

Motion for Proceeds Following Judgment of Foreclosure¹

[MCL 211.78t](#) sets forth requirements for when a claimant² submits notice of intention to claim an interest in remaining proceeds³ from the transfer or sale of foreclosed property under [MCL 211.78m](#).⁴ [MCL 211.78t](#) “is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of [Michigan]. A right to claim remaining proceeds under [[MCL 211.78t](#)] is not transferable except by testate or intestate succession.” [MCL 211.78t\(11\)](#). [Stage 1](#) and [Stage 2](#) of this document provide checklists regarding notice requirements imposed on the claimant and foreclosing governmental unit. [Stage 3](#) and [Stage 4](#) provide checklists regarding filing requirements imposed on the claimant and foreclosing governmental unit. [Stage 5](#) provides a checklist for the court hearing and order.

Stage 1 - Notice Required to be Served on Foreclosing Governmental Unit by Claimant

IF THE FORECLOSED PROPERTY WAS TRANSFERRED OR SOLD AFTER JULY 17, 2020:

¹See also *Tyler v Hennepin Co, Minn*, 598 US 631 (2023), *Rafaeli, LLC v Oakland Co*, 505 Mich 429 (2020), *Jackson v Southfield Neighborhood Revitalization Initiative*, ___ Mich App ___ (2023), *In re Petition of Muskegon Co Treasurer for Foreclosure*, ___ Mich App ___ (2023), and *In re Petition of Barry Co Treasurer for Foreclosure*, ___ Mich App ___ (2024).

²“Claimant” means “a person with a legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property under [[MCL 211.78k](#)] who seeks pursuant to [[MCL 211.78t](#)] recognition of its interest in any remaining proceeds associated with the property.” [MCL 211.78t\(12\)\(a\)](#).

³“Remaining proceeds” means “the amount equal to the difference between the amount paid to the foreclosing governmental unit for a property due to the sale or transfer of the property under [[MCL 211.78m](#)] and the sum of all of the following: (i) The minimum bid under [[MCL 211.78m](#)]. (ii) All other fees and expenses incurred by the foreclosing governmental unit pursuant to [[MCL 211.78m](#)] in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of the property not included in the minimum bid. (iii) A sale commission payable to the foreclosing governmental unit equal to 5% of the amount paid to the foreclosing governmental unit for the property.” [MCL 211.78t\(12\)\(b\)](#).

⁴[MCL 211.78m](#) addresses the entry of judgment and vesting of title to tax delinquent property.

- The claimant must notify the foreclosing governmental unit using a form prescribed by the department of treasury by July 1 immediately following the effective date of the foreclosure of the property. [MCL 211.78t\(1\)\(a\)](#); [MCL 211.78t\(2\)](#).
- Notice must be by personal service acknowledged by the foreclosing governmental unit or by certified mail, return receipt requested. [MCL 211.78t\(2\)](#).
- Notice must be notarized and include all of the following:
 - The name of the claimant.
 - The telephone number of the claimant.
 - The address at which the claimant wants to receive service.
 - The parcel identification number of the property, and, if available, the address of the property.
 - An explanation of the claimant's interest in the property.
 - A description of any other interest in the property immediately before the foreclosure under [MCL 211.78k](#) held by other persons and known by the claimant, including a lien or a mortgage.
 - A sworn statement or affirmation by the claimant that the information included in the notice is accurate. [MCL 211.78t\(2\)\(a\)-\(g\)](#).
- IF THE FORECLOSED PROPERTY WAS TRANSFERRED OR SOLD BEFORE JULY 18, 2020:**
 - A claim may be made only if the Michigan Supreme Court orders that its decision in *Rafaeli, LLC v Oakland Co*, 505 Mich 429 (2020), applies retroactively. [MCL 211.78t\(1\)\(b\)\(i\)](#).
 - The claimant must notify the foreclosing governmental unit using the form prescribed by the department of treasury under [MCL 211.78t\(2\)](#) in the manner prescribed under [MCL 211.78t\(2\)](#) by the March 31 at least 180 days after any qualified order. [MCL 211.78t\(1\)\(b\)\(ii\)](#); [MCL 211.78t\(6\)](#).
 - By the following July 1, the foreclosing governmental unit must provide each claimant with a notice relating to the foreclosed property in the form and manner provided

under [MCL 211.78t\(3\)](#) (see [Stage 2](#)). [MCL 211.78t\(1\)\(b\)](#); [MCL 211.78t\(6\)](#).

Stage 2 - Notice Required to be Served on Claimant by Foreclosing Governmental Unit

- No later than January 31 immediately succeeding the sale or transfer of the property, the foreclosing governmental unit must send by certified mail, return receipt requested, a notice in a form prescribed by the department of treasury to each claimant that notified the foreclosing governmental unit pursuant to [MCL 211.78t\(2\)](#). [MCL 211.78t\(3\)](#).
- The notice must include the following information:
 - The parcel identification number of the property.
 - The legal description of the property.
 - The address for the property if available.
 - The date on which the property was sold or transferred or a statement indicating that the property was not sold or transferred.
 - The minimum bid for the property as determined by the foreclosing governmental.
 - The amount for which the property was sold or transferred.
 - The amount of the sale cost recovery for the property, which must be equal to 5% of the amount under [MCL 211.78t\(3\)\(f\)](#).
 - The amount of any outstanding unpaid state, federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure of the property under [MCL 211.78k](#) based on the records of the foreclosing governmental unit.
 - The total amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit.
 - The name and address provided by each claimant for the property pursuant to [MCL 211.78t\(2\)](#).
 - A statement that a claimant must file pursuant to [MCL 211.78t\(4\)](#) a motion with the circuit court in the same

proceeding in which the judgment of foreclosure of the property was effective under [MCL 211.78k](#) to claim any remaining proceeds payable to the claimant. The statement must include the case number assigned to the proceeding, the name of the judge assigned to the proceeding, and contact information for the clerk of the circuit court. [MCL 211.78t\(3\)\(a\)-\(k\)](#).

Stage 3 - Filing of Motion by Claimant

IF THE PROPERTY WAS TRANSFERRED OR SOLD AFTER JULY 17, 2020:

- After receipt of a notice under [MCL 211.78t\(3\)](#) (see [Stage 2](#)), the claimant may file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under [MCL 211.78k](#) to claim any portion of the remaining proceeds. [MCL 211.78t\(4\)](#).
- The motion must be filed between February 1 immediately succeeding the date on which the property was sold or transferred and the immediately succeeding May 15. [MCL 211.78t\(4\)](#). The motion may not be filed after that May 15 if notice was provided under [MCL 211.78i](#) of the show cause hearing under [MCL 211.78j](#) and the foreclosure hearing under [MCL 211.78k](#) before the show cause hearing and the foreclosure hearing, notwithstanding [MCL 211.78l](#).⁵ [MCL 211.78t\(4\)](#).
- The motion must indicate:
 - Whether the claimant or an entity in which the claimant held a direct or indirect interest purchased the property.
 - Whether the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed. [MCL 211.78t\(4\)\(a\)-\(b\)](#).

IF THE PROPERTY WAS TRANSFERRED OR SOLD BEFORE JULY 18, 2020:

- The claimant may file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under [MCL 211.78k](#) by the

⁵[MCL 211.78l](#) provides in pertinent part that “the owner of extinguished recorded or unrecorded interest in that property shall not bring an action, including an action for . . . any proceeds from the sale or transfer of the property . . . more than 2 years after the judgment of foreclosure of the property is effective under [[MCL 211.78k](#)]. . . . An action to recover any proceeds from the sale or transfer of property foreclosed for nonpayment of real property taxes . . . must be brought as provided under [[MCL 211.78t](#)].” [MCL 211.78l\(1\)](#).

following October 1 to claim any portion of the remaining proceeds. [MCL 211.78t\(6\)](#).

The motion must be certified and include all of the following:

- The name of the claimant filing the motion.
- The telephone number of the claimant.
- The address at which the claimant wants to receive service.
- The parcel identification number of the property, and, if available, the address of the property.
- An explanation of the claimant's interest in the property.
- A description of any other interest in the property, including a lien or a mortgage, immediately before the foreclosure under [MCL 211.78k](#) held by any other person or entity known by the claimant.
- A statement indicating that the claimant or an entity in which the claimant held a direct or indirect interest did or did not purchase the property.
- A statement indicating that the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed.
- A sworn statement or affirmation by the claimant that the information included in the motion is accurate. [MCL 211.78t\(6\)\(a\)-\(i\)](#).

WHETHER THE MOTION IS FILED PURSUANT TO [MCL 211.78T\(4\)](#) OR [MCL 211.78T\(6\)](#), THE MOTION MUST INDICATE:

- The specific basis for the claimant's asserted interest in some or all of the remaining proceeds, including the claimant's interest in the property immediately before its foreclosure under [MCL 211.78k](#) and documentation evidencing that interest. [MCL 211.78t\(8\)](#).
- The claimant must affirm they did not transfer and were not otherwise divested of their interest in the property before the judgment of foreclosure was effective under [MCL 211.78k](#). [MCL 211.78t\(8\)](#).

- If a claimant had a lien or other security interest in the property at the time the judgment of foreclosure was effective under [MCL 211.78k](#), the claimant must indicate the amount owed to the claimant pursuant to the lien or security interest and the priority of the claimant's lien or security interest. [MCL 211.78t\(8\)](#).
- The motion must be verified and include a sworn statement or affirmation by the claimant of its accuracy. [MCL 211.78t\(8\)](#).
- The claimant must serve a copy of the motion on the foreclosing governmental unit. [MCL 211.78t\(8\)](#).

Stage 4 - Required Filings by the Foreclosing Governmental Unit

- Following the end of the claim period in [MCL 211.78t\(4\)](#), or after receipt of a motion under [MCL 211.78t\(6\)](#) (see [Stage 3](#)), the foreclosing governmental unit must file with the circuit court proof of service of the notice required under [MCL 211.78t\(3\)](#) (see [Stage 2](#)) and, for each property for which a claimant provided notice under [MCL 211.78t\(2\)](#) or filed a motion under [MCL 211.78t\(6\)](#), a list of all of the following information:
 - The parcel identification number of the property. [MCL 211.78t\(5\)\(a\)](#); [MCL 211.78t\(7\)\(a\)](#).
 - The legal description of the property. [MCL 211.78t\(5\)\(b\)](#); [MCL 211.78t\(7\)\(b\)](#).
 - The address for the property if available. [MCL 211.78t\(5\)\(c\)](#); [MCL 211.78t\(7\)\(c\)](#).
 - The date on which the property was sold or transferred or, a statement indicating that the property was not sold or transferred. [MCL 211.78t\(5\)\(d\)](#); [MCL 211.78t\(7\)\(d\)](#).
 - The minimum bid for the property as determined by the foreclosing governmental unit. [MCL 211.78t\(5\)\(e\)](#); [MCL 211.78t\(7\)\(e\)](#).
 - The amount for which the property was sold or transferred. [MCL 211.78t\(5\)\(f\)](#); [MCL 211.78t\(7\)\(f\)](#).
 - The amount of the sale commission for the property, which must be equal to 5% of the amount under [MCL 211.78t\(5\)\(f\)](#) or [MCL 211.78t\(7\)\(f\)](#). [MCL 211.78t\(5\)\(g\)](#); [MCL 211.78t\(7\)\(g\)](#).
 - The amount of any outstanding unpaid state, federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure

of the property under [MCL 211.78k](#) based on the records of the county treasurer. [MCL 211.78t\(5\)\(h\)](#); [MCL 211.78t\(7\)\(i\)](#).⁶

- The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property. [MCL 211.78t\(5\)\(i\)](#); [MCL 211.78t\(7\)\(h\)](#).⁷
- The name and address provided by each claimant for the property pursuant to [MCL 211.78t\(2\)](#) or [MCL 211.78t\(6\)](#). [MCL 211.78t\(5\)\(j\)](#); [MCL 211.78t\(7\)\(j\)](#).

Stage 5 - Hearing and Order on the Motion

- After the foreclosing governmental unit responds to a claimant's motion (see [Stage 4](#)) the court must set a hearing date and time for each property for which 1 or more claimants has filed a motion and provide notice to each claimant and the foreclosing governmental unit at least 21 days before the hearing date. [MCL 211.78t\(9\)](#).
- At the hearing, determine the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective. The claimant carries the burden of proof of interest in any remaining proceeds. [MCL 211.78t\(9\)](#).
- The court must order payment to the foreclosing governmental unit of a sale commission equal to 5% of the amount for which the property was sold. Any remaining proceeds must be allocated based upon determination and order that the foreclosing governmental unit pay applicable remaining proceeds to 1 or more claimants consistent with [MCL 211.78t\(9\)](#). [MCL 211.78t\(9\)](#).
- An order must not unjustly enrich a claimant at the expense of the public. [MCL 211.78t\(9\)](#).
- The order must require that remaining proceeds be applied to any unpaid obligations payable to a tenant at the time the foreclosure was effective or any unpaid civil fines relating to the property owed at the time the foreclosure was effective for

⁶[MCL 211.78t\(5\)\(a\)-\(j\)](#) and [MCL 211.78t\(7\)\(a\)-\(j\)](#) mirror each other with the exception of [MCL 211.78t\(5\)\(h\)](#), which mirrors [MCL 211.78t\(7\)\(i\)](#).

⁷[MCL 211.78t\(5\)\(a\)-\(j\)](#) and [MCL 211.78t\(7\)\(a\)-\(j\)](#) mirror each other with the exception of [MCL 211.78t\(5\)\(i\)](#), which mirrors [MCL 211.78t\(7\)\(h\)](#).

violation of an ordinance authorized by [MCL 117.4l](#). [MCL 211.78t\(9\)](#).

- ❑ The order must provide for the payment of any unpaid amounts not otherwise payable to another claimant to satisfy a state, federal, or local tax collecting unit tax lien immediately preceding the effective date of the foreclosure under [MCL 211.78k](#) if the lien had priority over the claimant's interest in the property. [MCL 211.78t\(9\)](#).
- ❑ The order must indicate that any further claim by a claimant under this act relating to the foreclosed property is barred. [MCL 211.78t\(9\)](#).
- ❑ The foreclosing governmental unit must pay the amounts ordered by the court to the claimants and any other persons ordered by the court under [MCL 211.78t\(9\)](#) within 21 days of the order pursuant to [MCL 211.78m](#). [MCL 211.78t\(10\)](#).