

2009 DRAFTING REQUEST

Bill

Received: **09/10/2008**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Gordon Hintz (608) 266-2254**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Real Estate - landlord/tenant
Real Estate - miscellaneous
Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hintz@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protections for tenants in foreclosure actions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/10/2008			_____			
/P1	rnelson2 09/19/2008 pkahler 09/22/2008	nmatzke 10/02/2008	jfrantze 10/02/2008	_____	sbasford 10/02/2008		
/P2	pkahler	nmatzke	phenry	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/30/2008 nelson2 11/06/2008	11/12/2008 nmatzke 02/03/2009	11/13/2008 _____ _____ _____		11/13/2008		
/1	pkahler 02/03/2009		jfrantze 02/03/2009 _____ _____		mbarman 02/03/2009	lparisi 02/03/2009	

FE Sent For:

<END>

↳ Not Needed

2009 DRAFTING REQUEST

Bill

Received: **09/10/2008**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Gordon Hintz (608) 266-2254**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Real Estate - landlord/tenant
Real Estate - miscellaneous
Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hintz@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protections for tenants in foreclosure actions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/10/2008			_____			
/P1	rnelson2 09/19/2008 pkahler 09/22/2008	nmatzke 10/02/2008	jfrantze 10/02/2008	_____	sbasford 10/02/2008		
/P2	pkahler	nmatzke	phenry	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/30/2008 rnelson2	11/12/2008 nmatzke	11/13/2008	_____	11/13/2008		
	11/06/2008	02/03/2009		_____			
/1	pkahler 02/03/2009		jfrantze 02/03/2009	_____	mbarman 02/03/2009		

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **09/10/2008**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Gordon Hintz (608) 266-2254**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Real Estate - landlord/tenant
Real Estate - miscellaneous
Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hintz@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protections for tenants in foreclosure actions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/10/2008						
/P1	rnelson2 09/19/2008 pkahler 09/22/2008	nmatzke 10/02/2008	jfrantze 10/02/2008		sbasford 10/02/2008		
/P2	pkahler	nmatzke	phenry		lparisi		
			<i>JH</i> 2/3	<i>Self</i> 2/3			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/30/2008 melson2	11/12/2008 / 1 nwn 2/3	11/13/2008	_____	11/13/2008		
	11/06/2008			_____			

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **09/10/2008**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Gordon Hintz (608) 266-2254**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Real Estate - landlord/tenant
Real Estate - miscellaneous
Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hintz@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protections for tenants in foreclosure actions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/10/2008			_____			
/P1	rnelson2 09/19/2008 pkahler 09/22/2008	nmatzke 10/02/2008	jfrantze 10/02/2008	_____	sbasford 10/02/2008		
	<i>1/2 Awn 11/6 1/2 KF 11/11</i>		<i>1/3 ph</i>	<i>1/3 pkahler</i>			

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 09/10/2008

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Gordon Hintz (608) 266-2254

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters: rnelson2

Subject: Real Estate - landlord/tenant
Real Estate - miscellaneous
Courts - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hintz@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Protections for tenants in foreclosure actions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler	pkahler 10/10/2	pkahler 10/2	pkahler 10/2			

FE Sent For:

<END>

9-10

plaintiff's atty / gives in foreclosure action

① notice to tenants

at all points in proceeding
to each unit

small claims procedure for notice

same type of notice!
personal or cert. mail
ret rec req

plaintiff must provide the notice

at 3 point

notice would notify of each of the 3 'events'

② at confirmation of sale, tenants get
60 days from
confirmation of sale
to vacate premises

in lieu of
③ security deposit bond

tenant may
of bond last month's rent

(which may be deducted from
sec deposit, if returns)

(so for last 60 days - after copying of sale -
pay for only 30)

RISK

④ prohibit landlords from

require ll to disclose foreclosure
action if rents property
during foreclosure action
(prospective tenant)

RPN

⑤ "writ of assistance" - to get tenant out after 60 days
(eviction) (one lb)

date of court would be prohibited for placing
on c-cap ahead of writ of assistance
"circuit court access program" in foreclosure
"c-cap" (how would dele know?)
action

Sup (rule 72

)

consolidated court automation program

case management system

(consolidated court automation program - case management system)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Rep Hines & aide (Chris)

Bob Anderson - 256-3304 ext 106 (legislation)

Sen Taylor - Madu Entemnuwa

me 414 286 3492

Jennifer Gonda (by speaker phone)

Min. has a law that's passed

send copies back to Rep Hines

From →

Bill Summary**Senate**

Senate Counsel & Research

State of Minnesota

S.F. No. 2908 - Tenant Notice Requirements (first engrossment)

Author: Senator Linda Higgins
Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394)
Date: February 29, 2008

Section 1 amends the statute imposing restrictions on residential lease terms for buildings in financial distress.

Subdivision 1 modifies lease limitation and tenant notice requirements. In cases where a landlord has received notice of a contract for deed cancellation or mortgage foreclosure sale, the landlord may only enter into a periodic lease agreement with a term of not more than two months, or the time remaining in the contract cancellation or redemption period, whichever is less. Before entering into a lease and accepting any rent or security deposit, the landlord must notify the prospective tenant that the landlord has received notice of a contract for deed cancellation or mortgage foreclosure sale and the date on which the cancellation period or redemption period ends.

Subdivision 2 is a new provision that includes an exception from this section for certain longer term leases. It would not apply if the holder or mortgagee agrees not to terminate the lease other than for lease violations for at least one year from commencement of the tenancy and the lease does not require the tenant to prepay rent for any month commencing after the end of the cancellation or redemption period so that rent payments would be due prior to the end of those periods.

Subdivision 3 provides for the transfer of a tenancy by operation of law for tenants who enter into a lease under **subdivision 2**. The tenant would be bound to the new landlord (contract for deed vendor or holder of the certificate of sale or their assignees) for one year or the balance of the lease term, whichever is less.

Subdivision 4 provides that a holder succeeding to an interest in a lease entered into under **subdivision 2** is not bound by certain acts of the prior landlord.

Section 2 allows a tenant to withhold rent on the grounds that the deposit would serve as payment for the rent, in cases where it is for the last month of a contract for deed cancellation or mortgage foreclosure redemption period.

Section 3 amends the grounds for eviction to clarify that in cases involving foreclosure of a mortgage, grounds for eviction exist after expiration of the time for redemption on foreclosure of the mortgage. The rights of tenants to remain on the property are modified with respect to a person who is a tenant during the redemption or termination period. If the person entered into a lease after the date of notice of the foreclosure or contract for deed cancellation and before expiration of the time for redemption or termination, the notice requirements in current law are changed from one month to two months.

KP:cs

SB 2664

[SIMILAR MATTER FILED DURING PAST SESSION
SEE NO. OF]

Proposed -
not law yet



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT AN ACT REQUIRING JUST CAUSE FOR EVICTION AND FORECLOSED PROPERTIES

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to protect citizens of the Commonwealth involved in the mortgage foreclosure crisis, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

- 1 SECTION 1. As used in this Act, the following words shall, unless the context clearly
- 2 requires otherwise, have the following meanings:
- 3
- 4 'Entity', a business organization, or any other kind of organization, including without
- 5 limitation, a corporation, partnership, trust, limited liability corporation, limited liability
- 6 partnership, joint venture, sole proprietorship, or any other category of organization, and
- 7 any employee, agent, servant or other representative of such entity.
- 8
- 9 'Eviction', any action, without limitation, by a foreclosing owner of a housing
- 10 accommodation which is intended to compel a tenant or occupant to vacate or to be
- 11 constructively evicted from such housing accommodation.
- 12
- 13 "Foreclosing owner", an entity that both (1) held or owned a mortgage or other security

14 interest in the housing accommodation at any point prior to the foreclosure of the housing
15 accommodation or is the subsidiary, parent, or agent of, or otherwise is related to any
16 entity which held or owned the mortgage or other security interest in the housing
17 accommodation at any time prior to the foreclosure of the housing accommodation; and
18 (2) holds title to this housing accommodation that it acquired at a foreclosure sale or by
19 any other method of foreclosure.

20
21 For purpose of this definition, the phrase 'holds title' shall include an entity which holds
22 title in any capacity, directly or indirectly, without limitation, whether in its own name, as
23 trustee, or as beneficiary. Any entity which attempts to evict tenants from the housing
24 accommodation, whether in its own name, as trustee, as mortgage servicer, or as
25 beneficiary, or in any other role, without limitation, shall be considered to 'hold title' for
26 the purpose of this definition.

27
28 Any institutional mortgagee that holds title to a housing accommodation that has been
29 foreclosed upon within the last three years shall be considered to be a foreclosing owner
30 for the purpose of this Act.

31
32 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property,
33 instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the
34 unpaid debt secured by the property, including, without limitation, foreclosure by action,
35 by bill in equity, by entry and continuation of possession for three years, and by sale
36 under the power of sale in a mortgage as described in Chapter 244 of the General Laws.

37
38 'Foreclosure sale', the foreclosure of a mortgage by sale of a housing accommodation
39 pursuant to a power of sale in a mortgage deed, as described in Section 14 of Chapter 244
40 of the General Laws.

41
42 'Housing accommodation', any building or buildings, structure or structures, or part
43 thereof or land appurtenant thereto, or any other real or personal property used, rented or
44 offered for rent for living or dwelling purposes, together with all services connected with
45 the use or occupancy of such property.

46
47 'Institutional mortgagee', any entity that holds or owns mortgages or other security
48 interest in three or more properties in the Commonwealth, or acts as a mortgage servicer
49 of three or more mortgages of properties in the Commonwealth, or is the subsidiary,
50 parent, or agent of, or otherwise related to any entity which holds or owns mortgages or
51 other security interests in three or more properties in the Commonwealth or acts as a
52 mortgage servicer of three or more mortgages of properties in the Commonwealth

53
54 'Just Cause', shall be at least one of the following: (a) the tenant or occupant has failed to
55 pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges,
56 but only if the foreclosing owner notified the tenant or occupant in writing of the amount
57 of rent or use and occupancy that was to be paid and to whom it was to be paid; (b) the
58 tenant or occupant has violated an obligation or covenant of the tenancy or occupancy
59 other than the obligation to surrender possession upon proper notice and has failed to cure

60 such violation within a reasonable time after having received written notice thereof from
61 the foreclosing owner; (c) the tenant or occupant is committing or permitting to exist a
62 nuisance in, or is causing substantial damage to, the unit, or is creating a substantial
63 interference with the quiet enjoyment of other occupants;
64 (d) the tenant or occupant is convicted of using or permitting the unit to be used for any
65 illegal purpose; (e) the tenant or occupant who had a written lease or other rental
66 agreement which terminated on or after this Act has taken effect, has refused, after
67 written request or demand by the foreclosing owner to execute a written extension or
68 renewal thereof for a further term of like duration and in such terms that are not
69 inconsistent with or violative of any provisions of this Act;
70 (f) the tenant or occupant has refused the foreclosing owner reasonable access to the unit
71 for the purpose of making necessary repairs or improvement required by the laws of the
72 United States, the Commonwealth or any subdivision thereof, or for the purpose of
73 inspection as permitted or required by agreement or by law or for the purpose of showing
74 the rental housing unit to a prospective purchaser or mortgagee;

75
76 'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender,
77 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and
78 any agent, servant, or employee of the mortgagee, or any successor in interest and/or
79 assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

80
81 'Mortgage Servicer', an entity which administers or at any point administered the
82 mortgage, including, but not limited to, calculating principal and interest, collecting
83 payments from the mortgagor, acting as an escrow agent, and foreclosing in the event of
84 a default.

85
86 'Post-foreclosure eviction', an eviction of a tenant by a foreclosing owner.

87
88 'Tenant or occupant', any person or group of persons entitled to occupy a housing
89 accommodation pursuant to a written lease, tenancy at will, tenancy at sufferance or
90 otherwise.

91
92 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation
93 which is used or intended for use as a residence by one household.

94
95 SECTION 2. Notwithstanding any other special or general law to the contrary, the
96 foreclosing owner shall not evict a tenant or occupant except for just cause.

97
98 SECTION 3. Any foreclosing owner that evicts tenants or occupants in violation of any
99 provisions of this Act, or any ordinance or by-law adopted pursuant to this Act, shall be
100 punished by a fine of not less than ten thousand dollars. Each eviction done in violation
101 of this Act constitutes a separate offense.

102
103 The district and superior courts, and the housing courts in the Commonwealth, shall have
104 jurisdiction over an action arising from any violation of this Act, or any ordinance, or by-
105 law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such

106 violation. No tenant shall be evicted in violation of any provision of this Act, or any
107 ordinance or by-law adopted pursuant to this act. It shall be a defense to eviction that the
108 foreclosing owner attempted to evict tenants in violation of any provision of this Act, or
109 any ordinance or by-law adopted pursuant to this Act.

110 SECTION 4. This Act shall cease to have effect on December 31, 2013.

111

112

113

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in the General Court assembled.

The undersigned, citizen of _____, respectfully petitions for the passage of the accompanying bill and for legislation.

AN ACT REQUIRING JUST CAUSE FOR EVICTION AND FORECLOSED PROPERTIES

Dianne Wilkerson(D W0)
Patricia Jehlen(PDJ0)
Edward Augustus, Jr.(EMA0)
Marc Pacheco(MRP0)
Harriette Chandler(HLC0)
Michael Morrissey(MWM0)
Richard Moore(RTM0)
James Marzilli, Jr.(JJM1)
Robert Creedon, Jr.(RSC0)

Second Suffolk
Second Middlesex
Second Worcester
First Plymouth and Bristol
First Worcester
Norfolk and Plymouth
Worcester and Norfolk
Twenty-third Middlesex
Second Plymouth and Bristol

California

Senate Bill No. 1137

CHAPTER 69

An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 8, 2008. Filed with Secretary of State July 8, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, Perata. Residential mortgage loans: foreclosure procedures.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified. Existing law also requires that the notice of sale in the case of default be posted on the property, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, that are for owner-occupied residences, this bill would, among other things, require a mortgagee, trustee, beneficiary, or authorized agent to wait 30 days after contact is made with the borrower, or 30 days after satisfying due diligence requirements to contact the borrower, as specified, before filing a notice of default. The bill would require contact with the borrower, as defined, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The bill would require the mortgagee, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. The bill would require the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require the mortgagee, trustee, beneficiary, or authorized agent, as part of the notice of sale, to include a specified declaration regarding contact with the borrower. The bill would authorize a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf,

options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property or the borrower has contracted with an organization, as specified. The bill would also require specified mailings to the resident of a property that is the subject of a notice of sale, as specified. In addition, the bill would make it a crime to tear down the notice of sale posted on a property within 72 hours of posting, thereby imposing a state-mandated local program.

Until January 1, 2013, this bill would require a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill would authorize a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill would require a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

(2) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property, as specified.

(3) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California is facing an unprecedented threat to its state economy and local economies because of skyrocketing residential property foreclosure rates in California. Residential property foreclosures increased sevenfold from 2006 to 2007. In 2007, more than 84,375 properties were lost to foreclosure in California, and 254,824 loans went into default, the first step in the foreclosure process.

(b) High foreclosure rates have adversely affected property values in California, and will have even greater adverse consequences as foreclosure rates continue to rise. According to statistics released by the HOPE NOW Alliance, the number of completed California foreclosure sales in 2007 increased almost threefold from 1,902 in the first quarter to 5,574 in the fourth quarter of that year. Those same statistics report that 10,556 foreclosure sales, almost double the number for the prior quarter, were completed just in the month of January 2008. More foreclosures means less money for schools, public safety, and other key services.

(c) Under specified circumstances, mortgage lenders and servicers are authorized under their pooling and servicing agreements to modify mortgage loans when the modification is in the best interest of investors. Generally, that modification may be deemed to be in the best interest of investors when the net present value of the income stream of the modified loan is greater than the amount that would be recovered through the disposition of the real property security through a foreclosure sale.

(d) It is essential to the economic health of California for the state to ameliorate the deleterious effects on the state economy and local economies and the California housing market that will result from the continued foreclosures of residential properties in unprecedented numbers by modifying the foreclosure process to require mortgagees, beneficiaries, or authorized agents to contact borrowers and explore options that could avoid foreclosure. These changes in accessing the state's foreclosure process are essential to ensure that the process does not exacerbate the current crisis by adding more foreclosures to the glut of foreclosed properties already on the market when a foreclosure could have been avoided. Those additional foreclosures will further destabilize the housing market with significant, corresponding deleterious effects on the local and state economy.

(e) According to a survey released by the Federal Home Loan Mortgage Corporation (Freddie Mac) on January 31, 2008, 57 percent of the nation's late-paying borrowers do not know their lenders may offer alternatives to help them avoid foreclosure.

(f) As reflected in recent government and industry-led efforts to help troubled borrowers, the mortgage foreclosure crisis impacts borrowers not only in nontraditional loans, but also many borrowers in conventional loans.

(g) This act is necessary to avoid unnecessary foreclosures of residential properties and thereby provide stability to California's statewide and regional economies and housing market by requiring early contact and communications between mortgagees, beneficiaries, or authorized agents and specified borrowers to explore options that could avoid foreclosure and by facilitating the modification or restructuring of loans in appropriate circumstances.

SEC. 2. Section 2923.5 is added to the Civil Code, to read:

2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to Section 2924 until 30 days after contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g).

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default filed pursuant to Section 2924 shall include a declaration from the mortgagee, beneficiary, or authorized agent that it has contacted the borrower, tried with due diligence to contact the borrower as required by this section, or the borrower has surrendered the property to the mortgagee, trustee, beneficiary, or authorized agent.

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.

(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(f) A borrower may designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.

(g) A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgagee, beneficiary, or authorized agent.

(C) A mortgagee, beneficiary, or authorized agent satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested.

(4) The mortgagee, beneficiary, or authorized agent shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(h) Subdivisions (a), (c), and (g) shall not apply if any of the following occurs:

(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their

homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(3) The borrower has filed for bankruptcy, and the proceedings have not been finalized.

(i) This section shall apply only to loans made from January 1, 2003, to December 31, 2007, inclusive, that are secured by residential real property and are for owner-occupied residences. For purposes of this subdivision, "owner-occupied" means that the residence is the principal residence of the borrower.

(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. Section 2923.6 is added to the Civil Code, to read:

2923.6. (a) The Legislature finds and declares that any duty servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, not to any particular parties, and that a servicer acts in the best interests of all parties if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 2924.8 is added to the Civil Code, to read:

2924.8. (a) Upon posting a notice of sale pursuant to Section 2924f, a trustee or authorized agent shall also post the following notice, in the manner required for posting the notice of sale on the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent shall mail, at the same time in an envelope addressed to the "Resident of property subject to foreclosure sale" the following notice in English and the languages described in Section 1632: "Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have."

(b) It shall be an infraction to tear down the notice described in subdivision (a) within 72 hours of posting. Violators shall be subject to a fine of one hundred dollars (\$100).

(c) A state government entity shall make available translations of the notice described in subdivision (a) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.

(d) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 5. Section 2929.3 is added to the Civil Code, to read:

2929.3. (a) (1) A legal owner shall maintain vacant residential property purchased by that owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. A governmental entity may impose a civil fine of up to one thousand dollars (\$1,000) per day for a violation. If the governmental entity chooses to impose a fine pursuant to this section, it shall give notice of the alleged violation, including a description of the conditions that gave rise to the allegation, and notice of the entity's intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days. The notice shall be mailed to the address provided in the deed or other instrument as specified in subdivision (a) of Section 27321.5 of the Government Code, or, if none, to the return address provided on the deed or other instrument.

(2) The governmental entity shall provide a period of not less than 30 days for the legal owner to remedy the violation prior to imposing a civil fine and shall allow for a hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the governmental entity shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation. The maximum civil fine authorized by this section is one thousand dollars (\$1,000) for each day that the owner fails to maintain the property, commencing on the day following the expiration of the period to remedy the violation established by the governmental entity.

(3) Subject to the provisions of this section, a governmental entity may establish different compliance periods for different conditions on the same property in the notice of alleged violation mailed to the legal owner.

(b) For purposes of this section, "failure to maintain" means failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

(c) Notwithstanding subdivisions (a) and (b), a governmental entity may provide less than 30 days' notice to remedy a condition before imposing a

civil fine if the entity determines that a specific condition of the property threatens public health or safety and provided that notice of that determination and time for compliance is given.

(d) Fines and penalties collected pursuant to this section shall be directed to local nuisance abatement programs.

(e) A governmental entity may not impose fines on a legal owner under both this section and a local ordinance.

(f) These provisions shall not preempt any local ordinance.

(g) This section shall only apply to residential real property.

(h) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(i) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 1161b is added to the Code of Civil Procedure, to read:

1161b. (a) Notwithstanding Section 1161a, a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure shall be given 60 days' written notice to quit pursuant to Section 1162 before the tenant or subtenant may be removed from the property as prescribed in this chapter.

(b) This section shall not apply if any party to the note remains in the property as a tenant, subtenant, or occupant.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 7. Nothing in this act is intended to affect any local just-cause eviction ordinance. This act does not, and shall not be construed to, affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 10. (a) This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to stabilize and protect the state and local economies and housing market at the earliest possible time, it is necessary for this act to take effect immediately.

(b) However, the provisions of Section 2 of this act, which adds Section 2923.5 to the Civil Code, and Section 4 of this act, which adds Section 2924.8 to the Civil Code, shall become operative 60 days after the effective date of this act.

O

1.1 A bill for an act
1.2 relating to landlord and tenant; providing for certain notices relating to
1.3 foreclosure; amending Minnesota Statutes 2006, sections 504B.151; 504B.178,
1.4 subdivision 8; 504B.285, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2006, section 504B.151, is amended to read:

1.7 **504B.151 RESTRICTION ON RESIDENTIAL LEASE TERMS FOR**
1.8 **BUILDINGS IN FINANCIAL DISTRESS; REQUIRED NOTICE OF PENDING**
1.9 **FORECLOSURE.**

1.10 Subdivision 1. Limitation on lease and notice to tenant. (a) Once a landlord
1.11 has received notice of a contract for deed cancellation under section 559.21 or notice of
1.12 a mortgage foreclosure sale under chapter 580 or 582, the landlord may only enter into
1.13 (i) a periodic residential lease agreement with a term of not more than two months or
1.14 the time remaining in the contract cancellation period or the mortgagor's redemption
1.15 period, whichever is less or (ii) a fixed term residential tenancy not extending beyond the
1.16 cancellation period or the landlord's period of redemption until:

- 1.17 (1) the contract for deed has been reinstated or paid in full;
1.18 (2) the mortgage default has been cured and the mortgage reinstated;
1.19 (3) the mortgage has been satisfied;
1.20 (4) the property has been redeemed from a foreclosure sale; or
1.21 (5) a receiver has been appointed.

1.22 (b) Before entering into a lease under this section and accepting any rent or security
1.23 deposit from a tenant, the landlord must notify the prospective tenant in writing that the
1.24 landlord has received notice of a contract for deed cancellation or notice of a mortgage

2.1 foreclosure sale as appropriate, and the date on which the contract cancellation period or
2.2 the mortgagor's redemption period ends.

2.3 (c) This section does not apply to a manufactured home park as defined in section
2.4 327C.01, subdivision 5.

2.5 Subd. 2. **Exception allowing a longer term lease.** This section does not apply if:

2.6 (1) the holder or the mortgagee agrees not to terminate the tenant's lease other than
2.7 for lease violations for at least one year from the commencement of the tenancy; and

2.8 (2) the lease does not require the tenant to prepay rent for any month commencing
2.9 after the end of the cancellation or redemption period, so that the rent payment would be
2.10 due prior to the end of the cancellation or redemption period.

2.11 For the purposes of this section, a holder means a contract for deed vendor or a
2.12 holder of the sheriff's certificate of sale or any assignee of the contract for deed vendor or
2.13 of the holder of the sheriff's certificate of sale.

2.14 Subd. 3. **Transfer of tenancy by operation of law.** (a) A tenant who enters into a
2.15 lease under subdivision 2 is:

2.16 (1) deemed by operation of law to become the tenant of the holder immediately upon
2.17 the holder succeeding to the interest of the landlord under the lease; and

2.18 (2) bound to the holder under all the provisions of the lease for either the balance of
2.19 the lease term or for one year after the start of the tenancy, whichever occurs first.

2.20 (b) A tenant who becomes the tenant of the holder under this subdivision is not
2.21 obligated to pay rent to the holder until the holder mails, by first class mail to the tenant at
2.22 the property address, written notice that the holder has succeeded to the interest of the
2.23 landlord. A letter from the holder to the tenant to that effect is prima facie evidence that
2.24 the holder has succeeded to the interest of the landlord.

2.25 Subd. 4. **Holder not bound by certain acts.** A holder succeeding to an interest in a
2.26 lease lawfully entered into under subdivision 2 is not: (1) liable for any act or omission
2.27 of any prior landlord; (2) subject to any offset or defense which the tenant had against
2.28 any prior landlord; or (3) bound by any modification of the lease entered into under
2.29 subdivision 2, unless the modification is made with the holder's consent.

2.30 Sec. 2. Minnesota Statutes 2006, section 504B.178, subdivision 8, is amended to read:

2.31 Subd. 8. **Withholding rent.** No tenant may withhold payment of all or any portion
2.32 of rent for the last payment period of a residential rental agreement, except an oral or
2.33 written month to month residential rental agreement concerning which neither the tenant
2.34 nor landlord has served a notice to quit, or for the last month of a contract for deed
2.35 cancellation period under section 559.21 or a mortgage foreclosure redemption period

3.1 under chapter 580 or 582, on the grounds that the deposit should serve as payment for the
3.2 rent. Withholding all or any portion of rent for the last payment period of the residential
3.3 rental agreement creates a rebuttable presumption that the tenant withheld the last payment
3.4 on the grounds that the deposit should serve as payment for the rent. Any tenant who
3.5 remains in violation of this subdivision after written demand and notice of this subdivision
3.6 shall be liable to the landlord for the following:

3.7 (1) a penalty in an amount equal to the portion of the deposit which the landlord
3.8 is entitled to withhold under subdivision 3 other than to remedy the tenant's default in
3.9 the payment of rent; and

3.10 (2) interest on the whole deposit as provided in subdivision 2, in addition to the
3.11 amount of rent withheld by the tenant in violation of this subdivision.

3.12 Sec. 3. Minnesota Statutes 2006, section 504B.285, subdivision 1, is amended to read:

3.13 Subdivision 1. **Grounds.** The person entitled to the premises may recover
3.14 possession by eviction when:

3.15 (1) any person holds over real property:

3.16 (i) after a sale of the property on an execution or judgment; or

3.17 (ii) ~~on foreclosure of a mortgage and after the~~ expiration of the time for redemption;
3.18 on foreclosure of a mortgage, or

3.19 ~~(iii)~~ after termination of contract to convey the property, provided that if the person
3.20 holding the real property after the expiration of the time for redemption or termination
3.21 is was a tenant during the redemption or termination period, the person entered into the
3.22 lease of any duration after the date of the notice of mortgage foreclosure or contract for
3.23 deed cancellation and prior to the expiration of the time for redemption or termination,
3.24 and the person has received:

3.25 (A) at least ~~one month's~~ two months' written notice to vacate no sooner than one
3.26 month after the expiration of the time for redemption or termination, provided that the
3.27 tenant pays the rent and abides by all terms of the lease; or

3.28 (B) at least ~~one month's~~ two months' written notice to vacate no later than the date of
3.29 the expiration of the time for redemption or termination, which notice shall also state that
3.30 the sender will hold the tenant harmless for breaching the lease by vacating the premises
3.31 if the mortgage is redeemed or the contract is reinstated;

3.32 (2) any person holds over real property after termination of the time for which
3.33 it is demised or leased to that person or to the persons under whom that person holds
3.34 possession, contrary to the conditions or covenants of the lease or agreement under which

4.1 that person holds, or after any rent becomes due according to the terms of such lease or
4.2 agreement; or

4.3 (3) any tenant at will holds over after the termination of the tenancy by notice to quit.

4.4 Sec. 4. **EFFECTIVE DATE.**

4.5 Section 1 is effective for leases entered into on or after August 1, 2008. Section 2 is
4.6 effective for cancellations of contracts for deed or mortgage foreclosures commenced on
4.7 or after August 1, 2008. Section 3 is effective for mortgage redemption periods expiring
4.8 on or after August 1, 2008.

MADISON OFFICE

31 South Mills Street, Madison, Wisconsin 53715

www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510**LEGALAction**
OF WISCONSIN**40 Years of Justice**

August 7, 2008

Rep. Gordon Hintz
Room 420 North
State Capitol
P.O. Box 8952
Madison, WI 53708**Re: Proposed legislation regarding notice to tenants in mortgage foreclosure cases**

Dear Rep. Hintz:

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Housing law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and family law).

I have received a copy of an email which you sent to the Winnebago Housing Coalition. The managing attorney for our Oshkosh office, Karen Roehl, is on the email list for the coalition.

We have been discussing legislation regarding this problem in our housing priority committee for quite some time. The problem is, of course, that the first time many tenants hear about the landlord's property being foreclosed upon is when the sheriff is at the door to put the tenant's family out on the street. Below are the recommendations we were thinking of submitting to the legislature. If you think they are helpful, we would be glad to be of assistance to you.

There are a few points in the process of a mortgage foreclosure where the plaintiff's (banks) attorneys are required to give notice to parties in a foreclosure proceeding, under Chapter 846 of the statutes: (1) notice of judgement, (2) notice of sale, and (3) notice of confirmation of sale. The judgement and sale may not be entered until at least 20 days have elapsed after the lis pendens (official notice of the action with the county real estate records) has been filed. Wis.

Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties

Green Bay Office Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties | tel 920-432-4645 | toll-free 800-236-1127 | fax 920-432-5078

La Crosse Office Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties | tel 608-785-2809 | toll-free 800-873-0927 | fax 608-782-0800

Migrant Project Statewide | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

Milwaukee Office Milwaukee and Waukesha Counties | tel 414-278-7722 | toll-free 888-278-0633 | fax 414-278-7126

Oshkosh Office Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties | tel 920-233-6521 | toll-free 800-236-1128 | fax 920-233-0307

Racine Office Kenosha, Racine and Walworth Counties | tel 262-635-8836 | toll-free 800-242-5840 | fax 262-635-8838

Rep. Gordon Hintz
August 7, 2008
Page Two

Stat. 846.01(2). The purpose of the lis pendens is to put others on notice who either already have a lien on the property or who were thinking of doing so.

The tenant is not a party and therefore has no right to notice. The tenant's lease is subject to termination at the time the interest of the landlord is terminated. Wis. Stat. 708.02. The tenant may be removed from the property under Wis. Stat. 710.10, in accordance with the procedures under Chapter 799. Under Chapter 799, a writ of restitution is entered in the foreclosure proceeding and the sheriff removes the tenant with the writ. I don't think that this is recorded with CCAP.

Under recommended best practices of the State Bar's real estate section, plaintiffs should give notice to tenants. Some mortgagees and their attorneys do provide notice. But many do not.

While banks could allow the tenants to remain on the premises, they often do not, for fear that the banks will legally become landlords, with all the obligations that accompany that legal relationship.

As Catey Doyle indicates, the recovery of security deposits is difficult because the landlord has little or no funds left.

The recommendation our attorneys have suggested is to require the plaintiff's attorneys to provide notice to tenants at the same time that they are required to give notice to parties. ***That is, that the plaintiff's attorneys would be required to provide notice by certified mail with return receipt requested or by personal service of process on tenants in the building at three distinct points: (1) the filing of the action for foreclosure, (2) the entry of the judgement of foreclosure, and (3) the time the hearing is set for the confirmation of sale.*** As Catey Doyle indicates, perhaps the court could also be encouraged or required by legislation to give the tenants 30 to 60 days to find another place to live at the confirmation of the sale. The notice of the sale itself is given by the sheriff, rather than the plaintiff's attorney (Wis. Stat. 846.16), so we thought it would be better to keep this as one of the routine notices that the plaintiff's are required to give (at the confirmation of sale), rather than to impose this obligation on the county sheriff.

The reason for the 3 notices is that foreclosure proceedings can be long and there may be different tenants who move in and out. In addition, tenants who are occupying a dwelling unit would like to know as soon as possible that the building is being foreclosed upon. This gives them time to look for another place, save money for a security deposit, etc.

And, since the plaintiff's attorneys are already required to send out these notices to parties during at least these stages in the proceedings, this should not be a burden on them.

Rep. Gordon Hintz
August 7, 2008
Page Three

The requirement that we have for service by mail or personal service is copied from Wis. Stat. 799.12 (1) and (3), relating to small claims actions under Chapter 799. Under that chapter, personal service is made by personally serving the tenant or a member of the family over the age of 14 on the premises [Wis. Stat. 801.11 (1)] or service may be authorized by the court to be made by certified mail with return receipt requested. The mail is considered to have been received, unless the envelope is returned to the clerk of court unopened.

The process for a foreclosure action is as follows: (1) commencement of the action; (2) judgment no sooner than 20 days after the lis pendens is filed; (3) for a residence, farm, church, or nonprofit organization, the owner is given 12 months from the date of judgement to redeem the premises before a sale may be held [Wis Stat. 846.10 (2)]; (4) for a commercial property the owner is given 6 months to redeem the premises before a sale may be held [Wis. Stat. 846.103 (1)]; (5) notice of sale to be held after the redemption period ends; (6) sale; and (7) confirmation of sale after 5 days notice to all parties. After that, the sheriff executes the writ to remove the tenants from the property.

As far as the security deposit is concerned, perhaps legislation could require that the mortgagee be required to return the security deposit from the rents it has received, minus whatever deductions are allowed by law for the withholding of security deposits. The legislation could specify that the collection of rent by the mortgagee, the return of security deposits, and whatever other management is conducted prior to the sale of the property does not make the mortgagee a landlord under Chapter 704.

If some or all of these recommendations appear to be attractive to you or if there is any further information you would like from us, please do not hesitate to contact me. Thank you.

Sincerely,



Robert J. Andersen
Staff Attorney



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Paul Vornholt
Director of Intergovernmental Relations

Proposal to strengthen protections for renters during a foreclosure proceeding.

As foreclosure rates in Milwaukee and elsewhere in the state rise, renters losing their homes have emerged as unintended victims of the housing crisis. The attached chart illustrates the magnitude of increased eviction filings in Milwaukee County and mimics the trend of increasing sheriff sales.

When a sheriff sale is confirmed, all interests in the property are cancelled, including the lease. Most mortgage servicers do not have the infrastructure in place to manage property and become landlords, oftentimes prompting them to evict tenants rather than allowing them to holdover in their lease. Evictions can and do happen on very short notice, and tenants may lose their security deposit in the process. This problem is even more severe given that renters are generally lower income residents, residing in lower income neighborhoods.

The ancillary problem created by the loss of occupancy is the property becomes vacant and target for theft and crime. The City of Milwaukee has had many reported cases of stripping of copper pipes, leaded glass, appliances, furnaces and other valuable items for vacant properties. This creates a downward spiral where the property loses value, becomes difficult to sell, and increasingly blights the neighborhood.

States such as Minnesota and California have recently passed legislation intended to curb these problems and we believe it would serve Wisconsin well to follow their lead. Legislative components of a strong renter protection system would include:

- Allowing a tenant to withhold their last month of rent on the grounds that the security deposit would serve as payment for their rent if it is the last month of a foreclosure redemption period.
- Requiring a mortgagee landlord to provide the tenant notice of the impending foreclosure sale at the same time they provide notice to the owner and explaining their rights.
- Requiring the mortgagee landlord to allow the tenant to stay on the premises up to 60 days from the foreclosure sale, assuming there is no just cause for eviction (e.g. nonpayment or criminal activity).
- Restricting landlords from leasing properties that are in the midst of foreclosure proceedings unless the proceeding is clearly disclosed and the lease ends prior to the end of the redemption period.

These protections will ensure that foreclosed properties remain inhabited and safe from vandalism, stripping, squatting or other crime. They will also ensure that a tenant has every opportunity to be notified of the impending loss of their home.

For more information, please contact:

Jennifer Gonda, Senior Legislative Fiscal Manager
(414) 286-3492 or jgonda@milwaukee.gov



CITY OF MILWAUKEE
DEPARTMENT OF ADMINISTRATION

JENNIFER GONDA
LEGISLATIVE FISCAL MANAGER SENIOR

CITY HALL ROOM 606
200 EAST WELLS STREET
MILWAUKEE, WI 53202

(414) 286-3492
CELL (414) 708-7680
FAX (414) 286-8547
EMAIL jgonda@milwaukee.gov