

The Timing of the Foreclosure Sale Process for Occupied Properties in Wisconsin

In *Bank of New York Mellon v. Carson*, 2015 WI 2015, the Wisconsin Supreme Court held 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” has expired. In 2016, the Wisconsin legislature and Governor Walker enacted a new law that brought further clarity to the process by revising the foreclosure law to require mortgagees holding a foreclosure judgment on abandoned real properties in Wisconsin to either (a) hold a sale of the mortgaged premises within 12 months of the date of the foreclosure judgment, or (b) release the mortgage lien and vacate the judgment of foreclosure. Under the new law, if the mortgagee fails to pursue either of the foregoing options within 12 months after the entry of the foreclosure judgment, either the mortgagor or the applicable municipality may petition the court for an order compelling a sale of the abandoned property.

However, a separate Wisconsin court decision has helped clarify that the need for clear foreclosure sale timeframes is confined to situations involving abandoned real properties in Wisconsin. In *Bank of America, N.A. v. Prissel*, 2015 WI App 10, the Wisconsin Court of Appeals examined Section 846.101 of the Wisconsin Statutes which sets forth the procedures to be followed by mortgagees seeking to foreclose on owner-occupied, residential properties consisting of only 1-4 units. In particular the Court examined whether the mortgagee must publish a notice of a foreclosure sale within the 6-month time frame suggested by the statute or risk having the court vacate the foreclosure judgment altogether.

After carefully reviewing the text of the applicable statute, the Court held that the mortgagee was permitted but not required to move forward with the foreclosure sale within the 6-month period following the issuance of the foreclosure judgment. In reaching its decision, the Wisconsin Court of Appeals was very careful to note that its interpretation of the suggested time frames in Section 846.101 (and, by extension, Section 846.103 which sets forth the foreclosure procedures for commercial properties) do not extend to the types of abandoned mortgaged properties addressed in the Carson case as Section 846.102 of the Wisconsin Statutes set forth a separate foreclosure procedures for addressing abandoned properties as opposed to real properties which continued to be occupied as was the situation in the Prissel case.

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For lenders, the Prissel case should provide some comfort that the judicial and legislative time frames that have been imposed on mortgagees of abandoned properties have not been imposed on lenders holding mortgages on properties in Wisconsin that continue to be occupied.

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