



MARY FELZKOWSKI

STATE SENATOR • 12TH SENATE DISTRICT

Testimony on Senate Bill 829

Senate Committee on Government Operations, Legal Review, and Consumer Protection

Senator Mary Felzkowski

12th Senate District

January 18, 2022

Good afternoon Chairman Stroebel and Fellow Committee Members,

Thank you for taking the time to hear testimony on Senate Bill 829.

Currently, under Wisconsin's property tax enforcement laws, if a property owner is unable to pay their property taxes, counties are authorized to seize the property and sell it to pay off the property taxes owed. Upon selling the property, the county must determine the net proceeds of the sale, which is equal to the sale price minus the unpaid taxes as well as any costs the county incurred that are associated with the tax delinquency, foreclosure, and sale of the property.

However, after paying off the property taxes that are owed, along with the costs associated with the foreclosure and the sale, the county may then keep any net proceeds unless the property is the former owner's homestead (at any time during the previous five years). For all other types of property (commercial, farm, vacant land, etc.), the county makes an oftentimes substantial profit and is allowed to keep those proceeds, regardless of how minor the tax delinquency was.

SB 829 seeks to protect the equity individuals have in their non-homestead properties upon property tax foreclosure sales. **Simply put, this bill will require counties to pay any net proceeds in a non-homestead property tax foreclosure sale to the former owner of the property, as is currently required for homestead properties.** This bill does not impact a county's ability to be made 100% whole, and simply guarantees that the remaining equity rightfully stays with the property's owner. Wisconsin is one of only nine states that still permits this practice of 'equity theft', and it is time we remedy that.

Thank you for taking the time to hear my testimony and I hope you support this bill.



SHANNON ZIMMERMAN

STATE REPRESENTATIVE • 30th ASSEMBLY DISTRICT

Senate Bill 829

Senate Committee on Government Operations, Legal Review, and Consumer Protection

January 18, 2022

Thank you Chairman Stroebel and committee members for hearing testimony on Senate Bill 829. The proposed legislation clarifies how a non-homestead property sale is handled following a finding of tax delinquency.

Current law allows the county, or in some cases the municipality, to sell the property in question and it is incumbent on the former owner to formally request any profits from the sale. If that request is not made, the county is allowed to retain the profits from the sale.

Our proposed bill would change this process and require that all profits from the sale of a property, homestead or not, would be returned to the owner, regardless of whether the proceeds were requested or not.

We believe that the managing agent, whether that be a county or municipality, should not lose money on the management and sale of these properties. On the flip side, they should not profit from these transactions either.

The proposal also eliminates from current law, a penalty equal to 2% of the sale price. Current law allows for this penalty to be applied before any proceeds are returned to the previous property owner.

During development of this proposal, the Wisconsin Counties Association has been consulted to ensure that these changes do not come as a surprise and the entities involved have the ability to prepare for the changes.

Thank you again for the opportunity to provide testimony. I hope I can count on your support of these measures as they move forward and I'd be happy to take any questions at this time.



Wisconsin REALTORS® Association

To: Members, Senate Committee on Government Operations, Legal Review and Consumer Protection

From: Cori Lamont, Senior Director of Legal and Public Affairs
Tom Larson, Executive Vice President

Date: January 18, 2022

RE: SB 829 – Proceeds from the sale of tax delinquent property to the former owner

The WRA supports requiring counties to pay any net proceeds in a property tax foreclosure sale to the former owner of the property.

Background

Under Wisconsin's property tax enforcement law, if a property owner is unable to pay their property taxes, counties are authorized to seize the property and sell it to pay off the property taxes owed. Wis. Stat. § 75.63. However, after paying off the property taxes owed (and all other penalties, interest and selling costs), the county may keep any net proceeds unless the property is the former owner's homestead. See Wis. Stat. § 75.36(4).

For all other types of property (commercial, farms, vacant land, etc.), the county gets a windfall and is allowed to keep the owner's remaining equity in the property...regardless of how small the tax delinquency. Such action by the county is referred to as foreclosure equity theft. While the exact number of Wisconsin foreclosure equity theft cases is unknown, the financial impacts on property owners can be significant and unjust.

For example, in *Ritter v. Ross*, 207 Wis.2d 476 (Ct. App. 1996), Mr. and Mrs. Ritter lost 38 acres of vacant land in Rock County with a fair market value of \$37,920 because they owed \$84.43 in back taxes. The county seized the property, sold it at auction for \$17,345 and kept all the profits: a \$17,260.07 windfall for the county.

Foreclosure equity theft is an unconstitutional taking.

Under the Fifth Amendment of the U.S. Constitution, the government is prohibited from taking property for a public purpose without just compensation. This protection applies to all property, whether real or personal. Keeping the remaining equity in a person's property after a foreclosure sale is exactly the type of government "taking" that the constitution was created to prevent.

Foreclosure equity theft magnifies financial hardships.

Generally, property owners fail to pay their property taxes and go into foreclosure due to some catastrophe in their lives such as a major medical issue, divorce, job loss, or death in the family. Keeping the equity in an owner's property makes such financial hardships even worse and could permanently prevent the owner from making a financial recovery.

Foreclosure equity theft creates an unjust financial windfall for counties.

Under current law, counties can deduct from the foreclosure sales proceeds all past due taxes, penalties, interest, and all costs incurred by the county related to the foreclosure and subsequent sale. Wis. Stat. § 75.36(3)(a). Allowing counties to profit by keeping any remaining net proceeds in the property is a financial windfall for the county at the expense of the affected property owner.

Wisconsin is one of only 12 states to allow foreclosure equity theft.

The vast majority of states prohibit the government from engaging in foreclosure equity theft. According to the Pacific Legal Foundation, Wisconsin is currently one of only 12 states that allow the government to keep any net proceeds after the foreclosure sale. (Alabama, Arizona, Colorado, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, New York, and Oregon). <https://pacificlegal.org/home-equity-theft/>

We respectfully request your support for SB 829.

Testimony of Dillon Chepp, Pacific Legal Foundation, on SB 829
Senate Committee on Government Operations, Legal Review and Consumer Protection
January 18, 2022

Chair Stroebel, Vice-Chair Felzkowski, and members of the Committee, my name is Dillon Chepp, and I am the legal policy counsel at Pacific Legal Foundation. PLF is a nonprofit law firm dedicated to protecting individual rights from government overreach. PLF has been litigating these issues for almost 50 years and last year we had our thirteenth and fourteenth wins at the U.S. Supreme Court.

Thank you for taking the time to address an egregious practice that we have labeled “equity theft” with Senate Bill 829 and allowing me to testify on the issue.

When a debt is owed, it should be paid. And someone owed a debt needs a mechanism to collect it. For example, when a person defaults on a mortgage, the bank can foreclose, sell the property, and take what it is owed. Anything recovered beyond the debt and costs associated with collecting the debt is returned to the former property owner.

Local government is no different. Local government relies on property tax revenue to operate and cannot be left without recourse when a person does not pay. Like a bank, counties can foreclose upon property where the owner has defaulted on their property taxes. The difference between what banks and localities can do in Wisconsin is that regardless of how small the debt, or how large the recovery, the county keeps it all.

A debt is a debt but collecting more than what is owed is theft. Even under a retributive form of justice that demands “an eye for an eye, and a tooth for a tooth,” the offended party cannot recover more than what will make them whole.

The case of Elmer and Helen Ritter demonstrates the harshness of this system. In 1989, the Wisconsin couple lost their 38-acre non-homestead property after failing to pay \$84.43 in back taxes. The county sold the property through a tax foreclosure sale for \$17,345. Rather than subtracting the \$84 and change owed and returning the remaining \$17,260 in proceeds to the Ritters, the county kept the entire amount.

In 1996, the Wisconsin Court of Appeals rejected the Ritter’s unlawful takings claim, explaining that “when a state’s constitution and tax codes are silent as to the distribution of excess proceeds received in a tax sale, the municipality may constitutionally retain them as long as notice of the action meets due process

requirements.”¹ It is incumbent on lawmakers to give a voice to those who stand to lose everything and ensure that the tax code is silent on this matter no more.

We think the U.S. Constitution’s protection against uncompensated takings should have overridden this interpretation of the state’s law, but regardless of who is right on that point, the Wisconsin law is unjust and immoral if it allows local governments to take more than they are owed.

The state of Michigan earned the scorn of national headlines for its tax foreclosure law that, like Wisconsin, allowed counties to take more than what was owed. Uri Rafaeli had his Michigan property taken over \$8.41 in underpaid property taxes. The county sold the property for \$24,500 and left our client with nothing. PLF challenged the case all the way up to the Michigan Supreme Court, which held that the state’s equity theft scheme was an unconstitutional taking of private property.²

Constitutional rights protect individuals from the government. One of the most fundamental of those rights is the right to not have your property taken without just compensation. Even one violation of a person’s rights is more than the Constitution will allow. Changing laws to protect your constituents from even the threat of unconstitutional action is not only worth your time but is your solemn duty as elected officials who have sworn an oath to uphold the constitution.

Senate Bill 829 is a fair bill that ensures those who are owed a debt can collect it, and that those who owe a debt must pay only what they owe. It allows counties to collect the tax debt owed along with interest, penalties, and compensation for incurred costs. And most importantly, it ensures that a lifetime of work and equity is not unconstitutionally and unjustly taken by the government.

Thank you again for the opportunity to testify and I am happy to answer any questions the committee may have.

¹ Ritter v. Ross, 558 N.W.2d 909, 912 (Wis. Ct. App. 1996).

² Rafaeli, LLC v. Oakland Cty., 952 N.W.2d 434 (Mich. 2020).