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# Update: Requirements for Foreclosure of Abandoned Properties in Wisconsin Continues to Take Shape

In a recent e-alert, the Reinhart Real Estate Opinions team updated a case we have been following with great interest. The Wisconsin Supreme Court held that a lender holding a foreclosure judgment of an abandoned property is required to bring an action to sell the abandoned property within a reasonable time following the redemption period. Although it did not give a hard-and-fast time period, it did indicate that the determination of reasonableness would be made on a case-by-case basis.

The concurring opinion warned that "thousands of foreclosed properties" in Wisconsin would need to be scheduled within a few months of its decision in order to comply with the Court's mandate. The concurrence fails to (1) reference a source for the number of abandoned properties in Wisconsin subject to foreclosure judgments; or (2) explain why "a few months" would necessarily be deemed the reasonable amount of time within which a sale would be required.

Regardless of the prognostications in the concurrence's opinion, at least one new case has been filed in the few months since its decision. In what we believe is the first case attempting to apply the Court's findings to investment properties, the former owner of a rental property has filed suit against its lender to force a sale. Robert Secrest purchased residential property in Milwaukee that he intended to rent to third parties. He obtained a loan from M&I Marshall & Ilsley Bank (now BMO Harris Bank) in February 2008. By April 2011, BMO had obtained a foreclosure judgment against Mr. Secrest, who provided to BMO the keys to the property and notified BMO that the property was abandoned.

According to Mr. Secrest's complaint, BMO elected not to proceed with a foreclosure sale in 2011— and in fact, BMO has not yet sold the property. In the meantime, the City of Milwaukee garnished Mr. Secrest's wages for non-payment of real estate taxes in 2011 and 2012. The City of Milwaukee is pursuing garnishment for 2013 and has informed Mr. Secrest of the tax amount due in 2014 as well.

Mr. Secrest would like the court to force a sale of the property. With the newfound direction from the Wisconsin Supreme Court, the lower court has the authority to force a sale of the property (if it determines the property to be abandoned). This case also raises equitable arguments related to the payment of

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maintenance and taxes during the time in which the property has been foreclosed upon, but prior to the sale. Mr. Secrest is seeking to recover those costs from BMO. In a unique argument, Mr. Secrest is also alleging that BMO did not properly enforce its rights and, therefore, its foreclosure lien should be removed (thereby resulting in Mr. Secrest owning the property free and clear with no mortgage lien or any amount due to BMO). We will continue to monitor this evolving area of Wisconsin foreclosure law.

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 Practice.

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