# Prevent Home Equity Theft in North Dakota:

***How the Peace Garden State is a "Step Below South Dakota"***

PACIFIC LEGAL FOUNDATION

# Introduction

In December 2018, Drayton resident Kevin Juhl was on a job hauling freight across the country when his wife called him, sobbing. The words she got out, as she choked back her tears, left him stunned: Pembina County had taken title to their home and was preparing to sell it at auction.

The Juhls had fallen behind on their property taxes, which were approximately $575 per year. Hauling freight kept Kevin away from home a lot, but it provided a good life for his wife and children. Kevin's wife also worked hard, delivering meals and providing transportation for county residents. The Juhls didn't consciously decide to stop paying their property taxes. A busy life of work and kids is not predictable. Tax notices aren't always received, and it's hard for many people to clear up past debts once tax penalties and interest start to accumulate.

To calm his wife, Kevin told her that they would pay what they owed and everything would be all right. Unfortunately, their local government had other plans.

Kevin learned in a phone call to the Pembina County Auditor's office that, since the county had used the state's tax foreclosure law to secure title to the Juhls' home, the county could sell it to someone else. The county wanted $45,000 to transfer ownership of the Juhls' home back to them. "We are hardworking people who pay our share," Kevin said. He couldn't believe they could take their home, where they had raised their children, over such a small debt and with little warning. "It felt like a setup."

In fact, North Dakota law allows counties to issue such threats and seize private homes—including all owners' equity—from families like the Juhls, even when their property is worth 100 times what they owe in taxes.

# Summary


## *North Dakota Law Facilitates Home Equity Theft*

- If you mistakenly underpay or fall behind on your property taxes and the debt remains unpaid, homeowners in North Dakota can lose all equity invested in their home, no matter how small the tax debt was.
- A debt is a debt, but the government keeping more than is owed (as much as 99 times more) is home equity theft.
- This wealth transfer from poor to rich is unjust and unconstitutional.

## *The Legislature Can Stop Home Equity Theft in North Dakota*

- A minor legislative fix would prevent anyone from losing more than what is owed in tax, penalty, interest, and other costs, and the county would be made whole.
- Once these debts are paid, the remaining money from any foreclosure or sale would be refunded to the former owner.

*For more information:*

https://pacificlegal.org/home-equity-theft/

Across the nation, property tax collectors can foreclose on homes to collect unpaid taxes if an owner misses a payment or even underestimates how much they owe. These tax collectors, quite rightly, seek to collect tax debt and interest to ensure resources for their communities.

In North Dakota, however, not only can a county collect the debt, but it also can take the entire home. Counties can seize everything, no matter how much equity the owner has in the home or how little tax is owed.[1] Only a dozen states still sanction this kind of "home equity theft." A debt is a debt, including a tax debt, but taking more than what is owed is theft.

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Nonetheless, the Juhls were at the mercy of Pembina County officials, who neglected to return phone calls or their emails after the initial conversation. The Juhls had no understanding of the state laws or that they were unconstitutional. They just wanted to keep their home. And if it was sold to someone else, they could be evicted during the middle of a harsh winter.

Fortunately for the Juhls, their harrowing story ended happily. An attorney and their local state representative helped convince the county to reverse course and allow them to regain their property by paying their original debts.

Kevin explains, however, that not everyone can secure such political and legal help or has the wherewithal to fight county officials. "If my wife was single, she would've been in trouble." And if the county officials hadn't decided to show mercy, the Juhls would have lost their home and all their savings in it.

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Courts and legislatures in other jurisdictions are ending this unconstitutional and immoral practice of home equity theft, putting North Dakota in a smaller and smaller minority. The remedy in North Dakota would be relatively easy and would not impede legitimate tax collection in any manner.

# Home and Land Equity Deserve Legal Protection in North Dakota

For many families, especially those with modest means, their home is their biggest investment, but it is much more than that. A home is part of the American dream. It helps connect families to their communities and is the tangible fruit of years of labor. A home provides economic security and stability against displacement.

Home equity is, in fact, a powerful tool for maintaining one's economic position. That equity can be a buffer against financial hardships, and it can provide a necessary lifeline in retirement.

All states allow government to collect property tax debts through foreclosure. Tax-delinquent property is usually sold at auctions to the highest bidder, and the proceeds are used first to pay all taxes, penalties, interest, and costs. In most states, the remaining funds go back to the former owner.[2] But in North Dakota, the government can keep everything under current state statutes.[3]

Government should protect private property, not enable state-authorized theft. When a government takes property, sells it, and keeps all the proceeds—beyond what is owed—that government is stealing money from some of its poorest residents. That stolen equity could keep many families out of intergenerational poverty.

In fact, home equity offers a meaningful, intergenerational wealth transfer that families at all income levels value. The U.S. Supreme Court has recognized the importance of the right to pass valuable property to heirs,[4] and such bequests are protected in almost every civilized society worldwide.

Tragically, however, tax foreclosures disproportionately impact those who have paid off their homes, primarily the elderly (or their families upon their passing).[5] When a bank holds a mortgage on a property, the bank typically collects property taxes in an escrow account and makes the payments. If the homeowner falls behind on payments, the bank will ordinarily foreclose on the mortgage long before the county forecloses on the tax debt. In that case, the law in all states requires the bank to pay any excess from the sale of the home back to the prior homeowner.

For those who own their homes outright, however, no bank is helping to make sure the taxes get paid. Aging owners who are ill or suffering cognitive decline may miss a tax bill or not realize that their entire home and equity is at risk in North Dakota. Such residents are often equally ill equipped to fight the unjust state law.

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Families of limited means overcome economic and social constraints, as well as government regulation, to buy a home. Yet, once North Dakota families achieve their dream and are building equity—or have even paid off the mortgage—the local government can take advantage of a temporary hardship or illness and take it all away. The North Dakota Legislative Assembly should end this immoral practice in its next legislative session.

## North Dakota:
### *Losing its Spirit?*

Many North Dakota counties tend to avoid the most abusive seizures allowed by state law. That restrained behavior, though admirable, is not universal. Nor is there any guarantee of mercy in counties where current practices tend to ameliorate an unjust law. When a family faces a confiscatory and unconstitutional law, hoping for mercy should not be the public policy response.

In the data available for 86% of North Dakota's population, between 2013 and 2019 roughly 500 homes went through tax foreclosure for debts that were usually less than 5% (often less than 1%) of the value of the home. Only


about 80 of the 500 homes were sold to new owners.[6] The data seems to confirm that, in most cases, the county sells the property back to the original owner for the taxes, fees, and interest owed.

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The typical outcome is reasonable, but the data shows that as many as one out of six such homeowners are not so fortunate. During the administration of their parents' estate in Williams County in 2013, LeAnne and Kris Glasoe lost their childhood home over a tax bill of less than 4% of the home's value. LeAnne and Kris even brought a case against the county for failure to properly notify them of the tax debt, but they were unable to reclaim the house—or the equity their parents had left them.[7]

North Dakotans should not have to rely on the uncertain benevolence of their county auditors to keep what they have rightfully inherited or earned. When county budgets get tight, officials may feel a greater temptation to supplement revenues by selling tax-foreclosed properties to new owners and keeping the excess.

With economic fallout from the pandemic and other uncertainties looming, it is not unthinkable that counties could be in a big enough pinch to succumb to such a temptation. The spirit of benevolence in North Dakota county governments is at risk.

# Home Equity Theft Across the Land

While most North Dakota counties currently avoid equity theft, the potential for abuse from such laws is well documented elsewhere, often shocking the nation.

*"A county government in Michigan foreclosed and sold a rental home of Uri Rafaeli, a retiree in his 80s, for an unpaid property tax debt of $8.41."*

In Michigan, Uri Rafaeli bought a modest property that he rented out to supplement his retirement income. Uri mistakenly underpaid his property taxes by $8.41. For a debt less than the price of a month of Netflix, Oakland County took his property, sold it for $25,000, and kept every cent. The case went all the way to the Michigan Supreme Court, which held that the local government unconstitutionally took Uri's property.[8] Now, Michigan counties justly face millions of dollars of damages in class action lawsuits because of all the property they have stolen.[9]

In Maricopa County, Arizona, the county government has taken hundreds of properties over property tax debts that, on average, amount to 1% of the home's fair market value.[10] That means for every dollar of tax debt the county legitimately collected in those foreclosures, the county stole $99.

## Reform:
### *Planting in the Peace Garden*

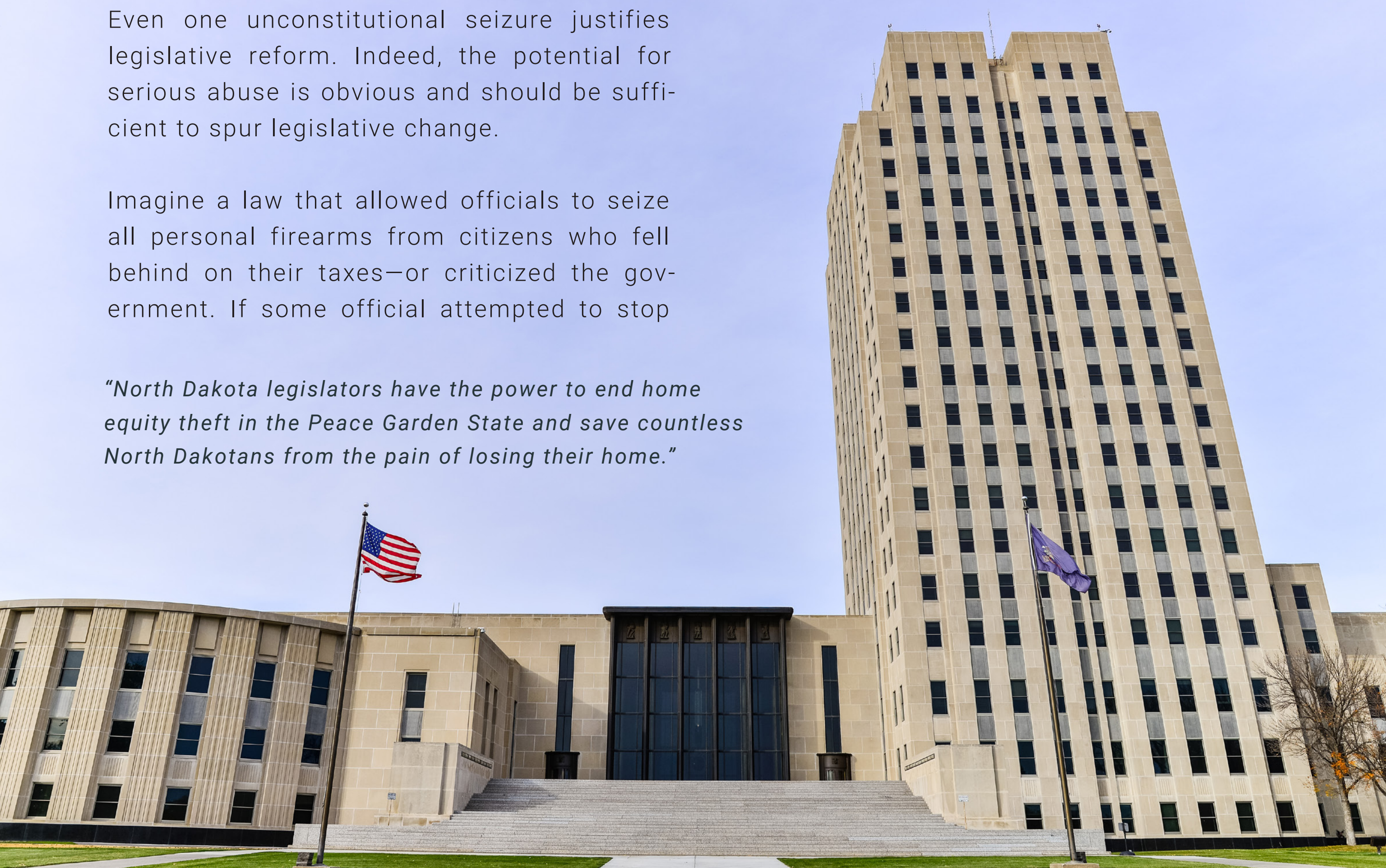
Even one unconstitutional seizure justifies legislative reform. Indeed, the potential for serious abuse is obvious and should be sufficient to spur legislative change.

Imagine a law that allowed officials to seize all personal firearms from citizens who fell behind on their taxes—or criticized the government. If some official attempted to stop reform of the law on the ground that he only used the threat of firearm seizures to speed up tax payments or stop criticism, and that he almost never followed through on his threats, his defense of the unconstitutional law would rightly be mocked.

Our right not to have our property taken by government without compensation and our right to free speech are constitutionally guaranteed for good reasons. Trusting government officials to exercise discretion and respect our property and liberty is not enough.

Reform would not be difficult. North Dakota and all other states have laws that govern bank mortgage foreclosures. In each of those laws, after the property is sold and the debts are paid, the original owner receives the remaining funds: the owner's own equity. If North Dakota treated the right to excess proceeds from a tax foreclosure like a mortgage foreclosure, the

*"North Dakota legislators have the power to end home equity theft in the Peace Garden State and save countless North Dakotans from the pain of losing their home."*



county would be able to collect all the revenue that it relies upon and would be made whole (including statutory interest on the tax debt and other fees associated with the sale), while the homeowners would be able to recover some of the years of work and resources they put into the home.

Less than two years ago, the Montana legislature changed its law in a bipartisan effort—with vote margins of about 90% in each chamber. For its part, Michigan's legislature was pushed into reform earlier this year when its confiscatory law was struck down as unconstitutional. Michigan counties still face hundreds of millions—or billions—of dollars in damages for their past actions. The North Dakota Legislative Assembly should not wait for a court order to solve the problem and protect its residents' homes.

# Endnotes

[1] *See* N.D. Cent. Code Ann. §§ 57-20-26, 57-28-09.

[2] *See*, e.g., Ark. Code Ann. § 26-37-209; Conn. Gen. Stat. Ann. § 12-157(h); Del. Code Ann. tit. 9, § 8779; Fla. Stat. Ann. §§ 197.522, 197.582; Idaho Code § 31-608(2)(b); Kan. Stat. Ann. § 79-2803; Ky. Rev. Stat. Ann. § 426.500; Mo. Rev. Stat. § 140.340; Nev. Rev. Stat. § 361.610.5; Ohio Rev. Code § 5723.11; 72 Pa. Cons. Stat. Ann. §§ 1301.2, 1301.19; S.C. Code Ann. § 12-51-130; S.D. Codified Laws § 10-22-27; Tenn. Code Ann. § 67-5-2702; Va. Code Ann. § 58.1-3967; Wash. Rev. Code Ann. § 84.64.080; Wyo. Stat. Ann. § 39-13-108(d)(iv).

[3] N.D. Cent. Code Ann. § 32-31-06.

[4] *Hodel v. Irving*, 481 U.S. 704 (1987).

[5] *See* Jennifer C.H. Francis, Comment, *Redeeming What is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales,* 25 Geo. Mason U. Civ. Rts. L.J. 85 (2014).

[6] Data were obtained from public records in Burliegh, Cass, Grand Forks, Morton, Ward and Williams Counties and property data purchased from Estated, which covers 23 of North Dakota's 53 counties.

[7] *Estate of Glasoe v. Williams Cty.*, 874 N.W.2d 311, 313 (N.D. 2016).

[8] *Rafaeli, LLC v. Oakland Cty.*, __N.W.2d__, 2020 WL 4037642, at *5 (Mich. 2020).

[9] Mike Martindale, *Oakland Board Seeks Answers from Treasurer on Retiree's Tax Foreclosure for $8*, The Detroit News, https://www.detroitnews.com/story/news/local/oakland-county/2020/07/22/oakland-county-board-tax-foreclosure-eight-dollars-court-ruling/5489758002/, July 22, 2020, (county's costs for just compensation may be $50 million); Andrew O'Reilly, *Michigan County Treasurer Rebuked for Seizing Retiree's Home Over $8 Tax Debt*, Fox News, https://www.foxnews.com/politics/michigan-county-treasurer-after-seizing-retirees-home-for-8-tax-debt, July 27, 2020, (cost to counties could be up to $2 billion statewide).

[10] Jim M. Manley, et al., *Stop Home Equity Theft in Arizona, Can they seize your home for an $8 mistake?*, Pacific Legal Foundation, https://pacificlegal.org/wp-content/uploads/2020/02/AZ-HET-Report-2-14-20.pdf, Feb. 14, 2020.

# About the Authors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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 landmark victory. She earned her J.D. from Ave Maria School of Law in Ann Arbor, Michigan.

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Daniel is Pacific Legal Foundation's legal policy director, where he leads the foundation's effort to advance legislative and executive reforms that protect and expand individual liberty, such as an end of state-sanctioned home equity theft. He earned his law degree from Cleveland Marshall College of Law and his undergraduate degree from Utah State University.

### *Pacific Legal Foundation*

PLF is a national nonprofit legal organization that defends Americans' liberties when threatened by government overreach and abuse. We sue the government in court when our clients' rights protected by the Constitution are violated, and advocate for legislative and regulatory reforms in the other branches of government. Started in 1973 in California, PLF now seeks reform across the country, including suits filed nationwide, scoring precedent-setting victories for our clients, with an unmatched track record at the United States Supreme Court.


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