

Lender Alert: Wisconsin Courts May Require Sheriff's Sales of Foreclosed Abandoned Properties

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A recent Wisconsin Court of Appeals decision may force lenders' hands on how they address the foreclosure of abandoned properties in Wisconsin. Traditionally, where a lender forecloses on a property, the lender is not obligated to follow through with a sheriff's sale. For a variety of reasons – significant past due property taxes, environmental contamination, etc. – a lender occasionally elects to hold its foreclosure judgment and not proceed to sale. Title to such a property often transfers to the local municipality at a later date through the tax forfeiture process. A newly published Wisconsin Court of Appeals decision establishes precedent for courts to require lenders who have foreclosed on properties deemed “abandoned”¹ to hold sheriff's sales of those properties within a set time following the entry of the foreclosure judgment.

In *Bank of New York v. Carson*,² the lender obtained a judgment of foreclosure in June 2011 on a residential property in Milwaukee. In November 2012, after the property had been vandalized, burglarized, and the city had started issuing fines to Carson for unaddressed building code violations, Carson moved the circuit court to amend the foreclosure judgment to find the property was abandoned and require the bank to hold a sheriff's sale. When the trial court denied the motion for lack of governing precedent on this issue, Carson sought appellate review.

The Wisconsin Court of Appeals determined the statutory language of Wis. Stat. § 846.102, which concerns the foreclosure of abandoned properties, can be used by a court to require a sheriff sale for a foreclosed abandoned property. The Court of Appeals reasoned the statute includes explicit language mandating the sheriff's sale of an abandoned property "shall be made upon the expiration of 5 weeks from the date when such judgment is entered." Wis. Stat. § 846.102(1). The Court of Appeals provided little guidance as to how soon the sale must be held following the expiration of the five-week redemption period. Instead it commented that a sale is required to be held without delay and courts may use their authority to hold parties in contempt to facilitate a timely sheriff's sale.

The decision also determined it is not the lender's exclusive option whether to offer proof to the court that a property is abandoned. The Court of Appeals found any party to the foreclosure lawsuit, as well as the local municipality, is permitted to offer evidence of abandonment. As a result, even though a lender may choose not to pursue an "abandoned" designation for a property, a borrower or an intervening local municipality may attempt to have a property deemed abandoned and force a sale.

While this decision breaks new ground in Wisconsin, its overall impact is limited. The decision only applies to properties that a court finds to be abandoned. Foreclosed properties that are occupied or unoccupied (but not abandoned) do not fall under the purview of this decision. A property must be found "abandoned" as that term is used in Wis. Stat. § 846.102 for a court to require a sheriff's sale. From a practical perspective, neither the statutory language of Wis. Stat. § 846.102 nor the *Carson* decision states a lender must actually bid at a sale. If there are no bids at the sale or no bids in an amount which a court will confirm, the parties will be left in the same position as they occupied prior to the sale.

The Bank of New York has stated it intends to seek the Wisconsin Supreme Court's review of this decision. Accordingly, there may be additional appellate guidance forthcoming on this issue.

¹ A court may find that a mortgaged property is abandoned upon receiving proof of specific conditions of abandonment. If a property is deemed abandoned, the lender's redemption period is shortened to five weeks. Wis. Stat. § 846.102.

² 2013 WI App 153, 2013 WL 6169403 (Wis. App. Nov. 26, 2013).

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