



Title Insurance Law Practice Group

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PROPERTY OWNER MUST BE AFFORDED DUE PROCESS NOTICE AND THE RIGHT TO CONTEST FORECLOSURE

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On May 23, 2007, the Michigan Supreme Court in the case of *In Re Petition by Treasurer of Wayne County for Foreclosure* (Supreme Court No. 129341) held that where the county failed to comply with the notice provisions of the General Property Tax Act (GPTA), the county deprived the owner of its property without providing due process. The statutory remedy allowing a property owner to go to the Court of Claims to seek monetary damages is not adequate.

In *In Re Petition by Treasurer of Wayne County for Foreclosure*, the respondent- appellee, Perfecting Church purchased two vacant Wayne County properties on July 1, 1999 to be used as parking lots for church service attendees. Approximately three years later, the Wayne County Treasurer filed a petition for foreclosure for unpaid taxes for the year 2000. On March 10, 2003, the Wayne Circuit Court entered a judgment of foreclosure regarding Perfecting Church's properties.

Pursuant to MCL 211.78i, the treasurer's office had a duty to mail the pending foreclosure notice to the church. However, because of a recording error, the notice was sent to the former owner, not Perfecting Church. In addition, the posted notices were incorrectly placed on a neighbor's adjacent lot, rather than on the two lots owned by the church. Consequently, Perfecting Church never received notice of the pending foreclosure.

The GPTA authorizes county treasurers to foreclose on tax-delinquent property and to sell the property at auction to satisfy tax delinquencies. However, a person may not be deprived of property without due process of law. The Supreme Court held in *Dow v Michigan*, 396 Mich 192, 210; 240 NW2d 450 (1976) that due process requires that before the government takes a person's property by foreclosure, the person must be afforded notice and the right to contest the foreclosure. However, in this case, the treasurer failed to follow the notice procedures of the GPTA and must now restore the church's title to the property.

For a complete copy of *In Re Petition by Treasurer of Wayne County for Foreclosure* (Supreme Court No. 129341), [click here](#).