



SHADOW EQUITY THEFT:

Confusing Claims Processes Allow Wholesale Home Equity Theft to Continue

Kyle Sweetland and Deborah J. La Fetra

LOCAL GOVERNMENTS COMMIT HOME EQUITY THEFT

when they take and sell a home at auction for unpaid property taxes but do not allow the homeowner to claim the equity in the property beyond what was owed. The Supreme Court of the United States ruled in 2023 in *Tyler v. Hennepin County* that home equity theft is unconstitutional,¹ and since then, most states have created a process for homeowners to claim excess proceeds from property tax auctions.²

However, experts allege that some states have made these processes so difficult that most eligible property

owners accidentally waive their rights to their equity.³ The outcome—windfall profits for governments—can be the same as home equity theft, but it is hidden by the claims process, justifying the neologism “shadow equity theft.”

Five states currently engage in shadow equity theft: Alabama, Arizona, Michigan, New Jersey, and New York.⁴ This research in brief details the claims process in those states, shows outcomes for the process in Michigan, and provides recommendations for improving that process in Michigan and other states.

THE CLAIMS PROCESS IN STATES THAT ALLOW SHADOW EQUITY THEFT

THE CLAIMS PROCESS IN A SHADOW EQUITY THEFT state has three main characteristics.

1. Property Owners Must File a Claim for Excess Proceeds with the Local Government

Some legal experts argue that requiring property owners to file a claim for excess proceeds is backwards. Rather, the onus is rightfully on the government to ensure that the property owner is paid without having to ask.⁵

Nebraska meets this expectation by requiring the purchaser to repay the property owner any surplus proceeds within a month of recording the transferred deed.⁶ Shadow equity theft states have no such requirement.

2. To Be Valid, Surplus Equity Claims Must Be Filed Before the Property Sale Occurs

To file a claim in advance, property owners would need to be aware of the pending auction (they are often oblivious, because they still reside in the property). Furthermore, before the auction, it is impossible to know the sale price, the amount of proceeds generated

above the amount of the tax debt, and whether those proceeds approximate the amount of equity taken in the foreclosure.

For example, in New York, property owners must file a written notice of claim with the clerk before the court orders the sale.⁷ Failure to do this waives the property owner's right to claim surplus proceeds after the sale.⁸

3. The Timeline to File a Claim Is Compressed

Limited and often strictly enforced claim deadlines can result in claim denials, even when a property owner substantially complies.

For example, Lillian Joseph tried to redeem about \$25,000 in surplus proceeds after her home in Iron County, Michigan, was sold for unpaid taxes in 2021. She mailed her notice of claim form to meet the July 1 deadline, and the form arrived at the county building on time, but because the treasurer did not retrieve it from the mailroom until July 2, the county kept all her home equity.⁹

OUTCOMES FOR THE CLAIMS PROCESS IN MICHIGAN

FOUR OF THE FIVE STATES THAT ALLOW SHADOW equity theft created a claims process in 2024, so data to evaluate their claims outcomes are lacking. However, Michigan has allowed property owners to claim excess sales proceeds since 2020, and there are statewide and local data on the amounts remitted to property owners who successfully navigate the claims process.¹⁰

To redeem surplus proceeds after a tax foreclosure sale, Michigan property owners must submit by personal service or certified mail, return receipt requested, a notarized form by July 1—before the auctions, which are usually held August to October.¹¹ The deadline, notarization, and specific submission requirements are strictly enforced. If the government accepts the form, property owners must jump through several more hoops: file a duplicative motion, appear in court, obtain a favorable judgment, and pay a 5 percent sales commission to the government to recover their surplus proceeds from the auction sale.¹²

Statewide Data

Property owners rarely succeed at claiming excess proceeds. Although Michigan property owners who lost their homes to foreclosure in 2020–2023 recovered roughly \$26 million,¹³ Michigan counties confiscated nearly \$125 million to fill government coffers (see Figure 1).¹⁴

The proportion of remitted excess proceeds was consistently small each year, even when more excess proceeds were available to be claimed. In 2020, approximately \$1 of every \$4 in surplus sales proceeds was returned to the original property owners, but in 2021, this proportion dropped to \$1 of every \$7. It rose slightly to \$1 of every \$6 in 2022, then to \$1 of every \$5 in 2023.

Oakland County Data

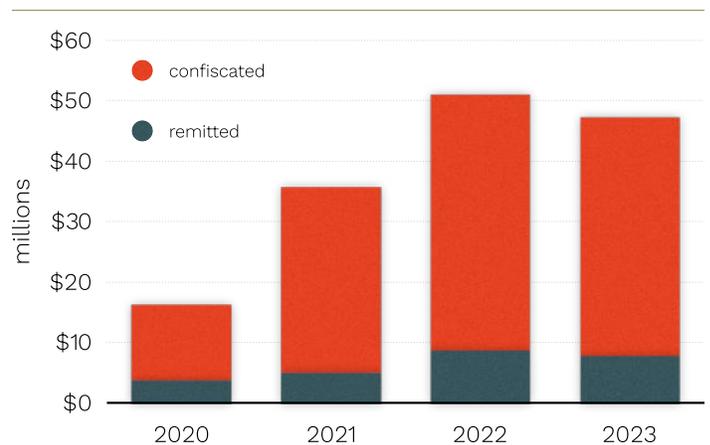
A deeper dive into Oakland County, part of the Detroit metropolitan area and Michigan's second largest county, reveals similar findings.¹⁵ Slightly less than \$1 million in surplus sales proceeds was returned to

property owners in 2022, according to public records.¹⁶ The remaining \$3.2 million of the total \$4.2 million in surplus proceeds went to the government. Only about \$1 of every \$4 in excess proceeds was returned to property owners.

The dollar recovery reflects sales of only 13 properties out of 373 tax-foreclosed properties put up for auction (about 4 percent; see Figure 2). The county rejected 10 claims, and 350 properties had no claims at all, allowing the county to confiscate the equity.

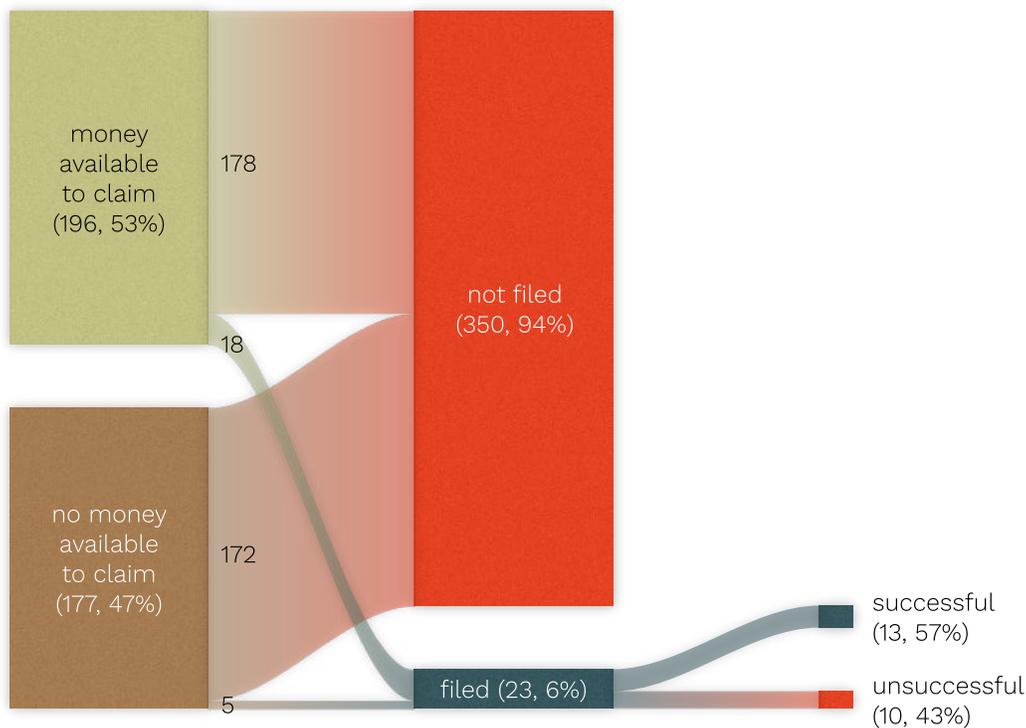
Of the 373 tax-foreclosed properties, 196 had money available to claim because they sold for at least \$20 more than what was owed—the break-even point for property owners, as it costs \$20 to file a motion to make an appearance in court and successfully claim excess proceeds.¹⁷ However, only 18 of these 196 properties had a notice of claim form filed, or about 9 percent. These findings suggest that most

FIGURE 1. Proceeds Remitted and Confiscated in Michigan (for Properties Foreclosed 2020–2023)



Source: “Auctions,” State of Michigan, <https://www.michigan.gov/taxes/property/forfeiture-foreclosure/county/auctions>: specifically, columns i (Number of Parcels Ordered Foreclosed and Not Canceled or Redeemed), xi (Total Amount of Proceeds Paid to Claimants for All Properties [note 5 percent of sale amount payable to FGU is deducted before proceeds are calculated]), and xii (Remaining Net Amount After Subtracting the Paid Claimant Proceeds Total [xi] from the Difference of Amounts Described in [x] and [ix]).

FIGURE 2. Properties with Successfully Claimed Auction Proceeds in Oakland County, Michigan (2022)



Source: Property auction sales and claim forms come from a FOIA request to the Oakland County Treasurer for copies of Michigan Department of Treasury Form 5743—Notice of Intention to Claim Interest in Foreclosure Sales Proceeds. These forms were cross-referenced with claim receipts (also obtained via a FOIA request to the treasurer) and property auction sales to determine how much was paid to claimants.

Note: Properties with “money available to claim” sold at auction for an amount exceeding the amount owed in taxes and fees as well as the cost of filing a motion in court to make a claim. Properties with “no money available to claim” may have gone unsold, been transferred, or been sold at a loss. Transfers may occur via quitclaim deeds or normal deeds to the state’s land bank, another municipality, or a nonprofit focused on redeveloping the property (e.g., Reroot Pontiac). Transfers like these happened with at least 18 properties.

property owners are unaware of the consequences of failing to file the notice of claim form or fail in their attempts to claim their surplus proceeds.

While local governments may not be overtly stealing property owners' equity, the state's claims process enables them to confiscate much of it.

REFORMS TO MAKE CLAIMS PROCESSES EASIER

CLAIMING SURPLUS PROCEEDS IN MICHIGAN AND other shadow equity theft states may be confusing and difficult for property owners, but it does not need to be. The Property Equity Protection Act,¹⁸ a model policy from Pacific Legal Foundation, can help guide states in crafting their laws to create a clear claims process and protect property owners' right to just compensation. The model policy gives property owners adequate notice and time to claim their property's equity after a tax sale.

States such as Nebraska and Massachusetts have implemented robust reforms, like the Property Equity Protection Act. As of 2023, Nebraska requires tax-foreclosed properties to go through an existing judicial foreclosure proceeding that protects the homeowner's surplus proceeds and allows them to claim those proceeds after the sale.¹⁹ And Massachusetts created a

system in 2024 that gives homeowners plenty of time—19 months—to claim excess proceeds.²⁰

Due to a lack of available data, it is not yet possible to compare how effectively claims processes remit surplus proceeds in robust reform states versus shadow equity theft states. Most states only reformed their laws within the past year or two, so future research should study the outcomes.

Michigan and other shadow equity theft states could do more to ensure that surplus proceeds are returned to their rightful owners. Additionally, by passing legislation to create a clear claims process and protect equity, states that still allow some form of home equity theft can protect their citizens' Fifth Amendment rights against uncompensated takings.

ENDNOTES

1. “Victory! Supreme Court Declares Home Equity Theft Unconstitutional: *Tyler v. Hennepin County*,” Pacific Legal Foundation, accessed December 14, 2025, https://pacificlegal.org/case/mn_home_equity_theft/.
2. “End Home Equity Theft” (website), Pacific Legal Foundation, accessed December 14, 2025, <https://homeequitytheft.org/>.
3. Jim Manley, “These States Are Trying to Bring Back Home Equity Theft,” Pacific Legal Foundation, *March 21, 2024*.
4. “Confusing Procedures Can Result in Shadow Equity Theft,” Pacific Legal Foundation, accessed December 14, 2025, <https://homeequitytheft.org/shadow-equity-theft>.
5. Manley, “Trying to Bring Back Home Equity Theft.”
6. “Within thirty days after recording of the deed, the grantee shall pay the surplus to the previous owner of the property described in the deed.” NEB. REV. STAT. § 77-1838(2). In this case, the grantee is the purchaser of the property. *Fair v. Continental Resources*, 317 Neb. 391, 407 (2024).
7. N.Y. REAL PROPERTY TAX § 1135.
8. “Upon the execution of such deed, the tax district, or the grantee as the case may be, shall be seized of an estate in fee simple absolute in such parcel and all persons . . . who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.” N.Y. REAL PROPERTY TAX § 1136(3)(c).
9. “Fighting Home Equity Theft in Michigan’s Unlawful Claims Process: *In re Petition of Alger, Iron County Treasurers for Foreclosure*,” Pacific Legal Foundation, accessed December 14, 2025, <https://pacificlegal.org/case/in-re-petition-of-alger-iron-county-treasurers-for-foreclosure/>.
10. Michigan amended its claim procedure in response to a state supreme court case, *Rafaeli, LLC v. Oakland County* (2020), that predated the US Supreme Court case *Tyler v. Hennepin County* (2023). For more details about the *Rafaeli* case, see “Michigan County Steals House for \$8 Debt,” Pacific Legal Foundation, accessed December 17, 2025, <https://pacificlegal.org/case/rafaeli-llc-v-oakland-county/>.
11. For an example of the dates in the claims process, see Oakland County Treasurer’s Office, “Property Tax Foreclosure Surplus Claims,” accessed December 14, 2025, <https://www.oakgov.com/government/oakland-county-treasurer-s-office/property-taxes/property-tax-foreclosure-surplus-claims>. The notarized form that must be specially served is Michigan Department of Treasury Form 5743—Notice of Intention to Claim Interest in Foreclosure Sales Proceeds, <https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Forms/Property-Tax/5743.pdf>.
12. MICH. COMP. LAWS §§ 211.78t(4), (12)(b)(3).
13. Foreclosures have a three-year redemption period in which the homeowner can keep the home from being sold. Hence, only data to 2023 are available. MICH. COMP. LAWS § 211.78k.
14. This amount does not include the windfall that the government took from owners by skipping the auction and taking the title through right of first refusal. MICH. COMP. LAWS § 211.78m.
15. Pacific Legal Foundation, “Confusing Procedures Can Result in Shadow Equity Theft,” End Home Equity Theft, accessed December 17, 2025, <https://homeequitytheft.org/shadow-equity-theft>.
16. These were the most recent data available at the time of the request. FOIA request filed with Oakland County Treasurer in February 2024.
17. “Fees and Forms,” Oakland County, accessed December 14, 2025, <https://www.oakgov.com/government/clerk-register-of-deeds/court-records/fees-forms>. Any surplus above \$20 is considered reasonable to claim. Under Arizona law, excess proceeds of at least \$2,500 based on fair market value (FMV) are considered reasonable. ARIZ. REV. STAT. § 42-18204(B). This analysis is based on auction sales prices, which underestimate FMV, so the analysis likely underestimates the number of properties where it would be reasonable to claim.
18. Pacific Legal Foundation, *The Property Equity Protection Act*, May 2024.
19. NEB. REV. STAT. § 77-1838.
20. MASS. GEN. LAWS ch. 60, § 64A(e).

PACIFIC LEGAL FOUNDATION

KYLE SWEETLAND is a strategic research manager at Pacific Legal Foundation. He provides research on issues involving government interference in Americans' constitutional property rights.

DEBORAH J. LA FETRA is a senior attorney in Pacific Legal Foundation's property rights practice, where she primarily focuses on Supreme Court litigation.

PACIFIC LEGAL FOUNDATION is a national nonprofit law firm 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 files suits across the country, scoring precedent-setting victories for our clients, with an unmatched track record at the Supreme Court of the United States.

