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## Appendix 1a

*If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.*

STATE OF MICHIGAN  
COURT OF APPEALS

*In re PETITION OF  
MUSKEGON COUNTY  
TREASURER FOR  
FORECLOSURE.*

MUSKEGON COUNTY  
TREASURER,  
Petitioner-Appellee,  
v  
KARI BEEMAN, LINDA  
HUGHES, JOHNNY  
CHAPMAN, STEPHANIE  
HULKA-BERTOIA, and  
SHEDRICK MI, LLC,  
Respondents-Appellants.  
FOR  
PUBLICATION  
October 26, 2023  
9:00 a.m.  
No. 363764  
Muskegon Circuit  
Court  
LC No. 2020-  
002044-CZ

Before: SWARTZLE, P.J., and O'BRIEN and  
FEENEY, JJ.

SWARTZLE, P.J.

Although self-executing, the Takings Clause must be read within the context of statutory protections

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available to a property owner. In response to our Supreme Court’s decision in *Rafaeli, LLC v Oakland Co*, 505 Mich 429; 952 NW2d 434 (2020), our Legislature enacted a statutory framework by which a former owner of real property could claim the proceeds that remained, if any, after a foreclosing government sold the property and satisfied that owner’s tax debt and related fees. This framework has several salient features, including pre-sale notice by the foreclosing government; a clear explanation of the former owner’s rights and responsibilities; and an express deadline by which the former owner must respond.

Respondents challenge the adequacy of this statutory framework and how it was applied here by the county treasurer. As we explain, this statutory framework comports with procedural due process and other constitutional requirements. Furthermore, the county treasurer followed the law by providing the required notices. Unfortunately, respondents did not similarly follow the law, and because they did not, they forfeited any right to the proceeds that remained after the satisfaction of their tax debts.

### I. BACKGROUND

#### A. STATUTORY FRAMEWORK POST-*RAFAELI*

An overview of recent Supreme Court case law and our Legislature’s response will help frame the arguments on appeal. Briefly, our Supreme Court held in *Rafaeli* that a former owner of real property sold at a tax-foreclosure sale for more than what was owed in taxes, interests, penalties, and fees had “a cognizable, vested property right to the surplus proceeds resulting from the tax-foreclosure sale.” *Id.* at 484. This

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right continued to exist after fee simple title to the properties vested with the foreclosing governmental unit (FGU). The FGU’s “retention and subsequent transfer of those proceeds into the county general fund amounted to a taking of plaintiffs’ properties under Article 10, § 2 of [Const 1963],” and the former owners were entitled to just compensation in the form of the return of the surplus proceeds. *Id.* at 484-485. When the Court decided *Rafaeli*, the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, did not provide a mechanism by which former property owners could recover their surplus proceeds.

In response to *Rafaeli*, our Legislature passed 2020 PA 255 and 2020 PA 256, which were given immediate effect on December 22, 2020. These acts purported 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 GPTA. 2020 PA 256, enacting § 3. At issue in the current appeal is MCL 211.78t, a provision added to the GPTA by 2020 PA 256. Section 78t provides the statutory means for a former property owner to claim and receive any applicable “remaining proceeds” from the tax-foreclosure sales of that person’s former properties.

A former property owner whose properties sold at a tax-foreclosure sale after July 17, 2020, the date the *Rafaeli* decision was issued, and who intends to recover any surplus proceeds from the sale, is required to notify the FGU of that intent by submitting Form 5743 by the July 1st immediately following the effective date of the foreclosure of the property. Form 5743 must be notarized and filed with the FGU “by personal service acknowledged by the FGU or by certified

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mail, return receipt requested.” MCL 211.78t(2). A property owner who satisfies these requirements becomes a “claimant.”

In the January immediately following the sale or transfer of a foreclosed property, the FGU notifies the claimant about the total amount of remaining proceeds or the amount of shortfall in proceeds, among other things. MCL 211.78t(3)(i). The notice must explain that the claimant may file a motion in the circuit court in the foreclosure proceeding to recover any excess proceeds. MCL 211.78t(3)(k). A claimant has from February 1st to May 15th of the year immediately following the tax-foreclosure sale to file the motion. MCL 211.78t(4).

At the end of this claim period, the FGU responds by: (i) verifying that the claimant timely filed Form 5743, and (ii) identifying any remaining proceeds. MCL 211.78t(5)(i). Specifically, the FGU files with the circuit court proof of service of the notice that the FGU mailed to the claimant in January, along with additional information identifying the property and the details of its sale, including the amount of any remaining proceeds or shortfall in proceeds. MCL 211.78t(5)(i).

The circuit court then holds a hearing to determine the relative priority of the claimant’s interest in any excess value. After requiring the payment of a sales commission to the FGU of 5% of the amount for which the property was sold, the circuit court then “allocate[s] any remaining proceeds based on its determination of priority, and order[s] the FGU to pay the remaining proceeds” to the claimant. MCL 211.78t(9). The FGU has 21 days to pay the amounts ordered by the circuit court. MCL 211.78t(10).

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### B. FACTS AND PROCEEDINGS

The material facts in this appeal are not in dispute. Respondents owned real properties in Muskegon County and fell behind on their property taxes. Petitioner, acting as the FGU, foreclosed their properties, effective March 31, 2021. None of the respondents timely filed Form 5743 conveying an intent to claim an interest in any excess proceeds. The properties were sold at auction and the proceeds applied to respondents' delinquent property taxes, interests, penalties, and fees. Each property sold for significantly more than its respondent-owner owed.

Subsequently, from December 2021 to April 2022, each respondent submitted an untimely Form 5743. Petitioner rejected the forms because they were filed after "the July 1 immediately following the [March 31, 2021] effective date of the foreclosure of the property." MCL 211.78t(2).

In May 2022, respondents moved separately to recover the remaining proceeds under MCL 211.78t(4). Petitioner opposed the motions, arguing that respondents were barred from seeking distribution of the remaining proceeds because they did not file Form 5743 before July 1, 2021. Respondents replied, raising several arguments pursued now on appeal.

The circuit court held a hearing on respondents' motions. Ruling from the bench, the circuit court found that the requirement of filing a notice of intent (i.e., Form 5743) by July 1st was clear and unambiguous and had to be enforced as written and that 2020 PA 256 afforded adequate due process. The trial court denied respondents' motions, and respondents appealed by leave granted. *In re Petition of Muskegon Co Treasurer for Foreclosure*, unpublished order of the

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Court of Appeals, entered February 2, 2023 (Docket No. 363764).

### II. ANALYSIS

On appeal, respondents claim that the procedures described in MCL 211.78t are not the exclusive means for recovering surplus proceeds, and petitioner engaged in an unlawful taking of their property. They also contend that the annual July 1st deadline for filing a notice of intent is unenforceable, they were not provided adequate due process, and the entire statutory scheme violates the Supremacy Clause. As explained, each of these arguments fails.

#### A. STANDARD OF REVIEW AND PRESERVATION

In reviewing the circuit court's resolution of a motion under MCL 211.78t, this Court reviews factual findings for clear error. *In re Tato*, 339 Mich App 654, 661; 984 NW2d 849 (2021). With respect to questions of law—including the interpretation and application of constitutional provisions and statutes—this Court reviews these *de novo*. *Kilpatrick v Lansing Community College*, \_\_\_ Mich App \_\_, \_\_; \_\_\_ NW2d \_\_\_ (2023) (Docket No. 361300); *In re Contempt of Murphy*, \_\_\_ Mich App \_\_, \_\_; \_\_\_ NW2d \_\_\_ (2023) (Docket No. 360560).

Respondents did not squarely raise their claims involving exclusivity of the statutory-claim scheme or the harshness/unreasonableness of the July 1st deadline in the circuit court or the questions presented on appeal. Under our raise-or-waive jurisprudence in ordinary civil appeals, these claims are deemed waived and not preserved for appellate review. *Tolas Oil & Gas Exploration Co*, \_\_\_ Mich App

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\_\_\_\_, \_\_\_\_; \_\_\_\_ NW2d \_\_\_\_ (2023) (Docket No. 359090); slip op at 5. The Court will, however, overlook respondents' failure to preserve because the claims involve questions of law with undisputed facts and their resolution is necessary for proper resolution of the appeal. *Id.*

### B. EXCLUSIVITY OF MCL 211.78t

The Court begins with respondents' claim that the process set forth in MCL 211.78t is not the exclusive means for recovering excess proceeds. As noted earlier, our Legislature enacted 2020 PA 256 in response to *Rafaeli*, and the statute was meant "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 [GPTA]." 2020 PA 256, enacting § 3. And, with specific respect to exclusivity, our Legislature's own words could hardly be clearer: Section 78t "is the *exclusive mechanism* for a claimant to claim and receive any applicable remaining proceeds under the laws of this state." MCL 211.78t(11) (emphasis added). Giving "exclusive" its plain, ordinary meaning, MCL 8.3a, our Legislature intended MCL 211.78t as the sole mechanism by which a former owner of foreclosed property could obtain any proceeds remaining from the tax-foreclosure sale and satisfaction of the owner's delinquent taxes and associated costs.

But, respondents argue, it is unclear what interest 2020 PA 256 was intended to protect. Whereas *Rafaeli* referred to "surplus proceeds," see, e.g., 505 Mich at 437, MCL 211.78t(1) refers to "any proceeds," and MCL 211.78t refers to "remaining proceeds."

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With respect to “any proceeds,” MCL 211.78l(1) addresses how owners of extinguished interests in property sold or transferred at a tax-foreclosure sale may recover the property or their interests in the property. It states that “[a]n 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.” MCL 211.78l(1). “Any,” construed according to its “common and approved usage,” MCL 8.3a, indicates “one or some indiscriminately of whatever kind,” “one, some, or all indiscriminately of whatever quantity,” or “unmeasured or unlimited in amount, number, or extent.” *Merriam-Webster’s Collegiate Dictionary* (11th ed), p 56. “Any proceeds” is sufficiently broad to suggest that the Legislature intended to include proceeds of any kind in the category.

Moreover, MCL 211.78l itself directs persons who wish to recover proceeds from the sale or transfer of foreclosed property to MCL 211.78t. No one could reasonably read “any proceeds” in MCL 211.78l and conclude that it does *not* include the “remaining proceeds” addressed in MCL 211.78t. “Any proceeds,” as used in MCL 211.78l does not irreconcilably conflict with the use of “remaining proceeds” in MCL 211.78t, nor have respondents shown that “any proceeds” or “remaining proceeds,” are equally susceptible to more than a single meaning.

Rather than an ambiguity between “any proceeds” and “remaining proceeds,” the real gravamen of respondents’ position appears to be that, in their opinion, the “remaining proceeds” of MCL 211.78t means something less than the “surplus proceeds” of *Rafaeli* because a 5% sales commission can be retained by the FGU under the statutory scheme. In effect, with 2020

## Appendix 9a

PA 256, our Legislature did not faithfully codify the full holding of *Rafaeli*, according to respondents. This argument, however, misses the mark, as it is directed to the question whether our Legislature actually addressed the constitutional infirmity of the prior GPTA. The argument has no bearing on the separate question of whether our Legislature intended its amendments to be the exclusive mechanism for a former property owner to pursue a constitutional claim.

Respondents also attempt to avoid the exclusivity of MCL 211.78t by arguing that the section does not apply to all former property owners but only to “claimants,” i.e., to those who choose to seek remaining proceeds in accordance with MCL 211.78t. They argue that use of the word “may” in MCL 211.78t(1) denotes permissiveness and indicates that former property owners could have pursued their surplus proceeds as claimants under MCL 211.78t but were not required to do so. Only if they chose to use MCL 211.78t as the means of recovering their surplus proceeds did they have to comply with subsection (2) by filing a notice of intent by July 1, 2021.

This argument fails for several reasons: First, respondents *did* try to recover their remaining proceeds under MCL 211.78t but failed to satisfy its requirements, so it is not clear that they even have standing to make the claim on appeal. Second and more importantly, it is the case that “may” generally denotes discretion. *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008). Former property owners who owe more in taxes, penalties, and fees than their homes are worth may exercise their discretion by *not* submitting a notice of intent. See *Rafaeli*, 505 Mich at 447 (noting that “sale proceeds are often insufficient to cover the full amount of delinquent taxes,

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interest, penalties, and fees related to the foreclosure and sale of the property”). Thus, respondents are correct that they had the choice to pursue their claims in accordance with MCL 211.78t. The flaw in their argument is their assumption that the alternative to pursuing a claim under MCL 211.78t was to pursue a claim by some other means—rather, their alternative was not to claim an interest in the foreclosed property in the first place.

The specific language of MCL 211.78t indicates our Legislature’s intent for the statute to serve as the sole mechanism by which former property owners can recover proceeds remaining after the sale or transfer of their foreclosed properties and the satisfaction of their tax debt and related costs. The use of “remaining proceeds” and “any proceeds” does not create an ambiguity, and respondents have not identified any other means provided by the GPTA for them to recover excess proceeds.

### C. THE “HARSH-AND-UNREASONABLE” EXCEPTION

In the alternative, respondents argue that the relatively short timeframe for pursuing a claim is harsh and unreasonable. The “harsh-and-unreasonable” exception has been applied to statutes of limitations and notice requirements when the consequences of strictly enforcing a time period are so harsh and unreasonable that it “effectively divested plaintiffs of the access to the courts intended by grant of the substantive right.” *Rusha v Dep’t of Corrections*, 307 Mich App 300, 311; 859 NW2d 735 (2014) (cleaned up).

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*Rusha* provides an example of factual circumstances that did not warrant application of the exception. At issue in *Rusha* was whether failure to file the six-month notice required by MCL 600.6431(1) barred the plaintiff's constitutional-tort claim against the government defendant. The Court of Claims ruled that the notice requirement did not apply to constitutional torts. This Court reversed, explaining that "it was well established that the Legislature may impose reasonable procedural requirements, such as a limitations period, on a plaintiff's available remedies even when those remedies pertained to alleged constitutional violations." *Id.* at 307 (cleaned up). Further, the Legislature's ability "to set reasonable procedural requirements is broadly construed." *Id.* at 308. "The only limitation, unless otherwise expressly indicated, on legislation supplementary to self-executing constitutional provisions is that the right guaranteed shall not be curtailed or any undue burdens placed thereon." *Id.* The imposition of a notice requirement on the self-executing prohibition against cruel-or-unusual punishment was a "minimal procedural burden," and "it [could] hardly be said that application of the six-month notice provision of § 6431(3) effectively divested plaintiff of the ability to vindicate the alleged constitutional violation or otherwise functionally abrogated a constitutional right." *Id.* at 308, 312. Providing statutory notice required only ordinary knowledge and diligence. See *id.* at 312-313.

By contrast, *Mays v Snyder*, 323 Mich App 1; 916 NW2d 227 (2018), provides an example of factual circumstances that warrant application of the harsh-and-unreasonable circumstances exception. The context for *Mays* was the Flint River water crisis. The

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plaintiffs sued the government defendants without having filed the notice of intention to file a claim required by MCL 600.6431, and the defendants moved for summary disposition under MCR 2.116(C)(4) (court lacks subject-matter jurisdiction) and (C)(7) (immunity provided by law). The Court of Claims denied the defendants' motion. *Id.* at 23-24. Affirming the denial, this Court reasoned that summary disposition "would deprive plaintiffs of access to the courts and effectively divest them of the ability to vindicate the constitutional violations alleged." *Id.* at 35. Also significant were the plaintiffs' allegations that several state actors purportedly took affirmative actions to conceal the hazardous nature of the Flint River water, as well as any event that would trigger the running of the six-month period. As a consequence of this alleged concealment, the burden on the plaintiffs to meet the filing requirement would have been more than minimal, as "it would have required clairvoyant recognition of circumstances that the state was working to convince the public did not actually exist." *Id.* at 36 n 9.

The present case resembles *Rusha* more than *Mays*. Unlike the state actors in *Mays*, there are no allegations that petitioner tried to conceal from respondents any information necessary to claim an interest in proceeds remaining after the tax-foreclosure sale of their properties and satisfaction of their tax debt and associated costs. Respondents have not disputed that they received several notices<sup>1</sup>

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<sup>1</sup> Respondents assert in passing on appeal that it is unclear whether they had actual notice of the July 1st filing deadline, as petitioner made no attempt to prove that they did. Respondents did not argue lack of notice in the circuit court. In fact, respondents' attorney stated during the August 5, 2022 motion hearing:

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involving foreclosure or that they received notices after their properties were foreclosed informing them that their properties may be sold for more than the amount that they owed to the FGU; anyone who had an interest in the property before foreclosure had a right to file a claim for remaining proceeds; and notice of an intent to claim excess proceeds had to be submitted before July 1, 2021. The same notices identified the form that respondents had to file (Form 5743), and the notices told them how to obtain and submit the form. As was the case in *Rusha*, the burden to submit Form 5743 was minimal and required only ordinary knowledge and diligence. Respondents suggest that completing Form 5743 was more than minimally burdensome because it had to be notarized and personally delivered or sent by certified mail. The notice required under MCL 600.6431 also had to be notarized, but the *Rusha* Court did not appear to consider that requirement unduly burdensome, *Rusha*, 307 Mich App at 310, 312, 313, and neither do we here.

Respondents argue that the harsh consequences of missing the deadline make strict enforcement of the deadline unreasonable. This could have also been said of the plaintiff in *Rusha*, however, whose failure to file the minimally burdensome notice required by MCL 600.6431 cost him the opportunity to take legal action to vindicate the constitutional right to be free from cruel-or-unusual punishment. The notice requirement affected the *Rusha* plaintiff's remedy; it did not deprive him of his constitutionally protected, substantive right. MCL 600.6431 "supplement[ed]

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"I'm not saying no notice. I'm just simply saying it's not sufficient notice."

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the constitutional protection at issue by placing a reasonable, albeit minimal, burden on a plaintiff to advise the state of potential claims.” *Rusha*, 307 Mich App at 313.

The notice requirement of MCL 211.78t(2) is not a presuit requirement, and its purpose differs from that of the notice requirement in MCL 600.6431(1). Nevertheless, similar to MCL 600.6431, MCL 211.78t(2) imposes a reasonable, minimal burden on former owners to advise the FGU of their intent to exercise that right by claiming any remaining proceeds. In the present case, respondents had a constitutionally protected right to proceeds remaining after satisfaction of their tax debt and associated costs, and they had an opportunity to begin the process of recovering those proceeds through the minimally burdensome completion of a single-page form. The circumstances of this case do not justify application of the harsh-and-unreasonable consequences exception to the statutory notice requirement of MCL 211.78t(2).

## D. DUE PROCESS

The Court now moves to respondents’ constitutional arguments, beginning with due process. Under both the Michigan and federal Constitutions, no person may be deprived of life, liberty, or property without due process of law. US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17. “These [due-process] protections apply to vested property interests.” *Souden v Souden*, 303 Mich App 406, 413; 844 NW2d 151 (2013). Our Supreme Court held in *Rafaeli*, 505 Mich at 484, that a former property owner has “a cognizable, vested property right to the

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surplus proceeds resulting from the tax-foreclosure sale of their properties.”

Due process is not a one-size-fits-all concept. It is, rather, “flexible and calls for such procedural protections as the particular situation demands.” *Mathews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976). Courts generally consider three factors to determine what is required by due process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Id.* at 335.]

The private interest affected by an FGU’s compliance with MCL 211.78t is a former property owner’s right to the proceeds remaining after the tax-foreclosure sale and the satisfaction of tax debt and associated costs. If the procedures are followed, the risk of an erroneous deprivation is nil—when a former property owner submits a timely and otherwise proper Form 5743, the FGU will be on notice that the former owner intends to exercise the right to proceeds, and the FGU will be required to notify that person of any proceeds remaining after satisfaction of the tax delinquency as well as how to file a claim. MCL 211.78t(3). Finally, as for the government interest involved, the FGU has an interest in having taxes paid in full as well as clarifying within a reasonable

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time period who has the right to any surplus from forfeited properties.

The statutory scheme set up by our Legislature and followed by petitioner satisfies due process. The notices informed respondents of their right to claim any excess proceeds and told them how to express their intent to exercise that right. First, a former owner is given pre-deprivation notice of a foreclosure and sale to satisfy unpaid taxes and associated costs. Second, the former owner is given several months to file a form indicating an intent to seek the remaining proceeds (if any) that might exist after the sale and satisfaction of taxes and related costs. If the statutory scheme is followed by the former owner and FGU, there will be no constitutional deprivation like the one in *Rafaeli*. This is all that due process requires in this situation.

Respondents retort, however, that the statutory scheme is deficient because the FGU has discretion whether to send a notice of existing surplus to a former property owner. This is, however, a false description of the statutory scheme. As already explained, the statutory scheme mandates that an FGU *must* provide, at the time a judgment of foreclosure is effective, an explanation to *all* persons with an interest in property of their right to claim any proceeds remaining after the sale and satisfaction of tax debt. MCL 211.78g(2), MCL 211.78i(7). *If* a former property owner submits a timely Form 5743, *then* the FGU *must* pay out any remaining proceeds to that person in accordance with MCL 211.78t. The FGU has no discretion under this statutory framework.

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Rather, what respondents really want is different, i.e., post-sale, process. Specifically, they contend, the FGU should have notified each of them after the respective tax-foreclosure sale. Implicit in this argument is the necessary corollary that along with a post-sale notification, the Legislature should have also provided a means for a prior property owner to claim excess proceeds even if that owner failed to provide timely notification. Although some states have adopted such systems, see Jenna Christine Foos, *State Theft in Real Property Tax Foreclosure Procedures*, 54 Real Prop Tr & Est LJ 93, 100 (2019), that is not the system adopted by our Legislature. So long as the statutory scheme adopted by our Legislature comports with due process—as MCL 211.78t does—whether such a scheme makes sense or not, or whether a “better” scheme could be devised, are policy questions for the Legislature, not legal ones for the Judiciary. *D’Agostini Land Co LLC v Dep’t of Treasury*, 322 Mich App 545, 560; 912 NW2d 593 (2018).

Respondents also make a rather technical argument that the notices were inadequate because they purportedly did not specifically identify the precise property to be taken, i.e., the remaining surplus. Respondents interpret *Rafaeli* as holding that a former property owner’s right to recover remaining proceeds arises only *after* the sale; therefore, only notices that an FGU sends after a tax-foreclosure sale, identifying the precise excess proceeds available to the former property owner, can satisfy due process.

Contrary to respondents’ argument, however, the right at issue here is not a novel or uncertain one that springs into existence only after a forfeiture and sale. The right to collect proceeds remaining after the tax-foreclosure sale of property existed under English

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common law, was “firmly established in the early years of Michigan statehood,” and was a common-law right routinely understood to exist by the ratifiers of the Michigan Constitution in 1963. *Rafaeli*, 505 Mich at 462-464, 472. Although respondents may not have had a *compensable* claim before the tax-foreclosure sale generated a surplus, the right to collect excess proceeds existed before the tax-foreclosure sale. As the *Rafaeli* Court explained, “While plaintiffs’ takings claim was not compensable until their properties sold for an amount in excess of their tax debts, that lack of an immediate right to collect the surplus proceeds does not mean that plaintiffs had no right to collect the surplus proceeds at all.” *Id.* at 476-477. Petitioner’s notices were not rendered inadequate by the fact that they were sent to respondents before the tax-foreclosure sale—if anything, the earlier notice was an even greater safeguard of respondents’ rights than the post-sale notice that they advocate for now.

### E. TAKINGS

Finally, respondents argue that, by imposing an administrative prerequisite on recovery, MCL 211.78t impinges on respondents’ vested property interests. They maintain that this results in a classic taking and requires just compensation under Const 1963, art 10, § 2, and the Fifth Amendment to the federal Constitution, as applied to the states through the Fourteenth Amendment. The 5% sales commission is also a taking, in their opinion. As a result, they argue that MCL 211.78t must be considered preempted by federal law and rendered invalid by the Supremacy Clause.

In addition to the Takings Clauses and Supremacy Clause, respondents also couch these arguments in

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terms of substantive due process. We reject this resetting of respondents' arguments. When, as here, "a constitutional claim is covered by a specific constitutional provision . . . the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *United States v Lanier*, 520 US 259, 272 n 7; 117 S Ct 1219; 137 L Ed 2d 432 (1997).

Considering first the takings argument, the Michigan Constitution prohibits the government from taking private property for public use "without just compensation being first made or secured in a manner prescribed by law." Const 1963, art 10, § 2. "Although the courts of this state have applied the state and federal Takings Clauses coextensively in many situations, this Court has found that Const 1963, art 10, § 2 offers broader protection than do US Const, Ams V and XIV." *AFT Mich v Michigan*, 497 Mich 197, 217; 866 NW2d 782 (2015) (citation omitted). With that said, respondents have not argued that Const 1963, art 10, § 2 should be applied any differently than the federal Takings Clause; therefore, this Court need "not inquire further whether it would be proper to do so." *Id.* at 218. Accordingly, we will consider the two clauses in tandem for purposes of this appeal.

Although not binding on this Court's interpretation of Michigan's Constitution, the federal Supreme Court's decision in *Nelson v City of New York*, 352 US 103; 77 S Ct 195; 1 L Ed 2d (1956), applying the federal Takings Clause, provides helpful guidance. The relevant issue in *Nelson*, 352 US at 109, was whether the City's retention of surplus proceeds that far exceeded the value of a property owner's delinquent water charges constituted a taking of private property without just compensation. The owner owed

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\$814.50, and his property was assessed at \$46,000. The City satisfied the statutory-notice requirements, and, when the owner did not file a timely answer in the foreclosure procedure asserting that the value of his property exceeded the amount of his debt, the court entered a foreclosure by default and the City obtained title to the property. *Id.* at 106, 110. The owner filed an action to recover the surplus proceeds, arguing, among other things, that retention of the proceeds constituted an unconstitutional taking without just compensation. *Id.* at 109. The Supreme Court disagreed, holding that there was no compensable taking when there was a statutory path for property owners to recover surplus proceeds, but the property owners failed to avail themselves of that procedure. *Id.* at 110.

The present case is similar to *Nelson*. Petitioner provided respondents with notice that adequately informed them of the steps to take to recover any proceeds that remained after the tax-foreclosure sale of their properties and the satisfaction of their tax debts and associated costs. The first step toward recovery was the minimally burdensome requirement of informing the FGU of the intent to assert a claim for any excess proceeds through the timely submission of Form 5743. Respondents did not take this action. Following the reasoning of the *Nelson* Court, respondents did not suffer a compensable taking.

Respondents contend that *Nelson* is inapplicable to the present case because 2020 PA 256 infringes on a constitutional guarantee. Respondents have failed to show, however, how the minimally burdensome procedures described in MCL 211.78t infringe on the right to collect excess proceeds. Respondents also assert

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that the *Rafaeli* Court considered the impact of *Nelson* and rejected its application in this instance.

The *Rafaeli* Court did not find *Nelson* helpful because *Nelson* did not speak to the factual situation in *Rafaeli*; it did not tell our Supreme Court “what occurs when the statutes governing foreclosure make no mention of, or expressly preclude, a divested property owner’s right to the surplus proceeds, but the divested property owner establishes a property right to the surplus proceeds through some other legal source, such as the common law.” *Rafaeli*, 505 Mich at 461. *Nelson* did not provide guidance because the statutes governing foreclosure in *Rafaeli* did not acknowledge former property owners’ rights to recover surplus, let alone provide a means for recovery.

Nor did *Rafaeli* “prevent[] the Legislature from enacting legislation that would require former property owners to avail themselves of certain procedural avenues to recover surplus proceeds.” *Rafaeli*, 505 Mich at 473 n 108. Just the opposite—the Court merely held “that the Legislature may not write this constitutionally protected vested property right out of existence.” *Id.* In response to *Rafaeli*, our Legislature rectified this constitutional infirmity with 2020 PA 256, and respondents have not shown that the act wrote their constitutionally protected property rights out of existence by imposing a notice requirement.

Respondents urge this Court to follow a recent decision of the federal Supreme Court decision of *Tyler v Hennepin Co, Minnesota*, \_\_\_ US \_\_\_; 143 S Ct 1369; \_\_\_ L Ed 2d \_\_\_ (2023). *Tyler* is not, however, factually similar to the present case; rather, it is similar to *Rafaeli*. Hennepin County sold Tyler’s home for \$40,000 to satisfy a \$15,000 tax bill and kept

## Appendix 22a

the \$25,000 surplus proceeds. At issue was whether this constituted an unconstitutional taking in violation of the Fifth Amendment. *Tyler*, \_\_\_ US at \_\_\_; 143 S Ct at 1373. Minnesota argued that Tyler had no property interest in the surplus proceeds under a 1935 law that purported to extinguish that property interest by “providing that an owner forfeits her interest in her home when she falls behind on her property taxes.” *Id.* at \_\_\_; 143 S Ct at 1376. The Supreme Court held that Minnesota had the power to sell Tyler’s home to recover unpaid property taxes, “[b]ut it could not use the toehold of the tax debt to confiscate more property than was due.” *Id.* The Court held that Minnesota had committed “a classic taking,” and that Tyler had stated a claim under the Takings Clause and was entitled to just compensation. *Id.* The Supreme Court noted that *Tyler* differed from *Nelson* because ‘Minnesota’s scheme provide[d] no opportunity for the taxpayer to recover the excess value; once absolute title has transferred to the State, any excess value always remains with the State.’ *Id.* at \_\_\_; 143 S Ct at 1379. Rather, because Michigan now provides an opportunity for respondents to recover the excess value of their property, *Tyler* does not compel a different outcome here.

Respondents separately argue that the 5% sales commission is an unconstitutional taking because it goes beyond the delinquent taxes, interest, penalties, and fees reasonably related to the foreclosure and sale of the property. This Court need not consider the claim, however, because respondents were never subject to the sales commission, given their failure to make a valid claim in the first place.

Finally, as for the Supremacy Clause, it is plainly not applicable here. Respondents seem to argue that

## Appendix 23a

their right to excess proceeds is protected by federal law, and no state law may be passed or interpreted in such a way as to deny that right. But this is not what happened here. As already explained, respondents did have a constitutionally protected right to excess proceeds remaining after the tax-foreclosure sale of their real properties and the satisfaction of their tax debt and related costs. They had notice and an opportunity to begin the process of recovering those proceeds through the minimally burdensome completion of a one-page form. They failed to submit the form by the July 1st statutory deadline and, as a result, they failed to act to enforce that right through the exclusive statutory mechanism created by our Legislature. Simply put, respondents have not shown that MCL 211.78t or any part of the statutory scheme violates due process or the Takings Clause, and the Supremacy Clause has no application in the present case.

### III. CONCLUSION

As the *Rafaeli* Court recognized, a former property owner has a constitutional right to the monetary proceeds, if any, that exist after a foreclosure sale and satisfaction of tax debt and related costs. In response to *Rafaeli*, our Legislature enacted a statutory scheme by which such owners can enforce their constitutional rights, and, as explained, this scheme passes constitutional muster. Respondents failed to avail themselves of these statutory protections, and, as a result, they failed to enforce their constitutional rights. The failure is theirs, not petitioner's or our Legislature's.

Affirmed.

/s/ Brock A. Swartzle  
/s/ Colleen A. O'Brien  
/s/ Kathleen A. Feeney

Appendix 24a

FILED 8/9/2022  
14th CIRCUIT COURT MUSKEGON COUNTY

STATE OF MICHIGAN  
IN THE 14<sup>TH</sup> CIRCUIT COURT FOR  
THE COUNTY OF MUSKEGON

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IN THE MATTER OF THE  
PETITION OF MUSKEGON  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES

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Donald R. Visser (P27961)	Michael D. Homier (P60318)
Donovan J. Visser (P70847)	Laura J. Genovich (P72278)
Bria Adderley- Williams (P84876)	Alexander J. Thibodeau (P82939)
VISSEN AND ASSOCIATES, PLLC <i>Attorneys for Claimants</i> 2480 – 44 <sup>th</sup> St. SE, Ste. 150 Kentwood, MI 49512 (616) 531-9860 donv@visserlegal.com	FOSTER SWIFT COLLINS & SMITH, PC <i>Attorneys for Respondent Muskegon County Treasurer's Office</i> 1700 E. Beltline Ave. NE, Suite 200 Grand Rapids, MI 49525 (616) 726-2230 mhomier@fosterswift.com lgenovich@fosterswift.com

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Appendix 25a

**ORDER DENYING MOTIONS OF CLAIMANTS  
LINDA HUGHES, KARI BEEMAN, JOHNNY  
CHAPMAN, STEPHANIE HULKA-BERTOIA,  
AND SHEDRICK, LLC TO DISBURSE  
REMAINING PROCEEDS FROM TAX  
FORECLOSURE SALE**

At a session of said Court, held in the Circuit Courtroom,  
in the County of Muskegon, State of Michigan, this \_\_\_\_  
day of August 2022.

PRESENT: HONORABLE KENNETH S. HOOPES,  
Circuit Court Judge

THIS MATTER having come before the Court upon  
Claimants Linda Hughes (Parcel No. 11-021-200-  
0005-00), Kari Beeman (Parcel No. 07-009-300-0001-  
00), Johnny Chapman (Parcel No. 10-025-400-0019-  
20), Stephanie Hulka-Bertoia (Parcel No. 24-205-087-  
0020-00), and Shedrick, LLC's (Parcel No. 02-691-000-  
039-00) Motions to Disburse Remaining Proceeds  
from Tax Foreclosure Sale, the Court having read the  
parties' submitted brief, the Court having held a  
hearing on August 5, 2022, and the Court otherwise  
being duly advised in the premises,

IT IS HEREBY ORDERED that Claimants Linda  
Hughes, Kari Beeman, Johnny Chapman, Stephanie  
Hulka-Bertoia, and Shedrick, LLC's Motions to  
Disburse Remaining Proceeds from Tax Foreclosure  
Sale is DENIED for the reasons stated on the record.

**IT IS SO ORDERED.**

The case was previously closed and remains closed.

Appendix 26a

08/09/2022  
11:15 AM

/s/ Kenneth S. Hoopes  
Honorable Kenneth S.  
Hoopes P-53469  
14TH CIRCUIT COURT  
JUDGE

APPROVED AS TO FORM:

/s/ Donald R. Visser  
Donald R. Visser (P27961)  
Attorney for Claimants

/s/ Laura J. Genovich  
Laura J. Genovich (P72278)  
Attorney for Muskegon County Treasurer

Appendix 27a

**Order**

**Michigan Supreme Court  
Lansing, Michigan**

September 30, 2024

Elizabeth T. Clement,  
Chief Justice

166580

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

*In re* PETITION OF MUSKEGON  
COUNTY TREASURER FOR  
FORECLOSURE.

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MUSKEGON COUNTY  
TREASURER,

Petitioner-Appellee,  
v

KARI BEEMAN, LINDA  
HUGHES, STEPHANIE HULKABERTOIA, SHEDRICK MI, LLC,  
and JOHNNY DORE,  
Personal Representative of the  
ESTATE OF JOHNNY  
CHAPMAN,

Respondents-Appellants.

SC: 166580  
COA: 363764  
Muskegon  
CC: 2020-  
002044-CZ

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/

On order of the Court, the application for leave to appeal the October 26, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we

## Appendix 28a

are not persuaded that the questions presented should be reviewed by this Court.

Seal of the Michigan Supreme Court  
Lansing

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 30, 2024

s/ Larry S. Royster  
Clerk

Appendix 29a

**Court of Appeals, State of Michigan**

**ORDER**

Brock A. Swartzle  
Presiding Judge  
Colleen A. O'Brien  
Kathleen A. Feeney  
Judges

In re Petition of Muskegon  
County Treasurer for Foreclosure

Docket No. 363764

LC No. 2020-002044-CZ

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The motion for reconsideration is DENIED.

s/ Brock J. Swartzle  
Presiding Judge

Seal of Court of Appeals  
of the State of Michigan

A true copy entered and certified by Jerome W.  
Zimmer Jr., Chief Clerk, on

December 8, 2023  
Date

s/ Jerome W. Zimmer Jr.  
Chief Clerk

## Appendix 30a

### **MCL 211.78m of the General Property Tax Act, provides in part:**

\* \* \*

(16)(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.

\* \* \*

## Appendix 31a

### **MCL 211.78t of the General Property Tax Act, provides in part:**

(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).

\* \* \*

(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 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.

## Appendix 32a

- (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 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.

## Appendix 33a

- (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.
- (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

## Appendix 34a

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 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 78l. 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.

## Appendix 35a

- (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 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 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

## Appendix 36a

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 judgment 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 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.

## Appendix 37a

(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 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

## Appendix 38a

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 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

## Appendix 39a

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 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 4l of the home rule city act, 1909 PA 279, MCL 117.4l, 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

## Appendix 40a

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.

(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

## Appendix 41a

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.

## Appendix 42a

### **NOTICE OF FORECLOSURE**

As of March 31, 2021, the property described below has been **FORECLOSED** by order of the Muskegon County Circuit Court due to unpaid 2018 and/or previous years taxes.

This property is now owned by the  
**Muskegon County Treasurer**

**Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**

This property may later be sold or transferred for more than the total amount due to the Foreclosing Governmental Unit. Any person that held an interest in this property at the time of foreclosure has a right to file a claim for **REMAINING PROCEEDS** pursuant to MCL 211.78t.

**In order to make a claim, you must take action no later than JULY 1, 2021** as explained below.

**Reference #: 61-18-00575**

**Property County:** Muskegon

**Parcel ID #:** 11-021-200-0005-00

**Street Address:** 251 S HILTON PARK RD,  
MUSKEGON

**Legal Description:**

EGELSTON TOWNSHIP THE E 2 ACRES OF THE N 1/2 OF THE S 1/2 OF THE N 1/2 OF THE NE 1/4 OF NE 1/4 SEC 21 T1ON R15W.

**Extra Info About This Property:**

## Appendix 43a

### **CLAIMS FOR REMAINING PROCEEDS**

The property will be offered for sale or transfer in accordance with state law. Any person that held an interest in this property at the time of foreclosure has a right pursuant to MCL 211.78t to file a claim for remaining proceeds that are realized from the sale or transfer of this property. Remaining proceeds are those proceeds left over, if any, after the total amount due to the Foreclosing Governmental Unit is paid.

In order to make a claim, YOU MUST SUBMIT A NOTICE OF INTENTION TO CLAIM INTEREST IN FORECLOSURE SALES PROCEEDS FORM 5743 TO THE MUSKEGON COUNTY TREASURER **NO LATER THAN JULY 1, 2021**. You can access Form 5743 by visiting [www.miTaxNotice.com/form5743](http://www.miTaxNotice.com/form5743) or by contacting the Muskegon County Treasurer.

You must submit the completed Form 5743 by **CERTIFIED MAIL OR PERSONAL DELIVERY** to The Muskegon County Treasurer, 173 E Apple Ave, Ste 104, Muskegon, MI 49442 no later than **July 1, 2021**.

If you submit Form 5743, the Foreclosing Governmental Unit will send you a notice no later than January 31, 2022 informing you whether any remaining proceeds are available and providing additional information about how to file a claim in the Muskegon County Circuit Court to claim such remaining proceeds.

The claims process is described in MCL 211.78t  
which can be viewed at

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

You are not required to be represented by an attorney in order to file Form 5743 though you may retain or

## Appendix 44a

consult an attorney if desired. Those who wish to consult with an attorney about this notice or your ability to make a claim for remaining proceeds under MCL 211.78t may go to the State Bar of Michigan's legal resource and referral web page at <https://lrs.michbar.org> or may call (800) 968-0738 for assistance in finding private legal counsel.

If you have questions or comments about this process, contact us by sending email to [muskegon@title-check.com](mailto:muskegon@title-check.com) or calling 269-226-2600. Title Check LLC is a title search and notice contractor and an authorized representative of the Foreclosing Governmental Unit. Form 5743 must be filed with Muskegon County Treasurer and SHOULD NOT be directed to Title Check, LLC.

Muskegon

61-18-00575

<b>OFFICIAL BUSINESS</b> <b>Muskegon County Treasurer</b>  (Muskegon Postal/Bar Code) 622 W KALAMAZOO AVE Kalamazoo MI 49007-3308	<b>FIRST CLASS</b> <b>MAIL</b> <b>U.S. POSTAGE</b> <b>PAID</b> Kalamazoo MI Permit No. 338
--	---

LINDA HUGHES  
671 S BROOKS RD  
MUSKEGON MI 49442-2709

Appendix 45a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MUSKEGON

\*\*\*\*\*

IN THE MATTER OF THE  
PETITION OF MUSKEGON  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES,

CASE No. 20-  
2044-CZ

HON. KENNETH  
HOOPES

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VISSEER AND ASSOCIATES, PLLC  
Donald R. Visser (P27961)  
Donovan J. Visser (P70847)  
Bria Adderley-Williams (P84876)  
*Attorneys for Claimant*  
2480 – 44th Street, S.E., Suite 150  
Kentwood, MI 49512  
(616) 531-9860

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**VERIFIED MOTION TO DISBURSE  
REMAINING PROCEEDS FROM  
TAX FORECLOSURE SALE**

---

COMES NOW, Claimant Linda Hughes (“Claimant”), by and through Counsel, VISSEER AND ASSOCIATES, PLLC, and requests that this Court compel the Muskegon County Treasurer to disburse the Remaining Proceeds from the tax foreclosure and sale of Claimant’s former property pursuant to MCL

## Appendix 46a

§ 211.78t. In support therefor, Claimant states as follows:

1. Claimant was the owner of certain real property identified by permanent parcel number 11-021-200-0005-00 located in the County of Muskegon (“Subject Property”). Claimant’s recorded deed is attached as **Exhibit 1**.
2. On February 24, 2021, pursuant to the General Property Tax Act (“GPTA”), this Court entered a Judgment of Foreclosure which included the Subject Property. This Court’s Judgment of Foreclosure is attached as **Exhibit 2**.
3. Claimant did not transfer or otherwise divest her interest in the Subject Property prior to the effective date of the Judgment of Foreclosure.
4. Further, the Subject Property was not encumbered by a lien or other security interest at the time the Judgment of Foreclosure became effective.
5. Subsequent to the entry of the Judgment of Foreclosure, the Muskegon County Treasurer sold the Subject Property for \$60,750.
6. The amount of unpaid delinquent taxes, interest, penalties, and fees incurred and owing to the Muskegon County Treasurer for the Subject Property was \$5,647.27.
7. As a consequence of the sale of the Subject Property, the County Treasurer received \$55,102.73.
8. Neither Claimant nor any entity in which Claimant held a direct or indirect interest purchased the Subject Property through the tax sale process outlined under MCL § 211.78m.
9. At the time this motion was filed, Claimant did not hold any direct or indirect interest in the Subject

## Appendix 47a

Property apart from her vested property interest in the “Remaining Proceeds” as defined in MCL § 211.78t.

10. In accordance with MCL § 211.78t(9), the County has deducted a 5% commission fee from the sale proceeds in the amount of \$3,037.50.

11. Claimant’s Remaining Proceeds are not subject to any further deductions outlined by MCL § 211.78t(8), and Claimant is entitled to claim the Remaining Proceeds of \$52,065.23 pursuant to MCL § 211.78t(4).

WHEREFORE, Claimant requests that this Court enter an Order directing the Muskegon County Treasurer to turnover Remaining Proceeds of \$52,065.23 to Claimant Linda Hughes within 21 days of this Court’s order as required by MCL § 211.78t(10).

Respectfully submitted,  
VISSER AND  
ASSOCIATES, PLLC

Dated: May 10, 2022

/s/ Donald R. Visser  
Donald R. Visser (P27961)  
Donovan J. Visser (P70847)  
Bria Adderley-Williams  
(P84876)  
*Counsel for Claimants*

[claimant signatures on following page]

*The undersigned hereby verifies that the representation of facts contained in this Motion are true and accurate.*

Dated: May 9, 2022

/s/ Linda Hughes  
Linda Hughes

## Appendix 48a

STATE OF MICHIGAN )  
                         )ss  
COUNTY OF MUSKEGON)

Subscribed to before me, a Notary Public, on this  
9<sup>th</sup> day of May, 2022, by Linda Hughes

/s/ Cynthis L. Beisel  
Notary Name  
Cynthia L. Beisel  
Notary Public, Muskegon  
County, MI  
Acting in Muskegon  
County  
My Commission Expires  
6-9-2028

[NOTARY STAMP]

## Appendix 49a

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.

<b>PART 1: APPLICANT INFORMATION</b>		
Claimant Last Name or Business Name  Hughes	Claimant First Name  Linda	Middle Initial
Claimant's Address to be Used for Service (Street Number, City, State, Zip Code)  c/o Visser and Associates, PLLC, 2480 44th St. SE, Suite 150, Kentwood, MI 49512		
Claimant's Telephone Number  616-531-9860	Claimant's E-mail Address  donovan@visserlegal.com	
<b>PART 2: PROPERTY IDENTIFICATION</b>		
County  Muskegon	Local Taxing Municipality  Egelston Township	Foreclosure Year 2021
Parcel Address (Street Number, City, State, ZIP Code)	Local Parcel Number  11-021-200-0005-00	

## Appendix 50a

251 S. Hilton Park Rd. Muskegon, MI 49442		
<b>PART 3: EXPLANATION OF INTEREST</b>		
I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below:		
<input type="checkbox"/> Warranty Deed Dated: _____ Recorded in Liber/Page: _____		
<input checked="" type="checkbox"/> Quit Claim Deed Dated: <u>12/16/2003</u> Recorded in Liber/Page: <u>Liber 3585, Page 523</u>		
<input type="checkbox"/> Mortgage Dated: _____ Amount: _____ Recorded in Liber/Page: _____		
<input type="checkbox"/> Other Lien Dated: _____ Amount: _____ Recorded in Liber/Page: _____		
I know of the following other interests in this property which were in effect immediately prior to foreclosure:		
None		
<b>PART 4: CERTIFICATION AND NOTARY</b>		
<i>I hereby swear that the above information is true and correct in relation to the subject property</i>		
Claimant's Signature s/Linda Hughes	Date 1-17-22	
<i>Subscribed and sworn to before me by Applicant on the following date:</i>		
Notary's Signature s/Cynthia L. Beisel	Commission Expiration 6-9-28 [Notary Stamp]	
Notary State of Authorization MI	Notary County of Authorization Muskegon	Notary Acting in County Muskegon
<b>FORECLOSING GOVERNMENTAL UNIT RECEIPT ACKNOWLEDGMENT</b>		
FGU Staff Signature of Receipt	FGU Staff Printed Name	Date of Receipt

Appendix 51a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MUSKEGON

\*\*\*\*\*

IN THE MATTER OF THE  
PETITION OF MUSKEGON  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES,

CASE No. 20-  
2044-CZ

HON. KENNETH  
HOOPES

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VISSEER AND ASSOCIATES, PLLC	Michael D. Homier (P60318)
Donald R. Visser (P27961)	Laura J. Genovich (P72278)
Donovan J. Visser (P70847)	Alexander J. Thibodeau (P82939)
Bria Adderley- Williams (P84876)	FOSTER SWIFT COLLINS & SMITH, PC
<i>Attorneys for Claimant</i> 2480 – 44th Street, S.E., Suite 150 Kentwood, MI 49512 (616) 531-9860	<i>Attorneys for Respondent</i> 1700 E. Beltline Ave NE, Suite 200 Grand Rapids, MI 49525 (616) 726-2200 lgenovich@fosterswift.com

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**SUPPLEMENTAL BRIEF IN REPLY TO  
RESPONDENT MUSKEGON COUNTY  
TREASURER'S OFFICE'S RESPONSE TO  
CLAIMANTS' MOTION TO DISBURSE  
SURPLUS PROCEEDS FROM  
TAX FORECLOSURE SALE**

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## Appendix 52a

COME NOW, Claimants LINDA HUGHES, KARI BEEMAN, JOHNNY CHAPMAN, STEPHANIE HULKA-BERTOIA and SHEDRICK MI, LLC (“Claimants”), by and through counsel, VISSER AND ASSOCIATES, PLLC, and in reply to the Muskegon County Treasurer’s Office’s Response to Claimants’ Motion to Disburse Surplus Proceeds from Tax Foreclosure Sale (“Response”) state the following:

### INTRODUCTION

The Michigan Supreme Court has unambiguously declared that Claimants and those similarly situated are the rightful owners of the surplus proceeds generated from the tax foreclosure sale of their former properties. *Rafaeli, LLC v Oakland County*, 505 Mich 429; 952 NW2d 434 (2020). Despite that clear declaration, the Muskegon County Treasurer (“Treasurer”) has asserted 2020 Public Act 256 (“P.A. 256”) as a procedural bar to Claimants’ claims for return of remaining proceeds as that term is defined by MCL § 211.78t(12)(b). Specifically, the Treasurer relies on the provisions of MCL § 211.78t—which the legislature adopted post-*Rafaeli* as a part of P.A. 256 on December 22, 2020—to support the assertion that Claimants’ claim should be barred in its entirety due to lack of conformity with the statute.

However, for the reasons set forth in more detail below, the Treasurer’s attempt to invoke the July 1 deadline of MCL § 211.78t(2) as a statutory bar to Claimants’ request for turnover of remaining proceeds fails since enforcing the deadlines and other procedural requirements set forth by MCL § 211.78t would not only interfere with Claimants’ vested, constitutionally protected property right as announced in *Rafaeli*, but it would also result in an unconstitutional

### Appendix 53a

taking under Article X, § 2 of Michigan's 1963 constitution and the Fifth Amendment of the United States Constitution. Further, it would constitute a clear violation of Claimants' procedural and substantive due process rights as well as Claimants' right to equal protection under Michigan and federal law. For these reasons, the Treasurer's attempt to use MCL § 211.78t as an affirmative defense to bar . . .

\* \* \*

## Appendix 54a

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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IN THE MATTER OF THE PETITION OF MUSKEGON COUNTY TREASURER FOR THE FORECLOSURE OF CERTAIN PARCELS OF PROPERTY DUE TO UNPAID 2018 AND PRIOR YEARS' TAXES, INTEREST, PENALTIES, AND FEES,	COA Docket No. _____
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VISSEER AND ASSOCIATES, PLLC Donald R. Visser (P27961) Donovan J. Visser (P70847) Bria Adderley- Williams (P84876) <i>Attorneys for Appellants/Claimant</i> 2480 44th St. SE, Suite 150 Kentwood, MI 49512 (616) 531-9860	Michael D. Homier (P60318) Laura J. Genovich (P72278) Alexander J. Thibodeau (P82939) <i>Attorneys for Appellee/Respondent</i> 1700 E. Beltline Ave. NE, Suite 200 Grand Rapids, MI 49525 (616) 726-2200 lgenovich@fosterswift.com
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Appendix 55a

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**APPLICATION BY CLAIMANTS-APPELLANTS**

**KARI BEEMAN, LINDA HUGHES, JOHNNY  
CHAPMAN, STEPHANIE HULKA-BERTOIA,  
and SHEDRICK, LLC**

**SEEKING LEAVE TO APPEAL  
UNDER  
MCR 7.205**

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\* \* \*

**STATEMENT IDENTIFYING ORDER  
TO BE APPEALED**

On August 9, 2022, Judge Kenneth S. Hoopes of the Muskegon County Circuit Court entered an order denying Claimants' recovery of "remaining proceeds" arising from the sale of Claimants' former real properties—properties which the Appellee had foreclosed on under the General Property Tax Act in March of 2021. (**Appellants' Appx. Pages 000257-000258**). The Circuit Court did so based upon Appellants' failure to file a "Notice of Intention to Claim Remaining Proceeds by July 1, 2021—a deadline that was contained in new legislation (2020 Public Act 256 ("PA 256")) following the Michigan Supreme Court's ruling in *Rafaeli, LLC v Oakland County*, 505 Mich 429; 952 NW2d 434 (2020). **Appellants' Appx. Pages 000263-000316**). Appellants contended that the July 1 provision, coupled with the purported exclusive remedy contained in PA 256, violated the Michigan and United States constitutions.

Appellants filed a Claim of Appeal with this Court August 12, 2022 (**Appellants' Appx. pages 000342-000342**), and this Court dismissed both Appellants'

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Claim of Appeal for Lack of Jurisdiction on August 23, 2022. (**Appellants' Appx. pages 000343-000343**). Thereafter on September 7 2022, Appellants filed a Motion for Reconsideration requesting that this Court reconsider its Order dismissing Appellants' Claim of Appeal for lack of jurisdiction. (**Appellants' Appx. pages 000345-000381**). This Court denied Appellants' Motion for Reconsideration on October 21, 2022. (**Appellants' Appx. pages 000344-000344**).

Pursuant to MCR 7.205(4)(b) “if the Court of Appeals dismisses a claim of appeal for lack of jurisdiction, a delayed application for leave to appeal may also be filed within 21 days of the entry of the dismissal order or an order denying reconsideration of that order...” Thus, Appellants' application for leave is timely filed.

### QUESTIONS PRESENTED

- I. SHOULD THIS APPLICATION TO APPEAL THE CIRCUIT COURT'S DECISION BE GRANTED?

Claimants/Appellants' answer: “Yes”.

Petitioner/Appellee's would answer: “No”.

- II. DID THE COURT ERR BY FAILING TO AWARD “REMAINING PROCEEDS” TO CLAIMANT/APPELLANT, OR IN THE ALTERNATIVE, DECLARE CERTAIN PROVISIONS OF PUBLIC ACT 256 UNCONSTITUTIONAL?

Claimants/Appellants' answer: “Yes”.

Petitioner/Appellee's would answer: “No”.

## Appendix 57a

### INTRODUCTION

The Michigan Supreme Court unambiguously ruled that Claimants, and those similarly situated are the rightful owners of the surplus proceeds generated from the tax foreclosure sale of their former properties. *Rafaeli, LLC v Oakland County*, 505 Mich 429; 952 NW2d 434 (2020). The Court ruled that the General Property Tax Act (MCL 211.1 et seq) was unconstitutional in that it provided that rights to the surplus proceeds were forfeited as part of the foreclosure process. The Court went through a long history of common law (several hundreds of years back to the Magna Carta) and found that the former property owner's rights to the surplus proceeds were constitutionally protected since those rights existed when the current Michigan Constitution was approved (1963).

Following the *Rafaeli* decision, the Legislature passed PA 256 which established a procedure for recovery of “remaining proceeds” which is definitionally different from “surplus proceeds” in *Rafaeli* but functionally equivalent to 95% of surplus proceeds.

1. The foreclosure's effective date is March 3;
2. The former property owner must file a Notice of Intention to Claim Remaining Proceeds by July 1;
3. The property is sold during the months of August and September,<sup>1</sup> at which time it is determined whether the property sold for more than the underlying delinquent taxes (i.e.

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<sup>1</sup> Muskegon County held its foreclosure sale on August 16, 2021.

## Appendix 58a

whether there is any “remaining proceeds” or “surplus proceeds”);

4. The County Treasurer must send a notice containing specified information to each party that has filed a Notice of Intention; and
5. A motion for remaining proceeds must be filed with the Circuit Court between February 1 and May 15 of the year following foreclosure.

However, for the reasons set forth in more detail below, any attempt to invoke the July 1 deadline of MCL § 211.78t(2) as a statutory bar to Claimants’ request for turnover of remaining proceeds fails since enforcing the deadlines and other procedural requirements set forth by MCL § 211.78t would not only interfere with Claimants’ vested, constitutionally protected property right as announced in *Rafaeli*, but it would also result in an unconstitutional taking under Article X, § 2 of Michigan’s 1963 constitution and the Fifth Amendment of the United States Constitution. Further, it would constitute a clear violation of Claimants procedural and substantive due process rights as well as Claimants’ right to equal protection under Michigan law and federal law.

### **STATEMENT OF FACTS**

Claimants had real property foreclosed in 2021 because of delinquent taxes. The Muskegon County Treasurer acted as the “Foreclosing Governmental Unit (“FGU”) as that term is defined in the General Property Tax Act (“GPTA”) (MCL 211.01 et seq.). Pursuant to the GPTA the effective date of foreclosure was March 31, 2021. The order related to Claimants’ remaining proceeds was entered on

## Appendix 59a

August 9, 2022 (**Appellants' Appx. pages 000257-000258**). For various reasons,<sup>2</sup> Claimants did not submit a “Notice of Intention to Claim Remaining Proceeds” (“Notice of Intention”) by July 1, 2021. However, once counsel advised Claimants of their property rights, Claimants advised Appellee of their interest by filing Notices of Intention.<sup>3</sup> (**Appellants' Appx. pages 000258-000262**). After Appellants filed their Motions with the circuit court, Appellee responded with the defense that Claimants' claims were banned because the Notice of Intention was not filed before July 1, 2021. (**Appellants' Appx. pages 000058-000127**). Claimants in turn filed a supplemental brief addressing why the July 1, 2021 would be unconstitutional. (**Appellants' Appx. pages 000128-000192**). Appellee filed a Response. (**Appellants' Appx. pages 000192-000255**). Appellee did

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<sup>2</sup> Those reasons are greatly varied—including disability and lack of notice. Notably, the nature of the foreclosure of real estate and the appropriation of surplus proceeds differ. Courts have approved the notice requirements related to foreclosure of the real estate. But as noted by *Rafaeli*, takings claims as to the fee of the real estate is different than the takings of surplus proceeds. (... Notably, plaintiffs do not dispute the legitimacy of defendants' authority to foreclose on their properties, nor do plaintiffs contest the adequacy of defendants' efforts to notify plaintiffs of the tax delinquency, forfeiture, and foreclosure. Instead, plaintiffs challenge defendants' retention of the surplus proceeds as an unconstitutional taking. ... *Rafaeli* at 452-453.) The GPTA provides for certified mail and tacking notice to the real property. There is no similar ability to tack notice to the surplus proceeds once they are generated. Since *Rafaeli*, no court has held that the notice provisions of the GPTA for foreclosure are sufficient as to surplus proceeds.

<sup>3</sup> Date of filing by Claimants was December 21, 2021.

## Appendix 60a

not claim any prejudice from failing to receive a Notice of Intention by July 1, 2021.

Without discussion of the constitutional issues and substantive rights involved, the Circuit Court ruled that failure to file a Notice of Intention by July 1 was dispositive of a claim for remaining proceeds. (**Appellants' Appx. pages 000256-000257**).

\* \* \*

## Appendix 61a

STATE OF MICHIGAN  
IN THE 14th CIRCUIT COURT FOR THE  
COUNTY OF MUSKEGON

IN THE MATTER OF THE  
PETITION OF MUSKEGON  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO UNPAID  
2018 AND PRIOR YEARS'  
TAXES, INTEREST,  
PENALTIES AND FEES,  
File No.  
20-002044-CZ  
MOTION

## RECORD

of the proceedings had in the above-entitled cause on the 5th day of August, 2022, before HONORABLE KENNETH S. HOOPES, CIRCUIT JUDGE.

## APPEARANCES:

For the Claimants:	DONALD R. VISSER, JD (P27961) Visser and Associates, PLLC 2480 – 44th Street, SE – Ste. 150 Kentwood, MI 49512 (616) 531-9860
For Respondent Muskegon County Treasurer's Office:	LAURA J. GENOVICH, JD (P72278) Foster Swift Collins & Smith, PC 1700 E. Beltline Ave, SE, Ste. 200 Grand Rapids, MI 49525 (616) 726-2200

## Appendix 62a

*McKee Court Reporting*  
3131 Coolidge Road; Muskegon, MI 49441  
(231) 798-7488

\* \* \*

THE COURT: All right. Thank you, Mr. Visser.  
Okay. There's a lot to unpack here.

\* \* \*

Now, the claimants make several arguments set forth in the briefs. First, that 20—211.78t interferes with the vested rights protected and announced under Rafaeli and is also a taking under the state and federal constitution that it violates due process and violates the right to equal protection.

\* \* \*

So really, what this Court has to make a determination is the constitutionality of the statute, which basically of the PA256, more specifically the statute stated before, the 211.78t, enacted on December 22nd, 2020, following the Rafaeli case of July of 2020. And when the Court does that, the courts must presume that a statute's constitutional and have a duty to construe the statute as constitutional unless constitutionality is clearly—or unconstitutionality is clearly apparent, and that's from the In Re: Sanders case that Mr. Visser has set forth in his brief. Now, that case does go on to speak about the Matthews v Eldridge, the U.S. Supreme Court, which indicates that it's basically the courts must balance the cost of certain procedural safeguards against the risks of not adapting such procedures.

And in this matter, the Court finds that the legislative requirements of the filing of the 5743 by the

## Appendix 63a

July 1 deadline, I find it to be narrow and, to some, difficult, I'm sure, to maneuver. However, the statute is clear and unambiguous. And as cited in the case of Ypsilanti Police Officers Association that a statute which is clear and unambiguous must be enforced as written, the statute is also that indicates the foreclosing government units undergo multiple notices to the claimants. So it gets to the point as to what point are the costs of the procedural safeguards not sufficient to protect individuals of their due process. The legislature has made this determination in enacting the PA256.

When this Court he reads Rafaeli, it's very easy to see where the claimants have an area to make their argument. I mean, the Rafaeli case is pretty forceful in its language of the rights that the individuals have to this surplus. However, as a trial court, I have to look at these statutes as constitutional unless there's —unconstitutionality is clearly apparent, and I just can't do that. And so here, I'm going to find that the PA256 is sufficient with regards to its due process and is constitutional and that claimants' motion to distribute the surplus proceeds from the tax foreclosure sale is denied and is barred for the claimant's failure to comply with MCL 211.78t.

\* \* \*

And what I would ask is that the—Ms. Genovich prepare an order. I guess either one of you can—if you want to make an agreement as to who is going to do the order, but it just needs to be indicated for the reasons stated on record that the Court is denying plaintiff's claims.

## Appendix 64a

And I'm sure that this is not the end of this saga. I'm sure that there's more to come with this story. But I'm just letting—I wanted to make a ruling on this so that everybody knew where we were at so we could move forward with this case and let the chips fall where they may with the appeals and whatnot and the federal cases and all that good stuff.

So that is the order of the Court.

\* \* \*