

BE CAUTIOUS OF REPAYMENT PLANS FOR DELINQUENT PROPERTY TAXES

Despite the upturn in the economy over the past several years, many commercial and residential property owners are still struggling, and may be behind on their property tax payment obligations. Real property taxes in Michigan are subject to a three year forfeiture and foreclosure process. Many property owners have entered into repayment plans with taxing authorities in order to avoid tax foreclosure. However, a recent Michigan Court of Appeals Opinion highlights the danger of entering into such an agreement without ensuring that the taxing authority cannot foreclose during the repayment plan.



In 2014, an Oakland County commercial property owner owed approximately \$120,000.00 in delinquent taxes for tax years 2011 and 2012. After certificates of forfeiture for non-payment of taxes were filed by the County Treasurer, the property owner and Treasurer entered into a repayment plan for the delinquent taxes, the owner promising to make substantial monthly installment payments to stave off foreclosure. The property owner had previously entered into similar agreements with the Treasurer in preceding years. However, this time, for reasons unexplained in the Court Opinion, the Treasurer continued the property tax foreclosure proceedings despite agreeing to the repayment plan. The property owner subsequently sued, claiming that the Treasurer breached its contract (the repayment plan) with the taxpayer by continuing with foreclosure proceedings. The trial court ruled in favor of the County.



On appeal, the Court of Appeals upheld the trial court's finding in favor of the County. Both Courts relied upon an issue of contract law which requires that there be some additional consideration provided by the taxpayer beyond the already-existing obligation to pay the property tax. The Court determined that by agreeing to repay the delinquent taxes, the taxpayer was agreeing to do nothing more than he was already obligated to do -- pay the taxes. Because no additional consideration was provided by the taxpayer, no enforceable contract was formed with the County requiring the County to hold off on foreclosure. The Court of Appeals Opinion makes clear that property owners should be cautious entering into tax repayment plans with any taxing authorities and ensuring that the agreement will be enforceable. Contact Real Estate Attorney [Michael Dorocak](#), or one of our other [real estate attorneys](#) if you or a client are faced with potential property tax forfeiture or foreclosure or other real estate dispute.