

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/23/2009**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Sheridan (608) 266-7503**

By/Representing: **Lisa Lundquist**

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

Drafter: **agary**

May Contact:

Addl. Drafters: **rnelson2**

Subject: **Fin. Inst. - int. rates/loans  
Courts - miscellaneous**

Extra Copies: **MDK**

Submit via email: **YES**

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

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov  
robert.nelson@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

First mortgage loan default notices and foreclosures

---

**Instructions:**

See Attached

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**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>
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/P1	agary 02/02/2009 rnelson2 02/02/2009	nnatzke 02/02/2009	rschluet 02/02/2009	_____	cduerst 02/02/2009		
/P2	rnelson2 02/05/2009 agary	nnatzke 02/16/2009	mduchek 02/16/2009	_____	mbarman 02/17/2009		

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	02/26/2009			_____			
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/2	agary 03/20/2009	nntaxke 03/20/2009	jfrantze 03/23/2009	_____	mbarman 03/23/2009	sbasford 03/23/2009	

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<END>

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*to 3/23*      *Self 3/23*

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3/20*

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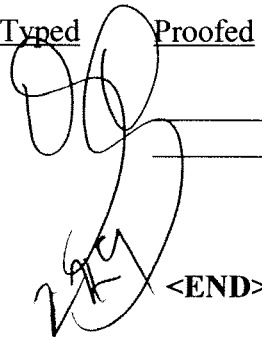
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agary

/p1 nwn  
2/2

  
2/2 <END>

FE Sent For:

## Gary, Aaron

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**From:** Gary, Aaron  
**Sent:** Monday, February 02, 2009 1:11 PM  
**To:** Lundquist, Lisa  
**Subject:** RE: Drafting Request

Hi Lisa,

I did some work on this draft over the weekend and have passed it along to the other drafter. Hopefully he can get to it soon. I had some additional questions in drafting but decided to just go ahead and put something together for your review, and we tweak it as necessary after you get the preliminary draft.

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Lundquist, Lisa  
**Sent:** Monday, February 02, 2009 9:30 AM  
**To:** Gary, Aaron  
**Subject:** RE: Drafting Request

Hi Aaron,

Sorry, I know you guys are swamped with the budget but thank you for the e-mail- I gives me a chance to get started on your questions in the meantime. I will get back to you with what I find out.

Thank you again,

Lisa

---

**From:** Gary, Aaron  
**Sent:** Friday, January 30, 2009 10:10 PM  
**To:** Lundquist, Lisa  
**Subject:** RE: Drafting Request

Hi Lisa,

I took another look at this request to try to get a sense of how much time it might take me to do it once I am freed of the budget and can do other work. The draft is not all that simple. I assume by "lender" you also want to include loan servicers. I haven't had time to do any research (and probably won't), but it seems quite possible that this proposed legislation would not be enforceable against national banks. This always leaves the question of whether you want to be able to enforce the legislation against state banks (which disadvantages state banks and gives them an incentive to abandon their state charters for federal charters - which is not good for the state of course). Have you received any opinion on whether this proposed legislation is preempted under federal law as applied to national banks? If so, it might be best to limit the legislation to mortgage bankers (which excludes state banks but includes about 400 non-bank lenders in Wisconsin and also operating subsidiaries of state banks).

The other thing I need to mention is that about half of the draft will not be mine. When I received the request I spoke with the other drafter and he is in the same boat I'm in - unable to work on anything but the budget right now. After I spoke with you earlier this week (yesterday ?), I talked to the other drafter again to see if his circumstances had changed and whether he could get started on the draft now - he said his circumstances had not changed.

There is a light at the end of the tunnel for budget work and I am hoping to work on your draft sometime next week. I can't make any promises for the other drafter, though. I understand that the Speaker is anxious for this draft and I am giving it

my top non-budget priority.

Aaron

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Lundquist, Lisa  
**Sent:** Friday, January 23, 2009 12:12 PM  
**To:** Gary, Aaron  
**Subject:** RE: Drafting Request

Thank you!

---

**From:** Gary, Aaron  
**Sent:** Friday, January 23, 2009 12:10 PM  
**To:** Lundquist, Lisa  
**Subject:** RE: Drafting Request

Hi Lisa,  
I will be the primary drafter on this bill. I have entered the request as LRB-1743.

Aaron

---

**From:** Kahler, Pam  
**Sent:** Friday, January 23, 2009 11:14 AM  
**To:** Gary, Aaron  
**Subject:** FW: Drafting Request

---

**From:** Lundquist, Lisa  
**Sent:** Thursday, January 22, 2009 4:54 PM  
**To:** Kahler, Pam  
**Subject:** Drafting Request

Hi Pam,

We are looking to get something drafted along the lines of:

Require lenders to provide homeowners with a greater awareness of the available resources and legal options. When a borrower has missed more than one full periodic payment on their first mortgage on their primary residence, a lender is required to provide the borrower with a notice of the default and include in that notice not only information related to the amount that must be paid or performance that must be tendered to cure the default, but also provide a list of adjustment service companies licensed by DFI that offer credit counseling services to homeowners.

In addition, in actions of foreclosures, credit card collection and money judgements in general, plaintiffs will be required to inform defendant(s) that Alternative Dispute Resolution (ADR) procedures (under 802.12) may be requested by either party. Upon request of either party, the Court will determine whether the case is appropriate for use of a settlement alternative and the judge may order the parties to seek a settlement alternative. Use of the ADR procedure will extend the time for filing a responsive pleading until the applicability of a settlement alternative is determined.

Please let me know of any questions or concerns you have about this.

Thank you,

Lisa  
Office of Rep. Sheridan  
266-3387

## Gary, Aaron

---

**From:** Kahler, Pam  
**Sent:** Friday, January 23, 2009 11:14 AM  
**To:** Gary, Aaron  
**Subject:** FW: Drafting Request

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**From:** Lundquist, Lisa  
**Sent:** Thursday, January 22, 2009 4:54 PM  
**To:** Kahler, Pam  
**Subject:** Drafting Request

Hi Pam,

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~~Require lenders to provide homeowners with a greater awareness of the available resources and legal options. When a borrower has missed more than one full periodic payment on their first mortgage on their primary residence, a lender is required to provide the borrower with a notice of the default and include in that notice not only information related to the amount that must be paid or performance that must be tendered to cure the default, but also provide a list of adjustment service companies licensed by DFI that offer credit counseling services to homeowners.~~

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Please let me know of any questions or concerns you have about this.

Thank you,

Lisa  
Office of Rep. Sheridan  
266-3387

*Foreclosure*



*Waated 2/3*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA ✓  
X-ref ✓

Gen.

1 AN ACT ...; **relating to:** mortgage loan defaults and notification of alternative  
2 dispute resolution options. ✓

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

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

3 SECTION 1. <sup>x^</sup> 138.065 of the statutes is created to read:

4 **138.065 Mortgage loan default notices.** (1) DEFINITIONS. In this section:

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

9 (b) "Mortgage lender" means any person, other than an individual, that  
10 originates first mortgage loans initially payable to the person or that services first  
11 mortgage loans. ✓

**SECTION 1**

1 (c) "Originate," with respect to a first mortgage loan, means to make an  
2 underwriting decision on the first mortgage loan and close the loan.✓

3 (d) "Services," with respect to a first mortgage loan, means to receive payments  
4 on a note from the borrower and distribute these payments in accordance with the  
5 terms of the note or servicing agreement.✓

6 **(2) DEFAULT NOTICE REQUIRED.** (a) If a borrower has failed to make a scheduled  
7 payment on a first mortgage loan by the payment due date for 2 consecutive payment  
8 periods and the failure to make these payments renders the borrower in default on  
9 the first mortgage loan, the mortgage lender shall provide the borrower with notice  
10 of the default no later than the payment due date for the next payment period.✓

11 (b) The notice required under par. (a)✓ shall inform the borrower of all of the  
12 following:

13 1. Any action required of the borrower to cure the default on the first mortgage  
14 loan, including any amount that must be paid to cure the default and bring the  
15 borrower current on the loan, and any date by which such action must be taken.✓

16 2. The names and addresses of adjustment service companies licensed under  
17 s. 218.02✓ that offer credit counseling services to homeowners.✓

18 **SECTION 2.** <sup>✓^</sup> 802.02 (1) (c) of the statutes is created to read:

19 802.02 (1) (c) If the claim for relief is for the foreclosure of a mortgage on real  
20 estate under ch. 846✓, for the collection of money owed for credit card debt, or for the  
21 recovery of money, a statement that either party may request the court to order the  
22 parties to select a settlement alternative under s. 802.12✓ as a means to attempt  
23 settlement of the claim.✓

24 **SECTION 3.** <sup>✓^</sup> 802.12 (2) (am) of the statutes is created to read:





## Gary, Aaron

---

**From:** Lundquist, Lisa  
**Sent:** Friday, February 13, 2009 12:45 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB 1743/ P1 drafting comments

Hi Aaron,

I left you a message but I'm sure you're all still busy with budget/ stimulus over there. On that first point, I think we were mistaken in our interpretation. So long story short on that first point- I would just ignore it and leave the language as is but if you need to/ want to talk more about it please give me a call.

Thank you again!

Lisa

---

**From:** Gary, Aaron  
**Sent:** Thursday, February 12, 2009 2:48 PM  
**To:** Lundquist, Lisa  
**Subject:** RE: LRB 1743/ P1 drafting comments

Hi Lisa,

I am making these changes and I am curious about the first change listed below: "exclude 'equivalent security interest'- keep it limited to first lien mortgages." I have heard more than once that the language "equivalent security interest" means a second mortgage, but that is not really accurate. The only case law of which I am aware states that this language does not mean a second mortgage. See Schmidt v. Waukesha State Bank, 204 Wis.2d 426, 440 n. 7 (Wis.App. 1996). It is correct that DFI has a rule (and there is an AG opinion supporting the rule, 63 OAG 557) applicable to a different chapter (ch. 422 in the Wisconsin Consumer Act) that provides, under certain provisions of the WCA, that if a financial institution holds **both the first and second** mortgages and there are no intervening interests, the second mortgage is treated as a first under the "equivalent security interest" language. Is this the result that you want to avoid by omitting the language "equivalent security interest"? If the people you are talking with have some legal authority that I'm not aware of, I'd be very interested in knowing about it, as this is not the first time the subject has come up.

Thanks!

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Lundquist, Lisa  
**Sent:** Wednesday, February 04, 2009 8:18 PM  
**To:** Gary, Aaron  
**Subject:** LRB 1743/ P1 drafting comments

Hi Aaron,

First of all, I should note that our timeframe for this proposal has slowed down- we'd of course like to keep working on it but it is not urgent. This is indeed a more complex draft than I anticipated. I do appreciate all of your work to turn this around so quickly. We were hoping to get this out this week but I don't foresee that happening.

After talking it over with some people here, we would agree with your assumptions- to include loan servicers in the

definition of lender and to limit this proposal to mortgage bankers/ exclude federally insured financial institutions.

Additional changes that have been suggested:

Change the definition of "first mortgage loan" on page one beginning at line 6 to exclude "equivalent security interest"- keep it limited to first lien mortgages.

On page 2, beginning at line 9, paragraph (2)(a) where it describes when a default occurs- to be more clear, can we change it to say that the borrower must fail to make a "full" scheduled payment. I believe the intent is really that the borrower must fail to make two full scheduled payments over two consecutive payment periods. For example: "If a borrower has failed to make two full scheduled payments over consecutive payment periods on a first mortgage loan and the failure to make these payments renders the borrower in default pursuant to the terms of the first mortgage loan, the mortgage lender shall provide the borrower with notice of the default no later than 45 days after the due date for the second consecutive payment."

Page 2, line 13 requires the notice to be sent no later than the payment due date for the next payment period. We have heard from creditors that that timeframe would be very difficult for them to meet given that there is a 15 day grace period in section 138.052 for borrowers to be able to make a payment without penalty. Can we change it to read "no later than 45 days after the due date for the second consecutive payment." That way, the lender would still wait the 15 day grace period to make sure no payment has arrived, yet the lender would be left with closer to 30 days to turn the notice around to the borrower.

Expand the definition of default to include other events like, failing to pay property taxes, failing to maintain appropriate insurance, etc/ match the definition of default in the Consumer Protection Act (425.203 (2)c).

On Page 2, beginning at line 21, new Section 802.02(1)(c) is created- it should be clear that this request "must be served on the other party no later than 5 days before an answer would otherwise be due." If a timeframe around this request is not established, the parties could get all the way to a court hearing (or even in the middle of a hearing) and one party could then decide to make this request. In fairness to all parties and the court, a timeframe like what I described above should be placed into the law so everyone understands by when this request must be made.

The requirement in new 802.02(1)(c) and 802.12(2)(am) reach to "credit card debt or for the recovery of money"- I think we want to limit these two new sections to first mortgage loans.

In new Section 802.12(2)(am), page 3 beginning at line 3- can we include a back end timeframe as to how long the settlement alternative can take before it is "concluded" so that one party could not unfairly drag the process on by being unresponsive or uncooperative.

I realize these changes will take some time. Please let me know if you have any questions and thank you again for your help.

Lisa  
Office of Rep. Sheridan  
266-3387



State of Wisconsin  
2009 - 2010 LEGISLATURE

in  
2/13  
wanted  
by 2/20

LRB-1743/PZ  
ARG&RPN:nwn:rs

RMA

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

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

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***Analysis by the Legislative Reference Bureau***

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4                    **SECTION 1.** 138.065 of the statutes is created to read:  
5                    **138.065 Mortgage loan default notices.** (1) DEFINITIONS. In this section:  
6                    (a) "First mortgage loan" means a loan that is secured by a first lien real estate  
7                    mortgage, or equivalent security interest, in a one-family to 4-family dwelling,  
8                    including individual condominium units, in this state that the borrower uses, or  
9                    intends to use, as his or her principal place of residence.

*banker" has the meaning given in s. 224.71 (3),*

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(b) "Mortgage lender" means any person, other than an individual, that originates first mortgage loans initially payable to the person or that services first mortgage loans.

(c) "Originate," with respect to a first mortgage loan, means to make an underwriting decision on the first mortgage loan and close the loan.

(d) "Services," with respect to a first mortgage loan, means to receive payments on a note from the borrower and distribute these payments in accordance with the terms of the note or servicing agreement.

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(2) DEFAULT NOTICE REQUIRED. (a) If a borrower has failed to make <sup>full</sup> scheduled payment on a first mortgage loan ~~by the payment due date~~ for 2 consecutive payment periods and the failure to make these payments renders the borrower in default ~~of~~ <sup>under the terms of</sup> the first mortgage loan, the mortgage ~~lender~~ <sup>banker</sup> shall provide the borrower with notice of the default ~~no later than~~ <sup>45 days after the</sup> ~~the payment~~ due date for the ~~next~~ <sup>2nd</sup> payment period.

*MSW 2-13*

(3) <sup>(E)</sup> CONTENT OF NOTICE. The notice required under ~~(a)~~ <sup>sub. (2)</sup> shall inform the borrower of all of the following:

14  
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20

- (a) Any action required of the borrower to cure the default on the first mortgage loan, including any amount that must be paid to cure the default and bring the borrower current on the loan, and any date by which such action must be taken.
- (b) The names and addresses of adjustment service companies licensed under s. 218.02 that offer credit counseling services to homeowners.

21  
22  
23  
24

SECTION 2. 802.02 (1) (c) of the statutes is created to read:

802.02 (1) (c) If the claim for relief is for the foreclosure of a mortgage on real estate under ch. 846, for the collection of money owed for credit card debt, or for the recovery of money, a statement that either party may request the court to order the

*to the court*

1 parties to select a settlement alternative under s. 802.12 as a means to attempt  
2 settlement of the claim) *↑ by submitting a request and serving a copy*  
*of that request on the other party no*  
*later than 5 days before an answer*

3 SECTION 3. 802.12 (2) (am) of the statutes is created to read: *is otherwise due*

4 802.12 (2) (am) If the action includes a claim for relief for the foreclosure of a  
5 mortgage on real estate under ch. 846, for the collection of money owed for credit card

6 debt, or for the recovery of money, a party to the action requests the court to order  
7 *and serves that request on the other*  
the parties to select a settlement alternative), and the court determines that the

8 *request is timely and the*  
action or proceeding is *an* appropriate one in which to invoke a settlement alternative,

9 the time periods for any responsive pleading are tolled until the selected settlement  
10 alternative is concluded. *party no later than 5 days*  
*before an answer is otherwise*  
*due*

11 SECTION 4. Initial applicability.

12 (1) The treatment of section 138.065 of the statutes first applies to loan defaults  
13 occurring on the effective date of this subsection.

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

16 (END)

*with the settlement alternative*  
*If, upon motion of either party, the court*  
*determines that a party is not participating*  
*in good faith, the court shall terminate the*  
*settlement alternative and may require*  
*that party to pay the other party's costs,*  
*including attorney fees, incurred while*  
*participating in the settlement alternative.*

*D-note*

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1743/P2ins  
ARG:.....

1

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**INSERT 2-13:**

4

(b) If a borrower has breached any term of a first mortgage loan, other than a

5

term requiring the borrower to make scheduled periodic payments of principal and

6

interest, and the breach materially impairs the borrower's ability to pay amounts

7

due under the loan and renders the borrower in default on the loan, the mortgage

8

banker shall provide the borrower with notice of the default no later than 45 days

9

after the mortgage banker determines that the borrower is in default on the loan. ✓

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

LRB-1743/P2dn

ARG:1....

nwn

Date

ATTN: Lisa Lundquist

Please review the attached draft carefully to ensure that it is consistent with your intent. The redrafting instructions reference s. 425.103 (2) (c), stats., regarding defaults, but that provision is not a perfect fit here and I was uncertain just how to use that provision as a model for the provisions of this draft. Accordingly, created s. 138.065 (2) (b) in the attached draft may not be what you had in mind.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.wisconsin.gov



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

LRB-1743/P2dn

ARG:nwn:md

February 16, 2009

ATTN: Lisa Lundquist

Please review the attached draft carefully to ensure that it is consistent with your intent. The redrafting instructions reference s. 425.103 (2) (c), stats., regarding defaults, but that provision is not a perfect fit here and I was uncertain just how to use that provision as a model for the provisions of this draft. Accordingly, created s. 138.065 (2) (b) in the attached draft may not be what you had in mind.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.wisconsin.gov](mailto:aaron.gary@legis.wisconsin.gov)

**Gary, Aaron**

---

**From:** Lundquist, Lisa  
**Sent:** Tuesday, February 24, 2009 7:26 PM  
**To:** Gary, Aaron  
**Subject:** RE: LRB-1743

Hi Aaron,

I talked over over here and the consensus is to remove that 425.103 (2)(c) reference language and just leave it that default occurs when you miss two consecutive payments. I think you made a very good point that more often than not, property tax and insurance payments and the like are roped in to most homeowners mortgage payments already.

Other than that I think the draft looks good. I am out March 2nd- 6th so if anything comes up with this Chris McKinny in Donna Seidel's office has permission to do with the draft anything that needs to be done.

Thank you again for all of the help.

Lisa

---

**From:** Gary, Aaron  
**Sent:** Tuesday, February 24, 2009 8:58 AM  
**To:** Lundquist, Lisa  
**Subject:** LRB-1743

Hi Lisa,

I received your voice mail. I am attaching to this e-mail the second version of the draft and drafter's note. Your memory about the default definition being discussed is probably a recollection of the attached drafter's note (to the latest version). I will call you later today to follow up on your voice mail message.

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

02/25/2009

2/27

EMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Editors: Please see  
D-Note first  
ARG

D-Note

Wanted by 3/4

by 10:00 AM

SAV  
X-ref

Regen.

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

*Analysis by the Legislative Reference Bureau*

insert  
ANAL-AG  
ANAL-RPL

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

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

5 **138.065 Mortgage loan default notices. (1) DEFINITIONS.** In this section:

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

10 (b) "Mortgage banker" has the meaning given in s. 224.71 (3).

SECTION 1

1 (2) DEFAULT NOTICE REQUIRED. (a) If a borrower has failed to make full  
 2 scheduled payments on a first mortgage loan for 2 consecutive payment periods and  
 3 the failure to make these payments renders the borrower in default under the terms  
 4 of the first mortgage loan, <sup>of a</sup> the mortgage banker <sup>holding or servicing the first mortgage loan</sup> shall provide the borrower with  
 5 notice of the default no later than 45 days after the due date for the 2nd payment  
 6 period.

7 (b) If a borrower has breached any term of a first mortgage loan, other than a  
 8 term requiring the borrower to make scheduled periodic payments of principal and  
 9 interest, and the breach materially impairs the borrower's ability to pay amounts  
 10 due under the loan and renders the borrower in default on the loan, the mortgage  
 11 banker shall provide the borrower with notice of the default no later than 45 days  
 12 after the mortgage banker determines that the borrower is in default on the loan.

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

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

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

MSL  
2-19 →

20 SECTION 2. 802.02 (1) (c) of the statutes is created to read:

21 802.02 (1) (c) If the claim for relief is for the foreclosure of a mortgage on real  
 22 estate under ch. 846, a statement that either party may request <sup>that</sup> the court <sup>to</sup> order  
 23 the parties to select a settlement alternative under s. 802.12 as a means to attempt  
 24 settlement of the claim, by submitting a request to the court and serving a copy of

1 that request on the other party no later than 5 days before an answer is otherwise  
2 due.

3 **SECTION 3.** <sup>✓</sup> 802.12 (2) (am) of the statutes is created to read:

4 802.12 (2) (am) If the action includes a claim for relief for the foreclosure of a  
5 mortgage on real estate under ch. 846, a party to the action requests the court to order  
6 the parties to select a settlement alternative and serves that request on the other  
7 party no later than 5 days before an answer is otherwise due, and the court  
8 determines that the request is timely and the action or proceeding is an appropriate  
9 one in which to invoke a settlement alternative, the time periods for any responsive  
10 pleading are tolled until the selected settlement alternative is concluded. If, upon  
11 motion of either party, the court determines that a party is not participating in good  
12 faith with the settlement alternative, the court shall terminate the settlement  
13 alternative, and may require that party to pay the other party's costs, including  
14 attorney fees, incurred while participating in the settlement alternative.

15 **SECTION 4. Initial applicability.**

16 (1) The treatment <sup>creation</sup> of section 138.065 of the statutes first applies to loan defaults  
17 occurring on the effective date of this subsection.

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

(END)

20  
Insert  
3-20

J-Note

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**INSERT ANAL-AG:**

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.

3

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**INSERT 2-19:**

5

**SECTION 1.** 138.065 (1) (a) of the statutes, as created by 2009 Wisconsin Act ...

6

(this act), is amended to read:

7

138.065 (1) (a) "First mortgage loan" means a ~~loan~~<sup>g</sup> residential mortgage ~~loan~~<sup>plain</sup> as defined in s. 224.71 (14), that is secured by a first lien real estate mortgage, or equivalent security interest, ~~in a one-family to 4-family dwelling, including individual condominium units, in this state on a dwelling or residential real property~~ that the borrower uses, or intends to use, as his or her principal place of residence.

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**INSERT 3-20:**

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**SECTION 2. Effective dates.** This act takes effect on the day after publication,

14

except as follows:

15

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

16

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1743/lrnins  
RPN:nwn:md

insert anl-rn:

*pleadings*

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 ~~document~~ that make~~s~~ 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, 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 is required to 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.

*must*

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

LRB-1743/1dn

ARG:j:...

nwn

*Date*

ATTN: Lisa Lundquist

Since the last version of this draft, Act 2 was signed into law. ✓ Act 2 includes changes to the definition of "mortgage banker" that require adjustments to be made in this draft. I have included these adjustments in this "/1" version.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.wisconsin.gov



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

LRB-1743/1dn  
ARG:nwn:ph

March 4, 2009

ATTN: Lisa Lundquist

Since the last version of this draft, Act 2 was signed into law. Act 2 includes changes to the definition of "mortgage banker" that require adjustments to be made in this draft. I have included these adjustments in this "/1" version.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.wisconsin.gov](mailto:aaron.gary@legis.wisconsin.gov)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

6-3387

3/17/09

- Lisa

• LRB-1743

• call Oswald Puhls

• Rose: cell 576-8205

• <sup>re</sup> equivalent security interest language

• <sup>1st</sup> sent her the e-mail ~~to~~ I previously sent (attached)

→  
3/17/09 flc w/ Rose - WBA wants limited to "true" 1<sup>st</sup> mortgage; not cover combined 1<sup>st</sup> & 2<sup>nd</sup>

3/19 flc w/ Lisa

• yes, take out the <sup>"equivalent"</sup> language to cover only true 1<sup>st</sup> mortgage, not combined 1<sup>st</sup> & 2<sup>nd</sup>s

## Gary, Aaron

---

**From:** Gary, Aaron  
**Sent:** Thursday, February 12, 2009 2:48 PM  
**To:** Lundquist, Lisa  
**Subject:** RE: LRB 1743/ P1 drafting comments

Hi Lisa,

I am making these changes and I am curious about the first change listed below: "exclude 'equivalent security interest'- keep it limited to first lien mortgages." I have heard more than once that the language "equivalent security interest" means a second mortgage, but that is not really accurate. The only case law of which I am aware states that this language does not mean a second mortgage. See Schmidt v. Waukesha State Bank, 204 Wis.2d 426, 440 n. 7 (Wis.App. 1996). It is correct that DFI has a rule (and there is an AG opinion supporting the rule, 63 OAG 557) applicable to a different chapter (ch. 422 in the Wisconsin Consumer Act) that provides, under certain provisions of the WCA, that if a financial institution holds both the first and second mortgages and there are no intervening interests, the second mortgage is treated as a first under the "equivalent security interest" language. Is this the result that you want to avoid by omitting the language "equivalent security interest"? If the people you are talking with have some legal authority that I'm not aware of, I'd be very interested in knowing about it, as this is not the first time the subject has come up.

Thanks!

Aaron

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Lundquist, Lisa  
**Sent:** Wednesday, February 04, 2009 8:18 PM  
**To:** Gary, Aaron  
**Subject:** LRB 1743/ P1 drafting comments

Hi Aaron,

First of all, I should note that our timeframe for this proposal has slowed down- we'd of course like to keep working on it but it is not urgent. This is indeed a more complex draft than I anticipated. I do appreciate all of your work to turn this around so quickly. We were hoping to get this out this week but I don't foresee that happening.

After talking it over with some people here, we would agree with your assumptions- to include loan servicers in the definition of lender and to limit this proposal to mortgage bankers/ exclude federally insured financial institutions.

Additional changes that have been suggested:

Change the definition of "first mortgage loan" on page one beginning at line 6 to exclude "equivalent security interest"- keep it limited to first lien mortgages.

On page 2, beginning at line 9, paragraph (2)(a) where it describes when a default occurs- to be more clear, can we change it to say that the borrower must fail to make a "full" scheduled payment. I believe the intent is really that the borrower must fail to make two full scheduled payments over two consecutive payment periods. For example: "If a borrower has failed to make two full scheduled payments over consecutive payment periods on a first mortgage loan and the failure to make these payments renders the borrower in default pursuant to the terms of the first mortgage loan, the mortgage lender shall provide the borrower with notice of the default no later than 45 days after the due date for the second consecutive payment."

Page 2, line 13 requires the notice to be sent no later than the payment due date for the next payment period. We have



500

m 3/20

RMR

# 2009 BILL

SA ✓

Reger.

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,

**BILL**

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.** <sup>✓</sup> 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, or equivalent security interest, in a one-family to 4-family dwelling,  
5 including individual condominium units, in this state that the borrower uses, or  
6 intends to use, as his or her principal 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.

**BILL**

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.** <sup>✓</sup> 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, or  
7 equivalent security interest, ~~in a one-family to 4-family dwelling, including~~  
8 ~~individual condominium units, in this state on a dwelling or residential real property~~  
9 that the borrower uses, or intends to use, as his or her principal place of residence.

10 **SECTION 3.** <sup>✓</sup> 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.** <sup>✓</sup> 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

**BILL****SECTION 4**

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)

**Basford, Sarah**

---

**From:** Lundquist, Lisa  
**Sent:** Monday, March 23, 2009 11:49 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1743/2 Topic: First mortgage loan default notices and foreclosures

Please Jacket LRB 09-1743/2 for the ASSEMBLY.