

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 855

(Senator McCray)

Budget and Taxation

Ways and Means

**Baltimore City - Property Tax - In Rem Foreclosure of Vacant or Nuisance
Property**

This bill allows for Baltimore City to establish an *in rem* foreclosure process for vacant or nuisance properties on which taxes are in arrears. The bill also establishes provisions governing (1) the disposition of property subject to foreclosure and (2) reopening of an *in rem* foreclosure judgment.

Fiscal Summary

State Effect: General fund expenditures may increase, and Annuity Bond Fund (ABF) revenues may be affected, beginning as early as FY 2024, as discussed below.

Local Effect: Baltimore City finances may be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Interested party” means any person having an interest in a vacant or nuisance property (1) who last appears as owner of the property on the collector’s tax roll; (2) who is a mortgagee of the property or assignee of a mortgage of record; (3) who is a holder of a beneficial interest in a deed of trust recorded against the property; (4) who is a taxing agency that has the authority to collect tax on the property; or (5) 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.

“Vacant or nuisance property” means a vacant lot or improved property determined to be a vacant property or a nuisance property under the Baltimore City Building Code.

In Rem Foreclosure

The bill authorizes Baltimore City to authorize, by law, *in rem* foreclosure of vacant or nuisance property on which taxes are in arrears. A law that authorizes an *in rem* foreclosure of vacant or nuisance property must (1) state the date after which real property may be subject to *in rem* foreclosure; (2) establish criteria for designating real property to be foreclosed; (3) authorize Baltimore City to file a complaint for an *in rem* foreclosure; and (4) include administrative rules and procedures necessary to carry out an *in rem* foreclosure of vacant or nuisance property. The city may not file a complaint for an *in rem* foreclosure action unless (1) the taxes on the real property have been delinquent for at least six months and (2) the right to appeal the notice of the property as vacant or nuisance property has tolled.

To initiate an *in rem* foreclosure action, Baltimore City must (1) file a complaint for an *in rem* foreclosure in the circuit court and (2) serve the complaint to each interested party in accordance with the Maryland Rules. The complaint must meet specified criteria. All taxes must be included in the foreclosure action and cease to be a lien against the property if a judgment is entered foreclosing the existing interests of all interested parties in the property. A complaint may be amended to include all taxes that become delinquent after the commencement of the *in rem* foreclosure action.

An interested party has the right (1) to cure the delinquent taxes on the property by paying all past due taxes at any time before the entry of the foreclosure judgment and (2) to be heard at the hearing on the complaint and contest the delinquency of the taxes and the adequacy of the proceedings.

If the circuit court finds that the complaint was served on each interested party and that the information set forth in the complaint is accurate, the court must:

- enter a judgment that (1) proper notice has been provided to all interested parties; (2) the real property is a vacant or nuisance property; and (3) forecloses the existing interests of all interested parties in the real property; and
- order that ownership of the real property be transferred to Baltimore City.

Disposition of Property and Compensation of Interested Parties

The city may sell a property at public auction (in accordance with specified procedures) or retain title to the property. In a sale, if the minimum bid (the total amount of liens for unpaid taxes on the property) is not made or exceeded, the city may bid the minimum bid price and purchase the property. If the property is sold and the sale price exceeds the amount of taxes due on the property plus the value of any improvements made by the city and any costs incurred by the city with respect to development of the property, the amount by which the sale price exceeds those amounts is distributed to the interested parties. If the city retains a property without a sale, the amount by which the appraised value of the property exceeds the amount of taxes due on the property is distributed to the interested parties.

Reopening Judgment

The bill prohibits a court from reopening a judgment rendered in an *in rem* foreclosure proceeding unless it is reopened for lack of jurisdiction or fraud in the conduct of the proceedings. A plaintiff seeking to reopen a judgment must file the action within three years of the issuance of the judgment, pay all taxes due on the property before filing the action, and within 30 days of filing the action, submit evidence to the court that they have obtained a bond equal to the property's reasonable value. A court may not reopen a judgment on the ground of constructive fraud in the conduct of the proceedings unless an application to reopen a judgment is filed within one year from the date of the judgment. The bill also establishes the amount required to redeem the property if an *in rem* foreclosure judgment is set aside.

Current Law: Statute provides counties and municipalities with specified authority for *in rem* foreclosure and sale of real property (1) that consists of a vacant lot or improved property cited as vacant and unsafe or unfit for habitation or other authorized use on a housing or building violation notice and (2) for which the total amount of liens for unpaid taxes on the property exceeds the total value of the property. A complaint for an *in rem* foreclosure action may not be filed by a county or municipality unless (1) the tax on the real property has been delinquent for at least six months and (2) the right to appeal the notice of the property as vacant and unsafe or unfit has tolled.

A complaint for *in rem* foreclosure must be filed in the circuit court of the county where the real property is located and must meet specified criteria. An interested party has the right (1) to cure the delinquent taxes and liens on the real property by paying all past due fees, payments, and penalties at any time before the entry of the foreclosure judgment and (2) to be heard at the hearing on the complaint and contest the delinquency of the taxes and the adequacy of the proceedings.

If the court finds that the county or municipality sent sufficient notice and a copy of the complaint to each interested party and that the information in the complaint is accurate, it must enter a judgment and order that ownership of the real property be transferred to the county or municipality.

State Expenditures: General fund expenditures may increase, beginning as early as fiscal 2024, for additional staff and operating expenses for the clerk of the circuit court in Baltimore City, to handle foreclosure filings, to the extent the city uses the authority provided by the bill. Any impact, however, cannot be reliably estimated at this time.

State Revenues: ABF revenues (State property tax revenues) may be affected, beginning as early as fiscal 2024, to the extent actions taken by the city under the bill's provisions impact the timing and amount of State property tax revenues collected from affected properties in the city; however, any impact cannot be reliably estimated.

Debt service payments on the State's general obligation bonds are paid from the ABF. Revenue sources for the fund include State property taxes; premium from bond sales; and repayments from certain State agencies, subdivisions, and private organizations.

Local Fiscal Effect: Baltimore City finances may be affected to the extent the bill's provisions allow for improvement of the use of properties in the city and/or increased collection of tax revenues associated with properties in the city. If the city uses the authority in the bill to take title to properties, city finances may be affected by costs associated with maintenance and/or improvement of those properties and any revenues (including tax revenues) or reduction in costs, resulting from any future sale or use of the properties. The city may incur administrative/operating costs associated with the *in rem* foreclosure and sale process. The city indicates it has initiated an *in rem* foreclosure program under existing law, but presumably the bill may result in the expansion of that program. The extent of any fiscal impact cannot be reliably estimated.

Small Business Effect: To the extent Baltimore City uses the authority under the bill, small businesses may benefit from any demand for their goods or services for improvements to, or maintenance of, properties after foreclosure judgements and/or the opportunity to purchase properties sold after foreclosure judgments.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 921 (Delegate Smith) - Ways and Means.

Information Source(s): Baltimore City; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; State Department of Assessments and Taxation; Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

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