

CHAPTER XXII

TAX TITLES



STANDARD 22.1

FAILURE TO SERVE NOTICE OF RIGHT TO RECONVEYANCE

STANDARD: UNLESS THE GRANTEE IN A STATE TREASURER'S TAX DEED SERVES A NOTICE OF RIGHT TO A RECONVEYANCE ON ALL PERSONS ENTITLED TO THE NOTICE WITHIN FIVE YEARS AFTER THE DATE THE GRANTEE BECOMES ENTITLED TO THE TAX DEED, THE GRANTEE AND THE GRANTEE'S HEIRS AND ASSIGNS ARE BARRED FROM ASSERTING ANY INTEREST DERIVED FROM THE TAX DEED.

Problem: Tom Bryan purchased the tax lien on Blackacre at the county treasurer's sale of land for delinquent taxes held on the first Tuesday in May, 1992. Bryan became entitled to a tax deed on the first Tuesday of May in 1993. Bryan did not surrender his tax purchaser's certificate until 1994, at which time he received a tax deed from the state treasurer. Bryan did not serve a notice of right to a reconveyance of Blackacre. Bryan conveyed Blackacre to Albert Brown in June 1998. Did Brown acquire marketable title to Blackacre?

Answer: No. Failure to serve the required notice within five years after the date when a tax purchaser, or the purchaser's heirs or assigns, became entitled to a state treasurer's tax deed, bars those claiming title under the deed or the certificate of purchase from asserting any interest derived from the tax deed.

Authorities: MCL 211.73a (repealed by 1999 P.A. 123, effective December, 31, 2003), 211.72 (repealed by 1999 P.A. 123, effective December, 31, 2003), 211.140 (repealed by 2001 P.A. 94, effective December 31, 2003). *McClure v Knight*, 284 Mich 649, 280 NW 76 (1938);

Brousseau v Conklin, 301 Mich 241, 3 NW2d 260 (1942); *Bentley v Cam*, 362 Mich 78, 106 NW2d 528 (1960).

Comment A: The required notice must be served within five years on all persons entitled thereto as of the date the notice was delivered to the sheriff for service. Such persons are:

- (a) the last grantee in the regular chain of title of the land, or of an interest in the land, according to the records of the county register of deeds;
- (b) the person in actual and open possession of the land;
- (c) the grantee under the tax deed issued by the state treasurer for the most recent year's taxes according to the records of the county register of deeds;
- (d) the mortgagee named in each undischarged recorded mortgage, or an assignee of each mortgage of record;
- (e) the holder of record of any undischarged recorded lien.

If a person entitled to a notice of right to a reconveyance is deceased or under legal disability, the notice must be served on the personal representative, trustee, conservator or guardian.

See MCL 211.73a and 211.92 (both repealed by 1999 P.A. 123, effective December 31, 2003), 211.140 (repealed by 2001 P.A. 94, being MCL 250.1001, effective December 31, 2003) and 211.140a (repealed by 2005 P.A. 183 effective December 31, 2006).

Comment B: The Committee expresses no opinion as to whether this Standard applies to a tax sale after 1997 because MCL 211.73a was repealed effective December 31, 2003, before expiration of the five-year period permitted for service of notice of right to a reconveyance.

Comment C: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. Following enactment of 1999 P.A. 123, beginning in 2001, liens for delinquent taxes for 1999 and later may be forfeited to

the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, in the county treasurer's discretion.

Comment D: After December 27, 1993, if real property has been identified as certified special residential property under MCL 211.55a (repealed by 1999 P.A. 123, effective July 23, 1999), the date that a purchaser becomes entitled to a tax deed is the second Tuesday in July of the year of the sale.

STANDARD 22.2

EFFECT OF DEED FROM STATE GIVEN TO EVIDENCE REDEMPTION

STANDARD: A DEED FROM THE DEPARTMENT OF NATURAL RESOURCES GIVEN TO EVIDENCE REDEMPTION OF REAL PROPERTY THROUGH PAYMENT OF DELINQUENT TAXES, CONVEYS TO THE GRANTEE ONLY THE INTEREST THE GRANTEE HELD BEFORE TITLE VESTED IN THE STATE AND REVIVES ALL INTERESTS WITH THEIR RESPECTIVE PRIORITIES AS EXISTED BEFORE TITLE VESTED IN THE STATE.

Problem A: Albert Thomas was the owner of Blackacre, subject to a mortgage executed by a prior owner, which Thomas had not assumed or agreed to pay. Blackacre was sold to the State at the 1991 county treasurer's sale of land for delinquent taxes. There was no redemption of Blackacre in the year following the sale. The state treasurer recorded a deed to the State in 1992. Thomas timely redeemed Blackacre and received a deed from the Department of Natural Resources. Is Blackacre subject to the mortgage?

Answer: Yes.

Problem B: Albert Thomas, Bernard Bell and James Leyland owned Blackacre as tenants in common. Blackacre was sold to the State at the 1991 county treasurer's sale of land for delinquent taxes. There was no redemption of Blackacre in the year following the sale. The state treasurer recorded a deed to the State in 1992. Thomas timely redeemed Blackacre and received a deed from the Department of Natural Resources. Are the interests of Bell and Leyland revived, subject to a lien in favor of Thomas?

Answer: Yes.

Authorities: MCL 211.67a (repealed by 1999 P.A. 123, effective December 31, 1999), 211.131a(2), 211.131c(4) and 211.131e(5) (repealed by 2005 P.A. 183, effective December 31, 2006).

- Comment A:** A lien in favor of the redeeming interest holder attaches to all interests in the real property held by other parties, if any, to an extent proportionate to the amount paid by the redeeming interest holder.
- Comment B:** This Standard also applies to a deed given to evidence redemption from a tax sale to the State by a municipality under the provisions of 1948 CL 211.355 (repealed by 1951 P.A. 167, being MCL 247.651) on or after June 19, 1941. See, *Oakland County Treasurer v Auditor General*, 292 Mich 58, 290 NW 327 (1940); and *Zirkaloso v Parsons*, 351 Mich 131, 88 NW2d 293 (1958).
- Comment C:** This Standard also applies to a deed of release and quitclaim executed by a holder of a tax deed from the state treasurer or auditor general in connection with a redemption from a tax sale under MCL 211.141 (repealed by 2005 P.A. 183, effective December 31, 2006).
- Comment D:** MCL 211.131a(1) (repealed by 2005 P.A. 183, effective December 31, 2006) authorizes the issuance of a deed to correct an error or to cancel a deed to the State for a reason other than redemption. Such a deed has the same effect as a deed from the State given to evidence redemption. See, Standard 22.3-1.
- Comment E:** Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. Following enactment of 1999 P.A. 123, beginning in 2001, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, in the county treasurer's discretion.

STANDARD 22.3-1

EFFECT OF CERTIFICATE OF ERROR FROM STATE ON TAX SALE

STANDARD: A CERTIFICATE OF ERROR ISSUED BY THE DEPARTMENT OF TREASURY TO DIVEST THE STATE OF TITLE TO REAL PROPERTY ERRONEOUSLY DEEDED TO IT IN CONNECTION WITH A COUNTY TREASURER'S SALE OF TAX DELINQUENT REAL PROPERTY REVIVES ALL INTERESTS WITH THEIR RESPECTIVE PRIORITIES THAT WOULD HAVE EXISTED HAD THE REAL PROPERTY NOT BEEN OFFERED AT THE SALE.

Problem: Albert Thomas was the owner of Blackacre, subject to a mortgage executed by a prior owner. Thomas had not assumed and agreed to pay the mortgage. Blackacre was erroneously sold at the 1991 county treasurer's sale of real property for delinquent taxes. It was later discovered that Blackacre should not have been offered at the sale. The Department of Treasury recorded a certificate of error relating to Blackacre setting forth the facts as to the erroneous sale. Is Blackacre subject to the mortgage?

Answer: Yes.

Authorities: MCL 211.98, 211.98b and 211.131a (repealed by 2005 P.A. 183, effective December 31, 2006). *Wood v Bigelow*, 115 Mich 123, 73 NW 129 (1897).

Comment A: This Standard applies regardless of whether the state treasurer's deed names as grantee a private party or the State of Michigan. It also applies in those instances in which the State, after its acquisition of title, conveys the land by deed.

Comment B: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. After 2000, under 1999 P.A. 123, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on

March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, at the county treasurer's discretion.

Note: No tax sale may be held after May, 2001 under MCL 211.60 *et seq.* See Standard 22.3-2 regarding certificates of error relating to tax foreclosures under MCL 211.78k.

STANDARD 22.3-2

EFFECT OF CERTIFICATE OF ERROR RECORDED BY FORECLOSING GOVERNMENTAL UNIT ON TAX FORECLOSURE PURSUANT TO MCL 211.78k(9)

STANDARD: A CERTIFICATE OF ERROR RECORDED BY A FORECLOSING GOVERNMENTAL UNIT PURSUANT TO MCL 211.78k(9) CANCELS THE FORECLOSURE OF REAL PROPERTY FOR DELINQUENT TAXES UNLESS THE REAL PROPERTY HAS BEEN PREVIOUSLY CONVEYED UNDER MCL 211.78m.

Problem: Albert Thomas owned Blackacre, subject to a mortgage given by a prior owner. Thomas did not assume the mortgage. Blackacre was erroneously foreclosed by a judgment entered in 2005. It was later discovered that taxes on Blackacre had been paid at the time of foreclosure. The foreclosing governmental unit did not sell Blackacre, but recorded a certificate of error describing Blackacre and stating that the foreclosure of Blackacre was in error. Is Blackacre subject to the mortgage?

Answer: Yes.

Authority: MCL 211.78k (9).

Comment: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. After 2000, under 1999 P.A. 123, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, at the county treasurer's discretion.

- Note 1:** No tax sale may be held after May, 2001 under MCL 211.60 *et seq.* See Standard 22.3-1 regarding certificates of error relating to tax sales before 2002.
- Note 2:** MCL 211.78m provides that foreclosed real property may be conveyed to the state, city, village, township or county, or to a purchaser at auction or, if the real property is a facility under the Natural Resources and Environmental Protection Act and certain other criteria apply, to the State Land Bank Fast Track Authority.

STANDARD 22.4

SCAVENGER DEEDS

STANDARD: A DEED, EXECUTED PURSUANT TO A SALE BY THE STATE LAND OFFICE BOARD OR THE DEPARTMENT OF CONSERVATION UNDER THE PROVISIONS OF 1937 P.A. 155, AS AMENDED (COMMONLY KNOWN AS THE SCAVENGER ACT), OF REAL PROPERTY ACQUIRED BY THE STATE IN TAX FORECLOSURE PROCEEDINGS VESTS MARKETABLE TITLE IN THE GRANTEE, SUBJECT TO ANY LIMITATIONS CONTAINED IN THE DEED OR THE SCAVENGER ACT. THE TITLE SO ACQUIRED IS ALSO SUBJECT TO ANY INTERESTS WHICH MAY BE REVIVED IN EQUITY.

Problem A: In 1943, the State acquired title to Blackacre as the result of proceedings for the sale of land for delinquent property taxes. In 1944, the State deeded Blackacre to Max Fry, who had no previous interest in Blackacre. Did Fry acquire marketable title to Blackacre?

Answer: Yes, subject to the limitations, if any, contained in the deed or provided by the Scavenger Act. See, Problems E and F and Comment C.

Problem B: Albert Thomas and Boswell Thomas held title to Blackacre as tenants in common. In 1943, the State acquired title to Blackacre as the result of proceedings for the sale of land for delinquent property taxes. In 1944, the State deeded Blackacre to Albert Thomas. Albert Thomas later conveyed Blackacre to Simon Grant. Did Grant acquire marketable title to Blackacre free of any rights of Boswell Thomas?

Answer: Yes, subject to the limitations, if any, contained in the deed to Albert Thomas or provided by the Scavenger Act. See, Problems E and F and Comment C.

Problem C: In 1938, Max Fry acquired title to Blackacre subject to several mortgages and liens which Fry did not assume or agree to pay. In 1942, the State acquired title to Blackacre as a result of proceedings for the sale of land for delinquent property taxes. In 1943, the State deeded

Blackacre to Fry. Did Fry acquire marketable title to Blackacre free of mortgages and liens?

Answer: Yes.

Problem D: Blackacre was subject to an easement by prescription in favor of the owners of adjoining land. In 1945, the State acquired title to Blackacre as a result of proceedings for the sale of land for delinquent property taxes. In 1946, the State deeded Blackacre to Max Fry. Did Fry acquire marketable title to Blackacre free of the easement?

Answer: Yes. See, however, Comment C regarding preservation of utility easements. See also, Standard 22.7.

Problem E: Blackacre was subject to recorded restrictions limiting its use to residential purposes only and imposing a minimum building setback line. In 1942, the State acquired title to Blackacre as a result of proceedings for the sale of land for delinquent property taxes. In 1943, the State deeded Blackacre to Max Fry, who had no previous interest in Blackacre. Did Fry acquire marketable title to Blackacre free of the restrictions?

Answer: No.

Problem F: In 1944, the State acquired title to Blackacre as a result of proceedings for the sale of land for delinquent property taxes. In 1946, the Department of Conservation which had jurisdiction over the area within which Blackacre was located, deeded Blackacre to Max Fry, who had no previous interest in Blackacre. Did the deed to Fry include the coal, oil, gas and other mineral rights in Blackacre?

Answer: No. Sales of land under the control and jurisdiction of the Department of Conservation (lands in the counties north of and including the counties of Oceana, Newaygo, Mecosta, Isabella, Midland and Arenac) to any person who was not a prior owner were subject to a reservation in favor of the State of all coal, oil, gas and other mineral rights.

Problem G: Robert Brown mortgaged Blackacre to Edward Lane. The mortgage contained a covenant to pay property taxes. Brown failed to pay the taxes. In 1947, the State acquired title to Blackacre as the result of proceedings for the sale of land for delinquent property taxes. In

1948, the State deeded Blackacre to Brown. In 1950, Brown deeded Blackacre to Simon Grant and the deed was recorded. In 1997, does Grant hold marketable title to Blackacre free of the mortgage lien?

Answer: Yes. In general, a court of equity will not permit a mortgagor or vendee, obligated by contract to pay taxes on mortgaged or purchased land, to default in doing so and then obtain an advantage over his mortgagee or vendor by acquiring title to the land under the provisions of the Scavenger Act. However, in this problem, title was conveyed by the purchasing mortgagor to a subsequent grantee who had no contractual duty to pay taxes; there was no timely action to enforce the mortgagee's rights; and more than 40 years have elapsed since the deed to Grant was recorded, i.e., the first muniment of title in the "40-year chain of title," is subsequent to the deed from the State Land Office Board to Brown.

Authorities: Generally: MCL 211.351 *et seq.* (repealed by 1964 P.A. 256, 1967 P.A. 196 and 1994 P.A. 451).

Problem A: *Pavlovic v Kastner*, 302 Mich 120, 4 NW2d 491 (1942); *Sharpe v State Land Office Board*, 306 Mich 189, 10 NW2d 822 (1943); *Langford v Auditor General*, 325 Mich 585, 39 NW2d 82 (1949).

Problem B: *Meltzer v State Land Office Board*, 301 Mich 541, 3 NW2d 875 (1942); *Koenig v Koenig*, 311 Mich 12, 18 NW2d 259 (1945); *Rolland v Rolland*, 314 Mich 619, 23 NW2d 104 (1946).

Problem C: *Darby v Freeman*, 304 Mich 459, 8 NW2d 137 (1943); *Lowrie & Webb Lumber Co v Ferguson*, 312 Mich 331, 20 NW2d 209 (1945).

Problem D: *Young v Thendara, Inc*, 328 Mich 42, 43 NW2d 58 (1950); *Grand Rapids Township Highway Commissioner v Walkotten*, 335 Mich 612, 56 NW2d 399 (1953); *Kern v Schaar*, 338 Mich 637, 62 NW2d 614 (1954); *Moceri v St. Clair Shores*, 366 Mich 380, 115 NW2d 103 (1962).

Problem E: MCL 211.359. *Grand Rapids Township Highway Commissioner v Walkotten*, 335 Mich 612, 56 NW2d 399 (1953); *Cooper v Kovan*, 349 Mich 520, 84 NW2d 859 (1957).

Problem F: MCL 211.353 (repealed by 1964 P.A. 256, effective August 28, 1964); MCL 211.356 (repealed by 1967 P.A. 196, effective November 2, 1967).

Problem G: MCL 565.101, 565.101a, 565.103 and 600.5803. *Jacobson v Nieboer*, 299 Mich 116, 299 NW 830 (1941); *Walker v Woods*, 308 Mich 24, 13 NW2d 193 (1944); *McAlpine v Meehan*, 312 Mich 107, 19 NW2d 765 (1945). See also, Standard 16.10. –

- Comment A:** The validity of any deed executed pursuant to the Scavenger Act, and the sale pursuant to which it was executed, cannot be attacked by reason of any defect in the procedure after six months after the issuance of the deed. MCL 211.358e. See, *Caplan v Jerome*, 314 Mich 198, 22 NW2d 270 (1946).
- Comment B:** The Scavenger Act became effective on July 3, 1937, and governed in part the disposition by the Department of Conservation or the State Land Office Board of all land acquired by the State of Michigan on or before May 1, 1949, as a result of tax sale proceedings. By amendment of the Act, the State Land Office Board was abolished as of May 1, 1949; later, the disposition of land subject to provisions of the Scavenger Act was administered by the Department of Conservation under section 6 of the Act until that section was repealed by 1967 P.A. 196, effective November 2, 1967.
- Comment C:** Deeds by the State Land Office Board or the Department of Conservation do not affect interests assessed as personal property under the provisions of Section 8 of the General Property Tax Act, MCL 211.8 (e.g., easements held by public utilities for gas or electric transmission lines).

STANDARD 22.5

DEED OF REAL PROPERTY REVERTED BEFORE APRIL 1, 1976 PURSUANT TO GENERAL PROPERTY TAX ACT

STANDARD: A DEED BY THE DEPARTMENT OF NATURAL RESOURCES OR THE DEPARTMENT OF CONSERVATION OF REAL PROPERTY ACQUIRED BY THE STATE FOR DELINQUENT TAXES BEFORE APRIL 1, 1976, UNDER AUTHORITY OF THE GENERAL PROPERTY TAX ACT, VESTS MARKETABLE TITLE IN THE GRANTEE.

Problem: In 1972, by proceedings under the General Property Tax Act for the sale of land for delinquent taxes, title to Blackacre was acquired by the State. Blackacre was deeded by the Department of Natural Resources to Harold Fowler in 1974. The deed contained a recital that it was given pursuant to Section 131 of the General Property Tax Act. The deed was recorded. Is Fowler's title marketable?

Answer: Yes.

Authorities: MCL 211.131(repealed by 2005 P.A. 183, effective December 31, 2006) and 211.67b (repealed by 1999 P.A. 123, effective December 31, 1999).

Comment A: Mineral, coal, oil and gas rights may be reserved in deeds executed pursuant to the General Property Tax Act. MCL 322.212. In *Matthews v Dept of Conservation*, 355 Mich 589, 96 NW2d 160 (1959), it was held that a reservation of mineral rights included sand, gravel, clay and other non-metallic minerals. 1964 P.A. 125 amended MCL 322.212 (now MCL 324.503) to provide that a reservation of "mineral rights" in a deed executed after May 15, 1964 does not include non-metallic minerals. A deed of tax-reverted land may also reserve to the State aboriginal antiquities and the right to explore and excavate for them. MCL 299.52.

Comment B: The title to real property conveyed by the State pursuant to the General Property Tax Act may be subject to certain visible or recorded

easements that were not extinguished when the land was acquired by the State. See, Standards 22.7, 22.8 and 22.9-1.

Comment C: The General Property Tax Act provides that after six months after the recording of a deed to the State pursuant to MCL 211.67(a), the State's title is deemed to be absolute and complete, and no suit or proceeding "shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul the said deed or the title derived thereunder." MCL 211.431.

In *Dow v State of Michigan*, 396 Mich 192, 240 NW2d 450 (1976), an action brought by owners against the State challenging the tax sale proceedings for want of due process, it was held that the State as titleholder could not rely on the statute "to insulate itself from redress if the statutory procedure does not meet constitutional requirements." The court stated, however, that a different question would be presented if rights of a third person had intervened. The Court of Appeals held in *Buckley Land Corp v Dept of Natural Resources*, 178 Mich App 249, 443 NW2d 390 (1989), *lv den*, 433 Mich 876 (1989), that *Dow* does not apply retroactively. See, Standard 22.6.

Comment D: With respect to the adequacy of notice under 1976 P.A. 292, see *Smith v Cliffs of the Bay Condominium Association*, 465 Mich 876, 634 NW2d 362 (2001); and *Jones v Flowers*, 547 US 220, 126 S Ct 1708, 164 L Ed 2d 415 (2006).

STANDARD 22.6

NOTICE REQUIRED BEFORE TAX SALE

STANDARD: NOTICE THAT REAL PROPERTY WILL BE SOLD FOR DELINQUENT TAXES AT THE ANNUAL TAX SALE MUST BE GIVEN:

- (A) BY THE COUNTY TREASURER BY SENDING NOTICE BY FIRST CLASS MAIL TO THE PARTY ASSESSED;
- (B) BY THE STATE TREASURER BY PUBLISHING A COURT ORDER AND PETITION ONCE EACH WEEK FOR THREE CONSECUTIVE WEEKS; AND
- (C) BY THE STATE TREASURER BY PUBLISHING A NOTICE ADVISING THE PUBLIC OF THE TAX SALE ADVERTISING.

Problem: The tax assessment roll listed John Green of 123 Greenacre Lane as the party assessed for taxes for Blackacre, which had an address of 789 Blackacre Road. Green moved from 123 Greenacre Lane but did not provide a change of address for the tax assessment roll. Green stopped paying property taxes on Blackacre. Blackacre was scheduled to be sold at the county treasurer's tax sale. Before the sale, notice of the sale was sent to John Green at 123 Greenacre Lane and to "Occupant" at 789 Blackacre Road. Neither notice was returned as undeliverable. A notice of the sale and copies of the order and petition were published once each week for three consecutive weeks. Were the notices sufficient?

Answer: Yes.

Authorities: MCL 211.61a, 211.61b, 211.63 and 211.66 (all repealed by 1999 P.A. 123, effective December 31, 2003). *Grand Rapids v Green*, 187 Mich App 131, 466 NW2d 388 (1991), *lv den*, 439 Mich 1007, 485 NW2d 491 (1992). See also *Thompson v Auditor General*, 261 Mich 624,

247 NW 360 (1933), regarding constitutional due process requirements for description of land with reasonable certainty.

Comment: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. Following enactment of 1999 P.A. 123, beginning in 2001, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, in the county treasurer’s discretion.

Caveat: MCL 211.61a provided in part: “Failure to receive or serve the notice shall not invalidate the proceedings taken under the state treasurer’s petition and decree of the circuit court, in foreclosure and sale of the lands for taxes.” MCL 211.66 provided, in part: “The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and on the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon.”

Dow v State of Michigan, 396 Mich 192, 240 NW2d 450 (1976), held that due process requires that an owner of a significant property interest be given proper notice and an opportunity for a hearing at which the owner may contest the State’s claim that it may sell the property for delinquent taxes, and that newspaper publication is not constitutionally adequate notice. The court held that holders of a significant property interest are entitled to notice “reasonably calculated, under all circumstances, to apprise them of [the] opportunity” for a hearing. *Dow* does not apply retroactively. *Buckley Land Corp v Dep’t of Natural Resources*, 178 Mich App 249, 443 NW2d 390 (1989), *lv den*, 433 Mich 876 (1989).

In response to *Dow*, 1976 P.A. 292, effective October 25, 1976, added MCL 211.67b (repealed by 1999 P.A. 123, effective December 31, 2003), requiring the county treasurer to send pre-sale notice to the occupant, and MCL 211.131e (repealed by 2005 P.A. 183, effective December 31, 2006), requiring the State to provide a hearing and notice of the hearing to all holders of significant property interests in parcels deeded to the State after a tax sale. *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 617 NW2d 536 (2000), *cert den*, 532 US 1020, 121 S Ct 1958, 149 L Ed 2d 754 (2001), held that the notice provisions and procedures in 1976 P.A. 292 satisfy the requirements of due process. But cf., *Jones v Flowers*, 547 US 220, 126 S Ct 1708, 164 L Ed 2d 415 (2006), in which the court held that the failure to take additional reasonable steps to provide notice to an owner whose certified mail notice was returned unclaimed did not satisfy due process requirements. The Committee expresses no opinion as to whether *Jones* applies retroactively.

Note: See Standard 22.1 regarding post-sale notice requirements applicable to a tax lien purchaser.

STANDARD 22.7

EFFECT OF TAX SALE PROCEEDING AFTER JULY 2, 1937 AND BEFORE AUGUST 28, 1964, ON LIENS AND ENCUMBRANCES ON REAL PROPERTY ACQUIRED BY STATE AT TAX SALE

STANDARD: TITLE TO REAL PROPERTY ACQUIRED BY THE STATE IN A TAX SALE PROCEEDING AFTER JULY 2, 1937 AND BEFORE AUGUST 28, 1964, IS FREE OF LIENS AND ENCUMBRANCES WHICH EXISTED WHEN THE STATE ACQUIRED TITLE.

Problem A: A plat recorded in 1925 included the grant of an easement over Blackacre. In 1951, the State acquired title to Blackacre in a tax sale proceeding. In 1953, after the redemption period expired, the State conveyed Blackacre to Robert Doe. Is Doe's title to Blackacre subject to the easement?

Answer: No.

Problem B: In 1928, Center City imposed a special assessment against Blackacre for street improvements. The assessment was not paid. In 1939, the State acquired title to Blackacre in a tax sale proceeding. In 1941, after the redemption period expired, the State conveyed Blackacre to Robert Doe. Is Doe's title to Blackacre subject to the special assessment?

Answer: No.

Problem C: Same facts as in Problem B. May Center City impose a special assessment to replace the cancelled assessment?

Answer: No. A special assessment cancelled by tax sale cannot be revived.

Authorities: MCL 211.67 (repealed by 1999 P.A. 123, effective December 31, 2003). *Municipal Investors Association v City of Birmingham*, 298 Mich 314, 299 NW 90 (1941); *Young v Thendara, Inc.*, 328 Mich 42, 43 NW2d 48 (1950); *Moceri v City of St Clair Shores*, 366 Mich 380, 115 NW2d 103 (1962).

STANDARD 22.8

EFFECT OF TAX SALE PROCEEDING AFTER AUGUST 27, 1964 AND BEFORE DECEMBER 14, 1990, ON LIENS AND ENCUMBRANCES ON REAL PROPERTY ACQUIRED BY STATE AT TAX SALE

STANDARD: TITLE TO REAL PROPERTY ACQUIRED BY THE STATE IN A TAX SALE PROCEEDING AFTER AUGUST 27, 1964 AND BEFORE DECEMBER 14, 1990, IS FREE OF LIENS AND ENCUMBRANCES WHICH EXISTED AT THE TIME THE STATE ACQUIRED TITLE, EXCEPT ANY VISIBLE OR RECORDED EASEMENT, RIGHT OF WAY OR PERMIT WHICH IS:

- (A) IN FAVOR OF THE UNITED STATES, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE;
- (B) IN FAVOR OF ANY PUBLIC AUTHORITY OR DRAINAGE DISTRICT; OR
- (C) GRANTED OR DEDICATED FOR PUBLIC USE OR FOR USE BY A PUBLIC UTILITY.

Problem: In 1959, John Doe granted an easement to Center City for a drain across Blackacre. In 1972, the State acquired title to Blackacre in a tax sale proceeding. In 1973, after the redemption period expired, the State conveyed Blackacre to Robert Jones. Is Jones's title to Blackacre subject to the easement?

Answer: Yes.

Authorities: MCL 211.67b(1) (repealed by 1999 P.A. 123, effective December 31, 2003). *City of Boyne City v Crain*, 179 Mich App 738, 446 NW2d 348 (1989); *Frey v Scott*, 224 Mich App 304, 568 NW2d 162 (1997).

Note: See Standard 22.6 with respect to notice required for tax sales.

STANDARD 22.9-1

EFFECT OF TAX SALE PROCEEDING PURSUANT TO MCL 211.60 THROUGH 211.70 AFTER DECEMBER 13, 1990 ON LIENS AND ENCUMBRANCES ON REAL PROPERTY ACQUIRED BY STATE AT TAX SALE

STANDARD: TITLE TO REAL PROPERTY ACQUIRED BY THE STATE THROUGH TAX SALE PROCEEDINGS PURSUANT TO MCL 211.60 THROUGH 211.70 AFTER DECEMBER 13, 1990 IS FREE OF LIENS AND ENCUMBRANCES WHICH EXISTED AT THE TIME THE STATE ACQUIRED TITLE, EXCEPT:

- (A) ANY VISIBLE OR RECORDED EASEMENT; AND**
- (B) ANY VISIBLE OR RECORDED RIGHT OF WAY OR PERMIT THAT IS:**
 - (1) IN FAVOR OF THE UNITED STATES, THE STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE;**
 - (2) IN FAVOR OF ANY PUBLIC AUTHORITY OR DRAINAGE DISTRICT; OR**
 - (3) GRANTED OR DEDICATED FOR PUBLIC USE OR FOR USE BY A PUBLIC UTILITY.**

Problem A: Jane Doe, the owner of Blackacre, conveyed the east half of Blackacre to Mary Smith in 1990. Doe later acquired an easement over the north 10 feet of the east half of Blackacre from Smith. The easement was not visible or recorded. In 1997, the State acquired title to the east half of Blackacre through a tax sale proceeding. In 1998, after expiration of the redemption period, the State conveyed the east half of Blackacre to Robert Jones. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: No.

Problem B: Jane Doe, the owner of Blackacre, conveyed the east half of Blackacre to Mary Smith in 1990, reserving in the deed an easement over the north 10 feet. The deed was recorded. In 1997, the State acquired title to the east half of Blackacre through tax sale proceedings. In 1999, after expiration of the redemption period, the State conveyed the east half of Blackacre to Robert Jones. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: Yes.

Problem C: Same facts as in Problem A, except Doe used the easement as a visible access road to the west half of Blackacre. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: Yes.

Authority: MCL 211.67b.

Comment A: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. Following enactment of 1999 P.A. 123, beginning in 2001, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent 1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, in the county treasurer's discretion.

Comment B: The Committee expresses no opinion as to whether MCL 211.67b is applicable to rights of way or permits of the type described in part B of the Standard which are neither visible nor recorded.

STANDARD 22.9-2

EFFECT OF TAX FORECLOSURE PROCEEDING ON LIENS AND ENCUMBRANCES ON REAL PROPERTY ACQUIRED BY FORECLOSING GOVERNMENTAL UNIT PURSUANT TO MCL 211.78k

STANDARD: TITLE TO REAL PROPERTY ACQUIRED BY A FORECLOSING GOVERNMENTAL UNIT THROUGH A CIRCUIT COURT JUDGMENT OF FORECLOSURE PURSUANT TO MCL 211.78k(5) IS FREE OF LIENS AND ENCUMBRANCES THAT EXISTED AT THE DATE THE JUDGMENT WAS ENTERED, EXCEPT:

- (A) FUTURE INSTALLMENTS OF SPECIAL ASSESSMENTS;
- (B) RECORDED LIENS, RESTRICTIONS OR OTHER GOVERNMENTAL INTERESTS IMPOSED PURSUANT TO THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, MCL 324.101 *ET SEQ.*;
- (C) VISIBLE OR RECORDED EASEMENTS OR RIGHTS OF WAY; AND
- (D) PRIVATE DEED RESTRICTIONS.

Problem A: Jane Doe, the owner of Blackacre, conveyed the east half of Blackacre to Mary Smith in 1995. Doe later acquired an easement over the north 10 feet of the east half of Blackacre from Smith. The easement was not visible or recorded. In 2003, the State, as the foreclosing governmental unit, acquired title to the east half of Blackacre through a judgment of foreclosure pursuant to MCL 211.78k(5) and expiration of the redemption period. Later, the state conveyed the east half of Blackacre to Robert Jones. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: No.

Problem B: Same facts as in Problem A, except the easement was recorded. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: Yes.

Problem C: Same facts as in Problem A, except Doe used the easement as a visible access road to the west half of Blackacre. Is Jones's title to the east half of Blackacre subject to the easement?

Answer: Yes.

Problem D: Beginning in 1997, Blackacre was subject to a special assessment payable over 20 years for road improvements. Later, the county treasurer, as the foreclosing governmental unit, acquired title to Blackacre through a judgment of foreclosure pursuant to MCL 211.78k(5) and expiration of the redemption period. Later, the county treasurer conveyed Blackacre to Robert Jones. Is Jones's title to Blackacre subject to the installments of the special assessment due and payable before entry of the judgment of foreclosure?

Answer: No, but Jones's title is subject to all future installments of the special assessment.

Authority: MCL 211.78k(5).

Comment A: MCL 211.78(6) defines "foreclosing governmental unit" as used in sections 78 through 157 of the General Property Tax Act, MCL 211.78 through 211.157, as (a) the county treasurer or (b) the state, if a county has opted out of the foreclosure process pursuant to MCL 211.78(3).

Comment B: Before 2002, delinquent real property tax liens were offered at annual sales held in each county pursuant to MCL 211.60 through 211.70. Liens not purchased at sale were automatically bid to the state for foreclosure. Following enactment of 1999 P.A. 123, beginning in 2001, liens for delinquent taxes for 1999 and later may be forfeited to the county treasurer on March 1 of the first year of delinquency and may then be subject to foreclosure at a circuit court hearing held at the end of the second year of delinquency, under MCL 211.78 through 211.78o. Delinquent tax liens for 1997 and earlier were sold under the former procedure. A phase-in period was created for delinquent

1998 and 1999 taxes, which were permitted to be sold under the former procedure or forfeited and foreclosed under the new procedure, in the county treasurer's discretion.

