

# Compensation disputed in fast-track tax foreclosure cases

Process can sometimes hurt the same people it's designed to help.



*Alana Harrison claims Montgomery County foreclosed on her late mother's Dandridge Avenue property in Dayton.*

*CHRIS STEWART / STAFF*

BY CHRIS STEWART  
STAFF WRITER

## DAYTON DAILY NEWS IN-DEPTH

A recent federal appeals court decision has breathed new life into a lawsuit against Montgomery County that could ultimately determine whether former property owners across the state who lost their homes to tax foreclosures are due money.

Counties across Ohio have foreclosed on thousands of properties for back taxes and then turned them over to land banks or cities without paying the owners for their equity beyond the tax debt, said former Ohio Attorney General Marc Dann, who represents the plaintiff in the local case and others

in lawsuits across the state.

“They’ve done the same thing to thousands of people. This is a systematic taking and it happened over and over and over again,” Dann said.

Montgomery County resident Alana Harrison filed the federal suit in 2019, arguing the county took her late mother’s property, which Harrison owned half of, and turned it over to the land bank.

Harrison, who seeks class-action status for the lawsuit, argues that the assessed value of the property was \$22,600 and the total taxes owed amounted to \$19,664.44 – a difference of \$2,935.56.

“Our argument is that it’s perfectly fine for the government to do, but under the takings clause to the U.S. Constitution, they have to pay the property owner for that which they’ve taken,” Dann said.

State law provided Harrison multiple opportunities to pay her taxes and defend her interest in the property and the U.S.

Supreme Court has upheld that takings claims don’t arise because of a failure to comply with the law, said Stephen Funk, an Akron attorney defending Montgomery County in the case.

“If you lost your property through your own neglect, that’s not a taking, that’s just a consequence,” he said.

“That’s the issue that we ultimately expect to prevail on in court.”

Before quasi-governmental land banks were formed, unresolved tax foreclosure proceedings culminated in a sheriff’s sale with the proceeds first satisfying any property taxes due counties and any balance going back to the owners.

In 2010, a state law took effect allowing expedited tax foreclosures in counties with populations of more than 60,000. The process let county boards of revision turn over properties to a county land bank or a municipality for redevelopment or resale – but with the tax slate wiped clean.

First dismissed in federal court, Harrison's case was appealed by Dann and Andrew Engel, a Centerville attorney also working on the case. Last month, a Sixth Circuit United States Court of Appeals decision reversed the district court's dismissal, allowing the case to move forward. A subsequent petition by the county for a Sixth Circuit rehearing was denied Thursday.

The 576-square-foot bungalow on Dandridge Avenue in Dayton and an adjacent lot that also belonged to Harrison's mother were foreclosed on in 2017 and turned over in 2018 to the land bank, the Montgomery County Land Reutilization Corp., which remains the owner.

Because there was no sheriff's sale, Harrison received no compensation, nor were any back taxes recouped by the county to use for public services, parks or schools, Dann said.

"So no taxes collected.

The property owner gets deprived of their equity. The lien holders get deprived of the money that's owed to them," he said. "There are a lot of losers here."

Idea 'missed the mark'

Administrative tax foreclosures are "not all evil" and the process has reduced the number of blighted properties that drive down home values in particular neighborhoods, Engel said. But the process can sometimes hurt the same people it's designed to help, Engel said.

"A lot of lower income folks tend to be hit hardest by these," he said. "They tend to be in lower income parts of the county and of the city of Dayton and that was the case with Ms. Harrison's home."

People who find themselves behind on real estate taxes are usually living on a fixed or very limited income, and often have difficulty understanding the legal system or don't have the means to fight a proceeding in court, Engel said.

Engel estimates deceased owners, many who had no mortgage, account for a quarter of the Montgomery County administrative foreclosure cases, often on tax liens that are relatively small compared to the value of the property.

“There’s just a lot of value being confiscated by the government,” he said. “Ultimately the objective was sound, but I think the implementation has missed the mark some, because it has taken from people value.

And even for folks who can’t afford to pay their taxes, the Constitution still means something.”

### Taxes go uncollected

A 2020 Ohio Center for Investigative Journalism report showed local governments lose millions of dollars in property tax revenue through expedited administrative foreclosures. The investigative group examined thousands of Board of Revision foreclosures in Montgomery and Cuyahoga counties, where the process is most prevalent in Ohio.

In 2019, the Montgomery County Treasurer’s Office filed 207 Board of Revision cases accounting for more than \$2.25 million owed to public coffers if all the cases closed. In 141 of the cases, the house’s assessed value exceeded the amount of taxes owed, potentially costing mortgage lenders and other lienholders nearly \$2.8 million , according to the Eye on Ohio report. In Cuyahoga County, 3,856 Board of Revision cases filed in 2018 and 2019 stood to lose homeowners and banks \$77 million worth of value. As much as \$9 million in tax revenue could have been collected at a sheriff’s sale to be put toward community services, according to the report.

Homeowners in the cases examined in Cuyahoga County owed a median of \$1,249 in back taxes. In 855 cases, the delinquent amount was less than \$500, according to the Eye on Ohio investigation.

Funk said properties that end up in a land bank’s hands are by definition in terrible condition. Before the state had the remedy, 99% of abandoned tax-delinquent properties failed to fetch the tax value at a sheriff’s sale, he said.

“In that situation you get straight forfeiture to the state,” Funk said. “If it did get sold to a third party, it would be a speculator and it would go back into foreclosure because they didn’t pay taxes either. So a lot of these properties are going through cycles of foreclosure.”

Mike Grauwelman, executive director of the Montgomery County Land Reutilization Corp., said properties transferred to the Montgomery County Land Bank and renovated are almost certain to return to productive use and

generate new property taxes. Program participants are screened, take homeownership classes and are required to make improvements in a timely manner or the land bank can take the property back.

“If something sells at a sheriff’s sale, it may or may not get refurbished. If we acquire a property, we know what’s going to happen to it,” he said. “Our program is designed in such a way that it effectively guarantees the outcome of that property will be improved.”

### Asking for ‘beans’

When asking U.S. District Court Judge Thomas Rose to dismiss the case in 2019, Montgomery County called Harrison’s case an “improper and meritless attempt” to allege a “takings” claim over a lawful prosecution and enforcement of an administrative tax foreclosure proceeding by Montgomery County.

The county said Harrison did not dispute nor contest the process, nor file a timely administrative appeal. It wasn’t until more than a year later the property was transferred to the land bank that Harrison make a “takings” claim based on the allegation that the fair market value of her property exceeded the total amount of taxes owed, and that she therefore is entitled to recover the difference.

“Years later, people that had no interest in the property at the time, who abandoned them, are now ... asking the taxpayers of Montgomery County to provide them a financial windfall when they fail to pay their own taxes,” Funk said.

Harrison moved into the house as a sixth grader when her mother, Frances Brooks, purchased the bungalow.

She moved out when she was 18, but Harrison said her brother, who died in September, lived in the house in more recent years and was maintaining the home and mowing the grass – but apparently not paying the property taxes.

Now 71, Harrison says she doesn’t understand why the county continues to fight the case over less than \$3,000, of which she would only receive \$891 after court costs and fees.

“It could have been settled,” she said. “This is like going on the third year. For

what? For beans.”

Engle said one straightforward solution would guard the rights of property owners while preserving the remedy the state legislature intended.

“Perhaps it’s as simple as if the property value exceeds the taxes, you have to take the property to sale,” he said. “On those properties where the taxes exceed the value, do you really have to take it to sale? I think there’s a better argument that you don’t in that situation. But if there’s some property-owner equity there, it’s only fair to the property owner to have that exposed to the market through a sheriff’s sale.”

Supreme Court showdown possible

Dann and Engel also represent a small mortgage company in a similar complaint filed last month against Montgomery County in the county’s appellate court. American Homeowner Preservation LLC, which held the note on an Annapolis Avenue property in Dayton, claims it was deprived compensation when it was foreclosed on in 2017. The delinquent taxes at the time were more than \$32,000 and the auditor’s assessment was \$48,120, exceeding total “impositions” by more than \$15,000, the complaint said.

So far, the U.S. Supreme Court has not decided a similar takings case. Dann and Engel appealed an earlier “equity theft” case to the Supreme Court, which justices declined to hear.

A 2019 Supreme Court decision, however, “recast” the grounds for the U.S.

Court of Appeals for the Sixth Circuit to allow Harrison to continue to seek recourse in federal court.

Harrison did not challenge Ohio’s right to collect delinquent taxes and didn’t seek to halt foreclosures or even get her home back, wrote Sixth Circuit Chief Judge Jeffrey S. Sutton.

“Harrison challenges only Ohio’s seizure of surplus equity, an amount in excess of taxes owed,” he wrote in the court’s opinion.

A recent decision by the Michigan Supreme Court “tees up” the issue for the U.S. Supreme Court, Engel said.

The Michigan court ruled last year against Oakland County, where authorities seized a home assessed at \$24,500 to satisfy an \$8.41 tax delinquency, concluding that such a “forfeiture” qualified as a taking under the state constitution and the owners were due compensation for any tax-foreclosure sale proceeds in excess of delinquent taxes, interest, penalties and fees related to the sale.

“I do believe this issue will get to the Supreme Court sometime in the next five years,” Engel said. “More and more states are adopting those types of programs and the issues are just going to come up more and more.”

Dann said the constitutional rights behind the Fifth Amendment’s Takings Clause reach back to the American Revolution.

“If the government needs to take something for the common good, like economic development, like making a vacant house into a productive house, then they have to pay whoever owns the property,” Dann said. “They can’t just seize it, which is really what’s been happening here.”