

State of Wisconsin



2017 Assembly Bill 253

Date of enactment: **November 30, 2017**

Date of publication*: **December 1, 2017**

2017 WISCONSIN ACT 104

AN ACT to repeal 846.167 (title) and (1) and 846.17; **to renumber** 846.167 (2) (a) and 846.167 (2) (c); **to renumber and amend** 846.16 (1), 846.16 (2), 846.16 (3), 846.167 (2) (intro.), 846.167 (2) (b) and 846.167 (3); **to amend** 77.22 (1), 846.10 (2) (a) 1., 846.10 (2) (a) 2. a., 846.10 (2) (a) 2. b., 846.101 (2) (b), 846.101 (2) (c) 1., 846.101 (2) (c) 2., 846.102 (3) (a) 1., 846.103 (1) and (2) and 846.16 (title); and **to create** 846.16 (1) (title), 846.16 (1) (c) 3., 846.16 (2m) (title), 846.16 (3m) (title), 846.16 (3m) (a) 1. and 2., 846.16 (3m) (b) and 846.16 (4) of the statutes; **relating to:** procedures related to a sale of foreclosed property by a sheriff or referee.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.22 (1) of the statutes is amended to read:

77.22 (1) There is imposed on the grantor of real estate a real estate transfer fee at the rate of 30 cents for each \$100 of value or fraction thereof on every conveyance not exempted or excluded under this subchapter. In regard to land contracts, the value is the total principal amount that the buyer agrees to pay the seller for the real estate. This fee shall be collected by the register at the time the instrument of conveyance is submitted for recording. Except as provided in s. 77.255, at the time of submission the grantee or his or her duly authorized agent or other person acquiring an ownership interest under the instrument, or the clerk of court or judgment creditor in the case of a foreclosure under s. 846.16, shall execute a return, signed by both grantor and grantee, on the form prescribed under sub. (2). The register shall enter the fee paid on the face of the deed or other instrument of conveyance before recording, and, except as provided in s. 77.255, submission of a completed real estate transfer return and collection by the register of the fee shall be

prerequisites to acceptance of the conveyance for recording. The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed. If the transfer is not subject to a fee as provided in this subchapter, the reason for exemption shall be stated on the face of the conveyance to be recorded by reference to the proper subsection under s. 77.25.

SECTION 2. 846.10 (2) (a) 1. of the statutes is amended to read:

846.10 (2) (a) 1. If the mortgage was executed before April 27, 2016, upon the expiration of 12 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 12-month period, except that the first printing of the notice shall not be made less than 10 months after the date when the judgment is entered, and except that the sale of a farm shall not be made or advertised until the expiration of one year from the date when the judgment is entered.

SECTION 3. 846.10 (2) (a) 2. a. of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

846.10 (2) (a) 2. a. Except as provided in subd. 2. b., upon the expiration of 6 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 6-month period, except that the first printing of the notice shall not be made less than 4 months after the date when the judgment is entered, and except that the sale of a farm shall not be made or advertised until the expiration of 6 months from the date when the judgment is entered.

SECTION 4. 846.10 (2) (a) 2. b. of the statutes is amended to read:

846.10 (2) (a) 2. b. Upon motion of the mortgagor before judgment is entered, if the court finds that the mortgagor is attempting in good faith to sell the mortgaged premises and has entered into a listing agreement with a real estate broker licensed under ch. 452 to sell the mortgaged premises, upon the expiration of 8 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 8-month period, except that the first printing of the notice shall not be made less than 6 months after the date when the judgment is entered, and except that the sale of a farm shall not be made or advertised until the expiration of 8 months from the date when the judgment is entered.

SECTION 5. 846.101 (2) (b) of the statutes is amended to read:

846.101 (2) (b) If the mortgage was executed before April 27, 2016, the sale of the mortgaged premises shall be made upon the expiration of 6 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 6-month period, except that the first printing of the notice shall not be made less than 4 months after the date when the judgment is entered.

SECTION 6. 846.101 (2) (c) 1. of the statutes is amended to read:

846.101 (2) (c) 1. Except as provided in subd. 2., upon the expiration of 3 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 3-month period, except that the first printing of the notice shall not be made less than one month after the date when the judgment is entered.

SECTION 7. 846.101 (2) (c) 2. of the statutes is amended to read:

846.101 (2) (c) 2. Upon motion of the mortgagor before judgment is entered, if the court finds that the mortgagor is attempting in good faith to sell the mortgaged premises and has entered into a listing agreement with a real estate broker licensed under ch. 452 to sell the mortgaged premises, upon the expiration of 5 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and

846.16 (1) and may be given within the 5-month period, except that the first printing of the notice shall not be made less than 3 months after the date when the judgment is entered.

SECTION 8. 846.102 (3) (a) 1. of the statutes is amended to read:

846.102 (3) (a) 1. Hold a sale of the mortgaged premises and have the sale confirmed under s. 846.165. Any sale of the mortgaged premises may be held at any time after the expiration of 5 weeks from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given at any time within the 12-month period.

SECTION 9. 846.103 (1) and (2) of the statutes are amended to read:

846.103 (1) No foreclosure sale involving real property other than a one-family 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 may be held until the expiration of 6 months from the date when the judgment is entered except a sale under sub. (2). Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 6-month period, except that the first printing of the notice shall not be made less than 4 months after the date when the judgment is entered.

(2) If the mortgagor of real property other than a one-family 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, which mortgage is recorded subsequent to May 12, 1978, may elect by express allegation in the complaint to waive judgment for any deficiency which ~~that~~ 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 premises 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 the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 (1) and may be given within the 3-month period, except that the first printing of the notice shall not be made less than one month after the date when the judgment is entered.

SECTION 10. 846.16 (title) of the statutes is amended to read:

846.16 (title) Notice and report of sale; confirmation; transfer.

SECTION 11. 846.16 (1) (title) of the statutes is created to read:

846.16 (1) (title) NOTICE OF SALE AND SALE.

SECTION 12. 846.16 (1) of the statutes is renumbered 846.16 (1) (a) and amended to read:

846.16 (1) (a) The sheriff or referee who makes sale of mortgaged premises, under a judgment therefor, shall give notice of the time and place of sale in the manner provided by law for the sale of real estate upon execution or in such other manner as the court shall in the judgment direct; ~~where. The sheriff or referee shall include in the notice of sale the street address, if any, of the real estate to be sold and the sum of the judgment. If the department of veterans affairs is also a party in the foreclosure action, the judgment shall direct that notice of sale be given by registered mail, return receipt requested, to the department at Madison, Wisconsin, at least 3 weeks prior to the date of sale, but such requirement does not affect any other provision as to giving notice of sale. Except as provided in sub. (3) and s. 846.167, the sheriff or referee shall, within 10 days thereafter, file with the clerk of the court a report of the sale, and shall also immediately after the sale first deduct any fee due under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with the clerk of the court for transmittal to the register of deeds; then deduct the costs and expenses of the sale, unless the court orders otherwise, and then deposit with the clerk of the court the proceeds of the sale ordered by the court. The~~ Upon the sale of the mortgaged premises and upon compliance with its terms, the sheriff or referee shall make and execute to the purchaser, the purchaser's assigns, or personal representatives a deed of the premises sold that includes each parcel of land sold to the purchaser and the purchase price.

(c) 1. Except as provided under subd. 2., the sheriff or referee may not accept from the purchaser at such sale as a deposit or down payment upon the same not less than \$100, in which case such amount shall be so deposited with as a deposit or down payment from the purchaser at a sale of mortgaged premises. The sheriff or referee shall deliver the amount of the deposit or down payment to the clerk of the court as above provided, in par. (b), and the purchaser shall pay the balance of the sale price shall be paid to the clerk by the purchaser at such sale of court upon the confirmation thereof of the sale. If the highest bid is less than \$100, the whole amount thereof shall be so deposited sheriff or referee shall deliver the entire amount.

SECTION 13. 846.16 (1) (c) 3. of the statutes is created to read:

846.16 (1) (c) 3. In all cases, the purchaser at the sale of the mortgaged premises shall pay the cost of sale.

SECTION 14. 846.16 (2) of the statutes is renumbered 846.16 (1) (c) 2. and amended to read:

846.16 (1) (c) 2. If the judgment creditor is the purchaser at the sale of the mortgaged premises, the judgment creditor may give ~~his or her~~ the judgment creditor's receipt to the sheriff or referee for any sum not exceeding the judgment creditor's judgment ~~and such.~~ The judgment creditor's receipt shall be deemed is considered a down payment, ~~but in every case the purchaser shall pay the cost of sale; and if the sum due the creditor. If the judgment creditor is the purchaser and the sum due to the creditor is less than the purchase price, the judgment creditor shall pay the difference to the sheriff or referee at the time of sale.~~

SECTION 15. 846.16 (2m) (title) of the statutes is created to read:

846.16 (2m) (title) CONFIRMATION.

SECTION 16. 846.16 (3) of the statutes is renumbered 846.16 (1) (b), and 846.16 (1) (b) (intro.), as renumbered, is amended to read:

846.16 (1) (b) (intro.) ~~If the mortgaged premises are located in a county having a population of 750,000 or more, no~~ No later than 10 days after the sale of the mortgaged premises, the sheriff or referee shall do all of the following:

SECTION 17. 846.16 (3m) (title) of the statutes is created to read:

846.16 (3m) (title) TRANSMITTAL TO REGISTER OF DEEDS.

SECTION 18. 846.16 (3m) (a) 1. and 2. of the statutes are created to read:

846.16 (3m) (a) 1. Deliver the deed to the mortgaged premises received under sub. (1) (b), the receipt for submitting a transfer return under s. 77.22, the amount due under s. 59.43 (2) to record the deed and any other document required to record the deed, and the transfer fee, if any, to the register of deeds.

2. Notify the register of deeds that the deed to the mortgaged premises received under sub. (1) (b), the receipt for submitting a transfer return under s. 77.22, the amount due under s. 59.43 (2) to record the deed and any other document required to record the deed, and the transfer fee, if any, are available in the clerk's office. If a register of deeds is notified under this subdivision, the register of deeds shall retrieve the documents and fees from the clerk of courts within a reasonable period of time.

SECTION 19. 846.16 (3m) (b) of the statutes is created to read:

846.16 (3m) (b) Upon confirmation of the sale, the deed executed under sub. (1) (a) shall vest in the purchaser, the purchaser's assigns, or personal representatives all the right, title, and interest of the mortgagor, the mortgagor's heirs, personal representatives, and assigns in and to the premises sold and shall be a bar to all claim, right of equity of redemption therein, of and against the parties to such action, their heirs, and personal representatives, and against all persons claiming under them subsequent to the filing of the notice of the pendency of the

action in which such judgment was rendered; and the purchaser, the purchaser's heirs, or assigns shall be let into the possession of the premises so sold on production of such deed or a duly certified copy thereof, and the court may, if necessary, issue a writ of assistance to deliver such possession.

SECTION 20. 846.16 (4) of the statutes is created to read:

846.16 (4) **NO CONFIRMATION OF SALE; RESALE.** (a) If any of the requirements under sub. (2m) are not satisfied and the purchaser is not the judgment creditor, the court shall order the purchaser to forfeit the amount of the purchaser's deposit or down payment and that amount shall be paid to the parties who would be entitled to the proceeds of the sale as ordered by the court. The court shall also order that the mortgaged premises be resold. The clerk of court shall destroy the deed executed to the defaulting purchaser and it shall be of no effect.

(b) If any of the requirements under sub. (2m) are not satisfied and the purchaser is the judgment creditor, the court may order the purchaser to forfeit the greater of the purchaser's deposit or \$500, and order the purchaser to comply with sub. (2) so that the mortgaged property may be sold to the purchaser.

(c) If the court does not confirm the sale of the mortgaged premises for a reason other than a failure to satisfy a requirement under sub. (2m), the clerk of court shall return the deposit or down payment to the purchaser and order the mortgaged premises to be resold. The clerk of court shall destroy the deed received under sub. (1) (b) and it shall be of no effect.

SECTION 21. 846.167 (title) and (1) of the statutes are repealed.

SECTION 22. 846.167 (2) (intro.) of the statutes is renumbered 846.16 (2m) (intro.) and amended to read:

846.16 (2m) (intro.) If a sheriff or referee makes a sale of mortgaged premises ~~located in a county~~ under a judgment of foreclosure and sale, all of the following apply:

SECTION 23. 846.167 (2) (a) of the statutes is renumbered 846.16 (2m) (a).

SECTION 24. 846.167 (2) (b) of the statutes is renumbered 846.16 (2m) (b), and 846.16 (2m) (b) 2. a., as renumbered, is amended to read:

846.16 (2m) (b) 2. a. The deed to the mortgaged premises delivered under s. ~~846.16~~ sub. (1) (b).

SECTION 25. 846.167 (2) (c) of the statutes is renumbered 846.16 (2m) (c).

SECTION 26. 846.167 (3) of the statutes is renumbered 846.16 (3m) (a) (intro.) and amended to read:

846.16 (3m) (a) (intro.) Upon the court confirming the sale of mortgaged premises ~~located in a county~~ and upon compliance by the purchaser with the terms of the sale and the payment of any balance of the sale price to be paid, unless otherwise ordered by the court, the clerk of the court shall do one of the following to transmit the deed to the mortgaged premises received under s. 846.16, the receipt for submitting a transfer return under s. 77.22, any certificate, waiver, or stipulation required under s. 101.122, the amount due under s. 59.43 (2) to record the deed and any other document required to record the deed, and the transfer fee, if any, sub. (1) (b) to the register of deeds of the county. for recording:

SECTION 27. 846.17 of the statutes is repealed.

SECTION 28. Initial applicability.

(1) This act first applies to a sale of mortgaged premises held by a sheriff or referee that occurs on the effective date of this subsection.