



# Dealing with Foreclosure Properties



## My Background

- Milwaukee Assistant City Attorney (2014-present)
  - Practice focuses on:
    - Public nuisances
    - Real estate development
    - Code enforcement
    - Collections
    - Litigation
- Former Green Bay Assistant City Attorney (2008-2014)
- Started in municipal law as an intern with City of West Allis (2006-2008)
- Marquette University Law School L'08



## Obligatory Disclaimer

- Do not take any of my comments today as legal advice
- Consult your own municipal attorney before taking action



## Wisconsin Property Tax

- "The property tax is the largest source of combined state and local tax revenue in Wisconsin."
  - Wisconsin Legislative Fiscal Bureau (January 2017)
- Key figures
  - In 2016, Wisconsin municipalities collected \$9.2 billion in property taxes
    - Includes Municipality, County, School District, and Technical College
  - That is almost \$1,600 per resident



## Property Tax Collection

- ▶ Almost all property taxes are paid voluntarily and on-time
  - ▶ Do you know your collection rate?
- ▶ If taxes are not paid by January 31 each year...
  - ▶ 1.0% simple interest
  - ▶ 0.5% penalty on principal balance (optional)
  - ▶ Personal money judgment
  - ▶ County tax foreclosure or tax deed



## Why Does This System Work?

- ▶ Tax collection is necessary for a functioning society
  - ▶ Powerful collections tools
  - +
  - ▶ Real estate has an inherent value
- ▶ It is worth paying taxes to ensure that you retain ownership
- ▶ There is no more efficient and effective legal collection method

## All Is Well Until...



## Foreclosure Process

- Every state has its own procedure
- Timelines vary widely
  
- The options are  
(from most to least common):
  - Judicial foreclosure
  - Nonjudicial foreclosure
  - Strict foreclosure



## Foreclosure Process (Wisconsin Only)

- ▶ In Wisconsin, the only option for a mortgagee is judicial foreclosure
  - ▶ Note: Land contracts use strict foreclosure
- ▶ A lender can file a foreclosure action if the borrower violates a provision of the mortgage
  - ▶ Usually non-payment is the reason
- ▶ After service on the borrower, the case is litigated
  - ▶ Borrowers can raise defenses
  - ▶ Discovery can occur



## Foreclosure Process (Wisconsin Only)

- ▶ If the court grants judgment...
- ▶ Redemption Period
  - ▶ After judgment is entered, the borrower gets more time to pay back the balance
  - ▶ Mortgages signed before April 27, 2016:
    - ▶ 12 months for owner-occupied residences
    - ▶ 6 months for rentals and commercial
  - ▶ Mortgages signed on and after April 27, 2016:
    - ▶ 6 months for owner-occupied residences
    - ▶ 3 months for rentals and commercial
- ▶ During this time, borrowers need to decide if they want to keep the house



## Foreclosure Process (Wisconsin Only)

- ▶ If the borrower wants to keep the house:
  - ▶ Refinance with a third-party and pay off the mortgage
  - ▶ Borrow money to pay the delinquency and keep the same mortgage
  - ▶ Renegotiate a new mortgage with the lender
  - ▶ File bankruptcy
  
- ▶ If the borrower does not want to keep the house:
  - ▶ Provide a deed-in-lieu of foreclosure
  - ▶ Short sale the property
  - ▶ Let it go to sheriff's sale



## Foreclosure Process (Wisconsin Only)

- ▶ After the redemption period expires, the lender arranges for a sheriff's sale
  - ▶ The county sheriff's office conducts a live real estate auction
  - ▶ Bidders state their bids in at least \$100 increments
  - ▶ The sheriff's office seeks the highest sales price
  
- ▶ Winning bidders must place at least 10% down on-the-spot
  - ▶ Cash or money order only!
  
- ▶ Very antiquated process
  - ▶ Changes on the horizon?



## Foreclosure Process (Wisconsin Only)

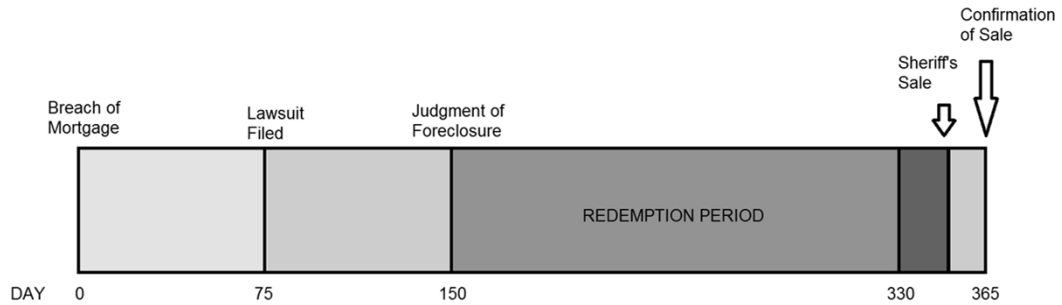
- After the sheriff sells the property, a sheriff's deed is submitted to the court
- The lender asks the court to confirm the sale
  - Judge determines if the sale is "fair value"
    - Not assessed value
    - Not fair market value
- Judge will confirm the sale if fair value is obtained
  - Could be as low as \$1 in some cases



## Foreclosure Process (Wisconsin Only)

- Within 10 days, winning bidder must pay the remaining 90% balance, plus:
  - Transfer fee
  - Recording fee
- Then, the clerk sends the deed to the register of deeds for recording
  - Used to just hand the original deed to the winning bidder...
- Unless there is a deficiency judgment, there is nothing else to do.

## Example Foreclosure Timeline



## Sticking Points During the Process

- Many steps along the way and rife with opportunity to stall
- The process grinds to a halt if:
  - Lender fails to get a judgment
  - Lender fails to schedule a sheriff's sale
  - No one bids at the auction
  - Lender reopens and dismisses the lawsuit



## Who's the Owner?

- ▶ Many borrowers are confused by the process
- ▶ Sometimes, they prematurely believe they have lost ownership

## Who's the Owner?

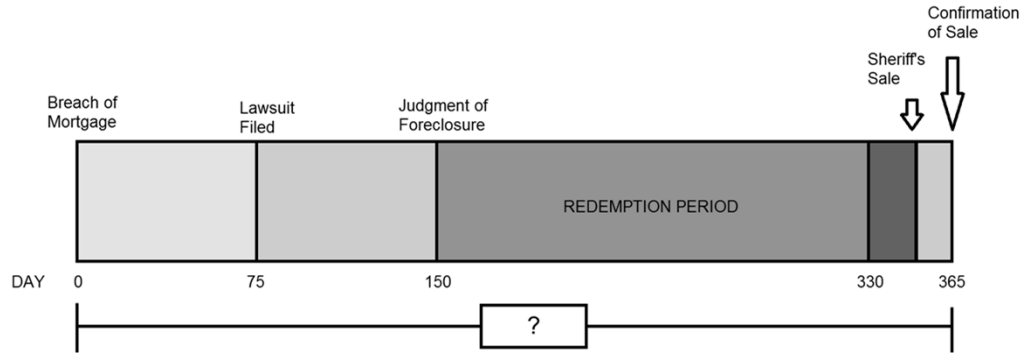
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The diagram illustrates the timeline of a foreclosure process over 365 days. Key milestones are marked as follows:

| Day       | Event                   |
|-----------|-------------------------|
| 0         | Breach of Mortgage      |
| 75        | Lawsuit Filed           |
| 150       | Judgment of Foreclosure |
| 150 - 330 | REDEMPTION PERIOD       |
| 330       | Sheriff's Sale          |
| 365       | Confirmation of Sale    |

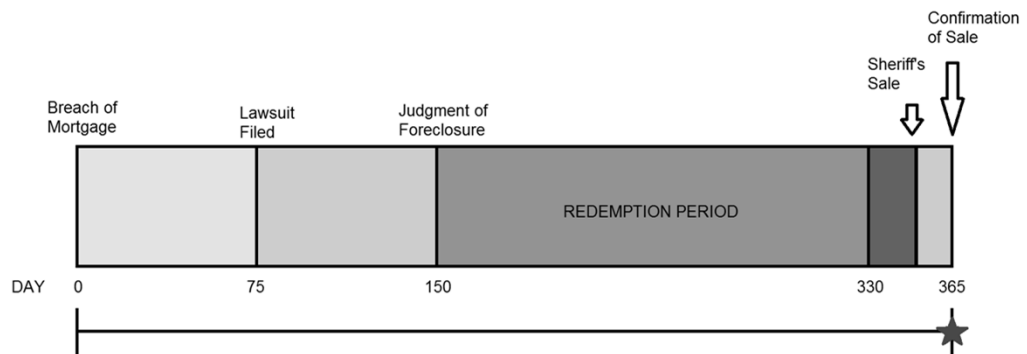
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## When the Owner-Occupant Vacates

- ▶ If the owner abandons the property before confirmation of sale...
  - ▶ Lender can reduce the redemption period to 5 weeks
  - ▶ Results in quick sale; intended to preserve asset value
- ▶ What if the lender doesn't act quickly to secure and sell the home?
- ▶ Many possible reasons why lenders do this...

## Public Nuisance Issues

- ▶ With no occupant and the bank not caring for the property, no one to:
  - ▶ Mow the lawn
  - ▶ Shovel snow
  - ▶ Manage weeds and vegetation
  - ▶ Monitor for crimes
    - ▶ Break-ins
    - ▶ Scrappers
    - ▶ Crimes (drug dealing, prostitution, kidnapping)
  - ▶ Maintain exterior
  - ▶ Maintain interior
  - ▶ Winterize property



## Financial Impact

- ▶ No one paying property taxes
- ▶ No one paying utility bills
- ▶ If separately billed, no one paying for garbage pickup



## Legal Status

- ▶ The **borrower still owns the property** and is probably liable for:
  - ▶ Injuries that happen
  - ▶ Code violations
  - ▶ Accrued taxes
- ▶ The lender is not the owner and has none of the associated duties
  - ▶ Wisconsin is a "Lien theory state"



## What Can You Do?

### Three-Step Process

1. Maintain the Property
2. Focus on Transferring the Property To A Responsible Owner
3. Collect on Expenses Incurred



## Step One

Maintaining the Property and Avoiding Nuisance Conditions



## Preliminary Question

- ▶ A major question to start is whether the lender is keeping up with the taxes
- ▶ Many lenders will continue to pay taxes on properties even after their foreclosure case has stalled
- ▶ If so, that opens up more options
  - ▶ Step One can last longer without as much of an impact
- ▶ If not, options are limited
  - ▶ Move on to Step Two as soon as possible



## Special Charges

- ▶ If you have the budget for it, your municipality can perform all maintenance services and tack those costs on to the taxes:
  - ▶ Snow and ice removal
  - ▶ Weed management
  - ▶ Sidewalk repairs
  - ▶ Garbage and refuse pickup
  - ▶ Recycling pickup
  - ▶ Calls for police services
- ▶ Wis. Stat. § 66.0627



## Special Charges

- ▶ If the lender is paying taxes, all of these costs should be reimbursed
- ▶ Even if the lender is not paying, does your county pay special charges in the August settlement?
  - ▶ Counties have the option to pay special assessments and charges that have not been collected and step into the shoes of the municipality
  - ▶ If you're one of the lucky ones, you will be reimbursed at that time



## Special Charges

- ▶ If the lender is not paying taxes any longer, you'll need to think about how much you want to spend on services
- ▶ You may be reimbursed years down the road if the county takes title and sells the property for enough money to cover your costs
- ▶ But, if the property is deteriorating in value, every dollar you spend on services may be a sunk cost
- ▶ If you do want to save money or do not have a budget or staff that allows you to perform those services, you should move right to Step Two



## Raze the Building

- ▶ If the building is dilapidated or out-of-repair and unsafe for human habitation, you can raze the building
  - ▶ Wis. Stat. § 66.0413
- ▶ It will be expensive, but it may prevent a serious nuisance problem
  - ▶ Razing a typical 1,500 sq. ft. house costs \$10,000-\$20,000
- ▶ Can try to collect after the fact...



## Step Two

Forcing An Ownership Transfer





## Forced Sheriff's Sale

- Wis. Stat. § 846.102
- Under some circumstances, you may be able to force the lender to take the property to a sheriff's sale and complete the process
- Only eligible if 12 months have passed after entry of foreclosure judgment
- You can do it earlier than 12 months, but the lender has some outs...
- Law was changed because of litigation in Milwaukee
  - City and Legal Action of Wisconsin



## Tax Foreclosure / Tax Deed

- If the taxes are not being paid, the county can issue a tax certificate
- County can take title to the property through tax foreclosure or a tax deed
- The earliest this can happen is after one full year of delinquency.



## Assignment of Right to Take Tax Foreclosure Judgment

- ▶ If the property is a perceived brownfield, the county can foreclose on the property for taxes, but assign the interest to a third party
  - ▶ Or it could assign it to the city, village, or town
  - ▶ City may have environmental liability exemption under Wis. Stat. § 292.11
  - ▶ But watch out for other environmental issues...
- ▶ Advantage to the county is that it never falls into the chain of title, so it may be more willing to foreclose



## Public Nuisance Receivership

- ▶ In certain circumstances, your attorney may be able to get an order that requires the owner to sell the home.
  - ▶ Unfortunately, this is not available until **after** the property becomes a problem
  - ▶ Drug houses, Prostitution houses
  - ▶ Ongoing public nuisance activities
- ▶ Courts often consider it an extreme action, but everything is relative
  - ▶ In some counties, judges may be more willing to take this action faster because the community has set that standard



## Step Three

Collecting Expenses



## Personal Judgment

- The municipality can sue a property owner and get a personal judgment equal to the amount of delinquent taxes and specials
- That amount can be collected even after tax foreclosure
- Most effective when:
  - Owner has other real estate
  - Owner is employed
  - Owner has other assets (bank accounts, cars, boats, etc.)

## Piercing the Corporate Veil

- ▶ Limited liability company(LLC) or corporation property owners
  - ▶ A separate legal entity by definition
  - ▶ Made up of members and shareholders
  - ▶ Has nearly all of the same business rights as an individual
- ▶ LLCs are important for the economy, but also open for abuse
- ▶ Very little oversight + Strong temptation = Shell LLCs

## Piercing the Corporate Veil

- ▶ Your municipal attorney would have to prove that the individual behind the LLC created it for the purpose of committing fraud
  - ▶ Fraud is using deceit for financial gain
  - ▶ The payment of taxes is a duty imposed by law
  - ▶ If the LLC was created for the purpose of avoiding taxes, strong argument that it was created to commit fraud
- ▶ LOOK FOR:
  - ▶ Delinquent taxes
  - ▶ Recent purchase by an LLC that was created shortly before acquiring property



## Piercing the Corporate Veil

- ▶ What actually happens?
- ▶ If successful, the court will “disregard the corporate fiction”
- ▶ That means, the court takes the liability that was supposed to solely be linked to the LLC and adds the member personally as a liable party.
- ▶ That expands the ability for the municipality to collect the debt
  - ▶ The LLC may have no other assets
  - ▶ But the member behind it probably has assets



## Conclusion

- ▶ Foreclosure property can pose unique challenges for local government
- ▶ Often by default, municipalities are the only entity that has standing and authority to something about foreclosures
- ▶ Treasurers can detect early warning signs like unpaid taxes, returned mail, and accruing special charges
- ▶ If you suspect a property is an abandoned foreclosure, contact your attorney and code enforcement department as soon as possible