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U.S. Supreme Court Decision Casts Doubt on Tax Foreclosure Sales in Massachusetts

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On May 25, 2023, the United States Supreme Court issued its decision in Tyler v. Hennepin County, Minnesota. The Court found that the County government violated the U.S. Constitution's Takings Clause by retaining the excess value of a home over and above the amount owed to the County for taxes, interest and costs following a tax foreclosure sale. This decision calls into question the "strict foreclosure" statutory schemes used in Massachusetts and 13 other states, whereby proceeds from the sale of property acquired by tax foreclosure in excess of the amount due for unpaid taxes may be retained by the taxing authority.

In Tyler, a tax foreclosure was conducted to recover approximately $15,000 in unpaid taxes, interest, and penalties on a one-bedroom condominium in Minneapolis. The County had seized the condominium and sold it for $40,000, extinguishing the $15,000 tax obligation. The County retained for its own use the remaining $25,000 excess value. Upon review, the Supreme Court held that the homeowner had a plausible case against the County for the "taking of property without just compensation," in violation of the Takings Clause in the Fifth Amendment to the U.S. Constitution. In what is a rare occurrence for this Supreme Court, the Court unanimously agreed that its precedents recognize a general principal that a taxpayer is "entitled to any surplus in excess of the debt owed."

This holding has significant potential consequences in Massachusetts, as the tax foreclosure statutory scheme, G.L. c. 60, et. seq., is similar to that addressed in Tyler. In describing the "strict foreclosure" standard, the Massachusetts Supreme Judicial Court has previously held that upon a tax foreclosure, the "taxpayer loses any equity [they have] accrued in the property, no matter how small the amount of taxes due or how large the amount of equity." Tallage Lincoln, Inc. v. Williams, 485 Mass. 449, 453 (2020). The Tyler decision, therefore, calls into question the constitutionality of the Massachusetts statutory scheme.

Moreover, although the Tyler court noted that a state providing a defined process through which an owner can reclaim surplus proceeds will not necessarily violate the Fifth Amendment, the Massachusetts statute does not contain any similar provision. See Nelson v. City of New York, 352 U.S. 103 (1956). The decision also raises a number of other concerns, including but not limited to whether municipalities are required to satisfy other liens that exist prior to remitting any surplus to the former owner; how to address so-called owners unknown parcels, parcels that were owned by dissolved corporations or persons now deceased; and how to handle foreclosed properties that are retained for municipal use.

Until the Massachusetts Legislature or courts provide further guidance on the topic, cities and towns must proceed with caution when conducting tax foreclosure sales to ensure compliance with all applicable statutory and constitutional requirements.

If you have any questions regarding the Tyler decision, pending tax title foreclosure sales, or legislative updates, please contact Managing Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com), or Attorney Thomas W. McEnaney (tmcenaney@k-plaw.com), Chair of our Tax Title Practice Group.