

9/10
other
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3079/2
RPN&PJK/kjf&cjs:rs
stays

2009 BILL

Regen

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

Analysis by the Legislative Reference Bureau

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

BILL

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 person} 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~~ ^{offer} 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. ~~Also~~ ^{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

which loan modification to offer the borrower. ^{Ins ML-2} The notice must also include the eligibility criteria and stating that the borrower has not met this criteria

other
electronic
communication

offer

Two
copies

Ins
ML-1

*
*
*

The notice must also include

BILL

or that none of the available modifications reduce the borrower's housing-related debt to less than 38%

proposal, mail his or her signed acceptance of the proposed mortgage modification agreement to the mortgagee negotiator within ten working days of receiving it. *portion of gross income*

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.

Ins Act - 3

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 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.

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

- 1 **SECTION 1.** 846.015 of the statutes is created to read:
- 2 **846.015 Mortgage foreclosure procedures.** (1) In this section:
- 3 (a) "Borrower" means the owner of residential property who gives a mortgage
- 4 on the residential property to the mortgagee to provide security for repayment of a
- 5 residential mortgage loan made to the owner of the residential property.
- 6 (b) "Condominium assessments" means regular and special assessments for
- 7 common expenses and charges owed by a condominium owner.

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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.

BILL

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.

BILL**SECTION 1**

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.

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
24 adjustment service company licensed under s. 218.02, or an independent nonprofit
25 organization approved by the federal department of housing and urban

BILL

1 development, that offers credit counseling services to homeowners to assist him or
2 her in making this request and in negotiating with the mortgagee negotiator.

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

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

13 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
14 ~~the borrower and mortgagee negotiator shall meet during the 90-day period~~
15 ~~either in person or by telephone or other electronic communication~~
16 specified in sub. (5) (b) to negotiate modifications to the residential mortgage loan.

17 Both parties shall negotiate in good faith. The borrower may ~~bring~~ ^{have} a member of an
18 adjustment service company licensed under s. 218.02, or of an independent nonprofit
19 organization approved by the federal department of housing and urban
20 borrower at the meeting. Either party may be assisted by an attorney. ~~The meetings~~
21 ~~held by the parties~~ ^{in person} shall be held at a time and place that is convenient to both parties
22 in the county where the residential property is located.

23 (7) (a) Based on the available information to the mortgagee negotiator, he or
24 she shall determine if the borrower is eligible for modification of the residential
25 mortgage loan. The borrower is eligible for a modification if his or her current

BILL

1 housing-related debt is 38 percent or more of the borrower's gross income. The
 2 mortgagee negotiator shall ~~suggest~~ ^{offer} one or more of the following modifications to the
 3 residential mortgage loan to lower the borrower's housing-related debt to less than
 4 38 percent of the borrower's gross income:

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

11 2. An extension of the amortization period for the residential mortgage loan
 12 term to 40 years or less from the date of the loan modification.

13 3. The deferral of payment of up to 20 percent of the unpaid balance of the
 14 residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale
 15 of the residential property.

16 4. The reduction or elimination of late fees or penalties.

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

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

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

BILL

SECTION 1

the eligibility criteria set forth in sub. (7)(a) and stating that the borrower has not met this criteria

Insert 9-1

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

(8) (a) The mortgagee negotiator shall send by 1st class mail all of the following to the borrower no later than 20 working days before the 90-day period under sub.

(5) (b) ends:

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

Insert 9-9

3. If the borrower is eligible for modifications to the residential mortgage loan,

two 2 copies
A written copy of the mortgage modification agreement proposed by the mortgagee negotiator.

Insert 9-12

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

Insert 9-13

5. If requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine *which modification or* if the borrower was eligible for modifications to the residential mortgage loan *would be offered to the borrower*

(b) The borrower shall mail by *1st 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) *f. 3*

Insert 9-21

(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.

BILL

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

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

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

insert
10-9 -> 11

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

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

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

18 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/ins
RPN&PJK:kjf&cjs:rs

2

1

insert anl-1:

no ~~FF~~ e ten

along with a notice telling the borrower to sign a copy of the proposal and return it to the mortgage negotiator within 10 working days after receipt of the proposal. If the borrower is eligible, but the mortgagee negotiator determines that it is not possible to lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income, the mortgagee negotiator shall inform the borrower of that determination.

insert anl-2:

no ~~FF~~ or that none of the available modifications lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income occurs

insert anl-3:

2) of the following: 1)
~~FF~~ The bill provides that the redemption period (the period of time that the borrower has to pay the amount owed on the mortgage after the foreclosure judgment is entered and before the property is sold) is reduced by the amount of time between the date that the borrower requests modifications in the mortgage and either the statement is sent to the borrower that he or she is not eligible for any modification or that no modification will reduce the housing-related debt to less than 38 percent of the borrower's gross income; or the borrower fails to timely submit the signed acceptance of the proposed mortgage modification agreement.

2

insert 9-1:

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(c) If, after reviewing all of the information available to the mortgagee

4

negotiator and considering all of the possible methods of modifying the residential

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mortgage loan under par. (a), the mortgagee negotiator determines that it is not

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possible to lower the borrower's housing-related debt to less than 38 percent of the

7

borrower's gross income, the mortgagee negotiator shall inform the borrower of that

8

determination under sub. (8) (a) 2.

9

10

insert 9-9:

11

2. If the borrower is eligible for modifications to the residential mortgage loan,

12

but none of the available modifications lower the borrower's housing-related debt to

1 less than 38 percent of the borrower's gross income, ~~the mortgage negotiator shall~~
2 ~~inform~~ *a statement informing* ← informing the borrower of that determination.

3

4 insert 9-12:

5 *no #* with a ~~notice~~ *statement* telling the borrower to sign a copy of the proposal and return it

6 to the mortgage negotiator within 10 working days after receipt of the proposal

8 insert 9-13:

9 *no #* and to determine if the available modifications lowered or failed to lower the
10 borrower's housing-related debt to less than 38% *percent* of the borrower's gross income.

11

12 insert 9-21

13 *no #* or that none of the available modifications lower the borrower's
14 housing-related debt to less than 38 percent of the borrower's gross income.

15

16 insert 10-9:

17 (10) The redemption period under this chapter for the borrower's residential
18 property shall be reduced by the number of days that occurred between the date that
19 the negotiator received the borrower's request for modifications under sub. (5) and
20 the date that one of the following occurred:

- 21 (a) The mortgage negotiator sent a statement to the borrower under sub. (8)
- 22 (a) that the borrower is not eligible for modifications to the residential mortgage loan
- 23 or that none of the available modifications lower the borrower's housing-related debt
- 24 to less than 38 percent of the borrower's gross income.

1 (b) The last day that the borrower had to submit his or her signed acceptance
2 of the proposed mortgage modification agreement under sub. (8) (b), if the borrower
3 fails to submit that acceptance within the time limit under sub. (8) (b).

HOMEOWNER DOES NOT REQUEST MODIFICATION

Lender sends notice to homeowner alerting them of modification process. Lender must wait 14 days for homeowner to send request. After end of 14 day period, foreclosure process can commence. Redemption period is not reduced.

HOMEOWNER REQUESTS MODIFICATION

Homeowner is not eligible for modification

After homeowner sends modification request, lender calculates possible modification. If homeowner is not eligible for modification under bill, lender must send notice to homeowner indicating they are not eligible (this notification must be sent not more than 70 days after initial notice is sent to homeowner). The foreclosure can go forward 20 days after that non-eligibility notice is sent.¹

The redemption period is reduced by the period equaling the time between when a homeowner responds with a modification request and when the lender notified the homeowner he or she is not eligible.²

Start at Initial Notice

→

[14 day response from homeowner]+[length of time for lender to calculate modification, send notice (maximum of 70 days minus time for initial homeowner response)]+[20 day waiting period for foreclosure to go forward]

→

Foreclosure goes forward

Homeowner is eligible for modification and accepts offer in timely manner

After homeowner sends modification request, lender calculates possible modification. If a homeowner is eligible for modification, the lender must send a modification agreement to the homeowner (this notification must be sent not more than 70 days after initial notice is sent to the homeowner). The homeowner then has 10 working days to return a signed copy of the agreement.

Start at Initial Notice

→

[14 day response from homeowner]+[length of time for lender to calculate modification, send agreement (maximum of 70 days minus time for initial homeowner response)]+[10 days for homeowner to return agreement, signed]

→

Mortgage is modified

Homeowner is eligible for modification, but does not accept modification offer or does not respond in timely manner to modification offer

After homeowner sends modification request, lender calculates possible modification. If a homeowner is eligible for modification, the lender must send a modification agreement to the homeowner (this notification must be sent not more than 70 days after initial notice is sent to the homeowner). The homeowner then declines modification or does not respond to the modification agreement within the 10 day period specified. The foreclosure can go forward not less than 90 days after the initial notice is mailed to the homeowner.

The redemption period is reduced by the period equaling the time between when a homeowner responds with a modification request and the last day the borrower had to submit the accepted modification agreement 10 days after the agreement is sent.

Start at Initial Notice

→

[14 day response from homeowner]+[length of time for lender to calculate modification, send agreement (maximum of 70 days minus time for initial homeowner response)]+[10 days for homeowner to return agreement, signed]

→

Foreclosure can go forward 90 days after initial notice was mailed

NOTE: If homeowner takes maximum response time of 14 days to send in modification request and the entire 10 day agreement return period goes forward, the lender will have a “waiting period” of as little as 10 days, and as much as 10 days plus the number of days under 70 the lender takes to calculate the modification and send notification to the homeowner.

So, under a scenario where the homeowner takes 14 days to send the modification request, the lender takes 30 days to calculate modification and send the no-modification agreement, and 10 day modification agreement return period expires, the lender will have a “waiting period” of 36 days before they can go forward with the foreclosure (90 days minus 54 days).

The lender would have a 90 day total waiting period before commencing with foreclosure, a period explicitly specified in the bill. However, the redemption period would only be reduced by 40 days (30 lender modification calculation/notification period + 10 day return period).

¹ Pg. 10 line 23 to pg. 11 line 4.

² Pg. 11 lines 18-21.

Nelson, Robert P.

From: Nerad, Ben
Sent: Monday, December 14, 2009 12:56 PM
To: Nelson, Robert P.
Subject: RE: Changes to LRB 3079/2

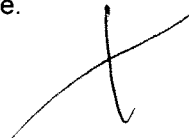
Bob,

Regarding provision 5:

Add to the initial notice the bank sends to the homeowner in default a description of the calculations used to determine eligibility and what the eligibility guidelines are.

Thanks,

Ben



Ben Nerad
608-266-2401

From: Nelson, Robert P.
Sent: Thursday, December 10, 2009 2:47 PM
To: Nerad, Ben
Subject: RE: Changes to LRB 3079/2

Ben,

I have a question about what the instruction "lender says what's in calculation" means. Does that mean that I should take all of the references to 38 percent out of the bill, such as on page 8, lines 12-13?

Bob N

From: Nerad, Ben
Sent: Thursday, December 10, 2009 10:12 AM
To: Nelson, Robert P.
Subject: RE: Changes to LRB 3079/2

Bob, we can continue with this draft.

Thanks,

Ben

Ben Nerad
608-266-2401

From: Nelson, Robert P.
Sent: Thursday, December 10, 2009 10:03 AM
To: Nerad, Ben
Subject: RE: Changes to LRB 3079/2

12/14/2009

Nelson, Robert P.

From: Nerad, Ben
Sent: Thursday, December 10, 2009 10:12 AM
To: Nelson, Robert P.
Subject: RE: Changes to LRB 3079/2

Bob, we can continue with this draft.

Thanks,

Ben

Ben Nerad
608-266-2401

From: Nelson, Robert P.
Sent: Thursday, December 10, 2009 10:03 AM
To: Nerad, Ben
Subject: RE: Changes to LRB 3079/2

Ben,

We cannot go back to a /p draft. I can create a new draft with a new number, and make that a /p. Or I can continue with this draft and we can continue to make changes as necessary.

Let me know your preference.

Bob N

From: Nerad, Ben
Sent: Tuesday, December 08, 2009 4:56 PM
To: Nelson, Robert P.
Subject: Changes to LRB 3079/2

Bob,

Could we please make the following changes to LRB 3079/2? Also, could we get it back into a P-draft?

- 1) change "mortgage" to "residential mortgage loan" throughout bill ✓
- 2) Remove 90 day waiting period if individual requests mortgage modification ✓
- 3) change all day references to "working days"
- 4) put in place the following timelines:
 - homeowner has 10 working days after receiving modification notice to request modification (currently in bill) ✓
 - homeowner has 20 working days after receiving modification notice to submit all materials needed by lender to lender ✓
- 5) **lender says what's in calculations** ?
- 6) add language in sub 5 to match sub 4 language on notification that if a borrower does not request changes, the foreclosure may proceed (this was the technical change you brought up previously) ✓
- 7) delete all provisions of bill that reduce redemption period (section 10 of bill)

12/10/2009

8) within 10 working days following receipt of borrowers financial information, lender must acknowledge borrowers request for modification ✓

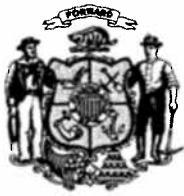
9) Within 30 calendar days following the servicer's receipt of homeowner's materials needed by lender, lender must determine qualification and communication whether homeowner is qualified (this reflects the federal plan, which references working days in other cases but calendar days in this case) ✓

Thanks,

Ben

Ben Nerad

Office of Rep. Tom Nelson
Assembly Majority Leader
608-266-2401



300n (12/14)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3079/2³

RPN:kjf&cjs:ph

Stays

2009 BILL

~~V.N - R 9 to 23-25 if no info provided~~

Regen

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

Analysis by the Legislative Reference Bureau

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

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the calculations and eligibility criteria used to determine if the borrower is eligible for any loan modifications

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 person in the county where the residential property is located or by telephone or other electronic communication 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 offer 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 ~~30 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 the eligibility criteria and stating that the borrower has not met this criteria. If the borrower is eligible, the notice must include two copies of the mortgage modification agreement proposed by the mortgagee negotiator along with a notice telling the borrower to sign a copy of the proposal and return it to the mortgagee negotiator within ten working days after receipt of the proposal. If the borrower is eligible, but the mortgagee negotiator determines that it is not possible

30 calendar days after the borrower submits the information or documents requested by the mortgagee negotiator, or 60 calendar days after that request is made if the borrower does not submit any information or documents

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to lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income, the mortgagee negotiator shall inform the borrower of that determination. 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. The notice must also include, if requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine which loan modification to offer the borrower or that none of the available modifications lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income. 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 ten 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, or that none of the available modifications reduce the borrower's housing-related debt to less than 38 percent of gross income, 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.

The bill provides that the redemption period (the period of time that the borrower has to pay the amount owed on the mortgage after the foreclosure judgment is entered and before the property is sold) is reduced by the amount of time between the date that the borrower requests modifications in the mortgage and either of the following occurs: 1) the statement is sent to the borrower that he or she is not eligible for any modification or that no modification will reduce the housing-related debt to less than 38 percent of the borrower's gross income; or 2) the borrower fails to timely submit the signed acceptance of the proposed mortgage modification agreement.

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

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

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

✓

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

2 **846.015 Mortgage foreclosure procedures.** (1) In this section:

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

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

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

11 (d) “Mortgagee” means a person who receives a mortgage to secure payment of
12 a residential mortgage loan.

13 (e) “Mortgagee negotiator” means a mortgagee or mortgage servicer who has
14 the authority to enter into negotiations regarding modifications to a residential
15 mortgage loan.

16 (f) “Mortgage servicer” means the servicing agent of a mortgagee.

17 (g) “Rate ceiling” means the lesser of the following:

18 1. The fully indexed and fully amortizing interest rate applicable to the
19 borrower’s residential mortgage loan before any modification to the loan is made.

20 2. The Federal Home Loan Mortgage Corporation’s primary mortgage market
21 survey rate for 30-year fixed-rate conforming mortgage loans, rounded to the

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1 nearest 0.125 percent, determined as of the date of preparation of a loan modification
2 document.

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

5 (i) "Residential property" means real property on which a one-family to
6 4-family dwelling is constructed or intended to be constructed, including individual
7 condominium units, that the borrower uses, or intends to use, as his or her principal
8 place of residence.

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

11 (a) The ~~mortgage~~ ^{residential loan} has been properly recorded. (residential) use 3 times (loan)

12 (b) The borrower has defaulted on a condition of the ~~mortgage~~ ^{residential} that gives the
13 mortgagee or mortgage servicer the right to foreclose on the ~~mortgage~~ ^{loan}.

14 (c) If the mortgagee or mortgage servicer is not the original mortgagee or
15 mortgage servicer, a record chain of title exists evidencing the assignment or transfer
16 of the mortgage to the mortgagee or mortgage servicer foreclosing on the ~~mortgage~~ ^{loan}.

17 (d) Except as provided in sub. (3), the mortgagee or mortgage servicer complies
18 with subs. (4) to (9). (residential) (loan)

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

24 (4) Before commencing an action to foreclose ~~a mortgage~~ ^{mortgage loan} on a residential
25 ~~property~~ a mortgagee or mortgage servicer shall provide to the borrower at his or her

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residential (circled)
loan (circled)

Arrows point from "residential" to "mortgage" in paragraph 3 and from "loan" to "mortgage" in paragraph 4.

1 last-known address by certified mail a written notice that contains all of the
2 following information:

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

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

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

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

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

19 (f) That if the borrower does make the request for modifications within the
20 14 ^{working} day period, the borrower may attend any meeting with the mortgagee negotiator
21 to discuss modifications in the residential mortgage loan accompanied by an
22 attorney or an employee or member of a company specified in par. (c), or both.

23 (g) That if the borrower does not request the modifications within the 14 ^{working} day
24 period, the mortgage foreclosure action may proceed.

(e) A description of the calculations that will be used to determine if the borrower is eligible for a modification and of the criteria used to determine that eligibility.

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

4 (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.

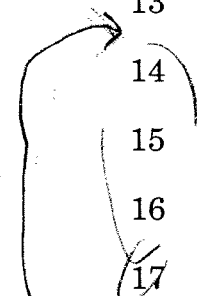
7 (5) (a) A borrower may request modifications to the residential mortgage loan
8 by sending the request to the mortgagee negotiator by 1st class mail within 14
9 working days after receipt of the notice under sub. (4). The borrower may contact an
10 adjustment service company licensed under s. 218.02, or an independent nonprofit
11 organization approved by the federal department of housing and urban
12 development, that offers credit counseling services to homeowners to assist him or
13 her in making this request and in negotiating with the mortgagee negotiator.

14 ^e ^{does not} ^a ^{for modifications}
~~(*)~~ If the borrower ~~submits~~ the request ~~within~~ ^{the} ~~14 day period~~ ^{working days} 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. (4) was mailed to the borrower,
17 ~~except as provided in sub. (3)~~ ^{proceed with the foreclosure action}

18 ^(b) ^{within 10 working days after}
~~(*)~~ 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 information ~~and~~ ^{or} documents that are necessary to determine if the borrower is
21 eligible for a modification of the residential mortgage loan. ^(c) The borrower shall
22 provide the mortgagee negotiator with the information and copies of any documents
23 requested ^{within 20 working days after receipt of that request} if the borrower has that information or has possession of those documents.

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

^{add to this} ~~(d)~~ ^{been received}
Within 10 working days after receipt of the borrower's information or documents, the mortgagee negotiator shall notify the borrower that the request for modifications has



after move
line 13

add to this

been received

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1 specified in sub. (5) (b) either in person or by telephone or other electronic
2 communication to negotiate modifications to the residential mortgage loan. Both
3 parties shall negotiate in good faith. The borrower may have a member of an
4 adjustment service company licensed under s. 218.02, or of an independent nonprofit
5 organization approved by the federal department of housing and urban
6 development, that offers credit counseling services to homeowners assist the
7 borrower at the meeting. Either party may be assisted by an attorney. Any meeting
8 held in person shall be held at a time and place that is convenient to both parties in
9 the county where the residential property is located.

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

17 1. An interest rate reduction, subject to a floor of 3 percent, for a fixed period
18 of at least 5 years. A loan modification under this paragraph may allow the
19 mortgagee or mortgage servicer to increase the interest rate after the fixed period of
20 the interest rate reduction expires, but the mortgagee or mortgage servicer may not
21 increase the interest rate by more than 1 percent per year and may not increase the
22 interest rate to more than the rate ceiling.

23 2. An extension of the amortization period for the residential mortgage loan
24 term to 40 years or less from the date of the loan modification.

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1 3. The deferral of payment of up to 20 percent of the unpaid balance of the
2 residential mortgage loan, until maturity of the loan, refinancing of the loan, or sale
3 of the residential property.

4 4. The reduction or elimination of late fees or penalties.

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

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

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

13 (c) If, after reviewing all of the information available to the mortgagee
14 negotiator and considering all of the possible methods of modifying the residential
15 mortgage loan under par. (a), the mortgagee negotiator determines that it is not
16 possible to lower the borrower's housing-related debt to less than 38 percent of the
17 borrower's gross income, the mortgagee negotiator shall inform the borrower of that
18 determination under sub. (8) (a) 2.

19 (d) This subsection does not prohibit a modification to the residential mortgage
20 loan on other terms, or a loss mitigation strategy other than a loan modification, if
21 the other modification or strategy is agreed to by the borrower and mortgagee
22 negotiator.

23 (8) (a) The mortgagee negotiator shall send by 1st class mail all of the following
24 to the borrower no later than ^{or 30 calendar} ~~70 working~~ days before the 90-day period under sub.

request
25 (5) (b) ends after receipt of the borrower's information or documents requested under sub. (5) (b) or no later than 60 calendar days after the mortgagee negotiator's request if the borrower does not submit any information or documents

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used to determine eligibility

1 1. If the borrower is not eligible for modifications to the residential mortgage
2 loan, a statement explaining the eligibility criteria ^g set forth in sub. (7) (a) and stating
3 that the borrower has not met this criteria.

4 2. If the borrower is eligible for modifications to the residential mortgage loan,
5 but none of the available modifications lower the borrower's housing-related debt to
6 less than 38 percent of the borrower's gross income, a statement informing the
7 borrower of that determination.

8 3. If the borrower is eligible for modifications to the residential mortgage loan,
9 2 written copies of the mortgage modification agreement proposed by the mortgagee
10 negotiator with a statement telling the borrower to sign a copy of the proposal and
11 return it to the mortgagee negotiator within 10 working days after receipt of the
12 proposal.

13 4. A copy of any calculations used by the mortgagee negotiator to determine if
14 the borrower was eligible for modifications to the residential mortgage loan and to
15 determine if the available modifications lowered or failed to lower the borrower's
16 housing-related debt to less than 38 percent of the borrower's gross income.

17 5. If requested by the borrower, a copy of the program, process, or guidelines
18 the mortgagee negotiator used to determine which modification or modifications to
19 the residential mortgage loan would be offered to the borrower.

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

23 (9) (a) If the mortgagee negotiator determines that the borrower is not eligible
24 for a modification to the residential mortgage loan ^f or that none of the available
25 modifications lower the borrower's housing-related debt to less than 38 percent of

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

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

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

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

14 ~~(10) The redemption period under this chapter for the borrower's residential~~
15 ~~property shall be reduced by the number of days that occurred between the date that~~
16 ~~the negotiator received the borrower's request for modifications under sub. (5) and~~
17 ~~the date that one of the following occurred:~~

18 ~~(a) The mortgagee negotiator sent a statement to the borrower under sub. (8)~~
19 ~~(a) that the borrower is not eligible for modifications to the residential mortgage loan~~
20 ~~or that none of the available modifications lower the borrower's housing-related debt~~
21 ~~to less than 38 percent of the borrower's gross income.~~

22 ~~(b) The last day that the borrower had to submit his or her signed acceptance~~
23 ~~of the proposed mortgage modification agreement under sub. (8) (b), if the borrower~~
24 ~~fails to submit that acceptance within the time limit under sub. (8) (b).~~

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SECTION 1

(1) ¹⁰ (11) If the court in which an action is commenced to foreclose ~~a mortgage~~ on
 (2) a residential ~~property~~ ^{mortgage loan} determines that the mortgagee or mortgage servicer did not
 3 comply with this section, the court shall dismiss the action.

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

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

(END)

D-Note

LRB-3079/3dn
RPN: kjf

Date

D-N

I had to add language to sub. (8)(a)^v to cover the situation when the borrower does not submit any information or documents. In sub. (5)(c),^v the borrower ^{needs to} provide information or documents ~~only~~ if he or she has ~~that~~ the information or documents. ^{Another} way to deal with this is to have the mortgagee request the information or documents and include with that request a form that the borrower must complete and return to the requester if the borrower will not be submitting anything. RPN

insert
on back →

Also, I added a time limit for requesting information under sub. (5) (a).



2009 BILL

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

Analysis by the Legislative Reference Bureau

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

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notice; 5) the calculations and eligibility criteria used to determine if the borrower is eligible for any loan modifications; 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 negotiator and borrower must meet in person in the county where the residential property is located or by telephone or other electronic communication 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 offer 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 30 calendar days after the borrower submits the information or documents requested by the mortgagee negotiator, or 60 calendar days after that request is made if the borrower does not submit any information or documents, 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 the eligibility criteria and stating that the borrower has not met this criteria. If the borrower is eligible, the notice must include two copies of the mortgage modification agreement proposed by the mortgagee negotiator along with a notice telling the borrower to sign a copy of the proposal and return it to the mortgagee negotiator within ten working days after receipt of the proposal. If the borrower is eligible, but the mortgagee negotiator determines that it is not possible to lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income, the mortgagee negotiator shall

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inform the borrower of that determination. 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. The notice must also include, if requested by the borrower, a copy of the program, process, or guidelines the mortgagee negotiator used to determine which loan modification to offer the borrower or that none of the available modifications lower the borrower's housing-related debt to less than 38 percent of the borrower's gross income. 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 ten 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, or that none of the available modifications reduce the borrower's housing-related debt to less than 38 percent of gross income, 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 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) The residential mortgage loan has been properly recorded.

4 (b) The borrower has defaulted on a condition of the residential mortgage loan
5 that gives the mortgagee or mortgage servicer the right to foreclose on the residential
6 mortgage loan.

7 (c) If the mortgagee or mortgage servicer is not the original mortgagee or
8 mortgage servicer, a record chain of title exists evidencing the assignment or transfer
9 of the mortgage to the mortgagee or mortgage servicer foreclosing on the residential
10 mortgage loan.

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

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

19 **(4)** Before commencing an action to foreclose on a residential mortgage loan,
20 a mortgagee or mortgage servicer shall provide to the borrower at his or her
21 last-known address by certified mail a written notice that contains all of the
22 following information:

23 (a) That the residential mortgage loan is in default and a mortgage foreclosure
24 action may be commenced, the reason that the residential mortgage loan is in
25 default, and the action required of the borrower to cure the default.

BILL**SECTION 1**

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

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

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

10 (e) A description of the calculations that will be used to determine if the
11 borrower is eligible for a modification and of the criteria used to determine that
12 eligibility.

13 (f) That if the borrower does make the request for modifications within 14
14 working days, the borrower may attend any meeting with the mortgagee negotiator
15 to discuss modifications in the residential mortgage loan accompanied by an
16 attorney or an employee or member of a company specified in par. (c), or both.

17 (g) That if the borrower does not request the modifications within 14 working
18 days, the mortgage foreclosure action may proceed.

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

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

BILL

1 (5) (a) A borrower may request modifications to the residential mortgage loan
2 by sending the request to the mortgagee negotiator by 1st class mail within 14
3 working days after receipt of the notice under sub. (4). The borrower may contact an
4 adjustment service company licensed under s. 218.02, or an independent nonprofit
5 organization approved by the federal department of housing and urban
6 development, that offers credit counseling services to homeowners to assist him or
7 her in making this request and in negotiating with the mortgagee negotiator.

8 (b) ~~Upon~~ *Within 10 working days after* receipt of the borrower's request for modifications to the residential
9 mortgage loan, the mortgagee negotiator may ask the borrower to provide any
10 information or documents that are necessary to determine if the borrower is eligible
11 for a modification of the residential mortgage loan.

12 (c) The borrower shall provide the mortgagee negotiator with the information
13 and copies of any documents requested within 20 working days after receipt of that
14 request if the borrower has that information or has possession of those documents.

15 (d) Within 10 working days after receipt of the borrower's information or
16 documents, the mortgagee negotiator shall notify the borrower that the request for
17 modifications has been received.

18 (e) If the borrower does not submit a request for modifications within 14
19 working days, the mortgagee or mortgage servicer may proceed with the foreclosure
20 action.

21 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
22 the borrower and mortgagee negotiator shall meet either in person or by telephone
23 or other electronic communication to negotiate modifications to the residential
24 mortgage loan. Both parties shall negotiate in good faith. The borrower may have
25 a member of an adjustment service company licensed under s. 218.02, or of an

BILL**SECTION 1**

1 independent nonprofit organization approved by the federal department of housing
2 and urban development, that offers credit counseling services to homeowners assist
3 the borrower at the meeting. Either party may be assisted by an attorney. Any
4 meeting held in person shall be held at a time and place that is convenient to both
5 parties in the county where the residential property is located.

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

13 1. An interest rate reduction, subject to a floor of 3 percent, for a fixed period
14 of at least 5 years. A loan modification under this paragraph may allow the
15 mortgagee or mortgage servicer to increase the interest rate after the fixed period of
16 the interest rate reduction expires, but the mortgagee or mortgage servicer may not
17 increase the interest rate by more than 1 percent per year and may not increase the
18 interest rate to more than the rate ceiling.

19 2. 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 3. 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 4. The reduction or elimination of late fees or penalties.

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1 (b) 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 (c) If, after reviewing all of the information available to the mortgagee
10 negotiator and considering all of the possible methods of modifying the residential
11 mortgage loan under par. (a), the mortgagee negotiator determines that it is not
12 possible to lower the borrower's housing-related debt to less than 38 percent of the
13 borrower's gross income, the mortgagee negotiator shall inform the borrower of that
14 determination under sub. (8) (a) 2.

15 (d) This subsection does not prohibit a modification to the residential mortgage
16 loan on other terms, or a loss mitigation strategy other than a loan modification, if
17 the other modification or strategy is agreed to by the borrower and mortgagee
18 negotiator.

19 (8) (a) The mortgagee negotiator shall send by 1st class mail all of the following
20 to the borrower no later than 30 calendar days after receipt of the borrower's
21 information or documents requested under sub. (5) (b), or no later than 60 calendar
22 days after the mortgagee negotiator made that request if the borrower does not
23 submit any information or documents:

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1 1. If the borrower is not eligible for modifications to the residential mortgage
2 loan, a statement explaining the eligibility criteria used to determine eligibility and
3 stating that the borrower has not met this criteria.

4 2. If the borrower is eligible for modifications to the residential mortgage loan,
5 but none of the available modifications lower the borrower's housing-related debt to
6 less than 38 percent of the borrower's gross income, a statement informing the
7 borrower of that determination.

8 3. If the borrower is eligible for modifications to the residential mortgage loan,
9 2 written copies of the mortgage modification agreement proposed by the mortgagee
10 negotiator with a statement telling the borrower to sign a copy of the proposal and
11 return it to the mortgagee negotiator within 10 working days after receipt of the
12 proposal.

13 4. A copy of any calculations used by the mortgagee negotiator to determine if
14 the borrower was eligible for modifications to the residential mortgage loan and to
15 determine if the available modifications lowered or failed to lower the borrower's
16 housing-related debt to less than 38 percent of the borrower's gross income.

17 5. If requested by the borrower, a copy of the program, process, or guidelines
18 the mortgagee negotiator used to determine which modification or modifications to
19 the residential mortgage loan would be offered to the borrower.

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

23 **(9)** (a) If the mortgagee negotiator determines that the borrower is not eligible
24 for a modification to the residential mortgage loan or that none of the available
25 modifications lower the borrower's housing-related debt to less than 38 percent of

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

5 (b) If the mortgagee negotiator determines that the borrower is eligible for a
6 modification to the residential mortgage loan, the mortgagee or mortgage servicer
7 may commence an action to foreclose on a mortgage if all the following conditions are
8 met:

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

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

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

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

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

22 **(END)**

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3079/3dn
RPN:kjfrs

December 16, 2009

I had to add language to sub. (8) (a) to cover the situation when the borrower does not submit any information or documents. In sub. (5) (c), the borrower needs to provide information or documents only if he or she has the information or documents.

Another way to deal with this is to have the mortgagee request the information or documents and include with that request a form that the borrower must complete and return to the requester if the borrower will not be submitting anything.

Also, I added a time limit for requesting information under sub. (5)(a).

Robert P. Nelson
Senior Legislative Attorney
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↑
(5)(a)

Ron - This stays
a 13.
Don't send out
until tomorrow
when Mike is
done with a
chart. Coordinate
it with him. Thanks
KSF

These
changes were
added to
13 file copy.

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

LRB-3079/3dn
RPN:kjf:rs

December 17, 2009

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Nelson, Robert P.

From: Nerad, Ben
Sent: Monday, December 21, 2009 3:12 PM
To: Nelson, Robert P.
Subject: Requested changes to LRB 3079/3

Bob,

After reviewing the latest draft, I'd like the following changes:

--Initial notice on foreclosure/modification must include information request from bank, for information reasonably necessary to determine gross income.

--After receiving initial notice, homeowner has 10 working days to submit request for modification; 20 working days to submit necessary materials.

Per our discussion, do you think there would be value in including the following provision to clarify situations when homeowners do not have necessary materials? (as we discussed, please don't make any changes to these provisions at this time.) I think the process below would allow some protection for homeowners in certain circumstances, while still keeping the current process timeline.

Within 20 working day timeline, borrower who has requested modification must either submit documents requested, or submit an explanation as to why they were not able to obtain and send in documents requested.

Currently, the lender must respond to the submission of documents within 10 working days, to notify the borrower they have received documentation. With above provision, lender would also respond to explanation of lack of documentation within 10 working days from receiving letter of explanation. If lender still is able to perform a modification calculation, modification must go forward.

If lender is unable to perform a modification calculation, lender must notify homeowner of this fact. Foreclosure can go forward 20 working days after this notification is sent, as under the bill if a modification agreement is not reached.

Ben Nerad

Office of Rep. Tom Nelson
Assembly Majority Leader
608-266-2401

12/21/2009