

SENATE BILL No. 386

May 18, 2017, Introduced by Senators EMMONS and BRANDENBURG and referred to the Committee on Finance.

A bill to amend 1893 PA 206, entitled
"The general property tax act,"
by amending section 78k (MCL 211.78k), as amended by 2016 PA 433.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 78k. (1) If a petition for foreclosure is filed under
2 section 78h, not later than the date of the hearing, the
3 foreclosing governmental unit shall file with the clerk of the
4 circuit court proof of service of the notice of the show cause
5 hearing under section 78j, proof of service of the notice of the
6 foreclosure hearing under this section, and proof of the personal
7 visit to the property and publication under section 78i.

8 (2) A person claiming an interest in a parcel of property set
9 forth in the petition for foreclosure may contest the validity or
10 correctness of the forfeited unpaid delinquent taxes, interest,
11 penalties, and fees for 1 or more of the following reasons:

1 (a) No law authorizes the tax.

2 (b) The person appointed to decide whether a tax shall be
3 levied under a law of this state acted without jurisdiction, or did
4 not impose the tax in question.

5 (c) The property was exempt from the tax in question, or the
6 tax was not legally levied.

7 (d) The tax has been paid within the time limited by law for
8 payment or redemption.

9 (e) The tax was assessed fraudulently.

10 (f) The description of the property used in the assessment was
11 so indefinite or erroneous that the forfeiture was void.

12 (3) A person claiming an interest in a parcel of property set
13 forth in the petition for foreclosure who desires to contest that
14 petition shall file written objections with the clerk of the
15 circuit court and serve those objections on the foreclosing
16 governmental unit before the date of the hearing required under
17 this section.

18 (4) If the court determines that the owner of property subject
19 to foreclosure is a minor heir, is incompetent, is without means of
20 support, or is undergoing a substantial financial hardship, the
21 court may withhold that property from foreclosure for 1 year or may
22 enter an order extending the redemption period as the court
23 determines to be equitable. If the court withholds property from
24 foreclosure under this subsection, a taxing unit's lien for taxes
25 due is not prejudiced and that property shall be included in the
26 immediately succeeding year's tax foreclosure proceeding.

27 (5) The circuit court shall enter final judgment on a petition

1 for foreclosure filed under section 78h at any time after the
2 hearing under this section but not later than the March 30
3 immediately succeeding the hearing with the judgment effective on
4 the March 31 immediately succeeding the hearing for uncontested
5 cases or 10 days after the conclusion of the hearing for contested
6 cases. All redemption rights to the property expire on the March 31
7 immediately succeeding the entry of a judgment foreclosing the
8 property under this section, or in a contested case 21 days after
9 the entry of a judgment foreclosing the property under this
10 section. The circuit court's judgment shall specify all of the
11 following:

12 (a) The legal description and, if known, the street address of
13 the property foreclosed and the forfeited unpaid delinquent taxes,
14 interest, penalties, and fees due on each parcel of property.

15 (b) That fee simple title to property foreclosed by the
16 judgment will vest absolutely in the foreclosing governmental unit,
17 except as otherwise provided in subdivisions (c) and (e), without
18 any further rights of redemption, if all forfeited delinquent
19 taxes, interest, penalties, and fees are not paid on or before the
20 March 31 immediately succeeding the entry of a judgment foreclosing
21 the property under this section, or in a contested case within 21
22 days of the entry of a judgment foreclosing the property under this
23 section.

24 (c) That all liens against the property, including any lien
25 for unpaid taxes or special assessments, except future installments
26 of special assessments and liens recorded by this state or the
27 foreclosing governmental unit pursuant to the natural resources and

1 environmental protection act, 1994 PA 451, MCL 324.101 to
2 324.90106, are extinguished, if all forfeited delinquent taxes,
3 interest, penalties, and fees are not paid on or before the March
4 31 immediately succeeding the entry of a judgment foreclosing the
5 property under this section, or in a contested case within 21 days
6 of the entry of a judgment foreclosing the property under this
7 section.

8 (d) That, except as otherwise provided in subdivisions (c) and
9 (e), the foreclosing governmental unit has good and marketable fee
10 simple title to the property, if all forfeited delinquent taxes,
11 interest, penalties, and fees are not paid on or before the March
12 31 immediately succeeding the entry of a judgment foreclosing the
13 property under this section, or in a contested case within 21 days
14 of the entry of a judgment foreclosing the property under this
15 section.

16 (e) That all existing recorded and unrecorded interests in
17 that property are extinguished, except a visible or recorded
18 easement or right-of-way, private deed restrictions, interests of a
19 lessee or an assignee of an interest of a lessee under a recorded
20 oil or gas lease, interests in oil or gas in that property that are
21 owned by a person other than the owner of the surface that have
22 been preserved as provided in section 1(3) of 1963 PA 42, MCL
23 554.291, interests in property assessable as personal property
24 under section 8(g), or restrictions or other governmental interests
25 imposed pursuant to the natural resources and environmental
26 protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all
27 forfeited delinquent taxes, interest, penalties, and fees are not

1 paid on or before the March 31 immediately succeeding the entry of
2 a judgment foreclosing the property under this section, or in a
3 contested case within 21 days of the entry of a judgment
4 foreclosing the property under this section.

5 (f) A finding that all persons entitled to notice and an
6 opportunity to be heard have been provided that notice and
7 opportunity. A person shall be deemed to have been provided notice
8 and an opportunity to be heard if the foreclosing governmental unit
9 followed the procedures for provision of notice by mail, for visits
10 to forfeited property, and for publication under section 78i, or if
11 1 or more of the following apply:

12 (i) The person had constructive notice of the hearing under
13 this section by acquiring an interest in the property after the
14 date the notice of forfeiture is recorded under section 78g.

15 (ii) The person appeared at the hearing under this section or
16 filed written objections with the clerk of the circuit court under
17 subsection (3) before the hearing.

18 (iii) Before the hearing under this section, the person had
19 actual notice of the hearing.

20 (g) A judgment entered under this section is a final order
21 with respect to the property affected by the judgment and except as
22 provided in subsection (7) shall not be modified, stayed, or held
23 invalid after the March 31 immediately succeeding the entry of a
24 judgment foreclosing the property under this section, or for
25 contested cases 21 days after the entry of a judgment foreclosing
26 the property under this section, **EXCEPT THAT A PERSON CLAIMING TO**
27 **HAVE A PROPERTY INTEREST UNDER SECTION 78I IN PROPERTY FORECLOSED**

1 UNDER THIS SECTION MAY SEEK TO INVALIDATE THE FORECLOSURE ON ANY OF
2 THE GROUNDS DESCRIBED IN MCR 2.612, SO LONG AS THE PROPERTY HAS NOT
3 BEEN TRANSFERRED UNDER SECTION 78M TO A PERSON OTHER THAN THE
4 FORECLOSING GOVERNMENTAL UNIT.

5 (6) Except as otherwise provided in subsection (5)(c) and (e),
6 fee simple title to property set forth in a petition for
7 foreclosure filed under section 78h on which forfeited delinquent
8 taxes, interest, penalties, and fees are not paid on or before the
9 March 31 immediately succeeding the entry of a judgment foreclosing
10 the property under this section, or in a contested case within 21
11 days of the entry of a judgment foreclosing the property under this
12 section, shall vest absolutely in the foreclosing governmental
13 unit, and the foreclosing governmental unit shall have absolute
14 title to the property, including all interests in oil or gas in
15 that property except the interests of a lessee or an assignee of an
16 interest of a lessee under an oil or gas lease in effect as to that
17 property or any part of that property if the lease was recorded in
18 the office of the register of deeds in the county in which the
19 property is located before the date of filing the petition for
20 foreclosure under section 78h, and interests preserved as provided
21 in section 1(3) of 1963 PA 42, MCL 554.291. The foreclosing
22 governmental unit's title is not subject to any recorded or
23 unrecorded lien and shall not be stayed or held invalid except as
24 provided in subsection (5)(G), (7), or (9).

25 (7) The foreclosing governmental unit or a person claiming to
26 have a property interest under section 78i in property foreclosed
27 under this section may appeal the circuit court's order or the

1 circuit court's judgment foreclosing property to the court of
2 appeals. ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) (G), AN**
3 appeal under this subsection is limited to the record of the
4 proceedings in the circuit court under this section and shall not
5 be de novo. The circuit court's judgment foreclosing property shall
6 be stayed until the court of appeals has reversed, modified, or
7 affirmed that judgment. If an appeal under this subsection stays
8 the circuit court's judgment foreclosing property, the circuit
9 court's judgment is stayed only as to the property that is the
10 subject of that appeal and the circuit court's judgment foreclosing
11 other property that is not the subject of that appeal is not
12 stayed. To appeal the circuit court's judgment foreclosing
13 property, a person appealing the judgment shall pay to the county
14 treasurer the amount determined to be due to the county treasurer
15 under the judgment on or before the March 31 immediately succeeding
16 the entry of a judgment foreclosing the property under this
17 section, or in a contested case within 21 days of the entry of a
18 judgment foreclosing the property under this section, together with
19 a notice of appeal. If the circuit court's judgment foreclosing the
20 property is affirmed on appeal, the amount determined to be due
21 shall be refunded to the person who appealed the judgment. If the
22 circuit court's judgment foreclosing the property is reversed or
23 modified on appeal, the county treasurer shall refund the amount
24 determined to be due to the person who appealed the judgment, if
25 any, and retain the balance in accordance with the order of the
26 court of appeals.

27 (8) The foreclosing governmental unit shall record a notice of

1 judgment for each parcel of foreclosed property in the office of
2 the register of deeds for the county in which the foreclosed
3 property is located in a form prescribed by the department of
4 treasury.

5 (9) After the entry of a judgment foreclosing the property
6 under this section, if the property has not been transferred under
7 section 78m to a person other than the foreclosing governmental
8 unit, a foreclosing governmental unit ~~may~~**SHALL** cancel the
9 foreclosure by recording with the register of deeds for the county
10 in which the property is located a certificate of error in a form
11 prescribed by the department of treasury, if the foreclosing
12 governmental unit ~~discovers~~**OR A COURT OF COMPETENT JURISDICTION**
13 **DETERMINES** any of the following:

14 (a) The foreclosed property was not subject to taxation on the
15 date of the assessment of the unpaid taxes for which the property
16 was foreclosed.

17 (b) The description of the property used in the assessment of
18 the unpaid taxes for which the property was foreclosed was so
19 indefinite or erroneous that the forfeiture of the property was
20 void.

21 (c) The taxes for which the property was foreclosed had been
22 paid to the proper officer within the time provided under this act
23 for the payment of the taxes or the redemption of the property.

24 (d) A certificate, including a certificate issued under
25 section 135, or other written verification authorized by law was
26 issued by the proper officer within the time provided under this
27 act for the payment of the taxes for which the property was

1 foreclosed or for the redemption of the property.

2 (e) An owner of an interest in the property entitled to notice
3 under section 78i was not provided notice sufficient to satisfy the
4 minimum requirements of due process required under the state
5 constitution of 1963 and the ~~constitution~~**CONSTITUTION** of the
6 United States.

7 (f) A judgment of foreclosure was entered under this section
8 in violation of an order issued by a United States Bankruptcy
9 Court.

10 (10) A certificate of error submitted to the county register
11 of deeds for recording under subsection (9) need not be notarized
12 and may be authenticated by a digital signature of the foreclosing
13 governmental unit or by other electronic means.

14 Enacting section 1. This amendatory act is retroactive and is
15 effective January 1, 2015.