

## Michigan Court of Appeals Upholds Taxpayer Recovery of Excess Tax Foreclosure Proceeds, Bars Multi-County Class Actions

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January 10, 2022

### Key Takeaways

- The Michigan Court of Appeals rejected an effort to allow class action recovery of excess proceeds from the sale of tax foreclosed properties.
- The Court ruled that the Michigan Supreme Court's 2020 decision in *Rafaeli v Oakland County* applied retroactively and that the subsequent legislative fix from December 2020 applied prospectively only. Under the new law, an owner must file a notice with the county by the July 1 immediately following the effective date of the foreclosure.
- The decision is most significant for cases where the taxpayer whose property was foreclosed had filed suit before the new legislation, and it may impact the right to interest on claims that complied with the requirements of the new legislation.

A new Michigan Court of Appeals ruling could impact the ability of taxpayers to recover excess proceeds from the sale of tax foreclosed properties.

In *Proctor v Saginaw County*, a consolidated appeal of five putative class actions against a large number of counties, the Court of Appeals rejected an effort to allow the recovery of such proceeds as a class action. The Court also held that the Michigan Supreme Court's 2020 decision in *Rafaeli v Oakland County* (**see our previous alert on that ruling**) applied retroactively and that the subsequent legislative fix, 2020 PA 256, MCL 211.78t(1), which created various procedural requirements for recovering excess proceeds, applied prospectively only. Finally, the Court also held that qualified immunity protected the government officials involved in the foreclosure process, while holding that under *Rafaeli*, taxpayers are entitled to recover both the excess proceeds and interest on those proceeds.

The *Proctor* Court affirmed the rejection of proposed class actions for owners in every county in the state. The Court held that a named plaintiff cannot sue a party in a class action whom that plaintiff could not have sued individually. The Court further held that, since none of the trial courts had granted class certification before the effective date of the legislative fix, any unnamed plaintiffs are subject to the procedural mandates of that legislation.

*Proctor* deals with claimants whose properties were foreclosed and who had filed suit before the December 2020 legislation. As it is too late for anyone else to file new claims for those pre-December 2020 foreclosure sales, the decision is most significant to taxpayers who already filed suit when that legislation was enacted.

This case did not address the mechanics of the new law. An owner must file a notice with the county by the July 1 immediately following the effective date of the foreclosure. The county then has to send a notice by January 31 to those claimants, who then must file a motion in circuit court between February 1 and May 15. The notice deadline passed on July 1, 2021, for 2021 foreclosure judgments (for tax year 2018) whose effective date was March 31, 2021. A new round of judgments and related deadlines are upcoming in March 2022 for 2019 taxes. The decision may impact the right to interest on claims that complied with the requirements of the new legislation.

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Please contact the authors or your Miller Canfield attorney to discuss the impact of these rulings.