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Fact Sheet: Title Problems
*Title problems suffered by Detroit
and other urban Michigan communities*

Title

“Title” is the legal right to control and dispose of property.

Clouded Title

When someone other than the owner of a property has (or claims to have) an interest in the property, the property owner’s title may have a “cloud” on it.

Title Insurance

Title insurance insures the title to, rather than the use of, real property. It is insurance to cover the risk that someone may challenge your title to a specific piece of property. Virtually all banks or other financial lenders will require title insurance in favor of the lender before lending for the purchase or improvement of a piece of property.

Title Problems

Problems with clouded title on tax-reverted parcels make transfer of those properties expensive, time consuming, and uncertain. Unfortunately, much of the tax-foreclosed property in Michigan suffers from “notice defects.” (See below.) These notice defects are significant to title because failure to properly notify an interested party regarding a tax foreclosure action is a constitutional violation. Therefore, there is no statute of limitations applicable to recovery. In other words, a person or business can appear at any time to prove (i) they had a claim to the property, (ii) they were not properly notified, and (iii) they are willing to pay back taxes to reclaim the property. A title company that insures the subject property would have to defend against that claim.

Title insurance companies are often unwilling to insure tax-reverted properties because of the risk that an individual with a significant interest in a parcel who did not receive adequate notice could sue the title company. Also, title premiums are based on the value of the insured property. Since the value of tax-reverted parcels is usually very low and the effort and expense to clear title may be high, there is little financial incentive for title companies to pursue this market. For this reason, many title companies will decline a request to insure the property at all.

A title company that is willing to consider insuring tax-reverted properties will, at a minimum, conduct a complete title search and review of notices for each parcel that was subject to tax foreclosure to determine whether the proper procedures were followed. If the title company is unable to determine that the proper procedures were followed, it may—depending upon when the tax foreclosure took place—recommend that the property be “re-noticed.” In the alternative, the title company may recommend that a “quiet title” action be performed. “Quiet title” is a legal process whereby the court establishes the state of the title. However, a quiet title action will not always cure inadequate notice, so some title insurers will not offer insurance solely on the basis of a quiet title action. In other cases, title insurers may require the purchase of a “re-insurance” product which will protect them against claims asserted on the basis of a defective tax foreclosure. These products are often expensive and the charge will be in addition to the title insurance premium.

Given the discussion regarding “cleaning title” in places like Detroit, companies or individuals have developed businesses that may claim to “clear” or “clean” title. While the company may be able to improve the condition of title, the property may still not qualify for title insurance. Any property owner considering paying for the service of “cleaning title” should first consult a title insurer to determine whether the property will be *insurable* upon completion of the “cleaning.”

How did we get here?

In May of 2000, it was estimated that 90 to 95 percent of the parcels in the City of Detroit’s inventory were the result of tax foreclosure actions taken by the State of Michigan. Similar situations exist in other Michigan urban communities. The state tax foreclosure process (prior to the 2002 implementation of PA 123 of 1999) included only a very cursory title search, which failed to identify all persons with a legal interest in the property, and inadequate efforts to contact taxpayers of record. This resulted in inadequate notification of all those persons. The state transferred tax-reverted parcels to a city by means of a quit claim deed, which does not guarantee clear title.

PA 123 of 1999 attempted to reform this system by (i) changing the tax reversion process and (ii) giving counties the option to “opt in” to conduct tax reversions for themselves rather than “opting out” and allowing the state to conduct tax reversions. Most counties in Michigan with significant urban populations “opted in” and currently conduct their own tax reversions. More information on the current tax reversion process in Michigan is available on the Michigan Department of Treasury’s website (www.michigan.gov/treasury).

Wayne County. Today, the State does not participate in tax foreclosure actions in Wayne County. Pursuant to PA 123 of 1999, Wayne County “opted in” so that it could foreclose on tax delinquent properties rather than the state. Although PA 123 of 1999 intended to improve the tax foreclosure process, the properties foreclosed upon by Wayne County continue to suffer from challenges regarding proper notification and potential constitutional challenges to the tax foreclosure process.

Ongoing Challenges

Despite many efforts, neither the title insurance industry nor the state legislature has been able to adequately respond to the concerns regarding title problems associated with tax-reverted property. The result is vacant and abandoned land throughout many of Michigan's urban communities.

Although title problems can generally be resolved, it can often take many hours and thousands of dollars for each property. Before purchasing any property, ensure that the title has been reviewed and that you or your organization has a strategy and sufficient resources for responding to any title problems. Your local title company, attorney or Community Legal Resources can be of assistance with your intended purchase of property or your current property holdings.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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