

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: November 15, 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: Action Report

REQUEST

This report recommends that the County Board of Supervisors pass an ordinance in response to recent amendments to Wisconsin State Statutes Chapter 75, which modify processes related to property tax foreclosure. The amendments require that the former owner or their heirs/beneficiaries be given preference in repurchasing the property. The Office of Corporation Counsel is presenting the draft resolution for immediate consideration alongside this report.

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 ordinance by the County Board of Supervisors.

Wisconsin State Statutes:	Wis. Stat. §§ 59.17(2)(b)3., 59.52(6), 75.35(2), 75.35(2), 75.36(2k), and 75.69(1m)(an).
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BACKGROUND

The State enacted 2023 Wisconsin Act 207 on March 22, 2024. This Act changes the process by which Wisconsin counties sell the land they acquire through property tax foreclosures. Key changes and their implications for Milwaukee County are summarized below. Largely, these changes were made in response to US Supreme Court case, *Tyler v. Hennepin County*¹. It is important to keep 2013 Wisconsin Act 14 and 2015 Wisconsin Act 55 in mind when evaluating Wisconsin Statutes chapter 75 and the changes 2023 Wis. Act 207 makes to the chapter. Importantly, in Milwaukee County the county executive rather than the county board has the power to “take and hold land acquired under ch. 75” pursuant to Wis. Stat. § 59.17(2)(b)3. Related to this, is that in

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

Wis. Stat. ch. 75 when the legislature allows the board to delegate its authority to a committee, such as in Wis. Stat. §§ 75.35(2)(d) and 75.69(1), that authority was already delegated to DAS by the county executive.

Key Changes to Wisconsin Statutes Chapter 75

Summary:

- The County is required to sell properties it acquires through property tax foreclosure. In order to transfer a property to another department, DAS can either sell the property to that department or transfer the property to that department such that they have enough time to list the property for sale in compliance with the new statutory requirements.
- On the first attempt to sell the property, every offer less than the appraised value must be rejected. In part for this reason, it is important that appraised values be determined as close in time to the foreclosure as reasonable.
- The County Board must amend M.C.G.O. § 6.01 to comply with the requirements of Wis. Stat. § 75.35(3).
- When paying former property owners the excess 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.
- When excess proceeds are unclaimed, they are treated the same as other unclaimed funds under Wis. Stat. § 59.66(2) rather than the special 5-year period previously in effect for unclaimed proceeds from property tax foreclosures.
- There are increased advertising requirements for the sale of all property unless it is sold back to the former owner.
- The timelines for when property must be listed for sale 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.

KEY CHANGES AND IMPLICATIONS

1. 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 within the timeframes listed in Wis. Stat. § 75.69 so that equity

in the property can be returned to the former owner to be compliant with the holding in *Tyler v. Hennepin County*. The County can either sell the property to another department or process a jurisdictional transfer if the other department will resell it within the statutory timeframes.

- **Impact:** This could cause cash flow and/or timeline issues for some departments as if another department wants to acquire a property, they will need to make an offer to purchase the property, or rehab and resell it withing tight timelines.

2. First Sale Attempt

- **Prior Method:** Milwaukee County was exempt from the requirement in Wis. Stat. §75.69(1) that it reject every bid less than the appraised value on the first attempt to sell a property by Wis. Stat. § 75.69(1m) (2021-22).
- **New Change:** Milwaukee County is no longer exempted from the requirements in Wis. Stat. §75.69(1).
- **Impact:** The County can still accept the bid most advantageous to it so long as it is more than the appraised value, but this will put limits on how the County can repurpose and/or sell tax foreclosed properties.

3. Right of Former Owners to Repurchase Properties

- **Prior Method:** There was no statutory requirement that former owners be given the right to repurchase single-family, owner-occupied properties. However, this was organizational practice.
- **New Change:** The County Board is required to pass an ordinance giving former owner who lost their title through delinquent tax collection enforcement procedures, or their beneficiaries, as defined in Wis. Stat. § 85103, or heirs, as defined in Wis. Stat. § 851.09 the right to purchase such lands through a process developed by DAS through AMOP.
- **Impact:** Giving preference to former owners of single-family, owner-occupied properties under the conditions in the relevant AMOP.

4. Handling of Liens on Tax Foreclosed Properties

- **Prior Method:** From the net proceeds of a sale of tax foreclosed property, the County was required to pay off any lien placed on the property at the time of the foreclosure sale.
- **New Method:** The County does not need to seek out lien holders who do not assert their rights during the foreclosure process as Wis. Stat. § 75.36(bm) was deleted by 2023 Wis. Act 207. But lien amounts are still required to be paid by former owners (or heirs/beneficiaries) under Wis. Stat. § 75.35(3).
- **Impact:** This will maximize the excess proceeds that property owners receive get when their property is foreclosed on without costing the County more, while not providing an incentive for sham foreclosures in an effort to remove other outstanding liens.

5. Handling of Excess Proceeds from Property Sales

- **Prior Method:** Excess proceeds that were not claimed by a former owner (or heirs/beneficiaries) were treated as a special group of funds and the County could claim them after five years.

- **New Change:** Unclaimed excess proceeds are handled under the procedures of Wis. Stat. § 59.66(2), the same as other unclaimed funds, which has a 10 year wait before the funds become the County's. (Wis. Stat. § 75.36 (2m)(a)).
 - **Impact:** There is a longer delay before the County can claim unclaimed excess proceeds which has a negative impact on cashflow, but the unclaimed excess proceeds are handled in an established way rather than being treated separately which reduces administrative burdens.
6. **New Advertising Requirements for Milwaukee County**
- **Prior Method:** County was exempt from advertising requirements in Wis. Stat. § 75.69 under the old Wis. Stat. § 75.69(1m)
 - **New Change:** The County must comply with the advertising requirements in § 75.69 for the sale of tax foreclosed property.
 - **Impact:** This will likely require additional staff time.
7. **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).
 - **Impact:** This ensures transparency and requires the county to expedite the advertising of properties for sale. However, it also puts increased administrative demands on DAS to comply with the rapid advertising timeframes.

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 authorized to use open or closed bids, or to engage licensed real estate brokers and salespersons to sell tax foreclosed properties Wis. Stat. § 75.35(2)(d)

County does not need to comply with advertising provisions if selling back to former owner or their heir/beneficiary. Wis. Stat. §§ 75.35(2)(e) and 75.35(3).

The County Board must amend M.C.G.O. § 6.01 to comply with the requirements of Wis. Stat. § 75.35(3). To repurchase the land the former owner must pay the County for:

- all costs and expenses as provided under s. 75.36(3)(a)², plus

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

- 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 liens at the time of the foreclosure, plus
- the County's costs associated with the repurchase.

Wis. Stat. § 75.35(3)

The exception from giving resale preference to former owners for tax foreclosed properties that were improved for or dedicated to a public use by the County no longer applies. Wis. Stat. § 75.35(3)

When paying the former owner any excess proceeds they are due from a sale of tax foreclosed property, the amount to pay off liens is no longer deducted.³

These excess 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).

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).

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) The 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

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 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

- foreclosure but is not a single-family, owner-occupied residence;
- (c) The property is eligible for a redemption or sale-back process authorized by Wis. Stat. § 75.35 (3), and set by local ordinance;
 - (d) The property qualifies for a raze order under Wis. Stat. § 66.0413;
 - (e) The county has estimated a cost of repair that exceeds 50 percent of the property's assessed value in the year of the county's acquisition;
 - (f) The delinquent property taxes, fees, interest, penalties, and other costs under Wis. Stat. § 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 Wis. Stat. §. 238.13 (1) (a); or
 - (h) The property is subject to Wis. Stat. § 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)

Recommendation

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

DAS – Economic Development Division will update and develop applicable AMOPs as required to implement statutory requirements.

OCC – Office of Corporation Counsel has attached their recommended ordinance to comply with the requirements of Wis. Stat. § 75.35(3).

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

This could have a negative financial impact on the County, but it is not clear yet what the magnitude will be and/or if minor administrative adjustments can ameliorate or eliminate any negative impacts.

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:

Emily Streff, Project Manager, DAS - Economic Development Division
James Davies, Assistant Corporation Counsel-Office of Corporation Counsel

APPROVED BY:

Celia Benton

Celia Benton
Economic Development Director, Department of Administrative Services

ATTACHMENTS:

- Report
- 2023 Wis. Act 207
- Wisconsin Statute Chapter 75
- Ordinance

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
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Ken Smith, County Board Research Analyst
Allyson R. Smith, Committee Coordinator