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Ruling on 'home equity theft' could affect Bay State

By Christian M. Wade | Statehouse Reporter
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BOSTON — A ruling by the U.S. Supreme Court in a Minnesota tax foreclosure case could impact Massachusetts, which like Minnesota is one of a handful of states that allows the seizure of equity from homeowners who are late on their property taxes.

In the ruling issued on Thursday, the justices sided with a 94-year-old woman over her claim that a county government violated the Constitution by keeping a $25,000 profit when it sold her home in a tax foreclosure sale.

Chief Justice John Roberts wrote in the ruling that taxpayers are only required to pay the government what it is owed and anything beyond that is an unconstitutional taking of property.

“The taxpayer must render unto Caesar what is Caesar’s but no more,” Roberts wrote, in a reference to biblical scripture.

“This decision affirms that property rights are fundamental and don’t depend solely on state law,” said Christina Martin, an attorney with the California-based Pacific Legal Foundation, which filed the lawsuit. “The court’s ruling makes clear that home equity theft is not only unjust, but unconstitutional.”

The ruling has implications for Massachusetts, which is among a dozen states, plus Washington, D.C., with tax foreclosure laws allowing local governments or investors to take dramatically more than what is owed from homeowners who slip into default.

Under Massachusetts foreclosure law, cities and towns can sell or keep tax liens on delinquent properties. The lienholder — whether it’s a local government or investor — can file for foreclosure once the debt is six months old.

Once a property is foreclosed on, the lienholder gets a deed and can keep or sell it. A lienholder can keep profits from the sale, under the law.

A report by Pacific Legal Foundation last year found homeowners in Massachusetts and other states collectively lost more than $777 million in savings on more than 5,600 homes based on their market value, above what they owed in taxes. On average, homeowners lost 86 percent of their equity, the group said.

Local governments, which often sell properties for a fraction of market value, collected an about $26 million more than they were owed on about 1,300 homes, the report noted.

Meanwhile, private investors collected an estimated $250 million more than they were owed on about 2,600 homes, the report’s authors said.

In Massachusetts, the report identifies about 315 homes in the state — including several in Lawrence — that have been impacted by home ‘equity theft’ totaling more than $48 million.

The Boston-based New England Legal Foundation filed a brief in support of the litigation, arguing that if the government seizes a home to collect overdue taxes the homeowner should be allowed to collect the surplus revenue from the sale once the taxes are paid.

Dan Winslow, the group’s president, said the ruling “confirms the rights of property owners to their hard-earned home equity and that the government cannot take that value beyond taxes owed without reimbursement.”

The ruling could impact several pending cases in Massachusetts, including a federal lawsuit filed in January by a Bolton alpaca farmer, who argues that the town violated his constitutional rights by making a $310,000 profit from the sale of his property to pay a $60,000 delinquent tax bill.

The complaint argues that Bolton’s use of the tax law violates the Fifth and Eighth amendments by allowing the town to keep surplus equity value from the sale of his property. It also asks a federal judge to declare that the state’s tax foreclosure statute is unconstitutional.

Another legal challenge was filed in U.S. Bankruptcy Court earlier this month on behalf of a Worcester woman who lost her home because she owed $2,600 in back taxes. The city allowed a private tax lien company to foreclose on her property.

The woman, who is being represented by the Pioneer Public Interest Law Center and Greater Boston Legal Services, had spent decades paying off her mortgage but had fallen behind on local property taxes after becoming sick, according to court filings.

Pioneer Public Interest Law Center President Frank Bailey said the high court's ruling sends a "clear message" to Massachusetts and other states that "any surplus beyond the tax debt should be returned to the homeowner.

On Beacon Hill, a group of lawmakers filed a bill early this year that would abolish the practice of taking equity from homes as part of the tax lien sale process.

"Permitting municipal officials and private, profit driven companies to prey upon the misfortunes of homeowners, robbing them of every cent of their equity, is unconscionable," state Sen. Mark Montigny, D-New Bedford, the bill's primary sponsor, said in a statement. "Pushing out senior citizens, people with disabilities, and those facing tremendous personal challenges is atrocious."

Montigny called on local officials to stop the equity theft in response to the Supreme Court ruling, and "pay restitution to anyone who suffered from this predatory practice."

Christian M. Wade covers the Massachusetts Statehouse for North of Boston Media Group's newspapers and websites. Email him at cwade@cnhinews.com

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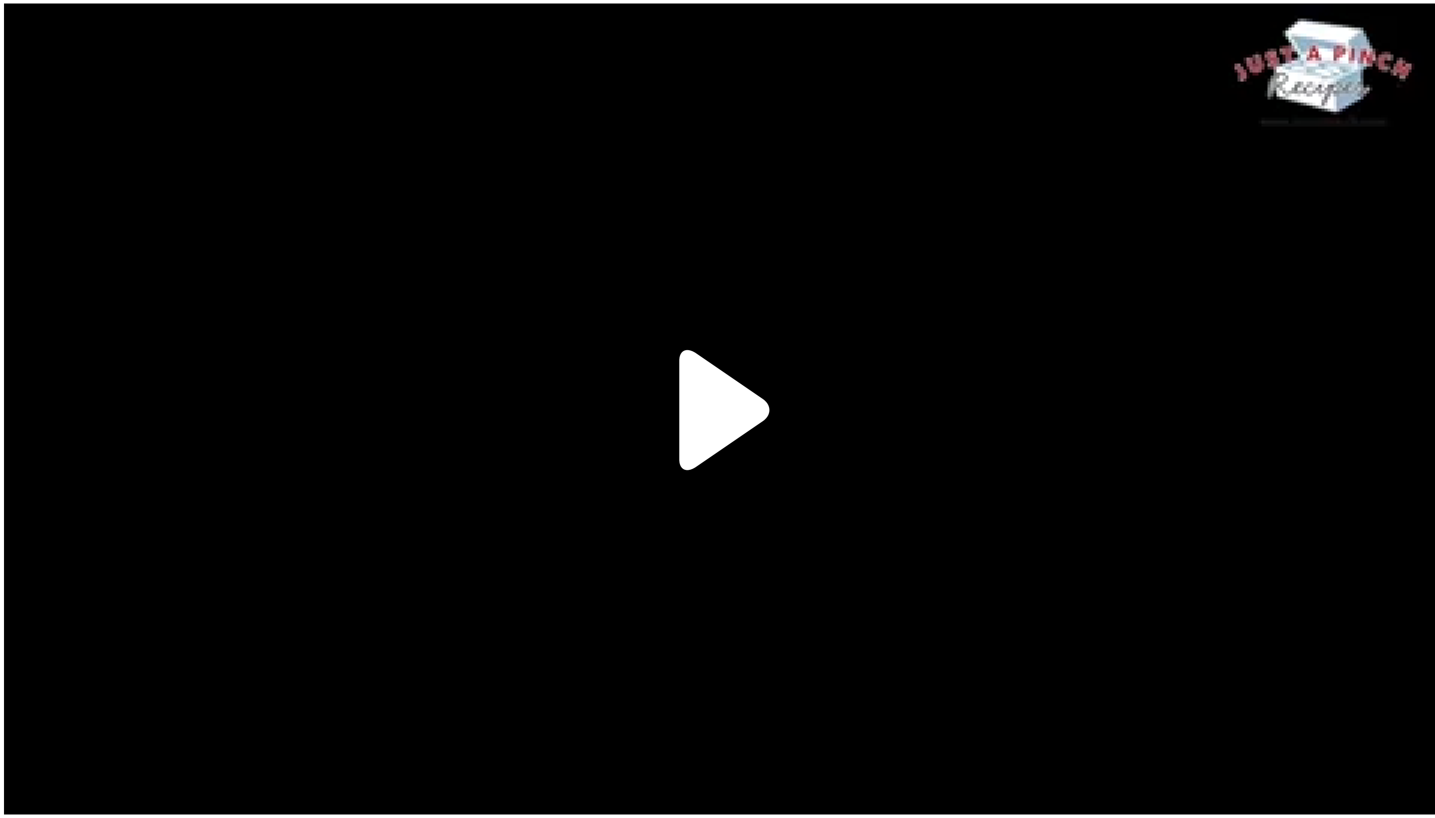

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