Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 386 (as passed by the Senate)
Sponsor: Senator Judy K. Emmons
Committee: Finance

Date Completed: 9-7-17

RATIONALE

The General Property Tax Act establishes procedures for the return of tax-delinquent property to a county treasurer, the placement of a lien on the property, forfeiture of the property, and the eventual foreclosure and sale of the property. These procedures require a number of notices, allow the owner to "redeem" the property by paying the delinquent taxes and other amounts, and involve court proceedings. The Act requires a circuit court to enter a final judgment on a foreclosure petition at any time after the hearing on the petition, but within a time frame set forth in the Act. The foreclosure judgment must specify that it is a final order with respect to the property affected by the judgment and, except as provided, may not be modified, stayed, or held invalid after specified dates.

These provisions are relevant to a specific situation in Isabella County in which the county treasurer denied a principal residence exemption for a parcel of property, the property was eventually foreclosed upon, and the foreclosure was upheld by the Michigan Court of Appeals. As a result of what occurred, some people believe that there is a need to expand the grounds upon which a foreclosure judgment may be invalidated, and to require a court to cancel a judgment under certain circumstances. (The Isabella County situation and the resulting litigation are discussed below in **BACKGROUND**, where the information is based on two Court of Appeals opinions in the matter.)

CONTENT

The bill would amend the General Property Tax Act to allow a person claiming to have an interest in property foreclosed due to unpaid taxes to seek to invalidate the foreclosure on certain grounds (reasons for which a court may relieve a party of a final judgment), if the property had not been transferred to a person other than the foreclosing governmental unit. The bill also would require, instead of allow, a foreclosing governmental unit to cancel a foreclosure under certain circumstances if the property had not been transferred to a person other than the governmental unit after a foreclosure judgment was entered.

The bill would be retroactive and would be effective January 1, 2015.

Specifically, the bill would allow a person claiming to have a property interest under Section 78i in property foreclosed to seek to invalidate the foreclosure on any of the grounds described in Michigan Court Rule (MCR) 2.612, so long as the property had not been transferred under Section 78m to a person other than the foreclosing governmental unit.

(Section 78i of the Act contains provisions regarding the identification of owners with an interest in property forfeited for unpaid delinquent taxes, among other things.

Under MCR 2.612, on motion and on just terms, the court in a civil action may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

-- Mistake, inadvertence, surprise, or excusable neglect.
-- Newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial.
-- Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
-- The judgment is void.
-- The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
-- Any other reason justifying relief from the operation of the judgment.

Section 78m of the Act, under certain circumstances, allows a foreclosing governmental unit, or its authorized agent, at the option of the governmental unit, to hold one or more property sales at which foreclosed property will be sold by auction sale. Section 78m contains further provisions regarding the sale of property, or the retention of property by a foreclosing governmental unit, among other things.)

Under the Act, after the entry of a foreclosure judgment, if the property has not been transferred under Section 78m to a person other than the foreclosing governmental unit, the unit may cancel the foreclosure by recording with the register of deeds for the county in which the property is located a certificate of error in a form prescribed by the Department of Treasury, if the foreclosing governmental unit discovers certain circumstances regarding the property (e.g., the property was not subject to taxation or the taxes had been paid).

Under the bill, the governmental unit would be required to cancel the foreclosure, instead, in the situation described above, if the foreclosing governmental unit or a court of competent jurisdiction determined any of the circumstances listed in the Act.

MCL 211.78k

BACKGROUND

The General Property Tax Act exempts an individual's principal residence from the tax levied by a school district for school operating purposes (typically 18 mills), to the extent provided in the Revised School Code. When the homeowner dies, his or her beneficiaries may continue to claim the principal residence exemption (PRE) if certain conditions are met. A situation in Isabella County involved property that was subject to the PRE and, after the homeowner died, continued to be occupied by his beneficiaries. As described below, the denial of the PRE and foreclosure of the property resulted in litigation between the homeowner's estate (referred to as the respondent) and the county treasurer.

In March 2010, the Isabella County treasurer denied the principal residence exemption for a parcel of property for tax years 2007, 2008, and 2009. The homeowner had claimed the PRE in 1994 and died intestate (without a valid will) in 2004. His wife died in 2008 and one of their children continued to occupy the home. After the PRE was denied, the respondent appealed to the Michigan Tax Tribunal. In March 2012, the Tribunal issued a final opinion that the property was entitled to the PRE for the years in question.

After the Tribunal issued its decision, the respondent paid the taxes on the property for 2010 and 2011 as calculated with the principal residence exemption. In June 2012, however, the county treasurer included the property in its petition for foreclosure. In February 2013, the respondent requested the circuit court to dismiss the petition, and the treasurer removed the parcel from its list of properties being forfeited and foreclosed upon. The respondent then requested the court to declare the property's 2010 and 2011 taxes paid in full. The court concluded that it had the power to apply the findings of the Tax Tribunal in the case in order to find that the taxes had been paid. In a February 2015 opinion, the Michigan Court of Appeals held that the circuit court was within its jurisdiction to make that determination, and that the respondent was entitled to the PRE for the 2010 and 2011 tax years (*Isabella County Treasurer v Estate of Timothy Scott Pung*, No. 318616).

While this litigation was pending, the treasurer issued the 2012 tax bill, which originally granted the principal residence exemption. When the respondent's personal representative went to pay the bill, he was informed that the PRE was denied, and a revised tax bill was issued. The respondent paid the amount of the original bill, but refused to pay the additional amount owed according to the revised bill. The treasurer then pursued foreclosure on the property, and sent notices by mail, posted a notice on the property, and published notices in the local newspaper. After the respondent did not reply to the notices or appear at a hearing, a foreclosure judgment was entered in February 2015. The respondent did not redeem the property during the redemption period. In May 2015, the respondent filed a motion to set aside the judgment or to force the treasurer to cancel the foreclosure, claiming that it did not receive notice as required by the General Property Tax Act. The circuit court found that the treasurer had complied with the statutory requirements, but concluded that the respondent was deprived of its constitutional right to due process, and set aside the foreclosure.

In an April 2017 decision, the Court of Appeals reversed the circuit court's order setting aside the foreclosure (*Isabella County Treasurer v Estate of Timothy Scott Pung*, No. 329858). The Court found that the respondent was not deprived it its constitutional right to due process. The respondent argued that the circuit court erred in concluding that it could not set aside the foreclosure for various other reasons, but the Court of Appeals held the circuit court "lacked authority to set the foreclosure aside absent a due-process violation". Since the respondent had not redeemed the property or appealed the foreclosure judgment, but chose to move to set aside the foreclosure after the redemption period had expired, "the only way to invalidate the judgment of foreclosure was through a finding that its due-process rights were violated".

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The situation described above involves a rare predicament in which an individual's property rights arguably were violated. The property's foreclosure, and a person's loss of his home, resulted from the nonpayment of taxes that should not have been owed. Although the Tax Tribunal, the circuit court, and the Court of Appeals all held at various points that the property was eligible for the principal residence exemption, the foreclosure eventually was upheld due to the facts of the case and the limitations of the law. The Court of Appeals itself referred to the "unfortunate circumstances of this case" but, as discussed above, held that it could not invalidate the foreclosure absent a due process violation, which the court found had not occurred. The bill would preserve property rights by allowing an individual to bring an action to invalidate a foreclosure judgment for reasons allowed under the Michigan Court Rules, and by requiring the circuit court to cancel a foreclosure after a judgment was entered, if certain conditions existed.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have an unknown fiscal impact on State and local government. By allowing a person with an interest in property to challenge a foreclosure judgment in additional circumstances, the bill could lead to the identification of an interested party who would pay back taxes to prevent a foreclosure sale. Alternatively, depending on the outcome of the litigation, the bill could delay a foreclosure auction that would raise funds to pay the back taxes and return the property to productive use.

Fiscal Analyst: Elizabeth Pratt

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