VIOLATING THE SPIRIT OF AMERICA:

HOME EQUITY THEFT IN MASSACHUSETTS

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Executive Summary

WHEN LAWRENCE CALKINS went to the town clerk's office to pay his late tax bill, he didn't understand why the woman refused to take his money. She told him that some gentleman was interested in taking his house. Returning home defeated, Lawrence sat down at the kitchen table and relayed the story to his daughter Laura.

In the months following that confusing interaction, Lawrence found himself fighting two battles. One was to save the home at 8 Cherry Street in Ware, MA, where his parents had raised him and his siblings—and where he, Laura, and her children lived. The second was his struggle to stay alive despite his failing health.

As for the first battle, Lawrence was tangled up in the tax foreclosure system in Massachusetts. To collect the tax debt Lawrence had tried to pay, the tax foreclosure system eventually took his family home and all the equity invested in it, destroying his daughter's and grandchildren's security. Unlike most states, which return what isn't owed to them after a property tax debt is paid, the state's tax foreclosure system unjustly takes millions of dollars in home equity from Massachusetts homeowners every year—indifferent to the suffering it causes.

- Massachusetts homeowners subjected to tax foreclosure lose 87% of their home equity on average—nearly $260,000 per home.
- In our study of 31 Massachusetts localities, representing one-third of the state's population, the government foreclosed and sold 254 homes for tax debt from January 2014 through June 2020. Massachusetts law allowed the taking of an estimated $60 million in equity above what these homeowners owed in property tax debt.
- Another 154 homes were foreclosed for tax debts from January 2014 through December 2020 by a private investment company that purchased tax liens (the right to collect a tax debt) from the state. Massachusetts law allowed the taking of an estimated $37 million in equity above what these homeowners owed in property tax debt.

While government has the power to collect unpaid taxes from homeowners, no government has the right to take someone's home and its equity, beyond what is owed. Both the United States and Massachusetts Constitutions protect homeowners' rights to just compensation and freedom from excessive fines.

Despite constitutional protections, a dozen states still sanction this kind of home equity theft. Massachusetts homeowners desperately need reform of the unconstitutional tax foreclosure law. Massachusetts lawmakers can lead that reform by protecting the equity homeowners have in their homes, despite their tax delinquency, and by ensuring that tax-foreclosed homes are sold for fair market value.

This report explores how the Massachusetts tax foreclosure law operates; explains why it commonly results in unconstitutional home equity theft; and identifies the winners and losers in this unjust system. The study on which the report is based analyzed data from 31 Massachusetts localities during the period January 2014 to June 2020. Data analysis focuses on homes sold by Tallage, a prominent private investment group that purchases Massachusetts tax liens, during the period January 2014 to December 2020. Data are drawn from public records requests, online land records, and property records collected for commercial purposes by Estated, a company that organizes and sells property data. The report concludes by suggesting potential solutions to home equity theft and identifying those stakeholders who will play a key role in reversing this unjust practice.

The Calkinses Lose the American Dream

At 8 Cherry Street, in the small mill town of Ware, Massachusetts, sits a modest two-family home. The home had belonged to the Calkins family for over 70 years before Laura's father missed a tax payment of $2,004.02 in 2010, and the town allowed a private investor to take the home, sell it, and keep the profits.

Laura's grandparents Bernice and Albert grew up in Ware and married just days before the October 1929 stock market crash that marked the start of the Great Depression. Over the next decade, the town struggled as its mills threatened to close. Ware residents purchased the mills and narrowly averted disaster for the town. With the town and his job at the paper mill saved, Albert turned his attention to growing his young family. By 1940, Bernice and Albert had three children and had purchased the home and land at 8 Cherry Street, hoping to make a better life for their family.

Inside 8 Cherry Street were the memories of the Calkins family. At 8 Cherry Street, Bernice and Albert welcomed Laura's father, Lawrence, home after being detained as a prisoner of war in Vietnam. Laura learned about wrestling from her grandfather. And her grandmother told stories of her childhood in Poland, where she was born during a bloody uprising against the Russian Empire, and where Christmas gifts were limited to handmade dolls and meals weren't guaranteed. At 8 Cherry Street, they celebrated holidays and birthdays and Laura mourned the losses of her grandfather and grandmother.

Bernice gave the home to Lawrence, who planned to leave it to Laura after he passed away.

In 2010, after 70 years of the Calkins family faithfully paying property taxes on 8 Cherry Street, Lawrence missed a payment. Financial difficulties had forced him to make a tough choice: pay the municipal property tax bill, or replace his unreliable vehicle so he had reliable transportation to appointments for chronic obstructive pulmonary disease (COPD) treatment.

As Lawrence's health deteriorated, life at 8 Cherry Street also began to break down. To care for her father, Laura quit her job and moved herself and her two daughters into the home. In 2012, days before Christmas, Lawrence learned that a private company was going to take his home due to the unpaid tax bill. At the dinner table one night, Lawrence confessed to Laura, "They [town clerk's office] wouldn't take my money; some gentleman was interested in taking the property." Laura had never seen her father look so defeated.

While managing frequent hospital visits, Lawrence hired an attorney and tried to obtain a reverse mortgage. After Lawrence failed to get a reverse mortgage, the Massachusetts Land Court transferred the property in mid-November 2014. Lawrence and Laura had irrecoverably lost the home Bernice and Albert had worked so hard to give them. And to make matters worse, they also lost all the equity savings in their home. The tax foreclosure system allowed the private investor to take the home, and all of its value, to settle a $2,000 debt.

If the debt had been a mortgage rather than a tax bill, the bank would have sold the property at auction, satisfied the debt, and returned any surplus proceeds to the Calkins family. If 8 Cherry Street was located in Connecticut—or any of the 37 other states where this practice is illegal—the Calkins family could have claimed equity that remained after satisfying the tax debt. But because their home was in Massachusetts, the Calkinses lost more than their home. They lost the family savings invested in the property—a practice called home equity theft.

Home Equity Theft Violates Property Rights

IN MASSACHUSETTS, if a homeowner falls behind on or mistakenly underpays their property taxes and the debt remains unpaid, an investor can bid for the right to take the home. Municipalities (like Ware) can sell a tax lien on the home to an investor, who pays the tax and then has the right to collect the debt at a generous 16% annual interest rate.

If the homeowner cannot pay the debt plus interest and fees, the tax lien allows the investor to foreclose and take the entire property. It doesn't matter how much home equity the owner had, or how little tax they owed; the investor can take everything.

Alternatively, the municipality may hold on to the tax lien, sell the home itself, and keep all the equity as a windfall for the government. See **Appendix 2** for a detailed explanation of the Massachusetts home equity theft process.

An Unjust System

Across the country, property tax collectors can foreclose on homes to collect unpaid taxes if owners miss payments or even underestimate how much they owe on a late payment. However, most tax collectors merely seek to collect outstanding tax debts and secure tax revenue for their communities. In fact, the vast majority of states require the foreclosing parties to sell the property and return excess profits to the original homeowner. Only 12 states, including Massachusetts, allow local governments or private investors to take the *entire* value of a tax-foreclosed home when the property is worth more than the debt.[1]

Massachusetts has a big equity theft problem, and it extends beyond family homes to all types of property. Previous research shows that, on average, property equity in tax foreclosure cases exceeds tax debt by a ratio of 43 to 1.[2] In just one year, local governments and tax lien investors took approximately $56 million in equity from the Massachusetts owners of 2,260 properties.[3] The tax foreclosure system allows governments and lienholders to make huge profits at the expense of former owners.

Like similar tax foreclosure schemes in other states, the Massachusetts system likely hits vulnerable people the hardest.[4] Moreover, it is likely that few homeowners have a clear understanding that carrying a municipal tax debt means they can lose not only their homes, but also the equity they've built over years and, potentially, decades.

An Unconstitutional System

Beyond being patently unjust, home equity theft is unconstitutional under the United States and Massachusetts Constitutions.[5] Although the Supreme Court of the United States and the Massachusetts Supreme Judicial Court have not yet written directly on instances of home equity theft, the Takings Clauses of both constitutions prohibit the government from taking property for public use without just compensation.

Home equity—the financial interest a person has in their home after satisfying all debts—is as much a form of property as the structure itself. Equity represents how much money a person has invested in their property, and accounts for a vast majority of American homeowners' wealth.[6]

Because equity is property, it cannot be taken for public use without providing just compensation to the former owner. Massachusetts law has recognized that principle for over a century. Since as far back as 1879, the Massachusetts Supreme Judicial Court has held that, as a matter of common law principle, government may only take as much as it is owed in taxes and fees.[7] In fact, protection of home equity from unlawful government seizure dates back to early American law and even England's Magna Carta of 1215, the foundation of our modern system of individual rights.[8]

Ultimately, when the government takes more than it is owed, it also takes on an obligation. It must pay the former owner for the excess property value it took or it must sell the property to the highest bidder and return the extra funds to the former owner. Failure to abide by this traditional protection violates the federal and Massachusetts Takings Clauses.

Municipalities might try to claim that taking the excess equity is, in effect, a fine levied on the homeowner for failure to pay taxes, rather than a taking of property. But the U.S. and Massachusetts Constitutions also prohibit government from imposing excessive fines. A penalty many times larger than the original tax debt—for the noncriminal act of failing to keep up with property taxes—is also unconstitutional.

Of course, tax collection is considered an important municipal function in Massachusetts. But cities cannot go beyond the confines of the federal and state constitutions by taking equity in addition to what homeowners owe in taxes, interest, and fees. Because victims of the tax foreclosure process can seek compensation in court, cities that seize equity to satisfy smaller tax debts are playing with fire. One day, they will likely have to account for their unconstitutional actions and pay back the people whose equity they stole—a lesson Michigan counties are currently learning the hard way.[9]

On a Mission to End Home Equity Theft Nationwide

Unfortunately for the Calkinses, Pacific Legal Foundation did not learn about the injustice they had faced at the hands of their local government until 2020.

In 2015, PLF had just started to focus on home equity theft. The organization's commitment to fighting this injustice grew in 2017, when PLF stepped in to represent Uri Rafaeli in Michigan. Uri had mistakenly underpaid his 2011 property taxes by $8.41—less than the cost of a monthly Netflix subscription.

Instead of notifying Uri of the mistake, officials of Oakland County, Michigan, eventually foreclosed on the tiny tax debt and sold the property at auction for $24,500. Instead of returning the profits (the sale price minus the tax debt, penalties, and fees), the county kept all the proceeds and left Uri with nothing.

Uri sued the county in state court but lost. Struck by the injustice of the situation, PLF appealed Uri's case to the Michigan Supreme Court. In July 2020, the Michigan Supreme Court struck down the unconstitutional tax foreclosure system and required counties to compensate victims of home equity theft. That decision left many counties with significant legal liabilities, sending a clear warning to local governments not to steal home equity.[10]

Since bringing Uri's case to the Michigan Supreme Court, PLF has been on a mission to end home equity theft across the country.[11] PLF has filed numerous cases and amicus briefs and helped introduce legislation defending people's home equity.[12]

For example, with PLF's assistance, the Montana legislature passed a 2019 bill protecting homeowners from home equity theft.[13] In 2021, PLF successfully spearheaded a legislative campaign to end home equity theft in North Dakota.[14] PLF supports any legislation in Massachusetts that would end home equity theft.[15] PLF also wrote an amicus brief in the New Hampshire Supreme Court opposing a city's attempt to create a loophole in the state precedent that protects tax-delinquent owners' equity.[16]

In 2021, PLF argued in the U.S. Eighth Circuit Court of Appeals on behalf of its client Geraldine Tyler. PLF attorneys asked the court to strike down a Minnesota law that allows local governments to seize and sell property for unpaid tax debts. Geraldine, a 92-year-old resident of Minneapolis, had failed to pay $2,300 in property taxes on her property worth $93,000. Hennepin County officials seized the property and sold it for $40,000, taking the balance as profit.[17]

Crushing the Spirits of Commonwealth Families

IN JULY 2015, Lawrence was in the hospital and Laura was home alone when the sheriff came to evict the Calkins family from 8 Cherry Street. Laura managed to grab a backpack of essentials and their four dogs. Though she had received an eviction notice, she was unprepared and had nowhere to bring the rest of the family's belongings and heirlooms, which she was forced to leave behind.

For many families, especially those with modest means, their home is their biggest investment. And often, it is much more than that—it is part of the American dream. It connects families to their communities and is the tangible fruit of years of labor. A home provides economic security and stability against displacement.

Lawrence did not survive the loss. Just three months later, he succumbed to COPD and passed away.

Heartbroken, homeless, and at a loss for how to retrieve her family's possessions, Laura struggled to figure out what to do next. She would have inherited the home and continued raising her daughters there.[18] Instead, she was forced to find a new place for her family to live. Finding a way to cope with the trauma of losing her father and her family home would have to come later. She would never recover her family's belongings that were left behind.

Hundreds of Homes Taken

The Calkins family's tragedy is not an isolated occurrence. From January 2014 through June 2020, at least 254 tax-foreclosed homes were sold by localities that are home to a third of the state's population. Because this report focuses on the 31 localities from which we could collect public records, it does not estimate the total number of tax foreclosures occurring across the entire commonwealth.[19]

We also reviewed the activity of Tallage, a major private investment group operating in Massachusetts. In Massachusetts, localities can choose to sell tax liens to private investors, or they can keep them. Sales to private investors allow municipalities to quickly recover taxes due. Tallage operates through various LLCs in the Commonwealth.[20] In all, we identified 154 tax-foreclosed homes involving Tallage during the study period of January 2014 to December 2020.[21] (See **Appendix 1** for an explanation of the data.)

We focus specifically on homes that experienced a tax foreclosure sale during the research period. We do not count homes that were foreclosed, but not sold, before the end of the study period.

Most people don't intentionally fail to pay their property taxes. As with the Calkinses and many others, life happens. Homeowners get sick, experience personal financial crises, or miscalculate a late payment. Research demonstrates that the elderly, sick, and poor are especially at risk of losing their most valuable asset—their home—for unpaid property taxes.[22]

None of that matters under current Massachusetts law, and there is no provision for restoring surplus equity to a former homeowner. The tax foreclosure system is complex and most people, like Lawrence, aren't able to understand it—much less deal with it—on their own.

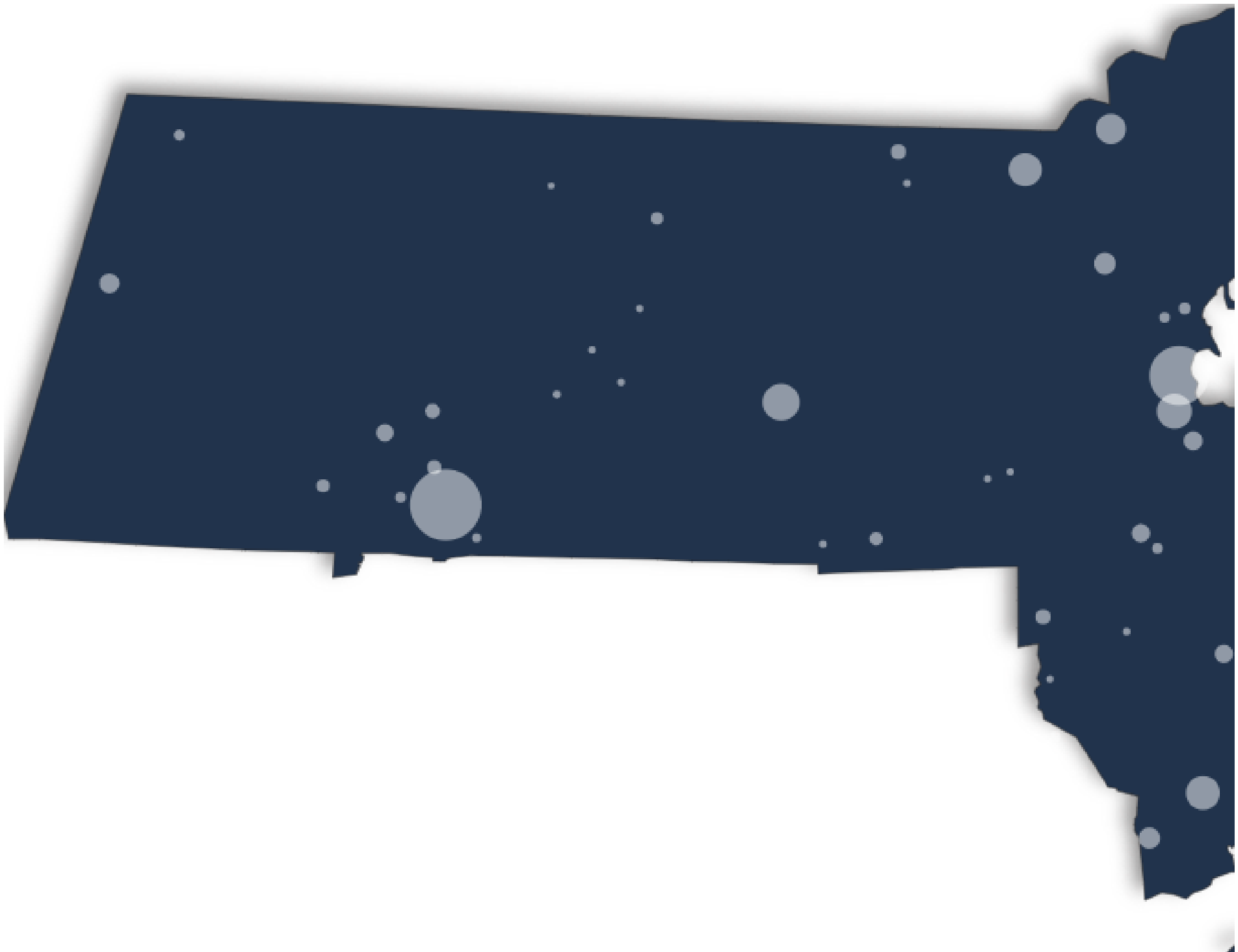
The good news is that PLF is working with Massachusetts families to fight back against predatory tax foreclosures.

Until recently, Mark and Neil Mucciaccio of Easton, Massachusetts, were at risk of losing their family home. A tragic combination of financial and medical hardships threw the family into disarray and caused them to lose track of their tax payments.

When the Mucciaccios missed paying their taxes in 2016, the town of Easton placed a lien on the property and began assessing 16% annual interest on the debt.

Several months later, the town sold its tax lien to Tallage for $4,355. Just one month later, Tallage started the foreclosure process and sent a notice to the Mucciaccios. The Mucciaccios do not recall receiving the notice, perhaps because it was written in legal jargon, warning merely that the company intended to "foreclose a tax lien acquired under a certain Instrument of Taking."

ALL KNOWN FORECLOSURES OF HOMES IN STUDY



Source: U.S. Census Bureau’s cartographic boundary shapefiles, 2016 edition

A Flourish map

Millions in Savings Lost

In 2019, Tallage foreclosed on the Mucciaccios' home in the Massachusetts Land Court, securing a transfer of title and absolute ownership of the property. With the Mucciaccios' debt at roughly $30,000 in taxes, interest, and costs, and the property worth $276,500, the Mucciaccios effectively lost not just their home, but more than $245,000 in savings.

The Mucciaccios were left with nothing.

A loss of this magnitude is not uncommon in Massachusetts under its tax foreclosure law. In the 31 localities we studied, homeowners lost a collective value of $60 million from January 2014 through June 2020, when the government foreclosed and sold their homes.[23]

In addition, homeowners whose properties were foreclosed and sold by Tallage between January 2014 and December 2020 collectively lost $37 million in equity—above their total estimated debt based on what Tallage paid to their localities (less than $4 million) and the 16% interest on the liens that private investors are allowed to charge.[24]

The average homeowners lost 87% of their equity—roughly $260,000 per home.[25]

$36,000
Average Tax Debt Owed

$260,000
Average Amount of Equity Lost

Homeowners in Massachusetts lost on average 87% of their home's value when their home was tax-forfeited

Thankfully, after PLF got involved with a lawsuit in state court, the Mucciaccios were able to reach an agreement with Tallage and save their home and equity. But that agreement does not protect anyone else in Massachusetts from its home equity theft law, and families are still losing their homes and their equity.

Massachusetts Institutions Grossly Profit

WHILE THESE FAMILIES have lost, governments and private investors have won big.

Above, we discussed the loss to families as the full estimated value of the property—how much they would have been likely to sell it for on the open market—minus how much they owed in taxes, interest, and costs.

Below, we discuss how much equity the sellers kept above what was owed. This value is often substantially less than market value. Municipalities are especially likely to sell tax-foreclosed properties far below market value, because governments are not in the real estate business and currently have few incentives to engage brokers for a competitive sale. Table 1 provides a summary of the homes taken and sold and the profits made in the 10 cities where we found the most tax foreclosure sales.

TABLE 1: MASSACHUSETTS GOVERNMENT AND TALLAGE EQUITY KEPT, SELECTED CITIES, 2014–2020

Sources: The data are drawn from public records requests, online land records, and Estated, a company that collects and sells property data.
Notes: Locality data go through June 2020 and Tallage data through December 2020. We did not request locality data for New Bedford and Quincy. For cities, *equity kept* is the value the home sold for over and above the estimated taxes, interest, and costs. In several cities, properties were sold for less than the total owed. For Tallage, *equity kept* is the value the home sold for over and above what Tallage paid localities for the right to foreclose the home. See **Appendix 1** for details.

Local Governments

While all localities have the same power under Massachusetts law to ensure tax debts are paid, they wield their power differently. Some do not sell tax liens and rarely foreclose, preferring to wait for homes with tax debts to be sold in a market transaction. These municipalities then collect the tax debt and interest owed from the sale proceeds, and the original owner (or the owner's heir) receives the balance of the home's equity. Other jurisdictions aggressively seize equity through tax foreclosure sales and/or sell tax liens to private investors like Tallage.

Five localities in our study—Boston, Holyoke, Lawrence, Springfield, and Wareham—directly sold 214 tax-foreclosed homes (see **Table 1**). Eleven of 31 localities did not sell any tax-foreclosed homes.[26]

Two localities that did not directly sell any tax-foreclosed homes sold tax liens to Tallage, which foreclosed on five Easton and three West Springfield homes. Lowell, Pittsfield, and Worcester sold a small number of homes and they also sold tax liens to Tallage, which foreclosed and sold several homes (see **Table 1**).

Tax foreclosures sell for a fraction of their market value. When government entities sell tax-foreclosed homes, they may have different motivations than realizing the highest sales price:

- Recouping unpaid taxes and costs, which makes them more likely to engage in a simple transfer of title or auction than to a competitive sale process;[27]
- Handing over the home for a nominal fee to a charitable or other entity that provides low-income housing; or
- Swiftly generating needed revenue by getting homes off their books and selling for what they can quickly get—often less than what is owed.

For comparison, in the 31 localities from January 2014 through June 2020, homes foreclosed by banks for unpaid mortgages sold for an average of 60% of the homes' estimated values.[28] Meanwhile, tax-foreclosed homes sold by localities sold for an average of 18% of estimated value. That's a significant difference in sales value that other states avoid (see **Fixing the Three-Legged Stool**). Despite the dismal sales prices, the 14 cities that took a profit kept $2.7 million more than what was owed in estimated taxes and interest.[29]

Private Investors

In 2010, Paul and Michele Meaney had a busy life with two children under age four. When Michele began to show symptoms of multiple sclerosis, life within their household became difficult and unpredictable. The children began waking up multiple times at night from nightmares about their mother dying. And Paul took on more responsibility to help his family stay afloat.[30]

Amid the intense stress of that year, the Meaneys forgot to pay water and sewer bills on four rental properties they relied on for their livelihood and savings. The family began to stabilize by the end of 2012, but just as they came up for air, the Massachusetts home equity theft system threatened to drown them again.[31]

Using the tax foreclosure system, private investors purchased tax liens on the Meaneys' properties at public auctions. Three of the properties were purchased by Coco Bella, LLC, and one by Tallage. All four properties were foreclosed (though the Meaneys could seek permission from the land court to redeem the properties for one year after foreclosure). Coco Bella and Tallage each sold one property to a new owner.

The Meaneys recovered the two unsold properties after their attorney reached out to Coco Bella. Shortly thereafter, they also recovered the property Coco Bella had sold.

The Meaneys sued Tallage for the return of their fourth property. Losing the property would leave the family liable for a $150,000 mortgage without the corresponding property or the income it generated. After a three-day trial, a judge ruled in favor of the Meaneys, requiring Tallage to accept redemption on the property.[32]

Most property owners are able to redeem their property from tax lien holders after paying the tax owed, fees, and interest allowed under Massachusetts laws.[33] However, some still lose their homes. And, as a consequence of Massachusetts law, they lose all their home equity as well.

From January 2014 through December 2020, Tallage foreclosed on and sold 154 Massachusetts homes.[34] Tallage paid local governments nearly $4 million in past-due taxes and interest for those properties. Tallage kept $15 million in home equity above what it had paid for the properties and estimated interest.[35] (See **Appendix 1** for more information.)

Tallage kept $15 million in home equity above what it had paid for the properties and estimated interest.

On average, Tallage sold the tax-foreclosed homes it purchased for 46% of estimated market value. By comparison, bank-foreclosed homes in the same localities sold for 74% of normal market value in that same period. The 46% of market value explains the difference in the homeowners' losses ($37 million) and the $15 million in sales value that Tallage was able to keep.

Fixing the Three-Legged Stool: Balancing the Interests of Homeowners, Local Governments, and Private Investors

UNFORTUNATELY, PLF was too late to help Laura Calkins. The statute of limitations period for challenging the unconstitutional law has expired, leaving no judicial avenue for her to fight for her family home or the equity her family invested in it. But she is brave enough to share her story in the hope that it can help preserve other families' savings.

The injustice faced by the Mucciaccios, Meaneys, and Calkinses, and others like them, must end. It's time for Massachusetts to make a change. However, because home equity theft is lucrative for some Massachusetts localities and private investors, it will take more than Laura to stand up to the powers that benefit from it.

Homeowners, local governments, and private tax lien investors each support the Commonwealth's property tax system, which might be thought of as a three-legged stool. If any leg is treated unfairly, the stool cannot stand. To ensure a fair tax foreclosure system and maintain a balanced stool, the law must respect Massachusetts residents' property rights, ensure localities are able to collect property taxes for local services, and allow private investors to collect only taxes owed, with reasonable interest and fees—which are often higher than market interest rates in other industries.

Private tax lien investors help cities clean up their tax rolls, and there's no reason they can't play a vital role in a just system, as they do in non-confiscatory systems elsewhere. For example, land records demonstrate that Tallage comes to a community and purchases all tax liens—even less-valuable liens—at once. These purchases transform a town's tax delinquencies into instant revenue.

Approximately half the states sell tax liens to private investors, with several allowing investors to bid competitively on the right to buy property tax liens.[36] The bidder that offers the property owner the lowest interest rate on the tax debt is awarded the lien on that property.

In these states, unlike Massachusetts, the local government wins because it can collect taxes due without experiencing a cash flow disruption; *and* the property owner wins because the interest rate is bid down and the owner's remaining equity is protected; *and* investors win because they collect interest on the lien when it is paid by the owner or through a foreclosure sale.

Connecticut, Delaware, New Hampshire, and Vermont all protect delinquent owners' equity in their property. Each of those states requires property to be sold to the highest bidder and surplus profits to be returned to former owners.[37]

When laws protect homeowners, tax liens are less likely to result in tax foreclosure. Liens that are foreclosed in a just system are more likely to be sold to owner-occupants, neighbors, or developers who will reuse the property and keep current on future taxes. Both outcomes result in fewer future delinquencies and support the value of neighboring homes, which, in turn, secures future tax revenues.[38]

When laws protect homeowners, sale proceeds first pay back taxes and reasonable interest and fees owed to the government or to tax lien investors. Interest rates on delinquent tax debts are lower than those in states with fixed statutory rates (like Massachusetts), often between 5% and 8%, owing to the competitive bidding process for initial tax liens described above. This safeguard also eliminates any serious risk of political favoritism or corruption.[39] The remaining home sale proceeds are refunded to the former owners. And unlike in Massachusetts, demographically comparable states have thousands of investors participating in the system.[40]

But in Massachusetts, investors collect 16% annual interest on all tax debt, even if the property is redeemed by the original owner, and investors often pocket a windfall on properties when they seize the homeowner's remaining equity—even if the windfall violates citizens' property rights. Respect for taxpayer property rights is a critical element of any tax collection system. Because the state's tax foreclosure system violates the rights of indebted owners, its two-legged stool cannot stand.

There are several ways to stabilize the stool, including legislative reform, local administrative change, and court rulings.

Legislative Reform

In March 2021, representatives in the Massachusetts legislature introduced a bill that would protect home equity in the tax foreclosure process and improve notice provisions for families facing foreclosure.

If passed, House Bill 3053 would require tax lien holders to provide clear notice to homeowners when their property is in danger of foreclosure. Instead of legal jargon, the required notice would state in bold letters that homeowners are in danger of losing their homes if they fail to pay tax debts before foreclosure.

In addition to requiring clear notice, the legislation would require lienholders to auction foreclosed property to the highest bidder, dispersing proceeds in a manner consistent with traditional mortgage foreclosures: applied first to the tax debt and other liens on the property, with all remaining proceeds returned to the original homeowner.

If the bill becomes law, the state's tax foreclosure system will no longer violate the United States and Massachusetts Constitutions.

But even if the legislation is enacted, there is more room for reform. Ultimately, taking someone's home should be the last resort for collecting on a debt. Rather, lienholders should be able to collect enough rents from the property to satisfy the debt without taking more than what is owed. Further, the law should require notice of foreclosure judgment to be sent to tax-indebted homeowners so they can take steps to preserve their right to their property's equity.[41] Finally, Massachusetts should consider implementing the interest "bid-down" system described above to protect homeowners and foster a competitive market for tax lien sales.

Local Administrative Changes

Our study examined only a fraction of the 351 municipalities that have the power to take home equity or sell that right to a private investor.[42] Each town or city has some control over the process, and none needs to exercise it in an unconstitutional manner.

For example, municipalities should add language to tax bills and notices explicitly stating that potential risks of continued tax delinquency include loss of property and the equity in it, along with high interest on the taxes due.[43] In addition to providing better and more frequent notice, localities should do the following:

1. Avoid selling liens to aggressive private investors who won't agree to return homeowners' equity;

2. Wait for a market sale to enforce the tax lien; or

3. Wait until the taxes total a substantial figure or a high percentage of the property's value before selling the property.

Court Rulings

In the meantime, PLF will continue to fight for homeowners in the courts, as we have done in the following cases nationwide:

- ***Tyler v. Hennepin County*** (MN)
- ***Mucciaccio v. Town of Easton and Tallage Lincoln, LLC*** (MA)
- ***Feltner v. Cuyahoga County Board of Revision*** (OH)
- ***Barnette v. HBI, LLC*** (NE)
- ***Perez v. Wayne County*** (MI)
- ***Rafaeli, LLC v. Oakland County*** *(MI)*
- ***Wayside Church v. Van Buren County*** (MI)

CONCLUSION

Courage Is the American Spirit

IT TAKES COURAGE for families like the Mucciaccios and Calkinses to fight injustice in the courts or to share their stories. And when constituents muster the bravery to speak out against an unjust and unconstitutional practice like home equity theft, governments have a responsibility to listen and act.

While government has the power to collect unpaid taxes from delinquent homeowners, no government should have the power to take someone's home and keep all the savings the homeowner invested in it. In the localities we studied, homeowners lost 87% of their home equity, on average—nearly $260,000 per home.

With more than 400 homes tax foreclosed and sold in a seven-year period, home equity theft is a glaring constitutional problem in Massachusetts; it is time for courts or lawmakers to end this practice. Massachusetts should follow the direction of the 38 states who do not sanction home equity theft, including North Dakota, Montana, and Michigan, which have recently outlawed the practice.

Government should protect private property, not enable state-authorized theft. When governments (or their agents) take property, sell it, and keep all the proceeds—beyond what is owed on a debt tied to that property—they steal money from some of the Commonwealth's most vulnerable residents.

Home equity is property. Taking it without compensation is theft; it is morally indefensible and unconstitutional. It's time for Massachusetts to ensure that current and future homeowners, unlike the Calkinses, will be able to rebound from setbacks and mistakes by salvaging their life savings through a fair and reasonable tax foreclosure process.

APPENDIX 1

Data Analysis Explanation

To examine the size and scope of home equity theft in the Commonwealth of Massachusetts, we studied practices in 31 cities and towns. These include the state's five largest cities: Boston, Cambridge, Lowell, Springfield, and Worcester. We selected the other 26 cities either because they had several cases before the land court at the time of selection or because they had many redemption deeds in the Estated property data set. These 31 localities cover one-third of the state's population.[44]

While this is a large sample of localities, it is not possible to establish statewide averages from it. Practices in the remaining jurisdictions could be similar, more abusive, or more reasonable. Despite these limitations, a complete review of every tax foreclosure in the Commonwealth is not necessary to demonstrate that substantial home equity theft is occurring each year.

DATA SOURCES

1. We used public records of tax foreclosure sales received directly from 28 Massachusetts localities: Attleboro, Brookline, Cambridge, Chelmsford, Chicopee, Concord, Easton, Fall River, Granville, Lawrence, Lowell, Marshfield, Mashpee, Medford, Methuen, Middleborough, Natick, Pittsfield, Plymouth, Rehoboth, Revere, South Hadley, Springfield, Taunton, Wareham, West Springfield, Woburn, and Worcester.

We requested "the following information for all properties that have experienced a tax lien foreclosure (pursuant to Massachusetts General Laws, ch. 60 §§ 53–69) between January 2014 and today":

- List of tax foreclosure sales with parcel numbers.
- List of tax deed sales (for the tax-foreclosed properties) with parcel numbers, unpaid taxes and other fees, and sale prices.

Requests were sent between May 2020 and January 2021.

2. We obtained data from online land records (**https://www.masslandrecords.com/**) for localities that failed to provide any records (Boston, Everett, and Holyoke) or that had relevant information missing from public records (Attleboro, Chicopee, Easton, Lawrence, Lowell, Marshfield, Mashpee, Middleborough, Pittsfield, Plymouth, Rehoboth, Wareham, and Worcester).
3. We used deed transactions collected by a property data company, Estated, to identify sales prices when they were missing from the public records, to identify all Tallage sales and sales prices, and to identify potential foreclosures in Boston, Everett, and Holyoke.[45]

4. We used Estated's estimated home valuations to calculate homeowners' lost equity.[46]

DATA NOTES

The data obtained from public records differed by locality: tax foreclosures, tax foreclosure sales, auctioned properties, and confirmation that a locality had not sold anything during the request period. In addition, localities supplied different figures for the taxes owed. These included, but were not limited to, the total owed at the time of foreclosure (including all taxes and costs), taxes and interest at foreclosure, taxes due at foreclosure, and taxes due at the time of lien.

Our analysis focused specifically on homes that experienced a tax foreclosure sale during the January 1, 2014, to June 30, 2020, study period. This means we did not count homes that were foreclosed but not sold before the end of the study period. We didn't count non-home properties: commercial, industrial, vacant, or other types of real estate.

Some homes were sold together in one transaction, which we determined from either public records we received or from the land records website. If homes were sold together, we divided the sale price by the number of homes in the deed to roughly apportion the total into individual sales prices. This procedure eliminated double counting of sales prices without affecting average calculations.

We primarily used data in the municipal records sent to us; when municipal records data were missing or incomplete, we used land records data.

LOCALITY ESTIMATES

Unfortunately, land records for locality foreclosures include only the amount due at the time the tax lien was put on the property. This sum significantly undercounts how much would have become due by the time of foreclosure. To estimate how much would have been due at the time of foreclosure, we used the formula , where X is the estimated taxes owed, T_a is the taking amount, T_y is the years of unpaid taxes at taking, F_y is the years of unpaid taxes at foreclosure, and θ is a multiplier (to account for interest, fees, increases in taxes, etc.).

To calculate the multiplier, we relied on a few cases where we collected the takings information from the land records, but the locality had also given us the total owed. Our multiplier came out to around 2.75.

TALLAGE ESTIMATES

Tallage estimates include all Tallage entities of which we were aware: Tallage Lincoln, LLC; Tallage Adams, LLC; Tallage Davis, LLC; and Tallage Brooks, LLC. We obtained the list of homes Tallage entities sold and the corresponding sales prices from Estated. We obtained data on the taxes, interest, and fees Tallage entities paid to take ownership of those properties from land records. Our Tallage estimates do not include any other costs Tallage entities incurred that were not paid to the locality, including attorney fees, property listing fees, etc. These other costs are not part of the public record.

Unlike the data available for locality-sold homes, we were able to obtain better data on how much Tallage paid the locality before obtaining a deed for each property. We relied on the following sources:

- The instrument of assignment,
- Subsequent certificates of tax payments,
- Municipal lien certificates, and
- Land court records of the tax foreclosure judgment date.

To determine how much Tallage paid for the tax liens to the point of foreclosure, we added the taxes, interest, or other fees from each of the government documents through the fiscal year of the foreclosure date. Because foreclosure dates are rarely the last day of the fiscal year, we opted to overestimate how much Tallage entities paid by including the whole fiscal year rather than prorating up to the foreclosure date. To account for the amount Tallage could charge the owner for redemption, we also added the 16% annual interest that private investors are allowed to charge. This was calculated beginning on the date the lien was acquired to the point of foreclosure for the instrument of assignment and certificates of tax payment values. This addition of interest is an estimate of the amount Tallage would keep in a system that returns equity to homeowners.

METHODOLOGY

We examined the number of homes taken for tax debts and sold by 31 localities and Tallage, breaking down sales between government actors and Tallage. We then looked at how much equity homeowners lost (homeowner estimated equity lost), how much governments kept (homeowner estimated equity kept) above what was owed, and how much Tallage secured (homeowner estimated equity kept) above what it paid and the 16% annual interest it was allowed to charge.

HOMEOWNER ESTIMATED EQUITY LOST

To calculate homeowner's lost equity for government sales, we used the estimated value of the home (using Estated property data valuations) and subtracted total taxes and fees due on the home (using public records, or estimating from taxes owed at time of taking, as listed in land records). Of the 254 homes foreclosed and sold during the study period, we obtained complete records for 223.

To calculate homeowner's lost equity for Tallage sales, we used the estimated value of the home (using Estated property data valuations), subtracted the total Tallage paid (mined from land records), and subtracted the estimated interest it was allowed to charge.

HOMEOWNER ESTIMATED EQUITY KEPT BY LOCAL GOVERNMENTS AND TALLAGE

To calculate the estimated homeowner equity kept by local government entities, we identified the price for which the government sold the home (using public records, Estated deed transactions, or mined from land records) and subtracted total taxes, interest, and fees due on the home (using public records or calculating from taxes owed at time of taking, as listed in land records). To the extent additional costs are not in the public records, they are under accounted for in this estimate. Of the 254 homes foreclosed and sold during the study period, we have complete records for 223.

The estimated homeowner equity kept by Tallage is how much Tallage sold the property for (from Estated data) minus the sum of the amount the company paid for the home (from land records) and the 16% annual interest they could constitutionally collect (estimated using land records).

Note: Feel free to contact any of the authors for access to our data.

APPENDIX 2

The Massachusetts Home Equity Theft Process

The tax foreclosure process in Massachusetts is complex and involves multiple steps. This section explains each step.

1. When a locality assesses a tax, it is instantly and automatically secured through a lien on the taxed property.[47]

2. If the property owner fails to pay the tax on time, the municipality's tax collector will make a demand for payment of the debt.[48]

3. If, after 14 days, the debt is not paid, the tax collector may "take such land for the town" after providing formal notice to the taxpayer. The tax title immediately transfers nearly all rights of ownership from the taxpayer to the town. The former owner is left with only a right of redemption,[49] meaning that by paying the taxes owed plus interest and fees, they can reclaim their title.

4. The tax debt begins accruing 16% annual interest when the municipality secures tax title to the property.

5. The municipality may either hold the tax title or sell the tax title to a private investor, who would have an identical right to collect on the tax debt at 16% annual interest.

6. Six months after the acquisition of tax title, the municipality or other lienholder may file a petition in the Land Court to foreclose on the landowner's right to redeem the property.[50]

7. When a foreclosure petition is filed with the Land Court, the court will perform a title examination and give interested parties (homeowners and other people with an ownership interest in the property) notice of the petition.

8. A Land Court foreclosure judgment grants "absolute title" to the municipality or other lienholder and bars further attempts to redeem the property.[51] Under current practices, the municipality or other holder of the tax title may keep the *entire* value of the property once the right to redeem is foreclosed—even if the property's value greatly exceeds the encumbering tax debt. The absolute title may lawfully be transferred, but we submit that the provision of Massachusetts law that supports

complete equity theft is unconstitutional under both the commonwealth and federal constitutions and, thus, is void.

9. Though described as absolute title, the foreclosure judgment may still be vacated, upon petition, within one year of the date of the foreclosure judgment. Such a petition is granted only in extraordinary circumstances and in the interest of justice and fairness.[52]

Notes

[1] The tax foreclosure process varies widely between states. We identified at least 12 home equity-theft states that have no process or allowance for returning surplus: Alabama, Arizona, Colorado, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, and Wisconsin. Additional states either lack uniform practices for returning surplus home equity or make it exceedingly difficult to secure it. For example, several states have improper loopholes that allow for the taking of surplus in some circumstances. Ohio law allows the state to take so-called "abandoned property" without just compensation. California allows home equity theft if the tax lien purchaser is the government or a nonprofit that plans to use the property for low-income housing development. Ohio Rev. Code § 323.78(B); CA Rev. & Tax Code § 3791.

[2] Ralph D. Clifford, "**Massachusetts Has a Problem: The Unconstitutionality of the Tax Deed**," *University of Massachusetts Law Review* 13, no. 2 (2018): 274–305.

[3] Ralph D. Clifford, "**Massachusetts Has a Problem: The Unconstitutionality of the Tax Deed**," *University of Massachusetts Law Review* 13, no. 2 (2018): 274–305.

[4]John Rao, ***The Other Foreclosure Crisis: Property Tax Lien Sales*** (Boston: National Consumer Law Center, July 2012).

[5] U.S. Const. amend. V (just compensation clause); U.S. Const. amend. VIII (excessive fines clause); Mass. Const. pt. I, art. X.

[6] Odeta Kushi, "**Homeownership Remains Strongly Linked to Wealth-Building,**" *First American*, November, 5, 2020.

[7] *Cone v. Forest*, 126 Mass. 97 (1879).

[8] For example, the 26th Clause of Magna Carta provided that the king could take only so much personal property as required to pay the debt of a deceased Crown tenant. Prior to Magna Carta, when someone died owing any form of taxation to the king, the king's officials "were in the habit of seizing everything they could find on his manors, under excuse of securing the interests of their royal master. They attached and sold chattels out of all proportion to the sum actually due. A surplus would often remain in the sheriff's hands, which he refused to disgorge. Magna Carta sought to make such irregularities impossible." William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John*, 2nd ed. (Glasgow; Maclehose, 1914), 322–23; Vincent R. Johnson, "The Ancient Magna Carta and the Modern Rule of Law: 1215 to 2015," 47 *St. Mary's Law Journal*, (2015) 1, 8.

[9] Oakland County alone estimates that it is liable for $34 million in repayments. Beth LeBlanc, "**High Court: Michigan Counties Cannot Make Profit on Tax-Foreclosed Homes**," *Detroit News*, July 17, 2020.

[10] Oakland County alone estimates that it is liable for $34 million in repayments. Beth LeBlanc, "**High Court: Michigan Counties Cannot Make Profit on Tax-Foreclosed Homes**," *Detroit News*, July 17, 2020.

[11] Pacific Legal Foundation, "**Ending Home Equity Theft**."

[12] *Rafaeli, LLC v. Oakland Cty.*, 952 N.W.2d 434, 470 (Mich. 2020).

[13] **S.B. 253**, 66th Legislature (MT 2019).

[14] N.D. Century Code **57-28-01**, et seq.

[15] *See, e.g.* **H.B. 3053**, 192nd General Court (MA 2021) (one bill currently pending before the Legislature that would end home equity theft).

[16] Brief for Pacific Legal Foundation as Amicus Curiae, *Polonsky v. Town of Bedford*, 173 N.H. 226 (2020).

[17] Carol Park and David J. Deerson, ***Looking Up: Ending Home Equity Theft in the North Star State*** (Sacramento: Pacific Legal Foundation, August 2021); *Tyler v. Hennepin County*, 505 F.Supp.3d 879, 884–85 (D. Minn. 2020).

[18] The U.S. Supreme Court has recognized the importance of the right to pass valuable property to heirs. *Hodel v. Irving*, 481 U.S. 704 (1987).

[19] Nor does this report provide a statistical comparison to other states with similar tax foreclosure systems. Government entities could be foreclosing on 100 or more homes per year among the approximately 2,260 properties foreclosed every year (including commercial, industrial, and vacant properties) that previous research has found. See Ralph D. Clifford, "**Massachusetts Has a Problem: The Unconstitutionality of the Tax Deed**," *University of Massachusetts Law Review* 13, no. 2 (2018): 274–305.

[20] This study's use of *Tallage* may refer to individual Tallage LLCs involved in a specified transaction or the collective group's transactions, depending on the context. **Tallage LLCs** include Tallage Lincoln, Tallage Adams, Tallage Davis, and Tallage Brooks. Though there is no parent company, each of these LLCs has (or had when operating) two officers—William P. Cowin and Daniel C. Hill.

[21] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated.

[22] Bernadette Atuahene and Christopher Berry, "**Taxed Out: Illegal Property Tax Assessments and the Epidemic of Tax Foreclosures in Detroit,**" *UC Irvine Law Review* 9, no. 4 (2019): 847–86; Bill Hogan, "**Predators Target Homes of Older Americans**," *AARP Bulletin* (April 2014); Andrew W. Kahrl, "**Capitalizing on the Urban Fiscal Crisis: Predatory Tax Buyers in 1970s Chicago**," *Journal of Urban History* 44, no. 3 (2018): 382–401; Andrew W. Kahrl, "**Investing in Distress: Tax Delinquency and Predatory Tax Buying in Urban America**," *Critical Sociology* 43, no. 2 (2017): 199–219. John Rao, ***The Other Foreclosure Crisis: Property Tax Lien Sales*** (Boston: National Consumer Law Center, July 2012).

[23] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated. Lost value could be estimated for 223 of the 256 homes taken.

[24] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated. Lost value could be estimated for 152 of the 163 homes taken.

[25] A median value of 91% of equity and $224,000 per home.

[26] The 11 localities that did not sell any tax-foreclosed homes are Brookline, Cambridge, Chelmsford, Concord, Easton, Fall River, Granville, Medford, Methuen, Natick, and West Springfield.

[27] Government entities typically do not have the resources to put tax-foreclosed properties on the real estate market for a competitive sale process, at least not without contracting out the process to other professionals.

[28] This value is typical of bank foreclosures. ATTOM data, "**Foreclosure Sale Discounts Rising Across U.S.**" (December 3, 2020).

[29] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated. Value kept could be estimated for 229 of the 254 homes taken.

[30] ***Tallage LLC v. Meaney***, 23 LCR 375, 375-76 (Mass. Land Ct. 2015).

[31] ***Tallage LLC v. Meaney***, 23 LCR 375, 375-76 (Mass. Land Ct. 2015).

[32] ***Tallage LLC v. Meaney***, 23 LCR 375, 375-76 (Mass. Land Ct. 2015); Christopher Burrell, "**Tax Lien Law Haunts Massachusetts Property Owners (Pt. 1)**," *GBH News,* January 22, 2018.

[33] Even after a foreclosure judgment, more homes appear to be returned than sold. From December 2018 through December 2020, 82 redemption deeds were issued, while 59 homes were sold.

[34] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated.

[35] This value is determined by the price Tallage sold the home for minus all the known payments it made to localities for unpaid taxes, fines, fees, utility bills, and the like.

[36] John Rao, ***The Other Foreclosure Crisis: Property Tax Lien Sales*** (Boston: National Consumer Law Center, July 2012).

[37] *See* Conn. Gen. Stat. Ann. § 12-157(i); Del. Code Ann. tit. 9, § 8779; *Thomas Tool Services, Inc. v. Town of Croydon*, 145 N.H. 218, 220 (2000); *Bogie v. Town of Barnet*, 129 Vt. 46, 55. (1970). In addition, Rhode Island effectively operates in the same way (see R.I. Gen. Laws Ann. § 44-9-37), but through auctioning the smallest undivided part of the land, if possible. R.I. Gen. Laws Ann. § 44-9-8.

[38] Margaret Dewar, ***The Effects on Cities of "Best Practice" in Tax Foreclosure: Evidence from Detroit and Flint*** (Ann Arbor, MI: CLOSUP Working Paper Series, No. 2, 2009); Charles D. Rittenhouse, "**The True Costs of Not Paying Your Property Taxes in Ohio**," *University of Dayton Law Review* 36 (2010): 221; William Weber, "**Tax Foreclosure: A Drag on Community Vitality or a Tool for Economic Growth?**" *University of Cincinnati Law Review* 81 (2012): 1615; Stephan Whitaker and Thomas James Fitzpatrick, "**The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes**" (Federal Reserve Bank of Cleveland Working Papers [Old Series] 1123, 2011).

[39] Tax Collector, Palm Beach County, Florida, "**Official Tax Certificate Auction Site**."

[40] Larry Barszewski, "**County Tax Auctions Put Small Investors at Disadvantage**," *Sun Sentinel*, May 19, 2017. Florida includes other safeguards in its property tax system that provide a model for other states to follow, including provisions analogous to home mortgage foreclosure rules to

ensure that any forced sale is close to market value. For example, the state authorizes counties to sell their tax-delinquent properties to the highest bidder via online auction.

[41] Because current law does not require a lienholder to notify the former owner of a foreclosure judgment, homeowners often find out that their home was foreclosed more than a year after foreclosure—once the period for appeal expires.

[42] Mass.gov, "**Reports Relating to Property Tax Data and Statistics**."

[43] Jennifer C.H. Francis, "**Redeeming What Is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales**," *Civil Rights Law Journal* 21, no. 1 (2014): 85–121.

[44] United States Census Bureau, ***Population***, *Population Change, and Estimated Components of Population Change: April 1, 2010 to July 1, 2019 (CO-EST2019-alldata)*, distributed by United States Census Bureau.

[45] **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated.

[46] "The valuation data comes from our proprietary AVM using advanced machine-learning algorithms. The property value comes from a number of weighted factors based on the property characteristics, market data, and other calculations." **Estated**, *Bulk Data, Massachusetts (1.99M properties)* (May 2021), sold by Estated.

[47] G.L. c. 60, § 37.

[48] G.L. c. 60, § 53.

[49] G.L. c. 60, § 53.

[50] G.L. c. 60, § 65.

[51] G.L. c. 60, § 64; G.L. c. 60, § 69.

[52] *Lynch v. City of Boston*, 48 N.E.2d 26, 27 (Mass. 1943).

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Acknowledgements

The authors acknowledge the help of George Sarno, Kate Cvancara, Alex Tatem, Carol Park, Allan Cogan, and Duncan Schroeder, including their many hours of assisting with data collection. Jaclyn Boudreau was primarily responsible for the report's design, and Christina Martin and Todd Gaziano provided valuable editorial assistance. We also thank our peer reviewers, including Ethan Yang.