

SENATE BILL No. 1409

September 5, 2006, Introduced by Senators BRATER, BIRKHOLZ and JELINEK and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1893 PA 206, entitled
"The general property tax act,"
by amending sections 78i and 78k (MCL 211.78i and 211.78k), as
amended by 2003 PA 263.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 78i. (1) Not later than May 1 immediately succeeding the
2 forfeiture of property to the county treasurer under section 78g,
3 the foreclosing governmental unit shall initiate a search of
4 records identified in subsection (6) to identify the owners of a
5 property interest in the property who are entitled to notice under
6 this section of the show cause hearing under section 78j and the
7 foreclosure hearing under section 78k. The foreclosing governmental
8 unit may enter into a contract with 1 or more authorized
9 representatives to perform a title search or may request from 1 or

1 more authorized representatives another title search product to
2 identify the owners of a property interest in the property as
3 required under this subsection or to perform other functions
4 required for the collection of delinquent taxes under this act.

5 (2) After conducting the search of records under subsection
6 (1), the foreclosing governmental unit or its authorized
7 representative shall determine the address reasonably calculated to
8 apprise those owners of a property interest of the show cause
9 hearing under section 78j and the foreclosure hearing under section
10 78k and shall send notice of the show cause hearing under section
11 78j and the foreclosure hearing under section 78k to those owners,
12 **AND** to a person entitled to notice of the return of delinquent
13 taxes under section 78a(4), ~~and to a person to whom a tax deed for~~
14 ~~property returned for delinquent taxes was issued pursuant to~~
15 ~~section 72 as determined by the records of the state treasurer or~~
16 ~~county treasurer as applicable,~~ by certified mail, return receipt
17 requested, not less than 30 days before the show cause hearing. If
18 after conducting the search of records under subsection (1) the
19 foreclosing governmental unit is unable to determine an address
20 reasonably calculated to inform a person with an interest in a
21 forfeited property, or if the foreclosing governmental unit
22 discovers a deficiency in notice under subsection (4), the
23 following shall be considered reasonable steps by the foreclosing
24 governmental unit or its authorized representative to ascertain the
25 address of a person entitled to notice under this section or to
26 ascertain an address necessary to correct the deficiency in notice
27 under subsection (4):

1 (a) For an individual, a search of the records of the probate
2 court for the county in which the property is located.

3 (b) For an individual, a search of the qualified voter file
4 established under section 509o of the Michigan election law, 1954
5 PA 116, MCL 168.509o, which is authorized by this subdivision.

6 (c) For a partnership, a search of partnership records filed
7 with the county clerk.

8 (d) For a business entity other than a partnership, a search
9 of business entity records filed with the department of labor and
10 economic growth.

11 (3) The foreclosing governmental unit or its authorized
12 representative or authorized agent shall make a personal visit to
13 each parcel of property forfeited to the county treasurer under
14 section 78g to ascertain whether or not the property is occupied.
15 If the property appears to be occupied, the foreclosing
16 governmental unit or its authorized representative shall do all of
17 the following:

18 (a) Attempt to personally serve upon a person occupying the
19 property notice of the show cause hearing under section 78j and the
20 foreclosure hearing under section 78k.

21 (b) If a person occupying the property is personally served,
22 orally inform the occupant that the property will be foreclosed and
23 the occupants will be required to vacate unless all forfeited
24 unpaid delinquent taxes, interest, penalties, and fees are paid, of
25 the time within which all forfeited unpaid delinquent taxes,
26 interest, penalties, and fees must be paid, and of agencies or
27 other resources that may be available to assist the owner to avoid

1 loss of the property.

2 (c) If the occupant appears to lack the ability to understand
3 the advice given, notify the ~~family independence agency~~
4 **DEPARTMENT OF HUMAN SERVICES** or provide the occupant with the names
5 and telephone numbers of the agencies that may be able to assist
6 the occupant.

7 (d) If the foreclosing governmental unit or its authorized
8 representative is not able to personally meet with the occupant,
9 the foreclosing governmental unit or its authorized representative
10 shall place the notice in a conspicuous manner on the property and
11 shall also place in a conspicuous manner on the property a notice
12 that explains, in plain English, that the property will be
13 foreclosed unless forfeited unpaid delinquent taxes, interest,
14 penalties, and fees are paid, the time within which forfeited
15 unpaid delinquent taxes, interest, penalties, and fees must be
16 paid, and the names, addresses, and telephone numbers of agencies
17 or other resources that may be available to assist the occupant to
18 avoid loss of the property. If this state is the foreclosing
19 governmental unit within a county, the department of ~~natural~~
20 ~~resources~~ **TREASURY** shall perform the personal visit to each parcel
21 of property under this subsection on behalf of this state.

22 (4) If the foreclosing governmental unit or its authorized
23 representative discovers any deficiency in the provision of notice,
24 the foreclosing governmental unit shall take reasonable steps in
25 good faith to correct that deficiency not later than 30 days before
26 the show cause hearing under section 78j, if possible.

27 (5) If the foreclosing governmental unit or its authorized

1 representative is unable to ascertain the address reasonably
2 calculated to apprise the owners of a property interest entitled to
3 notice under this section, or is unable to notify the owner of a
4 property interest under subsection (2), the notice shall be made by
5 publication. A notice shall be published for 3 successive weeks,
6 once each week, in a newspaper published and circulated in the
7 county in which the property is located, if there is one. If no
8 paper is published in that county, publication shall be made in a
9 newspaper published and circulated in an adjoining county. This
10 publication shall be instead of notice under subsection (2).

11 (6) The owner of a property interest is entitled to notice
12 under this section of the show cause hearing under section 78j and
13 the foreclosure hearing under section 78k if that owner's interest
14 was identifiable by reference to any of the following sources
15 before the date that the county treasurer records the certificate
16 required under section 78g(2):

17 (a) Land title records in the office of the county register of
18 deeds.

19 (b) Tax records in the office of the county treasurer.

20 (c) Tax records in the office of the local assessor.

21 (d) Tax records in the office of the local treasurer.

22 (7) The notice required under subsections (2) and (3) shall
23 include all of the following:

24 (a) The date on which the property was forfeited to the county
25 treasurer.

26 (b) A statement that the person notified may lose his or her
27 interest in the property as a result of the foreclosure proceeding

1 under section 78k.

2 (c) A legal description or parcel number of the property and
3 the street address of the property, if available.

4 (d) The person to whom the notice is addressed.

5 (e) The total taxes, interest, penalties, and fees due on the
6 property.

7 (f) The date and time of the show cause hearing under section
8 78j.

9 (g) The date and time of the hearing on the petition for
10 foreclosure under section 78k, and a statement that unless the
11 forfeited unpaid delinquent taxes, interest, penalties, and fees
12 are paid on or before the March 31 immediately succeeding the entry
13 of a judgment foreclosing the property under section 78k, or in a
14 contested case within 21 days of the entry of a judgment
15 foreclosing the property under section 78k, the title to the
16 property shall vest absolutely in the foreclosing governmental unit

17 **AND THAT ALL EXISTING INTERESTS IN OIL OR GAS IN THAT PROPERTY**
18 **SHALL BE EXTINGUISHED EXCEPT THE FOLLOWING:**

19 **(i) THE INTERESTS OF A LESSEE OR AN ASSIGNEE OF A LESSEE UNDER**
20 **AN OIL OR GAS LEASE IN EFFECT AS TO THAT PROPERTY OR ANY PART OF**
21 **THAT PROPERTY IF THE LEASE WAS RECORDED IN THE OFFICE OF THE**
22 **REGISTER OF DEEDS IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED**
23 **BEFORE THE DATE OF FILING THE PETITION FOR FORECLOSURE UNDER**
24 **SECTION 78H.**

25 **(ii) INTERESTS PRESERVED AS PROVIDED IN SECTION 1(3) OF 1963 PA**
26 **42, MCL 554.291.**

27 (h) An explanation of the person's rights of redemption and

1 notice that the rights of redemption will expire on the March 31
2 immediately succeeding the entry of a judgment foreclosing the
3 property under section 78k, or in a contested case 21 days after
4 the entry of a judgment foreclosing the property under section 78k.

5 (8) The published notice required under subsection (5) shall
6 include all of the following:

7 (a) A legal description or parcel number of each property.

8 (b) The street address of each property, if available.

9 (c) The name of any person or entity entitled to notice under
10 this section who has not been notified under subsection (2) or (3).

11 (d) The date and time of the show cause hearing under section
12 78j.

13 (e) The date and time of the hearing on the petition for
14 foreclosure under section 78k.

15 (f) A statement that unless all forfeited unpaid delinquent
16 taxes, interest, penalties, and fees are paid on or before the
17 March 31 immediately succeeding the entry of a judgment foreclosing
18 the property under section 78k, or in a contested case within 21
19 days of the entry of a judgment foreclosing the property under
20 section 78k, the title to the property shall vest absolutely in the
21 foreclosing governmental unit **AND THAT ALL EXISTING INTERESTS IN**
22 **OIL OR GAS IN THAT PROPERTY SHALL BE EXTINGUISHED EXCEPT THE**
23 **FOLLOWING:**

24 (i) **THE INTERESTS OF A LESSEE OR AN ASSIGNEE OF A LESSEE UNDER**
25 **AN OIL OR GAS LEASE IN EFFECT AS TO THAT PROPERTY OR ANY PART OF**
26 **THAT PROPERTY IF THE LEASE WAS RECORDED IN THE OFFICE OF THE**
27 **REGISTER OF DEEDS IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED**

1 BEFORE THE DATE OF FILING THE PETITION FOR FORECLOSURE UNDER
2 SECTION 78H.

3 (ii) INTERESTS PRESERVED AS PROVIDED IN SECTION 1(3) OF 1963 PA
4 42, MCL 554.291.

5 (g) A statement that a person with an interest in the property
6 may lose his or her interest in the property as a result of the
7 foreclosure proceeding under section 78k AND THAT ALL EXISTING
8 INTERESTS IN OIL OR GAS IN THAT PROPERTY SHALL BE EXTINGUISHED
9 EXCEPT THE FOLLOWING:

10 (i) THE INTERESTS OF A LESSEE OR AN ASSIGNEE OF A LESSEE UNDER
11 AN OIL OR GAS LEASE IN EFFECT AS TO THAT PROPERTY OR ANY PART OF
12 THAT PROPERTY IF THE LEASE WAS RECORDED IN THE OFFICE OF THE
13 REGISTER OF DEEDS IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED
14 BEFORE THE DATE OF FILING THE PETITION FOR FORECLOSURE UNDER
15 SECTION 78H.

16 (ii) INTERESTS PRESERVED AS PROVIDED IN SECTION 1(3) OF 1963 PA
17 42, MCL 554.291.

18 (9) The owner of a property interest who has been properly
19 served with a notice of the show cause hearing under section 78j
20 and the foreclosure hearing under section 78k and who failed to
21 redeem the property as provided under this act shall not assert any
22 of the following:

23 (a) That notice was insufficient or inadequate on the grounds
24 that some other owner of a property interest was not also served.

25 (b) That the redemption period provided under this act was
26 extended in any way on the grounds that some other owner of a
27 property interest was not also served.

1 (10) The failure of the foreclosing governmental unit to
2 comply with any provision of this section shall not invalidate any
3 proceeding under this act if the owner of a property interest or a
4 person to whom a tax deed was issued is accorded the minimum due
5 process required under the state constitution of 1963 and the
6 constitution of the United States.

7 (11) As used in this section, "authorized representative"
8 includes all of the following:

9 (a) A title insurance company or agent licensed to conduct
10 business in this state.

11 (b) An attorney licensed to practice law in this state.

12 (c) A person accredited in land title search procedures by a
13 nationally recognized organization in the field of land title
14 searching.

15 (d) A person with demonstrated experience searching land title
16 records, as determined by the foreclosing governmental unit.

17 (12) The provisions of this section relating to notice of the
18 show cause hearing under section 78j and the foreclosure hearing
19 under section 78k are exclusive and exhaustive. Other requirements
20 relating to notice or proof of service under other law, rule, or
21 legal requirement are not applicable to notice and proof of service
22 under this section.

23 Sec. 78k. (1) If a petition for foreclosure is filed under
24 section 78h, not later than the date of the hearing, the
25 foreclosing governmental unit shall file with the clerk of the
26 circuit court proof of service of the notice of the show cause
27 hearing under section 78j, proof of service of the notice of the

1 foreclosure hearing under this section, and proof of the personal
2 visit to the property and publication under section 78i.

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

7 (a) No law authorizes the tax.

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

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

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

15 (e) The tax was assessed fraudulently.

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

18 (3) A person claiming an interest in a parcel of property set
19 forth in the petition for foreclosure who desires to contest that
20 petition shall file written objections with the clerk of the
21 circuit court and serve those objections on the foreclosing
22 governmental unit prior to the date of the hearing required under
23 this section.

24 (4) If the court determines that the owner of property subject
25 to foreclosure is a minor heir, is incompetent, is without means of
26 support, or is undergoing a substantial financial hardship, the
27 court may withhold that property from foreclosure for 1 year or may

1 enter an order extending the redemption period as the court
2 determines to be equitable. If the court withholds property from
3 foreclosure under this subsection, a taxing unit's lien for taxes
4 due is not prejudiced and that property shall be included in the
5 immediately succeeding year's tax foreclosure proceeding.

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

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

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

1 days of the entry of a judgment foreclosing the property under this
2 section.

3 (c) That all liens against the property, including any lien
4 for unpaid taxes or special assessments, except future installments
5 of special assessments and liens recorded by this state or the
6 foreclosing governmental unit pursuant to the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.101 to
8 324.90106, are extinguished, if all forfeited delinquent taxes,
9 interest, penalties, and fees are not paid on or before the March
10 31 immediately succeeding the entry of a judgment foreclosing the
11 property under this section, or in a contested case within 21 days
12 of the entry of a judgment foreclosing the property under this
13 section.

14 (d) That, except as otherwise provided in subdivisions (c) and
15 (e), the foreclosing governmental unit has good and marketable fee
16 simple title to the property, if all forfeited delinquent taxes,
17 interest, penalties, and fees are not paid on or before the March
18 31 immediately succeeding the entry of a judgment foreclosing the
19 property under this section, or in a contested case within 21 days
20 of the entry of a judgment foreclosing the property under this
21 section.

22 (e) That all existing recorded and unrecorded interests in
23 that property are extinguished, except a visible or recorded
24 easement or right-of-way, private deed restrictions, **INTERESTS OF A**
25 **LESSEE OR AN ASSIGNEE OF A LESSEE UNDER A RECORDED OIL OR GAS**
26 **LEASE, INTERESTS IN OIL OR GAS IN THAT PROPERTY THAT ARE OWNED BY A**
27 **PERSON OTHER THAN THE OWNER OF THE SURFACE THAT HAVE BEEN PRESERVED**

1 AS PROVIDED IN SECTION 1(3) OF 1963 PA 42, MCL 554.291, or
2 restrictions or other governmental interests imposed pursuant to
3 the natural resources and environmental protection act, 1994 PA
4 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes,
5 interest, penalties, and fees are not paid on or before the March
6 31 immediately succeeding the entry of a judgment foreclosing the
7 property under this section, or in a contested case within 21 days
8 of the entry of a judgment foreclosing the property under this
9 section.

10 (f) A finding that all persons entitled to notice and an
11 opportunity to be heard have been provided that notice and
12 opportunity. A person shall be deemed to have been provided notice
13 and an opportunity to be heard if the foreclosing governmental unit
14 followed the procedures for provision of notice by mail, for visits
15 to forfeited property, and for publication under section 78i, or if
16 1 or more of the following apply:

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

20 (ii) The person appeared at the hearing under this section or
21 filed written objections with the clerk of the circuit court under
22 subsection (3) prior to the hearing.

23 (iii) Prior to the hearing under this section, the person had
24 actual notice of the hearing.

25 (g) A judgment entered under this section is a final order
26 with respect to the property affected by the judgment and except as
27 provided in subsection (7) shall not be modified, stayed, or held

1 invalid after the March 31 immediately succeeding the entry of a
2 judgment foreclosing the property under this section, or for
3 contested cases 21 days after the entry of a judgment foreclosing
4 the property under this section.

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 A**
16 **LESSEE UNDER AN OIL OR GAS LEASE IN EFFECT AS TO THAT PROPERTY OR**
17 **ANY PART OF THAT PROPERTY IF THE LEASE WAS RECORDED IN THE OFFICE**
18 **OF THE REGISTER OF DEEDS IN THE COUNTY IN WHICH THE PROPERTY IS**
19 **LOCATED BEFORE THE DATE OF FILING THE PETITION FOR FORECLOSURE**
20 **UNDER SECTION 78H, AND INTERESTS PRESERVED AS PROVIDED IN SECTION**
21 **1(3) OF 1963 PA 42, MCL 554.291.** The foreclosing governmental
22 unit's title is not subject to any recorded or unrecorded lien and
23 shall not be stayed or held invalid except as provided in
24 subsection (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 appeal under this subsection is limited to the record
3 of the proceedings in the circuit court under this section and
4 shall not be de novo. The circuit court's judgment foreclosing
5 property shall be stayed until the court of appeals has reversed,
6 modified, or affirmed that judgment. If an appeal under this
7 subsection stays the circuit court's judgment foreclosing property,
8 the circuit court's judgment is stayed only as to the property that
9 is the subject of that appeal and the circuit court's judgment
10 foreclosing other property that is not the subject of that appeal
11 is not stayed. To appeal the circuit court's judgment foreclosing
12 property, a person appealing the judgment shall pay to the county
13 treasurer the amount determined to be due to the county treasurer
14 under the judgment on or before the March 31 immediately succeeding
15 the entry of a judgment foreclosing the property under this
16 section, or in a contested case within 21 days of the entry of a
17 judgment foreclosing the property under this section, together with
18 a notice of appeal. If the circuit court's judgment foreclosing the
19 property is affirmed on appeal, the amount determined to be due
20 shall be refunded to the person who appealed the judgment. If the
21 circuit court's judgment foreclosing the property is reversed or
22 modified on appeal, the county treasurer shall refund the amount
23 determined to be due to the person who appealed the judgment, if
24 any, and retain the balance in accordance with the order of the
25 court of appeals.

26 (8) The foreclosing governmental unit shall record a notice of
27 judgment for each parcel of foreclosed property in the office of

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

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

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

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

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

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

27 (e) An owner of an interest in the property entitled to notice

1 under section 78i was not provided notice sufficient to satisfy the
2 minimum requirements of due process required under the state
3 constitution of 1963 and the constitution of the United States.

4 (f) A judgment of foreclosure was entered under this section
5 in violation of an order issued by a United States bankruptcy
6 court.

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