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Massachusetts law allowing state to keep foreclosed home sale profits unconstitutional, AGs office says



The AG says the state can no longer seize a home for nonpayment of taxes. (AP file photo)

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The state can no longer take your home, sell it and keep the profits, representatives from the [Attorney General's](#) office told a joint committee of the Legislature. On Thursday, the Joint Committee on Revenue heard testimony from advocates speaking in favor or against more than 60 bills, most dealing with property tax. One of the proposals, offered by state Sen. Mark Montigny, aims to bring Massachusetts into compliance with a recent U.S. Supreme Court decision which declared that the practice of confiscating real estate property to make up for missed taxes and keeping any profits from any following sale is no longer allowed. "The message from our office is that the time is now to fix this statute, we look forward to working with the committee to do so," First Assistant Attorney General Pat Moore told the committee. "The tax lien foreclosure process set forth in Chapter 60 of the General Laws is now unconstitutional."

In May, the U.S. Supreme Court ruled unanimously that a state government may take a person's real estate property to make up for unpaid property taxes, but that any profit made by selling the property cannot be kept by the government. Massachusetts, along with nearly a dozen other states, currently allows the Commonwealth to foreclose on a property when back taxes are owed and then sell the property to recoup the tax loss, with any extra money kept and not returned to the taxpayer. Lawmakers have tried to change the practice in the past but have seen little movement. Now, according to the AG's office, they will no longer have any choice in the matter.

"We are likely to see a decision striking down the pertinent parts of Chapter 60 in the very near future," Moore said. "The Tyler decision ensures that that time is very near." In deciding *Tyler v. Hennepin County, Minnesota*, Chief Justice John Roberts [wrote](#) that "the County had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due."

Not only is the practice unconstitutional, but it's downright against the democratic principles of the state, Amber Villa, Chief of the Attorney General's Neighborhood Renewal Division, told the committee "We consistently see the struggles that people undergo to own a home and to maintain that ownership," she said.

"The commonwealth's property tax foreclosure process undermines homeownership and strips equity earned by homeowners. This has profound impacts on countless families across Massachusetts." Last week Montigny said his bill, "An Act protecting homeowners from unfair tax lien practices by cities and towns," or [S.1876](#), would not face a roll call vote if his colleagues express the will to act. "For five years I've been talking about it and now just more people have had their equity stolen. I won't roll call it today but to be clear, there will be a day soon that if the process isn't expedited to remedy this situation post-Supreme Court decision, I will roll call it, and I won't be deterred by the suggestion this isn't the appropriate vehicle," he said.