

**TESTIMONY OF THE PENNSYLVANIA LAND TITLE
ASSOCIATION**

HOUSE FINANCE COMMITTEE

APRIL 28, 2008

On behalf of the 700 members of the Pa Land Title Association, I would like to thank you for allowing me to testify on Senate Bill 777, Printer's Number 1560. Accompanying me today is Jane Roach Maughan, an attorney who represents the PLTA in the litigation Pennsylvania Land Title Association v. East Stroudsburg School District.

PLTA would also like to publicly thank Senator Pat Browne and his staff for the numerous stakeholder meetings they held on Senate Bill 777. Although we believe that the current printer's number of SB 777 has vastly improved since the bill was first introduced, PLTA still has some serious concerns with the legislation which I will attempt to outline in the course of this testimony. Unfortunately, while PLTA was involved in the negotiations over the provisions of SB 777, we were also required to address the various demands of the litigation. In point of fact, PLTA's success in the litigation may be the reason that this legislation was introduced in the first place.

Let me digress some to explain to the Committee our Association's connection with the issues this legislation is attempting to address. In considering SB 777, it is important that there be an understanding of the issues involved in the litigation. I will now turn this portion of my testimony over to Jane for her to provide you with some history and an update on the litigation.

[Jane Roach Maughan]

The use of the Municipal Lien Act to collect real estate taxes is relatively new. The Act was amended in 1999 from its former status as a law used almost exclusively to collect water and sewer liens. By adding the word "tax" to the MCTLA, and by adding provisions imposing attorneys fees on late taxpayers, just two simple amendments enormously broadened the use of the MCTLA.

Real estate taxes hold a unique status. They are the most powerful liens at law in the Commonwealth because they move in front of other liens—including purchase mortgages. When real estate taxes go delinquent, they are a lien ahead of the mortgage on the property—this obviously creates significant title issues. It is critically important for title agents, lawyers, mortgage lenders and real estate purchasers and sellers to be able to get regular access to the records of real estate taxes, both records of the history of timely paid taxes and records of the payoff amounts for delinquent taxes.

Following the MCTLA 1999 amendments Portnoff Law Associates actively recruited school districts, townships, boroughs, counties and cities to collect pursuant to the MCTLA. Because they promised that these taxing districts would save the 5% commission charged by the county Tax Claim Bureaus, and because they promised to shift all fees and costs to the delinquent taxpayers, they were hired by more than 70 taxing districts.

Portnoff Law Associates then had taxing districts instruct their elected tax collectors to stop making returns to the county tax claim bureaus. This was an unnecessary and significant wrong that caused consumers, lenders and the title industry serious problems. This misdirection of public records caused a disruption of a 50 year archive of public real estate tax records.

The tax claim bureaus operate under the Real Estate Tax Sale Law. RETSL was passed by this Legislature in 1947, in response to a massive failure of property tax collection during and following the Depression. Before RETSL was passed in 1947, there was no centralized collection of real estate taxes and the lien of real estate taxes was not clear. RETSL gave the Commonwealth's municipalities a uniform, centralized process for the prosecution and collection of delinquent tax claims. All year, elected Tax Collectors collect timely payments from Pennsylvania property owners. On December 31 they close their books. RETSL requires that they then make a return of their original records to the county Tax Claim Bureau. RETSL makes real estate taxes a first lien on real estate—ahead of all other liens and mortgages. The tax claim bureaus are the only entities entitled to accept payment of delinquent taxes. This is critical because without control of payments, the bureaus can't keep track of what is still delinquent and what is not.

The delinquency rates vary from county to county but they hover around 5%. In Monroe they are often under 4%. To collect 4% of the real estate taxes, Portnoff diverted 100% of the annual tax records. This is a critically important issue because it leads to the next astonishing development.

Portnoff Law Associates then sold access to those records at \$25 to \$50 per payoff statement—title agents, lenders, lawyers have to pay the \$50 if they need 24 hour service which they often do. For a faxed statement of the status of a property's real estate taxes, Portnoff charges \$25 to \$50. In every real estate transaction as to any property in any of those 70 taxing districts, Portnoff Law Associates got \$25 to \$50 for a payoff statement as to 100% of the taxpayers. Taxpayers who paid their taxes on time for their entire lives had to pay this private law firm \$25 to \$50 for payoff statements when they sold or refinanced their property. The sale of public records by Portnoff was not limited to delinquent tax payers; it affected every property owner in all 70 taxing districts. The school districts and municipalities do not get this money—Portnoff Law Associates sells access to public records for a profit and none of their clients seemed to know or care.

Add \$1 to every real estate transaction in 70 taxing districts for 8 years and you're talking millions of dollars. Now make that \$25 to \$50.

We sued to put a stop to this and we won. The only way to sue was to chose a county because we had to start at the trial level. We chose Monroe. Judge Vican of Monroe County was appalled by this conduct and ordered the return of the records to the public domain and the provision of free payoff statements if this private collection was to continue. Portnoff Law Associates then financed the appeals that only recently concluded.

On appeal, the Commonwealth Court on its own accord decided to sit en banc to hear the appeal of the school districts and published a decision completely upholding Judge Vican. The Supreme Court refused, twice, to change the Commonwealth Court's decision.

We won on every issue. Nevertheless, Portnoff Law Associates has done the following:

They are in contempt proceedings in Monroe County because they continue to charge for payoff statements and they continue actively to collect payments. They don't want the taxes passing through the Tax Claim Bureau because they do not want to trigger the 5% commission having wrongfully or mistakenly promised their clients there would be no bureau commissions. They have violated Judge Vican's Order. The records are back in the public domain, in the Monroe County Tax Claim Bureau, but they are effectively worthless because Portnoff refuses to direct taxpayers to make their payments at the Bureau and continues actively to collect. The returned records cannot be kept current by the Bureau and are thus worthless.

Additionally, Portnoff Law Associates maintains that the decision of the Commonwealth Court applies only to Monroe County. This is absurd. But this is their position and they continue to collect the \$25 to \$50 fax fees in the districts outside Monroe despite our repeated objections and the clear directives of the Commonwealth Court. They have not actively undertaken the task of returning the records to the various tax claim bureaus outside Monroe County. We recently have advised the Lehigh County clients of Portnoff of our intention to start the same lawsuit in Lehigh County very soon if we have to do so to secure state-wide enforcement county by county.

Additionally, in the recent class action in Philadelphia before Judge Mark Bernstein, it was discovered that the methods of calculating interest and attorneys fees used by Portnoff Law Associates are highly suspect, constitute unjust enrichment and substantial refunds were ordered

We have only recently discovered that Portnoff is not following the sale provisions of the MCTLA. The MCTLA requires a two step sale process just like that of the RETSL, to slow down the process of sale to keep homeowners in their homes if possible. The both statutes, the MCTLA and RETSL, require an upset sale, one in which limited title passes, followed by a court-ordered sale. The court ordered sale can't take place until a year after the lien is filed under the MCTLA— and under RETSL it's 18 months. But Portnoff just has its clients file directly with the Sheriff for a sale like that held on an ordinary money judgment and ignores the two step process.

We have learned a lot in this litigation. We have learned in this litigation that government has important purposes and is effective. Government employees and offices are open and regulated. The archives of tax records across this Commonwealth back to 1947 warrant protection and must be open to public access. We have learned that unlike government departments, private law firms are closed, confidential and can't be regulated, apparently even by our own Commonwealth Court sitting en banc. We have learned that the profit motive is a dangerous element to add to the collection of real estate taxes. In just four years of collecting in Monroe County, in two rural school districts, Portnoff Law Associates earned

over \$1 million in legal fees—not including their fax fees for payoffs. They have never disclosed what they made and continue to make on the fax fees for the sale of public records. None of this money, neither the attorneys fees nor the fax fees, ever went to the schools. All of it was paid by consumers, many of them struggling to keep up with rising real estate taxes. All of it left the counties.

The RETSL has worked well since 1947. With delinquencies at 5% and under, we need to examine whether we want home owners and mortgage lenders divested of valuable property and interests overnight. RETSL is slow, but for a reason. Taxing districts are going to get the money—are millions in attorneys fees and fax fees worth getting 5% of the tax revenue to the schools and municipalities no more than six months sooner than the tax claim bureaus do?

We have learned, and the courts have decided, that the two systems of collection can coexist. Certainly there are some private collection entities that follow the law, they don't find the statutes incompatible. The MCTLA collection powers may be a necessary adjunct for taxing districts whose Tax Claim bureaus presently are inefficient. But addressing the inefficiency of a particular county bureau at a local level is the most appropriate solution. Dual collection has proved dangerous and should not be expanded. The very laws you have enacted to expand it recently clearly have been abused. But for my clients' willingness to litigate to pursue its mission to protect consumers, there would have been no accountability or correction of the wrongs I have discussed.

[Return to John Effner]

Given the case history in *Pennsylvania Land Title Association v. East Stroudsburg School District*, PLTA supports Section 26 of Senate Bill 777 for the following reasons:

1. It would permit each county, except for first and second class counties, to designate an office or a department to maintain a public record, by paper or electronically, with respect to delinquent taxes. Although the list will not be updated on a real time basis, there appear to be enough updates to put searchers on notice of any delinquencies.
2. It would require these counties, through the office so designated by each county, to certify for a reasonable charge the delinquent taxes when paid.
3. When taxes are delinquent, a certification of delinquent taxes shall be issued by or on behalf of the municipality. A bona fide purchaser will now be able to rely upon a municipality's certification and the municipality will be estopped from asserting a tax lien for the taxes covered by the certification.

However, PLTA still has some very serious concerns regarding SB 777. But it is important to understand that PLTA does not oppose the use of private collectors for the collection of delinquent taxes. In fact, PLTA encourages each county to identify and post on its web site the names of private collectors being used by the various municipalities so that those collectors could readily be identified and contacted for delinquent tax information.

However, given PLTA's experiences in *Pennsylvania Land Title Association v. East Stroudsburg School District*, it has become very clear that private collection entities must be subject to some oversight. PLTA cannot afford to continue to be the only watchdog. The persistent violations of the law described by Jane that caused PLTA to initiate the litigation are tied to profit motives that have proven to be strong enough, and the money involved is significant enough, to result in public officials being persuaded by a private collection entity to violate the law. It is extremely important that records that are public be maintained for the benefit of, and made available to, the public.

Our litigation clarified how both RETSL and MCTLA can and do operate efficiently together. PLTA has difficulty supporting SB 777 because Section 42 of SB 777 would undermine that effective balance. If left alone, the MCTLA in its current format would permit continued private collection. All records would remain in the control of the Tax Claim Bureaus. To compensate the Counties for operating the County's central office and maintaining the records so that they would be available to the public, they would continue to receive 5% of the delinquent tax monies collected - not the entire amount collected. This is neither unreasonable nor unworkable. In fact, for Section 26 to be properly implemented, it is absolutely necessary.

For those reasons, PLTA has difficulty supporting SB 777 also because of the provisions of Section 43 that would make the legislation retroactive. It is doubtful that they would be upheld by the Courts and appear to be motivated to justify the actions that both Judge Bernstein and Judge Vican, in their respective opinions, held to be in violation of the law. In effect, the hard-fought victory obtained by PLTA in *Pennsylvania Land Title Association v. East Stroudsburg School District* would be nullified.

Thank you for affording PLTA the opportunity to express its views concerning the current draft of SB 777.