

How to Prevent Tax Liens and Tax Foreclosures from Depleting Wealth from Older Homeowners, Especially in Communities of Color

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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.

Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, housing, and the courts for older adults with limited resources. Since 1972 we have focused our efforts on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Justice in Aging has a particularly strong interest in working with older adult advocates to preserve housing stability for low-income older adults, with a focus on the racial disparities in homeownership and housing affordability experienced by older Black, Latino/a, and immigrant homeowners and renters.

Introduction

Homeownership, and the corresponding equity and economic stability it provides, is the primary way that American families accumulate and pass on intergenerational wealth. Due to a long history of racially discriminatory housing policies and practices and residential segregation that persists to this day, there is a large racial and ethnic gap in homeownership rates. Approximately 44% of Black households own their own homes, compared to 74% of white households, and this racial gap in homeownership accounts for nearly 40% of the racial wealth gap.¹ The gap in the homeownership rate between Black and white families in the United States is bigger today than it was in the 1960s when it was legal to refuse to sell someone a home because of the color of their skin.

Discriminatory tax assessment and appeal practices, especially during the Jim Crow era, contributed to the persistent homeownership gap.² Black-owned properties were routinely and intentionally over assessed, resulting in the loss of those properties for owners who could not afford the taxes. The disparities persist today. Black and Latino/a residents face an unequal property assessment and appeals process that results in higher tax burdens, and a greater risk of tax foreclosure.³

Older, low-income homeowners, many of whom are Black, Latino/a or immigrants, face a myriad of other threats and financial pressures that jeopardize their ability to preserve a lifetime of equity they have built up in their homes.

Many have difficulty affording the costs of maintaining their homes on low, fixed-incomes, including paying for taxes and municipal services. As a result, these older homeowners are disproportionately subject to tax lien foreclosure, which can result in a devastating loss of homes and the accumulated equity in those homes.

Overview of the Taxation of Real Property

All states have enacted statutes which authorize both the creation of a lien against real property when taxes on the property are not paid and the enforcement of this lien is by a sale of the property.⁴ These statutory schemes are not uniform. Nevertheless, certain common features exist.

There are three 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; and
- Contest tax lien enforcement or foreclosure.

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. Tax abatement and exemption programs are discussed below. Another rule of thumb is that if there is basis to contest the tax lien, it is best to take this action as early as possible, as state law may preclude the property owner from doing so later.

While the focus of this chapter summary is primarily on *ad valorem*⁵ property tax assessment liens and sales, it should be noted that there are other types of governmental liens authorized by state statutes. For example, a municipality may impose a lien for unpaid water and sewer charges or for charges connected with the repair of a building after a building code violation.⁶ Some local governments have established loan programs to finance energy efficiency home improvements that require the property owner to enter into a contract creating a special assessment that is secured by a lien against the property.⁷ The enforcement process of these liens is likely to be similar to the enforcement of regular *ad valorem* property taxes.⁸

Issues related to property tax sales, including those resulting from vacant properties, can have a significant impact on local communities. Tenants in rental properties subject to tax foreclosures are also affected, and they typically do not receive adequate notice of tax sales.⁹ However, this chapter summary focuses on the impact of tax sales on residential homeowners.

The Real Property Taxation Process

Property Assessment

The first step in the taxation process is the determination or assessment of the value of the real property, in accordance with the method of valuation used in the jurisdiction. Some jurisdictions assess at full value while others use a percentage of full value.¹⁰ It should be noted, however, that merely because property is assessed at full value for tax purposes does not mean that the actual tax is higher than the tax in a jurisdiction using a percentage assessment. It is the tax rate that determines the amount of the tax. For example, when a full value assessment is used, and the tax rate is two percent, the tax will be lower than if a sixty percent of value assessment is used with a tax rate of 3.5%.

In most jurisdictions these valuations are then reviewed by a board of “equalization” whose role is to ensure that similar properties are taxed equally so that the tax burden is distributed evenly. The tax is then levied (or imposed) in proportion to the assessment at a percentage set by statute. State and local law always includes some process for challenging an assessment.

The Tax Lien

If the property tax is not paid within a certain time period, the tax bill becomes a lien on the property.¹¹ The creation of a tax lien generally occurs automatically by operation of state statute. The lien also typically becomes effective as against fixtures on the property. This may include a manufactured home, if under state law the home is fixed to the land.¹²

By statute, a tax lien almost always has first priority over all other liens, including mortgages, whether created before or after the tax lien.¹³ These statutes have been upheld on the grounds that priority is essential to the government collecting the revenue necessary to conduct its business.¹⁴

Because a tax lien will generally supersede any mortgages, mortgage holders in first lien position will normally insist that taxes be paid through an escrow account established by the lender.¹⁵ The mortgage holder or its servicer then pays the taxes as they come due from funds in the escrow account. Occasionally, the failure of the holder or servicer to make timely or correct disbursements out of escrow to pay taxes will result in a tax lien foreclosure.¹⁶

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, perhaps because the mortgages have already been paid off. Therefore, no mortgage holder or servicer is involved in the payment of these taxes.

The Tax Lien Foreclosure Process

Most jurisdictions follow three sequential steps to foreclose on properties delinquent on taxes;

- Imposition of a lien and notification of pending tax sale;
- Sale of the tax lien or tax deed; and
- Final enforcement of the lien through foreclosure.

The final step generally results in a transfer of the property to the taxing authority or tax sale purchaser and cuts off the ownership interests of the homeowner in the property. In between the first and final stages, homeowners typically have a redemption period during which they can remove the lien and reacquire full ownership of the property by paying the taxes owed, plus interest, penalties, attorney fees, and costs.

Because the property tax lien and sale are entirely created by statute, courts have generally held that all statutory requirements be substantially followed in order to have a valid sale.¹⁷ Thus, the tax itself must be valid. It must be properly levied, and it must be properly assessed. Otherwise, the sale may be set aside.¹⁸

Notification of Tax Sale

At some point following a period of nonpayment of property taxes, the tax obligation becomes a lien on the property. In some states, a lien for the tax obligation may arise automatically upon assessment even without a delinquency. If the outstanding taxes are not paid or the tax lien is not discharged by payment, the taxing authority will generally initiate the first “notification” stage of the tax sale process. The sale process is usually commenced by the taxing authority’s preparation of a list of delinquent tax properties, identifying the taxpayer, the property, and the amount of tax due. The list is recorded and published in the local newspaper. Some form of personal notice is also provided on the property owners and any lien holders. An order of sale is issued to the appropriate government official to conduct the sale.¹⁹ While all states require some form of notice to the taxpayer, the sale in most jurisdictions involves no judicial process.²⁰

The Tax Sale

There are three different approaches taxing authorities use to dispose of tax liens during the second “tax sale” stage following nonpayment of taxes by homeowners:

- auction,
- negotiated bulk sale, and
- securitization.²¹

The auction method was the only method used until the 1990s, and it remains the most common tax sale procedure today. Following efforts to privatize government functions in other areas, some local governments have used bulk sales of tax liens as a means to shift tax collection responsibility to private entities. This same goal has been achieved by a small number of local governments through the pooling and sale of tax liens in a securitization process similar to that used in the mortgage industry for mortgage-backed securities.²²

In some jurisdictions, the property itself is sold at the tax sale, in a process analogous to an execution sale. The property may be sold at auction to the highest bidder, though often it is sold for the amount of unpaid taxes.²³ Because the purchaser typically receives a tax deed to the property, the tax sale procedure in such states may be referred to as a “tax deed” sale.

In other states, something less than full title to the property is initially sold. Because the purchaser typically receives a tax lien certificate, the tax sale procedure in such states may be referred to as a “tax lien certificate” sale. For example, in Illinois, the purchaser at the tax sale receives a certificate of purchase upon payment of the delinquent taxes and costs.²⁴ After the expiration of the period of redemption, the certificate holder may obtain the tax deed by initiating an action.²⁵ In Minnesota, a tax judgment is sold. If the property is not redeemed before the expiration of the statutory redemption period, the property forfeits to the purchaser.²⁶

Bidding Procedure at Auctions

Unlike traditional auction sales and mortgage foreclosure sales, potential buyers at a tax sale in most states do not bid based on the value of the property, because the property is sold for the amount of unpaid taxes, interest, fees, penalties, and related costs. In states that do not permit the property to be sold for more than the unpaid taxes, there is generally no competitive, value-based bidding such as might exist at other auction sales. However, when there is more than one bidder on the property, states generally have devised some proxy for competitive bidding through three primary methods: the percentage ownership method, the interest rate method, and the overbid method.

In the percentage ownership method, the “highest” bidder is the purchaser who is willing to accept the smallest proportional share or fraction of the total tax sale interest in the property that is sold.²⁷ For example, in a tax deed sale in which there is bidding, the sale may result in the purchaser acquiring a ten percent interest in the property. If the property is not redeemed by the homeowner and the tax deed is foreclosed, the homeowner would still retain a ninety percent interest in the property. Because fractional interests are not as marketable as full title in property, this form of bidding is generally less desirable to potential purchasers. However, for purchasers who are interested in receiving a return in investment in the form of interest and penalty payments upon redemption and have no desire to obtain a full ownership interest in the property, this bidding procedure is not a deterrent.

The interest rate method assigns the lien to the bidder who requests the lowest rate for interest due upon redemption in addition to the unpaid taxes.²⁸ For example, state law may set the maximum interest to be paid by the homeowner upon redemption at 18%, but the winning bid may be awarded to the potential purchaser who is willing to accept redemption interest at the rate of 14%. This type of bidding can benefit the homeowner by reducing the costs of redemption.

The last method, the overbid method, assigns the lien to the bidder who pays the highest additional amount after paying the unpaid taxes on the property. Any surplus above the tax obligation and costs of sale is usually paid to the former owner or to junior recorded lienholders if required by law.²⁹

No matter which bidding method is used, the proceeds from the sale are then used to pay the outstanding tax bill, penalties, interest, and costs of the sale. In states where a tax deed to the property is sold at auction to the highest bidder, any excess proceeds may be subject to claims of interested parties, such as the former owner and holders of junior liens on the property.³⁰

Transfer without Auction

In some jurisdictions, there is no sale at all, or it may not occur until after the property is transferred. The taxing authority or local government simply executes on its lien by taking the property. This is similar to the process referred to as “strict foreclosure” of mortgages. For example, in New Hampshire, unpaid taxes become a lien against the property after expiration of a statutory period.³¹ The taxpayer and others with a recorded interest in the property are given notice of the lien together with a redemption period of two years and one day to pay off the lien. If the lien is not paid, the town takes the property free and clear of all liens.³² Once the property is acquired by the taxing authority or local government, state law generally provides a procedure for final disposition of the property. In Minnesota, the property is initially forfeited to the state for unpaid taxes and fees and then sold at public auction to the highest bidder for not less than the appraised value.³³ Sometimes, taxing authorities sell tax liens through a negotiated bulk sale (a bundle of tax liens) or a securitization process.

After the Tax Sale: Redemption and Foreclosure of Rights

Full rights to the property sold at a tax sale generally do not pass immediately to the purchaser. Rather, state law typically provides that the purchaser acquires an interest in the property subject to redemption by the former owner.³⁴ The former owner has a right to redeem the property by paying to the purchaser the purchase price plus interest within the time period allowed by statute.³⁵ If the former owner does not redeem within the prescribed period, the purchaser acquires title to the property free and clear of all liens created prior to the sale.³⁶ In some states, the deed is issued to the purchaser automatically upon the expiration of the redemption period; in other states a tax sale purchaser must apply for the deed and then bring a foreclosure action to cut off the right of redemption or an action to quiet title.³⁷ Most states do not require that the taxing authority or the purchaser reimburse the former owner for any surplus equity in the property when the property is transferred to the purchaser.

Judicial supervision over the tax sale process varies considerably from state to state. In approximately half of the states, particularly those in which the redemption right terminates automatically, there is no court oversight of the tax sale process.³⁸ Similar to non-judicial mortgage foreclosure proceedings, there is no judge reviewing the process to ensure that the law has been followed.

Grounds for Challenging Tax Sales

After a tax sale has been conducted, it may be possible to unwind the sale through a legal challenge. The grounds on which courts have set aside sales include the following:

- Defects in the tax lien or the tax sale process;
- Taxes are not owed;
- Fraud in the sale or redemption process;
- Purchaser’s lack of legal authority to bid;
- Excusable neglect;

- Equitable grounds;
- Inadequacy of sale price;
- Avoidance in bankruptcy as a fraudulent transfer;
- Inadequate notice; and
- Constitutional due process issues and other constitutional challenges.

Constitutional and Fair Housing Claims

In addition to statutory and equitable defenses or claims, constitutional grounds for challenging tax sales include:

- Failure to comply with due process; and
- Failure to provide just compensation for loss of significant equity that remains after tax debts have been paid.

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.³⁹ However, even after property loss occurs, advocates can potentially raise a federal or state Takings Clause claim.⁴⁰ As previously noted, most states do not require the taxing authority or the purchaser to reimburse the former owner for any surplus equity after property transfer to the purchaser. Several courts have found that tax foreclosure qualifies as an unconstitutional taking if the process fails to provide former owners with sufficient opportunity to recover surplus equity.⁴¹

Tax sale policies that lead to a disparate impact on racial minorities may also potentially violate the Fair Housing Act (FHA).⁴² Under the FHA, it is illegal to “refuse to sell or rent...or to refuse to negotiate for the sale or rental of, *or otherwise make unavailable or deny, a dwelling* to any person because of race, color, religion, sex, familial status, or national origin.”⁴³ Moreover, the FHA prohibits housing policies or practices that have a disproportionately adverse effect on protected classes even in the absence of discriminatory intent.⁴⁴ Courts have generally interpreted the FHA’s statutory language broadly and determined that the FHA applies to property tax policies that “make unavailable or deny a dwelling to racial minorities without proper justification.”⁴⁵

Fraud by Tax Sale Speculators

In many communities, there is a group of predatory speculators that seek to profit by manipulating the tax sale process. Some of these speculators buy many properties at tax sale. They then seek to lure unsophisticated homeowners to transfer their redemption rights in exchange for expensive or fraudulent sale-leaseback schemes or high-rate loans.

Speculators may also seek to obtain properties at below-market cost and then resell them at a substantial profit. Some of these speculators will do everything possible to frustrate redemption by the taxpayer. Depending on the statutory rules, schemes can include failure to provide required notices, efforts to hide an address which can be used for tendering redemption payments, and misstatements of the redemption amount to frighten homeowners into walking away from their homes.⁴⁶

Remember that homeowners retain their redemption rights even when a tax sale gives a speculator rights in the property. The letter of the law should be enforced against speculators and predatory practices should be challenged in court. Even if there is no way to undo the tax sale itself, the victim may have fraud and other damages claims against the predator.⁴⁷

Conclusion

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.

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
- National Consumer Law Center: [The Other Foreclosure Crisis: Property Tax Lien Sales](#) (July 2012)
- Community Legal Services: [The Philadelphia Tax Property Handbook](#)

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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Endnotes

- 1 U.S. Census Bureau, Current Population Survey/Housing Vacancy Survey, November 2, 2021, available at: [census.gov/housing/hvs/files/currenthvspress.pdf](https://www.census.gov/housing/hvs/files/currenthvspress.pdf). HUD USER, Office of Policy Development & Research, 2021. Closing the African American Homeownership Gap, available at: huduser.gov/portal/pdredge/pdr-edge-featd-article-032221.html.
- 2 See Andrew Kahrl, More for Less: How Property Taxes Fuel Racial Inequality, Jan. 21, 2021.
- 3 Carlos Avenancio-Leon and Troup Howard, The Assessment Gap: Racial Inequalities in Property Taxation, Dec. 2021.
- 4 See National Consumer Law Center, Home Foreclosures, Chapter 15 and Appendix F and G, summarizing state tax abatement laws and tax lien foreclosure laws.
- 5 That is, property tax based on the value of the property.
- 6 See, e.g., *White v. Mercado*, 455 Fed. Appx. 691 (7th Cir. 2011) (involving tax sale based on property lien for costs of weed cutting and debris removal). Cf. *Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012) (municipality lacked authority to record property liens to secure payment for garbage related charges); *In re Carroll Cty. 2013 Tax Sale*, 21 N.E.3d 832 (Ind. 2014) (statute prohibits foreclosure method when only lien on property is unpaid sewer bill, but does not prohibit alternative method of tax lien sale when sewer bill is only lien).
- 7 See National Consumer Law Center, Home Foreclosures § 15.7 (regarding the PACE program).
- 8 See, e.g., *Amy Realty v. Gomes*, 839 A.2d 1232 (R.I. 2004) (tax sale procedure used for nonpayment of sewer fees).
- 9 See, e.g., *Sallie v. Tax Sale Investors, Inc.*, 998 F. Supp. 612 (D. Md. 1998) (challenging adequacy of notice to tenants on due process grounds).
- 10 See Real Estate Tax Appeals, Rohan, vol. 8, § 2.01*[3] (1984) (citing U.S. Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism (1984)).
- 11 Often this is the first day of the year following the year in which the tax is assessed. See, e.g., Mo. Rev. Stat. § 140.310 (on January 1, any unpaid taxes become a lien on the property); N.M. Stat. Ann. § 7-38-48 (unpaid taxes become a lien on January 1 for the tax year for which the taxes are imposed). See also Tex. Tax Code § 32.01 (West) (tax lien attaches on January 1 to property to secure the payment of all taxes, penalties, and interest imposed for the year on the property).
- 12 See *Rochman v. Cape Mercantile Bank & Trust Co.*, 156 B.R. 794 (Bankr. S.D. Ill. 1993) (manufactured home was fixed to the property and was conveyed with tax deed even though manufactured home was placed on the property after the tax sale); *OnBank & Trust Co. v. Hannold*, 684 N.Y.S.2d 677 (N.Y. App. Div. 1999) (home not affixed to land was real property, and not person property, for tax assessment purposes). See generally National Consumer Law Center, Repossessions § 14.13 (10th ed. 2022), updated at www.nclc.org/library.
- 13 See, e.g., Ky. Rev. Stat. Ann. § 134.420 (West); N.M. Stat. Ann. § 7-38-48 (tax lien is the first lien and is paramount to any other interest in the property, perfected or unperfected). See also *Solarte v. Washington Mut. Bank*, 2005 WL 3291813 (Cal. Ct. App. Dec. 6, 2005) (unpublished) (liens for real property taxes have priority over all private liens, regardless of time of creation).
- 14 See *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983), citing *Minneapolis Threshing Mach. Co. v. Roberts County*, 149 N.W. 163 (S.D. 1914); 72 Am. Jur. 2d *State & Local Taxation* § 898.
- 15 Mortgage escrow accounting procedures are regulated by the Real Estate Settlement Procedures Act (RESPA). 12 U.S.C. § 2609. See generally National Consumer Law Center, Mortgage Servicing and Loan Modifications § 3.5 (2019), available at www.nclc.org/library.
- 16 *Choi v. Chase Manhattan Mortg. Co.*, 63 F. Supp. 2d 874 (N.D. Ill. 1999) (servicer failed to pay taxes on homeowners' property over two-year period because a tax notification company it contracted with provided erroneous information). This problem and others related to escrow accounts are discussed in Chapter 2, Chapter 3, and Chapter 4 of NCLC's Mortgage Servicing and Loan Modifications (2019), updated at www.nclc.org/library.
- 17 See, e.g., *Fidlin v. Collision*, 156 N.W.2d 53 (Mich. Ct. App. 1967); *VonElbrecht v. Jacobs*, 332 S.E.2d 568 (S.C. 1985); C.J.S. *Taxation* § 745.
- 18 C.J.S. *Taxation* § 754.
- 19 See, e.g., N.M. Stat. Ann. § 7-38-65; S.C. Code Ann. § 12-45-180.
- 20 Some states require the taxing authority to obtain a court order through an *ex parte* proceeding.
- 21 See Georgette Poindexter et al., *Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress*, 30 Conn. L. Rev. 157, 172 (Fall 1997).
- 22 See Moody's Investors Service, Moody's Approach to Rating US Tax Lien-Backed ABS (Mar. 28, 2014), available at cdn.ymaws.com/www.ntla.org/resource/resmgr/pdf/Moody_Approach.pdf.
- 23 E.g., Cal. Rev. & Tax Code §§ 3693, 3706 (West); Tex. Tax Code Ann. § 34.01(m) (West).
- 24 35 Ill. Comp. Stat. §§ 200/21-205, 200/21-240, 200/21-250.
- 25 35 Ill. Comp. Stat. §§ 220/22-30, 200/22-40. See *A.P. Properties v. Goshinsky*, 714 N.E.2d 519 (Ill. 1999) (describing Illinois procedure and holding that purchaser does not have debtor/creditor relationship to taxpayer, so that purchaser could not object to property transfer under state fraudulent transfer act (UFTA)).
- 26 Minn. Stat. §§ 280, 281.
- 27 See, e.g., Me. Rev. Stat. tit. 36, § 1074; Mass. Gen. Laws ch. 60, § 43.

- 28 See, e.g., Ariz. Rev. Stat. Ann. § 42-18114; N.J. Stat. Ann. § 54:5-32 (West).
- 29 E.g., DLT List, L.L.C. v. M7ven Supportive Hous. & Dev. Grp., 779 S.E.2d 436 (Ga. Ct. App. 2015) (excess funds are distributed to those persons holding interests in the property at the time of the tax sale, such as the owner or lienholders, however redeeming creditor cannot both redeem the property and receive excess funds from the tax sale to pay for the priority lien created by the redemption).
- 30 E.g., Crowell v. Bexar County, 351 S.W.3d 114 (Tex. App. 2011) (despite foreclosure and no redemption, interested parties, including former owner, may claim against excess proceeds). Cf. First Union Nat'l Bank of Florida v. Lee Cty. Comm'n, 75 So. 3d 105 (Ala. 2011) (mortgagee who redeems property after tax sale not entitled to excess proceeds).
- 31 See N.H. Rev. Stat. Ann. § 80:69.
- 32 N.H. Rev. Stat. Ann. § 80:69.
- 33 Minn. Stat. §§ 280, 281, 282.
- 34 In states that have several alternative tax sale procedures or permit different procedures for certain cities or local governments, the availability of a right of redemption may depend upon the specific procedure used. See Fouse v. Saratoga Partners, 204 A.3d 1028 (Pa. Commw. Ct. 2019), *appeal granted*, 2019 WL 4183530 (Pa. Sept. 4, 2019) (finding that lack of right of redemption following an upset tax sale under Pennsylvania law does not violate equal protection clause).
- 35 See Md. Code Ann., Tax-Prop. § 14-827 (West) (owner has right to redeem until right of redemption has been foreclosed by buyer; buyer can bring foreclosure action not less than one year and not more than two years post sale (§ 14-833)).
- 36 See, e.g., S.C. Code Ann. § 12-51-130 (tax deed is evidence of good title). See also Williams v. McCallum, 917 P.2d 794 (Idaho 1996) (redemption payment tendered one day late was ineffective to redeem property).
- 37 See, e.g., Md. Code Ann., Tax-Prop. § 14-833 (West) (holder of certificate of sale must bring action to foreclose no sooner than one year after sale and no later than two years after sale); Knosp v. Shafer Properties, L.L.C., 820 N.W.2d 68 (Neb. Ct. App. 2012) (holder of tax sale certificate can either obtain tax deed from county treasurer or foreclose tax lien and sell property, but holder must act within six months from expiration of third anniversary of sale). Cf. Puget Sound Inv. Group, Inc. v. Bridges, 963 P.2d 944 (Wash. Ct. App. 1998) (holding that under Washington law action to quiet title is necessary after foreclosure of IRS tax lien, ejectment action unavailable).
- 38 Frank Alexander, *Tax Lien, Tax Sales and Due Process*, 75 Ind. L. J. 748, 753, n.14 (2000). See also Appx. G, *infra*.
- 39 See generally National Consumer Law Center, Home Foreclosures § 15.3.4.1-5 (outlining due process and notice requirements for tax sales).
- 40 The Fifth Amendment of the US Constitution states that private property may not be taken for public use without just compensation. U.S. Const. amend. V.
- 41 See, e.g., Coleman ex rel Bunn v. District of Columbia, 70 F. Supp. 3d 58 (D.D.C. 2014) (rejecting argument that forfeiting equity was an extra incentive for payment of taxes rather than an unconstitutional taking); Rafaeli, LLC v. Oakland County, 952 N.W. 2d 434, 460 (Mich. 2020) (finding that retention of surplus proceeds far in excess of tax debts amounts to a taking under the state constitution and cannot be justified as a valid form of tax collection); In Rem Tax Foreclosure Action No. 53 Borough of Brooklyn, Index No. 8700/2015, 2019 WL 1431423 (Sup. Ct. Kings Cty, Mar. 28, 2019) (holding that city's transfers of properties valued in excess of tax liens without giving owners the opportunity to recoup surplus were unlawful takings).
- 42 To the extent that disparate impact may be the result of intentional discrimination, advocates could also raise an equal protection claim. See Dorce v. City of New York, No. 19-CV-2216 (JGK), 2022 WL 2286381, at 13 (S.D.N.Y. June 24, 2022) (finding that, in alleging that city tax foreclosure proceedings targeted homeowners of color, former property owners sufficiently stated claim for violation of equal protection).
- 43 42 U.S.C. § 3604(a) (2012) (emphasis added).
- 44 24 CFR § 100.500.
- 45 Brighton Park Neighborhood Council v. Berrios, No. 17 CH 16453, 2019 WL 4178606, at 8 (Ill. Cir. Ct. Feb. 07, 2019). See also MorningSide Cmty. Org. v. Sabree, No. 16-008807-CH, slip op. at 16-17 (Mich. Cir. Ct. Oct. 17, 2016) (holding that tax foreclosure policy was prohibited conduct under the FHA); Coleman v. Seldin, 181 Misc. 2d 219, 236 (N.Y. Sup. Ct. 1999) (finding that real property tax assessment system was subject to the FHA). See generally Coty Montag, Lien in: Challenging Municipalities' Discriminatory Water Practices Under the Fair Housing Act, 55 Harv. C.R.-C.L. L. Rev. 199, 217-24 (2020) (discussing recent FHA litigation related to lien sales and foreclosures).
- 46 See, e.g., Parks v. Wells Fargo Home Mortg., Inc., 398 F.3d 937 (7th Cir. 2005) (noting that state court had vacated tax sale deed based on actual fraud of "tax scavenger" who had falsely verified in state court petition that she had caused sheriff to personally serve homeowners with statutory notice).
- 47 *Id.* See, e.g., *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 2014 WL 5512661 (D.N.J. Oct. 31, 2014) (claim under tax sale law dismissed in class action involving bid-rigging conspiracy for failure to allege redemption from defendants). See also National Consumer Law Center, Mortgage Lending Ch. 4 (3d ed. 2019), *updated at* www.nclc.org/library.