

Act 207 and Sale of Tax Foreclosed Properties

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ATTOLLES
LAW, S.C.

WCA
Wisconsin Counties Association



Agenda

1. Review of *Tyler v. Hennepin County*
2. Review of Act 207
3. Common Questions and Concerns



Tyler v. Hennepin County



An aerial photograph of a city, likely New York City, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

The Basic Holding

“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.”

An aerial photograph of a city, likely Washington D.C., showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

Open Questions

- When does the “taking” occur? When the deed is acquired? When the property is sold?
- How is the property valued for purposes of determining when “just compensation” is owed?
- Does *Tyler* mandate the sale of property?

Act 207



An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the center of the image, containing the title text.

Act 207: Background

- After *Tyler*, Wisconsin legislators were anxious to codify in statute an obligation to sell tax-deeded properties and a requirement that any excess proceeds be returned to the former owner.
- This desire resulted in 2023 Wisconsin Act 207, which makes several changes to state law that are notable regarding disposition of tax-foreclosed properties.

An aerial photograph of a city, likely St. Louis, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the center of the image, containing the title text.

Act 207: Requirement to Sell

- Act 207 provides (at Section 15) that within 240 days and, beginning in 2026, within 180 days, of a county acquiring a tax deed, the county must advertise the property for sale by publishing on the county's website and either (a) providing a class 1 notice; or (b) advertising on a multiple listing service.
- The publication requirement (and all of the provisions within the Act) apply to tax deeds a county acquired or will acquire from April 1, 2022, and after. However, the 240-day publication requirement deadline does not start until the effective date of Act 207 for deeds acquired before the effective date of Act 207.

An aerial photograph of a city, likely Baltimore, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the center of the image, containing the title text.

Act 207: Requirement to Sell

- What about deeds a county acquired before April 1, 2022?
- What about property that a county transferred to a municipality for no consideration?
- What about property that the county retained?

An aerial photograph of a city with various buildings and green spaces. A semi-transparent white box is overlaid in the center, containing the title text.

Act 207: Right of Former Owner to Repurchase

- Section 7 of Act 207 **requires** counties—with respect to single-family, owner-occupied properties—to have an ordinance or resolution that gives former owners, their beneficiaries, or their heirs the right to repurchase tax-foreclosed properties by paying the county for its costs and expenses incurred plus the amount of property taxes that would have been owed on the property for the year during which the purchase occurs if the county had not acquired the property plus amounts to satisfy any other liens at the time of the foreclosure including the county's costs associated with the repurchase.
- Such repurchases are excluded from the notice requirements the county must follow when selling tax-foreclosed properties.
- Such an ordinance **may** apply to all other properties in the county as well.



Act 207: Right of Former Owner to Repurchase

- If ordinance applies only to owner-occupied properties, how are you policing whether a property is owner-occupied?
- The former owner's right to repurchase must apply "prior to the sale of tax-deeded lands"—when does the right expire?
 - When a sale is closed?
 - When the property is noticed for sale?
 - Some other time?
 - Can you cut off repurchase rights at a certain point?



Act 207: Right of Former Owner to Repurchase

- How do you handle repurchases by heirs or beneficiaries?
- What are the county's "costs and expenses?"
- Is the county required to pay off any liens or is verification enough?
- How are lien payoffs verified?
- Can the county require pre-payment of title costs?



Act 207: Treatment of Surplus Proceeds

- Prior to Act 207, if the county was unable to locate the former owner within five (5) years following the mailing of the notice of the existence of proceeds, the former owner forfeited the proceeds.
- Act 207 eliminates the “locate” requirement and instead requires a county to transmit any unclaimed surplus proceeds to unclaimed funds under Wis. Stat. § 59.66(2) if the payment mailing is returned or otherwise not claimed within one (1) year of the sale.

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Act 207: Treatment of Surplus Proceeds

- Prior to Act 207, a county was required to use any excess sale proceeds from the sale of tax-deeded property to “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.”
- Act 207 repeals this requirement and removes lien repayment from the calculation of the proceeds due to the former owner.

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Act 207: Right to Petition for Relief from Deadlines

- Act 207 creates the ability of a county to petition the circuit court that handled the initial tax foreclosure for relief from any provisions in Chapter 75, including the notice deadlines for sales of tax-deeded properties, for cause, so long as the petition is filed no later than the applicable deadline for publishing notice.
- What does the petition look like?

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Statutory Defense

75.35 (7) LIABILITY PRECLUDED. Absent fraud, no county is liable for acts or omissions associated with the sale of property under this section, including the process by which the property is sold.

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BUT Remember...

Compliance with Act 207. secs. 75.35, 75.36 and 75.69 do not automatically result in compliance with *Tyler*.

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Disposing of Tax-Foreclosed Properties

1. Upon acquisition of tax deed, provide notice to former owner of right to potential surplus proceeds.
2. Follow local ordinance for ensuring the right of a former owner to repurchase the property.
3. Provide notice to taxing jurisdictions of unsettled special assessments or special charges.
4. Unless former owner exercises right to repurchase, advertise the sale and appraised value of the property.



Disposing of Tax-Foreclosed Properties

5. On first attempt to sell, advertise the sale and appraised value by (1) publishing on county's website and (2) either publishing a class 1 notice or advertising on MLS.
6. On the first attempt to sell, must reject bids less than appraised value. Otherwise, must accept highest bid exceeding appraised value unless the county board or a designated committee prepares a written statement, available for public inspection, explaining the reasons for accepting a bid less than the highest bid.



Disposing of Tax-Foreclosed Properties

7. Subsequent attempts to sell property may be advertised through publication of Class 1 notice.
8. On subsequent attempts, property may be sold for less than appraised value if county board or designated committee reviews and approves sale. Highest bid must still be accepted unless county board or designated committee provides written explanation.
9. In all cases, notice of sale must be mailed to municipal clerk where real estate is located at least 3 weeks prior to sale.



Disposing of Tax-Foreclosed Properties

10. Determine net proceeds of sale by subtracting costs of sale.
11. Pay any MFL withdrawal taxes or fees due DNR and any special assessments.
12. Send remainder to the former owner minus: (1) delinquent taxes, interest, and penalties owed by former owner to the county on other property and (2) the property taxes that would have been owed on the property for the year during which the sale occurs if the county had not acquired property.

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Disposing of Tax-Foreclosed Properties

13. If payment to former owner is returned to the county or otherwise not claimed by the former owner within one year, the payment is considered unclaimed funds.
14. County Treasurer should dispose of funds as provided in Wis. Stat. § 59.66(2).





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