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Senate Bill 1137 (as introduced 9-22-20)  
Sponsor: Senator Jim Runestad  
Committee: Finance

Date Completed: 9-30-20

## **CONTENT**

**The bill would amend the General Property Tax Act to do the following:**

- **Require a \$175 fee added to each forfeited property to be used for the administration of tax foreclosures, sales, and remediations of properties.**
- **Require a certificate for a forfeited property to include an explanation of the right of a person with an interest in the property at the time a judgment of foreclosure of the property was effective to claim that person's interest in any remaining proceeds.**
- **Extend, from July 1, 2023, to July 1, 2025, certain payment reduction measures that apply to property for which delinquent property taxes remain unpaid located in a local unit of government that is participating in a payment reduction program.**
- **Require various notices to include an explanation of the right of a person with an interest in the property at the time a judgment of foreclosure was effective to claim that person's interest in the remaining proceeds.**
- **Establish a process by which a claimant could claim an interest in the applicable remaining proceeds from the sale or transfer of foreclosed property.**

This bill states that it "is curative and is intended to codify and give full effect to the right of a former holder of a legal interest in property to any remaining proceeds resulting from the foreclosure and sale of the property to satisfy delinquent real property taxes" under the General Property Tax Act, as recognized by the Michigan Supreme Court in *Rafaeli, LLC v Oakland County*, consistent with the legislative findings and intent under Section 78 of the General Property Tax Act.

### Use of Fees for Administration

Except as otherwise provided, on March 1 in each tax year, certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more is forfeited to the county treasurer for the total unpaid amount. If property is forfeited to a county treasurer, the county treasurer must add a \$175 fee to each parcel of property for which those delinquent taxes, interest, penalties, and fees remain unpaid. The bill would require the fee to be used by the foreclosing governmental unit and the fee added under Section 78d (which generally adds a \$15 fee on each parcel of property for which the delinquent taxes, interest, penalties, and fees remain unpaid) would have to be used by the county treasurer for the administration of Sections 78 to 79a, including costs associated with providing required notices and with the forfeiture, foreclosure, sale,

maintenance, repair, and remediation of property. Also, where the Act refers to "parcel of property" or "parcel" the bill would refer to "property".

#### Certificate for Forfeited Property

Within 45 days after property is forfeited, the county treasurer must record with the county register of deeds a certificate in a form determined by the Department of Treasury for each property forfeited, specifying that the property has been forfeited and not redeemed and that absolute title to the property will vest in the county treasurer on the March 31 immediately succeeding the entry of a judgment foreclosing the property or in a contested case 21 days after the entry of a judgment foreclosing the property.

Under the bill, the certificate would have to specify that absolute title to the property *and any equity associated with an interest in the property* would vest in the *foreclosing governmental unit* on one of those dates. The certificate also would have to include an explanation of the right of a person with an interest in the property at the time a judgment of foreclosure of the property was effective to claim that person's interest in any remaining proceeds pursuant to Section 78t (which the bill would add) after a sale or transfer of the property.

#### Extension of Payment Reduction Measures

Notwithstanding any provision of the Act or charter to the contrary, until July 1, 2023, certain payment reduction measures apply to property for which delinquent property taxes remain unpaid located in a local unit of government that is participating in a payment reduction program. The bill would extend this date to July 1, 2025.

By May 1 immediately succeeding the forfeiture of property to the county treasurer, the foreclosing governmental unit must initiate a search of records to identify the owners of a property interest in the property who are entitled to notice of the show cause hearing (i.e., the hearing to show cause why absolute title to the property should not vest in the foreclosing governmental unit) and the foreclosure hearing. The foreclosing governmental unit may enter into a contract with one or more authorized representatives to perform a title search or may request from one or more authorized representatives another title search product to identify the owners of a property interest in the property or to perform other functions required for the collection of delinquent taxes under the Act. Under the bill, other functions required for the collection of delinquent taxes would include the administration of Sections 78 to 79a. Also, where the Act refers to "owners of a property interest", the bill would refer to "persons with a property interest".

The Act requires the foreclosing governmental unit or its authorized representative or authorized agent to make a personal visit to each parcel of property forfeited to the county treasurer to ascertain whether the property is occupied. If the property appears to be occupied, the foreclosing governmental unit or its authorized representative must do certain things, including attempt to personally serve upon the person occupying the property notice of the show cause and foreclosure hearings. If the foreclosing governmental unit or its authorized representative is not able to meet with the occupant, the unit or its representative must place in a conspicuous location on the property a notice that explains that the property will be foreclosed unless forfeited unpaid delinquent taxes, interest, penalties, and fees owed on the property are paid and other information. The notice also would have to include an explanation of the right of a person with an interest in the property at the time of a judgment of foreclosure was effective to claim that person's interest in the remaining proceeds as described below after a sale or transfer of the property.

### Action for Proceeds of Foreclosed Property; Time Barred

If a judgment for foreclosure is entered and all existing recorded and unrecorded interests in a parcel of property are extinguished, the owner of an extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under the Act may not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages. Under the bill, if a judgment of foreclosure were entered and all existing interests were extinguished, the owner of any interest in that property could not bring an action, including an action for possession or recovery of the property or any interest in the property or of any proceeds from the sale or transfer of the property under the Act, or other violation of the Act or other State law, the State Constitution, or the US Constitution more than two years after the judgment of foreclosure was effective. The bill would eliminate language pertaining to jurisdiction of such an action.

### Right of First Refusal

Not later than the first Tuesday in July after the entry of judgment vesting absolute title to tax delinquent property in the foreclosing governmental unit, the State may exercise the right of first refusal to purchase the property. If the State elects not to do so, a city, village, or township may purchase for a public purpose foreclosed property within that city, village, or township by paying to the foreclosing unit the minimum bid. Under the bill, a local authority also could purchase the property. The bill would eliminate the "public purpose" language and specifies that the amount paid could be the minimum bid or the fair market value.

The Act specifies that if property purchase by a local government is later sold for an amount in excess of the minimum bid and pertinent costs, the excess amount must be returned to the delinquent tax property sales proceeds account for the year in which the property was purchased, or if the State is the foreclosing governmental unit, the Land Reutilization Fund. The bill would eliminate this provision.

### Subsequent Sale of Property

If property not previously sold is not transferred to the city, village, or township in which the property is located, the foreclosing governmental unit must retain possession of the property. If the unit does so, and the foreclosing governmental unit is the State, title to the property must vest in the Land Bank Fast Track Authority. Under the bill, if the foreclosing unit retained possession of the property and was not the State, the unit could do any of the following:

- Transfer the property to the Land Bank Fast Track Authority created under the Land Bank Fast Track Act with the consent of the Authority.
- Convey the property.
- Offer the property for sale, including a subsequent sale by auction.

### Notice Requirements; Claim an Interest in Remaining Proceeds

The bill would add Section 78t, which would allow a claimant to submit a notice of intention to claim an interest in the applicable remaining proceeds from the sale or transfer of property foreclosed after December 31, 2020, as described below. A claimant could file a claim for applicable remaining proceeds from the sale or transfer of property foreclosed before January 1, 2021, as described below.

For property foreclosed after December 31, 2020, by the July 1 immediately following the effective date of the foreclosure, a claimant seeking remaining proceeds for the property

would have to notify the foreclosing governmental unit using a form prescribed by the Department of Treasury. The Department would have to make the form available to the public on its website. A foreclosing governmental unit would have to make the form available to the public on its website if it maintained a website. Notice to a foreclosing governmental unit would have to be by personal service acknowledged by the foreclosing governmental unit or by certified mail, return receipt requested. The notice would have to be notarized and include all of the following:

- The name of the claimant.
- The telephone number of the claimant.
- The address at which the claimant wanted to receive service.
- The parcel identification number of the property, and, if available, the address of the property.
- An explanation of the claimant's interest in the property.
- A description of any other interest in the property immediately before the foreclosure held by others and known by the claimant, including a lien or a mortgage.
- A sworn statement or affirmation by the claimant that the information included in the notice was accurate.

By January 31 immediately succeeding the sale or transfer of the property, the foreclosing governmental unit would have to send by certified mail, return receipt requested, a notice to each claimant that notified the foreclosing governmental unit. The notice would have to include the following information:

- The parcel identification number and legal description of the property.
- The address for the property if an address were available for the property.
- The date on which the property was sold or transferred or, if the property was not sold or transferred, a statement indicating so.
- The minimum bid for the property as determined by the foreclosing governmental unit.
- The amount for which the property was sold or transferred.
- The amount of the sale commission for the property, which would have to be equal to 5.0% of the sale or transfer amount.
- The amount of any outstanding unpaid State, Federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure of the property.
- The total amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid and other fees incurred by the foreclosing governmental unit in foreclosing and selling the property exceeded the amount received by the foreclosing governmental unit from a sale or transfer of the property.
- The name and address provided by each claimant for the property.
- A statement that a claimant would have to file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective to claim any remaining proceeds payable to the claimant.

#### Foreclosure Proceeds Claims

For a claimant seeking remaining proceeds from the sale or transfer of a foreclosed property after December 31, 2020, after receiving a notice, the claimant could file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective to claim any portion of the remaining proceeds to which the claimant was entitled. A motion would have to be filed during the period beginning on February 1 immediately succeeding the date on which the property was sold or transferred and ending on the immediately succeeding May 15, and could not be filed after that date if notice were provided of the show cause hearing and the foreclosure hearing before those hearings.

At the end of the claim period, the foreclosing governmental unit would have to file with the circuit court proof of service of the notice and, for each property for which a claimant provided notice, a list of information substantially similar to that required for a notice to a claimant.

For a claimant seeking remaining proceeds from the sale or transfer of a property foreclosed before January 1, 2021, the claimant could file a motion with the circuit court in the same proceeding in which a judgment of foreclosure was effective to claim any portion of the remaining proceeds to which the claimant was entitled. The motion would have to be certified and include all of the following:

- The name of the claimant filing the motion.
- The telephone number of the claimant.
- The address at which the claimant wanted to receive service.
- The parcel identification number of the property, and, if available, the address of the property.
- An explanation of the claimant's interest in the property.
- A description of any other interest in the property, including a lien or a mortgage, immediately before the foreclosure held by any other person or entity and known by the claimant.
- A sworn statement or affirmation by the claimant that the information included in the motion was accurate.

At the end of the claim period or after receiving a motion, the foreclosing governmental unit would have to file with the circuit court proof of service of the notice and, for each property for which a claimant provided notice or filed a motion, a list of all of the following information:

- The parcel identification number and legal description of the property.
- The address for the property if an address were available for the property.
- The date on which the property was sold or transferred or, if the property were not sold or transferred, a statement indicating that fact.
- The minimum bid for the property as determined by the foreclosing governmental unit.
- The amount for which the property was sold or transferred.
- The amount of the sale commission for the property, which would have to be equal to 5% of the sale or transfer price.
- The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid and other fees incurred in foreclosing and selling the property exceeded the amount received by the foreclosing governmental unit from a sale or transfer of the property.
- The amount of any outstanding unpaid State, Federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure.
- The name and address provided by each claimant for the property.

A motion by a claimant under Section 78t would have to provide the specific basis for the claimant's asserted interest in the remaining proceeds, including the claimant's interest in the property immediately before its foreclosure and documentation evidencing that interest. The claimant also would have to affirm that the claimant did not transfer and was not otherwise divested of the claimant's interest in the property before the judgment of foreclosure were effective. If a claimant had a lien or other security interest in the property when the judgment of foreclosure was effective, the claimant would have to indicate the amount owed to the claimant under the lien or security interest and the priority of the claimant's lien or security interest. The motion would have to be verified and include a sworn statement or affirmation by the claimant of its accuracy. A claimant filing a motion would have to serve a copy of the motion on the foreclosing governmental unit.

After the foreclosing governmental unit responded to a claimant's motion, the court would have to set a hearing date and time for each property for which one or more claimants filed a motion and would have to notify each claimant and the foreclosing governmental unit of the hearing date at least 21 days before the hearing date. At the hearing, the court would have to determine the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective. The foreclosing governmental unit could appear at the hearing. The burden of proof of a claimant's interest in any remaining proceeds for a claimant would be on the claimant. The court would have to require payment to the foreclosing governmental unit of a sale commission equal to 5.0% of the amount for which the property was sold and would have to allocate any remaining proceeds based upon its determination and order that the foreclosing governmental unit paid applicable remaining proceeds to one or more claimants consistent with its determination. An order for the payment of remaining proceeds could not unjustly enrich a claimant at the expense of the public. The order would have to provide for the payment of any unpaid amounts not otherwise payable to another claimant owed by a claimant to satisfy a State, Federal, or local tax collecting unit tax lien on the property immediately preceding the effective date of the foreclosure if the lien had priority over the claimant's interest. The order also would have to bar any further claim by a claimant under the Act relating to the foreclosed property.

The foreclosing governmental unit would have to pay the amounts ordered by the court to the claimants and any other persons ordered by the court within 21 days of the order.

A right to claim remaining proceeds would not be transferable except by testate or intestate succession.

MCL 211.78g et al.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would extend by two years the sunset of a provision allowing the reduction of delinquent taxes owed on a forfeited property under certain circumstances. The extension would have a minor negative fiscal impact on the State and an indeterminate fiscal impact on local government. In any case, if that delinquent tax liability were reduced, revenue to the local government also would be reduced. However, if the taxes that were collected would not have been collected otherwise, the net fiscal impact for the local government would be positive. Any additional administrative costs for county treasurers or the State would be minimal and would be absorbed under existing appropriations. Since the provisions would be voluntary for local units of government, the total impact is impossible to estimate, and would depend on how exactly the provisions were used.

The provisions relating to the distribution of proceeds from the sale of foreclosed property would have no fiscal impact on the State and would have a negative fiscal impact on local government. Currently, a foreclosing governmental unit deposits the proceeds from the sale of foreclosed property in a restricted account that can be used for purposes specified in the statute, including to reimburse the delinquent tax revolving fund for taxes, interest, and fees on the property, as well as other costs related to the foreclosure, maintenance, and sale of foreclosed property. After all costs are paid, the remaining balance generally may be transferred to the general fund of the county. The bill would no longer allow the transfer to the general fund of the county and, instead would require that any remaining balance be used for costs incurred in connection with the foreclosed property, the defense of title actions, the administration of the Act, or for the payment of claims for remaining proceeds or other amounts ordered as described above. Since there is no statewide record of proceeds and minimum bids, there is no way to calculate the total revenue loss if the change were enacted.

The bill would add additional administrative costs to the Department of Treasury. These costs would include developing forms for notifications to foreclosing government units by claimants, and local unit notifications to claimants. These costs likely would be minimal and within current appropriations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.