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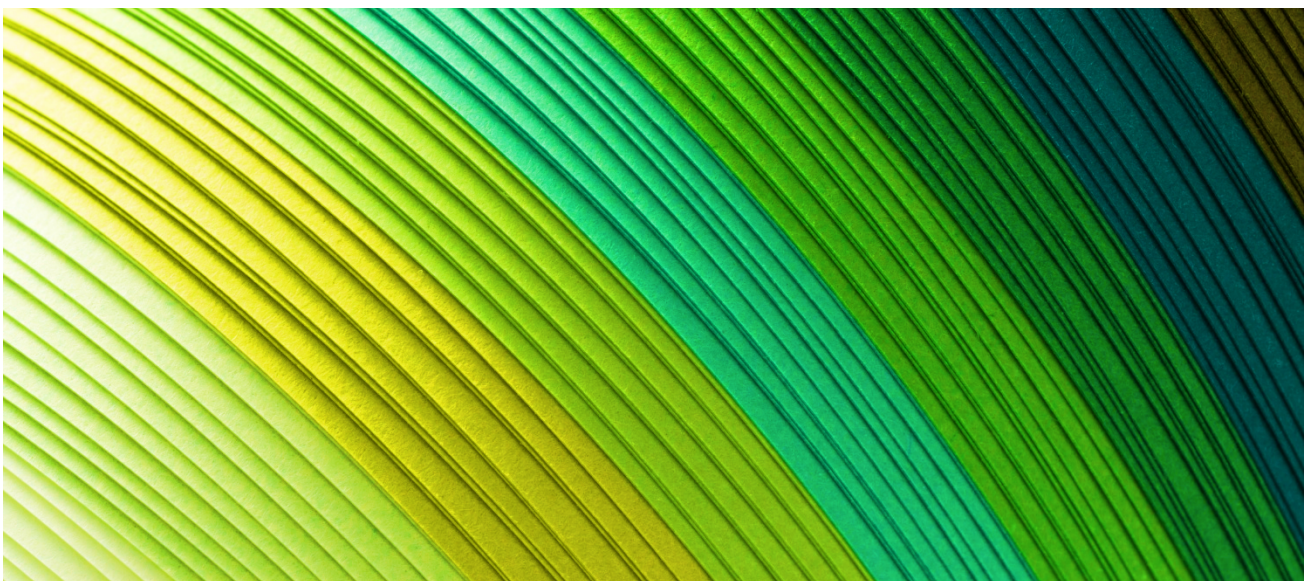


# After Foreclosure Assets

## The Institutionalization of Surplus Equity

Prepared for Institutional Allocators

December 2025





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# After Foreclosure Assets: The Institutionalization of Surplus Equity

## Executive Summary

### The Core Thesis

Foreclosure increasingly does not imply negative equity. A January 2023 CFPB analysis (citing Black Knight data) found that 81% of homeowners in active foreclosure had at least 10% equity as of Q3 2022. When properties sell at foreclosure auction, sale proceeds can exceed the amounts owed on senior debt and valid liens, creating surplus proceeds that belong to the former owner under state law. Depending on jurisdiction and foreclosure type, surplus funds may be held by clerks of court, county treasurers, trustees, or state unclaimed property programs, and can remain unclaimed due to notice gaps, mobility, probate complexity, and procedural friction.

This report defines and analyzes After Foreclosure Assets (AFA)-a fragmented capital market created by this structural shift-and examines conditions under which institutional capital may participate.

### Scope Note

AFA encompasses two adjacent but legally distinct markets:

1. **Mortgage Foreclosure Surplus** - Excess proceeds from judicial or trustee sales where the sale price exceeds the mortgage debt. This is the primary focus of the TAM analysis and operational sections herein.
2. **Tax Foreclosure Surplus** - Excess proceeds from tax-lien sales, now constitutionally protected under *Tyler v. Hennepin* (2023). Retroactive recovery opportunities (e.g., Michigan class settlements) fall into this category.

These markets operate under different statutes and claim pathways. Where data or examples span both, this is noted.

### The Legal Catalyst

The Court held in *Tyler v. Hennepin County* (598 U.S. 631) that a government's retention of surplus value in a tax foreclosure beyond what it is owed can constitute a taking under the Fifth Amendment. The ruling has prompted reforms and litigation in tax-foreclosure regimes where surplus retention occurred, and it has increased scrutiny around surplus handling and recovery procedures.

### The Market

- **Current Activity:** November 2025 saw 35,651 foreclosure filings, a 21% year-over-year increase, representing nine consecutive months of growth (ATTOM Data Solutions).
- **Geographic Concentration:** Delaware, South Carolina, Nevada, New Jersey, and Florida exhibit the highest foreclosure filing rates (November 2025).
- **Total Addressable Market (TAM):** Extrapolations from high-transparency jurisdictions suggest an accumulated stock of roughly \$5-\$8 billion in unclaimed surplus funds nationally (directional), with annual new-flow addressable estimates in the low single-digit billions depending on jurisdictional fee rules and claim economics. These estimates require independent verification.

### The Structural Inefficiency

The AFA market remains fragmented across 3,000+ county jurisdictions with no centralized database, no standardized claim process, and no institutional-grade aggregator. Consumer advisories and enforcement actions describe contingency fees that can reach 75% in some jurisdictions (per NJ Division of Consumer Affairs). In fee-capped states like Florida (12% under Fla. Stat. Section 45.033), margins are constrained. Other states (California, Maryland) regulate foreclosure consultant conduct without explicit percentage caps. This fragmentation creates conditions where institutional-grade infrastructure may capture efficiency gains.



## The Investment Thesis

For institutional allocators, AFAs present a distinct operational profile:

- **Collateral:** Surplus proceeds held in custody (court clerk, trustee, county treasurer, or state unclaimed property), subject to statutory priority.
- **Risk Profile:** Procedural and duration-based rather than market-based. Key risks include lien complexity, owner identification, and jurisdictional processing delays.
- **Economics:** Determined by fee caps and consumer-protection rules, cost-per-claim, duration, and claim success rates.
- **Correlation:** No formal correlation study has been conducted on institutional AFA portfolios; claim outcomes are primarily driven by legal and operational variables, while foreclosure volumes are cyclical.

The AFA market today resembles the Tax Lien market of the 1990s or the Single-Family Rental (SFR) market of the early 2010s- both of which were dismissed as "unscalable" before becoming multi-billion dollar institutional asset classes.

## The Conclusion

Tyler provides constitutional clarity for tax-foreclosure surplus. Mortgage-foreclosure surplus rights remain state-law governed. Custody and claim procedures vary by state and foreclosure type. Institutional participation depends on building compliant, state-specific workflows that reduce friction and cost relative to prevailing recovery practices.





# After Foreclosure Assets: The Institutionalization of Surplus Equity

## Section 1: The Great Decoupling - Why Foreclosure No Longer Implies Negative Equity

### 1.1 The Institutional Paradox

For the better part of two decades, the term "foreclosure" has served as a synonym for "capital destruction." In the institutional memory of the 2008 Global Financial Crisis (GFC), a foreclosure filing represented the terminal state of a negative-equity spiral-a liquidation event where the underlying collateral value was, by definition, insufficient to cover the senior debt. However, as of late 2025, a profound structural decoupling has occurred. While foreclosure activity is rising-November 2025 saw 35,651 filings, a 21% year-over-year increase- the underlying mechanics of these defaults have shifted. Unlike the GFC era, today's foreclosure is frequently a liquidity event for surplus equity, not a realization of loss. This shift has created a massive, fragmented, and largely overlooked capital market: After Foreclosure Assets (AFA).

### 1.2 The Equity Cushion: A Regime Shift in Distress

The primary driver of this decoupling is the unprecedented accumulation of home equity over the last five years. According to a January 2023 Consumer Financial Protection Bureau (CFPB) analysis citing Black Knight data, 81% of homeowners in active foreclosure held an equity cushion of at least 10% as of Q3 2022. This represents a structural inversion from the 2008-2012 period, when negative equity was the norm in foreclosure proceedings. In many cases, a foreclosure auction can produce surplus proceeds after satisfying senior debt, foreclosure costs, and valid junior liens. These surplus proceeds are legally the property of the former owner under state law, yet they frequently remain unclaimed. Depending on jurisdiction and foreclosure type, surplus funds may be held in custody by clerks of court, trustees, county treasurers, or state unclaimed property programs, where they can remain dormant due to notice gaps, owner mobility, probate complexity, and procedural friction.

### 1.3 November 2025: Market Momentum and Geographic Concentration

The scale of this opportunity is expanding as the "higher-for-longer" interest rate environment begins to pressure leveraged households. November 2025 data from ATTOM Data Solutions confirms an accelerating trend:

- **Foreclosure Starts:** 23,720 properties entered the process, a 17% increase from the previous year.
- **Completions (REO):** 3,884 properties were repossessed by lenders, a 26% year-over-year jump.
- **Total Filings:** 101,513 properties had filings in Q3 2025 alone.

This activity is not uniform but concentrated in high-equity, high-velocity markets where the "surplus delta"-the gap between debt and market value-is widest.

| State          | Foreclosure Rate (Nov 2025) | 1 in X Housing Units |
|----------------|-----------------------------|----------------------|
| Delaware       | Highest                     | 1,924                |
| South Carolina | High                        | 1,973                |
| Nevada         | High                        | 2,373                |
| New Jersey     | High                        | 2,511                |
| Florida        | High                        | 2,565                |

Source: ATTOM Data Solutions, U.S. Foreclosure Market Report, November 2025.



Florida, despite a lower per-unit rate than Delaware, generates the highest absolute volume due to market size. Based on a preliminary aggregation of county clerk records in high-activity Florida counties (Marion, Duval, Lee, Orange), court-held surplus funds from 2023-2024 foreclosure sales appear to total in the tens of millions of dollars statewide. However, no comprehensive state-level registry exists, and this estimate should be treated as directional rather than definitive.

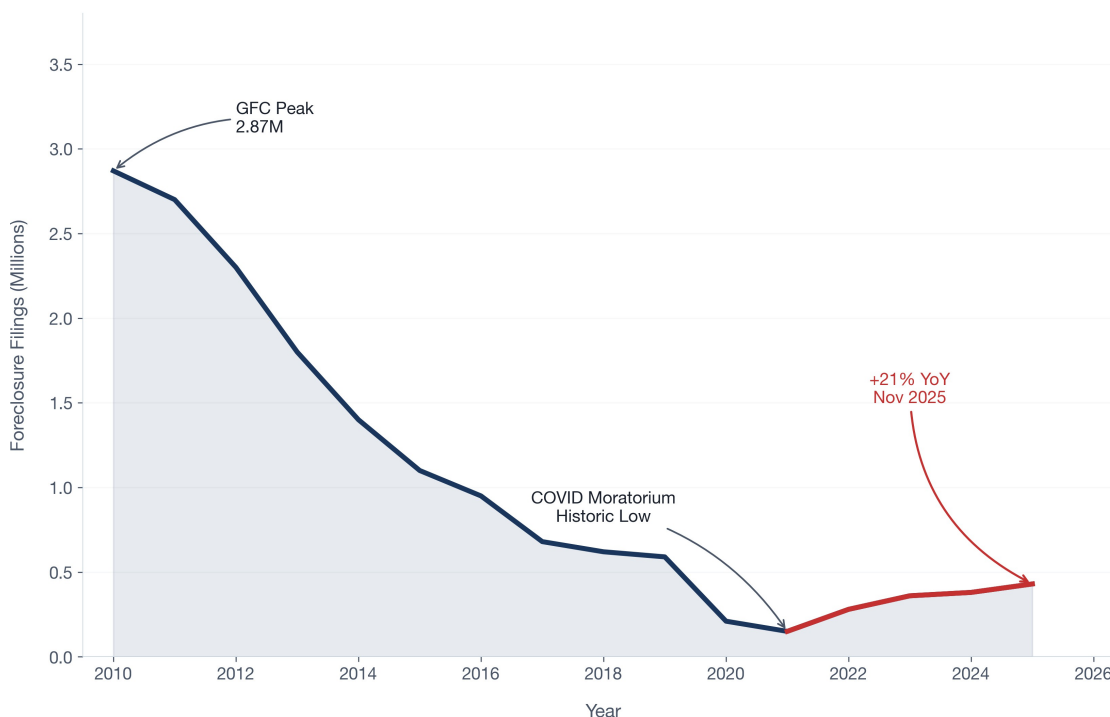
## 1.4 The Structural Gap

These funds are legally the property of the former homeowner, yet the "claim-right" is a representable asset. The transferability of this right varies significantly by state: some jurisdictions permit assignment of surplus claims, while others (including Florida under Fla. Stat. Section 45.033) cap compensation for recovery services at 12% of the surplus.

There is no centralized exchange for these claims, and the current market participants, a "cottage industry" of small-scale surplus hunters, reportedly charge fees ranging from 30-50% or higher. This fragmentation has created conditions that may favor standardization, though regulatory constraints in key states will shape viable business models.

Exhibit 1: U.S. Foreclosure Filings (2010–2025)

Annual filings showing GFC decline, COVID trough, and recent acceleration



Source: ATTOM Data Solutions, Monthly Foreclosure Market Reports



## Section 2: The Legal Shift - Tyler v. Hennepin and the Constitutional Mandate

### 2.1 The End of "Home Equity Theft" in Tax Foreclosures

For decades, a legal gray area existed in the disposition of tax foreclosure surpluses. In several jurisdictions, local governments conducting tax-lien sales were permitted to retain the entirety of a property's sale proceeds, regardless of whether the surplus far exceeded the underlying tax debt. This practice, often termed "home equity theft" by advocacy groups, created a pool of trapped capital with no clear path to recovery for the rightful owners.

Note: Mortgage foreclosure surplus rights have historically been governed by state law, with most states already requiring return of excess proceeds to the borrower. The Tyler ruling specifically addresses tax foreclosure takings, though its Fifth Amendment logic may influence mortgage-surplus disputes in certain jurisdictions.

This landscape was fundamentally altered on May 25, 2023, by the United States Supreme Court in *Tyler v. Hennepin County*, 598 U.S. 631 (2023).

### 2.2 The Tyler Precedent

The Court held that while governments may collect what they are owed, retention of surplus value beyond that amount can constitute a taking requiring just compensation under the Fifth Amendment.

The ruling established:

1. **Surplus Is Property:** Equity remaining after satisfaction of the tax debt is a protected property interest.
2. **Taking Requires Compensation:** If the government retains more than what is owed, it may be required to return the surplus.

### 2.3 The 2024-2025 Reform Wave

The Tyler ruling triggered an immediate and ongoing wave of legislative reform and litigation across the United States. In 2024 and 2025, states that previously permitted surplus retention have been forced to rewrite their statutes, creating a standardized claim-right where none existed.

| State         | Legislative Action / Status (2024-2025) | Impact                                                                                                                                                                                                            |
|---------------|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Massachusetts | Ch. 60 Amendments (2024)                | Abolished "strict foreclosure" in tax sales; surplus must now be returned.                                                                                                                                        |
| Michigan      | Multi-county class settlements          | Wayside Church v. Van Buren County and related litigation triggered settlements for past tax-foreclosure surplus retention. See <a href="https://taxforeclosuresettlement.com">taxforeclosuresettlement.com</a> . |
| Oregon        | HB 4056 (2024)                          | Created formal mechanism for property tax foreclosure surplus distribution.                                                                                                                                       |
| Nebraska      | LB 679 (Introduced Jan 2025)            | Pending legislation to reform tax sale processes for surplus recovery.                                                                                                                                            |
| Colorado      | HB 24-1056 (2024)                       | Modernized tax lien processes to align with Tyler.                                                                                                                                                                |

### 2.4 Retroactive Recovery Opportunities

In some states, litigation and settlements have created retroactive recovery opportunities for past tax-foreclosure surplus retention. Analysis by the Pacific Legal Foundation identifies over 8,600 properties between 2014 and 2021 in Michigan alone where at least \$780 million in equity was retained by counties (Pacific Legal Foundation, "Home Equity Theft" Reports).

These retroactive claims operate under settlement-specific timelines and procedures, distinct from ongoing mortgage-foreclosure surplus mechanics.

## 2.5 Academic Context: Property Rights and Foreclosure Economics

The Tyler ruling aligns with established academic literature on property rights and foreclosure dynamics. Research by Gerardi, Shapiro, and Willen (2007) in a Federal Reserve Bank of Boston Working Paper documented the significant role of equity position in foreclosure outcomes, establishing that borrowers with positive equity rarely proceed to foreclosure completion when informed of their options.<sup>1</sup> More recently, Mayer, Pence, and Sherlund (2009) in the *Journal of Economic Perspectives* analyzed the structural factors driving foreclosure waves, noting that policy interventions focused on equity preservation significantly reduce loss severity for all parties.<sup>2</sup>

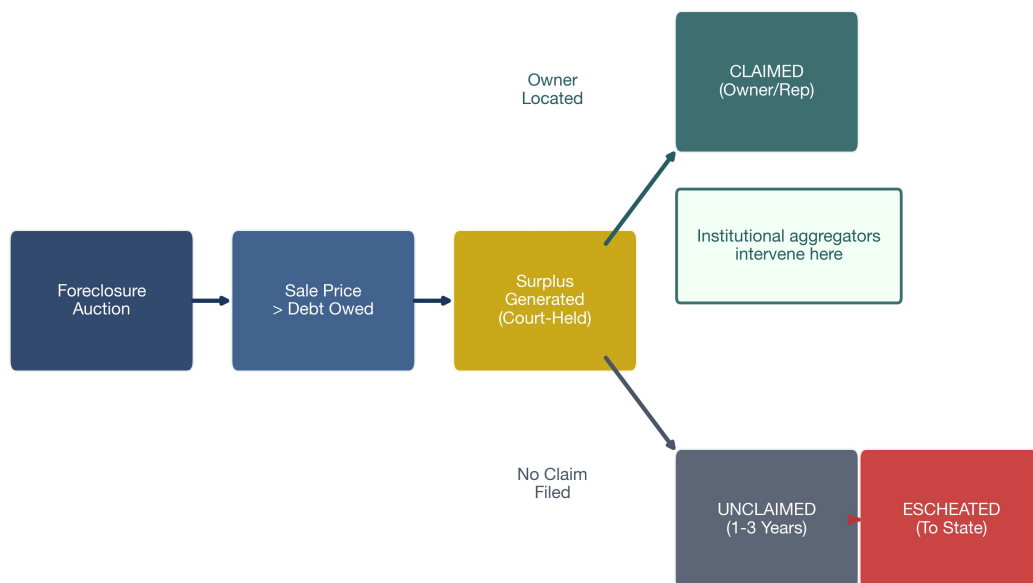
Tyler reinforces the constitutional protection of surplus value in tax foreclosures, aligning with the broader literature on equity position and foreclosure outcomes.

<sup>1</sup> Gerardi, K., Shapiro, A. H., & Willen, P. S. (2007). "Subprime outcomes: Risky mortgages, homeownership experiences, and foreclosures." *Federal Reserve Bank of Boston Working Paper* 07-15.

<sup>2</sup> Mayer, C., Pence, K., & Sherlund, S. M. (2009). "The Rise in Mortgage Defaults." *Journal of Economic Perspectives*, 23(1), 27-50.

Exhibit 2: Foreclosure Surplus Recovery Flow

From auction to claim or escheatment





## Section 3: The Scale of Unclaimed Capital - Quantifying the AFA Market

### 3.1 The "Shadow" Liquidity Pool

Despite Tyler's constitutional holding for tax-foreclosure surplus, surplus distribution and recovery remain operationally fragmented across both tax and mortgage foreclosure contexts. This has resulted in a "shadow" liquidity pool: surplus funds held in custody that remain unclaimed due to owner displacement, probate complexity, notice failures, or lack of awareness. Because there is no federal reporting requirement for foreclosure surpluses, market sizing must be extrapolated from "high-transparency" jurisdictions. These "AFA-Friendly" states provide a proxy for the multi-billion dollar national opportunity.

### 3.2 Geographic Case Studies (2024-2025)

#### Florida: High-Transparency Jurisdiction

Florida represents one of the more transparent surplus markets in the U.S. DFS reported returning more than \$44 million in unclaimed property in March 2025. The published release describes unclaimed property broadly and does not attribute the total specifically to foreclosure surplus.

Individual county clerk offices publish surplus fund lists (e.g., Marion, Duval, Lee, Orange counties). However, no comprehensive statewide aggregation exists. Investors should conduct county-by-county analysis using primary registry sources.

#### Arizona: Maricopa County

Maricopa County (Phoenix) maintains an Excess Proceeds Registry through the Treasurer's office and Superior Court. The county publishes excess proceeds data from trustee sales, though the format and update frequency vary. While specific property counts and aggregate balances fluctuate, Maricopa represents a significant concentration of Arizona's foreclosure activity and associated surplus pools.

Investors conducting due diligence should request current registry extracts directly from county offices.

#### Michigan: Tax-Foreclosure Settlement Landscape

Following the Wayside Church litigation, Michigan has become a primary site for retroactive tax-foreclosure surplus recovery. Multi-county class action settlements are currently in progress, covering thousands of property owners. Settlement details and claim procedures are available at [taxforeclosuresettlement.com](https://taxforeclosuresettlement.com).

### 3.3 Escheatment: The "Duration" Factor

A critical component of the AFA asset class is the Escheatment Timeline. If a surplus remains unclaimed for a specified period, it "escheats" (transfers) to the state treasury. Once escheated, recovery becomes significantly more complex and expensive.

| State      | Primary Claim Pathway                                        | Fee Constraints                                                                    | Escheatment                                                                 |
|------------|--------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Florida    | Clerk of Court; Fla. Stat. Section 45.031-Section 45.032     | 12% cap on transfers/ assignments (Section 45.033)                                 | 1 Year (to DFS per Section 45.032)                                          |
| Arizona    | Trustee/Treasurer; ARS Section 33-812                        | 30-day restriction; fees above \$2,500 (excl. attorney fees) presumed unreasonable | 2 Years                                                                     |
| California | Trustee notice + court deposit; Cal. Civ. Code Section 2924j | Foreclosure consultant conduct regulated (Section 2945 et seq.)                    | 30-day claim clocks under Section 2924j; 3-year unclaimed-property dormancy |

Note: Holding entities, fee constraints, and claim pathways vary by foreclosure type (judicial vs.



non-judicial) and jurisdiction. This table reflects mortgage-foreclosure surplus pathways. Tax-foreclosure surplus follows different statutes. California trustee-sale surplus involves 30-day notice/claim periods and potential court deposit steps under Section 2924j; the 3-year bar reflects unclaimed-property dormancy conventions, not a trustee claim-filing deadline. New York mortgage surplus claims are governed by RPAPL Section 1361; court funds escheat under Abandoned Property Law Article VI after three years with county treasurer.

This timeline creates a "liquidity duration" for the asset. Capital that can deploy infrastructure to identify and claim these funds within the 1–2-year court-held window operates with lower legal friction than post-escheatment recovery.

### 3.4 Illustrative Transaction: Surplus Recovery Mechanics

To illustrate the mechanics of surplus recovery, consider the following hypothetical transaction based on publicly available Florida county data:

| Element                        | Illustrative Value                                                                    |
|--------------------------------|---------------------------------------------------------------------------------------|
| Property                       | Single-family residence                                                               |
| Auction Sale Price             | \$285,000                                                                             |
| Senior Mortgage Balance + Fees | \$145,000                                                                             |
| Surplus Generated              | \$140,000                                                                             |
| Owner Status                   | Relocated; unaware of surplus                                                         |
| Estimated Timeline to Payout   | 90-180 days                                                                           |
| Recovery Fee                   | 12% (Florida statutory cap under Fla. Stat. Section 45.033 for assignment structures) |
| Net to Former Homeowner        | ~\$123,200                                                                            |

#### Key Observations:

- Florida caps compensation for surplus recovery services at 12% under Fla. Stat. Section 45.033 when using an assignment or purchase structure, subject to specific conditions.
- Actual timelines vary significantly by county court processing capacity and lien complexity.
- This illustration is not based on a specific verified transaction; investors should conduct independent due diligence on actual county registries.

Note: Return calculations depend heavily on the business model employed (fee-for-service vs. capital deployment), jurisdictional fee constraints, and operating costs. Prospective returns should not be extrapolated from this illustration.

### 3.5 TAM Extrapolation: Methodology and Estimates

Scope Note: The following TAM analysis estimates mortgage foreclosure surplus based on ATTOM foreclosure data and Florida county samples. It does not include Tyler-related tax-foreclosure lookbacks (e.g., Michigan \$2B+), which represent a separate, one-time recovery opportunity with distinct legal rails.

The absence of federal reporting requirements for foreclosure surpluses necessitates a "bottom-up" approach to market sizing. The following methodology triangulates data from high-transparency jurisdictions:

#### Step 1: Annual Foreclosure Volume

- ATTOM reported 357,062 properties with foreclosure filings in 2023 and 322,103 in 2024. ATTOM also reported 270,222 foreclosure starts in 2023 and 253,306 in 2024. These serve as volume anchors; surplus creation depends on the subset of cases that proceed through sale and produce excess proceeds.

#### Step 2: Equity Incidence Rate

- CFPB analysis (January 2023, citing Black Knight) found that 81% of homeowners in active foreclosure had at least 10% equity as of Q3 2022. Equity levels in active foreclosure are used only as a proxy for surplus potential at sale.



- Assumption: 70-80% of completed foreclosures in the current market generate a measurable surplus (sensitivity range; adjusted for properties with minimal equity, complex lien structures, or price depreciation). This is an assumption, not a verified statistic.

### Step 3: Average Surplus Per Property

- Florida county clerk data (2023-2024) suggests average surplus balances of \$25,000-\$60,000 per property, depending on market.
- Conservative midpoint estimate: \$35,000 average surplus.

### Step 4: Calculation

| Variable                       | Value           | Basis                                                                           |
|--------------------------------|-----------------|---------------------------------------------------------------------------------|
| Annual Foreclosure Completions | ~120,000        | Assumption: 30-40% of starts reach REO/completion; 35% midpoint used for sizing |
| Surplus Incidence Rate         | 75%             | Midpoint of 70-80% range per CFPB/ Black Knight equity data                     |
| Properties Generating Surplus  | ~90,000         | Completions x Incidence Rate                                                    |
| Average Surplus                | \$35,000        | FL county clerk samples (Marion, Duval, Lee; 2023-24; n~200 records)            |
| Annual Surplus Creation        | ~\$3.15 billion | Properties x Avg Surplus                                                        |

### Step 5: Addressable Market Adjustment

- Not all surpluses are economically recoverable (some are too small to justify claim costs; some owners cannot be located; some jurisdictions have prohibitive fee caps).
- Estimated "addressable" rate: 60-70%
- Annual Addressable TAM: ~\$1.9-\$2.2 billion (new flow)

### Step 6: Accumulated Stock

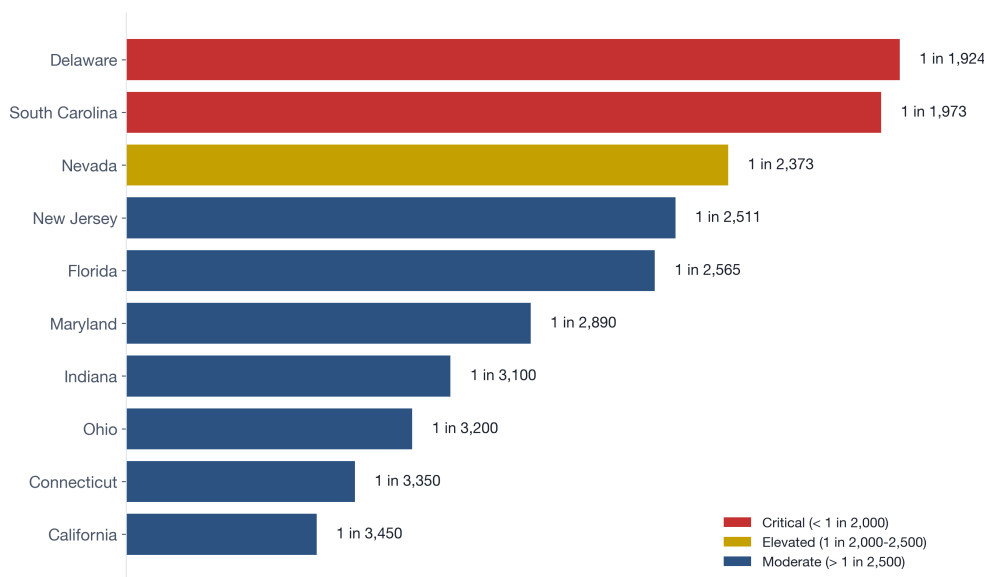
- Surplus funds accumulate over time before escheatment. Based on 1-3 year claim windows across states, the accumulated stock of unclaimed surpluses is estimated at \$5 billion-\$8 billion nationally.

Caveat: These estimates are directional and based on extrapolation from limited high-transparency jurisdictions. Actual market size may vary significantly. Independent verification of specific county and state data is essential for investment decisions.



Exhibit 3: Foreclosure Rates by State (Nov 2025)

Measured as 1 in X housing units with a filing



Source: ATTOM Data Solutions, November 2025 Foreclosure Market Report

## Section 4: Why It Stays Unclaimed - Information Asymmetry and Operational Friction

### 4.1 The Friction Moat

Surplus capital remains unclaimed because the workflow is procedurally hostile, administratively fragmented, and uneconomic to scale without specialized infrastructure. The After Foreclosure Asset market is protected by a "moat" of information asymmetry and administrative complexity that has historically barred institutional participation.

### 4.2 Information Asymmetry: The Database Gap

There is no "Bloomberg Terminal" for foreclosure surpluses. Data is fragmented across 3,000+ individual county jurisdictions, each with its own method of recording, holding, and notifying (or failing to notify) owners of surplus funds.

- **Transparency Variance:** While Florida and Arizona provide online lists, most states (including New York, Georgia, and Illinois) require direct court contact or manual "registry of deeds" searches to identify surplus balances.
- **The Owner Gap:** The primary "client"-the former homeowner-is typically in a state of crisis and relocation. Most court notices are sent to the foreclosed address, meaning they are never received.

### 4.3 Process Friction: The Procedural Gauntlet

Claiming a surplus is not as simple as filing a form. It is a legal process that requires:

1. **Verification of Standing:** Proving the claimant is the rightful owner or heir.
2. **Lien Resolution:** Junior liens (HOA, 2nd mortgages, tax liens) must be notified and potentially paid out of the surplus before the owner receives the remainder.
3. **Court Hearings:** Many jurisdictions require a formal motion and a hearing before a judge to release the funds.
4. **Probate Hurdles:** A significant percentage of foreclosures involve deceased owners, requiring a probate case to be opened before a claim can proceed.



#### 4.4 The "Cottage Industry" and the Opportunity for Standardization

The current "AFA market" is dominated by a cottage industry of "surplus hunters." These are typically small-scale operators or specialized law firms that use manual scraping and "door-knocking" tactics to locate owners.

- **Pricing in Uncapped States:** In states without fee caps (e.g., Georgia, Ohio, Indiana), cottage-industry operators reportedly charge finder fees of 30-50% or higher of the recovered amount. The NJ Division of Consumer Affairs has issued advisories warning homeowners about high-fee surplus recovery services.
- **Regulated States:** In response to consumer protection concerns, states including Florida (12% cap under Fla. Stat. Section 45.033 for assignment structures), California (foreclosure consultant conduct regulated under Cal. Civ. Code Section 2945 et seq.), and Maryland (Md. Code 7-313/314 licensing and contract requirements) have imposed caps or regulatory constraints on surplus recovery services.

##### **Implications for Market Evolution:**

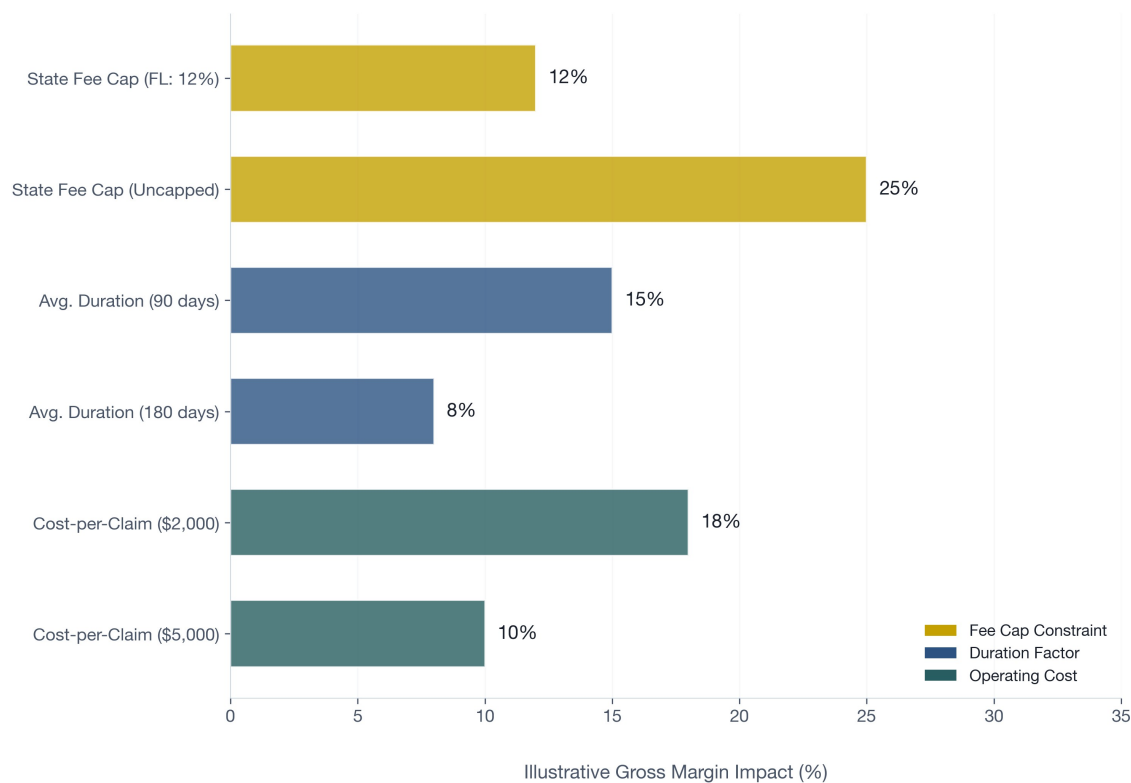
The fragmentation of the current market creates conditions where institutional-grade infrastructure-technology to aggregate data across jurisdictions and legal capacity to process claims at scale-could operate with significantly lower friction costs than the cottage industry. Such standardization would also provide more transparent and compliant service to former homeowners, potentially triggering regulatory and consumer advocacy support.





## Exhibit 4: AFA Economics Sensitivity

Key Drivers of Gross Margin (Illustrative, Not Expected Returns)



Percentages reflect a toy per-claim unit economics model (gross fee revenue minus direct claim-processing costs), holding claim size constant and varying only the listed driver.

Source: Illustrative model assumptions. Actual economics vary by jurisdiction, business model, and cost structure.



## Section 5: The Asset Class Defined - Mechanics, Transferability, and Underwriting

### 5.1 Defining the After Foreclosure Asset (AFA)

To the institutional allocator, an After Foreclosure Asset (AFA) is not a real estate asset; it is a contingent legal claim on surplus proceeds held in custody. Depending on jurisdiction and foreclosure type, custody may reside with court clerks, county treasurers, trustees, or state unclaimed property programs.

Structurally, AFA is closer to a "structured settlement" or a "probate advance" than a traditional property investment.

The value of an AFA is derived from the Surplus Delta:

$[\text{Sale Price}] - [\text{Total Secured Debt} + \text{Administrative Fees}] = \text{Surplus Equity}$

### 5.2 Transferability and Monetization

The claim to surplus funds is generally a representable property right, though transferability and fee structures are heavily state-dependent. Key monetization approaches include:

1. **Assignment of Interest:** The former homeowner assigns their interest in the surplus to the aggregator in exchange for an upfront payment. Caveat: Some states cap compensation for such arrangements (e.g., Florida caps at 12% under Fla. Stat. Section 45.033).
2. **Fee-for-Service (Aggregator Model):** The aggregator manages the legal recovery process on a contingency fee basis. Caveat: State-specific fee caps and licensing requirements apply (e.g., Maryland requires licensing under Md. Code 7-313/314).
3. **Purchase of REO Residuals:** Purchasing the "right to surplus" from institutional lenders or GSEs during the disposition of their REO portfolios. Caveat: This channel is emerging and not yet standardized.

**Critical Diligence Note:** Business models must be structured on a state-by-state basis to comply with fee caps and consumer protection regulations. A uniform national approach is not viable.

### 5.3 The Underwriting Framework: "AFA Credit"

Underwriting an AFA requires a specialized framework that accounts for "Process Risk" rather than "Market Risk."

| Underwriting Factor  | Risk Mitigation                                                      |
|----------------------|----------------------------------------------------------------------|
| Chain of Title       | Pre-claim title search to identify undisclosed junior liens.         |
| Standing / Identity  | Robust KYC and genealogical research (for probate cases).            |
| Jurisdictional Speed | Mapping county-level processing times to calculate "Duration."       |
| Fee Cap Compliance   | Ensuring claim structures align with state-specific regulatory caps. |

### 5.4 Duration and Operational Considerations

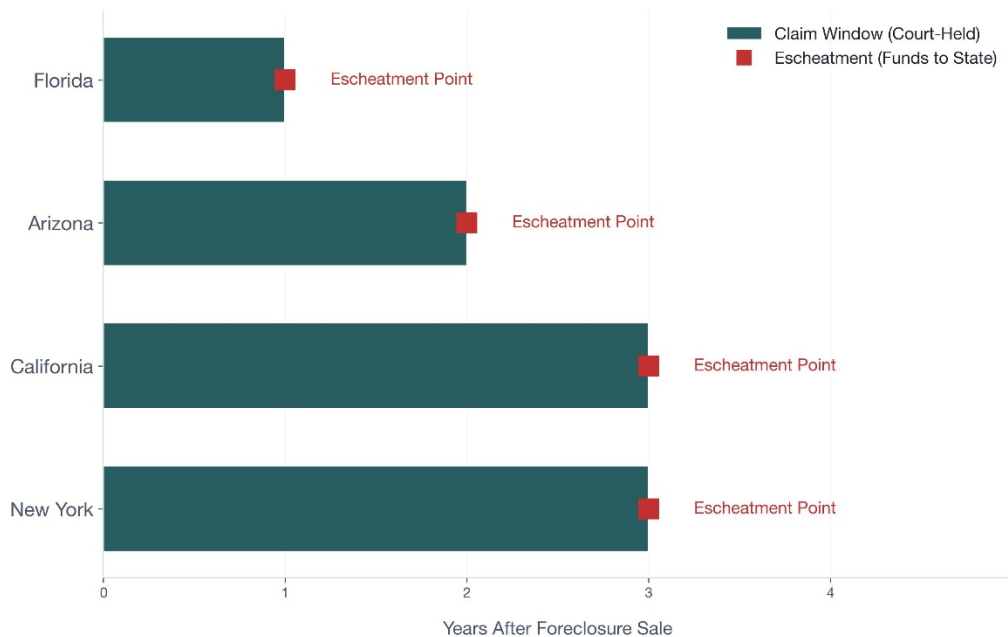
Surplus funds are held by various custodians depending on jurisdiction: clerks of court, county treasurers, trustees, or state unclaimed property programs. Recovery is not guaranteed.

- **Custody Variance:** Holding entity, claim procedures, and disbursement timelines vary significantly by state and foreclosure type.
- **Duration:** 90-180 days for straightforward claims; 1 year+ for probate, contested liens, or complex title chains. Duration impacts operating cost and capital utilization.
- **Primary Risks:** Lien priority disputes, owner identification challenges, documentation requirements, and fee cap constraints.
- **Economics:** Determined by fee caps (e.g., Florida 12%), cost-per-claim, documentation burden, and claim success rate. No stated yields or IRRs should be inferred from this analysis.



### Exhibit 5: Escheatment Timelines by State

Illustrative dormancy horizon before funds are typically reported/remitted; claim timing is jurisdiction-specific



Source: Fla. Stat. §45.031-§45.032, ARS §33-812, Cal. Civ. Code §2924j-§2924k, N.Y. RPAPL §1361. CA: 30-day notice/claim periods under §2924j; 3-year bar is unclaimed-property dormancy.



## Section 6: Risk Factors - Navigating Complexity and Ethics

### 6.1 Process Risk: The Primary Variable

Unlike traditional real estate, where the risk is market-driven (price fluctuations), AFA risk is entirely procedural.

- **Lien "Pop-Ups":** The primary threat to a surplus claim is the emergence of a previously unrecorded or junior lienholder (e.g., an HOA or a local municipality) whose claim has priority over the owner's.
- **Documentation Failure:** Courts are highly formalistic. A missing death certificate in a probate-linked claim can stall a payout for years.
- **Administrative Lag:** Budget cuts or staffing shortages at the county level can extend the "Duration" of the asset, reducing capital utilization and increasing cost per recovered dollar.

### 6.2 Regulatory and Legislative Risk

The post-Tyler reform wave is a double-edged sword. While it has created standardized claim-rights in tax-foreclosure states, it also invites scrutiny in mortgage-surplus contexts.

- **Expanding Fee Caps:** States with fee caps (e.g., Florida's 12% under Fla. Stat. Section 45.033) constrain gross margins regardless of operational efficiency. If more states adopt similar caps, the "aggregator" model must shift toward higher volume and lower cost-per-claim.
- **Automated Government Payouts:** There is a theoretical risk that states could build their own "auto-payout" systems (similar to tax refunds), which would eliminate the information advantage created by fragmented custody and notice failures. However, given the complexity of junior lien resolution and owner identification, this remains unlikely in the medium term.

### 6.3 Reputational and Ethical Considerations

Institutional capital is often wary of distressed real estate due to "vulture" optics.

- **The Reframing:** In the AFA space, the Tyler v. Hennepin ruling provides a powerful ethical framework for tax-foreclosure surplus recovery. For mortgage-surplus recovery, the ethical case rests on correcting information asymmetry: the aggregator is not "taking" a home; they are recovering capital for a person who has already lost their home.
- **The "Surplus Hunter" Contrast:** Operating with transparency and lower fees than reported cottage-industry rates (NJ Consumer Affairs advisories document finder fees up to 50% or higher in uncapped states) improves outcomes for foreclosed homeowners. However, this comparison is state-specific and depends on regulatory environment.

### 6.4 Market Risk: The Volume Paradox

AFA volume is pro-cyclical with distress. An exceptionally strong economy with 0% foreclosure rates would theoretically "starve" the asset class. However, as 2024-2025 data shows, foreclosures can rise even in periods of low unemployment due to interest rate shocks and idiosyncratic distress.



## Section 7: Implications for Institutional Capital - The New Frontier of Alternative Credit

### 7.1 The Institutionalization of Niche Credit

The After Foreclosure Asset (AFA) market today resembles the Tax Lien market of the 1990s or the Single-Family Rental (SFR) market of the early 2010s. Both began as fragmented cottage industries dismissed by institutional allocators as "unscalable" or "too operationally intensive."

Today, tax lien investing is a multi-billion dollar institutional industry, and SFR is a core component of many pension fund portfolios. AFA is the next evolution of this trend.

### 7.2 Why Now?

Three factors have converged to increase institutional attention on AFA:

1. **Legal Clarity:** Tyler v. Hennepin clarified constitutional treatment for tax-foreclosure surplus. State-level reforms and litigation continue.
2. **Data Accessibility:** Data aggregation from county-level registries has improved, though coverage and format remain fragmented.
3. **Search for Alternatives:** Allocators continue to explore niche, operationally intensive credit strategies. AFA economics are jurisdiction-dependent and model-specific.

### 7.3 Comparable Asset Class Positioning

| Asset Class            | Underlying Collateral                                                  | Risk Profile                       | Economics Driver                                       |
|------------------------|------------------------------------------------------------------------|------------------------------------|--------------------------------------------------------|
| AFA                    | Surplus proceeds in custody (clerk, trustee, treasurer, state program) | Procedural / Duration / Regulatory | Fee caps, duration, cost-per-claim, claim success rate |
| Tax Liens              | Real Estate (Senior)                                                   | Regulatory / Liquidation           | Statutory interest rates, redemption rates             |
| Structured Settlements | Insurance/Annuity                                                      | Credit / Duration                  | Discount rate, mortality, credit quality               |
| Probate Advances       | Future Estate Value                                                    | Genealogical / Legal               | Estate complexity, heir identification                 |

Note: Yield comparisons omitted. AFA economics are model-specific and jurisdiction-dependent. See Exhibit 4 for sensitivity analysis.

### 7.4 Considerations for Allocators

For family offices and LPs evaluating alternative credit exposures, AFAs present a distinct operational profile. Claim outcomes are primarily driven by procedural and legal variables at the case and jurisdiction level. No formal correlation study has been conducted on institutional AFA portfolios, and foreclosure volumes are cyclically linked to credit conditions. Allocators should treat diversification claims as theoretical pending empirical validation.

The trajectory of other fragmented asset classes (tax liens, SFR) suggests that capital tends to follow standardization. If institutional-grade infrastructure emerges in the AFA space, early movers may benefit from reduced competition and established operational scale.





## Section 8: Conclusion - The Trajectory of AFA

Foreclosure increasingly does not imply negative equity. A January 2023 CFPB analysis (citing Black Knight) found that 81% of homeowners in active foreclosure had at least 10% equity as of Q3 2022. November 2025 ATTOM data shows foreclosure filings up 21% year-over-year, with 35,651 properties receiving filings that month alone.

When foreclosure auctions produce sale proceeds exceeding amounts owed on senior debt and valid liens, surplus proceeds belong to the former owner under state law. These funds are held in custody by clerks of court, county treasurers, trustees, or state unclaimed property programs, depending on jurisdiction and foreclosure type. Many remain unclaimed due to notice gaps, owner mobility, probate complexity, and procedural friction.

The legal and operational landscape:

- Tyler v. Hennepin (2023) provides constitutional clarity for tax-foreclosure surplus: governments may not retain surplus value beyond what is owed without just compensation.
- Mortgage-foreclosure surplus rights remain state-law governed, with claim pathways, fee caps, and custody arrangements varying by jurisdiction.
- No uniform federal mandate governs mortgage-surplus distribution or recovery.

The operational thesis:

The AFA market is fragmented across 3,000+ county jurisdictions with no centralized database and no standardized claim process. Historical precedent from adjacent asset classes (tax liens, SFR) suggests that institutional-grade infrastructure can reduce friction and cost in fragmented markets. Whether AFA follows that trajectory depends on building compliant, state-specific workflows that improve outcomes relative to prevailing recovery practices.

For allocators evaluating niche credit strategies, AFA represents a structural shift worth monitoring-not as an inevitability, but as an operational opportunity contingent on regulatory navigation and infrastructure development.



# After Foreclosure Assets: Appendices

## Appendix A: Methodology & Data Sources

### A.1 Foreclosure Data

- **Primary Source:** ATTOM Data Solutions, U.S. Foreclosure Market Report (Monthly)
- **Coverage:** National foreclosure filings, starts, completions, and REO activity
- **Time Series:** 2010-2025 (monthly granularity)
- **Access:** [attomdata.com/news/market-trends/foreclosures/](https://attomdata.com/news/market-trends/foreclosures/)

### A.2 Equity and Borrower Data

- **Primary Source:** Consumer Financial Protection Bureau (CFPB), citing Black Knight data
- **Key Publication:** "Most homeowners in foreclosure have substantial equity in their homes" (Blog, January 20, 2023)
- **Key Statistics:** 81% of homeowners in active foreclosure held at least 10% equity (Q3 2022)
- **Access:** [consumerfinance.gov/about-us/blog/](https://consumerfinance.gov/about-us/blog/)

### A.3 Surplus Fund Balances (State-Level)

- **Florida:** Florida Department of Financial Services (DFS), Unclaimed Property Division; County Clerk records (Marion, Duval, Lee, Columbia counties)
- **Arizona:** Maricopa County Treasurer's Office, Excess Proceeds Registry
- **Michigan:** Class action settlement data (Wayside Church v. Van Buren County, 6th Cir.)

### A.4 Legal and Regulatory Data

- **Case Law:** Tyler v. Hennepin County, 598 U.S. 631 (2023); Wayside Church v. Van Buren County (6th Cir., ongoing)
- **State Legislation:** Compiled from state legislature websites and legal databases (Westlaw, LexisNexis)
- **Advocacy Research:** Pacific Legal Foundation, "Home Equity Theft" Reports (2021-2024)

### A.5 Academic Sources

- Gerardi, K., Shapiro, A. H., & Willen, P. S. (2007). "Subprime outcomes: Risky mortgages, homeownership experiences, and foreclosures." Federal Reserve Bank of Boston Working Paper 07-15.
- Mayer, C., Pence, K., & Sherlund, S. M. (2009). "The Rise in Mortgage Defaults." Journal of Economic Perspectives, 23(1), 27-50.



## Appendix B: State-by-State Regulatory Summary

### B.1 Florida

| Element              | Detail                                                                                                                                                                                                                 |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Statute    | Fla. Stat. Section 45.031, Section 45.032, Section 45.033 (2025)                                                                                                                                                       |
| Foreclosure Type     | Judicial                                                                                                                                                                                                               |
| Surplus Claim Window | Before the clerk reports surplus as unclaimed; surplus is presumed unclaimed one year after sale absent pending entitlement proceedings (claim timing per Section 45.031; remittance trigger per Section 45.032(3)(c)) |
| Escheatment Timeline | 1 year after sale (remitted to DFS Unclaimed Property per Section 45.032)                                                                                                                                              |
| Fee Caps             | 12% cap on compensation for assignment/purchase structures (Fla. Stat. Section 45.033)                                                                                                                                 |
| Transparency         | High (online county lists available)                                                                                                                                                                                   |

### B.2 Arizona

| Element              | Detail                                                                                                                                                                                       |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Statute    | ARS Section 33-812                                                                                                                                                                           |
| Foreclosure Type     | Non-judicial (trustee sale)                                                                                                                                                                  |
| Surplus Claim Window | 2 years                                                                                                                                                                                      |
| Escheatment Timeline | 2 years                                                                                                                                                                                      |
| Fee Constraints      | ARS Section 33-812 imposes timing and fee reasonableness constraints on third-party recovery agreements; fees above \$2,500 (excluding attorney fees and filing costs) presumed unreasonable |
| Transparency         | Moderate (Maricopa publishes data)                                                                                                                                                           |



### B.3 California

| Element              | Detail                                                                                                                                                                                                            |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Statute    | Cal. Civ. Code Section 2924j-Section 2924k (mortgage surplus distribution)                                                                                                                                        |
| Foreclosure Type     | Non-judicial (deed of trust)                                                                                                                                                                                      |
| Surplus Claim Window | Trustee notice and claim intake occur on a 30-day clock after notice; if proceeds are deposited with the superior court clerk, claimants have 30 days from notice to file with the court (Civ Code Section 2924j) |
| Escheatment Timeline | Unclaimed-property reporting/dormancy is typically 3 years; trustee-sale surplus handling is governed by Section 2924j process steps                                                                              |
| Fee Caps             | Foreclosure consultant conduct regulated under Cal. Civ. Code Section 2945 et seq.; specific fee caps for surplus recovery services not codified but subject to UDAP scrutiny                                     |
| Transparency         | Moderate                                                                                                                                                                                                          |

### B.4 New York

| Element              | Detail                                                                                                                                        |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Statute    | N.Y. RPAPL Section 1361 (surplus money claims procedure); N.Y. Abandoned Property Law Article VI, Section 600 et seq. (abandoned court funds) |
| Foreclosure Type     | Judicial                                                                                                                                      |
| Surplus Claim Window | Per RPAPL Section 1361 procedure; requires motion to court                                                                                    |
| Escheatment Timeline | Court funds held by county treasurer/NYC commissioner of finance for three years before reporting to State Comptroller (per OSC guidance)     |
| Fee Caps             | None codified for surplus recovery services                                                                                                   |
| Transparency         | Low                                                                                                                                           |

### B.5 Michigan

| Element              | Detail                                  |
|----------------------|-----------------------------------------|
| Governing Statute    | Post-Tyler reform in progress           |
| Foreclosure Type     | Tax foreclosure (primary focus)         |
| Surplus Claim Window | Retroactive claims active (2014-2021)   |
| Escheatment Timeline | Varied (class action settlements apply) |
| Fee Caps             | N/A (litigation-driven)                 |
| Transparency         | High (settlement registries)            |



### B.6 Post-Tyler Reform States (2024-2025)

| State         | Legislation       | Status              | Key Change                                              |
|---------------|-------------------|---------------------|---------------------------------------------------------|
| Massachusetts | Ch. 60 Amendments | Enacted 2024        | Abolished strict foreclosure; surplus return required   |
| Oregon        | HB 4056           | Enacted 2024        | Property tax foreclosure surplus distribution mechanism |
| Nebraska      | LB 679            | Introduced Jan 2025 | Pending tax sale reform for surplus recovery            |
| Colorado      | HB 24-1056        | Enacted 2024        | Tax lien modernization                                  |





## Appendix C : Glossary of Terms

| Term                                        | Definition                                                                                                                                                                                               |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AFA (After Foreclosure Asset)               | A contingent legal claim on surplus proceeds held in custody (by clerks, treasurers, trustees, or state programs) generated when a foreclosure sale exceeds amounts owed on senior debt and valid liens. |
| Surplus / Excess Proceeds                   | The difference between the foreclosure sale price and the total secured debt plus administrative fees. Legally the property of the former homeowner.                                                     |
| Escheatment                                 | The legal process by which unclaimed property (including surplus funds) transfers to state ownership after a statutory period.                                                                           |
| Tyler v. Hennepin                           | U.S. Supreme Court case (2023) holding that government retention of surplus value in a tax foreclosure beyond what is owed can constitute a "taking" under the Fifth Amendment.                          |
| Cottage Industry                            | The current market structure of small-scale "surplus hunters" who locate owners and recover funds for high contingency fees (50-75%).                                                                    |
| REO (Real Estate Owned)                     | Property acquired by a lender through foreclosure.                                                                                                                                                       |
| Junior Lien                                 | A subordinate claim on a property (e.g., 2nd mortgage, HOA lien) that is paid after senior debt but before surplus is released to the owner.                                                             |
| IOLTA (Interest on Lawyers' Trust Accounts) | Pooled accounts where attorney-held funds (including some surplus claims) may be temporarily held.                                                                                                       |
| Chain of Title                              | The sequence of historical ownership transfers for a property, used to verify standing for surplus claims.                                                                                               |
| Claim Window                                | The statutory period during which a surplus claim can be filed before funds escheat to the state.                                                                                                        |
| Duration (AFA context)                      | The time from surplus creation to payout; impacts cash conversion, operating cost, and capital utilization.                                                                                              |
| Surplus Delta                               | The gap between property sale price and total debt, representing the recoverable equity.                                                                                                                 |

## Appendix D: Works Cited

### Legal Sources

1. Tyler v. Hennepin County, 598 U.S. 631, 638 (2023).
2. Wayside Church v. Van Buren County, No. 22-1737 (6th Cir., ongoing).
3. Fla. Stat. Section 45.031, Section 45.032, Section 45.033 (2025) - Mortgage foreclosure surplus claim timing, remittance, and fee caps.
4. ARS Section 33-812 (Arizona Revised Statutes) - Trustee sale excess proceeds.
5. Cal. Civ. Code Section 2924j-Section 2924k - Mortgage foreclosure surplus distribution and claim procedures.
6. N.Y. RPAPL Section 1361 - Surplus money claims procedure; N.Y. Abandoned Property Law Article VI, Section 600 et seq. - Court funds escheatment.
7. Md. Code Real Prop. 7-313, 7-314 - Surplus recovery service licensing.
8. Oregon HB 4056 (2024) - Property tax foreclosure surplus.
9. Nebraska LB 679 (Introduced January 2025) - Pending tax sale reform.



- 10. Colorado HB 24-1056 (2024) - Tax lien modernization.
- 11. Massachusetts Ch. 60 Amendments (2024) - Tax foreclosure surplus.

Government and Regulatory Sources

- 12. Consumer Financial Protection Bureau. "Mortgage Borrowers with Equity in Foreclosure." CFPB Blog, January 2023.
- 13. Florida Department of Financial Services. Unclaimed Property Division Reports, 2024-2025.
- 14. Maricopa County Treasurer's Office. Excess Proceeds Registry, Q4 2025.
- 15. ATTOM Data Solutions. U.S. Foreclosure Market Report, November 2025.

Academic Sources

- 16. Gerardi, K., Shapiro, A. H., & Willen, P. S. (2007). "Subprime outcomes: Risky mortgages, homeownership experiences, and foreclosures." Federal Reserve Bank of Boston Working Paper 07-15.
- 17. Mayer, C., Pence, K., & Sherlund, S. M. (2009). "The Rise in Mortgage Defaults." Journal of Economic Perspectives, 23(1), 27-50.

Advocacy and Industry Sources

- 18. Pacific Legal Foundation. "Home Equity Theft in America" Reports, 2021-2024.
- 19. Center for Community Progress. Tyler v. Hennepin Policy Brief, 2024.
- 20. NJ Division of Consumer Affairs. Advisory on Surplus Fund Finder Fees.

Appendix E: County Resource Links (Sample)

| County               | State | Resource Type        | URL                                                                                                               |
|----------------------|-------|----------------------|-------------------------------------------------------------------------------------------------------------------|
| Marion County        | FL    | Unclaimed Funds List | <a href="https://marioncountyclerk.org/unclaimed-funds">marioncountyclerk.org/unclaimed-funds</a>                 |
| Duval County         | FL    | Surplus Funds        | <a href="https://duvalclerk.com/unclaimed-funds">duvalclerk.com/unclaimed-funds</a>                               |
| Columbia County      | FL    | Foreclosure Surplus  | <a href="https://columbiaclerk.com/current-foreclosure-surplus">columbiaclerk.com/current-foreclosure-surplus</a> |
| Lee County           | FL    | Tax Deed Sales       | <a href="https://leeclerk.org/tax-deed-sales">leeclerk.org/tax-deed-sales</a>                                     |
| Maricopa County      | AZ    | Excess Proceeds      | <a href="https://excessproceedsmaricopa.co">excessproceedsmaricopa.co</a>                                         |
| Michigan (Statewide) | MI    | Settlement Claims    | <a href="https://taxforeclosuresettlement.com">taxforeclosuresettlement.com</a>                                   |



**MILAN CM**

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