



**DC Affordable
Law Firm**

**Testimony of
Legal Aid DC and DC Affordable Law Firm**

**Before the Committee of the Whole
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 26-0771
“Tax Sale Equity Amendment Act of 2026”**

September 23, 2026

Legal Aid DC¹ and DC Affordable Law Firm² jointly submit the following testimony regarding Bill 26-0771, Tax Sale Equity Amendment Act of 2026. We support the Council’s goals of ensuring that the District’s property tax foreclosure process is compliant with the U.S. Supreme Court’s rulings in *Tyler v. Hennepin County*³ and *Pung v.*

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

² DC Affordable Law Firm delivers direct legal services that advance safety, stability, and economic security for modest- and low-income DC residents through an expansive civil practice. In our heirs' property and probate practice, we routinely serve and represent heirs and District residents navigating the confluence of DC estate administration and tax sale issues.

Isabella County.⁴ However, we are concerned that the proposed language does not adequately comply with the Supreme Court's requirements. Additionally, the bill as drafted imposes excessive and unnecessary barriers to our client population accessing the remaining equity in their home after a tax sale foreclosure.

Our organizations work with low-income District homeowners to help them avoid foreclosure and build generational wealth.⁵ The bill's proposed policy, as written, would allow private investors to seize this wealth due to a procedural technicality. Instead, we encourage the Committee to prioritize a version of this policy that ensures that if a family loses their home in a tax sale foreclosure, the family won't lose out on the equity they worked so hard to build. Removing the opt-in requirement would ensure the District can collect taxes through the tax sale process while also ensuring that any equity stays with the homeowners who earned it.

We Encourage the Committee to Remove the Requirement for Homeowners to Opt-In to Their Equity

The Supreme Court in *Tyler v. Hennepin County* made clear that if a homeowner loses their property to satisfy a government debt, they are entitled to any surplus after the debt and associated costs are paid off. Currently, only properties the District recognizes as owner-occupied go to a trustee sale upon a judgment in a real property tax foreclosure lawsuit.⁶ This means that owners of other properties have no mechanism to receive the equity they are entitled to. The proposed legislation aims to fix this by allowing homeowners to opt-in to their equity within 30 days of being served with the complaint. Our testimony will be focused on this subset of homeowners, as those are the ones who, currently, aren't entitled to the equity in their homes and, in the proposed system, must follow judicial procedures to access their equity.

³ In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), the Supreme Court held that the practice of a government selling a home to satisfy a government debt and keeping any surplus as a windfall violates the Takings Clause of the Fifth Amendment.

⁴ In *Pung v. Isabella County*, 609 U.S. ____ (2026), the Supreme Court held, among other things, that homeowners are entitled to the surplus proceeds from a property tax sale.

⁵ In this testimony, a "low-income" household is one with an income equal to, or less than, 80% of the area median income ("AMI") and greater than 50% AMI. See D.C. Code § 42-2801 (using this definition of "low-income").

⁶ D.C. Code § 47-1382.01.

First, creating an opt-in system does not alleviate the takings concerns raised in *Tyler*. This policy shifts the burden of avoiding a taking on the homeowner instead of on the District, which should automatically ensure homeowners have access to their equity. The policy relies on homeowners not complying with a narrow procedural window to entice investors to purchase liens. Overwhelmingly, Legal Aid DC tax sale clients learn about our services during their initial court hearings where Magistrate Judges provide unrepresented parties with contact information for legal services. These initial hearings are often scheduled six months or later after the filing of the case. The small procedural window proposed does not allow homeowners to consult with counsel and understand their rights, and thus doesn't allow for meaningful due process to comply with *Tyler*.

Second, this is harmful policy for the District and D.C. homeowners. An opt-in provision, which could lead to homeowners losing their equity based solely on arbitrary procedural grounds, may exacerbate D.C.'s existing racial wealth gap. Sixty-four percent of Legal Aid DC clients that are seeking help with a tax sale foreclosure are Black.⁷ Additionally, in D.C., the homeownership rate for Black households lags behind that of white households – racial disparities in income and intergenerational wealth impact Black District residents' ability to own a home.⁸ When Black District residents do own their homes, they endure suppressed home values (in D.C., median home values are three times higher in predominantly white Wards as opposed to predominantly Black Wards).⁹ Mayor Muriel Bowser's Black Homeownership Strikeforce identified threats to the preservation of Black homeownership as a challenge to wealth building in the District.¹⁰ It does not take a stretch of the imagination to see how an opt-in provision with a limited timeframe, such as the one proposed, could lead to the loss of homes (and the unjust transfer of a traditional source of generational wealth) from Black District residents to private investors without due process.

Furthermore, in implementing an opt-in system, the District would make itself a massive outlier from other states – aggravating the existing Congressional scrutiny this issue has

⁷ Based on Legal Aid DC data from May 1, 2025 through July 31, 2026.

⁸ D.C. Fiscal Policy Institute, *DC Can Advance Racial Equity and Black Homeownership through the Property Tax*, (Oct. 17, 2023), available at <https://dcfpi.org/all/dc-can-advance-racial-equity-and-black-homeownership-through-the-property-tax/>.

⁹ *Id.*

¹⁰ *Id.*

already received.¹¹ Requiring property owners to opt-in to claim their equity as part of the judicial process would make the District a significant outlier. Our neighbors in Virginia recently updated their tax sale process such that all properties subject to tax sale get sold, and homeowners have 2 years from the sale of the property to request their equity from the Court Registry, after which the equity funds convert to Unclaimed Property where they remain for 5 years.¹² More progressive policies exist in jurisdictions like Massachusetts¹³ where a homeowner's request for equity is not time-barred at all. In Maine,¹⁴ municipal officers are charged with returning the surplus equity funds to all homeowners without the homeowners even needing to ask. These policies ensure that no homeowner slips through the cracks, and hard-won generational wealth is preserved. These policies all recognize the obvious: **no homeowner, if given the choice, would ever decline to collect the equity in their home.** Instead, the proposed policy relies on homeowners falling through the cracks to entice and unjustly enrich private investors at the expense of the generational wealth of longtime District residents.

We Encourage the Committee to Increase Protections for Heirs Property in this Legislation

Our organizations have particular concerns about how heirs' property is handled in the current iteration of this legislation. After the death of a loved one, heirs are navigating grief and loss, while trying to understand and complete the complex legal and administrative steps required to settle an estate. Family dynamics can further complicate the process, particularly as developing a plan regarding who will protect and facilitate the transfer of the property can be complex. Introducing an added step for heirs – one that if they fail to comply with has dire financial consequences – intensifies the threat of property loss by some of our city's most vulnerable residents, including people from low-income households, elderly persons, and those who do not know where or how to secure legal support to navigate the complexities of probate.

Additionally, while the proposed bill establishes a process for notifying “reasonably ascertainable heirs” there remains a significant risk that a purchaser's efforts to identify those individuals will not reach every person with an interest in the property. If an heir

¹¹ Press Release, *Comer Investigates Unconstitutional DC Housing Practices*, (Jun. 16, 2026), available at <https://oversight.house.gov/release/comer-investigates-unconstitutional-dc-housing-practices/>.

¹² Va. Code Ann. § 58.1-3967 (2025).

¹³ Mass. G. L. c.60, sec. 64A.

¹⁴ 36 M.R.S. 943-C.

does not receive actual notice, they can lose their interest in the property, which they are legally entitled to, without an opportunity to protect their rights through the legal process.

Further, if property is left to a party that isn't a reasonably ascertainable heir via a will, this process will ensure those people do not receive notice. These can be extended family members, godchildren, friends, or any variety of people to whom a DC resident could leave their property to in a will that does not fall under the category of reasonably ascertainable heirs. Inheriting property via a will does not make one any less entitled to equity than other reasonably ascertainable heir. We hope that this Committee is open to changing this law to reflect that.

Conclusion

After Congress sent a letter to the DC Council expressing their concerns with the current unconstitutional tax sale scheme, the nation's eyes are on DC. This Committee has an opportunity to show the country that DC is at the forefront of progressive policy instead of being beholden to private investors. We encourage the Committee to alter the Tax Sale Equity Amendment Act to eliminate the opt-in requirement to ensure this new policy complies with *Tyler* and *Pung*, and to better protect heirs' property to help preserve generational wealth in the District. We thank the Committee for the opportunity to submit this testimony. If you have questions about this testimony, please contact Matt Sokol, Legal Aid Staff Attorney, Consumer Law Unit, at msokol@legalaiddc.org or Mónica Palacio, DC Affordable Law Firm Co-Legal Director, at mpalacio@dcaffordablelaw.org.