

Property Taxes, Notice, Due Process and **TITLE INSURANCE**

**Why we do ..
what we do.**

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The history of

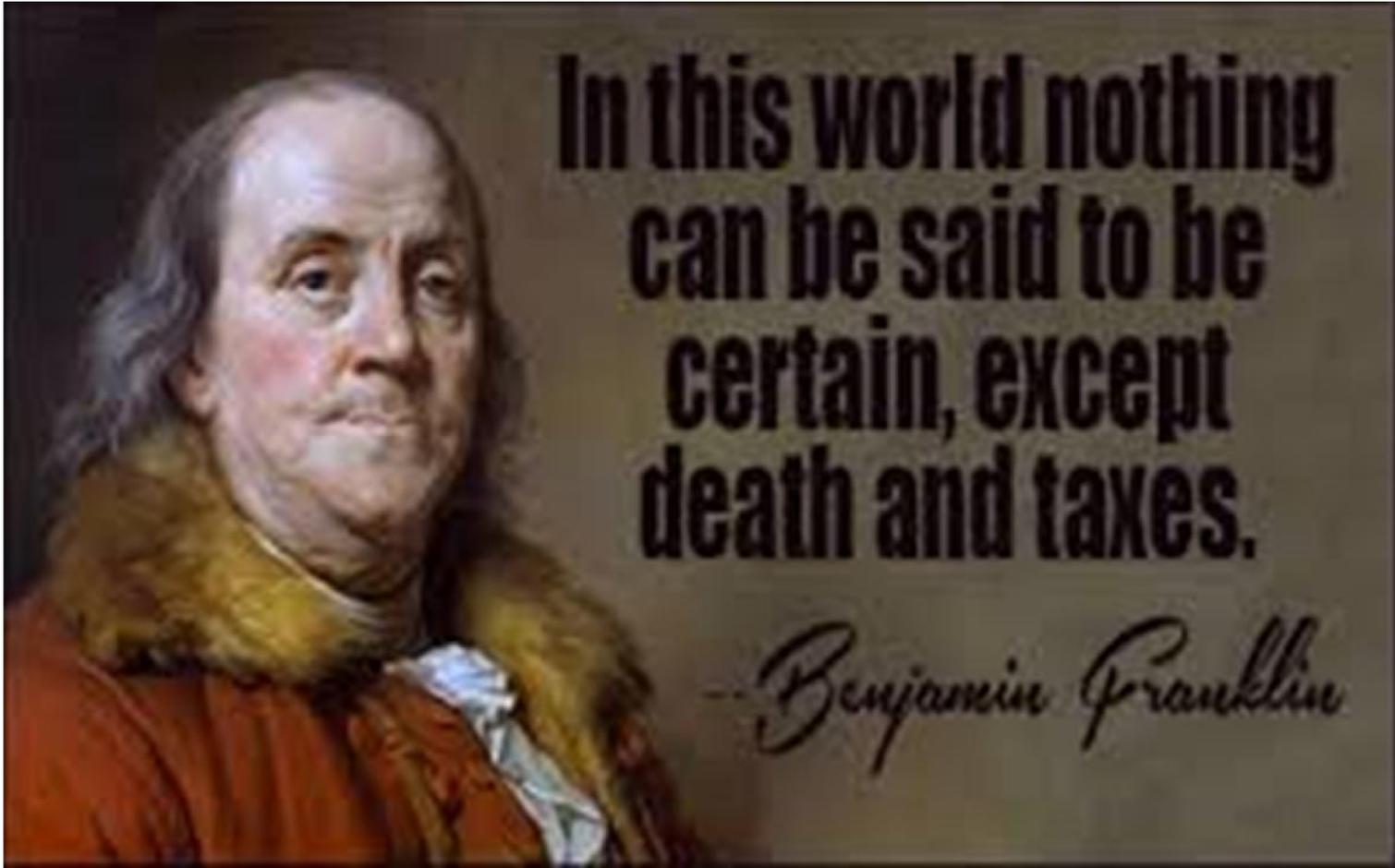
TAXATION



“Be weary of strong drink. It can make you shoot at Tax Assessors ... and MISS. - Robert Heinlein



- The earliest known tax records are from 6000 BC. **Clay tablets** found at Lagash (now Iraq.)
- The **Athenians** complained that property taxes were too high and that the government should lower expenditures. Sound familiar ?
- The Apostle, **Matthew**, was a tax assessor.
- **Lady Godiva** rode a horse, naked, through the streets of Coventry, England to protest the assessment of her husbands property. He was granted an abatement.



**In this world nothing
can be said to be
certain, except
death and taxes.**

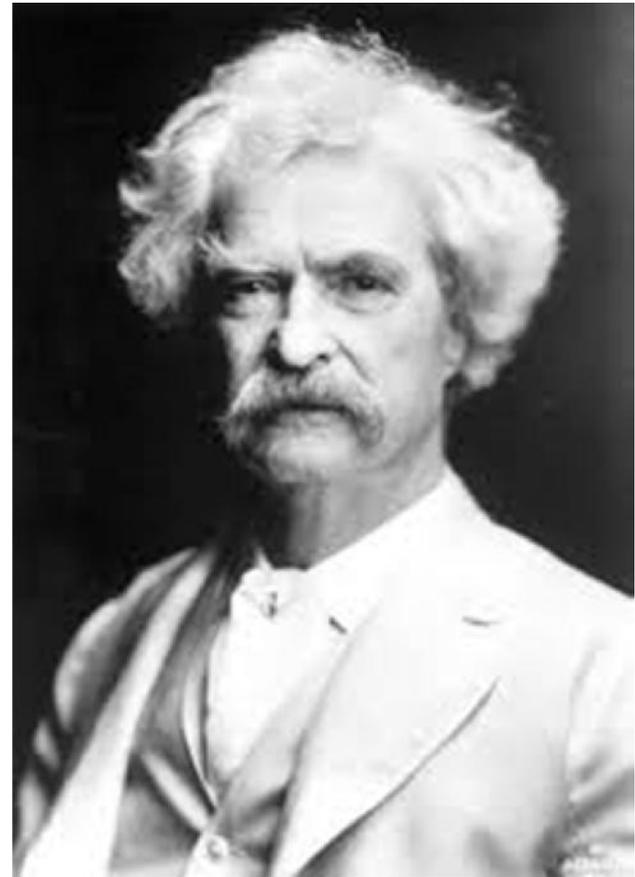
- Benjamin Franklin

- In 1620, the 102 **Pilgrims** at Plymouth Rock immediately created tax assessments to build a fort to protect themselves from the natives.
- In early **Boston**, taxes collected went directly to the church, regardless of your religious associations.
- In 1635, the town council there held annual meetings to set individual tax rates.
- At the time of the **Revolutionary War**, the “north” had assessment based taxes, the “south” relied on the “poll tax” collected from wealthy males.
- At the drafting of the **Constitution**, the “north” advocated a national property tax, while the “south” opposed it.
- The civil war was financed, chiefly, by the sale of public lands.
- The “windows” tax.

**“What’s the difference
between a Taxidermist
and a Tax Assessor ?**

**The
Taxidermist
ONLY takes
your skin.”-**

Mark Twain





- Michigan allowed its first taxes to be assessed in **1850**, when its “updated” constitution allowed Counties , Townships and school districts to levy.
- The “General Property Tax Act” was created in 1893 and expanded in the Constitution of 1908.
- Homestead **property tax exemptions** were created during the Great Depression. The burden was shifted to the sales tax.
- In 1932, the Federal government collected NO taxes from alcohol because of **prohibition**. In 1934 it collected \$259 Million dollars. In 1939, \$624 Million.

Property tax collection enforcement in Michigan – 1850 to 2000

- Michigan offered **LIENS** against delinquent tax lands at annual sales held the first Tuesday in May.
- Investors purchased “**tax lien certificates**” for the face value of the delinquent tax, penalty and interest
- If redeemed during the next 12 months, the investor received 1.5% interest per month, or 18% annual.
- At month #12, the state issued a “Tax Deed” (good for 5 years), and the interest rate increased to 50%.
- The lien buyer then had to pursue “**perfection**” of their lien through title search and notice.
- At month #18, the lien buyer owned the property ... sometimes in shared ownership with the former owner.

The tax lien process was fraught with problems:

- Bad notice work (and unrecorded documentation) by uninformed, unqualified or lazy lien buyers.
- Property abandonment by lien buyers only interested in interest revenue which created a cycle of blight still evident in urban cores.
- The State being “stuck” with only the junk property and having many title and litigation issues because of notice deficiencies prior to the 1970's.
- Delinquency and redemption periods were years longer, in hopes that owners would redeem .. Or someone would acquire the parcel (or buy the State lien over-the-counter) and pay.

Dow v. State of Michigan (396 MI 192) 1965/74-6

- Prior to Dow, notice by the State was **ONLY** given by publication of **LEGAL DESCRIPTIONS**. There was no mailing other than statements and bills. No names were included in published notices.
- Tax lien buyers were required to send certified (registered) mail and often used process servers to encourage redemption.
- The court ruled that parties in **title** were entitled to **MAILED** notice before lands could be foreclosed ... not just those on the **tax rolls**.
- Mailed notice was to be sent to an address “**reasonably calculated, under all the circumstances**” to give notice.
- **Spouses** were entitled to their own, individual notice.
- **Occupants** were also entitled to notice.
- Notice by **publication alone** was deemed inadequate.

“Newspaper publication is a formality. A few institutional lenders may hire persons to scan such notices, but newspaper publication for most property owners provides no notice at all.”

Michigan Supreme Court
Dow v. State of Michigan

What if the property isn't of value ?

Brandon Twp v. Tomkow (211 MICH APP 275) **1982-95**

* The court ruled that arbitrary policy decisions or statutory provisions regarding notice, based on the SEV or perceived value of a parcel, were a violation of due process and equal protections guarantees.

So WHERE should we send the notices ?

Smith v. Cliffs on the Bay (463 Mich. 420) 1975/87-2000

- “For due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have in fact led to a more certain means of notice”.
Dissent of Kelly and Cavanaugh noted. See Jones v Flowers.

Sidun v. Wayne County Treasurer (751 N.W.2d 453) 2006-8

- Where the “address reasonably calculated” is readily available to the FGU and not utilized, the notice fails. “When in doubt, mail it out !”

Republic Bank v. Genesee County Treasurer (

- The FGU is not obligated to undertake a search of tax payment files to discover alternate addresses for notice where addresses exist that are reasonably calculated to provide that notice.
- Where **actual notice is accomplished** by any means, further efforts are not required. It is not necessary to complete all forms of notice.

And WHO gets noticed ?

FNB Chicago v Michigan Dept of Treasury

* Recording the Certificate of Forfeiture at April 15 provides ACTUAL NOTICE to all parties that take title after that date. Be careful who you notice !

Republic Bank v Genesee County Treasurer

* The FGU is not expected to trace mergers or acquisitions that are not reflected in local property or tax records

MERS as nominee and other Mortgage assignment issues

When all else fails ...

Wayne Co. Treasurer v. Perfecting Church (474 Mich. 1059)

- * Because of a **tax roll error**, the mail notice for both parcels was sent to the **former owner**, not Perfecting Church.
 - Perfecting Church became aware of the issue and paid one bill. Upon inquiry, they were told that the bill covered both parcels ... and it didn't.
 - 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.
 - ... and the property had already been sold ...

“People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking.”

United States Supreme Court, Jones v. Flowers, 547 U.S. 220

Jones v. Flowers, 547 U.S. 220

* “When mailed notice of a tax sale is returned unclaimed, a State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so. “

- “What is reasonable in response to new information depends on what that information reveals. The certified letter’s return “unclaimed” meant either that Jones was not home when the postman called and did not retrieve the letter or that he no longer resided there. One reasonable step addressed to the former possibility would be for the State to **resend the notice by regular mail**, which requires no signature.

- ... Regular mail can be left until the person returns home, and might increase the chances of actual notice. Other reasonable follow-up measures would have been to **post notice** on the front door or address otherwise undeliverable **mail to “occupant.”**

“Contrary to Jones’ claim, the Commissioner was not required to search the local phone book and other government records.

Such an open-ended search imposes burdens on the State significantly greater than the several relatively easy options outlined here.” *Jones v Flowers*

Legislative intent

The **failure** of this state or a political subdivision of this state **to follow a requirement** of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state **unless the minimum requirements of due process** accorded under the state constitution of 1963 or the constitution of the United States are violated.

MCL 211.78



Other cases worthy of note:

Harbor Watch Condo Assn v Emmet County Treasurer

- A FGU is not a “purchaser” of property when taking under a statutory role ... and is not subject to OA fees.
- This follows the logic of environmental litigation, that the FGU is an involuntary acquirer ... and not a “voluntary purchaser”

Title Insurance

..... and tax reversion

What they **DO** properly weigh:

- Appellate courts tend to be very sympathetic to property owners, often accepting equitable and emotional arguments for allowing redemption, instead of strict statutory interpretation.
- Most title insurance agents do not have sufficient experience in this area to properly ascertain the risk, and may expose the underwriter to liability.
- Many of the title chains have defects in existing records from breaks in the chain, deceased parties without proper probate proceedings and unrecorded documents.

“Just say NO”

- Underestimate the percentage of **property intentionally abandon**.
- Fail to understand the willingness of FGUs to **cancel foreclosures or refund purchasers** where notices are found to be bad, which eliminates most claims.
- Is not properly “doing the math” on the **income v. claim** ratio potential of selling policies, especially on the lower value property.
- Is not recognizing the **deterrent of redemption expense** in preventing claims. **Over half of foreclosures are worth less than the delinquency.**
- Doesn't anticipate **curative title work** or **quiet title** fixes to problem titles where there is no resistance to the reversion.

**There exists a lucrative
niche for the underwriter
willing to carefully **review**
tax titles, **cure** necessary
defects, and **pool** the
risks.**