



2023
NACCTFO
ANNUAL
CONFERENCE



**A CASE STUDY IN BACK TO THE
FUTURE?**

MICHIGAN'S PROPERTY TAX SYSTEM:
*Where We Have Been, Where We Are, Where We
May Be Going, And Why It Matters Beyond
Michigan*

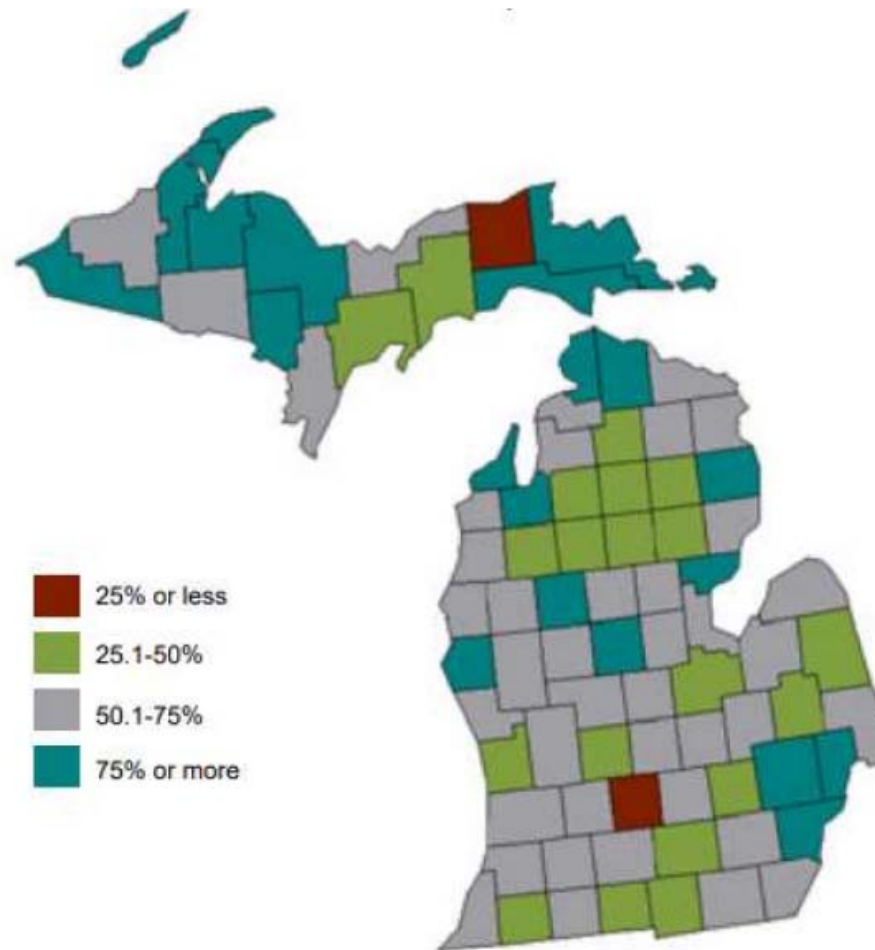
*Presented by Karen Coffman
Jackson County, Michigan Treasurer*

Michigan's Property Tax System

Michigan—like many other states—has historically placed a heavy burden on property taxes to fund local governments and their services.

In this graphic, the percentages in the key correlate with the percentage that EACH COUNTY relies upon PROPERTY TAXES for revenue.

(Michigan Department of Treasury)



Where We Have Been



- Over the past 40 years, Michigan voters adopted property tax limitations (in 1978 and 1994) “in response to the unpredictable variations and unconstrained growth of assessed values that were affecting tax bills.” *Citizens Research Council of Michigan, Memorandum 1169 (July 2022), Local Governments Respond to Property Tax Limitations By Raising Tax Rates.*
- For much of this same time period, Michigan’s delinquent property tax collection process was not working well.



Where We Have Been (cont.)

- Michigan’s tax lien delinquent tax collection process took “about six years to complete” and, as a result of this delay, many homes and businesses lingered in the tax revision process—left abandoned and hazardous.
- The longer the delinquent properties were left unaddressed, the more costly and burdensome the rehabilitation. Abandoned also properties contributed to crime, blight, and decay.
- The burden of these consequences fell on local governments, adjoining property owners, and taxpayers.

Where We Have Been (cont.)

As the Michigan Legislature at that time recognized, the system posed “**several “public policy”** problems, including:

(1) It was “**unfair to those who pay their taxes on time**”;

(2) The lack of tax revenue that was owed and budgeted “**thwart[ed] local government operations**”;

(3) The tax collection process was “**labor intensive and time-consuming**”;

(4) The back-taxed, often abandoned properties “**cause[d] urban blight**”; and

(5) The system “**hamstr[ung] land acquisition and redevelopment projects.**”

House Analysis of General Property Tax Act Amendment Bills Package, July 23, 1999.

Michigan General Property Tax Act - PA 206 of 1893

<http://legislature.mi.gov/doc.aspx?mcl-act-206-of-1893>

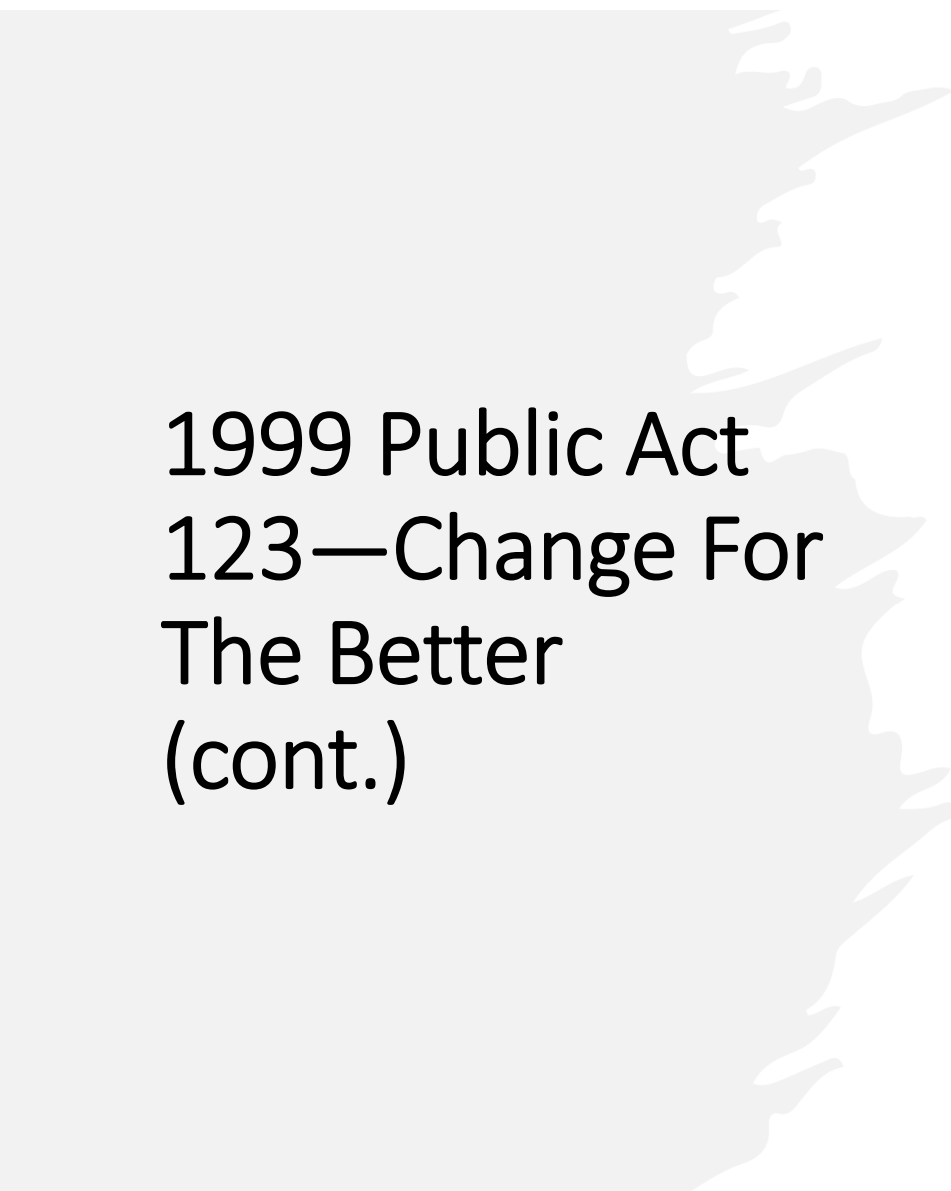


1999 Public Act 123 Change For The Better

- In 1999, the Michigan Legislature revised the process for collecting delinquent property taxes—Public Act 123—moving away from the tax lien system which was part of the Michigan General Property Tax Act (GPTA). Counties now had the option to opt-in and the elected County Treasurer could now act as the “Foreclosing Governmental Unit.”(FGU). The State of Michigan, represented by the Michigan Attorney General, also is a FGU.

<https://www.legislature.mi.gov/documents/1999-2000/publicact/htm/1999-PA-0123.htm>

- The new process, set forth largely in MCL 211.78 *et seq.*, is an ***in rem*, judicial foreclosure system**, which includes safeguards to assist property owners and prevent foreclosure.
- Numerous property tax exemptions apply to those are impoverished, disabled, or mentally incapacitated.
- Multiple notices—both of delinquency and potential foreclosure—must be provided to those with an interest in the tax delinquent property.



1999 Public Act 123—Change For The Better (cont.)

- The PA 123 tax foreclosure process also allows for those potentially subject to foreclosure to offer objections to the foreclosure, which are to be addressed by the Circuit Court at a public hearing.
- Show Cause Hearing in January and Judicial Foreclosure Hearing in February
- If property is ultimately foreclosed and not redeemed (by March 31) the property transfers to the FGU and then dispersed in several possible ways, including:
 - (1) Right of First Refusal;
 - (2) Public Auction; or
 - (3) State or County Land Bank Authority.

1999 Public Act 123— Change For The Better (cont.)

Under PA 123, the FGU was statutorily obligated to keep all amounts received from tax foreclosure auctions and deposit the collected funds above the taxes owed into a Delinquent Tax Revolving Fund (DTRF), via a statutory waterfall.

If the FGU declared a surplus in the DTRF, the surplus could be transferred into a County's General Fund.



PA 123

A Resounding Success

- Significantly benefitted property owners, who were delinquent in their property taxes.
- Also, reduced blight and improved notice to taxpayers (Due Process).
- Other benefits
 - Streamlined process for FGU
 - Law created more equitable system
 - Foreclosure Prevention



Michigan Becomes The Model

Several states amended their tax foreclosure statutes—using Michigan as the model—to streamline their tax foreclosure process, combat blight, return properties to productive use, and back on the tax rolls.



Constitutional Challenges To Michigan's Tax Foreclosure Statute



Notwithstanding these improvements, and the FGUs' strict compliance with Act 123's requirements, beginning in 2014 delinquent taxpayers alleged that the requirement directing FGUs to retain all sale proceeds—and use the proceeds to pay unpaid taxes, maintain tax-foreclosed property that cannot be sold, and for costs associated with the foreclosure process—violates the takings clause.



For years, these cases ran on parallel tracks in state and federal courts. The courts initially rejected these challenges, both on jurisdictional and constitutional grounds. See *Rafaeli, LLC v. Oakland Cty.*, (Mich. Ct. App. Oct. 24, 2017); See also *Wayside Church v. Van Buren Cty.* (W.D. Mich/6th Cir)



Takings claims had also been rejected under similar statutes codified in other states. See *Automatic Art, L.L.C. v. Maricopa Cty.* (D. Ariz. Mar. 18, 2010); *Reinmiller V. Marion Cty.* (D. Or. Oct. 16, 2006).



Michigan Association
OF **County Treasurers**

M.A.C.T. Activated

- **May 2018** – Freed v Gratiot County
- Ellison and Outside Legal Counsel PLC submitted Freedom of Information Act (FOIA) requests to all county treasurers in **May** and **August of 2018 inquiring about surplus proceeds**
- **December 2018** – Class Action lawsuits filed by Ellison naming all counties by its board of commissioners and all county treasurers
- MACT made decision to begin work consistently on these legislative/legal issues, contracted legal counsel to help navigate the legislative process – “boots on the ground”
- Up until this point, MACT was in a more reactive position.
- That all changed moving through 2018 and into 2019.



Michigan Association OF County Treasurers

- Strong leadership of MACT
 - trying to herd cats - challenges
 - 83 ways
 - committee structure in the association
- Communication utilizing MACT list serve – with caution
- Media was inquiring, needed strong, simple message of all the work that we do for Foreclosure PREVENTION
- Began working with professional Public Relations contractor and proactively creating Op Ed pieces to send to media to share our side of the story – Ottawa, Newaygo, Eaton, Newaygo*, Michigan Association of Counties (June 2018), Central Michigan Radio, Detroit News Oakland



Michigan Association OF County Treasurers

2019

- All throughout 2019 MACT was meeting (conference calls) at least twice a month, sometimes more
- MACT actively engaging other state wide associations to inform and educate that this is not just a county treasurer issue
- MACT and Legislative team selected the best legislators to begin work - Senator Runstead (July); education, draft language, stops and starts, testifying to Senate, ...
- Oral arguments for Rafaeli (November)
- More lawsuits filed ...





Michigan Association
OF County Treasurers

2020

**** MARCH ** – COVID**

- **July 17, 2020 – Rafaeli LLC v Oakland County
Michigan Supreme Court Opinion**
- **Continued work on getting a positive message out**
 - **October – County Treasurers Support Bills to Update Tax Foreclosure Legislation**
 - **December - County Treasurers Support Bills to Update Tax Foreclosure Legislation**

Rafaeli v. Oakland County – The Michigan Supreme Court Steps In

That changed when, in ***Rafaeli***, the Michigan Supreme Court held that Michigan’s Takings Clause is violated when FGUs sell tax-foreclosed property at auction and retain more than the taxes owed—as the GPTA required. (July 17, 2020)

Rafaeli held as a matter of Michigan property law that those with property interests in foreclosed property have a “right to collect the surplus proceeds that are realized from the tax-foreclosure sale,” and that a county’s “retention of those surplus proceeds under the GPTA amounts to a taking of a vested property right requiring just compensation” **under Michigan’s Constitution.**



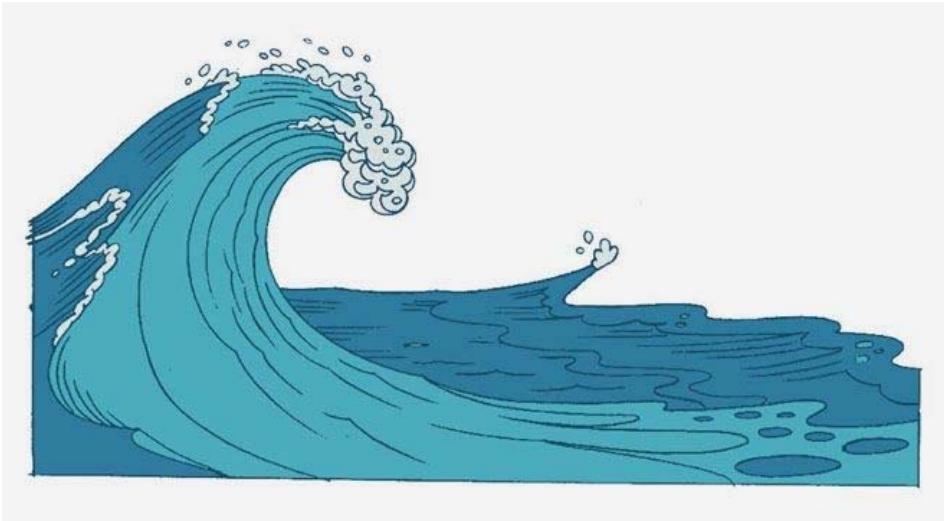


The Michigan Supreme Court Steps In (cont.)

- The Michigan Supreme Court reasoned that, “when a property is taken to satisfy an unpaid tax debt, just compensation requires the [FGU] to return any proceeds from the tax-foreclosure sale in excess of the delinquent taxes, interest, penalties, and fees reasonably related to the foreclosure and sale of the property—***no more, no less.***” *Rafaeli* (emphasis added).
- The Court further clarified a number of issues with surplus proceeds claims under the GPTA, and rejected fair market value as a measure of compensation for claimants.

Wave Of State And Federal Court Lawsuits

The United States Sixth Circuit Court of Appeals notes “deluge of litigation” in Michigan state and federal courts regarding Michigan’s tax foreclosure system – based upon *Rafaeli*.



The Michigan Legislature Comes to The Rescue

The Michigan Supreme Court in *Rafaeli* stated that:

“[n]othing in [its] holding . . . prevents the Legislature from enacting legislation that would require former property owners to avail themselves of certain procedural avenues to recover the surplus proceeds.” *Id.* at 460 n.108.

During the depths of COVID restrictions and a little over a month after the 2020 elections...





Michigan Association OF County Treasurers

December 2020

- MACT - All hands on deck – every treasurer contacted their legislators (phone, email, text, in person) as the bills were moving through the House
 - Yes, even in lame duck session,
 - Yes, mere days before the close of the 100th Legislative session
 - And Yes, even 10 days before Christmas!
- All of our work, two years later, both of our bills passed December 17th and the Governor signed bills into law December 22nd

The Michigan Legislature Comes to The Rescue (cont.)

- The Michigan Legislature responded to *Rafaeli* by amending the GPTA and creating a mechanism for former interest holders in tax foreclosed property to recover the surplus proceeds. (With MACT collaboration)
- In December 2020, the Legislature unanimously adopted 2020 Public Acts 255 and 256, which provide a process for former interest holders in tax foreclosed to claim an interest in sale proceeds in excess of the minimum bid and other foreclosure-related fees.

<https://www.legislature.mi.gov/documents/2019-2020/publicact/htm/2020-PA-0255.htm>

<https://www.legislature.mi.gov/documents/2019-2020/publicact/htm/2020-PA-0256.htm>





The Michigan Legislature Comes to The Rescue (cont.)

The new process applies to foreclosures occurring **after** *Rafaeli*. Like *Rafaeli*, Acts 255 and 256 allow former interest holders of foreclosed property to recover excess sale proceeds, but **not** fair market value. Mich. Comp. Laws § 211.78t.

The Michigan Legislature Comes to The Rescue (cont.)

- Under Michigan law, any person with a “legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property,” may submit a **claim** for excess sales proceeds, including but not limited to former lienholders, mortgagors, heirs, along with the person listed on the deed for the tax foreclosed property. Mich. Comp. Laws § 211.78t(12).

<http://legislature.mi.gov/doc.aspx?mcl-211-78t>



Michigan Association OF County Treasurers

2021

- MACT work now begins on how to implement PA 255
 - Legislative committee work continues – zoom calls 2x month
 - Title Check – contracted partner with most counties in the state – works with MACT to put in place the new requirements; training
 - BS&A – contracted partner with most counties in the state – works with MACT to make changes in the tax software to implement the new requirements; training.
 - We adapted to the new law, continued communication to ensure we have uniformity in our application of the law

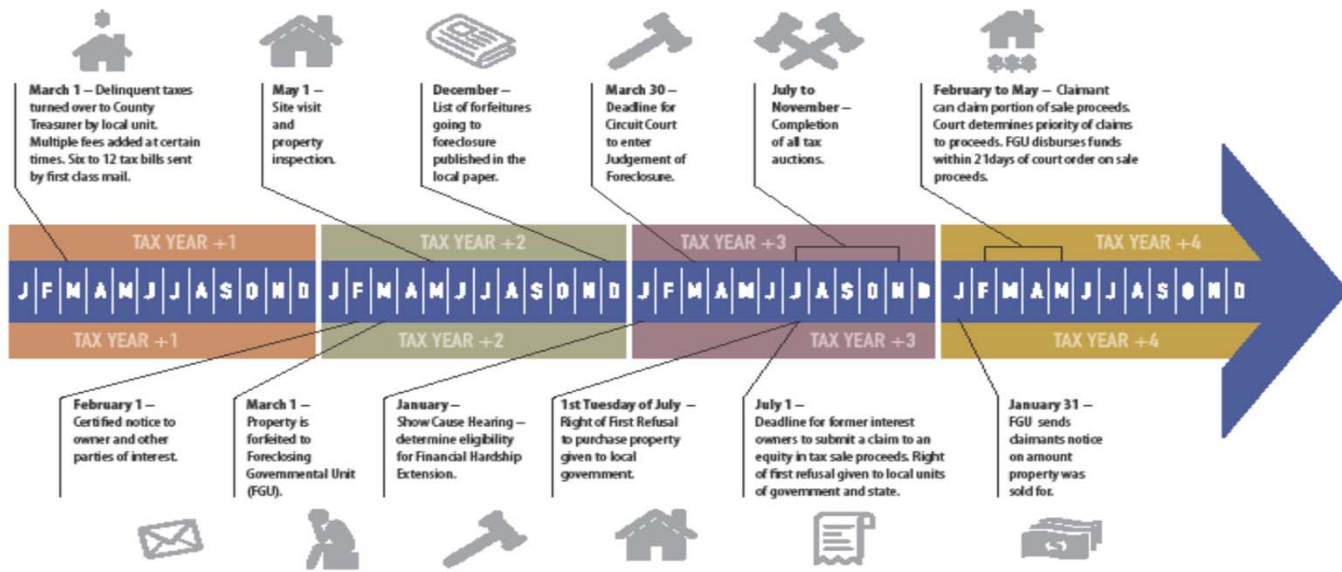
Continued work on getting a positive message out

- **January – What Property Owners Can Expect From Revised Tax Foreclosure**



Michigan Association OF County Treasurers

FORECLOSURE TIMELINE





Michigan Association OF County Treasurers

FORECLOSURE TIMELINE

TAX YEAR +1			TAX YEAR +3		
Date	Statute	Action	Date	Statute	Action
Mar 1	MCL 211.78a(2)	Unpaid taxes levied in the immediately preceding year are returned to the County Treasurer as delinquent for collection.	Jan	MCL 211.78h(2)	FGU files amended petition removing redeemed parcels.
Mar 1	MCL 211.78a(3)	4% admin fee and interest computed at a noncompounded rate of 1% per month added to delinquent parcel.	Jan-Feb	MCL 211.78k(1)	Not later than the hearing date, FGU files proof of certified mail service of show-cause and foreclosure hearings, proof of personal visit to property, and proof of publication.
By Jun 1	MCL 211.78b	Foreclosing Governmental Unit (FGU) sends notice by first-class mail to taxpayer or owner.	7 + days before judicial hearing	MCL 211.78j(1)	FGU holds administrative show-cause hearing.
By Sep 1	MCL 211.78c	FGU sends second notice by first-class mail to taxpayer or owner.	Jan 30-Feb 28	MCL 211.78h(5), .78k	Judicial foreclosure hearing held.
Oct 1	MCL 211.78d	FGU adds a \$15 fee.	Mar 30	MCL 211.78k(5)	Deadline for circuit court to enter judgment of foreclosure.
Nov 1	MCL 211.78e(1)	FGU prepares a list of all property subject to forfeiture for delinquent taxes.	Mar 31	MCL 211.78k	Effective date of judgment. Last day to redeem foreclosed property. Title vests in FGU.
Dec 1	MCL 211.78e(2)	FGU updates taxpayer address based on current local unit records.	Jul 1	MCL 211.78t(2)	Deadline for former interest holders to submit to the FGU a notice of intention to claim an interest in sale proceeds using a form available from the FGU or the Department of Treasury.
			Jul (1st Tues.)	MCL 211.78m(1)	Deadline to exercise gov. agency first right of refusal; but could take place before this date.
			Jul (3rd Tues.)	MCL 211.78m(2), (5)	First opportunity to offer property at auction. One or more auctions may be held, the last of which has no or low minimum bid.
			Jul-Nov	MCL 211.78m(3)	Second governmental right of refusal purchase opportunity after each public auction.
			Nov (1st Tues.)	MCL 211.78m(2)	Deadline for completion of all auctions.
			Dec 1	MCL 211.78m(6)	Deadline for FGU to transfer list of unsold parcels to the city, township, or village clerk.
			Dec 30	MCL 211.78m(6)	Deadline for city, township, or village to reject property transfer. Date title transfers to local unit or, in case of objection, to FGU or the Land Bank Fast Track Authority if state is FGU.
			Dec 31	MCL 211.78m(11)	All taxes for the year of foreclosure are canceled for parcels purchased by state, city, village, township, county, or city or county land bank before the first auction; transferred to the local unit or Land Bank Fast Track Authority after not selling at auction; or retained by FGU.
			Dec 31	MCL 211.78m(12)	All liens for costs of demolition, safety repairs, debris removal, or sewer or water charges due on the property as of the December 31 immediately succeeding the sale, transfer, or retention of the property are canceled.
TAX YEAR +2			TAX YEAR +4		
Date	Statute	Action	Date	Statute	Action
Feb 1	MCL 211.78f(1), (2)	FGU sends notice by certified mail to taxpayer and, if different, the owner, AND by first-class mail to occupant.	Jan 31	MCL 211.78t(3)	Deadline for FGU to send each claimant a notice that includes the amount for which the property was sold; the amount of any outstanding unpaid taxes, including federal, state, and local tax liens; and the total amount of any remaining proceeds.
Feb 1	MCL 211.78f(3), (4)	FGU may publish notices in a newspaper.	Feb 1-May 15	MCL 211.78t(4)	Period during which a claimant may file a motion with the circuit court to claim any portion of the remaining proceeds to which the claimant is entitled.
Mar 1	MCL 211.78g(1)	Delinquent property forfeits to the treasurer.	Feb 1-May 15	MCL 211.78t(5)	FGU must provide info to court, including all claimants for a parcel, minimum bid, sale amount, and taxes owed.
Mar 1	MCL 211.78g(1)	FGU adds \$175 title fee to the parcel.	After FGU responds to claimant's motion	MCL 211.78t(9)	Circuit court hearing to determine relative priority of claims to sale proceeds and the value of each claim of interest.
Mar 1	MCL 211.78g(3) (b)	Redemption requires additional interest computed at a noncompounded rate of 1/2% per month from March 1 preceding forfeiture.	Within 21 days after court order	MCL 211.78t(10)	FGU disburses the funds within 21 days after entry of an order directing disposition of the sale proceeds.
Mar 1	MCL 211.78g(3) (c)	Redemption requires payment of all recording fees and all fees for service of process or notice.			
Apr 15	MCL 211.78g(2)	Deadline for FGU to record a certificate of forfeiture.			
May 1	MCL 211.78i(1), (3)	FGU initiates title search and personal visit to forfeited property.			
Jun 15	MCL 211.78h(1)	Deadline for FGU to file petition for foreclosure with listing of forfeit with the circuit court.			
Dec-Jan	MCL 211.78i(2)	FGU sends certified mail notice of show-cause hearing (scheduled not less than 7 days before judicial hearing), no less than 30 days before the show-cause hearing, to owners of interest.			
Dec-Jan	MCL 211.78i(5)	FGU publishes notice listing pending foreclosures.			



Michigan Association OF County Treasurers

2022

Well we thought we had it fixed ...

- More new lawsuits, lots and lots of back and forth with existing lawsuits, moving to and from all levels of the courts system
- Back into the reactive position, watching and waiting as things move through the courts, filing briefs etc. when and where needed
- Lots of court decisions coming out – most impacting us not in a positive way – lots of frustration, feeling that we haven't been heard or that only a small part of the issue is addressed but I digress

The Michigan Legislature Comes to The Rescue (cont.)

- Since *Rafaeli*, Michigan courts have applied its holding and further refined the relief available to surplus proceeds for claimants not subject to the Act 256 claims procedure. In *Proctor v. Saginaw Cty. Bd. of Comm'rs*, 340 Mich. App. 1; ___ N.W.2d ___ (Mich. Ct. App. 2022), *application pending*, the Michigan Court of Appeals rebuffed attempts to gain additional relief beyond that allowed under *Rafaeli* by adding federal claims.
- The court “disagree[d] with plaintiffs’ contention that they are entitled to any recovery beyond the surplus proceeds from the tax foreclosure sale,” but “agree[d] that plaintiffs are entitled to post-tax sale interest on such surplus proceeds.” *Id.* at 27. The court observed that state law establishes the extent of a property interest, and the Fifth Amendment merely protects that interest, if any. *Id.* at 29.

The Michigan Legislature Comes to The Rescue (cont.)

- On September 22, 2022, the Michigan Court of Appeals held that “***Rafaeli* did not announce a new rule of law but returned the law to that which was recognized at common law and by the ratifiers of the Michigan Constitution of 1963, see *Rafaeli* 505 Mich at 472, and should be given full retroactive effect.” *Schafer v. Kent Cty.*, 2022 Mich. App. LEXIS 5692, at *9 (Mich. Ct. App. Sept. 22, 2022).**
- The Michigan Supreme Court has granted leave to Kent County in *Schafer* and is expected to address issues relating to Michigan’s tax foreclosure system sometime in late 2023 to 2024.

Back In the “Time-Machine” – *Hall v. Oakland County*

On October 13, 2022, the Sixth Circuit issued its decision in *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022) (cert. petition denied). *Hall* recognized the predominance of state law issues that permeate these matters, and ordered the district court to abstain from ruling on the plaintiff’s takings claim under the Michigan Constitution.

The Sixth Circuit “vacate[d] the district court’s dismissal of [plaintiffs’] takings claim under the Michigan Constitution . . . , and remand[ed] that claim with instructions for the district court to abstain from adjudicating it” because “[w]hether the facts alleged here violate the Michigan Constitution’s Takings Clause is an issue for the Michigan courts to decide.”



Back In the “Time-Machine” – *Hall v. Oakland* (cont.)

Nevertheless, *Hall* concluded that Oakland County had taken Ms. Hall’s “equitable title” to her home at the time the property was foreclosed upon and title transferred to the FGU—which stated a claim for violation of the *federal* Takings Clause. 51 F.4th 196-97.

The Sixth Circuit also relied upon property rights purportedly set forth in the ***Magna Carta***.



"You can read, right? — I want you to check this thing for loopholes."

Michigan Is Not Alone – The U.S. Supreme Court: *Tyler v. Hennepin County*



- In January, the United States Supreme Court granted cert in case challenging Minnesota’s tax foreclosure system under the federal Fifth (Takings) and Eighth Amendments (Excessive Fines).
- The Michigan Association of Counties, along with the Michigan Association of County Treasurers, submitted an **amicus brief** noting Michigan’s past and present tax foreclosure system, the *Rafaelli* and *Hall* decisions, the Michigan Legislature’s response, and the impact of an adverse holding by the Court on state and local governments public finance.

Hennepin County: Where do we go from here?

On May 25, 2023, the Supreme Court issued its decision in *Hennepin County Case*:

- The retention of surplus proceeds is a Taking, without just compensation, and violates the Fifth Amendment unless....
 - There is a statutory mechanism for a former interest holder in tax foreclosed property to claim surplus proceeds. Michigan's updated statutory process – creating the exclusive mechanism to obtain surplus proceeds may be a model for others.
- What about abandoned property? It may also be an exception. See PA 132 1999. <http://legislature.mi.gov/doc.aspx?mcl-Act-132-of-1999>
- Not a violation of the Eighth Amendment, but



Michigan Association OF County Treasurers

The things we've witnessed and learned:

- I am very proud of the commitment, time, effort, tenacity, expertise, collaboration, and education that all of my peer treasurers have shared with the association throughout this experience
- Partnerships are vital and collaboration is necessary
- Political strategy, building political capital, political prowess, and being able to be politically agile and adept (if that's even possible?)
- Communication
- Having a strong, consistent, positive message; Public relations are important
- Education is crucial
- And, yes there are many 'costs' that we have learned in this process – legal expenses, PR expenses

Questions?



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