



In the Board Room: *Tyler v. Hennepin County*
What Does It Mean for Counties?

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Property Tax Collection In Wisconsin

- When a property owner fails to pay property taxes when due, the county treasurer issues a tax certificate to the county. Wis. Stat. § 74.57(1).
- The tax certificate creates a lien on the land and, with some exceptions, initiates a redemption period of at least two years during which the property may be redeemed by payment of the accrued taxes, penalties, and interest. Wis. Stat. §§ 74.57(2); 75.01; 75.521(1)(b); 75.521(5).



Property Tax Collection In Wisconsin (cont'd)

- Generally, if a property remains unredeemed two years after issuance of a tax certificate, a county has three options.
- The County may take a tax deed under Wis. Stat. 75.14.
- The County may commence an action to foreclose on the tax certificate under Wis. Stat. 75.19.
- The County may commence an action to foreclose the tax lien represented by the certificate under Wis. Stat. 75.521.



The Surplus Equity Issue In Wisconsin Law

- What happens when the value of the taxpayer's property exceeds the amount of tax, interest, and penalties due?
- Wisconsin courts have rejected the idea that there is a common law right for the property owner to recover the surplus proceeds from the subsequent sale of a tax-foreclosed property.



The Surplus Equity Issue In Wisconsin Law (cont'd)

- *Oosterwyk v. Milwaukee Cty.*, 31 Wis. 2d 513, 517-18, 143 N.W.2d 497 (1966)
- Rejected an unjust enrichment claim by a former owner.
- Stated that “[i]n our opinion, a former owner ... is not entitled to any surplus unless the legislature chooses to provide therefor” and “[w]e perceive no basis in equity to hold that if the property is subsequently sold at a profit it is the former owner who is entitled to enjoy such excess.”



The Surplus Equity Issue In Wisconsin Law (cont'd)

- Wisconsin courts have also rejected the idea that a violation of the Constitution's Takings Clause occurs when surplus equity is not returned to property owner.
- *Ritter v. Ross*, 207 Wis. 2d 476, 486, 558 N.W.2d 909 (Ct. App. 1996) (rejecting claim under Takings Clause and stating "when a state's constitution and tax codes are silent as to the distribution of excess proceeds received in a tax sale, the municipality may constitutionally retain them as long as notice of the action meets due process requirements")



The Surplus Equity Issue In Wisconsin Law (cont'd)

- Instead, over the years the Wisconsin Legislature has addressed this issue in various ways via statute.
- Beginning in 1987, homestead property owners had a statutory right to any surplus proceeds remaining after the sale of tax-forfeited property.
 - Statutory right did not attach to owners of non-homestead property.
- The former property owner forfeited this right if the former property owner did not make a written request for payment within 60 days of receiving notice of the former owner's potential entitlement to surplus proceeds.



The Surplus Equity Issue In Wisconsin Law (cont'd)

- 2021 Wisconsin Act 216 makes significant changes to the law.
- Counties must notify the former property owner that the former owner may be entitled to a share of the proceeds of a future sale.
- Counties are required to send any surplus proceeds (net of payments on liens?) from a tax-foreclosure sale to the former property owner (both homestead and non-homestead properties).
- Only if the county is unable to locate the former owner within 5 years following the mailing of the required notice does the former owner forfeit the right to any remaining equity in the property.



Tyler v. Hennepin Co., Minn.: The U.S. Supreme Court Weighs In

- Geraldine Tyler accumulated about \$15,000 in unpaid property taxes, penalties, and interest on her condominium. The county took ownership of the property for the unpaid tax liability and subsequently sold the property for \$40,000, retaining the \$25,000 in surplus proceeds.
- Ms. Tyler sued, claiming that the county's retention of the surplus proceeds was a taking of Ms. Tyler's property without just compensation, in violation of the Takings Clause.



Tyler v. Hennepin Co., Minn.: The U.S. Supreme Court Weighs In (cont'd)

- The Court acknowledged the power of the government to seize and sell real property to recover unpaid taxes.
- Nevertheless, the Court unanimously concluded that when there was money remaining after a home was sold by the government to satisfy past due taxes, the remaining value was property of the property owner protected from uncompensated appropriation by the government.



Tyler v. Hennepin Co., Minn.: The U.S. Supreme Court Weighs In (cont'd)

- “The County had the power to sell Tyler’s home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a ‘classic taking in which the government directly appropriates private property for its own use.’ Tyler has stated a claim under the Takings Clause and is entitled to just compensation.”
- “A taxpayer who loses her \$40,000 house to the State to fulfill a \$15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar’s, but no more.”



Implications for Wisconsin

- Under Wisconsin law, a former owner loses any right to surplus proceeds if the former owner cannot be located within 5 years—constitutionally appropriate?
- Valuation of properties: is the former property owner entitled to surplus proceeds leftover from sale (regardless of when the sale occurs) or entitled to the difference between the value of the property and the tax debt at the time of transfer of title? If the latter, how do you determine value?



Implications for Wisconsin (cont'd)

- Wisconsin law currently only provides a right to surplus proceeds if a county subsequently sells the tax-foreclosed property, but counties are not required to sell the properties.
- Under the Tyler decision, a county that retains ownership of a tax-foreclosed property would seemingly need to compensate the former owner for any excess value in the property beyond the unpaid tax liability.
- Potential legal claims for surplus proceeds retained prior to Act 216.



2021 Wisconsin Act 216

SECTION 1. 75.36 (2m) (intro.) and (b) of the statutes are consolidated, renumbered 75.36 (2m) and amended to read:

75.36 (2m) NOTICE; PROCEEDS. Upon acquisition of a tax deed under this chapter ~~if sub. (4) applies,~~ the county treasurer shall notify the former owner, by registered mail or certified mail sent to the former owner's mailing address on the tax bill, that the former owner may be entitled to a share of the proceeds of a future sale. ~~If the former owner does not request, in writing, payment within 60 days after receipt of that notice, the former owner forfeits all claim to those proceeds. If the former owner timely requests payment,~~ the county shall send to the former owner the proceeds identified in sub. (3) (c) minus any delinquent taxes, interest, and penalties owed by the former owner to the county in regard to other property and minus the ~~greater of the following amounts: (b) The actual costs of the sale as specified under sub. (3) (a) plus 2 percent of the sale price plus all amounts disbursed under sub. (3) (b) and (bm) and plus the amount of property taxes that would have been owed on the property for the year during which the sale occurs if the county had not acquired the property. If the county is unable to locate the former owner within 5 years following the mailing of the notice under this subsection, the former owner~~ **forfeits the right to any remaining equity in the property.**

SECTION 2. 75.36 (2m) (a) of the statutes is repealed.

SECTION 3. 75.36 (3) (bm) of the statutes is created to read:

75.36 (3) (bm) From the net proceeds of the sale of the property, as determined under par. (a), **pay off any lien placed on the property at the time of the foreclosure sale in accordance with the contract or law giving rise to the lien. If the net proceeds are not sufficient to pay all outstanding amounts due, the net proceeds shall be distributed to such lienholders in priority based upon the date of the lien, as determined by the circuit court for the county in which the property is located.**

SECTION 4. 75.36 (3) (c) of the statutes is amended to read:

75.36 (3) (c) Distribute any remaining net proceeds ~~that are subject to sub. (4) to the former owner, as provided under sub. (2m).~~

SECTION 5. 75.36 (4) of the statutes is repealed. [limiting claim to surplus to homestead owners]



Act 216 Clean-Up Items

- Can the fees associated with a real estate broker be considered “costs” that can be charged against the property?
- What does it mean that a county is “unable to locate” the former owner?
 - What diligence is required in a search effort?
- How are lienholders identified and how is the amount of a given lien determined? What if there is a dispute on preference?



Where Do We Go From Here?

- Potential statutory revisions to streamline the tax foreclosure process and unify procedures. How do we minimize burdens on counties?
- Potential statutory revisions to statutory penalties and interest rates. How do we ensure that we are incentivizing property owners to pay their taxes timely?
- How do we deal with situations where tax liability exceeds value of property? Personal liability?



Questions?



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