



LEGAL ISSUES
RELATING TO COUNTY GOVERNMENT

ACT 207 REVISES PROCESS FOR
**County Disposition of
Properties Obtained Through
Tax Foreclosure**

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In March, Gov. Tony Evers signed 2023 Wisconsin Act 207 into law to implement the U.S. Supreme Court’s 2023 decision in *Tyler v. Hennepin County*, wherein the court held that a county’s retention of excess surplus (i.e., the difference between the sale price and the amount the former property owner owed in back taxes, interest, penalties, etc.) amounted to an unconstitutional “taking” of the former owner’s property. Following this decision, both the Legislature and governor expressed a desire to create a statutory mandate that counties sell properties acquired through tax foreclosure and remit any surplus proceeds to the former owner. The final legislation went through a lengthy process involving several proposals and revisions to bill drafts brought about by the need to address stakeholder concerns.

The WCA immediately recognized the desire to create the statutory mandate, but also impressed upon the Legislature and governor the need to address other issues brought about primarily by the statutory changes codified in 2021 Wisconsin Act 216. Following months of discussions and negotiations with the various stakeholders, the WCA was able to negotiate language in Act 207 resolving some

of these issues. While several county concerns with the sale process are addressed in Act 207, the WCA recognizes a need to continue discussions surrounding additional statutory changes to further clarify and simplify the process and anticipates those discussions continuing in the next legislative session.

An overview of the primary changes to the process for a county’s sale of properties acquired through tax foreclosure (codified in Chap. 75 of the Wisconsin Statutes) follows.

► **Requirement to sell tax-deeded properties**

In *Tyler v. Hennepin County*, the U.S. Supreme Court made it clear that a county’s retention of proceeds from the sale of tax-deeded property in excess of amounts owed the county is an unconstitutional taking. Based upon this precedent, as indicated above, Wisconsin legislators and the governor were anxious to codify in statute an obligation to sell tax-deeded properties and a requirement that any excess proceeds be returned to the former owner. Of course, any sale transaction requires two parties — a seller and a buyer. Therefore, it is impossible to impose a sale requirement by statute because

any sale would be contingent upon locating a willing buyer. As a result, Act 207 imposes strict timing requirements relating to publishing notice of tax-deeded properties available for sale.

Specifically, Act 207 amends Wis. Stat. § 75.69(1) to provide that within 240 days¹ and, beginning in 2026, within 180 days, of a county acquiring a tax deed, the county must advertise the property for sale by publishing notice on the county's website and either (a) providing a class 1 notice; or (b) advertising on a multiple listing service. The publication requirement (and all the provisions within Act 207) apply to tax deeds a county acquired or will acquire from April 1, 2022, and after. However, the 240-day publication requirement deadline did not start until March 24, 2024, for deeds acquired before such date.

In addition, Act 207 (at Sections 1 and 20) eliminates a county's authority to exchange tax-deeded properties with municipalities for no consideration, which furthers the intent to require the sale of the properties acquired through tax foreclosure,

► **Method of sale**

Act 207 (at Section 5) authorizes a county to sell tax-deeded properties by open or closed bid or engage licensed real estate brokers. In essence, the county can determine the most efficient and expedient method to sell the property, provided it complies with the publication requirements related to the property's availability for purchase.

► **Right of former owner to repurchase**

Prior to Act 207, under Wis. Stat. § 75.35(3), a county could, at its option, provide the former owner or the former owner's heirs preference to repurchase a tax-deeded property. Act 207 (at Section 7) requires a county to provide, by ordinance, the repurchase preference to the former owner and the former owner's heirs and beneficiaries² for single-family, owner-occupied properties and maintains the option for all other properties. Section 7 of Act 207 requires the former owner (or beneficiary or heir) to make the county whole for (a) all costs, expenses, back taxes, etc., due in relation to the property; (b) the amount of property taxes that would have been due but for the county's acquisition; and (c) amounts to satisfy any other liens existing on the property at the time of the foreclosure. In addition, the former owner must reimburse the county for its costs associated with any repurchase.

► **Hold period for proceeds**

Prior to Act 207, under Wis. Stat. § 75.36(2m), if the county was unable to locate the former owner within five years following the mailing of the notice of the existence of proceeds, the former owner forfeited the proceeds. Some questioned what efforts a county would be statutorily required to undertake to "locate" a former owner. Section 10 of Act 207 eliminates the "locate" requirement and



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Section 11 of Act 207 requires a county to transmit any unclaimed surplus proceeds to unclaimed funds under Wis. Stat. § 59.66(2) if the payment mailing is returned or otherwise not claimed within one year of the sale.

► Payoff liens

Prior to Act 207, Wis. Stat. § 75.36(3)(bm) required a county to use any surplus proceeds from the sale of tax-deeded property to “pay off any lien placed on the property at the time of the foreclosure sale in accordance with the contract

or law giving rise to the lien.” Given that any liens are extinguished through the tax foreclosure process, many questioned how counties could effectuate the Legislature’s intent in enacting this statutory language. Act 207 (at Section 14) repeals this subsection of the statutes.

► Special rules for the city of Milwaukee and Milwaukee County

Prior to Act 207, under Wis. Stat. § 75.69(1m)(a), Milwaukee County and the city of Milwaukee enjoyed an exemption from the existing publication (and certain other) requirements applicable to other counties. Act 207 eliminates the exemption and instead creates special rules surrounding publication and disposition of tax-deeded properties in Milwaukee County and the city of Milwaukee.

► Effective date

Section 21 of Act 207 makes the new statutory rules applicable to all tax deeds a county acquired or will acquire on or after April 1, 2022, which was the effective date of 2021 Wisconsin Act 216. In addition, Section 21 provides that Act 207 does not impact (a) any sale that occurred prior to the effective date (March 24, 2024); or (b) any sale that occurs during the 90-day period following the effective date.

If you have any questions surrounding this article, please do not hesitate to contact the authors. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.

1. As discussed in this article, sections 16-19 of Act 207 contain alternative notice and publication provisions specific to Milwaukee County and the city of Milwaukee, which are not discussed in detail in this article.
2. Note that prior to Act 207, Wis. Stat. 75.35(3) only extended to a former owner’s heirs and not beneficiaries.



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