



Legislation Details (With Text)

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**Title:** An ordinance relating to petitions to the circuit court by the city attorney’s office to reopen and vacate in rem tax foreclosure judgments.

**Sponsors:** ALD. BORKOWSKI, ALD. CHAMBERS JR.

**Indexes:** IN REM JUDGMENTS

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Date	Ver.	Action By	Action	Result	Tally
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5/1/2023	0	JUDICIARY & LEGISLATION COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
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5/16/2023	0	MAYOR	SIGNED		
5/26/2023	0	CITY CLERK	PUBLISHED		

221877  
ORIGINAL

ALD. BORKOWSKI, CHAMBERS, JR

An ordinance relating to petitions to the circuit court by the city attorney’s office to reopen and vacate in rem tax foreclosure judgments.

304-50 rc

This ordinance changes and clarifies the procedure for vacating an in rem tax foreclosure judgment obtained by the city against a property owner. Under current code provisions, a property owner may request a vacated judgment on a foreclosed property while still owing the city money on other properties. This ordinance requires that all of the money owed for any of the owner’s properties be paid before the city attorney’s office petitions the court for a vacation.

Furthermore, the ordinance:

1. Clarifies the process for obtaining a vacation by defining who qualifies as an applicant.
2. Lists what is required for the initial written request for a vacation.
3. Specifies the review performed by the city treasurer and the report on any outstanding costs that is prepared by the city attorney’s office, city treasurer’s office, department of city development, department of neighborhood services, health department and Milwaukee water works. This report forms the basis of the common council file for the vacation.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 304-50 of the code is repealed and recreated to read:

**304-50. Vacation of In Rem Judgment. 1. DEFINITIONS.** In this section:

- a. "Beneficiary" means any person nominated in a will, trust, living will, durable power of attorney, or the like to receive an interest in property other than in a fiduciary capacity as defined in s. 851.03, Wis. Stats.
- b. "Former owner" means a person or entity named as the grantee on the most recent deed recorded with the Milwaukee county register of deeds prior to the judgment of foreclosure.
- c. "Heir" means any person, including the surviving spouse, adopted child, and step-child, who is entitled under the statutes of intestate succession to an interest in property of a decedent as defined in s. 851.09, Wis. Stats.
- d. "In rem judgment" means a foreclosure judgment under s. 75.521 Wis. Stats., against real property for delinquent property taxes.
- e. "Ownership interest" means a person or entity who is a full or part-owner of real property, or is a member or owner of a limited liability company or other business entity which owns real property.
- f. "Personal representative" means any person, as defined in s. 851.23, Wis. Stats., to whom letters to administer a decedent's estate have been granted by the court or by the probate registrar under ch. 865, Wis. Stats., but does not include a special administrator.
- g. "Recorded interest" means an interest in real property, such as a lien or mortgage, stated in a valid document which was recorded with the Milwaukee county register of deeds prior to the judgment of foreclosure.
- h. "Redemption amount" means the city's total costs associated with the property. Any rental income collected by the city shall not be applied against the total amount due to the city for the redemption of the property. Total costs shall include:
  - h-1. Costs reported to the common council.
  - h-2. All costs incurred by the city with respect to the property through the date of vacation of the city's judgment.
  - h-3. All city and county taxes, special assessments and special charges, including interest and penalties through the date of the vacation.
  - h-4. All administrative and overhead costs, including but not limited to, administrative and overhead costs incurred by the reporting departments beyond those costs already paid under sub. 4-d.
- i. "Subject property" means the property that was foreclosed on by the city and is now part of the application to the common council to reopen and vacate the foreclosure judgment.

**2. REOPENING AND VACATION OF IN REM JUDGMENT.** The common council may adopt a resolution directing the city attorney's office to petition the circuit court to reopen and vacate an in rem foreclosure judgment obtained by the city pursuant to s. 75.521, Wis. Stats.

**3. APPLICANTS.** a. Any of the following persons may request to vacate an in rem tax foreclosure judgment:

- a-1. The living former owner as shown on the most recently recorded valid deed.
- a-2. Any person or entity having any recorded interest in the property, with the consent of the former owner, unless the former owner is deceased or cannot be located following diligent search and inquiry.
- b. Any heir, beneficiary, or personal representative of the former owner may request to vacate a foreclosure judgment if the former owner was deceased before the application deadline, and if the applicant provides a signed affidavit stating the relationship to the former owner and one of the following, if applicable:
  - b-1. Birth certificate.

b-2. Marriage certificate.

b-3. Obituary.

b-4. A copy of any applicable will, trust, living will, durable power of attorney, or the like.

b-5. A decision or judgment of the probate court.

c. If the applicant is an heir, the beneficiary, or personal representative of the former owner, and if the request to vacate is approved by the common council, within 180 days of the recording of the order to vacate judgment, the applicant shall transfer legal title to the beneficiary or beneficiaries by recording the transfer with the Milwaukee county register of deeds. Failure to do so shall preclude any further application to vacate a foreclosure of the subject property by any heir, beneficiary or personal representative of the former owner.

d. The applicant shall immediately provide the city treasurer and department of neighborhood services with the name and contact information of the individual who shall be responsible for the property in the period before the legal title is recorded in the name of a beneficiary or heir.

**4. WRITTEN REQUEST.** A request to vacate an in rem tax foreclosure judgment shall meet each of the following requirements:

a. The request shall be submitted to the city treasurer within 90 days from the date of entry of the in rem tax foreclosure judgment.

b. The written request shall be on a form created by the city treasurer, which will identify each of the following:

b-1. The property address.

b-2. The property's tax key number.

b-3. The name and mailing address of the applicant.

b-4. The applicant's interest in the property.

b-5. A list of all other real property in the city in which the former owner has an ownership interest individually or as part of an entity.

c. The written request shall be signed by the former owner. The common council may, in its discretion, waive the requirement that the former owner consent to the applicant's request if the common council finds that it is in the city's best interest to do so.

d. Along with the written request to the city treasurer, the applicant shall pay to the city treasurer in cash or by cashier's check deposits of administrative costs of the:

d-1. City attorney's office.

d-2. City clerk's office.

d-3. City treasurer's office.

d-4. Department of city development.

d-5. Health department.

d-6. Water works.

e. If the property contains any rental units, the applicant, if the former owner, shall also file an application to record the subject property and any other unrecorded properties with the department of neighborhood services, as required in s. 200-51.5.

**5. CITY TREASURER REVIEW.** a. The city treasurer shall not accept a request that fails to meet any of the requirements in sub. 3 or 4 or where the department of city development indicates that the city has accepted an offer to purchase the property.

b. The city treasurer shall date-stamp each written request and then forward each timely-received request to the city clerk along with a written report which indicates each of the following:

b-1. The amount of unpaid taxes, charges, interest and penalties due on the subject property.

b-2. Whether the administrative and overhead costs of the various city departments have been paid.

b-3. The status of tax payments for all other properties located in the city in which the former property

owners have an ownership interest and any other costs incurred or to be incurred by it with respect to the properties.

**6. COMMON COUNCIL FILE.** a. Upon receipt of a request that complies with the requirements of sub. 4, the city treasurer shall notify the city clerk that a request to vacate an in rem tax foreclosure judgment has been received.

b. The city clerk shall, in turn, introduce a common council file no later than the next regular meeting and shall, at that time, notify the city attorney's office, department of city development, department of neighborhood services, health department and water works in writing that a request under this section has been made.

c. The city clerk shall gather the following reports within 15 working days of notification, except that the city clerk may grant an extension to the 15-day period upon receipt of a written request submitted by the reporting department:

c-1. A department of neighborhood services report verifying:

c-1-a. Whether the subject property or any other property in the city in which the owner has an ownership interest is subject to raze orders issued pursuant to s. 218-4.

c-1-b. Whether the subject property or any other property in the city in which the owner has an ownership interest has any order to correct condition of premises issued by the department.

c-1-c. The total costs incurred or to be incurred with respect to the subject property and any other property in the city in which the owner has an ownership interest.

c-2. A department of city development report which shall:

c-2-a. Identify occupied parcels, as well as any occupants, leases, personal property issues or concerns associated with the subject property and any other property in the city in which the owner has an ownership interest.

c-2-b. Identify any known acquisition interest by others.

c-2-c. Indicate whether the subject property is located in an existing or planned project area.

c-2-d. Indicate whether the subject property is suitable for any public program or use.

c-2-e. List the total costs incurred or to be incurred with respect to the subject property and any other property in the city in which the owner has an ownership interest, including but not limited to: repair costs, razing charges, expenses associated with environmental matters and property management.

c-2-f. Any other relevant information.

c-3. Health department and the department of neighborhood services reports verifying whether the subject property or any other property in the city in which the owner has an ownership interest are subject to a nuisance notice issued by the department, and which lists total costs incurred or to be incurred by it with respect to each property.

c-4. A water works report which lists any outstanding charges or fees that may be owed to the water works with respect to the subject property and any other property in the city in which the owner has an ownership interest.

c-5. A city attorney report stating any amount owed by the former owner for municipal court judgments, with respect to the subject property or any other property in the city in which the owner has an ownership interest, along with any other relevant information.

**7. COMMITTEE HEARING.** a. Upon receipt of all of the required reports, the city clerk shall submit a coordinated report to the appropriate committee of the common council, including the total costs and expenses reported by each of the reporting departments, as well as total costs and expenses reported to the city clerk by any other city department or agency concerning the property. This information shall be presented at a committee hearing.

b. The committee may hold the application to the call of the chair no more than twice, for a maximum total of 3 hearings. If the applicant fails to appear, the application may be placed on file.

**8. PAYMENT OF OTHER OUTSTANDING DEBT.** a. Prior to the common council meeting, the applicant shall pay each of the following:  
a-1. All costs, fees, and charges associated with the property which have been identified by the city departments as reported under sub. 6.  
a-2. All delinquent taxes for any other properties the applicant owns in the city, including any property owned by any business entity in which the applicant is a manager or member, as reported under sub. 4-b.  
b. The clerk's office shall confirm with the city treasurer, prior to the common council meeting, that the amounts in par. a. have been paid.

**9. COUNCIL VOTE.** a. The common council shall make the final determination whether the property should be returned to the former owner.  
b. The common council may, at its discretion, reserve the right to disapprove vacation of an in rem judgment as to any property.  
c. The common council may, at its discretion, condition its approval of vacation of an in rem judgment or return of real property to a former owner.  
d. Conditions may include, but are not limited to, the former owner waiving any potential claims regarding city disposition of personal property left in the subject property as allowed by state or local law.  
e. The common council shall consider whether the debt identified in subs. 5 and 6, excluding the delinquent taxes on the subject property, has been paid prior to the common council vote.  
f. If the applicant withdraws the request after submitting it to the city treasurer or if the request is denied, the city shall retain all of the administrative fees paid under sub. 4-d to defray the city's cost of processing the request.

**10. PAYMENT TO VACATE.** a. If the resolution authorizing vacation of the city's in rem tax foreclosure judgment is adopted by the common council, then the applicant shall contact the treasurer's office for the updated redemption amount.  
b. Within 30 days of adoption of the resolution, the applicant shall pay the redemption amount to the city treasurer by cash or cashier's check.  
c. If the applicant fails to timely pay in full, all deposits made by the applicant shall be forfeited, and the common council's approval of the return of the property shall be rescinded.

**11. ORDER TO VACATE JUDGMENT.** Once the applicant has satisfied the requirements of this section, the city attorney's office shall petition the court to reopen and vacate the city's in rem tax foreclosure judgment against the subject property so that title to the subject property may be restored to the former owner. The city attorney's office shall record the court order to vacate judgment with the Milwaukee county register of deeds.

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau  
Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE

IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: \_\_\_\_\_

Office of the City Treasurer

LRB 177852-3

Christopher Hillard

3/29/2023