

2009 DRAFTING REQUEST

Bill

Received: **07/03/2009**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Thomas Nelson (608) 266-2418**

By/Representing: **Ben**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters: **agary**

Subject: **Courts - miscellaneous
Fin. Inst. - miscellaneous**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Notice of mortgage foreclosure

Instructions:

See attached

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Handwritten notes and signatures:
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*Not by notice - use
current judicial process.*

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<END>

Nelson, Robert P.

From: Gary, Aaron
Sent: Thursday, July 02, 2009 3:04 PM
To: Nelson, Robert P.
Subject: FW: Michigan foreclosure law
Attachments: HB 4453_billennrolled_.pdf; HB 4455_billennrolled_.pdf; HB 4454_billennrolled_(1).pdf

Another home mortgage foreclosure draft. I'll come talk to you about it (I just peeked into your office but you weren't there).

From: Nerad, Ben
Sent: Thursday, July 02, 2009 2:57 PM
To: Gary, Aaron
Subject: Michigan foreclosure law

Aaron,

As per our discussion, attached are the recently signed into law Michigan foreclosure bills. Generally, I'd like to not include provisions relating to notice of foreclosure, as I believe most are included or similar to provisions in LRB 1743/2. That said, if there are substantial differences that I haven't been able to discern between the two bills it may make sense to include the MI notice provisions. Apart from that, I'd like to include all provisions of the 3 MI bills attached in a bill draft.

Please let me know once you've had a chance to look at this and would need input from me.

Thanks,

Ben

Ben Nerad
Office of Rep. Tom Nelson
Assembly Majority Leader
608-266-2418

STATE OF MICHIGAN

95TH LEGISLATURE

REGULAR SESSION OF 2009

Introduced by Reps. Jackson, Roy Schmidt, Simpson, Robert Jones, Cushingberry, Slavens, Lisa Brown, Roberts, Corriveau, Scripps, Kennedy, Huckleberry, Haase, Haugh, Liss, Tlaib, Segal, Switalski, Bledsoe, Nerat, Smith, Ebli, Barnett, Melton, Miller, Nathan and Leland

ENROLLED HOUSE BILL No. 4453

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending the title and section 3204 (MCL 600.3204), the title as amended by 1999 PA 239 and section 3204 as amended by 2004 PA 186, and by adding section 3205.

The People of the State of Michigan enact:

TITLE

An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts.

Sec. 3204. (1) Subject to subsection (4), a party may foreclose a mortgage by advertisement if all of the following circumstances exist:

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by

the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

(4) A party shall not commence proceedings under this chapter to foreclose a mortgage of property described in section 3205a(1) if 1 or more of the following apply:

(a) Notice has not been mailed to the mortgagor as required by section 3205a.

(b) After a notice is mailed to the mortgagor under section 3205a, the time for a housing counselor to notify the person designated under section 3205a(1)(c) of a request by the mortgagor under section 3205b(1) has not expired.

(c) Within 14 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c) and 90 days have not passed after the notice was mailed.

(d) The mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c), the mortgagor has provided documents if requested under section 3205b(2), and the person designated under section 3205a(1)(c) has not met or negotiated with the mortgagor under this chapter.

(e) The mortgagor and mortgagee have agreed to modify the mortgage loan and the mortgagor is not in default under the modified agreement.

(f) Calculations under section 3205c(1) show that the mortgagor is eligible for a loan modification and foreclosure under this chapter is not allowed under section 3205c(7).

(5) Subsection (4) applies only to proceedings under this chapter in which the first notice under section 3208 is published after the effective date of the amendatory act that added this

subsection and before 2 years after the effective date of the amendatory act that added this subsection.

Sec. 3205. As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

(b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.

(c) "Mortgage servicer" means the servicing agent of the mortgage.

Enacting section 1. This amendatory act takes effect 45 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) House Bill No. 4454.

(b) House Bill No. 4455.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

STATE OF MICHIGAN

95TH LEGISLATURE

REGULAR SESSION OF 2009

Introduced by Reps. Johnson, Roy Schmidt, Simpson, Robert Jones, Cushingberry, Slavens, Lisa Brown, Roberts, Corriveau, Scripps, Kennedy, Huckleberry, Haase, Haugh, Liss, Tlaib, Segal, Switalski, Bledsoe, Nerat, Smith, Ebli, Barnett, Melton, Nathan, Miller, Leland, Angerer, Bauer, Terry Brown, Byrnes, Constan, Dean, Dillon, Donigan, Durhal, Espinoza, Geiss, Gonzales, Gregory, Hammel, Jackson, Lipton, Neumann, Polidori, Bettie Scott, Sheltroun, Slezak, Stanley and Young

ENROLLED HOUSE BILL No. 4455

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding sections 3205c, 3205d, and 3205e; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 3205c. (1) If a borrower has contacted a housing counselor under section 3205b but the process has not resulted in an agreement to modify the mortgage loan, the person designated under section 3205a(1)(c) shall work with the borrower to determine whether the borrower qualifies for a loan modification. Unless the loan is described in subsection (2) or (3), in making the determination under this subsection, the person designated under section 3205a(1)(c) shall use a loan modification program or process that includes all of the following features:

(a) The loan modification program or process targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. Housing-related debt under this subdivision includes mortgage principal and interest, property taxes, insurance, and homeowner's fees.

(b) To reach the 38% target specified in subdivision (a), 1 or more of the following features:

(i) An interest rate reduction, as needed, subject to a floor of 3%, for a fixed term of at least 5 years.

(ii) An extension of the amortization period for the loan term, to 40 years or less from the date of the loan modification.

(iii) Deferral of some portion of the amount of the unpaid principal balance of 20% or less, until maturity, refinancing of the loan, or sale of the property.

(iv) Reduction or elimination of late fees.

(2) In making the determination under subsection (1), if the mortgage loan is pooled for sale to an investor that is a governmental entity, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the governmental entity.

(3) In making the determination under subsection (1), if the mortgage loan has been sold to a government-sponsored enterprise, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the government-sponsored enterprise.

(4) This section does not prohibit a loan modification on other terms or another loss mitigation strategy instead of modification if the other modification or strategy is agreed to by the borrower and the person designated under section 3205a(1)(c).

(5) The person designated under section 3205a(1)(c) shall provide the borrower with both of the following:

(a) A copy of any calculations made by the person under this section.

(b) If requested by the borrower, a copy of the program, process, or guidelines under which the determination under subsection (1) was made.

(6) Subject to subsection (7), if the results of the calculation under subsection (1) are that the borrower is eligible for a modification, the mortgage holder or mortgage servicer shall not foreclose the mortgage under this chapter but may proceed under chapter 31. If the results of the calculation under subsection (1) are that the borrower is not eligible for a modification or if subsection (7) applies, the mortgage holder or mortgage lender may foreclose the mortgage under this chapter.

(7) If the determination under subsection (1) is that the borrower is eligible for a modification, the mortgage holder or mortgage servicer may proceed to foreclose the mortgage under this chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in good faith offered the borrower a modification agreement prepared in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the mortgage holder or mortgage servicer, the borrower has not executed and returned the modification agreement within 14 days after the borrower received the agreement.

(8) If a mortgage holder or mortgage servicer begins foreclosure proceedings under this chapter in violation of this section, the borrower may file an action in the circuit court for the county where the mortgaged property is situated to convert the foreclosure proceeding to a judicial foreclosure. If a borrower files an action under this section and the court determines that the borrower participated in the process under section 3205b, a modification agreement was not reached, and the borrower is eligible for modification under subsection (1), and subsection (7) does not apply, the court shall enjoin foreclosure of the mortgage by advertisement and order that the foreclosure proceed under chapter 31.

Sec. 3205d. The Michigan state housing development authority shall develop the list of housing counselors approved by the United States department of housing and urban development or by the Michigan state housing development authority who may perform the duties of housing counselor under sections 3205a to 3205c.

Sec. 3205e. Sections 3205a to 3205d are repealed effective 2 years after the effective date of the amendatory act that added this section.

Enacting section 1. This amendatory act takes effect 45 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) House Bill No. 4453.

(b) House Bill No. 4454.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009

Introduced by Reps. Coulouris, Roy Schmidt, Simpson, Robert Jones, Cushingberry, Slavens, Lisa Brown, Roberts, Corriveau, Scripps, Kennedy, Huckleberry, Haase, Haugh, Liss, Tlaib, Segal, Switalski, Bledsoe, Nerat, Smith, Ebli, Barnett, Melton, Nathan, Miller and Leland

ENROLLED HOUSE BILL No. 4454

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding sections 3205a and 3205b.

The People of the State of Michigan enact:

Sec. 3205a. (1) Subject to subsection (6), before proceeding with a sale under this chapter of property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall serve a written notice on the borrower that contains all of the following information:

- (a) The reasons that the mortgage loan is in default and the amount that is due and owing under the mortgage loan.
- (b) The names, addresses, and telephone numbers of the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or mortgage servicer.
- (c) A designation of 1 of the persons named in subdivision (b) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.
- (d) That enclosed with the notice is a list of housing counselors prepared by the Michigan state housing development authority and that within 14 days after the notice is sent, the borrower may request a meeting with the person designated under subdivision (c) to attempt to work out a modification of the mortgage loan to avoid foreclosure and that the borrower may also request a housing counselor to attend the meeting.

(e) That if the borrower requests a meeting with the person designated under subdivision (c), foreclosure proceedings will not be commenced until 90 days after the date the notice is mailed to the borrower.

(f) That if the borrower and the person designated under subdivision (c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(g) That if the borrower and the person designated under subdivision (c) do not agree to modify the mortgage loan but it is determined that the borrower meets criteria for a modification under section 3205c(1) and foreclosure under this chapter is not allowed under section 3205c(7), the foreclosure of the mortgage will proceed before a judge instead of by advertisement.

(h) That the borrower has the right to contact an attorney, and the telephone numbers of the state bar of Michigan's lawyer referral service and of a local legal aid office serving the area in which the property is situated.

(2) A person who serves a notice under subsection (1) shall enclose with the notice a list prepared by the Michigan state housing development authority under section 3205d of the names, addresses, and telephone numbers of housing counselors approved by the United States department of housing and urban development or the Michigan state housing development authority.

(3) A person shall serve a notice under subsection (1) by mailing the notice by regular first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, both sent to the borrower's last known address.

(4) Within 7 days after mailing a notice under subsection (3), the person who mails the notice shall publish a notice informing the borrower of the borrower's rights under this section. The person shall publish the information 1 time in the same manner as is required for publishing a notice of foreclosure sale under section 3208. The notice under this subsection shall contain all of the following information:

(a) The borrower's name and the property address.

(b) A statement that informs the borrower of all of the following:

(i) That the borrower has the right to request a meeting with the mortgage holder or mortgage servicer.

(ii) The name of the person designated under subsection (1)(c) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(iii) That the borrower may contact a housing counselor by visiting the Michigan state housing development authority's website or by calling the Michigan state housing

development authority.

(iv) The website address and telephone number of the Michigan state housing development authority.

(v) That if the borrower requests a meeting with the person designated under subsection (1)(c), foreclosure proceedings will not be commenced until 90 days after the date notice is mailed to the borrower.

(vi) That if the borrower and the person designated under subsection (1)(c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(vii) That the borrower has the right to contact an attorney, and the telephone number of the state bar of Michigan's lawyer referral service.

(5) A borrower on whom notice is required to be served under this section who is not served and against whom foreclosure proceedings are commenced under this chapter may bring an action in the circuit court for the county in which the mortgaged property is situated to enjoin the foreclosure.

(6) If the borrower and the person designated under subsection (1)(c) have previously agreed to modify the mortgage loan under section 3205b, this section and sections 3205b and 3205c do not apply unless the borrower has complied with the terms of the mortgage loan, as modified, for 1 year after the date of the modification.

Sec. 3205b. (1) A borrower who wishes to participate in negotiations to attempt to work out a modification of a mortgage loan shall contact a housing counselor from the list provided under section 3205a within 14 days after the list is mailed to the borrower. Within 10 days after being contacted by a borrower, a housing counselor shall inform the person designated under section 3205a(1)(c) in writing of the borrower's request.

(2) After being informed of a borrower's request to meet under this section, the person designated under section 3205a(1)(c) may request the borrower to provide any documents that are necessary to determine whether the borrower is eligible for a modification under section 3205c. The borrower shall give the person designated under section 3205a(1)(c) copies of any documents requested under this section.

(3) A housing counselor contacted by a borrower under this section shall schedule a meeting between the borrower and the person designated under section 3205a(1)(c) to attempt to work out a modification of the mortgage loan. At the request of the borrower, the housing counselor will attend the meeting. The meeting and any later meetings shall be held at a time and place that is convenient to all parties, or in the county where the property is situated.

Enacting section 1. This amendatory act takes effect 45 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) House Bill No. 4453.

(b) House Bill No. 4455.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

①

Sec. 3204. (1) Subject to subsection (4), a party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

(b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

*see def-
s. 3205*

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

(4) A party shall not commence proceedings under this chapter to foreclose a mortgage of property described in section 3205a(1) if 1 or more of the following apply:

(a) Notice has not been mailed to the mortgagor as required by section 3205a.

Borrower

(b) After a notice is mailed to the mortgagor under section 3205a, the time for a housing counselor to notify the person designated under section 3205a(1)(c) of a request by the mortgagor under section 3205b(1) has not expired.

(c) Within 14 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c) and 90 days have not passed after the notice was mailed.

(d) The mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c), the mortgagor has provided documents if requested under section 3205b(2), and the person designated under section 3205a(1)(c) has not met or negotiated with the mortgagor under this chapter.

(e) The mortgagor and mortgagee have agreed to modify the mortgage loan and the mortgagor is not in default under the modified agreement.

(2)

(f) Calculations under section 3205c(1) show that the mortgagor is eligible for a loan modification and foreclosure under this chapter is not allowed under section 3205c(7).

(5) Subsection (4) applies only to proceedings under this chapter in which the first notice under section 3208 is published after the effective date of the amendatory act that added this subsection and before 2 years after the effective date of the amendatory act that added this subsection.

Sec. 3205. As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

(b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.

(c) "Mortgage servicer" means the servicing agent of the mortgage.

Sec. 3205a. (1) Subject to subsection (6), before proceeding with a sale under this chapter of property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall serve a written notice on the borrower that contains all of the following information:

(a) The reasons that the mortgage loan is in default and the amount that is due and owing under the mortgage loan.

(b) The names, addresses, and telephone numbers of the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or mortgage servicer.

(c) A designation of 1 of the persons named in subdivision (b) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(d) That enclosed with the notice is a list of housing counselors prepared by the Michigan state housing development authority and that within 14 days after the notice is sent, the borrower may request a meeting with the person designated under subdivision (c) to attempt to work out a modification of the mortgage loan to avoid foreclosure and that the borrower may also request a housing counselor to attend the meeting.

(e) That if the borrower requests a meeting with the person designated under subdivision (c), foreclosure proceedings will not be commenced until 90 days after the date the notice is mailed to the borrower.

(f) That if the borrower and the person designated under subdivision (c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(g) That if the borrower and the person designated under subdivision (c) do not agree to modify the mortgage loan but it is determined that the borrower meets criteria for a modification under section 3205c(1) and foreclosure under this chapter is not allowed under section 3205c(7), the foreclosure of the mortgage will proceed before a judge instead of by advertisement.

(2)

(h) That the borrower has the right to contact an attorney, and the telephone numbers of the state bar of Michigan's lawyer referral service and of a local legal aid office serving the area in which the property is situated.

(2) A person who serves a notice under subsection (1) shall enclose with the notice a list prepared by the Michigan state housing development authority under section 3205d of the names, addresses, and telephone numbers of housing counselors approved by the United States department of housing and urban development or the Michigan state housing development authority.

(3) A person shall serve a notice under subsection (1) by mailing the notice by regular first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, both sent to the borrower's last known address.

(4) Within 7 days after mailing a notice under subsection (3), the person who mails the notice shall publish a notice informing the borrower of the borrower's rights under this section. The person shall publish the information 1 time in the same manner as is required for publishing a notice of foreclosure sale under section 3208. The notice under this subsection shall contain all of the following information:

(a) The borrower's name and the property address.

(b) A statement that informs the borrower of all of the following:

(i) That the borrower has the right to request a meeting with the mortgage holder or mortgage servicer.

(ii) The name of the person designated under subsection (1)(c) as the person to contact and that has the authority to make agreements under sections 3205b and 3205c.

(iii) That the borrower may contact a housing counselor by visiting the Michigan state housing development authority's website or by calling the Michigan state housing development authority.

(iv) The website address and telephone number of the Michigan state housing development authority.

(v) That if the borrower requests a meeting with the person designated under subsection (1) (c), foreclosure proceedings will not be commenced until 90 days after the date notice is mailed to the borrower.

(vi) That if the borrower and the person designated under subsection (1)(c) reach an agreement to modify the mortgage loan, the mortgage will not be foreclosed if the borrower abides by the terms of the agreement.

(vii) That the borrower has the right to contact an attorney, and the telephone number of the state bar of Michigan's lawyer referral service.

(5) A borrower on whom notice is required to be served under this section who is not served and against whom foreclosure proceedings are commenced under this chapter may bring an action in the circuit court for the county in which the mortgaged property is situated to enjoin the foreclosure.

(6) If the borrower and the person designated under subsection (1)(c) have previously agreed to modify the mortgage loan under section 3205b, this section and sections 3205b and 3205c do not apply unless the borrower has complied with the terms of the mortgage loan, as modified, for 1 year after the date of the modification.

what if no contact?

Sec. 3205b. (1) A borrower who wishes to participate in negotiations to attempt to work out a modification of a mortgage loan shall contact a housing counselor from the list provided under section 3205a within 14 days after the list is mailed to the borrower. Within 10 days after being contacted by a borrower, a housing counselor shall inform the person designated under section 3205a(1)(c) in writing of the borrower's request.

(2) After being informed of a borrower's request to meet under this section, the person designated under section 3205a(1)(c) may request the borrower to provide any documents that are necessary to determine whether the borrower is eligible for a modification under section 3205c. The borrower shall give the person designated under section 3205a(1)(c) copies of any documents requested under this section.

(3) A housing counselor contacted by a borrower under this section shall schedule a meeting between the borrower and the person designated under section 3205a(1)(c) to attempt to work out a modification of the mortgage loan. At the request of the borrower, the housing counselor will attend the meeting. The meeting and any later meetings shall be held at a time and place that is convenient to all parties, or in the county where the property is situated.

Sec. 3205c. (1) If a borrower has contacted a housing counselor under section 3205b but the process has not resulted in an agreement to modify the mortgage loan, the person designated under section 3205a(1)(c) shall work with the borrower to determine whether the borrower qualifies for a loan modification. Unless the loan is described in subsection (2) or (3), in making the determination under this subsection, the person designated under section 3205a(1)(c) shall use a loan modification program or process that includes all of the following features:

(a) The loan modification program or process targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. Housing-related debt under this subdivision includes mortgage principal and interest, property taxes, insurance, and homeowner's fees.

(b) To reach the 38% target specified in subdivision (a), 1 or more of the following features:

(i) An interest rate reduction, as needed, subject to a floor of 3%, for a fixed term of at least 5 years.

(ii) An extension of the amortization period for the loan term, to 40 years or less from the date of the loan modification.

(iii) Deferral of some portion of the amount of the unpaid principal balance of 20% or less, until maturity, refinancing of the loan, or sale of the property.

(iv) **Reduction** or elimination of late fees.

(2) In making the determination under subsection (1), if the mortgage loan is pooled for sale to an investor that is a governmental entity, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the governmental entity.

(3) In making the determination under subsection (1), if the mortgage loan has been sold to a government-sponsored enterprise, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the government-sponsored enterprise.

(4) This section does not prohibit a loan modification on other terms or another loss mitigation strategy instead of modification if the other modification or strategy is agreed to by the borrower and the person designated under section 3205a(1)(c).

(5) The person designated under section 3205a(1)(c) shall provide the borrower with both of the following:

(a) A copy of any calculations made by the person under this section.

(b) If requested by the borrower, a copy of the program, process, or guidelines under which the determination under subsection (1) was made.

(6) Subject to subsection (7), if the results of the calculation under subsection (1) are that the borrower is eligible for a modification, the mortgage holder or mortgage servicer shall not foreclose the mortgage under this chapter but may proceed under chapter 31. If the results of the calculation under subsection (1) are that the borrower is not eligible for a modification or if subsection (7) applies, the mortgage holder or mortgage lender may foreclose the mortgage under this chapter.

(7) If the determination under subsection (1) is that the borrower is eligible for a modification, the mortgage holder or mortgage servicer may proceed to foreclose the mortgage under this chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in good faith offered the borrower a modification agreement prepared in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the mortgage holder or mortgage servicer, the borrower has not executed and returned the modification agreement within 14 days after **the borrower received** the agreement.

(8) If a **mortgage holder** or mortgage servicer begins foreclosure proceedings under this chapter in violation of this section, the borrower may file an action in the **circuit court** for the county where the mortgaged property is situated to convert the foreclosure proceeding to a judicial foreclosure. If a borrower files an action under this section and the court determines that the borrower participated in the process under section 3205b, a modification agreement was not reached, and the borrower is eligible for modification under subsection (1), and subsection (7) does not apply, the court shall enjoin foreclosure of **the mortgage** by **advertisement and order** that the foreclosure proceed under chapter 31.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

[Handwritten initials]

Gen

1 **AN ACT ...; relating to:** residential mortgage loan foreclosures.

Analysis by the Legislative Reference Bureau

Prelim anal →

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

2 **SECTION 1.** 846.015 of the statutes is created to read:

3 **846.035¹ Mortgage foreclosure procedures.** (1) In this section:

4 (a) "Borrower" means the owner of residential property who gives a mortgage
5 on the residential property to the mortgagee to provide security for repayment of a
6 residential mortgage loan made to the owner of the residential property.

7 (b) "Condominium assessments" means regular and special assessments for
8 common expenses and charges owed by a condominium owner.

9 (c) "Housing-related debt" means mortgage loan principal and interest
10 payments, property taxes, property insurance premiums, and condominium
11 assessments.

1 (d) "Mortgagee" means a person who receives a mortgage to secure payment of
2 a residential mortgage loan.

3 (e) "Mortgage negotiator" means a mortgage or mortgage servicer who has
4 the authority to enter into negotiations regarding modifications to a residential
5 mortgage loan.

6 (f) "Mortgage servicer" means the servicing agent of a mortgagee.

7 (g) "Residential mortgage loan" means a loan that is secured by a first lien real
8 estate mortgage, or equivalent security interest, in a residential property.

9 (h) "Residential property" means real property on which a one-family to
10 4-family dwelling is constructed or intended to be constructed, including individual
11 condominium units, that the borrower uses, or intends to use, as his or her principal
12 place of residence.

13 (2) A mortgagee or mortgage servicer may foreclose on a residential property
14 if all of the following apply:

15 (a) The mortgage has been properly recorded.

16 (b) The borrower has defaulted on a condition of the mortgage that gives the
17 mortgagee or mortgage servicer the right to foreclose on the mortgage.

18 (c) If the mortgagee or mortgage servicer is not the original mortgagee or
19 mortgage servicer, a record chain of title exists evidencing the assignment or transfer
20 of the mortgage to the mortgagee or mortgage servicer foreclosing on the mortgage.

21 (d) Except as provided in par. (b), the mortgagee or mortgage servicer complies
22 with subs. (4) to (11).

23 (3) If the mortgagee or mortgage servicer and borrower have previously agreed
24 to modify the residential mortgage loan under this section and the mortgagee or
25 mortgage servicer has complied with the terms of the agreement, but the borrower

1 has not complied with the terms of the agreement, the mortgagee or mortgage
2 servicer may commence an action to foreclose on the mortgage without complying
3 with subs. (4) to (11).

4 (4) (a) Before commencing an action to foreclose a mortgage on a residential
5 property, a mortgagee or mortgage servicer shall provide to the borrower at his or her
6 last known address by first class mail, and by certified mail, return receipt requested
7 with delivery restricted to the borrower, a written notice that contains all of the
8 following information:

9 1. That the mortgage is in default and mortgage foreclosure action may be
10 commenced, the reason that the mortgage is in default, and the action required of the
11 borrower to cure the default.

12 2. The name, address, and telephone number of the mortgagee negotiator.

13 3. The names and addresses of adjustment service companies licensed under
14 s. 218.02 that offer credit counseling services to homeowners.

15 4. That the borrower may request modifications to the residential mortgage
16 loan by sending the request to the mortgagee negotiator by first class mail within 14
17 working days after receiving the written notice from the mortgagee or mortgage
18 servicer.

19 5. That if the borrower requests modifications within the 14-day period, a
20 foreclosure proceeding may not be commenced under this section until 90 days after
21 the date that the mortgagee or mortgage servicer mailed the written notice to the
22 borrower.

23 6. That if the borrower does make ^{the} that request for modifications within the
24 14-day period, the borrower may ^{attend} be to any meeting with ^{the} mortgagee negotiator ^{the}

residential

to discuss modifications in the mortgage loan

1 accompanied by an attorney or an employee or member of a company specified in
2 subd. 3 or both.

3 7. That if the borrower does not request the modifications within the 14-day
4 period, the mortgage foreclosure action may proceed.

5 8. That if the parties reach an agreement to modify the residential mortgage
6 loan, the mortgage may not be foreclosed if the borrower complies with the terms of
7 the modified agreement.

8 (5) (a) The borrower may request modifications to the residential mortgage
9 loan by sending the request to the mortgagee negotiator by first class mail within 14
10 working days after receipt of the notice under sub. (3). The borrower may contact an
11 adjustment service company licensed under s. 218.02 that offers credit counseling
12 services to homeowners to assist him or her in making this request and in negotiating
13 with the mortgagee negotiator.

14 (b) If the borrower submits the request within the 14-day period, the
15 mortgagee or mortgage servicer may not commence an action to foreclose on the
16 mortgage until 90 days after the notice under sub. (3) was mailed to the borrower,
17 except as provided in sub. (3).

18 (c) Upon receipt of the borrower's request for modifications to the residential
19 mortgage loan, the mortgagee negotiator may ask the borrower to provide any
20 documents and information *and documents* that are necessary to determine if the borrower is
21 eligible for a modification of the residential mortgage loan. The borrower shall
22 provide the mortgagee negotiator with the information and copies of any documents
23 requested if the borrower has that information or has possession of those documents.

24 (6) If the borrower makes a timely request for a meeting *of modifications* under sub. (5) (a), the
25 borrower and mortgagee negotiator shall meet during the 90-day period specified in

1 sub. (5) (b) to negotiate modifications to the residential mortgage loan. Both parties
 2 shall negotiate in good faith. The borrower may bring a member of an adjustment
 3 service company licensed under s. 218.02 that offers credit counseling services to
 4 homeowners to assist him or her at the meeting. Either party may be assisted by an
 5 attorney. The meetings held by the parties shall be held at a time and place that is
 6 convenient to both parties in the county where the residential property is located.

7 (7) Based on the available information to the mortgagee negotiator, he or she
 8 shall determine if the borrower is eligible for modification of the residential mortgage
 9 loan. The borrower is eligible for a modification if his or her current housing-related
 10 debt is 38 percent or more of the borrower's gross income. The mortgagee negotiator
 11 shall suggest one or more of the following modifications to the residential mortgage
 12 loan to lower the borrower's housing-related debt to less than 38 percent of the
 13 borrower's gross income:

14 (a) An interest rate reduction, subject to a floor of 3 percent, for a fixed period
 15 of at least 5 years.

16 (b) An extension of the amortization period for the residential mortgage loan
 17 term to 40 years or less from the date of the loan modification.

18 (c) The deferral of payment of up to 20 percent of the unpaid balance of the
 19 residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale
 20 of the residential property.

21 (d) The reduction or elimination of late fees or penalties.

22 (e) In determining how to modify the residential mortgage loan under this
 23 subsection, if the loan is pooled for sale to an investor that is a governmental body,
 24 the mortgagee negotiator shall follow the modifications guidelines established by
 25 that governmental body. In determining how to modify the residential mortgage loan

W. 24
 25

the borrower
him or her
any
for any modifications

1 under sub. (6), if the loan has been sold to a government-sponsored entity, the
2 mortgage negotiator shall follow the modifications guidelines established by that
3 government-sponsored entity.

4 (f) This subsection does not prohibit a modification to the residential mortgage
5 loan on other terms, or a loss mitigation strategy other than a loan modification, if
6 the other modification or strategy is agreed to by the borrower and mortgagee
7 negotiator.

8 (8) (a) The mortgage negotiator shall send by first class mail all of the following
9 to the borrower no later than 20 working days before the 90-day period under sub.
10 (5) (b) ends:

11 1. If the borrower is not eligible for modifications to the residential mortgage
12 loan, a statement explaining why he or she is not eligible.

13 2. If the borrower is eligible for modifications to the residential mortgage loan,
14 a written copy of the mortgage modification agreement proposed by the mortgagee
15 negotiator.

16 3. A copy of any calculations used by the mortgagee negotiator to determine if
17 the borrower was eligible for modifications to the residential mortgage loan.

18 4. If requested by the borrower, a copy of the program, process, or guidelines
19 the mortgagee negotiator used to determine if the borrower was eligible for
20 modifications to the residential mortgage loan.

21 (b) The borrower shall mail by first class mail his or her signed acceptance of
22 the proposed mortgage modification agreement to the mortgage negotiator within
23 10 working days of receipt of the proposal provided under par. (a) 2.

24 (9) (a) If the mortgagee negotiator determines that the borrower is not eligible
25 for a modification to the residential mortgage loan, the mortgagee or mortgage

1 servicer may, not less than 20 working days after the statement is mailed to the
2 borrower under sub. (8) (a) 1., commence an action to foreclose on the mortgage if all
3 of the conditions under sub. (2) are met.

4 (b) If the mortgagee negotiator determines that the borrower is eligible for a
5 modification to the residential mortgage loan, the mortgagee or mortgage servicer
6 may, not less than 90 days after the notice is mailed to the borrower under sub. (4),
7 commence an action to foreclose on a mortgage if all the following conditions are met:

8 1. The mortgagee negotiator has in good faith offered the borrower a mortgage
9 modification agreement prepared in compliance with sub. (6).

10 2. For reasons not related to any action or inaction of the mortgagee or
11 mortgage servicer, the borrower does not submit an acceptance of the mortgage
12 modification agreement within the 10-day period under sub. (8) (b).

13 ¹⁰
~~(12)~~ If the court in which an action is commenced to foreclose a mortgage on
14 a residential property determines that the mortgagee or mortgage servicer did not
15 comply with this section, the court shall dismiss the action.

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to actions to foreclose mortgages on residential
18 property commenced on the effective date of this subsection.

19 (END)

D-Note

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

LRB-3079/P1dn

RPN: *ef*

Date

Please review this draft carefully to ensure that it is consistent with your intent.

The draft requires a court to dismiss a mortgage foreclosure if the mortgagee fails to comply with the new statutory section. If you want to provide more incentives to comply with that section, you could give the court additional authority to require a mortgagee that does not comply to pay any court costs, including attorney fees, incurred by the borrower as a result of the commencement of the mortgage foreclosure.

Robert P. Nelson
Senior Legislative Attorney
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3079/P1dn
RPN:kjf:md

July 15, 2009

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Robert P. Nelson
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7-28 Ben Neral from Rep Nelson's office
by phone

he would like to add a two-year sunset
to the bill (provisions sunset
after two years after the effective
date)

also, DFI has indicated that a change needs
to be made to s. 893.33 due to
the 40-year extension in s. 846.015(7)
(b)

but he needs more info. before
requesting that change