



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 729**

April 15, 2010 – Offered by Representative CLARK.

1 **AN ACT** *to amend* 846.35 (1) (a) (intro.), 846.35 (1) (a) 1., 846.35 (1) (a) 2., 846.35
2 (1) (b) 2., 846.35 (2) (a) (intro.) and 846.35 (6); and *to create* 704.35 (1) (c),
3 846.015, 846.35 (1) (am) and 846.35 (2) (c) of the statutes; **relating to:** the
4 foreclosure and sale of residential property.

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

5 **SECTION 1.** 704.35 (1) (c) of the statutes is created to read:
6 704.35 (1) (c) The rights and obligations of the tenant specified under s. 846.35
7 (2).

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

9 **846.015 Additional mortgage foreclosure procedures for**
10 **owner-occupied residential property. (1) DEFINITIONS.** In this section:

1 (a) “Government–sponsored enterprises” means the Federal National
2 Mortgage Association, the Federal Home Loan Mortgage Corporation, and the
3 Government National Mortgage Association.

4 (b) “Mortgagee negotiator” means a mortgagee or mortgage servicer who has
5 the authority to enter into negotiations regarding modifications to a mortgage loan
6 involving owner–occupied residential property.

7 (c) “Mortgage modification program” means the federal home affordable
8 modification program established by the U.S. department of the treasury under 12
9 USC 5219.

10 (d) “Mortgage modification program participant” means a financial institution
11 or mortgage servicer that has executed an agreement with the Federal National
12 Mortgage Association, in its capacity as financial agent for the United States, to be
13 a participant in the mortgage modification program.

14 (e) “Mortgage servicer” means the servicing agent of the mortgagee.

15 (f) “Owner–occupied residential property” means a one–family to 4–family
16 dwelling, which, at the time the mortgage loan was originated, was occupied or
17 intended to be occupied, by the mortgagor as his or her place of residence.

18 **(2) NOTIFICATION.** Before commencing an action to foreclose on a mortgage loan
19 involving owner–occupied residential property, a mortgage modification program
20 participant shall provide to the mortgagor at his or her last–known address by
21 certified mail a written notice that contains all of the following information:

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

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

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

5 (d) That the mortgagor may request to be considered under the mortgage
6 modification program for a modification to the mortgage loan by contacting the
7 mortgagee negotiator.

8 **(3) AFFIDAVIT.** (a) In any mortgage foreclosure action involving owner-occupied
9 residential property, the plaintiff shall file an affidavit with the court stating
10 whether the mortgage loan is owned, securitized, or guaranteed by a
11 government-sponsored enterprise and whether the mortgagee or mortgage servicer
12 is a mortgage modification program participant.

13 (b) If the affidavit in par. (a) states that the mortgage loan is owned, securitized,
14 or guaranteed by a government-sponsored enterprise and that the mortgagee or
15 mortgage servicer is a mortgage modification program participant, a copy of the
16 affidavit shall be attached to the complaint given to the mortgagor and the affidavit
17 shall include a statement showing one of the following:

18 1. That the mortgage loan is not eligible for modification under the mortgage
19 modification program.

20 2. That the process required by the mortgage modification program has been
21 properly completed without resulting in a modification of the mortgage loan and that
22 the plaintiff has sent written notification of that result to the mortgagor.

23 **(4) DETERMINATION.** (a) In all mortgage foreclosure actions involving
24 owner-occupied residential property, the court shall not enter a judgment of

1 foreclosure and sale until the court has received a copy of the affidavit as required
2 under sub. (3) and made the determination required under par. (d).

3 (b) If the court determines that the mortgage modification program is
4 applicable to the mortgage loan but that the process to determine if a modification
5 will be made under that program has not been completed, the court shall stay the
6 foreclosure action until the program's requirements are completed. If the action is
7 stayed, the plaintiff shall advise the court of the status of the action every 45 days.
8 If the plaintiff fails to advise the court of the status of the action every 45 days, the
9 court may dismiss the foreclosure action.

10 (c) If the mortgage loan is modified under the mortgage modification program,
11 and the mortgagor is complying with the terms of the modification, the plaintiff shall
12 immediately notify the court and the court shall dismiss the foreclosure action.

13 (d) If the court determines that the facts set forth in the affidavit under sub.
14 (3) are not in dispute, the foreclosure action may continue.

15 (e) This subsection does not preclude the plaintiff from voluntarily dismissing
16 the foreclosure action.

17 **(5) MORTGAGE MODIFICATION PROGRAM PARTICIPANTS.** The department of financial
18 institutions shall maintain a current list of mortgage modification program
19 participants on the department's public Internet Web site.

20 **(6) TERMINATION.** This section does not apply after December 31, 2012.

21 **SECTION 3.** 846.35 (1) (a) (intro.) of the statutes, as created by 2009 Wisconsin
22 Act 2, is amended to read:

23 846.35 **(1)** (a) (intro.) If residential rental property is the subject of a foreclosure
24 action, the plaintiff shall provide the following written notices at the following times
25 to the tenants who are in possession of each rental unit when a notice is given:

1 **SECTION 4.** 846.35 (1) (a) 1. of the statutes, as created by 2009 Wisconsin Act
2 2, is amended to read:

3 846.35 (1) (a) 1. No later than 5 30 days after the foreclosure action is filed,
4 notice that the plaintiff has commenced a foreclosure action with respect to the rental
5 property.

6 **SECTION 5.** 846.35 (1) (a) 2. of the statutes, as created by 2009 Wisconsin Act
7 2, is amended to read:

8 846.35 (1) (a) 2. No later than 5 30 days after the judgment of foreclosure is
9 entered, notice that the plaintiff has been granted a judgment of foreclosure with
10 respect to the rental property and notice of the date on which the redemption period
11 ends.

12 **SECTION 6.** 846.35 (1) (am) of the statutes is created to read:

13 846.35 (1) (am) Each notice under par. (a) shall include a statement of the
14 rights and obligations of the tenant specified under sub. (2).

15 **SECTION 7.** 846.35 (1) (b) 2. of the statutes, as created by 2009 Wisconsin Act
16 2, is amended to read:

17 846.35 (1) (b) 2. By certified mail ~~with return receipt requested~~ supported by
18 a certificate of mailing obtained from the U.S. post office from which the mailing was
19 made, and, separately, by first class mail. Notice given under this subdivision is
20 considered completed when it is mailed, ~~unless the envelope enclosing the notice is~~
21 ~~returned unopened to the plaintiff~~ both mailings are sent, postage pre-paid, to the
22 tenant, or, if the tenant's name is unknown to the plaintiff, to the occupant, at each
23 rental unit address. All notices mailed under this subdivision shall be mailed in
24 envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address
25 appears, ~~with a request to return to that address.~~

1 **SECTION 8.** 846.35 (2) (a) (intro.) of the statutes, as created by 2009 Wisconsin
2 Act 2, is amended to read:

3 846.35 **(2)** (a) (intro.) Notwithstanding ss. 708.02 and 710.10 (3) and ch. 704,
4 all of the following apply to a tenant whose tenancy is terminated as a result of a
5 foreclosure judgment and sale with respect to the rental property:

6 **SECTION 9.** 846.35 (2) (c) of the statutes is created to read:

7 846.35 **(2)** (c) After the sale of the property is confirmed and during the period
8 that the tenant retains possession under this subsection, the purchaser at the sale
9 and the tenant shall have all of the rights and obligations of a landlord and tenant,
10 respectively, under ch. 704 and under the tenant's lease, if any, with respect to each
11 other and the property.

12 **SECTION 10.** 846.35 (6) of the statutes, as affected by 2009 Wisconsin Act 28,
13 is amended to read:

14 846.35 **(6)** PENALTIES. If a plaintiff fails to provide a notice under ~~par. sub. (1)~~
15 (a) in accordance with ~~pars. sub. (1) (a), (am), and (b)~~, or fails to comply with sub. (5),
16 the court shall award the tenant to whom the notice should have been given or who
17 should not have been named as a defendant \$250 in damages, plus reasonable
18 attorney fees. A tenant may not recover under this paragraph for more than one
19 notice violation.

20 **SECTION 11. Initial applicability.**

21 (1) The treatment of sections 704.35 (1) (c), 846.015 (1) to (4), and 846.35 (1) (a)
22 (intro.), 1., and 2., (am), and (b) 2. and (2) (a) (intro.) of the statutes first applies to
23 foreclosure actions commenced on the effective date of this subsection.

