

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 69 - L.D. 101

**An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the United States Supreme Court has ruled in *Tyler v. Hennepin County*, 598 U.S. \_\_\_ (2023) that a Minnesota local government sale of property that was acquired by the local government by foreclosure for failure of the owner to pay property taxes without returning to the former owner the surplus proceeds received by the government entity in excess of the amount owed by the former owner violated the takings clause of the Fifth Amendment to the United States Constitution stating that "private property [shall not] be taken for public use, without just compensation"; and

**Whereas,** statutes in this State governing the foreclosure and sale of property for failure to pay property taxes are substantially similar to the laws of Minnesota and are in jeopardy of being found unconstitutional by the United States Supreme Court; and

**Whereas,** the possibility of multiple legal challenges to the State's statutes regarding sale of property following foreclosure presents the possibility of significant disruption to municipal foreclosure sales, municipal expenditures resulting from challenges to foreclosure sale laws, uncertainty of title to properties sold for foreclosure pursuant to current laws, inconsistencies in municipal responses to the United States Supreme Court decision and general disruption of the foreclosure process; and

**Whereas,** amendment of the State's foreclosure statutes needs to take effect as soon as possible to avoid the significant negative effects of delay in ensuring that the state laws are within the bounds of the United States Constitution; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 36 MRSA §943-C**, as amended by PL 2019, c. 401, Pt. A, §10, is further amended to read:

**§943-C. Sale of ~~homesteads formerly owned by persons 65 years of age or older~~ foreclosed properties**

Notwithstanding any provision of law to the contrary, after the foreclosure process under sections 942 and 943 or sections 1281 and 1282 is completed and the right of redemption has expired, if a municipality chooses to sell to someone other than the ~~immediate former owner or owners~~ property that immediately prior to foreclosure received a property tax exemption as a homestead under subchapter 4-B, the municipal officers or their designee shall notify the ~~immediate former owner or owners~~ of the right to require the municipality to use the sale process under subsection 3 as long as the ~~immediate former owner or owners~~ demonstrate that the property meets the requirements of subsection 1. For the purpose of this section, "former owner" means the owner or owners of record at the time of foreclosure or, if deceased, the former owner's heirs, devisees or personal representatives. The notice must be sent by United States Postal Service certified mail, return receipt requested, and first-class mail to the last known address of the ~~immediate former owner or owners~~. If the municipality agrees to sell the property back to the ~~immediate former owner or owners~~, the alternative sale process under this section does not apply. If the sale to the ~~immediate former owner or owners~~ is not completed, the requirements of this section are reinstated.

**1. Subject property.** Property is subject to the requirements of this section if:

~~A. Immediately prior to foreclosure the property was owned by at least one person who, on the date the tax lien certificate was recorded, was 65 years of age or older and occupied the property as a homestead as defined in section 681, subsection 2; and~~

~~B. The former owner or owners of the property demonstrate to the municipal officers or their designee that:~~

~~(1) The income, as defined in section 5219-KK, subsection 1, paragraph D, of the former owner or owners of the property was less than \$40,000, after medical expenses have been deducted, for the calendar year immediately preceding the calendar year in which the right of redemption expired; and~~

~~(2) The value of liquid assets of the former owner or owners of the property is less than \$50,000 in the case of a single individual or \$75,000 in the case of 2 or more individuals. For the purposes of this paragraph, "liquid assets" means something of value available to an individual that can be converted to cash in 3 months or less and includes bank accounts, certificates of deposit, money market or mutual funds, life insurance policies, stocks and bonds, lump-sum payments and inheritances and funds from a home equity conversion mortgage that are in the individual's possession whether they are in cash or have been converted to another form.~~

The former owner or owners must provide documentation verifying the former owner's or owners' income and liquid assets.

All applications or information submitted in support of an application under this subsection, files and communications relating to the application and the determination on the application are confidential records. Hearings and proceedings held pursuant to this subsection must be held in executive session.

**2. Notification; appeal.** At least 90 days prior to listing property described in subsection 1 for sale, the municipal officers or their designee shall notify send a written notice to the last known address of the former owner or owners, by United States Postal Service certified mail, return receipt requested, and first-class mail, of the former owner's or owners' right to require the sale process described in subsection 3. The municipal officers or their designee shall include with the notice an application form with instructions concerning application procedures and submission of information necessary for the municipality to determine whether the former owner or owners meet the conditions required under subsection 1. The former owner or owners must be allowed at least 30 days from the date the notice is mailed to submit the required application form and information. The municipal officers or their designee, within 30 days after receiving the required form and information, shall notify the former owner or owners whether the former owner or owners have been determined to be eligible for the sale process described in subsection 3 and inform the former owner or owners of the right to appeal pursuant to the Maine Rules of Civil Procedure, Rule 80B. The State Tax Assessor shall prepare application forms, notices and instructions that must be used by municipalities to inform former owners of their right to apply for the sale process provided under subsection 3.

**3. Sale process requirements.** If a municipality determines that the former owner or owners meet the conditions specified under subsection 1 the former owner submits a written demand within 90 days after the notification in subsection 2 that the sale process of this subsection be used, the municipal officers or their designee shall:

- A. List the property for sale with a real estate broker licensed under Title 32, chapter 114 who does not hold an elected or appointed office in the municipality and is not employed by the municipality;
- B. Sell the property at fair market value via quitclaim deed to the successful buyer at the highest price at which the property is able to sell, or the price at which the property is anticipated by the real estate broker to sell within 6 months after listing; and
- C. Pay to the former owner or owners any proceeds from the sale sale proceeds in excess of:
  - (1) The sum of all taxes owed on the property;
  - (2) Property taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the municipality;
  - (3) All accrued interest;
  - (4) Fees, including property listing and real estate broker's fees; and
  - (5) Any other expenses incurred by the municipality in selling or maintaining the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed and reasonable attorney's fees;

(6) The cost to the municipality of the lien and foreclosure process, including, but not limited to, reasonable attorney's fees; and

(7) Unpaid sewer, water or other utility charges and fees imposed by the municipality.

If the municipal officers are unable to list or sell the property under the requirements of paragraphs A and B, or if the property tax payer does not request that the property be sold according to the sale process in this subsection, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, if the municipal officers pay the former owner any excess sale proceeds as calculated in paragraph C.

~~**4. Effect of inability to contract or sell property.** If, after attempting to contract with at least 3 real estate brokers who meet the requirements of subsection 3, paragraph A, a municipality is unable to contract with a real estate broker for the sale of the property as described in subsection 3 or the broker cannot sell the property within 6 months after listing, the municipality may retain, sell or dispose of the property in the same manner as other property acquired through the tax lien foreclosure process.~~

**5. Property in the unorganized territory.** With regard to the sale of property acquired by the State through tax lien foreclosure in the unorganized territory, the State Tax Assessor has the obligations of a municipality under this section.

**6. Quitclaim deed and waiver of former owner.** As a condition of disbursement of excess sale proceeds to the former owner under subsection 3, paragraph C, the municipal officers may require the former owner to execute a quitclaim deed without covenant conveying any interest of the former owner in the property to the municipality and to deliver that deed before conveyance by the municipality to the buyer. Receipt of such excess sale proceeds by the former owner is deemed to be a waiver of any right of the former owner to commence any action pursuant to section 946-B.

**Sec. 2. Working group established.** The Department of Administrative and Financial Services, Maine Revenue Services shall establish a Working Group to Study Equity in the Property Tax Foreclosure Process, referred to in this section as "the working group."

**1. Membership.** The State Tax Assessor shall appoint the members of the working group from among those who are interested in property tax lien foreclosure and which must include at least the following:

- A. A representative of the Office of the Attorney General;
- B. One member from an organization representing municipal tax assessors;
- C. One member from a statewide organization that represents the interests of municipalities;
- D. One member representing the Maine Association of Realtors;
- E. One member representing a statewide organization that represents commercial bankers;
- F. One member representing a statewide organization that represents attorneys working in the field of property title law;
- G. One member representing property title insurance agents; and

H. One member representing an organization of legal services providers that specializes in serving clients who are 65 years of age or older or who have low income.

**2. Chair.** The State Tax Assessor, or the assessor's designee, shall serve as the chair of the working group.

**3. Appointments; convening of working group.** All appointments must be made no later than 30 days following the effective date of this Act.

**4. Duties.** The working group shall study issues associated with the process of foreclosure on property for failure of the owner to pay property taxes, including, but not limited to:

A. The recent decision of the United States Supreme Court regarding municipal retention of excess revenue retained by a government entity from the sale of property acquired by the government entity following foreclosure for failure of the former owner to pay property taxes;

B. The constitutional requirements of due process and the takings clause and their impact on the property tax lien foreclosure process, including notice requirements to delinquent taxpayers and related entities that hold liens or mortgages to the property to which the foreclosure is being applied and conditions under which a government entity is or should be entitled to retain excess funds acquired through sale of property that has been acquired by foreclosure;

C. The role of the Maine Redevelopment Land Bank Authority, mortgage holders and other lienholders and the rights of each in the tax lien foreclosure process;

D. Whether the tax lien foreclosure process is or should be the same for both residential property and commercial property or whether differences are necessary or desirable;

E. The rights of former owners, commercial lenders or lienholders and government entities when property has been acquired for nonpayment of property tax and the government entity does not intend to sell the property; and

F. Whether a redemption period following foreclosure is necessary when the former owner has the right to reacquire the property, the statute of limitations on a former owner's ability to reacquire property or bring action to recover excess funds obtained by a government entity through foreclosure sale and the extent of the rights of subsequent purchasers.

**5. Staff assistance.** The State Tax Assessor shall provide necessary staffing services to the working group.

**6. Provision of information to working group.** The Department of Administrative and Financial Services, Maine Revenue Services shall provide to the working group information, consistent with the restrictions set forth in the Maine Revised Statutes, Title 36, section 191, that is requested by the working group.

**7. Report.** No later than January 15, 2024, the working group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 131st Legislature. The Joint Standing Committee on Taxation may report out legislation related to the report to the Second Regular Session.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.