

**Public Policy Position
HB 6268 and SB 1137**

The Real Property Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,480 members. The Real Property Law Section is not the State Bar of Michigan and the position expressed herein is that of the Real Property Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Real Property Law Section has a public policy decision-making body with 17 members. On November 18, 2020, the Section adopted its position after a discussion and vote at a scheduled meeting. 13 members voted in favor of the Section’s position on HB 6268 and SB 1137, 0 members voted against this position, 0 members abstained, 4 members did not vote.

Oppose with Recommended Amendments

Explanation:

HB 6268

Section 78l(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property ~~who claims that he or she did not receive any notice required under this act~~ shall not bring an action, **including an action** for possession **or recovery** of the property ~~against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.~~ **or any interests in the property or of any proceeds from the sale or transfer of the property under this act, or other violation of this act or other law of this state, the state constitution of 1963, or the Constitution of the United States more than 2 years after the judgment of foreclosure of the property is effective under section 78k.**

Suggested change:

Section 78l(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property ~~who claims that he or she did not receive any notice required under this act~~ shall not bring an action, **including an action** for possession **or recovery** of the property **against any subsequent owner,** ~~but may only bring an action to recover monetary damages as provided in this section.~~ **Such owner of an extinguished recorded or unrecorded interest in that property shall not bring an action for** ~~or of any~~ **proceeds from the sale or transfer of the property under this act, or other violation of this act**

or other law of this state, the state constitution of 1963, or the Constitution of the United States more than 2 years after the judgment of foreclosure of the property is effective under section 78k.

HB 6261 adds Section 78(t) which defines the process for making a claim of surplus funds. It does not appear to address any claim against the property itself.

SB 1137

Section 78(l) is a duplicate of the amendment proposed above in HB 6268 and therefore the same comments and suggested correction apply.

This adds an additional two years to an already lengthy process in returning abandoned property to tax paying ownership. The access by an owner of an interest in property subject to tax foreclosure to surplus funds received by a treasurer following a sale of the property for an amount in excess of the delinquent taxes, costs and fees, is required pursuant to the Rafaeli decision of the Supreme Court of Michigan. The decision did not create or require a claim against the property itself in the event of such a sale. This legislation opens the door to such a claim for a period of two years following the foreclosure. Further the legislation, with our proposed change would not impair any existing constitutional due process claims.

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