

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: June 21, 2024

To: Marcelia Nicholson, Chairwoman, Milwaukee County Board of Supervisors

From: Celia Benton, Economic Development Director, Department of Administrative Services

Subject: From the Economic Development Director, Department of Administrative Services, outlining the key changes to Wisconsin Statutes Chapter 75 and their impact on county procedures for handling tax-foreclosed properties.

File Type: Informational Only

REQUEST

This report is informational only. Amendments to Wisconsin State Statutes Chapter 75 will require the County Board of Supervisors to pass a resolution to implement the new statutory requirements. The Office of Corporation Counsel will present the draft resolution in a future cycle.

POLICY

Milwaukee County is required to adhere to Wisconsin State Statutes for the sale of tax-foreclosed properties. Recent amendments necessitate changes in our procedures and the adoption of a new resolution by the County Board of Supervisors.

Wisconsin State Statutes:	Wis. Stat. §§ 75.35(2), 75.35(2), 75.36(2k), and 75.69(1m)(an).
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BACKGROUND

The State of Wisconsin 2023 Assembly Bill 969 (2023 Wisconsin Act 207), enacted in March 2024, makes changes to the process by which a Wisconsin county sells the land it acquires through tax-deeded foreclosures. Key changes and their implications for Milwaukee County are summarized below. Largely, these changes were made based on the US Supreme Court case, *Tyler v. Hennepin County*¹, and will ensure compliance with its requirements.

Key Changes to Wisconsin Statutes Chapter 75

Summary:

- 2023 Wisconsin Act 207 requires, rather than allows, the County Board pass an ordinance or resolution giving former owners, their beneficiaries, or their heirs the right to repurchase land lost through tax deed by paying the County for all costs

¹ 598 U.S. 631, 143 C.Ct. 1369, 215 L.Ed.2d 564 (2023).

and expenses incurred, plus any taxes that would have been owed while the County owned the property and amounts to satisfy any other liens at the time of the foreclosure prior to the sale of the land. The resolution or ordinance must apply to single-family, owner-occupied properties and may also apply to other properties.

- The County is required to sell properties it acquires through property tax foreclosure.
- When selling tax foreclosed properties, the County is authorized to use open or closed bids in addition to sale via real estate brokers and salespersons as previously allowed.
- When paying former property owners, the proceeds they may be entitled to from the sale of the tax foreclosed property, the amount to pay off liens is no longer deducted from the proceeds. If the funds are unclaimed, they are treated the same as other unclaimed funds under Wis. Stat. 59.66(2) rather than the special 5-year forfeiture period previously in effect.
- There are increased notice requirements that vary based on when the property was acquired by the County and the status of the property, including among other factors, whether the property is owner occupied, whether it is a vacant lot, or whether the delinquent property taxes, or cost to repair are excessive compared to the property's value.
- On the first attempt to sell the property, every offer less than the appraised value must be rejected.

Details/Support:

County is required to sell tax foreclosed properties. Wis. Stat. §§ 75.35(2), 75.35(2), 75.36(2k), and 75.69(1m)(an)

County is now authorized to also use open or closed bids as methods of selling tax foreclosed properties Wis. Stat. § 75.35(2)(d)

County does not need to comply with notice provisions if selling back to former owner. Wis. Stat. §§ 75.35(2)(e) and 75.35(3).

The County Board is required to pass an ordinance for single-family, owner-occupied properties providing the former owner (or their heirs/beneficiaries) with the right to purchase back the land. The County Board may provide such preference for all other owners. To purchase back the land the former owner must pay the County for:

- all costs and expenses as provided under s. 75.36(3)(a)², plus
- the amount of property taxes that would have been owed on the property for the year during which the purchase occurs if the county had not acquired the property, plus
- amounts necessary to satisfy any other lines at the time of the foreclosure, plus
- the County's costs associated with the repurchase.

Wis. Stat. § 75.35(3)

The exception for resale preference to former owners no longer applies to tax foreclosed properties that were improved for or dedicated to a public use by the County.

Wis. Stat. § 75.35(3)

When paying the former owner any proceeds they are due from a sale of tax foreclosed property, the amount to pay off liens is no longer deducted.³ The proceeds, if unclaimed, are now treated the same as other unclaimed funds under Wis. Stat. 59.66(2) rather than the 5-year forfeit period previously in effect. Wis. Stat. § 75.36 (2m)(a) and (b).

County cannot sell property unless the sale and appraised value of such real estate has first been advertised by publication on the County's website and either publication of a class 1 notice, under ch. 985 or by advertising on a MLS, no later than 240 days after the county acquires the property or, beginning in 2026, no later than 180 days after the County acquires the property. Wis. Stat. § 75.69

EXCEPT FOR:

For properties in Milwaukee County acquired after March 24, 2024 where any of the following apply: (a) property is a vacant lot; (b) the property is residential property occupied by a person with a valid ownership or leasehold interest in the property at the time of foreclosure but is not a single-family, owner-occupied residence; (c) the property is eligible for a redemption or sale-back process authorized by s. 75.35 (3), and set by local ordinance; (d) The property qualifies for a raze order under s. 66.0413; (e) the county has estimated a cost of repair that exceeds 50 percent of the property's

2 - The following costs, including personnel costs associated with them: foreclosure costs, record-keeping costs, legal costs, advertising costs and title insurance costs. A county may establish a reasonable estimate of the average costs under this subdivision incurred with respect to property sold after the taking of a tax deed which it may use instead of determining the actual costs for any parcel sold by the county.

- The following actual costs, including personnel costs associated with them: maintenance costs that are required for compliance with building codes or health orders, board-up costs, clean-up costs, demolition costs and all other costs that are reasonable and necessary to sell the property except costs under subd. 2.

- The amount of reasonable and customary real estate agent or broker fees or other actual costs paid for selling the property.

- All amounts of unpaid general property taxes, interest, penalties, special assessments, special charges and special taxes levied against the property sold, including interest and penalties imposed under s. 74.47 previously paid to taxing jurisdictions by the county.

3 The County is not required to search out and pay off these liens if the lien holder does not assert their rights during the foreclosure process. If the lien holder did assert their rights, those costs would arguably be included within the allowed costs under Wis. Stat. 75.36(3)(a)(1m) "all other costs that are reasonably necessary to sell the property." If the lien holder did not exert their rights, the lien would be extinguished by the tax foreclosure. See *Laciejewski v. Sedlak*, 116 Wis. 2d 629, 342 N.W.2d 743 (1984) and 62 Atty. Gen 234

assessed value in the year of the county's acquisition; (f) the delinquent property taxes, fees, interest, penalties, and other costs under s. 75.36 (3) (a) exceed 75 percent of the property's assessed value in the year of the county's acquisition. (g) the county has reason to believe the property is a brownfield pursuant to s. 238.13 (1) (a); or (h) the property is subject to s. 75.106 the County shall advertise the sale by publishing on the County's website and either by publication of a class 1 notice, under ch. 985, or by advertising on an MLS no later than 36 month after the day on which the County acquires the property.

HOWEVER, if the property is a single-family, owner-occupied residence, it is only subject to the extended time frame for d. through h. Wis. Stat. § 75.69(1m)(am)

For properties in Milwaukee County acquired before March 24, 2024, the County has 10 years to sell such properties. If any such property remains unsold after the expiration of the 10-year period, the County shall advertise the sale of the property by publishing on the County's website and either publication of a class 1 notice under ch. 985, or by advertising on an MLS, no later than 180 days after the expiration of the 10-year period, regardless of the property type. Wis. Stat. § 75.69(1m)(an).

KEY CHANGES AND IMPLICATIONS

1. **New Methods for Selling Tax Foreclosed Properties**

- **Prior Method:** Counties were limited to specific methods for selling properties.
- **New Change:** Counties are now authorized to use both open and closed bids (Wis. Stat. § 75.35(2)(d)). This provides more flexibility in choosing appropriate sale methods based on market conditions and preferences.

2. **Exemptions from Notice Provisions for Former Owners**

- **Prior Method:** County was exempt from notice provisions under the old Wis. Stat. 75.69 (1m)
- **New Change:** The County does not need to comply with notice provisions if selling the property back to the former owner (Wis. Stat. §§ 75.35(2)(e) and 75.35(3)). This streamlines the process of returning properties to former owners and reduces administrative burdens.

3. **Right of Former Owners to Repurchase Properties**

- **Prior Method:** No mandated right for former owners to repurchase single-family, owner-occupied properties.
- **New Change:** The County Board is now required to pass an ordinance providing former owners (or their heirs/beneficiaries) with the right to repurchase their land, covering all related costs and taxes (Wis. Stat. § 75.35(3)). This offers a fair chance for former owners to regain their properties.

4. **Property Transfers to other County Departments**

- **Prior Method:** The County could give properties acquired by tax foreclosure to other County departments.

- **New Change:** The County must sell properties acquired by tax foreclosure so that equity in the property can be returned to the former owner to be compliant with the holding in *Tyler v. Hennepin County*.
- 5. Handling of Proceeds from Property Sales**
- **Prior Method:** Liens were deducted from proceeds before paying former owners and unclaimed funds had their own special procedure.
 - **New Change:** Proceeds are now paid to former owners without lien deductions. Unclaimed proceeds handled under the procedures of Wis. Stat. § 59.66(2), the same as other unclaimed funds. (Wis. Stat. § 75.36 (2m)(a)).
- 6. Advertising and Selling Properties within Specified Timeframes**
- **Prior Method:** Less stringent advertising or timeframe requirements.
 - **New Change:** Properties must be advertised by publication on the county's website and through a class 1 notice or MLS within specified timeframes (Wis. Stat. § 75.69). This ensures transparency and expedites the sale process.

Recommendation

DAS – Economic Development Division will immediately implement the statutorily required notice provisions.

The Office of Corporation Counsel will seek adoption of the required ordinance as soon as practicable.

ALIGNMENT TO STRATEGIC PLAN

Describe how the item aligns to the objectives in the [strategic plan](#):

3B: Enhance the County's fiscal health and sustainability

FISCAL EFFECT

N/A

TERMS

N/A

VIRTUAL MEETING INVITES

Emily Streff, Project Manager, DAS - Economic Development Division

Celia Benton, Director, DAS-Economic Development Division

Scott Brown, Acting Corporation Counsel-Office of Corporation Counsel

James Davies, Assistant Corporation Counsel-Office of Corporation Counsel

PREPARED BY:

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APPROVED BY:

Celia Benton

Celia Benton

Economic Development Director, Department of Administrative Services

ATTACHMENTS:

- Report
- Wisconsin Statute Chapter 75

CC:

David Crowley, County Executive
Supervisor Steve F. Taylor, County Board Chairman
Economic and Community Development Committee Members
Mary Jo Meyers, Chief of Staff, Office of the County Executive
Aaron Hertzberg, Director, Department of Administrative Services
James Mathy, Housing Administrator, Department of Health and Human Services
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Steve Cady, Research and Policy Director, Office of the Comptroller
Allyson R. Smith, Committee Coordinator