

New Wisconsin Law Regarding the Foreclosure Process for Abandoned Properties

In the 2015 e-alert, "[Wisconsin Supreme Court Affirms That Courts Are Required to Order the Sale of Abandoned Property](#)," the Reinhart [Real Estate Opinion Team](#) reported on the Wisconsin Supreme Court's upholding of a decision reached in *Bank of New York Mellon v. Carson*. As a reminder, in *Carson*, the Wisconsin Supreme Court decided that Wisconsin circuit courts have the authority to order the sale of abandoned properties subject to a foreclosure judgment "within a reasonable time after the redemption period." As noted in the 2015 e-alert, this decision had the potential to immediately impact the Wisconsin real estate market as lenders holding foreclosure judgments on abandoned properties seemingly needed to promptly schedule a sale or risk being deemed to have held these properties for an unreasonable period of time.

In response to the *Carson* decision, Governor Scott Walker and the Wisconsin Legislature recently enacted a new law, 2015 Wisconsin Act 376 ("Act 376"), revising the foreclosure procedure for abandoned property in Wisconsin. Act 376 (1) clarifies that only the plaintiff, municipality or county (*i.e.*, not the mortgagor) can bring a motion to declare a property abandoned, and (2) provides a clearer set of alternatives for a mortgagee once it obtains a foreclosure judgment on an abandoned property. In regards to this second point, after the entry of a foreclosure judgment on such a property, Act 376 now requires the mortgagee to take one of the following actions within 12 months:

- hold a sale of the mortgaged premises and have the sale confirmed; or
- release or satisfy the mortgage lien and vacate the judgment of foreclosure.

If, for whatever reason, the mortgagee does not pursue either of the foregoing options within 12 months after the entry of the foreclosure judgment, the mortgagor or the applicable municipality may petition the court for an order compelling a sale of the abandoned property.

Although Act 376 clarifies the amount of time mortgagees of abandoned property have to decide whether to proceed to the final sale of the property, traditional lenders and other parties holding Wisconsin mortgages on abandoned properties still need to carefully weigh the possible costs and benefits of even commencing a

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possible foreclosure action as they could be forced to pursue the foreclosure all the way through to the conclusion of a sheriff's sale if the mortgagor or local municipality were to bring a successful action to compel a sale following the aforementioned 12 month period. Assuming it does file, a mortgagee should also take appropriate steps to ensure that the subsequent sale takes place at a time reasonably acceptable to the mortgagee.

If you have questions about this case or foreclosure processes in Wisconsin generally, please contact your Reinhart attorney or any member of the Reinhart [Real Estate Opinion Team](#).

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