

THE FINE PRINT

Efforts to ban ‘home equity theft’ in Massachusetts picking up steam

By [Sean P. Murphy](#) Globe Staff, Updated March 29, 2022, 4:23 p.m.



Deborah Foss was evicted from her home because of unpaid taxes. State Representatives Jeff Roy, right, and Tommy Vitolo are trying to overturn a law that allows private companies to buy tax liens, evict owners and keep the equity. PAT GREENHOUSE/GLOBE STAFF

A lawsuit filed Tuesday on behalf of a New Bedford woman says she was unfairly deprived of more than \$210,000 in home equity by the city of New Bedford and a private company after she fell behind on her property taxes.

The suit was filed by a small libertarian public interest law firm that says its ultimate goal is a ban on what it calls “home equity theft,” a practice allowed in Massachusetts and about a dozen other

states.

It begins when a city or town sells a private company its tax liens — unpaid real estate taxes owed by property owners. Once the company takes over the lien it is allowed to charge 16 percent interest on the outstanding back taxes. If the homeowner still cannot pay, the company can foreclose on the property and evict them. After paying the taxes, it gets to keep the remaining equity in the property — which could be hundreds of thousands of dollars.

That contrasts with what happens when a bank forecloses on a property. In that case, the bank sells the property, deducts from the proceeds what it is owed, then returns any remaining equity to the former owner.

Joshua Polk, a Pacific Legal Foundation attorney, likened the procedure in tax-lien cases to legal larceny.

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“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.

These kinds of transactions can be highly profitable to private companies, as is illustrated by the case of Deborah Fagg, 66, the woman who lost her home in New Bedford

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Speaking at a press conference in Boston announcing the suit, Foss on Tuesday said “I can’t believe this happened to me. It’s cruel and wrong and it shouldn’t happen to anyone else.”

Also appearing at the press conference were two members of the Massachusetts House of Representatives, Jeffrey N. Roy and Tommy Vitolo, who have sponsored a bill to abolish the taking of equity in such cases.

“It’s terribly unfair and needs to end,” said Roy.

Foss scraped together “her life savings and her inheritance” to purchase a small home in New Bedford in 2015, according to the lawsuit filed in Superior Court in New Bedford.

But facing a growing list of health issues and living on less than \$1,000 a month in fixed income, Foss fell behind on her taxes. In 2018, the city of New Bedford opted to sell its tax lien to Tallage Davis, LLC, a Boston for-profit that specializes in buying tax liens.

New Bedford and dozens of other municipalities statewide regularly sell off tax liens to get delinquent cases off their books.

In the Foss case, New Bedford sold the lien for the amount Foss owed in taxes and interest at the time — about \$10,000. There was no mortgage on the property.

The suit says the sale of the lien set the stage for Tallage to take the property.

“By selling the lien, the City transferred to Tallage the authority under the Massachusetts tax statute to collect 16 percent interest on the tax debt and to foreclose on the property and confiscate all equity in the property if Ms. Foss failed to pay the tax debt,” the suit says.

The foreclosure process begun by Tallage dragged on in the courts for more than a year. At one point, Foss submitted a written response to the court asking for permission to “sell her home to pay her debt and save her equity,” the suit says.

“She did not know her rights or whether she could sell the property without the court’s permission,” the suit says.

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At 16 percent interest, the debt quickly ballooned. In 2019, Foss was told she would have to pay more than \$24,000 to “redeem her property and avoid foreclosure,” the suit says.

Several months later, a court granted “absolute title” in the property to Tallage, the suit says.

On March 1, “Tallage sold the property for \$242,000, which was at least \$210,000 more than Ms. Foss’s total debt,” and about \$232,000 more than Tallage had paid the City of New Bedford for the lien back in 2018, the suit says.

Foss, according to the suit, “has been homeless since [being evicted], living out of her car. She does not have the savings or income to secure alternative housing at this time.”

“Had Ms. Foss known that her entire property was at risk of being taken, including all the equity value she had built up in the property, she would have sold the property, sought a loan, secured a payment plan, or made other arrangements to satisfy her tax debt to the city before losing everything,” the suit says.

Dan Hill a lawyer representing Tallage, said “we followed all the legal procedures. There were no shortcuts. It was all done legally.”

Hill said Tallage incurred about \$100,000 in expenses during the process, including the cost to remediate an oil spill caused by a leaking tank in the basement. Even with those expenses, Tallage appears to have realized a financial gain of more than \$100,000.

In a [50-page report](#) released in December, the Pacific Legal Foundation says “unlike most states, which return what isn’t owed to them after a property tax debt is paid, the [Massachusetts] tax foreclosure system unjustly take millions of dollars in home equity from property homeowners every year — indifferent to the suffering it causes.”

More than 150 homes were foreclosed upon for tax debts by private companies in the seven-year period ended in December 2020, allowing “the taking of an estimated \$37 million in equity above what these homeowners owed in property tax debt,” according to the report.

The Pacific Legal Foundation last year represented Mark and Neil Mucciaccio of Easton who had fallen behind on the property taxes on the house they inherited and faced a potential loss of \$255,000 in equity. Tallage was in the late stages of evicting the brothers and their families when the foundation got involved.

But, after the Mucciaccio case was featured in a [Globe column](#), a judge ultimately ruled the brothers could keep their house, based on a family member stepping forward to get a loan to pay the back taxes.

At the time the Mucciaccio case was settled, Polk said he would 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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