2013 ASSEMBLY BILL 188

May 3, 2013 – Introduced by Representatives BERCEAU, OHNSTAD, BERNARD SCHABER, BEWLEY and HULSEY, cosponsored by Senators HARRIS and MILLER. Referred to Committee on Financial Institutions.

1   AN ACT *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the

2   statutes; **relating to:** priority of certain refinance mortgages.

Analysis by the Legislative Reference Bureau

Under current law, a mortgage on real property creates a lien on the property. Mortgages may be recorded in the office of the register of deeds of the county in which the property is located, which gives the public notice of the lien on the property. Certain duly recorded mortgages have priority over certain other liens on the property, which means that the lienholder with priority has first right to use proceeds from the property to satisfy an obligation owed to the lienholder by the property owner.

This bill specifies that a refinance residential mortgage retains the priority of the prior (original) first–lien residential mortgage, including priority over any second–lien mortgage that is created after the original first–lien mortgage, if all of the following conditions are satisfied:

1. The principal amount of the loan secured by the refinance mortgage does not exceed the outstanding principal balance of the loan secured by the original mortgage plus $5,000.

2. The interest rate of the loan secured by the refinance mortgage is stated in the refinance mortgage at the time it is recorded and, if the original mortgage secures a fixed–rate loan, does not exceed the interest rate set forth in the mortgage note secured by the original mortgage.

3. The refinance mortgage is recorded and contains specified information on its first page.

The bill includes provisions to facilitate the recording and indexing of refinance mortgages in a way that allows the public to also locate the original mortgages.

For further information see the **local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 59.43 (9) (b) of the statutes is amended to read:

2   59.43 **(9)** (b) In the case of refinance mortgages, as defined in s. 138.059 (1) (d),

3   assignments, satisfactions and partial releases of mortgages, and subordination of

4   mortgages, the index shall also contain the document number or volume and page

5   of the original mortgage instrument whenever that original mortgage instrument is

6   referenced on the document.

7   SECTION 2. 138.059 of the statutes is created to read:

8   **138.059 Priority of certain refinance mortgages over subordinate**

9   **mortgages. (1)** DEFINITIONS. In this section:

10   (a) "Loan" means a loan secured by a real estate mortgage on a one–family to

11   4–family dwelling that the borrower uses as his or her principal place of residence.

12   (b) "Prior mortgage" means a first lien real estate mortgage, given as security

13   for a loan, that is recorded before a subordinate mortgage on the same property.

14   (c) "Recorded" means recorded or filed in the office of the register of deeds in

15   the county where the real property is located.

16   (d) "Refinance mortgage" means a real estate mortgage given to secure a

17   refinancing.

18   (e) "Refinancing" means the replacement of a loan secured by a prior mortgage

19   with a new loan secured by a real estate mortgage and the payment in full of the debt

20   owed under the original loan secured by the prior mortgage.

1   (f) "Subordinate mortgage" means a 2nd lien, or other junior lien, real estate

2   mortgage given to secure a loan.

3   **(2)** PRIORITY OF REFINANCE MORTGAGE. Notwithstanding ss. 215.21 (4) and

4   706.11 (1), a refinance mortgage retains the priority of the prior mortgage, including

5   priority over any subordinate mortgage over which the prior mortgage had priority

6   before the refinancing, if all of the following apply:

7   (a) The principal amount of the loan secured by the refinance mortgage does

8   not exceed the outstanding principal balance of the loan secured by the prior

9   mortgage plus $5,000.

10   (b) The interest rate of the loan secured by the refinance mortgage is stated in

11   the refinance mortgage at the time it is recorded and, if the prior mortgage secures

12   a fixed–rate loan, does not exceed the interest rate set forth in the mortgage note

13   secured by the prior mortgage.

14   (c) The refinance mortgage is recorded and states on its first page, in bold–faced

15   capital letters, "THIS IS A REFINANCE MORTGAGE" and contains on its first page

16   the document number of the prior mortgage instrument or the volume and page

17   where the prior mortgage instrument is recorded.

18   SECTION 3. 706.05 (2m) (a) of the statutes is amended to read:

19   706.05 **(2m)** (a) Except as provided in par. (b), any document submitted for

20   recording or filing that is to be indexed in the real estate records, any document

21   submitted for recording or filing that modifies an original mortgage or land contract

22   and any subordination agreement submitted for recording or filing shall contain the

23   full legal description of the property to which it relates if the document or

24   subordination agreement is intended to relate to a particular parcel of land. The

25   legal description may be included on the document or may be attached to the

1   document. Any such document, including a refinance mortgage, as defined in s.

2   138.059 (1) (d), shall also contain the document number of any original mortgage or

3   land contract that the document affects and, if given on the original mortgage or land

4   contract, the volume and page numbers of the original mortgage or land contract.

5   **SECTION 4. Initial applicability.**

6   (1) This act first applies to refinance mortgages recorded on the effective date

7   of this subsection.

8   **SECTION 5. Effective date.**

9   (1) This act takes effect on the first day of the 4th month beginning after

10   publication.

11   **(END)**