

Receivership

- Code enforcement remedy of last resort
- Created by statute, M.G.L. c. 111, section 127I
- When owner has abandoned the property or is unable/unwilling to bring a property up to code
- Places the property under the control of a court appointed receiver
- Receiver makes necessary repairs
- Statutory lien with priority over all other encumbrances except municipal taxes

Traditional Receivership

- Receivers = small contractors, rental property managers, lawyers
- Receiver brings property up to code
- Invests own funds or borrows and assigns priority liens
- Disposes of property when work is done, by auction or private sale

Amendment to Receivership Statute Affordable Homes Act, Section 29

...the court... may allow the sale of the property to a nonprofit entity for fair market value in its then current condition... conditioned upon the court finding that the nonprofit agrees to correct all outstanding state sanitary code violations and rehabilitate the property for sale to a first-time homebuyer whose income is not more than 120 per cent of the area median income....

Elements of New Receivership Model Western Massachusetts Pilot

- Municipality identifies eligible vacant properties
- Petition specifies Special Attorney Receiver
- SAR boards, secures, insures, maintains, and gets FMV appraisal
- SAR contacts qualified non-profit developer
- Non-profits determines whether to make an offer
- SAR moves the court for permission to sell “as is” to non-profit
- If sale is approved, SAR handles transaction, receiver’s lien is discharged, non-profit takes title



24-26 Los Angeles St., Springfield



Developments in Receivership and Tax Taking

Reclaiming Vacant Properties Conference

April 8, 2025

Springfield, MA



42 Cleveland Street, Greenfield – Before





42 Cleveland Street, Greenfield May 2024 Groundbreaking





42 Cleveland Street, Greenfield -- After





42 Cleveland Street, Greenfield -- After





Updates in Tax Foreclosure

- Why changes to the tax foreclosure process?
- What changes?
- Status today remains fluid



Legal Disclaimer

This brief synopsis is provided for introductory, informational purposes only. It is not legal advice and should not be construed as an attempt to provide a legal opinion about any of the matters discussed herein.



Why Change MA Tax Foreclosure Process?

- *Tyler v. Hennepin County*, 598 U.S. 631 (2023)
 - Arose out of Minnesota who had similar tax foreclosure law to MA
 - Geraldine Tyler, 94 year old homeowner moved into a home for seniors
 - House fell into tax arrears of approx. \$15,000
 - Sold in tax foreclosure for \$40,000
 - County retained the \$25,000 in equity (diff. between the sale price and the outstanding taxes)



Why Change MA Tax Foreclosure Process?

- *Tyler v. Hennepin County (cont'd)*
 - Supreme Court found a violation of the 5th Amendment right to due process
 - “nor shall private property be taken for public use, without just compensation”
 - Supreme Court held: “The taxpayer must render unto Caesar what is Caesar’s, but no more.”



Why Change MA Tax Foreclosure Process?

- Critically, like Minnesota, the MA tax foreclosure law at the time allowed for the taxing authority to keep all equity in a tax sale
- AG's Office advised the Legislature that we believed the MA law to be unconstitutional
- Legislature amended the tax foreclosure statute in July 2024 in the state budget process



Key Process Changes to Tax Foreclosures

- Defines “Excess equity”
- Provides: Within 14 days* of final judgment, judgment holder must elect:
 - To retain possession; or
 - Sell the property
- Person entitled to the excess equity has 18 months to submit a claim to the judgment holder for the equity
 - After 19 months, if unclaimed, equity is turned over to the unclaimed property division of the Commonwealth



Option to Retain Property

- If a foreclosing entity opts to retain the property:
 - Use reasonable efforts to have property appraised within 120 days
 - Appraisal is for highest and best use as of the date of the final judgment
 - Must be conducted by an independent appraiser, licensed by the Commonwealth



Option to Sell Property

- If a foreclosing entity opts to sell the property:
 - Must list for sale with a real estate agent/broker* within 180 days
 - Parties can agree to more time
 - Agent/Broker cannot hold elected or appointed office or be employed by the municipality in which the property is located
 - If property fails to sell within 12 months, must hold an auction
 - If property does not sell, can elect to schedule another sale and is not considered “retained”



Other Issues Addressed by Amendments

- Enhanced notice provisions
- Reduced interest rate by half (from 16% to 8%)
- Removed limitation on how much interest could be waived by the taxing authority (previously a 50% cap)
- Lowered initial payment required to redeem



Other Issues Addressed by Amendments

- Itemized accounting required at time of appraisal or sale
- Extends time between a tax taking and ability to file to foreclose the right of redemption
- Creates a commission to further review the law and practices around the collection of delinquent property taxes

Springfield tax title portfolio



Tax Title redevelopment: 45 homes 2010-23



Before & after – Central Street



19 homes in development

