



State of Wisconsin
2007 - 2008 LEGISLATURE

Inserts

LPS - Please check spelling.

LRB-2635/P1

PJK:bjk&jld:rs

stays

rm is run

RPN

P2

✓ PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

(in 8-23)

regenerate ←
↓

and foreclosure consultants

staying certain eviction actions ↑

1 AN ACT *to create* 227.01 (13) (rm) and 846.40 of the statutes; **relating to:**
* 2 regulating foreclosure reconveyances, providing an exemption from
3 rule-making procedures, and providing a penalty.

* Jus A-1 →

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 property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after six months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

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 the information that

by any means

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 the foreclosure reconveyance contract by delivering a signed and dated notice of cancellation to the foreclosure purchaser within five 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:

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.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

agriculture, trade and consumer protection

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Insert A-2

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.

Insert 3-3

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.

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:

xxxx NOTE: ^{AA} IS this how you want the subdivision above to read?

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 the
9 real property following the completion of the foreclosure proceeding, which interest
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.

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

Insert 4-17

Insert 4-9

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.

****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).

SECTION 2

notice of

you may mail or otherwise

or physical

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).

***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)

Seller's

***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.

foreclosed homeowner

***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 of the federal
6 Home Ownership Equity Protection Act, 15 USC 1639, or its implementing
7 regulations, 12 CFR 226.31 ^{or 226.32 and} 226.34, for any foreclosure reconveyance in which the
8 foreclosed homeowner obtains a vendee's interest in a land contract. Insert 10-5

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

10 1. Ensure that title to the subject dwelling has been reconveyed to the
11 foreclosed homeowner.

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?

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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.

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* ******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. "Consideration" does not include
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.

SECTION 2

Insert 14-1

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

(B) 10

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 2. In the absence of additional misconduct, a failure of the parties to complete
12 a reconveyance transaction shall not subject a foreclosure purchaser to the criminal
13 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) ✓

Insert 14-13

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2635/P2ins

PJK:.....

Lbjk

INSERT A-1 ✓

(This is still a work in progress. Because of numerous questions resulting from differences between Minnesota law and Wisconsin law, the analysis for this version of the draft does not address foreclosure consultants.)

(END OF INSERT A-1) ✓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2635/P2ins
PJK:bjk&jld:rs

stays

INSERT A-2 ✓

no ft The bill also provides that a court must grant a stay in an eviction action if the property was the subject of a foreclosure reconveyance and the defendant was the owner of the property, has continuously occupied the property since the conveyance, and has either commenced an action concerning the foreclosure reconveyance or asserts fraud or other deceptive practices in connection with the foreclosure reconveyance. The stay continues for 90 days if the defendant does not commence an action concerning the foreclosure reconveyance within 90 days or until there is a final decision in the action if an action already has been commenced or is commenced within 90 days.

(END OF INSERT A-2) ✓

INSERT 3-3 ✓

1 SECTION 1. 799.40 (4) of the statutes is renumbered 799.40 (4) (a). ✓

2 SECTION 2. 799.40 (4) (b) of the statutes is created to read:

3 ✓ 799.40 (4) (b) The court shall stay the proceeding in a civil action of eviction
4 against a foreclosed homeowner, as defined in s. 846.40 (1) (b), under the
5 circumstances and as provided in s. 846.40 (9).

(END OF INSERT 3-3) ✓

INSERT 3-9 ✓

6 → no ft, or employed by an affiliate of, ✓

(END OF INSERT 3-9) ✓

INSERT 3-10 ✓

7 → no ft, and who does not have a business or personal relationship with any foreclosure
8 purchaser involved in the closing other than the provision of real estate settlement
9 services ✓

(END OF INSERT 3-10) ✓

INSERT 3-18 ✓



Ins 3-18

1 *not* any of the following:

2 *4* 1. A natural person who shows that he or she is not in the business of
3 foreclosure purchasing and who has a prior personal relationship with the foreclosed
4 homeowner.

5 *4* 2. A

(END OF INSERT 3-18)

INSERT 4-9

6 *not* either the residence in foreclosure or other real property

(END OF INSERT 4-9)

INSERT 4-17

7 *4* (h) "Residence in foreclosure" means residential real property that consists of
8 one to 4 family dwelling units, one of which the owner occupies as the owner's
9 principal place of residence, and with respect to which there is a delinquency or
10 default on any loan payment or debt secured by or attached to the residential real
11 property, including land contract payments.

units

real property

(END OF INSERT 4-17)

INSERT 6-20

12 *not* The contract and notice of cancellation must contain a street or physical
13 address to which notice of cancellation may be mailed or otherwise delivered. A post
14 office box may be designated for delivery by mail only if it is accompanied by a street
15 or physical address at which the notice may be delivered by a method other than mail.
16 An e-mail address may be provided in addition to the street or physical address. If

*Insert 6-20
↓
continued*

ins 6-20 contd ↙

1 cancellation is mailed, delivery is effective upon deposit in the U.S. mail. If
2 cancellation is sent by e-mail, delivery is effective upon transmission. ✓

(END OF INSERT 6-20) ✓

INSERT 8-2 ✓

not
3 , or you may e-mail a notice of cancellation, ✓

(END OF INSERT 8-2) ✓

INSERT 8-3 ✓

not
4 , or (e-mail address of purchaser's place of business) ✓

(END OF INSERT 8-3) ✓

INSERT 10-5 ✓

not
5 for disclosure, loan terms, and conduct under ✓

(END OF INSERT 10-5) ✓

INSERT 10-8 ✓

not
6 , regardless of whether the terms of the land contract meet the annual
7 percentage rate or points and fees requirements for a covered loan under 12 CFR
8 226.32 (a) and (b) ✓

(END OF INSERT 10-8) ✓

INSERT 12-4 ✓

not
9 , or a penalty imposed by a court for the filing of a frivolous claim in an eviction
10 action under sub. (9) ✓

(END OF INSERT 12-4) ✓

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INSERT 14-1

1802

1 (9) STAY OF PROCEEDINGS IN EVICTION ACTIONS. (a) A court hearing an eviction
2 action against a foreclosed homeowner shall stay the proceedings, without the
3 imposition of a bond, if a defendant makes a prima facie showing of all of the
4 following:

5 1. That any of the following apply to the defendant:

6 a. The defendant has commenced an action concerning a foreclosure
7 reconveyance.

8 b. The defendant asserts (a defense under Minnesota law s. 504B.121) that the
9 property that is the subject of the eviction action is also the subject of a foreclosure
10 reconveyance that is in violation of this section.

****NOTE: I don't think Wisconsin has anything comparable to Minnesota law s.
504B.121. How do you want to modify this provision?

11 c. The defendant asserts, in connection with a foreclosure reconveyance, a
12 claim of affirmative defense of fraud, false pretense, false promise,
13 misrepresentation, misleading statement, or deceptive practice.

****NOTE: Please compare this subdivision with the comparable provision in the
Minnesota law. Do you want to make any changes? I'm not sure the Minnesota law is
drafted properly.

14 2. That the defendant owned the foreclosed residence.

****NOTE: There is no definition for "foreclosed residence." Do you think it is
self-explanatory or should the reference be to the "property that is the subject of the
eviction action"?

15 3. That the defendant conveyed title to the foreclosed residence to a 3rd party
16 upon a promise that the defendant would be allowed to occupy the foreclosed
17 residence or other real property in which the foreclosure purchaser or a person acting
18 in participation with the foreclosure purchaser has an interest and that the

continued

Ins 14-1 cont'd 2002

1 foreclosed residence or other real property would be the subject of a foreclosure
2 reconveyance. ✓

****NOTE: There is no definition for "foreclosed residence." Do you think it is
self-explanatory or should the reference be to the "property that is the subject of the
eviction action"? ✓

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

****NOTE: There is no definition for "foreclosed residence." Do you think it is
self-explanatory or should the reference be to the "property that is the subject of the
eviction action"? ✓

7 (b) For purposes of par. (a), notarized affidavits are acceptable means of proof
8 for meeting the defendant's burden of proof. A defendant may request, and upon a
9 showing of good cause the court may grant, up to an additional 2 weeks to produce
10 evidence to make the prima facie showing required under par. (a). ✓

11 (c) The stay under this subsection shall remain in effect for 90 days if the
12 defendant does not commence an action in connection with a foreclosed reconveyance
13 transaction within 90 days from the issuance of the stay. If the defendant has
14 commenced, or commences within 90 days from the issuance of the stay, an action in
15 connection with a foreclosed reconveyance transaction, the stay shall remain in
16 effect until the court hearing the action related to the foreclosure reconveyance
17 renders a final decision in the matter. ✓

****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. In
addition, I removed the language about another court ordering that the stay be lifted, and
changed it to the other court rendering a final decision. I don't think one circuit court has
jurisdiction to lift a stay ordered by another circuit court. ✓

(END OF INSERT 14-1) ✓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2635/P2ins

PJK:.....

bjk

INSERT 14-13

10/10

SECTION 846.45 of the statutes is created to read:

846.45 Regulation of foreclosure consultants. (1) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Contract" means an agreement, or any term in an agreement, between a foreclosure consultant and an owner for the rendition of any service.

(b) 1. Except as provided in subd. 2., "foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, representation, or offer to an owner to perform for compensation, or who for compensation performs, any service that the person in any manner represents will in any manner do any of the following:

a. Stop or postpone the foreclosure sale.

b. Obtain any forbearance from a beneficiary or mortgagee.

c. Assist the owner to exercise the right of reinstatement provided in

(Minnesota law section 580.30).

****NOTE: Is the "right of reinstatement" comparable to anything in Wisconsin law?

d. Obtain an extension of the period within which the owner may reinstate the owner's obligation.

****NOTE: Is "reinstatement" comparable to anything in Wisconsin law?

e. Obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage.

****NOTE: Should this be "the residence in foreclosure"?

f. Assist the owner in foreclosure or loan default to obtain a loan or advance of funds.

****NOTE: Since "owner" is a defined term and is used in the (intro.) of this paragraph, do we need to include "in foreclosure or loan default"?

↓ continued

Insert 14-13 2 of 10

1 g. Avoid or ameliorate the impairment of the owner's credit resulting from the
2 recording of a notice of default or the conduct of a foreclosure sale.

***NOTE: Do we record a notice of default in Wisconsin?

3 h. Save the owner's residence from foreclosure.

4 2. "Foreclosure consultant" does not include any of the following:

5 a. A person licensed to practice law in this state when the person renders
6 service in the course of his or her practice as an attorney at law.

7 b. A person licensed as a debt prorater under (Minnesota law sections 332.12
8 to 332.29) when the person is acting as a debt prorater as defined in these sections.

***NOTE: Is there anything comparable to a debt prorater in Wisconsin law?

9 c. A person licensed as a real estate broker or salesperson under ch. 452 when
10 the person engages in acts for which licensure under that chapter is required, unless
11 the person is engaged in offering services designed to, or purportedly designed to,
12 enable the owner to retain possession of the residence in foreclosure.

13 d. A person certified or licensed to practice as a certified public accountant
14 under ch. 442 when the person is acting in any capacity for which the person is
15 certified or licensed under that chapter.

16 e. A person, or the person's authorized agent, acting under the express
17 authority or written approval of the Department of Housing and Urban Development
18 or other department or agency of the United States or this state to provide services.

19 f. A person who holds or is owed an obligation secured by a lien on any residence
20 in foreclosure when the person performs services in connection with this obligation
21 or lien if the obligation or lien did not arise as the result of or as part of a proposed
22 foreclosure reconveyance.

↓ continued

Insert 14-13 30710

1 g. A person or entity doing business under any law of this state, or of the United
 2 States, relating to a financial institution, as defined in s. 214.01 (1) (jn), lender
 3 licensed under s. 138.09, or insurance company; or a mortgagee that is a United
 4 States Department of Housing and Urban Development approved mortgagee; or a
 5 subsidiary or affiliate of these persons or entities, or an agent or employee of these
 6 persons or entities, while engaged in the business of these persons or entities.

****NOTE: Is the punctuation correct for the proper grouping of the above entities?

7 h. A person registered under s. 224.72 as a mortgage banker, loan originator,
 8 or mortgage broker, when acting under the authority of that registration.

****NOTE: Are the persons specified above equivalent to "residential mortgage originator or servicer" under Minnesota law?

9 i. A private nonprofit agency or organization that offers counseling or advice
 10 to owners of homes in foreclosure or loan default if the agency or organization does
 11 not contract for services with for-profit lenders or foreclosure purchasers.

****NOTE: Should "home in foreclosure" be changed to "residence in foreclosure"?

12 j. A judgment creditor of the owner, to the extent that the judgment creditor's
 13 claim accrued prior to the personal service of the foreclosure notice required by
 14 (Minnesota law section 580.03), but excluding a person who purchased the claim
 15 after such personal service.

* ****NOTE: Does Wisconsin law have provision for purchasing claims? What do you
 want to use for the event prior to which the claim must have accrued (i.e., instead of
 "personal service of the foreclosure notice")? Recording of the lis pendens? Service of the
 summons and complaint?

16 k. A foreclosure purchaser.

17 (c) "Foreclosure purchaser" has the meaning given in s. 846.40 (1) (c).

18 (d) "Foreclosure reconveyance" has the meaning given in s. 846.40 (1) (d).

19 (e) "Owner" means the record owner of the residence in foreclosure at the time

20 the lis pendens was recorded, or the summons and complaint were served.

↓ continued

Insert 14-13 4810

****NOTE: I changed this definition so that it relates to the "residence in foreclosure," since that is a defined term, instead of to the "residential real property in foreclosure."

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

3 (g) "Residence in foreclosure" has the meaning given in s. 846.40 (1) (h).

4 (h) "Service" includes any of the following:

5 1. Debt, budget, or financial counseling of any type.

6 2. Receiving money for the purpose of distributing it to creditors in payment
7 or partial payment of any obligation secured by a lien on a residence in foreclosure.

8 3. Contacting creditors on behalf of an owner.

****NOTE: Since "owner" is a defined term, I removed "of a residence in foreclosure."

9 4. Arranging or attempting to arrange for an extension of the period within
10 which the owner may cure the owner's default and reinstate his or her obligation
11 pursuant to (Minnesota law section 580.30).

****NOTE: How do you want this changed? Is there anything comparable in Wisconsin law to "reinstating the obligation"? I removed "of a residence in foreclosure" since "owner" is a defined term.

12 5. Arranging or attempting to arrange for a delay or postponement of the time
13 of sale of the residence in foreclosure.

14 6. Advising the filing of any document, or assisting in any manner in the
15 preparation of any document for filing, with a bankruptcy court.

16 7. Giving any advice, explanation, or instruction to an owner that in any
17 manner relates to curing a default in or reinstating an obligation secured by a lien
18 on the residence in foreclosure, the full satisfaction of that obligation, or the
19 postponement or avoidance of a sale of a residence in foreclosure, under a power of
20 sale contained in any mortgage.

****NOTE: Since "owner" is a defined term, I removed "of a residence in foreclosure."

↓ continued

Insert 14-13 5 of 10

1 (2) CANCELLATION OF FORECLOSURE CONSULTANT CONTRACT. (a) In addition to any
2 other right under law to rescind a contract, an owner has the right to cancel a contract
3 until midnight of the 3rd business day after the day on which the owner signs a
4 contract that complies with sub. (3).

5 (b) 1. Cancellation occurs when the owner delivers, by any means, written
6 notice of cancellation to the foreclosure consultant at the foreclosure consultant's
7 address specified in the contract.

8 2. If notice of cancellation is given by mail, cancellation is effective when the
9 notice is deposited in the U.S. mail, properly addressed with postage prepaid. If
10 notice is given by e-mail, cancellation is effective upon transmission.

11 (c) Notice of cancellation given by the owner need not take the particular form
12 as provided with the contract under sub. (3) (e). However expressed, notice is
13 effective if it indicates the intention of the owner not to be bound by the contract.

14 (3) CONTRACT. (a) Every contract must be in writing and must fully disclose
15 the exact nature of the foreclosure consultant's services and the total amount and
16 terms of compensation.

17 (b) The following notice, printed in not less than 14-point boldface type and
18 completed with the name of the foreclosure consultant, must be printed immediately
19 above the statement required by par. (c):

20 NOTICE REQUIRED BY WISCONSIN LAW

21 (name of foreclosure consultant) or anyone working for him or
22 her CANNOT do any of the following:

23 1. Take any money from you or ask you for money until (name of
24 foreclosure consultant) has completely finished doing everything he or she said he
25 or she would do.

↓ continued

Insert 14-13

60210

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, in not less than 10-point boldface type, the following statement: "You, the owner, may cancel this transaction at any time prior to midnight of the 3rd 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 that is no smaller than that generally used in the body of the document, both of the following:

***NOTE: Which "notice of cancellation" is being referred to here? Is it the notice given by the owner under sub. (2) or the notice that accompanies the contract under par. (e)? Subsection (3) (c) seems to say that the notice given by the owner only needs to indicate the intention not to be bound, while this paragraph provides a requirement for what the notice must contain. How do you want to harmonize these provisions?

1. The name and street or 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 street or physical address at which the notice may be delivered by a method other than mail. An e-mail address may be included in addition to the street or physical address.

2. The date the owner signed the contract.

(e) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION." This form must be attached to the contract, must be easily detachable, and must contain, in not less than 10-point type and written in the same language as used in the contract, the following statement:



continued

Insert 14-13

70710

****NOTE: I have removed the first two sentences of this paragraph in the Minnesota law because they were redundant. Subsection (2) addresses cancellation and when it is effective. ✓

1 NOTICE OF CANCELLATION

2 (Enter date of transaction)

3 1. You may cancel this transaction, without any penalty or obligation, within
4 3 business days from the above date. ✓

5 2. To cancel this transaction, you may either (1) mail or otherwise deliver a
6 signed and dated copy of this notice of cancellation or any other written notice of
7 cancellation, or (2) e-mail a notice of cancellation to (name of foreclosure
8 consultant) at (street or physical address of foreclosure consultant's place of
9 business) or (e-mail address of foreclosure consultant's place of business) NOT
10 LATER THAN MIDNIGHT OF (date). ✓

11 3. I hereby cancel this transaction. ✓

12 (Date)

13 (Owner's signature)

****NOTE: Should all of the above references to "transaction" be to "contract" instead? ✓

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

17 (g) The 3 business days during which the owner may cancel the contract shall
18 not begin to run until the foreclosure consultant has complied with this subsection. ✓

19 (4) VIOLATIONS. It is a violation of this section for a foreclosure consultant to
20 do any of the following: ✓

****NOTE: I specified that the following actions are a violation of this section. Is that accurate? If not, what are they a violation of? ✓



continued

Insert 14-13 80710

- 1 (a) Claim, demand, charge, collect, or receive any compensation until after the
- 2 foreclosure consultant has fully performed each and every service the foreclosure
- 3 consultant contracted to perform or represented that he or she would perform.
- 4 (b) Claim, demand, charge, collect, or receive any fee, interest, or any other
- 5 compensation for any reason that exceeds 8 percent per year of the amount of any
- 6 loan that the foreclosure consultant may make to the owner. Any loan may not, as
- 7 provided in par. (c), be secured by the residence in foreclosure or any other real or
- 8 personal property.
- 9 (c) Take a wage assignment, a lien of any type on real or personal property, or
- 10 any other security to secure the payment of compensation. Any security taken to
- 11 secure the payment of compensation is void and unenforceable.
- 12 (d) Receive any consideration from any 3rd party in connection with services
- 13 rendered to an owner unless the consideration is first fully disclosed to the owner.
- 14 (e) Acquire any interest, directly or indirectly or by means of a subsidiary or
- 15 affiliate, in a residence in foreclosure from an owner with whom the foreclosure
- 16 consultant has contracted.
- 17 (f) Take any power of attorney from an owner for any purpose, except to inspect
- 18 documents as provided by law.

***NOTE: What is meant by "as provided by law" in this context? Is there another way to say this that makes the meaning clearer?

- 19 (g) Induce or attempt to induce any owner to enter into a contract that does not
- 20 comply in all respects with subs. (2) and (3).
- 21 (5) WAIVER NOT ALLOWED. Any waiver by an owner of this section or of an owner's
- 22 rights under this section is void and unenforceable as contrary to public policy. Any

↓ continued

Insert 14-13 9810

1 attempt by a foreclosure consultant to induce an owner to waive the owner's rights
2 is a violation of this section.

3 (6) REMEDIES. (a) A violation of this section is considered to be a violation of
4 s. 100.18, and all remedies under s. 100.18 (11) are available in an action commenced
5 for a violation of this section. An owner may bring an action against a foreclosure
6 consultant for any violation of this section.

7 (b) No court action may be brought for a violation of this section, except by an
8 owner against whom the violation was committed or by the attorney general.

9 (c) The court shall award actual damages, reasonable attorney fees and costs,
10 and appropriate equitable relief if the plaintiff prevails in an action brought under
11 this subsection. The court may award exemplary damages up to one and one-half
12 times the compensation charged by the foreclosure consultant if the court finds that
13 the foreclosure consultant violated sub. (4) (a), (b), or (d), and the foreclosure
14 consultant's conduct was in bad faith.

15 (d) The secretary of agriculture, trade and consumer protection may pursue
16 administrative action for a violation of this section.

17 (e) Any action brought under this subsection shall be commenced within 4
18 years after the date of the alleged violation or be barred.

19 (7) PENALTY. Any person who commits a violation described in sub. (4) may,
20 upon conviction, be fined not more than \$10,000 or imprisoned not more than one
21 year or both.

22 (8) CONTRACT PROVISION FOR ARBITRATION VOID. Any provision in a contract
23 entered into on or after the effective date of this subsection [revisor inserts date],

↓ continued

Insert 14-13 10 of 10

- 1 that attempts or purports to require arbitration of any dispute arising under this
- 2 section is void at the option of the owner. ✓

(END OF INSERT 3-4)

14-13 ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2635/P2dn
PJK:bjk&jld:rs

PJK - 2635/P2 was requested "ASAP" on 8/29 @ 4:00 pm. As per Cathlene, I forwarded the draft, which was edited, but these ~~questions~~ questions remain.

bjk

Since this version of the draft defines a "residence in foreclosure," I shortened the definition of "foreclosed homeowner" to mean the owner of a residence in foreclosure. Is this okay?

In the Minnesota law relating to the stay of eviction action, there were two provisions that dealt with the court imposing monetary sanctions for filing frivolous or bad faith claims or defenses. I am advised by Bob Nelson, who drafts civil procedure, that these should not be included because s. 802.05 provides the sanctions that a court may impose for frivolous claims or defenses.

I noticed this P2 drafter's note in the Client folder. It was not included with the P2 hard copy. Did you want to include it with the P2 draft?

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

yes - but
moot now



yes



should "conveyance" here be "reconveyance" ?

Insert A-2
line 3

"since the property was conveyed to a third party"

Should the quoted material read:

"homes in foreclosure" and "residences in foreclosure" ?

XXXX Note p. 6
btwn line 11 + 12
Should this read:

"Subsection (2)(c) seems to say..."

9-13

meeting with Tim Eberman and

Jeff Kostelec (Rep Richards) office -

resolved embedded notes (mostly get rid of provisions w/ MN references that have nothing comparable - WI)

change definition of res. in foreclosure so that owner does not have to live there

change "owner" in foreclosure consultant to "foreclosed homeowners" since that definition does not require that a foreclosure be commenced (see def of residence in foreclosure)

remove exception from def. of "foreclosure consultant" for nonprofits