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Assembly Committee on Housing and Real Estate

Testimony from Rep. William Penterman in favor of Assembly Bill 969

Chairman Brooks and members of the Assembly Committee on Housing and Real Estate - thank you for taking my testimony in support of Assembly Bill 969 (AB 969), relating to the county sale of tax-deeded lands.

I am writing to express my strong support for the proposed legislation aimed at addressing a critical loophole in the current property tax foreclosure statutes in Wisconsin. This legislation is essential in aligning state law with the U.S. Supreme Court's unanimous decision in *Tyler v. Hennepin County*, which declared that retaining net proceeds from foreclosure sales without selling the property constitutes an unconstitutional taking.

Prior to the enactment of 2021 Wis. Act 216, counties in Wisconsin could retain all proceeds from foreclosure sales, even if the amount exceeded the property tax debt and associated fees. Act 216 corrected this practice by mandating the return of net proceeds to former owners. However, a significant gap in the law remains, allowing counties to foreclose on a property for minimal tax debt and retain it without selling it, thereby violating the principles set forth in the *Tyler* decision.

The proposed legislation seeks to rectify this inconsistency by mandating that counties must sell a property after foreclosing upon it. This aligns with the U.S. Supreme Court's ruling and ensures that retaining a property without selling it constitutes an unconstitutional taking, as established in the *Tyler* case. By closing the existing gap, this legislation promotes transparency, fairness, and adherence to the U.S. Supreme Court's precedent.

I urge the Assembly Committee on Housing and Real Estate to consider and support this legislation, as it represents a significant step towards aligning Wisconsin's laws with constitutional principles and protecting the property rights of its residents. Thank you for your attention to this matter and for your consideration.



To: Assembly Committee on Housing and Real Estate
From: Tom Larson, President & CEO
Cori Lamont, Vice President of Legal and Public Affairs
Date: January 24, 2024
RE: AB 969/SB 918 – Foreclosure Equity Theft Loophole

The Wisconsin REALTORS® Association (WRA) supports requiring counties to sell property and distribute any net proceeds to the former owner after acquiring the property through a property tax foreclosure.

Background

In 2023, the U.S. Supreme Court unanimously ruled in *Tyler v. Hennepin County* that efforts by counties to retain net proceeds from foreclosure sales constitute an unconstitutional taking.

Wisconsin law is generally consistent with the Court's ruling after the passage of 2021 Wis. Act 216, which specifies that former property owners are entitled to the surplus proceeds following a sale of tax-deeded property at auction.

However, Wisconsin law contains a potential loophole because it does not expressly require the county to sell tax-deeded property. Rather, surplus proceeds are due to the former owner only if the county decides to sell the property. Otherwise, the county can keep the property and use it for any purpose without providing just compensation to the former owner.

AB 969/SB 918 is aimed at closing the potential loophole by requiring counties to sell a property after foreclosing upon it. Requiring counties to sell property after foreclosing upon it will help return any remaining equity in the property back to the former owner and ensure that counties are not engaging in an unconstitutional "taking," as established in the *Tyler* case.

Keeping property with a value greater than the tax debt owed is an unconstitutional taking.

In *Tyler v. Hennepin County*, the U.S. Supreme Court held that an unconstitutional "taking" occurs when government keeps the remaining equity in a person's property after a foreclosure. The Court's ruling is consistent with the law enacted by Wisconsin lawmakers in 2022 (2021 Wis. Act 216) which requires counties to return any net equity after a foreclosure sale to the former owner.

While Wisconsin law does not explicitly require a county to sell the property after acquiring title through foreclosure, such a practice would violate the constitutional principles recognized in *Tyler* if the value of the property exceeded the tax debt owed to the county.

Foreclosure equity theft magnifies financial hardships.

Allowing counties to keep property with a value greater than the tax debt owed would cause further financial hardship to families who lost their properties. Generally, property owners fail to pay their property taxes and go into foreclosure due to some catastrophe in their lives such as a major medical issue, divorce, job loss, or death in the family.

Keeping the equity in an owner's property makes such financial hardships even worse and could permanently prevent the owner from making a financial recovery.

Counties should not be given the option to keep someone's property.

Under current law, counties have unilateral authority to decide whether they want to sell or keep someone's property acquired through property tax foreclosure.

Property owners should not have to rely on bureaucratic goodwill to receive the compensation to which are constitutionally entitled. Moreover, allowing counties to profit by keeping property with a value greater than the tax debt owed would be a financial windfall for the county at the expense of the affected property owner.

The WRA is currently working with stakeholders to address concerns relating to procedural matters associated with the sale of the property.

We respectfully request your support for AB 969/SB 918.