

# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for

2011 LRB-3703 (For: Rep. Berceau)

has been transferred to the drafting file for

**2013 LRB-0828** (For: Rep. Berceau)



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 12/18/2012 (Per: ARG)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## 2011 DRAFTING REQUEST

### Bill

Received: 12/30/2011

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: Carly Karmel

May Contact:

Drafter: agary

Subject: Fin. Inst. - int. rates/loans

Addl. Drafters:

Extra Copies: PJK

Submit via email: YES

Requester's email: Rep.Berceau@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

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#### Pre Topic:

No specific pre topic given

---

#### Topic:

Priority of refinance mortgages over subordinate mortgages

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 01/12/2012	jdyer 01/23/2012	rschluet 01/23/2012	_____	mbarman 01/23/2012		
/P2	agary 01/31/2012	jdyer 02/01/2012	phenry 02/01/2012	_____	lparisi 02/01/2012		Local
/1	agary 02/27/2012	jdyer 02/27/2012	jmurphy 02/27/2012	_____	lparisi 02/27/2012		Local

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

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Wanted: **As time permits**

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By/Representing: **Carly Karmel**

May Contact:

Drafter: **agary**

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See attached

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/P1	agary 01/12/2012	jdye 01/23/2012	rschluet 01/23/2012	_____	mbarman 01/23/2012		
/P2	agary 01/31/2012	jdye 02/01/2012	phenry 02/01/2012	_____	lparisi 02/01/2012		Local

FE Sent For:

*1 2/27 jld* *pm 4/27* *SELF 2/27*  
<END>

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Wanted: **As time permits**

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May Contact:

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FE Sent For:

*P2 2/1/12*  
*JLD*  
*Y*  
*ph* <END>

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Wanted: As time permits

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For: Terese Berceau (608) 266-3784

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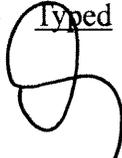
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/P1	agary	PI / 23 jld		_____	_____		

FE Sent For:

<END>

12312

**Gary, Aaron**

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**From:** Kuczenski, Tracy  
**Sent:** Thursday, December 29, 2011 4:41 PM  
**To:** Karmel, Carly  
**Cc:** Gary, Aaron  
**Subject:** RE: Draft Request

Hi Carly –

I have forwarded your request to Aaron Gary (copied on this email), who drafts bills related to financial institutions, including second mortgages. He will contact you directly if he has any questions.

Thanks,  
Tracy

Tracy K. Kuczenski  
*Legislative Attorney*  
Wisconsin Legislative Reference Bureau  
tracy.kuczenski@legis.wisconsin.gov  
(608) 266-9867

---

**From:** Karmel, Carly  
**Sent:** Thursday, December 29, 2011 12:52 PM  
**To:** Kuczenski, Tracy  
**Subject:** Draft Request

Hi Tracy:

Rep. Berceau would like legislation to be drafted regarding second mortgages. A constituent contacted Rep. Berceau regarding this issue, and I have included his e-mail request below with the information for this proposal. The idea is that the legislation would instruct second mortgage holders to automatically subordinate certain refinance transactions.

Are there any possible pitfalls or unintended consequences that you see we could avoid before we draft such legislation? Should we be aware of anything regarding this issue -- I am not very well-versed in this matter.

If you have any questions, please let me know.

Thanks!

Carly

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**Carly Karmel**  
Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784

12/30/2011

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Good morning Representative Berceau and Team,

I am a mortgage banker and have an initiative for you to consider. Currently, constituents that hold first and second mortgages have increasingly difficult times consolidating the two mortgages into one. An alternative is to refinance the first mortgage and subordinate the second mortgage back to second position. Unfortunately, lenders' subordination departments often have troubles developing their own guidelines when it comes to these situations.

My suggestion is to introduce legislation that instructs second mortgage holders to automatically subordinate certain refinance transactions. The second lien holder stands to lose everything in the event of foreclosure - foreclosure being an extremely prevalent problem for constituents.

The certain refinance transactions mentioned would include the following:

1. New loan must be Rate and Term. No Cash-Out transactions allowed.
2. Must improve interest rate if refinancing fixed rate. If current loan deemed exotic in nature due to variable rate, balloon, or negative amortization features, this may be waived.
3. Maximum second balance to be auto-subordinated of \$150k. Anything above the \$150k threshold may encounter problems in underwriting anyway.

Net tangible benefit of the first mortgage being refinanced is already considered during underwriting, so I believe it does not need to be addressed.

This is a no-brainer and, I believe, would meet minimal to no resistance by committee and banks. Constituents will also hold you in high regard for taking down the red tape that holds them back from saving their home. At a minimum, constituents stand to benefit from advancing their household cash flow. Many individuals pay one or more of the following during their loan process: appraisal fee, application fee, lock-in fee, inspection fee, faxing documents and printing documents. That money is lost if an appraisal value does not support either a) combining the first and second mortgages or b) refinancing the first mortgage and subordinating the second mortgage.

I do have a colleague in the state of Virginia that helped a similar bill to be passed. The bill passed unanimously through all phases.

It can be viewed here: Virginia 55-58.3 . I am willing to take part in testifying or whatever is requested of me to help my community as I strongly believe of this initiative's importance.

I hope this finds you well. Please let me know how I can help further.

Sincerely,

[prev](#) | [next](#)

§ 55-58.3. Priority of refinance mortgage over subordinate mortgage.

A. As used in this section:

"Refinance mortgage" means the mortgage, deed of trust or other instrument creating a security interest in real estate given to secure a refinancing.

"Refinancing" means the replacement of a loan secured by a prior mortgage with a new loan secured by a mortgage, deed of trust or other instrument and the payment in full of the debt owed under the original loan secured by the prior mortgage.

"Subordinate mortgage" means a mortgage or deed of trust securing an original principal amount not exceeding \$150,000, encumbering or conveying an interest in real estate containing not more than one dwelling unit that is subordinate in priority (i) under subdivision A 1 of § 55-96 to a mortgage, deed of trust or other security interest in real estate (otherwise known as the prior mortgage); or (ii) as a result of a previous refinancing.

B. Upon the refinancing of a prior mortgage encumbering or conveying an interest in real estate containing not more than one dwelling unit, a subordinate mortgage shall retain the same subordinate position with respect to a refinance mortgage as the subordinate mortgage had with the prior mortgage, provided that:

1. Such refinance mortgage states on the first page thereof in bold or capitalized letters: "THIS IS A REFINANCE OF A (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) RECORDED IN THE CLERK'S OFFICE, CIRCUIT COURT OF (NAME OF COUNTY OR CITY), VIRGINIA, IN DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN THE ORIGINAL PRINCIPAL AMOUNT OF \_\_\_\_\_, AND WITH THE OUTSTANDING PRINCIPAL BALANCE WHICH IS \_\_\_\_\_.";

2. The principal amount secured by such refinance mortgage does not exceed the outstanding principal balance secured by the prior mortgage plus \$5,000; and

3. The interest rate is stated in the refinance mortgage at the time it is recorded and does not exceed the interest rate set forth in the prior mortgage.

C. The priorities among two or more subordinate mortgages shall be governed by subdivision A 1 of § 55-96.

D. The provisions of subsection B shall not apply to a subordinate mortgage securing a promissory note payable to any county, city or town or any agency, authority or political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 or 15.2-2305, or pursuant to any program authorized by federal or state law or local ordinance or resolution, for (i) low- and moderate-income persons or households or (ii) improvements to residential potable water supplies and sanitary sewage disposal systems made to address an existing or potential public health hazard, and which mortgage, if recorded on or after July 1, 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON THE REFINANCING OF ANY PRIOR MORTGAGE."

(2000, c. 971; 2002, c. 172; 2003, c. 381; 2011, c. 77.)

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**Gary, Aaron**

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**From:** Karmel, Carly  
**Sent:** Tuesday, January 10, 2012 12:56 PM  
**To:** Gary, Aaron  
**Subject:** RE: Draft Request

Thanks for the update!

Carly

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**Carly Karmel**

Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784

---

**From:** Gary, Aaron  
**Sent:** Monday, January 09, 2012 2:46 PM  
**To:** Karmel, Carly  
**Cc:** Kahler, Pam  
**Subject:** RE: Draft Request

Hi Carly,

I have entered this draft as LRB-3703. I have reviewed the materials you provided and begun the drafting, but I do have many other requests, some of which predate this one, so I cannot tell you exactly when it will be done. It is rather technical and is taking some time.

To my understanding, this is what the draft will do:

When a creditor makes a loan on a home, it takes a mortgage as security. If more than one mortgage is taken, the rights between the creditors depend on the priority in time of the mortgages. That is, the creditor taking the first mortgage records the mortgage first with the register of deeds. The 2nd mortgage is taken later and recorded later. The first mortgage creditor has priority over the 2nd mortgage creditor by virtue of the fact that the first mortgage was filed with register of deeds before the 2nd mortgage was filed with the register of deeds. When a refinancing of the first mortgage occurs, the refinanced mortgage is recorded after the 2nd mortgage is recorded. Without a "subordination agreement" of the 2nd mortgagee, the 1st mortgagee would lose its priority. This inhibits refinancings, even though the refinancing would be beneficial (as to rates and terms) to the homeowner. My understanding of the instructions is that a refinanced 1st mortgage should not lose its priority vis-a-vis the 2nd mortgage if the refinancing meets certain conditions, including that it is done for a better rate/term and not to take equity out of the home.

A link that you provided with the instructions gives the following description, which I think is pretty helpful:

A subordination agreement is a legal document used to make the claim of one party junior to (or inferior to) a claim in favor of another. It is generally used to grant first lien status to a lienholder who would otherwise be secondary to another party, with the approval of the party that would otherwise have first lien. Typically a subordination arises when there are two existing mortgages, a first mortgage and a second mortgage, and the mortgagor intends to refinance the first mortgage. If the holder of the second mortgage does not subordinate the lien of its mortgage to the new mortgage, the new lender will not refinance the first mortgage. However, the second mortgage holder does not want to release its mortgage

1/11/2012

and re-file, due to additional costs and priority problems, so it will subordinate its lien to the lien of the replacement mortgage.

Aaron

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Karmel, Carly  
**Sent:** Monday, January 09, 2012 1:35 PM  
**To:** Gary, Aaron  
**Subject:** RE: Draft Request

Hi Aaron:

Rep. Berceau would like to know the status of the draft for the second mortgage bill. Additionally, could you put together a memo explaining what the bill would do, as neither Rep. Berceau nor I are very well-versed in banking and mortgages?

Thank you for your help!

Carly

---

**Carly Karmel**  
Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784

---

**From:** Kuczenski, Tracy  
**Sent:** Thursday, December 29, 2011 4:41 PM  
**To:** Karmel, Carly  
**Cc:** Gary, Aaron  
**Subject:** RE: Draft Request

Hi Carly –

I have forwarded your request to Aaron Gary (copied on this email), who drafts bills related to financial institutions, including second mortgages. He will contact you directly if he has any questions.

1/11/2012



~~soon~~



in 1/2 due Thurs

jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

X

Gen

1 AN ACT ...; relating to: priority of certain refinance mortgages. ✓

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

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

3 59.43 (9) (b) In the case of refinance mortgages, as defined in s. 138.059 (1) (d),  
4 assignments, satisfactions and partial releases of mortgages, and subordination of  
5 mortgages, the index shall also contain the document number or volume and page  
6 of the original mortgage instrument whenever that original mortgage instrument is  
7 referenced on the document.

History: 1995 a. 201 ss. 326, 327, 335, 338 to 353, 355, 361, 367, 369, 375, 377 to 380, 382 to 384; 1995 a. 225 ss. 159, 160, 162; 1995 a. 227; 1997 a. 27 ss. 2164am to 2164e, 9456 (3m); 1997 a. 35, 79, 140, 252, 282, 303, 304; 1999 a. 96; 2001 a. 10; 2001 a. 16 ss. 1999m to 2001m, 4041b; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 ss. 1 to 7, 23, 24; 2005 a. 25 ss. 1231 to 1234, 2493; 2005 a. 139, 441; 2009 a. 98, 314, 320.

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

1           **138.059 Priority of certain refinance mortgages over subordinate**  
2 **mortgages. (1) DEFINITIONS.** In this section:

3           (a) "Loan" means a loan secured by a real estate mortgage on a one-family to  
4 4-family dwelling ~~which~~ <sup>that</sup> the borrower uses as his or her principal place of residence.

5           (b) "Prior mortgage" means a first lien real estate mortgage, given as security  
6 for a loan, that is recorded before a subordinate mortgage on the same property.

7           (c) "Recorded" means recorded or filed in the office of the register of deeds in  
8 the county where the real property is located.

9           (d) "Refinance mortgage" means a real estate mortgage given to secure a  
10 refinancing.

11           (e) "Refinancing" means the replacement of a loan secured by a prior mortgage  
12 with a new loan secured by a real estate mortgage and the payment in full of the debt  
13 owed under the original loan secured by the prior mortgage.

14           (f) "Subordinate mortgage" means a 2nd lien, or other junior lien, real estate  
15 mortgage given to secure a loan with an original principal amount of not more than  
16 \$150,000.

17           **(2) PRIORITY OF REFINANCE MORTGAGE.** Notwithstanding ss. 215.21 (4) and  
18 706.11 (1), a refinance mortgage retains the priority of the prior mortgage, including  
19 priority over any subordinate mortgage over which the prior mortgage had priority  
20 before the refinancing, if all of the following apply:

21           (a) The principal amount of the loan secured by the refinance mortgage does  
22 not exceed \$150,000 and does not exceed the outstanding principal balance of the  
23 loan secured by the prior mortgage plus \$5,000.

24           (b) The interest rate of the loan secured by the refinance mortgage is stated in  
25 the refinance mortgage at the time it is recorded and, if the prior mortgage secures

1 a fixed-rate loan, does not exceed the interest rate set forth in the mortgage note  
2 secured by the prior mortgage.

3 (c) The refinance mortgage is recorded and states on its first page, in bold-faced  
4 capital letters, "THIS IS A REFINANCE MORTGAGE" and contains on its first page  
5 the document number of the prior mortgage instrument or the volume and page  
6 where the prior mortgage instrument is recorded.

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

8 706.05 (2m) (a) Except as provided in par. (b), any document submitted for  
9 recording or filing that is to be indexed in the real estate records, any document  
10 submitted for recording or filing that modifies an original mortgage or land contract  
11 and any subordination agreement submitted for recording or filing shall contain the  
12 full legal description of the property to which it relates if the document or  
13 subordination agreement is intended to relate to a particular parcel of land. The  
14 legal description may be included on the document or may be attached to the  
15 document. Any such document, including a refinance mortgage, as defined in s.  
16 138.059 (1) (d), shall also contain the document number of any original mortgage or  
17 land contract that the document affects and, if given on the original mortgage or land  
18 contract, the volume and page numbers of the original mortgage or land contract.

History: 1971 c. 211; 1977 c. 217, 253, 447; 1979 c. 221; 1983 a. 492 s. 3; 1985 a. 174; 1991 a. 66, 269; 1993 a. 145, 486; 1995 a. 110, 201; 1997 a. 35; 1999 a. 96; 2005 a. 179, 441.

19 **SECTION 4. Initial applicability.**

20 (1) This act first applies to refinance mortgages recorded on the effective date  
21 of this subsection.

22 **SECTION 5. Effective date.**



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

LRB-3703/P1dn

ARG:.....

date

JLD

ATTN: Carly Karmel ✓

Please review the attached draft carefully to ensure that it is consistent with your intent.

I am uncertain whether this legislation will effect a change in law. I do not find any statute directly addressing the issue of the priority of a refinanced first lien mortgage. However, case law might be interpreted as allowing a refinanced first lien mortgage to claim the priority of the original first lien mortgage. See Home Owners' Loan Corp. v. Papara, 241 Wis. 112, 118 (Wis. 1942); Rock River Lumber Corp. v. Universal Mortg. Corp., 82 Wis. 2d 235, 243, 246 (Wis. 1978). I recommend consulting DFI, the Wisconsin Bankers Association, or the Wisconsin Credit Union League regarding industry practice and interpretation on this issue.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will add an analysis and convert it to an introducible "1" draft. ✓

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

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

LRB-3703/P1dn  
ARG:jld:rs

January 23, 2012

ATTN: Carly Karmel

Please review the attached draft carefully to ensure that it is consistent with your intent.

I am uncertain whether this legislation will effect a change in law. I do not find any statute directly addressing the issue of the priority of a refinanced first lien mortgage. However, case law might be interpreted as allowing a refinanced first lien mortgage to claim the priority of the original first lien mortgage. See *Home Owners' Loan Corp. v. Papara*, 241 Wis. 112, 118 (Wis. 1942); *Rock River Lumber Corp. v. Universal Mortg. Corp.*, 82 Wis. 2d 235, 243, 246 (Wis. 1978). I recommend consulting DFI, the Wisconsin Bankers Association, or the Wisconsin Credit Union League regarding industry practice and interpretation on this issue.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will add an analysis and convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**Gary, Aaron**

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**From:** Karmel, Carly  
**Sent:** Monday, January 30, 2012 2:55 PM  
**To:** Gary, Aaron  
**Subject:** LRB 3703

Hi Aaron,

The draft of LRB 3703 meets Rep. Berceau's approval. She would like an analysis to be provided in order to consult with the constituent who brought this issue to her attention.

Thanks!  
Carly

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**Carly Karmel**  
Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784



in 1/31



LRB-3703/PZ  
ARG:jld:rs

wanted  
by 2/2

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

LX

Regen

1 AN ACT *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the  
2 statutes; **relating to:** priority of certain refinance mortgages.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

insert ANAL

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

3 SECTION 1. 59.43 (9) (b) of the statutes is amended to read:  
4 59.43 (9) (b) In the case of refinance mortgages, as defined in s. 138.059 (1) (d),  
5 assignments, satisfactions and partial releases of mortgages, and subordination of  
6 mortgages, the index shall also contain the document number or volume and page  
7 of the original mortgage instrument whenever that original mortgage instrument is  
8 referenced on the document.

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

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

3           (a) "Loan" means a loan secured by a real estate mortgage on a one-family to  
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5           (b) "Prior mortgage" means a first lien real estate mortgage, given as security  
6 for a loan, that is recorded before a subordinate mortgage on the same property.

7           (c) "Recorded" means recorded or filed in the office of the register of deeds in  
8 the county where the real property is located.

9           (d) "Refinance mortgage" means a real estate mortgage given to secure a  
10 refinancing.

11           (e) "Refinancing" means the replacement of a loan secured by a prior mortgage  
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3 (c) The refinance mortgage is recorded and states on its first page, in bold-faced  
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7 **SECTION 3.** 706.05 (2m) (a) of the statutes is amended to read:

8 706.05 (2m) (a) Except as provided in par. (b), any document submitted for  
9 recording or filing that is to be indexed in the real estate records, any document  
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11 and any subordination agreement submitted for recording or filing shall contain the  
12 full legal description of the property to which it relates if the document or  
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14 legal description may be included on the document or may be attached to the  
15 document. Any such document, including a refinance mortgage, as defined in s.  
16 138.059 (1) (d), shall also contain the document number of any original mortgage or  
17 land contract that the document affects and, if given on the original mortgage or land  
18 contract, the volume and page numbers of the original mortgage or land contract.

19 **SECTION 4. Initial applicability.**

20 (1) This act first applies to refinance mortgages recorded on the effective date  
21 of this subsection.

22 **SECTION 5. Effective date.**

23 (1) This act takes effect on the first day of the 4th month beginning after  
24 publication.

25 (END)

1

2

**INSERT ANAL:**

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

This bill specifies that a refinance residential mortgage retains the priority of the prior (original) first-lien residential mortgage, including priority over any second-lien mortgage that is created after the original first-lien mortgage and that secures a loan of \$150,000 or less, if all of the following conditions are satisfied:

1. The principal amount of the loan secured by the refinance mortgage does not exceed \$150,000 and does not exceed the outstanding principal balance of the loan secured by the original mortgage plus \$5,000.

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

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

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

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

**Gary, Aaron**

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**From:** Karmel, Carly  
**Sent:** Monday, February 27, 2012 12:37 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB 3703

Hi Aaron,

That change sounds good to me. And, yes, we would like this be a /1 draft.

Thanks,  
Carly

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**Carly Karmel**

Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784

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**From:** Gary, Aaron  
**Sent:** Monday, February 27, 2012 10:14 AM  
**To:** Karmel, Carly  
**Subject:** RE: LRB 3703

Hi Carly,

I'm sorry that I was out of the office on Friday and didn't get back to you. I'm glad you found the .pdf.

With regard to the changes below, I reviewed the original instructions again and I probably misconstrued your constituent's initial e-mail. I don't agree with how your constituent proposes to change s. 138.059 (2) (a) but, reviewing the instructions again, agree that it should be changed to achieve the same ends. (With reference to the comment below in green, the draft is not redundant now but the proposed change would make it redundant.)

Would you be ok with changing 138.059 (2) (a) so that it eliminates the \$150,000 clause and simply states: "The principal amount of the loan secured by the refinance mortgage does not exceed the outstanding principal balance of the loan secured by the prior mortgage plus \$5,000." (No reference to the \$150,000 limit is needed in this provision because it is already covered by sub. (1) (f).)

Also, do you want this to be a /P3 draft or a /1?

Thanks. Aaron

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

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**From:** Karmel, Carly  
**Sent:** Friday, February 24, 2012 3:39 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB 3703

Hi Aaron,

After speaking with the constituent who brought this issue to Rep. Berceau's attention there are minor changes to the draft:

In section 138.059 (2)(a) it should say:

The principal amount of the loan secured by the ~~refinance~~ subordinate mortgage does not exceed \$150,000. (statement is now redundant to (1) (f)) ¶ (The refinance mortgage) ~~and~~ does not exceed the outstanding principal balance of the loan secured by the prior mortgage plus \$5,000.

Thank you for your patience in helping me understand this issue.

Carly

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**Carly Karmel**  
Legislative Assistant  
Office of Rep. Terese Berceau  
76th Assembly District  
608-266-3784

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**From:** Gary, Aaron  
**Sent:** Monday, January 30, 2012 3:18 PM  
**To:** Karmel, Carly  
**Subject:** RE: LRB 3703

OK. Did you want it redrafted as a "/P2" (preliminary), or a "/1"? Thanks. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

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**From:** Karmel, Carly  
**Sent:** Monday, January 30, 2012 2:55 PM  
**To:** Gary, Aaron  
**Subject:** LRB 3703

2/27/2012



in 2/27



LRB-3703/1/1  
ARG:jld:ph

Wanted  
by 2/29

RMK

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2011 BILL

4

Regen

1 AN ACT *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the  
2 statutes; **relating to:** priority of certain refinance mortgages.

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

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

This bill specifies that a refinance residential mortgage retains the priority of the prior (original) first-lien residential mortgage, including priority over any second-lien mortgage that is created after the original first-lien mortgage and that secures a loan of \$150,000 or less, if all of the following conditions are satisfied:

- 1. The principal amount of the loan secured by the refinance mortgage does not ~~exceed \$150,000 and does not~~ exceed the outstanding principal balance of the loan secured by the original mortgage plus \$5,000.
- 2. The interest rate of the loan secured by the refinance mortgage is stated in the refinance mortgage at the time it is recorded and, if the original mortgage secures a fixed-rate loan, does not exceed the interest rate set forth in the mortgage note secured by the original mortgage.
- 3. The refinance mortgage is recorded and contains specified information on its first page.

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

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

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

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

2           59.43 (9) (b) In the case of refinance mortgages, as defined in s. 138.059 (1) (d),  
3 assignments, satisfactions and partial releases of mortgages, and subordination of  
4 mortgages, the index shall also contain the document number or volume and page  
5 of the original mortgage instrument whenever that original mortgage instrument is  
6 referenced on the document.

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

8           **138.059 Priority of certain refinance mortgages over subordinate**  
9 **mortgages. (1) DEFINITIONS.** In this section:

10           (a) "Loan" means a loan secured by a real estate mortgage on a one-family to  
11 4-family dwelling that the borrower uses as his or her principal place of residence.

12           (b) "Prior mortgage" means a first lien real estate mortgage, given as security  
13 for a loan, that is recorded before a subordinate mortgage on the same property.

14           (c) "Recorded" means recorded or filed in the office of the register of deeds in  
15 the county where the real property is located.

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

18           (e) "Refinancing" means the replacement of a loan secured by a prior mortgage  
19 with a new loan secured by a real estate mortgage and the payment in full of the debt  
20 owed under the original loan secured by the prior mortgage.

1 (f) "Subordinate mortgage" means a 2nd lien, or other junior lien, real estate  
2 mortgage given to secure a loan with an original principal amount of not more than  
3 \$150,000.

4 (2) PRIORITY OF REFINANCE MORTGAGE. Notwithstanding ss. 215.21 (4) and  
5 706.11 (1), a refinance mortgage retains the priority of the prior mortgage, including  
6 priority over any subordinate mortgage over which the prior mortgage had priority  
7 before the refinancing, if all of the following apply:

8 (a) The principal amount of the loan secured by the refinance mortgage does  
9 not exceed \$150,000 and does not exceed the outstanding principal balance of the  
10 loan secured by the prior mortgage plus \$5,000.

11 (b) The interest rate of the loan secured by the refinance mortgage is stated in  
12 the refinance mortgage at the time it is recorded and, if the prior mortgage secures  
13 a fixed-rate loan, does not exceed the interest rate set forth in the mortgage note  
14 secured by the prior mortgage.

15 (c) The refinance mortgage is recorded and states on its first page, in bold-faced  
16 capital letters, "THIS IS A REFINANCE MORTGAGE" and contains on its first page  
17 the document number of the prior mortgage instrument or the volume and page  
18 where the prior mortgage instrument is recorded.

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

20 706.05 (2m) (a) Except as provided in par. (b), any document submitted for  
21 recording or filing that is to be indexed in the real estate records, any document  
22 submitted for recording or filing that modifies an original mortgage or land contract  
23 and any subordination agreement submitted for recording or filing shall contain the  
24 full legal description of the property to which it relates if the document or  
25 subordination agreement is intended to relate to a particular parcel of land. The

1 legal description may be included on the document or may be attached to the  
2 document. Any such document, including a refinance mortgage, as defined in s.  
3 138.059 (1) (d), shall also contain the document number of any original mortgage or  
4 land contract that the document affects and, if given on the original mortgage or land  
5 contract, the volume and page numbers of the original mortgage or land contract.

6 **SECTION 4. Initial applicability.**

7 (1) This act first applies to refinance mortgages recorded on the effective date  
8 of this subsection.

9 **SECTION 5. Effective date.**

10 (1) This act takes effect on the first day of the 4th month beginning after  
11 publication.

12 (END)



## 2011 BILL

1     **AN ACT** *to amend* 59.43 (9) (b) and 706.05 (2m) (a); and *to create* 138.059 of the  
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### *Analysis by the Legislative Reference Bureau*

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**BILL**

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

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

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**BILL**

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11 publication.

12 (END)