



Supreme Court calls real property tax foreclosure into question - by Gabriella Botticelli

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A recent United States Supreme Court opinion has significant impact on New York's Real Property Tax Law. *Tyler v. Hennepin County, Minnesota*, decided on May 25, 2023, ruled it unconstitutional for a taxing authority to foreclose upon and sell property based upon a failure to pay taxes without a procedure for the property owner to recover any surplus from the sale. In *Tyler*, the county took possession of a condo based on a \$15,000 tax delinquency. The county sold the condo for \$40,000, keeping the \$25,000 surplus. The court ruled that the county's retention of the surplus violated the Constitution's Takings Clause.

New York's Real Property Tax Law ("RPTL") § 1136 raises similar concerns. Per RPTL § 1136, when a taxing authority seeks judgment to foreclose a tax lien and no answer has been interposed, or the court has determined the answer is not meritorious, the court shall award judgment to the tax district which "shall contain a direction to the enforcing officer" to "execute and cause to be recorded a deed conveying to such tax district full and complete title to such parcel." See RPTL § 1136(3); see also RPTL § 1136(2)(a). Some New York counties take advantage of this statute to take possession of delinquent properties, sell them for more than the sums owed for taxes, and keep the surplus. In response to *Tyler*, there is legislation pending to change the RPTL to impose a moratorium on tax foreclosure until the state can amend its laws to comply with *Tyler* and allow property owners to recover any surplus that may result from a tax lien sale.

If you are at risk of losing your property through a tax lien foreclosure, contact an attorney to ensure your rights are protected.

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