

12/22
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3079/3
RPN:kjf&cjs:rs
1
Stays

TODAY
2009 BILL

SA✓

D-14

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

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 ~~10~~ working days after receiving the

(one-family to four-family dwelling)

ten

*

BILL

the documents needed to determine the borrower's gross income

and provides

notice; 5) the calculations and eligibility criteria used to determine if the borrower is eligible for any loan modifications; 6) ⁷⁾ 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; ⁸⁾ that if the borrower does not make a timely request for loan modifications, the mortgage foreclosure action may proceed; ⁹⁾ 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 ¹⁰⁾ that the mortgagee and borrower may agree to loss mitigation strategies other than loan modifications.

or provide

A borrower, within ^{ten} 10 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~~ ^{the borrower's} 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.

and if the documents are provided

that are needed to determine the borrower's gross income

Case 2x7

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

why

these

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inform the borrower of ^{how} that determination ^{was made}. 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.

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.

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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.

BILL

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.

insert
6-12

13 (i) That if the borrower ~~does make the~~ request for modifications within 14
14 working days after receiving the written notice and provides the materials described in par. (g),
15 to discuss modifications in the residential mortgage loan accompanied by an
16 attorney or an employee or member of a company or organization specified in par. (c), or both.

17 (j) That if the borrower does not request the modifications within 10 working
18 days after receiving the written notice or submit the materials described in
19 par. (g),

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

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

within 20 working days
after receiving the written
notice
<use 2x>

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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 ¹⁰ 10
 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) Within 10 working days after receipt of the borrower's request for
 9 modifications to the residential mortgage loan, the mortgagee negotiator may ask
 10 the borrower to provide any information or documents that are necessary to
 11 determine if the borrower is eligible for a modification of the residential mortgage
 12 loan. *shall notify the borrower that the request for modifications has been received.*

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

insert 7-15
 16 (d) Within 10 working days after receipt of the ~~borrower's information or~~
 17 ~~documents~~ *materials required to be provided under par. (c)* the mortgagee negotiator shall notify the borrower that the ~~request for~~
 18 ~~modifications has been received.~~ *materials have been received.*

insert 7-21
 19 (e) If the borrower does not submit a request for modifications within ~~10~~ ¹⁰ 10
 20 working days, the mortgagee or mortgage servicer may proceed with the foreclosure
 21 action *not submit the information requested under sub. (c) or a statement as to why that information is not provided.*

22 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
 23 *and timely provides the mortgagee negotiator with the materials required,*
 24 the borrower and mortgagee negotiator shall meet either in person or by telephone
 25 or other electronic communication to negotiate modifications to the residential
 mortgage loan. Both parties shall negotiate in good faith. The borrower may have

under sub. (5)(c)

BILL

1 a member of an adjustment service company licensed under s. 218.02, or of an
2 independent nonprofit organization approved by the federal department of housing
3 and urban development, that offers credit counseling services to homeowners assist
4 the borrower at the meeting. Either party may be assisted by an attorney. Any
5 meeting held in person shall be held at a time and place that is convenient to both
6 parties in the county where the residential property is located.

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

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

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

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

25 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 ^{materials required} under sub. (5) (b), or no later than 30 calendar
22 days after the mortgagee negotiator made that request if the borrower does not
23 submit any information or documents.

(c)

21
22
23

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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~~^{why} the borrower has not met ~~this~~^{these} 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~~^{how that} determination ~~was made~~.

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

BILL

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).

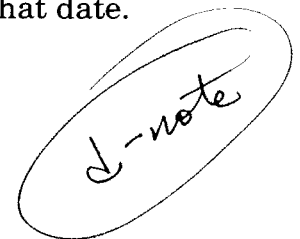
11 2. For reasons not related to any action or inaction of the mortgagee or
12 mortgage servicer, the borrower does not submit an acceptance of the mortgage
13 modification agreement within 10 working days under sub. (8) (b).

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)

A handwritten note in a circle, written in cursive, that says "d-note".

1 insert 6-12:

2 (f) A list of the documents that the borrower needs to provide to the mortgage^e
3 negotiator that are reasonably necessary for the mortgage^e negotiator to determine
4 the monthly gross income of the borrower in order to make the calculations described
5 in par. (e).

6 (g) That within 20 working days after receipt of this notice^e the borrower is
7 required to provide the documents described in par. (f) ~~or a statement as to why~~^e the
8 borrower is unable to provide some or all of the ~~requested~~^e documents.

9
10 insert 7-17: ^e (15) *

11 (c) A borrower shall, within 20 working days after receipt of the notice under
12 sub. (4), provide the mortgage^e negotiator with the documents ~~described in sub. (4)~~^e
13 (f) ~~or a statement as to why~~^e the borrower is unable to provide some or all of the
14 documents. ^e a statement as to why

15
16 insert 7-21: ^e (e) *

17 (d) The mortgagee or mortgage servicer may proceed with the foreclosure
18 action if either of the following occurs:

19 1. The borrower does not submit a request for modifications within 10 working
20 days after receipt of the notice under sub. (4).

21 2. The borrower does not ~~submit~~^e the ~~documents or statement~~^e required under
22 ~~sub. (4)(g)~~^e within 20 working days after receipt of the notice under sub. (4).

receiving the written notice

a statement as to why

listed in the notice as provided under

materials

provide

par. (c)

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

LRB-3079/4dn
RPN:kjf&cj:rs

2
cjs

- date -

Ben,

I made changes that I think fulfill your request. Check it over and let me know of any changes.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

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

LRB-3079/4dn
RPN:cjs:ph

January 5, 2010

Ben,

I made changes that I think fulfill your request. Check it over and let me know of any changes.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Nerad, Ben
Sent: Monday, January 11, 2010 11:58 AM
To: Nelson, Robert P.
Subject: RE: "loss mitigation strategy" synonym

Please do a new draft.

Thanks,

Ben

Ben Nerad
608-266-2401

From: Nelson, Robert P.
Sent: Friday, January 08, 2010 1:53 PM
To: Nerad, Ben
Subject: RE: "loss mitigation strategy" synonym

Ben,

Do you want me to do a new draft based on our discussions, or shall I wait for further suggestions?

Bob N

From: Nerad, Ben
Sent: Thursday, January 07, 2010 3:47 PM
To: Nelson, Robert P.
Subject: RE: "loss mitigation strategy" synonym

That's fine by me. I'd like to keep the language on p. 10 as is.

Also, I'm guessing this is just an email typo, but "negotiator" is misspelled below.

Ben Nerad
608-266-2401

From: Nelson, Robert P.
Sent: Thursday, January 07, 2010 1:22 PM
To: Nerad, Ben; Grosz, Scott; Topp, Jessica
Subject: RE: "loss mitigation strategy" synonym

Ben,

I drafted some language to use in the notice in place of p. 7, ls. 10-12:

"(k) That the process outlined in the written notice does not prohibit the borrower and mortgage negotiator from agreeing to some other method of resolving the residential mortgage loan default issue."

01/11/2010

What do you think?

We could use your suggested term on p. 10, line 8.

Bob N

From: Nerad, Ben

Sent: Thursday, January 07, 2010 12:31 PM

To: Grosz, Scott; Nelson, Robert P.; Topp, Jessica

Subject: "loss mitigation strategy" synonym

All,

Per our discussion yesterday, what does everyone think of using the term "Foreclosure prevention strategy" instead of "loss mitigation strategy"?

Ben Nerad

Office of Rep. Tom Nelson

Assembly Majority Leader

608-266-2401

Nelson, Robert P.

To: Nerad, Ben; Grosz, Scott; Topp, Jessica

Subject: RE: "loss mitigation strategy" synonym

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Subject: "loss mitigation strategy" synonym

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Ben Nerad

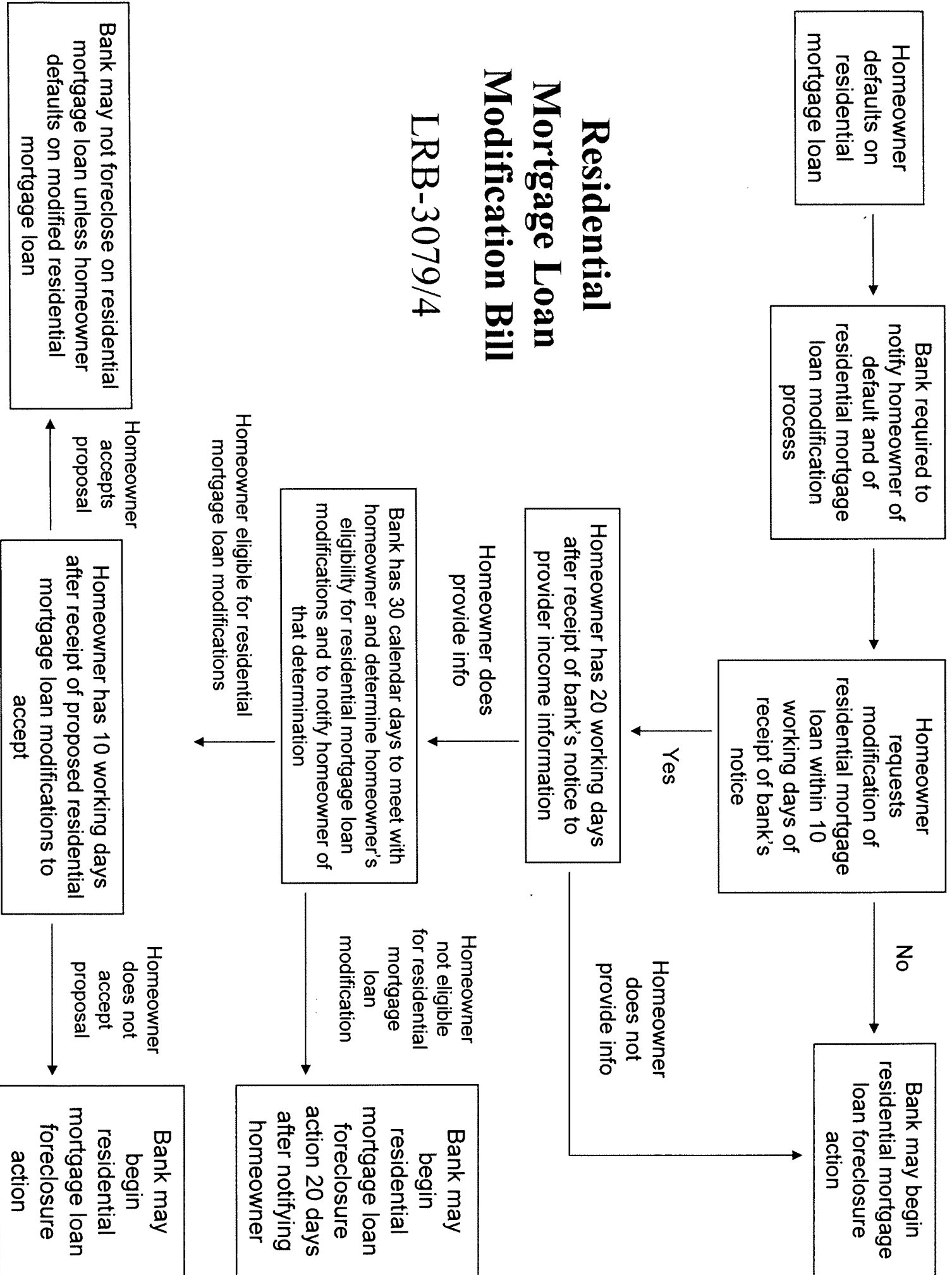
Office of Rep. Tom Nelson

Assembly Majority Leader

608-266-2401

Residential Mortgage Loan Modification Bill

LRB-3079/4





1/16
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-30794
RPN:kjf&cjs:ph
Slays

soon

2009 BILL

SA

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

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 (a one-family to four-family dwelling) 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

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within ten working days after receiving the notice; 5) the calculations and eligibility criteria used to determine if the borrower is eligible for any loan modifications; 6) the documents needed to determine the borrower's gross income; 7) that if the borrower makes a timely request for loan modifications and provides the documents needed to determine the borrower's gross income, the borrower may attend a meeting with the mortgagee negotiator to discuss the modifications accompanied by an attorney or other person; 8) that if the borrower does not make a timely request for loan modifications or provide the documents needed to determine the borrower's gross income, the mortgage foreclosure action may proceed; 9) 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 10) that the mortgagee and borrower may agree to loss mitigation strategies other than loan modifications. *to resolve the loan default*

meet

to a method

A borrower, within ten working days of receiving this notice, may request loan modifications by sending the request to the mortgagee negotiator. If a timely request is made and if the documents are provided that are needed to determine the borrower's gross income, 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. Based on available information, the mortgagee negotiator must determine if the borrower is eligible for a loan modification. The borrower is eligible if the borrower's 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 documents that are needed to determine the borrower's gross income, 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 why the borrower has not met these 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

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income, the mortgagee negotiator shall inform the borrower of how that determination was made. 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. *within the previous three years* ✓

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.

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:

BILL**SECTION 1**

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

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

6 (c) "Housing-related debt" means mortgage loan principal and interest
7 payments, property taxes, property insurance premiums, and condominium
8 assessments.

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

11 (e) "Mortgage negotiator" means a mortgagee or mortgage servicer who has
12 the authority to enter into negotiations regarding modifications to a residential
13 mortgage loan.

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

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

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

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

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

24 (i) "Residential property" means real property on which a one-family to
25 4-family dwelling is constructed or intended to be constructed, including individual

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1 condominium units, that the borrower uses, or intends to use, as his or her principal
2 place of residence.

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

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

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

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

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

15 (3) If the mortgagee or mortgage servicer and borrower have ^gpreviously agreed
16 to modify the residential mortgage loan within the previous 3 years and the mortgagee or mortgage servicer has
17 complied with the terms of the agreement, but the borrower has not complied with
18 the terms of the agreement, the mortgagee or mortgage servicer may commence an
19 action to foreclose on the residential mortgage loan without complying with subs. (4)
20 to (9).

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

BILL**SECTION 1**

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

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

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

9 (d) That the borrower may request modifications to the residential mortgage
10 loan by sending the request to the mortgagee negotiator by 1st class mail within 10
11 working days after receiving the written notice.

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

15 (f) A list of the documents that the borrower needs to provide to the mortgagee
16 negotiator that are reasonably necessary for the mortgagee negotiator to determine
17 the monthly gross income of the borrower in order to make the calculations described
18 in par. (e).

19 (g) That within 20 working days after receiving the written notice the borrower
20 is required to provide the documents described in par. (f) and, if the borrower is
21 unable to provide some or all of the documents, a statement as to why.

22 (h) That if the borrower requests modifications to the residential mortgage loan
23 within 10 working days after receiving the written notice and provides the materials
24 described in par. (g) within 20 working days after receiving the written notice, the
25 borrower may attend any meeting with the mortgagee negotiator to discuss

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1 modifications in the residential mortgage loan accompanied by an attorney or an
2 employee or member of a company or organization specified in par. (c), or both.

3 (i) That if the borrower does not request the modifications within 10 working
4 days after receiving the written notice or submit the materials described in par. (g)
5 within 20 working days after receiving the written notice, the mortgage foreclosure
6 action may proceed.

7 (j) 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 modification agreement.

10 (k) That the process outlined in the written notice does not prohibit a loss
11 mitigation strategy other than a loan modification if the strategy is agreed to by the
12 borrower and mortgagee negotiator.

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

20 (b) Within 10 working days after receipt of the borrower's request for
21 modifications to the residential mortgage loan, the mortgagee negotiator shall notify
22 the borrower that the request for modifications has been received.

23 (c) A borrower shall, within 20 working days after receipt of the notice under
24 sub. (4), provide the mortgagee negotiator with the documents listed in the notice as

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1 provided under sub. (4) (f) and, if the borrower is unable to provide some or all of the
2 documents, a statement as to why.

3 (d) Within 10 working days after receipt of the materials required to be
4 provided under par. (c), the mortgagee negotiator shall notify the borrower that the
5 materials have been received.

6 (e) The mortgagee or mortgage servicer may proceed with the foreclosure action
7 if either of the following occurs:

8 1. The borrower does not submit a request for modifications within 10 working
9 days after receipt of the notice under sub. (4).

10 2. The borrower does not provide the materials required under par. (c) within
11 20 working days after receipt of the notice under sub. (4).

12 (6) If the borrower makes a timely request for modifications under sub. (5) (a),
13 and timely provides the mortgagee negotiator with the materials required under sub.
14 (5) (c), the borrower and mortgagee negotiator shall meet either in person or by
15 telephone or other method agreed upon by both parties ~~electronic communication~~ to negotiate modifications to the
16 residential mortgage loan. Both parties shall negotiate in good faith. The borrower
17 may have a member of an adjustment service company licensed under s. 218.02, or
18 of an independent nonprofit organization approved by the federal department of
19 housing and urban development, that offers credit counseling services to
20 homeowners assist the borrower at the meeting. Either party may be assisted by an
21 attorney. Any meeting held in person shall be held at a time and place that is
22 convenient to both parties 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~~

[Handwritten box containing the text from line 25, with a large scribble over the second sentence.]

↑ STET: leave line 25 as typed

If the borrower is eligible

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1 housing-related debt is 38 percent or more of the borrower's gross income. The
2 mortgage negotiator shall 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.

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

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

11 (8) (a) The mortgagee negotiator shall send by 1st class mail all of the following
12 to the borrower no later than 30 calendar days after receipt of the materials required
13 under sub. (5) (c):

14 1. If the borrower is not eligible for modifications to the residential mortgage
15 loan, a statement explaining the eligibility criteria used to determine eligibility and
16 why the borrower has not met these criteria.

17 2. If the borrower is eligible for modifications to the residential mortgage loan,
18 but none of the available modifications lower the borrower's housing-related debt to
19 less than 38 percent of the borrower's gross income, a statement informing the
20 borrower of how that determination was made.

21 3. If the borrower is eligible for modifications to the residential mortgage loan,
22 2 written copies of the mortgage modification agreement proposed by the mortgagee
23 negotiator with a statement telling the borrower to sign a copy of the proposal and
24 return it to the mortgagee negotiator within 10 working days after receipt of the
25 proposal.

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

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

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

11 **(9)** (a) If the mortgagee negotiator determines that the borrower is not eligible
12 for a modification to the residential mortgage loan or that none of the available
13 modifications lower the borrower's housing-related debt to less than 38 percent of
14 the borrower's gross income, the mortgagee or mortgage servicer may, not less than
15 20 working days after the statement is mailed to the borrower under sub. (8) (a) 1.,
16 commence an action to foreclose on the mortgage if all of the conditions under sub.
17 (2) are met.

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

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

Nelson, Robert P.

From: Stafford, Beau
Sent: Friday, January 29, 2010 9:30 AM
To: Nelson, Robert P.
Cc: Nerad, Ben
Subject: FW: LRB 3079/5 permissions

Bob,

We will officially request a draft at this time. Thanks!

Beau Stafford

Office of Representative Fred Clark

42nd Assembly District

608-266-7746

Beaustafford@gmail.com

From: Nerad, Ben
Sent: Thursday, January 28, 2010 4:43 PM
To: Nelson, Robert P.
Cc: Stafford, Beau
Subject: LRB 3079/5 permissions

Bob,

Rep. Fred Clark's office has permission to get the jacket to LRB 3079/5 (Michigan bill) jacketed to them, make changes, etc.

Thanks,

Ben

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

01/29/2010