

Delinquent Property Taxes: What Every Practitioner Needs to Know About Foreclosures¹

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I. Introduction	1-1
II. Legislative Intent	1-2
III. Comparison with Former Process	1-3
IV. County Participation.	1-4
V. Forfeiture	1-4
VI. Redemption Following Forfeiture	1-8
VII. Foreclosure.	1-8
VIII. Appeals	1-14
IX. Tax Lien Buyers.	1-14
X. Bankruptcy.	1-15
XI. Limitation of Remedies for Former Owners Who Did Not Receive Notice . .	1-15
XII. Post-Foreclosure Sales.	1-16
XIII. Title Documents.	1-18
Summary.	1-18

I. Introduction

New tax foreclosure process adopted as part of larger package of bills intended to address urban blight, primarily through urban homesteading:

1999 PA 123 - New tax foreclosure process, adds §§ 78-78p to General Property Tax Act, (“GPTA”), MCL 211.78-.78p, and amends other sections of the GPTA.

Technical amendments to 1999 PA 123 are adopted in 2001 PA 94-101.

1999 PA 132 - CERTIFICATION OF ABANDONED PROPERTY FOR ACCELERATED FORFEITURE ACT, MCL 211.961-.966.

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The opinions expressed in this presentation are those of the author and do not necessarily reflect the views of the Department of Attorney General or the State of Michigan.

1999 PA 133 - Process for accelerated tax foreclosure and quiet title by tax lien buyers, for certified abandoned property, adds §§ 79 and 79a to GPTA, MCL 211.79-.79a.

1999 PA 134 - TAX REVERTED PROPERTY EMERGENCY DISPOSAL ACT, MCL 211.971-.976 (Authorizes local units of government to address problems of poor title on lands acquired by tax reversion where the local unit obtained title prior to 1/1/00 by bringing quiet title actions in bulk.)

1999 PA 84 - URBAN HOMESTEADING IN MULTIFAMILY PUBLIC HOUSING ACT, MCL 125.2721-.2734.

1999 PA 127 - URBAN HOMESTEAD ACT, MCL 125.2701-.2709.

1999 PA 128 - URBAN HOMESTEADING IN SINGLE PUBLIC HOUSING ACT, MCL 125.2761-.2770.

1999 PA 129 - URBAN HOMESTEADING ON VACANT LAND ACT, MCL 125.2741-.2748.

1999 PA 130 - Authorizes Municipal Housing Commissions to establish urban homesteading programs, amends MCL 125.694b.

1999 PA 131 - Authorizes MSHDA to make loans for urban homesteading, amends MCL 125.1422.

New foreclosure process applies to taxes assessed after December 31, 1998, i.e., to 1999 and subsequent years' taxes. § 78a(1).

Except that county treasurers could elect to cancel the 2000 tax lien sale (for 1997 tax liens) **and the 2001 tax lien sale (for 1998 tax liens) if there were no county delinquent tax revolving fund notes or bonds outstanding.** If a county treasurer canceled the 2000 tax lien sale or the 2001 tax lien sale, then 1997 delinquent taxes or 1998 delinquent taxes were subject to forfeiture (in 2001 and 2002) and foreclosure (in 2002 and 2003) under new process. § 60.

Counties holding tax lien sales in 2000: Barry, Calhoun, Hillsdale, Houghton, Mackinac, Mason, Mecosta, Monroe, Muskegon, Osceola, Oscoda, St. Clair, Shiawassee.

Counties holding tax lien sales in 2001: Hillsdale, Mackinac, Mecosta, Monroe, Muskegon, Osceola, St. Clair, Shiawassee, Wayne.

Former process continued to apply to the 2000 and 2001 tax sales and applies to the thousands of deeds previously issued under that process.

Pre-1999 taxes that were not foreclosed under the old process, *e.g.*, due to bankruptcy, taxes on appeal, sale cancelled by certificate of error, etc, will be forfeited and foreclosed under the new process. § 60, as amended by 2001 PA 100.

II. Legislative Intent

Legislature sought to address two problems.

1. **The former process took too long.** 5-6 years from when the taxes became delinquent for parcels bid to the state and minimum 4 years (and up to nine years) for privately bid parcels.

2. **Local units of government or purchasers who acquired tax-reverted property from the DNR often did not get good title**, primarily due to inadequate title work or inadequate notice to former interestholders.

“The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property for delinquent taxes **constitute the performance** by this state or a political subdivision of this state of **essential public purposes and functions.**” § 78(1) (emphasis added).

Section 78(2) provides that **the Legislature intends the provisions of the GPTA relating to the return, forfeiture, and foreclosure of tax-delinquent property to satisfy the minimum requirements of due process** under the State and United States Constitutions and that those provisions are not to be construed as creating a claim or cause of action against the State or a political subdivision unless the minimum requirements of due process under the State Constitution or the United States Constitution are violated.

III. Comparison with Former Process

Under the former process:

Tax liens were sold in the third year of delinquency, followed by a 1-year redemption period. § 74.

If not redeemed within 1 year, deeded to private purchaser or state.

If privately bid, former owners were entitled to notice within 5 years followed by a 6-month redemption period. Most tax lien purchasers initiated the 6-month redemption period within 1-2 years of receiving a deed.

If state bid, there was a 6-month redemption period under MCL 211.131c, after which Treasury performed title work and gave notice/hearing under MCL 211.131e, followed by final 30-day redemption period and the DNR inspected the property and gave notice pursuant to § 131c. Treasury 131e hearings generally occurred 18-24 months after deeding, *i.e.*, up to three years after sale, 6 years after initial delinquency.

Under new process:

Tax liens forfeited to county treasury at the beginning of the second year of delinquency.

County or state treasurer performs or contracts for title work and gives notice of an administrative and a judicial hearing.

Judicial hearing on petition to foreclose tax lien held in February at end of second year of delinquency, followed by final 21-day redemption period. An administrative hearing must be held at least 7 days before the judicial hearing. **Entire foreclosure process ends at end of second year of delinquency.**

Tax liens are no longer sold to private parties.

Under the Act, the only remedy following entry of a foreclosure judgment for former interestholders is an action for money damages in the Court of Claims. But, see, Amendments to Judgments, page 18

IV. County Participation

County Option to Allow State to Foreclose on Forfeited Property

Counties had until December 1, 1999, to elect not to participate in the foreclosure and sale of tax-delinquent property within the county. If a county opted out, the state is responsible for the title work, notices and foreclosure after the property is forfeited to the county treasurer. Counties that elected not to participate in the foreclosure and sale of forfeited property remain responsible for collecting delinquent taxes and for sending notices prior to forfeiture. § 78(3). 32 counties opted to foreclose and 51 opted to allow the state to foreclose.²

During December 2004 counties may revisit their initial decisions.

A “**foreclosing governmental unit**” (“FGU”) is: (a) the county treasurer or (b) the State, if a county has opted out of the foreclosure process. § 78(6).

Section 78(4) provides that the foreclosure of forfeited property by a county is voluntary and not an activity or service required of units of local government by the State for purposes of Section 29 of Article 9 of the State Constitution (the Headlee Amendment).

Municipal tax foreclosure (Detroit and Kalamazoo)

Section 78a(6) authorizes units of local government to foreclose on delinquent taxes after two years, notwithstanding a charter provision that precludes foreclosure on delinquent taxes until after three years. This provision applies to the cities of Detroit and Kalamazoo, the only 2 that still foreclose their own city taxes, rather than turning over delinquent taxes to the county treasurer for collection.

This provision also requires units of local government to treat unpaid taxes as delinquent on March 1 each year, except for delinquent taxes that are covered by payment plan contracts entered into before July 1, 1999. This prohibits extended redemption plans by local units after July 1, 1999.

V. Forfeiture

Section 78(6)(b) defines “forfeited” or “forfeiture” as meaning that a FGU may seek a judgment of foreclosure if property is not redeemed as provided under the Act. For-

2. Counties that opted to handle the foreclosure process as FGU (32): Alcona, Allegan, Alpena, Antrim, Berrien, Cheboygan, Genesee, Gladwin, Gratiot, Hillsdale, Huron, Ionia, Isabella, Jackson, Kent, Lake, Lapeer, Lenawee, Mackinac, Macomb, Menominee, Midland, Montcalm, Newaygo, Oakland, Presque Isle, Roscommon, Sanilac, Van Buren, Washtenaw, Wayne, Wexford.

Counties that opted to allow the state to foreclose as FGU (51): Alger, Arenac, Baraga, Barry, Bay, Benzie, Branch, Calhoun, Cass, Charlevoix, Chippewa, Clare, Clinton, Crawford, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Houghton, Ingham, Iosco, Iron, Kalamazoo, Kalkaska, Keweenaw, Leelanau, Livingston, Luce, Manistee, Marquette, Mason, Mecosta, Missaukee, Monroe, Montmorency, Muskegon, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Ottawa, Saginaw, St. Clair, St. Joseph, Schoolcraft, Shiawassee, Tuscola.

feiture to a county treasurer does not give the county treasurer, or the state if the state is the FGU, any right, title or interest in the property and, presumably, no liability. § 78g(1).

A. Return of Delinquent Taxes

On March 1 each year taxes levied in the immediately preceding year that remain unpaid are returned to the county treasurer as delinquent. § 78a(2).

B. County Property Tax Administration Fee & Interest

Delinquent property is subject to a 4 % county property tax administration fee and simple interest at a rate of 1 percent per month computed from the March 1 that the taxes were returned delinquent. § 78a(3)

C. Holders of Unrecorded Interests and Undischarged Mortgages

Any person with an unrecorded interest in property may receive notice of a tax delinquency by paying a \$5.00 fee to the county treasurer by February 1 each year. Any person who holds an undischarged mortgage may receive notice of a tax delinquency by paying a \$1.00 per parcel annual fee to the county treasurer. § 78a(4). Although the act is unclear, most county treasurers conclude that the fee covers a tax year, not a calendar year. Thus, one paying this fee for any one year will get all notices related to that tax year, not all notices mailed in that calendar year.

D. First (June) Notice

MCL 211.78b requires county treasurers to send a notice by **first-class mail not later than June 1** following return of taxes as delinquent to:

- a. The person to whom the tax bill for delinquent property was last sent or to the person identified as the owner.
- b. Persons who paid the \$5.00 or \$1.00 fee to receive notices.
- c. Holders of tax certificates.

This notice, like all pre-forfeiture notices is sent only to persons of record in the county or local treasurers' offices.

A notice must include all of the following information:

- a. Forfeiture date.
- b. A statement that a person holding a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceedings.
- c. A legal description or parcel number of the property, and the street address, if possible.
- d. The names of the persons to whom the notice is addressed.
- e. The unpaid delinquent taxes, interest, penalties, and fees due.
- f. A statement that unless the taxes, interest, penalties, and fees are paid within 21 days after a foreclosure judgment is entered, absolute title will vest in the FGU.

- g. A statement of the person's redemption rights and notice that those redemption rights expire 21 days after entry of a foreclosure judgment.

E. Second (September) Notice

Section 78c requires county treasurers to send a second notice by first-class mail not later than September 1 following return of taxes as delinquent. The September notice must be sent **to the same persons entitled to receive the June notice** and include the **same information contained in the June notice** plus a statement that if not redeemed by October 1, a \$15.00 fee will be added to the redemption amount.

F. October \$15 Fee To Cover Costs of Notice

A \$15.00 per parcel fee is added on property remaining delinquent October 1 following the March 1 on which taxes were returned delinquent. §78d.

G. November Forfeiture List

On November 1 each year the county treasurer must compile a list of properties delinquent for prior years' taxes. These properties will be subject to forfeiture on the following March 1. §78e(1).

H. December Record Search

Section 78e(2) requires county treasurers, not later than December 1, to determine, to the extent possible, based exclusively on **records contained in the office of the local assessor, local treasurer, and county treasurer**, for property subject to forfeiture on the succeeding March 1:

- a. The street address of the property.
- b. The name and address of all of the following:
 - i. The owners.
 - ii. The holder of any undischarged mortgage, tax certificate, or other legal interest.
 - iii. A subsequent purchaser under any land contract.
 - iv. A person entitled to notice of the return of delinquent taxes under § 78a(5) (Detroit collateralized tax liens).

I. Third (February) Notice

Section 78f(1) requires county treasurers to send a notice by **certified mail not later than February 1** of the year following the return of delinquent taxes. The third notice must include the same information contained in the second (September) notice and be sent to the following persons, as **identified in the December title search (which does not include a search of the office of the register of deeds)**:

- a. Person to whom the tax bill for delinquent property was last sent.
- b. The person identified as the owner, if different than the person to whom the tax bill for delinquent property was last sent.
- c. The holder of any undischarged mortgage.

- d. The holder of a tax certificate or other legal interest.
- e. A subsequent land contract purchaser.
- f. A person who paid a \$5.00 or \$1.00 fee to receive notices.

Notice must also be sent to **occupant, by first class mail**, if notice not otherwise sent to the address of the property. § 78f(2).

J. **Optional Notice By Publication**

County treasurers **may** also **publish** the Third Notice. If the treasurer opts to publish, **publication of the street address and the name of the taxpayer or owner are optional.** § 78f(3), (4). Publishing street addresses is often problematic and many treasurers are concerned about publishing names of delinquent taxpayers, especially if it should turn out that the treasurer's records do not have the current taxpayer. On the other hand, such a publication would probably trigger many responses to outdated information in county treasurers' records.

I am not aware of any county treasurer publishing the February pre-forfeiture notice.

K. **Forfeiture Date**

On March 1 of the year following delinquency (exactly 1 year after the taxes were returned delinquent), if the delinquent taxes remain unpaid, the property forfeits to the county treasurer. §78g(1).

A county treasurer or FGU has no right to possession of the property until 21 days after entry of a foreclosure judgment. *Id.*

A \$175.00 fee attaches to each parcel of forfeited property. *Id.*

After forfeiture, **interest is recalculated at the rate of 1.5%/month** (up from 1%/month) **back to the March 1 that the taxes were returned delinquent and continues to accrue at 1.5%/month.** § 78g(3).

After forfeiture, all recording, service of process, and notice fees must also be paid as part of the cost of redemption. *Id.* At present these fees total \$303/parcel in counties where the state is the FGU. The only documents that will be recorded for redeemed parcels are the forfeiture and redemption certificates.

L. **Forfeiture Certificate**

Within 45 days after forfeiture, **county treasurers must file with the register of deeds a certificate placing parties on notice that property has forfeited** and that title to the property will be lost 21 days after entry of a foreclosure judgment. § 78g(2).

A county treasurer must forward a copy of each certificate to the State Treasurer if that county elects to have the State foreclose on tax-delinquent property within that county.

VI. Redemption Following Forfeiture

A. **Property may be redeemed at any time prior to 21 days after entry of the Judgment of Foreclosure.**

B. **Interest Acquired Through Redemption**

A **person** with a legal interest in property **who redeems the property acquires no greater interest than what he or she would have had if the property had not forfeited.** § 78g(5). This is the same as under the prior process.

A person other than the owner who redeems property is entitled to a lien for the redemption amount. § 78g(4). However, the lien has the same priority “as the existing lien, title, or interest.” *Id.* This is a change from the prior process where the redemption lien was a first lien.

The person entitled to the lien must record a lien for a redemption amount with the register of deeds **within 30 days.** § 78g(5).

C. **Redemption Certificate**

Section 78g(6) requires county treasurers to issue a redemption certificate when property is redeemed. One copy of the certificate must be provided to each of the following:

- a. The person who redeemed the property.
- b. The county treasurer.
- c. The Michigan Department of Treasury.
- d. The register of deeds.

VII. Foreclosure

A “foreclosing governmental unit” (“FGU”) is: (a) the county treasurer or (b) the State, if a county has opted out of the foreclosure process. § 78(6).

A. **Circuit Court Foreclosure Petition**

FGUs must, not later than June 15 following forfeiture, file with the circuit court of the county in which forfeited property is located, a petition listing all property forfeited and not redeemed. The petition must seek a judgment in favor of the FGU vesting absolute title in the FGU without further rights of redemption. § 78h(1).

If a parcel is redeemed after the petition is filed, the FGU must move to delete the parcel from the petition. § 78h(2).

B. **FGUs May Withhold Property From The Foreclosure Petition**

Under § 78h(3) FGUs may withhold property from a foreclosure petition if:

- a. The property is held by **minor heirs** or persons who are **incompetent or without means of support** until a guardian is appointed to protect that person’s rights or interests, or

- b. The **property is held by a person undergoing “substantial financial hardship” as defined by federal poverty guidelines** or by broader guidelines established by the FGU.

Withholding a parcel of property from a foreclosure petition does not prejudice the FGU’s lien or its right to include the property in a subsequent foreclosure petition. § 78h(4).

C. **Setting A Foreclosure Hearing Date**

Section 78h(5) requires the circuit court clerk to “immediately” schedule a hearing date not more than 30 days before the following March 1, *i.e.*, during February of the year following the forfeiture.

D. **Title Searches**

FGUs must, commencing not later than May 1 after a forfeiture, **conduct a title search to identify the owners of an interest in the forfeited property** entitled to notice of the administrative show cause hearing and of the judicial foreclosure hearing. § 78i(1). Originally, FGUs could only contract with title insurance companies or agents licensed to conduct business in this State. By amendment to § 78i(1) in 2001 PA 101, FGUs may now have title searches and personal visits done by title insurance companies or licensed agents, attorneys, persons accredited in title search procedures by a nationally recognized organization in the field of title searches, or persons with demonstrated experience in the field of title searches as determined by the FGU.

THE TITLE SEARCH IS THE FIRST OF FOUR STEPS CRITICAL TO THE FORECLOSURE PROCESS IN TERMS OF TIMING, DUE PROCESS PROTECTION FOR INTERESTHOLDERS, AND PROTECTING THE FGUs FROM DAMAGE CLAIMS.

E. **Locating Addresses**

Section 78i(2) requires FGUs, or their authorized representative, to “determine the address reasonably calculated to apprise those owners of a property interest” in tax-delinquent property concerning the pendency of the administrative show cause hearing and the judicial foreclosure hearing.

F. **Persons Entitled To Notice**

Under § 78i(7), **the owner of an interest in forfeited property is entitled to notice** of the administrative show cause hearing and of the judicial foreclosure hearing **only if the owner’s interest can be identified *before the date on which the county treasurer records the certificate of forfeiture* from any of the following records:**

- a. The register of deeds.
- b. The county treasurer.
- c. The local assessor.
- d. The local treasurer.

Recording at the register of deeds office after the certificate of forfeiture is recorded is not necessarily sufficient to insure receipt of notices. The recorded certificate of forfeiture provides constructive to later recording parties.

Nothing prohibits title searches for after-recorded documents.

G. Fourth Notice - - Administrative Show Cause Hearing and Judicial Foreclosure Hearing

THIS REGISTERED MAIL NOTICE TO ALL INTERESTHOLDERS IS THE SECOND STEP THAT IS CRITICAL TO THE FORECLOSURE PROCESS IN TERMS OF TIMING, DUE PROCESS PROTECTION FOR INTERESTHOLDERS, AND PROTECTING THE FGUs FROM DAMAGE CLAIMS.

Section 78i(2) requires FGUs to send by **certified mail, return receipt requested, notice of the administrative show cause hearing and of the judicial foreclosure hearing**. The notice must be sent at least 30 days before the date of the administrative show cause hearing and must include all of the following information:

- a. The forfeiture date.
- b. A statement that the person notified may lose his or her interest in the property as a result of the foreclosure proceedings.
- c. A legal description or parcel number of the property, and the street address, if possible.
- d. The name of the person to whom the notice is addressed. Act 123 originally required the name of all persons to whom the notice was sent. 2001 PA 101 dropped this requirement. § 78i(7).
- e. The total taxes, interest, penalties, and fees due.
- f. The date and time of the show cause hearing.
- g. The date and time of the judicial foreclosure hearing.
- h. An explanation of the person's redemption rights and notice that those redemption rights expire 21 days after entry of a foreclosure judgment.

H. Limitation on Rights of Persons Served

Section 78i(9) prohibits an owner of tax-delinquent property who is properly served and who fails to redeem the property from asserting:

- a. That the notice was insufficient or inadequate because another owner of an interest in the property was not served, or
- b. That the redemption period is extended because another owner of an interest in the property was not served. This is consistent with the decision in *Halabu v Behnke*, 213 Mich App 598; 541 NW2d 285 (1995), regarding notices under § 140 of the GPTA, and contrary to the holding in *Adamo v Detroit*, 234 Mich App 234; 593 NW2d 646 (1999), *rev'd* 466 Mich 890; 647 NW2d 479 (2002), regarding notices under § 131e of the GPTA.

I. Personal Visit

Section 78i(3) requires FGUs to conduct a personal visit to each parcel of forfeited property. If the state is the FGU, the DNR will do the inspections. *If a parcel of property appears to be occupied*, the FGU is required to do all of the following:

- a. Personally serve notice upon the person occupying the property.
- b. If personal service occurs, orally inform the person that the property will be foreclosed and the occupant will be required to vacate unless the taxes, interest, penalties, and fees are paid.
- c. If the occupant appears to lack the ability to understand the advice given, notify the Family Independence Agency or supply the occupant with the names and telephone numbers of agencies that may be able to render assistance.
- d. Post a notice on the property if it is not possible to personally meet with the occupant.

THE PROPERTY INSPECTION IS THE THIRD STEP THAT IS CRITICAL TO THE FORECLOSURE PROCESS IN TERMS OF TIMING, DUE PROCESS PROTECTION FOR INTERESTHOLDERS, AND PROTECTING THE FGUs FROM DAMAGE CLAIMS.

J. Recording The Proofs of Service

Section 78i(4) originally required the recording of proofs of service of the notice of the administrative show cause hearing, the judicial foreclosure hearing, and the personal visit with the register of deeds. 2001 PA 101 eliminated the recording of proofs of service with the register of deeds. Proofs are available only from the court or the FGU.

K. Proof of Service Verification By Title Companies

Section 78i(5) originally required FGUs that enter into contracts with title insurance companies or agents to provide the company or agent with recorded proofs of service and the company or agent to notify the FGU within 10 days of any deficiency of service which the FGU must then correct and provide proof of the correction to the company or agent. § 78i(5). Title companies expressed concern that this certification requirement may be interpreted as some form of insurance. Although not the intent, this caused significant difficulty in contracting with title companies for title searches. Amended by 2001 PA 101, this section now requires the FGU or its authorized representative, if it discovers a deficiency in the provision of service, to take reasonable steps in good faith to correct the deficiency. Title searches no longer need be performed by title insurance companies, *see Title Searches*, p 12, *supra*.

Getting titlework, identifying and inspecting parcels, locating current addresses for all persons entitled to notice, sending the notices, processing the returns, and following up on returned notices with bad addresses in time for publication prior to the administrative hearing has proved challenging for many FGUs.

L. Notice by Publication

If an FGU is unable to ascertain the address of a person entitled to notice or if the notice could not be served, FGUs must publish notice of the administrative show cause hearing and of the judicial foreclosure hearing. Notice by publication must occur once a week for three successive weeks in a newspaper published and circulated in the county in which the forfeited property is located or, if no newspaper is published in that county, then in a newspaper in an adjoining county. § 78i(5). Most FGUs publish all names, whether notice has already been served.

NOTICE BY PUBLICATION IS THE FOURTH STEP THAT IS CRITICAL TO THE FORECLOSURE PROCESS IN TERMS OF TIMING, DUE PROCESS PROTECTION FOR INTERESTHOLDERS, AND PROTECTING THE FGUs FROM DAMAGE CLAIMS.

M. Administrative Show Cause Hearing

FGUs must hold an administrative show cause hearing not less than seven days before the judicial foreclosure hearing. § 78j(1).

N. Defenses To Foreclosure

Under § 78j(2) the show cause hearing allows an interestholder to raise any of the following defenses to foreclosure:

- a. The tax is not authorized by law.
- b. The taxing authority acted without jurisdiction or did not impose the tax in question.
- c. The person or property assessed was exempt from the tax in question, or was not legally assessed.
- d. The tax has been paid.
- e. The tax was assessed fraudulently.

If the objection is upheld, the FGU must notify the county treasurer and the county treasurer must correct the tax roll.

In addition, the FGU may withhold the property from foreclosure if the owner is a minor, incompetent, or undergoing substantial financial hardship. § 78h(3)

O. Circuit Court Filing Of Proofs of Service

Section 78k(1), as amended by 2001 PA 94, requires FGUs to file with the circuit court clerk proof of service of the show cause and judicial hearings, personal inspection, and publication before the date of the judicial foreclosure hearing. This is a large amount of paper in some counties.

P. Judicial Foreclosure Hearing

A hearing must be held in the circuit court within 30 days prior to March 1 of the year following the forfeiture. § 78h(5).

A person claiming an interest in forfeited property may appear at the judicial foreclosure hearing to contest the validity or correctness of the taxes, interest,

penalties, and fees for any of the reasons set forth above as defenses to be raised at administrative hearings. § 78k(2).

In addition, the court may withhold the property from foreclosure for a period of one year, or otherwise extend the redemption period, if the owner is a minor heir, incompetent, or undergoing substantial financial hardship. § 78k(4)

One contesting the tax must file written objections with the clerk of the court and serve the objection on the FGU. § 78k(3). No time limits are set forth in the act. This requirement should also be included in the notices given to interested holders or published.

One need not appear at the administrative hearing in order to protect the right to appear at the judicial hearing.

Q. Withholding Parcels From Foreclosure

Although the act does not so provide, it may well be necessary to withhold parcels from the foreclosure hearing if the FGU is concerned that notice sufficient for due process has not been provided.

R. Foreclosure Judgment

Section 78k(5) requires the circuit court to enter judgment **in uncontested cases not later than 10 days after the March 1 immediately after the foreclosure petition is filed, and in contested cases not later than 10 days after the conclusion of the hearing.** A circuit court judgment must specify all of the following:

- a. **The legal description, and if known, the street address and parcel number of the property.**
- b. **That fee simple title to the property will vest in the FGU, without any further redemption rights unless the taxes, interest, penalties, and fees due are paid within 21 days after entry of the foreclosure judgment.**
- c. **That liens, including tax liens and liens for special assessments, except future installments of special assessments and liens recorded by the State or by the FGU pursuant to the Natural Resources and Environmental Protection Act, are extinguished unless the taxes, interest, penalties, and fees due are paid within 21 days after entry of a foreclosure judgment.**
- d. **That the FGU has good and marketable title.**
- e. **That all existing recorded and unrecorded interests in the property are extinguished, except for a visible or recorded easement or right of way, private deed restrictions, or a restriction or other governmental interest imposed pursuant to Natural Resources and Environmental Protection Act.**
- f. **A finding that all those entitled to notice and an opportunity to be heard have been provided that notice and opportunity.**

S. Amendments to Judgments

Some courts have been granting relief under **MCR 2.612**, allowing FGUs to correct problems with a judgment (*e.g.*, to remove a parcel from foreclosure if later found to have been in bankruptcy) or allowing former owners to redeem after entry of judgment. Allowing a redemption after property has been sold would thwart one of the Legislature's primary goals in adopting Act 123.

Some FGUs have strenuously objected to granting of relief under MCR 2.612, and have addressed their errors in the foreclosure process by issuing **quitclaim deeds** to property foreclosed in error back to the former owners.

Pending legislation may authorize FGUs to record certificates of error canceling the foreclosure judgment as to parcels foreclosed in error or without adequate notice.

T. Recordation of Judgment

FGUs must record with the register of deeds a notice of the foreclosure judgment for each parcel. § 78k(8).

VIII. Appeals

Section 78k(7) provides that an FGU or a person claiming an interest in a parcel of forfeited property may appeal the foreclosure judgment to the Court of Appeals within 21 days following entry of the foreclosure judgment. § 78k(7).

In order to appeal, a person must pay the amount due in the foreclosure judgment within 21 days of the entry of that judgment. *Id.*

Review is on the record created below and **is not de novo.** § 78k(7)

Although amended by 2001 PA 94, **the language regarding appeals is still somewhat unclear.** As amended, section 78k(7) states in part:

If the circuit court's judgment foreclosing the property is affirmed on appeal, the amount determined to be due shall be refunded to the person who appealed the judgment. If the circuit court's judgment foreclosing the property is reversed or modified on appeal, the county treasurer shall refund the amount determined to be due to the person who appealed the judgment, if any, and retain the balance in accordance with the order of the court of appeals.

Two options appear possible: (1) the appealing taxpayer gets a refund of the taxes paid to appeal, regardless of whether the appeal is successful, and retains the property (this option appears to be an unlikely legislative intent) or (2) a taxpayer who loses an appeal loses the property but gets back to taxes paid to appeal (forfeiture of property following an unsuccessful appeal seems an unduly harsh impediment to appeal).

IX. Tax Lien Buyers

The new process has no special provisions to protect tax lien buyers with outstanding liens from the prior tax foreclosure process, except that tax lien buyers are entitled to notice of the forfeiture and foreclosure of properties on which they have liens.

If tax lien holders do not redeem from the forfeiture and no other interested party redeems, the tax lien holders' interests are extinguished along with most other interests upon foreclosure and expiration of the redemption period.

Tax lien buyers who redeem a parcel after forfeiture to protect their tax liens receive a second statutory lien for the amount paid to redeem the subsequent years' taxes. § 78g(4).

X. Bankruptcy

Under the former process, the sending of notices of right to redeem after entry of judgment and issuance of deeds was considered an affirmative act enjoined by the automatic stay provisions of section 362(a) of the Bankruptcy Code. 11 USC 362(a). *In re Tranter*, 171 BR 256 (Bankr WD Mich, 1994). Thus, a bankruptcy filed any time prior to the sending of the final notices was sufficient to stay the effect of the tax lien sale and subsequent redemption periods.

Under the new process, there are no affirmative acts with respect to foreclosed property after entry of the judgment of foreclosure. The final 21-day redemption period expires with only the passage of time. Arguably, **under the new process bankruptcy protection must be sought prior to the entry of the judgment of foreclosure in order to obtain any protection in excess of the 60-day extension of the redemption period afforded by 11 USC 108(b)**. *Cf. In re Glenn*, 760 F2d 1428 (CA 6, 1985) (section 362(a) does not toll or stay redemption period following foreclosure sale for bankruptcy filed after the sale is held).

XI. Limitation of Remedies for Former Owners Who Did Not Receive Notice

A. Limitation To A Claim For Money Damages

Section 78l provides that after a foreclosure judgment is entered, and recorded and unrecorded interests are extinguished, the owner of an interest in foreclosed property who claimed that he or she did not receive any notice required under the GPTA may not bring an action to recover the property but may only bring an action for money damages in the Court of Claims.

This appears to expand the jurisdiction of the Court of Claims which otherwise does not have jurisdiction to hear claims against county treasurers.

If upheld by the courts, this limitation to money damages will insure that one of the two major legislative goals is met, title to property obtained following a tax foreclosure will be marketable. If the courts reject this limitation, title companies will in all likelihood be leery of insuring title and one of the two major goals of the legislation will be thwarted.

B. Standards For Compliance With Statutory Process

Although the courts required **strict compliance** with statutory requirements under the **former process**, *Stein v Hemminger*, 165 Mich App 678; 419 NW2d 50, 1v den 430 Mich 896 (1988), the Legislature makes clear that the failure to comply with requirements set forth in the statute does not give rise to a claim for

relief under the **new process** unless there has been a **failure to comply with** state or federal **due process requirements** for notice. § 78(2).

C. Statute of Limitations

An action for money damages must be brought within two years of entry of foreclosure judgment. § 78l(3).

D. Limitation On Damages

Section 78l(4) provides money damages must be determined as of the date of the foreclosure judgment and shall not exceed the fair market value as of that date. § 78l(4)

XII. Post-Foreclosure Sales

Act 123 provides for 3 post-foreclosure auction sales by the FGU, in July (optional), September and November of the year of foreclosure. The July sale (if held) and the September sale require a minimum bid. The November bid does not require a minimum bid.

County treasurers of adjacent counties may hold joint sales at a location outside the county in which the property is located. § 78m(9). The FGU may also offer 2 or more parcels as a group. § 78m(1). If the state is the FGU the DNR will be handling the sales, in several multi-county sales around the state.

The **minimum bid** includes all delinquent taxes, interest, penalties, and fees due and expenses of administering the sale, including sale preparation. If a city, village, or township purchases property, the minimum bid does not include any taxes levied by the city, village, or township nor any interest, penalties, or fees due on those taxes. § 78m(10). But many county treasurers “charge back” these amounts to the local units.

Initial Governmental Purchases

Not later than the first Tuesday in July each year, or the first Tuesday in September if no sale is conducted in July, the State has a right of first refusal to purchase property from an FGU for the greater of the fair market value of the property or the minimum bid. If the state does not purchase, **a city, village, or township may purchase property** within the city, village, or township **for a public purpose** for the minimum bid. If a city, village, or township does not purchase property, the county in which the property is located may purchase the property for the minimum bid (need not be for a public purpose). § 78m(1).

“**Public purpose**” is not defined. The term is essentially identical to the term “public use” which has constitutional implications, *Novi v Robert Adell Children’s Funded Trust*, 253 Mich App 330, 341 (2002), and was interpreted quite broadly in *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981), to include acquisition by condemnation for transfer to a private entity for redevelopment.

Some local units have been acquiring parcels for resale back to former owners. Perhaps not inconsistent with legislative intent, especially in the first year of the new process where former owners may have inadvertently lost title by foreclosure.

In an August 19, 2003, letter to Senator Mark H. Schauer, the Chief Deputy Attorney General declined to define “public purpose” under Act 123 and, instead, gave examples of what would be public purposes, including mass transportation and rehabilitation of blighted areas.

If a city, township or village (but not a county) purchases for a minimum bid and subsequently sells for more than the minimum bid plus all costs incurred relating to demolition, renovation, improvements, or infrastructure development, the **excess sale proceeds must be returned to the FGU.**

July Minimum-Bid Sale

Beginning on the third Tuesday in July each year, FGUs may hold one or more property sales at one or more convenient locations. Notice of the sale must be published not less than 30 days before the sale in a newspaper published and circulated in the county in which the property is located or, if no newspaper is published in that county, then in a newspaper in an adjoining county. Not more than 30 days after the date of the sale, property must be conveyed to the person bidding the highest amount above the minimum bid. § 78m(2).

Subsequent Governmental Purchases

In those counties holding a July sale, a city, village, or township may purchase property not sold at the July sale by paying the minimum bid not later than the first Tuesday in September. If none purchase the property, the county in which the property is located may purchase the property by paying the minimum bid. § 78m(3). There is no requirement for a public purpose or return of excess sale proceeds if acquired by a local unit of government for minimum bid after first offered at public auction in July.

September Minimum-Bid Sale

Beginning on the third Tuesday in September each year, FGUs must hold one or more property sales at one or more convenient locations. A September sale is subject to the same requirements that govern a July sale. § 78m(4).

November Non-Minimum Bid Sale

Beginning on the third Tuesday in November each year, FGUs must offer for sale property not previously sold at the July or September sales. A November sale is subject to the same requirements that govern the July and September sales, except that no minimum bid is required. § 78m(5).

Title Obtained By Purchasers

A sale deed conveys fee simple title to the property, § 78m(1), subject to the rights not canceled by the tax foreclosure, *see, Foreclosure Judgments*, p 18, *supra*.

The purchaser is liable for taxes in the year of purchase, even if the taxes are billed prior to the purchase, *i.e.*, summer taxes in the year of foreclosure are not paid by the FGUs and must be paid by a purchaser who acquires at the July, September or November sale or the property will again be foreclosed for delinquent taxes.

Special assessments continue to be a problem. Special assessments predating the foreclosure judgment are cancelled by the judgment but some local units may attempt to place liens on the property after the entry of judgment for work done on the property (demolition, trash pickup, grass cutting) either prior to entry of judgment or while the property is held by the FGU between expiration of the redemption period and sale of the property.

Unsold Property

On December 1 the FGUs must send a list of unsold property to the clerk of the city, village, or township in which the property is located. **The city, village, or township has until December 30 to object in writing to the transfer of a given parcel of property or the property will be transferred by the FGU.** § 78m(6).

Retained Property

FGUs must retain unsold property that is not transferred to a city, village, or township. § 78m(7).

XIII. Title Documents

Certificate of forfeiture

Certificate of error, canceling certificate of forfeiture. Does not necessarily indicate forfeited taxes were paid.

Notice of judgment

Redemption certificate, cancels certificate of forfeiture and notice of judgment if recorded. A redemption certificate indicates the forfeited taxes were paid.

Transfer deed to state, county or local unit of government.

Sale deed

The act does not require recording any documents with respect to parcels retained by the FGU, leaving a gap in record title.

Summary

Legislature sought to address two problems.

- 1. The former process took to long.**
- 2. Local units of government or purchasers who acquired tax-reverted property from the DNR often did not get good title**, primarily due to inadequate title work or inadequate notice to former interestholders.

The legislature made specific findings regarding the continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes and specifically stated that its intent was to comply with the minimum requirements of due process for interestholders of tax delinquent property without creating any additional rights that may interfere with the foreclosure process.

The result of the legislation is:

- 1. The new procedure reduces the foreclosure process to just two years from the date the taxes are returned delinquent, a vast improvement.**
- 2. Whether property sold after foreclosure will be marketable or insurable is much more problematic. The success of this goal depends primarily on the constitutionality of the limitation of former interestholders to claims for**

money damages. If upheld by the courts, this limitation will almost certainly insure that title to property obtained following a tax foreclosure will be insurable. If the courts reject this limitation, at best, title will only be insurable on a case-by-case basis where it can be shown that notice was actually received by the interestholders or that all reasonable efforts were made at service of notice.