



May 1, 2024

Sen. Susan Moran
Rep. Mark Cusack
Sen. Michael Brady
Rep. David Paul Linsky

Joint Committee on Revenue:
Re: Massachusetts Property Tax Foreclosure Bills

Dear Chairs Moran and, Cusack, and members of the Joint Committee on Revenue:

On behalf of the clients, communities, and homeowners we serve, we are writing regarding the need to revise Massachusetts' property tax foreclosure laws in light of the U.S. Supreme Court decision of *Tyler v. Hennepin County* last May and the recent decision of the MA Superior Court in *Mills v. City of Springfield* that was just released on April 18. Under *Tyler*, as reaffirmed by *Mills*, Massachusetts' current tax foreclosure scheme is unconstitutional because it does not allow a former homeowner to access excess sale proceeds after the property taxes, interest, and fees are paid following a property tax foreclosure sale. As you review the options to ensure compliance with *Tyler* and *Mills*, we ask you to consider a holistic approach that would both allow former homeowners to access the highest amount of excess proceeds after a tax sale possible and provide provisions to prevent property tax foreclosure from happening in the first place.

In the past three months, there have been over 200 property tax foreclosures filed with the Land Court.¹ Many Massachusetts elders and low-income individuals may not be aware of their eligibility for existing tax abatements or deferral of taxes. Now, tax arrearage notices do not alert homeowners that they can lose their home to a tax foreclosure and especially when the tax liens are sold to third parties, the buyers have no incentive to reach out to the homeowner and work with them on solutions that allow the homeowner to stay in their homes.

Often, these vulnerable homeowners have cognitive issues which impact their ability to understand their tax bills and pay promptly. Greater Boston Legal Services recently counseled an elderly client facing tax foreclosure from the home that she has lived in since

¹ <https://www.mass.gov/doc/tax-lien-cases/download>

she was five years old. The client admitted to having difficulty with her reading comprehension. Until she spoke with GBLs, she was unaware of tax deferral programs and payment plan options that she is eligible for.

Sometimes one individual handles the household finances to the exclusion of others. Upon one spouse's death, the surviving spouse may struggle to understand their tax obligations, or may be learning that their spouse was not addressing their home's tax burden. In a recent case, Ashley Mills, a single mother, almost lost her home in Springfield for property taxes. She owed about \$20,000 and would have lost over \$200,000 in equity had the tax foreclosure proceeded. Even after a Superior Court judge recently stopped the foreclosure and declared the tax foreclosure process unconstitutional, she has few options to pay the arrears as municipalities such as Springfield have no real repayment plans or options for homeowners under current law.²

Preventative measures are essential to preserve homeownership, especially in light of the state's significant shortage of affordable housing.³ Recommendations that would help prevent tax foreclosures include:

- Comprehensive Notice: in the most common languages spoken by limited English proficient consumers in the state
 - providing information about property tax relief programs and how to access each program at every stage of the tax assessment, collection and sale process and
 - explaining the options and procedures 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.
 - Providing notice to the local and regional council on aging
- Mandate that municipalities must: a) accept affordable payment plans to *prepay* taxes for those on a fixed or limited income who cannot afford two lump sums a year and to pay past due taxes over an extended period, most likely on a monthly basis and b) allow affordable payment plans to *repay* past due taxes and require no more than a 5% minimum first payment.
- Increase the time allowed to redeem the property and waive interest or reduce the interest rate on tax arrears to create an affordable, realistic option for homeowners to reclaim their property. Require municipalities to reduce the amount of interest owed upon completion of payment of the principal amounts in a repayment plan.
- Allow municipalities to place subordinate liens of properties with low or zero interest for low income homeowners who are unable to enter into repayment plans due to limited income.
- Expand the authority of the Land Court to craft affordable repayment plans and reduce the accrued interest and ongoing interest rate for low income homeowners.

² See <https://tinyurl.com/Mills-SpringfieldTaxFC>

³ https://public.tableau.com/app/profile/housingnavigator/ma/viz/hnmi_2024_01/HousingDashboard2

For those who cannot afford to keep their homes and the property is sold at a tax sale, it is imperative to fulfill constitutional mandates by a) obtaining the highest price possible for the property and providing “just compensation” to preserve the homeowner’s hard-earned equity and b) providing an easy way to access the excess equity after a sale. The U.S. Constitution requires that a homeowner be provided “just compensation” when a property is taken. Not only must the homeowner have access to the excess equity after a tax sale, but the property should also be sold in a way to maximize the compensation they receive. To ensure this we recommend:

- Providing the land court with statutory authority to order the property be marketed and sold by a realtor to maximize the price and return of the equity to the homeowner
- If the property does not or cannot sell through a realtor, require a high-bid public auction to allow a fair price for the property.
- Provide the taxpayer owner with all excess sale proceeds after the property taxes and certain fees and costs are paid
- Where a taxpayer owner has passed away, allow easy access for heirs to obtain the surplus value. If the heirs cannot be located, the excess equity should be turned over to the MA unclaimed property fund.
- If the homeowner seeks to challenge the process or proceeds of a tax foreclosure sale and demands a jury, the homeowner should be allowed to remove the case to Superior Court which can provide for a jury trial.

Outlined below are highlights of recommendations for changes to particular Massachusetts’ statutes that address property taxes. We are also working with a group of stakeholders to draft proposed language for the following recommendations.

I. Provisions to obtain just compensation for property in property tax foreclosure sale and provide access of excess proceeds to taxpayer

NEW: Redemption by open market sale. G.L. c. 60 § 68A

- At the request of a taxpayer-homeowner, the Land Court will have the ability to allow, as an extension of time to redeem, a sale of the property through a real estate agent
- The sale proceeds will be disbursed by the closing agent per a specified hierarchy of payments owed, including that the taxpayer retains all excess proceeds
- Note- This process would allow the most accurate fair market value to be obtained for the property to provide just compensation. The Land Court has discretion to allow additional time to redeem and this would provide them the statutory authority to continue this practice.

- In addition, the Land Court should have discretion to fashion other remedies to allow a taxpayer-homeowner to redeem the property such as waiving interest and creating a no or low- interest bearing subordinate lien for the amounts owed.

NEW: Sale following decree foreclosing the right of redemption. G.L. c. 60, § 69B

- After a decree is entered foreclosing the taxpayer-owner’s rights of redemption, the municipality or purchaser shall procure an appraisal and an auctioneer will hold a high-bid public sale
- Bidding shall start at 2/3 of appraised value but if there are no bids, the property may be sold to the highest bidder.
- The Land Court has discretion to determine whether the sale price is reasonable, and whether to confirm the sale
- Proceeds from the sale are distributed according to G.L. c. 60 § 68A.
- This does not apply if a municipality agrees to sell property back to the former owner.
- NOTE- If an open market sale is not feasible, this process provides another opportunity to try to obtain a fair market value for the property and provide the taxpayer with “just compensation.”

NEW: Sale following decree foreclosing the right of redemption. G.L. c. 60, § 69B

- Requires comprehensive notice if there are proceeds from the sale.
- Provides a process for heir(s) to claim excess proceeds.
- Any unclaimed funds disposed of pursuant to G.L. c. 200A.
- Requires recording of to whom proceeds were paid, amount, and for what real estate.

NEW: Payment of excess value. G.L. c. 60, § 43A

- If a municipality keeps the property, the municipality needs to pay the excess according to G.L. c. 60 § 68A, paragraph C, subsection 3 [Redemption by Open Sale] using the appraised value as the sale value.

II. Provisions to provide protections to prevent property tax foreclosures

AMEND: Partial Payments. G.L. c. 60, § 22

- Require collectors to receive partial payment amounts of 5% or less of the total tax owed.

AMEND: Payment Plan. G.L. c. 60, § 62A

- For owner-occupied properties, lengthen payment plan term up to ten years.
- Waive 50% of accrued interest for owner-occupied properties. Waive 75% interest for individuals who are 60+ or whose primary source of income comes from disability benefits.

- Reduce the minimum lump sum needed to redeem from a 25% down payment to a maximum of 5%.
- No interest shall accrue on the unpaid balance in the payment plan and may not foreclose during the term of the agreement.

AMEND: Interest rate on amounts to redeem; G.L. c. 59 § 57 & G.L. ch. 60, § 62

- Decrease the amount of 14 and 16 percent interest to 8 percent interest, the amount charged on pre-sale amounts owed

AMEND: Allow low income and elder homeowners to defer taxes pursuant to M.G.L c 59 § 5 Clause 41A without the mortgage holders assent so long as deferred taxes do not encumber more than 50% of net equity after mortgage(s) and liens on home.

AMEND: Create a minimum amount that must accrue before a taking, sale, or foreclosure; G.L. c. 60

AMEND: Repeal arrest for failure to pay taxes; G.L. c. 60 §16

AMEND: **Increase time to redeem; G.L. c. 60 § 65** from six months to twelve months.

AMEND: Provide more comprehensive notice provisions: Subsection (c) of section 2C of chapter 60, Section 16 of said chapter 60, section 52 of chapter 60, Section 53 of said chapter 60, and Section 53 of said chapter 60

- Notice requirements for tax purchasers including when a purchaser changes.
- Provide understandable notices in most commonly spoken languages of the community.
 - Specific requirements for what shall be included in the notice
 - Requirements for delivery of notice
 - Provide in-person service for residential property
 - Provide for additional notice to the local/regional council on aging

AMEND G.L. c. 59 § 5(Forty-first A) to create more accessible tax deferrals and recovery agreements for adults over age 65

AMEND G.L. c. 60, § 52 to eliminate third-party purchasers for owner-occupied properties

AMEND: G.L. c. 60 § 71 to allow the Land Court jurisdiction to remove a case to Superior Court if a party claims a jury trial.

We would very much appreciate an opportunity to discuss these recommendations with you. Please do not hesitate to reach out to us to schedule a time to meet. Thank you.

Respectfully submitted by:

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