



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

## **Guidance About Tax Lien Foreclosures After the Supreme Court's Decision in Tyler v. Hennepin County**

The Office of the Attorney General (“OAG”) is providing this Guidance to help homeowners, cities, and towns understand the changing legal landscape of real estate tax lien foreclosures in Massachusetts under the “Tax Lien Foreclosure Law,” G.L. c. 60 (or “Chapter 60”), after the recent decision of the Supreme Court of the United States in a case called Tyler v. Hennepin County, 598 U.S. 631 (2023) (“Tyler”). The Supreme Court in the Tyler case found that some important parts of a tax lien foreclosure law that is similar to Massachusetts’ Tax Lien Foreclosure Law, are unconstitutional.

### **What is a Tax Lien Foreclosure**

A tax lien foreclosure<sup>1</sup> is a court proceeding that can happen if a homeowner does not pay their real estate taxes or water/sewer bills. These unpaid taxes or bills can become liens on the property. A town or city<sup>2</sup> may undertake a tax lien foreclosure of the property to collect the unpaid taxes or bills by filing a case with the Massachusetts Land Court asking the court to end the homeowner’s right to the property. After foreclosure, the town or city can either keep the property or sell it. Either way, the homeowner loses their property.

### **The Supreme Court’s Decision in Tyler v. Hennepin County**

In the Tyler case, a Minnesota homeowner who lost her home after a tax lien foreclosure challenged part of a Minnesota law that let foreclosing municipality keep all of the money made from a foreclosure sale, including any equity the homeowner had in the home above what she owed to the municipality. This case was appealed to the U.S. Supreme Court.

---

<sup>1</sup> For a detailed explanation of the tax lien foreclosure process, see the Supreme Judicial Court’s opinion in Tallage Lincoln, LLC v. Williams, 485 Mass. 449, 451-53, 461-70 (2020). As the Court explained in that case, the result of this type of “strict foreclosure” is that “the taxpayer loses any equity he or she has accrued in the property, no matter how small the amount of taxes due or how large the amount of equity.” Id. at 453.

<sup>2</sup> A town or city can also sell its tax liens to a third party who then can foreclose on the lien.

In May 2023, the Supreme Court decided that Minnesota’s tax lien foreclosure law violated the Takings Clause of the Fifth Amendment to the U.S. Constitution. The Supreme Court found that the municipality “could not use the toehold of the tax debt to confiscate more property than was due,” and that “[b]y doing so, it effected a classic taking in which the government directly appropriates private property for its own use.”<sup>3</sup> For these reasons, the Supreme Court found the Minnesota law to be unconstitutional, and decided that the homeowner deserved “just compensation” for the lost value of her home.<sup>4</sup>

### **Massachusetts’ Tax Lien Foreclosure Law**

The Massachusetts Tax Lien Foreclosure Law, Chapter 60, is similar to the Minnesota law that the Supreme Court found to be unconstitutional. The Tax Lien Foreclosure Law creates a process through which Massachusetts homeowners with unpaid real estate taxes or water/sewer bills can lose their homes and any equity they may have in the property above the amount due for the unpaid taxes or bills.<sup>5</sup> This is true even if the property is worth much more than the taxes or water/sewer bills the homeowner owes to the municipality.<sup>6</sup> Under current law, the homeowner may lose all of the equity in their home, without getting paid for it, even if their home is worth more than the value of all the debts on the home, such as mortgages.

### **Massachusetts’ Tax Foreclosure Law is Unconstitutional under Tyler**

The Attorney General’s Office’s position is that the tax lien foreclosure process created by the Tax Lien Foreclosure Law is unconstitutional in light of the Supreme Court’s decision in Tyler.<sup>7</sup> It is important that homeowners, municipalities and third-parties who are involved in a tax foreclosure understand the effect of Tyler and take action to avoid the type of home equity taking that the Supreme Court declared unconstitutional.

Pursuant to the Tyler decision, Massachusetts municipalities and any third-party purchasers of tax liens may not take “more property than [is] due” without giving the homeowner “just compensation.”<sup>8</sup> Failure to observe this principle could result in liability for an unconstitutional taking. The legal ramifications are potentially significant and remain uncertain due to a number of pending cases in the federal and state courts.

---

<sup>3</sup> 598 U.S. at 639 (citation and internal quotation marks omitted).

<sup>4</sup> Id.

<sup>5</sup> See generally G.L. c. 60; Williams, 485 Mass. at 451-53.

<sup>6</sup> See, e.g., Williams, 485 Mass. at 453 (noting a case in which unpaid water and sewer bills of \$492.51 led to foreclosure on a home worth \$270,000).

<sup>7</sup> See Remarks of Pat Moore, First Assistant Attorney General, Office of the Attorney General, to the Joint Committee on Revenue as Prepared for Delivery, June 22, 2023, <https://www.mass.gov/doc/pat-moore-municipal-tax-lien-foreclosure-testimony/download>.

<sup>8</sup> See Tyler, 598 U.S. at 639.

To comply with the Tyler decision and to avoid an unconstitutional taking, municipalities and third parties should ensure that any excess funds recovered or excess value kept from a tax lien foreclosure—beyond the tax liability and any associated costs, interest, and late fees—are provided to the original homeowner.

### **Assistance for Homeowners Facing Tax Lien Foreclosure**

Homeowners dealing with a tax lien foreclosure should speak with a lawyer about how the Tyler decision could affect them. If you need help finding an attorney, you may contact:

- [Massachusetts Bar Association Lawyer Referral Service](#)

(617) 654-0400 or (866) 627-7577 (toll-free)

For free legal representation for low-income individuals:

- Pioneer Public Interest Law Center  
185 Devonshire Street, Suite 1101  
Boston, MA 02110

[Frank.bailey@pioneerlegal.org](mailto:Frank.bailey@pioneerlegal.org)

(617) 877-9511

[www.pioneerlegal.org](http://www.pioneerlegal.org)

- Massachusetts Legal Resource Finder

[www.masslrf.org](http://www.masslrf.org)

For more information:

- The [Land Court Tax Lien Foreclosure Cases Resources | Mass.gov](#)  
[www.mass.gov/land-court-tax-lien-foreclosure-cases-resources](http://www.mass.gov/land-court-tax-lien-foreclosure-cases-resources)