

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH

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TOWN OF TYNGSBOROUGH,  
PLAINTIFF

V.

PAULA RECCO,  
DEFENDANT

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LAND COURT DEPARTMENT  
DOCKET# 18 TL 001223

**BRIEF OF AMICUS CURIAE MASSACHUSETTS MUNICIPAL LAWYERS ASSOCIATION**

The Massachusetts Municipal Lawyers Association respectfully submits this Brief in response to an invitation of the Court dated October 13, 2023 in the above captioned matter.

**STATEMENT OF INTEREST**

The Massachusetts Municipal Lawyers Association (hereinafter the "Association"), formerly the City Solicitors & Town Counsel Association, is the municipal law bar association for Massachusetts. Since 1946, the Association has served Massachusetts cities and towns, and has provided municipal law educational opportunities to its members and public officials. Association members consist of attorneys whose practice includes providing legal services to cities and towns or who otherwise devote a substantial portion of their practice to the advancement of municipal law. The Association advocates to support home rule and to broaden local citizens' opportunity to participate in the governance of the Commonwealth's 351 cities and towns.

The Court has sought “the input of interested persons or entities on proposed remedies and forms of judgment” relative to the request of the Town of Tyngsborough (hereinafter the “Town”).

The Town has requested that the Court issue a judgment in some manner requiring the sale of the subject premises [at 4 Danforth Road (hereinafter the “Locus”)] with compensation to the defendant taxpayer [Paula Recco (hereinafter the “Taxpayer”)] for any surplus after the payment of outstanding taxes, fees and interest due to the Town. The Court has also requested input of interested persons or entities on the applicability of the Commonwealth’s existing eminent domain statutes, including without limitation G. L. c. 79, § 10, which permits a party to recover damages “[w]hen the real estate of any person has been taken for the public use...but such taking, entry or damage was not effected by or in accordance with a formal vote or order of the appropriate board of officers of a body politic or corporate duly authorized by law...”.

#### STATEMENT OF THE ISSUE

A municipality relies on the certainty of its finances to provide the essential municipal services upon which its residents and businesses depend. When it goes to the financial markets to borrow long term funds for capital projects, the bond rating which will determine the cost of borrowing is determined based on how the municipality collects its taxes and manages its finances. Currently there is uncertainty<sup>1</sup> regarding a major source of municipal revenue – the collection of real estate taxes.

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<sup>1</sup> There are a number of sources of this uncertainty. First and foremost is the decision of the United States Supreme Court in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023). The Land Court has discussed the uncertainty resulting from Tyler in its denial of the Taxpayer’s Motion for Summary Judgment in the above captioned matter. Second, the Division of Local Services of the Massachusetts Department of Revenue (hereinafter “DLS”) has addressed the issue in Bulletin 2023-04, advising that given the uncertainty as to whether surplus proceeds from the sale of Tax Possession will need to be returned to the former property owner, DLS will not object to a municipality temporarily holding such surplus proceeds in an agency account until there is a directive from the courts resolving the matter. Third, the Massachusetts Attorney General has issued a Guidance in which she has stated that to avoid an unconstitutional taking, municipalities should ensure that excess sales proceeds be returned to the former property owner. Both the DLS Bulletin and the Massachusetts Attorney General’s Guidance are advisory and not mandatory. Finally, in *Kelly v. City of Boston*, 348 Mass. 385, 387 (1965) – issued forty-five years before *Tyler* - the Supreme Judicial Court stated, “[w]e think it is clear from the ... history of the tax statutes that the Legislature intended the surplus from a sale of land taken for nonpayment of taxes, on which the right of redemption has been foreclosed in the Land Court, to belong to the municipality.” *Tyler* has rendered the continued validity of *Kelly*, at the least, questionable.

In this case, when denying the Taxpayer's Motion for Summary Judgment, the Court stated:

although a recent U.S. Supreme Court decision brings uncertainty to the manner in which the case will proceed, contrary to the defendant's argument, a judgment foreclosing the defendant's statutory right of redemption would not effect an unconstitutional taking provided that provision is made for compensation to the taxpayer of any surplus value of the foreclosed property in excess of the taxes, fees and interest owed the plaintiff by the defendant.

The referenced decision, *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023), involved a review of the real estate tax collection process in Minnesota. The Court described the Minnesota process as follows:

Hennepin County imposes an annual tax on real property. Minn. Stat. § 273.01 (2022). The taxpayer has one year to pay before the taxes become delinquent. § 279.02. If she does not timely pay, the tax accrues interest and penalties, and the County obtains a judgment against the property, transferring limited title to the State. See §§ 279.03, 279.18, 280.01. The delinquent taxpayer then has three years to redeem the property and regain title by paying all the taxes and late fees. §§ 281.17(a), 281.18. During this time, the taxpayer remains the beneficial owner of the property and can continue to live in her home. See § 281.70. But if at the end of three years the bill has not been paid, absolute title vests in the State, and the tax debt is extinguished. §§ 281.18, 282.07. The State may keep the property for public use or sell it to a private party. § 282.01 subds. 1a, 3. If the property is sold, any proceeds in excess of the tax debt and the costs of the sale remain with the County, to be split between it, the town, and the school district. § 282.08. The former owner has no opportunity to recover this surplus.

*Tyler*, 598 U.S. at 635.

In discussing the effect of *Tyler* on Massachusetts real estate tax collection, it is important to distinguish the process by which the Right of Redemption of Tax Title<sup>2</sup> is foreclosed, from the process by which the proceeds from the sale of a Tax Possession (defined below) are handled. The first three years of the Minnesota process are similar to the Massachusetts process for the redemption of a Tax Title prior to the filing of a Complaint to Foreclosure the Right of Redemption.

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<sup>2</sup> The Right of Redemption of a Tax Title is an absolute right to regain title to the property upon full payment of the tax title account balance, interest fees and costs. General Laws Chapter 60, Section 62; *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 467 (2020).

Pursuant to General Laws Chapter 60, Section 62, the Right of Redemption is an absolute right to regain title to the property upon payment of the full amount of the tax title account balance, including taxes, fees, costs, and interest. *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 467 (2020). Since the required payment necessary to redeem the Tax Title is no greater than the outstanding real estate taxes, fees, costs and interest, this portion of Massachusetts real estate tax collection does not effect an unconstitutional taking as defined by *Tyler*.

The Minnesota process after the first three years is similar to the process that existed in the Commonwealth prior to 1915, and still exists in instances of Low Value Land Tax Foreclosures. G.L. c. 60, § 79. However, since 1915, if a municipality seeks to sell a parcel in order to recover the unpaid real estate taxes, interest and penalties that have accrued, rather than merely assigning the tax lien, the Commonwealth has required the municipality to obtain a Decree of Foreclosure of the Right of Redemption of a Tax Title through a judicial process that is specifically designed to protect the due process rights of the taxpayer. *See, e.g.* G.L. 60, §§ 65-69A. There is no similar process required under Minnesota law. Therefore, as will be more fully discussed below, while *Tyler* may cause some uncertainty, it does not render the process of foreclosing a Tax Title in Massachusetts an unconstitutional taking.

However, where *Tyler* does raise significant concern – which the Association regards to be the issue about which this Court seeks input – is in relation to the handling of surplus proceeds arising from the sale of a parcel for which the Right of Redemption has been foreclosed, commonly called a “Tax Possession.” This issue is the focus of the Association in this brief.

## GENERAL LAWS CHAPTER 60 AND ITS LEGISLATIVE HISTORY

The principal purpose of General Laws Chapter 60 is to ensure that a municipality will receive the taxes owed to it, while observing the provisions of the chapter designed to protect the interests of taxpayers. *Brown v. City of Boston*, 353 Mass 740, 742 (1968). The process by which Massachusetts municipalities foreclose on a parcel of land for non-payment of real estate taxes has remained generally unchanged since 1915. Chapter 121 of the Resolves of 1914 appointed a Special Commission to consider and recommend changes in the laws relative to Liens, Mortgages and Tax Titles (hereinafter the “Special Commission”). Specifically, the Special Commission was empowered to make “such changes, revision and codification as it shall deem advisable in respect to the laws relative to collectors' deeds and takings of land for taxes, and the procedure relative to such deeds and takings, and to the titles thereby obtained, as it may consider advisable.” Chapter 121 of the Resolves of 1914. The Special Commission, which was chaired by the Honorable Charles Thornton Davis, Chief Justice of the Land Court, filed its Report in 1915 as House #1600, “Report of the Special Commission Appointed to Consider and Recommend Changes in the Laws Relative to Liens, Mortgages and Tax Titles,” House Doc. #1600 of 1914 (January, 1915), attached hereto as Exhibit A, (hereinafter the “Report”).

Prior to filing the Report, the Special Commission held hearings across the Commonwealth in Boston, Springfield, Pittsfield, Fall River, and Worcester. The Special Commission found that conditions relative to tax titles varied greatly in different municipalities across the Commonwealth. Report, p. 17. The Report stated that in Massachusetts in 1914 a "tax title" was in theory an "absolute and perfect title direct from the sovereign power".<sup>3</sup> Report, p. 17.

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<sup>3</sup> The Report described a tax title as a type of eminent domain taking and thus required the same strict adherence to the law and processes required to protect due process.

Further, in 1914, it was generally understood that tax titles would vest absolute title without the necessity of foreclosing any right of redemption as is required today. Report, p. 18. However, the Special Commission also found that only about two out of every one hundred tax titles were valid in large part due to issues surrounding lack of actual notice and therefore lack of due process. Report, p. 18.

Although it recognized the "title-vesting" nature of a tax title in Massachusetts, the Special Commission, keenly aware of the concerns over lack of notice, nonetheless recommended that it be treated as "security, instead of Title Absolute" in order to protect due process. Report, p. 18. The Special Commission proposed legislation that created a process that sought to secure actual notice on real parties in interest and gave exclusive jurisdiction over the process to the Land Court. Report, p. 19. It appears that the Special Commission believed that by creating a process that was substantially similar to the process by which the Land Court oversaw the registration of land, due process would be protected.<sup>4</sup> The process, enacted by the General Court, and codified as General Laws Chapter 60, Sections 64 through 75 (hereinafter the "Strict Foreclosure Law")<sup>5</sup>, has remained substantially unchanged over the past 108 years.

While the Strict Foreclosure Law substantially altered the nature of a Tax Title in Massachusetts<sup>6</sup>, it retained much of the nomenclature that existed prior to 1915. It is nonetheless clear that it was the expressed intent of the Special Commission that parcels which had been taken for nonpayment of real estate taxes be held as security only until foreclosure of the Right of

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<sup>4</sup> The Special Commission discussed the importance of actual notice at page 19 of the report. The Special Commission also proposed, in Section 14 of the proposed legislation, that the process "shall conform as nearly as possible to the land court practice, rules, regulations and procedure in relation to matters of land registration."

<sup>5</sup> The process set forth in General Laws Chapter 60, Sections 64 – 75 are typically referred to as a "Strict Foreclosure", as opposed the administrative foreclosure provisions of General Laws Chapter 60, Section 79 which is commonly referred to as a "Low Value Foreclosure".

<sup>6</sup> The right to sell land for taxes rests solely upon the existence of such a lien, which is a creature of statute and not originally a feature of the collection of taxes in this Commonwealth. *Shruhan v. City of Revere*, 298 Mass 12, 14 (1937).

Redemption. The Report refers to the practice of other States in treating land which had been taken for non-payment of real estate taxes as security only until foreclosure of the Right of Redemption and not as title theoretically absolute. The Report then states:

This is all that should be required in Massachusetts; but provision should be made for either redemption or the foreclosure of the security within a reasonable time, and after actual notice to the real parties in interest, and an opportunity to redeem. This method has been suggested at all of the hearings and conferences given by the commission, and out of 32 speakers on the subject 30 were in favor and only 2 opposed.

Report, p. 18. This substantial change in the nature of a Tax Title from title absolute to security for the payment of unpaid real estate tax, and the substantial due process protections created in the foreclosure process, most likely saved the method of foreclosing Tax Titles in Massachusetts from being deemed an unconstitutional taking. However, there is an inherent conflict in Chapter 60 that gives rise to the question of how to handle the surplus from the sale of a Tax Possession.

## THE INHERENT CONFLICT IN GENERAL LAWS CHAPTER 60

In *Town of Lynnfield v. Owners Unknown*, the Court explained that the purpose of Chapter 60

is not to provide municipalities with a method of acquiring property for municipal purposes without paying the owner of the property fair compensation as in eminent domain proceedings. The redemption provisions were enacted by the Legislature to provide municipalities with a mechanism for the prompt collection of delinquent real estate taxes. *Brown v. City of Boston*, 353 Mass. 740, 742, 235 N.E.2d 36 (1968). Thus, the only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of the taxes due on the property, together with other costs and interest. When an owner of property taken for the nonpayment of real estate taxes comes forward with sufficient funds to redeem the property, the purpose of the statute has been fulfilled.

*Town of Lynnfield*, 397 Mass. 470, 474 (1986).<sup>7</sup>

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<sup>7</sup> In *A Treatise on the Law of Tax Titles, Their Creation, Incidents, Evidence and Legal Criteria*, Henry Campbell Black explains, "It is of course neither the policy nor the design of the state to profit by the delinquency of the land owner. Its object in proceeding against the realty is merely to put in operation a prompt and efficacious method of collecting its lawful demands. As soon as the taxes, with interest and costs, have been realized from the purchase

Thus, as the Land Court stated in its denial of the Taxpayer's Motion for Summary Judgment, upon the payment of unpaid taxes, interest, fees and costs by the property owner that the Tax Title is redeemed.

While the Special Commission clearly sought to transform Tax Titles into security rather than title absolute, the Special Commission recognized that under certain circumstances when a taxpayer did not redeem the Tax Title, the municipality would have to sell the property, now a Tax Possession, to collect the outstanding taxes, interest, fees and costs. In the Report, the Special Commission states: "Land once foreclosed by a city or town should thereafter be held by it like any other land belonging to it, and held for municipal purposes, and not, as at present, subject to continued taxation. Collectors find that the law as it now stands prevents rather than promotes the marketability of the land." Report, p. 20. The Special Commission's solution to concerns with the marketability of a Tax Possession was codified as General Laws Chapter 60, Section 77, which provides in part: "After foreclosure by a town of the rights of redemption under a tax title or taking, as hereinbefore provided, the land shall thereafter be held and disposed of like any land belonging to it and held for municipal purposes, and shall not while so held be assessed for taxes."

While Chapter 60, Section 77 may resolve any concerns with the marketability of the Tax Possession, it causes a problem with the proceeds of the sale of the Tax Possession. As discussed above, the purpose of the Tax Title after 1915 is to secure payment of the unpaid real estate taxes, interest, fees and costs. If the Tax Possession sells for a price that is equal to the unpaid real estate taxes, interest, fees and costs without any surplus, there is no issue. However, Chapter 60 includes

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money, this object is fully accomplished. Henry Campbell Black, *A Treatise on the Law of Tax Titles, Their Creation, Incidents, Evidence and Legal Criteria* § 262 (2d ed. 1893).



no provision to deal with any surplus that may arise from the sale of the Tax Possession.<sup>8</sup> As the Court in *Crystal Springs v. Town of Freetown* stated, “it is not inappropriate to state that it is firmly established that towns may hold real estate for the public use of the inhabitants and convey the same. Precise authority for the conveyance of land acquired after foreclosure by a town of the rights of redemption under a tax title or taking is to be found in G.L. (Ter.Ed.) c. 60, § 77, which should be read together with G.L.(Ter.Ed.) c. 40, § 3”. *Crystal Spring Finishing Company v. Town of Freetown*, 314 Mass. 315, 317 (1943). This is why the Tax Title, a legal interest that was transformed by Chapter 60 into mere security for unpaid real estate taxes, interest, fees, and costs, becomes transformed into title absolute by Chapter 60, Section 77 upon the entry of the Decree of Foreclosure.

While Chapter 60, Section 64 states that the municipality holds absolute title after the entry of a Decree of Foreclosure, it does not mandate that that the Tax Possession must be treated in the same fashion as municipal property thus preventing the distribution of surplus sales proceeds to the taxpayer. Rather it is Section 77 that requires that the Tax Possession be disposed of “like any other land belonging to it”.

This inherent conflict in Chapter 60 must ultimately be resolved by the General Court.<sup>9</sup> However, there are three (3) possible equitable methods to address this inherent conflict until the General Court acts.

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<sup>8</sup> Since the Tax Possession, which is clearly security for the unpaid real estate taxes, interest, fees and costs, is to be treated in the same fashion as municipal property, then the entirety of the proceeds from the sale must be retained by the municipality.

<sup>9</sup> At present there are three (3) Bills pending in the Massachusetts House of Representatives and four (4) Bills pending in the Massachusetts Senate. Only Senate Bill 1953 addresses this issue.

## GENERAL LAWS CHAPTER 60, SECTION 68

The Land Court Notification and Request for Amici Submissions specifically references General Laws Chapter 60, Section 68 as a possible source of authority to address the use of the surplus of sales proceeds from the sale of Tax Possession. General Laws Chapter 60, Section 68 provides, in part:

Any person claiming an interest, on or before the return day or within such further time as may on motion be allowed by the court, shall, if he desires to redeem, file an answer setting forth his right in the land, and an offer to redeem upon such terms as may be fixed by the court. Thereupon the court shall hear the parties, and may in any case in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, interest at the time rate of sixteen per cent per annum and all subsequent taxes, cost and interest to which the petitioner may be entitled under sections sixty-one and sixty-two, together with the costs of the proceeding and such counsel fee as the court deems reasonable. ***The court may impose such other terms as justice and the circumstances warrant.*** (emphasis supplied).

Since the process for disposition of the Tax Possession mandated by Chapter 60, Section 77 prevents a municipality from returning the surplus for the sale of a Tax Possession to the taxpayer (as would be required since the foreclosed Tax Title was merely security for the unpaid real estate taxes, interest, fees and costs),<sup>10</sup> it could be argued that justice and the circumstances would warrant the imposition of terms directing the refund of the surplus to the taxpayer. However, the language authorizing the Land Court to impose such other terms as justice and circumstances warrant is in the context of the Land Court's issuance of the terms of the Finding which sets the terms of redemption of the Tax Title. As such, if a Tax Title has been transformed into a Tax Possession, the redemption period established by the Finding has expired as have its terms of

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<sup>10</sup> General Laws Chapter 60, Section 54 which provides in part “[s]uch title shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges, with interest thereon.”

redemption. Therefore, Chapter 60, Section 68 does not appear to provide a possible source of authority for an order directing refund of the surplus post Decree.

#### GENERAL LAWS CHAPTER 79, SECTION 10

As discussed above, prior to 1915, a Tax Title was treated as an absolute and perfect title from the sovereign power. Report, p. 17. Thus, it could be argued that the provisions of Chapter 60, Section 77 return the nature of the Tax Title into an absolute and perfect title from the sovereign power. If such is the case, then after the payment of any outstanding real estate taxes, interest, fees and costs, the surplus funds from the sale of Tax Possession could be turned back to the taxpayer. G.L. c. 79, § 44A. However, while Chapter 60, Section 77 states that Tax Possession should be treated in a fashion similar to municipal property, it does not state that Tax Possessions are municipal property. This is because municipal property serves a public purpose as a Town Hall, fire station, police station, school or park. The redemption provisions were enacted by the Legislature to provide municipalities with a mechanism for the prompt collection of delinquent real estate taxes. *Brown*, 353 Mass. at 742. It is for this reason that when a Tax Possession is obtained by a municipality, its stated value is not its fair market value, but rather the total of the outstanding real estate taxes, fees, and costs. It does not serve an independent public purpose.

Sale proceeds from the sale of Tax Possession and sales proceeds from the sale of municipal property are treated differently under the laws of the Commonwealth. Pursuant to General Laws Chapter 59, Section 23, the sales proceeds from the sale of Tax Possessions and the receipts from Tax Title redemptions are treated identically and included in the calculation of “Free Cash”. *See* G.L. c. 59, § 23.<sup>11</sup> Additionally, pursuant to General Laws Chapter 60, Section 77B, a Custodian

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<sup>11</sup> “Free Cash” is the amount of available funds certified by the Director of Accounts of the Massachusetts Department of Revenue as available on July the first next preceding the date of the appropriation.

of Tax Possessions has care, custody, management, and control of all Tax Possession acquired by a municipality and may sell said Tax Possessions at a public auction with approval of the Mayor and City Council in a city or the Board of Selectmen and Town Meeting in a Town as would be typically required for the sale of municipal property.

General Laws Chapter 79, Section 10 allows for compensation to a property owner when all or a portion of their property has been taken for a public use without a formal vote or order of the duly authorized board of officers of the municipality. It is uncertain that a municipality's retention of surplus proceeds from the sale of a Tax Possession could be deemed a "public use" or a "public purpose." The Association does not take a position regarding this issue but rather, as discussed below, suggests the use of the Court's equity powers to craft a method to address the surplus funds from the sale of Tax Possession until the General Court acts to resolve this issue in a more permanent fashion.

#### **GENERAL LAWS CHAPTER 185, SECTION 1**

Pursuant to General Laws Chapter 185, Section 1(k), the Land Court "shall have exclusive jurisdiction... in all cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved, including actions for specific performance of contracts."

It is well established that a court may not exercise its equitable powers where there is an adequate remedy at law. *Liebson v. Liebson*, 412 Mass. 431, 433 (1992); *Cadigan v. Brown*, 120 Mass. 493, 494 (1876). However, where, as here, there is no adequate remedy at law to address the surplus of the sales proceeds of a Tax Possession, there is no bar to an equitable remedy that

allows the use of Title Examination required by General Laws Chapter 60, Section 66 to create a process by which surplus proceeds from the sale of a Tax Possession could be managed.

Pursuant to General Laws Chapter 60, Section 66, the Land Court appoints a Land Court Title Examiner to perform a Title Examination of the subject parcel of a Complaint to Foreclose the Right of Redemption. In performing such a Title Examination, the Land Court Examiner will begin the examination twenty (20) years before the date of the Instrument of Taking which created the Tax Title and then bring the examination forward to date of the report of the Title Examination. In doing so, the Land Court Title Examiner will identify parties in interest who will receive notice of the pendency of the matter and be given an opportunity to redeem the Tax Title. This is a hallmark of the process recommended by the Special Commission and created by the General Court, and is integral in the Land Court's protection of the due process during the foreclosure process. The Land Court Title Examiner's Report provides the name of the Party in Interest, their address, and the recording information for the document that gives rise to their interest. It also sets forth the stated amount of any mortgage, liens, attachments or executions.

By virtue of this process, the Land Court has already determined the Parties in Interest and provided notice to said Parties in Interest before the Decree of Foreclosure could be issued. Further, the Land Court Title Examiner's Report pursuant to General Laws Chapter 60, Section 66 provides the recording information of the instruments of record title which create the party's interest in the Tax Title, thus it is possible to determine the hierarchy of mortgages, liens, executions, and attachments. Therefore, it may be possible to authorize an existing administrative government agency possessing the knowledge, expertise and specific skillset required to manage the distribution of the surplus funds from the sale of a Tax Possession. For example, one such administrative agency may be the Unclaimed Property Division of the Office of Treasurer of the

Commonwealth. As Receiver General, the Treasurer of the Commonwealth receives funds from accounts previously held by banks, financial institutions, and other entities that have been unclaimed. The Treasurer then oversees the process by which the holder of such an account, or their heirs, may claim these unclaimed funds.

Using its equity powers, the Land Court could issue an Order that accompanies a Decree of Foreclosure. The Land Court Examiner's Title Report would be attached to the Order. Such an Order would provide that the municipality shall attempt to sell<sup>12</sup> the Tax Possession as soon as practicable<sup>13</sup> and upon such sale retain sufficient funds to pay the unpaid real estate taxes, interest, fees and costs (including the costs of the auction and sale)<sup>14</sup>. The Order could then provide that any surplus funds along with a copy of the Order be forwarded to the Treasurer of the Commonwealth, and further authorize the Treasurer to provide notice to the Parties in Interest as set forth in the Land Court Title Examiner's Report. Finally, the order could provide that any funds are not claimed within two (2) years, that the remaining funds would be transferred to the municipality.<sup>15</sup>

Thus, relying in part on the Land Court's equity powers, and upon the provisions of Chapter 60 which are designed to protect due process, the Land Court could provide a short-term remedy

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<sup>12</sup> When a municipality seeks to retain a Tax Possession for municipal use, it must transfer the property from a Tax Possession to municipal property. As part of this transfer, the municipality will appropriate fund from the General Fund and transfer the funds to the municipality's Tax Possession Account as if the property had been sold to a bona fide third party. As such the same process regarding surplus could apply when the municipality retains the Tax Possession for municipal use.

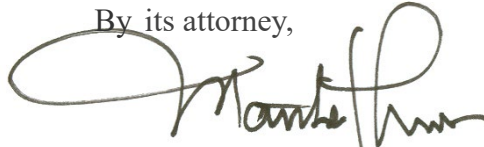
<sup>13</sup> General Laws Chapter 60, Section 77B allows a municipality to name a Custodian of Tax Possessions who notwithstanding any General or Special Law to the contrary may sell Tax Possessions by means of public auction. If in the opinion of the Custodian of Tax Possessions such a sale is impracticable, the Custodian may lease the Tax Possession for up to three (3) years.

<sup>14</sup> In instances when a municipality has subsequently determined that a Tax Possession may satisfy a municipal need as a park, playground, municipal facility, or conservation land the municipality must in effect buy the Tax Possession from itself. *See Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005).

<sup>15</sup> This process would alleviate the need to file an interpleader as is required with surplus funds from a bank foreclosure. This process would allow such a distribution to be managed by the Commonwealth while conserving judicial resources.

to the inherent conflict that exists in Chapter 60 until the General Court resolves the conflict in a more permanent fashion. Such a process would also prevent the sale of a Tax Possession from being deemed an unconstitutional taking.

Respectfully submitted,  
MASSACHUSETTS MUNICIPAL LAWYERS ASSOCIATION  
By its attorney,


A handwritten signature in black ink, appearing to read "Matthew J. Thomas", written over a horizontal line.

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Dated: December 4, 2023

## CERTIFICATE OF SERVICE

I, Matthew J. Thomas, Esq., Counsel for the Massachusetts Municipal Lawyers Association, Amicus Curiae, hereby certify that on this 4<sup>th</sup> day of December, 2023, a true copy of the forgoing document was served via e-fileMA on all counsel of record.



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MATTHEW J. THOMAS, ESQ.