



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4650/2
KRP:klm&kjf

2017 SENATE BILL 621

December 7, 2017 - Introduced by Senators OLSEN, JOHNSON, CARPENTER and COWLES, cosponsored by Representatives KATZMA, GOYKE, ALLEN, ANDERSON, BALLWEG, BERCEAU, BOWEN, E. BROOKS, R. BROOKS, BROSTOFF, CONSIDINE, CROWLEY, FELZKOWSKI, FIELDS, HEBL, HUTTON, KNODL, KOYENGA, KUGLITSCH, KULP, MURSAU, OHNSTAD, PETERSEN, POPE, RIEMER, RIPP, ROHRKASTE, SARGENT, SINICKI, SKOWRONSKI, SPIROS, SPREITZER, SUBECK, C. TAYLOR, TUSLER, WACHS, YOUNG and ZEPNICK. Referred to Committee on Insurance, Housing and Trade.

1 **AN ACT** *to renumber* 846.16 (3) and 846.165 (1); *to renumber and amend*
2 846.16 (1), 846.16 (2), 846.165 (2) and 846.17; *to amend* 846.10 (2) (a) 1., 846.10
3 (2) (a) 2. a., 846.10 (2) (a) 2. b., 846.101 (2) (b), 846.101 (2) (c) 1., 846.101 (2) (c)
4 2., 846.102 (3) (a) 1., 846.103 (1), 846.103 (2), 846.16 (title), 846.167 (2) (b) 2. a.,
5 846.167 (3) and 846.17 (title); and *to create* 846.16 (1) (title), 846.16 (1) (b),
6 846.16 (2m) (title), 846.16 (2m) (a) (title), 846.16 (2m) (a) 1., 846.16 (2m) (a) 3.,
7 846.16 (2m) (b), 846.16 (3) (title), 846.16 (3) (am), 846.16 (3) (bm), 846.16 (3) (c)
8 (title) and 846.16 (3) (d) of the statutes; **relating to:** authorizing counties to
9 conduct foreclosure sales using an Internet-based auction.

Analysis by the Legislative Reference Bureau

This bill authorizes a county to enact an ordinance that requires the sheriff or referee to conduct, or engage a third party to conduct, sales of foreclosed property in the county using an Internet-based auction.

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For further information see the *state* 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.** 846.10 (2) (a) 1. of the statutes is amended to read:

2 846.10 (2) (a) 1. If the mortgage was executed before April 27, 2016, upon the
3 expiration of 12 months from the date when the judgment is entered. Notice of the
4 time and place of sale shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be
5 given within the 12-month period, except that the first printing of the notice shall
6 not be made less than 10 months after the date when the judgment is entered, and
7 except that the sale of a farm shall not be made or advertised until the expiration of
8 one year from the date when the judgment is entered.

9 **SECTION 2.** 846.10 (2) (a) 2. a. of the statutes is amended to read:

10 846.10 (2) (a) 2. a. Except as provided in subd. 2. b., upon the expiration of 6
11 months from the date when the judgment is entered. Notice of the time and place
12 of sale shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the
13 6-month period, except that the first printing of the notice shall not be made less
14 than 4 months after the date when the judgment is entered, and except that the sale
15 of a farm shall not be made or advertised until the expiration of 6 months from the
16 date when the judgment is entered.

17 **SECTION 3.** 846.10 (2) (a) 2. b. of the statutes is amended to read:

18 846.10 (2) (a) 2. b. Upon motion of the mortgagor before judgment is entered,
19 if the court finds that the mortgagor is attempting in good faith to sell the mortgaged
20 premises and has entered into a listing agreement with a real estate broker licensed
21 under ch. 452 to sell the mortgaged premises, upon the expiration of 8 months from

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1 the date when the judgment is entered. Notice of the time and place of sale shall be
2 given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 8-month period,
3 except that the first printing of the notice shall not be made less than 6 months after
4 the date when the judgment is entered, and except that the sale of a farm shall not
5 be made or advertised until the expiration of 8 months from the date when the
6 judgment is entered.

7 **SECTION 4.** 846.101 (2) (b) of the statutes is amended to read:

8 846.101 (2) (b) If the mortgage was executed before April 27, 2016, the sale of
9 the mortgaged premises shall be made upon the expiration of 6 months from the date
10 when the judgment is entered. Notice of the time and place of sale shall be given
11 under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 6-month period,
12 except that the first printing of the notice shall not be made less than 4 months after
13 the date when the judgment is entered.

14 **SECTION 5.** 846.101 (2) (c) 1. of the statutes is amended to read:

15 846.101 (2) (c) 1. Except as provided in subd. 2., upon the expiration of 3 months
16 from the date when the judgment is entered. Notice of the time and place of sale shall
17 be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 3-month
18 period, except that the first printing of the notice shall not be made less than one
19 month after the date when the judgment is entered.

20 **SECTION 6.** 846.101 (2) (c) 2. of the statutes is amended to read:

21 846.101 (2) (c) 2. Upon motion of the mortgagor before judgment is entered, if
22 the court finds that the mortgagor is attempting in good faith to sell the mortgaged
23 premises and has entered into a listing agreement with a real estate broker licensed
24 under ch. 452 to sell the mortgaged premises, upon the expiration of 5 months from
25 the date when the judgment is entered. Notice of the time and place of sale shall be

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1 given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 5-month period,
2 except that the first printing of the notice shall not be made less than 3 months after
3 the date when the judgment is entered.

4 **SECTION 7.** 846.102 (3) (a) 1. of the statutes is amended to read:

5 846.102 (3) (a) 1. Hold a sale of the mortgaged premises and have the sale
6 confirmed under ~~s. 846.165~~ 846.17. Any sale of the mortgaged premises may be held
7 at any time after the expiration of 5 weeks from the date when the judgment is
8 entered. Notice of the time and place of sale shall be given under ~~ss. 815.31 and s.~~
9 846.16 (1) and may be given at any time within the 12-month period.

10 **SECTION 8.** 846.103 (1) of the statutes is amended to read:

11 846.103 (1) No foreclosure sale involving real property other than a one-family
12 to 4-family residence that is owner-occupied at the commencement of the
13 foreclosure action, a farm, a church, or a tax-exempt nonprofit charitable
14 organization may be held until the expiration of 6 months from the date when the
15 judgment is entered except a sale under sub. (2). Notice of the time and place of sale
16 shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 6-month
17 period, except that the first printing of the notice shall not be made less than 4
18 months after the date when the judgment is entered.

19 **SECTION 9.** 846.103 (2) of the statutes is amended to read:

20 846.103 (2) If the mortgagor of real property other than a one-family to
21 4-family residence that is owner-occupied at the commencement of the foreclosure
22 action, a farm, a church, or a tax-exempt nonprofit charitable organization has
23 agreed in writing at the time of the execution of the mortgage to the provisions of this
24 section, the plaintiff in a foreclosure action of a mortgage, which mortgage is recorded
25 subsequent to May 12, 1978, may elect by express allegation in the complaint to

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1 waive judgment for any deficiency ~~which~~ that may remain due to the plaintiff after
2 sale of the mortgaged premises against every party who is personally liable for the
3 debt secured by the mortgage, and to consent that the mortgagor, unless he or she
4 abandons the property, may remain in possession of the mortgaged premises and be
5 entitled to all rents, issues, and profits therefrom to the date of confirmation of the
6 sale by the court. When the plaintiff so elects, judgment shall be entered as provided
7 in this chapter, except that no judgment for deficiency may be ordered nor separately
8 rendered against any party who is personally liable for the debt secured by the
9 mortgage and the sale of the mortgaged premises shall be made upon the expiration
10 of 3 months from the date when the judgment is entered. Notice of the time and place
11 of sale shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the
12 3-month period, except that the first printing of the notice shall not be made less
13 than one month after the date when the judgment is entered.

14 **SECTION 10.** 846.16 (title) of the statutes is amended to read:

15 **846.16 (title) Notice and report of sale; sale of mortgaged premises;**
16 **procedures after sale.**

17 **SECTION 11.** 846.16 (1) (title) of the statutes is created to read:

18 846.16 (1) (title) NOTICE OF SALE.

19 **SECTION 12.** 846.16 (1) of the statutes is renumbered 846.16 (1) (a) and
20 amended to read:

21 846.16 (1) (a) Notice of in-person sale. ~~The~~ Except as provided in par. (b), the
22 sheriff or referee who makes sale of mortgaged premises, under a judgment therefor,
23 shall give notice of the time and place of sale in the manner provided by law for the
24 sale of real estate upon execution as provided under s. 815.31 or in such other manner
25 as the court shall in the judgment direct; where.

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1 (c) Notice to department of veterans affairs. In addition to providing notice of
2 sale under par. (a) or (b), if the department of veterans affairs is also a party in the
3 foreclosure action, the judgment shall direct that notice of sale be given by registered
4 mail, return receipt requested, to the department at Madison, Wisconsin, at least 3
5 weeks prior to the date of sale, ~~but such requirement does not affect any other~~
6 ~~provision as to giving notice of sale. Except as provided in sub. (3) and s. 846.167,~~
7 ~~the sheriff or referee shall, within 10 days thereafter, file with the clerk of the court~~
8 ~~a report of the sale, and shall also immediately after the sale first deduct any fee due~~
9 ~~under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with~~
10 ~~the clerk of the court for transmittal to the register of deeds; then deduct the costs~~
11 ~~and expenses of the sale, unless the court orders otherwise, and then deposit with~~
12 ~~the clerk of the court the proceeds of the sale ordered by the court. The sheriff may~~
13 ~~accept from the purchaser at such sale as a deposit or down payment upon the same~~
14 ~~not less than \$100, in which case such amount shall be so deposited with the clerk~~
15 ~~of the court as above provided, and the balance of the sale price shall be paid to the~~
16 ~~clerk by the purchaser at such sale upon the confirmation thereof. If the highest bid~~
17 ~~is less than \$100, the whole amount thereof shall be so deposited.~~

18 **SECTION 13.** 846.16 (1) (b) of the statutes is created to read:

19 846.16 (1) (b) *Notice of Internet-based sale.* If a sale is conducted under sub.
20 (2m) (b), the sheriff or referee who makes sale of mortgaged premises shall give notice
21 of the time and place of sale as provided under par. (a), except as follows:

22 1. Section 815.31 (1) does not apply to the sale. The sheriff or referee shall
23 publicly advertise the time and place of holding the sale by posting, at least 3 weeks
24 prior to the date of the sale, a written notice describing the mortgaged premises to
25 be sold with reasonable certainty in one public place in the city, village, or town where

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1 the mortgaged premises are located and, if the county where the mortgaged premises
2 are located maintains an Internet site, on that Internet site. If the city, village, or
3 town where the mortgaged premises are located maintains an Internet site, the city,
4 village, or town may post the notice on that Internet site.

5 2. The notice shall include all of the following information:

6 a. A statement that the sale will be conducted using an Internet-based auction.

7 b. The address of the Internet site where the Internet-based auction will be
8 conducted.

9 c. The time period during which bids for the mortgaged premises may be
10 submitted.

11 d. Instructions on how the general public may observe the Internet-based
12 auction and on how a person may participate in the auction, including any
13 prerequisites to participation that may apply, or the address of an Internet site where
14 those instructions are posted.

15 e. A description of the terms of sale that apply to the Internet-based auction.

16 **SECTION 14.** 846.16 (2) of the statutes is renumbered 846.16 (2m) (a) 2. and
17 amended to read:

18 846.16 **(2m)** (a) 2. If the judgment creditor is the purchaser at a sale of
19 mortgaged premises, the judgment creditor may give ~~his or her~~ the judgment
20 creditor's receipt to the sheriff or referee for any sum not exceeding the amount of
21 the judgment creditor's judgment and such. ~~The receipt shall be deemed is~~
22 considered a down payment, ~~but in every case the purchaser shall pay the cost of sale;~~
23 ~~and if the sum due the creditor under subd. 1. If the judgment creditor is the~~
24 purchaser and the sum due to the creditor is less than the purchase price, the
25 judgment creditor shall pay the difference to the sheriff or referee at the time of sale.

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1 **SECTION 15.** 846.16 (2m) (title) of the statutes is created to read:

2 846.16 **(2m)** (title) SALE OF MORTGAGED PREMISES.

3 **SECTION 16.** 846.16 (2m) (a) (title) of the statutes is created to read:

4 846.16 **(2m)** (a) (title) *Payment of purchase price and costs of sale; deposit or*
5 *down payment.*

6 **SECTION 17.** 846.16 (2m) (a) 1. of the statutes is created to read:

7 846.16 **(2m)** (a) 1. The sheriff or referee may accept not less than \$100 as a
8 deposit or down payment from the purchaser at a sale of mortgaged premises. If the
9 purchaser gives a deposit or down payment, the sheriff or referee shall deliver the
10 amount of the deposit or down payment to the clerk of court as provided in sub. (3)
11 (bm) or (c), and the purchaser shall pay the balance of the purchase price to the clerk
12 of court upon the confirmation of the sale as provided in s. 846.17 (5). If the highest
13 bid is less than \$100 and the purchaser gives that amount as a deposit or down
14 payment, the sheriff or referee shall deliver the whole amount of the deposit or down
15 payment to the clerk of court.

16 **SECTION 18.** 846.16 (2m) (a) 3. of the statutes is created to read:

17 846.16 **(2m)** (a) 3. In all cases, the purchaser at a sale of mortgaged premises
18 shall pay the costs of the sale.

19 **SECTION 19.** 846.16 (2m) (b) of the statutes is created to read:

20 846.16 **(2m)** (b) *Internet-based sale.* 1. A county may enact an ordinance that
21 requires the sheriff or referee to conduct, or engage a 3rd party to conduct, sales of
22 mortgaged premises in the county using an Internet-based auction. The sheriff or
23 referee in a county that enacts such an ordinance shall conduct all sales of mortgaged
24 premises in the county using Internet-based auctions.

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1 2. If the sheriff or referee conducts a sale using an Internet-based auction, the
2 sheriff or referee may accept payment of any amounts paid to the sheriff or referee
3 under par. (a) by credit card, debit card, or other electronic payment method and may
4 charge a surcharge to the payer to recover charges associated with accepting the
5 electronic payment.

6 **SECTION 20.** 846.16 (3) (title) of the statutes is created to read:

7 846.16 (3) (title) PROCEDURES AFTER SALE.

8 **SECTION 21.** 846.16 (3) of the statutes is renumbered 846.16 (3) (c).

9 **SECTION 22.** 846.16 (3) (am) of the statutes is created to read:

10 846.16 (3) (am) *Execution of deed.* After a sale of mortgaged premises under
11 sub. (2m) and upon compliance with the terms of the sale, the sheriff or referee shall
12 make and execute to the purchaser, the purchaser's assigns, or personal
13 representatives a deed of the mortgaged premises sold that sets forth each parcel of
14 land sold to the purchaser and the purchase price paid for each parcel.

15 **SECTION 23.** 846.16 (3) (bm) of the statutes is created to read:

16 846.16 (3) (bm) *Deductions from proceeds; transmittals to clerk of court.* Except
17 as provided in par. (c) and s. 846.167, after a sale of mortgaged premises under sub.
18 (2m), the sheriff or referee shall do all of the following:

19 1. No later than 10 days after the sale, file with the clerk of court a report of
20 the sale.

21 2. Immediately after the sale, deduct any transfer fee due under s. 77.22 (1)
22 and, upon compliance with the terms of the sale, deliver the transfer fee, a transfer
23 return under s. 77.22, and the deed executed under par. (am) to the clerk of court for
24 transmittal to the register of deeds.

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1 3. Immediately after the sale, deduct the costs and expenses of the sale, unless
2 the court orders otherwise, and deliver the proceeds of the sale ordered by the court
3 to the clerk of court.

4 **SECTION 24.** 846.16 (3) (c) (title) of the statutes is created to read:

5 846.16 (3) (c) (title) *Deductions from proceeds and transmittals to clerk of court*
6 *in populous counties.*

7 **SECTION 25.** 846.16 (3) (d) of the statutes is created to read:

8 846.16 (3) (d) *Deed held until confirmation.* The clerk of court shall hold a deed
9 delivered to the clerk of court under par. (bm) 2. or (c) 2. a. until confirmation of the
10 sale under s. 846.17.

11 **SECTION 26.** 846.165 (1) of the statutes is renumbered 846.165.

12 **SECTION 27.** 846.165 (2) of the statutes is renumbered 846.17 (1) and amended
13 to read:

14 846.17 (1) DETERMINATION OF FAIR VALUE OF MORTGAGED PREMISES. ~~In case the~~ If
15 mortgaged premises sell for less than the amount due and to become due on the
16 mortgage debt and costs of sale, there ~~shall be~~ is no presumption that ~~such~~ the
17 mortgaged premises sold for their fair value, and ~~no sale shall be confirmed and the~~
18 court may not confirm the sale or render a judgment for deficiency rendered, until
19 the court is satisfied that the fair value of the mortgaged premises sold has been
20 credited on the mortgage debt, interest, and costs.

21 **SECTION 28.** 846.167 (2) (b) 2. a. of the statutes is amended to read:

22 846.167 (2) (b) 2. a. The deed to the mortgaged premises delivered under s.
23 846.16 (3) (c) 2. a.

24 **SECTION 29.** 846.167 (3) of the statutes, as affected by 2017 Wisconsin Act 59,
25 is amended to read:

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1 846.167 (3) Upon the court confirming the sale of mortgaged premises located
2 in a county and upon compliance by the purchaser with the terms of the sale and the
3 payment of any balance of the sale price to be paid, unless otherwise ordered by the
4 court, the clerk of the court shall transmit the deed to the mortgaged premises
5 received under s. 846.16 (3) (c) 2. a., the receipt for submitting a transfer return
6 under s. 77.22, the amount due under s. 59.43 (2) to record the deed and any other
7 document required to record the deed, and the transfer fee, if any, to the register of
8 deeds of the county.

9 **SECTION 30.** 846.17 (title) of the statutes is amended to read:

10 **846.17 (title) ~~Deed, execution and Confirmation of sale; payment of sale~~**
11 **proceeds; effect of deed.**

12 **SECTION 31.** 846.17 of the statutes is renumbered 846.17 (4) and amended to
13 read:

14 846.17 (4) EFFECT OF DEED UPON CONFIRMATION. ~~Upon any such sale being made~~
15 ~~the sheriff or referee making the same, on compliance with its terms, shall make and~~
16 ~~execute to the purchaser, the purchaser's assigns or personal representatives, a deed~~
17 ~~of the premises sold, setting forth each parcel of land sold to the purchaser and the~~
18 ~~sum paid therefor, which deed, upon~~ Except as provided in sub. (5), upon
19 ~~confirmation of such a sale, of mortgaged premises, the deed executed under s. 846.16~~
20 (3) (am) shall vest in the purchaser, the purchaser's assigns, or personal
21 representatives, all the right, title, and interest of the mortgagor, the mortgagor's
22 heirs, personal representatives, and assigns in and to the premises sold and ~~shall be~~
23 is a bar to all claim, right of equity of redemption therein, of and against the parties
24 to ~~such~~ the action, their heirs and, personal representatives, and ~~also against all~~
25 persons claiming under them subsequent to the filing of the notice of the pendency

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1 of the action in which such judgment was rendered; and the purchaser, the
2 purchaser's heirs, or assigns shall be let into the possession of the premises so sold
3 on production of such the deed or a duly certified copy thereof of the deed, and the
4 court may, if necessary, issue a writ of assistance to deliver such that possession.
5 ~~Such deed or deeds so executed by the sheriff as above set forth shall be forthwith~~
6 ~~delivered by the sheriff to the clerk of the court to be held by the clerk until the~~
7 ~~confirmation of the sale, and upon the~~

8 (3) PAYMENT OF SALE PROCEEDS AND DELIVERY OF DEED UPON CONFIRMATION. Upon
9 confirmation thereof of a sale of mortgaged premises, the clerk of the court shall
10 ~~thereupon~~ pay to the parties entitled thereto, or to their attorneys, the proceeds of
11 the sale, and, except as provided in sub. (5) and s. 846.167, and upon compliance by
12 the purchaser with the terms of the sale, the clerk of court shall deliver to the
13 purchaser, the purchaser's assigns, or personal representatives, at the sale ~~such~~ of
14 the mortgage premises the deed upon compliance by such purchaser with the terms
15 of such sale, and the payment of any balance of the sale price to be paid delivered to
16 the clerk of court under s. 846.16 (3) (bm) 2. or (c) 2. a.

17 (5) PAYMENT OF PURCHASE PRICE; FAILURE OF PURCHASER TO PAY. In the event of the
18 failure of such Within 10 days after the court confirms a sale of mortgaged premises,
19 the purchaser to shall pay any part of the purchase price remaining to be paid within
20 ~~10 days after the confirmation of such sale, the.~~ If the purchaser fails to make that
21 payment, all of the following apply:

22 (a) The purchaser shall forfeit the amount so deposited shall be forfeited and
23 paid delivered to the clerk of court under s. 846.16 (3) (bm) 2. and 3. or (c) 2. b.

