

TALLAGE LINCOLN, LLC VS. JESSYE L. WILLIAMS & OTHERS[1]

Docket:	SJC-12847
Dates:	January 7, 2020 - August 19, 2020
Present:	Gants, C.J., Lenk, Gaziano, Lowy, Budd, & Cypher, JJ.
County:	Suffolk
Keywords:	Real Property, Tax lien, Tax title, Assignment of tax title, Foreclosure of tax title. Taxation, Real estate tax: tax taking, Tax lien, Real estate tax: foreclosure of tax lien, Real estate tax: assignment of tax title, Real estate tax: redemption, Real estate tax: foreclosure of right of redemption.

Civil action commenced in the Land Court Department on November 10, 2016.

A request for a finding on the redemption amount was heard by Michael D. Vhay, J., and a motion for reconsideration was considered by him.

An application for leave to prosecute an interlocutory appeal was heard by John Englander, J., in the Appeals Court. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Daniel C. Hill (John D. Finnegan also present) for the plaintiff.

Marc R. Deshaies for the defendants.

GANTS, C.J. In 2011, Jessye Williams, Jessie Williams, III, and George Wortham (owners) failed to pay the real estate taxes on their New Bedford home. As a result, the city of New Bedford (city) took tax title to the property in November 2011, pursuant to G. L. c. 60, §§ 53-54. The owners subsequently did not pay their real estate taxes in 2012, 2013, 2014, and 2015, and each year, these taxes were added to the amount due in the city's tax title account. In May 2016, Tallage Lincoln, LLC (Tallage), a for-profit entity in the business of acquiring tax titles from municipalities, was the successful bidder at a tax title auction conducted by the city, and the city assigned Tallage its tax title to the property. Later in 2016, Tallage

initiated proceedings to foreclose (i.e., terminate) the owners' right to redeem the property. The owners filed a timely answer to the petition, exercising their right of redemption. In 2018, Tallage asked the Land Court to find the redemption amount that the owners would need to pay to avoid losing their home. Tallage requested that the redemption amount include the real estate taxes owed to the city at the time that Tallage was assigned the tax title account in 2016; the real estate taxes that Tallage itself had paid on the property in 2016, 2017, and 2018; the statutory interest rate of sixteen percent per year on the unpaid real estate taxes and the taxes paid by Tallage; and Tallage's legal fees. A Land Court judge rejected Tallage's requested finding, ruling that the statutory scheme set forth in G. L. c. 60, § 52, did not permit assignees of tax title accounts, such as Tallage, to include their own subsequent tax payments in the amount required for redemption. The judge noted that if the owner paid the redemption amount, § 52 assignees could seek to recover those payments through a lien on the property. Tallage appealed from the decision, and we transferred the appeal to this court on our own motion. For the reasons that follow, we affirm the judge's decision.

Statutory background. Before we discuss the matter presently before the court, we provide some context given the archaic and arcane process of tax lien foreclosure.^[2] Because (1) private homeowners are rarely represented in tax lien foreclosure proceedings, (2) this body of law is difficult to understand even for experienced attorneys, and (3) the complexity and opacity of this process can, and sometimes does, result in catastrophic consequences for homeowners, we include a full discussion of the tax lien foreclosure process in an Appendix to this opinion. However, we briefly summarize (and simplify) it here to the extent necessary to understand what happened in this case.

When a taxpayer fails to pay his or her real estate taxes, the statutory scheme provides municipal tax collectors with two primary ways to collect the taxes: by conducting a tax sale, see G. L. c. 60, §§ 43-45, or by executing a tax taking, see G. L. c. 60, § 53. If a municipality conducts a tax sale, it issues a "collector's deed" to the third-party purchaser, granting that party the rights to collect the delinquent taxes from the delinquent taxpayer and to foreclose the delinquent taxpayer's right of redemption in the Land Court. G. L. c. 60, § 45. Tax sales used to be the predominant method of collecting real estate taxes, see P. Nichols, *Taxation in Massachusetts* 358-359 (3d ed. 1938), but they have fallen out of use, except in a

few municipalities, and have largely been replaced by tax takings, see Massachusetts Collectors and Treasurers Association, Collector's Manual, at 44, 55 (rev. 2017), https://www.masscta.com/sites/g/files/vyhlif3441/f/uploads/collectors_manual.pdf [<https://perma.cc/R8DQ-TPMR>].

When a tax collector conducts a tax taking, as happened in this case, the municipality obtains "tax title" to the property, which is best understood as legal ownership of the property subject to the owner's right of redemption. G. L. c. 60, § 53. Following the taking, the municipality must create a "tax title account," to which it can "certify" (i.e., add) subsequent missed tax payments, as well as any fees, charges, and interest accrued, without having to conduct another taking. G. L. c. 60, §§ 50, 61. Interest accrues at fourteen percent annually from the time that the taxes become delinquent until the taking, G. L. c. 59, § 57, and increases to sixteen percent annually after the taking, G. L. c. 60, § 62. If the delinquent taxpayer does not "redeem" the property (i.e., pay the balance of the tax title account) within six months of the taking, the municipality can petition the Land Court to foreclose the taxpayer's right of redemption. G. L. c. 60, § 65. Alternatively, if the municipality does not wish to proceed against the taxpayer itself, it can assign the tax title to a private party. See G. L. c. 60, § 2C (bulk sale of tax receivables and liens); G. L. c. 60, § 52 (tax title auction). The private party can then take further action on the tax title account itself, including petitioning the Land Court to foreclose the taxpayer's right of redemption after the statutory six-month redemption period has run. G. L. c. 60, § 65.

Once the petition to foreclose has been filed, the Land Court notifies the taxpayer and advises him or her of the right to redeem the property and the requirement to appear and answer the petition by a certain date. G. L. c. 60, § 65. If the taxpayer fails to file a timely response to the petition, the municipality or assigned private party may immediately move the court to enter a judgment of foreclosure of the right of redemption. G. L. c. 60, § 67. If the taxpayer answers and appears, the municipality or private party files a request for a finding by the Land Court regarding the amount of money that the taxpayer must pay in order to redeem the property. G. L. c. 60, § 68. This redemption amount includes the amount of taxes certified to the tax title account, as well as any interest, costs, and fees. *Id.* In addition, costs and fees associated with the foreclosure action,

including legal fees, are chargeable to the taxpayer. G. L. c. 60, § 65. The Land Court also sets a deadline for redemption. G. L. c. 60, § 68.

If the taxpayer does not timely respond to the petition or fails to redeem the property according to the terms fixed by the Land Court, the court may enter judgment foreclosing the right of redemption. Upon entry of such judgment, the municipality or private party assignee takes absolute title to the property. G. L. c. 60, § 69. Known as "strict foreclosure," this process is different in several important ways from a foreclosure by power of sale, which is how mortgage foreclosures generally proceed. See G. L. c. 244, § 11.

With a mortgage foreclosure, when a borrower fails to make mortgage payments, the lender must provide proper notice to the borrower and, if the borrower fails to pay the amount needed to discharge the mortgage, the lender may sell the property at auction to the highest bidder. See G. L. c. 244, §§ 14, 17B; G. L. c. 183, § 21. If the property is sold for more than is owed on the mortgage, the lender retains the amount owed (including interest, penalties, and any costs associated with foreclosure) and pays any surplus back to the borrower; the borrower thereby keeps any equity in the home.[3] G. L. c. 244, § 36.

Strict foreclosure, by contrast, does not involve any type of sale; rather, the foreclosure judgment extinguishes the taxpayer's remaining interest in the property -- the right of redemption -- and converts the municipality's or third party's tax title into absolute title. G. L. c. 60, § 64. In addition, the foreclosing party takes title free and clear of all encumbrances, including mortgages and other liens. *Id.* See *Gaunt v. Arzoomanian*, 313 Mass. 38, 40 (1943) (mortgagees lose their security interest in land following foreclosure decree). Consequently, after a strict foreclosure, the taxpayer loses any equity he or she has accrued in the property, no matter how small the amount of taxes due or how large the amount of equity.[4] See *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094 (June 26, 2015) (failure of taxpayers to pay municipal water and sewer bills amounting to \$492.51 resulted in foreclosure on property with fair market value of \$270,000).

Although G. L. c. 60, § 69, states that entry of the foreclosure judgment "shall forever bar all rights of redemption," the taxpayer may move to vacate the judgment if he or she pays the redemption amount, plus interest, within one year. G. L. c. 60, § 69A. After one year, the judgment is final and can be vacated

only upon a showing of a denial of due process. See *North Reading v. Welch*, 46 Mass. App. Ct. 818, 819-820 (1999).

Factual background. The owners are the record title holders of a single-family home in New Bedford. In fiscal year 2011, the owners failed to pay their \$2,775.64 real estate tax bill. In November 2011, pursuant to G. L. c. 60, §§ 53-54, the city's tax collector took tax title to the home and created a tax title account for the delinquent balance of \$2,957.16, which included the unpaid taxes, the fourteen percent statutory interest that had accrued up until the date of the taking, and the fees and fines associated with the taking. Following the taking, interest began to accrue at sixteen percent per year. See G. L. c. 60, § 62. The owners did not exercise their right of redemption following the taking and additionally failed to pay their real estate taxes in 2012, 2013, 2014, and 2015. Each year, the unpaid taxes were certified to the tax title account.

In May 2016, the city conducted a tax title auction where Tallage was assigned the tax title account to the home. Under G. L. c. 60, § 52, the municipality must sell the title "to the highest bidder," and the assignee is required to pay no less than the balance of the tax title account, which here, at that time, was \$22,901.97: \$15,204.72 for the five years of unpaid taxes and \$7,697.25 in accrued interest, fees, and fines. Tallage paid only the minimum amount required by statute -- the \$22,901.97 balance of the tax title account.

Six months later, in November 2016, Tallage commenced an action in the Land Court to foreclose the owners' right of redemption. The petition listed the assessed value of the property as \$182,500. Although the owners answered the foreclosure petition, they continued not to pay their real estate taxes. As a result, in May 2016, 2017, and 2018, Tallage paid the taxes on the property, totaling \$10,701.22.

In October 2018, Tallage moved for a finding regarding the redemption amount that the owners would have to pay in order to redeem the title to the home. The finding request for \$44,315.68 included (a) the unpaid taxes for fiscal years 2011 through 2015, plus the interest, fees, and fines that had accrued until Tallage purchased the tax title; (b) the subsequent delinquent taxes that Tallage paid on the property for fiscal years 2016 through 2018; and (c) sixteen percent annual interest on item (b).

The owners did not dispute that the redemption amount should include item (a); however, they objected to the inclusion of items (b) and (c), arguing that there was no statutory authority allowing those sums to be included in the redemption calculation. A Land Court judge agreed with the owners, concluding that tax payments made by § 52 assignees subsequent to the assignment of the tax title account created a lien on the property but could not be added to the tax title account and therefore could not be included in the redemption amount. The judge ordered Tallage to file a renewed motion under G. L. c. 60, § 68 (without prejudice to its appellate rights), excluding subsequent tax payments from the redemption amount. The judge also denied Tallage's motion for reconsideration.

Tallage thereafter filed a renewed motion for entry of a finding, and the Land Court recorder issued a finding regarding the redemption amount on May 16, 2019, which excluded Tallage's subsequent tax payments and the corresponding sixteen percent interest on those payments. Tallage also filed a petition under G. L. c. 231, § 118, for permission to take an interlocutory appeal, and the petition was allowed by a single justice of the Appeals Court. We transferred the case to this court on our own motion.

Discussion. 1. Redemption amount as determined by plain language of statute. Tax liens are created by statute, and a detailed statutory scheme, set forth in G. L. c. 60, governs their enforcement. As previously noted, if the municipality conducts a tax taking, it creates a tax title account, see G. L. c. 60, § 50, and may subsequently retain ownership of the tax title account or assign it to a third party by public auction, see G. L. c. 60, § 52, or through a bidding process, see G. L. c. 60, § 2C.

When a municipality or third party seeks to foreclose a property owner's right of redemption, the process is often lengthy, sometimes taking years. As a result, the real estate taxes for subsequent years may become delinquent while the tax title account is open and the foreclosure is pending. If the municipality has retained ownership of the tax title account, the collector can certify those subsequent delinquent taxes to the tax title account, as occurred in this case when the owners did not pay their real estate taxes in 2012 through 2014. G. L. c. 60, § 61. This eliminates the need for the municipality to conduct another taking when it already has tax title to the property. See *id.* If the account has been assigned, the § 52

assignee may pay the subsequent taxes, record a certificate of payment within thirty days, and thereby obtain a lien on the property. G. L. c. 60, § 60.

If a municipality or third party seeks to foreclose the owner's right of redemption, and the owner claims the right to redeem title to the property, the Land Court must, as discussed supra, make a finding regarding the redemption amount. G. L. c. 60, § 68. The charges that may be included in the redemption amount are set forth in § 68 and include "the original sum [of the tax title account or collector's deed], 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 [§§ 61 and 62]" (emphasis added), court costs, and legal fees. Therefore, the subsequent taxes paid by an assignee can only be included in the redemption amount if authorized by G. L. c. 60, § 61 or § 62.

Section 61 allows a municipality to add subsequent unpaid taxes to a tax title account that it holds; it does not apply to accounts held by an assignee. Section 62 applies both to tax title accounts assigned pursuant to § 52 and to collector's deeds purchased pursuant to § 45 at a tax sale. However, § 62 expressly distinguishes between the two, allowing § 45 purchasers of collector's deeds, but not § 52 assignees, to include subsequent tax payments in the redemption demand:

"[A property owner] may so redeem by paying or tendering to a purchaser [of a collector's deed], or to the person to whom an assignment of a tax title has been made by the town, at any time prior to the filing of such petition for foreclosure, in the case of a purchaser the original sum and intervening taxes and costs paid by him and interest on the whole at said rate, or in the case of an assignee of a tax title from a town the amount stated in the instrument of assignment with additional interest on the principal amount at said rate from the date of said assignment" (emphasis added).

Therefore, the plain language of § 62 treats § 52 assignees differently from § 45 purchasers. "[W]here the language of a statute is plain and unambiguous, it is conclusive as to the legislative intent" (citation omitted). *Commonwealth v. Wassilie*, 482 Mass. 562, 573 (2019). Tallage argues that there is no rational reason for treating § 52 assignees differently from § 45 purchasers, but "[w]e do not 'interpret a statute so as to render it or any portion of it meaningless.'" *Volin v.*

Board of Pub. Accountancy, 422 Mass. 175, 179 (1996), quoting *Adamowicz v. Ipswich*, 395 Mass. 757, 760 (1985). Tallage's interpretation would render superfluous the distinction specifically made by the Legislature between § 52 assignees and § 45 purchasers.

Apart from arguing that this distinction makes no sense, Tallage argues that § 52 assignees must be permitted to include their own subsequent tax payments in their redemption demands in order to achieve a "harmonious reading" of the statutory scheme. See *Board of Educ. v. Assessor of Worcester*, 368 Mass. 511, 513-514 (1975) ("where two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose"). We therefore examine the purpose of the statutory scheme to determine whether such an interpretation is warranted.

2. Purpose of statutory scheme. From our reading of c. 60, two primary statutory purposes emerge: first, to ensure that the municipality receives the taxes it is owed, and second, to protect the taxpayer's right of redemption. In *Brown v. Boston*, 353 Mass. 740, 742 (1968), we recognized that "[t]he principal purpose of c. 60 is to ensure that the city will receive the taxes owed to it," but we also recognized the importance of "due observance of the provisions of the chapter made for the protection of the interests of taxpayers." "[T]he long standing policy in this Commonwealth favors allowing an owner to redeem property taken for the nonpayment of taxes." *Lynnfield v. Owners Unknown*, 397 Mass. 470, 473-474 (1986). And, because tax redemption statutes are "remedial in their nature," they "are interpreted liberally in favor of a person seeking to recover his [or her] land." *Id.* at 474, quoting *Union Trust Co. v. Reed*, 213 Mass. 199, 201 (1912). Together, these cases stand for the proposition that c. 60 should be interpreted to favor redemption and that the court ought not declare rights for § 52 assignees that the statutory scheme does not expressly grant.

This court's decision in *Snow v. Marlborough*, 301 Mass. 422 (1938), also counsels us to strictly construe the provisions of G. L. c. 60. In that case, a property owner failed to pay his real estate taxes for multiple years following a tax taking; however, the municipality neglected to certify those subsequent delinquent taxes to the tax title account. *Id.* at 426-427. Strictly interpreting the statute, the court held that the municipality could not include the subsequent delinquent taxes in the redemption amount due to its failure to certify them as required by the statute,

even though doing so would have served the statutory purpose of allowing the municipality to collect the taxes owed it. *Id.* Here, read strictly, G. L. c. 60, § 61, does not permit § 52 assignees to add subsequent tax payments to the redemption amount.

Tallage makes a number of policy arguments about why this strict construction would frustrate the purpose of the statutory scheme to provide an effective and efficient means to collect taxes. See *Brown*, 353 Mass. at 742. First, Tallage claims that excluding its subsequent tax payments from the redemption amount would "reward" taxpayers for not paying their taxes because they would pay an interest rate less than sixteen percent on those subsequent delinquent taxes. However, Tallage does not make clear how this supposed "reward" -- a lower interest rate -- would make tax collection less effective, where the taxes would have been paid by the § 52 assignee and therefore already collected by the town. The purpose of the statutory scheme is to allow the municipality to collect "the taxes owed to it," not to increase the amount of interest that § 52 assignees can collect. See *Brown*, *supra*. In addition, allowing § 52 assignees to include subsequent taxes, with sixteen percent interest, would substantially increase the amount that taxpayers must pay to redeem their properties, contrary to "the long standing policy in this Commonwealth" favoring redemption. See *Lynnfield*, 397 Mass. at 473. See also *Union Trust Co.*, 213 Mass. at 201.

Tallage also argues that prohibiting § 52 assignees from adding subsequent tax payments to the redemption amount might discourage them from paying the subsequent taxes. If this were to happen, municipalities would be forced to execute another tax taking or tax sale in order to collect the taxes. See G. L. c. 60, § 61 ("A city or town which has assigned a tax title held by it shall, after such assignment, have all the rights and powers to take or sell the real estate affected thereby, for the nonpayment of taxes, which it would have possessed had said city or town never been the holder of said tax title"). However, as noted by the Land Court judge, Tallage itself dispelled the likelihood of that situation, explaining that "no § 52 assignee in its right mind would risk a second taking" and the possibility of having its interest wiped out. Far more likely, § 52 assignees would continue to pay subsequent taxes pursuant to § 60 and would seek to enforce the resulting liens in a separate action if the taxpayer successfully redeemed the property. Given that assignees may -- and indeed Tallage did -- record such liens against the property,

there already exists a mechanism by which assignees may recover subsequent tax payments, contrary to Tallage's claim that inclusion of those payments in the redemption amount is the only way that an assignee can recover them.

Tallage also draws comparisons among different provisions of the statutory scheme to explain why allowing § 52 assignees to include their subsequent tax payments in the redemption amount would lead to a "harmonious reading." Tallage argues that because "[t]he issuance of tax payment certificates by the collector to assignees under [G. L. c. 60, § 60,] parallels the certification procedures under [G. L. c. 60, § 61,] . . . certified payments made by assignees should therefore be treated no differently than subsequent unpaid taxes 'certified' to a tax title account under [G. L. c. 60, § 61]." But this argument ignores a critical practical distinction between municipalities holding a tax title account and § 52 assignees: municipalities are accountable to their constituents, but assignees are accountable only to their investors or shareholders.

When municipalities proceed against delinquent taxpayers themselves, the statutory scheme provides a number of mechanisms to facilitate redemption and allow taxpayers to keep their homes. Municipalities can agree to reduce the interest owed by taxpayers and to structure payment plans. See G. L. c. 60, § 62A. They may apply to the Commissioner of Revenue to reduce the principal amount owed. See G. L. c. 58, § 8. Municipalities can also create their own programs aimed at protecting vulnerable citizens. See G. L. c. 59, § 5K (granting authority to municipalities to enact programs for senior citizens to provide volunteer services in exchange for real estate tax abatement). These proceedings are "conducted within the political process and, much like a District Attorney's office, with a large measure of discretion, cognizant of special circumstances." *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094, *supra*.

But once a municipality assigns its interest in a property to a private party, it relinquishes its ability to work with taxpayers and loses control over the outcome of the proceedings. Section 52 assignees are not beholden to any political process and have no obligation or incentive to act in the best interests of the community; "[s]uch entities are responsible to their investors, not the citizens of a city or town." *Id.* "Maximizing return on investment may not include accommodation to individual circumstance to the same extent a municipality, acting for itself, might otherwise deem warranted." *Id.*

For example, in *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094, *supra*, a family in the midst of numerous health crises failed to pay a \$492.51 water and sewer charge, assuming that the mortgage company would pay the bill out of the escrow account. The municipality conducted a tax sale, and Tallage purchased the collector's deed at auction for \$1,052.84. *Id.* The family did not file an answer to Tallage's foreclosure petition because they did not understand the ramifications of the notices; their mortgage company did not file an answer due to a clerical error. *Id.* Tallage obtained a default judgment for absolute title to the property, which had a fair market value of \$270,000, and sold it three weeks later to another company for \$150,000. *Id.* When the family sought to vacate the default judgment under G. L. c. 60, § 69A, which gives the court discretion to vacate tax lien foreclosures within one year of judgment, Tallage argued, albeit unsuccessfully, that its sale of the property cut off the one-year statutory period during which taxpayers can move to vacate a foreclosure judgment. *Id.*

The risk that § 52 assignees might use such aggressive tactics and undermine "the provisions of the chapter made for the protection of the interests of taxpayers," *Brown*, 353 Mass. at 742, leads us to the conclusion that treating municipalities and § 52 assignees differently is in fact the more harmonious reading of the statutory scheme. Given the long-standing policy of the Commonwealth to favor redemption, we decline to grant § 52 assignees rights not expressly granted by the statutory scheme where such a grant would increase the redemption amount and thereby create a greater obstacle to taxpayer redemption.

Conclusion. We affirm the Land Court judge's denial of Tallage's finding request and hold that the statutory scheme does not permit § 52 assignees of tax title accounts to include their own subsequent tax payments, and interest thereon, in their redemption demands.

So ordered.

Appendix.

As is common throughout the United States, real estate taxes in the Commonwealth are imposed at the local level by the city or town where the property is located. G. L. c. 59, § 2A. There are four main steps in real estate tax administration: first, the municipality's assessor identifies taxable properties, G. L.

c. 59, § 2; second, the assessor determines the value of those properties, G. L. c. 59, §§ 2A, 38; third, the assessor sets the tax rate to be applied to the value of different types of properties, G. L. c. 59, § 23A; and fourth, the municipality's collector of taxes (collector) collects the taxes, G. L. c. 60, § 2. Where the taxpayer fails to pay the taxes that are due, a complex statutory scheme governs the collection of municipal taxes. Because the statutes are so complex and because taxpayers often attempt to navigate the collection process without the benefit of counsel, sometimes to their detriment, we attempt in this Appendix to explain the statutory scheme and the collection process.

1. Demand for taxes. The collector first prepares and sends a tax bill to each person assessed, receives the payments, and accounts for them. G. L. c. 60, §§ 2, 3, 6-7. Payment is due within thirty days of the bill date. G. L. c. 59, § 57. If a tax bill remains unpaid on the thirty-first day, interest begins to accrue on the amount outstanding at fourteen percent annually, retroactive to the date of the bill. *Id.* The collector then mails a formal demand for payment of the overdue taxes to the last, best address of the owner of record. G. L. c. 60, § 16. The demand letter is usually just an updated tax bill with the interest added, as well as any fees associated with sending the demand. G. L. c. 60, §§ 15-16. The demand contains no mention of the potentially dire consequences of nonresponse. Nor does it matter to the validity of any subsequent tax proceedings whether the owner actually receives the demand. G. L. c. 60, § 16.

If the owner refuses or neglects to pay the taxes within fourteen days after demand has been made, the collector has a number of different options for collecting the delinquent taxes, including the following: taking or selling the real estate property, G. L. c. 60, § 37; seizing and selling the owner's personal property, G. L. c. 60, §§ 24-29; arresting the owner, G. L. c. 60, § 29; suing the owner, G. L. c. 60, § 35; withholding payment of any money owed to the owner, G. L. c. 60, § 93; and denying or revoking certain local licenses or permits, G. L. c. 40, § 57. The choice of which remedy to pursue belongs to the collector, and multiple remedies may be pursued simultaneously. See *Boston v. Turner*, 201 Mass. 190, 197 (1909) ("The remedies which the statutes provide for the collection of a tax are cumulative. The tax collector is not bound at his peril to select and pursue a single one"). Most commonly, however, the collector will seek payment of the unpaid taxes by a taking or sale of the taxpayer's real estate property.

2. Perfection of tax liens. To understand a tax taking or sale, one must first understand a tax lien. A lien is a formal record of a debt, combined with a security interest in the property. In turn, a security interest is a legal right of the entity to whom money is owed, in this case the municipality, to take remedial action with respect to the property if the debt is not paid.

Once taxes are assessed on a property, a lien arises automatically, giving the municipality a security interest in the property. G. L. c. 60, § 37 ("Taxes assessed upon land . . . shall with all incidental charges and fees be a lien thereon from January first in the year of assessment . . ."). See *Hanna v. Framingham*, 60 Mass. App. Ct. 420, 425 (2004) ("the town's lien securing payment of real estate taxes arises automatically"). The lien secures payment not only of the real estate taxes, but also of other municipal charges connected to the property, such as water and sewer fees. See G. L. c. 60, § 43 (definition of taxes). And the lien takes priority over all other liens and claims on the property, including mortgages, see *Gaunt v. Arzoomanian*, 313 Mass. 38, 39-40 (1943), and Federal tax liens, see 26 U.S.C. § 6323(b)(6).

The lien terminates when the taxes are paid. G. L. c. 60, § 23. If the taxes remain unpaid, the lien continues indefinitely as long as the assessed owner continues to own the property. G. L. c. 60, § 37. But if the property is sold, the lien expires three years and six months from the end of the fiscal year when the taxes were assessed.[1] *Id.*

Once the formal demand to pay overdue taxes has been sent and fourteen days have gone by without payment of the taxes, G. L. c. 60, § 17, the collector can take action to preserve, or "perfect," the lien either by executing a tax taking, G. L. c. 60, §§ 53-54, or, less commonly, a tax sale, G. L. c. 60, §§ 43-45. Either of these processes, described in detail *infra*, ensures that the lien will remain on the property regardless of a change in ownership.

3. Tax taking. Tax takings are the most common way that municipalities in the Commonwealth collect delinquent real estate taxes. See Massachusetts Collectors and Treasurers Association, *Collector's Manual*, at 44 (rev. 2017), https://www.masscta.com/sites/mcta/files/uploads/collectors_manual.pdf [<https://perma.cc/R8DQ-TPMR>].

a. Notice of taking. The first step in a tax taking is the notice of taking. G. L. c. 60, § 53. The collector prepares a notice that states the time and place at which the taking will occur and that includes a description of the property, the year and amount of the delinquent taxes, the name of the assessed owner of the property, and any subsequent owners of the property. G. L. c. 60, §§ 40, 53. At least fourteen days before the taking is to occur, this notice must be published in a local newspaper and posted in "two or more convenient and public places." G. L. c. 60, § 53. As an alternative to newspaper publication, the collector can personally serve notice of the taking on the owner in the same manner as that required for service of subpoenas. *Id.* See G. L. c. 233, § 2. However, according to the Massachusetts Collectors and Treasurers Association, collectors generally do not conduct personal service "because of the expense involved and the increased chance of an error that could invalidate the taking." *Collector's Manual*, *supra* at 45. Consequently, owners are unlikely to receive actual notice of an impending taking, unless they happen to read the legal notices in the local newspaper or pass by one of the public postings. And even if an owner did chance upon a notice of taking, the document -- State Tax Form 300 -- is formalistic and devoid of any mention that the owner risks losing his or her home and all of the equity in it.

b. Taking. At the designated time and place, the collector announces that he or she is taking the property for the municipality. G. L. c. 60, § 53. At this point, two things happen. First, the municipality takes tax title to the property, and the delinquent taxpayer is left with only a right of redemption, discussed *infra*. *Id.* Second, the already substantial fourteen percent annual interest rate on the overdue taxes increases to a sixteen percent annual interest rate, G. L. c. 60, § 62, which, as noted by the judge in this case, is "only 400 basis points shy of the rate that triggers the Commonwealth's criminal usury statute, G. L. c. 271, § 49."

The statute speaks of tax title as "security for the repayment of [overdue] taxes," G. L. c. 60, § 54, but in practice, taking tax title effectively transfers control of the property from the delinquent taxpayer to the city or town. After taking tax title, the municipality can "take immediate possession" of the property. G. L. c. 60, § 53. If the property generates rent or other income, the municipality can keep the money. *Id.* The municipality is not liable to the delinquent taxpayer for any damage that occurs during its possession of the property. *Id.* And the municipality even assumes some duties for the care and maintenance of the property. See G. L.

c. 60, § 77; *Milford v. Boyd*, 434 Mass. 754, 759-760 (2001) (town liable for common area expenses following tax taking); *Kurtigian v. Worcester*, 348 Mass. 284, 287-289 (1965) (city liable for injuries resulting from private nuisance on property following tax taking).

c. Instrument of taking. After the taking, the collector must record an instrument of taking within sixty days. G. L. c. 60, § 54. The instrument of taking -- State Tax Form 301 -- is substantially similar to the notice of taking in that it states the cause of the taking (i.e., overdue taxes), describes the property, and provides information regarding the name of the person assessed and the amount of the taxes, interest, and charges up to the date of taking. Also, as with the notice of taking (and the demand for overdue taxes), it provides no information regarding the practical consequences of the taking, nor does it inform the delinquent taxpayer of the right of redemption or how one might undertake the process of regaining title to the property.

d. Tax title account. Upon completion of a tax taking, responsibility for collection of the delinquent taxes transfers to the town's treasurer, who must set up a tax title account for the property. G. L. c. 60, § 50. The tax title account is a receivable for the amount of unpaid real estate taxes and other unpaid municipal charges, such as for water or sewer services, as well as the interest accrued, and any other fees and charges incurred by the collector, such as those associated with posting and publishing the notice of taking. *Id.*

The benefit of a tax title account is that if subsequent taxes are delinquent, they can be "certified" by the collector to the account and confirmed by a certificate signed by the treasurer. G. L. c. 60, § 61. For example, if a taxpayer failed to pay real estate taxes in 2016, leading the municipality to create a tax title account, and the taxpayer then failed to pay 2017 real estate taxes, the 2017 taxes could be added to the account created in 2016 without the need for the collector to "retake" the property for continued nonpayment of taxes.[2]

The treasurer may mail notices to the delinquent taxpayer and the present owner of the property, if those are not the same person, informing them that the property is in tax title and that the point of contact is the treasurer not the collector. See *Collector's Manual*, *supra* at 47. However, such notice is not required by statute.

4. Tax sale. As an alternative to a tax taking, a collector can conduct a tax sale by executing a tax collector's deed. G. L. c. 60, § 45. Tax sales are an older method of collecting taxes: the statutory authority for the issuance of collector's deeds has existed, in its earliest form, since 1731. See P. Nichols, *Taxation in Massachusetts* 358-359 (3d ed. 1938). Although tax sales used to be the customary method of tax collection, see *id.*, they have been largely supplanted by tax takings, see *Collector's Manual*, *supra* at 44, 55. However, they are still used by some municipalities today, notably Worcester. See, e.g., *Tallage, LLC vs. Gemme*, Mass. Land Ct., No. 12 TL 143424 (Sept. 9, 2019); *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094 (June 26, 2015).

a. Notice of sale. As with tax takings, after the demand for taxes has been sent and fourteen days have passed without payment, the first step in the tax sale process is the notice of sale. G. L. c. 60, § 40. The notice of sale contains the same information as the notice of taking described *supra* and must be published by the collector in a local newspaper and posted in "two or more convenient and public places" at least fourteen days before the sale. G. L. c. 60, §§ 40, 42.

b. Public auction. If the taxes remain unpaid fourteen days after the notice is published and posted, the collector can sell the property at the time and place specified in the notice. G. L. c. 60, § 43. The property may not be sold for less than the amount of the unpaid taxes, plus interest and any other charges or fees that have accrued, G. L. c. 60, §§ 43, 48, and the purchaser must pay the collector within twenty days of the sale, G. L. c. 60, § 49. If nobody bids for the property or if the purchaser fails to make timely payment, the municipality becomes the purchaser. G. L. c. 60, §§ 48-49.

The language of the statute is somewhat confusing because it refers to "sale" of "the land." G. L. c. 60, § 43. However, the person who purchases "the land" at auction is not buying the property itself; rather, the purchaser buys a tax receivable, which grants the rights to collect the delinquent taxes, plus interest and any fees and charges, and to foreclose the delinquent taxpayer's right of redemption in Land Court. G. L. c. 60, § 45. An important distinction between tax sales and tax takings is that tax takings grant the municipality an immediate right of possession, G. L. c. 60, § 53, but those who purchase property at a tax sale do not have "any right to possession of the land until the right of redemption is foreclosed," G. L. c. 60, § 45.

c. Collector's deed. Following the auction, the collector issues the purchaser a collector's deed, which must be recorded within sixty days and which states the reason for the sale, the purchase price, the name of the delinquent taxpayer, and where the notice of sale was posted and published. G. L. c. 60, § 45. If the municipality itself becomes the purchaser of the property, the collector's deed must also state that "no sufficient bid was made at the sale or that the purchaser failed to pay the amount bid." G. L. c. 60, § 50. As with instruments of taking, collector's deeds are subject to the delinquent taxpayer's right of redemption. G. L. c. 60, § 45. And, as noted supra, they act only as a security device "for the repayment of the purchase price, with all intervening costs, terms imposed for redemption and charges, with interest"; they do not confer legal ownership of the property. *Id.*

d. Tax title account. If the municipality becomes the purchaser of the property at auction, the next step is for the treasurer to set up a tax title account. G. L. c. 60, § 50. As noted supra, this allows the subsequent unpaid taxes to be added to the account. G. L. c. 60, § 61.

From the municipality's perspective, tax sales have the advantage of allowing the city or town to immediately collect the taxes, including charges and fees, if the property is purchased at the sale. *Collector's Manual*, supra at 55. However, the major disadvantage is that, unless the municipality purchases the property itself and creates a tax title account, it has no easy way of collecting subsequent unpaid taxes on the property. *Id.* As a result, if a taxpayer fails to make the next year's tax payment, the collector may have to conduct another tax sale or a tax taking in order to collect the taxes. *Id.*

5. Assignment of tax liens to a private party. Where a municipality has taken a property or has become the purchaser through a tax sale, the treasurer may initiate proceedings to enforce the lien, as described infra. Alternatively, and increasingly frequently, the treasurer may assign the municipality's interest to a private party. See G. L. c. 60, § 2C (bulk sale of tax receivables and liens); G. L. c. 60, § 52 (tax title auction).

a. Assignment at tax title auction. Tax title auctions allow municipalities to assign tax titles either individually or in bundles to parties with no prior interest in

the property.[3] G. L. c. 60, § 52. There are notice, publication, and posting requirements for an assignment similar to those for tax takings and sales. *Id.*

i. Notice of auction. In order to hold a tax title auction, notice of the auction must be published in a local newspaper and posted in two or more convenient places fourteen days prior, as in the case of tax takings and tax sales. *Id.* See G. L. c. 60, § 40. In addition, the treasurer must send the notice of the intended assignment to the current owner of record at his or her last known address at least ten days before the auction. G. L. c. 60, § 52. Failure of the owner to receive this notice, however, does not affect the validity of the assignment. *Id.*

ii. Tax title auction. On the day specified in the notice, the treasurer holds a public auction at which the tax title is assigned to the highest bidder. *Id.* See *Dennehy v. Walpole*, 26 Mass. App. Ct. 930, 931 (1988). The bid must be, at minimum, the balance due on the tax title account. G. L. c. 60, § 52. Bidders may offer more than the amount that the taxpayer owes to the municipality, but if a taxpayer seeks to redeem the property after the assignment, the assignee may not charge the premium to the taxpayer. *Id.*

iii. Instrument of assignment. After the auction, the winning bidder must pay the municipality the amount of the bid and any interest that has accrued since the date of the auction. *Id.* Upon full payment, the treasurer executes an instrument of assignment, which must be recorded within sixty days. *Id.* The assignee does not acquire any right to possession of or to receive any rent or income from the tax title property. There is no requirement under G. L. c. 60, § 52, that the taxpayer be given notice that the tax title was in fact assigned at the auction or to whom.

iv. Subsequent unpaid taxes. After a tax title account has been assigned, the tax title account is closed, because the tax has been collected. As a result, if a taxpayer fails to pay subsequently assessed real estate taxes, the collector cannot certify them to the tax title account. Instead, the collector would have to conduct a new tax taking or sale in order to collect the taxes. See G. L. c. 60, § 61 ("A city or town which has assigned a tax title held by it shall, after such assignment, have all the rights and powers to take or sell the real estate affected thereby, for the nonpayment of taxes, which it would have possessed had said city or town never been the holder of said tax title"). Assignees under G. L. c. 60, § 52, do not have the automatic right to purchase the new tax title. However, a § 52 assignee may pay

the subsequent taxes itself, record a certificate of payment, and thereby obtain a lien on the property. G. L. c. 60, § 60.

b. Assignment through bulk sale of tax receivables and liens. Since 1996, municipalities have also had the option of assigning their tax receivables (unpaid taxes that have not yet been put into tax title) and tax titles in bulk. See G. L. c. 60, § 2C, inserted by St. 1996, c. 375, § 1.

i. Publication of accounts. Before collectors or treasurers can assign delinquent taxes, they must publish a list of all accounts to be assigned in a local newspaper at least two months before the assignment. G. L. c. 60, § 2C. There is no requirement that notice of the intended assignment be mailed to the current property owner.

ii. Request for proposals. Unlike assignment through the public auction, where the highest bidder wins, G. L. c. 60, § 2C, grants the municipality more discretion. The municipality chooses the § 2C assignee based on "(i) the price proposed by the offeror; (ii) the offeror's qualifications and experience; (iii) the offeror's plan for communicating with the taxpayers; (iv) whether the offeror has a regular place of business in the commonwealth; (v) whether the offeror is in good standing with the department of revenue; and (vi) other criteria determined by the commissioner and the municipality."

Also unlike assignments under G. L. c. 60, § 52, the bidder may not need to pay the full balance of the tax title account; a municipality can sell its tax titles with a discount of up to fifty percent of the amount of interest that has accrued on the accounts. G. L. c. 60, § 2C. However, if the bidder pays a premium for the accounts, as under G. L. c. 60, § 52, the premium may not be charged as part of the redemption amount. G. L. c. 60, § 2C. Once the purchaser has paid the purchase price, the assignment must be recorded through an instrument of transfer. *Id.*

iii. Notice of assignment. Following the assignment, the municipality provides the names and addresses of the parties to whom notice of the assignment is owed. *Id.* The § 2C assignee must then provide notice of its purchase of the tax receivable or tax title to the taxpayer within twelve days. *Id.* This notice need include only the name, address, telephone number, and preferred method of communication of the purchaser; it need not provide the taxpayer with notice of his or her rights, including the right to redeem the property. *Id.* Because taxpayers

may be unaware of the possibility that their municipal tax obligations can be assigned to a private party, and because the notice is, like all of the others described so far, formalistic, taxpayers may not understand (or believe) that they now owe their delinquent taxes to a private party.

iv. Right of first refusal. If a § 2C assignee has purchased the tax receivable or tax title to a property and the taxpayer is subsequently delinquent in paying his or her real estate taxes on that property, the § 2C assignee has the right of first refusal to purchase the subsequent receivable. *Id.* There is no notice or publication requirement for such an assignment. *Id.*

6. Enforcement of tax liens. a. Right of redemption. Whether a municipality perfects its tax lien by taking or sale, or assigns its interest to a private party, the delinquent taxpayer retains a right of redemption. See G. L. c. 60, §§ 2C, 45, 52, 53. 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. G. L. c. 60, § 62. By statute, the taxpayer is entitled to redeem the property for six months after the taking or sale; however, the right of redemption lasts unless and until it is foreclosed. G. L. c. 60, § 65.

Any party with an interest in the property can exercise this right of redemption until a petition to foreclose it has been filed in the Land Court. Therefore, the right of redemption may be exercised not only by the delinquent taxpayer or current owner of the property, but also by a mortgagee, lien holder, creditor, or easement holder, among others. *Id.* See *Union Trust Co. v. Reed*, 213 Mass. 199, 201 (1912) (broadly construing "any person having an interest in any such land" to include "all varieties of titles and rights"; "it comprehends estates in fee, for life and for years, mortgages, liens, easements, attachments, and every kind of claim to land which can form the basis of a property right"). If an interested party successfully pays off the full tax title account balance, the treasurer files an instrument of redemption, which removes the lien and returns title to the property to the taxpayer (or other redeeming party). G. L. c. 60, § 62.

If the municipality owns the tax title, a taxpayer may also redeem the property by making installment payments to the treasurer, which gives the municipality flexibility to work out a payment plan with the delinquent taxpayer, provided the taxpayer pay the full amount of the tax title account, with interest. See G. L. c. 60,

§ 62. There is no minimum partial payment, and, upon accepting partial payments, the treasurer may extend the waiting period to foreclose for up to two years. *Id.*

In addition, municipalities that have adopted an ordinance or bylaw pursuant to G. L. c. 60, § 62A, may enter into payment agreements with the taxpayer as authorized by the ordinance or bylaw. Such payment agreements can last up to five years and waive up to fifty percent of the interest that would otherwise be owed if the taxpayer complies with the payment schedule in the agreement, but the taxpayer must make "a minimum payment at the inception of the agreement of [twenty-five percent] of the amount needed to redeem the parcel." *Id.* As long as the taxpayer adheres to the payment plan, the treasurer cannot file a foreclosure petition in the Land Court; however, if the taxpayer fails to make the agreed-upon payments, the taxpayer would be in default and subject to foreclosure of the right of redemption. *Id.* Importantly, however, if a municipality assigns its interest in property to a private party, it loses its ability to work with taxpayers to craft a payment plan.

b. Foreclosure of right of redemption. i. Petition to foreclose. If nobody redeems the property within six months after the taking or sale, the municipal treasurer, the purchaser of a collector's deed, or an assignee under G. L. c. 60, § 2C or § 52, may begin proceedings to foreclose the delinquent taxpayer's right of redemption by filing a petition in the Land Court.[4] G. L. c. 60, § 65. The foreclosure petition may be filed any time after the six-month redemption period has passed; there is no statute of limitations. *Id.* The Land Court then conducts a title examination and gives notice to all of the parties with an interest in the land, informing them of the petition and providing a period of time no shorter than twenty days to answer the petition. G. L. c. 60, §§ 66-67. If the taxpayer fails to file a timely response to the petition, the municipality or private party may immediately move the court to enter a judgment of foreclosure of the right of redemption. G. L. c. 60, § 67. Between fiscal years 2016 and 2020, almost one-quarter of taxpayers did not respond to the petition and therefore were found by the court to have defaulted.[5]

ii. Request for finding. If the taxpayer answers and appears, the Land Court provides the taxpayer with an explanation of his or her rights. For many, this is the first time that they are provided with any effective notice of their right to redeem -- after the statutory redemption period has already expired.

The municipality or private party then files a request for a finding by the Land Court regarding the amount of money that the taxpayer must pay in order to redeem the property. G. L. c. 60, § 68. This redemption amount includes the amount of taxes certified to the tax title account, as well as any interest, costs, and fees. *Id.* In addition, costs and fees associated with the foreclosure action, including legal fees, may be included in the redemption amount. G. L. c. 60, § 65. The Land Court also sets a time for redemption. G. L. c. 60, § 68. The homeowners, the majority of whom are unrepresented, sometimes are reluctant to negotiate with the attorney for the municipality or private party because the billing rate for the attorney's time spent on negotiations can be added to the redemption amount.

The redemption period under G. L. c. 60, § 68, is distinct from the six-month statutory redemption period following the tax taking or sale under G. L. c. 60, § 65. The Land Court has broad discretion to allow redemption over any "time fixed by the court." G. L. c. 60, § 68. In this way, the Land Court may permit a taxpayer to pay the redemption amount in installments over a fixed period, such as where the tax title has been assigned to a private party, which does not have statutory authority to enter into payment plans with taxpayers. *Id.* Through use of this discretionary redemption period, the Land Court can also give a taxpayer the opportunity to redeem the property through refinancing or through the voluntary sale of the property. However, the Land Court cannot provide taxpayers with legal advice, and many are unrepresented with little understanding of the process or risks that they are facing.

iii. Foreclosure. If the taxpayer does not respond to the petition or fails to redeem the property according to the terms fixed by the Land Court, and the court enters judgment to foreclose the right of redemption, the municipality or private party takes absolute title to the property. G. L. c. 60, § 69. This "strict foreclosure" process is different in several important ways from a foreclosure by power of sale, which is typical of home mortgage foreclosures. See G. L. c. 244, § 11. When a homeowner fails to make mortgage payments, the lender may sell the property at auction to the highest bidder if the lender has provided proper notice to the borrower and the borrower failed to discharge the mortgage. See G. L. c. 244, §§ 14, 17B; G. L. c. 183, § 21. If the property is sold for more than is owed on the mortgage, the lender retains the amount owed (including interest, penalties, and

any costs associated with foreclosure) and pays any surplus back to the borrower; the borrower thereby keeps any equity in the home. G. L. c. 244, § 36.

By contrast, there is no sale in a strict foreclosure; the foreclosure judgment extinguishes the taxpayer's remaining interest in the property -- the right of redemption -- and converts the municipality's or third party's tax title into absolute title. G. L. c. 60, § 64. See *Sandwich v. Quirk*, 409 Mass. 380, 384, cert. denied, 502 U.S. 814 (1991) ("The absolute title proclaimed by § 64 clears the record title so that the municipality may sell the property or keep it for municipal purposes, free of the claims of the prior owner and other persons whose rights are extinguished"). In addition, the foreclosing party takes title free and clear of all encumbrances, including mortgages and other liens. G. L. c. 60, § 64. See *Gaunt*, 313 Mass. at 40 (mortgagees have no interest in land following foreclosure decree). Consequently, following the foreclosure, the municipality or third party owns the property outright, and the taxpayer loses any equity that he or she had in the property, no matter how small the amount of the taxes owed. See *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094 (June 26, 2015) (failure of taxpayers to pay municipal water and sewer bills amounting to \$492.51 resulted in foreclosure on property valued at \$270,000). There is generally equity to lose in these foreclosed properties because most of the property owners who find themselves facing foreclosure have a home with no mortgage on it: if the property were mortgaged, the mortgagee generally would pay the real estate taxes even if the homeowner were in default on the mortgage in order to protect its interest in the property.

iv. Petition to vacate foreclosure. Although G. L. c. 60, § 69, states that entry of the foreclosure judgment "shall forever bar all rights of redemption," the taxpayer may move to vacate the judgment upon payment of the full redemption amount plus interest for up to one year. G. L. c. 60, § 69A. The Land Court may then, in its discretion, vacate the foreclosure judgment if "required to accomplish justice" (citation omitted). *Lynch v. Boston*, 313 Mass. 478, 480 (1943). After one year, the judgment is final and can be vacated only upon a showing of lack of due process. See *North Reading v. Welch*, 46 Mass. App. Ct. 818, 819-820 (1999). If a taxpayer fails to file a timely response to the petition to foreclose and if the owner of the tax title moves the Land Court to enter a judgment of foreclosure of the right of redemption, there is no statutory requirement that the taxpayer be notified of the foreclosure judgment.

v. Eviction. Once the Land Court has entered the foreclosure judgment, the municipality or private party owns the property outright. G. L. c. 60, § 69. If the property is occupied, the new owner may then initiate a summary process eviction under G. L. c. 239, § 1. See *Adjartey v. Central Div. of the Hous. Court Dep't*, 481 Mass. 830, 834 n.7 (2019). However, because of the one-year period during which the former owner can move to vacate the foreclosure, the new owners may delay the eviction proceedings: in at least one case, a § 2C assignee, aware of the absolute one-year bar on petitions to vacate, implemented a strategy "to lay low in the hopes that the taxpayer would remain unaware of her rights, and [did] not communicate with the taxpayer until the one-year right to petition to redeem after the foreclosure judgment had expired." *Ithaca Fin., LLC vs. Leger*, Mass. Land Ct., No. 14 TL 148761 (HPS) (May 10, 2019).[6]

footnotes

[1] Jessie Williams, III; and George H. Wortham, Jr.

[2]"For most mortals, mere mention of property tax administration is sufficient to make eyes glaze over and heads nod." H.J. Aaron, *Who Pays the Property Tax?: A New View* 56 (1975).

[3]This is a highly simplified explanation of mortgage foreclosure; the reality is far more complicated. See G. L. c. 244, §§ 11-17C (statutory framework regulating foreclosure by power of sale).

[4]Several of our sister States have determined that excess value from a tax taking must be made available to the taxpayer as a matter of constitutional law. See, e.g., *Thomas Tool Servs., Inc. v. Croydon*, 145 N.H. 218, 220 (2000) (tax lien procedure resulting in equity windfall to purchaser of tax deed violated takings clause of New Hampshire Constitution); *Bogie v. Barnet*, 129 Vt. 46, 55 (1970) (retention of excess value by town amounts to unlawful taking for public use without compensation contrary to Vermont Constitution).

In *Kelly v. Boston*, 348 Mass. 385, 388 (1965), this court considered the legislative history of the statutory scheme governing tax lien foreclosures and determined that the Legislature intended that the process result in forfeiture of the taxpayer's equity to the municipality. The parties in that case did not raise any constitutional challenge, and we did not address the constitutionality of the statutory

scheme. Here, too, the parties have not raised a constitutional challenge, and we do not address the constitutionality of the statutory scheme.

footnotes for Appendix

[1]For example, for taxes assessed in fiscal year 2019, which ran from July 1, 2018 to June 30, 2019, the lien expires on December 31, 2022, if the property is sold before the tax collector takes steps to perfect the lien.

[2]In many municipalities, once delinquent taxes are added to the tax title account, those taxes no longer appear on subsequent real estate tax bills sent by the collector. That means that the homeowner who failed to pay the assessed 2016 real estate taxes would not see those taxes on the 2017 bill.

[3]Treasurers may not assign tax titles subject to a payment agreement entered into pursuant to G. L. c. 60, § 62A, discussed infra.

[4]If the property is of "low value," i.e., assessed under \$15,000, another optional administrative foreclosure procedure exists. G. L. c. 60, § 79. In addition, an expedited process can be followed where the property has been abandoned. G. L. c. 60, § 65.

[5]Between fiscal years 2016 and 2020, there were 10,301 tax lien cases that reached a final disposition. In 2,498 of these cases, or 24.3 percent, a motion for general default was allowed.

[6]As noted by the Land Court in *Tallage LLC vs. Meaney*, Mass. Land Ct., No. 11 TL 143094 (June 26, 2015), such tactics are unsurprising:

"Tax foreclosure proceedings brought and pursued by private entities are outside the political process. Such entities are responsible to their investors, not the citizens of a city or town, and their goals and incentives are not the same. Maximizing return on investment may not include accommodation to individual circumstance to the same extent a municipality, acting for itself, might otherwise deem warranted."