

Providing Lenders with a Shortened Redemption Period Option in Wisconsin Mortgages

In reviewing a lender's mortgage form in our capacity as Wisconsin local counsel, one of the most frequent revisions we suggest making is to insert language to provide the lender, in its capacity as mortgagee, the opportunity to shorten the mortgagor's redemption period in order to reclaim the mortgaged property more quickly. The following summary explains the concept that needs to be added to a mortgage securing Wisconsin real property in order to ensure the mortgagee has the option to reduce the normal redemption period by one-half.

All foreclosures of real property in Wisconsin must be done through a statutorily derived judicial process that provides mortgagors with a time period following the lender's receipt of a default judgment to redeem the property and, thereby, avoid a foreclosure sale. Section 846.103(1) of the Wisconsin Statutes generally prohibits any foreclosure sale of commercial real property until six months after the date the lender secures a default judgment. If, however, the mortgagee expressly waives its right to any deficiency judgment in its pleadings, section 846.103(2) of the Wisconsin Statutes allows the mortgagee an opportunity to shorten that redemption period from six months to three months provided that the mortgagor had expressly agreed to permit the mortgagee to shorten the redemption when the mortgage was executed.¹

Unless an out-of-state lender is aware of the availability of this shortened redemption period, it is likely that it will not insert the advance mortgagor consent language into its mortgage document needed for a mortgagee to elect to use this shortened redemption period option in the event of a subsequent default by the mortgagee. When called upon to serve as the lender's Wisconsin counsel, however, we are happy to work with lenders and their counsel to ensure that this mortgage consent language is added to the Wisconsin mortgage form to preserve as many options as possible for the lender in the event of a subsequent default by its mortgagee.

If you have questions about this update or the applicability of Wisconsin law to particular loan documents, please contact your Reinhart attorney or any member of the Reinhart Real Estate Opinion Team.

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¹ In particular, section 846.103(2) of the Wisconsin Statutes states: If the mortgagor of real property other than a one- to 4-family residence that is owner-occupied at the commencement of the foreclosure action, a farm, a church or a tax-exempt nonprofit charitable organization has agreed in writing at the time of the execution of the mortgage to the provisions of this section, the plaintiff in a foreclosure action of a mortgage... may elect by express allegation in the complaint to waive judgment for any deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage, and to consent that the mortgagor, unless he or she abandons the property, may remain in possession of the mortgaged property and be entitled to all rents, issues and profits therefrom to the date of confirmation of the sale by the court. When the plaintiff so elects, judgment shall be entered as provided in this chapter, except that no judgment for deficiency may be ordered nor separately rendered against any party who is personally liable for the debt secured by the mortgage and the sale of the mortgaged premises shall be made upon the expiration of 3 months from the date when such judgment is entered.

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