
Policy Reform Post-*Tyler*

Preserving Homeownership, Preventing Vacancy, and Reducing Legal Risk

December 5, 2023

Policy Reform Post-*Tyler v. Hennepin County*

Preserving Homeownership, Preventing Vacancy, and Reducing Legal Risk

- *Tyler* Overview and Need for Reform (Community Progress and NCLC)
- Populations Most Impacted by Tax Foreclosures (NCLC)
- Preventing Tax Foreclosures (NCLC)
- Addressing Vacant, Abandoned, and Deteriorated Properties (Community Progress and NCLC)



Overview & Need for Reform

Case summary and identification of key unanswered questions



Equity should drive reform

1) Keep people in their homes!

2) Address the VAD next door!



Key Terms

For purposes of this discussion:

Property tax foreclosure (“foreclosure”)

Foreclosure sale (aka, “public sale”)

Strict foreclosure

Redemption rights

Equity

Surplus



Property Tax Foreclosure in General

Hundreds of systems, most allow for the sale of one, the other, or both:



OR



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Summary of *Tyler v. Hennepin County*

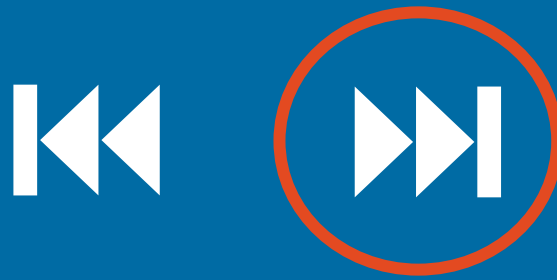
- Ms. Tyler moved out, didn't pay taxes for 5 years
- Hennepin County took title, ~\$15k in debt was wiped out
- 15 months later, County sold property for ~\$40k
- No mechanism for former owner to claim excess proceeds or value



Foreclosing local governments can continue to utilize tax foreclosure, but cannot retain value that exceeds the total amount of the tax lien being foreclosed.



Liability both retroactive and prospective



But....



Impact of *Tyler*: Factors to consider

When does the “taking” occur?

How can local governments determine whether a surplus exists?



Impact of *Tyler*: Factors to Consider

- Does the foreclosure process ever have a high-bid auction of the property itself?
 - Is the sale followed by a long redemption period before final transfer?
 - Is there a high-bid sale only if prior auctions don't yield a minimum bid?
 - Is the sale conducted in a manner that could potentially generate competitive bidding?
 - What if tax liens or deeds are sold in a bulk sale to highest bidder?

Impact of *Tyler*: Factors to Consider

- Does the right to surplus proceeds come with limitations?
 - Illinois permits recovery through indemnity fund but awards are capped unless owners can prove they were not negligent in failing to pay taxes
 - Alabama requires owners to first redeem before they can recover surplus proceeds

Impact of *Tyler*: Factors to Consider

- Does access to surplus require owner to take certain actions before final transfer of property, such as requesting a sale?
 - Can states rely upon *Nelson v. City of New York*?
- Does owner get adequate notice of right to request sale and surplus?
- Does owner need to bring a court action to request sale?

Impact of *Tyler*: Factors to Consider

- Does *Tyler* apply if tax certificate or lien is sold to private buyer, who later has right to foreclose right of redemption and become owner?
 - Private buyer is acting under color of state law and performing a public function
 - Colorado and Massachusetts Attorney General opinions

Populations Most Impacted

Older adults and
communities of color



Baltimore Tax Sale Prevention Clinics (2020)

- 72% of clients were older adults
- 48% were disabled
- 85% identify as Black
- Nearly three-quarters (72%) reported annual household incomes of less than \$30,000

Property Tax Foreclosure Risk Factors for Older Adults

- Past surveys have identified the main hurdles for older adults facing unaffordable taxes or tax liens
 - High taxes, death of a spouse, increase in expenses
 - Insufficient exemptions, inadequate repayment plans, or other relief options for low-income older adults
 - Addition of interest and penalties to account for late payment
 - Dementia/ cognitive impairment/ difficulty remembering to apply for property tax relief programs
 - Lack of technology or difficulty applying for property tax relief programs

Impact on Communities of Color

- Homeowners of color more likely to face property tax foreclosure
- Purchase of tax liens by investors leads to gentrification of communities, which can push out lower-income residents and the elderly from once affordable neighborhoods
- In other neighborhoods property values are further depressed and there is an increase in blight, including vacant and abandoned properties

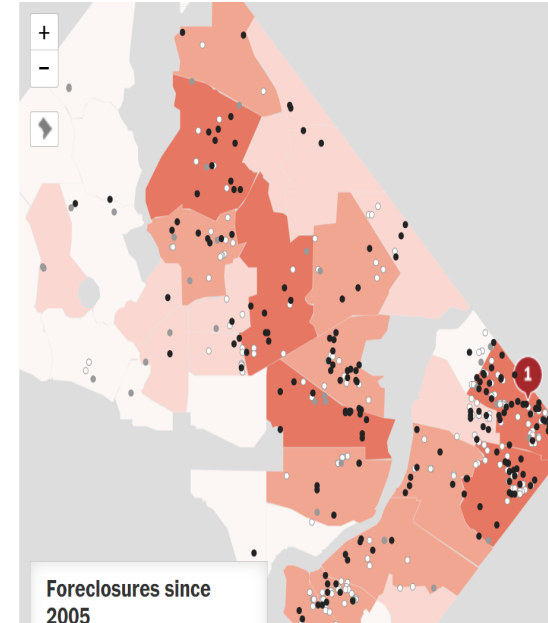
Where tax lien foreclosures occur in the District

Dots on the map show foreclosures that followed tax liens since 2005, and the shading represents number of pending foreclosure cases.

Minorities are hit the hardest

72%

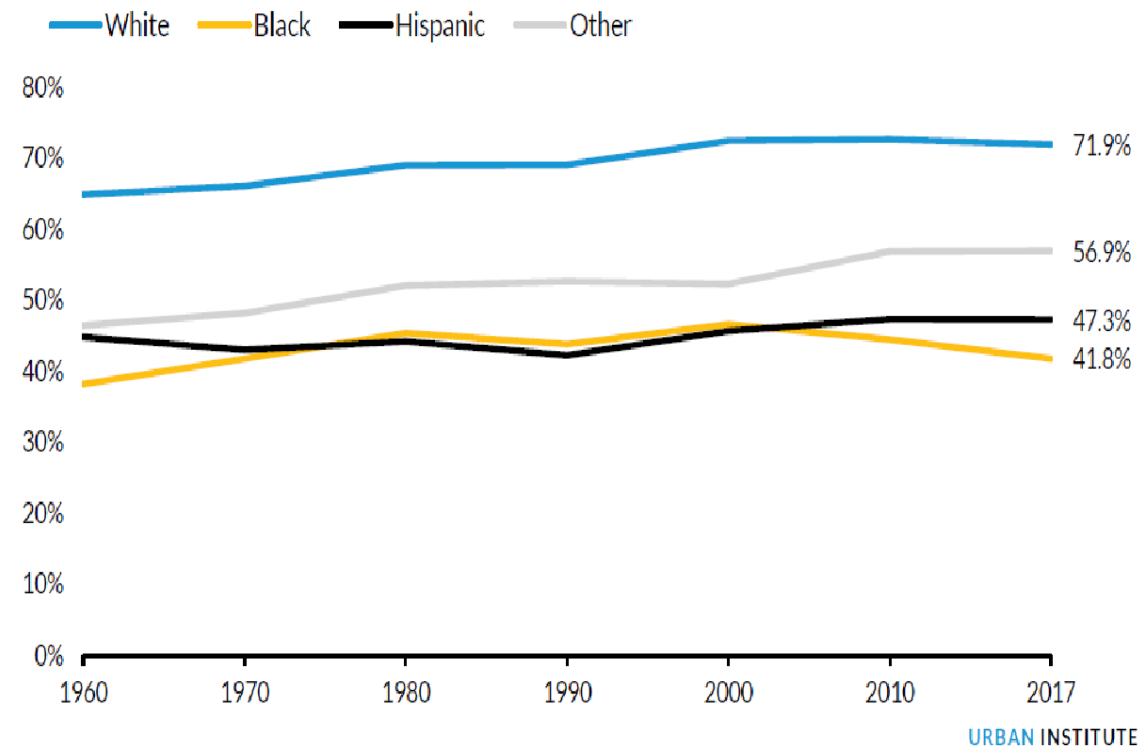
of pending foreclosures are in neighborhoods where less than 20% of the population is white.



The Racial Homeownership Gap

FIGURE 1

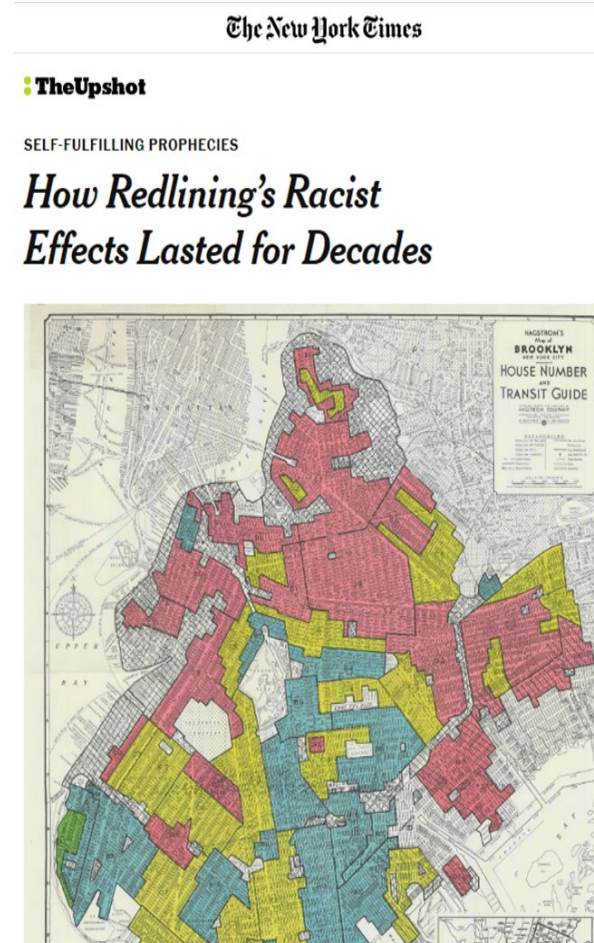
Homeownership by Race or Ethnicity



Sources: Decennial Census and the American Community Survey.

Legacy of Housing Discrimination

- Laws and policies that segregated public & private housing
 - Redlining
 - Financing
 - Exclusionary zoning
- Homeownership Rate—72.7% white and 44% Black individuals



Racial Wealth Gap

Other wealth building tools:

- Retirement Accounts
 - 60% White, 34% Black, 30% Hispanic
- Family-owned businesses
 - Black and Hispanic families are half as likely to own a business
- Vehicle ownership
 - 90% White, 80% Hispanic, 73% Black

Property taxes add significantly to the cost of owning a home

- Black and Hispanic households pay disproportionately higher taxes relative to their homes' value
- Leads to higher carrying costs for Black households
 - On average Black households pay \$390 more per year in taxes compared to white households
 - Nearly a quarter of the disparity in total homeownership costs for Black households as compared to white households is due to local property tax assessments
- For families living on the financial edge, higher property taxes combined with other property-related fees and costs increase the risk of foreclosure and displacement

High rates of property tax foreclosure drains wealth and destabilizes communities of color

- Government has an obligation to affirmatively further fair housing
- This includes taking measures to preserve existing homes, a source of affordable housing
- Reform to tax process to increase protections
 - Decrease the role of investors in the process
- Pay particular attention to inequities in the tax assessment and appeals process
- Make notices and information readily accessible, especially in the languages most commonly spoken in the community

Preventing Tax Foreclosures

Assessments, Notice,
Exemptions, Payment
Plans, Redemption Periods,
and Heirs' Protections



Key Policy Goals

- Prevention, prevention, prevention: the door is open



What States Can Do to Reduce Property Tax Foreclosures

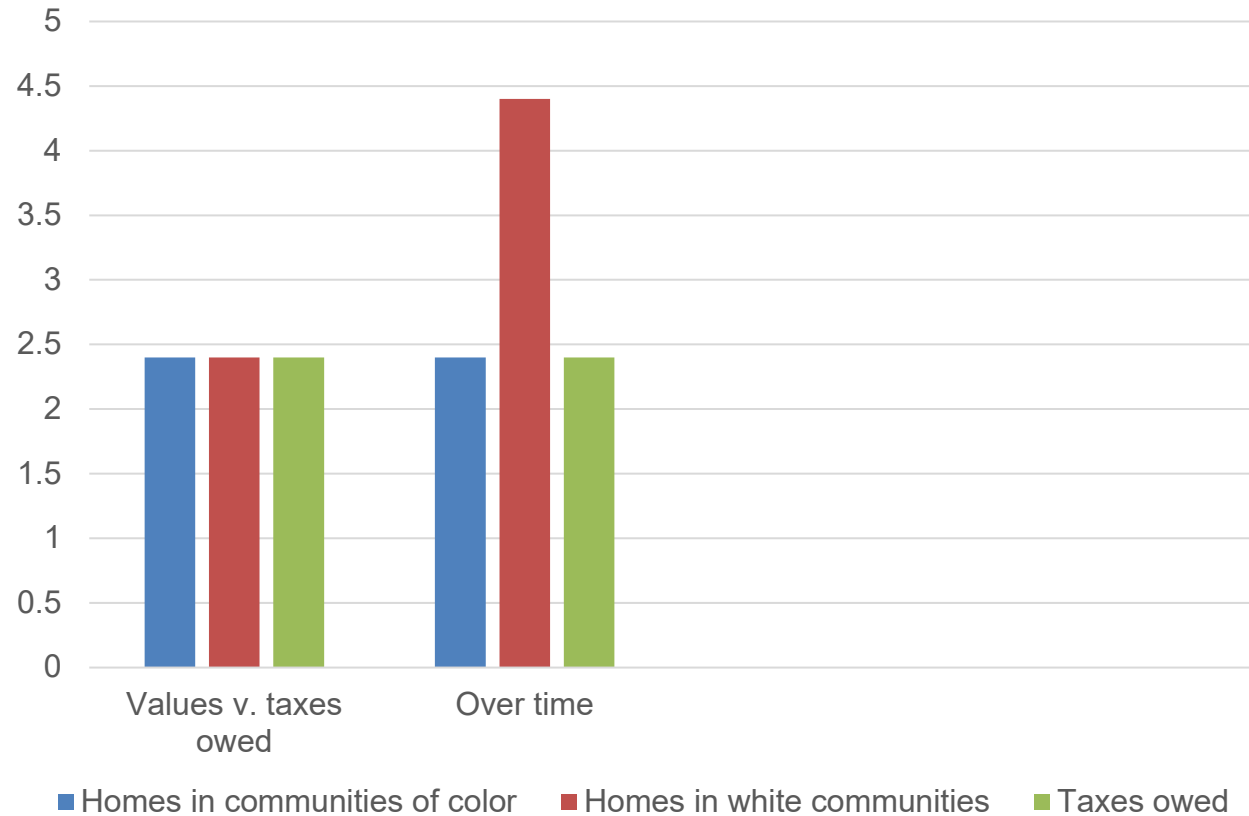
- New [NCLC 2-page issue brief](#)
- Assessment Process and Relief Programs
- How to Make the Tax Foreclosure Process More Fair

Property Tax Assessments

PROBLEM

- Inequities in tax assessment & irregular property tax assessments
 - Black and Hispanic homeowners:
 - pay disproportionately high taxes relative to their homes' values
 - 10-13% higher property tax = roughly an additional \$6.5 billion owed for property taxes each year.

Property Tax Assessments



*Demonstrative only

Property Tax Assessments

SOLUTION

- Implementing or improving oversight for assessments
- Require regular, accurate assessments
- Industry-standard techniques
- But caution re: payment shock



Property Tax Assessment Appeals

Black homeowners are less likely to appeal their assessed values and win if they do appeal.

If they do win, they receive smaller reductions in their assessed values

- Open, accessible appeals process including comprehensive notice

Notice

Require **comprehensive notice**, in English and the most common languages spoken in the state, of:

- all property tax relief programs,
- options to prevent the sale,
- the time and place of the sale,
- the right to redeem the property after a sale, and
- details about other post-sale procedures.

Exemptions

- More generous exemptions to older, disabled, and low-income households
- Cap the amount of taxes owed based on a percentage of a homeowner's income ("circuit breakers")

Exemptions

Progressive exemption tool

Flat dollar homestead exemption or credit

Boston: Reduce the taxable value of principal residence by a flat dollar amount, 35% of the average assessed home value in the city that year.

In 2021, the first \$295,503 of a primary residence value was exempt from property taxes.

More benefit to lower value homes

Easy to administer

Payment Plans

PROBLEM

Homeowners living paycheck to paycheck who do not pay their taxes as part of their monthly mortgage payment struggle to pay tax bills that are due twice a year in large lump sums.

Payment Plans

SOLUTION

Allow local governments to accept monthly payments to **pre-pay taxes** or work out other **payment plans** for homeowners who cannot **make a lump-sum payment** of the full outstanding balance.

Redemption Period

A period after the home is sold at foreclosure when homeowner can still reclaim the home.

PROBLEM

Some states:

- do not have one,
- allow only a short window,
- or pile on large penalties and fees.

Redemption Period

SOLUTION

- Reasonable redemption period
- Limit the interest, penalties, fees, and costs to a fair amount,
- Allow redemption through a payment plan, and
- Require effective notice of these rights.



Protecting Heirs Property Owners

Heirs Property Owners and Property Tax Relief

- Heirs Property
 - Family owned home that is jointly owned by descendants of a deceased person whose estate has not yet gone through probate
- They own the home but if names are not on the deed; no “record title”
 - Must go through probate but not familiar with the process
 - Time consuming and expensive

Consequences for Heirs: High Tax Burden

- The deceased owner's exemption most likely terminates upon death
- By the time heirs realize the amounts due for property taxes, it is often soon before or after a tax sale and options are limited.

Relief for Heirs

SOLUTION

- Ensure that heirs who reside in the home are eligible for the same relief as any homeowner-occupant.
 - Heirs = owner
 - Allow use of affidavit of heirship
 - Eliminate penalties for failure to notify assessor right away
 - Provide retroactive relief (for all)

Resources

- [NCLC, Property Tax Foreclosures on Heirs' Property \(Aug. 2023\)](#)
- [NCLC, Supreme Court Stops Equity Theft in Property Tax Foreclosures \(June 2023\)](#)
- [Property Tax Foreclosures on Heirs Property: An Interview with Sarah Mancini, Andrea Bopp Stark, and Kristopher Smith \(NCLC & LISC Sept. 2023\)](#)
- [Video on Property Tax Foreclosures & Older Adults: Tyler v. Hennepin](#)

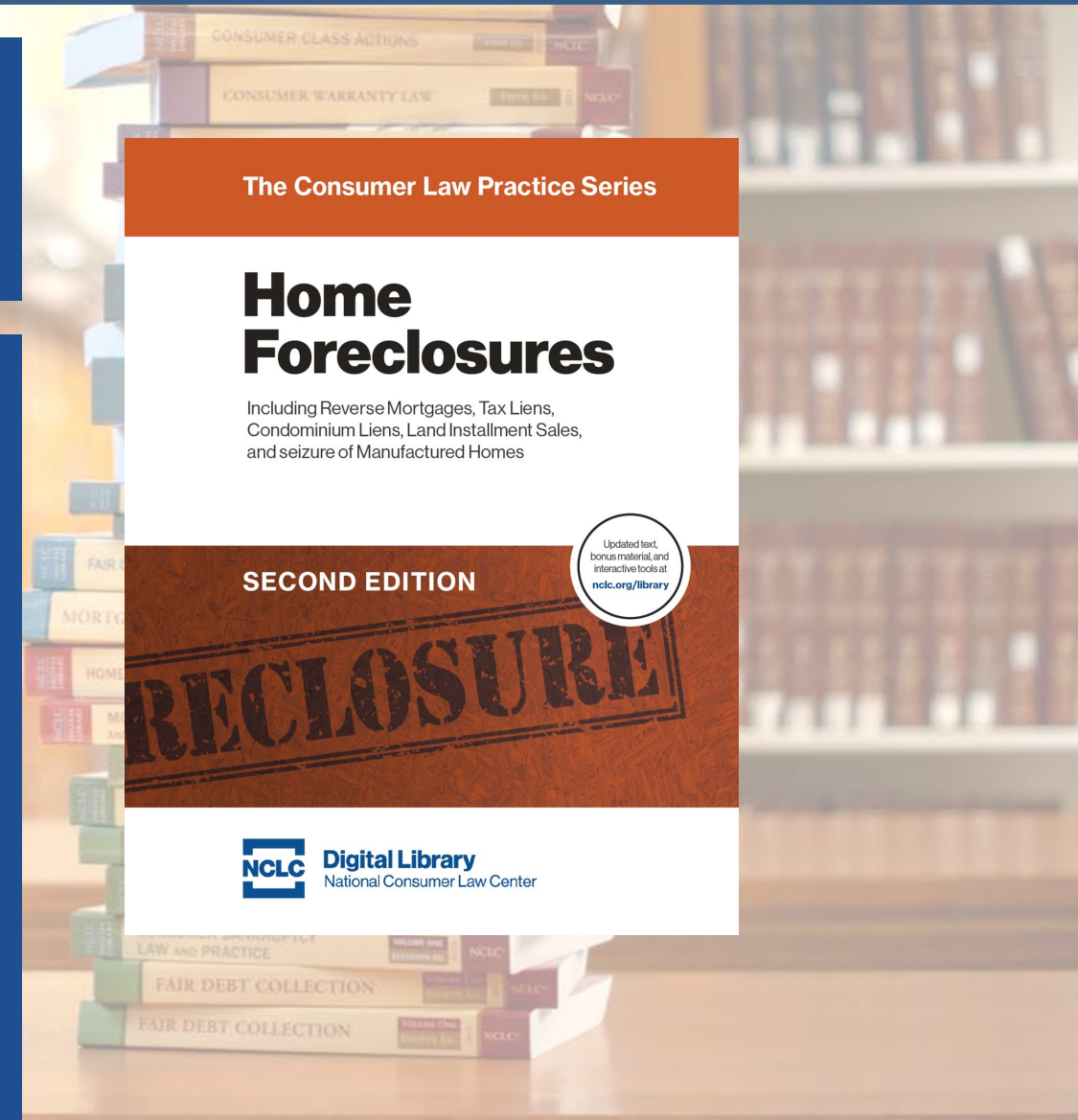
Home Foreclosures

2023 Second Edition

**With a Chapter on Preventing
Property Tax Foreclosure**

www.nclc.org/library

Legal Aid & nonprofits receive 50%
by emailing publications@nclc.org.



Contact NCLC

Primary point of contact for case consultation and policy support for NCLC on these issues:

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- Focusing on heirs property, property tax foreclosure, and Medicaid estate recovery

Addressing Vacant, Abandoned, and Deteriorated (VAD) Properties



Vacant, Abandoned, and Deteriorated (VAD) Properties

Negative Impacts:

- Public health
- Individual wealth
- Public finances

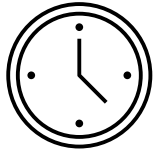


VAD Properties and Tax Foreclosure: The Problem

- Properties stuck in limbo
- Foreclosure procedures do not produce insurable title
- No path to return properties to productive reuse



VAD Properties and Tax Foreclosure: Potential Reforms



Shorten the process for VAD properties



VAD Properties and Tax Foreclosure: Potential Reforms



Shorten the process for VAD properties



Sell the dirt, not the debt



VAD Properties and Tax Foreclosure: Potential Reforms



Shorten the process for VAD properties



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Provide judicial oversight and constitutional notice



VAD Properties and Tax Foreclosure: Potential Reforms



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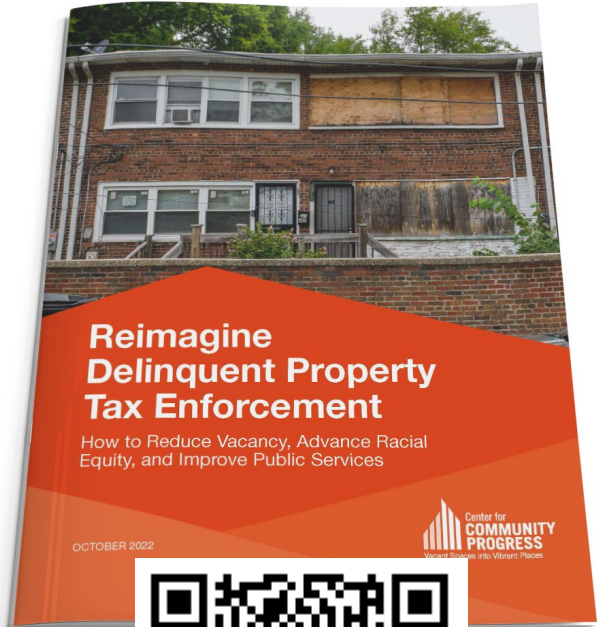
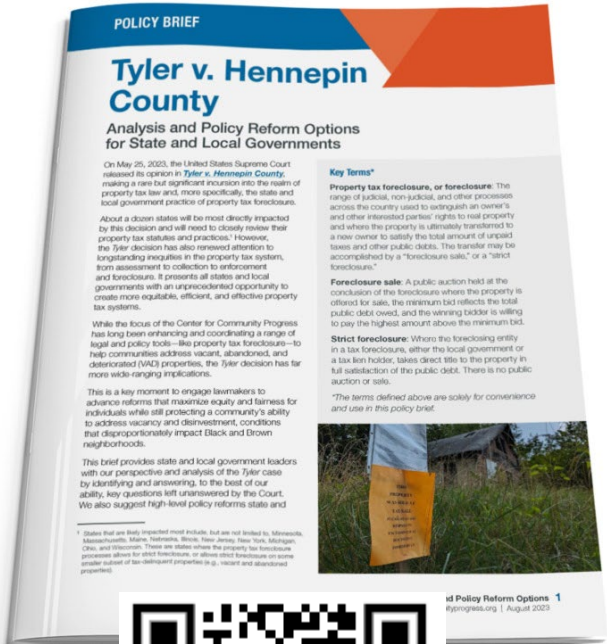
Provide judicial oversight and constitutional notice



Allow for the transfer properties that do not sell to local governments or land banks



Additional Resources



Reclaiming Vacant Properties Conference 2024

October 9-11, 2024

Hyatt Regency

St. Louis, Missouri



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