

Stop Home Equity Theft in Arizona

Can they seize your home for an \$8 mistake?



PACIFIC LEGAL
FOUNDATION

Nine years ago, Uri Rafaeli bought a modest rental house for \$60,000 to help supplement his retirement income. All was well until Mr. Rafaeli miscalculated one tax payment. He tried to correct it, but inadvertently underpaid the penalty by \$8.41. The county seized his house, sold it, and kept every penny.

Home equity theft is immoral and unconstitutional. Mr. Rafaeli brought his case to the Michigan Supreme Court last fall, which will very likely strike down the state's confiscatory law. Other state supreme courts have struck down similar unconstitutional laws, and more challenges are coming.

Arizona is among the shrinking number of states that retain this indefensible practice of taking everything when citizens fall behind on their property taxes.

Recent analyses of Arizona tax and sales records paint a sobering picture of the unjust suffering this practice inflicts on its most vulnerable citizens:

- Hundreds of Arizonans have lost their homes for debts as small as \$16.46.
- The median amount of equity theft is \$64,000 for a tax debt that is less than 1 percent of home value.

The moral and economic harm inflicted on Arizonans is well documented. The remedy is straightforward. With passage of reforms like those in the Equity Theft Prevention Act (HB 2445), the Legislature is poised to finally set things right.

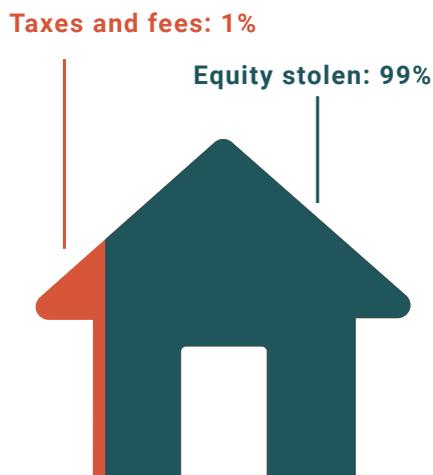
Arizona Law Facilitates Home Equity Theft

- If you mistakenly underpay or fall behind on your property taxes in Arizona and the debt remains unpaid, an investor can bid for the right to take the home—for pennies on the dollar.
- Under current law, homeowners can lose all equity invested in their home, no matter how small the tax debt.
- This wealth transfer from poor to rich is unjust and unconstitutional.

The Legislature Can Stop Home Equity Theft in Arizona

- Provisions in the Equity Theft Prevention Act (HB 2445) would prevent anyone from losing more than what is owed in tax, penalty, interest, and statutory cost.
- Once these debts are paid, the remaining money from the auction will be refunded to the former owner.

For more information:
<http://pacificlegal.org/hometheft>



Homes examined in our study were foreclosed over taxes and fees that average just 1% of the property value. The remaining 99% of equity was stolen from the homeowners.

The Problem:

Arizona's Law Is Unjust

If an Arizona homeowner inadvertently underpays his property taxes, even by a few dollars, counties sell a lien on the home to an investor, who pays the tax and then has the right to collect the debt. That lien allows the investor to take the entire home if the owner can't pay the debt and other fees. The investor can take everything, no matter how much equity the owner had in the home or how little tax was owed.

Home equity is property. Taking it without compensation is home equity theft. It's indefensible and it's unconstitutional.

Most people don't intentionally fail to pay their property taxes. As with Uri Rafaeli and so many others, life happens: homeowners miscalculate their payments, get sick, or encounter unexpected financial crises. The elderly, sick, and poor are especially at risk of losing their most valuable asset—their home—for unpaid property taxes. None of that matters under current Arizona law, and there is no provision for restoring surplus equity to a former homeowner.

In a detailed 2017 investigative report, the Walter Cronkite School of Journalism and Mass Communication exposed the injustice of Arizona's tax foreclosure law. According to its report, hundreds of Arizonans lost their homes for unpaid property tax debts.¹ These owners lost not just their homes but also the years or decades of accumulated equity.

As our new research confirms, that injustice continues. In most cases of Arizona home equity theft, long-time owners had paid the entire mortgage and only recently failed to pay property tax or related debt. In a quarter of the cases reviewed, the homeowner's debt totaled less than \$500. In one case, a homeowner recently lost his \$50,000 home because of \$16.46 in unpaid taxes.

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Arizona's property tax law looted more than \$9 million in equity from homeowners in the most recent four-year period in Maricopa County alone. The equity taken from homeowners is an unearned windfall to private investors, who already profit (not unreasonably) from interest on the unpaid taxes.

The Consequences:

Arizona's Law Encourages Home Equity Theft

County governments across the nation, quite rightly, strive to collect tax debt and interest, as well as reasonable fees relating to tax lien or deed sales.

Arizona law invites investors, including banks and out-of-state corporations, to bid on the right to collect property tax debts.² Investors may charge up to 16 percent annual interest on the debt.³ Thirty-seven states already forbid taking more than what is owed in taxes, interest, and fees. Interest charges and reasonable fees ensure an adequate return on investment for those who pay the tax.

But current Arizona law encourages a wealth transfer from the poor to the rich. If the owner fails to pay a tax debt, the investor may take full title to the property, free and clear.⁴ In some cases where investors are not involved, the Arizona state government itself may take title to the property, sell it, and share with counties the windfall of hard-earned equity at the expense of struggling homeowners.⁵ In short, if you fail to pay property taxes on your land or home, your county

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may give your entire nest egg to a private investor or the state for pennies on the dollar.

Among tax lien states, 22 of 29 forbid the lienholder to retain excess equity over what is owed, and none of the remaining states can credibly argue that its tax lien sales would not function efficiently without the theft of equity. Legislative action and legal challenges in the seven outlier states are shifting the policy climate dramatically.

Arizona should act in advance of court-mandated reform. The moral and economic harm inflicted on its citizens is well documented. Whether it's the government or investors who obtain the unearned windfall, home equity theft pillages the state's most vulnerable citizens. No amount of notice, even when it is received, makes it okay for government to take or transfer someone's property for a small tax debt.

Just Practices:

Anchored in Founding History

Most states collect delinquent property taxes while expressly protecting owner equity. In Florida, for example, the state authorizes counties to sell tax-delinquent properties to the highest bidder via online auction.⁶ Sale proceeds first pay back taxes and reasonable interest and fees owed to the government and to tax lien investors. Remaining monies are refunded to the former owners.⁷

Returning surplus to the former owner is the centuries-old practice enforced uniformly at the American founding and for decades thereafter. The U.S. Constitution forbids excessive fines and requires

the government to pay “just compensation” when it takes a private citizen’s property.⁸

Only a dozen states sell property and fail to return the remaining equity to the former owner. These states, Arizona included, face potential financial liability for constitutional violations.

For example, Michigan Supreme Court justices seemed almost flabbergasted last fall when Oakland County defended the legality of seizing Uri Rafaeli’s rental property when he inadvertently underpaid his property taxes by \$8.41.⁹ When the county sold his investment property, it retained every penny from the sale, and Mr. Rafaeli received nothing.

Based on the oral argument, it is very likely the Michigan Supreme Court will find this practice of equity theft unconstitutional, like several other state supreme courts. If so, Oakland County will be required to repay Mr. Rafaeli, and counties throughout Michigan may be required to repay vast amounts more being sought in class action lawsuits.

An Arizona Roadmap to Ending Home Equity Theft

The Arizona Legislature should act promptly to align its laws with the Constitution, prevent home equity theft, and protect vulnerable homeowners. It is currently considering at least one bill designed to do just that.

Provisions in the Equity Theft Prevention Act, (HB 2445) would prevent anyone from taking more

from homeowners than they owe in tax, penalty, interest, and statutory cost. If HB 2445 or another bill with similar protections is signed into law, county treasurers would sell properties with long-term tax debts to the highest bidder. After debts are paid, the remaining monies would be refunded to the former owners.

Current Arizona law encourages a wealth transfer from the poor to the rich. If the owner fails to pay a tax debt, the investor may take full title to the property, free and clear.

HB 2445 also contains other reforms to maximize the return of equity to homeowners, including auction procedures that are straightforward and streamlined. Treasurers could contract with private, online auctioneers to sell properties. To incentivize high bids, treasurers may offer auctioneers up to 3 percent of the value that exceeds the tax debt associated with a property.

Following other states, HB 2445 requires notice of the remaining equity be sent to all parties with a recorded interest in the property prior to foreclosure. Interested parties must submit a statement indicating interest in the property. Funds would be disbursed in order of priority, consistent with other Arizona debt-collection practices. The law also includes provisions that protect vulnerable owners against fraudulent claims on remaining equity monies.

Digging Deeper:

Arizona Home Equity Theft by the Numbers

DATA: COUNTY TAX LIEN SALES AND FORECLOSURES

We filed public records requests for tax lien sales and foreclosures data in every Arizona county.¹⁰ Most counties do not maintain those records in an easily usable format, or did not provide the data to us by the time this report was prepared. Fortunately, Maricopa County, which contains approximately 61 percent of Arizona’s population, does keep its data in a useful, electronic format and provided it in response to our request.¹¹

Spot checks confirm that home equity theft occurs in counties across the state. Policymakers and citizens can learn a lot by analyzing the data from its most populous county.

ANALYSIS: MARICOPA TAX FORECLOSURES

We married Maricopa County information on individual tax liens with sales transaction data to determine which liens resulted in tax foreclosures and post-foreclosure sales. The

percentage of equity taken from homeowners compared to the size of tax debts owed paints a sobering picture of the law’s effect.

The following table summarizes key data on tax foreclosures and subsequent loss of home equity between 2016 and 2019.

As the summary table indicates, the accumulated taxes, interest, and penalties that are legitimately owed most frequently amount to less than 1 percent of the home’s value.

Just Change:

The Arizona Legislature Can Act Now

Nothing can morally justify taking the entire home equity and leaving the former owner nothing. And when their nest egg is taken, the former owner may be left homeless or looking for government subsidized housing.

The state of Montana recently demonstrated that legislative solutions similar to HB 2445 are possible. In May 2019, Montana’s governor signed a reform law that prevents theft of home equity when property is taken to settle property tax debts. The law passed the legislature with overwhelming bipartisan sup-

	Tax debt	Accumulated debt	Home sale price	Lost equity	Percent lost
Low	\$16.46	\$59.57	\$43,600	\$43,540	99.9%
High	\$8,503.14	\$11,583.09	\$423,000	\$411,417	97.3%
Median	\$425.82	\$715.04	\$65,000	\$64,121	99.1%
Total*	\$74,618	\$110,964	\$9,179,019	\$9,068,055	99.1%

* This study analyzed data on 105 properties foreclosed or transferred for tax debts and subsequently sold. As of this writing 47 additional properties remain held by the investor, and have not yet been resold.

port.¹² The final margin in the Senate was 49 to 1, and in the House, the vote was 89 to 8.

With HB 2445, or similar legislation, the Arizona Legislature should—and can—act this session to end home equity theft, protect the property rights of its citizens, and end the gross pillaging of vulnerable owners' home and land equity.

Nothing can morally justify taking the entire home equity and leaving the former owner nothing.

Endnotes

¹ *Arizona Republic*, "How a home can be lost over \$50 in back taxes," June 12, 2017 <https://www.azcentral.com/story/money/real-estate/2017/06/12/tax-lien-foreclosures-arizona-maricopa-county/366328001/>.

² A.R.S. § 42-18114.

³ A.R.S. § 42-18053.

⁴ A.R.S. § 42-18204.

⁵ A.R.S. § 42-18113.

⁶ FL ST § 197.542; see, e.g., Miami-Dade Clerk of Courts, Administrative Order 2013-05 (electronic tax deed sales procedures) at http://www.miami-dade-clerk.com/property_tax_deed_AO_2013_05.asp.

⁷ FL ST § 197.582.

⁸ U.S. Const., Amend. 5 (just compensation clause); U.S. Const., Amend. 8 (excessive fines clause).

⁹ *Rafaeli, LLC v. Oakland County*, No. 156849, <https://courts.michigan.gov/courts/michigansupreme-court/oral-arguments/2019-2020/pages/156849.aspx>.

¹⁰ Arizona's tax lien laws require county treasurers to record tax lien sales. A.R.S. § 42-18117. We continue to collect and analyze county data. Thank you to Allan Cogan and Keelyn Gallagher for all their help collecting, cleaning, and analyzing the data.

¹¹ The Maricopa County Treasurer's Office included a wealth of information on its website and readily responded to records requests. We extend particular thanks to Mr. VanKley for assembling data.

¹² Montana Senate Bill 253 passed with overwhelming support in both the House and the Senate. See <https://legiscan.com/MT/bill/SB253/2019>.

About the Authors

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Jim lives with his family in Phoenix, where he litigates in defense of free speech, economic liberty, and property rights. For more than a decade, he has been fighting to protect and expand freedom through strategic litigation and policymaking. He graduated from Arizona State University and earned his J.D. from the University of Colorado Law School.

Christina M. Martin

Christina is an attorney fighting to end the unconstitutional taking of homes and land as payment for relatively small property tax debts. She was lead counsel before the Michigan Supreme Court in Mr. Rafaeli's case. She earned her J.D. from Ave Maria School of Law in Ann Arbor, Michigan.

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Pacific Legal Foundation

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