



2015 SENATE BILL 629

January 22, 2016 - Introduced by Senators LASEE and STROEBEL, cosponsored by Representatives KATZMA, ALLEN, CRAIG, GANNON, JARCHOW, KREMER and MACCO. Referred to Committee on Insurance, Housing, and Trade.

1 **AN ACT to renumber and amend** 846.10 (2) and 846.101 (2); **to amend** 846.101
2 (1), 846.102 (1), 846.103 (1) and 846.103 (2); and **to create** 846.10 (2) (a) 2.,
3 846.101 (2) (c) and 846.102 (3) and (4) of the statutes; **relating to:** the
4 redemption period and notice of sale applicable to a foreclosure action involving
5 noncommercial property and procedures regarding abandoned property in a
6 foreclosure action.

Analysis by the Legislative Reference Bureau

This bill 1) reduces the redemption period applicable to a foreclosure action involving certain residential and other noncommercial property from 12 months to six months if the deficiency is not waived and from six months to three months if the deficiency is waived; 2) limits who may petition the court in a foreclosure action to declare mortgaged property abandoned for purposes of reducing the redemption period; 3) provides that commercial mortgaged property that is abandoned need not be sold by the plaintiff; 4) provides that, if noncommercial mortgaged property is abandoned, the plaintiff must, within 12 months after a foreclosure judgment is entered, either sell the property and have the sale confirmed or release the mortgage lien and vacate the foreclosure judgment; 5) clarifies that notice of foreclosure sale may, but is not required to, be given during the redemption period; and 6) provides that, if a mortgagor is attempting in good faith to sell noncommercial mortgaged property, the court may increase the applicable redemption period from six months

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to eight months if the deficiency is not waived and from three months to five months if the deficiency is waived.

Under current law, a judgment of foreclosure must specify a length of time, called a redemption period, during which a mortgagor may redeem the mortgaged property by paying the entire amount of the mortgage debt, including interest and costs incurred by the foreclosing plaintiff. Upon redemption, the judgment of foreclosure and the underlying mortgage are discharged, and the mortgagor retains the property. The length of the redemption period depends on the type of property involved and on whether the plaintiff elects to waive judgment for any deficiency which may remain due to the plaintiff after the property is sold.

Under current law, the redemption period applicable to a one-family to four-family residence that is owner-occupied at the commencement of the action, a farm, a church, or a tax-exempt charitable organization (noncommercial property) is 12 months if the deficiency is not waived and six months if the deficiency is waived. This bill reduces the redemption period applicable to a foreclosure action involving noncommercial property from 12 months to six months if the deficiency is not waived and from six months to three months if the deficiency is waived.

This bill also provides that, if a mortgagor is attempting in good faith to sell noncommercial mortgaged property and has entered into a listing contract with a licensed real estate broker to sell the mortgaged property, the court may increase the redemption period from six months to eight months if the deficiency is not waived and from three months to five months if the deficiency is waived.

Under current law, if a court finds that the mortgaged property is abandoned, the redemption period is reduced to five weeks. In *Bank of New York Mellon v. Carson*, 2015 WI 15, 361 Wis. 2d 23, 859 N.W.2d 422, the Wisconsin Supreme Court held that the court had the authority, upon motion of the mortgagor, to determine whether the mortgaged property was abandoned and could require that the property be sold within a reasonable time after the five-week redemption period. This bill permits a court to declare a mortgaged property abandoned only upon motion of the plaintiff or the city, town, village, or county where the mortgaged property is located. This bill also provides that, if mortgaged property is determined to be abandoned, one of the following applies:

1. If the mortgaged property is noncommercial property, the plaintiff must, within 12 months after judgment is entered, either sell the property and have the sale confirmed or release the mortgage lien and vacate the foreclosure judgment.

2. If the mortgaged property is real property other than noncommercial property, the plaintiff is not required to sell the property, but any sale of the property may take place after the expiration of the five-week redemption period.

Finally, this bill codifies the holding of the Wisconsin Court of Appeals in *Bank of America, N.A. v. Prissel*, 2015 WI App 10, 359 Wis. 2d 561, 859 N.W.2d 172, by

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clarifying that notice of foreclosure sale may, but is not required to, be given during the redemption period for a noncommercial property for which deficiency is waived.

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

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

3 846.10 (2) (a) (intro.) Any party may become a purchaser. ~~No~~ Except for a sale
4 under s. 846.101 or 846.102 and except as provided in pars. (b) and (c), no sale
5 involving a ~~one-~~ one-family to 4-family residence that is owner-occupied at the
6 commencement of the foreclosure action, a farm, a church, or a tax-exempt nonprofit
7 charitable organization may be held ~~until~~ except as follows:

8 1. If the mortgage was recorded before the effective date of this subdivision
9 [LRB inserts date], upon the expiration of 12 months from the date when the
10 judgment is entered, ~~except a sale under s. 846.101 or 846.102.~~ Notice of the time
11 and place of sale shall be given under ss. 815.31 and 846.16 and may be given within
12 the 12-month period, except that the first printing of the notice shall not be made
13 less than 10 months after the date when the judgment is entered, and except that the
14 sale of a farm shall not be made or advertised until the expiration of one year from
15 the date when such the judgment is entered.

16 (b) In all cases the parties may, by stipulation, filed with the clerk, consent to
17 an earlier sale.

18 (c) Sales under foreclosure of mortgages given by any railroad corporation may
19 be made immediately after the rendition of the judgment.

20 **SECTION 2.** 846.10 (2) (a) 2. of the statutes is created to read:

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1 846.10 (2) (a) 2. If the mortgage was recorded on or after the effective date of
2 this subdivision [LRB inserts date]:

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

10 b. Upon motion of the mortgagor before judgment is entered, if the court finds
11 that the mortgagor is attempting in good faith to sell the mortgaged premises and
12 has entered into a listing agreement with a real estate broker licensed under ch. 452
13 to sell the mortgaged premises, upon the expiration of 8 months from the date when
14 the judgment is entered. Notice of the time and place of sale shall be given under ss.
15 815.31 and 846.16 and may be given within the 8-month period, except that the first
16 printing of the notice shall not be made less than 6 months after the date when the
17 judgment is entered, and except that the sale of a farm shall not be made or
18 advertised until the expiration of 8 months from the date when the judgment is
19 entered.

20 **SECTION 3.** 846.101 (1) of the statutes is amended to read:

21 846.101 (1) If the mortgagor has agreed in writing at the time of the execution
22 of the mortgage to the provisions of this section, and the foreclosure action involves
23 a ~~one—~~ one-family to 4-family residence that is owner-occupied at the
24 commencement of the foreclosure action, a farm, a church, or a tax-exempt nonprofit
25 charitable organization, the plaintiff in a foreclosure action of a mortgage on real

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1 estate of 20 acres or less, which mortgage is recorded subsequent to January 22,
2 1960, may elect by express allegation in the complaint to waive judgment for any
3 deficiency which may remain due to the plaintiff after sale of the mortgaged premises
4 against every party who is personally liable for the debt secured by the mortgage, and
5 to consent that the mortgagor, unless he or she abandons the property, may remain
6 in possession of the mortgaged ~~property~~ premises and be entitled to all rents, issues,
7 and profits therefrom to the date of confirmation of the sale by the court.

8 **SECTION 4.** 846.101 (2) of the statutes is renumbered 846.101 (2) (a) and
9 amended to read:

10 846.101 (2) (a) When the plaintiff so elects, judgment shall be entered as
11 provided in this chapter, except that no judgment for deficiency may be ordered
12 ~~therein~~ nor separately rendered against any party who is personally liable for the
13 debt secured by the mortgage ~~and~~.

14 (b) If the mortgage was recorded before the effective date of this paragraph
15 [LRB inserts date], the sale of such the mortgaged premises shall be made upon the
16 expiration of 6 months from the date when such the judgment is entered. Notice of
17 the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given
18 within such the 6-month period, except that the first printing of a copy of such the
19 ~~notice in a newspaper~~ shall not be made less than 4 months after the date when such
20 the judgment is entered.

21 **SECTION 5.** 846.101 (2) (c) of the statutes is created to read:

22 846.101 (2) (c) If the mortgage was recorded on or after the effective date of this
23 paragraph [LRB inserts date], the sale of the mortgaged premises shall be made
24 as follows:

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

6 2. Upon motion of the mortgagor before judgment is entered, if the court finds
7 that the mortgagor is attempting in good faith to sell the mortgaged premises and
8 has entered into a listing agreement with a real estate broker licensed under ch. 452
9 to sell the mortgaged premises, upon the expiration of 5 months from the date when
10 the judgment is entered. Notice of the time and place of sale shall be given under ss.
11 815.31 and 846.16 and may be given within the 5-month period, except that the first
12 printing of the notice shall not be made less than 3 months after the date when the
13 judgment is entered.

14 **SECTION 6.** 846.102 (1) of the statutes is amended to read:

15 846.102 (1) In an action for enforcement of a mortgage lien, and upon motion
16 of the plaintiff or the city, town, village, or county where the mortgaged premises are
17 located, if the court makes an affirmative finding upon proper evidence being
18 submitted that the mortgaged premises have been abandoned by the mortgagor and
19 the mortgagor's assigns, judgment shall be entered as provided in s. 846.10 ~~except~~
20 ~~that the sale of such mortgaged premises shall be made upon the expiration of 5~~
21 ~~weeks from the date when such judgment is entered.~~ Notice of the time and place
22 of sale shall be given under ss. 815.31 and 846.16 and placement of the notice may
23 commence when judgment is entered sub. (3) or (4). In this section, "abandoned"
24 means the relinquishment of possession or control of the mortgaged premises

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1 whether or not the mortgagor or the mortgagor's assigns have relinquished equity
2 and title.

3 **SECTION 7.** 846.102 (3) and (4) of the statutes are created to read:

4 846.102 (3) (a) If the court finds that the mortgaged premises have been
5 abandoned under sub. (1), and the foreclosure action involves a one-family to
6 4-family residence that is owner-occupied at the commencement of the foreclosure
7 action, a farm, a church, or a tax-exempt nonprofit charitable organization,
8 judgment shall be entered as provided in s. 846.10, except that the plaintiff shall, no
9 later than 12 months from the date when the judgment is entered, do one of the
10 following:

11 1. Hold a sale of the mortgaged premises and have the sale confirmed under
12 s. 846.165. Notice of the time and place of sale shall be given under ss. 815.31 and
13 846.16 and may be given at any time within the 12-month period.

14 2. Release or satisfy the mortgage lien and vacate the judgment of foreclosure.
15 If the plaintiff presents evidence that the mortgage lien has been released or satisfied
16 and requests that the judgment of foreclosure be vacated, the court shall vacate the
17 judgment of foreclosure with prejudice.

18 (b) If, 12 months after the date when the judgment is entered, the plaintiff has
19 not completed an action under par. (a) 1. or 2., any party to the action or the city, town,
20 village, or county where the mortgaged premises are located may petition the court
21 for an order compelling a sale of the mortgaged premises.

22 (4) If the court finds that the mortgaged premises have been abandoned under
23 sub. (1), and the foreclosure action involves real property other than a one-family to
24 4-family residence that is owner-occupied at the commencement of the foreclosure
25 action, a farm, a church, or a tax-exempt nonprofit charitable organization,

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1 judgment shall be entered as provided in s. 846.10, except that the mortgaged
2 premises need not be sold, but any sale of the mortgaged premises may be held at any
3 time after the expiration of 5 weeks from the date when the judgment is entered.
4 Notice of the time and place of sale, if any, shall be given under ss. 815.31 and 846.16
5 and may be given at any time after the judgment is entered.

6 **SECTION 8.** 846.103 (1) of the statutes is amended to read:

7 846.103 (1) No foreclosure sale involving real property other than a ~~one—~~
8 one-family to 4-family residence that is owner-occupied at the commencement of
9 the foreclosure action, a farm, a church, or a tax-exempt nonprofit charitable
10 organization may be held until the expiration of 6 months from the date when the
11 judgment is entered except a sale under sub. (2). Notice of the time and place of sale
12 shall be given under ss. 815.31 and 846.16 and may be given within the 6-month
13 period, except that the first printing of the notice shall not be made less than 4
14 months after the date when the judgment is entered.

15 **SECTION 9.** 846.103 (2) of the statutes is amended to read:

16 846.103 (2) If the mortgagor of real property other than a ~~one—~~ one-family to
17 4-family residence that is owner-occupied at the commencement of the foreclosure
18 action, a farm, a church, or a tax-exempt nonprofit charitable organization has
19 agreed in writing at the time of the execution of the mortgage to the provisions of this
20 section, the plaintiff in a foreclosure action of a mortgage, which mortgage is recorded
21 subsequent to May 12, 1978, may elect by express allegation in the complaint to
22 waive judgment for any deficiency which may remain due to the plaintiff after sale
23 of the mortgaged premises against every party who is personally liable for the debt
24 secured by the mortgage, and to consent that the mortgagor, unless he or she
25 abandons the property, may remain in possession of the mortgaged property

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1 premises and be entitled to all rents, issues, and profits therefrom to the date of
2 confirmation of the sale by the court. When the plaintiff so elects, judgment shall be
3 entered as provided in this chapter, except that no judgment for deficiency may be
4 ordered nor separately rendered against any party who is personally liable for the
5 debt secured by the mortgage and the sale of the mortgaged premises shall be made
6 upon the expiration of 3 months from the date when such the judgment is entered.
7 Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and
8 may be given within the 3-month period, except that the first printing of the notice
9 shall not be made less than one month after the date when the judgment is entered.

SECTION 10. Initial applicability.

11 (1) The treatment of section 846.102 (1), (3), and (4) of the statutes first applies
12 to foreclosure actions commenced on the effective date of this subsection.

13 (END)