Frequently Asked Questions: Preventing Tax Foreclosures for Older Adults: Accessing Tax Relief Options

NATIONAL CENTER ON LAW & ELDER RIGHTS

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Odette Williamson, National Consumer Law Center

Andrea Bopp Stark, National Consumer Law Center

This FAQ is a follow up to NCLER's training, *Preventing Tax Foreclosures for Older Adults: Accessing Tax Relief Options*. The webcast recording has more information.

National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

How do property tax foreclosures occur?

All states have enacted laws which authorize the creation of a lien against real property when taxes on the property are not paid and sale of the property in order to collect that lien.[1] These statutory schemes are not the same in all states. Nonetheless, certain common features exist. In general, the taxing authority assesses the value of the property and issues a tax bill, usually annually. If the bill is not paid in a timely manner, the taxing authority can auction or sell either the tax lien or the home itself. Homeowners do have options to stop the tax sale process at various points, but many times the most at-risk homeowners don't find an advocate until very late in the process.

Why do tax foreclosures particularly impact older adults?

A large percentage of the homeowners who are facing a property tax foreclosure or tax lien sale are older homeowners who do not have mortgages on their homes. Because a tax lien will generally supersede any mortgage, mortgage holders in first lien position will normally insist that taxes be paid through an escrow account established by the lender. The mortgage holder or its servicer then pays the taxes as they come due from funds in the escrow account. In general, if there is a mortgage on the property, the mortgage company will not allow the home to go into tax foreclosure because the mortgage company's lien would then be wiped out. Older adults who have paid off their mortgage are therefore one of the most common groups to end up in the tax foreclosure process.

1 See National Consumer Law Center, Home Foreclosures, Chapter 15 and Appendix F and G, summarizing state tax abatement laws and tax lien foreclosure laws.

What are the various points at which an advocate can help a homeowner avoid the risk of tax foreclosure?

There are basic opportunities for intervention in the real estate taxation process. It is possible to:

- Object to assessments of the property value;
- Assist in seeking tax abatements, exemptions, or compromises;
- Contest tax lien enforcement or tax foreclosure; and
- Help the homeowner attempt to redeem the property after the tax sale.

How can advocates help homeowners increase the affordability of their property taxes?

As with many areas of consumer law, preventing an unmanageable debt from arising in the first instance is the best approach for preventing a tax sale. For that reason, analysis should begin with the assessment process. If the homeowner's tax assessment seems too high, an advocate can assist the homeowner in appealing that valuation.

Another important step is to make sure the homeowner is taking advantage of all available tax relief. In most states, there is a reduction in the tax bill for homeowner-occupants, known as a homestead exemption, abatement, or circuit breaker. However, the homeowner must apply for this relief. Additional relief may be available for older adults and disabled homeowners below a certain income. Many homeowners are not aware of these rights and may not have obtained all available discounts.

What issue did the Supreme Court recently rule on related to tax foreclosure laws?

In 2023, the Supreme Court ruled in Tyler v. Hennepin County that it is unconstitutional for a local government to take a home in a property tax foreclosure and keep the homeowner's equity after the tax debt is paid. This can apply even when a local government sells a tax lien to a private purchaser who keeps the homeowner's equity after a tax foreclosure. Many states and localities will be forced to take a close look at their tax foreclosure laws, because like Minnesota, they do not currently require the taxing authority or the purchaser to reimburse the former owner for any surplus equity after property transfers to the purchaser.

What other constitutional law issues might exist in tax foreclosure cases?

Jurisdictions and governmental actors must provide proper notice to owners and each party with a record interest in the property, along with a full and adequate opportunity to contest the action before foreclosure. Further, due process requires adequate notice at each stage of the tax lien foreclosure process, including notice of post-sale procedures and redemption rights.

How can advocates protect heirs property owners from the risk of tax foreclosure?

Heirs property owners, who inherited the family home and have not yet filed probate, are at elevated risk for property tax foreclosure. Heirs may not realize they need to apply for available tax relief, and the rules are often unclear regarding their eligibility. States should ensure that heirs property owners residing in the home are eligible for the same relief as any homeowner-occupant, and should change their policies to increase access to this relief for heirs.

Why does this issue matter so much?

Property tax liens and property tax foreclosures deprive older adults of the ability to age in place, benefit from the wealth built through homeownership, and pass that wealth on to their heirs. Homeowners of color may be at greatest risk of tax foreclosure, due to patterns of unequal wealth accumulation, which make them more likely to struggle if they experience a loss of income; and due to patterns of disproportionate property assessment.

What is the role of community outreach in preventing property tax foreclosures of older adults?

Community outreach is particularly important to prevent older homeowners from losing their homes to property tax foreclosure or to scammers that exploit the threat of tax foreclosure. When homeowners are targeted, legal representation can make the difference between losing everything and holding onto the family home.

Additional Resources

- National Consumer Law Center:
  - Home Foreclosures (2019), Chapter 15 (*updated)*
  - The Other Foreclosure Crisis: Property Tax Lien Sales (July 2012)
  - Property Tax Foreclosures on Heirs Property (Aug. 2023)
  - Supreme Court Stops Equity Theft in Property Tax Foreclosures (2023)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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