



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.

1 **AN ACT to create** 846.015 of the statutes; **relating to:** residential mortgage loan
2 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

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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

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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.

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

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

- 1 **SECTION 1.** 846.015 of the statutes is created to read:
- 2 **846.015 Mortgage foreclosure procedures.** (1) In this section:

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1 (a) “Borrower” means the owner of residential property who gives a mortgage
2 on the residential property to the mortgagee to provide security for repayment of a
3 residential mortgage loan made to the owner of the residential property.

4 (b) “Condominium assessments” means regular and special assessments for
5 common expenses and charges owed by a condominium owner.

6 (c) “Housing-related debt” means mortgage loan principal and interest
7 payments, property taxes, property insurance premiums, and condominium
8 assessments.

9 (d) “Mortgagee” means a person who receives a mortgage to secure payment of
10 a residential mortgage loan.

11 (e) “Mortgage negotiator” means a mortgagee or mortgage servicer who has
12 the authority to enter into negotiations regarding modifications to a residential
13 mortgage loan.

14 (f) “Mortgage servicer” means the servicing agent of a mortgagee.

15 (g) “Rate ceiling” means the lesser of the following:

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

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

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

24 (i) “Residential property” means real property on which a one-family to
25 4-family dwelling is constructed or intended to be constructed, including individual

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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:

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

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

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

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

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

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

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

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

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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

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

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

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

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

10 2. The borrower does not provide the materials required under par. (c) within
11 20 working days after receipt of the notice under sub. (4).

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

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

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1 is 38 percent or more of the borrower's gross income. If the borrower is eligible, the
2 mortgagee negotiator shall offer one or more of the following modifications to the
3 residential mortgage loan to lower the borrower's housing-related debt to less than
4 38 percent of the borrower's gross income:

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

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

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

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

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

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

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

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

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

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

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

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

21 3. If the borrower is eligible for modifications to the residential mortgage loan,
22 2 written copies of the mortgage modification agreement proposed by the mortgagee
23 negotiator with a statement telling the borrower to sign a copy of the proposal and
24 return it to the mortgagee negotiator within 10 working days after receipt of the
25 proposal.

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

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

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

11 **(9)** (a) If the mortgagee negotiator determines that the borrower is not eligible
12 for a modification to the residential mortgage loan or that none of the available
13 modifications lower the borrower's housing-related debt to less than 38 percent of
14 the borrower's gross income, the mortgagee or mortgage servicer may, not less than
15 20 working days after the statement is mailed to the borrower under sub. (8) (a) 1.,
16 commence an action to foreclose on the mortgage if all of the conditions under sub.
17 (2) are met.

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

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

