

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3772**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 24, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 3772.

As amended, this bill would revise the “tax sale law,” R.S.54:5-1 et seq., and the In Rem Tax Foreclosure Act (1948), P.L.1948, c.96 (C.54:5-104.29 et seq.), to bring those laws into compliance with the 2023 United States Supreme Court decision in *Tyler v. Hennepin County, Minnesota, et al.*, 143 S. Ct. 1369 (2023) concerning the ability of a property owner, whose right to redeem a tax lien on their property has been foreclosed by the holder of a tax sale certificate, to receive any of the owner’s equity remaining in the property after the tax lien foreclosure.

Under existing State law, the holder of a tax sale certificate, after six months in the case of a municipality holding the tax sale certificate or in the case of the holder of a tax sale certificate on a property that is abandoned, or after two years in the case of a third party lienholder, may file suit in Superior Court to foreclose the right of the property owner to redeem the tax lien. Upon the foreclosure, the lienholder receives title to the property and all of the equity remaining in the property, leaving the former property owner with no funds from the foreclosure with which to purchase another property.

In the *Tyler* decision, the Supreme Court determined that Hennepin County could not keep equity in the property beyond the amount it was owed for overdue property taxes and interest thereon. Under the Court’s ruling, excess equity was considered to be property that could not be taken from the former property owner, consistent with the takings clause restrictions of the 5th Amendment of the United States Constitution.

The bill revises the “tax sale law” and the In Rem Tax Foreclosure Act to require that, except in cases of abandoned property, as that term is defined in P.L.2003, c.210 (C.55:19-78 et seq.), a property owner whose property is subject to a tax lien foreclosure, or that owner’s heirs, have the right to demand, by written request to the Superior Court prior to the date that the final judgment is entered, that the holder of the tax sale certificate foreclose the right to redeem that certificate in the same manner as a mortgage, through a judicial sale of the property through the office of the county sheriff, or in the

alternative, through an Internet auction of the property through the office of the county sheriff. In the event that the owner or the owner's heirs do not demand a judicial sale or an Internet auction, the tax sale certificate holder may foreclose without such sale, and the owner and the owner's heirs would have no claim against the holder of the tax sale certificate for any equity in the property. For abandoned properties, no judicial sale or Internet auction would be required and the Superior Court would be authorized to bar any claims to surplus equity as part of a foreclosure action.

The bill also stipulates that the amount received through a judicial sale or the Internet auction would be conclusively presumed to be the fair market value of the property, and if no one bids on the property through a judicial sale or Internet auction, and the owner of the tax sale certificate obtains fee title from the sheriff, it would be conclusively presumed that there is no equity in the property. In the event that the sheriff has not established an Internet auction, the owner or the owner's heirs would only be entitled to a judicial sale.

The bill would require the county sheriff to deposit with the clerk of the Superior Court any surplus funds derived from the judicial sale or Internet auction, after the holder of the tax sale certificate has been paid the redemption moneys, allowable costs, and attorney's fees as set forth by the court in the final judgment of foreclosure, and the sheriff has deducted the costs to the office of the county sheriff of holding the judicial sale or Internet auction. This process would be the exclusive method through which the owner, or the owner's heirs, may claim and receive any surplus funds. The bill defines "surplus funds" as meaning any funds derived from the judicial sale or Internet auction of a property, after the holder of the tax sale certificate has been fully redeemed, and paid moneys due and owing to the holder of the tax sale certificate, and after the costs charged by the sheriff to the holder of the tax sale certificate to conduct the judicial sale or the Internet auction have been withheld.

In the event a premium payment is made by the lienholder to acquire a tax sale certificate for a property that is required to be sold at a judicial sale or Internet auction, the bill would require the premium payment to be refunded to the lienholder provided a writ of execution is sent to the county sheriff to schedule the judicial sale or Internet auction within five years from the date of the tax sale. The premium would not be refunded, however, if the lienholder is the successful bidder at the judicial sale or auction. For any premium payments that are due to escheat to a municipality during tax year 2024, the bill would extend the escheatment for an additional year.

The bill also requires that the notice provided by lien holders to property owners of the intention to file a foreclosure complaint must advise the owner that the owner or the owner's heirs have the right to request a judicial sale or an Internet auction of the property to preserve any equity in the property. The notice would be sent by certified mail

to the last known address of each person entitled to redeem the tax sale certificate and the owner's address based upon the last deed of record with the county clerk. The notice would also contain the amount necessary to redeem the outstanding tax sale certificate.

The bill also provides a detailed reimbursement structure for expenses incurred by the lienholder, which are to be certified by the lien holder to the tax collector and added to the amount required to redeem the tax sale certificate. Depending on whether a foreclosure complaint has been filed, the lienholder would be entitled to reimbursement of various expenses related to preparation and litigation of a foreclosure action such as attorney's fees, mailing costs, filing fees, service of process fees, and property search costs.

The bill also provides that the provisions of the bill would apply to any tax lien for which the right of redemption has not been foreclosed as of its effective date.

As amended and reported by the committee, A3772 is identical to S2334 (2R).

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

Change the timeline in which a property owner, or the owner's heirs, whose property is not abandoned and is subject to a tax lien foreclosure, has the right to make written demand to the Superior Court to foreclose the property owner's right to redeem that certificate through a judicial sale of the property as in the manner of a mortgage or an Internet auction through the office of the county sheriff from 45 days after the property owner is served with a foreclosure complaint, to any time prior to the date that the final judgment is entered;

Provide that in the case of a premium paid by a lienholder to a municipality, the premium would be required to be refunded if within five years of the date of the tax sale, the writ of execution is sent to the county sheriff's office to schedule a sheriff's sale of the property; however, if the lienholder is the successful bidder at the judicial sale or Internet auction, the tax collector cannot refund the premium. The amendments also extend by one year a premium that is due to escheat to a municipality in 2024;

Stipulate that the amount received through a judicial sale or Internet auction would be conclusively presumed to be the fair market value of the property. If no one bids on the property through a judicial sale or at an Internet auction, and the owner of the tax sale certificate obtains fee title from the sheriff, it would be conclusively presumed that there is no equity in the property;

Provide that in the event that the sheriff has not established an Internet auction, the owner or the owner's heirs would only be entitled to a judicial sale;

Require the county sheriff to deposit with the clerk of the Superior Court any surplus funds derived from the judicial sale, or Internet

auction, after the holder of the tax sale certificate has been paid the redemption moneys, including allowable costs and attorney's fees, and the sheriff has deducted the costs to the office of the county sheriff of holding the judicial sale or Internet auction. The amendments specify that this process would be the exclusive method through which the owner, or the owner's heirs, may claim and receive any surplus funds;

Define "surplus funds" as meaning any funds derived from the judicial sale or Internet auction of a property, after the holder of the tax sale certificate has been fully redeemed, and paid moneys due and owing to the holder of the tax sale certificate, and after the costs charged by the sheriff to the holder of the tax sale certificate to conduct the judicial sale or the Internet auction have been withheld;

Require that notice provided by a lienholder other than a municipality be provided at least 30 days' notice to the property owner who is entitled to redeem an outstanding tax lien be sent to the owner's address based on the last deed of record with the county clerk, in addition to the person's last known address;

Require that notice provided by lien holders to property owners advise the owner that the owner or the owner's heirs have the right to request a judicial sale or an Internet auction of the property to preserve any equity in the property;

Provide a detailed reimbursement structure for expenses actually incurred by the lien holder for preparation and litigation of a foreclosure action, such as attorney's fees, mailing costs, service of process fees, and property search costs, which costs are required to be certified by the lien holder to the tax collector and added to the amount required to redeem the tax sale certificate;

Permit municipalities that hold a tax sale certificate to file an action to foreclose the right of redemption at the time of a tax sale, and at any time thereafter, for properties that are abandoned pursuant to the "Abandoned Properties Rehabilitation Act," P.L.2003, c.210 (C.55:19-78 et al.);

Authorize the Superior Court to bar claims to surplus equity for abandoned properties;

Exempt abandoned properties from the judicial sale and Internet auction requirements established by the bill;

Require that the provisions of the bill apply to any tax lien for which the right of redemption has not been foreclosed as of the bill's effective date;

Require that the process set forth in section 3 of the bill would be the exclusive method through which the owner or the owner's heirs may assert a claim to any surplus funds by motion to the Superior Court; and

Require that if all costs and reasonable attorney's fees are not recovered through the judicial sale or Internet auction, and the holder of the tax sale certificate has a first lien paramount to any other lien on any surplus funds and is thereby entitled to apply to the Superior Court

to recover any unpaid costs or attorney's fees, the attorney would be required to record a Statewide judgment lien for the outstanding attorney's fees.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate reduction in annual municipal revenues and have no net impact on county finances.

Municipalities will incur a revenue loss due to two aspects of the bill. First, municipalities will no longer be permitted to retain the full amount of proceeds resulting from the sale of foreclosed property for which a municipality holds the tax sale certificate. Second, municipalities will be required to refund to the holder of a tax sale certificate the full amount of the premium bid offered by the certificate holder if a property is scheduled for a judicial sale or Internet auction within five years of the date of the tax sale. However, data on the total amount of revenue generated by the sale of foreclosed properties and the amount of premium bids retained by municipalities are not compiled on a Statewide basis, hindering a full accounting of the potential impact of the bill on municipal revenues.

The OLS anticipates that the bill will not have a net impact on county finances because it requires county sheriffs to deduct the costs of holding a judicial sale or an Internet auction from the proceeds of the sale of a property prior to remitting any funds to the property owner, resulting in offsetting county costs and revenues.