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WISCONSIN STATE REPRESENTATIVE

41ST ASSEMBLY DISTRICT

Assembly Bill 253: Procedures Related to a Sale of Foreclosed Property by a Sheriff or Referee
Testimony of State Representative Joan Ballweg
Assembly Committee on Local Government
May 3, 2017

Thank you, Chair Brooks, and members of the Committee on Local Government for holding this public hearing on AB 253.

AB 253 is a good government bill that will improve the process for how sheriff's deeds are filed after a property is sold at auction. The current sheriff's sale process gives the sheriff's deed to the Clerk of Courts, and after the court confirms the sale and the purchaser complies with all of the terms of the sale, the deed is then delivered to the purchaser; they may or may not record the deed as there is neither a time limit imposed nor a requirement to record. If the deed is not recorded, or if it is not done in a timely manner, the previous owner remains responsible for the property. This creates confusion because the previous owner will continue to receive the tax bill, delinquent notices, compliance notices and other property related notices.

AB 253 fixes this problem by keeping the entire process within the county. Rather than the Clerk of Courts giving the deed to the buyer to transfer it, AB 253 requires the Clerk of Courts to notify the Register of Deeds that a sheriff's deed is available for recording. Then, it is up to each county on how the deed is transferred between the two offices. Keeping the entire process within the county ensures deeds are actually transferred and are done so in a timely manner.

This change to the process was made in Milwaukee County during the negotiations for the Buck's Arena. AB 253 extends this process to the rest of the state to provide consistency. The only difference under AB 253 is the Clerk of Courts have the option to notify the register of deeds rather than requiring the Clerk of Courts to transfer the deed. This change was made as a result of conversations with the Clerk of Courts.

You will likely hear from the Clerk of Courts that there are alternatives to other parts of this process. Both the Register of Deeds and I have had several conversations with them regarding their concerns. The final bill draft does incorporate some of their suggestions, but we did as much as we thought we could to keep the bill practical and improve the process.

AB 253 also makes changes to the information included on foreclosure sale notices to provide as much information to potential buyers as possible before the auction. Currently, these notices are only required to "describe the property to be sold...with reasonable certainty". AB 253 takes best practice examples from certain counties statewide by requiring all foreclosure sale notices include the street address of the property to be sold at the sale if available, and the sum of the judgment.

Numerous organizations, including the Wisconsin Register of Deeds Association, Wisconsin Counties Association, Wisconsin Sheriff's & Deputy Sheriff's Association, Wisconsin County Treasurers Association, Wisconsin County Surveyors Association, Wisconsin Land Title Association, Wisconsin Real Property Listers Association, Wisconsin Land Information Association, and the Wisconsin Land Information Officer Network support AB 253 to improve the process for everyone involved in these transactions. Thank you for considering AB 253, and I am happy to answer any questions.



Luther S. Olsen

State Senator

14th District

TO: Assembly Committee on Local Government

DATE: Wednesday, May 3, 2017

SUBJECT: Testimony in favor of Assembly Bill 253

Thank you Chairman Brooks and the Assembly Committee on Local Government for holding a hearing and allowing me to testify in favor of Assembly Bill 253.

Under current law, for foreclosed property located outside of Milwaukee County, if the court confirms the sale and the purchaser complies with all of the terms of the sale, including paying any balance due on the purchase price, the clerk of court delivers the sheriff's deed to the purchaser. There is no requirement under current law that the purchaser deliver the sheriff's deed to the register of deeds for recording.

The current sheriff's sale process gives the sheriff's deed to the buyer; they may or may not record the deed as there is neither a time limit imposed nor a requirement to record. Often the tax rolls and property ownership are not updated in the county records until several months or even years after the sale. This legislation will ensure the buyer of a foreclosed property sale is on record after confirmation and all funds have been received by the courts. This protects the integrity of the county land records, holds the correct owner responsible for any taxes, zoning, and health issue that could affect the citizens of Wisconsin.

In addition, this legislation provides the clerk of court the option of notifying the register of deeds that a sheriff's deed is available for recording instead of requiring the clerk of court to transmit a sheriff's deed to the register of deeds. It also requires that a notice of a foreclosure sale include the street address of the property to be sold at the sale and the sum of the judgment.

The following groups are in support of this legislation:

- Community Association Institute-Wisconsin
- Wisconsin County Surveyors Association
- Badger State Sheriff's Association
- Wisconsin Sheriff's & Deputy Sheriff's Association
- Wisconsin Land Title Association
- Wisconsin Real Property Listers Association
- Wisconsin Land Information Association
- Wisconsin County Treasurers Association
- Wisconsin Land Information Officer Network
- Wisconsin Counties Association

Thank you members, we ask for your support and would be more than happy to answer any questions.



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May 3, 2017

Members of the Assembly Committee on Local Government:

Thank you for holding a hearing today on Assembly Bill (AB) 253, relating to procedures related to a sale of foreclosed property by a sheriff or referee. As a coauthor of this bill, I'm writing today to share my strong support for this legislation.

Last session, a constituent of mine in Portage came to me with a request to standardize the information that is published in foreclosure sale notices. As an attorney, he has experience dealing with these notices and wanted them to include the property's street address and the sum of the judgment.

For various reasons, that bill did not make it through the 2015 session, but thanks to Rep. Ballweg and Sen. Olsen, the same language is now included in AB 253. This bill would expand Milwaukee County's current process for confirming a foreclosure sale and recording the sheriff's deed to the entire state, and would require that all foreclosure sale notices include the property's street address and the sum of the judgment.

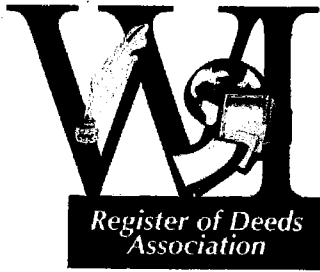
These changes would help standardize and simplify our statutes on foreclosure sales across the state, ensuring that all potential buyers have a fair chance at purchasing a property. As you may know, this legislation is supported by the Badger State Sheriffs' Association, the Wisconsin Sheriffs and Deputy Sheriffs Association, the Wisconsin Land Title Association, and others.

AB 253 is a common-sense, bipartisan effort to help make the foreclosure sale process more straightforward and transparent for our sheriffs, attorneys, and potential buyers. I encourage Chairman Brooks to bring AB 253 to a vote, and I hope you will all support it. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Dave Considine
State Representative
81st Assembly District





Wisconsin Register of Deeds Association Legislative Committee

Committee Members: Beth Pabst- Co-Chair, Sarah Guenther – Co-Chair, Karen Manske, John LaFave, Karen Miller, JoEllyn Storz, Tyson Fettes, Mike Mazemke, Margo Katterhagen, Kristi Chlebowski, Susan Ginter

<http://www.wrdaonline.org/Index.htm>

Re: Support Foreclosed Property Sale AB-253 and SB-175

The Wisconsin Register of Deeds Association (WRDA) **supports Foreclosed Property Sale AB-253 and SB-175**. The passage of this legislation will create efficiencies through accurate property records servicing multiple government agencies and the public.

- **Seamless Foreclosure Process.** With the implementation of the new legislation, the sheriff will hold the sale, the courts will confirm the sale, and the clerk of courts will notify the Register of Deeds.
- **Ownership Record Integrity.** The county ownership records, tax and assessment rolls, county zoning, municipal housing regulations, and state agencies records will show the correct owner on record immediately. This will assist not only these departments in contacting the correct owner regarding property issues but will also assist utility companies, realtors and law enforcement agencies.
- **Previous Owner Liability.** When the deed is not recorded in a timely manner, the tax bill is sent to the owner of record, the person who lost their property. They also receive delinquent notices, compliance notices and other property related notices to a home they no longer own.
- **Unscrupulous Purchasers.** Some Sheriff's deed purchasers choose not to record the deed; they do not pay municipal or county taxes and fees nor do they follow the standard landlord requirements. They collect rent but do not make necessary improvements to the property to ensure the safety of their renters.
- **Unkept Property.** Unkept properties lead to declining property values to the entire neighborhood, animal and bug infestation, health issues, as well as neighbor complaints to the municipal, county and law enforcement personnel.
- **Increased Crime.** Statistics show that unkept property leads to higher crime rate including squatters, drug houses, and vandalism. When a home is sold on Sheriff's sale, it is publically noticed, criminals look for these homes to steal plumbing and electrical items, and conduct criminal activity.

For these reasons, **the WRDA strongly supports Foreclosed Property Sale AB-253 and SB-175**. This protects the integrity of the county land records, holds the correct owner responsible for any taxes, zoning, safety and health issues that could affect the citizens of Wisconsin.

SHERIFF'S DEED

Document Number

Drafted by: Duncan C. Delhey

Case No. 15-CV-1424

TYSON FETTES
RACINE COUNTY
REGISTER OF DEEDS
Fee Amount: \$32.00
Transfer Fee: \$213.00

Pages: 1



THIS SPACE RESERVED FOR RECORDING DATA

Guaranty Trust Company

Plaintiff,

vs.

Susan Zakraysek a/k/a Susan C. Zakraysek and Kristin T. Miller

Defendants.

NAME AND RETURN ADDRESS:

FIK Investment Corp
15 Indian Dr
Clarendon Hills, IL 60514

276-00-00-11347-000

Parcel Identification Number (PIN)

Pursuant to a judgment of foreclosure entered in this matter, the subject premises was sold at auction to the highest and best bidder, FIK Investment Corp. Therefore, the sheriff does hereby grant and convey unto said successful bidder, all of the following described land, located in the County of Racine, State of Wisconsin, to wit:

Lots 2 and 3, Block 4, Jay Eye See No. 5, Nelson and Sorenson's Addition, according to the recorded plat thereof. Said land being in the City of Racine, County of Racine and State of Wisconsin.

Sheriff Christopher Schmaling

(Type/Print Name)

SHERIFF - ~~DEPUTY SHERIFF~~

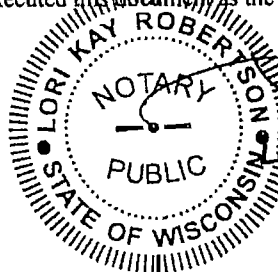
(Strike the inappropriate title)

STATE OF WISCONSIN)

)ss

COUNTY OF RACINE)

Personally came before me this 29 day of June, 2016, the above named Sheriff Christopher Schmaling personally known to me as the officer described above, and who executed this document as the sheriff or on behalf of the sheriff of this county.



Lori Kay Robertson, Notary Public
Racine County, Wisconsin

My commission expires: 11-04-2018

Foreclosed Property Sales - This is a Statewide Issue

AB253 & SB175

Barron County

We had a Sheriff's deed floating out there from May until the end of September. The new owner tried to get a building permit and discovered that he wasn't in title according to the county property records.

Dodge County

An elderly couple in City of Beaver Dam, due to illness lost their property on Sheriff's sale. The purchaser from the sale never recorded the Sheriff's deed. The couple is now being harassed by the city and other bill collectors for payment on maintenance of the property, such as snow removal and lawn mowing, etc. and they no longer reside there. There is no current owner or address listed for the Treasurer to send the property tax bills to.

Eau Claire County

A third party purchased a foreclosed property; they made major improvements to the house, when the weatherization inspector prepared the certificate of compliance it was discovered that the deed and the stipulation were never recorded. Unfortunately after months of calling and searching the deed could not be located, a new deed was prepared, causing extra work and costs for everyone involved.

Jefferson County

In 2014 a home was sold on Sheriff's sale; for the first year the neighbors mowed the lawn, not only to keep the neighborhood looking nice but also for safety purposes. The neighbors called our office on a regular basis to see if the name had changed on the property, but after a while they stopped calling, mowing and checking on the home. The foreclosing lender never checked on the house for over a year; sometime during the winter of 2015, a water heater freezes and bursts. Neighbors start seeing black mold on the doors, they look in the windows and the entire house is full of black mold, the drywall is falling off the vaulted ceilings. The home that was valued at \$204,200 when the foreclosure action started sold in 2016 for \$86,000.

Oneida County

I just had the Deputy Clerk of Court come down last week looking for a check that never cleared from 2014. It was made out to the register of deeds for the \$30 recording fee that was supposed to be for a Sheriff's Deed to be recorded. The lis pendens was recorded in October 2013 and the sheriff's sale took place in August 2014. At that time, the Clerk of Court gave the deed and recording fee check directly to the new owner who was supposed to walk down to our office and record the deed and pay the recording fees. As of today, the new owner never came in to record the Sheriff's Deed and the real estate is still being shown on the tax roll under the old owner's name. The taxes have been paid by the new owner the last two years but no deed of record.

Racine County

A few weeks ago I had a customer come to the counter because her tax bill was still coming in the previous owner's name. A third party purchased the property from a Sheriff's sale; he never recorded the sheriff's deed, however he then sold the property to the new buyer. The county tax roll did not change because there was a lapse in title. After many phone calls, research and work from both the new buyer and several county offices we were able to track down the person who purchased the property on sheriff's sale; he simply forgot to record the deed and still had the check from the Clerk of Courts. The new buyer took the sheriff's deed and brought it to the Register of Deeds office for recording. The county could then change the tax roll to reflect her being the owner of this property.

Rock County

The buyer of a sheriff sale did not record the deed for 2 years; the person that was foreclosed on kept receiving the tax bills and utility bills and calling us. The buyer paid the taxes 1.5 years after the Sheriff sale, including delinquent utilities. Then he recorded the deed a few months later. He tried to pay the transfer fee with a stale check which we denied. He paid the fee out of his pocket and is now trying to get the check reissued from the Clerk of Courts to just him.

Sheboygan County

We had some issues with homes being foreclosed on and the bank not knowing what they all owned. I know of one instance where the neighbor tried for over two years to get information about the house next door as he was interested in purchasing it. He tried numerous times to contact CITI bank but received no response. He took care of the property during the whole time; then some homeless folks tried to move in. He finally did end up purchasing the place a few years later.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0062/P1
FFK:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 253

1 **AN ACT** *to renumber and amend* 846.17; *to amend* 846.16 (1); and *to create*
2 846.16 (2m) of the statutes; **relating to:** procedures related to a sale of
3 foreclosed property by a sheriff or referee.

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

4 **SECTION 1.** 846.16 (1) of the statutes is amended to read:
5 846.16 (1) The sheriff or referee who makes sale of mortgaged premises, under
6 a judgment therefor, shall give notice of the time and place of sale in the manner
7 provided by law for the sale of real estate upon execution or in such other manner
8 as the court shall in the judgment direct; where. The sheriff or referee shall include
9 in the notice of sale the street address, if any, of the real estate to be sold and the sum
10 of the judgment. If the department of veterans affairs is also a party in the

1 foreclosure action, the judgment shall direct that notice of sale be given by registered
2 mail, return receipt requested, to the department at Madison, Wisconsin, at least 3
3 weeks prior to the date of sale, but such requirement does not affect any other
4 provision as to giving notice of sale. ~~Except as provided in sub. (3) and s. 846.167,~~
5 ~~the sheriff or referee shall, within 10 days thereafter, file with the clerk of the court~~
6 ~~a report of the sale, and shall also immediately after the sale first deduct any fee due~~
7 ~~under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with~~
8 ~~the clerk of the court for transmittal to the register of deeds; then deduct the costs~~
9 ~~and expenses of the sale, unless the court orders otherwise, and then deposit with~~
10 ~~the clerk of the court the proceeds of the sale ordered by the court. The sheriff may~~
11 ~~accept from the purchaser at such sale as a deposit or down payment upon the same~~
12 ~~not less than \$100, in which case such amount shall be so deposited with the clerk~~
13 ~~of the court as above provided, and the balance of the sale price shall be paid to the~~
14 ~~clerk by the purchaser at such sale upon the confirmation thereof. If the highest bid~~
15 ~~is less than \$100, the whole amount thereof shall be so deposited.~~

16 **SECTION 2.** 846.16 (2m) of the statutes is created to read:

17 846.16 (2m) If the mortgaged premises are located in a county having a
18 population of less than 750,000, no more than 10 days after the sale of the mortgaged
19 premises, the sheriff or referee shall do all of the following:

20 (a) File a report of the sale with the clerk of court.

21 (b) After deducting the costs and expenses of the sale, unless the court orders
22 otherwise, deliver the proceeds of the sale ordered by the court to the clerk of court.

****NOTE: Do you still want the fee for the transfer return and transfer return
delivered to the clerk of court?

1 (c) Deliver the deed to the mortgaged premises to the register of deeds to hold
2 under s. 846.17 (2).

3 **SECTION 3.** 846.17 of the statutes is renumbered 846.17 (1) and amended to
4 read:

5 846.17 (1) Upon any such sale being made the sheriff or referee making the
6 same, on compliance with its terms, shall make and execute to the purchaser, the
7 purchaser's assigns or personal representatives, a deed of the premises sold, setting
8 forth each parcel of land sold to the purchaser and the sum paid therefor, which deed,
9 upon confirmation of such sale, shall vest in the purchaser, the purchaser's assigns
10 or personal representatives, all the right, title and interest of the mortgagor, the
11 mortgagor's heirs, personal representatives and assigns in and to the premises sold
12 and shall be a bar to all claim, right of equity of redemption therein, of and against
13 the parties to such action, their heirs and personal representatives, and also against
14 all persons claiming under them subsequent to the filing of the notice of the pendency
15 of the action in which such judgment was rendered; and the purchaser, the
16 purchaser's heirs or assigns shall be let into the possession of the premises so sold
17 on production of such deed or a duly certified copy thereof, and the court may, if
18 necessary, issue a writ of assistance to deliver such possession. Such

19 (2) A deed or deeds so executed by the sheriff as above set forth under sub. (1)
20 shall be forthwith delivered by the sheriff to the register of deeds under s. 846.16 (2m)
21 or to the clerk of the court under s. 846.16 (3) to be held by the register of deeds or
22 the clerk of the court until the confirmation of the sale, and upon.

23 (3) Upon the confirmation thereof of the sale, the clerk of the court shall
24 thereupon pay to the parties entitled thereto, or to their attorneys, the proceeds of

1 the sale, and, except as provided in s. 846.167, shall deliver to the purchaser, the
2 purchaser's assigns or personal representatives, at the sale such deed.

3 (4) If the property that was sold at the sale is located in a county having a
4 population of less than 750,000, upon compliance by such the purchaser with the
5 terms of such the sale, and the payment of any balance of the sale price to be paid,
6 the clerk of the court shall notify that register of deeds that the deed executed by the
7 sheriff and held by the register of deeds under sub. (2) may be recorded.

****NOTE: Please note that this bill does not provide a mechanism to ensure that the register of deeds will have everything required to actually record the deed, such as the recording fee or any other document required for the register of deeds to record the deed, including any certificate, waiver, or stipulation required under s. 101.122.

8 (5) In the event of the failure of such the purchaser to pay any part of the
9 purchase price remaining to be paid within 10 days after the confirmation of such the
10 sale, the amount so deposited shall be forfeited and paid to the parties who would be
11 entitled to the proceeds of such the sale as ordered by the court, and a resale shall
12 be had of said the premises, and in. In such event such, the register of deeds or clerk
13 of court holding the deed under sub. (2) shall destroy the deed so executed to the
14 defaulting purchaser shall be destroyed by said clerk, and the deed shall be of no
15 effect.

16 (6) In the event that such sale is not confirmed by the court, the clerk shall
17 forthwith refund to the purchaser at such sale the amount so paid or deposited by
18 the purchaser, and. In such event, the register of deeds or clerk of court holding the
19 deed under sub. (2) shall likewise destroy such sheriff's the deed so executed, and the
20 same deed shall be of no effect, and a resale of the premises shall be had upon due
21 notice thereof.

22 **SECTION 4. Initial applicability.**

