

TESTIMONY IN SUPPORT OF SB 346

To: The Honorable Senator Roger Reitz, Chairperson
Honorable Senator Dick Kelsey Vice Chairperson and
Members of the Senate Local Government Committee

From: Cindy Harmison, Lenexa City Attorney

Date: January 30, 2012

Re: Bidding at Tax Sales - Senate Bill No. 346

Thank you for the opportunity to present testimony in support of SB 346. SB 346 amends the bidding procedures to return two statutes back to their pre-2003 legislative amendments. Specifically, it would prevent mortgage holders from bidding at tax auction. We anticipate that the unintended consequences of the 2003 amendments were not contemplated by the Legislature.

Unfortunately, Lenexa has a real life example of the negative impacts of the current law as amended in 2003. Within the City is a tract of land on which the lender obtained an order of foreclosure on the mortgage in April 2011, however they have not proceeded to sheriff's sale. Representatives for the lender made statements to the City that the reason they have not proceeded to sheriff's sale is because they do not want to pay the delinquent taxes and assessments which are nearly as high as the loan on the property. The taxes and assessments on this property are delinquent to 2007 in the approximate amount of \$800,000 and the property is scheduled for inclusion in the County's next tax sale.

Also within the City is another property upon which foreclosure has not commenced because the lender has again indicated that the delinquent taxes and assessments exceed the loan amount. This property is also scheduled for

sale at tax auction. We don't believe Lenexa is unique in this experience. Under the current statute, the lender may bypass his contractual rights under the mortgage documents and mortgage foreclosure process by bidding in less than the taxes due at the tax sale which in turn negatively impacts all of the taxpayers when the taxing jurisdictions are not made whole, as is required in a foreclosure action. Lenders are provided the contractual remedy of foreclosure and should not be allowed to clear title with foreclosure proceedings and then sit on their rights only to obtain title at a tax sale for less than the taxes due.

Another problem with the current statute is that it allows the lender to give the property back to the debtor, even though a debtor is otherwise prohibited from bidding at the tax auction. Although this is probably unlikely with most commercial lenders, it is a real possibility when the lender is a family member or otherwise has a personal relationship with the debtor.

The City supports SB 346 returning the law to the pre-2003 amendments and prohibiting a lender from bidding at auction. Alternatively, the City would support an amendment that permits the mortgage holder to bid at auction, but requiring a minimum bid in the amount of the taxes, interest, and costs owed, so that no taxing jurisdiction loses tax revenue as a result of a lender's participation in the bidding process.

If we may be of any assistance to the committee on this matter, please let me know. We appreciate your support.