

Navigating the Uncertainty Over Tax Title Surplus Proceeds: DLS Offers Interim Guidance to Municipalities and Local Finance Officials

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As we previously announced in an [eUpdate dated June 12, 2023](#), the United States Supreme Court issued its decision in Tyler v. Hennepin County, Minnesota on May 25, 2023. The Supreme Court's 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 title foreclosure in excess of the amount due for unpaid taxes may be retained by the taxing authority.

Since that time, municipalities and local finance officials have been awaiting further guidance from Massachusetts courts and the Legislature on how to process tax title foreclosure cases considering the apparent conflict between the state tax foreclosure statute, G.L. c.60, et. seq., and the Supreme Court's Tyler decision. One such issue concerns the method and means by which a municipality may hold surplus proceeds following a tax title foreclosure sale.

In a Bulletin (BUL-2023-05) to local officials, the Division of Local Services indicated that it will not object to a community temporarily holding surplus funds generated from a tax title foreclosure in an "agency account" while further guidance is pending from the Massachusetts courts and the Legislature. In its bulletin, DLS notes that "there is no reservation of surplus proceeds from a sale of property as a tax possession after the community has acquired title through foreclosure. Not only is there no language in G.L. c.60, §77B or any other provision of c.60 requiring the reservation of surplus from a sale of tax possession property, but G.L. c.44, §53 establishes a default rule making municipal receipts a general fund revenue that may only be spent by appropriation and G.L. c.59, §23 provides that the balance of available funds certified by the director of accounts as of July first (free cash) is increased by the proceeds from the sale of tax possession property."

However, given the uncertainty as to how and whether these surplus proceeds will need to be returned in all cases to the former property owners, "DLS will not object to a community temporarily holding any such surplus proceeds in an agency account until there is a directive from the courts on this matter." As you are aware, an agency account is used to report resources in a purely custodial capacity by a governmental unit, and generally involves the receipt, investment and periodic transfer of money to fulfill legal obligations to individuals, private organizations or other governments.

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg (lgoldberg@k-plaw.com) or Thomas W. McEnaney (tmcenaney@k-plaw.com).

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