

Attachment #3

1.1 A bill for an act
1.2 relating to commerce; regulating certain transactions with homeowners whose
1.3 homes are in foreclosure; regulating homestead property; modifying provisions
1.4 governing exemptions and the enforcement of judgements against homestead
1.5 property; amending Minnesota Statutes 2006, sections 325N.01; 325N.03;
1.6 325N.04; 325N.10, subdivisions 3, 4, by adding a subdivision; 325N.13;
1.7 325N.14; 325N.17; 325N.18, by adding a subdivision; 510.02; 510.05; 550.175,
1.8 subdivisions 1, 4, by adding a subdivision; 550.18; 550.19; 550.22; 550.24;
1.9 580.24; Laws 2004, chapter 263, section 26; proposing coding for new law in
1.10 Minnesota Statutes, chapter 550.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2006, section 325N.01, is amended to read:

1.13 **325N.01 DEFINITIONS.**

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

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

- 1.19 (1) stop or postpone the foreclosure sale;
- 1.20 (2) obtain any forbearance from any beneficiary or mortgagee;
- 1.21 (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- 1.22 (4) obtain any extension of the period within which the owner may reinstate the
1.23 owner's obligation;
- 1.24 (5) obtain any waiver of an acceleration clause contained in any promissory note or
1.25 contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

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- 2.1 (6) assist the owner in foreclosure or loan default to obtain a loan or advance
2.2 of funds;
- 2.3 (7) avoid or ameliorate the impairment of the owner's credit resulting from the
2.4 recording of a notice of default or the conduct of a foreclosure sale; or
- 2.5 (8) save the owner's residence from foreclosure.
- 2.6 (b) A foreclosure consultant does not include any of the following:
- 2.7 (1) a person licensed to practice law in this state when the person renders service
2.8 in the course of his or her practice as an attorney-at-law;
- 2.9 (2) a person licensed as a debt prorater under sections 332.12 to 332.29, when the
2.10 person is acting as a debt prorater as defined in these sections;
- 2.11 (3) a person licensed as a real estate broker or salesperson under chapter 82 when the
2.12 person engages in acts whose performance requires licensure under that chapter unless the
2.13 person is engaged in offering services designed to, or purportedly designed to, enable the
2.14 owner to retain possession of the residence in foreclosure;
- 2.15 (4) a person licensed as an accountant under chapter 326A when the person is acting
2.16 in any capacity for which the person is licensed under those provisions;
- 2.17 (5) a person or the person's authorized agent acting under the express authority
2.18 or written approval of the Department of Housing and Urban Development or other
2.19 department or agency of the United States or this state to provide services;
- 2.20 (6) a person who holds or is owed an obligation secured by a lien on any residence
2.21 in foreclosure when the person performs services in connection with this obligation or lien
2.22 if the obligation or lien did not arise as the result of or as part of a proposed foreclosure
2.23 reconveyance;
- 2.24 (7) any person or entity doing business under any law of this state, or of the United
2.25 States relating to banks, trust companies, savings and loan associations, industrial loan and
2.26 thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee
2.27 which is a United States Department of Housing and Urban Development approved
2.28 mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or
2.29 employee of these persons or entities while engaged in the business of these persons
2.30 or entities;
- 2.31 (8) a person licensed as a residential mortgage originator or servicer pursuant to
2.32 chapter 58, when acting under the authority of that license ~~or a foreclosure purchaser as~~
2.33 ~~defined in section 325N.10;~~
- 2.34 (9) a nonprofit agency or organization that offers counseling or advice to an owner
2.35 of a home in foreclosure or loan default if they do not contract for services with for-profit
2.36 lenders or foreclosure purchasers; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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4.1 (f) "Residence in foreclosure" means residential real property consisting of one to
4.2 four family dwelling units, one of which the owner occupies as his or her principal place
4.3 of residence, ~~and against which there is an outstanding notice of pendency of foreclosure,~~
4.4 ~~recorded pursuant to section 580.032, or against which a summons and complaint has been~~
4.5 ~~served under chapter 581~~ where there is a delinquency or default on any loan payment
4.6 or debt secured by or attached to the residential real property including, but not limited
4.7 to, contract for deed payments.

4.8 (g) "Owner" means the record owner of the residential real property in foreclosure at
4.9 the time the notice of pendency was recorded, or the summons and complaint served.

4.10 (h) "Contract" means any agreement, or any term in any agreement, between
4.11 a foreclosure consultant and an owner for the rendition of any service as defined in
4.12 paragraph (e).

4.13 Sec. 2. Minnesota Statutes 2006, section 325N.03, is amended to read:

4.14 **325N.03 CONTRACT.**

4.15 (a) Every contract must be in writing and must fully disclose the exact nature of the
4.16 foreclosure consultant's services and the total amount and terms of compensation.

4.17 (b) The following notice, printed in at least 14-point boldface type and completed
4.18 with the name of the foreclosure consultant, must be printed immediately above the
4.19 statement required by paragraph (c):

4.20 "NOTICE REQUIRED BY MINNESOTA LAW

4.21 (Name) or anyone working for him
4.22 or her CANNOT:

4.23 (1) Take any money from you or ask you for money
4.24 until (Name) has completely finished
4.25 doing everything he or she said he or she would do;
4.26 and

4.27 (2) Ask you to sign or have you sign any lien,
4.28 mortgage, or deed."

4.29 (c) The contract must be written in the same language as principally used by the
4.30 foreclosure consultant to describe his or her services or to negotiate the contract, must
4.31 be dated and signed by the owner, and must contain in immediate proximity to the space
4.32 reserved for the owner's signature a conspicuous statement in a size equal to at least
4.33 10-point boldface type, as follows:

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

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

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

5.10 (2) the date the owner signed the contract.

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

5.18 "NOTICE OF CANCELLATION

5.19
5.20 (Enter date of transaction) (Date)

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

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

5.29 to
5.30 (Name of foreclosure consultant)

5.31 at
5.32 (Physical address of foreclosure consultant's
5.33 place of business)

5.34
5.35 (E-mail address of foreclosure consultant's
5.36 place of business)

5.37 NOT LATER THAN MIDNIGHT OF
5.38 (Date)

5.39 I hereby cancel this transaction
5.40 (Date)

5.41
5.42 (Owner's signature)"

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

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

6.5 Sec. 3. Minnesota Statutes 2006, section 325N.04, is amended to read:

6.6 **325N.04 VIOLATIONS.**

6.7 It is a violation for a foreclosure consultant to:

6.8 (1) claim, demand, charge, collect, or receive any compensation until after the
6.9 foreclosure consultant has fully performed each and every service the foreclosure
6.10 consultant contracted to perform or represented he or she would perform;

6.11 (2) claim, demand, charge, collect, or receive any fee, interest, or any other
6.12 compensation for any reason which exceeds eight percent per annum of the amount of
6.13 any loan which the foreclosure consultant may make to the owner. Such a loan must not,
6.14 as provided in clause (3), be secured by the residence in foreclosure or any other real or
6.15 personal property;

6.16 (3) take any wage assignment, any lien of any type on real or personal property, or
6.17 other security to secure the payment of compensation. Any such security is void and
6.18 unenforceable;

6.19 (4) receive any consideration from any third party in connection with services
6.20 rendered to an owner unless the consideration is first fully disclosed to the owner;

6.21 (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate
6.22 in a residence in foreclosure from an owner with whom the foreclosure consultant has
6.23 contracted;

6.24 (6) take any power of attorney from an owner for any purpose, except to inspect
6.25 documents as provided by law; or

6.26 (7) induce or attempt to induce any owner to enter a contract which does not comply
6.27 in all respects with sections 325N.02 and 325N.03.

6.28 Sec. 4. Minnesota Statutes 2006, section 325N.10, subdivision 3, is amended to read:

6.29 Subd. 3. **Foreclosure reconveyance.** "Foreclosure reconveyance" means a
6.30 transaction involving:

6.31 (1) the transfer of title to real property by a foreclosed homeowner during a
6.32 foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or
6.33 by creation of a mortgage or other lien or encumbrance during the foreclosure process

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7.1 that allows the acquirer to obtain title to the property by redeeming the property as
7.2 a junior lienholder; and

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

7.9 Sec. 5. Minnesota Statutes 2006, section 325N.10, subdivision 4, is amended to read:

7.10 Subd. 4. **Foreclosure purchaser.** "Foreclosure purchaser" means a person that has
7.11 acted as the acquirer in ~~more than one~~ a foreclosure reconveyance ~~during any 24-month~~
7.12 ~~period~~. Foreclosure purchaser also includes a person that has acted in joint venture or joint
7.13 enterprise with one or more acquirers in ~~more than one~~ a foreclosure reconveyance ~~during~~
7.14 ~~any 24-month period~~. A foreclosure purchaser does not include: (i) a natural person
7.15 who shows that the natural person is not in the business of foreclosure purchasing and
7.16 has a prior personal relationship with the foreclosed homeowner, or (ii) a federal or state
7.17 chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

7.18 Sec. 6. Minnesota Statutes 2006, section 325N.10, is amended by adding a subdivision
7.19 to read:

7.20 Subd. 7. **Residence in foreclosure.** "Residence in foreclosure" means residential
7.21 real property consisting of one to four family dwelling units, one of which the owner
7.22 occupies as the owner's principal place of residence, where there is a delinquency or
7.23 default on any loan payment or debt secured by or attached to the residential real property,
7.24 including, but not limited to, contract for deed payments.

7.25 Sec. 7. Minnesota Statutes 2006, section 325N.13, is amended to read:

7.26 **325N.13 CONTRACT CANCELLATION.**

7.27 (a) In addition to any other right of rescission, the foreclosed homeowner has
7.28 the right to cancel any contract with a foreclosure purchaser until midnight of the fifth
7.29 business day following the day on which the foreclosed homeowner signs a contract that
7.30 complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period
7.31 during which the foreclosed homeowner has a right of redemption, whichever occurs first.

7.32 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means,
7.33 written notice of cancellation ~~to the address specified in the contract,~~ provided that, at a

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

8.8 (c) A notice of cancellation given by the foreclosed homeowner need not take the
8.9 particular form as provided with the contract.

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

8.13 Sec. 8. Minnesota Statutes 2006, section 325N.14, is amended to read:

8.14 **325N.14 NOTICE OF CANCELLATION.**

8.15 (a) The contract must contain in immediate proximity to the space reserved for the
8.16 foreclosed homeowner's signature a conspicuous statement in a size equal to at least
8.17 14-point boldface type, if the contract is printed, or in capital letters, if the contract is
8.18 typed, as follows:

8.19 "You may cancel this contract for the sale of
8.20 your house without any penalty or obligation
8.21 at any time before
8.22
8.23 (Date and time of day)
8.24 See the attached notice of cancellation form
8.25 for an explanation of this right."

8.26 The foreclosure purchaser shall accurately enter the date and time of day on which the
8.27 cancellation right ends.

8.28 (b) The contract must be accompanied by a completed form in duplicate, captioned
8.29 "notice of cancellation" in a size equal to a 12-point boldface type if the contract is
8.30 printed, or in capital letters, if the contract is typed, followed by a space in which the
8.31 foreclosure purchaser shall enter the date on which the foreclosed homeowner executes
8.32 any the contract. This form must be attached to the contract, must be easily detachable,
8.33 and must contain in type of at least 10 points, if the contract is printed or in capital
8.34 letters if the contract is typed, the following statement written in the same language as
8.35 used in the contract:

8.36 "NOTICE OF CANCELLATION

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9.1
9.2 (Enter date contract signed)
9.3 You may cancel this contract for the sale of
9.4 your house, without any penalty or obligation,
9.5 at any time before
9.6
9.7 (Enter date and time of day)
9.8 To cancel this transaction, ~~personally you may~~
9.9 use any of the following methods: (1) mail or
9.10 otherwise deliver a signed and dated copy of
9.11 this cancellation notice; or (2) e-mail a notice
9.12 of cancellation to
9.13
9.14 (Name of purchaser)
9.15 at
9.16 (~~Street~~ Physical address of purchaser's
9.17 place of business)
9.18
9.19 (E-mail address of foreclosure consultant's
9.20 place of business)
9.21 NOT LATER THAN
9.22 (Enter date and time of day)
9.23 I hereby cancel this transaction
9.24 (Date)
9.25
9.26 (Seller's signature)"

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

9.30 (d) The five business days during which the foreclosed homeowner may cancel the
9.31 contract must not begin to run until all parties to the contract have executed the contract
9.32 and the foreclosure purchaser has complied with this section.

9.33 Sec. 9. Minnesota Statutes 2006, section 325N.17, is amended to read:

9.34 **325N.17 PROHIBITED PRACTICES.**

9.35 A foreclosure purchaser shall not:

9.36 (a) enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
9.37 homeowner unless:

9.38 (1) the foreclosure purchaser verifies and can demonstrate that the foreclosed
9.39 homeowner has a reasonable ability to pay for the subsequent conveyance of an interest
9.40 back to the foreclosed homeowner. In the case of a lease with an option to purchase,
9.41 payment ability also includes the reasonable ability to make the lease payments and
9.42 purchase the property within the term of the option to purchase. There is a rebuttable
9.43 presumption that a homeowner is reasonably able to pay for the subsequent conveyance

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10.1 if the owner's payments for primary housing expenses and regular principal and interest
10.2 payments on other personal debt, on a monthly basis, do not exceed 60 percent of
10.3 the owner's monthly gross income. For the purposes of this section, "primary housing
10.4 expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard
10.5 insurance, real estate taxes, and association dues. There is a rebuttable presumption that
10.6 the foreclosure purchaser has not verified reasonable payment ability if the foreclosure
10.7 purchaser has not obtained documents other than a statement by the foreclosed homeowner
10.8 of assets, liabilities, and income;

10.9 (2) the foreclosure purchaser and the foreclosed homeowner complete a closing
10.10 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or
10.11 mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an
10.12 in-person meeting to complete final documents incident to the sale of the real property
10.13 or creation of a mortgage on the real property conducted by a closing agent, as defined
10.14 in section 82.17, who is not employed by or an affiliate of the foreclosure purchaser, or
10.15 employed by such an affiliate, and who does not have a business or personal relationship
10.16 with the foreclosure purchaser other than the provision of real estate settlement services;

10.17 (3) the foreclosure purchaser obtains the written consent of the foreclosed
10.18 homeowner to a grant by the foreclosure purchaser of any interest in the property during
10.19 such times as the foreclosed homeowner maintains any interest in the property; and

10.20 (4) the foreclosure purchaser complies with the requirements of for disclosure, loan
10.21 terms, and conduct in the federal Home Ownership Equity Protection Act, United States
10.22 Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations,
10.23 title 12, sections 226.31 to, 226.32, and 226.34, for any foreclosure reconveyance in which
10.24 the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of
10.25 whether the terms of the contract for deed meet the annual percentage rate or points and
10.26 fees requirements for a covered loan in Code of Federal Regulations, title 12, sections
10.27 226.32 (a) and (b);

10.28 (b) fail to either:

10.29 (1) ensure that title to the subject dwelling has been reconveyed to the foreclosed
10.30 homeowner; or

10.31 (2) make a payment to the foreclosed homeowner such that the foreclosed
10.32 homeowner has received consideration in an amount of at least 82 percent of the
10.33 fair market value of the property within 150 days of either the eviction or voluntary
10.34 relinquishment of possession of the dwelling by the foreclosed homeowner. The
10.35 foreclosure purchaser shall make a detailed accounting of the basis for the payment
10.36 amount, or a detailed accounting of the reasons for failure to make a payment,

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11.1 including providing written documentation of expenses, within this 150-day period. The
11.2 accounting shall be on a form prescribed by the attorney general, in consultation with
11.3 the commissioner of commerce, without being subject to the rulemaking procedures of
11.4 chapter 14. For purposes of this provision, the following applies:

11.5 (i) there is a rebuttable presumption that an appraisal by a person licensed or certified
11.6 by an agency of the federal government or this state to appraise real estate constitutes the
11.7 fair market value of the property;

11.8 (ii) the time for determining the fair market value amount shall be determined in the
11.9 foreclosure reconveyance contract as either at the time of the execution of the foreclosure
11.10 reconveyance contract or at resale. If the contract states that the fair market value shall
11.11 be determined at the time of resale, the fair market value shall be the resale price if
11.12 it is sold within 120 days of the eviction or voluntary relinquishment of the property
11.13 by the foreclosed homeowner. If the contract states that the fair market value shall be
11.14 determined at the time of resale, and the resale is not completed within 120 days of the
11.15 eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair
11.16 market value shall be determined by an appraisal conducted during this 120-day period
11.17 and payment, if required, shall be made to the homeowner, but the fair market value
11.18 shall be recalculated as the resale price on resale and an additional payment amount, if
11.19 appropriate based on the resale price, shall be made to the foreclosed homeowner within
11.20 15 days of resale, and a detailed accounting of the basis for the payment amount, or a
11.21 detailed accounting of the reasons for failure to make additional payment, shall be made
11.22 within 15 days of resale, including providing written documentation of expenses. The
11.23 accounting shall be on a form prescribed by the attorney general, in consultation with
11.24 the commissioner of commerce, without being subject to the rulemaking procedures
11.25 of chapter 14;

11.26 (iii) "consideration" shall mean any payment or thing of value provided to the
11.27 foreclosed homeowner, including unpaid rent or contract for deed payments owed by the
11.28 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
11.29 property, reasonable costs paid to third parties necessary to complete the foreclosure
11.30 reconveyance transaction, payment of money to satisfy a debt or legal obligation of the
11.31 foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused
11.32 by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous
11.33 claim under section 325N.18, subdivision 6, but

11.34 (iv) "consideration" shall not include amounts imputed as a down payment or fee
11.35 to the foreclosure purchaser, or a person acting in participation with the foreclosure
11.36 purchaser, incident to a contract for deed, lease, or option to purchase entered into as part

- 12.1 of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary
12.2 to complete the foreclosure reconveyance;
- 12.3 (c) enter into repurchase or lease terms as part of the subsequent conveyance that are
12.4 unfair or commercially unreasonable, or engage in any other unfair conduct;
- 12.5 (d) represent, directly or indirectly, that:
- 12.6 (1) the foreclosure purchaser is acting as an advisor or a consultant, or in any other
12.7 manner represents that the foreclosure purchaser is acting on behalf of the homeowner;
- 12.8 (2) the foreclosure purchaser has certification or licensure that the foreclosure
12.9 purchaser does not have, or that the foreclosure purchaser is not a member of a licensed
12.10 profession if that is untrue;
- 12.11 (3) the foreclosure purchaser is assisting the foreclosed homeowner to "save the
12.12 house" or substantially similar phrase; or
- 12.13 (4) the foreclosure purchaser is assisting the foreclosed homeowner in preventing a
12.14 completed foreclosure if the result of the transaction is that the foreclosed homeowner will
12.15 not complete a redemption of the property;
- 12.16 (e) make any other statements, directly or by implication, or engage in any other
12.17 conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion
12.18 or misunderstanding, including, but not limited to, statements regarding the value of
12.19 the residence in foreclosure, the amount of proceeds the foreclosed homeowner will
12.20 receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or
12.21 obligations incident to or arising out of the foreclosure reconveyance; or
- 12.22 (f) do any of the following until the time during which the foreclosed homeowner
12.23 may cancel the transaction has fully elapsed:
- 12.24 (1) accept from any foreclosed homeowner an execution of, or induce any foreclosed
12.25 homeowner to execute, any instrument of conveyance of any interest in the residence
12.26 in foreclosure;
- 12.27 (2) record with the county recorder or file with the registrar of titles any document,
12.28 including but not limited to, any instrument of conveyance, signed by the foreclosed
12.29 homeowner;
- 12.30 (3) transfer or encumber or purport to transfer or encumber any interest in
12.31 the residence in foreclosure to any third party, provided no grant of any interest or
12.32 encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for
12.33 value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge
12.34 on the part of any such person or entity that the property was "residential real property
12.35 in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18.

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13.1 This section does not abrogate any duty of inquiry which exists as to rights or interests of
13.2 persons in possession of the residential real property in foreclosure; or
13.3 (4) pay the foreclosed homeowner any consideration.

13.4 Sec. 10. Minnesota Statutes 2006, section 325N.18, is amended by adding a
13.5 subdivision to read:

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

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

13.15 (2) owned the foreclosed residence;

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

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

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

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

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

13.31 (1) the failure of the foreclosed homeowner to commence an action in a court of
13.32 competent jurisdiction in connection with a foreclosed reconveyance transaction within
13.33 90 days after the issuance of the stay; or

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

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

14.4 Sec. 11. Minnesota Statutes 2006, section 510.02, is amended to read:

14.5 **510.02 AREA AND VALUE; HOW LIMITED.**

14.6 Subdivision 1. **Exemption.** The homestead may include any quantity of land not
14.7 exceeding 160 acres, and not included in the laid out or platted portion of any city. If the
14.8 homestead is within the laid out or platted portion of a city, its area must not exceed
14.9 one-half of an acre. The value of the homestead exemption. The exemption per homestead,
14.10 whether the exemption is claimed jointly or individually by one or more debtors, may not
14.11 exceed \$200,000 \$300,000 or, if the homestead is used primarily for agricultural purposes,
14.12 \$500,000 \$750,000, exclusive of the limitations set forth in section 510.05.

14.13 Subd. 2. **Adjustment of dollar amounts.** The dollar amounts in subdivision 1 must
14.14 change periodically in the manner provided for under section 550.37, subdivision 4a. The
14.15 commissioner of commerce shall include the changes in the dollar amounts as part of the
14.16 announcement and publication made under those provisions.

14.17 Sec. 12. Minnesota Statutes 2006, section 510.05, is amended to read:

14.18 **510.05 LIMITATIONS.**

14.19 ~~Such~~ The amount of the homestead exemption shall not be reduced by and shall
14.20 not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes or
14.21 assessments, to a claim filed pursuant to section 256B.15 or section 246.53 or, to any
14.22 charge arising under the laws relating to laborers or material suppliers' liens or to any
14.23 charge obtained pursuant to a valid waiver of the homestead exemption.

14.24 Sec. 13. Minnesota Statutes 2006, section 550.175, subdivision 1, is amended to read:

14.25 Subdivision 1. **Order directing sale of real property.** The executing creditor
14.26 must obtain an order from the court directing a sale of the real property that includes
14.27 a homestead before service of the notice of execution on real property containing the
14.28 homestead of the debtor. The order shall contain the following findings:

14.29 (1) whether the real property is the homestead of a nondebtor;

14.30 (2) the amount of the debtor's homestead exemption, if any; and

14.31 (3) whether the fair market value of the real property exceeds the sum of the debtor's
14.32 homestead exemption and the present encumbrances.

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15.1 If the court finds that there is no nondebtor with a valid homestead interest in the
15.2 real property and that the fair market value of the homestead real property exceeds the
15.3 sum of the debtor's homestead exemption and the present encumbrances, the court shall
15.4 order a sale of the real property for cash or cash equivalents to the extent of the homestead
15.5 exemption at the time of sale.

15.6 Subd. 1a. Notification of homestead designation. If real property is to be sold on
15.7 execution and the property contains a portion of the homestead of the debtor, the debtor
15.8 must be notified by the executing creditor that the homestead may be sold and redeemed
15.9 separately from the remaining property. The notice in subdivision 2 must be included in
15.10 the notice of execution served on the debtor under section 550.19.

15.11 Sec. 14. Minnesota Statutes 2006, section 550.175, subdivision 4, is amended to read:

15.12 Subd. 4. Sale of property. (a) If the sheriff receives a homestead property
15.13 designation under subdivision 3, the sheriff must offer and sell the designated homestead
15.14 property, and the remaining property, separately, unless the executing creditor denies the
15.15 right to the exemption, objects to the property designated, or claims the value exceeds
15.16 the exemption.

15.17 (b) If the executing creditor is dissatisfied with the homestead property designation
15.18 or the debtor's valuation of the property, upon proper motion to the district court of the
15.19 county in which any part of the property is located, the executing creditor is entitled to
15.20 a court approved designation of the homestead and a court determination of value. The
15.21 court shall either approve the debtor's designation or cause the property to be surveyed
15.22 and order a homestead designation consistent with the standards of subdivision 3 and
15.23 require an appraisal of fair market value, as applicable. The court's designation of the
15.24 homestead property must conform to the debtor's request, to the extent not inconsistent
15.25 with the standards of subdivision 3.

15.26 (c) The court, in determining appraised value, shall review any appraisals provided
15.27 by the debtor and executing creditor and may require a court appointed independent
15.28 appraisal. The appraisals shall evaluate the property's fair market value, net of reasonable
15.29 costs of sale.

15.30 (d) If the court determines that the property claimed as a homestead exceeds in value
15.31 the amount of the homestead exemption or if the court determines that the property cannot
15.32 be divided without material injury, the court shall order the sale of the entire property,
15.33 including the designated homestead. ~~Out of the proceeds of the sale, the court shall pay~~
15.34 ~~the debtor the amount of the homestead exemption and apply the balance of the proceeds~~

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16.1 ~~of the sale on the execution~~ for cash or cash equivalents to the extent of the homestead
16.2 exemption at the time of sale.

16.3 (e) At the sale, no bid may be accepted unless it exceeds the amount of the
16.4 homestead exemption. If no bid exceeds the exemption, the homestead is exempt.

16.5 (f) The cost of any court ordered survey or appraisal and of the sale must be collected
16.6 on the execution, if the debtor designated as the debtor's homestead a greater quantity of
16.7 property, property of greater value than the debtor was entitled to, or designated a parcel
16.8 that does not meet the standards of subdivision 3. In all other cases, the costs shall be
16.9 borne by the executing creditor.

16.10 Sec. 15. Minnesota Statutes 2006, section 550.175, is amended by adding a subdivision
16.11 to read:

16.12 Subd. 6. Real property not subject to execution. Real property that includes a
16.13 homestead as defined under section 510.01 is not subject to execution under this chapter if
16.14 there is a nondebtor with:

16.15 (1) homestead rights under sections 507.02 and 510.01 to 510.04;

16.16 (2) rights as a joint tenant or life tenant; or

16.17 (3) rights to take the homestead under section 524.2-402.

16.18 Sec. 16. Minnesota Statutes 2006, section 550.18, is amended to read:

16.19 **550.18 NOTICE OF SALE.**

16.20 Before the sale of property on execution notice shall be given as follows:

16.21 (1) if the sale be of personal property, by giving ten days posted notice of the time
16.22 and place thereof;

16.23 (2) if the sale be of real property, on execution or on judgment, by six weeks posted
16.24 and published notice of the time and place thereof, describing the property with sufficient
16.25 certainty to enable a person of common understanding to identify it; and

16.26 (3) a judgment creditor shall record a certified copy of the order directing sale of real
16.27 property issued pursuant to section 550.175, if the real property is a homestead, with the
16.28 county recorder or registrar of titles as appropriate in the county in which the real property
16.29 is located before the first date of publication of the notice of sale required under clause (2).

16.30 An officer who sells without such notice shall forfeit \$100 to the party aggrieved, in
16.31 addition to paying actual damages; and a person who before the sale or the satisfaction of
16.32 the execution, and without the consent of the parties, takes down or defaces the notice
16.33 posted, shall forfeit \$50; but the validity of the sale shall not be affected by either act,
16.34 either as to third persons or parties to the action.

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17.1 Sec. 17. Minnesota Statutes 2006, section 550.19, is amended to read:

17.2 **550.19 SERVICE ON JUDGMENT DEBTOR.**

17.3 ~~At or before the time of posting notice of sale, the officer shall serve a copy of the~~
17.4 ~~execution and inventory, and of such notice, upon the judgment debtor, if the debtor be a~~
17.5 ~~resident of the county, in the manner required by law for the service of a summons in a~~
17.6 ~~civil action.~~ A judgment creditor must, at least four weeks before the appointed time of
17.7 sale, serve a copy of the notice of sale in like manner as a summons in a civil action in the
17.8 district court upon the judgment debtor if the judgment debtor is a resident of the county
17.9 and upon any person in possession of the homestead other than the judgment debtor.
17.10 In addition, the notice of sale must also be served upon all persons who have recorded
17.11 a request for notice in accordance with section 580.032.

17.12 Sec. 18. **[550.206] REPORT OF SALE OF HOMESTEAD ON EXECUTION;**
17.13 **CONFIRMATION; RESALE.**

17.14 Upon sale of a homestead on execution, the sheriff shall file a report of the sale with
17.15 the court. Upon the filing of the report of sale, the court shall grant an order confirming
17.16 the sale, or, if it appears upon due examination that justice has not been done, the court
17.17 may order a resale on terms the court determines are just. Upon confirmation of the sale
17.18 and execution of the certificate of sale, the sheriff shall hold the amount of the homestead
17.19 exemption in trust for the judgment debtor until the debtor vacates the property, or the
17.20 redemption period expires, whichever occurs first. The balance of the proceeds of the
17.21 sale shall be applied to the execution. The sheriff shall pay any surplus thereafter in the
17.22 manner provided in section 580.09.

17.23 Sec. 19. Minnesota Statutes 2006, section 550.22, is amended to read:

17.24 **550.22 CERTIFICATE OF SALE OF REALTY.**

17.25 When a sale of real property is made upon execution, or pursuant to a judgment or
17.26 order of a court, unless otherwise specified therein, the officer shall execute and deliver
17.27 to the purchaser a certificate containing:

- 17.28 (1) a description of the execution, judgment, or order;
17.29 (2) a description of the property;
17.30 (3) the date of the sale and the name of the purchaser;
17.31 (4) the price paid for each parcel separately;
17.32 (5) if subject to redemption, the time allowed by law therefor;
17.33 (6) the amount of the debtor's homestead exemption, if any, as determined under
17.34 section 550.175.

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18.1 Such certificate shall be executed, acknowledged, and recorded in the manner
18.2 provided by law for a conveyance of real property, shall be prima facie evidence of the
18.3 facts ~~therein~~ stated, and, upon expiration of the time for redemption, shall operate as
18.4 a conveyance to the purchaser of all the right, title, and interest of the person whose
18.5 property is sold in and to the same, at the date of the lien upon which the same was sold.
18.6 Any person desiring to perpetuate evidence that any real property sold under this section
18.7 was not homestead real property may procure an affidavit by the person enforcing the
18.8 judgment, or that person's attorney, or someone having knowledge of the facts, setting
18.9 forth that the real property was not homestead real property. The affidavit shall be
18.10 recorded by the county recorder or registrar of titles, and the affidavit and certified copies
18.11 of the affidavit shall be prima facie evidence of the facts stated in the affidavit.

18.12 Sec. 20. Minnesota Statutes 2006, section 550.24, is amended to read:

18.13 **550.24 REDEMPTION OF REALTY.**

18.14 (a) Upon the sale of real property, if the estate sold is less than a leasehold of two
18.15 years' unexpired term, the sale is absolute. In all other cases the property sold, or any
18.16 portion thereof which has been sold separately, is subject to redemption as provided
18.17 in this section.

18.18 (b) The judgment debtor, the debtor's heirs, successors, legal representatives, or
18.19 assigns may redeem within one year after the day of sale, or order confirming sale if
18.20 the property is a homestead, by paying, to the purchaser or the officer making the sale,
18.21 the amount for which the property was sold with interest at the judgment rate and if the
18.22 purchaser is a creditor having a prior lien, the amount thereof, with interest, on the amount
18.23 of the sale in excess of the homestead exemption, at the judgment rate together with any
18.24 costs as provided in sections 582.03 and 582.031.

18.25 (c) If there is no redemption during the debtor's redemption period, creditors having
18.26 a lien, legal or equitable, on the property or some part thereof, subsequent to that on
18.27 which it was sold may redeem in the manner provided for redemption by creditors of the
18.28 mortgagor in section 580.24, in the order of their respective liens.

18.29 (d) If the property is abandoned during the judgment debtor's redemption period,
18.30 the person holding the sheriff's certificate may request that the court reduce the judgment
18.31 debtor's redemption period to five weeks using the procedures provided for a foreclosure
18.32 by action in section 582.032, subdivision 5.

18.33 Sec. 21. Minnesota Statutes 2006, section 580.24, is amended to read:

18.34 **580.24 REDEMPTION BY CREDITOR.**

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19.1 (a) If no redemption is made by the mortgagor, the mortgagor's personal
19.2 representatives or assigns, the most senior creditor having a legal or equitable lien upon
19.3 the mortgaged premises, or some part of it, subsequent to the foreclosed mortgage, may
19.4 redeem within seven days after the expiration of the redemption period determined
19.5 under section 580.23 or 582.032, whichever is applicable; and each subsequent creditor
19.6 having a lien may redeem, in the order of priority of their respective liens, within seven
19.7 days after the time allowed the prior lienholder by paying the amount required under this
19.8 section. However, no creditor is entitled to redeem unless, within the period allowed for
19.9 redemption by the mortgagor, the creditor:

19.10 (1) records with each county recorder and registrar of titles where the foreclosed
19.11 mortgage is recorded a notice of the creditor's intention to redeem;

19.12 (2) records in each office where the notice is recorded all documents necessary to
19.13 create the lien on the mortgaged premises and to evidence the creditor's ownership of the
19.14 lien; and

19.15 (3) after complying with clauses (1) and (2), delivers to the sheriff who conducted
19.16 the foreclosure sale or the sheriff's successor in office a copy of each of the documents
19.17 required to be recorded under clauses (1) and (2), with the office, date and time of filing
19.18 for record stated on the first page of each document.

19.19 The sheriff shall maintain for public inspection all documents delivered to the sheriff
19.20 and shall note the date of delivery on each document. The sheriff may charge a fee of
19.21 \$100 for the documents delivered to the sheriff relating to each lien. The sheriff shall
19.22 maintain copies of documents delivered to the sheriff for a period of six months after the
19.23 end of the mortgagor's redemption period.

19.24 (b) Saturdays, Sundays, legal holidays, and the first day following the expiration
19.25 of the prior redemption period must be included in computing the seven-day redemption
19.26 period. When the last day of the period falls on Saturday, Sunday, or a legal holiday,
19.27 that day must be omitted from the computation. The order of redemption by judgment
19.28 creditors subsequent to the foreclosed mortgage shall be determined by the order in which
19.29 their judgments were entered as memorials on the certificate of title for the foreclosed
19.30 premises or docketed in the office of the district court administrator if the property is not
19.31 registered under chapter 508 or 508A, regardless of the homestead status of the property.
19.32 All mechanic's lienholders who have coordinate liens shall have one combined seven-day
19.33 period to redeem.

19.34 (c) The amount required to redeem from the holder of the sheriff's certificate of sale
19.35 is the amount required under section 580.23. The amount required to redeem from a
19.36 person holding a certificate of redemption is:

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- 20.1 (1) the amount paid to redeem as shown on the certificate of redemption; plus
20.2 (2) interest on that amount to the date of redemption; plus
20.3 (3) the amount claimed due on the person's lien, as shown on the affidavit under
20.4 section 580.25, clause (3).

20.5 The amount required to redeem may be paid to the holder of the sheriff's certificate
20.6 of sale or the certificate of redemption, as the case may be, or to the sheriff for the holder.

20.7 Sec. 22. Laws 2004, chapter 263, section 26, is amended to read:

20.8 Sec. 26. **EFFECTIVE DATE; EXPIRATION.**

20.9 Sections 1 to 18, 22, 23, and 25 are effective August 1, 2004; and expire December
20.10 ~~31, 2009~~. Sections 19, 20, 21, and 24 are effective July 1, 2004.

-2833/P1
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stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Companion
No changes

Today 8-31

D-note

-regen.

1 AN ACT *to renumber* 799.40 (4); and *to create* 227.01 (13) (rm), 799.40 (4) (b),
2 846.40 and 846.45 of the statutes; **relating to:** regulating foreclosure
3 reconveyances and foreclosure consultants, staying certain eviction actions,
4 providing an exemption from rule-making procedures, and providing a penalty.

Analysis by the Legislative Reference Bureau

(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.)

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 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 by any means 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.

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 agriculture, trade and consumer protection.

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.

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. 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.

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.

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.** 799.40 (4) of the statutes is renumbered 799.40 (4) (a).

5 **SECTION 3.** 799.40 (4) (b) of the statutes is created to read:

6 799.40 **(4)** (b) The court shall stay the proceeding in a civil action of eviction
7 against a foreclosed homeowner, as defined in s. 846.40 (1) (b), under the
8 circumstances and as provided in s. 846.40 (9).

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

10 **846.40 Regulation of foreclosure reconveyances. (1) DEFINITIONS.** In this
11 section:

12 (a) "Closing" means an in-person meeting to complete final documents incident
13 to the sale of real property or the creation of a mortgage on real property that is
14 conducted by a closing agent who is not employed by, an affiliate of, or employed by

1 an affiliate of, any foreclosure purchaser involved in the closing, and who does not
2 have a business or personal relationship with any foreclosure purchaser involved in
3 the closing other than the provision of real estate settlement services.

4 (b) “Foreclosed homeowner” means an owner of a residence in foreclosure.

5 (c) “Foreclosure purchaser” means a person that has acted as the acquirer in
6 a foreclosure reconveyance. “Foreclosure purchaser” also includes a person that has
7 acted in joint venture or joint enterprise with one or more acquirers in a foreclosure
8 reconveyance. “Foreclosure purchaser” does not include any of the following:

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

12 2. A federal or state chartered bank, savings bank, savings and loan
13 association, or credit union.

14 (d) “Foreclosure reconveyance” means a transaction involving all of the
15 following:

16 1. The transfer of title to real property by a foreclosed homeowner during a
17 foreclosure proceeding, either by a transfer of interest from the foreclosed
18 homeowner or by the creation of a mortgage or other lien or encumbrance during the
19 foreclosure process.

****NOTE: Is this how you want the subdivision above to read?

20 2. The subsequent conveyance, or promise of a subsequent conveyance, of an
21 interest back to the foreclosed homeowner by the acquirer or a person acting in
22 participation with the acquirer that allows the foreclosed homeowner to possess
23 either the residence in foreclosure or other real property, which interest includes an
24 interest in a land contract, purchase agreement, option to purchase, or lease.

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

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

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

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

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

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

22 1. The name, business address, and the telephone number of the foreclosure
23 purchaser.

24 2. The address of the residence in foreclosure.

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

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

6 5. The time at which possession is to be transferred to the foreclosure
7 purchaser.

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

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

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

14 9. Immediately above the statement required by sub. (5) (a), in not less than
15 14-point boldface type if the contract is printed or in capital letters if the contract
16 is typed, and completed with the name of the foreclosure purchaser, the following
17 notice:

18 NOTICE REQUIRED BY WISCONSIN LAW

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

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

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

7 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means,
8 a signed and dated written notice of cancellation. The contract and notice of
9 cancellation must contain a street or physical address to which notice of cancellation
10 may be mailed or otherwise delivered. A post office box may be designated for
11 delivery by mail only if it is accompanied by a street or physical address at which the
12 notice may be delivered by a method other than mail. An e-mail address may be
13 provided in addition to the street or physical address. If cancellation is mailed,
14 delivery is effective upon deposit in the U.S. mail. If cancellation is sent by e-mail,
15 delivery is effective upon transmission.

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

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

22 **(5) NOTICE OF CANCELLATION.** (a) 1. The contract must contain conspicuously
23 and in immediate proximity to the space reserved for the foreclosed homeowner's
24 signature, in not less than 14-point boldface type if the contract is printed or in
25 capital letters if the contract is typed, the following statement: "You may cancel this

1 contract for the sale of your house without any penalty or obligation at any time
2 before (date and time of day). See the attached notice of cancellation form for an
3 explanation of this right.”

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

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

13 NOTICE OF CANCELLATION

14 (Enter date contract signed)

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

17 2. To cancel this transaction, you may mail or otherwise deliver a signed and
18 dated copy of this notice of cancellation, or you may e–mail a notice of cancellation,
19 to (name of purchaser) at (street or physical address of purchaser’s place of
20 business), or (e–mail address of purchaser’s place of business) NOT LATER THAN
21 (date and time of day).

22 3. I hereby cancel this transaction.

23 (Date)

24 (Seller’s signature)

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

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

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

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

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

21 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
22 homeowner has a reasonable ability to pay for the subsequent conveyance of an
23 interest back to the foreclosed homeowner. In the case of a lease with an option to
24 purchase, payment ability also includes the reasonable ability to make the lease
25 payments and purchase the property within the term of the option to purchase.

1 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
2 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
3 primary housing expenses and regular principal and interest payments on other
4 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
5 homeowner's monthly gross income. There is a rebuttable presumption that the
6 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
7 purchaser has not obtained documents other than a statement by the foreclosed
8 homeowner of assets, liabilities, and income.

9 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
10 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
11 or mortgage from a foreclosed homeowner.

12 3. The foreclosure purchaser obtains the written consent of the foreclosed
13 homeowner to a grant by the foreclosure purchaser of any interest in the property
14 during such times as the foreclosed homeowner maintains any interest in the
15 property.

16 4. The foreclosure purchaser complies with the requirements for disclosure,
17 loan terms, and conduct under the federal Home Ownership Equity Protection Act,
18 15 USC 1639, or its implementing regulations, 12 CFR 226.31, 226.32, and 226.34,
19 for any foreclosure reconveyance in which the foreclosed homeowner obtains a
20 vendee's interest in a land contract, regardless of whether the terms of the land
21 contract meet the annual percentage rate or points and fees requirements for a
22 covered loan under 12 CFR 226.32 (a) and (b).

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

24 1. Ensure that title to the subject dwelling has been reconveyed to the
25 foreclosed homeowner.

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

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

14 b. The time for determining the fair market value amount shall be specified in
15 the foreclosure reconveyance contract as either at the time of the execution of the
16 foreclosure reconveyance contract or at resale. If the contract states that the fair
17 market value shall be determined at the time of resale, the fair market value shall
18 be the resale price if it is sold within 120 days after the eviction of, or voluntary
19 relinquishment of the property by, the foreclosed homeowner. If the contract states
20 that the fair market value shall be determined at the time of resale, and the resale
21 is not completed within 120 days after the eviction of, or voluntary relinquishment
22 of the property by, the foreclosed homeowner, the fair market value shall be
23 determined by an appraisal conducted during this 120-day period and payment, if
24 required, shall be made to the foreclosed homeowner, but the fair market value shall
25 be recalculated as the resale price on resale and an additional payment amount, if

1 appropriate based on the resale price, shall be made to the foreclosed homeowner
2 within 15 days after resale, and a detailed accounting of the basis for the payment
3 amount, or a detailed accounting of the reasons for failure to make additional
4 payment, shall be made within 15 days after resale, including providing written
5 documentation of expenses. The accounting shall be on a form prescribed by the
6 attorney general, in consultation with the secretary of agriculture, trade and
7 consumer protection.

8 c. "Consideration" means any payment or thing of value provided to the
9 foreclosed homeowner, including unpaid rent or land contract payments owed by the
10 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
11 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
12 reconveyance transaction, payment of money to satisfy a debt or legal obligation of
13 the foreclosed homeowner, the reasonable cost of repairs for damage to the dwelling
14 caused by the foreclosed homeowner, or a penalty imposed by a court for the filing
15 of a frivolous claim in an eviction action under sub. (9). "Consideration" does not
16 include amounts imputed as a down payment or fee to the foreclosure purchaser, or
17 a person acting in participation with the foreclosure purchaser, incident to a land
18 contract, lease, or option to purchase entered into as part of the foreclosure
19 reconveyance, except for reasonable costs paid to 3rd parties necessary to complete
20 the foreclosure reconveyance.

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

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

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

4 2. That the foreclosure purchaser has certification or licensure that the
5 foreclosure purchaser does not have, or that the foreclosure purchaser is not a
6 member of a licensed profession if that is untrue.

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

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

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

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

22 1. Accept from the foreclosed homeowner an execution of, or induce the
23 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
24 residence in foreclosure.

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

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

12 4. Pay the foreclosed homeowner any consideration.

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

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

18 a. The defendant has commenced an action concerning a foreclosure
19 reconveyance.

20 b. The defendant asserts (a defense under Minnesota law s. 504B.121) that the
21 property that is the subject of the eviction action is also the subject of a foreclosure
22 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?

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

***NOTE: Please compare the subdivision above 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.

4 2. That the defendant owned the foreclosed residence.

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

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

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

19 (c) The stay under this subsection shall remain in effect for 90 days if the
20 defendant has not yet commenced and does not commence, within 90 days from the
21 issuance of the stay, an action in connection with a foreclosed reconveyance
22 transaction. If the defendant has commenced, or commences within 90 days from the
23 issuance of the stay, an action in connection with a foreclosed reconveyance

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1 transaction, the stay shall remain in effect until the court hearing the action related
2 to the foreclosure reconveyance 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 reverse the order of another circuit court.

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

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

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

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

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.

15 **SECTION 5.** 846.45 of the statutes is created to read:

16 **846.45 Regulation of foreclosure consultants. (1) DEFINITIONS.** In this
17 section, unless the context requires otherwise:

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

20 (b) 1. Except as provided in subd. 2., "foreclosure consultant" means a person
21 who, directly or indirectly, makes a solicitation, representation, or offer to an owner

1 to perform for compensation, or who for compensation performs, any service that the
2 person in any manner represents will in any manner do any of the following:

3 a. Stop or postpone the foreclosure sale.

4 b. Obtain any forbearance from a beneficiary or mortgagee.

5 c. Assist the owner to exercise the right of reinstatement provided in
6 (Minnesota law section 580.30).

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

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

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

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

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

12 f. Assist the owner in foreclosure or loan default to obtain a loan or advance of
13 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"?

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

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

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

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

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

20 b. A person licensed as a debt prorater under (Minnesota law sections 332.12
21 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?

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

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

8 e. A person, or the person's authorized agent, acting under the express
9 authority or written approval of the department of housing and urban development
10 or other department or agency of the United States or this state to provide services.

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

15 g. A person or entity doing business under any law of this state, or of the United
16 States, relating to a financial institution, as defined in s. 214.01 (1) (jn), lender
17 licensed under s. 138.09, or insurance company; or a mortgagee that is a United
18 States department of housing and urban development approved mortgagee; or a
19 subsidiary or affiliate of these persons or entities, or an agent or employee of these
20 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?

21 h. A person registered under s. 224.72 as a mortgage banker, loan originator,
22 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?

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

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

- 4 j. A judgment creditor of the owner, to the extent that the judgment creditor's
5 claim accrued prior to the personal service of the foreclosure notice required by
6 (Minnesota law section 580.03), but excluding a person who purchased the claim
7 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?

- 8 k. A foreclosure purchaser.

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

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

11 (e) "Owner" means the record owner of the residence in foreclosure at the time
12 the lis pendens was recorded, or the summons and complaint were served.

****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."

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

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

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

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

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

20 3. Contacting creditors on behalf of an owner.

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

1 4. Arranging or attempting to arrange for an extension of the period within
2 which the owner may cure the owner's default and reinstate his or her obligation
3 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.

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

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

8 7. Giving any advice, explanation, or instruction to an owner that in any
9 manner relates to curing a default in or reinstating an obligation secured by a lien
10 on the residence in foreclosure, the full satisfaction of that obligation, or the
11 postponement or avoidance of a sale of a residence in foreclosure, under a power of
12 sale contained in any mortgage.

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

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

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

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

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

7 **(3) CONTRACT.** (a) Every contract must be in writing and must fully disclose
8 the exact nature of the foreclosure consultant’s services and the total amount and
9 terms of compensation.

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

13 NOTICE REQUIRED BY WISCONSIN LAW

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

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

19 2. Ask you to sign or have you sign any lien, mortgage, or deed.

20 (c) The contract must be written in the same language as principally used by
21 the foreclosure consultant to describe his or her services or to negotiate the contract,
22 must be dated and signed by the owner, and must contain in immediate proximity
23 to the space reserved for the owner’s signature, in not less than 10-point boldface
24 type, the following statement: “You, the owner, may cancel this transaction at any

1 time prior to midnight of the 3rd business day after the date of this transaction. See
2 the attached notice of cancellation form for an explanation of this right.”

3 (d) The notice of cancellation must contain, and the contract must contain on
4 the first page, in a type size that is no smaller than that generally used in the body
5 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?

6 1. The name and street or physical address of the foreclosure consultant to
7 which the notice of cancellation is to be mailed or otherwise delivered. A post office
8 box does not constitute a physical address. A post office box may be designated for
9 delivery by mail only if it is accompanied by a street or physical address at which the
10 notice may be delivered by a method other than mail. An e-mail address may be
11 included in addition to the street or physical address.

12 2. The date the owner signed the contract.

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

****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.

17 **NOTICE OF CANCELLATION**

18 (Enter date of transaction)

19 1. You may cancel this transaction, without any penalty or obligation, within
20 3 business days from the above date.

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

7 3. I hereby cancel this transaction.

8 (Date)

9 (Owner's signature)

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

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

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

15 **(4) VIOLATIONS.** It is a violation of this section for a foreclosure consultant to
16 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?

17 (a) Claim, demand, charge, collect, or receive any compensation until after the
18 foreclosure consultant has fully performed each and every service the foreclosure
19 consultant contracted to perform or represented that he or she would perform.

20 (b) Claim, demand, charge, collect, or receive any fee, interest, or any other
21 compensation for any reason that exceeds 8 percent per year of the amount of any
22 loan that the foreclosure consultant may make to the owner. Any loan may not, as

1 provided in par. (c), be secured by the residence in foreclosure or any other real or
2 personal property.

3 (c) Take a wage assignment, a lien of any type on real or personal property, or
4 any other security to secure the payment of compensation. Any security taken to
5 secure the payment of compensation is void and unenforceable.

6 (d) Receive any consideration from any 3rd party in connection with services
7 rendered to an owner unless the consideration is first fully disclosed to the owner.

8 (e) Acquire any interest, directly or indirectly or by means of a subsidiary or
9 affiliate, in a residence in foreclosure from an owner with whom the foreclosure
10 consultant has contracted.

11 (f) Take any power of attorney from an owner for any purpose, except to inspect
12 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?

13 (g) Induce or attempt to induce any owner to enter into a contract that does not
14 comply in all respects with subs. (2) and (3).

15 **(5) WAIVER NOT ALLOWED.** Any waiver by an owner of this section or of an owner's
16 rights under this section is void and unenforceable as contrary to public policy. Any
17 attempt by a foreclosure consultant to induce an owner to waive the owner's rights
18 is a violation of this section.

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

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

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

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

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

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

16 **(8) CONTRACT PROVISION FOR ARBITRATION VOID.** Any provision in a contract
17 entered into on or after the effective date of this subsection ... [revisor inserts date],
18 that attempts or purports to require arbitration of any dispute arising under this
19 section is void at the option of the owner.

20 **SECTION 6. Initial applicability.**

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

23

(END)

D-note