

When Lenders Initiate Foreclosure of Abandoned Properties in Wisconsin, They Need to Promptly Sell the Abandoned Property

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After a recent decision by the Wisconsin Court of Appeals,¹ Wisconsin's lending community should think twice before initiating a foreclosure action on an abandoned property. The court's holding requires lenders holding a foreclosure judgment on abandoned property to sell the property five weeks after the foreclosure judgment is entered. Although this case dealt with only residential property, the Wisconsin Statutes the court relied upon do not differentiate between residential or commercial properties. Therefore, this interpretation is likely to have equal application to commercial properties as well.

The facts of the case involved a bank initiating a foreclosure action against its borrower, Ms. Carson, who the court described as a "sixty-two-year-old widow who was physically and financially unable to care for the property." Ms. Carson did not answer or dispute foreclosure. Instead, she moved out.

Consequently, three months later, the bank went through the formal—and required—process of registering the house with the city of Milwaukee as an abandoned property. Pursuant to city of Milwaukee ordinances, lenders of abandoned properties have certain obligations to inspect abandoned

properties that are subject to foreclosure actions. In June of 2011, the bank obtained a foreclosure judgment by default. Then, as far as the court discerned, the bank did nothing, including failing to comply with its inspection requirements under the city's ordinances. Ms. Carson continued to have very little to do with the property as well.

Other people, namely burglars and vandals, visited the property more regularly than did either the bank or Ms. Carson. Thanks to their handiwork, the city of Milwaukee fined Ms. Carson, who remained the property owner, pending a sheriff's sale. Finally, in November 2012, 16 months after the foreclosure judgment, Ms. Carson filed an action to force the sale of her property. The bank objected, claiming she had no such right to determine when the bank had to sell the property.

Although the lower court sided with the bank, the appellate court overturned the decision, siding with Ms. Carson. The appellate court examined Wisconsin Statute Section 846.102 in detail. In relevant part, the statute reads that "[i]n an action for enforcement of a mortgage lien [of an abandoned property],... the sale of such mortgaged premises shall be made upon the expiration of 5 weeks from the date when such judgment is

entered." The statute provides that "[i]n addition to the parties to the action to enforce a mortgage lien," a municipality or county may also enforce such lien rights.

Given the plain language of the statute, the appellate court held that a lender holding a foreclosure judgment against an abandoned property must sell the property five weeks after obtaining a foreclosure judgment. The appellate court further held that either party to a foreclosure action could enforce these rights. Many lenders may already abide by this nuanced obligation with respect to abandoned properties. However, all prudent lenders need to be aware of this recent decision and implement policies and practices to either delay receipt of a foreclosure judgment on an abandoned property or be prepared to move swiftly following such judgment.

The case may be appealed to the Wisconsin Supreme Court for additional review. Lenders should "stay tuned" for more information or clarification on this issue. ♦

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¹ Bank of New York v. Carson, 2013 WI App 153 (Dist. 1, Nov. 26, 2013).