult for homeowners to know how much of the lien amount is for water and how much is for property taxes.⁸ From the moment a water lien is imposed, many homeowners see their debt explode as interest, fees, and other costs get tacked onto the bill. The situation worsens once the lien is sold, making it difficult for the owner to cure the debt and retain ownership of the home. In effect, the sequence of events following a water lien often sends some homeowners into a spiral of financial instability that may lead to loss of property and displacement from the home.

To better understand this complex process, here is a quick look at how a water lien can lead to loss of a home.

This sequence of events may vary depending on the municipality. In some cases, a municipality can obtain court approval to sell or auction a property directly, resulting in immediate loss of home ownership.⁹ While there are some steps between an unpaid water bill and a water lien, the process can move quickly for many families, leaving them little time to weigh their options. Given the complexity of this process and how rapidly it can progress, families dealing with burdensome unpaid water bills or a resulting shutoff should seek legal counsel.



QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning municipal water liens:

- Does your water utility use liens to collect on water debt?
 - If so, has the use of liens led to customers losing their homes or bearing other economic hardships? Which customers or communities are being affected? (See the Data Collection and Transparency module for methods of obtaining data.)
 - Is there a minimum amount of water debt that must accumulate before the municipality resorts to a lien? Are water debts combined with other debt such as property taxes in the calculation of the minimum amount?
- What is the process for the water utility to place or sell a lien? Who oversees it? Is there a tax ombudsman?
 - Are customers provided with advance notice and a fair opportunity to avoid the lien? Is the notice actually effective at informing the customers and giving them an opportunity to avoid the lien?
 - Who is collecting on the lien?
 - Are there state or local laws that protect homeowners' home equity or prohibit unfair practices (such as exorbitant fees and charges)?
 - What fees and charges are added to a customer's total balance?
- What options does your water utility provide for customers to affordably resolve their debt and avoid a lien? (See the Water Debt module for a discussion of alternative approaches.)

The purchaser of a lien generally gains an interest in the property rather than full ownership.¹⁰ This means the occupant-owner still has the right to prevent full ownership from passing to the purchaser. If the owner fails to pay the purchaser within a specific amount of time, known as the redemption period, he or she loses the title to the home and it passes to the purchaser, who then has the right to evict.¹¹

Why do publicly owned utilities use liens to settle unpaid water bills? Some utilities argue that liens are an important alternative to shutoffs to incentivize customers to pay past-due water bills—although some use both shutoffs and liens as collection tools. Regardless, water liens are rife with problems that harm customers.

“In the case of Vicki Valentine, an unemployed Baltimore homeowner, the redemption costs made it impossible for her to redeem. The Huffington Post reported that she had fallen behind on a \$362 water bill she owed the city. As interest, penalties, and legal fees accrued, the debt ballooned to \$3,600, ten times the original amount. The tax certificate purchaser eventually foreclosed on the home and Ms. Valentine was later evicted.”

—FROM *THE OTHER FORECLOSURE CRISIS*, NATIONAL CONSUMER LAW CENTER¹²

HARMFUL PRACTICES IN THE WATER LIEN PROCESS

Water liens are a problem for a number of reasons and leave homeowners vulnerable in unique ways. Municipalities and states do little to inform homeowners about the process and how to avoid losing their home.¹³ In states like Maine, a water lien results in an automatic foreclosure unless the homeowner pays the charges within a specified period.¹⁴ In Cleveland, a class action alleged that the city’s water lien practices disproportionately affected Black residents; homeowners claimed they had little ability to challenge their water bills because the city provided them no notice of their right to dispute charges. The homeowners further alleged that most of those who tried to dispute their charges received no hearing.¹⁵ Not only are bills sometimes wrong or inflated, but municipalities often have discretion over water lien sales—meaning no judge oversees the process to ensure that the law is followed.¹⁶ This is a recipe for corruption and unethical dealing that can lead to disparate and discriminatory outcomes.¹⁷

Due to an overall lack of transparency, investors take advantage of water lien sales.¹⁸ A homeowner could lose their home worth hundreds of thousands of dollars for a lien of as little as a few thousand dollars. The house may later be resold by the purchaser for a huge profit while the homeowner is left out in the cold.¹⁹ Lien purchasers, which may be individuals or large investors like banks, manipulate and use the lien sale process to profit from homeowner distress. Worse yet, many states allow these purchasers to add exorbitant fees and interest rates that owners must pay to avoid losing their homes.²⁰

KEY PROBLEMS WITH WATER LIENS

Lack of Notice

- Some cities automatically issue a lien based on how long an account has been overdue and how much is owed. In other cities, liens may seem automatic due to lack of notice. Lack of notice reduces the homeowner’s ability to challenge a past-due water bill or the resulting lien.

Loss of Home Equity

- As investors snatch up valuable properties during lien sales, homeowners may lose their home equity. Few states protect homeowners’ equity interests during these sales.

Foreclosure

- Inability to pay exorbitant bills (which include fees and interest tacked on to the original past-due bill) presented by the city or by an investor means homeowners often face foreclosure. Many states have no limitations on how much an investor can demand from a homeowner.

Lack of Renter Protections

- Practices that preclude renters or tenants from opening their own water accounts and becoming customers of the utility, thereby denying them associated rights and protections, leave them vulnerable to displacement.

The exploitation does not end in the water lien sale process. Small liens can spark bidding wars among investors who may pay the city more than the lien amount.²¹ However, more often the city asks for only the amount owed on the lien. Because the lien is typically less than the property's value, homeowners lose equity in their homes. When a home sells for more than the lien, state laws provide that homeowners cannot receive the excess funds—the difference between the lien amount and the sell price—until the original water debt and any fees, interests, and other costs are satisfied, and only if the homeowner requests the excess funds. The process harms the homeowner's home equity interest, a main source of wealth and financial security for some families. And as the National Consumer Law Center noted in a 2012 study, very few states have procedures to safeguard homeowners' equity interests.²²

STEPHANIE BROWN, IN BALTIMORE, FELL BEHIND ON HER WATER BILL AND NEARLY LOST HER HOME²³

"It all started in 2017 when my neighbor came over, asking if I knew my house was up for sale. I told her no, that must be a mistake. She had the paper in her hand, flipped to the section with the list of properties that were up for tax sale, and there it was. The home I have lived in for 32 years was listed for tax sale at \$1,532.50, the amount I owed on my water bill. . . .

In order to save my home, I tried calling the Department of Finance, and they gave me the runaround for two days. Each person I talked to would say I needed to talk to someone else, and I couldn't get any answers from anyone."

After struggling to get answers, Stephanie eventually found out she would have to pay half her monthly income to resolve the past-due water bill and save her house. She ended up borrowing money from her brother.

These problems in the water lien process contribute to home loss and an increase in vacant or abandoned homes, deteriorating quality of life in communities.²⁴ As noted earlier, water lien sales and foreclosures hit Black communities hardest. For instance, a report by the NAACP Legal Defense and Education Fund found that while Cuyahoga County, Ohio, is only 30 percent Black, more than 60 percent of water liens were in predominantly Black neighborhoods in 2017 and 2018.²⁵ The same report also highlighted Baltimore's practice of placing liens on homes for past-due water bills as low as \$350.²⁶ News reports there highlighted people about to lose their homes over water debt—even as the homeowners argued that the underlying water bills were erroneous.²⁷ However, in 2017 the mayor of Baltimore suspended lien sales based solely

on unpaid water bills.²⁸ In 2019, the Maryland legislature passed the Water Taxpayer Protection Act, making the suspension permanent for the city of Baltimore for residential properties.²⁹

The water lien process involves a range of practices that harm housing security and impact a family's long-term financial well-being. This is especially true for families whose main asset is their home. Without stronger laws to protect homeowners from water liens and make them less vulnerable during the lien sale process, many families will continue to lose their homes because of unpaid water bills.

SOLUTIONS TO ADDRESS THE HARMS OF WATER LIENS

Although publicly owned utilities argue they need the lien process to recover unpaid water bills, the best way to avoid liens is to adopt policies and programs that ensure people can afford their water bills, such as those explored throughout this toolkit. With good programs in place, liens (and shutoffs) become unnecessary. People should not lose water service because of inability to pay, nor should they lose their homes. People-centric approaches are needed to address affordability challenges.

Policy solutions to reduce the harms of water liens include banning lien sales based solely on delinquent water bills, improving notice to provide homeowners the opportunity to contest bills before a lien is imposed, and offering repayment plans to homeowners to satisfy delinquent water bills.³⁰ In some cases, state law may need to be amended to allow local governments to change their practices concerning liens.

■ Ban lien sales of homes based on water debt.

State or local legislation can ban lien sales of homes when those liens are based on delinquent water or sewer bills. The prohibition should protect both homeowners and renters. For example, as noted above, in 2019 Maryland passed legislation banning lien sales of homes based on past-due water bills in the city of Baltimore. The Maryland law protects homeowners by allowing lien sales based on unpaid water bills only when the property is not a residence, the lien is at least \$350, and the unpaid charges are at least three quarters in arrears.³¹

■ Reform state protections regarding lien sales, including water lien sales.

Advocate for state legislation to safeguard homeowner equity and protect homeowners from exorbitant redemption costs, unreasonable fees, and interest associated with a lien.³²

Water liens can send homeowners into a spiral of financial instability, potentially leading to loss of the home.

- **Improve notice of water liens and opportunities to avoid a lien.**

Advocate for a state or local law requiring increased notice and waiting periods before a lien is placed on a home, so homeowners have the opportunity to challenge the lien. Adequate notice should be provided at every step of the process.³³

- **Create an ombudsman to guide people through the lien process and help them avoid lien sales.**

Advocate for the creation of an ombudsman or other role whose purpose is to help clarify the complex lien process and inform people of their options to avoid a lien sale.³⁴

- **Offer customers effective debt relief programs to avoid liens and lien sales.**

See the Water Debt module for policy options that offer debt relief to customers, providing both the municipality and the customer an alternative way to address debt without resorting to a lien or lien sale.

In addition to these policy solutions, advocates should discourage municipalities from using any existing lien authority to collect unpaid water debts. There are examples of cities, such as Cambridge, Massachusetts, that have lien authority for water debts but have a policy to not use this method.³⁵ Advocates should look to those cities to learn what has worked and how to replicate these policies elsewhere. Ultimately, the consequences of unpaid water bills should not include loss of one's main asset and housing security.

KEY RESOURCES:

Cody Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*, NAACP's Legal Defense & Educational Fund, Inc.

The NAACP Legal Defense Fund's 2019 report spotlights the harms of water liens and includes an in-depth investigation of the impacts of lien sales in Baltimore, Maryland and Cleveland, Ohio.

John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales* (July 2012), *National Consumer Law Center*.

This report provides an overview of consumer issues related to tax lien sales, including a detailed overview of the lien sale process. Many of the issues discussed apply to water liens.

ENDNOTES

- 1 For example, in Philadelphia this process is colloquially referred to as a “water foreclosure.” Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, March 28, 2022.
- 2 Coty Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, May 2019, https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.
- 3 Ibid.
- 4 Ibid.
- 5 For example, according to a recent survey, an average of 6,600 water liens per year are placed on homes in Richmond, Virginia, and 1,800 are placed on homes in St. Louis. Center for Water Security and Cooperation, *American Water Access Survey*, Spring 2022, <https://drive.google.com/file/d/10LjfhNyz3q8p368XjQTn512VegSikub/view>.
- 6 Charlie Harak, Jen Bosco, and Ana Girón Vives, *Utilities Advocacy for Low-Income Households in Massachusetts*, 4th ed. (Boston: National Consumer Law Center, 2019), 24, <https://www.masslegalservices.org/content/utilities-advocacy-low-income-households-massachusetts>.
- 7 John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales*, National Consumer Law Center (hereinafter NCLC), July 2012, https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf; Rochelle Bobroff, “Legislative Remedies for the Injustice of D.C.’s Real Property Tax Sale System,” *Clearinghouse Review Journal of Poverty Law and Policy* 48, no. 7-8 (November–December 2014): 150–55, <https://www.crowell.com/files/Legislative-Remedies-for-the-Injustice-of-DC-s-Real-Property-Tax-Sale-System.pdf>; “Losing Your Home Over a Water Bill,” *Baltimore Sun*, June 4, 2017, <https://www.baltimoresun.com/opinion/editorial/bs-ed-tax-sales-20170604-story.html>.
- 8 NCLC, “Notification of Tax Sale,” section 15.2.3.2 in *Home Foreclosures* (Boston: NCLC, 2017), <https://library.nclc.org/hf>.
- 9 For example, in Philadelphia, once the city files a “rule returnable” (a date by which the opposing party or homeowner must respond) and receives judicial approval, it can sell the property at public auction free and clear. The Sheriff’s Office handles the proceeds of the sale, and the owner may be able to get some of his or her equity out of the home. Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, March 28, 2022.
- 10 NCLC, “Redemption and Foreclosure,” section 15.2.3.4 in *Home Foreclosures*.
- 11 Ibid.
- 12 John Rao, “Case Studies of Real People Harmed Due to Small Liens Against Their Homes,” in *The Other Foreclosure Crisis: Property Tax Lien Sales*, NCLC, July 2012, https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-stories.pdf.
- 13 Rao, *The Other Foreclosure Crisis*.
- 14 Ibid at 39.
- 15 NAACP Legal Defense Fund, “LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs,” press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>; *Pickett v. City of Cleveland*, No. 1:19 CV 2911 (N.D. Ohio Sept. 29, 2020), https://www.clevescene.com/media/pdf/09.29.20_oliverdecision_clewaterlawsuit.pdf.
- 16 Coty Montag, “Lien In: Challenging Municipalities’ Discriminatory Water Practices Under the Fair Housing Act,” *Harvard Civil Rights-Civil Liberties Law Review* 55, no. 1 (Winter 2020): 199–265, <https://harvardcrcl.org/wp-content/uploads/sites/10/2020/09/Montag.pdf>; NCLC, “Notification of Tax Sale.”
- 17 Giving municipalities full discretion in the water lien and tax sale process “could mean that some homeowners in a particular jurisdiction are unfairly penalized for overdue municipal charges and others are not.” Montag, “Lien In.”
- 18 This lack of transparency extends to information about whether (and to what extent) municipalities even use liens to collect unpaid water bills. In other words, many homeowners may not know that their delinquent water bill can lead to a lien on their home.
- 19 Rao, *The Other Foreclosure Crisis*.
- 20 Ibid; NCLC, “Fraud by Tax Sale Speculators,” section 15.5 in *Home Foreclosures*.
- 21 Chris Burrell, “Some Cities Are Cashing In On Homeowners’ Tax Debts, And Making Foreclosure More Likely,” GBH News, January 21, 2019, <https://www.wgbh.org/news/local-news/2019/01/21/some-cities-are-cashing-in-on-homeowners-tax-debts-and-making-foreclosure-more-likely>.
- 22 Rao, *The Other Foreclosure Crisis*.
- 23 Stephanie Brown, testimony to Baltimore City Council, Taxation, Finance & Economic Development Committee, in favor of the Water Accountability and Equity Act, May 16, 2019, <https://www.nrdc.org/sites/default/files/waea-testimony-stephanie-brown-20190516.pdf>.
- 24 Montag, “Lien In.”
- 25 Montag, *Water/Color*.
- 26 Ibid.
- 27 “Homeowners: Water Bill Mistakes Led to Us Possibly Losing Our Homes,” CBS Baltimore, March 21, 2012, <https://baltimore.cbslocal.com/2012/03/21/homeowners-water-bill-mistakes-led-to-us-possibly-losing-our-homes/>.
- 28 Baltimore City Department of Public Works, “Water-Only Liens Not Subject to Tax Sale,” December 20, 2017, <https://publicworks.baltimorecity.gov/news/press-releases/2017-12-20-water-only-liens-not-subject-tax-sale>.
- 29 Md. Code Ann., Tax-Prop. § 14-849.1 (West); Danielle E. Gaines, “Baltimore Lawmakers Push to End Tax Sales Over Water Bills,” WTOP News, January 31, 2019, <https://wtop.com/maryland/2019/01/baltimore-lawmakers-push-to-end-tax-sales-over-water-bills/>.
- 30 For policy recommendations to protect consumers from the harms of tax lien sales generally, see Rao, *The Other Foreclosure Crisis*.
- 31 Md. Code Ann., Tax-Prop. § 14-849.1 (West).
- 32 Rao, “Case Studies of Real People Harmed.”
- 33 Ibid.
- 34 Washington, D.C., for example, enacted legislation creating an ombudsman position to help people avoid tax lien foreclosures. Bobroff, “Legislative Remedies”; Government of D.C., “Office of the Real Property Tax Ombudsman,” accessed May 14, 2022, <https://dc.gov/service/office-real-property-tax-ombudsman>.
- 35 Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities*, Northeastern Law Program on Human Rights and the Global Economy, July 2019, <http://humanright2water.org/wp-content/uploads/2020/04/1907-A-Drop-in-the-Bucket-.pdf>.