

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 557 (Delegate Holmes)
 Ways and Means

Property Tax - In Rem Foreclosure and Sale - Vacant and Abandoned Property

This bill establishes procedures for counties and municipalities to authorize by law a process to initiate a judicial in rem foreclosure proceeding. Only real property that consists of a vacant lot, or an improved property cited as vacant and unfit for habitation on a housing or building violation, may be sold under this procedure. The bill specifies that the Court of Appeals is required to adopt rules to carry out provisions of the bill, and that a county or municipality may not file a complaint for an in rem foreclosure action under the bill until such rules are effective.

Fiscal Summary

State Effect: General fund expenditures increase by \$61,900 for programming costs in FY 2020 only. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	61,900	0	0	0	0
Net Effect	(\$61,900)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Because the bill only authorizes local governments to take specified actions relating to establishing procedures for in rem foreclosures and sales, the overall impact is expected to be minimal. However, local governments may benefit from the bill's provisions by returning vacant and abandoned property to productive use more quickly.

Small Business Effect: None.

Analysis

Bill Summary: “Interested party” means (1) the person who last appears as owner of real property on the collector’s tax roll; (2) a mortgagee of the property or assignee of a mortgage of record; (3) a holder of a beneficial interest in a deed of trust recorded against the real property; or (4) any person having an interest in the real property whose identity and address are reasonably ascertainable from the county land records or revealed by a full title search consisting of at least 50 years. Tax means any tax, or charge of any kind due to the State or any of its political subdivisions or to any other taxing agency, that by law is a lien against the real property on which it is imposed or assessed. Tax includes interest, penalties, and service charges.

In Rem Foreclosure and Sale

A law enacted by a county or municipality that authorizes an in rem foreclosure and sale must meet specified criteria. It must (1) state the date after which real property may be subject to in rem foreclosure and sale; (2) establish criteria for designating real property to be foreclosed and sold; (3) authorize the county or municipality to file a complaint for an in rem foreclosure on behalf of the governing body of the county or municipality; and (4) include administrative rules and procedures necessary to carry out an in rem foreclosure and sale.

Designation of Property

A county or municipality may designate real property to be sold under in rem foreclosure and sale procedures. After real property is designated for sale, the county or municipality must file a complaint for an in rem foreclosure action. The county or municipality may not file a complaint for an in rem foreclosure action unless the tax on the real property has been delinquent for at least six months.

Required Notice

At least 60 days before filing a complaint for an in rem foreclosure, the county or municipality must notify all other taxing agencies that have the authority to collect tax on the real property of the county or municipality’s intention to file a complaint for an in rem foreclosure of the real property. Within 30 days after receiving notice, a taxing agency must certify to the county or municipality a statement of all taxes due to the taxing agency. All taxes that are certified must be included in the foreclosure action and cease to be a lien against the real property if a judgment is entered foreclosing the existing interests of all interested parties in the real property.

Filing a Complaint

Before filing the complaint, the county or municipality must obtain a lien release from the State for any liens for unpaid State property taxes, interest, and penalties or pay to the State any unpaid State property taxes, interest, and penalties. The county or municipality must file the complaint for an in rem foreclosure in the circuit court of the county where the real property is located.

The complaint for an in rem foreclosure must include identifying information relating to the jurisdiction, the property, and the interested parties, as specified. The complaint must also include (1) a statement that the real property is a vacant lot or improved property cited as vacant and unfit for habitation on a housing or building violation notice; (2) copies of any violation notice cited; (3) a request that the circuit court not schedule a hearing on the complaint until 30 days after the date that the complaint is filed; and (4) a request that the circuit court enter a judgment that forecloses the existing interests of all interested parties in the real property and orders the real property to be sold at public auction.

A complaint for an in rem foreclosure may be amended to include all taxes that become delinquent after the commencement of the in rem foreclosure action.

Hearing, Entry of Judgement, and Sale of Property

A circuit court is prohibited from setting a hearing for an in rem foreclosure until 30 days after the complaint for an in rem foreclosure is filed. At the hearing, any interested party has the right to be heard and to contest the delinquency of the taxes and the adequacy of the proceedings. If the circuit court finds that the information set forth in the complaint is accurate, the court must (1) enter a judgment that proper notice has been provided to all interested parties, and the real property is a vacant lot or improved property cited as vacant and unfit for habitation on a housing or building violation notice and (2) order that the real property be sold.

After entry of judgment, the county or municipality must sell, in accordance with the Maryland Rules, the real property at public auction. The real property may not be sold until 45 days after the entry of judgment. The minimum bid for the sale of the real property must be based on the fair market value of the real property, as determined by the county or municipality. The real property must be sold to the person making the highest bid. The person making the highest bid is required to pay the full bid amount to the county or municipality. If the minimum bid is not made or exceeded, the county or municipality that filed the complaint may bid the minimum bid price and purchase the real property. If the highest bid exceeds the minimum bid amount, the county or municipality must deposit the funds in excess of the minimum bid in an escrow account. The circuit court is required to distribute the funds deposited into escrow to the interested parties in the order of priority

of the interests of the interested parties. After the sale, the county or municipality must file a notice informing the circuit court of the sale and stating the date of the sale. The sale of real property is final and binding on the maker of the highest bid.

Required Report

Within 90 days after each sale, the county or municipality must file a report of the sale with the circuit court. The report must identify the sale that took place, the sale price, and the identity of the purchaser. The county or municipality may consolidate multiple sale reports.

Current Law: Under common law, an “in rem” action is generally a legal action taken against a thing, such as property, as opposed to a legal action taken against a person.

For general information about the tax sale process, see the **Appendix – Tax Sale Process**.

Tax Sales of Vacant and Abandoned Property

Chapter 568 of 2018 addressed the tax sale of vacant and abandoned property by expanding several provisions of law that were previously only applicable in Baltimore City. Chapter 568 authorizes each county or municipal corporation to, among other things, release liens to facilitate the transfer of properties sold at tax sale, sell abandoned property for less than the total amount owed, and expedite the foreclosure of abandoned property. Chapter 568 also authorizes counties to withhold properties from sale that have been designated for redevelopment purposes.

Under Chapter 568, abandoned property consisting of either a vacant lot or improved property cited as vacant and unfit for habitation on a housing or building violation notice may be sold at auction for a sum less than the total amount of all taxes, interest, and expenses. The person responsible for the taxes prior to the sale must remain liable to the collector for the difference between the amount received in the tax sale and the taxes, interest, penalties, and expenses remaining after the sale. The collector must establish a minimum bid for abandoned property.

Additionally, Chapter 568 specifies that a certificate for abandoned property with a minimum bid less than the lien amount reverts to the county or municipal corporation and is void unless a proceeding to foreclose the right of redemption is filed within three months of the date of the certificate of sale and the holder is granted an extension by the court. The holder of a certificate of sale for abandoned property with a minimum bid less than the lien amount may file a complaint to foreclose all rights of redemption in the property at any time after the date of sale.

When the governing body of a county or municipal corporation becomes the holder of a certificate of sale, the governing body may file a complaint, at any time after the date of sale, to foreclose all rights of redemption in abandoned property consisting of a vacant lot or improved property cited as vacant and unfit for habitation on a housing or building violation notice.

Sale of Property to Enforce a Lien for Water and Sewer Service in Baltimore City

Chapter 714 of 2018 (1) requires the tax collector in Baltimore City to withhold residential property from sale if the taxes on the property consist only of a lien for unpaid water and sewer charges, and (2) prohibits the Mayor and City Council of Baltimore City from selling a property to enforce a lien for unpaid charges for water and sewer service, unless the property is not a residential property, the lien is for at least \$350, and the unpaid charges are at least three quarters in arrears. These provisions terminate December 31, 2019.

Absent the effects of Chapter 714, in Baltimore City, the mayor and city council may not sell a property solely to enforce a lien for unpaid charges for water and sewer service unless (1) the lien is for at least \$350 for a property other than owner-occupied, residential property or (2) the lien is for at least \$750, and the unpaid charges for water and sewer service are at least three quarters in arrears for an owner-occupied, residential property.

The mayor and city council may enforce a lien on a property other than owner-occupied, residential property for unpaid water and sewer service that is less than \$350 if the property is being sold to enforce another lien. Similarly, the mayor and city council may enforce a lien on owner-occupied, residential property for unpaid water and sewer service that is less than \$750 if the property is being sold to enforce another lien.

Sale of Property to Enforce a Lien for Unpaid Sanitary Commission Benefit Assessments

Kent County: The governing body of Kent County may authorize by local law the sale of real property to enforce a lien based on unpaid sanitary commission assessments or other charges. The procedures for establishment, notification, and enforcement of a lien must conform to specified standards in the Code of Kent County.

Allegany, Dorchester, and Somerset Counties: In Allegany, Dorchester, and Somerset counties, the sanitary commission may request the county tax collector to conduct a sale of real property to enforce a lien for unpaid sanitary commission benefit assessments or other charges. The sale must occur at a county tax sale using the same procedures governing the sale of property for delinquent property taxes.

Background: The tax sale system in Maryland, like many states throughout the country, is designed for local counties to collect delinquent real property taxes and other unpaid

charges owed to the counties (such as water or environmental liens), all of which are liens against the real property.

Each county in Maryland conducts an annual tax sale, whereby the tax liens are offered to the public at auction. Generally, the highest bidder in the auction pays the total amount of the tax liens to the county and receives a tax sale certificate from the county which gives the bidder the right to obtain ownership of the property by filing a tax sale foreclosure lawsuit.

Every owner of record of real property must pay real estate property taxes on that property, and any other fees that become liens on the property if unpaid. Real estate property taxes and fees on rental properties are the responsibility of the property owner. If there is a mortgage on the property, it is the responsibility of the property owner to send or deliver the real estate property tax bill to the bank, building association, or other lending institution. Many times however, mortgage companies pay the real estate property tax bills. Real estate property taxes are due and payable every year even if there is no mortgage due on the property.

Generally, once properties are deemed delinquent, and the owner does not pay within a certain timeframe, the property enters tax sale. Investors purchase the liens, allowing the jurisdiction to collect on those liens and receive the outstanding amounts all at one time. The tax sale purchaser has two years to redeem the lien or foreclose on the property. Homeowners in this situation can redeem the lien by paying the purchaser the amount of the lien, plus up to 18% interest in some jurisdictions, plus various fees outlined in the current statute. In the case of vacant property liens, many are not sold at tax sale and, therefore, the liens continue to accumulate and the properties continue to be a nuisance on the community.

Task Force to Study Tax Sales in Maryland

Chapters 615 and 616 of 2017 established a task force to study tax sales in the State. The task force was required to (1) evaluate and assess the impact of tax sales in Maryland; (2) evaluate how tax sales are conducted in each county; (3) evaluate tax sales to collect delinquent water charges and alternative methods of collecting delinquent water charges; and (4) examine and make recommendations for reform of the tax sale process in Maryland. The task force met four times during the 2017 interim and issued its report in January 2018.

This bill is based on one of the task force's recommendations. The recommendation is as follows:

Enable jurisdictions to voluntarily create the judicial In Rem tax sale system recommended by the Center for Community Progress, with additions that provide constitutionally defensible language for jurisdictions to select which properties go through this system. The In Rem system is for vacant

properties. In essence, it allows jurisdictions to use a deed sale system to address vacant properties, not a tax sale certificate system, in which clear and insurable title is delivered at the completion of the deed sale system.

Under this new system, if the jurisdiction chooses to do so, the jurisdiction would establish a date certain by which property owners would either have to pay off delinquent taxes (or, if eligible, enter into a payment plan) or face foreclosure. The jurisdiction would then auction off the deed and, in the absence of any bidder, would assume ownership of the property. In cases where jurisdictions will establish land banks, the property can be transferred to the land bank for disposition and redevelopment.

In 2017, the General Assembly gave land banks the power of lien release and updated other aspects of the land bank statute to make land banks a better tool for blight elimination.

State Fiscal Effect: The Judiciary (Administrative Office of the Courts) advises that general fund expenditures will increase by \$61,964 in fiscal 2020 for computer programming upgrades necessary to implement the provisions of the bill. The estimate is based on approximately 581 additional work hours for analysis, programming, and testing.

Additional Information

Prior Introductions: HB 1246 of 2018 received a hearing in the House Ways and Means Committee, but no further action was taken. Its cross file, SB 954, passed the Senate as amended and received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: SB 509 (Senator Eckardt, *et al.*) - Budget and Taxation.

Information Source(s): Montgomery and Worcester counties; cities of Salisbury and Westminster; Maryland Municipal League; Town of Leonardtown; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; State Department of Assessments and Taxation; Department of Legislative Services

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Appendix – Tax Sale Process

In general, a tax collector must sell, at an auction, not later than two years from the date the tax is in arrears, all property in the county on which the tax is in arrears. However, this requirement does not apply in Baltimore City, and statute is silent as to any timeline for the sale. The time for the tax sale is established by local law. Failure of the collector to sell the property within the two-year period does not affect the validity or collectability of any tax or the validity of any sale subsequently made.

The tax collector sets specified terms for the auction and publishes public notice of the tax sale, including requirements for potential bidders.

When a property is purchased at a tax sale, the purchaser must pay to the tax collector any delinquent taxes, penalties, sale expenses, and a high-bid premium except as otherwise specified. Except for agricultural property, when a bidder at a tax sale purchases a property in Baltimore City and Prince George's County under specified circumstances, the bidder must pay a high-bid premium that is the greater of 20% of the amount by which the highest bid exceeds the lien amount or 40% of the property's full cash value. The terms for payment of the purchase price and high-bid premiums, if any, are determined by the collector.

Generally, the property owner has the right to redeem the property within six months from the date of the tax sale by paying the total lien amount on the property, delinquent taxes, penalties, interest, and certain expenses of the purchaser. If the owner redeems the certificate, the purchaser is refunded the amounts paid to the collector plus the interest and expenses. If the owner does not redeem the certificate, the purchaser has the right to foreclose on the property after the six-month right of redemption period has passed. Under most circumstances, if the right to foreclose is not exercised by the purchaser within two years, the certificate is void, and the purchaser is not entitled to a refund of any monies paid to the collector.