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Massachusetts residents still losing home equity under state foreclosure law despite Supreme Court ruling

Home owners at risk of losing equity under foreclosure laws banned by high court



Chris Christo/Boston Herald

Worcester sold a resident's tax debt to a third party for under \$4,000. Under the state's now unconstitutional law, the third party company is allowed to sell the property and keep the hundreds of thousands in equity. (Chris Christo/Boston Herald)

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Week after week, Massachusetts residents are still having their home equity taken under absolute title, according to advocates and lawyers working to have the practice stopped immediately and bolstered by a recent Supreme Court decision. In May, the nation's highest court ruled in *Tyler v. Hennepin County* that a municipality in Minnesota had violated the

Constitution's takings clause when it sold a foreclosed property and kept proceeds beyond what the property owner owed in taxes. As a consequence, and according to Attorney General's office [testimony](#) to the Legislature shortly after the Supreme Court's ruling, a provision of Massachusetts law allowing cities and towns to foreclose on properties, sell them, and keep the entire proceeds of the sale is also unconstitutional. The practice of "home equity theft" by municipalities or third party companies acting on their behalf continues to occur in Massachusetts, according to attorney Chris Perry, while the legislature, courts, governor's office and attorney general sit idly by.

He said the Supreme Court decision provided a constitutional right, "and to realize the ability to obtain that right, no action needs to be taken," he told the Herald. "Despite that, it's status quo, nothing has changed." Perry says the current problem could be mitigated by removing now unconstitutional language regarding "absolute title" from the Land Court's website and altering a form used by claimants to begin the tax lien foreclosure process, a suggestion he shared to the chief judge of the state's [Land Court](#) and to the AG's office. He wrote that he's prepared to sue to force the issue if the court or other wings of government won't act.

"Absolute title" foreclosure is not, in itself, prohibited by the Supreme Court's decision, but the keeping of any excess is prohibited. A court spokesperson told the Herald the website has been updated to include information "about a taxpayer's right to claim any excess proceeds from the plaintiff after a foreclosure has occurred." Frank Bailey, a retired federal bankruptcy judge in Massachusetts who now leads the Pioneer Public Interest Law Center, said he has seen Bay State residents moving through the Land Court and toward the risk of losing the equity in their homes, and it's not just his clients. "There are still motions to foreclose on the right of people to redeem their property," he said. "It's happening every week." An ongoing case in [Worcester](#) in which Bailey is involved, he said, provides a perfect example. In this case, the owner of a roughly \$300,000 home owed under \$4,000 in taxes. The city sold the debt to a third party company, which then lawfully foreclosed on the owner's property rights and obtained the title to the home. The home can be sold and every dime kept by the new title holder.

Bailey said he isn't surprised no new law has been passed to change the state's foreclosure process to bring the state into compliance with *Tyler* — though there are several under consideration. Lawmakers, after all, represent cities and towns that need tax takings to operate and keep the roads paved, he said. "People need to pay their taxes," the former judge said. "(Municipalities) can take the properties, they can sell them, but give the equity to the homeowner. Usually it wasn't their fault they fell behind. It's their equity, their life savings." While the Legislature has been slow to act, Bailey said Attorney General Andrea Campbell and Gov. Maura Healey need to apply pressure from the bully pulpit now to push the courts to reform themselves.

Dan Winslow, who heads the New England Legal Foundation, said that there is no need for any action by the executive branch or the Legislature. "We don't have to all sit on our hands and wonder what happens next. The Supreme Court has told us what happens next. You don't have to have the statute changed," he said. "If I were still a trial court judge, I would invite the parties to show cause why and how the *Tyler* case affects the pending case."

According to a spokesperson for the Attorney General's office, Campbell is of the legal opinion that the Legislature must act to bring the state into compliance with the *Tyler* decision. In June, First Assistant Attorney General Pat Moore told the Joint Committee on Revenue that the state's Chapter 60 law is written in such a way that it cannot be altered in part, but must be entirely reworked. "The time is now to fix the statute," Moore told the committee. "The tax lien foreclosure process set forth in Chapter 60 of the General Laws is unconstitutional." A spokesperson for Healey's office said that their "administration is confident that the courts are complying with all relevant U.S. Supreme Court rulings."

According to Perry, changing the law is a "red herring" distracting from the fact the courts should, and could in his opinion, put a halt to every foreclosure until a constitutional version of the law is presented. "They are still issuing these absolute titles in defiance of the Supreme Court," he said. A spokesperson for the Senate President's office said that "the bills regarding Chapter 60 that are in committee are under active review by their respective committees" while a spokesperson for the House Speaker's office said that "the House is currently reviewing this issue through the formal legislative process and working towards a solution."