

THE FINE PRINT

# In Mass., private companies can make a killing, legally, if you can't keep up with your property taxes

By [Sean P. Murphy](#) Globe Staff, Updated January 18, 2021, 4:07 p.m.



Brothers Neil and Mark Mucciaccio risk losing their house because of delinquent taxes. But a legal foundation has stepped in to try to block that on constitutional grounds. DAVID L. RYAN/GLOBE STAFF

On Nov. 11, Mark Mucciaccio answered the door at his home in Easton to a woman who said she had been sent by the property's "owner" to change the locks on the doors.

The woman handed him a “to whom it may concern” letter that said the house, which Mucciaccio, 58, and his brother, Neil, 55, inherited from their late parents many years ago, was now owned by a company called Tallage Lincoln LLC.

The three-sentence letter cited a “final” court judgment giving the company ownership, but said nothing about taxes. Still, Mucciaccio had no doubt it came as a result of the thousands of dollars he owed in property taxes, dating back to 2016.

Mucciaccio lives in the house with his wife, daughter, two grandchildren, and his brother. He and his brother are both out of work, one as a truck driver, the other as a maintenance worker. On top of that, the family in recent years has been hit hard by multiple, major chronic health issues.

Mucciaccio said he asked the woman with the letter to leave, and then began working on a plan to save his home. Soon, he picked up a surprising ally: a small libertarian public interest law firm called the Pacific Legal Foundation, based in California.

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What attracted the foundation’s interest (and mine) is that Massachusetts is one of only about a dozen states that allow municipalities — and companies that take over their tax title liens — to reap windfalls when they take properties from tax delinquents like Mucciaccio.

That's because they are allowed to keep whatever equity there is in the property after back taxes, interest, and fees are paid.

The Mucciaccio home has no mortgage. The tiny house is assessed for just \$61,100, but the land it sits on is valued at \$224,500. They currently owe about \$30,000 in taxes, fees, and interest — the amount owed to the private company that took over the lien on the property.

After the taxes are paid, that would leave about \$255,000 in equity.

Is it fair for them to lose \$255,000 to pay off a debt of \$30,000?

Joshua Polk, a Pacific Legal Foundation attorney, likened it to legal larceny.

“When a debt-holder takes more than what's actually owed that's usually called theft, but in this context it's actually endorsed by state law,” he said.

It's worth contrasting tax and mortgage foreclosures. Property owners who fail to pay their mortgages lose their property. But the lenders that sell foreclosed property are allowed to take only what they are owed in overdue payments. Any amount over that (the equity) goes to the former owners of the property.

But that's not the case if a municipality takes a property for unpaid taxes, as the Mucciaccios found out.

The Town of Easton first slapped a lien on the Mucciaccios' property in 2017 for unpaid taxes of a little less than \$4,000. A year later, Tallage Lincoln paid off the Mucciaccios' tax debt and then continued to pay the taxes on the property. By taking over the lien, it obtained from the town the right to pursue ownership of the property by getting a foreclosure order in court.

Tallage Lincoln is a private, for-profit Boston company that specializes in taking over municipal liens and seeking foreclosure in court.

In 2019, Tallage got a judgment of foreclosure. But the law allows defendants in such cases one year to challenge. After the one-year period ended, Tallage Lincoln sent its agent to the Mucciaccios' doorstep, apparently unsure if anyone lived there and ready to change the locks.

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Mark Mucciaccio said he had never received any of the foreclosure notices. But the letter hand delivered to him prompted him to pull out another letter, one he had received months earlier and put aside. It was from Josh Polk, the legal foundation's lawyer.

The Pacific Legal Foundation last year scored a major victory when the Michigan Supreme Court ruled that taking the equity from tax scofflaws in cases like the Mucciaccios' was unconstitutional.

After that, Polk set his sights on Massachusetts. But he needed a client. So he scoured online court records for property owners facing foreclosure due to unpaid taxes and mailed dozens of letters offering free legal assistance, including the one sent to the Mucciaccios.

On Jan. 6, Polk, representing the Mucciaccios, filed suit against Tallage Lincoln and the Town of Easton, saying that the loss of equity the Mucciaccios faced violated their constitutional right against the government taking private property without compensation. (The suit names Tallage Lincoln as a defendant under the theory it is the town's agent.)

Mark Mucciaccio pleaded for more time to come up with the money to pay his debt and keep his home.

The judge didn't grant Mucciaccio's request, nor did he deny it. And Tallage Lincoln did not oppose it. A new hearing is set for next month. In the meantime, it's possible the Mucciaccios and Tallage Lincoln could come to terms.

If that happens, Polk said he will find another client to challenge a state law he views as allowing a grossly overreaching government to wrongly confiscate property.

"We're not done in Massachusetts," he said. "Not until this law is declared unconstitutional and stricken from the books."

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