



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3079/PA

RPN:kjf/md

P2

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+RJK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D into
(= 7-29)

TODAY

Reger Cat

SAV

1 AN ACT *to create* 846.015 of the statutes; **relating to:** residential mortgage loan
2 foreclosures.

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. 846.015 of the statutes is created to read:
4 **846.015 Mortgage foreclosure procedures.** (1) In this section:
5 (a) "Borrower" means the owner of residential property who gives a mortgage
6 on the residential property to the mortgagee to provide security for repayment of a
7 residential mortgage loan made to the owner of the residential property.
8 (b) "Condominium assessments" means regular and special assessments for
9 common expenses and charges owed by a condominium owner.

1 (c) "Housing-related debt" means mortgage loan principal and interest
2 payments, property taxes, property insurance premiums, and condominium
3 assessments.

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

6 (e) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has
7 the authority to enter into negotiations regarding modifications to a residential
8 mortgage loan.

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

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

12 (h) "Residential property" means real property on which a one-family to
13 4-family dwelling is constructed or intended to be constructed, including individual
14 condominium units, that the borrower uses, or intends to use, as his or her principal
15 place of residence.

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

18 (a) The mortgage has been properly recorded.

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

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

24 (d) Except as provided in par. (b), the mortgagee or mortgage servicer complies
25 with subs. (4) to (9).

Handwritten notes:
A circle around "par. (b)" with an arrow pointing to "Sub. (3)".
The text "it stays" is written near the arrow.

1 (3) If the mortgagee or mortgage servicer and borrower have previously agreed
 2 to modify the residential mortgage loan (under this section) and the mortgagee or ✓
 3 mortgage servicer has complied with the terms of the agreement, but the borrower
 4 has not complied with the terms of the agreement, the mortgagee or mortgage
 5 servicer may commence an action to foreclose on the mortgage without complying
 6 with subs. (4) to (9).

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

12 (a) ✕ That the mortgage is in default and ^a mortgage foreclosure action may be ✓ ✕
 13 commenced, the reason that the mortgage is in default, and the action required of the
 14 borrower to cure the default.

15 (b) ✕ The name, address, and telephone number of the mortgagee negotiator. ✕

16 (c) ✕ The names and addresses of adjustment service companies licensed under ✕
 17 s. 218.02 that offer credit counseling services to homeowners.

18 (d) ✕ That the borrower may request modifications to the residential mortgage ✕
 19 loan by sending the request to the mortgagee negotiator by first class mail within 14
 20 working days after receiving the written notice from the mortgagee or mortgage
 21 servicer.

22 (e) ✕ That if the borrower requests modifications within the 14-day period, a ✕
 23 foreclosure proceeding may not be commenced under this section until 90 days after
 24 the date that the mortgagee or mortgage servicer mailed the written notice to the
 25 borrower.

1 (f) ~~g~~ That if the borrower does make the request for modifications within the
 2 14-day period, the borrower may attend any meeting with the mortgagee negotiator
 3 to discuss modifications in the residential mortgage loan accompanied by an
 4 attorney or an employee or member of a company specified in subd. 3 or both. *par. (c)*

5 (g) ~~h~~ That if the borrower does not request the modifications within the 14-day
 6 period, the mortgage foreclosure action may proceed. ✓

7 (h) ~~i~~ That if the parties reach an agreement to modify the residential mortgage
 8 loan, the mortgage may not be foreclosed if the borrower complies with the terms of
 9 the modified agreement. ✗

10 (5) (a) The borrower may request modifications to the residential mortgage
 11 loan by sending the request to the mortgagee negotiator by first class mail within 14
 12 working days after receipt of the notice under sub. (4). The borrower may contact an
 13 adjustment service company licensed under s. 218.02 that offers credit counseling
 14 services to homeowners to assist him or her in making this request and in negotiating
 15 with the mortgagee negotiator.

16 (b) If the borrower submits the request within the 14-day period, the
 17 mortgagee or mortgage servicer may not commence an action to foreclose on the
 18 mortgage until 90 days after the notice under sub. (5) was mailed to the borrower, ✓
 19 except as provided in sub. (3).

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

1 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
2 the borrower and mortgagee negotiator shall meet during the 90-day period
3 specified in sub. (5) (b) to negotiate modifications to the residential mortgage loan.
4 Both parties shall negotiate in good faith. The borrower may bring a member of an
5 adjustment service company licensed under s. 218.02 that offers credit counseling
6 services to homeowners to assist the borrower at the meeting. Either party may be
7 assisted by an attorney. The meetings held by the parties shall be held at a time and
8 place that is convenient to both parties in the county where the residential property
9 is located.

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

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

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

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

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

all of the following apply: (41)

1 (e) In determining how to modify the residential mortgage loan under this
 2 subsection, if the loan is pooled for sale to an investor that is a governmental body,
 3 the mortgagee negotiator shall follow the guidelines established by that
 4 governmental body for any modifications. In determining how to modify the
 5 residential mortgage loan under sub. (6), if the loan has been sold to a
 6 government-sponsored entity, the mortgagee negotiator shall follow the guidelines
 7 established by that government-sponsored entity for any modifications.

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

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

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

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

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

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

1 (b) The borrower shall mail by first class mail his or her signed acceptance of
2 the proposed mortgage modification agreement to the mortgagee negotiator within
3 10 working days of receipt of the proposal provided under par. (a) 2.

4 (9) (a) If the mortgagee negotiator determines that the borrower is not eligible
5 for a modification to the residential mortgage loan, the mortgagee or mortgage
6 servicer may, not less than 20 working days after the statement is mailed to the
7 borrower under sub. (8) (a) 1., commence an action to foreclose on the mortgage if all
8 of the conditions under sub. (2) are met.

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

13 1. The mortgagee negotiator has in good faith offered the borrower a mortgage
14 modification agreement prepared in compliance with sub. (6). ⁷ ✓

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

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

Insert 7-20

21 **SECTION 2. Initial applicability.** *is of section 2*
22 (1) ~~This act~~ first applies to actions to foreclose mortgages on residential
23 property commenced on the effective date of this subsection.

(END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/P2ins

ERN:.....

PJK

INSERT 7-20

1 (11) (a) Except as provided in par. (b), this section applies to foreclosure actions
2 that are commenced on or after the effective date of this paragraph [LRB inserts
3 date], and before the date that is 2 years after the effective date of this paragraph
4 [LRB inserts date].

5 (b) This section applies to a foreclosure action that is commenced after the date
6 that is 2 years after the effective date of this paragraph [LRB inserts date], if
7 notice under sub. (4) was mailed before that date, the borrower requested
8 modifications to the residential mortgage loan ^{under sub. (5)(a)} within 14 working days after
9 receiving the notice, and the foreclosure action is commenced under sub. (9) not less
10 than 90 days after the notice was mailed.

(END OF INSERT 7-20)

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

LRB-3079/P2dn

PJK:|:|:|:|

ajs

- date -

This redraft provides a sunset after two years for the foreclosure procedure in the draft.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

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

LRB-3079/P2dn
PJK:cjs:md

July 31, 2009

This redraft provides a sunset after two years for the foreclosure procedure in the draft.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

8-4-09

Ben Neras from Rep Nelson's
Office

changes to LRB-3079:

- ① end date for sunset should be Dec. 31, 2012.
- ② add the language from LRB90494 after each "s. 218.02" → i.e. HUD approved counseling agency.
- ③ add sub. (7)(f) → p. 6, lines 9-12 to the notice in sub. (4)
- ④ make it explicit that borrower must act in good faith even before defaulting on loan to start the process
- ⑤ late ?? (no info yet)

8/13

Ben - Rep. Nelson

- 4 changes provided to PSK
- one more item - take out one item
 - wants to see language - e-mail

taken out →

→ change adding good faith responsibility to front end of mortgage modification (for mortgage holders as they are getting into foreclosure)

- wants to see what it could look like -
 - wants to see e-mail rough

- will e-mail additional change
 - from Treasury Dept. document

- timing sensitivity - would like to see it late this week or early next week

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, August 13, 2009 1:58 PM
To: Nerad, Ben
Cc: Kahler, Pam
Subject: RE: LRB 3079 change

Ben,
Pam had finished the changes you discussed earlier. I pulled the draft from editing and removed one of the changes as we discussed, and added the new change below.

You wanted to see what the removed change would look like. As Pam drafted it, the removed change would have been as follows, with the change in italics (referring to page & line of the "/P2" draft)

P. 3, line 17: (d) That the borrower, *if in default involuntarily and in the absence of bad faith*, may request modifications to the
P. 4, line 10: (5) (a) The borrower *who is in default involuntarily and in the absence of bad faith* may request modifications to the

I have made the other change and the draft is back into editing. I'm hoping you'll receive it tomorrow or Monday.

Aaron

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

From: Nerad, Ben
Sent: Thursday, August 13, 2009 10:17 AM
To: Gary, Aaron
Subject: LRB 3079 change

Aaron,

Per our discussion, below is the language I'd like to add to LRB 3079. This language would relate to the provision on page 5, lines 17 and 18, and speaks to what happens after the 5 year rate reduction period discussed in that section of the bill. In case additional context on this language is needed, here is the link the the full Treasury Dept document from which this provision comes:

http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf.

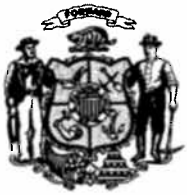
Thanks,

Ben

The modified interest rate must remain in place for five years, after which time the interest rate will be gradually increased 1% (100 basis points) per year or such lesser amount as may be needed until it reaches the Interest Rate Cap.

The Interest Rate Cap for the modified loan is the lesser of (i) the fully indexed and fully amortizing original contractual rate or (ii) the Freddie Mac Primary Mortgage Market Survey rate for 30-year fixed rate conforming mortgage loans, rounded to the nearest 0.125%, as of the date that the modification document is prepared. If the modified rate exceeds the Freddie Mac Primary Mortgage Market Survey rate in effect on the date the modification document is prepared, the modified rate will be the new note rate for the remaining loan term.

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



State of Wisconsin
2009 - 2010 LEGISLATURE

In 8/13

P3

LRB-3079/P

RPN&PJK:kjf&cjs:md

Wanted by
8/14 end of
day if possible

rm rm stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft
8-12

Reger

1 AN ACT to create 846.015 of the statutes; relating to: residential mortgage loan
2 foreclosures.

Analysis by the Legislative Reference Bureau

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

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6 on the residential property to the mortgagee to provide security for repayment of a
7 residential mortgage loan made to the owner of the residential property.

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

SECTION 1

1 (c) "Housing-related debt" means mortgage loan principal and interest
2 payments, property taxes, property insurance premiums, and condominium
3 assessments.

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

6 (e) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has
7 the authority to enter into negotiations regarding modifications to a residential
8 mortgage loan.

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

10 (h) ~~(h)~~ "Residential mortgage loan" means a loan that is secured by a first lien real
11 estate mortgage, or equivalent security interest, in a residential property.

12 (i) ~~(h)~~ "Residential property" means real property on which a one-family to
13 4-family dwelling is constructed or intended to be constructed, including individual
14 condominium units, that the borrower uses, or intends to use, as his or her principal
15 place of residence.

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

18 (a) The mortgage has been properly recorded.

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

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

24 (d) Except as provided in sub. (3), the mortgagee or mortgage servicer complies
25 with subs. (4) to (9).

1 (3) If the mortgagee or mortgage servicer and borrower have previously agreed
2 to modify the residential mortgage loan and the mortgagee or mortgage servicer has
3 complied with the terms of the agreement, but the borrower has not complied with
4 the terms of the agreement, the mortgagee or mortgage servicer may commence an
5 action to foreclose on the mortgage without complying with subs. (4) to (9).

6 (4) Before commencing an action to foreclose a mortgage on a residential
7 property, a mortgagee or mortgage servicer shall provide to the borrower at his or her
8 last-known address by ^{1st} first class mail, and by certified mail, return receipt
9 requested with delivery restricted to the borrower, a written notice that contains all
10 of the following information:

11 (a) That the mortgage is in default and a mortgage foreclosure action may be
12 commenced, the reason that the mortgage is in default, and the action required of the
13 borrower to cure the default.

14 (b) The name, address, and telephone number of the mortgagee negotiator.

15 (c) The names and addresses of adjustment service companies licensed under
16 s. 218.02 ^{Insert 3-16} that offer credit counseling services to homeowners.

17 (d) That the borrower may request modifications to the residential mortgage
18 loan by sending the request to the mortgagee negotiator by ^{1st} first class mail within 14
19 working days after receiving the written notice from the mortgagee or mortgage
20 servicer.

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

1 (f) That if the borrower does make the request for modifications within the
2 14-day period, the borrower may attend any meeting with the mortgagee negotiator
3 to discuss modifications in the residential mortgage loan accompanied by an
4 attorney or an employee or member of a company specified in par. (c), or both.

5 (g) That if the borrower does not request the modifications within the 14-day
6 period, the mortgage foreclosure action may proceed.

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

Insert 4-9

10

11

(5) (a) ^AThe borrower may request modifications to the residential mortgage
loan by sending the request to the mortgagee negotiator by ^{1st}first class mail within 14
12 working days after receipt of the notice under sub. (4). The borrower may contact an
13 adjustment service company licensed under s. 218.02 ^{Insert 4-13} that offers credit counseling
14 services to homeowners to assist him or her in making this request and in negotiating
15 with the mortgagee negotiator.

16 (b) If the borrower submits the request within the 14-day period, the
17 mortgagee or mortgage servicer may not commence an action to foreclose on the
18 mortgage until 90 days after the notice under sub. (4) was mailed to the borrower,
19 except as provided in sub. (3).

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

1 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
 2 the borrower and mortgagee negotiator shall meet during the 90-day period
 3 specified in sub. (5) (b) to negotiate modifications to the residential mortgage loan.
 4 Both parties shall negotiate in good faith. The borrower may bring a member of an
 5 adjustment service company licensed under s. 218.02 that offers credit counseling
 6 services to homeowners to assist the borrower at the meeting. Either party may be
 7 assisted by an attorney. The meetings held by the parties shall be held at a time and
 8 place that is convenient to both parties in the county where the residential property
 9 is located.

→ insert 5-5

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

check

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

insert 5-18

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

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

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

1 (e) In determining how to modify the residential mortgage loan under this
2 subsection, all of the following apply:

3 1. If the loan is pooled for sale to an investor that is a governmental body, the
4 mortgagee negotiator shall follow the guidelines established by that governmental
5 body for any modifications.

6 2. If the loan has been sold to a government-sponsored entity, the mortgagee
7 negotiator shall follow the guidelines established by that government-sponsored
8 entity for any modifications.

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

13 (8) (a) The mortgagee negotiator shall send by ^{1st} (first) class mail all of the
14 following to the borrower no later than 20 working days before the 90-day period
15 under sub. (5) (b) ends:

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

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

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

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

1

(b) The borrower shall mail by ^{1st} first class mail his or her signed acceptance of the proposed mortgage modification agreement to the mortgagee negotiator within 10 working days of receipt of the proposal provided under par. (a) 2.

4

(9) (a) If the mortgagee negotiator determines that the borrower is not eligible for a modification to the residential mortgage loan, the mortgagee or mortgage servicer may, not less than 20 working days after the statement is mailed to the borrower under sub. (8) (a) 1., commence an action to foreclose on the mortgage if all of the conditions under sub. (2) are met.

9

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

13

1. The mortgagee negotiator has in good faith offered the borrower a mortgage modification agreement prepared in compliance with sub. (7).

15

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

18

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

21

(11) (a) Except as provided in par. (b), this section applies to foreclosure actions that are commenced on or after the effective date of this paragraph ... [LRB inserts

23

date], and before the date that is 2 years after the effective date of this paragraph

24

[LRB inserts date]

→ December 31, 2012

1

(b) This section applies to a foreclosure action that is commenced after the date

2

that is 2 years after the effective date of this paragraph ... [LRB inserts date] if

3

notice under sub. (4) was mailed before that date.

4

(END)

December 31, 2012

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/P3ins
PJK:.....

INSERT 3-16

1 ^{wof}, and of independent nonprofit organizations approved by the federal
2 department of housing and urban development,

(END OF INSERT 3-16)

INSERT 3-17

3 ^{wof}, if in default involuntarily and in the absence of bad faith,
(END OF INSERT 3-17)

INSERT 4-9

4 ^{ff} (i) That the process outlined in this notice does not prohibit a loss mitigation
5 strategy other than a loan modification if the strategy is agreed to by the borrower
6 and mortgagee negotiator.

****NOTE: I modified this paragraph from the language in sub. (7) (f) because sub. (7) (f) specifies ways in which the loan may be modified, while the notice in this subsection only requires the borrower to request a modification, so a modification "on other terms" would not make sense in this paragraph. Is this okay?

(END OF INSERT 4-9)

INSERT 4-10

7 ^{wof} who is in default involuntarily and in the absence of bad faith
(END OF INSERT 4-10)

INSERT 4-13

8 ^{wof}, or an independent nonprofit organization approved by the federal department
9 of housing and urban development,

(END OF INSERT 4-13)

INSERT 5-5



Insert 5-5

1 . ^{no ft}, or of an independent nonprofit organization approved by the federal
2 department of housing and urban development,

(END OF INSERT 5-5)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/P3insAG
ARG:.....

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INSERT 2-9:

(g) "Rate ceiling" means the lesser of the following:

1. The fully indexed and fully amortizing interest rate applicable to the borrower's residential mortgage loan before any modification to the loan is made.
2. The Federal Home Loan Mortgage Corporation's primary mortgage market survey rate for 30-year fixed-rate conforming mortgage loans, rounded to the nearest 0.125 percent, determined as of the date of preparation of a loan modification document.

INSERT 5-18:

(no 4) A loan modification under this paragraph may allow the mortgagee or mortgage servicer to increase the interest rate after the fixed period of the interest rate reduction expires, but the mortgagee or mortgage servicer may not increase the interest rate by more than one percent per year and may not increase the interest rate to more than the rate ceiling.

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

LRB-3079/P3dn

PJK:.....

Date

ARG: kjf

This redraft does the following:

1. Changes the sunset date to December 31, 2012
2. Adds HUD-approved credit counseling agencies to those a borrower may contact.
3. Adds to the notice to the borrower that loss mitigation strategies other than loan modification are not prohibited.
4. ~~Requires the borrower to be in default involuntarily and in the absence of bad faith.~~

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

ADD ARG d-note here



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/P3dnAG
ARG:.....

Add to Pam's d-note

X In addition to the ^{three} items above, this redraft adds the definition of "rate ceiling" in created s. 846.015 (1)(g) and the second sentence of created s. 846.015 (7)(a). These changes are based on the Treasury Department language provided to me. I omitted a portion of this Treasury Department language that seems to me internally inconsistent. The Federal Home Loan Mortgage Corporation, a government-sponsored enterprise commonly known as Freddie Mac, was placed in conservatorship in 2008 by the newly created Federal Housing Finance Administration (formerly OFHEO). According to the financial press, many believe that Freddie Mac will ultimately be dissolved, although it is unclear when, if at all, this might occur. If it does occur, the provision in the attached draft relating to Freddie Mac's mortgage market survey rate will no longer work, but this may not be a problem since the bill's provisions will not apply after December 31, 2012.

X As you know, the drafter prepared this draft based on three Michigan bills provided to him. It is unclear to me exactly what this draft requires of lenders with respect to loan modifications. Created s. 846.015 (7) requires the mortgagee negotiator to "suggest one or more of the following" loan modifications to the borrower. Does the bill require the lender to in fact propose loan modifications, or does it simply require the lender to open a dialogue? Under created s. 846.015 (9), I am similarly uncertain what it means to be "eligible for a modification" and, feeding back into my comment regarding sub. (7), when the requirement that the "mortgagee negotiator has in good faith offered the borrower a mortgage modification agreement" comes into play. The answers to these questions impact the assessment of whether portions of the draft might be preempted by federal law. The lending practices of national banks and other federally chartered financial institutions are largely governed by federal law. However, there is a body of federal law, stemming from a U.S. Supreme Court case, finding that national banks can be governed by state law when it comes to the mortgage foreclosure process. Yet, to the extent that this bill is interpreted as imposing state law requirements beyond the foreclosure process, and actually requires a lender to offer a borrower a loan modification, the bill might be found to be preempted by federal law as applied to national banks and other federally chartered financial institutions. In addition, because the modification of a mortgage loan is actually a modification of the contract terms of a promissory note, if the bill is construed to require lenders to offer loan

modifications to borrowers, arguments might be made that mandating loan modifications violates the Contracts Clause of the federal and state constitutions.

Aaron R. Gary
Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/P3dn
PJK&ARG:kjf.md

August 14, 2009

This redraft does the following:

1. Changes the sunset date to December 31, 2012.
2. Adds HUD-approved credit counseling agencies to those a borrower may contact.
3. Adds to the notice to the borrower that loss mitigation strategies other than loan modification are not prohibited.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

In addition to the three items above, this redraft adds the definition of "rate ceiling" in created s. 846.015 (1) (g) and the second sentence of created s. 846.015 (7) (a). These changes are based on the Treasury Department language provided to me. I omitted a portion of this Treasury Department language that seems to me internally inconsistent. The Federal Home Loan Mortgage Corporation, a government-sponsored enterprise commonly known as Freddie Mac, was placed in conservatorship in 2008 by the newly created Federal Housing Finance Administration (formerly OFHEO). According to the financial press, many believe that Freddie Mac will ultimately be dissolved, although it is unclear when, if at all, this might occur. If it does occur, the provision in the attached draft relating to Freddie Mac's mortgage market survey rate will no longer work, but this may not be a problem since the bill's provisions will not apply after December 31, 2012.

As you know, the drafter prepared this draft based on three Michigan bills provided to him. It is unclear to me exactly what this draft requires of lenders with respect to loan modifications. Created s. 846.015 (7) requires the mortgagee negotiator to "suggest one or more of the following" loan modifications to the borrower. Does the bill require the lender to in fact propose loan modifications, or does it simply require the lender to open a dialogue? Under created s. 846.015 (9), I am similarly uncertain what it means to be "eligible for a modification" and, feeding back into my comment regarding sub. (7), when the requirement that the "mortgagee negotiator has in good faith offered the

borrower a mortgage modification agreement” comes into play. The answers to these questions impact the assessment of whether portions of the draft might be preempted by federal law. The lending practices of national banks and other federally chartered financial institutions are largely governed by federal law. However, there is a body of federal law, stemming from a U.S. Supreme Court case, finding that national banks can be governed by state law when it comes to the mortgage foreclosure process. Yet, to the extent that this bill is interpreted as imposing state law requirements beyond the foreclosure process, and actually requires a lender to offer a borrower a loan modification, the bill might be found to be preempted by federal law as applied to national banks and other federally chartered financial institutions. In addition, because the modification of a mortgage loan is actually a modification of the contract terms of a promissory note, if the bill is construed to require lenders to offer loan modifications to borrowers, arguments might be made that mandating loan modifications violates the Contracts Clause of the federal and state constitutions.

Aaron R. Gary
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Wanted
by 8/26

in 8/24

stays

KMR

8/21 Hc w/Ben - wants / /

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
internal refs

Gen Cat

1 **AN ACT to create** 846.015 of the statutes; **relating to:** residential mortgage loan
2 foreclosures.

Analysis by the Legislative Reference Bureau

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

Insert
Analysis

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

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

4 **846.015 Mortgage foreclosure procedures.** (1) In this section:

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

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

SECTION 1

1 (c) "Housing-related debt" means mortgage loan principal and interest
2 payments, property taxes, property insurance premiums, and condominium
3 assessments.

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

6 (e) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has
7 the authority to enter into negotiations regarding modifications to a residential
8 mortgage loan.

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

10 (g) "Rate ceiling" means the lesser of the following:

11 1. The fully indexed and fully amortizing interest rate applicable to the
12 borrower's residential mortgage loan before any modification to the loan is made.

13 2. The Federal Home Loan Mortgage Corporation's primary mortgage market
14 survey rate for 30-year fixed-rate conforming mortgage loans, rounded to the
15 nearest 0.125 percent, determined as of the date of preparation of a loan modification
16 document.

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

19 (i) "Residential property" means real property on which a one-family to
20 4-family dwelling is constructed or intended to be constructed, including individual
21 condominium units, that the borrower uses, or intends to use, as his or her principal
22 place of residence.

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

25 (a) The mortgage has been properly recorded.

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

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

6 (d) Except as provided in sub. (3), the mortgagee or mortgage servicer complies
7 with subs. (4) to (9).

8 **(3)** If the mortgagee or mortgage servicer and borrower have previously agreed
9 to modify the residential mortgage loan and the mortgagee or mortgage servicer has
10 complied with the terms of the agreement, but the borrower has not complied with
11 the terms of the agreement, the mortgagee or mortgage servicer may commence an
12 action to foreclose on the mortgage without complying with subs. (4) to (9).

13 **(4)** Before commencing an action to foreclose a mortgage on a residential
14 property, a mortgagee or mortgage servicer shall provide to the borrower at his or her
15 last-known address by 1st class mail, and by certified mail, return receipt requested
16 with delivery restricted to the borrower, a written notice that contains all of the
17 following information:

18 (a) That the mortgage is in default and a mortgage foreclosure action may be
19 commenced, the reason that the mortgage is in default, and the action required of the
20 borrower to cure the default.

21 (b) The name, address, and telephone number of the mortgage negotiator.

22 (c) The names and addresses of adjustment service companies licensed under
23 s. 218.02, and of independent nonprofit organizations approved by the federal
24 department of housing and urban development, that offer credit counseling services
25 to homeowners.

1 (d) That the borrower may request modifications to the residential mortgage
2 loan by sending the request to the mortgagee negotiator by 1st class mail within 14
3 working days after receiving the written notice from the mortgagee or mortgage
4 servicer.

5 (e) That if the borrower requests modifications within the 14-day period, a
6 foreclosure proceeding may not be commenced under this section until 90 days after
7 the date that the mortgagee or mortgage servicer mailed the written notice to the
8 borrower.

9 (f) That if the borrower does make the request for modifications within the
10 14-day period, the borrower may attend any meeting with the mortgagee negotiator
11 to discuss modifications in the residential mortgage loan accompanied by an
12 attorney or an employee or member of a company specified in par. (c), or both.

13 (g) That if the borrower does not request the modifications within the 14-day
14 period, the mortgage foreclosure action may proceed.

15 (h) That if the parties reach an agreement to modify the residential mortgage
16 loan, the mortgage may not be foreclosed if the borrower complies with the terms of
17 the modified agreement.

18 (i) That the process outlined in this notice does not prohibit a loss mitigation
19 strategy other than a loan modification if the strategy is agreed to by the borrower
20 and mortgagee negotiator.

****NOTE: I modified this paragraph from the language in sub. (7) (f) because sub.
(7) (f) specifies ways in which the loan may be modified, while the notice in this subsection
only requires the borrower to request a modification, so a modification "on other terms"
would not make sense in this paragraph. Is this okay?

21 (5) (a) A borrower may request modifications to the residential mortgage loan
22 by sending the request to the mortgagee negotiator by 1st class mail within 14
23 working days after receipt of the notice under sub. (4). The borrower may contact an

1 adjustment service company licensed under s. 218.02, or an independent nonprofit
2 organization approved by the federal department of housing and urban
3 development, that offers credit counseling services to homeowners to assist him or
4 her in making this request and in negotiating with the mortgagee negotiator.

5 (b) If the borrower submits the request within the 14-day period, the
6 mortgagee or mortgage servicer may not commence an action to foreclose on the
7 mortgage until 90 days after the notice under sub. (4) was mailed to the borrower,
8 except as provided in sub. (3).

9 (c) Upon receipt of the borrower's request for modifications to the residential
10 mortgage loan, the mortgagee negotiator may ask the borrower to provide any
11 information and documents that are necessary to determine if the borrower is
12 eligible for a modification of the residential mortgage loan. The borrower shall
13 provide the mortgagee negotiator with the information and copies of any documents
14 requested if the borrower has that information or has possession of those documents.

15 **(6)** If the borrower makes a timely request for modifications under sub. (5) (a),
16 the borrower and mortgagee negotiator shall meet during the 90-day period
17 specified in sub. (5) (b) to negotiate modifications to the residential mortgage loan.
18 Both parties shall negotiate in good faith. The borrower may bring a member of an
19 adjustment service company licensed under s. 218.02, or of an independent nonprofit
20 organization approved by the federal department of housing and urban
21 development, that offers credit counseling services to homeowners to assist the
22 borrower at the meeting. Either party may be assisted by an attorney. The meetings
23 held by the parties shall be held at a time and place that is convenient to both parties
24 in the county where the residential property is located.

(a)

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

8 (1. (a)) An interest rate reduction, subject to a floor of 3 percent, for a fixed period
9 of at least 5 years. A loan modification under this paragraph may allow the
10 mortgagee or mortgage servicer to increase the interest rate after the fixed period of
11 the interest rate reduction expires, but the mortgagee or mortgage servicer may not
12 increase the interest rate by more than 1 percent per year and may not increase the
13 interest rate to more than the rate ceiling.

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

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

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

20 (b) (e) In determining how to modify the residential mortgage loan under this
21 subsection, all of the following apply:

22 1. If the loan is pooled for sale to an investor that is a governmental body, the
23 mortgagee negotiator shall follow the guidelines established by that governmental
24 body for any modifications.

1 2. If the loan has been sold to a government-sponsored entity, the mortgagee
2 negotiator shall follow the guidelines established by that government-sponsored
3 entity for any modifications.

4 (c) 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. X

8 (8) (a) The mortgagee negotiator shall send by 1st 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 mortgagee 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

SECTION 1

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. (7).

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) 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 (11) (a) Except as provided in par. (b), this section applies to foreclosure actions
17 that are commenced on or after the effective date of this paragraph [LRB inserts
18 date], and before December 31, 2012.

19 (b) This section applies to a foreclosure action that is commenced after
20 December 31, 2012, if notice under sub. (4) was mailed before that date.

21 (END)

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2

INSERT ANAL:

Under current law, if a mortgagee brings an action for foreclosure of a mortgage on a residential property, the homeowner (mortgagor or borrower) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended.

This bill creates a process to allow a borrower who is in default on a first mortgage loan on a residential property to pursue a loan modification during a mortgage foreclosure action. Under the bill, before a first lien residential mortgage holder or its servicing agent (mortgagee) may commence an action to foreclose the mortgage, the mortgagee must provide a written notice (default-foreclosure notice) to the borrower that contains all of the following information: 1) that the mortgage is in default and a mortgage foreclosure action may be commenced, the reason that the mortgage is in default, and the action required of the borrower to cure the default; 2) the name, address, and telephone number of a mortgagee negotiator with authority to enter into negotiations regarding modifications to the residential mortgage loan; 3) the names and addresses of credit counseling services for homeowners; 4) that the borrower may request loan modifications by sending the request to the mortgagee negotiator within 14 working days after receiving the notice; 5) that if the borrower requests loan modifications within this 14-day period, a foreclosure proceeding may not be commenced until 90 days after the date that the mortgagee mailed the notice to the borrower; 6) that if the borrower makes a timely request for loan modifications, the borrower may attend a meeting with the mortgagee negotiator to discuss the modifications accompanied by an attorney or other person; 7) that if the borrower does not make a timely request for loan modifications, the mortgage foreclosure action may proceed; 8) that if the parties reach an agreement to modify the residential mortgage loan, the mortgage may not be foreclosed if the borrower complies with the terms of the modified agreement; and 9) that the mortgagee and borrower may agree to loss mitigation strategies other than loan modifications.

A borrower, within 14 working days of receiving this notice, may request loan modifications by sending the request to the mortgagee negotiator. If a timely request is made, the mortgagee may not commence an action to foreclose on the mortgage until 90 days after the mortgagee mailed the default-foreclosure notice. During this 90-day period, the mortgagee negotiator and borrower must meet in the county where the residential property is located to negotiate, in good faith, modifications to the residential mortgage loan. The borrower must provide to the mortgagee negotiator documents and information requested by the mortgagee negotiator that are necessary to determine if the borrower is eligible for a loan modification. Based

on available information, the mortgagee negotiator must determine if the borrower is eligible for a loan modification. The borrower is eligible if his or her current housing-related debt is 38 percent or more of the borrower's gross income. If the borrower is eligible, the mortgagee negotiator must suggest one or more of the following loan modifications to lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income: 1) an interest rate reduction, subject to a floor of three percent, for a fixed period of at least five years, after which the interest rate may increase within specified parameters; 2) an extension of the amortization period for the residential mortgage loan term to 40 years or less from the date of the loan modification; 3) the deferral of payment of up to 20 percent of the unpaid balance of the residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale of the residential property; or 4) the reduction or elimination of late fees or penalties. However, for certain residential mortgage loans, the mortgagee negotiator must follow government guidelines for loan modifications.

Not later than 20 working days before the end of the 90-day period that commences with the default-foreclosure notice, the mortgagee negotiator must notify the borrower as to whether the borrower is eligible for modifications to the residential mortgage loan. If the borrower is not eligible, the notice must include a statement explaining why the borrower is not eligible. If the borrower is eligible, the notice must include a copy of the mortgage modification agreement proposed by the mortgagee negotiator. Regardless of whether the borrower is eligible, the notice must include a copy of any calculations used by the mortgagee negotiator to determine the borrower's eligibility and, if requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine the borrower's eligibility. If the borrower is eligible, the borrower must, to accept the proposal, mail his or her signed acceptance of the proposed mortgage modification agreement to the mortgagee negotiator within 10 working days of receiving it.

- ✓ A mortgagee may only foreclose on a residential property if: 1) the mortgage
- ✓ has been properly recorded; 2) the borrower has defaulted on a condition of the
- ✓ mortgage that gives the mortgagee the right to foreclose; 3) there is a record chain
- ✓ of title for the mortgage, if the mortgagee is not the original mortgagee; and 4) the
- ✓ mortgagee has satisfied the requirements specified above, unless the mortgagee and
- ✓ borrower previously agreed to a loan modification and the mortgagee but not the
- ✓ borrower complied with the terms of the modification agreement.

If the mortgagee negotiator determines that the borrower is not eligible for a modification to the residential mortgage loan, the mortgagee must wait at least 20 working days after mailing the ineligibility notice before commencing an action to foreclose on the mortgage. If the mortgagee negotiator determines that the borrower is eligible for a loan modification, the mortgagee must wait at least 90 days after mailing the default-foreclosure notice before commencing the foreclosure action and may only commence the action if the mortgagee negotiator in good faith offered the borrower a mortgage modification agreement and the borrower failed to timely accept it.

A court must dismiss the foreclosure action of a mortgagee that has failed to comply with the requirements of the bill. The bill applies only to foreclosure actions

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commenced on or after the bill's effective date and before December 31, 2012, or
involving default-foreclosure notices provided before December 31, 2012.

For further information see the *state* fiscal estimate, which will be printed as
an appendix to this bill.

Gary, Aaron

From: Nerad, Ben
Sent: Monday, August 24, 2009 4:41 PM
To: Gary, Aaron
Subject: LRB 3079/1 change

Aaron,

Could you please change LRB 3079/1 as we discussed -- pg. 8 line 2 from "shall suggest" to "shall offer"? ✓

Thanks,

Ben

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

8/24 f/c w/ Ben
re d-note
suggest → offer

eligibility part is OK

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, August 25, 2009 3:58 PM
To: Nerad, Ben
Cc: Nelson, Robert P.
Subject: RE: LRB 3079/1 change

Ben,

In making this change, I see again what I found confusing about the eligibility provisions in subs (8) and (9) (mentioned in my drafter's note). Since there is really only one criteria for eligibility, I believe the provision requiring an explanation of why the person is not eligible creates confusion and I believe the language on p. 9, lines 15-17 also doesn't work (since the 38% standard is the only basis for eligibility).

To make the bill clearer, I would like to rewrite p. 9, line 9 so that it reads: "... loan, a statement explaining the eligibility criteria set forth in sub. (7) (a) and stating that the borrower has not met this criteria." ✓

A fix to the problem with p. 9, lines 15-17 is not so simple. The bill seems to contemplate a two-step approach. If the person meets the 38% standard, the person is eligible. Eligibility is not dependent on any guidelines (govt. agency or otherwise) or other process or program. Once eligible, the mortgagee negotiator then may look to guidelines etc. to determine which option to offer. So I think the language of p. 9, lines 15-17 is not consistent with the rest of the bill. Either lines 15-17 should be removed if the intent was truly to focus on eligibility (since these factors are really irrelevant to eligibility and the calculation is already required to be provided under p. 9, lines 13-14) or lines 16-17 should be modified to replace "to determine if the borrower was eligible for modifications to the residential mortgage loan" with something like "to determine which modification or modifications to the residential mortgage loan were offered to the borrower." ✓

Let me know how you want to proceed.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
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aaron.gary@legis.state.wi.us

9/3 Hc w/Ben
• they are still considering this
• wait on making this change

9/8 Hc w/Ben
• change at 9-9: ok ✓
• change at 9-15 to 17: add ✓
(language (don't delete))

From: Nerad, Ben
Sent: Monday, August 24, 2009 4:41 PM
To: Gary, Aaron
Subject: LRB 3079/1 change

Aaron,

Could you please change LRB 3079/1 as we discussed -- pg. 8 line 2 from "shall suggest" to "shall offer"?

Thanks,

Ben

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

Bob,

I spoke with Ben from Rep. Nelson's office regarding changes to this draft. He would like the following changes made. If possible, he would like the changes in an amendment (so he can see the changes) and also in another "slash" version of the bill draft.

✓ 1. Under the current draft, there is a 90 day foreclosure timeline. The proceeding is delayed for the period of the mediation process, but some of the delay is recovered from the redemption period. He wants a more direct relationship – however many days the mediation process under the draft takes on the front end, that many days is removed from the redemption period on the back end.

✓ 2. Under the current draft, there is a 38 % trigger for eligibility. Once eligible, the bank must make an offer of changes. He wants to make so that if the bank makes an offer of changes but cannot get under the 38 %, the bank can go forward with the foreclosure.

✓ 3. Under the current draft, the bank and borrower must meet. He wants to allow the option of a telephone meeting if a telephone meeting is best for both parties.

✓ 4. Under the current draft (p. 5, lines 13-17), the bank must provide notification by certified mail. This requires a signature. The problem is that the borrower might already be out of the house. So if there is another method of mailing that would require some verification of delivery but not necessarily a signature, he wants to specify this method instead of certified mail. Or create some exception allowing the bank to show a good faith effort to send the notice but that it was unable to get a signature.

I have already made one change on the draft and discussed another change with Ben. They are still considering that other change. → 9/8 both changes are now made

Aaron

Analysis? ✓