Property Equity Protection Act

Summary: The Property Equity Protection Act seeks to protect property owners from losing their equity when their property is seized to pay a debt to the government. The Act's intent is to protect property owners by giving them ample time to pay off the debt, robust notice about the process, and, if necessary, a fair, public sale for the highest bid. The property tax debt, plus related fees, interest, and costs must be paid first, and then other liens will be paid in order of priority. Any remaining equity must be returned to the original owner.

WHEREAS, tax laws that allow government or investors to take more than the tax debt owed, plus reasonable penalties, interest, and appropriate fees, unjustly confiscate equity from property owners; and

WHEREAS, ensuring property owners have adequate notice of tax debts and a clear process to repay them is essential to ensuring due process of law; and

WHEREAS, the Constitutions of the United States and this [State/Commonwealth] both prohibit the taking of private property by the government for public use without just compensation; and

WHEREAS, the Constitutions of the United States and this [State/Commonwealth] both prohibit the imposition of excessive fines for criminal or civil offenses; and

WHEREAS, the legislature has determined that it is a matter of statewide concern to protect private property equity after delinquent taxes, plus reasonable penalties, interest, and appropriate fees, have been collected; now, therefore,

Notwithstanding any provision of law to the contrary, be it enacted:

Section 1. Redemption

(a) Any person may redeem a tax debt on behalf of the property owner of record within five years after the tax debt becomes delinquent or after five years but before the delivery of a treasurer's deed to the purchaser or the purchaser's heirs or assigns.

(b) No tax lien or deed may be foreclosed unless the amount of the outstanding tax debt against the parcel, plus reasonable penalties, interest, and appropriate fees, exceeds 5 percent of the fair market value of the parcel as shown by the county auditor's then-current valuation of the parcel, or $50,000, whichever is lower.

Section 2. Competitive Auctions

(a) After the expiration of the statutory redemption period, the holder of a tax lien may file a foreclosure action in state court forcing the sale of the property in the same manner as a mortgagee pursuant to [mortgage foreclosure provisions of state law]. Statutory provisions governing tax sales are in addition to any statutory provisions governing mortgage foreclosure sales.

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(b) The sale shall include an online bidding process in which bids are received electronically over the internet in a real time, competitive bidding event.

(c) The sale shall be advertised in a multiple listing service for at least 30 days prior to the auction.

(d) When a taxing jurisdiction sells the right to collect a tax debt, the winning bidder shall be the person who pays the whole amount of delinquent taxes, interest, penalties, and charges due on the property, and who in addition offers to accept the lowest rate of interest on the amount so paid to redeem the property.

(e) When a taxing jurisdiction sells a property to satisfy a tax debt, the property shall be sold to the highest bidder.

(f) A private party may be contracted to operate and advertise the auction and to advertise the property. The contract may provide that if the property sells for more than the amount of the taxes, penalties, interest and costs charged against the property, the private party operating and advertising the auction and advertising the property may receive up to three percent of the amount of the sale price of a property that is more than the amount of the taxes, penalties, interest and costs charged against the property.

Section 3. Notice Requirements

(a) The tax collector must certify that the following notices have been made at least 60 days, but not more than 120 days, prior to a tax sale.

(b) The following persons must be notified by certified mail with return receipt requested or by registered mail if the notice is to be sent outside the continental United States, at least 60 days prior to a tax sale, again at least 30 days prior to sale, and again 30 days before issuance of a treasure’s deed following the sale:

- **(1)** Any property owner of record according to the records of the county recorder in the county in which the property is located. If notice to any property owner is returned undeliverable, a diligent search must be undertaken to locate and provide notice to property owners of record.

- **(2)** Any lienholder of record who has recorded a lien against the property if an address appears on the recorded lien.

- **(3)** Any mortgagee of record if an address appears on the recorded mortgage.

- **(4)** Any vendee of a recorded contract for deed if an address appears on the recorded contract.

- **(5)** Any other lienholder who has applied to the tax collector to receive notice if an address is supplied to the collector.

(6) Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed.

(7) Any lienholder of record who has recorded a lien against a mobile home located on the property if an address appears on the recorded lien.

(8) Any legal titleholder of record of property that is contiguous to the property described in the tax certificate, if the property described is submerged land or common elements of a subdivision and if the address of the titleholder of contiguous property appears on the record of conveyance of the property to the legal titleholder. As used in this chapter, the term "contiguous" means touching, meeting, or joining at the surface or border, other than at a corner or a single point, and not separated by submerged lands. Submerged lands lying below the ordinary high-water mark which are sovereignty lands are not part of the upland contiguous property for purposes of notification.

(9) Any person who has requested to receive notices of delinquent taxes.

(c) For purposes of determining who must be noticed, the tax collector must contract with a title company or an abstract company to provide a property information report. The tax collector may select any title or abstract company, regardless of its location, as long as the fee is reasonable, the required information is submitted, and the title or abstract company is authorized to do business in this state. The tax collector may advertise and accept bids for the title or abstract company if he or she considers it appropriate to do so.

(d) The tax collector shall enclose with every notice required by this section, and with each delinquent tax notice, a statement as follows, in the five most common languages in the state:

WARNING: There are unpaid taxes on property at (address) which you may own or have a legal interest in or which may be contiguous to your property. The property will be (or was) sold at public auction on (date) unless the back taxes are paid. To make payment, or to receive further information, contact (tax collector) immediately at (address), (telephone number). You may be eligible for free legal assistance if you reach out to (name of free legal services organization) at (address), (telephone number), for legal advice about how to respond to this notice.

(e) The tax collector shall cause a printed copy of the notices to be published in a newspaper of general circulation in the county where the property is located, including the warning statement.

(f) The tax collector shall cause a copy of the notices to be posted in a conspicuous place on the property by the sheriff of the county in which the property is located, including the warning statement.

(g) The tax collector shall post a copy of the notices in a conspicuous location on its website and at its physical offices.

(h) The tax collector shall cause a copy of the notice to be recorded, including the warning statement. A person acquiring an interest in the property after the notice has been recorded is deemed to be on notice of the pending sale, and no additional notice is required. The sale of the property automatically releases any recorded notice of tax sale for that property. If the property is redeemed, the tax collector must record a release of the notice upon payment of the recording fee.

(i) Fees and costs incurred by the tax collector related to the notifications required in this section shall be paid from the proceeds of a tax sale, or added to the opening bid for a tax lien.

Section 4. Surplus Proceeds Return

(a) When any property is sold at a tax sale, proceeds shall be distributed in the following order of priority:

(1) For payment of delinquent taxes and satisfaction of existing tax liens, plus reasonable penalties, interest, and fees;

(2) To governmental units holding a lien of record against the payment, including any tax debts not giving rise to the tax sale;

(3) Any surplus belongs to the owner of the property prior to the tax sale and must be promptly returned to the owner, or the owner's heirs or assigns. The tax collector shall notify the owner of the surplus. The owner of the surplus may claim it by contacting the tax collector and providing proof of ownership of the parcel.

(4) If the owner or the owner's heirs or assigns fail to claim the surplus or there are multiple claims for the surplus, within 120 days after the sale, the tax collector shall file an interpleader action in circuit court or pay the surplus funds according to the tax collector's determination of the priority of claims. Fees and costs incurred by the tax collector related to the disbursement of the surplus, including fees and costs related to an interpleader action, shall be paid from the surplus funds. If the tax collector files an interpleader action, the court shall determine the distribution of funds based upon the priority of liens filed. The court shall award reasonable fees and costs from the interpleaded funds. An action to require payment of surplus funds is not ripe until the claim and review periods expire.

(5) The failure of any person, other than the owner or the owner's heirs or assigns, to file a claim for surplus funds within 120 days after the sale or the filing of an interpleader action, whichever is later, constitutes a waiver of interest in the surplus funds, and all claims thereto are forever barred.

(b) Any surplus that remains unclaimed after 120 days shall be administered by the state pursuant to the provisions of [abandoned property provisions of state law].

Section 5. Limits on Interest Rates and Penalties

(a) Except as otherwise expressly provided by law, taxes owed the state or any local taxing jurisdiction shall bear interest at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January 1 of each calendar year. Interest shall begin to accrue from the date the tax is past due until the date the tax is paid.

(b) No other penalty shall apply to tax debts, except the reasonable costs of collection.