

LAING RECOGNIZED BY THE NADC AS ONE OF THE FINEST LAWYERS IN THE COUNTRY

Dean P. Laing, of O'Neil, Cannon, Hollman, DeJong and Laing S.C, has been selected to the 2015 list as a member of the Nation's Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Its mission is to objectively recognize the attorneys who elevate the standards of the Bar and provide a benchmark for other lawyers to emulate.

Members are thoroughly vetted by a research team, selected by a blue ribbon panel of attorneys with podium status from independently neutral organizations, and approved by a judicial review board as exhibiting virtue in the practice of law. Due to the incredible selectivity of the appointment process, only the top 1% of attorneys in the United States are awarded membership in NADC. This elite class of advocates consists of the finest leaders of the legal profession from across the nation.

ATTORNEYS WITTENBERG AND KILLORAN CONTRIBUTE TO THE AMERICAN BAR ASSOCIATION SECTION OF LITIGATION HEALTH LAW LITIGATION NEWSLETTER

O'Neil, Cannon, Hollman, DeJong and Laing S.C. attorneys Christa Wittenberg and Grant Killoran recently contributed articles to the Spring 2015 Edition of the *Health Law Litigation Newsletter* published by the American Bar Association Section of Litigation.

Attorney Wittenberg, an associate in the firm's Litigation Practice Group, authored an article entitled "The Constitutional Framework for Public Health Responses to Disease Outbreaks," analyzing the role of federal and state government in responding to contagious disease outbreaks, such as the recent Ebola virus crisis.

Attorney Killoran, the Chair of the firm's Litigation Practice Group and one of the State Bar of Wisconsin's Delegates to the ABA House of Delegates, authored an article entitled "American Bar Association House of Delegates Update" discussing a number of resolutions passed by the ABA House of Delegates at the ABA Mid-Year Meeting in Houston in February.

A complete copy of the Spring 2015 Edition of the ABA Section of Litigation *Health Law*

ATTORNEY GUMINA PRESENTS TO THE HFTP GREATER MILWAUKEE CHAPTER

On March 25, 2015, Joseph E. Gumina, who leads the firm's labor and employment practice, spoke to the Greater Milwaukee Chapter of the Hospitality Financial and Technology Professionals. Attorney Gumina spoke about the latest developments in labor and employment law affecting the hospitality industry, including the latest developments before the NLRB and the EEOC. Attorney Gumina also spoke about wage and hour compliance and workplace harassment issues in the hospitality industry.

ATTORNEY WALSH TO PRESENT AT UPCOMING SFSP MILWAUKEE CHAPTER MEMBERSHIP MEETING AND NETWORKING EVENT

Attorney Peter J. Walsh will be presenting at the SFSP Milwaukee Chapter Membership Meeting and Networking event on Tuesday, March 24, 2015.

Mr. Walsh is a member of the Tax and Succession Planning Practice Group and will be presenting on how insurance products, such as life insurance and long term care insurance, can be used in asset protection planning for long term care. He first presented this topic to the Elder Law Section of the Wisconsin Bar in September 2013 and his upcoming presentation will be updated to reflect recent changes in the law.

ATTORNEY LAING SPEAKS AT MARQUETTE UNIVERSITY LAW SCHOOL SEMINAR

On March 6, 2015, Dean Laing spoke at the 2015 Marquette University Law School Civil Litigation and Evidence Conference for attorneys. The topic of his presentation was

“Deposition Practice,” and included discussion on errata sheets, sequestration, videotape depositions, telephonic depositions and behavior at depositions. The presenters at the Conference included some of the top trial attorneys in Wisconsin.

ATTACK OF THE ZOMBIE PROPERTY

On February 17, 2015, the Wisconsin Supreme Court, in *The Bank of New York Mellon v. Carson*, 2015 WI 15, decided that, under Section 846.102 of the Wisconsin Statutes, banks and others who file mortgage foreclosure cases may be legally compelled to hold judicial sales of abandoned properties within a reasonable time after the borrower’s redemption period expires. This decision flies in the face of the foreclosure practices of many lenders and, therefore, is worthy of careful consideration.

To avoid the problems highlighted by this case, it may be wise for lenders and others who foreclose mortgages to consider taking advantage of the receivership process to liquidate and dispose of abandoned or “zombie” properties, rather than using conventional mortgage foreclosure proceedings.

The facts of *BoNY v. Carson* are straightforward. In 2007, Countrywide loaned \$52,000 to Carson, who signed a note and mortgage, pledging her Milwaukee home as collateral. Carson later defaulted on her loan payments and, BoNY, acting as the trustee for Countrywide, filed a foreclosure lawsuit. BoNY was unable to serve Carson with the foreclosure pleadings, but in the process of attempting service, BoNY’s process server noted that Carson’s house appeared vacant because the garage was boarded, the snow was not shoveled, and there were no footprints around the house.

Given its inability to serve Carson personally, BoNY published notice of the foreclosure action in a local newspaper and Countrywide’s servicer filed a Registration of Abandoned Property with the City of Milwaukee. Carson did not respond and, in July 2011, a judgment for foreclosure and ordering sale of the property was entered in favor of BoNY. The circuit court declared Carson’s indebtedness and directed that the property be sold at a sheriff’s auction at any time after three months had passed based on Section 846.102.

Sixteen months later, BoNY still had not sold the mortgaged property via a sheriff’s sale and had no plans to do so. Thus, the case involved what is sometimes called an “abandoned foreclosure,” “bank walkaway,” “zombie title/property,” or “limbo loan.” Moreover, despite obtaining a judgment of foreclosure, BoNY took no steps to secure the property. It was repeatedly burglarized and vandalized and, at one point, a fire started in the garage. The Department of Neighborhood Services ordered that the property be maintained, but neither

BoNY nor Carson did so. As a result, Carson received notices of accumulated trash and overgrown vegetation and was fined \$1,800 by the City of Milwaukee.

In an effort to force BoNY to sell the property, Carson filed a motion seeking to amend the judgment to include a finding that the property was abandoned, along with an order requiring that the property be sold after five weeks had passed from the date of the amended judgment, relying on Section 846.102. The circuit court denied the motion, concluding that the statute did not grant it any authority to order BoNY to sell the property *at a specific time*.

On appeal, Carson argued that the trial court had the authority to order a sale of the property promptly upon expiration of the redemption period. The Court of Appeals agreed, deciding that “the plain language of the statute directs the court to ensure that an abandoned property is sold without delay, and it logically follows that if a party to a foreclosure moves the court to order a sale, the court may use its contempt authority to do so.” BoNY sought review by the Wisconsin Supreme Court, which granted BoNY’s request and identified two issues: (1) whether the statute authorizes a court to order a mortgagee to bring a property to sale; and (2) whether a court can require a mortgagee to bring a property to sale at a certain point in time.

After considering the plain language of Section 846.102 and related statutes, the Wisconsin Supreme Court rejected BoNY’s argument that a mortgagee could not be ordered to sell a property within a particular time. Rather, the plain meaning of the statute gave the circuit court authority to order a sheriff’s sale of abandoned property. But, the Supreme Court did not stop there. It went on to interpret Section 846.102 as *mandating* that a circuit court order the sale of abandoned property if certain conditions are met: “Those conditions do not depend on action by the mortgagee alone and are not dependent on its acquiescence or consent.”

Having determined that a circuit court may (or sometimes must) compel a bank to sell an abandoned property, the Supreme Court next turned to the question of whether a circuit court has authority to order *when* the property must be sold. After again considering the plain language of Section 846.102, along with legislative history showing an intent to alleviate the problem of abandoned homes in Milwaukee’s inner-city through prompt sales, the Supreme Court held that circuit courts indeed have authority to order a sale within a reasonable time after expiration of the statutory redemption period. Accordingly, *BoNY v. Carson* holds that a circuit court not only has the legal authority to order a prompt sale of abandoned property, but also that, if a circuit court issues such an order, it may require that such a sale take place within a reasonable time based on a totality of the circumstances of the case.

When abandoned properties are the subject of lien foreclosure actions, lenders should consider the benefits of appointing a receiver for such properties. A receivership not only

prevents a finding of abandonment, but also is a way to liquidate property without going through the judicial foreclosure process.

For further information, please contact John Schreiber, Seth Dizard, or any of the attorneys in OCHD&L's Banking and Creditors' Rights Practice Group.

ATTORNEY MAGER PRESENTS DURING "UTILIZATION OF MENTAL HEALTH, COUNSELING, AND MEDICAL RECORDS IN FAMILY LAW CASES: A VIEW FROM THE BENCH, THE BAR AND HEALTHCARE PROFESSIONALS"

On February 5, 2015, Gregory S. Mager spoke during Utilization of Mental Health, Counseling, and Medical Records in Family Law Cases: A View from the Bench, the Bar and Healthcare Professionals presented by The Society of Family Lawyers, The Leander Foley Matrimonial Inns of Court, and The Association of Family and Conciliation Courts Wisconsin Chapter. This continuing education program addressed the technical, legal aspect of requests for production of health care records and of complying with records requests, factors in determining admissibility of these records, limitations on use, pros and cons of using these records, standards for mental health professionals regarding records, the effect of litigation on record keeping, the effects of record production/admission on therapeutic relationships, and alternatives to using these records.

Attorney Mager is a shareholder at O'Neil Cannon who focuses his practice on family law. Contact him at gregory.mager@wilaw.com or 414.291.4726 for your family law needs.

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ELECTS VAN DE KAMP AS SHAREHOLDER

O'Neil, Cannon, Hollman, DeJong and Laing is pleased to announce that Timothy Van de Kamp was recently elected a shareholder of the firm. Mr. Van de Kamp has been with the firm since 2012 and is a member of the Corporate Practice Group. He focuses his practice in Real

Estate and Construction Law and Banking and Creditors' Rights.

Mr. Van de Kamp is an active member of the community. He is a member of the Board of Directors for the Iota Court Preservation Association, the Real Estate Alliance for Charity, and NAIOP Commercial Real Estate Development Association.

Learn more about Mr. Van de Kamp by visiting his full profile.

KILLORAN FEATURED IN THE WISCONSIN LAW JOURNAL

Attorney Grant Killoran was featured in the *Wisconsin Law Journal* article entitled, "Killoran takes onstage experience to courtrooms."

Read full article [here](#).



DEAN LAING FEATURED IN THE WISCONSIN SUPER LAWYERS 2014 EDITION

We are proud to announce that our Partner, Dean Laing, has been featured as the Cover Story for the 2014 *Wisconsin Super Lawyers* magazine. A copy of the article, which calls O'Neil, Cannon, Hollman, DeJong and Laing S.C. "the midsize Milwaukee powerhouse," can be found [here](#).

For the past 10 years, Super Lawyers has published its annual magazine in Wisconsin, in which it selects approximately 5% of Wisconsin attorneys as "Super Lawyers." In addition, each year the magazine selects the Top 50 Attorneys in Wisconsin. Super Lawyers' selection process consists of surveying all Wisconsin attorneys and judges, conducting its own independent research, and having its Blue Ribbon Panel evaluate attorneys.

Since 2006, Dean has been selected each year as one of the Top 50 Attorneys in Wisconsin. He is one of only 10 attorneys out of over 15,000 attorneys in Wisconsin—and the only commercial litigator—to be selected for that honor in each of those nine years. Dean has

also been selected as one of the Top 25 Attorneys in Milwaukee each year since Super Lawyers began publishing the list in 2011.

Congratulations Dean on this tremendous honor.

