



2013 SENATE BILL 488

January 10, 2014 - Introduced by Senators HARRIS and L. TAYLOR, cosponsored by Representatives GOYKE, JACQUE, JOHNSON, HULSEY, BERCEAU, HEBL, PASCH, SARGENT, GENRICH, ZEPNICK, KESSLER, SINICKI, OHNSTAD, BARNES, ZAMARRIPA and WRIGHT. Referred to Committee on Insurance and Housing.

- 1 **AN ACT to amend** 943.14; and **to create** 846.085, 943.13 (4m) (e) and 943.15 (1r)
2 of the statutes; **relating to:** entry on property in foreclosure.

Analysis by the Legislative Reference Bureau

If a mortgagor (person who takes out a mortgage loan to, for example, buy property) defaults in the repayment of the loan, the mortgagee (person or entity that made the loan, such as a bank) may commence a mortgage foreclosure action, the procedure for which is provided in current law. If the mortgagor owes the money, the court will enter judgment for the mortgagee, who is the plaintiff in the action. Before the property may be sold at sheriff's sale, a specified period of time, known as the redemption period, must elapse during which the mortgagor may pay the amount owed on the loan. If the amount is not paid by the end of the redemption period, the property will be sold at sheriff's sale and the amount realized on the sale of the property will be paid against the amount owed on the loan. The length of the redemption period, which is usually three months, six months, or a year, depends on the type of property and whether the mortgagee is seeking a deficiency judgment for any amount of the default on the loan that is not realized on the sale of the property. If the court determines that the property has been abandoned, the redemption period is only five weeks long.

Under this bill, after a mortgage foreclosure action is commenced, an employee or agent of, or contractor with, the city, village, or town (municipality) in which the property in foreclosure is located, or a utility company providing water, electric, or natural gas service to the property, may go on the property, enter into any buildings on the property, using such reasonable force as is necessary, and take any action

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necessary to preserve or protect the property or public health and safety. This may be done, however, only if the municipality has determined that it is likely that the property is abandoned, using any reasonable criteria, including the criteria that a court uses in a foreclosure action to determine that property has been abandoned, and that it is necessary to preserve or protect the property or public health and safety or to inspect the property to determine if any action is necessary to preserve or protect the property or the public health and safety. The bill also provides that, in a mortgage foreclosure action in which the court has determined that the property has been abandoned, after judgment is entered for the plaintiff in the action, the plaintiff may go on the property and enter into any buildings on the property, using such reasonable force as is necessary, to inspect the property and take any action necessary to preserve or protect the property. The bill provides immunity from civil and criminal liability to any employee or agent of, or contractor with, a municipality in which a property in foreclosure is located or utility company that provides service to the property, and to a plaintiff in a foreclosure action, for acts or omissions related to going on, and inspecting, the property and taking any actions authorized under the bill.

The bill requires the clerk of circuit court for the county in which a mortgage foreclosure action is commenced to provide notice of the commencement of the action to the municipality in which the property in foreclosure is located and to the law enforcement agency that provides primary law enforcement services to that municipality. The notice must include the address of the property and the name and address of the plaintiff in the foreclosure action, but may not include the name of the property owner or defendant in the foreclosure action.

For further information see the *state and 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.** 846.085 of the statutes is created to read:
- 2 **846.085 Entry on property in foreclosure. (1) DEFINITIONS.** In this section:
- 3 (a) “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).
- 4 (b) “Municipality” means a city, village, or town.
- 5 (c) “Property” means mortgaged premises that are the subject of a foreclosure
- 6 action.
- 7 (d) “Representative of a utility” means a person who is employed by, an agent
- 8 of, or under contract with a public utility, as defined in s. 196.01 (5), or a cooperative

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1 association organized under ch. 185, that provides water, electric, or natural gas
2 service to the property.

3 (e) "Representative of the municipality" means a person who is employed by,
4 an agent of, or under contract with a municipality.

5 **(2) ENTRY BY MUNICIPALITY OR UTILITY.** At any time after the commencement of
6 a mortgage foreclosure action, a representative of the municipality in which the
7 property is located or a representative of a utility may go on the property, enter any
8 buildings on the property, using such reasonable force as appears necessary, and take
9 any action necessary to preserve or protect the property or public health and safety,
10 if all of the following apply:

11 (a) The municipality has determined that the property is abandoned or that it
12 is likely that the property is abandoned. The municipality may use any reasonable
13 criteria to determine whether the property is abandoned, including the criteria
14 under s. 846.102 (2) (a) to (f).

15 (b) The municipality has determined that entry on the property or in buildings
16 on the property is necessary to preserve or protect the property or public health and
17 safety or to inspect the property to determine if any action is necessary to preserve
18 or protect the property or public health and safety.

19 **(3) ENTRY BY PLAINTIFF.** In a mortgage foreclosure action, if the court finds under
20 s. 846.102 that the property has been abandoned, at any time after judgment for the
21 plaintiff has been entered, the plaintiff, or an employee or agent of or contractor with
22 the plaintiff, may go on the property and enter any buildings on the property, using
23 such reasonable force as appears necessary, to inspect the property and take any
24 action necessary to preserve or protect the property.

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1 **(4) NOTICE FROM CLERK OF COURT.** (a) At the commencement of a mortgage
2 foreclosure action, the clerk of circuit court for the county in which the action is filed
3 shall provide notice of the commencement of the action to the municipality in which
4 the property is located and to the law enforcement agency that provides primary law
5 enforcement services to the municipality in which the property is located.

6 (b) The clerk of circuit court and the municipality and law enforcement agency
7 may agree on the form of the notice and the method of delivering the notice, or the
8 clerk may provide the notice in the form and manner most convenient for the clerk,
9 which may include delivery by electronic mail.

10 (c) The notice provided under this subsection shall include the street address
11 or location of the property and the name and address of the plaintiff in the action.
12 The notice may not include the name of the owner of record of the property or the
13 name of the defendant in the action.

14 **(5) IMMUNITY FROM LIABILITY.** A person authorized under sub. (2) or (3) to go on
15 a property and enter buildings on a property is immune from civil liability for acts
16 or omissions related to carrying out the powers and responsibilities under sub. (2)
17 or (3), whichever is applicable, unless the person asserting liability proves that the
18 act or omission constitutes willful misconduct.

19 **SECTION 2.** 943.13 (4m) (e) of the statutes is created to read:

20 943.13 **(4m)** (e) A person entering or remaining on the land as authorized under
21 s. 846.085 (2) or (3).

22 **SECTION 3.** 943.14 of the statutes is amended to read:

23 **943.14 Criminal trespass to dwellings.** Whoever intentionally enters the
24 dwelling of another without the consent of some person lawfully upon the premises,
25 under circumstances tending to create or provoke a breach of the peace, is guilty of

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1 a Class A misdemeanor. This section does not apply to a person entering or
2 remaining on the land as authorized under s. 846.085 (2) or (3).

3 **SECTION 4.** 943.15 (1r) of the statutes is created to read:

4 943.15 (1r) This section does not apply to a person entering or remaining on
5 the land as authorized under s. 846.085 (2) or (3).

6 **SECTION 5. Initial applicability.**

7 (1) This act first applies to foreclosure actions that are commenced on the
8 effective date of this subsection.

9 (END)