



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

Date: January 10th, 2018
To: Assembly Committee on Local Government
From: Representatives Terry Katsma and Evan Goyke
Re: Assembly Bills 690 and 691: Sheriff Sale Fairness Package

Dear Chairman Brooks and committee members,

Thank you for your prompt consideration of Assembly Bill (AB) 690 and AB 691. It is our opinion that this set of two new ideas will fundamentally improve upon counties' procedures for returning troubled properties to the marketplace, and we are eager to discuss the ideas with you.

We have become aware of a troubling pattern of predatory behavior by a small number of delinquent landlords in our state. The *Milwaukee Journal Sentinel* has spent 18 months investigating properties, owners and tenants who are tangled in crisis; *Landlord Games*, the newspaper's series of watchdog reports on this issue, has documented how the bad actors have figured out how to turn a profit by preying on vulnerable classes of tenants. Separately, University of Wisconsin (UW) alum Dr. Matthew Desmond's book *Evicted*, selected by UW-Madison for its 2016-17 "Go Big Read" common-reading program, tells the story of the people and the neighborhoods right here in Wisconsin for whom stable, quality housing is a constant challenge.

We attended a sheriff sale of foreclosed Milwaukee properties last year to see the system in action for ourselves. Our observations, and some background, may be helpful as you evaluate our legislative proposals:

- A "typical" foreclosure proceeding is a lawsuit filed by a bank against a borrower who failed to make payments as agreed. In Wisconsin, the bank first obtains a court judgment authorizing the bank to arrange for the local county sheriff to hold a public auction of the foreclosed property. Typically, at the auction, the bank bids the amount it is still owed by the borrower—because, typically, the bank prefers to take ownership of the property temporarily and then list it on the open market with the help of a real estate agent. Thus, in many Wisconsin communities, it is quite unusual for a third-party bidder—such as a private investor—to actually win a property at a sheriff sale auction. In other words, if the property has significant value, the foreclosing bank probably wants to repossess it at the public auction so that the bank may later take the opportunity to market the property to a wider range of potential buyers.

- In some instances, however—most commonly when the foreclosed property has relatively little value and the bank decides not to bid at the public auction—a third party is the winning bidder. Statute does not presently specify any requirements or qualifications as to who may purchase a property at public auction, but at the auction we attended, the local sheriff strictly required photo identification from third-party winning bidders and a cash deposit on their purchases.

The problem, in a nutshell, is this: a handful of delinquent landlords have learned how to exploit sheriff sale auctions and acquire new rental properties—invariably in neighborhoods that are already suffering from the compounded challenges of very low property values—more rapidly than the government can compel them to pay their property taxes and building code judgments.

We stood in the same room with people who already own hundreds of rental units, on which they owe tens of thousands of dollars in taxes and fines, and watched as the government awarded them winning bids for new properties. We *know* that the bad actors have no intention of paying the property taxes they rightfully owe; we *know* that they have no intention of keeping up even with routine maintenance on their properties; and we *know* that Wisconsin neighborhoods and the people who live there are suffering as a result. This predatory business model is a known problem in Milwaukee County, but it could take root in other communities as well.

We offer two proposals that we believe will give communities better tools to fight back:

- AB 690 provides a process by which any county may—optionally—enact a local ordinance to conduct sheriff sale auctions online. Homebuyers, investors and agents are accustomed in today's market to shopping for properties online. Online auctions would be more accessible, potentially better advertised and potentially less intimidating for well-meaning investors in the communities who need them most.
- AB 691 prohibits a buyer from acquiring a new property at a sheriff sale auction if the buyer is already more than 120 days delinquent on property taxes or building code judgments. The bill also gives the court a series of penalties that it may impose on bad actors who violate the proposed buyer eligibility requirements or misrepresent their eligibility.

These bills do not create cumbersome new regulations or requirements for the vast majority of potential bidders at sheriff sales or for the countless property owners who are making their communities better places to live. The bills maintain and expand an open, fair and unobstructed market for these homes.

Thank you for your consideration of our ideas. We welcome your contribution to the conversations that we have pursued for many months.



Luther S. Olsen

State Senator

14th District

TO: Assembly Committee on Local Government
FROM: Senator Luther Olsen
DATE: January 10, 2018
SUBJECT: Testimony in favor of Assembly Bill 690 and 691

Thank you Chairman Brooks and the Assembly Committee on Local Government holding a hearing and allowing me to testify in favor of Assembly Bill 690 and 691.

In recent years, Milwaukee has been dealing with nuisance landlord practices that are damaging city neighborhoods and compromising the safety of tenants. The bad actors routinely purchase property at sheriff sales while simultaneously avoiding to pay court fines for building codes and/or incurring delinquent property taxes on their current properties.

We worked with the City of Milwaukee to create two pieces of legislation that will improve the system. These two improvements will benefit not only Milwaukee but all Wisconsin communities.

- Assembly Bill 690 enables counties to host or contract online auctions for foreclosed properties, making the process more accessible and less intimidating for bidders and investors.
- Senate Bill 691 prohibits a buyer from acquiring a new property at a sheriff sale if the buyer is already more than 120 days delinquent on property taxes or building code judgements.

These proposals will make the process more accessible for bidders and investors in the neighborhoods that need them the most, while preventing the small group of delinquent landowners from expanding their network of rental properties

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

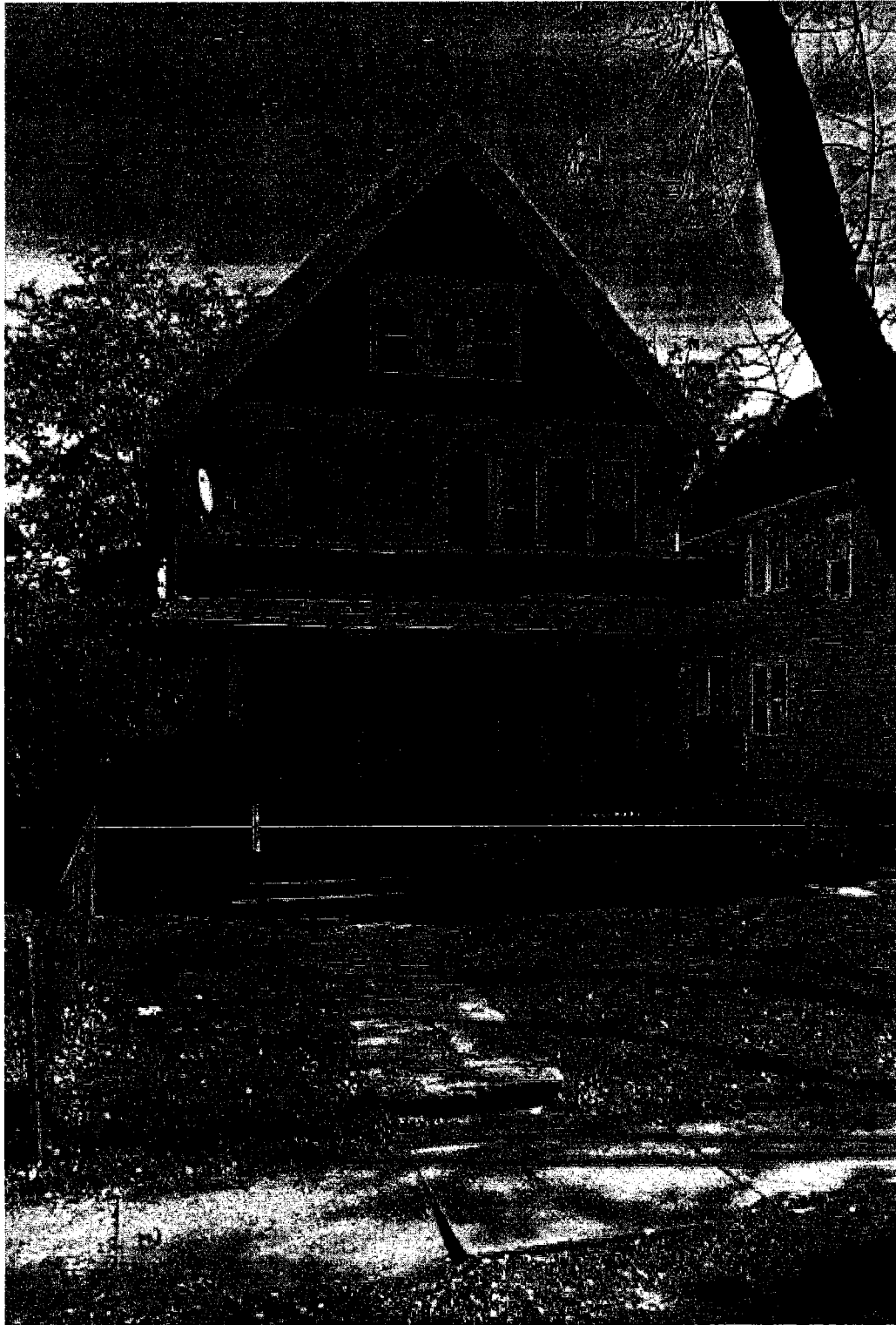
Authors' Explanation: Assembly Substitute Amendment 1 to AB 690

- Technical changes to the original bill draft became necessary when 2017 AB 253 (Rep. Ballweg/Sen. Olsen) was enacted as 2017 Wisconsin Act 104.
- This amendment specifies that, if a county uses its new authority (under the bill) to begin conducting foreclosure sales via Internet-based auctions AND wants to hire a third party to conduct the Internet-based auctions, then the third party must be registered as an auctioneer by the Wisconsin Department of Safety and Professional Services.
- In another U.S. state that moved its foreclosure sales to Internet-based auctions, some consumers were harmed when they inadvertently purchased properties' second liens—in the erroneous belief that they were bidding on the properties themselves. We are not aware of any legitimate reason why a consumer would desire to purchase a second lien against a foreclosed property. Therefore, this amendment requires that notice of sale for an Internet-based foreclosure auction must describe any lien that has a higher priority than the mortgage that is the subject of the foreclosure auction and that the auction website must clearly identify any higher-priority lien(s).

Authors' Explanation: Assembly Amendment 1 to AB 691

- It is fairly common for a plaintiff (lender) in a foreclosure proceeding to assign certain rights or actions—including an auction bid—to the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC). It is not our intention to interfere with such cooperation or require those agencies to affirm that they are eligible auction bidders. This amendment clarifies that an "assignee of the plaintiff" such as FNMA or FHLMC is exempt from the bill's proposed auction bidder qualifications.
- Our intention is for potential foreclosure auction bidders to be aware of the bidder qualifications as early as possible, but we do not intend to increase the cost—borne by the plaintiff (lender)—of publishing foreclosure-related notices in the newspaper. This amendment clarifies that the proposed auction bidder requirements shall be posted by the sheriff or referee alongside any notice of foreclosure sale—whether in a public place or online—but that it is not necessary for the plaintiff (lender) to pay to publish the bidder qualifications in the newspaper.
- This amendment clarifies the court's options for imposing penalties on auction bidders who intentionally misrepresent their qualifications.
- This amendment provides the sheriff or referee of a foreclosure auction greater flexibility in enforcing the proposed bidder qualifications at the time of the auction.
- To avoid procedural delays, this amendment commands the winning auction bidder to file the required affidavit (confirming his/her bidding eligibility) prior to court confirmation of the sale.

2872 North 44th Street – Milwaukee, WI



2872 North 44th Street

Kenneth Martin bought this duplex in 2007 and took out a \$131,000 mortgage. But like so many others, he too was impacted by the foreclosure crisis of the late 2000s.

Legacy Bank filed a foreclosure action against him in mid-2010 and took the property to a sheriff's sale on August 20, 2012.

On that Monday morning, Mohammad Choudry joined no more than a few dozen people in a basement room of the Milwaukee County Courthouse. He knew the system well because he had already purchased 23 other properties at sheriff's sale prior to that date.

The live auction lasted only a few minutes until Mr. Choudry was the last bidder standing. The sheriff's department, as required by law, deemed him to be the highest bidder at \$4,901 and awarded him a sheriff's deed. He usually carried several thousand dollars in cash with him in case he wanted to buy multiple properties, but in this case he needed to put down only \$100.

As he committed to spending thousands of dollars to acquire this particular piece of real estate, he already owned 44 other parcels and owed hundreds of thousands of dollars in property taxes on those properties.

When the judge was considering whether to confirm the sale on Oct. 1, 2012, there was no way to prevent a person like Mr. Choudry from buying that property despite how derelict he was in maintaining his other properties. With no authority to stop it, the judge confirmed the sale and Mr. Choudry took title.

He owned the property for over 2 years, but never paid taxes or made a single repair to the building. In fact, didn't even record the deed, so title showed only the prior owner's name.

On November 11, 2014, after never paying any property taxes, the City of Milwaukee took ownership of the property through tax foreclosure.

With two years of ownership, Mr. Choudry made as much as \$24,000 in rental revenue from the duplex.

While under his ownership, his only expense was the \$4,900 purchase price. He walked away, likely \$20,000 richer, leaving the taxpayers on the hook for its 4 years of tax-delinquency and total debt of \$16,891.95. The city maintained the property for a year and sold it in late 2015 for \$6,000.

At least a portion of that \$20,000 profit went toward buying more properties at sheriff's sale because he bought 34 more properties over the next 4 years until the City of Milwaukee sued him and put all 76 of his properties under receivership.

This law would have prevented Mr. Choudry from purchasing the property and running it into the ground while the rest of the city taxpayers picked up his tab. It would have saved taxpayer money and prevented Mr. Choudry from negatively impacting the neighbors on the 2800 Block of North 44th Street by letting his property deteriorate.

Appeals Court orders Milwaukee landlord Will Sherard to cough up \$64,550 in fines

Cary Spivak, Milwaukee Journal Sentinel Published 6:00 a.m. CT Dec. 13, 2017

Will Sherard, long known as one of the most notorious Milwaukee central city landlords, must pay \$64,550 in municipal court fines that he has been effectively dodging as far back as 2009, a state Court of Appeals judge ordered Tuesday.

In a 16-page decision, Judge Timothy Dugan flatly rejected all of Sherard's arguments that he be allowed to continue making small payments on building code fines imposed in 19 separate cases.

"Sherard did not testify or present any evidence showing that he was actually unable to pay the money judgment," Dugan wrote.

In fact, Sherard has continued to be a regular at the Milwaukee County sheriff's sales where foreclosed properties are auctioned off to lenders, landlords, slumlords and people seeking to buy a fixer-upper to live in.

Since January 2016, Sherard and his Morocco Investments LLC have spent more than \$115,000 at the sheriff's sales to buy a dozen properties, according to a review of Milwaukee County Register of Deeds records.

Morocco Investments sold two properties for \$60,500 during that time. Sherard has testified that he is the sole owner of Morocco.

"It is frustrating to see that Will Sherard keeps buying more and more properties while still neglecting to pay his municipal debts," said Patrick Leigl, the assistant city attorney who prosecuted the civil case against Sherard. "He fought this case yet he continues to buy more and more property. It frustrates the system."

Sherard learned of Dugan's order from a Journal Sentinel reporter Tuesday. He refused to answer questions about the ruling.

"What is your reaction to it?" Sherard asked a reporter. He said he would call back and answer questions later Tuesday, but has not done so.

The Journal Sentinel, in April 2016, disclosed how Sherard and others routinely received Municipal Court approval to make nominal payments on their building codes fines. Meanwhile, some, including Sherard, continued to buy more problem-plagued inner-city properties to rent to low-income residents.

In May 2016, the City Attorney's office objected to continuing Sherard's easy payment plan. In response, Municipal Court Judge Phillip Chavez in June 2016 ordered that Sherard pay \$39,728 in building code fines within 60 days, plus an additional \$24,822 one year after that.

Since that order, Sherard and Morocco Investments have racked up an additional \$25,220 in court fines for code violations. More than \$11,000 of that amount has not been paid.

Sherard, 76, who has been in the inner-city rental business for about a half-century, appealed Chavez's order, claiming he could not afford to pay the fines.

Dugan noted that during the 2016 Municipal Court proceedings Sherard "argued he had been making a good faith effort to pay the forfeitures" and told the court "we're all struggling to make payments." He asked the court for "something that he could live with," pointing out that he owed nearly \$40,000 to various city departments, including those responsible for property taxes and water service.

The city countered Sherard's poverty plea, arguing last year that Sherard's properties were assessed at \$1.41 million and that he had paid a \$120,000 court judgment in 2015.

"The fact that Sherard recently paid a \$120,000 judgment in full provides support" the city's demand that he pay up, Dugan wrote Tuesday.

The \$64,550 owed by Sherard is being held by Sherard's attorney in an escrow account and will be forwarded to the city unless Sherard persuades the court to stay its order, Leigl said. The money was placed in escrow last year when Milwaukee County Circuit Court Judge Glenn Yamahiro rejected Sherard's appeal.

Sherard is one of a handful of problem landlords who have been subject to increased scrutiny since the Journal Sentinel launched a series of stories showing how some slumlords use various strategies to game the system.

In recent months, state lawmakers and city officials have:

Introduced state legislation that would allow counties to conduct online sheriff's sales of property — an action that is aimed at attracting a wider range of buyers to the sales. In Milwaukee County, the sales are conducted in the basement of the Safety Building and are attended largely by regulars.

Introduced a second bill that would ban individuals who owe back property taxes or court fines for building code violations from buying properties at a sheriff's sale. Firms, including limited liability companies, owned or linked to people owing back taxes or fines would also be banned from buying at the sales. Both bills have bi-partisan sponsors and are scheduled to be discussed Wednesday at hearing before the Senate Committee on Insurance, Housing and Trade.

Obtained a court order banning Mohammad Choudry from buying any more city properties and placing the properties he or his network of limited liability companies own into receivership. At the time of the action brought by the City Attorney's Office, Choudry's 76 properties had nearly 1,800 building code violations.

Charged in court that landlord Elijah Mohammad Rashaed exploits poverty-stricken and desperate tenants by renting out unsafe properties that violate city codes. The City Attorney's Office initially sought to place his properties in receivership, but last month reached an agreement calling for Rashaed to sell the 166 properties owned by him and 18 LLCs he controls.

Under pressure from the city and Robert W. Baird & Co. Inc., James Herrick sold at least seven of the problem plagued central city properties that he owned through LLCs. Herrick, a Baird executive who lives in a \$1.1 million River Hills estate, was chastised in political circles after his holdings were revealed.



Tom Barrett
Mayor

Sharon Robinson
Director of Administration

La Keisha W. Butler
Director of Intergovernmental Relations

Department of Administration
Intergovernmental Relations Division

City of Milwaukee Testimony on Assembly Bill 691
Assembly Committee on Local Government
January 10, 2018

Chairman Brooks and members of the committee, thank you for the opportunity to testify today. I would like to start by thanking Representatives Katsma and Goyke for their leadership on the bill.

The City of Milwaukee supports Assembly Bill 691 related to eligible bidders and purchasers at mortgage foreclosure sales, and providing a penalty for false affidavits filed with courts.

Currently under state law, a habitual nuisance landlord can routinely purchase property at sheriff sales and wreak havoc on neighborhoods. Under current mortgage foreclosure law all that is required is for bidder to be the winning bidder, and to have cash to pay. There is no screening of the buyer at all. Neither the Court nor the Sheriff does any screening of buyer credentials or track record. So, under current law, even though sheriff sales are conducted by the sheriff, under a statutory process, and supervised and confirmed by the Court, nuisance owners with horrible track records can, and do, routinely buy property. This phenomenon has been reported on extensively by the Milwaukee Journal Sentinel. It can happen anywhere in Wisconsin. It damages neighborhoods.

Under SB 691, two reasonable requirements are placed on sheriff sale buyers. The requirements do not apply to the foreclosing lender or to any defendant in the foreclosure case, so lenders and borrowers in the foreclosure case are not affected. They apply only to successful bidders who are not party to the foreclosure case - 3rd party buyers. Successful 3rd party bidders must submit an affidavit to the court affirming that the bidder does not own property in the state that is more than 120 days tax delinquent and that the bidder does not have an outstanding judgment regarding noncompliance with state or local building codes. Those affirmations must also be true about any entity that the bidder owns, manages or controls, and about any entity that owns, manages or controls the bidder if the bidder is an entity.

Those two requirements will end current abuse under current law associated with problem buyers at sheriff sales. Under current law, without the bidder requirements, known, chronic, nuisance landlords buy their real estate inventory at sheriff sales. These nuisance owners are the ones who form multiple entities to dodge tenants, building inspectors and tax collectors. AB 691 will make it much harder for them to operate.

If any party to the case, or the city, village, town, or county where the property is located, becomes aware of a false affidavit, they can inform the court, and if the court determines the affidavit is false, the court can refuse to confirm the sale, and can order the bidder's deposit forfeited, and can order a new sale. If the court determines that the bidder knowingly made a false representation, the court can order the bidder to pay forfeiture up to \$1,000 and may bar the bidder from bidding for up to a year. Forfeited deposits and fines go to the parties who would have been entitled to the proceeds of sale - they benefit the parties to the case.

The City of Milwaukee supports Assembly Bill 691 for the reasons stated above, and encourages passage of this legislation.

For additional information please contact:

Kimberly Montgomery, Sr. Legislative Fiscal Manager, kmontgomery@milwaukee.gov or 414.286.8564



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

La Keisha W. Butler
Director of Intergovernmental Relations

TO: Honorable Members of the Assembly Committee on Local Government
FROM: Kimberly Montgomery
DATE: January 10, 2018
SUBJECT: Support for Assembly Bill 690

Chairman Brooks and members of the committee, thank you for the opportunity to testify today. I would also like to thank Representatives Katsma and Goyke for their leadership on the bill.

The City of Milwaukee supports Assembly Bill 690 which authorizes counties to conduct foreclosure sales using an Internet-based auction.

Currently, Sheriff Sales are conducted by the Sheriff in the county in which the property is located and are subject to additional terms and conditions that the Sheriff Sale shall require. Typically, all parties interested in purchasing property at a Sheriff Sale Foreclosure are required to pay a down payment of the minimum amount of 10% of their total bid in cash or certified funds at the sale.

The current process is an antiquated one. For generations these sales have been taking place in courthouses or other government buildings. In Milwaukee, the Sheriff Sales are held Monday mornings in a large windowless room in the basement of the Safety Building. Bidders must be physically present to bid. This greatly reduces competition meaning there are few bidders.

Most of the attendees at the sales are regulars. We have seen evidence of collusion in bidding among the small pool of regulars who attend. Bidders who are not regulars may feel uncomfortable and intimidated.

Allowing counties to use an internet-based auction will even the playing field by widening the audience of bidders, ultimately increasing the competition. This in turn could help increase the amount paid and therefore help to maximize bids, so that you're more likely to get market value. This will favor foreclosing lenders because with more bidders competing, likelihood that they will get their loan paid increases meaning lenders won't have to own so many REO parcels.

For the reasons stated above, the City of Milwaukee supports Assembly Bill 690 and urges the committee to vote in favor of passage. Thank you for your consideration in this matter.

For more information please contact:

Kimberly Montgomery, Sr. Legislative Fiscal Manager
kmontgomery@milwaukee.gov or 414-286-8564



WISCONSIN AUCTIONEERS ASSOCIATION, INC.

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January 10, 2017

RE: Assembly Bill 690 - Relating to: authorizing counties to conduct foreclosure sales using an Internet-based auction.

Rep. Katsma & Rep. Goyke:

The Wisconsin Auctioneers Association (WAA) supports the substitute amendment that was added to your proposed legislation – AB 690. We are pleased that you include on page 9 – lines 10-11 of the substitute amendment language - that if the sheriff would engage a third party to conduct the auctions, there would be a stipulation requiring that third party to be a licensed WI auctioneer or auction company.

Thank you for reaching out to the WAA and including our concerns mentioned above when crafting the substitute amendment. WAA urges passage of AB 690 with the substitute amendment.

Feel free to contact WAA if you have any questions.

Thanks for your consideration.

Bryce Hansen
Legislative Committee Chair of Wisconsin Auctioneers Association