

## Foreclosure

### Milwaukee Mayor Touts Court Ruling Helping Cities Deal with ‘Zombie Homes’

**M**ilwaukee Mayor Tom Barrett said Wisconsin municipalities have a new tool for managing so-called “zombie homes,” abandoned properties that contribute to urban decay, following a Wisconsin Supreme Court decision affirming cities’ authorities to compel lenders to sell such properties.

In an interview with Bloomberg BNA Feb. 19, Barrett touted a recent unanimous state Supreme Court decision examining the duties of mortgage lenders under Wisconsin’s 2011 accelerated foreclosure law. Among other things, the ruling clarifies that the law authorizes borrowers and municipalities to seek circuit court orders requiring lenders to sell abandoned properties “within a reasonable time.”

Barrett said the ruling gives cities such as Milwaukee a mechanism for dealing with abandoned properties, which contribute to neighborhood decline, trigger public safety problems, and devour municipal resources. Barrett said Milwaukee is currently managing a backlog of more than 300 zombie properties.

“I don’t view this as a weapon; it’s a tool,” Barrett said. “We are not trying to bludgeon anybody. What we are trying to do is make sure these homes are lived in.”

Jeffrey R. Myer, advocacy director for Legal Action of Wisconsin and counsel to the borrower who brought the case to the Supreme Court, said the ruling shuts the door on lenders’ claims that they cannot be compelled to sell foreclosed properties.

“There is no question this is a serious problem, and this decision gives cities an extra tool to deal with reluctant banks,” Myer said in an interview. “This really is important because so much of the foreclosure problem is the properties that have gone bad, the properties that have been abandoned.”

**BNY Mellon Precedent.** The precedent emerged in a case involving Bank of New York Mellon, which was decided by the Supreme Court on Feb. 17 (*The Bank of New York Mellon v. Carson*, , Wis., 15 WI 15, ruling issued, 2/17/15).

The court’s decision responded to a Milwaukee borrower who had lost her home in foreclosure and abandoned the property. The borrower was nonetheless fined by the city for various maintenance and safety vio-

lations more than a year after foreclosure because Bank of New York never sold the home. A circuit court judge ruled she had no authority to compel the bank to put the house up for sale.

On appeal to the high court, Bank of New York asserted that Wisconsin Statute section 846.102, the portion of the real estate code governing foreclosure of abandoned properties, does not require it to sell a property after obtaining a judgment of foreclosure. The bank further asserted that the statute section is simply permissive, not mandatory.

Even if the statute mandates the sale of an abandoned property, Bank of New York argued it provides no deadline for compliance. In line with that view, the bank said it is free to execute on its judgment at any time within five years of the foreclosure judgment and circuit courts are without authority to order differently.

**Crafted to Help Cities.** Justice Ann Walsh Bradley, writing on behalf of the court, disagreed, finding that the plain language of the statute and the legislative history around section 846.102 suggest the law was crafted to help municipalities deal with abandoned properties in a timely fashion. Bradley concluded that a determination of abandonment provides circuit courts with authority to order mortgagees to bring the property to sale within a “reasonable time” after the redemption period. The court added that circuit courts are in the best position to determine what constitutes a reasonable period of time.

“Admittedly, what is considered a reasonable time will vary with the circumstances of each case,” Bradley wrote. “The circuit court is in the best position to consider arguments and evidence on this issue. Thus, we leave it to the circuit court’s discretion to determine, after considering the totality of the circumstances, what a reasonable period of time may be for each case, in light of the statute’s purpose.”

Attorneys for Bank of New York could not be reached for comment on the decision. The bank was represented by Valerie L. Bailey-Rihn and Katherine Maloney Perhach of the Milwaukee office of Quarles & Brady LLP.

**Legal Clarity.** Barrett said municipalities are pleased to have won a stronger degree of legal clarity on the zombie property issue after nearly four years of uncertainty. He expressed frustration with lenders after Milwaukee and other jurisdictions cooperated with the industry on the expedited foreclosure statute.

“The irony here is that the banks worked with us to get the state law changed to allow for the accelerated process for foreclosures,” Barrett said. “One of the elements of the Supreme Court’s decision was that this was something the banks understood was a valuable tool. Our position is: we want you to use the tool.”

Amanda E. Adrian, a staff attorney with Legal Aid Society of Milwaukee Inc. which works with borrowers in foreclosure, said borrowers, as well as municipalities, suffer when lenders refuse to dispose of foreclosed properties.

Adrian, who filed a friend of the court brief in the Bank of New York litigation, said borrowers generally do not realize that the foreclosure process is not complete until the property is sold. As the holder of the title on the foreclosed property, the borrower can be held responsible for any violations of municipal statutes associated with maintenance and safety.

“Those of us who represent homeowners in foreclosure are very, very happy with this decision. It gives us a very clear avenue to get relief for our clients who find themselves in this situation. Before, the law was unsettled. This definitely gives us more leverage to resolve these cases. We have a very well-defined tool.”

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*Full text of the Wisconsin Supreme Court’s ruling can be found at <http://op.bna.com/bar.nsf/r?Open=jtin-9tvv3l>.*

*Wisconsin Statute section 846.102 can be found at <http://docs.legis.wisconsin.gov/statutes/statutes/846/102>.*