

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1209

(Delegate Kaiser)

Ways and Means

Property Tax - Collection of Unpaid Taxes and Tax Sales

This bill (1) establishes the State Tax Sale Ombudsman within the State Department of Assessments and Taxation (SDAT); (2) requires all counties and specified municipal corporations to enact specified judicial in rem tax foreclosure legislation; (3) establishes timing, notice, and filing requirements related to judicial in rem tax foreclosures; and (4) establishes various reporting requirements. The bill requires the Court of Appeals to adopt rules to carry out provisions of the bill related to judicial in rem tax foreclosures and specifies that the bill's provisions related to judicial in rem tax foreclosures are only applicable to liens for unpaid taxes that attach to real property on or after July 1, 2020. **The bill takes effect January 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by \$212,300 in FY 2020 for SDAT to establish the State Tax Sale Ombudsman and meet the bill's requirements. To the extent programming changes are required to assist the circuit courts to distribute funds deposited in escrow, general fund expenditures may increase.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	212,300	375,900	387,700	400,300	413,300
Net Effect	(\$212,300)	(\$375,900)	(\$387,700)	(\$400,300)	(\$413,300)

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

Local Effect: Local government revenues decrease, potentially significantly, as a result of the bill's limitations on the use of tax sales to enforce liens. **This bill imposes a mandate on a unit of local government.**

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. “Eligible homeowner” means an individual who (1) occupies a dwelling with an assessed value of \$300,000 or less that is subject to a lien for unpaid tax and (2) has a Maryland adjusted gross income of \$60,000 or less, as calculated under specified provisions of the Tax-General Article.

Tax Sale Ombudsman

The State Tax Sale Ombudsman (1) must be appointed by the Director of Assessments and Taxation; (2) must be in the management service of the State personnel management system; and (3) may be removed from office only after a hearing before the department and a finding of incompetency or other good cause. The ombudsman must:

- assist eligible homeowners to understand the process for collection of delinquent taxes;
- actively assist eligible homeowners to apply for tax credits, discount programs, and other public benefits;
- refer eligible homeowners to legal services, housing counseling, and other social services;
- maintain a website that functions as a clearinghouse for information concerning (1) the process for collection of delinquent taxes; and (2) services and programs that are available to assist eligible homeowners to pay delinquent taxes and improve their financial situation;
- maintain a toll-free telephone number that an eligible homeowner may call to obtain individualized personal assistance with delinquent taxes; and
- coordinate with the Comptroller and each county to compile the list of eligible homeowners in each county on an annual basis.

A county may, by law, establish a county tax sale ombudsman to fulfill all the responsibilities of the State Tax Sale Ombudsman with respect to eligible homeowners within the county.

Required County Legislation

Each county must enact a law implementing judicial in rem tax foreclosure procedures, but a municipal corporation is only required to enact such a law if the municipal corporation conducts an in rem foreclosure and sale to enforce a municipal tax lien. A law implementing judicial in rem tax foreclosure procedures must include:

- a requirement that the dwelling of an eligible homeowner not be subject to foreclosure and sale unless the tax on the dwelling (1) has been delinquent for at least 2 years; and (2) exceeds \$1,000;
- a rate of interest for each month or fraction of a month that tax is overdue on the dwelling of an eligible homeowner that does not exceed 0.5%;
- a prohibition on requiring an eligible homeowner to pay any fees or expenses incurred by the county or municipal corporation related to a judicial in rem tax foreclosure;
- a requirement that the county or municipal corporation send at least five notices to an eligible homeowner as specified;
- an option for an eligible homeowner to prevent foreclosure and sale by entering into an installment payment plan;
- a process by which an eligible homeowner who is low income, at least 65 years old, or disabled may apply for an exemption if the eligible homeowner meets criteria specified by the county or municipal corporation;
- a process for referring eligible homeowners to the State Tax Sale Ombudsman or to the county tax sale ombudsman if applicable;
- a procedure for the county or municipal corporation to file a complaint for an in rem foreclosure; and
- any additional administrative rules and procedures necessary.

Timing of Complaint

A county or municipal corporation may file a complaint for an in rem foreclosure action after (1) taxes on the dwelling of an eligible homeowner have been delinquent for at least two years or (2) taxes on any other property subject to in rem foreclosure have been delinquent for at least one year.

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 taxes 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 request that the circuit court not schedule a hearing on the complaint until 30 days after the date that the complaint is filed and (2) 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 (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 at least 45 days after the entry of judgment. The minimum bid for the sale of the real property must be 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 a sale, the county or municipality must file a notice informing the circuit court of the sale and stating the date of the sale. A sale of real property is final and binding on the maker of the highest bid.

Required Report

Within 90 days after a 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.

Tax Sale Reports

SDAT must conduct an annual survey of each county and any municipal corporation that conducts a tax sale by a collector or as part of a judicial in rem tax foreclosure to obtain specified data. SDAT must analyze and summarize the information collected through the survey annually in a report and (1) publish the report on its website and (2) on or before December 31 each year, submit the report to specified committees of the General Assembly.

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.

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

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 Expenditures: General fund expenditures increase for SDAT by \$212,301 in fiscal 2020, which accounts for the bill's January 1, 2020 effective date. This estimate reflects the cost of hiring one State Tax Sale Ombudsman and four regional tax sale

representatives to establish and manage the ombudsman program required under the bill, actively assist eligible homeowners as specified, maintain the required website and toll-free number, conduct the annual survey, submit the required report, and develop specified expertise in (1) the tax sale processes of each county; (2) available credits and discount programs; and (3) available legal services. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses including additional communications costs associated with the toll-free number and website.

Positions	5
Salaries and Fringe Benefits	\$176,288
One-time Start-up Expenses	24,450
Ongoing Communications Costs	10,000
Ongoing Operating Expenses	<u>1,563</u>
Total FY 2020 State Expenditures	\$212,301

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Future year communications costs total \$20,000 annually.

SDAT advises that special funds may be available to help cover costs. According to SDAT, total expenditures could be paid for using general funds (50%) and local-county cost reimbursement special funds (50%). The local-county cost reimbursement fund is used to fund activities that impact counties and is capitalized through an assessment collected by SDAT from the counties on a quarterly basis. The Department of Legislative Services advises that it is unclear as to whether these special funds may be used for the Tax Sale Ombudsman program, and that general fund support may be necessary for all expenditures. Accordingly, this fiscal analysis assumes all expenditures are general funds.

Local Fiscal Effect: Local government revenues decrease, potentially significantly, as a result of the bill's restrictions on counties and municipal corporations as specified under the bill as part of the required judicial in rem tax foreclosure legislation. Provisions which (1) prohibit foreclosure and sale unless the tax on the dwelling has been delinquent for at least two years and exceeds \$1,000; (2) limit interest rates to 0.5%; and (3) prohibit requiring an eligible homeowner to pay any fees or expenses incurred by the county or municipal corporation related to a judicial in rem tax foreclosure contribute to the decrease revenues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Worcester counties; City of Laurel; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; 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.