

Stop This Tax Foreclosure

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STOP THIS TAX FORECLOSURE

by

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1. Discussion on Secured Status of Property Tax Claims in Bankruptcy

Initially, it should be remembered that under current bankruptcy law, identification of secured claims and the priority status of secured claims is determined by state law:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. . . . The justifications for application of state law are not limited to ownership interests; they apply with equal force to security interests, including the interest of a mortgagee in rents earned by mortgaged property.

Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 918 (1979). Therefore Michigan law determines when property is secured and in what priority secured claims exist. Pursuant to Michigan law, MCLA § 211.40, “the amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien.” In addition, “the lien for these amounts, and for all interest and charges on those amounts, shall continue until paid in full.” These liens “take precedence over all other claims, encumbrances, and liens” MCLA § 211.40. In short, property tax liens trump all other liens/encumbrances.

2. Automatic Stay does not Stop Assessment of Property Taxes or the Application of liens to those taxes

Once a bankruptcy petition is filed, the Bankruptcy Code provides that the Automatic Stay provisions of the Code are not applicable to the “creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of

the filing of the petition.” 11 U.S.C. § 362(b)(18). In short, the filing of a bankruptcy does not stop the assessment or application of liens on property post-petition.

3. Under Michigan law, “Tax Day” is December 31st of the Year Preceding the Applicable Tax Year

Under Michigan law, the status of property for the purposes of property taxes is determined on “Tax Day” which is defined by Michigan law as December 31st of the year previous to the tax year (example, December 31, 2016 is the “Tax Day” for property for 2017 taxes. So, on December 31, 2016 the taxes assessed on property for 2017 become a lien on that property. “Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise assessed on the tax day” MCLA § 211.40.

4. Taxes for a Current Year can be Paid Until the End of February of the Following Year; on March 1st of the Following Year Taxes are Turned Over to the County for Collection and a One-Time 4% administrative fee is Added to the Taxes Owed Along with interest of 12.0% (per annum – 1% per month) on the Uncollected Taxes

Property taxes may be paid locally through the end of February of the year following the tax year (example: delinquent 2016 property taxes can be paid locally until March 1, 2017), however, once those taxes remain unpaid they are turned over to the county for collection and the county charges a one-time administrative fee of 4% and the statutory interest rate of 1% per month (12% per annum). *See* MCLA § 211.78a. Discuss In re Rice, 2016 Bankr. LEXIS 3225 (Bankr. E.D. Mich. September 1, 2016).

5. The Interest Rate for Delinquent Taxes on Property Subject to Forfeiture/Foreclosure Becomes 18% Per Annum (1.5 % per month) After March 1, of the Year After the Taxes Were Originally Turned over to the County

If the taxes that were turned over to the county go unpaid for another year, they are subject to foreclosure and/or forfeiture and the interest rate adjusts to 18% per annum (1.5% per month)

until paid. (Pursuant to the example in paragraph 4 above, the 2016 taxes are subject to forfeiture/foreclosure on March 1, 2018). *See* MCLA § 211.78g.

6. Notice Provisions Related to the Forfeiture/Foreclosure of the Property

See the table at the end of this section identifying the time periods and notices involved with a property tax foreclosure.

7. What is the Last Day that a Bankruptcy can be filed to stop a Debtor from Losing the Property Permanently?

Pursuant to MCLA § 211.78k March 30th of the year that follows the filing of a petition requesting a judgment that title be vested in the foreclosing governmental unit without right of redemption pursuant to MCLA § 211.78h (which occurs no later than June 15th for taxes that are due for 2 years prior (example for delinquent 2014 taxes the petition would be filed by June 15, 2016). Once March 31st arrives (March 31, 2017 in this example) it is too late to save the property with one exception, if the owner contests the entry of the judgment then the redemption rights of the owner expire 21 days from the entry of the judgment pursuant to MCLA § 211.78k(5). An appeal of the judgment foreclosing the property can be filed, but pursuant to MCLA § 211.78k(7), a person appealing the judgment must pay the amount due to the county treasurer on the judgment by March 31st (or 21 days after the judgment was entered in contested cases as indicated above) which is usually out of the question for people seeking bankruptcy relief. In short, **a bankruptcy must be filed by March 30th to avoid the foreclosure (with no redemption rights) once a judgment of foreclosure has been entered.**

8. What if an Owner of Property or an Interest in the Foreclosed Property Did Not Receive Proper Notice Under Michigan Law (MCLA § 211.78 et seq.)?

Pursuant to MCLA § 211.78l, a claim that proper notice was not given to an interest holder in property that was foreclosed “shall not bring an action for possession of the property against any

subsequent owner, but may only bring an action to recover monetary damages as provided in this section.” MCLA § 211.78l(1). No action for monetary damages can be brought if two years has elapsed after a judgment of foreclosure under MCLA 211.78k (MCLA 211.78l(2)) and monetary damages are limited to the fair market value of the property (on that date) minus amounts owed for taxes on the property. MCLA § 211.78l(4).

9. What Happens to a Delinquent Property Tax Installment Plan if a Bankruptcy is Filed After the Plan is Accepted and Can a Plan be Made After a Bankruptcy is Filed?

Initially, it should be noted that what constitutes a Delinquent Property Tax Installment Plan varies from county to county. MCLA § 211.78q(1) states: “Notwithstanding any provision of this act or charter to the contrary, a foreclosing governmental unit may create a delinquent property tax installment payment plan for eligible property, the title to which is held by a financially distressed person.” So, different counties have different plans and county plans currently in existence can change over time. The statute itself (MCLA § 211.78q) does not provide for any action in the event a bankruptcy is filed after an agreement is entered into and therefore what plan is being considered should be reviewed by counsel before filing a bankruptcy petition. Oakland County currently has no provision in its agreement that terminates a delinquent property tax installment agreement once a bankruptcy is filed and, as long as the Debtor(s) pay pursuant to the agreement, the agreement will continue. A delinquent property tax installment plan after a bankruptcy is filed is allowed but in a Chapter 13 (or other reorganization case) the Debtor(s) should make clear to the county treasurer what taxes are being paid (separate pre-petition debts from post-petition debts) to avoid confusion and default under a post-petition agreement.

10. Do Special Assessments Get Treated Like Property Taxes and How Should Special Assessments be Treated in a Chapter 13 Plan?

Pursuant to MCLA § 104A.3: “After the date of confirmation of any roll levying a special assessment, the full amount of the assessment and all interest thereon shall constitute a lien on the premises subject thereto and that amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be collected as delinquent city property taxes or by a suit against the person.” Therefore, special assessments should be treated as secured claims and if current, may be paid outside the plan like other secured debts. (Note that Special Assessments are also a debt of the owner of the property unlike water bills or tax bills which simply attach to the property).

11. Do Water and Sewer Bills Get Treated Like Property Taxes and How Should Water and Sewer Bills be Treated in a Chapter 13 Plan?

The treatment of water and sewer bills under state law is governed by MCLA §§ 123.161-167 and provide that amounts owed on water bills are a lien upon the house, building, lot, or parcel where water/sewage services were provided. The water/sewer liens have priority over all other liens except taxes and special assessments (whenever recorded) pursuant to MCLA § 123.165. MCLA § 123.163 specifically deals with enforcement of the water/sewer lien and states: “The lien created by this act may be enforced by a municipality in the manner prescribed in the charter of the municipality, by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality.” Usually, delinquent water and sewer bills are collected by the county once they are delinquent. In the event of delinquent water bills, the obligations should be listed as secured debts and notice of the bankruptcy should be sent to the municipality where the Debtor(s) reside and to the treasurer of

the county. Discuss the opinion in Shefa LLC v. Oakland Cnty. Treasurer (In re Shefa, LLC) 535 B.R. 165 (E.D. Mich., 2015).

Forefeiture of Property for 2014 Tax Delinquency: MCL §211.78				
Filing Bankruptcy Can Save Your Property From Foreclosure if Filed By March 30th, 2017	DATE	ACTION	MCL	Explanation
	July/Dec. 2014	Taxes Billed by Municipality	211.44	
	March 1st, 2015	Unpaid Taxes Delinquent	211.78a	Any taxes from the Previous year will be delinquent if not paid by March 1st the following year (turned over to county)
	After March 1st, 2015	An Initial Notice is Sent via 1st class Mail	211.78b	Approximately June 1, 2015, notice is sent to Taxpayer or Owner
	September 1st, 2015	An Second Notice is Sent via 1st class Mail	211.78c	Approximately September 1, 2015, notice is sent to Taxpayer or Owner (includes Scheule of Fees)
	October 1st, 2015	Additional Fees Assessed (\$15.00)	211.78d	Redemption requires these assessed fees to be paid in addition to delinquent tax
	November 1st, 2015	Properties subject to forfeiture are added to county list	211.78e(1)	The Treasurer prepares a list of properties subject to forfeiture
	February 1st, 2016	A third notice is sent	211.78f	February 1st, 2015, an Identical notice is sent to Taxpayer or Owner (includes Scheule of Fees)
	March 1st, 2016	Property is forfeited to the county treasurer	211.78g	The Property is forfeited to the county treasurer to allow the County to seek a judgment of foreclosure
	By April 15th, 2016	Treasurer required to record certificate of forfeiture with registrar of deeds	211.78g(2)	Certificate must say property has been forfeited and will be lost if not redeemed by March 30 (or within 21 days after entry of foreclosure if contested)
	By May 1st, 2016	County must verify property owners	211.78i(1)	Cnty. Treasurer must seach title and tax records to identify owners of any interest; and inform them of show cause hearing and foreclosure hearing
	By June 15th, 2016	Foreclosing unit must file petition requesting absolute title to property	211.78h	The foreclosing govt. unit is required to file a petition with the clerk of the circuit court listing all property forfeited and not redeemed. The petition seeks a judgment requesting absolute title to the property without right to redeem
	Beginning January 2017	Owner given two opportunities to object to foreclosure	211.78j,k	Before foreclosure, owner must be given two opportunities to object. 1) Show cause hearing and 2) foreclosure hearing (SC hrg must be at least 7 days before FC hrg, At FC hrg, Owner can redeem or argue against foreclosure)
PETITION MUST BE FILED BY MARCH 30TH, 2017				
By March 30th, 2017	Court Enters Judgment of Foreclosue	2.1178k(5)	By March 30th, the Court must enter the Final Judgment of Foreclosure	
March 31st, 2017	Judgment is effective	211.78(k)(5)	Regardless of when the Final Judgment of Foreclosure is entered, it becomes effective 3/31. All Redemption Rights EXPIRE	

How do Debtors address delinquent property taxes in their schedules?

- **General Treatment: Pre-Petition Tax Obligations**

- 1) Secured Claim: Treat in schedules and in the plan:
 - a) Schedule D should include the disclosure of the city or county taxing authority, tax year in question as well as amount of claim.
(See generally: 11 U.S.C. § 1325)
 - b) Schedule J: Ought to reflect a projected payment of future tax obligations, which can be amended from time to time to reflect the obligations to the taxing authority.
 - c) Plan Treatment:
 - i) See: 11 U.S.C. § 1325 (a)(5) and 11 U.S.C. § 1322 (b)(2)
 - ii) Claim must be cured during life of the chapter 13 Plan
 - iii) Available treatment under Class 5, interest is determined by statute, see 11 U.S.C. § 511 and MCLA 211.78a which is 12% APY for delinquent tax years and 18% APY for forfeited tax years and also see MCLA 211.78g

- **What happens after Confirmation of the Plan? “Two Things in Life are certain....” B. Franklin)**

- 1) **Post-petition Taxes... What happens when things don't go according to plan? What then?**

- a) Special assessments (e.g. concrete repair work by the city)
- b) Debtors fail to make the direct payment to the taxing authority for post-petition tax years. (Error, omission, temporary loss of income?)
- c) Taxes are no longer escrowed in the mortgage.
 - i) Example: crammed mortgages & avoided mortgages: When escrowed mortgages are crammed or avoided in a Chapter 13, a common outcome is that the mortgagee will not service the loan in the same way and payments of taxes, once accomplished by escrow, become the post-petition responsibility of the Debtors.

2) Addressing Post-Petition Obligations:

- a) Special Assessments: Payment plans available to Debtors with the taxing authorities, 0% interest if not delinquent. Address any changes in budget or if necessary by amending the plan.
- b) Payment through the plan, Two requirements:
 - i) Payment through the plan of post-petition taxes or assessments: See 11 U.S.C. § 1305 regarding the filing and allowance of post-petition claims; § 1305 (1) provides for the filing of post-petition claims: *“for taxes that become payable to a governmental unit while the case is pending....”*
 - ii) Effectuate by proposing a modification to the chapter 13 plan incorporating the terms of the debtor to be included and granting authority for creditor to file such claim.
 - iii) File a Proof of Claim: however a § 1305 claim must be consensual: If authorized, Debtors’ counsel can file a protective claim, but cannot bind creditor to be paid in plan post-confirmation.

3) Applicable Case Law:

In re: Fisher 355 B.R.20, 2006 (Discussion of tax Forfeiture process and analysis in context of Chapter 7 adversary proceeding seeking to avoid a fraudulent conveyance under 11 U.S.C. § 548 against the county treasurer)