



**AARP MN Written Testimony
Submitted to the
House Judiciary Committee, March 13, 2024
House File 4822**

Chair Becker-Finn and Members of the Committee, my name is Mary Jo George, and I am the State Director of Advocacy for AARP Minnesota. On behalf of our 620,000 members statewide, we thank you for the opportunity to testify on Representative Feist's bill HF 4822. Today, we want to share our serious concerns with this legislation both around the process for homeowners to recover their equity and the lack of robust notifications. We have been in discussions with the Counties and hope to continue working with them to improve this bill.

AARP believes this legislation places too much of the burden on homeowners to recover their equity loss when they can't pay their property taxes in tax forfeiture cases. While property owners should be aware of their responsibility to pay their real estate taxes on time, many of them, particularly the more vulnerable elderly population, don't understand the complicated tax lien and foreclosure process. Regrettably, this bill does not simplify that process.

As you are aware, this legislation is the result of the unanimous decision by the Supreme Court, in ***Tyler versus Hennepin County***, which recently held that it is unconstitutional for counties to keep the equity in tax forfeiture cases.

In this case, the county seized the condominium owned by Geraldine Tyler because of a \$2,300 tax debt. This debt ballooned to \$15,000 with interest and penalties. Ms. Tyler moved because she felt unsafe in her neighborhood and defaulted on her taxes. The County then sold the property for \$40,000 and kept that entire amount.

A loss of equity can have a devastating impact on the financial security of lower-income homeowners, particularly for older adults who depend most heavily on this equity for their economic survival.

Under the new Section 3, Subd.14, a homeowner must file a claim to receive the excess surplus after the property is sold in a public auction. This puts the burden on the homeowner to a) assess/guess whether there may be a surplus and b) provide a notice to the county auditor in a short period of time--only 60 days, or less if the notice is delivered by mail.

The burden should not be on the homeowner to jump through hoops to claim a surplus, particularly vulnerable homeowners facing the stress and devastation of not being able to pay their property taxes. This is also a high burden for certain older homeowners who have limited technological and/or physical abilities. Moreover, there is no guidance on what this notice should say, where the county auditor is located, and how it can be delivered.

Even if there were, this is a shift in the burden to the homeowner with grave consequences for failure to comply-- a loss of all their equity. This will certainly result in homeowners losing the equity in their homes for failure to either know about this process and/or be able to comply.

Finally, AARP urges you to strengthen the notice provisions in this section. The provision, referencing 282.02, provides notice of the sale only by publication with no notice going directly to the homeowner.

There should be a more comprehensive notice to include at least the owner since adjoining landowners get notices mailed to them. Counties should also be required to do more to notify the heirs of the property when a homeowner has passed away.

Heirs of a deceased homeowner have ownership rights even if the estate has not been probated and they aren't on the deed. Yet, under this bill and current law, family members would have to go through probate which can take years and is very expensive. We believe counties should accept other documents as proof of ownership including sworn affidavits of ownership along with supporting documents.

In conclusion, Minnesota is one of only 10 states where property owners can lose their entire nest egg if they neglect to pay their property tax bill. Thus, we urge you to do better by reducing the burden on homeowners to recover their full equity above what is legitimately owed and strengthen notice provisions to homeowners and their heirs.

Thank you for your time today.

Minnesota's Tax Forfeiture System

Minnesota tax laws provide mechanisms for collecting past-due/unpaid property taxes, as well as providing for relief mechanisms for financial hardship. County governments are given the responsibility of managing the tax forfeiture process on behalf of all local governments along with the state.

When a tax forfeiture occurs, the property is transferred to the state to be held in trust for local taxing districts. Counties are required to manage these properties—which is often costly, especially for contaminated or unsafe properties—and return them to productive use. In cases where properties are sold back into private ownership, state statute dictates what must be done with the proceeds, including apportionment to local taxing districts.



Impact of U.S. Supreme Court Ruling

In spring 2023, the U.S. Supreme Court ruled that Minnesota's tax forfeiture system was unconstitutional because revenue from tax-forfeited sales in excess of the total tax debt owed was not returned to the property owner, violating the *Takings Clause* of the U.S. Constitution's Fifth Amendment.

While there are sales of tax-forfeited property that yield excess/net value, many tax-forfeited properties result in excessive, publicly-funded costs to manage and clean up the property on top of net uncollected taxes. The Court's decision is expected to increase costs to manage these properties according to state law and should not be borne by local taxpayers. Counties remain increasingly concerned that the ability for local government to fund these state obligations will be severely impacted and delayed if the state does not identify a new foreclosure process along with a mechanism to assist counties in funding property clean-up and eliminating unsafe conditions that can negatively impact communities.

For decades, Northern counties have maintained over \$2.8 million acres of tax-forfeited property. These lands serve the timber and mining industry while providing recreation and environmental benefits. Protection of this land is critical.



Minnesota Must Respond

The Legislature must revise state tax forfeiture laws to comply with the U.S. Supreme Court ruling.

Minnesota should create a new process that provides homeowners with ample opportunities to remain in their homes while also affording local governments flexibility to respond and pay for blighted and unsafe conditions.

This process must address the ability to return equity in situations where sales result in value greater than costs and taxes owed or where the government opts to hold the property.

This process must protect the legacy land base held by northern counties for the benefit of the state.

The state should also support a settlement with claimants with a responsible window for past claims and a clear, efficient timeline to file for absolution.

This one-time, state-funded settlement process should be part of any forfeiture revision legislation and be paid for by the state.

March 13, 2024

Chair Becker-Finn and Members of the House Judiciary Finance and Civil Law Committee:

Thank you for the opportunity to submit written testimony on Rep. Feist's HF 4822, modifying distribution of excess proceeds from sales of tax-forfeited property.

Minnesota Realtors® (MNR) was founded in 1919 and is a business trade association with a membership of over 21,000 real estate professionals statewide active in all aspects of the real estate transaction.

In *Tyler v. Hennepin County*, an elderly homeowner lost her condominium to foreclosure and alleged that the county violated the constitutional ban on takings without just compensation when it kept the excess proceeds from the sale of her property that exceeded the tax debt owed. MNR, along with the National Association of Realtors® and the American Property Owners Alliance, filed an amicus brief in support of the property owner's entitlement to the surplus equity, arguing the state statute results in an unconstitutional taking of private property under the Fifth Amendment.

The U.S. Supreme Court ruled unanimously in favor of the homeowner.

In reviewing HF 4822, we are concerned about the provision in Sec. 2, Subd. 2, which would require the homeowner to provide notice by written statement that the homeowner believes the value of their interest in the property may exceed the total amount of the delinquent taxes, fees, and penalties. This requirement may not be understood or followed by some homeowners in tax forfeiture resulting in those homeowners not receiving the equity to which they are entitled. This process should be as simple as possible for the homeowner.

I appreciate Rep. Feist taking the time to speak with me this week about the bill and for allowing me to share our concern. We look forward to additional conversations with Rep. Feist and other interested parties as this bill moves forward.

Thank you again for the opportunity to provide written testimony on HF 4822.

Sincerely,



Paul Eger
Senior Vice President, Governmental Affairs
Minnesota Realtors®



PACIFIC LEGAL FOUNDATION

March 14, 2024

Statement before Minnesota House in Opposition of HF 4822 Committee on Judiciary Finance & Civil Law

Re: Testimony—Reforming Minnesota’s Tax Foreclosure Process
By Christina Martin, Pacific Legal Foundation

To: Chair Becker-Finn, Vice-Chair Frazier, and Members of the Committee on Judiciary Finance & Civil Law

Thank you for your time today. My name is Christina Martin, and I am a senior attorney with Pacific Legal Foundation. The Foundation is a nonprofit, public interest law firm with 17 U.S. Supreme Court wins on behalf of Americans’ constitutional rights—including 3 last year. We are dedicated to defending and promoting property rights, proper separation of powers, and opportunity and equality under the law in courtrooms and capitols around the country.

One of the Foundation’s 2023 Supreme Court wins was in a case from Minnesota, *Tyler v. Hennepin County*, where we represented a now 95-year-old Minnesota resident who lost her greatest asset—equity in her home—due to the state’s unconstitutional and unconscionable predatory tax foreclosure process. In this instance, a grandmother who experienced harassment on the streets near her condo began to feel unsafe and rented an apartment in a senior living community, where she felt safer.

With the cost of rent at her new home, Ms. Tyler fell behind on her condo’s property taxes. She owed only \$2,311 in property taxes, but had almost \$13,000 in added penalties, interest, and fees. To collect the \$15,000 debt, Hennepin County seized her condo, valued at \$93,000, sold it for \$45,000, and pocketed it all—a \$25,000 windfall at Ms. Tyler’s expense.

In its *Tyler* decision, the Supreme Court held that Minnesota’s tax foreclosure system violated Ms. Tyler’s constitutional rights. The Court unanimously held that the government violates the Fifth Amendment’s Takings Clause when it uses “the toehold of the tax debt to confiscate more than it [is] due.” The Court noted that Minnesota’s statute violated the purpose of the Takings Clause, which “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

HF 4822 does not fix this injustice. And it violates principles from other recent takings decisions as well, like *Knick v. Twp. of Scott*.

The proposed law plainly is designed to avoid paying people like Ms. Tyler. Rather than simply let them collect their money, like any other type of debtor in Minnesota, the statute requires owners to figure out their peril and their remedy before they’ve lost anything. This statute would have been no better for Ms. Tyler than the current unconstitutional one. She would have had to



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understand the notices, estimate the value of her property compared to what she would ultimately owe the government at foreclosure, and then figure out how to properly notify the County that she (of course) wants to be paid for the excess property it is taking from her.

The Foundation has represented more than two dozen people like Ms. Tyler around the country, and we've talked with dozens more. What we've observed is that these individuals are overwhelmingly poor, elderly, or ill. Sometimes they are just overwhelmed by other difficulties—like caring for a sister with Alzheimers or working overtime while raising small children, as in the case of two of our clients. Sometimes there are language barriers. But almost without exception, they never imagined that their own government would be seeking to exploit one of the most traumatizing events in their lives—the loss of a home—by taking a windfall at their expense. This bill keeps that exploitation of Minnesota's most vulnerable people in place.

In 2020, Michigan enacted a law similar to that proposed in HF 4822 and since then has been riddled with numerous class action lawsuits challenging this unfair claim process. Only property owners with the most resources are able to navigate the new system and claim their own money—the surplus proceeds from the sale of their homes. We are representing five individuals who tried to navigate the process, but filed their claim forms late. And, we may bring similar claims here, if Minnesota adopts this proposed bill. And perhaps we, or another organization, will take the issue all the way up to the Supreme Court again, if necessary. But it would be better for all involved to instead do right by Minnesota's most vulnerable population now.

Minnesota's legislature is in a position to end an unfair, unconstitutional, and predatory practice once and for all. We oppose the passage of HF 4822 as written and encourage the committee to recommend an amendment that properly protects property owners' rights.

Thank you for your time.

Sincerely,

CHRISTINA MARTIN
Senior Attorney
Pacific Legal Foundation

For further questions, please contact:

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