



2023 Municipal Law Seminar MINI WORKSHOP A Tax Title Cases

DISCUSSION SUMMARY

(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop A is provided for educational and training purposes. It does not constitute legal advice or represent Department of Revenue opinion or policy, except to the extent it reflects statements contained in a public written statement of the Department of Revenue.

1. What happens if a municipality receives a demand for equity from the sale of a tax possession property as a result of a taking from years earlier?

This is a matter for the court to resolve, and there are cases presently under review that will give further guidance on this issue.

- 2a. For a sale through a collector's deed, where should the municipality deposit the proceeds?

Proceeds would go to revenue.

- 2b. If a municipality's treasurer assigns the legal ownership of the tax title to the highest bidder at auction, where do the proceeds from the assignment go?

The proceeds, in due course, would go to free cash.

3. Does Tyler v. Hennepin County rule out tax title foreclosure in Land Court?

No, tax title foreclosure will still occur; however, the issue is whether equity funds will need to be returned to the property owners or not after the taxes, interest and fees.

[Tyler v. Hennepin County, 598 U.S. 631 \(2023\)](#)

4. Is there now a moratorium on tax title foreclosures in the state as a result of the decision in Tyler v. Hennepin County?

As of this time, there is no moratorium on tax title foreclosure cases.

5. Will *Tyler v. Hennepin County* impact the popularity of the sale of collector's deeds under G.L. c. 60, §§ 43-45?

We believe so. Purchasing tax collector's deeds might not be as desirable as it was because the private investor may only be entitled to 16% interest.

[Tyler v. Hennepin County, 598 U.S. 631 \(2023\)](#)
[G.L. c. 60, §§ 43, 44, 45](#)

6. Could the state provide a mechanism for taxpayers to recover the equity after a foreclosure and sale of a tax possession property?

This is a distinct possibility. We could see an amendment to a statute through the Legislature, or it's possible the Land Court may impose conditions on foreclosure. Perhaps equity can be requested under G.L. c. 60, § 68. Recall that the Supreme Court found no Takings Clause violation in *Nelson v. City of New York* because the New York City ordinance did not absolutely preclude an owner from obtaining the surplus proceeds of a judicial sale. Instead, the New York City ordinance simply defined the process through which the owner could claim the surplus.

[Nelson v. City of New York, 352 U.S. 103 \(1956\)](#)
[G.L. c. 60, § 68](#)

7. What should municipalities do after the sale of a property as a tax possession in light of the holding in *Tyler v. Hennepin County*?

Given the uncertainty, DLS will not object to a community temporarily holding any such surplus proceeds in an agency account until there is further clarity on this matter. Municipal treasurers should consult with their local counsel, chief executive officer(s) and finance team(s) before deciding to do so. See Bul-2023-5.

[Bul-2023-5](#)
[Tyler v. Hennepin County, 598 U.S. 631 \(2023\)](#)