

No. 24-1095

IN THE
Supreme Court of the United States

CHELSEA KOETTER,

Petitioner,

v.

MANISTEE COUNTY TREASURER *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MICHIGAN

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

The Takings Clause of the Fifth Amendment prohibits the government from appropriating private property without just compensation. But it has never required that compensation be automatic or unconditional. Rather, this Court has upheld statutory frameworks that establish reasonable, accessible procedures for asserting a right to surplus proceeds following tax foreclosure, including deadlines and filing requirements. Petitioner attempts to recast this well-settled doctrine as a rule of absolute entitlement—asserting that the government commits a constitutional violation by enforcing a straightforward claims process that she was aware of but failed to follow.

Petitioner mischaracterizes both the statute and the decision below. The Michigan Court of Appeals did not hold that the government may retain surplus proceeds categorically, providing no avenue for this Court to revisit its recent decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023). Nor did it evaluate whether Michigan’s statutory claims process is constitutionally adequate or provides a meaningful opportunity for potential claimants to recover surplus value—presenting no platform to reconsider or overrule *Nelson v. City of New York*, 352 U.S. 103 (1956). It held only that when a former property owner fails to file the required statutory claim form by a clear and well-publicized deadline, the right to surplus proceeds was not preserved under state law—and thus no taking occurs.

The hypothetical and illusory questions presented by the petition are narrow, fact-bound, doctrinally limited—

and not squarely implicated by this case: (1) whether the Constitution mandates compensation where a property owner is provided notice and a meaningful opportunity to claim surplus proceeds, but loses those proceeds due solely to her own failure to comply with the procedure the law requires; and (2) does *Nelson* remain binding precedent under the Fifth and Fourteenth Amendments where, as here, the government does not categorically extinguish a property owner's interests in surplus proceeds, but instead provides a clear and accessible statutory process for recovering them—one that a claimant must use to preserve the right to just compensation.

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**RESPONDENT MANISTEE COUNTY
TREASURER’S BRIEF IN OPPOSITION**

INTRODUCTION

State and local governments rely on property taxes to fund schools, roads, public health and safety, and other essential services. Like many jurisdictions, Michigan provides a structured and judicially-supervised process for enforcing delinquent tax obligations, including a pathway for former property owners to recover surplus proceeds from a tax foreclosure sale. That process is codified in Mich. Comp. Laws § 211.78t (“Section 78t”), which gives delinquent taxpayers 12-15 months of notice and a straightforward three-month opportunity to preserve their rights to excess value in the property. To recover surplus, it requires only that the former owner file a one-page notarized form by a date clearly identified in multiple mailed notices. Chelsea Koetter received those notices. She did not file the form on time. She now asks this Court to invalidate the statute because she failed to follow its procedure.

This case does not ask whether the government may take more than it is owed. It does not challenge a statute that unilaterally erases equity or denies owners a path to recovery. And it does not involve a state that defied this Court’s recent decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023). Here, the State changed its laws in response to a Michigan Supreme Court case, *Rafaeli, LLC v. Oakland County*, 505 Mich. 429 (2020)—which reaffirmed that former property owners retain a property interest in surplus proceeds from tax foreclosure sales and established the need for statutes

like Section 78t to facilitate that recovery under the Michigan Constitution’s Takings Clause (App. 9a-10a)—consistent with this Court’s decision in *Tyler*. Michigan now offers exactly the kind of surplus recovery system *Tyler* endorsed. The core issue advanced by Petitioner, therefore, is constrained to a routine application of settled law: whether a property owner who failed to use a specific and reasonable procedure to claim surplus proceeds has suffered a constitutional violation simply because that person did not follow the notice-prolific and months-long process made available under state law.

Petitioner insists that this statutory framework—with a claim preservation process that thousands of Michigan taxpayers have successfully navigated since 2020 by filing a notice of intent to claim—is constitutionally meaningless. But the Michigan Court of Appeals never endorsed that view. Nor did it substantively address the adequacy of the process at all. Instead, it found that Petitioner’s claim failed on threshold grounds: she missed a plainly stated deadline. Her takings and due process claims were not rejected because the law is unfair, but because she did not timely invoke it.

Petitioner also urges this Court to use her case as a means to revisit *Nelson v. City of New York*, 352 U.S. 103 (1956), and its most recent Takings Clause precedent. But this case is not the vehicle for that request. Unlike the absolute forfeiture law invalidated in *Tyler*, the Michigan statute mirrors—and goes beyond—the process upheld in *Nelson*: it provides former owners a post-foreclosure-sale opportunity to claim surplus proceeds while imposing only modest procedural conditions. Nor does this case implicate *Knick v. Township of Scott*, 588 U.S. 180 (2019),

which addressed when takings claims ripen for federal court adjudication—not whether a state’s process for recovering surplus proceeds is constitutionally sufficient. And, there is no conflict between *Nelson*, *Knick*, or *Tyler*, and no need for this Court to resolve a nonexistent doctrinal divide. These cases address different procedural and substantive dimensions of takings claims and form a coherent line of precedent: *Nelson* confirms that a state may impose a reasonable procedure for surplus recovery; *Knick* ensures that takings claims are ripe for federal court review when the taking occurs without exhausting state remedies; and *Tyler* reaffirms that the government cannot keep surplus value when no recovery mechanism exists—none of which contradicts Michigan’s statutory scheme, which both recognizes surplus proceeds and provides a process for claiming them. To the extent the Court is inclined to revisit any of these issues, this petition does not pave the way for doing so. This is not a forfeiture without recourse, a ripeness trap, or an unjust windfall case; it is a textbook example of missing a fair and clearly marked off-ramp.

The Court does not grant certiorari to review ordinary applications of clear state statutory deadlines or to second-guess factual determinations grounded in a petitioner’s own inaction. The constitutional questions raised here are illusory, and this case is not a suitable vehicle for addressing them.¹ The petition should be denied.

1. Multiple petitions for certiorari raising nearly identical and substantially similar surplus proceeds and Takings Clause issues are currently pending or anticipated before this Court. The currently pending petitions are *Beeman v. Muskegon County Treasurer* (Docket No. 24-858) and *Pung v. Isabella County* (Docket No. 25-95). The anticipated certiorari petitions arise from the following recent

STATEMENT OF THE CASE

I. Michigan’s Tax Foreclosure and Surplus Proceeds Statute

Michigan’s General Property Tax Act (“GPTA”) establishes a multi-year, court-managed process for collecting delinquent property taxes. To protect the constitutional rights of property owners, the Michigan Legislature, following the Michigan Supreme Court’s 2020 decision in *Rafaeli*, created a detailed statutory mechanism to ensure that former owners may recover surplus proceeds generated by a tax foreclosure sale. This process is set forth in Section 78t, and reflects the Legislature’s intent to strike a constitutionally sound balance between the government’s tax enforcement authority and the protection of private property interests.

The Legislature enacted Section 78t in direct response to the Michigan Supreme Court’s landmark 2020 decision in *Rafaeli*, which held that when the government sells a tax-foreclosed property for more than the taxes and costs owed, the former owner retains a property interest in the surplus proceeds under the 1963 Michigan Constitution. *See Rafaeli*, 952 N.W.2d at 441. The Michigan Supreme Court concluded that allowing the government to keep the full sale price—including surplus value—amounted to an unconstitutional taking of private property without just compensation. *See id.* at 466.

Critically, *Rafaeli* did not invalidate Michigan’s tax foreclosure framework in its entirety, but rather emphasized the constitutional necessity of creating a

Sixth Circuit and Michigan Court of Appeals decisions: *Howard v. Macomb County*, 133 F.4th 566 (6th Cir. 2025), and *McGee v. Alger County Treasurer* (Docket No. 24-A-1140).

process by which former owners could recover surplus proceeds. *See id.* at 453-54, 462. In response, the Legislature enacted 2020 Public Acts 255 and 256, which amended Michigan Compiled Law Section 211.78m and created Section 78t. These provisions were designed to restore a constitutionally sound balance—preserving governmental tax enforcement powers while ensuring that property owners have a meaningful, judicially-supervised opportunity to reclaim excess value minus associated fees and costs. The enacting section of 2020 PA 256 confirms this legislative intent, citing *Rafaeli* as the impetus for reform and the legal basis for recognizing surplus proceeds as a compensable private property interest. *See App. 104a.*

In developing Sections 78m and 78t, the Michigan Legislature consulted with a range of stakeholders, including constitutional scholars, property rights advocates, county treasurers, and nonprofit legal organizations. Among those contributors was the Pacific Legal Foundation, which publicly supported the Legislature's effort to design a surplus recovery mechanism that would comply with the Michigan Supreme Court's ruling in *Rafaeli* and the constitutional protections it reaffirmed. Legislative records reflect the Pacific Legal Foundation's early engagement with the drafting process, including its endorsement of the concept of providing a defined post-foreclosure process for former owners to recover surplus proceeds. *See App. 1a-8a.* (September 30, 2020 Senate Committee on Finance Meeting Minutes). The collaborative development of these provisions underscores that Michigan's statutory framework reflects both constitutional imperatives and broad-based policy input from stakeholders and organizations concerned with protecting private property rights.

A. Timeline and Mechanics of Foreclosure

The foreclosure process begins when a property owner becomes delinquent on unpaid property taxes. *See* App. 68a. (Mich. Comp. Laws § 211.78a(2)). Municipalities return unpaid taxes to the county treasurer as delinquent for collection on March 1 of the year following the tax assessment year. *See id.* If the taxes remain unpaid for over a year following tax delinquency, and following several statutorily-mandated notices, the property is forfeited to the county foreclosing governmental unit (“FGU”) on March 1 of the second year. *See* App. 69a-70a, 71a-72a, 74a-76a, 77a-78a. (Mich. Comp. Laws §§ 211.78b, 211.78c, 211.78f, 211.78g(1)).

Following forfeiture, the FGU initiates a judicial foreclosure proceeding in circuit court, no later than June 15 in each tax year. *See* App. 80a. (Mich. Comp. Laws § 211.78h(1)). After a full judicial process—including multiple notices, a show cause hearing, and a circuit court hearing—the court enters a judgment of foreclosure no later than March 31 of the third year, at which point fee simple title vests in the FGU. *See* App. 83a-84a, 88a, 90a-94a; (Mich. Comp. Laws §§ 211.78i(2), 211.78j, 211.78k(5), 211.78k(6); *See* Pet. App. 33a-34a (Mich. Comp. Laws § 211.78t(9)). This statutory process involves multiple notices (including advance notice), publication, personal visits to the forfeited property, proof of the former efforts submitted to the court, and in-person hearings—all designed to ensure that property owners are adequately informed. *See* App. 69a-70a, 71a-72a, 74a-76a, 78a-79a, 83a-84a, 84a-86a, 86a-87a, 88a, 89a. (Mich. Comp. Laws §§ 211.78b, 211.78c, 211.78f, 78g(2), 211.78i(2), 211.78i(3), 211.78i(5), 211.78j, 211.78k(1)).

Michigan’s tax foreclosure system is part of a broader, multi-year tax enforcement framework that includes extensive due process protections well before the sale. Notices begin early in the delinquency timeline, including those sent in June and October of the year taxes become delinquent, making the process effectively span approximately 24 months. *See* App. 69a-70a, 73a. (Mich. Comp. Laws §§ 211.78b, 211.78d). Owners receive multiple written notices over 12 to 15 months, are offered payment plans, and may raise hardship objections—including for mental incapacity—at both a mandatory show cause hearing and the foreclosure hearing. *See* App. 88a, 89a-90a, 90a. (Mich. Comp. Laws §§ 211.78j(2), 211.78k(2), 211.78k(4)). These protections reinforce the fairness of the overall process and underscore that the surplus claim system operates as the final step in a carefully constructed tax recovery regime—not as an isolated or punitive event.

B. The Surplus Proceeds Process Under Section 78t

Michigan enacted Section 78t to allow former property owners and other interest holders to claim surplus proceeds resulting from post-foreclosure auction sales. *See* Pet. App. 25a (Mich. Comp. Laws § 211.78t(1)). The statute provides that after a foreclosure judgment is entered and the FGU acquires title, the property is offered at a public auction. *See* App. 95a-98a. (Mich. Comp. Laws § 211.78m(2)).

If the auction generates proceeds greater than the taxes, interest, fees, and five-percent commission (or “sales cost recovery”) to cover administrative costs, the difference is deemed the “remaining proceeds,” more

commonly referred to as a “surplus.” Pet. App. 27a, 35a (Mich. Comp. Laws § 211.78t(12)(b); *see also* Mich. Comp. Laws § 211.78t(3)(g)). Section 78t explicitly defines the five-percent deduction from auction proceeds as a “sale commission.” Pet. App. 29a (Mich. Comp. Laws § 211.78t(5)(g)). This provision was included to incentivize FGUs to actively market foreclosed properties and thereby maximize sale prices—ultimately benefitting former owners by increasing the potential surplus. Although the term “commission” may evoke private-sector comparisons, in this context it reflects a policy judgment to align county incentives with surplus maximization. Additionally, the commission compensates for real administrative costs, including auction marketing, legal processing, and post-sale disbursement obligations—distinguishing it from any asserted windfall. *See* Pet. App. 24a (Mich. Comp. Laws § 211.78m(16)(c)).

Former owners and other qualifying interest holders are entitled to claim this surplus if they file a specific form—Form 5743—by July 1 of the year of the foreclosure. *See* Pet. App. 25a-26a (Mich. Comp. Laws § 211.78t(2)). Other qualifying interest holders may include mortgage lenders, lienholders, bankruptcy creditors, child-support creditors, judgment creditors, or heirs with a legal or equitable claim to the property—claimants who, like (or having superiority over) the former owner, are entitled to seek their share of the surplus. *See* Pet. App. 34a-35a (Mich. Comp. Laws § 211.78t(12)(a)). By requiring timely filings and adjudication by a judge within the foreclosure case itself, the process ensures that all legitimate claims are addressed in an orderly and equitable manner, avoiding conflicting demands, double disbursement, and costly litigation (*e.g.*, surplus payment to a former owner

followed by a separate demand letter from a mortgage lender). Because foreclosure judgments are entered no later than March 31, every claimant is afforded a fixed three-month window to file the form and preserve a right to remaining proceeds. *See* App. 90a-93a; (Mich. Comp. Laws §§ 211.78k(5)); *see also* Pet. App. 30a (Mich. Comp. Laws § 211.78t(6)). Section 78t reflects state legislative judgment to channel all potential claims through a simple process, via Form 5743, assuring a centralized, efficient, manageable, transparent, and fair process.

Form 5743 is a one-page, notarized document that must be submitted either in person at the FGU's office or by certified mail with return receipt requested. Form 5743, entitled "Notice of Intention to Claim Interest in Foreclosure Sales Proceeds," asks claimants to provide their name and contact information, identify the foreclosed property by parcel number and address, state the nature of their interest at the time of foreclosure (such as ownership, mortgage, or lien), list any other known interest holders, and sign the form under notary acknowledgment. *See* App. 105a-107a. Filing the form by the deadline preserves the claimant's right to be notified of surplus and to file a motion for disbursement in the same judicial foreclosure action. *See* Pet. App. 25a-26a (Mich. Comp. Laws § 211.78t(2)). The FGU notifies those who filed timely claims, and the court adjudicates and distributes the available surplus. *See* Pet. App. 33a (Mich. Comp. Laws § 211.78t(9)). The failure to submit the form by July 1 forfeits the right to surplus proceeds under the statute.

Since its enactment in 2020, Section 78t has returned over \$19,000,000 in surplus proceeds statewide to claimants aligned with properties foreclosed in 2020,

2021, and 2022.² The amount of surplus proceeds paid to claimants has increased year-over-year.³ Nonetheless, Petitioner opines that only “5% of Michigan tax debtors” have recovered surplus proceeds under the statute. Petitioner bases her distorted view on one single county—Oakland—and on one single year—2022. Pet. 11. Moreover, a true rate of recovery is unavailable because the counties are not required to compile or report this data. By contrast, in many counties, a majority of those who timely file the one-page Form 5743 receive payment. For example, in Van Buren County, the circuit court ordered the disbursement of more than \$1.4 million in proceeds under Section 78t in 2022 and 2023.⁴ In 2023,

2. See generally Michigan Dep’t of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales by This State 2020, 2021, 2022*, <https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2020-Foreclosure-Sales-State-Wide-Reports.pdf?rev=d35b00d7a0da4e43841834a6c4f10f97&hash=F840E69A91621D5B54F70276ED530559>; <https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2021-Foreclosure-Sales-State-Wide-Reports.pdf?rev=8838f2ed3621414f84bfe14370c870cd&hash=655BE43781E843D9E5E7B435D29BF295>; <https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2022-Foreclosure-Sales-State-Wide-Reports.pdf?rev=8a646d149d52437fa797942498b5ac92&hash=28B5B9562BF2E9B7A08F6871FA47FBEC>.

3. See *id.*

4. See Michigan Dep’t of Treasury, *supra* note 2, at 75 (2021 Report), 75 (2022 Report). Note: Annual surplus proceed amounts are calculated utilizing the previous calendar year’s foreclosure sale report figures. However, county foreclosure sale reports have a deadline of September 30 of the second calendar year following the foreclosure of a property. As a result, for properties foreclosed in 2023, potential surplus proceeds were paid in 2024, but the

circuit courts in Kalamazoo, Muskegon, Oakland, and Wayne counties disbursed approximately \$4.6 million in surplus proceeds to claimants who filed timely claims.⁵ These successful recoveries indicate that the process is functioning as designed by the Legislature and accessible by those who engage it—hardly the kind of system that requires federal judicial scrutiny.

II. Factual Background

Petitioner owned residential property in Manistee County, Michigan. She became delinquent on her taxes due to nonpayment of approximately \$1,200 in 2018 property taxes. *See* Pet. 1. Under the GPTA, after multiple notice and collection efforts, the Manistee County Treasurer initiated judicial foreclosure proceedings, as required by Michigan law. *See id.* In accordance with statutory requirements, the Treasurer mailed Petitioner notices of the pending foreclosure and Petitioner’s right to claim surplus proceeds by filing Form 5743 by July 1, 2021. *See* Pet. App. 4a.

On February 12, 2021, the Manistee County Circuit Court entered a judgment of foreclosure, and title to the property vested in the County Treasurer on March 31, 2021. *See* Pet. 7. That judgment triggered the three-month surplus claim window under Section 78t(2). But Petitioner did not submit Form 5743 by the July 1 deadline. *See* Pet. App. 4a. She attempted to file the form on July 9,

foreclosure sale reports will not be available until after September 2025. *See* App. 100a (Mich. Comp. Laws § MCL 211.78m(8)(i)).

5. *See* Michigan Dep’t of Treasury, *supra* note 2, at 38, 57, 59, 77 (2022 Report).

eight days late, and submitted another copy in August. *See* Pet. 7-8. Because both filings were untimely, the Manistee County Treasurer rejected them in accordance with the statute. *See* Pet. 8. The County later sold the property at public auction for \$106,500, generating a surplus of approximately \$102,000 after satisfying taxes, interests, fees, and the commission charge.⁶

III. Procedural History

After the sale, Petitioner filed a motion in the Manistee County Circuit Court requesting disbursement of the surplus. *See id.* The trial court denied the motion on procedural grounds, holding that because she had failed to file Form 5743 by the statutory deadline, she had no enforceable right to surplus proceeds. *See id.*

Petitioner appealed to the Michigan Court of Appeals, asserting that the denial of surplus funds constituted a violation of the Takings Clause and Due Process Clause of the U.S. Constitution. *See* Pet. 9. She did not challenge the notice she received, nor did she dispute the statutory deadline itself—but instead argued that enforcing the July 1 deadline resulted in an unconstitutional taking of her property interest. *See* Pet. App. 5a.

6. Although Petitioner's claim was denied under the current statute due to her failure to timely file Form 5743, it is important to note that Michigan's surplus recovery system also includes a comprehensive retroactive claims process for foreclosures that occurred before the 2020 reforms. Thousands of "notice of intent to claim" forms have already been submitted, and motions are due by October 1, 2025. The Michigan Supreme Court has even created a simplified motion form to facilitate access. This ongoing administrative process underscores that Michigan is actively addressing past claims—further demonstrating that Petitioner's case is not representative of a systemic failure or constitutional dilemma.

The Michigan Court of Appeals affirmed the trial court's decision and did not evaluate whether Michigan's statutory surplus claims process is constitutionally adequate with respect to notice or provides a meaningful opportunity to recover surplus value. *See* Pet. App. 2a. Instead, the court adopted the reasoning from its earlier published decision in *In re Muskegon County Treasurer for Foreclosure*, No. 363764, __ N.W.3d __, 2023 WL 7093961 (Mich. Ct. App. Oct. 26, 2023), petition for writ of certiorari pending sub nom. *Beeman v. Muskegon County Treasurer*, No. 24-858, which summarily upheld the statutory scheme against a due process challenge. *See* Pet. App. 5a. There, the court concluded that because the Treasurer complied with the statute and provided timely notice, due process was satisfied. *See* Pet. App. 9a.

The Michigan Court of Appeals here did not conduct an independent constitutional analysis of whether the surplus process under Section 78t is meaningfully accessible, reasonable in structure, or proportionate in burden. Nor did it address whether the three-month window or notarization and delivery requirements were reasonable under this Court's precedent, including the seminal three-part due process analysis of *Mathews v. Eldridge*, 424 U.S. 319 (1976). As a result, the court assumed the process was constitutionally sufficient and denied Petitioner's claim based solely on her failure to comply with the procedural requirement of timely filing a claim. *See* Pet. App. 5a-6a.

Petitioner then sought leave to appeal to the Michigan Supreme Court, which denied her application on June 5, 2024. *See* Pet. App. 20a. She now seeks certiorari from this Court, asking it to come to a merits decision on issues not addressed by the lower Michigan courts,

revisit harmonious Supreme Court precedent that address issues not raised in this case, and—in that space devoid of any ground warranting this Court’s review—hold that Michigan’s surplus-claims procedure is constitutionally infirm.

REASONS FOR DENYING THE PETITION

Certiorari should be denied because this case presents no conflict, no unresolved constitutional question, and no other basis for this Court’s intervention. Michigan’s statute expressly recognizes a former owner’s right to recover surplus proceeds from a tax sale and provides a clear, simple, and accessible process to preserve that right by timely filing a one-page notarized form. Pet. App. 25a (Mich. Comp. Laws § 211.78t). Petitioner received multiple notices explaining this requirement but failed to act until after the deadline had passed. *See* Pet. App. 4a. The lower courts resolved the case solely on procedural (timeliness) grounds—without reaching or analyzing whether Michigan’s process is constitutionally sufficient—rendering this petition an ill-suited vehicle for reexamining *Nelson*, *Knick*, or *Tyler*. In any event, those decisions of this Court are not in conflict: *Nelson* upheld surplus recovery conditioned on procedural compliance; *Knick* concerned ripeness, not remedies; and *Tyler* condemned absolute forfeiture without recovery recourse, which Michigan law does not permit. Petitioner’s claim of lost surplus proceeds is not because the statute extinguished her rights, but because she did not use the procedure expressly created to protect them. This Court does not grant certiorari to review procedural missteps or entertain constitutional hypotheticals divorced from the decisions below, and should deny certiorari here where the case teeters on such a weak foundation.

I. The Petition Presents No Split, No Conflict with Supreme Court Precedent, and No Issue of Ongoing National Importance.

Petitioner urges this Court to review a narrow, straightforward case resolved exclusively on procedural grounds as though it presents a live, unresolved constitutional conflict of national scope and import. It does not. The decision below turned entirely on Petitioner's failure to meet a state statutory deadline—while summarily rejecting the constitutional claims based on *In re Petition of Muskegon County* without substantive analysis. *See* Pet. App. 5a-6a. Petitioner's assertions of a circuit conflict and mass significance mischaracterize both the record and the precedent. *See* Pet. 10-11.

Petitioner argues that Michigan's tax foreclosure surplus process violates the Takings Clause by permitting the government to retain surplus proceeds without compensation unless the former owner takes affirmative action. *See* Pet. 11-12. She claims this procedural structure conflicts with *Tyler* and *Nelson*, and presents an issue of exceptional importance because surplus proceeds protections affect homeowners nationwide. *See id.* But those claims collapse under simple scrutiny.

First, there is no conflict—either doctrinal or practical—between Michigan's post-*Rafaeli* statute and this Court's precedents. In *Nelson*, the Court held that a former owner who failed to follow a state's surplus-claim procedure could constitutionally be denied the excess proceeds. *See Nelson*, 352 U.S. at 110. Michigan's statute operates on the same principle: it expressly preserves the former owner's right to any surplus proceeds, subject only

to a modest procedural requirement—filing a notarized, one-page form by a certain (and generous) date. Pet. App. 25a-26a (Mich. Comp. Laws § 211.78t(2)). *Tyler*, by contrast, involved a regime where the government categorically extinguished the former owner’s property interest without any opportunity to claim a surplus. That is the opposite of Michigan’s approach, which recognizes the property interest and channels its recovery through a judicial process. *Knick* is likewise no obstacle: it addresses the ripeness doctrine and does not prohibit states from conditioning property claims on procedural compliance.

The doctrinal thread running through *Nelson*, *Knick*, and *Tyler* is clear: a state may not confiscate property outright without notice or a remedy, but it may require timely action to assert a property right. That is precisely what Michigan’s statute does—and precisely what Petitioner failed to do.

Second, this case is not a vehicle for resolving a national controversy. Petitioner identifies no conflict among lower courts interpreting similar statutes, no indication that other jurisdictions are invalidating comparable procedures, and no evidence that Michigan’s law has resulted in systemic forfeitures of surplus proceeds due to confusion or ambiguity. On the contrary, former owners have steadily claimed surplus proceeds under the very process Petitioner ignored. The statutory deadline is simple, the notice was clear, and the form was one page. Petitioner missed the deadline (incidentally, without any offered explanation), filed late, and now seeks to constitutionalize a personal oversight.

Data from the Michigan Department of Treasury—required to be submitted to the Legislature through 2025—shows that tax foreclosures have declined since the enactment of Section 78t in 2020.⁷ This undermines Petitioner’s claim of widespread systemic harm. *See* Pet. 11. Petitioner’s misplaced reliance on surplus claims data for Genesee County (Flint) is based on a gross misunderstanding of the state’s foreclosure records: the cited \$5 million “surplus” was in fact a \$5.2 million *shortfall*. *See* Pet. 11. Had the property taxes been paid when due, the funds would have contributed to public services for Genesee County citizens. Instead, after satisfying the property tax balances, funds were unnecessarily lost on administrative and foreclosure litigation costs.

At bottom, this case is not about whether a state may confiscate surplus proceeds without compensation. Michigan does not. It is about whether a former owner who receives repeated notices and then misses an express deadline may nevertheless demand that the state set aside its process and disburse surplus proceeds. That question does not divide the lower courts, implicate any federal interest, or warrant review.

7. *See generally* Michigan Dep’t of Treasury, *Foreclosing Governmental Unit Reports of Real Property Foreclosure Sales by This State 2020-2022* (indicating how many parcels were ordered foreclosed and not canceled or redeemed by county and demonstrating a decrease in property foreclosures since 2020).

II. Petitioner Misrepresents the Relationship Between *Nelson*, *Knick*, and *Tyler*, Which Form a Cohesive and Reinforcing Line of Precedent.

Petitioner argues that Michigan’s statutory surplus process conflicts with this Court’s takings jurisprudence, suggesting that *Nelson* is incompatible with *Knick* and *Tyler*. See Pet. 22-23. But that argument rests on a misreading of each decision and an even deeper misunderstanding of Michigan law. There is no conflict. These cases form a consistent line of authority—each addressing different questions under the Takings Clause—and Michigan’s law faithfully adheres to all three.

Start with *Nelson*. There, the Court upheld a New York City law requiring former owners to file a timely claim to recover surplus proceeds from a tax foreclosure. See *Nelson*, 352 U.S. at 110. The Court held that no taking occurred when the City retained the proceeds of the foreclosure sale after the City took adequate steps to notify the owners of their four years of delinquency and “in the absence of [their] timely action to redeem or to recover any surplus.” *Id.* That is precisely what Michigan’s post-*Rafaeli* statute does. Section 78t gives former owners multiple written notices, a clearly defined three-month window, and a simple, one-page form to notarize and file or send by certified mail. If they timely assert a claim, they are entitled to any resulting surplus minus statutory costs and minus any amounts adjudicated in favor of other interest holders who have timely submitted a claim using the same statutory process. If they do not, as in *Nelson*, no protected interest is taken.

Knick, in contrast, addressed an entirely different issue—when a takings claim becomes ripe. *See* 588 U.S. at 185, 189. It overruled the so-called “state-litigation requirement” and held that a takings claim accrues when the government takes property without just compensation, even if the claimant has not yet exhausted state remedies. *Id.* at 206. But *Knick* said nothing about whether procedural conditions on surplus recovery—such as filing deadlines or administrative steps—are unconstitutional. Indeed, *Knick* reaffirmed the core principle that a claimant must have a cognizable property interest in the first place to allege a taking. *See id.* at 185. That interest never arose here because Petitioner failed to preserve it.

The doctrinal harmony between *Nelson* and *Knick* was endorsed by *Knick* itself. Chief Justice Roberts, joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh, made no suggestion that *Nelson* was inconsistent or undermined. The dissent in *Knick* led by Justice Kagan—taking the position that a Takings Clause claim is not ripe until the government denies compensation, and therefore plaintiffs must first seek just compensation through available state procedures before suing in federal court—likewise did not question *Nelson*’s continuing validity. *See id.* at 209 (Kagan, J., dissenting).

Finally, *Tyler* involved a statute that permitted the government to automatically extinguish all surplus value from a home following a tax foreclosure—leaving the former owner with no mechanism to claim it. *See Tyler*, 598 U.S. at 635. This Court held that such a regime violated the Takings Clause, both because it denied compensation and because it disregarded longstanding common-law protections for a former owner’s equity.

See id. at 645. Michigan’s statute does the opposite: it preserves the former owner’s right to the surplus and provides a post-judgment opportunity to claim it. If anything, *Tyler* confirms the constitutional soundness of Michigan’s approach. As the Court noted, a process that allows the former owner to reclaim surplus proceeds aligns with the historical baseline of just compensation. *See id.* at 639. That is what the Michigan Legislature designed Section 78t to achieve.

Notably, *Tyler* was a unanimous 9-0 decision, also authored by Chief Justice Roberts, and it explicitly distinguished *Nelson* on the grounds that it does not apply to cases where there is “no opportunity for the taxpayer to recover the excess value from the State,” suggesting, if not underscoring, that *Nelson* remains valid—and fully compatible—when a claims process exists, as it does in Michigan. *See id.* at 632. Similarly, in a separate concurrence, Justice Gorsuch, joined by Justice Jackson, emphasized a separate constitutional dimension of the case (Eighth Amendment) but did not dispute the Takings Clause framework articulated by the majority or its treatment of *Nelson*. *See id.* at 648.

In other words, Petitioner’s suggestion that these three cases are doctrinally at odds is both inaccurate and immaterial. *Nelson* validates Michigan’s framework. *Knick* is irrelevant to the question of procedural compliance. And *Tyler* condemns only systems that deny any remedy at all. These precedents are not in tension—they are soundly in alignment. And Michigan’s statute fits squarely within their shared constitutional logic: property owners must be given a meaningful opportunity to claim

what is theirs, and if they are, the government may condition recovery on timely participation in the process.

III. Michigan’s Statute Reflects Sound Legislative Judgment, and its Application Here Raises No Federal Question that Would Invite Intrusion Into a Core Area of State Tax and Property Law.

Michigan’s surplus recovery statute is not only constitutionally sound—it exemplifies the legislative reform this Court encouraged in *Tyler*. Far from authorizing uncompensated confiscation of surplus proceeds, the statute protects former owners (and all other stakeholders) by granting them a clear, accessible, and timely process to claim excess proceeds after tax foreclosure.

Michigan enacted Section 78t to establish a post-foreclosure mechanism for disbursing surplus proceeds to former owners and other qualified interest holders. This process is not a trap or arbitrary. It begins with repeated notices delivered throughout a multi-year foreclosure process, consistently informing owners that they will have a three-month window to claim any surplus proceeds while also offering opportunities to preserve any surplus proceeds. The three-month deadline is plainly set out in the statute, reinforced by multiple mailed notices at this stage, and accompanied by straightforward filing instructions. And the consequences of inaction are equally clear. *See* Pet. App. 28a (Mich. Comp. Laws § 211.78t(4)). If a former owner misses the deadline, they forfeit the right to any surplus proceeds. That is not a taking. It is procedural finality.

Importantly, Petitioner makes no serious argument that the process itself is structurally unreasonable. She does not contend that the deadline is too short, that the one-page form is confusing, that the notarization requirement is an undue burden, or that the notice she received was inadequate. Nor could she. The record establishes she received proper notice and understood the requirements, but submitted her claim late. *See* Pet. App. 4a, 9a. Her case involves no ambiguity, no hardship, and no systemic failure. It involves only a missed deadline (still, without any offered explanation) and a known statutory consequence.

This Court has never held that due process or the Takings Clause entitles a claimant to an indefinite opportunity to recover funds after foreclosure. On the contrary, it has repeatedly affirmed that property rights can be conditioned on compliance with reasonable procedural rules. *Nelson* made that intuitive point clear decades ago, and *Tyler* reaffirmed that what the Constitution prohibits is permanent forfeiture without any process—not the imposition of reasonable procedural conditions.

Petitioner’s effort to invalidate or rewrite Michigan’s carefully constructed surplus recovery process invites a level of federal judicial intervention into state tax and property systems that this Court has long declined to entertain. Under principles of federal-state comity, state legislatures are afforded broad discretion to design the mechanisms by which they administer their own property and tax enforcement systems—including how they define, allocate, and recover surplus proceeds from tax-foreclosed properties. Michigan’s statute reflects a deliberate and responsive exercise of this discretion, enacted by

its Legislature in response to state court precedent (*Rafaeli*) and calibrated to balance finality, fairness, and administrative feasibility.

Michigan’s structured process also reflects practical necessity. Historically, and since 2020, counties across the state have faced a substantial number of surplus proceeds adjudications—driven in part by the backlog of pre-*Rafaeli* claims, retroactive implementation of *Rafaeli*, and ongoing individual and class action litigation over surplus claims. Thousands of cases remain pending seeking retroactive surplus recovery. Requiring FGUs to affirmatively investigate or hold open claims for former property owners who decline to submit a one-page form would needlessly strain limited county resources, delay finality, and invite conflicting claims—all contrary to sound, local governance.

The Constitution does not compel such inefficiency and indefiniteness. As this Court reaffirmed in *Nelson*, states may condition surplus recovery on procedural compliance (*Nelson*, 352 U.S. at 110), and Michigan’s statute does exactly that—ensuring a reasonable opportunity without imposing an open-ended administrative burden. To the extent any open questions remain about the implementation or adequacy of Michigan’s surplus recovery system, they are best addressed by Michigan’s own courts as the State continues to work through implementation of the 2020 statute. The process remains nascent—still being shaped by Michigan courts, the state Legislature, and local county process. Petitioner’s case is the first litigation to test the statute’s operation since enactment, and the state has not seen similar post-*Rafaeli* foreclosure adjudications under the 2020 statute after the initial year.

It would run counter to the Court’s traditional respect for state sovereignty to intervene in this context—particularly where the statute expressly protects property rights, sets a clear procedure for asserting them, and is enforced through state judicial processes. The U.S. Constitution does not demand that state legislatures adopt a uniform surplus recovery scheme, nor does it empower federal courts to supervise or second-guess reasonable state-level determinations about claim deadlines, filing procedures, or notice protocols. Doing so would displace not only the Michigan Legislature’s considered judgment, but also the governing role of state courts in enforcing those state statutory frameworks.

Petitioner’s challenge thus fails at every level: she had an available avenue and remedy, she received repeated notice, but she failed to act. The statute functioned as intended, and the courts below enforced it faithfully. Federal constitutional law does not require more, and federalism principles counsel against asking this Court to impose more. No federal question is presented and no federal interest is implicated—let alone one warranting this Court’s intervention.

IV. The Constitutional Questions Petitioner Raises Were Neither Addressed Nor Decided Below, Making This a Poor Vehicle for Review.

Even if a case involving Michigan’s post-*Rafaeli* surplus-claims process could someday warrant this Court’s review, this is undoubtedly not that case. Petitioner’s constitutional arguments were not resolved by the lower courts, the record is undeveloped on critical

factual predicates, and the only issue actually decided below was her failure to comply with a routine statutory deadline. *See* Pet. App. 4a, 9a. The case is factually narrow, legally shallow, and procedurally lopsided—making it an unsuitable platform for addressing broader questions under the Takings Clause.

First, the core constitutional issue Petitioner seeks to litigate—whether Michigan’s claims process under Section 78t is constitutionally meaningful—was never reached below. The Michigan Court of Appeals was not asked to, and did not address whether Michigan’s surplus-claims process is constitutionally adequate. *See id.* at 9a-11a. Petitioner asks this Court in the first instance to evaluate whether the statutory scheme provides a “reasonable opportunity” for former owners to recover surplus proceeds, but the court below never engaged that question either. *See* Pet. 17. Instead, it resolved the case strictly on procedural grounds: Petitioner failed to timely file the required form under the plain terms of the statute, and that failure forfeited her right to claim any surplus. *See* Pet. App. 4a.

Rather than conducting a constitutional analysis, the Michigan Court of Appeals relied on *In re Petition of Muskegon County*, a state court decision which held—without in-depth analysis—that Michigan’s surplus-recovery scheme satisfies due process so long as notice is given and statutory steps are followed. *See* Pet. App. 5a. The court below treated that precedent as controlling and performed no inquiry into whether the statutory process is meaningfully accessible, reasonably structured, or constitutionally proportionate under the

due process framework of *Mathews*. It did not consider whether the statutory deadline is fair in light of the notice provided. Nor did it evaluate whether the process imposes any undue burden on former owners like Petitioner who receive notice but act too late. The decision below assumed the statute's validity without analyzing it. Petitioner, thus, seeks this Court's review of a question the Michigan courts did not reach. That disconnect makes the petition an invitation to issue an advisory opinion on a question not raised or resolved below, which alone makes this case a nonstarter for doctrinal clarification.

Second, because the decision below turned entirely on Petitioner's noncompliance, the factual record contains no findings on key constitutional factors: whether the July 1 deadline imposes a meaningful burden, whether the notice was adequate under due process principles, or whether the remedy was inaccessible in practice. Without such a factual record—or any ruling on those questions—this Court would be left addressing abstract legal claims in a vacuum. That is precisely what it has consistently declined to do. *See Ramsey v. United Mine Workers*, 401 U.S. 302, 312 (1971) (finding it inappropriate to consider an issue not addressed by the lower courts and where there is no record support for it).

Third, even accepting Petitioner's framing, the supposed conflict between *Tyler*, *Knick*, and *Nelson* is manufactured, not outcome-determinative, and not implicated by the facts of this case. This Court in *Tyler* invalidated a statutory regime that categorically extinguished equity without any recovery mechanism. *Tyler*, 598 U.S. at 645. Michigan's statute here, by contrast, expressly protects surplus interests and provides a path

to claim them. This case involves not the lack of a remedy, but the failure to timely invoke one. Consequently, it does not invite or require reconsideration of this Court's prior holdings—it avoids them entirely.

Finally, any attempt to use this case as a vehicle for broader Takings Clause analysis would be hamstrung by its limited scope and procedural posture. This case raises no live constitutional controversy. The Takings and Due Process theories offered in the petition remain entirely undeveloped in the record, and the facts necessary to evaluate them—such as any burdens imposed by the filing process, the practical adequacy of notice, or whether alternative remedies exist—were not litigated or addressed below. Even assuming the legal questions Petitioner presents are important, this case does not squarely present them. It, thus, lacks a preserved federal claim, an undisputed factual record or any relevant factual record, or a decision on any constitutional merits. *See Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (reasoning that the Court will not address a federal constitutional issue which has not been decided below and where it could benefit from a more completed record). And while the petition may view this as a takings test case—it's really a missed deadline with conjured constitutional overtones.

To the extent the Court is inclined to revisit or clarify *Nelson*, this is not the case for it. Petitioner has never challenged the adequacy of the notice she received, the notarization requirement, or the three-month filing period set forth in Section 78t. Nor did she contest the structure or accessibility of the surplus recovery process itself—the procedure relevant here. Without any preserved claim

that the procedure itself is unfair or inaccessible, the case presents no foundation for reconsidering *Nelson*'s holding on procedural due process grounds.

And if the Court wishes in the future to clarify how *Tyler* interacts with post-forfeiture surplus procedures or what procedural safeguards the Takings Clause demands, it should wait for a case that actually presents those questions cleanly, directly, and with a fully developed record. This petition leads down none of those roads.

CONCLUSION

Petitioner had a key, a map, and clear instructions—she did not open the door. That’s not a constitutional crisis, and for the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — SENATE COMMITTEE
ON FINANCE MEETING MINUTES,
SEPTEMBER 30, 2020**

**THE SENATE
COMMITTEE ON FINANCE
SENATOR JIM RUNESTAD, CHAIR**

MEMBERS:	7500 BINSFELD
SEN. ARIC NESBITT,	BUILDING
VICE CHAIR	P.O. BOX 30036
SEN. KEVIN DALEY	LANSING,
SEN. JON BUMSTEAD	MICHIGAN 48909-7536
SEN. CURTIS S.	PHONE: (517) 373-1758
VANDERWALL	FAX: (517) 373-0938
SEN. STEPHANIE	
CHANG, MINORITY	
VICE CHAIR	
SEN. BETTY JEAN	
ALEXANDER	

**COMMITTEE MEETING MINUTES
September 30, 2020**

A meeting of the Senate Committee on Finance was scheduled for Wednesday, September 30, 2020, at 12:00 noon in Room 403 of the Capitol Building.

The agenda summary is as follows:

1. Reported SB 1137 (S-2) (Sen. Runestad) with recommendation and immediate effect.

Appendix A

2. Reported SB 676 (S-1) (Sen. Lucido) with recommendation and immediate effect.
3. Reported SB 1076 (Sen. MacGregor) with recommendation and immediate effect.
4. Testimony regarding SB 1105 (Sen. VanderWall).
5. Testimony regarding SB 1106 (Sen. Daley).
6. Reported SB 1053 (S-1) with recommendation and immediate effect.

The Chair called the meeting to order at 12:08 p.m. He instructed the Clerk to call the roll. At that time, the following members were present: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander, a quorum was present.

The Chair entertained a motion by Sen. Nesbitt to adopt the meeting minutes from September 23, 2020. Without objection, the minutes were adopted.

The Chair brought up SB 1137 and SB 676 (Sen. Lucido) and summarized the bills.

The Chair invited the following individuals to present testimony regarding SB's 1137 and 676:

Steven Liedel, MI Association of County Treasurers
– Support

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Catherine McCleary, Washtenaw County Treasurer,
via Zoom – Support

Daniel Dew, Pacific Legal Foundation – via Zoom –
Support

Denna Bosworth, Michigan Association of Counties
– Neutral

Judy Allen, Michigan Townships Association –
Neutral, SB 1137

Chris Hackbarth, Michigan Municipal League –
Neutral, SB 1137

The Chair entertained a motion by Sen. Nesbitt to adopt
the (S-2) version of SB 1137. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley,
Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the (S-2) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report
SB 1137 (S-2) to the floor with recommendation that it
pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley,
Bumstead, VanderWall, Chang and Alexander

Nays: None

Appendix A

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for SB 1137 (S-2). Without objection, immediate effect was recommended.

The Chair entertained a motion by Sen. Nesbitt to adopt the (S-1) version of SB 676. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the (S-1) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report SB 676 (S-1) to the floor with recommendation that it pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for SB 676 (S-1). Without objection, immediate effect was recommended.

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Appendix A

The Chair invited Sen. MacGregor to summarize SB 1076.

The Chair invited the following individuals to present testimony regarding SB 1076:

Robin Lott, Michigan Treasury, Fostering Futures
Scholarship, via Zoom – Support

The Chair entertained a motion by Sen. Nesbitt to report
SB 1076 to the floor with recommendation that it pass.

The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley,
Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect
for SB 1076. Without objection, immediate effect was
recommended.

The Chair invited Sen. VanderWall and Sen. Daley to
summarize SB's 1105 and 1106.

The Chair invited the following individuals to present
testimony regarding SB's 1105 - 1106:

Laura Sherman, MI Energy Innovation Business
Council, via Zoom – Neutral

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Rachel Richards, Michigan Department of Treasury,
via Zoom – No Position

Steve Levitas, Pine Gate Renewables, via Zoom – No
Position

Stephanie Dohn, Southern Current, via Zoom –
Support

Carolee Smith, Consumers Energy, via Zoom –
Support

Dan Papineau, Michigan Chamber – Support

Chris Hackbarth, Michigan Municipal League – No
Position

Judy Allen, Michigan Townships Association – No
Position

Denna Bosworth, Michigan Association of Counties
– Oppose

Ed Rivit, Michigan Conservative Energy Forum –
Support

The cards were read of those individuals not wishing to
present testimony regarding SB's 1105 – 1106:

Mike Johnston, Michigan Manufactures Association
– Support

Appendix A

Winston Feehley, DTE – Support

Abigail Wallace, Michigan Environmental Council
– Oppose

Matt Patton, Detroit Regional Chamber – Support

Jim Murray, Coalition for Community Solar Access
– Support

Chuck Lippstreu, Michigan Agri-Business
Association – Support

Jeff Cobb, Michigan Association of School Boards
- Oppose

The Chair invited Steve Gilbert, of Sen. Victory's office,
to summarize SB 1053.

The Chair entertained a motion by Sen. Nesbitt to adopt
the (S-1) version of SB 1053. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley,
Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the (S-1) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report
SB 1053 (S-1) to the floor with recommendation that it
pass. The vote was as follows:

8a

Appendix A

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley,
Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for
SB 1053 (S-1). Without objection, immediate effect was
recommended.

There being no further business before the committee, the
Chair moved to adjourn the meeting. Without objection,
the committee was adjourned at 1:42 p.m.

Date Adopted by Committee: 10/07/2020

**APPENDIX B — CONSTITUTION OF
MICHIGAN 1963, ARTICLE X, SECTION 2**

MCL—Article X § 2

CONSTITUTION OF MICHIGAN OF 1963

§ 2 Eminent domain; compensation.

Sec. 2.

Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. Compensation shall be determined in proceedings in a court of record.

“Public use” does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph.

In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action

Appendix B

involves a taking for the eradication of blight, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use.

Any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by this section, by statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the constitutional amendment that added this paragraph.

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**APPENDIX C — MICHIGAN
PUBLIC ACT 255 OF 2020**

Act No. 255
Public Acts of 2020
Approved by the Governor
December 22, 2020
Filed with the Secretary of State
December 22, 2020
EFFECTIVE DATE: January 1, 2021

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senator Lucido

ENROLLED SENATE BILL No. 676

AN ACT to amend 1893 PA 206, entitled “An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with

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respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts,” by amending section 78m (MCL 211.78m), as amended by 2014 PA 501.

The People of the State of Michigan enact:

Sec. 78m. (1) Not later than the first Tuesday in July immediately succeeding the entry of judgment under section 78k vesting absolute title to tax delinquent property in the foreclosing governmental unit, this state may exercise the right of first refusal to purchase foreclosed property at the greater of the minimum bid or its fair market value by paying that amount to the foreclosing governmental unit if the foreclosing governmental unit is not this state. If this state elects not to purchase the property under its right of first refusal and 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), a city, village, township, or city authority may purchase foreclosed property located within that city, village, township, or area of the city authority included in the judgment and subject to sale under this section by paying the foreclosing governmental unit the greater of the minimum bid or the fair market value of the property. If this state elects not to purchase the property under its right of first refusal and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), a city, village, township, or city authority

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may purchase the foreclosed property by paying the foreclosing governmental unit the minimum bid. If a city, village, township, or city authority does not purchase that property and 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county in which that property is located may purchase that property under this section by paying the foreclosing governmental unit the greater of the minimum bid or the fair market value of the property. If a city, village, township, or city authority does not purchase that property and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county in which the property is located may purchase that property under this section by paying the foreclosing governmental unit the minimum bid. If a city, village, township, city authority, or county does not purchase that property, 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), and the property is within the area of a county authority, the county authority may purchase the property under this section by paying the foreclosing governmental unit the greater of the minimum bid or the fair market value of the property. If a city, village, township, city authority, or county does not purchase that property and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county authority in which the property is located may purchase that property under this section by paying the foreclosing governmental unit the minimum bid. If property is purchased by a city, village, township, city authority, county, or county authority under this subsection, the foreclosing governmental unit shall convey

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the property to the purchasing city, village, township, city authority, county, or county authority within 30 days.

(2) Subject to subsection (1), beginning on the third Tuesday in July immediately succeeding the entry of the judgment under section 78k vesting absolute title to tax delinquent property in the foreclosing governmental unit and ending on the immediately succeeding first Tuesday in November, the foreclosing governmental unit, or its authorized agent, at the option of the foreclosing governmental unit, shall hold 1 or more property sales at 1 or more convenient locations at which property foreclosed by a judgment entered under section 78k will be sold by auction sale, which may include an auction sale conducted via an internet website. Notice of the time and location of a sale must be published not less than 30 days before a sale in a notice publication circulated in the county in which the property is located, if there is one. If no notice publication is circulated in that county, publication must be made in a notice publication circulated in an adjoining county. Each sale must be completed before the first Tuesday in November immediately succeeding the entry of judgment under section 78k vesting absolute title to the tax delinquent property in the foreclosing governmental unit. Except as provided in this subsection and subsection (5), property must be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid. The foreclosing governmental unit may sell properties individually or may offer 2 or more properties for sale as a group. The minimum bid for a group of properties must equal the sum of the minimum bid for each property

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included in the group. The foreclosing governmental unit may adopt procedures governing the conduct of the sale and the payment for conveyance of properties under this section and may cancel the sale before the issuance of a deed under this subsection if authorized under the procedures. The foreclosing governmental unit shall require full payment at the close of each day's bidding or by a date not more than 21 days after the sale. Before the foreclosing governmental unit conveys a property sold at a sale, the purchaser shall provide the foreclosing governmental unit with proof of payment to the local tax collecting unit in which the property is located of any property taxes owed on the property at the time of the sale. A foreclosing governmental unit shall cancel a sale if unpaid property taxes owed on a property or properties at the time of a sale are not paid within 21 days of the sale. If a sale is canceled under this subsection, the foreclosing governmental unit may offer the property to the next highest bidder and convey the property to that bidder under this subsection, subject to the requirements of this subsection for the highest bidder. Not more than 14 days after payment to the foreclosing governmental unit of all amounts required by the highest bidder or the next highest bidder under this subsection, the foreclosing governmental unit shall convey the property by deed to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid, or the next highest bidder if the sale to the highest bidder is canceled and the next highest bidder pays the amount required under this section to purchase the property. The deed must vest fee simple title to the property in the person bidding the highest amount above

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the minimum bid, unless the foreclosing governmental unit discovers a defect in the foreclosure of the property under sections 78 to 781 or the sale is canceled under this subsection or subsection (5). If this state is the foreclosing governmental unit within a county, the department of treasury is responsible for conducting the sale of property under this subsection and subsections (4) and (5) on behalf of this state. Before issuing a deed to a person purchasing property under this subsection or subsection (5), the foreclosing governmental unit shall require the person to execute and file with the foreclosing governmental unit an affidavit under penalty of perjury. If the person fails to execute and file the affidavit required by this subsection by the date payment for the property is required under this section, the foreclosing governmental unit shall cancel the sale. An affidavit under this section must indicate that the person meets all of the following conditions:

(a) The person does not directly or indirectly hold more than a minimal legal interest in any property with delinquent property taxes located in the same county as the property.

(b) The person is not directly or indirectly responsible for any unpaid civil fines for a violation of an ordinance authorized by section 41 of the home rule city act, 1909 PA 279, MCL 117.41, in the local tax collection unit in which the property is located.

(3) For sales held under subsection (2), after the conclusion of that sale, and before any additional sale held under subsection (2), a city, village, township, or

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city authority may purchase any property not previously sold under subsection (1) or (2) by paying the foreclosing governmental unit the minimum bid. If a city, village, township, or city authority does not purchase that property, the county in which that property is located may purchase that property under this section by paying the foreclosing governmental unit the minimum bid. If a city, village, township, city authority, or county does not purchase that property and the property is within the area of a county authority, the county authority may purchase the property under this section by paying the foreclosing governmental unit the minimum bid.

(4) If property is purchased by a city, village, township, city authority, county, or county authority under subsection (3), the foreclosing governmental unit shall convey the property to the purchasing city, village, township, city authority, county, or county authority within 30 days.

(5) All property subject to sale under subsection (2) must be offered for sale at 1 or more sales conducted as required by subsection (2). If the foreclosing governmental unit elects to hold more than 1 sale under subsection (2), the final sale held under subsection (2) must be held not less than 28 days after the immediately preceding sale under subsection (2). At the final sale held under subsection (2), the sale is subject to the requirements of subsection (2), except that the minimum bid is not required. However, the foreclosing governmental unit may establish a reasonable opening bid at the sale to recover the cost of the sale of the property or properties, and the

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foreclosing governmental unit shall require a person who held an interest in property sold under this subsection at the time a judgment of foreclosure was entered against the property under section 78k to pay the minimum bid for the property before issuing a deed to the person under subsection (2). If the person fails to pay the minimum bid for the property and other amounts by the date required under this section, the foreclosing governmental unit shall cancel the sale of the property.

(6) On or before December 1 immediately succeeding the entry of judgment under section 78k, a list of all property not previously sold by the foreclosing governmental unit under this section must be transferred to the clerk of the city, village, or township in which the property is located. The city, village, or township may object in writing to the transfer of 1 or more properties. On or before December 30 immediately succeeding the entry of judgment under section 78k, all property not previously sold by the foreclosing governmental unit under this section must be transferred to the city, village, or township in which the property is located, except those properties to which the city, village, or township has objected. Property located in both a village and a township may be transferred under this subsection only to a village. The city, village, or township may make the property available under the urban homestead act, 1999 PA 127, MCL 125.2701 to 125.2709, or for any other lawful purpose.

(7) If property not previously sold is not transferred to the city, village, or township in which the property is

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located under subsection (6), the foreclosing governmental unit shall retain possession of that property. If the foreclosing governmental unit retains possession of the property and the foreclosing governmental unit is this state, title to the property must vest in the land bank fast track authority created under section 15 of the land bank fast track act, 2003 PA 258, MCL 124.765. If the foreclosing governmental unit retains possession of the property and the foreclosing governmental unit is not this state, the foreclosing governmental unit may do any of the following:

(a) Transfer the property to a land bank fast track authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(b) Convey the property pursuant to section 78r.

(c) Offer the property for sale, including, but not limited to, a subsequent sale under this section.

(8) A foreclosing governmental unit shall deposit the proceeds from the sale of property under this section into a restricted account designated as the “delinquent tax property sales proceeds for the year ____”. The foreclosing governmental unit shall direct the investment of the account. The foreclosing governmental unit shall credit to the account interest and earnings from account investments. The foreclosing governmental unit shall use proceeds in that account only for the following purposes in the following order of priority:

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(a) For each property that was sold or transferred for an amount equal to or greater than the minimum bid, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees on each property that was transferred or sold that year.

(b) For each property that was sold or transferred for an amount equal to or greater than the minimum bid, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of foreclosed property and the administration of this act, including costs for the defense of title actions and other legal expenses, must be paid up to the amount for which the property was sold on a property-by-property basis.

(c) Payments to claimants of remaining proceeds for the year ordered under section 78t and any other payments ordered under section 78t must be paid on a property-by-property basis.

(d) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees.

(e) For each property that was sold or transferred for an amount greater than the minimum bid, fees incurred

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by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act for the year but not paid under subdivision (b) must be paid.

(f) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for the year must be paid.

(g) Any fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for any prior year that have not been paid or reimbursed from a prior year's delinquent tax property sales proceeds must be paid.

(h) If the foreclosing governmental unit is this state, any remaining balance must be transferred to the land reutilization fund created under section 78n. If the foreclosing governmental unit for a county is this state, not later than September 30 of the second calendar year after foreclosure, the department of treasury shall, subject to subparagraph (xiii), submit an electronic report to the house and senate committees with jurisdiction

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over taxation that includes, for each county, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

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(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025.

(i) If the foreclosing governmental unit is not this state, not later than September 30 of the second calendar year after foreclosure, the foreclosing governmental unit shall, subject to subparagraph (xiii), submit a written report to its board of commissioners and the state treasurer identifying any remaining balance and any contingent costs of title, environmental remediation, or other legal claims relating to foreclosed property as determined by the foreclosing governmental unit. Any remaining balance must be used for costs incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property, the defense of title actions and other legal expenses, or the administration of this act, or for the payment of claims for remaining proceeds or other amounts ordered under section 78t. The report required under this subdivision must include,

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in a form determined by the department of treasury, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

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(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025.

(9) Two or more county treasurers of adjacent counties may elect to hold a joint sale of property as provided in this section. If 2 or more county treasurers elect to hold a joint sale, property may be sold under this section at a location outside of the county in which the property is located. The sale may be conducted by any county treasurer participating in the joint sale or by an authorized agent of each county treasurer participating in the sale. A joint sale held under this subsection may include or be an auction sale conducted via an internet website.

(10) The foreclosing governmental unit shall record a deed for any property transferred under this section with the county register of deeds. The foreclosing governmental unit may charge a fee in excess of the minimum bid and any sale proceeds for the cost of recording a deed under this subsection.

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(11) For property transferred to this state, a city, a village, a township, a city authority, a county, or a county authority under subsection (1), a city, village, or township under subsection (6), or retained by a foreclosing governmental unit under subsection (7), all taxes due on the property as of the December 31 following the transfer or retention of the property are canceled effective on that December 31 and the property is exempt from the collection of taxes under this act while held by the city, village, township, city authority, county, county authority, or foreclosing governmental unit.

(12) For property sold, transferred, or retained under this section, 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 effective on that December 31. This subsection does not apply to liens recorded by the department of environment, Great Lakes, and energy under this act or the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.

(13) If property foreclosed under section 78k and held by or under the control of a foreclosing governmental unit is a facility as defined under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101, before the sale or transfer of the property under this section, the property is subject to all of the following:

(a) Upon reasonable written notice from the department of environment, Great Lakes, and energy, the foreclosing

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governmental unit shall provide access to the department of environment, Great Lakes, and energy, its employees, contractors, and any other person expressly authorized by the department of environment, Great Lakes, and energy to conduct response activities at the foreclosed property. Reasonable written notice under this subdivision may include, but is not limited to, notice by electronic mail, if the foreclosing governmental unit consents to notice by electronic mail before the provision of notice by the department of environment, Great Lakes, and energy.

(b) If requested by the department of environment, Great Lakes, and energy to protect public health, safety, and welfare or the environment, the foreclosing governmental unit shall grant an easement for access to conduct response activities on the foreclosed property as authorized under chapter 7 of article II of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20302.

(c) If requested by the department of environment, Great Lakes, and energy to protect public health, safety, and welfare or the environment, the foreclosing governmental unit shall place and record deed restrictions on the foreclosed property as authorized under chapter 7 of article II of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20302.

(d) The department of environment, Great Lakes, and energy may place an environmental lien on the foreclosed property as authorized under section 20138 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20138.

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(14) If property foreclosed under section 78k and held by or under the control of a foreclosing governmental unit is a facility as defined under section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101, before the sale or transfer of the property under this section, the department of environment, Great Lakes, and energy shall request and the foreclosing governmental unit shall transfer the property to the state land bank fast track authority created under section 15 of the land bank fast track act, 2003 PA 258, MCL 124.765, if all of the following apply:

(a) The department of environment, Great Lakes, and energy determines that conditions at a foreclosed property are an acute threat to the public health, safety, and welfare, to the environment, or to other property.

(b) The department of environment, Great Lakes, and energy proposes to undertake or is undertaking state-funded response activities at the property.

(c) The department of environment, Great Lakes, and energy determines that the sale, retention, or transfer of the property other than under this subsection would interfere with response activities by the department of environment, Great Lakes, and energy.

(15) A person convicted for executing a false affidavit under subsection (5) is prohibited from bidding for a property or purchasing a property at any sale under this section.

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(16) As used in this section:

(a) “City authority” means a land bank fast track authority created under section 23(5) of the land bank fast track act, 2003 PA 258, MCL 124.773.

(b) “County authority” means a land bank fast track authority created under section 23(4) of the land bank fast track act, 2003 PA 258, MCL 124.773.

(c) “Minimum bid” is the minimum amount established by the foreclosing governmental unit for which property may be sold or transferred under subsections (1) to (3). The minimum bid must include all of the delinquent taxes, interest, penalties, and fees due on the property, and may include any additional expenses incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, maintenance, repair, or remediation of the property or the administration of this act for the property, including, but not limited to, foreclosure avoidance, mailing, publication, personal service, legal, personnel, outside contractor, and auction expenses.

Enacting section 1. Section 78m of the general property tax act, 1893 PA 206, MCL 211.78m, as amended by this amendatory act, takes effect January 1, 2021.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1137 of the 100th Legislature is enacted into law.

Enacting section 3. This amendatory act is curative and intended to codify and give full effect to the right

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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, 1893 PA 206, MCL 211.1 to 211.155, as recognized by the Michigan supreme court in *Rafaeli, LLC v Oakland County*, docket no. 156849, consistent with the legislative findings and intent under section 78 of the general property tax act, 1893 PA 206, MCL 211.78.

This act is ordered to take immediate effect.

/s/ Margaret O'Brien
Secretary of the Senate

/s/ Gary L. Randall
Clerk of the House of Representatives

Approved _____

/s/ _____
Governor

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**APPENDIX D — MICHIGAN
PUBLIC ACT 256 OF 2020**

Act No. 256
Public Acts of 2020
Approved by the Governor
December 22, 2020
Filed with the Secretary of State
December 22, 2020
EFFECTIVE DATE: December 22, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senators Runestad and MacGregor

ENROLLED SENATE BILL No. 1137

AN ACT to amend 1893 PA 206, entitled “An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time

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within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts,” by amending sections 78g, 78i, and 78l (MCL 211.78g, 211.78i, and 211.78l), section 78g as amended by 2020 PA 33, section 78i as amended by 2015 PA 190, and section 78l as amended by 2003 PA 263, and by adding section 78t.

The People of the State of Michigan enact:

Sec. 78g. (1) Except as otherwise provided in this subsection, 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 amount of those unpaid delinquent taxes, interest, penalties, and fees. If property is forfeited to a county treasurer under this subsection, the foreclosing governmental unit does not have a right to possession of the property until the April 1 immediately succeeding the entry of a judgment foreclosing the property under section 78k or in a contested case until 22 days after the entry of a judgment foreclosing the property under section 78k. If property is forfeited to a county treasurer under this subsection, the county treasurer shall add a \$175.00 fee to each property for which those delinquent taxes, interest, penalties, and fees remain unpaid. The fee added under this subsection must be used by the foreclosing governmental

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unit and the fee added under section 78d must be used by the county treasurer for the administration of sections 78 to 79a, including, but not limited to, costs associated with providing required notices and with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of property. A county treasurer shall withhold a property from forfeiture for any reason determined by the state tax commission. The state tax commission shall determine the procedure for withholding a property from forfeiture under this subsection.

(2) Not more than 45 days after property is forfeited under subsection (1), the county treasurer shall record with the county register of deeds a certificate in a form determined by the department of treasury for each property forfeited to the county treasurer, specifying that the property has been forfeited to the county treasurer and not redeemed and that absolute title to the property and any equity associated with an interest in the property will vest in the foreclosing governmental unit on the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k or in a contested case 21 days after the entry of a judgment foreclosing the property under section 78k. The certificate must 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 is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m. If a certificate of forfeiture is recorded in error, the county treasurer shall record with the county register of deeds a certificate of error

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in a form prescribed by the department of treasury. A certificate submitted to the county register of deeds for recording under this subsection need not be notarized and may be authenticated by a digital signature of the county treasurer or by other electronic means. If the county has elected under section 78 to have this state foreclose property under this act forfeited to the county treasurer under this section, the county treasurer shall immediately transmit to the department of treasury a copy of each certificate recorded under this subsection. The county treasurer shall upon collection transmit to the department of treasury within 30 days the fee added to each property under subsection (1), which may be paid from the county's delinquent tax revolving fund and upon receipt must be deposited by the department of treasury in the land reutilization fund created under section 78n.

(3) Property forfeited to the county treasurer under subsection (1) may be redeemed at any time on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k or in a contested case within 21 days of the entry of a judgment foreclosing the property under section 78k upon payment to the county treasurer of all of the following:

(a) The total amount of unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited or the reduced amount of unpaid delinquent taxes, interest, penalties, and fees payable under subsection (8), if applicable.

(b) Except as otherwise provided in this subdivision and subdivision (c), in addition to the interest calculated

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under sections 60a(1) or (2) and 78a(3), additional interest computed at a noncompounded rate of 1/2% per month or fraction of a month on the taxes that were originally returned as delinquent, computed from the March 1 preceding the forfeiture. The county treasurer may waive the additional interest under this subdivision if the property is withheld from the petition for foreclosure under section 78h(3)(c).

(c) If the property is classified as residential real property under section 34c, the property is a principal residence exempt from the tax levied by a local school district for school operating purposes under section 7cc, and a tax foreclosure avoidance agreement is in effect for the property under section 78q(5), while the tax foreclosure avoidance agreement is effective, all of the following apply:

(i) The property must be withheld from the petition for foreclosure under section 78h.

(ii) The additional interest under subdivision (b) does not apply and interest computed at a noncompounded rate of 1/2% per month or fraction of a month on the taxes that were originally returned as delinquent, computed from the date that the taxes originally were returned as delinquent, applies to the property.

(d) All recording fees and all fees for service of process or notice.

(4) If property is redeemed by a person with a legal interest in the property as provided under subsection (3),

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any unpaid taxes, interest, penalties, and fees not returned as delinquent to the county treasurer under section 78a are not extinguished.

(5) If property is redeemed by a person with a legal interest in the property as provided under subsection (3), the person redeeming does not acquire a title or interest in the property greater than that person would have had if the property had not been forfeited to the county treasurer, but a person redeeming, other than the owner, is entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have, which must be recorded within 30 days with the register of deeds by the person entitled to the lien. The lien acquired has the same priority as the existing lien, title, or interest.

(6) If property is redeemed as provided under subsection (3), the county treasurer shall issue a redemption certificate in quadruplicate in a form prescribed by the department of treasury. One of the quadruplicate certificates must be delivered to the person making the redemption payment, 1 must be filed in the office of the county treasurer, 1 must be recorded in the office of the county register of deeds, and 1 must be immediately transmitted to the department of treasury if this state is the foreclosing governmental unit. The county treasurer shall also make a note of the redemption certificate in the tax record kept in his or her office, with the name of the person making the final redemption payment, the date of the payment, and the amount paid. If the county treasurer accepts partial redemption

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payments, the county treasurer shall include in the tax record kept in his or her office the name of the person or persons making each partial redemption payment, the date of each partial redemption payment, the amount of each partial redemption payment, and the total amount of all redemption payments. A certificate and the entry of the certificate in the tax record by the county treasurer is evidence of a redemption payment in the courts of this state. A certificate submitted to the county register of deeds for recording under this subsection need not be notarized and may be authenticated by a digital signature of the county treasurer or by other electronic means. If a redemption certificate is recorded in error, the county treasurer shall record with the county register of deeds a certificate of error in a form prescribed by the department of treasury. A copy of a certificate of error recorded under this section must be immediately transmitted to the department of treasury if this state is the foreclosing governmental unit.

(7) If a foreclosing governmental unit has reason to believe that a property forfeited under this section may be the site of environmental contamination, the foreclosing governmental unit shall provide the department of environment, Great Lakes, and energy with any information in the possession of the foreclosing governmental unit that suggests the property may be the site of environmental contamination.

(8) Notwithstanding any provision of this act or charter to the contrary, until July 1, 2025, all of the following apply to property for which delinquent property

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taxes remain unpaid, including property forfeited under this section, located in a local unit of government that, pursuant to subsection (10)(b)(i) or (ii), is participating in a payment reduction program authorized by this subsection:

(a) If the property is subject to an exemption under section 7u and the property's owner has not previously received a payment reduction under this subsection, the foreclosing governmental unit may do 1 or more of the following:

(i) If the total amount of unpaid delinquent taxes is greater than 10% of the property's taxable value for the calendar year preceding the year the property was exempt from the collection of taxes under section 7u, reduce the amount required to be paid under section 78a(1) or required to be paid to redeem the property under subsection (3)(a) to 10% of the property's taxable value for the calendar year preceding the year the property was exempt from the collection of taxes under section 7u. A reduction under this subparagraph must be allocated to each taxing unit based on the proportion that its unpaid delinquent taxes certified to the county treasurer bear to the total amount of unpaid delinquent taxes certified to the county treasurer in connection with the property.

(ii) Cancel some or all of any unpaid delinquent taxes that represent charges for services that have become delinquent and have been certified to the county treasurer for collection of taxes and enforcement of the lien for the taxes under section 21(3) of the revenue bond act of 1933, 1933 PA 94, MCL 141.121.

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(iii) Cancel all of the interest, penalties, and fees required to be paid under this act.

(b) If the amount required to be paid under this act is reduced under subdivision (a), the foreclosing governmental unit may further reduce the amount by an amount not to exceed 10% of the unpaid delinquent taxes required to be paid to redeem the property if the property is redeemed by a single lump-sum payment made within a period to be determined by the foreclosing governmental unit.

(c) A foreclosing governmental unit may apply the provisions of this subsection to property subject to a delinquent property tax installment payment plan under section 78q(1) or a tax foreclosure avoidance agreement under section 78q(5). Except as provided in this subdivision, the terms and conditions of a payment reduction applied to property under this subsection must be consistent with the terms and conditions of a delinquent property tax installment payment plan under section 78q(1) or tax foreclosure agreement under section 78q(5) for the property. If the owner of property subject to a delinquent property tax installment payment plan under section 78q(1) or a tax foreclosure avoidance agreement under section 78q(5) has failed to pay any amounts owed under the plan or agreement, that nonpayment does not prohibit the property owner from receiving a payment reduction under this subsection. Notwithstanding any provision of this act to the contrary, the full amount owed by an owner of property as reduced by this subsection must be payable in not more than 3 years after the date the reduction is established by the foreclosing governmental unit.

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(d) If a property owner has paid a reduced amount under this subsection in accordance with the terms, conditions, and time period established by the county treasurer, any remaining unpaid taxes, interest, penalties, and fees otherwise payable shall be canceled by the county treasurer, including, but not limited to, any interest, fee, or penalty payment requirements set forth in a delinquent property tax installment payment plan under section 78q(1) or a tax foreclosure avoidance agreement under section 78q(5) with respect to the property. A county treasurer shall not impose any additional interest, penalties, fees, or other charges of any kind in connection with a payment reduction program under this subsection.

(e) If the owner of property subject to a payment reduction under this subsection fails to pay the full reduced amount of delinquent taxes, penalties, and fees under this subsection in accordance with the terms, conditions, and time period established by the county treasurer, all of the following apply:

(i) The amount required to be paid to redeem the property is the sum of both of the following:

(A) The full amount of any unpaid delinquent taxes on the property.

(B) Interest under subsection (3)(b) and any additional interest, fees, charges, and penalties otherwise applicable to any unpaid taxes on the property, including, but not limited to, interest, fees, charges, and penalties canceled under subdivision (d).

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(ii) The property must be included in the immediately succeeding petition for foreclosure under section 78h.

(f) A foreclosing governmental unit may not approve a reduction in the amount required to redeem property under this subsection if the reduction would cause noncompliance with section 87c(7) or otherwise impermissibly impair an outstanding debt of the county or any taxing unit.

(g) All payments collected in connection with property under this subsection must be distributed to each taxing unit that has certified to the county treasurer unpaid delinquent taxes for the property in an amount based on the proportion that the taxing unit's unpaid delinquent taxes certified to the county treasurer bear to the total amount of unpaid delinquent taxes certified to the county treasurer in connection with the property.

(h) A county treasurer shall set forth the terms and benefits of a payment reduction program available under this subsection in a plan available upon request to the department of treasury. The plan must set forth which of the reductions described in subdivisions (a) and (b) are available under the program and must include any other information determined to be necessary or appropriate in the discretion of the county treasurer.

(9) If a payment reduction under subsection (8) is in effect for property for which a county has issued notes under this act that are secured by the delinquent taxes and interest on that property, at any time within 2 years after the date that those taxes were returned as

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delinquent, the county treasurer may charge back to any taxing unit the face amount of the delinquent taxes that were owed to that taxing unit on the date those taxes were returned as delinquent, less the amount of any payments received by the county treasurer on that property. All subsequent payments of delinquent taxes and interest on that property must be retained by the county treasurer in a separate account and either paid to or credited to the account of that taxing unit.

(10) A foreclosing governmental unit's authority to apply any of the payment-reduction measures otherwise available under subsection (8) is subject to all of the following:

(a) A foreclosing governmental unit that seeks to implement a program under subsection (8) shall provide written notice to the treasurer of each affected local unit of government within the county in which the property is located of the foreclosing governmental unit's intent to implement the program and state that the local unit of government has the option of participating in the program. The notice must contain all of the terms and conditions to be offered under the program, in addition to any other information that the foreclosing governmental unit considers necessary or appropriate.

(b) Not later than 21 days after the foreclosing governmental unit provides the written notice described in subdivision (a), the treasurer of any affected local unit of government may provide the foreclosing governmental unit with 1 of the following, as applicable:

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(i) Written notice of nonparticipation in the program, if the local unit of government is located in a county with a population of more than 1,500,000 according to the most recent population estimate produced by the United States Census Bureau's Population Estimates Program (PEP). All property within a local unit of government that provides written notice of nonparticipation under this subparagraph will be excluded from the program. Any affected local unit of government whose treasurer does not provide written notice of nonparticipation under this subparagraph is conclusively presumed to have consented to participation in the program, and all property within that local unit of government will be included in the program.

(ii) Written notice of participation in the program, if the local unit of government is located in a county other than one described in subparagraph (i) and the governing body of the local unit of government has approved a resolution to participate in the program. All property within a local unit of government that provides written notice of participation under this subparagraph will be included in the program. Any affected local unit of government whose treasurer does not provide written notice of participation under this subparagraph is conclusively presumed to have declined to participate in the program, and all property within that local unit of government will be excluded from the program.

(11) As used in this section, "local unit of government" means a city, township, or village.

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Sec. 78i. (1) Not later than May 1 immediately succeeding the forfeiture of property to the county treasurer under section 78g, the foreclosing governmental unit shall initiate a search of records identified in subsection (6) to identify the persons with a property interest in the property entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k. The foreclosing governmental unit may enter into a contract with 1 or more authorized representatives to perform a title search or may request from 1 or more authorized representatives another title search product to identify the persons with a property interest in the property as required under this subsection or to perform other functions required for the collection of delinquent taxes under this act, including, but not limited to, the administration of sections 78 to 79a.

(2) After conducting the search of records under subsection (1), the foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise each person with a property interest in a forfeited property of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those persons, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing. If after conducting the search of records under subsection (1) the foreclosing governmental unit is unable to determine an address reasonably calculated to inform a person with

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an interest in a forfeited property, or if the foreclosing governmental unit discovers a deficiency in notice under subsection (4), the following are reasonable steps by the foreclosing governmental unit or its authorized representative to ascertain the address of a person with an interest in property entitled to notice under this section or to ascertain an address necessary to correct the deficiency in notice under subsection (4):

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

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

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

(d) For a business entity other than a partnership, a search of business entity records filed with the department of licensing and regulatory affairs.

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

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

(b) If a person occupying the property is personally served, verbally inform the occupant that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid, of the time within which all forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and of agencies or other resources that may be available to assist in avoiding loss of the property interest and any equity associated with the interest in the property.

(c) If the occupant appears to lack the ability to understand the information provided, notify the department of health and human services or provide the occupant with the names and telephone numbers of the agencies that may be able to assist the occupant, or both.

(d) If the foreclosing governmental unit or its authorized representative does not personally meet with the occupant, the foreclosing governmental unit or its authorized representative shall place in a conspicuous location on the property a notice that explains, in plain English, that the property will be foreclosed unless forfeited unpaid delinquent taxes, interest, penalties, and fees owed on the property are paid, the time within which forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and the names, addresses, and

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telephone numbers of agencies or other resources that may be available to assist a person with an interest in the property with avoiding the loss of the property interest and any equity associated with the property interest. The notice must include the internet website address for the legal resource and referral center of the state bar of Michigan and the toll-free telephone number for the state bar of Michigan's lawyer referral service. The notice also must 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 is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m. If this state is the foreclosing governmental unit within a county, the department of treasury or its authorized representative shall perform the personal visit to each property under this subsection on behalf of this state.

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

(5) If the foreclosing governmental unit or its authorized representative is unable to ascertain an address reasonably calculated to apprise a person with a property interest entitled to notice under this section, or is unable to notify a person with a property interest under subsection (2), the foreclosing governmental unit

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shall provide notice by publication as provided in this subsection and section 78s. The notice must be inserted for 2 successive weeks, once each week, in a notice publication circulated in the county in which the property is located. If a notice publication is not circulated in the county in which the property is located, the foreclosing governmental unit shall insert the notice in a notice publication circulated in an adjoining county. In addition to provision of notice in a notice publication, the foreclosing governmental unit may also post the notice under this subsection for not less than 14 days on a website, including, but not limited to, a website maintained by the foreclosing governmental unit.

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

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

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

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

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

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

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

(b) A statement that the person notified may lose that person's interest in the property and any equity associated with that property interest as a result of the foreclosure proceeding under section 78k.

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

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

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

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

(g) The date and time of the hearing on the petition for foreclosure under section 78k, and a statement that unless the forfeited unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k, or in a contested case within 21 days of the entry of a judgment foreclosing the property under section 78k, the title to the property will vest absolutely in the foreclosing governmental unit and that all existing interests in oil or gas in that property will be extinguished except the following:

(i) The interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as

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to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h.

(ii) Interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291.

(h) An explanation of the person's rights of redemption and notice that the rights of redemption will expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k, or in a contested case 21 days after the entry of a judgment foreclosing the property under section 78k.

(i) An explanation of the right of a person with an interest in the property at the time a judgment of foreclosure of the property is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m.

(j) The internet website address for the legal resource and referral center of the state bar of Michigan and the toll-free telephone number for the state bar of Michigan's lawyer referral service.

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

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

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

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

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

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

(f) A statement that unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k, or in a contested case within 21 days of the entry of a judgment foreclosing the property under section 78k, the title to the property will vest absolutely in the foreclosing governmental unit and that all existing interests in oil or gas in that property will be extinguished except the following:

(i) The interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h.

(ii) Interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291.

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(g) A statement that a person with an interest in the property may lose that interest and any equity associated with that interest as a result of the foreclosure proceeding under section 78k and that all existing interests in oil or gas in that property will be extinguished except the following:

(i) The interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h.

(ii) Interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291.

(h) An explanation of the right of a person with an interest in the property at the time a judgment of foreclosure of the property is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m.

(i) The internet website address for the legal resource and referral center of the state bar of Michigan and the toll-free telephone number for the state bar of Michigan's lawyer referral service.

(9) A person with a property interest properly served under this section with a notice of the show cause hearing under section 78j and the foreclosure hearing under

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section 78k that fails to redeem the property as provided under this act shall not assert any of the following:

(a) That notice was insufficient or inadequate on the grounds that some other person with a property interest was not also served.

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

(c) That the person did not receive the notice required by law of the show cause hearing under section 78j or the foreclosure hearing under section 78k.

(10) The failure of the foreclosing governmental unit to comply with any provision of this section does not invalidate any proceeding under this act if the person with a property interest is notified of the show cause hearing under section 78j and the foreclosure hearing under section 78k consistent with the minimum due process required under the state constitution of 1963 and the Constitution of the United States.

(11) As used in this section, “authorized representative” includes all of the following:

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

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

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

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

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

Sec. 78l. (1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property shall not bring an action, including an action for possession or recovery of the property or any interests in the property or of any proceeds from the sale or transfer of the property under this act, or other violation of this act or other law of this state, the state constitution of 1963, or the Constitution of the United States more than 2 years after the judgment of foreclosure of the property is effective under section 78k. Nothing in this section authorizes an action not otherwise authorized under the laws of this state. An action to recover any proceeds from the sale or transfer of property foreclosed for nonpayment of real property taxes under this act must be brought as provided under section 78t.

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(2) The right to sue recognized by this section is not transferable except by testate or intestate succession.

Sec. 78t. (1) A claimant may submit a notice of intention to claim an interest in any applicable remaining proceeds from the transfer or sale of foreclosed property under section 78m, subject to the following:

(a) For foreclosed property transferred or sold under section 78m after July 17, 2020, the notice of intention must be submitted pursuant to subsection (2).

(b) For foreclosed property transferred or sold under section 78m before July 18, 2020, both of the following:

(i) A claim may be made only if the Michigan supreme court orders that its decision in *Rafaeli, LLC v Oakland County*, docket no. 156849, applies retroactively.

(ii) Subject to subparagraph (i), the notice of intention must be submitted pursuant to subsection (6).

(2) For foreclosed property transferred or sold under section 78m after July 17, 2020, by the July 1 immediately following the effective date of the foreclosure of the property, a claimant seeking remaining proceeds for the property must notify the foreclosing governmental unit using a form prescribed by the department of treasury. The department of treasury shall make the form available to the public on an internet website maintained by the department of treasury. A foreclosing governmental unit shall make the form available to the public on an internet

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website maintained by the foreclosing governmental unit if the foreclosing governmental unit maintains an internet website. Notice to a foreclosing governmental unit under this subsection must be by personal service acknowledged by the foreclosing governmental unit or by certified mail, return receipt requested. The notice must be notarized and include all of the following:

- (a) The name of the claimant.
 - (b) The telephone number of the claimant.
 - (c) The address at which the claimant wants to receive service.
 - (d) The parcel identification number of the property, and, if available, the address of the property.
 - (e) An explanation of the claimant's interest in the property.
 - (f) A description of any other interest in the property immediately before the foreclosure under section 78k held by other persons and known by the claimant, including a lien or a mortgage.
 - (g) A sworn statement or affirmation by the claimant that the information included in the notice is accurate.
- (3) Not later than the January 31 immediately succeeding the sale or transfer of the property under section 78m, the foreclosing governmental unit shall send

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by certified mail, return receipt requested, a notice in a form prescribed by the department of treasury to each claimant that notified the foreclosing governmental unit pursuant to subsection (2). The notice must include the following information:

- (a) The parcel identification number of the property.
- (b) The legal description of the property.
- (c) The address for the property if an address is available for the property.
- (d) The date on which the property was sold or transferred under section 78m or, if the property was not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.
- (e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.
- (f) The amount for which the property was sold or transferred under section 78m.
- (g) The amount of the sale cost recovery for the property, which must be equal to 5% of the amount under subdivision (f).
- (h) 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 under section 78k based on the records of the foreclosing governmental unit.

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(i) The total amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred by the foreclosing governmental unit in foreclosing and selling the property under section 78m exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(j) The name and address provided by each claimant for the property pursuant to subsection (2).

(k) A statement that a claimant must file pursuant to subsection (4) a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under section 78k to claim any remaining proceeds payable to the claimant. The statement must include the case number assigned to the proceeding, the name of the judge assigned to the proceeding, and contact information for the clerk of the circuit court.

(4) For a claimant seeking remaining proceeds from the transfer or sale of a foreclosed property transferred or sold under section 78m after July 17, 2020, after receipt of a notice under subsection (3), the claimant may file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under section 78k to claim any portion of the remaining proceeds that the claimant is entitled to under this section. A motion under this subsection must be filed during the period beginning on February 1 immediately succeeding the date on which the property was sold

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or transferred under section 78m and ending on the immediately succeeding May 15, and may not be filed after that May 15 if notice was provided under section 78i of the show cause hearing under section 78j and the foreclosure hearing under section 78k before the show cause hearing and the foreclosure hearing, notwithstanding section 781. The motion must indicate both of the following:

(a) Whether the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under section 78m.

(b) Whether the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed.

(5) At the end of the claim period described in subsection (4), the foreclosing governmental unit shall file with the circuit court proof of service of the notice required under subsection (3) and, for each property for which a claimant provided notice under subsection (2), a list of all of the following information:

(a) The parcel identification number of the property.

(b) The legal description of the property.

(c) The address for the property if an address is available for the property.

(d) The date on which the property was sold or transferred under section 78m or, if the property was

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not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.

(e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.

(f) The amount for which the property was sold or transferred under section 78m.

(g) The amount of the sale commission for the property, which must be equal to 5% of the amount under subdivision (f).

(h) 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 under section 78k based on the records of the county treasurer.

(i) The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(j) The name and address provided by each claimant for the property pursuant to subsection (2).

(6) For a claimant seeking remaining proceeds from the transfer or sale of a foreclosed property transferred or sold under section 78m pursuant to this subsection, the

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claimant must notify the foreclosing governmental unit using the form prescribed by the department of treasury under subsection (2) in the manner prescribed under subsection (2) by the March 31 at least 180 days after any qualified order. By the following July 1, the foreclosing governmental unit shall provide each claimant seeking remaining proceeds for the property and notifying the foreclosing governmental unit under this subsection with a notice relating to the foreclosed property in the form and manner provided under subsection (3). To claim any applicable remaining proceeds to which the claimant is entitled, the claimant must file a motion with the circuit court in the same proceeding in which a judgement of foreclosure was effective under section 78k by the following October 1. The motion must be certified and include all of the following:

- (a) The name of the claimant filing the motion.
- (b) The telephone number of the claimant.
- (c) The address at which the claimant wants to receive service.
- (d) The parcel identification number of the property, and, if available, the address of the property.
- (e) An explanation of the claimant's interest in the property.
- (f) A description of any other interest in the property, including a lien or a mortgage, immediately before the

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foreclosure under section 78k held by any other person or entity and known by the claimant.

(g) A statement indicating that the claimant or an entity in which the claimant held a direct or indirect interest did or did not purchase the property under section 78m.

(h) A statement indicating that the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed.

(i) A sworn statement or affirmation by the claimant that the information included in the motion is accurate.

(7) At the end of the claim period described in subsection (4) or after receipt of a motion under subsection (6), the foreclosing governmental unit shall file with the circuit court proof of service of the notice required under subsection (3) and, for each property for which a claimant provided notice under subsection (2) or filed a motion under subsection (6), a list of all of the following information:

(a) The parcel identification number of the property.

(b) The legal description of the property.

(c) The address for the property if an address is available for the property.

(d) The date on which the property was sold or transferred under section 78m or, if the property was

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not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.

(e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.

(f) The amount for which the property was sold or transferred under section 78m.

(g) The amount of the sale commission for the property, which must be equal to 5% of the amount under subsection (f).

(h) The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(i) 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 under section 78k based on the records of the county treasurer.

(j) The name and address provided by each claimant for the property pursuant to subsection (2) or (6).

(8) A motion by a claimant under this section must provide the specific basis for the claimant's asserted interest in some or all of the remaining proceeds, including

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the claimant's interest in the property immediately before its foreclosure under section 78k and documentation evidencing that interest. The claimant also shall 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 was effective under section 78k. If a claimant had a lien or other security interest in the property at the time the judgment of foreclosure was effective under section 78k, the claimant shall indicate the amount owed to the claimant pursuant to the lien or security interest and the priority of the claimant's lien or security interest. The motion must be verified and include a sworn statement or affirmation by the claimant of its accuracy. A claimant filing a motion under this section must serve a copy of the motion on the foreclosing governmental unit.

(9) After the foreclosing governmental unit responds to a claimant's motion under this section, the court shall set a hearing date and time for each property for which 1 or more claimants filed a motion under this section and 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 shall 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 may appear at the hearing. The burden of proof of a claimant's interest in any remaining proceeds for a claimant is on the claimant. The court shall require payment to the foreclosing governmental unit of a sale commission equal to 5% of the amount for which the property was sold by the foreclosing governmental unit. The court shall allocate

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any remaining proceeds based upon its determination and order that the foreclosing governmental unit pay applicable remaining proceeds to 1 or more claimants consistent with its determination under this subsection. An order for the payment of remaining proceeds must not unjustly enrich a claimant at the expense of the public. If a claimant indicated in the motion that the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under section 78m or if the claimant indicated in the motion that the claimant held a direct or indirect interest in the property at the time the motion was filed, the order must require remaining proceeds to be applied to any unpaid obligations payable to a tenant at the time the foreclosure was effective or any unpaid civil fines relating to the property owed at the time the foreclosure was effective for violation of an ordinance authorized by section 41 of the home rule city act, 1909 PA 279, MCL 117.41, in the local tax collecting unit in which the property is located. The order must 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 under section 78k if the lien had priority over the claimant's interest in the property. The order also must provide that any further claim by a claimant under this act relating to the foreclosed property is barred.

(10) The foreclosing governmental unit shall pay the amounts ordered by the court to the claimants and any other persons ordered by the court under subsection (9) within 21 days of the order pursuant to section 78m.

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(11) This section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state. A right to claim remaining proceeds under this section is not transferable except by testate or intestate succession.

(12) As used in this section:

(a) “Claimant” means a person with a legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property under section 78k who seeks pursuant to this section recognition of its interest in any remaining proceeds associated with the property.

(b) “Remaining proceeds” means the amount equal to the difference between the amount paid to the foreclosing governmental unit for a property due to the sale or transfer of the property under section 78m and the sum of all of the following:

(i) The minimum bid under section 78m.

(ii) All other fees and expenses incurred by the foreclosing governmental unit pursuant to section 78m in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of the property not included in the minimum bid.

(iii) A sale commission payable to the foreclosing governmental unit equal to 5% of the amount paid to the foreclosing governmental unit for the property.

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Enacting section 1. Sections 78g and 78i of the general property tax act, 1893 PA 206, MCL 211.78g and 211.78i, as amended by this amendatory act, take effect January 1, 2021.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 676 of the 100th Legislature is enacted into law.

Enacting section 3. This amendatory act 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, 1893 PA 206, MCL 211.1 to 211.155, as recognized by the Michigan supreme court in *Rafaeli, LLC v Oakland County*, docket no. 156849, consistent with the legislative findings and intent under section 78 of the general property tax act, 1893 PA 206, MCL 211.78.

This act is ordered to take immediate effect.

/s/ Margaret O'Brien
Secretary of the Senate

/s/ Gary L. Randall
Clerk of the House of Representatives

Approved _____

/s/ _____
Governor

APPENDIX E — MCL § 211.78

MCL § 211.78a (EXCERPT)

211.78a Property returned as delinquent subject to forfeiture, foreclosure, and sale; unpaid taxes from preceding year; county property tax administration fee and interest; notice of return of delinquent taxes; annual fee; procedures and schedules established by ordinance.

* * *

(2) On March 1 in each year, taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent for collection. However, if the last day in a year that taxes are due and payable before being returned as delinquent is on a Saturday, Sunday, or legal holiday, the last day taxes are due and payable before being returned as delinquent is on the next business day and taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent on the immediately succeeding business day. Except as otherwise provided in section 79 for certified abandoned property, property delinquent for taxes levied in the second year preceding the forfeiture under section 78g or in a prior year to which this section applies shall be forfeited to the county treasurer for the total of the unpaid taxes, interest, penalties, and fees for those years as provided under section 78g.

* * *

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MCL § 211.78b

§ 211.78b. Notice provisions; June 1.

Sec. 78b.

Except as otherwise provided in section 79 for certified abandoned property, on or within 60 days before the June 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer as delinquent under section 78a, the county treasurer shall send notice of all the following by first-class mail, address correction requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent or to the person identified as the owner of property returned for delinquent taxes, to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax certificate for property returned for delinquent taxes was issued under former section 71, as shown on the current records of the county treasurer:

(a) The date property on which unpaid taxes were returned as delinquent will be forfeited to the county treasurer for those unpaid delinquent taxes, interest, penalties, and fees.

(b) A statement that a person who holds a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding.

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

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

(e) The unpaid delinquent taxes, interest, penalties, and fees due on the property.

(f) A statement that unless those unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k, absolute title to the property shall vest in the foreclosing governmental unit.

(g) A statement of the person's rights of redemption and notice that the rights of redemption will expire on the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k.

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MCLS § 211.78c

§ 211.78c. Notice provisions; September 1.

Sec. 78c.

Except as otherwise provided in section 79 for certified abandoned property, on or within 60 days before the September 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer as delinquent under section 78a, the county treasurer shall send notice of all the following by first-class mail, address correction requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent or to the person identified as the owner of property returned for delinquent taxes, to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax certificate for property returned for delinquent taxes was issued under former section 71, as shown on the current records of the county treasurer:

(a) The date property on which unpaid taxes were returned as delinquent will be forfeited to the county treasurer for those unpaid delinquent taxes, interest, penalties, and fees.

(b) A statement that a person who holds a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding.

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

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

(e) The unpaid delinquent taxes, interest, penalties, and fees due on the property.

(f) A schedule of the additional fees that will accrue on the immediately succeeding October 1 under section 78d if the unpaid delinquent taxes, interest, penalties, and fees due on the property are not paid.

(g) A statement that unless those unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k, absolute title to the property shall vest in the foreclosing governmental unit.

(h) A statement of the person's rights of redemption and notice that the rights of redemption will expire on the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k.

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MCL § 211.78d

211.78d Additional fee; October 1.

Sec. 78d. Except as otherwise provided in section 79 for certified abandoned property, on the October 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer for forfeiture, foreclosure, and sale under section 60a(1) or (2) or returned to the county treasurer as delinquent under section 78a, the county treasurer shall add a \$15.00 fee on each parcel of property for which the delinquent taxes, interest, penalties, and fees remain unpaid.

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MCLS § 211.78f

§ 211.78f. Notice provisions; February 1; additional notices.

Sec. 78f.

(1) Except as otherwise provided in section 79 for certified abandoned property, not later than the February 1 immediately succeeding the date that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale under section 60a(1) or (2) or returned to the county treasurer as delinquent under section 78a, the county treasurer shall send a notice by certified mail, return receipt requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent and, if different, to the person identified as the owner of property returned for delinquent taxes as shown on the current records of the county treasurer and to those persons identified under section 78e(2). The notice required under this subsection shall include all of the following:

(a) The date property on which those unpaid taxes were returned as delinquent will be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees.

(b) A statement that a person who holds a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding.

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

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

(e) The unpaid delinquent taxes, interest, penalties, and fees due on the property.

(f) A schedule of the additional interest, penalties, and fees that will accrue on the immediately succeeding March 1 pursuant to section 78g if those unpaid delinquent taxes, interest, penalties, and fees due on the property are not paid.

(g) A statement that unless those unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k, absolute title to the property shall vest in the foreclosing governmental unit.

(h) A statement of the person's rights of redemption and notice that the rights of redemption will expire on the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k.

(2) The notice required under subsection (1) shall also be mailed to the property by first-class mail, addressed to "occupant", if the notice was not sent to the occupant of the property pursuant to subsection (1).

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(3) A county treasurer may insert 1 or more additional notices in a notice publication circulated in the county in which the property is located. If no notice publication is circulated in the county in which the property is located, the county treasurer may insert 1 or more additional notices in a notice publication circulated in an adjoining county. Additionally, a county treasurer may post 1 or more additional notices on a website, including, but not limited to, a website maintained by the county treasurer.

(4) The county treasurer may insert in a notice publication circulated in the county in which the property is located, notice of the street address, if available, of property subject to forfeiture under section 78g on the immediately succeeding March 1 for delinquent taxes or the street address, if available, of property subject to forfeiture under section 78g on the immediately succeeding March 1 for delinquent taxes and the name of the person to whom a tax bill for property returned for delinquent taxes was last sent and, if different, the name of the person identified as the owner of the property returned for delinquent taxes as shown on the current records of the county treasurer. If no notice publication is circulated in the county in which the property is located, the county treasurer may insert a notice under this subsection in a notice publication circulated in an adjoining county. Additionally, a county treasurer may post on a website, including, but not limited to, a website maintained by the county treasurer.

*Appendix E***MCL § 211.78g (EXCERPTS)**

211.78g Property delinquent for preceding 12 months or forfeited for total amount; right to possession by foreclosing governmental unit; limitation; recording certificate with county register of deeds; redemption; property as site of environmental contamination; payment reduction program; requirements; “local unit of government” defined.

Sec. 78g. (1) Except as otherwise provided in this subsection, 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 amount of those unpaid delinquent taxes, interest, penalties, and fees. If property is forfeited to a county treasurer under this subsection, the foreclosing governmental unit does not have a right to possession of the property until the April 1 immediately succeeding the entry of a judgment foreclosing the property under section 78k or in a contested case until 22 days after the entry of a judgment foreclosing the property under section 78k. If property is forfeited to a county treasurer under this subsection, the county treasurer shall add a \$175.00 fee to each property for which those delinquent taxes, interest, penalties, and fees remain unpaid. The fee added under this subsection must be used by the foreclosing governmental unit and the fee added under section 78d must be used by the county treasurer for the administration of sections 78 to 79a, including, but not limited to, costs associated with providing required notices and with the forfeiture,

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foreclosure, sale, maintenance, repair, and remediation of property. A county treasurer shall withhold a property from forfeiture for any reason determined by the state tax commission. The state tax commission shall determine the procedure for withholding a property from forfeiture under this subsection.

(2) Not more than 45 days after property is forfeited under subsection (1), the county treasurer shall record with the county register of deeds a certificate in a form determined by the department of treasury for each property forfeited to the county treasurer, specifying that the property has been forfeited to the county treasurer and not redeemed and that absolute title to the property and any equity associated with an interest in the property will vest in the foreclosing governmental unit on the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k or in a contested case 21 days after the entry of a judgment foreclosing the property under section 78k. The certificate must 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 is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m. If a certificate of forfeiture is recorded in error, the county treasurer shall record with the county register of deeds a certificate of error in a form prescribed by the department of treasury. A certificate submitted to the county register of deeds for recording under this subsection need not be notarized and may be authenticated by a digital signature of the

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county treasurer or by other electronic means. If the county has elected under section 78 to have this state foreclose property under this act forfeited to the county treasurer under this section, the county treasurer shall immediately transmit to the department of treasury a copy of each certificate recorded under this subsection. The county treasurer shall upon collection transmit to the department of treasury within 30 days the fee added to each property under subsection (1), which may be paid from the county's delinquent tax revolving fund and upon receipt must be deposited by the department of treasury in the land reutilization fund created under section 78n.

* * *

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MCLS § 211.78h

§ 211.78h. Petition for foreclosure; filing in circuit court; removal of property from petition; withholding property by foreclosing governmental unit; hearing date.

Sec. 78h.

(1) Not later than June 15 in each tax year, the foreclosing governmental unit shall file a single petition with the clerk of the circuit court of that county listing all property forfeited and not redeemed to the county treasurer under section 78g to be foreclosed under section 78k for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees. If available to the foreclosing governmental unit, the petition shall include the street address of each parcel of property set forth in the petition. The petition shall seek a judgment in favor of the foreclosing governmental unit for the forfeited unpaid delinquent taxes, interest, penalties, and fees listed against each parcel of property. The petition shall request that a judgment be entered vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption.

(2) If property is redeemed after the petition for foreclosure is filed under this section, the foreclosing governmental unit shall request that the circuit court remove that property from the petition for foreclosure before entry of judgment foreclosing the property under section 78k.

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(3) The foreclosing governmental unit may withhold the following property from the petition for foreclosure filed under this section:

(a) Property the title to which is held by minor heirs or persons who are incompetent, persons without means of support, or persons unable to manage their affairs due to age or infirmity, until a guardian is appointed to protect that person's rights and interests.

(b) Property the title to which is held by a person undergoing substantial financial hardship, as determined under a written policy developed and adopted by the foreclosing governmental unit. The foreclosing governmental unit shall make available to the public the written policy adopted under this subdivision. The written policy adopted under this subdivision shall include, but is not limited to, all of the following:

(i) The person requesting that the property be withheld from the petition for foreclosure holds the title to the property.

(ii) The total household resources of the person requesting that the property be withheld from the petition for foreclosure meets the federal poverty income standards as defined and determined annually by the United States office of management and budget or alternative guidelines adopted by the

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foreclosing governmental unit, provided that the alternative guidelines include all persons who would otherwise meet the federal poverty income standards under this subparagraph. As used in this subparagraph, “total household resources” means that term as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508.

(c) Property the title to which is held by a person subject to a delinquent property tax installment payment plan or tax foreclosure avoidance agreement under section 78q.

(4) If a foreclosing governmental unit withholds property from the petition for foreclosure under subsection (3), a taxing unit’s lien for taxes due or the foreclosing governmental unit’s right to include the property in a subsequent petition for foreclosure is not prejudiced.

(5) The clerk of the circuit court in which the petition is filed shall immediately set the date, time, and place for a hearing on the petition for foreclosure, which hearing shall be held not more than 30 days before the March 1 immediately succeeding the date the petition for foreclosure is filed.

*Appendix E***MCL § 211.78i (EXCERPTS)**

§ 211.78i. Identification of owners of property interest; title search; personal visit to determine occupancy; publication of notice; sources of identification; notice provisions; prohibited assertions if failure to redeem property; noncompliance; “authorized representative” defined; applicability of other requirements.

* * *

(2) After conducting the search of records under subsection (1), the foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise each person with a property interest in a forfeited property of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those persons, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing. If after conducting the search of records under subsection (1) the foreclosing governmental unit is unable to determine an address reasonably calculated to inform a person with an interest in a forfeited property, or if the foreclosing governmental unit discovers a deficiency in notice under subsection (4), the following are reasonable steps by the foreclosing governmental unit or its authorized representative to ascertain the address of a person with an interest in property entitled to notice under this section or to

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ascertain an address necessary to correct the deficiency
in notice under subsection

* * *

Sec. 78i.

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

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

(b) If a person occupying the property is personally served, verbally inform the occupant that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid, of the time within which all forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and of agencies or other resources that may be available to assist in avoiding loss of the property interest and any equity associated with the interest in the property.

(c) If the occupant appears to lack the ability to understand the information provided, notify the

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department of health and human services or provide the occupant with the names and telephone numbers of the agencies that may be able to assist the occupant, or both.

(d) If the foreclosing governmental unit or its authorized representative does not personally meet with the occupant, the foreclosing governmental unit or its authorized representative shall place in a conspicuous location on the property a notice that explains, in plain English, that the property will be foreclosed unless forfeited unpaid delinquent taxes, interest, penalties, and fees owed on the property are paid, the time within which forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and the names, addresses, and telephone numbers of agencies or other resources that may be available to assist a person with an interest in the property with avoiding the loss of the property interest and any equity associated with the property interest. The notice must include the internet website address for the legal resource and referral center of the state bar of Michigan and the toll-free telephone number for the state bar of Michigan's lawyer referral service. The notice also must 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 is effective under section 78k to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property under section 78m. If this state is the foreclosing governmental unit within a county, the department of treasury or its authorized

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representative shall perform the personal visit to each property under this subsection on behalf of this state.

(4):

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

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

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

(d) For a business entity other than a partnership, a search of business entity records filed with the department of licensing and regulatory affairs.

(5) If the foreclosing governmental unit or its authorized representative is unable to ascertain an address reasonably calculated to apprise a person with a property interest entitled to notice under this section, or is unable to notify a person with a property interest under subsection (2), the foreclosing governmental unit shall provide notice by publication as provided in this subsection and section 78s. The notice must be inserted for 2 successive weeks, once each week, in a notice publication circulated in the county in which the property is located. If a notice publication is not circulated in the county in which the property is located, the foreclosing governmental unit

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shall insert the notice in a notice publication circulated in an adjoining county. In addition to provision of notice in a notice publication, the foreclosing governmental unit may also post the notice under this subsection for not less than 14 days on a website, including, but not limited to, a website maintained by the foreclosing governmental unit.

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MCL § 211.78j

§ 211.78j. Schedule of show cause hearing by foreclosing governmental unit.

Sec. 78j.

(1) If a petition for foreclosure is filed under section 78h, the foreclosing governmental unit shall schedule a hearing not later than 7 days immediately preceding the date of the foreclosure hearing under section 78k to show cause why absolute title to the property forfeited to the county treasurer under section 78g should not vest in the foreclosing governmental unit. The foreclosing governmental unit may hold combined or separate hearings for different owners or persons with a property interest in the property forfeited to the county treasurer.

(2) The owner and any person with a property interest in the property forfeited to the county treasurer may appear at the hearing held pursuant to this section and redeem that property or show cause why absolute title to that property should not vest in the foreclosing governmental unit for any of the reasons set forth in section 78k(2).

(3) If the owner or any person with a property interest in the property forfeited to the county treasurer prevails in a hearing under subsection (1), the foreclosing governmental unit shall notify the county treasurer and the county treasurer shall correct the tax roll to reflect that determination.

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MCL § 211.78k (EXCERPTS)

211.78k. Proof of service of notice; filing with circuit court; contesting validity or correctness by person claiming property interest; filing objections; order extending redemption period; entry of judgment; specifications; failure to pay delinquent taxes, interest, penalties, and fees after entry of judgment; appeal to court of appeals; recording judgment or notice of judgment; cancellation; submission of certificate of error.

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

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

(a) No law authorizes the tax.

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

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

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

(e) The tax was assessed fraudulently.

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

* * *

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

(5) The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested

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cases. All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case 21 days after the entry of a judgment foreclosing the property under this section. The circuit court's judgment must specify all of the following:

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

(b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees, which delinquent taxes, interest, penalties, and fees may be reduced by the foreclosing governmental unit in accordance with section 78g(8), are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(c) That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all

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forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

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

(e) That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease, interests in oil or gas in that property that are owned by a person other than the owner of the surface that have been preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291, interests in property assessable as personal property under section 8(g), or restrictions or other governmental interests imposed under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in

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a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

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

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

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

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

(g) A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) must not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

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

*Appendix E***MCL § 211.78m (EXCERPTS)**

§ 211.78m. Granting state right of first refusal; election by state not to purchase property; purchase of property by city, village, township, or county; property sale at auction; notice of time and location; procedure; property not previously sold; disposition of sale proceeds; joint sale by 2 or more county treasurers; deed recording; cancellation of taxes and certain costs upon transfer or retention of property; foreclosed property defined as facility under MCL 324.20101; person convicted for executing false affidavit; definitions.

* * *

(2) Subject to subsection (1), beginning on the third Tuesday in July immediately succeeding the entry of the judgment under section 78k vesting absolute title to tax delinquent property in the foreclosing governmental unit and ending on the immediately succeeding first Tuesday in November, the foreclosing governmental unit, or its authorized agent, at the option of the foreclosing governmental unit, shall hold 1 or more property sales at 1 or more convenient locations at which property foreclosed by a judgment entered under section 78k will be sold by auction sale, which may include an auction sale conducted via an internet website. Notice of the time and location of a sale must be published not less than 30 days before a sale in a notice publication circulated in the county in which the property is located, if there is one. If no notice publication is circulated in that county, publication must be made in a notice publication circulated in an

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adjoining county. Each sale must be completed before the first Tuesday in November immediately succeeding the entry of judgment under section 78k vesting absolute title to the tax delinquent property in the foreclosing governmental unit. Except as provided in this subsection and subsection (5), property must be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid. The foreclosing governmental unit may sell properties individually or may offer 2 or more properties for sale as a group. The minimum bid for a group of properties must equal the sum of the minimum bid for each property included in the group. The foreclosing governmental unit may adopt procedures governing the conduct of the sale and the payment for conveyance of properties under this section and may cancel the sale before the issuance of a deed under this subsection if authorized under the procedures. The foreclosing governmental unit shall require full payment at the close of each day's bidding or by a date not more than 21 days after the sale. Before the foreclosing governmental unit conveys a property sold at a sale, the purchaser shall provide the foreclosing governmental unit with proof of payment to the local tax collecting unit in which the property is located of any property taxes owed on the property at the time of the sale. A foreclosing governmental unit shall cancel a sale if unpaid property taxes owed on a property or properties at the time of a sale are not paid within 21 days of the sale. If a sale is canceled under this subsection, the foreclosing governmental unit may offer the property to the next highest bidder and convey the property to that bidder under this subsection, subject to the requirements of

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this subsection for the highest bidder. Not more than 14 days after payment to the foreclosing governmental unit of all amounts required by the highest bidder or the next highest bidder under this subsection, the foreclosing governmental unit shall convey the property by deed to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid, or the next highest bidder if the sale to the highest bidder is canceled and the next highest bidder pays the amount required under this section to purchase the property. The deed must vest fee simple title to the property in the person bidding the highest amount above the minimum bid, unless the foreclosing governmental unit discovers a defect in the foreclosure of the property under sections 78 to 78l or the sale is canceled under this subsection or subsection (5). If this state is the foreclosing governmental unit within a county, the department of treasury is responsible for conducting the sale of property under this subsection and subsections (4) and (5) on behalf of this state. Before issuing a deed to a person purchasing property under this subsection or subsection (5), the foreclosing governmental unit shall require the person to execute and file with the foreclosing governmental unit an affidavit under penalty of perjury. If the person fails to execute and file the affidavit required by this subsection by the date payment for the property is required under this section, the foreclosing governmental unit shall cancel the sale. An affidavit under this section must indicate that the person meets all of the following conditions:

(a) The person does not directly or indirectly hold more than a minimal legal interest in any property with

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delinquent property taxes located in the same county as the property.

(b) The person is not directly or indirectly responsible for any unpaid civil fines for a violation of an ordinance authorized by section 4l of the home rule city act, 1909 PA 279, MCL 117.4l, in the local tax collection unit in which the property is located.

* * *

(8) A foreclosing governmental unit shall deposit the proceeds from the sale of property under this section into a restricted account designated as the “delinquent tax property sales proceeds for the year _____”. The foreclosing governmental unit shall direct the investment of the account. The foreclosing governmental unit shall credit to the account interest and earnings from account investments. The foreclosing governmental unit shall use proceeds in that account only for the following purposes in the following order of priority:

(a) For each property that was sold or transferred for an amount equal to or greater than the minimum bid, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees on each property that was transferred or sold that year.

(b) For each property that was sold or transferred for an amount equal to or greater than the minimum bid,

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fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of foreclosed property and the administration of this act, including costs for the defense of title actions and other legal expenses, must be paid up to the amount for which the property was sold on a property-by-property basis.

(c) Payments to claimants of remaining proceeds for the year ordered under section 78t and any other payments ordered under section 78t must be paid on a property-by-property basis.

(d) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees.

(e) For each property that was sold or transferred for an amount greater than the minimum bid, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act for the year but not paid under subdivision (b) must be paid.

(f) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, fees incurred by the foreclosing governmental unit in connection with the forfeiture,

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foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for the year must be paid.

(g) Any fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for any prior year that have not been paid or reimbursed from a prior year's delinquent tax property sales proceeds must be paid.

(h) If the foreclosing governmental unit is this state, any remaining balance must be transferred to the land reutilization fund created under section 78n. If the foreclosing governmental unit for a county is this state, not later than September 30 of the second calendar year after foreclosure, the department of treasury shall, subject to subparagraph (xiii), submit an electronic report to the house and senate committees with jurisdiction over taxation that includes, for each county, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

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(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

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(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025. (i) If the foreclosing governmental unit is not this state, not later than September 30 of the second calendar year after foreclosure, the foreclosing governmental unit shall, subject to subparagraph (xiii), submit a written report to its board of commissioners and the state treasurer identifying any remaining balance and any contingent costs of title, environmental remediation, or other legal claims relating to foreclosed property as determined by the foreclosing governmental unit. Any remaining balance must be used for costs incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property, the defense of title actions and other legal expenses, or the administration of this act, or for the payment of claims for remaining proceeds or other amounts ordered under section 78t.

The report required under this subdivision must include, in a form determined by the department of treasury, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

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(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025.

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MCL §§ 211.78(g), (i), (l), (m), (t) Compiler's Note

Enacting section 3 of Act 256 of 2020 provides:

“Enacting section 3. This amendatory act 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, 1893 PA 206, MCL 211.1 to 211.155, as recognized by the Michigan supreme court in *Rafaeli, LLC v Oakland County*, docket no. 156849, consistent with the legislative findings and intent under section 78 of the general property tax act, 1893 PA 206, MCL 211.78.”

**APPENDIX F — MICHIGAN DEPARTMENT
OF TREASURY — FORM 5743**

Michigan Department of Treasury
5743 (02-21)

**Notice of Intention to Claim Interest in Foreclosure
Sales Proceeds**

Issued under authority of Public Act 206 of 1893;
Section 211.78t.

Beginning with 2021 foreclosure sales and transfers, a person that intends to make a claim for excess sales proceeds must complete and return this notarized notice to the Foreclosing Governmental Unit by July 1 in the year of foreclosure. This notice must be delivered via certified mail, return receipt requested, or by personal service. Completing and returning this form evidences an intent to make a future claim but is not itself a claim for sales proceeds.

PART 1: APPLICANT INFORMATION		
Claimant Last Name or Business Name	Claimant First Name	Middle Initial
Claimant's Address to be used for Service (Street Number, City, State, ZIP Code)		
Claimant's Telephone Number	Claimant's E-mail Address	

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PART 2: PROPERTY IDENTIFICATION		
County	Local Taxing Municipality	Foreclosure Year
Parcel Address (Street Number, City, State, ZIP Code)		Local Parcel Number
PART 3: EXPLANATION OF INTEREST		
<p>I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below:</p> <p><input type="checkbox"/> Warranty Deed Dated: _____</p> <p>Recorded in Liber/Page: _____</p> <p><input type="checkbox"/> Quit Claim Deed Dated: _____</p> <p>Recorded in Liber/Page: _____</p> <p><input type="checkbox"/> Mortgage Dated: _____ Amount: _____</p> <p>Recorded in Liber/Page: _____</p> <p><input type="checkbox"/> Other Lien Dated: _____ Amount: _____</p> <p>Nature of Lien: _____</p> <p>Recorded in Liber/Page: _____</p>		

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I know of the following other interests in this property,
which were in effect immediately prior to foreclosure:

PART 4: CERTIFICATION AND NOTARY

*I hereby swear that the above information is true and
correct in relation to the subject property*

Claimant's signature

Date

*Subscribed and sworn to before me by Applicant on
the following date:*

Notary's Signature

Commission
Expiration

Notary State of
Authorization

Notary County
of Authorization

Notary
Acting in
County

**FORECLOSING GOVERNMENTAL UNIT
RECEIPT ACKNOWLEDGMENT**

FGU Staff Signature of
Receipt

FGU Staff
Printed Name

Date of
Receipt