2011 DRAFTING REQUEST

Bill

Received: **04/18/2011**

Received By: **tkuczens**

Wanted: **As time permits**

Companion to LRB:

For: **Fred Clark (608) 266-7746**

By/Representing: **Kate**

May Contact:

Drafter: **tkuczens**

Subject: **Courts - civil procedure**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Clark@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Residential mortgage loan foreclosures

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tkuczens 04/18/2011	jdyer 04/19/2011		_____ _____			State
/1			mduchek 04/19/2011	_____ _____	lparisi 04/19/2011	ggodwin 05/06/2011	

FE Sent For:

at intro 5-17-11

<END>

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/?	tkuczens	1 4/19 jld					

FE Sent For:

<END>

April 15, 2011

T. call from Kate (Rep. Clerk)

Redraft 2009 AB 729 (LRB -3079/5)

→ only change: sunset date to 12/31/2014

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–3079/5
RPN: [redacted]rs

2009 ASSEMBLY BILL 729

February 11, 2010 – Introduced by Representatives CLARK, YOUNG, PASCH, SMITH, HEBL, JORGENSEN, TURNER, BERNARD SCHABER, GRIGSBY, SINICKI, ZEPNICK, HIXSON, BERCEAU, HRAYCHUCK and SOLETSKI, cosponsored by Senator TAYLOR. Referred to Committee on Housing.

AN ACT *to create* 846.015 of the statutes; **relating to:** residential mortgage loan foreclosures.

Analysis by the Legislative Reference Bureau

Under current law, if a mortgagee brings an action for foreclosure of a mortgage on a residential property, the homeowner (mortgagor or borrower) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended.

This bill creates a process to allow a borrower who is in default on a first mortgage loan on a residential property (a one–family to four–family dwelling) to pursue a loan modification during a mortgage foreclosure action. Under the bill, before a first lien residential mortgage holder or its servicing agent (mortgagee) may commence an action to foreclose the mortgage, the mortgagee must provide a written notice (default–foreclosure notice) to the borrower that contains all of the following information: 1) that the mortgage is in default and a mortgage foreclosure action may be commenced, the reason that the mortgage is in default, and the action required of the borrower to cure the default; 2) the name, address, and telephone number of a mortgagee negotiator with authority to enter into negotiations regarding modifications to the residential mortgage loan; 3) the names and addresses of credit counseling services for homeowners; 4) that the borrower may request loan modifications by sending the request to the mortgagee negotiator

within ten working days after receiving the notice; 5) the calculations and eligibility criteria used to determine if the borrower is eligible for any loan modifications; 6) the documents needed to determine the borrower's gross income; 7) that if the borrower makes a timely request for loan modifications and provides the documents needed to determine the borrower's gross income, the borrower may meet with the mortgagee negotiator to discuss the modifications accompanied by an attorney or other person; 8) that if the borrower does not make a timely request for loan modifications or provide the documents needed to determine the borrower's gross income, the mortgage foreclosure action may proceed; 9) that if the parties reach an agreement to modify the residential mortgage loan, the mortgage may not be foreclosed if the borrower complies with the terms of the modified agreement; and 10) that the mortgagee and borrower may agree to a method other than loan modifications to resolve the loan default.

A borrower, within ten working days of receiving this notice, may request loan modifications by sending the request to the mortgagee negotiator. If a timely request is made and if the documents are provided that are needed to determine the borrower's gross income, the mortgagee negotiator and borrower must meet in person in the county where the residential property is located or by telephone or other communication to negotiate, in good faith, modifications to the residential mortgage loan. Based on available information, the mortgagee negotiator must determine if the borrower is eligible for a loan modification. The borrower is eligible if the borrower's current housing–related debt is 38 percent or more of the borrower's gross income. If the borrower is eligible, the mortgagee negotiator must offer one or more of the following loan modifications to lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income: 1) an interest rate reduction, subject to a floor of three percent, for a fixed period of at least five years, after which the interest rate may increase within specified parameters; 2) an extension of the amortization period for the residential mortgage loan term to 40 years or less from the date of the loan modification; 3) the deferral of payment of up to 20 percent of the unpaid balance of the residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale of the residential property; or 4) the reduction or elimination of late fees or penalties. However, for certain residential mortgage loans, the mortgagee negotiator must follow government guidelines for loan modifications.

Not later than 30 calendar days after the borrower submits the documents that are needed to determine the borrower's gross income, the mortgagee negotiator must notify the borrower as to whether the borrower is eligible for modifications to the residential mortgage loan. If the borrower is not eligible, the notice must include a statement explaining the eligibility criteria and why the borrower has not met these criteria. If the borrower is eligible, the notice must include two copies of the mortgage modification agreement proposed by the mortgagee negotiator along with a notice telling the borrower to sign a copy of the proposal and return it to the mortgagee negotiator within ten working days after receipt of the proposal. If the borrower is eligible, but the mortgagee negotiator determines that it is not possible to lower the borrower's housing–related debt to less than 38 percent of the borrower's gross

income, the mortgagee negotiator shall inform the borrower of how that determination was made. Regardless of whether the borrower is eligible, the notice must include a copy of any calculations used by the mortgagee negotiator to determine the borrower's eligibility. The notice must also include, if requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine which loan modification to offer the borrower or that none of the available modifications lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income. If the borrower is eligible, the borrower must, to accept the proposal, mail his or her signed acceptance of the proposed mortgage modification agreement to the mortgagee negotiator within ten working days of receiving it.

A mortgagee may only foreclose on a residential property if: 1) the mortgage has been properly recorded; 2) the borrower has defaulted on a condition of the mortgage that gives the mortgagee the right to foreclose; 3) there is a record chain of title for the mortgage, if the mortgagee is not the original mortgagee; and 4) the mortgagee has satisfied the requirements specified above, unless the mortgagee and borrower agreed within the previous three years to a loan modification and the mortgagee but not the borrower complied with the terms of the modification agreement.

If the mortgagee negotiator determines that the borrower is not eligible for a modification to the residential mortgage loan, or that none of the available modifications reduce the borrower's housing–related debt to less than 38 percent of gross income, the mortgagee must wait at least 20 working days after mailing the ineligibility notice before commencing an action to foreclose on the mortgage. If the mortgagee negotiator determines that the borrower is eligible for a loan modification, the mortgagee may only commence the action if the mortgagee negotiator in good faith offered the borrower a mortgage modification agreement and the borrower failed to timely accept it.

A court must dismiss the foreclosure action of a mortgagee that has failed to comply with the requirements of the bill. The bill applies only to foreclosure actions commenced on or after the bill's effective date and before December 31, 2012, or involving default–foreclosure notices provided before December 31, 2012. 2014

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill. 2014

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

1 **SECTION 1.** 846.015 of the statutes is created to read: for residential property

2 **846.015 Mortgage foreclosure procedures. (1)** In this section:

(a) "Borrower" means the owner of residential property who gives a mortgage on the residential property to the mortgagee to provide security for repayment of a residential mortgage loan made to the owner of the residential property.

(b) "Condominium assessments" means regular and special assessments for common expenses and charges owed by a condominium owner.

(c) "Housing–related debt" means mortgage loan principal and interest payments, property taxes, property insurance premiums, and condominium assessments.

(d) "Mortgagee" means a person who receives a mortgage to secure payment of a residential mortgage loan.

(e) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has the authority to enter into negotiations regarding modifications to a residential mortgage loan.

(f) "Mortgage servicer" means the servicing agent of a mortgagee.

(g) "Rate ceiling" means the lesser of the following:

1. The fully indexed and fully amortizing interest rate applicable to the borrower's residential mortgage loan before any modification to the loan is made.

2. The Federal Home Loan Mortgage Corporation's primary mortgage market survey rate for 30–year fixed–rate conforming mortgage loans, rounded to the nearest 0.125 percent, determined as of the date of preparation of a loan modification document.

(h) "Residential mortgage loan" means a loan that is secured by a first lien real estate mortgage, or equivalent security interest, in a residential property.

(i) "Residential property" means real property on which a one–family to 4–family dwelling is constructed or intended to be constructed, including individual

1 condominium units, that the borrower uses, or intends to use, as his or her principal
2 place of residence.

3 **(2)** A mortgagee or mortgage servicer may foreclose on a residential property
4 only if all of the following apply:

5 (a) The residential mortgage loan has been properly recorded.

6 (b) The borrower has defaulted on a condition of the residential mortgage loan
7 that gives the mortgagee or mortgage servicer the right to foreclose on the residential
8 mortgage loan.

9 (c) If the mortgagee or mortgage servicer is not the original mortgagee or
10 mortgage servicer, a record chain of title exists evidencing the assignment or transfer
11 of the mortgage to the mortgagee or mortgage servicer foreclosing on the residential
12 mortgage loan.

13 (d) Except as provided in sub. (3), the mortgagee or mortgage servicer complies
14 with subs. (4) to (9).

15 **(3)** If the mortgagee or mortgage servicer and borrower have agreed to modify
16 the residential mortgage loan within the previous 3 years and the mortgagee or
17 mortgage servicer has complied with the terms of the agreement, but the borrower
18 has not complied with the terms of the agreement, the mortgagee or mortgage
19 servicer may commence an action to foreclose on the residential mortgage loan
20 without complying with subs. (4) to (9).

21 **(4)** Before commencing an action to foreclose on a residential mortgage loan,
22 a mortgagee or mortgage servicer shall provide to the borrower at his or her
23 last–known address by certified mail a written notice that contains all of the
24 following information:

(a) That the residential mortgage loan is in default and a mortgage foreclosure action may be commenced, the reason that the residential mortgage loan is in default, and the action required of the borrower to cure the default.

(b) The name, address, and telephone number of the mortgagee negotiator.

(c) The names and addresses of adjustment service companies licensed under s. 218.02, and of independent nonprofit organizations approved by the federal department of housing and urban development, that offer credit counseling services to homeowners.

(d) That the borrower may request modifications to the residential mortgage loan by sending the request to the mortgagee negotiator by 1st class mail within 10 working days after receiving the written notice.

(e) A description of the calculations that will be used to determine if the borrower is eligible for a modification and of the criteria used to determine that eligibility.

(f) A list of the documents that the borrower needs to provide to the mortgagee negotiator that are reasonably necessary for the mortgagee negotiator to determine the monthly gross income of the borrower in order to make the calculations described in par. (e).

(g) That within 20 working days after receiving the written notice the borrower is required to provide the documents described in par. (f) and, if the borrower is unable to provide some or all of the documents, a statement as to why.

(h) That, if the borrower requests modifications to the residential mortgage loan within 10 working days after receiving the written notice and provides the materials described in par. (g) within 20 working days after receiving the written notice, the borrower may meet with the mortgagee negotiator to discuss modifications in the

1 residential mortgage loan accompanied by an attorney or an employee or member of
2 a company or organization specified in par. (c), or both.

3 (i) That if the borrower does not request the modifications within 10 working
4 days after receiving the written notice or submit the materials described in par. (g)
5 within 20 working days after receiving the written notice, the mortgage foreclosure
6 action may proceed.

7 (j) That if the parties reach an agreement to modify the residential mortgage
8 loan, the mortgage may not be foreclosed if the borrower complies with the terms of
9 the modification agreement.

10 (k) That the process outlined in the written notice does not prohibit the
11 borrower and mortgagee negotiator from agreeing to some other method of resolving
12 the residential mortgage loan default.

13 **(5)** (a) A borrower may request modifications to the residential mortgage loan
14 by sending the request to the mortgagee negotiator by 1st class mail within 10
15 working days after receipt of the notice under sub. (4). The borrower may contact an
16 adjustment service company licensed under s. 218.02, or an independent nonprofit
17 organization approved by the federal department of housing and urban
18 development, that offers credit counseling services to homeowners to assist him or
19 her in making this request and in negotiating with the mortgagee negotiator.

20 (b) Within 10 working days after receipt of the borrower's request for
21 modifications to the residential mortgage loan, the mortgagee negotiator shall notify
22 the borrower that the request for modifications has been received.

23 (c) A borrower shall, within 20 working days after receipt of the notice under
24 sub. (4), provide the mortgagee negotiator with the documents listed in the notice as

provided under sub. (4) (f) and, if the borrower is unable to provide some or all of the documents, a statement as to why.

(d) Within 10 working days after receipt of the materials required to be provided under par. (c), the mortgagee negotiator shall notify the borrower that the materials have been received.

(e) The mortgagee or mortgage servicer may proceed with the foreclosure action if either of the following occurs:

1. The borrower does not submit a request for modifications within 10 working days after receipt of the notice under sub. (4).

2. The borrower does not provide the materials required under par. (c) within 20 working days after receipt of the notice under sub. (4).

(6) If the borrower makes a timely request for modifications under sub. (5) (a), and timely provides the mortgagee negotiator with the materials required under sub. (5) (c), the borrower and mortgagee negotiator shall meet either in person or by telephone or other communication method agreed upon by both parties to negotiate modifications to the residential mortgage loan. Both parties shall negotiate in good faith. The borrower may have a member of an adjustment service company licensed under s. 218.02, or of an independent nonprofit organization approved by the federal department of housing and urban development, that offers credit counseling services to homeowners assist the borrower at the meeting. Either party may be assisted by an attorney. Any meeting held in person shall be held at a time and place that is convenient to both parties in the county where the residential property is located.

(7) (a) Based on the available information, the mortgagee negotiator shall determine if the borrower is eligible for modification of the residential mortgage loan. The borrower is eligible for a modification if his or her current housing–related debt

is 38 percent or more of the borrower's gross income. If the borrower is eligible, the mortgagee negotiator shall offer one or more of the following modifications to the residential mortgage loan to lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income:

1. An interest rate reduction, subject to a floor of 3 percent, for a fixed period of at least 5 years. A loan modification under this paragraph may allow the mortgagee or mortgage servicer to increase the interest rate after the fixed period of the interest rate reduction expires, but the mortgagee or mortgage servicer may not increase the interest rate by more than 1 percent per year and may not increase the interest rate to more than the rate ceiling.

2. An extension of the amortization period for the residential mortgage loan term to 40 years or less from the date of the loan modification.

3. The deferral of payment of up to 20 percent of the unpaid balance of the residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale of the residential property.

4. The reduction or elimination of late fees or penalties.

(b) In determining how to modify the residential mortgage loan under this subsection, all of the following apply:

1. If the loan is pooled for sale to an investor that is a governmental body, the mortgagee negotiator shall follow the guidelines established by that governmental body for any modifications.

2. If the loan has been sold to a government–sponsored entity, the mortgagee negotiator shall follow the guidelines established by that government–sponsored entity for any modifications.

(c) If, after reviewing all of the information available to the mortgagee negotiator and considering all of the possible methods of modifying the residential mortgage loan under par. (a), the mortgagee negotiator determines that it is not possible to lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income, the mortgagee negotiator shall inform the borrower of that determination under sub. (8) (a) 2.

(d) This subsection does not prohibit a modification to the residential mortgage loan on other terms, or a loss mitigation strategy other than a loan modification, if the other modification or strategy is agreed to by the borrower and mortgagee negotiator.

(8) (a) The mortgagee negotiator shall send by 1st class mail all of the following to the borrower no later than 30 calendar days after receipt of the materials required under sub. (5) (c):

1. If the borrower is not eligible for modifications to the residential mortgage loan, a statement explaining the criteria used to determine eligibility and why the borrower has not met these criteria.

2. If the borrower is eligible for modifications to the residential mortgage loan, but none of the available modifications lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income, a statement informing the borrower of how that determination was made.

3. If the borrower is eligible for modifications to the residential mortgage loan, 2 written copies of the mortgage modification agreement proposed by the mortgagee negotiator with a statement telling the borrower to sign a copy of the proposal and return it to the mortgagee negotiator within 10 working days after receipt of the proposal.

4. A copy of any calculations used by the mortgagee negotiator to determine if the borrower was eligible for modifications to the residential mortgage loan and to determine if the available modifications lowered or failed to lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income.

5. If requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine which modification or modifications to the residential mortgage loan would be offered to the borrower.

(b) The borrower shall mail by 1st class mail his or her signed acceptance of the proposed mortgage modification agreement to the mortgagee negotiator within 10 working days of receipt of the proposal provided under par. (a) 3.

(9) (a) If the mortgagee negotiator determines that the borrower is not eligible for a modification to the residential mortgage loan or that none of the available modifications lower the borrower's housing–related debt to less than 38 percent of the borrower's gross income, the mortgagee or mortgage servicer may, not less than 20 working days after the statement is mailed to the borrower under sub. (8) (a) 1., commence an action to foreclose on the mortgage if all of the conditions under sub. (2) are met.

(b) If the mortgagee negotiator determines that the borrower is eligible for a modification to the residential mortgage loan, the mortgagee or mortgage servicer may commence an action to foreclose on a mortgage if all the following conditions are met:

1. The mortgagee negotiator has in good faith offered the borrower a mortgage modification agreement prepared in compliance with sub. (7).

2. For reasons not related to any action or inaction of the mortgagee or mortgage servicer, the borrower does not submit an acceptance of the mortgage modification agreement within the 10 working days specified under sub. (8) (b).

(10) If the court in which an action is commenced to foreclose on a residential mortgage loan determines that the mortgagee or mortgage servicer did not comply with this section, the court shall dismiss the action.

(11) (a) Except as provided in par. (b), this section applies to foreclosure actions that are commenced on or after the effective date of this paragraph .... [LRB inserts date], and before December 31, 2012. 2014

(b) This section applies to a foreclosure action that is commenced after December 31, 2012, 2014 if notice under sub. (4) was mailed before that date.

(END)

Godwin, Gigi

From: Battiato, Kathryn
Sent: Friday, May 06, 2011 10:32 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-1948/1 Topic: Residential mortgage loan foreclosures

Please Jacket LRB 11-1948/1 for the ASSEMBLY.

IMPORTANT: Please send jacket to the office before 12pm today. Thank you!