A Manual for

COUNTY TREASURER

PROPERTY VISIT INSPECTORS

Updated August 25, 2005

Contact:

Marty Spaulding
TITLE CHECK, LLC
516 W South Street
Kalamazoo MI 49007-4645
(269) 226.2600
(800) 259.7470
martys@title-check.com

The contents of this manual are intended for use only by Property Visit Inspectors of Michigan County Treasurers serving Personal Visit notices on Occupants of lands in the forfeiture and foreclosure process as required by the Michigan General Property Tax Act (as amended).

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Before you even start reading this ….

Get a copy of your County Road map or a Plat Book (Land Atlas) which shows Townships, Ranges, and Section numbers (see Page 4)

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PURPOSE OF THE VISIT

Under Michigan Property Tax law, when parties become delinquent in payment of their real estate taxes, the "Foreclosing Governmental Unit" is responsible for notifying all parties associated with the property during a period up to and including a hearing in Circuit Court.

At this hearing, we must demonstrate that we have made a diligent effort at notifying not only the title holder of the land, but also lenders, lien holders, heirs of deceased parties … and the **OCCUPANTS** of the property.

"Occupants" are not necessarily just owners or tenants. It can also include "squatters", the homeless, and people that may have control or use of the property but are not often there. (Example: An Oil or Natural Gas pump house, or a hunting camp or a farm building where there is no residence)

As a property inspector, your role is to locate the property, determine if it is or may be occupied or occasionally visited by someone in control, and then to make a diligent effort at providing them notice of the pending foreclosure.

This requires a visual inspection of the property, and a verbal interview with anyone that appears to occupy the property.

If the property has buildings or other signs of occupancy (campers, automobiles, sheds, campsites or other similar possible shelters) it must be POSTED with a copy of the notice if no occupant appears to be there, or if parties refuse to "answer the door".

You then gather information on a worksheet, photograph the property, determine its **GPS** co-ordinates, and return the materials to Title Check for filing with the Court.

Your role in providing notice is very important.

For many non-owner occupants, it is the only notice they will receive that the property is being foreclosed for non-payment of taxes.

Remember: You are there to provide assistance, not evict them!

MATERIALS REQUIRED & PROVIDED

You obviously will need reliable transportation. If available (and authorized), an official vehicle (County or Police) lends credibility and authority, but they are not required.

Required equipment:

- A digital camera
- Ample storage capacity/disks for at least 2 photos per property
- A detailed map of the County showing **Township and Range numbers as well as Section numbers**. (See page 4). Most road commission maps show this and are free. Get several copies to mark on! A County Plat book is also VERY recommended as they show the subdivisions as well as other info.
- Notepads, pens, highlighters, flashlight
- A method for measuring distance (measuring wheel, long tape measure)
- A staple gun for posting notices on vacant or unoccupied structures
- Duct tape or similar fastening material
- (Optional) A cell phone for calling Title Check and/or the Treasurers office if questions arise.
- A method for copying the digital photos to CD-ROM or floppy disk, and blank discs for copying.
- Mailing supplies and postage to return the results to Title Check.

What we will provide to you:

- Notices to be delivered (with assistance telephone numbers)
- Maps of subdivisions to aid you in locating parcels
- A list of all the properties, sorted so that all the properties in the same square mile are listed together to save time in finding them.
- An inspection worksheet for you to use in noting the condition of the property and the results of interviewing any occupants found there.
- A handheld GPS unit to determine the location of the property.
- A supply of plastic sheet protectors to weatherproof posted notices
- Mailing labels for returns to Title Check

LOCATING THE PROPERTY

Some properties are very easy to locate, because they have a street address on the form and a building with the street number clearly displayed.

Others are vacant and more difficult to locate. Or may be in an area where there are few road signs or other structures with addresses.

The list we provide you with the notices will sort the entire county by "Section" "Township" and "Range". This will place all properties within the same square mile in order on the list to make locating them much more efficient.

Sections, Townships and Ranges

In Michigan, each 36 square miles (6 miles x 6 miles) is known as a "survey township". But don't confuse this with township **names**. There are sometimes several townships with the same "name" in a County … but they'll each have a different "township and range **number**".

If you look at a county map it should have markings such as (example) "T23N" along the right and left sides, and (example) "R3W" along the top and bottom. If it doesn't … get a different map!

There is a "meridian line" which runs from the North end of the Upper Peninsula (in Chippewa County) to the Southern border with Ohio on the line between Lenawee and Hillsdale County.

There is also a "baseline" which starts in Wayne County (on Eight Mile Road) and runs West to Lake Michigan where Allegan and VanBuren Counties meet.

Each 36 mile square "township" is given an ID based on its location **East or West** of the meridian line, and **North or South** of the baseline.

So by stating the Township and Range ID, every parcel of land is immediately narrowed down to a 36 square mile area, known as a "survey township".

Examples:

T**27N** = The 27th Township row **North** of the baseline.

R**9W** = The 9th Range row **West** of the meridian.

T27N, R9W = Whitewater Township, Grand Traverse County

The list we provide you will sort all parcels by the township and range, then numerically by the Section number.

A section is one square mile, and each township has 36 sections (except for those which aren't on maps because they're under water).

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Figure 1. Diagram of section locations within a survey township.

A glance at any township will show that all sections are numbered in the same method.

So the list we provide you, showing Section, Township and Range number, in order, narrows every parcel down to one square mile instantly and makes them a snap to roughly locate on your county road map.

When you receive the list from us, in addition to the section, township and range, we will provide you the street address (if it was able to be determined) and a map of the entire subdivision (if the land is subdivided).

Working with street addresses:

House numbers, just like townships and ranges, start from a "zero point" in each mailing area. They start at 1 or 100 and then run North, South, East and West from the center point.

Odd and Even numbered addresses are always on opposite sides of the street!

If the numbers run "up" … and then suddenly start running "down" … you've just crossed into another mailing area! However this should never happen in one section of land, so check your list and your map for section/township/range and you should be all set!

BE SURE to double check the NORTH, SOUTH, EAST, WEST (or NE, SE, NW or SW) part of the address!

PLEASE REMEMBER:

The street addresses we provide usually come from the Assessors office. THEY MAY NOT BE CORRECT. It is always very important to talk to occupants or neighbors if in doubt!

Sometimes the property being noticed is behind or next to a building with that address and may not be the building itself. Double check the maps and the measurements!

DON'T BE AFRAID TO ASK THE NEIGHBORS!

Finding subdivided property:

1) Go to the square mile identified on the list.
2) Look for the nearest cross streets as shown on the plat map
3) Measure or estimate the distance from the intersection to the property as shown on the map.
4) Compare street addresses of other properties to the one you're looking for
5) (If all else fails) Ask a neighbor! (People are always very helpful and are often interested in buying property next to theirs!)

Possible problems to watch for:

- The streets have been renamed (check for the streets on either side to get your bearings and note this on the worksheet!)
- The streets were never cleared and don't physically exist

Finding "long description" (metes and bounds) property:

These are fairly easy if they have a street address. If not:

You will need to have an understanding of legal land descriptions. If not, **find someone that can help**. The local assessor or the Manager for your county at Title Check (800.259.7470) can assist you.

SHORT CUT:
TAX MAPS are usually found in the County Equalization, Township Assessors or Land Resource office. Take a note pad and find the parcel on the map and note the distance from the nearest intersection.

Math for reference:

Each section of land is one square mile. That's 5280 feet x 5280 feet.
(Hint: Each 1/10th of a mile on your car odometer is roughly 528 feet.)

A quarter section = ¼ mile = 1320 feet x 1320 feet

Unit	Length*	Width*	Area*	Square feet*
Township	6 miles	6 miles		
Section	5280 feet (1 mile)	5280 feet (1 mile)	640 acres	
Half section	5280 feet (1 mile)	2640 feet (1/2 mile)	320 acres	
¼ Section	2640 feet (1/2 mile)	2640 feet (1/2 mile)	160 acres	6,969,600
½ of ¼ Section	2640 feet (1/2 mile)	1320 feet (1/4 mile)	80 acres	3,484,800
¼ of ¼ Section	1320 feet (1/4 mile)	1320 feet (1/4 mile)	40 acres	1,742,400
½ of ¼ of ¼	1320 feet (1/4 mile)	660 feet (1/8 mile)	20 acres	871,200
¼ of ¼ of ¼	660 feet	660 feet	10 acres	435,600
½ of ¼ of ¼ of ¼	660 feet	330 feet	5 acres	217,800
¼ of ¼ of ¼ of ¼	330 feet	330 feet	2.5 acres	108,900
One Acre	208.75 feet	208.75 feet	1 acre	43,560
One Chain	66 feet			
One Rod/Perch/Pole	16.5 feet			
One Link	.66 foot			

*Note: Occasionally sections are not perfectly square (to make up for the curvature of the earth).

PLEASE NOTE: (Example) If a description says it's the "West **5 acres** of the **NW1/4** …." That does not mean that it's "automatically" 660 x 330 feet in size.

You'll need to do the math using the information at hand:

Area (**5 acres**) = 217,800 square feet / One side (**NW 1/4**>) = 2640' / **217,800 ÷ 2640 = 82.50 feet**

Result: 82.50 feet x 2640 feet = 217,800 square feet = 5 acres!

HINT: Read legal descriptions backward …. The largest unit of measure is always at the end of the description. Narrow it down on the map and you'll find it easy!

Bearings and distances (this is the hardest part … we promise):

Some descriptions have a bunch of gobblety gook that looks like this:

"thence N0°28′42″E, 214.82 feet"

This is actually very easy to decipher once you understand it.

First, you're seeing two things. A direction and a distance.

N0°28′42″E is a **direction**
214.82 feet is a **distance**

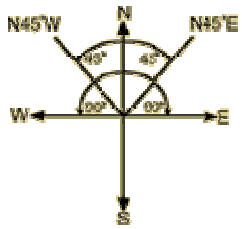
Sorting out the direction is very easy. Because we're not out there surveying, a general direction is fine.

0° is degrees, 28′ is "minutes" (1/60th of a degree) and 42″ is "seconds" (1/60th of a minute).

Forget the minutes and seconds. Condense this information to: North 0 degrees East, 214.82 feet

North 0 degrees is North
North (or South) 90 degrees is East or West
South 0 degrees is South

Other variables are easy to calculate:



Just remember to discard the minutes and seconds (' and ") and then its straight North or South (zero degrees), East or West (90 degrees) or NE, NW, SE or SW as the bearing calls for.

Then distance is as normally measured.

If you get a really snotty one ….

Use the tax maps or call Title Check for help at (800) 259.7470.

Determining if the property is "Occupied":

Congratulations. You've found your way to the property! Now the easy part!

Is anyone there? Is there anyone that **the Judge** would consider to be an "Occupant"?

First, be sure you're at the right place. Don't be afraid to ask the neighbors if you have the right place if it appears to be a vacant lot. They're always very helpful. If there is a building there, and it appears to be occupied, that makes it pretty simple:

They're either home, (or answering the door) or they're not.

But that's another discussion (Page 10). For now we're dealing with the properties that don't have a house with furniture or a car in the driveway.

A property should be considered to be occupied if you see:

- **Any sort of building, tent, shack, car or other property. (This includes junk piles, oil wells, lumber and farm products or anything other than flat ground and living trees)**
- **People**

All vacant buildings and land needs to be inspected for occupants.

IF A PROPERTY HAS MORE THAN ONE UNIT (Apartments, condos, rental stores) YOU MUST SERVE A COPY OF THE NOTICE ON EACH UNIT.

Do NOT enter buildings. (For legal AND safety reasons)

Knock or announce and ask if anyone is there. **If so, discuss (Page 10). If not, inspect the grounds and make notes (Page 11).**

Interviewing Occupants:

If the property is occupied, it could either be the owner, or it may be tenants, friends, or people that just happen to have permission to be there.

Remember that we are there to provide information
….. Not to evict or threaten!

There are several things we are here to do:

- Make sure they know the property is tax delinquent and could be lost for back taxes on **March 31st of next year**
- Find out who the occupants are and if they can tell us **where the owner is**
- Determine if they **understand** what you're telling them
- Assess their **need for help** (language issues, money issues, physical illness issues)

Make notes about the interview results on the return inspection form.

If they give any indication about the whereabouts of the "owner", please try to get phone numbers, addresses or other contact info (where they live or work, relatives etc)

A suggested approach:

"Hello, I'm here for the <Insert Name> County Treasurers office. Do you live here?"

"My name is <Insert Name> … what is your name?" (**Make note**)

"Can you tell me where I can find the owner? Is there a different place where they can be reached?" (**Make note**)

"Do you have a phone number or address for them?" (**Make note**)

Proceed to describe what is happening and see if they were already aware of it. **Over half of the parcels** on the list are delinquent **every** year, (they always pay at the last possible minute) and the occupant may already know about the situation.

Providing Counseling to Occupants:

Unfortunately, there isn't a big pot of money out there to pay peoples taxes.

The back side of the notice you will deliver to the occupants will list several agencies that may be able to assist qualified people, but the list of requests is long and the funds are very limited.

Our goal is to locate those with the inability to understand the process and to route them to someone that can take the necessary time to try and help them.

Generally this is people with language barriers, those with mental/comprehension disabilities and those with short term financial crisis.

Please make full notes about the situation they face. **If they do not own the property, they need to contact the person that does!**

Refer people as follows:

Language Issues: Have them seek interpretation through the local Family Independence Agency (FIA – on the backside of the form). Many of these people may have the resources to pay but just don't understand the importance of getting it done.

Comprehension Issues: Try to get a name of a relative, guardian or social worker they may be dealing with.

Financial Crisis: IF THEY OWN THE PROPERTY, Strongly suggest that they appear at the SHOW CAUSE HEARING (date and place on the notice). They **NEED** to bring evidence of their income (tax returns and any major bills) for the Treasurer to consider in giving them a **ONE YEAR** extension on paying their taxes. PLEASE stress the importance of showing up at this hearing or making arrangements with the Treasurer **BEFORE** the hearing. After March 31 passes it is **TOO LATE** to ask for "more time".

Suggest:

- That they find a friend or relative to pay the taxes for them.
- That they sell or give the property to someone that will pay.
- That they seek immediate assistance.
- That they contact the Treasurers office NOW for payment arrangements. April 1st is too late!

Gathering information for the Return of Service and Worksheet

We provide you with a notice to be delivered (or posted), and an additional worksheet which is used to note occupancy comments as well as physical attributes of the property.

The BACK SIDE of the second copy of the notice is a worksheet you must use to gather information about your visit.

It is important to note the **date and time of the delivery**. You should also attempt to get the name of the person you speak with (if any) if they're co-operative.

You need to note whether you **served an occupant** or **posted the property**.

Describe the property and anything which is located on it.

- Get the State, Year, Make/Model and license plate numbers of any **vehicles** on the property
- Does the house have **utility meters** still installed? Are they turned on or off?
- Are the **doors and windows** secure to prevent trespassing?
- Is there a **MOBILE HOME** located on the property?
- Is there any evidence of fire damage or other major **structural issues**?
- Is the yard maintained? Is there a lot of **debris**?
- Describe any **buildings or structures** (What color, condition, how many stories)
- What are the **GPS co-ordinates** of the property at the FRONT DOOR or CENTER OF THE LOT?
- Is the land dry? Swampy? Flat? Hilly? Wooded?
- Are there any signs that the property might have **environmental contamination** issues? (Gas pumps, excessive automobile piles, empty chemical drums, greasy soil …)
- Is there any evidence of **mining**? (Upper Peninsula parcels in particular)

You are our eyes. **Describe what you see in detail**. Make notes of any discussions.

POSTING PROPERTY:

If the property may be occupied but no one is there, place the delivery copy of the notice in a plastic protector, and adhere it to the property using tape or staples. **PLEASE be sure not to damage the property doing so**. If there is an address number or "front door" on the building, post it adjacent to it.

WE NEED TO BE ABLE TO SEE THE POSTED NOTICE AS WELL AS THE NUMBERS ON THE HOUSE. If possible .. close enough to read the large numbers on the notice.

Sample posting photo:

We do not need to post property which has no signs of occupancy. (See above)

IF A PROPERTY HAS MORE THAN ONE UNIT (Apartments, condos, rental stores) YOU MUST SERVE A COPY OF THE NOTICE ON EACH UNIT. You'll need to make copies ….

Photographs:

Take **as many photos as necessary** to evidence what you find. At least one of each building, especially areas of damage or debris. Front and rear photos where possible.

FIRST: Take photo of the entire property from the roadside. (Always called **Photo "A"**)
SECOND: Photos of cars, mobile homes, sheds, and other items on the property (Photos "B", "C" etc)
THIRD: Take one photo of the posted notice (or an occupant holding a notice if possible) (Always called **Photo "Z"**)

Keep a sheet which indicates what each photo is (address, photo # at this address, and what the photo shows)

Returning information to Title Check

You were sent a notice, a return worksheet, and maps and other identifying information in the data packet.

The original notice should have been delivered to the occupant, or posted if the property had a structure or contents on it. (Do not post empty land).

We need to have the COMPLETED worksheet returned to us. It should have your signature, printed name, and the **date and time the property was inspected**, and as much detail about the occupants, owner and property as you can ascertain.

The photographs should be transferred to a CD on your computer, and then each photo should be RENAMED so that it matches the large "reference number" which was located on the front side of the notice.

##########A – The curbside photo
##########B – "Extra Photo B"
##########C – "Extra Photo C"
Etc
##########**Z** – The posted or delivered notice photo (unless vacant)

Just to be safe, make TWO copies of the CD and keep one in case the first is damaged somehow.

Package the return forms and CD **CAREFULLY**. The postal service has destroyed several packages sent to us in the past, and redoing the work can be a **major problem**, especially if time is short.

If you are sending all of the material in one shipment, or in large batches (over 100) we would be more than happy to reimburse you for **FEDERAL EXPRESS** next day delivery …. The $20 is well worth the safety and speed issue. Just add it to the invoice when you send it.

Our mailing address:

TITLE CHECK LLC
Attn: Justin Hubbs or Mickey Loew
516 W South Street
Kalamazoo MI 49007-4645

(269) 226-2600

Invoicing and Payment for services

Invoices should accompany each batch of returns and photos sent to the office for processing.

We issue payment every other Friday, so a regular inflow of returns should generate a check to you every 14 days or so.

Each invoice should indicate the quantity of inspections completed AND THEIR REFERENCE NUMBERS. Many inspectors make several copies of the list we send to them and use a highlighter to show which they are invoicing for in the current batch.

Once we receive and verify the batch, we issue a check.

Questions about processing or finding the lands:

Justin Hubbs or Mickey Loew
(800) 259-7470

Questions about payment:

Patrick Banks
(800) 259-7470

Issues related to occupants that need assistance or people that "want to talk to someone":

Call Title Check (800) 259-7470, and ask for the Manager for the County You are working in.

You will also need to send us IRS forms before we can issue your first check if we don't have one on file for you. You can obtain one at:

http://www.irs.gov/pub/irs-pdf/fw9.pdf

I would suggest getting this form filled out and submitted to us immediately to prevent later confusion (like late checks because we didn't have it on file).

Your role as a Property Visit Agent

Your appearance at the property is a very important part of the notice process for occupants and taxpayers facing loss of their property rights.

We take it seriously and you should also.

Do:

- **Be courteous and helpful**. "Put yourself into their shoes" and understand their issues.
- **Don't be in a hurry**. Take an extra minute or two to ask for extra information and give the property a good evaluation for things which we might need to know. Make lots and lots of notes!
- **Take lots of pictures**. Time stamp them if possible.
- **Be SURE you have the right property**. Ask the neighbors if you need to.
- **Call if you need help**. We are just a phone call away if you run into a "delicate" situation.

Don't:

- **Act like a "bill collector"**. We are there to help them!
- **EVER use strong language or try to physically intimidate**! Easier to walk away and write them up as a "non-cooperative customer".
- **Enter structures even if they are open**! Knock and post if no one responds. It is still their property!
- **Leave people with unanswered questions**. Try your best to give them some sort of number or person to call … whether it is the property owner or FIA or the Treasurers office or Title Check. The back of the notice has a "starter" list. Feel free to add on to it!

You are our eyes and ears on the ground. What you do is very important to the process of providing notice to people faced with losing their property.

Always remember this: You may be called on to testify about giving this notice. Your actions, your memory, your notes and your photos are all very important. Do the job professionally and there won't be any effort at all of us being proud in the notice we provided.

recorded separately from the general fund. No evidence was presented to indicate that the fee was not used for the collection or administration of property taxes. We find no error.

We decline to address plaintiff's final issue, that defendant's affirmative defenses have no application in this matter, because resolution of this issue would have no effect on the outcome of this case.

Affirmed.

BRANDON TOWNSHIP v TOMKOW

Docket No. 154992. Submitted January 3, 1995, at Lansing. Decided June 2, 1995, at 9:05 A.M. Leave to appeal sought.

Brandon Township brought an action in the Oakland Circuit Court against Alan and Leo Tomkow and the Department of Natural Resources, seeking to quiet title with regard to certain real property in the township that had been deeded to the state because of unpaid taxes. The property was declared surplus property by the DNR and sold to the Tomkows. The township condemned part of the property in order to build a new dam on the site. The Tomkows and the township were unable to reach an agreement regarding the amount of compensation due for the taking. The owners of the property before the tax sale then sold their redemption rights to the township. The court, Fred M. Mester, J., granted summary disposition for the township, quieting title in the township. The Tomkows appealed, and the township cross appealed from the court's ruling that MCL 211.131e; MSA 7.190(3) is constitutional.

The Court of Appeals *held:*

Contrary to the trial court's finding, the notice requirement of MCL 211.131e; MSA 7.190(3) is unconstitutional. Nevertheless, the trial court's resolution of the dispute between the Tomkows and Brandon Township in favor of the township is affirmed. The statute, as written, limits due process protection to landowners who hold property valued over a specific monetary amount. However, the value of a property interest does not measure the scope of the constitutional protection against a taking without just compensation and a deprivation of property without due process. A specific dollar amount may not be used to trigger the notice requirement of the statute, nor may the existence of an interest in property be influenced by its size or dollar value. The provision in the statute that limits the notice requirement to owners of property with state equalized valuations of more than $1,000 violates the Due Process Clause and is unconstitutional. The former owner's right of redemption

REFERENCES

Am Jur 2d, Eminent Domain §§ 8, 150-156, 394.

See ALR Index under Eminent Domain.

survived the change in title resulting from the original tax sale, the deeding to the state, the sale to the Tomkows, and the condemnation proceeding. However, because title to the property was vested in the state following the proceeding, the right of redemption attached solely to the compensation award. The original owner was free to sell or give those rights to any party it chose, to the exclusion of the grantees under the DNR deed. The township may exercise the redemption rights that the original owner assigned to it.

Affirmed.

1. CONSTITUTIONAL LAW — DUE PROCESS — REAL PROPERTY — TAKING — JUST COMPENSATION.

The value of a property interest does not measure the scope of the constitutional protection against a taking without just compensation and a deprivation of property without due process; the existence of an interest in property is not influenced by its size or dollar value (US Const, Am XIV; Const 1963, art 1, § 17).

2. CONSTITUTIONAL LAW — DUE PROCESS — REAL PROPERTY — TAX SALES — REDEMPTION — NOTICE.

The provision in MCL 211.131e; MSA 7.190(3) that limits the notice requirement regarding the redemption period applicable to those lands deeded to the state pursuant to MCL 211.67a; MSA 7.112(1) to owners of property with a state equalized valuation of more than $1,000 violates the Due Process Clause and is unconstitutional (US Const, Am XIV; Const 1963, art 1, § 17).

Frank J. Kelley, Attorney General, *Thomas L. Casey,* Solicitor General, *Thomas J. Emery,* Assistant in Charge, and *Kevin T. Smith,* Assistant Attorney General, for the Department of Natural Resources.

Campbell, Keenan, Harry, Cooney & Karlstrom (by *Stuart B. Cooney*), for Brandon Township.

Philip E. Hodgman, for Alan and Leo Tomkow.

Before: FITZGERALD, P.J., and MARILYN KELLY and G. N. BASHARA, JR.,* JJ.

MARILYN KELLY, J. Defendants Alan Tomkow and Leo Tomkow appeal as of right from a grant of summary disposition quieting title in plaintiff, Brandon Township. The Township cross-appeals from the judge's ruling that MCL 211.131e; MSA 7.190(3) is constitutional, naming both the Tomkows and the Michigan Department of Natural Resources (DNR) as cross-appellees. We affirm the judge's decision to quiet title in Brandon Township on the basis that the notice requirement of the statute violates due process and is unconstitutional.

I

The facts and history of this case are complicated. The property involved borders Lake Louise. A portion of it contains a dam which is the principal support for the lake and a wetland. It was originally part of a subdivision known as Belle-Anne Falls Subdivision.

A

Before 1953, the Chernick family owned the property. In 1953, the Chernicks transferred it to BAF Estates, in which they were the primary shareholders. In 1964, BAF Estates transferred it back to the Chernick family. In 1972, the Chernicks, doing business as the Detroit Construction Company, transferred it to the Glass Land Holding Company (Glass Land). Throughout the entire pe-

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

riod involved here, Glass Land was the record title owner of the property.

The Chernick family, BAF Estates, the Detroit Construction Company and Glass Land all shared the same address. While it is not completely clear from the record or briefs, these companies and the Chernicks apparently held and developed various properties.

Beginning in 1979, the Oakland County Treasurer's Office sent notices of property tax delinquency on the Lake Louise property. They were mailed to the correct address but directed to BAF Estates rather than Glass Land. In 1980, the Treasurer's Office sent a notice to BAF that the property would be sold at a tax sale. It sent a special redemption notice to BAF in December, 1981, and a final notice in August, 1982.

Before the final notice was mailed, Brandon Township and the Chernicks entered into a consent judgment in which they agreed to divide the property into two parcels. Parcel B contained the Lake Louise dam. Parcel A was a vacant lot subject to an easement for access to an adjacent dam. Each parcel was assigned a state equalized evaluation (SEV) for tax purposes of less than $1,000.

The property taxes on the land were not paid. Notice of a tax sale was again sent to the Chernicks doing business as Detroit Construction Company and to BAF Estates. No notice was sent to Glass Land. Members of the Chernick family paid taxes on parcel A for the year 1979. Either by error or oversight, and to further complicate the matter, parcel A continued to be listed by the Oakland County Treasurer as part of the original property. Consequently, when taxes on it again became delinquent, no notices were sent to any of the Chernicks' companies. Parcel B was deeded to

the state due to unpaid taxes in 1982, parcel A in 1984.

The two parcels were subsequently declared surplus property by the Department of Natural Resources (DNR). In 1987, the Tomkows purchased both parcels from the state through the DNR. In 1990, the Tomkows obtained Glass Land's rights to parcel A by a quit claim deed which was never recorded.

In 1990, the state informed the Tomkows that the dam on parcel B required significant repair and ordered them to make the repairs. When they failed to do so, the water level in Lake Louise fell, exposing mud and muck on other lakefront properties. These were apparently both unsightly and unsafe.

Brandon Township condemned the parcel B property with the intention of building a new dam on the site and restoring Lake Louise to its previous level. Although the Tomkows appealed from the taking, it was upheld by the Court of Appeals in 1991.

B

The Tomkows and Brandon Township were unable to reach an agreement on an appropriate amount due them as compensation for the taking. While the Tomkows and Brandon Township were negotiating the amount, the Chernicks and Glass Land sold their redemption rights in both parcels to Brandon Township.

The Township then sought to quiet title in itself. It argued that, since Glass Land had received no notice of the 1983 tax sale, its rights of redemption were still valid. Moreover, it had purchased those rights from Glass Land and all related parties. The Township apparently sought to quiet title in itself

to forestall the Tomkows from claiming any right to compensation for the taking. Brandon Township moved for summary disposition.

The judge found that notice of the original tax sale of parcel B was inadequate. He concluded that Glass Land still held an unextinquished right of redemption at the time of the condemnation and thereafter. The judge mentioned that the SEV for parcel A was less than $1,000 and notice of the tax sale was not required. The judge concluded that Glass Land had validly transferred the right of redemption to Brandon Township.

Plaintiff moved for clarification of the ruling as it pertained to parcel A, and defendant moved for reconsideration. The judge held an evidentiary hearing to determine how the SEV of each parcel had been determined. It was significant, because MCL 211.131e; MSA 7.190(3) extends the redemption period on lands deeded to the state until owners of a significant property interest have been notified. However, the statute requires notice to property holders only if the property has an SEV of more than $1,000. The notice issue was apparently pivotal to whether Glass Land retained the redemption rights which it purported to transfer to Brandon Township by quit claim deed.

The judge first found that MCL 211.131e; MSA 7.190(3) was constitutional. He held that, since the state had received information that the parcel was valued at more than $1000, it had failed to satisfy the statutory notice provision for both parcels. Therefore, Glass Land retained redemption rights following the tax sale and was free to transfer them to the Township.

Since the transfer had already occurred, the Township had redemption rights to both parcels at the time it and the Tomkows were negotiating the compensation award. As a consequence of the judge's ruling, the Tomkows were not entitled to compensation for parcel A or B.

II

Plaintiff, in its cross appeal, challenges the constitutionality of the notice requirement of MCL 211.131e; MSA 7.190(3) on due process grounds.

We believe that plaintiff's arguments are correct and find that the notice requirement of MCL 211.131e; MSA 7.190(3) is unconstitutional. On this basis, we affirm the judge's resolution of the dispute between the Tomkows and Brandon Township in favor of the Township.

A

In 1976, our Supreme Court issued *Dow v Michigan,* 396 Mich 192; 240 NW2d 450 (1976). *Dow* was an action to quiet title in which our Supreme Court found a tax sale defective. It ruled that the state had failed to give the titleholder and the land contract purchasers adequate notice of the tax foreclosure proceeding. The state had relied on newspaper notice. Our Supreme Court found this to be a violation of the Due Process Clauses of the federal and state constitutions. US Const, Am XIV; Const 1963, art 1, § 17. In reaching its conclusion, the *Dow* Court wrote:

> We hold that the Due Process Clause requires that an owner of a significant interest in property be given proper notice and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice. [*Dow,* p 196.]

The Court concluded that the owner of real

property is entitled to claim the protection of the Due Process Clause with respect to the assessment and collection of taxes. It found that both the title holder and the land contract purchaser had a significant interest in property within the meaning of the Due Process Clause. *Id.*, p 204. Before they could be deprived of their property interests, the Constitution required that they be afforded an opportunity to be heard "at a meaningful time and in a meaningful manner"; they must be given notice in a manner reasonably calculated to apprise them of that opportunity. *Id.*, pp 206-207.

Apparently in response to *Dow,* the Michigan Legislature enacted MCL 211.131e; MSA 7.190(3). It provides in part:

> (1) The redemption period on those lands deeded to the state pursuant to section 67a that have a state equalized valuation of $1,000.00 or more shall be extended until owners of a significant property interest in the lands have been notified of a hearing before the department of treasury. Proof of notice to those persons and notice of the hearing shall be recorded with the register of deeds in the county in which the property is located. [MCL 211.131e; MSA 7.190(3).]

B

In the case before us, when the property was divided into two parcels in 1982, each was assigned an SEV of less than $1,000. Consequently, pursuant to MCL 211.131e; MSA 7.190(3), the state was not required to, nor did it, give Glass Land notice of the tax sale of the parcels.

MCL 211.131e; MSA 7.190(3), as written, limits due process protection to landowners who hold property valued over a specific monetary amount.

However, the value of a property interest does not measure the scope of the constitutional protection against a taking without just compensation and a deprivation of property without due process. *Hodel v Irving,* 481 US 704, 726; 107 S Ct 2076; 95 L Ed 2d 668 (1987). Moreover, the Michigan Supreme Court has not viewed a property's value as a basis for limiting notification of those with a significant interest in it. Rather, it has concluded that the constitutional requirements of due process do not depend upon a balancing of the importance of the interest or the nature of the subsequent proceedings. *Dow,* p 205, citing *Bd of Regents v Roth,* 408 US 564; 92 S Ct 2701; 33 L Ed 2d 548 (1972).

Our conclusion that a specific dollar amount may not be used to trigger the notice requirement of MCL 211.131e; MSA 7.190(3) is also supported by a decision of our Court, *Flint v Takacs,* 181 Mich App 732; 449 NW2d 699 (1989). There, the state acquired land after a tax sale. It notified the two major land holders of a hearing before the sale, pursuant to MCL 211.131e; MSA 7.190(3). However, it did not notify a number of tenants in common whose interests amounted to less than two percent of the value of the parcel. We held that failure to notify the tenants in common rendered notice inadequate, because the due process concerns raised in *Dow* were equally applicable to the facts of the case. *Flint,* p 738. The Court considered the *Dow* court's acceptance of the view that the important factor is not the relative size or dollar value of an owner's interest; it is the creation by state law of a legitimate claim of expectation to that interest. *Id.,* p 739.

While the SEV of the property in *Flint* exceeded the dollar amount requirement of MCL 211.131e; MSA 7.190(3), we believe the same due process

considerations apply to the property interests at issue here. The existence of an interest in property is not influenced by its size or dollar value. Even though the SEVs of the parcels under consideration here were less than $1,000, Glass Land had a legitimate interest in the land. The provision in MCL 211.131e; MSA 7.190(3) which limits the notice requirement to owners of property with SEVs of more than $1,000 violates the Due Process Clause and is unconstitutional.

Glass Land, as the last grantee in the chain of title according to the Register of Deeds, was entitled to notice of the proceedings involving the property. This is true regardless of the value of its interest. Moreover, our Court has repeatedly held that strict compliance with the tax sale notice provisions is required. *Stein v Hemminger,* 165 Mich App 678, 682; 419 NW2d 50 (1988); *Richard v Ryno,* 158 Mich App 513, 516; 405 NW2d 184 (1987). Actual notice is not enough to satisfy the statute's notice requirements.

Consequently, the notice requirements of MCL 211.131e; MSA 7.190(3) were not satisfied by other mailings to the various companies which shared the address used by Glass Land. Nor were they satisfied by other events which may have served to give Glass Land actual notice of the tax sale.

Glass Land's right of redemption survived the change in title resulting from the original tax sale, the deeding to the state and the subsequent sale to the Tomkows. Moreover, as in *Flint,* the right of redemption survived the change in title effected by the condemnation proceeding. However, since title to the property was vested in the state following the proceeding, the right of redemption attached solely to the compensation award. Glass Land was free to sell or give those rights to any party it

chose, to the exclusion of the grantees under the DNR deed. Brandon Township may exercise the redemption rights which Glass Land assigned to it.

Affirmed.

DOW v. STATE OF MICHIGAN

DOCKET NO. 54848, (CALENDAR NO. 6).

396 Mich. 192 (1976)

240 N.W.2d 450

DOW
v.
STATE OF MICHIGAN

Supreme Court of Michigan.

Argued March 12, 1974.

Decided April 1, 1976.

Vander Veen, Freihofer & Cook (by George E. Pawlowski) for plaintiffs.

Frank J. Kelley, Attorney General, Robert A. Derengoski, Solicitor General, Jerome Maslowski and Russell E. Prins, Assistants Attorney General, for defendant.

Amicus Curiae: George L. Corsetti and Michael J. Barnhart for Michigan Association for Consumer Protection and Michigan Legal Services Association.

LEVIN, J.

Marie Parker Smith, titleholder to a parcel of real property improved with a family residence, and Carl and Rose Dow, land contract purchasers of Smith, commenced this action to quiet title against the State of Michigan which had acquired title to the property at a tax sale for nonpayment of 1965 city taxes in the amount of $35.82.

Plaintiffs claim the tax sale was defective because the state failed to give them adequate notice of the tax foreclosure proceedings.

The issue is whether the Due Process Clause, barring the state from depriving any person of property without due process of law,[1] precludes foreclosure of the state's statutory lien for unpaid property taxes absent notice, other than newspaper publication, to owners of significant interests in the property.

The circuit court, finding that the statutory requirements concerning tax sales had been complied with, rejected plaintiffs' constitutional challenges and entered a summary judgment dismissing the complaint. The Court of Appeals affirmed.

We hold that the Due Process Clause requires that an owner of a significant interest in property be given proper notice and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice of such right.

We reverse and remand to the trial court for entry of a judgment quieting title in Smith, subject to the land contract purchaser's interest of the Dows.

I

Proceedings to foreclose a tax lien are commenced by petition filed with the circuit court for the county in which the delinquent tax lands are situated.[2] Notice of the hearing on the petition[3] is required to be published in a regularly established newspaper in the county.[4] Publication is declared to be "equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition".[5]

Notice of the tax sale is to be mailed to the last known post office address of the person "according to the records of [the state treasurer's] office", against whom the delinquent taxes are assessed. However, "Failure to receive or serve such notice shall not invalidate the proceedings taken under the state treasurer's petition and decree of the circuit court in foreclosure and sale of the lands for taxes."[6]

Not later than 120 days before expiration of the right to redeem from a tax sale, registered return receipt notice of such right is to be mailed to each person to whom is assessed land bid in to the state at the tax sale and still held as a state bid. A defect in or failure to receive or serve the notice does not invalidate the proceedings.[7]

Private tax sale purchasers, but not the state, are required to give notice by registered mail to all persons "having any estate in such lands or any interest therein, either in fee, for life or for years or any mortgagee * * * the holder of any lien * * * or any person in the actual possession of the lands at the time of such tax purchase".[8]

After the expiration of six months from the time a deed is made to the state no action may be commenced to set it aside.[9]

Neither Smith nor the Dows were in possession. The property was occupied by a tenant of the Dows.

Title to the property is now in the State of Michigan.

It is agreed that Smith and the Dows were without actual knowledge of the tax sale or the circuit court hearing regarding the 1965 taxes and that the records of neither the Kent County Clerk's nor Treasurer's Office show proof of service by mailing of notices of the tax sale or of the circuit court hearing or of the right of redemption.

Rose Dow received notice of the period for exercise of the right to redeem but did not disclose this information to Carl Dow or Smith until after termination of the redemption period. Carl Dow and Smith were without notice of the redemption period.[10]

Notice of the sale was published in the Sentinel-Leader, published weekly in the City of Sparta (population 3,094) with a circulation of 2,100. Sparta is ten miles from Grand Rapids. Smith is a resident of Grand Rapids (population 411,000) and the Dows are residents of the City of Wyoming (population 56,560).[11]

II

Michigan's provision for notice by publication in tax foreclosure proceedings was sustained against a due process challenge by the United States Supreme Court in *Longyear v Toolan,* 209 U.S. 414; 28 S.Ct. 506; 52 L Ed 859 (1908).

Forty-three years later, in *Mullane v Central Hanover Bank & Trust Co,* 339 U.S. 306; 70 S.Ct. 652; 94 L Ed 865 (1950), the Supreme Court declared unconstitutional a section of the New York Banking Law which permitted service by newspaper publication to the beneficiaries of a common trust fund whose addresses were known or readily ascertainable. In *Schroeder v City of New York,* 371 U.S. 208; 83 S.Ct. 279; 9 L Ed 2d 255 (1962), and *Walker v City of Hutchinson,* 352 U.S. 112; 77 S.Ct. 200; 1 L Ed 2d 178 (1956), the Court struck down notice by publication in land condemnation proceedings.[12] In *Covey v Town of Somers,* 351 U.S. 141; 76 S.Ct. 724; 100 L Ed 1021 (1956), notice by publication of a tax sale was held insufficient where the landowner, known to be mentally incompetent, was without a guardian and unable to understand the nature of the proceedings.[13]

While the dictates of *Mullane* have been applied by the Court in cases where the property owner had no reason to expect that a judicial proceeding might be commenced against his property, property tax assessments are a definite annual event of which all competent[14] landowners are cognizant.

In sustaining in *Longyear* notice by publication, the United States Supreme Court espoused the so-called "caretaker theory".[15]

"The owner of property whose, taxes duly assessed, have remained unpaid for more than one year must be held to the knowledge that proceedings for sale are liable to be begun as soon as practicable after the first day of June, and that the law contemplates that they will be ended before December 1, when the sales will be made by the county treasurer. *The proceedings are inscribed on the public records and otherwise made notorious. If he exercises due vigilance, he cannot fail to learn of their pendency, and that full opportunity to defend is afforded to him. This satisfies the demands of due process of law,* and the judgment is affirmed." *Longyear v Toolan, supra,* p 418 (emphasis supplied).

In *Golden v Auditor General* 373 Mich. 664; 131 N.W.2d 55 (1964), this Court, distinguishing *Mullane, Schroeder* and *Walker* as cases where the plaintiffs had no reason to anticipate that action would be taken against their property, rejected a claim that a tax deed should be set aside because the statute does not require personal service or notice by mail.

III

After *Golden* was decided, the United States Supreme Court expanded the protection of consumers against state action under the Due Process Clause. In *Sniadach v Family Finance Corp,* 395 U.S. 337; 89 S.Ct. 1820; 23 L Ed 2d 349 (1969), Wisconsin's procedure for prejudgment garnishment of wages without notice was held violative of the Due Process Clause. *Fuentes v Shevin,* 407 U.S. 67; 92 S.Ct. 1983; 32 L Ed 2d 556 (1972), struck down two state statutes permitting replevin upon *ex parte* application to a court clerk without prior notice. In *Mitchell v W T Grant Co,* 416 U.S. 600; 94 S.Ct. 1895; 40 L Ed 2d 406 (1974), the Court cut back, upholding Louisiana's sequestration statute which permits issuance of a writ to enforce a vendor's lien without a prior hearing. However, in *North Georgia Finishing, Inc v Di-Chem, Inc,* 419 U.S. 601; 95 S.Ct. 719; 42 L Ed 2d 751 (1975), the Court struck down Georgia's statutes which provide for prejudgment garnishment of a bank account on a writ issued by a court clerk without notice or hearing.

While *Fuentes, Mitchell* and *North Georgia* may differ regarding the quantum of process to be accorded, it is clear that the Due Process Clause applies to a creditor's effort to enforce its lien through judicial proceedings or other state action against a defaulting debtor. In commenting on *Fuentes,* the Court in *North Georgia Finishing* observed:

"Although the length or severity of a deprivation of use or possession would be another factor to weigh in determining the appropriate form of hearing, it was not deemed to be determinative of the *right to a hearing of some sort.* Because the official seizures had been carried out without notice and without

opportunity for a hearing or other safeguard against mistaken repossession, they were held to be in violation of the Fourteenth Amendment." *North Georgia Finishing, Inc v Di-Chem, Inc, supra,* p 606 (emphasis supplied).

While *North Georgia Finishing* concerns a commercial transaction[16] "involving parties of equal bargaining power", and *Sniadach, Fuentes* and *Mitchell* concern creditors who sought to collect relatively small amounts from individual consumers, the Court declined to make a distinction on that account:

"We are no more inclined now that we have been in the past to distinguish among different kinds of property in applying the Due Process Clause. *Fuentes v Shevin,* 407 US at 89-90." *North Georgia Finishing, Inc v Di-Chem, Inc, supra,* p 608.

The Due Process Clause is a limitation on state action. *Sniadach et al* involved state action because the creditor utilized process issued by state officials to enforce its claim. In this case where the state is the moving party, the state-action requirement is clearly satisfied.

IV

In analyzing due process claims, the United States Supreme Court first determines "[w]hether any procedural protections are due" and then decides "what process is due". *Morrissey v Brewer,* 408 U.S. 471; 92 S.Ct. 2593; 33 L Ed 2d 484 (1972).

In determining whether any procedural protection is required, the Court considers "whether the nature of the interest is one within the contemplation of the `liberty or property' language of the Fourteenth Amendment". *Morrissey v Brewer, supra,* p 481.[17]

The question whether the Due Process Clause applies here can be readily answered. In *Longyear v Toolan, supra,* and other tax cases[18] it was unquestioned that the owner of real property is entitled to claim the protection of the Due Process Clause in respect to the assessment and collection of taxes. The "actual owner * * * of real estate, chattels or money" has "property interests protected by procedural due process". *Board of Regents v Roth,* 408 U.S. 564; 92 S.Ct. 2701; 33 L Ed 2d 548 (1972).

Smith, as legal titleholder to the property, had a significant interest in property within the meaning of the Due Process Clause. Carl and Rose Dow, who were purchasing the property on land contract, also had a significant property interest within the protection of the clause.[19]

Addressing the question what process is due, we note that "due process is flexible and calls for such procedural protections as the particular situation demands". *Morrissey v Brewer, supra,* p 481. "The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." *Boddie v Connecticut,* 401 U.S. 371, 378; 91 S.Ct. 780; 28 L Ed 2d 113 (1971).

While the form and nature of the hearing can vary, the Due Process Clause secures an absolute right to an opportunity for a meaningful hearing "*before* the termination becomes effective".[20] (Emphasis by the Court.)

"The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend" upon a balancing of the importance of the interest and the nature of the subsequent proceedings. *Board of Regents v Roth, supra,* p 570, n 8 (emphasis by the Court). That the hearing "is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing" prior to deprivation of "any significant property interest". *Boddie v Connecticut, supra,* p 379.

"`The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v Ordean,* 234 U.S. 385, 394 [34 S.Ct. 779; 58 L Ed 1363] (1914). The hearing must be `at a meaningful time and in a meaningful manner.' *Armstrong v Manzo,* 380 U.S. 545, 552 [85 S.Ct. 1187, 14 L Ed 2d 62] (1965)." *Goldberg v Kelly,* 397 U.S. 254, 267; 90 S.Ct. 1011; 25 L Ed 2d 287 (1970).

The "opportunity to be heard" includes the right to notice of that opportunity. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co, supra,* p 314.

Smith and the Dows had significant interests in property protected by the Due Process Clause. Before the state may deprive them of those interests, the Constitution requires that they be afforded an opportunity to be heard at a meaningful time and in a meaningful manner.[21] Additionally, Smith and the Dows were entitled to notice "reasonably calculated, under all the circumstances", to apprise them of that opportunity.

V

The tax lien foreclosure statute provides for two forms of notice — notice by mail and notice by publication.

While the statute provides for mailed notice, there is no record of notice having been mailed or received in this case. The state does not contend that we should assume that notices were duly mailed; the statute's express statement that no consequence shall attach to non-mailing precludes any such contention.

Few taxpayers will learn of the pendency of tax foreclosure proceedings as a result of newspaper publication. It is agreed that Smith and the Dows did not receive notice in that or any other manner.

The City of Sparta, where the Sentinel-Leader is published, is located ten miles from Grand Rapids where Smith resides. The Dows live in the City of Wyoming. The Sentinel-Leader has a circulation of 2,100. Residents of Grand Rapids and Wyoming are not likely to be readers of the Sentinel-Leader.

Newspaper publication is a formality. A few institutional lenders may hire persons to scan such notices, but newspaper publication for most property owners provides no notice at all.

"Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. *In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint." Mullane v Central Hanover Bank & Trust Co, supra,* p 315. (Emphasis supplied.)

Notice by publication is not constitutionally adequate "with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question. `Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mail to apprise them of its pendency.'" *Schroeder v City of New York, supra,* pp 212-213.[22]

"There is nothing peculiar about litigation between the Government and its citizens that should deprive those citizens of a right to be heard." *Walker v City of Hutchinson, supra,* p 117. The obligation to mail notice to the owners of significant interests in land sold for nonpayment of taxes has long been imposed

on tax title buyers. Tax title buyers typically purchase more than one parcel at a time and thus are obliged to send many notices. Their ability to provide mailed notice "is persuasive that postal notification * * * would not seriously burden" the government. *Mullane v Central Hanover Bank & Trust Co, supra,* p 319.

"The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." *Stanley v Illinois,* 405 U.S. 645, 656; 92 S.Ct. 1208; 31 L Ed 2d 551 (1972).

We agree with Judge JOHN H. GILLIS, who dissented in the Court of Appeals, that the caretaker theory has been undermined by *Fuentes* and other decisions of the United States Supreme Court. Manifestly, due process would not be satisfied by a state statute providing for notice by publication of proceedings to withdraw welfare benefits, revoke the probation of a fugitive or to replevin or garnishee a debtor's property.

"Where a man's automobile or color television set is at stake, due process requires notice and a prior hearing before a creditor is entitled to retake possession. *Inter City Motor Sales v Judge of the Common Pleas Court for the City of Detroit,* 42 Mich.App. 112 [201 N.W.2d 378] (1972); *Fuentes v Shevin,* 407 U.S. 67; 92 S.Ct. 1983; 32 L Ed 2d 556 (1972). Presumably, an installment purchaser of chattels knows when he is in default just as the owner of real property knows when he hasn't paid taxes. Both the chattel buyer and the real estate owner should be held to know that courts and creditors will deal with them in due course. I fail to see why debtors in personal property are entitled to `more due process' than the owner of real estate, whose `asset' will certainly not leave the state in some mysterious fashion on the eve of court action." *Dow v State of Michigan,* 46 Mich.App. 101, 114; 207 N.W.2d 441 (1973) (GILLIS, J. dissenting).

Since publication provides most taxpayers no notice at all, the caretaker theory in effect dispenses with notice entirely. And without notice there is no meaningful opportunity to be heard.

The state has no proper interest in taking a person's property for nonpayment of taxes without proper notice and opportunity for a hearing at which the person can contest the state's right to foreclose and cure any default determined. (See fn 21.) By reason of the Due Process Clause it may not do so.

VI

Real property interests of record are readily identifiable. Accordingly, the titleholder, Smith, was entitled to have the state employ such means "as one desirous of actually informing [her] might reasonably adopt" to notify her of the pendency of the proceedings. *Mullane v Central Hanover Bank & Trust Co, supra,* p 315.[23]

It does not appear whether the land contract purchaser's interest of the Dows was of record. Ordinarily a land contract purchaser of a residence is in actual possession and readily identifiable. The Dows were not in possession. The typical land contract requires the purchaser to pay taxes. It does not appear whether the tax assessor or the treasurer were aware of the Dows' interests or, indeed, to whom tax bills had been sent. If their interests were of record or if the assessor or treasurer was aware of their interests, they too were entitled to have the state employ such means "as one desirous of actually informing [them] might reasonably adopt" to notify them of the pendency of the proceedings.

Personal service is not required. Notice by mail is adequate.[24] Mailed notice must be directed to an address reasonably calculated to reach the person entitled to notice. Mailing should be by registered or certified mail, return receipt requested, both because of the greater care in delivery and because of the record of mailing and receipt or non-receipt provided. Such would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period.

VII

Difficulties anticipated in giving notice and affording an opportunity for a hearing do not justify dispensing with notice and hearing requirements.[25] Actual difficulties are factors affecting the type of notice and what hearing requirement is reasonable.[26]

A judicial hearing is not required. A proper administrative procedure "with ultimate recourse to the judiciary" would satisfy constitutional requirements.[27]

Putting aside the questions that might arise if the cost to the owner of redeeming after a sale were substantially in excess of the pre-sale cost of curing a delinquency, it would satisfy constitutional requirements if the state were to adopt a procedure providing for (i) ordinary mail notice[28] before sale to the person to whom tax bills have been sent and to "occupant," and (ii) after sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption. The burden required by the Constitution is manageable.

Reversed. Remanded to the trial court.

KAVANAGH, C.J., and WILLIAMS and FITZGERALD, JJ., concurred with LEVIN, J.

COLEMAN, J., concurred in the result.

LINDEMER and RYAN, JJ., took no part in the decision of this case.

FOOTNOTES

1. US Const, Am XIV; Const 1963, art 1, § 17.
2. MCLA 211.61; MSA 7.105.
3. MCLA 211.62; MSA 7.107.
4. MCLA 211.63; MSA 7.108.
5. MCLA 211.66; MSA 7.111.
6. MCLA 211.61a; MSA 7.106.
7. MCLA 211.73c; MSA 7.119(2).
8. MCLA 211.141, 211.142; MSA 7.199, 7.200.
9. MCLA 211.431; MSA 7.661.The state cannot rely on this statutory provision to insulate itself from redress if the statutory procedure for tax sales does not meet constitutional requirements. A different question would be presented if rights of third persons had intervened.
10. The purchasers' interest of a husband and wife under a land contract is an estate by the entirety. Stevens v Wakeman, 213 Mich. 559, 567; 182 NW 73 (1921); Zeigen v Roiser, 200 Mich. 328, 341; 166 NW 886 (1918); 13 Mich Law & Practice, Husband and Wife, § 3, p 461. Prior to the enactment of 1975 PA 288, the husband had the right to control the possession and use of property held by entirety and to collect the rents and profits. Arrand v Graham, 297 Mich. 559; 298 NW 281 (1941); 13 Callaghan's Mich Civil Jurisprudence, Husband and Wife, § 66, p 132; 13 Mich Law & Practice, Husband and Wife, § 3, p 463.Act 288 provides:"A husband and wife shall be equally entitled to the rents, products, income, or

profits, and to the control and management of real or personal property held by them as tenants by the entirety." MCLA 557.71; MSA 26.210(1)Whatever may have been the prior law, each spouse is now entitled to separate notice.
11. The population figures are based on the 1970 Federal census.
12. In City of New York v New York, N H & H R Co, 344 U.S. 293, 296; 73 S.Ct. 299; 97 L Ed 333 (1953), the Supreme Court held that in a railroad reorganization notice by publication to creditors of the time for filing their claims was not sufficient. "Notice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best."
13. In Robinson v Hanrahan, 409 U.S. 38, 40; 93 S.Ct. 30; 34 L Ed 2d 47 (1972), the Court invalidated a state forfeiture proceeding in which notice was sent to the individual's home address at a time when he was known to the authorities to be in jail: "Under these circumstances, it cannot be said that the State made any effort to provide notice which was `reasonably calculated' to apprise appellant of the pendency of the forfeiture proceedings."
14. While Covey v Town of Somers, 351 U.S. 141; 76 S.Ct. 724; 100 L Ed 1021 (1956), involved a tax sale, the landowner was known to the authorities to be incompetent and uninformed regarding the annual assessment of taxes.
15. It has been suggested that the early decisions of the United States Supreme Court approving notice by publication were an outgrowth of the holding in Pennoyer v Neff, 95 U.S. 714; 24 L Ed 565 (1878), that jurisdiction over a nonresident could not be obtained by service of process outside a state. To solve the dilemma posed by that doctrine where litigation concerned property located within a state but owned by a nonresident, the Court permitted notice to be made by publication on the theory that the proceeding was in rem. The caretaker theory — that owners of property were obliged to keep themselves informed of recurring events affecting their property — supplemented the in rem analysis.With the development of the minimum contracts theory of International Shoe Co v Washington, 326 U.S. 310; 66 S.Ct. 154; 90 L Ed 95 (1945), and the enactment of long-arm statutes permitting service of process outside the state, the "rule that the process of a state may not be served beyond its borders is a relic of the past". See Note, The Constitutionality of Notice by Publication in Tax Sale Proceedings, 84 Yale LJ 1505, 1507 (1975).In Robinson v Hanrahan, supra, p 39, the Court reiterated that the application of the Due Process Clause does not depend on classification as in rem or in personam:"In Mullane v Central Hanover Bank & Trust Co, 339 U.S. 306 (1950), after commenting on the vagueness of the classifications `in rem, or more indefinitely quasi in rem, or more vaguely still, "in the nature of a proceeding in rem,"' this Court held that `the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state.' Id., at 312."
16. The indebtedness was alleged to have arisen on account of goods sold and delivered in the amount of $51,279.17.
17. Among the interests recognized by the United States Supreme Court as "liberty" protected by the due process clause are interracial marriage [Loving v Virginia, 388 U.S. 1; 87 S.Ct. 1817; 18 L Ed 2d 1010 (1967)]; foreign language education of a child [Meyer v Nebraska, 262 U.S. 390; 43 S.Ct. 625; 67 L Ed 1042 (1923)]; education of a child in a non-public school [Pierce v Society of Sisters, 268 U.S. 510; 45 S.Ct. 571; 69 L Ed 1070 (1925)]; procreation of children [Skinner v Oklahoma, 316 U.S. 535; 62 S.Ct. 1110; 86 L Ed 1655 (1942)]; father to custody of illegitimate child [Stanley v Illinois, 405 U.S. 645; 92 S.Ct. 1208; 31 L Ed 2d 551 (1972)]; good time credit for prisoner [Wolff v McDonnell, 418 U.S. 539; 94 S.Ct. 2963; 41 L Ed 2d 935 (1974)]; protection against improper revocation of parole [Morrissey v Brewer, 408 U.S. 471; 92 S.Ct. 2593; 33 L Ed 2d 484 (1972)].Interests protected as "property" under the Due Process Clause include welfare benefits [Goldberg v Kelly, 397 U.S. 254; 90 S.Ct. 1011; 25 L Ed 2d 287 (1970)]; employment with Federal contractor [Cafeteria & Restaurant Workers Union v McElroy, 367 U.S. 886, 895; 81 S.Ct. 1743; 6 L Ed 2d 1230 (1961)]; continued employment as a college teacher [Perry v Sindermann, 408 U.S. 593; 92 S.Ct. 2694; 33 L Ed 2d 570 (1972)]; continued employment as a Federal employee [Arnett v Kennedy, 416 U.S. 134; 94 S.Ct. 1633; 40 L Ed 2d 15 (1974)].
18. See Kelly v Pittsburgh, 104 U.S. 78, 80; 26 L Ed 658 (1881); Hibben v Smith, 191 U.S. 310, 325; 24 S.Ct. 88; 48 L Ed 195 (1903); Central of Georgia R Co v Wright, 207 U.S. 127, 138; 28 S.Ct. 47; 52 L Ed 134 (1907); Londoner v Denver, 210 U.S. 373, 385; 28 S.Ct. 708; 52 L Ed 1103 (1908); Turner v Wade, 254 U.S. 64, 67-68; 41 S.Ct. 27; 65 L Ed 134 (1920); McGregor v Hogan, 263 U.S. 234, 237; 44 S.Ct. 50; 68 L Ed 282 (1923).

19. The United States Supreme Court has held that the Due Process Clause protects property interests which, like that of a land contract purchaser, are "intangible".In Board of Regents v Roth, 408 U.S. 564, 571-572; 92 S.Ct. 2701; 33 L Ed 2d 548 (1972), the Court said that "the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money". (Emphasis supplied.)Synthesizing its earlier decisions recognizing property interests in intangible property [Goldberg v Kelly, 397 U.S. 254; 90 S.Ct. 1011; 25 L Ed 2d 287 (1970) (welfare benefits); Slochower v Board of Education, 350 U.S. 551; 76 S.Ct. 637; 100 L Ed 692 (1956); Wieman v Updegraff, 344 U.S. 183; 73 S.Ct. 215; 97 L Ed 216 (1952); Connell v Higginbotham, 403 U.S. 207; 91 S.Ct. 1772; 29 L Ed 2d 418 (1971) (contracts of public employment)], the Court observed:"Certain attributes of `property' interests protected by procedural due process emerge from these decisions. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims."Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law — rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 408 US at 577.Similarly, see, Perry v Sindermann, 408 U.S. 593; 92 S.Ct. 2694; 33 L Ed 2d 570 (1972).

20. Bell v Burson, 402 U.S. 535, 542; 91 S.Ct. 1586; 29 L Ed 2d 90 (1971). The "Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." Mathews v Eldridge, 424 U.S. 319; 96 S.Ct. 893; 47 L Ed 2d 18 (1976)."The opportunity to defend one's property before it is finally taken is so basic that it hardly bears repeating." Arnett v Kennedy, supra, p 180 (White, J.).

21. The statute provides for rights of redemption and for notice of those rights. MCLA 211.73c; MSA 7.119(2). See, also, MCLA 211.74; MSA 7.120; MCLA 211.67; MSA 7.112; MCLA 211.67a; MSA 7.112(1).In this case the property was sold for nonpayment of taxes in the amount of $35.82. Even if it were determined on a proper hearing that $35.82 was owing, the state could not forfeit an ownership equity, worth many times that amount, if prompt payment were forthcoming. A hearing would not be "at a meaningful time" unless the owner of a significant interest in the property had an opportunity to cure any delinquency determined upon the hearing and avoid foreclosure and the taking of his property by the state. Even if the right to redeem were not constitutionally rooted, once granted by statute it is protected by the Due Process Clause. In Arnett v Kennedy, supra, pp 153-154, the plurality opinion declared "that where the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of appellee must take the bitter with the sweet". Six Justices, in three separate opinions, rejected that view. An opinion authored by Justice Powell declared that such a "view misconceives the origin of the right to procedural due process. That right is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in federal employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." 416 US, pp 166-167.Similarly, see Wolff v McDonnell, supra, fn 17, pp 557-558, where the Supreme Court, recognizing that a state was not compelled to give prisoners credit for good time, said: "But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment `liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated. * * * [A] person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government."

22. "In the present case there seem to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value." Walker v City of Hutchinson, 352 U.S. 112, 116; 77 S.Ct. 200; 1 L Ed 2d 178 (1956).

23. "The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." Mullane v Central Hanover Bank & Trust Co, 339 U.S. 306, 315; 70 S.Ct. 652; 94 L Ed 865 (1950).
24. See Grannis v Ordean, 234 U.S. 385; 34 S.Ct. 779; 58 L Ed 1363 (1914); Mullane v Central Hanover Bank & Trust Co, supra; and Schroeder v City of New York; 371 U.S. 208; 83 S.Ct. 279; 9 L Ed 2d 255 (1962).
25. See Goldberg v Kelly, supra, p 261; Bell v Burson, supra, p 540. Cf. United States Department of Agriculture v Murry, 413 U.S. 508; 93 S.Ct. 2832; 37 L Ed 2d 767 (1973).
26. Mathews v Eldridge, supra.
27. Public Clearing House v Coyne, 194 U.S. 497; 24 S.Ct. 789; 48 L Ed 1092 (1904); Crane v Hahlo, 258 U.S. 142; 42 S.Ct. 214; 66 L Ed 514 (1922); Bell v Burson, supra.
28. See Grannis v Ordean, supra.

Order

Michigan Supreme Court
Lansing, Michigan

December 2, 2009

Marilyn Kelly,
Chief Justice

137527

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

FIRST NATIONAL BANK OF CHICAGO,
as Trustee for BANKBOSTON HOME
EQUITY LOAN TRUST 1998-1,
Plaintiff-Appellee,

v

SC: 137527
COA: 272431
Ct of Claims: 03-000057-MT

DEPARTMENT OF TREASURY and
DEPARTMENT OF NATURAL RESOURCES,
Defendants-Appellants.

_____/

On order of the Court, the application for leave to appeal having been granted and the briefs and oral arguments of the parties having been considered by the Court, we hereby REVERSE the September 9, 2008 judgment of the Court of Appeals. For the reasons stated in the Court of Appeals dissenting opinion, we find that BankBoston received constitutionally sufficient notice. We REMAND this case to the Court of Claims for consideration of the issues raised by the plaintiff but not addressed by that court during its initial consideration of this case.

CORRIGAN, J. (*concurring*).

I concur in the order reversing the judgment of the Court of Appeals and remanding to the Court of Claims for consideration of plaintiff's remaining issues. I also concur with Justice Young that any additional inquiry regarding the quality of notice given to plaintiff's assignor is unnecessary. I write separately to underscore my agreement with the well-reasoned analysis of the Court of Appeals dissenting opinion concerning why plaintiff lacks standing to assert BankBoston's right to notice. A thorough review of the stipulated facts and exhibits fails to show how the mortgage assignment from BankBoston to plaintiff, which occurred *after* the certificate of forfeiture had already been recorded, left BankBoston with any residual property interest. See MCL 211.78i(6). Moreover, "it is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice." *In re AMB*, 248

Mich App 144, 176 (2001). Therefore, plaintiff's status as the trustee for a separate legal entity, BankBoston Home Equity Loan Trust 1998-1, does not magically fulfill the statutory and constitutional prerequisites for plaintiff to file suit on behalf of a party that previously transferred its entire interest. See MCL 600.2041; *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 740 (2001). Accordingly, I agree with the Court of Appeals dissent that "there is no evidence that the single, isolated mortgage assignment imbued plaintiff with any continuing association with BankBoston, endowed it with any derivative entitlement to know BankBoston's affairs, or enabled it to raise BankBoston's legal claims, if any still existed." *First Nat'l Bank of Chicago v Dep't of Treasury*, 280 Mich App 571, 593 (2008).

MARKMAN, J., joins the statement of CORRIGAN, J.

YOUNG, J. (*concurring*).

I concur in the order reversing the judgment of the Court of Appeals and remanding the case to the Court of Claims for consideration of plaintiff's remaining issues. I would further note that the constructive notice provided by recording a certificate of forfeiture pursuant to MCL 211.78g(2) provides constitutionally adequate notice for those property interests that are unknown and not of record at the time the property is forfeited to the county treasurer. See *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 317 (1950); *Mennonite Bd of Missions v Adams*, 462 US 791, 798 (1983). Moreover, this particular method of notice "is not substantially less likely to bring home notice than other of the feasible and customary substitutes," *Mullane*, 339 US at 315, and is given in addition to other methods of constructive notice required by law. MCL 211.78i(3)(d) and (5). Because plaintiff has received constitutionally adequate notice, I believe that any further inquiry into the quality of notice given to plaintiff's assignor is wholly unnecessary.

CORRIGAN and MARKMAN, JJ., join the statement of YOUNG, J.

STATE OF MICHIGAN
IN THE 57TH CIRCUIT COURT FOR THE COUNTY OF EMMET

HARBOR WATCH CONDOMINIUM ASSOCIATION, a Michigan nonprofit corporation,

Plaintiff,

v

File No: 12-103747-CZ
Honorable Charles W. Johnson

EMMET COUNTY TREASURER,

Defendant.

OPINION

Plaintiff Harbor Watch Condominium Association seeks a money judgment for unpaid condominium assessments. The assessments at issue fell due when Defendant Emmet County Treasurer held title to a number of condominium units pursuant to her statutory duty to foreclose and sell real property to collect delinquent real property taxes. Both parties seek summary disposition. For the reasons set forth below, the Court grants summary disposition to Defendant.

Harbor Watch is a condominium project in Petoskey, Michigan. A number of the condominium units, consisting of both vacant site condominium lots, and buildings housing condominium units in various stages of completion, were forfeited to the Treasurer on account of delinquent property taxes for the year 2008. Defendant claims that the total amount of property taxes due on the subject units was $307,852.72; that the eventual sale of the units to third parties generated $124,500.00; and, thus that the taxing authority lost taxes due on the units totalling $183,252.74.

Plaintiff claims the sum of $97,366.09, representing unpaid assessments, together with late charges and interest, on the subject units during the time when Defendant owned these units in connection with the foreclosure and sale process. Thus, unfortunately, this case presents the Court with having to determine which of the two parties to this lawsuit shall suffer further losses, as a result of the failure of the original owners of the units in question to pay both their condominium assessments and their property taxes.

Plaintiff's claim is premised upon an alleged contract. Plaintiff relies upon provisions in the recorded master deed and bylaws for the condominium. The condominium documents expressly state that the provisions thereof:

> "are covenants running with the land and are a burden and a benefit to developer, to any other persons acquiring or owning an interest in the condominium project, to the association, and to the respective successors and assigns of all these parties."[1]

Plaintiff notes, correctly, that covenants running with the land are legal, favored by public policy, and enforceable as contracts. *Terrien v Zwit*, 467 Mich 56, 71-72; 648 NW2d 602 (2002) Plaintiff's position that ownership of units obligates the owner to pay condominium assessments would certainly be correct if Defendant was the voluntary purchaser of one or more of the units in the condominium.

[1] Amended and Restated Master Deed, recorded at Liber 998, page 187, Emmet County Records, Paragraph 1(a).

However, Defendant says that her ownership came about only as a result of her fulfilling her statutory duties in connection with the collection of delinquent property taxes. The General Property Tax Act, MCL 211.78, et seq., sets forth with great specificity the duties of a county treasurer, and the steps a treasurer must take in connection with the collection of delinquent property taxes. The statute begins with the following language:

> "The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property for delinquent taxes constitute the performance by this state or a political subdivision of this state of essential public purposes and functions."
>
> MCL 211.78(1).

The language quoted above clearly indicates the Legislature's determination that collection of delinquent property taxes is an "essential public. . . function." Throughout the balance of the statutory provisions governing collection of delinquent property taxes and property tax foreclosure, in almost every instance, the duties of the treasurer are mandatory duties, as evidenced by statutory language that begins: "The county treasurer shall. . ."[2]

Perhaps the only exception to the mandatory nature of a treasurer's duties is found in MCL 211.78(5), the section seized upon by Plaintiff, which states as follows:

> "The foreclosure of forfeited property by a county is voluntary and is not an activityor service required of units of local government for purposes of section 29 of article IX of the state constitution of 1963."

The language quoted above is not, as Plaintiff maintains, a legislative direction that all delinquent tax collection activities of a county treasurer are "voluntary". Rather, this is clearly a provision responsive to the so-called Headlee Amendment to the Michigan Constitution, which prohibits the state from imposing unfunded mandates on local units of government.[3] The language quoted above addresses any Headlee Amendment issue regarding the tax collection duties of a county treasurer, by giving each county an option. Each county may elect to have it's treasurer perform the duties specified with respect to the collection of delinquent taxes, or the county may elect to have the state perform these duties instead.

Aside from this one option as to who will perform the foreclosure activities, everything else in terms of the obligations set forth in the Property Tax Act are mandatory upon the governmental unit, be it the county treasurer or the state, who performs the collection activities. As a result of the mandatory nature of the treasurer's duties with respect to collection of delinquent property taxes, the Plaintiff's contract theory of liability fails.

---

[2] Section 78g of the Act provides that real property, as to which taxes are delinquent for more than 12 months, is forfeited to the county treasurer. Section 78h requires that the foreclosing governmental unit file suit in the Circuit Court. The suit, as pertinent to the condominium units at issue in this case, resulted in a Judgment of Foreclosure entered by this Court on February 17, 2011. Pursuant to Section 78k, this Judgment vested fee simple title in the Treasurer as of March 31, 2011. She held title thereafter until the units in question were sold at the auction sales conducted as required by Section 78m.

[3] Const 1963, art IX, section 29.

In general, contract liability arises only from a consensual relationship between the parties.. As the court states in *Kamalnath v Mercy Memorial Hospital,* 194 Mich App 543, 548-549; 487 NW2d 499 (1992):

> "It is hornbook law that a valid contract requires a 'meeting of the minds' on all the essential terms. 'In order to form a valid contract, there must be a meeting of the minds on all the material facts. A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind. [*Stanton v Dachille,* 186 Mich App 247, 256; 463 NW2d 479 (1990), citing *Heritage Broadcasting Co v Wilson Communications, Inc.,* 170 Mich App 812, 818; 428 NW2d 784 (1988)].'
>
> 'Meeting of the minds' is a figure of speech for mutual assent.'"

Defendant obviously did not assent to being held liable for condominium assessments for units in question. There was no assent by the Treasurer to her ownership of these units. The Treasurer's ownership of these units was mandated by law. It was her duty under the Property Tax Act.

The only exception to the requirement of mutual assent for a contract, is in the case of a contract implied in law. In *In re Lewis Estate,* 168 Mich App 70, 70-74, 423 NW2d 600 (1988), the Court of Appeals explained the nature of and requirements for a contract implied in law as follows:

> "A contract implied in law is not a contract at all but an obligation imposed by law to do justice even though it is clear that no promise was ever made or intended. A contract may be implied in law where there is a receipt of a benefit by a defendant from a plaintiff and retention of the benefit is inequitable, absent reasonable compensation."

Arguably, during the time that she held title to the subject units, the Treasurer received benefits from Plaintiff, in the form of whatever services Plaintiff provided with respect to the subject condominium units. However, as noted above, both Plaintiff and Defendant are suffering losses arising from the failure of the owner of the unit to pay amounts due. Thus, the record in this case does not and cannot support a finding that Defendant's retention of any benefits conferred by Plaintiff is inequitable.

The controlling reality of this case is that the Defendant's ownership of the condominium units was involuntary. It resulted only from Defendant carrying out her statutory duties. Accordingly, Plaintiff's motion for summary disposition is denied. Defendant's motion for summary disposition is granted, and the case shall be dismissed.

Counsel for Defendant shall submit an order consistent with this opinion.

Dated: 5/24/13

Charles W. Johnson (P28926)
Circuit Court Judge

c: Mr. John R. Turner
Ms. Kathleen M. Abbott

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JONES *v.* FLOWERS ET AL.

CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 04–1477. Argued January 17, 2006—Decided April 26, 2006

Petitioner Jones continued to pay the mortgage on his Arkansas home after separating from his wife and moving elsewhere in the same city. Once the mortgage was paid off, the property taxes—which had been paid by the mortgage company—went unpaid, and the property was certified as delinquent. Respondent Commissioner of State Lands mailed Jones a certified letter at the property's address, stating that unless he redeemed the property, it would be subject to public sale in two years. Nobody was home to sign for the letter and nobody retrieved it from the post office within 15 days, so it was returned to the Commissioner, marked "unclaimed." Two years later, the Commissioner published a notice of public sale in a local newspaper. No bids were submitted, so the State negotiated a private sale to respondent Flowers. Before selling the house, the Commissioner mailed another certified letter to Jones, which was also returned unclaimed. Flowers purchased the house and had an unlawful detainer notice delivered to the property. It was served on Jones' daughter, who notified him of the sale. He filed a state-court suit against respondents, alleging that the Commissioner's failure to provide adequate notice resulted in the taking of his property without due process. Granting respondents summary judgment, the trial court concluded that Arkansas' tax sale statute, which sets out the notice procedure used here, complied with due process. The State Supreme Court affirmed.

Held:

1. When mailed notice of a tax sale is returned unclaimed, a State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so. Pp. 4–12.

(a) This Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent,

Syllabus

see, *e.g., Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 314, but has never addressed whether due process requires further efforts when the government becomes aware prior to the taking that its notice attempt has failed. Most Courts of Appeals and State Supreme Courts addressing this question have decided that the government must do more in such a case, and many state statutes require more than mailed notice in the first instance. Pp. 4–6.

(b) The means a State employs to provide notice "must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane,* 399 U. S., at 315. The adequacy of a particular form of notice is assessed by balancing the State's interest against "the individual interest sought to be protected by the Fourteenth Amendment." *Id.,* at 314. Here, the evaluation concerns the adequacy of notice prior to the State's extinguishing a property owner's interest in a home. It is unlikely that a person who actually desired to inform an owner about an impending tax sale of a house would do nothing when a certified letter addressed to the owner is returned unclaimed. The sender would ordinarily attempt to resend the letter, if that is practical, especially given that it concerns the important and irreversible prospect of losing a house. The State may have made a reasonable calculation of how to reach Jones, but it had good reason to suspect when the notice was returned that Jones was no better off than if no notice had been sent. The government must consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case. See *Robinson* v. *Hanrahan,* 409 U. S. 38, 40 *(per curiam),* and *Covey* v. *Town of Somers,* 351 U. S. 141, 146–147. It does not matter that the State in each of those cases was aware of the information *before* it calculated the best way to send notice. Knowledge that notice was ineffective was one of the "practicalities and peculiarities of the case" taken into account, *Mullane, supra,* at 314–315, and it should similarly be taken into account in assessing the adequacy of notice here. The Commissioner and Solicitor General correctly note the constitutionality of that a particular notice procedure is assessed *ex ante*, not *post hoc.* But if a feature of the State's procedure is that it promptly provides additional information to the government about the effectiveness of attempted notice, the *ex ante* principle is not contravened by considering what the government does with that information. None of the Commissioner's additional contentions—that notice was sent to an address that Jones provided and had a legal obligation to keep updated, that a property owner who fails to receive a property tax bill and pay taxes is on inquiry notice that his property is subject to governmental taking, and that Jones was obliged to ensure that those in whose hands he left his

Syllabus

property would alert him if it was in jeopardy—relieves the State of its constitutional obligation to provide adequate notice. Pp. 7–12.

2. Because additional reasonable steps were available to the State, given the circumstances here, the Commissioner's effort to provide notice to Jones was insufficient to satisfy due process. What is reasonable in response to new information depends on what that information reveals. The certified letter's return "unclaimed" meant either that Jones was not home when the postman called and did not retrieve the letter or that he no longer resided there. One reasonable step addressed to the former possibility would be for the State to resend the notice by regular mail, which requires no signature. Certified mail makes actual notice more likely only if someone is there to sign for the letter or tell the mail carrier that the address is incorrect. Regular mail can be left until the person returns home, and might increase the chances of actual notice. Other reasonable follow-up measures would have been to post notice on the front door or address otherwise undeliverable mail to "occupant." Either approach would increase the likelihood that any occupants would alert the owner, if only because an ownership change could affect their own occupancy. Contrary to Jones' claim, the Commissioner was not required to search the local phone book and other government records. Such an open-ended search imposes burdens on the State significantly greater than the several relatively easy options outlined here. The Commissioner's complaint about the burden of even these additional steps is belied by Arkansas' requirement that notice to homestead owners be accomplished by personal service if certified mail is returned and by the fact that the State transfers the cost of notice to the taxpayer or tax sale purchaser. The Solicitor General's additional arguments—that posted notice could be removed by children or vandals, and that the follow-up requirement will encourage States to favor modes of delivery that will not generate additional information—are rejected. This Court will not prescribe the form of service that Arkansas should adopt. Arkansas can determine how best to proceed, and the States have taken a variety of approaches. Pp. 12–17.

359 Ark. 443, ___ S. W. 3d ___, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA and KENNEDY, JJ., joined. ALITO, J., took no part in the consideration or decision of the case.

Michigan Supreme Court
Lansing, Michigan

Opinion

FILED JANUARY 26, 2005

REPUBLIC BANK, also known as D & N BANK,

Plaintiff-Appellee,

v **No. 126247**

GENESEE COUNTY TREASURER,

Defendant-Appellant.

PER CURIAM.

This case concerns the application of two notice provisions in the General Property Tax Act, MCL 211.1 *et seq.* We must determine whether plaintiff may maintain a claim under the act on the basis of defendant county treasurer's alleged failure to adequately notify plaintiff of a tax foreclosure on a piece of property on which plaintiff was the mortgagee. The Court of Claims granted summary disposition to plaintiff on a finding that the notice given was insufficient under the act, and the Court of Appeals affirmed that decision. We reverse the judgment

of the Court of Appeals and remand the case to the Court of Claims.

I

On August 5, 1999, D & N Bank gave a $490,000 loan to Karmo Flint Investment, Inc. This loan was secured by a mortgage on a gas station located in Grand Blanc Township in Genesee County, Michigan. The mortgage was recorded with the Genesee County Register of Deeds, and it listed D & N Bank's headquarters address in Hancock, Michigan, as the proper location for provision of any notice. The summer taxes on the secured property were due on the day the loan was closed. D & N Bank did not deduct the amount required to pay the then-delinquent property taxes from the funds disbursed to the mortgagor, and those 1999 summer taxes were mistakenly never paid. All subsequent tax assessments were paid by D & N Bank or by plaintiff Republic Bank as its successor.

The dispute between the parties in this case was engendered by the mailing of a hearing notice to what plaintiff alleges was the wrong address. This question of the proper address for the notice was a consequence of a bank merger that occurred before the mailing. In May 1999, D & N Financial Corporation, the holding company of D & N Bank, had merged with Republic Bancorp, Inc., the holding

company of plaintiff Republic Bank. D & N Bank itself was subsequently merged into Republic Bank in December 2000. D & N Bank had its headquarters in Hancock. Republic Bank has its headquarters in Lansing, Michigan. After the bank merger, Republic Bank continued to maintain an office at the Hancock address. In fact, the former president and chief executive officer of D & N Financial, who became vice-chairman of the board of directors and one of the largest shareholders of the merged corporation, maintained his office at the Hancock location, as did other corporate officers.

Karmo Flint Investment ultimately defaulted on its loan from D & N Bank. On November 1, 2001, a stipulated order was entered in a civil action filed by Republic Bank (as D & N Bank's successor) in Oakland Circuit Court. The order appointed a receiver for the secured property and authorized the receiver to take immediate possession and to borrow from Republic Bank the funds necessary to pay any delinquent and future property taxes.

Neither D & N Bank nor Republic Bank availed itself of the right granted by MCL 211.78a(4) to receive delinquent tax notices, and the 1999 summer tax delinquency did not come to Republic Bank's attention. Because those taxes were never paid, defendant Genesee County Treasurer

commenced foreclosure proceedings on the Grand Blanc Township property. Defendant did not notify either D & N Bank or Republic Bank of the pending forfeiture of the property. Defendant did send out a notice of show cause and judicial foreclosure hearings in January 2002. The notice was sent by certified mail, return receipt requested, to the D & N Bank address in Hancock listed on the mortgage. On January 8, 2002, an employee at the Hancock office signed the return receipt. According to plaintiff, the notice never made it to the appropriate personnel at Republic Bank's Lansing headquarters.

Republic Bank did not send a representative to appear at the foreclosure hearing on February 19, 2002. At the hearing, the Genesee Circuit Court ordered a judgment of foreclosure to be entered on March 1, 2002. Pursuant to that judgment, title in the property was to be vested in defendant if all delinquent taxes were not paid within twenty-one days of entry. Neither Republic Bank nor the receiver of the property paid the delinquent taxes. Consequently, defendant obtained title to the property on March 23, 2002.

Upon discovery of the loss of the property, Republic Bank filed this action seeking monetary relief in the Court of Claims, alleging that defendant had not provided proper

notice of the foreclosure proceedings. At the close of discovery, both parties filed motions for summary disposition. The Court of Claims denied defendant's motion, and granted plaintiff's motion, finding that defendant had violated two notice provisions in the General Property Tax Act, MCL 211.78f and MCL 211.78i. The order granting plaintiff's motion was not a final judgment, because a hearing to determine plaintiff's damages was still required.

Defendant filed an application for leave to appeal with the Court of Appeals, which was granted. The Court of Appeals affirmed the decision of the Court of Claims.[1] It examined what it deemed the unique facts of this case and concluded that defendant had given plaintiff insufficient notice of the foreclosure proceedings. The Court of Appeals relied primarily on defendant's failure to mail the notice of show cause and foreclosure proceedings to Republic Bank at its Lansing headquarters. The Court concluded that mailing the notice to the Hancock address listed on the mortgage was not reasonably calculated to apprise plaintiff of the pendency of the proceedings, as required by the General Property Tax Act, MCL 211.78i. The

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[1] Unpublished opinion per curiam, issued April 27, 2004 (Docket No. 251072).

Court added that, although defendant's failure to give notice of the threatened forfeiture, as required by MCL 211.78f, would not, standing alone, give rise to a due process claim, it was an important factual consideration in the Court's conclusion that the foreclosure notice failed to satisfy the requirements of due process.

II

The General Property Tax Act authorizes county treasurers to seize tax-delinquent property and sell it at auction in order to recover the delinquent taxes. It also imposes procedural safeguards in order to afford persons with an interest in such property an opportunity to be heard. Among those safeguards are various notice requirements. In this case, three provisions of the act are particularly relevant.

As an overall principle, MCL 211.78(2) provides that the adequacy of notice under the act is governed by state and federal due process standards, rather than by the specific provisions of the act. The subsection states as follows:

> **It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create**

> new rights beyond those required under the state constitution of 1963 or the constitution of the United States. The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated. [MCL 211.78(2).]

MCL 211.78f(1) requires a county treasurer to send certain parties notice of the date on which property will be forfeited to the county treasurer for unpaid delinquent taxes. The subsection states in part as follows:

> Except as otherwise provided in section 79 for certified abandoned property, not later than the February 1 immediately succeeding the date that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale under section 60a(1) or (2) or returned to the county treasurer as delinquent under section 78a, the county treasurer shall send a notice by certified mail, return receipt requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent and, if different, to the person identified as the owner of property returned for delinquent taxes as shown on the current records of the county treasurer and to those persons identified under section 78e(2). [MCL 211.78f(1).]

Plaintiff, as a holder of an undischarged mortgage, is an entity identified under section 78e(2).[2] Therefore,

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[2] MCL 211.78e(2)(b) lists (i) the owners, (ii) the holder of any undischarged mortgage, tax certificate issued under section 71, or other legal interest, (iii) a

plaintiff was entitled to notice under section 78f(1). It is undisputed that defendant did not provide such notice.

The lower courts focused on the notice provision of MCL 211.78i. In January 2002, when defendant sent out its notice of show cause and foreclosure hearings, the section provided in relevant part as follows:[3]

> (1) Not later than May 1 immediately succeeding the forfeiture of property to the county treasurer under section 78g, the foreclosing governmental unit shall initiate a title search to identify the owners of a property interest in the property who are entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k. . . .
>
> (2) The foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the pendency of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those owners, to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax deed for property returned for delinquent taxes was issued pursuant to section 72 as determined by the records of the state treasurer, by certified mail, return receipt requested, not less than 30 days before the show cause hearing. The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this

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subsequent purchaser under any land contract, and (iv) a person entitled to notice of the return of delinquent taxes under section 78a(5).

[3] The section was substantially amended by 2003 PA 263.

> act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States. [MCL 211.78i.]

In short, notice must be sent to an address reasonably calculated to apprise the object of notice of the pending proceedings, and this requirement must be evaluated in the context of affording the object of notice minimal due process.

III

We will first examine whether defendant failed to provide adequate notice under MCL 211.78i. As earlier noted, the Court of Appeals concluded that defendant failed to determine the address reasonably calculated to apprise Republic Bank of the show cause and foreclosure hearings. In reaching this conclusion, the Court noted that defendant could have found an updated address in the local tax records, because plaintiff had paid the property taxes for the winter of 1999, the year 2000, and the summer of 2001, all before the foreclosure action. A search of the tax records, said the Court, would have given defendant an easily attainable updated address. We disagree with this analysis.

In *Dow v Michigan,* 396 Mich 192; 240 NW2d 450 (1976), this Court examined the requirements of due process in the

context of giving notice of a tax sale. In *Dow* the question was whether notice by publication was sufficient. This Court found that such notice did not meet constitutional standards, and then went on to describe the kind of notice that would satisfy due process requirements:

> **Personal service is not required. Notice by mail is adequate. Mailed notice must be directed to an address reasonably calculated to reach the person entitled to notice. Mailing should be by registered or certified mail, return receipt requested, both because of the greater care in delivery and because of the record of mailing and receipt or non-receipt provided. Such would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period. [396 Mich 211.]**

This analysis was acknowledged by this Court in *Smith v Cliffs on the Bay Condo Ass'n,* 463 Mich 420; 617 NW2d 536 (2000), which considered a constitutional challenge to the procedures by which tax-sale title to a piece of property was obtained. The notice provision at issue was MCL 211.131e. In *Smith,* tax notices were sent to the address of a corporation as indicated on a quitclaim deed. The mailing to this last known address was returned by the post office as not deliverable. The owner contended that under this circumstance, the notice was inadequate, and that additional efforts should have been undertaken to ascertain

the owner's current address. This Court disagreed, stating:

> **In this case there is nothing to indicate that the township, county, or state had been informed of a new address for the association. Thus, it was appropriate for notices to be sent to the Birmingham address stated in the deed conveying the disputed parcel to the association. The fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located. [463 Mich 429.]**

This Court held in *Smith* that the mailing of tax delinquency and redemption notices to a corporation at its tax address of record in the manner required by the General Property Tax Act was sufficient to provide constitutionally adequate notice.

The Court of Appeals in this case distinguished *Smith* by noting that, here, the municipality had been informed of a new address through the fact that plaintiff paid taxes on the property under the new name and address. We do not find this distinction significant. First, the record shows that plaintiff paid at least some of the post-summer 1999 property taxes using checks with the Hancock address on them. More importantly, this Court indicated in *Smith* that due process does not impose an obligation to undertake additional investigations, when an address has been provided on the relevant document and that document address

has not been changed. We agree with defendant's argument that to require municipalities to keep copies of checks that are sent to pay taxes and then compare the addresses thereon to those already provided for all property subject to foreclosure would place unwarranted burdens on those municipalities.

Here, where defendant relied on the address provided in the mortgage recorded with the Genesee County Register of Deeds, Republic Bank still operated a branch office at that address, and an employee of the bank signed the certified mail receipt card at that address, defendant not only complied with the minimum requirements of due process, but provided plaintiff with actual notice of the hearings. Defendant clearly sent notice to "the address reasonably calculated to apprise" plaintiff of the hearings.

Having found that defendant complied with the requirements of MCL 211.78i, we must also examine the implications of defendant's failure to provide any notice under MCL 211.78f. As the Court of Appeals held, such failure to give notice would not, standing alone, give rise to a due process claim. We agree. As this Court explained in *Mudge v Macomb Co*, 458 Mich 87, 102; 580 NW2d 845 (1998), the critical question for purposes of due process is whether an individual has been given a "'meaningful

opportunity to be heard . . . .'" (Quoting *Boddie v Connecticut*, 401 US 371, 379; 91 S Ct 780; 28 L Ed 2d 113 [1971].) We noted that deprivation of property by adjudication must be preceded by notice and opportunity appropriate to the nature of the case, and within the limits of practicability.

Here, the minimal requirements of due process were satisfied where Republic Blank received constitutionally adequate notice of the show cause and forfeiture hearings. Due process does not require the advance notice of MCL 211.78f when a person is given adequate notice and a meaningful opportunity to be heard pursuant to MCL 211.78i. Such a conclusion is mandated by the above-quoted language in MCL 211.78(2). Consequently, the Court of Appeals erred in affirming the grant of summary disposition in favor of plaintiff in this case. We thus reverse the judgment of the Court of Appeals. This matter is remanded to the Court of Claims for further proceedings consistent with this opinion.

Clifford W. Taylor
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman

S T A T E O F M I C H I G A N

SUPREME COURT

REPUBLIC BANK, also known as D & N BANK,

Plaintiff-Appellee,

v **No. 126247**

GENESEE COUNTY TREASURER,

Defendant-Appellant.

KELLY, J. (*concurring*).

I agree with the disposition of this case. I continue to believe that a significant question exists about the constitutionality of the notice provisions of Michigan's General Property Tax Act. MCL 211.1 *et seq.* However, in this case, the notice that defendant provided not only satisfied the act, it survives constitutional scrutiny.

A property owner facing foreclosure must be given notice that foreclosure proceedings are underway. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 315; 70 S Ct 652; 94 L Ed 865 (1950); MCL 211.78i(2). The property owners may not have been given adequate notice in the case of *Smith v Cliffs on the Bay Condo Ass'n,* 463 Mich 420; 617 NW2d 536 (2000) (Kelly, J., dissenting). There, notice was mailed to the owners but returned as undeliverable. I

believed that the owners may have been denied due process of law and I wrote:

> **When the [Department of Treasury] receives notice that its tax bills directed to a corporation are undeliverable at a certain address, reasonableness may require one more step: an inquiry to the Corporations and Securities Bureau to check for a current address. [*Id.* at 433.]**

By contrast, in the present case, defendant Genesee County Treasurer researched the title records for plaintiff's correct address and sent the notice to plaintiff at that address by certified mail. Defendant received verification that plaintiff had accepted delivery. These actions reasonably warned plaintiff that foreclosure of the property was about to occur.

Moreover, plaintiff Republic Bank received actual notice of the foreclosure hearing. It is the successor to D & N Bank's interest, and it continued to maintain an office at the address listed in the title records. Its employee accepted the notice.[1]

It is true that the bank was not given notice as required by § 78f of the act, MCL 211.78f. However, the

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[1] **That the notice was misplaced after plaintiff's employee accepted it is irrelevant to the question whether the bank received minimal due process.**

notice it received of the show cause hearing and judicial forfeiture met the minimum requirements of due process. Therefore, I agree that the decision of the Court of Appeals should be reversed.

Marilyn Kelly
Michael F. Cavanagh

Michigan Supreme Court
Lansing, Michigan

Opinion

FILED JULY 2, 2008

STELLA SIDUN,

Plaintiff-Appellant,

v No. 131905

WAYNE COUNTY TREASURER,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

CAVANAGH, J.

We granted leave to appeal in this case to determine whether defendant Wayne County Treasurer's efforts to provide notice of foreclosure proceedings to plaintiff Stella Sidun satisfied due process in light of *Jones v Flowers*, 547 US 220; 126 S Ct 1708; 164 L Ed 2d 415 (2006). Because the county treasurer failed to employ reasonable follow-up methods to notify plaintiff of the proceedings involving her property, we hold that plaintiff's due-process rights were violated. The Court of Appeals erred by concluding that the county treasurer's efforts met the requirements described by *Jones*. Therefore, we reverse the judgment of the Court of Appeals and remand to the circuit court for further proceedings.

I. STATEMENT OF FACTS AND PROCEEDINGS

Plaintiff's mother, Helen Krist, owned a two-family dwelling at 2691 Commor Street in Hamtramck for several decades. In 1979, Krist executed a quitclaim deed conveying the Hamtramck property to herself and to plaintiff as joint tenants. The deed stated that "HELEN KRIST . . . the address of which is 3233 Stolzenfeld-Warren, MI 48091" quitclaims the property "to HELEN KRIST and STELLA SIDUN, as joint tenants with right of survivorship and not as tenants in common, whose street number and postoffice address is 3233 Stolzenfeld-Warren, MI 48091 and 2681 Dorchester-Birmingham, MI 48008. . . ." The deed was properly recorded with the Wayne County Register of Deeds.

Krist used the Hamtramck residence as rental property, taking primary responsibility for maintaining the property and collecting rent from its tenants. Plaintiff assisted Krist by driving her to the property to collect the rent and writing receipts. The utility bills for the property were sent to Krist's residence in Warren, and plaintiff assisted Krist in paying them as well. Krist developed Alzheimer's disease in the late 1990s. In 1998, Krist moved from her Warren residence to live with plaintiff and her husband in their Birmingham residence. Plaintiff's husband arranged to have the utility bills from the Hamtramck property sent to the Birmingham address. However, the Hamtramck city assessor and the county treasurer were not informed of Krist's new address. The Warren house was sold several months after Krist moved to Birmingham.

Wayne County tax bills are mailed to the address of the taxpayer, as recorded by the local assessor. During the tax years of 1999 to 2003, the county treasurer mailed all tax bills for the Hamtramck property to Krist at the Warren residence, which was consistent with the Hamtramck city assessor's records from that period. Plaintiff was not mentioned in the city assessor's records. Krist and plaintiff failed to pay the county property taxes on the Hamtramck property for the tax years 2000 and 2001, resulting in a tax delinquency of $2,066.45.

In accordance with the General Property Tax Act (GPTA), MCL 211.1 *et seq*., the county treasurer sent two notices of tax delinquency by first-class mail, address correction requested, to Krist at the Warren address. Notice of tax delinquency was also sent by certified mail, return receipt requested, to Krist at the Warren address; it was returned as undeliverable. After the property was forfeited to the county treasurer, a petition for foreclosure was filed on June 14, 2002. The county treasurer took several additional steps required by MCL 211.78i as part of the foreclosure proceedings. On the basis of the information located on the property's deed, the county treasurer sent notice of the show-cause and foreclosure hearings by certified mail addressed to both Krist and plaintiff at the Warren address on December 18, 2002. The letter was returned as undeliverable. A representative of the county treasurer visited the property and posted notice of the foreclosure petition on the property, as the representative was unable to personally meet with the occupant. The county treasurer also published notification three times in the public-notice section of the Michigan Citizen, a community

newspaper. However, notice was never sent to plaintiff's Birmingham residence, which was on the recorded deed.

Krist died on January 1, 2003. A show-cause hearing regarding why the property should not be foreclosed was held on January 14, 2003. The foreclosure hearing was held on February 26, 2003. On March 10, 2003, a judgment of foreclosure was entered against the property and absolute title vested in the county treasurer. The county treasurer sold the property at auction for $52,000 to the owner of Krist's former Warren residence. At the time of the purchase, the property had an appraised value of $85,000. Plaintiff and her husband learned of the sale from a tenant of the property, who contacted them after the new owner attempted to collect rent.

Plaintiff filed suit, alleging that she had been wrongfully deprived of her property without proper notice in violation of the GPTA and the Due Process Clause of the Michigan Constitution. The trial court denied plaintiff's motion for summary disposition and granted summary disposition for the county treasurer, ruling that the attempts to notify plaintiff satisfied due process and the requirements of the GPTA. Plaintiff appealed to the Court of Appeals, which, in a split decision, affirmed the trial court's order.[1] Plaintiff appealed to this Court; we vacated the judgment of the Court of Appeals and remanded for reconsideration in

[1] *Sidun v Wayne Co Treasurer*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2006 (Docket No. 264581).

light of *Jones*. 475 Mich 882 (2006). On remand, the Court of Appeals, again in a split decision, reached the same result, holding that *Jones* did not compel a different conclusion because the county treasurer's efforts to provide notice were sufficient to satisfy due process, particularly in light of the county's follow-up measure of posting notice on the property.[2] This Court granted plaintiff's application for leave to appeal. 480 Mich 864 (2007).

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). This Court also reviews constitutional issues de novo. *Harvey v Michigan*, 469 Mich 1, 6; 664 NW2d 767 (2003).

III. CONSTITUTIONAL NOTICE REQUIREMENTS

The Due Process Clause of the Michigan Constitution states: "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. The corresponding provision of the United States Constitution is applicable to Michigan through the Fourteenth Amendment, and provides in part, "nor shall any person . . . be deprived of life, liberty, or property, without due process of law." US Const, Am V. It is undisputed that plaintiff holds a property interest in the subject property; accordingly, she has a

[2] *Sidun v Wayne Co Treasurer*, unpublished opinion per curiam of the Court of Appeals, issued August 15, 2006 (Docket No. 264581).

constitutional right to due process of law before the government takes title to the property.

Proceedings that seek to take property from its owner must comport with due process.[3] A fundamental requirement of due process in such proceedings is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Interested parties are "entitled to have the [government] employ such means 'as one desirous of actually informing [them] might reasonably adopt' to notify [them] of the pendency of the proceedings." *Dow v Michigan,* 396 Mich 192; 240 NW2d 450 (1976), quoting *Mullane, supra* at 315. That is, the means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice. *Mullane, supra* at 315. However, "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *Jones*, *supra* at ___; 126 S Ct at 1713. In this case, the county treasurer attempted to notify plaintiff of the foreclosure proceedings, but actual notice was not achieved. Thus,

[3] "The state has no proper interest in taking a person's property for nonpayment of taxes without proper notice and opportunity for a hearing at which the person can contest the state's right to foreclose and cure any default determined." *Dow, supra* at 210 (applying *Mullane v Central Hanover Bank & Trust Co,* 339 US 306; 70 S Ct 652; 94 L Ed 865 [1950]).

the issue is whether the methods employed by the county treasurer were sufficient to satisfy due-process requirements.[4]

A notification method may be reasonable and constitutional if employing the method is "reasonably certain to inform those affected," or, when circumstances do not reasonably permit such notice, if the method employed is not substantially less likely to provide notice than other customary alternative methods. *Mullane*, *supra* at 315. Notably, *Mullane* recognized that the reasonableness of a particular method could vary, depending on what information the government had. That case concerned a New York law that merely required notice by publication to inform beneficiaries of a common trust fund that the fund was subject to judicial settlement. *Id*. at 309-310. The Court held that while notice by publication was constitutionally sufficient with regard to beneficiaries whose interests or addresses were unknown, notice by publication was insufficient

[4] While plaintiff also alleged violations of the GPTA, we will not review the disposition of these claims. As a practical matter, any remedies available to plaintiff are contingent on her constitutional claim since MCL 211.78(2) states in relevant part, "The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated." See also MCL 211.78i(10), which states, "The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States."

for beneficiaries whose names and addresses were known by the government. "Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." *Id*. at 318. Notice by publication was inadequate in the case of known beneficiaries "because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." *Id*. at 319.

Moreover, even if a statutory scheme is reasonably calculated to provide notice in the ordinary case, the United States Supreme Court has nevertheless "required the government to consider unique information about an intended recipient." *Jones*, *supra* at ___; 126 S Ct at 1716. The Court has explained that the "'notice required will vary with [the] circumstances and conditions.'" *Id*. at ___; 126 S Ct at 1714 (citation omitted). The government's knowledge that its attempt at notice has failed is a "'circumstance and condition' that varies the 'notice required.'" *Id*. (citations omitted). In such a case, the adequacy of the government's efforts will be evaluated in light of the actions it takes after it learns that its attempt at notice has failed. The Court explained, "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at ___; 126 S Ct at 1713. "What steps are reasonable in response to new information depends upon what the new information reveals." *Id*. at ___; 126 S Ct at 1718. For example, when certified mail is returned as

"unclaimed," it means either that the addressee still lives at that address but was not home when the mail was delivered and did not retrieve it, or that the addressee no longer resides at that address. *Id*. Under those circumstances, a reasonable follow-up measure aimed at the first possibility would be to resend the notice by regular mail. *Id*. at ___; 126 S Ct at 1718-1719. Reasonable follow-up measures directed at the possibility that the addressee had moved would be to post notice on the front door or to send notice addressed to "occupant." *Id*. at ___; 126 S Ct at 1719. Although the government must take reasonable additional steps to notify the owner, it is not required to go so far as to "search[] for [an owner's] new address in the . . . phonebook and other government records such as income tax rolls." *Id*. at ___; 126 S Ct at 1719. Ultimately, the Court did not prescribe the form of service that should be adopted in any given case, but simply observed that for purposes of its holding—which found the state's follow-up actions insufficient—it sufficed that additional reasonable steps were available for the state to employ before taking the property. *Id*. at ___; 126 S Ct at 1721.

IV. THE INITIAL ATTEMPT AT PROVIDING NOTICE

Applying the principles established by *Mullane* and *Jones* to this case, we conclude that the measures taken by the county treasurer to inform plaintiff of the foreclosure proceedings were constitutionally deficient. When there are multiple owners of a piece of property, due process entitles each owner to notice of foreclosure proceedings. See *Mennonite Bd of Missions v Adams*, 462 US 791, 799; 103 S Ct 2706; 77 L Ed 2d 180 (1983). The notice provisions of the GPTA

seek to fulfill this obligation. After the foreclosing governmental unit has determined the owners of a property interest in the subject property, it must send notice by certified mail to those owners at "the address reasonably calculated to apprise those owners" of the foreclosure proceedings. MCL 211.78i(2).[5] Pursuant to this provision, the county treasurer sent certified mail, addressed to both Krist and plaintiff, to the Warren residence. At the time the letter was sent, sending mail to Krist at the Warren address was a method reasonably calculated to notify her of the proceedings because that address was on file with the Hamtramck city assessor. Moreover, the deed confirmed that Krist lived at the Warren residence. However, using the same Warren address to contact both property owners was not reasonable in light of the information known by the county treasurer.

To identify all interest-holders in the property under MCL 211.78i(1), the county treasurer was required to consult the deed to the property.[6] And, in fact,

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[5] MCL 211.78i(2) provides in relevant part:

> [T]he foreclosing governmental unit or its authorized representative shall determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing under section 78j and the foreclosure hearing under section 78k and shall send notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those owners, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing.

[6] MCL 211.78i(1) states in part: "The foreclosing governmental unit shall initiate a search of records identified in subsection (6) to identify the owners of a property interest in the property who are entitled to notice under this section of the (continued…)

the county treasurer did consult the deed and discover plaintiff's property interest. But it was unreasonable for the county treasurer to assume that both property holders resided at the Warren address, when the deed denotes two property holders with different last names and references two separate addresses. Further, the initial reference linking Krist to the Warren residence supports the inference that the Birmingham address belongs to plaintiff, the other owner. The beginning of the deed states, "HELEN KRIST, formerly HELEN CHWALEBA, survivor of herself and ANDREW CHWALEBA, her former husband, . . . the address of which is 3266 Stolzenfeld-Warren, MI 48091 Quit Claims to HELEN KRIST AND STELLA SIDUN" the subject property. Immediately following this reference, the deed repeats the Warren address and mentions the Birmingham address for the first time; it lists Krist's name first and plaintiff's name second and then provides Krist's address first and plaintiff's address second. Although the deed does not specifically state, "the following is Sidun's address," a reasonable person would be able to infer that the *second address* is plaintiff's address given that plaintiff's name is the *second name* listed immediately above the addresses. Accordingly, the deed did not support the county treasurer's interpretation that both Krist and plaintiff resided at the single address, because that would leave the Birmingham address unexplained. The county treasurer also knew that Krist *alone*

(…continued)
show cause hearing under section 78j and the foreclosure hearing under section 78k." The first type of records specified in subsection (6) are land title records in the office of the county register of deeds. MCL 211.78i(6)(a).

was listed as the taxpayer for the property at the Warren address. In light of all the information, a reasonable person would deduce that Krist was connected to the Warren address, while plaintiff was connected to the Birmingham address. Accordingly, a person who actually wished to notify both property owners would have sent a letter to the Birmingham address, rather than operating as if it were never mentioned in the deed.

If the government provides notice by mail, due process requires it to be mailed to an "address reasonably calculated to reach the person entitled to notice." *Dow, supra* at 211. The address "reasonably calculated to reach [plaintiff]," a person who was entitled to notice, was her home address that was listed on the recorded deed in defendant's possession. Because defendant had plaintiff's address at hand, but failed to mail notice to her at that address, defendant failed to accord plaintiff minimal due process.

Our holding does not categorically require foreclosing entities to search for and send notice to additional addresses whenever multiple owners are entitled to notice of foreclosure. And neither due process nor the GPTA generally requires a foreclosing entity to send notice to all addresses that the entity has, or could have, discovered. The guiding principle remains that notice must be "reasonably calculated" to apprise interested parties of the action and to provide them an opportunity to be heard. *Mullane, supra* at 314; *Dow, supra* at 211. Under different circumstances, sending notice to multiple owners at one address may well satisfy this standard. But here, the deed in the treasurer's possession listed

two owners and two addresses, and, in light of the deed's wording, sending notice to both owners at the first address only was constitutionally insufficient.

V. THE FOLLOW-UP NOTIFICATION MEASURES

The follow-up measures taken by the county treasurer were insufficient to rectify the failed attempt to notify plaintiff. When the county treasurer learned that the certified mail sent to the Warren address had been returned, it was alerted that Krist, plaintiff, or both either did not live there or had not been home at the time. As additional steps, the county treasurer posted notice on the Hamtramck property and published notice. These both may be reasonable follow-up measures, as *Jones* recognized. However, *Jones* also indicated that what constitutes a reasonable follow-up measure depends on the circumstances, including what information the government had both before and after its failed attempt.

In this case, the county treasurer knew that there were two owners and two addresses listed on the deed, but it only sent notice to one address. When that notice failed with respect to *both* owners, a reasonable additional step would have been to attempt sending notice to the other address in the deed, whether addressed to Krist, plaintiff, or both. A person who actually desired to inform a real-property owner of an impending tax sale of a house she owns would not fail to send notice to the second of two addresses on the recorded deed that such person had in his possession, especially when the notice sent to the other address came back unclaimed. The reasonable alternative measure of sending notice to the Birmingham address was obviously available to the county treasurer, as *Jones*

requires, since the county treasurer had already consulted the deed to identify plaintiff as a property owner.

This step is far from asking the government to conduct a search for a new address in a phone book or income-tax rolls. See *Jones, supra* at ___; 126 S Ct at 1719. The burden on the government would have been slight; defendant would not have had to search for plaintiff's address because it was in the recorded deed that the county treasurer had already consulted, and it only involved exploring one alternative address. Thus, while the county treasurer should have sent notice to the Birmingham address when it first attempted to contact both property owners, it particularly should have done so when it learned that its initial methods of providing notice had failed. The address "reasonably calculated to reach [plaintiff]," *Dow, supra* at 211, a person who was entitled to notice, was her home address that was listed on the recorded deed in defendant's possession. Similarly, "'one desirous of actually' . . . notify[ing] [plaintiff] of the pendency of the proceedings," *Dow, supra* at 211, quoting *Mullane, supra* at 315, would certainly have mailed notice to plaintiff's home address that was listed on the recorded deed in defendant's possession, particularly when the notice mailed to the other address listed on the deed was returned unclaimed. "This is especially true when, as here, the subject matter of the [notice] concerns such an important and irreversible prospect as the loss of a house." *Jones, supra* at ___; 126 S Ct at 1716.

It is worth noting that the government's constitutional obligation to provide notice is not excused by an owner's failure to keep his or her address updated in

government records. A party's ability to take steps to safeguard its own interests does not relieve the government of its constitutional obligation. *Jones*, *supra* at ___; 126 S Ct at 1717. Similarly, "the common knowledge that property may become subject to government taking when taxes are not paid does not excuse the government from complying with its constitutional obligation of notice before taking private property." *Id*. On the contrary, "an interested party's 'knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending.'" *Id*. at ___; 126 S Ct at 1717, quoting *Mennonite Bd, supra* at 800. Thus, while plaintiff should have been more diligent regarding the tax liability on her property, the government may not take that property without providing due process of law.

VI. CONCLUSION

Given that plaintiff's due-process rights were violated, the circuit court erred in denying her motion for summary disposition and granting summary disposition for the county treasurer. Further, at the time plaintiff filed her claim, she sought only money damages, not to set aside the judgment of foreclosure. Indeed, the GPTA specifically precludes claims seeking to modify judgments of foreclosure and limits causes of action arising under the act to claims for money damages.[7] However, while plaintiff's appeal was pending, we decided *In re*

[7] MCL 211.78*l*(1) provides:

(continued…)

Petition by Wayne Co Treasurer, 478 Mich 1; 732 NW2d 458 (2007), in which we held unconstitutional the provisions of the GPTA that vest absolute title in the foreclosing governmental unit without allowing the circuit court to modify judgments of foreclosure if an owner has been deprived of due process. *Id*. at 10-11. Plaintiff is such an owner; thus, the provisions of the GPTA that limit her remedy to money damages and strip the circuit court of jurisdiction to set aside the foreclosure are unenforceable against her. We reverse the Court of Appeals judgment and remand the case to the circuit court for further proceedings consistent with this opinion.

Michael F. Cavanagh
Clifford W. Taylor
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman

(…continued)

> If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act 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.