Reforming Property Tax Foreclosure Laws to Promote Sustainable Homeownership

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A retired grandmother lost her home and became homeless after she could not pay a tax debt of around $9,000, which ballooned to close to $30,000 with interest and fees. Her home later sold for $242,000, and she was not given any of the proceeds from the sale.

Unfortunately, her story is not uncommon. Older adults, those on a low or fixed incomes, and Black and Latino/Hispanic households are most at risk of losing their homes in a tax foreclosure. Additionally, heirs' property—property passed down among family members without a formal transfer of the property—is too often lost in a tax sale. Without record title to the property, heirs lack access to tax relief programs and may not be given notice of the tax sale foreclosure process.

In 2023, the U.S. Supreme Court ruled in *Tyler v. Hennepin County* that it is unconstitutional for a local government to take a property in a tax foreclosure and keep the equity after the tax debt and costs are paid. Many states will now need to take a close look at their tax foreclosure laws to make sure that they are aligned with the precedent set by *Tyler*. As they do, they should revise the laws to protect property owners from unnecessary tax foreclosures and preserve the equity in their homes.

Property tax systems can foster sustainable homeownership, be fair and reasonable for property owners, and still provide the revenue needed for quality public services.

Opportunities for State Action

Require Clear, Meaningful Notice at Every Stage of the Tax Foreclosure Process

Require comprehensive notices that use plain language, are translated into the consumer's language of choice, include information about tax exemptions and repayment plans, and note the consequences of each stage of the tax foreclosure process, including at a minimum:

- Notice of delinquency, remedies, and assistance programs available, including an itemization of the total amount of taxes and fees owed
- Require documentation of attempts to reach homeowners and heirs prior to moving to the tax sale stage
- Notice of time and place of the tax foreclosure hearing and sale after the delinquency notice has been sent and if no response has been received by the homeowner or heirs
- Notice of the results of the sale, including:

- Information about any third-party purchaser or other entities involved
- Clear explanation of the owner’s redemption rights and any action the owner must take to preserve their ownership rights

Ensure the Owners, Including Persons who have Inherited an Ownership Interest, Receive Notice of the Foreclosure Stages

- By USPS First Class mail, certified mail, and, when possible, email
- By publication in local media, posting at the property, and posting online
- By personal service with hand delivery using a process server, delivered upon the initiation of the process used to terminate the owner's rights in the property

If the owner is deceased, the state should appoint an attorney ad litem to conduct due diligence in locating heirs, including a search of land, court, and other records and online resources.

Make Redemption Costs Affordable and Accessible

- Establish clear rights of redemption with reasonable, accessible processes
- Limit interest and penalty rates on redemption amounts by municipalities and private tax certificate purchasers

Establish Alternatives to Tax Sales

Create payment options to help owners avoid tax sales and retain valuable equity, including:

- Allowing payment plans with low interest rates and waiver of penalties
- Deferring taxes owed until the property is sold
- Requiring a minimum of four years between initiation of a property tax lien and the final tax foreclosure to give the owner, including any heirs, time to resolve the delinquency

To Prevent Root Causes of Foreclosure, Protect Older Adults and Low-Income Households Who Struggle to Pay Property Taxes

Enact laws to protect those most at risk of losing their property to tax foreclosure, including:

- Deferring payment of taxes on a primary residence owned by someone 65 or older
- Setting a minimum amount of debt incurred before a tax foreclosure can be initiated
- Limiting taxes on primary residences to a percentage of the owner’s income for certain lower-income owners
- Promoting available property tax relief programs through property tax statements, online resources, and other mailings
- Establishing a monthly payment schedule for property taxes

Create and Improve Property Tax Exemptions

Enact laws that favor expanded access to property tax exemptions, including:

- Creating flat dollar exemptions that exempt a larger percentage of the assessment on low-value homes and produce a more progressive distribution of tax obligations
- Ensuring that heirs who reside in the home are eligible for the same relief, if qualified, as any owner-occupant, including by allowing alternative proof of ownership such as an affidavit
- Reducing burdensome barriers to accessing tax exemptions, such as annual or in-person renewal requirements

Require Market-Driven Tax Foreclosure Processes for Owner-Occupied/Involved Residential Properties if There is a Tax Sale

Establish appropriate pre- and post-sale processes that maximize sale proceeds including:

- Attempt to sell the property using a real estate agent before conducting a public auction
- If the property does not sell on the open market, conduct a high bid public auction with a minimum bid amount based on a percentage of the property's appraised value
- Require recent appraisals to establish fair market value of the property being sold
- Return any excess sale proceeds to the former owner, including heirs if the former owner is deceased, and create a simple process for claiming the excess proceeds
- In the case of multiple heirs, create a presumption that heirs who have resided in the property as their primary residence for more than a year at the time of the sale have authority to receive the excess proceeds on behalf of all heirs, in the absence of a written agreement between heirs or objection by a non-resident heir
- If no owner or heir claims the excess proceeds, transfer the funds to the state's unclaimed property program (instead of to the municipality) to allow the owner/heir significant additional time to access the funds

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