

## Massachusetts Superior Court Rules Tax Title Statute Unconstitutional May 15, 2024

On April 18, 2024, the Massachusetts Superior Court (Callan, J.) ruled in favor of the plaintiff in [Ashley M. Mills v. City of Springfield](#), Hampden Superior Court Docket No. 2379CV00545. The [Mills](#) court found that the Massachusetts tax title foreclosure statutory scheme, found in G.L. c.60, is unconstitutional as applied where a tax debt is less than the value of the property.

In [Mills](#), the homeowner was facing foreclosure on her home due to a \$22,000 tax debt. The home was valued by the City at \$145,000 for tax assessment purposes for FY2022 and likely had a fair market value higher than the assessed value. The Superior Court, in a case of first impression following the U.S. Supreme Court's decision in [Tyler v. Hennepin County, Minnesota](#), 598 U.S. 631 (2023), held that because G.L. c.60 does not include a procedure by which the owner can recover the value of property above the amount owed following a tax taking, a municipality's retention of an owner's surplus equity violates the takings clause of Article 10 of the Massachusetts Declaration of Rights and the Fifth Amendment to the United States Constitution.

The Superior Court found that the statutory scheme is not facially unconstitutional because there are circumstances where the tax debt exceeds or equals the value of a property. However, as G.L. c.60 provides no mechanism for an owner to recover their surplus equity, the Court found that the statutory scheme, in its present form, is "untenable and requires Legislative correction."

A number of bills to amend G.L. c.60 are pending before the General Court. However, until the Legislature takes action, cities and towns must proceed with caution when conducting tax foreclosure sales to ensure compliance with all applicable statutory and constitutional requirements. For that reason, in our opinion, tax title receipts in excess of debt owed should be separately accounted for.

If you have any questions regarding how this decision may impact your municipality's tax title holdings or procedures, please call 617-556-0007 or e-mail Attorney Thomas W. McEnaney ([TMcEnaney@k-plaw.com](mailto:TMcEnaney@k-plaw.com)) or Attorney Jonathan G. Murray ([JMurray@k-plaw.com](mailto:JMurray@k-plaw.com)).

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