



**TESTIMONY OF SUSAN DOLLINGER
DIRECTOR – UNCLAIMED PROPERTY
North Dakota Department of Trust Lands**

House Bill 1267

**Finance and Taxation Committee
March 27, 2023**

Chairman Kannianen and members of the Senate Finance and Taxation Committee, for the record, my name is Susan Dollinger. I am the Director of the Unclaimed Property Division of the North Dakota Department of Trust Lands. I am here to testify in opposition to House Bill 1267.

The Unclaimed Property Division administers and enforces the North Dakota Revised Uniform Unclaimed Property Act, more commonly referred to as RUUPA. The primary function of the Unclaimed Property Division is to protect consumers by ensuring abandoned property is returned to its rightful owner. Since its inception in 1975, the Unclaimed Property Division has been housed in the Department of Trust lands under the control of the Board of University and School Lands. I only mention this as a point of clarification as I have heard several discussions surrounding where Unclaimed Property has been housed over the years.

RUUPA (N.D.C.C. ch. 47-30.2) directs all funds received by the Division be credited to the Common Schools Trust Fund. The funds are invested, and income generated during that time is used to benefit the education of children in North Dakota. All unclaimed property received is held in perpetuity, meaning the owner has the right to claim the property at any time at no cost.

It is promotions such as National Unclaimed Property Day (February 1st) and various other outreach activities which increase awareness of the program and encourage citizens to visit our website to search for and claim their property. (unclaimedproperty.nd.gov) These outreach activities work, as evidenced by our single-day record of claims received on February 1, 2023.

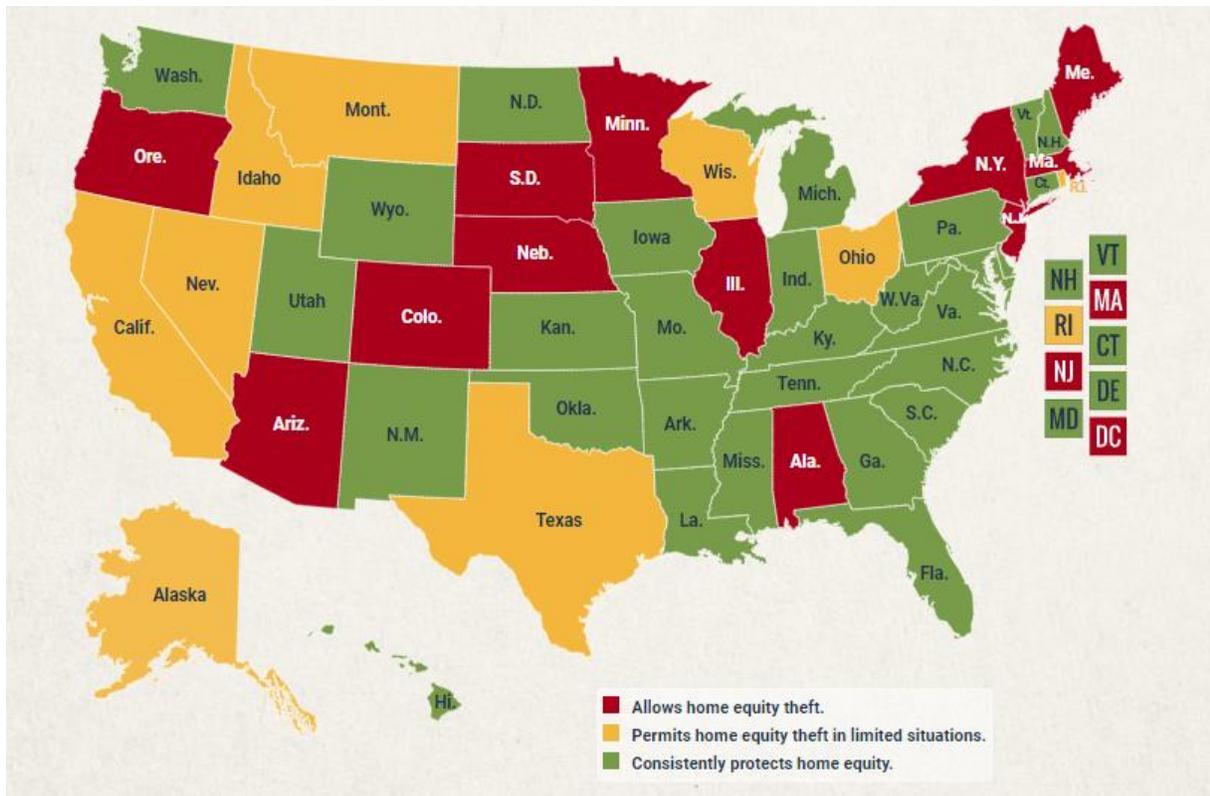
There are several key terms in the Unclaimed Property industry that are important to understand as we discuss what HB1267 does. First, the term “holder” is a person (usually a business but in this instance, the county) obligated to hold for, deliver, or pay to the owner of property subject to Unclaimed Property Laws. Second, the term “owner” is a person, or their legal representative, who has a legal or equitable interest in said property.

The Dormancy Period refers to a specified period in which an owner takes no action regarding his/her property while in the custody of the holder. Once the dormancy period has passed, the holder is required to turn the property over to the State. It is important to note that BEFORE a holder turns over ANY property to the State, it must conduct due diligence. Meaning, the holder must make one final attempt to locate the owner and attempt to return the property.

If a holder is unable to locate and return the property to the owner, then unclaimed property laws require the holder to deliver the property to the state and provide the name and last known address of the owner. Upon delivery to the state, the holder is no longer liable to the property owner. Thus, it is reasonable to say that ALL property that comes to the Unclaimed Property Division is for owners who can't be found.

I should note that in this context "property" is not real estate, but rather consists of intangible items such as uncashed vendor or payroll checks, dormant bank accounts, undeliverable securities, forgotten utility deposits, and in this case, unclaimed excess proceeds from a tax lien foreclosure sale. State unclaimed property programs share the common view that holders of unclaimed property have no legal or moral right to hold unclaimed property on their books, but rather this property belongs to employees, customers, vendors, shareholders, and most importantly, taxpayers.

I would be remiss if I did not point out that the issues surrounding excess proceeds from tax lien foreclosure sales under N.D.C.C. ch. 57-28 were thoughtfully considered during the 67th Legislative Assembly in HB 1199. HB 1199 made North Dakota one of the states where home equity theft is no longer legal. Passing HB 1267 will remove all the good work done last session and put North Dakota back on the list of states who continue to allow home equity theft. The map below comes from the Pacific Legal Foundation which shows the states in green as the states that protect its citizens home equity. If HB 1267 passes, it would place North Dakota back in the red category.



What I would like to do now is put some context to the narrative.

Since July 1, 2021 (When HB1199 became effective)	
14	The number of counties who have reported excess tax lien foreclosure funds
46	The total number of properties reported
8	The number of properties reported in the name of commercial entities
38	The number of properties reported in the name of private owners
\$260,127.01	Total value of excess proceeds from tax foreclosure liens reported

What is really at stake here? Government can take property to collect unpaid taxes but taking more than it is owed is legalized home equity theft. In January 2023, the United States Supreme Court announced it would review the case of Geraldine Tyler, an elderly widow who sued Hennepin County, Minnesota for the unconstitutional theft of her home equity.

As an elderly woman living alone, Geraldine Tyler was doing just fine in the one-bedroom condo she owned in Minneapolis. That is, until 2010, when a rise in neighborhood crime and frightening incidents near her home alarmed Geraldine and her family and prompted her hasty move to a safer area, where she rented an apartment in a senior community.

Finally, Geraldine felt safe and comfortable again, surrounded by other seniors. But the property taxes on her condo started piling up. Soon Geraldine accrued a \$2,300 tax debt and the government started tacking on thousands of dollars in interest, fees, and other penalties until the total bill reached \$15,000 in 2015. At that point, Hennepin County seized Geraldine's condo and sold it one year later for \$40,000. Instead of keeping the \$15,000 it was owed and refunding Geraldine the sale surplus, the county kept all \$40,000.

This is an egregious violation of fundamental property rights. Both the U.S. and North Dakota Constitutions prohibit the government from taking private property without giving owners just compensation. Home equity—the portion of a home's market value that belongs to the homeowner after all debts on the property are subtracted—is private property and therefore just as protected as a home or land.

Passing HB 1267 would put our taxing political sub-divisions at risk of years long legal battles like Hennepin County is facing, as well as the others listed in the attachment to this testimony.

Mr. Chairman and members of the committee, I urge you to have unclaimed excess funds derived from tax lien foreclosures continue to be placed in the custody of the Unclaimed Property Division rather than revert to the counties. Allowing counties to keep the excess is an unconstitutional taking that deprives owners of the opportunity to search for and claim what is rightfully theirs, and at the same time reduces future earnings of the Common Schools Trust Fund.

Thank you for your time. I would stand for any questions you may have.

Summary of Legal Battles

Fair v. Continental Resources (Nebraska) - Active

Kevin Fair owned a home in Nebraska worth \$60,000. But when he was unable to pay his \$588.21 property tax bill, the government put a tax lien on the property and sold it to a private party, Continental Resources, who paid the taxes on it, and then foreclosed on Mr. Fair, seizing his home. After Continental foreclosed on him, Mr. Fair sued, arguing that Nebraska took his equity and gave it to Continental.

Foss v. City of New Bedford, ET Al. (Massachusetts) – Won

Deborah Foss, a 66-year-old disabled retiree, used her life savings in 2015 to buy a two-family house in New Bedford. A year later, dealing with medical and financial problems and tenants who stopped paying rent, Foss fell behind on her property taxes and by 2018 her tax debt had accrued to \$9,626. New Bedford sold the tax lien to a private company, Tallage Davis, which initiated a foreclosure. Foss appeared in court and asked for a payment plan, but she could not afford a lawyer, and her request was dismissed. Tallage charged her 16 percent interest, and when she could not pay nearly \$25,000 in 2019, it foreclosed on her home and evicted her on February 1, 2022. Tallage sold her house for \$242,000 – keeping a profit of \$210,000 more than Foss's debt.

Hall V. Meisner (Michigan) – Won-Ruled Unconstitutional

When Tawanda and Prentiss Hall fell behind on their property taxes, they did what many financially strapped homeowners do: set up a payment plan with the local government. They didn't want to lose the Southfield, Michigan home where they lived with their children.

The Oakland County treasurer ended the plan, however, with the tax debt standing at \$22,642, and foreclosed on their home. The Halls were shocked to learn that the foreclosure took from them not only the value of debt but every penny of equity they had built up in the house. Instead of selling the house at public auction, paying off the debt, and returning the surplus (minus interest and penalties) to the homeowners, the county used the Halls' money to enrich a private company, Southfield Neighborhood Revitalization Initiative, LLC, managed by City of Southfield officials.

Through a series of legal transactions, the county took the Halls' home (and the homes of seven other homeowners party to this case) and transferred it through the City of Southfield to the Revitalization Initiative, which sold it for more than \$300,000. The Halls received none of the difference between the debt they owed and the sales price.

Johnson v. City of East Orange (New Jersey) – Active

In 1993, Lynette emigrated to New Jersey, settling in with her husband to raise their family. Today, Lynette is proud that her eight children, now adults, share the family's deep-rooted entrepreneurship and independence. Her son, Elton, and daughter, Shevon, were no exception. In 2014, the brother and sister found an ideal commercial location in East Orange, New Jersey, to run their small businesses.

In 2014, Lynette Johnson bought a commercial property for her and her children to share; her son Elton would run a deli-grocery store on one side of the building while Shevon would use the other side for her shipping business.

The property cost \$55,000 and Lynette spent another \$16,000 on architectural plans and permits for renovations. She never received property tax assessments and thus did not pay the first year's property taxes.

In New Jersey, property taxes are treated as a continuous lien. If they're not paid by the close of a fiscal year, the lien is sold at public auction for the taxes owed plus interest. Unbeknownst to the Johnsons, the city bought their tax lien at public auction in October 2015. At the time of sale, Lynette owed \$4,621.98.

The Johnsons remained in the dark for the next two years, during which time the lien amount grew to nearly \$20,000. In fact, they didn't know the city foreclosed on their property in February 2018 until a month later when a family member saw police towing vehicles from the property.

Shevon rushed to the scene and was informed the property now belonged to the city. She went straight to City Hall and offered to pay the lien amount in full, only to be told it was too late. Three months later, the city sold the property to private investors for \$101,000—and kept all proceeds from the sale, netting an \$81,000 profit.

Rafaeli, Ilc. V. Oakland County (Michigan) - Won

In 2011, Uri Rafaeli's business—Rafaeli, LLC—purchased a modest rental property in Southfield, Michigan for \$60,000. Rafaeli inadvertently underpaid the property's 2011 taxes. He paid his 2012, 2013 taxes in full. After learning he owed money for 2011, Rafaeli tried to pay the full 2011 tax debt in January, 2013. He mistakenly did not factor in interest growing on the debt and underpaid by \$8.41. The County foreclosed on the property, sold it for \$24,500, and pocketed the massive windfall at Rafaeli's expense.

Perez v. Wayne County (Michigan) - Active

In 2013, Erica Perez and her father Romualdo bought a four-unit apartment home in Detroit for \$60,000 intending to rent it out.

In 2017, Wayne County seized the family's home because they unknowingly underpaid their 2014 property tax bill by \$144, despite the fact they had paid their property taxes in full every year since.

The county tacked on another \$359 in interest, penalties, and fees, foreclosed on their property, sold it for \$108,000, and kept every cent beyond what was owed—which state law not only allows, but encourages.

Wayside Church v. Van Buren County (Michigan) - Active

When Wayside Church fell behind on its 2011 property taxes on a parcel that the church had used as a youth camp, Van Buren County, Michigan took the youth camp property and sold it for \$206,000 to pay the church's \$16,750 in taxes, penalties, interest, and fees. Invoking the Michigan General Property Tax Act, the County kept the surplus proceeds—\$189,250 more than the debt—as a windfall.