PRESIDENT’S MESSAGE

February 2023

I start this newsletter with an article which raises some interesting ethical and legal issues concerning the enforcement powers available in respect of liability for property tax.

The headline reads: “The Government Seized an Elderly Minnesota Woman’s Home Over $2,300 in Unpaid Property Taxes, Sold It, and Pocketed the Proceeds. The Supreme Court Just Agreed to Hear Her Case.”

The article goes on to explain that an elderly widow whose condo was seized and sold by the county government for unpaid property taxes, with the government pocketing the proceeds from the equity in her property, may finally get relief after the United States Supreme Court agreed to hear her case.

In 1999, Geraldine Tyler bought a one-bedroom condo in Minneapolis, Minnesota that she called home until 2010, when rising crime in the neighborhood alarmed her and her family, so she rented an apartment in a safer area. After she moved, she had financial difficulties and about $2,300 in unpaid property taxes accrued on the condo.

In 2015, the total tax debt, penalties, interest, and fees Tyler owed to Hennepin County, Minnesota was $15,000. The county government seized her condo and sold it for $40,000. But the county didn’t just keep the $15,000 she owed them; it pocketed the entire $40,000 proceeds from the sale. Tyler is now 93 years old and lives in an assisted living facility.

The author of the article spoke to the lead counsel on Tyler’s case who explained that Minnesota allows county governments to seize property for unpaid taxes, force a sale, and keep any excess value. From 2014 to 2021, at least 1,360 Minnesotans lost their homes in this way for debts that averaged only 8 percent of the home’s value, representing a stunning total of over $100 million in home equity lost.

This constitutes “home equity theft” the lawyers argue; this is when the government takes more than what is necessary to satisfy the tax debt, and is a violation of the Constitution’s Fifth Amendment prohibition on taking property without just compensation and the Eighth Amendment prohibition on excessive fines and fees.

And, the articles continues, Minnesota is far from the only state that permits home equity theft. A review of laws across the country found it is allowed in a total of twelve states plus the District of Columbia and permitted “in limited situations” in an additional nine states.

Minnesota isn't even the worst offender, the author states. New Jersey forced 661 homes into foreclosure and sale resulting in a loss of nearly $115 million in equity during that same 2014-2021 period, and Illinois is the number one "home equity robber" taking nearly $400 million in equity from 4,719 homes.

The lawyers continued to gather national data on home equity theft, finding thousands of homes that were forced into sales from 2014 to 2021 by local governments or private investors holding tax certificates (that's an entirely different avenue for abuse) and losing over $777 million in home equity. But these figures "severely understate" the problem because they've only been able to review select records in a fraction of jurisdictions in each state. "The reality," says the lawyers' website, is unquestionably "even worse."

As an example of how some states have drafted protections for property owners, Section 197.582 of the Florida Statutes provides clear procedures for the disbursement of proceeds from a tax sale, spelling out the priority of payments to the holder of the tax lien, any other government liens, and senior and junior lien holders (such as mortgages, second mortgages, or home equity loans). Florida law directs the clerk of the court collect the surplus funds, provide notice to lien holders to submit their claims within a 120-day claim period, and then if there are any remaining funds after that time expires, "there is a conclusive presumption that the [former property owner] is entitled to the surplus funds."

The lawyers state that Tyler had no such law protecting her in Minnesota. To the contrary, the state law spelled out how various local government entities should divide up their "ill-gotten gains", distributing funds to various county budgets for "forest development and county parks and recreation areas," plus other "specified percentages" to the relevant county, school district, and city coffers.

Tyler filed suit arguing when Hennepin County kept the $25,000 value from her property that was in excess of the debt she owed, it was a violation of her rights under the U.S. and Minnesota Constitutions, specifically the federal and state takings clauses, excessive fines clauses, and substantive due process, in addition to unjustly enriching the county with the surplus profits.

The county removed the case to federal court and filed a motion to dismiss for failure to state a claim and prevailed at the district court level. Tyler appealed, and the U.S. Court of Appeals for the Eighth Circuit affirmed the lower court's granting of the motion to dismiss.

In its ruling, the Eighth Circuit ruled that "for Tyler to state a plausible claim for relief, she must show that she had a property interest in the surplus equity after the county acquired the condominium." The court ruled that because the Minnesota statute provided how the county was to spend the entire surplus and did not grant the former property owner a right to that surplus, Tyler did not have a right to the $25,000 in excess of her debt from the sale of her condo.

Tyler appealed the Eighth Circuit's decision to the Supreme Court, arguing that the appellate court had erred in their ruling by not recognizing the debtor's property rights in the equity value of their homes. Allowing a county government to take more property than necessary to pay a tax debt "violates deeply rooted property rights" and conflicts with prior Supreme Court case precedent on takings cases, wrote Tyler's attorneys in their Petition for Writ of Certiorari.

“No one disputes that government may lawfully seize property to collect a debt,” the motion continued. “But when it takes more than what it is owed, it violates the Takings Clause” because the government’s power to collect a tax debt is “exhausted the moment the tax was collected.” The Eighth Circuit had also failed to properly address Tyler’s claim that the county’s retention of the $25,000 was a violation of the Constitution’s prohibitions on excessive fines.

Tyler’s case raised a “a pressing national problem that has festered for decades in the lower courts,” concluded the attorneys, and “presents an excellent vehicle” for the Supreme Court to “put the controversy to rest” by issuing a ruling on whether these statutes constitute unconstitutional takings or excessive fines, and pointed out the inequities often present in these cases:

> Windfall statutes like Minnesota’s have devastating consequences for homeowners who fall behind on their taxes for non-blameworthy reasons, including cognitive decline, physical or mental illness that led them to financial difficulty, or simple poverty. Elderly property owners, like Tyler, are especially susceptible to losing their property in this way when they leave their residences for senior living or medical facilities and fail to recognize the consequence of allowing a foreclosure to occur… As Justice Thomas wrote about other types of forfeitures, “[t]hese forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. Perversely, these same groups are often the most burdened by forfeiture.”

The Supreme Court included *Tyler v. Hennepin County* among those cases granted a writ of certiorari on Friday, January 13. The lead counsel on the case said they were very pleased the nation’s highest court had agreed to hear Tyler’s case, because “we’re not just trying to end home equity theft in Minnesota, but all home equity theft in the United States and, if the Supreme Court gets this right, I think that it should end home equity theft once and for all.”

The lawyer took issue with the county’s argument that the district court accepted in granting the motion to dismiss, that the Minnesota statute authorized the county to seize the surplus proceeds in excess of the delinquent taxes. “Property rights don’t just disappear because the state legislature says so,” she insisted. “If that were the case, then the Fifth Amendment would just basically be an illusory protection.”

One particular egregious example the lawyers shared was in Michigan, where Oakland County seized her client Uri Rafaeli’s rental property over $8.41. Rafaeli had bought the small rental house for $60,000 in 2011 and inadvertently missed one of the tax bills that first year. He paid his 2012 and 2013 taxes in full. When he did get the bill in the mail in January 2013 for the outstanding 2011 taxes, he sent a check, but the interest had continued to accrue and he underpaid by $8.41. The county foreclosed, sold Rafaeli’s property for $24,500, and “kept all the money,” said the lawyer.

The situation was “completely unjust,” she continued, and “shockingly, that has happened to a lot of people,” because these laws “create this financial incentive for the government to foreclose on people who are often the most vulnerable in society,” those who are elderly, medically ill, socioeconomic disadvantaged, and so on, who face losing their property this way.

As an aside, I mentioned the Rafaeli case in a previous newsletter referring to the Supreme Court decision.

The lawyer continued by explaining that the state law was changed after the Michigan Supreme Court ruled that Rafaeli should not have lost the entire value of his property over $8.41 in unpaid taxes (a seemingly obvious conclusion but it did take appealing all the way to the state's highest court to get there), but Michigan counties have continued "fighting hard" to defend their "nefarious seizures" under the previous version of the statute, she said. She described a pending case in Michigan where she represented a family who bought a four-unit apartment home and unknowingly underpaid their taxes by $144, and the county seized the building, sold it for $108,000, and kept all the money.

The lawyer stated these kind of takings by the government have "no basis in history". She said "You had more protections under the Magna Carta in 1215" than Americans do today in what she referred to as the "naughty states", i.e. those that allow home equity theft. It was the "most vulnerable people," she said, "who end up getting robbed legally" by their own governments, "so that's why we're hoping that this isn't just a victory for Mrs. Tyler; we're hoping it will end all home equity theft in the United States."

It will be very interesting to see the outcome of this case. The full article, which appeared in "Law & Crime" and contains some interesting graphics, is available via the link below:

https://lawandcrime.com/supreme-court/the-government-seized-an-elderly-minnesota-womans-home-over-2300-in-unpaid-property-taxes-sold-it-and-pocketed-the-proceeds-the-supreme-court-just-agreed-to-hear-her-case/

Moving on to IPTI activities, I am pleased to say that we have almost completed our draft report for the external, independent audit of a revaluation being undertaken by a large valuation agency in Africa. We have also recently been asked to complete another external audit of the property tax valuation work carried out by another valuation agency in North America. These IPTI audits provide a very interesting area of work for our experts who are able to add value to the work undertaken by the valuation agencies concerned by providing valuable external advice and sharing best practice from around the globe.

We recently delivered two webinars the first of which was one in a series we provide in partnership with the Institute of Municipal Assessors (IMA). This IMA-IPTI webinar was titled "Challenges in Valuation of Income Producing Properties - Part 1" and I was pleased to chair the event. Our two expert speakers demonstrated how to accurately interpret an income/expense statement as well as explaining the process for developing fair market rents that can be applied across a grouping of properties. Establishing accurate market rents is an important component of producing accurate values of income producing properties and our presenters covered a great deal of ground in the time available. Part 2 of this webinar will be held on 8 February.

The second webinar we delivered during January was titled "Determining Valuation Influences". This was another in our series of IPTI webinars which deal with an introduction to mass appraisal. Our two very experienced speakers looked at key issues relating to exploratory data analysis in the mass appraisal process including measures of central tendency; measures of dispersion; graphical analysis; identifying data errors and anomalies; and outlier identification. They provided a very helpful insight into the ways in which relevant data needs to be considered before moving on to model building and valuation. The next webinar in this series is due to be held on 15 February and will look at valuation models.

As usual, we have a wide range of events coming up over the next few months. For details of all our forthcoming events, please visit our website: www.ipti.org

Now it's time for a quick look at what is making headlines concerning property taxes in selected jurisdictions and countries around the world. For more information, and links to the original news articles, please look at IPTI Xtracts on our website.

Starting with Ireland, it is reported that some 360,000 homeowners submitted Local Property Tax (LPT) values below the Revenue's estimates. More than half a million people claim their properties are worth less than €200,000 and will have to pay just €90 a year. This report comes as a recent survey showed that most people think the tax is unfair and should be scrapped as it takes no account of ability to pay. The large number of lower-value properties raises suspicions that some people have deliberately submitted a lower value for their home than it is worth in a bid to keep the amount of tax due down. LPT is a self-assessed tax, and raised €500m last year. Statistics up to January 5 from Revenue show that more than half of the residential properties in the State have been valued at €262,500 or less by their owners. This amounts to around 900,000 properties. The rules were changed for LPT last year, requiring a new valuation for homes, the first such request to revalue since 2013. And new homes that had been exempt from the tax were liable for LPT following the changes. Property owners were required to determine the market value of their property as at last November 1, 2021. To arrive at its estimates for home values, Revenue used stamp duty returns to get sales data, Central Statistics Office figures and other data sources. Revenue data for January shows that 65pc of owners submitted a value for their property that was in line with the estimated value put on it by Revenue. But 22pc opted for a lower valuation, which put them into a lower tax band for LPT. Most of those opted for one band below the one Revenue estimated was appropriate for their property. Some 3pc went for two bands below the valuation band estimated by Revenue. There are 20 different LPT bands. For example, properties valued at under €200,000 pay just €90 in LPT. If the property is worth between €200,000 and €262,500, the annual LPT bill is €225. Some 13pc sent in an LPT return saying they had a higher valuation than Revenue estimated so a higher valuation band for the tax applied to them. The Revenue statistics publication said: "Therefore, 92pc of owners' valuations are the same or one band higher or lower than the Revenue guidance."

An interesting property tax valuation issue arose out of a recent case in British Columbia, Canada concerning contaminated land. Ordinarily, owners of significantly contaminated sites can seek and obtain a reduction in the assessed value of their lands and therefore a reduction in property taxes on account of the presence of the contamination and the drag such contamination has on the value of the lands. However, following the case of *Seaspan ULC v. North Vancouver (District)*, the BC Court of Appeal has ruled that such a reduction in value is not warranted where the land in question is subject to a remediation order. This decision is worth consideration any time that an owner of a contaminated site is faced with a decision as to whether to undertake voluntary remediation or face the prospect of having a remediation order levied against it. By way of background, Seaspan is the owner of property determined to be contaminated under the BC Environmental Management Act. The site was, prior to 1965, used as a wood treatment facility under different ownership, and was, after 1965, used by Seaspan as a shipyard. The site is contaminated with creosote from the historic wood treating operations and tributyltin from the Seaspan's shipyard operations.

In the early 1990s, the Ministry of Environment identified that the site was significantly contaminated and in 1995 endeavoured to have the owners voluntarily remediate the site. Despite the Ministry delivering two draft remediation orders, the parties did not commence voluntary remediation, and in 2010 the Ministry issued a remediation order. By the date of the appeal before the Court of Appeal, Seaspan had spent nearly $50 million on remediation efforts and estimated that the cost of the remaining remediation work was approximately $50 million more. For the assessment years of 2013 through to 2019, Seaspan appealed the assessments of the value of the property arguing that the contamination present on the property adversely affected its value and therefore the anticipated cost of remediation should be deducted from the value of the property for assessment purposes. On appeal to the Property Assessment Appeal Board (PAAB), the Board agreed with Seaspan and reduced the assessed value of the properties accordingly. On appeal of the Board's decision to the Supreme Court of British Columbia by stated case, the Supreme Court disagreed with the Board's ruling, holding that the remediation order was an order that ran with the lands and that any potential buyer would acquire the land with the benefit of the fact that the remediation order made the current owners obligated to remediate the site. As a result, the Court concluded that there should be no reduction in the assessed value on account of the contamination because any potential hypothetical purchaser would not be obligated to incur any costs in addressing the contamination. Seaspan appealed to the Court of Appeal, who ultimately upheld the Supreme Court's decision. The matter is now to be sent down to the PAAB where it may consider whether, despite the remediation order, there may have been any legitimate reasons for a reduced value.

A somewhat disturbing issue has recently arisen in a county in Ohio, USA, where a county commissioner considered that his home's property tax valuation was too high so he contested it - the way any other homeowner can - through the Board of Revision. The problem is that the same individual is also Chairman of the Board of Revision! Worse still, it transpires that the Board's other two Members have their respective budgets set by the same person, albeit along with the other county commissioners, which raises "conflict of interest" considerations. The appeal - and how to handle similar ethical quandaries - resulted in what was described as a "lively debate" at the first Board of Revision meeting of 2023.

And finally, I recently referred to a "mistake" that had been made in connection with the authorities in India sending a property tax bill for the Taj Mahal which has been exempt from such taxes since it was built in 1632. It seems that a similar problem has arisen in nearby Pakistan where a district municipal corporation has recently sent property tax bills to properties in their jurisdiction owned by the federal and provincial governments. They have followed these bills up with property tax recovery notices which has caused some problems as, according to the Sindh Urban Immovable Property Tax Act 1958, all federal and provincial buildings are exempt from any type of taxes. It will be interesting to see how these issues are resolved through, no doubt, a series of somewhat "challenging" meetings between the different levels of government! It also raises the wider global issue of whether government properties should be exempt from property taxes or should pay them in order to make a contribution to the costs of the local government in whose locality they are based. Much, of course, also depends on the inter-governmental funding arrangements in place between the various bodies concerned.

Paul Sanderson JP LLB (Hons) FRICS FIRRV
President, International Property Tax Institute