

The Magna Carta Offered More Property Protection Than Modern U.S. States

Eight dollars and 41 cents. About the cost of a Chipotle burrito. That's how much Uri Rafaeli owed the treasury in Wayne County, Michigan, for property taxes. To get that \$8.41, the county took his house and sold it for \$24,500 (or about 3,000 burritos.) They kept every penny for themselves.

There is a word for this practice: theft. And Wayne County is not the only one winning big on the minuscule mistakes of the little guy: it's every county in Michigan and in a [dozen other states](#), as well.

Home Equity Theft

The nation is in the midst of [a housing crisis](#). As FEE readers [well know](#), government policies like zoning restrictions and rent control contribute to and sustain the problem. Home equity theft – taking the entire value of a home despite being entitled only to a tiny fraction thereof, like what happened to Rafaeli – [doesn't help](#).

The system is designed to make it very easy for property tax payers to make mistakes. Of course, government must notify property owners of their delinquency, but they don't appear to take this duty especially seriously. In the case of [Erica Perez](#), whose home was taken and sold for \$108,000 to satisfy a debt of \$144, the notice was mailed to the wrong address – even though the county had the correct address on file.

This isn't surprising. If treasuries stand to make massive profits off the mistakes of property owners, they aren't

likely to be steadfast in helping owners avoid those mistakes. It's all about the incentives. Folks considering investing in property in one of these states might want to think twice given they can lose everything over minor discrepancies that the system itself helps to facilitate.

Even the Magna Carta, first promulgated in 1215, required that tax collectors take only so much property as required to pay a debt. But many states today are violating people's [property rights](#) and pulling tricks that would have made King John blush.

Legislative Solutions

There are a few routes to correcting this situation. First, the problem can be fixed legislatively. Where home equity theft is built into the state tax code, one easy solution is to change the code. There has been success in this area already. Montana [recently passed](#) a law requiring that excess funds from foreclosure sales be paid back to the original owner. Although the law applies only to certain classes of property, it is a major step in the right direction.

But what if the legislature is unwilling to adjust its tax codes? Fortunately, property owners are not without recourse: there is a law higher than the state tax code.

The Fifth Amendment to the Constitution of the United States prohibits government from taking property without compensation. The Eighth Amendment protects against excessive fines. Analogous provisions in the respective constitutions of the offending states provide the same protection. With the help of Pacific Legal Foundation, Rafaeli brought his case all the way to the Michigan Supreme Court, and a decision is expected in the coming months. At [oral argument in November](#), you could hear the incredulity in Justice Richard H. Bernstein's voice as he grilled the county's attorney:

You have a situation where people owe eight dollars and they lost their house. How is that—I mean...how is that equitable?

Even aside from the Constitution, other fundamental principles of law and equity are violated when government takes more than it's owed. For example, homeowners might bring a claim of unjust enrichment, which prevents people from retaining benefits they have unfairly derived from others.

Counterproductive Use

But regardless of the solution, it is time for people to recognize the problem. Home equity theft isn't merely unjust – it's counterproductive. A government-sponsored [study](#) found that

most Detroit homes that have been tax foreclosed do not return to productive use.

In other words, home equity theft creates dead weight. Money is diverted from the market into government coffers while property is taken out of the hands of the people most likely to make productive use of it. Given the housing crisis throughout the country (and not for nothing, it's especially bad in [Wayne County](#)), legislators and lawyers in the offending states might want to take another look at their tax codes.

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