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The Benefits of Wisconsin's Shortened Redemption Period Statute to Both Mortgagors and Mortgagees

In Wisconsin, mortgagees seeking to foreclose a mortgage must follow the judicial foreclosure procedures laid out in Chapter 846 of the Wisconsin Statutes, including, without limitation, the statutorily-prescribed redemption periods for different types of property. For real properties other than 1-4 family owner-occupied residential properties, farm properties or church or other tax-exempt properties, Section 846.103(2) provides that no foreclosure sale may be held until six (6) months after the date of the entry of the foreclosure judgement. However, the mortgagee can elect to cut the redemption period in half if (a) the mortgagor had agreed in writing to permit the mortgagee the right to shorten the redemption period at the time that the mortgage was executed, and (b) the mortgagee agrees to waive any deficiency claim against the mortgagor at the time the mortgagee elects to exercise its rights to the shortened redemption period.

In reviewing loan documents as Wisconsin local counsel for a lender, 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 permit the mortgagee to cut the redemption period in half if the mortgage is, in turn, willing to waive any deficiency claim against the mortgagee.

However, both lenders and borrowers should be aware that Section 846.103(2) can provide both short-term and long-term benefits to a mortgagor as well as a mortgagee. If the mortgagee elects to pursue its right to a shortened redemption period, Section 846.103(2) also provides that the mortgagor will retain possessory rights to the mortgaged premises, including the right to collect all rents and profits, up to the date that the eventual foreclosure sale is confirmed by the court. In the longer term, the mortgagor would also benefit from the mortgagee's waiver of any deficiency claim that it may have against the mortgagor related to the mortgagor's default under the mortgage.

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