

**STOP**

# HOME EQUITY THEFT



## The Land Court Says



A Tax Lien Foreclosure is a court proceeding that **can** happen if a homeowner does not pay their real estate taxes. A town or city **may** undertake a tax lien foreclosure of the property to collect the unpaid taxes **asking** the Massachusetts Land Court **to end the homeowner's right to the property.** After foreclosure, the town or city can either keep or sell the property.

The Supreme Court has found that **tax lien foreclosure laws similar to Massachusetts' are unconstitutional.**

Under the U. S. Constitution, **property owners will be owed compensation** from a tax foreclosure - if the property taken by the government is worth more than the tax debt owed.

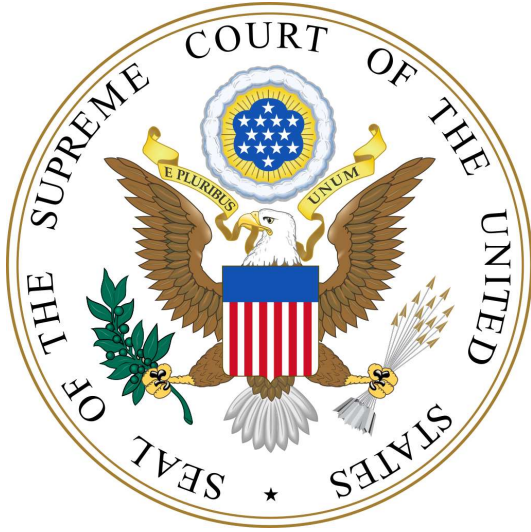


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## The Supreme Court Says



The amount that exceeds the tax debt owed is sometimes called the “home equity.” The Supreme Court decided that **when the taxing authority keeps these “excess” or “surplus” funds from the foreclosure sale, the authority has made a “taking,”** in violation of the Fifth Amendment of the U.S. Constitution, which says that government cannot take private property without paying just compensation.

Massachusetts’ scheme provides **no opportunity for the taxpayer to recover the excess value;** once absolute title has transferred.

The highest court in the land explained that **property rights are fundamental and cannot be erased** by a state statute that redefines them out of existence.



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## The Town of Bolton's Problem



In the wake of the United States Supreme Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), Massachusetts municipalities face a difficult circumstance: The state statutory scheme establishing a process for municipal foreclosures on real property is clearly **unconstitutional**.

The Legislature seems to understand this problem and has held hearings to address it; but the Legislature has not yet amended the relevant statutory sections in G.L. c. 60.

**"if a whole tract of land was sold when a small part of it would have been sufficient** for the taxes, which at present appears to be the case, the collector unquestionably exceeded his authority."

*Stead's Executors v. Course*, 4 Cranch 403, 414



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## The Attorney General Says



The MA AGO's position is that **the property owner has suffered a violation of his Fifth Amendment rights** when the government takes his property without just compensation.

42 U.S.C. §1983 allows a plaintiff to recover **attorneys' fees and costs**, and creates possible personal liability that **cannot be indemnified** under state law. See G.L. c. 258, § 9

The MA Legislature seems to understand this problem and has held hearings to address it; but the Legislature has not yet amended the relevant statutory sections in G.L. c. 60.

"It is not sufficient for a statute to authorize a taking and then provide a *possibility* for **compensation in a later proceeding.**"



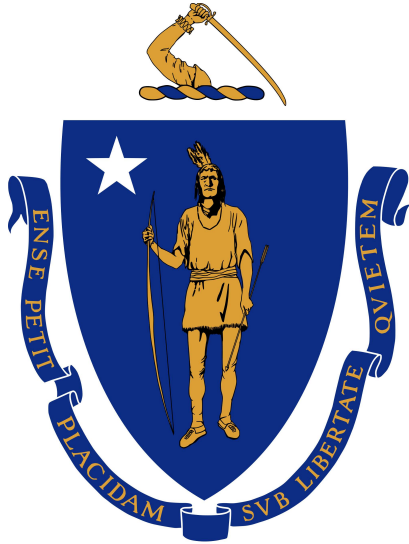


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## The Town's Optional Choices



The town counsel may again tell us:

**“A town meeting cannot supersede state law and town employees cannot be compelled to deviate from state law”.**

No need to worry...

G.L. c. 60 §62A: Repayment Plans have some requirements but are **optional** and not exclusionary of other reasonable terms

Bylaw 215-2: Withholding permits is **optional**

G.L. c. 60 §43: Requires sale of the **smallest undivided part**

G.L. c. 60 §64: Foreclosing rights of redemption is **optional**

G.L. c. 60 §69A: The Town may **vacate** Land Court tax title foreclosure judgments at any time with **no financial risk**



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## The Cost if Properties Not Sold



Assumed Back Property Taxes	\$~50K
Assumed Current Property Value	\$550K +
Equity Owed	\$500K +
Possible Legal Costs	\$500K +

**The above example alone would cost the town \$1M dollars to collect a \$50K debt (20:1)** This money would be spent without any approval at town meeting. The back taxes and any future taxes on that property would **never be recovered**.

“[T]he **only legitimate interest** of a town in seeking to foreclose rights of redemption **is the collection of taxes due** on the property, together with other costs and interest”.

*City of Boston v. James*, 26 Mass. App.Ct. At 630



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## The Article Summary



**Municipalities will be held liable for the equity taken and legal costs in any ongoing State and Federal actions necessary to recoup the equity.**

A **Yes Vote** will provide an **alternative**, working with property owners to create reasonable repayment agreements, and allow the permitting necessary to sell at **full and fair market value**, avoiding the need for a public auction sale.

**If the Town wishes to retain a foreclosed tax property it will follow the same procedure as it would for any other property put to public use.** Said proposition will come before Town Meeting and require the necessary 2/3 vote as any other expenditure to acquire real estate would.



**VOTE  
YES**