



## Ants arriving at the picnic: U.S. 6th Circuit Court of Appeals finds merit in federal “takings” claim filed against county land bank

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In May 2021, the federal 6<sup>th</sup> Circuit Court of Appeals in Cincinnati sent a county land bank case back to the district court in Dayton for reconsideration. Rejecting the winning argument at the lower level—that the owner of an abandoned property had her chance to raise objections earlier in a tax foreclosure process, which she didn’t—the appeals court held that new U.S. Supreme Court precedent does, in fact, allow the owner to raise a federal “takings” argument under the Constitution once a property is deemed abandoned and titled to a county land bank.

In its holding in *Harrison v. Montgomery County, Ohio* (2021 WL 1881382, decided May 11, 2021), a unanimous panel of federal appellate judges rejected the county’s argument, which had been supported by the Ohio Attorney General, that property owners were precluded from bringing suits related to their formerly owned abandoned land after transfer to county land banks. Citing a relatively new opinion issued by the U.S. Supreme Court (*Knick v. Township of Scott, Pennsylvania*, 139 S.Ct. 2162, decided June 21, 2019), the 6<sup>th</sup> Circuit held this property owner could, indeed, bring her takings claim to federal court as soon as her property had been adjudicated as “abandoned” by the Montgomery County Board of Revision and ordered transferred to the county land bank under Ohio’s land banking statutes (see Ohio Revised Code Sections 323.65 et seq.).

Has Ohio’s county land banking statutes—a national model—been overrun by the proverbial ants at the picnic? Not necessarily. A careful read of the opinion reveals the limits of the court’s determination that a federal “taking” has occurred in the transfer of an abandoned property to a county land bank. Specifically, the appeals court labeled as a “taking” the property owner’s inability to be paid any overage amount of her property’s fair market value in relation to the amount of delinquent taxes, assessments and

fees otherwise due. That is, in the court's eyes, Ohio's land banking statutes provide no opportunity for the property owner to demand, and receive, payment of the leftover amount of value on her property beyond outstanding taxes and fees. The court denotes this as "excess equity" after the property transfers to the county land bank.

This case arose as part of a series of recent challenges to Ohio's land banking statutes by advocates ideologically opposed to the law's expeditious handling of vacant and tax-delinquent properties. It remains to be seen how far this opinion reaches into the daily efforts of county land banks across the state. For one, the 6<sup>th</sup> Circuit case involved an initial tax foreclosure complaint that did not definitively assert a transfer of the property to a county land bank (such assertions are commonly pled when drafting such complaints, although under the court's reasoning, this may be a discrepancy without much difference). For another, the owner in the case did not seek return of the abandoned property. She sought only the amount of excess equity.

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