



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2635/7

PJK:.....

* LPS - check spelling.

PI
bjk
+
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
xref ✓
D-note
(in 6-7)

generat

1 AN ACT ^g; relating to: regulating foreclosure reconveyances, providing an
2 exemption from rule-making procedures, and providing a penalty.

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 prevails and obtains a foreclosure judgment, the ~~morgagor~~ ^{property owner} 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 six months to a year, depending on the type of property and whether the mortgagor will owe a deficiency, the amount by which the judgment exceeds the amount obtained at the sale. This bill addresses foreclosure reconveyances. A foreclosure reconveyance is defined as a transaction under which the mortgagor transfers title to the property in foreclosure to a third party, called a foreclosure purchaser in the bill. The foreclosure purchaser redeems the property and subsequently conveys, or promises to subsequently convey, to the mortgagor (foreclosed homeowner) an interest in the property that allows the foreclosed homeowner to remain in possession of the property, such as an interest in a land contract, a purchase agreement, an option to purchase, or a lease.

Under the bill, if a foreclosure purchaser enters into a foreclosure reconveyance, it must be by a written contract. The bill specifies what information the contract must contain and requires that duplicate copies of a completed notice of cancellation be attached to the contract. The foreclosed homeowner may cancel

(mortgagor)

one
which is

that

e the

→ the foreclosure reconveyance contract by delivering a signed and dated notice of cancellation to the foreclosure purchaser within ^{five} 5 business days after the foreclosed homeowner signs the contract. The bill prohibits any waiver of any of the foreclosure reconveyance provisions, except for the five-day right to cancel the contract if the property is to be sold at sheriff's sale within those five days and the foreclosed homeowner waives his or her right to cancel in a handwritten statement.

***NOTE: See my note after this waiver provision in the draft.

The bill contains various prohibitions and requirements that apply generally to foreclosure purchasers, including:

check A

1) Prohibiting a foreclosure purchaser from entering into a foreclosure reconveyance unless, among other things, the foreclosure purchaser verifies that the foreclosed homeowner has the ability to pay for the subsequent conveyance of the interest back to the foreclosed homeowner. *

2) Requiring a foreclosure purchaser either to ensure that title to the dwelling has been reconveyed to the foreclosed homeowner or to pay to the foreclosed homeowner consideration of at least 82 percent of the fair market value of the property within 150 days of either the eviction from the property of, or the voluntary relinquishment of possession of the property by, the foreclosed homeowner. If the foreclosure purchaser pays the foreclosed homeowner, the foreclosure purchaser must provide a detailed accounting of the basis for the payment amount on a form prescribed by the attorney general, in consultation with the secretary of commerce. *

→ 3) Prohibiting a foreclosure purchaser from entering into repurchase or lease terms, as part of the subsequent conveyance, that are unfair or commercially unreasonable and from engaging in any other unfair conduct. *

4) Prohibiting a foreclosure purchaser from acting as an advisor or consultant or in any other manner representing that the foreclosure purchaser is acting on behalf of the foreclosed homeowner. *

5) Prohibiting a foreclosure purchaser from making any other statements or engaging in any other conduct that is false, deceptive, or misleading. *

6) Prohibiting a foreclosure purchaser from taking certain actions, such as accepting from the foreclosed homeowner any instrument of conveyance of any interest in the residence in foreclosure or transferring any interest in the residence to a third party, before the time for the foreclosed homeowner to cancel the transaction has fully elapsed. *

Finally, the bill specifies penalties that apply if a foreclosure purchaser violates any of the provisions, authorizes a court to order punitive damages for a violation, and specifies that a violation shall be considered a fraud and that a foreclosed homeowner may bring an action for damages.

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

CRIME

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

1 X
SECTION 1. 227.01 (13) (rm) of the statutes is created to read:

2 ✓ 227.01 (13) (rm) Is a form prescribed by the attorney general for an accounting
3 under s. 846.40 (8) (b) 2. ✓

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

5 ✓ **846.40 Regulation of foreclosure reconveyances.** (1) DEFINITIONS. In this
6 section: ✓

7 ✓ (a) "Closing" means an in-person meeting to complete final documents incident
8 to the sale of real property or the creation of a mortgage on real property that is
9 conducted by a closing agent who is not employed by or an affiliate of any foreclosure
10 purchaser involved in the closing.

11 ✓ (b) "Foreclosed homeowner" means an owner of residential real property,
12 including a condominium, that is the primary residence of the owner and whose
13 mortgage on the real property is or was in foreclosure.

14 ✓ (c) "Foreclosure purchaser" means a person that has acted as the acquirer in
15 more than one foreclosure reconveyance during any 24-month period. "Foreclosure
16 purchaser" also includes a person that has acted in joint venture or joint enterprise
17 with one or more acquirers in more than one foreclosure reconveyance during any
18 24-month period. "Foreclosure purchaser" does not include a federal or state
19 chartered bank, savings bank, savings and loan association, or credit union. ✓

20 ✓ (d) "Foreclosure reconveyance" means a transaction involving all of the
21 following:

22 1. The transfer of title to real property by a foreclosed homeowner during a
23 foreclosure proceeding, either by a transfer of interest from the foreclosed
24 homeowner or by the creation of a mortgage or other lien or encumbrance during the

1 foreclosure process that allows the acquirer to obtain title to the property by
2 redeeming the property as a junior lienholder. ✓

→ *****NOTE:** Under Wisconsin law, a junior lienholder does not have redemption rights. A junior lienholder, upon payment of the judgment amount to the clerk of court, is subrogated to the rights of the plaintiff (financial institution). See s. 846.15. You could limit this subdivision to a transfer of title, since the creation of a mortgage or other lien or encumbrance would not allow the foreclosure purchaser to obtain title by redeeming the property. Alternatively, you could specify that the creation of a mortgage or other lien or encumbrance allows the acquirer to become subrogated to the rights of the plaintiff (instead of obtaining title to the property by redeeming the property) and then let the foreclosure action proceed as necessary for the acquirer to obtain title. Please advise on how you wish to modify this provision. ✓

Property

3 2. The subsequent conveyance, or promise of a subsequent conveyance, of an
4 interest back to the foreclosed homeowner by the acquirer or a person acting in
5 participation with the acquirer that allows the foreclosed homeowner to possess the
6 real property following the completion of the foreclosure proceeding, which interest
7 includes an interest in a land contract, purchase agreement, option to purchase, or
8 lease.

9 (e) "Primary housing expenses" means the sum of payments for regular
10 principal, interest, rent, utilities, fire and casualty insurance, real estate taxes, and
11 association dues. ✓

12 (f) "Resale" means a bona fide market sale of the property subject to the
13 foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party. ^{e 3rd}

14 (g) "Resale price" means the gross sale price of the property on resale.

15 (2) CONTRACT REQUIREMENT, FORM AND LANGUAGE. A foreclosure purchaser that
16 enters into any foreclosure reconveyance shall do so by a written contract. Every
17 contract must be written in letters of not less than 12-point boldface type, in the
18 same language principally used by the foreclosure purchaser and foreclosed
19 homeowner to negotiate the sale of the residence in foreclosure, and must be fully
20 completed, signed, and dated by the foreclosed homeowner and foreclosure

1 purchaser before the execution of any instrument of conveyance of the residence in
2 foreclosure.

3 (3) CONTRACT TERMS. (a) Every contract required by sub. (2) must contain the
4 entire agreement of the parties and must include all of the following terms:

5 1. The name, business address, and the telephone number of the foreclosure
6 purchaser.

7 2. The address of the residence in foreclosure.

8 3. The total consideration to be given by the foreclosure purchaser in connection
9 with or incident to the sale.

10 4. A complete description of the terms of payment or other consideration,
11 including any services of any nature that the foreclosure purchaser represents he or
12 she will perform for the foreclosed homeowner before or after the sale.

13 5. The time at which possession is to be transferred to the foreclosure
14 purchaser.

15 6. A complete description of the terms of any related agreement designed to
16 allow the foreclosed homeowner to remain in the home, such as a rental agreement,
17 repurchase agreement, land contract, or lease with option to purchase.

18 7. The time for determining the fair market value of the property, as provided
19 under sub. (8) (b) 2. b.

***NOTE: This was not in the Minnesota law.

20 8. A notice of cancellation as provided in sub. (5) (b).

21 9. Immediately above the statement required by sub. (5) (a), in not less than
22 14-point boldface type if the contract is printed or in capital letters if the contract
23 is typed, and completed with the name of the foreclosure purchaser, the following
24 notice:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

NOTICE REQUIRED BY WISCONSIN LAW ✓

Until your right to cancel this contract has ended, ✓ (Name of foreclosure purchaser) or anyone working for (Name of foreclosure purchaser) CANNOT ask you to sign or have you sign any deed or any other document.

(b) The contract required by this subsection survives delivery of any instrument of conveyance of the residence in foreclosure and has no effect on persons other than the parties to the contract.

(4) CONTRACT CANCELLATION. ✓ (a) In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the 5th ✓ business day following the day on which the foreclosed homeowner signs a contract that complies with subs. (2) to (6) ✓ or until 8:00 a.m. ✓ on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, ✓ written notice of cancellation to the foreclosure purchaser's address specified in the contract. ✓

****NOTE: The Minnesota law refers to "the address specified in the contract" but there are two addresses specified in the contract. I assumed the one intended was the one for the foreclosure purchaser. ✓

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form provided under sub. (5) (b). ✓

(d) Within 10 ✓ days following receipt of a notice of cancellation given in accordance with this ✓ subsection, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

a signed and dated

1 (5) NOTICE OF CANCELLATION. (a) 1. The contract must contain conspicuously
2 and in immediate proximity to the space reserved for the foreclosed homeowner's
3 signature, in not less than 14-point boldface type if the contract is printed or in
4 capital letters if the contract is typed, the following statement: "You may cancel this
5 contract for the sale of your house without any penalty or obligation at any time
6 before (date and time of day). See the attached notice of cancellation form for an
7 explanation of this right."

8 2. The foreclosure purchaser shall accurately enter the date and time of day on
9 which the cancellation right ends.

10 (b) The contract must be accompanied by a completed form in duplicate,
11 captioned "NOTICE OF CANCELLATION" in 12-point boldface type if the contract is
12 printed or in capital letters if the contract is typed, followed by a space in which the
13 foreclosure purchaser shall enter the date on which the foreclosed homeowner
14 executes the contract. This form must be attached to the contract, must be easily
15 detachable, and must contain, in not less than 10-point type if the contract is printed
16 or in capital letters if the contract is typed, the following statement:

17 NOTICE OF CANCELLATION

18 (Enter date contract signed)

19 1. You may cancel this contract for the sale of your house, without any penalty
20 or obligation, at any time before (date and time of day).

21 2. To cancel this transaction, personally deliver a signed and dated copy of this
22 cancellation notice to (name of foreclosure purchaser) at (street address of
23 foreclosure purchaser's place of business) NOT LATER THAN (date and time of
24 day).

****NOTE: The Minnesota law required the "purchaser's" name and business address. I assumed this was intended to be the "foreclosure purchaser's" name and address.

3. I hereby cancel this transaction.

(Date)

(Foreclosed homeowner's signature)

****NOTE: The Minnesota law has a space for the "seller's" signature. I assumed this should be the "foreclosed homeowner's" signature.

(c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The 5-day period under sub. (4) (a) during which the foreclosed homeowner may cancel the contract does not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this subsection.

(6) WAIVER. Any waiver of any of provisions of this section is void and unenforceable as contrary to public policy, except that a consumer may waive the 5-day right to cancel under sub. (4) (a) if the property is subject to a foreclosure sale within the 5 business days and the foreclosed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

****NOTE: Should "consumer" be "foreclosed homeowner"? Also, would the property ever be sold at a sheriff's sale? I thought the definition of "foreclosure reconveyance" required the foreclosure purchaser to redeem the property.

(7) LIABILITY. Any provision in a contract entered into on or after the effective date of this subsection [revisor inserts date], that attempts or purports to require arbitration of any dispute arising under this section is void at the option of the foreclosed homeowner.

****NOTE: I changed "owner" (from the Minnesota law) to "foreclosed homeowner" at the end of the sentence above. I assumed that "owner" and "foreclosed homeowner" were the same.

1 (8) GENERAL PROHIBITIONS AND REQUIREMENTS. (a) A foreclosure purchaser may
2 not enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
3 homeowner unless all of the following are satisfied:

4 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
5 homeowner has a reasonable ability to pay for the subsequent conveyance of an
6 interest back to the foreclosed homeowner. In the case of a lease with an option to
7 purchase, payment ability also includes the reasonable ability to make the lease
8 payments and purchase the property within the term of the option to purchase.
9 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
10 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
11 primary housing expenses and regular principal and interest payments on other
12 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
13 homeowner's monthly gross income. There is a rebuttable presumption that the
14 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
15 purchaser has not obtained documents other than a statement by the foreclosed
16 homeowner of assets, liabilities, and income.

17 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
18 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
19 or mortgage from a foreclosed homeowner.

20 3. The foreclosure purchaser obtains the written consent of the foreclosed
21 homeowner to a grant by the foreclosure purchaser of any interest in the property
22 during such times as the foreclosed homeowner maintains any interest in the
23 property.

1 4. The foreclosure purchaser complies with the requirements of the federal
2 Home Ownership Equity Protection Act, 15 USC 1639, or its implementing
3 regulations, 12 CFR 226.31 to 226.34, for any foreclosure reconveyance in which the
4 foreclosed homeowner obtains a vendee's interest in a land contract.

5 (b) A foreclosure purchaser shall do either of the following:

6 1. Ensure that title to the subject dwelling has been reconveyed to the
7 foreclosed homeowner.

8 2. Make a payment to the foreclosed homeowner such that the foreclosed
9 homeowner has received consideration in an amount of at least 82 percent of the fair
10 market value of the property within 150 days after either the eviction of, or voluntary
11 relinquishment of possession of the dwelling by, the foreclosed homeowner. The
12 foreclosure purchaser shall make a detailed accounting of the basis for the payment
13 amount, or a detailed accounting of the reasons for failure to make a payment,
14 including providing written documentation of expenses, within this 150-day period.
15 The accounting shall be on a form prescribed by the attorney general, in consultation
16 with the secretary of commerce. For purposes of this subdivision, all of the following
17 apply:

 ****NOTE: In the Minnesota law, the attorney general is to consult with the
"commissioner of commerce." I changed this to the secretary of commerce, but you could
specify the head of a different department, such as DATCP, for example, which regulates
real property rental. Do you want to change this?

18 a. There is a rebuttable presumption that an appraisal by a person licensed or
19 certified by an agency of the federal government or this state to appraise real estate
20 constitutes the fair market value of the property.

21 b. The time for determining the fair market value amount shall be specified in
22 the foreclosure reconveyance contract as either at the time of the execution of the
23 foreclosure reconveyance contract or at resale. If the contract states that the fair

1 market value shall be determined at the time of resale, the fair market value shall
 2 be the resale price if it is sold within 120 days after the eviction of, or voluntary
 3 relinquishment of the property by, the foreclosed homeowner. If the contract states
 4 that the fair market value shall be determined at the time of resale, and the resale
 5 is not completed within 120 days after the eviction of, or voluntary relinquishment
 6 of the property by, the foreclosed homeowner, the fair market value shall be
 7 determined by an appraisal conducted during this 120-day period and payment, if
 8 required, shall be made to the foreclosed homeowner, but the fair market value shall
 9 be recalculated as the resale price on resale and an additional payment amount, if
 10 appropriate based on the resale price, shall be made to the foreclosed homeowner
 11 within 15 days after resale, and a detailed accounting of the basis for the payment
 12 amount, or a detailed accounting of the reasons for failure to make additional
 13 payment, shall be made within 15 days after resale, including providing written
 14 documentation of expenses. The accounting shall be on a form prescribed by the
 15 attorney general, in consultation with the secretary of commerce.

***NOTE: Same as above NOTE regarding secretary of commerce.

~~ATTENTION THIS SUBDIVISION~~
 c. ^{STET} "Consideration" means any payment or thing of value provided to the
 foreclosed homeowner, including unpaid rent or land contract payments owed by the
 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
 reconveyance transaction, payment of money to satisfy a debt or legal obligation of
 the foreclosed homeowner, or the reasonable cost of repairs for damage to the
 dwelling caused by the foreclosed homeowner. "Consideration" does not include
 amounts imputed as a down payment or fee to the foreclosure purchaser, or a person
 acting in participation with the foreclosure purchaser, incident to a land contract,

16
 17

1 lease, or option to purchase entered into as part of the foreclosure reconveyance,
2 except for reasonable costs paid to 3rd parties necessary to complete the foreclosure
3 reconveyance.

4 (c) A foreclosure purchaser may not enter into repurchase or lease terms as part
5 of the subsequent conveyance that are unfair or commercially unreasonable, or
6 engage in any other unfair conduct.

7 (d) A foreclosure purchaser may not represent, directly or indirectly, any of the
8 following:

9 1. That the foreclosure purchaser is acting as an advisor or a consultant, or in
10 any other manner represent that the foreclosure purchaser is acting on behalf of the
11 foreclosed homeowner.

12 2. That the foreclosure purchaser has certification or licensure that the
13 foreclosure purchaser does not have, or that the foreclosure purchaser is not a
14 member of a licensed profession if that is untrue.

15 3. That the foreclosure purchaser is assisting the foreclosed homeowner to save
16 the house, or a substantially similar phrase.

17 4. That the foreclosure purchaser is assisting the foreclosed homeowner in
18 preventing a completed foreclosure if the result of the transaction is that the
19 foreclosed homeowner will not complete a redemption of the property.

20 (e) A foreclosure purchaser may not make any other statements, directly or by
21 implication, or engage in any other conduct that is false, deceptive, or misleading,
22 or that has the likelihood to cause confusion or misunderstanding, including
23 statements regarding the value of the residence in foreclosure, the amount of
24 proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract

1 term, or the foreclosed homeowner's rights or obligations incident to or arising out
2 of the foreclosure reconveyance.

3 (f) Until the time during which the foreclosed homeowner may cancel the
4 transaction has fully elapsed, a foreclosure purchaser may not do any of the
5 following:

6 1. Accept from the foreclosed homeowner an execution of, or induce the
7 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
8 residence in foreclosure.

9 2. Record or file with the register of deeds any document, including any
10 instrument of conveyance, signed by the foreclosed homeowner.

11 3. Transfer or encumber or purport to transfer or encumber any interest in the
12 residence in foreclosure to any 3rd party, provided no grant of any interest or
13 encumbrance is defeated or affected as against a bona fide purchaser or
14 encumbrance for value and without notice of a violation of this subdivision.
15 Knowledge on the part of any such person or entity that the property was residential
16 real property in foreclosure does not constitute notice of a violation of this
17 subdivision. This subdivision does not abrogate any duty of inquiry that exists as to
18 rights or interests of persons in possession of the residential real property in
19 foreclosure.

****NOTE: To my knowledge, the phrase "encumbrance for value" is not commonly
used in Wisconsin. Do you know of any other term more commonly used in this state, or
do you think "encumbrance for value" is satisfactory?

20 4. Pay the foreclosed homeowner any consideration.

21 (9) ENFORCEMENT. (a) A violation of this section shall be considered a fraud.

22 (b) A foreclosed homeowner against whom a violation of this section is
23 committed may bring an action for damages.

1 (c) A court may order punitive damages under s. 895.043 for a violation of this
2 section.

3 (d) 1. A foreclosure purchaser who violates this section by engaging in any
4 practice that would operate as a fraud or deceit upon a foreclosed homeowner may
5 be fined not more than \$50,000 or imprisoned for not more than one year in the
6 county jail or both.

7 2. In the absence of additional misconduct, a failure of the parties to complete
8 a reconveyance transaction shall not subject a foreclosure purchaser to the criminal
9 penalties under subd. 1.

10 **SECTION 3. Initial applicability.**

→ 11 (1) This act first applies to foreclosures commenced on the effective date of this
12 subsection.

actions

13 (END)

note

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

LRB-2635/Edn

PJK:.....

bjk

JLD

Date

This draft follows the Minnesota law. The Minnesota law does not seem to use defined terms consistently. I have noted in the draft where I changed terms to consistently use defined terms. However, I may have changed a term to a defined term when ~~that~~ term was not intended.

There are a number of embedded NOTES pointing out problems with the Minnesota law. Regarding the embedded NOTES, you needn't respond to an embedded NOTE if you agree with a change I've made and noted. I will just remove the NOTE from the next version of the draft if you do not respond to it.

The penalty subsection in this draft does not follow the Minnesota law exactly, which referred to other penalties in Minnesota law. The penalty subsection in this draft is greatly simplified; however, I tried to include most of the types of penalties that were included in the Minnesota law. Let me know if you want any changes.

defined
the defined

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

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

LRB-2635/P1dn
PJK:hjk&jld:rs

June 25, 2007

This draft follows the Minnesota law. The Minnesota law does not seem to use defined terms consistently. I have noted in the draft where I changed terms to consistently use defined terms. However, I may have changed a term to a defined term when the defined term was not intended.

There are a number of embedded NOTES pointing out problems with the Minnesota law. Regarding the embedded NOTES, you needn't respond to an embedded NOTE if you agree with a change I've made and noted. I will just remove the NOTE from the next version of the draft if you do not respond to it.

The penalty subsection in this draft does not exactly follow the Minnesota law, which referred to other penalties in Minnesota law. The penalty subsection in this draft is greatly simplified; however, I tried to include most of the types of penalties that were included in the Minnesota law. Let me know if you want any changes.

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

Addition to Minn. Stat. 325N.18

Subd. 6. Stay of eviction action. (a) A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay, without imposition of a bond, if a defendant makes a prima facie showing that the defendant:

(1) has (i) commenced an action concerning a foreclosure reconveyance; (ii) asserts a defense under section 504B.121 that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of sections 325N.10 to 325N.17; or (iii) asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, in connection with a foreclosure reconveyance;

(2) owned the foreclosed residence;

(3) conveyed title to the foreclosed residence to a third party upon a promise that the defendant would be allowed to occupy the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the foreclosed residence or other real property would be the subject of a foreclosure reconveyance; and

(4) since the conveyance, has continuously occupied the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest.

For purposes of this subdivision, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional two weeks to produce evidence required to make the prima facie showing.

(b) A court may award to a plaintiff a \$500 penalty upon a showing that the defendant filed a frivolous claim or asserted a frivolous defense.

(c) The automatic stay expires upon the later of:

(1) the failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosed reconveyance transaction within 90 days after the issuance of the stay; or

(2) the issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

(d) If, after the expiration of the stay or an order lifting the stay, a court finds that the defendant's claim or defense was asserted in bad faith and wholly without merit, the court may impose a sanction against the defendant of \$500 plus reasonable attorney fees.



Minnesota Office of the Revisor of Statutes

[Legislature Home](#) | [Links to the World](#) | [Help](#) | [Ac](#)

[House](#) | [Senate](#) | [Joint Departments and Commissions](#) | [Bill Search and Status](#) | [Statutes, Laws, and Rules](#)
[Minnesota Statutes Table of Chapters](#) [Chapter 504B Table of Contents](#)

504B.121, Minnesota Statutes 2006

Copyright © 2006 by the Office of Revisor of Statutes, State of Minnesota.

504B.121 TENANT MAY NOT DENY TITLE; EXCEPTION.

A tenant in possession of real property under a lawful lease may not deny the landlord's title in an action brought by the landlord to recover possession of the property. This prohibition does not apply to a tenant who, prior to entering into the lease, possessed the property under a claim of title that was adverse or hostile to that of the landlord.

History: *1999 c 199 art 1 s 5*

Please direct all comments concerning issues or legislation
to your [House Member](#) or [State Senator](#).

For Legislative Staff or for directions to the Capitol, visit the [Contact Us](#) page.

[General questions or comments.](#)

1 2. That the defendant owned the foreclosed residence.

2 3. That the defendant conveyed title to the foreclosed residence to a 3rd party
3 upon a promise that the defendant would be allowed to occupy the foreclosed
4 residence or other real property in which the foreclosure purchaser or a person acting
5 in participation with the foreclosure purchaser has an interest and that the
6 foreclosed residence or other real property would be the subject of a foreclosed
7 reconveyance.

8 4. That since the conveyance to the 3rd party, the defendant has continuously
9 occupied the foreclosed residence or other real property in which the foreclosure
10 purchaser or a person acting in participation with the foreclosure purchaser has an
11 interest.

12 (b) For purposes of par. (a), notarized affidavits are acceptable means of proof
13 to meet the defendant's burden of proof. A defendant may request, and upon a
14 showing of good cause the court may grant, up to an additional 2 weeks to produce
15 evidence to make the prima facie showing required under par. (a).

16 (c) The court may award to a plaintiff a \$500 penalty against a defendant upon
17 a showing that the defendant filed a frivolous claim or asserted a frivolous defense.

****NOTE: Is this limited to the claims and assertions under par. (a)? I took the
c Frivolous claims penalty out. § 802.05 covers this.*

18 (d) The stay under this subsection shall remain in effect for 90 days if the
19 defendant does not commence an action in a court of competent jurisdiction in
20 connection with a foreclosed reconveyance transaction within 90 days from the
21 issuance of the stay. If the defendant has commenced, or commences within 90 days
22 from the issuance of the stay, an action in connection with a foreclosed reconveyance
23 transaction, the stay shall remain in effect until the court hearing claims related to
24 the foreclosure reconveyance orders that the stay be lifted.

*renders its decision
hearing that action? &*

****NOTE: This is modified from the language of the Minnesota law, which I did not think made sense. Perhaps my interpretation of what was meant is incorrect.

****NOTE: Bob, can a court hearing one matter order the lifting of a stay that was imposed by another court in another matter? *I am not sure. It would be better if the eviction action was brought before the*

1
2
3
4

(e) If, after the expiration or lifting of the stay, the court finds that the defendant's claim or defense was asserted in bad faith and is without merit, the court may impose a monetary sanction against the defendant in the amount of \$500, plus reasonable attorney fees.

Again, s. 802.05 covers this so this par. not needed.

(END OF INSERT 14-1)

court that had the foreclosure reconveyance action, but I don't think that would work. I think "Instead", the "eviction" action should be held in abeyance by that court until the court hearing the foreclosure reconveyance action makes its decision.

LEGAL AID SOCIETY OF MILWAUKEE, INC.

521 North 8th Street
Milwaukee, Wisconsin 53233
Telephone: (414) 727-5300
Facsimile: (414) 291-5488

FACSIMILE COVER SHEET

Number of pages, including this cover page: 14

If all pages are not received, or you have any other problem with the transmission of this fax, please call _____, as soon as possible.

TO: Pam Kahler

FAX: 608 - 264-6948

FROM: Nick Toman

DATE: 7/25/07

The information in this facsimile message is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be an attorney-client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this facsimile to us by mail. Thank you.

MESSAGE:

These are the changes to the "foreclosure purchaser" section of the bill. I'll get you the "foreclosure consultant" info as soon as I can.

- Nick

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. 227.01 (13) (rm) of the statutes is created to read:

2 227.01 (13) (rm) Is a form prescribed by the attorney general for an accounting
3 under s. 846.40 (8) (b) 2.

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

5 846.40 Regulation of foreclosure reconveyances. (1) DEFINITIONS. In this
6 section:

7 (a) "Closing" means an in-person meeting to complete final documents incident
8 to the sale of real property or the creation of a mortgage on real property that is
9 conducted by a closing agent who is not employed by or an affiliate of any foreclosure

10 purchaser involved in the closing, *or employed by such an affiliate, and wh*
does not have a personal or business relationship with the foreclosure

11 (b) "Foreclosed homeowner" means an owner of residential real property, purchas
12 including a condominium, that is the primary residence of the owner and whose ^{other} ~~that~~
13 mortgage on the real property is or was in foreclosure. ^{provision of} ~~the~~
^{real estate} ~~settlement~~ ^{services}

14 (c) "Foreclosure purchaser" means a person that has acted as the acquirer in

15 ~~more than one~~ ^a foreclosure reconveyance ~~during any 24-month period.~~ "Foreclosure
16 purchaser" also includes a person that has acted in joint venture or joint enterprise

17 with one or more acquirers in ~~more than one~~ ^a foreclosure reconveyance ~~during any~~

18 ~~24-month period.~~ ¹ "Foreclosure purchaser" does not include a federal or state
19 ~~chartered bank, savings bank, savings and loan association, or credit union.~~

20 (d) "Foreclosure reconveyance" means a transaction involving all of the
21 following:

in den 1

1 1. The transfer of title to real property by a foreclosed homeowner during a
 2 foreclosure proceeding, either by a transfer of interest from the foreclosed
 3 homeowner or by the creation of a mortgage or other lien or encumbrance during the
 4 foreclosure process that allows the acquirer to obtain title to the property by
 5 redeeming the property as a junior lienholder.

***NOTE: Under Wisconsin law, a junior lienholder does not have redemption rights. A junior lienholder, upon payment of the judgment amount to the clerk of court, is subrogated to the rights of the plaintiff (financial institution). See s. 846.15. You could limit this subdivision to a transfer of title, since the creation of a mortgage or other lien or encumbrance would not allow the foreclosure purchaser to obtain title by redeeming the property. Alternatively, you could specify that the creation of a mortgage or other lien or encumbrance allows the acquirer to become subrogated to the rights of the plaintiff (instead of obtaining title to the property by redeeming the property) and then let the foreclosure action proceed as necessary for the acquirer to obtain title. Please advise on how you wish to modify this provision.

6 2. The subsequent conveyance, or promise of a subsequent conveyance, of an
 7 interest back to the foreclosed homeowner by the acquirer or a person acting in
 8 participation with the acquirer that allows the foreclosed homeowner to possess ^{either} the ~~the~~ ^{residence}
 9 real property ~~following the completion of the foreclosure proceeding,~~ ^{in foreclo} which interest ^{or other}
 10 includes an interest in a land contract, purchase agreement, option to purchase, or
 11 lease.

12 (e) "Primary housing expenses" means the sum of payments for regular
 13 principal, interest, rent, utilities, fire and casualty insurance, real estate taxes, and
 14 association dues.

15 (f) "Resale" means a bona fide market sale of the property subject to the
 16 foreclosure reconveyance by the foreclosure purchaser to an unaffiliated 3rd party.

17 (g) "Resale price" means the gross sale price of the property on resale.

Insert Aden. 2

18 (2) CONTRACT REQUIREMENT; FORM AND LANGUAGE. A foreclosure purchaser that
 19 enters into any foreclosure reconveyance shall do so by a written contract. Every
 20 contract must be written in letters of not less than 12-point boldface type, in the

1 same language principally used by the foreclosure purchaser and foreclosed
2 homeowner to negotiate the sale of the residence in foreclosure, and must be fully
3 completed, signed, and dated by the foreclosed homeowner and foreclosure
4 purchaser before the execution of any instrument of conveyance of the residence in
5 foreclosure.

6 (3) CONTRACT TERMS. (a) Every contract required by sub. (2) must contain the
7 entire agreement of the parties and must include all of the following terms:

8 1. The name, business address, and the telephone number of the foreclosure
9 purchaser.

10 2. The address of the residence in foreclosure.

11 3. The total consideration to be given by the foreclosure purchaser in connection
12 with or incident to the sale.

13 4. A complete description of the terms of payment or other consideration,
14 including any services of any nature that the foreclosure purchaser represents he or
15 she will perform for the foreclosed homeowner before or after the sale.

16 5. The time at which possession is to be transferred to the foreclosure
17 purchaser.

18 6. A complete description of the terms of any related agreement designed to
19 allow the foreclosed homeowner to remain in the home, such as a rental agreement,
20 repurchase agreement, land contract, or lease with option to purchase.

21 7. The time for determining the fair market value of the property, as provided
22 under sub. (8) (b) 2. b.

****NOTE: This was not in the Minnesota law.

23 8. A notice of cancellation as provided in sub. (5) (b).

1 9. Immediately above the statement required by sub. (5) (a), in not less than
 2 14-point boldface type if the contract is printed or in capital letters if the contract
 3 is typed, and completed with the name of the foreclosure purchaser, the following
 4 notice:

5 NOTICE REQUIRED BY WISCONSIN LAW

6 Until your right to cancel this contract has ended, (Name of foreclosure
 7 purchaser) or anyone working for (Name of foreclosure purchaser) CANNOT ask
 8 you to sign or have you sign any deed or any other document.

9 (b) The contract required by this subsection survives delivery of any
 10 instrument of conveyance of the residence in foreclosure and has no effect on persons
 11 other than the parties to the contract.

12 (4) CONTRACT CANCELLATION. (a) In addition to any other right of rescission, the
 13 foreclosed homeowner has the right to cancel any contract with a foreclosure
 14 purchaser until midnight of the 5th business day following the day on which the
 15 foreclosed homeowner signs a contract that complies with subs. (2) to (6) or until 8:00
 16 a.m. on the last day of the period during which the foreclosed homeowner has a right
 17 of redemption, whichever occurs first.

18 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means,
 19 a signed and dated written notice of cancellation ~~to the foreclosure purchaser's~~
 20 ~~address specified in the contract.~~ see #3

****NOTE: The Minnesota law refers to "the address specified in the contract" but there are two addresses specified in the contract. I assumed the one intended was the one for the foreclosure purchaser.

21 (c) A notice of cancellation given by the foreclosed homeowner need not take the
 22 particular form provided under sub. (5) (b).

1 (d) Within 10 days following receipt of a notice of cancellation given in
2 accordance with this subsection, the foreclosure purchaser shall return without
3 condition any original contract and any other documents signed by the foreclosed
4 homeowner.

5 (5) NOTICE OF CANCELLATION. (a) 1. The contract must contain conspicuously
6 and in immediate proximity to the space reserved for the foreclosed homeowner's
7 signature, in not less than 14-point boldface type if the contract is printed or in
8 capital letters if the contract is typed, the following statement: "You may cancel this
9 contract for the sale of your house without any penalty or obligation at any time
10 before (date and time of day). See the attached notice of cancellation form for an
11 explanation of this right."

12 2. The foreclosure purchaser shall accurately enter the date and time of day on
13 which the cancellation right ends.

14 (b) The contract must be accompanied by a completed form in duplicate,
15 captioned "NOTICE OF CANCELLATION" in 12-point boldface type if the contract is
16 printed or in capital letters if the contract is typed, followed by a space in which the
17 foreclosure purchaser shall enter the date on which the foreclosed homeowner
18 executes the contract. This form must be attached to the contract, must be easily
19 detachable, and must contain, in not less than 10-point type if the contract is printed
20 or in capital letters if the contract is typed, the following statement:

21 NOTICE OF CANCELLATION

22 (Enter date contract signed)

23 1. You may cancel this contract for the sale of your house, without any penalty
24 or obligation, at any time before (date and time of day).

-1 ——— 2. To cancel this transaction, personally deliver a signed and dated copy of this
 2 cancellation notice to (name of foreclosure purchaser) at (street address of
 ③ foreclosure purchaser's place of business) NOT LATER THAN (date and time of
 ④ day). (email address of foreclosure purchaser's place of business)

****NOTE: The Minnesota law required the "purchaser's" name and business address. I assumed this was intended to be the "foreclosure purchaser's" name and address.

5 3. I hereby cancel this transaction.

6 (Date)

7 (Foreclosed homeowner's signature)

****NOTE: The Minnesota law has a space for the "seller's" signature. I assumed this should be the "foreclosed homeowner's" signature.

8 (c) The foreclosure purchaser shall provide the foreclosed homeowner with a
 9 copy of the contract and the attached notice of cancellation at the time the contract
 10 is executed by all parties.

11 (d) The 5-day period under sub. (4) (a) during which the foreclosed homeowner
 12 may cancel the contract does not begin to run until all parties to the contract have
 13 executed the contract and the foreclosure purchaser has complied with this
 14 subsection.

15 (6) WAIVER. Any waiver of any of provisions of this section is void and
 16 unenforceable as contrary to public policy, except that a consumer may waive the
 17 5-day right to cancel under sub. (4) (a) if the property is subject to a foreclosure sale
 18 within the 5 business days and the foreclosed homeowner agrees to waive his or her
 19 right to cancel in a handwritten statement signed by all parties holding title to the
 20 foreclosed property.

****NOTE: Should "consumer" be "foreclosed homeowner"? Also, would the property ever be sold at a sheriff's sale? I thought the definition of "foreclosure reconveyance" required the foreclosure purchaser to redeem the property.

1 (7) LIABILITY. Any provision in a contract entered into on or after the effective
 2 date of this subsection [revisor inserts date], that attempts or purports to require
 3 arbitration of any dispute arising under this section is void at the option of the
 4 foreclosed homeowner.

****NOTE: I changed "owner" (from the Minnesota law) to "foreclosed homeowner"
 at the end of the sentence above. I assumed that "owner" and "foreclosed homeowner"
 were the same.

5 (8) GENERAL PROHIBITIONS AND REQUIREMENTS. (a) A foreclosure purchaser may
 6 not enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
 7 homeowner unless all of the following are satisfied:

8 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
 9 homeowner has a reasonable ability to pay for the subsequent conveyance of an
 10 interest back to the foreclosed homeowner. In the case of a lease with an option to
 11 purchase, payment ability also includes the reasonable ability to make the lease
 12 payments and purchase the property within the term of the option to purchase.
 13 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
 14 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
 15 primary housing expenses and regular principal and interest payments on other
 16 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
 17 homeowner's monthly gross income. There is a rebuttable presumption that the
 18 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
 19 purchaser has not obtained documents other than a statement by the foreclosed
 20 homeowner of assets, liabilities, and income.

21 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
 22 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
 23 or mortgage from a foreclosed homeowner.

1 3. The foreclosure purchaser obtains the written consent of the foreclosed
 2 homeowner to a grant by the foreclosure purchaser of any interest in the property
 3 during such times as the foreclosed homeowner maintains any interest in the
 4 property.

5 4. The foreclosure purchaser complies with the requirements ^{for disclosure, loan terms and} of the federal ^{conduct}
 6 Home Ownership Equity Protection Act, 15 USC 1639, or its implementing ⁱⁿ
 7 regulations, 12 CFR 226.31, ^{226.32,} to 226.34, for any foreclosure reconveyance in which the

8 foreclosed homeowner obtains a vendee's interest in a land contract, ^{regardless of whether}
 9 ^{the terms of the contract meet the annual percentage rate or points and}

10 (b) A foreclosure purchaser shall do either of the following: ^{Fee s requirement for}
 11 1. Ensure that title to the subject dwelling has been reconveyed to the Regulator ^{a covered loan in Code of}
 foreclosed homeowner, ^{or} ^{Title 12, sections}
 226.32 (a) and (b).

12 2. Make a payment to the foreclosed homeowner such that the foreclosed
 13 homeowner has received consideration in an amount of at least 82 percent of the fair
 14 market value of the property within 150 days after either the eviction of, or voluntary
 15 relinquishment of possession of the dwelling by, the foreclosed homeowner. The
 16 foreclosure purchaser shall make a detailed accounting of the basis for the payment
 17 amount, or a detailed accounting of the reasons for failure to make a payment,
 18 including providing written documentation of expenses, within this 150-day period.
 19 The accounting shall be on a form prescribed by the attorney general, in consultation
 20 with the secretary of commerce. For purposes of this subdivision, all of the following
 21 apply:

****NOTE: In the Minnesota law, the attorney general is to consult with the "commissioner of commerce." I changed this to the secretary of commerce, but you could specify the head of a different department, such as DATCP, for example, which regulates real property rental. Do you want to change this?

1 a. There is a rebuttable presumption that an appraisal by a person licensed or
2 certified by an agency of the federal government or this state to appraise real estate
3 constitutes the fair market value of the property.

4 b. The time for determining the fair market value amount shall be specified in
5 the foreclosure reconveyance contract as either at the time of the execution of the
6 foreclosure reconveyance contract or at resale. If the contract states that the fair
7 market value shall be determined at the time of resale, the fair market value shall
8 be the resale price if it is sold within 120 days after the eviction of, or voluntary
9 relinquishment of the property by, the foreclosed homeowner. If the contract states
10 that the fair market value shall be determined at the time of resale, and the resale
11 is not completed within 120 days after the eviction of, or voluntary relinquishment
12 of the property by, the foreclosed homeowner, the fair market value shall be
13 determined by an appraisal conducted during this 120-day period and payment, if
14 required, shall be made to the foreclosed homeowner, but the fair market value shall
15 be recalculated as the resale price on resale and an additional payment amount, if
16 appropriate based on the resale price, shall be made to the foreclosed homeowner
17 within 15 days after resale, and a detailed accounting of the basis for the payment
18 amount, or a detailed accounting of the reasons for failure to make additional
19 payment, shall be made within 15 days after resale, including providing written
20 documentation of expenses. The accounting shall be on a form prescribed by the
21 attorney general, in consultation with the secretary of commerce.

****NOTE: Same as above NOTE regarding secretary of commerce.

22 c. "Consideration" means any payment or thing of value provided to the
23 foreclosed homeowner, including unpaid rent or land contract payments owed by the
24 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the

1 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
2 reconveyance transaction, payment of money to satisfy a debt or legal obligation of
3 the foreclosed homeowner, or the reasonable cost of repairs for damage to the
4 dwelling caused by the foreclosed homeowner, ^{or a penalty imposed by a court for the filing of a frivolous claim} "Consideration" does not include ^{under} ~~under~~ ^{Section 840.40(3)}
5 amounts imputed as a down payment or fee to the foreclosure purchaser, or a person
6 acting in participation with the foreclosure purchaser, incident to a land contract,
7 lease, or option to purchase entered into as part of the foreclosure reconveyance,
8 except for reasonable costs paid to 3rd parties necessary to complete the foreclosure
9 reconveyance.

10 (c) A foreclosure purchaser may not enter into repurchase or lease terms as part
11 of the subsequent conveyance that are unfair or commercially unreasonable, or
12 engage in any other unfair conduct.

13 (d) A foreclosure purchaser may not represent, directly or indirectly, any of the
14 following:

15 1. That the foreclosure purchaser is acting as an advisor or a consultant, or in
16 any other manner represent that the foreclosure purchaser is acting on behalf of the
17 foreclosed homeowner.

18 2. That the foreclosure purchaser has certification or licensure that the
19 foreclosure purchaser does not have, or that the foreclosure purchaser is not a
20 member of a licensed profession if that is untrue.

21 3. That the foreclosure purchaser is assisting the foreclosed homeowner to save
22 the house, or a substantially similar phrase.

23 4. That the foreclosure purchaser is assisting the foreclosed homeowner in
24 preventing a completed foreclosure if the result of the transaction is that the
25 foreclosed homeowner will not complete a redemption of the property.

1 (e) A foreclosure purchaser may not make any other statements, directly or by
2 implication, or engage in any other conduct that is false, deceptive, or misleading,
3 or that has the likelihood to cause confusion or misunderstanding, including
4 statements regarding the value of the residence in foreclosure, the amount of
5 proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract
6 term, or the foreclosed homeowner's rights or obligations incident to or arising out
7 of the foreclosure reconveyance.

8 (f) Until the time during which the foreclosed homeowner may cancel the
9 transaction has fully elapsed, a foreclosure purchaser may not do any of the
10 following:

11 1. Accept from the foreclosed homeowner an execution of, or induce the
12 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
13 residence in foreclosure.

14 2. Record or file with the register of deeds any document, including any
15 instrument of conveyance, signed by the foreclosed homeowner.

16 3. Transfer or encumber or purport to transfer or encumber any interest in the
17 residence in foreclosure to any 3rd party, provided no grant of any interest or
18 encumbrance is defeated or affected as against a bona fide purchaser or
19 encumbrance for value and without notice of a violation of this subdivision.
20 Knowledge on the part of any such person or entity that the property was residential
21 real property in foreclosure does not constitute notice of a violation of this
22 subdivision. This subdivision does not abrogate any duty of inquiry that exists as to
23 rights or interests of persons in possession of the residential real property in
24 foreclosure.

****NOTE: To my knowledge, the phrase "encumbrance for value" is not commonly used in Wisconsin. Do you know of any other term more commonly used in this state, or do you think "encumbrance for value" is satisfactory?

1 4. Pay the foreclosed homeowner any consideration.

2 (9) ENFORCEMENT. (a) A violation of this section shall be considered a fraud.

3 (b) A foreclosed homeowner against whom a violation of this section is
4 committed may bring an action for damages.

5 (c) A court may order punitive damages under s. 895.043 for a violation of this
6 section.

7 (d) 1. A foreclosure purchaser who violates this section by engaging in any
8 practice that would operate as a fraud or deceit upon a foreclosed homeowner may
9 be fined not more than \$50,000 or imprisoned for not more than one year in the
10 county jail or both.

11 → INSERT EVICTION STAY SECTION
12 2. In the absence of additional misconduct, a failure of the parties to complete
13 a reconveyance transaction shall not subject a foreclosure purchaser to the criminal
14 penalties under subd. 1.

14 SECTION 3. Initial applicability.

15 (1) This act first applies to foreclosure actions commenced on the effective date
16 of this subsection.

17 (END)

Addendum

1. A foreclosure purchaser does not include: (i) a natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner, or (ii) a federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

2. (h) Residence in foreclosure. "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, contract for deed payments.
S/this be added?

3. , provided that, at a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission.

Kahler, Pam

From: Nick Toman [ntoman@lasmilwaukee.com]
Sent: Monday, July 23, 2007 2:20 PM
To: Kahler, Pam
Subject: Re: LRB 2635-Foreclosure "Rescue" Scam Bill
Attachments: Minn. Stat. 325N.18 Subd. 6_NEW.doc; ATT20047213.htm

Pam,

No problem. I'm in Milwaukee, so we'll have to talk over the phone. I've become a bit busy today and I have a meeting at four. Will you be in tomorrow? I am busy from 1-2 tomorrow, but otherwise I'm free. Does it work if I call you tomorrow morning?

Nick
Pam,

This is the addition to the Foreclosure Reconveyance Statute (.10-.18). I was wrong in that the new section is a new *subdivision* added to 325N.18, not a new numbered section.

Getting a clean copy of 325N.01-.09 is tougher than I expected. I'm giving you a link to the Minnesota Reviser's website with all the changes, but it's going to take a while to get a clean copy. I'll give a hard copy to my secretary tomorrow to start typing a clean copy, but it could take a while.

<http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1533.3.html&session=ls85>

I'll fax the rest to you within the next couple of days.

Thanks again.

Nick

Kahler, Pam

From: Nick Toman [ntoman@lasmilwaukee.com]
Sent: Monday, July 23, 2007 10:16 AM
To: Kahler, Pam; Kostelic, Jeff
Cc: Catey Doyle; tje@broydrick.com; bethany_sanchez@hotmail.com
Subject: LRB 2635-Foreclosure "Rescue" Scam Bill
Attachments: LRB_2635_Notes.doc; ATT19995076.htm

Pam,

Tim Elverman asked me to contact you directly about the bill you've drafted. First, thank you for your work on this. Second, I've attached a short memo on changes we'd like to see based on our cases and research at Legal Aid. Some are fairly superficial, but there are some substantive changes that we believe are necessary, and some major additions to the bill.

I'm also attaching an updated version of the Minnesota Statute 325N, as the Minnesota legislature found some changes necessary. I think it's important to include these changes in the Wisconsin bill, as they address some flaws in the original language of the statute.

The third attachment is my comprehensive notes on the changes between the original Minnesota statute and the revised version. The notes are probably a bit too comprehensive (and perhaps cryptic), but I'll include them just in case.

I'd like to talk about the bill sometime today, if that's convenient for you. If there's a good time, let me know.

Thanks.

Nicholas Toman
Marquette University Law School/
Legal Aid Society of Milwaukee
ntoman@lasmilwaukee.com
Office: 414 727-5329
Cell: 414 412-9248

This message was sent by the Legal Aid Society of Milwaukee Inc.
We are located at:

521 North 8th Street
Milwaukee, Wisconsin 53233

Our primary telephone number is 414-727-5300, and our primary FAX number is 414-291-5488

07/23/2007

Notes on Preliminary Draft of Act

In addition to the changes resulting from the Drafter's Notes, there are two areas of concern with the current draft of the bill to create Wis. Stat. 846.40: the omission of changes made to the model statute, Minn. Stat. 325N, and the omission of Minn. Stat. 325N.01-.09 dealing with "Foreclosure Consultants."

I. The draft does not adopt the recent changes made to Minnesota Statute 325N.

I am attaching a comprehensive survey of the changes made to the Minnesota law, including those changes made to the "foreclosure consultant" section of the statute. The main changes in the Minnesota law are:

1. M.S.A. 325N Subd. 4. / Wis. 846.40(1)(c): The definition of "Foreclosure purchaser" no longer includes a requirement that the foreclosure purchaser acquires more than one property in a 24-month period. A single reconveyance will suffice.
2. M.S.A. 325N Subd. 4. / Wis. 846.40(1)(c): An exception from the definition of "foreclosure purchaser" is made for "a natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner." It seems to be an exception for friends and family who want to help a distressed friend or relative without having to comply with the requirements of the law.
3. M.S.A. 325N.13(b) / Wis. 846.40(4)(b): Specific language allowing rescission by email was added to the "Contract Cancellation" section.
4. M.S.A. 325N.17(2) / Wis. 846.40(1)(a): The Minnesota law added language to the

definition of “closing,” prohibiting anyone with a personal or business relationship from conducting the closing. The changes make the requirements stricter.

5. M.S.A. 325N.18 Subd. 6 / Wis. N.A.: The Minnesota law now has a “Stay of eviction action” addition. Essentially, an eviction court must immediately stay the eviction action if the evicted homeowner alleges the eviction is the result of a reconveyance plan. The stay is in effect until litigation settles the reconveyance dispute.

There are a number of other small changes in language that probably don’t affect the substance of the statute.

II. Inclusion of Minn. Stat. 325N.01-.09

The Wisconsin bill doesn’t adopt the first section of 325N that deals with “foreclosure consultants.” While this part is not directly related to reconveyance scams, I worry that many Wisconsin cases would not be covered by the reconveyance statute alone.

The reconveyance statute requires that the foreclosure purchaser (1) obtains title or an interest in the property while the property is in foreclosure, and (2) conveys or promises to convey an interest back to the foreclosed homeowner. The interest conveyed back to the foreclosed homeowner includes “an interest in a land contract, purchase agreement, option to purchase, or lease.”

The problem I see is that the purchaser doesn’t always promise to reconvey an interest back. PJ, for example, rarely promises anything; in the YK case, there was *perhaps* a disputed lease, but in most PJ cases, there is simply a promise to *help* followed by an eviction. The transaction consists of vague promises to help, a power of attorney, and a conveyance to a straw

buyer. If the purchaser makes no representation about what happens to the house after she obtains title, the law will not apply. The first half of 325N covers such transactions and prohibits any power of attorney documents or conveyances. A large number of Wisconsin "rescue" scam problems would be mitigated under the "foreclosure consultant" section, but not the "reconveyance" portion of the Minnesota law.

III. Response to drafter's notes

✓ **Note 1.** Note following 846.40(1)(d)(1): It's probably best to leave the junior lienholders language out, as it doesn't apply to Wisconsin law.

✓ **Note 2.** Note following 846.40(3)(a)(7): Inclusion of time for determining fair market value in contract requirements is a good addition.

✓ **Note 3.** Note following 846.40(4)(b): The "address specified in the contract" should be the foreclosure purchaser's address, as you note.

✓ **Note 4 and 5.** Notes following 846.40(5)(2) and (3): The changes of "purchaser's" and "seller's" to "foreclosure purchaser's" and "foreclosed homeowner's," respectively is correct, but I worry that the statutory language might be confusing on a consumer disclosure form. The terms should make it clear to the foreclosed homeowner who is referenced.

"Foreclosure purchaser" is probably not going to be confusing, as it contains the word "purchaser," but the lay consumer may not immediately understand "foreclosed homeowner." Perhaps the bill should stay with the Minnesota language there?

✓ **Note 6.** Note following 846.40(6): The change of "consumer" to "foreclosed homeowner" does add consistency and is a valid change.

I believe the right to waive the five day "right to cancel" results from the foreclosure acquirer's prohibition against obtaining an interest in the property until the five day period is up. If the property is scheduled to be sold before the five day period runs, the acquirer would have to redeem the property without a security interest. Therefore, the foreclosed homeowner may waive the five day right to rescind only if the Sheriff's Sale is scheduled before that period is over.

✓ **Note 7.** Following 846.40(7), the change from "owner" to "foreclosed homeowner" is good, especially in light of the confusion as to who actually owns the home in transactions such as this.

✓ **Note 8 and 9.** Note following 846.40(8): The Minnesota law requires the AG to consult with the "commissioner of commerce." DATCP is probably the best Wisconsin department head for this section.

✓ **Note 10.** Note following 846.40(8)(f)(3): "Encumbrance for value" is not a term used in Wisconsin, but it does seem to be the broadest phrase available for the context, and it should be adopted. Any cloud of title, no matter the form, should be covered, and "encumbrance" is the only word that seems to cover all types of clouds.

HF 1209 Changes to MSA 325N.

Foreclosure Consultant Section (325N.01-.09):

.01(b)(8) “or a foreclosure purchaser as defined in section 325N. 10” from list of what foreclosure consultants do not do.

MOVED to 325N.01(b)(11) with no other changes.

“Sub 11 created instead of just tacking this at the end of (8)

.01(c)(2) Changed from “That allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding . . .” to “that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property . . .”

- Basically, real property following the completion of the foreclosure proceeding: becomes “residence in foreclosure or any other real property.”

- The change may be broader, as it would deal with liens on homes besides the foreclosed home.

324N.01(f) Changed from a residential property of one to four units in which the owner lives, “and against which there is an outstanding notice of pendency of foreclosure, recorded pursuant to section 580.032, or against which a Summons and Complaint has been served under Chapter 581” to a residential property of one to four units in which the owner lives “where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property including, but not limited to, contract for deed payments.”

- Why? It’s easier to read.
- It seems broader – there’s no statutes involved and it doesn’t turn on the procedural posture (whether a Summons has been served or a notice of pendency is filed)
- A mere late payment – delinquency – could now qualify as a residence in foreclosure
- New language isn’t limited to “K for deed payments” so any lien would qualify?

325N.03(d) Adds “The notice of cancellation must contain” to “on the first page” each of the following . . .(d)(1)-(2).

.03(d)(1) Adds “physical” before “address”

-Why? E-mail addresses and e-mail cancellations are added and discussed later on.

- Discusses P.O. boxes – they can only be used as a mailing address for the notice of cancellation if another physical address to “which the notice could be delivered by a method other than mail” is included.
- An e-mail address may be included.

325N.03(e)

- Adds methods of delivery allowed for the cancellation of the K.
- ANY means will suffice

- by mail, cancellation is effective upon mailing
- by e-mail, cancellation is effective upon transmission.
- The specific wording of the notice is changed to allow e-mail cancellation.

325N.04(2)

To the section limiting interest to 8%, the bill adds “Such a loan MUST NOT, as provided in clause (3), be secured by the residence in foreclosure or any other real or personal property.”

Why? Maybe there was ambiguity between whether the clause (2) interest rate limit and the clause (3) security invalidation applied to the same loan or created two types of loans?

Foreclosure Reconveyance Section (325N.10-):

325N.10 Subdivision 3 (“Foreclosure reconveyance” def.)

Sub 3(2) “To possess the real property following the completion of the foreclosure proceeding” changed to “possess either the residence in foreclosure or other real property.”

- Same as change in 325N.01(c)(2) definition of “foreclosure conveyance.”
- Presumably it clarifies that this law applies to deals that promise the foreclosed homeowner will own either the foreclosed home or another home or property at the deals completion. In other words, a deal is a foreclosure reconveyance deal even if the “reconveyed property” is not the original foreclosed property.

Subdivision 4 (“Foreclosure purchaser” def)

- Removes the time restraint. The original wording required the person to act “as the acquirer in more than one foreclosure reconveyance during any 24-month period.” The changed law would merely require “The person . . . has acted as the acquirer in a foreclosure reconveyance.”
- The bill would exempt from the definition of a “foreclosure purchase” a (1) natural person, who (2) has a prior personal relationship with the foreclosed homeowner, and (3) can show s/he is not in the business of foreclosure purchasing.
 - This limitation is probably for family members trying to help each other out. The burden of proving that s/he is not in the “business” is on the acquirer, though. I’m curious how this would work.

Subdivision? (“Residence in foreclosure”)

- This is exactly the same definition in 325N.01(f).
- The original law did not define “residence in foreclosure” in 325N.10. The subdivision is new.

325N.13 Contract Cancellation

- The changes parallel the changes to 325N.03(d) in addressing the insufficiency of a PO box and the sufficiency of an e-mail cancellation.
- The changes are reflected in the required specific wording of the attached notice of cancellation form.

325N.17 Prohibited Practices

.17(1)(2) A closing is required for any deed transfer or mortgage.

- Under the original wording, the closing agent must not be “employed by or an affiliate of the foreclosure purchaser.”
- The bill would retain all the language and add (after “purchaser”), or employed by such an affiliate, and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services.”
- In short, the bill expands the guards on the closing agents impartiality.

.17(1)(4) HOEPA Requirements

- The original required compliance with the “Code of Federal Regulations, Title 12, Sections 226.31 to 226.34”. The amended statute would require compliance with “sections 226.31, 226.32 and 226.34.”

Section 226.33 is eliminated.
Why?

- “Requirements of the Federal” HOEPA changed to “Requirements for Disclosure, loan terms, and conduct in the Federal” HOEPA.
- Language would be added to read that the loan must be HOEPA compliant “regardless of whether the terms of the contract for deed meet” the specific requirements of a covered loan under the HOEPA statutes.

.17(b)(2)(iii)

- This deals with the maximum value the foreclosure purchaser can take away from the transaction and how it’s calculated. The limit is still 18% of the fair market value of the home. (iii) adds penalties “imposed by the court for the filing of a frivolous claim under section 325N.18 subdivision 6.” To the calculation of the consideration from the purchaser to the homeowner.
- Subdivision 6 is new.

325N.18 Subd.6: Stay of eviction action

- This is a new subdivision resulting from the bill.
- It allows the foreclosed to get an automatic stay of eviction in eviction court if the defendant in eviction can show a prima facie case that:
 - 1) S/he has
 - Commenced an action concerning a foreclosure reconveyance
 - Asserts a defense under section 504(b).121 that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of sections 325N.10 to 325N.17, or
 - Asserts an affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in connection with a foreclosure reconveyance.
 - 2) owned the foreclosed residence
 - 3) conveyed title in a way that would qualify as a reconveyance and
 - 4) has continuously occupied the residence since the conveyance.
- Subd. 6 allows for the stay to be valid for
 - 1) 90 days if the defendant in eviction fails to commence an action in that time, or
 - 2) when the court hearing the reconveyance action lifts the stay of eviction.
- The defendant in eviction may be subject to a \$500 fine and attorneys’ fees for bad faith of frivolous claims.

Z:\Student Interns\Nick\HF 1209-0720-2007.doc

(1) **325N.01. Definitions**

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale;
- (2) obtain any forbearance from any beneficiary or mortgagee;
- (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- (4) obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or
- (8) save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

- (1) a person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney-at-law;
- (2) a person licensed as a debt prorater under sections 332.12 to 332.29, when the person is acting as a debt prorater as defined in these sections;
- (3) a person licensed as a real estate broker or salesperson under chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;
- (4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;
- (5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;
- (6) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;
- (7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or

entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license;

(9) a nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers;

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service; and

(11) a foreclosure purchaser as defined in section 325N.10

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) contacting creditors on behalf of an owner of a residence in foreclosure;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to section 580.30;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

- (f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as his or her principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property including, but not limited to, contract for deed payments.
- (g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.
- (h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

(2) 325N.02. Rescission of foreclosure consultant contract

- (a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 325N.03.
- (b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.
- (c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
- (d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

(3) 325N.03. Contract

- (a) Every contract must be in writing and must fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.
- (b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working
for him or her CANNOT:

- (1) Take any money from you or ask you
for money until (Name)
has completely finished doing everything
he or she said he or she would do; and
- (2) Ask you to sign or have you sign any
lien, mortgage, or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and physical address of the foreclosure consultant to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by another method other than mail. An e-mail address may be included, in addition to the physical address; and
- (2) the date the owner signed the contract.

(e) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least 10-point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation to

(Name of foreclosure consultant)

at

(Physical address of foreclosure consultant's place of business)

(E-mail address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF

(Date)

I hereby cancel this transaction

(Date)

.....

(Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

(4)

325N.04. Violations

It is a violation for a foreclosure consultant to:

- (1) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;
- (2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner. Such a loan must not, as provided in clause (3), be secured by the residence in foreclosure or any other real or personal property;
- (3) take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;
- (4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;
- (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;
- (6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or
- (7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

(5)

325N.05. Waiver not allowed

Any waiver by an owner of the provisions of sections 325N.01 to 325N.09 is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of sections 325N.01 to 325N.09.

(6) **325N.06. Remedies**

(a) A violation of sections 325N.01 to 325N.09 is considered to be a violation of section 325F.69, and all remedies of section 8.31 are available for such an action. A private cause of action under section 8.31 by a foreclosed homeowner is in the public interest. An owner may bring an action against a foreclosure consultant for any violation of sections 325N.01 to 325N.09. Judgment must be entered for actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation.

(c) The court may award exemplary damages up to 1- 1/2 times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of section 325N.04, clause (1), (2), or (4), and the foreclosure consultant's conduct was in bad faith.

(d) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.01 to 325N.09, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

(7) **325N.07. Penalty**

Any person who commits any violation described in section 325N.04 may, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year or both. Prosecution or conviction for any violation described in section 325N.04 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

(8) **325N.08. Provisions severable**

If any provision of sections 325N.01 to 325N.09 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 325N.01 to 325N.09 remains valid.

(9) **325N.09. Liability**

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.01 to 325N.09 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

Kahler, Pam

From: Gary, Aaron
Sent: Thursday, August 09, 2007 1:55 PM
To: Kahler, Pam
Subject: RE: Financial institutions

It sounds like the closest thing in WI would be "loan originator" and "mortgage banker" as defined in s. 224.71 (1r) and (3). They are "registered" under s. 224.72.

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

From: Kahler, Pam
Sent: Thursday, August 09, 2007 1:41 PM
To: Gary, Aaron
Subject: RE: Financial institutions

Aaron - one other question. Is there anything comparable under our stats. that you know of to "a person licensed as a residential mortgage originator or servicer"?

From: Gary, Aaron
Sent: Thursday, August 09, 2007 10:50 AM
To: Kahler, Pam
Subject: RE: Financial institutions

Hi Pam,

Mostly this language tracks what is often referred to "generically" as a "financial institution" under Wis law. There are a number of definitions - for example, 54.854 (7), 69.30 (1) (b), 214.01 (1) (jn). I prefer the definition in s. 214.01 (1) (jn).

If you say "any financial institution, as defined in s. 214.01 (1) (jn), or lender licensed under s. 138.09", I think that should cover it.

Aaron

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

From: Kahler, Pam
Sent: Thursday, August 09, 2007 10:37 AM
To: Gary, Aaron
Subject: Financial institutions

Hi, Aaron:

This is from that Minnesota law you made an insert for. I need translation. Would you make any changes to this for our statutes: "any person or entity doing business under any law of this state, or of the United States, relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions"? Thanks!

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682

P(c) The court shall award

Commenced for a violation of this section

1 (6) REMEDIES. (a) A violation of this section is considered to be a violation of
 2 ~~section 325F.69~~ *§ 100.18, 100.18 under § 100.18 (ii)* and all remedies of ~~section 8.31~~ *in* are available for such an action. ~~A~~
 3 private cause of action under section 8.31 by a foreclosed homeowner is in the public
 4 interest. An owner may bring an action against a foreclosure consultant for any
 5 violation of this section. Judgment must be entered for actual damages, reasonable
 6 attorney fees and costs, and appropriate equitable relief. *if the plaintiff prevails in an action under this subsection*

7 ~~(e)~~ (b) The rights and remedies provided in par. (a) are cumulative to, and not a
 8 limitation of, any other rights and remedies provided by law. Any action brought
 9 under this subsection ~~must~~ *shall* be commenced within four years ~~from~~ *9 after* the date of the
 10 alleged violation. *or be barred.*

11 *no P* (c) The court may award exemplary damages up to 1-1/2 times the
 12 compensation charged by the foreclosure consultant if the court finds that the
 13 foreclosure consultant violated sub. (4) (a), (b), or (d), and the foreclosure consultant's
 14 conduct was in bad faith.

15 *cb1* (d) Notwithstanding any other provision of this subsection, ~~no~~ *court* action may be
 16 brought ~~on the basis of~~ *for* a violation of this section, except by an owner against whom
 17 the violation was committed or by the attorney general. ~~This limitation does not~~
 18 ~~apply to administrative action by the secretary of agriculture, trade and consumer~~ *P(d)*
 19 protection. *may pursue administrative action for a violation of this section*

20 (7) PENALTY. Any person who commits a violation described in sub. (4) may,
 21 upon conviction, be fined not more than \$10,000 or imprisoned not more than one
 22 year or both. Prosecution or conviction for any violation described in sub. (4) will not
 23 bar prosecution or conviction for any other offenses. These penalties are cumulative
 24 to any other remedies or penalties provided by law.