

DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

Workshop A

Municipal Law Conference 2024

Tax Title Cases

Tyler v. Hennepin County

143 S. Ct. 1369 (May 25, 2023)

- Tyler owned condo in Hennepin County, Minnesota with \$15,000 in unpaid taxes.
 - County seized condo and sold it for \$40,000, keeping \$25,000 in excess for itself
- Unanimous US Supreme Court decision-Tyler stated a claim under the Takings Clause of the 5th Amendment.
 - Tyler was entitled to any surplus from the sale of the property.
 - *The taxpayer must render unto Caesar what is Caesar's, but no more!*
- Concurrence: tax forfeiture scheme may have run afoul of the 8th Amendment's Excessive Fines Clause.
- Nelson v. City of New York, 352 U.S. 103 (1956): New York City ordinance is constitutional. Simply defined the process through which the owner could claim the surplus.

Marguerite Kelly v. City of Boston

348 Mass. 385 (January 28, 1965)

- Property owner who lost property to tax foreclosure was not entitled to recover any surplus value of the property in excess of the taxes, interest and costs owed.
 - *Court was not asked to and did not address any constitutional issues*
- Strict foreclosure G.L. c. 60, § 69
 - Judgment extinguishes taxpayer's remaining interest in the property
- Background on tax foreclosure in Massachusetts
- Chapter 60 provides surplus to owner under Land of Low Value auction foreclosure
- No comparable provision for Land Court foreclosure in Chapter 60
- Reverse situation of deficiency judgment in Boston v. Gordon

Ashley M. Mills v. City of Springfield
Memorandum of Decision & Order
(April 18, 2024)

- Unpaid tax bill of \$1,636.70 in 2016; debt increased to around \$22,000.
- 2023 Motion for Judgment of Foreclosure.
- Tax foreclosure action pending in Land Court and action filed with Supreme Judicial Court & was transferred to Superior Court.
- Mills sought declaration retaining surplus in taking violated Art. 10 of MA Declaration of Right and 5th Amendment to US Constitution & enjoin Springfield from taking home until provision made to pay her difference between FMV of home and tax debt.
- Springfield argued G.L. c. 79, §§ 10 and 14 provides a procedure to claim excess equity and that therefore the tax foreclosure process under Chapter 60 doesn't violate the takings.

Ashley M. Mills v. City of Springfield

Continued

- Chapter 60 doesn't provide a procedure by which a delinquent taxpayer could recover the value of the property above what was owed.
- Retention of surplus equity from a taking pursuant to Chapter 60 does violate article 10 of the MA Declaration of Rights & the 5th Amendment to the US Constitution.
- Statutory scheme is not facially unconstitutional in circumstances where the tax debt and interest exceeds or equals the value of the property.
 - Unconstitutional as applied in circumstances where the tax debt is less than the value of the property.
- *Statutory scheme is untenable and requires legislative correction.*

Tyngsborough v. Recco
Decision on Cross Motions for Judgment on the Pleadings (May 21, 2024)

- 2010 filed IOT for \$2,093.50 for unpaid taxes, interest and costs from FY07. Town filed a petition to foreclose in 2018.
- Recco filed motion to dismiss, claiming Chapter 60 is unconstitutional with respect to any property.
- Tyngsborough filed motion to have the court fashion a remedy by which the town would acquire title to the property but compensate Recco for any surplus after payment of taxes, interest and costs.
 - Acknowledged post-Tyler constitutional obligation to return surplus equity after foreclosure.
- *Whether Chapter 60 rendered unconstitutional by Tyler, or whether MA law provides opportunity for owner to be compensated so as to prevent a Chapter 60 tax foreclosure from being unconstitutional under both the MA and US Constitutions?*

Tyngsborough v. Recco

Continued

- **Recco's motion for summary judgment denied**
 - **Judgment foreclosing Recco's statutory right of redemption would not effect an unconstitutional taking *provided that* provision is made for compensation to Recco for any surplus value of the foreclosed property in excess of the taxes, fees and interest.**
- **Land Court did not need to address the argument that the totality of the statutory foreclosure scheme embodied in chapter 60 is unconstitutional.**
 - **Chapter 60 does provide a mechanism that can be used, G.L. c. 60, § 77B**
 - **Public auction, notice to former owner**

Woodbridge and Browning v. City of Greenfield
Memorandum of Decision & Order U.S. District Court
(May 29, 2024)

- **Plaintiffs allege violation under the Takings Clause of 5th Amendment & the Excessive Fines Clause of the 8th Amendment.**
- **Woodbridge: 2 parcels taken in 2017 for \$5,761.85 owed and costs of taking, interest and fees \$54,098.23. City sold a parcel for \$270,000 and kept the other parcel.**
- **Browning: parcel taken in 2016 for \$1,578.12 owed and costs of taking, interest and fees \$18,455.58. City sold parcel for \$34,000 in 2010 & sold 9 mo. later for \$272,500.**
- **2019 Judgments extinguishing right of redemption for both. City has not paid either of plaintiffs any portion of excess value above debt.**
- **City sought to dismiss, claiming just following MA's statutory scheme, policy a recitation of compliance w/law & plaintiffs barred by res judicata and claim preclusion based on Land Court judgment.**

Woodbridge and Browning v. City of Greenfield

Continued

- MA statutory scheme closer to that of Minnesota, which Supreme Court struck, than that of New York's.
- Plaintiffs plausibly alleged that MA statutory scheme is unconstitutional under Tyler and that the City wrongfully retained surplus proceeds/value from the taking of their properties.
- *May well be that Tyler can't be applied retroactively, but parties didn't address the issue & Court declines to do so.*
 - *Chapter 140, Section 212 addresses retroactive claims of excess equity.*
- City's motion to dismiss was denied.
- [Bulletin 2023-5](#) highlighted in the case.

Legislative Fix:
Chapter 140 of the Acts
of 2024

Chapter 140 of the Acts of 2024

- **Section 80 adds two definitions under G.L. c. 60, § 1 regarding disposition of foreclosed property**
 - **Excess equity.**
 - **Language understandable by a least sophisticated consumer.**

- **Section 81 modifies G.L. c. 60, § 2C (assignment & transfer of tax receivables)**
 - **New requirements that must be included on notices that must be sent to affected property owners using language understandable by a least sophisticated consumer, along with a notice in 7 languages clearly stating that the notice affects legal rights and should be translated immediately.**
 - **DLS to provide forms.**

Chapter 140 of the Acts of 2024

- **Section 82 amends G.L. c. 60, § 16 (Collector's Demand Notices)**
 - **Advise property owner to contact assessors about abatements, exemptions and tax deferrals.**
 - **New requirements added to demand notices for Class One residential properties and mixed-use properties.**
 - **DLS to provide State Tax Form 6016.**

- **Section 83 modifies G.L. c. 60, § 25 (Distrained goods & auction)**
 - **Additional notices that must be sent to taxpayers prior to auctioning off distrained goods.**
 - **Collectors rarely use as a remedy.**
 - **Article IX of the UCC (*if security interest on property, cannot auction off*).**
 - **DLS to provide forms (similar requirements as those for G.L. c. 60, § 16).**

Chapter 140 of the Acts of 2024

- **Section 84 amends G.L. c. 60, § 52 (assignment of tax title)**
- **Treasurer's notice of intended assignment (may assign & transfer tax title(s) individually or bundled to highest bidder after public auction).**
- **For residential parcels**
 - **Mailed to the taxpayer at last known residence and usual place of abode or place of business;**
 - **Posted upon the property;**
 - **Posted in a convenient and public place; and**
 - **All three of these forms of notice must include a uniform notice prepared by DOR. DLS to provide State Tax Form 6052.**


Chapter 140 of the Acts of 2024

- **Section 85-87 amends G.L. c. 60, § 53 (tax taking)**
 - **Amends process when real estate tax is not paid after the demand is sent for both for residential and for all other property.**
 - **Collector must wait until at least 14 days after demand sent**
 - **If unpaid, collector to give notice of intent to take. State Tax Form 6053.**
 - **For class one residential: a) posted on municipal website, b) mailed to taxpayer at last known address (residence or business), c) posted upon the property itself (likely applies for vacant land as well); for all 3, must include STF 6053 & 6053A.**
 - **Mixed use property, follow above requirements.**
 - **Posting on property itself can be done by sheriff or constable. It may be possible that the cost of this service can be added to the tax title account under G.L. c. 60, § 15, Clause 17.**
 - **For residential & non-residential, post in 2 or more public places. Res. 2 forms; Non-res. STF 6053 & in newspaper.**

Chapter 140 of the Acts of 2024

- **Section 85-87 continued on tax taking**
 - **The notice must contain a description of the property to be taken, the amount of taxes and other charges for which the property will be taken, the names of all owners known to the collector, and the time and place of the taking;**
 - **Collector must then wait at least 14 days after the later of the date of the publication or posting of the notice of intent to take.**
 - **Collector then makes the taking at the time and place in the notice.**
 - **Collector must record or register Instrument of Taking (STF 301) at Registry of Deeds within 60 days of the date of the taking under G.L. c. 60, § 54.**
 - **Must include a description of the property, the name of the assessed owner or owners, and the taxes and charges for which the property was taken.**

Chapter 140 of the Acts of 2024

- **Section 88 amends G.L. c. 60, § 62 (Tax Title Interest Rate)**
 - **Reduces the tax title interest rate from 16% to 8%.**
 - **Interest on outstanding taxes remains at 14%.**
 - **Prospective application** 
 - **Reduced interest rate only applicable for tax titles *entered into on or after November 1, 2024.***
 - **Property already in tax title before November 1, 2024 continues to accrue interest at a rate of 16%; taxes added to existing tax title also accrue interest at 16%.**
 - **Well settled in MA absent a clear indication of legislative intent, a statute presumptively operates prospectively only.**
 - **Nothing in Section 88 *expressly* provides for retroactive application (Legislature did make other amendments retroactive, see Section 212).**
 - **DLS position further bolstered by the language used in the recently filed supplemental budget.**

Chapter 140 of the Acts of 2024

- **Section 89-91 amends local option statute G.L. c. 60, § 62A (Tax Title Payment Agreements)**
 - **Requires acceptance and enactment of bylaw or ordinance.**
 - **Treasurers may waive interest on tax title account *only* as authorized by bylaw or ordinance.**
 - **Previously: agreements for up to 5 years, pay at least 25% of the total amount needed to redeem at that time and the agreement could only waive up to 50% interest.**
 - **Now: agreements up to 10 years, pay at least 10% of total amount needed to redeem at that time and waive interest up to 100%.**

Chapter 140 of the Acts of 2024

- **Section 89-91 regarding amendment to local option payment agreements continued**
 - **Bylaw or ordinance establishes parameters such as tax title categories (residential or commercial, if residential, owner occupied), applicable term and interest waiver.**
 - **Bylaw or ordinance may not modify statutory interest rate or waive any collection costs or charges.**
 - **Nothing in the Act requires a previously approved ordinance or bylaw to be adjusted to conform to the amended duration, interest or upfront payment amounts.**
 - **To use the new amounts must reflect the same in an amended or newly created ordinance or bylaw.**
 - **If amended, any changes could only apply to new agreements entered into on or after the November 1, 2024 effective date.**

Chapter 140 of the Acts of 2024

- **Section 92 amends G.L. c. 60, § 64**
 - **Discusses that Land Court has exclusive jurisdiction.**
 - **Foreclosure judgment holder's title absolute upon decree of foreclosure by the Land Court.**
 - **Clarifies that prior owners and any others with financial interest (mortgagees, other lienholders) in the property have a right to receive excess equity.**

Chapter 140 of the Acts of 2024

- **Section 93 adds G.L. c. 60, § 64A (Disposition of Foreclosed Property)**
 - **Municipality must decide either to retain possession of the property and dedicate to municipal use or sell the property**
 - **Decision within 14 days after the entry of judgment foreclosing all rights of redemption has become final.**
 - **14 days measured from:**
 - **No appeal: 30 days**
 - **Appeal: at time judgment entered for the appeal**
- **Once decision is made ➡ former owners must be notified of that decision by certified mail and be informed of the process for them to claim any resulting excess equity.**
 - **Practical consideration – make decision before judgment becoming final and send notice immediately after judgment becomes final.**

Chapter 140 of the Acts of 2024

■ **Section 93 (Disposition of Foreclosed Property)**

■ **Where municipality elects to retain the property:**

- **Use reasonable efforts to have an appraisal of the property be conducted within 120 days of the judgment becoming final unless otherwise agreed upon by taxpayer;**
- **Appraisal for the highest and best use of the property as of the date of the final judgment of foreclosure and conducted by an independent appraiser licensed in MA.**
- **Resulting value from this process will be used to determine whether any excess equity exists that can then be claimed by the taxpayer.**
 - **Note to claim excess equity, prior owners must file written complaint in the superior court for the return of excess equity within 12 months of the effective date and right to jury trial unless waived by the taxpayer.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
 - **Where municipality elects to sell the property:**
 - **Municipality must list the property for sale with a real estate agent or broker within 180 days of the judgment becoming final unless otherwise agreed upon by the taxpayer.**
 - **For example, if a foreclosure decree is issued on March 1, 2025 and there is no appeal then the judgment becomes final on March 31, 2025. As a result here, the municipality must list the property for sale within 180 days of March 31, 2025.**
 - **The real estate agent or broker *cannot* hold elected or appointed office or be employed by the municipality where the property is located.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
 - **Where municipality elects to sell the property continued**
 - **If 12 months have elapsed from the date of the initial listing by the agent or broker and the property has not been sold, the municipality must conduct an auction for said property:**
 - **Auctioneer handling auction must be licensed in MA and cannot hold elected or appointed office in the municipality or be an employee of the municipality in ANY capacity.**
 - **Auctioneer may not accept bids at auction that are less than 2/3 of the appraised value.**
 - **Once a decision is made to move to auction, obtain appraisal that complies with the provisions governing retaining the property.**
 - **Bids may not be accepted from elected or appointed officials in the municipality, or from employees of the municipality.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
 - **Where municipality elects to sell the property continued**
 - **If a property still cannot be sold after both the (1) initial listing for sale with a real estate agent or broker and (2) the auction:**
 - **Municipality must notify all parties entitled to excess equity, by certified mail, of its intent to continue trying to market the property for sale, without the property being considered retained by the municipality.**
 - **Thereafter, the property may be sold at auction by the municipality's tax title custodian (usually treasurer) under the procedure specified in G.L. c. 60, § 77B. Alternatively, the municipality may sell the property in any other manner authorized by law, see G.L. c. 30B and G.L. c. 40, § 3.**
 - **Other comment from Inspector General?**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
- **Further process under election of sale or retention**
 - **Within 30 days of a sale or, in the case of a municipality retaining possession, the municipality must:**
 - **Prepare a written itemized accounting of the disposition of the proceeds arising from the sale or a report of the appraisal including but not limited to the following:**
 - **Sale price, legal fees, marketing fees, auctioneer fees, advertising costs, appraisal fees and any excess equity due to any parties entitled to claim excess equity.**
 - **Accounting must be sent by certified mail to any parties entitled to claim excess equity to their last known address or place of business.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
- **Itemized Accounting**
 - **Starting point is either (1) sale proceeds from the sale of the property; or (2) appraised value from the appraisal if the property is being retained.**
 - **Provide tax title balance due as of date of entry of judgment; unpaid property taxes, assessments for unpaid water/sewer, property insurance and/or homeowners fees paid by municipality.**
 - **Documented post-judgment costs (such as listing fees, management fees, appraisal fees, maintenance fees, etc.).**
 - **Excess equity = sale proceeds or appraised value – above costs.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
- **If identity and mailing address of any parties entitled to claim excess equity *are known*, along with itemized accounting:**
 - **Provide a proportional share of the excess equity to which each such individual is entitled.**
- **If identity and mailing address of any parties entitled to claim excess equity *are not known*, along with itemized accounting:**
 - **Publish notice to alert former owners and all others known to hold right of redemption in property at time judgment of foreclosure entered in Land Court that they may claim excess equity in writing to municipality.**
 - **Claim within 18 months after date of notice.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
- **Regarding claim on excess equity:**
 - **May deliver the claim by personal service with receipt acknowledged by the municipality or submit the claim to the collector's office.**
 - **Claim must contain the claimant's name, phone number, mailing address, property address or parcel number & description of their interest in the property and shall include any other persons or entities known to the claimant to have an interest in the property.**
 - **Act requires any excess equity be held in escrow in a segregated interest-bearing account until disposed of either to the prior owner or under G.L. c. 200A.**
 - **If not claimed within 19 months of a sale or appraisal must be reported pursuant to Chapter 200A.**

Chapter 140 of the Acts of 2024

- **Section 93 (Disposition of Foreclosed Property)**
- **Disputes arising out of this process may be filed by an interested party in Superior Court within 12 months after the date of the notice of written itemized accounting.**
- **Where the property is being retained:**
 - **Municipality must have an appropriation to provide for the excess equity. The appropriation can be made from any available funds in the community (free cash, general stabilization fund, etc.)**
 - **Time constraint:**
 - **Must provide an itemized accounting within 30 days of receiving an appraisal & provide in same correspondence amount of the excess equity if the former owner is known.**
 - **Particularly in towns, appropriation may need to be considered well in advance of the judgment becoming final.**

Chapter 140 of the Acts of 2024

- **Section 94 modifies G.L. Ch. 60, Section 65 (Foreclosure)**
 - **If amount in tax title is not paid, treasurer can seek to enforce lien through foreclosure.**
 - **Extends the waiting period for filing tax foreclosure petition in Land Court to foreclose all rights of redemption from 6 months following a tax sale or tax taking to 12 months (applies to tax takings on or after November 1, 2024).**
 - **Some exceptions: taxpayer has tax deferral under G.L. c. 59 § 5, Cl. 41A or Cl. 18A (6 mo. after taxpayer dies or property sold) and where buildings on a parcel are abandoned immediately after recording of affidavit from Bldg. Inspector under G.L. c. 60, § 81A.**

Chapter 140 of the Acts of 2024

- **Section 95 amends G.L. c. 60, § 69A (Vacating Decree Barring Redemption)**
 - **Generally provides for when a former owner may ask the Land Court to reverse a final judgment in a tax foreclosure case (within one year of the date of entry of the final judgment).**
 - **The former owner must present “extraordinary circumstances.”**
- **A final judgment cannot be reversed if:**
 - **An “innocent purchaser” has bought the property, or**
 - **A claim for “excess equity” has been paid.**

Chapter 140 of the Acts of 2024

- **Section 212 (Retroactive Claims of Excess Equity)**
 - **Former owners may seek excess equity that resulted from their foreclosed property if their right of redemption was foreclosed upon by a final judgment of foreclosure entered on or after May 25, 2021 but before the effective date of the Act.**
 - **To claim excess equity, prior owners must file written complaint in Superior Court for the return of excess equity within 12 months of the effective date of the Act. There is right to jury trial unless waived by all the parties.**
 - **DLS interprets this section to mean that claims can be filed no later than November 1, 2025 (ambiguous, consult w/local counsel to make determination).**
 - **No claim for the return of excess equity may be asserted by any party where a Land Court judgment of foreclosure was entered and not appealed, on or before May 24, 2021.**

Chapter 140 of the Acts of 2024

- **Section 213 (Special Commission to Conduct Comprehensive Study)**
 - **Relative to current law and practice around collection of delinquent property tax revenue by municipalities.**
 - **Commission shall file report with clerks of senate and house of representatives, joint committee on revenue and senate and house committee on ways and means not later than December 31, 2025.**
 - **Report to include among other items:**
 - **Best practices in other states:**
 - **Other recommendations that the commission finds to be in the best interest of property owners and municipalities: and**
 - **Collection & analysis of data, which may include the number of foreclosures of properties following a tax taking which resulted in the loss of excess equity by former property owners for the 3 years preceding the United States Supreme Court ruling in Tyler v. Hennepin County, 598 U.S. 631 (2023).**

Chapter 140 of the Acts of 2024

- **Have we got this now?!**
- **Questions?**
- **See [Bulletin 2024-6](#).**
- **The [State Tax Forms](#) noted within the Bulletin will be available prior to November 1, 2024.**

Proposed 2024 Municipal
Empowerment Act:
Selected Provisions

Proposed 2024 Municipal Empowerment Act

- **OPEB Liability Trust Fund Technical Correction**
 - **This technical change related to the OPEB Liability Trust Fund statute (G.L. c. 32B, § 20) replaces the term “governing boards” with “governing body,” allowing the local legislative body to give said authorization for participation.**
- **Appointed and Combined Treasurer-Collector**
 - **This section enables cities and towns to combine the appointed positions of collector of taxes and treasurer to a single appointed treasurer-collector position.**

Proposed 2024 Municipal Empowerment Act

- **Collection of Water Charges on Non-Resident Customers**
 - **There is a common statutory scheme that lets municipalities and districts, by local option, establish liens when customers of municipal utility services - gas, electricity, steam, water and sewer - do not pay user charges when due. Lighting plants, water departments and sewer departments often provide utility services to ratepayers living in neighboring communities. While lighting plants and sewer departments may impose liens for customers located in those municipalities, water departments cannot. This section extends that option to municipalities and districts that provide water services to customers outside their borders.**
- **Collection of Motor Vehicle Excise**
 - **These sections allow a tax collector notify the Registry of Motor Vehicles of non-payment of the motor vehicle excise directly, after notifying the delinquent taxpayer of the intent to “mark” their license or registration for non-payment.**

Proposed 2024 Municipal Empowerment Act

- **Local Option Taxes 1**
 - **This section establishes a new local option Motor Vehicle Excise (MVE) surcharge of 5%.**
- **Allow Financing of Right of First Refusal Option**
 - **These sections allow cities and towns, when exercising their right of first refusal under G.L. c. 61, 61A or 61B, to pay for the cost of the relevant chapterland purchase by utilizing the financing mechanism described in the Qualified Bond Act, G.L. c. 44A.**
- **Borrowing for School Projects**
 - **Allows a 40-year term for borrowing for a school construction/renovation project - current law allows for a maximum term of 30 years**

Questions?