

One Form of Action Opinion Available to Wisconsin

It is not uncommon for out-of-state commercial lenders taking a mortgage on Wisconsin real property to request Wisconsin counsel to opine on whether there is no "one form of action" or similar rule that would require a mortgagee to choose only one remedy when enforcing its rights under the Mortgage. Below is an opinion that our firm was recently requested to give in its capacity as a borrower's local counsel:

There is no "one form of action" or similar rule in the State of _____ limiting the Collateral Agent to choosing only one remedy in enforcing its rights under the Mortgage(s), and no law that would impair the right of the Collateral Agent to secure a deficiency judgment or realize on any other mortgages or collateral for the Loans whether prior to, concurrently with or after realizing upon, any Mortgage.

Unlike California, Utah and other states that have adopted a version of "one form of action" rule, Wisconsin does not limit lenders to a single form of action to collect on a mortgage debt. As a result, Wisconsin counsel should be able to provide some version of the "one form of action" opinion typically requested by a lender. Below is a version of the "one form of action" opinion used by our firm's attorneys when they are asked to give this opinion in a real estate opinion:

There is no "one form of action" or similar rule in the State of Wisconsin limiting Lender to choosing only one remedy in enforcing its rights under the Mortgage, and no law that would impair the right of Lender (a) to secure a deficiency judgment pursuant to Wisconsin Statutes Chapter 846 Real Estate Foreclosure (except to the extent that Lender waives such rights to a deficiency judgment pursuant to Wisconsin Statutes sections 846.101 or 846.103, or otherwise), or (b) realize on any other mortgages or collateral for the loans secured by the Mortgage whether prior to, concurrently with or after realizing upon, the Mortgage.

If you have questions about this update, please contact your Reinhart attorney or any member of the Reinhart Real Estate Opinion Team.

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