

TAX FORECLOSURE AUCTIONS UNDERVALUE PROPERTY AND RETURN INSUFFICIENT EQUITY TO OWNERS

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After the US Supreme Court ruled that home equity theft is unconstitutional, almost all states created a process ostensibly to return excess proceeds from the sale of tax-foreclosed properties at auction to property owners. However, the auction sales price that can be claimed is often significantly lower than the fair market value (FMV) of a home,¹ which legal experts contend prevents property owners from claiming the total equity to which they are entitled and denies them just compensation under the Fifth Amendment.²

For example, *Pung v. Isabella County, Michigan* will be heard by the Court. Isabella County foreclosed on Marc Pung's home and sold it at auction to recover about \$2,200 in taxes. At the time of the auction, Michigan counties retained all proceeds from tax foreclosure sales. Subsequently, Michigan law allowed tax debtors to recover auction proceeds, and a federal court later ordered Isabella County to remit \$76,000 in auction sale proceeds, less the amount of taxes, fees, and penalties.³ However, the county itself assessed the value of the home as roughly \$194,000.⁴ This additional \$118,000 in equity is currently unavailable for Pung to claim.

Pung's situation has happened elsewhere in Michigan. Figure 1 shows 2022 tax foreclosure auction sales data from Oakland County, Michigan, a county in the Detroit metropolitan area and the second largest in Michigan. Of the 137 properties sold at auction for which the county-assessed FMV could be calculated, 133 of them had county-assessed FMV greater than the winning bid at auction. The aggregate surplus FMV (FMV after accounting for taxes, fees, and penalties) for all 137 properties was greater than \$1,900,000. By contrast, only 16 of these 137 properties had surplus auction proceeds, totaling slightly more than \$600,000.

This difference of about \$1,300,000 between surplus county-assessed FMV and surplus auction proceeds represents property equity that does not currently have to be paid out by the county to owners.

OPTIONS FOR REFORM

To maximize the sales price and more closely approximate FMV, local governments can use different types of auctions.⁵ For example, properties with much buyer interest sell for more at real-time auctions, whereas properties with little buyer interest sell for more at sealed-bid auctions.⁶ Local governments can also advertise auctions more widely to increase buyer interest, rather than advertising only in select publications that reach investors, developers, and others familiar with the auction process.⁷

FIGURE 1. SURPLUS EQUITY BASED ON COUNTY-ASSESSED FAIR MARKET VALUE (FMV) VS SURPLUS AUCTION PROCEEDS AVAILABLE TO CLAIM IN OAKLAND COUNTY, MICHIGAN (2022)



Note: Property auction sales, taxes, fees, and penalties were cross-referenced by parcel identification numbers with state-equalized valuations to determine surpluses. FMV is calculated by multiplying a property's state-equalized valuation by two.

Source: FOIA request to Oakland County Treasurer, available from authors upon request; Tax-Sale.info, "Catalogue" (dataset), September 28, 2022, <https://tax-sale.info/catalog/getCsv/id/2147>; Tax-Sale.info, "Catalogue" (dataset), October 28, 2022, <https://tax-sale.info/listings/catalog/2173>.

Local governments can use auctions that accept a wider variety of payment methods rather than accepting only cash or the equivalent, which forbids mortgage financing and further restricts the number of qualified bidders.⁸ Finally, local governments can also avoid bundling properties and performing bulk sales, which inevitably reduce the sale price for individual properties.⁹

NOTES

- In Michigan, the law says annual property assessments done by the government determine the property's "true cash value" is "the fair market value or the usual selling price of property." MICH. COMP. LAWS § 211.27 (2022). According to courts, fair market value is twice the property's state-equalized valuation (SEV). *Gardner v. Dep't of Treasury*, 498 Mich. 1, 7, footnote 10 (2015).
- Pet. for Writ of Cert., Pung v. Isabella County, Michigan*, No. 25-95 (U.S. July 22, 2025).
- MICH. COMP. LAWS § 211.78t; Amy Howe, "Supreme Court to Hear Cases on Guns, Government Confiscation, and Several Other Issues," *SCOTUSBlog*, October 3, 2025.
- Ilya Somin, "The Supreme Court Will Hear Another Home Equity Theft Takings Case," *Volokh Conspiracy*, October 4, 2025.
- "Types of Auctions," Fred Wilson Auction Service, accessed November 24, 2025, <https://www.fredwilsonauction.com/auctions/types-of-auctions>.
- For a deeper understanding of this topic, see Russ Hilk, "Auctions vs. Sealed Bid," *Wavebid*, <https://blog.wavebid.com/auction-vs-sealed-bid/>. For further details on real-time auctions, see Pacific Legal Foundation, *The Property Equity Protection Act*, May 2024, 2.
- John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales* (Boston, MA: National Consumer Law Center, July 2012).
- Pinellas County Tax Deed, "Tax Deed Sale Process," Realauction, last updated January 31, 2020, <https://www.pinellas.realtaxdeed.com/index.cfm?ZACTION=HOME&ZMETHOD=TAXDEED>.
- Christopher Berry and Max Schmidt, *Selling Distress: How the Tax Foreclosure System Exacerbates Disinvestment in Cook County Communities* (Chicago, IL: Center for Municipal Finance, September 2022).



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