

State of Wisconsin



2015 Assembly Bill 720

Date of enactment: April 25, 2016
Date of publication*: April 26, 2016

2015 WISCONSIN ACT 376

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

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

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

846.10 (2) (a) (intro.) Any party may become a purchaser. ~~No~~ Except for a sale under s. 846.101 or 846.102 and except as provided in pars. (b) and (c), no sale involving a ~~one—~~ 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~~ except as follows:

1. If the mortgage was executed before the effective date of this subdivision [LRB inserts date], upon the expiration of 12 months from the date when the judgment is entered, ~~except a sale under s. 846.101 or 846.102.~~ Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 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 ~~such~~ the judgment is entered.

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

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

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

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

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 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.

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,

* 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."

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

846.101 (1) If the mortgagor has agreed in writing at the time of the execution of the mortgage to the provisions of this section, and the foreclosure action involves a ~~one-~~ 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, the plaintiff in a foreclosure action of a mortgage on real estate of 20 acres or less, which mortgage is recorded subsequent to January 22, 1960, may elect by express allegation in the complaint to waive judgment for any deficiency which 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 property premises and be entitled to all rents, issues, and profits therefrom to the date of confirmation of the sale by the court.

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

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

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

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

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

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 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.

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

846.102 (1) In an action for enforcement of a mortgage lien, and upon motion of the plaintiff or the city, town, village, or county where the mortgaged premises are located, if the court makes an affirmative finding upon proper evidence being submitted that the mortgaged premises have been abandoned by the mortgagor and the mortgagor's assigns, judgment shall be entered as provided in s. 846.10 ~~except that the sale of such mortgaged premises shall be made upon the expiration of 5 weeks from the date when such judgment is entered.~~ Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and placement of the notice may commence when judgment is entered sub. (3). In this section, "abandoned" means the relinquishment of possession or control of the mortgaged premises whether or not the mortgagor or the mortgagor's assigns have relinquished equity and title.

SECTION 7. 846.102 (3) of the statutes is created to read:

846.102 (3) (a) If the court finds that the mortgaged premises have been abandoned under sub. (1), judgment shall be entered as provided in s. 846.10, except that the plaintiff shall, no later than 12 months from the date when the judgment is entered, do one of the following:

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 and may be given at any time within the 12-month period.

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

(b) If, 12 months after the date when the judgment is entered, the plaintiff has not completed an action under par. (a) 1. or 2., any party to the action or the city, town,

village, or county where the mortgaged premises are located may petition the court for an order compelling a sale of the mortgaged premises.

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

846.103 (1) No foreclosure sale involving real property other than a ~~one—~~ 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 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 9. 846.103 (2) of the statutes is amended to read:

846.103 (2) If the mortgagor of real property other than a ~~one—~~ 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 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 ~~property~~ 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 ~~such~~ the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 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. Initial applicability.

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

