



nwn+ kf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D - write  
(= 9-22)

SA ✓  
X-ref ✓

gen cat

1 AN ACT ...; relating to: protections for tenants in foreclosure actions.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 704.35 of the statutes is created to read:

3 **704.35 Residential rental property in foreclosure. (1) DUTY OF LANDLORD**  
4 TO ADVISE OF FORECLOSURE. If a foreclosure action has been commenced against  
5 residential rental property, the landlord shall, before entering into a lease or  
6 accepting any rent or security deposit from a prospective tenant at any time before  
7 the expiration of the redemption period, advise the prospective tenant in writing of  
8 all of the following:

9 (a) That a foreclosure action has been commenced against the rental property.

10 (b) The date on which the redemption period expires.

SECTION 1

(2) TENANT PROTECTIONS. The protections under s. 846.40 apply to a residential tenant if a foreclosure action is or has been commenced against the real property containing the dwelling unit occupied by the tenant.

insert from p. 3

SECTION 2. 846.40 of the statutes is created to read:

**846.40 Protections for tenants in foreclosure actions. (1) NOTICES FROM PLAINTIFF.** (a) If residential rental property is the subject of a foreclosure action, the plaintiff shall provide to the <sup>current</sup> tenants of each rental unit of the property all of the following notices at the following times:

Insert 2-8

1. When the foreclosure action is filed, notice that the plaintiff has commenced a foreclosure action with respect to the rental property.

2. When the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property.

3. When the confirmation of sale hearing has been scheduled, notice of the date and time of the hearing.

(b) The notices under par. (a) may be given in any of the following ways:

1. By personal service as provided in s. 801.11 (1).

2. By certified mail with return receipt requested. Notice given under this subdivision is considered completed when it is mailed, unless the envelope enclosing the notice is returned unopened to the plaintiff. All mailing of notices under this subdivision shall be done in envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address appears, with a request to return to that address.

(2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT. (a) Notwithstanding ch. 704, a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale with respect to the rental property is entitled to do all of the following:

1           1. Retain possession of the tenant's rental unit for up to 60 days after the sale  
2 of the property is confirmed.

3           2. Withhold the rent amount for the last month during which the tenant  
4 actually retains possession of the rental unit, regardless of whether the tenant  
5 retains possession after the sale of the property is confirmed. *as authorized*

6           (b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after  
7 the sale of the property is confirmed shall pay rent for the period during which the  
8 tenant retains possession, on a pro rata basis, at the rate that applied immediately  
9 before the confirmation of the sale of the property.

10           **SECTION 3.** 799.40 (5) of the statutes is created to read:

11           799.40 (5) EVICTION BASED ON FORECLOSURE. (a) If the plaintiff in an eviction  
12 acquired the residential real property as the result of a foreclosure action, the  
13 plaintiff shall attach to the complaint a statement specifying that fact.

14           (b) If the plaintiff attaches the statement required under par. (a), the clerk of  
15 circuit court may not include any information about that eviction action in the  
16 consolidated court automated program that would be accessible to the public through  
17 the circuit court public access Web site.

18           (c) The requirement that the plaintiff attach a statement under par. (a) only  
19 applies if all of the following conditions apply:

20           1. The *plaintiff commenced the* eviction action *was* commenced within 120 days after the foreclosure  
21 confirmation of sale hearing occurred *occurred*

22           2. The defendant in the eviction action was a tenant in *possession of* the residential property  
23 when the foreclosure confirmation of sale hearing occurred *occurred*

24           **SECTION 4. Initial applicability.**

*move to 2-3*

*a civil action of*

*under sub 2.1*



**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0194/P1ins  
PJK:.....

**INSERT 2-8**

1           **846.40 Protections for tenants in foreclosure actions. (1) NOTICES FROM**  
2           PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the  
3           plaintiff shall provide the following notices at the following times to the tenants who  
4           are in possession of each rental unit when a notice is given:

**(END OF INSERT 2-8)**

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-01947dn  
PI  
PJK&RPN:.....

hwn + lgt

Date

the last  
last

Although we didn't discuss this, I assumed you wanted the provisions limited to residential rental property.

I provided that the rent payable if the tenant retains possession for up to 60 days after the confirmation of sale would be the same as the tenant paid before and on a pro rata basis. Is this what you want? If rent is paid on a pro rata basis, do you want to provide that the amount for the last 30 days, rather than month, may be withheld? "Month" may be interpreted to mean that the tenant may withhold rent that would be payable in the last calendar month in which the tenant remains on the property, which might be only a few days.

Do you want to specify that any rent withheld by the tenant for the last month may be withheld from the security deposit if the security deposit is returned? *I guess the*

Do you want to be more specific about when the notices must be provided by the plaintiff, such as within a certain number of days after each of the specified events? When the plaintiff gives notice of the foreclosure judgment, it might be helpful for the tenants if the notice also provided the date on which the redemption period ends.

Do you want to require only one notice per rental unit, or notices to all persons who have signed a lease for the unit and one notice per unit if there is no lease?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

question is, does the tenant owe rent for the last month, even though it may be withheld, or is the last month's rent forgiven?



I am not sure if the language added to s. 799.40<sup>✓</sup> meets your intent. I put a time limit (an arbitrary number of days) in the draft just to allow persons who acquire property by foreclosure to avoid the requirement to add the statement if they are evicting for a reason other than the foreclosure.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.wisconsin.gov

**Kahler, Pam**

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**From:** McKinny, Chris  
**Sent:** Monday, October 27, 2008 9:45 AM  
**To:** Kahler, Pam  
**Subject:** FW: Bill Draft  
**Attachments:** foreclosure notice to tenants revision of LRB 0194.doc

Pam,

Attached please find our group's suggested revisions to LRB 0194. There is no hurry on this-we would just like to have something ready to go by January. If you have any questions, please do not hesitate to let me know. Thank you very much for all of your help on this-it is greatly appreciated. Have a great day!

Chris McKinny  
Office of Rep. Hintz

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**From:** Robert J. Andersen [mailto:RJA@legalaction.org]  
**Sent:** Monday, October 20, 2008 10:53 AM  
**To:** 'Gonda, Jennifer'; McKinny, Chris  
**Cc:** Mark A. Silverman  
**Subject:** RE: Bill Draft

Hello Jennifer & Chris:

I did talk to our Housing Priority Coordinator last Friday, and I have written a redraft of the LRB draft. It is attached. We incorporated some of the comments that I initially made to the draft. We also felt that there needed to be some penalty provisions for failure to give notice. As I indicated before, the payment of rent on a pro rata basis becomes complicated. In fact, since rentals are always on a month to month basis, the idea of giving 60 days from the date of the hearing on the confirmation of sale might make this a little difficult to administer, when that hearing is held in the middle of the month. So, we plugged in the same concept we used last session for the Safe Housing Act (ability of domestic violence victims to break their leases) -- which is to make the 60 days run from the beginning of the month that follows the month in which the hearing is held. Since this may make for a long extended period of possession, we may want to go with 30 days xtra, instead of 60. The material in the attached revision that is underlined is new to the LRB draft. The material that is stricken would be material that would be stricken from the LRB draft. Please feel free to contact me with any questions or suggestions you have.

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**From:** Gonda, Jennifer [mailto:Jennifer.Gonda@milwaukee.gov]  
**Sent:** Monday, October 20, 2008 10:23 AM  
**To:** McKinny, Chris; Robert J. Andersen  
**Cc:** Mark A. Silverman  
**Subject:** RE: Bill Draft

Hi Chris-  
I did circulate the draft and am still waiting back for a few comments. Interestingly, the Manager of our Landlord Training Program also shared this article with me.

I will compile our comments and get back to you in the next day or so. Thanks for your patience,  
Jennifer

10/27/2008

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**From:** McKinny, Chris [mailto:Chris.McKinny@legis.wisconsin.gov]  
**Sent:** Thursday, October 09, 2008 12:01 PM  
**To:** Robert J. Andersen; Gonda, Jennifer  
**Cc:** Mark A. Silverman  
**Subject:** RE: Bill Draft

This is interesting: <http://www.cnn.com/2008/US/10/08/chicago.evictions/index.html>

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**From:** Robert J. Andersen [mailto:RJA@legalaction.org]  
**Sent:** Monday, October 06, 2008 5:03 PM  
**To:** 'Gonda, Jennifer'; McKinny, Chris  
**Cc:** Mark A. Silverman  
**Subject:** RE: Bill Draft

Attached is my preliminary reaction to the LRB draft. I have cc'd a copy to Mark Silverman, our Housing Priority Coordinator. I will get back to you with more. Jennifer, if you would like to wait until you return for the draft to be circulated among your folks, that would be fine -- or if you want me to communicate with somebody, that's ok too.

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**From:** Gonda, Jennifer [mailto:Jennifer.Gonda@milwaukee.gov]  
**Sent:** Sunday, October 05, 2008 3:21 AM  
**To:** McKinny, Chris; Robert J. Andersen  
**Subject:** RE: Bill Draft

Thanks Chris-  
I am traveling but will try to take a close look over the next day or so.

Jennifer

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**From:** McKinny, Chris [mailto:Chris.McKinny@legis.wisconsin.gov]  
**Sent:** Fri 10/3/2008 4:29 PM  
**To:** Robert J. Andersen; Gonda, Jennifer  
**Subject:** Bill Draft

Bob and Jennifer,

We just received the bill draft and I wanted both of you to take a look at it. I haven't had a chance to yet, but I plan on doing so prior to Monday. Please let me know what you think when you get a chance. Thanks, and have a great weekend!

Chris

## SECTION 1

704.35 Residential property in foreclosure. (1) DUTY OF LANDLORD TO ADVISE OF FORECLOSURE. If a foreclosure action has been commenced against residential property, ~~the landlord shall, before entering into a lease or accepting any rent or security deposit from a prospective tenant at any time before the expiration of the redemption period, advise the prospective tenant~~ any subsequent rental agreement between the owner of the property and a tenant shall include a written agreement between the landlord and the tenant that the tenant has been notified in writing of all of the following:

- (a) That a foreclosure action has been commenced against the rental property.
- (b) If judgment has been entered, the date on which the redemption period expires.
- (2) Any rental agreement that does not include the notice referred to in sub. (1) is voidable at the election of the tenant.

~~(2)~~(3) TENANT PROTECTIONS. The protections under s. 846.40 apply to a residential tenant if a foreclosure action is or has been commenced against the real property containing the dwelling unit occupied by the tenant.

DELETE SECTION 2, page 2, lines 5-18.

## SECTION 3

### **846.40 Protections for tenants in mortgage foreclosure actions. (1) NOTICES**

FROM PLAINTIFF. (a) If a residential property is the subject of a foreclosure action, the plaintiff shall provide the following notices at the following times to the tenants who are in possession of each rental unit when notice is given:

1. When the foreclosure action is filed, notice that the plaintiff has commenced a foreclosure action with respect to the rental property, no later than 5 days after the action is commenced.

2. When the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property, no later than 5 days after the judgment is entered. The notice shall include a notice of the date on which the redemption period ends.

3. When the confirmation of sale hearing has been scheduled, notice of the date and time of the hearing.

(b) The notices under par. (a) may be given in the following ways:

1. By personal service as provided in s. 801.11 (1).
2. By certified mail with return receipt requested. Notice be given under this subdivision is considered completed when it is mailed, unless the envelope enclosing the notice is returned unopened to the plaintiff. All notices mailed under this subdivision shall be mailed in envelopes upon which the plaintiff's or the plaintiff's attorney's return address appears, with a request to return to that address.

(c) A plaintiff who fails to give notice under this section to a tenant who is in possession of the rental unit at the time is liable to the tenant for \$250 in damages, plus the costs of reasonable attorney fees.

(2) EXTENDED POSSESSION OF PREMISES, WITHHOLDING OF LAST MONTH'S RENT. (a) Notwithstanding ch. 704, a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale with respect to the rental property is entitled to all of the following:

1. Retain possession of the tenant's rental unit for up to 60 [or, as an alternative 30] days after the beginning of the month following the month in which the sale of the

property is confirmed.

2. Withhold the rent amount for the last month during which the tenant actually retains possession of the rental unit, regardless of whether the tenant retains possession after the sale of property is confirmed, as authorized under subd. 1. The right to possession of the premises of the tenant expires at the end of the month in which the tenant withholds rent.

(b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after the sale of the property is confirmed shall pay rent for the period during which the tenant retains possession, ~~on a pro-rata basis~~ on the same basis, ~~at~~ as the rate that applied immediately before the confirmation of the sale of the property.

(c) No writ of assistance may be issued for the removal of any tenant from a property prior to the expiration of 60 [30] days after the beginning of the month following the month in which the hearing is held on the confirmation of sale, unless the tenant has waived the right to continued possession of the premises in writing or the tenant has vacated the premises.

(d) Nothing in this section otherwise limits the right of the new property owner to recover for violation of the provisions of Chapter 704 by the tenant.

(3) EXCLUSION OF INFORMATION ON CCAP. Information concerning the removal of a tenant from a residential tenancy, including information regarding the issuance of a writ of assistance, writ of restitution or the entry of a judgment of eviction, as a result of a mortgage foreclosure may not be recorded or reported by the clerk of circuit court for inclusion in the consolidated court automated programs that are accessible to the public through the circuit court public access web site.

done

new

RPN

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0194/P1dn  
PJK&RPN:nwn&kjf:jf

October 2, 2008

Although we didn't discuss this, I assumed you wanted the provisions limited to residential rental property.

I provided that the rent payable if the tenant retains possession for up to 60 days after the confirmation of sale would be the same as the tenant paid before and on a pro rata basis. Is this what you want? If rent is paid on a pro rata basis, do you want to provide that the amount for the last 30 days, rather than the last month, may be withheld? "Month" may be interpreted to mean that the tenant may withhold rent that would be payable in the last calendar month in which the tenant remains on the property, which might be only a few days.

Do you want to specify that any rent withheld by the tenant for the last month may be withheld from the security deposit if the security deposit is returned? I guess the question is, does the tenant owe rent for the last month, even though it may be withheld, or is the last month's rent forgiven?

Do you want to be more specific about when the notices must be provided by the plaintiff, such as within a certain number of days after each of the specified events? When the plaintiff gives notice of the foreclosure judgment, it might be helpful for the tenants if the notice also provided the date on which the redemption period ends.

Do you want to require only one notice per rental unit, or notices to all persons who have signed a lease for the unit and one notice per unit if there is no lease?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

I am not sure if the language added to s. 799.40 meets your intent. I put a time limit (an arbitrary number of days) in the draft just to allow persons who acquire property by foreclosure to avoid the requirement to add the statement if they are evicting for a reason other than the foreclosure.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)



11/6  
State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0194/P1  
PJK&RPN:nwn&kjf:jf

r m is nwn  
nwn+ kjf  
P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

→ regenerate ↓

1 AN ACT to create 704.35, 799.40 (5) and 846.40 of the statutes; relating to:  
2 protections for tenants in foreclosure actions.✓

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

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

CS  
PROVIDE NOTICE

3 SECTION 1. 704.35 of the statutes is created to read:  
4 **704.35 Residential rental property in foreclosure. (1) DUTY OF LANDLORD**  
5 TO ~~ADVISE~~ OF FORECLOSURE. If a foreclosure action has been commenced against  
6 residential rental property, the landlord shall, before entering into a lease or  
7 accepting any rent or security deposit from a prospective tenant at any time before  
8 the expiration of the redemption period, ~~advise the~~ prospective tenant in writing of  
9 all of the following:  
10 (a) That a foreclosure action has been commenced against the rental property.

property shall

during the pendency of the action and before

Insert 2-1

*if judgment has been entered*

1 (b) The date on which the redemption period expires.

2 ② TENANT PROTECTIONS. The protections under s. 846.40 apply to a residential  
3 tenant if a foreclosure action is or has been commenced against the real property  
4 containing the dwelling unit occupied by the tenant.

5 SECTION 2. 799.40 (5) of the statutes is created to read:

6 799.40 (5) EVICTION BASED ON FORECLOSURE. (a) If the plaintiff in a civil action  
7 of eviction acquired the residential real property as the result of a foreclosure action,  
8 the plaintiff shall attach to the complaint a statement specifying that fact.

9 (b) If the plaintiff attaches the statement required under par. (a), the clerk of  
10 circuit court may not include any information about that eviction action in the  
11 consolidated court automated programs that would be accessible to the public  
12 through the circuit court public access Web site.

13 (c) The requirement that the plaintiff attach a statement under par. (a) applies  
14 only if all of the following conditions apply:

15 1. The plaintiff commenced the eviction action within 120 days after the  
16 foreclosure confirmation of sale hearing occurred.

17 2. The defendant in the eviction action was a tenant in possession of the  
18 residential property when the foreclosure confirmation of sale hearing occurred.

19 SECTION 3. 846.40 of the statutes is created to read:

20 846.40 Protections for tenants in foreclosure actions. (1) NOTICES FROM  
21 PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the  
22 plaintiff shall provide the following notices at the following times to the tenants who  
23 are in possession of each rental unit when a notice is given:

24 1. ~~When~~ the foreclosure action is filed, notice that the plaintiff has commenced  
25 a foreclosure action with respect to the rental property.

*No later than 5 days after*

*no later than 5 days after*

1 2. ~~When~~ the judgment of foreclosure is entered, notice that the plaintiff has  
2 been granted a judgment of foreclosure with respect to the rental property.  
3 3. When the confirmation of sale hearing has been scheduled, notice of the date  
4 and time of the hearing.

5 (b) The notices under par. (a) may be given in any of the following ways:  
6 1. By personal service as provided in s. 801.11 (1).  
7 2. By certified mail with return receipt requested. Notice given under this  
8 subdivision is considered completed when it is mailed, unless the envelope enclosing  
9 the notice is returned unopened to the plaintiff. All notices mailed under this  
10 subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's  
11 attorney's, return address appears, with a request to return to that address.

12 (2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT. (a)  
13 Notwithstanding ch. 704, *all of the following apply to* a tenant whose tenancy is terminated as a result of a  
14 foreclosure judgment and sale with respect to the rental property is entitled to do all

15 of the following:  
16 1. Retain possession of the tenant's rental unit for up to 60 days after the sale  
17 of the property is confirmed. *Subject to subd. 3, the tenant may*

18 2. Withhold the rent amount for the last month during which the tenant  
19 actually retains possession of the rental unit, regardless of whether the tenant  
20 retains possession after the sale of the property is confirmed, as authorized under  
21 subd. 1.

22 (b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after  
23 the sale of the property is confirmed shall pay rent for the period during which the  
24 tenant retains possession, on a pro rata basis, at the *same* rate that applied immediately  
25 before the confirmation of the sale of the property.

*and the date on which the redemption period ends*

*Insert 3-11*

*Insert 3-17*

*Insert 3-21*

*Insert 3-25*  
*Insert 3-25 b*



2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0194/P2ins  
PJK:.....

INSERT 2-1

1 (2) RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE. Any rental  
2 agreement entered into between the property owner and a tenant during the  
3 pendency of the foreclosure action and before the expiration of the redemption period  
4 shall include a separate written statement, signed by the tenant, that the owner has  
5 provided written notice as required under sub. (1). A rental agreement that does not  
6 include the statement signed by the tenant is voidable at the option of the tenant.

(END OF INSERT 2-1)

INSERT 3-11

para (a) and  
(b)

7  
8  
9

(c) A plaintiff that fails to provide a notice under par. (a) in accordance with par  
(a) shall be liable to the tenant to whom the notice should have been given for \$250  
in damages, plus reasonable attorney fees.

\*\*\*NOTE: Does \$250 apply to each notice not given, so that a single tenant who is not provided any notice could receive \$750 in damages? Do you want to clarify this or leave it up to the judge?

(END OF INSERT 3-11)

INSERT 3-16

End of Ins 3-16

10

with

2 months after the end of the month in which

Ins 3-17

\*\*\*NOTE: Since months are not necessarily 30 days long, I provided that the tenant would have two months, rather than 60 days, after the month in which the sale is confirmed. Is this ok, or do you want to actually count days? This can, of course, be changed to one month (or 30 days), if you prefer.

(END OF INSERT 3-16)

INSERT 3-21



*Ins. 3-21*

1           3. The tenant's right to retain possession of the rental unit expires at the end  
2 of the month for which the tenant withholds rent, as authorized under subd. 2. ✓✓

(END OF INSERT 3-21)

INSERT 3-25

3           (3) ISSUANCE OF WRIT OF ASSISTANCE OR RESTITUTION. No writ of assistance or writ  
4 of restitution for the removal of a tenant whose tenancy is terminated as a result of  
5 a foreclosure judgment and sale may be ordered before the end of the second <sup>2nd</sup> month  
6 beginning after the month in which the sale of the property is confirmed, unless any  
7 of the following applies:

      \*\*\*\*NOTE: Should the prohibition be on the *ordering, issuing, or executing* of a writ  
of assistance or restitution?

8           (a) The tenant has waived in writing the right under sub. (2) (a) 1. to retain  
9 possession of the rental unit. ✓✓

10          (b) The tenant has vacated the premises.

      \*\*\*\*NOTE: Would a writ of assitance <sup>assistance</sup> or restitution be necessary if the tenant has  
vacated the premises?

11          (4) RECOVERY FOR STATUTORY VIOLATIONS. Nothing in this section otherwise  
12 limits the right of a property owner who acquires the property as a result of a  
13 foreclosure action to recover for a violation of ch. 704 by a tenant of the former  
14 property owner. ✓✓

      \*\*\*\*NOTE: I'm not sure what this means. Is this referring to the two months that  
the tenant retains possession under sub. (2) (a) 1.? If so, it would be better to be specific.  
In addition, it may be better to leave this out entirely, since it is not really necessary and  
may create more questions than it answers. Why, for example, would the new owner be  
prohibited from recovering for damages to the property made by the tenant just because  
the tenant has the statutory right to retain possession of the property for up to two  
months after the foreclosure? Does saying that the *new* owner may recover for violations  
of ch. 704 imply that the *former* owner may not recover for violations of ch. 704 occurring  
before the owner lost the property?

(END OF INSERT 3-25)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0194/P2insrn  
RPN:nwn&kjf:jf

(CS)  
AUTOMATION

AUTOMATED

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insert 3-25b

(5) EXCLUSION OF INFORMATION FROM THE CONSOLIDATED COURT PROGRAM<sup>s</sup> No information in a civil action, including a writ of assistance, writ of restitution, or entry of judgment of eviction<sup>stet.</sup> concerning the removal of a tenant from residential rental property may be included in the consolidated court automated programs that are accessible to the public through the circuit court public access Web site if that removal is the result of a mortgage foreclosure of that residential rental property.

automation

tenants

\*\*\*NOTE: I am not sure how the court staff will know that the removal is the result of a foreclosure.

**Kahler, Pam**

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**From:** Peterson, Eric  
**Sent:** Tuesday, February 03, 2009 1:43 PM  
**To:** Kahler, Pam  
**Subject:** 1251/1

Pam:

One more thing with this draft: Can you send Bob Meyer in Rep. Hintz's office a copy and he is going to order a rush jacket for the Assembly as the companion to our Senate version.

Thanks!  
Eric

***Eric M. Peterson***  
Chief of Staff, Senator Lena C. Taylor  
Wisconsin State Senator - 4th Senate District  
*t - 608-266-5810 f - 608-267-2353*

**Kahler, Pam**

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**From:** Peterson, Eric  
**Sent:** Wednesday, January 21, 2009 1:05 PM  
**To:** Kahler, Pam  
**Subject:** RUSH redraft of 1251/P1  
**Attachments:** foreclosure tenants revision of LRB 1251-P1.doc

Pam:

I need a rush redraft of 09-1251/P1. The attached memo and the below emails should provide directions. Bob Anderson of Legal Aid can be contacted if you have questions at 256-3304 x 106.

Thanks, Eric

***Eric M. Peterson***

Chief of Staff, Senator Lena C. Taylor  
 Staff Director, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing  
 Joint Review Committee on Criminal Penalties  
 608-266-5810

---

**From:** Robert J. Andersen [mailto:RJA@legalaction.org]  
**Sent:** Tuesday, January 20, 2009 9:34 AM  
**To:** 'Gonda, Jennifer'; Meyer, Bob; Enwemnw, Madu  
**Subject:** RE: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Hello all:

First, I agree with 2 months. So, the language on page 3, line 12 and page 4, line 5 (LRB draft 1251/P1) should remain as is, referring to 2 months.

I think the last two questions could be resolved by replacing the language on page 3, lines 14-17, with the following:

"2. The tenant may withhold rent in an amount equal to the security deposit during the last period the tenant actually retains possession of the rental unit, regardless of whether the tenant retains possession after the sale of the property is confirmed, as authorized under subd.1"

I think this directive, plus my latest memo, which I attach here again, could be submitted to the drafter, since I think it is otherwise ok with everybody. If the drafter(s) has/have any questions, they could contact me by email or at 256-3304 x 106. The same is true for you too.

**From:** Gonda, Jennifer [mailto:Jennifer.Gonda@milwaukee.gov]

01/21/2009

**Sent:** Friday, January 16, 2009 4:50 PM

**To:** Gonda, Jennifer; Robert J. Andersen; Bob.Meyer@legis.wisconsin.gov; Madu.Enwemnwa@legis.wisconsin.gov

**Subject:** RE: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Hello,

I spoke with Arman Rouf, the Attorney at Legal Aid who reviewed the bill draft. He agrees with Bob and I regarding the comments below. As for the number of months, his preference was also to go with 2, rather than 1.

He also noted a concern that the language regarding withholding the last month's rent doesn't explicitly state that it is a remedy for losing the security deposit. Further, in some cases the security deposit may also be more or less than one month or rent. I wonder if the drafter has a suggestion to deal with that issue?

Again, thanks for the opportunity to comment.

Jennifer

**From:** Gonda, Jennifer

**Sent:** Wednesday, January 14, 2009 2:27 PM

**To:** 'Robert J. Andersen'; 'Bob.Meyer@legis.wisconsin.gov'; 'Madu.Enwemnwa@legis.wisconsin.gov'

**Subject:** RE: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Hello Bob, Bob and Madu,

I've gone through the P-draft and will provide my responses in the same order as Bob. However, as I told Bob Meyer earlier, I did also share the draft with the Legal Aid Society and a staffperson here and would like to hear back from them before we finalize it.

- 1 - I agree with Bob, the \$250 should only be charged once.
- 2 - I agree "months" makes more sense. However, I still prefer 2 months to 1.
- 3 - I agree this should read "executed."
- 4 - I defer to Bob on this one because I am not familiar with this process.
- 5 - I agree this section seems to be unnecessary.
- 6 - I agree the court staff should be able to decipher this.

Lastly, as for the effective date -in my opinion the initial applicability section makes sense as it is and should not be changed.

I looked through my original notes and believe that the draft appears to accomplish all of the points we raised. Anecdotaly, the number of calls being received by the city (and I also heard the Milwaukee Bar Association's Lawyer Referral Line) have really escalated in recent months. This is an important issue for our community. We very much appreciate that Rep. Hintz and Sen. Taylor have agreed to take this on.

Thanks for the opportunity to comment.

Jennifer

**From:** Robert J. Andersen [mailto:RJA@legalaction.org]

**Sent:** Wednesday, January 14, 2009 1:15 PM

**To:** Gonda, Jennifer; 'Bob.Meyer@legis.wisconsin.gov'; 'Madu.Enwemnwa@legis.wisconsin.gov'

**Subject:** RE: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Jennifer, Madu, and Bob:

I am resending this email, because I forgot to add the attachment. I am blaming the computer for this.

01/21/2009

The draft that Jennifer sent me (LRB 09-1251/P1) is the same as LRB-0194/P2. Yesterday I gave Madu and Bob the memo that I have attached to this email, explaining the revision I would recommend making to LRB-0194/P2. The same recommendations apply to LRB 09-1251/P1, so I have re-titled the memo to address that LRB draft. In addition, the LRB drafter wrote a separate memo (LRB-1251/P1dn) asking whether we had recommended any revision regarding the application and effective dates. I did not intend to make any recommendations regarding the application and effective dates. I think what is in LRB 09-1251/P1 regarding this is fine. So, I guess the question is whether anyone disagrees with what I have recommended in the attached memo or whether anyone has any different ideas. Otherwise, what I have recommended should be given to the drafter to revise LRB 09-1251/P1. I hope this isn't too confusing. Thanks.

---

**From:** Gonda, Jennifer [mailto:Jennifer.Gonda@milwaukee.gov]  
**Sent:** Tuesday, January 13, 2009 4:42 PM  
**To:** Robert J. Andersen  
**Subject:** FW: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Bob –  
Did you see this latest version?

Jennifer

Jennifer Gonda Birnbaum  
Sr. Legislative Fiscal Manager  
Intergovernmental Relations Division  
City of Milwaukee, Wisconsin  
Office: (414) 286-3492  
Cell: (414) 708-7680

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**From:** Meyer, Bob [mailto:Bob.Meyer@legis.wisconsin.gov]  
**Sent:** Wednesday, January 07, 2009 4:10 PM  
**To:** Gonda, Jennifer  
**Subject:** FW: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

Jen,  
I spoke with the Taylor office today and they had some changes made to the bill based on Bob's suggestions. Take a look and let me know what you think.

Bob Meyer  
Office of Representative Gordon Hintz  
322 West, State Capitol  
888-534-0054 toll-free

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**From:** Peterson, Eric  
**Sent:** Wednesday, January 07, 2009 3:58 PM  
**To:** Meyer, Bob  
**Subject:** FW: Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

*Eric M. Peterson*

Chief of Staff, Senator Lena C. Taylor

TO: Rep. Hintz  
Sen. Taylor

FROM: Bob Andersen

RE: Protections for tenants in foreclosure actions B LRB B 1251/P1

DATE: January 12, 2009

Here are my recommendations for revision of the LRB draft, in response to the drafter's notes, which I have copied below:

1. On page 3, line 6, after the word "given" insert "a minimum of" and at the end of the sentence, insert the following sentence:

A tenant shall not recover for more than one violation under this section.

\*\*\*\*NOTE: Does \$250 apply to each notice not given, so that a single tenant who is not provided any notice could receive \$750 in damages? Do you want to clarify this or leave it up to the judge?

This refers to the penalty that would be applied to a plaintiff in a mortgage foreclosure case if the plaintiff failed to notify a tenant of the foreclosure action at any of three different points in the process. I would think a tenant would be able to recover the penalty for only one violation. We don't want to create some unjust enrichment scheme for a tenant and a tenant who brings this action will have found out about the existence of the foreclosure action.

2. On page 3, line 12, delete "2 months" and substitute "1 month"

\*\*\*\*NOTE: Since months are not necessarily 30 days long, I provided that the tenant would have two months, rather than 60 days, after the month in which the sale is confirmed. Is this ok, or do you want to actually count days? This can, of course, be changed to one month (or 30 days), if you prefer.

I think months are fine. I also think the time the tenant should be able to remain on the premises should be limited to one month after the end of the month in which the sale of the property is confirmed. The reality is that the confirmation of sale hearing will probably be held somewhere in the middle of the month, so the tenant's actual time for remaining on the premises will in many cases be more than a month's time.

3. On page 4, line 5, delete the word "ordered" and substitute "executed" and delete "2<sup>nd</sup> month" and insert "a month".

\*\*\*\*NOTE: Should the prohibition be on the *ordering, issuing, or executing* of a writ of assistance or restitution?

Again, this should provide that the writ of assistance (which removes the tenant) cannot be executed prior to the end of one month following the end of the month in which the confirmation of sale hearing is held. I guess I have already answered the drafters' question. It should limit the "execution" of the writ by the sheriff.

4. On page 4, line 10, delete that line.

\*\*\*\*NOTE: Would a writ of assistance or restitution be necessary if the tenant has vacated the premises?

Don't need (3)(b) on page 4, because the Sheriff would not be executing a writ if the tenant has vacated.

5. On page 4, delete lines 11 - 14

\*\*\*\*NOTE: I'm not sure what this means. Is this referring to the two months that the tenant retains possession under sub. (2) (a) 1.? If so, it would be better to be specific. In addition, it may be better to leave this out entirely, since it is not really necessary and may create more questions than it answers. Why, for example, would the new owner be prohibited from recovering for damages to the property made by the tenant just because the tenant has the statutory right to retain possession of the property for up to two months after the foreclosure? Does saying that the *new* owner may recover for violations of ch. 704 imply that the *former* owner may not recover for violations of ch. 704 occurring before the owner lost the property?

I agree. This section is unnecessary. It was intended to say that the tenant is still liable for damages, even though the tenant is in effect substituting the security deposit for the last month's rent. On page 3, par. (2)(a)2. does not really mention the security deposit. It simply says that the tenant may withhold the last month's rent. The reality is that this does not relieve the tenant of liability for damages, so nothing more needs to be said.

6. No revision is necessary on page 5 of the draft. The court staff will either see that the case is coded as a foreclosure case or, if it is an eviction case, the narrative in the eviction will reveal that the eviction is due to a foreclosure judgment.

\*\*\*\*NOTE: I am not sure how the court staff will know that the tenant's removal is the result of a foreclosure.

Staff Director, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing  
Joint Review Committee on Criminal Penalties  
608-266-5810

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**From:** Duerst, Christina

**Sent:** Tuesday, January 06, 2009 12:38 PM

**To:** Sen. Taylor

**Subject:** Draft review: LRB 09-1251/P1 Topic: Tenant protections in foreclosure actions

**Following is the PDF version of draft LRB 09-1251/P1 and drafter's note.**



*Wm is m*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*1pm  
today  
D-note*

*Regen*

1 AN ACT to create 704.35 and 846.40 of the statutes; relating to: protections for  
2 tenants in foreclosure actions.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*Insert  
A-1*

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

3 SECTION 1. 704.35 of the statutes is created to read:  
4 **704.35 Residential rental property in foreclosure.** (1) DUTY OF LANDLORD  
5 TO PROVIDE NOTICE OF FORECLOSURE. If a foreclosure action has been commenced  
6 against residential rental property, during the pendency of the action and before the  
7 expiration of the redemption period, the owner of the property shall notify any  
8 prospective tenant in writing of all of the following:  
9 (a) That a foreclosure action has been commenced against the rental property.  
10 (b) If judgment has been entered, the date on which the redemption period  
11 expires.

1           (2) RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE. Any rental  
2 agreement entered into between the property owner and a tenant during the  
3 pendency of the foreclosure action and before the expiration of the redemption period  
4 shall include a separate written statement, signed by the tenant, that the owner has  
5 provided written notice as required under sub. (1). A rental agreement that does not  
6 include the statement signed by the tenant is voidable at the option of the tenant.

7           (3) TENANT PROTECTIONS. The protections under s. 846.40 apply to a residential  
8 tenant if a foreclosure action is or has been commenced against the real property  
9 containing the dwelling unit occupied by the tenant.

10           SECTION 2. 846.40 of the statutes is created to read:

11           **846.40 Protections for tenants in foreclosure actions.** (1) NOTICES FROM  
12 PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the  
13 plaintiff shall provide the following notices at the following times to the tenants who  
14 are in possession of each rental unit when a notice is given:

15           1. No later than 5 days after the foreclosure action is filed, notice that the  
16 plaintiff has commenced a foreclosure action with respect to the rental property.

17           2. No later than 5 days after the judgment of foreclosure is entered, notice that  
18 the plaintiff has been granted a judgment of foreclosure with respect to the rental  
19 property and notice of the date on which the redemption period ends.

20           3. When the confirmation of sale hearing has been scheduled, notice of the date  
21 and time of the hearing.

22           (b) The notices under par. (a) may be given in any of the following ways:

23           1. By personal service as provided in s. 801.11 (1).

24           2. By certified mail with return receipt requested. Notice given under this  
25 subdivision is considered completed when it is mailed, unless the envelope enclosing

1 the notice is returned unopened to the plaintiff. All notices mailed under this  
2 subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's  
3 attorney's, return address appears, with a request to return to that address.

4 (c) If a plaintiff fails to provide a notice under par. (a) in accordance with pars.  
5 (a) and (b), the court shall award the tenant to whom the notice should have been  
6 given \$250 in damages, plus reasonable attorney fees. *Insert 3-6*

*\*\*\*\*NOTE: Does \$250 apply to each notice not given, so that a single tenant who is not provided any notice could receive \$750 in damages? Do you want to clarify this or leave it up to the judge?*

7 (2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT. (a)  
8 Notwithstanding ch. 704, all of the following apply to a tenant whose tenancy is  
9 terminated as a result of a foreclosure judgment and sale with respect to the rental  
10 property:

11 1. Subject to subd. 3., the tenant may retain possession of the tenant's rental  
12 unit for up to 2 months after the end of the month in which the sale of the property  
13 is confirmed.

*\*\*\*\*NOTE: Since months are not necessarily 30 days long, I provided that the tenant would have two months, rather than 60 days, after the month in which the sale is confirmed. Is this ok, or do you want to actually count days? This can, of course, be changed to one month (or 30 days), if you prefer.*

*Insert 3-17*

14 2. The tenant may withhold the rent amount for the last month during which  
15 the tenant actually retains possession of the rental unit, regardless of whether the  
16 tenant retains possession after the sale of the property is confirmed, as authorized  
17 under subd. 1.

18 3. The tenant's right to retain possession of the rental unit expires at the end  
19 of the month for which the tenant withholds rent, as authorized under subd. 2.

20 (b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after  
21 the sale of the property is confirmed shall pay rent for the period during which the

Execution

1 tenant retains possession at the same rate that applied immediately before the  
2 confirmation of the sale of the property.

*executed*

3 (3) ISSUANCE OF WRIT OF ASSISTANCE OR RESTITUTION. No writ of assistance or writ  
4 of restitution for the removal of a tenant whose tenancy is terminated as a result of  
5 a foreclosure judgment and sale may be issued before the end of the 2nd month  
6 beginning after the month in which the sale of the property is confirmed, unless any  
7 of the following applies:

\*\*\*\*NOTE: Should the prohibition be on the ordering, issuing, or executing of a writ of assistance or restitution?

8 (a) The tenant has waived in writing the right under sub. (2) (a) 1. to retain  
9 possession of the rental unit.

10 (b) The tenant has vacated the premises.

\*\*\*\*NOTE: Would a writ of assistance or restitution be necessary if the tenant has vacated the premises?

11 (4) RECOVERY FOR STATUTORY VIOLATIONS. Nothing in this section otherwise  
12 limits the right of a property owner who acquires the property as a result of a  
13 foreclosure action to recover for a violation of ch. 704 by a tenant of the former  
14 property owner.

\*\*\*\*NOTE: I'm not sure what this means. Is this referring to the two months that the tenant retains possession under sub. (2) (a) 1.? If so, it would be better to be specific. In addition, it may be better to leave this out entirely, since it is not really necessary and may create more questions than it answers. Why, for example, would the new owner be prohibited from recovering for damages to the property made by the tenant just because the tenant has the statutory right to retain possession of the property for up to two months after the foreclosure? Does saying that the new owner may recover for violations of ch. 704 imply that the former owner may not recover for violations of ch. 704 occurring before the owner lost the property? It may be interpreted that way.

15 (5) EXCLUSION OF INFORMATION FROM THE CONSOLIDATED COURT AUTOMATION  
16 PROGRAMS. No information in a civil action, including a writ of assistance, writ of  
17 restitution, or entry of judgment of eviction, concerning the removal of a tenant from  
18 residential rental property may be included in the consolidated court automation

1 programs that are accessible to the public through the circuit court public access Web  
2 site if that removal is the result of a mortgage foreclosure of that residential rental  
3 property.

\*\*\*\*NOTE: I am not sure how the court staff will know that the tenant's removal is  
the result of a foreclosure.

4 **SECTION 3. Initial applicability.**

5 (1) TENANT PROTECTIONS. The treatment of sections 704.35 (3) and 846.40 of the  
6 statutes first applies to foreclosure actions that are commenced on the effective date  
7 of this subsection.

8 (2) RENTAL AGREEMENTS. The treatment of section 704.35 (2) of the statutes first  
9 applies to rental agreements entered into on the effective date of this subsection.

10 (END)

D-ute

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1251/lins  
PJK&RPN:.....

INSERT A-1

Under current law, if the owner of real property that is subject to a mortgage defaults in making payments, the mortgagee, which is usually a financial institution, may commence a foreclosure action. If the mortgagee (plaintiff) prevails and obtains a foreclosure judgment, the property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after the redemption period, which can last from three months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

Also under current law, if property that is subject to a mortgage is leased after the lien of the mortgage attaches, the lease is subject to termination if the interest of the mortgagor terminates. Thus, the lease of a tenant to property that is subject to a mortgage terminates and the tenant may be evicted, if the landlord loses the property in a foreclosure action.

This bill requires the plaintiff in a foreclosure action against residential rental property to provide to the tenants of the property with notice that a foreclosure action has been filed, notice that the plaintiff has been granted judgment, along with notice of the date on which the redemption period ends, and notice of the date and time of the hearing to confirm the sale of the property. A tenant may recover \$250 in damages if a notice is not given. In addition, the bill provides that a tenant may retain possession of the rental unit for up to two months after the end of the month in which the sale of the property is confirmed, and may withhold rent in the amount of the security deposit for the last period during which the tenant actually retains possession of the rental unit.

The bill also requires a landlord to notify any prospective tenant in writing that a foreclosure action has been commenced and, if judgment has been entered, the date on which judgment was entered and the date on which the redemption period ends. Any rental agreement entered into during the pendency of a foreclosure action must include a separate statement, signed by the tenant, that the landlord has provided the required notices, or it is voidable at the option of the tenant.

Under current law, the director of state courts has established a consolidated electronic system that contains information about cases filed in the circuit courts in the state, including both civil cases and criminal cases. This system, known as the Consolidated Court Automation Programs (CCAP), contains a variety of information about the parties to circuit court cases, their attorneys, documents filed with the court, and deadlines, decisions, and outcomes of cases. The information regarding case data contained on the CCAP system is available in the court's Internet Web site called the Wisconsin Circuit Court Access (WCCA). This bill would prohibit the placing of any information on a civil action concerning the removal of a tenant from a residential rental property in the WCCA Internet Web site if that removal was the result of a mortgage foreclosure of the residential rental property.

(END OF INSERT A-1)

**INSERT 3-6**

1 *Ni 9* A tenant may not recover under this paragraph<sup>✓</sup> for more than one notice  
2 violation.<sup>✓</sup>

(END OF INSERT 3-6)

**INSERT 3-17**

3 2. The tenant may withhold rent in an amount equal to the security deposit  
4 during the last period the tenant actually retains possession of the rental unit,<sup>✓</sup>  
5 regardless of whether the tenant retains possession after the sale of the property is  
6 confirmed, as authorized under subd. 1.<sup>✓</sup>

(END OF INSERT 3-17)



State of Wisconsin  
2009 - 2010 LEGISLATURE

0194/1  
LRB-1251/1  
PJK&RPN:nwn&kjfjf

n m not run

2009 BILL

today

(use 1251/1 as 0194/1)

- 1 *Regen.* AN ACT *to create* 704.35 and 846.40 of the statutes; **relating to:** protections for
- 2 tenants in foreclosure actions.

***Analysis by the Legislative Reference Bureau***

Under current law, if the owner of real property that is subject to a mortgage defaults in making payments, the mortgagee, which is usually a financial institution, may commence a foreclosure action. If the mortgagee (plaintiff) prevails and obtains a foreclosure judgment, the property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after the redemption period, which can last from three months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

Also under current law, if property that is subject to a mortgage is leased after the lien of the mortgage attaches, the lease is subject to termination if the interest of the mortgagor terminates. Thus, the lease of a tenant to property that is subject to a mortgage terminates and the tenant may be evicted, if the landlord loses the property in a foreclosure action.

This bill requires the plaintiff in a foreclosure action against residential rental property to provide the tenants of the property with notice that a foreclosure action has been filed, notice that the plaintiff has been granted judgment, along with notice of the date on which the redemption period ends, and notice of the date and time of the hearing to confirm the sale of the property. A tenant may recover \$250 in damages if a notice is not given. In addition, the bill provides that a tenant may

**BILL**

retain possession of the rental unit for up to two months after the end of the month in which the sale of the property is confirmed, and may withhold rent in the amount of the security deposit for the last period during which the tenant actually retains possession of the rental unit.

The bill also requires a landlord to notify any prospective tenant in writing that a foreclosure action has been commenced and, if judgment has been entered, the date on which the redemption period ends. Any rental agreement entered into during the pendency of a foreclosure action must include a separate statement, signed by the tenant, that the landlord has provided the required notices, or it is voidable at the option of the tenant.

Under current law, the director of state courts has established a consolidated electronic system that contains information about cases filed in the circuit courts in the state, including both civil cases and criminal cases. This system, known as the Consolidated Court Automation Programs (CCAP), contains a variety of information about the parties to circuit court cases, their attorneys, documents filed with the court, and deadlines, decisions, and outcomes of cases. The information regarding case data contained on the CCAP system is available in the court's Internet Web site called the Wisconsin Circuit Court Access (WCCA). This bill prohibits the placing of any information on a civil action concerning the removal of a tenant from a residential rental property in the WCCA Internet Web site if that removal was the result of a mortgage foreclosure of the residential rental property.

---

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

1           **SECTION 1.** 704.35 of the statutes is created to read:

2           **704.35 Residential rental property in foreclosure.** (1) DUTY OF LANDLORD  
3 TO PROVIDE NOTICE OF FORECLOSURE. If a foreclosure action has been commenced  
4 against residential rental property, during the pendency of the action and before the  
5 expiration of the redemption period, the owner of the property shall notify any  
6 prospective tenant in writing of all of the following:

7           (a) That a foreclosure action has been commenced against the rental property.  
8           (b) If judgment has been entered, the date on which the redemption period  
9 expires.

10           **(2) RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE.** Any rental  
11 agreement entered into between the property owner and a tenant during the

**BILL**

1 pendency of the foreclosure action and before the expiration of the redemption period  
2 shall include a separate written statement, signed by the tenant, that the owner has  
3 provided written notice as required under sub. (1). A rental agreement that does not  
4 include the statement signed by the tenant is voidable at the option of the tenant.

5 (3) TENANT PROTECTIONS. The protections under s. 846.40 apply to a residential  
6 tenant if a foreclosure action is or has been commenced against the real property  
7 containing the dwelling unit occupied by the tenant.

8 SECTION 2. 846.40 of the statutes is created to read:

9 **846.40 Protections for tenants in foreclosure actions.** (1) NOTICES FROM  
10 PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the  
11 plaintiff shall provide the following notices at the following times to the tenants who  
12 are in possession of each rental unit when a notice is given:

13 1. No later than 5 days after the foreclosure action is filed, notice that the  
14 plaintiff has commenced a foreclosure action with respect to the rental property.

15 2. No later than 5 days after the judgment of foreclosure is entered, notice that  
16 the plaintiff has been granted a judgment of foreclosure with respect to the rental  
17 property and notice of the date on which the redemption period ends.

18 3. When the confirmation of sale hearing has been scheduled, notice of the date  
19 and time of the hearing.

20 (b) The notices under par. (a) may be given in any of the following ways:

21 1. By personal service as provided in s. 801.11 (1).

22 2. By certified mail with return receipt requested. Notice given under this  
23 subdivision is considered completed when it is mailed, unless the envelope enclosing  
24 the notice is returned unopened to the plaintiff. All notices mailed under this

**BILL**

1 subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's  
2 attorney's, return address appears, with a request to return to that address.

3 (c) If a plaintiff fails to provide a notice under par. (a) in accordance with pars.  
4 (a) and (b), the court shall award the tenant to whom the notice should have been  
5 given \$250 in damages, plus reasonable attorney fees. A tenant may not recover  
6 under this paragraph for more than one notice violation.

7 **(2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT.** (a)  
8 Notwithstanding ch. 704, all of the following apply to a tenant whose tenancy is  
9 terminated as a result of a foreclosure judgment and sale with respect to the rental  
10 property:

11 1. Subject to subd. 3., the tenant may retain possession of the tenant's rental  
12 unit for up to 2 months after the end of the month in which the sale of the property  
13 is confirmed.

14 2. The tenant may withhold rent in an amount equal to the security deposit  
15 during the last period the tenant actually retains possession of the rental unit,  
16 regardless of whether the tenant retains possession after the sale of the property is  
17 confirmed, as authorized under subd. 1.

18 3. The tenant's right to retain possession of the rental unit expires at the end  
19 of the month for which the tenant withholds rent, as authorized under subd. 2.

20 (b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after  
21 the sale of the property is confirmed shall pay rent for the period during which the  
22 tenant retains possession at the same rate that applied immediately before the  
23 confirmation of the sale of the property.

24 **(3) EXECUTION OF WRIT OF ASSISTANCE OR RESTITUTION.** No writ of assistance or  
25 writ of restitution for the removal of a tenant whose tenancy is terminated as a result

**BILL**

1 of a foreclosure judgment and sale may be executed before the end of the 2nd month  
2 beginning after the month in which the sale of the property is confirmed, unless the  
3 tenant has waived in writing the right under sub. (2) (a) 1. to retain possession of the  
4 rental unit.

5 (4) EXCLUSION OF INFORMATION FROM THE CONSOLIDATED COURT AUTOMATION  
6 PROGRAMS. No information in a civil action, including a writ of assistance, writ of  
7 restitution, or entry of judgment of eviction, concerning the removal of a tenant from  
8 residential rental property may be included in the consolidated court automation  
9 programs that are accessible to the public through the circuit court public access Web  
10 site if that removal is the result of a mortgage foreclosure of that residential rental  
11 property.

12 **SECTION 3. Initial applicability.**

13 (1) TENANT PROTECTIONS. The treatment of sections 704.35 (3) and 846.40 of the  
14 statutes first applies to foreclosure actions that are commenced on the effective date  
15 of this subsection.

16 (2) RENTAL AGREEMENTS. The treatment of section 704.35 (2) of the statutes first  
17 applies to rental agreements entered into on the effective date of this subsection.

18

(END)

D-note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

0194/12n  
LRB-1251/1dn

PJK:nwr:jf  
↑  
stays

~~January 30, 2009~~

Date

I made the requested changes to this draft. I believe the proposed language that states that a tenant may withhold rent in the amount of the security deposit during the last period the tenant retains possession of the property is ambiguous, however. I don't know how long "the last period" is.

Pamela J. Kahler  
Senior Legislative Attorney  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0194/1dn

PJK:nwn:jf

February 3, 2009

I made the requested changes to this draft. I believe the proposed language that states that a tenant may withhold rent in the amount of the security deposit during the last period the tenant retains possession of the property is ambiguous, however. I don't know how long "the last period" is.

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**Parisi, Lori**

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**From:** Meyer, Bob  
**Sent:** Tuesday, February 03, 2009 3:44 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-0194/1 Topic: Protections for tenants in foreclosure actions

Please Jacket LRB 09-0194/1 for the ASSEMBLY.