

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

2833/Pldn
LRB-2685/P2dn
PJK:bjk&ld:rs
stays

Date

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

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

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**DRAFTER'S NOTE
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LRB-2833/P1dn
PJK&RPN:bjk:pg

September 4, 2007

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

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2635/1
PJK&RPN:bjk&jld:awp
2833/1
stet

2007 BILL

SA ✓
SDM ←
(in 10-1)
→ D-10
(no changes)

repen.

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

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 residential real 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.

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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 it was conveyed to a third party, and has either commenced an action

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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 concerning the foreclosure reconveyance already has been commenced or is commenced within 90 days.

The bill also addresses foreclosure consultants. A foreclosure consultant is defined as a person who offers to a foreclosed homeowner to perform for compensation any of various services that will assist the foreclosed homeowner with the loan default or foreclosure, such as stopping the foreclosure sale, assisting the foreclosed homeowner to obtain a loan, or saving the property from foreclosure. The bill, however, specifies numerous exceptions to the definition of "foreclosure consultant" for persons who provide those services, such as an attorney, real estate broker, or certified public accountant rendering such services in the course of his or her practice; a mortgage banker or broker; and a foreclosure purchaser.

The bill provides that any agreement (contract) between a foreclosure consultant and a foreclosed homeowner for the rendition of services must be in writing, and that a foreclosed homeowner who enters into a contract for services with a foreclosure consultant has the right to cancel the contract without penalty within three days by delivering, by mail, e-mail, or any other means, a notice of cancellation to the foreclosure consultant. The bill specifies the information that the contract must contain and requires that duplicate copies of a notice of cancellation be attached to the contract.

The bill sets out actions by a foreclosure consultant that are violations and for which the bill provides remedies. Violations include demanding or receiving compensation before every service under the contract has been performed, acquiring an interest, including a security interest, in the real property in foreclosure, inducing a foreclosed homeowner to enter into a contract that does not comply with the requirements set out in the bill, and charging interest of more than eight percent on any loan made to the foreclosed homeowner. The bill provides that a foreclosed homeowner or the attorney general may bring a legal action against a foreclosure consultant for a violation of the requirements under the bill and specifies the damages; that the secretary of agriculture, trade and consumer protection may bring an administrative action for a violation; and that any action is barred if not brought within four years of the violation. The bill also prohibits any waiver of any of a foreclosed homeowner's rights under the bill and provides that any provision in a contract requiring arbitration of any dispute arising under the provisions is void at the option of the foreclosed homeowner.

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.

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

18 (b) "Foreclosed homeowner" means an owner of a residence in foreclosure.

19 (c) "Foreclosure purchaser" means a person that has acted as the acquirer in
20 a foreclosure reconveyance. "Foreclosure purchaser" also includes a person that has

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1 acted in joint venture or joint enterprise with one or more acquirers in a foreclosure
2 reconveyance. "Foreclosure purchaser" does not include any of the following:

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

6 2. A federal or state chartered bank, savings bank, savings and loan
7 association, or credit union.

8 (d) "Foreclosure reconveyance" means a transaction involving all of the
9 following:

10 1. The transfer of title to real property by a foreclosed homeowner during a
11 foreclosure proceeding, either by a transfer of interest from the foreclosed
12 homeowner or by the creation of a mortgage or other lien or encumbrance during the
13 foreclosure process.

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

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

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

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

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1 (h) "Residence in foreclosure" means residential real property that consists of
2 one to 4 family dwelling units and with respect to which real property there is a
3 delinquency or default on any loan payment or debt secured by or attached to the
4 residential real property, including land contract payments. The owner of the
5 residential real property may, but is not required to, occupy the residential real
6 property as the owner's principal place of residence.

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

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

17 1. The name, business address, and telephone number of the foreclosure
18 purchaser.

19 2. The address of the residence in foreclosure.

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

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

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1 5. The time at which possession is to be transferred to the foreclosure
2 purchaser.

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

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

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

9 9. Immediately above the statement required by sub. (5) (a), in not less than
10 14-point boldface type if the contract is printed or in capital letters if the contract
11 is typed, and completed with the name of the foreclosure purchaser, the following
12 notice:

13 **NOTICE REQUIRED BY WISCONSIN LAW**

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

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

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

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1 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means,
2 a signed and dated written notice of cancellation. The contract and notice of
3 cancellation form under sub. (5) (b) must contain a street or physical address to which
4 notice of cancellation may be mailed or otherwise delivered. A post office box may
5 be designated for delivery by mail only if it is accompanied by a street or physical
6 address at which the notice may be delivered by a method other than mail. An e-mail
7 address may be provided in addition to the street or physical address. If cancellation
8 is mailed, delivery is effective upon deposit in the U.S. mail. If cancellation is sent
9 by e-mail, delivery is effective upon transmission.

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

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

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

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

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

NOTICE OF CANCELLATION

8 (Enter date contract signed)

9
10 1. You may cancel this contract for the sale of your house, without any penalty
11 or obligation, at any time before (date and time of day).

12 2. To cancel this transaction, you may mail or otherwise deliver a signed and
13 dated copy of this notice of cancellation, or you may e-mail a notice of cancellation,
14 to (name of purchaser) at (street or physical address of purchaser's place of
15 business), or (e-mail address of purchaser's place of business) NOT LATER THAN
16 (date and time of day).

17 3. I hereby cancel this transaction.

18 (Date)

19 (Seller's signature)

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

23 (d) The 5-day period under sub. (4) (a) during which the foreclosed homeowner
24 may cancel the contract does not begin to run until all parties to the contract have

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1 executed the contract and the foreclosure purchaser has complied with this
2 subsection.

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

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

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

16 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
17 homeowner has a reasonable ability to pay for the subsequent conveyance of an
18 interest back to the foreclosed homeowner. In the case of a lease with an option to
19 purchase, payment ability also includes the reasonable ability to make the lease
20 payments and purchase the property within the term of the option to purchase.
21 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
22 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
23 primary housing expenses and regular principal and interest payments on other
24 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
25 homeowner's monthly gross income. There is a rebuttable presumption that the

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1 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
2 purchaser has not obtained documents other than a statement by the foreclosed
3 homeowner of assets, liabilities, and income.

4 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
5 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
6 or mortgage from a foreclosed homeowner.

7 3. The foreclosure purchaser obtains the written consent of the foreclosed
8 homeowner to a grant by the foreclosure purchaser of any interest in the property
9 during such times as the foreclosed homeowner maintains any interest in the
10 property.

11 4. The foreclosure purchaser complies with the requirements for disclosure,
12 loan terms, and conduct under the federal Home Ownership Equity Protection Act,
13 15 USC 1639, or its implementing regulations, 12 CFR 226.31, 226.32, and 226.34,
14 for any foreclosure reconveyance in which the foreclosed homeowner obtains a
15 vendee's interest in a land contract, regardless of whether the terms of the land
16 contract meet the annual percentage rate or points and fees requirements for a
17 covered loan under 12 CFR 226.32 (a) and (b).

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

19 1. Ensure that title to the subject dwelling has been reconveyed to the
20 foreclosed homeowner.

21 2. Make a payment to the foreclosed homeowner such that the foreclosed
22 homeowner has received consideration in an amount of at least 82 percent of the fair
23 market value of the property within 150 days after either the eviction of, or voluntary
24 relinquishment of possession of the dwelling by, the foreclosed homeowner. The
25 foreclosure purchaser shall make a detailed accounting of the basis for the payment

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1 amount, or a detailed accounting of the reasons for failure to make a payment,
2 including providing written documentation of expenses, within this 150-day period.
3 The accounting shall be on a form prescribed by the attorney general, in consultation
4 with the secretary of agriculture, trade and consumer protection. For purposes of
5 this subdivision, all of the following apply:

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

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

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1 attorney general, in consultation with the secretary of agriculture, trade and
2 consumer protection.

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

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

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

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

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

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

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

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

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

19 1. Accept from the foreclosed homeowner an execution of, or induce the
20 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
21 residence in foreclosure.

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

24 3. Transfer or encumber or purport to transfer or encumber any interest in the
25 residence in foreclosure to any 3rd party, provided no grant of any interest or

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1 encumbrance is defeated or affected as against a bona fide purchaser or
2 encumbrance for value and without notice of a violation of this subdivision.
3 Knowledge on the part of any such person or entity that the property was residential
4 real property in foreclosure does not constitute notice of a violation of this
5 subdivision. This subdivision does not abrogate any duty of inquiry that exists as to
6 rights or interests of persons in possession of the residence in foreclosure.

7 4. Pay the foreclosed homeowner any consideration.

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

12 1. That any of the following applies to the defendant:

13 a. The defendant has commenced an action concerning a foreclosure
14 reconveyance with respect to the property that is the subject of the eviction action.

15 b. The defendant asserts, in connection with a foreclosure reconveyance, any
16 violation of this section or a claim or affirmative defense of fraud, false pretense, false
17 promise, misrepresentation, misleading statement, or deceptive practice.

18 2. That the defendant owned the foreclosed residence.

19 3. That the defendant conveyed title to the foreclosed residence to a 3rd party
20 upon a promise that the defendant would be allowed to occupy the foreclosed
21 residence or other real property in which the foreclosure purchaser or a person acting
22 in participation with the foreclosure purchaser has an interest and that the
23 foreclosed residence or other real property would be the subject of a foreclosure
24 reconveyance.

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

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

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

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

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

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

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

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

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

5 **846.45 Regulation of foreclosure consultants. (1) DEFINITIONS.** In this
6 section, unless the context requires otherwise:

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

9 (b) "Foreclosed homeowner" has the meaning given in s. 846.40 (1) (b).

10 (c) 1. Except as provided in subd. 2., "foreclosure consultant" means a person
11 who, directly or indirectly, makes a solicitation, representation, or offer to a
12 foreclosed homeowner to perform for compensation, or who for compensation
13 performs, any service that the person in any manner represents will in any manner
14 do any of the following:

15 a. Stop or postpone the foreclosure sale.

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

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

20 d. Assist the foreclosed homeowner to obtain a loan or advance of funds.

21 e. Avoid or ameliorate the impairment of the foreclosed homeowner's credit
22 resulting from the recording of a lis pendens or the conduct of a foreclosure sale.

23 f. Save the residence in foreclosure from foreclosure.

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

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

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

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

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

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

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

24 g. A person registered under s. 224.72 as a mortgage banker, loan originator,
25 or mortgage broker, when acting under the authority of that registration.

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1 h. A judgment creditor of the foreclosed homeowner, to the extent that the
2 judgment creditor's claim accrued prior to the recording of the lis pendens in the
3 foreclosure action.

4 i. A foreclosure purchaser.

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

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

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

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

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

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

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

14 3. Contacting creditors on behalf of a foreclosed homeowner.

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

17 5. Advising the filing of any document, or assisting in any manner in the
18 preparation of any document for filing, with a bankruptcy court.

19 6. Giving any advice, explanation, or instruction to a foreclosed homeowner
20 that in any manner relates to curing a default in or reinstating an obligation secured
21 by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the
22 postponement or avoidance of a sale of a residence in foreclosure, under a power of
23 sale contained in any mortgage.

24 **(2) CANCELLATION OF FORECLOSURE CONSULTANT CONTRACT.** (a) In addition to any
25 other right under law to rescind a contract, a foreclosed homeowner has the right to

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1 cancel a contract until midnight of the 3rd business day after the day on which the
2 foreclosed homeowner signs a contract that complies with sub. (3).

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

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

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

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

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

19 NOTICE REQUIRED BY WISCONSIN LAW

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

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

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

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1 (c) The contract must be written in the same language as principally used by
2 the foreclosure consultant to describe his or her services or to negotiate the contract,
3 must be dated and signed by the foreclosed homeowner, and must contain in
4 immediate proximity to the space reserved for the foreclosed homeowner's signature,
5 in not less than 10-point boldface type, the following statement: "You, the owner,
6 may cancel this transaction at any time prior to midnight of the 3rd business day
7 after the date of this transaction. See the attached notice of cancellation form for an
8 explanation of this right."

9 (d) The notice of cancellation form under par. (e) must contain, and the contract
10 must contain on the first page, in a type size that is no smaller than that generally
11 used in the body of the document, both of the following:

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

18 2. The date the foreclosed homeowner signed the contract.

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

23 NOTICE OF CANCELLATION

24 (Enter date of transaction)

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1 1. You may cancel this transaction, without any penalty or obligation, within
2 3 business days from the above date.

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

9 3. I hereby cancel this transaction.

10 (Date)

11 (Owner's signature)

12 (f) The foreclosure consultant shall provide the foreclosed homeowner with a
13 copy of the contract and the attached notice of cancellation immediately upon
14 execution of the contract.

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

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

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

23 (b) Claim, demand, charge, collect, or receive any fee, interest, or any other
24 compensation for any reason that exceeds 8 percent per year of the amount of any
25 loan that the foreclosure consultant may make to the foreclosed homeowner. Any

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1 loan may not, as provided in par. (c), be secured by the residence in foreclosure or any
2 other real or 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 a foreclosed homeowner unless the consideration is first fully disclosed
8 to the foreclosed homeowner.

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

12 (f) Except as otherwise provided by law, take any power of attorney from a
13 foreclosed homeowner for any purpose.

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

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

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

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

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

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

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

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

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

SECTION 6. Initial applicability.

22 (1) FORECLOSURE RECONVEYANCES. The treatment of sections 227.01 (13) (rm)
23 and 846.40 of the statutes, the renumbering of section 799.40 (4) of the statutes, and
24 the creation of section 799.40 (4) (b) of the statutes first apply to foreclosure
25 reconveyances that are entered into on the effective date of this subsection.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2833/23dn
PJK:.....

of 1
Lbjk

Date

✓
This version of the draft is the same as LRB-2635/1. It is my understanding that no more changes are needed to the draft. You might want to check with Representative Richards's office to make sure. ✓

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

LRB-2833/1dn
PJK:bjk:rs

October 1, 2007

This version of the draft is the same as LRB-2635/1. It is my understanding that no more changes are needed to the draft. You might want to check with Representative Richards's office to make sure.

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Duerst, Christina

From: Leighton, Kyle
Sent: Friday, October 05, 2007 3:35 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2833/1 Topic: Equity stripping in mortgage foreclosure

Please Jacket LRB 07-2833/1 for the SENATE.