



## What Does Tyler v Hennepin County Mean for Foreclosures in Michigan?

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On May 25, 2023, the U.S. Supreme Court issued its opinion in *Tyler v Hennepin County*, No. 22-166, in which the Court held that Hennepin County, Minnesota violated the Takings Clause of the Fifth Amendment when it retained the excess value of Geraldine Tyler's home above her tax debt. The decision was 9-0 and received a lot of attention. So, what does it mean for Michigan? Well, not much.

Acting under Minnesota law, Hennepin County foreclosed on Tyler's home when she owed \$2,300 in unpaid taxes and \$13,000 in interest and penalties. The County then sold the home for \$40,000, \$25,000 more than Tyler's combined unpaid taxes, interest, and penalties. And then, because Minnesota law did not provide a mechanism for Tyler to claim the excess proceeds generated by the sale, the County simply kept the excess funds. Tyler sued, arguing that the County violated the federal Takings Clause when it did so.

The Supreme Court unanimously found in Tyler's favor. As the Court stated, its "precedents have... recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed." *Tyler*, slip op at 2.

But although *Tyler* may have wide-ranging effects in Minnesota and a handful of other states, it is not likely to have much impact (if any) in Michigan. That's because the Michigan Supreme Court issued a similar opinion just a few years ago in *Rafaeli v Oakland Co.*, 505 Mich 429 (2020). In that case, the Michigan Supreme Court held that the same governmental action that occurred in *Tyler*—retaining the excess proceeds from a foreclosure sale above what the former property owner owed in taxes, interest, and penalties—constituted a taking under Article 10, § 2 of the Michigan Constitution (the Michigan Takings Clause).

Following *Rafaeli*, the Michigan Legislature created a process under which former property owners and other claimants can claim the excess proceeds created by a foreclosure sale. To claim the excess

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proceeds, a claimant must comply with certain procedures and meet various statutory deadlines.

The constitutionality of this new process, codified at MCL 211.78t, is currently being litigated in both state and federal courts. But *Tyler* should not affect that litigation. Indeed, in *Rafaeli*, the Michigan Supreme Court suggested that the Legislature could create a process to claim excess proceeds that would pass constitutional muster under Michigan law. In doing so, it relied in part on *Nelson v City of New York*, 352 US 103 (1956), in which the Supreme Court of the United States upheld a New York City statute that is similar to MCL 211.78t and allowed claimants to claim excess proceeds if they complied with specified procedures and deadlines. In other words, Nelson's takings claim was rejected because New York City offered a meaningful process by which excess proceeds could be claimed by interest holders. *Tyler* does not disturb *Nelson*. In fact, the *Tyler* Court specifically distinguished the situation in that case (where Minnesota had no process to claim excess proceeds) from *Nelson* (where a process in New York City similar to that established by MCL 211.78t was upheld). In *Tyler*, an unconstitutional taking occurred. In *Nelson*, the governmental process complied with constitutional standards, and no unconstitutional taking occurred.

Against this backdrop, with the advent of MCL 2.1178t and the Supreme Court of the United States's continued adherence to *Nelson*, *Tyler v Hennepin County* should have little to no effect in Michigan. Instead, the arena to watch remains the state and federal litigation challenging MCL 211.78t under the Michigan Supreme Court's decision in *Rafaeli*.

If you have any questions about this case, please contact a member of our municipal law team.

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