



2009 ASSEMBLY BILL 407

August 31, 2009 – Introduced by Representatives HRAYCHUCK, DEXTER, MASON, CLARK, BERCEAU, MOLEPSKE JR., BERNARD SCHABER, HIXSON, ZEPNICK, RICHARDS and GRIGSBY, cosponsored by Senators KREITLOW and HANSEN. Referred to Committee on Housing.

1 **AN ACT** *to amend* 138.065 (1) (a); and *to create* 138.065, 802.02 (1) (c) and 802.12
2 (2) (am) of the statutes; **relating to:** mortgage loan defaults and notification of
3 alternative dispute resolution options.

Analysis by the Legislative Reference Bureau

Under current law, with exceptions, a mortgage banker is a person that originates certain mortgage loans for itself or others, sells such mortgage loans to others, or services such mortgage loans. Among the exceptions, a mortgage banker generally does not include a financial institution.

Under this bill, if a borrower has failed to make full scheduled payments on a residential first mortgage loan for two consecutive payment periods and the failure to make these payments renders the borrower in default, a mortgage banker holding or servicing the loan must provide the borrower with notice of the default within 45 days after the due date for the second payment period. The notice must inform the borrower of any action required of the borrower to cure the default and of the names and addresses of adjustment service companies licensed with the Department of Financial Institutions that offer credit counseling services to homeowners.

Under this bill, if an action is brought in circuit court for the foreclosure of a mortgage on real estate, the contents of the legal pleadings that make the claim for foreclosure must include a statement that either party to the action may request that the court order the parties to select an alternative method of settling the claim. Current law allows a circuit court to order parties to an action to use an alternative settlement method, such as binding arbitration, mediation, nonbinding arbitration,

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or direct negotiations. Under the bill, if the court orders the parties to select an alternative method to settle the claim and the court determines that a party is not participating in good faith, the court must terminate the settlement alternative and may order that party to pay the other party's costs, including attorney fees, incurred while participating in the settlement alternative.

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

1 **SECTION 1.** 138.065 of the statutes is created to read:

2 **138.065 Mortgage loan default notices. (1) DEFINITIONS.** In this section:

3 (a) “First mortgage loan” means a loan that is secured by a first lien real estate
4 mortgage in a one-family to 4-family dwelling, including individual condominium
5 units, in this state that the borrower uses, or intends to use, as his or her principal
6 place of residence.

7 (b) “Mortgage banker” has the meaning given in s. 224.71 (3).

8 **(2) DEFAULT NOTICE REQUIRED.** If a borrower has failed to make full scheduled
9 payments on a first mortgage loan for 2 consecutive payment periods and the failure
10 to make these payments renders the borrower in default under the terms of the first
11 mortgage loan, a mortgage banker holding or servicing the first mortgage loan shall
12 provide the borrower with notice of the default no later than 45 days after the due
13 date for the 2nd payment period.

14 **(3) CONTENT OF NOTICE.** The notice required under sub. (2) shall inform the
15 borrower of all of the following:

16 (a) Any action required of the borrower to cure the default on the first mortgage
17 loan, including any amount that must be paid to cure the default and bring the
18 borrower current on the loan, and any date by which such action must be taken.

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1 (b) The names and addresses of adjustment service companies licensed under
2 s. 218.02 that offer credit counseling services to homeowners.

3 **SECTION 2.** 138.065 (1) (a) of the statutes, as created by 2009 Wisconsin Act
4 (this act), is amended to read:

5 138.065 (1) (a) “First mortgage loan” means a residential mortgage loan, as
6 defined in s. 224.71 (14), that is secured by a first lien real estate mortgage ~~in a~~
7 ~~one-family to 4-family dwelling, including individual condominium units, in this~~
8 ~~state on a dwelling or residential real property~~ that the borrower uses, or intends to
9 use, as his or her principal place of residence.

10 **SECTION 3.** 802.02 (1) (c) of the statutes is created to read:

11 802.02 (1) (c) If the claim for relief is for the foreclosure of a mortgage on real
12 estate under ch. 846, a statement that either party may request that the court order
13 the parties to select a settlement alternative under s. 802.12 as a means to attempt
14 settlement of the claim, by submitting a request to the court and serving a copy of
15 that request on the other party no later than 5 days before an answer is otherwise
16 due.

17 **SECTION 4.** 802.12 (2) (am) of the statutes is created to read:

18 802.12 (2) (am) If the action includes a claim for relief for the foreclosure of a
19 mortgage on real estate under ch. 846, a party to the action requests the court to order
20 the parties to select a settlement alternative and serves that request on the other
21 party no later than 5 days before an answer is otherwise due, and the court
22 determines that the request is timely and the action or proceeding is an appropriate
23 one in which to invoke a settlement alternative, the time periods for any responsive
24 pleading are tolled until the selected settlement alternative is concluded. If, upon
25 motion of either party, the court determines that a party is not participating in good

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1 faith with the settlement alternative, the court shall terminate the settlement
2 alternative, and may require that party to pay the other party's costs, including
3 attorney fees, incurred while participating in the settlement alternative.

4 **SECTION 5. Initial applicability.**

5 (1) The creation of section 138.065 of the statutes first applies to loan defaults
6 occurring on the effective date of this subsection.

7 (2) The treatment of sections 802.02 (1) (c) and 802.12 (2) (am) of the statutes
8 first applies to actions commenced on the effective date of this subsection.

9 **SECTION 6. Effective dates.** This act takes effect on the day after publication,
10 except as follows:

11 (1) The amendment of section 138.065 (1) (a) of the statutes takes effect on
12 January 1, 2010, or on the day after publication, whichever is later.

13 (END)