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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 ALGER
COUNTY TREASURER FOR
FORECLOSURE.

ALGER COUNTY
TREASURER,
Petitioner-Appellee,

UNPUBLISHED
September 12,
2024

v

JOHANNA MCGEE, Personal
Representative of ESTATE
OF JACQUELINE MCGEE,
Claimant-Appellant.

No. 363803
Alger Circuit
Court
LC No. 2020-
008018-CZ

In re PETITION OF IRON
COUNTY TREASURER
FOR FORECLOSURE.

IRON COUNTY
TREASURER,
Petitioner-Appellee,

No. 363804
Iron Circuit Court
LC No. 20-006007-
CZ

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v

LILLIAN JOSEPH,
Claimant-Appellant

Before: GADOLA, C.J., and PATEL and YOUNG, JJ.
PER CURIAM.

Two consolidated cases are before this Court presenting similar issues with MCL 211.78t, the Legislative response to the Michigan Supreme Court decision in *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 484; 952 NW2d 434 (2020). Both the Estate of Johanna McGee (hereinafter “the Estate”) and Lillian Joseph (hereinafter “Joseph”) are represented by the same counsel. In one case, the Estate appeals by delayed leave granted¹ the circuit court order denying the Estate’s motion to compel petitioner, the Alger County Treasurer, to disburse to the Estate proceeds from the tax-foreclosure sale in excess of the tax delinquency, penalties, interest, and fees owed on the decedent’s property. On appeal, the Estate challenges the constitutionality of MCL 211.78t, contends that MCL 600.5852(1) applies to toll the July 1 deadline in MCL 211.78t(2), and argues that restitution is required for petitioner’s unjust enrichment.

In the other case, Joseph appeals by delayed leave granted,² the trial court’s order denying her motion to distribute the proceeds remaining from the tax-fore-

¹ *In re Petition of Alger Co Treasurer for Foreclosure*, unpublished order of the Court of Appeals, entered June 20, 2023 (Docket No. 363803).

² *In re Petition of Iron Co Treasurer for Foreclosure*, unpublished order of the Court of Appeals, entered June 20, 2023 (Docket No. 363804).

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closure sale of her property that exceeded the amount that she owed in taxes, interest, penalties, and fees (collectively, “tax debt”). On appeal, Joseph raises similar constitutional challenges to MCL 211.78t, contending that the statute is not the exclusive means of recovering surplus proceeds after a tax-foreclosure sale and urges the imposition of a constructive trust to prevent petitioner’s unjust enrichment. Joseph raises distinct issues with respect to notice and her near-miss attempt to adhere to the notice provision.

On the basis of this Court’s published opinions in *In re Barry Co Treasurer for Foreclosure*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 362316), and *In re Muskegon Co Treasurer for Foreclosure*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 363764), we affirm the circuit court’s orders in both cases.

I. SHARED FACTUAL BACKGROUND

In 2020, the Michigan Supreme Court held that former owners of properties sold at tax-foreclosure sales 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 of their properties.” *Rafaeli*, 505 Mich at 484. This 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 [former owners’] 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.

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In response to *Rafaeli*, our Legislature passed 2020 PA 255 and 2020 PA 256, which were given immediate effect on December 22, 2020. 2020 PA 256 added MCL 211.78t to the General Property Tax Act (GPTA), MCL 211.1 *et seq.* That statute provides the means for foreclosed property owners to claim and receive any applicable surplus from the tax-foreclosure sales of their former properties. A subsection of that statute, § 78t(2), requires property owners whose homes were sold or transferred after July 17, 2020, the date the *Rafaeli* decision was issued, and who intend to claim any surplus proceeds from the sale or transfer, to notify the FGU of their intention by completing and submitting a single-page form, i.e., Form 5743,³ by the July 1 immediately following the effective date of the foreclosure of their properties. In the January immediately following the sale or transfer of foreclosed properties, the FGU notifies the claimants, among other things, whether there is a surplus in proceeds and tells them that they may file a motion in the circuit court in the foreclosure proceeding to recover any remaining proceeds payable to them. MCL 211.78t(3)(k).

A. FACTUAL BACKGROUND SPECIFIC TO THE ESTATE CASE

Jacqueline McGee owned real property in Alger County and fell behind on her 2018 property taxes. McGee died on February 7, 2021. Ten days later, petitioner, acting as the FGU for the county, obtained a judgment of foreclosure against McGee's property,

³ Michigan Department of Treasury, *Notice of Intention to Claim Interest in Foreclosure Sales Proceeds, Form 5743* (Feb 2021).

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effective on March 31, 2021. The property sold at auction for \$38,250. Subtracting from this amount the delinquent taxes, interest, penalties, and fees, and a \$1,912.50 sales commission, left about \$32,737.71 in remaining proceeds.⁴ The Estate filed Form 5743 on February 25, 2022, and moved for disbursement of the remaining proceeds on May 20, 2022. In a brief filed in support of its motion, the Estate raised a number of constitutional arguments against enforcement of the July 1 deadline in § 78t(2); asserted that application of the wrongful death saving provision, MCL 600.5852, gave the Estate's personal representative two years from the issuance of letters of authority to bring an action to recover remaining proceeds; and contended that the 5% sales commission was an unconstitutional taking.

As it pertains to the instant appeal, petitioner opposed the motion on the ground that the Estate's notice of intention (Form 5743) was not timely under MCL 211.78t(2). In a brief in support of its response, petitioner argued in opposition to the Estate's constitutional arguments; contended that MCL 600.5852 did not apply because the Legislature provided an explicit exception to the filing deadlines in § 78t in § 78l(1), which gives a claimant who did not receive due process before the foreclosure two years to file a claim; and asserted that the Estate had no basis for claiming that the 5% commission was an unconstitutional taking.

After a hearing on the Estate's motion for disbursement, at which the parties argued con-

⁴ The parties differ about the exact amount of proceeds remaining, but this difference is not relevant to the instant appeal.

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sistently with their written briefs, the circuit court issued a written order denying the Estate's motion. The circuit court declined to rule on the constitutional issues and adopted petitioner's reasoning for rejecting the application of the death-saving provision. The Estate now appeals by delayed leave granted.

B. FACTUAL BACKGROUND SPECIFIC TO JOSEPH CASE

Lillian Joseph owned real property in Iron County and fell behind on her property taxes. Petitioner, acting as the FGU, foreclosed her property, effective March 31, 2021. The judgment of foreclosure explained that any person with a legal interest in the property immediately before the effective date of foreclosure could "seek recognition of its interest in any remaining proceeds as that term is defined in MCL 211.78t(12)(b) by using a form prescribed by the Michigan Treasury Department to so notify **Petitioner**." Among other things, the judgment of foreclosure explained that the notice had to be "made by personal service acknowledged by **Petitioner** or by certified mail, return receipt requested . . . by the July 1 immediately following the effective date" of the judgment of foreclosure. The trial court ordered petitioner to send the judgment of foreclosure to Joseph's last known addresses by first-class mail within 10 days of entry of the judgment. Joseph has not indicated that she did not receive this mailing.

After foreclosure became effective, petitioner sent Joseph a notice of foreclosure that provided the same information about how to claim any proceeds that remained after the tax-foreclosure sale and the satisfaction of Joseph's tax debt. The notice of foreclosure provided petitioner's mailing address,

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including its suite number. Joseph did not inform petitioner of her intention to claim any remaining proceeds by submitting Form 5743 to petitioner by July 1, 2021. Joseph sent Form 5743 by Priority Mail Express® on June 29, 2021, but petitioner did not actually receive it until July 2. The property sold at auction for \$27,500. After Joseph's tax debt and petitioner's 5% sales commission were deducted from the sale proceeds, about \$21,810 remained.

Joseph moved for an order compelling petitioner to disburse the remaining proceeds. She argued that she filed Form 5743 by July 1, 2021, using the United States Postal Service's Priority Mail Express® shipping option. She also argued, among other things, that she had substantially complied with the procedural requirements in MCL 211.78t, that the statute was unconstitutional, that the statute was not the exclusive means of recovering proceeds remaining from the tax-foreclosure sale, and that she had a cognizable constructive-trust claim. Petitioner opposed the motion, primarily on grounds that the Legislature clearly articulated its intent that MCL 211.78t provided the exclusive mechanism for Joseph to recover surplus proceeds and that Joseph had not complied with the July 1 notice deadline in § 78t(2).

During oral argument on Joseph's motion to disburse, petitioner called Iron County Treasurer, Melanie Camps, to testify about receiving Joseph's Form 5743. Camps testified that there were more than 20 office suites in the courthouse and the courthouse annex, and that each suite had its own, locked mailbox that could not be accessed by any other office. Petitioner's office was in Suite 12. Mail that lacked a suite number was put into a locked "miscellaneous" mailbox and did not reach its destination

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until a courthouse employee unlocked the miscellaneous mailbox and sorted the mail into the correct locked mailboxes. For misdelivered mail, e.g., mail that should have gone to Suite 12 but went to Suite 10, each suite had a wooden shelf and the suite that received the misdelivered mail could put the mail on the correct suite's shelf. Camps said that her office usually checked the mail four or five times a day on July 1; she found the envelope with Joseph's notice on her wooden shelf on July 2. Petitioner admitted into evidence Joseph's Priority Mail Express® envelope, showing that she had omitted petitioner's suite number from the address.

The trial court ultimately determined that Joseph's notification was untimely filed, denied her motion to disburse, denied her request for a constructive trust, and determined that the substantial-compliance exception was inapplicable. Joseph now appeals by delayed leave granted.

II. LEGAL ANALYSIS

On appeal, Joseph and the Estate assert that MCL 211.78t is not the exclusive means of recovering surplus proceeds and that if it is, then the statute results in a taking without just compensation and violates due-process protections, and the July 1 deadline in § 78t(2) should not be enforced because it results in harsh and unreasonable consequences. Both the Estate and Joseph argue the imposition of a constructive trust to prevent petitioners' unjust enrichment is warranted. The Estate separately argues that MCL 600.5852 applies to toll the July 1 deadline for filing the notice of intent required by MCL 211.78t.

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We review de novo questions of constitutional law. See *Bonner v Brighton*, 495 Mich 209, 221; 848 NW2d 380 (2014). “Statutes are presumed to be constitutional, and [this Court has] a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.” *Calhoun Co v Battle Creek*, 338 Mich App 736, 743; 980 NW2d 561 (2021). Similarly, we review de novo whether the circuit court interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016). “Whether a specific party has been unjustly enriched is generally a question of fact . . . [but] whether a claim for unjust enrichment can be maintained is a question of law[.]” *Jackson v Southfield Neighborhood Revitalization Initiative*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 361397); slip op at 27-28 (quotation marks and citation omitted; alterations in original).

A. STATUTORY CLAIMS

1. EXCLUSIVITY OF MCL 211.78t

Joseph and the Estate acknowledge on appeal that this Court held in *Muskegon Treasurer*, ___ Mich App at ___; slip op at 5, that the Legislature intended MCL 211.78t as the exclusive mechanism for claiming and recovering remaining proceeds and rejected arguments to the contrary that are identical with those advanced by the Estate in the present appeal. Joseph and the Estate concede that this Court is bound by that holding, see MCR 7.215(J)(1), but asks this Court to now find otherwise and to issue a conflicting opinion, see MCR 7.215(J)(2). Both parties, by way of the same counsel, advance the same arguments that this Court has already rejected, does not identify any

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errors in this Court’s reasoning on the issue in *Muskegon Treasurer*, and does not cite any authority contrary to this Court’s conclusion regarding the exclusivity of MCL 211.78t(2). Under these circumstances, we have no reason to reject *Muskegon Treasurer* and to issue a conflicting opinion.

2. SUBSTANTIAL COMPLIANCE

Unique to Joseph is her near-miss attempt at providing notice in compliance with MCL 211.78t. Joseph contends that she timely informed petitioner of her intention to claim an interest in surplus proceeds because her Form 5743 was in petitioner’s mailroom by July 1, 2021, and that, even if her notice was not made in strict compliance with MCL 211.78t(2), she substantially complied with the statute’s requirements. Joseph asserts, therefore, that the trial court erred by not applying the substantial-compliance exception. We disagree.

We review de novo whether the circuit court properly interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016). It is a cardinal rule of statutory interpretation that a “clear and unambiguous statute warrants no further interpretation and requires full compliance with its provisions as written.” *Northern Concrete Pipe, Inc v Sinacola Cos-Midwest, Inc*, 461 Mich 316, 320; 603 NW2d 257 (1999).

MCL 211.78t(2) states, in relevant part, that for a property sold or transferred after July 17, 2020,

by the July 1 immediately following the effective date of the foreclosure of property, a claimant seeking remaining proceeds for the property

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must notify the [FGU] using a form prescribed by the department of treasury. . . . Notice to a [FGU] under this section must be by personal service acknowledged by the [FGU] or by certified mail, return receipt requested.

At issue is whether Joseph's form was timely, given that it was delivered to a common mailroom on July 1, but not to petitioner's office until July 2.

Joseph argues that MCL 211.78t(2) does not specify whether notification that is made by mail is completed when Form 5743 is delivered to the FGU's mailroom, mailbox, office, or to the treasurer personally. We agree that it would be an interesting question if, because of mailing delays or internal procedures, Form 5743 were mailed timely but not received by July 1. But we refrain from engaging in that inquiry because this argument ignores § 78t(2)'s critical requirement that service by mail must be by return receipt requested, which Joseph did not request. A return receipt provides the sender with an electronic or physical delivery record showing the signature of the person who accepted the mailing. The requirement that notices sent by mail must be sent "return receipt requested" indicates that the Legislature intended notice to be effective when actually received by an employee in the FGU. See *Wigfall v Detroit*, 504 Mich 330, 343; 934 NW2d 760 (2019) (suggesting by analogy that all employees in the FGU are agents of the FGU for purposes of receiving notice).

Joseph asserts that any delay in the delivery of her notice was caused by the courthouse's mailroom employees. She argues that these employees may be deemed petitioner's agents for receiving and sorting

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mail in the miscellaneous mailbox and contends that she should not be penalized for their delayed delivery. Joseph cites no authority to counter that the delay in delivery was caused by Joseph's own failure to properly address her notice to petitioner. It is, on this record, undisputed that petitioner's office did not actually possess the notice until July 2.

Joseph next argues that the trial court erred by not finding that she substantially complied with the notice requirements. It is true that courts "are inclined to favor a liberal construction of notice requirements," that this judicial policy "is based on the theory that an inexperienced layman with a valid claim should not be penalized for some technical defect," and that a notice requirement "should not receive so strict a construction as to make it difficult for the average citizen to draw a good notice." *Meredith v Melvindale*, 381 Mich 572, 579; 165 NW2d 7 (1969).

The facts of the present case do not trigger the reasons for liberally construing notice requirements. Section 78t(2) calls for completing a single-page form asking for basic information and Joseph presents no issues with completion of the form itself. The statute then states that, if mailed, the form must be sent by certified mail, return receipt requested. This mailing requirement does not require any particular legal knowledge, nor is the instruction difficult for the average citizen to follow, particularly considering the availability of assistance from the United States Postal Service or commercial mail carriers. There is also the additional, undisputed information presented at oral argument that Joseph had the assistance of legal counsel at the time of this mailing. Clearly, Joseph understood the deadline for submitting the notice was July 1 following the effective date of the

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foreclosure of the property. And all this information, as well as petitioner's full address, was included in the notice of foreclosure that was mailed to Joseph at her known addresses. In light of the foregoing, it cannot reasonably be said that the notice requirements of § 78t(2) raise concerns that an "inexpert layman" would be "penalized for some technical defect" or that strict compliance with the requirements would make it "difficult for the average citizen to draw good notice." *Meredith*, 381 Mich at 579.

The statutory scheme that the Legislature put in place as the sole mechanism for claiming any proceeds remaining after a tax-foreclosure sale and the satisfaction of the foreclosed property owner's tax debt does not have a substantial-compliance provision. And even if it had a substantial-compliance provision, that "provision should not be interpreted to nullify altogether the general rule that statutes should be interpreted consistent with their plain and unambiguous meaning." *Northern Concrete Pipe, Inc.*, 461 Mich at 320-321 (holding that the plaintiff's construction lien was untimely when, even though the plaintiff submitted the required notice within the statutorily required period, the notice was returned twice for correction and, ultimately, accepted after the statutorily required period). Joseph has cited no authority for applying the substantial-compliance exception to a plain and unambiguous deadline such as the one in MCL 211.78t. For these reasons, we conclude that the trial court did not err by finding that Joseph's Form 5743 was untimely or by declining to apply the substantial-compliance exception to excuse the untimeliness of her notice.

Relatedly, Joseph also argues that the loss of her surplus proceeds is a harsh and unreasonable

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consequence for obtaining proof of delivery by electronic tracking rather than by a certification and return-receipt process.

This issue comes to us unpreserved, because Joseph did not argue in the trial court that enforcement of the mailing requirements in § 78t resulted in an unreasonably harsh consequence. See *Hein v Hein*, 337 Mich App 109, 114; 972 NW2d 337 (2021) (“Issues are considered preserved for appellate review if they are raised in the trial court and pursued on appeal.”). This Court applies the raise-or-waive rule in civil cases. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2023); slip op at 5. Because Joseph did not raise the issue in the trial court, we have no obligation to consider the issue. See *id.* at ___; slip op at 3. Nevertheless, Joseph is not entitled to relief because her argument does not address the reason for the trial court’s denial of her motion to disburse, which was her own failure to meet the July 1 deadline for submitting her Form 5743 notice. Relief need not be considered when an appellant fails to dispute the basis of the trial court’s ruling. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Accordingly, we decline to consider this issue because it is not preserved and because Joseph has not addressed the basis of the trial court’s denial of her motion to disburse.

B. TAKINGS VIOLATION

The Estate and Joseph assert that petitioners’ retention of surplus proceeds amounted to an unconstitutional taking.

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Takings Clauses in the United States and Michigan Constitutions prohibit taking private property for public use without just compensation. US Const, Ams V and XIV; Const 1963, art 10, § 2. These provisions “do not prevent the government from establishing rules requiring property owners to take an affirmative act to preserve their rights in property.” *Barry Treasurer*, ___ Mich App at ___; slip op at 4. There is no compensable taking when there exists “a statutory path for property owners to recover surplus proceeds, but the property owners fail[] to avail themselves of that procedure.” *Muskegon Treasurer*, ___ Mich App at ___; slip op at 10, citing *Nelson v New York City*, 352 US 103, 110; 77 S Ct 195; 1 L Ed 2d 171 (1956).

The Estate and Joseph acknowledge this Court’s holding in *Muskegon Treasurer* that: the respondents in that case did not have a compensable-takings claim because the Legislature provided a statutory pathway for claimants to recover any surplus proceeds due them, the petitioner followed the statutory scheme, and the respondents failed to take the minimally burdensome first step toward recovery by filing a notice of intent that was timely under § 78t(2). Nevertheless, the Estate and Joseph contend that *Nelson v New York City*, 352 US 103; 77 S Ct 195; 1 L Ed 2d 171 (1956), which this Court found persuasive on this issue in *Muskegon Treasurer*, has significant differences that render it inapt in the context of Michigan’s foreclosure scheme. Accordingly, both parties urge this Court to issue a conflicting opinion under MCR 7.215(J)(1). These arguments are not persuasive.

Joseph and the Estate argue that, because MCL 211.78t infringes on a property owner’s constitu-

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tionally guaranteed right to recover surplus proceeds, the reasoning in *Nelson* is inapplicable. This claim of error fails because neither the respondents in *Muskegon Treasurer*, nor the present parties have established that MCL 211.78t infringes foreclosed property owners' constitutionally protected right to recover proceeds remaining after the tax-foreclosure sale and the satisfaction of its tax debt and associated costs. See *Muskegon Treasurer*, ___ Mich App at ___; slip op at 10.

The Estate and Joseph also argue that the statute at issue in *Nelson* allowed property owners to raise defenses or counterclaims in the foreclosure proceeding, in contrast to 78t, which requires a multistep process to recover excess proceeds. The Estate and Joseph do not explain how this procedural difference undermines this Court's reliance on *Nelson's* holding that a compensable takings claim cannot exist when the Legislature has provided a valid procedure for foreclosed property owners to recover surplus proceeds. The Estate and Joseph cannot obtain relief by simply announcing a position and then leaving it to this Court to do the rest. See *ER Drugs v Dep't of Health & Human Servs*, 341 Mich App 133, 146-147; 988 NW2d 826 (2022).

The Estate argues that this Court erred in *Muskegon Treasurer* by failing to recognize that *Nelson* did not involve a takings claim because that issue had not been preserved. Joseph suggests that the New York Legislature's predecision amendment of the statute to lessen some of its harshness rendered *Nelson's* holding practically moot. However, even postamendment, it appears that the recovery of property still required compliance with certain procedures. See *Nelson*, 352 US at 110-111. Neither

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party has given us any reason to believe that *Nelson's* holding would not apply to takings claims raised by residents who failed to follow the new procedures.

Lastly, the Estate urges this Court to issue a conflicting opinion on the basis that *Hall v Meisner*, 51 F4th 185 (CA 6, 2022), defined the federally protected right as originating at the time of the foreclosure, which the Estate asserts signifies that “there are some attributes of this right that are different than state rights under *Rafaeli*.” Again, the Estate leaves it to this Court to identify what those attributes might be and how they call for a decision different from that in *Muskegon Treasurer*. See *ER Drugs*, 341 Mich App at 146-147. And the Estate fails to distinguish the factual and legal context of *Hall* from that of the present case. The properties in *Hall* were foreclosed on before legislation was passed to codify and give full effect to the rights recognized in *Rafaeli*. Because these protections were not available to the *Hall* plaintiffs, and because the county’s foreclosure practice amounted to “strict foreclosure,” it could be said that, in *Hall*, an unconstitutional taking occurred at foreclosure. There was no compensable taking in *Muskegon Treasurer*, however, because the respondents had a statutory scheme that protected their right to remaining proceeds. Given these factual and legal differences between *Hall* and *Muskegon Treasurer*, the Estate’s implication that *Hall* compels a conflicting opinion fails.

Petitioners followed the statutory scheme, but the Estate and Joseph failed to enforce their constitutional rights by not availing themselves of the provided means of recovery.

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C. DUE-PROCESS VIOLATIONS

The Estate and Joseph assert violations of procedural and substantive due process. The United States and Michigan Constitutions “guarantee that no state shall deprive any person of life, liberty or property, without due process of law.” *Cummins v Robinson Twp*, 283 Mich App 677, 700; 770 NW2d 421 (2009) (quotation marks and citation omitted). See US Const, Ams V and XIV; Const 1963, art 1, § 17. These guarantees have procedural and substantive components that protect individual liberty and vested property interests “against certain government actions regardless of the fairness of the procedures used to implement them.” *Cummins*, 283 Mich App at 700 (quotation marks and citation omitted). See also *Souden v Souden*, 303 Mich App 406, 413; 844 NW2d 151 (2013) (indicating that due-process protections apply to vested property rights).

The Estate and Joseph argue that petitioners’ notices did not satisfy procedural due process because they did not notify the Estate or Joseph that petitioners were going to confiscate surplus proceeds nor identify the amount of surplus proceeds to be confiscated. The due-process arguments pertain to the statutory scheme per se, not specifically to the notices that petitioners sent in these cases. An alternative process might be one in which FGUs inform foreclosed property owners of the results of the sale or transfer of their properties and provide a means for them to claim excess proceeds, regardless of whether they timely filed Form 5743. Some states have adopted this type of notice, but Michigan has not. This Court held in *Muskegon Treasurer*, ___ Mich App at ___; slip op at 8, that the statutory scheme for recovering

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remaining proceeds satisfied due process and that, “[i]f the statutory scheme is followed by the former owner and FGU, there will be no constitutional deprivation like the one in *Rafaeli*.” “So long as the statutory scheme adopted by our Legislature comports with due process—and 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.” *Id.* at ___; slip op at 9 (citation omitted).

As to substantive due process, the Estate and Joseph argue that both MCL 211.78t(2)’s procedural deadline and the confiscation of surplus proceeds on the basis of that deadline is subject to strict scrutiny, that Form 5743 serves no valid purpose, and that the mechanics of its submission are unduly burdensome. However, this Court observed in *Muskegon Treasurer*, ___ Mich App at ___; slip op at 9 (quotation marks and citation omitted), that “[w]hen, 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.” The constitutional claims, therefore, must be analyzed under the Takings Clause and under guarantees of procedural due process rather than as violations of substantive due process. See *id.*; see also *Barry Treasurer*, ___ Mich App at ___; slip op at 3. As indicated, the arguments regarding both issues fail.

Lastly, the Estate argues that the July 1 notice deadline in § 78t(2) should not be enforced. The Estate contends that the deadline is unreasonable because it occurred before the Estate knew whether it would have a claim for surplus proceeds, that enforcement of the deadline resulted in the too-harsh consequence of

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the loss of more than \$30,000 in surplus proceeds, and that the 90-day window for filing Form 5743 is unduly burdensome. Although the Estate argued in the circuit court that the deadline in MCL 211.78t(2) was unconstitutional for various reasons, it did not raise the harsh-and-unreasonable-consequences argument that it now raises on appeal. Therefore, this issue is not preserved. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). This Court applies the raise-or-waive rule in civil cases. *Tolas*, ___ Mich App at ___; slip op at 5. Because the Estate did not raise the issue in the circuit court, we are not obligated to consider the issue. See *id.* at ___; slip op at 3. We “may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented.” *Id.* (quotation marks and citation omitted). The Estate concedes that its arguments regarding this issue are the same as those considered and rejected by this Court in *Muskegon Treasurer*; that this Court is bound by that decision; and, therefore, that it is not entitled to relief on this issue. Accordingly, we decline to consider the issue in this appeal.

As the Estate and Joseph concede, this Court considered and rejected the arguments that they advance in the foregoing issues in *Muskegon Treasurer*. Although both parties urge us to issue an opinion that conflicts with *Muskegon Treasurer*, neither has provided any legal reason for doing so, nor have they argued any distinguishing facts that render our holdings in *Muskegon Treasurer* inapplicable in the present case.

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D. APPLICABILITY OF MCL 600.5852

Unique to the Estate is the claim that the trial court erred by not applying the death-saving provision, MCL 600.5852, to toll the deadlines in § 78t. This Court recently held in *Barry Treasurer*, ___ Mich App at ___; slip op at 6, that MCL 600.5852 does not apply to toll the July 1 filing deadline under MCL 211.78t(2). As a result, this argument must fail.

MCL 600.5852(1) states as follows:

If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.

The decedent in *Barry Treasurer* died in 2018, without having paid his 2018 property taxes. The FGU foreclosed on the property in 2021 and sold it at a tax-foreclosure sale later that year for \$40,000. In April 2022, the decedent's heir opened an estate. Shortly thereafter, the estate moved for an order compelling the FGU to distribute to the estate the approximately \$36,475 in surplus proceeds remaining after satisfaction of the decedent's tax debt and related costs. The FGU opposed the motion on grounds that neither the estate nor the decedent's heir had complied with the July 1, 2021 notice requirement of § 78t(2); therefore, the estate, and the decedent's heir, had forfeited any right that they might have to the surplus proceeds. The estate argued, among other things, that failure to meet the filing requirement did not bar its claim because the saving provision in MCL 600.5852

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gave it two years after letters of authority were issued to bring an action for the recovery of surplus proceeds. The circuit court rejected the estate's argument and entered an order denying the estate's motion. *Id.* at ____; slip op at 2.

This Court affirmed the circuit court's order on appeal, expressly rejecting the estate's argument that MCL 600.5852 governed the case. *Id.* at ____; slip op at 6. This Court determined that the death-saving provision did not apply for two reasons. First, the decedent's claim for surplus proceeds did not survive his death by operation of law. This Court reasoned that "the death-saving provision applie[d] only to claims that survive a decedent's death by operation of law. Any claim to surplus proceeds accrued after foreclosure of the property, so the claim was not in existence when [the decedent] died." *Id.* at ____; slip op at 7. In fact, the right to surplus proceeds arguably passed to the decedent's heir after the decedent's 2018 death because title to the property passed to the heir after the decedent died. *Id.*, citing MCL 700.2103; *Pardeike v Fargo*, 344 Mich 518, 522; 73 NW2d 924 (1955) ("Upon the death of the owner of real estate, title passes to and vests in the heirs, not to the personal representatives."); *Mich Trust Co v Grand Rapids*, 262 Mich 547, 550; 247 NW2d 744 (1933) ("[T]he title to real estate descends immediately to [the decedent's] heirs, subject to be divested for the payment of decedent's debts."). Accordingly, the person who could have redeemed the property before foreclosure or signaled his intent to claim any proceeds remaining after the tax-foreclosure sale was the decedent's heir. *Barry Treasurer*, ____ Mich App at ____; slip op at 7. Second, this Court concluded that application of MCL 600.5852 was precluded by "the

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Legislature’s provision of an exception to the preclusive effect of MCL 211.78t(2) in MCL 211.78l(1).” *Id.* at ____; slip op at 6.

Applying the holding in *Barry Treasurer* to the Estate here, the claim for surplus proceeds had not arisen at the time of McGee’s death and, therefore, did not survive her death. The Estate urges this Court to construe “action” in MCL 600.5852(1) as meaning that the decedent’s right to recover proceeds at a future date survived her death. However, to the extent that the right to recover surplus proceeds follows title to the property, the legal interest in surplus proceeds passed with the property to the decedent’s heir(s) after the decedent’s death. See *id.*; *In re Emmet Co - Treasurer for Foreclosure*, ____ Mich App ____, ____; ____ NW2d ____ (2023); slip op at 4-6. Given these facts, even if MCL 600.5852(1) did apply, it would not apply here. The Estate has not argued that MCL 211.78l applies.

For the foregoing reasons, we conclude that the circuit court did not err by concluding that MCL 600.5852 did not apply to toll the filing deadline in § 78t(2).

E. CONSTRUCTIVE TRUST

Lastly, the Estate and Joseph contend that petitioners’ confiscation of the surplus proceeds on the basis of a procedural technicality supports a claim of unjust enrichment. Again, we disagree.

Unjust enrichment is a cause of action to correct a defendant’s unjust retention of a benefit owed to another. *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019). Unjust enrichment is grounded in the idea that a party “shall not be allowed to profit or

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enrich himself inequitably at another's expense." *McCreary v Shields*, 333 Mich 290, 294; 52 NW2d 853 (1952) (quotation marks and citation omitted). An unjust-enrichment claim can arise when a party "has and retains money or benefits which in justice and equity belong to another." *Id.* (quotation marks and citation omitted). "The remedy for unjust enrichment is restitution." *Wright*, 504 Mich at 418.

"When a statute governs resolution of a particular issue, a court lacks the authority to invoke equity in contravention of the statute." *Thomas v Dutkavich*, 290 Mich App 393, 413 n 9; 803 NW2d 352 (2010). As our Supreme Court has explained, "[r]egardless of how unjust the statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree." *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002) (quotation marks and citation omitted).

We reject the attempt to frame the operation of MCL 211.78t as resulting in petitioners' unjust enrichment. The Legislature provided an exclusive, validly enacted, constitutional scheme by which former property owners can recover remaining proceeds, and petitioners complied with the scheme. The statutory scheme created by our Legislature mandates how FGUs are to use the monies from tax-foreclosure sales and leaves FGUs no discretion to disburse remaining proceeds to foreclosed property owners who did not comply with the requirements of MCL 211.78t. See MCL 211.78m(8). Under these circumstances, an equitable remedy would contravene the Legislature's clearly stated intent and essentially reduce MCL 211.78t to a nullity. See *Muskegon Treasurer*, ___ Mich App at ___; slip op at 5 ("The

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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."). Because the Legislature provided a duly enacted, constitutionally valid statutory means of recovering proceeds remaining from a tax-foreclosure sale in excess of the tax debt, restitution under a theory of unjust enrichment is not warranted.

Affirmed.

/s/ Michael F. Gadola

/s/ Sima G. Patel

/s/ Adrienne N. Young

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RECEIVED AND FILED
SEP 28 2022
MARY ANN FROBERG, CLERK
ALGER COUNTY, MI

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

In the Matter of the Petition of the Alger County Treasurer for Foreclosure of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' taxes, Interest, Penalties, and Fees.	File No. 20-8018-CH HON. BRIAN D. RAHILLY Circuit Judge (P74065)
--	---

MR. CHARLES A. LAWLER (P65164) CLARK HILL, PLC 215 S Washington Sq, Suite 200 Lansing, MI 48933 clawler@clarkhill.com (517) 318-3016	VISSER AND ASSOCIATES, PLLC DONALD R. VISSER (P27961) DONOVAN J. VISSER (P70847) BRIA ADDERLEY- WILLIAMS (P84876) 2480 – 44th St. S.E., Ste. 150 Kentwood, MI 49512 (616) 531-9860
---	---

Appendix 27a

Order Re: Claim of McGee Estate

At a session of said Court on September 27, 2022,
Alger County, State of Michigan,

PRESENT: HON. BRIAN D. RAHILLY
Circuit Judge

Consistent with this Court's rulings in other like cases with the 11th Circuit, the Court denies the claim of the McGee Estate. This Court will not address the constitutional issues, as it previously ruled on similar issues in Schoolcraft County Case Number 20-5456-CZ. The Court further rules that the Death Savings Provision does not apply and adopts the analysis provided in the Treasurer's brief.

The Court certainly has concerns about the constitutionality of MCL 211.78t as a sole remedy. This Court has ruled previously that this statute is not the sole remedy in these types of cases because it does not protect the rights defined in *Rafaeli*.

It is ordered.

Date: 9/27/2022

/s/ Brian D. Rahilly
Hon. Brian D. Rahilly
11th Circuit Court Judge

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FILED
APR 26 2022
IRON COUNTY CLERK

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF IRON
41ST JUDICIAL CIRCUIT

IN THE MATTER OF THE	File No. I20-6007-CZ
PETITION OF IRON	
COUNTY TREASURER FOR	HON. DONALD S.
THE FORECLOSURE OF	POWELL
CERTAIN PARCELS OF	
PROPERTY DUE TO	ORDER DENYING
UNPAID 2018 AND PRIOR	MOTION OF
YEARS' TAXES, INTEREST,	LILLIAN JOSEPH
PENALTIES, AND FEES.	(HENNESSY) TO
	DISBURSE
	SURPLUS
	PROCEEDS FROM
	TAX
	FORECLOSURE
	SALE DATED
	FEBRUARY 22, 2022

IRON COUNTY TREASURER,
Petitioner

v

LILLIAN JOSEPH (HENNESSY),
Claimant.

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Steven J. Tinti (P36308)
LAW OFFICE OF STEVEN J. TINTI
Attorney for Petitioner
Iron County Treasurer
P.O. Box 98
Crystal Falls, MI 49920
(906) 875-7451

Donald R. Visser (P27961)
Donovan J. Visser (P70847)
Bria Adderley-Williams (P84876)
VISSER AND ASSOCIATES, PLLC
Attorney for Claimant

Anthony Girard
IN PRO PER
630 9th Avenue
Suite 420
New York, New York 10036

At a session of said Court held on
the 14th day of April, 2022.

PRESENT: THE HONORABLE
DONALD S. POWELL
Trial Court Judge

The Court having before it the Motion of Lillian Joseph (Hennessy) to Disburse Surplus Proceeds from Tax Foreclosure Sale dated February 22, 2022, reviewed and materials filed, heard the testimony taken, heard the arguments of counsel and being otherwise fully informed in the premises;

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IT IS ORDERED that the claims of Claimant, LILLIAN JOSEPH (HENNESSY), that the tax foreclosure process set forth in 2020 PA 256 was unconstitutional on its face and was unconstitutional as applied in this matter are DENIED for the reasons stated on the record.

IT IS FURTHER ORDERED that MCL 211.78t(2) does not permit substantial compliance in the filing of a claim for remaining proceeds.

IT IS FURTHER ORDERED that Notice of Intention to Claim Interest in Foreclosure Sale Proceed (Michigan Department of Treasury Form 5743) filed by Claimant, LILLIAN JOSEPH (HENNESSY), is determined to not be timely and therefore the claims of Claimant, LILLIAN JOSEPH (HENNESSY), are DENIED for the reasons stated on the record.

IT IS FURTHER ORDERED that the request for imposition of a constructive trust as to remaining proceeds is DENIED for the reasons stated on the records.

This Order resolves the last pending claim and closes the case pursuant to MCR 2.602(A)(3).

Date: 4/26/22

/s/ Donald S. Powell
Donald S. Powell (P46897)
Trial Court Judge

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Order **Michigan Supreme Court**
 Lansing, Michigan

March 28, 2025

Elizabeth T. Clement,
Chief Justice

167712-3

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

In re PETITION OF ALGER
COUNTY TREASURER FOR
FORECLOSURE.

ALGER COUNTY TREASURER,
Petitioner-Appellee,

v

JOHANNA McGEE,
Personal Representative of the
ESTATE OF JACQUELINE
McGEE,

Claimant-Appellant.

SC: 167712
COA: 363803
Alger CC:
2020-008018-
CH

In re PETITION OF IRON
COUNTY TREASURER FOR
FORECLOSURE.

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IRON COUNTY TREASURER,	SC: 167713
Petitioner-Appellee,	COA: 363804
v	Iron CC: 20-
LILLIAN JOSEPH,	006007-CZ
Claimant-Appellant.	

_____/

On order of the Court, the application for leave to appeal the September 12, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we 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.

March 28, 2025

/s/ Larry S. Royster
Clerk

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**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.

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(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.

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(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,

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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 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.

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(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 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

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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 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.

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(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 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).

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(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 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

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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 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

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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.

(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.

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(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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RECEIVED AND FILED
FEB 17 2021
MARY ANN FROBERG, CLERK
ALGER COUNTY, MI

COUNTY OF ALGER
IN THE 11th JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF ALGER

In the matter of the	File No. 20-8018-CH
petition of the County	Hon. Brian D. Rahilly
Treasurer for	
Foreclosure of Certain	
Parcels of Property Due	
Unpaid 2018 and Prior	
Years Taxes, Interest,	
Penalties and fees	

JUDGMENT OF FORECLOSURE

At a session of said Court held in the Courthouse in the City of Munising, County of Alger, State of Michigan on February 17, 2021.

PRESENT: Honorable Brian D. Rahilly, Circuit Judge

This matter was initiated with the filing of a Petition, on or about June 1, 2020. The Petition identifies parcels of property forfeited to the Alger County Treasurer under MCL 211.78g for unpaid 2018 and prior years' taxes and sets forth the amount of the unpaid delinquent taxes, interest, penalties,

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and fees for which each parcel of property was forfeited. The Petition seeks a Judgment in favor of the Petitioner, the Alger County Treasurer, for the forfeited unpaid delinquent taxes, interest, penalties, and fees listed against each parcel of property. The Petition further seeks a Judgment vesting absolute title to each parcel of property in the Petitioner, without right of redemption, as to parcels of property not redeemed by March 31, 2021, and after entry of this Judgment.

On or about January 19, 2021, Petitioner filed an Amended Petition, deleting parcels that had been redeemed or that Petitioner determined should be withheld from foreclosure, and amending the final redemption date sought by Petitioner as required by 2003 PA 263.

On or about January 19, 2021, Petitioner filed with the Clerk of the Court Proof of Service of the Notice of Show Cause Hearing and Notice of Foreclosure Hearing, Proof of Publication, and Proof of Personal Visit, as required by MCL 211.78k(1), for each of the remaining parcels.

A hearing on the Petition and Amended Petition and objections thereto was held on February 18, 2020, at which time all parties interested in the forfeited properties were heard.

The Court finds that those parties entitled to notice and an opportunity to be heard have been provided that notice and opportunity.

THEREFORE, IT IS ORDERED:

- a) The amount of forfeited delinquent taxes, interest, penalties, and fees set forth in the list

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of foreclosed property attached to this Judgment is valid and Judgment of Foreclosure is entered in favor of Petitioner against each parcel of property, separately, for payment of the amount set out against the parcel; provided, however, that interests in property assessable as personal property under MCL 211.8(G) are exempt from this Judgment of foreclosure.

- b) Fee simple title to each parcel foreclosed upon by this Judgment will vest absolutely in Petitioner, subject to the limitations of paragraphs (c) and (d), below, without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest required by statute, are not paid to the County Treasurer on or before March 31, 2021.
- c) All liens against each parcel, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by the State or the Petitioner pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101, et seq., are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest required by statute, are not paid to the County Treasurer on or before March 31, 2021.
- d) All existing recorded and unrecorded interests in each parcel are extinguished except: (1) a visible or recorded easement or right-of-way, (2) private deed restrictions, (3) restrictions or

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other governmental interests imposed pursuant to the Natural Resources and Environmental Protection Act, supra, (4) interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease recorded before the date of filing of the Petition in this action, (5) interests preserved under § 1(3) of the Dormant Minerals Act, MCL 554.291(3), and (6) interests in property assessable as personal property under MCL 211.8(g), if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest required by statute, are not paid to the County Treasurer on or before March 31, 2021.

- e) Petitioner has good and marketable fee simple title to each parcel, subject to the limitations of paragraphs (c) and (d), above, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest required by statute, are not paid to the County Treasurer on or before March 31, 2021.

Dated: February 17, 2021

/s/ Brian D. Rahilly
Brian D. Rahilly
Alger County
Circuit Judge

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FEB 17 2021

MARY ANN FROBERG, CLERK

ALGER COUNTY, MI

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* * *

006-006-007-00 N-7219 CO RD H-15
Occupied/Personally Served 09/13/2020 Bryan Hill

* * *

CERTIFIED MAIL NOTICE RECORD
ALGER COUNTY

* * *

006-006-007-00 92148901114328100025305528
12/10/2020 **No Mail Receptacle 12/21/2020**
JACQUELINE CHILICKI PO BOX 96
SHINGLETON MI 49884

006-006-007-00 92148901114328100025305603
12/10/2020 **No Such Number 12/21/2020**
JACQUELINE CHILICKI N7170 COUNTY
ROAD H15 SHINGLETON MI 49884

006-006-007-00 92148901114328100025328947
12/10/2020
JACQUELINE CHILICKI N 7219 CO RD H 15
SHINGLETON MI 49884

* * *

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PAYMENT DEADLINE

Persons that hold an interest in real estate with unpaid **2018** and/or previous years taxes will **LOSE ALL TITLE INTEREST IN THAT PROPERTY AFTER MARCH 31, 2021**

Payment of 2018 and/or previous years taxes **MUST BE PAID IN FULL** by end of business **MARCH 31, 2021.**

or this property WILL BE FORECLOSED

THERE IS NO WAY TO RECOVER THIS PROPERTY AFTER MARCH 31, 2021.

If this property is foreclosed, you have a right to claim any excess funds remaining after the sale or transfer of the property by filing a Notice of Intention form by July 1, 2021 (see below).

Property County: Alger

Parcel ID #: 006-006-007-00

Reference #: 02-18-00081

Street Address: N-7219 CO RD H-15,
SHINGLETON

Legal Description:

SEC 6 T46N R17W 1.02 A PT OF NE 1/4 OF NE 1/4
COM 196' N OF NE COR OF SE 1/4 OF NE 1/4, TH
W 332', TH N 134', TH E 332', TH S 134' TO POB

Extra Info About This Property:

No Personal Checks – Payments must be cash, cashiers check, money order, credit or debit card. To pay online visit our website:

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www.govpaynow.com and enter PLC code #6470 to pay delinquent taxes. Payments will be accepted until 4:00 PM on Tuesday, March 31st.

**CONTACT THE ALGER COUNTY TREASURER
AT 906-387-4535 FOR THE CURRENT PAYOFF
AMOUNT.**

Please disregard this notice if you have recently paid
this amount, or if you claim no interest in this
property.

**VERIFY PAYMENT OF TAXES BY YOUR
LENDER** if you escrow tax payments with your
Mortgage.

**This real estate is in the process of FORE-
CLOSURE for unpaid 2018 and/or previous
years property taxes.**

THE CIRCUIT COURT FOR THE COUNTY OF
ALGER HAS ENTERED A JUDGMENT WHICH
BECOMES EFFECTIVE MARCH 31, 2021 VESTING
TITLE IN THE FORECLOSING GOVERNMENTAL
UNIT.

It is recommended that you pay, or notify persons that
are responsible for paying these taxes immediately to
prevent loss of this property.

IF THIS PROPERTY IS FORECLOSED, it may later
be sold for more than the total amount due to the
Foreclosing Governmental Unit. Any person who held
an interest in this property at the time of foreclosure
has a right to file a claim for remaining excess money,
if any. In order to make a claim, **YOU MUST SUBMIT**

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A NOTICE OF INTENTION FORM TO THE Alger
County Treasurer **NO LATER THAN JULY 1, 2021.**

If you have questions or comments about this process,
contact us by sending email to alger@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.

Alger	02-18-00081
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NOTICE OF FORECLOSURE

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

Property County: Alger

Parcel ID #: 006-006-007-00

Reference #: 02-18-00081

Street Address: N-7219 CO RD H-15,
SHINGLETON

Legal Description:

SEC 6 T46N R17W 1.02 A PT OF NE 1/4 OF NE 1/4
COM 196' N OF NE COR OF SE 1/4 OF NE 1/4, TH
W 332', TH N 134', TH E 332', TH S 134' TO POB

Extra Info About This Property:

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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 ALGER COUNTY TREASURER **NO LATER THAN JULY 1, 2021**. You can access Form 5743 by visiting www.miTaxNotice.com/form5743 or by contacting the Alger County Treasurer.

You must submit the completed Form 5743 by **CERTIFIED MAIL OR PERSONAL DELIVERY** to The Alger County Treasurer, 101 Court St, Munising, MI 49862 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 consult an attorney if desired. Those who wish to

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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 alger@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 Alger County Treasurer and **SHOULD NOT** be directed to Title Check, LLC.

Alger	02-18-00081
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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 Lillian M. Joseph, formerly known as Lillian Hennessy	Claimant First Name Anthony Girard	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	
PART 2: PROPERTY IDENTIFICATION		
County Iron	Local Taxing Municipality Crystal Falls Twp., MI 49920	Foreclosure Year 2021

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Parcel Address (Street Number, City, State, ZIP Code) Unknown	Local Parcel Number 002-317-014-40	
PART 3: EXPLANATION OF INTEREST		
I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below: <input checked="" type="checkbox"/> Warranty Deed Dated: <u>01/22/1981</u> Recorded in Liber/Page: <u>Liber 204, Page 537</u> <input type="checkbox"/> Quit Claim Deed Dated: _____ Recorded in Liber/Page: _____ <input checked="" type="checkbox"/> Mortgage Dated: <u>03/30/2012</u> Amount: <u>\$2299.54+ int @6%</u> Recorded in Liber/Page: <u>Liber 692, Page 215</u> <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:		
<div>None</div>		
PART 4: CERTIFICATION AND NOTARY		
<i>I hereby swear that the above information is true and correct in relation to the subject property</i>		
Claimant's Signature s/Lillian M. Joseph	Date 6/29/21	
<i>Subscribed and sworn to before me by Applicant on the following date:</i>		
Notary's Signature s/Harivaden P. Mehta	Commission Expiration 01/20/2025	
Notary State of Authorization New York	Notary County of Authorization Nassau	Notary Acting in County Nassau
FORECLOSING GOVERNMENTAL UNIT RECEIPT ACKNOWLEDGMENT		

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FGU Staff Signature of Receipt	FGU Staff Printed Name	Date of Receipt
<div>Notary Stamp: Harivaden P. Mehta Notary Public – State of New York NO. 01ME6199533 Qualified in Nassau County My Commission Expires Jan 20, 2025</div>		

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FILED
May 16, 2022

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

* * * * *

IN THE MATTER OF
THE PETITION OF File No. 20-8018-CH
THE ALGER COUNTY
TREASURER FOR HON. BRIAN D.
FORECLOSURE OF RAHILLY
CERTAIN PARCELS
OF PROPERTY DUE
TO UNPAID 2018 AND
PRIOR YEARS' TAXES,
INTEREST,
PENALTIES, AND
FEES.

VISSER 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

**MOTION OF THE ESTATE OF JACQUELINE
HELEN MCGEE TO DISBURSE REMAINING
PROCEEDS FROM TAX FORECLOSURE SALE**

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COMES NOW, Claimant The Estate of Jacqueline Helen McGee by Johanna McGee as Personal Representative (“Claimant”), by and through Counsel, VISSER AND ASSOCIATES, PLLC, and requests that this Court compel the Alger County Treasurer to disburse the Remaining Proceeds from the tax foreclosure and sale of Claimant’s former property pursuant to MCL § 211.78t. In support thereof, Claimant states as follows:

1. Claimant was the owner of certain real property identified by permanent parcel number 006-006-007-00 located in the County of Alger (“Subject Property”).

2. On February 17, 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 1**.

3. Claimant did not transfer or otherwise divest its 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 Alger County Treasurer sold the Subject Property for \$38,250.

6. The amount of unpaid delinquent taxes, interest, penalties, and fees incurred and owing to the Alger County Treasurer for the Subject Property was \$3,599.79.

7. As a consequence of the sale of the Subject Property, the County Treasurer received \$34,650.21.

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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 Property apart from its 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 \$1,912.50.

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 \$32,737.71 pursuant to MCL § 211.78t(4).

WHEREFORE, Claimant requests that this Court enter an Order directing the Alger County Treasurer to turnover Remaining Proceeds of \$32,737.71 to Claimant The Estate of Jacqueline Helen McGee within 21 days of this Court’s order as required by MCL § 211.78t(10).

Respectfully submitted,

VISSER AND
ASSOCIATES, PLLC

Dated: May 16, 2022

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

Appendix 61a

Filed February 22, 2022

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

* * * * *

IN THE MATTER OF THE
PETITION OF THE IRON Case No. I20-6007-CZ
COUNTY TREASURER
FOR THE FORECLOSURE HON. DONALD S.
OF CERTAIN PARCELS POWELL
OF PROPERTY DUE TO
UNPAID 2018 AND PRIOR
YEARS' TAXES,
INTEREST, PENALTIES,
AND FEES.

VISSER 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

**MOTION OF LILLIAN JOSEPH (HENNESSY)
TO DISBURSE SURPLUS PROCEEDS FROM
TAX FORECLOSURE SALE**

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COMES NOW, Claimant LILLIAN JOSEPH (“Claimant”), by and through counsel, VISSER AND ASSOCIATES, PLLC,

1. Claimant was the owner of certain real property commonly identified by permanent parcel number 002-317-014-40 located in the Township of Hematite, County of Iron (“Subject Property”). Claimant’s recorded deed is attached as **Exhibit 1**.

2. On February 19, 2021, and 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 hereto as **Exhibit 2**.

3. However, the equity in the Subject Property after the foreclosure remained Claimant’s property.

4. Subsequent to the entry of Judgment of Foreclosure, the Iron County Treasurer sold the Subject Property for \$27,500 (see **Exhibit 3**).

5. Upon information and belief, the amount of unpaid delinquent taxes, interest, penalties and fees incurred and owing to the Iron County Treasurer for the Subject Property was less than \$5,690.45.

6. As a consequence of the sale of the Subject Property, the County Treasurer received \$21,809.55 or more in excess funds (i.e., exceeding the amount of delinquent taxes, interest, penalties and fees that were due). The excess funds generated are hereinafter referred to as “Surplus Proceeds”.¹

¹ “Surplus Proceeds” as used throughout this Motion is defined as proceeds from the tax foreclosure sale of the Subject Property that exceeds the unpaid delinquent taxes, interest, penalties, and fees.

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7. The Iron County Treasurer has been holding the Surplus Proceeds for the benefit of Claimant.

8. In 2020, the Michigan Supreme Court in *Rafaeli* made it unequivocally clear that the Surplus Proceeds were the property of the former property owner—in this case the Claimant Lillian Joseph.

9. On June 29, 2021, a “Notice of Intention to Claim Interest in Foreclosure Sales Proceeds” attached as **Exhibit 4** (“Notice”) was transmitted to the Foreclosing Governmental Unit—Iron County.

10. Claimant’s Notice was delivered to the County Treasurer on July 1, 2021, as shown by **Exhibit 5**.

11. Despite a timely submission and delivery, the County Treasurer sent a letter to Claimant on July 13, 2021 refusing to turnover Claimant’s Surplus Proceeds. The Treasurer’s letter is attached as **Exhibit 6**.

12. On August 25, 2021 and again on February 11, 2022, Claimant, through counsel, sent letters to the County Treasurer in the form of Exhibits 7 and 8 providing proof that Claimant’s Notice was delivered to the Treasurer’s office on July 1, 2021.

13. At time this Motion was filed, the Treasurer has failed to respond to either letter.

14. No Notice was required to preserve Claimant’s rights in her equity.

15. Pursuant to *Rafaeli* and Michigan’s Constitution, Claimant is entitled to immediate turnover of Surplus Proceeds in the amount of \$21,809.55.

16. Claimant incorporates and relies on the arguments outlined in the supporting brief submitted concurrently with this Motion.

WHEREFORE, Claimant requests that this Honorable Court enter an Order directing the Iron

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County Treasurer to immediately turn over Claimant's Surplus Proceeds the amount of \$21,809.55 to the Claimant, together with reasonable attorney fees associated with this action and taxable costs.

Respectfully submitted,

VISSER AND
ASSOCIATES, PLLC

Dated: February 22, 2022 /s/ Donald R. Visser
Donald R. Visser
(P27961)
Donovan J. Visser
(P70847)
Bria Adderley-Williams
(P84876)
Counsel for Claimant

PROOF OF SERVICE

A copy of this document was served upon all parties of record by electronic delivery and/or U.S. Mail on Feb 24, 2022, pursuant to MCR 2.107(C).

/s/ Kelly A. Eefsting
Kelly A. Eefsting

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**Excerpts of March 30, 2022, Hearing Transcript
Pages 15–16**

STATE OF MICHIGAN
IN THE 41ST CIRCUIT COURT
FOR IRON COUNTY

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

Case No.
20-6007-CZ

v

Lillian Joseph,

Defendant.

_____ /

PETITION ON FORECLOSURE
PROCEEDING HELD VIA ZOOM RECORDING
BEFORE THE HONORABLE DONALD S. POWELL
Crystal Falls, Michigan – March 30, 2022

APPEARANCES:

REPRESENTING CLAIMANT:

DONALD R. VISSER (P27961)
Visser and Associates, PLLC
2480 44th Street Southeast, Suite 150
Kentwood, Michigan 49512
(616) 531-9860

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REPRESENTING PETITIONER:

STEVEN J. TINTI (P36308)

Law Office of Steven J. Tinti

P.O. Box 98

Crystal Falls, Michigan 49920

(906) 875-7451

RECORDED BY: LORI WILLMAN (CEO 4817)

* * *

THE COURT: First of all, I'm going to address substantial compliance shortly. Right now, I'm going to just address the constitutionality of the statute. Whether as a whole, or as applied.

The case of People vs Yanna, Y-A-N-N-A, 297 Mich App 137, 824 northwest second, 241. From 2012. States that the Courts are to presumed statutes to be constitutional, unless their constitutionality is clearly apparent.

It is clear that Rafael (sic) changed the way that municipalities handle excess proceeds from the sale of tax foreclosed properties. And—and frankly, I think that Rafael (sic) was decided correctly.

That does not prevent the legislature from setting up a procedure that counties and municipalities are to follow, in order to effectuate the ruling of Rafaeli.

And I find that the procedures that the legislature, the state legislature, have set up, are an appropriate response to Rafaeli, from a procedural standpoint. And are therefore constitutional.

With regard to the “as applied”, the argument is that no sale had actually taken place, prior to the date

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that the notice was required. And that therefore, as applied to this case, it was unconstitutional.

And I—and find that the sale did not need to take place, before a claim for this residue can be made. The claimant was aware of the fact that her property was being sold on tax sale. She was aware of the fact it was behind in taxes.

I presume she knew, to some degree, what her property was worth. And she was put on notice that she could have a claim, for these proceeds, if she applied by July 1st through the proper procedures. And we didn't need to have a sale actually place.

So I find it's constitutional as a whole, and I find it's constitutional as applied to the particular claimant in this case.

* * *